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September 14, 2010

By Email and U.S. Mailc/o Rosie Ruiz
Chair Wayne Rew and Commissioners
Regional Planning Commission
Los Angeles County
Department of Regional Planning
Impact Analysis Section, Room 1348
320 West Temple Street
Los Angeles, CA 90012
rruiz@planning.lacounty.govRe: Comments on the Final Environmental Impact Report for the AV Solar Ranch One Project (County Project R2009-02239, Conditional Use Permit No. 200900026)

Dear Chairman Rew and Commissioners:

We write on behalf of California Unions for Reliable Energy ("CURE") to comment on the Final Environmental Impact Report ("FEIR") prepared by the Los Angeles County Department of Regional Planning ("DRP") for the 230 MW AV Solar Ranch One Project ("Project") proposed by AV Solar Ranch 1, LLC. Although we will not attend tomorrow's hearing on the Project, we urge the Planning Commission to not approve the FEIR and to direct DRP to revise and recirculate a draft EIR to the public.

CURE submitted extensive comments on the draft EIR on July 30, 2010. After carefully reviewing the FEIR, we conclude that DRP failed to adequately respond to CURE's comments and that significant new information has been added to the EIR. For these reasons, DRP's contention that recirculation of the EIR is *not* required under the California Environmental Quality Act ("CEQA") lacks merit.

When significant new information is added to a draft environmental review document after the close of public comment and before Project certification, a

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revised draft environmental review document must be noticed and recirculated for public comment.¹ New information is significant for the purpose of CEQA when the environmental review document is “changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect.”² Here, DRP has revised its analysis in response to CURE’s July 30, 2010 comments to include a *new* mitigation measure for *previously unidentified impacts* to the federally listed Desert tortoise and *new*, unsupported, *analyses* regarding baseline biological and air quality conditions at the Project site.³ Additionally, DRP now claims that this *industrial* Project is *not* subject to the requirements of Water Code sections 10910 and 10912. This new information qualifies as “significant new information” under CEQA.

As detailed in CURE’s July 30, 2010 comments, the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. The FEIR still does not adequately analyze potentially significant Project impacts in several critical resource areas, including air quality, biological resources, visual resources, and water quality, and fails to propose adequate mitigation for the significant impacts that it does identify. The FEIR continues to fail to present a stable and finite Project description and to include an adequate Water Supply Assessment as required by Sections 10910 and 19012 of the California Water Code. These defects, as well as numerous additional analytical deficiencies described fully in our July 30, 2010 comments, render the DEIR, and the FEIR, invalid as an environmental review document under CEQA.

The EIR must be recirculated for public review and comment in accordance with CEQA.⁴ Failure to circulate the EIR deprives the public of a meaningful opportunity to comment upon the substantial adverse effects of the Project.

Sincerely,

/s/

Elizabeth Klebaner

¹ Pub. Resources Code, § 21092.1.

² Cal. Code Regs. tit 14, § 15088.5.

³ See Department of Regional Planning, Los Angeles County, AV Solar Ranch One Project Final Environmental Impact Report, August 2010, pp. RORG-3-3, 3-13, 3-36-37, 3-45-46.

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

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EK:

cc: ctran@planning.lacounty.gov (email only)
kszalay@planning.lacounty.gov (email only)

The Los Angeles County Regional Planning Commission (“Commission”) conducted a public hearing on the Project on June 30, 2010 and heard a presentation by Staff and the Applicant. At this hearing, Staff recommended and the Applicant agreed to underground nearly all portions of the Project-related 34.5-kV and 230-kV transmission lines in the County of Los Angeles, as analyzed in Project Alternative 3 in the Draft EIR. Two members of the public (representatives of the Antelope Valley Trade Association and the Greater Antelope Valley Economic Alliance) testified in favor of the Project, and two members of the public (both from the Antelope Acres Town Council) testified with concerns regarding the Project. After public testimony, the Commission continued the Project hearing to September 15, 2010.

The August 2010 Final EIR, which contained written responses to comments received during the noticed comment period, was completed and submitted to the State Clearinghouse/Governor’s Office of Planning and Research, and distributed on August 31, 2010. Distribution of the Final EIR entailed providing copies of the Final EIR to public agencies and organizations that commented on the Draft EIR, and notifying individuals who commented on the Draft EIR of the Final EIR availability. The Final EIR was made available to the public on the County’s website, at the LACDRP location, and at five public libraries located in the vicinity of the Project area. The Final EIR was prepared and distributed in accordance with State CEQA Guidelines §15088, which requires that written responses be provided at least 10 days prior to certifying an environmental impact report.

At the September 15, 2010 public hearing, four members of the public testified in favor of the Project; the president of the Antelope Acres Town Council, a representative of the Desert and Mountains Conservation Authority, and representatives of the Greater Antelope Valley Economic Alliance and the Los Angeles Economic Development Corporation. No testifiers spoke against the Project. The Commission determined that the undergrounding of both the on-site and off-site 34.5-kV and 230-kV transmission lines within the unincorporated County area is required, with the exception of three required above ground public right of way crossings including one above ground point of connection at the Kern County border and above ground crossings over jurisdictional drainages in order to minimize visual intrusion and minimize the proliferation of above ground transmission lines as well as to ensure compliance with the applicable provisions of the Countywide General Plan and the Antelope Valley Areawide General Plan. The Commission also found the Project to be consistent with the applicable Los Angeles Countywide General Plan and Antelope Valley Area Plan and policies, and that the Project meets the necessary findings for the proposed VTTM and CUP pursuant to the Subdivision Map Act and applicable County Code provisions. The Commission adopted the EIR, associated MMRP, and CEQA Findings of Fact, and approved the CUP, VTTM, and associated CUP and VTTM Findings and Conditions.

Following the close of the noticed Draft EIR comment period, four late comment letters were transmitted to LACDRP. These letters included a letter from the California Department of Transportation (Caltrans) dated September 14, 2010, a letter from Adams Broadwell Joseph & Cardozo, on behalf of the California Unions for Reliable Energy (CURE) dated September 14, 2010, and an email from Ms. Melody Mokres dated September 14, 2010. Additionally, on September 24, 2010, Ms. Kyndra Joy Casper, Esq. from Sheppard Mullin Richter & Hampton, LLP, who is agent and representative of Northrop Grumman Corporation, filed an appeal on the Commission decision. The September 24, 2010 appeal was submitted with an attached Rider containing late comments on the June 2010 Draft EIR and August 2010 Final EIR.

LACDRP subsequently prepared the November 2010 Final EIR Section 6.0, Responses to Late Comments to respond to the late comments received after the close of the noticed Draft EIR public comment period (July 30, 2010), and after the August 2010 Final EIR was issued.

The Board finds that the Project does not require recirculation under CEQA (Public Resources Code Section 21092.1, CEQA Guidelines Section 15088.5). CEQA Guidelines Section 15088.5 requires recirculation of an EIR prior to certification of the Final EIR when “significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review.” “New information is not ‘significant’ unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the Project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the Project’s proponents have declined to implement. ‘Significant new information’ requiring recirculation includes, for example, a disclosure showing that:

1. A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented;
2. A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance;
3. A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project’s proponents decline to adopt it;
4. The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.”

In addition, CEQA Guidelines Section 15088.5(b) provides that “recirculation is not required where the new information added to the EIR merely clarifies and amplifies or