

DEPARTMENT OF TRANSPORTATION

DISTRICT 11, DIVISION OF PLANNING

4050 TAYLOR ST, M.S. 240

SAN DIEGO, CA 92110

PHONE (619) 688-6960

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TTY 711

www.dot.ca.gov

*Flex your power!
Be energy efficient!*

October 2, 2013

Wistaria Ranch Solar NOP

Imperial County
Planning and Development Services
David Black
801 Main Street
El Centro, CA 92243

Dear Mr. Black:

The California Department of Transportation (Caltrans) received a copy of the Notice of Preparation (NOP) for the Draft Environmental Impact Report (Draft EIR) for the proposed Wistaria Ranch Solar project located near State Route 98 (SR-98). Caltrans has the following comments:

Utility Encroachment:

The NOP identifies that the project is proposing a transmission line that will connect to the Imperial Solar Energy Center South (ISECS) switchyard near SR-98. The following statements are general information for transmission line crossings on State highways. Please refer to Caltrans Encroachment Permits Manual (http://www.dot.ca.gov/hq/traffops/developserv/permits/encroachment_permits_manual/index.html) for guidance on utility encroachment.

Access:

Any access needs to be reviewed and approved by Caltrans.

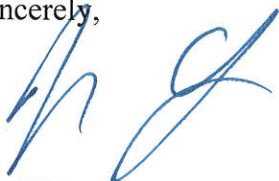
A Traffic Control Plan or construction traffic impact study may be required by the developer for approval by Caltrans prior to construction for any access to SR-98. The plans shall be prepared in accordance with Caltrans's *Manual of Traffic Controls for Construction and Maintenance Work Zones*. Traffic restrictions and pedestrian / bicycle detours may also need to be addressed. All work proposed within the right of way (R/W) requires lane and shoulder closure charts. All roadway features (e.g., signs, pavement delineation, roadway surface, etc.) within the State R/W must be protected, maintained in a temporary condition, and/or restored. For more information, contact the District Traffic Manager, Camille Abou-Fadel, at 619-718-7833

Any work performed within Caltrans R/W must provide an approved final environmental document including the California Environmental Quality Act (CEQA) determination addressing any environmental impacts within the Caltrans' R/W, and any corresponding technical studies. If these materials are not included with the encroachment permit application, the applicant will be required to acquire and provide these to Caltrans before the permit application will be accepted. Identification of avoidance and/or mitigation measures will be a condition of the encroachment permit approval as well as procurement of any necessary regulatory and resource agency permits.

Additional information regarding encroachment permits may be obtained by contacting the Caltrans Permits Office at (619) 688-6158. Early coordination with Caltrans is strongly advised for all encroachment permits.

If you have any questions on the comments Caltrans has provided, please contact Marisa Hampton of the Caltrans Development Review Branch at (619) 688-6954.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Armstrong', is written over the word 'Sincerely,'.

JACOB M. ARMSTRONG, Chief
Development Review Branch



907 Brockman Rd. El Centro, CA 92243
Phone 760-352-4531 Fax 760-357-5479

October 1, 2013

To: Armando Villa
Director IC Planning & Development Dept.

Re: Wistaria Ranch Solar, LLC

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OCT 09 2013

IMPERIAL COUNTY
PLANNING & DEVELOPMENT SERVICES

According to the information provided this project includes two fields directly east of our cattle feeding operations at 907 Brockman Road. I have marked our proximity on the Project Location Map attached. Before stating my opposition to placing solar panels this close to our feedyard I would like to state that this letter is pertaining to my position as manager and president of Cattleman's Feed & Milling dba Meloland Cattle Co. Along with my family I also have property in this project close to my residence at 903 West Highway 98.

The problem with placing solar panels too close to a cattle feeding operation is the increased temperatures generated by the lack of plant life and also the ability of metal and solar panels to hold heat for longer periods of time after sunset and slow the cooling process. As summer started this year I took several trips down Pulliam Road south of Highway 98 and east on Anza Road to see what the temperatures were relative to areas around our feedlot property 4 miles away on Brockman Road. On average in the afternoons the temperatures were 2-4 degrees warmer around the areas with solar panels than the surrounding farmland. The temperature readings were taken using my pickup thermometer. In the evening right after dark the areas of farmland however started cooling much faster than the areas around solar panels. In late June and early July I made several trips at 9 to 11PM to determine the differences. Most of these readings were from 4 to 6 degrees warmer.

The reason this is a problem is that cattle during our 100+ temperatures in the summer months spend all day under the shades and as the sun goes down come out to eat and drink water. During the 3-4 hours after sunset they are active and eat a majority of their 2nd daily feeding. If temperatures are higher consumptions and performance will be impacted. In addition to potential loss of performance issues any increase in summer temperature can impact animal health and lead to higher death loss. There is not an accurate way of determining the potential cost of the higher temperature impact. In extreme and prolonged periods of heat like we experienced in the summer

of 2012 the higher temperatures could be very costly. When temperatures are about 105 the impact would be minimal but when the mercury hits 115 every degree is much more critical in increasing stress on cattle.

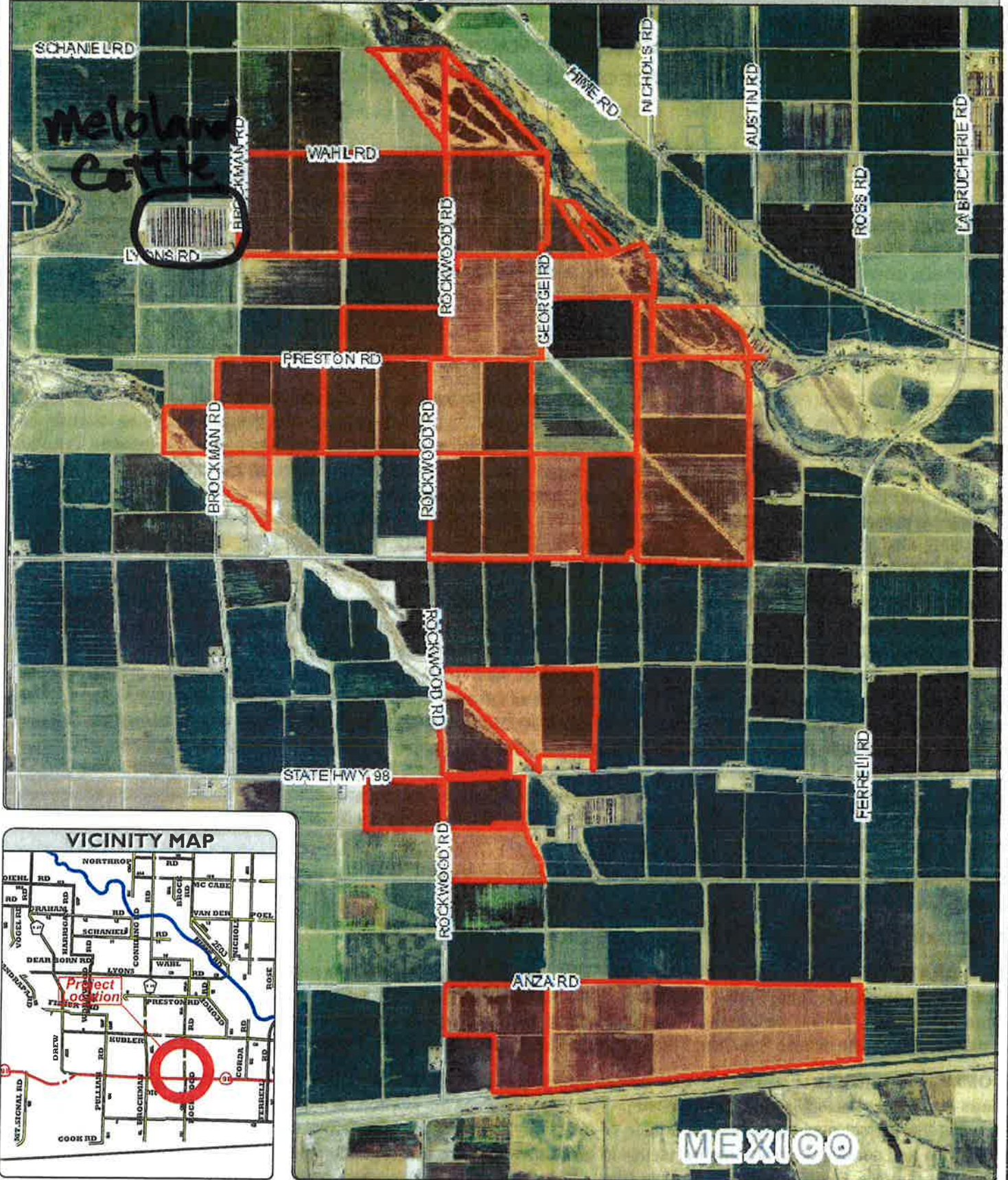
Therefore I have to state my opposition to any solar panels within 1/2 mile of our cattle feeding operations. It is possible that 1/4 mile is enough of a buffer but anything less than that would be totally unacceptable. I understand that we do not own the adjacent property and have no control over the cropping patterns on it either. I do know that solar panels will increase the ambient temperature in our area and with the prevailing wind in the summer coming from the south and southeast we are going to experience some increases even with a 1/2 mile buffer.

If you have any questions please give me a call at 760-996-1032.

A handwritten signature in black ink, appearing to read "Bill Brandenburg". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bill Brandenburg,
President, Cattlemen's Feed & Milling
dba Meloland Cattle Co.

PROJECT LOCATION MAP



VICINITY MAP



**PLANNING & DEVELOPMENT
SERVICES DEPARTMENT**

801 MAIN ST., EL CENTRO, CA 92243
(760) 482-4236 FAX: (760) 353-8338

WISTARIA RANCH SOLAR, LLC
SCOPING MEETING & NOTICE OF PREPERATION
APN# 052-170-014-000



North
N01°18'00"E

Imperial County
Planning & Development Services Department
NOTICE OF PREPARATION OF DRAFT EIR FOR THE WISTARIA RANCH SOLAR PROJECT
NOTICE OF PUBLIC SCOPING MEETING

The Imperial County Planning & Development Services Department intends to prepare an Environmental Impact Report (EIR) for the proposed Wistaria Ranch Solar LLC project, as described below. A public scoping meeting for the proposed EIR will be held by the Imperial County Planning & Development Services Department at 6:00 p.m. on October 10, 2013. The scoping meeting will be held at the Board of Supervisors Chambers, 2nd Floor, County Administration Center located at 940 Main Street, El Centro, CA 92243. Comments regarding the scope of the EIR will be accepted at this meeting. Additionally, comments may be sent to the Planning and Development Services Department, 801 Main Street, El Centro, California 92243, attention David Black, Project Planner.

SUBJECT: Wistaria Ranch Solar LLC

PLANNING COMMISSION APPROVAL: Spring 2014

PROJECT LOCATION: Wistaria Ranch Solar LLC is proposing to develop the Wistaria Ranch Solar (Project), a group of solar photovoltaic (PV) energy generation facilities in Imperial County, California. The Project would be located on portions of the approximately 2,793 acres. The solar properties are located in south-west-central Imperial County, California, along State Highway 98, Kubler Road, Anza Road and Preston Road, north of the US/Mexico border. The project is also located just west of the New River approximately 5.5 west of the City of Calexico. The thirty-two individual parcels (Assessor Parcel Numbers [APNs]: 052-170-014, 052-180-001 & -002, 052-180-011 & 012, -015, -028, -034, -039, -045, -054, 052-210-006, -019 & -020, -025 & 026, -029, 052-350-001 - 004, -020 - 022, 052-360-008 & -009, 052-410-006, 052-440-003 - 006, & -009) comprise the Project site 2,793 acres

PROJECT DESCRIPTION: The Project would consist of the construction, operation and reclamation of up to seventeen (17) separate solar energy projects; the proposed Project consists of a solar photovoltaic (PV) generating facility approximately 250 megawatts (MW) in size. The ultimate energy output is dependent on several variables, including off-take arrangements and the evolving efficiency of PV panels. As a result, the Project could generate more or less than 250 MW. The Project will use conventional PV modules (either crystalline or thin-film) or concentrated photovoltaic (CPV) modules. The system operates only when the sun is shining during daylight hours. The Project may be constructed at one time over an 18 month period, or it may be built out over a ten year period. As the CUPs are constructed over time, each CUP (phase) could take approximately 12 months. Construction of some CUPs would overlap one another. The Project would allow utilities greater flexibility in obtaining renewable energy to meet ratepayer needs. The construction equipment, materials, and labor involved in building the Project remain similar whether it is constructed in phases over ten years or built-out over an 18 month period.

DESIGNATED AREA PLAN: The project area is designated as Agriculture by the Imperial County General Plan. Project parcels are zoned A-2 and A-3

BOARD OF SUPERVISORS DISTRICT: District 2, Supervisor Jack Terrazas

ANTICIPATED SIGNIFICANT EFFECTS: The EIR will analyze potential impacts associated with the following: Aesthetics; Agriculture and Forest Resources; Air Quality; Biological Resources; Cultural Resources; Geology/Soils; Greenhouse Gas Emissions/Climate Change; Hazards and Hazardous Materials; Hydrology and Water Quality; Land Use/Planning; Noise; Public Services; Transportation/Circulation; Utilities and Service Systems and Cumulative Impacts.

COMMENTS REQUESTED: The Imperial County Planning & Development Services Department would like to know your ideas about the effects this solar power plant project might have on the environment and your suggestions as to mitigation or ways the project may be revised to reduce or avoid any significant environmental impacts. Your comments will guide the scope and content of environmental issues to be examined in the EIR. Your comments may be submitted in writing to: Armando G. Villa, Director, Imperial County Planning & Development Services Department, 801 Main Street, El Centro, CA 92243. Available project information may be reviewed at this location.

NOTICE OF PREPARATION REVIEW PERIOD: September 27, 2013 through October 28, 2013.

COLORADO RIVER BOARD OF CALIFORNIA

770 FAIRMONT AVENUE, SUITE 100

GLENDALE, CA 91203-1068

(818) 500-1625

(818) 543-4685 FAX

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October 15, 2013

OCT 18 2013

IMPERIAL COUNTY
PLANNING & DEVELOPMENT SERVICES

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

Regarding SCH# 2013-091-084: Notice of Preparation of the draft Environmental Impact Report
for the Wistaria Ranch Solar, Imperial County, California

Dear Mr. Black:

The Colorado River Board of California (CRB) has received and reviewed a copy of Notice of Preparation of the draft Environmental Impact Report for the Wistaria Ranch Solar, Imperial County, California.

At this juncture, the CRB has determined that it has no comments regarding the Notice. However, as for the following issues: 1) surface and/or groundwater water supply and use for the solar project during construction and operation periods, 2) drainage and flood flows, 3) electric power supply, and 4) the solar power project generation interconnection to Imperial Valley Substation, please have the project applicant (Wistaria Ranch Solar, LLC) check with the requirements of Imperial Irrigation District.

If you have any questions, please feel free to contact me or my staff, Dr. Jay Chen, at (818) 500-1625.

Sincerely,

A handwritten signature in black ink, appearing to read "Tanya Trujillo".

Tanya M. Trujillo
Executive Director

cc: Mr. Scott Morgan, Director, State Clearinghouse
Mr. Kevin E. Kelley, General Manager, Imperial Irrigation District

NOP Distribution List

Resources Agency

- ☒ **Resources Agency**
Nadell Gayou
 - ☐ **Dept. of Boating & Waterways**
Nicole Wong
 - ☐ **California Coastal Commission**
Elizabeth A. Fuchs
 - ☒ **Colorado River Board**
Tanya Trujillo
 - ☒ **Dept. of Conservation**
Elizabeth Carpenter
 - ☒ **California Energy Commission**
Eric Knight
 - ☐ **Cal Fire**
Dan Foster
 - ☐ **Central Valley Flood Protection Board**
James Herota
 - ☐ **Office of Historic Preservation**
Ron Parsons
 - ☒ **Dept of Parks & Recreation**
Environmental Stewardship Section
 - ☐ **California Department of Resources, Recycling & Recovery**
Sue O'Leary
 - ☐ **S.F. Bay Conservation & Dev't. Comm.**
Steve McAdam
 - ☒ **Dept. of Water Resources Resources Agency**
Nadell Gayou

Fish and Game

- ☐ **Dept. of Fish & Wildlife**
Scott Flint
Environmental Services Division
- ☐ **Fish & Wildlife Region 1**
Donald Koch

- ☐ **Fish & Wildlife Region 1E**
Laurie Harnsberger
- ☐ **Fish & Wildlife Region 2**
Jeff Drongesen
- ☐ **Fish & Wildlife Region 3**
Charles Armor
- ☐ **Fish & Wildlife Region 4**
Julie Vance
- ☐ **Fish & Wildlife Region 5**
Leslie Newton-Reed
Habitat Conservation Program
- ☒ **Fish & Wildlife Region 6**
Gabrina Gatchel
Habitat Conservation Program
- ☐ **Fish & Wildlife Region 6 I/M**
Heidi Sickler
Inyo/Mono, Habitat Conservation Program
- ☐ **Dept. of Fish & Wildlife M**
George Isaac
Marine Region

Other Departments

- ☐ **Food & Agriculture**
Sandra Schubert
Dept. of Food and Agriculture
- ☐ **Depart. of General Services**
Public School Construction
- ☐ **Dept. of General Services**
Anna Garbeff
Environmental Services Section
- ☐ **Dept. of Public Health**
Jeffery Worth
Dept. of Health/Drinking Water
- ☐ **Delta Stewardship Council**
Kevan Samsam

Independent Commissions, Boards

- ☐ **Delta Protection Commission**
Michael Machado
- ☐ **Cal EMA (Emergency Management Agency)**
Dennis Castrillo

SL County: Imperial

- ☒ **Native American Heritage Comm.**
Debbie Treadway
- ☒ **Public Utilities Commission**
Leo Wong
- ☐ **Santa Monica Bay Restoration**
Guangyu Wang
- ☒ **State Lands Commission**
Jennifer Deleong
- ☐ **Tahoe Regional Planning Agency (TRPA)**
Cherry Jacques

Business, Trans & Housing

- ☐ **Caltrans - Division of Aeronautics**
Philip Crimmins
- ☐ **Caltrans - Planning**
Terri Pencovic
- ☒ **California Highway Patrol**
Suzann Ikeuchi
Office of Special Projects
- ☐ **Housing & Community Development**
CEQA Coordinator
Housing Policy Division

Dept. of Transportation

- ☐ **Caltrans, District 1**
Rex Jackman
- ☐ **Caltrans, District 2**
Marcelino Gonzalez
- ☐ **Caltrans, District 3**
Gary Arnold
- ☐ **Caltrans, District 4**
Erik Alm
- ☐ **Caltrans, District 5**
David Murray
- ☐ **Caltrans, District 6**
Michael Navarro
- ☐ **Caltrans, District 7**
Dianna Watson

- ☐ **Caltrans, District 8**
Dan Kopulsky
- ☐ **Caltrans, District 9**
Gayle Rosander
- ☐ **Caltrans, District 10**
Tom Dumas
- ☒ **Caltrans, District 11**
Jacob Armstrong
- ☐ **Caltrans, District 12**
Maureen El Harake

Cal EPA

Air Resources Board

- ☐ **All Projects**
CEQA Coordinator
- ☐ **Transportation Projects**
Jon Taylor
- ☐ **Industrial Projects**
Mike Tollstrup

- ☐ **State Water Resources Control Board**
Regional Programs Unit
Division of Financial Assistance

- ☐ **State Water Resources Control Board**
Student Intern, 401 Water Quality
Certification Unit
Division of Water Quality

- ☐ **State Water Resources Control Board**
Phil Crader
Division of Water Rights

- ☒ **Dept. of Toxic Substances Control**
CEQA Tracking Center

- ☐ **Department of Pesticide Regulation**
CEQA Coordinator

SCH# **2013091084**

Regional Water Quality Control Board (RWQCB)

- ☐ **RWQCB 1**
Cathleen Hudson
North Coast Region (1)
- ☐ **RWQCB 2**
Environmental Document
Coordinator
San Francisco Bay Region (2)
- ☐ **RWQCB 3**
Central Coast Region (3)
- ☐ **RWQCB 4**
Teresa Rodgers
Los Angeles Region (4)
- ☐ **RWQCB 5S**
Central Valley Region (5)
- ☐ **RWQCB 5F**
Central Valley Region (5)
Fresno Branch Office
- ☐ **RWQCB 5R**
Central Valley Region (5)
Redding Branch Office
- ☐ **RWQCB 6**
Lahontan Region (6)
- ☐ **RWQCB 6V**
Lahontan Region (6)
Victorville Branch Office
- ☒ **RWQCB 7**
Colorado River Basin Region (7)
- ☐ **RWQCB 8**
Santa Ana Region (8)
- ☐ **RWQCB 9**
San Diego Region (9)

- ☐ **Other** _____
- _____
- _____
- ☐ _____
Conservancy

**BEN ABATTI FARMS, LLC
P.O. BOX 3070
EL CENTRO, CA 92244
(760) 352-2376**

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OCT 25 2013

IMPERIAL COUNTY
PLANNING & DEVELOPMENT SERVICES

October 25, 2013

Imperial County Planning & Development Services Department
801 Main Street
El Centro, CA 92243

ATTN: Armando G. Villa – Director

SUBJECT: Wisteria Ranch Solar LLC

Dear Mr. Villa:

I have been a farmer in the Imperial Valley for over 60 years. The Imperial Valley has proposed very much off the agricultural business for generations. I strongly feel that the Wisteria Ranch Solar Project will have a negative impact on the Imperial Valley Agriculture.

All Solar Projects present and future has and will be hurting the Imperial Valley. The Solar Projects creates hotter temperatures, which hurt our commodities and create more dust with the increasing loss of farm land, which also creates more allergies to the general public. Also there has been reported several waste metals which are produced during the solar production and are currently presenting disposal problems. Some of these metals include chromium and mercury and if they are abandoned could be harmful to the public. (Please See Attachment)

My suggestion for the Wisteria Ranch Solar Project is for the Imperial County Planning & Development Services recommend desert areas. There is land available on Dunaway Road Interstate 8 North and South that is not farmable land and can be used for this project.

Thank-you very much for your consideration on this project.

BEN ABATTI FARMS, LLC



Ben Abatti
Owner

Bad Things About Solar Energy – Solar Waste

Category: [Solar Energy Info](#), Tags: [cheap solar power](#), [home solar](#), [solar research](#)



The production of solar panels also requires the use of rare metals, including tellurium. This is a by-product from mined copper and is mostly found in high concentrations in Mexico and China. There has been on-going debate by environmentalists and scientists regarding whether the supply of tellurium will be able to meet the ever-growing needs of the solar-cell production industry, as this metal is also used in other electrical industries, for semi-conductor purposes. It is currently second only to gold in terms of its rarity and consumption has been rising steadily over the past ten years or so. With this the price of tellurium is also rising; it has more than doubled in the last five years. Higher manufacturing costs will of course lead to higher retail prices for consumers interested in purchasing solar panels. Tellurium is often thought to be the 'holy grail' element when it comes to photovoltaics, however if this is the case, manufacturers will need to look at ways in which to overcome its scarcity.

MICHAEL & KERRI ABATTI

P.O. BO 287

EL CENTRO, CA 92244

760-352-0755 760-352-0725 FAX

October 24, 2013

Planning & Development Services Dept.

801 Main St

El Centro, Ca. 92243

Attn: David Black, Project Planner

Re: Wisteria Ranch Solar

This Solar project is going to have a drastic effect on my farming operation in this area. This project sits directly south of my farm ground and it will cause the air to be warmer than normal creating heat dams. Because of the Valley's south and southwest winds (which we cannot control) this in addition to the solar project would have a huge effect on the crops in my fields. In addition the dust that comes with these predominate winds and the housing of feathers from birds roosting along with other vertebrae pests will cause damage. My aerial and ground applications will be more difficult by the proximity of this project. Please reconsider the placement of such a large project and what this will do with the thousands of acres of good farm ground in this area.

Thank you.

Sincerely,


Michael Abatti

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OCT 28 2013

IMPERIAL COUNTY
PLANNING & DEVELOPMENT SERVICES

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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

11.178.01

March 19, 2014

Via Electronic Mail and U.S. Post
email: davidblack@co.imperial.ca.us

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

**Re: Scoping Comments of The Protect Our Communities Foundation,
Backcountry Against Dumps, Donna Tisdale and Carolyn Allen
on the Wistaria Ranch Solar Project, SCH No. 2013091084**

The Protect Our Communities Foundation, Backcountry Against Dumps, Donna Tisdale and Carolyn Allen (collectively, “Conservation Groups”) submit the following comments on the Wistaria Ranch Solar Energy Center (“Project”) proposed by Wistaria Ranch Solar, LLC. These comments serve the dual purposes of informing (1) Imperial County’s (the “County’s”) Project review under the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 *et seq.*, and (2) the Imperial County Airport Land Use Commission’s (“ALUC’s”) review of the Project, including proposed variances ## 13-0002 through 13-0018, for consistency with the Airport Compatibility Plan.

The Project would involve the construction and operation of an approximately 250-megawatt (“MW”) solar photovoltaic (“PV”) electrical generation facility, along with associated transmission interconnection lines and facilities, on nearly 2,800 acres of *highly productive* farmland, all of which are currently in agricultural production and at least 436 acres of which are protected by Williamson Act contracts. Imperial County Planning and Development Services Department, September 20, 2013, Initial Study for the Wistaria Ranch Solar Energy Center (“Initial Study”), at p. 13. This fertile farmland is irreplaceable, and the food and fiber it produces year in and year out for Americans throughout our country are of inestimable value to present and future generations. Yet the Project would “preclude cultivation of the land throughout the tenure of its operational life,” and possibly permanently. *Id.* Furthermore, the Project would likely cause significant additional impacts to agriculture and the agricultural economy countywide by reducing demand for agriculture-serving businesses and interfering with one of the only airports servicing agricultural spraying operations in the County.

Conservation Groups oppose this Project as an unnecessary industrialization of highly productive farmland. Not only would the Project have significant environmental, agricultural and economic impacts, the proposed solar farm uses are forbidden by the Imperial County General Plan (and hence the Planning and Zoning Law, Government Code section 65000 *et seq.*). Thus, echoing a growing chorus of opinions on this subject, Conservation Groups urge Imperial County to analyze and adopt as an alternative to the proposed Project the development of non-fossil fuel distributed generation projects near demand centers in already-disturbed areas. In further expression of these major concerns and others, Conservation Groups offer the following comments to assist the County and the ALUC in analyzing the Project, and to aid the County in developing a Draft Environmental Impact Report (“DEIR”) on the Project.

I. THE ALUC SHOULD POSTPONE ITS PROJECT ANALYSIS UNTIL THE COUNTY HAS PREPARED A DEIR.

It is premature for the ALUC to analyze the Project and its consistency with the Airport Compatibility Plan before CEQA review has been completed. By proceeding before the County has even prepared a DEIR for the Project, the ALUC runs the risk of overlooking an as-yet-unanalyzed potential impact that makes the Project inconsistent with the Airport Compatibility Plan. For example, the Project could disrupt the functioning of the lone local airport servicing agricultural spraying operations.¹ The Project could put local pilots at significant risk due to the glint and glare from its solar panels. The Project’s elevated transmission lines could also pose a significant risk to low-flying spraying aircraft. The ALUC should wait until the County has analyzed these and other impacts in a DEIR before considering any action on the Project.

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

A. The Board 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 the county general plan

¹ The airport and associated airstrip begin just to the east of Weed Road, in between Anza Road and California Route 98, which is just over one mile from the eastern boundary of the southernmost portion of the Wistaria Project. The airport is owned and managed by Frontier Agricultural Services, Inc (“Frontier”).

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.*

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 entire Project site. 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. . . .

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).

Here, it is undisputed that the proposed industrial-scale solar facility uses will terminate and prevent all agricultural use on the subject lands for up to *40 years*. Initial Study, pp. 9 (“The Project would have the same 40-year total CUP life as current CUPs”), 13 (“The Project would preclude cultivation of the land throughout the tenure of its operational life”). 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 respectively 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 would impede agricultural operations on *surrounding* lands and reduce employment, income, sales and tax revenue in the County. 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.

Because the proposed solar energy generation and transmission uses at the Project sites would “conflict with agricultural operations,” result in the certain “elimination” of agricultural operations and “have a significant adverse effect on agricultural production,” both on the Project sites and 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.

Despite the fact that the Project would “conflict with” and result in the certain “elimination” of “agricultural operations,” and “have a significant adverse effect on agricultural production,” the Initial Study prepared for the Project states that ““Solar energy electrical generator[s]’ [are] allowed use[s] subject to a Conditional Use Permit (CUP),” and therefore “[n]o change in the existing zoning for any of the parcels would occur.” Initial Study, p. 25 (quoting section 90508.02 of the County Land Use Code). The Initial Study is mistaken. The existing A-2 (General Agriculture), A-2-R (General Agriculture, Rural Zone) and A-3 (Heavy Agriculture) zoning on the Project sites is *inconsistent* with the General Plan’s “Agriculture” designation.

As discussed, the Project is incompatible with the General Plan’s explicit use standards for lands designated as “Agriculture.” Not only will the proposed solar energy generation and transmission use conflict with existing (and future) agricultural operations and have a significant adverse effect on agricultural production *on* the Project sites by terminating and preventing all agricultural use on the sites for up to *40 years*, it will impede agricultural operations elsewhere in the County as well. 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.”).

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. . . . [Absence 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.

III. THE DEIR MUST CONTAIN A ROBUST ANALYSIS OF PROJECT ALTERNATIVES AND IMPACTS.

Despite the fact that the proposed Project's solar uses are prohibited by the County General Plan, the County has decided to develop a Draft Environmental Impact Report for the Project now. While Conservation Groups maintain that the County may not approve the Project under the current General Plan, they nonetheless offer the following comments on and suggestions for this and any subsequent environmental review of the Project.

A. The DEIR Should Analyze a Distributed Generation Alternative.

To comply with CEQA, agencies must consider a "reasonable range" of alternatives. CEQA Guidelines §15126.6(a); *Village of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1028. To do so here, the County must analyze a distributed generation alternative (rooftop and other distributed solar generation sources, as well as non-solar options). A distributed generation alternative is both feasible and environmentally preferable to the proposed Project.

1. Distributed Generation Is Feasible.

The evidence is clear: Distributed generation – including such sources as solar photovoltaics ("PV"), small-scale rooftop wind turbines and combined heat and power plants – is both technically and economically feasible. Indeed, distributed generation is not only feasible, *it is already in use and rapidly expanding*. For example, SDG&E – a likely purchaser of the Project's generated electricity – is on pace to add between 80 and 100 MW of distributed solar photovoltaic capacity in its service territory each year from 2013 through 2020. This new PV generation will be developed under the auspices of programs such as the Renewable Auction Mechanism program, which the California Public Utilities Commission ("CPUC") approved in December 2010.² Under that program, California will add 1,000 MW of local PV by 2015, 80.7 MW of which were allocated to SDG&E. SDG&E will also be allotted approximately 50 MW of local PV under the 750 MW SB 32 feed-in tariff distributed PV program.³ Furthermore, by the

² CPUC Decision D.10-12-048, "Decision Adopting the Renewable Auction Mechanism," December 16, 2010, p. 30, Table 1, available at: http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/128432.pdf.

³ CPUC feed-in tariff website, description of SB 32, available at: <http://www.cpuc.ca.gov/PUC/energy/Renewables/feedintariffsum.htm>.

end of 2016, approximately 180 MW of distributed PV capacity will be added in SDG&E's service territory under the California Solar Initiative "million solar roofs" program.⁴ Combined, approximately 410 MW of local PV capacity will be developed in SDG&E's service territory by the end of 2015. And SDG&E has the ability to add much more, as its territory has at least 7,000 MW of urban and suburban PV potential.⁵

In addition to distributed PV, SDG&E is also on pace to add a substantial number of distributed combined heat and power plants over the next decade. Biogas- or biomethane-fired CHP plants are renewable portfolio standard-eligible, and there are up to 1,700 MW of currently estimated biogas and/or biomethane potential in California to fuel those plants.⁶ California's AB 32 greenhouse gas compliance strategy calls for the development of 4,000 MW of CHP by 2020.⁷ Since SDG&E supplies about 7 percent of the state's electricity,⁸ about 280 MW of new CHP should be allocated to and added in SDG&E's service territory by 2020 to comply with the AB 32 target.

And, as discussed below, expanding SDG&E's renewable energy portfolio – and California's more broadly – with distributed instead of remote, industrial-scale generation will cause much less harm to the environment and public health, while also providing a more robust and sustainable economic stimulus.

⁴ California Center for Sustainable Energy, "Overview of Solar Incentive Programs," October 9, 2009, p. 7, available at: <http://www.slideshare.net/ccsemedia/overview-ofsolar-incentive-programs>.

⁵ Powers, *San Diego Smart Energy 2020: The 21st Century Alternative*, October 2007, p. 48, available at: http://www.etechnicalinternational.org/new_pdfs/smartenergy/52008_SmE2020_2nd.pdf.

⁶ CEC PIER Program, Consultant Report, "Distributed Renewable Energy Assessment – Final Report," August 11, 2009, Appendix Bio-Power, p. 49, available at: http://www.cleancoalition.org/storage/references/11-aug-09_Navigant_distributed%20renewable%20energy%20assessment_final%20report.pdf.

⁷ CPUC Decision D.10-12-035, "Decision Adopting Qualifying Facility and CHP Program Settlement Agreement," December 16, 2010, available at: http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/128624.PDF.

⁸ California Energy Commission, "2007 Integrated Energy Policy Report, December 2007," p. 27, Figure 1-11, available at: <http://www.energy.ca.gov/2007publications/CEC-100-2007-008/CEC-100-2007-008-CMF.PDF>.

2. Distributed Generation Is Better for the Environment and the Economy than Remote, Industrial-Scale Generation Projects Like the Wistaria Solar Energy Center.

Distributed energy projects such as rooftop solar PV have substantial environmental, aesthetic, economic and public safety benefits over remote, industrial-scale solar energy facilities such as the Wistaria Project.⁹ They do not mar the landscape with massive, glare-producing and unsightly 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.¹⁰ Their reliability is far greater. And they are easier to upgrade as technology improves.

In addition, as these 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, utility-scale projects like the Soitec Solar Project. 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.

⁹ 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.

¹⁰ The U.S. Energy Information Administration estimates that California lost nearly *18 million* kilowatt-hours of electricity in 2010, due primarily to conductor resistance, corona discharges and other transmission and distribution line losses. Energy Information Administration, January 27, 2012, *State Electricity Profiles 2010*, DOE/EIA-0348(01)/2, at p. 30, available at: <http://www.eia.gov/electricity/state/pdf/sep2010.pdf>.

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).¹¹

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

B. The DEIR Must Analyze the Project's Significant Agricultural Impacts.

As discussed above, the Project would have a significant impact on agricultural production by terminating and preventing all agricultural use of the subject lands for *at least 40 years*, and potentially indefinitely. Initial Study, p. 13. In addition to rendering the Project's solar uses impermissible under the County General Plan, which is itself a significant environmental impact under CEQA,¹² the Project's agricultural impacts also constitute

¹¹ 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 4)

¹² CEQA jurisprudence recognizes that where, as here, general plan requirements are adopted to protect environmental quality, departure from those general plan standards constitutes evidence of a significant environmental impact. The Governor's Office of Planning and Research has made this clear in its *CEQA Technical Advice Series* (September 1994):

The agency should also rely upon its general plan as a source of environmental standards. For instance, policies for the conservation of agricultural land may yield a threshold based on soil type, project size, and water availability.

Id., "Thresholds of Significance: Criteria for Defining Environmental Significance." Here, the General Plan has gone one step further by specifically designating the subject sites for exclusively "Agriculture" use. Thus, it is clear that the General Plan's policy for the conservation of agricultural land plainly forbids the proposed solar use. Violation of this environmental standard demonstrates the significance of the Project's impacts on the environment. *The Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 930

significant impacts that must be fully analyzed and mitigated in the County's DEIR.

Among the Project's numerous significant agricultural impacts are (1) causing the loss of fertile topsoil, (2) disrupting agricultural aircraft operations (as discussed above), and (3) impeding countywide agricultural operations, with resultant negative impacts on the agricultural economy and job market. The significant impact on agriculture-serving businesses of land fallowing and conversion of farmland to other uses is well established. As Agricultural Commissioner Valenzuela stated in her comments on the DEIR for a similar solar project as noted above, "removal of any farmland out of production would have a direct negative impact on employment, income, sales and tax revenue." Exhibit 3. These impacts are substantially greater when the cumulative effects of all the proposed and planned utility-scale energy projects in the County are considered together. The County must assess these cumulative impacts in the DEIR along with the Project-specific impacts.

C. The DEIR Must Analyze the Project's Impacts on the Burrowing Owl and Other Listed, Rare and Important Species.

As the Initial Study acknowledges, the Project would have "potentially significant impacts to burrowing owls," which are a state-listed "Species of Concern" and a federally listed "Bird of Conservation Concern." Initial Study, p. 16. The DEIR must thoroughly analyze the Project's impacts to this important species.

Among the numerous burrowing owl impacts that the Project would have and that must be examined in the DEIR are the following. First, the thousands of Project photovoltaic panels would present a substantial collision risk to burrowing owls, particularly given that the height of the panels would likely be about the same height at which the owls typically forage. Second and relatedly, the photovoltaic panels would also greatly hinder the owls' ability to forage. Third, to the extent the Project would eliminate burrowing animals and their burrows from the Project sites, it would significantly impact the owls by (1) reducing the abundance of prey for the owls, and (2) destroying their nesting habitat, as burrowing owls use burrows created by other animals instead of making their own. The County must analyze these impacts prior to Project approval rather than rely on impermissibly deferred mitigation measures such as *post*-approval owl surveys of the Project sites and *subsequent* development of a burrowing owl mitigation plan.

The County must also fully investigate, via field surveys and a careful literature review, whether the Project would impact any of the species listed as endangered or threatened under the federal and state Endangered Species Acts. The federally listed species known or believed to

(holding that "if substantial evidence supports a fair argument that the proposed project conflicts with [the applicable land use policies and regulations, and those policies were adopted *in order to avoid or mitigate environmental impacts*], this constitutes grounds for requiring an EIR").

occur in Imperial County include those listed in the U.S. Fish and Wildlife Service's Species by County Report for Imperial County.¹³ The state-listed species can be found on the California Department of Fish and Game's website.¹⁴

D. The DEIR Must Identify Likely Water Sources for the Project.

CEQA requires the County to identify in its DEIR the likely water sources for the Project, and analyze the "environmental impacts of exploiting those sources" and "how those impacts are to be mitigated." *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 421 (quote), 434, 440-441. "An EIR that neglects to explain the likely sources of water and analyze their impacts, but leaves long-term water supply considerations to later stages of the project, does not serve the purpose of sounding an environmental alarm bell." *Id.* at 441 (internal quotations and citation omitted).

E. The DEIR Must Analyze the Project's Electromagnetic Field Impacts.

The County must analyze the Project's electromagnetic field ("EMF") impacts in the DEIR. The Initial Study contains no mention or analysis of these impacts despite increasing scientific evidence that EMF exposure can cause severe health impacts. 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.¹⁵ Similarly, as reported in Jeffrey Lovich's and Joshua Ennen's recent

¹³ The Fish and Wildlife Service's Species by County Report for Imperial County is available online at:

http://ecos.fws.gov/tess_public/countySearch!speciesByCountyReport.action?fips=06025

¹⁴ <http://www.dfg.ca.gov/wildlife/nongame/list.html>

¹⁵ 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_Effects_Electricity_Emphasis_Diabe

BioScience article, Doctor Alfonso Balmori (in a 2010 article) found the “possible impacts of chronic exposure to athermal electromagnetic radiation” on mammal species to include “damage to the nervous system, disruption of circadian rhythms, changes in heart function, impairment of immunity and fertility, and genetic and developmental problems.” Exhibit 8 at 987. Furthermore, even though there remains some disagreement over the impacts of EMF, many “authors suggest that [this] . . . should not be cause for inaction. Instead, they argue that the precautionary principle should be applied in order to prevent a recurrence of the ‘late lessons from early warnings’ scenario that has been repeated throughout history.” *Id.*

F. The DEIR Must Analyze the Project’s Audible, Inaudible, High-Frequency and Low-Frequency Noise Impacts.

In analyzing the Project’s audible noise impacts, the County should normalize its noise emission estimates to account for the fact that the Project area is a rural community with little to no prior exposure to industrial noise, such as would be produced by Project. In addition, the County should analyze not only the Project’s audible noise emissions and impacts, but its inaudible infrasound and low-frequency noise emissions too, which have recently been shown to have a much greater potential to impact humans than previously thought.¹⁶

G. The DEIR Must Analyze the Project’s Direct, Indirect and Embedded Greenhouse Gas Emissions.

The County admits in the Initial Study that the “Project has the potential to generate greenhouse gas emissions during construction associated with travel required to and from the Project site parcels by construction workers, delivery of materials, and operation of heavy equipment.” Initial Study, p. 20. But the County must do more in the DEIR than just analyze the global warming impacts of Project construction. The County must also (1) assess the Project’s substantial *embedded* greenhouse gas emissions: the GHG emissions associated with production of the materials used to construct the Project, such as the photovoltaic panels; and (2) compute

tes_Multiple_Sclerosis.pdf; The National Foundation for Alternative Medicine, “The health effects of electrical pollution,” available at:
http://d1fj3024k72gdx.cloudfront.net/health_effects.pdf.

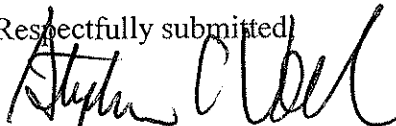
¹⁶ “[I]nfrasound elicits larger electrical potentials in the apical regions of the cochlea than those generated by any other frequencies in the range of audibility. . . . The apical regions of the cochlea should therefore be regarded as highly responsive to infrasound stimulation with responses occurring at stimulus levels well below the estimated level that is perceived” (*i.e.* heard). Salt *et al.*, 2013, “Large Endolymphatic Potentials from Low-Frequency and Infrasonic Tones in the Guinea Pig,” *The Journal of the Acoustical Society of America*, 133(3): 1561-1571, at p. 1569 (attached hereto as Exhibit 9).

the change in GHG emissions from the soil on the Project site resulting from the Project's conversion of the land from agricultural production to the proposed solar farm. Additionally, the County must ascertain whether the electricity produced by the Project would actually either (1) supplant electricity currently generated by fossil fuel-based systems, or (2) meet a future energy demand that would otherwise be met with fossil fuel-based generation.

IV. CONCLUSION

The 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 has decided to develop a Draft Environmental Impact Report for the Project. While Conservation Groups maintain that the County may not approve the Project under the current General Plan, they have nonetheless provided the foregoing scoping comments on the Project DEIR. Among other CEQA tasks, the County must fully analyze in the DEIR the reasonable Project alternatives and adverse impacts identified by Conservation Groups above, and identify and evaluate mitigation measures including development of distributed energy on alternative, disturbed sites near energy demand centers, that would avoid or reduce those impacts to insignificance. Conservation Groups also urge the ALUC to not take any action on the Project until, at the very least, the County has prepared and certified the Final EIR on this Project.

Respectfully submitted,



Stephan C. Volker

Attorney for The Protect Our Communities Foundation,
Backcountry Against Dumps, Donna Tisdale and
Carolyn Allen

SCV:taf

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. Seeking Alpha, April 22, 2011, "NRG Energy's CEO Discusses Q4 2010 Results – Earnings Call Transcript;"
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. Salt *et al.*, 2013, "Large Endolymphatic Potentials from Low-Frequency and Infrasonic Tones in the Guinea Pig," *The Journal of the Acoustical Society of America*, 133(3): 1561-1571.

EXHIBIT 1



DEPARTMENT OF CONSERVATION

Managing California's Working Lands

DIVISION OF LAND RESOURCE PROTECTION

801 K STREET • MS 18-01 • SACRAMENTO, CALIFORNIA 95814

PHONE 916 / 324-0850 • FAX 916 / 327-3430 • TDD 916 / 324-2555 • WEBSITE conservation.ca.gov

November 1, 2011

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

Dear Mr. Villa:

SUBJECT: Cancellation of Land Conservation (Williamson Act) Contract
No. 2001-00706; Landowner: James R. & Barbara A. Smith; Applicant: 8
Minute Energy (Calipatria Solar Farm II); APN 022-170-005

The Department of Conservation (Department) monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act. The Department has reviewed the application submitted by the Imperial County Department of Planning and Development Services (County) regarding the referenced cancellation and offers the following recommendations.

Project Description

The petition proposes to cancel 563 acres of agricultural land subject to Williamson Act Contract in order to build a photovoltaic energy facility (Project) which will generate a total of 50 megawatts. The Project Site is located approximately one mile north of Calipatria, California within Imperial County and is bounded by Blair Road to the east, E. Peterson Road to the north, W. Lindsey Road to the south and the Southern Pacific Railroad to the west. The Calipatria State Prison is located to the northeast of the project site. According to the petition, the applicant has submitted a Conditional Use Permit for a 40 year term.

Cancellation Findings

Government Code (GC) section 51282 states that tentative approval for cancellation may be granted only if the local government makes *either* one of the following findings:

- 1) Cancellation is **consistent** with purposes of the Williamson Act, (not addressed by the cancellation petition) **or**
- 2) Cancellation is in the **public interest**.

The following are the requirements for the public interest findings required under GC section 51282 (above):

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

2) Cancellation is in the Public Interest

For the cancellation to be in the public interest, the Board must make both of the following findings:

- a. Other public concerns substantially outweigh the objectives of the Williamson Act, and
- b. There is no *proximate, noncontracted land*¹ which is available and *suitable*² for the use proposed on the contracted land, or, development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land.

Department Comments on the Public Interest Cancellation Findings

The Department has reviewed the petition and additional information supplied by the applicant, and offers the following comments with regards to the submitted public interest findings:

a) Other public concerns substantially outweigh the objectives of the Williamson Act:

Renewable energy is energy generated from sources such as the sun, wind, the ocean, and the earth's core. Solar photovoltaic electricity qualifies as a renewable energy source for the purposes of California's Renewables Portfolio Standards. In April, Governor Brown signed Senate Bill 2 (First Extraordinary Session) which extends the current 20% renewables portfolio standard target in 2010 to a 33% renewables portfolio standard by December 31, 2020. Through a number of legislative actions and/or policies, the State has placed an importance on renewable energy as well as preserving farmland.

There are many factors in determining whether the production of solar energy is of a higher public interest than the pre-existing agricultural use of the land. Some factors may include the quality of the soil, current agricultural production and the availability of reliable irrigation water. The Department has no comment regarding this particular finding.

¹ "Proximate, noncontracted land" means land not restricted by contract, which is sufficiently close to land which is so restricted that it can serve as a practical alternative for the use which is proposed for the restricted land. (GC section 51282).

² "Suitable" for the proposed use means that the salient features of the proposed use can be served by the land not restricted by contract. Such nonrestricted land may be a single parcel or may be a combination of contiguous or discontiguous parcels. (GC section 51282).

b) *There is no available and suitable proximate non-contracted land for the use proposed on the contracted land:*

According to the petition, the property was chosen due to its close proximity to the electrical grid which has the capacity for the solar facility. The Department has no comment regarding this particular finding.

Cancellation Findings Conclusion

Imperial County Board of Supervisors could approve the cancellation application based on the required public interest findings only if the Board feels it has adequate amount of information and has built the record to meet the statutory requirements.

Compatible Use

The Department has determined that commercial solar facilities are an industrial use of the land and inconsistent with the intent of the Williamson Act and its protection of open space and agricultural resources. The suggestion that a solar facility is a compatible use as defined by the Williamson Act is misguided. The footprint of a solar facility and the fact that it does not allow for the continuation of agricultural operations or open space activities as the main operation of the land, make it inconsistent with many different sections of the Act. The Department views GC §51238, which cites the compatibility of gas, electric, water, communication, or agricultural labor housing facilities in an *agricultural preserve*, as referring to those structures which have minimal impact on the land, and which are necessary for the needs of a community. The Department has consistently interpreted this section to describe overhead power lines, electrical substations, underground communication lines, and water lines, all of which take up a minimal amount of land.

Additionally, the Williamson Act provides a preferential tax assessment on contracted land in exchange for limiting the land to agricultural or open space uses. Agricultural use means the use of the land for the purpose of producing an agricultural commodity for commercial purposes (GC§51201(a)). Open space is the use or maintenance of land in a manner that preserves its natural characteristics, beauty, or openness for the benefit and enjoyment of the public or for wildlife habitat (GC§51201(o)). A commercial solar facility does not meet the definition of an agricultural use and solar energy does not meet the definition of an agricultural commodity, which means any and all plant and animal products produced in this State for commercial purposes. Nor is it consistent with the definition of an open space use. In addition, GC§51242 requires that land enrolled in a Williamson Act contract be devoted to agricultural use. When a solar project displaces all of the agriculture, and replaces it with a use that has no agricultural utility, the land clearly ceases to be devoted to agriculture.

Mr. Armando G. Villa
November 1, 2011
Page 4 of 4

Neither the Legislature nor City Councils or Boards of Supervisors can override the restrictions included within the Williamson Act or the Constitutional provision enabling the Act. The construction of solar facilities removes and replaces agriculture or open space uses to have a significant impact on agricultural and open space lands, including grazing land. After a review of the proposal, the Department does not believe that the County can consider commercial solar facilities compatible with the Williamson Act contract.

Site Restoration Plan

Since solar technology is advancing rapidly over time, the amount of open land that is needed for the same amount of solar energy production may decrease significantly in the future. That same land may also one day be needed again for the production of food.

It is important that proposals for the conversion of agricultural land to solar energy projects include a detailed site restoration plan describing how the project proponents will restore the land back to its current condition including irrigation supplies if and when some or all of the solar panels are removed. This type of plan would be similar to SMARA-required restoration plans on proposed mining sites. The Department recommends that an acceptable site restoration plan be required by the County for the proposed project.

Thank you for the opportunity to provide comments on the proposed cancellation. Please provide our office with a copy of the Notice of Public Hearing on this matter ten (10) working days before the hearing and a copy of the published notice of the Board's decision within thirty (30) days of the tentative cancellation pursuant to GC section 51284. If you have any questions concerning our comments, please contact Sharon Grewal, Environmental Planner at (916) 327-6643.

Sincerely,

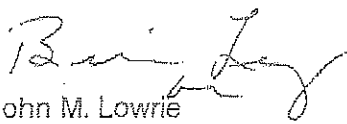

John M. Lowrie
Program Manager
Williamson Act Program

EXHIBIT 2



DEPARTMENT OF CONSERVATION

DIVISION OF LAND RESOURCE PROTECTION

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July 16, 2010

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Ms. Patricia Valenzuela, Planner III
Imperial County Planning & Development Services
801 main Street
El Centro, CA 92243

Subject: Notice of Preparation for a DEIR for Imperial Solar Energy Center South
- SCH# 2010061038

Dear Ms. Valenzuela:

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the Notice of Preparation (NOP) for a DEIR for Imperial Solar Energy Center South. The Division monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act and other agricultural land conservation programs. We offer the following comments and recommendations with respect to the proposed project's potential impacts on agricultural land and resources.

Project Description:

The project is located on Pullman Road and Anza Road in an unincorporated part of Imperial County on the US/Mexico Border. The project site is 903 acres of agricultural land. The site is designated Prime Farmland and Farmland of Statewide Importance per the Imperial County Farmland Mapping and Monitoring Program maps. The existing General Plan designation is Agriculture and the zoning is General Agriculture Rural Zone and Heavy Agriculture.

The project proposes the development of a solar energy center and would consist of ground mounted photovoltaic solar power generation system, supporting structures, an operations and maintenance building, substation, water treatment facility, plant control system, meteorological station, roads and fencing. The project also plans a 120-foot wide Right-of-Way from the project site, along BLM land, within BLM's designated Utility Corridor "N" to the Imperial Valley Substation.

Division Comments:

The initial study for the NOP stated that because solar generation facilities are an allowed use within the zone district and subject to a conditional use permit, they do not conflict with existing zoning for agriculture and thus no impact is identified. However, the entire purpose of going through the conditional use permit process is to trigger a thorough CEQA review of a project's potential impacts. The development of 903 acres of Prime Farmland and Farmland of Statewide Importance is a substantial amount of development and displacement of agricultural resources.