ORG-3

ADAMS BROADWELL JOSEPH & CARDOZO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062
eklebaner@adamsbroadwell.com

DANIEL L. CARDOZO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
JASON W. HOLDER
MARC D. JOSEPH
ELIZABETH KLEBANER
RACHAEL E. KOSS
LOULENA A. MILES
ROBYN C. PURCHIA

FELLOW
AARON G. EZROJ

OF COUNSEL
THOMAS R. ADAMS
ANN BROADWELL
GLORIA D. SMITH

SACRAMENTO OFFICE
520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721
TEL: (916) 444-6201
FAX: (916) 444-6209

July 30, 2010

By Email and U.S. Mail

Christina Tran
Los Angeles County
Department of Regional Planning
Impact Analysis Section, Room 1348
320 West Temple Street
Los Angeles, CA 90012
ctrain@planning.lacounty.gov

Re: Comments on Draft Environmental Impact Report for the AV Solar Ranch One Project

Dear Ms. Tran:

We are writing on behalf of California Unions for Reliable Energy ("CURE") to comment on the Draft Environmental Impact Report ("DEIR") prepared by the Los Angeles County Department of Regional Planning ("DRP") for the 230 MW AV Solar Ranch One Project ("Project") proposed by AV Solar Ranch 1, LLC ("Applicant"). After carefully reviewing the DEIR and the supporting documentation available to us, we conclude that DRP has failed to adequately identify, analyze, and mitigate the Project's potentially significant effects to air quality, biological resources, and soil and water. Due to these deficiencies, among others which are fully detailed in our comments, the DEIR must be revised to adequately address all Project impacts. The revised DEIR must be recirculated for public review and comment in accordance with the California Environmental Quality Act ("CEQA"). ORG-3-1 -2

The Project requires a vesting tentative tract map and a conditional use permit from DRP to authorize Project construction, operation and maintenance. The Project will also require permits from the Lahontan Regional Water Quality Control Board ("Water Board") and the Antelope Valley Air Quality Management -3

District ("Air District"). The Project will require encroachment permits from the County for the placement of electrical transmission line poles in County road rights of ways, and an encroachment permit from Kern County for transmission line crossings and linear encroachments along 170th Street West. Although nowhere identified in the EIR, the Project also requires a streambed alteration agreement, pursuant to section 1602 of the California Fish and Game Code. -3 -4

I. INTRODUCTION

CURE is a coalition of unions whose members help solve California's energy problems by building, maintaining, and operating conventional and renewable energy power plants. Poorly designed renewable energy power plants may degrade the environment by destroying historic resources and wildlife habitat areas, causing noise and visual intrusion, and polluting water and soil. Union members live in and around this community and have a direct interest in protecting the biological resources in and around the Project site and the groundwater and air resources in Antelope Valley. Union members also have a direct interest in ensuring a safe workplace for workers during Project construction. -5

Our comments on the DEIR were prepared with the assistance of technical experts, Matthew Hagemann, P.G. and Jim Cornett M.S. The comments of Mr. Hagemann and Mr. Cornett along with their *curriculum vitae*, are provided herein as Attachment A and B, respectively. Please note that the comments by Mr. Hagemann and Mr. Cornett are in addition to the issues addressed below and, thus, should be evaluated and responded to separately. -6

The DEIR fails to adequately analyze potentially significant Project impacts in several critical resource areas, including air quality, biological resources, visual resources, and water quality, and fails to propose adequate mitigation for the significant impacts that it does identify. The DEIR also fails to present a stable and finite Project description and fails to include an adequate Water Supply Assessment ("WSA"), as required by Sections 10910 and 19012 of the California Water Code. These defects, as well as numerous additional analytical deficiencies described in our comments, render the DEIR invalid as an environmental review document under CEQA. Because significant new information must be added to the DEIR to -7 -8 -9 -10

remedy these deficiencies, the revised DEIR must be recirculated for public review and comment.[1] -10

II. THE DEIR FAILS TO SATISFY CEQA'S PURPOSE AND GOALS

CEQA has two basic purposes, neither of which the DEIR satisfies. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.[2] CEQA requires that an agency analyze potentially significant environmental impacts in an EIR.[3] The EIR should not rely on scientifically outdated information to assess the significance of impacts, and should result from "extensive research and information gathering" including consultation with state and federal agencies, local officials, and the interested public.[4] To be adequate, the EIR should evidence the lead agency's good faith effort at full disclosure.[5] Its purpose is to inform the public and responsible officials of the environmental consequences of their decisions *before* they are made. For this reason, 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.[6] Thus, the EIR protects not only the environment but also informed self-government."[7] -11

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures.[8] 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."[9] 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

---

[1] *See Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 91.

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

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

[4] *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm.* (2001) 91 Cal. App.4th 1344, 1367 and *Schaeffer Land Trust v. San Jose City Council*, 215 Cap.App.3d 612, 620.

[5] CEQA Guidelines § 15151; *see also Laurel Heights I* (1998) 47 Cal.3d 376, 406.

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

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

[8] CEQA Guidelines § 15002(a)(2)-(3); *Berkeley Keep Jets Over the Bay Com.*, 91 Cal.App.4th at 1354.

[9] CEQA Guidelines § 15002(a)(2).

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.[10] -11

The DEIR fails to satisfy the basic purposes of CEQA. Specifically, the DEIR fails to reflect a good faith effort on the part of DRP to perform an independent investigation by failing to adequately identify the Proposed project, failing to set forth a complete and sufficiently detailed biological baseline and failing to examine Project impacts to the federally threatened desert tortoise, the state threatened Mojave Ground squirrel, and numerous other special status plants and wildlife. -12 The DEIR also fails to provide an accurate description of the existing environment upon which to measure impacts in several resource areas. The failure to accurately describe the existing environment is compounded by other errors and missing analyses in the DEIR with respect to significant impacts to groundwater resources -13 within the Antelope Valley Groundwater Basins, air quality, and public health from the increased risk of public exposure to Valley Fever as a result of the Project. -14 The DEIR also fails to disclose the soil contamination extant on the Project site. Lastly, the DEIR fails to include and show with the required degree of certainty that groundwater resources exist to meet Project demand, as required by Water Code section 10910 and 10912. -15

With respect to mitigation, the DEIR fails to identify adequate feasible mitigation for significant impacts to biological resources, state jurisdictional waters, and public health from the risk of worker exposure to Valley Fever during Project construction. -16

The DEIR's confusing description of the Project, lack of information on the environmental baseline, reasonably foreseeable Project impacts, inadequate WSA, and lack of feasible measures necessary to mitigate significant impacts fails to inform decision makers and the public of the Project's potentially significant environmental effects and how those impacts will be mitigated. -17 The public cannot evaluate and comment on the Project and its potentially significant impacts, based on the vastly inadequate environmental analysis provided in the DEIR. In addition, because the DEIR fails to provide information regarding the Project's potentially significant impacts to groundwater resources, there is no evidence to support the DEIR's conclusion that all significant Project impacts have been mitigated. -18

[10] CEQA Guidelines § 15092, subd. (b)(2)(A)-(B).

III. PROJECT DESCRIPTION

The courts have repeatedly held that "[a]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document]."[11] A project description must be accurate and consistent throughout an environmental review document.[12] It is impossible for the public to make informed comments on a project of unknown or ever-changing proportions.

> A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental costs . . . .[13]

-19

In this case, the DEIR fails to provide a stable and finite description of the proposed solar technology for the Project. As such, its analysis of the Project's impacts on air, soil and water resources cannot be ascertained. In addition to this fundamental flaw, the DEIR also fails to include in the Project description the Project's need for a Streamed Alteration Agreement under section 1602 of the Fish and Game Code, an access road that will be constructed along the proposed transmission line right of way, and to state how domestic water will be supplied to the O&M building during Project operations.

-20

-21

A. The DEIR Fails to Identify the Proposed Project

The DEIR states, "the proposed project is to arrange PV panels, tracking units, inverters, and transformers into 1- to 3- MW blocks, that combined, will achieve the full plant capacity."[14] However, the DEIR fails to definitively state whether single-axis tilted tracker, horizontal tracker units, or fixed-tilt panels are the proposed Project.[15] The distinction is significant because each type of PV panel results in distinct, potentially significant environmental effects.

-22

DRP's failure to provide a stable and finite Project description severely compromised the adequacy of its analysis; portions of the DEIR are also

-23

---

[11] *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.

[12] *Id.* at 192.

[13] *Id.* at 192-193.

[14] County of Los Angeles Department of Regional Planning Impact Analysis Section, Draft Environmental Impact Report AV Solar Ranch One Project, June 2010, at p. 4-7 (hereafter "DEIR").

[15] DEIR at pp. 4-7, 2-6.

incomprehensible due to DRP's efforts to describe the contingencies of each technology. DRP's failure to settle on a stable Project description has obscured the proposed Project such that the public is unable to discern the Project under review. -23

The proposed use of different PV panel technologies amounts to not one but three different project proposals. If the Applicant employs tilted trackers, 70,000 concrete ballast foundations would need to be drilled into the Project site. The use of horizontal trackers, on the other hand, would involve the installation of 130,000 concrete piles or peers. However, if the Project involves fixed-tilt solar panels, approximately 465,000 steel piles are proposed.[16] The DEIR concludes that the fixed-tilt solar panel proposal would result in the worst case scenario with respect to construction noise, and would require mitigation to reduce the impact to less than significant.[17,18] However, the DEIR and Applicant fail to evaluate the significance of the noise impacts related to the tilted tracker and horizontal tracker proposals.[19] Thus, there is no substantial evidence to support DRP's claim that worst case scenario noise impacts have been analyzed or could be feasibly avoided. -24

The three different Project proposals would also result in disparate air quality impacts. The DEIR obscures the fact that a concrete batch plant would only be required for the tilted tracker and horizontal tracker alternatives. Without the concrete batch plant, the Project's construction emissions would be significantly reduced.[20] The DEIR does not inform the reader of this important Project alternative, nor does it clearly set forth the expected emissions for each of the three proposed technologies. -25

The DEIR's failure to settle on one proposed Project also creates significant confusion with respect to the proposed grading and excavation activities. The Project Description chapter of the DEIR provides that "the total Project grading-related balanced cut and fill is estimated to be approximately 180,000 cubic yards."[21] The DEIR then contradicts this statement with the following, convoluted analysis: -26

---

[16] DEIR, Appendix I, p. 3-4; DEIR at p. 4-8.
[17] *See* DEIR, Appendix I, pp. 3-3-3-4.
[18] *See* DEIR, pp. 2-83, 5.18-8, 5.18-10-12, 5.8-22.
[19] *Id.*
[20] *See* DEIR, p. 5.6-18-19.
[21] DEIR, p. 4-26.

> [I]f drilled pier foundations are used, approximately 1/3 cubic yard[*sic*] of soil will be excavated for each pier....installation of drilled pier foundations would result in an estimated 42,500 cubic yards of excavated material for approximately 130,000 solar array support foundation holes . . . . The *worst case* combined cut and fill (grading) and excavation (non-grading related) quantity for development of the Project site is estimated at 250,000 cubic yards of soil material that would be balanced on the site.[22]

-26

Elsewhere the DEIR indicates that the Project proposes 179,996 cubic yards of cut, 2,000 cubic yards of which *will not be balanced.*[23] Elsewhere still, the DEIR provides 249,333 cubic yards of soil will be excavated or graded on site, 977 of which will not be balanced.[24] Other materials included in the DEIR state that "onsite grading of a maximum of 700,000 cubic yards of soil is expected."[25] The DEIR makes no effort to address these discrepancies.

From the information provided in the DEIR it is impossible to ascertain how much cut and fill is expected for each of the three proposals. Moreover, nothing in the record suggests that DRP evaluated the potentially significant effects, if any, associated with each of the three possible construction scenarios. Therefore, there is no substantial evidence to support DRP's claim that the worst case scenario soil mobilization impacts (whether 250,000 cubic yards or 700,000 cubic yards) could be feasibly avoided with the selection of one of the three solar panel technologies.

-27

The DEIR also fails to analyze the relative water needs of the three 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.[26] The DEIR and supporting materials also fail to analyze the differences in post-Project infiltration rates for each construction alternatives.[27] In short, DRP has failed to comply with CEQA's requirement that the EIR must first *identify the proposed Project* in order to then provide a reasoned analysis of the Project's effects.

-28

---

[22] DEIR, pp. 4-26-27 (emphasis added).
[23] DEIR, Fig. 4.4-12.
[24] DEIR, p. 4-46.
[25] DEIR, Appendix A, Notice of Preparation, p. 3.
[26] *Id.* at p. 4-14, p. 4-25 compare with *id.* at p. 4-26.
[27] *Id.* at p. 2-13.

B. The DEIR Fails to Identify the Project's Need for a Streambed Alteration Agreement

The DEIR's description of the Project must include "a list of related environmental review and consultation requirements mandated by federal, state, or local law, regulations, or policies.[28] Section 1602 of the California Fish and Game Code requires all entities to consult with the Department of Fish and Game ("DFG") prior to diverting, obstructing, or substantially changing the natural flow of state jurisdictional waters.[29] If DFG determines that the proposed project will substantially impact state jurisdictional waters, the project proponent must submit an application for and obtain a Streambed Alteration Agreement from DFG which will set forth the reasonable measures necessary to protect the resource. DFG's issuance of a streambed alteration agreements is considered a "project" subject to CEQA.[30]

The DEIR states that the Project site is traversed by three ephemeral streams, and the southern bank of a fourth ephemeral stream (identified as "Drainage D") is located on the Project site.[31] One of the four ephemeral streams (identified as "Drainage C") is known as Broad Canyon Creek.[32] According to the DEIR, all of the drainages delineated within the Project site convey flows in a generally west to east direction, and exhibit defined beds, banks, and channels.[33] The four ephemeral streams are subject to the jurisdiction of the California Department of Fish and Game ("DFG") pursuant to section 1600 et seq. of the California Fish and Game Code.[34] The Applicant intends to construct Arizona crossings at two points along Drainage A, and to erect a "cutoff wall" made of PVC or steel to contain the boundaries of Drainage A – which, according to the DEIR, has the potential to meander.[35] The Project will impact all four drainage channels, as clearly depicted in Figure 4.4-1A of the DEIR.[36] As such, the Applicant must submit an application for a streambed alteration agreement to DFG.

-29

---

[28] CEQA Guidelines § 15124(d).
[29] Fish & G. Code § 1602.
[30] CEQA Guidelines § 15378.
[31] DEIR, p. 3-3.
[32] *Id.*, p.4-21.
[33] *Id.*, p. 5.7-7.
[34] *Id.*
[35] DEIR, Appendix A.1, Fig. 5 "Proposed Channel Improvements."; DEIR, p. 4-23.
[36] *See id.* at pp. 4-21, 2.13-2.14 (admitting impacts to drainage features on the Project site).

As a result of DRP's failure to include the streambed alteration agreement into the description of the Project, the DEIR's treatment of Project impacts to state jurisdictional waters is highly misleading. The DEIR provides a clear, graphic illustration of the Project's impacts to state waters, identifies significant impacts to those features, and proposes mitigation.[37] However, according to the Project Description section of the DEIR, "[a]ll site drainages will be avoided *and* remain unmodified."[38] This erroneous statement is repeated throughout the DEIR.[39]

DRP's failure to identify the Project's streambed alteration agreement also violates CEQA's prohibition on piecemealed environmental review. In performing its analysis, a lead agency must not "piecemeal" or "segment" a project by splitting it into two or more segments. This approach ensures "that environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences."[40] In *Laurel Heights I*, the California Supreme Court set forth the following two-pronged test for determining whether reasonably foreseeable future activities must be included in an EIR project description: -30

> We hold that an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.[41]

Under *Laurel Heights I*, DRP's environmental review of the Project should have included the streambed alteration agreement because it is both a reasonably foreseeable consequence of the Project, and will likely change the scope or nature of the initial project through conditions that would reduce Project impacts, including an alternate site layout. By failing to evaluate this aspect of the Project, DRP has violated the express provisions of the CEQA Guidelines and improperly piecemealed its environmental review of the Project.

---

[37] *Id.* at pp. 4-21, 2.13-2.14.
[38] *Id.*, at p. 4-21 (emphasis added).
[39] *See e.g., id.* at p. 5.5-9.
[40] *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592; *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 283-284.
[41] *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390 (hereafter "*Laurel Heights*").

IV. THE DEIR FAILS TO PROVIDE AN ACCURATE DESCRIPTION OF THE ENVIRONMENTAL BASELINE

The DEIR employs an inaccurate and incomplete baseline, thereby skewing the impact analysis. An accurate description of the environmental setting is important because it establishes the baseline physical conditions against which a lead agency can determine whether an impact is significant.

The failure to adequately describe the existing setting contravenes the fundamental purpose of the environmental review process, which is to determine whether there is a potentially substantial, adverse change compared to the existing setting. CEQA requires the lead agency to include a description of the physical environmental conditions in the vicinity of a project as they exist at the time environmental review commences.[42] 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.[43]

-31

The baseline environmental setting for CEQA review is the existing environment – not the environmental setting that could exist under existing entitlements and not a hypothetical environmental setting that might possibly exist in the future.[44] In *CBE v. SCAQMD*, the Supreme Court affirmed this basic CEQA rule, rejecting the SCAQMD's approach to the environmental baseline, wherein the District measured a proposed project's increased emissions against the maximum emissions that were allowed under a previously issued permit for a refinery.[45] In reaching this conclusion, the Court applied well-established case law from numerous appellate court decisions interpreting environmental baseline requirements under CEQA Guidelines section 15125.[46]

---

[42] CEQA Guidelines § 15125, subd. (a).

[43] *Ibid.*

[44] *CBE v. SCAQMD* (2010) 48 Cal.4th 310, 322 (hereafter "*CBE v. SCAQMD*"); *see also Environmental Planning and Info. Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354 (hereafter "*EPIC*") and *Friends of Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 874.

[45] *CBE v. SCAQMD*, 48 Cal.4th at 322.

[46] *Id.* at pp. 321-322, fn. 6-7, discussing, among other cases, *EPIC*, *supra*, 131 Cal.App.3d at p. 354 and *Save Our Peninsula Com. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 121.

In addition to relying on the appropriate baseline, the EIR must describe the existing setting in sufficient detail to enable a proper analysis of project impacts.[47] DRP must gather relevant data, and provide an adequate description of the existing setting in a revised DEIR. -31

A. The DEIR Fails to Provide a Sufficiently Detailed Air Quality Setting

In *Galante Vineyards v. Monterey Peninsula Water Management District*, the Fourth District Court of Appeals found that an Air Quality section that briefly described the area as "sparsely populated, with no industry other than several vineyards" inadequate under CEQA because it failed to discuss a significant aspect of the environmental baseline in sufficient detail.[48] In this case, DRP's discussion of the Project's air quality setting in the DEIR suffers from the same error.

"The northern parts of Los Angeles County, including the Project area, are within the Valley Fever endemic area (Pappagianis and Vam Kekerix 2002). Matlof *et al* states that experience indicates that certain areas of Los Angeles County are endemic foci for *C. immitis*."[49] Valley Fever is caused by the microscopic fungus *coccidiodides immitis*. As described in the DEIR, infection can occur through spores that become airborne when contaminated soil is disturbed by human activities, such as agricultural activities or construction, and are inhaled.[50] Infection is often accompanies by flu like symptoms. In less than 1% of cases, however, the illness can spread to the lungs, brain, bone and skin. If left untreated, Valley Fever can lead to severe pneumonia, meningitis, and death.[51] -32

With regard to the Project setting, the DEIR states,

> [a]djacent to the proposed Project area, much of land is zoned for agricultural use. The Project site is not currently active agricultural land, but agricultural activities are ongoing in *nearby areas*.[52] -33

---

[47] *Galante Vineyards v. Monterey Peninsula Water Management District* (1997) 60 Cal.App.4th 1109, 1121-22.
[48] *See id.*
[49] DEIR, p. 5.6-13.
[50] *See id.* at p. 5.6-11.
[51] *Id.*
[52] DEIR, p. 5.6-14 (emphasis added).

This description fails to provide sufficient detail regarding the concentration of agricultural activities around the Project site in order to ascertain whether the Project's contribution of dust blown *coccidiodides immitis* fungi spores could result in significant cumulative impacts. The DEIR should identify the agricultural activities and provide the distance of those activities from the Project site to analyze whether the Project could significantly impact public health. The DEIR's cursory discussion of "nearby" agricultural activities precludes an adequate analysis of the Project's air quality and public health impacts. DRP must prepare an EIR that adequately describes the environmental setting in order to accurately and adequately analyze potential significant impacts to air quality and public health. Without this baseline information, no substantial evidence exists to support the finding that the Project's relative contribution to the dissemination *coccidiodides immitis* fungi spores in the Project area is less than significant. -33

B. The DEIR Fails to Provide or Analyze a Biological Baseline for the Entirety of the Project Impact Area

The DEIR fails to establish an adequate biological baseline because the survey data covers only a portion of the Project impact area. The DEIR must evaluate the direct, indirect, and cumulative effects of a Project.[53] Indirect effects are changes in the physical environment that occur later in time or farther removed in distance than direct effects.[54] However, no biological surveys were done beyond the immediate Project boundaries.[55] -34

The Project site is irregular in shape, with five right-angle bends that envelope five non-Project areas on two sides (not including drainages).[56] Non Project-areas bounded on two or more sides by a development should be surveyed with the same intensity as the Project site itself because the proximity of adjacent lands when surrounded by development can be expected to be severely impacted by Project construction, operation and maintenance activities.[57] Additionally, small animals can easily move on and off site in a matter of minutes, and certainly within days.[58] For this reason, it is a standard practice to conduct surveys at least 100 -35

---

[53] CEQA Guidelines §15126.2(a).
[54] CEQA Guidelines §15358(a)(2).
[55] Attachment B (Comments of Jim Cornett), p. 2.
[56] Attachment B (Comments of Jim Cornett), p. 1.
[57] *Id.* pp.1-2.
[58] *Id.*

yards beyond site boundaries since important biological resources may lie immediately off site.[59]

Absent survey data for the entirety of the Project impact area, including areas where indirect effects are likely, the DRP cannot evaluate the Project's impacts on existing biological resources. The Applicant must be required to provide biological baseline data for the entire Project impact area, and that information must be incorporated into the revised DEIR. -35

C. The DEIR Fails to Provide Biological Baseline Data for the Whole of the Project

Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable phases and components of a project.[60] An action is considered part of a proposed project under CEQA when it is conditioned on the approval of the proposed project.[61] Here, it is undisputed that the proposed gen tie is part of the Project.[62] As such, the environmental effects of the proposed transmission line must be evaluated with the same rigor as the main power plant facilities. However, the DEIR and supporting materials fail to provide any information regarding the survey efforts or state whether formal biological studies had been conducted for the portion of the transmission line lying in Kern County, and within the area of the proposed Whirlwind substation on which the Project plans to rely.[63] -36

The DEIR also fails to identify and describe the access road or roads that will be needed to install and service the transmission line in both counties.[64] Additional biological studies may need to be completed for the entire length of the transmission line, if the access road corridor will occupy an area that is wider than initially described in the DEIR.[65] Absent biological survey data for these Project components, DRP cannot fully evaluate the Project's potentially significant environmental effects. -37

---

[59] *Id.*
[60] *Laurel Heights I, supra*, 47 Cal.3d at p. 396-97.
[61] *Tuolumne County Citizens for Responsible Growth v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1231.
[62] *See* DEIR, p. 4-5.
[63] Attachment B (Comments of Jim Cornett), p. 2.
[64] *Id.*
[65] *Id.*

D. The Project Fails to Establish a Defensible Baseline With Regard to Terrestrial Vertebrae Within the Project Impact Area

Substantial evidence 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."[66] According to the Biota Report, the biological surveys that were conducted on the Project site were directed toward birds and plants.[67] The only vertebrae observations were incidental. It is virtually impossible to conduct valid surveys for terrestrial vertebrates while looking upward at birds.[68] The scientifically invalid baseline data provided by the Applicant simply does not constitute substantial evidence. Absent adequate data regarding the baseline conditions at the Project site, Project impacts cannot be evaluated. -38

E. The DEIR Fails to Provide a Defensible Baseline for the Western Burrowing Owl

According to the Applicant's Biota Report, most of the burrowing owl protocol surveys were conducted at the wrong time, when owls are less likely to be observed, and during extremely windy conditions.[69] For these reasons, it is highly likely that burrowing owls were underestimated in the census provided by the Applicant. Based on the survey information provided in the DEIR, it is impossible to accurately assess the magnitude of Project impacts on this species.[70] The Applicant must resurvey the Project site to accurately determine baseline conditions with regard to the Western burrowing owl.[71] -39

---

[66] *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 596. *See also Lucas Valley Homeowners Assoc. v. County of Marin* (1991) 233 Cal.App.3d 130, 157 ("irrelevant generalization, too vague and nonspecific to amount to substantial evidence of anything").
[67] DEIR, Appendix E, pp.4-66-4-67.
[68] Attachment B (Comments of Jim Cornett), p. 2.
[69] *Id.* at p. 5.
[70] Attachment B (Comments of Jim Cornett), p. 5.
[71] *Id.*

F. The DEIR Fails to Provide a Defensible Baseline for Groundwater Pumping at the Project Site

The baseline environmental setting for CEQA review is the existing environment – not the environmental setting that could exist under existing entitlements and not a hypothetical environmental setting.[72] The existing physical conditions are normally assessed at the time the notice of preparation of a CEQA document is published.[73] Courts have allowed the lead agency to use an average over a range of time periods to ascertain the most accurate description of existing conditions where there is substantial evidence to support a finding that environmental conditions can vary from year to year.[74] However, the lead agency's assumptions regarding average conditions must be made clear in the DEIR and supported by substantial evidence.[75] -40

The DEIR appears to use (a) groundwater use dating back to 1990, and (b) the Applicant's theoretical entitlement to groundwater as the environmental baseline for Project impacts.

DRP's selection of 1990 conditions is arbitrary and violates CEQA.[76] DRP provides the following rationale for its baseline analysis, -41

> For the purpose of Section 5.14 [Utilities], including Sections 5.14.2.1.2 [Project Water Supply] and 5.14.3.2.1 [Project Water Supply Impacts], the relevant period for determining historic water usage within the Antelope Valley Groundwater Basin in the Adjudication process, which has implications for resolution of claims of prescription and claims of

---

[72] *CBE v. SCAQMD, supra*, 48 Cal.4th at p. 322; *see also EPIC, supra*, 131 Cal.App.3d at 354 and *Friends of Eel River v. Sonoma County Water Agency, supra*, 108 Cal.App.4th at 874.

[73] *See Cadiz Land Company, Inc. v. San Jose City Council supra*, 83 Ca.App.4th at 86 ("The EIR must describe environmental conditions in the vicinity of the project, "as they exist at the time the notice of preparation is published, or if no notice of preparation is published . . . this environmental setting will normally constitute the baseline physical conditions by which the lead agency determines whether an impact is significant.").

[74] *See e.g. San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 658;

[75] *Id.*; *see also Planning and Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 248-49.

[76] *See CBE v. SCAQMD, supra*, 48 Cal.4th at p. 322.

overlying owners to quiet title to water rights, is likely to be a 5-year period in the 1990s to be determined by the Court.[77] -41

First, historic water usage is not the same as the physical environmental conditions in the vicinity of the Project as they existed at the time the environmental review commenced.[78] Second, DRP's explanation of historic water usage does not substitute for a rationale of how historic water uses provide an accurate description of current conditions, as required by CEQA. Third, a determination with regard to the Applicant's groundwater entitlement has not been made, but even if it had, various courts have held that an entitlement to use an amount of water is not the same as a determination of actual use: "the impacts of the project must be measured against the real conditions on the ground."[79] As such, any future judicial determination regarding the Applicant's groundwater right, if any, does not absolve DRP from evaluating the Project's impacts as measured against current conditions. DRP is required to conduct a good faith inquiry into actual, current conditions at the Project site to ascertain whether the proposed Project pumping will result in significant adverse environmental effects.[80] Therefore, DRP's analysis must be revised. -42

The DEIR's reliance on groundwater extractions records dating back to the 1990s results in a grossly inaccurate assessment of baseline conditions. Reportedly, some portions of the Project site were used for alfalfa production from 1960 through the early 1990s.[81] Alfalfa is a notoriously thirsty crop, and one which has been steadily abandoned by farmers in arid regions of California.[82] The *only* evidence cited in the DEIR to support the claim that alfalfa was ever cultivated on the Project site is a conversation between the Applicant's consultant and the former property owners.[83] Moreover, the site was more recently farmed in 2004.[84] At that time, the Project site was reportedly used for pistachio orchards and onions, both -43

---

[77] DEIR, p. 5.14-7.
[78] *See* CEQA Guidelines § 15125(a).
[79] *See Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 121.
[80] *Id.*, at 121 (collecting cases.) *Cadiz Land Company, Inc., v. Rail Cycle, L.P., supra*, 83 Cal.App.4th at 87.
[81] DEIR, p. 5.5-8.
[82] *See* generally, Attachment C (Hanson et al.); Attachment D (Rosekrans), Ch. 3. p. 16.
[83] *See e.g.*, DEIR, p. 5.5-8.
[84] DEIR, p. 5.14-8.

crops require much less water than alfalfa.[85] This chronology of agricultural activities at the Project site is consistent with the general pattern of agricultural production in Antelope Valley, which shows a steady shift from the cultivation of alfalfa to the cultivation of less thirsty crops, such as pistachio orchards (which can be watered only four months out of the year) and onions.[86] -43

DRP estimates that the *current* groundwater usage at the Project site is equivalent to the average farmhouse domestic use, or 1 AFY.[87] However, there is little evidence in the DEIR to support a finding that the Project site was actually occupied at the time the notice of preparation was published. The absence of credible information regarding current conditions, and DRP's reliance on past conditions, invalidate DRP's finding that Project impacts to water supply in Antelope Valley are less than significant. However, a proper analysis of the Project's impacts to groundwater resources is critical in this case. -44

As described in the DEIR, the Antelope Valley Groundwater Basin is in overdraft. Groundwater extractions have exceeded the estimated natural recharge of the basin since the 1920s, which has resulted in declining water levels and land subsidence.[88] The region now relies on imported water to reduce and avoid overdraft conditions.[89] Although groundwater levels have experienced a slight rise in the Project area, the DEIR suggests that this may be due to a decrease in agricultural and industrial activity in the Project area.[90] More importantly, the Project area remains in overdraft. Therefore, DRP must revise the DEIR to analyze whether *resumed* groundwater pumping at the Project site will have adverse effects on groundwater resources in the Lancaster subunit or the Antelope Valley Groundwater Basin. In order to do this, DRP must first conduct a good faith inquiry into the actual, existing conditions at the Project site. Without this information, it is impossible to identify the appropriate environmental baseline for the purposes of CEQA and to assess the Project's impacts on groundwater supplies.[91] Because an adequate analysis of baseline conditions is absent from the -45

---

[85] Attachment E (Minutes of the Significant Ecological Area Technical Advisory Committee (SEATAC) Meeting of 11 May 2009), p. 6.
[86] Attachment F (UC Davis Drought Management: Pistachios); Attachment G, p. 16.
[87] DEIR, p. 5.5-9.
[88] DEIR, p. 5.14-4.
[89] *See id.*
[90] *Id.*, at p. 5.14-5.
[91] *See Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 119.

DEIR, DRP has failed to support its conclusion that the Project will not result in significant impacts to groundwater resources with substantial evidence.[92] -45

G. The DEIR Fails to Provide a Sufficiently Detailed Description of Groundwater Pumping Activities Surrounding the Project Site

The DEIR also fails to provide the public and decisionmakers with relevant information regarding surrounding groundwater use. Although the materials provided by the Applicant identify several wells in the vicinity of the Project site, the DEIR fails to provide any information regarding the current use of those wells, and whether groundwater pumping has caused drawdown in surrounding wells. This highly apparent gap in the DEIR's description of the environmental setting precludes an adequate analysis of Project impacts on groundwater resources, and specifically well drawdown in surrounding wells.

It is apparent that well drawdown constitutes an effect on the environment within the meaning of CEQA, as the groundwater level at neighboring wells is part of the "physical conditions which exist within the area which will be affected by [the] proposed project."[93] Moreover, the DEIR makes clear that numerous Antelope Valley groundwater rights holders, including the Applicant, are in litigation before the Los Angeles County Superior Court regarding the priority of use in the Antelope Valley Groundwater Basin.[94] This suggests that there are insufficient groundwater supplies to satisfy the needs of all groundwater rights holders. According to the DEIR, "[t]he case involves many complex legal issues, hundreds of parties, and may take years to be resolved."[95] -46

Without basic information regarding groundwater pumping in the vicinity of the Project site, DRP cannot evaluate the effect of Project pumping on surrounding resources. DRP must prepare a revised DEIR that adequately describes the environmental baseline for groundwater resources.

---

[92] *See id.*
[93] *Protect the Historic Amador Water Ways v. Amador Water Agency* 116 Cal.App.4th 1099, 1111, *citing* Pub. Resources Code § 21060.5.
[94] *See* DEIR, p. 5.14
[95] DEIR, p. 5.14-7.

H. The DEIR Fails to Provide a Defensible Baseline Analysis of the Antelope Valley Groundwater Basin

DRP's analysis of baseline conditions in the Antelope Valley Groundwater Basin is gravely flawed. DRP purports to base its analysis of the Antelope Valley basin hydrology on a two page memorandum, provided by the County of Los Angeles Department of Public Works, dated June 10, 2010. Citing to the June 10, 2010 memorandum, the DEIR states that "the average annual native recharge plus local return flows is currently estimated as approximately 82,300 AFY."[96] The DEIR further provides, citing to the same memorandum, that "coupled with return flows from imported water, the total sustainable yield of the Basin is estimated to be approximately 110,000 AFY."[97] -47

First, the June 10, 2010 memo does not make these findings. Instead, DRP appears to be citing claims that are made by the Applicant's consultant in support of the Project. According to the Applicant, 82,300 AFY describes the sustainable yield, when counting only "return flows [that] derive from the use of local groundwater only."[98] Alternatively, when also counting the use of supplemental waters, which "augmented natural recharge," sustainable yield is "about 100,000 AFY"[99] Neither of these conditions represent the existing environmental setting under CEQA.

Baseline conditions in the Antelope Valley Groundwater Basin are characterized by overdraft.[100] "Water-level data collected in spring 1996 (Carlson and others, 1998) represent regional water levels after more than 75 years of ground-water development in the basin . . . . In the Lancaster subbasin, depth to water is more than 100 ft below land surface throughout most of the subbasin and the water table has declined to a level that has eliminated the discharge of ground water by evapotranspiration."[101] This information must be clearly stated in the revised DEIR in order to inform the public of existing conditions. -48

---

[96] DEIR, p. 5.14-4.
[97] DEIR, p. 5.14-4.
[98] DEIR, Appendix J.2, Memorandum from Joseph C.Scalmanini, Luhdhorff & Scalmanini Consulting Engineers to Dennis Hunter, Los Angeles Department of Public Works p. 6.
[99] *Id.*
[100] Attachment G (USGS 2003: Simulation of Ground-Water Flow and Land Subsidence, Antelope Valley Ground-Water Basin, California), p. 3.
[101] Attachment G, p. 20.

DRP must prepare a revised DEIR that adequately describes the Antelope Valley Groundwater Basin. -48

I. The DEIR Fails to Fairly Disclose Baseline Soil Conditions at the Project Site

The DEIR fails to fully disclose the extent of soil contamination from former agricultural activities at the Project site. Specifically, the DEIR fails to disclose the environmental conditions described in the Phase I Environmental Site Assessment ("Phase I ESA") prepared by Michael Brandman Associates, a report that is cited in the DEIR but not made available within the DEIR Appendices. The Phase I ESA includes the following information:

> Soil sampling within the 80 acres south of the occupied/ranch headquarters area, used since the previous testing to grow onions, should be conducted to confirm that no further action under federal or state guidelines is required.[102] -49

The DEIR indicates that onion farming continued through 2005 on the 80-acre tract, but fails to state when onion farming commenced on the Project site.[103] This information is necessary to evaluate the extent of contamination at the Project site. A number of pesticides are currently known to be used in onion farming, including Diazinon, Metam potassium, Metam sodium, and 1,3 – Dichloropropene.[104] The DEIR provides no evidence to suggest that any sampling has been done on the Project site, and does not even attempt to describe the type of pesticides that may have been actually used.[105] Therefore, the DEIR fails to disclose existing soil conditions at the Project site.

J. The DEIR Fails to Adequately Analyze the Visual Baseline at the Project Site

The DEIR fails to explain how the post-construction KOP simulations provided in the DEIR (Figures 5.10-4 to 5.10-13) were created. Typically, -50

[102] Michael Brandman Associates, Phase I ESA (2007), p. 2.
[103] DEIR, p.5.9-4.
[104] Attachment A (Comments of Matthew Hagemann), p. 3.
[105] *Id.*

documentation on key observation points includes software used to create the images, the camera aperture, focal length, camera height and other factors that would affect the quality of the rendered image.[106] Without the data, the accuracy of the rendered image is uncertain.[107] The DEIR should be revised to provide data on the KOP simulations and to provide a narrative on the suitability of the rendered images in providing an accurate portrayal of the visual impacts. -50

A revised DEIR should be prepared to include two simulated images from a KOP 1 along State Highway 138 at a location amidst the panel array. The simulated view from KOP 1 (Figure 5.10-5) is inadequate in simulating a "worst case" motorist viewpoint because the perspective does not simulate views to the north and south of the panel arrays.[108] Therefore, at least two images from KOP 1 should be generated to simulate a motorist's view on State Highway 138 to the north and to the south.[109] -51

Simulated images were included in the DEIR for KOPs that include the Antelope Valley California Poppy Reserve and the Arthur B. Ripley Desert Woodland State Park. However, a simulated post-construction image was not prepared for a KOP at the Fairmont/Antelope Buttes area, managed by the Santa Monica Mountains Conservancy, and located less than a half-mile from the Project.[110] KOP 3, prepared for the Antelope Valley California Poppy Reserve, is more than two miles from the Project and is therefore not representative of the view from the Fairmont/Antelope Buttes area, a location with potential recreational value.[111] A KOP should be prepared to include a simulated image from the Fairmont/Antelope Buttes area representative of the viewpoint of a hiker overlooking the Project.[112] -52

The DEIR must be revised to include sufficient information to enable an adequate analysis of visual conditions at the Project site. Because the DEIR's analysis is based on an inadequate description of existing visual resources, its analysis of Project impacts on visual resources is invalid. -53

---

[106] Attachment A (Comments of Matthew Hagemann), p. 5.
[107] *Id.*
[108] *Id.* at p. 5-6.
[109] *Id.*
[110] *Id.*
[111] *Id.*
[112] *Id.*

V. THE DEIR FAILS TO ANALYZE THE PROJECT'S POTENTIALLY SIGNIFICANT ENVIRONMENTAL EFFECTS

The lead agency's identification of a project's significant environmental effects is one of the primary purposes of an EIR and is necessary to implement CEQA's policy that significant environmental effects are mitigated to the degree feasible before Project approval.[113] A draft EIR must identify and focus on the possible significant environmental impacts of a proposed project.[114] In preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met with respect to any given effect."[115] If after preparing the Initial Study the lead agency determines that an effect is less than significant, the EIR must provide "a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant."[116]

A. The DEIR's Finding of No Significant Project Effects on Public Health From Valley Fever is Invalid Because It is Not Based on Substantial Evidence

The DEIR's Air Quality anlaysis dismisses the potential for the Project to significantly impact the incidence of public exposure to *Coccidiodides immitis* with the following statement:

> At present, the local population is exposed to significant levels of dust, and the dust in the region is believed to contain the *C. immitis* fungi, thus the local population is most likely exposed to *C. immitis* fungi (i.e. Valley Fever).[117]

The DEIR appears to conclude, without expressly stating, that there is no risk of public exposure because the local populace is already currently exposed to dust

-54

[113] Kostka & Zischke, Practice Under the California Environmental Quality act (2nd Ed. 2010), §13.2.
[114] Pub. Resources Code § 21100(b)(1); CEQA Guidelines §§ 15126(a), 15126.2.
[115] *Protect the Historic Amador Water Ways v. Amador Water Agency* 116 Cal.App.4th 1099, 1109.
[116] *Id. citing* CEQA § 21100(c); *see also* CEQA Guidelines § 15128.
[117] DEIR, p. 5.6-14.

likely containing the fungi.[118] This statement of reasons is inadequate because the DEIR fails to provide *facts*, *reasonable assumptions* predicated upon *facts*, or *expert opinion* supported by *facts* to buttress its conclusion that the local population is not at risk because the rate of infection has stabilized.[119] On the contrary, the facts in the record strongly suggest that increased and continued exposure to dust containing *Coccidiodides immitis* fungal spores *increases* the risk of infection, and could potentially lead to infection outside of the immediate Project area. Following is an abbreviated list of substantial evidence provided in the DEIR of potentially significant impacts on public health:

> Historically, people at risk for infection are individuals not already immune to the disease and whose jobs involved *extensive contact* with soil dust . . . (LACDPH 2004);[120]
>
> Valley Fever cases may be caused due to soils containing fungal spores that become disturbed by wind erosion, vehicular transportation, construction, or farming. Even natural phenomena, such as earthquakes or wildfires may disturb soils containing the fungi . . . dispers[ing] the small infectious particles *miles from their place of origin* (Cavenaugh 2004);[121]
>
> In any given year, about 3 percent of people who live in an area where coccidiodomycosis *is common* will develop and infection (LACDPH 2004);[122]
>
> Kern, Los Angeles, and San Diego counties had the highest total number of hospitalizations and together accounted for 47 percent of all hospitalizations due to coccidiodomycosis in the state of California during this time period. There were 417 deaths from 1997 to 2002, resulting in a mortality rate of 2.1 per 1 million California residents annually. Death from coccidiodomycosis average about 70 per year statewide (Flaherman et al. 2007); and[123]

-54

[118] DEIR, p. 5.6-28.
[119] *See* Pub. Resources Code, § 21082.2(c).
[120] DEIR, p. 5.6-11 (emphasis added).
[121] DEIR, p. 5.6-12 (emphasis added).
[122] DEIR, p. 5.6-12 (emphasis added).
[123] DEIR, p. 5.6-14.

> In 2008, Valley Fever incidences were 14.2 per 100,000 persons in the Antelope Valley, compared to the rest of Los Angeles County where Valley Fever incidences were 2.33 per 100,000 persons (Antelope Valley Partners for Health 2009).[124]

-54

In short, *nothing* in the record supports DRP's wildly inaccurate conclusion that because the risk already exists, the Project's cumulative contribution to that risk is not significant.

Numerous aspects of the Project will result in significant long-term increases in dust without proper mitigation. Such increases are expected from the proposed internal roadway system, which will include a network of compacted dirt roads between solar blocks.[125] The DEIR admits that the impact from dust is significant and should be mitigated with dust suppression activities "as necessary."[126] Absent adequate mitigation, increased dust will also be caused by removal of vegetation within proposed Project fire breaks, including 100 foot wide perimeter fire breaks and 200 foot wide fire breaks within the facility.[127] Lastly, the Project proposes a 4.25 mile long transmission line, which will require an access road.[128] However, the DEIR fails to even identify the road or state whether the road will be paved.

-55

-56

DRP must recirculate a revised DEIR that addresses the public's significant risk of exposure to *Coccidiodides immitis* during Project construction, and ensures that the dust suppression proposed will adequately protect the public from increased risk of exposure. In the very least, DRP should endeavor to produce an environmental review document that contains a rational line of reasoning between the facts presented and the conclusions that are reached based on those facts.

-57

---

[124] DEIR, p. 5.6-14.
[125] *See* DEIR, p. 4-12.
[126] *Id.*
[127] DEIR, p. 4-26.
[128] DEIR, p. 4-5, 4-6.

B. The DEIR Fails to Analyze the Effect of Project Grading Activities on Rates of Valley Fever Infection in Workers

The DEIR must evaluate the significant impacts of the *Project* as proposed.[129] While DRP assumes, as a general matter, that there is a potentially significant risk that workers may contract Valley Fever during Project construction, DRP has made no effort to evaluate *the Project* to determine the severity of the risk. DRP's failure to analyze the proposed Project contravenes CEQA's policy that significant environmental effects are *mitigated to the degree feasible* before Project approval.[130] -58

The Project will generate significant amounts of dust during construction, which could be harmful to workers without proper mitigation. The earth moving activities will include excavation and grading on and off site. These activities will include the creation of more than *nine thousand* infiltration basins and banks throughout the site.[131] It is unclear from the DEIR how much cut and fill will be involved, or whether the cut and fill will be balanced on site, however the range provided in the DEIR and supporting materials is somewhere between 250,000 and 700,000 cubic yards.[132] Additional short term dust emissions can be expected from the construction of the proposed Project cutoff wall, which will involve driving sheet piles into the ground to an approximate depth of 15 feet to contain a stream that meanders through the heart of the Project site.[133] The DEIR provides no analysis of these Project components. -59

DRP must prepare a revised DEIR that actually analyzes the proposed Project to evaluate the significance of the risk of infection posed to workers during construction. A fundamental purpose of an EIR is to identify ways in which *a proposed project's significant environmental effects* can be mitigated or avoided.[134] Absent such analysis, DRP cannot make a showing that the mitigation proposed in the DEIR will reduce the risk to a level of insignificance. -60

---

[129] Pub. Resources Code §21100(b)(1); *see also* CEQA Guidelines §§ 15126(a), 1516.2(a), 15143.
[130] Kostka & Zischke, Practice Under the California Environmental Quality act (2nd Ed. 2010), §13.2.
[131] DEIR, p. 4-22-23.
[132] *See supra*, Comments Section III.A, Project Description.
[133] *See* DEIR, p. 4-23.
[134] *See* Pub. Resources Code §§ 21002.1(a), 21061.

C. The DEIR Fails to Evaluate Project Impacts on Mohave Ground Squirrel

The Mojave ground squirrel is listed as a threatened species under the California Endangered Species Act. The DEIR finds that the potential for the species to exist on the Project site is low based on the rationale that cultivation of the Project site since the late 1940s has made the habitat unsuitable for the species.[135] The absence of the Mojave ground squirrel from the Project area of impact has not been adequately shown.[136] Instead, there is substantial evidence that the Mojave ground squirrel may exist on the Project site, which is within the species' range. Moreover, recent studies indicate that the species has been found throughout Antelope Valley, large parts of which are in agricultural use.[137] The Applicant has made no effort to rebut this assertion having elected to forego focused trapping surveys on the Project site.[138] -61

DRP's finding of no significant impact must be based on substantial evidence. The DEIR may not rely on outdated scientific information, but must reflect a good faith effort on the part of the lead agency to study the Project's potentially significant impacts on biological resources. DRP has failed to support its finding that the Project will not result in potentially significant impacts to the Mohave ground squirrel.

D. The DEIR Fails to Evaluate Project Impacts to Desert Tortoise

The desert tortoise is listed as a threatened species under both the state and federal Endangered Species Acts. The DEIR states that "based on biological surveys, literature review, and consultation with USFWS [U.S. Fish and Wildlife Service] and CDFG [California Department of Fish and Game], the Project site does not contain and is not known to contain desert tortoise, [or] suitable desert tortoise habitat."[139] This statement is, at best, inconsistent with the record evidence. -62

Contrary to the statement provided in the DEIR, FWS *has* found that suitable habitat exists within the Project site and that absence of the desert tortoise cannot be shown. A letter from USFWS dated June 16, 2009, states that "some

---

[135] DEIR, 5.7-104.
[136] Attachment B (Comments of Jim Cornett) p.3.
[137] *See id.*
[138] *Id.*
[139] DEIR, p. 5.7-73.

potential exists that the project site and areas along the proposed transmission line may support individuals of the federally threatened desert tortoise . . . [t]o determine whether desert tortoise occur in the project area, we recommend that the proponent survey areas that would be affected by construction and operation of the solar plant and transmission line" in accordance with USFWS survey protocol.[140] In an email from FWS, dated July 9, 2009, the Service retracted its initial recommendation that surveys be conducted but concluded that an avoidance strategy should nevertheless be implemented due to presence of native habitat within the Project impact area.[141] -62

The desert tortoise is a known resident of Antelope Valley and is an inhabitant of at least some of the habitats within the project boundaries.[142] Because no focused surveys for desert tortoise have been conducted, its presence on the Project site cannot be ruled out. As such, DRP has failed to support its findings of no impacts with substantial evidence as required by CEQA.

E. The DEIR's Finding of No Impacts to the Greater Roadrunner During Project Construction Is Not Based on Substantial Evidence

Greater roadrunners are relatively mobile,[143] and one greater roadrunner was observed on site even though no focused surveys for the species were conducted within the Project impact area.[144] The DEIR states that "construction activities on-site should present little risk to eggs and nestlings, since no nests are expected due to lack of suitable nesting habitat."[145] This finding is not supported by substantial evidence. According to the information provided in the DEIR, suitable habitat for the Greater roadrunner does exist on the Project site.[146] As such, the DEIR should be revised to include mitigation measures for impacts to the Greater roadrunner during Project construction. -63

---

[140] DEIR, Appendix A.
[141] *Id.*
[142] Attachment B (Comments of Jim Cornett), p.3.
[143] DEIR, p.5.7-39.
[144] *See* Attachment B (Comments of Jim Cornett), p.5; DEIR, p. 5.7-51.
[145] DEIR, p. 5.7-40.
[146] Attachment B (Comments of Jim Cornett), p. 5.

F. The DEIR Fails to Adequately Evaluate Project Impacts to State Jurisdictional Waters

Water courses that cut through the heart of a project, as is the case here, are likely to be impacted by construction and grading activities, as well as facility operation if not adequately mitigated.[147] Here, the DEIR fails to provide any data, opinions of biologists, or other relevant regulatory material, that the use of 100 foot setbacks would adequately protect the jurisdictional features on the Project site. It is also clear from DRP's records that the Center for Biological Diversity recommends 1,000 foot to 500 foot setbacks to mitigate significant impacts to drainage features.[148] This fact is not found in the DEIR. The DEIR also fails to evaluate numerous potential impacts to onsite drainage, including inadvertent dumping of toxic materials into channels during construction.[149] -64

G. The DEIR Fails to Adequately Analyze the Effects of Project Groundwater Pumping on Surrounding Wells

"The fundamental purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment."[150] To that end, the EIR "shall include a detailed statement setting forth . . . [a]ll significant effects which a proposed project is likely to have."[151]

The Initial Study prepared for the Project indicates that the Project's impacts to water supplies are potentially significant.[152] The DEIR then finds no significant impacts to water resources and requires no mitigation.[153] In reaching this conclusion, however, DRP neglected to analyze the effect of Project pumping on surrounding wells. This omission is a significant flaw in DRP's analysis of the Project's potential effects. As stated by the Supreme Court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* ("*Vineyard*"), the ultimate question under CEQA is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable impacts of -65

[147] Attachment B (Comments of Jim Cornett), p.6.
[148] Attachment H (Email from DRP to CDFG, January 13, 2009).
[149] Attachment B (Comment of Jim Cornett), p. 6.
[150] *Vineyard Area Citizens for Responsible Growth, Inc.* (2007) 40 Cal.4th 412, 428 ("*Vineyard*").
[151] *Id. citing* Pub. Resources Code § 21100(b)(1).
[152] DEIR, Appendix A, Attachment 2, p. 20.
[153] *See* DEIR, p.5.14-12,

supplying water to the project.[154] In this respect, the DEIR's analysis of the Project's *effects* on surrounding well users is decidedly inadequate. -65

That groundwater pumping at the Project site may have impacts on surrounding wells is a reasonably foreseeable proposition, particularly because the Antelope Valley Groundwater Basin is characterized by overdraft conditions and the area surrounding the Project site is not served by a public domestic water supply system.[155, 156] The likelihood of adverse effects on groundwater resources as a result of Project pumping is further underscored by the fact that, according to the DEIR, there are currently no restrictions on groundwater pumping in Antelope Valley.[157] Significantly, the construction phase of the Project, which proposes the most aggressive pumping rate – 150 AFY as opposed to approximately 12 AFY for operation – would likely occur before the Antelope Valley Groundwater Basin could be adjudicated, indeed the DEIR assumes that would be the case. Yet, the DEIR fails entirely to consider the impacts of groundwater use at the Project on surrounding wells, how any adverse impacts will be mitigated, and the impacts of likely future water sources if groundwater ceases to be sufficient.[158] The Applicant's submissions also lack this analysis, focusing instead on the likelihood that the irrigation well *at the Project site* can be relied upon as an adequate source of water.[159] -66

From the information provided, it is clear that DRP has not even pondered the issue of future drawdown in surrounding wells as a result of the Project. Even if DRP found that impacts to surrounding wells were not significant, DRP failed to provide "a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant."[160] However, even this finding must be based on substantial evidence. An analysis of this potentially significant impact must be included in a revised DEIR and the revised DEIR must be recirculated for public review and comment in accordance with CEQA. -67

---

[154] *Vineyard, supra*, 40 Cal.4th at 432; *see also Laurel Heights I, supra*, 47 Cal.3d at pages 398-399.
[155] *See* DEIR, p. 5.14-16.
[156] *See Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 830-31; *Stanislaus Natural Heritage* (1996) 48 Cal.App.4th 182, 206,
[157] DEIR, p. 5.4-12.
[158] *See* DEIR, pp. 5.14-11-17.
[159] *See generally*, DEIR, Appendix J.
[160] CEQA Guidelines § 15128.

H. The DEIR Fails to Evaluate Hazards to Plant and Animal Species as a Result of the Project

The Applicant's proposal to extensively grade and water the proposed Project site would result in the introduction of exotic weed species to the Project site and the immediate vicinity and would represent a significant hazard to native plant and animal species that must be mitigated.[161] Despite this, the DEIR fails to evaluate hazards to wildlife from increased raven populations as a result of landscape irrigation. The DEIR also fails to evaluate exotic weeds or to require a comprehensive weed management plan, including the identification of a complete list of herbicides that will be used on site. Thus, the DEIR must be revised and recirculated for public review. -68

I. The DEIR Fails to Evaluate the Project's Effects on the Antelope Valley Groundwater Basin

CEQA requires the lead agency to include a description of the physical environmental conditions in the vicinity of a project as they exist at the time environmental review commences.[162] 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.[163] The baseline environmental setting for CEQA review is the existing environment – not the environmental setting that could exist under existing entitlements and not a hypothetical environmental setting.[164] The existing physical conditions are normally assessed at the time the notice of preparation of a CEQA documents is published.[165] As discussed in Section IV(H) of these Comments, the basin is currently in overdraft. -69

---

[161] Attachment B (Comments of Jim Cornett), p.7.

[162] CEQA Guidelines § 15125, subd. (a).

[163] *Id.*

[164] *CBE v. SCAQMD, supra*, 48 Cal.4th at p. 322; *see also EPIC, supra*, 131 Cal.App.3d at 354 and *Friends of Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 874.

[165] *See Cadiz Land Company, Inc., supra*, 83 Ca.App.4th at 86 ("The EIR must describe environmental conditions in the vicinity of the project, "as they exist at the time the notice of preparation is published, or if no notice of preparation is published . . . this environmental setting will normally constitute the baseline physical conditions by which the lead agency determines whether an impact is significant.").

A threshold of significance may be useful to determine whether an environmental impact normally should be considered significant.[166] However, "[a] public agency cannot apply a threshold of significance or regulatory standard in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect.[167] The DEIR relies on a theoretical sustainable yield of 82,300 AFY as a threshold of significance, where exceedence of the total sustainable yield (and an exceedence of an allocation of that yield) would be deemed significant.[168] There are two significant legal problems with the County's threshold of significance.

First, despite DRP's proposal to use a claimed sustainable yield as a threshold of significance, DRP never makes a finding of significance.[169] DRP readily admits this because DRP believes, nonsensically, that it must know the Applicant's eventual allocation of the total theoretical sustainable yield. DRP's effort to understand whether the Applicant has any legal entitlement to the water is valiant, but it does not substitute for and is not relevant to an impact analysis under CEQA. The Applicant's allocation of the total sustainable yield is not known at this time, and therefore DRP is unable to make a finding of significance based on the referenced sustainable yield. -69

Second, DRP confuses its requirement to determine whether the Applicant is legally entitled to use groundwater with its requirement to analyze significant impacts under CEQA. The DEIR states that "to determine whether or not the Project would result in a significant impact, it is necessary also to consider whether the Project's water usage would be consistent with the amount of water estimated to be allocated to the Project site as its share of the safe yield for the Basin."[170] The DEIR then proceeds to evaluate the uncertainty of the Project's proposed water supply.[171] DRP's analysis conflates two, distinct inquiries under CEQA: the impacts of a proposed use on water resources and the impacts of alternative uses if the proposed use is uncertain. Where there is uncertainty, the lead agency is required to evaluate the impacts of alternative uses,[172] however, the agency is first required -70

[166] CEQA Guidelines § 15064.7(a).
[167] *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 342 (internal quotations omitted).
[168] DEIR, pp. 5.4-4, 5.14-12.
[169] DEIR, p.5.14-13.
[170] DEIR, p. 5.14-13.
[171] *Id.*
[172] *Vineyard, supra*, 40 Cal.4th at 432; *see also Napa Citizens for Honest Government v. Napa County Bd. of* Supervisors (2001) 91 Cal. App.4th 342, 373.

to evaluate the impacts of the proposed use.[173] Thus, in order to arrive at a finding of significance, DRP must evaluate the impacts of *the proposed groundwater pumping* on the Antelope Valley Groundwater Basin. [174] -70

The fact that the Antelope Valley Groundwater Basin is currently characterized by conditions of overdraft suggests that any additional pumping results in potentially significant adverse impacts.[175] In *Kings County Farm Bureau v. City of Hanford*, the Court held that an EIR was legally inadequate because the lead agency misapplied CEQA in assessing both project-specific and cumulative air quality impacts. The City of Hanford failed to evaluate the significance of the impact when compared to the existing setting. Instead, the City improperly claimed that a project's emissions were minor when compared to other existing emissions in the air basin.

> "The significance of an activity depends on the setting. (Guidelines, §15064, subd.(b).) The relevant question to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in [the] air basin." [176] -71

Here too, DRP claims that the Project's water extraction is small compared to other hypothetical existing water extractions in the basin (under a safe yield scenario). However, the relevant question to be addressed is not the relative amount of water use by the Project when compared to other users in a not-yet-achieved potential future sustainable yield in the basin, but whether any additional amount of water use should be considered significant in light of the serious nature of the overdraft problems in the groundwater basin.

Substantial evidence suggests that groundwater pumping results in adverse impacts to the Antelope Valley Groundwater Basin. Ground subsidence in the

---

[173] Pub. Resources Code § 21100(b)(1); CEQA Guidelines §§ 15126(a), 15126.2
[174] *Vineyard, supra,* 40 Cal.4th at 432; *see also Laurel Heights I, supra,* 47 Cal.3d at 398-399.
[175] *See e.g., Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718 ("The relevant question to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.")
[176] *Id. at* 718.

Antelope Valley has resulted from groundwater withdrawal, and natural recharge has been impeded due to groundwater pumping in the Basin.[177] Therefore, any groundwater pumping, such as that contemplated for the Project, has the potential to further increase subsidence in the Antelope Valley.[178]

The DEIR does not make a finding, based on substantial evidence, regarding whether any additional pumping is potentially significant. Because DRP has not answered this question, the information and analysis in the DEIR regarding the effect of the Project's proposed pumping is inadequate. DRP must provide an adequate analysis of the Project's impacts to the Antelope Valley Groundwater Basin in a revised DEIR, and recirculate the revised DEIR for public review and comment in accordance with CEQA. -71

VI. THE DEIR FAILS TO DESCRIBE EFFECTIVE MITIGATION MEASURES FOR EACH SIGNIFICANT ENVIRONMENTAL IMPACT

An EIR must propose and describe mitigation measures sufficient to minimize the significant adverse environmental impacts identified in the EIR.[179] Also, mitigation measures must be designed to minimize, reduce or avoid an identified environmental impact or to rectify or compensate for that impact.[180] Where several mitigation measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified.[181] A lead agency may not make the required CEQA findings unless the administrative record clearly shows that all uncertainties regarding the mitigation of significant environmental impacts have been resolved. In this regard, DRP's administrative record is clearly deficient. -72

In particular, CEQA requires the lead agency to adopt feasible mitigation measures that will substantially lessen or avoid the Project's potentially significant environmental impacts and describe those mitigation measures in the EIR.[182] A public agency may not rely on mitigation measures of uncertain efficacy or

---

[177] Attachment A (Comments of Matthew Hagemann), p. 4; *see generally*, Attachment G.
[178] Attachment A (Comments of Matthew Hagemann), p. 4
[179] Pub. Res. Code, §§ 21002.1(a), 21100(b)(3).
[180] CEQA Guidelines, § 15370.
[181] CEQA Guidelines, § 15126.4(a)(1)(B).)
[182] Pub. Resources Code §§ 21002, 21081(a), 21100(b)(3); CEQA Guidelines § 15126.4.

feasibility.[183] Mitigation measures must also be fully enforceable through permit conditions, agreements or other legally binding instruments.[184]

Here, the DEIR lacks effective mitigation for several categories of impacts. In addition, the DEIR generally provides only conclusory discussions regarding the effectiveness of mitigation measures. Additional mitigation measures must be included in the DEIR, and the revised measures must be recirculated for public review. -72

A. The DEIR Fails to Minimize the High Risk of Worker Exposure to Valley Fever

The mitigation measures proposed to mitigate the significant risk of worker exposure to Valley Fever fail to address the high risk of exposure at the Project site. The DEIR should also require health surveillance on the Project site to enhance the likelihood of early detection, as recommended by federal regulatory guidelines.[185] -73

B. The DEIR Fails to Require a Comprehensive Weed Management Plan and to Mitigate for Potentially Significant Impacts of Herbicide Use

The DEIR fails to include, or require, a Comprehensive Weed Management Plan.[186] The Applicant proposes to use herbicides, such as Round-Up, which is manufactured by the Monsanto Company to control vegetation on the Project site.[187] The DEIR stats that "herbicides would be used in accordance with manufacturer's recommendations and would not be used within 100 feet of ephemeral Drainages A and C or within the development setbacks for Drainages B and D on the site."[188] DRP finds no potentially significant impacts to surface water runoff as a result of the selective use of herbicides.[189] However, the DEIR also indicates that herbicides such as Round-Up, would also be used to control vegetation within the 100 foot fire -74

---

[183] *Kings County Farm Bureau, supra*, 221 Cal.App.3d at 727 ([finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available].)
[184] *Id.* at § 15126.4(a)(2).
[185] *See* Attachment I (Office of Health and Safety, U.S. Department of Energy, Safety Advisory: Valley Fever).
[186] See Comments of Jim Cornett, Attachment B, p.7.
[187] DEIR, p. 5.5-16.
[188] *Id.*
[189] *Id.*

breaks that are proposed for the perimeter of the Project site.[190] Round-Up herbicide has been shown to be slightly to moderately toxic in aquatic studies.[191] The DEIR fails to evaluate and prescribe mitigation measure to limit the use of herbicides where the perimeter firebreaks intersect offsite drainage.[192]

Although the DEIR proposes to mitigate for Project impacts to water quality through a Stormwater Pollution Prevention Plan (SWPPP) that will be prepared for the Project, and through compliance with the Applicant's proposed Drainage Plan, neither document addresses herbicide use. Under the NPDES program, the SWPPP addresses certain regulated toxics, but to the exclusion of the active ingredient in Round –Up. The proposed Drainage Plan also does not mitigate for this impact because it does not cover construction activities and is intended only to address stormwater flows. -74

C. The DEIR Fails to Adequate Mitigate for the Loss of Joshua Tree Woodland on the Project Site

The entire Project site was formerly Joshua Tree Woodland prior to conversion to agriculture.[193] Joshua Tree Woodland is returning to the Project site now that agricultural activities have ceased.[194] Because of this clear sign of re-establishment, the entire Project site is Joshua Tree Woodland habitat in the process of recovering.[195] -75

The DEIR proposes preserving an isolated 100 acres on the Project site to mitigate for the loss of Joshua Tree Woodland. However, this mitigation measure does not adequately minimize impacts to Joshua Tree Woodland.[196] Mitigation must focus on the entire Project site: the 2,100 acres of recovering Joshua Tree Woodland that will be lost as a result of the Project.[197] -76

Mitigation for impacts to Joshua Tree Woodland should assume that 2,100 acres of Woodland habitat is being lost, not just the few acres where Joshua trees

---

[190] DEIR, pp. 5.5-17, 5.6-20.
[191] Attachment J (Material Safety Data Sheet Roundup Original Herbicide).
[192] *See* DEIR, Fig. 4.4-1A.
[193] Attachment B (Comments of Jim Cornett), p. 8.
[194] *Id.*
[195] *Id.*
[196] Attachment B (Comments of Jim Cornett), p.8.
[197] *Id.*

have re-established at this moment in time. Mitigation ratios for the loss of this habitat should be at least 0.5 to 1 based upon accepted standards.[198] -76

D. The DEIR Fails to Require Adequate Mitigation for Impacts to Special Status Species

DRP recommends 450 acres of compensation for the loss of approximately 2,100 acres of Blainville's horned lizard, horned lark, western meadowlark, western burrowing owl, greater roadrunner, lark sparrow, prairie falcon, loggerhead shrike, Joshua tree and possibly the Mohave ground squirrel and desert tortoise, habitat. DRP provides no rationale for this ratio of compensation and, as such, the ratio is arbitrary. The proposed ratio of compensation fails to adequately compensate for the loss of native habitat, because it is not based on substantial evidence. -77

A 1:1 ratio is typically applied wherever there are direct impacts to sensitive species.[199] Direct impacts on the Project site include the loss of 2,100 acres of native habitat.[200] The actual direct area of impact is even larger when offsite impacts and temporary impacts along the transmission line corridor are also considered.[201] The Applicant must demonstrate that the mitigation acreage acquired will actually provide suitable habitat for these species and that the lands will be protected. At the very least, replacement mitigation must require 1 acre for every 1 acre impacted, or greater, because of the large number of sensitive species impacted by this project, which each require mitigation under CEQA.[202]

VII. DRP FAILED TO PREPARE AN ADEQUATE WATER SUPPLY ASSESSMENT FOR THE PROJECT

The California Legislature has declared that the availability of water supply is a critical planning consideration in any new development project. In adopting Senate Bill 610 ("SB 610"), the Legislature amended the Water Code to ensure that there is a direct relationship between land use decisions and water supply.[203] Pursuant to SB 610, the DEIR must determine if existing and projected water -78

---

[198] *Id.*
[199] *Id.*
[200] *Id.*
[201] *Id.*
[202] *Id.*
[203] Wat. Code §§ 10910, 10912.

sources are sufficient for anticipated Project demands. SB 610 requires that a "Water Supply Assessment" be prepared to assess water supply for various types of projects prior to development. The Water Supply Assessment must then be included and incorporated in any CEQA documentation prepared for the project.[204]

SB 610 requires either the WSA to determine whether the Project's demand was included in the city or County's most recent Urban Water Management Plan ("UWMP").[205] If the demand was included in the UWMP, the lead agency may incorporate information from the UWMP in preparing the required elements of the assessment. (Water Code § 10910, subd. (c)(2).)

Where an updated UWMP is not available, SB 610 states that the following elements must be included in the Water Supply Assessment:

1. Discussion with regard to whether the public water system's total projected water supplies available during normal, single dry, and multiple dry water years during a 20-year projection will meet the projected water demand associated with the proposed project, and
2. Discussion of the public water system's existing and planned future uses, including agricultural and manufacturing uses.[206]

Before reaching an answer, the WSA must also, through current documentation, identify the existing entitlements, rights, or contracts relevant to the identified water supply for the proposed project.[207] This identification must be demonstrated by providing specific information, including the following:

1. information related to written contracts or other proof of entitlement to an identified water supply;
2. copies of a capital outlay program for financing the delivery of a water supply that has been adopted by the public water system;
3. federal, state, and local permits for construction of necessary infrastructure associated with delivering the water supply; and

-78

[204] Wat. Code, § 10911(b).
[205] Wat. Code § 10910(c)(1).
[206] Wat. Code § 10910(c).
[207] Wat. Code, § 10910(d)(2).

4. any necessary regulatory approvals that are required in order to be able to convey or deliver the water supply.

DRP has included its WSA for the Project in Section 5.14 of the DEIR.[208] Under SB 610, DRP's WSA must include documentation, identifying the existing entitlements, rights, or contracts relevant to the identified water supply for the proposed Project. The DEIR fails to provide written contracts or other proof of entitlement to an identified water supply for the Project. Therefore, the WSA fails to meet the requirements set forth in SB 610. -78

DRP must provide an adequate WSA in a revised DEIR, and recirculate the revised DEIR for public review and comment in accordance with CEQA.

VIII. THE DEIR MUST BE REVISED AND RECIRCULATED FOR PUBLIC REVIEW AND COMMENT

The DEIR must be revised to adequately analyze and address the Project's impacts and must be re-circulated for public review. CEQA requires re-circulation of an EIR when significant new information is added to the EIR following public review but before certification. (Pub. Res. Code § 21092.1; see also CEQA Guidelines, § 15088.5.) The CEQA Guidelines clarify that new information is significant if "the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project" including, for example, "a disclosure showing that ... [a] new significant environmental impact would result from the project." (CEQA Guidelines, § 15088.5.) -79

As thoroughly discussed above and in the attached comments, the DEIR fails to include significant information regarding the Project's potentially significant impacts to air quality, biological resources, groundwater resources, soil contamination and visual resources at the Project site. These impacts must be thoroughly addressed in a revised DEIR that is re-circulated for public review. New

[208] *See* DEIR, Appendix J.2.

ORG-3

and revised mitigation measures feasible of reducing impacts to a less than significant level must also be described in the revised DEIR prior to recirculation. -79

Sincerely,

Elizabeth Klebaner

EK:bh

Attachments