

Comment Letter 11: Adams Broadwell Joseph and Cardozo (January 19, 2016)

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January 19, 2016

VIA E-MAIL AND OVERNIGHT MAIL

Ross Fehrman
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**Re: Comments on the Second Partially Recirculated Draft
 Environmental Impact Report for the Willow Springs Solar
 Array Project (PP10232) (State Clearinghouse No. 2010031023)**

Dear Mr. Fehrman:

On behalf of Kern County Citizens for Responsible Solar, we submit these comments on the Second Partially Recirculated Draft Environmental Impact Report ("2nd RDEIR") prepared by the County of Kern ("County") for the Willow Springs Solar Array Project ("Project"). The Project requires zoning changes, a Specific Plan amendment and a conditional use permit to allow development of a photovoltaic ("PV") solar power plant with a capacity of 150 megawatts ("MW"), located on a 1,402 acre site over nine parcels. We previously provided comments on the Draft Environmental Impact Report ("Draft EIR") for the Project on April 13, 2015, the (uncertified) Final Environmental Impact Report ("Final EIR") for the Project issued on June 24, 2015, and the first Partially Recirculated Draft EIR ("1st RDEIR") issued in September, 2015.

11-A

The 2nd RDEIR limits its scope to the Project's potential impacts on agricultural issues and thus does not address any of the other inadequacies raised in our prior comments. Accordingly, our prior comments still stand regarding the inadequacies of the overall environmental impact report prepared for the Project. The comments submitted herein are limited to the new changes contained in the

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2nd RDEIR. In making these comments, we also incorporate by reference our comments submitted on the Draft EIR, FEIR and 1st RDEIR, along with the exhibits and attachments to those comment letters.

11-B

While the 2nd RDEIR corrects a number of errors relating to its evaluation of agricultural impacts that were contained in the prior iterations of this document, it still contains numerous factual assertions that are not supported by substantial evidence and that mislead the public as to the true scope of the Project's impact on these resources. In addition, the mitigation relied upon by the 2nd RDEIR to reduce these impacts is vague and arbitrary, fails to encompass all agricultural resources impacted by the Project, fails to impose all feasible mitigation to reduce impacts, and is not supported by substantial evidence. Finally, the 2nd RDEIR fails to disclose, evaluate or mitigate potential pest and weed impacts to adjacent farmland.

11-C

These defects, along with the defects in the rest of the Project's EIR sections, render the EIR legally inadequate. The County must correct these defects and prepare a legally adequate environmental document before the Project may be approved.

I. STATEMENT OF INTEREST

Kern County Citizens for Responsible Solar is a coalition comprised of individuals (including Rosamond residents, Gary Wilcox and Daniel Wilbour, Mojave residents, Gaston Moore, Lorreta Moore and Emilio Pino, and Tehachapi residents, Josh Hernandez and Neal Herman), and groups, including California Unions for Reliable Energy and its members and their families. Kern County Citizens for Responsible Solar was formed to advocate for responsible and sustainable solar development that protects the environment where the coalition members and their families live, work, and recreate.

11-D

The individual members of Kern County Citizens for Responsible Solar live in and recreate in and around eastern Kern County. They have a personal interest in protecting the Project site from unnecessary, adverse impacts to the area's plants, wildlife, air and water and agricultural resources. These individuals appreciate and enjoy the ecosystem in and around the Project area.

California Unions for Reliable Energy ("CURE") is a coalition of labor organizations whose members encourage sustainable development of California's energy and natural resources. Environmental degradation destroys cultural and

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wildlife areas, consumes limited fresh water resources, causes water and air pollution, and imposes other stresses on the environmental carrying capacity of the state. This in turn jeopardizes future development by causing construction moratoriums and otherwise reducing future employment opportunities for CURE's members.

Additionally, union members live, recreate and work in the communities and regions that suffer the impacts of projects that are detrimental to human health and the environment. CURE therefore has a direct interest in enforcing environmental laws to minimize the adverse impacts of projects that would otherwise degrade the environment. Finally, CURE members are concerned about projects that risk serious environmental harm without providing countervailing economic benefits. The CEQA process allows for a balanced consideration of a project's socioeconomic and environmental impacts, and it is in this spirit that we offer these comments.

11-D

II. LEGAL STANDARD

CEQA has two basic purposes, neither of which the 2nd RDEIR satisfies. First, CEQA is designed to inform decisionmakers and the public about the potentially significant environmental impacts of a project before harm is done to the environment.¹ The DEIR is the “heart” of this requirement.² The DEIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”³

11-E

To fulfill this function, the discussion of impacts in a RDEIR must be detailed, complete, and “reflect a good faith effort at full disclosure.”⁴ An adequate RDEIR must contain facts and analysis, not just an agency's conclusions.⁵ CEQA

¹ 14 Cal. Code Regs. (“CEQA Guidelines”) § 15002(a)(1); *Berkeley Keep Jets Over the Bay v. Bd. of Port Commissioners*. (2001) 91 Cal.App.4th 1344, 1354; *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

² *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

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

⁴ CEQA Guidelines, § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

⁵ See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.

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requires a RDEIR to disclose all potential direct and indirect, potentially significant environmental impacts of a project.⁶

11-E

Second, if a RDEIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.⁷ CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.⁸ Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the RDEIR to meet this obligation.

11-F

In this case, the 2nd RDEIR fails to satisfy the basic purposes of CEQA because: (1) it fails to accurately disclose the scope of the Project's impact on agricultural resources; (2) it rejects feasible measures that would further reduce significant impacts; and (3) it fails to support its findings with substantial evidence.

III. THE SECOND RDEIR MISREPRESENTS THE SCOPE OF THE PROJECT'S IMPACT ON AGRICULTURAL RESOURCES

As set forth in the DEIR, 1st RDEIR, the 2nd RDEIR and the Kern County CEQA Implementation Document,⁹ the threshold for determining whether a project's impact on agricultural resources will be significant is if it: "[c]onverts Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural uses."¹⁰ The Project site contains 119.5 acres of Prime Farmland, 198.1 acres of Farmland of Statewide Importance and 113.2 acres of Unique Farmland, for a total of 430.8 acres of Important Farmland.¹¹

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All 430.8 acres of this Important Farmland will be taken out of agricultural production as a result of the conversion of the Project property to a solar PV generating facility. Thus, the conversion of this Important Farmland to

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⁶ Pub. Resources Code § 21100(b)(1); CEQA Guidelines, § 15126.2(a).

⁷ Pub. Resources Code §§ 21002.1(a), 21100(b)(3); CEQA Guidelines, § 15002(a)(2) and (3); *Berkeley Keep Jets Over the Bay v. Bd. of Port Commissioners*. (2001) 91 Cal.App.4th 1344, 1354; *Laurel Heights Improvement Assn. v. Regents of the University of Cal.* (1998) 47 Cal.3d 376, 400.

⁸ Pub. Resources Code §§ 21002-21002.1.

⁹ The Kern County CEQA Implementation Document, 2004b.

¹⁰ RDEIR, p. 4.2-10.

¹¹ RDEIR, p. 3-10.

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nonagricultural uses is a significant impact under Kern County's CEQA threshold of significance. The DEIR and the 1st RDEIR, however, nonetheless found that this impact would be less than significant. As we stated in our prior comments, these findings were based on speculation and misinformation, not substantial evidence.

The 2nd RDEIR attempts to correct this error by now acknowledging that the Project's conversion of the site to nonagricultural use is a significant impact requiring mitigation. In grudgingly making this change, however, the 2nd RDEIR continues to inaccurately describe the Project baseline in a way that substantially understates and misrepresents the scope of this impact. As a result, the 2nd RDEIR fails in its duty to comply with CEQA's informational requirements.

11-H

CEQA requires the disclosure of the scope and severity of a project's environmental impacts where such information is necessary to allow decisionmakers and the public to understand the environmental consequences of the project.¹² The requirement to disclose the scope and severity of a Project's impacts is also reflected in CEQA's requirement that a lead agency recirculate an EIR where new information reveals a "substantial increase in the severity of an environmental impact."¹³

11-I

In order to ensure that the public and the decisionmakers fully understand the potential consequences of Project approval, CEQA requires an EIR to provide sufficient information to allow a comparison of "what is actually happening" without the project, and the "conditions expected to be produced by the project."¹⁴ An accurate description of the environmental setting, or baseline, prior to the Project proposal is thus a fundamental prerequisite to an accurate, meaningful evaluation of environmental impacts.¹⁵ Without this information, an appropriate analysis cannot be made, effective mitigation cannot be designed, and alternatives cannot be considered.

11-J

¹² 1 Kostka & Zischke, *Practice Under the Cal. Environmental Quality Act* (Cont.Ed.Bar 2009) § 13.28, p. 638; *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376, 405; see also *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 93-94 (overturning EIR for failure to disclose the amount of groundwater subject to contamination).

¹³ CEQA Guidelines, § 15088.5, subd. (a)(2).

¹⁴ *Citizens for East Shore Parks v. Cal. State Lands Com.* (2011) 202 Cal.App.4th 549, 561 [citing *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 322, 328].

¹⁵ See *Save Our Peninsula Com. v. Monterey Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125.

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The 2nd RDEIR, however, fails to comply with this standard by falsely claiming that the groundwater allocation for the Project site would not be “sufficient to support the long-term suitability of the site for agricultural use” even without Project approval. The 2nd RDEIR states that groundwater rights for the Project site are currently in litigation, but that a draft judgment has been approved by the majority of the litigants that provides water rights to the Project site in the amount of 923 acre-feet per year.¹⁶ The 2nd RDEIR claims that this allocation is far less than what was required historically to support agriculture on the site and is not sufficient to support the long-term suitability of the site for agricultural use. These claims are not supported by substantial evidence and are contrary to the evidence to the record.

11-K

The expected reduction of the Project's site's groundwater rights to 923 acre-feet per year is not evidence that agricultural production is no longer feasible on the Project site, nor is it “far less” than what was required historically to support agriculture on the site. According to Table 2 of the water supply assessment attached to the Draft EIR, the amount of water used in three of the last five years of agricultural production was either well under 923 acre-feet or just slightly over 923 acre-feet.

11-L

Furthermore, the 2nd RDEIR fails to disclose that an expert report prepared by House Agricultural Associates evaluated the economic feasibility of continued agricultural production on the Project site and found that the groundwater allocation for the Project site was, in fact, sufficient to support the long-term suitability of the site for agricultural use. The report was prepared by Gregory House, who has almost 40 years of experience in agricultural appraisal and consulting throughout California and the western states. Mr. House is a qualified expert witness in agricultural economics, crop productivity, and farming practices in California Superior Court, United States Tax Court, and United States Bankruptcy Court. Mr. House has provided technical reports for numerous environmental impact reports and other land evaluation and planning projects involving agriculture, including the use of the LESA model and other analytical tools. He is also a farmer of 30 years, a lecturer in the Department of Agricultural and Resource Economics at the University of California at Davis, and an Accredited Farm Manager and as an Accredited Rural Appraiser. He is also accredited by the American Society of Agronomy as a Certified Professional Agronomist and Certified

11-M

¹⁶ Final EIR at p. 7-293.

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Crop Advisor. Mr. House's comments and CV have been previously provided to the County and are again attached as an exhibit to these comments.

11-M

In his attached report, Mr. House evaluates and determines the water consumption requirements and the economic viability of continued agricultural activity on the Project site. Based upon this analysis, Mr. House finds that the 923 acre-feet per year of groundwater allocated to the Project site as a result of the draft judgment in the groundwater adjudication litigation is adequate to grow a variety of vegetables and cereals on at least 430.8 acres of crops at the Project site on an ongoing and economically sustainable basis.¹⁷

11-N

No contrary expert evidence exists in the record. Accordingly, the 2nd RDEIR's finding that the "increasing scarcity of and cost of water" render agricultural activities on the Project site unsustainable and not economically viable is not supported by substantial evidence.

By falsely stating that the Project would not be able to support continued agricultural activities even without Project approval due to lack of sufficient groundwater rights, the 2nd RDEIR deceives the public and the decisionmakers into believing that that Project's contribution to this loss of agricultural land is relatively minor in scope. The 2nd RDEIR thus violates CEQA by improperly misrepresenting and concealing the true scope of the Project's impact.

11-O

While this misrepresentation does not alter the 2nd RDEIR's revised finding that the Project's conversion of agricultural land would be significant and unavoidable, it does directly affect the 2nd RDEIR's recommendation for mitigation to address this revised finding. As discussed *infra*, the 2nd RDEIR recommends substantially less rigorous mitigation for this Project than it does for other solar projects in the County. The rationale for requiring less mitigation is based

11-P

¹⁷ House Comments, p. 19. While the 2nd RDEIR now claims that the applicant, Willow Springs Solar, LLC, only has rights to 608 acre-feet per year of the property owner's 923 acre-feet per year of groundwater rights, such a claim is only relevant to an analysis of whether the Project has sufficient water for its proposed construction and operational activities. It has no relevance to the analysis of the Project's impact on loss of Important Farmland. The Project continues to convert 430.8 acres of Important Farmland that would otherwise have had water rights to 923 acre-feet per year of groundwater to a non-agricultural use. The statement that the Project applicants are retaining just 608 acre-feet per year of the property owner's 923 acre-feet per year of groundwater rights only serves to underscore the likely permanence of this conversion.

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expressly upon this incorrect assumption that the Project's existing farmland lacks long-term viability due to lack of water.

11-P

IV. THE 2ND RDEIR FAILS TO SET FORTH MITIGATION FOR SOME OF THE IMPORTANT FARMLAND THAT THE PROJECT WILL CONVERT TO NON-AGRICULTURAL USE

The 2nd RDEIR also fails to comply with CEQA because it only sets forth mitigation for part of the Important Farmland that will be converted to non-agricultural use by the Project. For a large segment of the Important Farmland that will be converted, no mitigation is considered or set forth at all. Under CEQA, an EIR must describe feasible mitigation measures that can minimize the project's significant environmental effects.¹⁸ CEQA prohibits public agencies from approving projects for which there are feasible alternatives or mitigation measures that will prevent or minimize impacts.¹⁹

In order to reduce the significant and unavoidable impacts of the Project's conversion of 430.8 acres of Important Farmland to non-agricultural use, the 2nd RDEIR proposes imposing new Mitigation Measure 4.2-1 (MM4.2-1), which requires the following:

11-Q

MM 4.2-1: Prior to the issuance of a grading or building permit, the project operator shall provide written evidence of completion of one or more of the following measures to mitigate the loss of approximately 430.8 acres Important Farmland at a ratio of 1:1 **for net acreage of solar panel coverage and associated infrastructure**, which may be included with any required biological resources mitigation. **Net acreage is to be calculated including but not limited to the area covered by the substation, inverters, transformers, operation and maintenance buildings, and the areas directly under the panels.** This includes approximately 119.5 acres of land designated as

¹⁸ 14 Cal. Code Regs. §§ 21002.1(a), 21061.

¹⁹ *County of San Diego v. Grossmont-Cuyamaca Community College District* (2006) 141 Cal.App.4th 86, 99; *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 368.

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Prime Farmland, 198.1 acres designated as Farmland of Statewide Importance, and 113.2 acres designated as Unique Farmland. **A plot plan shall be submitted substantiating the net acreage calculation along with written evidence of compliance.**

- (1) Funding and/or purchase of agricultural conversion easements or deed restrictions within Kern County (will be managed and maintained by an appropriate entity);
- (2) Purchase of credits from an established agricultural farmland mitigation bank or in-lieu fee program acceptable to Kern County;
- (3) Contribution of agricultural land or equivalent funding to an organization that provides for the preservation of farmland in California; or
- (4) Participation in any agricultural land mitigation program adopted by Kern County that provides equal or more effective mitigation than the measures listed above.

11-Q

Mitigation land shall meet the definition of Prime Farmland, Farmland of Statewide Importance, or Unique Farmland, and be land of similar agricultural quality or higher, as established by the State Department of Conservation. Completion of the selected measure or a combination of the selected measures, shall include properties located within the Antelope Valley Area if feasible, as determined by the Director of the Kern County Planning and Community Development Department (Planning Director). If it is determined by the project operator that available land in the Antelope Valley Area has been exhausted, then the project operator shall submit proof to the Planning Director. At that time the Planning Director may authorize the project operator to utilize qualifying land within the State of California of similar agricultural quality or higher.

(Emphasis provided.)

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MM 4.2-1 is legally inadequate because it only provides mitigation for agricultural land that is located “directly under the panels” or directly under infrastructure equipment or structures. MM 4.2-1 misleadingly calls this land “net acreage.” The Project, however, takes all 430.8 acres of Important Farmland on the Project site out of agricultural production, not just the portions of Important Farmland located directly under panels or directly under infrastructure equipment or structures. No explanation or evidence is provided to support the designation of some of this Important Farmland as “net acreage” or for the decision not to mitigate Important Farmland that does not fall under this arbitrary “net acreage” designation. Nor does any justification exist to only mitigate this “net acreage.” The Project converts the *entire* Project property to a solar PV generating facility; none of it will be used for agricultural production.

11-Q

By limiting the mitigation to just the portions of Important Farmland located directly under panels or directly under infrastructure equipment or structures, MM4.2-1 fails to provide any mitigation for the remainder of the Important Farmland impacted by the Project. Moreover, the 2nd RDEIR fails to explain why the proposed mitigation is feasible to mitigate the affected Important Farmland located directly under panels or directly under infrastructure equipment or structures, but is not feasible for the affected Important Farmland not located directly under panels or directly under infrastructure equipment or structures.

11-R

One of the fundamental objectives of an EIR is to identify ways to mitigate or avoid a project’s significant environmental impacts.²⁰ CEQA Guideline section 15126.4 states that an EIR shall identify mitigation for “*each* significant effect described in the EIR.”²¹ By only identifying mitigation for the affected Important Farmland located directly under panels or directly under infrastructure equipment or structures, the 2nd RDEIR fails to comply with the requirements of CEQA.

11-S

The EIR must be revised to identify and adopt feasible mitigation for the loss of Important Farmland that is not identified as “net acreage” under MM4.2-1.

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²⁰ Pub. Resources Code §§ 21002.1, subd. (a), 21061.

²¹ CEQA Guideline § 15126.4, subd. (1)(A) (emphasis provided).

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V. THE SECOND RDEIR FAILS TO IMPOSE FEASIBLE MITIGATION THAT WOULD REDUCE THE PROJECT'S IMPACT ON THE LOSS OF AGRICULTURAL RESOURCES

A. The Second RDEIR's Rejection of the County's Standard 1:1.5 Ratio for Mitigating the Conversion of Agricultural Land to Solar PV Use Is Arbitrary and Not Supported by Substantial Evidence

In addition to needing to expand the scope of MM 4.2-1 to encompass all of the Important Farmland that will be converted by this Project, MM 4.2-1 should also be amended to require the same mitigation set forth in the County's adopted "Pathway for Processing Conversion of Agricultural Land to Solar PV Use in the Central Valley" ("the Pathway Process"). The Pathway Process requires a solar PV project applicant to purchase agricultural easements within Kern County at a ratio of 1.5-to-1 or to fund other compensatory mitigation at an equivalent amount. The Pathway Process thus sets forth a level of feasible mitigation that is substantially greater than the 1-to-1 ratio proposed in the 2nd RDEIR. CEQA requires the imposition of feasible mitigation to reduce project impacts. Since impacts would still be significant and unavoidable even with the mitigation set forth in MM 4.2-1, additional mitigation that would further reduce impacts is required if determined feasible by the County. The County's implementation of the Pathway Process mitigation ratio of 1.5-to-1 in other solar projects in the County is substantial evidence that this ratio of mitigation is generally feasible for these types of projects.

11-U

The 2nd RDEIR does not explain why a ratio of 1.5-to-1 would not be feasible here. When alternatives or mitigation measures are rejected as infeasible, the findings must reveal the agency's reasons for reaching that conclusion. Conclusory statements are inadequate.²²

11-V

The 2nd RDEIR's justification for not applying the Pathway Process mitigation ratio is not that a 1.5-to-1 ratio isn't feasible, but rather is that the Project property "does not have long-term viability for farmland use due to scarcity and increasing cost of water to support agriculture."²³ As discussed above, the

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²² *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1034-1035.

²³ 2nd RDEIR at p. 4.2-13.

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claim regarding long-term viability is not supported by substantial evidence and is contrary to the evidence in the record. The Project site already has rights to at least 923 acre-feet per year of groundwater. The attached House Agricultural Associates report demonstrates that the Project property has sufficient groundwater rights to viably continue agricultural production on all 430.8 acres of the Project site's Important Farmland. In any case, the 2nd RDEIR determines that the loss of Important Farmland is a significant and unavoidable Project impact even with the incorrectly-alleged lack of long-term viability due to water shortages. This impact must be reduced to the extent feasible.

11-W

The 2nd RDEIR also improperly justifies the 1:1 ratio based on its assumption that the Department of Conservation will no longer designate any farmland on the Project site as Important Farmland in future DOC maps due to the lack of irrigated agriculture on the site since 2010. This justification violates CEQA's requirement to mitigate impacts that occur as a result of the Project. CEQA guidelines require a Project's impacts to be determined by comparison to the baseline environmental setting as it existed at the time the Notice of Preparation ("NOP") was published.²⁴ Thus, according to established CEQA case law, the proper baseline in this case is the environmental setting as it existed in 2010 when the NOP was issued.

11-X

In 2010, the most current and up-to-date Department of Conservation Farmland Mapping and Monitoring Program ("FMMP") map was the 2008-2010, which designated the 430.8 acres of Project land as Prime, Unique and Farmland of Statewide Importance.²⁵ Accordingly, the County may not rely on the cessation of agricultural activities on the Project site after the issuance of the NOP as justification to impose a much smaller compensatory mitigation requirement than it would otherwise have imposed. The Supreme Court has stated that the reason for looking at conditions at the time of the NOP is so that a "temporary lull or spike in operations that happens to occur at the time environmental review for a new project begins should not depress or elevate the baseline."²⁶ Otherwise applicants would be

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²⁴ CEQA Guidelines section 15125, subd. (a).

²⁵ See <http://www.conservation.ca.gov/dlrp/fmmp/Pages/Kern.aspx>; August 13, 2015 phone conversation with DOC confirming 2008-2010 was latest FMMP in 2010. Not only was the 430.8 acres of Project farmland designated as Important under the applicable 2008-2010 FMMP map, but the same farmland on the Project site was *again* designated as such in the 2010-2012 FMMP map – *two years after the NOP for the Project was issued*.

²⁶ *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 328.

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encouraged to suspend or increase operations artificially, simply in order to establish a more favorable baseline and avoid mitigation costs.²⁷

11-Y

B. Compensatory Mitigation Should Be Required to Mitigate Loss of Agricultural Land in Kern County

We support MM 4.2-1's requirement that mitigation land must be located in Antelope Valley unless proof is submitted that acquisition of mitigation land in Antelope Valley is not feasible. However, to ensure that mitigation is more directly correlated to the impact of agricultural conversion in Kern County, we recommend amending MM 4.2-1 to require that if the acquisition of mitigation land in Antelope Valley is not feasible, mitigation land acquired outside of Antelope Valley must still be located in the County of Kern. Currently, MM 4.2-1 states that if the acquisition of mitigation land in Antelope Valley is not feasible, then other mitigation land may be acquired anywhere in California – even in areas that have no relationship to the continued viability of agricultural activities within the County.

11-Z

Furthermore, if mitigation land were allowed to be acquired outside of Kern County, the County should, at a minimum, require it to be in an area determined by an organization that provides for the preservation of farmland in California to be at risk for agricultural conversion. The purchase of an agricultural easement on land that is not considered to be at risk of conversion from agricultural use would fail to provide any meaningful mitigation.

11-A2

MM 4.2-1 should also be revised to set forth performance standards for determining whether the acquisition of mitigation land in Antelope Valley is feasible. Without such performance standards, MM 4.2-1 is impermissibly vague and lacks enforceability.

11-B2

VI. THE SECOND RDEIR FAILS TO DISCLOSE, ANALYZE, AND MITIGATE THE PROJECT'S IMPACTS TO NEIGHBORING FARMS

The 2nd RDEIR's analysis of agricultural impacts is also inadequate because it fails to disclose, evaluate and mitigate the Project's potential indirect impacts to neighboring farmland from the proliferation of rodents and weeds. Here, several areas of the Project are bordered directly by farmland. If weeds and pests are not

11-C2

²⁷ *Id.*

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controlled on the Project site, they may cause a direct adverse impact on neighboring farmland that has not been disclosed or mitigated.

11-C2

Kern County has long recognized that solar generation facilities could create habitat for weeds and rodents.²⁸ Wash water and rain runoff helps germinate weeds, which can easily spread to neighboring farms. In addition, rodents seek sheltered areas, such as solar arrays, for their burrows. Because the Project may cause the population of rodents to increase in the area, it is foreseeable that the rodents could impact neighboring farms where food will be available to them. Because of these potential impacts, Kern County's Pathway Process states that solar PV projects that convert agricultural land should be required to submit a vertebrate pest and weed management plan that protects neighboring farmlands.²⁹

11-D2

The 2nd RDEIR fails to disclose or evaluate this potential impact. It also contains no explanation of why a vertebrate pest and weed management plan would be required for solar PV projects in Kern County that convert agricultural land in the Central Valley, but not here.

11-E2

The County must revise the Draft EIR to disclose that the Project may impact neighboring farmland. The revised EIR must include a complete analysis of these potential indirect impacts and include all feasible mitigation measures, such as those provided under the Pathway Process.

11-F2

VII. CONCLUSION

This Project is one of approximately 48 approved or proposed solar power plants that will cumulatively convert over 35,000 acres of agricultural land to an industrial use.³⁰ This agricultural land has provided substantial employment to Kern County residents - employment opportunities that will not be replaced by the small operational staff required to operate these land intensive solar projects. Due to the unprecedented scope of large scale development projects taking place on agricultural land in this region, it is essential that the County's EIR adequately disclose and aggressively mitigate the Project's impact on agricultural resources.

11-G2

²⁸ See Kern County, Pathway for Processing: Conversion of Agricultural Land to Solar PV Use (July 17, 2012).

²⁹ Kern County, Pathway for Processing: Conversion of Agricultural Land to Solar PV Use (July 17, 2012).

³⁰ http://www.co.kern.ca.us/planning/pdfs/renewable/solar_projects.pdf


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As discussed in our prior comments, the Project will also result in significant impacts on air quality, biological resources, and worker health and safety that have not been adequately disclosed, evaluated or mitigated in the prior Project CEQA documents. The 2nd RDEIR does not address the errors relating to these other impacts and thus those errors remain uncorrected. A new EIR must be prepared for this Project that fully discloses all of its potentially significant impacts and that sets forth mitigation to prevent or minimize those impacts to the extent feasible.

11-H2

We appreciate the opportunity to comment on this Project and urge the County to resolve these issues before moving forward with the Project.

Sincerely,



Thomas A. Enslow

TAE:lj1

Attachment

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