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August 28, 2017

Via Email and Overnight Delivery

Mr. John F. Tavaglione, Chair
Honorable Members of the Board of
Supervisors
Ms. Kecia Harper-Ihem, Clerk of the Board
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County Administrative Center
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Riverside, California 92501
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Mr. Russell Brady, Planner
Mr. Larry Ross, Principal Planner
Mr. Steve Weiss, Planning Director
Riverside County Planning Department
4080 Lemon Street, 12th Floor
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Riverside, CA 92502-1409
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Re: Action Item 4992 / Public Hearing Item – CUP03684, PUP00916,
DA00086, EIR00532: Palo Verde Mesa Solar Project (CUP No.
3684 and PUP No. 916) / Final Environmental Impact Report

Dear Chair Tavaglione, Honorable Members of the Board of Supervisors, Ms.
Harper-Ihem, Mr. Brady, Mr. Ross, Mr. Weiss:

On behalf of **Citizens for Responsible Solar (“Citizens”)**, we submit these *supplemental comments*¹ on Action Item 4992 and the Final Environmental Impact Report (“FEIR”) for the Palo Verde Mesa Solar Project (“Project”). These comments address the FEIR’s response to Citizen’s comments regarding hazardous materials, air quality, biological resources, and failure to respond to comments regarding the Project’s potentially significant, unmitigated impacts on water

¹ On August 25, 2017, Citizens submitted preliminary comments on the FEIR addressing the Project’s significant impacts on sensitive bird and bat species from collisions with solar panels and other Project structures. Those comments are incorporated by reference herein.

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quality. Citizens expressly reserves the right to supplement these comments at the Board hearing, and at any later hearings and proceedings related to this Project.²

Citizens urges the Board of Supervisors to continue the August 29, 2017 hearing on the Project by at least 30 to 60 days in order to give the public adequate time to review and respond to the massive amount of new information contained in the FEIR. The FEIR was released on August 17, 2017, less than 10 days ago, and contains over 1000 pages of new evidence and information that was not contained in the DEIR. A continued hearing is necessary in order to ensure a meaningful opportunity for public review of the FEIR and public comment at the Board hearing, in order to give the Board the opportunity to consider the public's comments *before* the County makes any final decisions regarding the Project.

Citizens for Responsible Solar is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential health, safety, public service, and environmental impacts of the Project. The association includes Blythe resident George Ellis, Riverside County resident James Hennegan, and California Unions for Reliable Energy ("CURE") and its members and families and other individuals that live and/or work in east Riverside County. Citizens was formed to advocate for responsible and sustainable solar development in and around Riverside County, in order to protect public health and safety and the environment where Citizens' members and their families live, work, and recreate. Citizens has a direct interest in ensuring that the environmental impacts of the Project are fully disclosed to the public and mitigated to the extent feasible, and in ensuring that the County and the Applicant comply with all applicable local, State, and Federal laws in their consideration of this Project.

Citizens and its technical consultants have conducted an initial review of the FEIR. Based on our review, it is clear that the County failed to prepare a legally adequate environmental document for the Project pursuant to the California Environmental Quality Act ("CEQA"),³ and failed to correct the significant

² Citizens submitted comments on the Draft Environmental Impact Report ("DEIR") for the Project November 28, 2016, and supplemental comments on February 16, 2017. Those comments are incorporated by reference. Citizens reserves the right to supplement these comments at later hearings and proceedings on this Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

³ Public Resources Code ("PRC") §§ 21000 et seq.; 14 Cal. Code Regs. ("CCR") §§ 15000 et seq. 3447-018acp

informational and analytical deficiencies in the DEIR that were identified by Citizens, public agencies, and other members of the public.

These comments are supported by the technical comments of Citizens' expert air quality consultants Paul Rosenfeld, PhD, and Hadley Nolan, and hazardous materials and hydrology expert Matt Hageman, P.G., C.Hg, of Soil Water Air Protection Enterprise ("SWAPE")⁴, as well as the comments of expert biologist Shawn Smallwood.⁵ The comments of SWAPE and Mr. Smallwood demonstrate that many of the FEIR's conclusions and significance determinations lack substantial evidence. The consultants' comments also present substantial evidence demonstrating that several of impacts described in the FEIR as less than significant, or less than significant with mitigation, are substantially more significant than the FEIR discloses. SWAPE and Mr. Smallwood identify additional analysis and mitigation measures

Citizens urges the Board to continue this hearing in order to give Staff the opportunity to fully consider Citizens' comments and evidence, and to revise and recirculate the FEIR to address its significant errors and omissions, prior to conducting any further hearings on the Project.

I. THE FEIR AND STAFF REPORT FAIL TO ADEQUATELY DISCLOSE AND MITIGATE THE PROJECT'S POTENTIALLY SIGNIFICANT IMPACTS

A. The FEIR and Staff Report Fail to Accurately Disclose and Mitigate the Project's Significant Carcinogenic Health Impacts from Diesel Truck Emissions.

Citizens' DEIR comments previously explained that the DEIR failed to adequately evaluate the health risk posed to nearby sensitive receptors from exposure to diesel particulate matter ("DPM") emissions released during Project construction. In response to those comments, the FEIR included an updated health risk assessment ("HRA") which incorporated OEHHA current guidance, as recommended by SWAPE.⁶ SWAPE reviewed the updated HRA and concludes that several assumptions the FEIR relies upon to calculate the health risk are incorrect

⁴ SWAPE's comments are attached hereto as Exhibit A.

⁵ Mr. Cashen's comments are attached hereto as Exhibit B.

⁶ Responses, p. 2-200- 2-201.

or unsupported.⁷ For example, the FEIR states that, while some off-site truck emissions would be occurring near the project site, only approximately 0.01 tpy of DPM would be emitted within 1 mile of the Project site.⁸ However, this conclusion is not supported, and is indeed contradicted, by the FEIR's own emissions estimates.⁹ As a result, SWAPE concludes that the FEIR still fails to accurately disclose the significant of health impacts to local sensitive receptors from exposure to DPM during Project construction.¹⁰

SWAPE also concludes that the Project's construction-related excess cancer risk is underestimated. SWAPE prepared its own screening level health risk assessment, using the Project's 3-year construction period as the exposure duration, and using health risk parameters recommended by OEHHA. Using these parameters, SWAPE health risk assessment demonstrates that the Project's construction-related residential cancer risk is 12.1 in one million.¹¹ This exceeds the applicable Air District significance threshold of 10 in one million, and it therefore a per se significant health risk impact.

This is significant impact that was not disclosed in the FEIR, and for which the County has not provided any mitigation. The FEIR must be revised to disclose and mitigate this significant impact, and the Board cannot recommend approval the Project unless and until these impacts are fully mitigated.

B. The FEIR and Staff Report Fail to Disclose and Mitigate Potentially Significant Impacts from Disturbing Contaminated Soil During Project Construction.

The FEIR fails to correct significant informational deficiencies in the DEIR's hazardous materials analysis that were previously identified by SWAPE, including, the DEIR's failure to quantify the extent and severity of potential impacts from exposure to soil contamination during Project construction phases.

The Project site encompasses the Blythe Lemon Ranch, a cleanup case that involved approximately 80 underground storage tanks ("USTs") used to fuel

⁷ Exhibit A, p. 2.

⁸ Responses, p. 2-200 - 2-201.

⁹ Exhibit A, p. 4.

¹⁰ Exhibit A, pp. 2-3.

¹¹ Exhibit A, p. 5.

gasoline-powered wind turbines.¹² The DEIR included a Phase I Environmental Site Assessment (“ESA”), which stated that residual gasoline contamination was documented to remain in soils beneath the Project at 44 of the former USTs.¹³ Mr. Hagemann explains that the the Colorado River Basin Regional Water Quality Control Board’s grant of “no further action required” status for the former UST sites is not determinative of the level of health risk that will be implicated if the USTs and contaminated soils surrounding them, are excavated during Project construction. Mr. Hagemann concludes that the residual fuel contamination documented in soil at the time of closure in 1991 may pose a significant risk to construction workers and nearby residents during Project construction.¹⁴

The FEIR dismisses Mr. Hagemann’s comments by simply referring to the closure of the USTs without addressing the data SWAPE highlighted in its DEIR comments, which showed residual contamination in soil at concentrations that are above levels that would be hazardous to construction workers, and without quantifying or disclosing the significance of the existing residual contamination.

At the time of the Lemon Ranch site closure, concentrations of gasoline in shallow soil that exceed Environmental Screening Levels (ESLs)¹⁵ for direct exposure to construction workers were allowed to remain in place. ESLs are groundwater, soil, soil gas, and indoor air concentrations developed by the regional water boards for over 100 toxic chemicals to be used to evaluate environmental sampling data collected from contaminated sites. Water Board guidance on ESLs explains that the presence of a chemical at concentrations in excess of an ESL indicates “that additional evaluation is warranted.”¹⁶ Based on the existing levels of residual contamination that exceed ESLs, Mr. Hagemann concludes that the gasoline contamination that remains in this soil is likely to pose health risks that include central nervous system impairments, headaches and dizziness, peripheral

¹² Exhibit A, p. 6.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See

[http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/ESL/ESL%20Workbook ESLs-Interim%20Final-22Feb16-Rev3-PDF.pdf](http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/ESL/ESL%20Workbook%20ESLs-Interim%20Final-22Feb16-Rev3-PDF.pdf)

¹⁶ See

http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/ESL/ESL%20Users%20Guidance-22Feb16.pdf
3447-018acp

neuropathy, and effects on the blood, immune system, lungs, skin, and eyes for any person who comes into contact with it.¹⁷

Mr. Hagemann explains that these impacts are not limited to the Project site or Project workers:

Not only are construction workers subject to these risks, the worker's families may also be at risk if clothing and footwear is contaminated during construction and brought home. Nearby residents, some located within 230 feet of the Project, may also be subject to health risks when soil is disturbed during Project construction. Nearby residents may inhale dust that may have absorbed gasoline contaminants.¹⁸

Mr. Hagemann concludes that a Phase II ESA must be prepared prior to Project approval to identify the specific locations of the former USTs and to sample those locations for the presence of soil contaminants associated with residual gasoline.

Phase II ESAs are commonly prepared for projects such as this one, which involve soil disturbance and excavation, in order to collect soil samples and analyze them for contaminants in a controlled laboratory analysis. The Project will involve pile driving and excavation, which will disturb soil at the Project site. The EIR fails to disclose whether any of the Project's planned pile driving and excavation will occur in the locations where USTs exist, or at depths where residual contamination has been documented. It is critical that the EIR disclose the location of each of the former USTs, as well as the location and levels of all associated contamination, in order to determine whether, and to what extent, Project excavation activities will directly disturb this contamination, and whether that disturbance poses a significant risk to human health.

Mr. Hagemann further explains that the Phase II ESA should also sample for the presence of residual pesticides which are acknowledged to be potentially present in soil from former agricultural operations.¹⁹ The sampling, under a Phase II investigation, must be conducted prior to Project approval, so that any health risks can be quantified and mitigated in a revised FEIR.

¹⁷ Exhibit A, pp. 5-6.

¹⁸ *Id.*

¹⁹ Exhibit A, p. 6; FEIR, p. 2-256.

As drafted, the FEIR contains inadequate information to determine whether soil disturbance during Project construction will pose significant health impacts on the public. The FEIR's conclusion that this risk is insignificant is not supported by substantial evidence.

C. The FEIR and Staff Report Fail to Accurately Disclose and Mitigate the Project's Significant Impacts on Water Quality.

Citizens' February 16, 2017 supplemental comments on the DEIR ("Supplemental Comments") identified several deficiencies in the DEIR's analysis of water quality impacts, including potentially significant impacts to jurisdictional waters. The FEIR fails entirely to respond to those comments. Mr. Hagemann concludes that the FEIR fails to disclose critical facts demonstrating that vehicular traffic and road modification associated with Project construction are likely to adversely affect water quality in the Southern Wash, a tributary to the Colorado River, and the McCoy wash.²⁰

Under CEQA, a significant impact may result when a project would violate water quality standards or waste discharge requirements or remove, fill, interrupt hydrology or, by other means, adversely affect waters of the State or jurisdictional waters of the U.S., as defined by section 404 of the CWA.²¹

McCoy wash, which passes through the northeast portion of the Project site, is a "tributary of the Colorado River."²² SWAPE previously explained that the eastward flow of both the McCoy and Southern Wash render both washes tributaries of the Colorado River.²³ SWAPE mapped the connection between the McCoy and Southern washes and the Colorado River. Citizens provided SWAPE's mapping to the County in its Supplemental Comments:²⁴ Attachment 1 to Supplemental Comments Exhibit A: The McCoy and Southern Washes' Connection to the Colorado River:²⁵

²⁰ See Exhibit A, p. 7.

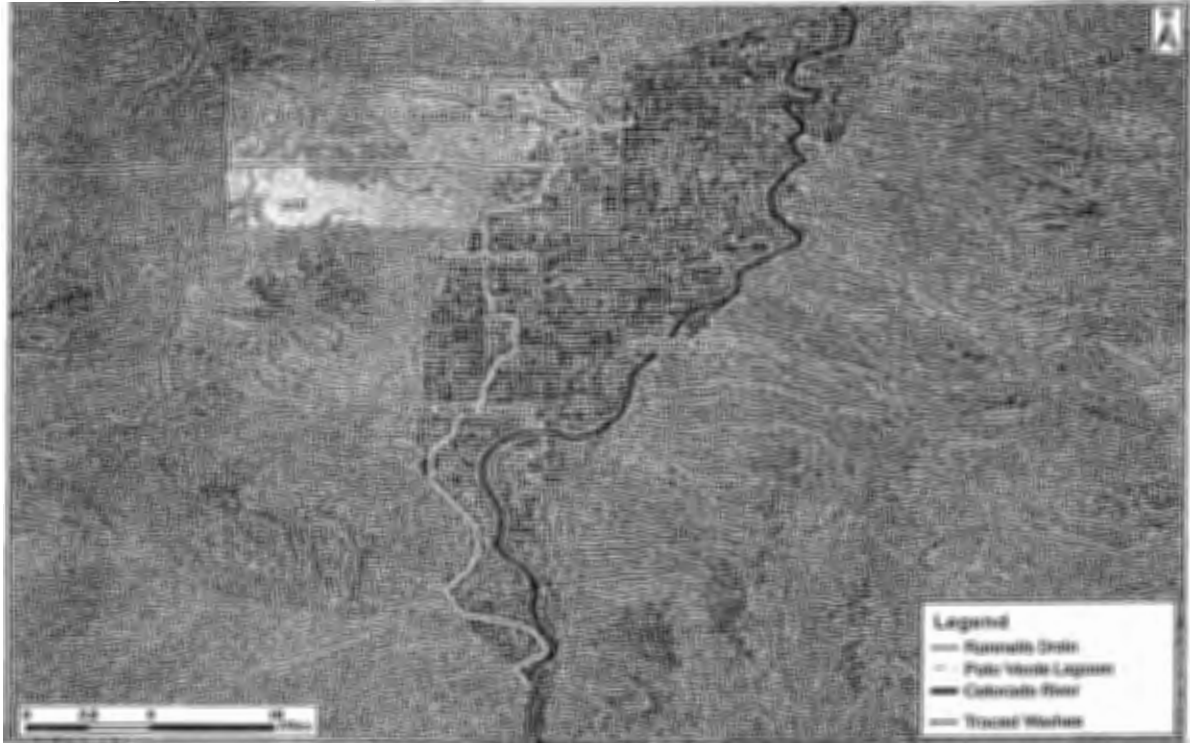
²¹ CEQA Guidelines, Appendix G (VII)(a), (IV)(d).

²² FEIR, p. 3.4-47.

²³ Exhibit A: Letter from Matt Hagemann to Ned Thimmayya re: Comments on the Hydrological Impacts of the Palo Verde Mesa Solar Project ("SWAPE Comments"), p. 1.

²⁴ *Id.*, p. 1.

²⁵ *Id.*, p. 4.



SWAPE's comments on the DEIR explained that the Project may significantly impact the Southern Wash.²⁶ According to Mr. Hagemann, use of two access roads—Buck Boulevard and Stephenson Boulevard—crossing the Southern Wash will require modification in order to be used as described by the applicant.²⁷

Mr. Hagemann explained that both Buck Boulevard and Stephenson Boulevard are “light duty” access roads that are insufficient for supporting construction of the scale required for the Project.²⁸ The DEIR recognized that Buck Boulevard crosses the Southern Wash at a “low water crossing” and that Buck Boulevard will be the “primary access” for the Project’s construction workers and delivery trucks.²⁹ As a result, the DEIR explained that all construction-related trips will cross the Southern Wash,³⁰ and that heavy Project machinery would therefore

²⁶ Exhibit A to Supplemental Comments: SWAPE Comments, p. 3.

²⁷ *Id.*, p. 1-3.

²⁸ *Id.*, p. 3.

²⁹ DEIR, p. 3.9-20; *id.*, p. 2-29.

³⁰ DEIR, p. 2-29.

be transported via Buck Boulevard and thus cross the Southern Wash.³¹ The DEIR further acknowledged that "primary access roads...shall be surfaced with aggregate,"³² and that paving may also be required for these roads,³³ thus implicitly acknowledging that the Southern Wash may be altered, or even filled with aggregate materials, in order to allow Project vehicles to pass along Buck Boulevard.

Mr. Hagemann concludes that these alterations and sediment deposits would adversely affect water quality in the Southern Wash.³⁴ The Southern Wash is a tributary to the Colorado River, and is therefore a jurisdictional waterway that is subject to regulation under the Clean Water Act (33 U.S.C. §1251 et seq.). Thus, the Project's direct impacts on the Southern Wash, as well as any indirect adverse impacts on the Colorado River resulting from Project activities that impact the Southern Wash, constitute significant impacts under CEQA.

The FEIR fails to disclose these impacts as significant, and fails to include adequate mitigation measures to reduce impacts to the Southern Wash to less-than-significant levels. The FEIR must be revised and recirculated to correct these deficiencies.

D. The FEIR and Staff Report Fail to Accurately Disclose and Mitigate the Project's Significant Impacts on Burrowing Owls.

Citizens' DEIR comments presented evidence demonstrating that the DEIR failed to adequately disclose the Project's potentially significant impacts to burrowing owls. Mr. Smallwood reviewed the FEIR's responses to those comments, and concludes that the FEIR failed to correct these errors. Mr. Smallwood concludes that the FEIR continues to erroneously conclude that over 90% of the Project site provides unsuitable habitat for burrowing owls, when, in fact, there is ample suitable habitat on site for the owls.³⁵ Mr. Smallwood explains that the FEIR's failure to recognize the presence of, and likelihood of occurrence, of burrowing owls at the Project site, is due to the County's failure to adhere to the basic CDFW 2012 Burrowing Owl Guidelines in conducting the baseline surveys for the DEIR.

³¹ *Id.*

³² *Id.*, p. 3-9-15.

³³ *Id.*

³⁴ Exhibit A, p. 7.

³⁵ See Exhibit B, p. 5-9.

Below is a table summarizing the specific requirements of the 2012 Burrowing Owl Guidelines that the FEIR fails to comply with. Each of these deficiencies constitutes a separate violation of the County's duty to conduct accurate baseline surveys, and to disclose and mitigate potentially significant impacts to burrowing owl in the FEIR. The FEIR must be revised and recirculated to correct these deficiencies.

Table 1. Assessment of EIR consistency with CDFW's (2012) recommended burrowing owl survey protocol. Standards are numbered to match those in CDFW (2012).

Standard in CDFW (2012)	Assessment of surveys performed	Was the standard met?
Minimum qualifications of biologists performing surveys and impact assessments		
(1) Familiarity with the species and local ecology	Some of the scientific literature is cited, but there is no evidence of personal familiarity with burrowing owl ecology. As an example, had Power Engineers been familiar with the species, their survey report would not have concluded that burrowing owls are active at dawn and dusk and sometimes at night; instead, it would have concluded the species is most active at night.	No
(2) Experience conducting habitat assessments and breeding and non-breeding season surveys	No evidence of experience was provided.	No
(3) Familiarity with regulatory statutes, scientific research and conservation related to burrowing owls	A few papers were cited on burrowing owl ecology, but no information was provided that would demonstrate knowledge of burrowing owl conservation.	No
(4) Experience with analyzing impacts on burrowing owls	No information provided.	No
Habitat assessment		
(1) Conduct at least 1 visit covering entire site and offsite buffer to 150 m	There was a visit in October 2011, but the County summarily deemed the majority (77.2%) of the project	No

Standard in CDFW (2012)	Assessment of surveys performed	Was the standard met?
	footprint as unsuitable because it was classified as fallow agricultural	
(2) Prior to site visit, compile relevant biological information on site and surrounding area	No information reported other than reviews of surveys performed at neighboring projects.	No
(3) Check available sources for occurrence records	Other sources were reviewed.	Yes
(4) Identify vegetation cover potentially supporting burrowing owls on site and vicinity	No details provided other than dismissing most of the project footprint as unsuitable for burrowing owls.	No
(5a) Describe project and timeline of activities	Timeline of activities was unreported.	No
(5b) Regional setting map showing project location	Provided.	Yes
(5c) Detailed map with project footprint, topography, landscape and potential vegetation-altering activities	The project footprint was mapped.	Yes
(5d) Biological setting including location, acreage, terrain, soils, geography, hydrology, land use and management history	Some of this information was reported, though some was cursory in description.	Partial
(5e) Analysis of relevant historical information concerning burrowing owl use or occupancy	None provided.	No
(5f) Vegetation cover and height typical of temporal and spatial scales relevant to the assessment	Not provided.	No
(5g) Presence of burrowing owl individuals, pairs or sign	Not provided, as no surveys were performed.	No
(5h) Presence of suitable burrows or burrow surrogates	The increasing number of ground squirrels and their burrows was mentioned (page 7), but Power Engineers inexplicably failed to conclude that burrowing owls likely increased in occurrence along with the ground squirrels.	No

Standard in CDFW (2012)	Assessment of surveys performed	Was the standard met?
Breeding season surveys		
Perform 4 surveys separated by at least 3 weeks	Achieved over 323 acres deemed suitable by Riverside County, but not achieved over 90% of the project footprint.	No
1 survey between 15 February and 15 April	Achieved over 323 acres deemed suitable by Riverside County, but not achieved over 90% of the project footprint.	No
2-3 surveys between 15 April and 15 July	Achieved over 323 acres deemed suitable by Riverside County, but not achieved over 90% of the project footprint.	No
1 survey following June 15	Achieved over 323 acres deemed suitable by Riverside County, but not achieved over 90% of the project footprint.	No
Walk transects spaced 7 m to 20 m apart	Achieved over 323 acres deemed suitable by Riverside County, but not achieved over 90% of the project footprint.	No
Scan entire viewable area using binoculars at start of each transect and at 100 m intervals	No surveys were performed over >90% of the project area.	No
Record all potential burrow locations determined by presence of owls or sign	No surveys were performed over >90% of the project area.	No
Survey when temperature >20° C, winds <12 km/hr, and cloud cover <75%	Mostly achieved on <10% of project area, but no surveys were performed over >90% of the project area.	No
Survey between dawn and 10:00 hours or within 2 hours before sunset	Mostly achieved on <10% of project area, but no surveys were performed over >90% of the project area.	No
Identify and discuss any adverse conditions such as disease, predation, drought, high rainfall or site disturbance	Possibly achieved on <10% of project area (high winds were reported during one survey), but no surveys were performed over >90% of the project area.	No

Standard in CDFW (2012)	Assessment of surveys performed	Was the standard met?
Survey several years at projects where activities will be ongoing, annual or start-and-stop to cover high nest site fidelity	Only one year of surveys was performed.	No
Reporting should include:		
(1) Survey dates with start and end times and weather conditions	Achieved.	Yes
(2) Qualifications of surveyor(s)	None provided.	No
(3) Discussion of how survey timing affected comprehensiveness and detection probability	No surveys were performed.	No
(4) Description of survey methods including point count dispersal and duration	None provided.	No
(5) Description and justification of the area surveyed	Provided, but justification was unsupported, consisting merely of a County staff member requiring surveys over small areas covered by natural vegetation.	No
(6) Numbers of nestlings or juveniles associated with each pair and whether adults were banded or marked	No surveys were performed over >90% of the project area, so survey effort was incomplete.	No
(7) Descriptions of behaviors of burrowing owls observed	No surveys were performed over >90% of the project area, so survey effort was incomplete.	No
(8) List of possible burrowing owl predators in the area, including any signs of predation of burrowing owls	Only observed predator species were mentioned.	Partial
(9) Detailed map showing all burrowing owl locations and potential or occupied burrows	A map was provided showing the locations of where sign was found, but no surveys were performed over >90% of the project area, so no mapped results were possible over the majority of the project area.	Partial
(10) Signed field forms, photos, etc.	None provided.	No
(11) Recent color photos of project site	Provided.	Yes
(12) Copies of CNDDDB field forms	None provided in report.	No

II. CONCLUSION

For the reasons discussed herein, and in our prior comments on the Project, Citizens respectfully requests that the Board require the County to revise and recirculate a legally adequate FEIR for the Project which fully discloses the Project's potentially significant impacts and requires implementation of all feasible mitigations required by law to reduce the Project's individual and cumulative impacts to less than significant levels.

Citizens also respectfully requests that the Board continue the August 29, 2017 hearing on the Project by at least 30 to 60 days, in order to afford Citizens and other members of the public adequate opportunity to review and consider the FEIR.

Thank you for your consideration of these comments. Please place them in the record of proceedings for the Project.

Sincerely,



Christina M. Caro

CMC:acp