

CHAPTER 3.0

COMMENTS AND RESPONSE TO COMMENTS

3.0 COMMENTS AND RESPONSE TO COMMENTS

3.1 INTRODUCTION

This chapter includes all comments received on the Draft EIR during the 50-day public and agency review period (45 day minimum per CEQA, plus five days per County of Imperial Guidelines). No new significant environmental impacts or issues, beyond those already identified in the Draft EIR for the Campo Verde Solar Project, were raised during the public review period. Acting as lead agency under CEQA, Imperial County directed responses to the comments received on the Draft EIR. Pursuant to CEQA Guidelines §15088.5, none of the comments received during the comment period involve any new significant impacts or “significant new information” that would require recirculation of the Draft EIR

3.2 LIST OF COMMENTERS

The following individuals and representatives of organizations and agencies submitted written comments on the Draft EIR.

COMMENTS RECEIVED BY IMPERIAL COUNTY			
LETTER	INDIVIDUAL OR SIGNATORY	AFFILIATION	DATE
1	Dave Singleton, Program Analyst	Native American Heritage Commission	May 29, 2012
2	Scott Morgan, Director	Governor’s Office of Planning and Research (with Imperial County Planning & Development Services letter attached)	June 11, 2012
3	Syndi Pompa, Associate Oil & Gas Engineer - Facilities	Department of Conservation, Division of Oil, Gas and Geothermal Resources	June 15, 2012
4	Al Shami Project Manager, Brownfields and Environmental Restoration Program	Department of Toxic Substances	June 26, 2012
5A & 5B	Donald Vargas, Environmental Specialist	Imperial Irrigation District	June 27, 2012 (Comment Letter 5A) December 12, 2011 (Comment Letter 5B – Attachment to Comment Letter 5A)
6	Scott Morgan, Director	Governor’s Office of Planning and Research	June 28, 2012
7	Belen Leon, APCD Environmental Coordinator	Imperial County Air Pollution Control District	July 3, 2012
8	Richard T. Drury	Lozeau Drury LLP, Attorneys for Laborers’ International Union of North America (LIUNA), Local Union No. 1184	July 3, 2012
9	Roy Skinner, Director, Project Permitting	First Solar, Inc.	July 3, 2012

3.0 COMMENTS AND RESPONSE TO COMMENTS

3.3 COMMENTS AND RESPONSES

3.3.1 REQUIREMENTS FOR RESPONDING TO COMMENTS ON A DRAFT EIR

CEQA Guidelines §15088 requires that lead agencies evaluate all comments on environmental issues received on the Draft EIR and prepare a written response. The written response must address the environmental issue(s) raised and provide a detailed response. Rationale must be provided when specific comments or suggestions (e.g., additional mitigation measures) are not accepted. In addition, the written response must be a good faith and reasoned analysis. As long as a good faith effort at full disclosure is made in the EIR (CEQA Guidelines §15204), lead agencies need only to respond to significant environmental issues associated with the project and do not need to provide all the information requested by commenters.

CEQA Guidelines §15204 recommends that commenters provide detailed comments that focus on the sufficiency of the Draft EIR in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. CEQA Guidelines §15204 also notes that commenters should provide an explanation and evidence supporting their comments. Pursuant to CEQA Guidelines §15064, an effect shall not be considered significant in the absence of substantial evidence.

CEQA Guidelines §15088 also recommends that where the response to comments results in revisions to the Draft EIR, those revisions should be noted as a revision to the Draft EIR or in a separate section of the Final EIR.

3.3.2 COMMENTS AND RESPONSE TO COMMENTS

Written comments on the Draft EIR are reproduced on the following pages, along with responses to those comments. To assist in referencing comments and responses, the letters are coded using numbers (e.g., Comment Letter 1) and each issue raised in the comment letter is assigned a number that correlates with the letter (e.g. 1-1, 1-2, 1-3, etc).

Where changes to the Draft EIR text result from responding to comments, those changes are included in the response and demarcated with revision marks (underline for new text, ~~strike-out~~ for deleted text). Comment-initiated text revisions to the Draft EIR and minor staff-initiated changes are compiled in their entirety and are demarcated with revision marks in Chapter 4.0, Errata, of this Final EIR.

3.0 COMMENTS AND RESPONSE TO COMMENTS

STATE OF CALIFORNIA

Edmund G. Brown, Jr., Governor

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-6251
Fax (916) 657-5390
Web Site www.nahc.ca.gov
ds_nahc@pacbell.net



COMMENT LETTER 1

MAY 31 2012

May 29, 2012

IMPERIAL COUNTY
PLANNING & DEVELOPMENT SERVICES

Mr. David Black, Senior Planner

Imperial County Planning & Development Services Department

801 Main Street
El Centro, CA 92243

Re: SCH#2011111049; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the "Campo Verde Solar Project;" located on 1,990-acres seven miles southwest of the city of El Centro; Imperial County, California.

Dear Mr. Black:

The Native American Heritage Commission (NAHC), the State of California 'Trustee Agency' for the protection and preservation of Native American cultural resources pursuant to California Public Resources Code §21070 and affirmed by the Third Appellate Court in the case of EPIC v. Johnson (1985: 170 Cal App. 3rd 604).

1-1

This letter includes state and federal statutes relating to Native American historic properties of religious and cultural significance to American Indian tribes and interested Native American individuals as 'consulting parties' under both state and federal law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9.

The California Environmental Quality Act (CEQA – CA Public Resources Code 21000-21177, amendments effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the CEQA Guidelines defines a significant impact on the environment as 'a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ... objects of historic or aesthetic significance.' In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE), and if so, to mitigate that effect. The NAHC did conduct a Sacred Lands File (SLF) search within the 'area of potential effect (APE) and Native American cultural resources were not identified.

1-2

The NAHC "Sacred Sites," as defined by the Native American Heritage Commission and the California Legislature in California Public Resources Code §§5097.94(a) and 5097.96. Items in the NAHC Sacred Lands Inventory are confidential and exempt from the Public Records Act pursuant to California Government Code §6254 (r).

Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries of cultural resources or burial sites once a project is underway. Culturally affiliated tribes and individuals may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We strongly urge that you make contact with the list of Native American Contacts on the attached list of Native American

1-3

3.0 COMMENTS AND RESPONSE TO COMMENTS

contacts, to see if your proposed project might impact Native American cultural resources and to obtain their recommendations concerning the proposed project. Pursuant to CA Public Resources Code § 5097.95, the NAHC requests cooperation from other public agencies in order that the Native American consulting parties be provided pertinent project information. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). Pursuant to CA Public Resources Code §5097.95, the NAHC requests that pertinent project information be provided consulting tribal parties. The NAHC recommends *avoidance* as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native American cultural resources and Section 2183.2 that requires documentation, data recovery of cultural resources.

Furthermore, the NAHC if the proposed project is under the jurisdiction of the statutes and regulations of the National Environmental Policy Act (e.g. NEPA; 42 U.S.C. 4321-43351). Consultation with tribes and interested Native American consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 *et seq*), 36 CFR Part 800.3 (f) (2) & .5, the President's Council on Environmental Quality (CSQ, 42 U.S.C 4371 *et seq.* and NAGPRA (25 U.S.C. 3001-3013) as appropriate. The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's *Standards* include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

1-3
continued

Confidentiality of "historic properties of religious and cultural significance" should also be considered as protected by California Government Code §6254(r) and may also be protected under Section 304 of he NHPA or at the Secretary of the Interior discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C., 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APEs and possibility threatened by proposed project activity.

1-4

Furthermore, Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for inadvertent discovery of human remains mandate the processes to be followed in the event of a discovery of human remains in a project location other than a 'dedicated cemetery'.

1-5

To be effective, consultation on specific projects must be the result of an ongoing relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. Regarding tribal consultation, a relationship built around regular meetings and informal involvement with local tribes will lead to more qualitative consultation tribal input on specific projects.

1-6

Finally, when Native American cultural sites and/or Native American burial sites are prevalent within the project site, the NAHC recommends 'avoidance' of the site as referenced by CEQA Guidelines Section 15370(a).

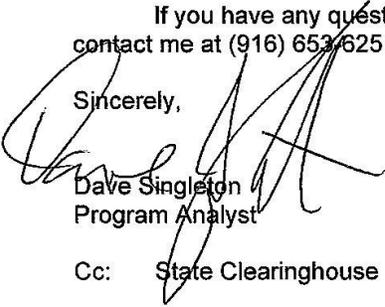
1-7

3.0 COMMENTS AND RESPONSE TO COMMENTS

If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

1-8

Sincerely,



Dave Singleton
Program Analyst

Cc: State Clearinghouse

Attachment: Native American Contact List

3.0 COMMENTS AND RESPONSE TO COMMENTS

Native American Contacts

Imperial County
May 29, 2012

La Posta Band of Mission Indians
Gwendolyn Parada, Chairperson
PO Box 1120 Diegueno/Kumeyaay
Boulevard , CA 91905
gparada@lapostacasino.
(619) 478-2113
619-478-2125

Fort Yuma Quechan Indian Nation
Keeny Escalanti, Sr., President
PO Box 1899 Quechan
Yuma , AZ 85366
qitpres@quechantribe.com
(760) 572-0213
(760) 572-2102 FAX

Manzanita Band of Kumeyaay Nation
Leroy J. Elliott, Chairperson
PO Box 1302 Kumeyaay
Boulevard , CA 91905
ljbirdsinger@aol.com
(619) 766-4930
(619) 766-4957 Fax

Ewiaapaayp Tribal Office
Will Micklin, Executive Director
4054 Willows Road Diegueno/Kumeyaay
Alpine , CA 91901
wmicklin@leaningrock.net
(619) 445-6315 - voice
(619) 445-9126 - fax

Campo Band of Mission Indians
Ralph Goff, Chairperson
36190 Church Road, Suite 1 Diegueno/Kumeyaay
Campo , CA 91906
chairgoff@aol.com
(619) 478-9046
(619) 478-5818 Fax

Ewiaapaayp Tribal Office
Michael Garcia, Vice Chairperson
4054 Willows Road Diegueno/Kumeyaay
Alpine , CA 91901
michaalg@leaningrock.net
(619) 445-6315 - voice
(619) 445-9126 - fax

Kwaaymii Laguna Band of Mission Indians
Carmen Lucas
P.O. Box 775 Diegueno -
Pine Valley , CA 91962
(619) 709-4207

Cocopah Museum/Cultural Resources Dept.
H. Jill McCormick, Tribal Archaeologist
County 15th & Ave. G Cocopah
Sommerton , AZ 85350
culturalres@cocopah.com
(928) 530-2291 - cell
(928) 627-2280 - fax

1-9

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2011111049; CEQA Notice of Completion; draft Environmental Impact Report DEIR) for the Campo Verde Solar Project; located seven miles southwest of the City of El Centro; Imperial County, California.

3.0 COMMENTS AND RESPONSE TO COMMENTS

Native American Contacts
Imperial County
May 29, 2012

Quenchan Indian Nation
John P. Bathke, THPO
P.O. Box 1899 Quechan
Yuma , AZ 85366
b.nash@quechantribe.com
(928) 920-6068 - CELL
(760) 572-2423
(760) 572-0515 - FAX

Ah-Mut-Pipa Foundation
Preston J. Arrow-weed
P.O. Box 160 Quechan
Bard , CA 92222 Kumeyaay
ahmut@earthlink.net
(928) 388-9456

Inter-Tribal Cultural Resource Protection Council
Frank Brown, Coordinator
240 Brown Road Diegueno/Kumeyaay
Alpine , CA 91901
frankbrown6928@gmail.com
(619) 884-6437

Kumeyaay Cultural Repatriation Committee
Bernice Paipa, Vice Spokesperson
1095 Barona Road Diegueno/Kumeyaay
Lakeside , CA 92040
(619) 478-2113
(KCRC is a Colation of 12
Kumeyaay Governments

1-9
continued

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#201111049; CEQA Notice of Completion; draft Environmental Impact Report DEIR) for the Campo Verde Solar Project; located seven miles southwest of the City of El Centro; Imperial County, California.

3.0 COMMENTS AND RESPONSE TO COMMENTS

RESPONSE TO COMMENT LETTER 1

Commenter: Dave Singleton, Program Analyst, Native American Heritage Commission

Date of Letter: May 29, 2012

Response to Comment 1-1: Introductory comment explaining the Native American Heritage Commission's (NAHC's) role. Comment asserts that the letter includes state and federal statutes relating to Native American historic properties, etc., and notes that state law addresses the freedom of Native American religious expression in Public Resources Code §5097.9. Comment noted. This comment does not address the adequacy of the analysis of the EIR.

Response to Comment 1-2: The comment explains the CEQA process as it relates to analyzing historical and archaeological resources. The comment states that the NAHC conducted a Sacred Lands File search within the Area of Potential Effect (APE) and that no Native American cultural resources were identified. The comment also notes that items in the Sacred Lands Inventory are confidential and exempt from the Public Records Act. Comment noted. This comment does not address the adequacy of the analysis of the EIR.

Response to Comment 1-3: The comment addresses early consultation with the Native American tribes and interested Native American Consulting parties. The Draft EIR documents the consultation process undertaken by the Bureau of Land Management as part of the separate Environmental Assessment prepared for the project. As noted on page 1.0-26 of the Draft EIR "Notification letters were sent to Native American Tribes by the BLM in October 2011. Another letter was sent with the cultural resources report and the Environmental Assessment in April, 2012." In addition, pages 4.7-11 and 4.7-12 identify tribes that were contacted by the preparer of the cultural resources technical report. These tribes were contacted for input on the APE. This comment does not address the adequacy of the analysis of the EIR.

Response to Comment 1-4: The comment notes that historic properties of religious and cultural significance are subject to confidentiality protection. Comment noted. No response is required.

Response to Comment 1-5: The comment cites sections of various codes that provide provisions for accidental discovery of human remains outside of a dedicated cemetery. Mitigation measure MM 4.7.4 on page 4.7-23 and 4.7-24 of the Draft EIR specifically addresses discovery of human remains. This comment does not address the adequacy of the analysis of the EIR.

Response to Comment 1-6: The comment notes the importance of on-going consultation with the NAHC. Coordination with the NAHC, as needed, is noted in mitigation measures MM 4.7.3 and MM 4.7.4 on pages 4.7-22 and 4.7-23 of the Draft EIR.

Response to Comment 1-7: The comment states that when Native American cultural sites are prevalent within the project site, the NAHC recommends "avoidance." Mitigation measure MM 4.7.2 on page 4.7-22 of the Draft EIR is consistent with this recommendation in stating "The archaeological monitor will monitor the effectiveness of the protective measures described in this measure at least twice per month during construction to ensure that unanticipated effects are avoided." Comment noted. No response is required.

Response to Comment 1-8: Closing remark with commenter contact information. Comment noted. No response is required.

3.0 COMMENTS AND RESPONSE TO COMMENTS

PLANNING & DEVELOPMENT SERVICES
A.L.U.C. / Administration / Building Division / Planning Division / Parks & Recreation / Planning Commission

Imperial County



Armando G. Villa, Director

May 30, 2012

State Clearinghouse
1400 Tenth Street
Sacramento, CA 95814

**COMMENT LETTER 2
(ATTACHEMENT)**



**RE: Draft Environmental Impact Report for Campo Verde Solar Project –
SCH No. 2011111049**

To whom it may concern,

The County of Imperial requests that the review period for the above referenced project be extended from 45-days to 50 days per County requirements. Please revise the review dates to match the dates published in the Imperial Valley Press: May 15, 2012 thru July 3, 2012.

2-2

Should you have any questions feel free to contact me at (760) 482-4240 or via email at davidblack@co.imperial.ca.us

Sincerely,

David Black
Planner IV

Cc: Armando G. Villa, AICP, Director of Planning & Development Services
Jim Minnick, Assistant Director of Planning & Development Services
Sean Moore, Planning Division Manager
Files: 10.105, Campo Verde Solar

001343 St. Pl. County, CA 92342 Phone: (760) 482-4240 Fax: (760) 252-8228 www.icpsd.com planninginfo@co.imperial.ca.us

3.0 COMMENTS AND RESPONSE TO COMMENTS

COMMENT LETTER 2 (ATTACHMENT)

201111049

Form A
Notice of Completion & Environmental Document Transmittal
 Mail to: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044 (916) 445-0613
 See NOTE below:
 SCH# 201111049

Project Title: Campo Verde Solar Project
 Lead Agency: Imperial County Contact Person: David Black
 Street Address: 801 Main Street Email: DavidBlack@co.imperial.com
 City: El Centro Zip: 92243 County: Imperial Phone: (760) 462-4240

Project Location
 County: Imperial City/Nearest Community: El Centro
 Cross Streets: Draw Road and Interstate E Zip Code: 92243 Total Acres: 1,960
 Assessor's Parcel No: Vanouze Section: 17, 21, 28, 33 and 34 Twp: T16S Range: R12E Base: Mount Signal Seeley
 Within 2 Miles: State Hwy # 98 Waterways: Westside Main Canal
 Airports: N/A Railways: N/A Schools: Westside Elementary School

Document Type
 CEQA: NOP Supplement/Subsequent EIR OTHER Joint Document
 Early Cons (Prior SCH No) Final Document
 Neg Dec Other Other
 Draft EIR Draft EIS FONSI

Local Action Type
 General Plan Update Specific Plan Rezone Annexation
 General Plan Amendment Master Plan Prezone Redevelopment
 General Plan Element Planned Unit Development Use Permit Coastal Permit
 Community Planning Dept Site Plan Land Division (Subdivision) Other Variance

Development Type
 Residential Units _____ Acres _____ Water Facilities Type _____ MGD _____
 Office Sq ft _____ Acres _____ Employees _____ Transportation Type _____
 Commercial Sq ft _____ Acres _____ Employees _____ Mining Mineral _____
 Industrial Sq ft _____ Acres _____ Employees _____ Power Type Solar Watts 140 MW
 Educational Waste Treatment Type _____
 Recreational Hazardous Waste Type _____
 Other _____

Project Issues Discussed in Document
 Aesthetic/Visual Flood Plain/Flooding Schools/Universities Water Quality
 Agricultural Land Forest Land/Fire Hazard Septic Systems Water Supply/Groundwater
 Air Quality Geological/Seismic Sewer Capacity Wetland/Riparian
 Archaeological/Historical Minerals Soil Erosion/Compaction/Grading Wildlife
 Coastal Zone Noise Solid Waste Growth Including
 Drainage/Absorption Population/Housing Balance Toxic/Hazardous Land Use
 Economic/Job Public Services/Facilities Traffic/Circulation Cumulative Effects
 Fiscal Recreation/Parks Vegetation Other _____

Present Land Use/Zoning/General Plan Use: Agriculture non-focc crops, Zoned A-2 - General Agriculture, A-2-R - General Agriculture, Rural Zone, and A-3 - Heavy Agriculture
 Project Description: A 140 MW solar facility including solar panels, a gen-se line, supporting electrical infrastructure, O&M Building, ancillary structures and fencing

2-3

State Clearinghouse Contact: (916) 445-0613

State Review Began: 5-14-2012

SCH COMPLIANCE 6-27-2012

Please note State Clearinghouse Number (SCH#) on all Comments

SCH#: 201111049
 Please forward late comments directly to the Lead Agency

AQMD/APCD 10
 (Resources: 5, 19)

Project Sent to the following State Agencies

- | | |
|--|--|
| <input checked="" type="checkbox"/> Resources | State/Consumer Svcs |
| <input type="checkbox"/> Boating & Waterways | General Services |
| <input type="checkbox"/> Coastal Comm | Cal EPA |
| <input checked="" type="checkbox"/> Colorado Rvr Bd | <input checked="" type="checkbox"/> ARB: Airport/Energy Projects |
| <input checked="" type="checkbox"/> Conservation | <input type="checkbox"/> ARB: Transportation Projects |
| <input checked="" type="checkbox"/> Fish & Game # <u>6</u> | <input type="checkbox"/> ARB: Major Industrial Projects |
| <input type="checkbox"/> Delta Protection Comm | <input type="checkbox"/> SWRCB: Div. Financial Assist. |
| <input type="checkbox"/> Cal Fire | <input type="checkbox"/> SWRCB: Wtr Quality |
| <input checked="" type="checkbox"/> Historic Preservation | <input type="checkbox"/> SWRCB: Wtr Rights |
| <input checked="" type="checkbox"/> Parks & Rec | <input checked="" type="checkbox"/> Reg. WQCB # <u>1</u> |
| <input type="checkbox"/> Central Valley Flood Prot. | <input checked="" type="checkbox"/> Toxic Sub Ctrl-CTC |
| <input type="checkbox"/> Bay Cons & Dev Comm. | Yth/Adlt Corrections |
| <input checked="" type="checkbox"/> DWR | Corrections |
| <input type="checkbox"/> Cal EMA | |
| <input type="checkbox"/> Resources, Recycling and Recovery | |
| Bus Transp Hous | Independent Comm |
| <input type="checkbox"/> Aeronautics | Energy Commission |
| <input checked="" type="checkbox"/> CHP | <input checked="" type="checkbox"/> NAHC |
| <input checked="" type="checkbox"/> Caltrans # <u>11</u> | <input type="checkbox"/> Public Utilities Comm |
| <input type="checkbox"/> Trans Planning | <input checked="" type="checkbox"/> State Lands Comm |
| <input type="checkbox"/> Housing & Com Dev | <input type="checkbox"/> Tahoe Rgl Plan Agency |
| <input type="checkbox"/> Food & Agriculture | |
| <input type="checkbox"/> Public Health | |
| | Conservancy |
| | Other: _____ |

3.0 COMMENTS AND RESPONSE TO COMMENTS

RESPONSE TO COMMENT LETTER 2

Commenter: Scott Morgan, Director, Governor's Office of Planning and Research

Date of Letter: June 11, 2011

Response to Comment 2-1: The comment documents the extension of the review period to July 3, 2012. Comment noted. No response is required.

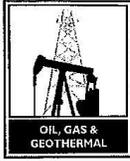
Response to Comment 2-2: The comment is a copy of the letter from the Imperial County Planning & Development Services Department requesting that the comment period be extended from 45-days to 50 days. Comment noted. No response is required.

Response to Comment 2-3: The comment is a copy of the Notice of Completion filed with the State Clearinghouse included as a attachment to Comment Letter 2. It demonstrates that no other details of the project, aside from the close of the review period, have changed. Comment noted. No response is required.

3.0 COMMENTS AND RESPONSE TO COMMENTS

NATURAL RESOURCES AGENCY

EDMUND G. BROWN, JR. GOVERNOR



DEPARTMENT OF CONSERVATION

DIVISION OF OIL, GAS AND GEOTHERMAL RESOURCES

5816 Corporate Avenue • Suite 200 • CYPRESS, CALIFORNIA, 90630-4731

PHONE 714 / 816-6847 • FAX 714 / 816-6853 • WEBSITE conservation.ca.gov

COMMENT LETTER 3

June 15, 2012

RECEIVED

JUN 18 2012

IMPERIAL COUNTY
PLANNING & DEVELOPMENT SERVICES

Mr. David Black, Planner IV
Imperial County Planning and Development -
801 Main Street
El Centro, CA 92243

Dear Mr. Black:

DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) FOR THE CAMPO VERDE
SOLAR PROJECT – SCH 2011111049

The Department of Conservation's Division of Oil, Gas, and Geothermal Resources (Division), Cypress office, has reviewed the above referenced project. Our comments are as follows:

The proposed project is located within the administrative boundaries of Imperial County. There is one plugged geothermal well adjacent to and one (same condition) within your project boundaries. Both belong to Chevron U.S.A. Inc. Well "C" 283 (025-90354) is the well within your project boundary. Well "C" 286 (025-90357) is the well adjacent to your project boundary. These wells are located on Division map W1-8 and in Division records.

The Division is mandated by Section 3106 of the Public Resources Code (PRC) to supervise the drilling, operation, maintenance, and plugging and abandonment of wells for the purpose of preventing: (1) damage to life, health, property, and natural resources; (2) damage to underground and surface waters suitable for irrigation or domestic use; (3) loss of oil, gas, or reservoir energy; and (4) damage to oil and gas deposits by infiltrating water and other causes. Furthermore, the PRC vests in the State Oil and Gas Supervisor (Supervisor) the authority to regulate the manner of drilling, operation, maintenance, and abandonment of oil and gas wells so as to conserve, protect, and prevent waste of these resources, while at the same time encouraging operators to apply viable methods for the purpose of increasing the ultimate recovery of oil and gas.

The scope and content of information that is germane to the Division's responsibility are contained in Section 3000 et seq. of the Public Resources Code (PRC), and administrative regulations under Title 14, Division 2, Chapter 4 of the California Code of Regulations.

The Department of Conservation's mission is to balance today's needs with tomorrow's challenges and foster intelligent, sustainable, and efficient use of California's energy, land, and mineral resources.

3.0 COMMENTS AND RESPONSE TO COMMENTS

Mr. David Black
June 15, 2012
Page 2 of 2

If any structure is to be located over or in the proximity of a previously plugged and abandoned well, the well may need to be plugged to current Division specifications. Section 3208.1 of the Public Resources Code (PRC) authorizes the State Oil and Gas Supervisor (Supervisor) to order the reabandonment of any previously plugged and abandoned well when construction of any structure over or in the proximity of the well could result in a hazard.

3-5

An operator must have a bond on file with the Division before certain well operations are allowed to begin. The purpose of the bond is to secure the state against all losses, charges, and expenses incurred by it to obtain such compliance by the principal named in the bond. The operator must also designate an agent, residing in the state, to receive and accept service of all orders, notices, and processes of the Supervisor or any court of law.

3-6

Written approval from the Supervisor is required prior to changing the physical condition of any well. The operator's notice of intent (notice) to perform any well operation is reviewed on engineering and geological basis. For new wells and the altering of existing wells, approval of the proposal depends primarily on the following: protecting all subsurface hydrocarbons and fresh waters; protection of the environment; using adequate blowout prevention equipment; and utilizing approved drilling and cementing techniques.

3-7

The Division must be notified to witness or inspect all operations specified in the approval of any notice. This includes tests and inspections of blowout-prevention equipment, reservoir and freshwater protection measures, and well-plugging operations.

3-8

The Division recommends that adequate safety measures be taken by the project manager to prevent people from gaining unauthorized access to oilfield equipment. Safety shut-down devices on wells and other oilfield equipment must be considered when appropriate.

3-9

If any plugged and abandoned or unrecorded wells are damaged or uncovered during excavation or grading, remedial plugging operations may be required. If such damage or discovery occurs, the Division's Cypress district office must be contacted to obtain information on the requirements for and approval to perform remedial operations.

3-10

Sincerely,



Syndi Pompa
Associate Oil & Gas Engineer - Facilities

3.0 COMMENTS AND RESPONSE TO COMMENTS

RESPONSE TO COMMENT LETTER 3

Commenter: Syndi Pompa, Associate Oil & Gas Engineer – Facilities, Department of Conservation

Date of Letter: June 15, 2012

Response to Comment 3-1: Introductory comments regarding the Department of Conservation’s review of the project. No response is required.

Response to Comment 3-2: The comment notes that the proposed project site includes one plugged geothermal well. An additional plugged well is located adjacent to the project boundary. The comment is noted.

Response to Comment 3-3: The comment cites the Division’s authority to supervise drilling, operation, maintenance, plugging and abandonment of wells. It goes on to discuss the Supervisor’s authority to regulate activities regarding oil and gas wells. The comment is noted. No response is required.

Response to Comment 3-4: The scope comment cites the section of the Public Resources Code and the California Code of Regulations that pertain to the Division’s responsibilities. The comment is noted. No response is required.

Response to Comment 3-5: The comment notes that any structure located over or in the proximity of a previously plugged and abandoned well may need to be plugged to the Division’s current specifications. Statute 3208.1 pertains to oil and gas wells. No analogous regulation exists for geothermal wells. The Department of Conservation, Division of Oil, Gas and Geothermal Resources currently does not have any laws or regulations for building setbacks or reabandonment of any geothermal wells including temperature gradients holes (Parli, 2012).

The geothermal well on the project site is documented on Page 4.10-3 of the Draft EIR. The well abandonment was approved on February 24, 1982 and is documented as having a cement surface plug within the upper 10 feet below the ground surface.

Response to Comment 3-6: The commenter states that a bond must be on file with the Division before certain operations are allowed. This comment addresses procedures associated with operations. No further response is required.

Response to Comment 3-7: The comment states that written approval from the Supervisor is required prior to changing the physical condition of any well (new or altering an existing well). The comment is noted. No response is required.

Response to Comment 3-8: The comment states that the Division must be notified to witness or inspect all operations specified in the approval of any notice. The comment is noted. No response is required.

Response to Comment 3-9: The comment notes safety procedures that should be observed regarding access to oil field equipment and shut down devices. The comment is noted. No response is required.

Response to Comment 3-10: The comment provides details regarding actions if a well is damaged during excavation or grading. This comment does not address the adequacy of the analysis of the EIR. However, it is noted for the decision-makers’ consideration.

3.0 COMMENTS AND RESPONSE TO COMMENTS



Matthew Rodriguez
Secretary for
Environmental Protection



Department of Toxic Substances Control

Deborah O. Raphael, Director
5796 Corporate Avenue
Cypress, California 90630



Edmund G. Brown Jr.
Governor

RECEIVED

June 26, 2012

COMMENT LETTER 4

JUN 29 2012

IMPERIAL COUNTY
PLANNING & DEVELOPMENT SERVICES

Mr. David Black
County of Imperial
801 Main Street
El Centro, CA 92243

DRAFT ENVIRONMENTAL IMPACT REPORT (EIR) FOR CAMPO VERDE SOLAR PROJECT (SCH# 2011111049)

Dear Mr. Black:

The Department of Toxic Substances Control (DTSC) has received your submitted Notice of Preparation Report for the above-mentioned project. The following project description is stated in your document: "The project is a proposal to build a 140-plus megawatt alternating current (MWAC) solar generation facility using photovoltaic (PV) technology. The project consists of the solar generation facility on private land and associated 230-kilovolt (kV) transmission line (gen-tie). The proposed gen-tie crosses both private and public land, the latter under the jurisdiction of the BLM. The gen-tie will connect the solar generation facility to the Imperial Valley Substation. The public lands crossed by the proposed gen-tie are managed by the BLM and located wholly within an area designated by the BLM for utilities and infrastructure corridors. A Right-of-Way (ROW) approval from the BLM is required to construct the proposed gen-tie.

4-1

The project includes PV solar modules, arrays, power conversion stations, an electrical collection system, a substation and switchyard. Other components of the project include an Operations and Maintenance Building, project support systems consisting of control systems, a communication system, lighting system, electric service, security, and fire system. The gen-tie would be designed for two 230-kV circuits with three conductors per circuit (to accommodate a future second line if necessary for a separate project). The gen-tie would cross approximately 0.9 miles of BLM land".

Based on the review of the submitted document DTSC has the following comments:

4-2

- 1) The EIR should evaluate whether conditions within the project area may pose a threat to human health or the environment. Following are the databases of some of the regulatory agencies:

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3.0 COMMENTS AND RESPONSE TO COMMENTS

Mr. David Black
 June 26, 2012
 Page 2

- National Priorities List (NPL): A list maintained by the United States Environmental Protection Agency (U.S.EPA).
- Envirostor (formerly CalSites): A Database primarily used by the California Department of Toxic Substances Control, accessible through DTSC's website (see below).
- Resource Conservation and Recovery Information System (RCRIS): A database of RCRA facilities that is maintained by U.S. EPA.
- Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS): A database of CERCLA sites that is maintained by U.S.EPA.
- Solid Waste Information System (SWIS): A database provided by the California Integrated Waste Management Board which consists of both open as well as closed and inactive solid waste disposal facilities and transfer stations.
- GeoTracker: A List that is maintained by Regional Water Quality Control Boards.
- Local Counties and Cities maintain lists for hazardous substances cleanup sites and leaking underground storage tanks.
- The United States Army Corps of Engineers, 911 Wilshire Boulevard, Los Angeles, California, 90017, (213) 452-3908, maintains a list of Formerly Used Defense Sites (FUDS).

4-2
 continued

2) The EIR should identify the mechanism to initiate any required investigation and/or remediation for any site that may be contaminated, and the government agency to provide appropriate regulatory oversight. If necessary, DTSC would require an oversight agreement in order to review such documents.

4-3

3) Any environmental investigations, sampling and/or remediation for a site should be conducted under a Workplan approved and overseen by a regulatory agency that has jurisdiction to oversee hazardous substance cleanup. The findings of any investigations, including any Phase I or II Environmental Site Assessment Investigations should be summarized in the document. All sampling results in which hazardous substances were found above regulatory standards should be clearly summarized in a table. All closure, certification or remediation approval reports by regulatory agencies should be included in the EIR.

4-4

3.0 COMMENTS AND RESPONSE TO COMMENTS

Mr. David Black
June 26, 2012
Page 3

- | | | |
|----|---|------|
| 4) | If buildings, other structures, asphalt or concrete-paved surface areas are being planned to be demolished, an investigation should also be conducted for the presence of other hazardous chemicals, mercury, and asbestos containing materials (ACMs). If other hazardous chemicals, lead-based paints (LPB) or products, mercury or ACMs are identified, proper precautions should be taken during demolition activities. Additionally, the contaminants should be remediated in compliance with California environmental regulations and policies. | 4-5 |
| 5) | Future project construction may require soil excavation or filling in certain areas. Sampling may be required. If soil is contaminated, it must be properly disposed and not simply placed in another location onsite. Land Disposal Restrictions (LDRs) may be applicable to such soils. Also, if the project proposes to import soil to backfill the areas excavated, sampling should be conducted to ensure that the imported soil is free of contamination. | 4-6 |
| 6) | Human health and the environment of sensitive receptors should be protected during any construction or demolition activities. If necessary, a health risk assessment overseen and approved by the appropriate government agency should be conducted by a qualified health risk assessor to determine if there are, have been, or will be, any releases of hazardous materials that may pose a risk to human health or the environment. | 4-7 |
| 7) | If it is determined that hazardous wastes are, or will be, generated by the proposed operations, the wastes must be managed in accordance with the California Hazardous Waste Control Law (California Health and Safety Code, Division 20, Chapter 6.5) and the Hazardous Waste Control Regulations (California Code of Regulations, Title 22, Division 4.5). If it is determined that hazardous wastes will be generated, the facility should also obtain a United States Environmental Protection Agency Identification Number by contacting (800) 618-6942. Certain hazardous waste treatment processes or hazardous materials, handling, storage or uses may require authorization from the local Certified Unified Program Agency (CUPA). Information about the requirement for authorization can be obtained by contacting your local CUPA. | 4-8 |
| 8) | Hazardous substances would be present on the Project site during construction (e.g., fuels and lubricants, wastes from demolition and remediation, paints and solvents). If released, these substances could pose risks to human health and the environment. For example, demolition wastes containing volatile or fluid hazardous wastes, such as PCB-containing oils or residual fuels from abandoned storage tanks, should be contained and packaged in accordance with regulatory requirements and regularly transported to appropriate disposal facilities. | 4-9 |
| 9) | DTSC can provide cleanup oversight through an Environmental Oversight Agreement (EOA) for government agencies that are not responsible parties, or a Voluntary Cleanup Agreement (VCA) for private parties. For additional | 4-10 |

3.0 COMMENTS AND RESPONSE TO COMMENTS

Mr. David Black
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Page 4

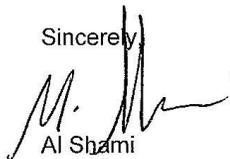
information on the EOA or VCA, please see
www.dtsc.ca.gov/SiteCleanup/Brownfields, or contact Ms. Maryam Tasnif-
Abbasi, DTSC's Voluntary Cleanup Coordinator, at (714) 484-5489.

4-10
continued

If you have any questions regarding this letter, please contact me at
ashami@dtsc.ca.gov, or by phone at (714) 484-5472.

4-11

Sincerely,



Al Shami
Project Manager
Brownfields and Environmental Restoration Program

cc: Governor's Office of Planning and Research
State Clearinghouse
P.O. Box 3044
Sacramento, California 95812-3044
state.clearinghouse@opr.ca.gov

CEQA Tracking Center
Department of Toxic Substances Control
Office of Environmental Planning and Analysis
P.O. Box 806
Sacramento, California 95812
nritter@dtsc.ca.gov

CEQA # 3555

3.0 COMMENTS AND RESPONSE TO COMMENTS

RESPONSE TO COMMENT LETTER 4

Commenter: Al Shami, Project Manager, Brownfields and Environmental Restoration Program,
Department of Toxic Substances

Date of Letter: June 26, 2012

Response to Comment 4-1: The comment provides a description of the proposed project. No response is required.

Response to Comment 4-2: The comment states that the EIR should evaluate whether conditions within the project area may pose a threat to human health or the environment. The comment also identifies databases of some of the regulatory agencies. The Draft EIR examined potential threats to human health in Section 4.10, Hazards and Hazardous Materials. This section included findings and recommendations of a Phase I ESA prepared for the project site.

Response to Comment 4-3: The comment states that the EIR should identify the mechanism to initiate any required investigation and/or remediation for any site that may be contaminated. Mitigation measures are identified for residual hazardous materials, pesticide residue and several other features that could be considered hazardous (refer to MM 4.10.2a, MM 4.10.2b, MM 4.10.2c, MM 4.10.2d and MM 4.10.2e on pages 4.10-21 and 4.10-22 of the Draft EIR). For each mitigation measure, the enforcement/monitoring agencies are identified. The DTSC serves as the Certified Unified Program Agency (CUPA) for Imperial County.

Response to Comment 4-4: The comment states that any environmental investigations, sampling and/or remediation for a site should be conducted under a workplan approved and overseen by a regulatory agency that has jurisdiction to oversee hazardous substance cleanup. As previously stated, a Phase I Environmental Site Assessment (ESA) was prepared for the project site. The findings and recommendations of the Phase I ESA were included in the Draft EIR. In addition, the Phase I ESA is included in its entirety as Appendix H of the Draft EIR.

Response to Comment 4-5: The comment states that investigations for hazardous materials would be necessary if any demolition is planned. Remediation would be required if contaminants (mercury, asbestos containing materials [ACMs], lead-based paint [LBP]) are found. Impact 4.10.2 in the Draft EIR discusses potential hazards on the site including structures potentially containing LBP. Mitigation measures are provided detailing proper removal and disposal of potential hazards. Refer to pages 4.10-20 through 4.10-22 of the Draft EIR.

Response to Comment 4-6: The comment states that future construction may require soil excavation or filing in certain areas and that sampling may be required. The comment goes on to state that if soil is contaminated, it must be properly disposed. Mitigation measure MM 4.10.2d on page 4.10-22 of the Draft EIR requires that “stained soil adjacent to ASTs shall be removed and disposed of in an approved manner by the owner/utility prior to commencing earthmoving activities.”

Response to Comment 4-7: The comment states that human health and the environment of sensitive receptors should be protected during construction and demolition activities. The comment also states that a health risk assessment should be conducted if any releases of hazardous materials may pose a risk to human health or the environment. Impacts 4.10.1, 4.10.2 and 4.10.3 discuss potential hazards associated with project implementation. Mitigation measures are identified (where appropriate) to address these hazards and reduce them to less than significant levels (refer to pages 4.10-18 through 4.10-23 of the Draft EIR). Fugitive dust

3.0 COMMENTS AND RESPONSE TO COMMENTS

control measures (MM 4.4.1c on page 4.4-18 of the Draft EIR) would serve to protect construction workers and sensitive receptors. In addition, the project would be required to follow Occupational Safety and Health Act (OSHA) requirements for construction and operation of the project which will include a Project-Specific Health and Safety Plan to protect project workers (page 4.10-2 of the Draft EIR). A Health Risk Assessment was not deemed necessary based on the RECs on the project site.

Response to Comment 4-8: The commenter states that any hazardous waste generated by the project must be managed in accordance with applicable State and local laws. Page 4.10-19 of the Draft EIR acknowledges “Any spent or surplus hazardous wastes would be transported off-site for disposal according to applicable State and County restrictions and laws governing the disposal of hazardous waste. Detailed information about the use, storage and disposal of hazardous materials would be provided in the Health and Safety Plan that would be developed by the construction contractor (refer to Table 2.0-4 in Chapter 2.0).”

Response to Comment 4-9: The commenter states that hazardous substances present on the project site during construction could pose risks to human health and the environment, if released. Impact 4.10.1 on pages 4.10-18 and 4.10-19 of the Draft EIR discuss the transport, use and storage, and disposal of hazardous materials used on the project site. As noted, in the discussion on page 4.10-19, “All hazardous materials (such as diesel fuel, oil and grease for heavy equipment) transported to the site during construction would occur in compliance with Department of Toxic Substances Control (DTSC) regulations... However, no acutely toxic hazardous materials would be used and none of the materials are anticipated to pose a significant potential for off-site impacts such as contamination through a large release of chemicals. The Applicant has identified mitigation measures that address handling of hazardous materials in a manner which would avoid potential for spills (refer to Table 2.0-4 in Chapter 2.0)...The project will also be required to comply with State laws and County Ordinance restrictions, which regulate and control hazardous materials handled on-site.”

Response to Comment 4-10: The comment states that the EIR should evaluate whether conditions within the project area may pose a threat to human health or the environment and identifies a website link and contact name and phone number. A Phase I ESA was prepared for the project site. The findings were included in Section 4.10, Hazards and Hazardous Materials of the Draft EIR. The Phase I ESA in its entirety was included as Appendix H of the Draft EIR.

Response to Comment 4-11: The comment provides a contact name and e-mail for any follow up questions. This comment is noted.

3.0 COMMENTS AND RESPONSE TO COMMENTS



COMMENT LETTER 5A

www.iid.com

GS-ES

June 27, 2012

Mr. David Black
Planner IV
Planning & Development Services Department
County of Imperial
801 Main Street
El Centro, CA 92243

SUBJECT: Notice of Availability Campo Verde Solar Project DEIR

Dear Mr. Black:

On May 15, 2012 we received from the Imperial County Planning and Development Services Dept. (ICPDSD), the Notice of Availability for a Draft Environmental Report (DEIR) for the Campo Verde Solar Energy Project. The proposed project consists of two primary components: 1) solar generation equipment and associated facilities on privately owned land capable of producing approximately 140+ MW; and, 2) 230-kV aboveground, electric transmission line(s) and associated facilities that will connect the generation facilities with the Imperial Valley Substation. The 1,990-acre solar photovoltaic energy-generating facility will be located in Imperial County approximately 7 miles southwest of the community of El Centro, California, south of I-8 and west of Drew Road and northeast of Westside Main Canal. The applicant has a long-term Power Purchase Agreement (PPA) with San Diego Gas and Electric (SDG&E) to purchase output from the Project.

5a-1

In addition to our December 12, 2011 comment letter issued on the Notice of Preparation for the DEIR (see attached letter), the Imperial Irrigation District (IID) has reviewed the DEIR and has the following comments:

5a-2

1. The proposed 230 kV and 34.5 kV overhead transmission lines will cross over existing IID's 7.2/12.47 kV electric distribution lines at 5 different locations (see attached map). In this regard, the project proponent has submitted an encroachment permit application to IID and IID Energy Department is currently analyzing these line crossings as part of the application review process. Project proponent should be advised to contact IID Energy Customer Operations Office at (760) 482-3300 for further information.

5a-3

2. IID Water facilities that would be impacted include Westside Main Canal, Fig Canal, Fern Canal, Fern Sidemain Canal, Wormwood Canal, Westside Drain, Dixie Drain No. 3C, Dixie Drain No. 3, Wixom Drain, Diehl Drain, Wormwood 7 Drain, Wormwood Drain, and Fig Drain.

5a-4

3. On page ES-39, Table ES-1 *Summary of Impacts*, last row, Impact 4.11.3 *Result in Substantial Flooding On- Or Off-Site/Create or Contribute Runoff Exceeding Capacity* of the DEIR, the proponent states implementation of the proposed project would generate

5a-5

IMPERIAL IRRIGATION DISTRICT
OPERATING HEADQUARTERS • P.O. BOX 937 • IMPERIAL, CA 92251

3.0 COMMENTS AND RESPONSE TO COMMENTS

<p>on-site runoff, existing drainage patterns would be maintained, the site would remain pervious, and sufficient capacity is available in IID receiving drains. The proposed project will impact IID drains, site runoff flows, and proposed storm water detention facilities. To mitigate impacts, the proposed project will require a comprehensive IID hydraulic drainage system analysis. IID's hydraulic drainage system analysis includes an associated drain impact fee. For further information, proponent should contact IID's Chief Civil Engineer at (760) 339-9559.</p>	5a-5
<p>4. The proponent may not use IID's canal or drain banks to access the project site.</p>	5a-6
<p>5. Storm water from this project shall discharge into IID drains through existing permitted drain outlets.</p>	5a-7
<p>6. The project may require IID facility improvements for which the project proponent will be financially responsible.</p>	5a-8
<p>7. Project proponent should be advised that, all new non-agricultural water project supply requests are processed in accordance with the IID's Interim Water Supply Policy for Non-Agricultural Projects (IWSP) (see http://www.iid.com/index.aspx?page=152 for a link to the IWSP). In order to enter into a water supply agreement with the IID and obtain a water supply for the project, the applicant will be required to comply with all applicable IID policies and regulations. Such policies and regulations require, among other things, that all potential environmental and water supply impacts of the Project have been adequately assessed, appropriate mitigation has been developed and appropriate conditions have been adopted by the relevant land use permitting/approving agencies. Furthermore, the applicant will be required to meet standards for water use efficiency and best management practices, including but not limited to those established by the County, as well as other water use efficiency standards, adopted by IID or local government agencies. For additional information regarding the IWSP, the IID Water Supply Planning/Colorado River Manager may be contacted at (760) 339-9038.</p>	5a-9
<p>8. On May 8, 2012 the IID Board of Directors adopted a Temporary Land Conversion Following Policy that will require participation from certain project developers and/or landowners as a condition of water service for new non-agricultural projects. In particular, this policy will target lower water demand projects, such as photovoltaic solar facilities, that require a temporary land use conversion and are permitted by conditional use permits on agriculturally-zoned lands. Implementation details are being developed by IID and will be incorporated into landowner following contracts and project water supply agreements issued under IID's Interim Water Supply Policy (see IID website http://www.iid.com/Modules/ShowDocument.aspx?documentid=5646 or the IID MCI webpage at http://www.iid.com/index.aspx?page=152).</p>	5a-10
<p>9. IID water, for use during the project's construction phase, requires an encroachment permit during that phase of the project.</p>	5a-11
<p>10. Any construction or operation on IID property or within its existing and proposed right of way or easements will require an encroachment permit, including but not limited to: surface improvements such as proposed new streets, driveways, parking lots, landscape; and all water, sewer, storm water, or any other above ground or underground utilities. A copy of the encroachment permit application is included in the Imperial Irrigation District's <i>Developer Project Guide 2008</i>, and can be accessed at:</p>	5a-12

3.0 COMMENTS AND RESPONSE TO COMMENTS

<http://www.iid.com/Modules/ShowDocument.aspx?documentid=2328>. Also, instructions for the completion of encroachment applications can be found at <http://www.iid.com/Modules/ShowDocument.aspx?documentid=2335>. The IID Real Estate Section should be contacted at (760) 339-9239 for additional information regarding encroachment permits.

5a-12
continued

11. In addition to IID's recorded easements, IID claims, at a minimum, a prescriptive right of way to the toe of slope of all existing canals and drains. Where space is limited and depending upon the specifics of adjacent modifications, the IID may claim additional secondary easements/prescriptive rights of ways to ensure operation and maintenance of IID's facilities can be maintained and are not impacted and if impacted mitigated. Thus, IID should be consulted prior to the installation of any facilities adjacent to IID's facilities. Certain conditions may be placed on adjacent facilities to mitigate or avoid impacts to IID's facilities.

5a-13

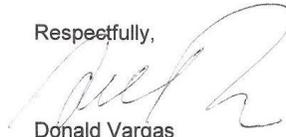
12. Any new, relocated, modified or reconstructed IID facilities required for and by the project (which can include but is not limited to electrical utility substations, electrical transmission and distribution lines, canals, drains, etc.) need to be included as part of the project's CEQA and/or NEPA documentation, environmental impact analysis and mitigation. Failure to do so will result in postponement of any construction and/or modification of IID facilities until such time as the environmental documentation is amended and environmental impacts are fully mitigated. **Any and all mitigation necessary as a result of the construction, relocation and/or upgrade of IID facilities is the responsibility of the project proponent.**

5a-14

Should you have any questions, please do not hesitate to contact me by phone at 760-482-3609 or by e-mail at dvargas@iid.com. Thank you for the opportunity to comment on this matter.

5a-15

Respectfully,



Donald Vargas
Environmental Specialist

Kevin Kelley. – General Manager
Jesse Silva. – Manager, Water Dept.
Joel Ivy. – Interim Manager, Energy Dept.
Paul G. Peschel. – Interim General Services Manager
Carl Stills. - Manager, Portfolio Mgmt. Office
Jeff M. Garber. – General Counsel
Carlos Villalon. – Asst. Mgr., Water Dept. System Control & Monitoring
Juan Carlos Sandoval. – Asst. Mgr. Energy Dept.
Jim Kelley. – Supervisor, Real Estate
Vikki Dee Bradshaw. – Interim Supervisor, Environmental Services

3.0 COMMENTS AND RESPONSE TO COMMENTS

RESPONSE TO COMMENT LETTER 5A

Commenter: Donald Vargas, Interim Supervisor, Environmental Services, Imperial Irrigation District
Date of Letter: June 27, 2012

Response to Comment 5a-1: The comment provides introductory remarks and a description of the proposed project. No response is required.

Response to Comment 5a-2: The comment notes that the IID's letter submitted on the Notice of Preparation (NOP) (dated December 12, 2011) is attached (refer to Comment Letter 5B). The County responded to IID's NOP comments, dated December 12, 2011, in Table 1.0-1 on pages 1.0-13 through 1.0-15 of the Draft EIR. However, the attached letter is included as Letter 5B of this Final EIR with the responses provided that reflect current status on the issues raised.

Response to Comment 5a-3: The comment states that the project will cross IID's existing electric distribution lines at 5 locations. The comment notes that the project has submitted an encroachment permit application. The Applicant is working with IID Energy's Project Manager and IID's Real Estate Division regarding the encroachment permits needed to cross IID's distribution system lines. The map that was attached is preliminary, and the final number and locations of crossing will be refined in coordination with IID. The Applicant has been made aware by IID's counsel that an encroachment agreement will be required for the project.

Response to Comment 5a-4: The comment identifies the IID water facilities that would be impacted by the project. The Applicant submitted encroachment permit applications to address any necessary crossings (e.g., Westside Main Canal) and any potential impacts to IID Water facilities. Grading and drainage plans and the permit application are currently under review by IID Water Department Engineering Services staff. The Applicant has also been made aware by IID's counsel that a transmission crossing license agreement will be required for the project.

Response to Comment 5a-5: The comment states that the proposed project will impact IID drains, site runoff flows, and proposed storm water detention facilities. The Draft EIR analyzes potential environmental impacts to drainage, on- and off-site runoff and stormwater in Section 4.11, Hydrology and Water Quality. The Applicant has met with the Chief Civil Engineer and supporting IID staff to discuss the project and provide exhibits, plans and studies for review with the encroachment permit application relating to IID facilities. The Applicant is aware of the separate IID hydraulic drainage system analysis relating to IID facilities. IID Engineering Services is currently reviewing the design package that was submitted for the project, and is preparing information regarding the scope and cost of the analysis. The Applicant will continue to work with IID's Chief Civil Engineer and his staff in support of the necessary analysis.

Response to Comment 5a-6: The comment states that the project may not use IID's canal or drain banks to access the project site. The Applicant is aware of this requirement and IID canals and drain banks will not be used to access the project site.

Response to Comment 5a-7: The comment states that storm water from this project will discharge into IID drains through existing permitted drain outlets. Existing drain outlets are not to current standards and IID has requested upgrading them to current standards. The Applicant will upgrade the drain outlets as requested, either in the existing location or in proximity to the existing location, in accordance with the requirements provide in the 2008 Developer Project Guide. The applicant is not proposing to increase the total number of drain outlets. Grading

3.0 COMMENTS AND RESPONSE TO COMMENTS

and Drainage Plans and Hydrology Study have been submitted to IID Engineering Services for review.

Response to Comment 5a-8: The comment states that the project may require IID facility improvements for which the project proponent will be financially responsible. This comment is noted. Chapter 2.0, Project Description of the Draft EIR identified IID facility improvements and analyzes potential environmental impacts associated with those proposed actions in Sections 4.1 through 4.12 of Chapter 4.0.

Response to Comment 5a-9: The comment discusses IID's Interim Water Supply Policy for Non-Agricultural Projects and the process for entering into a water supply agreement. The Draft EIR analyzes potential environmental impacts to hydrology and water quality in Section 4.11, Hydrology and Water Quality. Water supply is discussed in Chapter 1.0 at under subsection 1.11 (Draft EIR page 1.0-37 and 1.0-38). The Applicant has been in contact with the IID Supply Planning/Colorado River Manager to discuss the Interim Water Supply Policy (IWSP) and process regarding the IID water supply agreement. The Applicant has submitted a project narrative, the Water Supply Request Letter, and has met with IWSP staff. The Applicant has received the Water Supply Response Letter, and is working with the IWSP staff to address each item on the IWSP checklist. The Applicant will meet or exceed standards for water use and efficiency required by applicable government agencies.

Response to Comment 5a-10: The comment states that IID has adopted a Temporary Land Conversion Following Policy that will require participation from certain project developers. The Applicant has been in contact with the IID Supply Planning/Colorado River Manager to discuss the Temporary Land Conversion Following Policy, and has reviewed the presentation to the IID Board of Directors. The Applicant has met with IWSP staff to discuss this policy and will continue to discuss with staff as the policy is finalized. The Following Agreement will be incorporated either into, or in conjunction with, the water supply agreement.

Response to Comment 5a-11: The comment states that IID water for use during the project's construction phase requires an encroachment permit during that phase of the project. The Applicant has submitted encroachment permit applications for temporary service pipe connections to the IID Real Estate Division, and has submitted temporary draw permit applications to the division office. The Applicant has also met with IID division staff in the field to determine locations for the temporary service pipe connections, and division staff is processing the draw permit applications.

Response to Comment 5a-12: The comment states that any construction or operation on IID property or within its existing and proposed right-of-way or easements will require an encroachment permit. For any proposed construction or operation on any existing IID rights of way or easements, the Applicant has submitted encroachment permit applications and construction plans to IID's Real Estate Section and has met with IID Engineering Services to discuss the project; the encroachment permits will confirm that such use will be undertaken in a manner that will not conflict with IID's use or impair its rights. The Applicant has also been made aware by IID's counsel that an encroachment agreement will be required for the project.

Response to Comment 5a-13: The comment notes that IID claims a prescriptive right-of-way to the toe of slope of all existing canals and drains. As a result, IID should be consulted prior to the installation of any project facilities adjacent to IID's facilities. The Applicant has identified relevant recorded easements held by IID. These easements are being addressed with IID

3.0 COMMENTS AND RESPONSE TO COMMENTS

pursuant to various pending encroachment permit applications. The Applicant has not identified any prescriptive or secondary easement rights held by IID that require encroachment permits; however, any encroachment permits to be granted by IID will encompass any relevant rights to the extent established by IID as part of this process and confirm that the Applicant's use will not unreasonably interfere with any of IID's rights.

Response to Comment 5a-14: The comment notes that any new, modified or reconstructed IID facilities required for and by the project need to be included as part of the project's environmental analysis. The Draft EIR discussed IID facility improvements in the Project Description in Chapter 2.0. Potential environmental impacts associated with the proposed actions are analyzed in Sections 4.1 through 4.12 of Chapter 4.0 of the Draft EIR.

3.0 COMMENTS AND RESPONSE TO COMMENTS



COMMENT LETTER 5B (ATTACHMENT TO COMMENT LETTER 5A)

www.iid.com

GS-EREP

December 12, 2011

Mr. Armando G. Villa
Director
Planning & Development Services Department
County of Imperial
801 Main Street
El Centro, CA 92243

SUBJECT: Campo Verde Solar Energy Project NOP of a DEIR

Dear Mr. Villa:

On November 22, 2011 we received from the Imperial County Planning and Development Services Dept., the Notice of Preparation (NOP) for a Draft Environmental Report (DEIR) for the Campo Verde Solar Energy (CVSE) Project. The proposed 1,990-acre solar photovoltaic energy-generating facility is located in Imperial County approximately 7 miles southwest of the community of El Centro, California, south of I-8 and west of Drew Road and northeast of Westside Main Canal.

5b-1

The Imperial Irrigation District (IID) submits the following comments to the NOP:

5b-2

1. Just as the California Department of Transportation objects to unnecessary crossing of the state's highways for safety reasons, IID is equally concerned about numerous crossing of the major IID irrigation canals. A case in point is the potential impacts to the Westside Main Canal (WSM) due to the Project's electrical transmission line (gen-tie) crossings for interconnection to the Imperial Valley Substation. While IID is not predicting the outcome of a study of the effects of a gen-tie tower being knocked over into the WSM, it is worth analyzing to develop a proposed mitigation strategy. Given that this project is one of many seeking approval by the County of Imperial (County) and Bureau of Land Management (BLM) and planning to cross the WSM, the safety of the IID irrigation system must be taken into consideration. Thus, the Project proponent is strongly advised to contact IID's Chief Civil Engineer at (760) 339-9559.

5b-3

2. The Project could potentially involve using the banks of the WSM as an access road. Project proponent may not use IID's canal or drain banks to access the project site. For further information on this matter, contact IID's Chief Civil Engineer.

5b-4

3. Additionally, IID has become aware that several of the solar energy generation projects being reviewed by the County and the BLM as stand-alone projects, are part of a larger proposal submitted by San Diego Gas & Electric (SDG&E) to the California Independent System Operator (CALISO), to develop a Locational Constrained Resource Interconnection Facility (LCRIF) named the "Imperial Valley Solar Collector Project." The proposed LCRIF has not been studied either operationally, as to its effect on the IID

5b-5

IMPERIAL IRRIGATION DISTRICT
OPERATING HEADQUARTERS - P.O. BOX 937 - IMPERIAL, CA 92251

3.0 COMMENTS AND RESPONSE TO COMMENTS

<p>balancing authority, or environmentally as to its effect on the resources within the Imperial County. SDG&E is suggesting that there are not sufficient facilities in Imperial County to transmit new renewable resources and that the gen-ties approved or in the process of being approved, for the various solar projects in the vicinity of the Imperial Valley Substation, should become part of a larger interconnected facility to transfer energy to the CALISO.</p>	<p>5b-5 continued</p>
<p>4. The apparent piecemealing being done regarding the effects of the various solar projects that together will form the framework for the LCRIF facilities is a cause of concern for IID given the potential impacts to our electrical balancing authority and our irrigation system integrity. A concern that is exacerbated by the fact that the County and BLM are being asked to approve projects that are part of a bigger whole without completing the full analysis of the entirety of the projects' impacts.</p>	<p>5b-6</p>
<p>5. If SDG&E seeks approval from the County and the BLM for its LCRIF proposal and required facilities, IID will be able to review the many impacts and participate in the environmental and operational review. Until that time, any approval for the CVSE Project or any other renewable generation development in the same vicinity as the proposed LCRIF should be limited to the generation project as described and analyzed in the environmental documents for the project. The above mentioned LCRIF proposal is not part of the CVSE project description. Any Conditional Use Permit or BLM Right-of-Way Grant should specifically limit the use of the permitted facilities for the purposes studied and until such time as a new permit application is received that addresses any required mitigation for an expanded use.</p>	<p>5b-7</p>
<p>6. Temporary interconnection to the IID S-Line that traverses the site is subject to IID's non-discriminatory Open Access Transmission Tariff provisions including availability of electrical energy facilities, capacity and deliverability on and from the IID's transmission system. For further information on this matter Project proponent should contact IID's Interconnection Transmission Contracts Administrator at (750) 482-3639 or access the IID website at: http://www.oatioasis.com/iid/index.html.</p>	<p>5b-8</p>
<p>7. Project proponent assumes that permanent electrical service for the O&M building and for substation backfeed power will be provided by IID. Power to O&M building would be served from the "L-67" circuit out of Dixieland Substation. However, power is limited around proposed CVSE Project and a Distribution Circuit Analysis needs to be performed by IID Distribution Planning Engineering in order to identify what kinds of Distribution System improvements are necessary to provide such service. At this time, the IID has not received an electrical service request from the CVSE Project proponent. Thus, Project proponent is urged to contact IID Energy - Customer Operations & Planning Section at (760) 482-3402 for additional information and guidance regarding electrical service for the Project. It is important to note that all costs associated with the relocation and/or upgrade of IID electrical infrastructure to service the Project will be the responsibility of the Project proponent.</p>	<p>5b-9</p>
<p>8. All new non-agricultural water project supply requests are processed in accordance with the IID's Interim Water Supply Policy for Non-Agricultural Projects (IWSP) (see http://www.iid.com/index.aspx?page=152 for a link to the IWSP). In order to obtain a water supply from IID for the project, the Project proponent will be required to comply with all applicable IID policies and regulations and may be required to enter into a water supply agreement with IID. Such policies and regulations require, among other things,</p>	<p>5b-10</p>

3.0 COMMENTS AND RESPONSE TO COMMENTS

<p>that all potential environmental and water supply impacts of the Project have been adequately assessed, appropriate mitigation has been developed and appropriate conditions have been adopted by the relevant land use permitting/approving agencies. Furthermore, the Project proponent will be required to meet standards for water use efficiency and best management practices, including but not limited to those established by the County, as well as other water use efficiency standards, adopted by IID or local government agencies. For additional information regarding the Interim Water Supply Policy, the IID Water Supply Planning/Colorado River Manager may be contacted at (760) 339-9038.</p>	5b-10 continued
<p>9. The DEIR/EA should address impacts to IID's drains. 33.3% of water delivered to agricultural users is discharged into the IID's drainage system. Reduction in field drainage due to land use conversion has an incremental effect on both drain water quality and volume of impacted drain and subsequent drainage path to the Salton Sea. This affects drainage habitat (flora and fauna) and the elevation of the Salton Sea (shoreline habitat and exposed acreage that may have air quality issues). Additionally certain direct-to-Sea drains have been identified as pupfish drains which require additional protections under state and federal Endangered Species Acts.</p>	5b-11
<p>10. Furthermore, the DEIR/EA should also contain an assessment or analysis of cumulative impacts considering other non-agricultural facilities whose water use (or potential water use) would reduce the inflow conveyed to IID drains and subsequently, the Salton Sea.</p>	5b-12
<p>11. The CVSE Project will impact numerous IID Water Department facilities in addition to the WSM, such as the Wormwood Lateral 7, Fig Canal, Fern Canal, Fern Sidemain Canal, Fern Lateral 7, Westside Drain, Dixie Drain No. 3, Dixie Drain No. 3-A, Wixom Drain, Diehl Drain, and Fig Drain.</p>	5b-13
<p>12. The agricultural water delivery gates and small parcel water service pipes that exist in the project area, shall not to be used for the solar project, except those designated in the water supply agreement. CVSE shall plug the outlets of delivery gate and service pipes prior to commencing construction at each parcel and shall be abandoned with an Abandonment Request Form (ARF). The ARF is available at the following IID web site link: http://www.iid.com/Modules/ShowDocument.aspx?documentid=2587. The ARF shall be submitted prior to commencing construction at each parcel. Abandoned delivery gates and small parcel service pipes can be re-established in the future, upon written request. CVSE shall continue to pay Water Availability Charges after the gates are abandoned.</p>	5b-14
<p>13. Any existing canal and drain facilities within the project site are to be abandoned and quitclaimed by IID. CVSE shall execute an Abandonment Agreement with IID for these facilities. The Abandonment Agreement will include provisions for the canal and drain facilities to remain in service with IID for the parcels they serve until agricultural activities are suspended. The Agreement will also address IID requirements for returning the project site to a condition to support agricultural production in the event the facility is decommissioned and deconstructed. The IID Real Estate Section should be contacted at (760) 339-9239 for further details.</p>	5b-15
<p>14. All existing underground tile drain pipe outlets into IID drains that serve the CVSE Project area are to be plugged prior to construction at each parcel. IID is to be notified 48 hours in advance of plugging, for on-site inspection and verification.</p>	5b-16

3.0 COMMENTS AND RESPONSE TO COMMENTS

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|--|--------------|
| <p>15. The CVSE project description states that the CVSE site's soil surface will be smoothed and compacted and that some drains may be removed. This will cause a greater volume of runoff to discharge and concentrate into the remaining drains, which is not an insignificant impact to drains, site runoff flows, or proposed storm water detention facilities, as stated in the NOP, and must be mitigated. IID drains are designed for farm drainage not storm water runoff. On site storm water runoff must be contained in retention ponds for release per IID requirements to make sure drain capacities are not exceeded. Consequently, a comprehensive IID hydraulic drainage system analysis is required to properly design system modifications to mitigate project impacts. The detailed drainage analysis will review the project's drainage hydraulics relative to IID system's hydraulics. Completion of the analysis may indicate the need for additional capital improvements, the cost of which would be borne by CVSE. IID's hydraulic drainage system analysis includes an associated drain impact fee.</p> | <p>5b-17</p> |
| <p>16. IID is working on development of a program to address operation and maintenance of the drainage system for non-agricultural connections. The program will provide a mechanism to ensure the drainage system is properly operated and maintained for non-agricultural connections. Non-agricultural connections such as CVSE will be required to execute an agreement with IID regarding drain operation and maintenance costs.</p> | <p>5b-18</p> |
| <p>17. In addition to IID's recorded easements, IID claims, at a minimum, a prescriptive right of way to the toe of slope of all existing canals and drains. Where space is limited and depending upon the specifics of adjacent modifications, the IID may claim additional secondary easements/prescriptive rights of ways to ensure operation and maintenance of IID's facilities can be maintained and are not impacted and if impacted mitigated. Thus, IID should be consulted prior to the installation of any facilities adjacent to IID's facilities. Certain conditions may be placed on adjacent facilities to mitigate or avoid impacts to IID's facilities.</p> | <p>5b-19</p> |
| <p>18. Any construction or operation on IID property or within its existing and proposed right of way or easements will require an encroachment permit, including but not limited to: surface improvements such as proposed new streets, driveways, parking lots, landscape; and all water, sewer, storm water, or any other above ground or underground utilities. A copy of the encroachment permit application is included in the IID's <i>Developer Project Guide 2008</i>, and can be accessed at: http://www.iid.com/Modules/ShowDocument.aspx?documentid=2328. Also, instructions for the completion of encroachment applications can be found at http://www.iid.com/Modules/ShowDocument.aspx?documentid=2335. The IID Real Estate Section should be contacted at (760) 339-9239 for additional information regarding encroachment permits.</p> | <p>5b-20</p> |
| <p>19. An IID encroachment permit is required in order to utilize existing surface water drain pipe connections to drains, and receive drainage service from IID. Surface water drain pipe connections are to be modified in accordance with IID standards.</p> | <p>5b-21</p> |
| <p>a. Construction Storm Water Permit: A construction storm water permit from the California Regional Water Quality Control Board (CRWQCB) is required before commencing construction. Copies of this permit and the Storm Water Pollution Prevention Plan for the CVSE Project are to be submitted to IID.</p> | <p>5b-22</p> |

3.0 COMMENTS AND RESPONSE TO COMMENTS

b. An industrial storm water permit from CRWQCB is required for operation of the proposed solar facility. A copy of this permit is to be submitted to IID.

5b-23

20. Any new, relocated, modified or reconstructed IID facilities required for and by the project (which can include but is not limited to electrical utility substations, electrical transmission and distribution lines, canals, drains, etc.) need to be included as part of the project's CEQA and/or NEPA documentation, environmental impact analysis and mitigation. Failure to do so will result in postponement of any construction and/or modification of IID facilities until such time as the environmental documentation is amended and environmental impacts are fully mitigated. **Any and all mitigation necessary as a result of the construction, relocation and/or upgrade of IID facilities is the responsibility of the project proponent.**

5b-24

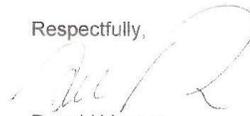
21. IID remains supportive of the CVSE Project and all renewable generation projects in the Imperial County in general and offers its assistance in the review of how to avoid unnecessary impacts to vital IID facilities or undermine IID's electrical balancing authority, as well as requirements for constructing around all IID facilities and interconnecting to IID's electrical grid.

5b-25

Should you have any questions, please do not hesitate to contact me by phone at 760-482-3609 or by e-mail at dvargas@iid.com. Thank you for the opportunity to comment on this matter.

5b-26

Respectfully,



Donald Vargas
Environmental Specialist

Kevin Kelley – General Manager
Michael Campbell - Chief Admin. Officer
Jesse Silva – Manager, Water Dept.
Joel Ivy – Interim Manager, Energy Dept.
Jeff M. Garber – General Counsel
Paul G. Paschel – Executive Program Manager
Carlos Villalon – Asst. Mgr., Water Dept. System Control & Monitoring
Juan Carlos Sandoval – Asst. Mgr. Energy Dept.
Carlton L. King – Asst. Mgr., Energy Dept. Customer Service Operations
Mike L. King – Manager, Water Dept. Colorado River Water Issues
Tina Shields – Asst. Mgr., Water Dept. Resources Planning & Management
David L. Barajas – General Supt., Energy Dept. System Planning & Engineering
Michael S. Trump – General Supt., Energy Dept. Customer Operations & Planning
Ismael Gomez – Chief Engineer, Water Dept. Engineering Services
Bruce Wilcox – Environ. Proj. Mgr., Water Dept. QSA Water Transfer
Randy Gray – Interim Supervisor, Real Estate & Right-of-Way
Vikki Dee Bradshaw – Interim Supervisor, Environmental Services

3.0 COMMENTS AND RESPONSE TO COMMENTS

RESPONSE TO COMMENT LETTER 5B

Commenter: Donald Vargas, Interim Supervisor, Environmental Services, Imperial Irrigation District
Date of Letter: December 12, 2011

Response to Comment 5b-1: The comment provides introductory remarks and a description of the proposed project. No response is required.

Response to Comment 5b-2: The comment states that the IID provides the following comments on the NOP. No response is required.

Response to Comment 5b-3: The commenter is concerned about the effects of a gen-tie line being knocked into the Westside Main Canal. Based on the on-going consultation with IID for the canal crossing, the gen-tie structures will be setback from the Westside Main Canal a minimum distance equal to the height of the structure. As a result of the setback distance, there is no risk of the gen-tie structure falling into the Westside Main Canal.

Response to Comment 5b-4: The comment states that the project would potentially use the banks of the Westside main Canal. The Applicant has indicated that IID canals and drain banks will not be used to access the project site. Refer to Response to Comment 5a-6,

Response to Comment 5b-5: The comment states that SDG&E is suggesting that there are not sufficient facilities in Imperial County to transmit new renewable resources. The comment asserts that the gen-ties approved, or in the process of being approved, for the various solar projects in the vicinity of the Imperial Valley Substation, should become part of a larger interconnected facility to transfer energy to the CALISO. This comment expresses an opinion and does not address an environmental issue to be analyzed as part of the EIR. This comment is noted for the decision-maker's consideration.

Response to Comment 5b-6: The comment expresses concern about piecemealing of solar projects that form the framework for the Locational Constrained Resource Interconnection Facility (LCRIF) facilities. This comment was addressed in Table 1.0-1, on page 1.0-13 and 1.0-14 of the Draft EIR (third bullet responding to Donald Vargas comments) and is reiterated here: "The Campo Verde Solar Project is not part of the LCRIF filed by SDG&E. The facilities identified in the LCRIF are to the south and east of the Imperial Valley Substation. Campo Verde Solar is proceeding with interconnection to the SDG&E system independently of any other projects. Any potential environmental impacts associated with the interconnection were analyzed as project-specific impacts in the Draft EIR. The potential environmental impacts of other solar projects in the Imperial Valley, including those in the LCRIF, were analyzed as applicable as part of the cumulative projects list as required by CEQA Guidelines §15130. The proposed project will not require additional permits related to the LCRIF. The scope of the Draft EIR was limited to the project components described in Chapter 2.0. Thus, only the potential environmental impacts from the proposed Campo Verde Solar Project construction and operation were analyzed in the Draft EIR."

Response to Comment 5b-7: The comment states that IID should participate in the environmental and operational review of the LCRIF. The comment notes that the LCRIF is not part of the proposed Campo Verde Solar Project. This comment expresses an opinion and does not address an environmental issue to be analyzed as part of the EIR. This comment is noted.

3.0 COMMENTS AND RESPONSE TO COMMENTS

Response to Comment 5b-8: The comment states that temporary interconnection to the IID S-Line that traverses the site is subject to IID’s non-discriminatory Open Access Transmission Tariff provisions. This comment expresses an opinion and does not address an environmental issue to be analyzed as part of the EIR. This comment is noted.

Response to Comment 5b-9: The comment discusses IID provision of electrical service to the O&M building. This comment does not address an environmental issue to be analyzed as part of the EIR. This comment is noted.

Response to Comment 5b-10: The comment explains how new non-agricultural water supply requests are processed and the describes the steps necessary for the project Applicant to comply with all applicable IID policies and regulations to enter into a water supply agreement with IID. The Applicant is aware of IID’s policies and regulations regarding water supply agreements and is currently working with IID to enter into such an agreement.

Response to Comment 5b-11: The comment states that the EIR should address impacts to IID drains noting that reduction in field drainage due to land use conversion has an incremental effect on both drain water quality and quantity to the Salton Sea. This comment was addressed in Table 1.0-1, on page 1.0-14 (fifth bullet responding to Donald Vargas’ comments) and is reiterated here. “Potential impacts from reductions in water flow via IID’s drain systems are addressed in Section 4.11, Hydrology and Water Quality, specifically under the discussion of “Reduction in Water Quantity and Quality” on page 4.11-21 of the Draft EIR. The site will be designed to comply with applicable standards for stormwater runoff and retention. The Applicant is in discussion with IID Water Engineering staff to address these issues. The Applicant will obtain required permits and approvals for stormwater runoff and retention, including those required by IID. The Draft EIR includes an assessment of the project’s potential hydrologic impacts, including any impacts to IID’s facilities.”

Response to Comment 5b-12: The comment states that the Draft EIR should contain an assessment or analysis of cumulative impacts of non-agricultural facilities which would reduce inflow to IID drains and subsequently to the Salton Sea. This issue is addressed in Table 1.0-1, on page 1.0-14 (fourth bullet responding to Donald Vargas’ comments) and more fully addressed in Section 4.11, Hydrology and Water Quality. Specifically, cumulative impacts from reductions in water flow via IID’s drain systems are discussed in the third paragraph under “Reduction in Water Quantity and Quality” on page 4.11-21 of the Draft EIR.

Response to Comment 5b-13: The comment identifies specific canals and drains that would be impacted by the proposed project. As stated in Comment 5a-4, above, the Applicant submitted encroachment permit applications to address any necessary crossings (e.g., Westside Main Canal) and any potential impacts to IID water facilities. Grading and drainage plans and the permit application are currently under review by IID Water Department Engineering Services staff. The Applicant has also been made aware by IID’s counsel that a transmission crossing license agreement will be required for the project.

Response to Comment 5b-14: The comment states that the agricultural water delivery gates and small parcel water service pipes in the project area shall not be used for the project except those designated in the water supply agreement. The comment also states that the Applicant shall abandoned the outlets of delivery gate and service pipes with an Abandonment Request Form. This comment does not address an environmental issue to be analyzed as part of the EIR.

3.0 COMMENTS AND RESPONSE TO COMMENTS

However, as noted in Response to Comment 5a-5 and 5a-7, the Applicant is working with IID Engineering Services.

Response to Comment 5b-15: The comment states that any canal and drain facilities within the project site are to be abandoned and quitclaimed by IID. This comment does not address an environmental issue to be analyzed as part of the EIR. However, as noted in Response to Comments 5a-5 and 5a-7, the Applicant is working with IID Engineering Services.

Response to Comment 5b-16: The comment states that all existing underground tile drain pipe outlets into IID drains that serve the project area are to be plugged prior to construction at each parcel. This comment does not address an environmental issue to be analyzed as part of the EIR. However, as noted in Response to Comments 5a-5 and 5a-7, the Applicant is working with IID Engineering Services.

Response to Comment 5b-17: The comment notes that IID will conduct a comprehensive hydraulic drainage system analysis to mitigate project impacts and that the costs of any improvements would be borne by the Applicant. The comment also states that on-site storm water runoff must be contained in retention ponds for release per IID requirements to make sure drain capacities are not exceeded. The Draft EIR included the results of the *Campo Verde Solar Conceptual Drainage Study and Storm Water Quality Analysis* prepared by Fuscoe Engineering (Fuscoe, 2012). As noted in Table 4.11-1 in the consistency analysis for Objective 8.4 (page 4.11-3 of the Draft EIR), “The Conceptual Drainage Study and Storm Water Quality Analysis (Fuscoe, 2012) confirmed the adequacy of drainage for the proposed project.”

Response to Comment 5b-18: The comment notes that the project, as a non-agricultural connection, will be required to execute an agreement with IID regarding drain operation and maintenance costs. This comment does not address an environmental issue to be analyzed as part of the EIR. However, as noted in Response to Comments 5a-5 and 5a-7, the Applicant is working with IID to address all aspects of the project that would involve IID facilities and water.

Response to Comment 5b-19: This comment is a duplicate of Comment 5a-13. Please refer to Response to Comment 5a-13.

Response to Comment 5b-20: The comment states that any construction on IID property or within existing and proposed right-of-way or easements will require an encroachment permit. This comment does not address an environmental issue to be analyzed as part of the EIR. The reader is referred to Response to Comments 5a-3, 5a-4, 5a-5, 5a-11, 5a-12 and 5a-13 regarding encroachment permit progress with IID.

Response to Comment 5b-21: The comment notes that an IID encroachment permit is required in order to use existing surface water drain pipe connections and receive drainage service from IID. This comment does not address an environmental issue to be analyzed as part of the EIR. The reader is referred to Response to Comments 5a-3, 5a-4, 5a-5, 5a-11, 5a-12 and 5a-13 regarding encroachment permit progress with IID.

Response to Comment 5b-22: The comment states that copies of the Construction Storm Water Permit and Storm Water Pollution Prevention Plan (SWPPP) for the project are to be submitted to the IID. The Construction General Permit and SWPPP are discussed on page 4.11-1, 4.11-2 and 4.11-15 of the Draft EIR. Both the Construction General Permit and the SWPPP can be made available for review by the IID.

3.0 COMMENTS AND RESPONSE TO COMMENTS

Response to Comment 5b-23: The comment states that an industrial storm water permit from the California Regional Water Quality Control Board is required for operation of the proposed solar facility. This statement is not correct. A General Industrial Stormwater Permit is not required because it is not applicable to the project. This is reflected as part of the changes in Chapter 4.0, Errata.

Response to Comment 5b-24: The comment notes that any new, relocated, upgraded, or reconstructed IID facilities required for and by the project need to be included in the project's CEQA documentation. The Draft EIR describes and evaluates the project in its entirety and specifies mitigation where needed. Funding for improvements and mitigation necessary for modification of IID facilities could be documented in the encroachment permits issued by IID for the project.

Response to Comment 5b-25: The commenter expresses support of the project and offers assistance to avoid unnecessary impacts to IID facilities. This comment is noted.

Response to Comment 5b-26: The comment provides contact information. This comment is noted.

3.0 COMMENTS AND RESPONSE TO COMMENTS

RECEIVED

COMMENT LETTER 6

JUL 02 2012



EDMUND G. BROWN JR.
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND DEVELOPMENT SERVICES
STATE CLEARINGHOUSE AND PLANNING UNIT



KEN ALEX
DIRECTOR

June 28, 2012

David Black
Imperial County
801 Main Street
El Centro, CA 92243

Subject: Campo Verde Solar Energy Project
SCH#: 2011111049

Dear David Black:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on June 27, 2012, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

6-1

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,


Scott Morgan
Director, State Clearinghouse

Enclosures
cc: Resources Agency

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044
(916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

3.0 COMMENTS AND RESPONSE TO COMMENTS

COMMENT LETTER 6 (ATTACHMENT)

Document Details Report State Clearinghouse Data Base

SCH#	2011111049						
Project Title	Campo Verde Solar Energy Project						
Lead Agency	Imperial County						
Type	EIR Draft EIR						
Description	A 140 MW solar facility including solar panels, a gen-tie line, supporting electrical infrastructure, O&M Building, ancillary structures and fencing.						
Lead Agency Contact							
Name	David Black						
Agency	Imperial County						
Phone	(760) 482-4240			Fax			
email	DavidBlack@co.imperial.ca.us						
Address	801 Main Street						
City	El Centro			State	CA	Zip	92243
Project Location							
County	Imperial						
City	El Centro						
Region							
Lat / Long							
Cross Streets	Drew Road and I-8						
Parcel No.	Various						
Township	16S	Range	12E	Section	Various	Base	SBB&M
							6-2
Proximity to:							
Highways	Hwy 98						
Airports							
Railways							
Waterways	Westside Main Canal						
Schools	Westside School						
Land Use	Agriculture, non-food crops. Z: A-2- General Agriculture, A-2-R-General Agriculture, Rural Zone, and A-3 Heavy Agriculture.						
Project Issues	Agricultural Land; Air Quality; Archaeologic-Historic; Drainage/Absorption; Flood Plain/Flooding; Noise; Soil Erosion/Compaction/Grading; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Wildlife; Growth Inducing; Landuse; Cumulative Effects; Geologic/Seismic; Aesthetic/Visual						
Reviewing Agencies	Resources Agency; Colorado River Board; Department of Conservation; Department of Fish and Game, Region 6; Office of Historic Preservation; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 11; Regional Water Quality Control Board, Region 7; Department of Toxic Substances Control; Native American Heritage Commission; State Lands Commission; Air Resources Board, Airport/Energy Projects						
Date Received	05/14/2012	Start of Review	05/14/2012	End of Review	06/27/2012	SBB&M	

Note: Blanks in data fields result from insufficient information provided by lead agency.

3.0 COMMENTS AND RESPONSE TO COMMENTS

RESPONSE TO COMMENT LETTER 6

Commenter: Scott Morgan, Director, Governor’s Office of Planning and Research

Date of Letter: June 28, 2012

Response to Comment 6-1: The comment states that the Draft EIR was submitted to selected state agencies for review. The comment notes that comments from agencies are forwarded to use in preparing the final environmental document. Lastly the comment acknowledges that the project has complied with the State Clearinghouse requirements for draft environmental documents pursuant to CEQA. This comment is administrative in nature. Comment noted. No response is required.

Response to Comment 6-2: The comment is the “Document Details Report State Clearinghouse Data Base” included as an attachment to Comment Letter 6. The form is for administrative purposes and does not require a response. In addition, a copy of the letter from the Native American Heritage Commission (NAHC) was also attached to Comment Letter 5. The NAHC letter appears as Comment Letter 1 in this Final EIR.

3.0 COMMENTS AND RESPONSE TO COMMENTS

150 SOUTH NINTH STREET
EL CENTRO, CA 92243-2850

TELEPHONE: (760) 482-4606
FAX: (760) 353-9904



COMMENT LETTER 7

July 3, 2012

Mr. Armando Villa
Planning & Development Services Director
801 Main Street
El Centro, CA 92243

SUBJECT: Draft Environmental Impact Report (DEIR) for Campo Verde Solar Project

Dear Mr. Villa:

The review of the DEIR for Campo Verde Solar Project has been finalized by the Imperial County Air Pollution Control District (Air District). The proposed Campo Verde Solar project is located on approximately 1,990 acres of agricultural land and it “consists of two primary components: 1) solar generation equipment and associated facilities on privately owned land (the “solar generation facility”); and, 2) 230-kilovolt (kV) aboveground, electric transmission line(s) and associated facilities (the “gen-tie”) located on both private land and public land managed by the BLM.” The project also includes PV solar modules, arrays, power conversion stations, an electrical collection system, a substation and switchyard. Other components of the project include an Operations and Maintenance Building, project support systems consisting of control systems, a communication system, lighting system, electric service, security, and fire system.

7-1

Therefore, as a responsible agency for Air Quality under CEQA, the Air District assesses air pollution control impacts from both the construction and operational phases of a project for adequacy. Based on the information provided, the Air District found the Air Quality Analysis inadequate and cannot agree with the findings of less than significant. Therefore, please address the actions items listed below.

7-2

1) URBEMIS construction dates differ from DEIR

a) **Executive Summary Page 4:** “Construction of the Project includes site preparation, foundation construction, erection of equipment and structures, installation of electrical systems, control systems, and start-up/testing. These construction activities are expected to require approximately 12 to 24 months. “However, the URBEMIS analysis was generated using only 12 months from 1/1/2013- 12/31/2013. Please clarify as the worst case scenario would have been using the approximate time frame of 24 months.

7-3

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Therefore, the speculated emissions provided in the URBEMIS are only for a 12 month period and not 24 months.	7-3 continued
b) Project Description Section D Page 2.0-22: States the “solar generation facility will be constructed in one continuous buildout cycle over a period of up to 24 months”. However, the Air Quality Analysis was modeled in a period of 12 months, 1/1/2013-12/31/2013. Please clarify.	7-4
2) Sensitive Receptors not analyzed	
a) Sensitive Receptors Page 4.4-11: “There are no sensitive receptors are located along roadway segments”. However, on section 4.4-20 states that West Side Elementary School is located 275 Feet away from the project site. Please clarify.	7-5
b) Initial Study section III. Air Quality section b, c: Section 4.4-20 of the DEIR and states that "Westside Elementary Schools site is located approximately 84-meters (275 feet) from the closest boundary of the project and would be considered the nearest sensitive receptor." Also, section d) of the initial study states that there is “1 school and a few residences occur in the immediate vicinity.” Therefore, the statement of section b, c of the initial study “No sensitive receptors immediately on surrounding the project site have been identified” is incorrect.	7-6
3) No Long Haul Analysis	
a) Deliveries Page 2.0-24: States “Deliveries of equipment and supplies to the site would vary over the construction period but are expected to peak at approximately 50 trips daily.” However, the section does not specify what type of equipment and where the equipment will be delivered from. Does this include the solar panels equipment? Please clarify the type of equipment and supplies.	7-7
b) Section 4.3 – 13: The delivery of equipment is anticipated to arrive from outside the Imperial Valley with a majority arriving from Los Angeles and Riverside Counties, San Diego, and the possibility of some truck traffic from other locations. Therefore, because truck emissions affect emission from the project, there must be identification of what type of equipment will be delivered to the project site. Again, please clarify the type of equipment that will be delivered from outside the Imperial Valley.	7-8
4) No “overland travel” Analysis	
a) Section F Page 2.0-39: “Access to the structure sites for construction of the transmission line would be provided via “overland travel” from the closest existing road to each location.” Could the project proponent please explain “overland travel”. This statement is broad and leaves much speculation.	7-9

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5) References to SCAQMD

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| <p>a) Construction Findings Page 4.4 – 16: This section references the SCAQMD CEQA Handbook. However, any Air Analysis must utilize the Air District Imperial County Air Quality Handbook (Handbook) revised in 2007.</p> | 7-10 |
| <p>b) Executive Summary Page 20: SCAQMD is referenced in this section. This section references the SCAQMD CEQA Handbook. However, any Air Analysis must utilize the Air District Imperial County Air Quality Handbook (Handbook) revised in 2007.</p> | 7-11 |
| <p>c) Table 4.4-9: The thresholds on this table are incorrect as they are identified as SCAQMD thresholds. Please revise this table with the correct reference and thresholds as they apply to the Imperial County.</p> | 7-12 |
| <p>d) Table 4.2 on page 27: SCQMD is reference in this table. Please revise to reference Imperial County Air District and the corresponding thresholds.</p> | 7-13 |

6) No GHG analysis as required by CEQA

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| <p>a) Impact 4.5.1 and 4.5.2: Although no impact is identified for greenhouse gas emissions, the strategies of AB 32 action are required to be consistent with the GHG emissions reduction. Please include AB 32 GHG actions under mitigation measures 4.5.1 and 4.5.2.</p> | 7-14 |
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7) An Inadequate Cumulative Analysis

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| <p>a) Executive Summary Page 5: “Since the operations and maintenance traffic generation is significantly less than the construction traffic generation, the higher and more conservative construction trip generation is used to determine potential Project transportation related impacts. In other words, the construction phase was used for the analysis because it is calculated to generate significantly higher traffic than the Project operations and maintenance.” While the Air District understands the thought, this is contrary to CEQA. Cumulatively, the operational phase should have been analyzed regardless of the less the significant finding for construction. As defined in <u>Section 15355</u>, a cumulative impact consists of an impact which is created as a <u>result of the combination of the project evaluated in the EIR together with other projects causing related impacts</u>. The DEIR failed to disclose operational impacts, significant or otherwise. Would those disclosed impacts, combined with other projects cause an incremental effect that would or would not be considered significant?</p> | 7-15 |
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Administration/Clarification

- | | |
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| <p>a) Impact 4.4.2: For construction purposes, the project will be required to use TIER II level equipment as certified the state of California.</p> | 7-16 |
| <p>b) Table 2.0-4 Page 2.0-48: Air Quality: The Statement “the project will comply with ICAPCD Rule 800” is incorrect. The project proponent will comply with Regulation</p> | 7-17 |

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VIII. This regulation is comprised of six individual rules which combined apply Best Available Control Measures to any size construction or earthmoving activity.	7-17 continued
c) Table 2.0-5 Page 2.0-53: Air Quality:	7-18
- Heavy duty off road diesel engines over 50 horsepower must meet Tier II ARB/EPA standards, not Tier I as stated in this section.	
- In order to comply with the Air Districts' Rule 801 – Construction of Earthmoving Activities, Visible emissions shall not exceed 20 percent opacity during construction and operation activities.	7-19
d) Section 4.4 Air Quality Page 4.4-7: In reference to Imperial County's determination of the 1997- 8-Hour NAAQS, on December 3, 2009, the U.S. EPA made a final determination that the Imperial County attained the 1997 8-Hour National Ambient Air Quality Standard (NAAQS) for Ozone (FR Vol. 74, No. 231, Page 63309). However, Imperial County's classification and designation status remains as a "moderate" non-attainment area for the 1997 8- hour ozone NAAQS.	7-20
e) Local Air Quality Page 4.4-9 and in Section 2.6 Local Air Quality Page 13: The statement in this section is incorrect and must be revised with the correct information. Imperial County has five monitoring stations by which four monitoring stations are under the Air District jurisdiction and one monitoring station located in Calexico is under CARB's jurisdiction. In addition, the Calexico- East station has been decommissioned leaving the Calexico- Ethel monitor as the only monitor operating in Calexico. Please revise this paragraph to reflect the proper information.	7-21
f) Construction Emission Calculations Page 4.4-12 and Section 4.0 Finding: The following statement is misleading: "An URBEMIS was submitted to the Air District for review." However, the Air District does not approve or disapprove an URBEMIS analysis before the review of an EIR. Therefore, as stated in the email addressed to Ryan Taylor on 4/11/2012 "Please keep in mind that an in depth analysis will be conducted when the Draft EIR is provided. Should there be any comments they will be addressed then." Therefore, the district did not approve the URBEMIS analysis as stated in this section.	7-22
g) Page 4.4-18 MM 4.4.1b: Use Diesel Oxidation Catalyst or alternative devices that achieve equivalent NOx emission reduction on all large diesel construction equipment as required by ICAPCD." Please reference to comments section current mitigation measures on page 2 of this comment letter.	7-23
h) Executive Summary Page 20: Grammatical error. "meaters" should corrected to meters.	7-24
i) Executive Summary Page 20, last paragraph: "Dust control must be updated daily" statement is incorrect. The dust control is reviewed by the Air District and the mitigation stated on the dust control plan must be complied with on a daily basis.	7-25

3.0 COMMENTS AND RESPONSE TO COMMENTS

j) **MM 4.4.1b. 4.** “Use Diesel Oxidation Catalyst on all diesel equipment”.

The Airborne Toxic Control Measure or ATCM regulates all diesel off road engines (therefore use of diesel oxidation catalysts can no longer be applied as mitigation) and must not be included as a mitigation measure.

7-26

k) In addition, a list of construction equipment (Table 4.4-6) and the associated EPA tier that is consistent with Air Quality Analysis such as the URBEMIS model that was provided for review shall be submitted to the county planning and development prior to the issuance of a grading permit to verify implementation the mitigation measure.

7-27

DRAFT EIR CONCLUSION

Because the Air District finds the Air Quality Analysis provided by Ldn Consulting for the Campo Verde Solar Project as inadequate, the Air District cannot agree with the finding of Less than Significant. The project may reduce its impacts to less than significant, should a revised Air Quality Analysis be provided, utilizes not only standard mitigation measures, but the following additional mitigation measures as well.

7-28

PM10 Construction:

1. Construction equipment shall be equipped with an engine designation of EPA Tier 2 or better (Tier 2+). A list of the construction equipment and the associated EPA Tier shall be submitted to the County Planning and Development Services Department prior to the issuance of a grading permit to verify implementation of this measure.

7-29

2. Pursuant to Air District, all construction sites, regardless of size, must comply with the requirements contained within Regulation VIII-Fugitive Dust Control Measures. A “Fugitive Dust Control Plan” shall be submitted to the Air District and shall include the following mitigation measures (CEQA Air Quality Handbook, Page 21), as applicable.

- Standard Mitigation Measures for Fugitive PM10 Control,
- Discretionary Measures for Fugitive PM10 Control,
- Enhanced Mitigation Measures For Construction Equipment, and
- Additional Enhanced Mitigation Measures

NOx Construction:

1. Pursuant to Air District Policy Number 5, prior to construction activities, the Permittee shall pay an in-lieu impact fee as determined by Air District using the formula provided in Air District Policy Number 5 to reduce NOx emissions. The applicable fee in Policy Number 5 is derived from utilizing the last three year Carl Moyer grant program average cost effectiveness for Imperial County multiplied by the amount of tons needed to be offset. Detailed emission calculations shall be provided to the Air District upon selection of the construction contractor, such that an accurate estimate of fees to be paid can be made prior to commencement of construction.

7-30

3.0 COMMENTS AND RESPONSE TO COMMENTS

These mitigation measures shall be implemented prior to and during construction.

7-30
continued

To Summarize, Cumulative Construction Impacts are analyzed in Section 4.4 Page 23. However, Cumulative Operational Impacts were not. Therefore, as defined in Section 15355 of the CEQA Guidelines, a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. Without the disclosed impacts combined with the combination of other projects, the cause an incremental effect that would or would not be considered significant is unknown. Shall the incremental effect is not considered significant; the EIR must briefly describe why the cumulative impact is not significant and disclose facts and any analysis supporting the conclusion. Shall the incremental effect be significant, the project may demonstrate by use of project level mitigation that the incremental effect may be reduced. With some projects, the only feasible mitigation for cumulative impacts may involve the adoption of ordinances or regulations rather than the imposition of conditions on a project-by project basis.

7-31

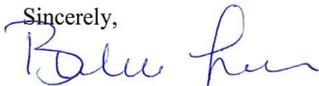
Finally, the assumption of the delivery of equipment is anticipated to arrive from outside the Imperial Valley with a majority arriving from Los Angeles and Riverside Counties, San Diego, and the possibility of some truck traffic from other locations. However, the only reference to delivery of the “equipment” was found in section 4.3-13. No analysis or additional explanation is provided in the DEIR that demonstrates the logistics of how many trucks, schedules, and emissions generated from them. Therefore, since truck emissions for the project were unsubstantiated, a long haul analysis demonstrating the emissions from the trucks must be included in the appendix of the EIR.

7-32

The Air Districts’ rule book, including all new regulations can be accessed via internet at www.Imperialcounty.net under “Air Pollution Control.” Thank you for allowing the Air District an opportunity to comment on this project. Should you have any questions please do not hesitate to call the office at (760)482-4606.

7-33

Sincerely,



Belen Leon
APC Environmental Coordinator

CC: Brad Poiriez
Reyes Romero
Monica Soucier
David Black

3.0 COMMENTS AND RESPONSE TO COMMENTS

RESPONSE TO COMMENT LETTER 7

Comment Letter 8 **Commenter: Belen Leon, APC Environmental Coordinator**

Date of Letter: July 3, 2012

Response to Comment 7-1: The comment provides introductory remarks describing the project. Comment noted.

Response to Comment 7-2: The comment notes that the Imperial County Air Pollution Control District (ICAPCD) is a commenting agency in the CEQA review process and requests that the action items listed in the letter be addressed. The action items are addressed in responses 7-3 through 7-33 below.

Response to Comment 7-3: The comment requests that the worst-case scenario be clarified to assume 24 months in the URBEMIS modeling. This comment is based on the expectation that construction could last from 12 to 24 months. Use of the 12-month construction period was conservative and appropriate because the worst-case emissions during multi-phase construction will occur during this period. Construction during this 12-month period includes the peak emission periods and results in the highest total annual and maximum total daily emissions, which are the criteria that the ICAPCD uses to determine if impacts are significant.

Response to Comment 7-4: The commenter notes that the Project Description states that construction would occur over a period of up to 24 months. The commenter questions why the analysis was modeled for a 12 month period. This issue has been previously addressed. Refer to Response to Comment 7-3.

Response to Comment 7-5: The comment requests clarification for the statement that there are no sensitive receptors in the area noting that the West Side Elementary School is located 275 feet from the project site. The text of the revised Air Quality Assessment (Appendix C of this Final EIR) and Section 4.4, Air Quality (with revisions from July 2012 Air Quality Assessment) (Appendix D of this Final EIR) have been changed to consistently indicate that although sensitive receptors occur in the area, project impacts to these sensitive receptors were determined to be negligible using the conservative SCREEN3 model.

Response to Comment 7-6: The commenter notes that the Draft EIR's reference to the West Side Elementary School as well as references in the Initial Study to the school and a few residences are in conflict with items b and c in the Initial Study. This comment is noted. The Draft EIR examined impacts to sensitive receptors including the West Side Elementary School.

Response to Comment 7-7: The commenter requests clarification with the type of equipment and supplies that would be delivered to the project site and where these deliveries would occur. The revised Air Quality Assessment report attached as Appendix C to this FEIR has been modified to identify the types of material delivered and the origin and distance of the trips. The URBEMIS model has been updated to include an analysis of the emissions from the long haul trips during construction and operation that uses conservative assumptions. The emissions associated with these trips did not significantly increase total annual or daily emissions relative to ICAPCD CEQA significance thresholds.

Response to Comment 7-8: The commenter requests clarification regarding what type of equipment will be delivered from outside the Imperial Valley. This issue has been previously addressed. Refer to Response 7-7.

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Response to Comment 7-9: The commenter asks for an explanation of what is meant by “overland travel.” This term refers to the construction of the gen-tie line on BLM land where no new access roads would be developed. Instead, the sites where transmission structures would be built would be accessed from existing nearby roads by traveling “overland” from the road to the structure sites without building a temporary road.

Response to Comment 7-10: The commenter notes that the SCAQMD CEQA Handbook is referenced in the analysis. The commenter asserts that the Air District’s Imperial County Air Quality Handbook revised in 2007 must be used. The Air District’s 2007 Imperial County Air Quality Handbook (Handbook) was used to conduct the air quality analysis for the project. All references to SCAQMD have been reviewed and corrected if the intent was to reference the ICAPCD’s Handbook. However, in some cases the reference to SCAQMD was intentional when referring to the air models, control efficiencies, and CEQA equations that SCAQMD is responsible for.

Response to Comment 7-11: The commenter notes that the Executive Summary includes references to the SCAQMD CEQA Handbook. The commenter reiterates that the Imperial County Air Quality Handbook revised in 2007 must be used for the analysis. As noted in Response to Comment 7-10, the ICAPCD Handbook was used to conduct the air quality analysis for the Project. However, the reference on page 20 of the Air Quality Study (included in Appendix C of the Draft EIR) to the SCAQMD CEQA Handbook noted in this comment is intentional because the ICAPCD Handbook does not recommend control efficiencies and URBEMIS was written based on the efficiencies in the SCAQMD CEQA Handbook.

Response to Comment 7-12: The commenter states that the thresholds identified in Table 4.4-9 are incorrect as they are SCAQMD thresholds. Thresholds have been verified with ICAPCD and updated in the revised Section 4.4, Air Quality included as Appendix D of this Final EIR.

Response to Comment 7-13: The commenter provides references a table and page number that do not exist in the document. It is unclear what table was intended to be referenced. However, it appears that the comment was directed at Table 4.2 in the Air Quality Assessment report in Appendix C in the Draft EIR. The reference to SCAQMD in this table has been revised to refer to the ICAPCD and its thresholds in the revised Air Quality Assessment included as Appendix C of this Final EIR.

Response to Comment 7-14: The commenter requests that AB 32 GHG actions be included under mitigation measures 4.5.1 and 4.5.2. The Draft EIR determined in Impact 4.5.1 that GHG emissions would be below Imperial County’s CEQA significance threshold. In addition, the Draft EIR determined in Impact 4.5.2 that the project would not conflict with any applicable plan, policy or regulation established to reduce GHG emissions, including the emission reduction strategies of the AB32 Scoping Plan. The project itself is consistent with AB32’s GHG emission reduction strategy of enacting a renewable portfolio standard, which the project will help achieve. Because it was determined that there will be no significant impact under Impact 4.5.1 or 4.5.2, then no mitigation is required under CEQA. However, these measures will be included, to the extent required as a matter of law.

Response to Comment 7-15: The commenter asserts that the Draft EIR failed to disclose operational impacts and questions whether the impacts, when combined with other projects, would cause an incremental effect that would or would not be considered significant. The Draft EIR states on

3.0 COMMENTS AND RESPONSE TO COMMENTS

page 4.4-17 that the air emissions caused by construction traffic will be higher than operational traffic. The Draft EIR determined that the cumulative impact of air emissions from construction traffic would not be cumulatively considerable. Because the cumulative impact of construction traffic air emissions will be higher than the cumulative impact from operational traffic, a reasonable conclusion supported by substantial evidence can be drawn that the cumulative air impacts from operational traffic would also not be cumulatively considerable. Nevertheless, the Air Quality Assessment report has been revised to include an analysis of cumulative impacts from the project's operational phase (included as Appendix C of this Final EIR). This analysis determined that cumulative emissions increases associated with the project-related traffic would be less than 0.1 percent of emissions associated with increased traffic due to cumulative projects, and therefore is not cumulatively considerable.

Response to Comment 7-16: The commenter states that for construction purposes the project will be required to use Tier 2 level equipment as certified by the state of California. Refer to Response to Comment 7-18.

Response to Comment 7-17: The commenter notes that the reference to ICAPCD Rule 800 is incorrect and should instead refer to Regulation VIII.

Page 2.0-48, Table 2.0-4 has been revised as follows to reference the appropriate regulation.

AIR QUALITY
Construction equipment will be equipped with EPA Tier 2 or better engine designation to reduce NOx impacts during construction.
Minimize construction equipment idling time either by shutting equipment off when not in use or reducing the time of idling to 5 minutes as a maximum to reduce NOx impacts.
All vehicles on site will be well-maintained to prevent leaks and minimize emissions during construction.
The project will comply with ICAPCD Rule 800 <u>Regulation VIII</u> (Fugitive Dust Requirement for Control of Fine Particulate Matter [PM ₁₀]). A Dust Control Plan for construction activities will be filed with the ICAPCD
Water or chemical dust suppressants will be applied to unstabilized disturbed areas and/or unpaved roadways in sufficient quantity and frequency to reduce fugitive dust emissions (including PM ₁₀).
Water or water-based chemical additives will be used in such quantities to control dust on areas with extensive traffic including unpaved access roads.
Vehicle speeds on unpaved roadways will be restricted to 15 mph.
Vehicles hauling dirt will be covered with tarp or other means.

Response to Comment 7-18: The commenter states that heavy duty off road diesel engines over 50 horsepower must meet Tier 2 ARB/EPA standards rather than Tier I as referenced.

Page 2.0-53, Table 2.0-5, the text has been revised to indicate Tier 2 rather than Tier I standards:

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AIR QUALITY

The following mitigation measures would be implemented during the construction of the Proposed Project to reduce the exhaust emissions of CO, NO_x, VOC, SO_x, and PM₁₀:

- Heavy duty off road diesel engines over 50 horsepower will meet Tier 4 II ARB/EPA standards for off-road equipment and will be properly tuned and maintained to manufacturers' specifications to ensure minimum emissions under normal operations;
- Construction vehicles will have 1996 and newer model engines;
- Visible emissions from all heavy duty off road diesel equipment will not exceed 20 percent opacity for more than three minutes in any hour of operation;
- A comprehensive inventory (i.e., make, model, year, emission rating) of all heavy-duty off-road equipment (50 horsepower or greater) that will be used an aggregate of 40 hours per week or more during the duration of the construction project will be submitted to the Imperial County Air Pollution Control District, if needed.

Response to Comment 7-19: In order to comply with the Air Districts' Rule 801 – Construction of Earthmoving Activities, visible emissions shall not exceed 20 percent opacity during construction and operation activities. MM 4.4.1c (Fugitive PM₁₀ Control) on page 4.4-18 of the Draft EIR, has been renumbered as MM 4.4.1b in the revised Section 4.4, Air Quality included as Appendix D of this Final EIR. The revised version includes the provision of 20 percent opacity. No further response is required.

Response to Comment 7-20: Section 4.4, Air Quality, Draft EIR page 4.4-7: In reference to Imperial County's determination of the 1997 8-Hour NAAQS, on December 3, 2009, the U.S. EPA made a final determination that Imperial County attained the 1997 8-Hour National Ambient Air Quality Standard (NAAQS) for Ozone (FR Vol. 74. No. 231, Page 63309). However, Imperial County's classification and designation status remains as a "moderate" non-attainment area for the 1997 8-hour ozone NAAQS. This reference has been corrected in the revised Section 4.4, Air Quality included as Appendix D of this Final EIR.

Response to Comment 7-21: The comment references page 4.4-9 as well as Section 2.6 page 13. There is no page 13 or Section 2.6 so it is not possible to respond to this comment. With regard to the discussion of Local Air Quality on page 4.4-9 the commenter asserts that Imperial County has five monitoring stations by which four monitoring stations are under the Air District jurisdiction and one monitoring station located in Calexico is under CARB's jurisdiction. The commenter also notes that, the Calexico-East station has been decommissioned leaving the Calexico-Ethel monitor as the only monitor operating in Calexico. The discussion has been changed based on these comments as reflected in the revised Section 4.4, Air Quality included as Appendix D of this Final EIR.

Response to Comment 7-22: The commenter refers to text on page 4.4-12 on the Draft EIR stating "An URBEMIS was submitted to the Air District for review." The commenter goes on to assert that the Air District does not approve or disapprove an URBEMIS analysis before the review of an EIR. The comment is noted, although the exact text referred to in the comment does not appear in the Draft EIR.

Response to Comment 7-23: The comment quotes MM 4.4.1b on page 4.4-18 of the Draft EIR (Use Diesel Oxidation Catalyst or alternative devices that achieve equivalent NO_x emission reduction on all large diesel construction equipment as required by ICAPCD"). The comment also states

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“Please reference to comments section current mitigation measures on page 2 of this comment letter.” It is not clear what the comment refers to as no mitigation measures nor a discussion of Diesel Oxidation Catalysts or NOx emissions are found on page 2 of this comment letter. Therefore, it is not possible to formulate a response. Nonetheless, as noted in Response to Comment 7-26, the revised Air Quality Assessment (Appendix C of the Final EIR) and the revised version of Section 4.4, Air Quality (Appendix D of the Final EIR) have been revised to state that the project will comply with the ATCM and the reference to the use of diesel oxidation catalyst as mitigation has been removed.

Response to Comment 7-24: The commenter states that there is a grammatical error on page 20 of the Executive Summary. Page ES-20 of the Executive Summary does not include the error noted (i.e. “meaters”). This has been corrected in the revised Air Quality Assessment included as Appendix C of this Final EIR.

Response to Comment 7-25: The commenter refers to Executive Summary Page 20, last paragraph: “Dust control must be updated daily” asserting that this statement is incorrect. Page ES-20 of the Executive Summary does not include this text nor was the quoted text identified anywhere in Draft EIR. The commenter also states that “The dust control is reviewed by the Air District and the mitigation stated on the dust control plan must be complied with on a daily basis.” This comment is noted for the decision-makers’ consideration. However, it was not clear what, if any, specific changes are warranted in the document because the quoted statement from the commenter could not be located. However, a similar statement was identified in the Air Quality Assessment published as Appendix C to the Draft EIR. The Air Quality Assessment has been revised to state that the dust control plan will be complied with daily (refer to Appendix D of this Final EIR).

Response to Comment 7-26: The commenter states that the Airborne Toxic Control Measure or ATCM regulates all diesel off road engines. The comment goes on to state that use of diesel oxidation catalysts can no longer be applied as mitigation and must not be included as a mitigation measure. A revised Air Quality Assessment has been prepared and included as Appendix C of this Final EIR that demonstrates that NOx emissions will not exceed the 100 lb/day threshold of significance if the project uses large construction equipment that meets CARB Tier 2 emission standards. Because the NOx emissions will not be significant, no mitigation for NOx emissions is required. Accordingly, diesel oxidation catalysts will no longer be applied as mitigation and mitigation measure MM 4.4.1b has been deleted from revised Section 4.4, Air Quality (Appendix D of this Final EIR).

Response to Comment 7-27: The comment states “In addition, a list of construction equipment (Table 4.4-6) and the associated EPA tier that is consistent with Air Quality Analysis such as the URBEMIS model that was provided for review shall be submitted to the county planning and development prior to the issuance of a grading permit to verify implementation the mitigation measure.” The Applicant will provide a list of equipment and associated EPA Tier ratings consistent with the Air Quality Assessment to the County Planning and Development Department prior to the issuance of a grading permit and far enough in advance to allow the ICAPCD to verify implementation of the mitigation measure.

Response to Comment 7-28: The comment states the Air Quality Analysis provided by Ldn Consulting for the Campo Verde Solar Project is inadequate. The comment expresses disagreement with the finding of “less than significant.” The comment further states that the project may reduce its impacts to less than significant if a revised Air Quality Analysis is prepared

3.0 COMMENTS AND RESPONSE TO COMMENTS

that uses standard mitigation measures and the additional mitigation measures described in Comments 7-29 to 7-31. As noted in Response to Comment 7-26, the Air Quality Assessment report in Appendix C of the Draft EIR has been revised to account for the fact that large construction equipment will meet CARB Tier 2 standards and comply with the ATCM (refer to Appendix C of this Final EIR). The revised analysis indicates that impacts from NOx emissions will be less than significant and do not require mitigation, whereas PM10 impacts can be mitigated to less than significant levels.

Response to Comment 7-29: The comment identifies requirements related to the use of construction equipment with engines meeting EPA Tier 2 or better designation and ICAPCD Regulation VIII-Fugitive Dust Control Measures to control PM10 emissions during construction. Refer to Response to Comments 7-18 and 7-26, respectively, regarding the use of Tier 2 construction equipment and submitting a list of equipment to County Planning and Development Services prior to the issuance of a grading permit. With respect to compliance with ICAPCD Regulation VIII, The Draft EIR states on pages 4.4-6 to 4.4-8, 4.4-15 and 4.4-21 that the Applicant is required to submit a Dust Control Plan to the ICAPCD that complies with Regulation VIII.

Response to Comment 7-30: The comment states that the project may pay an in-lieu impact fee for NOx pursuant to ICAPCD Policy Number 5 prior to construction activities. This mitigation measure is not required because NOx emissions from construction will not cause a significant impact. Refer also to Response to Comment 7-26.

Response to Comment 7-31: The comment reiterates a previous comment [Comment 7-15] regarding the analysis of cumulative operational impacts. Refer to Response to Comment 7-15.

Response to Comment 7-32: The comment reiterates two prior comments [Comments 7-7 and 7-8] regarding the need to include “long haul” truck emissions in the Draft EIR’s analysis of air quality impacts. Refer to Response to Comments 7-7 and 7-8.

Response to Comment 7-33: The comment also provides the website for the ICAPCD’s rulebook and provides closing remarks. This comment is noted.



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COMMENT LETTER 8

July 3, 2012

Via email and overnight delivery

David Black, Planner IV
Imperial County Planning and Development Services Department
801 Main Street
El Centro, California 92243

**Re: Comment re: Draft EIR for the Campo Verde Solar Project
SCH No. 2011111049
CUP No. 11-007
Variance #12-008**

Dear Mr. Black:

This letter is submitted on behalf of Laborers International Union of North America, Local Union 1184, and its members living in Imperial County ("LIUNA Local Union No. 1184" or "Commenters") regarding the proposed Draft Environmental Impact Report ("DEIR") for the Campo Verde Solar Project ("Project"), SCH No. 2011111049, CUP No. 11-007 and Variance No. 12-008. After reviewing the DEIR together with our team of expert consultants, it is evident that the document contains numerous errors and omissions that preclude accurate analysis of the Project. As a result of these inadequacies, the DEIR fails as an informational document, fails to identify environmentally superior Project alternatives, and fails to impose feasible mitigation measures to reduce the Project's impacts.¹

8-1

In particular, the DEIR has the following deficiencies:

1. The DEIR is wholly inadequate in its assessment of the impacts arising from the Project's conversion of productive Imperial Valley farmland, particularly given the overall conversion of approximately 23,800 acres (or approximately 5%) of all

8-2

¹ We reserve the right to supplement these comments at later hearings and proceedings for this Project. *See Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109.

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Imperial Valley farmland has already been or will be converted to solar farms in the foreseeable future.² Specific deficiencies of the DEIR include:

- a. the DEIR erroneously concludes that the Project is consistent with the General Plan despite the fact that the Imperial County General Plan and its Elements zone the project site as "Agriculture" and prioritize the protection of farmland; 8-3
 - b. the DEIR erroneously concludes that a 5% conversion of all agricultural land in Imperial County is not a cumulatively considerable impact. Commenters cannot identify any time a 5% land conversion of an entire county has ever been considered less than significant; 8-4
 - c. the DEIR mischaracterizes the conversion as "temporary" despite the fact that it will last at least 40 years with no assurances that the solar panels will be removed at the end of the project's life or that agricultural reclamation will succeed; and 8-5
 - d. the DEIR proposes insufficient mitigation, either 1:1 replacement for lost farmlands or to pay 20% (30% for prime farmland) of the cost of the land into a fund used for unspecified purposes. 8-6
2. The DEIR fails to adequately assess impacts to biological resources, including burrowing owls and other raptors, migratory birds, mammals, reptiles, native plants.
- a. The DEIR fails to establish a credible baseline for biological resources, particularly because adequate surveys for wildlife and plants were not conducted and complete data sets were not provided in the DEIR and Biological Technical Report ("BTR").
 - b. In several instances, the DEIR improperly proposes unenforceable, inadequate and deferred mitigation measures, including failing to develop and/or conduct: 8-7
 - i. a spring rare plant survey;
 - ii. Phase III burrowing owl surveys within the Proposed and Alternative Gen-tie Corridors;
 - iii. winter Burrowing Owl surveys;
 - iv. Mountain Plover surveys;
 - v. winter avian use surveys;

² The DEIR estimates that the currently planned conversion from agriculture to solar development in Imperial County is 19,133.29 acres. (DEIR, at 4.9-17) Commenters are informed and believed that the acreage, including the Project, is closer to approximately 23,800 acres.

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| <ul style="list-style-type: none"> vi. spring avian use surveys; vii. a Common Raven control plan; viii. a weed risk assessment and management plan; ix. an integrated pest management plan; x. a Burrowing Owl mitigation and monitoring plan; xi. the Bird and Bat Conservation Strategy; and xii. a site reclamation and revegetation plan. | | 8-7
continued |
| <ul style="list-style-type: none"> c. The DEIR also fails to adequately assess the loss of wetlands, waterways and irrigated agricultural lands, especially cumulative impacts, and their effects on birds and other wildlife. | | 8-8 |
| <p>3. The DEIR fails to adequately assess impacts to water quality and important aquatic resources in Imperial County, including the Salton Sea and several wetlands.</p> <ul style="list-style-type: none"> a. The DEIR concludes that the project will have a less than significant impact on the Salton Sea and the New River, but the DEIR does not adequately assess impacts from loss of run-off from 5% of the agricultural area in Imperial Valley on the Salton Sea. b. The DEIR admits significant impacts will occur to wetlands, but it improperly defers mitigation and does not commit to any particular ratio or level of mitigation. | | 8-9 |
| <p>4. The DEIR improperly creates a fair share mitigation fee payment for traffic impacts without providing assurances that the mitigation will actually be implemented.</p> | | 8-10 |
| <p>5. The DEIR fails to identify adequate mitigation measures for the significant impacts that will arise from particulate matter and NOx from construction.</p> | | 8-11 |
| <p>6. The DEIR fails to adequately assess alternatives to the project, particularly alternatives that would minimize or avoid significant impacts arising from the project.</p> | | 8-12 |
| <p>We have prepared these comments with the assistance of Scott Cashen, M.S., an expert wildlife biologist who has expertise in the areas of burrowing owls and other species relevant to this DEIR. His comments and curriculum vitae are attached hereto as Exhibit 1 and are incorporated by reference in their entirety. In addition, we have obtained the consultation of Matt Hagemann, P.G. C.Hg., an expert hydrologist. His comments are attached as Exhibit 2 hereto and are incorporated herein by reference in their entirety. Each of Mr. Cashen's and Mr. Hagemann's comments requires separate response in the Final EIR.</p> | | 8-13 |
| <p>We have prepared these comments with the assistance of Scott Cashen, M.S., an expert wildlife biologist who has expertise in the areas of burrowing owls and other species relevant to this DEIR. His comments and curriculum vitae are attached hereto as Exhibit 1 and are incorporated by reference in their entirety. In addition, we have obtained the consultation of Matt Hagemann, P.G. C.Hg., an expert hydrologist. His comments are attached as Exhibit 2 hereto and are incorporated herein by reference in their entirety. Each of Mr. Cashen's and Mr. Hagemann's comments requires separate response in the Final EIR.</p> | | 8-14 |

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LIUNA Local Union No. 1184 recognizes that the development of renewable energy is critical for the reduction of greenhouse gas emissions. Renewable energy is essential to forestall the worst consequences of climate change and to help the state of California meet its ambitious emissions reductions goals. LIUNA Local Union No. 1184 supports the development of renewable energy production, including the development of solar power generation through both appropriately sited solar "farms" and distributed solar power generation. All solar power projects must be properly sited and carefully planned to minimize impacts on the environment. Renewable energy projects should avoid impacts to sensitive species and habitats, and should be sited in proximity to electricity consumers to reduce the costs and impacts associated with new transmission corridors. Only by maintaining the highest standards in these and other ways can renewable energy production be truly sustainable. Unfortunately, the proposed project falls short in these and other ways. As a consequence, the DEIR will need to be revised and recirculated, as set forth below.

8-14
continued

I. BACKGROUND

The Project would cover approximately 1990 acres of land in southern Imperial County with a 140-plus megawatt alternating current (MWAC) solar generation facility with photovoltaic (PV) technology and associated 230-kilovolt (kV) transmission line, which will cross both private and public land within the jurisdiction of the U.S. Bureau of Land Management. (DEIR, at 2.0-1)³ The Project is one of many industrial-scale solar developments in Imperial County, a conversion process that currently includes approximately 23,800 acres of land in the county.

The Campo Verde Solar Project is part of a large conversion of Imperial County agricultural land to industrial solar development. In addition to the approximately 23,800 acres currently undergoing conversion to solar development, more conversions of agricultural and public land are certainly a foreseeable possibility—including from solar, wind and urban development. Notably, the DEIR fails to acknowledge this mass conversion of land and instead impermissibly narrows the discussion farmland conversion to projects within 15 miles of the Project site

8-15

Approximately 1852 acres of proposed project site are agricultural land and approximately 1822 of those acres are considered "important" farmlands. (DEIR, at 2.0-2; *see also* Imperial County General Plan, Agricultural Element, Policy 1, at 39 ("[A]ll

³ On February 2, 2012, the project applicant submitted a Variance Application because proposed gen-tie structures may exceed the 120-foot height limit for areas zoned A-2 and A-3. (DEIR, at 2.0-2) On February 15, 2012, the Airport Land Use Commission (ALUC) found the project consistent with the 1996 Airport Land Use Compatibility Plan (ALUCO) and approved the variance with no conditions.

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agricultural land in Imperial County is considered as Important Farmland, as defined by Federal and State agencies, and should be reserved for agricultural uses.")) The Project would completely "preclude agricultural crop production" at the site for the life of the project (up to 40 years). There is no guarantee that the site will be returned to agricultural production after the 40-year period. Thus, the Campo Verde project will convert more than 1850 acres of productive agricultural land which produces food, fibers and degrade the rural, agricultural and natural character of Imperial Valley permanently.

8-15
continued

All of the private lands within the project site are zoned as "Agriculture", designated as A-2 (General Agriculture), A-2-R (General Agriculture, Rural Zone), and A-3 (Heavy Agriculture). (DEIR, at 2.0-2, -32; Imperial County Land Use Plan, Section 4.2, Figure 4.2-1) The DEIR states that pursuant to Land Use Ordinance, Title 9, Div. 5, Sections 90508.02 and 90509.02, "solar electrical generators, electrical power generating plants, substations, and facilities used for transmission of electrical energy are allowed as conditional uses in Agricultural zones. (DEIR, at 2.0-2) In an effort to comply with the Land Use Ordinance, the Applicant is seeking a Conditional Use Permit (CUP) from the ICPDS.

Other site features include transmission lines and communication equipment, a 7-foot high chain link security fence topped with barbed wire, exterior lighting, and a septic system. (See DEIR, at 2.20-19-21) The project includes above-ground communication and transmission lines. (DEIR, at 2.0-20) The DEIR is unclear as to whether a microwave dish will be a permanent part of the communication system.⁴ (Id.)

8-16

The gen-tie would cross private lands designed by the Imperial County Land Use Plan as "Agriculture" and would preclude crop production. (DEIR, at 2.0-32) The gen-tie necessitates at least eight structures within BLM land, wholly contained within a designated Area of Critical Environmental Concern (ACEC) in the California Desert Conservation Area (CDCA) Plan Corridor N (or Utility Corridor N) and the West-wide Energy Corridor Segment 115-238. The transmission line structures would range from approximately 100-145 feet and with spans of 400-800 feet. (DEIR, at 2.0-37)

Each transmission structure would require clearing of approximately 15,000 square feet during construction and permanent disturbance of 300 square feet; the DEIR

8-17

⁴ In discussing the Communication System, the DEIR states that a "temporary microwave dish may be installed on a 50-foot pole" during construction. (DEIR, at 2.0-20) However, the Substation and Switchyard section, the DEIR mentions that the "communication system may include above or below ground fiber optic cable or microwave tower" without specifying that the microwave tower would be temporary (Id.) The DEIR should be revised to clarify this issue and, if necessary, assess and mitigate any impacts from the microwave tower.

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indicates that an unspecified "[a]dditional area" may be cleared on private land.⁵ (DEIR, at 3.0-37) Areas would be cleared of large rocks and vegetation. (DEIR, at 2.0-39) Four to eight hundred cubic feet of excavated material would be "distributed on BLM land, or hauled offsite . . ." (DEIR, at 2.0-43) The DEIR does not discuss any of the impacts associated with "redistribution" of cleared materials (which can have environmental impacts) or their disposal off-site (which can have additional, unconsidered impacts).

8-17
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The Project is expected to be constructed over a period of up to 24 months. (DEIR, at 2.20-22) Construction-related features will include temporary trailers, septic systems, water storage ponds and tanks, waste management, fuel and other hazardous material storage, storage, and temporary lighting. Construction-related impacts include removal of all existing trees and dense vegetation, fugitive particulate matter from grading, tracking of sediment onto adjacent roadways, alteration or destruction of ditches and waterways, soil alteration and compaction, use of approximately 1,500 acre-feet of water. (DEIR, at 2.20-25-25)

8-18

The project would include approximately 1.4 miles of gen-tie that would exit the southwest corner of the facility, cross the Westside Main Canal, and enter BLM land. (DEIR, at 2.0-30; Figure 2.0-4) The proposed route over BLM lands would generally cross native Sonoran Desert habitat in an area that currently does not have any transmission facilities. (DEIR, at 2.0-32) The impacts on the BLM lands are unclear, in part, because rare plant and adequate breeding and wintering bird surveys were not conducted at the time of the release of the DEIR.

8-19

Once the Project is constructed, ongoing activities will include regular usage and trips to and from the site by 4-12 fulltime workers, 40-50 daily trips to the site for deliveries of supplies or other operational needs, water treatment and storage, sanitation facilities. Operations would continue at the site for up to 40 years. The DEIR states that after that period, the site will be reclaimed for use as agricultural land, *but an Agricultural Reclamation Plan is not included in the DEIR.*

8-20

It cannot be disputed that this is a very large project that will have permanent impacts on the land at the project site and contribute to significant cumulative changes to Imperial County. Much smaller solar project proposals such as a 30 MW project in Puerto Rico have met with local resistance because of, among other issues, the loss of farmland.⁶ The impact of the loss of the prime agricultural land has cultural, demographic and economic consequences. Imperial County Agricultural Commissioner Connie Valenzuela

8-21

⁵ The DEIR cannot assess the environmental impacts of clearing of "additional area[s]" if they are not specified in the DEIR. The DEIR must be revise to specify what, if any, "additional areas" would be cleared and identify impacts and appropriate mitigation measures.

⁶ "Renewable Energy Projects Generate Opposition in Puerto Rico," April 8th, 2012, found at <http://www.corpwatch.org/article.php?id=15698>

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has consistently stated that "removal of any farmland out of production would have direct negative impact on employment, income, sales and tax revenue." (Exhibit 3). While economic analysis is not always part of an EIR, it should be included here because (1) economic impacts are tied to impacts on the rural and agricultural character of the County, preservation of which is required by the General Plan and (2) the General Plan only permits conversion of agricultural lands to non-agricultural uses where a long term economic benefit can be demonstrated (i.e., a net gain over current and future agricultural uses).

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Given the number of other solar projects proposed for Imperial County and their effectively permanent change on the landscape and character of the County, the Cumulative Impacts are undeniably immense. Alone, a 1990-acre solar farm will unquestionably have extensive, significant impacts. However, when considered cumulatively with other past, present and foreseeable projects converting agricultural land to non-agricultural uses in Imperial County, there is no credible way to conclude that the Project's impacts are less than significant under CEQA.

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II. STANDING

Local 1184's headquarters is located immediately adjacent to the proposed Project site. Members of Local 1184 live, work and recreate in the immediate vicinity of the Project site. These members will suffer the impacts of a poorly executed or inadequately mitigated Project, just as would the members of any nearby homeowners association, community group or environmental group. Hundreds of Local 1184 members live and work in areas that will be affected by traffic, air pollution, and water pollution generated by the Project.

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In addition, construction workers will suffer many of the most significant impacts from the Project as currently proposed, such as from air pollution emissions from poorly maintained or controlled construction equipment, possible risks related to hazardous materials on the Project site, risks from Valley Fever, and other impacts. Therefore, Local 1184 and its members have a direct interest in ensuring that the Project is adequately analyzed and that its environmental and public health impacts are mitigated to the fullest extent feasible.

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III. LEGAL STANDARDS

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances). (*See, e.g.*, Pub. Res. Code § 21100.) The EIR is the very heart of CEQA. (*Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.) "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory

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language." (*Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.)

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. (14 Cal. Code Regs. ("CEQA Guidelines") § 15002(a)(1).) "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'" (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564) The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." (*Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal. App. 4th 1344, 1354 ("Berkeley Jets"); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810)

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Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and all feasible mitigation measures. (CEQA Guidelines § 15002(a)(2) and (3); See also, *Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564) The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced." (Guidelines §15002(a)(2)) If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns." (Pub.Res.Code § 21081; 14 Cal.Code Regs. § 15092(b)(2)(A) & (B))

While the courts review an EIR using an "abuse of discretion" standard, "the reviewing court is not to 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A 'clearly inadequate or unsupported study is entitled to no judicial deference.'" (*Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added), quoting, *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal. 3d 376, 391 409, fn. 12 (1988)) As the court stated in *Berkeley Jets*, 91 Cal. App. 4th at 1355:

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A prejudicial abuse of discretion occurs "if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 722]; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal. App. 4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 946)

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IV. THE PROJECT IS FATALLY INCONSISTENT WITH THE COUNTY'S GENERAL PLAN, VIOLATING CEQA AND LAW USE LAW.

The DEIR incorrectly concludes that the Project is consistent with the General Plan. In fact, the proposed solar farm is forbidden by the General Plan's Land Use and Agriculture Elements and the Project may not proceed without a General Plan amendment. (See Imperial County General Plan, Land Use Element (Rev. 2008), at 48) Specifically, the Land Use Element of the General Plan mandates that where questions of land use compatibility arise, the proponent of a non-agricultural use of land zoned as "Agriculture" must demonstrate that the proposed use "does not conflict with agricultural operations and will not result in premature elimination of agricultural operations." (Id.)

The incompatibility of solar farm development with continuing agricultural production is well established and inarguable. The California Department of Conservation has determined in similar cases that proposed solar development on agricultural lands are "completely incompatible" with on-site agricultural uses. (Exhibit 4) At best, the DEIR glosses over the glaring inconsistency with the General Plan and its elements and, consequently, fails to assess these inconsistencies as the significant negative impacts that they are.

Imperial County would be exceeding its authority if it were to issue permits or variances related to the Project as described in the DEIR because the Project is inconsistent with the County's General Plan, particularly its Agricultural, Land Use, and Open Space and Recreation Elements. (See *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1184) In *Neighborhood Action Group*, the Court of Appeal held that "a use permit is struck from the mold of the zoning law...the zoning law must comply with the adopted general plan...[and] the adopted general plan must comply with state law." (Id. at 1184) The general plan delimits the authority of the permit-issuing agency; thus, where an agency issues a permit that is inconsistent with the general plan, it exceeds its legal authority and the permit is invalid. (Id.) Imperial County's General Plan clearly states the County's policy for protecting farmland and a culture of farming in the county and the General Plan Elements are replete with policies that require the protection of farmland and the county's natural values. The Project's conflict with these land use policies must be considered significant, especially when considered cumulatively with other projects that are resulting in the loss of Imperial County farmland.

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A. Project Inconsistencies with the General Plan and its Elements Constitute Significant Impacts under CEQA.

The County must treat its analysis of conflicts with the General Plan seriously and land use decisions must be consistent with the plan. (CEQA Guidelines, App. G, Evaluation of Environmental Impacts, Item 6; Guidelines § 15125(d); Gov. Code § 65860(a)) The General Plan is intended to be the "constitution for all future

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developments" in Imperial County, a "charter for future development," that embodies "fundamental land use decisions that guide the future growth and development of cities and counties." (*Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors of El Dorado County* (1998) 62 Cal.App.4th 1334, 1335; *Leshner Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531,54; *City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521,532) The "propriety of virtually any local decision affecting land use and development depends upon consistency with applicable general plan and its elements." (*Citizens of Goleta Valley v. Board of Supervisors of County of Santa Barbara* (1990) 52 Cal.3d 553, 570) The consistency doctrine has been described as the "linchpin of California's land use and development laws; it is the principal which infuses the concept of planned growth with the force of law." *Corona-Norco Unified School District v. City of Corona* (1993) 17 Cal.App.4th 985, 994.

A project's impacts may be deemed significant if they are greater than those deemed acceptable in a general plan. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1416). A significant impact on land use and planning would occur if the project would "[c]onflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect." (CEQA Guidelines Appendix G, § IX(b))

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According to the CEQA Guidelines, "environmental effects" include direct and indirect impacts to land use and planning. Where the plan or policy was adopted to avoid negative environmental effects, conflicts with the plan or policy constitutes a significant negative impact. (*Oro Fino Gold Mining Corp. v. Co. of el Dorado* (1990) 225 Cal.App.3d 872, 881-882; *see also Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4; *County of El Dorado v. Dept. of Transp.* (2005) 133 Cal.App.4th 1376; CEQA Guidelines, App. G, § IX(b)) Thus, under CEQA, a project results in a significant effect on the environment if the project is inconsistent with an applicable land use plan, policy or regulation adopted for the purpose of avoiding or mitigating one or more of these environmental effects.

The DEIR fails to conduct a complete and forthright consistency analysis with the Imperial County General Plan and its Elements. The DEIR must be revised to analyze inconsistencies identify appropriate mitigations or set the foundation for a finding of overriding considerations.

1. The DEIR misleadingly characterizes the Project's impacts as "temporary."

The DEIR's assertion that the elimination of agricultural activities is temporary is erroneous. The project will take productive agricultural land out of production for up to 40 years – approximately two generations. The soils and other landscape features will be

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permanently altered. The DEIR fails to provide any credible agricultural reclamation plan and does not provide any substantial evidence that the soils can be reclaimed and put to productive agricultural use. Moreover, once this and other projects depress the agricultural economy of Imperial County—reducing the need for suppliers, transport, and labor, among other support services—there can be no assurance that the agricultural economy and character of the County will simply resume after 40 years as if the Project and similar conversions of agricultural land had never occurred. The DEIR contains no reclamation plan explaining how, after 40-years, the land could be restored to agricultural use. Without any reclamation plan, the impact must be assumed to be significant, permanent and unmitigated. (See, *Citizens For Responsible Equitable Emt'l Dev. v. City of Chula Vista* (2011) 197 Cal.App.4th 327 (failure to include mitigation plan in CEQA documents renders impact significant and unmitigated))

8-29
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2. The DEIR fails to adequately analyze and mitigate for cumulative impacts related to changes in land use and inconsistencies with General Plan elements.

The Campo Verde project is part of a large scale conversion of more than 23,000 acres of productive and important Imperial County farmland, approximately 5% of the county's total agricultural land. Despite the fact that the Project is part of a county-wide movement to large-scale solar development, the DEIR impermissibly narrows the scope of projects considered for cumulative impacts to those projects within 10 miles of the site. Within that constricted perspective, the DEIR concludes that the impacts are not cumulatively significant.

An EIR must discuss significant cumulative impacts. (CEQA Guidelines § 15130(a)) This requirement flows from CEQA section 21083, which requires a finding that a project may have a significant effect on the environment if "the possible effects of a project are individually limited but cumulatively considerable. . . . 'Cumulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (See also 14 Cal. Code Regs. § 15130(a)) "Cumulative impacts" are defined as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (*Id.* § 15355(a)) "[I]ndividual effects may be changes resulting from a single project or a number of separate projects." (*Id.*) Incremental contributions must be assessed "when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probably foreseeable projects." (14 Cal. Code Regs. § 15065(a)(3))

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"The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking

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place over a period of time." (*Communities for a Better Environment v. Cal. Resources Agency ("CBE v. CRA")*, (2002) 103 Cal.App.4th 98, 117) A legally adequate cumulative impacts analysis views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand. "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (CEQA Guidelines § 15355(b))

As the court recently stated in *CBE v. CRA*, 103 Cal. App. 4th at 114:

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

(Citations omitted). In this case, the conversion of a "mere" 1990 acres of agricultural land may seem insignificant in the vast Imperial Valley, but in truth the Project is part of an incremental aggregation of impacts that is assuming "threatening dimensions" when considered collectively with other sources of similar impacts.

In *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d at 718, the court concluded that an EIR inadequately considered an air pollution (ozone) cumulative impact. The court said: "The [] EIR concludes the project's contributions to ozone levels in the area would be immeasurable and, therefore, insignificant because the [cogeneration] plant would emit relatively minor amounts of [ozone] precursors compared to the total volume of [ozone] precursors emitted in Kings County. The EIR's analysis uses the magnitude of the current ozone problem in the air basin in order to trivialize the project's impact." The court concluded: "The relevant question to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin."⁷ *Kings County* is particularly relevant in this matter given that

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⁷ *Los Angeles Unified v. City of Los Angeles*, 58 Cal.App.4th at 1024-1026 found an EIR inadequate for concluding that a project's additional increase in noise level of another 2.8 to 3.3 dBA was insignificant given that the existing noise level of 72 dBA already exceeded the regulatory recommended maximum of 70 dBA. The court concluded that this "ratio theory" trivialized the project's noise impact by focusing on individual inputs rather than their collective significance. The relevant issue was not the relative amount of traffic noise resulting from the project when compared to existing traffic noise, but whether any additional amount of traffic noise should be considered significant given the nature of the existing traffic

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the DEIR failed to adequately consider the region-wide cumulative impacts arising from the Project and sources of similar impacts.

Similarly, in *Friends of Eel River v. Sonoma County Water Agency*, (2003) 108 Cal. App. 4th 859, the court recently held that the EIR for a project that would divert water from the Eel River had to consider the cumulative impacts of the project together with other past, present and reasonably foreseeable future projects that also divert water from the same river system. The court held that the EIR even had to disclose and analyze projects that were merely proposed, but not yet approved. The court stated, CEQA requires "the Agency to consider 'past, present, and probable future projects producing related or cumulative impacts . . .'" (Guidelines, § 15130.(b)(1)(A)) The Agency must interpret this requirement in such a way as to 'afford the fullest possible protection of the environment.'" *Id.*, at 867, 869. The court held that the failure of the EIR to analyze the impacts of the project together with other proposed projects rendered the document invalid. "The absence of this analysis makes the EIR an inadequate informational document." (*Id.*, at 872) In this matter, the DEIR clearly fails to adequately assess the cumulative losses of irrigation flows to the Salton Sea and the New River, the loss of agricultural land throughout the County, the cumulative urban decay impacts, and the loss of irrigated agriculture as habitat for wildlife.

8-30
continued

a. The DEIR's restriction of its cumulative impacts analysis to land uses within ten miles of the project is overly restrictive.

The DEIR explicitly excludes solar projects that are more than ten (for land use-related impacts) to fifteen (for impacts to biological resources) miles from the Project site. (*See, e.g.*, DEIR, at 3.0-7, 4.2-26, Impact 4.2.2, Table 4.9-9) An EIR cannot arbitrarily restrict review of sources of similar environmental impacts. When considering other projects for inclusion in the cumulative impacts analysis, the lead agency must consider factors including the nature of the resource in question, the location of the project, and the type of project. (14 Cal. Code Regs. § 15130(b)(a)) Location may be particularly important where the location of other projects affects the severity of the impact. (*See* 14 Cal. Code Regs. § 15130(b)(2); *see also City of Long Beach v. Los Angeles Unified School District* (2009) 176 Cal.App.4th 889, 907)

8-31

The DEIR must be revised to consider cumulative land use impacts from all solar projects in Imperial County and any other past, present or foreseeable projects that include the conversion of agricultural lands to non-agricultural uses. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 723) When determining whether a list of other projects included in the cumulative analysis is adequate, a court must

noise problem.

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determine "whether it was reasonable and practical to include the projects and whether, without their inclusion, the severity and significance of the cumulative impacts were reflected adequately." (*Id.*) Given the well-publicized existence of a large number of other solar projects within Imperial County and the fact that those projects (and their impacts) are well documented, it is neither reasonable nor practical for the County to fail to consider those projects in its cumulative impacts analysis for the Project at hand. (*See San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713; *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 409) In this case, all solar projects in the county have a cumulative impact on urban decay; water flows to the Salton Sea; loss of agricultural land; loss of habitat, and other impacts discussed herein. Therefore, the EIR must address the cumulative impacts of these projects county-wide, not only an artificially limited 10-mile radius.

The DEIR is also deficient because it fails to include in its cumulative impacts analysis the impacts from non-solar projects that have similar impacts on affected resources. EIRs are required to analyze cumulative impacts from sources of similar impacts, not just similar projects. (14 Cal. Code Regs. § 15130(a)(1), (b)(2); *City of Long Beach v. Los Angeles Unified School District* (2009) 176 Cal.App.4th 889, 907; *Laupheimer v. State* (1988) 200 Cal.App3d 440, 465 (court rejected Dept. of Forestry's review of cumulative impacts to water quality from logging operations because it did not consider all projects in the watershed that contributed to erosion and water quality problems); *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 721 (finding the EIR's cumulative impacts analysis inadequate because it failed to include other energy projects throughout the regional air basin)

8-31
continued

Moreover, the DEIR acknowledges a "trend in conversion of agricultural land is expected to continue due to development pressure, and other factors." (DEIR, at 4.9-18) At a minimum, the DEIR must be revised to include analysis of this trend, including development pressure and "other factors", as the overall result is a continuing loss in Imperial County farmland and concomitant environmental impacts.

Here, the DEIR must be revised to consider not only other solar and other energy projects, but any past, current, or foreseeable projects such as industrial or urban development that will convert Imperial County farmland to non-agricultural uses or have other impacts similar to those arising from the project. These include projects such as the Ocotillo Wind Project and the Brawley Geothermal Plant.

b. The proposed Mitigation Measures rely on unenforceable, vague and deferred mitigation measures.

CEQA disallows deferring the formulation of mitigation measures to post-approval studies. (CEQA Guidelines § 15126.4(a)(1)(B); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309.) Feasible mitigation measures for

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significant environmental effects must be set forth in an EIR for consideration by the lead agency's decision makers and the public before certification of the EIR and approval of a project.⁸

The formulation of mitigation measures generally cannot be deferred until after certification of the EIR and approval of a project. CEQA Guidelines Section 15126.4(a)(1)(B) states: "...[f]ormulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way." An agency may only defer the formulation of mitigation measures when it possesses "'meaningful information' reasonably justifying an expectation of compliance." (*Sundstrom* at 308; see also *Sacramento Old City Association v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028-29 (mitigation measures may be deferred only "for kinds of impacts for which mitigation is known to be feasible"))

A lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation because there was no evidence that replacement water was available).) This approach helps "insure the integrity of the process of decisionmaking by precluding stubborn problems or serious criticism from being swept under the rug." (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935)

However, a lead agency's adoption of an EIR's proposed mitigation measure for a significant environmental effect that merely states a "generalized goal" to mitigate a significant effect without committing to any specific criteria or standard of performance violates CEQA by improperly deferring the formulation and adoption of enforceable mitigation measures. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93 ("EIR merely proposes a generalized goal of no net increase in

8-32
continued

⁸ "Deferral of the specifics of mitigation is permissible where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan. [Citation.] On the other hand, an agency goes too far when it simply requires a project applicant to obtain a biological [or other] report and then comply with any recommendations that may be made in the report." (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275.) "If mitigation is feasible but impractical at the time of a general plan or zoning amendment, it is sufficient to articulate specific performance criteria and make further approvals contingent on finding a way to meet them." (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 793.)

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greenhouse gas emissions and then sets out a handful of cursorily described mitigation measures for future consideration that might serve to mitigate the [project's significant environmental effects.]")

Here, the DEIR's reliance on tentative plans for agricultural reclamation and mitigation for impacts to biological, hydrological, and air quality resources undermine the purpose of CEQA and deprive the public and decision makers of the information necessary to assess the project.⁹ For example, the DEIR states that the Applicant "plans" to restore the site back to agricultural production. (DEIR, at 2.0-29-30) Reclamation would necessarily include de-compaction of solids, grading, weed control, reestablishment of irrigation and waterways and soil amendments. (*Id.*) However, there is no assurance that reclamation will ever occur; as such, reclamation as a mitigation measure is purely speculative and the Project's impacts must be assessed as if reclamation will not occur. (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92) In *CBE v. City of Richmond*, the Court held that "reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decisionmaking; and[,] consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment."

8-32
continued

In concluding that the Project does not result in cumulatively considerable impacts, the DEIR relies, in part, on Mitigation Measure 4.9.1, which states that the Applicant will either purchase conservation easements, payment of in-lieu fees, or executing a Public Benefits Agreement. (DEIR, at 4.9-20; *see also* DEIR, at 4-14) Each of these options constitutes impermissible, deferred mitigation.

8-33

First, acquisition of Agricultural Conservation Easements do not replace the loss of farmland. The easements would be secured on land that is already in agricultural production and, ostensibly, protected from conversion and development by the Imperial

⁹ Several examples exist of deferred mitigation plans in the DEIR. For example, the DEIR states that "[a] *Raven Control Plan* will be prepared and implemented . . ." (DEIR, at 2.0-48, Table 2.0-4), a "Plant Salvage Plan would be developed. . ." (DEIR, at 2.0-51, Table 2.0-4), and that mitigation for alteration and loss of wetlands will eventually be developed.

The proposal of deferred mitigation for impacts to burrowing owls is especially worrisome. The DEIR states that "[c]ompensation for burrowing owl habitat modifications will be made per coordination with responsible resources agencies. (DEIR, at 2.0-47, Table 2.0-4) Moreover, initial surveys for the burrowing owls are insufficient, failing to provide a suitable project baseline and failing to ensure that impacts to breeding birds will not occur. For example, the DEIR states that preconstruction clearance surveys for burrowing owls would be conducted within 30 days prior to construction. (*Id.*) As discussed by Mr. Cashen in the attached report, the survey time is too long, as owls can move into new burrows in less than 30 days.

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County General Plan and other land use plans. Consequently, the acquisition of easements cannot in any way be thought of as off-setting agricultural losses due to the project. In other words, the Conservation Easements do nothing to increase the amount of agricultural land compared to the actual existing "baseline" environment.

8-33
continued

Second, the proposal that the Applicant will pay an "Agricultural In-lieu Mitigation Fee" to the amount of 20% of the fair market value is inadequate for two reasons. Fees paid for mitigation that do not ensure implementation of the mitigating action are invalid. (*Napa Citizens for Honest Gov. v. Bd. of Supervisors* (2000) 91 Cal.App.4th 342 (rejecting fee payment plan where there is no evidence that impacts will be mitigated simply through payment of a fee); *Anderson First Coal. v. City of Anderson* (2005) 130 Cal.App.4th 1173 (finding traffic mitigation fee is inadequate because it does not ensure that mitigation measure will be implemented) Moreover, the establishment of 20% fair market value for land that is being taken out of agricultural production for at least 40 years is arbitrary and not supported by any evidence in the record. It would appear much more economical for the permittee to simply pay the 20% value rather than opt for Options 1 or 3, which would be significantly more expensive. It is likely that the 20% payment will at best pay to replace 20% of the land taken out of production – resulting in a net loss of 80% of the land. There is no credible way in which this measure reduces the impact to less than significant. It is also a near certainty that any economically rational developer will simply pay the 20% "fee" rather than replace agricultural land 1:1, which would cost 100% of the replacement cost. This exception swallows the rule.

8-34

Third, the "Public Benefits Agreement" ("PBA") touted in Option 3 constitutes deferred mitigation. Because the PBA is not provided in the DEIR, it cannot be considered as mitigation by the reviewing public or decision makers. (See, *Citizens For Responsible Equitable Env't'l Dev. v. City of Chula Vista* (2011) 197 Cal.App.4th 327 (failure to include mitigation plan in CEQA documents renders impact significant and unmitigated)) Moreover, the DEIR fails to explain how the PBA would constitute mitigation for the loss of agricultural land, particularly given the value placed on the conservation of agricultural land by the General Plan and other applicable land use plans. Finally, the PBA creates the appearance of a quid pro quo for the County's willingness to depart from the policies of its General Plan.

8-35

As discussed above, these conclusions are in error. The DEIR must be revised to include a more thorough and forthright discussion of consistency with applicable plans. Moreover, because the DEIR fails to identify impacts and mitigation measures for those impacts, appropriate mitigation measures must also be analyzed and proposed.

8-36

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B. The Project is Inconsistent with the Agriculture Element of the General Plan.

The Board of Supervisors expressly stated that "[a]doption of the Agricultural Element of the Imperial County General Plan demonstrates the long-term commitment by the County to the full promotion, management, use and development and protection of agricultural production." (Imperial County General Plan ("ICGP"), Agricultural Element, at 1) The Agricultural Element is implemented through—not superseded by—County Ordinances governing operations, activities, and industries that "ensure compatibility with adjacent land uses and provide clear guidelines for decisions in agricultural areas." The policies in the Agricultural Element "legally bind the County." The Agricultural Element also recognizes the County's firm policy, as embodied in the 1990 "Right-to-Farm Ordinance" that that is the "declared policy of this County to enhance and encourage agricultural operations within the County." (ICGP, at 2)

Agriculture is the "single most important economic activity" in Imperial County., with a typical gross value of agriculture production averaging about \$1 billion/year. (ICGP, at 3) Agricultural revenue generates significant tax revenue for the county and supports other aspects of the local economy. (*Id.*) Agriculture has made Imperial county a "major producer and supplier of high quality plant and animal foods and non-food." (*Id.*) Notably, the Agricultural Element also recognizes that an indirect benefit of agricultural in Imperial County is the "creation of modified wetlands that attract useful and beneficial wildlife." (*Id.*)

8-37

The Agricultural Element identified acreage changes in agricultural lands from 1988-1990, reflecting losses of 607 acres of "Farmland of Statewide Importance", 48 acres of "Unique Farmland", and 905 acres of "Farmland of Local Importance," for a total loss of "Important Farmland" of 1,395 acres. (*Id.* at 11, Table 2) The DEIR acknowledges an additional loss of approximately 8,055.4 acres of Imperial County farmland from just solar projects within ten miles of the Project site. (DEIR, at 4.9-19, Table 4.9.9)¹⁰

The Agricultural Element recognizes that population growth will occur in Imperial County and that important farmlands will continue to be converted due to urbanization. The DEIR confirms this and acknowledges that there is a "trend in conversion of agricultural land is expected to continue due to development pressure, and other factors." (DEIR, at 4.9-18)

¹⁰ As discussed below, the DEIR's analysis of cumulative impacts is deficient, in part, because it only considered impacts from projects within a 10-miles radius of the Project site and because it failed to include other projects that are converting agricultural lands to non-agricultural uses. (See *San Joaquin Raptor/Wildlife Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713; *Kings County Farm Bureau v. City of Hanford* (1990) Cal.App.3d 692, 723)

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The Agricultural Element concludes "the permanent conversion of significant amounts of important farmland to non-agricultural uses will negatively impact the local economy and the County's ability to provide important agricultural products to the nation and elsewhere." (*Id.*, at 18) In other words, the conversion of agricultural lands to non-agricultural uses is a fundamental change in the land use, aesthetic, and environmental character of the county, with significant adverse environmental impacts.

8-37
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The Agricultural Element also recognizes that "leapfrogging" or "checkerboard" patterns of non-agricultural development around agricultural lands can lead to isolation of farmlands that leads to "several major problems relating to agricultural operation" including irrigation, chemical application, and access. (*Id.*, at 18)

The Agricultural Element sets forth specific goals and objectives with which the proposed project is in conflict. "Preservation of Important Farmland" is its first policy. (*Id.*, at 39) Specifically, the policy requires that:

[n]o agricultural land designated except as provided in Exhibit C shall be removed from the Agriculture category except where needed for use by a public agency, for geothermal purposes, where a mapping error has occurred, or where a clear long term economic benefit to the County can be demonstrated through the planning and environmental review process.

8-38

(*Id.* at 39) Commenters note that the only way farmland can be converted to non-agricultural, solar development is where a "clear long term economic benefit" over and above the benefit of agricultural use is demonstrated. While lead agencies are not required to include economic analyses in an EIR, relevant economic and social information may be required. (*See* Pub. Res. Code § 21081(a)(3); 14 Cal. Code Regs. §§ 15091(a)(3), 15131, 15364.)_ If the information is not included in the EIR, it must be included elsewhere on record for the lead agency in these proceedings. (*See* 14 Cal. Code Regs. 15131(e)) Here, there is no economic analysis or substantial evidence to support a finding that the Project will result in a "clear long term economic benefit" over agricultural use.

The Element further states in relevant part:

Preservation of Important Farmland

Goal 1: All Important Farmland, including the categories of Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance, as defined by Federal and State agencies, should be reserved for agricultural uses.

8-39

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Objective 1.1 Maintain existing agricultural land uses outside of urbanizing areas and allow only those land uses in agricultural areas that are compatible with agricultural activities.

Objective 1.2 Encourage the continuation of irrigation agriculture on Important Farmland.

Objective 1.3 Conserve Important Farmland for continued farm related (non-urban) use and development while ensuring its proper management and use.

Objective 1.4 Discourage the location of development adjacent to productive agricultural lands.

Objective 1.5 Direct development to less valuable farmland (i.e., Unique Farmland and Farmland of Local Importance rather than Prime Farmland or Farmland of Statewide Importance) when conversion of agricultural land is justified.

Objective 1.6 Recognize and preserve unincorporated areas of the County, outside of city sphere of influence areas, for irrigation agriculture, livestock production, aquaculture, and other special uses.

...

Objective 1.8 Allow conversion of agricultural land to non-agricultural uses only where a clear and immediate need can be demonstrated, based on population projections and lack of other available land (including land within incorporated cities) for such non-agricultural uses. Such conversion shall also be allowed only where such uses have been identified for non-agricultural use in a city general plan or the County General Plan, and are supported by a study to show a lack of alternative sites.

(Imperial County General Plan, Agriculture Element, at 39)

The Project as described in the DEIR violates Goal 1 and every subsequent objective in the Agriculture Element. It expressly does not keep important farmlands "reserved for agricultural uses," contravening Goal 1. It also does not "maintain existing agricultural uses" ("Objective 1.1), "continue irrigation agriculture" (Objective 1.2), "conserve important farmland for agricultural use" (Objective 1.3), "discourage development adjacent to productive farmland" (Objective 1.3), or "allow conversion of agricultural land to non-agricultural uses only where a clear and immediate need can be demonstrated . . . [and] where such uses have been identified for non-agricultural use in the a city general plan or the County General Plan" (Objective 1.8). The Project's clear inconsistencies with these County policies constitute a significant and unmitigated

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environmental impact under CEQA. (CEQA Guidelines Appendix G, § IX(b) (a significant impact on land use and planning occurs where a project would "[c]onflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan [or] specific plan . . . adopted for the purpose of avoiding or mitigating an environmental effect."))

8-39
continued

The Project also violates Goal 2 of the Agriculture element, which prohibits "leapfrogging" or "checkerboard" patterns of non-agricultural development in agricultural areas. The Objectives identified to implement the goal include:

Objective 2.1 Do not allow the placement of new non-agricultural land uses such that agricultural fields or parcels become isolated or more difficult to economically and conveniently farm.

...

Objective 2.6 Discourage the development of new residential or other non-agricultural areas outside of city "spheres of influence" unless designated for non-agricultural use on the County General Plan, or for necessary public facilities.

8-40

The proposed Project will certainly allow placement of non-agricultural development adjacent to working farmland, resulting in further isolation and inconvenience for working the farmland. Moreover, when considered cumulatively with the loss of approximately 5% of Imperial County farmland in this "checkerboard" fashion, the departure from Goal 2 and Objective 2.1 becomes even more significant. Finally, by failing to consider a Project Alternative which would rely on distributed generation (see below), the DEIR fails to at least assess consistency with Objective 2.6; distributed generation would site solar generation facilities in urban areas and protect productive farmland.

Impact 4.9.3 concludes that while the project would incrementally add to conversion of agricultural land in Imperial Valley, the impacts would be "temporary" and therefore less than cumulatively considerable. (DEIR, at 4.9-17, Impact 4.9.3) The conclusions is expressly based on the overly-restrictive analysis of existing, proposed and foreseeable projects and the project's "temporary" nature. (*Id.*) As discussed above, the DEIR is deficient because it analyzes only projects within a 10-mile radius of the site and claims, without support, that the conversion is only temporary. There is no credible interpretation under which a 40-year project can be deemed "temporary." Most projects have a useful life of 30-years or less. Under this construction, everything is "temporary." Particularly given that there is no reclamation plan proposed, this 40-year Project simply cannot be deemed "temporary," and this construction is arbitrary and capricious. To the extent that the conversion is "temporary", the DEIR fails to provide a Reclamation Plan to allow for assessment of whether reclamation will be possible.

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C. The Project Is Inconsistent with the Land Use Element of the General Plan.

The Land Use Element of the General Plan Objective is intended to "maintain and promote the economic prominence of agricultural enterprises, determine appropriate urban development centers and encourage their economic development, and protect the existing character of rural and recreational communities and areas, and preserve the unique natural and cultural resources of the Imperial Valley as a region." (ICGP, Land Use Element, at 2)

The Project is inconsistent with several of the goals and objectives set forth by the Land Use Element. Specifically, the project is inconsistent with Land Use Element Goal 1 ("Preserve commercial agriculture as a prime economic force."), Objective 1.1 ("Encourage the continued agricultural use of prime/productive lands.") and Objective 2.2 ("Discourage the location of incompatible development adjacent to or within productive agricultural lands."). (ICGP, Land Use Element, at 37) The Project does not preserve commercial agriculture in Imperial County, especially when considered with the conversion of more than 23,000 other acres of land from commercial agriculture to solar.

Land Use Element Goal 3 aims to "[a]chieve balanced economic and residential growth while preserving the unique natural scenic and agricultural resources of Imperial County. (Land Use Element, at 38) Objective 3.4 states the intent to "[p]rotect/[i]mprove the aesthetics of Imperial County and its communities." (DEIR, at 4.1-4. Table 4.1-1) Because the project actively degrades the aesthetics of Imperial County or, at a minimum, does nothing to protect or improve them, it is inconsistent with the Land Use Element.

The Land Use Element states that lands designated as "Agriculture" may not be developed with uses that do not preserve and protect agricultural production and related activities. (ICGP, Land Use Element (Rev. 2008), at 47-48) The Land Use Element states:

8-42

1. Agriculture.

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

Where this designation applies, 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 the existing and proposed use does not conflict with agricultural operations and will not result in premature elimination of such agricultural operations. No use shall be permitted that would have a significant adverse impact on agricultural production . . .*

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(ICGP, Land Use Element (Rev. 2008), at 48 (emphasis added) As discussed above, the proposed project would undoubtedly conflict with agricultural operations on the affected lands. It will "prematurely" eliminate them by converting productive farmland to solar panels and support infrastructure.

8-42
continued

Impact 4.2.1 determines that the impacts of the project due to conflicts with applicable land use plans are less than significant. (DEIR, at 4.2-25, Impact 4.2.1) The DEIR relies in large part on Land Use Ordinance Section 90508.1's allowance of electrical power generating plants within existing agricultural zones. (*Id.*)

Section 90508.1 is invalid because it contravenes the General Plan, particularly its requirement that lands zoned as Agriculture not be converted to non-agricultural uses except with specific exemptions. Consequently, Conditional Use Permits issued pursuant to the Section (or otherwise in conflict with the General Plan) are invalid and constitute *ultra vires* actions by the Board of Supervisors. (*See Neighborhood Action Group*, 156 Cal.App.3d at 1184; *FUTURE v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1342) While lead agencies are typically granted deference in interpreting their own general plans, deference is not appropriate where the agencies acts *ultra vires* and exceeds its legal authority or jurisdiction. Here, by issuing a permit that is inconsistent with the General Plan's Land Use element, the County would be abusing its discretion, exceeding its authority, and not entitled to any deference by a reviewing court.

8-43

In finding Impact 4.2.3 less than cumulatively considerable, the DEIR relies on its overly restrictive analysis of projects within ten miles (discussed above) and the unsupported assumption that the project is "temporary". (DEIR, at 4.2-27, Impact 4.2.3) The cumulative impact analysis must be revised to consider all similar projects and projects with similar land use impacts, and to consider those impacts as permanent rather than "temporary".

8-44

D. The Project Is Inconsistent with the Conservation and Open Space Element of the General Plan.

In multiple instances, the DEIR erroneously concludes that the project is consistent with the Conservation and Open Space Element of the General Plan. The Conservation and Open Space Policies of the General Plan are intended to protect the natural character and resources of Imperial County. The element recognizes that Imperial County is "located on one of the most important flyway corridors in the western hemisphere for migrant waterfowl, shorebirds and songbirds." (Conservation and Open Space Element, at 8) Agricultural features such as canals, drainage ditches, and flooded fields contribute to the County's value for wildlife. (*See id.*)

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In the Preservation for Biological Resources section, Goal 2 states that the "County will preserve the integrity, function productivity, and long-term viability of environmentally sensitive habitats, and plant and animal species" The DEIR erroneously finds consistency because the project site is located on "previously disturbed agricultural land" and that while native flora and fauna would suffer impacts, Mitigation Measures MM 4.12.1 through 4.12.12 will reduce those impacts to less than significant levels. (DEIR, at 4.2-11, Table 4.2.1)

The DEIR's logic fails on multiple fronts. First, the "disturbed agricultural land" provides active habitat for many species of birds and other wildlife. (ICGP, Conservation and Open Space Element, at 8) The Agricultural Element of the General Plan recognizes that an "indirect benefit" of cultivated agriculture in Imperial County is the creation of "modified wetlands that attract useful and beneficial wildlife." (ICGP, Agricultural Element, at 3) The DEIR's burrowing owl study acknowledges that farm land provides substantial habitat for burrowing owls and other species. (DEIR, Appendix 1, Heritage Environmental Consultants, LLC (2012) *Campo Verde Solar Energy Project Protocol Burrowing Owl Survey Report*, at 2 ("Agricultural areas may benefit the species and appear to represent preferred habitat in Imperial County")) Thus, the DEIR cannot dismiss the ecological value of the Project site merely because it is cultivated agricultural land.

8-45
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The DEIR's determination of consistency with Objective 1.6 ("Ensure the conservation, development and utilization of the County's natural resources.") is even less supportable. (See DEIR, at 4.2-11, Table 4.1.1) The DEIR reaches this conclusion, in part, on the claim that the project is "temporary." This ignores the direct, immediate impact that the project will have. Moreover, the project will last up to 40 years, with no guarantee that the lands will be return to agricultural use. To the extent that wildlife use and rely on the project area now, there is no way the Applicant or the County can ensure that wildlife will return to the area if the reconversion is successful. To the extent that the DEIR considers the applicant's intention to submit an Agricultural Reclamation Plan, it is relying on inappropriate deferred mitigation. To assess the adequacy of the Agricultural Reclamation Plan, the public and decision makers must be given an opportunity to review it in conjunction with the DEIR. A mere promise of a hypothetical plan does not constitute mitigation.

8-46

Goal 4 of the Open Space Element states that the "County will actively conserve and maintain contiguous farmlands and prime soil areas to maintain economic vitality and the unique lifestyle of the Imperial Valley." (DEIR, at 4.2-12) Remarkably, the DEIR finds consistency with this goal. (*Id.*) The DEIR rationalizes that the project would result in "temporary" conversion of farmland. And promise that Reclamation Plan "will be" developed, but no such plan is included in the DEIR. (*See id.*) The promise of a Reclamation Plan constitutes unenforceable and deferred mitigation. CEQA itself is 40-years old. Certainly the drafters of CEQA never envisioned that a project with a 40-year duration could be dismissed as "temporary." Indeed, under this interpretation almost

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every project ever proposed could be dismissed as temporary and therefore less than significant. Such an interpretation essentially renders CEQA itself a nullity. 8-47
continued

Goal 7 of the Open Space Element states that the "aesthetic character of the region shall be protected and enhanced to provide a pleasing environment for residential, commercial, recreational and tourist activity." The EIR acknowledges that the Project would change the visual character of the site with industrial solar facilities and accessories, with concomitant impacts to aesthetic resources. (DEIR, at 4.1-3, Table 4.1-1) In addressing the aesthetic impacts, the DEIR offers Mitigation Measure 4.1.2, which promises that the Applicant "will work with adjacent landowners" to develop screening methods to reduce visual and aesthetic impacts. (DEIR, at 4.1-28) Mitigation Measure 4.1.2 is merely a promise to initiate unspecified activities without any performance criteria. As such, is constitutes inappropriate, unenforceable and inadequate deferred mitigation. 8-48

The DEIR correctly concludes that the Project conflicts with Goal 7 and Objective 7.1, which purport to protect the natural beauty of the county's desert resources. (DEIR, at 4.1-3, Table 4.1-1) The DEIR states the gen-tie would pass through BLM land and include transmission lines, structures, and disturbance to the desert habitat. Again, the DEIR offers Mitigation Measure 4.2.1 to offset this impact. But as discussed above, MM 4.2.1 constitutes deferred mitigation and is inadequate to address this impact. 8-49

The DEIR finds consistency with Objective 8.4, which states that the County will "[e]nsure the use and protection of rivers and other waters in the County" and ensure proper accommodation for storm water runoff. Objective 8.5 purports to "[p]rotect and improve water quality and quantity for all water bodies in Imperial County. However, in addressing both of these potential impacts, the DEIR defers development of mitigation measures, especially the creation of a Storm Water Pollution Prevention Plan ("SWPPP") and other plans that will be "determined at the time of final design approval." (See, e.g., DEIR, at 4.11-2) Once again, a failure to include the SWPPP and other plans in the DEIR constitutes deferred mitigation that cannot be considered to adequately mitigate the Project's impacts. 8-50

V. THE DEIR FAILS TO ANALYZE AND MITIGATE ALL POTENTIALLY SIGNIFICANT IMPACTS. 8-51

The DEIR offers an incomplete analysis of impacts to biological resources—particularly wildlife—because it consistently underestimates the value of cultivated farmlands for wildlife. The value of the cultivated farmlands is particularly recognizable given the ecologically barren conditions of an industrial-scale solar development. 8-51

The Imperial County General Plan Open Space and Conservation Element recognizes that the County has a rich and diverse population of wildlife and native plants and that the agricultural lands of the County contribute to its overall value, particularly 8-52

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for certain species of birds and mammals. (*See, e.g.*, ICGP, Conservation and Open Space Element, at 8 ("The food potential of cultivated areas is the main contributor to the broad range of bird species frequenting the County."))

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances). (*See, e.g.*, Pub. Res. Code § 21100.) The EIR is the very heart of CEQA. (*Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.) "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.)

CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and all feasible mitigation measures. (CEQA Guidelines § 15002(a)(2) and (3); *See also, Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564) The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced." (Guidelines §15002(a)(2)) If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns." (Pub.Res.Code § 21081; 14 Cal.Code Regs. § 15092(b)(2)(A) & (B))

A prejudicial abuse of discretion occurs "if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 722]; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal. App. 4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 946)

The comments provided below are supplemental to and in accord with those provided by Mr. Cashen and Mr. Hagemann, LIUNA's expert consultants. The comments provided Mr. Cashen and Mr. Hagemann require individual responses in the Response to Comments as well.

8-52
continued

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A. The DEIR Fails to Adequately Analyze Impacts to Biological Resources.

It is the policy of the State of California to

Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities.

(Pub. Res. Code § 21001(c).) An EIR may not avoid studying impacts to biological resources by proposing future study or mitigation based on future studies unless the mitigation measures and performance standards are explicit in the DEIR. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 671)

As discussed below, the DEIR fails to assess impacts to wildlife, especially sensitive species, and native plants. Where impacts are identified, the DEIR impermissibly relies on vague, unenforceable and deferred mitigation measures, most of which lack a foundation in science and performance standards. Consequently, the DEIR must be revised to reassess impacts to biological resources and, where appropriate, propose adequate mitigation measures with definite terms and verifiable performance standards.

1. The DEIR Fails to Adequately Analyze Impacts to the Western Burrowing Owl.

The DEIR and associated Burrowing Owl study indicate that at least 65 active burrows and 76 inactive burrows exist within the project site. (DEIR, at 4.12-23) The Burrowing Owls, which are protected under several state and federal laws, breed at sites within the project boundaries. (*Id.*) At a minimum, the project should be considered to displace at least 76 burrowing owls.

The EIR concedes that it will have a potentially significant impact on the Western Burrowing Owl, a California "Species of Special Concern" and a federally-listed "Bird of Conservation Concern." (*See* DEIR Exhibit 1, Camp Verde Burrowing Owl Survey, at 2) Approximately 70% of California's Burrowing Owls live in Imperial Valley and appear to be already suffering a population decline (*Id.*) However the DEIR erroneously concludes that the impact is less than significant because of proposed mitigation measures. As discussed below, these mitigation measures are inadequate because they are not supported by substantial evidence and include uncertain and deferred mitigation measures.

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a. The Burrowing Owl Surveys were incomplete and the DEIR fails to provide an adequate baseline for Burrowing Owls in the Project area.

It appears that not all of the planned Burrowing Owl surveys were conducted and, to the extent studies were completed, they are incomplete and misleading. As discussed by Mr. Cashen in his comments, it is unclear whether the surveys covered fallow fields in the Project area. Burrowing Owls may use the fallow areas and will suffer impacts if Project facilities and construction occur there. Moreover, the data associated with the surveys that were conducted was not provided in the DEIR or its supporting documentation. The DEIR should be revised to include all necessary surveys and a complete data set for review by the public.

8-56

b. The DEIR relies on deferred, unenforceable, and unproven mitigation measures for offsetting impacts to Burrowing Owls.

The EIR erroneously relies on outdated information in analyzing impacts to and mitigation measures for Burrowing Owls. For example, the DEIR cites to the 1995 *California Department of Fish and Game's Staff Report on Burrowing Owl Mitigation* despite the fact that the Department produced a revised staff report on Burrowing Owl mitigation in February 2012, approximately three months prior to the release of the DEIR. (*See, e.g.*, DEIR, at 4.12-69) At a minimum, the DEIR must be revised to consider the significant new information available in the 2012 report.

First, the DEIR does not provide any evidence that Burrowing Owl displacement and habitat replacement has *ever* been successful. In fact, the scientific consensus is that the success of displacement and replacement schemes is questionable, at best. (*See* Cal. Dept. of Fish & Game. 2012. *Burrowing Owl Staff Report*, at 10 ("The long-term demographic consequences of these techniques have not been thoroughly evaluated, and the fate of evicted or excluded burrowing owls has not been systematically studied.")¹¹ Where replacement burrows are provided, they should be within 50-100 meters of the original territories and should include adequate foraging habitat. (*Id.* at 10 (citing Thomsen 1971, Haug and Oliphant 1990). Replacement habitat more than 100 meters away from the original site is less likely to be used by the displaced owls. (*Id.*)

8-57

Second, Mitigation Measure 4.12.6b's proposal to replace Burrowing Owl foraging habitat is inadequate because it does not identify any proposed ratio for

8-58

¹¹ Available at <http://www.dfg.ca.gov/wildlife/nongame/docs/BUOWStaffReport.pdf>. To the extent that the DEIR relies on the 2005 CDFG Burrowing Owl Staff report, the DEIR analysis must be revised to include new information in the 2012 Staff Report.

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mitigation, nor does it set any performance standards. While the Mitigation Measure promises consultation with CDFG, it does not provide any credible scientific basis for the proposed mitigation measures, especially given that CDFG's 2012 Staff Report calls into the question the overall efficacy of Burrowing Owl mitigation. At a minimum, the DEIR must identify the acreage of lost breeding and foraging habitat and identify a comparable acreage to be set aside as mitigation and/or establish specific performance standards that the mitigation measure will be required to meet. Without doing so, Mitigation Measure 4.12.6b remains vague, unenforceable and deferred mitigation.

8-58
continued

Third, the DEIR fails to assess collision risks that arise from the photovoltaic panels and/or transmission lines. The panels present significant risks of collisions due to their height. Moreover, non-reflective panels can cause twice the number of bird strikes that occur with conventional clear panels.

8-59

Fourth, the DEIR fails to assess the potential impacts of installing the gen-tie towers on BLM land, particularly where they will serve as perches for predators of Burrowing Owls and other animals. Research in the Altamont Pass Wind Resource Area indicates that wind turbines may act as perches for predators that contribute to predation of Burrowing Owls and other animals. The DEIR should consider the impacts of the additional of perching structures and wires in the landscape, especially impacts on Burrowing Owls, Mountain Plovers, and other sensitive species. To the extent that plans such as the Raven Management Plan will address such issues, Commenters note that that plans are not included in the DEIR and no performance standards are provided; consequently, such plans are at best deferred mitigation and cannot be relied on in the impact analysis.

8-60

Fifth, Mitigation Measure 4.12.6 sets forth measures that purport to avoid, minimize, or mitigate impacts to Burrowing Owls. (DEIR, at 4.12-69) It includes inadequate and improperly deferred mitigation measures. For example, 4.12.6(a)(1) states that "to the extent practicable", activities will be conducted outside the bird breeding season to avoid impacts to owls. "To the extent practicable" is too vague and undefined to be considered an adequate and enforceable mitigation measures. Moreover, removal of burrows can still have significant negative impacts for juveniles and families even when juveniles are "foraging independently".

8-61

Perhaps of greater concern is that the Mitigation Measure allows for construction during the breeding season where a "qualified" biologist conducts a survey within 30 days of initiation of construction. (DEIR, at 4.12-70) Burrowing Owls can initiate nesting within a 30-day window. The Mitigation Measure should be revised to ensure surveys within 7 days of initiation of construction and/or to demonstrate what period of time is scientifically supportable to ensure that owl nests are not taken as a result of construction activity.

8-62

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Moreover, the DEIR provides no credible scientific support that the Mitigation Measure's provisions for displacement will actually mitigate for the loss of the Burrowing Owl breeding habitat. (See, e.g., DEIR 4.12-70) As discussed in the 2012 CDFG staff report on Burrowing Owl Mitigation, there is no indication that displacement schemes work for owls, especially when replacement habitat is farther than 100 meters from the initial nesting site. Given that the DEIR does not—and cannot—provide evidence that this mitigation measure will work, the DEIR should be revised to assess the level of significance of impact to Burrowing Owls assuming that displacement is not a valid means of mitigation.

8-63

The DEIR's analysis of the projects contribution to cumulative impacts to Burrowing Owls resulting from similar projects and sources of impacts is likewise inadequate. With the conversion of 23,000 acres of Imperial County to solar farm generation and an expected continuation of conversion of agricultural lands to urban and other non-agricultural uses, the available habitat for Burrowing Owls in Imperial County will continue to decline. The DEIR's failure to adequately assess and mitigate for this impact is a glaring flaw and must be remedied.

8-64

2. The DEIR Fails to Adequately Analyze Impacts to Resident, Migratory and other Special Status Birds.

The DEIR acknowledges that the project will have impacts on other resident and migratory birds, though it concludes, without evidence, that those impacts are less than significant. For example, the DEIR acknowledges that Imperial County's agricultural areas provide substantial amounts of habitat for wintering migratory birds, including the Sandhill Crane and Mountain Plover. (See, e.g., DEIR, at 4.12-23)

8-65

The DEIR acknowledges that migratory wintering birds move from site to site within Imperial County from year to year, probably due to changing growing cycles and crops. (See DEIR, at 4.12-27, 28) This means that the project area's approximately 1900 acres of farmland serve the role, at times, of providing habitat when other parts of the County are less suitable. Moreover, the DEIR fails to assess the cumulative impact resulting from the incremental loss of over 23,000 acres of farm land to solar projects within Imperial County on species such as the Mountain Plover.

Avian mortality does occur as a result of solar farm development. (See, e.g., McCrary, M.D. et al. 1986. *Avian Mortality at a Solar Energy Power Plant*. J. Field Ornithol. 57(2):125-141 (finding 70 bird deaths of 26 species of birds over a 40-week study at a heliostat facility in the Mojave Desert) At a minimum, the erection of manmade structures in a heretofore open environment increases the likelihood of bird-structure collisions in Imperial County. To the extent the County would distinguish between the Project and that studied by McCrary et al., the County should provide reports, studies and other substantial evidence demonstrating that avian mortalities are not a potential impact from the project. In any event, artificial structures alter the landscape, changing perching,

8-66

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roosting and nesting substrates, forage and prey bases, and behaviors due to changes in lighting, activities, and landscape features. A 2000-acre project alone could be expected to result in significant effects on a local scale; when considered as part of more than 23,000 acres of ag-to-solar conversion, the cumulative impacts are considerable. At a minimum, the DEIR must be revised to improve its assessment of individual and cumulative impacts to bird populations.

8-66
continued

a. The DEIR fails to adequately assess a baseline and impacts of the project on the Mountain Plover.

Imperial County may be home to up to 61% of the total Mountain Plover population during the winter months. (DEIR, at 4.12-27) According to the US Fish & Wildlife Service, alfalfa and idle fields in Imperial Valley are "critical" to plovers wintering in Imperial Valley and "activities in this region can substantially impact the entire mountain plover population." (Dinsmore, Stephen. 2003. *Mountain Plover (Charadrius montanus): TA Technical Conservation Assessment*. USDA Forest Service, at 18)¹² The DEIR fails to address the Project's individual impacts on Mountain Plovers in any meaningful way and, perhaps more importantly, fails to adequately assess the Project's cumulatively considerable impact when assessed as part of the wide-scale conversion of agricultural land in Imperial Valley to non-agricultural uses.

8-67

b. The DEIR fails to adequately assess impacts to the Southwestern Willow Flycatcher.

The DEIR concludes the Southwestern Willow Flycatcher is "not likely to nest" in the survey area. However, nesting cannot be ruled out until protocol surveys are completed, especially given that the Biological Technical Report states that the proposed area in which the gen-tie will be built provides suitable habitat for the Southwestern Willow Flycatcher. (See BTR, at 3-42) The DEIR improperly makes a conclusion without providing substantial evidence to support it.

8-68

c. The DEIR fails to adequately assess impacts to the Loggerhead Shrike.

The DEIR acknowledges that species such as the Loggerhead Shrike may nest within the project area or nest nearby and forage within the project area. (DEIR, at 4.12-28) However, no mitigation is proposed for the loss of more than 1900 acres of habitat for the species. Moreover, no analysis is provided for the cumulative impact of more than 23,000 acres of important farmland, which provides roosting, nesting and foraging habitat for the shrike and other resident and migratory species.

8-69

¹² Available at <http://www.fs.fed.us/r2/projects/scp/assessments/mountainplover.pdf>

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d. The DEIR fails to adequately assess impacts to the Yuma Clapper Rail.

The DEIR concludes Yuma clapper rail is "not likely to nest" in the survey area. This conclusion is not supportable without at least some effort to survey for the presence of the rails, especially given that the Biological Technical Report identifies that the proposed area in which the gen-tie will be built provides suitable habitat for the Yuma Clapper Rail. (*See* BTR, at 3-42)

8-70

e. The Avian and Bat Conservation Strategy must be included in the DEIR.

The DEIR recognizes several potentially significant impacts to bird and bat species. (*See, e.g.*, DEIR, at 4.12-61, 62, 64, 71 (impacts to Golden Eagle)). For example, Impact 4.12.2 recognizes that impacts to the Southwestern Willow Flycatcher are potentially significant. (DEIR, at 4.12-61, 62) Impacts 4.12.3 and 4.12.4, 4.12.5, 4.12.7 recognize the potential impacts to the Yuma Clapper Rail, the Greater Sandhill Crane, Mountain Plover, and Golden Eagle respectively.

The DEIR improperly proposes to defer mitigation of these impacts in Mitigation Measure 4.12.2 by stating that the Applicant will produce an Avian and Bat Conservation Strategy ("ABCS"). (DEIR, at 4.12-63, 64) The DEIR provides only the broadest of descriptions for the ABCS and assures the reader that measures shall be developed based on unspecified guidelines and input from the U.S. Fish and Wildlife Service. (*Id.*) For example, the DEIR offers the utterly vague assurance that disturbance to vegetation will be minimized to the "extent practicable", without providing any means of measuring performance with the mitigation measure. In discussing surveys during the breeding bird season, the DEIR very vaguely describes pre-construction "clearance" surveys and states only that direct impacts to active nesting migratory birds "should" be avoided. (*Id.*) There are promises to "minimize" disturbances, control invasive species, and development of other plants, such as a Worker Education Training, Raven Control Plan, and a Wildlife Mortality Reporting Program, all without any concrete description or specified performance standards. (*Id.* at 4.12-63, 64) While the DEIR provides very broad outlines of the ABCS, it lacks the specificity and performance standard required by CEQA.

8-71

f. The DEIR fails to assess impacts of lighting on birds and other species.

The DEIR acknowledges that lighting at the project may have impacts on some species, such as the Mountain Plover. (*See, e.g.*, DEIR, at 4.12-67) The DEIR states—without citing evidence—that Mountain Plover are not active at night. However, multiple studies demonstrate that other plover and shorebird species are active at night and that daytime surveys do not adequately assess nighttime activity. (*See, e.g.* Gillings, S. et al. 2005. *Diurnal Studies do not Predict Nocturnal Habitat Choice and Site Selection of*

8-72

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European Golden-Plovers (Pluvialis Apricaria) and Northern Lapwings (Vanellus Vanellus). The Auk 122(4):1249-1260); Whittingham, M.J et al. 1999. *Notes on Night-time Activity of Golden Plover Pluvialis apricaria Chicks in the North Pennines*. Wader Study Group Bull. 90: 56-58; Thibault, M. and R. McNeil. 1995. *Predator-Prey Relationship between Wilson's Plovers and Fiddler Crabs in Northeastern Venezuela*. Wilson Bull. 107(1): 73-80). The DEIR must be revised to consider the impacts of nighttime lighting on wildlife in the area and, where appropriate, mitigation measures must be proposed.

8-72
 continued

3. The DEIR Fails to Adequately Analyze and Mitigate for Impacts to Wildlife Corridors and Wildlife Movement.

The DEIR erroneously concludes that "avian and terrestrial species are able to move freely throughout the survey area." (DEIR, at 4.12-26) However, the Project Description includes the installation of permanent protection about the project and additional fencing as needed during construction. The fencing will include barbed wire, which can hinder some species' movement. The project will also alter or destroy waterways, which are often important corridors for wildlife. The DEIR does not even consider these impacts.

8-73

The project's incremental contribution to the cumulative impact of reducing or degrading wildlife corridors and freedom of movement within Imperial County must also be assessed. Given that more than 23,000 acres of once unfenced and open farmland will be isolated into fenced, industrial areas and that similar, associated waterways will be altered or destroyed, the DEIR must at least consider these changes on a cumulative scale.

8-74

The loss of burrowing mammals, may result in changes to the migratory and movement behaviors of species that prey upon them, particularly Burrowing Owls and other raptors. Predators and prey have complex relationships that can be altered by habitat destruction, human disturbance, and natural occurrences that cause population fluctuations and even local extinctions. (See, e.g., Orrock, J.L. et al. (2008) *Consumptive and Nonconsumptive Effects of Predators on Metacommunities of Competing Prey*. *Ecology*, 89(9), 2008, pp. 2426-2435; see also Sutherland et al. (1998) *The Effect of Local Change in Habitat Quality on Populations of Migratory Species*. *Journal of Applied Ecology* 35: 418-421) Again, the project's incremental contribution should also be considered in an improved analysis of cumulative impacts.

8-75

4. The DEIR fails to analyze impacts to native plants and improperly defers mitigation for weed management.

The DEIR acknowledges that the project area is home to native vegetation, but that a rare plant survey was not conducted. (DEIR, at 4.12-7) Further, despite that the gen-tie would pass through a BLM area of special ecological concern no rare plant

8-76

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surveys were conducted there as well¹³ (*Id.*) Instead, there was a promise to conduct a survey in the spring of 2012. (*Id.*)

While CEQA does not require a quantified analysis of biological impacts, it does require that conclusions be based on supporting biological studies or analyses that are credible and verifiable. (*See Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437) Moreover, an EIR cannot avoid conducting studies by proposing a plan to mitigate those impacts based on future studies, especially where the mitigation measures and mitigation performance standards are not identified in the EIR. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 671)

8-76
continued

It appears that fall rare plant surveys could not be conducted, apparently due to lack of rain. Moreover, the DEIR acknowledges fall plants did not bloom in 2011. In any event, the survey protocol sets survey transects to be 30 meters apart on BLM lands, which is way too far apart. If spring surveys were conducted, the data were not provided in the DEIR. At a minimum, CDFG survey guidance dictates that rare plant surveys must be conducted anywhere where there is native or naturalized vegetation that may be directly or indirectly impacted by a project.

5. The DEIR must analyze and mitigate for the impacts from the use of any herbicides, pesticides or rodenticides.

The DEIR lacks a clear and cohesive plan for integrated pest management. The DEIR states that herbicides may be used as part of a weed control management plan (to be determined later). However the DEIR does not address whether pesticides will be used (including for mosquito treatments for any on-site water storage) or rodenticides. Rodenticides in particular can have significant negative impacts for Burrowing Owls, Golden Eagles, and other raptors. The DEIR must include a comprehensive integrated pest management plan and address and mitigate related impacts.

8-77

B. The DEIR Fails to Adequately Analyze Impacts to Worker Health Related to Hazardous Soil Contamination.

Matthew Hagemann, C.Hg., PG, former West Coast Regional Director of the US Environmental Protection Agency's Superfund Program, concludes that the DEIR inadequately analyzes toxic chemical risks related to the Project.

8-78

Mr. Hagemann concludes that "the DEIR fails to adequately disclose and mitigate hazards at the Project site that may pose a risk to construction workers during

¹³ The DEIR appears to be internally inconsistent with regard to whether rare plant surveys were conducted. While the DEIR states that the surveys were not conducted in one section (*see* DEIR, at 4.12-7), it later states that no special status plants were detected during "rare plant surveys" (*see* DEIR, at 4.12-15)

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construction. Potentially hazardous conditions include stained soils, the presence of several above ground storage tanks (ASTs), and potential pesticide residues from prior agricultural use of the Project site. The DEIR does not identify these conditions as hazardous and does not mitigate these conditions. Hazardous conditions should be evaluated by a soil sampling investigation conducted to compare analytical results to regulatory human health screening levels to ensure protection of worker health and safety. The results of the investigation should be included in a revised DEIR.” Since these risks affect construction workers primarily, LIUNA is particularly concerned that these impacts be properly analyzed and mitigated to safeguard the health and safety of construction workers.

Mr. Hagemann notes a significant discrepancy between the initial Phase I Environmental Site Assessment prepared for the Project, which raised significant concerns, and a later Phase I that reversed these conclusions. Several hazardous conditions were identified in two Phase I Environmental Site Assessments prepared in 2011 and 2012 for the Project site.¹⁴ The 2011 Phase I was “superseded” by the 2012 Phase I that was included as Appendix H to the DEIR.¹⁵ Information from both Phase I ESAs was used in the preparation of these comments. The DEIR was apparently prepared on the basis of the 2011 Phase I ESA (which was not made available by Imperial County during the review period) because information in the DEIR differs from that in the 2012 Phase I ESA. The differences are noted in Mr. Hagemann’s comments.

CEQA does not allow the County to bury an inconvenient study by preparing a different study that better suits its needs. The court in the case *Stanislaus Audobon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144 rejected a county’s argument that a revised initial study prepared by the county which contradicted the findings of the first initial study had not “relegated the first initial study to oblivion.” *Id.* at 154. The court stated, “We analogize such an untenable position to the unringing of a bell. The first initial study is part of the record. The fact that a revised initial study was later prepared does not make the first initial study any less a record entry nor does it diminish its significance, particularly when the revised study does not conclude that the project would not be growth inducing but instead simply proceeds on the assumption that evaluation of future housing can be deferred until such housing is proposed.” (*Id.* at 154) The City cannot conclude that a project may have significant impacts and then, when such admission is no longer convenient, simply change its conclusion to better suit its needs. The conclusions from the original Initial Study themselves create a “fair argument” that the Project may have significant impacts, despite other evidence to the

8-78
continued

¹⁴ Phase I Environmental Site Assessment for the First Solar Project Sagebrush Site, Imperial County, California (ESA) (URS, 2011) and Phase I Environmental Site Assessment for the First Solar Campo Verde Project Site (URS, 2012)

¹⁵ 2012 Phase I ESA, p. ES-1

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contrary, including the revised Initial Study. See, *Id.*; *Gentry v. Murietta* (1995) 36 Cal.app.4th 1359 (petitioner may rely on statements made in initial study to establish fair argument, even in the face of contradictory evidence).

Mr. Hagemann concludes that the DEIR identifies a number of conditions that may pose health risks to workers involved in earthwork activities:

Aboveground storage tanks

- Eight approximately 500-gallon aboveground storage tanks reportedly containing sulfuric acid;
- Eight approximately 1,000-gallon ASTs reportedly containing anhydrous ammonia; and
- Two approximately 1,000-gallon ASTs containing ammonium nitrate.

Stained soil

Stained soil was observed adjacent the ASTs in two locations:

- One AST on the southern edge of a tank that reportedly contained sulfuric acid (located in parcel APN 051-360-04); and
- 4 ASTs that contained sulfuric acid or anhydrous ammonia (located on the east central side of parcel APN 051-360-32).

Agricultural use

The DEIR states that the Project site has historically been farmed and is currently in agricultural production (DEIR, p. 4.10-20). Wheat, oats, alfalfa, and Bermuda grass are known to have been cultivated on the Project site (DEIR, p. 4.12-7). However, the DEIR provides no specific information on pesticides that may have been applied in cultivation of these crops. The DEIR simply notes that the Project site contained pesticide residue (DEIR, p. 4.10-20). The DEIR does identify that bags of herbicide were observed on the property (DEIR, p. 4.10-12). However, the 2012 Phase I ESA prepared for the Project does not identify these bags.¹⁶

Despite the presence of these conditions, the DEIR fails to make provisions for soil sampling to ensure that workers are not exposed to hazardous conditions during earthwork. The DEIR provides only mitigation measures that would remove (but not sample) ASTs and stained soil prior to earthmoving activities (Mitigation Measures 4.10.2b and 4.10.2d).

The DEIR fails to identify any mitigation measures to protect workers from touching soils or breathing dust that may be contaminated by soils that may not be visibly

8-78
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8-80

¹⁶ The 2012 Phase I ESA states that it supersedes the previous 2011 Phase I ESA (Phase I ESA, p. ES-1).

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stained. The DEIR only mentions a fugitive dust control plan, prepared in accordance with Imperial County Air Pollution Control District requirements, to minimize “potential for air dispersion of pesticide residues in dust during grading activities” (DEIR, p. 4.10-20). However, no specific provisions are required for toxic contaminants in the fugitive dust control plan and therefore a fugitive dust control plan does not constitute mitigation.

8-80
continued

Site preparation will include grading and excavation to install underground wiring and cables, electric poles, equipment pads, service area facilities (DEIR, p. 4.11-17). Grading will require the use of “large equipment to excavate, transport, place and re-compact soil” (DEIR, p. 2.0-25). If soil samples are not collected in areas of where pesticides may have been applied and in areas of stained soils, workers involved in earthmoving activities may but put at risk by touching contaminated soil and by breathing contaminated dust.

8-81

Agricultural activities may have included the use of organochlorine pesticides, including Dieldrin, 4,4'-DDE, and 4,4'-DDT. A nearby area that was previously used for agricultural purposes, approximately 3.5 miles east of the Project site, was investigated by the Department of Toxic Substances Control (DTSC) for these and other pesticides¹⁷ which may persist in soil for hundreds of years despite being banned in the 1970s.¹⁸ The U.S. EPA has determined organochlorine pesticides, such as Dieldrin, 4,4'-DDE, and 4,4'-DDT, to be probable human carcinogens. DDT is also known to affect the nervous system.¹⁹

8-82

The DEIR states that the 2012 Phase I ESA did not find the potential presence of agricultural chemicals to be a recognized environmental condition (REC)²⁰ (DEIR, p. 4.10-20), a finding that is typically followed by a soil sampling investigation under a Phase II ESA.²¹ The finding that the potential presence of agricultural chemicals is not a REC is in contrast with the findings of other Phase I ESAs conducted in Imperial County on former agricultural land. For example, a Phase I ESA for an Imperial County project identifies the potential presence of pesticide usage as a REC and states that “the presence and concentration of near surface pesticides [...] can be accurately characterized only by

¹⁷ http://www.envirostor.dtsc.ca.gov/public/profile_report.asp?global_id=13010010

¹⁸ Toxicological Profile for DDT, DDE, and DDD, Agency for Toxic Substances and Disease Registry, <http://www.atsdr.cdc.gov/toxprofiles/tp35.pdf>, p. 3

¹⁹ ToxFAQs, DDT, DDE, DDD, <http://www.atsdr.cdc.gov/toxfaqs/faq.asp?id=80&tid=20>

²⁰ A REC is defined as the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property.

²¹ http://en.wikipedia.org/wiki/Phase_I_environmental_site_assessment

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site-specific sampling and testing”.²² Another I ESA prepared for the Imperial Solar Energy West project in Imperial County identifies that the potential for soil and groundwater contamination from materials disposed on site as a REC. It goes on to recommend a Phase II ESA to be conducted to include soil sampling.²³

8-82
continued

Conditions at the Project site, including the presence of ASTs with associated stained soils and potential pesticide residues in soil, should be evaluated in a Phase II ESA to be included in a revised DEIR. Results of the soil sampling program should be compared to health-based screening levels (including U.S. EPA Regional Screening Levels²⁴ and California Human Health Screening Levels²⁵). If soil concentrations are found to exceed health-based screening levels, adequate mitigation must be provided in a revised DEIR to ensure that human health of construction workers is protected.

8-83

C. The DEIR Fails to Adequately Analyze Stormwater Impacts.

Mr. Hagemann concludes that the DEIR fails to adequately analyze stormwater impacts related to the Project. Mr. Hagemann concludes that the 2012 Fuscoe Conceptual Drainage Study and Stormwater Quality Analysis report (Appendix I to the DEIR) fails to identify how PV panels would alter stormwater flows and resultant discharge to adjacent waterways, including Imperial Irrigation District canals and the New River. The DEIR states (p. 4.11-3):

To ensure proper drainage and accommodate (*sic*) stormwater runoff, the proposed project would rely on existing drainage patterns coupled with proposed detention basins located outside of the solar arrays and shallow ponded basins under the arrays. The Conceptual Drainage Study and Storm Water Quality Analysis (Fuscoe, 2012) confirmed the adequacy of drainage for the proposed project.

8-84

The DEIR states that the County of Imperial requires storage for 3” of runoff from project sites and that storage areas provided with development be designed such that they are able to drain within 72 hours. The Fuscoe report was prepared to provide a technical basis to sizing the storage areas and included a commonly used analytic solution, known as the Rational Method to estimate the runoff expected from rainfall.

²² <ftp://ftp.co.imperial.ca.us/icpds/eir/procalamos-res/final/39appf1-phase1-env-assess.pdf>

²³ http://www.blm.gov/pgdata/etc/medialib/blm/ca/pdf/elcentro/nepa/isec_west.Par.55661.File.dat/FAppGISECw_esa.pdf

²⁴ <http://www.epa.gov/region9/superfund/prg/>

²⁵ <http://www.calepa.ca.gov/brownfields/documents/2005/CHHSLsGuide.pdf>

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The Fuscoe report was prepared with a predetermined and scientifically biased stated purpose:

The purpose of this study is to describe the existing and proposed hydrologic conditions for the Campo Verde Solar project. The study will show that the proposed condition does not substantially increase the peak runoff flowrate from the site, substantially maintains existing drainage patterns, detains runoff in accordance with County of Imperial standards, and results in no significant impact to the Imperial Irrigation District (IID) Drain system.

Mr. Hagemann concludes that the Fuscoe report is flawed however by failure to consider that PV panels are impervious and that drippage from the panels will be concentrated along driplines at the edge of the panels, a phenomenon acknowledged in other PV solar DEIRs.²⁶ Rainfall that runs off of the panels will be concentrated along miles of driplines that will be created by the panel array. This drippage will concentrate rainfall into rills that will consolidate stormwater flow and concentrate drainage. When drainages are concentrated with other drainages created by runoff along other driplines, stormwater runoff will become further concentrated.

In the Fuscoe report, the Rational Method analysis was conducted by assuming “under proposed conditions, the existing drainage characteristics of the project site will remain substantially the same” (p. 10). This is an assumption that does not represent post construction features where a large part of incident rainfall will be intercepted by the PV panels and concentrated along driplines. Where flow is concentrated, the potential for infiltration is reduced and therefore calculation of storage capacities made in the Fuscoe report may be undersized.

By not considering that stormwater flow may become concentrated along the driplines, the DEIR may underestimate the sizing of storage basins. A revised DEIR needs to be prepared to include the impact of PV panel construction on stormwater flow and quantities of stormwater discharge.

D. The DEIR Fails to Adequately Analyze Toxic Chemical Impacts Related to Cadmium Telluride.

The Project proposes to build solar panels across 3.1 square miles of land. The Project will install thousands of panels containing cadmium telluride (CdTe) encapsulated between two sheets of glass (DEIR, p. 10-19). Mr. Hagemann notes that the potential for

8-84
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8-85

²⁶ http://www.cosb.us/Solargen/deir/c15_water.pdf, p. C.15-25

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cadmium to leach from broken panels has been observed in research papers.²⁷ Cadmium, from fertilizers used on the Project site,²⁸ can also be entrained in runoff as water flows through contaminated soil. Project site runoff flows into six Imperial Irrigation District drains (Appendix I, p. 2 of 38). Runoff from tile drains will be eliminated as a source of water to these six drains (*Ibid.*). The analysis states that these drains are not designed to handle runoff from large storm events but are primarily for agricultural runoff. During large storm events, runoff is “detained within low lying areas of agricultural fields until the peak of the storm has passed, after which the detained runoff is slowly discharged to the Drains” (*Ibid.*).

Drainage from the Project site flows into the New River which in turn flows into the Salton Sea. The Salton Sea is on California’s 303(d) List of Impaired Water Bodies.²⁹ The Salton Sea is impaired for selenium, salt, and nutrients from agricultural flows.³⁰ A study by the State Water Resources Control Board shows that the Salton Sea contains organophosphate pesticides in toxic levels.³¹ Cadmium is also present in the Salton Sea^{32, 33} and the waters that feed into it.³⁴

Mr. Hagemann concludes that Cadmium may leach from broken or weathered PV panels and add to cadmium already present in site soils from fertilizers.

Cadmium from Broken PV Panels

The EIR does not directly address the issue of panel breakage and the potential for leachate. The EIR simply states that “methods used to inspect, gather, and contain broken PV modules would also minimize the potential release of semiconductor material” (EIR, p. 1.0-19). The EIR does not specify what methods will be used or how

8-85
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²⁷ Fate and Transport Evaluations of Potential Leaching Risks from Cadmium Telluride Photovoltaics (2012). Environmental Toxicology and Chemistry, Vol. 31, No. 7

²⁸ *Ibid.*

²⁹ http://www.waterboards.ca.gov/rwqcb7/water_issues/programs/tmdl/docs/r7_2008_303_d_list_staffreport.pdf

³⁰

http://www.waterboards.ca.gov/coloradoriver/water_issues/programs/tmdl/docs/alamo/aslt5_6.pdf

³¹ http://www.waterboards.ca.gov/rwqcb7/water_issues/programs/salton_sea/docs/salton_sea_watershed_staff_report_2003.pdf

³² <http://www.co.imperial.ca.us/PdfDocuments/QSALitigationBulletin.pdf>

³³ <http://articles.latimes.com/2002/jul/14/opinion/oe-haddad14>

³⁴ http://www.saltonsea.ca.gov/media/ppr_final.pdf

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exactly PV module breakage will be identified. The EIR also does not identify how often the Project site will be checked for broken panels.

Data obtained from First Solar shows that the PV modules have an approximate breakage rate of 1%. It is not clear, however, if this includes breakage from earthquakes, wind, and other weathering. If this estimate does not include breakage from occurrences such as earthquakes, it is likely that it will be higher. Panel breakages can expose the cadmium that was locked inside. Cadmium is mobile in surface water and ground water. It can get entrained in water, either during rainfall or panel-washing activities, and runoff the property.

8-85
continued

A recent study conducted on the potential leaching risks of cadmium from broken PV panels found that groundwater concentrations of cadmium to be 0.783 mg/L. This exceeds the a Regional Water Quality Control Board Environmental Screening Level (ESL) of 0.25 mg/L for the protection of freshwater by more than three times. The cadmium concentration at the point of breakage is estimated to be between 4 µg/L to 6 µg/L.³⁵ This is more than twice the concentration of cadmium the USGS has found in the Salton Sea.³⁶

The EIR also does not address the cumulative impacts of cadmium from neighboring thin film solar projects. The EIR fails to identify two other solar projects in Imperial County that will also use CdTe technology. The Imperial Solar Energy Center – South project will generate 200MW of power and be constructed on 964 acres of land. The Imperial Solar Energy Center – West will generate up to 250MW of power and be constructed on 1130 acres of land. Both of these projects drain to the Salton Sea. A revised EIR must be prepared that addresses this potentially significant impact.

8-86

At the end of their life, all of these panels are likely to end up in a landfill. Panels containing cadmium-telluride are likely to cause significant problems with landfill leachate and disposal – similar to the problems caused by household batteries containing mercury and cadmium, which are now a significant problem at landfills throughout the state. Failing to analyze this foreseeable impact now constitutes both an inadequate project description, and a piecemealing of the project, which will necessarily involve both installation and disposal. (See, *Association for a Clean Environment v. Yosemite Community College*, CITE)

8-87

The EIR should consider the alternative of requiring the use of less toxic silicon-based PV panels, which are readily available. An EIR must describe a range of reasonable alternatives to the Project, or to the location of 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

8-88

³⁵ Fate and Transport Evaluations of Potential Leaching Risks from Cadmium Telluride Photovoltaics (2012). Environmental Toxicology and Chemistry, Vol. 31, No. 7

³⁶ <http://www.usbr.gov/lc/region/saltsea/SaltonSeaEcosystemMonitoring.pdf>

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the alternatives. “An EIR’s discussion of alternatives must contain analysis sufficient to allow informed decision making.” (*Laurel Heights I*, 47 Cal.3d at 404.) An EIR must also include “detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” (*Id.* at 405.) One of CEQA’s fundamental requirements is that the DEIR must identify the “environmentally superior alternative,” and require implementation of that alternative unless it is infeasible. (14 Cal.Code Regs. §1526.6(e)(2); Kostka & Zischke, *Practice Under the California Environmental Quality Act* §15.37 (Cont. Educ. Of the Bar, 2008).) Typically, a DEIR identifies the environmentally superior alternative, which is analyzed in detail, while other project alternatives receive more cursory review.

8-88
continued

E. The DEIR Fails to Adequately Analyze Air Quality Impacts

1. Particulate Matter

Mr. Hagemann concludes that the DEIR fails to adequately analyze air quality impacts of the Project. The Project’s PM10 emissions are 205.87 pounds/day and significant before mitigation (EIR, p. 4.4-16). To address this significant impact, the EIR provides for the following mitigation:

- Apply water during grading/grubbing activities to all active disturbed areas at least twice daily;
- Apply water to all onsite roadways at least three times daily or use of magnesium chloride or other County approved dust suppression additives and apply water one-time daily; and
- Reduce all construction related traffic speeds onsite to below 15 Miles per Hour (EIR, p. 4.4-16).

8-89

After mitigation, PM10 emissions are estimated to be 21.84 pounds/day, and are considered less than significant (DEIR, p. 4.4-16).

The reduction in emissions from implementation of the mitigation measures is estimated to be 90%; however, no quantitative basis for the estimate in emissions reduction is provided in the DEIR. The EIR attributes 55% of the reduction in PM10 emissions to the mitigation measure of watering twice daily, consistent with URBEMIS model assumptions (DEIR, p. 4.4-16). The DEIR does not identify what mitigation measures account for the remaining 35% reduction in PM10 emissions.

The DEIR does not include URBEMIS model inputs or assumptions that were used. A revised EIR needs to be prepared to detail, by providing model inputs, how the

8-90

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estimated 90% reduction in PM10 emissions was achieved through mitigation. If necessary, additional mitigation measures must be included:

- Watering during excavation to prevent excessive dust;
- Discontinuation of construction activities during windy conditions when activities cause visible dust plumes;
- A wheel-washing system;
- Covering all trucks hauling soil and other loose materials;
- Minimizing drop heights when loaders dump material into trucks; and
- Other fugitive dust control measures as necessary to comply with Imperial County Air Pollution Control District Rules and Regulations.

8-90
continued

2. NOx.

The Project's construction emissions of NOx are 130.31 pounds/day and significant before mitigation (EIR, p. 4.4-16). The EIR provides the following mitigation:

- Use Diesel Oxidation Catalyst on large diesel construction equipment as required by the ICAPCD (EIR, p. 4.4-17).

NOx emissions will be 93.59 pounds/day after mitigation and less than significant (EIR, p. 4.4-16). This is a reported reduction of 28%. As mentioned above, neither the EIR nor any of its supporting documents substantiate this reduction and do not include the model inputs or assumptions that were used. A revised EIR needs to be prepared that shows how this 28% reduction in NOx emissions is achieved. If necessary, additional mitigation must be included:

8-91

- A plan to demonstrate that heavy-duty (50 horsepower or more) off-road vehicles to be used in the construction project will achieve a project wide fleet-average 20% NOX reduction and 45% particulate reduction compared to the most recent California Air Resources Board fleet average; and
- Limiting emissions from all off-road diesel powered equipment to a maximum of 40% opacity for more than three minutes in any one hour. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) shall be repaired immediately.

3. Cumulative Impacts

The EIR fails to adequately analyze the Project's cumulative impacts together with the large number of similar projects being proposed in the County. Recognizing that several projects may together have a considerable impact, CEQA requires an agency to

8-92

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consider the “cumulative impacts” of a project along with other projects in the area. (Pub. Resources Code §21083(b); CEQA Guidelines §15355(b)) If a project may have cumulative impacts, the agency must prepare an EIR, since “a project may have a significant effect on the environment if “[t]he possible effects of a project are individually limited but cumulatively considerable.” (*Kings County Farm Bur. v. City of Hanford* (1990) 221 Cal.App.3d 692, 721) It is vital that an agency assess “the environmental damage [that] often occurs incrementally from a variety of small sources . . .” (*Bakersfield Citizens For Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214 (“*Bakersfield Citizens*”))

8-92
continued

The EIR does not adequately address the impact of the Project’s construction emissions in a cumulative context. The EIR identifies 24 additional solar projects within the neighboring area (EIR, Table 3.0-1). There are also two other solar projects in Imperial County that the EIR does not identify (cite BLM page). The EIR acknowledges that these proposed solar projects for the nearby area are “large scale renewable energy projects” and that the “majority of the air emissions from these projects would be generated during construction” (EIR, p. 4.4-21). The Air Quality Assessment completed for the Project shows that diesel particulate matter (DPM) emissions from construction will extend out to 2,000 meters from the center of the Project (Appendix C, p. 23). The EIR, using this analysis, assumes that all other solar projects proposed in the area will also have DPM emissions that extend 2,000 meters. It then goes on to say that because there will be no overlap of these emissions, there will not be a significant cumulative impact from Project construction (EIR, p. 4.4-22). This analysis is unreasonable. Some of the solar projects proposed for construction in neighboring areas are will generate more power and will be built on larger plots of land. Therefore, it is unreasonable to assume that other solar projects will have the exact emissions of this Project. The EIR’s claim that the Project will not have cumulative, based on the above analysis, is inadequate.

8-93

4. Offsite Receptors

The DEIR states that “existing residential uses on the project site will be removed as part of the project thereby eliminating potential exposure of residents. No sensitive receptors are located along roadway segments” (DEIR, 4.4-11). However, Figure 2.0-3 of the DEIR shows that there are residences on Drew Road, east of the Project boundary. Review of Google Earth imagery shows that these residences are within 500 feet of the Project site (Attachment A).

8-94

The DEIR does not disclose this and does not analyze the impacts of PM10 and DPM on offsite receptors, especially on the old or the very young who may live in the

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neighboring residences. Given that offsite receptors may be impacted by the Project's operational emissions, a DEIR must be prepared that provides adequate mitigation measures to protect human health.

8-94
continued

F. The DEIR Fails to Adequately Analyze Impacts to Hydrology and Water Quality.

1. The DEIR fails to analyze and mitigate for impacts to New River and the Salton Sea due to reduced flows from agricultural lands.

8-95

The DEIR lacks any adequate analysis of impacts to New River and Salton Sea due to reduced agricultural return flows. The DEIR concludes downstream flows are expected to be maintained at current level, but provides no support for this statement. (See DEIR, at 4.12-65)

Scott Cashen concludes that the Project would have very significant adverse impacts on water supply and water quality in the Salton Sea. As the DEIR acknowledges, agricultural runoff contributes significantly to total inflows to the Salton Sea.³⁷ As irrigated agricultural land is converted to nonagricultural use, the associated runoff ceases to drain into the New and Alamo rivers, ultimately reducing the Sea's total inflows.³⁸ According to the DEIR, the Project would eliminate 2,830 acre-feet of water that currently flows into IID's drainage system and ultimately the New River and Salton Sea.³⁹ The DEIR then states:

8-96

[u]nder average irrigation practices the removal of the Campo Verde project area from agricultural production represents a reduction of less than one-tenth of one percent (0.04%) in the amount of water reaching the Salton Sea. Under normal precipitation conditions the reduction is 0.0001%. Neither reduction would be noticeable.⁴⁰

With respect to cumulative impacts, the DEIR states:

[b]ased on the assumption that an average acre of agricultural land uses 4.63 acre-feet per year and assuming a worst-case scenario in which implementation of all the projects listed in Table 4.11-2 results in the conversion of the entire 12,343 acres, under average irrigation practices

8-97

³⁷ *Ibid*, p. 4.11-21.

³⁸ *Ibid*.

³⁹ *Ibid*.

⁴⁰ *Ibid*.

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this represents a total water consumption of 57,148 acre-feet of water. Again, one third of this (18,859 acre-feet) is returned to the drainage system and ultimately the Salton Sea. The removal of these 12,343 acres of agricultural land would result in a reduction of less than three-tenths of one percent (0.25%) in the amount of water reaching the Salton Sea. This estimate is considered conservative because the estimate assumed all project acreage was in agricultural production. Small percentages of each project contain land that is not in agricultural production. Therefore, the cumulative water quantity and quality impacts to the Salton Sea are considered less than significant, and the project’s contribution to these impacts is considered to be less than cumulatively considerable.⁴¹

8-97
 continued

Mr. Cashen concludes that these calculations are flawed for several reasons.

First, the total average inflow to the Salton Sea from 1950 to 2002 period was estimated to be 1,300,000 acre-feet/year.⁴² Therefore, reducing inflows by 2,830 acre-feet equates to 0.2 percent, not less than one-tenth of one percent as suggested in the DEIR. Moreover, considerably less than 1,300,000 acre-feet/year currently enter the Salton Sea due to the Quantification Settlement Agreement (i.e., Water Transfer Project).⁴³

8-98

Second, the DEIR fails to substantiate the statement that “[u]nder normal precipitation conditions the reduction is 0.0001%.” Ninety percent of the entire inflow to the Sea is agricultural runoff from the Imperial, Coachella, and Mexicali Valleys.⁴⁴ The average precipitation on the Salton Sea water surface is estimated at 49,142 acre-feet/year; groundwater inflows are estimated to be about 11,000 acre-feet/year; and the estimated average discharge from non-irrigated portions of the watershed is approximately 2,031 acre-feet/year.⁴⁵ Given these precipitation-related sources contribute relatively little to the Salton Sea, they would not lower the Project’s impact from “0.04%” to “0.0001%” as suggested in the DEIR.

8-99

Third, the Salton Sea receives inflows from the Imperial Valley, Coachella Valley, and Mexico.⁴⁶ Therefore, any analysis of the cumulative reduction of water reaching the

8-100

⁴¹ *Ibid.*

⁴² California DWR and DFG. 2006. Salton Sea Ecosystem Restoration Program Draft Programmatic Environmental Impact Report. p. 5-9.

⁴³ Approximately 150,000 afy less in 2012. See: <http://www.sdcwa.org/quantification-settlement-agreement>.

⁴⁴ Salton Sea Authority. 2003. About the Salton Sea [internet]. Available at: <http://www.saltionsea.ca.gov/about/about.htm#>

⁴⁵ California DWR and DFG. 2006. Salton Sea Ecosystem Restoration Program Draft Programmatic Environmental Impact Report, Chapter 5.

⁴⁶ *Ibid.*

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Salton Sea must consider all of these sources (i.e., the entire watershed). The conclusion that cumulative projects would cause a “reduction of less than three-tenths of one percent (0.25%) in the amount of water reaching the Salton Sea” is inherently flawed because the scope of analysis used to calculate the numerator (cumulative projects in Imperial Valley) and denominator (total reduction to Salton Sea inflows) are not comparable.

8-100
continued

Fourth, as identified above, the average inflow to the Salton Sea between 1950 to 2002 period was estimated to be 1,300,000 acre-feet/year.⁴⁷ Therefore, a cumulative reduction of 18,859 acre-feet of water would reduce inflows to the Salton Sea by 1.45%, not less than three-tenths of one percent as suggested in the DEIR.

8-101

Substantial evidence supports a fair argument that the Project may result in potentially significant impacts to the Salton Sea and its biological resources. The Salton Sea is California’s largest lake. It supports a National Wildlife Refuge and it is a critical stop on the Pacific Flyway for migrating birds, including several state and federally listed endangered and threatened species. Approximately 76 percent of the freshwater inflow to the Sea is agricultural drain water from Imperial Valley.⁴⁸ Because the Sea has no outlets, salts concentrate in it and thus the Sea is dependent on the continued inflow of freshwater to support it. Currently, the Sea is 25 percent saltier than the ocean, with salinity increasing at approximately 1 percent per year.

Mr. Cashen concludes that because the Salton Sea watershed is impaired and the Salton Sea ecosystem is imperiled, any reduction in water inflows as a result of the Project may result in a potentially significant impact to the Sea and its biological resources. It is undisputed that substantial evidence exists regarding the extreme dangers to the Sea and its resources from reductions in water flow to the Sea. According to the Salton Sea Authority, reduction in freshwater to the Sea may result in significant impacts from rising salinity.

8-102

The issue of salinity has become a major focus because it is reaching a level where it is interfering with fish reproduction and survival. Loss of fish greatly impacts the Sea’s productive sport fishery, and the food source for fish-eating birds that flock to the Sea.

To stabilize salinity levels in the Sea, at least an amount equal to the new salt entering the Sea must be removed so that salinity levels don’t go higher. If relatively freshwater now being used on farm fields and flowing to the Sea is conserved and transferred elsewhere, significantly more salt will have to be removed to lower the concentration of salt in the water remaining in the Sea. Thus, the Project’s reduction in freshwater flow into the New River (which discharges into the Salton Sea) is a potentially significant impact requiring considerable more analysis than the cursory (and flawed) analysis presented in the DEIR.

⁴⁷ *Ibid*, p. 5-9.

⁴⁸ *Ibid*, Table 5-2.

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2. The DEIR Fails to Assess Impacts to Fig Lagoon and New River Habitats

Fig Lagoon is located approximately 0.35 miles north of the Project site. Fig Lagoon and/or Wixom drain where it enters the lagoon, supports numerous special-status bird species, including the federally endangered and state threatened Yuma clapper rail and the state threatened California black rail.⁴⁹ The DEIR does not discuss Project impacts to Fig Lagoon. However, it states: “[b]ecause downstream flows are expected to be maintained at current levels, effects to downstream YCR [Yuma clapper rail] habitat are not anticipated.”⁵⁰ This statement is unsupported. Moreover, it conflicts with hydrological analysis presented in the DEIR, which: (a) establishes the Project would eliminate 2,830 acre-feet of water that currently flows into IID’s drainage system and ultimately the New River and Salton Sea; and (b) concludes the Project would result in a net decrease in area potentially contributing flows to the Fig Drain, Diehl Drain, and the Wixom Drain when compared to the existing condition.⁵¹

8-103

Wixom Drain discharges into the Fig Lagoon wetland complex.⁵² A substantial amount of the water in Wixom Drain comes from irrigation water at the Project site.⁵³ Emergent and riparian vegetation are very sensitive to changes in hydrology, as are the species that depend on the vegetation for habitat. For example, the Draft Recovery Plan for the Yuma clapper rail identifies the loss of water supporting habitat as the biggest threat to the species’ recovery.⁵⁴ Thus, any reduction in water entering Wixom Drain is likely to affect the lagoon, its habitats, and the special-status species that it supports. The DEIR provides no data or analysis pertaining to these potentially significant impacts.

The DEIR also fails to analyze Project impacts associated with reduced agricultural return flows to the New River. Scientific literature provides substantial

8-104

⁴⁹ California Natural Diversity Database. 2009. Rarefind [computer program]. Version 3.1.0. Jun 1, 2012. Sacramento (CA): Wildlife & Habitat Data Analysis Branch. California Department of Fish and Game. See also eBird. 2011. eBird: An online database of bird distribution and abundance [web application]. Version 2. eBird, Ithaca, New York. Available: <http://www.ebird.org>. (Accessed: 2012 Jul 1).

⁵⁰ DEIR, p. 4.12-65.

⁵¹ *Ibid*, p. 4.11-17 and 4.11-21.

⁵² James Associates, Inc. 2012. Seeley 7.5-minute quadrangles [topographic map]. MacTopos 3.0 georeferenced for MacGPS Pro. See also DEIR, p. 4.11-8.

⁵³ *Ibid*.

⁵⁴ U.S. Fish and Wildlife Service. 2009. Yuma Clapper Rail (*Rallus longirostris yumanensis*) Recovery Plan. Draft First Version. U.S. Fish and Wildlife Service, Southwest Region, Albuquerque, New Mexico. p. iv.

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evidence that the diversion of water away from the New River may affect vegetation communities. For example, Nilsson and Svedmark (2002) discussed how a river's flow regime has a substantial effect on the successional evolution of riparian plant communities and ecological processes.⁵⁵ Meixner et al. (2009) reported: "riparian ecosystems of the arid and semiarid Southwest are sensitive to even small changes in riparian water balance."⁵⁶ McEwan et al. (2006) discussed how changes in the flow regime alter groundwater-surface water interactions, which in turn alter wetlands.⁵⁷

Based on his review of the scientific literature, Mr. Cashen has concluded that the Project would likely have a significant impact on Fig Lagoon and the special-status species that occupy it. Furthermore, the Project may have a significant impact on habitats associated with the New River, and the species that occupy those habitats. The County must require hydrologic analysis that examines the effects of reduced inflows on habitats that occur within drains, Fig Lagoon, and the New River. Unless a site-specific hydrological study can demonstrate otherwise, there is substantial scientific evidence to conclude that the Project's diversion of water away from drains, Fig Lagoon, and the New River would result in several potentially significant adverse impacts to biological resources.

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G. The DEIR Fails to Adequately Analyze Impacts from Traffic.

The DEIR acknowledges that the project may result in potentially cumulative considerable traffic impacts. (DEIR, at 4.3-42, Impact 4.3.3) The DEIR improperly proposed the payment of "fair share" fees into a mitigation fund as mitigation to reduce the impact to less than cumulatively considerable. (DEIR, at 4.3-49)

8-105

Mitigation fees are not adequate mitigation unless the lead agency can show that the fees will fund a specific mitigation plan that will actually be implemented in its entirety. (*Napa Citizens for Honest Gov. v. Bd. Of Supervisors* (2001) 91 Cal.App.4th 342 (rejecting fee payment as mitigation where no evidence that impacts will be mitigated simply by paying a fee); *Anderson First Coal. v. City of Anderson* (2005) 130 Cal.App.4th

⁵⁵ Nilsson, C, M Svedmark. Basic Principles and Ecological Consequences of Changing Water Regimes: Riparian Plant Communities. 2002. Environmental Management. 30(4): 470-476.
⁵⁶ Meixner T, K Baird, MA Dixon, JF Hogan, SJ Lite, J Stromberg. 2009. Hydrologic Thresholds for Biodiversity in the Semiarid Riparian Ecosystems: Importance of climate Change and variability [abstract]. Available at: epa.gov/ncer/events/calendar/2009/may27b/abstracts/meixner.pdf. [emphasis added].
⁵⁷ McEwan K, I Jolly, K Holland. Groundwater- surface water interactions in arid/semi-arid wetlands and the consequences of salinity for wetland ecology. 2006. CSIRO Land and Water Report 53/06:7.

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1173 (finding a traffic mitigation fee inadequate because it did not ensure that mitigation measure would actually be implemented); *Kings Co. Farm Bureau v. Hanford* (1990) 221 Cal.App.3d 692) Here, there is no assurance that the Applicant will be required to pay into any fund and no performance standard to provide certainty of thresholds for required payment. Perhaps more importantly, there is no assurance that the mitigation measure will be implemented if the mitigation payment is made because the mitigation measure depends on payment from other projects, which may or may not pay into the fund. In other words, the DEIR does not establish a causal connection into payment of the mitigation fee and the need for and creation of the mitigation measure. Consequently, the proposed mitigation cannot reduce the cumulative impact on traffic to a less than significant level.

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continued

H. The DEIR Lacks an Adequate Monitoring and Reporting Plan

The Mitigation Monitoring and Reporting Program (MMRP) is a required element of a DEIR containing mitigation measures. Since this DEIR contains mitigation measures, it must include an MMRP. However, the MMRP contained in this DEIR is inadequate. It merely lists out the mitigation measures contained in the DEIR, which is helpful, but which hardly suffices to satisfy the requirements of, for example, CEQA Guidelines § 15097 which states in relevant part:

The public agency may choose whether its program will monitor mitigation, report on mitigation, or both. "Reporting" generally consists of a written compliance review that is presented to the decision making body or authorized staff person. A report may be required at various stages during project implementation or upon completion of the mitigation measure. "Monitoring" is generally an ongoing or periodic process of project oversight.

8-106

(14 Cal.Code Regs. § 15097)

Since the DEIR contains mitigation measures that rely on future studies, it is all the more crucial that the MMRP contain provisions for formal review. There needs to be actual "monitoring" and/or "reporting." Furthermore, the burrowing owl studies to be conducted in the future constitute deferred mitigation measures without adequate performance criteria. That is in part because the surveys conducted to date are deficient and need to be conducted again. That being the case, the DEIR should make clear that any future efforts to locate burrowing owls and/or their burrows will be effective; specific protocols for this should be made part of the DEIR itself.

I. A Stormwater Pollution Prevention Plan (SWPPP) Must Be Prepared

The DEIR admits that the Project may have impacts on stormwater runoff at least during construction-related activities. (DEIR, at 4.11-14, 19) Discharges during

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construction will include sediment, heavy metals, fuels, and other pollutants. The DEIR provides not explanation of how these discharges will be mitigated for, aside from stating that a Stormwater Pollution Prevention Plan ("SWPPP") will be developed in the future, and that it will incorporate measures sufficient to reduce the stormwater impacts to a level of insignificance. Thus, the SWPPP is not adequately described in the DEIR for public consideration. This is clearly inadequate under CEQA.

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CEQA does not permit deferral of the development of mitigation measures until after project approval. The overall effectiveness of the proposed mitigation must be evaluated in the Draft EIR and subjected to public comment. (CEQA Guidelines § 15126.4(a)(1)(B); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309) An agency may not rely on mitigation measures of uncertain efficacy or feasibility. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727) This approach helps to "insure the integrity of the process of decision-making by precluding stubborn problems or serious criticism from being swept under the rug." (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935) By failing to include any description of the SWPPP, the DEIR "sweeps under the rug" all of the questions concerning the effectiveness, and potential adverse impacts of the measure in violation of CEQA.

8-018

Consequently, a SWPPP must be prepared immediately and included in the DEIR for review. The SWPPP must contain a site map which shows the construction site perimeter, existing and proposed structures, lots, roadways, storm water collection and discharge points, general topography both before and after construction, and drainage patterns across the project site. The SWPPP must list Best Management Practices (BMPs) the discharger will use to protect the quality of storm water runoff, and the placement of those BMPs. Additionally, the SWPPP must contain: a visual monitoring program; a chemical monitoring program for "non-visible" pollutants to be implemented if there is a failure of BMPs; and a sediment monitoring plan if the site discharges directly to a water body listed on the Water Board's 303(d) list for sediment.

8-109

Unless the SWPPP is included in a revised DEIR, neither the public nor governmental decisionmakers will ever be able to determine if the SWPPP is adequate to mitigate the Project's storm water impacts. There is no way to determine based on the present DEIR whether the SWPPP will or will not be adequate to reduce the Project's impacts to below the level of significance.

VI. THE DEIR IMPROPERLY SEGMENTS THE PROJECT.

The DEIR states the Project includes a gen-tie on Bureau of Land Management (BLM) land. However, the DEIR states that environmental review of the gen-tie will be conducted separately under National Environmental Policy Act (NEPA). The DEIR states:

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The Applicant's information for the gen-tie on Bureau of Land Management (BLM) managed land appeared primarily in the Right-of-Way Plan of Development (POD) for the Campo Verde Gen-Tie Project submitted to the BLM in September, 2011 (CVS, 2011). The gen-tie portion on BLM land is undergoing separate environmental review to fulfill the requirements of the National Environmental Policy Act (NEPA). An Environmental Assessment is being prepared for the gen-tie by the BLM. (DEIR, p. 2.0-1)

The County has abused its discretion and has failed to proceed in a manner required by law by segmenting the Project. CEQA requires an agency to analyze the "whole of an action." In *Nelson v. County of Kern* (2010) 190 Cal. App. 4th 252, the court held that when part of a project is on state land and part on federal land, the CEQA document must analyze the "whole project," including the state and federal portions. The court held that the CEQA lead agency may not defer analysis of the federal portion of the project to federal review under NEPA.

8-110
continued

The County is making precisely the same error in this case by deferring analysis of the gen-tie to BLM review under NEPA. The CEQA document must be revised to analyze the whole of the action, including the gen-tie.

VII. THE DEIR FAILS TO IDENTIFY THE ENVIRONMENTALLY SUPERIOR ALTERNATIVE.

A. The EIR Must Include a Reasonable Range of Alternatives.

An EIR must describe a range of reasonable alternatives to the Project, or to the location of 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. "An EIR's discussion of alternatives must contain analysis sufficient to allow informed decision making." (*Laurel Heights Improv. Assoc. v. Regents of Univ. of Calif.* ("Laurel Heights I"), 47 Cal.3d at 404.)

8-111

The analysis of project alternatives must contain an accurate quantitative assessment of the impacts of the alternatives. In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 733-735, the court found the EIR's discussion of a natural gas alternative to a coal-fired power plant project to be inadequate because it lacked necessary "quantitative, comparative analysis" of air emissions and water use.

The considered alternatives must include the environmentally superior alternative, which the lead agency is required to select unless it is infeasible. As explained by the Supreme Court, an environmentally superior alternative may not be rejected simply because it is more expensive or less profitable:

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The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.

(Citizens of Goleta Valley v. Bd. of Supervisors (1988) 197 Cal.App.3d 1167, 1180-81; see also Burger v. County of Mendocino (1975) 45 Cal.App.3d 322 (county's approval of 80 unit hotel over smaller 64 unit alternative was not supported by substantial evidence).)

"A public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment." (CEQA Guidelines § 15021(a)(2)) Furthermore, "Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." (CEQA Guidelines § 15126.6(b).) Finally, "the EIR need examine in detail only the [alternatives] that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making." (CEQA Guidelines § 15126.6(f))

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continued

B. The Project DEIR Fails to Adequately Analyze the Distributed Solar Alternative.

A distributed generation alternative should have been selected for detailed analysis in this DEIR. There is little doubt that a distributed generation alternative "would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen [some] of the significant effects of the project," consistent with the guidance of CEQA Guidelines § 15126.6(a).

8-113

1. A distributed generation alternative would meet project objectives while avoiding most environmental impacts.

The DEIR fails to provide a detailed analysis of distributed generation and instead offers a series of unsubstantiated assumptions. (DEIR, at 6.0-3) Distributed generation would site small-scale PV installations on private or publicly owned buildings, rooftops, parking lots, and other structures. (*Id.*) It would avoid all impacts on farmland and habitats are reduce the facilities needed for power transmission.

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The DEIR's argument that the distributed generation alternative is not feasible because "there is no guarantee that any portion of the solar installation would occur in

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Imperial Valley" is a wispy straw man. The DEIR erroneously concludes—without any evidence—that the alternative "would not meet any of the County's objectives (i.e., economic investment in the County; diversifying the County's economic base; generating local jobs and tax revenue; reinforcing the County's position as a leader in renewable energy production; and expanding the local renewable energy sector). In fact, distributed generation facilities in Imperial County would accomplish all of those objectives. The DEIR's blithe conclusion is supported only by unsubstantiated assumptions.

A large-scale distributed generation project would create economic investment in the County, particularly in jobs for solar installation work and associated support systems. Those jobs would be *in addition* to jobs and other economic activities associated with keeping more than 1800 acres of important farmland in production. Moreover, the distributed generation would be developed on heretofore unproductive real estate (i.e., roofs and other structures), rather than conversion of productive farmlands. Thus, there would be a net gain in productivity, rather than the permanent reduction in agricultural activity effected by the proposed Project.

The distributed generation alternative would also diversify the County's economic base and position the County as a leader in distributed generation—considered by many to be the future of solar development. Distributed generation will also provide for expansion of the project to new structures as they become available and allow for updating and replacement more readily than large scale solar farms. Today's large-scale solar "farm" can quickly become a "dinosaur" compared with the distributed systems that can quickly absorb the new technology about to come online. At a minimum, the DEIR must give this alternative serious consideration and explain—with supported facts, not mere conclusions---why the alternative will not meet the Project objectives.

The distributed generation alternative would also avoid nearly all of the Project's potential environmental impacts. It would not result in inconsistencies with the General Plan, would keep farmland in production, would avoid impacts to Burrowing Owls, Mountain Plovers, and other species, and reduce potential impacts to water and air quality in the region.

2. The DEIR's analysis of Distributed Generation and other alternatives should consider impacts on ratepayers.

The County should consider the issue of how project implementation will impact ratepayers. While these questions would seem to be central to a discussion of the merits of this project, there has been little or no discussion of how the Project will concretely affect energy rates. A full exploration of these questions should be conducted for the public. Central questions that should be addressed include:

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continued

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- How will implementation of the Project affect the rates that ratepayers will pay for energy?
- How will implementation of the Project affect rates paid by residents of Imperial County?
- Will ratepayers be forced to pay for any of the costs to the County resulting from the project?

Relevant to this inquiry is a report by the California Public Utilities Commission's Division of Ratepayer Advocates (DRA). The report is entitled, *Green Rush: Investor-Owned Utilities' Compliance with the Renewables Portfolio Standard* (February, 2011). This report points out, among other things, that the cost of renewable energy is quite high and that California:

utilities have signed contracts that will cost them over \$6 billion more than they would otherwise pay for electricity from natural gas power plants. . . . The DRA contends in its report that the CPUC hasn't done a good job scrutinizing contracts to make sure they aren't unreasonably high and won't saddle consumers with hefty bills . . . The report goes on to say that utilities and the CPUC gives too much weight to whether developers can complete and deliver their projects and not enough to the projects' costs to the public. It notes that the utilities have signed enough contracts to meet the state goals, so there is no good reason to accept super expensive contracts to ensure that the goals are met.

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The report contains the following finding: "The utilities are on track to achieve the 20% RPS goal by the end of flexible compliance in 2013 and are ahead of schedule to meet the 33% Renewable Energy Standard (RES) goal by 2020, even though some projects scheduled to come online will fail or be delayed." (*Id.* at 5, italics added)

CEQA provides that a lead agency "has an obligation to balance a variety of public objectives, including economic, environmental, and social factors" in justifying its findings. (CEQA Guidelines §§ 15021(d), 15093(a).) Moreover, the Imperial County General Plan requires that where agricultural land is being converted to non-agricultural uses, there must be a showing that the non-agricultural use will accrue a long term net economic benefit to the County. Higher rates for Imperial County citizens must be included in that calculus of "economic benefit" for the county. In any event, the report from the DRA, which is based on recent information, shows that there is no pressing need to rush into approval of a renewable energy project merely to meet the needs of California's RPS goals.

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VIII. THE COUNTY SHOULD PREPARE AND RECIRCULATE A SUPPLEMENTAL DEIR

Recirculation of an EIR prior to certification is required "when the new information added to an EIR discloses: (1) a new substantial environmental impact resulting from the project or from a new mitigation measure proposed to be implemented; (2) a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance; (3) a feasible project alternative or mitigation measure that clearly would lessen the environmental impacts of the project, but which the project's proponents decline to adopt; or (4) that the draft EIR was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was in effect meaningless." (CEQA Guidelines §§ 15162; *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal. 4th 1112, 1130, citing *Mountain Lion Coalition v. Fish & Game Comm'n* (1989) 214 Cal.App.3d 1043.

Recirculation is required where "significant new information" has been added to an EIR. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 447) New information is "significant" where it results in a change to the EIR's analysis or mitigation of a substantial adverse environmental effect. (*See id.*) to the EIR.

Here, the DEIR must be revised to address the many deficiencies identified above. Specifically, the DEIR must be revised and recirculated to allow the public a meaningful opportunity to comment on a complete analysis of cumulative impacts that includes sources of similar impacts within Imperial County, not just those limited to a ten- to fifteen-mile radius. Moreover, the DEIR must be revised to include the surveys of wildlife and plants that were promised but not conducted or that were conducted, but the data were not made available. Finally, the DEIR must be revised to include concrete, credible mitigation measures and not promises to develop plans or pay mitigation fees for mitigation measures that may not be implemented. Unless the DEIR is revised to address these deficiencies and unless that DEIR is recirculated for further public review, the public and decision makers will be deprived of an opportunity for full input and informed decision making.

IX. CONCLUSION

LIUNA Local Union No. 1184 believes the Project DEIR is wholly inadequate and requires significant revision, recirculation and review. Moreover, LIUNA believes that the Project as proposed would result in too many unmitigated adverse impacts on the environment to be justified. Given the ongoing "solar gold rush" occurring in the fragile desert areas of southern California, and given the likelihood that the state's RPS goals will be met without this project, LIUNA believes the proposed Project should be reconsidered. Distributed generation of renewable electricity represents the "low hanging

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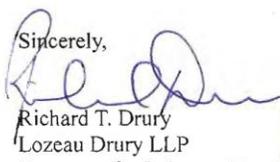
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fruit” of solar electricity generation and should be pursued throughout already disturbed areas before sacrificing fragile desert environments and the species that rely on them. In a short time, solar panels will far exceed the technology of today in terms of efficiency. Imperial County should think twice before approving a potentially costly dinosaur in its backyard. The hazards and risks posed by valley fever and cadmium-telluride panels have not been considered to the potential great harm to workers and nearby residents who, even if small in number, deserve and are entitled to full consideration. All of these considerations weigh against approval of the project as proposed.

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continued

Thank you for your attention to these comments. Please include this letter and all attachments hereto in the record of proceedings for this project.

Sincerely,



Richard T. Drury
Lozeau Drury LLP
Attorneys for Laborers' International Union of
North America (LIUNA), Local Union No. 1184

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RESPONSE TO COMMENT LETTER 8

Commenter: Richard T. Drury, Lozeau Drury, LLP

Date of Letter: July 3, 2012

Response to Comment 8-1: The commenter states that this letter is submitted on behalf of Laborers International Union of North America, Local Union 1184, and its members living in Imperial County ("LIUNA Local Union No. 1184" or "Commenters"). The comment states that the Draft EIR fails as an informational document, fails to identify environmentally superior project alternatives, and fails to impose feasible mitigation measures to reduce the project's impacts. No substantive statements are provided in this comment to support these assertions. However, this comment is noted for the decision-makers' consideration.

Response to Comment 8-2: The comment asserts that the Draft EIR's analysis of the impacts arising from the temporary conversion of agricultural land to solar farm use is deficient because 5% of all agricultural land in Imperial County has been or is proposed to be converted to solar farm use. Impact analysis under CEQA is based on a variety of factors and is subject to the County's discretion as lead agency with regards selection of significance criteria. See CEQA Guidelines §15126.2(a). Conclusions regarding significance must be based on substantial evidence, absent a quantitative significance criteria.

Under CEQA Guidelines §15384 "substantial evidence . . . is enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. . . . Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence."

The comment is not based on substantial evidence. There is no requirement under CEQA, absent a significance criteria, that the amount of agricultural land temporarily converted to solar farm use result in a determination of significance. Here, the Draft EIR concludes that because the conversion is temporary, the impacts to agricultural land are mitigable to less than significant. The fact that up to 5%, which is a conservative assumption, of the County's agricultural land may be converted to non-agricultural use in the future has no bearing on the determination of the project's impact to agricultural lands.

Response to Comment 8-3: The comment contends that the project cannot be found consistent with the Imperial County General Plan (Imperial County General Plan) because "the Imperial County General Plan and its Elements zone the project site as "Agriculture" and prioritize the protection of farmland." Inherent in the comment's conclusion is an interpretation of the Imperial County General Plan's goals, policies, and objectives that prohibits, in all instances, non-agricultural related uses on lands designated for agriculture. Generally, "because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and [the agency] has broad discretion to construe its policies in light of the plan's purpose." *Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App. 4th 1552. "An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment. State law does not require perfect conformity between a proposed project and the applicable general plan . . . [because] it is nearly impossible for a project to be in perfect conformity with each and every policy set forth in the applicable plan. . .

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It is enough that the proposed project will be compatible with the objectives, policies, general land uses and programs specified in the applicable plan.” Id. (internal quotations and citations omitted). Thus, the County has the authority to interpret the meaning of the Imperial County General Plan and determine whether the proposed project is consistent with the Imperial County General Plan.

The Imperial County General Plan includes a variety of goals, policies, and objectives that are implicated by the proposed project and must, in some instances, be balanced against each other. The Imperial County General Plan thus cautions against its Goals and Policies being interpreted as doctrine:

Imperial County’s Goals and Objectives are intended to serve as long-term principles and policy statements representing ideals which have been determined by the citizens as being desirable and deserving of community time and resources to achieve. The Goals and Objectives, therefore, are important guidelines for agricultural land use decision making. It is recognized, however, that other social, economic, environmental, and legal considerations are involved in land use decisions and that these Goals and Objectives, and those of other General Plan Elements, should be used as guidelines but not doctrines (Imperial County General Plan Agricultural Element III. A Preface).

Turning to specific policies implicated by the proposed project, the Imperial County General Plan actively promotes both alternative energy and opportunities for economic growth. For example, Goal 1 of the Geothermal/Alternative Energy and Transmission Element (“Alternative Energy Element”) provides that the County “supports and encourages the full, orderly, and efficient development of geothermal/alternative energy resources while at the same time preserving and enhancing where possible agricultural, biological, human, and recreational resources.” Concerning impacts to agricultural lands and biological resources from alternative energy project, Goal 2 of the Alternative Energy Element states that the County will attempt to “minimize all impacts to agricultural lands and biological resources that could potentially result from the development of geothermal/alternative resources” through implementation of the following objectives, among others:

- Objective 2.1 Site and design production facilities to lessen impacts on agricultural land and biological resources.
- Objective 2.3 Utilize existing easements or rights-of-way and follow field boundaries for electric and liquid transmission lines.
- Objective 2.4 Carefully analyze the potential impacts on agricultural and biological resources from each project.
- Objective 2.5 Require the relocation or creation of new habitat as might be appropriate.

Consistent with these objectives, the proposed project has been designed to lessen impacts on agricultural lands and biological resources and the Draft EIR has analyzed the proposed project’s potential impacts on agricultural and biological resources and has imposed mitigation, including relocation or creation of new habitat, where appropriate.

In addition to the goals and objectives in the Alternative Energy Element promoting alternative energy in the County, the Imperial County General Plan also recognizes the need for the County to promote diverse economic uses. For example, Goal 2 of the Land Use Element states that the County should “[d]iversify employment and economic opportunities in the County while preserving agricultural activity”, and Goal 3, Objective 3.2 of the Land Use Element recognizes

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the need to “[p]reserve agricultural and natural resources while promoting diverse economic growth through sound land use planning.” Thus, while there is no question that promoting and preserving agricultural uses is an important part of the County’s vision, it is by no means the sole policy, goal, or objective of the Imperial County General Plan, thus requiring the County’s decision-makers to balance various interests when making land use decisions.

The Imperial County General Plan contemplates the use of agricultural lands for other uses, and specifically provides that the evaluation and approval of those uses will occur through the implementation of zoning and the conditional use permit (CUP) review process. Specifically, the Land Use Element provides that “[e]lectricity and other energy generating facilities are heavy industrial uses, except geothermal, hydroelectric, wind and solar facilities may be regulated differently than other types of power plants by implementing zoning.” (Imperial County General Plan, Land Use Element, page 6). Further, the Land Use Compatibility Matrix in the Imperial County General Plan provides that industrial uses are permissible on lands zoned A-2 and A-3 with a CUP. Imperial County General Plan, Land Use Element, Table 4). Thus, pursuant to the Imperial County General Plan, with the approval of a CUP, the proposed project would be an allowable use within the existing land use and zoning designations for the site.

Further, while the Land Use Element provides that agriculture is the principal and dominant use for agriculture-designated lands, it expressly allows non-agricultural uses on agricultural land provided the project proponent demonstrates that the non-agricultural use (1) “does not conflict with agricultural operations and will not result in the premature elimination of such agricultural operations” and (2) meets the requirement that “no use should be permitted which would have a significant adverse effect on agricultural production.” (Imperial County General Plan Land Use Element IV.C.1.) The proposed project does not conflict with any existing agricultural operations, nor will it result in the premature elimination of agricultural operations.

Likewise, the proposed project would not have a significant adverse effect on agricultural production. The County has established a permitting process which ensures that the potential effects of using Agriculture-designated lands for solar projects are thoroughly considered. Sections 90508.02 and 90509.02 of the County’s Land Use Ordinance identify the permitted and conditional uses within zones A-2, A-2-R and A-3. All of the project site parcels are zoned A-2, A-2-R, and A-3, and all zoning designations require a conditional use permit (CUP) for solar energy facilities (Draft EIR, page 4.2-16). The discretionary nature of a CUP process also triggers review under CEQA.

Furthermore, to the extent that the commenter questions the validity of the Land Use Ordinance allowing for such exceptions, the time for this has passed. A petition alleging that an ordinance is inconsistent with a County’s general plan must be filed within 90 days of the adoption of the ordinance. Cal. Gov. Code §65860(b); *Lee v. City of Monterey Park*, 173 Cal. App. 3d 798 (1985).

As the Draft EIR states, the proposed project will not have a significant adverse effect on agricultural production. As already noted, existing agricultural production on the project site is limited. To the extent the proposed project will prevent the use of the project site from being used for agricultural production over the 40-year operational life of the proposed project, the Draft EIR has identified mitigation measures which will limit the proposed project’s effect on agricultural production. These measures include options to:

- Acquire an agricultural conservation easement on a 1:1 (no-prime farmland); or

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- 2:1 (prime farmland) ratio of impacted acres, thus ensuring the availability of an equal amount of agricultural land for production;
- Pay an in-lieu mitigation fee to be used by the County's Agriculture Commissioner to promote active agriculture production;
- Enter into a voluntary Public Benefits Agreement that will include, among other things, payment of a fee no less than the in lieu mitigation fee contemplated above. Draft EIR, pages 4.9-14 to 4.9-15 (Mitigation Measure MM 4.9.1a - Options 1, 2 and 3).

Thus, while the proposed project will cause the project site to be unavailable for agricultural production for the life of the project, this temporary loss is mitigated to less than significant by the mitigation measures, which ensure that opportunities for active agriculture production in the County will continue be available, supported, and promoted.

As to the comment's suggestion that the loss of the project site for agricultural production could be "indefinite," County policy requires preparation and implementation of an agriculture reclamation plan that will return the site to agriculture production. See Response to Comment 8-5.

Response to Comment 8-4: The comment states that based on its belief that 5% of the County's agricultural land has been or will be used for solar farm use, the conversion of agricultural land must be found to be cumulatively considerable. However, there is no fixed standard for determining whether a cumulative impact is significant under CEQA. Cumulative impact analysis is subject to the lead agency's discretion. CEQA Guidelines §15130. Moreover, whether an impact is cumulatively considerable depends on an analysis of numerous variables, not just one quantitative standard. This issue has been previously addressed. Refer to Response to Comment 8-2.

Response to Comment 8-5: The comment asserts that use of the project site for 40 years is not "temporary". Even though the proposed project will cause the project site to be unavailable for agricultural production during construction, operation, and decommissioning of the proposed project, this temporary loss is mitigated to less than significant by the mitigation measures (i.e. MM 4.9.1a - Options 1, 2 and 3), which ensure that opportunities for active agriculture production in the County will continue be available, supported, and promoted. Mitigation Measure MM 4.9.1b requires preparation of a reclamation plan detailing the procedure for reclamation and financial assurance that the panels will be removed. The cost estimate required as part of the Reclamation Plan will be included in a bond or some other financial instrument to ensure that monies needed to return the site to its current agricultural condition in 40 years are available for that purpose.

A use permit must have time limitations. See Imperial County Code Section 90203.11. Because the use permit is subject to time limits, the use cannot be considered be permanent.

The comment also asserts that there is no assurance that the solar panels will be removed or that reclamation will succeed. The reclamation required by the Draft EIR provides further evidence that the use is temporary, due to implementation of a mitigation measure requiring preparation of a Reclamation Plan that will return the site to agriculture production.

Response to Comment 8-6: The commenter states that the Draft EIR proposes insufficient mitigation, citing the options of a 1:1 replacement for lost farmlands or to pay 20% (30% for prime farmland) of the cost of the land into a fund used for unspecified purposes. The commenter does not substantiate why the mitigation is insufficient.

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The Draft EIR identifies mitigation for both Non-Prime and Prime Farmland as part of mitigation measure MM 4.9.1a. Further, MM 4.9.1a specifies that fees collected for the cost of the land “will be placed in a trust account administered by the Imperial County Agricultural Commissioner’s office and will be used for such purposes as the acquisition, stewardship, preservation and enhancement of agricultural lands within Imperial County (Draft EIR, page 4.9-11). It should be noted that portions of MM 4.9.1a have been revised per Comment 8-58 below. The proposed revisions are included in Chapter 4.0, Errata of this Final EIR. However, the revisions do not affect the language regarding the trust account and its purposes. Refer also to Response to Comments 8-32 to 8-36.

Response to Comment 8-7: The comment states that the Draft EIR fails to establish a credible baseline for biological resources based on the assertion that adequate surveys for wildlife and plants were not conducted and complete data sets were not provided in the Draft EIR and Biological Technical Report (“BTR”). Contrary to the comment’s assertion, the Draft EIR and BTR provide a rigorous baseline condition for biological resources. (Draft EIR, pages 4.12-5 to 4.12-56; BTR, pages 3-1 to 3-50). This baseline and related impacts analyses were based on thorough field surveys conducted throughout 2010 and 2011, including general biological surveys, focused rare plant surveys, focused burrowing owl surveys, avian use surveys and federal and state jurisdictional waters surveys. Draft EIR, pages 4.12-57 to 4.12-60; BTR, pages 2-1 to 2-4. [Note: the BTR was included as Appendix J to the Draft DIR but is also included as Appendix A to this Final EIR with spring surveys included].

Limited seasonal surveys that were completed after publication of the Draft EIR – all of which were provided for the commenter’s review prior to the close of the comment period – confirm the information regarding biological resources and related analyses that is identified in the Draft EIR and BTR. The results of these seasonal surveys do not suggest any change in the biological resources known or assumed to be in the area, nor do the results indicate any increase in impacts or required mitigation identified and described in the Draft EIR. Because the results of the seasonal surveys are consistent with and confirmatory of the Draft EIR and BTR, they do not constitute “significant new information” requiring recirculation under CEQA. See Cal. Pub. Res. Code §21092.1; 14 C.C.R. 15088.5. See also *Cal. Oak Found. v. Regents of Univ. of Cal.*, 188 Cal.App. 4th 227, 266-67 (2010). The Final EIR and BTR have been updated to include the data from the following seasonal surveys: spring rare plant surveys; Phase III Burrowing Owl surveys of the Proposed and Alternate Gen-tie Corridors; winter Burrowing Owl surveys; Mountain Plover surveys; winter avian use surveys; spring avian use surveys.

The comment further states that, in several instances, the Draft EIR improperly proposed inadequate and deferred mitigation measures, thereafter listing several management plans/strategies and seasonal confirmation surveys identified in the Draft EIR. As noted above, the surveys identified by the commenter were seasonal surveys conducted to confirm the result of prior surveys that had been conducted for the same resources and that are discussed in the Draft EIR and BTR. The management plans and strategies referenced in the comment are mitigation requirements that the Applicant will be required to prepare subject to CUP approval and prior to issuance of ministerial permits. The following plans and strategies referenced in the comment have been completed: common raven control plan; weed management plan (and risk assessment) for federal land; a draft burrowing owl mitigation and monitoring plan, which has been submitted to CDFG; a bird and bat conservation strategy, which has been submitted to the BLM, USFWS, and CDFG for review; and a site reclamation and revegetation plan.

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There is no legal requirement that these be made available in a Draft EIR for public review and comment before project approval. *See Christward Ministry v. County of San Diego*, 13 Cal. App. 4th 31, 48 (1993). Rather, as was done here, an EIR must propose and describe mitigation measures to minimize significant environmental effects. *See, e.g.*, Draft EIR Table ES-1: Summary of Impacts, at ES-40. *See also* Cal. Pub. Res. Code §21001.1(a); 14 C.C.R. §15126. Public Resources Code §21081.6 provides that a mitigation monitoring or reporting program (“MMRP”) shall be adopted when the public agency makes its requisite findings on imposition of mitigation measures. *See* 14 C.C.R. §15097(a). Thus, consideration and adoption of the MMRP will occur, consistent with this requirement, at the forthcoming public hearings for the proposed project.

Response to Comment 8-8: The comment states that the Draft EIR fails to adequately assess the loss of wetlands, waterways and irrigated agricultural lands, especially cumulative impacts, and their effects on birds and other wildlife. The comment does not identify any particular inadequacy in the Draft EIR’s assessment of impacts to the loss of wetlands, waterways and irrigated agricultural lands and their effects on wildlife. These resources and related impacts to these resources are addressed at length in Section 4.11, Hydrology and Water Quality of the Draft EIR on pages 4.11-1 to 4.11-21, and in Section 4.12, Biological Resources pages 4.12-1 to 4.12-94.

With regard to specific water resources, the project will not result in the loss of any Army Corps of Engineers (“ACOE”) jurisdictional wetlands and only 0.26 acres of CDFG jurisdictional waters (Refer to Draft EIR, pages 4.12-85). No other jurisdictional waters would be impacted. The amount of active and fallow agricultural lands in the project area is addressed in Section 4.12 of the Draft EIR, pages 4.12-9 and 4.12-37. Specific impacts to species that depend on those habitats are addressed under the respective species’ sections of the Draft EIR in Section 4.12. Multiple species depend on wetlands and irrigated agricultural lands. Impacts to the habitats of those species, including birds, were addressed in the appropriate wildlife sections of the Draft EIR in Section 4.12.

Response to Comment 8-9: The comment states that the Draft EIR fails to adequately assess impacts to water quality and important aquatic resources in Imperial County, including the Salton Sea and several wetlands. Specifically the comment asserts that the Draft EIR does not adequately assess impacts from loss of run-off from 5% of the agricultural area in Imperial Valley on the Salton Sea.

The transition from agricultural to solar infrastructure land uses would result in a substantial reduction in pesticide, herbicide, and fertilizer application, and storm water from the proposed solar sites. The impacts to the water quality of the receiving ditches, and ultimately the New River and Salton Sea, would be beneficial because of the reduction in pesticides, herbicides and fertilizers from the site. Removal of these substances will result in a significant saline reduction in the receiving waters.

The IID is currently implementing a drain water quality improvement plan (Resolution No 93-145) to achieve water quality objectives to comply with the Clean Water Act 303(d). A component of the IID plan is to reduce maintenance operations which will result in a reduction of Total Suspended Solids (TSS) (HDR, 2012). In addition, the proposed solar array areas would have grasses and/or soil stabilizers to control storm water erosion. Detention basins would also be used to further reduce water quality impacts. Grasses will act as both a physical and chemical filter during runoff events. They physically filter out particulate matter during runoff events as water flows through the grass. Bio-chemical reactions between plant roots and soil water facilitate the

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uptake of nutrients within the soil profile. Both processes would also prevent the transport of existing pesticide residues in on-site soils. Refer to Response to Comment 8-101 which describes IID's legal obligations under State Water Resources Control Board (SWRCB) orders, the Quantification Settlement Agreement and IID Water Transfer Agreement, which includes mitigation of water quality and biological impacts to the Salton Sea. As such, the cumulative effects to water quality in the Salton Sea as a result of development of the projects listed in Table 4.11-2 would likely be beneficial as fewer pollutants would drain into the Salton Sea and higher quality water would be used for environmental mitigation requirement obligations of the IID. Also see Response to Comments 8-98 and 8-102.

Response to Comment 8-10: The comment asserts that the County admits significant impacts will occur to wetlands and has improperly deferred mitigation for impacted jurisdictional waters identified in the Draft EIR and has not committed to any particular ratio or level of mitigation. The County disagrees with this comment. First, the Draft EIR does not identify any significant impacts to wetlands. As noted in Response to Comment 8-8, the project will not result in the loss of any ACOE jurisdictional wetlands and only 0.26 acres of CDFG jurisdictional waters (which are not wetlands but an agricultural tail ditch). Refer to page 4.12-85 of the Draft EIR.

With regard to mitigation for impacts to the 0.26 acre agricultural tail ditch, Mitigation Measure MM 4.12.13 on page 4.12-87 of the Draft EIR states that the Applicant shall coordinate with the CDFG to obtain a Section 1600 Streambed Alteration Agreement ("SAA") to address any impacted CDFG-jurisdictional waters, and that the anticipated mitigation ratio for that habitat loss is 2:1. Mitigation for losses under Section 1600 are not pre-designated but rather are determined by the CDFG on a case-by-case basis through the SAA for the project. The SAA cannot be finalized until the EIR is certified. There is no improper deferral of mitigation under these circumstances. *See Clover Valley Found. v. City of Rocklin*, 187 Cal. App. 4th 200, 237 (2011) (where it is anticipated that a regulatory agency will impose mitigation requirements when issuing its permit for a project, formulation of specific details of the measures may be deferred).

Response to Comment 8-11: The comment states that the Draft EIR improperly creates a fair share mitigation fee payment for traffic impacts without providing assurances that the mitigation will actually be implemented.

The referenced mitigation measure, MM 4.3.3, is not for project-specific traffic impacts but rather for potential cumulatively considerable traffic impacts, which could possibly occur only if all cumulative projects in this specific local area were to occur simultaneously. "Fair share" impact fees are expressly permitted to mitigate cumulatively considerable impacts under CEQA. CEQA Guidelines §15130. Refer also to Response to Comment 8-105.

Response to Comment 8-12: The comment states that the Draft EIR fails to identify adequate mitigation measures for the significant impacts that will arise from particulate matter and NO_x from construction. The Air Quality Assessment in Appendix C of the Draft EIR has been revised to incorporate compliance with EPA Tier 2 emission standards for large construction equipment and the California Air Resources Board (CARB) Air Toxics Control Measures (ATCM) for diesel particulate matter from portable diesel engines rated at 50 horsepower and greater. The revised Air Quality Assessment, which will be included in the Final EIR, shows that there will be no significant impact associated with emissions of oxides of nitrogen (NO_x) during construction and therefore no mitigation measures will be required. Mitigation measures to reduce

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particulate matter (PM10) are set forth in MM 4.4.1a and 4.4.1b of the Final EIR. Refer also to Responses to Comments 7-89 to 7-93.

Response to Comment 8-13: The commenter asserts that the Draft EIR fails to adequately assess alternatives to the project, particularly alternatives that would minimize or avoid significant impacts arising from the project.

The County agrees that CEQA requires that an EIR consider a reasonable range of alternatives to the project, or location of the project, which could feasibly attain most of the basic objectives of the project but could avoid or lessen one or more significant environmental effects. 14 C.C.R. §15126.6. The Draft EIR analyzes one solar generation facility action alternative and one no action alternative, and two gen-tie alternatives. Refer to Draft EIR, Chapters 2.0 and 6.0. In addition, in response to stakeholder input, the Applicant has proposed, and the County incorporated in the Final EIR, an additional reduced size solar generation facility action alternative, that would further reduce project impacts and is located entirely within the scope and footprint of the proposed solar generation facility. Refer to Chapter 1.0, Chapter 2.0, Introduction, 2.0 (pages 2.0-3 and 2.0-4) and Chapter 4.0, Errata of this Final EIR.

As noted in Chapter 4.0, Errata of this Final EIR, the Reduced Size Solar Generation Facility Alternative would not result in any new substantial environmental impact or substantial increase in the severity of an environmental impact, constitute a feasible alternative that would lessen the environmental impacts of the project but which the Applicant declines to adopt, or render the Draft EIR so fundamentally and basically inadequate and conclusory in nature that public comment was in effect meaningless, such that recirculation would be required pursuant to CEQA. See Pub. Res. Code §21092.1; 14 C.C.R. §15088.5.

Response to Comment 8-14: The comment states that the comments have been prepared with the assistance of expert wildlife biologist Scott Cashen, M.S., and an expert hydrologist Matt Hagemann, P.G, C.Hg.

The comment goes on to state that LIUNA supports the development of renewable energy production and that such projects should avoid impacts to sensitive species and habitats and should be sited in proximity to electricity consumers to reduce the costs and impacts associated with new transmission corridors. Comment noted.

The comment does not raise environmental issues, or question the sufficiency of the environmental analysis in the Draft EIR; therefore, no further response is required. Cal. Pub. Res. Code §21091(d)(2)(B); 14 C.C.R. §§15088(c), 15132(d), 15204(a). Responses to comments by Messrs. Cashen and Hagemann are addressed as part of Response to Comments 8-56, 8-98, 8-102, 8-104, and 8-78, 8-84, 8-85, 8-89, respectively.

Response to Comment 8-15: The comment states that Campo Verde Solar Project is part of approximately 23,800 acres currently undergoing conversion to solar development in Imperial County. The comment asserts that the Draft EIR fails to acknowledge the mass conversion of land and instead narrows the discussion of farmland conversion to projects within 15 miles of the project site. The comment concludes that the project will convert more than 1,850 acres of productive agricultural land which produces food, fibers and degrade the rural, agricultural and natural character of Imperial Valley permanently. To the extent this comment purports to summarize the project description in the Draft EIR, the comment does not raise environmental issues, or question the sufficiency of the environmental analysis in the Draft EIR; therefore, no

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further response is required. Cal. Pub. Res. Code §21091(d)(2)(B); 14 C.C.R. §§15088(c), 15132(d), 15204(a).

The comment that the Draft EIR “impermissibly narrows the discussion [of] [sic] farmland conversion to projects within 15 miles of the project site,” is incorrect. As a general matter, an EIR must discuss cumulative impacts when they are significant and the project’s incremental contribution is “cumulatively considerable.” 14 Cal. Code Regs. 15130(a). A project’s incremental contribution is cumulatively considerable if the incremental effects of the project are significant “when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probably future projects. 14 Cal. Code Regs. 15065(a)(3).

As to the geographic scope of the cumulative impacts analysis, no fixed standards apply, and the County has discretion to apply its expertise in selecting an appropriate assessment area. *See City of Long Beach v. Los Angeles Unified Sch. Dist.*, 176 Cal.App. 4th 889 (2009); *see also Ebbetts Pass Forest Watch v. Dep’t of Forestry & Fire Protection*, 123 Cal.App. 4th 1331, 1352 (2004) (upholding agency’s determination that using overly expansive cumulative impact assessment area for biological impacts would dilute project’s impacts to the point that they could not be recognized). The EIR should provide an explanation supported by evidence for the geographic area used in the analysis. 14 Cal. Code Regs. 15130(b)(3); *City of Long Beach*, 176 Cal.App. 4th at 907. Courts will defer to the agency’s definition of an appropriate area for assessing cumulative impacts if the record shows a reasonable basis for it. *Ebbetts Pass*, 123 Cal.App. 4th at 1352.

The Draft EIR selected the Imperial Valley within Imperial County as the geographic scope for evaluating cumulative impacts to agricultural resources. The Draft EIR states in pertinent part on page 4.9-17 that:

“The geographic scope for cumulative impacts to agricultural resources is the Imperial Valley located in Imperial County. The Imperial Valley Agricultural Complex consists of approximately 500,000 acres of more-or-less contiguous farm fields located in the Imperial Valley and surrounded by desert and mountain habitat. The Imperial Valley Agricultural Complex comprises approximately 17 percent of the County’s 2,942,080 acres (County of Imperial, 1996). Approximately 540,942 acres of the County are designated as farmland under the FMMP (DOC, 2011, p. 32).”

This geographic scope is reasonable. The Imperial Valley contains over 90 percent of the agricultural land in Imperial County, and the agricultural land in the Imperial Valley is nearly contiguous throughout. Thus, the Imperial Valley is the heart of agricultural activity in Imperial County and is where cumulative impacts would be felt most acutely.

As to the comment that the conversion of agricultural land is permanent, please see Response to Comment 8-5.

Response to Comment 8-16: This comment purports to summarize the Project Description in the Draft EIR. The comment does not raise environmental issues, or question the sufficiency of the environmental analysis in the Draft EIR; therefore, no further response is required. Cal. Pub. Res. Code §21091(d)(2)(B); 14 C.C.R. §§15088(c), 15132(d), 15204(a).

Response to Comment 8-17: The comment provides details from the Project Description regarding transmission structure site clearance. The comment does not address the adequacy of the

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analysis and no further response is required. To the extent this comment purports to summarize the project description in the Draft EIR, the comment does not raise environmental issues, or question the sufficiency of the environmental analysis in the Draft EIR; therefore, no further response is required. Cal. Pub. Res. Code §21091(d)(2)(B); 14 C.C.R. §§15088(c), 15132(d), 15204(a).

In addition, the commenter's claim that the redistribution of excavated soils on BLM land and the disposition of the excavated soils offsite could have environmental impacts is speculative and not supported by substantial evidence.

Nevertheless, the Draft EIR describes the measures that the Applicant will use to restore temporarily disturbed areas on page 2.0-44. In particular, the construction area would be restored per BLM requirements. In addition, excavated soil would be redistributed to areas on BLM land that will be disturbed by project activities, such as on existing access roads, to the extent authorized by BLM. To the extent that soil may not be redistributed on BLM land, the disposal of soil offsite would consist of utilizing the soil at the solar generation facility site for such purposes as grading.

Response to Comment 8-18: The comment notes that the project is expected to be constructed over a period of up to 24 months and provides details regarding construction as quoted from the Project Description of the Draft EIR. The comment does not raise environmental issues, or question the sufficiency of the environmental analysis in the Draft EIR; therefore, no further response is required. Cal. Pub. Res. Code §21091(d)(2)(B); 14 C.C.R. §§15088(c), 15132(d), 15204(a).

Response to Comment 8-19: The comment states that the impacts on the BLM lands are unclear, in part, because rare plant and adequate breeding and wintering bird surveys were not conducted at the time of the release of the Draft EIR. To the extent that this comment purports to summarize part of the project description in the Draft EIR, the comment does not raise environmental issues, or question the sufficiency of the environmental analysis in the Draft EIR; therefore, no further response is required. Cal. Pub. Res. Code §21091(d)(2)(B); 14 C.C.R. §§15088(c), 15132(d), 15204(a). The comment regarding rare plant and bird surveys is addressed in Response to Comment 8-7.

Response to Comment 8-20: The comment notes that the Draft EIR indicates that the site will be reclaimed for use as agricultural land, but an Agricultural Reclamation Plan is not included in the Draft EIR. To the extent that this comment purports to summarize part of the project description in the Draft EIR, the comment does not raise environmental issues, or question the sufficiency of the environmental analysis in the Draft EIR; therefore, no further response is required. Cal. Pub. Res. Code §21091(d)(2)(B); 14 C.C.R. §§15088(c), 15132(d), 15204(a).

The Draft EIR states that an Agricultural Reclamation Plan to return the site to its current agricultural condition must be submitted to the County for review and approval prior to the issuance of an occupancy permit for the Project's Operations and Maintenance Building, as provided in mitigation measure MM 4.9.1b. See Response to Comments 8-29 and 8-32.

Response to Comment 8-21: The commenter asserts that economic impacts should be discussed in the Draft EIR because (1) economic impacts are tied to impacts on the rural and agricultural character of the County, preservation of which is required by the General Plan and (2) the General Plan only permits conversion of agricultural lands to non-agricultural uses where a long

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term economic benefit can be demonstrated (i.e., a net gain over current and future agricultural uses). Please refer to Response to Comments 8-4 and 8-5.

Response to Comment 8-22: The comment asserts that the project alone, as well as on a cumulative level will have extensive, significant impacts with regard to converting agricultural land to non-agricultural uses. Please refer to Response to Comment 8-4.

Response to Comment 8-23: The comment states that Local 1184’s headquarters is located immediately adjacent to the proposed project site. The comment expresses concern that Local 1184 members in the area will be affected by traffic, air pollution, and water pollution generated by the project. The comment does not raise environmental issues, or question the sufficiency of the environmental analysis in the Draft EIR; therefore, no further response is required. Cal. Pub. Res. Code §21091(d)(2)(B); 14 C.C.R. §§15088(c), 15132(d), 15204(a).

Response to Comment 8-24: The comment asserts that construction workers will suffer adverse affects from the project such as exposure to air pollution emissions from poorly maintained or controlled construction equipment, possible risks related to hazardous materials on the project site, and risks from Valley Fever, and other impacts. The comment expresses concern that public health impacts be mitigated to the fullest extent feasible.

None of the comments are substantiated with supporting evidence. Construction equipment would be required to use alternative fuel or be catalyst equipped and idling time would be minimized as identified in MM 4.4.1c (Draft EIR, page 4.4-19). The reader is also referred to Response to Comment 8-79 and 8-80 regarding a discussion of exposure to other hazards (e.g. contaminated soils/hazardous substances).

Valley Fever was discussed on page 4.0-14 of the Draft EIR. As noted in the text, “Imperial County has a relatively low Valley Fever incidence rate of 0.1 to 5 cases for every 100,000 people (CDPH, 2009).” It should also be recognized that the proposed project is located on disturbed agricultural land that is actively farmed. While the discussion in the Draft EIR acknowledges that conditions in the Imperial Valley are conducive to the occurrence of Valley Fever spores, construction of the proposed project is not anticipated to increase exposure to Valley Fever. Temporary disturbance of the topsoil during construction would be no greater than the annual disturbance of topsoil that currently occurs in association with existing agricultural activities. In addition, page 4.0-18 of the Draft EIR states “implementation of MM 4.4.1a, MM 4.4.1b, and MM 4.4.1c identified to reduce PM₁₀ in Section 4.4, Air Quality would be effective in reducing airborne dust. Implementation of these mitigation measures, as well as a dust control plan as required by the Imperial County Air Pollution Control District, would minimize the spread of fungal spores thereby reducing potential for contracting Valley Fever during construction. No impacts associated with exposure to Valley Fever would occur during operations and maintenance as the applicant intends to apply a dust palliative to suppress fugitive dust during the operational phase of the project.”

Response to Comment 8-25: The comment includes quotes from several CEQA cases as well as the CEQA Guidelines in describing the purposes of CEQA. This comment does not specifically address the adequacy of the environmental analysis of the Draft EIR. This comment is noted.

Response to Comment 8-26: The comment describes “abuse of discretion” citing several court cases that address this issue. This comment does not specifically address the adequacy of the environmental analysis of the Draft EIR. This comment is noted.

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Response to Comment 8-27: The comment states that the Draft EIR incorrectly concludes that the project is consistent with the General Plan and asserts that proposed solar farm is forbidden by the General Plan's Land Use and Agriculture Elements. The comment also contends that the project would need a General Plan Amendment and that the project would be incompatible with continuing agricultural production.

The project's consistency with the Imperial County General Plan has been previously analyzed. Refer to Response to Comment 8-3. This comment also asserts that due to the alleged inconsistency with the Imperial County General Plan, the County would be exceeding its authority if it issued the conditional use permit (CUP) required for the project. The comment refers to *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal. App. 3d 1176, 1184, to support its assertion. In that case, the County of Calaveras approved a CUP for a proposed project, but the County of Calaveras did not have a valid General Plan (i.e., the General Plan was determined not to be in compliance with State law). This, in turn, invalidated Calaveras County's issuance of a CUP for the project because a CUP must be based on a valid General Plan. The circumstances regarding the *Neighborhood Action Group v. County of Calaveras* case are not applicable to this project. Unlike the "*Neighborhood*" case, the County of Imperial's General Plan meets State requirements and is legally valid. As such, no defect exists as it relates to the County's authority to issue a CUP for the proposed solar generation project, consistent with the underlying zoning designations within the project site.

Development of the solar facility is subject to the County's Land Use Ordinance. Pursuant to Title 9, Division 5, Chapter 8, "Solar energy electrical generator," "Electrical power generating plant," "Major facilities relating to the generation and transmission of electrical energy," and "Resource extraction and energy development," are uses that are permitted in the A2 zone subject to approval of a CUP from the County of Imperial. Additionally, development of the solar facility is subject to the County's Land Use Ordinance. Pursuant to Title 9, Division 5, Chapter 9, "Solar energy plants" is a use that is permitted in the A-3 zone subject to approval of a CUP from the County of Imperial.

One of the Court's primary considerations in the "*Neighborhood*" case was whether the County of Calaveras had the authority to issue a CUP if it had failed to adopt a general plan containing elements, required by state law, which are relevant to the uses authorized by the permit. The County of Imperial's General Plan Land Use Element recognizes solar energy (an alternative form of energy) as being consistent with the County's overall goals and energy policies. With the approval of all CUPS, Variances and discretionary permits, the proposed project would be an allowable use within the existing land use and zoning designations for the site. The County of Imperial's General Plan Land Use Element also recognizes other allowable renewable energy types such as wind driven electrical generation, geothermal, and bio-mass energy. In addition, the County of Imperial's General Plan recognizes facilities for the transmission of electrical energy.

As summarized in the Goals and Objectives of the Geothermal and Transmission Element of the Imperial County General Plan (Goal 1), "The County of Imperial supports and encourages the full, orderly, and efficient development of geothermal/alternative energy resources while at the same time preserving and enhancing where possible agricultural, biological, human, and recreational resources..." The Geothermal and Transmission Element of the Imperial County General Plan further states (Objective 1.1), Design for the co-location of energy facilities through the designation of "energy park" zones to increase certainty and facilitate power generation development and to provide for efficient use of land resources..." Similar to the permitted uses

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(solar energy plants) under Section 90508.02 of the Land Use Ordinance, which identifies the permitted and conditional uses within the A-2 zoning designation, the County Land Use Ordinance (Section 91701.09) includes the Geothermal Overlay ("G") Zone which permits minor geothermal projects and wells; and, by Conditional Use Permit, allows major and intermediate geothermal projects, geothermal test facilities, and major geothermal exploratory wells. As such, the proposed solar project and other renewable energy projects would promote Imperial County's renewable energy policies, similar to other forms of renewable energy, and would be consistent.

Response to Comment 8-28: The comment asserts that the project's inconsistencies with the Imperial County General Plan result in significant impacts. The project's consistency with the Imperial County General Plan has been previously analyzed. Refer to Response to Comment 8-3. The County agrees with the comments regarding the importance of the General Plan to land use planning in the County. As explained in Response to Comment 8-3, the County is fulfilling its obligation to ensure that the project is on balance consistent with the General Plan.

The comment, however, asserts if there is an inconsistency with any applicable provision of the General Plan, there must be a finding of a significant impact. The comment relies on CEQA Guidelines Appendix G, Item 6 and §15125(d) to support its erroneous conclusion. [There is no "Item 6" of Appendix G that addresses this question. The commenter is likely referring to Item X of the Appendix G Checklist, which also serves as a significance criterion for land use impacts. See Draft EIR, Section 4.2, page 4.2-22.

The commenter is misconstruing that §15125(d) requires an analysis of consistency between the project and the General Plan be provided in the Environmental Setting. The Draft EIR correctly notes that "[w]hile this EIR analyzes the project's consistency with the General Plan pursuant to CEQA Guidelines §15125, the Imperial County Board of Supervisors ultimately determines on balance whether the project is overall consistent with the County's General Plan." As stated in Response 7.3, "[a] project is consistent with the General Plan if, considering all aspects, it will further the objectives and policies of the General Plan and not obstruct their attainment." The Draft EIR satisfies this requirement in Land Use-Section 4.2-Environmental Setting. See Draft EIR Table 4.2-2, pages 4.2-6 to 4.2-14 (County General Plan) and Table 4.2-3, pages 4.2-18-4.2-20 (regional plans).

The comment correctly notes that the significance criteria in Section 4.2, Land Use of the Draft EIR for land use impacts is a "conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect." (CEQA Guidelines, Appendix G, Item X(b)). The comment cites four cases as examples of courts finding that inconsistencies with the General Plan result in significant impacts under CEQA. However, none of these cases result in a court finding that the inconsistency was a significant project-specific impact that needed to be mitigated under CEQA.

In *Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359, 1416, the court found that a project that was within the level of traffic impacts permitted under the City's General Plan could still be considered to have significant impacts in a project-specific EIR. Here, there are no quantitative General Plan standards that apply to the temporary conversion of agricultural land. In *Oro Fino Gold Mining Corp. v. Co. of El Dorado* (1990) 225 Cal. App. 3d 872, 881-882, the alleged inconsistency with the General Plan was a basis for requiring an EIR to evaluate the project's

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environmental impacts, as opposed to being used to find that an inconsistency with the General Plan was a project-specific impact. In *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal. App. 4th 777, 783-784; the court addressed the inconsistency of a specific plan amendment with the General Plan. There is no specific plan proposed here. Lastly, in *County of El Dorado v. Dept. of Transp.* (2005) 133 Cal. App. 4th 1376 the court found the project's consistency analysis invalid because El Dorado County's General Plan was invalid (See also *Neighborhood* case cited in Response to Comment 8-27). Of particular note, in *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal. App. 3d 1416, the court stated that "CEQA nowhere calls for evaluation of the impacts of a proposed project on an existing general plan; it concerns itself with the impacts of the project on the environment, defined as the existing physical conditions in the affected area."

Response to Comment 8-29: The comment states that the Draft EIR's assertion that the elimination of agricultural activities is temporary is erroneous. The characterization of the solar farm use as temporary has been previously discussed and is supported by substantial evidence. Refer to Response to Comment 8-5.

The comment further asserts that the site will be permanently altered by the project and thus cannot be returned to productive agricultural use. However, the Reclamation Plan requires engineering cost estimates and bonding or financial assurance of those costs so that at the end of 40 years, the soils can be reclaimed. The commenter's assertion that the County's agricultural economy will be depressed after 40 years, thus negating the possibility for productive agricultural use, is speculative and not supported by substantial evidence.

The comment erroneously claims that there is no required reclamation for the project. See Response 8-28 and Mitigation Measure 4.9.1b. In asserting that the reclamation plan must be part of the CEQA document, commenter relies on, *Citizens For Responsible Equitable Envel Dev. v. City of Chula Vista* (2011) 197 Cal. App. 4th 327. However, that case was about whether mitigation measures in a Mitigated Negative Declaration were effective enough to avoid a fair argument that an EIR was required for the project. This case does not require that failure to include a mitigation plan in an EIR renders the impact significant and unavoidable.

The comment states that the Draft EIR's assertion that the elimination of agricultural activities is temporary is erroneous. The comment also states that the Draft EIR contains no reclamation plan explaining how, after 40-years, the land could be restored to agricultural use.

The Draft EIR identifies mitigation measures MM 4.9.1a and MM 4.9.1b to address the proposed project's effects on farmland. These measures require selection of one four options: acquire an agricultural conservation easement (1:1 basis for non-prime farmland; 2:1 basis for prime farmland); pay an "Agricultural In-Lieu Mitigation Fee"; enter into a voluntary Public Benefits Agreement; or revise the CUP Application/Site Plan to avoid Prime Farmland (Draft EIR, pages 4.9-14 and 4.9-15).

Thus, while the proposed project will cause the project parcels to be unavailable for agricultural production during construction and the operational life of the project, this temporary loss is mitigated to a less than significant level with implementation of the mitigation measures. These measures will ensure that opportunities for active agriculture production in the County continue be available, supported, and promoted even with development of the project. MM 4.9.1b requires the Applicant to prepare a Reclamation Plan to return the site to its current agricultural condition. The Plan must be submitted prior to issuance of a grading permit. Further, MM

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4.9.1b requires that financial assurance/bonding in the amount equal to the site reclamation cost estimated to return the land to its current agricultural condition be provided by the Permittee (Draft EIR, page 4.9-15). Lastly, the project site would remain designated as “Agriculture” and the existing zoning of A-2, A-2-R and A-3 would not be changed. Therefore, the loss of farmland on the project parcels is considered temporary.

Response to Comment 8-30: The comment asserts that the Draft EIR impermissibly narrows the scope of projects considered for cumulative impacts to those projects within 10 miles of the site. The comment quotes several court cases that deal with cumulative impacts.

The County agrees with the comment’s recitation of the CEQA Guidelines applicable to cumulative impacts. However, the comment erroneously asserts that the 10 mile radius selected for assessing cumulative land use impacts results in an inadequate cumulative impact analysis.

The comment incorrectly asserts that the Draft EIR “impermissibly narrows the discussion [of] [sic] farmland conversion to projects within 10 miles of the project site”. As a general matter, an EIR must discuss cumulative impacts only when they are significant and the project’s incremental contribution is “cumulatively considerable.” (CEQA Guidelines §15130(a)). A project’s incremental contribution is cumulatively considerable if the incremental effects of the project are significant “when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probably future projects. (CEQA Guidelines §15065(a)(3)).

As to the geographic scope of the cumulative impacts analysis, no fixed standards apply, and the County has discretion to apply its expertise in selecting an appropriate assessment area. See *City of Long Beach v. Los Angeles Unified Sch. Dist.*, 176 Cal. App. 4th 889 (2009); see also *Ebbetts Pass Forest Watch v. Dep’t of Forestry & Fire Protection*, 123 Cal. App. 4th 1331, 1352 (2004) (upholding agency’s determination that using overly expansive cumulative impact assessment area for biological impacts would dilute project’s impacts to the point that they could not be recognized). The EIR should provide an explanation supported by evidence for the geographic area used in the analysis. 14 Cal. Code Regs. 15130(b)(3); *City of Long Beach*, 176 Cal. App. 4th at 907. Courts will defer to the agency’s definition of an appropriate area for assessing cumulative impacts if the record shows a reasonable basis for it. *Ebbetts Pass*, 123 Cal. App. 4th at 1352.

The Draft EIR describes the geographic scope of the cumulative land use impact analysis on page 4.2-26 as follows:

“The geographic scope for the analysis of cumulative impacts related to land use is the area within a 10-mile radius of the project site. This distance was determined based on capturing projects within a reasonable distance of the project site. The cumulative setting for land use includes buildout of the approved, proposed and reasonably foreseeable projects as identified in Table 3.0-1.”

Further support for the election of the 10 mile radius is provided on page 4.2-27 of the Draft EIR. While additional solar projects are further north in the county (to the south and southeast of the Salton Sea), there is an intervening area of approximately 20 to 25 miles separating the proposed project from these sites. Based on this large gap, and the fact that multiple solar projects were located in proximity to the project site in the southern portion of the county, a 10-

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mile radius was considered a reasonable distance for capturing cumulative projects relative to land use.

Thus, this geographic scope is reasonable and based on substantial evidence. Land use impacts are more localized than the impacts to other resources. Based on the significance criteria used to assess impacts—whether a community is physically divided or there is a conflict with a General Plan policy or regulation or with applicable habitat conservation plans-- there is no basis under CEQA to expand the geographic scope for cumulative land use impacts beyond the 10-mile radius. If any cumulative land use impacts would arise, they would be within this area of the County, rather than an area more than 10 miles away (e.g., Brawley).

Response to Comment 8-31: The comment states that Draft EIR’s restriction of its cumulative impacts analysis to land uses within ten miles of the project is overly restrictive. This issue was previously discussed. Refer to Response to Comment 8-30 with respect to the selection of the 10 mile radius as the geographic scope of cumulative impacts.

The comment asserts that using only solar energy projects in the list-based approach to cumulative impact analysis results in an inadequate cumulative impacts analysis. CEQA upholds an approach if it is based on substantial evidence. CEQA Guidelines §15130(b)(2) provides that “when utilizing a list, . . . factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a particular air pollutant or mode of traffic.”

Here, the Draft EIR concluded that solar projects are different than other non-agricultural projects (like residential or commercial development) in that they require land amounts of land, need to be located distant from urban areas, require little water and a high level of solar insolation. Based on these unique characteristics of solar farms, the cumulative land use impacts would be most conservatively assessed by including only other solar projects located in close proximity to the project site (Refer to Draft EIR page 4.2-27).

In support of its assertion that the type of projects and area of inclusion should be expanded, the comment cites potential impacts to “urban decay, [and] water flows to the Salton Sea. . .” The commenter offers no substantial evidence of the likelihood of those impacts. The comment is thus speculative. The comment further notes that there are cumulative impacts to loss of habitat and agricultural land that should be assessed. The Draft EIR examines cumulative impacts to agriculture on pages 4.9-17 to 4.9-20; cumulative impacts to loss of habitat are discussed on pages 4.12-89 to 4.12-94.

Response to Comment 8-32: The comment states that the proposed mitigation measures rely on unenforceable, vague and deferred mitigation measures.

The comment erroneously asserts that the Draft EIR is “deferring the formulation of mitigation measures to post-approval studies.” The “studies” the comment asserts are being improperly deferred include plans adopted for mitigation of impacts to agriculture. CEQA permits an EIR to contain mitigation measures that require preparation of a more precise mitigation plan after certification of the EIR, provided that practical considerations make it difficult to develop the plan at the EIR stage and the agency “commits to eventually devising measures that will satisfy specific performance criteria articulated at the time of approval.” *Sacramento Old City*

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Association v. City Council, 229 Cal. App. 3d 1011, 1028-29 (1991). Section 15126.4(a)(1)(B) of the CEQA Guidelines provides that “Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.” CEQA case law provides that an agency may properly defer formulation of the specifics “where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan.” *Defend the Bay v. City of Irvine*, 119 Cal. App. 4th 1261, 1274-75 (2004); *see also San Joaquin Raptor v. County of Merced*, 149 Cal. App. 4th 645, 669 (2007) (deferral appropriate pending further study for kinds of impacts for which mitigation is known to be feasible so long as the mitigation measure describes the options that will be considered and identified specific and mandatory performance standards). This situation occurs when it is impractical to identify the specifics of the measure at an early stage of approval (e.g., CUP), and can be handled by specifying performance criteria and further approvals are made contingent on finding a way to meet those criteria (e.g., construction permits).”

For example, the Reclamation Plan required as mitigation measure MM 4.9.1b, which the comment characterizes as “tentative”, has “specific, feasible means of mitigation, and includes “specific performance criteria“ that will govern implementation of the mitigation measure after CUP approval. *Sacramento Old City Ass’n v City Council* (1991) 229 CA3d 1011, 1029. The Reclamation Plan’s specific standards include preparation of a reclamation plan by civil engineers detailing the procedure for reclamation, and financial assurance that the panels will be removed including a cost estimate for returning the site to its current agricultural condition. To ensure performance of the Reclamation Plan, the mitigation measure requires the project sponsor to either put up a bond or provide some other form of assurance that the funds are available for reclamation in 40 years. In addition, the project sponsor must do all of this prior to the issuance of a grading permit or building permit (whichever is issued first).

Refer also to Response to Comments 8-7 and 8-10.

Response to Comment 8-33: The comment asserts that mitigation measure Mitigation Measure MM 4.9.1 which prescribes purchase of conservation easements, payment of in-lieu fees, or executing a Public Benefit Agreement, constitutes deferred mitigation. The comment erroneously characterizes the imposition of a conservation easement under MM 4.9.1 as impermissible deferred mitigation. The comment states that “conservation easements do not replace the loss of farmland” because “the easements would be secured on land that is already in agricultural production and, ostensibly, protected from conversion and development by the” Imperial County General Plan. However, a conservation easement is more permanent protection than the Imperial County General Plan, since the Imperial County General Plan can be changed by the County Board of Supervisors or the voters by initiative whereby a conservation easement is in perpetuity. Moreover, a conservation easement has clearly defined standards and is an enforceable legal document that can be enforced by the County. If the purposes of the easement are not being satisfied, the County can bring a legal action to compel compliance.

Response to Comment 8-34: The comment asserts that the payment of an agricultural in-lieu fee pursuant to Mitigation Measure 4.9.1a is inadequate. Assessment of a fee is an appropriate form of mitigation when it is linked to a specific mitigation program. *Anderson First Coalition v. City of Anderson* (2005) 130 Cal. App. 4th 1173. Here, the County has a mitigation fee program for preservation of County land that is to be administered by the County Agricultural

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Commissioner's office. Mitigation Measure MM 4.9.1a restricts expenditure of the mitigation funds to acquisition, preservation, and enhancement of agricultural lands in Imperial County. The restriction of funds collected pursuant to the fee to acquire, enhance and/or preserve agricultural lands will result in protection of additional agricultural land from development.

The comment's assertion that the fees will not be expended is speculative. Once there are adequate fees collected, subject to the measure's restriction, there is no basis to conclude that the Agricultural Commissioner would not expend the funds to satisfy the mitigation measure. The comment's assertion that payment of the fee would not reduce impacts is speculative and not supported by substantial evidence

Response to Comment 8-35: The comment contends that the Public Benefit Agreement constitutes deferred mitigation for loss of agricultural land. The Public Benefit Agreement is not deferred mitigation because it contains standards governing the expenditure of the fee. Those standards are directly related to the preservation of agricultural land. That the Agreement is not part of the EIR does not render it deferred mitigation. As stated in Response 8-32, as long as there are performance standards for implementation of a mitigation measure, the measure is not deferred. Here, the Resolution contains guidelines for implementation of the Public Benefit Agreement and restrictions on expenditure of the fee collected (Resolution No. 2012-005). This renders the mitigation feasible and effective.

Response to Comment 8-36: The comment states that the Draft EIR must be revised to include a discussion of consistency with applicable plans and identify appropriate mitigation measures. Response to Comment 8-3 discusses consistency of the project with applicable plans. The Draft EIR's conclusions as to the significance of impacts and the recommendation of mitigation measures is supported by substantial evidence. The comment seeking revision is not supported by substantial evidence.

Response to Comment 8-37: The comment states that the project is inconsistent with the Agricultural Element of the General Plan. Response to Comment 8-3 discusses the consistency of the project with the Agriculture Element of the General Plan. Response to Comment 8-2, 8-3, 8-4, 8-5, 8-27 and 8-29 address the temporary nature of the project's conversion of agricultural land. These same responses are applicable to the comment's assertion that "the conversion of agricultural lands to non-agricultural uses is a fundamental change in the land use, aesthetic, and environmental character of the county, with significant adverse environmental impacts."

The County agrees with the Agricultural Element's comments regarding the role agriculture plays in the County's economy. However, any statements in the Agricultural Element with respect to future impacts are not considered substantial evidence and are speculative.

Response to Comment 8-38: The comment erroneously asserts that an economic analysis would be required in the record to comply with CEQA. The commenter bases its assertion on the provision in the Agricultural Element that "farmland can be converted to non-agricultural, solar development is where a 'clear long term economic benefit' over and above the benefit of agricultural use is demonstrated" citing p. 39 of the Imperial County General Plan Agricultural Element. However, the commenter confuses inclusion of economic analysis in the CEQA record with economic analysis satisfying the Agricultural Element language. CEQA narrowly limits the inclusion of social and economic impacts in an EIR. CEQA Guidelines §15131. Moreover, CEQA allows economic analysis in the administrative record only if the basis for infeasibility, and thus

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rejection of a mitigation or alternative, is economic. Refer to CEQA Guidelines §15091(a)(3) and 15364.

The County did prepare a Fiscal and Economic Impact Analysis (FEIA), independent of the EIR. However, consideration of the economic benefits of the conversion of agricultural land as may be set forth in the FEIA, has no bearing on the adequacy of the EIR.

Response to Comment 8-39: The comment identifies the Goal and objectives from the Agricultural Element of the General Plan regarding preservation of important farmland. The comment goes on to state that the project violates this goal and objectives. These issues have been previously addressed. Refer to Response to Comments 8-3 and 8-28.

Response to Comment 8-40: The comment states that the project violates Goal 2 and associated objectives of the Agricultural Element which prohibits leapfrogging. The comment also asserts that distributed generation would site solar generation facilities in urban areas and protect productive farmland. Both issues have been previously addressed. Refer to Response to Comments 8-3 and 8-28 with regards to consistency with the General Plan; refer to Response to Comment 8-113 with regards to the distributed generation alternative.

The issue of "leapfrogging" or "checkerboard" is discussed in on page 17 of the Imperial County General Plan Agricultural Element (Section II. D, Existing Conditions and Trends). It states: "An increase in "leapfrogging" or "checkerboard" patterns of residential and other development on agricultural land outside of existing urban boundaries."

The Agricultural Element goes on to define "leapfrogging" or "checkerboard" development in terms of residential use as follows:

"Leapfrogging or "checkerboard" patterns of development occur when new subdivisions and other land uses are constructed in the midst of agricultural land near a city or rural community. Agricultural fields typically become bounded by new residential or urban land uses, and often become isolated as they are cut off from existing farmland. This isolation or stranding of fields leads to several major problems relating to agricultural operations including irrigation, the application of pesticides and other chemicals by aerial spraying and other means, and access by tractors, trucks and other farm equipment. Eventually, these fields become too small or circumscribed by other land uses to be economically or conveniently farmed." (Agricultural Element, page 18).

Leapfrogging has increased in the past few years and is a major concern of farmers. Agricultural uses of the type practiced in Imperial County, as opposed to "gentry farming" common in other Southern California communities, are not compatible with residential uses. When a leapfrog residential development is allowed to occur, this inherent incompatibility creates land use conflicts on all four sides of the new development. Inevitably, farming loses out and residential expands to create new boundaries of conflict.

The project is not a residential use. It does not result in leapfrogging. The analyses of the project's consistency with Policy 2 of the Agricultural Element in Table 4.9-1 is based on the facts that the project will not increase infrastructure necessary to support residential or other more intense urban development.

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Response to Comment 8-41: The comment asserts that the 10-mile radius is too narrowly defined and disputes the project’s 40-year tenure as being deemed “temporary.” These issues have been previously addressed. Refer to Response to Comments 8-5, 8-29m 8-30 and 8-31 regarding comments on the geographic scope for cumulative impact analysis and the characterization of the project as temporary with respect to its impacts. With respect to the assertion that there is no reclamation plan proposed, refer to Response to Comments 8-5 and 8-32.

The comment states that “Most projects have a useful life of 30-years or less.” The comment provides no substantial evidence in support of its assertion and is therefore speculative.

Response to Comment 8-42: The comment contends that the project is inconsistent with the Land Use Element of the General Plan. This issue has been previously addressed. Refer to Response to Comments 8-3, 8-27, 8-28 and 8-37.

Response to Comment 8-43: The comment states that the County is exceeding its legal authority in allowing a project inconsistent with the General Plan. Refer to Response to Comments 8-3 and 8-27.

Response to Comment 8-44: The comment asserts that the cumulative land use analysis is overly restrictive. This issue has been previously addressed. Refer to Response to Comments 8-5, 8-29, 8-30 and 8-31.

Response to Comment 8-45: The comment contends that the project is inconsistent with the Conservation and Open Space Element. Refer to Response to Comments 8-3 and 8-28 with respect to the project’s consistency with identified portions of the Conservation and Open Space Element. The Draft EIR relies on the fact that the site is already “disturbed land” to support the conclusion that the project is consistent with certain policies and objectives of this Element. Since the site is already impaired by agricultural use, there is less likelihood that it will support certain flora and fauna. This fact is substantial evidence. In contrast, the commenter provides no substantial evidence to supports its assertion; thus it is speculative.

Merely because the Imperial County General Plan states that “disturbed agricultural land” may have some value is not substantial evidence to show that the project site has any ecological value. A broad generalization in the Imperial County General Plan does not refute the substantial evidence in the EIR and its Appendices with regards to the conclusion that the site has limited ecological value because it is disturbed and cultivated land.

Response to Comment 8-46: The comment contends that there is no guarantee that the project lands will be returned to agricultural use. These issues have been previously addressed. Refer to Response to Comment 8-5 with respect to the comments on the characterization of the project as temporary. Refer to Response to Comments 8-5 and 8-29 regarding the restoration of the site’s agricultural use through Mitigation Measure MM 4.9.1b-Reclamation Plan. Refer to Response to Comment 8-32 with respect to comments on deferred mitigation.

The comment erroneously asserts that the Reclamation Plan should be subject to public review “in conjunction with the Draft EIR.” That is not required under CEQA. The public and decision makers have adequate opportunity to review and comment on the effectiveness and feasibility of mitigation measures, such as the Reclamation Plan, during the Draft EIR public review process and in hearings on project approvals. CEQA Guidelines §15126.4(a)(1) require that the EIR “shall identify mitigation measures for each significant environmental effect identified in the EIR.” The Draft EIR complies with this requirement. Furthermore, there is no requirement in CEQA that

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plans required as part of any mitigation measures be prepared prior to project approval. The Reclamation Plan, like other mitigation measures, is enforceable as part of the Mitigation and Monitoring Program, pursuant to CEQA Guidelines §15097(a) and as conditions of approval on the CUP.

§15097 describes the County's enforcement authority to ensure compliance with mitigation measures as follows. "In order to ensure that the mitigation measures and project revisions identified in the EIR are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects...and until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program." Under these provisions the County remains responsible for ensuring that mitigation measures, such as MM 4.9.1b are fully implemented as part of project implementation.

Response to Comment 8-47: The comment notes that the Draft EIR found the project consistent with Goal 4 of the Agricultural Element of the Imperial County General Plan but questions this finding in light of the project's 40-year duration. The reader is referred to Response to Comments 8-3 and 8-28 regarding determination and effect of consistency with the General Plan. With respect to the comment on the temporary nature of the project, refer Response to Comments 8-5 and 8-29. With regard to the comment that the Reclamation Plan is deferred mitigation, refer to Response to Comment 8-32.

The comment erroneously states that CEQA would preclude a project with a 40-year life from being considered temporary. Neither the CEQA statute (Public Resources Code 21000 et seq.) or the CEQA Guidelines include or make reference to a specific time period for when project life or its impacts are determined to be temporary. The comment lacks substantial evidence to support it and is speculative.

Response to Comment 8-48: The comment discusses Goal 7 of the Open Space Element and contends that Mitigation Measure MM 4.1.2 is deferred mitigation. Deferred mitigation has been previously addressed. Refer to Response to Comment 8-32. Section 4.1 states that "visual quality" is a measure of a landscape or view's visual appeal and can be somewhat subjective based on the individual viewer's preferences." Refer to Draft EIR page 4.1-8. Engaging the sensitive receptors who will be most affected by the change in visual quality in the means of reducing the significance of the impact in a manner that they find acceptable is not deferral. Mitigation Measure MM 4.1.2 has standards to determine whether the measure has been satisfied. These standards specify that "if vegetative screening is used, xeriscape plants shall be selected from the "Imperial County Xeriscape Guide and Map" and that "Initial xeriscape planting, if desired by the landowner, shall be the responsibility of the Applicant." To ensure ongoing compliance with this measure, it provides that "the landscape maintenance to check the health of the plants shall be performed by the landowner or Applicant, as needed and as determined by the agreement between the two parties". The fact that the owner chooses the means of screening based on their own subjective assessment of the visual quality and is obligated to maintain the screening pursuant to a contract, ensures that the measure will be implemented.

Response to Comment 8-49: The comment agrees with the Draft EIR's conclusion that the project conflicts with Goal 7 and Objective 7 of the Open Space Element of the General Plan and

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reiterates that Mitigation Measure MM 4.2.1 constitutes deferred mitigation. These issues have been previously discussed. Refer to Response to Comment 8-48.

Response to Comment 8-50: The comment contends that because the SWPPP was not included in the Draft EIR that it is deferred mitigation.

In general, CEQA permits an EIR to contain mitigation measures that require preparation of a more precise mitigation plan after certification of the EIR, provided that practical considerations make it difficult to develop the plan at the EIR stage and the agency “commits to eventually devising measures that will satisfy specific performance criteria articulated at the time of approval.” *Sacramento Old City Association v. City Council*, 229 Cal. App. 3d 1011, 1028-29 (1991). Section 15126.4(a)(1)(B) of the CEQA Guidelines provides that mitigation measures may specify performance standards that would mitigate a significant impact and that might be achieved in more than one way. CEQA case law provides that an agency may properly defer formulation of the specifics “where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan.” *Defend the Bay v. City of Irvine*, 119 Cal. App.4th 1261, 1274-75 (2004); *see also San Joaquin Raptor v. County of Merced*, 149 Cal. App.4th 645, 669 (2007) (deferral appropriate pending further study for kinds of impacts for which mitigation is known to be feasible so long as the mitigation measure describes the options that will be considered and identified specific and mandatory performance standards). This situation occurs when it is impractical to identify the specifics of the measure at an early stage of approval (e.g., CUP), and can be handled by specifying performance criteria and further approvals are made contingent on finding a way to meet those criteria (e.g., construction permits).

With respect to the specific comment that failure to include as SWPPP in the Draft EIR constitutes improper deferral of mitigation, refer to Response to Comment 8-108.

Response to Comment 8-51: The comment states that the Draft EIR offers an incomplete analysis of impacts to biological resources – particularly wildlife – because it consistently underestimates the value of cultivated farmland for wildlife. Contrary to the comment’s assertion, the Draft EIR fully documented both active and fallow agricultural areas as a distinct vegetation community which supports biological resources. Draft EIR, Section 4.12, page 4.12-9. The Draft EIR then fully analyzed impacts to biological resources, particularly wildlife, for all species that depend on cultivated farmlands, for specific example, Mountain Plover and Burrowing Owl. This analysis is addressed in the Draft EIR sections on impacts to individual species. *See, e.g.*, Draft EIR, Section 4.12, pages 4.12-67 to 4.12-68 (Mountain Plover); and page 4.12-69 (Burrowing Owl).

Response to Comment 8-52: The comment cites various sections of CEQA and various cases. No specific aspect of the Draft EIR is noted for consideration. No response is required.

Response to Comment 8-53: The comment references LIUNA’s expert consultants. The comment does not address the adequacy of the environmental analysis. No response is required.

Response to Comment 8-54: The comment states that the Draft EIR fails to adequately analyze impacts to biological resources and provide adequate mitigation.

The County agrees with the general proposition that mitigation measures calling for a mitigation plan to be devised based on future studies may be inadequate under CEQA if they do not describe the nature of the actions expected to be incorporated in the plan. *See Communities for a Better Env’t v. City of Richmond*, 184 Cal. App. 4th 70, 95 (2010). The County disagrees,

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however, with the broad assertion in this comment that the Draft EIR fails to assess impacts to wildlife, especially sensitive species, and native plants, or that the Draft EIR fails to set forth adequate standards for mitigation to address potential impacts to wildlife. Section 4.12 of the Draft EIR analyzed impacts to all biological resources based on known habitats and the surveys conducted in the area and, where necessary, sets forth specific mitigation measures. Contrary to the comment's assertion, this analysis did not suggest that approval of the project would result in the elimination of a fish or wildlife species or the potential that fish and wildlife populations would drop below self-perpetuating levels. Refer to Response to Comment 8-7.

Response to Comment 8-55: The comment states that the Draft EIR fails to adequately analyze impacts to Western Burrowing Owl. The comment states that the Draft EIR erroneously concludes that the mitigation measure for Western Burrowing Owl is inadequate because it is not supported by substantial evidence and includes uncertain and deferred mitigation measures. The proposed mitigation measures in MM.4.12.6a for Burrowing Owls were based on the *1995 CDFG Staff Report on Burrowing Owl Mitigation*, (Draft EIR, Section 4.12, pages 4.12-69 and 4.12-70). The 1995 Report was subsequently supplemented by the *2012 CDFG Staff Report on Burrowing Owl Mitigation* as the Draft EIR was being finalized and which CDFG later confirmed should be used to guide Burrowing Owl mitigation for this project. The 2012 Staff Report, published on March 7, 2012, is consistent with the 1995 Report. CDFG has deemed these mitigation measures, which were based on multiple years of Burrowing Owl surveys and analysis, adequate to reduce impacts to less than significant levels. The Burrowing Owl Mitigation and Monitoring Plan referenced at subpart (4) of MM 4.12.6a has been prepared pursuant to the 1995 and 2012 Staff Reports, and submitted to the CDFG for approval.

Response to Comment 8-56: The comment asserts that Burrowing Owl surveys were an incomplete/inadequate baseline for burrowing owl. The comment states that the commenter's expert (Mr. Cashen) was unclear whether Burrowing Owl surveys covered fallow fields within the project area. As noted in the Draft EIR, the entire project area, including fallow fields, was surveyed for Burrowing Owl. The Draft EIR analysis of impacts to burrowing owls incorporated data from Phase III breeding surveys for the entire project area – both the solar project survey area and the gen-tie corridors. Further data from subsequent breeding surveys conducted in the spring of 2012 have been incorporated as Appendices in this Final EIR (Refer to Appendix A – BTR with 2012 Spring Surveys, and Appendix B, revised Section 4.12, Biological Resources). Because the subsequent surveys demonstrate reduced potential impacts to Burrowing Owl than the potential impacts identified in the Draft EIR, this additional information does not constitute "significant new information" requiring recirculation under CEQA. See Cal. Pub. Res. Code §21092.1; 14 C.C.R. §15088.5. Refer also to Response to Comment 8-7.

Response to Comment 8-57: The comment states that the Draft EIR erroneously relies on outdated information in analyzing impacts to and mitigation measures for Burrowing Owl, citing the lack of reference to the 2012 CDFG Staff Report on Burrowing Owl Mitigation. Contrary to the comment's assertion, the 2012 Staff Report, issued March 7, 2012 as the Draft EIR was being finalized, does not undermine the Draft EIR's Burrowing Owl mitigation measure, which requires the development of a Burrowing Owl Mitigation and Monitoring Plan and takes into account current CDFG guidance, including the 2012 CDFG Staff Report on Burrowing Owl Mitigation. The resulting mitigation will be consistent with that report, and reference to the 2012 CDFG Staff Report is included in the Final EIR as a required component of Burrowing Owl mitigation.

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The required mitigation for Burrowing Owl displacement and habitat replacement set forth in CDFG's guidance constitutes the most appropriate methods to reduce impacts based on the most current scientific literature. These techniques are accepted as the most appropriate by the agencies, and are appropriately afforded deference by the County in this instance where CDFG – which serves as the trustee agency with regard to fish and wildlife of the state – has specifically adopted the measures through its guidance (14 C.C.R. §15386(a)).

Response to Comment 8-58: The comment states that Burrowing Owl Mitigation Measure MM 4.12 is inadequate because it does not identify a proposed ratio for mitigation or set forth performance standards. As noted in Response to Comment 8-57, the Draft EIR states that the Applicant must consult with CDFG to determine the amount and conditions of compensatory mitigation for foraging habitat lost as a result of project implementation, which is based on CDFG's applicable guidance (Draft EIR, page 4.12-71). Under CDFG's 1995 Staff Report on Burrowing Owl Mitigation, CDFG required that 6.5 acres of foraging habitat be permanently preserved contiguous with occupied burrow sites for each pair of breeding Burrowing Owls or single unpaired resident bird. See 1995 Staff Report, p. 6. Under CDFG's 2012 Staff Report on Burrowing Owl Mitigation, CDFG requires a site specific determination based on information referenced in CDFG's guidance, which set standards for CDFG's determination. See 2012 Staff Report, p. 11 and Appendix A to the Staff Report.

In conformance with this mitigation requirement, the applicant has prepared a Mitigation and Monitoring Plan, which proposes compensatory mitigation acreage in accordance with CDFG guidance. A copy of that Mitigation and Monitoring Plan, which is undergoing CDFG review, is referenced in both the Draft EIR and Final EIR.

Response to Comment 8-59: The comment states that the Draft EIR fails to assess the collision risks that arise from photovoltaic ("PV") panels and/or transmission lines, and the comment includes the unsupported statement that non-reflective panels present significant risks of collision due to their height and can cause twice the number of bird strikes that occur with conventional clear panels, which commenter fails to identify. The Draft EIR addresses avian collision risks, both in baseline and impact analyses, in several instances and specifically incorporates mitigation to address and minimize potential collision risk. See Draft EIR, pages 4.12-23, 4.12-63, 4.12-66, 4.12-67, 4.12-68, 4.12-72, 4.12-73, 4.12-91 and 4.12-92. Mitigation measures in the Draft EIR, including MM 4.12.2, address the collision risks posed to avian species by PV panels and transmission lines. For example, the Draft EIR calls for the Applicant to prepare and implement a Bird and Bat Conservation Strategy ("BBCS") that incorporates Avian Power Line Interaction Committee ("APLIC") design guidelines for overhead utilities as appropriate to minimize avian collisions with gen-tie line facilities. See Draft EIR, page 4.12-63. Moreover, no evidence was offered in support of this comment.

Response to Comment 8-60: The comment states that the Draft EIR fails to assess the potential impacts of installing the gen-tie towers on BLM land where they will serve as perches for predators of Burrowing Owls and other animals. The Draft EIR addresses potential predation impacts by avian predators associated with project facilities, focusing on species likely to be present on the BLM land where the gen-tie towers will be located. See Draft EIR, pages 4.12-68 and 4.12-71. Notably, no occupied Burrowing Owl burrows were observed within the full survey area on BLM land (Draft EIR, page 4.12-69). Moreover, Mitigation Measure MM 4.12.2 requires the development of a Raven Control Plan, which addresses the avoidance and minimization in potential increases in predation from new perches on potential prey species.

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Response to Comment 8-61: The comment states that Mitigation Measure MM 4.12.6 sets forth measures to avoid, minimize or mitigate impacts to Burrowing Owls which constitute inadequate and improperly deferred mitigation measures, citing that certain activities will be avoided “to the extent practicable.” The comment fails to properly reference the language in the Draft EIR which sets up a condition requiring either construction during the non-breeding season to avoid impacts or the imposition of specific mitigation measures if construction takes place during the breeding season. As set forth in MM 4.12.6a), initial grading and clearing within the project footprint shall take place to the extent practicable during the Burrowing Owl non-breeding season. However, in the event initial grading and clearing must occur during the breeding season, then measures 2 through 4 set forth in the measure shall be implemented (Refer to Draft EIR, page 4.12-70).

Construction of this project could take 12 to 24 months. As a result, there will be times when construction in proximity to burrows during the breeding season cannot be avoided. Hence, the use of “[t]o the extent practicable” in the description of the measure, and the inclusion of additional measures to be implemented if initial grading and clearing within the project footprint is to begin during the breeding season. See Draft EIR, page 4.12-70. This in no way makes MM 4.12.6 unenforceable, as is asserted in the comment. Indeed, if the mitigation measures are adopted for the project, the County will not be able to cancel them without reviewing the continuing need for them, stating its reasons for the change, and supporting its decision with substantial evidence. See *Katzeff v. Dep’t of Forestry & Fire Protection*, 181 Cal. App. 4th 601, 614 (2010).

Response to Comment 8-62: The comment states that the mitigation measure set forth in MM 4.12.6(a) requiring pre-construction surveys for Burrowing Owls within 30 days of construction is too long and should be revised to ensure a survey within 7 days of the initiation of construction and/or to demonstrate what period of time is scientifically supportable to ensure that owl nests are not taken as a result of construction. The pre-construction survey window of 30-days is derived directly from CDFG’s 1995 Guidance, which specifically states that “[p]reconstruction surveys of suitable habitat at the project site(s) and buffer zone(s) should be conducted within 30 days prior to construction to ensure no additional burrowing owls have established territories since the initial surveys.” (CDFG’s 1995 Staff Report on Burrowing Owl Mitigation, page 5). Subsequent to the publication of the Draft EIR, CDFG confirmed that the County should use CDFG’s 2012 Guidance with regard to Burrowing Owl mitigation. Pursuant to that guidance, and based on the agency’s field experience since 1995, CDFG will require that pre-construction detection surveys be completed no less than 14 days prior to initiating ground disturbing activities using its recommended methods. See CDFG Staff Report on Burrowing Owl Mitigation, Appendix D. Because the Applicant is required to comply with CDFG’s approval and guidance with regard to its Burrowing Owl Mitigation and Monitoring Plan, that requirement has been updated as part of the revised Section 4.12, Biological Resources included as Appendix B of this Final EIR.

Response to Comment 8-63: The comment states that the Draft EIR fails to provide credible scientific support that the Mitigation Measure’s provisions for displacement will mitigate for the loss of Burrowing Owl breeding habitat, and that the Draft EIR should be revised to assume that displacement is not a valid means of mitigation. The displacement mitigation measures are in fact based on the most current scientific literature and CDFG recommendations which, as noted elsewhere, were updated and are incorporated by reference in the Final EIR.

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Response to Comment 8-64: The comment states that the Draft EIR’s analysis of cumulative impacts to Burrowing Owls is inadequate, without identifying any particular inadequacy. The Draft EIR evaluated potential cumulative impacts to all special status species that appear on lists published by agencies with relevant jurisdiction (refer to Draft EIR, pages 4.12-89 to 4.12-94). It identifies habitat disturbances by other approved, proposed and reasonably foreseeable projects in the Imperial Valley. Refer to Draft EIR, Table 4.12-12, page 4.12-90. It then addresses direct and indirect cumulative impacts to Burrowing Owls, concluding that, with implementation of Mitigation Measure MM 4.12.6 and MM 4.12.6b, the proposed project combined with the cumulative projects would result in a less than cumulatively considerable impact to Burrowing Owls (refer to Draft EIR, page 4.12-91). Those mitigation measures, like others proposed in the Draft EIR, were developed to mitigate for impacts including this project’s contribution to cumulative impacts.

Response to Comment 8-65: The comment appears to challenge the Draft EIR’s analysis of impacts to resident, migratory and other special status birds, including cumulative impacts resulting from the incremental loss of farm land to Imperial County solar projects. The Draft EIR incorporates detailed impact analyses for resident and migratory birds, including the Greater Sandhill Crane and Mountain Plover (see, for example Draft EIR, pages 4.12-66 to 4.12-68). These analyses considered the migratory nature of these species and the suitability of foraging habitat within the immediate vicinity of the project area. Cumulative impacts to migratory birds, including Mountain Plover, are discussed on page 4.12-92 of the Draft EIR.

Response to Comment 8-66: The comment states that the County should provide additional evidence demonstrating that avian mortalities are not a potential impact from the project, and that the Draft EIR should be revised to better assess individual and cumulative impacts to bird populations. The Draft EIR does, in fact, address collision risks posed to avian species by PV panels and transmission lines. Refer to Response to Comment 8-59. The Draft EIR calls for the Applicant to prepare and implement a Bird and Bat Conservation Strategy (“BBCS”) which incorporates Avian Power Line Interaction Committee (“APLIC”) design guidelines for overhead utilities as appropriate to minimize avian collisions with gen-tie line facilities. See Draft EIR, p. 4.12-63. The Draft EIR’s analysis of cumulative impacts also assesses cumulative impacts to bird populations from collisions, noise and light impacts (Draft EIR, page 4.12-92).

Commenter’s citation to the 1986 McCrary study of a reflective surface solar thermal/central receiver facility with heliostat structures approximately 40 meters high has no relevance to the proposed project which will employ non-reflective PV panels with a height of no more than 7 feet (fixed-tilt) or 11 feet (tracker). As noted in that study, “[t]he most frequent form of avian mortality at Solar One during this study was from collisions with structures, primarily heliostats. Reflective surfaces are especially prone to collisions, and it is not surprising that collisions with mirrored heliostats occur on a somewhat regular basis considering the reflective surface area of Solar One.” Commenter provides no basis for linking this solar thermal plant study to the proposed PV project, and none exists in the study itself.

Response to Comment 8-67: The comment makes the general and unsupported assertion that the Draft EIR fails to adequately address the project’s individual and cumulative impacts on Mountain Plovers. To the contrary, the Draft EIR fully analyzed individual and cumulative impacts to biological resources for migratory bird species that depend on Imperial Valley farmlands, including Mountain Plover. Refer to Draft EIR, at pages 4.12-23 to 4.12-28; 4.12-67 to 4.12-68; 4.12-92.

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Response to Comment 8-68: The comment states that the Draft EIR improperly concluded without providing substantial evidence that the Southwestern Willow Flycatcher is not likely to nest in the survey area. The Draft EIR fully analyzed impacts to potential migratory bird habitat, including Southwestern Willow Flycatcher habitat. No nesting habitat exists in the survey area, and no habitat used during migration will be removed to accommodate the proposed project (refer to Draft EIR, at 4.12-61 to 4.12-64). Although two subspecies of the Willow Flycatcher are known to migrate through the Imperial Valley, the Southwestern Willow Flycatcher does not nest within the area. This has been further confirmed by protocol-level surveys conducted in the immediate vicinity of the project area, and the wildlife agencies therefore did not require site-specific protocol nesting surveys. Refer to Draft EIR, pages 4.12-16 to 4.12-20; 4.12-61 to 4.12-64. Nonetheless, mitigation measures, including a BBCS are being implemented to address any potential impacts to Southwestern Willow Flycatcher. Refer to Draft EIR, MM 4.12.2 on pages 4.12-63 and 4.12-64.

Response to Comment 8-69: The comment states that the Draft EIR improperly fails to propose mitigation for the loss of Loggerhead Shrike habitat and fails to analyze the potential impacts of the cumulative loss of farmland habitat on the shrike and other resident and migratory species. The Draft EIR discusses potential impacts to nesting raptors – which includes Loggerhead Shrike – and incorporates mitigation addressing potential impacts through the adoption MM 4.12.8, which seeks to avoid impacts through initial grading and clearance outside of breeding season and, where construction needs to occur within the breeding season, to require pre-construction surveys and, if nesting raptors are present, to flag the nest area, to establish a 500-foot delineated buffer around the nest area and to require that no work activity occur within this buffer area until an approved biologist determines that any fledglings are independent of the nest. Refer to Draft EIR, pages 4.12-72 to 4.12-73. The Draft EIR also analyzed cumulative impacts to nesting raptors, including Loggerhead Shrike. Refer to Draft EIR, pages 4.12-91 to 4.12-92.

Response to Comment 8-70: The comment states that the Draft EIR improperly concluded that the Yuma Clapper Rail is not likely to nest in the survey area based on the lack of a site-specific survey. As discussed in the Draft EIR, based on surveyed habitat and existing site conditions associated with drains and canals, Yuma Clapper Rail are unlikely to nest within the survey area. Refer to Draft EIR, pages 4.12-20 to 4.12-21; 4.12-64 to 4.12-66. Nonetheless, based on the identified habitat, the Draft EIR does conclude that the Yuma Clapper Rail could potentially forage within certain areas and for this reason assumes it present. As a result, nesting surveys were not necessary and mitigation is imposed. Refer to MM 4.12.2, pages 4.12-65 to 4.12-66.

Based on assumed presence of Yuma Clapper Rail, and in consultation with the wildlife agencies, the Applicant is being required to mitigate any potential disturbance to Yuma Clapper Rail during construction activities by establishing and flagging a buffer of 250-feet around identified potential Yuma Clapper Rail habitat during the breeding season (February 15 - June 30), and cannot conduct any project-related construction, clearing or ground disturbing activities within 250-feet of potential Yuma clapper rail habitat during breeding season. This revised mitigation measure is reflected in Section 4.12, Biological Resources which is included as Appendix B of this Final EIR.

Response to Comment 8-71: The comment states that the Draft EIR improperly defers mitigation of impacts to bird and bat species, in part by not incorporating a finalized Avian and Bat Conservation Strategy into the Draft EIR. MM 4.12.2 requires the applicant to prepare and

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implement a Bird and Bat Conservation Strategy (BBCS) and outlines specific conservation measures that must be incorporated into the BBCS, as well as minimum requirements for a Wildlife Reporting Program, Wildlife Mortality Reporting Program, Worker Education Training, and Raven Control Plan. Refer to Draft EIR, pages 4.12-63 to 4.12-64. The BBCS has been completed and submitted to the BLM, USFWS, and CDFG for review and approval. There is no legal requirement that it be made available in a Draft EIR for public review and comment before project approval. See *Christward Ministry v. County of San Diego*, 13 Cal. App. 4th 31, 48 (1993). Rather, as was done here, an EIR must propose and describe mitigation measures to minimize significant environmental effects. See for example Draft EIR Table ES-1: Summary of Impacts, at ES-40. See also Cal. Pub. Res. Code §21001.1(a); 14 C.C.R. §15126. Refer also to Response to Comment 8-7.

Response to Comment 8-72: The comment states that the Draft EIR fails to assess impacts of lighting at the project on birds and other species, in particular the Mountain Plover. The Draft EIR in fact fully analyzes the potential impacts of nighttime lighting on wildlife in the survey area. Refer to Draft EIR, pages 4.12-62 to 4.12-63; 4.12-65 to 4.12-69; and 4.12-92 to 4.12-93. Proposed mitigation measures include requirements to minimize the use of outdoor lighting and to direct lighting toward the interior of the construction area. Refer to Draft EIR, pages 4.12-63; 4.12-66. As to the Mountain Plover, the Draft EIR acknowledges and accounts for potential impacts of lighting on this species. Refer to Draft EIR, page 4.12-67.

Response to Comment 8-73: The comment states that the Draft EIR does not adequately analyze potential impacts on wildlife from temporary and permanent fencing around the survey area. The quotation cited in the comment – that “avian and terrestrial wildlife species are able to move freely through the survey area” – is a factual statement describing current conditions in the survey area (Draft EIR, pages 4.12-36). The project’s potential impacts on wildlife movement are fully analyzed later in the Draft EIR. Refer to Draft EIR, page 4.12-87.

Response to Comment 8-74: The comment states that the incremental contribution to the cumulative impact of reducing or degrading wildlife corridors and freedom of movement within Imperial County must also be assessed. As noted in Response to Comment 8-73 above, the potential for the project’s impacts on wildlife movement were analyzed in the Draft EIR. As a general matter, the project would not interfere with wildlife corridors and linkages which are situated along IID drain facilities because those areas would not be fenced and would therefore remain open as movement corridors. From a cumulative perspective, the situation is the same for other existing or proposed projects due to continued IID control over its facilities. Additional text has been added to the discussion of Cumulative Impacts to Biological Resources (Impact 4.12.18) to address habitat connectivity and wildlife corridors as part of the revised Section 4.12, Biological Resources included as Appendix B of this Final EIR.

Response to Comment 8-75: The comment appears to assert that, as a general matter, the Draft EIR fails to adequately analyze impacts on wildlife resulting from the potential loss of prey for Burrowing Owl and other raptor species. In fact, potential loss of prey was analyzed and addressed for Burrowing Owls and other raptors in analyzing potential impacts to those species. For example, refer to Draft EIR, page 4.12-69 (Burrowing Owl); page 4.12-71 (Golden Eagle); and page 4.12-72 (Nesting Raptors).

Response to Comment 8-76: The comment states that the Draft EIR inadequately analyzes impacts to native plants and improperly defers mitigation by failing to conduct rare plant surveys. As described in the Draft EIR, a fall rare plant survey was not conducted only in the isolated fallow

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agricultural area in the southwestern portion of the solar generation facility. Refer to Draft EIR, page 4.12-7; BTR, pages 2-1 to 2-2. The vegetation in this area did not represent native habitat, and the area was lacking fall-blooming species in undisturbed native habitats. Fall rare plant surveys were conducted for BLM lands within the survey area, and all suitable areas within the entire project area were surveyed in the spring of 2012. The Draft EIR analysis was based on the results of the project surveys as well as data from other recent projects that collected data in the same area. All data from these surveys are “credible and verifiable.” See *Save Round Valley Alliance v. County of Inyo*, 157 Cal. App. 4th 1437 (2007).

Survey transect spacing, which the comment concludes without support is “way too far apart,” was based on approved BLM and CDFG protocols (Biological Technical Report, pages 2-1 to 2-2 in Appendix J of the Draft EIR and Appendix A of this Final EIR). In fact, all wildlife and botanical surveys were conducted in accordance with agency (CDFG, BLM, USFWS) protocols and were accepted by those agencies. No further surveys were required for any species.

Spring survey data was not included in the Draft EIR because those surveys were still in progress at the time of publication. Spring Survey data confirm the Draft EIR impact analysis, with no “significant new information” identified. Refer to Response to Comment 8-7.

Response to Comment 8-77: The comment states that the Draft EIR lacks a clear and cohesive plan for integrated pest management. As set forth in the Draft EIR, in order to minimize the introduction and spread of weeds, the County is requiring a Weed Management Plan (“WMP”) with specific performance standards set forth in Mitigation Measure MM 4.12.12a and 4.12.12b. That WMP has been completed for both federal and private lands, and does not anticipate the use of any pesticides or rodenticides. If needed, such substances would be used in accordance with applicable laws. For example, as stated in Section 4.12 of the Draft EIR on pages 4.12-84 and 4.12-85 “Only herbicides and adjuvants approved by the State of California and Imperial County will be used to control invasive species at the energy facility site. Invasive plant species on BLM lands would be prevented, controlled, and treated through an Integrated Pest Management approach per the Vegetation Treatments on Bureau of Land Management Lands in 17 Western States Programmatic Environmental Report. Only herbicides approved by BLM in California will be used on BLM lands.”

Response to Comment 8-78: The commenter states that Draft EIR fails to adequately analyze impacts to worker health related to hazardous soil contamination. The comment goes on to state that there were discrepancies between the initial Phase I ESA and the 2012 Phase I ESA. The 2012 Phase I ESA was an update to the previous 2011 Phase I ESA prepared by URS for the First Solar Project Sagebrush Site. To be consistent with the Project Description, the updated Phase I ESA removed APN 051-310-27 from the subject property and added APN 051-350-012 and four linear alignments that include the Non-BLM Off-site Gen-Tie Alignment, the Collector Line Alignment, the Western Off-site Gen-Tie Alignment and the Eastern Off-site Gen-Tie Alignment (Refer to Figures 1 and 2 of the 2012 Campo Verde Project Site Phase I ESA in Appendix H of the Draft EIR). The updated Phase I ESA also identified the property as the First Solar Campo Verde Project Site.

Minor changes were observed on the property during the February 11 and March 5, 2012 site reconnaissance as compared to the June 23, 2011 site reconnaissance (e.g., staining was not observed beneath ASTs located on the property as identified in 2011 and bags of herbicides were no longer observed on the property as identified in 2011). These changes did not affect

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the conclusions of the Phase I ESA. In the 2011 Phase I ESA staining appeared to be *de minimis* and did not constitute a Recognized Environmental Condition (REC). Significant concerns were not identified in the 2011 Phase I ESA, and the conclusions in the 2011 and the 2012 reports are identical. In both the 2011 and the 2012 Phase I ESAs, RECs were not identified on the property and no additional investigation was recommended.

Furthermore, the case relied on by the commenters involved a situation where the lead agency issued a subsequent initial study. In the context of CEQA, initial studies are substantively different from resource surveys. An initial study includes an agency's initial conclusions about a project's impacts. Understandably, an agency must explain the reasons for its changed conclusions. With resource studies, the circumstances may be different at a later date. We are not aware of any rule that would require consideration of every Phase I ever performed for a site. Moreover, in light of the general industry standard that Phase I ESA's are valid for a period of six months, the 2011 Phase I ESA was no longer reliable at the time the Draft EIR was written.

Response to Comment 8-79: The comments states that the Draft DIR fails to make provisions for soil sampling to ensure that workers are not exposed to hazardous conditions during earthwork.

The 2011 and 2012 Phase I ESAs did not identify RECs and did not recommend additional investigation. As discussed in Impact 4.10.2 (Section 4.10, Hazards and Hazardous Materials) on pages 4.10-20 and 4.10-21 of the Draft EIR, removal of hazardous materials (ASTs) would be completed prior to construction activities according to applicable regulations.

The Imperial County Agricultural Commissioner is responsible for implementing and enforcing the laws and regulations of the pesticide use enforcement program and issuing permits for all Restricted Use Materials and Operator Identification Numbers to agricultural pesticide applicators. Growers of crops, onto which restricted pesticides are to be applied, are required to obtain a user permit, which defines the manner, method and approximate time of the proposed application. All agricultural and commercial pesticide applications are randomly monitored to ensure that pesticides are handled in an environmentally safe manner and the pesticide handlers, the community, and field workers are protected. In addition, any illness or complaint of exposure resulting from pesticide use is investigated and reported to the State of California Department of Pesticide Regulation. No records of permits for use of restricted pesticides were found for the applicable property owners for the Campo Verde site during the Phase I ESAs performed in 2011 and 2012.

Response to Comment 8-80: The Draft EIR fails to identify any mitigation measures to protect workers from touching soils or breathing dust that may be contaminated by soils that may not be visibly stained (i.e. pesticide residues).

In addition to the fugitive dust control measures discussed in the Draft EIR, the project would be required to follow Occupational Safety and Health Act (OSHA) requirements for construction and operation of the project (Draft EIR, page 4.10-2), which will include a Project-Specific Health and Safety Plan to protect project workers (Draft EIR, page 4.10-19).

Response to Comment 8-81: The comment reiterates that if soil samples are not collected in areas where pesticides may have been applied and in areas of stained soils, workers involved in earthmoving may be at risk. This issue has been previously addressed. Refer to Response to Comments 8-79 and 8-80.

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Response to Comment 8-82: The comment refers to a Phase I prepared for the Imperial Solar Energy West Project and its recommendations for a Phase ESA II with soil sampling. The conclusions of Phase I ESAs are site-specific. The conclusions of other Phase I ESAs in Imperial County cannot be compared to the Campo Verde Project Site Phase I ESA. Based on the findings of the 2012 Campo Verde Phase I ESA, no RECs were identified and no additional investigation was recommended. The Phase I ESA is included as Appendix H of the Draft EIR.

Response to Comment 8-83: The commenter contends that conditions at the project site warrant evaluation in a Phase II ESA. This issue has been previously addressed. Please refer to Response to Comment 8-82.

Response to Comment 8-84: The commenter erroneously concludes that the Fuscoe Hydrology Study in Appendix I of the Draft EIR “was prepared with a predetermined and scientifically biased stated purpose” based on the commenter’s interpretation of the quoted statement from the Introduction of the Hydrology Report. To the contrary, the quoted statement simply states the conclusions of the Hydrology Study.

The commenter contends that the Hydrology Study is flawed because it fails to consider that PV panels are impervious and that drippage from the panels will be concentrated along the driplines at the edge of the panels. This contention is not correct and is based on an erroneous analysis of the Study. In fact, the Hydrology Study does not calculate infiltration along the arrays or along the long flow paths through arrays into detention basins. Instead, infiltration is only considered within the footprint of detention basins, which is a small percentage of the site. As such, the comment does not offer substantial evidence that the Hydrology Study is flawed or that the stormwater detention basins are undersized.

Response to Comment 8-85: The comment states that the Draft EIR fails to adequately analyze toxic chemical impacts related to cadmium telluride. CdTe PV modules use the compound cadmium telluride, not elemental cadmium. Cadmium telluride has an extremely low solubility product in water ($K_{sp} = 9.5 \times 10^{-35}$; Kaczmar, 2012). Because of the low solubility of CdTe, aggressive extraction methods are required to leach CdTe from a module. Such methods are used, for example, in the recycling process for CdTe modules. They involve crushing the module into millimeter scale pieces and agitating it in an acidic solution (Held, 2009). These extraction methods in no way mimic actual broken module exposure to rainwater.

Based on warranty return data, the breakage rate of CdTe PV modules is low, 1% over 25 years (0.04% per year). This breakage rate is an overestimate because over one-third occurs during shipping and installation with subsequent removal for takeback and recycling. In addition, a proportion of broken modules have only chipped glass that does not affect the CdTe semiconductor layer. In the case of a catastrophic event (e.g., earthquake), the entire project site would be inspected, resulting in removal of broken modules for recycling. In general, broken modules are identified through a combination of routine visual inspections of modules and power output monitoring. The latter includes diagnostic comparison of actual to expected performance, or comparison of co-located arrays to identify low performance areas and modules that are nonfunctioning potentially due to breakage. Strict power performance contracts motivate the prompt removal and replacement of nonfunctioning modules.

Scientific literature on leaching models, rather than observes, potential leaching risks from broken panels (Sinha et al., 2012). The cited research paper uses screening level risk assessment methodology in which potential releases under worst case assumptions are compared with

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health screening values. These conservative assumptions do not reflect actual or expected conditions. For example, the modeling assumes total release of Cd compounds from broken modules, even though such total release would not occur in the field due to the extremely low solubility of CdTe, and the protocols in place to detect and remove broken modules. Notwithstanding this conservative approach, the research paper concludes that potential exposure point concentrations in soil, air, and groundwater are below human health screening levels and background levels in California.

Based on the worst-case total release modeling in Sinha et al. (2012), the estimated soil exposure point concentration from leaching is 0.0128 mg Cd/kg, which is well below the shallow soil extended environmental screening level (ESL) (1.7 mg Cd/kg), as well as below average background soil concentrations in California (0.36 mg Cd/kg; Bradford et al., 1996) and fertilizer concentrations (38-89 mg Cd/kg; USEPA, 1999). It is not appropriate to compare the groundwater exposure point concentration in Sinha et al. (2012) to the freshwater ESL value, as the groundwater point of exposure in Sinha et al. was assumed to be 7.6 meters away from the project site, whereas the Salton Sea is over 20 miles from the project site. In summary, given the low solubility of CdTe and the protocols for detecting and removing broken modules, potential impacts to the Salton Sea are negligible.

Response to Comment 8-86: The comment states that the EIR does not address the cumulative impacts of cadmium from neighboring thin film solar farms. The two projects cited by the commenter, the Imperial Solar Energy Center – South and the Imperial Solar Energy Center – West, are outside of the one-mile radius established in the Draft EIR to evaluate cumulative impacts from hazards and hazardous materials. Moreover, the Imperial Solar Energy Center – West project is slated to use concentrating solar technology rather than PV technology, so it is not relevant. Finally, it is reasonable to conclude that the Imperial Solar Energy Center – South project will not cause cumulatively considerable impacts to the Salton Sea as a result of using CdTe PV technology because, as noted in Response to Comment 8-85 above, the potential impacts to the Salton Sea due to CdTe leaching from broken First Solar PV modules is negligible. As such, there could not be a potentially significant cumulative impact to the Salton Sea from having multiple projects with CdTe modules.

Response to Comment 8-87: The comment assumes that the panels will end up in a landfill at the end of their life causing cadmium-telluride contamination. The comment request that landfill leachate and disposal be examined.

The comment that photovoltaic (PV) modules used in the project will likely end up in landfills is speculative and does not take into account First Solar's construction practices or First Solar's pre-funded recycling program. In addition, the Draft EIR addresses the disposition of PV modules during the construction, operation and decommissioning of the project.

As noted on pages 2-26 and 4.10-19 of the Draft EIR, any modules damaged or broken during construction will be returned to First Solar's manufacturing facility in Ohio for recycling consistent with California and Federal requirements. Thus, these modules would not end up at a landfill.

During operations, there are incentives in place to ensure that end-of-life modules are collected and recycled under First Solar's pre-funded recycling program, rather than being disposed in a landfill. Specifically, in 2005, First Solar established a pre-funded PV module collection and recycling program through which First Solar's modules may be returned to the company for

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recycling at no cost to the end user (First Solar 2010). The estimated collection and recycling costs are built into the price of every module sold, providing the ultimate end user with strong incentives to use the recycling program. First Solar's program is designed to encourage whoever owns the project at the end of its life to take advantage of the pre-funding program. Every module has a label providing information on the program, there is documentation included in customer contracts, and the recycling is provided free of charge. The ability of an end-user to use the program is unconditional – anyone in possession of a First Solar module can request collection and recycling at any time. And because of the independent financing structure First Solar has established, the collection and recycling program will remain free of cost to the end user even if First Solar ever becomes insolvent. Accordingly, the project owner has a strong financial incentive to use First Solar's recycling program because it is free, as opposed to paying to dispose of the modules in a landfill. It is therefore reasonable to conclude that significant disposal of end-of-life modules in landfills is unlikely.

Consistent with these facts, the Draft EIR states on page 2.0-29 that the modules would be collected and recycled under First Solar's pre-funded recycling program. For the reasons stated above, the project owner would have a strong financial incentive to use First Solar's recycling program rather than incur the cost of disposing all of the project's PV modules in a landfill. Even if the then-current owner/operator were to abandon the project, leaving the modules in the field without using the already-paid-for recycling program, the County would be able to use the recycling program itself. In other words, First Solar's recycling program links with the modules, not with the purchaser or owner of the modules.

Furthermore, under current law, PV modules would constitute California-only hazardous waste at end of life and therefore could not be disposed in a municipal landfill. Whoever owns the modules at that time would have to follow all laws, which includes disposing of California-only hazardous waste at a disposal facility permitted to accept such waste. Thus, while First Solar has established a program that prefunds the recycling of all modules and creates clear incentives for the owner of the project to use the program, any modules that are not recycled would be disposed of at an appropriately permitted facility.

Moreover, even if the PV modules were to be disposed of in a landfill permitted to accept California-only hazardous waste, the statement that such modules would cause significant problems with landfill leachate and disposal is inconsistent with available information. As discussed in Response to Comment 8-85, to mobilize a significant quantity of CdTe from a module via leaching, the glass modules must be ground into an extremely fine powder and then subjected to agitation in an acidic environment. Such highly specific conditions are improbable to occur in a landfill.

Response to Comment 8-88: The comment states that the project should consider use of less toxic silicon-based panels as an alternative. The Draft EIR is not required to evaluate alternative types of PV technology as project alternatives. Moreover, the statement that silicon-based PV panels are less "toxic" is not supportable. Use of heavy metals is common to all photovoltaic technologies. For example, silicon PV modules contain lead. More importantly, several studies have shown that, over the product life cycle, CdTe PV is the ecologically leading PV technology, with the lowest carbon footprint, fastest energy payback time, and lowest heavy metal emissions (Fthenakis et al., 2008).

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Response to Comment 8-89: The comment contends that the Draft EIR fails to adequately analyze PM. The Air Quality Assessment in Appendix C of the Draft EIR has been revised to incorporate compliance with EPA Tier 2 emission standards for large construction equipment and the California Air Resources Board (CARB) Air Toxics Control Measures (ATCM) for diesel particulate matter from portable diesel engines rated at 50 horsepower and greater. The revised Air Quality Assessment, which will be included in the Final EIR, shows that PM10 emissions would exceed the ICAPCD significance threshold without mitigation. The revised Air Quality Analysis shows that PM10 emissions would be reduced to less than significant levels by applying water during grading and grubbing activities and on onsite roadways.

Response to Comment 8-90: The comment states that the Draft EIR does not include URBEMIS model inputs or assumptions. The Air Quality Assessment in Appendix C of the Draft EIR states that air quality impacts related to construction were calculated using the latest URBEMIS2007 air quality model, which was developed by CARB. URBEMIS2007 has been approved by ICAPCD and the County for construction emission calculations. URBEMIS incorporates emission factors from the EMFAC2007 model for on-road vehicle emissions and the OFFROAD2007 model for off-road vehicle emissions. Default settings were used within the model. Mitigation measures to reduce PM10 are set forth in MM 4.4.1a and MM 4.4.1b of Section 4.4, Air Quality (with revisions from July 2012 Air Quality Assessment) included as Appendix D of this Final EIR.

Response to Comment 8-91: The comment states that the Draft EIR fails to adequately analyze NOx. The Air Quality Assessment in Appendix C of the Draft EIR has been revised to incorporate compliance with EPA Tier 2 emission standards for large construction equipment and the CARB airborne toxic control measures (ATCM) for diesel particulate matter from portable diesel engines rated at 50 horsepower and greater. The revised Air Quality Assessment (included as Appendix C of this Final EIR), shows that there will be no significant impact associated with emissions of oxides of nitrogen (NOx) during construction and therefore no mitigation measures will be required.

Response to Comment 8-92: The comment asserts that the EIR fails to adequately analyze the project's impacts with the large number of similar projects in the County. To the extent that this comment asserts that the analysis of cumulative impacts is inadequate, the contention is not supported by substantial evidence. To the extent the comment purports to set forth the legal requirements for evaluating cumulative impacts in the CEQA context, the comment does not raise environmental issues; therefore, no further response is required. Cal. Pub. Res. Code §21091(d)(2)(B); 14 C.C.R. §§15088(c), 15132(d), 15204(a). Refer also to Response to Comment 8-93.

Response to Comment 8-93: The comment states that the EIR fails to adequately analyze the project's construction emissions impacts in the cumulative context. There is no fixed standard for determining whether a cumulative impact is significant under CEQA. Cumulative impact analysis is subject to the lead agency's discretion (CEQA Guidelines §15130). Similarly, no fixed standards apply to establish the geographic scope of the cumulative impacts analysis and the County has discretion to apply its expertise in selecting an appropriate assessment area. See *City of Long Beach v. Los Angeles Unified Sch. Dist.*, 176 Cal. App. 4th 889 (2009); see also *Ebbetts Pass Forest Watch v. Dep't of Forestry & Fire Protection*, 123 Cal. App. 4th 1331, 1352 (2004) (upholding agency's determination that using overly expansive cumulative impact assessment area for biological impacts would dilute project's impacts to the point that they could not be recognized). The EIR should provide an explanation supported by evidence for the geographic area used in the analysis. 14 Cal. Code Regs. 15130(b)(3); *City of Long Beach*, 176 Cal.App.4th at

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907. Courts will defer to the agency's definition of an appropriate area for assessing cumulative impacts if the record shows a reasonable basis for it. *Ebbetts Pass*, 123 Cal. App. 4th at 1352.

The assumption used in the Draft EIR that diesel particulate matter (DPM) emissions from the construction of other reasonably foreseeable solar projects will extend 2,000 meters out from the center these projects, which is the same assumption made for the proposed project, is a reasonable exercise of the County's discretion to determine cumulative impacts. The commenter's contention that DPM emissions from some of these other solar projects could extend farther than 2,000 is not supported by substantial evidence.

Response to Comment 8-94: The comment states that the Draft EIR does not analyze the impacts of PM10 and DPM on offsite receptors. The statement on page 4.4-11 of the Draft EIR will be corrected to state that there are sensitive receptors in the area. However, the Draft EIR did in fact analyze the potential DPM impacts to sensitive receptors, as provided in the discussion of Impact 4.4.2 on pages 4.4-19 to 4.4-20 and in the Air Quality Assessment in Appendix C to the Draft EIR. The Draft EIR concludes on page 4.4-20 that "no sensitive receptors either adjacent to the project or beyond the project would be exposed to DPM levels that significantly increase the risk of cancer. In other words, although there are sensitive receptors in the area, they will not be exposed to emissions that would increase their risk of cancer to above 10 in one million." Accordingly, no mitigation measures are required.

Response to Comment 8-95: This comment states that the Draft EIR lacks adequate analysis of impacts to the New River and Salton Sea due to reduced agricultural return flows based on the Draft EIR's conclusion that downstream flows are expected to be maintained at current levels. This comment is an introductory statement relevant to Response to Comments 8-96 to 8-102 and is addressed in Responses to Comments 8-9 and 8-96 to 8-102, which explain that the project would result in less than a three tenths of one percent reduction in the total volume of inflow to the Salton Sea, and provide beneficial effects by reducing pesticides, herbicides and fertilizers – and a related significant saline reduction – to the New River and Salton Sea. Text has been added to the discussion of "Reduction in Water Quality and Quantity" to clarify the loss of flow potentially attributed to the project and cumulative solar development as shown below.

Page 4.11-21, beginning in the second paragraph under the heading "Reduction in Water Quantity and Quality", the following additions and revisions have been made:

"Agricultural runoff contributes significantly to total inflows to the Salton Sea. As irrigated agricultural land is converted to nonagricultural use, the associated runoff ceases to drain into the New and Alamo rivers, ultimately reducing the sea's total inflows. As described above, the proposed project will convert approximately 1,852 acres of active farmland. The projects listed in **Table 4.11-2** contain a total of approximately 12,343 acres of irrigated agricultural land. The average annual water consumption per-acre within the Imperial Irrigation District is 4.63 acre-feet, per acre, per year (IID, 2011). For the project site, total water consumption based on the average annual usage is 8,575 acre-feet of water. One third of the applied irrigation water (~~2,830~~ 2,858 acre-feet) is returned to the drainage system and ultimately the Salton Sea. The total drainage area for the Salton Sea is 8,360 square miles. The Sea has a total volume of approximately 7,500,000 acre-feet and a surface area of 240,639 acres. Under average irrigation practices the removal of the Campo Verde project area from agricultural production represents a reduction of less than one-tenth of one percent

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(0.04%) in the ~~amount~~ volume of water ~~reaching in~~ the Salton Sea. ~~Under normal precipitation conditions the reduction is 0.0001%. Neither This reduction would be noticeable-undetectable.~~

From 1950 to 2002 average annual inflow into the Salton Sea was 1.3 million acre-feet and 80 percent of this total came from the Imperial Valley. Assuming that flows have been reduced due to the Quantification Settlement Agreement (approximately 150,000 acre-feet less), current annual inflow to the Salton Sea is approximately 1.15 million acre-feet. The proposed project would result in a reduction of 2,858 acre-feet per year of runoff to the Salton Sea. This amount represents less than three tenths of one percent of the annual average inflow to the Salton Sea, and just four one-hundredths of one percent of the total volume in the Salton Sea. Given a total surface area of 376 square miles (240,639 acres) and a total volume of 7.2 million acre-feet, the reduction of 2,585.3 acre-feet per year is estimated to reduce the surface elevation of the Salton Sea by 0.14 inches.

Based on the assumption that an average acre of agricultural land uses 4.63 acre-feet per year and assuming a worst-case scenario in which implementation of all the projects listed in **Table 4.11-2** results in the conversion of the entire 12,343 acres, under average irrigation practices this represents a total water consumption of 57,148 acre-feet of water. Again, one third of this (~~18,859~~ 19,049 acre-feet) is returned to the drainage system and ultimately the Salton Sea. The removal of these 12,343 acres of agricultural land would result in a reduction of less than three-tenths of one percent (0.25%) in the ~~amount~~ volume of water ~~reaching in~~ the Salton Sea. This estimate is considered conservative because the estimate assumed all project acreage was in agricultural production. Small percentages of each project contain land that is not in agricultural production.

As described above, from 1950 to 2002 average annual inflow into the Salton Sea was 1.3 million acre-feet and 80 percent of this total came from the Imperial Valley. Assuming that flows have been reduced due to the Quantification Settlement Agreement (approximately 150,000 acre-feet less), current annual inflow to the Salton Sea is approximately 1.15 million acre-feet. The cumulative projects listed in **Table 4.11-2** would result in a reduction of 19,409 acre-feet per year of runoff to the Salton Sea. This amount represents approximately 1.65 percent of the annual average inflow to the Salton Sea, and three tenths of one percent of the total volume in the Salton Sea. Given a total surface area of 376 square miles (240,639 acres) and a total volume of 7.2 million acre-feet, the reduction of 2,585.3 acre-feet per year is estimated to reduce the surface elevation of the Salton Sea by 0.95 inches.

The surface elevation of the Salton Sea fluctuates annually by approximately 12 inches, reaching its maximum annual elevation between March and June and its minimum elevation between October and November as a result of irrigation practices. Given the seasonal fluctuation, a drop in surface elevation between 0.14 (project related) and 0.95 inches (cumulative projects) is considered to be negligible and would not result in significant impacts on habitat areas. Habitat impacts from the reduction of flows and the minor water elevation change would be well within the seasonal fluctuation in surface elevation. The habitat conditions along the shoreline of the Salton Sea currently experiences, and has adjusted to, the seasonal water level fluctuations that the project's effect would be within (PMC, 2011).

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Furthermore, the proposed project's and cumulative projects' reduction in agricultural water use would support the IID's needs in fulfilling its legal obligations under State Water Resources Control Board (SWRCB) orders, the Quantification Settlement Agreement and IID Water Transfer Agreement, which includes mitigation of water quality and biological impacts to the Salton Sea. As such, the proposed project is consistent with the IID Water Transfer Agreement HCP EIR/EIS, the existing Section 7 Biological Opinion, and IID CESA Permit 2081. Additionally, IID has created an Equitable Distribution Plan (EDP) to give itself the flexibility to meet changing circumstances in supply and demand. The EDP would essentially create an agricultural fallowing incentive program in the event of a supply/demand imbalance. By October of each year, IID staff must forecast water demand and available supply and recommend whether there will be a supply/demand imbalance (SDI). With the knowledge that the proposed project is anticipated to use up to 20 acre-feet of water per year during its lease period, instead of a more intense agricultural water use, IID can account for this lower water demand when determining whether there will be a SDI and may help prevent the need to activate the EDP, which will allow more agricultural landowners to use their agricultural water supply, which is expected to result in a neutral net impact on water flowing to the sea (ESA, 2012b).

Likewise, in the years when IID must trigger the EDP, the water conservation from the proposed project and other cumulative projects reduces the need to induce fallowing on as many agricultural acres to generate the additional water conservation needed to meet its transfer obligations and Salton Sea mitigation obligations. According to IID's EDP Negative Declaration, in 2003, IID implemented a rotation fallowing program to successfully create conserved water to deliver to the Salton Sea and now IID plans to increase fallowing incrementally to a maximum of about 25,000 acres. With the knowledge that the proposed projects will be using less water, IID can fallow less than the 25,000 acres to produce the same amount of water needed to meet its transfer obligations and conserve water to deliver to the Salton Sea (PMC, 2011). In this context, to the extent IID believes mitigation is needed in implementing the EDP, IID controls the mitigation by selecting how many farmland acres to enroll in its fallowing program to create the Salton Sea mitigation water (ESA 2012b).

As a result, IID acknowledged in its Negative Declaration adopting the EDP that the fallowing necessary to provide the transfer and Salton Sea mitigation water would not have a significant impact on water quality or biology. Specifically, it states for biology, "Implementation of the EDP would not have an effect on any biological resources within the IID water service area. The EDP could result in minor short-term changes in the location of water use and therefore, the volume of flows in the drains. However, any changes in the location of flows would be temporary and negligible, and well within historic variations, and therefore are not expected to result in any adverse effects on biological resources that rely on the drains for habitat....[i]t is expected that under an SDI [state and federal refuges in the IID service area] will have sufficient supply to maintain current uses and operations and/or to fulfill obligations under environmental permits issued to IID (ESA 2012b). Previous environmental documentation has made a similar finding, that there would be no impact as a result of cumulative development related to the EDP (see Imperial Solar Energy Center South Project EIR/EA).

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As for water quality, it states, "The proposed EDP would not result in any impacts associated with hydrology and water quality....the magnitude of any potential change is anticipated to be minimal and, due to constant variation in cropping patterns and locations of idled lands, most likely will be undetectable when compared to the existing condition" (PMC, 2011).

Therefore, the cumulative water quantity and quality impacts to the Salton Sea, IID's drainage system and the New River are considered **less than significant**, and the project's contribution to these impacts is considered to be less than cumulatively considerable. It should be noted that the reduction in agricultural runoff would result in an incremental improvement in water quality due to the reduced amount of agriculture related pollutants."

Response to Comment 8-96: The commenter concludes that the project would have very significant adverse impacts on water supply and water quality in the Salton Sea. The remainder of the comment describes information provided in the Draft EIR. No response is needed. The sentence included on page 4.11-21 of the Draft EIR that states "Under normal precipitation conditions the reduction is 0.0001%." has been removed from the document as shown in Response to Comment 8-95. Additional information has been provided in Section 4.11, Hydrology and Water Quality, "B. Cumulative Impacts and Mitigation Measures" to further support the conclusion under Impact 4.11.4. See also Response to Comments 8-98 and 8-102.

Response to Comment 8-97: The commenter quotes information from the Draft EIR. No response is necessary. Refer to Response to Comment 8-98.

Response to Comment 8-98: The commenter suggests that reducing flows to Salton Sea by 2,830 acre-feet equates to 0.2 percent, not one tenth of one percent. In the Draft EIR, the text on page 4.11-21 inadvertently described this reduction as the amount of water reaching the Salton Sea. The text has been revised to indicate that the reduction is actually the percentage of the total volume in the Salton Sea.

The agricultural lands currently occupied by the site of the proposed project use an estimated annual average of 8,575 acre-feet of water. One third of this equates to 2,858.3 acre-feet ($(1/3) \times 8,575 \text{ acre-feet} = 2,858.3 \text{ acre-feet}$) of water that will no longer flow to the Salton Sea. These 2,858.3 acre-feet equate to less than four one-hundredths of one percent ($(2,858.3 \text{ acre-feet} / 7,200,000 \text{ acre-feet}) = 0.0003969$ or 0.0397 percent) reduction in the volume of water in the Salton Sea due to the proposed Campo Verde solar project.

Currently, about 1.3 million acre-feet flow into the Salton Sea each year and 80 percent of this total comes from Imperial Valley. Assuming that flows have been reduced due to the Quantification Settlement Agreement (approximately 150,000 acre-feet less), as cited in the comment letter, current annual inflow to the Salton Sea is approximately 1.15 million acre-feet. The Campo Verde project would result in a reduction of 2,858.3 acre-feet per year of runoff to the Salton Sea. This amount represents less than three tenths of one percent of the inflow to the Salton Sea, and just four one-hundredths of one percent of the total volume in the Salton Sea. Given a total surface area of 376 square miles (240,639 acres) and a total volume of 7.2 million acre-feet, the reduction of 2,585.3 acre-feet per year is estimated to reduce the surface elevation of the Salton Sea by 0.14 inches ($(2,858.3 / 240,639) = 0.01187 \times 12 = 0.14 \text{ inches}$).

For the cumulative condition, the reduction of less than three-tenths of one percent included in the text on page 4.11-21 inadvertently described this reduction as the amount of water reaching

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the Salton Sea. The text has been revised to indicate that the reduction is actually the percentage of the total volume in the Salton Sea.

The three-tenths of one percent estimate was based on the amount of annual water consumption within the IID for agricultural uses (4.63 acre-feet/ac), the total acreage of land for the proposed solar projects (12,343 acres), and the estimated volume of the Salton Sea (7.2 million acre-feet) (DOI, 2007). Assuming applied irrigation water (4.63 acre-feet/ac) for all projects listed in Table 4.11-2 (12,343 acres), a total of 57,148.1 acre-feet (4.63 acre-feet per acre x 12,343 acre = 57,148.1 acre-feet) would be generated. This is the total estimated water demand from projects listed in Table 4.11-2. The Imperial Irrigation District estimates that only one third (1/3) of the applied irrigation water is returned to the Salton Sea. This means that only 19,049.4 acre-feet ($[(1/3) \times 57,148.1 \text{ acre-feet}] = 19,049.4 \text{ acre-feet}$) of the applied irrigation water actually returns to the Salton Sea. This equates to less than three tenths of one percent ($[(19,049.4 \text{ acre-feet}/7,200,000 \text{ acre-feet}] = 0.002645$ or 0.2645 percent) of the total 7,200,000 acre-feet volume of the Salton Sea.

Analyzing all the proposed projects listed in Table 4.11-2 would result in a total reduction of 19,049.4 acre-feet. This would lower the elevation of the Salton Sea by 0.95 inches ($[(19,050 \text{ acre-feet}/240,639 \text{ acre-feet}] = 0.07837 \times 12 \text{ inches} = 0.95 \text{ inches}$). The surface elevation of the Salton Sea fluctuates annually by approximately 12 inches, reaching its maximum annual elevation between March and June and its minimum elevation between October and November as a result of irrigation practices. Given the seasonal fluctuation, a drop in surface elevation between 0.14 and 0.95 inches is considered to be negligible and would not result in significant impacts on habitat areas. Habitat impacts from the reduction of flows and the minor water elevation change would be well within the seasonal fluctuation in surface elevation. The habitat conditions along the shoreline of the Salton Sea currently experiences and has adjusted to the seasonal water level fluctuations that the project's effect would be within (PMC, 2011).

Therefore, no impacts are anticipated to the water levels in the Salton Sea, shoreline habitat of the Salton Sea, water quality of the Salton Sea and water quality of the New River due to the construction of the proposed project or the combined total of the proposed projects listed in Table 4.11-2.

Furthermore, the proposed projects' reduction in agricultural water use would support the IID's needs in fulfilling its legal obligations under State Water Resources Control Board (SWRCB) orders, the Quantification Settlement Agreement and IID Water Transfer Agreement, which includes mitigation of water quality and biological impacts to the Salton Sea. As such, the proposed project is consistent with the IID Water Transfer Agreement HCP EIR/EIS, the existing Section 7 Biological Opinion, and IID CESA Permit 2081. Additionally, IID has created an Equitable Distribution Plan (EDP) to give itself the flexibility to meet changing circumstances in supply and demand. The EDP would essentially create an agricultural fallowing incentive program in the event of a supply/demand imbalance. By October of each year, IID staff must forecast water demand and available supply and recommend whether there will be a supply/demand imbalance (SDI). With the knowledge that the proposed project is anticipated to use up to 20 acre-feet of water per year during its lease period, instead of a more intense agricultural water use, IID can account for this lower water demand when determining whether there will be a SDI and may help prevent the need to activate the EDP, which will allow more agricultural landowners to use their agricultural water supply, which is expected to result in a neutral net impact on water flowing to the sea (PMC, 2011).

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Likewise, in the years when IID must trigger the EDP, the water conservation from the proposed project reduces the need to induce fallowing on as many agricultural acres to generate the additional water conservation needed to meet its transfer obligations and Salton Sea mitigation obligations. According to IID's EDP Negative Declaration, in 2003, IID implemented a rotation fallowing program to successfully create conserved water to deliver to the Salton Sea and now IID plans to increase fallowing incrementally to a - maximum of about 25,000 acres. With the knowledge that the proposed projects will be using less water, IID can fallow less than the 25,000 acres to produce the same amount of water needed to meet its transfer obligations and conserve water to deliver to the Salton Sea (PMC, 2011). In this context, to the extent IID believes mitigation is needed in implementing the EDP, IID controls the mitigation by selecting how many farmland acres to enroll in its fallowing program to create the Salton Sea mitigation water.

As a result, IID acknowledged in its Negative Declaration adopting the EDP that the fallowing necessary to provide the transfer and Salton Sea mitigation water would not have a significant impact on water quality or biology. Specifically, it states for biology, "Implementation of the EDP would not have an effect on any biological resources within the IID water service area. The EDP could result in minor short-term changes in the location of water use and therefore, the volume of flows in the drains. However, any changes in the location of flows would be temporary and negligible, and well within historic variations, and therefore are not expected to result in any adverse effects on biological resources that rely on the drains for habitat....[i]t is expected that under an SDI [state and federal refuges in the IID service area] will have sufficient supply to maintain current uses and operations and/or to fulfill obligations under environmental permits issued to IID (Imperial County 2011). Previous environmental documentation has made a similar finding, that there would be no impact as a result of cumulative development related to the EDP (see Imperial Solar Energy Center South Project EIR/EA).

As for water quality, it states, "The proposed EDP would not result in any impacts associated with hydrology and water quality....the magnitude of any potential change is anticipated to be minimal and, due to constant variation in cropping patterns and locations of idled lands, most likely will be undetectable when compared to the existing condition" (PMC, 2011).

Response to Comment 8-99: The statement that "under normal precipitation conditions the reduction is 0.0001%" has been removed from the document. The text has been modified to reflect that the .04% reduction is in relation to the total volume in the Salton Sea and not the percentage reduction in the annual in-flow. See Response to Comments 8-98 and 8-102.

Response to Comment 8-100: The cumulative projects list was developed in consultation with the lead agency and included other large scale projects that would contribute to the conversion of agricultural lands to other uses in the Imperial Valley. These represent the key projects in the watershed that would result in changes to the hydrology of the Salton Sea and associated waterways.

Response to Comment 8-101: The commenter suggests that the cumulative reduction of 18,859 acre-feet of water would reduce inflows to Salton Sea by 1.45% not less than three-tenths of one percent. For the cumulative condition, the reduction of less than three-tenths of one percent included in the text on page 4.11-21 inadvertently described this reduction as the amount of water reaching the Salton Sea. The text has been revised to indicate that the reduction is actually the percentage of the total volume in the Salton Sea. See Response to Comments 8-98 for additional information relevant to this comment.

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Response to Comment 8-102: The commenter suggests that substantial evidence supports a fair argument that the project may result in potentially significant impacts to the Salton Sea and its biological resources. See response to comment 8-98 and discussion below. Under the terms of the Quantified Settlement Agreement (QSA) entered into by and between the Imperial Irrigation District (IID) and various other parties, IID has agreed to a “cap” on its allocation of water from the Colorado River of 3.1 million acre-feet, from which IID must conserve sufficient water to transfer water to certain other users under the agreement, as well for environmental mitigation associated with the Salton Sea. IID has projected that this will require reductions in total water delivery to the IID service area of 84,500 acre-feet from 2010 to 2045. Water available for agriculture during this period will generally be whatever water is available following IID’s reductions for water transfers and environmental mitigation, as well as consumption by municipal and other non-agricultural uses. Due to projected increases in water usage for municipal and other non-agricultural uses, the projected reduction in water available for agriculture during that same period is approximately 180,304 acre-feet (ESA, 2012a).

Thus, over the 50-year operational life of the proposed project, the amount of water consumed by agricultural production, and the attendant runoff to the Salton Sea, will be reduced regardless of whether the project site and other cumulative projects were to remain in agricultural production. In other words, the reduction in water consumption and related discharge at the project site caused by the proposed project will be subsumed in the overall reduction in water consumption in discharge by IID as a whole since the total available water for use by IID customers is “capped” (ESA, 2012a).

It should also be noted that this reduction in water discharge to the Salton Sea is a contemplated component of the Salton Sea Authority’s “Plan for Multi-Purpose Project” (available at <http://www.saltontsea.ca.gov/pdfs/ssa-plan-board-review-copy-8-20-06.pdf>), which projects that over the course of approximately 40 years (encompassing the majority of the operational life of the proposed project), the amount of inflow to the Salton Sea will decrease from approximately 1,200,000 acre-feet per year to approximately 800,000 acre-feet per year, including a reduction in farm inflow from drainage and spills of approximately 200,000 - 300,000 acre-feet per year. Thus, the proposed project will have no significant impact on the amount of water discharged to the Salton Sea over the life of the project, and have no impact on planned restoration efforts (ESA, 2012a).

Response to Comment 8-103: The comment states that the Draft EIR does not adequately assess hydrological impacts to Fig Lagoon and potential Yuma Clapper Rail (YCR) habitat. The Draft EIR YCR analysis (Impact 12.4.3, on pages 4.12-67 to 4.12-69 of the Draft EIR) was updated in this Final EIR to further address this issue, and Mitigation Measure mm 4.12.3 was added to the document to mitigate any potential adverse impact to YCR (refer to Appendix B, Section 4.12, Biological Resources (with revisions from 2012 Spring Surveys of this Final EIR).

For a discussion of potential impacts to the Salton Sea, refer to response to comment 8-98. The reduction in flows through the drains, Fig Lagoon, and New River to the Salton Sea are expected to result in a surface elevation drop in the Salton Sea of 0.14 inches. The Salton Sea fluctuates by 12 inches on an annual basis, making this reduction negligible. Therefore, as stated in response to comment 8-98, “no impacts are anticipated to the water levels in the Salton Sea, shoreline habitat of the Salton Sea,…” Similarly, a reduction in flows in the Fig Drain, Diehl Drain, and Wixom Drain which contribute directly to the inflow to the Fig Lagoon, is not expected to result in impacts to habitats in that complex because it is a small proportion of the total amount of

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water that flows into the Lagoon when compared to the overall drain system and inputs from the New River, and very slight drops in surface elevation are not likely to impact habitats at Fig Lagoon.

Also as noted in Response to Comment 8-98, IID acknowledged in its Negative Declaration adopting the Equitable Distribution Plan (EDP) that the following necessary to provide the transfer and Salton Sea mitigation water would not have a significant impact on water quality or biology. Specifically, it states for biology, "Implementation of the EDP would not have an effect on any biological resources within the IID water service area. The EDP could result in minor short-term changes in the location of water use and therefore, the volume of flows in the drains. However, any changes in the location of flows would be temporary and negligible, and well within historic variations, and therefore are not expected to result in any adverse effects on biological resources that rely on the drains for habitat."

MM 4.12.3 also requires monitoring and maintenance of the Wixom Marsh just upstream of the Fig Lagoon, reducing potential impacts to less than significant.

Response to Comment 8-104: The comment states that the Draft EIR also fails to analyze project impacts associated with reduced agricultural return flows to New River. Refer to Response to Comments 8-98, 8-102, and 8-103. The Fig Drain and Diehl Drain comprise a very small portion of the New River Watershed. The Fig Drain and Diehl Drain also drain only approximately 1/3 of the proposed project area. For the same reasons described in Response to Comments 8-98, 8-102, and 8-103, and because these variations are well within historic variations for the New River system, they are not expected to result in any adverse effects on biological resources.

Response to Comment 8-105: The comment states that the Draft EIR fails to adequately analyze impacts from traffic and asserts that payment of "fair share fees" is improper mitigation. The Draft EIR states on pages 4.3-45 to 4.3-49 that the identified intersection would be monitored during the peak construction month (generating highest project traffic volumes) to determine whether conditions at the intersection warrant any mitigation. The Draft EIR also recommends that the Project enter into an agreement with the County for the fair share contribution mitigation that would only be implemented in the case that mitigation at that specific intersection is warranted. Payment of "fair share" fees to mitigate a project's cumulatively considerable impacts is expressly allowed under CEQA Guidelines §15130. The Draft EIR identified the recommended mitigation measure in Table 4.3-29 as installing a traffic signal at the identified intersection

If all projects do not occur simultaneously (to be validated through traffic data collection and analysis as noted in the Draft EIR), there would be no need for any mitigation. Therefore, the potential need for mitigation and the share that each contributing project would be assessed could only be determined during construction of the proposed project, which is the only timeframe during which the project could appreciably contribute to local traffic.

Response to Comment 8-106: The comment asserts that the Draft EIR should have included the Mitigation Monitoring and Reporting Program (MMRP) for public review and comment. This is incorrect. An EIR must propose and describe mitigation measures to minimize the significant environmental effects identified in the EIR (Cal. Pub. Res. Code §21001.1(a); 14 C.C.R. §15126.), which was done here. The requirement to adopt an MMRP set forth in Public Resources Code §21081.6 provides that the MMRP shall be adopted when the public agency makes the requisite findings as part of its consideration of project approval. 14 C.C.R. §15097(a). Consideration and

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possible adoption of the MMRP will therefore occur at the forthcoming public hearings for the proposed project consistent with this requirement.

Response to Comment 8-107: The comment asserts that a SWPPP must be prepared. The Draft EIR describes on pages 4.11-1 to 4.11-2 the requirements that must be included in a Storm Water Pollution Prevention Plan (SWPPP) prepared to meet the requirements of the State Water Resources Control Board Construction General Permit Order No. 2010-0014-DWQ (General Construction Permit). Additional description of how the SWPPP will be developed and implemented, and the control measures that will be included in the SWPPP, are discussed on pages 4.11-15 to 4.11-16. Moreover, the scope and contents of the SWPPP is set forth in the General Construction Permit. Finally, the adequacy of the Applicant's SWPPP and its proper implementation will be subject to oversight and enforcement by the Regional Water Quality Control Board – Colorado River Basin Region. Refer also to Response to Comment 8-108.

Response to Comment 8-108: The comment asserts that CEQA does not allow deferral of development of mitigation after project approval. The comment incorrectly asserts that the SWPPP is a mitigation measure. Rather, the Applicant must comply with the General Construction Permit, which includes the preparation and implementation of a SWPPP. In addition, preparation of the SWPPP is listed as one of the Applicant Proposed Measures in Table 2.0-4 on page 2.0-48. See also Response to Comment 8-107. Because the comment is incorrect that the SWPPP is a mitigation measure, the contention regarding impermissible deferral of preparation of a mitigation measures is not relevant.

Moreover, a requirement that a project comply with specific laws or regulations may also serve as adequate mitigation of environmental impacts in an appropriate situation. *Oakland Heritage Alliance v City of Oakland* (2011) 195 CA 4th 884, 906. A SWPPP is such a regulatory requirement. Preparation of the SWPPP does not involve any discretionary decision making by an agency, consequently there is nothing for the public to review.

Response to Comment 8-109: The comment describes items to be included in SWPPP. The SWPPP has been previously addressed. Refer to Response to Comments 8-107 and 8-108.

Response to Comment 8-110: The comment states that the Draft EIR improperly segments the project because the gen-tie is analyzed separately under NEPA. The comment asserts that the Draft EIR is inadequate and the County has abused its discretion under CEQA by failing to consider the "whole of the action" because the Bureau of Land Management (BLM) has separately conducted environmental review of the project's proposed gen-tie on federal land under the National Environmental Policy Act. The comment fails to recognize that the fact that the BLM is conducting its own analysis under federal law does not in any way impact the County's analysis under CEQA or scope of the Draft EIR which does, in fact, consider the entirety of the proposed project – both the solar generation facility and the gen-tie, and alternatives thereto, which are proposed on both private land under the County's jurisdiction and on federal land under BLM's jurisdiction. See e.g., Draft EIR Chapter 2.0, subsections 2.1.5 and 2.2, and Chapter 6; see also page 4.12-5.

Response to Comment 8-111: The comment states that the project must describe a reasonable range of alternatives. The County agrees that CEQA requires an EIR to describe a reasonable range of alternatives. The comment does not raise any significant environmental issues, or question the sufficiency of the environmental analysis in the Draft EIR; therefore, no further response is

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required. Cal. Pub. Res. Code §21091(d)(2)(B); 14 C.C.R. §§15088(c), 15132(d), 15204(a). Refer also to Response to Comment 8-13.

Response to Comment 8-112: The comment states that the considered alternatives must include the environmentally superior alternative. The County agrees that CEQA requires an EIR to describe a reasonable range of alternatives, including an environmentally superior alternative. The environmentally superior alternative is set forth in Chapter 6.0, Alternatives of the Draft EIR (page 6.0-27). The comment does not raise any significant environmental issues, or question the sufficiency of the environmental analysis in the Draft EIR; therefore, no further response is required. Cal. Pub. Res. Code §21091(d)(2)(B); 14 C.C.R. §§15088(c), 15132(d), 15204(a).

Response to Comment 8-113: The comment states that the Draft EIR fail to adequately analyze the distributed solar alternative. The comment states that a distributed generation alternative should have been selected for detailed analysis in the Draft EIR. Distributed generation typically involves small-scale PV installations on private or publicly owned residential, commercial, or industrial building rooftops, parking lots or areas adjacent to existing structures such as substations. The location of such small-scale installations is not geographically constrained and, as relevant for CEQA purposes, could be located anywhere in the State. Distributed generation is generally available for use on site and does not deliver electricity to the grid as a utility-scale solar facility does.

The Draft EIR did evaluate a distributed generation system as suggested by the comment and analyzed whether a distributed generation system would meet the project's objectives. Draft EIR, page 6.0-3. Ultimately, the Draft EIR determined not to carry it forward as part of the "reasonable range" of alternatives to the proposed project.

CEQA vests the lead agency with significant discretion when it comes to identifying a reasonable range of alternatives to study in an EIR, and permits the lead agency to reject proposed alternatives from more detailed analysis provided the process used to select the alternatives is briefly discussed in the EIR and the decision is supported by evidence in the record. 14 C.C.R. §15126.6(c); *Tracy First v. City of Tracy* (2009) 177 Cal. App. 4th 912. An alternative may be rejected from detailed analysis in an EIR if it fails to reduce or avoid the project's significant environmental effects, does not implement the basic project objectives, is not potentially feasible, or is facially unreasonable. 14 C.C.R. §15126.6(c); *Id.*, see also *Mann v. Community Redevelopment Agency* (1991) 233 Cal. App. 3d 1143; *Del Mar Terrace Conservancy, Inc. v. City Council* (1991) 10 Cal. App. 4th 712. These criteria are not exhaustive, however, and other appropriate factors may be considered as well. *Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal. App. 3d 274.

The distributed generation alternative was rejected from further consideration for several reasons. First, because distributed generation is not geographically constrained, there is no guarantee that any portion of the solar installation would occur in Imperial County. Thus, this alternative would not meet any of the County's objectives (i.e., economic investment in the County; diversifying the County's economic base, generating local jobs and tax revenue; reinforcing the County's position as a leader in renewable energy production; and expanding the local renewable energy sector). Second, because distributed PV can be installed anywhere in the State, such installations could be installed in areas that do not meet the objective of locating the project in an area that ranks among the highest in solar resource potential. The County has no authority or influence over the installation of distributed PV generation systems outside of its jurisdiction. As such, there is no guarantee that action by the County to approve a distributed

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generation alternative would: (1) result in the installation of 139 MW of generating capacity; or, (2) support the objective of assisting the State of California meet to its RPS goals. On this latter point, because distributed generation projects are typically used to generate power for on-site use only, a distributed generation alternative would generally not accomplish the project's goals with respect to transmission and delivery of power to the grid, which is an essential element of the RPS.

Beyond this rationale, as determined in the Draft EIR, the proposed project does not result in any significant environmental effects. The lack of significant environmental effects necessarily narrows the range of available alternatives offering environmental advantages in comparison with the proposed project. See *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal. App. 4th 477. In terms of selecting alternatives from this narrow range for detailed consideration, CEQA Guidelines §15126.6(a) provides that alternatives selected for consideration in an EIR should "avoid or substantially lessen any of the significant effects of the project..." While a distributed generation alternative could potentially avoid some of the proposed project's less than significant environmental effects, it does not "avoid or substantially reduce" any significant effects, and the slight reductions in impacts that might be achieved by a distributed generation alternative did not warrant carrying the alternative forward, especially in light of some of the detriments to such an alternative.

Specifically, the proposed project is a utility-scale solar facility that has site control over specific private parcels of land in Imperial County and a power purchase agreement (PPA) with San Diego Gas & Electric Company which includes scheduled start dates for the delivery of the electricity to be generated by the proposed project and related penalties if those dates are not met. The current timeframe for commencement of electricity service under the PPA is the fourth quarter of 2013, and the proposed project has a reserved queue position for the delivery of the generated power set forth in the Large Generator Interconnection Agreement. A distributed generation alternative is simply not a reasonable or practical alternative to such a defined utility-scale facility as proposed.

Furthermore, a distributed generation solar project would change the fundamental nature of the project by requiring the acquisition or lease of numerous unidentified locations throughout Imperial County, and perhaps beyond, to assemble a distributed solar array capable of generating 139 MW. Such acquisitions by a private party, and the time it would take to do so, render the distributed generation alternative infeasible. In addition, distributed generation systems typically generate 10-kW per project and only comprise approximately 773-MW of generating capacity in California (CPUC, 2010) (Draft EIR, page 6.0-3). Numerous distributed generation projects would be required to replace a single utility-scale project. Distributed generation would also require locating solar energy systems on existing buildings, which are not efficiently organized for energy production.

Given these factors, it is unrealistic to assume that the proposed project could acquire access rights to numerous individual properties, and timely permit and construct sufficient small-scale solar facilities capable of generating capacity sufficient to satisfy the terms of the PPA within the timeframe required by that agreement or provide to the regional transmission system at a location which has existing available capacity to deliver electricity. Thus, not only is a distributed generation alternative patently unreasonable and therefore appropriately rejected from detailed analysis in the Draft EIR (*Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal. App. 4th 729 [alternative may be rejected from detailed consideration if as a

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practical matter such alternative is unlikely to be carried out within the reasonable future]), but a distributed generation alternative fails to satisfy basic project objectives related to delivering power to the regional utility under the terms set forth in the PPA and Large Generator Interconnection Agreement.

A recent study of California's efforts to meet the RPS makes clear that utility-scale and distributed generation renewable energy projects are not mutually exclusive means to achieve the RPS, but instead must be implemented in concert along with other activities. California Council on Science and Technology, "California's Energy Future - The View to 2050" (May 2011), p. 33; "California's Energy Future - Electricity from Renewable and Fossil Fuels with Carbon Capture and Sequestration" (April 2012), pages 11-16. Utility-scale solar projects such as the proposed project are a necessary to achieve California's renewable energy goals, and timely development of the proposed project will assist in that goal while not preventing or otherwise detracting from future development of distributed generation facilities. Therefore, rejection of a non-utility scale distributed generation alternative was reasonable and the Draft EIR adequately evaluated a reasonable range of alternatives.

Response to Comment 8-114: The commenter contends that distributed solar would meet project objectives while avoiding environmental impacts. Distributed solar has been previously addressed. Refer to Response to Comment 8-113.

Response to Comment 8-115: The comment states that the analysis of distributed generation and other alternatives should consider impacts to ratepayers. The comment cites to and purports to summarize a report by the California Public Utilities Commission's Division of Ratepayer Advocates entitled "Green Rush: Investor-Owned Utilities' Compliance with the Renewable Energy Portfolio Standard" (February 2011) and asserts that the Draft EIR should have analyzed how implementation of the proposed project would impact utility rates paid by residents of Imperial County. The comment cites to various sections of CEQA and the CEQA Guidelines relating to a public agency's adoption of a statement of overriding considerations, which is a separate policy document in which the public agency balances the environmental effects of a project with social, economic, legal and other issues. Such an evaluation is separate from the process of preparing and certifying an EIR, which is concerned with evaluating the significant environmental effects of a project. CEQA Guidelines §15131 provides that economic and social effects need not be analyzed in an EIR. *See also Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App. 4th 1184. Thus, the comment does not raise any significant environmental issues, or question the sufficiency of the environmental analysis in the Draft EIR; therefore, no further response is required. Cal. Pub. Res. Code §21091(d)(2)(B); 14 C.C.R. §§15088(c), 15132(d), 15204(a).

Response to Comment 8-116: The comment states that the County should prepare and recirculate a supplemental Draft EIR. The comment purports to summarize the legal standard for recirculation pursuant to the California Environmental Quality Act and asserts that the Draft EIR for the proposed project must be recirculated. As an initial matter, the comment erroneously cites to CEQA Guidelines §15162, which sets forth the standards for preparation of a subsequent EIR or negative declaration. The standards for recirculation of an EIR are set forth in CEQA Guidelines §15088.5.

Generally, an EIR must be recirculated for additional public review if "significant new information" is added to the EIR following notice of the initial public review period but prior to final certification (CEQA Guidelines §15088.5(a)). Not all "new information" added to an EIR is

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significant, and “new information added to the EIR that merely clarifies or amplifies or makes insignificant modifications” does not trigger recirculation (CEQA Guidelines §15088.5(b)).

“New information” is considered significant, and an EIR must be recirculated, when:

- The new information shows a new, significant environmental impact resulting either from the project or from a mitigation measure;
- The new information shows a substantial increase in the severity of an environmental impact, except that recirculation would not be required if mitigation that reduces the impact to insignificance is adopted; and
- The new information shows a feasible alternative or mitigation measure, considerably different from those considered in the EIR, that clearly would lessen the environmental impacts of a project and the project proponent declines to adopt it.

See (CEQA Guidelines §15088.5(a)(1)-(3); see also *Laurel Heights*, 6 Cal.4th at 1129. An EIR must also be recirculated if the Draft EIR is “so fundamentally and basically inadequate and conclusory in nature” that public comment on the Draft EIR is essentially meaningless. *Mountain Lion Coalition v. Fish & Game Commission* (1989) 214 Cal. App. 3d 214; see also Guidelines §15088.5(a)(4).

The comment does not raise any individual grounds for recirculation, but merely refers to issues identified earlier in the comment letter. As discussed in these Responses to Comment, no “significant new information” triggering the need for recirculation needs to be added to the EIR, and there is no new, or no substantial increase in the severity of an existing, significant environmental impact, and no new feasible alternative or mitigation measure that clearly would lessen the environmental impact(s) of a project and which the project proponent declines to adopt.

Response to Comment 8-117: The comment provides closing remarks and reiterates LIUNA’s position that the document requires significant revision, recirculation and review. These remarks have been addressed at length in the preceding response to comments. This comment is noted for the decision-makers’ consideration.

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COMMENT LETTER 9

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July 3, 2012

David Black, Planner IV
County of Imperial
Imperial County Planning & Development
801 Main Street
El Centro, CA 92243

**Re: Campo Verde Solar Project Conditional Use Permit
Draft Environmental Impact Report**

Dear Mr. Black:

Campo Verde Solar, LLC (Campo Verde or Applicant), a wholly owned subsidiary of First Solar, Inc., hereby provides to the County of Imperial (County) its written comments on the Draft Environmental Impact Report (DEIR) for the Campo Verde Solar Project (Project), issued by the County on May 15, 2012. Campo Verde’s written comments consist of both this letter and the documents contained in the Attachments, each of which is specifically incorporated herein by reference.

9-1

At the outset, we thank County staff and the County’s consultant, Ericsson-Grant, Inc. (EGI) for their hard work in compiling and preparing this DEIR regarding the Project. We also appreciate the significant public outreach efforts and agency consultation that has been conducted for the DEIR by the County under the California Environmental Quality Act (CEQA).

9-2

We have organized our comments on the DEIR by chapter and subchapter as set out in the DEIR. We address specific comments in the order that they appear in a particular chapter or section.

9-3

Executive Summary

On page ES-1, the statement in the last sentence of Section ES.1 that Campo Verde has submitted a variance application seeking approval to construct generation transmission line (gen-tie) structures up to 145 feet is not correct. Campo Verde’s variance application submitted on February 6, 2012 seeks permission to build gen-tie structures up to 135 feet. Campo Verde may need to amend its variance application to seek permission to build gen-tie structures up to 145

9-4

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feet depending on the outcome of discussions with the Imperial Irrigation District (IID) regarding canal crossings.

9-4
continued

On page ES-5, in Table ES-1, the reference to “several residences” should be revised to state “two residences and a school” or “three habitable structures.”

9-5

On page ES-69, in Table ES-1, Impact 4.12.10, under MM 4.12.10c, the statement “Implement MM 4.12.11, below would address impacts to FTHL as a result of invasive, exotic plant species” incorrectly references MM 4.12.11. The correct reference is to MM 4.12.12.

9-6

Introduction

On page 1.0-2, in the fourth paragraph, the statement that Campo Verde has submitted a variance application seeking approval to construct gen-tie structures up to 145 feet is not correct. Campo Verde’s variance application submitted on February 6, 2012 seeks permission to build gen-tie structures up to 135 feet. Campo Verde may need to amend its variance application to seek permission to build gen-tie structures up to 145 feet depending on the outcome of discussions with the IID regarding canal crossings.

9-7

On page 1.0-7, under the heading United States Army Corps of Engineers, please revise this discussion to note that the Corps has issued Campo Verde a Preliminary Jurisdictional Determination and determined that the Project will not result in any fill impacts to waters under the Corps’ jurisdiction. Accordingly, Campo Verde does not require a permit from the Corps. In addition, we note that there is an extra period at the end of the paragraph that should be deleted.

9-8

On page 1.0-8, please update the discussion under the heading BLM and California State Historic Preservation Office (SHPO) to note that the Class III Cultural Resources Study has been completed and that BLM has initiated consultation with the SHPO.

9-9

On page 1.0-10, the reference to a Dust Control Permit should be replaced with Dust Control Plan.

9-10

On page 1.0-10, note that, with regard to IID’s approvals, Campo Verde may also enter into a Following Agreement with IID under IID’s Temporary Land Conversion Following Policy.

9-11

On page 1.0-12, under Section 1.7, the pre-application meeting with BLM was held from 10:00 a.m. to 11:30 a.m., not 11:30 p.m.

9-12

On page 1.0-17, the text of the first bullet should be revised to note that the Fiscal Impact Analysis has been prepared.

9-13

On page 1.0-23, the text in the last full bullet should be revised to state that the number of employees that may be present on site during operations is four to 12.

9-14

On page 1.0-34, the last sentence in the first paragraph under the Fire Protection heading should be revised to state that “Inverters will be located in a pre-fabricated protective electrical

9-15

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<p>equipment enclosure or shelter with adjacent transformer,” which is consistent with the discussion in the Project Description.</p>	<p>9-15 continued</p>
<p>On page 1.0-36, under the heading Wastewater Treatment, note that Campo Verde is also seeking permission for a holding tank for domestic sewage from the construction trailers.</p>	<p>9-16</p>
<p>On page 1.0-37 to 38, under the Water Supply heading, note that Campo Verde may enter into a Following Agreement with IID under IID’s Temporary Land Conversion Following Policy, which would assist IID in meeting its interim water supply policy obligations without following active agricultural lands.</p>	<p>9-17</p>
<p>Project Description</p>	
<p>On page 2.0-2, note that the statement in the first paragraph that Campo Verde has submitted a variance application seeking approval to construct gen-tie structures up to 145 feet is not correct. Campo Verde’s variance application submitted on February 6, 2012 seeks permission to build gen-tie structures up to 135 feet. Campo Verde may need to amend its variance application to seek permission to build gen-tie structures up to 145 feet depending on the outcome of discussions with the Imperial Irrigation District (IID) regarding canal crossings.</p>	<p>9-18</p>
<p>On page 2.0-3, in the third paragraph, add “as well as private ditches” to the end of the sentence, “The solar generation facility site includes a series of soil and concrete lined irrigation canals and ditches operated by the Imperial Irrigation District (IID).”, to acknowledge that not all ditches in the solar generation facility site are operated by IID.</p>	<p>9-19</p>
<p>On page 2.0-3, in the third paragraph under Section A, note that not all roads are public; some are private. Accordingly, please replace “public roads” with “roads.”</p>	<p>9-20</p>
<p>On page 2.0-8, in Table 2.0-1, the zoning for APN 051-360-018-000 is erroneously shown as A-3 and should be corrected as A-2R.</p>	<p>9-21</p>
<p>On page 2.0-18, in the second sentence in the first paragraph under the Power Conversion Substation (PCS) heading, replace “fed” with “feed.”</p>	<p>9-22</p>
<p>On page 2.0-20, please replace “up to” with “approximately” as the modifier to the statement that the operations and maintenance (O&M) facility will be 3000 square feet. The final sizing of the O&M building could be slightly larger or smaller than 3000 square feet.</p>	<p>9-23</p>
<p>On page 2.0-22, in the second paragraph under the Fire System heading, replace the last sentence with “Access to all nearby properties will be maintained.” This is to clarify that, although access will be maintained, some reconfiguration may occur.</p>	<p>9-24</p>
<p>On page 2.0-26, please add the qualifier “as required” to the end of the last two sentences in the paragraph under the heading Air Quality and Dust Suppression to indicate that Campo Verde will apply dust suppressants as needed as determined by site conditions and as required pursuant to Imperial County Air Pollution Control District (ICAPCD) rules and the requirements of the Dust Control Plan prepared for the Project.</p>	<p>9-25</p>

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<p>On page 2.0-28, the last sentence in the first paragraph is misleading due to the parenthetical “(during washing events).” Campo Verde does not anticipate that it will be necessary to wash the PV modules because they are designed to operate efficiently despite dust, and rainfall is anticipated to provide adequate washing should any be necessary. Accordingly, please modify the parenthetical by adding the underlined text as follows: “(during washing events, <u>which are not anticipated to occur</u>).”</p>	9-26
<p>On page 2.0-28, in the second sentence under the Stormwater heading, replace “Each developed parcel” with “Each developed area” to clarify that Campo Verde will not be constructing a stormwater detention basin for each legal parcel within the Project Area. Rather, Campo Verde will construct stormwater detention basins as conceptually shown on Figure 2.0-3.</p>	9-27
<p>On page 2.0-28, note that the substation transformer will also be a noise source.</p>	9-28
<p>On page 2.0-30, delete the second sentence in the first paragraph under Section 2.1.5A because the statement that the private parcel is crossed by the gen-tie is inaccurate.</p>	9-29
<p>On page 2.0-30, in Table 2.0-2, please add parcels APN 051-350-010 and APN 051-350-011 to provide flexibility for construction laydown and aerial easements. In addition, APN 051-350-012 was erroneously included and should be deleted. Lastly, we suggest that the heading for the middle column be changed from Change Acreage to Description, which is more consistent with the information provided in that column.</p>	9-30
<p>On page 2.0-31, please replace Figure 2.0-13 with the figure provided in Attachment A, which is incorporated herein by reference. The updated figure includes APNs for two parcels that are outside the Project boundary, and clarifies the project boundary..</p>	9-31
<p>On page 2.0-37, please revise the first sentence in the second paragraph to state that Campo Verde may also use self-supporting concrete poles to construct the gen-tie. I.e., the sentence should be revised by adding the underlined text as follows: “The project would use <u>self-supporting single concrete poles</u> or self-supporting single steel poles made of self-weathering or galvanized steel to better blend into the surrounding environment.” Campo Verde may use either or both types of poles.</p>	9-32
<p>On page 2.0-37, under the heading Private Land, please revise the second sentence by deleting the phrase “on private land” because the portion of the gen-tie that is on private land will be accessed using a new internal road. The rest of the sentence only applies to portions of the gen-tie on BLM land.</p>	9-33
<p>On page 2.0-37, under Section E, the impact area for the gen-tie footings should be corrected to state 100 feet x 250 feet.</p>	9-34
<p>On page 2.0-39, under the heading Vegetation Clearing, the impact area for the gen-tie footings should be corrected to state 100 feet x 250 feet.</p>	9-35
<p>On page 2.0-43, in the third sentence under the Site Excavation heading, please change the reference to a “site grading permit” to “construction permit.” This change is appropriate</p>	9-36

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<p>because the term is a more general permit description that will cover all of the various approvals that may be needed to do the excavation work</p>	<p>9-36 continued</p>
<p>On page 2.0-46, delete the first sentence at the top of the page because there are no ROW easements on private land in the Western gen-tie alignment.</p>	<p>9-37</p>
<p>On page 2.0-46, in the first sentence under Section I, please revise the text to state that the ROW is a “BLM ROW” for clarification.</p>	<p>9-38</p>
<p>In various portions of Table 2.0-5, we note that that there is inconsistent table formatting and header sentence formatting. Please make the formatting consistent in order to prevent any ambiguity in content or meaning of the applicant proposed measures on BLM land.</p>	<p>9-39</p>
<p>On page 2.0-57, a short description of the “Reduced Size Solar Generation Facility Alternative” discussed in this letter under Project Alternatives below should be added.</p>	<p>9-40</p>
<p>On page 2.0-59, there appears to be a superfluous parenthetical at the end of the fifth bullet under the heading, “B. Imperial Irrigation District.” Please delete.</p>	<p>9-41</p>
Aesthetics	
<p>On page 4.1-29, it appears that KOP#7 should be added to MM 4.1.2 as one of the views that should be eligible for screening mitigation because it is described as a potentially significant impact.</p>	<p>9-42</p>
<p>On page 4.1-30, the statement in the third paragraph under the Glare heading that no “galvanized products” will be used on the project is incorrect and should be deleted. Project components that may be constructed with galvanized steel include, but are not limited to, array posts, gen-tie tower poles and cross-arms, and chain link fencing for perimeter security. However, these project components would not cause glare impacts. Therefore, the Project’s glare impacts continue to be less than significant.</p>	<p>9-43</p>
Land Use	
<p>On page 4.2-27, delete the “9” that appears before the last sentence in the paragraph at top of the page.</p>	<p>9-44</p>
<p>On page 4.2-28, the second and third full sentences state that PV modules installed at the Project may be impacted by dust and particles from periodic spraying at adjacent agricultural fields. In fact, the performance of the PV technology utilized at the Project will not be impacted by dust or spray particles. Accordingly, dust and spray particles will be less than nuisance level impacts and are not anticipated to require any action by Campo Verde to address such impacts, such as washing modules. In light of this, we suggest that you delete this discussion.</p>	<p>9-45</p>
Transportation and Circulation	
<p>On page 4.3-21, the second paragraph under the heading Proposed Action Operations and Maintenance Trip Generation is somewhat misleading because it suggests that there is a</p>	<p>9-46</p>

3.0 COMMENTS AND RESPONSE TO COMMENTS

substantial likelihood that PV module washing will be required. In fact, it is highly unlikely that PV module washing will be necessary because the modules are designed to operate efficiently despite dust, and rainfall is anticipated to provide a sufficient degree of washing over the life of the Project. Accordingly, please add a sentence at the end of this paragraph stating to the effect that “However, panel washing is not anticipated to be necessary.”

9-46
continued

Air Quality

Regarding the use of diesel oxidation catalyst proposed to be required under mitigation measure MM 4.4.1b on page 4.4-18, we understand that the ICAPCD no longer requires this measure in light of new requirements and/or guidance from the California Air Resources Board (CARB). We understand that the ICAPCD, following CARB’s direction, now specifies that diesel construction equipment must meet Tier II requirements or better to achieve the ICAPCD’s CEQA mitigation requirements for oxides of nitrogen (NO_x). Accordingly, MM 4.4.1b should be revised to require Tier II compliance, rather than the use of diesel oxidation catalyst. In addition, the references to the use of diesel oxidation catalyst at the bottom of page 4.0-16 and the top of 4.0-17 should also be replaced with references to Tier II emissions standards.

9-47

On page 4.4-17, MMs 4.4.1a(1) and 4.4.1a(2) should be revised to eliminate the specified watering frequency and state instead that Campo Verde will apply water or County-approved dust suppressants as needed to comply with its Dust Control Plan and comply with the ICAPCD’s opacity limits. The existing prescriptive requirements are counterproductive and unnecessary. Applying water three times per day without respect to need only serves to waste water. For example, if the ground is damp due to rainy conditions, applying water for dust control would not be needed. Similarly, the manufacturer’s directions for certain dust suppressants expressly state that water should not be applied for a certain time after application.

9-48

On page 4.4-20, under the Mitigation Measures heading, it is our understanding that the intent of the text is that implementation of mitigation measures MM 4.4.1a, b and c constitute T-BACT and that no other measures are required. In order to eliminate any ambiguity, please delete “In addition” and “also” from the second sentence.

9-49

Geology and Soils

On page 4.6-14, in the second sentence of the third paragraph, delete the parenthetical reference: “(such as occasional PV panel washing).” Campo Verde does not anticipate conducting any panel washing during the life of the Project.

9-50

On page 4.6-18, under the heading Significance After Mitigation at the bottom of the page, MM 4.6.2 should be replaced with MM 4.6.1 per the discussion in the paragraph above under the Mitigation Measures heading.

9-51

On page 4.6-15, mitigation measure MM 4.6.4 should be limited to the solar generation facility and the private land portion of the gen-tie. The County does not have jurisdiction over the BLM portion of the gen-tie.

9-52

On page 4.6-15 and pages 4.6-16 to -17, respectively, we suggest replacing mitigation measures MM 4.6.4 and MM 4.6.6 with the following text. The substantive mitigation measure

9-53

3.0 COMMENTS AND RESPONSE TO COMMENTS

remains the same in each case, but the additional detail clarifies the standards to be used in the analysis of site conditions and the development of design recommendations.

Proposed Revision to MM 4.6.4

The proposed solar generation facility and the private-land portion of the gen-tie shall be designed in accordance with a Geotechnical Evaluation that will be prepared by a licensed professional engineer. Prior to the final design of the Project, the Geotechnical Evaluation shall be conducted to identify the presence and potential impact of expansive soils throughout the project site. The testing and analysis conducted as a part of the Geotechnical Evaluation shall be done under the guidance of a licensed professional engineer in general accordance with the applicable American Society for Testing and Materials (ASTM) standards and other locally-accepted testing methods. The Geotechnical Evaluation shall provide design recommendations for the expansive soil conditions identified at the project site that are in conformance with applicable industry standards. The Geotechnical Evaluation shall be submitted to Imperial County for review and approval prior to issuance of building permits, as required by Imperial County.

Proposed Revision to MM 4.6.6

The proposed solar generation facility and the private-land portion of the gen-tie shall be designed in accordance with a Corrosion Analysis that will be prepared by a licensed professional engineer. The Geotechnical Evaluation required in MM 4.6.4 above shall include Soil Resistivity Testing and Chemical Testing to identify the corrosion potential of the existing soil throughout the project site. Soil Resistivity Testing shall utilize the Wenner 4-point method. Chemical Testing shall be in accordance with ASTM or other locally-accepted testing and reporting standards. Following completion of the Geotechnical Evaluation, a Corrosion Analysis shall be prepared by a qualified engineer to model the effects of corrosion on project components. The Corrosion Analysis shall be based on standards developed by ASTM, the National Bureau of Standards (NBS), the International Organization for Standards (ISO), the National Association of Corrosion Engineers (NACE) International, and other applicable standards. The Corrosion Analysis shall provide design recommendations for the corrosive soil conditions identified at the project site that are in conformance with applicable industry standards, which may include galvanization, epoxy coatings, thicker steel and cathodic protection. The Corrosion Analysis shall be submitted to Imperial County for review and approval prior to issuance of the structural post building permit, as required by Imperial County. Results and

9-53
continued

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recommendations of the Corrosion Analysis shall be implemented into the structural design of the project.	9-53 continued
Cultural Resources	
On page 4.7-1, in the third paragraph, as a clarification please replace the last sentence with the following: “The non-confidential version of the document is provided on the attached CD of Technical Appendices as Appendix E of this EIR.”	9-54
On page 4.7-8, in the last sentence under the first paragraph under the heading “The Kumeyaay,” the order of the references to the Tipai and the Ipai is incorrect and should be switched. The Ipai is the name for the northern subgroup, and the Tipai is the name for southern subgroup.	9-55
Noise	
On page 4.8-18, under the heading, “Transformer/Inverter and Array Tracker Noise Levels,” at the end of the second sentence, it appears that “kV” should be inserted after “34.5-“.	9-56
Also on page 4.8-18, please note that Campo Verde may use a transformer for the Project substation with a higher audible noise level than is referenced and discussed in this section. In addition, as a result of design refinements, the substation transformer will be located farther from the property line than the distance analyzed in the DEIR. However, the noise impact will remain less than significant. As noted in Appendix A in the Noise Analysis in Appendix F of the DEIR, the largest transformer has an average audible sound level of 76 decibels. While Campo Verde does not intend to use a transformer this large, even if it did and placed it the same distance from the property line as analyzed in the DEIR, the noise reduction due to distance of 35.6 decibels would reduce the resultant noise level at the property line to 40.6 decibels. This is less than the County’s most restrictive property line standard of 45.0 decibels. The noise level at the property line from the transformer that will actually be used in the Project substation will be even less because the transformer will have a lower audible noise level, and may also be located farther from the property line.	9-57
Agricultural Resources	
On page 4.9-14, with respect to mitigation measure MM 4.9.1a, under Option 2 for both Non-Prime Farmland and Prime Farmland, please clarify that the Agricultural In-Lieu Mitigation Fee for impacts to non-prime and prime farmland is to be based on the number of acres of each type of farmland impacted by the Project, not the total number of acres of the proposed Project site. Under the current language, this mitigation measure would require Campo Verde to pay an Agricultural In-Lieu Mitigation Fee equal to 50 percent of the fair market value for the total acreage of the entire project site. To clarify the intent of this measure, we suggest that, in Option 2 for Non-Prime Farmland, the phrase “total acres of proposed site” be replaced with “acres of non-prime farmland impacted by the Project.” Similarly, we suggest that, in Option 2 for Prime Farmland, the phrase “total acres of the proposed site” be replaced with “acres of prime farmland impacted by the Project.”	9-58

3.0 COMMENTS AND RESPONSE TO COMMENTS

On page 4.9-15, in the last paragraph, third line from the bottom, delete “and of MM 4.9.2”. There is no MM 4.9.2 in the DEIR.

9-59

On page 4.9-16, the last two sentences in the first paragraph discuss the Silverleaf Project. This appears to be a cumulative impact issue that should be deleted from the discussion in this portion of the DEIR.

9-60

Hazards and Hazardous Materials

On page 4.10-2, in the paragraph at top of page, delete the last sentence that references the General Industrial Stormwater Permit because it is not applicable to the Project.

9-61

On pages 4.10-21 to 22, we suggest adding detail to mitigation measure MM 4.10.2b regarding the disposition of the above-ground storage tanks (ASTs). Specifically, we suggest adding the following to the end of the mitigation measure: “The removal and disposition of such ASTs shall be in accordance with applicable regulations.”

9-62

Biological Resources

Spring biological surveys of the Project area for plants and animals have been completed. Accordingly, the Biological Resources section should be updated to reflect this new, up-to-date information. We have provided a redlined copy of the Biological Resources section as Attachment B for the County’s convenience, which is incorporated herein by reference.¹ In addition, we have included the 2012 spring survey data to supplement the Biological Technical Report in Appendix J of the DEIR as Attachment C, which is incorporated herein by reference.

9-63

In addition, we have the following additional comments on the Biological Resources section.

9-64

On pages 4.12-31, 4.12-56, 4.12-60 and 4.12-93, the discussion under the heading Jurisdictional Waters should be revised to note that the Corps has issued Campo Verde a Preliminary Jurisdictional Determination and determined that the Project will not result in any fill impacts to waters under the Corps’ jurisdiction. Accordingly, Campo Verde does not require a permit from the Corps.

9-65

On pages 4.12-58 to 59, replace the references to the California Department of Fish and Game’s (CDFG) 1995 burrowing owl mitigation protocol with references to CDFG’s 2012 Staff Report on Burrowing Owl Mitigation (March 7, 2012) as the source for burrowing owl mitigation requirements.

9-66

On page 4.12-71 to -72, we suggest that mitigation measure 4.12.6b reference CDFG’s 2012 Staff Report on Burrowing Owl Mitigation as the performance standard that Campo Verde will use to determine the mitigation acreage. Specifically, we suggest adding the following text

9-67

¹ For the copy of this letter being submitted by email, we have uploaded an electronic copy of the redlined Biological Resources section attached hereto to our consultant ENValue’s ftp site and have notified EGI that it is available. The electronic copy was too large to be accepted by the County’s email system.

3.0 COMMENTS AND RESPONSE TO COMMENTS

<p>to the last sentence of the mitigation measure: “and in accordance with CDFG’s 2012 guidance for Burrowing Owl mitigation.”</p>	<p>9-67 continued</p>
<p>On page 4.12-80, the sentence under Table 4.12-9, “Implement MM 4.12.11, below, would address impacts to FTHL as a result of invasive, exotic plant species.”, should reference MM 4.12.12 instead. Impact 4.12.11 concerns the Colorado fringe-toed lizard, not invasive, exotic species, and it does not have a mitigation measures other than to implement MM 4.12.10. By comparison, MM 4.12.12 concerns the impact of invasive, exotic species on potential riparian habitat or special status communities, and has mitigation measures targeted to mitigate this impact. See our parallel comment above on the Executive Summary.</p>	<p>9-68</p>
<p>On page 4.12-93, under the heading Mitigation Measures, please revise the parenthetical following MM 4.12.2 to state “SWFL and YCR.”</p>	<p>9-69</p>
<p>Alternatives</p>	
<p>Commencing with the scoping period and through its direct outreach efforts, Campo Verde has received input from various stakeholders inquiring whether the company could reduce impacts from the solar generation facility to agricultural and environmental resources. In response to those requests and through the work of its design, engineering and supply chain teams, Campo Verde has developed a reduced size layout for the solar generation facility that reduces the amount of agricultural land necessary for the solar generation facility while maintaining the power output of the project. This alternative layout remains entirely within the scope of the proposed solar generation facility described in Chapter 2.0, but reduces the land area required for the facility by approximately 27 percent and, as a result, reduces the impact to agricultural and environmental resources. The description of this “Reduced Size Solar Generation Facility Alternative” and its corresponding impacts to each resource area is set out in detail in Attachment D. Campo Verde requests that the County include this alternative as a new alternative (Alternative 4) in the Final EIR.</p>	<p>9-70</p>
<p>On pages 6.0-2 to 3, in Section 6.2, for improved readability please consider breaking up the discussion of alternatives considered but not selected for analysis by adding sub-headings for: (1) alternative site location (portion of first full paragraph); (2) larger solar generating facility (second paragraph); (3) distributed generation (third through second to last paragraph); and (4) reduced power output alternative (last paragraph). As noted above, Campo Verde has developed a Reduced Size Solar Generation Facility Alternative which reduces environmental impacts while achieving the same power output as the proposed solar generation facility.</p>	<p>9-71</p>
<p>On page 6.0-9, please include parcel APN 051-350-012 in Table 6.0-1. The acreage for this parcel is 1.02 acres. It would be used for a gen-tie easement. The nearest intersection is Liebert and Wixom Roads.</p>	<p>9-72</p>
<p>On page 6.0-14, the first paragraph after Table 6.0-4 should be updated to acknowledge that the spring rare plant surveys have been conducted, which confirm that there would be no impacts to federally listed, state-listed or BLM sensitive plant species if the Project uses the Alternative Gen-Tie route.</p>	<p>9-73</p>

3.0 COMMENTS AND RESPONSE TO COMMENTS

On page 6.0-15, in the third to the last paragraph, the burrowing owl burrow data related to the Alternative Gen-Tie route should be updated to note that 14 suitable but inactive burrows were observed in the survey area during the spring surveys that were conducted.

9-74

Other CEQA Required Considerations

Commencing on page 7.0-2 to the end of this chapter, the header incorrectly states "Cumulative Impacts Summary" and the page numbering format is 5.0-2 to 5.0-5. Please correct this.

9-75

On page 7.0-4, in the second line in the second paragraph, please change "solar energy facility" to "solar generation facility" to be consistent with rest of the DEIR.

9-76

* * * * *

We appreciate the considerable time and effort that the County and EGI have devoted to the scoping process, data development, impact analysis, mitigation measure formulation and overall preparation of this DEIR. The comments by Campo Verde herein are intended to add transparency and further explain the findings contained in this draft document, so that the Final EIR summarizes all of the relevant data, analysis and conclusions.

9-77

Campo Verde has worked to be responsive to input from the County, other government agencies and the public regarding this Project. Campo Verde has proactively conducted biological, cultural and other surveys, prepared noise, visual, air quality and other studies and taken all possible steps to fully characterize the baseline environmental conditions and analyze the potential environmental impacts of the Project. Many of the Applicant Proposed Measures for the Project resulted from advance consultation with a variety of government agencies and third parties. These measures were intended to anticipate, and then avoid or minimize, impacts by embedding the measures in the Project Description.

9-78

In this same spirit of environmental responsibility, Campo Verde has presented the Reduced Size Solar Generation Facility Alternative to further avoid, reduce and minimize potential environmental impacts in key resource areas. Among other things, this proposed alternative will condense the Project size and reduce impacts to agricultural lands. At the same time, it will achieve both Applicant and federal/state goals of adding 140-plus megawatts of new renewable energy for California citizens.

9-79

Please feel free to contact us at any time if you have any questions or would like to discuss these comments.

Sincerely yours,



Roy Skinner
Director, Project Permitting

Attachments

3.0 COMMENTS AND RESPONSE TO COMMENTS

RESPONSE TO COMMENT LETTER 9

Commenter: Roy Skinner, Director, Project Permitting

Date of Letter: July 3, 2012

Response to Comment 9-1: The comment identifies the commenter as Campo Verde Solar, LLC. The comments include this letter and documents contained in attachments incorporated by reference. Comment noted.

Response to Comment 9-2: The commenter thanks the County for its efforts in preparing the Draft EIR and for its public outreach efforts.

Response to Comment 9-3: The comment addresses the organization of the comments on the document.

Response to Comment 9-4: The comment clarifies that Campo Verde's variance application, as submitted, is for gen-tie structures up to 135-feet. The Draft EIR incorrectly states that the variance application was for transmission line structures up to 145 feet.

Page ES-1, the last paragraph under subsection ES.1, Project Background has been revised as follows to address this discrepancy:

"On February 7~~6~~, 2012, the Applicant submitted a Variance Application to the ICPDS. The Variance Application was submitted to address gen-tie structures that may exceed the A-2 and A-3 zoning height limitation of 120 feet. If approved, the Variance would permit a maximum height of the gen-tie ~~line~~-structures of ~~145~~ 135 feet. The Applicant may need to amend its variance application to seek permission to build gen-tie structures up to 145 feet pending the outcome of discussions with the Imperial Irrigation District regarding canal crossings."

Response to Comment 9-5: The comment requests a clarification regarding a reference to residences in Impact 4.1.2.

Page ES-5, Table ES-1, Impact 4.1.2 has been revised as follows:

"Impact 4.1.2 The proposed project would convert agricultural fields to a solar generation facility thereby replacing vegetation with man-made structures. The project would alter the overall character of the project site and substantially alter views from ~~several residences~~ two residences and a school. Therefore, this impact is considered **potentially significant.**"

The same change is also made to Impact 4.1.2 on page 4.1-25 in Section 4.1, Aesthetics. Refer to Chapter 4.0, Errata, of this Final EIR.

Response to Comment 9-6: The comment requests that an incorrectly referenced mitigation measure on page ES-69 in Table ES-1 be revised.

Page ES-69, Table ES-1, the paragraph following MM 4.12.10c has been revised as follows:

"Implementation of ~~MM 4.12.11~~ ~~11~~, below, would address impacts to FTHL as a result of invasive, exotic plant species."

3.0 COMMENTS AND RESPONSE TO COMMENTS

Response to Comment 9-7: The comment clarifies that Campo Verde’s variance application, as submitted, is for gen-tie structures up to 135-feet. The Draft EIR incorrectly states that the variance application was for transmission line structures up to 145 feet.

Page 1.0-2, the fourth paragraph has been revised as follows to address this discrepancy:

“On February 7~~6~~, 2012, the Applicant submitted a Variance Application to the ICPDS. The Variance Application was submitted to address gen-tie structures that may exceed the A-2 and A-3 zoning height limitation of 120 feet. If approved, the Variance would permit a maximum height of 135 feet for the gen-tie line-structures of 145 feet. The Applicant may need to amend the Variance application to seek permission to build gen-tie structures up to 145 feet pending the outcome of discussions with the Imperial Irrigation District regarding canal crossings.”

Response to Comment 9-8: The comment requests that the discussion under the United States Army Corps of Engineers be revised to reflect that the Corps has issued a Preliminary Jurisdictional Determination and determined that the project will not result in any fill impacts to waters under the Corps’ jurisdiction. As such, the project does not require a permit from the Corps.

Page 1.0-7, discussion under the United States Army Corps of Engineers has been revised as follows:

“The United States Army Corps of Engineers (ACOE) possesses jurisdiction over waters of the United States and jurisdictional wetlands pursuant to the federal Clean Water Act. The ACOE regulates the discharge of dredge/fill material into such waters, including ditches and drains that could be jurisdictional. The Applicant has submitted a jurisdictional determination report to the ACOE to determine the scope of potential jurisdictional waters and, if required by the ACOE, will obtain permit coverage for any impacts to federal jurisdictional waters. The Corps has issued the Applicant a Preliminary Jurisdictional Determination that the project will not result in any fill impacts to waters under the Corps’ jurisdiction. As such, the Applicant does not require a permit from the Corps.”

Response to Comment 9-9: The comment requests that the discussion under the heading BLM and California State Historic Preservation Office (SHPO) to note that the Class III Cultural Resources Study has been completed and that BLM has initiated consultation with the SHPO.

Page 1.0-8, the second and third paragraphs under the heading “BLM and California State Historic Preservation Office (SHPO)” has been revised as follows:

~~“BLM is in the process of initiating formal Section 106 process because t~~The Class III cultural resources study for the gen-tie ~~is in the process of being~~ has been finalized and the BLM has initiated the Section 106 process.

The BLM ~~will consult~~ has also initiated consultation with the SHPO and Advisory Council on Historic Preservation (ACHP) to evaluate the effect of the project on resources listed or eligible for listing under the National Register of Historic Places and California Register of History Places. Depending upon the results of this process, the agencies may enter into a Programmatic Agreement (PA), a Memorandum of Agreement (MOA) or other agreement to address and resolve any potential adverse effects.”

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Response to Comment 9-10: The commenter requests that the reference to a Dust Control Permit be changed to Dust Control Plan.

Page 1.0-10, the last sentence under the paragraph under the heading “Imperial County Air Pollution Control District” has been revised as follows:

“The project will obtain a Dust Control ~~Permit Plan~~ to comply with Rule 801 of Imperial County’s Rules and Regulations for Construction and Earthmoving Activities.”

Response to Comment 9-11: The commenter notes that the Applicant may also enter a following Agreement with IID and suggests that this be identified in the discussion of approvals.

Page 1.0-10, a new last sentence has been added to the paragraph under the heading “Imperial Irrigation District” as follows:

“The Imperial Irrigation District (IID) has infrastructure on and surrounding the project site including drains, canals and overhead infrastructure. IID will review the project and will use the Final EIR in its approval of encroachment permits for crossings of IID canals, permits for construction water and power, and contracts for project water use and power during operation. IID may also review and approve agreements to transfer or quitclaim easements and/or fee parcels, for drainage, restrict surface access, and to abandon delivery gates and service pipes. The Applicant may also enter a Following Agreement with IID under the District’s Temporary Land Conversion Following Policy.”

Response to Comment 9-12: The comment notes that the pre-application meeting with BLM was held from 10:00 a.m. to 11:30 a.m. and requests that this correction be made to the text.

Page 1.0-12, second sentence in the first paragraph under “1.7 Public Participation Opportunities/Comments and Coordination.”

“The Applicant held a BLM pre-application meeting on October 12, 2011 from 10:00 a.m. to 11:30 ~~p.m.~~ a.m. in the BLM El Centro Field Office.”

Response to Comment 9-13: The comment notes that the text should be revised to reflect that a Fiscal Impact Report has been prepared.

Page 1.0-17, first bullet, the text has been revised as follows:

- “● Displacement of farmworker employment (*A Fiscal Impact Analysis ~~is being~~ has been prepared for the proposed project separately from the EIR and was completed in March, 2012.*)”

Response to Comment 9-14: The comment requests that the number of employees that may be present on site during operations be revised.

Page 1.0-23, fourth bullet under comments from Carolyn Allen, the text has been revised as follows:

- “● Electrified fencing, no employees on site (*No electrified fencing is proposed as part of the project. Four to ~~10~~ 12 workers would be on-site during operations.*)”

Response to Comment 9-15: The comment requests that the description of inverters under the discussion of Fire Protection be revised to be consistent with the Project Description.

3.0 COMMENTS AND RESPONSE TO COMMENTS

Page 1.0-34, last sentence of the first paragraph under the heading “Fire Protection” has been revised as follows:

“Inverters and transformers would will be located within a pre-fabricated enclosed structures protective electrical equipment enclosure or shelter with adjacent transformer.”

Response to Comment 9-16: The comment requests that additional information be added to the discussion of Wastewater Treatment.

Page 1.0-36, last paragraph under the discussion of “Wastewater Treatment,” additional text has been added as follows:

“The project would include an on-site O&M building with a septic system, which requires a permit from the Imperial County Public Health Department. The Applicant is also seeking permission for a holding tank for domestic sewage from the construction trailers. During construction, portable toilets and a septic tank for temporary construction offices will be used to provide sanitary facilities. Thus, a less than significant impact is identified for this issue and it is not discussed further in the EIR.”

Response to Comment 9-17: The comment notes that the Applicant may enter into a Following Agreement with IID. The text has been revised to reference the Following Agreement and IID’s interim water supply policy obligations.

Page 1.0-37 last paragraph and page 1.0-38 first paragraph, text has been revised as follows:

“IID serves as the regional water supplier to the Imperial Unit which encompasses agricultural areas as well as the seven incorporated cities of Brawley, Calexico, Calipatria, El Centro, Holtville, Imperial and Westmorland. IID imports raw Colorado River water and delivers it untreated to agricultural, municipal, and industrial water users within its Service Area which includes the project site. IID has an annual apportionment of 3.1 million acre-feet of Colorado River water per year. Due to the dependability of IID’s water rights, Colorado River flows, and storage facilities for Colorado River water, it is unlikely that the water supply of IID would ever be affected, even in dry years or under drought conditions. The Applicant may enter into a Following Agreement with IID under IID’s Temporary Land Conversion Following Policy. The Following Agreement which would assist IID in meeting its interim water supply policy obligations without following active agricultural lands. Industrial water would be supplied to the project under an industrial service water agreement with the IID.”

Response to Comment 9-18: The comment clarifies that Campo Verde’s variance application, as submitted, is for gen-tie structures up to 135-feet. The Draft EIR incorrectly states that the variance application was for transmission line structures up to 145 feet. To address this discrepancy, additional text has been added.

Page 2.0-2, the first paragraph has been revised as follows:

“On February 76, 2012, the Applicant submitted a Variance Application to the ICPDS. The Variance Application was submitted to address gen-tie structures that may exceed the A-2 and A-3 zoning height limitation of 120 feet. If approved, the Variance would permit a maximum height of the gen-tie Line-structures of 145 135 feet. The Applicant may need to amend its variance application to seek permission to build gen-tie

3.0 COMMENTS AND RESPONSE TO COMMENTS

structures up to 145 feet pending the outcome of discussions with the Imperial Irrigation District regarding canal crossings.”

Response to Comment 9-19: The comment requests that the text be revised to clarify that not all ditches in the solar generation facility site are operated by IID.

Page 2.0-3, third paragraph, fourth sentence, the text has been revised as follows:

“The solar generation facility site includes a series of soil and concrete lined irrigation canals and ditches operated by the Imperial Irrigation District (IID) as well as private ditches.”

Response to Comment 9-20: The comment requests that the text be revised to clarify that not all roads are public.

Page 2.0-3, third paragraph, third sentence, the text has been revised as follows:

“The 1,852 acres represents agricultural fields within the solar generation facility site minus other land (i.e., the acreage of ~~public~~ roads, IID canals, ditches and maintenance roads currently on the site).”

Response to Comment 9-21: The comment notes that the zoning is incorrectly identified for APN 051-360-018-000 in Table 2.0-1.

Page 2.0-8, Table 2.0-1, has been revised as follows:

**“TABLE 2.0-1
PRIVATELY OWNED PARCELS – SOLAR GENERATION FACILITY SITE**

Assessor’s Parcel Number	Acreage	Zoning
051-360-018-000	1.80	A-3-A-2-R ”

Response to Comment 9-22: The comment notes a misspelled word requiring revision.

Page 2.0-18, second sentence in the first paragraph under the “Power Conversion Substation,” has been revised as follows:

“These DC cables then ~~fed~~ feed to a Power Conversion Station (PCS), comprised of DC to alternating current (AC) inverters and a medium voltage transformer.”

Response to Comment 9-23: The commenter notes that the final sizing of the O&M building could be slightly larger or smaller than 3,000 square feet.

Page 2.0-20, third sentence in the paragraph under the heading “Operations and Maintenance Building”

“The maximum building height will be approximately 18 feet and ~~up to~~ approximately 3,000 square feet in area.”

Response to Comment 9-24: The comment request that additional descriptive text be provided to clarify that although access will be maintained to all properties, some reconfiguration may occur.

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Page 2.0-22, last sentence of the second paragraph, under the heading “Fire System” has been revised as follows:

“A Fire Management Plan will be prepared and the final site plan would be designed in accordance with Fire Department requirements for access so as not to interfere with emergency service providers’ ability to access to the site. Access to all nearby properties ~~would remain in place~~ will be maintained.”

Response to Comment 9-25: The comment requests that a qualifier be added to the discussion of Air Quality and Dust Suppression to indicated that dust suppressants will be applied as needed as determined by site conditions and require pursuant to ICAPCD rules and requirements of the Dust Control Plan prepared for the project.

Page 2.0-26, the paragraph under “Air Quality & Dust Suppressants” has been revised as follows:

“The project will adhere to the applicable rules of the Imperial County Air Pollution Control District (ICAPCD) and will develop and implement a plan to minimize fugitive dust emissions. During construction, roads and work areas will be watered and/or dust palliatives will be applied as need to suppress dust. When earth moving activities are completed in an area, all exposed soil would be coated with a permeable dust suppressant as required. The roadways within and around the solar field will be compacted native soil and would also be treated with a dust suppressant as required.”

Response to Comment 9-26: The comment notes that panel washing is not anticipated because the PV modules are designed to operate efficiently despite dust and rainfall. To more accurately reflect the likelihood of panel washing, clarification has been added to the text.

Page 2.0-28, last sentence in the first paragraph, has been revised as follows:

“Such trips are anticipated to result in a daily maximum of 40 or 50 trips (during washing events which are not anticipated to occur) and more commonly 20 trips or less during routine operation of the project.”

Response to Comment 9-27: The commenter requests clarification regarding construction of stormwater detention basins.

Page 2.0-28, second sentence of the first paragraph under the heading “Stormwater,” the text has been revised as follows:

“Each developed ~~parcel~~ area will include a retention basin to hold stormwater flows from most storm events.”

Response to Comment 9-28: The comment notes that the substation transformer should also be identified as a noise source.

Page 2.0-28, the first paragraph under the heading “Noise” has been revised as follows:

“During operation, the primary sources of noise would be the substation transformer, as well as the inverters and transformers distributed throughout the solar generation facility site.”

Response to Comment 9-29: The comment requests that an incorrect statement regarding the gen-tie line crossing a private parcel be removed.

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Page 2.0-30, second sentence in the first paragraph under Section 2.1.5, “A. Existing Uses and Features” has been eliminated as follows:

“The proposed approximately 1.4 mile gen-tie would exit the southwest corner of the solar generation facility site (privately owned land), cross the Westside Main Canal, and enter BLM land (refer to **Figure 2.0-4**). ~~The private parcel crossed by the gen-tie is agricultural land.~~ The elevations on this parcel range from 24 to 25 feet below mean sea level. This segment of the gen-tie would extend south from the solar generation facility site and cross over the Westside Main Canal. The Applicant controls the portion of the solar generation facility site impacted by the gen-tie through a purchase agreement. The crossing of the Westside Main Canal would require approval from IID. Additional easements may be obtained from adjacent private landowners.”

Response to Comment 9-30: The commenter requests that two additional parcels be added to Table 2.0-2 to allow flexibility for construction laydown and aerial easements and that APN 051-350-012 was erroneously included and should be deleted. The commenter also requests that the heading of the middle column be revised to more accurately describe the information provided in the middle column.

Page 2.0-30, Table 2.0-2, the following revisions have been made:

**TABLE 2.0-2
PRIVATELY OWNED PARCELS – GEN-TIE**

Assessor’s Parcel Number	<u>Acreage Description</u>	Nearest Cross Street/Intersection
<u>APN 051-350-010</u>	<u>Fallow farmland between solar site and BLM lands</u>	<u>Liebert and Mandrapa Roads</u>
<u>APN 051-350-011</u>	<u>Fallow farmland between solar site and BLM lands</u>	<u>Liebert and Mandrapa Roads</u>
APN 051-350-014	Part of solar project site	Liebert and Mandrapa Roads
APN 051-350-012	Temporary construction or aerial easement	Liebert and Mandrapa Roads
APN 051-350-008	Temporary construction easement and/or aerial easement	Liebert and Mandrapa Roads

Source: Imperial County Zoning Maps.

Response to Comment 9-31: The comment requests that Figure 2.0-13 be replaced with an updated figure that includes APNs for two parcels that are outside the Project boundary and clarifies the project boundary.

Figure 2.0-13 has been revised and is include as part of the Errata of this document (refer to Chapter 4.0, Errata).

Response to Comment 9-32: The comment requests that the text be revised on page 2.0-37 to indicate that the project may use self-supporting concrete poles to construct the gen-tie.

Page 2.0-37, first sentence of second paragraph has been revised as follows to indicate that both types of poles may be used:

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“The project would use self-supporting single concrete poles or self-supporting single steel poles made of self-weathering or galvanized steel to better blend into the surrounding environment.”

Response to Comment 9-33: The comment requests that text be revised to remove the reference to private land because the portion of the gen-tie on private land will be accessed using a new internal road.

Page 2.0-37, paragraph below the heading “Private Land”, second sentence, the text has been revised as follows:

“Access to the portions of the gen-tie line on BLM-managed land ~~and on private land~~ would be provided during both construction and operation by using existing unpaved roads on the parcels being crossed, if possible.”

Response to Comment 9-34: The commenter notes that the impact area for the gen-tie footings is incorrect.

Page 2.0-37, first sentence under the heading “Disturbance Area,” the text has been revised to correct the impact area for the gen-tie footings as follows:

“A 100-foot by ~~150~~ 250-foot (~~15,000~~ 25,000 square foot) area around each structure on BLM land would be cleared of obstructions to ensure safety for construction.”

Response to Comment 9-35: The commenter notes that the impact area for the gen-tie footings is incorrect.

Page 2.0-39, first sentence under the heading “Vegetation Clearing,” the text has been revised to correct the impact area for the gen-tie footings as follows:

“A temporary workspace approximately 100-foot by ~~150~~ 250-foot on BLM lands would be cleared of any obstructions (such as large rocks and large vegetation) that could create safety risks for construction.”

Response to Comment 9-36: The comment requests clarification with regard to the reference to a “site grading permit.” The comment requests that the term “construction permit” be used as it will cover all of the various approvals that may be needed to do the excavation work.

Page 2.0-43, the third sentence under the heading “Site Excavation” has been revised as follows to reflect this change:

“A ~~site grading permit~~ construction permit is required for the earthmoving activities associated with the project.”

Response to Comment 9-37: The commenter requests that the first sentence at the top of the page be deleted because there are no ROW easements on private land in the Western gen-tie alignment.

Page 2.0-46, first sentence in the first paragraph at the top of the page has been eliminated as follows:

~~“ROW easements located on private lands will include adaptive provisions for the implementation of the Weed Control Plan. Prior to implementation, the Applicant will work with the BLM and any other landowners to obtain authorization of the weed control treatment that is required.”~~

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Response to Comment 9-38: The commenter states that the text should be revised to clarify that the ROW is a BLM ROW.

Page 2.0-46, first sentence under the heading “Decommissioning and Restoration of Gen-Tie” has been revised as follows:

“This section outlines the measures that will be taken at such time in the future when the BLM ROW has expired, is not renewed, and the project is decommissioned. At this time, these actions are anticipated to include:”

Response to Comment 9-39: The comment notes inconsistencies in table formatting and header sentence formatting in Table 2.0-5 of the Draft EIR (pages 2.0-49 through 2.0-54). The formatting of the table has been corrected and appears in the Errata of this document (refer to Chapter 4.0, Errata).

Response to Comment 9-40: The comment states that a short description of the “Reduced Size Solar Generation Facility Alternative” should be added to the list of alternatives in the project description.

Page 2.0-57, the Reduced Size Solar Generation Facility has been added as Alternative 3 and the No Action Alternative has been renumbered to Alternative 4, as follows:

“2.2 ALTERNATIVES

This EIR considered three alternatives in addition to the proposed project:

- **Alternative 1 - Alternative Gen-Tie Across BLM Land** - This alternative includes the same approximate 1,990 acre solar generation facility site as the proposed project and proposes a gen-tie that would follow the existing IID S-line and associated access road. A 0.9 mile Gen-tie is proposed including a 0.1 mile segment on the solar generation facility site. The gen-tie would also cross approximately 0.4 miles of BLM land and 0.4 miles of private land.
- **Alternative 2 - Private Land Gen-Tie Alternative** - This alternative includes the same approximate 1,990 acre solar generation facility site as the proposed project and proposes a 1.85 mile gen-tie that would originate from the western side of the solar generation facility site (0.1 mile segment) and cross approximately 1.75 miles of private lands to the west. The gen-tie would follow existing field roads and ditches to the Imperial Solar Energy Center West site. From this point, the proposed project would use available capacity on Imperial Solar Energy Center West’s gen-tie line that has an approved right-of-way to the Imperial Valley Substation.
- **Alternative 3 – Reduced Size Solar Generation Facility Alternative** - This alternative represents an overall reduction in the size of the solar generation facility within the existing facility layout identified for the proposed project. The Reduced Size Solar Generation Alternative uses the fixed-tilt solar panel mounting configuration and the same type of PV technology as the proposed project. This alternative can be developed on reduced acreage for the following reasons: eliminating the horizontal tracker configuration which requires more land area per electrical output; increasing the array density within the fixed-tilt configuration; using a more efficient class of PV modules that have become available; and focusing on the most suitable parcels included in the solar generation facility. This improved efficiency and site design reduces the land area required for the facility by approximately 27 percent, while maintaining the same 140-plus MWAC power output. The facility, while reduced in area, will use approximately the

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same or less Power Conversion Stations, Electrical Collection System, Substation and Switchyard and Operations and Maintenance Building, and will follow the same construction process and operations and maintenance protocol, as the proposed project. The Reduced Size Solar Generation Alternative is also capable of interconnecting using the same gen-tie alignment as the proposed project, the gen-tie across BLM land, or the private land gen-tie.

- **Alternative 3 4 - No Action Alternative** – This alternative would result in continued use of the project site for agricultural production. The proposed Campo Verde Solar Project would not be developed.”

Response to Comment 9-41: The commenter notes that superfluous text was included as part of the fifth bullet on page 2.0-59. The text has been revised to eliminate this text.

Page 2.0-59, fifth bullet under the heading “B. Imperial Irrigation District (IID)”

- “• Water Supply Agreements for construction and permanent water ~~(IID will be making CEQA findings specifically related to the water supply agreements so we need to make sure the discussion of water supply by IID is adequate within the EIR).~~”

Response to Comment 9-42: The comment states that KOP #7 should be added to MM 4.1.2 as one of the views that should be eligible for screening mitigation.

Page 4.1-29, MM 4.1.2 has been revised to include KOP #7 as follows:

- “**MM 4.1.2** Prior to issuance of construction permits, the Applicant shall work with affected landowners and ICPDS to develop a visual screening program that will screen views of the project from KOP #2, #7, #8 and #9, if determined to be needed by each landowner.”

Response to Comment 9-43: The commenter states that project components may be constructed with galvanized steel and notes that the text describing glare should be revised to remove the reference to use of galvanized products. The commenter goes on to describe what components may be constructed of galvanized steel and how these components would not cause glare impacts or change the conclusion of less than significant.

Page 4.1-30, third paragraph under the discussion of “Glare” has been revised as follows:

“As such, the PV solar modules would not create a significant source of glare during sunlight hours. Also, the project would not use other reflective materials such as fiberglass, aluminum or vinyl/plastic siding, ~~galvanized products~~, and brightly painted steel roofs that have the potential to create on- and off-site glare. Therefore, operations and maintenance of the project is not anticipated to create a new source of glare that would adversely affect day or nighttime views in the area. Thus, glare impacts are considered **less than significant.**”

Response to Comment 9-44: The commenter notes the inclusion of a random number in the text which should be removed.

Page 4.2-27, the number “9” in the third full sentence of the first paragraph has been eliminated:

“Because such height limits would not occur automatically, there would be no cumulative contribution to height limits with development of the cumulative projects 9.”

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Response to Comment 9-45: The commenter states that the performance of the PV technology used at the project will not be impacted by dust or spray particles from adjacent agricultural parcels and that washing modules will not be required. The commenter requests that the discussion describing nuisance dust and spray particles be removed.

Page 4.2-28, the first paragraph, second and third full paragraphs have been revised as follows:

~~“However, lands surrounding the project site are currently in agricultural use and are zoned for agriculture. Solar projects developed adjacent to agricultural areas are subject to dust and particles from periodic spraying being carried by the wind and depositing on PV panels. These represent nuisance issues rather than insurmountable cumulative land use incompatibilities or conflicts. The proposed project is consistent with the Imperial County General Plan with a CUP. While the implementation of the project would temporarily convert the site from agricultural fields to a solar facility, it would be developed consistently with the land uses allowed on the site and there would be no conflicts with the Imperial County General Plan or zoning. The proposed project, in combination with other cumulative projects, would result in a less than cumulatively considerable contribution to land use compatibility. Therefore, this impact is considered less than cumulatively considerable.”~~

Response to Comment 9-46: The comment states that the text on page 4.3-21 is misleading because it suggests that there is a substantial likelihood that PV module washing will be required. The commenter requests that the text be modified to reflect that panel washing is not anticipated to be necessary.

Page 4.3-21, the text in the second paragraph under the heading “Proposed Action Operations and Maintenance Trip Generation” has been revised as follows:

~~“During a typical year, assuming a worst-case scenario where panel washing is necessary (rather than the panels being cleaned by rainfall), the project will require up to 10 daily water trucks for panel washing over approximately 15 business days; however, the washing frequency is estimated from one to four times a year. During the washing period, the total project daily traffic may increase to 40 or 50 ADT over a 15 business day period. However, panel washing is not anticipated to be necessary.”~~

Response to Comment 9-47: The commenter states that the ICAPCD specifies that diesel construction equipment must meet Tier 2 requirements or better to achieve the ICAPCD’s CEQA mitigation requirements for oxides of nitrogen (NOx) rather than use diesel oxidation catalyst. The commenter requests that MM 4.4.1b be revised to require Tier 2 compliance. The comment also requests that references to the use of diesel oxidation catalyst at the bottom of page 4.0-16 and the top of 4.0-17 be replaced with references to Tier 2 emissions standards. This change has been made where appropriate in the revised Section 4.4, Air Quality, included as Appendix D of this Final EIR. The reader is also referred to Response to Comment 8-26.

Response to Comment 9-48: The commenter states that MMs 4.4.1a(1) and 4.4.1a(2) should be revised to eliminate the specified watering frequency and instead indicate that water or County-approved dust suppressants would be applied as needed to comply with its Dust Control Plan and comply with the ICAPCD’s opacity limits. The commenter explains the rationale for this proposed change (i.e. wasting water, conflicts with dust suppressant manufacturer’s

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specifications). This change to MM 4.4.1a has been made in the revised Section 4.4, Air Quality, included as Appendix D of this Final EIR.

Response to Comment 9-49: The commenter states that implementation of MM 4.4.1a, 4.4.1b and 4.4.1c constitute T-BACT. The commenter requests that the text be revised to eliminate any ambiguity in this regard. The requested changes have been made where in the revised Section 4.4, Air Quality, included as Appendix D of this Final EIR.

Response to Comment 9-50: The commenter reiterates a previous assertion that panel washing is not anticipated during the life of the project.

Page 4.6-14, second sentence of the third paragraph, has been revised to remove the parenthetical reference to panel washing as follows.

“The generally flat topography of the site and the low average annual precipitation for the area would reduce the likelihood of substantial erosion and loss of topsoil. Daily operations and routine maintenance (~~such as occasional PV panel washing~~) are not anticipated to increase erosion. Further, to control erosion during operation of the project, the solar field would be coated with a permeable dust suppressant and the roadways within and around the solar field would be covered with gravel. Likewise, during operation soil erosion and sedimentation would be controlled in accordance with the Best Management Practices (BMPs) included as part of the project’s Storm Water Pollution Prevention Plan (SWPPP) (discussed further in Section 4.11, Hydrology and Water Quality). Thus, erosion impacts would be reduced to less than significant levels during operations.”

Response to Comment 9-51: The commenter asserts that MM 4.6.2 is incorrectly referenced in the discussion of mitigation measures for Impact 4.6.7. The correct reference should be MM 4.6.1 per the discussion provided for Impact 4.6.7.

Page 4.6-18, the text under the heading “Significance After Mitigation” at the bottom of the page, has been revised as follows:

“Project-specific impacts are mitigated on a project-by-project basis. Following implementation of the mitigation measures MM ~~4.6.2~~ 4.6.1, MM 4.6.4 and MM 4.6.6, geology and soils impacts would be reduced to less than cumulatively considerable levels.”

Response to Comment 9-52: The commenter states that mitigation measure MM 4.6.4 should be limited to the solar generation facility and the private land portion of the gen-tie because the County does not have jurisdiction over the BLM portion of the gen-tie. The reference to the gen-tie in this mitigation refers to the structures located on the solar generation facility site which is on private land. The text has been modified to clarify the reference to the gen-tie as shown in Response to Comment 9-53, below.

Response to Comment 9-53: The commenter suggests revising mitigation measures MM 4.6.4 and MM 4.6.6 to provide additional detail clarifying the standards to be used in the analysis of site conditions and the development of design recommendations.

Page 4.6-15, MM 4.6.4 has been revised as follows:

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“MM 4.6.4 The proposed solar generation facility and the private-land portion of the gen-tie shall be designed in accordance with a Geotechnical Evaluation that will be prepared by a licensed professional engineer during the final design phase. The Final Geotechnical Evaluation report will be submitted to Imperial County Department of Planning and Development Services for review and approval prior to issuance of building permits as required by the Imperial County. The Final Geotechnical Evaluation report will include an analysis and recommendations regarding design for expansive soil conditions. Prior to the final design of the Project, the Geotechnical Evaluation shall be conducted to identify the presence and potential impact of expansive soils throughout the project site. The testing and analysis conducted as a part of the Geotechnical Evaluation shall be done under the guidance of a licensed professional engineer in general accordance with the applicable American Society for Testing and Materials (ASTM) standards and other locally-accepted testing methods. The Geotechnical Evaluation shall provide design recommendations for the expansive soil conditions identified at the project site that are in conformance with applicable industry standards. The Geotechnical Evaluation shall be submitted to Imperial County for review and approval prior to issuance of building permits, as required by Imperial County.”

Pages 4.6-16 to -17, MM 4.6.6 has been revised as follows:

“MM 4.6.6 A Field Resistivity and Ground Potential Rise Evaluation shall be prepared by a qualified engineer, which shall include specific measures to address corrosion impacts. The proposed solar generation facility and the private-land portion of the gen-tie shall be designed in accordance with a Corrosion Analysis that will be prepared by a licensed professional engineer. The Geotechnical Evaluation required in MM 4.6.4 above shall include Soil Resistivity Testing and Chemical Testing to identify the corrosion potential of the existing soil throughout the project site. Soil Resistivity Testing shall utilize the Wenner 4-point method. Chemical Testing shall be in accordance with ASTM or other locally-accepted testing and reporting standards. Following completion of the Geotechnical Evaluation, a Corrosion Analysis shall be prepared by a qualified engineer to model the effects of corrosion on project components. The Corrosion Analysis shall be based on standards developed by ASTM, the National Bureau of Standards (NBS), the International Organization for Standards (ISO), the National Association of Corrosion Engineers (NACE) International, and other applicable standards. The Corrosion Analysis shall provide design recommendations for the corrosive soil conditions identified at the project site that are in conformance with applicable industry standards. Potential measures may include, but are not limited to, Design recommendations may include galvanization, epoxy coatings, thicker steel, and cathodic protection. The Corrosion Analysis shall be submitted to Imperial County for review and approval prior to issuance

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of the structural post building permit, as required by Imperial County. Results and recommendations of the Corrosion Analysis shall be implemented into the structural design of the project.”

Response to Comment 9-54: The commenter requests that clarifying text be added.

Page 4.7-1, third paragraph, the last sentence has been replaced as follows:

“Information contained in this section is summarized from multiple sources including *Inventory, Evaluation and Analysis of Impacts on Historic Resources on Private Lands Within the Area of Potential Effect of the Campo Verde Solar Project, Imperial County, California* prepared by ASM Affiliates, Inc (Davis et. al, 2011), *Inventory Report of the Cultural Resources Within the Campo Verde Solar Energy Gen-tie Line, Imperial County, California* (Mitchell, 2011) and the “California Historical Resources Information System Records Search” prepared by the South Coastal Information Center (SCIC, 2011). The non-confidential version of This the document is provided on the attached CD of Technical Appendices as **Appendix E** of this EIR.”

Response to Comment 9-55: The commenter notes that the order of the references to the Tipai and the Ipai is incorrect and should be switched. The Ipai is the name for the northern subgroup, and the Tipai is the name for southern subgroup.

Page 4.7-8, in the last sentence under the first paragraph under the heading “The Kumeyaay,” has been revised as follows:

“The Kumeyaay are the Yuman-speaking native people of central and southern San Diego County and the northern Baja Peninsula in Mexico. Spanish missionaries and settlers used the collective term Diegueño for these people, which referred to people living near the presidio and mission of San Diego de Alcalá. Today, these people refer to themselves as Kumeyaay or as ~~Tipai~~ Ipai and ~~Ipai~~ Tipai, which are northern and southern subgroups of the Kumeyaay (Mitchell, 2011).”

Response to Comment 9-56: The commenter notes that “kV” is missing following “34.5.”

Page 4.8-18, second sentence under the heading “Transformer/Inverter and Array Tracker Noise Levels,” “kV” has been added as follows:

“The two smaller transformers consist of a 1 megavolt-amp (MVA) from 200 volt (V) to 12-kV and a 1-MVA from 12-V to 34.5-kV.”

Response to Comment 9-57: The comment states that the project may use a transformer for the substation with a higher audible noise level than is referenced and discussed on page 4.8-18 of the Draft EIR. The proposed project’s onsite substation will be located in the southern portion of the site west of Liebert Road north of the Westside Main Canal (please refer to Figure 3-A in Appendix A of the Noise Analysis). The substation is located 800 feet or more from the nearest property line, located to the south. The larger transformer at the substation has a noise level of 86 dBA at a distance of 5 feet and two transformers would be 89 dBA at 5 feet. The reduction in the noise level at a distance of 800 feet is -44.1 dBA resulting in a noise level of less than 44.9 dBA at the nearest property. Therefore, the proposed substation will comply with the County’s most restrictive property line standard of 45 dBA Leq.

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As a result of design refinements, the substation transformer will be located farther from the property line than the distance analyzed in the Draft EIR. Nevertheless, the noise impact will remain less than significant. As noted in Appendix A in the Noise Analysis (Appendix F of the Draft EIR), the largest transformer has an average audible sound level of 76 decibels. The project does not intend to use a transformer this large. However even if a larger transformer was used and placed at the same distance from the property line as analyzed in the Draft EIR, the noise reduction due to distance of 35.6 decibels would reduce the resultant noise level at the property line to 40.6 decibels. This is less than the County's most restrictive property line standard of 45.0 decibels.

The noise level at the property line from the transformer that will actually be used in the substation will be even less because the transformer will have a lower audible noise level and may also be located farther from the property line.

Response to Comment 9-58: The commenter requests that changes be made to Option 2 for both Non-Prime Farmland and Prime Farmland under MM 4.9.1a to clarify that the Agricultural In-Lieu Mitigation Fee for impacts to non-prime and prime farmland be based on the number of acres of each type of farmland impacted by the project. The commenter also suggests that Option 2 for Prime Farmland be revised to reflect only "acres of prime farmland impacted by the project."

Page 4.9-14, with respect to mitigation measure MM 4.9.1a, under Option 2 for both Non-Prime Farmland and Prime Farmland, the following revisions have been made:

"MM 4.9.1a Non-Prime Farmland

- **Option 2:** The Permittee shall pay an "Agricultural In-Lieu Mitigation Fee" in the amount of 20% of the fair market value per acre for the ~~total~~ acres of non-prime farmland impacted by the project ~~proposed site~~ based on five comparable sales of land used for agricultural purposes as of the effective date of the permit, including program costs on a cost recovery/time and material basis. The Agricultural In-Lieu Mitigation Fee, will be placed in a trust account administered by the Imperial County Agricultural Commissioner's office and will be used for such purposes as the acquisition, stewardship, preservation and enhancement of agricultural lands within Imperial County.

Prime Farmland

- **Option 2:** The Permittee shall pay an "Agricultural In-Lieu Mitigation Fee" in the amount of 30% of the fair market value per acre for the ~~total~~ acres of prime farmland impacted by the project ~~the proposed site~~ based on five comparable sales of land used for agricultural purposes as of the effective date of the permit, including program costs on a cost recovery/time and material basis. The Agricultural In-Lieu Mitigation Fee, will be placed in a trust account administered by the Imperial County Agricultural Commissioner's office and will be used for such purposes as the acquisition,

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stewardship, preservation and enhancement of agricultural lands within Imperial County.”

Response to Comment 9-59: The commenter notes that there is no MM 4.9.2 in the Draft EIR; therefore, the reference noted in the text is incorrect and needs to be eliminated.

Page 4.9-15, last sentence in the paragraph under the heading “Significance After Mitigation” has been revised as follows:

“Implementation of any of the options under MM 4.9.1a, in combination with MM4.9.1b, ~~and of MM 4.9.2~~ would reduce the impacts associated with the temporary conversion of farmland, including Prime Farmland, Farmland of Statewide Importance, Farmland of Local Importance, and Unique Farmland to a **less than significant level.**”

Response to Comment 9-60: The commenter noted that the discussion’s inclusion of reference to the Silverleaf project appears to be a cumulative impact issue that should be deleted from the discussion in this portion of the Draft EIR.

On page 4.9-16, the last two sentences in the first paragraph have been revised as follows:

“Agricultural land currently surrounds the solar energy facility site, while native desert surrounds the portion on BLM land (see Figure 4.9-1). The proposed project would place a solar generation facility in an area currently used for agriculture. The project does not include the extension of utilities or infrastructure that would pressure nearby lands to urbanize with residential, commercial, or other urban levels of development. Moreover, the project is not anticipated to result in the indirect conversion of farmland on adjoining or nearby properties. ~~However, the Silverleaf Solar project is proposed adjacent to the southern, western and eastern boundaries of the Campo Verde Solar Energy project. Thus, the potential exists for further conversion of agricultural land in the immediate and general vicinity of the project site, separate from the proposed project.~~”

Response to Comment 9-61: The commenter notes that references to the General Industrial Stormwater Permit should be deleted because it is not applicable to the Project.

On page 4.10-2, in the paragraph at the top of the page, the last sentence has been deleted as follows:

“effluent limitations and state water quality standards, requires permits for the discharge of pollutants into navigable waters, provides enforcement mechanisms, and authorizes funding for wastewater treatment works construction grants and state revolving loan programs, as well as funding to states and tribes for their water quality programs. Provisions have also been added to address water quality problems in specific regions and specific waterways. The project would be subject to the General Permit for Discharges of Storm Water Associated with Construction Activity (NPDES No. CAS000002) (Construction General Permit Order 2010-2014-DWQ, effective February 14, 2011 during construction. ~~Operation of the project would be covered under Industrial Storm Water General Permit Order 97-03-DWQ (General Industrial Permit)–NPDES permit (No. CAS000001).~~”

Response to Comment 9-62: The commenter suggests adding clarification to the MM 4.10.2b to address removal and disposition of ASTs.

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Pages 4.10-21 and 4.10-22, mitigation measure MM 4.10.2b has been revised as follows:

“MM 4.10.2b ASTs containing sulfuric acid, ammonium nitrate solution, and anhydrous ammonia shall be removed from the following locations and wherever else present on the project site prior to commencing earth moving activities: east central side of APN 051-360-32; northwest and northeast side, southeast corner and northeast corner of APN 051-310-40; southern edge of APN 051-360-04; southwest corner of APN 051-310-50; northeast corner of APN 051-310-40; east-central side of APN 051-360-32; southeast corner of APN 051-360-03; and the southeast corner of APN 051-360-02. The removal and disposition of such ASTs shall be in accordance with applicable regulations.”

Response to Comment 9-63: The commenter states that Spring biological surveys of the project area for plants and animals have been completed. The Biological Resources section has been updated and is included in the Errata of this document (refer to Chapter 4.0, Errata). The commenter has also provided the 2012 spring survey data to supplement the Biological Technical Report in Appendix J of the Draft EIR as Attachment C. The 2012 spring survey is part of the revised BTR included as Appendix A of this Final EIR.

Response to Comment 9-64: The commenter notes that additional comments are provided on the Biological Resources section. Refer to Response to Comment 9-65 through 8-69, below.

Response to Comment 9-65: The commenter states that the discussions under Jurisdictional Waters should be revised to note that the Army Corps of Engineers (“ACOE” or “Corps”) has issued a Preliminary Jurisdictional Determination and determined that the project will not result in any fill impacts to waters under the Corps’ jurisdiction. Accordingly, the project does not require a permit from the Corps. This is reflected where appropriate under the discussions of “Jurisdictional Waters” and “F. Jurisdictional Delineation” in the revised Section 4.12, Biological Resources, included as Appendix B of this Final EIR.

Response to Comment 9-66: The commenter requests that the references to the California Department of Fish and Game’s (CDFG) 1995 burrowing owl mitigation protocol be replaced with references to CDFG’s 2012 Staff Report on Burrowing Owl Mitigation (March 7, 2012) as the source for burrowing owl mitigation requirements. This change has been made under the heading “F. Focused Burrowing Owl Surveys” and elsewhere as appropriate in the revised Section 4.12, Biological Resources, included as Appendix B of this Final EIR.

Response to Comment 9-67: The commenter suggests that mitigation measure MM 4.12.6b reference CDFG’s 2012 Staff Report on Burrowing Owl Mitigation as the performance standard for determining mitigation acreage. This change has been made in the revised Section 4.12, Biological Resources, included as Appendix B of this Final EIR.

Response to Comment 9-68: The commenter notes that the reference to MM 4.12.11 below Table 4.12.9 is incorrect. The proper mitigation to be referenced should be MM 4.12.12 as it addresses the impact of invasive, exotic species on potential riparian habitat or special status communities, and has mitigation measures targeted to mitigate this impact. This change has been made in the revised Section 4.12, Biological Resources, included as Appendix B of this Final EIR.

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Response to Comment 9-69: The commenter requests that the parenthetical following MM 4.12.2 be revised to reflect both SWFL and YCR. This change has been made in the revised Section 4.12, Biological Resources, included as Appendix B of this Final EIR.

Response to Comment 9-70: The comment describes how the Applicant has considered input from various stakeholders inquiring whether the project could reduce impacts from the solar generation facility to agricultural and environmental resources. The comment explains that the Applicant has developed a reduced size layout for the solar generation facility that reduces the amount of agricultural land necessary for the solar generation facility while maintaining the power output of the project. The description of this “Reduced Size Solar Generation Facility Alternative” and its corresponding impacts to each resource area is set out in detail in this Final EIR. [Note: The “Reduced Size Solar Generation Facility Alternative” has been added to the Final EIR as Alternative 3; The No Project Alternative has been renumbered as Alternative 4].

Response to Comment 9-71: The commenter requests that sub-headings be added to break up the discussion of alternatives considered but not selected for analysis.

Page 6.0-2 and 6.0-3, the first paragraph of the discussion under the heading “6.2 Alternatives Considered But Not Selected For Analysis” has been divided into three paragraphs and headings have been added to the text as follows:

6.2 ALTERNATIVES CONSIDERED BUT NOT SELECTED FOR ANALYSIS

Identifying alternatives to the proposed project was limited by the fact that the project is a utility-scale solar project (i.e., a solar energy project that generates a large amount of electricity that is transmitted from a solar energy plant to many users through the transmission grid). Based on the nature of the project, it required three key considerations in order to determine where it could be sited: 1) an area with access to high solar insolation (i.e., exposure to the sun’s rays) rates; 2) a large area to accommodate solar collectors; and, 3) access to the California Independent System Operator (CAISO) transmission system to send electricity to consumers.

The proposed project site is currently designated “Agriculture” in the Imperial County General Plan and zoned A-2 - General Agriculture, A-2-R - General Agriculture, Rural Zone, and A-3 - Heavy Agriculture. The site was chosen for the reasons identified above regarding utility-scale solar projects. The southwestern portion of Imperial County has year-round unobstructed access to sunlight during daytime hours. Likewise, sufficient land area is available to accommodate a utility-scale solar project. The flat topography and contiguous nature of large blocks of land are ideal for the project. Lastly, and perhaps most importantly, is the site’s proximity relative to the Imperial Valley Substation, a CAISO interconnection point. Access to connect to the substation is a key factor in providing utility-scale solar power to the transmission grid for distribution to consumers.

“Alternative Site Location”

Choosing an “Alternative Site” was considered, but not selected for detailed analysis. A feasible alternative site would likely either be an area already designated for future residential development or contain Prime Farmland or Farmland of Statewide Importance (95% of all agricultural lands in Imperial County). Likewise, an alternative

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site, if vacant and undisturbed, could potentially have greater impacts on habitat for endangered and threatened species than a site that is actively cultivated for agricultural purposes. The Applicant does not own or possess access to an alternative site in Imperial County to develop the proposed project. Moreover, alternative locations are not available in closer proximity to the Imperial Valley Substation, which is entirely surrounded by land managed by the Bureau of Land Management (BLM), which is subject to significant environmental and development constraints. Development of the proposed project at an alternative location is therefore infeasible because of the difficulties in assembling contiguous land and the result in additional and greater impacts associated with such a location and a longer gen-tie.

“Larger Solar Generating Facility”

A larger solar generation facility site of approximately 2,266 acres in size was also considered but not selected for detailed analysis. This alternative included the same parcels as the proposed project (which total 1,990 acres) plus four additional contiguous parcels (051-300-009-000, 051-300-008-000, 051-310-026-000, and 051-300-005-000) totaling approximately 276 acres which are under Williamson Act Contract. The addition of these parcels would allow the generation of 35 to 50 MWs of additional solar energy while impacting the same amount of BLM land to connect to the Imperial Valley Substation as the proposed project. The gen-tie for a larger solar project would follow the same route as the proposed gen-tie. While this alternative would meet the project objectives and provide more renewable energy, it would result in greater impacts to agricultural lands, including loss of prime farmland and cancellation of four Williamson Act Contracts. In addition, some of these parcels were located close to the Fig Lagoon which is used by several bird species. Exclusion of these parcels could reduce potential biological impacts. For these reasons, this alternative was not selected for analysis.

“Distributed Generation”

A distributed generation alternative to the proposed project was also considered but not selected for detailed analysis. A distributed PV generation alternative would consist of small-scale PV installations on private or publicly owned residential, commercial, or industrial building rooftops, parking lots or areas adjacent to existing structures such as substations. The location of such small-scale installations is not geographically constrained and, as relevant for CEQA purposes, could be located anywhere in the State. California currently has over 773 MW of distributed PV systems which cover over 40 million square feet (CPUC 2010).

Even assuming that there are enough additional sites throughout California for installation of sufficient distributed PV to accomplish the project’s objective of generating 139 MW, this alternative cannot feasibly accomplish most of the project’s objectives.

Because distributed generation is not geographically constrained, there is no guarantee that any portion of the solar installation would occur in Imperial County. As such, this alternative would not meet any of the County’s objectives (i.e., economic investment in the County; diversifying the County’s economic base; generating local jobs and tax revenue; reinforcing the County’s position as a leader in renewable energy production;

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and expanding the local renewable energy sector). Furthermore, because distributed PV can be installed anywhere in the State, such installations could be installed in areas that do not meet the objective of locating the project in an area that ranks among the highest in solar resource potential. The County has no authority or influence over the installation of distributed PV generation systems outside of its jurisdiction. As such, there is no guarantee that action by the County to approve a distributed generation alternative would: 1) result in the installation of 139 MW of generating capacity; or, 2) support the objective of assisting the State of California meet to its RPS goals. For these reasons, a distributed solar alternative was not considered for further analysis.

“Reduced Power Output Alternative”

Lastly, a reduced size project alternative that results in a reduction in power output would not meet the Project Objectives and was therefore not analyzed in detail. However, the Applicant is continually working to refine the project design to increase project efficiency and further reduce impacts to the environment and natural resources. Therefore, the project layout and associated impacts identified and analyzed in this Draft EIR are considered a conservative (worse case) scenario, and may be further revised and reduced in the Final EIR.

Response to Comment 9-72: The commenter requests that an additional APN to be used for the gen-tie easement be added to Table 6.0-1.

Page 6.0-9, Table 6.0-1 has been revised to add APN 051-0350-012 as follows:

**TABLE 6.0-1
PRIVATELY OWNED PARCELS – ALTERNATIVE GEN-TIE ON BLM LANDS**

Assessor’s Parcel Number	Acreage	Nearest Cross Street/Intersection
APN 051-350-014	Part of solar project site	Liebert and Mandrapa Roads
APN 051-350-010	1.5 acres	Liebert and Mandrapa Roads
APN 051-350-011	3.6 acres	Liebert and Mandrapa Roads
<u>APN 051-350-012</u>	<u>1.02</u>	<u>Liebert and Wixom Roads</u>

Source: Imperial County Zoning Maps.

Response to Comment 9-73: The commenter states that the text following Table 6.0-4 should be updated to acknowledge that the spring rare plant surveys have been conducted, which confirm that there would be no impacts to federally listed, state-listed or BLM sensitive plant species if the Alternative Gen-Tie route is used.

Page 6.0-14, the first paragraph after Table 6.0-4 has been revised as follows:

“No federally listed, state-listed or BLM sensitive plant species are known or expected to occur within the Alternative Gen-Tie across BLM land based on spring surveys ~~completed for other transmission projects paralleling the IID S-Line route conducted for this gen-tie alignment.~~ Spring rare plants ~~are being done~~ conducted in March, April, and possibly May 2012, ~~depending on conditions and guidance from the BLM.~~ Based on survey results ~~from other projects,~~ there are no anticipated impacts to federally listed, state-listed or BLM sensitive plant species if the project uses the Alternative Gen-Tie route.”

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Response to Comment 9-74: The commenter states that the burrowing owl burrow data related to the Alternative Gen-Tie route should be updated to note that 14 suitable but inactive burrows were observed in the survey area during the spring surveys that were conducted.

Page 6.0-15, the text of the third to the last paragraph has been revised as follows:

“Impacts to Burrowing Owl (BUOW) resulting from implementation of the Alternative Gen-Tie across BLM land would be similar to but slightly less than that described for the proposed gen-tie in Section 4.12, Biological Resources. Two suitable but unoccupied BUOW burrows were observed within the survey area. Removal of these burrows is not anticipated because they would be spanned by the Alternative Gen-Tie across BLM land. Fourteen suitable but inactive burrows were observed in the survey area during the spring surveys that were conducted. In addition, adjacent suitable foraging habitat for these burrows would not be removed during construction activities. Therefore, impacts to BUOW would be similar for both the Alternative Gen-Tie across BLM land and the proposed project.”

Response to Comment 9-75: The commenter notes discrepancies in the header and page numbering in Chapter 7.0. Appropriate revisions have been made and are included in Chapter 4.0, Errata of this Final EIR.

Response to Comment 9-76: The commenter requests that the reference to a “solar energy facility” be changed to be consistent with the rest of the Draft EIR.

Page 7.0-4, the second line in the second paragraph has been revised as follows:

“Development of the project site would irretrievably commit building materials and energy to the construction and maintenance of the solar ~~energy~~ generation facility, Gen-Tie and associated buildings and infrastructure proposed upon project buildout.”

Response to Comment 9-77: The commenter expresses appreciation to the County and EGI for their efforts in preparing the Draft EIR. The commenter notes that the comments in this letter are intended to add transparency and further explain the findings contained in the Draft EIR, so that the Final EIR summarizes all of the relevant data, analyses and conclusions. This comment does not address the adequacy of the analyses in the Draft EIR. No response is required.

Response to Comment 9-78: The commenter explains that the Applicant has worked to be responsive to input from the County, other government agencies and the public regarding the project. The commenter asserts that the Applicant has proactively conducted biological, cultural and other surveys, prepared noise, visual, air quality and other studies and taken all possible steps to fully characterize the baseline environmental conditions and analyze the potential environmental impacts of the project. The commenter notes that many of the “Applicant Proposed Measures for the Project” resulted from advance consultation with a variety of government agencies and third parties. These measures were intended to anticipate, and then avoid or minimize, impacts by embedding the measures in the Project Description. This comment is noted for the decision-makers.

Response to Comment 9-79: The commenter notes that the Reduced Size Solar Generation Facility Alternative has been provided to further avoid, reduce and minimize potential environmental impacts in key resource areas. This alternative is discussed extensively in the Final EIR Chapter 1.0, Introduction as well as in Chapter 4.0, Errata.

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