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BY: OVERNIGHT MAIL, FAX, AND E-MAIL

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Re: Comments on the Initial Study/Mitigated Negative Declaration for the Gestamp Asetym Solar "GIFFEN 1" Project (Conditional Use Permit Application No. 3347)

Dear Mr. Chambers:

We are writing on behalf of **Fresno County Citizens for Responsible Solar** to provide comments on the Initial Study/Mitigated Negative Declaration ("IS/MND") prepared by Fresno County ("County"), pursuant to the California Environmental Quality Act ("CEQA"),¹ for the GIFFEN 1 power plant proposed by Gestamp Asetym Solar ("Applicant"). GIFFEN 1 comprises a solar generating facility consisting of approximately 90,720 photovoltaic ("PV") modules, a 1,200 square-foot maintenance building, eighteen 160 square-foot inverter/transformer buildings, a substation, and a two-mile transmission line interconnecting the facility with PG&E's existing substation ("Project"). According to the IS/MND, the Project has a generating capacity of 18 megawatts ("MW") and will be located on approximately 160 acres in Fresno County, nine miles southwest of the City of San Joaquin. The Project requires a Conditional Use Permit ("CUP") from the County.

¹ Pub. Resources Code, § 21000 *et seq.*



As explained more fully below, the IS/MND prepared for the Project does not comply with CEQA's requirements. The IS/MND fails to include a complete, accurate and stable Project description and fails to set forth the environmental baseline for agricultural, air quality, and hazards. Additionally, there is a fair argument, based upon substantial evidence, that the Project will result in potentially significant and unmitigated impacts on agricultural resources, air quality, biological resources, and worker and public health through worker exposure to *Coccidioides immitis* ("C. immitis") spores and residual pesticides during construction and decommissioning activities. Accordingly, the County may not approve the CUP 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 air quality expert James Clark, Ph.D., biologist Scott Cashen, M.S., and hazardous materials expert Matthew Hagemann P.G., C.Hg. Their technical comments are attached hereto and submitted in addition to the comments in this letter. Accordingly, the County must address and respond to the comments of Dr. Clark, Mr. Cashen, and Mr. Hagemann separately.

I. STATEMENT OF INTEREST

Fresno County Citizens for Responsible Solar is an unincorporated association of individuals and labor unions that may be adversely affected by the Project's potentially significant environmental and public and worker safety hazards. The coalition includes Fresno County residents Jeff Taylor, Carrie Taylor, and Vaughn Laymon, and California Unions for Reliable Energy ("CURE") and its local union affiliates and the local union members and their families that live and/or work in Fresno County.

CURE is a coalition of labor unions whose members help solve the State's energy problems by building, maintaining and operating conventional and renewable energy power plants. Since its founding in 1997, CURE has been committed to building a strong economy and a healthier environment. CURE has helped cut smog-forming pollutants in half, reduced toxic emissions, increased the use of recycled water for cooling systems and pushed for groundbreaking pollution control equipment as the standard for all new power plants, all while ensuring new power plants are built with highly trained, professional workers who live and raise families in nearby communities.

Jeff Taylor, Carrie Taylor, and Vaugh Laymon and the individual members of CURE unions live, work, recreate and raise their families in Fresno County, including in and around the City of San Joaquin. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members of the CURE unions may also work on the Project itself. They will, therefore, be first in line to be exposed to any hazardous materials, air contaminants or other health and safety hazards that exist onsite.

In addition, CURE has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there. Continued degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

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

CEQA has two basic purposes, neither of which the IS/MND satisfies. First, CEQA is designed to inform decisionmakers and the public about the potential, significant environmental effects of a project.² CEQA requires that lead agencies analyze any Project with potentially significant environmental impacts in an environmental impact report ("EIR").³ 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."⁴ 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."⁵

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures.⁶ The EIR serves to provide public agencies and the public in general, with information about

² Cal. Code Regs., tit. 14, § 15002, subd. (a)(1) (hereafter "CEQA Guidelines").

³ See Pub. Resources Code, § 21000; CEQA Guidelines § 15002.

⁴ *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (citations omitted).

⁵ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁶ CEQA Guidelines § 15002, subd. (a)(2)-(3); *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1354.

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.”⁷ 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 21081.⁸

CEQA’s purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.⁹ 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.¹⁰ 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.¹¹

An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.¹²

“CEQA excuses the preparation of an EIR and allows the use of a negative declaration when an initial study shows that there is **no substantial evidence** that the project may have a significant effect on the environment.” [Citations.] In certain situations where a

⁷ CEQA Guidelines § 15002, subd. (a)(2).

⁸ *Ibid.*; CEQA Guidelines § 15092, subd. (b)(2)(A)-(B).

⁹ See Pub. Resources Code, § 21100.

¹⁰ Pub. Res. 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.

¹¹ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

¹² *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”].

straightforward negative declaration is not appropriate, the agency may permit the use of a mitigated negative declaration. [Citations.]¹³

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.¹⁴

Courts have held that, “[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.”¹⁵ “Substantial evidence,” required to support the fair argument, is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”¹⁶ Substantial evidence can be provided by technical experts or members of the public.¹⁷

¹³ *Inyo Citizens for Better Planning v. Board of Supervisors* (2009) 180 Cal.App.4th 1, 6-7, quoting *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1372-1374 (emphasis added).

¹⁴ Pub. Resources Code, § 21064.5, emphasis added.

¹⁵ See, e.g., *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 and *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504-505.

¹⁶ CEQA Guidelines, § 15384(a).

¹⁷ 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.

According to the CEQA Guidelines, when determining whether an EIR is required, the lead agency is required to apply the principles set forth in Section 15064(f) and:

[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: 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.

The IS/MND fails to satisfy the basic purposes of CEQA by failing to inform the public and decisionmakers of the Project's potentially significant impacts and to propose mitigation measures that can reduce those impacts to a less-than-significant level. Here, the County lacks substantial evidence to conclude that the Project will "clearly" have a less-than-significant impact on the environment.¹⁸ As detailed in these comments, there is a fair argument, supported by substantial evidence, that the Project may result in significant impacts to agricultural resources, air quality, biological resources and public health. Therefore, the County is required to prepare an EIR which includes a complete and accurate Project description, a sufficiently detailed description of the environmental baseline, identifies the Project's potentially significant impacts, and proposes mitigation which will reduce those impacts to a less than significant level.

III. THE PROJECT DESCRIPTION IN THE IS/MND IS INADEQUATE

The IS/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 adequate evaluation of the potential environmental effects of a proposed project. Without a complete project description, the environmental analysis under CEQA will be impermissibly narrow, thus minimizing the project's impacts and undercutting public review.¹⁹ A "complete" project description, under CEQA, is also one which includes *all* phases of a project.²⁰ The courts have repeatedly held that

¹⁸ Pub. Resources Code, § 21064.5.

¹⁹ See, e.g., *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.

²⁰ See CEQA Guidelines §§ 15063(a)(1), 15378(a) (a CEQA "project" is the "whole of an action"); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Calif.* (1988) 47 Cal.3d 376, 396-397 (lead agency must assess the environmental impacts of all phases of a project); *Natural Resources*

“an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document].”²¹ Only through an accurate view of the project may affected outsiders and public decisionmakers balance the proposal’s benefit against its environmental costs.²² The IS/MND is inadequate because it fails to identify all components and all phases of the Project by excluding from the Project description the Applicant’s proposed two-mile transmission line, on-site water treatment plant, and Project decommissioning activities, and by failing to settle on a stable description of the proposed PV panel foundations. The County must include a complete Project description in an EIR.

A. The Project Description Improperly Excludes the Applicant’s Proposed Two-Mile Transmission Line

The Project description in the IS/MND is inaccurate because it fails to identify a two-mile *transmission* line that will interconnect the Project to PG&E’s system, vaguely referring to this Project component as “35 utility poles up to 80 feet tall.”²³ The proposed transmission line will result in potentially significant impacts to biological resources, none of which are addressed in the IS/MND. As described by Mr. Cashen, the Project transmission line has the potential to cause significant impacts to birds, particularly raptors.²⁴ The County’s failure to address this Project component also skews the impact analysis because the IS/MND fails to account for the acreage impacted by the transmission line, as well as the air quality and land use impacts associated with its construction and maintenance. Under CEQA, the proposed transmission line is part of the Project’s environmental footprint and must be analyzed as such in an EIR.

B. The Project Description Improperly Excludes the Applicant’s Proposed Water Treatment Plant

The Project Description in the IS/MND is incomplete because it excludes the Applicant’s proposed water treatment plant. According to the Applicant’s Operational Statement, a water system and small water treatment plant will be

Defense Council v. City of Los Angeles (2002) 103 Cal.App.4th 268, 278, 284 (same); *Bozung v. Local Agency Formation Com.* (1975), 13 Cal.3d 263, 283-84 (analysis must address “later phases of the project, and any secondary, support, or off-site features necessary for its implementation”).

²¹ *County of Inyo v. County of Los Angeles* (1977) 71 Cal.App.3d 185, 193.

²² *Id.* at 192-193.

²³ See IS/MND, p. 1; cf. Applicant’s Operational Statement, p.1.

²⁴ Scott Cashen Comments, p. 16 (Attachment 1).

placed at the O&M building to provide on-site de-ionized water for panel washing.²⁵ Although not described in the IS/MND, the Applicant proposes to apply backwash water, amounting to 145,000 gallons on annual basis, to the Project site and along the perimeter fence.²⁶ As described by Mr. Cashen, backwash water from the Project's water treatment facility will contribute high concentrations of selenium and other salts into water systems, which then may become toxic to wildlife.²⁷ The IS/MND fails to address this Project component, thus impermissibly curtailing the impacts analysis. Under CEQA, the water treatment plant is part of the Project's environmental footprint and must be analyzed as such in an EIR.

C. The Project Description Improperly Excludes Project Decommissioning Activities

According to the Applicant's Operational Statement, the Project will have three phases: construction, operation and decommissioning.²⁸ In particular, once the generating facility is permanently shut down, the Applicant will undertake a 6-month decommissioning and reclamation process.²⁹ During this time, the Applicant proposes to remove all above and below ground equipment and structures and building improvements, demolish and remove concrete foundations, and, if necessary, grade the site.³⁰ The County failed to include these activities in the Project description section of the IS/MND. Phase three is part of the Project and may result in environmental impacts, including potentially significant impacts to air quality, public health, and biological resources. The County's failure to conduct an assessment of the impacts associated with phase three of the Project violates CEQA. Under CEQA, phase three is part of the Project's environmental footprint and must be analyzed as such in an EIR.

D. The IS/MND Fails to Provide a Stable Project Description

The IS/MND fails to state whether single-axis tilted tracker systems or fixed-tilt panels are the proposed Project.³¹ The distinction is significant because each proposal will result in distinct, potentially significant environmental impacts, none of which are addressed in the IS/MND. If the Applicant employs tilted trackers,

²⁵ Applicant's Operational Statement, p.12.

²⁶ See Applicant's Operational Statement, p. 31.

²⁷ Scott Cashen Comments, p. 2.

²⁸ See, generally, Applicant's Operational Statement.

²⁹ *Id.* at Supplemental Information, p. 2.

³⁰ *Ibid.*

³¹ See, e. g., IS/MND, p. 2.

concrete ballast foundations would likely need to be drilled into the Project site.³² Whereas the use of fixed-tilt solar panels, would likely require the drilling and installation of piles or piers.³³ These different methods of installing PV panels at the Project site will result in distinct potentially significant noise, air quality and public health impacts, none of which are addressed in the IS/MND.

There is a fair argument that the installation of fixed-tilt solar panels will result in significant construction noise.^{34,35} The IS/MND fails to analyze the relative noise impacts of the two proposals, or to propose mitigation that will reduce construction noise to a less than significant level. The use of tracker systems, on the other hand, would significantly increase the Project's construction emissions as compared to the use of fixed-tilt panels.³⁶ This is because trackers would likely require a concrete batch plant for concrete to be mixed onsite during Project construction.³⁷ The IS/MND fails to analyze the expected emissions for each of the engineering proposals, or propose mitigation to reduce impacts to a less than significant level.

Tracker systems and fixed-tilt panels also require different amounts of earthwork and grading activities.³⁸ As described in these comments, grading and excavation may result in potentially significant impacts on public health by exposing workers to *C. immitis* spores and residual pesticides in the Project soils. The IS/MND fails to address the earthwork activities associated with the Applicant's two engineering options. Finally, the IS/MND fails to identify and analyze the relative water needs of the two possible construction scenarios and the degree to which the Project can feasibly reduce its construction water demand if, for example, steel piles are used instead of concrete.³⁹ In short, the IS/MND fails to comply with CEQA's requirement that the lead agency must *identify the proposed Project* in order to then provide a reasoned analysis of the Project's effects.

³² See, e. g., County of Los Angeles, Draft Environmental Impact Report for the AV Solar Ranch One Project, June 2010, p. 4-8, available at http://planning.lacounty.gov/assets/upl/case/project_r2009-02239_deir.pdf (Attachment 4) ("AV Solar Ranch DEIR").

³³ *Id.*; see also Operational Statement, p. 28.

³⁴ See AV Solar Ranch DEIR, Appendix I, pp. 3-3-3-4 (Attachment 4).

³⁵ *Id.* at pp. 2-83, 5.18-8, 5.18-10-12, 5.8-22 (Attachment 4).

³⁶ See *id.* at p. 5.6-18-19 (Attachment 4).

³⁷ See AV Solar Ranch DEIR, p. 4-27 (Attachment 4).

³⁸ See *id.* at pp. 4-26-27 (Attachment 4).

³⁹ See *id.* at p. 4-14, p. 4-25 compare with *id.* at p. 4-26 (Attachment 4).

IV. THE IS/MND FAILS TO DOCUMENT OR DESCRIBE THE ENVIRONMENTAL SETTING

An Initial Study must include a description of the project's environmental setting.⁴⁰ 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.⁴¹ As a general matter, the IS/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."⁴² The IS/MND is inadequate because the baseline information it provides is inaccurate and insufficient. The County's record is similarly devoid of information regarding baseline conditions.

A. The IS/MND Fails to Describe Baseline Agricultural Resources Conditions at the Project Site

The IS/MND states that "[s]ince 2004, the site has been fallow or cultivated in winter grains."⁴³ The IS/MND further provides that no surface water supply allocation is available from Westlands Water District ("WWD") for the Project parcel.⁴⁴ The County's description of baseline conditions at the Project site is misleading and is contradicted by the record. According to information provided by the Applicant, the Project parcel was last farmed in 2011 when the parcel was cultivated for row crops and garlic.⁴⁵ In that same year, the Project parcel was irrigated by water supplied by WWD.⁴⁶

The IS/MND also fails to disclose that unlike many parcels retired by WWD from agricultural production pursuant to federal and state settlement agreements, the Project parcel is not subject to restrictions on irrigation and may be used for agricultural production. Finally, the IS/MND fails to disclose that due to the high quality of the soil resources at the Project site, among other factors, the Project parcel is identified as "Farmland of Statewide Importance" by the Department of Conservation.⁴⁷ These informational deficiencies in the IS/MND render the

⁴⁰ CEQA Guidelines, § 15063 subd. (d)(2).

⁴¹ CEQA Guidelines, § 15125, subd. (a).

⁴² *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.

⁴³ IS/MND, p.3.

⁴⁴ *Id.*

⁴⁵ Applicant's Supplemental Information, p. 1.

⁴⁶ *Ibid.*

⁴⁷ *Id.*

IS/MND inadequate under CEQA because they preclude decisionmakers and the public from evaluating the Project's impacts on agricultural resources. The County is required to disclose existing agricultural conditions in an EIR.

B. The County Lacks Baseline Data to Assess Project Impacts on Agricultural Resources

The IS/MND must “disclose the data or evidence upon which person(s) conducting the study relied. Mere conclusions simply provide no vehicle for judicial review.”⁴⁸ The IS/MND does not cite to any substantial evidence regarding the baseline conditions for agricultural resources at the Project site and its vicinity. The entirety of the County's analysis appears to be based on the minimal information provided by the Applicant. This dearth of information precludes the possibility of defensible impact analysis.

CEQA places the burden of environmental investigation on the government rather than the public. Accordingly, a lead agency may not hide behind its failure to completely and accurately provide a description of the project and its impacts.⁴⁹ To the contrary, “deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.”⁵⁰ In this case, the IS/MND fails to identify the baseline agricultural operations at the Project site and in the Project vicinity, or grapple with the fact that Fresno County has experienced a dramatic loss of agricultural land in the last ten years.

What the County has failed to consider is that Western Fresno County has experienced a very large loss of farmland in the last several years, in large part due to the permanent retirement of large swaths of agricultural land. Between 2004 and 2006 alone, over 9,000 acres of Prime Farmland and over 5,000 acres of Farmland of Statewide Importance in Fresno County lost those classifications.⁵¹ In the WWD, 44,100 acres has either been permanently retired under legal settlements or a federal land retirement program.⁵² Several years ago, WWD also

⁴⁸ *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.

⁴⁹ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311; see also *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.

⁵⁰ *Ibid.*

⁵¹ Land Use Conversion Table for Fresno County, 2004-2006 (Attachment 5).

⁵² U.S. Bureau of Reclamation, Draft Environmental Impact Statement for the San Luis Unit Feature Reevaluation, pp. 2-5 and 2-14 (2005) (Attachment 6), full document available at: (http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=61); see also Initial Study

annexed 10,000 acres of irrigated land in the Broadview Water District for land retirement, which is several miles from the Project site.⁵³ In 2007, the U.S. Bureau of Reclamation finalized its decision to pursue retirement of 194,000 acres of agricultural land in the San Luis Unit of the Central Valley Project, which includes the acreage mentioned above as well as other acreage in western Fresno County.⁵⁴ A reasonable estimate of agricultural land retirement in the area surrounding the Project could exceed 200,000 acres.⁵⁵ In addition, Pacific Gas & Electric Company has unilaterally removed hundreds of acres of farmland from Williamson Act protection in western Fresno County in order to construct new solar facilities.⁵⁶

The IS/MND also fails to acknowledge the agricultural uses immediately surrounding the Project site. This deficiency precludes an analysis of the Project's impacts on agricultural resources. According to information submitted by the Applicant, the Project abuts agricultural farmland to the north, south, east, and west.⁵⁷ According to the Applicant, much of the property in the area is owned by WWD and is currently being dry farmed.⁵⁸ The IS/MND does not address current conditions at the Project site and its vicinity. The gaps in the County's analysis support the inference that the Project may result in a potentially significant impact to agricultural resources and surrounding farms. The County must prepare a revised CEQA document which adequately describes the environmental setting with respect to agricultural resources. Absent this information, the significance of the Project's impacts on agricultural resources cannot be assessed.

C. The IS/MND Fails To Include Baseline Data With Respect To Air Quality

The IS/MND simply does not contain a description of the environmental setting with respect to air quality resources.⁵⁹ This defect renders the IS/MND

Application for CUP No. 3329 (Attachment 8), "Operational Statement," p. 3 (nearby solar project proposed on 489 acres within Westland Water District's land retirement program).

⁵³ U.S. Bureau of Reclamation, San Luis Drainage Feature Re-evaluation Feasibility Report, pp. iii, fn. 1, and x (2008) (Attachment 7), full document available at: http://www.usbr.gov/mp/sccaosld/docs/sldfr_report/slfr_3-08_v02.pdf.

⁵⁴ U.S. Bureau of Reclamation, Record of Decision for San Luis Drainage Feature Re-evaluation (2007), p. 5.

⁵⁵ See "Why Land Retirement Makes Sense for Westlands Water District" (Attachment 9).

⁵⁶ Fresno Bee, *PG&E solar projects concern Fresno County Leaders*, November 12, 2011 (Attachment 10).

⁵⁷ Applicant's Air Quality Study, January 11, 2012, p. 17.

⁵⁸ *Ibid.*

⁵⁹ See IS/MND, p. 6.

inadequate under CEQA.⁶⁰ The Project is located in the San Joaquin Valley Air Basin, which is designated in “serious nonattainment” of the federal standard for coarse particulate matter (“PM10”). As the Applicant’s air impacts analysis acknowledges, due to the severely degraded air quality conditions in the Project vicinity, “**any** addition to the PM10 problem could be significant.”⁶¹ The San Joaquin Valley Air Basin is also designated in nonattainment of the federal annual and 24-hour standards for fine particulate matter (PM2.5).⁶² “Epidemiological studies have shown statistically significant correlations between elevated PM2.5 levels and premature mortality.”⁶³ “Other important health effects associated with PM2.5 exposure include aggravation of respiratory and cardiovascular disease . . . changes in lung function and increased respiratory symptoms, as well as new evidence for more subtle indicators of cardiovascular health.”⁶⁴ The San Joaquin Valley Air Basin is also designated in extreme non-attainment for the federal and state ozone standards. The IS/MND fails to provide this highly relevant information regarding the ambient conditions in the Project conditions. Absent this basic information decisionmakers and the public cannot evaluate the Project in its environmental context.

D. The County Lacks Baseline Data to Assess Project Impacts on Biological Resources

The IS/MND must “disclose the data or evidence upon which person(s) conducting the study relied. Mere conclusions simply provide no vehicle for judicial review.”⁶⁵ As described by Mr. Cashen, the County lacks substantial evidence on which to base an impact analyses for biological resources because the County has not required the Applicant to conduct surveys for special status species, and the surveys that were conducted are not scientifically sound. In particular, the Applicant’s report and habitat assessment lacks any discussion of the burrowing owl, including whether the biologist searched for owls, their sign, or burrows that could be occupied by the species.⁶⁶ Moreover, as the survey report/habitat

⁶⁰ See CEQA Guidelines, § 15063 subd. (d)(2).

⁶¹ Applicant’s Air Quality Study, January 11, 2012, p. 16 (emphasis added).

⁶² Environmental Protection Agency, Approval and Promulgation of Implementation Plans; California; 2008 San Joaquin Valley PM2.5 Plan and 2007 State Strategy, 76 Fed. Reg. 41,338, July 13, 2011 (Attachment 11).

⁶³ *Id.* at 41,339.

⁶⁴ *Ibid.*

⁶⁵ *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.

⁶⁶ Scott Cashen Comments, p.3.

assessment acknowledges, the field survey that was conducted for the Project does not constitute a California Department of Fish and Game (DFG) and/or U.S. Fish and Wildlife Service (“USFWS”) protocol-level survey for any specific species.⁶⁷ Similarly, protocol surveys for Swainson’s hawk nest sites within 0.5-mile of the Project site have not been conducted.⁶⁸ In addition, the IS/MND does not provide any information on the nest sites known to occur within 10 miles of the Project site.⁶⁹ Lastly, the IS/MND does not provide survey results or other data relevant to the San Joaquin kit fox.⁷⁰ Absent baseline data regarding special status species use of the site, the County cannot conclude that the Project’s impacts to these species have been reduced to a less than significant level.

E. The IS/MND Fails to Describe Baseline Conditions Related to Hazards and the Potential Occurrence of *Coccidioides immitis* at the Project Site

C. immitis is a soil fungus native to the San Joaquin Valley which causes Coccidioidomycosis, commonly known as “Valley Fever.”⁷¹ Valley Fever is typically transmitted by inhalation of airborne spores of *C. immitis*, which grow in soil during the wet season.⁷² Infection occurs in endemic areas and is most commonly acquired in the summer or the late fall during outdoor activities.⁷³ Valley Fever is endemic in San Joaquin Valley and occurs both among residents and visitors to the Valley.⁷⁴ *C. immitis* spores are spread through disturbed dust particles or soil disturbance, such as excavation and grading activities.⁷⁵ In most cases, the primary infection is in the lungs.⁷⁶ In 35-40% of cases, infection leads to mild influenza 1 to 4 weeks after exposure, although some persons develop severe pneumonia.⁷⁷ If left untreated, in 1% of cases Valley Fever can spread beyond the lungs and can be

⁶⁷ *Ibid.*

⁶⁸ *Id.* at pp. 3-4.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ Duane R Hospenthal, MD, PhD et al., Coccidioidomycosis, Dec. 8, 2011 (Attachment 12).

⁷² Fresno County Department of Public Health, Public Health Perspective, Spring/Summer 2011 (Attachment 13).

⁷³ Hospenthal.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*; Fresno County Department of Public Health, Public Health Perspective, Spring/Summer 2011, p. 3.

⁷⁶ Hospenthal.

⁷⁷ *Ibid.*; Fresno County Department of Public Health, Public Health Perspective, Spring/Summer 2011, p. 3.

fatal.⁷⁸ People at greatest risk for contact include farmers and construction workers.⁷⁹

The Fresno County Department of Public Health has collected and evaluated Valley Fever statistics since 2004. In the years 2004-2010, the County's data indicate an increase in numbers of cases as well as in incidence rates of Valley Fever in Fresno County. In 2006, a peak occurred with 83 cases per 100,000 persons.⁸⁰ The IS/MND fails to disclose that *C. immitis* is endemic in Fresno County and may occur at the Project site. This informational deficiency renders the IS/MND inadequate under CEQA. "A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process."⁸¹ The County's failure to identify the potential presence of *C. immitis* on the Project site and Valley Fever as a regional public health concern in the IS/MND precludes decisionmakers and the public from considering the Project in its environmental context.

F. The IS/MND Does Not Describe Baseline Conditions Related to Hazards and Prior Pesticide Use at the Project Site

The IS/MND fails to provide an adequate disclosure of the environmental conditions that may pose hazards to workers on the Project site and in the vicinity. Mr. Hagemann reviewed the IS/MND and concluded that it is inadequate in its description of existing conditions and evaluation of potential and likely significant adverse impacts to worker health.⁸² Specifically, no Phase I Environmental Site Assessment ("ESA") has been submitted to enable the County to identify hazardous waste issues that may pose a risk to workers or the environment and require further investigation and mitigation. This is despite the fact that the Project site has historically been used for agriculture and may contain pesticides. Because the IS/MND lacks this baseline information, its findings and conclusions regarding hazards and hazardous materials are also not based on substantial evidence.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ Fresno County Department of Public Health, Public Health Perspective, Spring/Summer 2011, p. 3.

⁸¹ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712; see also *City of Fremont v. San Francisco Bay Area Rapid Transit Dist.* (1995) 34 Cal.App.4th 1780, 1790.

⁸² Hagemann comments, p. 1 (Attachment 3).

In Mr. Hagemann's opinion, potential hazards may be present on the Project site and the County must require a Phase I ESA before approving the Project in order to enable an analysis of potentially significant impacts to human health.⁸³ The County must determine if past uses on the Project site resulted in hazards that are actually present. Failure to assess the real conditions on the Project site may result in unanalyzed and unmitigated impacts to worker health and the environment.

V. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT UNMITIGATED IMPACTS TO AGRICULTURAL RESOURCES

According to information submitted by the Applicant, the Project site includes approximately 160 acres designated by the Department of Conservation as of Farmland of Statewide Importance.⁸⁴ Therefore, the Project will remove 160 acres of Farmland of Statewide Importance from agricultural production for a minimum of 40 years. The IS/MND concludes that this impact is significant, but determines that the impact is mitigated to a less-than-significant level because the site lacks a suitable water source for agricultural production and because the use proposed by the Project is temporary.⁸⁵ The IS/MND's evaluation of agricultural impacts is deficient for several reasons. First, the County's conclusion that agricultural production is precluded by lack of a water source is contradicted by the record. According to information submitted by the Applicant, there is no legal barrier to irrigation at the Project site and, in fact, WWD supplied irrigated water to the Project site in 2011.⁸⁶ Furthermore, the fact that the Applicant proposes to meet the Project's water demand by digging a well on the Project site dispels any doubt regarding the availability of water.⁸⁷

Second, the County's conclusion that restoring the Project parcel to pre-Project conditions will reduce the Project's impact on important farmland to a less-than-significant level is invalid as a matter of law. Under CEQA, impacts that are short-term or temporary in nature may nonetheless be significant.⁸⁸ It is well settled in CEQA case law that "short term effects may have such significance as to

⁸³ *Ibid.* pp. 1-2.

⁸⁴ Supplemental Information p. 2.

⁸⁵ IS/MND pp. 3-4.

⁸⁶ Supplemental Information, p. 1.

⁸⁷ *See* Operational Statement, p. 12.

⁸⁸ CEQA Guidelines, § 15126.2, subd. (a).

require an EIR.”⁸⁹ An agency may not, therefore, minimize the significance of an impact just because it is “temporary.” The IS/MND prepared for the Project fails to analyze and mitigate the Project’s impacts on agricultural resources over the next 40 years, and improperly minimizes those impacts by labeling them “temporary.”

Substantial evidence in light of the whole record shows that the Project may have a significant impact on agricultural resources. The threat that farmland conversion poses to the viability of continued agriculture in California cannot be overstated. In only a century and a half since the Gold Rush, almost 700,000 acres in the Central Valley alone have been developed for urban use. Almost 100,000 acres of this land was paved over in the 1990s alone. Within just the next generation, close to a million more acres of farmland could vanish, putting additional pressure on the ability of the region’s farmers to continue producing food for the State, the nation and the world.⁹⁰ As discussed above, there has been a rapid loss of farmland in western Fresno County in recent years. The Legislature has repeatedly held that conversion of agricultural land is a significant concern and that the preservation of agricultural land is a significant goal of the State.⁹¹ The Legislature has further stated that CEQA shall play an important role in the preservation of agricultural lands.⁹²

The State Department of Conservation developed a California Agricultural Land Evaluation and Site Assessment (“LESA”) Model to provide lead agencies with a methodology to ensure that significant effects on the environment of agricultural land conversions are quantitatively and consistently considered in the environmental review process.⁹³ The LESA Model’s evaluation factors include two land evaluation measures regarding soil resource quality and four site assessment factors, including a project’s size, water resource availability, surrounding

⁸⁹ *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.

⁹⁰ American Farmland Trust, *The Future is Now: Central Valley Farmland at the Tipping Point?* (2006) (Attachment 14).

⁹¹ Gov. Code, § 51220 (Williamson Act findings that agricultural preservation is valuable and necessary); Civ. Code, § 815 (legislative declaration that preservation of agricultural lands “is among the most important environmental assets of California”); Pub. Resources Code, § 10200, et seq. (California Farmland Conservancy Program Act, promoting the establishment of agricultural easements as a means to preserve agricultural land).

⁹² This language was used as the finding behind amendments to Public Resources Code sections 21060.1, 21061.2 and 21095 in 1993 (Stats. 1993, ch. 812, §1, subd. (d)).

⁹³ Pub. Resources Code, § 21095.

agricultural lands, and surrounding protected resource lands.⁹⁴ The project score then becomes the basis for making a determination of a project's potential significance. The IS/MND does not calculate or rely upon a LESA score, or any other objective modeling or analysis, to determine that the impact to agricultural resources is less-than-significant. This deficiency in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.⁹⁵

Because the Project would remove 160 acres of land designated as Farmland of Statewide Importance from agricultural production for a minimum of 40 years, a fair argument exists that the Project may cause significant, unmitigated, impacts to agricultural resources. As detailed in these comments, the finding in the IS/MND that the Project will have no significant effect on agricultural resources is inadequate because there is no evidence to support it.⁹⁶ The County is not allowed to hide behind its own failure to gather relevant data. Under CEQA, the County must prepare an EIR for the proposed Project.

In the EIR, the County must propose feasible mitigation measures that will reduce impacts to a less than significant level. Consistent with standard practices, the IS/MND must require the purchase of enforceable agricultural conservation easements *at least* at a 1:1 ratio for all important farmland that the Project removes from possible agricultural production.⁹⁷ Numerous statutory schemes underscore the importance of preserving agricultural lands and point to conservation easements as an appropriate method to mitigate impacts to agriculture.⁹⁸ To fully mitigate impacts on agricultural lands, such mitigation must

⁹⁴ See DOC's LESA Model Instruction Manual (Attachment 15).

⁹⁵ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

⁹⁶ *Ibid.*

⁹⁷ Where land is being taken out of agricultural development, the purchase of conservation easements serve only as partial compensation because they do not create new replacement agricultural land, but rather only mitigate the development pressures and cumulative impacts on nearby agricultural land. In such cases, some jurisdictions have required the purchase of conservation easements at a greater ratio than 1:1. The City of Davis Municipal Code, for example, requires that "Two times as many acres of agricultural land shall be protected as was changed to a nonagricultural use in order to mitigate the loss of agricultural land" or "payment of a fee based upon a two-to-one replacement for a farmland conservation easement." (City of Davis Municipal Code § 40A.03.030 (Attachment 16).

⁹⁸ See, e.g., California Land Conservation Act of 1965 ("Williamson Act"), Gov. Code 51200 et seq.; California Farmland Conservancy Program Act, Pub. Resources Code, § 10201 et seq.; Farmland Protection Policy Act, 7 U.S.C., § 4201, et seq.; see also Gov. Code, § 815 et seq. (encouraging preservation of agricultural land through conservation easements); San Joaquin County Code, § 9-

ensure that the conservation easements protect agricultural land of *equal or greater quality* as the land being converted. The San Joaquin County Agricultural Mitigation ordinance, for example, requires agricultural mitigation land to be of “comparable or better soil quality” than the agricultural land affected by the project.⁹⁹ The ordinance also requires evidence that the mitigation land has adequate and reliable water supply to support the agricultural use of the land.¹⁰⁰

VI. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT UNMITIGATED IMPACTS TO AIR QUALITY

The IS/MND must include “an identification of environmental effects.”¹⁰¹ The IS/MND does not identify the Project’s adverse air quality impacts. As such, the IS/MND is inadequate under CEQA. The IS/MND also fails to propose measures that will reduce the Project’s significant air quality impacts to a less than significant level. Accordingly, CEQA requires the County to evaluate the Project’s impacts on air quality in an EIR.

The IS/MND states that the San Joaquin Valley Air Pollution Control District’s comments conclude that the Project’ emissions of criteria pollutants “are expected to be mitigated below the District significance thresholds.”¹⁰² The IS/MND identifies the District’s significance thresholds as follows: 10 tons per year for oxides of nitrogen (“NOx”), 10 tons per year for reactive organic gases (“ROG”), and 15 tons per year for PM10.¹⁰³ These thresholds apply to emissions from Project operations.¹⁰⁴ The District has not established quantitative significance thresholds for construction emissions. As explained by the District’s CEQA guidance document, construction emissions can result in significant short-term air quality impacts:

1080 (Attachment 17) (requiring 1:1 or greater mitigation ratio for agricultural land impacts); see also Davis Municipal Code, § 40A.03.030 (requiring 2:1 mitigation ratio for conversion of agricultural land).

⁹⁹ San Joaquin County Code of Ordinances § 9-1080.5, subd. (b) (Attachment 17).

¹⁰⁰ *Ibid.*

¹⁰¹ CEQA Guidelines, §15063, subd. (d).

¹⁰² IS/MND, p. 6.

¹⁰³ *Ibid.*

¹⁰⁴ See San Joaquin Valley Air Pollution Control District, Guide for Assessing and Mitigating Air Quality Impacts, p. 26, *available at*

<http://www.valleyair.org/transportation/CEQA%20Rules/GAMAQI%20Jan%202002%20Rev.pdf>.

A project's construction phase produces many types of emissions, but PM-10 is the pollutant of greatest concern. PM-10 emissions can result from a variety of construction activities, including excavation, grading, demolition, vehicle travel on paved and unpaved surfaces, and vehicle exhaust. Construction-related emissions can cause substantial increases in localized concentrations of PM-10, as well as affecting PM-10 compliance with ambient air quality standards on a regional basis. Particulate emissions from construction activities can lead to adverse health effects as well as nuisance concerns such as reduced visibility and soiling of exposed surfaces The use of diesel powered construction equipment produces ozone precursor emissions and combustion related particulate emissions. Large construction projects lasting many months may exceed the District's annual threshold for NOx emissions and could expose area residents to diesel particulate.¹⁰⁵

The CEQA Guidelines, Appendix G, establish that impacts on air quality would be significant if a project would violate any ambient air quality standard or substantially contribute to an existing or projected violation of an ambient air quality standard. To determine whether such violations occur, it is common practice for lead agencies to compare project emissions to quantitative significance thresholds developed by local air districts as a screening tool for CEQA review.¹⁰⁶ Thresholds of significance for construction emissions are typically expressed on a short-term basis, *i.e.* daily or hourly basis to adequately capture impacts due to the high variability of emissions during different construction stages.¹⁰⁷

Given the lack of short-term quantitative significance thresholds in the District's CEQA guidance, the Applicant could have conducted ambient air quality dispersion modeling to evaluate whether ambient air quality standards would be violated during any of the construction phases. In the alternative, the Applicant could have used short-term significance thresholds developed by other air districts to screen for significance of criteria pollutant emissions.¹⁰⁸ The IS/MND fails to evaluate the Project's construction emissions. Although the Applicant's Air Quality

¹⁰⁵ San Joaquin Valley Air Pollution Control District, Guide for Assessing and Mitigating Air Quality Impacts, p. 24.

¹⁰⁶ James Clark Comments, p. 5 (Attachment 2).

¹⁰⁷ *Ibid.*

¹⁰⁸ Several jurisdictions in California have established CEQA significance thresholds for short-term constructions emissions, these include Imperial County, the Sacramento Metropolitan Air Quality Management District, Solano County, among others. *See also*, James Clark Comments, pp. 7-9.

Study addresses the Project's construction emissions, the Applicant's analysis similarly obscures the Project's short-term construction emissions. As detailed in these comments, the Project will result in significant, unmitigated short-term emissions of NOx, PM10, and PM2.5. The County is required under CEQA to evaluate these impacts in an EIR.

A. The Project Will Result in Significant, Unmitigated NOx Emissions

NOx are a precursor of ozone. As shown by Dr. Clark, the Project will result in significant, unmitigated NOx emissions from the use of construction equipment.¹⁰⁹ Daily estimates of NOx emissions during the grading and trenching activities (185 lbs/day and 116 lbs/day, respectively) exceeds significance thresholds by up to 100%.¹¹⁰ However, because the San Joaquin Valley Air Basin is in severe nonattainment of the federal ambient ozone standard, any additional emissions of NOx can be deemed significant. By any reasonable measure, the Project's short-term NOx emissions will be significant. The IS/MND fails to identify this significant Project impact.

As explained by Dr. Clark, the mitigation measures proposed in the IS/MND will not reduce the Project's significant NOx emissions to a level of insignificance. In particular, the IS/MND concludes that compliance with the District's regulations will reduce Project NOx emissions to less than significant. The District's regulations do not detail methods for controlling NOx emissions. Therefore, and as further explained by Dr. Clark, compliance with the District's regulations will not reduce Project emissions.¹¹¹

B. The Project Will Result in Significant, Unmitigated PM10 Emissions

As shown by Dr. Clark, the Applicant's analysis significantly underestimates the Project's short-term emissions of PM10. Using the U.S. EPA's AP-42 emission factor for construction related emissions, Dr. Clark shows that the Project's construction emissions of PM10 would exceed 122.88 tons.¹¹² As such, short-term emissions of PM10 meet and exceed significance thresholds.

¹⁰⁹ James Clark Comments, p. 8.

¹¹⁰ *See id.*

¹¹¹ *See id.* at pp. 9-10.

¹¹² *Id.* at pp. 8-9.

The IS/MND concludes that compliance with the District's regulations will reduce Project PM10 emissions to less than significant. In particular, the IS/MND relies on District's Rule VIII regulations for control of fugitive dust during grading and construction operations. As explained by Dr. Clark in his comments, Regulation VIII does not actually detail the methods for controlling dust generation during construction operations. As such, compliance with Regulations VIII will not reduce the Project's significant PM10 emissions to a less than significant level.

Feasible mitigation measures that could be used to reduce the Project's impacts on air quality during the extended construction period include switching to cleaner fuels such as alternative fuels (compressed natural gas, liquefied natural gas, propane, ethanol, and methanol) or alternative diesel fuels (emulsified diesel), and fuel borne-catalysts; replacing, repowering, or rebuilding old equipment; and retrofitting equipment with diesel particulate filters, diesel oxidation catalysts, selective catalytic reduction, lean NOx catalyst technology, and exhaust gas recirculation; all of which have been demonstrated on off-road equipment. Additional methods for controlling the Project's construction emissions are detailed in Dr. Clark's comments.¹¹³

C. The Project May Result in Significant, Unmitigated PM2.5 Emissions

During construction, a large number of diesel-powered equipment would operate on site and numerous diesel-powered trucks would deliver supplies. PM2.5 emissions result from the combustion of fossil fuels, including diesel-powered equipment.¹¹⁴ The health impacts of PM2.5 are different and substantially more severe than those from PM10. Overwhelming scientific evidence shows that long-term exposure to fine particulate air pollution contributes to pulmonary and systemic oxidative stress, inflammation, progression of atherosclerosis, and risk of ischemic heart disease and death.¹¹⁵ Another recent study found that each 10- $\mu\text{g}/\text{m}^3$ increase in PM2.5 air pollution was associated with an approximately six percent increase in cardiopulmonary mortality and an eight percent increase in

¹¹³ *Id.* at pp. 10-11.

¹¹⁴ Bay Area Air Quality Management District, Particulate Matter Overview, <http://www.baaqmd.gov/Divisions/Planning-and-Research/Particulate-Matter.aspx>

¹¹⁵ Pope C. A. III, Ezzati M., and Dockery D. W., Fine-Particulate Air Pollution and Life Expectancy in the United States, *The New England Journal of Medicine*, January 22, 2009, vol. 360, pp. 376-386.

lung cancer mortality.¹¹⁶ The U.S. EPA concluded with respect to short-term exposure studies that “epidemiological evidence was found to support likely causal associations between PM2.5 and both mortality and morbidity from cardiovascular and respiratory diseases.”¹¹⁷ The IS/MND does not address the potential health risks associated with exhaust emissions of diesel particulate matter from these sources. As described by Dr. Clark, the Project’s PM2.5 emissions may be significant.¹¹⁸ The County must prepare an EIR to evaluate the health risk from PM2.5 during Project construction activities.

VII. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT UNMITIGATED PUBLIC HEALTH IMPACTS

The Project may result in significant adverse public health impacts through worker exposure to *C. immitis* spores during Project construction and decommissioning activities. The Project involves substantial earthmoving and trenching activities. The Applicant proposes to install 90,720 PV panels at the Project site, each requiring a 12 to 15 inch-diameter pier to be drilled three to seven feet below ground for foundation.¹¹⁹ Earth disturbing activities during Project construction will also include site clearing, site grading, and trenching.¹²⁰ Once the Project is decommissioned, the Applicant proposes to remove all below-ground equipment and structures, remove and demolish foundations, and grade the Project site to return it to the its original state.¹²¹ Reclamation activities are expected to continue for approximately six months.¹²²

As described by Dr. Clark, propagation and air entrainment of *C. immitis* occurs on soils that are not irrigated during dry seasons, including natural environments, undeveloped land, and grazing areas.¹²³ The IS/MND fails to

¹¹⁶ A.A. Pope III, R.T. Burnett, M.J. Thun, E.E. Calle, D. Krewski, K. Ito, G.D. Thurston, Lung Cancer, Cardiopulmonary Mortality, and Long-term Exposure to Fine Particulate Air Pollution, *Journal of the American Medical Association*, v. 287, no. 9, pp. 1132-1141, 2002.

¹¹⁷ U.S. Environmental Protection Agency, National Center for Environmental Assessment, Office of Research and Development, Provisional Assessment of Recent Studies on Health Effects of Particulate Matter Exposure, EPA/600/R-06/063, July 2006; http://www.epa.gov/oar/particulatepollution/pdfs/ord_report_20060720.pdf.

¹¹⁸ James Clark Comments, pp. 11-12.

¹¹⁹ See IS/MND, p. 1; cf. Operational Statement, p. 28.

¹²⁰ Applicant’s Air Quality Study, p. 14.

¹²¹ Supplemental Information, p.2.

¹²² *Ibid.*

¹²³ James Clark Comments, p. 19.

analyze the potential for worker exposure to *C. immitus* during Project construction and reclamation activities. Substantial evidence shows that exposure to *C. immitus*, absent appropriate mitigation, may result in significant adverse public health impacts given the likely occurrence of *C. immitus* spores at the Project site, combined with the Applicant's proposal to commence earthmoving activities during the dry season.¹²⁴ CEQA requires the County to evaluate this impact and propose all feasible mitigation measures necessary to reduce this impact to a less than significant level in an EIR.

VIII. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT WILL RESULT IN SIGNIFICANT, UNMITGATED IMPACTS TO BIOLOGICAL RESOURCES

The IS/MND states that that, according to DFG, several sensitive species under the California and the Federal Endangered Species Act may occur on the Project site.¹²⁵ The IS/MND further provides that, according to DFG, absent implementation of mitigation and avoidance measures, the Project may significantly impact the Swainson's hawk, burrowing owl, San Joaquin kit fox and nesting birds.¹²⁶ As discussed in the comments of Mr. Cashen, the proposed mitigation measures are inadequate and will not reduce the Project's impacts to a less than significant level. Substantial evidence supports a fair argument that the Project will result in significant, unmitigated impacts to special status species, which must be evaluated in an EIR.

A. The Project Will Result in Potentially Significant, Unmitigated Impacts to the Burrowing Owl

The USFWS listed the burrowing owl as a Bird of Conservation Concern and DFG listed it as a Species of Special Concern. The Project will result in potentially significant impacts to the burrowing owl, none of which are analyzed or mitigated in the IS/MND. First, as described in the comments of Mr. Cashen, the Applicant proposes to evict burrowing owls from the Project site.¹²⁷ The eviction of burrowing owls is a potentially significant impact and is not analyzed in the IS/MND.¹²⁸

¹²⁴ See James Clark Comments, p. 19.

¹²⁵ IS/MND, p. 7.

¹²⁶ *Ibid.*

¹²⁷ Scott Cashen Comments, p. 5.

¹²⁸ *Ibid.*

Second, the IS/MND provides that the Applicant will be applying pesticides and rodenticides to the Project site during Project operation.¹²⁹ As described by Mr. Cashen, secondary poisoning from rodenticides is considered a serious threat to the burrowing owl.¹³⁰ In addition to poisoning of non-target organisms, rodenticides eliminate prey resources for predators, such as the burrowing owl. Rodenticides also eliminate the host burrowers (e.g., ground squirrels) that burrowing owls depend on for burrow creation. As a result, use of rodenticides at the Project site will degrade the existing habitat, and it will conflict with DFG's conservation goal to: "[m]inimize or prevent unnatural causes of burrowing owl population declines (e.g., nest burrow destruction, chemical control of rodent hosts and prey)."¹³¹ In the expert opinion of Mr. Cashen, eviction of burrowing owl from the Project site and the use of pesticides and rodenticides by the Applicant will result in potentially significant, unmitigated impacts to the burrowing owl.¹³²

B. The Project Will Result in Potentially Significant, Unmitigated Impacts to the San Joaquin Kit Fox By Obstructing Kit Fox Movement Corridors

The San Joaquin kit fox is listed as an endangered species under the federal Endangered Species Act and threatened under the California Endangered Species Act. In the expert opinion of Mr. Cashen, the Project may significantly impact the kit fox by obstructing kit fox movement corridors. As further described by Mr. Cashen, movement corridors for kit foxes are essential to preventing local extinctions and allowing recolonization of lands where foxes are extirpated or habitat has been restored.¹³³ Kit fox typically avoid habitats with complex structure (such as will be present on the Project site), because these habitats inhibit detection of predators.¹³⁴ It is Mr. Cashen's expert opinion that kit foxes may view the solar arrays as a barrier or threat, suggesting that the Project may inhibit or prevent kit fox movement.¹³⁵

Given the uncertainties associated with the Project's ability to maintain kit fox movement, described more fully in the comments of Mr. Cashen, the County cannot conclude that Project impacts to the San Joaquin kit fox have been mitigated

¹²⁹ *Id.* at p. 8.

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² *Id.* at p. 9.

¹³³ *Id.* at p. 6.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

to a less than significant level.¹³⁶ An EIR should be prepared to analyze and disclose the regional and statewide significance of Project impacts on San Joaquin kit fox movement and whether the Project conflicts with kit fox recovery efforts.

C. The Project Will Result in Potentially Significant, Unmitigated Impacts to the San Joaquin Kit Fox Due to Rodenticide Use

As with the burrowing owl, secondary poisoning from rodenticides is considered a serious threat to the San Joaquin kit fox.¹³⁷ The USFWS concluded that select pesticides are likely to jeopardize the continued existence of the San Joaquin kit fox, and that current restrictions on anticoagulants are insufficient to prevent an acceptable level of adverse effects to non-target organisms.¹³⁸ In the opinion of Mr. Cashen, the Project's use of rodenticides may have an unmitigated, significant impact on the kit fox.¹³⁹

D. The Project Will Result in Potentially Significant, Unmitigated Impacts to the Swainson's Hawk

The Swainson's hawk is listed as a threatened species under the California Endangered Species Act. As with the burrowing owl and the San Joaquin kit fox, Mr. Cashen concludes that the Applicant's proposed use of rodenticides will result in potentially significant impacts on the Swainson's hawk.¹⁴⁰

E. The Project Will Result in Potentially Significant, Unmitigated Impacts to Nesting Birds

As described by Mr. Cashen, the Project site and surrounding habitat provide habitat for nesting birds.¹⁴¹ Most nesting bird species are protected by the Migratory Bird Treaty Act ("MBTA"), and in some cases the State and federal government.¹⁴² The IS/MND does not provide any mitigation for impacts to nesting

¹³⁶ *See ibid.*

¹³⁷ *Id.* at p. 8.

¹³⁸ *Id.* at p. 9.

¹³⁹ *Ibid.*

¹⁴⁰ *Id.* at p. 8.

¹⁴¹ *Id.* at p. 15.

¹⁴² *Ibid.*

birds. As a result, it is the expert opinion of Mr. Cashen, that the Project may cause significant, unmitigated impacts to sensitive avian resources.¹⁴³

F. The Project Will Result in Potentially Significant, Unmitigated Impacts to Birds

As described by Mr. Cashen, the Project is located within an avian flyway.¹⁴⁴ Further, as described by Mr. Cashen, because the Project includes the installation of approximately 90,000 PV arrays, the Project may result in significant bird fatalities through collision.¹⁴⁵ Mr. Cashen proposed feasible measures to mitigate this hazard in his comments.¹⁴⁶ For example, the California Energy Commission has required all recently licensed solar projects to conduct a Bird Monitoring Study to monitor the death and injury of birds from collisions with solar facility features, among other measures.¹⁴⁷ The County should propose similar measures to mitigate bird fatality as a result of the Project in an EIR.

IX. THE IS/MND DOES NOT SUFFICIENTLY DISCLOSE, ANALYZE, AND MITIGATE POTENTIAL HAZARDS

The IS/MND states that “impact of pesticides on construction and operational crew from prior farming operations on the property is not a concern.”¹⁴⁸ This conclusion is invalid under CEQA because it is unsupported. Here, the County has no substantial evidence to conclude that prior farming activities will not pose a risk to workers because the County has not required the Applicant to conduct and submit an assessment of potential hazards through a Phase I Environmental Site Assessment (“ESA”).¹⁴⁹

Substantial evidence supports the finding that the Project may result in a potential hazard to workers through exposure to pesticides that may be present in Project site soils through dermal contact with the soil and inhalation of dust. As described by hydrologist and hazards expert, Matthew Hagemann, cultivation of

¹⁴³ *Id.*

¹⁴⁴ *Id.* at p. 16.

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ California Energy Commission. 2010 Jul. Supplemental Staff Assessment for the Calico Solar Project. p. C.2-230

¹⁴⁸ IS/MND, p. 15.

¹⁴⁹ See Email from Derek Chambers to Janet Laurain, regarding Public Records Act Response re: Gestamp Asetym Solar Project, May 2, 2012, (Attachment18).

row crops at the Project site may have involved the use of organochlorine pesticides, including Dieldrin, 4,4'-DDE, and 4,4'-DDT.¹⁵⁰ The U.S. EPA determined that organochlorine pesticides, such as Dieldrin, 4,4'-DDE, and 4,4'-DDT, are probable human carcinogens. DDT is also known to affect the nervous system.¹⁵¹

As described by Mr. Hagemann, agricultural lands in the Project vicinity have been investigated for the presence of these and other pesticides, which may persist in soil for hundreds of years despite being banned in the 1970s.¹⁵² During Project construction and decommissioning, activities that would disturb the ground surface include: grading, placement of fill, and soil compaction for placement of photovoltaic arrays, foundations and footings, and construction of access roads and drainage features, as well as the removal and demolition of these Project features. According to Mr. Hagemann, these activities have the potential to expose construction workers to pesticides that may be present in Project site soils. In the opinion of Mr. Hagemann, worker exposure to residual pesticide during Project construction and decommissioning activities is a potentially significant health risk.¹⁵³ The County must prepare an EIR to evaluate this potentially significant hazard.

X. CONCLUSION

The IS/MND is inadequate as an environmental document because it fails to include a complete and accurate Project description, set forth the existing environmental setting or “baseline” for agricultural and air quality resources and potential hazards at the Project site, and identify the Project’s potentially significant impacts on air quality, biological resources, and public health. Here, the County also lacks substantial evidence to assess Project impacts because the County has not required the Applicant to provide key data on baseline conditions with respect to agricultural resources, biological resources and potential hazards at the Project site. Due to these significant deficiencies in the IS/MND, 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 that any aspect of a project, either individually or cumulatively, may cause

¹⁵⁰ Matt Hagemann Comments, p. 1.

¹⁵¹ *Id.*

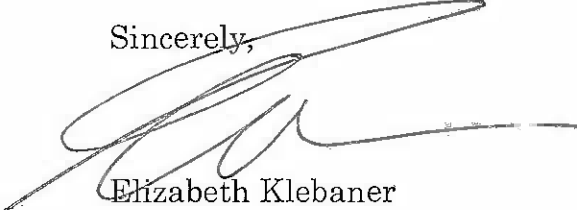
¹⁵² *Id.*

¹⁵³ *Ibid.* at pp. 1-2.

Derek Chambers
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a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial.¹⁵⁴ As discussed in detail above, there is substantial evidence that the Project would result in significant adverse impacts that were not identified in the IS/MND and that are not adequately mitigated, including: the removal of 160 acres of Farmland of Statewide Importance from agricultural production for a minimum of 40 years; significant emissions of criteria pollutants during Project construction and decommissioning; habitat modification and mortality of special status species through exposure to various Project features; and worker exposure to *C. immitis* and residual pesticides through contact with potentially contaminated soils at the Project site. We urge the County to fulfill its responsibilities under CEQA by withdrawing the IS/MND and preparing an EIR that addresses the issues raised in this comment letter. In this way the County and the public can ensure that the Project's significant environmental impacts are mitigated to a less than significant level.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elizabeth Klebaner', with a long horizontal flourish extending to the right.

Elizabeth Klebaner

EK:vs
Attach. (1-18)

¹⁵⁴ CEQA Guidelines § 15063(b)(1).