

KERN COUNTY PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT

Board of Supervisors

STAFF REPORT

Date: October 30, 2012

FILE: Appeal #2, Map #152
S.D.: #2 - Scrivner

TITLE: Appeal Case No. 2, Map No. 152

PROPOSAL: An appeal to the decision of the Planning Commission (Resolution 71-12; approved September 27, 2012) approving Conditional Use Permit No. 11, Map No. 152 to allow for the construction and operation of a 250 megawatts solar electrical generating facility (Section 19.12.030.G and Section 19.14.030.G) within the A (Exclusive Agriculture), A GH (Exclusive Agriculture - Geologic Hazard Combining), A GH FPS (Exclusive Agriculture - Geologic Hazard Combining - Floodplain Secondary Combining), and A-1 (Limited Agriculture) Districts

APPELLANT: **Gideon Kracov on behalf of LIUNA, Local No. 220** (original applicant - Beacon Photovoltaic project by Beacon Solar, LLC (NextEra Energy Resources)) (PP12213)

PROJECT SIZE: 2,298 acres

LOCATION: Four miles from California City, 15 miles north of the unincorporated town of Mojave, and less than one mile southwest of the unincorporated town of Cantil/Rancho Seco; in southeastern Kern County

GENERAL PLAN DESIGNATION: 5.6 (Residential - Minimum 2.5 Gross Acres/Unit) (Cantil Interim Community Plan); 1.1 (State and Federal Land); 5.8 (Residential - Minimum 20 Gross Acres/Unit); 8.2/2.1 (Resource Reserve - Seismic Hazard); 8.5 (Resource Management); 8.5/2.1 (Resource Management - Seismic Hazard); and 8.5/2.5 (Resource Management - Flood Hazard)

SURROUNDING LAND USE/ZONING: North - Undeveloped land/E (2 1/2) RS (Estate - 2 1/2 acres - Residential Suburban Combining), E (20) RS (Estate - 20 acres - Residential Suburban Combining), A, A-1; East - Undeveloped land/A, A-1, A-1 MH (Limited Agriculture - Mobilehome Combining), A WE (Exclusive Agriculture - Wind Energy); South - Undeveloped land/A, A FPS (Exclusive Agriculture - Floodplain Secondary Combining); West - Undeveloped farmland, residences/PL RS GH (Platted Lands - Residential Suburban Combining - Geologic Hazard Combining) and A

PROJECT ANALYSIS: The matter before your Board today is an appeal of the decision by the Planning Commission on September 27, 2012, to approve a conditional use permit for the Beacon Photovoltaic project by Beacon Solar, LLC (NextEra Energy Resources). This conditional use permit would allow for the construction and operation of a photovoltaic (PV) power generation facility on 38 contiguous parcels that would produce 250 megawatts (MW) of renewable electrical energy and includes the installation of approximately 972,000 PV panels (Conditional Use Permit 11, Map 152, Resolution 71-12). The project would consist of a 2,298-acre PV solar facility and a transmission line to connect the solar facility with the nearby Los Angeles Department of Water and Power (LADWP) Barren Ridge Substation. The total project area is

2,301 acres – 2,298 acres for the solar facility and 3.3 acres for the transmission line footprint. Table 1 indicates the parcels included in project site.

Table 1 Project Assessor Parcel Numbers

469-021-01	469-021-09	469-050-01	469-060-02	469-140-11
469-021-02	469-021-10	469-050-02	469-060-12	469-091-28
469-021-03	469-022-01	469-050-05	469-060-13	469-092-12
469-021-04	469-022-02	469-050-06	469-060-16	469-092-18
469-021-05	469-022-03	469-050-09	469-060-17	469-092-27
469-021-06	469-022-06	469-050-17	469-082-16	469-280-02
469-021-07	469-022-08	469-050-18	469-082-26	
469-021-08	469-022-09	469-060-01	469-092-13	

The project area (the solar facility and associated transmission lines), is located within Sections 4, 7, 8, and 9, T31S, R37E, MDB&M. The site is less than one mile southwest of the unincorporated town of Cantil/Rancho Seco, four miles from the northern boundary of California City, 15 miles north from the town of Mojave, and 24 miles northeast of the city of Tehachapi. The site consists of undeveloped and previously disturbed land, formerly used for agricultural activities. The project site has not been in agricultural production since the 1980s. The majority of the project site is located within the Kern County General Plan area and the northernmost portion of the site is located within the Cantil Interim Community Plan (Cantil ICP) area. The project site has Kern County General Plan Map Code designations of 8.1 (Intensive Agriculture), 8.5 (Resource Management), 8.1/2.1 (Intensive Agriculture - Seismic Hazard), 8.5/2.1 (Resource Management - Seismic Hazard), and 8.5/2.5 (Resource Management - Flood Hazard). The Cantil ICP land use designation in the northern part of the site is 5.6 (Residential - Minimum 2.5 Gross Acres/Unit).

The project site has zoning classifications that include A GH (Exclusive Agriculture - Geologic Hazard Combining), A GH FPS (Exclusive Agriculture - Geologic Hazard Combining - Floodplain Secondary Combining), and PL RS GH (Platted Lands - Residential Suburban Combining - Geologic Hazard Combining). The portion of the property that is zoned as Platted Lands would only be used for the transmission line; no solar panels will be installed on this property. The majority of the site is zoned A (Exclusive Agriculture) or A-1 (Limited Agriculture), which allows for the operation of a solar facility with approval of a conditional use permit.

Overview of Project

The proposed project being considered by your Board is a revised version of a project that had been previously approved through the California Energy Commission’s (CEC) CEQA-equivalent process known as an Application for Certification (AFC). Previously known as the Beacon Solar Energy Project (BESP) located on the same site, the project involved a parabolic through solar thermal technology to produce electrical power (250 MW) using a steam turbine generator fed from a solar steam generator. Power plants using solar thermal technology over generating 50 MW are under the exclusive jurisdiction of the California Energy Commission. This technology proposed different construction, solar technology, and operational effects than those being evaluated in this EIR. Most notably is the amount of water consumption necessary to operate the facility as a solar thermal project compared to a photovoltaic project.

The AFC process was conducted over multiple years and included environmental analysis, agency coordination, public outreach, and stakeholder input. The CEC approved (certified) the BESP in August 2010; no challenges were filed against this approval. Subsequent to this approval, the project proponent determined that another technology (solar photovoltaic) would be more efficient and cost effective than the solar thermal technology proposed in the AFC.

Although spot legislation allowed this project along with five other solar thermal projects in other counties changing to solar PV projects to be processed by the California Energy Commission, which otherwise is preempted from processing PV projects, the project proponent chose to honor the local government jurisdiction over solar photovoltaic generation. In 2011, an application was filed with the Kern County Planning and Community Development Department proposing a revised project utilizing photovoltaic (PV) panel technology on the site. This conditional use permit considers the proposed project (PV panels) at the site. While some materials prepared during the CEC process were utilized and referenced as background information, the Environmental Impact Report and supporting technical documentation processed by the County is focused specifically to this PV project.

Surrounding Area:

The Desert Tortoise Natural Area is located about five miles to the east and three miles north of the Western Rand Mountain Area of Critical Environmental Concern. Red Rock Canyon State Park is located four miles to the north of the site, and Koehn Lake is located five miles to the east-northeast. The Jawbone Canyon off-highway vehicle (OHV) open use area is located one-mile north of the project site on the west side of State Route 14, and the Pacific Crest Trail is located about 12 miles to the west. The project site and the surrounding areas are primarily undeveloped disturbed lands, formerly used for agricultural activities. State Route 14 runs along a portion of the western border of the project site, and an existing Union Pacific rail line runs through the project site; the project proposes to take access via State Route 14. An existing LADWP electrical transmission line runs roughly in parallel to State Route 14 about one mile further to the west, and the existing LADWP Barren Ridge substation is located one-mile to the southwest. The Honda Proving Ground, an automotive test track, is located roughly 3/4-mile east of the project site.

Project Characteristics

The proposed project includes the development of a 250 MW PV solar energy generating facility and associated infrastructure, including an estimated 972,000 PV solar panels, an operation and maintenance (O&M) building, and a generation tie-line in the southwestern portion of the site to connect into the Barren Ridge Substation, which is operated by Los Angeles Department of Water and Power (LADWP).

- 230 kilovolt (kv) overhead transmission line one mile off-site, to connect the solar facility to the existing LADWP Barren Ridge Substation.
- A one-story 5,000-square-foot O&M building, parking lot, office, and associated septic system.
- Solar meteorological station.
- Connection to on-site Southern California Edison (SCE) electric distribution line, to provide power to the facility during construction and operation.
- Reactivation of on-site water supply wells.
- On-site access roads.
- Perimeter security fencing that meets California Department of Fish and Game (CDFG) and U.S. Fish and Wildlife Service (USFWS) requirements.
- Temporary construction staging/laydown area.
- Potential solar tracking system consisting of drive motors, drive arms, and possibly organic hydraulic systems that allow for rotation of solar panels from east to west, tracking the suns position over the course of the day.

farming practices and disking activities, and is considered of poor quality habitat and foraging for these species. Therefore, the available evidence supports the DEIR's conclusion that any loss of foraging habitat as a result of the construction and operation of the proposed project will not have a significant impact on golden eagles and, therefore, does not require mitigation under CEQA.

Gideon Kracov, Attorney at Law

The commenter submitted a comment letter that raised a number of concerns that generally fell into several themes, including the proposed project's a) inconsistency with the Kern County General Plan and its Elements; b) inadequate analysis of appropriate alternatives; c) the lack of an analysis and mitigation regarding socioeconomic issues; d) inadequate analysis and mitigation regarding the project's potential impacts to agricultural, biological resources, air quality, hydrology and water quality, and hazardous materials. The commenter asserted that the document was not adequate and, therefore, should be revised and recirculated.

Consistency with the General Plan: The DEIR assessed the project's consistency with the Kern County General Plan, the Kern County Zoning Ordinance, the Airport Land Use Compatibility Plan (ALUCP), and other appropriate regulations in Section 4-9, *Land Use and Planning*. The project site is within the A (Exclusive Agriculture) and A-1 (Limited Agriculture) Districts, which allow for the construction and operation of a solar facility with approval of a conditional use permit. It should be further noted that the Kern County General Plan has an adopted Energy Element (Chapter 5 of the Kern County General Plan). Within this element there are numerous goals and policies related to energy development including Section 5.4.5 of the General Plan which is specifically dedicated to solar energy development, and which encourages safe and orderly commercial solar development. Further, Policy 16 of Section 1.9, states that "The County will encourage development of alternative energy sources by tailoring its Zoning and Subdivision Ordinances and building standards to reflect Alternative Energy Guidelines published by the California State Energy Commission. Impacts related to on- and off-site flooding are discussed in DEIR Section 4.8, *Hydrology and Water Quality* pages 4.8-1 – 4.8-20), and Section 4.5, *Geology and Soils*, evaluated seismic impacts. As noted in the DEIR, with compliance with all State and local regulations as well as implementation of the proposed mitigation measures, impacts are expected to be less than significant.

Based on the information presented, it is Staff's opinion that the DEIR adequately analyzes and documents potential impacts of the project, related to land use, hydrology, and water quality. The DEIR also evaluated the applicable established land use policies and regulations of the Kern County General Plan, the Kern County Zoning Ordinance, and ALUCP to the proposed project and determined the project to be generally consistent with those goals and policies. The commenter does not provide evidence to contradict the conclusions of the DEIR, and Kern County, as Lead Agency, has adequately addressed this issue under CEQA

Alternatives: Staff notes that an EIR must contain a reasonable range of feasible alternatives to the project, or to the location of the project, which can attain most of the project's objectives and would avoid or substantially lessen any of the project's significant effects. However, the DEIR is not obligated to consider alternatives that do not avoid or substantially lessen the project's significant environmental impacts. The commenter suggested that the DEIR consider a reduced scale alternative, an alternative that avoids seismic and flood hazards, and an alternative that avoids cadmium telluride panels. Although there is no legal requirement that these alternatives be analyzed, for informational purposes only, Staff added an analysis of these alternatives to the Final EIR (see pages 7-9 through 7-23 of Chapter 7- Response To Comments). The analysis in the Final EIR demonstrates that these alternatives will not substantially reduce any of the project's four significant environmental impacts: visual impacts (both project-specific and

cumulative), cumulative air quality impacts during construction, and cumulative biological impacts.

Socioeconomic issues: The commenter asserts that the DEIR must analyze a project's potential to cause urban decay on both a cumulative and project level. However urban decay, as the concept has been developed by case law, has been limited to retail center development projects (so-called "supercenters") that could draw business away from existing retail businesses. Urban decay impacts from a solar energy project on vacant land in a rural area are too remote and do not require analysis under CEQA as the concerns are speculative and not supported by existing case law. Additionally, the commenter cites no cases, and the Lead Agency is unaware of any, in which a court has held that urban decay analysis is applicable to a non-retail project, and certainly not to a commercial photovoltaic solar project proposed in a rural area. Furthermore, there is no substantial evidence presented in the DEIR that the Beacon Photovoltaic Project would cause urban decay. The project site is located in a rural area and will not result in vacancies in downtown business areas or otherwise adversely affect the livelihood of people in Kern County.

The commenter also states that the proposed project is not an efficient use of the land. Staff notes that CEQA does not require a specific standard for project efficiency to be associated with a proposed land use development. Additionally, he asserts that the project would adversely affect employment due to the low workers per acre associated with a solar project. The project site is currently vacant and has not been used for agricultural purposes since the mid-1980s. The project site and a large area of land surrounding the project site, currently employs zero (0) workers per acre. Consequently, the construction and operation of a solar power plant on this property would cause an increase in the workers per acre and could potentially induce other businesses to develop in the area, further increasing the worker population

The commenter alleges that the DEIR fails to adequately analyze and mitigate for risks of widespread abandonment of solar projects. The proposed project is required to have a decommissioning plan backed by financial assurances, as stipulated in the proposed Mitigation Measure MM 4.9-1. The requirement of having a County-approved decommissioning plan and financial assurances are tied to the conditional use permit, an entitlement that is attached to the land, not the property owner. As such, even if the project is sold, each owner would be required to adhere to the same decommissioning plan and financial assurance requirements. The financial assurance options are adequate and are routinely used for other projects such as mining operations by Kern County.

The commenter also asserts that the DEIR should consider how the proposed project will impact ratepayers. The CEQA environmental review process is intended to evaluate a project's environmental impacts and inform the appropriate decision-makers and the public about those impacts. The potential effect of a solar electrical generation facility to ratepayers is speculative at best, and is not considered an environmental impact and is, therefore, beyond the scope of a CEQA EIR document. The California Public Utilities Commission is the appropriate regulatory body and forum to discuss potential impacts to ratepayers, not a CEQA document. Furthermore, the proposed project is being developed with private funding and not by the ratepayers; no public funds were used to finance this project. If approved, the project would employ an estimated 385 construction workers for approximately 22 months, and maintain a staff of between five and ten permanent employees for long-term operations and maintenance activities, project is anticipated to contribute approximately \$18 million in property, sales and use taxes over the expected 30-year lifetime of the project.

Environmental Impacts: The commenter contends that the DEIR fails to adequately analyze and recommend mitigation regarding potential impacts to agricultural, biological resources, air

Memorandum of Understanding

Section 53091 of the California State Government Code provides an exemption from local building and zoning ordinances for a city or county project that includes the location or construction of facilities for the production or generation of electrical energy, among other uses. In addition, utility companies regulated by the California Public Utilities Commission have specific exemptions for transmission lines and other generating facilities. Mandates for renewable energy projects have made commercial solar and wind projects an attractive investment for utilities, cities, and counties. To ensure conformance to the land use regulations adopted and implemented by this County, past projects such as the Pine Tree Wind project (Los Angeles Department of Water and Power), Alta-Oak Creek Wind project, Antelope Valley Water Bank (Semi-Tropic Water Banking Authority), and the Lost Hills Solar project have included a Memorandum of Understanding/Agreement that binds any buyer or operator to agree to be bound by the Kern County Zoning Ordinance, including Kern County building permit requirements, the conditions of the conditional use permit, and the Mitigation Measure Monitoring Program regardless of any exemption they may have under Section 53091. Additionally, Mitigation Measure MM 4.12-1 requires the project proponent to provide the County written verification of ownership by April 15 of each calendar year. If the project is sold to a city, county, or utility company that pays assessed taxes that equal less than \$1,000 per MW per year, then that entity shall pay those taxes plus an amount necessary to equal the equivalent of \$1,000 per MW. The amount shall be paid for all years of operation. These mechanisms provide sufficient assurances that all provisions of the recommended approval will be implemented for the life of the project. Condition of Approval (4)(a) requires an MOU to be executed by your Board prior to the issuance of grading or building permits. A signed copy of the Agreement is attached for your review.

Planning Commission Consideration

On September 27, 2012, a public hearing was held by the Planning Commission to consider a conditional use permit to allow the development of the proposed 250 MW solar facility. Staff presented an overview of the project and the EIR prepared for the project.

The Planning Commission then heard testimony and a PowerPoint slide presentation by the applicant's representative, Brandon Stankiewicz. Mr. Stankiewicz provided an overview of the project, and emphasized its positive benefits, including:

- The creation of up to 385 construction jobs for approximately 22 months
- Eight to ten full-time jobs during plant operations
- Clean power for up to 100,000 California homes
- Estimated \$18 million in property, sales and use taxes over the project's lifetime
- Facility payroll and additional contracted maintenance
- Increased purchases of local goods and services
- Contributions to County Capital Improvement Plan
- Conversion of un-used property to productive use

A copy of this presentation is included for your Board's consideration. Additionally, Mr. Stankiewicz pointed out that the project is located on a site that has not been utilized in almost 30 years. The design of the photovoltaic panels allows the applicant to micro-site panels, thereby avoiding biological and culturally sensitive areas, as indicated on the site plan. The proposed project would also use significantly less water than the original solar thermal project. He also mentioned that the company was committed to hiring local residents and would continue to support the County in this way.

Mr. Mitchell Tsai, a representative of the appellant, Gideon Kracov, Attorney at Law, who represents the Laborers International Union of North America (LIUNA) Local #220; LIUNA has an office in Bakersfield and over 1,400 members who live and work in Kern County. Mr. Tsai submitted two letters, "Reply to Comments: Draft Environmental Impact Report of Beacon Photovoltaic Project" by Michael Kavanaugh, dated September 21, 2012, and "Comments on the Final Environmental Impact Report and Response to Comments for the Beacon Photovoltaic Project, Kern County," by Matt Hagemann, dated September 25, 2012 to the Planning Commissioners. Staff would like to point out that although one letter was dated September 21, 2012, and indicated that it was emailed to Staff on that date; Staff did not receive the email or letter. Mr. Tsai later confirmed that in fact, the letter was never mailed nor emailed prior to the hearing date. A copy of these letters is attached for your Board's review.

Mr. Tsai also stated that while the County had provided very good, quality responses to Mr. Kracov's original letter in Chapter 7- Response to Comments (see FEIR Response Letter 7), the EIR should be revised and recirculated to address specific issues, specifically the potential environmental impacts of damaged solar panels during flood events, and cadmium telluride leakage if the solar panels were damaged. He also noted that the Air Quality analysis of the EIR inaccurately quantified PM10 and other criteria pollutant emissions. He also raised concerns regarding the financial assurances from NextEra (the parent company of Beacon Solar, LLC) and whether these assurances were appropriate and adequate.

Commissioner Edwards asked for clarification that the issue was worker safety regarding the potential release of CdTe or other emissions from the construction of the project. Mr. Tsai stated that the EIR should be circulated to address these concerns and more research needed to be completed prior to approval.

Kern County Planning and Community Development Department Director Oviatt clarified that NextEra had not provided the County with financial assurances and was not required to do so until the project was approved. If approved, at that time, the developer who owned or moved forward with the project would be required to provide that financial assurance to the County as outlined in the mitigation measure. Regarding cadmium exposure, Ms. Oviatt pointed out that this issue was extensively discussed in Chapter 7- Response to Comments, Response 7-N. She also noted that the City of Los Angeles had placed on their agenda the proposed purchase of the Beacon Photovoltaic project. The \$18 million in taxes mentioned by the applicant would be reduced. However, due to the signing of the MOU (which requires the project owner to abide with the approved conditions of approval and mitigation measures placed on the project), if the project is sold to a city, county, or utility company that pays assessed taxes that equal less than \$1,000 per megawatt per year, then they will pay those taxes plus an amount necessary to equal the equivalent of \$1,000 per megawatt.MW, in addition to public services fees. Although exempted from paying sale taxes on panels and equipment, the City of Los Angeles would pay approximately \$8 million to the County over the life of the project, as well as any indirect taxes generated by local workers.

Division Chief Craig Murphy responded to the assertions made about the Air Quality and Hydrology sections of the EIR. He stated that the Hydrology and Hydraulics Study (see EIR Appendix H) and EIR Section 4.8- Hydrology was reviewed by the Kern County Engineering, Surveying and Permit Services Department/Floodplain Management Section and the Floodplain Manager. The language incorporated in Mitigation Measure MM 4.8-2 was requested to include preparation of a drainage plan that is designed to minimize runoff and surface water pollution and includes their recommendations to minimize the potential for impeding or redirecting 100-year flood flows, thereby minimizing the potential impacts from flooding. In addition, an Air Quality study prepared for the project and EIR Section 4.3- Air Quality was reviewed by technical experts

as well as the Eastern Kern Air Pollution Control District (EKAPCD). The air quality study analyzed both construction and operations emissions generated by the project; those emissions are expected to exceed established thresholds during temporary construction activities. EKAPCD did not raise any concerns regarding the inadequacy of the study, the assumptions used in the analysis, or the proposed mitigation measures.

Mr. Randy Howard, Director of Power Systems Planning and Development at Los Angeles Department of Water and Power (LADWP), reiterated that their Board had approved the purchase of the solar project, pending final details and the approval of the conditional use permit. He stated that LADWP operated several other nearby renewable energy projects in the County, including the PineTree Wind project, various transmission lines and aqueducts, and had a local headquarters in Mojave and staff already in the County, indicating the City's commitment to working with the County. LADPW was comfortable with the MOU and the recommended mitigation measures and conditions of approval placed upon the project.

No other members of the public addressed the Commission, and the public hearing was closed by Chairman Martin.

Commissioner Bellomini discussed the project and noted that it was well-sited on disturbed former agricultural land that had not been farmed for a number of years. The land provides little economic revenue from agricultural production or manufacturing. Commissioner Bellomini also noted that the project is not near heavily urbanized or populated areas.

Commissioner Edwards reiterated the position that this was a well sited project. He was impressed that the project would comply with the proposed mitigation measures to protect biological and other resources while still meeting their business goals. Mr Edwards stated he was satisfied that workers and the public would be adequately protected.

Chairman Martin agreed that this proposal was the highest and best use of this land. He agreed with Staff that he can make the appropriate findings and overrides for significant and unavoidable impacts of the project.

Commissioner Bellomini made a motion to recommend approval of the project, which was seconded by Commissioner Edwards. A vote count was called, and the project was unanimously approved by the three presiding Commissioners.

Appeal

The Planning Commission approved the project on September 27, 2012, by a vote of three to zero. On October 9, 2012, an appeal was filed by Gideon Kracov on behalf of the Laborers International Union of North American, Local #220 (LIUNA). Mr. Kracov stated that the reason for the appeal was due to violations of CEQA and the Kern County General Plan. Attached to the appeal form is a letter from Mr. Kracov dated August 23, 2012, which includes the original letters by Dr. Michael Kavanaugh and Matt Hagemann, P.G., C.Hg (Exhibits 1 and 2, respectively). Staff notes that this material is identical to what was submitted to Staff and responded to in Chapter 7 - Response to Comments (see above for a summary of those remarks). In addition to the appeal material, the supplemental letters from Dr. Kavanaugh and Mr. Hagemann (with co-author Uma Bhandaram) that were submitted at the Planning Commission, along with a copy of the appeal form, are included for your Board's review.

Staff responded in detail to the original August 23, 2012, letter in the FEIR and Planning Commission staff report, of which your Board has received copies. However, Staff has now

included a more in-depth analysis and response to the original comments, as well as supplementary information, and additional substantiation by expert testimony prepared by Dr. Mark Berkman of the Brattle Group regarding socioeconomic issues, and Dr. Steven Heisler, QEP, regarding air quality issues is presented below. These documents are also included as Attachment 1 and 2, respectively, for your Board's consideration.

Mr. Kracov reiterated a number of concerns that generally fall into several themes, including the proposed project's (a) fatal inconsistency with the Kern County General Plan and its Elements; (b) inadequate analysis of appropriate alternatives; (c) the lack of an analysis and mitigation regarding socioeconomic issues; (d) inadequate analysis and mitigation regarding the project's potential impacts to agriculture, biological resources, air quality, hydrology and water quality, and hazardous materials. The commenter reasserted that the document was not adequate and therefore, should be revised and recirculated. Additionally the DEIR should be revised because it fails to analyze inconsistencies, identify appropriate mitigations, or set the foundation for a finding of overriding considerations.

The new Kavanaugh letter again raises several environmental concerns that should be analyzed in the EIR, including physical and structural deterioration and future abandonment of the project site, as well as the possible displacement of workers, lack of adequate financial assurances, and the efficiency of the proposed Beacon photovoltaic project based on megawatts versus acres. The new Hagemann letter reiterated that the FEIR inadequately addressed the previous comments and failed to disclose and evaluate issues associated with air quality, hydrology, hazards and hazardous materials. Mr. Hagemann restated that the County should disclose and mitigate these issues in a recirculated FEIR.

The observations of the three commenters are specifically addressed below.

Consistency with the General Plan: The commenter asserts that the project is fatally inconsistent with the County's General Plan, violating CEQA and land use law. The commenter goes on to state that the County must treat its analysis of conflicts with the General Plan seriously and land use decisions must be consistent with the plan, as noted in CEQA Guidelines. In response, Staff notes that the Draft EIR assessed the project's consistency with the Kern County General Plan, the Kern County Zoning Ordinance, the Airport Land Use Compatibility Plan (ALUCP) and other appropriate regulations, which are thoroughly discussed in Section 4-9, *Land Use and Planning* and properly found the project to be consistent with these requirements. The General Plan is a set of long-term goals and policies that the County uses to guide development decisions. Development projects are required to be consistent with the goals and objectives of the General Plan. "An action, program or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." Governor's Office of Planning and Research, General Plan Guidelines, page 164; *see also Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 994. It is the County's responsibility to determine whether a proposed project is consistent with the General Plan. This is a legislative decision and within the discretion of the agency, unless it acts arbitrarily, capriciously or without evidentiary support. Furthermore, a project need not be in conformity with each and every General Plan policy. It must merely be "in harmony" with the General Plan. *Sequoyah Hills Homeowners Ass'n v. City of Oakland* (1993) 23 Cal.App.4th 704, 717-718. Your Board should note that there is no requirement under CEQA to assess a project's consistency with the zoning regulations, just "applicable plans," and thus the EIR provides information above and beyond the requirements of the statute. The commenter does not provide evidence to contradict the conclusions of the DEIR, and as such, the document has adequately addressed this issue under CEQA.

The commenter first contends that the DEIR fails to achieve “an overarching goal” of the section on Seismic Hazards, namely “to strive to prevent loss of life, reduce personal injuries, and property damage, minimize economic and social diseconomies resulting from natural disaster by directing development to areas that are not hazardous.” The DEIR in fact includes this overarching goal at page 4.9-4 of the EIR and indicates on page 4.9-15 that the project is “largely consistent with applicable land use plans.” No evidence has been submitted that siting the project in the proposed location would lead to loss of life, personal injuries, or property damage. The development contemplated by the project does not involve structures capable of occupancy. Moreover, the structures are engineered to withstand seismic and flooding hazards as discussed in more detail below.

The commenter also mentions Policy 1 and states that the project is not consistent with Policy 1 because it would be located in an area with potential seismic and flood hazards. Policy 1 states “Kern County will ensure that new development is not sited on land that is physically or environmentally constrained . . . to support such development unless appropriate studies establish that such development will not result in unmitigated significant impact.” Policy 1 is analyzed in Section 4.5, *Geology and Soils*, pages 4.5-8 and 4.5-9, and Section 4.8, *Hydrology and Water Quality*, pages 4.8-8 and 4.8-9, of the DEIR. As discussed in Section 4.5, *Geology and Soils*, the proposed on-site building would incorporate the 2010 California Building Code (CBC) earthquake design requirements. In addition, Mitigation Measure MM 4.5-1 requires that a geotechnical engineer design project facilities to withstand seismically induced groundshaking on the site. With incorporation of the mandatory CBC requirements and Mitigation Measure MM 4.5-1, significant impacts related to seismic hazards would not occur and the project would be consistent with Policy 1. Furthermore, no office or other human occupied structures would be constructed in the seismic hazard zone.

The discussion of site drainage patterns also shows that the project will be consistent with Policy 1. As discussed in Impacts 4.8-4 and 4.8-5 (page 4.8-10 of the DEIR), the proposed project would alter site drainage patterns as compared to existing conditions. Concrete pads, the operation and maintenance building, PV panel posts, etc., would introduce new impervious surfaces that could potentially increase the rate or amount of runoff. However, the total amount of new impervious surfaces for the site would be eight acres, which represents 0.4 percent of the total site. Site drainage and grading plans would be required to comply with specific guidelines related to flood control, erosion, and on-site drainage flow requirements. Proposed grading would elevate access roads and also act to detain flows from flooding off-site. Therefore, with implementation of MM 4.5-2, MM 4.7-1, MM 4.8-1 and MM 4.8-2, the alterations to the existing drainage patterns and impacts to runoff and flooding at the project site would be less than significant. In addition, the project has been designed to avoid the area designated as a shallow flood zone. Therefore, with compliance with all State and local regulations as well as the proposed mitigation measures, there would be no project impacts resulting from flooding, again showing consistency with Policy 1.

The commenter asserts that the DEIR includes an inadequate discussion of Policy 2 because it does not include an explanation of the ordinances and programs that would be implemented to mitigate potential hazards. Policy 2 states: “In order to minimize risk to Kern County residents and their property, new development will not be permitted in hazard areas in the absence of implementing ordinances and programs. These ordinances will establish conditions, criteria, and standards for the approval of development in hazard areas.” In particular, the commenter says that the EIR does not contain the conditions, criteria, and standards that would allow development to take place in the proposed location. Staff is of the opinion that the commenter is wrong. The conditions, criteria, and standards adopted by the County to assure that projects will not be inappropriately sited in hazardous areas include but are not limited to: Kern County CEQA

Implementing Ordinance, Kern County Zoning Code section setting forth the standards and criteria for issuance of a conditional use permit (including the appropriateness of the location for the proposed development), the Kern County Development Standards, which establish specific guidelines as to flood control, as well as requiring adherence to the Kern County Code of Building Regulations. Additional development standards and building requirements that address seismic and flood hazards are discussed in the DEIR, as are project-specific mitigation measures. The commenter alleges that the DEIR does not include mitigation measures to reduce impacts to flood hazards, as required by Policy 10. This is also not correct. Policy 10 states: “The County will allow lands which are within flood hazard areas, other than primary floodplains, to be developed in accordance with the General Plan and Floodplain Management Ordinance, if mitigation measures are incorporated so as to ensure that the proposed development will not be hazardous within the requirements of the Safety Element (Chapter 4) of this General Plan.” EIR Section 4.8, *Hydrology and Water Quality*, extensively discusses potential impacts related to flood hazards and provides specific, appropriate mitigation measures that reduce impacts related to flooding to a less than significant level, including a requirement to submit a Stormwater Pollution Prevention Plan (SWPPP) (Mitigation Measure MM-4.8-1) and a drainage plan (MM 4.8-2), which would minimize potential surface water pollution of waters that could ultimately enter the groundwater basin.

The commenter contends that the project would result in the loss of valuable agricultural land and, therefore, conflicts with Section 1.9, Resource, of the General Plan. Section 1.9 states “conflicts over the use of agricultural land frequently occur. As is the case for other urbanizing regions, the loss of valuable agricultural lands to urban development is a prime concern.” Policy 2 calls for the County to “protect areas of important . . . agricultural resource potential for future use.” As recognized by the General Plan, conversion of agricultural land to other uses “frequently occurs.” The use of some agricultural land for non-agricultural use is thus anticipated by the General Plan. If these policies were evidence of a fatal General Plan inconsistency for all developments sited or to be sited on land zoned for agricultural, hundreds of existing and future development projects in Kern County would be subject to the same alleged fatal inconsistency. The County does not interpret these policies as a prohibition on the development of urban or industrial projects on agricultural land nor would it be reasonable to do so. Rather, the County may balance these policies against policies in the Land Use and Conservation Element and Energy Element encouraging and promoting the development of renewable energy projects. For example, Policy 6 in Section 1.9, Resource, which contains the policies discouraging premature conversion of agricultural land, states that it is the policy of the County to “encourage alternative sources of energy, such as solar and wind energy, while protecting the environment.” Policy 6 clearly allows the County to balance the goal of promoting solar energy against the goal of protecting agricultural land and to balance these policies in favor of solar energy on a case by case basis. Given the need for sufficient land area for utility scale solar projects, the most frequent place such projects are proposed for development is away from existing urban centers on land designated for agriculture. The County prefers that solar and other such projects are sited on less valuable agricultural land than prime agricultural land. The proposed project site is designated as grazing land, the least valuable of all types of lands designated for agricultural. Moreover, the site has not been used for any type of agricultural use for approximately 30 years.

The commenter points out that solar generating facilities are not explicitly listed as permitted land uses in the descriptions of “Intensive Agricultural” and “Resource Management” land use designations (Section 1.9 of the General Plan). However, the commenter fails to note that the uses cited in the General Plan for lands designated Intensive Agriculture and Resource Management “include, *but are not limited to*” the expressly enumerated uses (emphasis added). As such, solar energy facilities are not inconsistent with the uses allowed by the General Plan even if not expressly enumerated. Moreover, “public utility uses” are an expressly enumerated

use that may be reasonably interpreted to include solar energy developments that are connected to the public utility transmission system. That is the case here. Given that the site was previously used as farmland, but has been out of agricultural use for approximately 30 years, and the fact that the EIR does not identify any significant public health and safety hazards that cannot be mitigated to less than significant levels, development of a solar facility at this site would be consistent with the adopted General Plan.

The commenter states that the project is inconsistent with Policy 3 because solar is not compatible with agricultural land uses. Policy 3 states, “The County will support programs and policies that provide tax and economic incentives to ensure the long-term retention of agriculture, timber, and other resource lands.” Policy 3 encourages support for programs such as the Williamson Act, which provide tax and economic incentives to maintain land in agricultural production. The project is consistent with this policy because the land in question is not subject to a Williamson Act contract and does not preclude the County from supporting tax and economic incentives to ensure the long-term retention of agriculture, timber, and other resource lands. Note that the County does not consider cancellation of Williamson Act contracts to necessarily conflict with this policy either, but no cancellation is proposed here in any event. Policy 16 of Section 1.9, states that “The County will encourage development of alternative energy sources by tailoring its Zoning and Subdivision Ordinances and building standards to reflect Alternative Energy Guidelines published by the California State Energy Commission.” As previously discussed, while the site contains fallow agricultural land, it has not been actively farmed since the 1980s, is not recognized as important farmland by the California Department of Conservation Farmland Mapping and Monitoring Program, and is not subject to a Williamson Act contract. However, approved solar projects play a significant role in meeting your Board’s adopted goal to promote the development of 10,000 MW of renewable energy within the County by year 2015. Approved solar projects would create over 8,000 construction jobs, 1,500 operational jobs, and up to \$25 billion of investment in the County, and as such, are consistent with the policies laid out in the General Plan.

Socioeconomic issues: The comments have been subdivided into four aspects.

Urban Decay:

The commenter states his interpretation of CEQA, the CEQA Guidelines, and CEQA case law pertaining to the identification and mitigation of potentially significant environmental impacts, and cites several CEQA cases for the proposition that an EIR must analyze a project’s potential to cause urban decay on both a cumulative and project level. However, it is Staff’s determination that the CEQA Guidelines and case law do not require an urban decay analysis under these conditions. The commenter does not offer any facts or evidence that suggest that the project may result in urban decay impacts on either a project or cumulative level – just speculation and unsupported arguments. Staff is unaware of any facts or evidence in which a court has held that urban decay analysis is applicable to a nonretail project, and specifically not to a commercial photovoltaic solar project proposed in a rural area.

Furthermore, there is no substantial evidence presented in the FEIR or by comment that the Beacon Photovoltaic Project would cause urban decay. 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 may also be reached.” 14. Cal. Code Regs. Section 15 384(a); Laurel Heights Improvement Association versus Regents of University of California (1988) 47 Cal. 3d 376, 393, 409. Substantial evidence includes facts, reasonable assumptions predicated on facts, and expert opinion supported by facts. Pub. Res. Code Section 21080(e)(1); Section 21082.2(c). Substantial evidence does not include

argument, speculation, or unsubstantiated opinion. Section 21080(e)(2); Section 21082.2(c). The substantiality of evidence must be made “in light of the whole record.” Section 21080.2(a).

The commenter does not present facts, reasonable assumptions predicated on facts or expert opinion supported by facts that the project would cause urban decay on a project or cumulative level. Instead, the commenter relies on an expert opinion that itself is based on argument, speculation, and unsubstantiated opinion based only on tenuous connections posing as causality. Neither commenter nor its expert cite, and Staff is unaware of any, studies or other evidence showing that a solar project or group of solar projects have the potential to cause urban decay in either urban areas or rural areas. The commenter does not identify what types of structures or what areas of the County may be subject to urban decay as a result of solar projects. Instead, the commenter suggests that all types of structures in all areas of the County are subject to urban decay as a result of PV solar projects. This sweeping, County-wide, doomsday prediction of urban decay is in stark contrast to the specific, retail-based urban decay in downtown areas recognized by certain California courts to be a potential physical impact of approving retail supercenters on the edge of cities and towns. In that case, the argument is that large scale retail malls and general merchandise and grocery retailers such as Walmart and Target will take customers from smaller specialty stores such as hardware, clothing, and corner markets. The loss of these customers would then result in such businesses failing and the storefronts being left empty. Such empty storefronts can be then abandoned and left to “decay” with lack of maintenance and graffiti removal leading to “urban blight.” Furthermore, the project site is vacant, previously disturbed land, and the construction of the project will not displace any existing businesses, residences, or workers. Thus, the central concern of the urban decay line of cases – that existing business would be displaced – is not present. Instead of displacing existing business, the evidence supports the conclusion that the project will create new jobs that do not exist today, both during construction and project operation.

While the commenter speculates that the conversion of agricultural land will lead to urban decay, the commenter provides no substantial evidence to support this assertion. The commenter’s argument that the project may cause urban decay appears to be founded on the theory of “disinvestment.” and centered on the following causal chain: converting land to a solar PV use has the potential to put downward pressure on local employment and wages, which could result in a reduction in spending and draw downs in savings, which could result in reduced building maintenance and increases in mortgage delinquencies (no indication is given where these events might occur), which could lead to deterioration of residential and commercial properties (no indication is provided that this deterioration would result in “blight”), which could ultimately result in adverse physical changes to the environment. Further, CEQA is site specific and this project site has not been farmed in at least 28 years when it was used for growing alfalfa and the spreading of out-of-county sewage sludge. There is no evidence submitted by the commenter or known to Staff that ties the lack of agricultural use of this property to reduced property values and mortgage defaults in the Cantil rural community, Mojave, or California City.

The commenter does not provide any evidence or facts to support this chain of tenuous assumptions; the claim is unsupported and has no basis in fact. Assuming that the project causes “economic change,” and assuming that this economic change is negative (which there is no evidence to support because the project would be creating jobs that didn’t exist before and not displacing any jobs), economic change alone is not sufficient to show that urban decay will follow. The commenter must show why economic change would cause people to abandon structures with facts and reasonable assumptions supported by facts. The commenter has provided none.

The commenter does not provide any evidence that the project or other solar projects in Kern County would generally drive down earnings. A letter dated October 16, 2012, from Dr. Mark Berkman of the Brattle Group further refutes the commenter's assertions (see Attachment 1). Dr. Berkman notes that because the project would not be constructed on land that is used for agricultural uses, there would be no displacement of agricultural uses. Furthermore, there is no evidence that approval of PV solar projects throughout Kern County is putting farming operations out of business or that farm workers are being laid off as a result. The commenter also presents no evidence to connect his theorized downward pressure on earnings with deterioration of residential and commercial facilities. Dr. Berkman explains that for there to be such a link, the commenter would need to show that the downward pressure on wages was significant enough to cause workers to neglect their homes and business as opposed to cutting back on other expenditures. The commenter has not provided any evidence showing such a link.

Certain categories of agricultural workers are commonly known to be some of the lowest paid of all workers, and the project and other solar projects in Kern County may increase the average earnings of workers in Kern County by creating new and better paying jobs. The commenters provide no statistics or facts on this point. Furthermore, the commenter has provided no evidence that approval of PV solar projects throughout the County is putting farming operations out of business or that farm workers are being laid off as a result.

The commenter also does not explain why the "disinvestment" theory is applicable to the project in the first instance or any other PV solar projects that are proposed or have been approved in Kern County. While the commenter notes that "disinvestment" has been observed in urban areas during the decline and depopulation of Rust Belt cities, without citing any supporting evidence, the commenter provides no explanation of why the theory should be applied in Kern County in the context of the development of the renewable energy projects. The decline and depopulation of the Rust Belt presumably occurred because of abandonment of the area by the manufacturing industry and corresponding loss of jobs, not because the rise of new industry that created jobs where none formerly existed. As Dr. Berkman notes, even in the Rust Belt cities, land that becomes unattractive for one use often becomes attractive for a different use resulting in improvements, not deterioration. Dr. Berkman concludes that re-use of the project site after 30 years of no productive use is significantly more likely to lead to economic improvement rather than economic deterioration, and has the added benefit of generating revenue for the County.

In short, the commenter's urban decay arguments are unsubstantiated, purely speculative, and are not supported by any facts or substantial evidence. CEQA does not require the County to engage in speculation or to analyze impacts that are unlikely to occur. The potential for project specific or cumulative urban decay impact is too remote to require analysis in the EIR for this proposed project.

Finally, to the extent there is existing "urban decay" in the rural or urban areas of Kern County, the urban decay may be the result of the national economic downturn and recession, which has greatly decreased property values and hastened the decline of the job market in the region. The development of the project, along with solar projects, is likely to contribute to the reversal of that trend by providing new jobs and new skill sets to a new industry, both during construction and project operation.

Project Inefficiency Based on Acres to MW Ratio

The commenter states that the proposed project is not an efficient use of the land since it would have a high acre to megawatt (MW) ratio compared to other proposed solar projects in Kern County. As an initial matter, the relative "efficiency" of the project's use of land is not a separate

issue requiring analysis under CEQA and is instead a policy matter for the County to take into consideration in deciding whether to approve, conditionally approve, or disapprove the project. Even if the commenter is correct that project is “less efficient” in its use of land than other solar projects, the commenter fails to provide facts, reasonable assumptions supported by facts, or expert opinion supported by facts that project the project’s land use “efficiency” would lead to or contribute to structural deterioration or abandonment in the County.

Furthermore, Dr. Berkman points out the additional land that the project would use relative to the land use efficiency of other solar projects is approximately 443 acres, which would represent a trivial loss in agriculture employment even if that acreage were placed back into agricultural production instead of developed with the project – approximately two jobs. Yet, the commenter has offered no evidence that the project site would be used for agricultural purposes again during the life of the solar project. Furthermore, Dr. Berkman concludes that the megawatt to acre (MW/acre) comparison is seriously flawed in measuring project performance in any event because the fact that the project may have a MW/acre ratio that is higher compared to other projects reveals nothing about the project’s economic efficiency.

Low Workers per Acre

The commenter maintains that the project would adversely affect employment in the area due to the low workers per acre associated with a solar project compared to the number of workers per acre associated with other land uses. The commenter does not provide any statistic, facts, or figures from any sources indicating what the average “worker per acre” is for either agricultural uses of land or for PV solar uses of land in Kern County or anywhere else in the world. Based on changes in technology, agriculture employs far fewer workers per acre than it has historically employed, therefore, it is not clear that a PV solar use of the land would employ fewer employees than an agricultural use of the land. For example, as discussed by Dr. Berkman, because of technological advances, agricultural uses of land do not generate many direct local jobs, and almonds, the most common crop in Kern County, generate only 0.00477 jobs per acre because of technological advances.

Nevertheless, assuming that as a general matter, PV solar projects employ fewer workers than agricultural projects, in the case of the project, the project site is currently vacant and has not been used for agricultural purposes since the mid-1980s. The project site and a large area of land surrounding the project site, currently employs zero (0) workers per acre. Consequently, the construction and operation of a solar power plant on this property would cause an increase in the workers per acre and could potentially induce other businesses to develop in the area, further increasing the worker population. Furthermore, the commenter does not distinguish or discuss the quality of jobs associated with agriculture uses of the land and PV solar uses of the land. Even if PV solar projects as a general matter result in fewer jobs per acre than agricultural uses, PV solar projects may provide “better” jobs in the sense of providing better pay and benefits. Furthermore, many agricultural jobs are seasonal in nature (e.g., workers are hired at harvest time) and are filled by migrant workers.

Abandonment of Solar Projects and Decommissioning

The commenter alleges that the DEIR fails to adequately analyze and mitigate for risks of widespread abandonment of solar projects. The commenter offers no evidence that solar facilities as opposed to any other development project are more likely to be abandoned if they failed or become obsolete. Because solar facilities are composed of materials with salvage value (e.g., Tellerium and Indium), and are the subject of a Power Purchase Agreement with a public or investor owned utility providing electricity for all of California, it is less likely that the facilities

would be simply abandoned if the project failed or became obsolete and it is more likely that the project would be obtained by the utility, bought by another investor, or be decommissioned and removed for the purpose of realizing the salvage value of the equipment.

The commenter notes that decommission plan and financial assurance mitigation measure (MM 4.9-1), only apply to the project and not to other solar projects in Kern County. This is incorrect. Mitigation measures related to the decommissioning of utility-sized solar facilities are incorporated as a requirement of all proposed solar projects in Kern County, not just this project, in order to establish safeguards to ensure the maintenance of the health, safety, and welfare of the citizens of the County. (see, e.g., Antelope Valley Solar, Catalina Renewable Energy, RE Distributed Solar, FRV Valley Solar, Lost Hills Solar, Maricopa Sun Solar Complex, RE Old River One and RE Old River Two Solar, the Valley Solar Project, and the Rosamond Solar Project). The County has determined that with implementation of the proposed mitigation, cumulative land use impacts related to abandonment would be considered less than significant, both for this project and other solar projects in Kern County.

The commenter states that the County appears to have no ability to require compliance with the mitigation measure once the building permits are issued; however, this statement is incorrect. The project would be authorized to operate pursuant to a conditional use permit. As with any project operating with approval of a conditional use permit, the project operator is obligated to comply with all mitigation measures and conditions of approval as approved by the decision-making body (i.e., the Planning Commission and/or the Board of Supervisors). Pursuant to Kern County Zoning Ordinance *Article V. Discretionary Permit Decisions by the Board of Supervisors*, Chapter 19.102.020, any permit, conditional use permit, variance, or zone modification issued pursuant to this chapter may be modified or revoked by the official or decision-making body that originally approved the permit by the same procedure under which the permit was issued for any of the following causes:

- A. That any term or condition of the permit, conditional use permit, variance, or zone modification has not been complied with.
- B. That the property or portion thereof subject to the permit, conditional use permit, variance, or zone modification is used or maintained in violation of any statute, ordinance, law, or regulation.
- C. That the use for which the permit, conditional use permit, variance, or zone modification was granted has been so exercised as to be detrimental to the public health or safety or as to constitute a nuisance.
- D. That changes in technology or in the type or amount of development in the vicinity of the use or other good cause warrants modification of the conditions of operation or imposition of additional conditions of operation to assure that the use remains compatible with existing and potential uses of other property within the general area in which the use is located.

Thus, in the event that the solar operator or a successor owner of the solar project is not complying with the terms of the project approvals, including any requirements regarding decommissioning or financial assurances, then the County has the authority to revoke the condition use permit. Such an action would put the utility as well on notice that the power being received from the facility under contract was in jeopardy and provide an additional point of leverage for compliance.

The commenter provides his opinions regarding what constitute an adequate financial assurance in connection with Mitigation Measure MM 4.9-1. The commenter states that a financial assurance must be able to withstand bankruptcy and attach to all future owners of the site.

Because the mitigation measure would be a condition attached to the approval of the conditional use permit for the project, the financial assurance requirement would be binding on successor owners of the project.

MM 4.9-1 also addresses the commenter's bankruptcy concerns. Contrary to the argument made by the commenter, the bankruptcy of the solar operator or any successor owner of the project would not cause the financial assurance required by MM 4.9-1 to become meaningless. As the commenter notes, the bankruptcy of the solar operator would have no effect on a letter of credit that a financial institution issues for the benefit of the County to meet the financial assurance requirement. While the commenter suggests that a surety bond for the benefit of the County could be subject to the claims of creditors in the event of a bankruptcy proceeding, the commenter cites no law or facts in support of this claim. The very purpose of requiring a letter of credit, surety bond, or other acceptable form of financial assurance is to protect the County in the event that solar operator fails to perform its decommissioning obligation, which is most likely to result from the bankruptcy of the solar operator.

The commenter questions the efficacy of Mitigation Measure MM 4.9-1 because of a perceived "mismatch" between the time for appeal a compulsory decommissioning after a project has been deemed abandoned and the length of time that a financial assurance would be in force. The financial assurance would remain in force through the full decommissioning of the project. Therefore, there is no mismatch. Even if the County extended the period for decommissioning from 24 months to 48 months, the maximum amount allowed by the mitigation measure, the financial assurance would remain in force because the financial assurance would not terminate or expire until the full decommissioning of the project. As previously noted, if the solar operator went bankrupt during this period it would not affect the County's ability to call upon the financial assurance if required. For example, in the case of a letter of credit, if the financial institution notified the County that it would not be renewing the letter of credit because the solar operator was in bankruptcy or had otherwise ceased to operate, the County would call upon financial assurance, receive the funds, and hold the funds until they are needed and expended for decommissioning.

Furthermore, the use of financial assurance mitigation is a policy decision, not a requirement of CEQA, per se. Your Board has determined that such financial assurance options are appropriate and adequate, and they are routinely used for other projects such as mining operations and wind projects by Kern County. The commenter states that the surety bond may be impractical, and that surety bonds have proved to be not effective to assure coal mine reclamation. However, the commenter does not provide any facts, studies, or other evidence in support of these claims, including any facts regarding why a surety bond would be "impracticable" in the solar context. Furthermore, the abandonment concerns raised by solar projects are different from the abandonment concerns raised by mining projects. With mining projects, the land has been disturbed and all valuable mineral resources removed, and the mining operator has no financial incentive to reclaim the land. With solar projects, the solar facilities have salvage value as analyzed by Dr. Berkman and, therefore, the solar operator has a financial incentive to decommission the facilities after operation. Thus, even though the County requires a decommissioning plan and financial assurances, the evidence supports the conclusion that the risk of abandonment of solar facilities is low. In addition, as Dr. Berkman explains, the decommissioning of a solar facility is unlike the decommissioning of a nuclear site or industrial site, and because PV plants do not contain large amounts of toxic substances, there is no reason to expect that the County would be responsible for the clean-up of a highly contaminated site in the event that the solar operator failed to perform its decommissioning obligations.

The commenter has not provided substantial evidence that Mitigation Measure MM 4.9-1 is inadequate or would otherwise fail to reduce cumulative impacts associated with abandonment to a less than significant impact.

Response To Supplemental Comment Letter from Michael Kavanaugh

The commenter responds that his original letter regarding the project's impacts of physical deterioration of structures are not based on speculation, and instead on "theory" and "historical events," however, the commenter again does not explain why his "disinvestment" theory is applicable to solar PV projects and does not provide evidence that a solar PV project or any other type of energy project could cause urban decay impacts. The commenter notes that the Beacon Photovoltaic Solar Project Cultural Resources states that there are several abandoned structures in the area near the site access point. The commenter cites this as evidence of the area's vulnerability to vacancy, structural deterioration, and abandonment. It is not clear why a few abandoned structures in the vicinity of the project site prove that the area is generally vulnerable to abandonment without any regard to social or economic factors nevertheless, the project proponent removed these abandoned structures prior to the EIR process, and thus already improved the value of the property. Furthermore, as discussed by Dr. Berkman, it is not surprising to find abandoned buildings in an area that has long fallen into disuse such as the project site, which has not been used productively for almost 30 years. Dr. Berkman explains that this is not evidence that the area is susceptible to further deterioration (especially if the land is put back to use as would be the case with the project) or that the proposed project will cause such deterioration. The commenter appears to believe that CEQA establishes a rebuttal presumption that all development projects of any nature require an analysis of urban decay. This is not the law. To require an analysis of urban decay, there must be actual evidence that the approval of the use will lead to physical deterioration of structures, not pure conjecture.

The commenter also states that the project needs no workers. This comment is incorrect. The project will require hundreds of workers during the construction phase and will employ several permanent workers during the operations phase. These will be jobs that did not exist in Kern County before the project was developed. The commenter does not explain how the creation of new jobs that did not exist before and which do not displace existing jobs will lead to a continuing or increased threat of "structural deterioration" or "abandonment."

The commenter also revisits his previous argument that the project is less "efficient" when compared to other solar PV projects in terms of land use and, therefore, the project is more likely to lead to structural deterioration. As previously noted, the land "efficiency" of the project relative to other projects is not a potential environmental impact requiring analysis under CEQA. Furthermore, the commenter does not provide any facts, evidence, or studies suggesting a less efficient project would be more likely to lead to structural deterioration or abandonment. The commenter concludes that "Inefficient land use may lead to other problems." The commenter does not identify which other problems, or how likely they are, or how the project would lead to them. CEQA does not require Lead Agencies to engage in this type of far-reaching game of speculation, particularly one played without reference to facts or reason.

The commenter also restates its previous argument that the financial assurances described in Mitigation Measure MM. 4.9-1 are inadequate. As discussed above, the financial assurances required by Mitigation Measure MM. 4.9-1 are adequate and will protect the County if the project is abandoned. As previously noted, the decommissioning plan and financial assurance requirements are both mitigation measures and conditions of approval attached to the conditional use permit and, therefore, run with the land and will be binding on successor owners of the project. The commenter suggests that the financial assurance make all parties jointly liable but

fails to indicate which parties should be involved or why having a single responsible party is inadequate. In the case of a letter of credit or surety bond, the County would be able to call on the instrument whenever the solar operator has failed to comply with its decommissioning obligations, regardless of how many parties are liable. The commenter also says that the financial assurance should be assured by an entity at arm's length from the site owner. A letter of credit would be issued by a financial institution, and a surety bond would be issued by a surety company, therefore, the entity providing the financial assurance would be at arm's length. The mitigation measure does not permit the owner or its affiliates to provide the financial assurance. The commenter states that the financial assurance must also be able to withstand bankruptcy. As previously noted, the bankruptcy of the solar operator or a successor owner would not impact the County's ability to call on the financial assurance. The commenter states that the financial assurance should clearly state what signals the start of restoration. MM 4.9-1 provides that the solar project will be deemed abandoned after 24 consecutive months, and must be removed with 60 days of written notice to the owner and operator. The trigger for calling the financial assurance is tied to the time when the project has ceased to be operational. The commenter also states that the financial assurance should be payable to an entity capable of managing the restoration. The commenter provides no evidence on why this should be a requirement. In any event, the County would be the beneficiary of the financial assurance and would use any funds called upon to either remove the solar facilities itself or hire an independent contractor to remove the facilities. Finally, the commenter states that the financial assurance should provide in cash the purchasing power needed to restore the site. The mitigation measure requires that as part of the development of the decommissioning plan, an estimate be prepared for the cost of decommissioning the project, which would serve as the basis for the value of the financial assurance. Furthermore, the mitigation measure requires that the financial assurance be reviewed annually by the County to confirm that adequate funds are available. Through these provisions, the mitigation measure ensures that adequate funds will be available at the time of decommissioning. In sum, even by the commenter's own standards, the financial assurances required by Mitigation Measure MM. 4.9-1 are adequate, and the commenter's assertion that the project would not provide cash to future generation for decommission is unsupported by evidence.

Finally, the commenter restates its opinion that the project is permanent in nature and states that the EIR is vague about the timing of restoration. See previous response on this topic.

The commenter contends that the EIR fails to adequately address impacts to golden eagles and wildlife movement corridors; improperly defers mitigation for permanent impacts to western burrowing owls; improperly defers mitigation for impacts to desert tortoise, western burrowing owl, and Mohave ground squirrel; fails to adequately mitigate cumulative impacts to biological resources; and fails to provide monitoring of avian collision fatalities. These comments are addressed below.

The DEIR Fully Analyzes Potential Project Impacts to Golden Eagles

The commenter alleges that the EIR fails to adequately assess impacts to golden eagles because its conclusions regarding the potential for the project site to provide foraging habitat for nesting golden eagles are unsupported. The commenter also alleges that the concept of transient use of the project site by golden eagles should be rejected. As noted in the EIR, Section 4.3 *Biological Resources*, the analyses were based on a number of scientific studies prepared by qualified biologists specifically for this project. The EIR's conclusions regarding potential project impacts to golden eagles are fully supported in the analysis provided in Section 4.3 *Biological Resources*, page 4.3-17; the Biological Technical Report (BTR) (EIR Appendix D) cited therein; and the surveys conducted for golden eagles in the project vicinity in 2011 and 2012.

The 2012 Survey Report notes that terrestrial wildlife movement is impaired across the project site because (1) the site is fenced, deterring potential wildlife movement across the site; (2) Pine Tree Creek wash, which is located west of the site, is unvegetated and rarely holds water, thereby reducing its value as a movement corridor because it provides no cover; and (3) State Route 14 is located west of the site, forming another wildlife movement barrier. (See, 2012 Survey Report at page 4 [Attachment 3 of the FEIR]. These factors further reduce the likelihood that any substantial golden eagle prey base exists on the project site. While the EIR acknowledges that raptors, including golden eagles, may conduct some foraging on the project site, there is no evidence that if converted to a solar facility, impacts on golden eagles would be significant due to the fact that golden eagles have not been seen foraging on site, currently are not using the project site for foraging, and the golden eagle foraging habitat on the project site is of low quality. As described in the EIR, if any golden eagles were to forage on the site, that foraging would be only on a transient, or limited basis because of the low quality foraging habitat on the site. The concept of transient use reflects the fact that any golden eagles passing through may conduct some limited foraging on the site, but that golden eagles likely would not use the site for foraging on any level sufficient to establish long-term use because of the site location and low quality habitat on the site. There is substantial evidence in the record to support this conclusion. *California Native Plant Society v. City of Rancho Cordova*, 172 Cal. App. 4th at 626.

The DEIR Fully Analyzes Potential Project Impacts to Terrestrial Wildlife Movement Corridors

The commenter contends that the EIR's conclusion that the project will not impact terrestrial wildlife movement corridors is faulty because the commenter disagrees with the factual evidence in the record upon which that conclusion relies, and the citation to the California Wilderness Coalition for the fact that the project site has not been identified as lying within a major terrestrial wildlife movement corridor. The burden is on the commenter to show that there is no substantial evidence in the record to support the County's conclusions, or that the evidence in the record could not reasonably support the findings. *California Native Plant Society v. City of Rancho Cordova*, 172 Cal. App. 4th at 626. Under CEQA, substantial evidence "means 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." CEQA Guideline 15384(a). The EIR and the BTR [Appendix D to the EIR] fully analyze the potential for wildlife to use corridors across the project site for wildlife movement and concludes that the project site does not have features that would be used as wildlife corridors (EIR Section 4.3 *Biological Resources*, pages 4.3-20 and 4.3-52 to 4.3-53; BTR, pages 47 to 48).

Finally, open space will remain to the east and south of the project site, thereby facilitating wildlife movement around the solar facility site, as noted in the DEIR, page 4.3-53. The California Wilderness Commission report cited in the EIR (*Missing Linkages*) was prepared in coordination with the Biological Resource Division of the U.S. Geological Survey, the California State Parks, and other similar institutions and organizations. The report includes maps that indicate the project site is not located within a major terrestrial wildlife movement corridor. This material provide substantial evidence to support the EIR's conclusion that the project will not impact wildlife movement corridors.

The DEIR Provides Appropriate Mitigation for Permanent Impacts to Western Burrowing Owls

The commenter contends that the EIR improperly defers mitigation for western burrowing owls by failing to identify suitable land parcels as potential compensation land. There is nothing in CEQA that requires identification of specific parcels of compensation land in an EIR. CEQA Guideline 15126.4(a)(1)(B) provides that "formulation of mitigation measures should not be

deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.” Cal. Code Regs., tit. 14, Section 15126.4. EIR Section 4.3, *Biological Resources* Mitigation Measure MM 4.3-16 states that "if burrowing owls are found on-site, compensatory mitigation for lost breeding and/or wintering habitat shall be implemented onsite or off-site in accordance with burrowing owl Staff Report guidance and consultation with California Department of Fish and Game." The Staff Report is published by CDFG and is readily available to the public. This mitigation measure further describes specific requirements the compensation lands must meet, in addition to compliance with the Staff Report, and requires development and implementation of a mitigation land management plan in accordance with Staff Report guidelines. Additional specific requirements for the land management plan also are included in MM 4.3-16. As the Court noted in *California Native Plant Society v. City of Rancho Cordova*, “when a public agency has evaluated the potentially significant impacts of a project and has identified measures that will mitigate those impacts, the agency does not have to commit to any particular mitigation measure in the EIR, as long as it commits to mitigating the significant impacts of the project. Moreover, . . . the details of exactly how mitigation will be achieved under the identified measures can be deferred pending completion of a future study.” (172 Cal. App. 4th at 621.) “If the agency has identified one or more mitigation measures and has committed to mitigating the impact those measures address, then the principles forbidding deferral of mitigation are not implicated.” (*Id.* at 623.) The EIR, therefore, fully complies with CEQA requirements for fully describing required mitigation for western burrowing owls, and does not improperly defer mitigation with respect to western burrowing owls.

The DEIR Provides Appropriate Mitigation for Impacts to Desert Tortoise, Western Burrowing Owl, and Mohave Ground Squirrel

The commenter also contends that the EIR improperly defers mitigation for desert tortoise, western burrowing owl, and Mohave ground squirrel in Mitigation Measure 4.3-17 by failing to require that a Habitat Mitigation and Monitoring Plan for these species be prepared that sets forth specific details related to the project’s compensatory mitigation prior to certification of the EIR. CEQA does not require a Lead Agency to specify at this time the details of exactly how mitigation will be achieved. *California Native Plant Society v. City of Rancho Cordova*, 172 Cal.App.4th 603 (2009). For example, as discussed above, CEQA does not require identification of specific parcels of compensation lands in the EIR. Rather, it requires only that the specific characteristics of that land, or performance standards, be included in proposed mitigation measures. MM 4.3-17(a) fully describes the performance standards that must be met for lands to be considered adequate compensation lands, and MM 4.3-17(b) includes four specific performance standards that must be met in the Habitat Mitigation and Monitoring Plan. The measure states that the lands must be similar or better quality than habitat lost and preferably located in the vicinity of the site; must be permanently preserved through a conservation easement; shall be managed to ensure continued existence of the species, and shall be funded for long-term management of the lands. Mitigation Measure MM 4.3-17(b). All of the compensation lands must be suitable habitat for the species for which they are providing compensation for impacts, and compliance must be verified by the Kern County Planning and Community Development Department. Mitigation Measure 4.3-17(a). As discussed above with respect to western burrowing owls and Mitigation Measure 4.3-16, there is no improper deferral of mitigation for desert tortoise, western burrowing owls or Mohave ground squirrels.

The DEIR Provides Adequate Mitigation for Cumulative Impacts to Biological Resources.

The commenter contends that the County must require that land area equal to the project area must be purchased and managed in perpetuity as habitat for special status species to compensate

for cumulative impacts to biological resources. As discussed above, where substantial evidence in the record supports a conclusion, the burden is on the person challenging that conclusion to demonstrate that the evidence could not reasonably support the conclusion. The DEIR includes adequate mitigation for cumulative impacts to biological resources. Those measures include MM 4.1-4, MM 4.3-1 through MM 4.3-23, MM 4.5-2, MM 4.7-1, MM 4.8-1, MM 4.8-2 and MM 4.8-3, and require the acquisition of 109.9 acres of compensation lands for impacts to biological resources (MM 4.3-17). There is nothing in CEQA that mandates that the Lead Agency require this project to mitigate those impacts in the manner proposed by the commenter. This is especially so where, as here, the impacts to sensitive species are small and the amount of habitat actually being used by those species is even smaller. CEQA requires that the project be adequately analyzed and that environmental and health impacts of the project are mitigated to the fullest extent feasible. The proposed mitigation measures satisfy CEQA and also satisfy the Kern County General Plan Policy 9 by providing mitigation for the cumulative impacts to biological resources.

There is no Evidence To Suggest That Monitoring of Avian Collision Fatalities Is Necessary

The commenter has failed to provide any scientific or biological basis for its assertion that avian collision fatalities with photovoltaic panels are likely to occur or are significant and, therefore, post-construction fatality monitoring should be required. The citations provided by the commenter are not relevant to a photovoltaic solar project, but instead address (1) potential impacts to avian species from solar mirrors mounted on towers that rise 86 meters in height (McCrary, et al. 1986); and (2) wind turbine projects (Smallwood (2007, 2009) and Smallwood and Karas (2009)). Staff is not aware of any information suggesting that photovoltaic panels designed in the manner proposed for this project pose a collision risk for avian species and notes that the California Department of Fish and Game did not raise this concern (see Response 4). Therefore, Staff does not believe that there is any justification based on available scientific evidence, for the commenter's assertion that post-construction monitoring is necessary to determine whether avian collisions are occurring.

Air Quality Issues

The commenter states that the DEIR and its supporting documents fail to provide any documentation to substantiate the 66 percent reduction in the project's PM₁₀ emissions during the construction phase. In addition, the commenter states that no rationale is provided in the DEIR on why estimates of NOx emissions from project construction are lower than other comparably sized solar projects, and that the DEIR fails to adequately analyze air quality impacts of the project, particularly PM₁₀ and NOx. The commenter also claims that the EIR does not include the methodology, modeling, or assumptions used to determine NOx emissions.

With respect to this project's construction NOx emissions, the methodology on how the emission calculations were performed is discussed on pages 4.2-26 and 4.2-27 of DEIR Section 4.2 *Air Quality*. In addition, a more detailed and thorough discussion of the methodology, including the disclosure of all assumptions used in the emissions calculations, along with the computer model inputs and outputs are included in Appendix C.2 of the EIR.

The commenter identifies no specific problem with the calculations to substantiate the basis for the claim that NOx air quality impacts are not adequately addressed in the EIR. There are a number of factors that may affect estimated air quality emissions of a proposed project. The commenter does not identify any specific evidence that there are errors in the calculation in the EIR or Appendix C.2.

However, Staff notes that as a substantiation of his assertions, the commenter compares this project with two other Kern County solar projects and three Imperial County solar projects. Your Board should be aware that Imperial County is east of San Diego and borders Mexico. It is not within the Mojave Desert Air Basin and, therefore, has different CEQA Thresholds, a different criteria pollutant attainment status, and does not use the *Guidelines for Preparing an Air Quality Assessment for Use in Environmental Impact Reports* adopted by your Board for Kern County. It should be noted that CEQA does not require acceptance or use of an air quality analysis prepared in a different jurisdiction. Furthermore, each project has differing parameters, including the amount of grading that must be completed (this project is proposing very little grading), the number of construction staff and the type of equipment to be used, as well as length of the construction schedule. A compressed construction timeframe would show increased amounts of emissions such as NO_x from heavy equipment and vehicles since there would be more construction workers and equipment on site at one time. When spread over 22 months, projects such as Beacon Photovoltaic would logically show reduced levels of emissions due to the smaller number of on-site staff and equipment. CEQA does not require a comparison between different projects; the studies utilized in an EIR are prepared specifically for that project, using the appropriate assumptions, protocols, and regulations as required by the Lead Agency and regulatory agencies. Staff utilizes air quality experts familiar with Kern County protocols and the Air Pollution Control Districts' requirements to review all air quality studies prepared for use in EIRs. Copies of the environmental documents are also distributed to the pertinent Air District for review and comment. As noted previously, the Eastern Kern Air Pollution Control District reviewed the EIR Section 4.3 Air Quality, and did not raise concerns regarding the air quality study, its assumptions, analysis, or the results presented in the EIR.

Staff notes that a detailed Air Quality and Greenhouse Gas Report was prepared by qualified air quality experts for this project (see Appendix C.2 of the EIR). In the follow-up memorandum to the Air Quality and Greenhouse Gas Report prepared for the project (see Appendix C.1 of the EIR), it is indicated that the 68 percent control efficiency is consistent with existing standards. Notably, even though the project's PM₁₀ emissions exceed the threshold by 26 percent during construction, compliance with Rule 402 would result in a 68 percent control efficiency.

Under CEQA, when projects are subject to specific performance criteria imposed by an environmental regulation, such as Rule 402, it is reasonable to expect that the environmental regulation will be followed. *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 910.

Furthermore, it should be noted that while compliance with EKAPCD Rule 402 alone would result in less-than-significant PM₁₀ emissions during construction, the project would nonetheless also implement Mitigation Measures MM 4.2-1 through MM 4.2-4, which are listed on pages 4.2-29 through 4.2-32 of the EIR, to further reduce the less-than-significant PM₁₀ emissions of the project during construction and operation. These mitigation measures would reduce the project's construction and operation PM₁₀ emissions beyond what is required under EKAPCD Rule 402 as well as Rule 419, which insures that PM₁₀ emissions are below the level required to protect people, including children and the elderly, from harm.

Response To Supplemental Comment Letter from Matt Hagemann

The commenter notes that Eastern Kern Air Pollution Control District's (EKAPCD) Rule 402 does not provide control efficiencies for the dust control measures required by Rule 402. The commenter then alleges that the control efficiencies in the Western Regional Air Partnership's (WRAP) Fugitive Dust Handbook do not substantiate the 68 percent control efficiency that was determined through implementation of fugitive dust mitigation measures and compliance with

EKAPCD's Rule 402. The commenter suggests that the mitigation measures to reduce fugitive dust should be modeled or calculated to show that the 68 percent control efficiency can be achieved.

Although the commenter is correct that control efficiencies for dust control measures are not provided by the EKAPCD, Dr. Heisler, an air quality expert, explains in his comment letter dated October 16, 2012 (see Attachment 2), that WRAP's control efficiencies, which are commonly used by air districts in California, such as the South Coast Air Quality Management District (SCAQMD), are substantial evidence of the types of efficiencies that can be expected for each required dust control measure. The efficiencies apply equally to dust control in EKAPCD as to dust control in basins regulated by other air districts. As Dr. Heisler notes, the air quality memorandum contained in Appendix C.1 of the EIR prepared for this project correctly states that the 68 percent control efficiency applied to this project is similar to the dust control efficiencies cited in other Kern County Planning and Community Development Department CEQA documents, e.g., Rosamond Solar Project Draft Environmental Impact Report (July 2010).

Additionally, Dr. Heisler cites to the tables of fugitive dust mitigation measures and their estimated control efficiencies compiled by SCAQMD, which is based primarily on the WRAP Fugitive Dust Handbook, to support his opinion that the application of a 68 percent control efficiency is appropriate. As shown in the SCAQMD tables, estimated dust control efficiencies from the measures required for dust control range from 57 percent to 90 percent. Therefore, the 68 percent control efficiency used in the air quality analysis for this project is reasonable. As noted by Dr. Heisler, even if the overall control efficiency were the lowest value shown in the table (57 percent), the maximum uncontrolled PM₁₀ emissions shown in Table 4.2-5 of the Draft EIR (18.91 tons per year) would be reduced to 8.13 tons per year, which is substantially lower than the EKAPCD CEQA significance threshold of 15 tons per year.

Regarding the health effects caused by particulate matter emissions, the commenter notes that his previously submitted comments included a discussion of those potential health effects that were not addressed. The commenter then lists several health effects that are known to be linked to particulate emissions and states that several residences are located within a half mile of the site and an elementary school is located three miles north of the site. The commenter requests that the Final EIR address potential health effects to sensitive receptors as a result of dust emissions during project construction and that a dust control plan pursuant to EKAPCD's Rule 402 be prepared and included in the EIR.

The information requested by the commenter regarding health effects from particulate matter emissions is already provided in the Draft EIR and in the Responses to Comments section of the Final EIR. Specifically, Section 4.2, *Air Quality*, of the EIR, and Response 7-M (above) of Chapter 7, *Responses to Comments*, in the Final EIR, explain that particulate matter emissions during construction and operation would not exceed the County's thresholds. Impacts to sensitive receptors are adequately discussed under Impact 4.2-4 in Section 4.2, *Air Quality*, of the Draft EIR, and Draft EIR's conclusion that the proposed project would have a less-than-significant impact related to exposure of sensitive receptors to substantial pollutant concentrations is supported by substantial evidence. See, e.g., Appendix C.1 and Appendix C.2 of the EIR.

In Dr. Heisler's opinion, the Beacon project may reduce fugitive dust in the region. A solar energy project must keep dust to a minimum through the use of dust control measures, as dust on PV panels reduces their efficiency for energy production. The mandatory dust control measures, along with water from the panel washing that runs off the panels and onto the ground and compaction of the driving surface over time, would reduce the amount of dust in the air compared to current conditions. For these reasons, it can be expected that implementation of the project

would result in an overall incremental decrease in particulate matter emissions and associated potential adverse health effects in the region.

The commenter correctly notes that the project falls into EKAPCD's category of a "Large Operation" and a dust control plan must be prepared for the project. This is already discussed in Section 4.2, *Air Quality*, of the Draft EIR. Contrary to the commenter's claim, it is not necessary for the dust control plan to be included in the Draft EIR or Final EIR. In fact, dust control plans are rarely included in EIRs because such plans are usually prepared after the land use permits are granted and the design of the project is finalized. This is also the case for other plans, such as Stormwater Pollution Control Plans. Further there is no need to include the preparation of a dust control plan as a mitigation measure because the project proponent already is required to prepare such as plan under Rule 402.

The County notes that Dr. Heisler concluded that the air quality analysis contained in the Draft EIR is technically sound and that the EIR's impact determinations are accurate.

Potential Issues with Solar Panels Composed of Cadmium Telluride (CdTe)

The commenter asserts that the proposed project would contribute to significant cumulative impacts to toxic chemicals related to cadmium telluride (CdTe). As stated on EIR Section 4.7, *Hazards and Hazardous Materials*, page 4.7-4, current CdTe PV modules pass federal leaching criteria for nonhazardous waste, which means they would not pose a risk for cadmium leaching if placed in a landfill. This test represents a much more intense environment and potential for leakage than would be experienced due to accidental on-site breakage. Additionally, as discussed in DEIR Section 4.7, *Hazards and Hazardous Materials*, page 4.7-17, it has been demonstrated that standard operation of CdTe PV systems does not result in cadmium emissions to air, water, or soil. CdTe releases are unlikely to occur during accidental breakage of the PV panels, such as breakage that may occur during flooding or earthquakes. Similarly, fire damage would not result in the release of CdTe. There are no significant flammable materials in the solar field. In fact, vegetation will be kept mowed to a minimal height under the panels, further reducing the chance of any combustion. In no case will there be fuel sufficient to reach the melting point of CdTe or the melting point of the glass in which it is encased, both which exceed 1,000°C. The CdTe PV panels do not pose a threat to nearby residences. The use of CdTe PV modules at the project site would not result in human or aquatic exposure of cadmium.

As noted in the EIR Section 4.7, page 4.7-4, several peer-reviewed studies support the conclusion that the breaking of panels will not result in releases of cadmium that could harm human health. These studies include *Emissions and Encapsulation of Cadmium in CdTe PV Modules During Fires* (V.M. Fthenakis et. al, 2005), *Health, Safety and Environmental Risks from the Operation of CdTe and CIS Thin-Film Modules* (H. Steinberger, 1998), and *Acute Oral and Inhalation Toxicities in Rats with Cadmium Telluride* (J. Zayed and S. Philippe, 2009). Further, CEQA does not require an EIR to identify the effects on the project and its users of locating the project in a particular environmental setting. *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 474. An EIR does not need to evaluate any potentially significant impacts of locating development in areas susceptible to hazardous conditions such as flooding or earthquakes because such impacts constitute impacts on the project caused by the environment. *Id.* at p. 474 & fn. 9.

Staff received a comment from the Kern County Environmental Health Services Division-Certified Unified Program Agency (CUPA) regarding solar panels utilizing CdTe. A copy of this letter is included for your Board's review. The letter states that although CdTe is a recognized toxic chemical if ingested, inhaled or improperly handled, its use in solar panels is as part of a

consumer end-product that is encased within the solar array structure. The CUPA does not require the project proponent to obtain a Hazardous Materials Business Plan for this material, pursuant to California Health & Safety Code Chapter 6.95.

Response To Supplemental Comment Letter from Matt Hagemann regarding Cadmium Issues

The commenter alleges that the draft EIR is defective because it does not adequately disclose or analyze the risk of cadmium contamination in the event that the panels break. But the commenter has presented no evidence that contradicts the DEIR's analysis or conclusion that the risk of cadmium contamination is miniscule. See DEIR at p. 4.7-3-4 (discussing this issue of possible panel breakage and subsequent CdTe releases and concluding that risks are extremely small).

The commenter states that a "2011 study found that cadmium, from broken panels, can leach into groundwater at concentrations that exceed Environmental Screening Levels." The study that the commenter refers to is titled *Fate and Transport Evaluations of Potential Leaching Risks from Cadmium Telluride Photovoltaics* and authored by Parikhit Sinha and others in 2012. As discussed in response to comment 7-N, that study supports the County's conclusion that the risk of cadmium contamination from broken panels is less than significant. See draft EIR at 4.7-3-4 (citing studies indicating that that even when the stability of the encapsulation of the cadmium is jeopardized, by breakage and then fire, cadmium emissions are negligible). The study examined the potential health effects associated with exposures to CdTe from broken solar modules in California and concluded that under the worst case scenario, exposure point concentrations in soil, air, and groundwater were "one to six orders of magnitude below human health screening levels indicating that it is highly unlikely that exposures to these media would pose potential health risks to on-site workers or off-site residents" (Sinha, et. al. at 1672). Specifically, air concentrations were "below screening levels by five to six orders of magnitude, indicating exposure to ambient air is a de minimis exposure pathway" (*id.*). Soil concentrations were "over an order of magnitude below both human health screening levels and regional background levels" (*id.*). Under the conditions modeled in the study where all panels broke and completely released all possible cadmium, the resulting cadmium concentrations in the water were consistent with drinking water standards and impacts to publicly owned treatment works were found to be "minimal" (*id.* at 1673).

The commenter also cites to a study published in 2003 titled *Life Cycle Impact Analysis of Cadmium in CdTe PV Production* by Vasilis Fthenakis. This study supports the County's conclusions as well. The study states that the CdTe remains stable until temperatures higher than typical fires (Fthenakis at 321). According to the study, "CdTe was captured in the molten glass [of the panels] and was not released into the environment" (*id.* at 322). The study concluded that "[n]o emissions of any kind can be generated when using PV modules under normal conditions and during foreseeable accidents (e.g. fires, breakage). New studies proved that CdTe in glass-glass modules would not be released during fires because Cd dissolves into the molten glass and is retained there" (*id.* at 331). Both studies cited by the commenter support the Draft EIR's statement that CdTe releases into the environment (air, water, and soil) are highly unlikely to occur during accidental breakage. There is no evidence to support the commenter's claim that the project has the potential to release CdTe at levels high enough to harm on-site workers, nearby residents, or school children.

In addition, the commenter claims that workers and people near the project site could be exposed to CdTe through inhalation of dust or ingestion of flakes and dust particles. To support this claim, the commenter cites a White Paper produced by the Silicon Valley Toxics Coalition titled *Toward a Just and Sustainable Solar Energy Industry*. The White Paper states that there is a potential for

toxic dust and fumes to occur during the preparation of materials used in the manufacture of CdTe solar panels. The project does not involve the manufacture of the panels, however, only the installation of the panels.

Further, contractors who install solar panels must strictly comply with California Occupational Safety and Health Administration requirements and the Hazardous Materials Business Plan to be produced in connection with the proposed project, which protects workers from hazards. The Hazardous Materials Business Plan includes procedures for proper handling, storage, transport, and disposal techniques for hazardous materials; describes methods to be used to avoid toxic releases and minimize impacts in the event of a release; and establishes public and agency notification procedures for spills and other emergencies including fires. In addition, the project applicant has committed to maintaining the panels in accordance with manufacturer recommendations, which will ensure that panels do not break or disintegrate. Accordingly, any potential impact from the accidental exposure of CdTe to workers or the public would be minimal.

Groundwater and Wastewater Discharge

The commenter suggests that treatment of locally sourced groundwater for panel washing is not discussed in the EIR and that treatment will require a waste discharge permit with the use of an evaporation pond.

A prior design of the project using solar thermal technology rather than the now proposed photovoltaic technology required evaporation ponds for wastewater discharge, which caused the project applicant to submit a Draft Waste Discharge to the RWQCB in 2009. The previously proposed solar thermal technology incorporated evaporation ponds to treat the wastewater stream from cooling tower blowdown. The currently proposed project uses photovoltaic (PV) solar technology, which does not generate wastewater. Therefore, evaporation ponds are not needed. Because the current design will not discharge waste on site or require evaporation ponds, no Waste Discharge Permit is required.

With regard to waste discharge requirements, as discussed on page 4.3-26 of DEIR Section 4.3, *Biology*, fill placement within jurisdictional Waters of the State, would be “required [to] obtain authorization through an Order of Waste Discharge or waiver thereof from the RWQCB and comply with other requirements of Porter-Cologne Act.” In addition, as stated on page 4.8-12, any fill work necessary to construct the crossings “will comply with all pertinent regulations.” For clarification purposes, the following text change to the second paragraph on page 4.8-12 of the DEIR is made:

The total impact to jurisdictional waters of the State will be minimal from these crossings (0.03 acres) and will comply with all pertinent regulations, which may include a Notice of Applicability for coverage under the General Waste Discharge Requirements (GWDRs) for low impact (less than 0.1 acre) dredged or fill discharges to jurisdictional waters of the State obtained from the Lahontan Regional Water Quality Control Board.

The EIR evaluated four crossings, including the three identified by the commenter. The evaluated crossings included the two existing low water crossings at the southern fence line where the washes enter the site, which would be improved as part of the project, and the crossing at the northern fence line where the unnamed wash leaves the site. As discussed on page 4.8-12, these Arizona-style crossings are needed to access the eastern side of the facility and placement of perimeter fencing. As described in the EIR, the total impact to these crossings will be minimal (0.03 acre), and work in these crossings will adhere to all existing regulations regarding erosion

and site drainage. Work associated with these crossings will comply with any waste discharge requirements.

Baseline for Soils and Worker Safety

The commenter contends that the DEIR fails to establish a baseline for soil conditions and assess potential pesticide and herbicide-related impacts related to construction workers and residents in the area.

As previously noted in the FEIR and Planning Commission staff report, a series of Phase I ESAs were prepared for the project plant site and transmission line corridor in 2007 to 2008 as additional parcels were purchased for the project, and these reports are included in Attachment 2 of the Final EIR. No recognized environmental conditions related to pesticide use were identified; therefore, soil sampling pursuant to a Phase II ESA is not warranted. Moreover, because the site has not been used for agriculture since the mid-1980s, evidence of hazardous pesticides would not have changed since 2007, and may be even less visible now.

Response To Supplemental Comment Letter from Matt Hagemann regarding Soil Issues

The commenter claims that the Phase I assessments are invalid because they are more than 180 days old is incorrect. Although the Phase I assessments may no longer be acceptable for certain transactional purposes, the information about the site's soils and groundwater remain valid for CEQA purposes. This is especially true here where the site has not been used for any purpose that could expose the site to contaminants since prior to when the ESAs were prepared.

The commenter also claims that because the land was used for agricultural purposes, a Phase II ESA must be prepared. The preparation of a Phase II for land that was used in part for alfalfa farming in the 1970s and 1980s is not typical. Multiple Kern County projects proceed on soil that was at one time used for agriculture without obtaining a Phase II, which merely narrows the location of possible contamination sites, especially when the Phase I ESAs did not indicate the need for additional soil sampling.

Even if a Phase II were conducted, there remains a possibility that workers may unexpectedly encounter hazardous materials such as contaminated soil. This is one of the many reasons that the project applicant must submit a Hazardous Materials Business Plan to the Environmental Health Services Department that describes procedures for handling and disposing of unanticipated hazardous materials encountered during construction. The Environmental Health Services Department is designated as the County's Certified Unified Program Agency (CUPA) and a Local Implementing Agency under the California Environmental Protection Agency (Cal/EPA), which allows it to oversee the inspection of possible hazardous areas, oversee the removal and disposal of hazardous materials, and have authority to make cleanup and closure determinations.

In addition, workers are protected by Mitigation Measure 4.7-3, which requires that when suspect asbestos-containing materials be uncovered during project construction, work at the project site must be immediately halted and a qualified hazardous materials professional must be contacted and brought to the area to make a proper assessment of the suspect materials. The measure further requires that all potentially friable asbestos-containing materials must be removed in accordance with federal, State, and local laws and the National Emissions Standards for Hazardous Air Pollutants guidelines prior to ground disturbance that may disturb such materials. All demolition activities must be undertaken in accordance with California Occupational Safety and Health Administration standards, as contained in Title 8 of the California Code of Regulations, Section 1529, to protect workers from exposure to asbestos. Materials containing more than 1 percent asbestos shall also be subject to the applicable Air Quality Management District

regulations. The reason demolition will be performed in conformance with federal, State, and local laws and regulations is so that construction workers and/or the public avoid significant exposure to asbestos-containing materials.

Potential Issues with Cumulative impacts Analysis in the EIR

The commenter summarizes CEQA Guidelines Sections 15130 and 15355 which address CEQA's requirement for an EIR to discuss cumulative impacts. The commenter also presents a summary of CEQA court cases in which courts made rulings regarding the need of cumulative impact analysis in EIRs and cases that determined the cumulative analysis for a given impact in previous EIRs from other Lead Agencies were inadequate.

With regard to the need to address cumulative impacts, cumulative impact discussions for each environmental topic area addressed in the EIR are provided at the end of each technical analysis contained within Chapter 4, under "Impacts and Mitigation Measures." Cumulative projects addressed in the EIR for the proposed project are listed in Chapter 3, *Project Description*, Table 3-4 and shown on Figure 3-10.

With regard to the need to evaluate the type of lands (e.g., agricultural or residential) these cumulative projects will impact, the EIR takes into account the existing and proposed land uses associated with these lands when evaluating whether the project would result in a cumulatively considerable contribution to a significant impact. For example, in the Land Use and Planning Chapter, the Draft EIR explains that the surrounding area is still relatively rural in nature and, therefore, the project in conjunction with cumulative development in the project area would increase urbanization and result in the loss of open space within the desert region of the County. This is a sufficient discussion of cumulative loss of open space. CEQA does not require a Lead Agency to provide a detailed description of the projects considered by the agency to evaluate whether the proposed project will result in cumulative impacts. The discussion of cumulative impacts in an EIR "need not provide as great detail as is provided for the effects attributable to the project alone." 14 Cal. Code Regs. § 15130(b); see *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383 (noting that the cumulative impacts discussion in an EIR need not be as detailed as the consideration of the proposed project itself).

With regard to the assertion that the proposed project would contribute to significant cumulative impacts to air quality, the analysis of cumulative air quality impacts presented in Section 4.2, *Air Quality*, (pages 4.2-40 through 4.2-44), determined and disclosed that construction emissions from the proposed project would combine with emissions from other past, present, and reasonably foreseeable projects to result in a significant and unavoidable cumulative impact with respect to VOCs, NO_x, and PM₁₀. An EIR that discloses a potentially significant and unavoidable impact fulfills its information disclosure purpose. See *Federation Hillside & Canyon Associations v. City of Los Angeles* (2004) 126 Cal. App. 4th 1180, 1198 ("[A] public agency is not required to favor environmental protection over other considerations, but it must disclose and carefully consider the environmental consequences of its actions" and "afford the public and other affected agencies an opportunity to participate meaningfully in the environmental review process.").

Alternatives:

The commenter first alleges that Alternative B is not a reasonable alternative because it would not meet any of the project operator's objectives. Instead of issuing a conditional use permit for solar development, Alternative B would develop the proposed site under the existing Kern County General Plan and zoning designations, which would allow agricultural operations or up to 115 residential dwelling units on the site, with reduced amount of potential agricultural production.

Contrary to the commenter's statement that Alternative B is not a reasonable alternative, Alternative B is required to be analyzed in the EIR as the No Project Alternative under Guidelines Section 15126.6. Section 15126.6 states in relevant part: "the specific alternative of 'no project' shall also be evaluated along with its impact. . . . The 'no project' analysis shall discuss . . . what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community." Alternative B complies with this requirement by looking at potential build out of the site under the existing General Plan and zoning, here, agricultural production or up to 115 residences. CEQA requires analysis of a no project alternative even if it does not meet any of the sponsor's objectives.

The commenter also indicates that the Beacon Photovoltaic Project EIR should have considered a reduced scale alternative, an alternative that avoids seismic and flood hazards, and an alternative that avoids cadmium telluride panels. Although there is no legal requirement to have included these analyses in the EIR (see discussion below) an analysis of these new alternatives can be found for informational purposes as a revised Chapter 6, on pages 7-9 through 7-23 of the FEIR. The revision explains that an alternative that avoids cadmium telluride panels is not required to be analyzed because the project itself will not result in significant impacts related to cadmium telluride.

In particular, an EIR is not obligated to include an alternative that will not substantially reduce or avoid the project's significant impacts. CEQA Guidelines Section 15126.6(f) provides "The alternatives shall be limited to ones that would avoid or substantially lessen any of significant effects of the project." In *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, a case involving a proposed Specific Plan Amendment and conditional use permit to build a 95,900-square-foot WinCo Foods store, the petitioners argued that the project EIR's range of alternatives was insufficient because it did not include a "reduced-store-size" alternative. The court rejected this argument as "without merit" because the record did not establish that a reduced-size alternative would substantially diminish any of the significant environmental impacts of the project.

Likewise here, no evidence exists to support the conclusion that a reduced scale alternative, an alternative that avoids seismic and flood hazards, and an alternative that avoids cadmium telluride would substantially reduce or avoid the project's significant environmental impacts. As the informational analysis of these alternatives in the Final EIR demonstrates, neither the reduced scale alternative nor the alternative that avoids seismic and flood hazards would substantially reduce identified project impacts. Both would merely slightly or incrementally reduce project impacts but they would still themselves result in significant and unavoidable impacts. Because CEQA only requires analysis of alternatives that would "avoid" or "substantially lessen" the project's significant impacts, there is no legal requirement that these alternatives be analyzed.

The commenter further states that the EIR fails to adequately support the conclusion that the environmentally superior alternative (Alternative C: No Utility-Solar Development – Distributed Commercial and Industrial Rooftop Solar Only) is infeasible; however, this is an incorrect conclusion reached by the commenter. First, it is not the role of an EIR to dismiss a potentially feasible alternative as ultimately feasible or infeasible. *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal. App. 4th 656. That is the role of the decision-maker in making CEQA findings on the project, including, if required, a Statement of Overriding Considerations. If the Lead Agency found that Alternative C were entirely impractical or infeasible, it would not have been provided as a viable alternative to the project, and would have been dismissed in Section 6.4, *Alternatives Eliminated from Further Consideration*. However, the Lead Agency considered this a potentially feasible alternative and,

therefore, conducted a full analysis of its environmental impacts, as compared to the proposed project.

The commenter asserts that the DEIR should consider how the proposed project and the alternatives will impact ratepayers and specifically rates paid for electric generation. The concern appears to focus on whether or not uneconomical renewable energy projects will be constructed and questions, based on an economic critique of the utilities' compliance with the Renewable Portfolio Standard (RPS), whether renewable energy is a good economic "deal" for the public in comparison to fossil fuel generated electricity, such as a combined cycle natural gas power plant. The commenter refers to a report by the CPUC's Division of Ratepayer Advocates (DRA) questioning whether the CPUC has done a good job scrutinizing the cost of renewable energy contracts because "it's no secret that renewable electricity is in general more expensive than from fossil fuels." The commenter also suggests that perhaps the County should not approve the project because the utilities are nearing compliance with the RPS mandate.

The CEQA environmental review process is intended to evaluate a project's *environmental* impacts and inform the appropriate decision-makers and the public about those impacts. The potential effect of a solar electrical generation facility to ratepayers, whether the CPUC should approve a power purchase agreement for the electricity to be generated by this project or whether the utilities should instead purchase cheaper energy from natural gas-fired power plants, is not considered an environmental impact and is, therefore, beyond the scope of a CEQA EIR document. The California Public Utilities Commission is the appropriate regulatory body and forum to discuss potential impacts to ratepayers arising from the State's RPS program or how well that program is functioning. This policy discussion is not appropriate or required in a CEQA document.

Based on the information presented in the EIR, Chapter 7-- Response to Comments, the Planning Commission staff report and above, the EIR adequately analyzes and documents potential impacts of the project, including impacts related to land use, hydrology and water quality, biology, hazards, and soils, and concludes that these issues have been properly analyzed, discussed and mitigated, to the extent feasible, as required by CEQA. The EIR also evaluated the applicable established land use policies and regulations of the Kern County General Plan, the Kern County Zoning Ordinance, and ALUCP to the proposed project and determined the project to be generally consistent with those goals and policies. The commenter does not provide evidence to contradict the conclusions of the EIR, and Kern County, as Lead Agency, has adequately addressed this issue under CEQA

Planning and Community Development Department Conclusions and Recommendation

Staff notes that Kern County represents a unique opportunity for the development of a commercial solar facility on previously disturbed and unproductive land. Due to favorable climatic conditions and an abundance of open space, large scale use of solar energy represents a major potential energy resource. Solar energy is a renewable resource that can be used to reduce the need for natural gas, petroleum, and coal based power plants. This reduces the need for nonrenewable resources, as well as reducing the emissions of greenhouse gases.

Your Board has approved a Kern County Renewable Energy Goal for the production of ten gigawatts from wind and solar facilities by 2015. This goal would include projects in all Kern County jurisdictions: cities, school, and water districts; and would create an estimated 8,000 construction jobs, 1,500 operational jobs, and up to 25 billion dollars of investment in the County's future, as well as provide power for over seven million people. Pursuing this goal sends a clear message that Kern County is committed to encouraging the private and public sector

investment needed for economic growth through the appropriate siting and construction of quality renewable energy projects. Staff notes that the proposed project would provide up to 385 construction jobs and up to ten permanent jobs if approved and constructed. Additionally the project would add 250 megawatts to the County's renewable portfolio.

Staff believes this project is consistent with the California Renewable Portfolio Standard that requires investor-owned utilities, such as Southern California Edison to increase their sale of electricity produced by renewable energy sources to 33 percent.

Pursuant to Section 19.104.040 of the Kern County Zoning Ordinance, an application for a conditional use permit can be approved, or conditionally approved, if it can make all of the following findings:

- (1) The proposed use is consistent with the goals and policies of the Kern County General Plan or Specific Plan.
- (2) The proposed use is consistent with the purpose of the applicable district or districts.
- (3) The proposed use is listed as a use subject to a conditional use permit in the applicable zoning district or districts or a use determined to be similar to a listed conditional use in accordance with the procedures set out in Section 19.08.030 through Section 19.08.080 of the Zoning Ordinance.
- (4) The proposed use meets the minimum requirements of the Zoning Ordinance applicable to the use and complies with all other applicable laws, ordinances, and regulations of the County of Kern and State of California.
- (5) The proposed use will not be detrimental to the health, safety, and welfare of the public or to property and residents in the vicinity.

It is Staff's opinion that there is adequate justification for your Board to find the implementation of the project in accordance with the proposed mitigation measures and recommended conditions of approval will not be materially detrimental to the public health, safety, or welfare or to property or residents in the vicinity. The project is generally located in an area with sparse habitation and a large amount of previous land disturbance and alterations in visual character by the existing Barren Ridge substation and related transmission lines. The recommended conditions of approval are intended to ensure that the project complies with all applicable laws, ordinances, and regulations in addition to offering the necessary assurances to area residents that it will not adversely affect their properties. Staff, therefore, concludes that the proposed conditional use permits sufficiently demonstrates compliance with the necessary findings.

Staff has reviewed the project with regard to land use compatibility and consistency with the Kern County General Plan and notes that the project is a compatible use and consistent with the General Plan Energy Element Goals and Policies.

The proposed project will reduce the amount of electricity generated using fossil fuels and, therefore, result in an offset of GHG emissions per year. Project construction would result in direct emissions of 282 MTCO₂e in 2012, 2,651 MTCO₂e in 2013, and 885 MTCO₂e in 2014. The total construction CO₂e emissions amortized over 30 years is equivalent to 127 MTCO₂e per year. Once operational, emissions associated with the proposed project would be limited to vehicle trips associated with the five to ten permanent employees. The proposed project's operational emissions would total 153 tons of CO₂e per year. However, because the project would replace the creation of energy through other methods, the operational GHG emissions

would actually result in a reduction in GHG emissions. The sum of the project's annual operational GHG emissions, without considering the potential reductions from displacement of gas-fired generation and amortized construction GHG emissions would be 280 MTCO₂e per year. When the displaced emissions from the gas-fired generation of electricity are taken into account, the proposed project would displace an estimated 213,020 MTCO₂e annually, which results in a net reduction of 212,740 MTCO₂e of GHGs per year. The project would generate 250 MW of renewable electricity, and help meet your Board's approved Kern County Renewable Energy Goal for the production of ten gigawatts from wind and solar facilities by 2015, making Kern County a leader in renewable energy.

The project is located in close proximity to existing utility transmission and infrastructure, thereby requiring minimal off-site improvements or impacts, and has undergone a thorough and extensive environmental review process, including the preparation of an Environmental Impact Report that identifies impacts and incorporates 67 mitigation measures in the form of complying with the goals, policies, as well as implementation measures of the Kern County General Plan, conditional use permit requirements, or other adopted regulations.

For operations, the proposed project is estimated to use about 15 acre-feet of water per year. The proposed project would use minimal water and free up water for the recharge of the Koehn subbasin, and use by other property owners in the vicinity by using far less water than typical agricultural operations.

The project is consistent with the Public Services Goals and Policies. MM 4.12-1 requires the project proponent shall pay for impacts on Countywide public protection, sheriff's patrol and investigative services, and fire services at a rate of \$28.84 per 1,000 square feet of panel-covered ground, divided by the number of years of operation and paid on a yearly basis. This equates to approximately \$1,289/acre of panel-covered ground. Using a conservative estimate of 468 acres of panel coverage (based on the site plan and proposed solar technology to be used). Staff estimates that the project proponent would pay a total of approximately \$603,252 over a 25 year period, which is \$24,130 per year.

Staff believes that the proposed PV solar facilities are compatible with other nearby activities and is consistent with the agriculturally-zoned district. The Zoning Ordinance allows for construction of solar energy electrical facilities within the A District with the approval of a conditional use permit. The project is compatible with the policies and programs of the Kern County General Plan and does not appear to be in conflict with any adopted land use plan or policy. Staff also notes that any changes or expansions of the proposed project would require the proponent to obtain a modification to this conditional use permit or a discretionary approval of a new conditional use permit, which may include additional environmental review. Conditions of approval have been added which would ensure future impact is less than significant.

Staff has reviewed the project with regard to compatibility with renewable energy, land use compatibility, and environmental concerns. It is Staff's opinion that the Final EIR prepared for this project is a comprehensive document with the best available information at this time which details the environmental effects of the project on surrounding land use. The Final EIR includes 67 mitigation measures that provide for the protection of the environment and provide funding for impacts to public services. CEQA requires that all feasible and reasonable mitigation be imposed on projects to reduce the impacts on the environment. Staff also concludes the Final EIR fully complies with CEQA, and these clarifications and modifications do not meet any of the conditions of CEQA Section 15088.5. No new information has been provided or feasible project mitigation rejected or environmental impact increased in severity that would require recirculation of the document. Changes to reflect these clarifications for the Final EIR, as appropriate, have

been made in Section 15091 Findings of Facts, Section 15093 Statement of Overriding Considerations, and the Mitigation Measure Monitoring Program for this project.

In his appeal, Staff notes that Mr. Kracov has not raised any new issues that were not considered by the Planning Commission when they voted to approve the proposed Beacon Photovoltaic project. Staff believes that the issues raised by LIUNA, a labor union, are an attempt to use CEQA in bargaining with the LADWP for jobs. This Department has carefully reviewed the project with regard to environmental concerns and land use compatibility, including all the issues raised by Mr. Kracov and is of the opinion that the Final EIR prepared for this project is a comprehensive document with the best information available at this time which details the environmental effects of the project on surrounding land use. Adherence to the proposed mitigation measures and conditions of approval will ensure that potential impacts are resolved in addition to providing the necessary assurances that implementation of the project will not be materially detrimental to the public health, safety, or welfare or to property or residents in the vicinity.

Based on the aforementioned analysis, Staff is recommending that your Board deny the appeal and uphold the decision of the Planning Commission to approve the project subject to conditions.

PUBLIC INQUIRY OR CORRESPONDENCE: Kern County Public Health Services
Department/Environmental Health Division/Hazardous Material Section

CEQA ACTION: Environmental Impact Report

DEPARTMENT RECOMMENDATION: Adopt resolution denying appeal; certify the Final Environmental Impact Report; adopt Section 15091 Findings and Section 15093 Statement of Overriding Considerations; adopt Mitigation Measure Monitoring Program; adopt resolution approving Conditional Use Permit in accordance with the recommended conditions; approve the Memorandum of Understanding/Agreement and authorize the Chairman to sign

BASIS FOR DISAPPROVAL AND RECOMMENDED FINDINGS:

- (1) This Board, in denying the appeal, concludes that the concerns raised are not grounds for denying the project and were considered at the Planning Commission hearing and in their approval of the project. This Board finds that no new information has been provided which contradicts the conclusions reached in the Final Environmental Impact Report prepared for the project. Adherence to the adopted mitigation measures and conditions of approval will confirm that the necessary assurances that implementation of the project will not be materially detrimental to the public health, safety, or welfare or to property or residents in the vicinity.

LHO:JLB;jc:sc

Attachments