



**LAND USE SERVICES DEPARTMENT
PLANNING DIVISION
PLANNING COMMISSION STAFF REPORT**



HEARING DATE: June 19, 2014

AGENDA ITEM # 3

Project Description

Vicinity Map

APNs: 0438-212-01, -02
Applicant: Mr. Stanley Chin, CF SBC Owner One, LLC
Community: Apple Valley/1st District
Location: East of Central Road, south of Tussing Ranch Road, and north of BNSF railroad tracks
Project No: P201300557/CF
Staff: Tracy Creason
Rep: EPD Solutions – Jeremy Krout
Proposal: Conditional Use Permit to establish a 3-megawatt solar photovoltaic electricity generation facility on 23



40 Hearing Notices Sent On: June 5, 2014
 Field Review: June 16, 2014

Report Prepared By: Tracy Creason
 Reviewed By: Commissioner Smith

SITE INFORMATION

Parcel Size: 23 Acres
Terrain: Generally flat desert terrain, with a wash running through the site in a northwest to southeast direction; approximate elevation is 3100 feet
Vegetation: Predominantly a combination of creosote bush scrub with Joshua tree woodland

SURROUNDING LAND DESCRIPTION:

AREA	EXISTING LAND USE	LAND USE ZONING DISTRICT
Site	Vacant lands	AV/RL (Apple Valley Sphere of Influence/ Rural Living)
North	Rural residential; vacant lands	AV/RS-1 (Apple Valley Sphere of Influence/Single Residential, 1-acre minimum parcel size)
South	Railroad; rural residential; vacant lands	AV/RL & AV/RS-1
East	Rural residential; vacant lands	AV/RL
West	Rural residential; vacant lands	Town of Apple Valley [Zoning & General Plan Designation: R-E (Estate Residential)]

	AGENCY	COMMENT
City Sphere of Influence:	Town of Apple Valley	Project is inconsistent with relevant Town Development Code requirements
Water Service:	N/A	Mariana Ranchos County Water District 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 3 MW solar photovoltaic electricity generation facility on 23 acres.

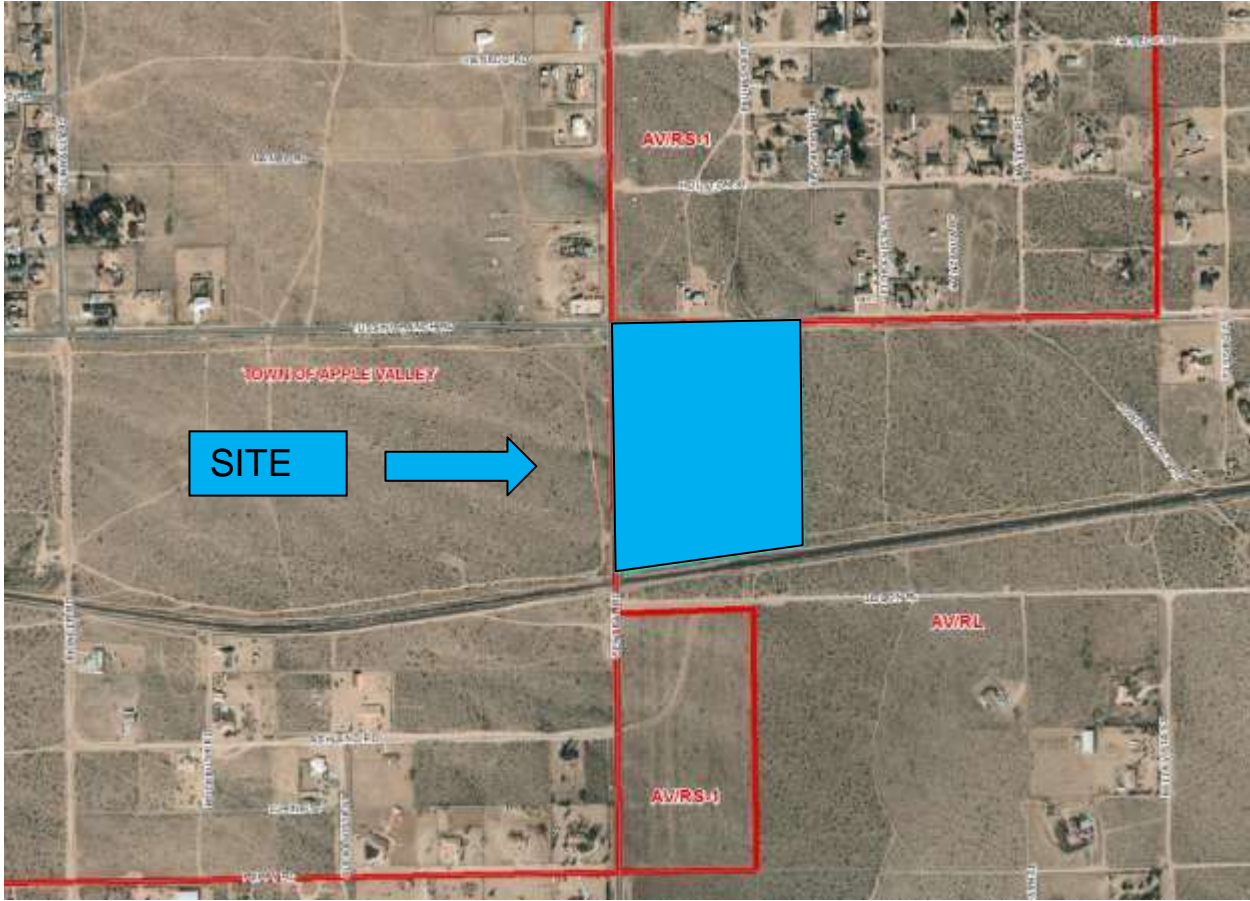
In accordance with Section 86.08.010 of the San Bernardino County Development Code, this action may be appealed to the Board of Supervisors.

THIS PAGE INTENTIONALLY LEFT BLANK

VICINITY MAP



OFFICIAL LAND USE DISTRICT MAP



PLOT PLAN

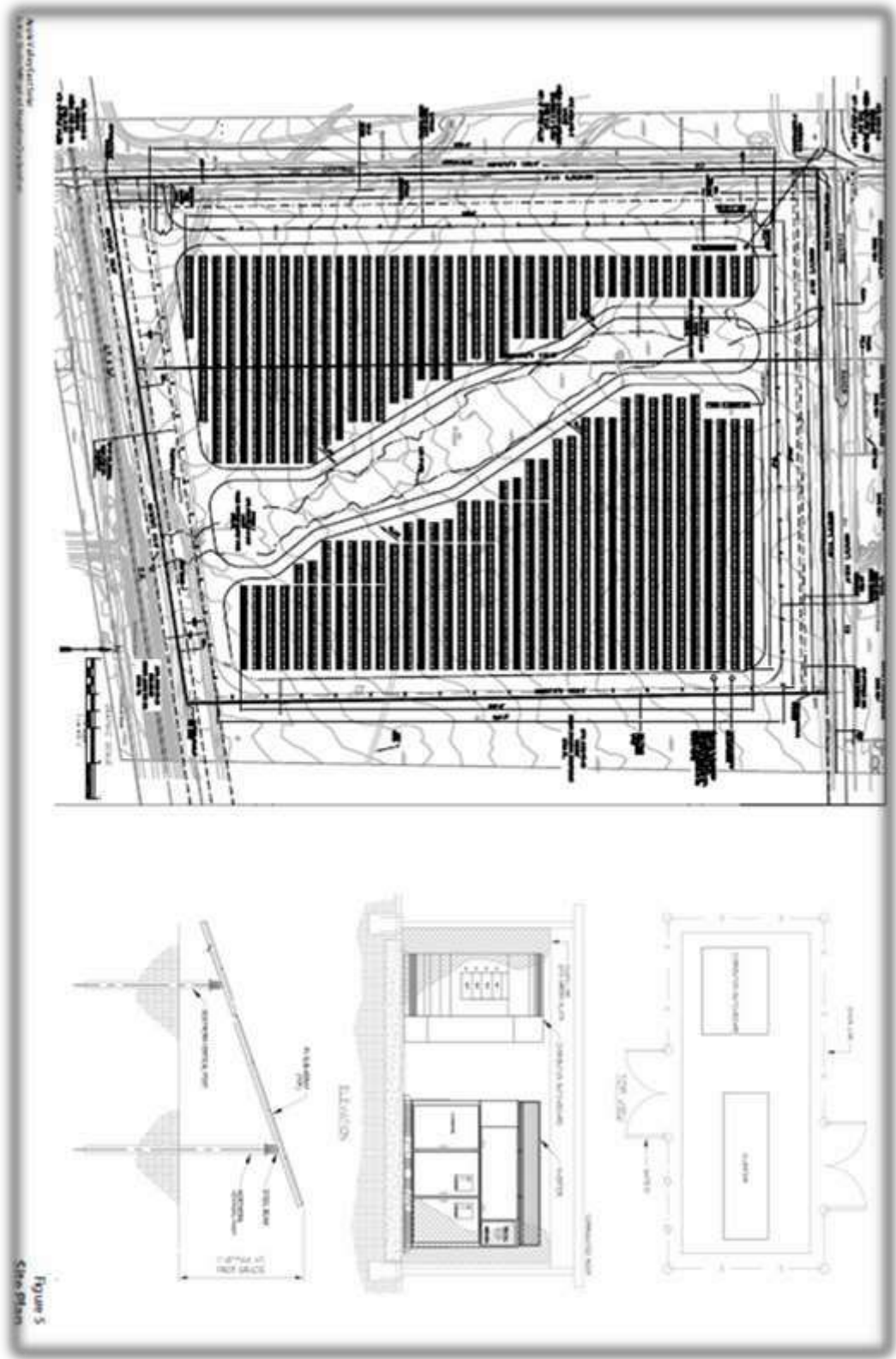


Figure 5
Site plan

SITE PHOTOS



Photo 1: View of site looking southeast from northwest corner, at intersection of Central and Tussing Ranch Roads.



Photo 2: View of site looking northeast from southwest corner, at Central Road.



Photo 3: View looking north from hills to the south of the site.



Photo 4: View looking north from hills to the south of the site.



PROJECT DESCRIPTION AND BACKGROUND:

Project: The proposed Conditional Use Permit (CUP) is requested to establish a 3 megawatt solar photovoltaic (PV) electricity generation facility (Project) on 2 parcels totaling approximately 23 acres in an unincorporated portion of Apple Valley, in the sphere of influence of the Town of Apple Valley. A lot merger application to create a single lot was also filed. Upon completion, the Project will be unmanned.

Location and Access: The proposed site is situated in the Desert Region of the County. It is on the east side of Central Road, the south side of Tussing Ranch Road, and the north side of the BNSF railroad tracks. The primary facility access point is proposed from Central Road, near the southwest corner of the project site.

Environmental Setting: The site slopes gently downward to the northwest and has an elevation change of approximately 25 feet over approximately 0.25 mile. Elevations range from approximately 3,095 feet above sea level (asl) to 3,120 feet asl. The site is bisected by one drainage course, which the Project avoids and leaves undisturbed. According to biological surveys conducted on the site, the plant community throughout the site is creosote bush scrub, with Joshua tree woodland interspersed. The Project site is within a potential habitat area for desert tortoise, burrowing owl, and Mohave ground squirrel. A Biological Resources Assessment was conducted on the Project site and additional areas including buffers. Focused surveys for desert tortoise, rare plants, burrowing owl, and Mohave ground squirrel were also conducted. A Mohave ground squirrel presence-or-absence trapping study was conducted using the California Department of Fish and Wildlife's standardized survey guidelines. Although no species were found during these surveys, mitigation measures have been identified for raven management, access road clearance surveys, worker awareness education, pre-construction surveys for burrowing owl and nesting birds, and avian mortality monitoring. If pre-construction surveys find burrowing owl or nesting birds, additional mitigation measures are required.

Solar Array Operation: Project facilities are proposed to include photovoltaic panels mounted at a fixed angle tilt facing south, not to exceed 12 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 and an unmanned supervisory control and data acquisition system to monitor and control facility operations. The site would be surrounded by a 7-foot high chain link fence. The Project proposes to tie in electrically to an existing distribution line along Central road. The Project would connect directly to this line, with no off-site distribution line extension required. The electricity produced by the Project would be sold to Southern California Edison under two long-term Power Purchase Agreements effective on December 7, 2012 with an initial operation deadline of December 7, 2014.

ANALYSIS:

General Plan Policy: The County General Plan establishes goals for renewable energy production in the County. Conservation Element Policy CO 4.12 states 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. This Project supports the objectives of these goals and policies.

Consistency with General Plan and Zoning Regulations: The current General Plan land use designation for the proposed Project area is Apple Valley Sphere of Influence/Rural Living (AV/RL), which allows development of renewable energy generation facilities with a CUP. While, the proposed Project is consistent with the County General Plan, the proposed Project is inconsistent with the standards outlined in Code Chapter 84.29 – Renewable Energy Generation Facilities as revised in December 2013. The Project does not meet the required findings for approval of a Commercial Solar Energy Facility outlined in section 84.29.035, specifically:

- Finding number 4, which requires proposed development to be “consistent with the goals, maps, policies, and standards of the General Plan and any applicable community or specific plan.” Although solar energy generation is a conditionally permitted use within the Rural Living (RL) land use zoning district, the site is within the Apple Valley Sphere Overlay (AV/). Because the proposal is inconsistent with the Town of Apple Valley’s Development Code requirements for commercial photovoltaic solar development, it is inconsistent with the County Development Code section 84.29.035 (c) (30) and Policy LU 9.4 of the County General Plan, which requires appropriate review for consistency with town or city standards for land use proposals located in the sphere of influence of a town or city.
 - Finding number 9, which requires that “proposed commercial solar energy generation facility is either (a) sufficiently separated from existing communities and existing/developing rural residential areas so as to avoid adverse effects, or (b) of a sufficiently small size, provided with adequate setbacks, designed to be lower profile than otherwise permitted and sufficiently screened from public view so as to not adversely affect the desirability and future development of communities, neighborhoods, and rural residential use.” Even though the Project proposal includes design features to screen the use from public view, it is approximately ½ mile east of an 895-lot neighborhood created with the recordation of Tract No. 5781 Circle “M” Ranchos Unit No. 5 in 1959 and developed thereafter. The neighborhood includes Mariana Academy, an elementary school, Mendel Park, and the Apple Valley Fire Protection District Station No. 5. Additionally, rural residential areas exist and are developing within the area, many at higher elevations whose views would be adversely impacted.
-

- Finding number 38, which states that “when located within a city’s sphere of influence, in addition to other County requirements, the proposed commercial solar energy facility will also be consistent with relevant city zoning requirements that would be applied to similar facilities within the city.” The Town of Apple Valley submitted their original comment letter in January 2014, in which they indicated that certain modifications would bring the proposed Project close to the Town’s development standards. In April 2014, the Town sent a second letter that indicated that in conformance with the San Bernardino County Development Code Section 84.29.035(c), the proposed Project is inconsistent with the Town’s Development Code requirements for commercial photovoltaic solar development.

Aesthetics/Visual: The site is within the sphere of influence of the Town of Apple Valley and adjacent to the Town boundary along Central Road. The area consists largely of rural residential development interspersed with vacant land. Other land uses include railroad tracks, paved roadways, and power lines. The site is not part of a vista of natural areas, as surrounding areas are generally flat and intervening landscapes and manmade structures limit views. More distant vistas from higher-elevation areas in the San Bernardino National Forest are not significantly impacted due to the low height of the proposed solar panels and other Project features. As such, views of undisturbed natural areas are not significantly affected by the Project.

The Project site is vacant and mostly flat, with no landforms of note. There are no unique or unusual features on the site that could dominate views of the area. Therefore, there are no unique or unusual features on the site that could comprise an important or dominant position in the viewshed.

Finally, the site does not offer distant vistas that provide relief from less attractive nearby features. The proposed Project would directly alter the existing view of the Project site from adjacent uses and roadways by developing about 22 acres of vacant land with solar panels and ancillary equipment. However, the site is flat and contains no significant geological or vegetation features that could be considered scenic. The solar equipment on site, consisting of solar panels and associated electrical equipment, would maintain a low profile – generally up to 12 feet in height. Other Project features would include access drives and chainlink fencing. The proposed Project has a low profile and will have little potential to create glare, because the PV panels are designed to absorb sunlight with no reflection. Minimal lighting will be used at night, in compliance with County Development Code standards for preservation of night skies. Therefore, the Project will not substantially degrade the existing visual character or quality of the site and its surroundings, although it may not be considered compatible with surrounding residential uses.

Biology: Phoenix Biological Consulting (Phoenix) conducted general biological investigations of the Project site to identify and document any biological resources that might be adversely affected by the Project. The Biological Habitat Assessment (BHA) covering the entire 23-acre site and additional buffer areas was conducted in December 2012, and the BHA was prepared in January 2013. Focused Surveys for desert tortoise, rare plants, and burrowing owl were prepared by Phoenix in June 2013, while Mohave ground squirrel trapping results were prepared in July 2013. A Jurisdictional Delineation

was completed in June 2013. The surveys found no signs of desert tortoise, burrowing owl, rare plants, or Mohave ground squirrel onsite or in the “Zone of Influence”. Although no species were found during these surveys, the Initial Study contains recommended mitigation measures for raven management, access road clearance surveys, worker awareness education, pre-construction surveys for burrowing owl and nesting birds, avian mortality monitoring, and additional mitigation measures if pre-construction surveys find burrowing owl or nesting birds.

Traffic: The Trip Generation Analysis was prepared by EPD Solutions in January 2014 for the Project. Construction activities are anticipated to be conducted for approximately 4 months and the workforce is estimated to be a maximum of 50. It is anticipated that site visits associated with maintenance and security staff will result in approximately 1 site visit per day or 365 round trips annually. Washing of solar panels will occur approximately two times per year using hauled water. Impacts to traffic in the area will be negligible upon construction of the Project.

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 will assist in the State’s efforts to meet the RPS standard and increased demands for electricity.

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 will assist in efforts to meet the California GHG emissions legislation, consistent with the County GHG reduction plan.

SOLAR ENERGY PROJECT MORATORIUM

On July 23, 2013, the Board of Supervisors 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 of Supervisors 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 after June 12, 2013; therefore, the Project is subject to the ordinance adopted on December 3, 2013. As noted on the first

page of this Staff Report, Staff does not recommend the findings required under this ordinance for approval of the subject Project. The additional findings required for approval of a Commercial Solar Energy Generating Facility are included with the standard findings required for approval of a CUP in Exhibit A.

ENVIRONMENTAL REVIEW

An 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 April 17, 2014. A 30-day CEQA public comment period ended on May 21, 2014. Staff received correspondence from the Mojave Desert Air Quality Management District (MDAQMD) in which they concurred with the air quality determinations contained in the IS. Additionally, they recommended additional dust suppression requirements be incorporated into any conditions of approval.

In conclusion, the Initial Study concludes that the proposed use, with the proposed mitigation measures, will not have a significant effect on the environment. While Staff recommends denial of the Project, if a recommendation is made in the future to conditionally approve the Project, a Mitigated Negative Declaration would be recommended for adoption.

PUBLIC COMMENTS

Project notices were distributed to surrounding property owners within 1,000 feet of the Project boundary on January 2, 2014. A letter from a law firm representing LiUNA requested notification of all CEQA and land use items associated with this Project. Correspondence in opposition to the Project was received from four nearby property owners. Concerns expressed in the letter of opposition included:

- Dust
- Glare
- Reduction in property values
- Migration of wildlife from site onto nearby residential properties
- Destruction of rural atmosphere
- Too close to existing residences

Additionally, on April 10, 2014, the Town of Apple Valley sent a letter that stated the proposed Project is inconsistent with the Town's Development Code requirements for commercial photovoltaic solar development. The letter states that the "site is zoned Rural Living (RL), both as a County zoning designation and as a Town sphere of influence zoning designation. The Town's Development Code only allows commercial photovoltaic solar development within the Apple Valley Dry Lake (Residential-Very Low Density (R-VLD)) zoning designation." Based on this inconsistency, we are recommending denial of the Project.

Based on the Staff review and analysis of the proposed Project, the Project would not have

any significant adverse environmental impacts, and the Project design would conform to the development standards of the Development Code, with the exception of the finding of consistency with the Town of Apple Valley location and development standards, and the finding of adequate separation from existing neighborhoods and developing rural residential areas.

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 inconsistent with the Town of Apple Valley’s Development Code requirements for commercial photovoltaic solar development, and it does not meet the County Code requirement for adequate separation from developing rural communities. Therefore, the Project does not conform to the required findings of fact outlined in Development Code Section 84.29.035(c), as described above, and Staff recommends denial of the Project.

RECOMENDATION: That the Planning Commission:

DENY a Conditional Use Permit to establish a 3 MW solar photovoltaic electricity generation facility on 23 acres.

ATTACHMENTS:

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