

## CHAPTER 3.0

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# COMMENTS AND RESPONSE TO COMMENTS

## 3.0 COMMENTS AND RESPONSE TO COMMENTS

### 3.1 INTRODUCTION

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

It should be noted that the Responses to Comments reflect the Project as proposed based on the Applicant’s request to the Imperial County Planning and Development Services Department to revise its application so that the Reduced Size Solar Generation Facility Alternative is selected, resulting in withdrawal of CUP 13-0047. (Letter from Robert A. Ramaekers, Vice President, Wistaria Ranch Solar, LLC, dated November 19, 2014). As such, the Project as now proposed includes 16 CUPs (13-0036 thru 13-0046 and 13-0048 thru 13-0052), 16 Variances (V13-002 thru V13-0011 and V13-0013 thru V13-0018) and encompasses 29 parcels totaling 2,661 acres. (Refer also to subsection 1.1.23 in Chapter 1.0, Introduction of this Final EIR). Any comments referencing CUP 13-0047 have been responded to in light of removal of CUP 13-0047. Accordingly, these Response to Comments, the Candidate CEQA Findings, and the Mitigation Monitoring and Reporting Program refer to the 16 CUP Alternative 2 as the “Preferred Project” or “Preferred Alternative” and the 17 CUP development scenario as the “Proposed Project” or “Original Project.”

### 3.2 LIST OF COMMENTERS

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

**TABLE 3.0-1**  
**LIST OF COMMENTERS ON THE DRAFT EIR**

COMMENTS RECEIVED BY IMPERIAL COUNTY			
LETTER or E- MAIL	INDIVIDUAL OR SIGNATORY	AFFILIATION	DATE
1	Jay Cravath, PhD Cultural Director	Chemehuevi Indian Tribe	September 15, 2014
2	Kimberly Nicol Assistant Field Supervisor	State of California - The Natural Resources Agency - Department of Fish and Wildlife	October 2, 2014
3	Donald Vargas, Environmental Analyst	Imperial Irrigation District	October 3, 2014 (October 22, 2013 September 20, 2012 attached)
4	Jacob Armstrong, Branch Chief, Development Review Branch	California Department of Transportation	October 6, 2014

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**TABLE 3.0-1**  
**LIST OF COMMENTERS ON THE DRAFT EIR**

COMMENTS RECEIVED BY IMPERIAL COUNTY			
LETTER or E- MAIL	INDIVIDUAL OR SIGNATORY	AFFILIATION	DATE
5	Connie L. Valenzuela Agricultural Commissioner	Imperial County Agricultural Commissioner, Sealer of Weights and Measures	October 10, 2014
6	Kennon A. Corey Assistant Field Supervisor	United States Department of Fish and Wildlife	October 10, 2014
7	Michael Abatti	Private Resident	October 10, 2014
8	Stephan C. Volker Attorney for Backcountry Against Dumps, Donna Tisdale, Carolyn Allen, Danny Robinson and Robco Farms, Inc.	Law Offices of Stephan C. Volker	October 10, 2014

### 3.3 COMMENTS AND RESPONSES

#### 3.3.1 REQUIREMENTS FOR RESPONDING TO COMMENTS ON A DRAFT EIR

CEQA Guidelines Section 15088 requires that lead agencies evaluate all comments on environmental issues received on the Draft EIR and prepare a written response. CEQA Guidelines Section 15088 also recommends that where the response to comments results in revisions to the Draft EIR, those revisions should be noted as a revision to the Draft EIR or in a separate Section of the Final EIR.

#### 3.3.2 COMMENTS AND RESPONSE TO COMMENTS

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

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

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#### LETTER 1

**From:** Jay Cravath, Ph.D. [<mailto:nuwuviculturalcenter@gmail.com>]

**Sent:** Monday, September 15, 2014 10:22 AM

**To:** David Black

**Subject:** Re: wistaria Solar project

Dear Mr. Black,

Regarding the Wistaria Solar Project:

While we have no specific comments, we request that if, during construction, any evidence of cultural resources are discovered, that you you cease work and notify us immediately.

Sincerely,

Dr. Cravath

Jay Cravath, Ph.D.  
Cultural Director  
Chemehuevi Indian Tribe  
PO Box 1976  
Havasup Lake, CA 92363  
760.858.1115

1-1

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### RESPONSE TO COMMENT LETTER 1

**Commenter:** Jay Cravath, Ph.D. Cultural Director, Chemehuevi Indian Tribe

**Date of Letter:** September 15, 2014

**Response to Comment 1-1:** The commenter states that the Tribe has no specific comments. However, if during construction any cultural resources are discovered, the commenter requests that work cease and the Tribe be notified immediately. This comment is noted.

Impact 4.7.2 in the EIR acknowledges that unrecorded subsurface archaeological resources could be damaged during earthmoving activities. Mitigation measure MM 4.7.2 specifies measures that the CUP owner must implement if potential subsurface resources are (accidentally) discovered during project construction. Although not requested by the commenter, the text of mitigation measure MM 4.7.2 on page 4.7-16 and 4.7-17 of the Draft EIR has been modified at the request of the Applicant to provide for a Native American monitor when needed:

#### **“FULL BUILD-OUT SCENARIO/PHASED CUP SCENARIO**

**MM 4.7.2** Per CEQA Guidelines Section 15126.4(b)(3)(A), preservation in place is the preferred method of mitigating impacts to archaeological sites. To the extent feasible, any discovered archaeological resources shall be preserved in place. However, if preservation in place is not feasible, each CUP owner shall retain a Registered Professional Archaeologist (RPA). Due to the extensive disturbance by farming in the agricultural fields and the limited depth of disturbance for the proposed Project, archaeological monitoring is not required on the agricultural fields outside the three recorded historic period sites. Archeological monitoring shall be required during construction within 10 feet of the three recorded historic period sites. However, in the unlikely event that potential subsurface resources are discovered by construction workers, the RPA shall be called to the site to investigate and monitor subsurface excavations within 100 feet of the potential resource. Monitoring activities shall be supervised by an RPA, who shall have the authority to determine the duration, intensity and inspection timing (from full-time to as-needed). The RPA may also recommend a Native American monitor (following the Guidelines for Monitors/Consultants of Native American Cultural, Religious, and Burial Sites established by the Native American Heritage Commission [NAHC]) to attend such investigations and monitoring efforts. The RPA shall be empowered to temporarily halt or divert construction operations within a reasonable distance from a find or resource exposure in order to determine if significant cultural resources are present, and if such resource would be adversely affected by continuing construction operations. The RPA shall immediately notify the Imperial County Planning and Development Services Department of such decisions.

Work shall not continue at the discovery site until the RPA, in coordination with the Native American monitor and the Imperial County Planning and Development Services Department, conducts sufficient research and data collection to make a determination that the resource is either 1) not cultural in origin; or 2) not potentially significant or eligible for listing on the NRHP or CRHR. If a potentially-eligible resource is encountered, then the archaeologist, the RPA, Native American monitor, lead agency the County, and Project proponent each CUP owner shall arrange for either 1) total avoidance of the resource, if possible; or 2)

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test excavations to evaluate eligibility for the CRHR and, if eligible, data recovery as mitigation. The data recovery plan shall identify methods for recovering the scientifically consequential information from and about the historical resource, and recordation/deposition of data/materials with the local California Historical Resources Information Center (CHRIS). Any recovered artifacts would be curated with a local museum. This will enable the collection of information that may be important to the prehistory or history of the local area, California, or the nation.”

Impact 4.7.3 (Impacts to Previously Unknown Subsurface Human Remains) discusses potential impacts in the event that evidence of human remains are discovered during construction activities. Mitigation measure MM 4.7.3 specifies measures that the CUP owner must implement if human remains, whether Native American or non-Native American, are discovered. The text of mitigation measure MM 4.7.3 on page 4.7-18 of the Draft EIR has been slightly revised as follows:

**“MM 4.7.3** In the event that evidence of human remains is discovered, construction activities within 200 feet of the discovery shall be halted or diverted and the Imperial County Coroner shall be notified (Section 7050.5 of the Health and Safety Code). If the Coroner determines that the remains are of a deceased Native American, the Coroner ~~shall~~ will notify the Native American Heritage Commission (NAHC) which shall in turn notify the designate a Most Likely Descendant (MLD) for the discovery ~~discovery~~ deceased Native American (Section 5097.98 of the Public Resources Code). Upon notification by the NAHC, the designated MLD shall have then has 48 hours from the time access to the ~~solar field site parcels~~ property is granted to make recommendations concerning treatment of the remains and associated grave goods (AB 2641). If the landowner does not agree with the recommendations of the MLD, the NAHC can mediate (Section 5097.94 of the Public Resources Code). If no agreement is reached, the ~~landowner shall~~ CUP owner must inter rebury the remains with appropriate dignity where they will not be further disturbed (Section 5097.98 of the Public Resources Code). With regards to the new burial site, in order to protect it, the ~~landowner shall~~ CUP owner must either record the site with the NAHC or the appropriate California Historical Resources Information System Center; record an open space or conservation zoning designation or easement; or record a document with the county in which the property is located (AB 2641). If the remains are not Native American, then the coroner shall follow all applicable laws for removal and treatment of the remains.”

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State of California - Natural Resources Agency  
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Inland Deserts Region  
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Ontario, CA 91764  
(909) 484-0459  
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EDMUND G. BROWN, Jr., Governor  
CHARLTON H. BONHAM, Director



LETTER 2

October 2, 2014

Mr. David Black  
Imperial County Planning  
601 Main Street  
El Centro, CA 92243  
[davidblack@co.imperial.ca.us](mailto:davidblack@co.imperial.ca.us)

Subject:  
Draft Environmental Impact Report  
Wistaria Ranch Solar Energy Center  
State Clearinghouse No. 2013091084

Dear Mr. Black:

The Department of Fish and Wildlife (Department) appreciates the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Wistaria Ranch Solar Energy Center Project (Project) [State Clearinghouse No. 2013091084]. The Department is responding to the DEIR as a Trustee Agency for fish and wildlife resources (California Fish and Game Code Sections 711.7 and 1802, and the California Environmental Quality Act [CEQA] Guidelines Section 15386), and as a Responsible Agency regarding any discretionary actions (CEQA Guidelines Section 15381), such as the issuance of a Lake or Streambed Alteration Agreement (California Fish and Game Code Sections 1600 *et seq.*) and/or a California Endangered Species Act (CESA) Permit for Incidental Take of Endangered, Threatened, and/or Candidate species (California Fish and Game Code Sections 2080 and 2080.1).

2-1

The Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species (i.e., biological resources). The Department is a Trustee Agency with responsibility under CEQA for commenting on projects that could affect biological resources. As a Trustee Agency, the Department is responsible for providing, as available, biological expertise to review and comment upon environmental documents and impacts arising from project activities (CEQA Guidelines, § 15386; Fish & G. Code, § 1802).

2-2

The 2,793 acre Project site is composed of 32 individual parcels located 6 miles southwest of the City of El Centro within an area south of Interstate 8, east of Pulliam Road, and north of the All American Canal in Imperial County. The proposed Project

2-3

*Conserving California's Wildlife Since 1870*



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includes the construction of a solar photovoltaic (PV) energy-generating facility constructed on up to 17 Conditional Use Permit (CUP) areas, each approximately 20 megawatts (MW). The Project may be constructed all at once or any combination of one or more CUP's at a time over a 10 year period. At full build-out the Project would generate up to 250 MW of electricity.

2-3 cont.

Following review of the Biological Resources section of the DEIR, the Department offers the comments and recommendations listed below to assist the County of Imperial in adequately identifying and/or mitigating the project's significant, or potentially significant, impacts on biological resources.

2-4

#### Lake and Streambed

Please note that for any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of a river or stream or use material from a streambed, the project applicant (or "entity") must provide written notification to the Department pursuant to Section 1602 of the Fish and Game Code. There is an incorrect timeline in the DEIR biological resources section 4.12. It states that the Department has 30 days to review the proposed actions and propose measures to protect affected fish and wildlife resources. Once an application is received the Department has 30 days to review and deem the application complete or incomplete. If the Department determines the activity may have a significant impact on the resources they shall provide the entity with a draft agreement within 60 days after the notification is complete.

2-5

A total of 135.5 acres of state jurisdictional waters are present within the biological study area surrounding the project. Direct impacts will occur to 59.19 acres of riparian and wetlands within all CUP's. Mitigation Measure (MM) 4.12.2 states that mitigation will be either on-site and/or off-site through an approved mitigation bank or in-lieu fee program. It also states that they type, location, and ratios will be determined through the permitting process. The applicant should include a mitigation proposal with proposed acreages and/or ratios along with a plan for on-site or off-site mitigation that demonstrate the specific measures to offset the impacts. Without such documentation the Department is unable to determine whether the impacts would be mitigated, and cannot, without further information from Imperial County concur that impacts to jurisdictional waters would be mitigated to less than significant levels through the implementation of MM 4.12.2.

2-6

Please note that CEQA Guidelines §15126.4, subdivision (a)(1)(8) states formulation of feasible mitigation measures should not be deferred until some future date. The Court of Appeal in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 struck down mitigation measures which required formulating management plans developed in consultation with State and Federal wildlife agencies after Project approval.

2-7

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#### Avian Impacts

It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 *et seq.*). In addition, sections 3503, 3503.5, and 3513 of the Fish and Game Code (FGC) prohibit the take of all birds and their nests. Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by FGC or any regulation made pursuant thereto; Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by FGC or any regulation adopted pursuant thereto; and Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

2-8

- Burrowing Owl

The DEIR states the project will result in permanent impacts to burrowing owl foraging and breeding habitat. In addition, approximately 22 occupied burrows will need to close prior to construction. Focused burrowing owl surveys were conducted in the spring and summer of 2012. The four focused surveys within the biological study area resulted in a range of 81-148 occupied burrows and between 19 and 55 pairs of owls. To mitigate for the loss of burrowing owl forage the applicant has proposed a varied mitigation approach using incentives for farmers to participate in owl safe activities on their land and enter into short-term farm agreements to grow burrowing owl friendly crops.

2-9

The Department appreciates the applicant's willingness to compensate for loss of forage and to engage the agricultural community in conserving and protecting the burrowing owl. However, the Department has a few concerns about the mitigation plan as outlined due to the fact that details of implementation, monitoring, financing, and oversight have not been worked out at this time. The applicant needs show that the amount of land needed to mitigate for loss of foraging is consistent each year and how that will be monitored and adjusted if/when farmers drop out of the contracts. The applicant also needs to provide details on how the burrowing owl safe activities will be determined to have either saved birds from death or enhanced habitat. This will provide the Department with the ability to assess whether the mitigation has succeeded in compensating for significant impacts. The Department has also not agreed to the compensation ratio described in Table 4.12-17 and will continue to work with the applicant in order to ensure compensation is biologically equivalent or superior.

2-10

The Department recommends adding a component to mitigation section 4.12.7 that allows for mitigation of burrowing owl forage in the form of conservation easements on agriculture lands in perpetuity. This form of mitigation has been implemented successfully on several previous renewable projects in the Imperial Valley and will be

2-11



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looked at as well for this project. In addition, the Department feels that a 1 year agreement to grow burrowing owl friendly crops is a sufficient length of time to truly benefit the burrowing owl and compensate for the loss of foraging. We recommend a minimum of 5 year agreements.

2-11 cont.

2-12

The DEIR states that the project may be developed all at once or one CUP at a time within 10 years. Impacts to foraging have been calculated for each CUP and the applicant wishes to compensate for the mitigation in 17 phases prior to ground disturbance for each phase. It is not possible for the Department to process 17 individual mitigation packages for one project. The Department is willing to arrange a more reasonable phasing option for the applicant such as 4 phases. We recommend providing a security in the form of a letter of credit (LOC) prior to ground disturbance at the site. The security allows the applicant to start disturbance and will give them 18 months to secure mitigation. Once four CUP's have established security then we can lump those four into one phase for mitigation. This will allow the applicant to start construction and the Department to have a more reasonable number of phases to assess for compensation.

2-13

- Migratory Birds

The DEIR states potential direct impacts to migratory birds include collisions with PV panels during construction and operation. Section 4.12.14a states that incidental avian carcasses or injured birds found shall be documented. The applicant also needs to have a plan in place during project construction to notify the Department of any listed or fully protected species within 24 hours by email or phone. The DEIR also states the possibility of direct take in the form of collisions for several fully protected species, such as Yuma clapper rail (*Rallus longirostris yumanensis*), American peregrine falcon (*Falco peregrinus anatum*), and Greater Sandhill Crane (*Grus canadensis tabida*). Please note that section 3511(a)(11) of the FGC states fully protected birds or parts thereof may not be taken or possessed at any time and no provisions are allowed to authorize the issuance of permits or license's to take any fully protected bird. If a fully protected species is found dead or injured on site the applicant shall notify the Department immediately and we will work with the applicant on the appropriate course of action.

2-14

2-15

The Department appreciates the opportunity to comment on the DEIR for the Wistaria Solar Energy Center Project (SCH No.201309108) and requests that the Department's comments be addressed in the revised CEQA document. If you should have any questions pertaining to this letter, please contact Magdalena Rodriguez at [Magdalena.Rodriguez@wildlife.ca.gov](mailto:Magdalena.Rodriguez@wildlife.ca.gov) or 909-844-2520.

2-16


john316

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Wistaria Solar Energy Center Project  
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Sincerely,

*for*  *Magdalena*

Kimberly Nicol  
Regional Manager

cc: State Clearinghouse, Sacramento

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#### RESPONSE TO COMMENT LETTER 2

**Commenter:** Kimberly Nicol, Regional Manager

State of California - The Natural Resources Agency - Department of Fish and Wildlife

**Date of Letter:** October 2, 2014

**Response to Comment 2-1:** The comment provides introductory remarks regarding the California Department of Fish and Wildlife's (CDFW) role as a trustee agency for CEQA and a responsible agency for issuance of a Lake or Streambed Alteration Agreement and Incidental Take Permit. Comment noted. No response is required.

**Response to Comment 2-2:** The comment states that the CDFW has jurisdiction over fish, wildlife native plants and habitat necessary to sustain populations of these species. The comment also reiterates that the CDFW is trustee agency with responsibility under CEQA for commenting on projects that could impact biological resources. Comment noted. No response is required.

**Response to Comment 2-3:** The comment provides a brief summary of the proposed Project, including its location, scope and components. Comment noted. No response is required.

**Response to Comment 2-4:** The comment notes that the CDFW has reviewed the Biological Resources Section of the Draft EIR and is providing comments and recommendations to assist the County in identifying and mitigating impacts to biological resources. The following responses to comments 2-5 thru 2-15 address CDFW's recommendations.

**Response to Comment 2-5:** The comment notes that written notification must be provided to the CDFW for any activity that will divert or obstruct the natural flow or change the bed, channel or bank of a river or stream or use material from a streambed. Comment noted.

The comment also notes that the text in the Draft EIR provides an incorrect timeline for application.

In response to the comment, the fourth and fifth sentences in the paragraph with the heading "Lake and Streambed Alteration Program" on page 4.12-5 of the Draft EIR have been revised as follows to address the comment:

"Prior to commencement of any activity that would substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank (which may include associated riparian resources) of a river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, the project proponent shall submit a complete Lake or Streambed Alteration Program notification package and fee to the CDFW. The Lake and Streambed Alteration Program is a California law that requires that any person, state, local government agency, or public utility notify the CDFW prior to beginning of the activities listed above. Once an application is received, the CDFW has 30 days to review and deem the application complete or incomplete. If the CDFW determines the activity may have a significant impact on the resources, the applicant will be provided with a draft agreement within 60 days after the notification is complete. The performance measures for the Program and any permit are contained in Cal. Fish & Game Code Section 1602 and administered by the CDFW. ~~The CDFW has 30 days to review the proposed actions and propose measures to protect affected fish and wildlife resources.~~ The final proposal that is mutually agreed upon by CDFW and the project proponent becomes the Lake or Streambed Alteration Agreement (SAA). The conditions of agreement and a CWA Section 404 permit often overlap."

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**Response to Comment 2-6:** The comment notes that the Project will result in direct impacts to 59.19 acres of riparian and wetlands and 135.5 acres of state jurisdictional waters within the biological study area.

This comment is not correct. Table 4.12-11, Anticipated Permanent Direct Impacts to Vegetation Communities and Cover for Project Solar Facilities (acres) (Draft EIR page 4.12-71), identifies direct impacts to vegetation communities mapped by AECOM. Not all riparian and wetland communities mapped during the vegetation mapping survey by AECOM were considered to be jurisdictional waters of the U.S. and state by RECON during the more focused jurisdictional waters delineation survey. Table 4.12-14, Anticipated Permanent Direct Impacts to Potential Jurisdictional Waters of the U.S. and State for the Solar Energy Center by CUP Area (acres) (Draft EIR page 4.12-91), identifies direct impacts to potential jurisdictional waters of the U.S. and state as mapped by RECON for each CUP. Note that if the preferred project is adopted, then CUP 13-0047 will no longer be a part of the approved Project. Under the scenario excluding CUP 13-0047, the Project will result in direct impacts to approximately 0.131 acres of U.S. and state jurisdictional waters and 0.057 acres of state jurisdictional waters.

The comment states that CDFW is unable to determine whether impacts would be mitigated, nor concur with the County's less-than-significant impact determination, because mitigation measure MM 4.12.2 states that the type (compensatory mitigation, mitigation bank, or in-lieu fee), location (on-site/off-site), and ratios will be determined through the permitting process.

Mitigation measure MM 4.12.2 on pages 4.12-88 and 4.12-89 of the Draft EIR states that permanent impacts to jurisdictional waters and wetlands shall be mitigated through on-site and/or off-site re-establishment and/or enhancement or jurisdictional waters and wetlands, or through an approved mitigation bank or in-lieu fee program if available. (Sub-Section 4.12.1, Regulatory Framework, of Section 4.12, Biological Resources, of the Draft EIR, describes the CDFW's jurisdiction under the Lake or Streambed Alteration Agreement program to include riparian resources.) Mitigation measure MM 4.12.2 also specifies the CUP owner's responsibility to obtain from the United States Army Corps of Engineers (USACE), Regional Water Quality Control Board (RWQCB), and California Department of Fish and Wildlife (CDFW) the necessary permits/authorizations for construction within, and permanent impacts to, jurisdictional waters and/or wetlands. The type, location, and mitigation ratios will be developed and finalized during the permit/authorization process, which would include notifying and coordinating with CDFW to obtain a SAA where CDFW jurisdictional resources would be affected. When on-site and/or off-site permittee-responsible compensatory mitigation is proposed, a detailed Wetland/Waters Mitigation Plan must be submitted for permitting agency approval prior to issuance of the permits/authorizations. Mitigation measure MM 4.12.2 sets forth the required contents of a Wetland/Waters Mitigation Plan, including site preparation, performance criteria, and long-term management. Alternatively, mitigation obligations may be satisfied by participating in an approved mitigation bank or in-lieu fee program in which case, a Wetlands/Waters Mitigation Plan is not required. Please see Response to Comment 2-7, immediately below.

**Response to Comment 2-7:** The comment references CEQA Guidelines Section 15126.4 subdivision (a)(1)(8). The last number should be the letter "B" rather than the number "8".

CEQA Guidelines Section 15126.4(a)(1)(B) states in full:

*Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would*

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*mitigate the significant effect of the project and which may be accomplished in more than one specified way.*

In pertinent part, mitigation measure MM 14.12.2 identifies three mitigation options that may be available to off-set direct impacts to jurisdictional waters (including CDFW jurisdiction): (i) on-site/off-site permittee-responsible re-establishment/enhancement, (ii) mitigation bank, and (iii) in-lieu fee program. Mitigation measure MM 14.12.2 identifies the basis for selecting **the type** (of the three) and **how much** (ratios) mitigation would be determined: through the notification process and issuance of a SAA by CDFW under California Fish and Game Code (CFGF) Section 1602, and based on availability of mitigation banks/in-lieu programs at the time of construction. Mitigation measure MM 14.12.2 specifies that if on-site/off-site permittee-responsible compensatory mitigation is proposed, a Wetland/Waters Mitigation Plan shall be prepared. As noted in Response to Comment 2-6 (immediately above), mitigation measure MM 14.12.2 sets forth performance standards of the Wetland/Waters Mitigation Plan where in-lieu fees are either not available or not chosen.

The comment references *San Joaquin Raptor* in which the court found an improper deferral of mitigation: (i) use of spring season protocol surveys to determine the existence of special-status plant species within or adjacent to the vernal pools, and (ii) a management plan prepared by a qualified biologist to “maintain the integrity and mosaic of the vernal pool habitat” if the species are identified per (i). *San Joaquin Raptor* at 670. The Court found the measures improperly deferred because the EIR failed to specify beyond a generalized goal (maintaining the integrity and mosaic of the vernal pool habitat) performance standards for the vernal pool management plan. *Id.* However, the comment does not acknowledge the holding in *San Joaquin Raptor* that a mitigation measure identifying for loss of wetlands on-site restoration or the purchase of off-site wetland bank mitigation credits was not improperly deferred. *Id.* at 671-72.

The difference between the *San Joaquin Raptor* court’s two holdings is based on the statutory scheme that governs the two measures. The first mitigation measure (management plan for special-status vernal pool plants) is not governed or mandated by any regulation beyond CEQA. In comparison, the mitigation measure specifying replacement habitat (through restoration or purchase of bank credits) would be governed by the permitting requirements of the Clean Water Act (Section 404 permit from USACE/Section 401 Water Quality Certification from RWQCB) and/or the Porter-Cologne Water Quality Control Act (waste discharge requirements issued by RWQCB) and the California Fish and Game Code (Chapter 6 Section 1600 from CDFW). The governing permitting requirement(s) specify performance standards, e.g., no net loss, and the lead agency can reasonably rely on compliance with permit requirements. (*Practice Under the California Environmental Quality Act*, CEB (2014) Section 14.12 [“It is acceptable to defer formulation of the specifics of a mitigation measure when a regulatory agency will be issuing a permit or other approval for the project and can be expected to impose mitigation requirements independent of CEQA as a condition of the permit/approval.”])

As illustrated in *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, the court overturned the trial court’s holding that “consultation” with USFWS regarding project impacts and mitigation for the federally listed Stephen’s kangaroo rat constituted improperly deferred mitigation and found instead that the EIR *did not* improperly defer mitigation because “consultation” with USFWS is governed by the Endangered Species Act (ESA). Project compliance with the ESA was necessary and ESA formal “consultation” establishes a framework by which specific minimization and mitigation measures must be identified before USFWS could issue a biological opinion/incidental take statement. *Id.* at 945.

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**Response to Comment 2-8:** The comment states that the Project proponent must comply with all applicable laws related to nesting birds and birds of prey. The comment cites the Migratory Bird Treaty Act (MBTA) and Fish and Game Code (CFGF) regarding take of birds and their nests. Comment noted. The proponent for each CUP will be required to comply with the MBTA and CFGF as noted in the comment.

**Response to Comment 2-9:** The comment states that the Project will result in permanent impacts to burrowing owl foraging and breeding habitat, notes that occupied burrows will need to be closed prior to construction and indicates that focused burrowing owl surveys were conducted. The comment goes on to state that the Applicant has proposed a varied mitigation approach using incentives for farmers to participate in owl safe activities and enter into short-term farm agreements to grow burrowing owl friendly crops. The CDFW states that the Applicant must also show that the amount of land needed to mitigate for loss of foraging is consistent each year and how the land will be monitored and adjusted if/when farmers terminate contracts. The Applicant also needs to provide details on how the burrowing owl safe activities will be determined to save birds from death or enhance habitat.

Mitigation measure MM 4.12.7 on pages 4.12-121 thru 4.12-125 of the Draft EIR provides three alternative “options” for compensating for the loss of 614 acres (248 hectares) of core burrowing owl foraging habitat, each of which could be used alone or in combination by CUP owners. The three options are as follows: (1) purchase of conservation easements in perpetuity; (2) participation in the Burrowing Owl Habitat Mitigation Plan, if available; and (3) payment of in-lieu fees, if available. The multifaceted Burrowing Owl Habitat Mitigation Plan would use on-farm contracts to allow the Project Applicant and/or CUP owners to fund the Imperial Valley Community Foundation – Burrowing Owl Stewardship and Education Fund (IVCF-BOSEF) or other non-profit organization to enroll and compensate farmers for growing and retaining owl friendly crops, to manage their farmlands in a manner that reduces owl mortality, monitor these agreements to ensure compliance, and employ adaptive management so that when new information is derived changes in the program are made to benefit burrowing owls.

The comment notes that CDFW recommends an option in addition to the Burrowing Owl Habitat Mitigation Plan be included for compensating for the loss of foraging habitat by placing conservation easements on lands in perpetuity. One of the three mitigation options available for impacts to core burrowing owl foraging habitat is CUP owner purchased conservation easements. The Burrowing Owl Habitat Mitigation Plan administrator may also use perpetual conservation easements as a part of the Plan portfolio: in addition to enrolling farmers in owl-friendly crop and owl-friendly practices contracts, the Burrowing Owl Habitat Mitigation Plan would also allow for the purchase of perpetual conservation easements of agricultural lands to compensate for the loss of core foraging habitat.

Mitigation measure MM 4.12.7 requires the Project Applicant (or a CUP owner) to prepare a Burrowing Owl Habitat Mitigation Plan for submittal to, and approval by, CDFW before the Plan can be used to mitigate for impacts to core foraging habitat. The Plan would have to be completed when proffer of compensatory mitigation (security is returned to CUP owner) is required.

Mitigation measure MM 4.12.7 sets forth the performance standards of this Burrowing Owl Habitat Mitigation Plan including development of the following:

- A monitoring and reporting program
- A long-term financing plan
- Accounting of acres enrolled in contract/conservation easement status



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- Duration of farm contracts (see Response to Comment 2-10)
- Measures to ensure enrolled acreage for farm contracts satisfy the compensatory mitigation requirements as specified in the EIR

The Burrowing Owl Technical Report (Appendix J of the Draft EIR) also recommends developing a list of on-farm practices in consultation with IVCF-BOSEF and the local farming community. This has been added to the list of performance standards that the Burrowing Owl Habitat Mitigation Plan will need to meet.

As noted in the DEIR (see Burrowing Owl Technical Report), the Imperial Irrigation District (IID) has found integrating owl safe practices into their management structure to be quite effective in reducing owl mortality. As noted in the Draft EIR, farm mortality has been reported as a concern by researchers in the Valley. Therefore, integrating in the types of actions that IID has found effective in reducing mortality will certainly benefit the expansion of IID's program throughout the valley. The "owl safe farming practices" component of the Burrowing Owl Habitat Mitigation Plan may include elements such as:

- All on-farm workers will participate in a BUOW awareness training conducted by a CDFW-approved biologist.
- A CDFW-approved biologist will survey farm fields and lands covered by the landowner agreement and flag all burrows, including burrows on IID right-of-ways (easements).
- Landowner will maintain burrow flagging during the course of the agreement and/or participation in the plan and be responsible for avoiding any human-caused disturbance of burrows.
- If the location of an active burrow is creating difficulty for agricultural activities, the landowner will work with the IVCF mitigation plan administrator and a qualified biologist that is approved by CDFW to determine whether the burrow can be collapsed after breeding is completed. The biologist would be hired by IVCF-BOSEF.

The farm agreements, administered by IVCF-BOSEF under the Burrowing Owl Habitat Mitigation Plan, would provide a payment to landowners in exchange for maintaining a specific acreage in burrowing owl-compatible crops and/or instituting burrowing owl-friendly farm practices during the term of the agreement. Following an annual compliance certification by IVCF-BOSEF, the landowners would receive an annual payment. A significant final payment (e.g., 25%), would be held back as a final payment at the end of the agreement term.

Compliance monitoring of owl-safe farming techniques, in combination with the final payment holdback, will demonstrate that implementation of owl-safe farming practices are protecting burrowing owls using enrolled farms that have successfully completed the contract term under the Burrowing Owl Habitat Mitigation Plan. Because the IVCF-BOSEF, or a similar non-profit with a comparable mission statement, would be responsible for administering the Burrowing Owl Habitat Mitigation Plan, IVCF-BOSEF will direct resources to conduct, or fund studies and collaborate with stakeholders, including IID and the farming community, to compare the relative success of owl-safe farming practices over time and incorporate that information as a part of the plan's adaptive management strategy.

The Burrowing Owl Habitat Mitigation Plan is not finalized because the Project Applicant, wildlife agencies, IVCF-BOSEF, and other stakeholders are evaluating the implementation details the comment identifies. The details would be based on the performance standards specified in the EIR (mitigation measure MM 4.12.7) and the principles identified in Appendix J of the Draft EIR in coordination with local stakeholders and CDFW.

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As noted above, the final Burrowing Owl Mitigation plan will be completed by the Applicant and approved by CDFW before this mitigation strategy can be used by the Project Applicant or CUP owners to proffer mitigation as required by mitigation measure MM 4.12.7.

Mitigation measure MM 4.12.7 on pages 4.12-121 thru 4.12-125 of the Draft EIR has been revised as shown below to make it clear that the Project Applicant and/or CUP owners may elect to purchase conservation easements as an alternative to participating in the Burrowing Owl Habitat Mitigation Plan; and would be required to do so if the Plan is not approved as compensatory mitigation for this project and if in-lieu fees are not available at the time the CUP owner is required to proffer compensatory mitigation.

#### **“BURROWING OWL CONSTRUCTION MEASURES - ALL CUPs 13-0036 THRU 13-0052**

**MM 4.12.7** The following measures shall apply to construction activities at the Full Build-out Scenario and each individual CUP (13-0036 thru 13-0052):

- A qualified biologist shall be on-site during all ground-disturbing construction activities in potential BUOW habitat. The qualified biologist shall be responsible for implementing and overseeing BUOW avoidance and minimization measures.
- The qualified biologist shall have the authority to stop construction if activities are in violation of avoidance and minimization measures. A qualified biologist possesses a bachelor's degree in wildlife biology or a related field and has demonstrated field experience in the identification and life history of BUOW.
- Per CDFW guidance, a take avoidance survey (i.e., pre-construction clearance survey) will be conducted by a qualified biologist to determine presence or absence of BUOW no less than 14 days and no more than 30 days prior to initiating construction activities. Surveys shall include areas within the Project footprint and a surrounding 500-foot (150-meter) buffer. The survey shall consist of walking parallel transects and noting any fresh BUOW sign or presence. The results of the take avoidance survey shall be provided to CDFW. If more than 30 days pass between the take avoidance survey and initiation of Project construction, additional take avoidance surveys may be required, depending on what actions have been implemented to deter BUOW from moving into the Project footprint and buffer area. A final take avoidance survey shall be conducted within the Project footprint within 24 hours prior to initiation of construction activities. Given the total duration of construction and the size of the Project, it is expected that take avoidance surveys will be conducted in phases, in order to stay within the required survey windows associated with construction activities.
  - If occupied burrows are found during take avoidance surveys, appropriate construction buffers or setback distances shall be determined by the qualified biologist on a case-by-case basis, depending on the season in which disturbance will occur, the type of disturbance, and other factors that could influence susceptibility to disturbance (e.g., topography, vegetation, existing disturbance levels, etc.). To the extent feasible, buffers of 246 feet (75 meters) will be used during the breeding season (February 1 through August 31) and 164 feet (50 meters) will be

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used during nonbreeding season (September 1 through January 31). “Shelter in place” techniques shall be used if necessary to create a visual and auditory barrier between construction activities and the occupied burrow. Techniques shall include placing hay bales, fencing, or another physical barrier between the occupied burrow and construction activities. The qualified biologist shall determine if and/or when shelter in place is necessary and feasible for implementation. When construction activities commence adjacent to the buffer area, a qualified biologist shall be present on-site full time to monitor the behavior of BUOW for at least 3 days. The qualified biologist shall have the authority to increase the setback distance if there are signs of disturbance, such as changes in behavior as a result of construction or other indications of distress by BUOW.

- If BUOW activity is detected at a burrow within the Project footprint during the non-breeding season (September 1 through January 31), BUOW shall be excluded from active burrows and encouraged to passively relocate to suitable, unoccupied habitat outside of the exclusion area. BUOW shall be excluded by installing one-way doors in burrow entrances. Although passive relocation does not result in control of the recipient area for BUOW, the qualified biologists shall verify that there is an acceptable “recipient” area within a reasonable distance that provides the necessary subsidies to support BUOW with the goal to minimize the stress of relocation. Subsidies to be considered include suitable burrows (primary and satellite) and habitat quality (e.g., vegetation cover, diversity) that is equal to or greater than that from which they were relocated. If, during pre-construction surveys, BUOW activity is detected at a burrow within the Project footprint during the breeding season (February 1 through August 31), then an appropriate construction buffer or setback distance shall be determined by the qualified biologist on a case-by-case basis. This buffer shall be flagged and all Project-related activity shall remain outside of the flagged area until a qualified biologist determines the burrow is no longer occupied (e.g., juveniles are foraging independently and are capable of independent survival).
- In the event that BUOW will be excluded from the Project footprint and occupied burrows will be impacted, a mitigation site with suitable burrows and habitat shall be secured and a Burrowing Owl Exclusion Plan shall be developed and approved by CDFW prior to excluding BUOW from burrows. Specific objectives for BUOW protection addressed by this Burrowing Owl Exclusion Plan shall describe exclusion methodology, burrow excavation procedures, on-site and post-relocation monitoring of occupied burrows, and reporting.
- ~~A Burrowing Owl Habitat Mitigation strategy shall be developed and approved by CDFW. BUOW occupancy analysis and modeling determined that the Project would impact 614 acres (248 hectares) of core BUOW foraging habitat. A mitigation program has been developed that~~

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~~compensates for impacts to core foraging habitat through a list of mitigation options including:~~

- Occupied BUOW burrows directly impacted shall be replaced by installing artificial burrows on mitigation sites (i.e., conservation easements, in-lieu fee lands, Farm Contract land), or other land as agreed to by CDFW, at a ratio of 1:1. If the mitigation sites identified for the Project have at least two suitable BUOW burrows for each occupied burrow directly impacted, then artificial burrows shall not be installed. Suitable burrows are defined as burrows greater than approximately 4 inches (10 centimeters) in diameter (height and width) and greater than approximately 60 inches (150 centimeters) in depth. Burrows shall be scoped to ensure they are of proper depth for BUOW.
- A security in an amount equal to the fair market value of the cost of a perpetual conservation easement and long-term endowment for the number of acres of burrowing owl habitat mitigation obligation for each CUP Phase (one or more CUPs for which a security is posted) prior to commencement of construction shall be posted to fulfill the mitigation obligations for lost burrowing owl habitat.
- A CUP owner shall proffer compensatory mitigation when a total of four CUP Phases have posted security and proffered compensatory mitigation or 18 months from the date of posting security on the first CUP Phase, whichever is longer. Security shall be returned to the CUP owner upon proffer of compensatory mitigation. CDFW may extend the 18-month period if the CUP owner is making a good-faith effort to proffer mitigation and demonstrating progress in securing mitigation. If the 18-month period elapses and the CUP owner cannot proffer mitigation or demonstrate a good faith effort to secure mitigation, CDFW may cash in the security to secure mitigation itself.
- The CUP owner shall proffer mitigation for lost burrowing owl core foraging habitat, as identified in the BUOW occupancy analysis and model (Table 4.12-16; Appendix J), by (1) securing a CUP owner purchased conservation easement or similar instrument that protects the agricultural use of the land in perpetuity at a ratio of 1:1; (2) participating in the Burrowing Owl Habitat Mitigation Plan administered by the Imperial Community Foundation-Burrowing Owl Stewardship and Education Fund (IVCF-BOSEF) (or similar qualified non-profit organization and approved by CDFW), if available; and/or (3) using a CDFW-approved in-lieu fee program, if one is available at the time the compensatory mitigation is proffered. To be available as compensatory mitigation for this Project, the Burrowing Owl Habitat Mitigation Plan shall be developed for approval by CDFW and the IVCF-BOSEF Board of Directors (or the Board of Directors of similar qualified non-profit organization) before the time compensatory mitigation is proffered.
- The Burrowing Owl Habitat Mitigation Plan would be developed to compensate for impacts to core foraging habitat, and include the following components:

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- Avoiding higher quality habitat to the extent practicable. [Note: The Project Applicant has already implemented this measure by removing portions of the Project based on the occupancy model.]
- ~~The Applicant shall collaborate with Imperial Valley Community Foundation-Burrowing Owl Stewardship and Education Fund (IVCF-BOSEF) or another nonprofit group~~ A strategy and methods to enroll farmers in a program to grow and retain Burrowing Owl Friendly Crops (BOFC) identified by the occupancy model (i.e., wheat and alfalfa). Core BUOW foraging habitat shall be mitigated at a 1:1 ratio by entering farm land into short-term (e.g., ~~1 to 5~~ minimum 3 years) farm agreements to predominantly grow BOFC (Table 4.12-17).
- ~~The Applicant shall collaborate with IVCF-BOSEF or another nonprofit group to enroll farmers in a Burrowing Owl Safe Farm Program (BOSFP) that~~ A strategy and method for integratings owl-friendly farm practices to reduce mortality of owls. For farm land enrolled in BOFC agreements that include requirements to implement BUOW safe farm practices, impacts to core BUOW foraging habitat shall be mitigated at a reduced ratio of ~~0.65:1~~ 0.7:1, which reflects the combined benefit of farming BOFC using BOSFP through short-term (e.g., ~~1 to 5 years~~ minimum of 3 years) farm agreements (Table 4.12-17).
- ~~The Applicant shall collaborate with IVCF-BOSEF or another non-profit group to develop a~~ A long-term financing plan and a defined program ~~shall fund an endowment account~~ sufficient to fund the BOFC/BOSFP agreement program through the end of the Project's operational life (anticipated to be approximately 30 years) (e.g. endowment account).

**TABLE 4.12-17**  
**COMPENSATION FOR CORE BURROWING OWL FORAGING HABITAT UNDER**  
**THE BURROWING OWL FARM CONTRACT PLAN<sup>1</sup> (ACRES)**

CUP Area	Core Foraging Habitat (acres)	Base BUOW Friendly Crops/ Consistency (1:1)	BUOW Friendly Crops/ Consistency + BOSFP (0.7:1) <sup>42</sup>
CUP 13-0036	123.7	123.7	86.6
CUP 13-0037	6.9	6.9	4.8
CUP 13-0038	0.0	0.0	0.0
CUP 13-0039	7.8	7.8	5.5
CUP 13-0040	37.9	37.9	26.6
CUP 13-0041	0.0	0.0	0.0
CUP 13-0042	0.0	0.0	0.0
CUP 13-0043	133.2	133.2	93.2
CUP 13-0044	0.0	0.0	0.0
CUP 13-0045	28.6	28.6	20.0
CUP 13-0046	14.7	14.7	10.3
<del>CUP 13-0047</del>	<del>0.4</del>	<del>0.4</del>	<del>0.3</del>

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**TABLE 4.12-17**  
**COMPENSATION FOR CORE BURROWING OWL FORAGING HABITAT UNDER**  
**THE BURROWING OWL FARM CONTRACT PLAN<sup>1</sup> (ACRES)**

CUP Area	Core Foraging Habitat (acres)	Base BUOW Friendly Crops/ Consistency (1:1)	BUOW Friendly Crops/ Consistency + BOSFP (0.7:1) <sup>12</sup>
CUP 13-0048	9.1	9.1	6.4
CUP 13-0049	1.9	1.9	1.3
CUP 13-0050	99.6	99.6	69.7
CUP 13-0051	150.2	150.2	105.2
CUP 13-0052	0.0	0.0	0.0
<b>Total</b>	<del>614.0</del> <b>613.6</b>	<del>614.0</del> <b>613.6</b>	<del>430.0</del> <b>429.7</b>

Source: AECOM 2014e, pp. 5-11-5-12).

<sup>1</sup>The mitigation ratios proposed in this table would also be used for Plan administrator-secured perpetual conservation easements. CUP owner-secured perpetual conservation easements would reflect a 1:1 mitigation ratio.

<sup>12</sup>Reduced ratios reflect added conservation value of implementing BOSFP through (short-term) Farm Contracts and perpetual conservation easements. Ratios shown are proposed and will be finalized in Burrowing Owl Habitat Mitigation Plan-Farm Contract Plan.

- ~~Establish a~~ A Farm Contract incentive plan, including compensation for farmers entering into and successfully executing Farm Contracts and eligibility requirements.
- ~~Identify~~ Identification of minimum duration of Farm Contracts and other Farm Contract management practices.
- A set of on-farm practices in consultation with IVCF-BOSEF, the local farming community, and other stakeholders.
- ~~Establish an~~ An accounting mechanism for tracking acreage enrolled in Farm Contracts.
- ~~Identify options~~ Specific actions to ensure enrolled acreage for Farm Contracts satisfy the established compensatory mitigation acreage requirement.
- ~~Establish a~~ A monitoring and reporting program.
- ~~Describe use of~~ An adaptive management strategy for in the implementation of the Burrowing Owl Habitat Mitigation Farm Contract Plan, such as changes to BOSFPs and Farm Contract duration.
- ~~Allow for~~ Ability to purchase of conservation easements and include a mechanism to provide long-term funding to enroll lands in agricultural conservation easements with a requirement to implement BOSFP, under the discretion of the implementing entity. The Burrowing Owl Habitat Mitigation Farm Contract Plan will finalize a reduced mitigation ratio to reflect the added conservation value of restricting land under an agricultural easement to

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implement BOSFP; the proposed mitigation ratio is 0.7:1 (**Table 4.12-17**). Conservation easements secured by the Burrowing Owl Habitat Mitigation Plan administrator (IVCF-BOSEF) without requirements to implement BOSFP would be mitigated at a 1:1 ratio.

- The total number of acres encumbered at any one time (as Farm Contracts would be short-term agreements) shall depend on Project impacts to core BUOW foraging habitat, the portfolio of Farm Contracts (i.e., whether a property is implementing burrowing owl-friendly crops only or also implementing BOSFP), and the quantity of acres in conservation easements. ~~[Note: A complete description of each mitigation option can be found in the LOA and CSP report (Appendix H included in **Appendix J** of this EIR).]~~
- ~~In the event that BUOW will be excluded from the Project footprint and occupied burrows will be impacted, a mitigation site with suitable burrows and habitat must be secured. A BUOW Exclusion Plan must be developed and approved by CDFW prior to excluding BUOW from burrows. Specific objectives for BUOW protection addressed by this Plan are to describe exclusion methodology, burrow excavation procedures, identification of artificial burrow sites, and post-relocation monitoring and reporting.~~
- ~~Occupied BUOW burrows directly impacted shall be replaced by installing artificial burrows on mitigation sites (i.e., conservation easements, in lieu fee lands, Farm Contract land), or other land as agreed to by CDFW, at a ratio of 1:1. If the mitigation sites identified for the Project have at least two suitable BUOW burrows for each occupied burrow directly impacted, then artificial burrows shall not be installed. Suitable burrows are defined as burrows greater than approximately 4 inches (10 centimeters) in diameter (height and width) and greater than approximately 60 inches (150 centimeters) in depth. Burrows shall be scoped to ensure they are of proper depth for BUOW.”~~

Also, as noted in mitigation measure MM 4.12.7, the Burrowing Owl Habitat Mitigation Plan includes among the compensation portfolio the purchase of conservation easements and a mechanism to provide long-term funding to enroll lands in agricultural conservation easements. The proportion of the burrowing owl compensation portfolio that contains perpetual conservations easements has yet to be determined and details of how that will be determined will be detailed in the Burrowing Owl Habitat Mitigation Plan.

**Response to Comment 2-10:** The comment states that the CDFW has not agreed to the compensation ratio described in Table 4.12-17 of the Draft EIR and will continue to work with the Applicant to ensure compensation is biologically equivalent or superior if the Burrowing Owl Habitat Mitigation Plan is developed and implemented as mitigation. Comment noted. Mitigation measure MM 4.12.7 on page 4.12-115 of the Draft EIR and Burrowing Owl Technical Report (Appendix J of the Draft EIR) have provided an analysis and mitigation strategy based on discounting compensation of core foraging habitat by rewarding farmers for growing and maintaining crops that burrowing owls exhibit a preference for and by integrating measures that reduce farm related owl mortality. The details regarding development and implementation of specific measures in the Burrowing Owl Habitat Mitigation Plan will be submitted to CDFW for review and approval before becoming available for use as compensation from the Applicant and/or CUP owner.

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**Response to Comment 2-11:** The comment states that the CDFW recommends adding a component to mitigation measure MM 4.12.7 that allows for mitigation of burrowing owl forage in the form of conservation easements in perpetuity. Mitigation measure MM 4.12.7 has been revised to make it clear that the CUP owners may elect to purchase conservation easements as an alternative to participating in the Burrowing Owl Mitigation Plan; and would be required to do so if the Plan is not approved as compensatory mitigation for this Project and in-lieu fees were not available. If required, conservation easements would be purchased by the CUP owner at a 1:1 ratio. Conservation easements are frequently used and accepted by wildlife agencies, though alternate mitigation measures may be more appropriate in a given situation, and the Burrowing Owl Habitat Mitigation Plan is intended to provide an appropriate alternate option.

Also, as noted in mitigation measure MM 4.12.7, the Burrowing Owl Habitat Mitigation Plan includes among the compensation portfolio the purchase of agricultural conservation easements by the Plan administrator and a mechanism to provide long-term funding. The proportion of the burrowing owl compensation portfolio that contains perpetual conservation easements has yet to be determined and details of how that will be determined will be detailed in the Burrowing Owl Habitat Mitigation Plan.

**Response to Comment 2-12:** The CDFW recommends a 5 year agreement to grow burrowing owl friendly crops to benefit and compensate for the loss of foraging habitat. The Draft EIR identified an example range of years that may be appropriate for farm contracts. The Draft EIR has been revised to state that the minimum term for farm contracts would be a minimum of 3 years. It is noteworthy, and will be taken into consideration in the final Burrowing Owl Mitigation Plan that four-year farming cycles constitute a long-term commitment to a specific crop in the Imperial Valley. As stated in the Draft EIR, the Burrowing Owl Habitat Mitigation Plan would identify the minimum duration of farm contracts and other farm contract management practices. Additionally, to provide flexibility to maximize success of the program, agreements with landowners would be a minimum of three years, IVCF-BOSEF will have the latitude to increase the minimum period based on its experience implementing the program.

**Response to Comment 2-13:** The comment states that it is not possible for the CDFW to process 17 individual mitigation packages for one Project. Instead the CDFW is willing to arrange a more reasonable phasing option such as 4 phases. The CDFW recommends providing a security in the form of a letter of credit prior to ground disturbance at the site.

During the Applicant's conversations with CDFW staff, CDFW has recommended that a CUP owner will not be required to proffer compensatory mitigation before commencement of construction of each CUP. Instead, as a CUP goes to construction, the CUP owner will be required to post security for the mitigation obligation for that CUP in order to aggregate mitigation.

If after 18 months after posting of security for the first CUP, fewer than three additional CUPs post security, the CUP owner may: 1) ask CDFW to extend the expiration period for the security; or 2) proffer the compensatory mitigation for its CUP. CDFW may extend the 18-month security cycle if the CUP owner(s) is making a good faith effort to proffer compensatory mitigation and can demonstrate progress in its efforts. If a CUP owner cannot proffer compensatory mitigation and CDFW does not extend the 18-month security expiration period, CDFW may cash in the security and use the funds to secure compensatory mitigation itself.

Securities will be returned to the CUP owner(s) conditioned on a proffer of compensatory mitigation, using one or more of the three burrowing owl foraging habitat mitigation options, (*i.e.*, conservation easement, Burrowing Owl Habitat Mitigation Plan, or in-lieu fee).



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There is no maximum limit to the number of CUPs that can be aggregated into a CUP Phase. For instance, if all 16 CUPs commence construction at once, then all 16 CUPs are required to post security prior to construction and proffer mitigation within 18 months in the manner noted above. However, if CUP construction proceeds more slowly, then once the first 4-CUP Phase mitigation security cycle is complete, the fifth CUP Phase to post security would start a second 4-CUP Phase mitigation security cycle; there could be several mitigation security phases. Mitigation security phasing provides the opportunity to secure larger preserve areas by aggregating mitigation funding.

**Response to Comment 2-14:** This comment notes that the Draft EIR identifies potential for direct impacts to migratory birds such as collisions with PV panels during construction and operation. The CDFW states that the Applicant needs to have a plan in place during project construction to notify the CDFW of any listed or fully protected species within 24 hours by e-mail or phone. Mitigation measure MM 4.12.14a on pages 4.12-154 and 4.12-154 has been revised as follows to note this procedure will be in place:

**"MM 4.12.14a** A ~~voluntary~~ Bird and Bat Conservation Strategy (BBCS) will be developed by the Project Applicant in coordination with the County of Imperial, USFWS, and CDFW.

The BBCS will include the following components:

- A description and assessment of the existing habitat and avian and bat species;
- An avian and bat risk assessment and specific measures to avoid, minimize, reduce, or eliminate avian and bat injury or mortality during all phases of the pProject.
- A post-construction monitoring plan that will be implemented to assess impacts on avian and bat species resulting from the Project. The post-construction monitoring plan will include a description of standardized carcass searches, scavenger rate (i.e., carcass removal) trials, searcher efficiency trials, and reporting.
- Statistical methods will be used to estimate Project avian and bat fatalities ~~if sufficient data is collected to support statistical analysis.~~ species, including special status species, annual mortality by taxa and season. Analysis will also determine collision rates during diurnal and nocturnal periods; species mortality composition; and assess the spatial distribution mortalities. Sufficient data (i.e., sample sizes) will dictate the extent that fatality models can be used to generate fatality estimates within the various categories. Fatality estimates will be generated using the most appropriate fatality estimator given the data set.
- An injured bird response plan that delineates care and curation of any and all injured birds.
- A nesting bird management strategy to outline actions to be taken for avian nests detected within the impact footprint during operation of the Project.
- A conceptual adaptive management and decision-making framework for reviewing, characterizing, and responding to monitoring results.
- Monitoring studies following commencement of commercial operation of each CUP area. Monitoring results will be reviewed annually by the Applicant

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and the County of Imperial, in consultation with CDFW and USFWS, to inform adaptive management responses.

- During Project construction, incidental avian carcasses or injured birds found during construction shall be documented. Should a carcass be found by Project personnel, the carcass shall be photographed, the location shall be marked, the carcass shall not be moved, and a qualified biologist shall be contacted to examine the carcass. When a carcass is detected, the following data shall be recorded (to the extent possible): observer, date/time, species or most precise species group possible, sex, age, estimated time since death, potential cause of death or other pertinent information, distance and bearing to nearest structure (if any) that may have been associated with the mortality, location (recorded with a Global Positioning System [GPS]), and condition of carcass.
- If any federal listed, state listed or fully protected avian carcasses or injured birds are found during construction or post-construction monitoring, the Project Applicant shall notify USFWS and CDFW within 24 hours via email or phone and work with the resource agencies to determine the appropriate course of action for these species. For such listed species, the CUP owner shall obtain or retain a biologist with the appropriate USFWS Special Purpose Utility Permit(s) and CDFW Scientific Collecting Permit(s) to collect and salvage all dead and injured birds, and store/curate them in freezers for later disposition and analysis.
- Although take is not anticipated, it is possible. Should mortality of a federally listed species be documented, the take will be addressed by applying for an incidental take permit through the development of a Habitat Conservation Plan (HCP) that satisfies the permit issuance criteria stipulated under Section 10(a)(1)(B) of the Endangered Species Act or through consultation under Section 7 of the federal Endangered Species Act. If mortality of a State-listed species is documented, the CUP owner shall apply for a 2081(b) incidental take permit from CDFW. Alternatively, if available, the CUP owner may elect to obtain incidental take authorization through participation in the Desert Renewable Energy Conservation Plan.
- Utility lines constructed above-ground shall conform to Avian Power Line Interaction Committee (APLIC) standards.
- Post-construction monitoring studies shall be conducted by a third-party independent contractor for at least 2 years following commencement of commercial operation of each CUP area. Monitoring results shall be reviewed annually by the Applicant and the County of Imperial, in consultation with CDFW and USFWS, to determine if and to what extent post-construction monitoring studies shall be continued in future years."

**Response to Comment 2-15:** The comment states that the Draft EIR indicates the possibility of direct take to fully protected species including Yuma clapper rail, American peregrine falcon and Greater Sandhill Crane. The comment notes that CFGC Section 3511(1)(22) prohibits take of fully protected birds. If a fully protect species is found dead or injured on the site, the Applicant will be required to notify the CDFW immediately. The Fully Protected Species, golden eagle, greater sandhill crane, and Yuma clapper rail, status is documented in Table 4.12-5 on page 4.12-43 of the

### 3.0 COMMENTS AND RESPONSE TO COMMENTS

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Draft EIR; the Fully Protected Species statutes are discussed in sub-Section 4.12.1, Regulatory Framework of Section 4.12, Biological Resources. Mitigation measure MM 4.12.14a has been revised to note this procedure will be in place. Refer to Response to Comment 2-14, above.

**Response to Comment 2-16:** This comment includes closing remarks and contact information for the individual responsible for compiling the letter. No response is required.

### 3.0 COMMENTS AND RESPONSE TO COMMENTS



# IID

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LETTER 3

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Executive-ES

October 3, 2014

Mr. Jim Minnick  
Interim Director  
Planning & Development Services Department  
County of Imperial  
801 Main Street  
El Centro, CA 92243

SUBJECT: Wistaria Ranch Solar Energy Center Project Draft EIR

Dear Minnick:

On September 2, 2014 we received from the Imperial County Planning & Development Services Department, the Draft Environmental Impact Report (EIR) for the Wistaria Ranch Solar Energy Center Project (Project). The Project consists of the development (individually, in clusters or all at once) of up to 17 solar projects on 32 parcels totaling approximately 2,793 acres under 17 Conditional Use Permits (#13-0036 thru #13-0052). Each solar field site will produce  $\pm$  20 MW. The parcels are approximately six miles southwest of El Centro, CA and four miles directly west of Calexico, CA and located in three groups (northern, central and southern) generally bounded by Wahl Road on the north, Brockman and Rockwood Roads on the west, the U.S./Mexico border on the south, and Ferrell and Corda Roads on the east.

3-1

The Imperial Irrigation District (IID) has reviewed the Draft EIR and, in addition to our comments contained in our September 20, 2012 and October 22, 2013 comment letters (see attached letters), has the following comments:

3-2

1. To better assess impacts to IID facilities, Project proponent will need to provide IID with phasing maps for the different build-out scenarios: individually, in clusters or all at once. Phasing maps shall include estimated times in which each portion of the projects will be built in their entirety or in a phased development.
2. Furthermore IID requires Imperial County approved construction plans as well as hard copy and digital CAD files of plan and profile drawings showing the generation interconnection (Gen-Tie) that extends from the proposed solar field site parcels through the existing Mount Signal Solar Farm Project to the existing Imperial Solar Energy Center South switchyard as well as the eight towers that will be added to the Mount Signal Solar Farm segment of the Gen-Tie to accommodate co-location of the Wistaria Solar Project 230 kV lines with the Mount Signal Solar Farm Gen-Tie line.
3. Given that the Project will collect electricity from the various solar field sites through the Electrical Collector Line Corridor and eventually be transmitted through the Mount Signal Solar Farm Gen-Tie, and the collector line corridor and the Gen-Tie include both electric line crossings of IID and Caltrans facilities for a total of 34 crossings, either electric or both electric and vehicular; IID requests that the Project proponent provide hard copy and digital CAD files of plan and profile drawings depicting all crossings for the Gen-Tie, collector lines and vehicular crossings. Information derived from these submittals will be incorporated into

3-3

3-4

3-5

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### 3.0 COMMENTS AND RESPONSE TO COMMENTS

Mr. Jim Minnick  
October 3, 2014  
Page 2

an encroachment agreement with IID. The encroachment agreement would encompass the construction, operation and de-commissioning of the facility.

3-5 cont.

4. It is important that Project proponent be made aware of IID's plan to build the Kubler Substation on the south east corner of Brockman Road and Kubler Road in conjunction with a future 92 kV transmission line with double and single 7.2/12.5 kV rated distribution lines along Kubler Road. Should the proposed Kubler Substation, which will be located approximately 1.4 miles north of the above mentioned solar facilities, be constructed, IID will require all solar facilities in the vicinity that are not participating financially with IID, through an Affected Services Agreement and a Backfeed and Station Power Service Agreement, to participate in funding the construction of the proposed new substation. Additional fees and funding for transmission and distribution upgrades to connect to the new substation will also be required.

3-6

5. To obtain temporary electrical service for the development, Project proponent will need to submit an application for the service required to IID Energy Customer Operations. If the service is feasible, the Project proponent will be financially responsible for all engineering, materials and construction costs, including any rights-of-way needed. If any IID electrical facilities need to be removed or relocated, that request can also be requested. For additional information in this regard, applicant should contact IID Energy Customer Operations located at 1699 W. Main St., Suite "A", Valley Plaza in the City of El Centro, CA 92243; (760) 482-3300, and speak with an IID Project Manager or Service Planner.

3-7

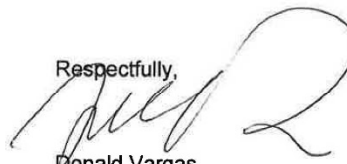
6. On water supply matters as related to IID's Interim Water Supply Policy for Non-Agricultural Projects and Temporary Land Conversion Following Policy as stated in our September 20, 2012 and October 22, 2013 comment letters, Project proponent should contact Autumn Plourd at (760) 339-9755

3-8

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

3-9

Respectfully,



Donald Vargas  
Environmental Analyst

Kevin Kelley – General Manager  
Kristine Fontaine – Asst. General Manager & Interim Portfolio Management Officer  
Tina Shields – Interim Planning and Water Conservation Manager, Water Dept.  
Mike Pacheco – Interim Operations and Maintenance Manager, Water Dept.  
Carl Stills – Manager, Energy Dept.  
Vance Taylor – Asst. General Counsel  
Tom King – Deputy Energy Manager, Engineering & Operations  
Paul G. Peschel – Manager Planning & Engineering, Energy Dept.  
Angela Evans – Manager Distribution Services & Maintenance Operations  
Juan Carlos Sandoval – Asst. Mgr., Transmission Expansion Development, Energy Dept.  
Michael P. Kemp – Superintendent, Real Estate & Environmental  
Shayne Ferber – Asst. Supervisor, Real Estate  
Vikki Dee Bradshaw – Environmental Compliance Officer



LETTER 3A

www.iid.com

GS-ES

October 22, 2013

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

SUBJECT: Wistaria Ranch Solar Project NOP of a DEIR

Dear Mr. Villa:

Pursuant to the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) the Imperial County Planning & Development Services Department issued for the Wistaria Ranch Solar (WRS) Project, where Wistaria Ranch Solar, LLC (Tenaska, Inc.) is proposing to construct a 250 MW solar photovoltaic energy-generating facility, to be located on approximately 2,793 acres of privately owned, agricultural land, six miles southwest of the city of El Centro, CA along Highway 98, Kubler Road, Anza Road and Preston Road and 5.5 miles directly west of Calexico, CA; the Imperial Irrigation District (IID) has reviewed the Initial Study/Environmental Checklist and has the following comments:

1. The WRS solar project may impact numerous IID Water Department facilities such as drains, site runoff flows, and proposed storm water detention facilities. To mitigate these impacts, the proposed project will require a comprehensive IID hydraulic drainage system analysis. IID's hydraulic drainage system analysis includes an associated drain impact fee. 3A-1
2. Storm water for this project should be connected to drains at existing agricultural discharge locations. 3A-2
3. Project proponent should contact IID Water Department Engineering Services at (760) 339-9265 as soon as the project's preliminary plans are completed to start IID's review process. 3A-4
4. Project proponent should be advised that, all new non-agricultural water project supply requests are processed in accordance with the IID's Interim Water Supply Policy for Non-Agricultural Projects (IWSP) (see <http://www.iid.com/index.aspx?page=152> for a link to the IWSP). In order to enter into a water supply agreement with the IID and obtain a water supply for the project, the applicant will be required to comply with all applicable IID policies and regulations. Such policies and regulations require, among other things, that all potential environmental and water supply impacts of the Project have been adequately assessed, appropriate mitigation has been developed and appropriate conditions have been adopted by the relevant land use permitting/approving 3A-5

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### 3.0 COMMENTS AND RESPONSE TO COMMENTS

Mr. Armando Villa  
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Page 2

agencies. Furthermore, the applicant will be required to meet standards for water use efficiency and best management practices, including but not limited to those established by the County, as well as other water use efficiency standards, adopted by IID or local government agencies. For additional information regarding the IWSP, the IID Water Supply Planning/Colorado River Manager may be contacted at (760) 339-9038.

3A-5 cont.

5. On May 8, 2012 the IID Board of Directors adopted a Temporary Land Conversion Fallowing Policy that will require participation from certain project developers and/or landowners as a condition of water service for new non-agricultural projects. In particular, this policy will target lower water demand projects, such as photovoltaic solar facilities, that require a temporary land use conversion and are permitted by conditional use permits on agriculturally-zoned lands. Implementation details are being developed by IID and will be incorporated into landowner following contracts and project water supply agreements issued under IID's Interim Water Supply Policy (see IID website <http://www.iid.com/Modules/ShowDocument.aspx?documentid=5646> or the IID MCI webpage at <http://www.iid.com/index.aspx?page=152>).

3A-6

6. IID water, for use during the project's construction phase, requires an encroachment permit during that phase of the project.

3A-7

7. Permanent electric service for the O&M building and for substation backfeed power shall be provided by IID. Thus, it is important to note that all costs associated with the relocation and/or upgrade of IID electrical infrastructure to service the project will be the responsibility of the project proponent. Project proponent is urged to contact IID Energy - Customer Operations & Planning Section at 760-482-3402 for additional information regarding electrical service for the project.

3A-8

8. The project intends to interconnect to a 230 kV line planned for other solar projects, thus the DEIR should include drawings depicting where the transmission and collector lines will be located, to be able to provide specific comments about impacts to IID's electrical facilities.

3A-9

9. Interconnection to IID transmission facilities is subject to IID's non-discriminatory Open Access Transmission Tariff provisions including availability of electrical energy facilities, capacity and deliverability on and from the IID's transmission system. For further information on this matter, if applicable, to assess potential impacts to the IID system for inclusion in the DEIR, project proponent should contact IID's Interconnection Transmission Contracts Specialist Sr. at (760) 482-3315.

3A-10

10. The project includes electric line and vehicular access crossings of IID facilities (drain, irrigation canal, electric line, etc.). The DEIR should include the exact locations of the crossings and the corresponding CEQA analysis. The project crossings should not interfere with the purpose of the IID's facilities.

3A-11

11. Any construction or operation on IID property or within its existing and proposed right of way or easements will require an encroachment permit or encroachment agreement (depending on the circumstances), including but not limited to: surface improvements such as proposed new streets, driveways, parking lots, landscape; and all water, sewer, storm water, or any other above ground or underground utilities. A copy of the encroachment permit application is included in the IID's *Developer Project Guide 2008*,

3A-12

### 3.0 COMMENTS AND RESPONSE TO COMMENTS

Mr. Armando Villa  
October 22, 2013  
Page 3

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

3A-12 cont.

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

3A-13

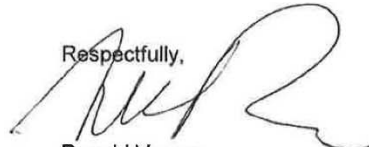
13. Any new, relocated, modified or reconstructed IID facilities required for and by the project (which can include but is not limited to electrical utility substations, electrical transmission and distribution lines, canals, drains, etc.) need to be included as part of the project's CEQA and/or NEPA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

3A-14

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

3A-15

Respectfully,



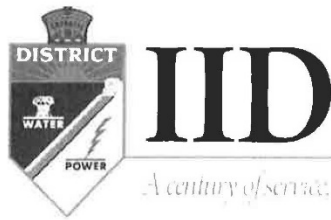
Donald Vargas  
Environmental Analyst

Kevin Kelley – General Manager  
Jesse Silva – Manager, Water Dept.  
Carl Stills – Interim Manager, Energy Dept.  
Vance Taylor – Asst. General Counsel  
Tom King – Interim Deputy Energy Manager, Engineering & Operations  
Paul G. Peschel – Interim Manager Planning & Engineering, Energy Dept.  
Angela Evans – Interim Manager Distribution Services & Maintenance Operations  
Juan Carlos Sandoval – Asst. Mgr., Transmission Expansion Development, Energy Dept.  
David Zavala – Interim Portfolio Management Officer, Portfolio Mgmt. Office  
Michael P. Kemp – Superintendent, Environmental & Real Estate  
Shayne Ferber – Asst. Supervisor, Real Estate  
Vikki Dee Bradshaw – Supervisor, Environmental Management



### 3.0 COMMENTS AND RESPONSE TO COMMENTS

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ATTACHMENT TO  
LETTER 3

[www.iid.com](http://www.iid.com)

GS-ES

September 20, 2012

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

SUBJECT: Wistaria Ranch Solar Energy Center Project CUP Application #12-0017

Dear Ms. Valenzuela:

On September 6, 2012, we received from the Imperial County Planning & Development Services Department, an advanced copy, not yet circulated for public comment, of the Conditional Use Permit (CUP) application #12-0017. Wistaria Ranch Solar, LLC is proposing to construct a 250 MW solar photovoltaic energy-generating facility, the Wistaria Ranch Solar Energy Center (WRS) project, to be located on approximately 3,394 acres of privately owned, agricultural land, six miles southwest of the city of El Centro, CA and 5.5 miles directly west of Calexico, CA. The project site is generally located south of Wahl Road, east of Brockman and Rockwood Roads, north of the U.S./Mexico border, and west of Ferrell and Corda Roads.

The Imperial Irrigation District (IID) has reviewed the application and has the following comments:

1. The WRS solar project may impact numerous IID Water Department facilities such as drains, site runoff flows, and proposed storm water detention facilities. To mitigate these impacts, the proposed project will require a comprehensive IID hydraulic drainage system analysis. IID's hydraulic drainage system analysis includes an associated drain impact fee.
2. Storm water for this project should be connected to drains at existing agricultural discharge locations.
3. Project proponent should be advised that, all new non-agricultural water project supply requests are processed in accordance with the IID's Interim Water Supply Policy for Non-Agricultural Projects (IWSP) (see <http://www.iid.com/index.aspx?page=152> for a link to the IWSP). In order to enter into a water supply agreement with the IID and obtain a water supply for the project, the applicant will be required to comply with all applicable IID policies and regulations. Such policies and regulations require, among other things, that all potential environmental and water supply impacts of the Project have been adequately assessed, appropriate mitigation has been developed and appropriate conditions have been adopted by the relevant land use permitting/approving agencies. Furthermore, the applicant will be required to meet standards for water use

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### 3.0 COMMENTS AND RESPONSE TO COMMENTS

efficiency and best management practices, including but not limited to those established by the County, as well as other water use efficiency standards, adopted by IID or local government agencies. For additional information regarding the IWSP, the IID Water Supply Planning/Colorado River Manager may be contacted at (760) 339-9038.

4. On May 8, 2012 the IID Board of Directors adopted a Temporary Land Conversion Following Policy that will require participation from certain project developers and/or landowners as a condition of water service for new non-agricultural projects. In particular, this policy will target lower water demand projects, such as photovoltaic solar facilities, that require a temporary land use conversion and are permitted by conditional use permits on agriculturally-zoned lands. Implementation details are being developed by IID and will be incorporated into landowner following contracts and project water supply agreements issued under IID's Interim Water Supply Policy (see IID website <http://www.iid.com/Modules/ShowDocument.aspx?documentid=5646> or the IID MCI webpage at <http://www.iid.com/index.aspx?page=152>).
5. IID water, for use during the project's construction phase, requires an encroachment permit during that phase of the project.
6. Permanent electric service for the O&M building and for substation backfeed power shall be provided by IID. Thus, it is important to note that all costs associated with the relocation and/or upgrade of IID electrical infrastructure to service the project will be the responsibility of the project proponent. Project proponent is urged to contact IID Energy - Customer Operations & Planning Section at 760-482-3402 for additional information regarding electrical service for the project.
7. Although, according to the document, the project does not consider crossing the West Side Main Canal with a new 230 kV line as part of its scope, but to interconnect to a 230 kV line projected by other solar projects, the application does not include drawings depicting where the transmission and collector lines will be located, consequently it is very difficult at this point in time to provide specific comments about impacts to IID's electrical facilities. However, we reserve the right to comment on these issues in the future as we deem necessary and as additional information becomes available.
8. Any construction or operation on IID property or within its existing and proposed right of way or easements will require an encroachment permit or encroachment agreement (depending on the circumstances), including but not limited to: surface improvements such as proposed new streets, driveways, parking lots, landscape; and all water, sewer, storm water, or any other above ground or underground utilities. A copy of the encroachment permit application is included in the IID's *Developer Project Guide 2008*, accessed at: <http://www.iid.com/Modules/ShowDocument.aspx?documentid=2328>. Also, instructions for the completion of encroachment applications can be found at <http://www.iid.com/Modules/ShowDocument.aspx?documentid=2335>. For additional information regarding encroachment permits, the IID Real Estate Section at (760) 339-9239 should be contacted.
9. In addition to IID's recorded easements, IID claims, at a minimum, a prescriptive right of way to the toe of slope of all existing canals and drains. Where space is limited and depending upon the specifics of adjacent modifications, the IID may claim additional secondary easements/prescriptive rights of ways to ensure operation and maintenance of IID's facilities can be maintained and are not impacted and if impacted mitigated.

### 3.0 COMMENTS AND RESPONSE TO COMMENTS

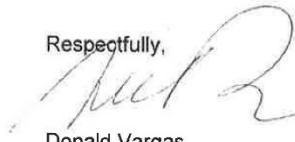
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Thus, IID should be consulted prior to the installation of any facilities adjacent to IID's facilities. Certain conditions may be placed on adjacent facilities to mitigate or avoid impacts to IID's facilities.

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

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

Respectfully,



Donald Vargas  
Environmental Specialist

Kevin Kelley. – General Manager  
Jesse Silva. – Manager, Water Dept.  
Mario Escalera. – Interim Deputy Manager - Operations, Energy Dept.  
Carl Stills. – Interim Deputy Manager – Strategic Planning, Energy Dept.  
Paul G. Peschel. – Interim General Services Manager  
Jeff M. Garber. – General Counsel  
Tom King. – Interim Project Management Officer, Portfolio Mgmt. Office  
Carlos Villalon. – Asst. Mgr., Water Dept. System Control & Monitoring  
Juan Carlos Sandoval. – Asst. Mgr. Energy Dept.  
Jim Kelley. – Supervisor, Real Estate  
Vikki Dee Bradshaw. – Interim Supervisor, Environmental Services

## 3.0 COMMENTS AND RESPONSE TO COMMENTS

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### RESPONSE TO COMMENT LETTER 3

**Commenter:** Donald Vargas, Environmental Analyst  
Imperial Irrigation District

**Date of Letter:** October 3, 2014

**Response to Comment 3-1:** This comment does not address the adequacy of the environmental analysis. The comment states that the Draft EIR was received by the Imperial Irrigation District (IID) on September 2, 2014. The comment provides a brief description of the Original Project and its location.

**Response to Comment 3-2:** The comment states that IID has reviewed the Draft EIR. In addition, a comment letter on the Notice of Preparation (NOP) (Letter 3A) dated October 22, 2013 as well as a letter dated September 20, 2012 (Attachment to Letter 3) are attached. The NOP letter was received and responded to as an attachment to this letter. The September 20, 2012 letter was written to the Planning Department to identify IID requirements for the project covers the same issues as those expressed in the NOP letter and Draft EIR Comment letter. Accordingly, the responses to those letters provide a good faith response to the comments raised in the September 20, 2012 letter.

**Response to Comment 3-3:** This comment does not address the adequacy of the environmental analysis. The commenter request that the Project proponent provide IID with phasing maps including estimated times of construction. The CUP owner would be required to comply with this request by the IID. No further response is required.

**Response to Comment 3-4:** The comment states that IID requires approved construction plans from the County as well as a hard copy and digital CAD files of the project. The CUP owner is responsible for providing any and all information requested by IID at the time IID of filing an application with IID. This comment is noted. This comment does not address the adequacy of the environmental analysis. No further response is required.

**Response to Comment 3-5:** This comment request that the project Proponent provide hard copy and digital CAD files of plan and profile drawings depicting the Gen-Tie, collector lines and vehicular crossings. This information will be incorporated into the encroachment agreement with IID at the time the CUP owner applies for an encroachment permit. This comment does not address the adequacy of the environmental analysis. No further response is required.

**Response to Comment 3-6:** The comment states that IID is planning to build the Kubler Substation approximately 1.4 miles north of the proposed Project and IID will require all solar facilities in the vicinity to participate in funding the construction of the substation. The CUP owner will participate in an affected system agreement, a backfeed, and a station service agreement with IID. This comment does not address the adequacy of the environmental analysis. No further response is required.

**Response to Comment 3-7:** The comment states that the Project proponent must submit an application for temporary electrical service to IID. The comment notes that the project Proponent will be financially responsible and provides contact information for additional information. As noted in the discussion of construction process for the Solar Energy Center on page 2.0-46 of the Draft EIR, "Temporary electric service may be obtained from IID for the main construction logistics areas." The Project proponent (CUP owner) would be required to comply with IID's process for obtaining temporary electrical service at the time of application for such service. This comment does not address the adequacy of the environmental analysis. No further response is required.

### 3.0 COMMENTS AND RESPONSE TO COMMENTS

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**Response to Comment 3-8:** The comment provides contact information for water supply related to IID's Interim Water Supply Policy for Non-Agricultural Projects and Temporary Land Conversion Fallowing Policy. The CUP owner will comply with IID's policies at the time the water supply agreement application is submitted for each CUP. The water supply agreement application will not be submitted until the CUP owner is ready to start construction so that the farmer can continue to grow crops on the fields affected by the CUP. IID has indicated that the Applicant will need to adhere to IID's policy for O&M water supply. IID will not issue a water supply agreement until the Project receives CEQA certification from the County. IID may prepare its own CEQA findings subsequent to certification of the EIR. This comment does not address the adequacy of the environmental analysis. No further response is required.

**Response to Comment 3-9:** This comment consists of closing remarks and contact information for the author of the letter. No response is required.

### 3.0 COMMENTS AND RESPONSE TO COMMENTS

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#### RESPONSE TO COMMENT LETTER 3A

(Note: This letter was submitted during the NOP comment period but not received by the County until the public review period for the Draft EIR)

**Commenter:** Donald Vargas, Environmental Analyst  
Imperial Irrigation District

**Date of Letter:** October 22, 2013

**Response to Comment 3A-1:** Introductory remarks regarding the NOP and a summary description of the Original Project. A full description is provided in Chapter 2.0, Project Description of the Draft EIR.

**Response to Comment 3A-2:** The comment notes that the Project may impact IID facilities and that a IID hydraulic drainage system analysis is required to mitigate these impacts. The Project Proponent would be required to have a hydraulic drainage system analysis performed. A complete discussion of existing and proposed hydrology of each CUP is provided in Section 4.11, Hydrology and Water Quality of the Draft EIR.

**Response to Comment 3A-3:** The comment states that storm water for this Project should be connected to drains at existing agricultural discharge locations. The proposed Project would connect to IID drains. Page 4.11-35 thru 4.11-36 of the Draft EIR states “The Final Hydrology Study would utilize standard Best Management Practices that model factors such as runoff coefficient or curve number, infiltration into underlying soils, and flow-in storm drain discharge pipes connected to the IID Drain system and/or the New River.”

**Response to Comment 3A-4:** The comment states that the Project proponent should contact IID Water Department Engineering Services to start the IID review process as soon as the Project’s preliminary plans are completed. The requirement to receive an encroachment permit or a large project encroachment agreement would occur post-CEQA review.

**Response to Comment 3A-5:** The comment notes that all new non-agricultural water project supply requests are processed in accordance with the IID’s Interim Water Supply Policy for Non-Agricultural Projects. The CUP owner will be required to meet standards for water use efficiency and best management practices. Water supply is discussed in Section 4.13, Public Services in sub-section 4.13.3 on pages 4.13-16 thru 4.13-24 of the Draft EIR.

**Response to Comment 3A-6:** The comment notes that the IID Board of Directors adopted a Temporary Land Conversion Following Policy that will require participation from certain project developers and/or landowners as a condition of water service for new non-agricultural projects. IID’s following program is discussed with regard to cumulative water quality, quantity and runoff as part of Impact 4.11.6 on pages 4.11-48 thru 4.11-53 of the Draft EIR.

**Response to Comment 3A-7:** The comment states that IID water for use during Project construction requires an encroachment permit. Chapter 2.0, Project Description, page 2.0-70 of the Draft EIR notes that Encroachment Permits will be required from IID.

**Response to Comment 3A-8:** The comment notes that IID will provide permanent electric service for the O&M building and for the substation backfeed power. It also states that all cost associated with relocation and/or upgrade of IID electrical infrastructure will be the responsibility of the Project proponent. Page 4.13-36 of the Draft EIR discusses provision of power from IID as follows: “The transmission facilities proposed by the Project to export power would be used to supply a backfeed of power to the Solar Energy Center from IID in the evening hours to operate the O&M building(s) and keep the inverters warm. The financial arrangements with IID are coordinated

### 3.0 COMMENTS AND RESPONSE TO COMMENTS

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through an Affected Services Agreement and Backfeed and Station Power Service Agreement. These agreements require the CUP owner to be responsible for obtaining a power supply from market sources delivered over CAISO-operated facilities and for all costs and expenses associated with delivery. The agreements also set forth a contract rate (currently \$67.00 per MWh) to be paid for energy. IID has developed a proforma Affected Services Agreement and Backfeed and Station Power Service Agreement and the Project's agreements will generally conform to those proforma agreements."

**Response to Comment 3A-9:** The comment states that the Draft EIR should include drawings depicting where the transmission and collector lines will be located. Figures 2.0-25A thru 2.0-25D in Chapter 2.0 of the Draft EIR (pages 2.0-47 thru 2.0-50) show the location of the Gen-Tie as well as the collector line corridors.

**Response to Comment 3A-10:** The comment states that interconnection to IID transmission facilities is subject to IID's non-discriminatory Open Access Transmission Tariff provisions. Contact information for IID's Interconnection Transmission Contracts is provided. Chapter 2.0, Project Description of the Draft EIR identifies discretionary actions and approvals, as well as subsequent/concurrent entitlements to implement the proposed Project (refer to pages 2.0-70 and 2.0-71).

**Response to Comment 3A-11:** The comment notes that the Project includes electric line and vehicular access crossings of IID facilities and request that the Draft EIR show the exact locations and corresponding CEQA Analysis. The locations of the Project crossings are shown on Figure 2.0-26 (page 2.0-52 of the Draft EIR). The crossings were analyzed as part of the Draft EIR where appropriate.

The comment also states that the Project should not interfere with the purpose of these IID facilities. As noted on page 2.0-70 of the Draft EIR, "The Project crossings will not interfere with the purpose of IID's facilities."

**Response to Comment 3A-12:** The comment states that any construction or operation on IID property or within its existing and proposed right-of-way easements will require an encroachment permit or encroachment agreement. Discretionary Actions and Approvals by IID are identified in Chapter 2.0, Project Description on page 2.0-70 of the Draft EIR. The comment also provides information on encroachment applications and contact information.

**Response to Comment 3A-13:** The comment states that IID requires a prescriptive right-of-way to the toe of slope of all existing canals and drains and notes that IID should be consulted prior to installation of any facilities adjacent to IID's facilities. The Applicant will be required to consult with IID regarding placement of facilities within IID right-of-way.

**Response to Comment 3A-14:** The comment states that any new, relocated, modified or reconstructed IID facilities required for and by the Project need to be included as part of the Project's CEQA document, environmental analysis and mitigation. The Draft EIR considered all aspects of the Project in its analysis.

**Response to Comment 3A-15:** The comment provides closing remarks and contact information.

### 3.0 COMMENTS AND RESPONSE TO COMMENTS

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

#### DEPARTMENT OF TRANSPORTATION

DISTRICT 11, DIVISION OF PLANNING

4050 TAYLOR ST, M.S. 240

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#### LETTER 4

October 6, 2014

11-IMP- 98  
PM 22.2  
Wistaria Ranch Solar  
SCH# 2013091084

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

Dear Mr. Black:

The California Department of Transportation (Caltrans) received a copy of the Wistaria Ranch Solar Draft Environmental Impact Report (DEIR) located near State Route 98 (SR-98). Caltrans has the following comments:

4-1

#### **DEIR Appendices:**

Page 30: As stated in the first paragraph, impacts to current traffic patterns are anticipated to be minimal during construction. "Therefore, impacts to area highways and intersections during construction are considered potentially significant unless mitigation is incorporated. A Traffic Impact Study is being prepared for the Project and its findings will be discussed in the EIR." Please clarify Caltrans ability to comment on impacts analyzed in a traffic study subsequent to the DEIR being released for public review. How will findings be discussed in the EIR that is currently out for public review? Please clarify.

4-2

Page 30: As stated in the second paragraph, "no impact to current traffic pattern is anticipated during operation of the project". However, the following three paragraphs state that there will be access via SR-98 and based on these statements; it appears there may be potential impacts on SR-98.

1. 4.2 LAND USE, Section 4.2.2 bottom sentence states that "Regional access to the solar field site parcels is available via US Interstate 8 (I-8) and SR-98 (refer to **Figure 2.0-1** in Chapter 2.0). Page 2.0-9 Conditional Use Permit **CUP 13-0036**, second paragraph states that "Two primary and secondary access points are proposed to CUP 13-0036. One primary and secondary access would be off of SR-98 west of Rockwood Road."
2. Page 2.0-44 **Site Access**, first paragraph reads that Access to the Project will primarily be via the following paved roads: County Highway S30, Anza Road, Kubler Road, Lyons Road, and SR-98.

4-3

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### 3.0 COMMENTS AND RESPONSE TO COMMENTS

Mr. David Black  
October 6, 2014  
Page 2

3. Figure 2.0-6, the primary access point *is SR-98 near* Rockwood Road and the secondary access point *is SR-98* near westerly CUP boundary. This figure shows the approximate locations of the access points near Rockwood Road.

4-3 cont.

- All three paragraphs above indicate there will be access via SR-98. Please verify.

- The “paved roads” appear to be Rockwood Road and SR-98 which are permanent access points. Based on Figure 3, Rockwood Road/SR-98 is not shown as being considered an intersection. Is Rockwood Road at SR-98 paved but not considered intersection? It is not clear whether there is another “paved road” near Rockwood Road off of SR-98 or not. Please clarify.

4-4

- If Rockwood Road is paved and intersects with SR-98, the study should include this “intersection” in the Intersection Capacity Analysis.

4-5

- **Figure 2.0-6, CUP 13-0036 and Figure 2.0-7, CUP 13-0037,** please note that any access near SR-98 should be placed outside the functional area of the intersection. Corner Clearance requirements should be implemented. Additionally, access off of SR-98 should address any potential impacts on operation and safety of the State Highway. This includes but not limited to corner sight distance and slow truck turning left and right to access these sites.

4-6

- Page 1-15, section 1.2.2.1 of the DEIR, the study confirms there will be no impacts to motorists from glint/glare because the modules are non-reflective.

4-7

- Page 2.0-11 **CUP 13-0037,** bottom of second paragraph states that the electric line associated with this CUP would extend south along Rockwood Road, over the Greeson Drain and SR-98. Therefore, as stated in the NOP response letter, for any utilities encroachment, such as transmission lines please refer to Chapter 600, Please refer to Table 6.7 of Caltrans Encroachment Permits Manual.

[http://www.dot.ca.gov/hq/traffops/developserv/permits/encroachment\\_permits\\_manual/index.html](http://www.dot.ca.gov/hq/traffops/developserv/permits/encroachment_permits_manual/index.html)

4-8

Any work performed within Caltrans right-of-way (R/W) will require approval by Caltrans and an encroachment permit will be required for any work within the Caltrans R/W prior to construction.

As part of the encroachment permit process, the applicant 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

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### 3.0 COMMENTS AND RESPONSE TO COMMENTS

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Mr. David Black  
October 6, 2014  
Page 3

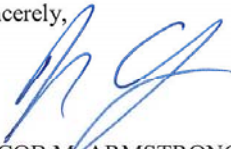
permit application will be accepted. Identification of avoidance and/or mitigation measures will be a condition of the encroachment permit approval as well as procurement of any necessary regulatory and resource agency permits. Encroachment permit submittals that are incomplete can result in significant delays in permit approval.

Improvement plans for construction within State Highway R/W must include the appropriate engineering information consistent with the state code and signed and stamped by a professional engineer registered in the State of California. Caltrans Permit Manual contains a listing of typical information required for project plans. All design and construction must be in conformance with the Americans with Disabilities Act (ADA) requirements.

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 Development Review Branch at (619) 688-6954.

Sincerely,



JACOB M. ARMSTRONG, Chief  
Development Review Branch

4-8 cont.

4-9

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to enhance California's economy and livability"*

### 3.0 COMMENTS AND RESPONSE TO COMMENTS

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#### RESPONSE TO COMMENT LETTER 4

**Commenter:** Jacob M. Armstrong, Branch Chief, Development Review Branch, Caltrans

**Date of Letter:** October 6, 2014

**Response to Comment 4-1:** Introductory statement noting Caltrans received a copy of the Draft EIR. No response is required.

**Response to Comment 4-2:** The comment references page 30 of the Initial Study/Notice of Preparation (IS/NOP) provided in Appendix A of the Draft EIR. The IS/NOP was submitted to the State Clearinghouse on September 26, 2013. Accordingly the text of the IS/NOP referred to a Traffic Impact Study being prepared for the Project. The Traffic Impact Study (dated May 14, 2014) was included as Appendix B of the Draft EIR. The findings of the Traffic Impact Study were included in Section 4.3, Transportation and Circulation of the Draft EIR. As discussed on pages 4.3-23 thru 4.3-62 of the Draft EIR, construction traffic impacts to Project study area intersections, roadway segments and freeway segment level of service (LOS) were all less than significant (i.e. operated at LOS C or better) during Existing (Year 2013), Near-Term (Year 2016), Mid-Term (Year 2019) and Long-Term (Year 2024) conditions. The lack of intersection, roadway segment and freeway segment impacts during Project operation are discussed in Response to Comment 4-3, below.

Additionally, the Traffic Impact Analysis was reviewed by the Imperial County Department of Public Works and Caltrans prior to inclusion in the Draft EIR. Caltrans provided a comment letter to the Imperial County Department of Public Works on December 2, 2013. Subsequent to the letter, Ms. Marisa Hampton of Caltrans confirmed with Justin Rasas of LOS Engineering (i.e. the preparer of the Traffic Impact Analysis) that Caltrans' comment letter was informational and did not require a response.

**Response to Comment 4-3:** The comment again appears to reference page 30 of the IS/NOP provided in Appendix A of the Draft EIR regarding access to the Project site off of SR-98. The comment then goes on to cite two references in the text (one from Section 4.2, Land Use; and one from Chapter 2.0, Project Description), and one Figure (2.0-6) from the Draft EIR that mention access off of SR 98. These references are correct in that one CUP (13-0036) would have both a primary and secondary access point off of SR-98.

The Draft EIR and the Traffic Impact Analysis correctly disclosed that there are no significant impacts to traffic patterns during operation of the Project because only approximately 15 full-time personnel are needed for operations and maintenance. Based on this information, the operations and maintenance (O&M) trip generation is estimated at 30 Average Daily Trips (ADT) with approximately 10 AM and 10 PM peak hour trips (Draft EIR, page 4.3-16). Such few trips do not have a significant impact traffic patterns during the post-construction, operational phase of the Project. Please note that the Traffic Impact Study used construction trip generation to analyze potential Project impacts because there are more construction trips than operational trips and the construction trips represent a more conservative impact analysis that would be more informative to the public and public agencies.

As noted in the Draft EIR and Caltrans comment letter there will be two access points to CUP 36 from SR-98. As CUP 36 represents a relatively small area of the overall Project, it is likely that less than 1/10 of the construction vehicles for the overall Project would be travelling to CUP 36 via SR-98 for a period of 7 to 8 months which is also not a significant impact to traffic patterns on SR-98 with implementation of a traffic control plan as reviewed by Caltrans (Draft EIR page 4.3-1).

### 3.0 COMMENTS AND RESPONSE TO COMMENTS

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**Response to Comment 4-4:** The comment states that Figure 3 (in the IS/NOP) does not show Rockwood Road and SR-98 as being considered an intersection. The commenter then questions whether Rockwood Road at SR-98 is paved but not considered an intersection.

Since the September 26, 2013 NOP filing, a traffic study dated May 14, 2014 was prepared and documented no direct and no cumulative impacts for the study area roadways and intersections. However, in response to Caltrans concern of potentially significant impacts to Caltrans' highways and intersections, a focused intersection capacity analysis was prepared for SR-98 at Rockwood Road by LOS Engineering. The letter report is dated October 24, 2014 and is provided in **Attachment A** to this Final EIR.

The October 2014 analysis demonstrates that SR-98 at Rockwood Road operates at acceptable LOS with the Project through year 2024, consistent with the less than significant intersection impacts identified in the Draft EIR. Volumes for Rockwood Road at SR-98 were forecasted by using the adjacent volumes from Ferrell Road/SR-98 to meet the planned submission schedule. Additionally, a Project driveway analysis was provided to show LOS for project access with SR-98. The Project traffic will not create a significant direct or cumulative impact because the intersection of Rockwood Road/SR-98 and the two planned Project driveways on SR-98 are calculated to operate at LOS C or better under near-term and long-term conditions. The proposed driveways on SR-98 will have encroachment permit requests submitted to Caltrans under separate cover at the appropriate time in the permitting process.

**Response to Comment 4-5:** The comment states that if Rockwood Road is paved at the intersection of SR-98, it should be included in the Intersection Capacity Analysis. As noted in Response to Comment 4-4, Rockwood Road is not paved north and south of SR-98, but will be pursuant to mitigation measure MM 4.3.6c, bullets 1 and 2 on page 4.3-65 of the Draft EIR. Refer to Response to Comment 4-4.

**Response to Comment 4-6:** The comment states that any access near SR-98 should be placed outside the functional area of the intersection. Corner clearance requirements should be implemented and access off of SR-98 should address any potential impacts on operation and safety of the State Highway (e.g. corner sight distance, slow trucks accessing the site). Comment noted. This comment does not address the adequacy of the environmental analysis and no further response is required.

**Response to Comment 4-7:** The comment states that there will be no impacts to motorists from glint/glare because the modules are non-reflective. The commenter is correct. Section 4.1, Aesthetics, of the Draft EIR (pages 4.1-37 thru 4.1-39) included a full discussion of light and glare impacts to motorists. All light and glare impacts associated with the Project were determined to be less than significant.

**Response to Comment 4-8:** The comment notes that CUP 13-0037 would have an electric line that would extend over SR-98. Crossing of SR-98 would encroach upon Caltrans Right-of-Way and require an encroachment permit. The comment provides information regarding the process for obtaining the permit and notes that an approved final environmental document must be included as part of the application package. In addition, the comment notes that improvement plans prepared by a professional engineer registered in the State of California and meeting all Americans with Disabilities Act requirements must be included. A contact number is provided to obtain information regarding encroachment permits. Comment noted. This comment does not address the adequacy of the environmental document.

**Response to Comment 4-9:** This comment provides contact information if there are any questions on the preceding comments. No response is required.

### 3.0 COMMENTS AND RESPONSE TO COMMENTS

Connie L. Valenzuela  
Agricultural Commissioner  
Sealer of Weights and Measures

Linda S. Evans  
Assistant Agricultural Commissioner/  
Asst. Sealer of Weights and Measures

**AGRICULTURAL COMMISSIONER  
SEALER OF WEIGHTS AND MEASURES**



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October 10, 2014

LETTER 5

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

Subject: Wistaria Solar Project Draft Environmental Impact Report

Dear Mr. Black:

We have reviewed the draft report. We have some concerns on issues that need discussion, and/or response:

**ES-9 Executive Summary**

- **Cumulative Conflicts with Applicable Land Use Plans, Policies, or Regulations**

- **Impact 4.2.2 – LCC change to PS or CC**

- 436 acres are under the Williamson Act. There is a significant cumulative impact since the Williamson Act was supposed to protect agricultural land from being developed. Other solar projects in the area and County have land that is under the Williamson Act as well.

- **Level of Impact - LCC change to PS or CC**

- **Mitigation Measure – Removal from the Williamson Act or from the project.**

**ES-51 Agricultural Resources**

- **Conversion of Prime Farmland, Unique Farmland or Farmland of Statewide Importance**

- **Impact 4.9.2 Conflict with Zoning and Existing Williamson Act Contract**

- Since 436 acres are under the Williamson Act there is a conflict. Was a petition filed for removal? What is the status of the cancelation of the Williamson Act and when will it be finalized. Are there any penalty fees? Who will pay the fees?

- **Level of Impact – LTS change to PS**

- **Mitigation Measure – Removal from the Williamson Act or from the project.**

- **Impact 4.9.3 Indirect Environmental Effects of Conversion Farmland**

- 32 parcels of farm land will be converted to non-agriculture use for 30 years. Conversion will affect the farmland, direct, indirect, induced jobs and the economy of the County.

- **Level of Impact – LTS change to PS**

5-1

5-2

5-3

5-4

1 | Page

### 3.0 COMMENTS AND RESPONSE TO COMMENTS

- **Mitigation Measure** - Compare job loss and crop value loss over the 30 year period vs County gains through taxes and other revenues. How will our County benefit by converting farmland? Will Agricultural and other Benefit fees be adequate? 5-4 cont.
- **Cumulative Agricultural Resources Impacts**
  - The 2013 total valley farmable acres as reported by IID is 473,311. One project alone does not seem significant but when all the solar projects acreage is added together the cumulative impact is significant. Imperial County is unique in its farming by being able to produce crops year round with multiple cropping on many fields. For a period of 30 years, 2,343 acres of farmland will be converted for this project. Approximately 22,500 acres of farmland have been projected for solar conversion. The loss of farmland will have an effect on our County's agriculture industry, agriculture infrastructure and our economy. 5-5
  - **Level of Impact** – LTS change to PS
  - **Mitigation Measure** – Consider non-agriculture land or Agricultural and other Benefit fees. Is there land in the County that would be better suited for conversion?

The California Department of Conservation has classified the farm ground for this project to be Prime Farmland, Unique Farmland or Farmland of Statewide Importance. This farmland supports crops that contribute directly to the County's \$2.15 billion gross agricultural production value. The removal of any farmland out of production for a 30 year period will have a negative effect on direct, indirect and induced employment, income, sales and tax revenue. 5-6

Should you have any questions, please call the office at (760)482-4314. 5-7

Sincerely,

  
Connie L. Valenzuela  
Agricultural Commissioner



### 3.0 COMMENTS AND RESPONSE TO COMMENTS

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#### RESPONSE TO COMMENT LETTER 5

**Commenter:** Connie Valenzuela, Agricultural Commissioner

**Date of Letter:** October 10, 2014

**Response to Comment 5-1:** The comment provides introductory remarks to the letter. No response is required.

**Response to Comment 5-2:** The comment references Impact 4.2.2 in the Executive Summary of the Draft EIR. Impact 4.2.2 (from Section 4.2, Land Use of the Draft EIR) addresses cumulative conflicts with applicable land use plans, policies or regulations. The commenter requests that the conclusion of “less than cumulatively considerable” be changed to “potentially significant” or “cumulatively considerable” because the Williamson Act is supposed to protect agricultural land from development. The commenter suggests that the mitigation measure to address the impact is remove Williamson Act land either from the existing contract or from the project.

The EIR already addresses this issue. The 436 acres referenced will be removed from the Williamson Act Contract as discussed in Section 2.0, Project Description (page 2.0-69), and Section 4.9, Agricultural Resources (pages 4.9-55 and 4.9-56) of the Draft EIR. In addition, in February 2010, the County decided to not accept any new Williamson Act contracts and not to renew existing contracts. Notices of nonrenewal were sent to all landowners with Williamson Act contracts in the County with the expectation of removing the County from the Williamson Act Program by 2018.

**Response to Comment 5-3:** The comment references Impact 4.9.2 in the Executive Summary of the Draft EIR. Impact 4.9.2 (from Section 4.9, Agricultural Resources) addresses conversion of prime farmland, unique farmland or farmland of statewide importance. The commenter requests that the conclusion of less than significant be changed to potentially significant. The commenter suggests that the mitigation measure to address the impact is remove Williamson Act land either from the existing contract or from the project. The commenter asks if a petition was filed for removal of the 436 acres from Williamson Act, what the status of the cancellation of Williamson Act is, and when will it be finalized.

Section 4.9, Agricultural Resources of the Draft EIR (pages 4.9-40 and 4.9-41) includes a discussion of the cancellation of the Williamson Act on Assessor’s Parcel Number 052-210-020 addressing these questions:

“On October 10, 2013, the owner of the property associated with CUP 12-0052 filed for a petition for cancellation of the Williamson Act contract on APN 052-210-020. The petition states that the development of the contracted parcel provides a more contiguous pattern of development than that of proximate non-contracted land. The Department of Conservation (DOC) has commented on the public interest cancellation findings regarding the contract affirming that all properties under Williamson Act contract within the County have been served a notice of nonrenewal in expectation of removing the County from the Williamson Act Program by 2018. The DOC also confirmed that this removal is part of the County’s decision to concentrate solar development in a specific area. The proposed project is almost entirely surrounded by existing and proposed solar facilities. The DOC believes that the proposed Project is appropriately situated and would meet the required finding that it substantially outweighs the objectives of the Williamson Act.

The DOC also commented on the consistency of the cancellation with Williamson Act findings. The DOC found that because the majority of the surrounding parcels have

### 3.0 COMMENTS AND RESPONSE TO COMMENTS

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existing or permitted solar facilities, and all contracted land is in nonrenewal, the proposed use is not expected to result in the removal of adjacent lands from agricultural use. Likewise, DOC found the cancellation is for an alternative use which is consistent with the applicable provisions of the Imperial County General Plan....Concurrent with the approval of the proposed Project, the County proposes to terminate Williamson Act Contract 2001-001. The DOC has recommended this Williamson Act Contract be termination and confirmed there was substantial evidence to support the required findings for termination in its letter to the County dated December 11, 2013. Therefore, conversion of land under Williamson Act Contract is not an issue and will not be discussed in the analysis of impacts. At this time, the County Assessor has provided the State with the assessment for the property so that the cancellation fee may be calculated and paid.”

**Response to Comment 5-4:** The comment references Impact 4.9.3 in the Executive Summary of the Draft EIR. Impact 4.9.3 (analyzed on pages 4.9-56 and 4.9-57 of Section 4.9, Agricultural Resources of the Draft EIR) addresses indirect environmental effects of conversion of farmland. The commenter requests that the conclusion of less than significant be changed to potentially significant. The comment suggest that the mitigation measure compare job loss and crop value loss over the 30 year period vs. County gains through taxes and other revenues. The commenter asks how the County will benefit by converting farmland. The commenter asks if Agricultural and other Benefit fees will be adequate.

The farmland here is not being converted, but will be subject to a temporary, non-agricultural use. Any impacts of such temporary use are addressed in mitigation measures MM 4.4.1a, MM 4.4.1b, and MM 4.4.1c in Section 4.1, Air Quality of the Draft EIR.

The socio-economic and environmental impacts from the conversion of farmland, which appear to be the focus of the comment are addressed in the discussion of Impact 4.9.1 on pages 4.9-50 thru 4.9-52 of the Draft EIR and Chapter 7.0, Other CEQA Considerations, sub-section 7.2 Socioeconomic Impacts (pages 7.0-15 thru 7.0-18 of the Draft EIR).

Objective 1.8 of the General Plan provides that such conversion requires a clear need and showing of benefit, although it is not clear that such a showing is applicable to a temporary use, the showing is supported by *Wistaria Ranch Solar Economic Impact Analysis (EIA)*, *Employment (Jobs) Impact Analysis (JIA)*, *Fiscal Impact Analysis (FIA)* (prepared by Development Management Group [DMG]) and by the payments to be made to the County as set out in County Resolution 2012-005, and the Guidelines policies adopted by the Board of Supervisors on February 11, 2014.

As discussed in Response to Comment 7-13, the *Wistaria Ranch Solar Economic Impact Analysis (EIA)*, *Employment (Jobs) Impact Analysis (JIA)*, *Fiscal Impact Analysis (FIA)* has been prepared for this project. The FIA supports the clear and immediate need for the Project including.

1. A net increase of 17 jobs compared to the jobs for the existing agricultural use;
2. A net increase of \$243 million in new wages compared to the wages for the existing agricultural use; solar job wages are estimated to be \$293 million compared to estimated \$50 million from continuing existing agricultural jobs (Exhibit A; DMG 2014);
3. Approximately 573 construction jobs (DMG 2014, p. 24);
4. Approximately \$451.41 million in overall economic impact to the Imperial Valley Region over the possible 30+ year term from the construction and operation of the Project (and
5. Approximately \$24.28 million in gross revenues (sales and property taxes) during the same period (DMG 2014, p. 19).



### 3.0 COMMENTS AND RESPONSE TO COMMENTS

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In 2012, the Board of Supervisors adopted Resolution 2012-005 establishing “Guidelines for the Public Benefit Program for Use with Solar Power Plants in Imperial County”. Through its Resolution 2012-005, the County Board of Supervisors found that Agricultural Benefit and the Community Benefit payments constitute appropriate and specific mitigation measures for solar projects’ temporary use of agricultural land. The Resolution states that solar energy projects may not create the economic advantages or permanent employment opportunities that other development could offer and that in meeting the state’s renewable energy goals, the Board did not want to accomplish those state goals at the expense of its residents because solar power plants commit areas to energy production that may preclude all other potential uses, including agricultural and open spaces uses.

The Resolution further states that the Board of Supervisors held public scoping meetings, public hearings and formed a committee that provided input on a Public Benefit Program that was designed to address concerns expressed by the local community and others related to negative effects of these projects, particularly the loss of agricultural jobs.

Finally, it found that utility-scale solar developers who voluntarily participated in the Public Benefit Program would “properly address the concerns of the community.” The Public Benefit Program includes specific Agricultural Benefit, Community Benefit and other payments. The Agricultural Benefit payment, Community Benefit payment, Sales Tax guarantees (along with other benefits) are confirmed and made enforceable pursuant to a Development Agreement between the County and the Applicant. The Development Agreement is proposed to be adopted at the same time as the project entitlements.

Subject to the specific terms of the Development Agreement, and in accordance with the Guidelines for the Public Benefit Program for Use with Solar Power Plants in Imperial County, the Applicant shall pay on a per acre basis for each acre temporarily converted: (1) an agricultural benefit fee for prime farmland and a separate fee for of farmland of statewide importance; and (2) a Project land community benefit fee. Such payments increase pursuant to the Consumer Price Index. In addition, there is a minimum sales tax guarantee as well an emergency services benefit payment, and property tax guarantees.

The use of the payments collected is determined pursuant to County policy. On February 11, 2014 the Board of Supervisors adopted the Agricultural Benefit Committee’s Recommended Funding Allocation. The funding allocation was recommended by a committee of agricultural and economic development experts that included the County Agricultural Commissioner, County Executive Officer, County Farm Bureau, Imperial Valley Vegetable Growers, Imperial County cattle industry, and two members of the general public. This allocation confirms these fees are to be used for the stewardship, protection and enhancement of agricultural lands within the County as directed by Resolution 2012-005, i.e.:

- The Agricultural Business Development Category, such as funding for agricultural commodity processing plants and energy plants that use agricultural products, which was identified as the greatest job creator category would receive 50 percent of the funds;
- The Research & Development Category, such as funding for development of new high-yield or water-efficient crops, new water conservation techniques, new technology to improve yields in existing crops, and partial funding for an endowment to support an agricultural research specialist, would receive 20% of the funds. Improved water conservation and efficient crop production keeps more farmland in production during drought cycles therefore supports job creation and maintenance;

### 3.0 COMMENTS AND RESPONSE TO COMMENTS

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- The Agricultural Stewardship Category, such as programs that bring fields back into production, implement soil reclamation, and improve existing fields to improve crop yields, would receive 20%. Increase production of crops again leads to more agricultural jobs to prepare and harvest the fields; and
- The Education/Scholarship Category, such as matching funds for scholarships awarded by agricultural organizations for agricultural studies, student loans, Future Farmers of America and 4-H loans, would receive 10%. Training the next generation of farming operations will also support agricultural job creation.

The Development Agreement requires the County to grant the funds to applicants with programs that can demonstrate they are likely to generate at least sufficient non-agricultural jobs to offset the direct and indirect agricultural jobs which may be lost (DMG 2014). The Development Agreement contains a procedure for the Project Proponent (as well as for the County) to enforce its provisions both administratively and judicially.

See also Response to Comment 8-29.

**Response to Comment 5-5:** The comment addresses cumulative agricultural resources impacts (Impact 4.9.4) and asserts that the loss of farmland will have an effect on the County's agricultural industry, agricultural infrastructure and the economy. The potential economic impacts are identified and discussed in the Draft EIR. The commenter requests that the level of impact be changed from less than significant to potentially significant.

See Response to Comment 5-4 above and Response to Comment 8-29 below.

The commenter also suggests that the mitigation consider non-agricultural land. See Letter 7 from Michael Abatti, Response to Comments 7-1, 7-4, 7-6, 7-10, 7-12 and 7-17, which discuss the infeasibility of alternatives for use of non-agricultural lands for this project. The Preferred Project has reduced the impacts to prime farmland proposed by the Original Project. The overall size of the Project will be reduced by 130 acres from 2,793 to approximately 2,661 acres. Likewise, the Preferred Project would result in a reduction of 45.1 acres of Prime Farmland, 0.2 acres of Farmland of Statewide Importance and 2.3 acres of Unique Farmland being temporarily converted as compared to the Original Project.

Finally, commenter suggests that the mitigation consider Agricultural and other Benefit fees. As discussed above, such fees have already been made a requirement for mitigation through the Development Agreement.

**Response to Comment 5-6:** The comment states that the California Department of Conservation has classified the Project site as Prime Farmland, Unique Farmland or Farmland of Statewide Importance. The commenter identifies the dollar value of the crops produced on the site and asserts that the removal of farmland for 30 years will negatively affect direct, indirect and induced employment, income, sales and tax revenue.

See Response to Comment 5-4.

**Response to Comment 5-7:** The comment provides closing remarks with contact information. Comment noted.

### 3.0 COMMENTS AND RESPONSE TO COMMENTS

LETTER 6



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Ecological Services

Palm Springs Fish and Wildlife Office  
777 East Tahquitz Canyon Way, Suite 208  
Palm Springs, California 92262



In Reply Refer To:  
FWS-IMP-15B008-15CPA005

Mr. Jim Minnick  
Imperial County  
Planning and Development Services  
801 Main Street  
El Centro, California 92243

OCT 10 2014

Subject: Comments on the Draft Environmental Impact Report for the Wistaria Ranch Solar Energy Farm Complex Project, Imperial County, California

Dear Mr. Minnick:

The U.S. Fish and Wildlife Service (Service) has reviewed the draft Environmental Impact Report (EIR), dated August 22, 2014, for the Wistaria Ranch Solar Energy Center (Project). The proposed project (Project) is 6 miles southwest of the City of El Centro. Tenaska (Applicant) has filed 17 Conditional Use Permits (CUP) on 32 parcels to develop up to 17 phased clusters of multiple projects (20 MW each) (Phased CUP Scenario) or build out the full project (Full Build-out Scenario), which would total 250 MW, on approximately 2,793 acres. The ultimate output of the Phased CUP Scenario would depend on several variables, including power-purchase agreements and the evolving efficiency of solar photovoltaic (PV) or concentrating photovoltaic (CPV) energy generation technologies.

6-1

We offer the following comments on the draft EIR as they relate to potential impacts on public trust resources. The primary concern and mandate of the Service is the conservation, protection and enhancement of fish and wildlife resources and their habitats for the continuing benefit of the American people. The Service has legal responsibility for the welfare of migratory birds, anadromous fish, and threatened or endangered animals and plants listed under the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). The comments provided herein are based on the information provided in the draft EIR, our knowledge of sensitive and declining fish and wildlife resources, and our participation in regional renewable energy conservation planning efforts.

6-2

We preface our comments by recognizing the need for development of renewable energy and the challenge of balancing solar energy development with conserving natural resources in the Salton Sea basin. We look forward to working with the agencies involved in this effort and offer our assistance to ensure all proposed projects are evaluated consistent with the various State and Federal renewable energy goals and policies guiding renewable energy programs.

6-3

The 2,793-acre Project would consist of solar PV technology modules or CPV panels; or a mix of two of the technologies, a specific type of tracking system was not identified in the project description. All CUPS would use the existing generation interconnection (Gen-Tie) line that extends

6-4