LETTER 7

Stephan C. Volker
Joshua A.H. Harris (of Counsel)
Alexis E. Krieg
Stephanie L. Clarke
Daniel P. Garrett-Steinman
Jamey M.B. Volker
M. Benjamin Eichenberg
Lauren E. Pappone

Law Offices of
Stephan C. Volker
436 – 14th Street, Suite 1300
Oakland, California 94612
Tel: (510) 496-0600 ❖ Fax: (510) 496-1366
svolker@volkerlaw.com

11.184.01

June 6, 2014

Via Email and U.S. Mail

David Black
Planner IV
Imperial County Planning &
Development Services Department
801 Main Street
El Centro, CA 92243
DavidBlack@co.imperial.ca.us

Jim Minnick,
Interim Director
Imperial County Planning
& Development Services Department
801 Main Street,
El Centro, CA 92243
JimMinnick@co.imperial.ca.us

Re: Seville Solar Farm Complex Draft Environmental Impact Report, SCH No. 2013091039

Pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq.*, Imperial County's Notice of Availability ("NOA") of Draft Environmental Impact Report ("DEIR") for Seville Solar Farm Complex Project ("Seville Solar" or "Project") and the public commenting instructions on page 1.0-16 of the DEIR, Backcountry Against Dumps, Donna Tisdale and Carolyn Allen (collectively, "Backcountry") submit the following comments on the April 2014 Seville Solar DEIR.

The proposed Project involves lot-line adjustments, new road construction, and the construction and operation of five utility-scale solar photovoltaic ("PV") or concentrating PV ("CPV") electrical generation facilities. The Project applicant – Regenerate Power LLC – seeks to reconfigure the existing parcels comprising the 2,440-acre Allegretti Farms property into twelve lots, eight of which would be developed as the Seville Solar Complex. Combined, the five projects would have a total maximum electrical output of 135 megawatts ("MW"). DEIR 2.0-9. Each of the projects would require its own substation, inverter modules, transformers, water well (either newly dug or existing), septic system and leach field, operations and maintenance building, among other ancillary facilities, including a shared access road from State Route 78, a new shared Imperial Irrigation District ("IID") switch station and approximately three miles of IID 92-kilovolt ("kV") transmission lines for interconnection of the new switch station to IID's Anza Substation. Each of the five projects requires a separate conditional use permit ("CUP"). *Id.* at 2.0-1.

7-1

The Project would industrialize at least 1,238 acres of the Allegretti Farms property that have been "designated [by the California Department of Conservation] as Prime Farmland, Farmland of Local Importance [or] Farmland of Statewide Importance." DEIR 4.9-7. This includes 651 acres of Prime Farmland, 352 acres of Farmland of Local Importance and 219 acres of Farmland of Statewide Importance. *Id.* at 4.9-9. As the DEIR admits, the proposed industrial-scale solar facility uses would *eliminate and prevent all agricultural use* on the entirety of that important farmland *for at least "20 years (or up to 40 years)* in the future." *Id.* at 4.9-22 (emphasis added). Furthermore, the Project would likely cause significant additional impacts to agriculture and the agricultural economy countywide by reducing the amount of available farmland and driving up the price of the remaining farmland, among other things. 7-1 Continued 7-2

Backcountry opposes this Project as an unnecessary industrialization of County farmland and open space. Not only would the Project have significant environmental, agricultural and economic impacts, the proposed industrial-scale electrical generation and transmission uses are forbidden by the Imperial County General Plan (and hence the Planning and Zoning Law, Government Code section 65000 *et seq.*). Backcountry encourages Imperial County to analyze and adopt as an alternative to the proposed Project programs to develop or incentivize the development of distributed PV generation projects *near energy demand centers in already-disturbed areas*. 7-3

The DEIR fails to provide an adequate project description that identifies the full 2,440-acre Allegretti Farms property as the Project area. It does not adequately discuss the Project's impacts on water resources, greenhouse gas ("GHG") emissions and biological resources, nor the health impacts to humans and wildlife of the electric and magnetic fields ("EMF") that will be produced by the Project. In further expression of these major concerns and others, Backcountry offers the following comments on the Project and the County's DEIR. 7-4

I. THE PROPOSED SOLAR ENERGY GENERATION AND TRANSMISSION USES ARE FORBIDDEN BY THE IMPERIAL COUNTY GENERAL PLAN LAND USE ELEMENT.

A. The County May Not Approve a Conditional Use that Is Forbidden by the County General Plan.

The Project is inconsistent with the County General Plan, and thus its approval would violate the Planning and Zoning Law. As acknowledged in *Neighborhood Action Group v. County of Calaveras* ("*Neighborhood*") (1984) 156 Cal.App.3d 1176, 1184, the requirement that use permits be consistent with a county's general plan 7-5

> is necessarily to be implied from the hierarchical relationship of the land use laws. To view them in order: a use permit is struck from the mold of the zoning law ([Government Code section] 65901); the zoning law must comply with the

> adopted general plan (§ 65860); the adopted general plan must conform with state law (§§ 65300, 65302). The validity of the permit process derives from compliance with this hierarchy of planning laws. *These laws delimit the authority of the permit issuing agency to act and establish the measure of a valid permit*. . . . A permit action taken without compliance with the hierarchy of land use laws is *ultra vires* as to any defect implicated by the uses sought by the permit.

7-5 Continued

Id. (emphasis added).

Because Imperial County is a general law county, the foregoing settled law is dispositive. Since, as shown below, the proposed solar energy generation and transmission uses are specifically forbidden under the Imperial County General Plan, the County lacks authority to approve those uses in contravention of the General Plan. Any "permit action taken without compliance with the hierarchy of land use laws is *ultra vires*." *Id.*

B. The Imperial County General Plan Forbids the Proposed Solar Energy Generation and Transmission Uses.

The Imperial County General Plan's Land Use Element specifically *forbids* the proposed solar uses within the "Agriculture" plan designation that applies to the entire Project site. Initial Study at 2-4 ("The existing General Plan land use designation is 'Agriculture'"). The Land Use Element directs that lands designated as "Agriculture" may not be developed with uses that do not preserve and protect agricultural production and related activities. It states in pertinent part as follows:

> **1. Agriculture.**
>
> This category is intended to preserve lands for agricultural production and related industries including aquaculture (fish farms), ranging from light to heavy agriculture. Packing and processing of agricultural products may also be allowed in certain areas, and other uses necessary or supportive of agriculture. . . .
>
> *Where this designation is applied, agriculture shall be promoted as the principal and dominant use to which all other uses shall be subordinate. Where questions of land use compatibility arise, the burden of proof shall be on the non-agricultural use to clearly demonstrate that an existing or proposed use does not conflict with agricultural operations and will not result in the premature elimination of such agricultural operations. No use should be permitted that would have a significant adverse effect on agricultural production*, including food and fiber production, horticulture, floraculture, or animal husbandry. . . .

7-6

Imperial County General Plan, Land Use Element (Revised 2008), page 48 (emphasis added).

It is clear from the foregoing language that lands designated as "Agriculture" in the General Plan must be used *only* for agriculture and related industries that support agricultural production. "Where questions of land use compatibility arise, the burden of proof shall be on the non-agricultural use to *clearly demonstrate* that an existing or proposed use does not conflict with agricultural operations and will not result in the premature elimination of such agricultural operations." *Id.* (emphasis added).

7-6 Coninued

Here, it is undisputed that the proposed industrial-scale solar facility uses would eliminate and prevent all agricultural use on more than 1,200 acres of important farmland for at least "20 years (or up to 40 years) in the future." DEIR 4.9-22. As the California Department of Conservation has determined in both the Williamson Act and CEQA contexts, and reiterated in its November 1, 2011, and July 16, 2010 letters (attached hereto as Exhibits 1 and 2) to the Imperial County Planning and Development Services Department regarding other solar projects proposed for lands designated for Agriculture on the County General Plan, commercial solar uses are *completely incompatible* with agricultural uses.

Furthermore, the Project could impede agricultural operations elsewhere in the County and reduce employment, income, sales and tax revenue. As Imperial County Agricultural Commissioner Valenzuela noted in her February 25, 2011 comments (attached hereto as Exhibit 3) on the DEIR for a similar solar project, "removal of any farmland out of production would have a *direct negative impact on employment, income, sales and tax revenue*." As these projects convert more and more agricultural land to non-agricultural uses, more and more agriculture-serving businesses will be forced to close. And as the quantity and quality of agriculture-serving businesses decreases in the County, more and more farmers will find it uneconomical or impractical to keep farming and sell, lease or use their lands for non-agriculture purposes. The DEIR concedes as much, stating that as "urbanization expands throughout the County, there is a growing economic incentive for local farmers to sell agricultural lands or relocate." DEIR 4.9-7.

7-7

Because the proposed solar energy generation and transmission uses would eliminate the potential for farming on the Project sites and "have a" potentially "significant adverse effect on agricultural production" elsewhere in the County, the Project is specifically forbidden by the General Plan.

C. The Project's Incompatibility with the General Plan Agricultural Use Provisions Is Not Cured by Other Conflicting General Plan Provisions or the County Land Use Ordinance.

7-8

Despite the fact that the Project would eliminate the potential for farming on site, the DEIR states that because the "proposed solar farm complex site is currently designated as 'Agriculture' on the Imperial County Land Use Map," the proposed "electrical power generating

plant . . . and electrical substations . . . are allowed uses within the existing . . . agricultural zones (A-2) with a CUP" pursuant to "section 90508.1 of the Imperial County Land Use Code." DEIR 4.2-18. The DEIR is mistaken. To the extent the existing A-2 zoning on the Project sites might allow elimination and preclusion of agricultural uses on the sites in order to develop solar energy production, such is *inconsistent* with the General Plan's "Agriculture" designation.

As discussed, the Project is incompatible with the General Plan's explicit protection of lands designated as "Agriculture." Not only would the proposed solar energy generation and transmission uses eliminate the potential for farming on the Project sites, they would "have a" potentially "significant adverse effect on agricultural production" elsewhere in the County. To the extent the County Land Use Ordinance – which by law is subordinate to the County General Plan – might be interpreted to allow uses such as the proposed solar facilities that are inconsistent with the General Plan's land use designations, that interpretation is invalid. Government Code § 65860(a); *Neighborhood*, 156 Cal.App.3d at 1184. And to the extent the General Plan Land Use Element's Compatibility Matrix approves zoning regulations that conflict with the Land Use Element's textual land use standards, the General Plan is internally inconsistent and invalid. Government Code § 65300.5 ("the Legislature intends that the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency"); *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 97 ("a general plan must be reasonably consistent and integrated on its face"); *Sierra Club v. Kern County* (1981) 126 Cal.App.3d 698, 704 ("Since the general plan was internally inconsistent, the zoning ordinance under review . . . could not be consistent with such plan and was invalid when passed.").

7-8 Continued

The County may not approve a land use in reliance on an invalid zoning regulation or General Plan element. "Under state law, the propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements. . . . [A]bsence of a valid general plan, or valid relevant elements or components thereof, precludes enactment of zoning ordinances and the like." *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800, 806; *Neighborhood*, 156 Cal.App.3d at 1104; *Concerned Citizens of Calaveras County*, 166 Cal.App.3d at 97. And where there is a clear violation of a specific general plan provision, mere compatibility with the overarching objectives of the plan is not enough to make a project consistent and compliant with the Plan as a whole. *Neighborhood*, 156 Cal.App.3d at 1184; *FUTURE v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1342.

II. THE PROJECT DESCRIPTION IS INADEQUATE.

"An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193. In addition, "[t]he data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may

7-9

not be previously familiar with the details of the project." *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* ("*Vineyard*") (2007) 40 Cal.4th 412, 431. The DEIR does not meet this informational standard.

The DEIR defines the "Project area" as "the 1,238-acre portion of the [2,440-acre Allegretti Farms property] on which the proposed Project would be built," including 1,181 acres to develop the proposed Project and 55 acres for "access roads, gen-tie corridors and substations." DEIR ES-2, 2.0-3 to 2.0-8. It claims that Lots 6, 7, and 8 "are not proposed to be developed as part of this Project" and therefore are not part of the Project area. DEIR 2.0-9. However, this narrow description of the Project area is unduly limiting and downplays the significant impacts of the Project. It is also inconsistent with the DEIR's impact analysis which discusses impacts to Lots 6, 7, and 8. The DEIR confuses the "Project area" with the solar development area: Indeed, *the Project includes the full 2,440-acre Allegretti Farms property.* DEIR 2.0-8 to 2.0-9; Pub. Res. Code § 21065 & 14 California Code of Regulations ["CEQA Guidelines"] § 15378 (a), (c) (defining a CEQA Project as the whole of an action, not each separate approval).

The DEIR cannot simply ignore Lots 6, 7, and 8 because no solar panels would be installed there. Contrary to the DEIR's omission of these Lots from the Project area, they would actually be impacted by the Project. The proposed primary access road and 92kV transmission line would cross Lots 6 and 7 under both the proposed Project and Alternative 1. DEIR 2.0-7 (Figure 2.0-4), 2.0-11 (Figure 2.0-5), 6.0-5 (Figure 6.0-1), 6.0-6. Furthermore, the boundaries of Lots 6, 7, and 8 were all altered by the Project's reconfiguration of the existing seven legal property parcels into "eight new individual lots and four common development interest lots." *Compare* DEIR 2.0-6 (Figure 2.0-3 depicting the existing parcels) *with* DEIR 2.0-7 (Figure 2.0-4 depicting the proposed reconfiguration) and 6.0-5 (Figure 6.0-1), 2.0-1, 2.0-8 to 2.0-9 (quote). Those boundary changes are a direct impact to those parcels, how they are used, and how they impact the environment. Therefore, the seven existing parcels that are being reconfigured constitute the Project area. By incorrectly defining the Project area as the solar development area, rather than the area reconfigured by the Project, the DEIR artificially limits the Project's impacts and omits discussion of lands that would be altered by the Project. 7-9 Continued

The DEIR itself makes clear that the Project area consists of the *full 2,440-acre* Allegretti Farms property, *not just the solar development area*. The DEIR's environmental analysis discusses the impacts of the proposed Project on Lots 6, 7, and 8 which directly abut the solar development area, contemplates development of these Lots at a later time, and discusses the potential impacts of development on that land. DEIR 4.7-11 (cultural surveys include areas on Lots 6 and 7); 4.9-17 ("construction of the solar farm complex could result in an increase in pests and nuisance conditions" on Lots 6, 7, and 8 and the environmental effects "are considered potentially significant during Project construction"); 4.12-9 (Figure 4.12-1, showing a biological survey area that includes part of Lot 6 and all of Lot 7); 4.13-19 (discussion of future residential development and wells on Lots 6, 7, and 8); DEIR Appendix F, p. 16 (a "new water well[] would

be constructed . . . on Lot 8"); DEIR Appendix K, pp. 5-6 (discussing future development, wells, and water use on Lots 6, 7, and 8). Since the DEIR itself discusses the impacts of the Project to the full 2,440-acre Allegretti Farms property, it cannot artificially limit the Project area to *half* that size. Doing so makes the DEIR internally inconsistent in violation of CEQA's informational requirements. The solar development area is not the same as the Project area: The full 2,440 acres would be directly impacted by the Project and therefore must be included in the Project area. 7-9 Continued

III. THE DEIR FAILS TO APPROPRIATELY ADDRESS IMPACTS TO WATER RESOURCES.

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

Vineyard, *supra*, 40 Cal.4th 434 (emphasis in original).

As discussed in more detail below, the DEIR failure to identify alternative water sources, and its facile assumption that the Project's water demands would not contribute to the existing overdraft condition violate CEQA's informational mandate. 7-10

The DEIR relies upon seven existing and two proposed wells as the source of groundwater for Project construction, operations and reclamation. DEIR 4.11-23. The current wells draw from the deeper of two aquifers under the property. DEIR Appendix K, p. 7. The DEIR and WSA acknowledge that the deep aquifer underlying the Project is *not* noticeably recharged by irrigation return flows, which instead feed into the shallow perched aquifer. DEIR 4.13-15; DEIR Appendix K, p 7. In addition, the DEIR and its Water Supply Assessment ("WSA") (DEIR Appendix K) clearly state that the local aquifer is in overdraft and that land subsidence has occurred at the Project location. DEIR 4.13-16; DEIR Appendix K, p. 9.

The DEIR improperly concludes that the Project would have less than significant impacts on groundwater supply and groundwater recharge. DEIR 4.11-23 to 4.11-25. In reaching this conclusion, the DEIR takes several logical leaps, makes assumptions unsupported by data, and conflates the shallow and deep aquifers underlying the Project area.

First, the DEIR assumes that the PV or CPV panels at each of the five Seville Solar

projects would need to be washed five times a year, using six to ten acre feet for each wash, for a total of 30 to 50 acre feet a year ("AFY") *per project*. DEIR 2.0-22. The desert winds are likely to deposit sand and dust on the Project's solar panels in great enough quantities to impact their power-generating capabilities, necessitating additional cleaning, and therefore additional water use beyond the 30 to 50 AFY per project. In addition, the Project's water demand was calculated to meet only the water necessary for washing, and does not account for the 50,000 gallons required to be stored onsite for fire protection. *Compare* DEIR 2.0-22 (30 to 50 AFY for washing times 5 projects equals 150 to 250 AFY) *and* 4.13-20 (each solar project would need 30 to 50 AFY for a total combined usage of 190 AFY at build out) *with* DEIR 2.0-13 & DEIR Appendix K, p. 1 (Project to have five water tanks with fire suppression storage). Thus, the DEIR presents incomplete and conflicting estimates of the total amount of water to be pumped for the Project.

7-10 Continued

Second, in concluding that the Project's operational water use would have less than significant impacts on groundwater supply and recharge, the DEIR assumes that the 190 AFY for solar project uses and 25 AFY for non-Project uses (including water for future residences on lots 6-8 which are not otherwise analyzed as part of the Project, as stated in DEIR 4.11-24 and at DEIR Appendix K, pp. 5-6) would not contribute to the deep aquifer's overdraft or additional subsidence at the Project location. DEIR 4.11-24 to 4.11-25; DEIR Appendix K, p. 11. The DEIR bases this conclusion on the assumption that the Project's water use would be consistent with water use at the site from 2002 to 2011, when water levels rose at the U.S.G.S. monitoring well at the property. DEIR 4.11-24. The WSA, however, acknowledges that "pumping volumes . . . for the 1995 to 2009 period are unknown" and that its water use estimates for that time are based on "very little data." DEIR Appendix K, p. 9. Its water use data for 2004 to 2013 is extrapolated from electricity bills, based on the questionable assumption that electricity usage directly correlates with the quantity of water pumped. DEIR Appendix K, p. 9. The DEIR also relies upon water use estimates for 2010 and 2011 based upon acres of land planted and an assumed ratio of water quantity per acre, but does not explain where it derived its application rate. DEIR 4.11-24.

7-11

Yet, the WSA and DEIR rely upon these fuzzy water-use estimates to claim that the Project's water use would allow the aquifer to *recharge*, even as the DEIR admits that it *cannot* quantify the amounts pumped with available data. DEIR 4.11-24 to 4.11-25. But there is insufficient data to show that the levels of pumping during this claimed period of aquifer recovery were as high as the WSA claims; and thus there is not sufficient data for the County to conclude that the 215 AFY required for Project operation would have a less than significant effect on these resources. In addition, it appears that the DEIR did not account for the additional 10 AFY allocated to the new Blu-In Park well when calculating the total demand on the deep aquifer during Project operation. DEIR 4.11-39; DEIR Appendix K, p. 9.

Third, the DEIR relies upon "on-going monitoring of groundwater levels in the [on-site] USGS well" to "provide progress checks" on the Project's impacts to groundwater levels, but makes no provisions for an alternative source of water if the USGS monitoring were to show that

7-12

the Project's water use was contributing to the overdraft condition. DEIR 4.11-25. While the DEIR mentions the use of the Ranch Oasis Mutual Water Company as a source of water for the project, this water company is not an independent source as it uses the same aquifer at the Project location. DEIR 2.0-9, 4.11-24, 4.13-22. Thus, without contemplating an alternative source of water, it is unreasonable to rely on this ongoing monitoring to conclude that Project operations would have a less than significant effect on groundwater supply and recharge. DEIR 4.11-25. 7-12 Continued

Fourth, the DEIR relies upon the temporary nature of Project construction *and* the assumption that excess pumped water would percolate back into the groundwater basin to find that Project construction would have a less than significant impact on groundwater supply and recharge. 4.11-23. The DEIR's reliance upon percolation to the *shallow* perched aquifer to lessen the Project's adverse impacts on groundwater supply and recharge makes no sense, since the Project is removing water from the *deeper* aquifer. DEIR 4.11-23. As the WSA makes clear, water percolating to the shallow perched aquifer at the Project site does *not* recharge the deeper aquifer. DEIR Appendix K, p.7. Indeed, the WSA also shows that the deeper aquifer levels do not respond to rainfall events, and that significant barriers such as clay layers prevent percolating water from readily reaching the deeper aquifer. DEIR Appendix K, p. 9. 7-13

Thus the DEIR and WSA impermissibly understate the Project's impacts to groundwater supply and recharge.

IV. THE DEIR IGNORES SIGNIFICANT PROJECT GREENHOUSE GAS EMISSIONS.

The DEIR acknowledges that CEQA mandates that it address whether the Project could "generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment." DEIR 4.5-15; *see also* CEQA Guidelines 15064.4 & DEIR Appendix G. Yet the DEIR fails to examine the indirect GHG emissions associated with Project construction. Under CEQA, a lead agency must "use its best efforts to find out and disclose all that it reasonably can," to demonstrate it has fully "considered the environmental consequences of [its] action." CEQA Guidelines §15144; *Vineyard*, 40 Cal.4th at 428; *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344 at 1355-1356 ("*Berkeley Keep Jets*"); *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 431. As discussed below, the DEIR's estimate that the Project's construction emissions would total only 4894.55 metric tons of CO_2 equivalent vastly understates the Project's far greater actual emissions because the County failed to include a "life-cycle" analysis of the CO_2 emissions necessary for Project construction and generation. 7-14

The County must also assess the Project's substantial *embedded* greenhouse gas emissions such as those emissions associated with production of the materials used to construct the Project, like PV panels, frames and support structures, by conducting a "life-cycle" analysis of the Project's GHG emissions. One such life-cycle analysis of a solar installation in Tucson,

Arizona, examined the emissions associated with the energy required to construct and operate the facility, using the average fuel mix and power-plan efficiency for the United States.[1] The Tucson study addressed the GHG emissions of "carbon dioxide, nitrous oxide, methane, sulfur hexafluoride, PFCs, and CFCs" which it expressed in kilograms of CO_2 equivalent. *Id.* For the solar modules examined in the study, the primary sources of GHG emissions were in producing the solar panels and frames, at over 25 kilograms of CO_2 equivalent per square meter of solar panels produced. Tucson Study, figure 4. In addition, the frames for the solar panels produced approximately 23 kilograms of CO_2 equivalent per square meter of frame material. *Id.*[2] The frames for the PV modules created 184 metric tons of CO_2 equivalent per peak MW. *Id.*, Table 2. When multiplied by the Project's 135 MW (2.0-9), this totals 24,840 tons CO_2 equivalent emissions for the Project's frames alone. Applying the Tucson Study's figures for the junction boxes, conduits, inverters, PV module interconnections, and other components – including the frames – to the Project, *the DEIR has failed to account for as much as 76,410 metric tons of CO_2 equivalent emissions associated with Project construction*. DEIR 4.5-16 to 4.5-17; Tucson Study, Table 2 ((204+184)x135=76,410). In the technical data accompanying DEIR Appendix C, it is clear that the modeling failed to account for these significant emissions. These unaccounted for emissions vastly exceed the metric ton 10,000 threshold of significance that the DEIR discusses on 4.5-15, and contradict the County's determination that the Project's GHG emissions would be less than significant.

7-14 Continued

The DEIR compounds its failure to examine the full life-cycle GHG emissions associated with the Project by artificially dispersing construction-stage emissions over a 25-year period instead of addressing them as they occur. *E.g.,* DEIR 4.5-17. AB 32 mandates 1990 levels by 2020, not more than a decade later. The County misapplies the inapplicable methodology of the South Coast Air Quality Management District (which has no jurisdiction over the Project) to downplay the significant and immediate GHG emissions associated with Project construction. *E.g.* DEIR 4.5-17 to 4.5-18. Contrary to AB 32's time-sensitive mandates, the County has improperly used an accounting method that understates the Project's significant short-term environmental harms.

7-15

[1] J. M. Mason, V. M. Fthenakis, T. Hansen & H.C. Kim, 2006, "Energy Pay-Back and Life Cycle CO_2 Emissions of the BOS in an Optimized 3.5 MW PV Installation," *Progress in Photovoltaics Research and Applications*, 14:179-190 (the "Tucson Study"), as downloaded from http://www.bnl.gov/pv/files/pdf/abs_197.pdf, at p. 7, attached hereto as Exhibit 4.

[2] The Tucson study utilized a number of Life Cycle Inventory databases, including: (1) Franklin Associates (http://www.fal.com/lifecycle-services.html#lca); (2) Ecoinvent (http://www.ecoinvent.org/); and, (3) the National Renewable Energy Laboratory (http://www.nrel.gov/lci/). Tucson Study, pp. 6, 13.

V. THE DEIR FAILS TO ADEQUATELY ANALYZE IMPACTS TO BIOLOGICAL RESOURCES.

CEQA mandates that the DEIR adequately analyze the Project's effects in order to foster informed decisionmaking and to allow the public to understand the Project's impacts. Public Resources Code § 21002.1; Guidelines §§ 15121, 15126, 15126.2. Where possible, the lead agency must employ feasible mitigation measures that could minimize the significant adverse impacts of a Project. Public Resources Code § 21002; Guidelines §§ 15121, 15126.4. As shown below, the DEIR fails to adequately address the Project's impacts to biological resources and fails to mitigate these impacts. In addition, the Project's impacts to migratory birds run counter to the Migratory Bird Treaty Act, 16 U.S.C. section 703, *et seq*. ("MBTA"). The DEIR's biological resources analysis must be revised. 7-16

A. The DEIR Relies Upon Inadequate Surveys.

In order to fully understand the Project's adverse impacts, the agency must complete adequate biological surveys to document the current resources in the area and how they would be affected. Public Resources Code § 21002.1; Guidelines §§ 15121, 15125, 15126, 15126.2. However, the surveys completed for this Project were inadequate – the survey area omitted much of the 2,440-acre Project area and the time spent surveying was too limited to obtain a thorough view of the biological resources. *Id.*; DEIR 4.12-8,

As discussed above, the project area consists of the whole 2440-acre Allegretti Farms property. However, the two general biological surveys, as well as the jurisdictional lands survey and burrowing owl survey, only consider 1,729 acres (including the solar development area, surrounding lands, and 50 feet on either side on the distribution line), which ignores nearly half of the project area. DEIR 4.12-1, 4.12-9 (Figure 4.12-1); DEIR Appendix I: Jurisdictional Delineation Report, Figure 2; DEIR Appendix I: Biological Technical Report, Figure 2; DEIR Appendix I: Results of Burrowing Owl Survey for the Seville Solar Project in Imperial County, California, Figure 2. Adequate surveys of the entire project area necessary under CEQA, especially given proposed future development of Lots 6, 7, and 8, and the potential for species to occur on those lands or nearby. DEIR 4.12-21 (desert pupfish critical habitat "has been designated in San Felipe Creek approximately two miles southeast of the survey area;" the "northern portion of the survey area" has the "greatest potential to support [the Flat-Tailed Horned Lizard]" and the West Mesa FTHL Management Area "occurs *just east and south* of the eastern end of the proposed transmission line"), 4.12-24 (the "prairie falcon has potential to forage in the survey area" and there is "limited nesting habitat;" "1,100 acres of the survey area had potential to be burrowing owl habitat"), 4.12-25 (there is "potential for the [northern] harrier to forage in the survey area"), 4.12-47 (desert pupfish critical habitat nearby); Public Resources Code § 21002.1; Guidelines §§ 15121, 15126, 15126.2; *Laurel Heights I, supra*, 47 Cal.3d at 409 n.12. 7-17

Furthermore, the time taken to complete these surveys was inadequate. General surveys were only completed twice - once in January and once in June. DEIR 4.12-8; DEIR Appendix I: Biological Technical Report, p. 3. Such limited surveys risk overlooking a significant number of resources that utilize the project area, or bloom, at different times during of year. As the DEIR admits, "general biological surveys were conducted in January and July, *which is outside the typical blooming period*" for special status plant species. DEIR 4.12-20 (emphasis added). Therefore, the DEIR's conclusion that "no special status plan species are expected to occur" because none "were observed" fails. *Id.*

Adequate surveys over the *entire* Project area, that span time periods in which wildlife is likely to be present and plant species are likely to be in bloom, are necessary for an adequate review under CEQA. Public Resources Code § 21002.1; Guidelines §§ 15121, 15126, 15126.2. "A clearly inadequate or unsupported study is entitled to no judicial deference," and does not constitute substantial evidence supporting an agency's finding. *Laurel Heights I*, *supra*, 47 Cal.3d at 409 n.12. The DEIR's failure to provide the studies necessary to understand the Project's impacts on critical environmental resources violates CEQA's informational purpose and prevents the public and decisionmakers from fully considering the impacts of the Project. CEQA Guidelines §15144; *Vineyard*, 40 Cal.4th at 428; *Berkeley Keep Jets,* 91 Cal.App.4th at 1355-1356.

7-17
Continued

B. Burrowing Owls

The Project poses significant threats to the burrowing owl but the DEIR's analysis of these threats is inadequate. Without adequate surveys of the Project area the public and decisionmakers cannot accurately determine the impacts of the Project on burrowing owls and their habitat, in violation of CEQA. CEQA Guidelines §15144; *Vineyard*, 40 Cal.4th at 428; *Berkeley Keep Jets,* 91 Cal.App.4th at 1355-1356. Not only was the focused survey for the burrowing owl completed over a far too limited survey area, but the DEIR's discussion of impacts to the owl and mitigation measures to protect it also fail, as shown below. DEIR 4.12-24 to 4.12-25, 4.12-28 to 4.12-29, 4.12-45 to 4.12-47, 4.12-51 to 4.12-53; DEIR Appendix I: Results of Burrowing Owl Survey for the Seville Solar Project in Imperial County, California.

7-18

An EIR must avoid potentially significant impacts where it is feasible to do so. Public Resources Code § 21002; Guidelines §§ 15121, 15125, 15126, 15126.4. But despite the clear confirmation "that the survey area *does support* burrowing owl habitat and a number of fossorial mammal burrows with potential to support burrowing owl," and that construction "could result in: the *direct mortality* of owls through crushing . . . ; *entrapment of/injury to* owls within burrows if burrow entrances become blocked; or the loss of nesting burrows, satellite burrows, foraging habitat, or wintering habitat," the DEIR incorrectly assumes that with limited mitigation this impact would be less than significant. DEIR 4.12-25 (first quote, emphasis added), 4.12-46 (second quote, emphasis added), 4.12-45 to 4.12-47. In fact, this assumption does not follow from the facts, for three reasons.

First, such significant impacts to the burrowing owl – direct mortality, entrapment or injury in crushed burrows, and loss of burrows or other habitat – cannot simply be mitigated by avoiding burrows or evicting the owl from its burrow through a one-way door. DEIR 4.12-47. Indeed, given the physical dimensions of the solar collections, avoiding burrows is not always possible, and even where it is, it does not mitigate the impacts of noise or night lighting. DEIR 4.12-47, 4.12-51 ("Elevated construction noise levels have the potential to make mating calls difficult to hear or frighten birds away from foraging in the area . . . [and] could adversely affect burrowing owl breeding behavior and reproductive success"), 4.12-52 ("Night lighting also has the potential to disrupt breeding/nesting behavior"). 7-19

Second, the DEIR erroneously asserts that construction noise impacts would be mitigated by a buffer of 300 feet. DEIR 4.12-49, 4.12-52. However, 300 feet would not be sufficient to protect the burrowing owl from "permanently leav[ing] their territories to avoid noisy activities." DEIR 4.12-51. Contrary to the DEIR's assertion, these mitigations would not make the impacts to the burrowing owl less than significant. 7-20

Third, where avoidance fails, this protected species would be forced to leave its burrow. DEIR 4.12-47. However, the DEIR fails to analyze what effect this "mitigation" would have on the species. *Id*. A single statement that eviction "would require CDFW approval of a Burrowing Owl Exclusion Plan" does not suffice for analysis of this impact and subsequently, fails to provide the public and decisionmakers with sufficient information to fully consider the impacts of the Project. CEQA Guidelines §15144; *Vineyard*, 40 Cal.4th at 428; *Berkeley Keep Jets,* 91 Cal.App.4th at 1355-1356. Deferral of mitigation measures to a future date with no guidelines on what those mitigations require, violates CEQA. CEQA Guidelines §15126.4; *Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 793-4 (mitigation may be deferred *only where* it includes specific performance criteria). 7-21

The impacts to burrowing owls must be better understood with a more thorough survey covering the entire Project area. Only then can the impacts be adequately analyzed and appropriate mitigation measures presented. Even with attempted avoidance or eviction as mitigation, however, the impact to burrowing owls would remain significant. 7-22

C. Loggerhead Shrike

"The loggerhead shrike was observed along the southern boarder" of the proposed Project and along the proposed transmission line overbuild. DEIR 4.12-20, 4.12-22 (Figure 4.12-4); DEIR Appendix I: Biological Technical Report, p. 9. The shrike is a USFWS Bird of Conservation Concern and a CDFW Species of Special Concern and therefore should be afforded significant protection from the adverse impacts of this Project, especially where "[p]otential impacts . . . may be adverse." DEIR 4.12-20; DEIR Appendix I: Biological Technical Report, pp. 9, 20 (quote). However, the DEIR wrongly concludes that because the "species has a lower level of sensitivity than other special status species," and because loggerhead shrike habitat is 7-23

"available adjacent to the Project area," the impacts to the loggerhead shrike would not be significant. DEIR 4.12-43 to 4.12-44; DEIR Appendix I: Biological Technical Report, p. 20.

However, this conclusion does not follow from the evidence provided: Just because a species is less sensitive than another species and has other habitat available does not mean that the impacts of the Project will be less than significant within the Project area. Indeed, it is entirely possible that the loggerhead shrike will be adversely impacted by the Project in a significant way. Mitigation to protect the species – such as habitat preservation, species avoidance, and surveying – *may* minimize the impacts to the loggerhead shrike. However, the public and decisionmakers cannot adequately evaluate that impact because the DEIR erroneously assumes that the impact is less than significant and therefore no mitigation measures are necessary. DEIR 4.12-43 to 4.12-44; DEIR Appendix I: Biological Technical Report, p. 20. Simply put, the DEIR is wrong. 7-23 Continued

D. Flat-Tailed Horned Lizard

The DEIR admits that, absent mitigation, the Project presents a potentially significant impact to the Flat-Tailed Horned Lizard ("FTHL"), which is a species of special concern to the California Department of Fish and Wildlife. DEIR 4.12-42 to DEIR4.12-43. The FTHL's shape and specialized camouflage allow it to blend in very easily, and make it difficult to detect. The DEIR's proposed mitigation measures assume that this vulnerable creature can be readily detected, but in fact detection is too problematic to provide adequate mitigation. 7-24

E. Swainson's Hawk

The DEIR acknowledges that Dan Falat, Colorado Desert District Superintendent for the California Department of Parks and Recreation, raised concerns regarding the Project's impacts to Swainson's hawks. DEIR 1.0-13; DEIR Appendix A, Letter 7. Mr. Falat confirms that Swainson's hawks have been observed at the Project location. Yet the DEIR contains *no* analysis of the potential impacts to this species. Swainson's hawks, which are considered a threatened species in California, pass through the Imperial Valley as they migrate to South America for winter. *See* California Department of Fish and Wildlife, Swainson's Hawks in California https://www.dfg.ca.gov/wildlife/nongame/raptors/swha/. The County's failure to address or study any potential impact to Swainson's Hawks, or to explain why no studies were performed violates CEQA. 7-25

F. Impacts to Birds: Collisions and the Pseudo-Lake Effect

The Project is located only 14 miles from the southern tip of the Salton Sea, which lies in a heavily traveled portion of the Pacific Flyway. DEIR ES-2. Solar projects' reflective panels often attract migratory birds searching for water. This "pseudo-lake effect" is suspected to be one of the main causes of migratory bird trauma and death at the PV facility Desert Sunlight. *See* 7-26

e.g. National Fish and Wildlife Forensics Laboratory *Avian Mortality at Solar Energy Facilities in Southern California: A Preliminary Analysis*, Rebecca A. Kagan, Tabitha C. Viner, Pepper W. Trail, and Edgard O. Espinoza ("FWS"), pp. 1, 11.[3] For this reason, the California Department of Parks and Recreation's scoping comments requested that Imperial County include detailed study of this issue in the DEIR. DEIR Appendix A, letter 7.

With little explanation, the DEIR claims that the Project would not attract migratory birds in such a way that causes collisions with the PV and CPV panels. DEIR 4.12-48 to 4.12-49. The DEIR asserts that the proposed project is "not anticipated to create glare" because of the composition of the panels. DEIR 4.12-49. However, the DEIR mistakenly relies upon the completely inapplicable land-based glare study in DEIR Appendix L to support this contention. Appendix L states that the angle of reflection for horizontal single-axis tracking PV arrays and dual axis CPV panels would be "well above ground level observation points" and therefore would not cause damaging glare to *land-based human observers*. DEIR Appendix L, p. 7. But it is birds in the sky, not humans on land, that are the source of the concern that the Project's glare would be directed to the sky. Appendix L also acknowledges that fixed tilt arrays would still be 20% or more reflective at sunrise and sunset. DEIR Appendix L, p. 6. Yet the DEIR and DEIR Appendix L ignore the potential for these arrays to attract birds at these active flight times. 7-26 Continued

In addition, Backcountry notes that the Project's expected use of open water ponds in order to meet the County's on-site retention requirements increases the collision risks for water birds. FWS, pp. 17, 24; DEIR 4.11-38. The open water is likely to attract water birds, who may confuse the panels for water as they try to land, causing severe trauma. FWS pp. 11, 17. 7-27

The DEIR also relies upon ongoing monitoring of bird deaths to justify its finding that the impacts would be less than significant. This reliance is misplaced. Monitoring alone, without a planned remedial action to *prevent* such impacts if bird deaths occur here just as they have with other solar projects, cannot lessen the deadly impacts caused by the pseudo-lake effect.

G. The Mitigation Measures for Impacts to Mesquite Thicket Are Insufficient.

The Project would remove 13.2 acres of Mesquite Thicket, an imperiled plant species. DEIR 4.12-34. The DEIR purports to mitigate this removal through either habitat compensation or restoration. The DEIR neither establishes a timeline for when this mitigation would occur, nor identifies who would decide which mitigation method to implement. *Id.* The DEIR states that habitat restoration would only occur "if demonstrated to be feasible" and if "implemented pursuant to a Habitat Restoration/Revegetation Plan." DEIR 4.12-36. Yet, the DEIR has neither 7-28

[3] This study is available for download here: http://docketpublic.energy.ca.gov/PublicDocuments/09-AFC-07C/TN201977_20140407T161504_Center_Supplemental_Opposition_to_Motion.pdf

analyzed whether such restoration would be feasible nor developed a Habitat Restoration/Revegetation Plan. In addition, the DEIR's compensation option does not identify (1) a suitable replacement habitat, (2) potential recipients for the mitigation fee payments, nor (3) the appropriate agencies to approve such mitigation measures. DEIR 4.12-36. The DEIR's improper deferral of these mitigation measures provides no assurance that the impacts of the Project will be mitigated to a less than significant level. The County's conclusion to the contrary cannot stand. 7-28 Continued

For all these reasons, the DEIR improperly ignores the potentially significant impacts that the Project would have on biological resources.

VI. THE DEIR FAILS TO ADEQUATELY ANALYZE ELECTRIC AND MAGNETIC FIELD POLLUTION.

The Project – primarily through its transmission lines, transformers and inverters – would expose Project workers, nearby residents, wildlife, and others to EMF radiation and the subsequent harm it causes. DEIR 4.10-12 (the Project "would create the potential for [EMF] exposure). All five of the Project's CPV systems would use inverter and transformer units to convert direct current ("DC") to alternating current ("AC"), interrupting the current flow and producing EMF. DEIR ES-1, 2.0-12 to 2.0-13. Recent studies, such as those by Dr. Samuel Milham and Dr. Magda Havas, have linked EMF exposure with an increase in ailments such as diabetes, fibromyalgia, chronic fatigue syndrome, and attention deficit disorder, among others.[4] Similarly, as reported in Lovich and Ennen's 2011 *BioScience* article, Doctor Alfonso Balmori (in a 2010 article) found that the "possible impacts of chronic exposure to athermal 7-29

[4] *See, e.g.*, Samuel Milham, "Attention Deficit Hyperactivity Disorder and Dirty Electricity," *Journal of Developmental and Behavioral Pediatrics*, September 2011 (attached hereto as Exhibit 5); Samuel Milham, "Historical Evidence That Electrification Caused the 20th Century Epidemic of 'Diseases of Civilization,'" *Medical Hypotheses*, 74:337-345, 2010 (attached hereto as Exhibit 6); Samuel Milham and L. Lloyd Morgan, "A New Electromagnetic Exposure Metric: High Frequency Voltage Transients Associated With Increased Cancer Incidence in Teachers in a California School," *American Journal of Industrial Medicine*, 2008 (attached hereto as Exhibit 7); Magda Havas, "Dirty Electricity Elevates Blood Sugar among Electrically Sensitive Diabetics and May Explain Brittle Diabetes," *Electromagnetic Biology and Medicine*, 27:135-146, 2008; Magda Havas, "Electromagnetic Hypersensitivity: Biological Effects of Dirty Electricity with Emphasis on Diabetes and Multiple Sclerosis," *Electromagnetic Biology and Medicine*, 25:259-268, 2006, available at: http://www.next-up.org/pdf/Magda_Havas_EHS_Biological_Effets_Electricity_Emphasis_Diabetes_Multiple_Sclerosis.pdf; The National Foundation for Alternative Medicine, "The health effects of electrical pollution," available at: http://d1fj3024k72gdx.cloudfront.net/health_effects.pdf.

electromagnetic radiation" on mammalian species include "damage to the nervous system, disruption of circadian rhythms, changes in heart function, impairment of immunity and fertility, and genetic and developmental problems."[5]

Rather than analyze these serious EMF risks, the DEIR sidesteps the issue by claiming that "[t]he potential for the transmission line on BLM land to impact human health is minimal because it would be located [in] an existing ROW" and "no residential uses are allowed within this corridor." DEIR 4.10-12. However, that argument ignores any cumulative impact of *adding* a transmission line to that ROW. The effects of adding this transmission line must be studied, and the EIR must include an estimate of the EMF levels that the Project components would generate at sensitive receptor distances to fully understand these impacts. The DEIR omits any such analysis and furthermore, *completely ignores* EMF emissions caused by the Project's inverters and transformers. *Id.*

The DEIR also claims that the "available evidence . . . has not established that [EMF] pose a significant health hazzard to exposed humans." DEIR 4.10-12. But this conclusory statement is not adequately supported in the DEIR, and is instead refuted by the numerous recent studies cited and discussed herein. *See, e.g.* Exhibits 5-7. The DEIR relies on a 2010 DEIR and Staff Report for a *different* solar project to support this erroneous claim. DEIR 4.10-12. However, the CPUC itself acknowledged in its Decision 93-11-013 that "the body of scientific evidence [on EMFs and their impacts] continues to evolve." Yet the DEIR fails to mention, let alone analyze, any of the scientific evidence produced since 2010 that show that EMFs impact human and wildlife health. DEIR 4.10-12. Instead, the DEIR's *half-page* discussion of EMFs only cites the one DEIR and Staff Report for a *different* project and ignores the actual scientific studies that are available.

7-29
Continued

The DEIR also argues that because "there is no agreement among scientists regarding the potential health risk related to EMFs," no further analysis is necessary. Even so, the lack of defined standards does not excuse the agency from fully analyzing EMF impacts in the DEIR. To paraphrase the Court of Appeal's holding in an analogous case involving air pollution from an airport expansion, "[t]he fact that a single methodology does not currently exist that would provide [the County] with a precise, or 'universally accepted,' quantification of human health risk from [EMF] exposure does not excuse the preparation of a health risk assessment – it requires [the County] to do the necessary work to educate itself about the different methodologies that *are* available." *Berkeley Keep Jets*, *supra*, 91 Cal.App.4th 1370.

Furthermore, the minimal discussion the DEIR *does* provide on EMFs is wholly

---

[5] Lovich, J.E. & J.R. Ennen, 2011, "Wildlife Conservation and Solar Energy Development in the Desert Southwest, United States," *BioScience*, 61(12): 982-992, at p. 984 (attached hereto as Exhibit 8)

insufficient as a CEQA analysis. The DEIR admits that "the proposed transmission line would create the potential for [EMF] exposure," and when activated "EMFs would be generated in proximity to the line." DEIR 4.10-12. Yet it concludes without *any* evidentiary support that "long-term exposure to EMFs generated by the transmission line are not expected and no impact would occur." *Id.* These two statements are contradictory and cannot stand.

Without an estimate of the EMF levels that the Project components would generate at sensitive distances, it is impossible to confirm that they would not be measurable or cause adverse effects at nearby residences. *Id.* The DEIR therefore lacks the requisite "substantial evidence" to support its conclusion that there would be no harm from the Project's EMF emissions. *Vineyard*, 40 Cal.4th at 426; *Laurel Heights Improvement Association of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 409 n.12 ("*Laurel Heights I*"). Moreover, the DEIR *entirely fails* to address the impacts of the Project's EMF emissions on Project workers and on-site or nearby wildlife. The DEIR must address these impacts fully, rather than dismissing them based on unsupported premises. 7-29 Continued

VII. THE DEIR FAILS TO ANALYZE IMPORTANT ALTERNATIVES.

CEQA requires EIRs' to "describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." Guidelines § 15126.6(a). Alternatives that would lessen significant effects should be considered even if they "would impede to some degree the attainment of the project objectives, or be more costly." *Id.* § 15126.6(b). The range of alternatives considered must "foster informed decisionmaking and public participation." *Id.* § 15126.6(a). Alternatives may only be eliminated from "detailed consideration" when substantial evidence in the record shows that they either (1) "fail[] to meet most of the basic project objectives," (2) are "infeasibl[e]," or (3) do not "avoid significant environmental impacts." *Id.* § 15126.6(c). 7-30

The DEIR here fails to analyze a reasonable range of alternatives and impedes, rather than fosters, informed decisionmaking and public participation for at least two reasons. First, the DEIR dismisses from detailed consideration the distributed generation alternative without adequate supporting analysis and data. Second, the DEIR rejects and fails to analyze the reduced-size project alternative without *any* – let alone *substantial* – evidence supporting its rationale for dismissal.

A. The County Must Analyze the Distributed Generation Alternative in Detail.

The DEIR states that the County purportedly "considered" a "distributed PV generation alternative . . . consist[ing] 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." DEIR 6.0-3. But instead of thoroughly analyzing the distributed 7-31

generation alternative, the County violated CEQA by dismissing the alternative from "detailed analysis" based solely on conclusory and erroneous assertions. *Id.*

As discussed below, a distributed generation alternative is not only technically, economically and politically feasible, it is better for the environment and the economy than remote, utility-scale electrical generation projects like Seville Solar. Because a distributed generation alternative is feasible, would result in a significant reduction in environmental impacts as compared to the proposed Project, and would meet most of the Project objectives, CEQA requires that the County fully analyze the alternative. Guidelines § 15126.6(b). 7-31 Continued

1. Distributed Generation Is Technically and Economically Feasible.

The DEIR implies that there may not be "enough additional sites throughout California for installation of sufficient distributed PV" to generate the "135 MW" that the Project would generate. DEIR 6.0-3. Not so. To the contrary, there is ample potential to develop significantly *more* than 135 MW in Imperial and San Diego counties alone (which counties are served primarily by IID and San Diego Gas & Electric Company ("SDG&E"), respectively). For example, the service territory of SDG&E – the contracted purchaser of at least some of the Project's generated electricity – has at least *7,000 MW* of urban and suburban PV potential.[6] 7-32

Imperial County, like San Diego County and SDG&E's service territory, also has some of the most "abundant solar resources" in the United States, with all areas of the County receiving "at least 6.5 kWh/m^2/day. Summit Blue Consulting LLC, April 1, 2008, "Renewable Energy Feasibility Study Final Report," p. 17 (attached hereto as 9). And with such abundant solar energy comes a great "technical potential for rooftop PV in the County," which was estimated in 2007 to be at least 346 MW, 93 MW on commercial building rooftops and 253 MW on residential rooftops.[7] *Id.* at 20. While Summit Blue concluded in its 2008 report that it was likely only economically feasible to develop the 93 MW of commercial rooftop PV, circumstances have changed significantly since then, both in Imperial and San Diego counties and throughout the world. *Id.* at 84.

For example, "[p]hotovoltaic modules have followed a well-documented historical trend of price decline. Since 1976, global module prices declined on average for every doubling of

[6] Bill Powers, *San Diego Smart Energy 2020: The 21st Century Alternative*, October 2007, p. 48, available at: http://www.localcleanenergy.org/files/11-oct-07_SD_Smart_Energy_2020_report_complete_FINAL1.pdf

[7] Note that his does not even account for the vast potential to develop solar PV systems above parking lots or as part of other hardtop surfaces like roads.

cumulative global production, resulting in a price decline of roughly 95% – from about $60/W to about $2/W – between 1976 and 2010." U.S. Department of Energy, February 2012, "SunShot Vision Study," Chapter 4, p. 74 (attached hereto as 10). While there was a brief spike in PV module costs around 2008 – when the Summit Blue report was published – the costs have since dropped to a new historic low. *Id.* at 74-75. Furthermore, it is fully within Imperial County's legislative purview to adopt additional incentives for residents and others to install distributed solar PV installation systems, as discussed below.

Recognizing the rapidly increasing technological and economic feasibility of distributed generation, along with its many environmental and other benefits, the California Legislature and state agencies including the California Public Utilities Commission have recently authorized and implemented numerous programs designed to incentivize distributed generation development. For example, Public Utilities Code section 2827 requires that "every electric utility . . . develop a standard contract or tariff providing for net energy metering" for residential, commercial, agricultural and other customers of the electric utility who operate distributed generation systems with a capacity of one MW or less. Pub. Util. Code § 2827(c)(1). By May 31, 2014, SDG&E already had 270 MW of installed net-metered PV capacity in its service territory.[8] IID, whose service territory includes Imperial County, had 22.06 MW of installed net-metered distributed generation as of June 4, 2014.[9]

7-32 Continued

In sum, the premier solar resources in both Imperial and San Diego counties (as well as the service territories of IID and SDG&E) are primed for harvest by distributed PV systems.

2. Promoting Distributed Generation Is Politically Feasible.

There are many politically workable options for Imperial County to incentivize installation and operation of distributed solar PV. For example, the County could adopt a local loan program to help property owners in the County finance PV installations on their properties, pursuant to Streets and Highways Code section 5898.20 *et seq*. An example of this type of program is Sonoma County's Property Assessed Clean Energy financing program.[10] Imperial

7-33

[8] This figure and additional details are provided on SDG&E's "Overview – NEM Cap" website: https://www.sdge.com/clean-energy/net-energy-metering/overview-nem-cap (last accessed June 6, 2014). A screenshot of the website is attached hereto as Exhibit 11.

[9] This figure and additional details are provided on IID's "Net Energy Metering" website: http://www.iid.com/index.aspx?page=583 (last accessed June 6, 2014). A screenshot of the website is attached hereto as Exhibit 12.

[10] Sonoma County's program is summarized on the U.S. Department of Energy's Database of State Incentives for Renewables & Efficiency website, available here:

County could also institute a local rebate program for installation of PV systems, such as the program developed by the City and County of San Francisco that gives money directly to qualifying PV system purchasers for residential, commercial and other non-residential PV installations.[11] These and many other types of PV incentivization programs Imperial County could adopt are conveniently outlined on the CleanEnergyAuthority's website on "California Solar Rebates and Incentives."[12]

7-33 Continued

3. Distributed Generation Is Better for the Environment and the Economy than Remote, Industrial-Scale Generation Projects Like Seville Solar.

Distributed generation projects such as rooftop solar PV have substantial environmental, aesthetic, economic and public safety benefits over remote, industrial-scale solar energy facilities such as Seville Solar.[13] They do not mar the landscape with massive and unsightly arrays of glare-producing PV and CPV panels, or their associated powerlines, substations and industrial operations and maintenance buildings. They are much less likely to ignite catastrophic wildfires. They do not displace agriculture and wildlife habitat. They present a much smaller threat to wildlife. They do not waste electricity due to conductor resistance and corona discharges along lengthy transmission lines.[14] Their reliability is far greater. And they are easier to upgrade as

7-34

http://www.dsireusa.org/incentives/incentive.cfm?Incentive_Code=CA188F&re=1&ee=1 (last accessed June 6, 2014).

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

[12] http://www.cleanenergyauthority.com/solar-rebates-and-incentives/california/ (last accessed June 6, 2014).

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

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

technology improves.

In addition, as these distributed solar PV technologies improve and the liability costs of utility-scale renewable energy facilities become clearer, the per-watt installed price for distributed solar PV systems should soon drop below that of remote, industrial-scale projects like Seville Solar. In likely recognition of this trend, many utility-scale renewable energy project developers themselves agree that distributed generation is the future of renewable energy power. For example, NRG Energy, Inc., CEO David Crane stated the following in a 2011 call with financial analysts:

> Ultimately, however, we fully recognize that the current generation of utility-sized solar and wind projects in the United States is largely enabled by favorable government policies and financial assistance. It seems likely that much of that special assistance is going to be phased out over the next few years, leaving renewable technologies to fend for themselves in the open market.
>
> We do not believe that this will be the end of the flourishing market for solar generation. We do believe that it will lead to a *stronger and more accelerated transition from an industry that is currently biased towards utility-sized solar plants to one that's focused more on distributed and even residential solar solutions on rooftops and parking lots*.
>
> We are already planning for this transition now within NRG, so that any potential decline in either the availability of utility-sized solar projects or in the attractiveness of the returns being realized on these projects, *will be exceeded in aggregate by the increase in the business we are doing on smaller distributed and residential solar projects* . . . . (emphasis added).[15]

7-34
Continued

In sum, distributed generation is not only feasible, it is environmentally and economically preferable to remote, utility-scale renewable energy generation facilities like Seville Solar.

---

http://www.eia.gov/electricity/state/pdf/sep2010.pdf.

[15] Seeking Alpha, April 22, 2011, "NRG Energy's CEO Discusses Q4 2010 Results – Earnings Call Transcript," at p. 7, *available at:* http://seekingalpha.com/article/254272-nrg-energy-s-ceo-discusses-q4-2010-results-earnings-call-transcript (attached hereto as Exhibit 13)

4. The DEIR's Rationales for Rejecting the Distributed Generation Alternative Fail.

The DEIR claims that a distributed generation alternative "cannot feasibly accomplish most of the Project's objectives," but fails to substantiate its assertion in at least three significant respects. DEIR 6.0-3.

7-35

a. The DEIR Concedes that a Distributed Generation Alternative Would Meet at Least Six Project Objectives.

Of the ten Project objectives listed on page 6.0-1, the DEIR only questions the ability of a distributed generation alternative to meet four – *less than half* – of them.[16] *Id.* The DEIR does not dispute that a distributed generation alternative using rooftop solar PV would achieve the other six objectives, *i.e.* to

- "[p]roduce on-peak renewable power to the electrical grip in California;"
- "[s]upport the greenhouse gas reduction goals of Assembly Bill 32;"
- "[s]ite the projects in [areas] with excellent solar energy resources in order to maximize productivity from the PV" panels;
- "[u]se a proven and available solar PV technology to reliably and economically produce electricity during daylight hours;"
- "[c]onstruct and operate solar power facilities with minimal impacts to the environment by locating the facilities on previously disturbed land and existing infrastructure;" and
- "reduce the historic groundwater use on the Project site."

7-36

Id. at 6.0-1 (quotes), 6.0-3.

[16] The DEIR also questions whether a distributed generation alternative could "accomplish the Project's objective of generating 135 MW." DEIR 6.0-3. But "generating 135 MW" is not a listed Project objective. *Id.* at 6.0-1. In any event, the DEIR assumes "that there are enough additional sites throughout California for installation of sufficient distributed PV to accomplish" that non-Project goal. *Id.* at 6.0-3.

b. The Evidence Shows that a Distributed Generation Alternative Would Advance at Least Three Additional Project Objectives.

A distributed generation alternative would advance at least three of the four Project objectives that the DEIR suggests it would not meet. First, such an alternative would do even better than "locat[ing] the solar power facilities as near as possible to . . . IID's electrical transmission facilities with anticipated capacity availability and a reserved queue position." DEIR 6.0-3. It would locate the generating facilities at the *source of demand*, obviating the need for many of the otherwise necessary transmission facilities.

Second, a distributed generation alternative would "support the objective of assisting the State of California meet . . . its [Renewables Portfolio Standard ('RPS')] goals." DEIR 6.0-3. More and more distributed PV sources are qualifying as RPS eligible and thus able to directly help utilities meet the RPS target of 33 percent renewables by 2020. For example, the California Energy Commission recently approved as RPS eligible (at least some) renewable energy credits associated with energy from customer-side distributed generation installations.[17] Furthermore, even those distributed PV sources that are not RPS eligible still indirectly assist utilities in achieving their RPS goals by reducing the amount of electricity that they would otherwise have to purchase from the grid, and thereby reducing the amount of RPS-eligible resources that they must purchase to achieve that 33-percent-renewables goal.

Third, a distributed solar PV alternative would "create" at least as much "additional employment and Project-related expenditures in local businesses" as would Seville Solar. DEIR 6.0-3. Using the numbers and formulas from a 2010 peer-reviewed study of the employment potential of renewable energy in United States, the construction of 135 MW of local PV would produce about 205 job-years of activity.[18]

7-37

[17] CEC, April 2013, "Renewables Portfolio Standard Eligibility Guidebook," Seventh Edition (attached hereto as Exhibit 14), available at: http://www.energy.ca.gov/2013publications/CEC-300-2013-005/CEC-300-2013-005-ED7-CMF.pdf

[18] Wei *et al.*, January 2010, "Putting Renewables and Energy Efficiency to Work: How Many Jobs Can the Clean Energy Industry Generate in the US?," *Energy Policy*, 38:919-931, at p. 923, Figure 1 (attached hereto as Exhibit 15). Assume 135 MW of PV produces 236.5 GWh per year (135 MW x 8,760 hr/yr x 0.20 x 1 GWh/1,000 MWh). PV produces 0.87 job-years per GWh. Therefore, 0.87 x 236.5 = 205.8 job-years.

c. The County Has the Authority to Adopt a Distributed Generation Alternative.

The DEIR concludes that "the County has no authority or influence over the installation of distributed PV generation systems outside of its jurisdiction," and as a result "there is no guarantee that" such an alternative would achieve numerous Project objectives or benefit Imperial County at all. DEIR 6.0-3. But the DEIR's premise is doubly wrong.

First, nothing requires that the distributed generation alternative apply outside of Imperial County. As discussed, the County has robust options, backed by constitutional authority, for incentivizing or otherwise providing for expanded distributed generation installation *within* Imperial County. Cal. Const. art. X, § 7 ("A county . . . may make and enforce within its limits all local police, sanitary, and other ordinances and regulations not in conflict with general laws").

7-38

Second, "jurisdictional borders are simply a factor to be taken into account and *do not establish an ironclad limit* on the scope of reasonable alternatives" in any event. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 575 n. 7 (emphasis added).

In sum, all of the DEIR's excuses for dismissing the distributed generation alternative without detailed analysis fail. Because a distributed PV alternative is feasible, would significantly reduce the Project's environmental impacts, and would meet many if not all of the Project objectives, CEQA requires that the County fully analyze the alternative. Guidelines § 15126.6(b).

B. The DEIR Wrongly Dismisses a Reduced-Size Project Alternative from Detailed Analysis.

The DEIR purports to reject the reduced-size project alternative because "would result in a reduction in power output and would not meet the Project objectives." DEIR 6.0-3. But the DEIR provides no evidence or explanation *whatsoever* to support its conclusory assertion. The mere fact that the reduced-size project alternative would reduce power output in no way demonstrates that the alternative would not meet the Project objectives. Indeed, *none* of the ten listed Project objectives specifies a numerical electrical generation goal. It is possible that a reduced-size project may not "[c]omply with the [undisclosed] terms and requirements of the five solar projects' long-term power purchase agreements," but apart from that, the alternative would achieve the remaining nine Project objectives in the same manner – if not to the same extent – as the proposed Project. *Id.* at 6.0-1. And the DEIR provides no evidence to the contrary.

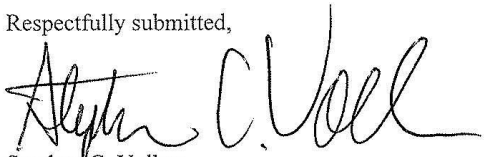
7-39

Because the DEIR eliminates from "detailed consideration" the reduced-size project alternative without *any* substantial evidence showing that it either (1) "fails to meet most of the basic project objectives," (2) is "infeasibl[e]," or (3) does not "avoid significant environmental impacts," it violates CEQA. Guidelines § 15126.6(c).

CONCLUSION

The Seville Solar Project's industrial use of lands designated "Agriculture" is specifically forbidden by the Imperial County General Plan. Therefore the County may not approve the Project. Despite this the County decided to proceed with considering the Project for approval, including preparing a DEIR. While Backcountry maintains that the County may not approve the Project under the current General Plan, it nonetheless provides the foregoing comments on the seriously flawed DEIR. Because the DEIR fails to fully analyze numerous significant environmental impacts and fails to discuss in detail at least two environmentally superior alternatives, it violates CEQA. The County must overhaul the DEIR to address the significant deficiencies identified above. 7-40

Respectfully submitted,



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

LIST OF EXHIBITS

1. John M. Lowrie, California Department of Conservation, Letter to Armando Villa re: Cancellation of Land Conservation (Williamson Act) Contract No. 2001-00706, November 1, 2011;

2. Dan Otis, California Department of Conservation, Letter to Patricia Valenzuela re: Notice of Preparation for a DEIR for Imperial Solar Energy Center South, July 16, 2010;

3. Connie L. Valenzuela, Imperial County Agricultural Commissioner, Letter to Armando Villa re: CUP 10-0035 8 Minutenergy Renewables, LLC, Calipatria Solar Farm II, February 25, 2011;

4. J. M. Mason, V. M. Fthenakis, T. Hansen & H.C. Kim, 2006, "Energy Pay-Back and Life Cycle CO_2 Emissions of the BOS in an Optimized 3.5 MW PV Installation," *Progress in Photovoltaics Research and Applications*, 14:179-190;

5. Milham, Samuel, September 2011, "Attention Deficit Hyperactivity Disorder and Dirty Electricity," Letter to Editor, *Journal of Developmental and Behavioral Pediatrics*;

6. Milham, Samuel, 2010, "Historical Evidence That Electrification Caused the 20th Century Epidemic of 'Diseases of Civilization.'" *Medical Hypotheses*, 74:337-345;

7. Milham, Samuel & L. Lloyd Morgan, 2008, "A New Electromagnetic Exposure Metric: High Frequency Voltage Transients Associated with Increased Cancer Incidence in Teachers in a California School," *American Journal of Industrial Medicine*;

8. Lovich, Jeffrey E., and Joshua R. Ennen, 2011, "Wildlife Conservation and Solar Energy Development in the Desert Southwest, United States," *BioScience* 61(12):982-992;

9. Summit Blue Consulting LLC, April 1, 2008, "Renewable Energy Feasibility Study Final Report," prepared for Imperial Irrigation District;

10. U.S. Department of Energy, February 2012, "SunShot Vision Study," Chapter 4;

11. San Diego Gas & Electric Company, "Overview – NEM Cap" website screenshot, available at: https://www.sdge.com/clean-energy/net-energy-metering/overview-nem-cap (last accessed June 6, 2014);

12. Imperial Irrigation District, "Net Energy Metering" website screenshot, available at:

http://www.iid.com/index.aspx?page=583 (last accessed June 6, 2014);

13. Seeking Alpha, April 22, 2011, "NRG Energy's CEO Discusses Q4 2010 Results – Earnings Call Transcript;"

14. California Energy Commission, April 2013, "Renewables Portfolio Standard Eligibility Guidebook," Seventh Edition, available at: http://www.energy.ca.gov/2013publications/CEC-300-2013-005/CEC-300-2013-005-ED7-CMF.pdf;

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

RESPONSE TO COMMENT LETTER 7

Commenter: Stephan C. Volker, Attorney for Backcountry Against Dumps, Donna Tisdale and Carolyn Allen, Law Offices of Stephan C. Volker

Date of Letter: June 6, 2014

Response to Comment 7-1: The comment provides a summary of the proposed Project and characterizes the Project consistent with the commenter's views. The comment does raise any issues with the adequacy of the analysis in the Draft EIR. No further response is required.

Response to Comment 7-2: The comment states that the Project would likely cause significant impacts to agriculture and the agricultural economy in Imperial County by reducing the amount of available farmland and driving up the price of the remaining farmland. Impacts to the agricultural economy generally, and to the price of farmland specifically, are economic considerations. CEQA Guidelines section 15131 provides that economic and social impacts need not be analyzed in an EIR. As stated by the court in *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal. App. 4th 1184, 1205, if substantial evidence in the record demonstrates that "the forecasted economic or social effects of a proposed project directly or indirectly will lead to adverse physical changes in the environment, then CEQA requires disclosure and analysis of the resulting physical impacts." The Project-specific and cumulative physical impacts of the Project on agriculture are analyzed in Section 4.9 of the Draft EIR, which explains that the Project site is not currently used for farming and that therefore no farmer or agricultural activity will be displaced. See also Response to Comment 7-7.

Response to Comment 7-3: The comment expresses opposition to the Project, and reaches general conclusions concerning the alleged impacts of the Project. See Responses to Comments 7-5 thru 7-29 for specific responses to these general conclusions. The comment also suggests that the County adopt an incentive program supporting the development of distributed solar PV generation (See Response to Comments 7-30 thru 7-38).

Response to Comment 7-4: The comment generally concludes that the Draft EIR fails to provide an adequate project description, and does not adequately discuss the Project's potential impacts on water resources, greenhouse gas (GHG) emissions, biological resources, and the health impacts from electric and magnetic fields (EMF). For project description, see Response to comment 7-9; for water resources, see Responses to Comments 7-10 thru 7-13; for GHG emissions, see Responses to Comments 7-14 thru 7-15; for biological resources, see Responses to Comments 7-16 thru 7-28; and for impacts from EMF, see Response to Comment 7-29.

Response to Comment 7-5: The comment states that California Planning and Zoning law prohibits issuance of a Conditional Use Permit that is inconsistent with a General Plan. It also states that "the proposed solar energy generation and transmission uses are specifically forbidden under the Imperial County General Plan." A Conditional Use Permit (CUP) may only be issued if it is authorized by the Imperial County Land Use Ordinance and is consistent with the General Plan.

The proposed solar generation and transmission uses are consistent with the County General Plan and are conditionally permitted uses under the County's Land Use Ordinance. As stated on page 4.2-18 of the Draft EIR (and revised in Chapter 4.0 of this Final EIR):

> The proposed solar farm complex site is currently designated as "Agriculture" on the Imperial County Land Use Plan Map. Per section [90508.02] of the Imperial County Land Use ~~Code~~ Ordinance, an electrical power generating plant (excluding nuclear or coal fired) and electrical substations in an electrical transmission

> system (500-kV/230-kV/161-kV) are allowed uses within the existing zones agricultural zones (A-2) with a CUP. . . No land use amendment would be required for the portion of the Project located within the County's jurisdiction because a solar facility is an allowed use subject to a CUP. Therefore, the proposed Project is consistent with the existing land use and zoning designations.

See also Response to Comment 7-6.

This comment also refers to the court ruling in *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1184. In that case, Calaveras County approved a CUP for a proposed project, but the county did not have a valid general plan (i.e., the court found the general plan did not comply with State law). In turn, this invalidated Calaveras County's issuance of a CUP for the proposed project. These circumstances do not apply to Imperial County's proposed issuance of a CUP for the Seville Solar Farm Complex. Unlike in *Neighborhood*, Imperial County's General Plan meets State requirements and is legally valid. As such, no defect exists that would affect the County's authority to issue a CUP for the proposed Seville Solar Farm Complex, consistent with the underlying zoning designation (i.e., A-2 - General Agriculture) for the Project site.

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 that were relevant to the uses authorized by the permit. The County of Imperial's General Plan Land Use Element recognizes solar energy as being consistent with the County's overall goals and energy policies. 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 ...."

Pursuant to Section 90508.02 of the County's Land Use Ordinance, "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 permitted uses in the A-2 zone subject to approval of a CUP. Similar to the permitted uses (solar energy plants) under Section 90508.02 of the Land Use Ordinance, Section 91701.09 of the County Land Use Ordinance includes the Geothermal Overlay ("G") Zone which permits minor geothermal projects and wells; and, by CUP, allows major and intermediate geothermal projects, geothermal test facilities, and major geothermal exploratory wells.

Based on the goals and objectives of the General Plan and relevant provisions of the County's Land Use Ordinance, with the approval of all Project entitlements, the proposed Project would be an allowable use within the existing land use and zoning designations for the site and would promote Imperial County's renewable energy policies.

Response to Comment 7-6: The commentor contends that the Imperial County General Plan "forbids the proposed solar uses within the 'Agriculture' plan designation that applies to the entire Project

site." Inherent in the comment's conclusion is an interpretation of the General Plan 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 ... 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 its General Plan and determine whether the proposed project is consistent.

The County's 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 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. (General Plan Agricultural Element, page 29 [Section III.A Preface].)

Turning to specific policies implicated by the proposed Project, the County General Plan actively promotes both alternative energy and opportunities for economic growth. For example, Goal I 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 projects, 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 *utilize existing* transmission facilities on land designated as Agriculture in the County's General Plan. 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 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 the need to "[p]reserve agricultural and natural resources *while promoting diverse economic growth* through sound land use planning." (General Plan, Land Use Element, page 38.) 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 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]lectrical 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." (General Plan Land Use Element, page 46.) Further, the Land Use Compatibility Matrix in the General Plan provides that industrial uses are permissible on lands zoned A-2 with a CUP. (General Plan, Land Use Element, Table 4, page 64.) Thus, pursuant to the 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." (General Plan Land Use Element, page 48 [Section IV.C.I].)

The proposed Project does not conflict with any existing, and will not result in the premature elimination of, agricultural operations. The Project site is not in full agricultural production, but rather, is currently idle farmland. Farming on the site has been in decline since the late 1970's due, in part, to poor soil and groundwater quality and the increased cost of electricity to pump groundwater (Draft EIR, page 4.9-4). There is no evidence in the record that the current landowner intends to resume active agricultural operations.

Nor does the proposed Project 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 90508.01 and 90508.02 of the County's Land Use Ordinance identify the permitted and conditional uses within the A-2 zoning designation. The Project site is zoned A-2, a designation that requires a CUP for solar energy facilities (Draft EIR, page 4.9-2.) The discretionary nature of a CUP process also triggers review under CEQA.

As the Draft EIR states, the proposed Project will not have a significant adverse effect on agricultural production. As already noted, there is no existing agricultural production on the Project site. To the extent the Seville Solar Farm Complex will prevent the site from being used for agricultural production over the 25-year operational life of the Project, the Draft EIR identified mitigation measures that will limit the Project's effect on agricultural production. These measures include options to:

- Acquire an agricultural conservation easement on a 1:1 (non-prime farmland) or 2:1 (prime farmland) ratio of impacted acres, thus ensuring the availability of an equal amount of agricultural land for production;
- Payment of an in-lieu mitigation fee to be used by the County's Agriculture Commissioner to promote active agriculture production; or
- Enter into a voluntary Public Benefit Agreement that will include, among other things, payment of a fee no less than the in lieu mitigation fee contemplated above.

(Draft EIR, page 4.9-15 – 4.9-16 [mitigation measure MM 4.9.1a].)

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 above mitigation measures, which ensure that opportunities for active agriculture production in the County will continue to be available, supported, and promoted.

Moreover, the proposed Project will not have a significant adverse effect on agricultural production on surrounding properties because the nearest Agriculture-designated lands (with exception of Lots 6-8) are approximately eight miles from the Project site. Furthermore, as discussed below, because Lots 6-8 have not been farmed for several years, and in some cases, have never been used for agricultural production, the proposed Project will not have a significant adverse effect on agricultural production on Lots 6-8. The proposed Project would not foreclose any opportunity to resume agricultural production on the previously farmed portions of Lots 6-8.

Based on the above, the County would be within its discretion to determine that the proposed Project is consistent with the various policies, goals, and objectives of the Imperial County General Plan promoting alternative energy and economic diversity. Thus, the comment's contra-interpretation notwithstanding, the General Plan does not "forbid" solar projects on Agriculture-designated lands.

Response to Comment 7-7: The comment states that the proposed Project "could impede agricultural operations elsewhere in the County and reduce employment, income, sales and tax revenue."

The Draft EIR considered the proposed Project's potential to impact agricultural operations elsewhere in the County in Section 4.9 (Agricultural Resources). The Draft EIR concludes that the proposed Project will have a less than significant impact on the County's agricultural operations (Draft EIR, page 4.9-14 thru 4.9-23.)

The comment letter cites to a February 25, 2011 letter from Imperial County Agricultural Commissioner Connie Valenzuela submitted as a comment letter on another solar project. The letter stated that "removal of any farmland out of production would have a direct negative impact on employment, income, sales and tax revenue." However, the project that the Agricultural Commissioner commented on was proposed on land that was being actively farmed and supported "crops that contribute directly to Imperial County's $1.45 billion gross agricultural

production value." Here, the proposed Project site is idle farmland that has not been used to support crops for years. Furthermore, the June 6, 2014 letter from Imperial County Agricultural Commissioner Connie Valenzuela, submitted in response to the Draft EIR for the proposed Project, does not cite any concern for direct negative impacts on employment, income, sales and tax revenue as a result of removal of any farmland out of production by the proposed Project.

The independent analysis of the economic, employment and fiscal impacts of the Project,[16] prepared by Development Management Group, Inc. under contract to Imperial County, confirmed the net positive value of the Project to Imperial County, as it determined:

> ". . . that the Seville Ranch [*sic*] Solar Farm Complex will generate the equivalent of 416 full-time one-year equivalent construction jobs over the first five-years and 12 full-time equivalent permanent jobs. By comparison the current use of the site has approximately less than one (1) job being produced from the limited agriculture occurring. When comparing both the direct and indirect permanent employment of agriculture versus utility (energy) production, the proposed use will generate a total of 46.6 permanent jobs while the current use creates 1.67 permanent jobs.

This report also "estimated that the County will receive a net of approximately $7.65 million in tax revenues over the thirty (30) year life of the project (net of $2.36 million in property tax revenue and $5.29 million in sales tax)." The property tax revenue to be generated by the Project is derived from a base land assessment value of $6.3 million upon build out on Lots 1-5,[17] which by contrast is three times greater than the current base land assessment value for all of the Property.[18]

As to the commenter's assertion that the Draft EIR should have analyzed the proposed Project's effects on the County's agricultural economy and job market, CEQA Guidelines section 15131 provides that economic and social impacts need not be analyzed in an EIR. As stated by the court in *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1205, if substantial evidence in the record demonstrates that "the forecasted economic or social effects of a proposed project directly or indirectly will lead to adverse physical changes in the environment, then CEQA requires disclosure and analysis of the resulting physical impacts."

As stated in the Draft EIR, the Project site accounts for only 0.07 percent of the County's Farmland of Statewide Importance (Draft EIR page 4.9-21). Even when considered in combination with other past, present, and reasonably foreseeable future projects in the County, less than 5 percent of farmland in Imperial County is affected (Draft EIR page 4.9-22). Given the relatively small amount of agricultural land impacted by the proposed Project individually, or in combination with other projects, the County would be well within its discretion to conclude that approval of the proposed Project will not have a significant adverse effect on agricultural operations elsewhere in the County. Further, the independent analysis of the economic, employment and fiscal impacts of the Project states that "We have further determined that the development of the Seville Ranch Solar Farm Complex WILL NOT cause physical blight (urban decay) because the facility is a stand-alone *(i.e. independent of other projects)* and will have its own contracts based on power purchase demand, meaning that there is not another commercial scale energy facility that will cease to

[16] "Final Report of Findings Economic/Employment (Jobs)/Fiscal Impact Analysis and Statement of Potential for Urban Decay: Seville Ranch Solar Farm Complex (Regenerate Power LLC) Proposed Project Imperial County, CA." Prepared May 27, 2014 by Development Management Group, Inc., 41-625 Eclectic Street, Suite D-2, Palm Desert, CA 92260.

[17] Id.

[18] Draft EIR Appendix H, Phase 1 Environmental Site Assessment, EMA Report No. 2226-04 dated May 2013, Appendix A. Preliminary Title Report Order No.: 7101204736-CM, dated April 12, 2013.

operate as a result of the Seville Ranch Solar Farm Complex."

Response to Comment 7-8: The comment contends that it is improper for the County to rely upon its Land Use Ordinance and the conditional use permit (CUP) process established pursuant to Section 90508.02 to "cure" the proposed Project's "incompatibility" with the Imperial County General Plan, and cites various Government Code sections and California court cases to support this conclusion. Though the general proposition of law that a zoning ordinance must be consistent with a general plan is correct, as explained in Response to Comment 7-6, the County would be well within its discretion to find that the proposed Project is consistent with the General Plan and, for those same reasons, the County's Land Use Ordinance and CUP process are also consistent with the General Plan.

Response to Comment 7-9: The comment states that the Project Description (Chapter 2.0 of the Draft EIR) is inadequate because it does not include Lots 6, 7, and 8 within the definition of "Project area" and therefore does not serve its fundamental informational purpose.

CEQA requires a stable project description that informs the public and decision-makers of the scope of the Project. Thus, the Project Description includes a detailed discussion of the various permit applications filed by the Applicant, including a Major Subdivision/Tract Map for the entire Allegretti Farms property where the project is being developed. Section 2.1.5.C provides:

> In support of the Project, a major subdivision/tract map is proposed which would reconfigure seven existing legal property parcels …into eight new individual lots and four common development interest lots (Draft EIR page 2.0-8 – 2.0-9).

The eight new individual lots (Lots 1-8) and four common development interest lots (Lots A-D) are specifically described in Table 2.0-1, including Lots 6-8. The Project Description then provides:

> Of the 12 proposed lots summarized in Table 2.0-1, eight would be specifically developed as the Seville Solar Farm Complex. Lots 1 thru 5 would be developed as individual solar farm projects (respectively, Seville Solar Farm Project One thru Five). Lots A, C, and D would be developed specifically for the benefit of all five solar farm projects. These three common development interest lots include land for: the IID electrical switch station (Lot C); the solar energy project substation (Lot D); and, the solar development gen-tie lines to the solar energy substations (Lot A) (Figure 2.0-4 and Figure 2.0-5). Lot B would be a common interest development interest lot for the internal property road system supporting all of the other lots (Figure 2.0-4 and Figure 2.0-5). Lots 6, 7 and 8 are not proposed to be developed as part of this Project (Draft EIR page 2.0-9).

The Project Description clearly describes the new lots (including Lots 6-8) that are being created as a result of the Major Subdivision/Tract Map that has been applied for as part of the Project, including the new groundwater well proposed on Lot 8 and the access road (Lot B) and transmission line crossing Lot 6 and Lot 7. The Project Description also clearly describes the physical changes that will be made to each of those lots as a result of the proposed development. As indicated in the Project Description (Draft EIR page 2.0-9), the Project does not propose to physically alter Lots 6, 7 and 8. In other words, the Project Description describes the creation of Lots 6-8, and then correctly informs the public that, upon creation, these new lots will not be physically developed as part of the Project. The Project Description and Draft EIR then use the phrase "Project area" to refer to the areas that are being physically altered for the solar energy projects.

As the commenter correctly notes, potential environmental impacts on Lots 6-8 from development of the adjacent lots has been analyzed in the Draft EIR (see Response to Comment 7-9 ("The Draft EIR's environmental analysis discusses the impacts of the proposed Project on Lots 6, 7 and 8, which directly abut the solar development area …"). Thus, not only does the Project Description clearly delineate the creation of Lots 6-8 as part of the Major Subdivision/Tract Map and alert the public to the fact that these lots will not be developed as part of the solar Project, the Draft EIR analyzes the direct and indirect impacts to Lots 6-8 that will result from developing the Major Subdivision/Tract Map (and associated groundwater wells and access road), as well as the five solar energy projects and related facilities on adjacent lots.

Response to Comment 7-10: The comment asserts that the Draft EIR fails to identify alternative water sources, and assumes that the Project's water demands would not contribute to the existing overdraft condition. See the Response to Comment 7-12 regarding alternative water sources and the Responses to Comments 7-10, 7-11 and 7-12 regarding overdraft of the groundwater.

The Commenter states that "The Draft EIR and WSA acknowledge that the deep aquifer underlying the Project is not noticeably recharged by irrigation return flows, which instead feed into the shallow perched aquifer." While true, this statement is not pertinent to determining the rate of recharge to the deep groundwater basin. The WSA states that:

> "Groundwater is available from the Ocotillo-Clark Valley Groundwater Basin (Basin Number 7-25) shown on Figure 1. … Recharge is from mountain runoff in the north and east, estimated to be 1,200 AFY for the Clark Valley portion of the basin and 1,100 AFY for the Ocotillo Valley portion of the basin (CDWR, 2004). Groundwater generally flows southeastward." (WSA, page 7) (emphasis added)

As shown in Figure 1 of the WSA, southeastward is in the direction of the Allegretti Property.

The Commenter also states that "the Draft EIR and its Water Supply Assessment ("WSA") (Draft EIR Appendix K) clearly state that the local aquifer is in overdraft …." This statement is not correct. The WSA (page 8) instead clearly states that "The groundwater basin has been in a state of overdraft as indicated by the water levels in the USGS (San Felipe) well shown on Figure 3 (USGS, 2013). (emphasis added) Overdrafting is the process of extracting groundwater beyond the safe yield or equilibrium yield of the aquifer – that is, extracting more groundwater from an aquifer than is being recharged to that aquifer. If the groundwater level in an aquifer is rising, the aquifer is not in a state of overdraft. As shown in Figure 3, the depth to groundwater in the deep aquifer under the Allegretti Farms property has been reduced since 2001, and thus the aquifer has not been in a state of overdraft since 2001.

The Commenter states that each of the five solar energy projects would be using 30 to 50 AFY of water for panel washing, or a total of 150 to 250 AFY for all five solar energy projects. This is incorrect. The Draft EIR (page 4.11-24) and the WSA (page 6) provide that "The amount of water needed for normal operations of the solar farm complex is conservatively estimated at 190 AF/Y, with an additional 25 AF for potential future non-solar, ancillary uses." (emphasis added) (Draft EIR, page 4.11-24). The commenter then speculates that "The desert winds are likely to deposit sand and dust on the Project's solar panels in great enough quantities to impact their power-generating capabilities, necessitating additional cleaning, and therefore additional water use beyond the 30 to 50 AFY per project." No information is offered in support of this assertion. The Draft EIR indicates that a total of 190 AFY of water is needed for the five solar lots (refer to Draft EIR p. 4.13-19, Table 4.13-7). This quantity is supported by the following table, which compares the estimated water needed per MW for various solar projects proposed in the Imperial Valley. The table shows that the amount of water proposed for panel washing per megawatt (MW) for

the Seville Solar Farm Complex is nearly 2.5 times that of the solar project with the next most intensive water use, and more than 70 times more water than the Imperial Solar Energy Center West Project which, like the Seville Solar Farm Complex, is also located on idle farmland west of the irrigated central valley.

Solar Project	MW AC	Proposed Water Use (AFY)	Proposed Water Use per MW (AF/MW)
Seville Solar Farm Complex	135	190	1.41
Calipatria Solar Farm I	70	40	0.57
Midway Solar Farm I	50	20	0.40
Calipatria Solar Farm II	49.9	20	0.40
Midway Solar Farm II	155	60	0.39
Solar Gen 2	150	45	0.30
Campo Verde Solar Project	140	20*	0.14
Mount Signal Solar Farm	200	215	1.07
IVSC 2, LLC	30	2.5	0.08
Centinela Solar Project	275	18	0.07
Imperial Solar Energy Center South	200	5*	0.03
Imperial Solar Energy Center West	250	5*	0.02

*Draft EIR states that Applicant believes that rainfall will keep the panels clean, but proposed stated AFY as a contingency.

The amount of water estimated to be needed for each of the five solar energy projects is more than sufficient to provide the water required to fill each of the five 20,000 gallon water tanks (not the 50,000 gallon water tanks identified by the Commenter) with the 20,000 gallons (equal to 0.06 AF) of water which would be used for domestic purposes, solar panel washing and fire protection

Finally, as stated in the Draft EIR (page 4.11-24), "The CUPs would expressly limit the amount of water which could be pumped from each well; require installation of a flow meter; and require the installation of flow meters and annual water use reports to the Imperial County Planning Department…"

Response to Comment 7-11: The Commenter states that the Draft EIR assumes that the consumption of 215 AFY would not contribute to the deep aquifer's overdraft or additional subsidence at the Project location because "the Project's water use would be consistent with water use at the site from 2002 to 2011, when water levels rose at the U.S.G.S. monitoring well at the property." (emphasis added) This statement is misleading, as the WSA actually concluded that the Project's use of pumped groundwater would be at the lower end of the 2002 to 2011 pumping rates, and comparable to the 2010-2011 pumping rates, when the depth to the groundwater table rose more swiftly than from 2002 to 2009:

> ". . . the recovering water levels on Figure 3 indicate that the pumping between 2002 and 2011 was within sustainable rates. The lower end of this pumping occurred in 2010 and 2011 and was estimated to be on the order of 200 AFY to 225 AFY. Water levels increased at a steeper angle during this time (Figure 3)." (Seville WSA, page 9; Appendix K of Draft EIR).

The Commenter claims that the WSA acknowledges that "pumping volumes . . . for the 1995 to 2009 period are unknown;" that its water use estimates for that time are based on "very little data;" that the Draft EIR "relies upon water use estimates for 2010 and 2011 based upon acres of land planted and an assumed ratio of water quantity per acre, but does not explain where it

derived its application rate;" and that "water use data for 2004 to 2013 is extrapolated from electricity bills, based on the questionable assumption that electricity usage directly correlates with the quantity of water pumped." Again, the Commenter misrepresents the text of the WSA, which actually states that:

> "Pumping volumes (and corresponding agricultural acreage) for the 1995 to 2009 period are unknown and have been estimated in Table 4 and Figure 4 using data from Table 2. Pumping volumes were not recorded and very little data exists regarding acres in production, crops grown, number of plantings per year, etc.

The referenced Table 2 is summarized from "An Agricultural History of Allegretti Farms, Imperial County, California," which is provided as Appendix G of the Draft EIR. The "Agricultural History" presents the following information regarding acres in production and crops grown for this time period, as provided by Joseph A. Allegretti, President of Allegretti Farms:

> "Allegretti Farms was leased to Morgan Ranches/Kelomar from 1993 to 2009. Crops grown during this time period included melons, onions, alfalfa, wheat, safflower, arugula, asparagus, milo and carrots. During this period, the most acreage farmed at any one time was approximately 1,000 acres, although the average acreage under cultivation was likely around 500 acres."

As stated in the Seville WSA, page 9 (Appendix K of Draft EIR), "Between 1996 and 2009, pumping was estimated to average around 2,800 AFY assuming an average of 500 acres were planted and a water application rate of 5.6 AF/acre per year (Table 4)." Footnote 2 to Table 4 of the WSA documents that the 5.6 AF/acre per year water application rate (that is, the acre-feet of water applied per acre of crop per year) is the average AFY per acre applied to agricultural lands in Imperial County, as documented by the Imperial County Farm Bureau (2013). For the years 2010 and 2011, footnote 2 to Table 4 states that "1.77 AFY/acre average historical onion use and 1.95 AF/acre average historic wheat use in Imperial Irrigation District (Dynamic, 2011). Assumed 75% irrigation efficiency for onions and wheat (2.4 and 2.6 AF/acre application rate)."

The mapping of the Allegretti Farms farmland conducted by the California Department of Conservation, Division of Land Resource Protection, Farmland Mapping and Monitoring Program (FMMP) since 1996 supports this estimate of active farmland from 1996 to 2012. Pursuant to the Program's farmland definitions, both "prime farmland" and "farmland of statewide importance" must have been used for irrigated agricultural production at some time during the four years prior to the mapping date. As shown in the table below, the areas of "prime farmland" plus "farmland of statewide importance" mapped by the FMMP on the Allegretti Farms averaged nearly 1,070 acres on the 2002 through 2012 maps of Imperial County. The FMMP maps also reflect the reduction in irrigated lands over the last decade, as the mapped irrigated "prime farmland" plus "farmland of statewide importance" has decreased by about 9 percent since its peak in 2006.

Map Year	Years for Prime or Statewide	Total Acres		
		Prime	Statewide	Prime + Statewide
2000	1996-2000	684.25	290.60	974.85
2002	1998-2002	729.81	286.27	1,016.08
2004	2000-2004	771.15	287.84	1,058.99
2006	2002-2006	859.05	315.67	1,174.72
2008	2004-2008	857.06	314.57	1,171.63
2010	2006-2010	819.89	275.73	1,095.61
2012	2008-2012	732.14	252.12	984.26
Average of the 2000 - 2012 Maps:				1,068.02

The Seville WSA does not extrapolate water use data for 2004 to 2013 from the Allegretti Farms electricity bills. Because electricity use by each of the Allegretti Farms water wells is individually metered by the IID, there is no question that electricity usage is directly linked to the quantity of water pumped by each well. What the WSA does do is compare the total electricity used per year from 2004 to 2013 by Allegretti Farms groundwater wells 1 through 6 to the recovery of the groundwater levels, which shows that the reduction in electricity use for groundwater pumping tracks the rise in groundwater levels:

> ". . . 2004 to 2013 electricity usage for Wells 1 through 6 was compiled using data from Imperial Irrigation District (IID) energy bills (Carey, December 23, 2013). Electricity usage and depth to water have been plotted on Figure 5. The reduction in annual electricity usage (and resulting pumping reduction) corresponds well with the increase in groundwater levels for the same time period as shown in Figure 5 indicating that reduction in on-site pumping has resulted in the recovery of groundwater levels." (Seville WSA page 8, para. 1)

The Commenter also states "that the Draft EIR did not account for the additional 10 AFY allocated to the new Blu-In Park well when calculating the total demand on the deep aquifer during Project operation." As stated in the Draft EIR (page 4.11-36), "Historic use for the Blu-In Park well has been approximately two AF/Y. A CUP has been issued allowing for a new well on an adjacent parcel to supply up to 10 AF/Y to the 187-space Blu-In RV Park. Water use for the existing Blu-In Park well would be limited to 2 AF/Y." As discussed in the Response to Comment 7-13, including the authorized 10 AFY (but apparently not yet produced) groundwater from the Blu-in RV Park well would not alter the conclusion of the Seville WSA, that the proposed pumping (from the Allegretti Farms property and the Blu-In RV Park) will be within sustainable levels during normal and drought conditions.

Finally, the Commenter contends that on the whole "there is insufficient data to show that the levels of pumping during this claimed period of aquifer recovery were as high as the WSA claims . . ." This comment has been addressed by the responses above and the conclusions of the WSA remain unchanged.

"The Project and property will need 215 AFY of groundwater at build out. Groundwater pumping in the Ocotillo-Clark Valley Groundwater Basin has been much greater in the past, leading to groundwater level declines and reported land subsidence. Groundwater levels have been recovering since about 2002 because of a reduction in groundwater use. The current pumping

estimates of 200 AFY to 250 AFY coupled with the groundwater level increases indicate that the proposed pumping of 215 AFY is within sustainable levels during normal and drought conditions."

Response to Comment 7-12: The Commenter states that the Draft EIR "makes no provisions for an alternative source of water if the USGS monitoring were to show that the Project's water use was contributing to the overdraft condition." First, as stated in the Response to Comment 7-10, the amount of water needed for the five solar energy projects is conservatively estimated, and there is no credible information that would indicate that additional groundwater would ever be desired to be produced for the projects. Second, Response to Comment 7-10 also reports that the Draft EIR (page 4.11-24) states that "The CUPs would expressly limit the amount of water which could be pumped from each well; require installation of a flow meter; and require the installation of flow meters and annual water use reports to the Imperial County Planning Department . . . ." Thus, the five solar energy projects would be restricted to producing no more than the requested 30 AFY (for the smaller projects) or 50 AFY (for the larger projects). Finally, as indicated in the Response to Comment 7-10, a number of solar projects approved by Imperial County have stated that they do not expect to need to wash the solar panels, relying instead on rainfall (and wind) to keep the panels clean. Thus, if USGS monitoring were to show that the Project's water use was contributing to the overdraft condition, Regenerate would simply reduce its groundwater production.

As stated in the Draft EIR (page 4.13-22), "As an option, the Ranch Oasis Mutual Water Company, formed in 1994 by Allegretti & Company for the purpose of providing water to the Allegretti Farms property (but never used), could be activated to provide water from one or more of the nine water wells to all of the subdivision lots." Thus, the Ranch Oasis Mutual Water Company is not an independent source of water, but an alternative means of delivering water from one or more of the nine wells to each of the subdivisions lots.

Response to Comment 7-13: The Commenter states that the Draft EIR relies upon the temporary nature of Project construction and the assumption that excess pumped water would percolate back into the groundwater basin to find that Project construction would have a less than significant impact on groundwater supply and recharge.

The Draft EIR (page 4.11-23) incorrectly characterized the finding of the geotechnical report when it stated that "The geotechnical investigation prepared for the proposed Project states that adverse effects to shallow groundwater are not anticipated to result from Project construction (PETRA 2012a)." The referenced geotechnical report actually stated that "Adverse effects on the proposed construction due to shallow groundwater are not anticipated." (Petra 2012a, page 7). Accordingly, the incorrect statement has be deleted as reflected in the Errata (Chapter 4.0) of this Final EIR.

The Draft EIR correctly states (page 4.11-23) that "An estimated 650 AF of water would be needed during construction of the proposed Project (Todd 2013). Project water would be obtained from either the existing water wells or the two new wells (#8 and #9) to be constructed." Because the groundwater used for construction would be produced from the deep aquifer, none of this construction water is expected to infiltrate into the deep aquifer because of the presence of the perched shallow aquifer (Draft EIR, p. 4.11-14). Some of the applied construction water could infiltrate into the shallow aquifer, and the County-requirement for the on-site retention of 3 inches of precipitation could result in water infiltration into the shallow aquifer.

The estimated 650 AF of groundwater to be used for construction of the five solar energy projects, equal to three years of operations water demand, would be consumed over the first years during which time the solar projects and residences (A single-family residence in an allowed use within the A-2 zoning designation. For the purposes of the WSA, it is assumed that a total of three homes

could be built on the three non-solar lots [Lots 6, 7, and 8]) would not yet be consuming the full 215 AFY for operations. The estimated 650 AF of groundwater to be consumed during construction of the five solar energy projects also equals 26 AFY over the 25-year life of the five solar energy projects. If this 26 AFY is added to the 190 AFY water demand conservatively assumed for the five solar energy projects, plus the 25 AFY water demand conservatively assumed for the potential residential uses, plus the 10 AFY additional water authorized for the Blu-In RV Park groundwater well, average water use would total 251 AFY. Because the WSA estimated that pumping for the Allegretti Farms ranged from 200 AFY to 225 AFY during 2010-2011, during which time the measured groundwater level rose nearly 8 feet, pumping an average of 251 AFY over the life of the five solar energy projects would also be within sustainable levels during normal and drought conditions. Impact 4.11-2 and the associated discussion (Draft EIR page 4.11-23) has been revised as follows:

"Result in Depleted Groundwater Supplies or Interfere Substantially with Groundwater Recharge

Impact 4.11.2 Implementation of the proposed Project would require use of groundwater during construction and operation. However, proposed pumping levels are anticipated to be sustainable, and excess would be retained on-site and allowed to percolate ~~back~~ into the shallow groundwater table. Therefore, impacts to groundwater supplies and recharge are considered **less than significant**.

Construction

The proposed Project intends to use groundwater as its source of water during construction. Seven ground water wells are located on the solar farm complex site, although only the domestic water well (#7) and two commercial water wells (#4 and #6) are currently operational. An estimated 650 AF of water would be needed during construction of the proposed Project (Todd 2013). Project water would be obtained from either the existing water wells or the two new wells (#8 and #9) to be constructed.

The WSA determined that the 215 AF/Y of pumping proposed for this Project and Property area operations would be sustainable during normal and drought conditions (see discussion under "Operation," below). The estimated 650 AF of groundwater to be used for construction of the solar projects, equal to three years of operations water demand, would be consumed over the first years during which time the solar projects and residences would not yet be consuming the full 215 AFY for operations. The estimated 650 AF of groundwater consumed during construction of the five solar energy projects also equals an average of 26 AFY over the 25-year life of the five solar energy projects. Adding this 26 AFY to the 215 AFY Project and Property demand, and the additional 10 AFY of water authorized from the Blu-In RV Park groundwater well, total new groundwater production would average 251 AFY over the 25-year life of the five solar energy projects. Because the WSA estimated that pumping for the Allegretti Farms ranged from 200 AFY to 225 AFY during 2010-2011, during which time the measured groundwater level rose nearly 8 feet, pumping an average of 251 AFY over the life of the five solar energy projects would also be within sustainable levels during normal and drought conditions.

~~The geotechnical investigation prepared for the proposed Project states that adverse effects to shallow groundwater are not anticipated to result from Project construction (PETRA 2012a). Any excess pumped water would percolate back into the groundwater basin in place or in proposed on-site detention facilities designed to meet the~~

~~requirements of the County of Imperial. In addition, construction-phase water use would be temporary in nature.~~ As recharge to the deep groundwater aquifer is from mountain runoff in the north and east part of the groundwater basin, construction activities for the solar projects would not affect recharge to the deep groundwater basin. Construction activities should also not result in substantial reduction in recharge to the shallow aquifer, as few impervious surfaces would be constructed, and each solar project would be designed to contain precipitation until it percolates into the shallow groundwater aquifer or evaporates. Therefore, construction of the proposed Project is anticipated to have a **less than significant impact** on deep groundwater supply and shallow groundwater recharge during Project construction.

Response to Comment 7-14: The comment states that the Draft EIR's estimate of Project construction greenhouse gas (GHG) emissions "vastly understates the Project's far greater actual emissions because the County failed to include a 'life-cycle' analysis of the CO_2 emissions necessary for Project construction . . . ." The comment goes on to state that the County must also assess the Project's "substantial embedded greenhouse gas emissions such as those emissions associated with production of the materials used to construct the Project, like PV panels, frames and support structures, by conducting a 'life-cycle' analysis . . . ."

Contrary to the comment's assertions, CEQA does not require the type of "life-cycle" analysis sought by the comment. Public Resources Code section 21151 provides that, in preparing an EIR, "any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse *changes in physical condition which exists within the area* as defined by in Section 21060.5." (Emphasis added). Public Resources Code section 21060.5 refers to such "area" as "the physical conditions which exist *within the area which will be affected by the proposed project* . . . ." (Emphasis added). The California Supreme Court interpreted these sections as requiring analysis of the local effects of a proposed project, and not requiring a life-cycle analysis of products that are the subject of a proposed project. (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (20 11) 52 Cal .4th 155.) CEQA only requires analysis of impacts that are directly or indirectly attributable to the project under consideration. (CEQA Guidelines, Section 15064(d).) "Life-cycle" emissions would refer to emissions beyond those that could be considered indirect effects of a project as that term is defined in CEQA Guidelines section 15358. Thus, the Draft EIR did not need to calculate the life-cycle GHG emissions associated with project construction or those "embedded" in the various components of the proposed Project, including the PV panels.

The comment cites to a study of life-cycle emissions prepared for a solar project in Tucson, Arizona. While the Tucson study considered GHG emissions that may be associated with producing solar panels and frames, the study was not prepared pursuant to the requirements of CEQA. As discussed above, CEQA does not require that the Draft EIR consider life-cycle GHG emissions. (*Laurel Heights Improvement Assn. v. University of Cal.* (1988) 47 Cal.3d 376, 415 ["[a] project opponent or reviewing court can always imagine some additional study or analysis that might provide helpful information. It is not for them to design the EIR. That further study... might be helpful does not make it necessary."].)

Response to Comment 7-15: The comment asserts that the Draft EIR failed to properly analyze the proposed Project's greenhouse gas (GHG) emissions by "artificially dispersing construction-stage emissions over a 25-year period instead of addressing them as they occur."

As described in the Draft EIR, the Imperial County Air Pollution Control District has not established quantitative significance thresholds to evaluate GHG impacts in a CEQA analysis. Instead, each project is evaluated on a case-by-case using the most up-to-date calculation and analysis methods

(Draft EIR, page 4.5-15.) To establish some context for considering the significance of the Project's construction-related and operational GHG emissions, the Draft EIR considered the significance threshold adopted by the nearby South Coast Air Quality Management District (SCAQMD), which is 10,000 MT CO2e per year. The Draft EIR also acknowledges that many California air districts, including SCAQMD, recommend that construction emissions associated with a project be amortized over the life of the project (typically 30 years) and added to the operational emissions (Draft EIR, page 4.5-15). Under CEQA, a lead agency has broad discretion to determine what methodology it will use to analyze GHG impacts. (CEQA Guidelines, Section 15064.4, subd. (a)(1) [lead agencies may "select the model or methodology it considers most appropriate"]; see also *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 336.)

The Draft EIR discloses that the amount of GHG emissions associated with Project construction activities would be 4,894.55 $MTCO_2e$ in 2014. (Draft EIR, page 4.5-16 – 4.5-17.) This amount is below the 10,000 $MTCO_2e$ per year threshold that the Draft EIR considered.

The Draft EIR also calculated the GHG emissions for Project operations, which would be 872.99 $MTCO_2e$ per year (Draft EIR, page 4.5-17 – 4.5-18.) The Draft EIR then amortized construction-phase emissions over the Project's maximum 25-year operational life, which resulted in the addition of 195.78 $MTCO_2e$ per year (4,894.55 $MTCO_2e$ divided by 25 years) to the Project's operational GHG emissions (Draft EIR, page 4.5-18).

The analysis of GHG emissions was therefore conservative in that it considered the construction emissions, which would be below the significance threshold if considered solely during the year that they would occur, in addition to project operational emissions, which would also be below the significance threshold if considered on their own. Even when the amortized construction emissions were added to project operation emissions, however, the resulting 1,068.77 $MTCO_2e$ per year would still be well below the 10,000 $MTCO_2e$ significance threshold considered in the Draft EIR. This evaluation is consistent with the CEQA Guidelines for evaluation of GHG emissions. (CEQA Guidelines, Section 15064.4.)

Response to Comment 7-16: The comment states that CEQA mandates that a Draft EIR analyze a project's effects on the environment in order to foster informed decision making, and that mitigation measures must be adopted to lessen or avoid potential impacts when feasible. The comment generally concludes that the Draft EIR fails to adequately address and mitigate the Project's impacts to biological resources, including migratory birds. See Response to Comments 7-17 thru 7-28 for specific responses to these general conclusions.

Response to Comment 7-17A: The comment asserts that the surveys completed as part of the Draft EIR are inadequate because portions of the Property were not surveyed for biological resources and because an insufficient amount of time was spent conducting surveys such that a thorough view of the biological resources could not be obtained.

This comment introduces the issues discussed in the following two paragraphs; please see the Response to Comment 7-17B and 7-17C for the responses to these two issues.

Response to Comment 7-17B: The comment asserts that the surveys completed as part of the Draft EIR are inadequate because portions of the Property were not surveyed for biological resources.

As stated in the Helix Biological Technical Report ("Seville Solar Project Biological Technical Report," January 3, 2014, referenced in the Draft EIR text as (HELIX 2014b), "The approximately 1,238-acres of proposed solar project disturbance is contained within an approximately 1,729-acre survey area (Figure 2)." Thus, the biology survey was conducted over all portions of

the Project area (which the Draft EIR defines as the "1,238-acre portion of the Property on which the proposed Project would be built), plus approximately 500 acres of additional lands on the Property. As depicted in the Draft EIR (Figure 4.12-1), the biological survey area includes all of the Project area: all of Lots 1-5; the east half of Lot 6 (the portion of this lot which abuts the Project area, and through which the new access road and transmission line would align); all of Lot 7 (through which the new access road and transmission line would align); Lots A-D; and the overbuilt portion of the 92 kV transmission line and the Anza Substation. A 100-foot buffer beyond the survey area (except the transmission line) was mapped for vegetation communities/land cover types. Surveys were not conducted of those areas of the Property on which no development (surface-disturbing or other impact) activities were proposed. This includes the west half of Lot 6 and Lot 8 (with the exception for the location of the proposed water well at the northwest corner of Lot 8, which is located within the 100-foot buffer beyond the survey area).

There is no appropriate habitat for the desert pupfish in the survey area, with the nearest population in San Felipe Creek approximately two miles southeast of the survey area (Draft EIR page 4.12-21.) Thus, no surveys for desert pupfish were conducted. There is limited nesting habitat, and moderate potential foraging habitat for the prairie falcon within the survey area (Draft EIR page 4.12-21 and 4.12-24). There is no suitable northern harrier nesting habitat within the survey area, but low to moderate potential foraging habitat (Draft EIR page 4.12-25). Much of the survey area has been heavily impacted by agricultural operations. The areas with the greatest potential to support FTHL occur in the northern portion of the survey area that supports some native vegetation (Draft EIR pg. 4.12-21). None of these three animals were observed during the biological surveys of the survey area (the entire Project area plus other Property lands) (Draft EIR, Table 4.12-3 and Appendix B of Appendix I). A focused burrowing owl survey was conducted over the Project area (Draft EIR, Appendix I). While no burrowing owl or addition burrowing owl sign (other than three old pellets) were observed on or in the immediate vicinity of the survey area, it was determined that the survey area does support burrowing owl habitat and a number of fossorial mammal burrows with potential to support burrowing owl (Draft EIR 4.12-45). The focused burrowing owls surveys were conducted consistent with the 2012 CDFW Staff Report on Burrowing Owl Mitigation.

Response to Comment 7-17C: The comment asserts that the surveys completed as part of the Draft EIR are inadequate because an insufficient amount of time was spent conducting surveys such that a thorough view of the biological resources could not be obtained.

Contrary to the comment's assertion, biological surveys were not conducted only in January and June (which the comment asserts would "risk overlooking a significant number of resources that utilize the project area, or bloom, at different times during of year."). As stated in the Draft EIR (page 4.12-20), "HELIX conducted a focused survey for special status plant species, with particular emphasis on Peirson's pincushion, on March 19, 2013. … [N]o special status plant species were found during the focused survey (refer to Table 4.12-2)." The March 19 date of this focused survey is well within the typical blooming period for special status plant species. Further, HELIX conducted burrowing owl surveys of the Project area and buffer areas over nine days in March, April, May and June 2013. It should also be noted that comments on the Draft EIR received from the California Department of Fish and Wildlife and the United States Fish and Wildlife Service expressed no concern with the timing of the general biology and special status plant and animal species surveys.

Response to Comment 7-17D: The comment states that surveys must include the entire area included in the Project and span the time periods in which wildlife and plant species are likely to be present and identifiable for an adequate review under CEQA. It also states that clearly inadequate or

unsupported stud[ies] are entitled to no judicial deference and do not constitute substantial evidence supporting an agency's finding. Finally, the comment asserts that the Draft EIR fails to provide studies necessary to understand the Project's impacts and therefore prevents the public and decision-makers from fully considering the Project's impacts.

As noted in Response to Comment 7-17A, the biology survey was conducted over all portions of the 1,238-acre Project area plus approximately 500-acres of other portions of the Property on which indirect impacts have the potential to occur. This included all of Lots 1-5; the east half of Lot 6 (the portion of this lot which abuts the Project area, and through which the new access road and transmission line would align); all of Lot 7 (through which the new access road and transmission line would align); Lots A-D; and the overbuilt portion of the 92 kV transmission line and the Anza Substation. The survey omitted only those portions of the Property upon which no development, and thus no physical effect, is proposed to occur. Further, as noted in Response to Comment 7-17C, HELIX conducted burrowing owl surveys of the Project area and buffer areas over nine days in March, April, May and June 2013, and the focused special status plant species survey was conducted within the typical blooming period for special status plant species; thus, there was adequate opportunity for the field biologists to determine if such special status plant species were present within the Project area – no such special status plant species were identified.

Response to Comment 7-18: The comment generally summarizes the content of Comments 7-19, 7-20, 7-21, 7-22A and 7-22B. The comment asserts that the Project poses significant threats to burrowing owl, that the Draft EIR's analysis of such threats is inadequate; that surveys for burrowing owl were inadequate for covering too limited of a survey area and finally; that the Draft EIR's discussion of impacts to burrowing owl and the mitigation measures to be implemented to protect the owl fail.

See the Responses to Comments below: 7-19, 7-20, 7-21, 7-22A and 7-22B.

Response to Comment 7-19: The comment asserts that the alleged impacts to burrowing owl by the Project through direct mortality, entrapment or injury cannot simply be mitigated by avoidance of burrows and/or eviction of owl from burrows.

The mitigation measures provided in the Draft EIR (mitigation measures MM 4.12.6a and MM 4.12.6b – including required pre-construction surveys for this species prior to site disturbance) are in accordance with the established CDFW measures, which require, to the extent burrowing owl are present onsite when construction begins, avoidance and use of buffer zones and further provide that to the extent such measures are unsuccessful, eviction of burrowing owl during the appropriate timeframe.

Furthermore the commenter does not provide specific evidence that such mitigation measures are inadequate, nor does the commenter provide suggestions for additional or different mitigation measures to avoid the alleged impacts to burrowing owl – the comment simply concludes the mitigation measures are insufficient, a conclusion which is incorrect as these measures are derived from those outlined in the 2012 CDFW "Staff Report on Burrowing Owl Mitigation."

Response to Comment 7-20: The comment states that the Draft EIR incorrectly concludes that a 300-foot buffer would not adequately mitigate construction noise impacts to burrowing owls and that implementation of such a buffer would not make the alleged impacts to burrowing owl less than significant.

CDFW's guidance for mitigation of noise impact for burrowing owls recommends primarily that noise impacts to burrowing owl, where possible, be avoided by use of buffer zones or other

measures between occupied owl burrows and Project activities.[19] CDFW has not recommended or otherwise specified the distance of such buffer. Nevertheless, the Draft EIR and biological technical report mitigation measure for the indirect impact generated by construction noise specifies a distance of 300 feet, which is the usual and customary distance between sensitive birds nest locations and construction activities (Draft EIR page 4.12-49, mitigation measure MM 4.12.8.) It should also be noted that comments on the Draft EIR received from the CDFW expressed no concern with the mitigation measures proposed in the Draft EIR.

Furthermore, the comment provides no evidence that the mitigation measures specified in the Draft EIR are inadequate or would not otherwise be effective mitigation for reducing noise impacts to burrowing owl, nor does the comment provide suggestions for additional or different mitigation measures to avoid noise impacts to burrowing owl.

Response to Comment 7-21: The comment asserts that the Draft EIR failed to analyze the effect of failed avoidance causing burrowing owl to leave its burrow and asserts that later preparation of a Burrowing Owl Exclusion Plan constitutes deferred mitigation. The comment further summarizes the applicable legal standard for determining when mitigation measures may be deferred.

The comment fails to recognize that the Draft EIR does consider the scenario where avoidance of burrowing owl proves ineffective and provides, in pertinent part, that, "[e]viction of burrowing owls is a potentially significant impact under CEQA [unless mitigated] and would require approval of a Burrowing Owl Exclusion Plan." (Draft EIR 4.12-47.) The Draft EIR further provides, that "[m]itigation for impacts to nesting, occupied and satellite burrows and/or burrowing owl habitat is required such that habitat acreage, number of burrows and burrowing owls impacted are replaced based on the burrowing owl life history information provided in Staff Report on Burrowing Owl Mitigation (CDFW 2012)." (Draft EIR 4.12-47.) Thus, the Draft EIR adequately considers the potential that burrowing owl eviction may be required if avoidance measures alone are insufficient to avoid impacts to burrowing owl, and that such activity, if necessary, is to be carried out consistent with the provisions of a Burrowing Owl Exclusion Plan developed pursuant to CDFW guidelines set forth in the Staff Report. Burrowing Owl Exclusion Plans are effective mitigation measures in avoiding impacts to burrowing owl (Appendix E, CDFW Staff Report). Note also that comments on the Draft EIR received from the California Department of Fish and Wildlife expressed no concern with the mitigation measures proposed in the Draft EIR.

Moreover, the subject mitigation measure does not constitute deferred mitigation as the commenter asserts because the CDFW Staff Report on Burrowing Owl Mitigation 2012 sets forth the applicable criteria under which a project may mitigate impacts to burrowing owl, including impacts associated with the eviction of burrowing owl.

Furthermore, the commenter provides no evidence that the mitigation measures specified in the Draft EIR are inadequate or would not otherwise be effective mitigation for reducing impacts to burrowing owl nor does the comment provide suggestions for additional or different mitigation measures to avoid such impacts to burrowing owl.

Response to Comment 7-22A: The comment provides that impacts to burrowing owl must be better understood with a more thorough survey of the entire Project area and that only after a more thorough survey is completed can the impacts be properly assessed and appropriate mitigation measures presented.

[19] Staff Report of Burrowing Owl Mitigation. State of California, Natural Resources Agency, Department of Fish and Game, March 7, 2012.

As noted in the Draft EIR, HELIX'S initial habitat assessment of the Project area determined that only 1,100 acres of the surveyed area had potential to be burrowing owl habitat (Draft EIR 4.12-24). HELIX later conducted a focused survey for burrowing owl in accordance with CDFW protocols, which, took place over ten days between March 2013 and June 2013 and, "…consisted of walking transects throughout the entire 1,100 acres of potential burrowing owl habitat within the survey area and determined that burrows with potential to support owls mainly occurred within three areas totaling 207 acres, along with a number of scattered outlying burrows." (Draft EIR Appendix I (Results of Burrowing Owl Survey for the Seville Solar Project in Imperial County, California)). "No burrowing owl or additional burrowing owl sign was observed on or in the immediate vicinity of the proposed Project survey area during the habitat assessment, burrow survey and focused owl survey…" (Draft EIR 4.12-25). Thus, contrary to the commenter's contention, a thorough survey of the entire Project area was completed such that the public and decision-makers can adequately understand the potential impacts to burrowing owl by the Project and determine the appropriate mitigation measures to be applied.

It is also of note that the usual relationship between burrowing owls and agriculture do not apply at the Project area because the Imperial Irrigation District (IID) irrigation and drainage infrastructure, which provides both forage habitat and shelter opportunities to burrowing owl, does not occur on or near the Project area.[20] The Project area is a much more xeric environment than those locations which are closer to the IID irrigation and drainage infrastructure and thus provide far fewer prey options, and quality of habitat, for the owl.

Response to Comment 7-22B: The comment provides that impacts to burrowing owl remain significant even after attempted avoidance or eviction efforts are implemented.

See Response to Comments 7-19, 7-20 and 7-21. Furthermore, the Draft EIR provides that implementation of mitigation measures MM 4.12.6a and MM 4.12.6b, where necessary, will, "avoid, minimize or mitigate potential impacts to burrowing owl during construction activities." (Draft EIR, page 4.12-46.) Moreover, the commenter makes the statement that neither of the Project's efforts to avoid or to evict burrowing owl will be effective mitigation and that impacts to burrowing owl will remain significant, but fails to provide evidence that either of the mitigation measures will be ineffective in avoiding impacts to burrowing owl.

Response to Comment 7-23: The comment reiterates the Draft EIR language that the loggerhead shrike was observed along the southern border, is a USFWS Bird of Conservation Concern and a CDFW Species of Special Concern; however, the comment disagrees with the Draft EIR conclusions that because of the lower level of sensitivity than other special status species and the available adjacent habitat, that the impacts to the loggerhead shrike would not be significant. The comment also believes that mitigation should have been offered to protect the species.

The comment fails to fully state the Draft EIR findings: that the loggerhead shrike habitat present within the Property is of poor quality, and that superior habitat occurs adjacent to the Project in the vicinity (Draft EIR page 4.12-43 and 4.12-44). The lack of significant impacts to this species is based on both the lower level of sensitivity and the poor quality of the habitat within the Property with the superior adjacent habitat. Further, Draft EIR mitigation measure MM 4.12.8 requiring pre-vegetation clearing surveys would reduce the potential for a significant impact to the shrike. No changes to the Draft EIR have been made.

[20] Coulombe, H. N. 1971. Behavior and Population Ecology of the Burrowing Owl, *Speotyto cunicularia*, in the Imperial Valley of California. Condor 73:162–176. https://sora.unm.edu/sites/default/files/journals/condor/v073n02/p0162-p0176.pdf

Response to Comment 7-24: The comment states that the Project presents a potentially significant impact to the flat-tailed horned lizard (FTHL) and that the proposed mitigation is not adequate given that the FTHL's shape and specialized camouflaging make detection difficult.

The Draft EIR identified mitigation measure MM 4.12.3, which would implement the terms and conditions of IID's ROW Grant, consistent with the Rangewide Management Strategy, to reduce direct and indirect impacts to FTHL on those lands identified as habitat (Draft EIR, at page 4.12-42). This mitigation measure would reduce impacts to FTHL through worker education, designation of a field contact representative (FCR), demarcation of work areas, relocation of lizards, use of existing roads, minimizing grading and vegetation clearance and covering of construction holes (Draft EIR, at page 4.12-43). Each of these measures would serve to reduce the likelihood of impacting FTHL should they be present within those lands identified as potential habitat. Following implementation of these measures, impacts to FTHL would be reduced to less than significant (Draft EIR, p 4.12-43).

The commenter implies that the FTHL blends in very easily, and is difficult to detect, which invalidates the Draft EIR's proposed mitigation measures, but fails to provide evidence that the mitigation measures will be ineffective in avoiding impacts to FTHL. The proposed mitigation measures, which are consistent with the Rangewide Management Strategy, rely principally on the implementation of preventative measures (worker education programs; clearly flagging or marking work area boundaries; use of existing roads; minimizing the area of disturbance of vegetation and soils; and covering construction holes), not waiting on detections of FTHLs.

See also Response to Comment 4-6B.

Response to Comment 7-25: The comment questions the lack of analysis of impacts to Swainson's hawk which the commenter asserts have been observed at the Project location.

The scoping comment from the Colorado Desert District of the California Department of Parks and Recreation stated that the Swanson's hawk … "has been observed roosting and/or foraging in the Allegretti property area which is in the direct vicinity of the proposed project." The scoping comment did not, as the Draft EIR comment claims, confirm "that Swainson's hawks have been observed at the Project location." While this scoping comment provides anecdotal information that a Swainson's hawk was observed in the Allegretti property area, available documentation suggests that Swainson's hawk would not be expected in or around the Project area.

As identified in the Biological Technical Report contained in Draft EIR Appendix I (Biological Resource Studies), HELIX Environmental Planning, Inc. conducted a search for special status biological resources reported within and near the survey area using a set of databases including the California Department of Fish and Wildlife (CDFW) California Natural Diversity Database (CNDDB; CDFW 2010a), the CDFW BIOS database, U.S. Fish and Wildlife Service critical habitat, and BLM sensitive species. A query of each database covering the four quadrangles centered on the Project area (an area of approximately 215 square miles) did not identify any reported occurrences of Swainson's hawk (Personal Communication, Larry Sward, HELIX, July 24, 2014).

Swainson's hawk is a state-listed threatened species and is on the USFWS's list of Birds of Conservation Concern (BCC) for Region 1 (DRECP 2012).[21] Swainson's hawk breeding habitat includes shrub-steppe areas with scattered trees, large shrubs and riparian areas.[22] Approximately 95% of California Swainson's hawks exist in the Central Valley according to the 2005-2006 California Swainson's Hawk Inventory study conducted for the California Department of Fish and

[21] http://www.drecp.org/meetings/linkdocs/2012-02-24_meeting/species_profiles/Swainson_Hawk.pdf
[22] (http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=B070)

Wildlife.[23] In California, the current known range for the species does not extend further south than the northern portions of Los Angeles County.[24] As depicted on Figure 4.12-2 and described in Section 4.12 of the Draft EIR, the Project area does not support shrub-steppe areas with scattered trees, large shrubs and riparian areas favored by Swainson's hawk. Therefore, no suitable breeding habitat for Swainson's hawk occurs on the site. Further, the Project area is located in Imperial County, which is well south of the current known range of the species. As such, the species would not be expected to breed or nest on the site.

Swainson's hawk are migratory and could range over the general vicinity when migrating from summer breeding sites in the U.S. and Canada to wintering sites in Central and South America. Swainson's hawk is a raptor adapted to the open grasslands, it has become increasingly dependent on agriculture, especially alfalfa crops, as native communities are converted to agricultural lands. As described in Section 4.12 of the Draft EIR, the Project area lacks active agriculture, in general, and alfalfa, in particular. Thus, the Project site currently provides marginal foraging habitat for Swainson's hawk.[25] There are currently no high quality agricultural foraging resources, highly suitable perches, or other suitable habitat present on the Project area that would encourage the species to forage or stop over at the site or immediate vicinity during migration.[26] The loss of this marginal raptor foraging habitat as a result of the Project would be considered less than significant given the abundance of higher quality, expansive agricultural foraging habitat in the region. The Project would not increase the suitability of the site for foraging and migrating raptors, and species such as Swainson's hawk would not be expected to use the site during Project operation for any of its life history needs (e.g. nesting habitat, foraging habitat, etc.). Given the lack of quality habitat, and following implementation of mitigation measure MM 4.12.8 requiring pre-vegetation clearing surveys for nesting birds, impacts to the Swainson's hawk are less than significant.

Response to Comment 7-26: The comment identifies that the Project is located 14 miles away from the Salton Sea, which is in the Pacific Flyway, and that the solar projects' reflective panels attract migratory birds searching for water (i.e. "pseudo lake effect").

Please see Response to Comment 4-4B which discusses migratory birds, the Pacific Flyway, and the lack of information on bird collisions at utility-scale solar energy facilities within the Salton Sea basin. Please also see Response to Comment 4-4D which discusses avian mortality and the "lake effect."

The commenter also claims that the Draft EIR incorrectly relies on the Draft EIR glare study (Appendix L) to support the contention that the proposed Project is not anticipated to create glare because of the composition of the panels. The commenter is largely correct. The Solar Glare Hazard Analysis (Draft EIR Appendix L) was an analysis of the potential for glare from the Project to surrounding ground level observation points, and should not have been included in discussion relative to glare and the Project's potential operational impacts to migratory birds. Information about potential glare impacts to residences west of the Project has been removed from the Draft EIR page 4.12-49 (refer to Chapter 4.0, Errata of this Final EIR). However, the Draft EIR does accurately conclude that due to the composition of the solar panels, glare impacts are not anticipated to be substantial (Draft EIR, pg. 4.12-49). As discussed in Response to Comment 4-4D, the Project PV and CPV modules are specifically designed to absorb light, rather than reflect it (Draft EIR Table 2.0-6, page 2.0-29). PV modules are dark in color and have a coating that enables

[23] (https://www.dfg.ca.gov/rap/projects/swainsonhawk/)
[24] (https://www.dfg.ca.gov/rap/projects/swainsonhawk/)
[25] (https://www.dfg.ca.gov/wildlife/nongame/raptors/swha/)
[26] (https://www.dfg.ca.gov/wildlife/nongame/raptors/swha/)

the panel to absorb as much of the available light as possible. (Draft EIR Table 2.0-6, page 2.0-29). Except as identified above, no further change to the Draft EIR is necessary in response to this comment.

Response to Comment 7-27A: The commenter remarks that the Project's expected use of open water ponds in order to meet the County's on-site retention requirements increases the risks for severe trauma to water birds.

As stated in the Draft EIR (page 2.0-21), to fully retain the 100-year, 24-hour peak flood volume resulting from onsite precipitation, the Project includes the construction of storm water retention basins on the southeastern corner of each proposed solar energy lot. These retention basins would be designed consistent with the County of Imperial Engineering Design Guidelines Manual for the Preparation and Checking of Street Improvements, Drainage and Grading Plans Within Imperial County (Imperial County 2008), which requires that the retention basins be empty within 72 hours after receiving water (Draft EIR page 4.11-16).

Average annual precipitation in the Ocotillo Valley Groundwater Basin area is approximately five inches (Draft EIR, page 4.11-9). Thus, the retention basins will only very sporadically receive water from the runoff of onsite precipitation, and will only store that water for up to 72 hours. In contrast, the USFWS document cited by the comment[27] states that "…birds are both attracted to the water feature at Desert Sunlight and habituated to the presence of an accessible aquatic environment in the area." Habituation requires repeated exposure, which would not occur with the very irregular, and very short term, containment of water in these retention basins. Given the Project area's distance from the Salton Sea; its isolation from suitable habitat; and the overall lack of resources attractive to migratory birds, it is not likely that the Project area would attract migratory birds using the Pacific Flyway with or without the short-term retention of water in these basins. Thus, the potential impact is still considered less than significant. See also Response to Comment 4-4D.

Response to Comment 7-27B: The commenter states that the Draft EIR's reliance upon ongoing monitoring of bird deaths to justify its determination that impacts would be less than significant is "misplaced," and that monitoring alone cannot lessen the deadly impacts caused by the pseudo lake effect.

As discussed on Draft EIR page 4.12-49 and in Response to Comment 4-4D, the potential for the Project to present a collision hazard to migratory birds is dependent upon the type of solar system to be installed and the setting of the Project area and surrounding lands. The Project would construct and operate only PV or CPV solar panels which are specifically designed to absorb light, rather than reflect it. As a result, the Draft EIR concludes that impacts from bird strikes are not anticipated to be substantial. For all of the reasons stated in the Responses to Comments 4-4B, 4-4D, 4-4E, 4-4F and 4-5B, construction, operation and reclamation of the Project would not result in significant impacts to migratory birds.

The Draft EIR (page 4.12-49) misstates that "Bird mortalities would be documented as part of long-term operational mitigation by a qualified biologist." This sentence has been corrected to read that "Bird mortalities would be documented as part of operational <u>monitoring</u> by a qualified biologist. Please also see the Response to Comment 4-4G, which describes that the Project Applicant has voluntarily agreed to develop, with input from CDFW and USFWS, and implement a Bird and Bat Conservation Strategy (BBCS), which would include as the primary component

[27] "Avian Mortality at Solar Energy Facilities in Southern California: A Preliminary Analysis," April 2014. http://alternativeenergy.procon.org/sourcefiles/avian-mortality-solar-energy-ivanpah-apr-2014.pdf

monitoring of the Project area to identify the level of mortality, if any, in the Project area during Project operations. The BBCS would be designed to monitor both the solar panel area and the transmission lines and would define the monitoring protocol to be implemented during operations, including additional monitoring if initial avian mortality is recorded. The development and implementation of this BBCS with the monitoring of any avian mortality from operations would provide data which would be valuable in evaluating avian mortality in the Imperial Valley in general and specifically in regards to the selected solar technology implemented for these projects.

Response to Comment 7-28: The comment states that the Project would remove 13.2 acres of Mesquite Thicket, an imperiled plant species. The comment also states that the "Draft EIR neither establishes a timeline for when this mitigation would occur, nor identifies who would decide which mitigation method to implement." The commenter further contends that the compensation option proffered by the Draft EIR results in improper deferral of mitigation by not identifying: "(1) a suitable replacement habitat, (2) potential recipients for the mitigation fee payments, nor (3) the appropriate agencies to approve such mitigation measures."

Mesquite (*Prosopis glandulosa* var. *torreyana)* occurs commonly in Imperial, San Diego, Riverside, San Bernardino, Kern, and Inyo Counties. It is not listed as sensitive by the California Native Plant Society[28] or any state or federal agency[29].

A CEQA document must contain sufficient, and specific biological data and has made an effort to present the most current information. As discussed in the Draft EIR, the Biological Technical Report was completed in January 2014 (See Draft EIR, page 4.12-1). In addition, two memorandums were prepared regarding proposed modifications to the Anza substation in 2014. (*Id.*) The Draft EIR recognized that the Project would result in the removal of 13.2 acres of Mesquite Thicket, a sensitive vegetation community which would be considered a potentially significant impact (See Draft EIR, page 4.12-34).

Deferral occurs where an EIR identifies mitigation measures of unknown effectiveness, such as an unknown plan that will occur by an unknown date. Mitigation measure MM 4.12.1 does not defer action and the Draft EIR does not ignore potential impacts of the project on Mesquite Thicket. Rather, mitigation measure MM 4.12.1 requires specific measures, to be implemented prior to the issuance of grading permits for the Project. Specifically, mitigation measure MM 4.12.1 requires:

> The loss of mesquite thicket shall be mitigated through a combination of compensation and/or restoration at a minimum of 1:1 ratio or as required by permitting agencies. Habitat compensation shall be accomplished through agency-approved land preservation or through mitigation fee payment for land supporting comparable habitat to that impacted by the proposed Project. Restoration may be appropriate mitigation for impacts if demonstrated to be feasible, and if the restoration effort is implemented pursuant to a Habitat Restoration/Revegetation Plan.
>
> *Timing/Implementation: Prior to issuance of grading permits.*
>
> *Enforcement/Monitoring: Project Applicant in collaboration with CDFW.* (See Draft EIR, page 3.12-36.)

[28] http://www.rareplants.cnps.org/result.html?fulldata=Prosopis+glandulosa+var.+torreyana
[29] http://www.calflora.org/cgi-bin/species_query.cgi?where-calrecnum=6878

The mitigation measure clearly ensures that the Project will result in mitigation at a ratio of at least 1:1, and sets forth sound performance standards by which the Applicant may choose to reduce the impact to less than significant, consistent with CEQA Guidelines Section 15126.4(a)(1)(B). Moreover, mitigation measure MM 4.12.1 requires the Applicant to secure approval from CDFW and submit proof to the County prior to the issuance of grading permits.

In any event, pursuant to *Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 793, 794, deferral is permissible where the agency commits itself to mitigation and either (1) adopts a performance standard and makes further approvals contingent on finding a way to meet the standard or (2) lists alternative means of mitigating the impact which must be considered, analyzed, and possibly adopted in the future. As set forth in the Draft EIR, mitigation measure MM 4.12.1 provides performance standards for mitigation that must be implemented in advance of any impact to Mesquite Thicket. The mitigation measure specifically identifies that the "Project Applicant in collaboration with CDFW" is responsible for implementing the success of the mitigation measure. The mitigation imposed recognizes that CDFW, as the permitting agency, may impose additional terms and conditions in addition to those identified in the mitigation measure included in the Draft EIR. Moreover, evidence of compliance with this mitigation measure shall be provided to the County *prior to the issuance of grading permits* (See Draft EIR page 4.12-36). The Project's impacts to Mesquite Thicket are considered less than significant because the Applicant is required to consult with CDFW and comply with measures that would result in Mesquite Thicket compensation at a ratio of at least 1:1, all of which must occur prior to any disturbance to the species. Therefore, compliance with the identified performance standards as required by mitigation measure MM .12.1 is consistent with CEQA's mitigation requirements.

Response to Comment 7-29: The comment asserts that the Draft EIR did not adequately analyze impacts related to the potential health risks associated with electromagnetic fields (EMF), and asserts that the Draft EIR must be revised to provide "an estimate of the EMF levels that the Project components would generate at sensitive distances . . . ."

Initially, any potential health risk associated with EMF is considered low as there are generally no sensitive uses in immediate proximity to the sites (Draft EIR page 4.10-12 and 4.4-11 (describing locations of nearest sensitive receptors)). Based on the overall undeveloped and unpopulated nature of the Project site, exposure to EMFs generated by the transmission line will be limited and, as discussed further below, there is no evidence that such limited exposure results in health impacts.

The California Department of Health Services (DHS), California Electric and Magnetic Fields Program, provides information regarding known possible health effects from EMFs created by the use of electricity. DHS references the National EMF Research and Public Information Dissemination (RAPID) Program, established by Congress as part of the Energy Policy Act of 1992, which has published its findings concluding evidence of the risk of cancer from EMF around power lines is weak. The report recognizes that EMF exposure "cannot be recognized as entirely safe" but "believes that the probability that EMF exposure is truly a health hazard is currently small" with "marginal scientific support that exposure to this agent is causing any degree of harm." Furthermore, in a decision from the California Public Utilities Commission (CPUC), the CPUC stated "at this time we are unable to determine whether there is a significant scientifically verifiable relationship between EMF exposure and negative health consequences." (CPUC Decision D.06-0I-042.)

The comment cites to studies linking EMF exposure to increased health risks to humans and other mammals. The County is entitled to rely on the studies cited above, particularly where they have

been prepared by the regulatory agency with jurisdiction over the relevant subject matter. Under established CEQA precedent, lead agencies may accept the determinations and conclusions reached by one set of experts, even though other conclusions may be reached by other experts. (*Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal. App. 4th 1018, 1042; *Eureka Citizens v. City of Eureka* (2007) 147 Cal.App.4th 357, 371-372; *Greenbaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 412.)

Pursuant to CEQA Guidelines Section 15145 "If, after a thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the lead agency should note its conclusion and terminate discussion of the impact." The Draft EIR determined that the available evidence as evaluated by the CPUC and other regulatory agencies has not established that EMF fields pose a significant health risk, further evaluation of this issue in the EIR would be speculative and is not warranted or required (Draft EIR, page 4.10-12.)

The comment cites to *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1370 for the proposition that the lack of a defined methodology to consider the significance of an impact "does not excuse the agency from fully analyzing EMF impacts." In *Berkeley Keep Jets*, the court considered whether the lead agency was required to analyze health risks associated with toxic air contaminant (TAC) emissions. Unlike here, the link between health risks and TAC emissions had been established. The court found that the agency could not rely on the fact that no established protocol existed to analyze those impacts to avoid providing an assessment, particularly where evidence in the record showed that protocols did exist. Here, there is no evidence that the limited exposure to EMFs associated with the Project results in health impacts. No further analysis is required.

Response to Comment 7-30: CEQA Guidelines Section 15126.6(a) requires an EIR to describe a reasonable range of alternatives, consistent with the legal standard set forth in the comment. As discussed in Response to Comment 7-31, the Draft EIR was not required to consider in detail a distributed generation alternative. Further, as discussed in Response to Comment 7-39, the Draft EIR was not required to analyze a reduced-size project alternative.

Response to Comment 7-31: The comment states that a Distributed Generation Alternative should have been selected for detailed analysis in the Draft EIR. Distributed generation involves the development of a large number of geographically distributed small to medium solar PV systems (ranging from 100 kilowatts to 1 MW in capacity) within existing developed areas, typically on the rooftops of commercial and industrial facilities. Distributed generation is generally available for use on-site and does not deliver electricity to the grid as a utility-scale solar facility does. The Draft EIR considered a distributed generation system as suggested by the comment, but determined not to carry it forward as part of the reasonable range alternatives to the proposed Project (Draft EIR page 6.0-3).

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. (CEQA Guidelines, Section 15126.6, subd. (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. (CEQA Guidelines, Section 15126.6, subd. (c); *Tracy First*, *supra*, 177 Cal.App.4th 912; see also *Mann v. Community Redevelopment Agency* (1991) 233 Cal.App.3d 1143; *Del Mar Terrace Conservancy, Inc. v. City Council* (1991)

10 Cal.App.4th 712.) These criteria are not exhaustive, however, and other appropriate factors may be considered as well. (*Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal.App.3d 274.)

The Distributed Generation Alternative was rejected from further consideration for several reasons. First, with the implementation of mitigation, 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 Section 15126.6, subdivision (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 may lessen some of the proposed Project's less than significant environmental effects, it would 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.

Further, as explained in the Draft EIR, even assuming there are enough additional sites throughout California for installation of sufficient distributed PV to accomplish the Project's objective of generating 135 MW, this alternative cannot feasibly accomplish most of the Project's objectives. First, such an alternative would be inconsistent with the objective to comply with the terms and requirements of the solar projects' long-term power purchase agreements. Second, a distributed generation alternative would be inconsistent with the objective to locate the solar power facilities as near as possible to the Imperial Irrigation District's electrical transmission facilities with anticipated capacity availability and a reserved queue position. Because distributed generation is not geographically constrained, there is no guarantee that any portion of the solar installation would occur in Imperial County. Third, 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 support the objective of assisting the State of California meet to its RPS goals. Fourth, for the same reason, there is no guarantee that a distributed generation alternative would support the goal to create additional employment and Project-related expenditures in Imperial County local businesses. (Draft EIR page 6.0-3.) For these reasons, a distributed solar alternative was not considered for further analysis.

In addition, the proposed Project would better achieve the objectives of supporting the greenhouse gas reduction goals by assisting the State in meeting its RPS goals. 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), page 33; "California's Energy Future - Electricity from Renewable and Fossil Fuels with Carbon Capture and Sequestration" (April, 2012), page 11-16)). Utility-scale solar projects such as the proposed Project are 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.

In addition, rooftop systems typically consist of less efficient fixed-tilt systems that may not be oriented optimally towards the sun, meaning that developers would need to obtain more surface area for the project if constructed on a rooftop instead of on the ground. The transaction costs of

obtaining multiple rooftops, the complexity of mobilizing construction crews across multiple projects including the transporting and deployment of construction materials in a less efficient manner, and the delay resulting from developing the deals to secure the same amount of PV-produced electricity can make this type of alternative infeasible.

Further, to the extent that distributed generation projects might have fewer impacts on certain resources because they do not utilize substations and transmission facilities, this also illustrates why distributed generation projects cannot meet one of the fundamental objectives of a utility-scale solar project: to produce on-peak renewable power to the electrical grid in California. At the same time, the delay in supplying a comparable amount of megawatts of clean energy to the public through distributed generation projects would create its own set of impacts due to failure to offset the impacts of counterpart fossil fuel energy consumption required to serve electrical demand not yet served by distributed generation projects that could otherwise be served by a utility-scale solar project. 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 7-32: The comment asserts and cites evidence supporting a contention that a distributed generation alternative is technically and economically feasible. The Draft EIR does not conclude that a distributed generation alternative is infeasible; rather, as discussed in Response to Comment 7-31, it considered but rejected a distributed generation alternative because such an alternative is not practicable and therefore does not satisfy the Project objectives.

As the Draft EIR identifies, the ability to acquire access and permission to use a large number of individual properties presents difficulties with respect to the build-out of the system within a timeframe that would be similar to that of the proposed Project. It is unrealistic to assume that the proposed Project could acquire access rights to numerous individual properties, and timely permit and construct sufficient small-to-medium scale solar facilities capable of generating capacity sufficient to satisfy the terms of the PPA, within the timeframe required by that agreement. Thus, a distributed generation alternative is 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 practical matter such alternative is unlikely to be carried out within the reasonable future]).

Response to Comment 7-33: The comment asserts that a distributed generation alternative is also politically feasible and suggests that the County could adopt a local loan program to incentivize property owners to install rooftop solar facilities. Again, the Draft EIR does not conclude that a distributed generation alternative is infeasible; rather, as discussed in Response to Comment 7-31, it considered but rejected a distributed generation alternative because such an alternative is not practicable and does not satisfy project objectives. Further, as discussed above, with the implementation of mitigation, the proposed Project does not result in any significant environmental effects. The County is therefore not required to adopt County-wide programs to incentivize installation of PV systems as part of the Project. (CEQA Guidelines, Section 15126.4, subd. (a)(3) [mitigation measures are not required for effects which are not found to be significant].)

Response to Comment 7-34: The comment suggests that a distributed generation alternative would actually be superior to the proposed Project in terms of environmental and economic impacts. See Response to Comment 7-31.

Response to Comment 7-35: This introductory comment states that the Draft EIR fails to substantiate its assertion that a distributed generation alternative cannot feasibly accomplish Project objectives in three ways but gives no specifics to support the statement. See Responses to Comment 7-36, 7-37, and 7-38.

Response to Comment 7-36: The comment asserts that a distributed generation alternative would meet six of the ten Project objectives. See Response to Comment 7-31 regarding the ability of a distributed generation alternative to meet Project objectives. In addition, the Draft EIR included analysis of a reasonable range of alternatives and was not required to include a distributed generation alternative, even if it did achieve some of the Project objectives. (CEQA Guidelines Section 15126.6, subd. (a) ["An EIR need not consider every conceivable alternative to a project"]; see also *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1163 [agencies may eliminate from consideration alternatives that would not "feasibly obtain most of the basic objectives of the project"].)

Response to Comment 7-37: The comment asserts that a distributed generation alternative "would advance at least three of the four Project objectives that the Draft EIR suggests it would not meet." See Response to Comment 7-31.

Response to Comment 7-38: The comment asserts that the County has authority to adopt a distributed generation alternative, and could incentivize distributed generation installation within the County. See Response to Comment 7-33. The comment further asserts the fact that the County has no authority to require installation of distributed PV generation systems outside its jurisdiction is not sufficient reason to dismiss the alternative. As discussed in Response to Comment 7-33, and consistent with the CEQA case law cited in the comment, the fact that a distributed generation alternative could not achieve the Project objectives within Imperial County was one factor that the County considered, among several others, to determine that the alternative would not be carried forward for further analysis. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 575 ["the law does not require in-depth review of alternatives which cannot be realistically considered and successfully accomplished; the [lead agency can] properly find that a property located outside of its decision making authority was not a feasible project alternative."].)

Response to Comment 7-39: The comment states that a reduced size alternative should have been selected for detailed analysis in the Draft EIR. As discussed on Response to Comment 7-31, an alternative may be rejected from consideration if it fails to meet the basic Project objectives. As stated in the Draft EIR, a reduced size alternative would result in a reduction in power output and would not meet the Project objectives. Therefore, a reduced size alternative was not analyzed in detail. (Draft EIR page 6.0-3.)

Further, with the implementation of mitigation, the proposed Project does not result in any significant environmental effects. The County therefore is not required to consider implementing a reduced size alternative unless the alternative will avoid or substantially lessen a significant impact. (CEQA Guidelines, Section 15126.6, subd. (a) [alternatives must focus on significant impacts of the project and the ability of the alternative to avoid or substantially lessen such impacts].) However, as discussed in the Draft EIR, the Applicant is working to increase Project efficiency and further reduce impacts to the environment and natural resources and is refining Project design plans, which will likely result in a reduced size project in the final design. Therefore, the proposed project layout and associated impacts identified and analyzed in the Draft EIR are considered a conservative (worst-case) scenario, and may be further revised and reduced in the Final EIR. (Draft EIR page 6.0-3.)

Response to Comment 7-40: The comment summarizes the commenter's previous comments and concludes the Draft EIR is inadequate and must be revised. See Response to Comments 7-1 thru 7-39 for specific responses to the issues raised by commenter. Otherwise, the comment does not raise any issues with the environmental analysis in the Draft EIR, and no further response is required.

THIS PAGE INTENTINOALLY LEFT BLANK.