



LAND USE SERVICES DEPARTMENT PLANNING COMMISSION STAFF REPORT

HEARING DATE: November 6, 2014

Project Description

AGENDA ITEM # 3

Vicinity Map

APN:	0435-132-01 & 0435-083-39
Applicant:	Lucerne Valley Desert View Ranch, LLC
Community:	Lucerne Valley/3 rd Supervisorial District
Location:	Bounded by Pioneer Road, Candida Road, Ocotillo Way and Desert View Road, with a small portion extending north of Desert View to Wren Street
Project No:	P201100489/CF
Staff:	Tracy Creason
Rep:	United Engineering Group - Beau Cooper
Proposal:	Conditional Use Permit for a 20 megawatt photovoltaic solar facility on a 198-acre portion of two parcels totaling approximately 358 acres



71 Hearing Notices Sent On: October 23, 2014

Field Review: November 3, 2014

Report Prepared By: Tracy Creason

Reviewed By: Commissioner Smith

SITE INFORMATION

Parcel Size: 358 Acres

Terrain: Relatively level, descending from south to north at slopes between 2 and 5 percent, with elevations ranging between 3050 feet to 3310 feet; four unnamed washes cross the property

Vegetation: Relatively undisturbed creosote bush community; co-dominants include burrobush and Joshua trees

SURROUNDING LAND DESCRIPTION:

AREA	EXISTING LAND USE	LAND USE ZONING DISTRICT
Site	Vacant	LV/RL-20 & LV/RL-10 (Lucerne Valley Community Plan / Rural Living – 20-acre & 10-acre minimum parcel sizes)
North	Vacant; Residence	LV/RL-5 & LV/RL-10 (Lucerne Valley Community Plan / Rural Living – 5-acre & 10-acre minimum parcel sizes)
South	Vacant; Residence; Railroad track	LV/RL-20
East	Vacant	LV/RL
West	Vacant; Residence	LV/RL-10, AV/RL, & AV/RL-20 (Apple Valley Sphere of Influence/Rural Living – 2.5-acre & 20-acre minimum parcel)

	AGENCY	COMMENT
City Sphere of Influence:	None	Not applicable
Water Service:	N/A	Apple Valley Ranchos Water Company approves use of local fire hydrants during construction & ongoing maintenance
Sewer Service	N/A	Not required

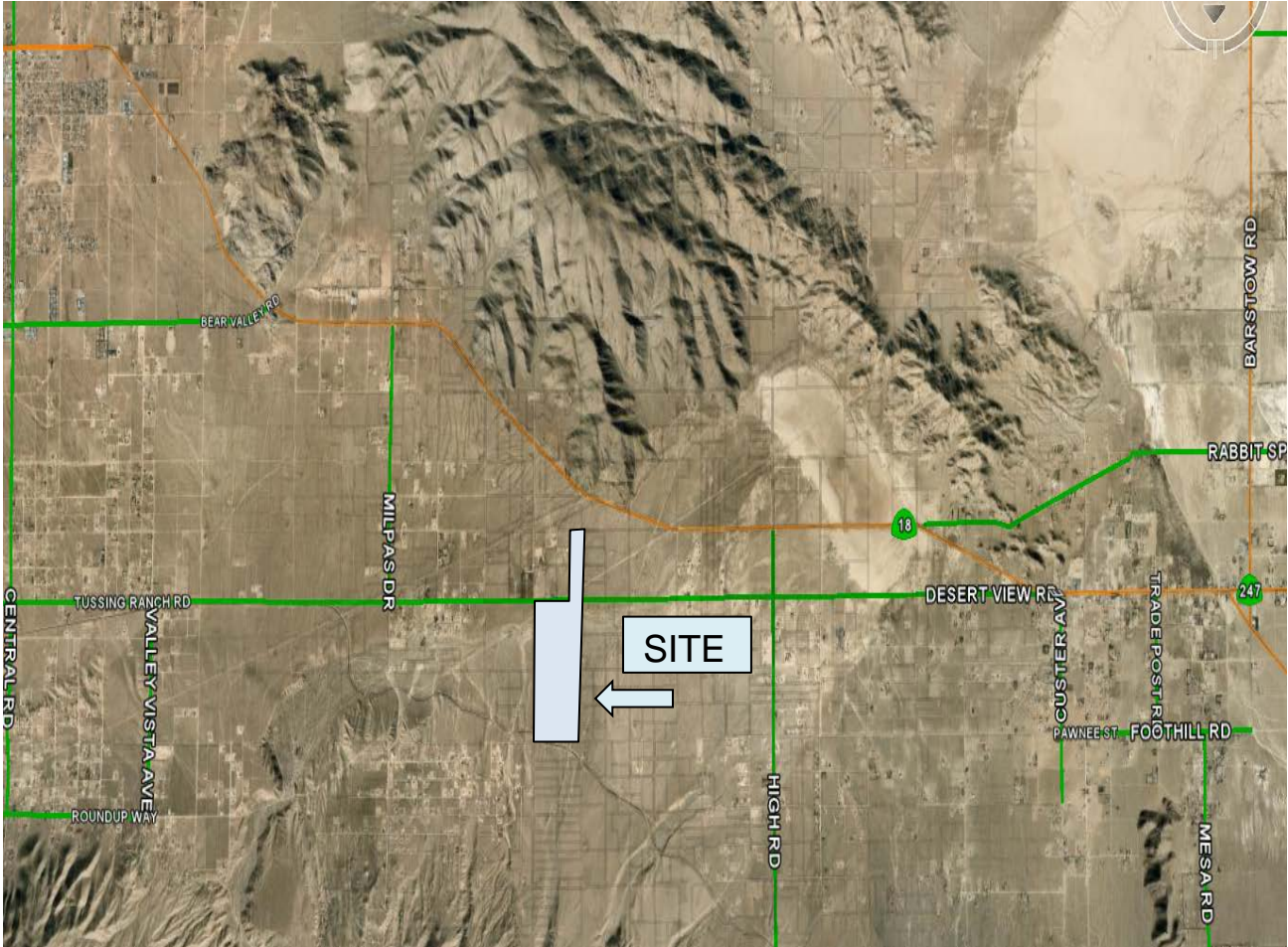
STAFF RECOMMENDATION: That the Planning Commission **DENY** the Conditional Use Permit to establish a 20 MW solar photovoltaic electricity generation facility on 198-acre portion of two parcels totaling approximately 358 acres.

In accordance with Section 86.08.010 of the San Bernardino County Development Code, this action may be appealed to the Board of Supervisors.

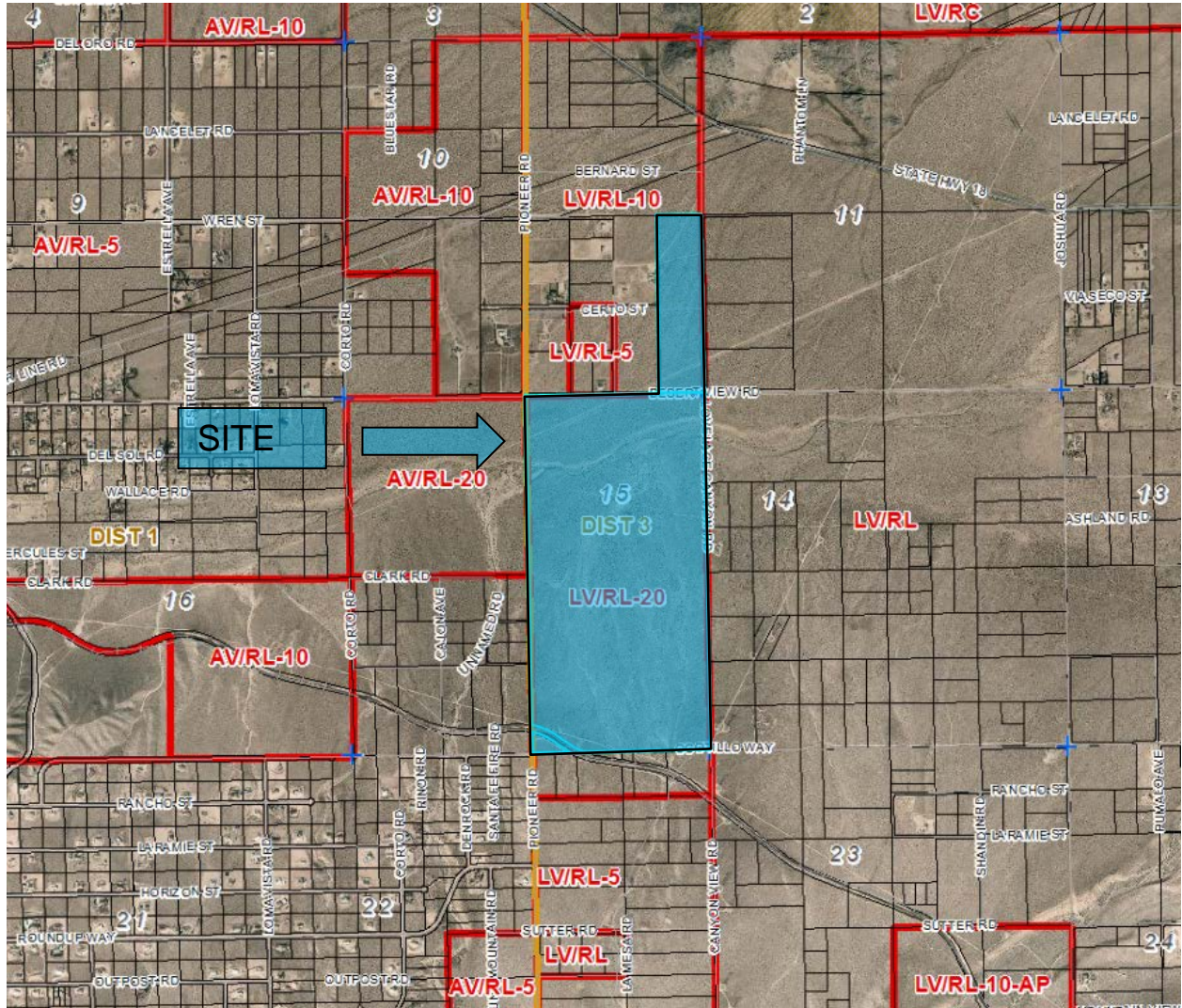
Lucerne Valley Desert View Ranch, LLC
P201100489/CUP
Planning Commission Staff Report
November 6, 2014

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VICINITY MAP



OFFICIAL LAND USE DISTRICT MAP



SITE PHOTOS



Looking south on Canyon View Road from Wren Street



Looking northwest from intersection of Desert View Road & Canyon View Road



Looking southwest from intersection of Desert View Road & Canyon View Road

SITE PHOTOS (Continued)



Looking northwest from intersection of Canyon View Road & Ocotillo Way



Looking northeast from intersection of Ocotillo Way & Pioneer Road



Looking southeast from intersection of Desert View Road & Pioneer Road

PROJECT DESCRIPTION AND BACKGROUND:

Project: The proposed Conditional Use Permit (CUP) is requested to establish a 20 megawatt solar photovoltaic (PV) electricity generation facility (Project) on a 198-acre portion of 2 parcels totaling approximately 358 acres in unincorporated Lucerne Valley, just east of the sphere of influence of the Town of Apple Valley. Upon completion, the Project would be unmanned except for periodic maintenance.

Location and Access: The proposed site is situated in the Desert Region of the County. The northernmost point of the site is approximately ¼ mile south of Highway 18. It is bounded by Pioneer Road on the west, Candida Road on the east, Ocotillo Way on the south, and Desert View Avenue on the north. A 40-acre portion of the site extends north of Desert View Avenue to Wren Street. The applicant has stated that the primary facility access point would be from Desert View Avenue.

Environmental Setting: The southern portion of the site slopes and drains from south to north at approximately five percent, while the northern portion of the site slopes and drains to the northeast at approximately two percent. Elevations on site range from approximately 3,050 feet above mean sea level (amsl) to 3,310 feet amsl. According to the Preliminary Drainage Report prepared for the project, there are four unnamed washes of significant size that cross the property. Two of these washes impact the southern boundary and two intersect the property along the western boundary. The Project proposes to avoid these historic flows and leave the drainage patterns undisturbed. According to biological surveys conducted on the site, the site supports a relatively undisturbed creosote bush community. Co-dominants include burrobush and Joshua trees. According to the Burrowing owl habitat assessment and burrow survey, the Project site supports suitable habitat and occupiable burrows for burrowing owl. The focused Desert Tortoise survey found historic evidence of desert tortoise on the site and within the general area. The habitat assessment for Mohave ground squirrel determined that the site supports suitable habitat. The Draft Initial Study prepared for the Project identified mitigation measures to reduce potential impacts.

Solar Array Operation: Project facilities are proposed to include photovoltaic panels mounted at a fixed angle tilt facing south, not to exceed 10 feet in height, supported by steel piers driven into the ground to an appropriate depth, as determined by soil conditions. The panels would form rows running east and west. The design proposes inverters and transformers that would be installed on small concrete pads. The site would be surrounded by an 8-foot high chain link fence. The Project would require construction of a new on-site substation. The Project proposes to tie in electrically to an existing distribution line along Desert View Road.

Solar Energy Project Moratorium: On July 23, 2013, the Board of Supervisors (Board) adopted an extension of an interim urgency ordinance originally adopted on June 12, 2013 establishing a temporary moratorium on approval of new commercial solar energy generation projects. The moratorium was established to allow time for the County to consider potential amendments to the County Development Code that would enhance compatibility of solar energy generation projects with residential land uses. On December

3, 2013, an ordinance was adopted by the Board to amend Chapter 84.29 of the County Development Code establishing new regulations for establishment of commercial solar energy generating systems. The moratorium did not apply to applications that had been accepted as complete and were already in process at the time of adoption of the interim urgency ordinance. The application for the subject Project was filed and accepted as complete before June 12, 2013; therefore, the Project is not subject to the ordinance adopted on December 3, 2013.

PUBLIC COMMENTS

Project notices were distributed to surrounding property owners within 1,000 feet of the Project boundary on January 25, 2012. A letter from a law firm representing LiUNA requested notification of all CEQA and land use items associated with this Project. A memorandum received from the Land Use Committee to the Municipal Advisory Council for County Service Area 29 in Lucerne Valley outlined recommended findings and conditions for the proposed Project. Comments from six surrounding property owners were received in opposition.

On August 7, 2014, the Lucerne Valley Economic Development Association sent an email clarifying, expanding upon, and reversing the community support expressed in the previous memorandum from the Lucerne Valley Municipal Advisory Council. These comments outlined the concerns relative to the community's experience with other utility scale renewable energy facilities currently under construction within the Lucerne Valley, and the resultant effects associated with grading, dust, site clearance, destruction of native plants, water usage, and visual impacts.

ENVIRONMENTAL REVIEW

Although an environmental finding is not required for a project denial (Public Resources Code § Section 21080(b)(5)), staff believes that the following information will be helpful to the Planning Commission's overall understanding of this Project.

A Draft Initial Study (IS) was prepared for the Project pursuant to County Guidelines under Ordinance 3040 and Section 15063 of the California Environmental Quality Act (CEQA) Guidelines. A Notice of Intent to Adopt a Mitigated Negative Declaration was prepared for the Project and submitted to the State CEQA Clearinghouse on October 30, 2013. A 30-day CEQA public comment period ended on December 4, 2013.

In response to circulation of the Draft Initial Study through the State Clearinghouse, Staff received comments from Lozeau Drury, Adams Broadwell Joseph & Cardozo, the California Department of Fish and Wildlife, and Caltrans. Comments received expressed concern about the adequacy of the Draft Initial Study's evaluation relative to:

- Lack of established baselines
 - Potential impacts of valley fever
 - Impacts on air quality
 - Impacts on wildlife, wildlife movement, habitat fragmentation
 - Avian impacts
-

- Visual impacts
- Parking and staging impacts
- Access road information
- Traffic Impact Study
- State highway access
- Grading impacts
- Decommissioning impacts
- Waste and waste disposal
- Water supply and usage
- Noise impacts
- Impacts to jurisdictional waters and washes
- Impacts to desert kit fox, desert tortoise, Mohave ground squirrel, burrowing owl

In an attempt to address these concerns, Staff requested additional technical information relative to aesthetics, biological resources, transportation and traffic, and water usage. The applicant chose not to submit the necessary additional information. Although the Draft Initial Study concluded that the proposed use, with mitigation measures, would not have a significant effect on the environment, Staff's final conclusion is unresolved. Additional information to supplement the original evaluation, and address the comments and concerns raised during the public review is needed before any recommendation can be made to conditionally approve the Project.

ANALYSIS:

Aesthetics/Visual: The site is within ¼ mile of State Highway 18, a County designated scenic corridor. It is adjacent to the sphere of influence of the Town of Apple Valley at its west boundary. The area consists largely of vacant land interspersed with rural residential development. Other land uses include railroad tracks, unpaved roadways, and power lines. Although the Draft Initial Study correctly stated that the site is not within a State designated scenic corridor, it omitted its proximity to the County scenic corridor. In light of experience with previous renewable energy facilities and in response to comments received during the State Clearinghouse review, Staff requested additional information from the applicant. This included a request for visual analysis, photo simulations, perimeter views, landscaping, transplanting, and planting plans to determine impacts of the proposal to the traveling public along Highway 18 and residents up and down slope from the Project site. At its highest point, the site is approximately 275 feet higher than Highway 18. The applicant chose not to prepare or submit the requested visual analysis or photo simulations.

Biology: The Project is located within the Biotic Resources Overlay. Phoenix Biological Consulting (Phoenix) in conjunction with RCA Associates conducted a habitat assessment for Mohave ground squirrel, and RCA Associates prepared a focused Desert Tortoise survey, and a Burrowing owl habitat assessment and burrow survey of the Project site to identify and document any biological resources that might be adversely affected by the Project. Although the biological surveys found suitable burrowing owl habitat, occupiable burrowing owl burrows, historic sign of tortoise, inactive/historic tortoise burrows, and suitable habitat for Mohave ground squirrel, incorporation of mitigation measures was

determined to reduce potential impacts to less than significant levels. In response to comments received during the State Clearinghouse review, Staff requested that potential impacts on wildlife, wildlife movement, habitat fragmentation, jurisdictional waters and washes be addressed. In light of experience with previous renewable energy facilities, Staff also requested an evaluation of the 'lake effect' potential. Staff did not receive substantive information to address these issues.

Traffic: The Draft Initial Study summarized and evaluated the anticipated construction traffic for the proposed Project. Based on trip generation information provided by the applicant, impacts to traffic in the area will be negligible upon construction of the Project when the only trips generated will be periodic ones required for Project maintenance. However, the applicant did not respond to a request from the County Traffic Division for a Construction Management Plan outlining the proposed access route to the Project site or a revised site plan showing the driveway locations. Additionally, the applicant did not respond to a Caltrans request for a Traffic Impact Analysis or the requested analysis of access onto the State highway.

Water Use: Although the site is approximately 7.8 miles east of the Apple Valley Ranchos Water Company service area, it provided a letter indicating it would provide temporary metered service for the Project during construction and for operation and maintenance, unless such provision creates an undue hardship for the water company's existing customers. Based on experience with similar projects, staff has found that the water usage for grading and construction activities is often underestimated. Staff has concerns about the lack of sufficient information provided in the application relative to water usage, especially in light of the tempered response from Apple Valley Ranchos Water Company.

Site Preparation and Grading: The Project proposal lacks specific details regarding site preparation and grading activities which are directly related to habitat impacts, drainage impacts, water usage, and fugitive dust emissions. Upon being asked for more information to fully evaluate these issues, the applicant chose not to provide any additional information and requested that Staff make a recommendation based on the information previously provided.

Greenhouse Gas Emissions Reduction: In 2006, the State of California passed the California Global Warming Solutions Act (Assembly Bill 32) which requires the state to reduce emissions of carbon dioxide (CO₂) and other greenhouse gases (GHG) to 1990 emission levels (a 30 percent reduction) by 2020. Senate Bill 1368, enacted in 2006, prohibits California electric utilities from constructing power plants or entering into long-term energy purchase contracts with facilities that do not meet the GHG emissions standard. In December, 2011 the County adopted a GHG reduction plan that established review criteria for GHG emissions. The proposed Project would assist in efforts to meet the California GHG emissions legislation, consistent with the County GHG reduction plan.

Renewable Energy Mandates: The California Renewable Portfolio Standard (RPS) legislation established in 2002 (Senate Bill 1078), and accelerated in 2006 (Senate Bill 107), requires retail sellers of electricity to obtain 20 percent of their supply of electricity from renewable energy sources by 2010 and 33 percent of electricity from renewable

energy sources by 2020. The proposed Project would assist in the State's efforts to meet the RPS standard and increased demands for electricity.

General Plan Consistency: The County General Plan establishes goals for renewable energy production in the County. Conservation Element Policy CO 4.12 states that that the County shall promote siting of renewable energy resources. Conservation Element Goal CO 8 aims to minimize energy consumption and promote safe energy extraction, uses and systems to benefit local, regional and global environmental goals. Policies under this goal include, Policy CO 8.3, which states that the County will assist in efforts to develop alternative energy technologies that have minimum adverse effect on the environment, and explore and promote newer opportunities for the use of alternative energy sources.

The General Plan Conservation (CO) Element provides direction regarding the conservation, development, and utilization of the County's natural resources. Countywide goal CO 2 is to maintain and enhance biological diversity and healthy ecosystems throughout the County. Desert Region goal D/CO 1 is to preserve the unique environmental features and natural resources of the Desert Region, including native wildlife, vegetation, water and scenic vistas. As discussed in the Biology Analysis above, the Project could potentially impact wildlife, wildlife movement, habitat fragmentation, jurisdictional waters and washes. Because it did not receive substantive information to address these concerns, Staff cannot recommend the required finding number 4 that the project is "consistent with the goals, maps, policies, and standards of the General Plan and any applicable community or specific plan."

The General Plan Open Space (OS) Element provides guidelines for the protection and preservation of open space, recreation, and scenic areas. Countywide goal OS 1 is to maintain and enhance the visual character of scenic routes in the County. As discussed in the Aesthetics and Visual Analysis above, the Project is within the viewshed of State Highway 18, a County designated scenic corridor. Because the applicant chose not to prepare or submit the requested visual analysis or photo simulations, staff cannot recommend the required finding number 4 that the project is "consistent with the goals, maps, policies, and standards of the General Plan and any applicable community or specific plan."

Consistency with Zoning Regulations. The current General Plan land use designation for the proposed Project site is Lucerne Valley Community Plan/Rural Living 20-acre minimum parcel size and 10-acre minimum parcel size (LV/RL-20 & RL-10), which allows development of renewable energy generation facilities with a CUP. Because of objectionable impacts associated with previous renewable energy facilities in Lucerne Valley, residents are concerned about this proposal. Although the application was submitted before the standards outlined in Code Chapter 84.29 – Renewable Energy Generation Facilities were revised in December 2013, information requested to address concerns (detailed above) was not submitted.

Although this Project is not subject to the ordinance adopted by the Board to amend Chapter 84.29 of the County Development Code and Staff is not required to make the

additional 31 findings for approval of a commercial solar energy facility contained therein, the proposal requires a discretionary decision, and the spirit of the new ordinance, current policy direction, and experience with numerous other solar projects has guided staff to conduct a more focused analysis of projects, especially with regard to environmental impacts. The additional information requested to supplement the original evaluation would have aided staff in making that analysis, but unfortunately, that information is not available.

SUMMARY:

Although the proposed Project would assist in meeting the renewable resource targets for retail sellers of electricity in California, and is consistent with the State's GHG emissions goals and the County GHG reduction and renewable energy goals and policies, it is in its present state inconsistent with the County General Plan. Therefore, the Project does not conform to the required findings of fact outlined in Development Code Section 85.06.0405(a), and Staff recommends denial of the Project. Additional information to supplement the original environmental evaluation and to address comments and concerns of other agencies is needed before any recommendation could be made to conditionally approve the Project and recommend a final environmental determination.

RECOMENDATION: That the Planning Commission:

DENY a Conditional Use Permit to establish a 20 megawatt photovoltaic solar facility on a 198-acre portion of two parcels totaling approximately 358 acres.

ATTACHMENTS:

Exhibit A: Findings
Exhibit B: Draft Initial Study
Exhibit C: Correspondence

EXHIBIT A

Findings

FINDINGS

Lucerne Valley Desert View Solar Project, Lucerne Valley, CA

P201100489

Per Development Code Section 85.06.040, the following are the required findings that the reviewing authority must determine to be true before approving any Conditional Use Permit.

1. **The site for the proposed use is adequate in terms of shape and size to accommodate the proposed use and all landscaping, loading areas, open spaces, parking areas, setbacks, walls and fences, yards, and other required features pertaining to the application.**

Project Consistency: The Project site is approximately 358 acres, of which approximately 198 are proposed to be developed. The subject site is adequate in shape and size to provide all required features pertaining to the proposed solar facility in compliance with applicable development standards, including all required setbacks and fences, temporary parking areas, and proposed open spaces. No loading areas, permanent parking areas or yards are required as the proposed facility will be unmanned and only occasional maintenance and service vehicles would access the site.

2. **The site for the proposed use has adequate access, which means that the site design incorporates appropriate street and highway characteristics to serve the proposed use.**

Project Consistency: The proposed Project failed to provide a Construction Management Plan outlining the proposed access route to the Project site.

3. **The proposed use will not have a substantial adverse effect on abutting property or the allowed use of the abutting property, which means that the use will not generate excessive noise, traffic, vibration, or other disturbance. In addition, the use will not substantially interfere with the present or future ability to use solar energy systems.**

Project Consistency: The Project is designed to leave 160 acres of the site undisturbed with substantial setbacks in excess of required development standards to minimize impacts to adjacent properties where development is proposed. A 26-foot-wide perimeter access road will be constructed along the Project site's fence line on all sides. The proposed solar panels would not exceed a maximum of 10 feet in height, lower than the typical single-story residence. When buffered by desert vegetation typical of the area and proposed fencing, such facilities are not anticipated to produce a significant effect on the aesthetics of local properties. Although a Draft Initial Study (IS) was prepared to analyze potential impacts associated with the proposed Project, comments received in response to circulation through the State Clearinghouse prompted Staff to request additional information from the applicant. The applicant chose

not to submit the requested information. As a result, the environmental analysis remains incomplete.

- 4. The proposed use and manner of development are consistent with the goals, maps, policies, and standards of the General Plan and any applicable community or specific plan.**

Project Consistency: The Project is inconsistent with the General Plan Conservation Element, which provides direction regarding the conservation, development, and utilization of the County's natural resources, and with the Open Space Element, which provides guidelines for the protection and preservation of open space, recreation, and scenic areas. Additional information to address this finding was requested of the applicant, but not provided; therefore consistency with this finding cannot be made in the affirmative.

- 5. There is supporting infrastructure, existing or available, consistent with the intensity of development, to accommodate the proposed development without significantly lowering service levels.**

Project Consistency: Project facilities are proposed to include photovoltaic panels mounted at a fixed angle tilt facing south, not to exceed 10 feet in height, supported by steel piers driven into the ground to an appropriate depth, as determined by soil conditions. The panels would form rows running east and west. The design proposes inverters and transformers that would be installed on small concrete pads. The site would be surrounded by an 8-foot high chain link fence. The Project would require construction of a new on-site substation. The Project proposes to tie in electrically to an existing distribution line along Desert View Road. Legal and physical access routes to the site remain undetermined. Electrical and telephone service are available adjacent to the site and would be extended to the site. No permanent water, wastewater, natural gas, or cable television infrastructure is required to serve the Project.

- 6. The lawful conditions stated in the approval are deemed reasonable and necessary to protect the public health, safety, and general welfare.**

Project Consistency: The Staff recommendation for this Project is for denial; therefore, there are no Conditions of Approval.

- 7. The design of the site has considered the potential for the use of solar energy systems and passive or natural heating and cooling opportunities.**

Project Consistency: The Project is a solar energy generation facility; therefore, it would fully comply with this requirement. Implementation of the Project would not impede development of solar energy generation systems on adjacent parcels.

EXHIBIT B

Draft Initial Study

**SAN BERNARDINO COUNTY
INITIAL STUDY ENVIRONMENTAL CHECKLIST FORM**

This form and the descriptive information in the application package constitute the contents of Initial Study pursuant to County Guidelines under Ordinance 3040 and Section 15063 of the State CEQA Guidelines.

PROJECT LABEL:

<p>APN: 0435-132-01 and 0435-083-39</p> <p>Applicant: Lucerne Valley Desert View Ranch, LLC</p> <p>Community: Lucerne Valley/ 1st District</p> <p>Location: Bounded by Pioneer Road on the west, Candida Road on the east, Ocotillo Way on the South and Desert View Avenue on the north. A small 40-acre portion of the project extends north of Desert View to Wren Street.</p> <p>Project No: P201100489</p> <p>Staff: Chris Conner</p> <p>Rep: United Engineering Group</p> <p>Proposal: A Conditional Use Permit to establish a 20-Megawatt Solar Photovoltaic Electricity Generation Facility on 198 acres of a 358-acre site.</p>	<p>USGS Quad: 15 Mile Valley</p> <p>T, R, Section: T04N R02W Sec. 10 & 15</p> <p>Lat/Long: 34°44'68" 117°06'96"</p> <p>Community Plan: N/A</p> <p>LUZD: RL-10 & RL-20</p> <p>Overlays: FS2</p>
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PROJECT CONTACT INFORMATION:

Lead agency: County of San Bernardino
Land Use Services Department
385 N. Arrowhead Avenue
San Bernardino, CA 92415-0182

Contact person: Chris Conner, Senior Planner
Phone No: (909) 387-4425
E-mail: cconner@lUSD.sbcounty.gov

Project Sponsor: Lucerne Valley Desert View Ranch, LLC – Silverado Power
44 Montgomery St. Suite 3065
San Francisco, CA 94104
(415) 692-7733

PROJECT DESCRIPTION:

Lucerne Valley Desert View Ranch (Silverado Power) proposes to construct and operate a 20-Megawatt (MW) photovoltaic (PV) solar energy generation facility ("Project") on a 358-acre site. The project site is situated in the east of of Section 15 and the southeast quarter of Section 10, Township 4 North, Range 2 West, San Bernardino Base and Meridian. The site lies approximately ¼ mile south of Highway 18, east of the sphere of influence of the Town of Apple Valley, and is bound by Pioneer Road on the west, Candida Road on the east, Ocotillo Way on the South and Desert View Avenue on the north. A small 40-acre portion of the site extends north of Desert View to Wren Street. (See **Figure 1: Vicinity Map**).



Looking south on Canyon View Rd. from Wren Street



Looking northwest from intersection of Desert View Road and Canyon View Road



Looking southwest from intersection of Desert View Road and Canyon View Road



Looking northwest from intersection of Canyon View Road and Ocotillo Way



Looking northeast from intersection of Ocotillo Way and Pioneer Road



Looking southeast from intersection of Desert View Road and Pioneer Road

Project Setting

The site is generally rectangular and elongated in a north-south direction. The natural topography of the site is relatively level, descending gradually from south to north at a slope of approximately 3 percent. The highest point of the site is in the southwest corner with an elevation of 3,310 above mean sea level (MSL) and the lowest point is the northeast corner with an elevation of 3,050 MSL. The westerly boundary of the site is adjacent to the Town of Apple Valley sphere of influence boundary.

The site is currently vacant and the area surrounding the site is generally rural and undeveloped. There is one single family house adjacent to the project on the north side of Desert View Avenue. There is an existing residence to the west across Abronia Avenue and two residences located south of the project site across Indian Trail. There are very few other residential units scattered within the project vicinity. The Rural Living (RL-5) zoning is primarily designed for residential development on large parcels 5 acres in size or greater; however in the project vicinity, housing density is estimated at one house per forty acres.

Existing land uses and Land Use Zoning Districts on and adjacent to the proposed Project site are listed in **Table 1**.

Location	Existing Land Use	Land Use Zoning District
Proposed Site	Vacant	RL-20 and RL-10
North	Vacant/Residence	RL-5 and RL-10
South	Vacant/Residence	RL-20
East	Vacant	RL
West	Vacant/Residence	RL, RL-20

Project Characteristics

The proposed PV project will generate equivalent power for approximately 5,000 average-size homes. The project will utilize PV modules mounted on fixed-tilt systems mounted in rows running east-west. The modules are wired together and connected to inverters, which convert Direct Current (DC) into electrical Alternating Current (AC). The power generated by the Project will be interconnected to Southern California Edison's (SCE) existing Transmission network, with the voltage transformation equipment and system safety equipment constructed on the site. The interconnection point is anticipated to take place at the southeast corner of the site on the tower directly adjacent to Canyon View Road. SCE will buy the energy produced by the project via a long-term Power Purchase Agreement. The PV panels are mounted on steel columns approximately five feet above grade and tilt to a maximum height of ten feet above grade. Electrical equipment, including inverters and transformers, will be located on concrete pads and all high-voltage AC electrical conductors will be located underground. This PV project will require a substation to be constructed on-site in order to tie into the existing Southern California Edison 115kV transmission line crossing the project site along Desert View Road. The substation area will be excavated for the transformer equipment and control building foundation, and oil containment area. Foundations for the substation will be reinforced concrete foundations.

Water Supply

Water will be required during construction for earthwork operations, primarily related to dust control for road construction, grading, and other site work. Construction is anticipated to last approximately 9 months. Water will be applied via water trucks. It is estimated that approximately 40,000 gallons of water per acre will be used for disking, leveling and recompacting the upper 12 inches of soil. This activity will occur during the first four weeks of site construction. Dust control is estimated to use approximately 200 gallons per acre per day. The 198-acre site and the 9-month construction period will result in a construction water requirement of approximately 48.03 acre feet. A minimal amount of water will be required for construction worker needs (e.g.,

drinking water, sanitation facilities). Bottled water and portable sanitation units will be used during construction.

For operational and maintenance activities, water will be needed for washing the solar panels and dust control as necessary.

Since the proposed Project will not be directly connected to a public water system, water during the construction period will be obtained from the Apple Valley Ranchos Water Company. Based on the proposed Project size, approximately 18,000 gallons will be required each time the panels are washed. Assuming the panels are washed four times per year, the total annual operational water use will be 0.22 acre-feet. An additional 163,350 gallons (0.50 AF) may be used annually to apply soil binder for dust suppression if needed. The total projected water use for operations and maintenance is approximately 235,350 gallons (0.72 AF) per year.

Signage

No signs other than the project contact information sign and those required for safety are being proposed.

Perimeter Fence

The perimeter of the Project site will be enclosed by a chain link fence with a maximum height of eight feet and access provided through a rolling gate located at the driveway off of Indian Trail. The main purpose of the fence is to prevent unauthorized access to the site.

Grading

Clearing and grubbing of the site will be performed as required, but no grading will be required except for the access roads, which will be created by blading and re-compacting native soil, and the concrete equipment pads, which will require engineered foundations.

Construction Schedule:

The construction activities are expected to be completed in approximately 24 months. The on-site workforce will consist of laborers, electricians, supervisory personnel, support personnel, and construction management personnel. Construction activities will be conducted consistent with San Bernardino County regulations regarding hours of construction. The project is expected to create 150 new jobs at peak crew size during the construction phase.

Decommissioning

The PV system will be decommissioned when the project's life is over. Most parts of the proposed system are recyclable. Panels typically consist of silicon, glass, and an aluminum frame. Tracking systems (not counting the motors and control systems) typically consist of steel and concrete. All of these materials can be recycled. Concrete from deconstruction is to be recycled. Local recyclers are available. Metal, scrap equipment and parts that do not have free flowing oil may be sent for salvage. Equipment containing any free flowing oil will be managed as waste and will have to be evaluated. Oil and lubricants removed from equipment will be managed as used oil -- a hazardous waste in California. Typical federal, state and local standards and regulations will apply.

Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement.):

- Mojave Desert Air Quality Management District
- California Department of Fish and Wildlife
- U.S. Department of Fish and Wildlife Service

EVALUATION FORMAT

This initial study is prepared in compliance with the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21000, et seq. and the State CEQA Guidelines (California Code of Regulations Section 15000, et seq.). Specifically, the preparation of an Initial Study is guided by Section 15063 of the State CEQA Guidelines. This format of the study is presented as follows. The project is evaluated based upon its effect on seventeen (17) major categories of environmental factors. Each factor is reviewed by responding to a series of questions regarding the impact of the project on each element of the overall factor. The Initial Study Checklist provides a formatted analysis that provides a determination of the effect of the project on the factor and its elements. The effect of the project is categorized into one of the following four categories of possible determinations:

Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less than Significant	No Impact
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Substantiation is then provided to justify each determination. One of the four following conclusions is then provided as a summary of the analysis for each of the major environmental factors.

1. **No Impact:** No impacts are identified or anticipated and no mitigation measures are required.
2. **Less than Significant Impact:** No significant adverse impacts are identified or anticipated and no mitigation measures are required.
3. **Less than Significant Impact with Mitigation Incorporated:** Possible significant adverse impacts have been identified or anticipated and the following mitigation measures are required as a condition of project approval to reduce these impacts to a level below significant. The required mitigation measures are: (List of mitigation measures)
4. **Potentially Significant Impact:** Significant adverse impacts have been identified or anticipated. An Environmental Impact Report (EIR) is required to evaluate these impacts, which are (List of the impacts requiring analysis within the EIR).

At the end of the analysis the required mitigation measures are restated and categorized as being either self-monitoring or as requiring a Mitigation Monitoring and Reporting Program.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

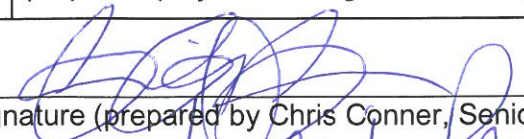
The environmental factors checked below will be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.


- | | | |
|---|---|---|
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Agriculture and Forestry Resources | <input type="checkbox"/> Air Quality |
| <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Geology / Soils |
| <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology / Water Quality |
| <input type="checkbox"/> Land Use/ Planning | <input type="checkbox"/> Mineral Resources | <input type="checkbox"/> Noise |
| <input type="checkbox"/> Population / Housing | <input type="checkbox"/> Public Services | <input type="checkbox"/> Recreation |
| <input type="checkbox"/> Transportation / Traffic | <input type="checkbox"/> Utilities / Service Systems | <input type="checkbox"/> Mandatory Findings of Significance |

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation, the following finding is made:

<input type="checkbox"/>	The proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION shall be prepared.
<input checked="" type="checkbox"/>	Although the proposed project could have a significant effect on the environment, there shall not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION shall be prepared.
<input type="checkbox"/>	The proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
<input type="checkbox"/>	The proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
<input type="checkbox"/>	Although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.


 Signature (prepared by Chris Conner, Senior Planner)


 Signature: David Prusch, Supervising Planner
 Land Use Services Department

10/28/13
 Date
 10/28/13
 Date

<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less than Significant with Mitigation Incorporated</i>	<i>Less than Significant</i>	<i>No Impact</i>
I. AESTHETICS - Will the project				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Substantially damage scenic resources, including but not limited to trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Create a new source of substantial light or glare, which will adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

SUBSTANTIATION: (Check if project is located within the view-shed of any Scenic Route listed in the General Plan):

- a) **Less than Significant Impact.** The proposed Project will not have a substantial adverse effect on a scenic vista as there are no state designated scenic highways in the vicinity of the project area.

The County General Plan Open Space Element, Policy OS 5.1. states that a feature or vista can be considered scenic if it:

- Provides a vista of undisturbed natural areas;
- Includes a unique or unusual feature that comprises an important or dominant portion of the viewshed; or,
- Offers a distant vista that provides relief from less attractive views of nearby features (such as views of mountain backdrops from urban areas).

The project site is zoned Rural Living (RL-10), (RL-20) and is relatively flat. The nearest mountains are the Granite Mountains located approximately one mile to the north. The solar equipment on site, comprising of PV modules mounted on tracker units and associated electrical equipment, will maintain a low profile – generally no more than ten feet high. The project will also include access roads and a chain link fence at the perimeter of the site. None of the proposed equipment will obstruct any view sheds in the area. Therefore, the proposed Project will not have a substantial adverse effect on a scenic vista or adversely change the visual character of the area; impacts will be less than significant.

- b) **No Impact.** The project will not substantially damage scenic resources or historic buildings within a state-designated scenic highway, as none exist onsite and the closest state designated scenic highway is more than 12 miles away.

- c) **Less than Significant Impact.** The proposed Project will have a low profile (ten feet max height) and minimal lighting; therefore, it will not substantially degrade the existing visual character or quality of the site and its surrounding. The current visual character of the Project site is typical of rural living areas consisting of flat lands surrounded by sparse residential development, and typical vegetation communities such as creosote bush, burro-weed, desert dandelion, and mustard. Human disturbance is minimal within the site. There are occasional trash piles, no structures or evidence of livestock grazing on site. There are also occasional Off Highway Vehicle (OHV) trails in

the area. The general area is sparsely developed with single family residential with lot sizes ranging from 5 acres to 20 acres in size.

Due to the distance from Highway 18, the low-angle viewing aspect, the natural topography, the actual ground coverage of the solar panels, and the low reflectivity of the solar panel surface, the project appears as rows of light-colored geometric shapes. The intervening view from Hwy 18 currently includes sporadic residential development throughout the landscape. The proposed Project blends well with the existing view.

- d) **Less than Significant Impact with Mitigation.** The proposed Project will not create a new source of substantial light or glare which will adversely affect day or nighttime views in the area. The project utilizes dark photovoltaic solar cells, which will track the sun to maximize solar exposure to the panels.

San Bernardino County Ordinance No. 3900 regulates glare, outdoor lighting, and night sky protection. Nighttime lighting associated with the proposed Project will be subject to County approval and compliance with San Bernardino County requirements. Specifically, lighting at the proposed facility will be installed at access gates and electrical equipment pads for safety, security or operational purposes. Lighting will be motion-activated and directed toward the ground from low elevation (<14 ft) poles. All lights will be shielded so that there is no upward directed light.

No significant adverse impacts related to Aesthetics are identified or anticipated. Therefore, no mitigation measures are required.

Issues	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant	No Impact
II. AGRICULTURE AND FORESTRY RESOURCES - In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Will the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland) as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Result in the loss of forest land or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SUBSTANTIATION: (Check if project is located in the Important Farmlands Overlay):

The proposed project is not located on Important Farmland, as mapped by the State of California. The site is located in an area that is considered rural desert land and is not located in an Agricultural Preserve area.

- a) **Less than Significant.** This site is identified as Grazing Land on the Farmland Mapping and Monitoring Program map prepared by the Department of Conservation. Grazing Land is considered land for which the existing vegetation is suited for grazing of livestock. The County of San Bernardino General Plan contemplated the loss of designated farmland in its 2007 EIR. In it, the County found that the loss of designated farmland would occur, especially in the project area. Approval of the project would authorize removal of vegetation suitable for grazing, but it would not constitute a significant loss of an agricultural resource. The project site is not considered prime farmland, unique farmland or farmland of statewide importance. Therefore, the project's impact to designated farmland is considered less than significant
- b) **No Impact.** The subject property is not designated or zoned for agricultural use and the proposed project does not conflict with any agricultural land use or Williamson Act land conservation contract.
- c) **No Impact.** The subject property is not forest land or timberland, and the project does not propose re-zoning.
- d) **No Impact.** The subject property is not forest land.
- e) **No Impact.** The proposed Project will not involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use. The current General Plan land use designation for the proposed Project area is Rural Living, which allows the development of renewable energy generation facilities with a Conditional Use Permit [Development Code Section 85.06].

No significant adverse impacts related to Agriculture and Forestry Resources are identified or anticipated. Therefore, no mitigation measures are required.

Issues	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant	No Impact
III. AIR QUALITY - Where available, the significance criteria established by the applicable air quality management or air pollution control district might be relied upon to make the following determinations. Will the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SUBSTANTIATION: (Discuss conformity with the Mojave Air Quality Management Plan, if applicable):

- a) **Less than Significant Impact.** The proposed Project will not conflict with or obstruct implementation of the applicable air quality plan. The project site is located within the Mojave Desert Air Basin (MDAB) and is within the jurisdiction of the Mojave Desert Air Quality Management District (MDAQMD). The Air Quality Management Plan (AQMP) provides a program for obtaining attainment status for key monitored air pollution standards, based on existing and future air pollution emissions resulting from employment and residential growth projections. The AQMP is developed using input from various agencies' General Plans and other projections for population and employment growth. While the proposed Project is not identified specifically in the County of San Bernardino General Plan, it will not generate new homes or employment opportunities that will change the County's projections. Given that the proposed Project will not alter the population or employment projections considered during the development of the AQMP, and considering the minor emissions attributable to the proposed Project during operation (refer to discussion in item III (b) below), impacts associated with AQMP consistency will be less than significant.

In order to limit the production of fugitive dust during implementation of the proposed project, construction activities will be conducted in accordance with MDAQMD Rules 403 - *Fugitive Dust* and 403.2 - *Fugitive Dust Control for the Mojave Desert Planning Area*. This includes using water trucks to minimize the production of visible dust emissions to 20 percent capacity in areas of where grading or vegetation removal occurs, within the staging areas, and on any unpaved roads utilized during project construction.

Over its lifetime, the proposed Project will not violate the regulations set forth by the MDAQMD Rule

Book or CEQA and Federal Conformity Guidelines. Electricity generation via the use of photovoltaic systems does not generate chemical emissions that will negatively contribute to air quality. The proposed Project is designed to limit the amount of vegetation that will be removed and grading required for access, which will limit fugitive dust generated during the life of the project.

- b) **Less than Significant with Mitigation Incorporated.** The proposed Project will not violate any air quality standard or contribute substantially to an existing or projected air quality violation (LSA, Air Quality Analysis, 2013.) Air quality impacts will include construction exhaust emissions generated from construction equipment, vegetation clearing and earth movement activities (if necessary), construction workers' commute, and construction material hauling for the entire construction period. These activities will involve the use of diesel- and gasoline-powered equipment that will generate emissions of criteria pollutants such as Carbon Monoxide (CO), Nitrogen Oxides (NO_x), Reactive Organic Gases (ROG) or Volatile Organic Compounds (VOC), Sulfur Oxides (SO_x), Particulate Matter less than 10 microns (PM₁₀), and Particulate Matter less than 2.5 microns (PM_{2.5}). The project construction activities also represent sources of vehicle re-entrained fugitive dust (which includes PM₁₀), a potential concern because the proposed Project is in a non-attainment area for ozone and PM-10.

Construction-related increases in emissions of fugitive dust, exhaust from construction equipment, and employee commute vehicles will be temporary and localized during construction. The proposed Project will also include dust abatement measures that will limit the generation of pollutants, including particulate matter 10 microns or less in diameter (PM₁₀), consistent with Rule 403.2 *Fugitive Dust Control for the MDPA*. This includes using water trucks to minimize the production of visible dust emissions to 20 percent opacity in areas where grading or vegetation removal occurs, within the staging areas, and on any unpaved roads used during project construction. Additionally, water application will be used to increase moisture content and reduce dust generation during construction. In the context of the project design and construction features, the proposed Project construction-related air quality impacts will be negligible.

Electricity generation via the use of photovoltaic systems does not generate chemical emissions that will negatively affect air quality. The proposed Project is designed to limit the amount of vegetation that will be removed and limit the amount of grading required for access, which will minimize fugitive dust generated during the life of the project.

During operation, one to two maintenance vehicles (generally pickup trucks) will routinely travel to the site per month, producing an insignificant amount of emissions.

- c) **Less than Significant Impact.** The proposed Project will not result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors) (LSA, Air Quality Analysis, 2013.) The project will contribute criteria pollutants in the area during the short-term project construction period. None of the activities associated with the proposed Project will create a substantial permanent increase in the emissions of criteria pollutants that will be cumulatively considerable. Occasional patrolling and routine maintenance and repairs of above facilities will have no impact on the emissions of criteria pollutants that will be cumulatively considerable. There are no sources of potential long-term air impacts associated with the implementation of the proposed project. Therefore, impacts will be less than significant.
- d) **Less than Significant Impact.** The proposed Project will not expose sensitive receptors to substantial pollutant concentrations (LSA, Air Quality Analysis, 2013.) The MDAQMD defines sensitive receptors as residences, schools, daycare centers, playgrounds and medical facilities (MDAQMD 2009). Residences in the project area will be exposed to short-term construction air quality impacts associated with construction exhaust emissions generated from construction

equipment, vegetation clearing, construction workers' commute, and construction material hauling during the construction period. There will be no air quality impacts from project operation: electricity generation via the use of photovoltaic systems does not generate chemical emissions that will negatively contribute to air quality. The County's general conditions and standards as well as project-specific design and construction features incorporated into the proposed Project such as dust suppression techniques per MDAQMD's Rule 403 will reduce any potential impacts from the project. No significant adverse impacts are identified or anticipated and no additional mitigation measures are required.

- e) **No Impact.** The proposed Project will not create objectionable odors that will affect a substantial number of people. Electricity generation via the use of photovoltaic systems does not generate chemical emissions that will negatively affect air quality or produce objectionable odors. Potential odor generation associated with the proposed Project will be limited to construction sources such as diesel exhaust and dust but these will be temporary and not be substantial (LSA, Air Quality Analysis, 2013.) No significant odor impacts related to project implementation are anticipated due to the nature and short-term extent of potential sources, as well as the intervening distance to sensitive receptors. Therefore, the operation of the project will have a less than significant impact associated with the creation of objectionable odors affecting a substantial number of people.

Possible significant adverse impacts have been identified or anticipated and the following mitigation measures are required as conditions of project approval to reduce these impacts to a level below significant.

The project will be subject to air quality regulations implemented by the Mojave Desert Air Quality Management District (MDAQMD), notably the nuisance and dust control regulations of MDAQMD Rules 402 and 403. In addition to these requirements, the following mitigation measures are recommended to reduce potential impacts of the project:

Mitigation Measures:

AQ-1 AQ/Dust Control Plan. The developer shall prepare, submit and obtain approval from County Planning of a Dust Control Plan (DCP) consistent with MDAQMD guidelines and a letter agreeing to include in any construction contracts/ subcontracts a requirement that project contractors adhere to the requirements of the DCP. The DCP shall include the following elements to reduce dust production:

- a) Exposed soil shall be kept continually moist through waterings to reduce fugitive dust during all grading/construction activities. (Minimum twice daily).
 - b) Street sweeping shall be conducted when visible soil accumulations occur along site access roadways to remove dirt dropped by construction vehicles.
 - c) Site access driveways and adjacent streets shall be washed daily, if there are visible signs of any dirt track-out at the conclusion of any workday.
 - d) Construction Vehicle tires shall be washed prior to leaving the project site.
 - e) All trucks hauling dirt away from the site shall be covered.
 - f) During high wind conditions (i.e., wind speeds exceeding 25 mph), areas with disturbed soil shall be watered hourly and activities on unpaved surfaces shall cease until wind speeds no longer exceed 25 mph.
 - g) Storage piles that are to be left in place for more than three working days shall either be sprayed with a non-toxic soil binder, covered with plastic or revegetated.
- [Measure AQ-1 – Prior to Grading/Land Disturbance]

Issues	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant	No Impact
IV. BIOLOGICAL RESOURCES - Will the project:				
a) Have substantial adverse effects, either directly or through habitat modifications, on any species identified as a candidate, sensitive or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc...) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

SUBSTANTIATION: (Check if project is located in the Biological Resources Overlay or contains habitat for any species listed in the California Natural Diversity Database):
Category N/A

A habitat assessment for the Mohave Ground Squirrel was prepared by Ryan Young and RCA Associates on October 10, 2011, a focused Desert Tortoise Survey was prepared by RCA Associates on October 7, 2011, and a habitat assessment and Burrowing Owl Burrow Survey was prepared by RCA Associates on October 12, 2012.

- a) **Less than Significant with Mitigation Incorporated.** Based on the above referenced surveys prepared by RCA Associates and Ryan Young, the site supports a relatively undisturbed creosote bush community. Co-dominants include burrobrush and Joshua trees. A wide variety of other

perennials were observed and some of the more common species included cholla, cheesebush, paperbag plant, Indian ricegrass, buckwheat, spiny hop-sage and winterfat. Dominant annuals included schisms, yellow buck wheat, vinegar weed and desert trumpet.

Wildlife species were identified during the field investigations conducted on September 21 through 25, 2011 and October 8, 9 and 10, 2012. Birds identified included sage sparrows, morning doves, ravens and western kingbirds. A solitary northern harrier, which is a California Species of special concern, was also observed on the property on two separate occasions. A few side-blotched lizards and western whiptail lizards were the only live reptiles observed during the field investigations. Marriams's Kangaroo rats may also be present on the site given the presence of numerous small mammal burrows observed throughout the property.

Burrowing Owl

The site supports suitable habitat for burrowing owl based on the results of the Phase I surveys and three occupiable burrows were identified during the Phase II surveys. The nearest documented Owl populations are located approximately 5.5 miles west of the site and 7.5 miles west of the site. Due to the lack of nearby populations and presence of only three occupiable burrows onsite, additional surveys were not recommended or conducted (Habitat Assessment & Burrowing Owl Burrow Survey, RCA Associates, October, 2012.)

The loss of potential owl habitat is not significant because 190 acres of the 358 acre project site will remain undeveloped. However, due to the migratory nature of the species, there is still potential for the owl to move onsite prior to construction potentially resulting in impacts to the species. The implementation of Mitigation Measures requiring pre-construction surveys and passive relocation (BIO-2), a Worker Environmental Awareness Program (BIO-6), and presence of a biological monitor during construction (BIO-1) will reduce potential impacts to a level below significant.

Desert Tortoise

The desert is the largest reptile in the arid southwest United States, and it historically occupied a range that included a variety of desert communities in southeastern California. Today, populations are largely fragmented and studies indicate a steady and dramatic decline over most of its former range. A highly contagious respiratory disease has infected tortoise populations over the last 20+ years, primarily in the western Mojave Desert region, which has had a very detrimental impact on population levels. Given the continued habitat loss and the rapid decline in numbers of tortoises brought about by the disease, the U.S. Fish and Wildlife Service exercised its emergency authority and determined tortoise populations north and west of the Colorado River to be an endangered species under the Endangered Species Act of 1973. On April 2, 1990, the U.S. Fish and Wildlife Service (USFWS) officially listed the desert tortoise as a threatened species under the Endangered Species Act of 1973.

During the protocol surveys conducted on the site, three partial tortoise carcasses were observed. Two of the carcasses were located in the northern portion of the site and one carcass was located near the southeast corner. In addition to the carcasses, three inactive/historic tortoise burrows were identified during the field investigations. Two of the burrows were observed near the boundary of the property and one burrow was located on the southeast portion of the site. Given the presence of documents tortoise population a few miles northeast of the site and the presence of tortoise sign within the boundaries of the property, tortoise could potentially occur on the site in the near future. However, no live tortoises were identified during the protocol surveys; consequently, the population levels may be very low in the area. The protocol survey results outlined in the RCA Associates are valid for one year as per CDFW and USFWS requirements, and an additional survey may be required if the 12-month time limit is exceeded before site clearing activities are commenced. However, regardless of results of the tortoise survey, desert tortoise cannot be taken under State and federal law. The survey report and any mitigation included do not constitute authorization for incidental take of the desert tortoise. Given the presence of tortoise sign on the property, USFWS

and CDFG must be contacted to discuss the results of the protocol survey.

Construction of the proposed project will have a direct impact on habitat that has been inhabited by tortoises in the past; however, the proposed project is not expected to impact any existing populations of live tortoises based on the results of the September, 2011 protocol surveys. The absence of any live tortoises or active burrows indicate that population levels on the site, as well as in the immediate area, have been significantly reduced over the last few decades due to a variety of activities including human impacts, habitat loss, and the presence of the wide spread respiratory disease.

The potential for project-related impacts to Mojave desert tortoises would be limited to individuals that either occupied the site but went undetected during protocol surveys or that were not present on-site during the surveys but colonized the area subsequently. Although unlikely, these impacts would be potentially significant, absent mitigation, due to the very high level of statutory protection afforded this species. These impacts would be reduced to a less than significant level through Mitigation Measures requiring the implementation of a Worker Environmental Awareness Program (BIO-2), presence of a biological monitor during construction (BIO-3), installation of tortoise exclusion fencing around disturbance zones (BIO-7), and pre-construction surveys for this species (BIO-8).

Mohave Ground Squirrel

The Mohave ground squirrel has been listed by the CDFW as a threatened species, thereby giving the animal protection under the California Endangered Species Act. The species is known to occur in the western Mojave Desert in portions of four counties, including Inyo, Kern, San Bernardino, and Los Angeles. The distribution of the Mohave ground squirrel is quite limited as compared to the distribution of other ground squirrel species. The Mohave ground squirrel is found in several habitat types throughout the Mojave Desert including creosote bush scrub, salt scrub, and Joshua tree woodland communities. Degradation and destruction of the species' habitat and isolation of individual populations appear to be the primary factors in the species' decline.

Based on the habitat assessment prepared by Ryan Young and RCA Associates, it was determined that the site supports suitable habitat (creosote bush community) for the Mohave ground squirrel. This conclusion was based on the following criteria:

1. Proximity of historic and recent records
2. Creosote bush community that is frequently associated with the species.
3. Connectivity to undisturbed habitat in the surrounding area.
4. Numerous small mammal burrows present throughout the site.
5. Property is within the known distribution of the Mohave ground squirrel.

There is no designated critical habitat for the Mohave ground Squirrel in the immediate area nor was there any proposed critical habitat in the area. Regardless of the results of the habitat assessment, Mohave ground squirrels cannot be taken under State law.

Construction of the project will have a direct impact on the potential Mohave ground squirrel habitat. The site does support suitable habitat for the species and populations of the species may be present on the site based on past observations of the species in the immediate area. Implementation of Mitigation Measure BIO-5 which requires the applicant to apply for an Incidental Take Permit (2081 Permit) from CDFW or conduct a live-trapping survey will reduce impacts to a level below significant.

- b) **No Impact.** The project implementation will not have any impacts to sensitive or regulated habitat because the project site is devoid of native riparian vegetation or other sensitive natural community identified in local or regional plans, policies, regulations, or by the CDFW or USFWS.
- c) **No Impact.** No waters or wetlands that fall under the jurisdiction of the U.S. Army Corps of Engineers (ACOE), California Regional Water Quality Control Board (RWQCB), and/or CDFW are

found on the proposed Project area (Preliminary Drainage Study, United Engineering Group, 2011). No indicators of hydrologic activity (topographical or geological), hydric soils, or hydrophytic vegetation were observed onsite. In addition, no blue-line streams are found on the Sunfair U.S. Geological Survey (USGS) 7.5-minute quadrangle in the vicinity of the project area.

- d) **Less than Significant with Mitigation Incorporated.** The project will not have an effect on migratory fish, but may have impacts on the Burrowing Owl. See section A above.
- e) **Less than Significant with Mitigation Incorporated.** The County Development Code Section 88.01.060 (Desert Native Plant Protection) provides regulations for the removal or harvesting of specified desert native plants in order to preserve and protect the plants and to provide for the conservation and proper use of desert resources. According to the Biological Report prepared by RCA Associates the site supports creosote bush community, Mojave yuccas and Joshua trees. The Joshua trees and the Mojave yuccas are listed in 88.01.060 (c) of the County Development Code as protected trees. According to the field survey prepared by RCA Associates there is a total of 662 Joshua trees and Mojave yuccas in the northern portion of the project and approximately 1,467 in the southern portion of the site.

Prior to any land disturbance the developer shall prepare and submit a native tree removal plan indicating exactly which trees or plants are proposed to be removed or relocated. The plan shall be prepared by a Desert Native Plant Expert in accordance with the County's Plant Protection and Management Ordinance. Implementation of these Mitigation Measures (BIO-10 – BIO-12) will reduce impacts to a level below significant.

- f) **Less than Significant.** The project area is not located within an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan. There will be no take of critical habitat and, therefore, no land use conflict with existing management plans will occur.

Possible significant adverse impacts have been identified or anticipated and the following mitigation measures are required as conditions of project approval to reduce these impacts to a level below significant.

Mitigation Measures

BIO-1 Biological Monitor. Prior to issuance of a grading permit, a qualified biologist shall be retained by the Applicant as the biological monitor subject to the approval of the County of San Bernardino. The biological monitor shall be present at all times during vegetation clearing or ground disturbance, and shall ensure that impacts to biological resources are avoided or minimized to the fullest extent possible. When construction activities have progressed to the point where biological resources are no longer present, as determined by the biological monitor, biological monitoring in the area may be reduced or discontinued with approval from the County of San Bernardino. The biological monitor shall have the authority to stop specific grading or construction activities if violations of mitigation measures or any local, state, or federal laws are suspected. [Mitigation Measure BIO-1 – Prior to Grading/Land Disturbance]

BIO-2 Pre-Construction Burrowing Owl Surveys and Passive Relocation. Within 14 days prior to ground disturbance, the Applicant shall retain a qualified biologist to conduct burrowing owl surveys within the area to be disturbed. The survey shall be performed by walking parallel transects spaced no more than 20 meters apart, and shall be focused on detecting burrows that are occupied, or are suitable for occupation, by the burrowing owl. The results of the surveys, including graphics showing the locations of any active burrows detected and any avoidance measures required, shall be submitted to the County

of San Bernardino and CDFG within 14 days following completion of the surveys. If active burrows are detected, the following take avoidance measures shall be implemented:

- If burrowing owls are observed using burrows on-site during the non-breeding season (September through January, unless determined otherwise by a qualified biologist based on field observations in the region), occupied burrows shall be left undisturbed, and no construction activity shall take place within 300 feet of the burrow where feasible (see below).
- If avoiding disturbance of owls and owl burrows on-site is infeasible, owls shall be excluded from all active burrows through the use of exclusion devices placed in occupied burrows in accordance with California Burrowing Owl Consortium (1993) protocols. Specifically, exclusion devices, utilizing one-way doors, shall be installed in the entrance of all active burrows. The devices shall be left in the burrows for at least 48 hours to ensure that all owls have been excluded from the burrows. Each of the burrows shall then be excavated by hand and/or mechanically refilled to prevent reoccupation. Exclusion shall continue until the owls have been successfully excluded from the disturbance area, as determined by a qualified biologist.
- Any active burrowing owl burrows detected on-site during the breeding season (February through August, unless determined otherwise by a qualified biologist based on field observations in the region), shall not be disturbed. Construction activities shall not be conducted within 300 feet of an active on-site burrow at this season.

[Mitigation Measure BIO-2 – Prior to Grading/Land Disturbance]

BIO-3 Mojave Desert Tortoise Exclusion Fencing. During the months of April, May, September, or October prior to initiation of construction activities, the Applicant will retain a qualified biologist to conduct Mojave desert tortoise surveys in accordance with the most recent USFWS survey protocol for this species. If Mojave desert tortoises or their recent sign are detected, the Applicant shall not initiate construction, and shall instead contact the USFWS and CDFW to develop an avoidance strategy and/or seek authorization for incidental take of Mojave desert tortoise.

If survey results are negative, the Applicant shall erect a tortoise exclusion fence surrounding all portions of the site that are proposed for solar development or other ground disturbance. The exclusion fence shall be installed in accordance with the specifications set forth in Chapter 8 of the USFWS' Desert Tortoise Field Manual (USFWS 2009), and installation of the fence shall be overseen by a biologist familiar with the installation of tortoise exclusion fencing. Following installation of the tortoise exclusion fence, the Applicant shall retain a qualified biologist to conduct a second, full-coverage pedestrian survey of all areas encompassed by the exclusion fence. If Mojave desert tortoises or their recent sign are detected, the Applicant shall immediately remove portions of the exclusion fence to prevent entrapment of tortoises, and shall contact the USFWS and CDFW to develop an avoidance strategy and/or seek authorization for incidental take of Mojave desert tortoise. If no tortoises or their sign are detected during the second survey, construction activities may commence.

All fence inventories shall be inspected at least twice per year. However, during the first two (2) to three (3) years all inspections shall be conducted quarterly at a minimum, to identify and document breaches and problem areas such as wash-outs, vandalism, and accident. Global positioning system (GPS) coordinates and mileages from existing highway markers shall be recorded in order to pinpoint problem locations and build a database of problem locations that may require more frequent checking. Following two to three years of initial inspection, subsequent inspections shall focus on known problem areas which shall be inspected more frequently than twice per year. In addition to semi-annual inspections, problem areas prone to wash-outs shall be inspected following precipitation that produces potentially fence-damaging water flow. A database of problem areas shall be established whereby checking fences in such areas can be done efficiently. [Mitigation Measure BIO-3 – Prior to Grading/Land Disturbance]

BIO-4 Pre-Construction Mojave Desert Tortoise Surveys and Avoidance. Within 14 days prior to construction-related ground clearing and/or grading, the Applicant shall retain a qualified biologist to conduct surveys for signs of occupancy by the Mojave desert tortoise. Surveys shall cover the entire area proposed for disturbance, shall be conducted by walking parallel transects spaced no more than 10 meters apart, and shall focus on detecting any live tortoises or their sign, including carcasses, burrows, palates, tracks, and scat. Should any sign indicating the presence of Mojave desert tortoise be detected, the Applicant shall not proceed with ground clearing and/or grading activities in the area of the find, and shall instead contact the USFWS and CDFW to develop an avoidance strategy and/or seek authorization for incidental take of Mojave desert tortoise.

The results of the pre-construction surveys, including graphics showing the locations of any tortoise sign detected, and documentation of any avoidance measures taken, shall be submitted to the USFWS, CDFG, and the County of San Bernardino within 14 days of completion of the pre-construction surveys or construction monitoring to document compliance with applicable federal and state laws pertaining to the protection of Mojave desert tortoise. [Mitigation Measure BIO-4 – Prior to Grading/Land Disturbance]

BIO-5 Mohave Ground Squirrel. Prior to the issuance of Grading Permits or any land disturbing activities on site the applicant will need to apply for an Incidental Take Permit (2081 Permit) from the California Department of Fish and Wildlife (CDFW) and provide suitable mitigation fees for the purchase of compensatory mitigation. However, In lieu of applying for the Incidental Take Permit, the applicant may conduct a live-trapping survey to definitively determine the presence or absence of the species on site. The live trapping survey must be conducted during the spring months (March – June) and if the species is not detected during the trapping period, mitigation may not be required by CDFW. However, if the species is detected, the Take Permit and appropriate mitigation will be required. [Mitigation Measure BIO-5 – Prior to Grading/Land Disturbance]

BIO-6 Worker Environmental Awareness Program. Prior to any construction activities on the project site, the Applicant will implement a Worker Environmental Awareness Program (WEAP) to educate on-site workers about sensitive environmental issues associated with the Project. The program will be administered to all on-site personnel, including the Applicant's personnel, contractors, and all subcontractors, on the first day of work prior to the employee's commencing work on the site. The WEAP will place special emphasis on the protected species that have potential to occur within the site, including the Mojave desert tortoise, Burrowing owl, Mohave ground squirrel, among other plant and wildlife species. The program will include the following elements:

- A presentation, developed by or in consultation with a qualified biologist, discussing the sensitive biological resources with potential to occur on-site, and explaining the reasons for protecting these resources and penalties for non-compliance;
- Brochures or booklets, containing written descriptions and photographs of protected species as well as a list of site rules pertaining to biological resources, to be provided to all WEAP participants;
- Contact information for the project biological monitor, and instructions to contact the monitor with any questions regarding the WEAP presentation or booklets;
- An acknowledgement form, to be signed by each worker indicating that they received WEAP training and will abide by the site rules protecting biological resources; and,
- Conspicuous stickers, identifying the project and signifying WEAP completion, to be distributed immediately following WEAP training and required on personnel hard hats.
- The project Applicant will be responsible for ensuring that all on-site personnel, throughout the duration of project construction, receive WEAP training. A training log, to be signed by all on-site personnel immediately following WEAP training, will be maintained on the project site during construction to document compliance with this measure.

[Mitigation Measure BIO-6 – Prior to Grading/Land Disturbance]

- BIO-7** Nesting Bird Season. All clearing and grubbing of the project site should take place between August 15 and February 15. Winter site clearing shall insure that nesting birds are not present and impacted. In accordance with the Migratory Bird Treaty Act (MBTA), if vegetation removal shall occur during the bird-nesting season, generally February 15 to August 15, a qualified biologist ornithologist will examine the site to avoid impacts to nesting birds. shall conduct preconstruction bird nesting surveys within 200 feet (or up to 300 feet depending on topography or other factors and 500 feet for raptors) to avoid impacts to nesting birds. If active bird nest(s) are detected during the pre-construction nesting surveys, the qualified ornithologist will establish an adequate no disturbance buffer around the active nest(s) shall be established as determined by a qualified biologist until the nest(s) have fledged to ensure the nesting birds are not disturbed until the young birds have fledged. [Mitigation Measure BIO-7 – Prior to Grading/Land Disturbance]
- BIO-8** Permanent Perimeter Fencing. Prior to installation of the project's security fence, a pre-construction survey for desert tortoises within and adjacent to (within 500 feet) the project site should be performed. The survey shall be initiated within one (1) week of the fence installation, and concluding no more than 48 hours prior to installation. The survey should be conducted using pedestrian transects spaced at no more than 10 meters. A second pre-construction survey should be conducted within 24 hours of the fence installation, and be restricted to the fence alignment and its immediate area. Should any tortoises be discovered within the proposed development area or immediately adjacent to the proposed fenced area, a contingency plan (as described under the *County General Conditions, Project Design and Construction Features* section) shall be implemented. [Mitigation Measure BIO-8 – Prior to Grading/Land Disturbance]
- BIO-9** Biological Monitoring During Construction of Security Fence. During installation of the project's security fence which shall include tortoise exclusion fencing, a biologist experienced with desert ecology and desert tortoise biology shall be present to ensure that disturbance to the habitat on and near the project site is kept to a minimum, and to prevent take of tortoises. The biological monitor shall have the authority to stop construction activities if desert tortoises or their burrows are threatened, or if rules protecting tortoises and their habitat (i.e., adherence to speed limits, picking up trash, etc.) are not being followed by construction personnel. [Mitigation Measure BIO-9 – Prior to Grading/Land Disturbance]
- BIO-10** Native Tree Removal and Relocation Plan. Prior to any land disturbance the developer shall prepare and submit a native tree removal plan indicating exactly which trees or plants are proposed to be removed or relocated. The plan shall be prepared by a Desert Native Plant Expert in accordance with the County's Plant Protection and Management Ordinance, and shall be approved prior to any land disturbance and/or removal of any trees or plants. Every effort shall be made to minimize vegetation removal. Native vegetation shall be flagged for protection. A project revegetation plan would be prepared for areas of native habitat temporarily impacted. [Mitigation Measure BIO-10 – Prior to Grading/Land Disturbance]
- BIO-11** Transplanting and Relocation of Native Trees and Plants. All transplanting approved by the County of San Bernardino must be initiated and completed under the supervision of a Desert Native Plant Expert. Approval of such transplant must take into consideration the time of year, the plant's original and transplanted physical orientation, prevailing wind direction, soil type of the original and transplanted locations, and other related attributes which may affect the successful transplantation of the Joshua Tree(s) and Yuccas in question as determined by the Desert Native Plant Expert. Joshua Trees and Yuccas that are proposed to be removed shall be transplanted or stockpiled for future transplanting wherever possible. In the instance of stockpiling and/or transplanting the permittee has submitted and has had the approval of a Joshua Tree and Yucca maintenance plan prepared by a Desert Native Plant Expert. This plan shall include a schedule for maintenance and a statement by the Desert Native Plant Expert that this maintenance plan and schedule will be implemented under his/her supervision. The

schedule shall include the requirement that a maintenance report is required at the end of the project or at six (6) month intervals, evidence to the satisfaction of the Planning Section that the Desert Native Plant Expert has supervised the scheduled maintenance to the extent that all transplanted and stockpiled plants have been maintained in such a manner to insure the highest practicable survival rate. In the event that this report is not satisfactory, a tree and plant replacement plan and implementation schedule prepared by a Desert Native Plant Expert may be required. [Mitigation Measure BIO-11 – Prior to Grading/Land Disturbance]

BIO-12 Cactus Salvage Plan. Prior to issuance of a grading permit, the Applicant shall submit a Cactus Salvage Plan to the County of San Bernardino and the CDFG for approval. The Cactus Salvage Plan shall contain the following elements:

- A spatial inventory of all native cacti within the project site, including species and locations;
- A quantitative assessment of the numbers of each cactus species to be removed by the project; and,
- Proposed measures to retain as many cacti as is practical on the project site, and a spatial and quantitative description indicating the species and locations of cacti to be preserved.

[Mitigation Measure BIO-12 – Prior to Grading/Land Disturbance]

<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less than Significant with Mitigation Incorporated</i>	<i>Less than Significant</i>	<i>No Impact</i>
V. CULTURAL RESOURCES - Will the project				
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SUBSTANTIATION: (Check if the project is located in the Cultural or Paleontologic Resources overlays or cite results of cultural resource review):

A Cultural Resources Assessment was prepared by BCR Consulting for this project on March 20, 2012.

- a) **Less than Significant Impact.** BCR Consulting conducted a cultural resources assessment on the project in the Lucerne Valley area. The records search and field survey did not identify any cultural resources, including prehistoric archaeological sites or historic buildings, within the project boundaries. Furthermore, research results combined with surface conditions have failed to indicate sensitivity for buried cultural resources. Based on these results, BCR Consulting recommends that no additional cultural resources work or monitoring is necessary during proposed project activities associated with the Project. Therefore, no significant impacts related to archaeological or historical resources is anticipated and no further investigations are recommended for the proposed project unless:

The Project changes to include areas outside the current project boundaries;

Cultural materials are encountered during project activities.

Although the current study has not indicated sensitivity for cultural resources within the project boundaries, ground disturbing activities always have the potential to reveal buried deposits not observed on the surface during previous archaeological surveys. In the event of the discovery of buried cultural resources, project activities in the vicinity of the resources shall be temporarily halted, and a qualified archaeologist shall be consulted to assess the significance of the resource and to provide proper management recommendations. The proposed Project is anticipated to have a less than significant impact to cultural resources. Accordingly, no mitigation under CEQA or avoidance of the isolate will be required.

- b) **Less than Significant Impact.** The proposed Project will not cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5 (see Section V (a) above). However, as a precautionary measure the developer shall consult with a qualified archaeologist in the event that buried cultural deposits are encountered during any phase of construction (e.g., grading, grubbing, or vegetation clearing). In the event of the discovery of buried cultural resources,

project activities in the vicinity of the resources shall be temporarily halted, and a qualified archaeologist shall be consulted to assess the significance of the resource and to provide proper management recommendations.

- c) **No Impact.** Any disturbance to natural formations will be too small to be considered significant. Therefore, implementation of the proposed Project is anticipated to have no impact to a paleontological resource.
- d) **No Impact.** The project site is not located a known cemetery, and no human remains are anticipated to be disturbed during the construction phase. However, in accordance with applicable regulations, construction activities will halt in the event of discovery of human remains, and consultation and treatment will occur as prescribed by law.

No significant adverse impacts related to Cultural Resources are identified or anticipated. Therefore, no mitigation measures are required.

Issues	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant	No Impact
VI. GEOLOGY AND SOILS - Will the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i. Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map Issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ii. Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iii. Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iv. Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on or off site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Be located on expansive soil, as defined in Table 181-B of the California Building Code (2001) creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SUBSTANTIATION: (Check if project is located in the Geologic Hazards Overlay District):

- a) **Less than Significant Impact.** The entire San Bernardino County area is particularly susceptible to strong ground shaking and other geologic hazards. However, the proposed Project site is not located within an Alquist-Priolo Earthquake fault zone. While the potential for onsite ground rupture cannot be totally discounted (e.g., unmapped faults could conceivably underlie the project corridor), the likelihood of such an occurrence is considered low due to the absence of known faults within the site.

The proposed Project will not include any habitable structures. Nonetheless, the design of any structures onsite will incorporate measures to accommodate projected seismic loading, pursuant to existing guidelines such as the "Greenbook" Standard Specifications for Public Works Construction (2006) and the International Code Council's (ICC) 2007 California Building Code (CBC). Specific

standards that may be used for the proposed Project include proper fill composition and compaction; anchoring (or other means of for securing applicable structures); and use of appropriate pipeline materials, dimensions and flexible joints. Based on the incorporation of applicable standards into project design and construction, potential project impacts associated with strong seismic ground shaking will be less than significant.

ii) Less than Significant Impact. The project site is within a seismically active region and is potentially subject to strong ground acceleration from earthquake events along major regional faults. The San Andreas Fault as a whole is capable of generating significant seismic activity but it has not been particularly active along the southern segment. The North Frontal Fault zone is located approximately 1.5 miles southeast of the project. The project design would incorporate measures to accommodate projected seismic loading, pursuant to existing guidelines such as the "Greenbook" Standard Specifications for Public Works Construction (2006) and the International Code Council's (ICC) 2007 California Building Code (CBC). Specific measures that may be used for the proposed project include proper fill composition and compaction; anchoring (or other means of for securing applicable structures); and use of appropriate pipeline materials, dimensions and flexible joints. Based on the incorporation of applicable measures into project design and construction, potential project impacts associated with strong seismic ground shaking would be less than significant.

iii) Less than Significant Impact. Liquefaction is the phenomenon whereby soils lose shear strength and exhibit fluid-like flow behavior. Loose granular soils are most susceptible to these effects, with liquefaction generally restricted to saturated or near-saturated soils at depths of less than 50 feet. Other types of seismic-related ground failure include ground rupture (as discussed in Section VI.a.i), landslides (as discussed in Section VI.a.iv), dynamic ground subsidence (or settlement) and lateral spreading. The soils underlying the site include undifferentiated Quaternary alluvial soils emanating from the local Mesozoic granitic and gneissic rock exposures at the higher elevations. According to the UC Davis Soil Resource Laboratory, these soils are well-drained and are not susceptible to liquefaction. Furthermore, the proposed Project design and construction will incorporate a number of standard measures to address potential seismic-related liquefaction and related effects such as settlement and lateral spreading, including similar types of measures from the CBC and Greenbook standards as noted above in Section VI.a.ii. Based on the incorporation of applicable standards into project design and construction, potential project impacts associated with seismic-related liquefaction and settlement will be less than significant.

iv) No Impact. The proposed Project will not have any risks associated with landslides. Landslides are the downslope movement of geologic materials. The stability of slopes is related to a variety of factors, including the slope's steepness, the strength of geologic materials, and the characteristics of bedding planes, joints, faults, vegetation, surface water, and groundwater conditions. The Project area is relatively flat terrain where landslides have not historically been an issue; therefore, no significant impacts are anticipated with respect to seismic-related (or other) landslide hazards.

- b) **Less than Significant Impact.** No substantial grading or vegetation removal will occur for the installation of the proposed Project. It is expected that vegetation will be cleared for the footprints of the individual tracker units, but those will be situated above the ground at a maximum height of ten feet. This allows the retention of some of the vegetation onsite, which will reduce wind speeds near ground level and result in less erosion.
- c) **Less than Significant Impact.** The mapped soil type-- undifferentiated Quaternary alluvial soils-- appears to be conducive to the development of the proposed project. The surface soils are disturbed, have low strength characteristics and are highly compressible when saturated. The Project design and construction methods, including recompacting surface soils in the area of structure will stabilize the surface soils; thereby, reducing potential impacts of the mapped soils to a

less than significant level.

The project area is relatively flat terrain where landslides have not historically been an issue. Furthermore, excavation associated with the proposed Project is not anticipated to extend beyond existing fill materials and alluvial deposits. Potential liquefaction (and related settlement and lateral spreading effects) and landslide impacts are discussed above in Sections VI.a.iii and VI.a.iv, respectively. Based on the described conditions and project design and construction methods, no significant impacts related to geologic instability are anticipated as a result of project implementation.

- d) **Less than Significant.** Expansive (or shrink-swell) behavior is attributable to the water-holding capacity of clay minerals and can adversely affect the structural integrity of facilities including underground pipelines. The onsite soils and other materials are generally granular and considered non-critically expansive. Therefore, impacts will be less than significant.
- e) **No Impact.** The project does not propose to use septic tanks or alternative wastewater disposal systems; therefore, no impacts are anticipated.

No significant adverse impacts related to Geology and Soils are identified or anticipated. Therefore, no mitigation measures are required.

	<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less than Significant with Mitigation Incorporated</i>	<i>Less than Significant</i>	<i>No Impact</i>
VII	GREENHOUSE GAS EMISSIONS - Will the project:				
	a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	b) Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SUBSTANTIATION:

- a) **Less than Significant Impact.** The County's Greenhouse Gas Emissions Reduction Plan (GHG Plan) was adopted on December 6, 2011 and became effective on January 6, 2012. The GHG Plan establishes a GHG emissions reduction target for the year 2020 that is 15 percent below 2007 emissions. The Plan is consistent with AB 32 and sets the County on a path to achieve more substantial long-term reduction in the post-2020 period. Achieving this level of emissions will ensure that the contribution to greenhouse gas emissions from activities covered by the GHG Plan will not be cumulatively considerable.

In 2007, the California State Legislature adopted Senate Bill 97 (SB 97) requiring that the CEQA Guidelines be amended to include provisions addressing the effects and mitigation of GHG emissions. New CEQA Guidelines have been adopted that require: inclusion of a GHG analyses in CEQA documents; quantification of GHG emissions; a determination of significance for GHG emissions; and, adoption of feasible mitigation to address significant impacts. The CEQA Guidelines [Cal. Code of Regulations Section 15083.5 (b)] also provide that the environmental analysis of specific projects may be tiered from a programmatic GHG plan that substantially lessens the cumulative effect of GHG emissions. If a public agency adopts such a programmatic GHG Plan, the environmental review of subsequent projects may be streamlined. A project's incremental contribution of GHG emissions will not be considered cumulatively significant if the project is consistent with the adopted GHG plan.

Implementation of the County's GHG Plan is achieved through the Development Review Process by applying appropriate reduction requirements to projects, which reduce GHG emissions. All new development is required to quantify the project's GHG emissions and adopt feasible mitigation to reduce project emissions below a level of significance. A review standard of 3,000 metric tons of carbon dioxide equivalent (MTCO₂e) per year is used to identify and mitigate project emissions. For projects exceeding 3,000 MTCO₂e per year of GHG emissions, the developer may use the GHG Plan Screening Tables as a tool to assist with calculating GHG reduction measures and the determination of a significance finding. Projects that garner 100 or more points in the Screening Tables do not require quantification of project-specific GHG emissions. The point system was devised to ensure project compliance with the reduction measures in the GHG Plan such that the GHG emissions from new development, when considered together with those from existing development, will allow the County to meet its 2020 target and support longer-term reductions in GHG emissions beyond 2020. Consistent with the CEQA Guidelines, such projects are consistent with the Plan and therefore are determined to have a less than significant individual and cumulative

impact for GHG emissions.

Greenhouse gas emissions resulting from the construction and operation of the proposed Project were quantified and reported in a technical memorandum (LSA, Air Quality Analysis, 2013.) Results of the analysis show that construction of the project will result in the generation of approximately 6,000 lbs/day of CO₂e over the anticipated 9 months of construction. Table VII-1 below details the estimated emissions. However, the project is expected to reduce regional CO₂e emission by 165,000 metric tons annually resulting in the project fully offsetting its construction emissions in less than 1 week of operation. These emissions are far below San Bernardino County's significance threshold of 3,000 MTCO₂e per year and are therefore consistent with the County of San Bernardino's September 2011 Greenhouse Gas Emissions Reduction Plan and would present a less than significant impact for GHG emission.

Table VII-1

Emissions Source	# of units	Hours per day	SCAQMD Off-Road EF ¹								
			Diesel Emission Factors (lbs/hour)								
			CO	VOC	NO _x	SO _x	PM ₁₀	PM _{2.5}	CO ₂	CH ₄	
Phase 1											
Scraper	2	8	1.0395	0.2783	2.4118	0.0027	0.1005	0.0925	262.49	0.0251	
Backhoe	2	8	0.0934	0.0192	0.1399	0.0002	0.0077	0.0071	16.698	0.0017	
Phase 2											
Pile Drivers	3	8	0.3765	0.0872	0.7938	0.0013	0.033	0.0304	122.66	0.0079	
Backhoe	2	8	0.0934	0.0192	0.1399	0.0002	0.0077	0.0071	16.698	0.0017	
Lifts	2	8	0.1925	0.0529	0.3059	0.0004	0.0202	0.0186	34.722	0.0048	
Crane	1	8	0.4737	0.1348	1.1934	0.0014	0.0508	0.0468	128.64	0.0122	
	# of units	Miles per day	EMFAC2011: 2013 Factors								Speed (mph)
			Diesel Emission Factors (gms/mi)								
			CO	VOC	NO _x	SO _x	PM ₁₀	PM _{2.5}	CO ₂	CH ₄	
Superintendent Truck	1	10	0.5594	0.0989	0.5686	0.009	0.0819	0.0754	377.48	0.06	15
Grade Checker Truck	1	10	0.5594	0.0989	0.5686	0.009	0.0819	0.0754	377.48	0.06	15
Delivery Trucks	2	20	0.5594	0.0989	0.5686	0.009	0.0819	0.0754	377.48	0.06	15
Water Truck	2	56	0.5594	0.0989	0.5686	0.009	0.0819	0.0754	377.48	0.06	15
Gasoline Emission Factors (gms/mi)											
Worker Commute	45	40	1.2915	0.0346	0.1255	0.003	0.0015	0.0014	287.01	0.018	50

¹ From SCAQMD web site: <http://www.aqmd.gov/ceqa/handbook/offroad/offroad.html>, downloaded 5/2/2013.

OffRoad Diesel PM_{2.5} calculated assuming the PM_{2.5} fraction of Diesel PM₁₀ is 0.920

² SO_x and CH₄ emissions factors from EMFAC2007 as EMFAC2011 does not include these two.

CH₄ = methane

CO = carbon monoxide

CO₂ = carbon dioxide

gms/mi = grams per mile

lbs/hour = pounds per hour

mph = miles per hour

NO_x = nitrogen oxides

PM_{2.5} = particulate matter less than 2.5 microns in diameter

PM₁₀ = particulate matter less than 10 microns in diameter

SCAQMD = South Coast Air Quality Management District

SO_x = sulfur oxides

VOC = volatile organic compound

Moreover, the construction of this solar facility will generate "green" electric power generation that would otherwise be produced with fossil fuels with much higher GHG emissions. The proposed Project thus would result in a net environmental benefit regarding GHG emissions.

- b) **No Impact.** The proposed Project would produce solar electricity and is consistent with the County of San Bernardino Greenhouse Gas Emissions Reduction Plan. (See discussion above in Item a).

No significant adverse impacts related to Greenhouse Gas Emission are identified or anticipated. Therefore, no mitigation measures are required.

	<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less than Significant with Mitigation Incorporated</i>	<i>Less than Significant</i>	<i>No Impact</i>
VIII	HAZARDS AND HAZARDOUS MATERIALS - Will the project:				
a)	Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b)	Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c)	Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d)	Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, will it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e)	For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, will the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f)	For a project within the vicinity of a private airstrip, will the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g)	Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h)	Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

SUBSTANTIATION:

- a) **Less than Significant Impact.** Implementation of the proposed Project will not entail the routine transport, use or disposal of hazardous materials, with the potential exception of short-term construction-related substances such as fuels, lubricants, adhesives, solvents and asphalt wastes. The potential risk associated with the accidental discharge during use and storage of such

construction-related hazardous materials during project construction is considered low because the handling of any such materials will be addressed through the implementation of Best Management Practices (BMPs) pursuant to the intent of the National Pollutant Discharge Elimination System (NPDES) General Construction Permit.

- b) **Less than Significant Impact.** The proposed Project will not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. With the exception of construction-related hazards such as fuels, lubricants, adhesives, solvents and asphalt wastes, the proposed Project will not generate or require the use or storage of significant quantities of hazardous substances. The photovoltaic panels used in the proposed Project are environmentally sealed collections of photovoltaic cells that require no chemicals and produce no waste materials. There is no a battery backup component, thus minimizing the need for transporting, using, or disposing of the hazardous materials that may be associated with the project. Furthermore, standard operating procedures will prevent the use of these materials from causing a significant hazard to the public or environment.
- c) **No Impact.** There are no existing or proposed schools within one-quarter mile of the proposed Project site. Additionally, operation and maintenance of the project will not produce hazardous emissions. No significant adverse impacts are anticipated and therefore, no mitigation measures are required.
- d) **No Impact.** The Project site is not located on a known site that is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. The proposed Project shall not create a significant hazard to the public or the environment. No impacts to this topic shall occur as a result of implementing the proposed Project and, therefore, no mitigation measures are required.
- e) **No Impact.** The proposed Project area is not located within an airport land use plan and it is not within two miles of a public airport or public use airport.
- f) **No Impact.** The proposed Project area is not located within the vicinity of a private airstrip; therefore, it will not result in a safety hazard for people residing or working in the project area.
- g) **No Impact.** Activities associated with the proposed Project will not impede existing emergency response plans for the project site and/or other land uses in the project vicinity. The Project will not result in any road closures that might have an effect on emergency response or evacuation plans in the vicinity of the project site. In addition, all vehicles and stationary equipment will be staged off public roads and will not block emergency access routes. Accordingly, implementation of the proposed Project will not impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan.
- h) **Less than Significant Impact.** Any development, along with the associated human activity, in previously undeveloped areas increases the potential of the occurrence of wildfires in the region. Comprehensive safety measures that comply with federal, state, and local worker safety and fire protection codes and regulations will be implemented for the proposed Project and will minimize the occurrences of fire due to project activities during construction and for the life of the project. Therefore, less than significant impacts are anticipated.

No significant adverse impacts related to Hazards and Hazardous Materials are identified or anticipated. Therefore, no mitigation measures are required.

	<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less than Significant with Mitigation Incorporated</i>	<i>Less than Significant</i>	<i>No Impact</i>
IX	HYDROLOGY AND WATER QUALITY - Will the project:				
a)	Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b)	Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there will be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level, which will not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c)	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that will result in substantial erosion or siltation on- or offsite?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d)	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which will result in flooding on- or offsite?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e)	Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f)	Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g)	Place housing within a 100-year flood hazard area as mapped on a Federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h)	Place within a 100-year flood hazard area structure which would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i)	Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j)	Inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SUBSTANTIATION:

a) **Less than Significant Impact.** According to the Preliminary Water Quality Management Plan prepared by United Engineering Group, the proposed Project will not violate any water quality standards or waste discharge requirements. No waters or habitats that fall under the jurisdiction of the ACOE, California RWQCB, or CDFG are found on the proposed project area. Potential water quality impacts from the proposed project are associated with short-term (construction-related) erosion/sedimentation and hazardous material use/discharge. As described above in Sections VI.b and VII.a, potential erosion/sedimentation and hazardous materials impacts would be avoided or reduced below a level of significance through conformance with applicable elements of the NPDES Construction Permit. Maintenance of the proposed project would include cleaning, drive motor repair, tracker repair, electrical connection repair, and panel replacement, and cleaning is expected to be conducted annually. Water would be trucked in from a hydrant maintained by the Apple Valley Ranchos Water Company located approximately 7.8 miles east of the site at the intersection of Central Road and Bear Valley Road. The water would contain no cleaning agents or other additives. Water discharged from the cleaning of the panels would be absorbed into the soils onsite.

b) **Less than Significant Impact.** The proposed Project will not entail the use of groundwater and; thus will not deplete groundwater supplies or interfere substantially with groundwater recharge such that there will be a net deficit in aquifer volume or a lowering of the local groundwater table level. Water would be trucked in from a hydrant maintained by the Apple Valley Ranchos Water Company located approximately 7.8 miles east of the site at the intersection of Central Road and Bear Valley Road. Most of the ground within the proposed Project area will not be covered with impermeable material, so water percolation and groundwater recharge will not be significantly impacted by the implementation of the project.

c) **Less than Significant Impact.** The proposed Project will have a less than significant impact on the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that will result in substantial erosion or siltation on- or offsite. The

There are four unnamed washes that traverse the project site however no major concentrations of runoff that originate within the project area. The general grade of the area lends itself to sheetflow that eventually drain into a regional wash (United Engineering Group, November, 2011.) The existing drainage patterns would not be significantly altered to install the selected technology. Minor grading would occur to allow the installation of PV panels across this existing feature and to install aggregate base access roads. The interior access roads will be designed to create fields to hold increased runoff flows within the solar array areas.

Furthermore, according to the Preliminary Drainage Study prepared for this project, no waters or habitats that fall under the jurisdiction of the ACOE, California RWQCB, or CDFG are found on the proposed Project area. No indicators of hydrologic activity (topographical or geological), hydric soils, or hydrophytic vegetation were observed onsite. In addition, no "blue-line" streams are found on the 15 Mile Valley USGS 7.5-minute quadrangle in the vicinity of the project area.

At locations where foundations are installed, it is expected that minor cuts will be required to place the tracker foundations on a level pad. It is expected that the cut material shall be placed around the pre-cast foundation in order to divert small localized flows away from the foundation and prevent undermining.

There shall be a slight increase in imperviousness of the soil onsite due to grading and construction activities. The root mass of the existing vegetation onsite is proposed to be left as-is to assist in erosion control and to maintain the existing soil characteristics (i.e. infiltration rates). Minor vegetation removal shall take place at the areas where the concrete pads for the trackers shall be placed and for gravel road installation. The addition of the foundations and inverter pads shall create a very slight increase in area that can be considered impervious. However, these foundations are small in size and located throughout the site. Additionally, the access roads are

expected to slightly increase the imperviousness of the area where roads are constructed, but again, the total area of these roads is small in comparison with the entire site and the roads do allow some level of infiltration.

During operation, the tracker panels shall drain freely to the ground any rainwater that hits them. Based on the volume of water falling from each panel, the height of the fall, and the soil conditions, it is not expected that erosion beyond an immediate micro level shall occur. It is expected that water shall fall from the PV panels and pond at a drip point before infiltrating or gradually migrating into the existing drainage patterns. If, over time, minor erosion is noted at the drip points, small gravel pads can be added to help dissipate the energy of the falling water. If, over time, minor erosion is noted near the foundations, minor grading can occur to restore support for the individual foundations, and keep surface flows from undermining the foundations in future storm events.

- d) **Less than Significant Impact.** The proposed Project will have a less than significant impact on the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which will result in flooding on- or offsite (see discussion in Item IX (c)).
- e) **Less than Significant Impact.** The proposed Project will not create or contribute runoff water which will exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff (see discussion in Item IX (a)).
- f) **Less than Significant Impact.** The proposed Project will not otherwise substantially degrade water quality (see discussion in Item IX (a)).
- g) **No Impact.** The proposed Project will not place housing within a 100-year flood hazard area as mapped on a Federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map. The project proposes no habitable structures. The site is designated Flood Zone D, which are characterized as areas in which flood hazards are undetermined but possible.
- h) **No Impact.** The proposed Project will not place within a 100-year flood hazard area structures that will impede or redirect flood flows. [See above discussion IX (g)].
- i) **No Impact.** The Project will not expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam, because the project site is not within any identified path of a potential inundation flow that might result in the event of a dam or levee failure or that might occur from a river, stream, lake or sheet flow situation.
- j) **No Impact.** The Project site will not be subject to inundation by seiche, tsunami, or mudflow. A tsunami is a series of ocean waves generated in the ocean by an impulsive disturbance. Due to the inland location of the proposed project, tsunamis are not considered a threat. A seiche is an oscillating surface wave in a restricted or enclosed body of water generated by ground motion, usually during an earthquake. Inundation from a seiche can occur if the wave overflows a containment wall or the banks of a water body. No impacts are expected to occur because the project is not adjacent to any marine or inland water bodies. The soils in the project area are moderately well-drained, the terrain is relatively flat, and mudflows have not historically been an issue in the proposed Project area.

No significant adverse impacts related to Hydrology and Water Quality are identified or anticipated. Therefore, no mitigation measures are required.

<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less than Significant with Mitigation Incorporated</i>	<i>Less than Significant</i>	<i>No Impact</i>
X. LAND USE AND PLANNING - Will the project:				
a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SUBSTANTIATION:

- a) **No Impact.** The project will not physically divide an established community, because there are no established residential communities present in the Project area. The proposed Project area is located in an unincorporated part of the County that has sparse residential development and will occupy an area that is currently vacant.
- b) **Less than Significant Impact.** The current General Plan land use designation for the proposed Project area is Rural Living (RL-5). The RL-5 land use district allows development of solar electrical power generation on sites greater than 20 acres. Electric power generation is allowed on the proposed Project site subject to a Conditional Use Permit. No General Plan Amendment is required; therefore, impacts are considered less than significant.
- c) **No Impact.** The proposed Project does not conflict with any applicable habitat conservation plans or natural community conservation plans.

No significant adverse impacts related to Land Use and Planning are identified or anticipated. Therefore, no mitigation measures are required.

Issues	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant	No Impact
XI. MINERAL RESOURCES - Will the project:				
a) Result in the loss of availability of a known mineral resource that will be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SUBSTANTIATION: (Check if project is located within the Mineral Resource Zone Overlay):

- a) **No Impact.** The USGS Mineral Resources Spatial Data Mapper was used to determine that no metallic or nonmetallic mineral resources have been mapped on the proposed Project area. In addition, although mining claims have been registered for some of the areas surrounding the project area, mostly for rock, gravel, concrete, and sand, no active mines or mining claims are located on or in the immediate vicinity of the project site. Implementation of the proposed Project will not result in the loss of any known mineral resources on the proposed site.
- b) **No Impact.** The proposed Project will not result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan (see discussion in Item XI (a)).

No significant adverse impacts related to Mineral Resources are identified or anticipated. Therefore, no mitigation measures are required.

Issues	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant	No Impact
XII. NOISE - Will the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, will the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, will the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
SUBSTANTIATION: (Check if the project is located in the Noise Hazard Overlay District <input type="checkbox"/> or is subject to severe noise levels according to the General Plan Noise Element <input type="checkbox"/>):				

- a) **Less than Significant with Mitigation Incorporated.** With the exception of a few scattered residences, the proposed Project is adjacent to mostly undeveloped and/or vacant lands. For the existing residents in the area, noise generated from the proposed Project could potentially temporarily generate noise levels in excess of standards established in the County General Plan or Noise Ordinance, or applicable standards of other agencies. Specifically, construction of the proposed Project may potentially create some elevated short-term construction noise impacts from construction equipment; however, these activities shall be limited to daytime hours and shall comply with the mitigation measure NOISE-1 below.

Noise generation from construction equipment/vehicle operation will be localized, temporary, and transitory in nature; therefore, no significant impacts will be anticipated. Operation of the proposed Project will not generate audible levels of noise or perceptible levels of vibration in the surrounding community. Onsite noises will be limited to the fractional horse power drive motors that rotate the photovoltaic panels on the single-axis tracking system and maintenance activities (including annual cleaning, drive motor repair, tracker repair, electrical connection repair, and panel replacement). Further, the project will not include additional dwellings or other development, nor will it have the

potential to generate any additional vehicle trips after construction is completed. Therefore, impacts are anticipated to be less than significant.

- b) **Less than Significant Impact.** It is not anticipated that the proposed Project will expose persons to or generate excessive groundborne vibration or groundborne noise levels except intermittently during construction. During operation, the proposed Project equipment will not result in any groundborne vibration. No additional mitigation will be required.
- c) **No Impact.** The proposed Project will not create a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project. Specifically, the project will result in temporary noise increases during construction but will not create any substantial permanent increase in the ambient noise levels due to the operation activities consisting of routine maintenance vehicles and equipment onsite with hardly discernible noises.
- d) **Less than Significant with Mitigation Incorporated.** The proposed Project is adjacent to mostly undeveloped and/or vacant lands; therefore, noise generated from the proposed Project could potentially result in some temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the projects. Specifically, construction of the proposed Project may potentially create some elevated short-term construction noise impacts from construction equipment; however, these activities shall be limited to daytime hours and shall comply with the mitigation measures N-1 (see Section XII (a)).
- e) **No Impact.** The proposed Project area is not located within an airport land use plan and it is not within two miles of a public airport or public use airport. The facility is primarily unmanned and noise impacts are not a concern.
- f) **No Impact.** The proposed Project area is not located within the vicinity of a private airstrip.

Possible significant adverse impacts have been identified or anticipated and the following mitigation measures are required as conditions of project approval to reduce these impacts to a level below significant.

Mitigation Measures

- NOISE-1 Noise Mitigation. The developer shall submit for review and obtain approval of an agreement letter that stipulates that all construction contracts/subcontracts contain as a requirement that the following noise attenuation measures be implemented:
- a) Noise levels of any project use or activity shall be maintained at or below adopted County noise standards (SBCC 83.01.080). The use of noise-producing signals, including horns, whistles, alarms, and bells, shall be for safety warning purposes only.
 - b) Exterior construction activities shall be limited between 7 a.m. and 7 p.m. There shall be no exterior construction activities on Sundays or National Holidays.
 - c) Interior construction activities may occur on any day and any time provided they comply with the County noise standards. (SBCC 83.01.080).
 - d) Construction equipment shall be muffled per manufacturer's specifications. Electrically powered equipment shall be used instead of pneumatic or internal combustion powered equipment, where feasible.
 - e) All stationary construction equipment shall be placed in a manner so that emitted noise is directed away from sensitive receptors nearest the project site.
- [Mitigation Measure NOISE-1 – Prior to Grading/Land Disturbance]

<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less than Significant with Mitigation Incorporated</i>	<i>Less than Significant</i>	<i>No Impact</i>
XIII. POPULATION AND HOUSING - Will the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SUBSTANTIATION:

- a) **No Impact.** The proposed Project will not induce substantial population growth in the area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure). No houses are being proposed as part of the proposed Project for construction workers or those that will be employed during operation of the facility. Construction is anticipated to take approximately 24 months, with a maximum of 150 construction workers per day. During operation, the project site will be un-manned. Accordingly, the proposed Project will not result in any impacts to housing or related infrastructure, nor will it require construction of additional housing. No significant adverse impacts are anticipated and, therefore, no mitigation measures are required.
- b) **No Impact.** The proposed Project will not displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere because the project site is currently undeveloped. No significant adverse impacts are anticipated and, therefore, no mitigation measures are required.
- c) **No Impact.** The proposed Project will not displace substantial numbers of people, necessitating the construction of replacement housing elsewhere because the project site is currently undeveloped. No significant adverse impacts are anticipated and, therefore, no mitigation measures are required.

No significant adverse impacts related to Population and Housing are identified or anticipated. Therefore, no mitigation measures are required.

<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less than Significant with Mitigation Incorporated</i>	<i>Less than Significant</i>	<i>No Impact</i>
XIV. PUBLIC SERVICES				
a) Will the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
Fire Protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Police Protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other Public Facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SUBSTANTIATION:

- a) **Fire - Less than Significant Impact.** The proposed Project area is serviced by the San Bernardino County Fire Protection District. The proposed Project will not substantially impact service ratios, response times, or other performance objectives related to fire protection. However, during construction, some public services including fire protection may be required but these will be short-term requirements and will not require increases in the level of public service offered or affect these agencies' response times. The project will incorporate perimeter and internal access driveway systems that are accessible to emergency equipment, including Knox locks on the gates for 24-hour access.

Any development, along with the associated human activity, in previously undeveloped areas increases the potential of the occurrence of wildfires. Comprehensive safety measures that comply with federal, state, and local worker safety and fire protection codes and regulations will be implemented for the proposed Project that will minimize the occurrences of fire due to project activities during construction and for the life of the project. Because of the low probability and short-term nature of potential fire protection needs during construction, the proposed Project will not result in associated significant impacts.

Police Protection – Less than Significant Impact. The proposed Project area and other unincorporated portions of the County are served by the San Bernardino County Sheriff's Department. The proposed Project will not impact service ratios, response times, or other performance objectives related to police protection. However, during construction, some public services including police protection may be required but these will be short-term requirements and will not require increases in the level of public service offered or affect these agencies' response times. In order to protect against theft and vandalism the proposed Project will employ its own security patrol crews to protect the project site during construction and operation of the project. The

project will incorporate up to eight foot tall security fencing and security camera systems.

Schools – No Impact. Long-term operation of the proposed facilities will place no demand on school services because it will not involve the construction of facilities that require such services (e.g., residences) and will not involve the introduction of a temporary or permanent human population into this area.

Parks – No Impact. Long-term operation of the proposed facilities will place no demand on parks because it will not involve the construction of facilities that require such services (e.g., residences) and will not involve the introduction of a temporary or permanent human population into this area.

Other Public Facilities – No Impact. The proposed Project will not result in the introduction and/or an increase in new residential homes and the proposed Project will not involve the introduction of a temporary or permanent human population into this area. Based on these factors, the proposed Project will not result in any long-term impacts to other public facilities.

No significant adverse impacts related to Public Services are identified or anticipated. Therefore, no mitigation measures are required.

	<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less than Significant with Mitigation Incorporated</i>	<i>Less than Significant</i>	<i>No Impact</i>
XV. RECREATION					
a)	Will the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility will occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b)	Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SUBSTANTIATION:

- a) **No Impact.** The proposed Project will not increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility will occur or be accelerated. No new residences or recreational facilities will be constructed as part of the proposed Project and the proposed Project will not induce population growth in adjacent areas. No significant adverse impacts are anticipated and, therefore, no mitigation measures are required.
- b) **No Impact.** The proposed Project does not include recreational facilities or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment. No new residences or recreational facilities will be constructed as part of the proposed project. The proposed Project will not induce population growth in adjacent areas and will not increase the use of recreational facilities in surrounding neighborhoods. No significant adverse impacts are anticipated and, therefore, no mitigation measures are required.

No significant adverse impacts related to Recreation are identified or anticipated. Therefore, no mitigation measures are required.

<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less than Significant with Mitigation Incorporated</i>	<i>Less than Significant</i>	<i>No Impact</i>
XVI. TRANSPORTATION/TRAFFIC - Will the project:				
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and greenways, pedestrian and bicycle paths, and mass transit.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Conflict with an applicable congestion management program, including but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SUBSTANTIATION:

- a) **Less-Than-Significant Impact.** The proposed Project will not conflict with any applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and greenways, pedestrian and bicycle paths, and mass transit.
- b) **Less than Significant Impact.** The proposed Project will not conflict with an applicable congestion management program, including but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways. The proposed Project will have a less than significant increase in traffic in relation to the existing traffic load and capacity of the street system. At the initiation of project construction, equipment that may include water trucks, backhoes, trenchers, and scrapers, will be mobilized to the project site using Desert View Road. This equipment will then be stored

onsite for the duration of construction and used as construction progresses. **Table XVI-1** summarizes anticipated construction traffic for the proposed Project.

Initial Study

Table XVI-1

Lucerne Valley Desert View Ranch Generating Facilities Construction Trip Generation

Description	Construction Vehicles			PCE	ADT	Vehicle Trip Generation						ADT	PCE Trip Generation					
	Quantity	Roundtrips	Type			AM Peak Hour			PM Peak Hour				AM Peak Hour			PM Peak Hour		
					in	out	total	in	out	total	in	out	total	in	out	total		
Phase 1: Site Preparation																		
Workers	45	1	Passenger	1	90	45	0	45	0	45	45	0	45	45	0	45	45	
Water Truck	2	7	Large Truck	2	28	14	0	14	0	14	14	0	14	14	0	28	28	
Back Hoe	2	1	Large Truck	2	4	2	0	2	0	2	2	0	2	2	0	4	4	
Scraper (Grader)	2	1	Large Truck	2	4	2	0	2	0	2	2	0	2	2	0	4	4	
Total Phase 1					126	63	0	63	0	63	63	0	63	63	0	81	81	
Phase 2: PV System Installation																		
Workers	150	1	Passenger	1	300	150	0	150	0	150	150	0	150	150	0	150	150	
Pile Drivers	3	1	Large Truck	2	6	3	0	3	0	3	3	0	3	3	0	6	6	
Back Hoe	2	1	Large Truck	2	4	2	0	2	0	2	2	0	2	2	0	4	4	
LH	2	1	Large Truck	2	4	2	0	2	0	2	2	0	2	2	0	4	4	
Crane	1	1	Large Truck	2	2	1	0	1	0	1	1	0	1	1	0	2	2	
Water Truck	2	7	Large Truck	2	28	14	0	14	0	14	14	0	14	14	0	28	28	
Equipment Deliveries	1	5	Large Truck	2	10	5	0	5	0	5	5	0	5	5	0	10	10	
Total Phase 2					354	177	0	177	0	177	177	0	177	177	0	204	204	

Notes:
 PCE = passenger car equivalent. A large truck has a PCE of 2. All other vehicles have a PCE of 1.
 ADT = average daily traffic

Impacts to local traffic on Desert View Road due to mobilizing construction equipment and delivery of machinery will be short-term in nature. Daily increases to traffic volumes during construction will primarily result from project personnel commuting to and from the work site. Based on the number of construction trips anticipated for the proposed project (up to 177 peak hour trips during PV system installation), the volume increase will be negligible compared to the typical traffic volume. Signage and flagman will be utilized if needed to decrease delays on Desert View Road.

During project operation, the project will be un-manned; as a result, minimal additional traffic will be generated by facility operation for periodic maintenance. It is anticipated that the panels would be washed four times per year resulting in 118 truck trips generated during operation. An additional 30 worker trips are anticipated relating to panel washing and maintenance activities

Based on the number of operation and maintenance traffic anticipated for the proposed Project, the volume increase will be negligible to the typical traffic volume on Desert View Road

- c) **No Impact.** The proposed Project will not affect air traffic patterns as there are no airports in the vicinity of the project site.

The solar reflectivity of the photovoltaic panels used in the proposed Project will be low due to the material used to manufacture solar panels. The project's contribution to the reflectivity within the area and the resultant potential negative effect on air traffic patterns is less than significant. Furthermore, no significant lighting is proposed.

- d) **No Impact.** The proposed Project will not include design features that will affect traffic safety, nor will it cause incompatible uses (such as farm equipment) on local roads. In addition, no new roads are being proposed as part of this project; consequently, there shall be no impacts. The gates into the facility will be inset to allow vehicle stacking at the gate that is off the traveled roadway.

- e) **Less than Significant Impact.** The proposed Project will not result in inadequate emergency access to the project area. During project construction, all vehicles will be parked off public roads and will not block emergency access routes. The proposed Project will not result in any closures of Indian Trail, Morongo Road, or Valle Vista Road that might have an effect on emergency access in the vicinity of the Project site.

- f) **No Impact.** The proposed Project will not conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance of safety of such facilities. No alternative transportation policies, plans, or programs have been designated for the proposed Project area.

No significant adverse impacts related to Transportation/Traffic are identified or anticipated. Therefore, no mitigation measures are required.

<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less than Significant with Mitigation Incorporated</i>	<i>Less than Significant</i>	<i>No Impact</i>
XVI. UTILITIES AND SERVICE SYSTEMS - Will the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded, entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Result in a determination by the wastewater treatment provider, which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Be served by a landfill(s) with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g) Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

SUBSTANTIATION:

- a) **No Impact.** The proposed Project will not exceed wastewater treatment requirements of the Colorado River RWQCB. The project will discharge uncontaminated water that is used to clean the solar panels, with no toxicants or cleaning agents used. The County General Plan defers to applicable Regional water control requirements, and the proposed project's water discharge does not require treatment or permitting according to the regulations of the Colorado River RWQCB.
- b) **No Impact.** The proposed Project will not require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which will cause significant environment effects.
- c) **No Impact.** The proposed Project will not require the construction or expansion of storm water drainage facilities. The proposed Project will discharge uncontaminated water that is used to clean the solar panels, with no toxicants or cleaning agents used. It is assumed that the insubstantial quantity of discharged water generated by cleaning will be absorbed into the soils onsite. Soils on the project area are moderately well-drained and are suitable for most type of development. Most of

the ground within the proposed Project area will not be covered with impermeable material.

- d) **Less than Significant Impact.** Water will be required during construction for earthwork operations, primarily related to dust control for road construction, grading, and other site work. Construction is anticipated to last approximately 9 months. Water will be applied via water trucks. It is estimated that approximately 40,000 gallons of water per acre will be used for disking, leveling and recompacting the upper 12 inches of soil. This activity will occur during the first four weeks of site construction. Dust control is estimated to use approximately 200 gallons per acre per day. The 198-acre site and the 9-month construction period will result in a construction water requirement of approximately 48.03 acre feet. A minimal amount of water will be required for construction worker needs (e.g., drinking water, sanitation facilities). Bottled water and portable sanitation units will be used during construction.

For operational and maintenance activities, water will be needed for washing the solar panels and dust control as necessary.

. Based on the proposed Project size, approximately 18,000 gallons will be required each time the panels are washed. Assuming the panels are washed four times per year, the total annual operational water use will be 0.22 acre-feet. An additional 163,350 gallons (0.50 AF) may be used annually to apply soil binder for dust suppression if needed. The total projected water use for operations and maintenance is approximately 235,350 gallons (0.72 AF) per year.

Since the proposed Project will not be directly connected to a public water system, water during the construction period will be obtained from the Apple Valley Ranchos Water Company which has indicated there is sufficient capacity to serve the project.

- e) **No Impact.** The proposed Project will not require or result in the construction of new wastewater treatment facilities or the expansion of existing wastewater treatment facilities. Accordingly, no impacts are anticipated from implementation of the proposed project.
- f) **Less than Significant Impact.** Less than significant impacts related to landfill capacity are anticipated from the proposed project. The proposed Project largely consists of short-term construction activities (with short-term waste generation limited to minor quantities of construction debris) and will not result in long-term solid waste generation. Solid wastes associated with the proposed Project will be disposed as appropriate in local landfill or at a recycling facility.

The panels and tracking system shall eventually need to be disposed (decommissioned). Most parts of the proposed PV system are recyclable. Panels typically consist of silicon, glass, and an aluminum frame. Tracking systems (not counting the motors and control systems) typically consist of steel and concrete. All of these materials can be recycled. Concrete from deconstruction shall be recycled through local recyclers. Metal and scrap equipment and parts that do not have free flowing oil will be sent for salvage. Equipment containing any free flowing oil shall be managed as hazardous waste and shall be evaluated before disposal at a properly permitted disposal facility. Oil and lubricants removed from equipment shall be managed as used oil and disposed in accordance with applicable State hazardous waste disposal requirements.

- g) **Less than Significant Impact.** The proposed Project will comply with all federal, state, and local statutes and regulation related to solid waste. The project will consist of short-term construction activities (with short-term waste generation limited to minor quantities of construction debris) and thus will not result in long-term solid waste generation. Solid wastes produced during the construction phase of this project, or during future decommission activity, will be disposed of in accordance with all applicable statutes and regulations. Accordingly, no significant impacts related to landfill capacity are anticipated from the proposed project.

No significant adverse impacts related to Utilities and Service Systems are identified or anticipated. Therefore, no mitigation measures are required.

Issues	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant	No Impact
XVII. MANDATORY FINDINGS OF SIGNIFICANCE:				
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Does the project have impacts that are individually limited, but cumulatively considerable? (“Cumulatively considerable” means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Does the project have environmental effects, which shall cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

SUBSTANTIATION:

- a) **Less than Significant Impact with Mitigation Incorporated.** Implementation of the proposed Project, with mitigation, will not degrade the quality of the environment, substantially reduce the habitat of fish or wildlife species, cause a fish or wildlife populations to drop below self-sustaining levels, threaten to eliminate a plant or animal community, or reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory.

Refer to *Section III, Air Quality*, where short-term (construction) air quality impacts are discussed. Implementation of mitigation measures *AQ-1* would further reduce air quality impacts to a less than significant level.

Refer to *Section IV, Biological Resources*. The project has the potential to affect, either directly or through habitat modifications, species identified as a candidate, sensitive or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service. Implementation of mitigation measures *BIO-1 through BIO-12* will reduce potential impacts to a level considered less than significant.

Refer to *Section XII, Noise*, where potential noise impacts are addressed. Implementation of mitigation measure *N-1* would reduce potential impacts to a less than significant level.

- b) **Less than Significant Impact.** Cumulative impacts are defined as two or more individual effects that, when considered together, are considerable or that compound or increase other environmental impacts. The proposed project’s impacts are considered cumulatively less than significant when considered in conjunction with related past, present, and reasonably foreseeable or probable future

developments in the area. There are no known projects occurring within the vicinity of the Project site.

- c) **Less than Significant Impact.** The incorporation of design measures, County policies, standards, and guidelines will ensure that there will be no substantial adverse effects on human beings, either directly or indirectly. Impacts of the proposed Project will be less than significant.

Possible significant adverse impacts have been identified or anticipated and the mitigation measures outlined in the following section are required as conditions of project approval to reduce these impacts to a level below significant.

MITIGATION MEASURES

(The following mitigation measures, which are also included within the Conditions of Approval and coupled with the required Condition Compliance Release Forms (CCRF) shall serve as the Mitigation Monitoring and Reporting Program for this project.)

- AQ-1** AQ/Dust Control Plan. The developer shall prepare, submit and obtain approval from County Planning of a Dust Control Plan (DCP) consistent with MDAQMD guidelines and a letter agreeing to include in any construction contracts/ subcontracts a requirement that project contractors adhere to the requirements of the DCP. The DCP shall include the following elements to reduce dust production:
- a) Exposed soil shall be kept continually moist through waterings to reduce fugitive dust during all grading/construction activities. (Minimum twice daily).
 - b) Street sweeping shall be conducted when visible soil accumulations occur along site access roadways to remove dirt dropped by construction vehicles.
 - c) Site access driveways and adjacent streets shall be washed daily, if there are visible signs of any dirt track-out at the conclusion of any workday.
 - d) Construction Vehicle tires shall be washed prior to leaving the project site.
 - e) All trucks hauling dirt away from the site shall be covered.
 - f) During high wind conditions (i.e., wind speeds exceeding 25 mph), areas with disturbed soil shall be watered hourly and activities on unpaved surfaces shall cease until wind speeds no longer exceed 25 mph.
 - g) Storage piles that are to be left in place for more than three working days shall either be sprayed with a non-toxic soil binder, covered with plastic or revegetated.
- [Measure AQ-1 – Prior to Grading/Land Disturbance]

- BIO-1** Biological Monitor. Prior to issuance of a grading permit, a qualified biologist shall be retained by the Applicant as the biological monitor subject to the approval of the County of San Bernardino. The biological monitor shall be present at all times during vegetation clearing or ground disturbance, and shall ensure that impacts to biological resources are avoided or minimized to the fullest extent possible. When construction activities have progressed to the point where biological resources are no longer present, as determined by the biological monitor, biological monitoring in the area may be reduced or discontinued with approval from the County of San Bernardino. The biological monitor shall have the authority to stop specific grading or construction activities if violations of mitigation measures or any local, state, or federal laws are suspected. [Mitigation Measure BIO-1 – Prior to Grading/Land Disturbance]

- BIO-2** Pre-Construction Burrowing Owl Surveys and Passive Relocation. Within 14 days prior to ground disturbance, the Applicant shall retain a qualified biologist to conduct burrowing owl surveys within the area to be disturbed. The survey shall be performed by walking parallel transects spaced no more than 20 meters apart, and shall be focused on detecting burrows that are occupied, or are suitable for occupation, by the burrowing owl. The results of the surveys, including graphics showing the locations of any active burrows detected and any avoidance measures required, shall be submitted to the County of San Bernardino and CDFG within 14 days following completion of the surveys. If active burrows are detected, the following take avoidance measures shall be implemented:
- If burrowing owls are observed using burrows on-site during the non-breeding season (September through January, unless determined otherwise by a qualified biologist based on field observations in the region), occupied burrows shall be left undisturbed, and no construction activity shall take place within 300 feet of the burrow where feasible (see below).

- If avoiding disturbance of owls and owl burrows on-site is infeasible, owls shall be excluded from all active burrows through the use of exclusion devices placed in occupied burrows in accordance with California Burrowing Owl Consortium (1993) protocols. Specifically, exclusion devices, utilizing one-way doors, shall be installed in the entrance of all active burrows. The devices shall be left in the burrows for at least 48 hours to ensure that all owls have been excluded from the burrows. Each of the burrows shall then be excavated by hand and/or mechanically refilled to prevent reoccupation. Exclusion shall continue until the owls have been successfully excluded from the disturbance area, as determined by a qualified biologist.
- Any active burrowing owl burrows detected on-site during the breeding season (February through August, unless determined otherwise by a qualified biologist based on field observations in the region), shall not be disturbed. Construction activities shall not be conducted within 300 feet of an active on-site burrow at this season.

[Mitigation Measure BIO-2 – Prior to Grading/Land Disturbance]

BIO-3

Mojave Desert Tortoise Exclusion Fencing. During the months of April, May, September, or October prior to initiation of construction activities, the Applicant will retain a qualified biologist to conduct Mojave desert tortoise surveys in accordance with the most recent USFWS survey protocol for this species. If Mojave desert tortoises or their recent sign are detected, the Applicant shall not initiate construction, and shall instead contact the USFWS and CDFW to develop an avoidance strategy and/or seek authorization for incidental take of Mojave desert tortoise.

If survey results are negative, the Applicant shall erect a tortoise exclusion fence surrounding all portions of the site that are proposed for solar development or other ground disturbance. The exclusion fence shall be installed in accordance with the specifications set forth in Chapter 8 of the USFWS' Desert Tortoise Field Manual (USFWS 2009), and installation of the fence shall be overseen by a biologist familiar with the installation of tortoise exclusion fencing. Following installation of the tortoise exclusion fence, the Applicant shall retain a qualified biologist to conduct a second, full-coverage pedestrian survey of all areas encompassed by the exclusion fence. If Mojave desert tortoises or their recent sign are detected, the Applicant shall immediately remove portions of the exclusion fence to prevent entrapment of tortoises, and shall contact the USFWS and CDFW to develop an avoidance strategy and/or seek authorization for incidental take of Mojave desert tortoise. If no tortoises or their sign are detected during the second survey, construction activities may commence.

All fence inventories shall be inspected at least twice per year. However, during the first two (2) to three (3) years all inspections shall be conducted quarterly at a minimum, to identify and document breaches and problem areas such as wash-outs, vandalism, and accident. Global positioning system (GPS) coordinates and mileages from existing highway markers shall be recorded in order to pinpoint problem locations and build a database of problem locations that may require more frequent checking. Following two to three years of initial inspection, subsequent inspections shall focus on known problem areas which shall be inspected more frequently than twice per year. In addition to semi-annual inspections, problem areas prone to wash-outs shall be inspected following precipitation that produces potentially fence-damaging water flow. A database of problem areas shall be established whereby checking fences in such areas can be done efficiently. [Mitigation Measure BIO-3 – Prior to Grading/Land Disturbance]

BIO-4 Pre-Construction Mojave Desert Tortoise Surveys and Avoidance. Within 14 days prior to construction-related ground clearing and/or grading, the Applicant shall retain a qualified biologist to conduct surveys for signs of occupancy by the Mojave desert tortoise. Surveys shall cover the entire area proposed for disturbance, shall be conducted by walking parallel transects spaced no more than 10 meters apart, and shall focus on detecting any live tortoises or their sign, including carcasses, burrows, palates, tracks, and scat. Should any sign indicating the presence of Mojave desert tortoise be detected, the Applicant shall not proceed with ground clearing and/or grading activities in the area of the find, and shall instead contact the USFWS and CDFW to develop an avoidance strategy and/or seek authorization for incidental take of Mojave desert tortoise.

The results of the pre-construction surveys, including graphics showing the locations of any tortoise sign detected, and documentation of any avoidance measures taken, shall be submitted to the USFWS, CDFG, and the County of San Bernardino within 14 days of completion of the pre-construction surveys or construction monitoring to document compliance with applicable federal and state laws pertaining to the protection of Mojave desert tortoise. [Mitigation Measure BIO-4 – Prior to Grading/Land Disturbance]

BIO-5 Mohave Ground Squirrel. Prior to the issuance of Grading Permits or any land disturbing activities on site the applicant will need to apply for an Incidental Take Permit (2081 Permit) from the California Department of Fish and Wildlife (CDFW) and provide suitable mitigation fees for the purchase of compensatory mitigation. However, In lieu of applying for the Incidental Take Permit, the applicant may conduct a live-trapping survey to definitively determine the presence or absence of the species on site. The live trapping survey must be conducted during the spring months (March – June) and if the species is not detected during the trapping period, mitigation may not be required by CDFW. However, if the species is detected, the Take Permit and appropriate mitigation will be required. [Mitigation Measure BIO-5 – Prior to Grading/Land Disturbance]

BIO-6 Worker Environmental Awareness Program. Prior to any construction activities on the project site, the Applicant will implement a Worker Environmental Awareness Program (WEAP) to educate on-site workers about sensitive environmental issues associated with the Project. The program will be administered to all on-site personnel, including the Applicant's personnel, contractors, and all subcontractors, on the first day of work prior to the employee's commencing work on the site. The WEAP will place special emphasis on the protected species that have potential to occur within the site, including the Mojave desert tortoise, Burrowing owl, Mohave ground squirrel, among other plant and wildlife species. The program will include the following elements:

- A presentation, developed by or in consultation with a qualified biologist, discussing the sensitive biological resources with potential to occur on-site, and explaining the reasons for protecting these resources and penalties for non-compliance;
- Brochures or booklets, containing written descriptions and photographs of protected species as well as a list of site rules pertaining to biological resources, to be provided to all WEAP participants;
- Contact information for the project biological monitor, and instructions to contact the monitor with any questions regarding the WEAP presentation or booklets;
- An acknowledgement form, to be signed by each worker indicating that they received WEAP training and will abide by the site rules protecting biological resources; and,
- Conspicuous stickers, identifying the project and signifying WEAP completion, to be distributed immediately following WEAP training and required on personnel hard hats.

- The project Applicant will be responsible for ensuring that all on-site personnel, throughout the duration of project construction, receive WEAP training. A training log, to be signed by all on-site personnel immediately following WEAP training, will be maintained on the project site during construction to document compliance with this measure.

[Mitigation Measure BIO-6 – Prior to Grading/Land Disturbance]

BIO-7

Nesting Bird Season. All clearing and grubbing of the project site should take place between August 15 and February 15. Winter site clearing shall insure that nesting birds are not present and impacted. In accordance with the Migratory Bird Treaty Act (MBTA), if vegetation removal shall occur during the bird-nesting season, generally February 15 to August 15, a qualified biologist ornithologist will examine the site to avoid impacts to nesting birds. shall conduct preconstruction bird nesting surveys within 200 feet (or up to 300 feet depending on topography or other factors and 500 feet for raptors) to avoid impacts to nesting birds. If active bird nest(s) are detected during the pre-construction nesting surveys, the qualified ornithologist will establish an adequate no disturbance buffer around the active nest(s) shall be established as determined by a qualified biologist until the nest(s) have fledged to ensure the nesting birds are not disturbed until the young birds have fledged. [Mitigation Measure BIO-7 – Prior to Grading/Land Disturbance]

BIO-8

Permanent Perimeter Fencing. Prior to installation of the project's security fence, a pre-construction survey for desert tortoises within and adjacent to (within 500 feet) the project site should be performed. The survey shall be initiated within one (1) week of the fence installation, and concluding no more than 48 hours prior to installation. The survey should be conducted using pedestrian transects spaced at no more than 10 meters. A second pre-construction survey should be conducted within 24 hours of the fence installation, and be restricted to the fence alignment and its immediate area. Should any tortoises be discovered within the proposed development area or immediately adjacent to the proposed fenced area, a contingency plan (as described under the *County General Conditions, Project Design and Construction Features* section) shall be implemented. [Mitigation Measure BIO-8 – Prior to Grading/Land Disturbance]

BIO-9

Biological Monitoring During Construction of Security Fence. During installation of the project's security fence which shall include tortoise exclusion fencing, a biologist experienced with desert ecology and desert tortoise biology shall be present to ensure that disturbance to the habitat on and near the project site is kept to a minimum, and to prevent take of tortoises. The biological monitor shall have the authority to stop construction activities if desert tortoises or their burrows are threatened, or if rules protecting tortoises and their habitat (i.e., adherence to speed limits, picking up trash, etc.) are not being followed by construction personnel. [Mitigation Measure BIO-9 – Prior to Grading/Land Disturbance]

BIO-10

Native Tree Removal and Relocation Plan. Prior to any land disturbance the developer shall prepare and submit a native tree removal plan indicating exactly which trees or plants are proposed to be removed or relocated. The plan shall be prepared by a Desert Native Plant Expert in accordance with the County's Plant Protection and Management Ordinance, and shall be approved prior to any land disturbance and/or removal of any trees or plants. Every effort shall be made to minimize vegetation removal. Native vegetation shall be flagged for protection. A project revegetation plan would be prepared for areas of native habitat temporarily impacted. [Mitigation Measure BIO-10 – Prior to Grading/Land Disturbance]

BIO-11 Transplanting and Relocation of Native Trees and Plants. All transplanting approved by the County of San Bernardino must be initiated and completed under the supervision of a Desert Native Plant Expert. Approval of such transplant must take into consideration the time of year, the plant's original and transplanted physical orientation, prevailing wind direction, soil type of the original and transplanted locations, and other related attributes which may affect the successful transplantation of the Joshua Tree(s) and Yuccas in question as determined by the Desert Native Plant Expert. Joshua Trees and Yuccas that are proposed to be removed shall be transplanted or stockpiled for future transplanting wherever possible. In the instance of stockpiling and/or transplanting the permittee has submitted and has had the approval of a Joshua Tree and Yucca maintenance plan prepared by a Desert Native Plant Expert. This plan shall include a schedule for maintenance and a statement by the Desert Native Plant Expert that this maintenance plan and schedule will be implemented under his/her supervision. The schedule shall include the requirement that a maintenance report is required at the end of the project or at six (6) month intervals, evidence to the satisfaction of the Planning Section that the Desert Native Plant Expert has supervised the scheduled maintenance to the extent that all transplanted and stockpiled plants have been maintained in such a manner to insure the highest practicable survival rate. In the event that this report is not satisfactory, a tree and plant replacement plan and implementation schedule prepared by a Desert Native Plant Expert may be required. [Mitigation Measure BIO-11 – Prior to Grading/Land Disturbance]

BIO-12 Cactus Salvage Plan. Prior to issuance of a grading permit, the Applicant shall submit a Cactus Salvage Plan to the County of San Bernardino and the CDFG for approval. The Cactus Salvage Plan shall contain the following elements:

- A spatial inventory of all native cacti within the project site, including species and locations;
- A quantitative assessment of the numbers of each cactus species to be removed by the project; and,
- Proposed measures to retain as many cacti as is practical on the project site, and a spatial and quantitative description indicating the species and locations of cacti to be preserved.

[Mitigation Measure BIO-12 – Prior to Grading/Land Disturbance]

NOISE-1 Noise Mitigation. The developer shall submit for review and obtain approval of an agreement letter that stipulates that all construction contracts/subcontracts contain as a requirement that the following noise attenuation measures be implemented:

- a) Noise levels of any project use or activity shall be maintained at or below adopted County noise standards (SBCC 83.01.080). The use of noise-producing signals, including horns, whistles, alarms, and bells, shall be for safety warning purposes only.
- b) Exterior construction activities shall be limited between 7 a.m. and 7 p.m. There shall be no exterior construction activities on Sundays or National Holidays.
- c) Interior construction activities may occur on any day and any time provided they comply with the County noise standards. (SBCC 83.01.080).
- d) Construction equipment shall be muffled per manufacturer's specifications. Electrically powered equipment shall be used instead of pneumatic or internal combustion powered equipment, where feasible.
- e) All stationary construction equipment shall be placed in a manner so that emitted noise is directed away from sensitive receptors nearest the project site.

[Mitigation Measure NOISE-1 – Prior to Grading/Land Disturbance]

GENERAL REFERENCES

- Alquist-Priolo Special Studies Zone Act Map Series (PRC 27500)
- California Environmental Quality Act (CEQA) Guidelines, Appendix G.
- California Fish and Game Code, Migratory Bird Treaty Act and Section 3503.
- California Standard Specifications, July 1992
- California Natural Diversity Database, accessed at www.dfg.ca.gov/biogeodata/cnddb/.
- California Department of Resources Recycling and Recovery (CalRecycle) Accessed at <http://www.calrecycle.ca.gov/SWFacilities/Landfills/> on August 17, 2012.
- California Department of Conservation. County of San Bernardino Important Farmland Map. 2010.
- California Geological Survey. Alquist-Priolo Earthquake Fault Zones Maps. Assessed at <http://www.consrv.ca.gov/cgs/rghm/ap/Pages/index.aspx> on August 16, 2012.
- Water Quality Control Plan – Colorado River Basin Region 7. Colorado River Regional Water Quality Control Board (CRRWQB) approved by the State Water Resources Control Board on February 17, 1994
- Federal Emergency Management Agency (FEMA). *Flood Insurance Rate Map and Flood Boundary Map*.
- Mojave Desert Air Quality Management District California Environmental Quality Act (CEQA) and Federal Conformity Guidelines (2009)*
- Mojave Desert Air Quality Management District Antelope Valley Air Pollution Control District Emissions Inventory Guidance Mineral Handling and Processing Industries. 2000.*
www.mdaqmd.ca.gov/Modules/ShowDocument.aspx?documentid=401
- San Bernardino Associated Government's *Congestion Management Plan – 2007 Update*. Adopted December, 2007.
- San Bernardino County. *Greenhouse Gas Emissions Reduction Plan*, Adopted December 6, 2011.
- San Bernardino County. *Development Code, 2007*
- San Bernardino County. *General Plan*, adopted 2007.
- San Bernardino County. *General Plan Environmental Impact Report, 2007*.
- San Bernardino County. *Lucerne Valley Community Plan*. Adopted March 13, 2007.
- San Bernardino County. Identified Hazardous Materials Waste Sites List, April 1998
- San Bernardino County. Countywide Integrated Waste Management Plan. Prepared by the Department of Public Works. December 2007.

San Bernardino County. *San Bernardino County Stormwater Program, Model Water Quality Management Plan Guidance.*

San Bernardino County of, Road Planning and Design Standards.

South Coast Air Quality Management District, CEQA Air Quality Handbook, November 1993.

Mojave Basin Area Watermaster, 19th Annual Report of the published on May 1, 2013. Accessed online at www.mojavewater.org/files.

Federal Emergency Management Agency Flood Insurance Rate Map and Flood Boundary Map.

Mojave Desert Air Quality Management District (MDAQMD), 2009, California Environmental Quality Act (CEQA) and Federal Conformity Guidelines.

San Bernardino County General Plan (Available online at <http://cms.sbcounty.gov/lus/Planning/GeneralPlan.aspx>)

San Bernardino County Development Code (Available online at <http://cms.sbcounty.gov/lus/Planning/DevelopmentCode.aspx>)

PROJECT SPECIFIC REFERENCES

All Phase Environmental, Inc, 2005. Phase I ~~Enviornmental~~Environmental Site Assessment, (June).

BCR Consulting, 2012. Cultural Resources Assessment (March) (Not Available For Public Review).

LSA Associates, 2013. Air Quality Analysis (October.)

LSA Associates, 2013. Construction Trip Generation (October.)

RCA Associated, 2011. Focused Desert Tortoise Survey (October).

RCA Associates, 2012. Habitat Assessment and Burrowing Owl Burrow Survey (October).

United Engineering Group, 2011. Preliminary Drainage Report (November).

EXHIBIT C

Correspondence

January 30, 2012

Re: Development Proposal

APPLICANT: LUCERNE VALLEY DESERT VIEW RANCH, LLC

ASSESSOR PARCEL NUMBER: 0435-132-01

Dear Planning/Chris Warrick:

The location of the project is stated as being "IN THE COMMUNITY OF:
LUCERNE VALLEY/1ST/SUPERVISORIAL DISTRICT"

The San Bernardino County assessor's map shows the property to be in the
"APPLE VALLEY TAX RATE AREA". As far as I know the boundaries of
Lucerne Valley does not start until High Rd. and that is 2 miles to the East of the
Eastern border of the project.

My other comment is that a project of this size will have a big impact on the rural
residential nature of the area and hopefully there will be some improvements to the
roads in the area including Pioneer Rd.

Please advise as to the description of the location of the project and any
information about road improvements that will be required for the project.

Respectfully,



Orrin Joseph, owner
0435-441-05-0000



SAN BERNARDINO COUNTY
LAND USE SERVICES
PLANNING PROJECT NOTICE

985 North Arrowhead Avenue, First Floor, San Bernardino, CA 92415-0182

Referral Date:
January 25, 2012

ATTENTION PROPERTY OWNERS

Page 1 of 2

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ASSESSOR PARCEL NUMBER: 0435-132-01 (See map below for more information)

PROJECT NUMBER: P201100489/CF * Multiple Parcel Associations *

APPLICANT: LUCERNE VALLEY DESERT VIEW RANCH, LLC

LAND USE DISTRICT (ZONING): LV/RL-10

IN THE COMMUNITY OF: LUCERNE VALLEY/1ST/ SUPERVISORIAL DISTRICT

LOCATED AT: DESERT VIEW ROAD, BOTH SIDES; LOVE LACE CANYON ROAD, WEST SIDE


PROPOSAL: CONDITIONAL USE PERMIT FOR A 20 MEGA WATT PHOTOVOLTAIC SOLAR FACILITY WITH A MAJOR VARIANCE TO REDUCE THE PAVING REQUIREMENT ON A 198 ACRE PORTION OF 358 ACRES.

If you want to be notified of the project decision, please print your name clearly and legibly on this form and mail it to the address above along with a self-addressed, stamped envelope. All decisions are subject to an appeal period of ten (10) calendar days after an action is taken. Comments (If you need additional space, please attach additional pages):

VICINITY MAP 

I object to this project.
No one wants to see
the desert floor
cluttered with the junk
of a solar electric
generating plant.



 _____ 01-30-12 Happy Trails Children's Foundation

SIGNATURE DATE AGENCY

IF THIS DECISION IS CHALLENGED IN COURT, SUCH CHALLENGE MAY BE LIMITED TO ONLY THOSE ISSUES RAISED IN WRITING AND DELIVERED TO LAND USE SERVICES BEFORE THE PROJECT DECISION IS MADE.

IF A PUBLIC HEARING IS HELD ON THE PROPOSAL, YOU OR SOMEONE ELSE MUST HAVE RAISED THOSE ISSUES AT THE PUBLIC HEARING OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE HEARING BODY AT, OR PRIOR TO, THE HEARING. DUE TO TIME CONSTRAINTS AND THE NUMBER OF PERSONS WISHING TO GIVE ORAL TESTIMONY, TIME RESTRICTIONS MAY BE PLACED ON ORAL TESTIMONY AT ANY PUBLIC HEARING ABOUT THIS PROPOSAL. YOU MAY WISH TO MAKE YOUR COMMENTS IN WRITING TO ASSURE THAT YOU ARE ABLE TO EXPRESS YOURSELF ADEQUATELY.



**SAN BERNARDINO COUNTY
LAND USE SERVICES
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385 North Arrowhead Avenue, First Floor, San Bernardino, CA 92415-0182

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ASSESSOR PARCEL NUMBER:	0435-132-01	(See map below for more information)
PROJECT NUMBER:	P201109489/CF	* Multiple Parcel Associations *
APPLICANT:	LUCERNE VALLEY DESERT VIEW RANCH, LLC	
LAND USE DISTRICT (ZONING):	LV/RL-10	
IN THE COMMUNITY OF:	LUCERNE VALLEY/1ST/ SUPERVISORIAL DISTRICT	
LOCATED AT:	DESERT VIEW ROAD, BOTH SIDES; LOVE LACE CANYON ROAD, WEST SIDE	
PROPOSAL:	CONDITIONAL USE PERMIT FOR A 20 MEGA WATT PHOTOVOLTAIC SOLAR FACILITY WITH A MAJOR VARIANCE TO REDUCE THE PAVING REQUIREMENT ON A 198 ACRE PORTION OF 358 ACRES.	

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Comments (if you need additional space, please attach additional pages):

We fully support this project and look forward to its approval.
Thank you

VICINITY MAP



SIGNATURE

1-31-12
DATE

Lansing Companies
AGENCY

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RE: Lucerne Valley Desert Views Ranch LLC
APN 0435-123-01

TO WHOM IT MAY CONCERN:

My property is located along Pioneer Rd, APN 043509340+1, Two Ten ACRE PARCELS. I HAVE NO PROBLEMS WITH THE SOLAR PROJECT. THE PROJECT IS NECESSARY FOR THE PUBLIC, AND WILL PUT MANY PEOPLE TO WORK.

I DO HOWEVER, HAVE A PROBLEM WITH THE PAVING VARIANCE. THE SOIL HAS A LARGE AMOUNT OF SILICA, WHICH NEEDS TO BE CONTROLLED, AT THE VERY LEAST THE ROADS INVOLVED HOWLACE CANYON-DESERT VIEW + PIONEER, WHICH ARE ALL ACCESS ROADS SHOULD BE GRADED AND COVERED WITH ROAD BASE.

ALL OF THESE ROADS WILL BE USED BY THE CONSTRUCTION CREWS

Thank You
Joseph Marple
JOSEPH MARPLE

SIGNATURE

DATE

AGENCY

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**SAN BERNARDINO COUNTY
LAND USE SERVICES
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385 North Arrowhead Avenue, First Floor, San Bernardino, CA 92415-0182

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ATTENTION PROPERTY OWNERS

Page 1 of 2

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PROJECT NUMBER: P201100489/CF * Multiple Parcel Associations *
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LAND USE DISTRICT (ZONING): LV/RL-10
IN THE COMMUNITY OF: LUCERNE VALLEY/1ST/ SUPERVISORIAL DISTRICT
LOCATED AT: DESERT VIEW ROAD, BOTH SIDES; LOVE LACE CANYON ROAD, WEST SIDE
PROPOSAL: CONDITIONAL USE PERMIT FOR A 20 MEGA WATT PHOTOVOLTAIC SOLAR FACILITY WITH A MAJOR VARIANCE TO REDUCE THE PAVING REQUIREMENT ON A 198 ACRE PORTION OF 358 ACRES.

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 Comments (If you need additional space, please attach additional pages):

I WOULD LIKE TO
 BE KEPT INFORMED
 ON PRESENT AND FUTURE
 ACTIVITY, REGARDING THIS
 APPLICATION, PLEASE PUT ME
 ON MAILING LIST AS
 APPLICATION PROGRESSES.

T, HANKS.

PARCEL # 0435-132-01
 PROJECT # P201100489/CF

THOMAS CHONOS
 5190 S. CONQUISTADOR ST
 LAS VEGAS NV 89148

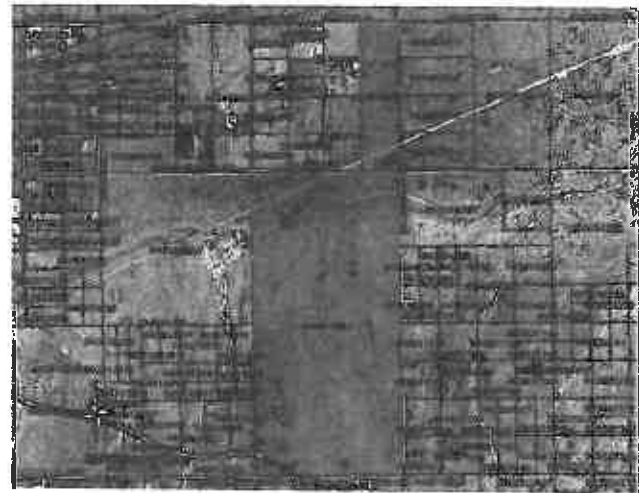
702 353 8893

SIGNATURE *Tom Chonos* DATE 2-2-12 AGENCY S.B.C LAND USE PLANNING PROJECT

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VICINITY MAP





**SAN BERNARDINO COUNTY
LAND USE SERVICES
PLANNING PROJECT NOTICE**

385 North Arrowhead Avenue, First Floor, San Bernardino, CA 92415-0182

Referral Date:
January 25, 2012

ATTENTION PROPERTY OWNERS

Page 1 of 2

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 PROJECT NUMBER: P201100489/CF * Multiple Parcel Associations *
 APPLICANT: LUCERNE VALLEY DESERT VIEW RANCH, LLC
 LAND USE DISTRICT (ZONING): LV/RL-10
 IN THE COMMUNITY OF: LUCERNE VALLEY/1ST/ SUPERVISORIAL DISTRICT
 LOCATED AT: DESERT VIEW ROAD, BOTH SIDES; LOVE LACE CANYON ROAD, WEST SIDE
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Comments (If you need additional space, please attach additional pages):

Dear Sirs:

I believe and would like to see the West side of Lovelace Canyon Rd. should be paved for the length of the subject project.

BRIAR METAGGART
 1642 Marion Way HOE
 Seal Beach, CA 92740
 0435-651-14-0000

VICINITY MAP



Briar Metaggart

2.5.2012

SIGNATURE

DATE

AGENCY

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PROJECT NUMBER: P201100489/CF * Multiple Parcel Associations *

APPLICANT: LUCERNE VALLEY DESERT VIEW RANCH, LLC

LAND USE DISTRICT (ZONING): LV/RL-10

IN THE COMMUNITY OF: LUCERNE VALLEY/1ST/ SUPERVISORIAL DISTRICT

LOCATED AT: DESERT VIEW ROAD, BOTH SIDES; LOVE LACE CANYON ROAD, WEST SIDE

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Comments (If you need additional space, please attach additional pages):

REC
CURRENT FILE
2012 FEB 13 PM 3:33

VICINITY MAP



Enayda M. Enabe 08 February 2012
 SIGNATURE ENAYDA M. ENABE DATE _____ AGENCY _____

IF THIS DECISION IS CHALLENGED IN COURT, SUCH CHALLENGE MAY BE LIMITED TO ONLY THOSE ISSUES RAISED IN WRITING AND DELIVERED TO LAND USE SERVICES BEFORE THE PROJECT DECISION IS MADE.

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DEPARTMENT OF TRANSPORTATION

DISTRICT 8

PLANNING (MS 725)

464 WEST 4th STREET, 6th FLOOR

SAN BERNARDINO, CA 92401-1400

PHONE (909) 383-4557

FAX (909) 383-5936

TTY 711

www.dot.ca.gov/dist8



*Flex your power!
Be energy efficient!*

FISCAL AGENCY
2013 DEC 19 AM 8:00

December 13, 2013

County of San Bernardino
Attn: Chris Conner
385 N Arrowhead Ave, 1st Floor
San Bernardino, CA 92415

Dear Ms. Conner,

Lucerne Valley Desert View Ranch- Solar Facility 08-SBd-18 PM 74.011

The California Department of Transportation (Caltrans) has reviewed the Notice of Completion & Environmental Document Transmittal for the proposed Solar Power Generating Facility in the City of Lucerne Valley, and has the following comments:

1. Please submit a Traffic Impact Study (TIA) for review.
2. Is there any proposed assess on the State highway?

We appreciate the opportunity to offer comments concerning this project. If you have any questions regarding this letter, please contact me at (909) 383-4557, or Dina Harrell at (909) 388-7139 for assistance.

Sincerely,

DANIEL KOPULSKY
Office Chief
Community & Regional Planning

Warrick, Chris - LUS

From: Griffith, Rosie - LUS on behalf of LUS - Customer Service
Sent: Tuesday, March 06, 2012 11:23 AM
To: Warrick, Chris - LUS
Subject: FW: ATTN; MR CHRIS WARRICK - REG DESERT VIEW SOLAR PROJECT BY SILVERADO POWER

From: Soojin Choi [<mailto:soochoi49@hotmail.com>]
Sent: Monday, March 05, 2012 6:18 PM
To: LUS - Customer Service
Subject: ATTN; MR CHRIS WARRICK - REG DESERT VIEW SOLAR PROJECT BY SILVERADO POWER

hello, mr chris warrick

i heard that the new solar project at the desert view road on west of lucerne valley was applied to the county by siliverado power located in SF

i live on the horizon street , a few blocks north from the location and always overlooking and driving by that area.

and when i heard about this project i couldn't understand why they applied the solar plant on this location because this is not the remote desert, and instead it is a middle of the many homes including ours.

And also it is not the empty land , there lived lots of animals.

I am very concerned about the animals living there

i had seen specially a lot of animals there and I think it's because of the ranch on the desert road right next to the project area , and the ranch has many fruit trees.

I have seen many kinds of animals around the area, including finches, woodpecker, wren, hummingbird, roadrunner, quail, hawk, pigeon, mockingbird, owl, and many unknown birds.

And I also spotted small and big squirrel, rabbit, rattlesnake, scorpions, lizards many small insects and even coyote.

It is not the empty land , many many animals are living there and many people also living there

if they want to build a solar plant, i think it's better to go further to the desert with no homes around, so no animals can live. (like the area on the north of the lucerne valley).

What's their main purpose? is the solar plant or they are just waiting until the area is developed and they will sell the land with a high profit while killing many animals and damaging the local residents

Please inspect the area thoroughly with the eye of the local resident and animals.

i trust that if you visit the area , you will not give a permission to that greedy investor.

thank you very much

soo choi

LAND USE COMMITTEE¹
TO THE
MUNICIPAL ADVISORY COUNCIL
FOR
COUNTY SERVICE AREA 29
LUCERNE VALLEY, SAN BERNARDINO COUNTY, CALIFORNIA

MEMORANDUM REGARDING PLANNING APPLICATIONS
FINDINGS FOR CONDITIONAL SUPPORT

The following application has been reviewed by the Land Use Committee regarding compliance with the Lucerne Valley Community Plan and/or other issues. The committee recommends findings for approval, with the following conditions being met, for this case.

Date of committee review: August 9, 2012

APN	Project #:
0435-083-39	P201100489/CUP-VAR
& 0435-132-01	

Applicant:	L.U.D.	Case Planner:
Lucerne Valley Desert View Ranch. LLC	LV/RL-10 & LV/RL-20	Chris Warrick
(Silverado Power)		

Comments & Conditions:

Since the Lucerne Valley Community Plan was drafted and approved prior to the influx of the renewable energy projects, it doesn't have any provisions to address here, but the county General Plan does. The committee doesn't find any issues with the land use for this project and will focus its comments and conditions based on the MAC's recommended guidelines for such projects.

- 1) During the presentation at a MAC meeting by the applicant the economic issues were adequately addressed.
- 2) The committee has some conditions that relate to development issues as outlined in the guidelines as well as issues with the application.
 - a) The applicant is asking for a variance to be relieved of the Pioneer Road dedication. The committee opposes this variance and feels that the applicant should still be required to dedicate its share of Pioneer Road, as would any other applicant would be required to do. However, the committee feels that the project should not be required to perform any road improvements other than the minimum required for fire department access.
 - b) The project should be required to provide a right-turn lane on highway 18 wherever the determination is made to where the construction traffic will come from, probably Milpas Drive.
 - c) The guidelines call for greater road setbacks and in this case a setback of 100 feet. The committee feels that this is not necessary on the upper north end on the west side, nor on Desert View because of the high power lines, nor on the south end because of the railway tracks and power pole easements. However, the committee feels that a 100-foot setback should be required along Pioneer Road and Canyon View Road. This greater setback should be left intact with native growth and also should be the areas where the displaced

¹ Committee Members: Richard Selby, Chairman, Jean Magee, Ernie Gommel, Chuck Bell & Roger Peterson.

Joshua trees should be planted to give greater screening. The projects plans indicate that the project will be fenced-in with chain-link fence with barbed wire on top for a total height of nine feet. This fence height is reasonable for this project but should be setback at the setback line of 100 feet, except where noted. Additional screening should be required where the project abuts an existing residence.

- d) The committee recommends that the applicant contact the Mojave Water Agency to see if it is feasible to acquire construction water from the Morongo pipeline therefore using secondary non-potable water for this purpose, instead of using Apple Valley Ranchos drinking water for this.
- e) The plans indicate that the maximum height for the solar arrays to be 10 feet. The guidelines recommend and the committee would like to see this to be 8 feet maximum.

If the applicant can provide the recommended conditions, then it has no problem with making findings for support of this project.

Respectfully:
Land Use Committee



State of California - Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

EDUARDO B. BROWN, Jr., Governor
CHARLTON H. BOESCH, Jr., Director



Clear
12/03/13
E

December 2, 2013

RECEIVED

DEC 02 2013

Mr. Chris Conner
Senior Planner

San Bernardino County Land Use Services Department
385 North Arrowhead Ave, 1st Floor
San Bernardino, CA 92415-0181

STATE CLEARING HOUSE

Subject: Comments for the Lucerne Valley Desert View Ranch Biological Surveys/Reports for Conditional Use Permit Application Permit P22-0101-000 State Clearinghouse Number (SCH#) 2013111010

Dear Mr. Conner:

The California Department of Fish and Game (Department) has reviewed the Biological Reports for the Lucerne Valley Desert View Ranch Conditional Use Permit (CUP) hereinafter referred to as the "Project". The Department appreciates this opportunity to comment on the above-referenced Project and provide input and recommendations relative to impacts to biological resources.

The proposed Project includes the construction, operation, and maintenance of a 20 megawatt (MW) solar photovoltaic (PV) electrical power generating facility on approximately 197 acres of the 358 acres parcel located in Township 4 North, Range 2 West, Section 10, San Bernardino Base and Meridian. The Project is approximately a quarter of a mile south of Highway 18, east of the sphere of influence of the Town of Apple Valley, in the County of San Bernardino, California. It is bounded by Pioneer Road on the west, Candida Road on the east, Ocotillo Way on the South, and Desert View Avenue on the north. A small 40 acre portion of the project extends north of Desert View to Wren Street.

The Department is a Trustee Agency pursuant to the California Environmental Quality Act (CEQA). A Trustee Agency has jurisdiction over certain resources held in trust for the people of California. Trustee agencies are generally required to be notified of CEQA documents relevant to their jurisdiction, whether or not these agencies have actual permitting authority or approval power over aspects of the underlying project (CEQA Guidelines, Section 15386). As the trustee agency for fish and wildlife resources, the Department provides requisite biological expertise to review and comment upon CEQA documents, and makes recommendations regarding those resources held in trust for the people of California.

The Department may also assume the role of Responsible Agency. A Responsible Agency is an agency other than the lead agency that has a legal responsibility for carrying out or approving a project. A Responsible Agency actively participates in the Lead Agency's CEQA process, reviews the Lead Agency's CEQA document and uses

Conserving California's Wildlife Since 1870

that document when making a decision on the project. The Responsible Agency must rely on the Lead Agency's environmental document to prepare and issue its own findings regarding the project (CEQA Guidelines, Sections 15095 and 15380). The Department most often becomes a responsible agency when a Lake or Streambed Alteration Agreement, pursuant to Section 1600 *et. seq.* of the Fish and Game Code, or a 2081 (b) California Endangered Species Act Incidental Take Permit is needed for a project. The Department relies on the environmental document prepared by the Lead Agency to make a finding and decide whether or not to issue the permit or agreement. It is important that the Lead Agency's CEQA document considers the Department's responsible agency requirements.

The Department offers the following comments and recommendations on the proposed Project:

Desert Kit Fox (DKF)

DKF is addressed in Title 14 of the California Code of Regulations: §460. "Fisher, marten, river otter, desert kit fox and red fox may not be taken at any time." It is also covered under the Fish and Game Code (FGC): §4000. "Fur-bearing mammals enumerated. The following are fur-bearing mammals: pine marten, fisher, mink, live otter, gray fox, red fox, kit fox, raccoon, beaver, badger, and muskrat." The Department's interpretation is that trapping or handling of kit foxes is not allowed due to the regulations cited above. Passive relocation is currently the only strategy for excluding DKF from project sites, provided the fox is not in a natal den.

The Department recommends that surveys be conducted to determine DKF presence and numbers on project sites well in advance of project approval and construction. A solid understanding of DKF numbers and locations is needed before starting passive exclusion. Activity at burrow sites can be evaluated using motion-activated cameras, which are less labor intensive. It can also be evaluated by checking for tracks using diatomaceous earth at den openings or just smoothing the sand at the openings. Project applicants will need to have a specific plan for addressing DKF passive relocation, with adequate scheduling built into it. Passive relocation should not take place while young are still in dens and dependent on the parents for food, or while females may be pregnant (either could directly cause death of pups). This seasonality most likely rules out passive relocation between mid January through June or July, or until biologists can document that pups are independent enough to travel with the parents off-site. This is why it is imperative to know in advance how many DKF burrows are within the Project footprint, how many are active and inactive, and construction schedule specifics so adequate time is allowed for passive relocation planning and implementation.

Jurisdictional Drainages

The Project may require notification for a Lake or Streambed Alteration Agreement, pursuant to Fish and Game Code (FGC) Section 1600 *et. seq.* FGC Section 1600 requires the project applicant to notify the Department of any activity that will divert, obstruct, or change the natural flow of the bed, channel or bank (which includes associated riparian habitat) of a river, stream or lake, or use material from a streambed

Mr. Chris Conner
December 2, 2013
Page 3

prior to the applicant's commencement of the activity. Streams include but are not limited to, intermittent and ephemeral streams, rivers, creeks, dry washes, drought, blue-line streams and watercourses with subsurface flow. Departmental jurisdiction under §1600 et. seq. may apply to all lands within the 100-year floodplain. Early consultation with the Department is recommended, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources.

Desert Tortoise

Protocol surveys for desert tortoise (DT) were conducted on September 21 and 25, 2011. According to the 2010 USFWS survey protocol, tortoise sign encountered within the action area during the survey effort confirms presence of desert tortoise within the project area. Since DT sign was observed within the project site during surveys presence is confirmed and an Incidental Take Permit (ITP) pursuant to Fish and Game Code § 2080 may be necessary to ensure that the unlawful take of DT would not occur.

Mohave Ground Squirrel

A habitat quality assessment conducted for the project determined that the project site and surrounding area does have suitable habitat for Mohave ground squirrel (MGS); however, no live-trapping surveys were conducted to determine presence or absence of the species. The Department recommends the Lead Agency require surveys be conducted using the 2010 California Department of Fish and Game Mohave Ground Squirrel Survey Guidelines to protocol to determine presence or absence of MGS. If presence is confirmed or inferred due to presence of sign, an ITP pursuant to Fish and Game Code § 2080 may be necessary to ensure that the unlawful take of MGS would not occur.

Burrowing Owl

The Department recommends the Lead Agency require pre-construction burrowing owl surveys. If burrowing owl are observed during the pre-construction survey, the Department recommends the Lead Agency require burrowing owl mitigation measures as detailed in the Department's 2012 Staff Report on Burrowing Owl Mitigation (2012 Staff Report). The 2012 Staff Report provides conservation and mitigation strategies to reduce potential impacts to burrowing owl as well as protocol survey guidelines (Appendix D). The primary goal of this document is avoidance which may include but is not limited to: avoid disturbing occupied burrows during the nesting season (September 1 through January 31), avoid impacting occupied burrows during the non-breeding season by migratory or resident burrowing owl, and avoid direct destruction of burrows.

If the above avoidance requirements cannot be met, on-site passive relocation should be implemented. Passive relocation is defined as encouraging owls to move from occupied burrows to alternate natural or artificial burrows. The 2012 Staff Report includes studies that show passive relocation was successful when artificial burrows were constructed within 75 meters of the occupied burrow and sufficient adjacent foraging habitat was present. Relocation of owls should only be implemented by a

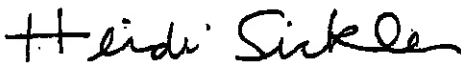
Mr. Chris Conner
December 2, 2013
Page 4

qualified biologist during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty. On-site habitat where owls are relocated should be preserved in a conservation easement and managed to promote burrowing owls' use of the site. Prior to exclusion or relocation of any burrowing owl, a Burrowing Owl Exclusion Plan should be prepared and submitted to the Department for review and approval. Appendix E of the 2012 Staff Report provides detailed examples of the type of information that should be included in the plan.

Permanent loss of occupied burrow and habitat shall be mitigated for in coordination with the Department. As compensation for the direct loss of burrowing owl nesting and foraging habitat, the project proponent shall mitigate by acquiring and permanently protecting known burrowing owl nesting and foraging habitat. The project proponent shall establish a long-term endowment account for the long-term management and maintenance of the preservation site for burrowing owls. The site shall be managed for the benefit of burrowing owls. The preservation site, site management, and endowment shall be approved by the Lead Agency after consultation with the Department. The 2012 Staff Report offers guidance on mitigation including mitigation monitoring and reporting requirements.

Thank you for this opportunity to comment. Questions regarding this letter and further coordination on these issues should be directed to Ms. Wendy Campbell, Environmental Scientist, at (760) 258-6921 or by email at WCampbell@wildlife.ca.gov.

Sincerely,



Heidi A. Sickler
Senior Environmental Scientist

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December 4, 2013

Mr. Chris Conner, Senior Planner
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**Re: Comments on Initial Study/Mitigated Negative Declaration for the
Lucerne Valley Desert View Ranch Project (SCH # 2013111010;
P201100489)**

Dear Mr. Conner:

I am writing on behalf of the Laborers International Union of North America, Local Union 783 and its members living in San Bernardino County ("LiUNA" or "Commenters") regarding the Lucerne Valley Desert View Ranch Project (SCH # 2013111010; P201100489), including all actions referring or related to the development of a 20 megawatt (MW) solar photovoltaic (PV) project on 198 acres of a 358-acre site in Lucerne Valley, bounded by Pioneer Road on the west, Candida Road on the east, Ocotillo Way on the South and Desert View Avenue on the north ("Project"). A small 40-acre portion of the Project extends north of Desert View to Wren Street.

Commenters urge the San Bernardino County ("County") to comply with the California Environmental Quality Act ("CEQA") and prepare an environmental impact report ("EIR") because the IS/MND prepared by the County is insufficient and an EIR is required where substantial evidence in the record supports a fair argument that the Project may have significant adverse impacts. However, the County proposes to proceed with adopting the IS/MND and approving the Project without fully complying with CEQA.

These comments are supported by expert comments of Mr. Matthew Hagemann and Dr. Shawn Smallwood. Mr. Hagemann is an expert in the fields of hydrogeology, toxics, and air quality. He is also the former Senior Science Policy Advisor, U.S. EPA Region 9 and Hydrogeologist, Superfund, RCRA and Clean Water programs. Mr. Hagemann's comments and curriculum vitae are attached hereto as Exhibit A and are incorporated herein by reference in their entirety. Dr.

Comments on Mitigated Negative Declaration for the
Lucerne Valley Desert View Ranch Project
December 4, 2013
Page 2 of 21

Smallwood is an expert wildlife biologist and ecologist who has expertise in the areas of rare and special status plants, animal density and distribution, habitat selection, habitat restoration, interactions between wildlife and human infrastructure and activities, conservation of rare and endangered species, and on the ecology of invading species, and other species impacts relevant to this IS/MND. His comments and curriculum vitae are attached hereto as Exhibit B and are incorporated by reference in their entirety.

First and foremost, the County must consider this Project in light of the current County-wide moratorium on approval of commercial solar energy generation projects, which the Board of Supervisors unanimously approved on June 12, 2013. (Exhibit C, Ordinance No. 4198.) According to the Staff Report, this Project is not directly affected by the moratorium because the application was deemed completed prior to when the moratorium was first adopted on June 12, 2013. (Staff Report, p. 8.) Nevertheless, the County must consider this Project carefully to carry out the purposes of the moratorium, which include immediate protection and preservation of the public peace, health, safety and welfare, coupled with CEQA's requirement that the County consider whether the Project would conflict with such an ordinance. (CEQA Guidelines, Appendix G, Section IX(b).)

The IS/MND falls short in the following ways:

1. The Project's IS/MND fails to accurately establish the Project's environmental setting or "baseline."
 - a. The IS/MND relies on a dated and incomplete Phase I Environmental Site Assessment.
 - b. The Phase I ESA also fails to adequately evaluate whether the two transformers on the Project site could leak or have leaked hazardous materials.
 - c. The IS/MND fails to evaluate or disclose relevant biological resources baselines for burrowing owls, desert tortoises, bats and, as a result, may have significant impacts on these species.
2. There is a fair argument that the Project may have significant unmitigated impacts of valley fever.
3. The IS/MND fails to analyze and mitigate the Project's cumulatively considerable impacts on air quality.
4. The Project's future monitoring or permit applications to address impacts to ground squirrels do not eliminate the possibility that the project will have significant impacts on that species.

Comments on Mitigated Negative Declaration for the
 Lucerne Valley Desert View Ranch Project
 December 4, 2013
 Page 3 of 21

5. The Project may have significant impacts on avian species from collisions with the Project's solar panels, fencing, and other features.
6. The Project may have significant impacts on wildlife movement and habitat fragmentation.
7. A fair argument is present that the Project may have visual impacts.

In addition, this comment letter supplements and incorporates by reference all prior written and oral comments submitted on the IS/MND for the Project by any commenting party or agency. Commenters request that the County decline to adopt the IS/MND and prepare an EIR. An EIR is required to analyze these and other impacts and to propose mitigation measures to reduce these impacts to the extent feasible.

PROJECT DESCRIPTION

The Project proposes to construct and operate a 20-Megawatt (MW) photovoltaic (PV) solar energy generation facility on a 358-acre site, located approximately ¼ mile south of Highway 18, east of the sphere of influence of the Town of Apple Valley, and bounded by Pioneer Road on the west, Candida Road on the east, Ocotillo Way on the South and Desert View Avenue on the north. A small 40-acre portion of the site extends north of Desert View to Wren Street. The Project site is currently vacant and is bound by residences on three sides (north, west, and south). The Project site will be enclosed by a chain link fence with a maximum height of eight feet to prevent unauthorized access to the site.

The Project will utilize PV modules mounted on fixed-tilt systems mounted in rows running east-west. The PV panels are mounted on steel columns approximately five feet above grade and tilt to a maximum height of ten feet above grade. Southern California Edison (SCE) will buy the energy produced by the Project via a long-term Power Purchase Agreement. The Project will construct a substation on-site in order to tie into the existing SCE 115kV transmission line crossing the project site along Desert View Road.

The Project construction will require approximately 48.03 acre feet of water for the 9-month construction period supplied via water trucks. The water will primarily be used for dust control for road construction, grading, and other site work. Approximately 40,000 gallons of water per acre will be applied for disking, leveling and recompacting the upper 12 inches of soil. Approximately 200 gallons per acre per day will be used for dust control.

The IS/MND provides two conflicting statements regarding the anticipated construction timeline. In one section, the IS/MND states that "Project construction is

Comments on Mitigated Negative Declaration for the
 Lucerne Valley Desert View Ranch Project
 December 4, 2013
 Page 4 of 21

anticipated to last approximately 9 months.” (IS/MND, p. 5.) On the next page, the IS/MND curiously states that “[t]he construction activities are expected to be completed in approximately 24 months.” (*Id.*, p. 6.)

The IS/MND provides that “The PV system will be decommissioned when the project’s life is over.” (IS/MND, p. 6.) The IS/MND provides that “Most parts of the proposed system are recyclable.” (*Id.*)

STANDING

“[U]nions have standing to litigate environmental claims.” (*Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1198, citing, *International Longshoremen’s & Warehousemen’s Union v. Board of Supervisors* (1981) 116 Cal. App. 3d 265.) Members of LIUNA Local 783 live, work, and recreate in the immediate vicinity of the proposed Project site. These members will suffer the impacts of a poorly executed or inadequately mitigated Project, just as would the members of any nearby homeowners association, community group, or environmental group. Members of LIUNA Local 783 live and work in areas that will be affected by air pollution, hazardous materials, and impacts on plant and wildlife species generated by the Project.

In addition, construction workers in particular will suffer many of the most significant impacts from the Project as currently proposed, such as exposure to residual pesticides at the Project site that pose a risk to human health through dust inhalation and direct physical contact on the ground. Therefore, LIUNA Local 783 and its members have a direct interest in ensuring that the Project is adequately analyzed and that its environmental and public health impacts are mitigated to the fullest extent feasible.

Commenters are interested in participating in a full and open CEQA process to ensure that all of the Project’s impacts are mitigated to the fullest extent feasible.

LEGAL STANDARD

As the California Supreme Court very recently held, “[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.” (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310, 319-320 (“*CBE v. SCAQMD*”), citing, *No Oil, Inc. v. City of Los Angeles*, (1974) 13 Cal.3d 68, 75; *Id.* at 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal. App. 3d 491, 504–505.) “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109 [“*CBE v. CRA*”].)

Comments on Mitigated Negative Declaration for the
 Lucerne Valley Desert View Ranch Project
 December 4, 2013
 Page 5 of 21

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903, 927.) The EIR is an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return.” (*Bakersfield Citizens*, 124 Cal.App.4th at 1220.) The EIR also functions as a “document of accountability,” intended to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” (*Laurel Heights Improvements Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.) The EIR process “protects not only the environment but also informed self-government.” (*Pocket Protectors*, 124 Cal.App.4th at 927.)

An EIR is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” (Pub. Res. Code, § 21080(d); see also *Pocket Protectors*, 124 Cal.App.4th at 927.) In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (14 Cal. Code Regs., § 15371 [CEQA Guidelines]), only if there is not even a “fair argument” that the project will have a significant environmental effect. (Pub. Res. Code, §§ 21100, 21064.) Since “[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process,” by allowing the agency “to dispense with the duty [to prepare an EIR],” negative declarations are allowed only in cases where “the proposed project will not affect the environment at all.” (*Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440.)

A negative declaration is improper, and an EIR is required, whenever substantial evidence in the record supports a “fair argument” that significant impacts may occur. Under the “fair argument” standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency’s decision. (CEQA Guidelines, § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-15; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.) The “fair argument” standard creates a “low threshold” favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. (*Pocket Protectors*, 124 Cal.App.4th at 928.)

The “fair argument” standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

Comments on Mitigated Negative Declaration for the
 Lucerne Valley Desert View Ranch Project
 December 4, 2013
 Page 6 of 21

This 'fair argument' standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency's decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

(Kostka & Zishcke, *Practice Under CEQA*, §6.29, pp. 273-274.) The Courts have explained that "it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is de novo, with a **preference for resolving doubts in favor of environmental review.**" (*Pocket Protectors*, 124 Cal.App. 4th at 928 [emphasis in original].)

As a matter of law, "substantial evidence includes . . . expert opinion." (Pub. Resources Code, § 21080(e)(1); CEQA Guidelines, § 15064(f)(5).) CEQA Guidelines demand that where experts have presented conflicting evidence on the extent of the environmental effects of a project, the agency must consider the environmental effects to be significant and prepare an EIR. (CEQA Guidelines § 15064(f)(5); Pub. Res. Code § 21080(e)(1); *Pocket Protectors*, 124 Cal.App.4th at 935.) "Significant environmental effect" is defined very broadly as "a substantial or potentially substantial adverse change in the environment." (Pub. Resources Code, § 21068; see also Guidelines § 15382.) An effect on the environment need not be "momentous" to meet the CEQA test for significance; it is enough that the impacts are "not trivial." (*No Oil*, 13 Cal.3d at 83.) In the *Pocket Protectors* case, the court explained how expert opinion is considered. The Court limited agencies and courts to weighing the admissibility of the evidence. (*Id.*) In the context of reviewing a Negative Declaration, "neither the lead agency nor a court may 'weigh' conflicting substantial evidence to determine whether an EIR must be prepared in the first instance." (*Id.*) Where a disagreement arises regarding the validity of a negative declaration, the courts require an EIR. As the *Pocket Protectors* court explained, "It is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project." (*Id.*)

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Comments on Mitigated Negative Declaration for the
Lucerne Valley Desert View Ranch Project
December 4, 2013
Page 7 of 21

DISCUSSION

A. The County Must Consider this Project Carefully in Light of the County-Wide Moratorium on the Approval of Commercial Solar Energy Generation Projects.

On June 12, 2013, the County Board of Supervisors (Board) unanimously adopted Interim Urgency Ordinance No. 4198, establishing a temporary (45-day) moratorium on approval of commercial solar energy generation projects. (Exhibit C, Ordinance No. 4198.) In adopting the moratorium, the Board found that County residents have reported adverse effects of solar generation projects which could adversely impact the quality of life for the residents and that “[t]here is a current and immediate threat to the public health, safety and welfare if permits or entitlements for construction of new solar energy generation projects are issued.” (Exhibit C, Ordinance No. 4198.) The moratorium, however, does not apply to applications for solar energy generation projects that have been accepted as complete prior to the June 12, 2013 Ordinance. (*Id.*)

On July 23, 2013, the Board extended the initial 45-day moratorium for an additional 10 months and 15 days, based on the same public welfare findings it made on June 12, 2013. The extended moratorium would allow the County to develop standards in the Development Code that will help ensure that such developments are compatible with existing land uses, which will include the preparation of a Renewable Energy Element of the General Plan, with a complementary Regulatory System for renewable energy projects. Based on the extension, the moratorium is set to expire on June 11, 2014.

Even if this Project may not be affected by the moratorium because the application was deemed completed prior to when the moratorium was first adopted on June 12, 2013, CEQA nevertheless requires that the lead agency consider whether the project would conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. (CEQA Guidelines, Appendix G, Section IX(b).) Since the moratorium is an ordinance which was adopted by the County for the purpose of avoiding or mitigating environmental effects, the County must analyze whether the Project conflicts with it.

Additionally, the Board’s adoption of such an urgency measure “necessary for the immediate protection and preservation of the public peace, health, safety and welfare” warrants a cautious and rigorous review of the instant Project. (See Exhibit C, Ordinance No. 4198.) Therefore, in reviewing this Project, the County must focus on the welfare of the County residents and the environment in which they reside. The County has made a formal finding that “[t]here is a current and immediate threat to the public health, safety and welfare if permits or entitlements for construction of new solar energy generation projects are issued.” (Exhibit C, Ordinance No. 4198.) There is no logical reason that this finding does not apply equally to the instant

Comments on Mitigated Negative Declaration for the
 Lucerne Valley Desert View Ranch Project
 December 4, 2013
 Page 8 of 21

Project. At the very least, the County must acknowledge all potentially significant environmental impacts that should be analyzed in an EIR.

Based on the arguments set forth below, substantial evidence supports a fair argument that the Project will have potentially significant impacts on the environment and an EIR is required to analyze such impacts and mitigate them to the extent feasible.

B. The IS/MND Fails to Accurately Establish the Project's Environmental Setting or "Baseline."

CEQA requires that an Initial Study include a description of the project's environmental setting or "baseline." (CEQA Guidelines, § 15063(d)(2).) The CEQA "baseline" is the set of environmental conditions against which to compare a project's anticipated impacts. (*Communities for a Better Environment v. So Coast Air Qual. Mgmt. Dist.* (2010) 48 Cal.4th 310, 321.) CEQA Guidelines section 15125(a) states, in pertinent part, that a lead agency's environmental review under CEQA:

...must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.

(*See, Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 124-125.)

Here, the IS/MND is inadequate because it fails to establish an accurate environmental setting for the Project.

1. The Incomplete and Dated Phase I ESA Fails to Disclose an Accurate Description of Baseline Hazardous Conditions at the Project Site.

The IS/MND fails to include a complete and current evaluation of the hazardous conditions present at the Project site. According to Mr. Hagemann, the Phase I Environmental Site Assessment ("ESA") attached to the IS/MND was completed in 2005, more than eight (8) years ago, and only covers a portion of the Project site. (Exhibit A, p. 1.) Based on the IS/MND and the Phase I ESA, the currently existing baseline hazardous conditions at the Project site are indeterminable.

Mr. Hagemann provides Figure 1 (Exhibit A, p. 2) to depict the portions of the Project site that the Phase I ESA failed to evaluate. According to Mr. Hagemann, it is critical for the County to conduct a new Phase I ESA to cover the unevaluated

Comments on Mitigated Negative Declaration for the
Lucerne Valley Desert View Ranch Project
December 4, 2013
Page 9 of 21

portions of the Project site because those portions contain scattered debris, just south of Certo Road and within the Project boundary. (Exhibit A, pp. 2-3.)

Because the IS/MND provides that the Project will involve clearing and grubbing of the site and grading for the access roads, Mr. Hagemann opines that any hazardous compounds associated with the debris currently present on the Project site may be disturbed, posing risks to construction workers who may touch contaminated materials or soils and breathe dust from the associated contaminated soils. (Exhibit A, p. 3.) Moreover, the Project site is surrounded by residences on three sides and therefore, Mr. Hagemann is concerned that residents nearby may be affected if hazardous materials are disturbed and generate contaminated vapors and dust. (*Ibid.*)

2. The IS/MND Fails to Adequately Evaluate the Transformers on the Project Site.

According to Mr. Hagemann, additional environmental conditions warrant further evaluation in an EIR as identified in the Phase I ESA. The Phase I ESA provides that there are two pole mounted transfers located on the Project site, just south of Desert View Avenue. (Phase I ESA, unnumbered figure, p. 49/108 pdf.) However, the Phase I ESA only briefly mentions the transformers without going into a detailed analysis of whether such conditions would pose risks to construction workers and/or residents nearby. (Phase I ESA, p. 33.) Because the transformers could have leaked PCB-containing fluids, Mr. Hagemann advises that a full evaluation of the transformers must be conducted as part of an EIR.

An EIR should be prepared to include a new Phase I ESA that would cover the entire Project site with a focus on the transformers and debris noted above. According to Mr. Hagemann, any sampling that would be required should be conducted along with an analysis of potential health risks. The analysis and results must be included in an EIR.

3. The IS/MND Fails to Evaluate or Disclose Relevant Biological Resources Baselines for Burrowing Owls, Desert Tortoises, Bats and, as a Result, May Have Significant Impacts on These Species.

The MND reads as an exercise to downplay the Project's potential impacts on wildlife rather than disclose a frank assessment of the Project's impacts. The MND attempts to gloss over its total failure to address potential impacts to burrowing owls by not looking for them, despite acknowledging that the site is the type of habitat where these protected birds will be found. A similar lack of effort is also observed for desert tortoise and bats.

Comments on Mitigated Negative Declaration for the
 Lucerne Valley Desert View Ranch Project
 December 4, 2013
 Page 10 of 21

a. Burrowing Owls

The MND relies on a burrowing owl survey conducted in October 2012. The survey confirmed that the project site “supports suitable habitat for burrowing owls....” Habitat Assessment and Burrowing Owl Burrow Survey, p. 15 (October 12, 2012). The survey also disclosed “[t]here occupiable burrows” within the project site. *Id.* The project consultant also acknowledged that “[a]dditional surveys (nesting season and winter surveys) are typically required if occupiable burrows are present on a site....” *Id.* The project’s consultant recommended that CDFG be consulted about such additional surveys. *Id.* There is no indication in the MND that any such consultation occurred. The consultant opines that “[b]ased on the absence of any documented populations in the immediate area and the presence of only three burrows, it is the opinion of RCA Associates LLC that owls are unlikely to occur on the site in the future and nesting season and winter surveys may not be necessary.” *Id.*

The project consultant’s own opinion admits that, although in their opinion, unlikely, burrowing owls may occur on the site. Dr. Smallwood has reviewed the Habitat Assessment and MND and concludes that because no follow up surveys were conducted and because the California Natural Diversity Data Base (CNDDDB) is an unreliable basis for concluding burrowing owls are not present on a site, that burrowing owls may be significantly affected by the Project.

Dr. Smallwood takes issue with the survey’s use of an “occupiable burrow” standard. As Dr. Smallwood explains, there is no scientific basis for disqualifying observed burrows based on a notion of its potential for occupancy by a burrowing owl.

I have performed many burrowing owl surveys over many years, and have never encountered a standard for determining burrowing owl presence that was based on the number of “occupiable burrows.” (Occupiable is not a word.) Such a standard would require nesting season surveys, which were not done by RCA Associates, LLC (2012). It would also require a much more thorough inspection of the ground than recommended in the CDFG (2012) guidelines, as burrow entrances are often difficult to see, depending on angle of view. Also, such a standard would require a burrow probe to investigate burrow depth and width, and whatever else the consultants might imagine a burrowing owl needs in an “occupiable” burrow. San Bernardino County’s (2013) reliance on the number of occupiable burrows lacked scientific foundation, and contradicted its first conclusion that the site provides suitable burrowing owl habitat.

Smallwood Comments, p. 2. Given the MND’s acknowledgement of “[n]umerous small mammal burrows present throughout the site,” the subjective elimination of all but three as burrowing owl sign lacks a scientific basis. See MND, p. 18.

Comments on Mitigated Negative Declaration for the
 Lucerne Valley Desert View Ranch Project
 December 4, 2013
 Page 11 of 21

Dr. Smallwood also points out that the CNDDDB is not evidence to demonstrate burrowing owls are not present within acknowledged suitable habitat. As the Department of Fish & Wildlife emphasizes, the CNDDDB is not an “exhaustive and comprehensive inventory” and that “[f]ield verification for the presence or absence of sensitive species will always be an important obligation of our customers.” Smallwood Comments, p. 2. Hence, the MND’s rationale for not performing the typical follow-up surveys during the burrowing owl’s nesting season and wintering season is not supported by any legitimate scientific rationale.

The MND’s provision for preconstruction surveys for burrowing owls do not replicate surveys during the nesting season and other appropriate times. “Pre-construction surveys will come too late to properly estimate project impacts and to formulate appropriate mitigation (see CDFG 2012).” Smallwood Comments, p. 7. Nor does the MND provide for any “compensatory mitigation for the taking of burrowing owls or their habitat” if even the preconstruction surveys find them present. Because (1) the project is suitable habitat for burrowing owls, (2) the project did not perform the surveys necessary to define the extent burrowing owls may rely on the observed “occupiable burrows” and perhaps numerous other burrows that did not meet the surveyors’ undefined and subjective standard of “occupiable,” Dr. Smallwood finds that the project may have an adverse impact on burrowing owls. Accordingly, an EIR for the Project must be prepared.

b. Desert Tortoises

Desert tortoises are a threatened species whose native habitat encompasses the Lucerne Valley. Desert tortoise populations in the Mojave Desert have been in serious decline for a number of years. See Jones, Rebecca, DFW, “Status of Desert Tortoise Populations In the California Deserts (Sept. 11, 2002) (Exhibit D) ([http://www.dmg.gov/documents/RPT Stts of DT Pops in CA Dsrts JonesR 091 102.doc](http://www.dmg.gov/documents/RPT_Stts_of_DT_Pops_in_CA_Dsrts_JonesR_091_102.doc)). The Project’s consultants observed three desert tortoise carcasses on the site as well as some previously inhabited burrows. MND, p. 17. Based on a single survey of the site and the failure to detect any live tortoises that day, the MND attempts to conclude that the tortoise population in the area may be low. *Id.* (“no live tortoises were identified during the protocol surveys; consequently, the population levels may be very low in the area”); *Id.*, p. 18 (“The absence of any live tortoises or active burrows indicate that population levels on the site, as well as in the immediate area, have been significantly reduced over the last few decades...”). Dr. Smallwood points out the illogic of the MND’s rationale:

This claim is the product of a convenient leap in logic. The protocol surveys were not designed to estimate population abundance; they were designed only to detect the species. In fact, the protocol surveys *did* detect the species, including burrows and body parts. But the County’s speculation that population levels might be low is just that – speculation. There was no scientific or professional foundation for

Comments on Mitigated Negative Declaration for the
 Lucerne Valley Desert View Ranch Project
 December 4, 2013
 Page 12 of 21

concluding that the population is low. And even if the population in the area is relatively low, that does not qualify the project's impacts as any less significant than if the population is relatively high. Animal populations always vary in abundance, and this variation is critical for persistence.

Smallwood Comments, p. 3. Dr. Smallwood points out that any conclusions about population impacts and the importance of the project site habitat to tortoises are not borne out by a single survey on-site:

There is no scientifically defensible basis for this claim [that the absence of live tortoise on the project site shows that populations are low]. For one thing, the protocol surveys might have failed to detect live tortoises that were present on the site, but animal populations are also spatially dynamic (Taylor and Taylor 1979). Activity areas shift to escape parasite and predator loads, or to allow food resources to recover. Another issue is scale. The surveys performed within a 190-acre site was much too small to draw conclusions about the status of a population, as this area was smaller than a single desert tortoise's home range.

Smallwood Comments, p. 3

Likewise, despite acknowledging that "[t]he protocol survey results outlined in the RCA Associates are valid for one year as per CDFW and USFWS requirements," the MND simply ignores this now realized fact and continues to rely on the outdated survey. MND, p. 17; Smallwood Comments, p. 3.

The MND also fails to acknowledge the increased risk of predation on tortoises that will occur from the erection of an 8-foot tall fence around the perimeter of the project. Smallwood Comments, p. 8. Nor does the MND include any compensatory mitigation for impacts to desert tortoises that are discovered by the project's even inadequate preconstruction survey. *Id.*

Dr. Smallwood's expert comments coupled with the fact that actual tortoise sign was observed on the Project site and the significant decline in tortoise populations observed in the Mojave Desert, including the Lucerne Valley, demonstrates that the Project may have a significant direct and cumulative impact on the desert tortoise.

c. Bats.

Dr. Smallwood confirms that the project site is frequented by bats, yet no mention is made of potential impacts to bats by the project and its construction. Because the project may impact bats, an EIR must be prepared.

Comments on Mitigated Negative Declaration for the
 Lucerne Valley Desert View Ranch Project
 December 4, 2013
 Page 13 of 21

C. Substantial Evidence Supports a Fair Argument that the Project May Have Significant Unmitigated Impacts of Valley Fever.

The IS/MND fails to consider the potential for the Project to cause an increase in the incidence of valley fever, a disease caused by inhalation of cocci spores of fungus found in soils. According to Mr. Hagemann, valley fever is endemic to arid regions in California including San Bernardino County. (Exhibit A, pp. 4-5.) People contract valley fever by breathing dust containing cocci spores which are too small to be seen. (*Id.* at p. 5.) Symptoms of valley fever include fever, cough, headache, rash, muscle aches, joint pain, skin lesions, chronic pneumonia, meningitis, and bone or joint infection. (*Id.*)

Despite the recent rise in incidences of valley fever in California, with 25,217 hospitalizations from 2000 through 2011 (Exhibit A, p. 5), the IS/MND entirely fails to analyze the Project's impacts on incidences of valley fever. According to Mr. Hagemann, soil disturbance of the Project site has the potential to cause an increased incidence of valley fever. (Exhibit A, p. 5.) Construction activities, including clearing and grubbing of the site and grading the access roads, may disturb cocci spores that may be present in the soils at the Project site. (*Id.*) Disturbed cocci spores, which can be transported via dust, can then impact construction workers and nearby residents through inhalation. (*Id.* at pp. 5-6.)

Mr. Hagemann recommends that the County prepare an EIR to identify the potential for an increase in the incidence of valley fever during Project construction and identify appropriate mitigation measures. (Exhibit A, p. 6.) The mitigation measures should include identification of best management practices (BMPs) for prevention and control of Valley Fever, as other counties like San Luis Obispo County has adopted. (*Id.*) Mr. Hagemann advises that reducing construction worker exposure should be a particular focus of mitigation, including consideration of the following measures:

- Use of personal protective equipment such as the use of respirators especially when digging or trenching;
- Provide HEPA-filtered air-conditioned enclosed cabs with two-way radios on heavy equipment;
- Pre-watering soil prior to disturbance;
- Prohibit eating and smoking at the worksite and require meals to be taken in separate areas with hand-washing facilities;
- Provide a worker training program, including training on the offsite transport of contaminated items;
- Prevent off-site spore transport through vehicle cleaning and boot washing; and
- Require an enhanced dust control plan that includes:
 - i) site worker use of dust masks (NIOSH N-95 or better) whenever visible dust is present;

Comments on Mitigated Negative Declaration for the
 Lucerne Valley Desert View Ranch Project
 December 4, 2013
 Page 14 of 21

- ii) implementation of enhanced dust control methods (increased frequency of watering, use of dust suppression chemicals, etc.) immediately whenever visible dust comes from or onto the site; and
- iii) no downwind PM10 ambient concentrations to increase more than 50 micrograms per cubic meter above upwind concentrations as determined by simultaneous upwind and downwind sampling. High volume particulate matter samplers or other EPA-approved equivalent method(s) for PM10 monitoring shall be used. Samplers shall be:
 - a. Operated, maintained, and calibrated in accordance with 40 Code of Federal Regulations (CFR), Part 50, Appendix J, or appropriate EPA-published documents for EPA-approved equivalent methods(s) for PM10 sampling;
 - b. Reasonably placed upwind and downwind of construction activities based on prevailing wind direction and as close to the property line as feasible, such that other sources of fugitive dust between the sampler and the property line are minimized; and
 - c. Operated during active construction operations.
- Providing for tests of workers and potentially affected nearby public, through
 - microscopic identification of the fungal spherules in an infected tissue, sputum or body fluid sample;
 - growing a culture of *Coccidioides* spp. from a tissue specimen, sputum or body fluid; and
 - detection of antibodies (serological tests specifically for Valley Fever) against the fungus in blood serum or other body fluids.¹

(Exhibit A, pp. 6-7.)

Based on the increased incidences of valley fever in arid regions of California in the recent years, the County must prepare an EIR to adequately analyze the potential impacts of valley fever as a result of the Project and mitigate such impacts to the extent feasible, as recommended by Mr. Hagemann above.

D. The IS/MND Fails to Analyze or Mitigate the Project's Potentially Cumulatively Considerable Impacts on Air Quality.

The County fails to analyze the cumulative impacts of the Project in connection with other related past, present and future projects in the vicinity. An agency must make a "mandatory finding of significance" and may not issue a negative declaration if a proposed project will have "impacts that are individually limited, but cumulatively considerable." (Pub. Resources Code, § 21083; CEQA Guidelines, § 15355.) "Cumulatively considerable means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future

¹ <https://www.vfce.arizona.edu/ValleyFeverInPeople/Diagnosis.aspx>

Comments on Mitigated Negative Declaration for the
 Lucerne Valley Desert View Ranch Project
 December 4, 2013
 Page 15 of 21

projects.” (CEQA Guidelines, Appendix G, Section XVII; CEQA Guidelines, section 15130(a).) “Cumulative impacts” are defined as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” (CEQA Guidelines, § 15355(a).) “[I]ndividual effects may be changes resulting from a single project or a number of separate projects.” (CEQA Guidelines, § 15355(a).)

“The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” (*CBE v. CRA, supra*, 103 Cal.App.4th at 117; see CEQA Guidelines, § 15355(b).)

As the court stated in *CBE v. CRA*:

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

(*CBE v. CRA*, 103 Cal.App.4th at 114.)

The IS/MND fails to provide an adequate cumulative air quality impacts analysis. The IS/MND provides a conclusory analysis, without any supporting evidence, that despite the fact that the Project will contribute criteria pollutants to the area during construction, the Project will not result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in non-attainment. (IS/MND, p. 14.)

The Mojave Desert Air Quality Management District (MDAQMD) is in nonattainment for ozone precursors, including NO_x, and PM₁₀. (IS/MND, October 2013 Air Quality Analysis, p. 10.) The IS/MND recognizes that the Project will emit NO_x and PM₁₀ during the 9-month long construction period. (*Id.* at p. A-1.) Without more analysis and evidence, the IS/MND does not have adequate basis to conclude that the Project will not result in cumulatively considerable impacts.

The IS/MND does not provide a list of foreseeable projects in the Project’s vicinity. The IS/MND merely provides that “[t]here are no known projects occurring within the vicinity of the Project site.” (IS/MND, pp. 51-52.) However, it is not clear what the IS/MND considered to be the “vicinity” of the Project site. Does the vicinity include a 5 mile radius or a 10 mile radius? Moreover, what type of “known projects”

Comments on Mitigated Negative Declaration for the
 Lucerne Valley Desert View Ranch Project
 December 4, 2013
 Page 16 of 21

did the IS/MND consider? Was the consideration of the type of projects limited to renewable projects, solar projects, or other related projects that could contribute to emissions of NOx and PM10? The IS/MND answers none of these critical questions before arriving at the “no impact” conclusion.

According to Mr. Hagemann, an EIR is required which provides a list of such projects and estimated emissions of NOx and PM10 from those projects. (Exhibit A, p. 4.) The County must identify other nearby projects and the NOx and PM emissions that are expected from construction of those projects which were not considered in the IS/MND. (*Id.*) Mr. Hagemann recommends that the County prepare a list of related, foreseeable projects within a six-mile radius of the Project site and provide the total estimate of NOx and PM emissions from those projects, in combination with the Project. (*Id.*)

E. The Project’s Future Monitoring or Permit Applications to Address Impacts to Ground Squirrels do not Eliminate the Possibility That the Project Will Have Significant Impacts on That Species.

Dr. Smallwood objects to the MND’s analysis of the project’s impacts on Mojave Ground Squirrels because, based on the failure to conduct a live-trapping survey, the County and project applicant have no idea how many squirrel may be present on site and, hence, they have no idea how to mitigate impacts. Smallwood Comments, pp. 3, 8. The MND acknowledges the likely presence of Mojave ground squirrels but only requires the Project either (1) to seek an incidental take permit from DFW without disclosing any conditions or mitigations that may apply, or (2) in lieu of an ITP, to conduct live trap surveys for the squirrel. MND, p. 21.

Dr. Smallwood points out that surveying for the squirrel does not mitigate harms to the species. Indeed, live trapping likely will harm some of the squirrels that are temporarily captured. “Live-trapping does nothing to mitigate project impacts. If anything, live-trapping increases the risk of impacts, as animals often die in live-traps.” Smallwood Comments, p. 3. Because the proposed mitigation may itself have a significant adverse impact on the endangered Mojave ground squirrel, an EIR must be prepared.

Nor do the unidentified conditions of a future incidental take permit mitigate potential impacts to the Mojave ground squirrel:

An incidental take permit would mitigate the impacts only if appropriate mitigation is a condition of the take permit. The Initial Study (San Bernardino County 2013) included no conditions that might be associated with such a take permit, so the formulation of this important part of the mitigation plan was effectively deferred to some unspecified, later date, thereby excluding the public from meaningfully participating with it.

Comments on Mitigated Negative Declaration for the
 Lucerne Valley Desert View Ranch Project
 December 4, 2013
 Page 17 of 21

Smallwood Comments, p. 3.

Because the MND acknowledges the ground squirrels likely presence (MND, p. 18) but has not formulated any mitigation to effectively avoid impacts to squirrels at the Project site, the project may have a significant adverse impact to the Mojave ground squirrel.

F. The Project May Have Significant Impacts on Avian Species From Collisions With the Project's Solar Panels, Fencing and Other Features.

Although the collision risk posed by utility-scale solar projects to birds is not entirely understood, it is known to occur. Perhaps it is the glare similar to water that such facilities exhibit. Whatever the reason, bird collisions with solar facilities do occur. As discussed by expert wildlife biologist, Dr. Smallwood, the MND fails to assess the likely impacts of avian collisions with the Project's panels and structures. Dr. Smallwood carefully analyzes the available collision study for a solar project. Adjusting that study's methods to reflect more recent science, Dr. Smallwood predicts that the Project will kill from 43 to 216 birds per year. Smallwood Comments, p. 6. This is a certain impact to avian species, *i.e.*, the project may have an adverse environmental impact on birds crashing into its panels. Relatedly, the mitigation measures considered in an EIR should include avian behavior surveys in advance of construction, in order to characterize avian flight paths and the types of behaviors of endemic species that could contribute to collision risk (Smallwood et al. 2009). *Id.*, pp. 8-9. By failing to address this likely impact, the MND is deficient as a matter of law.

Other agencies with responsibility to evaluate solar PV projects pursuant to CEQA have determined that avian collisions with PV solar projects are certain to occur. For example, the California Energy Commission recently issued a final staff assessment for the Blythe Solar Power Project in Riverside County. Blythe Solar Power Project, Staff Assessment – Part B (October 11, 2013) (excerpts attached as Exhibit E) ("BSPP Staff Assessment"). The BSPP Staff Assessment acknowledges that, although "[t]he extent and severity of potential collision impacts on avian species under the modified BSPP is not quantifiable, they are **certain to occur**. Based on the extent of injury or mortality, and the species affected, this effect will likely be significant. Impacts could remain cumulatively considerable after implementation of all feasible mitigation measures." BSPP Staff Assessment, p. 4.2-88. See *id.*, pp. 4.2-7 – 4.2-8. Dr. Smallwood, although agreeing that uncertainty regarding predicting the number of avian collisions with a solar project plainly exist, he does not agree with the BSPP Staff Assessment's notion that one cannot quantify a range of estimated collisions that take into account the uncertainty. See Smallwood Comments, pp. 4-6. The BSPP Staff Assessment provides a description of the likely causes of increased collisions with solar PV facilities such as proposed by the Project:

Comments on Mitigated Negative Declaration for the
 Lucerne Valley Desert View Ranch Project
 December 4, 2013
 Page 18 of 21

The reflective characteristics of PV panels likely vary depending on the position of the sun, viewing angle, tilt of the panels, and other variables. PV solar arrays sometimes reflect the sky, including clouds, and can appear lighter in color. At other times and under different conditions, the PV arrays may appear dark like a still body of water. While it remains unclear how wildlife (primarily birds and bats, but also insects) perceive solar fields, and if the solar collectors are attractive under certain conditions, it is well documented that solar fields, including large PV array fields, can pose risks to birds or bats (pers. comm. REAT agency biologists regarding the Desert Sunlight Solar Farm, and Monthly Compliance Reports for Genesis Solar Electric Project⁷, Ivanpah Solar Electric Generating System, Abengoa Mojave Solar, and SEGS VIII and SEGS IX.

Blythe Assessment, p. 4.2-87. *See also id.*, p. 4.2-89 (“Avian species migrating nearby or over PV project sites may be drawn to the panels partly due to the polarization; however, many confounding variables exist, such as the potential for PV fields to appear as a body of water”).²

Given that many avian species are fully protected under California law, including the burrowing owl (see F&G Code 3503.5 [no take of even an individual owl]), it is untenable for the County and the MND to claim that a large 198-acre solar project will not adversely affect birds flying through the site. Even one burrowing owl hitting the panels is a violation of F&G Code § 3503.5 and thus significant under CEQA.

In addition to the solar panel, the site will be surrounded by a 10-foot high, barbed wired fence. As Dr. Smallwood explains, “fences can entrap wildlife (Photo 1). Smallwood, p. 7.” Dr. Smallwood provides a graphic photograph of a dead great-horned owl (individuals of which also are fully protected from take pursuant to F&G Code § 3503.5) illustrating the possible impacts a tall fence topped with barbed wire poses to avian species. As a result, an EIR must be prepared evaluating these collision impacts.

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² *See also id.*, p. 4.2-5. (“Operation of the project may result in avian collisions with panels, power lines, or other project features. Aside from a risk of collision with power lines or project features, fully protected species associated with the site have the potential for risk of overheating, disorientation, and other anthropogenic forms of injury or mortality. Currently, the exact source of injury or mortality to birds on renewable energy sites is unclear, yet the risks are certain.”)

Comments on Mitigated Negative Declaration for the
 Lucerne Valley Desert View Ranch Project
 December 4, 2013
 Page 19 of 21

G. The Project May Have Significant Impacts on Wildlife Movement and Habitat Fragmentation.

The MND fails to acknowledge or discuss the Project's potential impacts on wildlife movement and habitat fragmentation. See Smallwood Comments, p. 7. In regard to wildlife movement, the Project site is bisected by no less than two arms of a clearly delineated wash. Habitat Assessment, p. 14 (Figure 4). The Project's consultant observes that "[t]he large desert wash located in the northern portion of the site, which is relatively well defined and extends off-site to the east and west for several miles, may act as a wildlife corridor for both small and large mammals (Figure 1)." *Id.*, p. 13. Despite that acknowledgment, the MND fails to mention or discuss the Project's potential impact on wildlife movement. Obviously, by placing two fences across at least the channels of the large wash on the site, the Project will disrupt movement of the many mammals and other species using that natural road to move through the area. Indeed, the fencing will be designed to exclude tortoises, and hence other animals as well, from this wash. MND, p. 20. As Dr. Smallwood summarizes:

Neglecting to mention [the wash and wildlife movement] in the Initial Study was a critical shortfall. The Initial Study's (San Bernardino County 2013) analysis of project impacts on wildlife movement was restricted to a single statement about burrowing owls and fish. No analysis was provided of the project's impacts on the movement of Mojave ground squirrel, desert tortoise, or any other species of wildlife. The project will be surrounded by a cyclone fence and will consist of PV arrays and supporting structures. Of course the project will disrupt wildlife movement in the region. An EIR is needed to properly assess the impacts of the project on wildlife movement, and to detail a mitigation plan to minimize and compensate for these impacts.

Smallwood Comments, p. 7. Similarly, the MND says nothing about habitat fragmentation, "a process that has been recognized as one of the most serious threats to the continued existence of terrestrial wildlife (Wilcox and Murphy 1985)." *Id.* An EIR is needed to properly address the project's impacts on wildlife movement and habitat fragmentation.

H. A Fair Argument is Present That the Project May Have Visual Impacts.

The Project site will be completely surrounded by a eight-foot tall chain-link fence. MND, p. 8. Almost 200-acres of solar panels will replace largely intact creosote bush habitat dotted with Joshua trees and Mojave yucca and replace it with an industrial scale solar power plant. The MND's notion that "[t]he proposed Project blends well with the existing view" of undisturbed native vegetation looking off toward the Granite Mountains is untenable. Obviously, replacing unbroken vistas of relatively undisturbed creosote bush habitat with endless rows of solar panels, fencing, supports and other structures will "[s]ubstantially degrade the existing visual

Comments on Mitigated Negative Declaration for the
 Lucerne Valley Desert View Ranch Project
 December 4, 2013
 Page 20 of 21

character or quality of the site and its surroundings.”

“Any substantial negative effect of a project on view and other features of beauty could constitute a significant environmental impact under CEQA.” *Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 401. Appendix G to the CEQA Guidelines recommends that the lead agency consider the following questions: “... Would the project: “a) Have a substantial adverse effect on a scenic vista? ... c) Substantially degrade the existing visual character or quality of the site and its surroundings? [or] “d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?” CEQA Guidelines, App. G, Section I (“Aesthetics”).

Reviewing the drawings for the Project, it appears that the panels and fencing will be constructed very close to the existing roads. Thus, any person driving or walking by the site will only see the fencing and panels. The distant view of the Granite Mountains from Pioneer Road, Canyon View Road, and Desert View Road will be entirely or partially blocked as one passes by or through the Project site.

Numerous other solar projects much like the proposed project have been identified as causing visual impacts, even after the implementation of mitigation. Thus, for example, the EIR prepared for the pending 40-MW, 324-acre Kingbird Solar Photovoltaic Project proposed in Kern County, after conducting a thorough analysis of that project’s aesthetic visual impacts, concluded that:

Although the proposed project is generally well-sited for efficiency of energy generation and low impacts on neighboring land uses, the industrial nature of the facilities, when introduced into the project viewshed, would substantially change the existing visual character of the landscape around the site as viewed from sensitive receptors for the life of the project. The proposed facility would substantially modify views in an area that is currently defined by agricultural lands and open space. This results in cultural modifications that are incompatible or promote disharmony with the existing landscape.

Kingbird EIR, p. 4.1-28 (excerpt attached as Exhibit F). And, despite several mitigations which reduced the project’s visual impacts including efforts to view-screening vegetation, the Kingbird EIR was forthright in acknowledging that “because there are no feasible mitigation measures that can be implemented to preserve the existing open space landscape character at the project site while at the same time developing a solar energy facility, impacts to visual resources would remain significant and unavoidable despite implementation of these mitigation measures.” *Id.* This example is substantial evidence of a fair argument that any solar project replacing largely undisturbed habitat may have significant visual impacts.

**Comments on Mitigated Negative Declaration for the
Lucerne Valley Desert View Ranch Project
December 4, 2013
Page 21 of 21**

The MND's conclusion that "[n]o significant adverse impacts related to Aesthetics are identified or anticipated" and that "[t]herefore, no mitigation measures are required" is not supported by common-sense or substantial evidence. See MND, p. 10. The Project's visual impacts to the existing visual characteristics of the site and adjacent areas will be profound. An EIR should be prepared to fully analyze this potential impact.

CONCLUSION

For the foregoing reasons, the IS/MND for the Project should be withdrawn, an EIR should be prepared and circulated for public review and comment in accordance with the requirements of the CEQA. Thank you for considering our comments.

Sincerely,



**Michael R. Lozeau
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December 19, 2013

Via Email and Overnight Mail

County of San Bernardino
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cconner@lusd.sbcounty.gov

**Re: Comments on the Initial Study/Mitigated Negative Declaration
for the Lucerne Valley Desert View Ranch Project**

Dear Mr. Conner:

We write on behalf of San Bernardino County Citizens for Responsible Solar to provide comments on the Initial Study/Mitigated Negative Declaration (“MND”) prepared by San Bernardino County for the Lucerne Valley Desert View Ranch project (“Project”) proposed by Lucerne Valley Desert View Ranch, LLC. The Project is a 20 MW photovoltaic (“PV”) solar energy generation facility proposed to be located on a 358-acre site in San Bernardino County. The Project site is located approximately one quarter mile south of Highway 18, east of the Town of Apple Valley, and is bound by Pioneer Road on the west, Candida Road on the east, Ocotillo Way on the south and Desert View Avenue on the north. The Project includes construction of PV modules mounted on fixed-tilt systems, voltage transformation equipment and system safety equipment necessary to connect to Southern California Edison’s existing transmission network, a substation, access roads and an eight-foot high chain link perimeter fence.

Based upon our review of the MND and supporting documentation, we conclude that the MND fails to comply with the California Environmental Quality Act’s¹ (“CEQA”) requirements. The MND fails to provide a complete and accurate Project description and to set forth an accurate and documented description of the

¹ Pub. Resources Code §§ 21000 et seq.
2997-006cv

December 19, 2013

Page 2

environmental setting against which to measure the Project's potentially significant impacts. These deficiencies in the MND are fatal errors. As a result, the MND fails to identify the Project's potentially significant environmental impacts and propose measures that can reduce those impacts to a less than significant level.

As described in these comments, there is more than a fair argument that the Project will result in potentially significant direct and indirect impacts on biological, hydrological and visual resources, land use and public health, and from Project construction noise. The County may not approve a Conditional Use Permit ("CUP") for the Project until it prepares an Environmental Impact Report ("EIR") that adequately analyzes the Project's potentially significant direct, indirect and cumulative impacts, and incorporates all feasible mitigation measures to minimize these impacts.

We prepared these comments with the assistance of biologist Scott Cashen. Mr. Cashen's technical comments on the MND and qualifications are attached and submitted to the County, in addition to the comments in this letter. The County must address and respond to the comments of Mr. Cashen separately.

I. STATEMENT OF INTEREST

San Bernardino County Citizens for Responsible Solar is a coalition of individuals and labor unions that may be affected by the potential health and safety hazards and environmental impacts of the Project. The coalition includes San Bernardino County residents Perry Brown and Brian Marsteller, and International Brotherhood of Electrical Workers Local 477 ("Local 477") and its members and their families (collectively, "Coalition"). The Coalition was formed to advocate for responsible and sustainable solar development in San Bernardino County to protect public health and safety and the environment where the Coalition members and their families live, work and recreate,

Perry Brown lives, works and recreates in San Bernardino County. Mr. Brown has a personal interest in protecting the Project area from unnecessary, adverse environmental impacts.

Brian Marsteller lives, works and recreates in San Bernardino County. Mr. Marsteller has a personal interest in protecting the Project area from unnecessary, adverse environmental impacts.

2897-006cv

December 19, 2013

Page 3

Local 477 is a labor union that encourages sustainable development of California's energy and natural resources. Environmental degradation destroys cultural and wildlife areas, consumes limited fresh water resources, causes air and water pollution, and imposes other stresses on the environmental carrying capacity of the State. This in turn jeopardizes future development by causing construction moratoriums and otherwise reducing future employment opportunities for Local 477's members. Additionally, union members live, recreate and work in the communities and regions that suffer the impacts of projects that are detrimental to human health and the environment. Local 477 therefore has a direct interest in enforcing environmental laws to minimize the adverse impacts of projects that would otherwise degrade the environment. Finally, Local 477 members are concerned about projects that risk serious environmental harm without providing countervailing economic benefits.

II. THE MND IS INTERNALLY INCONSISTENT AND FAILS TO ADEQUATELY DESCRIBE THE PROJECT

The MND does not meet CEQA's requirements because it fails to include a complete and accurate project description, rendering the entire impact analysis inherently unreliable. An accurate and complete project description is necessary to perform an evaluation of the potential environmental effects of a proposed project.² Without a complete project description, the environmental analysis will be impermissibly narrow, thus minimizing the project's impacts and undercutting public review.³ The courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document]."⁴ Only through an accurate view of the project may affected outsiders and public decision makers balance the proposal's benefit against its environmental costs.⁵

A. The MND Completely Fails to Describe Parking and Staging Areas

A complete description of the Project's parking and staging areas is necessary to assess the Project's impacts. During construction, the County expects that

² See, e.g., *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.

³ See *id.*

⁴ *County of Inyo v. County of Los Angeles* (1977) 71 Cal.App.3d 185, 193.

⁵ *Id.* at 192-193.

2997-006cv

December 19, 2013

Page 4

approximately 150 workers will be present during peak construction.⁶ Construction equipment will also be present on the Project site.⁷ In addition, delivery trucks will travel to the Project site each day during construction.⁸ The MND does not indicate where the construction crew members or delivery trucks would park, or where the construction equipment would be staged. Depending on the use, size, surface composition and location, the Project's staging and parking areas could cause unanalyzed and unmitigated impacts to biological and hydrological resources. The County must describe the Project's staging and parking areas so that decision makers and the public can adequately assess the Project's impacts.

B. The MND Fails to Adequately Describe the Project's Access Roads

The MND states that grading will be required for Project access roads.⁹ However, the MND provides no details regarding the access roads, such as length, width or depth of these roads. The County must provide more detailed information regarding the Project's access roads. There is no way to effectively evaluate impacts from roadways of unknown lengths, widths or depths. The County must revise its description of the Project's access roads in an EIR so that the public and decision makers can assess the Project's impacts on the environment, as well as the Project's compliance with all County rules and regulations.

C. The MND Fails to Describe the Amount of Grading Required for the Project

The MND states that Project construction would require clearing, grubbing and grading.¹⁰ The description does not provide with any degree of precision the amount of grading that will be required for the Project. The amount of grading (e.g. volume of soil disturbed) is highly relevant to measuring a range and severity of Project impacts, including, but not limited to, impacts to air quality, soils, biological and hydrological resources, worker and public health and safety, and water supply. The County must describe the amount of grading in greater detail so that the Project's impacts can be accurately measured.

⁶ MND, p. 6.

⁷ *Id.*, p. 30.

⁸ *Id.*

⁹ *Id.*, p. 6.

¹⁰ *Id.*

2997-006cv

December 19, 2013

Page 5

D. The MND Fails to Adequately Describe Project Decommissioning

Pursuant to CEQA, the project description must describe the "whole of an action" which is being approved, including *all* components and future activities that are reasonably anticipated to become part of the project.¹¹ This includes, but is not limited to, "later phases of the project, and any secondary, support, or off-site features necessary for its implementation."¹² The requirements of CEQA cannot be avoided by chopping a large project into many little ones or by excluding reasonably foreseeable future activities that may become part of the project.¹³ The County, as the lead agency, must fully analyze the whole of a project in a single environmental review document and may not piecemeal or split a project into pieces for purposes of analysis. The MND fails to describe the full scope of the Project being approved, and thus fails to disclose the full range and severity of the Project's environmental impacts. The public and decision makers have this, and only this, opportunity to comment on the Project. For this reason, every phase of the project must be assessed with the same level of specific details, including decommissioning. Anything less violates CEQA.

In this case, the Project has three distinct phases: construction, operation/maintenance and decommissioning. The decommissioning phase consists of removing all Project structures and the restoration of the Project's 358-acre site. These decommissioning activities are a part of the "whole of the project," and as a matter of common sense they will result in environmental impacts, including, but not limited to, impacts to air quality, biological resources, water and solid waste capacity. The MND, however, fails to fully describe decommissioning and, as a result, fails to adequately disclose, analyze and mitigate the impacts.

The MND states that:

[t]he PV system will be decommissioned when the project's life is over. Most parts of the proposed system are recyclable. Panels typically consist of silicon, glass, and an aluminum frame. Tracking systems (not counting the motors and control systems) typically consist of steel and concrete. All of

¹¹ 14 Cal. Code Regs ("CEQA Guidelines"), §15378 (emphasis added).

¹² *Bozung v. Local Agency Formation Com.* (1975), 13 Cal 3d 263, 283-84.

¹³ Pub. Resources Code § 21159.27 (prohibiting piecemealing); see also, *Rio Vista Farm Bureau Center v. County of Solano*, 5 Cal.App.4th 351, 370 (1992).

December 19, 2013

Page 6

these materials can be recycled. Concrete from deconstruction is to be recycled. Local recyclers are available. Metal, scrap equipment and parts that do not have free flowing oil may be sent for salvage. Equipment containing any free flowing oil will be managed as waste and will have to be evaluated. Oil and lubricants removed from equipment will be managed as used oil – a hazardous waste in California.¹⁴

The MND's description of Project decommissioning is severely deficient. The MND provides no details about how long decommissioning will take and completely fails to describe several decommissioning activities, such as decommissioning of fencing, the substation, the control building and interconnection equipment, among other activities. The MND's description of Project decommissioning is entirely inadequate. The County must prepare an EIR that fully describes and analyzes Project decommissioning.

E. The MND Fails to Adequately Describe Project Waste and Waste Disposal

The MND states that the Project will result in less than significant impacts related to landfill capacity and solid waste disposal.¹⁵ According to the MND, the Project:

largely consists of short-term construction activities (with short-term waste generation limited to minor quantities of construction debris) and will not result in long-term solid waste generation. Solid wastes associated with the proposed Project will be disposed as appropriate in [a] local landfill or at a recycling facility.

The panels and tracking system shall eventually need to be disposed (decommissioned). Most parts of the proposed PV system are recyclable. Panels typically consist of silicon, glass, and an aluminum frame. Tracking systems (not counting the motors and control systems) typically consist of steel and concrete. All of these materials can be recycled. Concrete from deconstruction shall be recycled through local recyclers. Metal, scrap equipment and parts that do not have free flowing oil may be sent for salvage. Equipment containing any free flowing oil shall be managed as

¹⁴ MND, p. 6.

¹⁵ *Id.*, p. 49.

2997-006cv

December 19, 2013

Page 7

hazardous waste and shall be evaluated before disposal at a properly permitted disposal facility. Oil and lubricants removed from equipment shall be managed as used oil and disposed in accordance with applicable State hazardous waste disposal requirements.¹⁶

The MND's description of the Project's waste generation and waste disposal is incomplete and, therefore, the MND's conclusion that the Project would not result in a significant impact on landfill capacity and solid waste disposal is unsupported.

First, the MND fails to describe waste that would be generated during Project construction. The MND only states that Project construction waste will be "limited to minor quantities of construction debris."¹⁷ There is no evidence that construction waste will be "minimal." The MND fails to describe waste from solar panel packaging and packaging from other Project components, such as the tracking systems' motors and control systems.

Second, the MND fails to adequately describe waste that would be generated from Project decommissioning, such as waste from fencing, the substation, the control building and interconnection equipment, among other decommissioning waste.

Third, the MND fails to adequately describe where Project waste would be recycled or otherwise disposed of. The MND only states that solid waste would be disposed of at a "local landfill" or "recycling center."¹⁸ Without a description of the specific landfill or recycling center, it is impossible to determine whether the facilities have the capacity to dispose of or recycle Project waste.

The MND fails to adequately describe Project waste and waste disposal. Thus, a fair argument can be made the Project may significantly impact public services. The County must prepare an EIR that fully describes Project waste and waste disposal.

¹⁶ MND, p. 49.

¹⁷ *Id.*

¹⁸ *Id.*

2007-006cv

December 19, 2013

Page 8

F. The MND Fails to Adequately Describe the Water Supply

The Project will not be connected to a public water system.¹⁹ The MND states that water for Project construction will be supplied by the Apple Valley Ranchos Water Company.²⁰ However, there is no evidence to support this statement. While the MND states that the Apple Valley Ranchos Water Company has a sufficient capacity to supply the Project,²¹ there is no evidence that the company *will* serve the Project.

Further, the MND completely fails to describe where the water will come from for Project operation and what the potentially significant impacts of using that water are, or whether that water can legally be used for the Project.

The County must prepare an EIR that adequately describes the Project's water supply. The EIR must also evaluate any impacts associated with using that water supply.

III. THE MND FAILS TO ADEQUATELY DESCRIBE THE EXISTING ENVIRONMENTAL SETTING

An MND must include a description of a project's environmental setting.²² The description of the environmental setting constitutes the baseline physical conditions by which a lead agency may assess the significance of a project's impacts.²³ As a general matter, the MND must also "disclose the data or evidence upon which person(s) conducting the study relied. Mere conclusions simply provide no vehicle for judicial review."²⁴ The MND is inadequate because its description of the environmental setting with respect to biological and hydrological resources, public health hazards and waste disposal is incomplete.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² CEQA Guidelines, §15063(d)(2).

²³ *Id.*, §15125(a).

²⁴ *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.

2007-000cv

December 19, 2013

Page 9

A. The Description of the Environmental Setting for Biological Resources is Incomplete

I. The MND Fails to Adequately Describe the Environmental Setting Against Which to Measure the Project's Impacts on Special-Status Plant Species

According to the MND, the Project site is a relatively undisturbed, natural environment that has the potential to support special-status plant species.²⁵ However, focused surveys for special-status plant species were not conducted and the MND does not identify or discuss the special-status plant species that may occur on or adjacent to the Project site which could be impacted by the Project.

California Department of Fish and Wildlife ("CDFW") survey guidelines provide that focused botanical surveys should be conducted whenever natural or naturalized vegetation occurs on a project site if the project has the potential for direct or indirect effects on vegetation.²⁶ Here, natural and naturalized vegetation occurs on the Project site.²⁷ Further, in Scott Cashen's expert opinion, "[g]iven the relatively undisturbed condition of the Project site, and documented occurrences of special-status plants in the Project region...Project activities may have significant, unmitigated impacts to sensitive botanical resources."²⁸ Thus, focused botanical surveys must be conducted prior to Project approval. Data from focused surveys are essential to fully assess the existing conditions on the Project site, analyze the Project's potentially significant impacts and formulate appropriate mitigation measures. The County must prepare an EIR that adequately discloses the environmental setting against which to measure the Project's impacts on special-status plants.

²⁵ MND, p. 16.

²⁶ California Department of Fish and Game. 2009. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities. Available at: http://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html#Plants.

²⁷ MND, p. 16; Attachment A, p. 2.

²⁸ Attachment A, p. 2.

2007-008cv

December 19, 2013

Page 10

2. The MND Fails to Adequately Describe the Environmental Setting Against Which to Measure the Project's Impacts on Golden Eagles

Golden eagles are protected under Fish and Game Code Section 3511 and the federal Bald and Golden Eagle Protection Act ("Eagle Act"). California law prohibits take of golden eagles, and the U.S. Fish and Wildlife Service ("USFWS") requires a permit for take of bald or golden eagles where the take is associated with, but not the purpose of the activity, and cannot be practicably avoided. Take includes causing a decrease in golden eagle productivity or causing nest abandonment by substantially interfering with normal breeding, feeding, or sheltering behavior.²⁹

To evaluate the potential for take under the Eagle Act, the USFWS requests that project applicants provide an inventory of eagle nests within 10 miles of the proposed project site. According to the California Natural Diversity Database, there are several active golden eagle nest sites within 10 miles of the Project site.³⁰ Yet, the MND provides no information on the status of golden eagle nest sites within 10 miles of the Project site.

Mr. Cashen explains in his comments that golden eagles have large home ranges and will travel far from their nests to access good foraging habitats.³¹ Further, the Project site supports important prey species for eagles in the American Southwest, such as rabbits and rodents.³² Thus, Mr. Cashen concludes that the Project site provides good foraging habitat for golden eagles.³³ Mr. Cashen also concludes that the Project could eliminate "a substantial amount of core habitat (perhaps all) used by at least one pair of breeding eagles,"³⁴ which "is likely to lead to take, as defined in the Eagle Act."³⁵ The County must prepare an EIR that adequately discloses the environmental setting against which to measure the Project's potentially significant impacts on golden eagles.

²⁹ 50 C.F.R. § 22.3.

³⁰ *Id.*

³¹ Attachment A, p. 3.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

2997-006uv

December 19, 2013

Page 11

3. *The MND Fails to Adequately Describe the Environmental Setting Against Which to Measure the Project's Impacts on Burrowing Owls*

The MND's description of the environmental setting for burrowing owls is unsupported and inadequate for three reasons. First, there is no support for the burrowing owl survey report that was prepared for the Project, which describes the Project site as having "very marginal habitat" for burrowing owls.³⁶ Mr. Cashen concludes that, based on scientific literature, the Project site provides *high-quality habitat* for burrowing owls because it contains burrows for roosting and nesting, relatively short vegetation and sparse vegetation, and prey.³⁷

Second, as Mr. Cashen explains in his comments, the burrowing owl surveys conducted for the Project are inconsistent with CDFW survey guidelines. CDFW survey guidelines require four site visits during the breeding season, at least one of which is between February 15 and April 15, and a minimum of three survey visits conducted at least three weeks apart between April 15 and July 15, with at least one visit after June 15.³⁸ CDFW survey guidelines also provide specific techniques to use for each site visit. For example, during each site visit, the investigator should walk straight-line transects spaced seven to 20 meters apart (depending on vegetation height and density) through all potential habitat at the Project site.³⁹

The burrowing owl surveys conducted for the Project did not adhere to the CDFW guidelines. Breeding season surveys were not conducted, only one series of line transect surveys was conducted and the transects were insufficient to detect all potential burrows used by burrowing owls.⁴⁰ Because the surveys are inconsistent with CDFW survey protocol, the County lacks the information necessary to adequately disclose and analyze the Project's impacts to burrowing owls or to devise effective mitigation.

Third, there is no support for the burrowing owl survey report's statement that, "[b]ased on the *absence* of any documented populations in the immediate area and the presence of only three burrows, it is the opinion of RCA Associates LLC that

³⁶ RCA Associates, LLC. 2012 Oct 12. Habitat Assessment & Burrowing Owl Burrow Survey: Lucerne Valley Desert View Ranch Generating Facility, unnumbered table, p. 20.

³⁷ Attachment A, p. 3.

³⁸ *Id.*, pp. 3-4.

³⁹ *Id.*, p. 4.

⁴⁰ *Id.*

2007-006cv

December 19, 2013

Page 12

owls are unlikely to occur on the site in the future and nesting season and winter surveys may not be necessary.”⁴¹ Mr. Cashen explains that the *absence* of documented populations in the area cannot be used as evidence that burrowing owls are unlikely present on the Project site.⁴² The California Natural Diversity Database (“CNDDDB”) is a *positive sighting database*. Thus, the absence of records does not mean a species is absent.⁴³ Furthermore, the CNDDDB has numerous records of burrowing owls in the vicinity of the Project – in Apple Valley and Lucerne Valley.⁴⁴ According to Mr. Cashen, “[t]here is no ecological reason why burrowing owls would be present in those regions, but absent from the Project site.”⁴⁵ In Mr. Cashen’s expert opinion, “the lack of documented occurrences in the immediate Project area is most likely a function of the lack of surveys.”⁴⁶

The County must prepare an EIR that adequately discloses the environmental setting against which to measure the Project’s potentially significant impacts on burrowing owls. The County must require surveys that adhere to CDFW’s guidelines in order to ensure an adequate impact assessment, develop clear and effective avoidance and minimization measures, and formulate appropriate mitigation measures. Until surveys adhering to CDFW guidelines have been conducted, it is not possible to effectively assess the extent of Project impacts on burrowing owls, as required by CEQA.

B. The Description of the Environmental Setting for Hydrologic Resources is Incomplete

1. *The MND Fails to Adequately Describe the Environmental Setting Against Which to Measure the Project’s Impacts on Jurisdictional Waters and Habitats*

The MND provides incorrect and inadequate information regarding the presence of jurisdictional waters on the Project site. The MND states,

according to the Preliminary Drainage Study prepared for this project, *no waters or habitats that fall under the jurisdiction of the ACOE,*

⁴¹ RCA Associates, LLC. 2012 Oct 12. Habitat Assessment & Burrowing Owl Burrow Survey: Lucerne Valley Desert View Ranch Generating Facility, p. 15 (emphasis added).

⁴² Attachment A, p. 4.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*, pp. 4-5.

2007 008cv

December 19, 2013

Page 13

*California RWQCB, or CDFG are found on the proposed Project area. No indicators of hydrologic activity (topographical or geological), hydric soils, or hydrophytic vegetation were observed onsite. In addition, no 'blueline' streams are found on the 15 Mile Valley USGS 7.5-minute quadrangle in the vicinity of the project area.*⁴⁷

The County has no support for these statements. In fact, the Preliminary Drainage Study indicates the *presence of "blueline" features and four relatively large desert washes* on the Project site.⁴⁸ While the Preliminary Drainage Study concludes these drainage features do not fall under the jurisdiction of the U.S. Army Corps of Engineers, it makes no conclusions about being waters of the State under the jurisdiction of the Regional Water Quality Control Board and/or CDFW.⁴⁹

The biological resource survey reports prepared for the Project also describe the presence of desert washes on the Project site. Specifically, they describe the presence of "three blueline channels bisecting the site" and conclude one of the channels may function as a wildlife corridor.⁵⁰

Further, based on Mr. Cashen's experience with other projects that have similar hydrologic features and on the environmental review document that was prepared for the nearby Granite Mountain Wind Energy Project, he concludes that the desert washes on the Project site fall under the jurisdiction of both the Regional Water Quality Control Board and the CDFW.⁵¹

Finally, although the hydrologic resources and biological resource reports describe the presence of desert washes on the Project site, neither mapped the full extent of the desert washes. The County's failure to describe existing waters of the State and failure to fully identify those waters precludes a full evaluation of the Project's impacts on jurisdictional features, the adequacy of the proposed mitigation and the Project's compliance with State law. The County must prepare an EIR that fully and accurately describes the jurisdictional waters and habitat present on the Project site.

⁴⁷ MND, p. 34 (emphasis added).

⁴⁸ United Engineering Group. 2011 Nov. Preliminary Drainage Report for Lucerne Valley Desert View Solar, San Bernardino County, CA. pp. 5-6; Exhibits B-C; and Appendix A, pp. 24-25 and 30-31.

⁴⁹ *Id.*, p. 6.

⁵⁰ RCA Associates, LLC. 2012 Oct 12. Habitat Assessment & Burrowing Owl Burrow Survey: Lucerne Valley Desert View Ranch Generating Facility, p. 2.

⁵¹ Attachment A, p. 6.

December 19, 2013

Page 14

C. The MND Fails to Disclose that Project Site Soils May Contain *Coccidioides immitis*

The MND's discussion of the Project's environmental setting is inadequate because it fails to address the potential presence of *Coccidioides immitis*, a fungus which causes Coccidioidomycosis, commonly known as Valley Fever, in the Project soils. Valley Fever is an infectious disease caused by inhaling the spores of *C. immitis*, which are released when infected soils are disturbed, for example by construction activities, agricultural operations, dust storms or earthquakes. The disease is endemic in the semiarid regions of the southwestern United States.⁵² From 1990 to 2008, more than 3,000 people died in the United States from Valley Fever, half of whom lived in California.⁵³ Recently, reported Valley Fever cases in the Southwest increased dramatically.⁵⁴ The disease is endemic to San Bernardino County and, therefore, the County should have addressed the potential presence of *C. immitis* spores on the Project site in the MND. This information is relevant to the Project's potentially significant impacts and must be included in an EIR.

D. The MND Fails to Adequately Describe the Existing Environmental Setting for Waste Disposal

The MND states that Project waste would be disposed of at a "local landfill" or "recycling center."⁵⁵ According to the MND, "[l]ocal recyclers are available."⁵⁶ However, there is no evidence that a "local landfill" or "recycling center" has the capacity to dispose of or recycle Project waste, particularly from decommissioning, which would include PV panels, tracking systems made of steel and concrete, metal, scrap equipment and parts, oil and lubricants, and fencing, among other things. The MND fails to adequately describe the facility that would receive the Project's waste disposal or recycling. The County must prepare an EIR that fully describes waste disposal or recycling facilities for the Project.

⁵² Attachment B: Center for Disease Control, Coccidioidomycosis (Valley Fever). Information for Health Professionals; <http://www.cdc.gov/fungal/coccidioidomycosis/health-professionals.html>.

⁵³ Attachment C: Jennifer Y. Huang, et al., Coccidioidomycosis-associated Deaths, United States, 1990-2008; <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3559166/>.

⁵⁴ Attachment D: Center for Disease Control; Fungal Pneumonia: A Silent Epidemic, Coccidioidomycosis (Valley Fever); <http://www.cdc.gov/fungal/pdf/cocci-fact-sheet-sw-us-508c.pdf>.

⁵⁵ MND, p. 49.

⁵⁶ *Id.*, p. 6.

2007-006cv

December 19, 2013

Page 15

IV. AN ENVIRONMENTAL IMPACT REPORT IS REQUIRED TO SATISFY CEQA'S PURPOSES AND GOALS

CEQA has two basic purposes, neither of which the MND satisfies. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.⁵⁷ CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.⁵⁸ The purpose of the EIR is to “inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment, but also informed self-government.”⁵⁹ The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”⁶⁰

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures.⁶¹ The EIR serves to provide public agencies and the public in general, with information about the effect that a proposed project is likely to have on the environment, and to “identify ways that environmental damage can be avoided or significantly reduced.”⁶² If a project has a significant effect on the environment, the agency may approve the project only upon a finding that it has “eliminated or substantially lessened all significant effects on the environment where feasible,” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns” specified in CEQA section 21081.⁶³ The MND fails to satisfy the basic purposes of CEQA by failing to inform the public and decision makers of the Project’s potentially significant impacts and to propose mitigation measures that can reduce those impacts to a less-than-significant level. The County is required to evaluate the Project in an EIR.

⁵⁷ CEQA Guidelines, § 15002(a)(1).

⁵⁸ See Pub. Resources Code, § 21000; CEQA Guidelines, § 15002.

⁵⁹ *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (citations omitted).

⁶⁰ *County of Inyo v. Yorty* (1973) 82 Cal.App.3d 795, 810.

⁶¹ CEQA Guidelines, § 15002(a)(2)-(3); *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1354.

⁶² CEQA Guidelines, § 15002(a)(2).

⁶³ *Id.*; CEQA Guidelines § 15092(b)(2)(A)-(B).

2007-000cr

December 19, 2013

Page 16

CEQA's purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.⁶⁴ CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the "fair argument" standard. Under that standard, a lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.⁶⁵ The fair argument standard creates a "low threshold" favoring environmental review through an EIR, rather than through issuance of a negative declaration or notices of exemption from CEQA.⁶⁶ An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.⁶⁷

A mitigated negative declaration may be prepared instead of an EIR only when, after preparing an Initial Study, a lead agency determines that a project may have a significant effect on the environment, but:

- (1) Revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where *clearly no significant effect* on the environment would occur; and
- (2) There is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.⁶⁸

⁶⁴ See Pub. Resources Code, § 21100.

⁶⁵ Pub. Resources Code, § 21082.2; CEQA Guidelines, § 15064(f), (h); *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1993) ("Laurel Heights II") 6 Cal. 4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

⁶⁶ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

⁶⁷ *Sierra Club v. County of Sonoma*, (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 ["If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an [environmental impact report] and adopt a negative declaration, because it could be 'fairly argued' that the project might have a significant environmental impact"].

⁶⁸ Pub. Resources Code, § 21064.5.

December 19, 2013
Page 17

Substantial evidence can be provided by technical experts or members of the public.⁶⁹ “If a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.”⁷⁰ The CEQA Guidelines provides that “if there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.”⁷¹

As detailed in the following sections, there is a fair argument, supported by substantial evidence that the Project may result in significant public health, visual, noise and land use impacts, impacts to biological and hydrological resources, and cumulative impacts. Therefore, the County is required to prepare an EIR to evaluate the Project’s impacts and propose all mitigation measures that are necessary to reduce those impacts to a less-than-significant level.

A Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Public Health Impacts from Valley Fever

The Project may result in significant adverse public health impacts to construction workers and adjacent residents from Valley Fever. Valley Fever is endemic to arid regions, including San Bernardino County.⁷² A recent increase in the incidence of Valley Fever has been linked to construction of large scale solar projects in the desert.⁷³ Valley Fever is caused by inhaling *C. immitis* spores from infected soils. In most cases, the primary infection is in the lungs.⁷⁴ In 35 to 40 percent of cases, infection leads to mild influenza one to four weeks after exposure,

⁶⁹ See, e.g., *Citizens for Responsible and Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1340 [substantial evidence regarding noise impacts included public comments at hearings that selected air conditioners are very noisy]; see also *Architectural Heritage Ass’n v. County of Monterey*, 122 Cal.App.4th 1095, 1117-1118 [substantial evidence regarding impacts to historic resource included fact-based testimony of qualified speakers at the public hearing]; *Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183, 199.

⁷⁰ CEQA Guidelines, § 15062(f).

⁷¹ *Id.*, § 15062(g).

⁷² Attachment E: County of San Bernardino Department of Public Health Fact Sheet.

⁷³ Attachment F: Valley Fever Epidemic Linked to Desert Solar Construction; Heightens Concerns Over Risks from Large-Scale Wind and Solar Projects, East County Magazine, May 2013.

⁷⁴ Attachment G: Duane R. Hospenthal, M.D., Ph.D., *Coccidioidomycosis* (Dec. 8, 2011) p. 1.

December 19, 2013

Page 18

although some persons develop severe pneumonia.⁷⁶ If left untreated, cases of Valley Fever can spread beyond the lungs and can be fatal.⁷⁸

C. immitis spores grow in soil during the wet season.⁷⁷ Infection most commonly occurs in the summer or late fall during outdoor activities.⁷⁸ *C. immitis* spores are spread through disturbed dust particles or soil disturbance, such as excavation and grading activities.⁷⁹ The Kern County Public Health Services Department found that *C. immitis* often occurs in the soil in areas with many animal burrows, prehistoric Indian campsites, areas with sparse vegetation, next to arroyos, areas with packrat middens, where the upper 12 inches of soil is undisturbed and in areas with sandy, well-aerated soil.⁸⁰ *Coccidioides* spores are small and have low terminal velocity and, therefore, have slow settling rates.⁸¹ Thus, these spores can remain aloft for long periods and can be carried hundreds of kilometers.⁸²

Project construction involves disturbing 358 acres of previously undisturbed soil with clearing, grubbing and grading.⁸³ Up to 12 inches of soil will be disked, leveled and recompactd.⁸⁴ Thus, construction workers and adjacent residents are at risk for contracting Valley Fever. Despite this, the MND completely fails to disclose or analyze the Project's potentially significant public health impacts associated with Valley Fever.

There is a fair argument based on substantial evidence that the Project may result in potentially significant impacts to construction workers and adjacent residents from Valley Fever. Absent appropriate mitigation, the Project may result in significant adverse public health impacts. CEQA requires the County to evaluate

⁷⁶ *Id.*

⁷⁶ Attachment H: Edward L. Moreno, M.D. MPH Director and Health Officer, Fresno County, *Communicable Disease Report: Coccidioidomycosis – "Valley Fever"* (Spring/Summer 2011).

⁷⁷ *Id.*

⁷⁸ Attachment G, p. 1.

⁷⁹ *Id.*; Attachment H, p. 3.

⁸⁰ Kern County Public Health Services Department. What Is Valley Fever, Prevention, available at <http://kerncountyvalleyfever.com/what-is-valley-fever/prevention/>.

⁸¹ Attachment I: Frederick S. Fisher, et al., *Operational Guidelines (version 1.0) for Geological Fieldwork in Areas Endemic for Coccidioidomycosis (Valley Fever)*, U.S. Geological Survey Open-File Report 00-348, 2000.

⁸² *Id.*

⁸³ MND, p. 6.

⁸⁴ *Id.*, p. 5.

0007 006ev

December 19, 2013

Page 19

this impact and propose all feasible mitigation measures necessary to reduce this impact to a less-than-significant level in an EIR.

To mitigate the Project's potentially significant impacts from Valley Fever, the EIR should incorporate the following measures, which were developed by several agencies and based on scientific studies:

First, the California Department of Public Health and Department of Industrial Relations recommend the following measures be incorporated into a project-specific health and safety plan, which should be included in an EIR for the Project:

1. Determine if the worksite is in an area where Valley Fever is endemic (consistently present). Check with your local health department to determine whether cases have been known to occur in the proximity of your work area. ...
2. Train workers and supervisors on the location of Valley Fever endemic areas, how to recognize symptoms of illness ..., and ways to minimize exposure. Encourage workers to report respiratory symptoms that last more than a week to a crew leader, foreman, or supervisor.
3. Limit workers' exposure to outdoor dust in disease-endemic areas. For example, suspend work during heavy wind or dust storms and minimize amount of soil disturbed.
4. When soil will be disturbed by heavy equipment or vehicles, wet the soil before disturbing it and continuously wet it while digging to keep dust levels down.
5. Heavy equipment, trucks, and other vehicles generate heavy dust. Provide vehicles with enclosed, air-conditioned cabs and make sure workers keep the windows closed. Heavy equipment cabs should be equipped with high efficiency particulate air (HEPA) filters. Two-way radios can be used for communication so that the windows can remain closed but allow communication with other workers.
6. Consult the local Air Pollution Control District regarding effective measures to control dust during construction. Measures may include

2007 006cv

December 19, 2013

Page 20

seeding and using soil binders or paving and laying building pads as soon as possible after grading.

7. When digging a trench or fire line or performing other soil-disturbing tasks, position workers upwind when possible.
8. Place overnight camps, especially sleeping quarters and dining halls, away from sources of dust such as roadways.
9. When exposure to dust is unavoidable, provide NIOSH-approved respiratory protection with particulate filters rated as N95, N99, N100, P100, or HEPA. Household materials such as washcloths, bandanas, and handkerchiefs do not protect workers from breathing in dust and spores. Respirators for employees must be used within a Cal/OSHA compliant respiratory protection program that covers all respirator wearers and includes medical clearance to wear a respirator, fit testing, training, and procedures for cleaning and maintaining respirators.

Different classes of respirators provide different levels of protection according to their Assigned Protection Factor ("APF"). Powered air-purifying respirators ("PAPRs") have a battery-powered blower that pulls air in through filters to clean it before delivering it to the wearer's breathing zone. PAPRs will provide a high level of worker protection, with an APF of 25 or 1000 depending on the model. When PAPRs are not available, provide a well-fitted NIOSH-approved full-face or half-mask respirator with particulate filters. Fit-tested half-mask or filtering facepiece respirators are expected to reduce exposure by 90% (still allowing about 10% face seal leakage), which can result in an unacceptable risk of infection when digging where Valley Fever spores are present.⁸⁵

⁸⁵ California Department of Public Health and California Department of Industrial Relations, Hazard Evaluation System & Information Service, Preventing Work-Related Coccidioidomycosis (Valley Fever), June 2013, available at <http://www.cdph.ca.gov/programs/hesis/Documents/CocciFact.pdf>
8007-006ev

December 19, 2013
Page 21

Second, the Kern County Public Health Services Department recommends:

1. Practice general prevention measures.
2. Determine if the work site is in a high risk Valley Fever area.
3. Obtain a health assessment prior to being exposed to Valley Fever.
4. Use non-susceptible workers.
5. Use machinery and vehicles with enclosed cabs and use air conditioning.
6. Use dust masks appropriate for the activity performed (see HESIS Fact Sheet).
7. Remove dusty clothing and store in plastic bags until washed.⁸⁶

Third, in response to an outbreak of Valley Fever among construction workers in 2007, the San Luis Obispo County Public Health Department in conjunction with the California Department of Public Health developed recommendations to limit exposure to Valley Fever based on scientific information from the published literature. They recommend that the following measures be implemented to reduce the possibility of worker illness when workers are exposed to dust in Valley Fever endemic areas:

1. Implement comprehensive Injury and Illness Prevention Program (required by Title 8, Section 3203) ensuring safeguards to prevent Valley Fever are included.
2. Work with a medical professional with expertise in cocci to develop a training program for all employees discussing the following issues: potential presence of *C. immitis* in soils; the risks involved with inhaling spores; how to recognize common symptoms (which resemble common viral infections, and may include fatigue, cough, chest pain, fever, rash, headache, and body and joint ache); requesting prompt

⁸⁶ Kern County Public Health Services Department, What Is Valley Fever, Prevention, available at <http://kerncountyvalleyfever.com/what-is-valley-fever/prevention/>.

December 19, 2013

Page 22

reporting of suspected symptoms to a supervisor and health care provider; discussing worker entitlement to receive prompt medical care if they suspect symptoms of work-related Valley Fever; and requesting the use of personal protection measures as outlined below.

3. Control exposure to dust:
 - Consult with local Air Pollution Control District Compliance Assistance programs and with California Occupational Safety and Health Administration ("Cal/OSHA") compliance program regarding meeting the requirements of Dust control plans and for specific methods of dust control. These methods may include wetting the soil while ensuring that the wetting process does not raise dust or adversely affect the construction process;
 - Provide high-efficiency particulate ("HEP")-filtered, air-conditioned enclosed cabs on heavy equipment. Train workers on proper use of cabs, such as turning on air conditioning prior to using the equipment;
 - Provide communication methods, such as 2-way radios, for use in enclosed cabs;
 - Provide National Institute for Occupational Safety and Health ("NIOSH")-approved respirators for workers without a prior history of Valley Fever;
 - Half-face respirators equipped with N-100 or P-100 filters should be used during digging. Employees should wear respirators when working near earth moving machinery;
 - Employees should be medically evaluated, fit-tested, and properly trained on the use of the respirators, and a full respiratory protection program in accordance with the applicable Cal/OSHA Respiratory Protection Standard (8 CCR 5144) should be in place;
 - Prohibit eating and smoking at the worksite, and provide separate, clean eating areas with hand-washing facilities;

December 19, 2013
Page 23

- Avoid outdoor construction operations during unusually windy Conditions; and
 - Consider limiting outdoor construction during the fall to essential jobs only, as the risk of cocci infection is higher during this season.
4. Prevent transport of cocci outside endemic areas:
- Thoroughly clean equipment, vehicles, and other items before they are moved off-site to other work locations
 - Provide workers with coveralls daily, lockers (or other system for keeping work and street clothing and shoes separate), daily changing and showering facilities;
 - Clothing should be changed after work every day, preferably at the work site;
 - Train workers to recognize that cocci may be transported offsite on contaminated equipment, clothing, and shoes; alternatively, consider installing boot-washing; and
 - Post warnings onsite and consider limiting access to visitors, especially those without adequate training and respiratory protection.
5. Improve medical surveillance for employees:
- Employees should have prompt access to medical care, including suspected work-related illnesses and injuries;
 - Work with a medical professional to develop a protocol to medically evaluate employees who have symptoms of Valley Fever;
 - Consider preferentially contracting with one to two clinics in the area and communicate with the health care providers in those clinics to ensure that providers are aware that Valley Fever has been reported in the area. This will increase the likelihood that ill workers will receive prompt, proper and consistent medical care;

December 19, 2013

Page 24

- Respirator clearance should include medical evaluation for all new employees, annual re-evaluation for changes in medical status, and annual training, and fit-testing;
- Please note that skin testing is not recommended for evaluation of Valley Fever; and
- If an employee is diagnosed with Valley Fever, a physician must determine if the employee should be taken off work, when they may return to work, and what type of work activities they may perform.⁸⁷

Substantial evidence supports a fair argument that the Project will result in a potentially significant, unmitigated public health impact to construction workers and adjacent residents from Valley Fever. The County is required to prepare an EIR to address this impact. The EIR should rely on a project-specific health and safety plan that specifies measures that will be implemented to mitigate this impact to a less-than-significant level.

B. Substantial Evidence Supports a Fair Argument That the Project May Result in Significant Impacts to Biological Resources

1. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts from Soil Stabilizers

According to the MND, soil stabilizers may be used on the Project site.⁸⁸ The majority of soil stabilizers are made from waste products from the manufacturing industry and many contain chemicals that are toxic to plants and animals.⁸⁹ The application of soil stabilizers has caused the browning of trees along roadways and stunted vegetation growth in forestlands, and soil stabilizers have caused sickness and adverse effects on reproduction in terrestrial animals.⁹⁰ Mr. Cashen explains that any vegetation or fauna on the site may come into direct contact with and be

⁸⁷ San Luis Obispo County Health Agency, Recommendations for Workers to Prevent Infection by Valley Fever in SLO County, available at <http://www.slocounty.ca.gov/Assets/PH/Epidemiology/Cocci+Recommendations.pdf>.

⁸⁸ MND, p. 6.

⁸⁹ Attachment A, p. 7.

⁹⁰ *Id.*

2007 008ev

December 19, 2013
Page 25

impacted by the Project's use of soil stabilizers.⁹¹

Substantial evidence supports a fair argument that the Project may result in significant impacts to biological resources from the use of soil stabilizers on the Project site. The MND completely fails to disclose this impact. The County must prepare an EIR that discloses, analyzes and mitigates potentially significant impacts to biological resources from the use of soil stabilizers on the Project site.

2. *Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts to Birds from Collisions*

Substantial evidence supports a fair argument that the Project may result in significant impacts associated with birds colliding with the Project's PV panels and barbed wire. The MND fails to disclose, analyze or mitigate these impacts.

First, the Project's PV panels pose a threat to birds that must be disclosed, evaluated and mitigated in an EIR. While the reasons that solar pose a threat to birds and the extent of the threat continue to be evaluated, the presence of dead and injured birds (including numerous water birds) at solar facilities under construction in California shows that solar arrays present a collision hazard to birds.⁹² It is believed that migrating birds mistake the broad reflective surfaces of solar arrays for water.⁹³

Because solar projects pose potentially significant impacts to birds from collisions, the USFWS developed monitoring methods to examine migratory bird take at solar power facilities.⁹⁴ In addition, the California Energy Commission ("CEC") has required all recently licensed solar projects to monitor the death and injury of birds from collisions with solar facility features.⁹⁵ In addition, scientific research has identified several techniques that enable birds to avoid collisions with glass and other reflective surfaces.⁹⁶ Mr. Cashen recommends that the County include these techniques, along with the monitoring program recommended by the USFWS and CEC, in an EIR for the Project as feasible mitigation measures to reduce the Project's potentially significant impacts on birds from collisions.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

2007-006cv

December 19, 2013

Page 26

Second, the Project's barbed wire fence poses a threat to birds. Barbed-wire fencing is known to pose a mortality hazard to sensitive species that occur in the Project area, including the golden eagle, burrowing owl and prairie falcon.⁹⁷ Mr. Cashen recommends that the fence be designed to minimize hazards to wildlife. At a minimum, Cashen suggests that the top wire of the fence be smooth.⁹⁸

Substantial evidence supports a fair argument that the Project may result in significant impacts associated with birds colliding with the Project's PV panels and barbed wire fencing. The County must prepare an EIR that adequately discloses, analyzes and mitigates the Project's potentially significant impacts associated with bird collisions.

3. *Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts to Desert Tortoise Habitat*

According to the MND, the Project would directly impact desert tortoise habitat and individual tortoises.⁹⁹ While the MND proposes some measures to avoid and minimize impacts to individual tortoises (e.g., tortoise exclusion fencing and pre-construction surveys), it lacks any mitigation for impacts to tortoise habitat. As a result, the Project's impacts on tortoise habitat remain significant and unmitigated.

4. *Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts to Desert Tortoise from Increased Raven Predation*

Mr. Cashen explains in his comments that the common raven is a known predator of the desert tortoise.¹⁰⁰ Further, the infrastructure and increased human activities associated with solar energy facilities benefit raven populations by providing perch and nest sites, and subsidies of food and water.¹⁰¹ The MND fails to disclose, analyze or provide mitigation for this impact.

The USFWS concluded that renewable energy projects and associated transmission facilities should implement mitigation measures designed to reduce

⁹⁷ *Id.*, p. 8.

⁹⁸ *Id.*

⁹⁹ MND, pp. 18 and 51.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

2007-000cv

December 19, 2013

Page 27

raven predation on desert tortoises. Feasible mitigation includes an on-site plan to minimize availability of food sources and the potential for ravens to occupy a project site and a financial contribution to the USFWS's regional raven management plan.¹⁰² These feasible mitigation measures should be incorporated into an EIR for the Project.

Substantial evidence supports a fair argument that the Project may result in significant impacts to desert tortoise from increased raven predation. The County must prepare an EIR that discloses, analyzes and mitigates this potentially significant impact.

5. *Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts from Translocation or Relocation of Wildlife*

The Project may require the translocation or relocation of desert tortoises, burrowing owls, Mohave ground squirrels, desert kit foxes and other wildlife species.¹⁰³ In Mr. Cashen's opinion, the translocation (or relocation) of wildlife out of the Project area constitutes a potentially significant impact that has not been disclosed, analyzed or mitigated in the MND.

Mr. Cashen explains that translocation of animals often fails because animals that are captured, handled and/or forced to move from their territory often become stressed.¹⁰⁴ This may lead to an increased production of lactic acid or "stress hormones" in the organism, which often results in mortality.¹⁰⁵ In addition, when an animal is moved to an unfamiliar location, it has no knowledge of the habitat resources essential for its survival, such as food, water and cover.¹⁰⁶ Also, if animals are moved to poor quality habitat or to habitat that does not meet animals' minimum patch size requirements, animals will experience high levels of mortality and/or reproductive failure.¹⁰⁷

Mr. Cashen points to several studies which show the adverse impact translocation often has on animals, including for example, the desert tortoise,

¹⁰² *Id.*

¹⁰³ *Id.*, p. 20.

¹⁰⁴ Attachment A, p. 9.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

2007 006ev

December 19, 2013

Page 28

burrowing owl and desert kit fox. Cashen points out that “[e]fforts to translocate desert tortoises have been particularly dismal. Of the 158 desert tortoises that were translocated off the Ft. Irwin Southern Expansion Area, 50% were found dead within 33 months of translocation, and an additional 26% were missing.”¹⁰⁸ Mr. Cashen explains that desert tortoises are known to carry infectious diseases that can lead to mortality.¹⁰⁹ If infected animals are translocated, they may transmit disease to a healthy population. Similarly, if healthy animals are translocated to a site with infected individuals, they may be exposed to disease.¹¹⁰ According to Cashen, “[u]nless rigorous procedures are implemented (e.g., blood testing, quarantines, medical treatment), the translocation of desert tortoises may do more harm than good.”¹¹¹

For burrowing owls, most translocation projects have resulted in fewer breeding pairs of owls at the relocation site than at the original site, and translocation projects have generally failed to produce self-sustaining populations of owls.¹¹² Accordingly, the CDFW has concluded that passive relocation of burrowing owls creates potentially significant impacts under CEQA that must be analyzed and mitigated.¹¹³ Studies attribute the limited success of burrowing owl translocation to strong site tenacity exhibited by burrowing owls and potential risks associated with forcing owls to move into unfamiliar and perhaps less preferable habitats.¹¹⁴

Translocation also significantly impacts desert kit fox. In his comments, Mr. Cashen explains that canine distemper disease in desert kit fox was recently documented at the Genesis Solar Energy Project site.¹¹⁵ Since then, the disease has spread and there is concern that the desert kit fox could suffer an epidemic similar to one that nearly wiped out the island fox population on Santa Catalina Island in 1999.¹¹⁶ According to the CDFW, “we know that habitat disturbance causes stress, and when animals succumb to stress they become more susceptible to disease.”¹¹⁷ According to Mr. Cashen, the Project has the potential to exacerbate the risk of kit

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*, p. 12.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*, p. 10.

¹¹³ California Department of Fish and Game, 2012. Page 10 *In: Staff Report on Burrowing Owl Mitigation*. Available at: <www.dfg.ca.gov/wildlife/nongame/docs/BUOWStaffReport.pdf>

¹¹⁴ Attachment A, p. 10.

¹¹⁵ *Id.*, pp. 10-11.

¹¹⁶ *Id.*, p. 11.

¹¹⁷ *Id.*

2007 006ev

December 19, 2013
Page 29

fox distemper by stressing resident kit foxes and displacing kit foxes from their home ranges which may lead to intermingling of healthy and diseased kit foxes.¹¹⁸

Substantial evidence supports a fair argument that translocation or relocation of wildlife may result in significant impacts. These impacts must be disclosed, analyzed and mitigated in an EIR. Mr. Cashen provides that "thorough and well-crafted translocation (or relocation) plans for any species that may need to be moved off the Project site" must be developed and approved by resource agencies. These plans must be included and analyzed in an EIR.

6. *Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts to Burrowing Owls and Burrowing Owl Habitat*

The MND acknowledges that the Project would impact suitable habitat for the burrowing owl.¹¹⁹ However, according to the MND, "[t]he loss of potential owl habitat is not significant because 190 acres of the 358 acre project site will remain undeveloped."¹²⁰ In Mr. Cashen's opinion, this conclusion is not supported because the MND fails to establish a mechanism (e.g., conservation easement) that ensures the remaining 190 acres will be preserved and managed in perpetuity to benefit burrowing owls.¹²¹ Thus, the Project's impacts to burrowing owl habitat remains significant and unmitigated.

The Project's impacts to individual burrowing owls also remain significant and unmitigated because the MND's proposed buffer and preconstruction surveys are inadequate. First, the MND requires a 300-foot buffer around any occupied burrow.¹²² However, as Mr. Cashen explains, this buffer distance is inconsistent with CDFW guidelines, which indicate buffers may need to be up to 500 meters (approximately 1,640 feet), depending on the level of disturbance.¹²³ Second, the MND requires a preconstruction survey for burrowing owls within 14 days prior to ground disturbance.¹²⁴ This condition is also inconsistent with CDFW guidelines, which recommend an initial preconstruction survey within the 14 days prior to

¹¹⁸ *Id.*

¹¹⁹ MND, p. 17.

¹²⁰ *Id.*

¹²¹ Attachment A, p. 14.

¹²² MND, p. 20.

¹²³ Attachment A, p. 15.

¹²⁴ MND, p. 19.

December 19, 2013

Page 30

ground disturbance, followed by a subsequent survey within 24 hours prior to ground disturbance.¹²⁶ Mr. Cashen explains this is because burrowing owls can be difficult to detect due to their cryptic coloration, extensive use of burrows and tendency to fly away when approached.¹²⁶ Also, as CDFW's 2012 Staff Report acknowledges, "burrowing owls may re-colonize a site after only a few days."¹²⁷ Thus, a single preconstruction survey conducted up to 14 days in advance of construction is insufficient to avoid and minimize take of burrowing owls.¹²⁸

Substantial evidence supports a fair argument that the Project may result in significant impacts to burrowing owls and burrowing owl habitat. The County must prepare an EIR that adequately discloses, analyzes and mitigates these impacts.

7. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts from the Spread of Invasive Plants

Invasive weeds disrupt ecosystem processes and degrade habitat for native plants and animals.¹²⁹ In his comments, Mr. Cashen explains that Project vehicles and crews could track clinging seeds and/or parts of noxious weeds onto the Project site.¹³⁰ Further, weed species will benefit from disturbance of the Project site and will readily colonize the site.¹³¹ Therefore, Mr. Cashen concludes that the Project has the potential to introduce invasive plant species and/or facilitate their spread in the Project area.¹³² The MND fails to disclose, analyze or mitigate this significant impact.

To mitigate this impact, Mr. Cashen explains that the County must identify the following:

1. The measures that will be implemented to prevent weed species from being introduced to the Project sites (e.g., equipment washing);

¹²⁶ Attachment A, p. 15.

¹²⁶ *Id.*

¹²⁷ *Id.*, citing CDFW 2012 Staff Report.

¹²⁸ Attachment A, p. 15.

¹²⁹ *Id.*, p. 12.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

2097-006av

December 19, 2013

Page 31

2. The weed species that will be subject to weed management measures, and the management objectives for each species (e.g., eradication versus control);
3. Where weed management and monitoring measures will be implemented, including the extent of a buffer zone surrounding the Project footprint;
4. The timing, frequency and duration of the suite of weed management measures that might be implemented for the Project;
5. The methods (including the timing, frequency and duration) for weed monitoring efforts at the Project site;
6. Success criteria for the weed mitigation program; and
7. The reporting requirements and enforcement mechanism.

Substantial evidence supports a fair argument that the Project may result in significant impacts from the spread of invasive plants. The County must prepare an EIR that discloses, analyzes and mitigates these significant impacts.

§. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts to Nesting Birds

Nesting birds are protected by the Migratory Bird Treaty Act ("MBTA"). According to the MND, several bird species likely nest in the Project area. The MND provides the following mitigation for the Project's potentially significant impacts to nesting birds:

if vegetation removal shall occur during the bird-nesting season, generally February 15 to August 15, a qualified biologist ornithologist will examine the site to avoid impacts to nesting birds. [The biologist] shall conduct preconstruction bird nesting surveys within 200 feet (or up to 300 feet depending on topography or other factors and 500 feet for raptors) to avoid impacts to nesting birds. If active bird nest(s) are detected during the pre-construction nesting surveys, the qualified

December 19, 2013

Page 32

ornithologist will establish an adequate no disturbance buffer around the active nest(s) shall be established [sic] as determined by a qualified biologist until the nest(s) have fledged to ensure the nesting birds are not disturbed until the young birds have fledged.¹³⁸

In Mr. Cashen's opinion, the preconstruction bird surveys and buffer zone proposed in the MND do not adequately avoid or minimize potentially significant impacts to nesting birds.¹³⁴ Specifically,

1. The MND fails to establish the timing of preconstruction breeding bird surveys in relation to ground disturbance activities. Some birds can build a nest and initiate egg-laying within a short period of time. Therefore, the County must establish the timing of preconstruction surveys such that birds will not be able to build a nest during the time that elapses between the preconstruction survey(s) and Project activities;
2. Even if vegetation clearing does not occur during the nesting season, bird nests in the vicinity of other construction activities may be adversely impacted by the Project (e.g., due to noise disturbance). As a result, preconstruction bird surveys must be required at all construction sites that are active during the breeding season;
3. The MND fails to establish minimum standards for locating nests and minimizing human-induced disturbance. Research indicates that nest finding is labor intensive and extremely difficult due to the tendency of many species to construct well-concealed or camouflaged nests. In general, bird nests are located when a variety of search techniques are used and considerable time (e.g., multiple surveys) is devoted to the effort;
4. The MND fails to establish a minimum buffer size that is supported by scientific information. Prior to reducing the buffer, the appointed biologist must present credible scientific information to the USFWS and CDFW substantiating that a reduced buffer is "adequate;" and

¹³⁸ MND, p. 22.

¹³⁴ Attachment A, p. 16.

2007-000cv

December 19, 2013
Page 33

5. The mitigation measure lacks monitoring, reporting and compliance mechanisms that ensure the mitigation is effective and impacts to nesting birds are effectively avoided.¹³⁵

These issues must be resolved before the County can conclude that impacts to nesting birds would be less than significant. As it stands, substantial evidence supports a fair argument that the Project may result in significant impacts to nesting birds. The County must prepare an EIR that adequately discloses, analyzes and mitigates these impacts.

9. *Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts to Wildlife Connectivity*

One of the MND's thresholds of significance is whether the Project would "interfere substantially with the movement of any native resident or migratory fish or wildlife species."¹³⁶ According to Mr. Cashen, the MND correctly concludes that the Project would not significantly impact migratory fish.¹³⁷ However, the MND provides no analysis of the Project's potentially significant interference with the movement of terrestrial wildlife.¹³⁸

Mr. Cashen explains that the Project site occurs in a transition zone between the South Coast and the Mojave Desert ecoregions, which link the San Bernardino Mountains to the inland desert ranges of the Granite, Ord and Rodman Mountains.¹³⁹ This "San Bernardino-Granite Mountains Connection" is one of 15 priority linkages, the protection of which is crucial to maintaining ecological and evolutionary processes among large blocks of protected habitat within the South Coast Ecoregion.¹⁴⁰ According to Cashen, the Project would "irreversibly compromise the biological value of the San Bernardino-Granite Mountains Connection, and consequently, the biological integrity of thousands of square miles of some of the best wildlands in southern California."¹⁴¹

¹³⁵ *Id.*

¹³⁶ MND, p. 16.

¹³⁷ Attachment A, pp. 12-13.

¹³⁸ MND, p. 19.

¹³⁹ Attachment A, p. 13.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* (emphasis added)

December 19, 2013

Page 34

Substantial evidence supports a fair argument that the Project may result in significant impacts to wildlife connectivity. The MND completely fails to disclose, analyze or mitigate this potentially significant impact. The County must prepare an EIR that does so.

10. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts to Native Plants

The Project site contains approximately 662 Joshua trees and Mojave yuccas in the northern portion of the site and approximately 1,467 in the southern portion of the site.¹⁴² The MND does not identify how many of these plants will be impacted by the Project or how many will be relocated. Nevertheless, the MND concludes that the Project's impacts to native plants would be reduced to a less-than-significant level after the preparation of four plans, including a Native Tree Removal and Relocation Plan, a Revegetation Plan, a Joshua Tree and Yucca Maintenance Plan and a Cactus Salvage Plan.¹⁴³ However, the MND fails to provide details regarding key aspects of the plans, such as success criteria, monitoring programs and contingency measures, as required by CEQA. Thus, there is no support for the MND's conclusion that these plans would reduce the Project's impacts to native plants to a less-than-significant level.

Substantial evidence supports a fair argument that the Project may result in significant impacts on native plants, including Joshua trees and Mojave yuccas. The County must prepare an EIR that adequately discloses, analyzes and mitigates these impacts.

11. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts on Additional Special-Status Wildlife Species

The MND fails to disclose, analyze or provide mitigation for all special-status species that may be significantly impacted by the Project. Based on Cashen's review of scientific literature and environmental documents prepared for other projects near the Project site, he concludes that the following additional species may be significantly impacted by the Project:

¹⁴² MND, p. 19

¹⁴³ *Id.*

0007-006cv

December 19, 2013
Page 35

- Bendire's thrasher (*CDFW Species of Special Concern; USFWS Bird of Conservation Concern*);
- Ferruginous hawk (*CDFW Watch List; USFWS Bird of Conservation Concern*);
- Loggerhead shrike (*CDFW Species of Special Concern; USFWS Bird of Conservation Concern*);
- Pallid San Diego Pocket Mouse (*CDFW Species of Special Concern*);
- Several special-status bat species; and
- Desert kit fox (*14 CCR 460 prohibits take of this species*).¹⁴⁴

Substantial evidence supports a fair argument that the Project may result in significant impacts to several species that were not identified in the MND. The County must prepare an EIR that discloses, analyzes and mitigates the Project's potentially significant impacts to Bendire's thrasher, ferruginous hawk, loggerhead shrike, pallid San Diego pocket mouse, special-status bat species and desert kit fox.

12. *Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Cumulative Impacts on Sensitive Biological Resources*

The MND provides no analysis of the Project's potentially significant cumulative impacts to biological resources. Rather, the MND states that there are no known projects in the vicinity of the Project site.¹⁴⁵ Mr. Cashen points out that there *are* projects in the vicinity of the Project site, including past and present projects (such as transmission lines, pipelines, roads, railroad tracks and residential development), and reasonably foreseeable future projects (such as the Marathon Solar Project, CAL SP VII Project, Deep Creek (Apple Valley) Project and Lucerne Valley Pit Amended Mining & Reclamation Plan).¹⁴⁶ In Cashen's opinion, the Project, in conjunction with these other past, present and reasonably foreseeable future projects, may generate significant cumulative impacts to sensitive biological resources.¹⁴⁷ Thus, the County must prepare an EIR to disclose, analyze and mitigate the Project's potentially significant cumulative impacts to sensitive

¹⁴⁴ *Id.*, p. 5.

¹⁴⁵ MND, p. 52.

¹⁴⁶ Attachment A, p. 13.

¹⁴⁷ *Id.*

December 19, 2013

Page 36

biological resources.

B. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant, Unmitigated Visual Impacts

The Project site is located in a rural desert area "consisting of flat lands surrounded by sparse residential development, and typical vegetation communities such as creosote bush, burro-weed, desert dandelion, and mustard. Human disturbance is minimal within the site."¹⁴⁸ The site is currently undeveloped. The Granite Mountains lie one mile north of the Project site.¹⁴⁹ There are residences adjacent to the Project site.¹⁵⁰

According to the MND, the Project "blends well with the existing view"¹⁵¹ and, therefore, will have a less-than-significant impact on the visual character of the site and its surroundings.¹⁵² The County provides no evidence to support its conclusion. No visual impact assessment was prepared for the Project and the MND contains no visual simulations depicting the visual impact of the Project.

The 358-acre Project site will be developed with PV modules mounted on tracker units, a substation and interconnection equipment, chain link fencing and access roads, among other Project components. Visual simulations from other PV solar projects in desert areas show distinct contrast between the projects and the desert environment.¹⁵³ As shown in those simulations, the PV projects do not "blend well with the existing view."

Substantial evidence supports a fair argument that the Project will result in a potentially significant impact on the visual character of the Project site and its surroundings. The County must prepare an EIR to evaluate the Project's visual impacts and propose all feasible mitigation measures that reduce Project impacts to a less-than-significant level.

¹⁴⁸ MND, p. 9.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*, p. 5.

¹⁵¹ *Id.*, p. 10.

¹⁵² *Id.*, pp. 9-10.

¹⁵³ E.g., see **Attachment J: Visual Simulations** prepared for the Sonoran Solar Energy Project and the Beacon Photovoltaic Project.

2007-006cv

December 19, 2013

Page 37

C. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant, Unmitigated Impacts from Noise

According to the MND, “[n]oise generation from construction equipment/vehicle operation will be localized, temporary, and transitory in nature; therefore, no significant impacts will be anticipated.”¹⁵⁴ Despite this conclusion, the MND includes a measure to reduce the Project’s construction noise impacts which requires Project construction equipment to be muffled “per manufacturer’s specifications” and that electric-powered equipment be used “where feasible.”¹⁵⁵ The MND’s “analysis” of the Project’s construction-related noise impacts is flawed for two reasons.

First, the MND improperly minimizes Project-related construction noise by labeling it “temporary.” The MND implies that because construction is temporary, construction noise is not of concern. Under CEQA, impacts that are short-term or temporary in nature may nonetheless be significant.¹⁵⁶ It is well settled in CEQA case law that “short-term effects may have such significance as to require an EIR.”¹⁵⁷ An agency may not, therefore, minimize the significance of an impact just because it is of a “temporary” or “short-term” nature.

Project construction will occur near sensitive receptors (adjacent and nearby residences). Project construction will take nine months and will entail the use of heavy equipment, including pile drivers, a scraper, backhoe, lift and crane.¹⁵⁸ Project construction also requires the use of large trucks, such as delivery trucks, a water truck, superintendent truck and grade checker truck.¹⁵⁹ The MND cannot assume, without any supporting evidence, that “no significant impacts will be anticipated” from Project construction noise because construction is “temporary.” The MND’s conclusion rests on incorrect assumptions and its “analysis” does not present conclusive evidence that Project construction will not result in significant impacts from noise.

¹⁵⁴ MND, p. 38.

¹⁵⁵ *Id.*, p. 39.

¹⁵⁶ CEQA Guidelines, § 15126(a).

¹⁵⁷ *No Oil, Inc. v. City of Los Angeles*, *supra*, 13 Cal.3d at 85; see also *Running Fence Corporation v. Superior Court of Sonoma* (1975) 51 Cal.App.3d 400, 424.

¹⁵⁸ Air Quality Analysis, Lucerne Valley Desert View Ranch Solar Generation Project, San Bernardino County, California, LSA Associates, Inc., October 2013, p. A-1.

¹⁵⁹ *Id.*

December 19, 2013

Page 38

Second, the MND's proposed measure to reduce the Project's construction noise impacts is vague, of uncertain efficacy and unenforceable. The MND requires Project construction equipment to be muffled "per manufacturer's specifications" and that electric-powered equipment be used "where feasible."¹⁶⁰ The measure is too vague to ensure that noise impacts will be reduced to a less-than-significant level.

Under CEQA, a public agency may not rely on mitigation measures of uncertain efficacy or feasibility.¹⁶¹ The MND's proposed measure contains language which fails to create an enforceable commitment – "per manufacturer's specifications" and "where feasible." These standards are vague, unenforceable and of uncertain efficacy. Consequently, substantial evidence supports a fair argument that the Project may result in significant, unmitigated impacts from construction-related noise.

D. Substantial Evidence Supports a Fair Argument That the Project May Result in Significant, Unmitigated Impacts to Washes on the Project Site

The Project involves construction activities that will impact washes on the Project site, as well as the quality of those waters. The construction activities proposed for the Project site will remove and otherwise impact waters of the State through fill, dust generation, and other activities. These activities include grading, the placement of PV panels "across" the washes and road construction.¹⁶² Substantial evidence supports a fair argument that these activities will result in potentially significant impacts through unregulated discharges of waste.

Surface waters at the Project site could be impacted through filling of washes, dust generation and discharge of contaminants, all of which are considered discharges of waste under State law.¹⁶³ Erosion and runoff of site contaminants will be greatest during construction when soil is disturbed. The MND fails to identify

¹⁶⁰ MND, p. 39.

¹⁶¹ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727.

¹⁶² MND, p. 34; United Engineering Group 2011 Nov. Preliminary Drainage Report for Lucerne Valley Desert View Solar, San Bernardino County, CA. Appendix B.

¹⁶³ Water Code §13050(d); see also *Lake Madrone Water Dist. V. State Water Resources Control Board* (1989) 209 Cal.App. 3d 163, 169.

December 19, 2013
Page 39

these potentially significant impacts and to specify mitigation measures that will reduce these impacts to a less than significant level.

The County relies on a Preliminary Water Quality Management Plan for the conclusion that the Project will not violate water quality standards or waste discharge requirements.¹⁶⁴ The conclusion is unsupported. The Preliminary Water Quality Management Plan does not address the potential soil contaminants that may become entrained in stormwater runoff and flow offsite, such as dust palliatives. Although the MND assumes that waste discharge will be mitigated to a less than significant level through conformance with applicable permit requirements under the federal Clean Water Act, the MND fails to address fill and other waste discharges that are regulated under State law.

The California Water Code requires any person discharging waste that could affect the waters of the State to file an application for waste discharge with the relevant regional water board.¹⁶⁵ Individual discharges of waste are regulated by waste discharge requirements, issued by the regional boards based upon mandatory reports filed by dischargers.¹⁶⁶ Reports of waste discharge must specify information regarding the character, location, and volume of the discharge.¹⁶⁷ The waste discharge requirements issued by the regional boards ensure implementation of relevant water quality control plans and the prevention of nuisance conditions.¹⁶⁸

According to the MND, the Preliminary Water Quality Management Plan concludes that no waters or habitats fall under the jurisdiction of the U.S. Army Corps, the California RWQCB or CDFW.¹⁶⁹ However, as explained above, the Preliminary Water Quality Management Plan only concludes that there are no jurisdictional waters of the United States on the Project site; it provides no conclusions regarding waters or habitats that fall under the jurisdiction of the RWQCB or CDFW. In Mr. Cashen's opinion, washes that exist on the Project site fall under the jurisdiction of both the RWQCB and CDFW. The MND fails to adequately analyze the Project's development of a power plant in washes. The MND also fails to propose mitigation measures that address discharge of waste into

¹⁶⁴ MND, p. 34.

¹⁶⁵ See Water Code §§ 13260 et seq.

¹⁶⁶ Water Code § 13260(a).

¹⁶⁷ *Id.*; 23 Cal. Code Reg. § 2205.

¹⁶⁸ Water Code § 13263(a).

¹⁶⁹ MND, p. 34.

2007-006cv

December 19, 2013
Page 40

surface water on the Project site. The MND simply lacks any assurance that waters of the State will not be significantly impacted.

Substantial evidence supports a fair argument that the Project will result in potentially significant, unmitigated impacts to water quality through unregulated discharge of waste. The County is required to prepare an EIR to address these impacts and to specify the mitigation measures that will be implemented to ensure that the Project will not result in potentially significant impacts to hydrologic features through unregulated discharge of waste.

E. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant, Unmitigated Land Use Impacts

CEQA requires an assessment of any inconsistencies between the Project and applicable land use plans.¹⁷⁰ A significant impact on land use and planning would occur if the Project would “[c]onflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.”¹⁷¹ Here, the Project conflicts with several goals and policies of the County’s General Plan. These inconsistencies are significant impacts that must be disclosed, analyzed and mitigated in an EIR.

1. The MND Fails to Disclose and Mitigate the Project’s Inconsistencies with the County’s General Plan

Under California law, a general plan serves as a “charter for future development”¹⁷², and embodies “fundamental land use decisions that guide the future growth and development of cities and counties.”¹⁷³ The general plan has been aptly described as “the constitution for all future developments” within a city or county.¹⁷⁴ Further, the “propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan

¹⁷⁰ CEQA Guidelines § 15125(a), (d).

¹⁷¹ CEQA Guidelines Appendix G, § IX(b).

¹⁷² *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 54.

¹⁷³ *City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 532.

¹⁷⁴ *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors of El Dorado County* (1998) 62 Cal.App.4th 1334, 1335.

December 19, 2013
Page 41

and its elements.”¹⁷⁵ The consistency doctrine has been described as the “linchpin of California’s land use and development laws; it is the principle which infuses the concept of planned growth with the force of law.”¹⁷⁶

The MND fails to acknowledge the Project’s conflicts with a number of the goals and policies of the County’s General Plan adopted for the purpose of avoiding or mitigating an environmental effect. These inconsistencies are significant environmental impacts that must be disclosed, analyzed and mitigated in an EIR. The following are examples of these inconsistencies:

a. The Project is Inconsistent with Goal D/LU 1

Goal D/LU 1 is to “[m]aintain land use patterns in the Desert Region that enhance the rural environment and preserve the quality of life of the residents of the region.” The Project is inconsistent with Goal D/LU 1 because, as described above, substantial evidence supports a fair argument that the Project may result in significant impacts to adjacent and nearby residents from Project noise and changes to the visual character of the Project site and its surroundings. In addition, substantial evidence supports a fair argument that the Project may result in significant public health impacts from Valley Fever. These impacts will detract from the rural character of the Project area and degrade the quality of life for adjacent and nearby residents.

b. The Project is Inconsistent with Goal D/LU 3

Goal D/LU 3 is to “[e]nsure that commercial and industrial development within the region is compatible with the rural desert character and meets the needs of local residents.” The Project is inconsistent with Goal D/LU 3 because, as described above, substantial evidence supports a fair argument that the Project may result in significant impacts from Project noise and changes to the visual character of the Project site and its surroundings. These impacts will detract from the rural desert character of the Project area and degrade the quality of life for adjacent and nearby residents.

¹⁷⁵ *Citizens of Goleta Valley v. Board of Supervisors of County of Santa Barbara* (1990) 52 Cal.3d 553, 570.

¹⁷⁶ *Corona-Norco Unified School District v. City of Corona* (1993) 17 Cal.App.4th 985, 994.
2997-000cv

December 19, 2013

Page 42

c. The Project is Inconsistent with Goal CO2 and Policy CO2.4 Program 3

Goal CO2 is to “maintain and enhance biological diversity and healthy ecosystems throughout the County.” Policy CO2.4 Program 3 provides that the “County shall not permit land conversion until adequate mitigation is provided to reduce impacts to less than significant in cases where a Mitigated Negative Declaration is used for CEQA compliance.” The Project is inconsistent with Goal CO2 and Policy CO2.4 Program 3 because, as described above, substantial evidence supports a fair argument that the Project may result in significant impacts to numerous plant and wildlife species, including the desert tortoise, golden eagle, burrowing owl, kit fox, nesting and migratory birds, special-status plants, Joshua tree and Mojave yucca, among other species. These impacts will detract from the health of the ecosystem and the biological diversity in the County.

d. The Project is Inconsistent with Goal D/CO 1 and Policies D/CO 1.2 and D/CO 1.3

Goal D/CO 1 is to “[p]reserve the unique environmental features and natural resources of the Desert Region, including native wildlife, vegetation, water and scenic vistas.” Policy D/CO 1.2 is to “[r]equire future land development practices to be compatible with the existing topography and scenic vistas, and protect the natural vegetation.” Policy D/CO 1.3 is to “[r]equire retention of existing native vegetation for new development projects, particularly Joshua trees, Mohave yuccas and creosote rings...” The Project is inconsistent with Goal D/CO 1, Policy D/CO 1.2 and Policy D/CO 1.3 because, as described above, substantial evidence supports a fair argument that the Project may result in significant impacts to numerous plant and wildlife species (including Joshua trees and Mohave yuccas, among other species) and hydrologic features. Thus, the Project will detract from the natural resources of the Project area, will not protect or retain the natural vegetation on the Project site, including Joshua trees and Mohave yucca.

e. The Project is Inconsistent with Policy N1.3 Program 1

Policy N1.3 Program 1 requires “an acoustical analysis prior to approval of proposed development of...a new noise generating use in an area that could affect existing noise-sensitive land uses. The appropriate time for requiring an acoustical analysis is during the environmental review process so that noise mitigation may be an integral part of the project design.” The Project is inconsistent with Policy N1.3

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December 19, 2013

Page 43

Program 1 because *no* acoustical analysis was conducted for the Project. Rather, the MND concludes, without support, that impacts from Project-generated noise will be less-than-significant.


V. CONCLUSION

The MND is inadequate because it fails to include a complete and accurate Project description, set forth the existing environmental setting and identify and mitigate the Project's potentially significant impacts on biological, hydrological and visual resources, public health and land use, and from Project construction noise. Due to these significant deficiencies, the County cannot conclude that the Project's potentially significant impacts have been mitigated to a less than significant level.

The CEQA Guidelines require that an EIR be prepared if there is substantial evidence supporting a fair argument that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial.¹⁷⁷ As discussed in detail above, there is substantial evidence that the Project would result in significant adverse impacts that were not identified in the MND.

We urge the County to fulfill its responsibilities under CEQA by withdrawing the MND and preparing an EIR to address the issues raised in this comment letter. By complying with State law, the County and the public can ensure that the Project's significant environmental impacts are mitigated to a less than significant level.

Sincerely,



Rachael E. Koss

REK:clv
Attachments

¹⁷⁷ CEQA Guidelines § 15063(b)(1).
2007-006cv

Creason, Tracy - LUS

From: Chuck Bell <chuckb@sisp.net>
Sent: Thursday, August 07, 2014 7:54 AM
To: Hudson, Tom; Rahhal, Terri; Watkins, Karen; Creason, Tracy - LUS
Subject: FW:

Importance: High

FOR THE RECORD - PENDING PC HEARING. PLEASE DISTRIBUTE TO THE COMMISSIONERS.

Following is Lucerne Valley Economic Development Association's (LVEDA) position on this solar PV project in Lucerne Valley:

LUCERNE VALLEY DESERT VIEW RANCH LLC – SILVERADO POWER – PROJECT # PT01100489 – CUP/VAR

On 8/9/12 the Lucerne Valley MAC's Land Use Committee sent comments to staff – not real support – not total opposition. At that time we had not experienced the reality of these industrial scale PV projects – especially in the wrong place – ie: the approved and under construction Agincourt and Marathon projects (now Lone Valley Solar) on Camprock Rd. in LV. These 2 projects are poster child examples of what not to do and where not to do it. The slope – braided with a major wash required immense grading – removal of large boulders - etc. Construction water use is on-going – way beyond the amount originally projected. So far – with 10 acre feet taken from Mojave Water Agency's Morongo Pipeline (non potable State Project water) – and the likely and continuing 40 acre feet (maybe more) from a local source (potable groundwater in an adjudicated, over drafted basin) – and still with significant dirt/dust blow off the site during spring winds – with multiple photos and complaints triggering County Code Enforcement and MDAQMD involvement – these 2 projects have greatly influenced our perspective on industrial – scale operations. Not to mention the significant numbers of Joshua trees and yucca plants destroyed – with a notice for public adoption of a few joshuas – placed in the SB Sun – which few desert residents read – not in our local papers – plants which some of us would have been willing to take. And of course the union workers – from out of the area – very few local residents employed – staying somewhere other than Lucerne Valley with no motels - and with minimal if any property tax benefit to the county or community.

We have (many times) provided County Planning – SPARC - CEC – DRECP – BLM – etc. with our siting/environmental/planning criteria – and more importantly – the concept of a 5+ square mile area (the only location) that the community deems suitable for industrial-scale PV – adjacent to an existing SCE transmission line – close to a proposed substation – flat area

requiring absolutely no grading – clay soil that can be stabilized with 1 application of water – in an area unsuitable for residential or any other land uses – screened by salt cedar trees that require no irrigation – basically – out of sight.

Because the proposed Desert View project site has many of the same geological/slope/potential flood/terrain/environmental/etc. features as do (did) Lone Valley Solar – filed prior to and exempt from the current County Solar ordinance – we certainly not wanting to replicate that in our community – not wanting to impose any more work on County Code Enforcement that may end up adopting what County Planning and developers don't get right – **WE OPPOSE THIS PROJECT – STRONGLY REQUEST THAT IT BE PUT 'ON HOLD' AT LEAST UNTIL THE COUNTY ADOPTS ITS 'RENEWABLE ENERGY' ELEMENT TO THE GENERAL PLAN – DRECP IS FINALIZED – INDUSTRIAL SCALE PV ZONING IS IN PLACE. Bottom line: when we know where we want to put this stuff!**

Note: There was an indication in the original notice that the developer intended to obtain construction water from Apple Valley Ranchos Water Co. If that is still the case – the Planning Dept./developer need to consult with the Mojave Water Agency (Mojave Basin Watermaster) in case water extraction from the “Alto” Sub Basin for transfer to the “Este” Sub Basin (where project is located) would constitute an inter-basin water transfer – which could be a violation of the Judgment. The best source of construction water is always non-potable State water from MWA's Morongo Pipeline – which traverses the project area – when and if available. The developer might be hard pressed to obtain construction water in the “Este” Sub-Basin (Lucerne Valley) – again – an overdrafted adjudicated groundwater basin.

Chuck Bell, Pres. 760 964 3118 chuckb@sisp.net
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Lucerne Valley, CA 92356