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Via U.S. Mail and Electronic Mail

Susan Harris
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**Re: Comments on the Draft Environmental Impact Report for the
Boulder Brush Facilities (SCH No. 2019029094, PDS2019-ER-19-
16-001, PDS 2019-MUP-19-002)**

Dear Ms. Harris:

We are writing on behalf of **Citizens for Responsible Wind Energy** and Doyle Mills to provide comments on the December 12, 2019 Draft Environmental Impact Report (“DEIR”) prepared by DUDEK for the County of San Diego (“County”), pursuant to the California Environmental Quality Act (“CEQA”),¹ for the Boulder Brush Facilities, which include a lease agreement between the Campo Band of Diegueño and Terra-Gen Development Company LLC (“Campo Lease”) for the Campo Wind Project (“Project”).² The DEIR incorporates by reference a May 2019 Draft Environmental Impact Statement (“DEIS”) prepared by the Bureau of Indian Affairs (“BIA”), pursuant to the National Environmental Policy Act. (“NEPA”).

O12-2

¹ 42 U.S.C. §§ 4321 et seq.

² County of San Diego, Draft Environmental Impact Report for the Campo Wind Project with Boulder Brush Facilities, (December 2019), (hereafter “DEIR”).

The Project includes a lease allowing Terra-Gen to develop, construct, operate and ultimately decommission a renewable energy generation facility on land within the boundary of the Campo Indian Reservation in Eastern San Diego County, California. The Campo Wind Project consists of both the Campo Wind Facilities on land within the Reservation and the Boulder Brush Facilities on adjacent private lands within the Boulder Brush Boundary. The Project includes up to 60 wind turbines, each approximately 4.2 megawatts in capacity and approximately 586 feet in total height, access roads, electrical collection and communication system, project collector substation, operations and maintenance facility, meteorological towers, water collection and septic system, temporary concrete batch plant, temporary staging areas, on-reservation portion of the generation tie line (“gen-tie line”), and boulder brush facilities, which include a portion of the gen-tie line, a high-voltage substation, a switchyard, and access roads).

O12-3

As explained in these comments, the DEIR fails to comply with CEQA’s basic requirement to act as an “informational document.” It is devoid of meaningful details upon which the public and decisionmakers can adequately assess the Project’s significant impacts. The DEIR fails to comply with the requirements of CEQA by (1) failing to include a complete project description (2) piecemealing the Campo Wind Project from the Torrey Wind Project, (3) failing to accurately describe the affected environment, (4) not disclosing, analyzing, or discussing mitigation for the Project’s significant impacts, and (5) impermissibly deferring identification of mitigation for the Project’s significant impacts. Because of these shortcomings, the DEIR is deficient as a matter of law and its determinations that it properly identifies and mitigates the Project’s significant impacts are not supported by substantial evidence.

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For each of these reasons, the County may not approve the Project until a revised environmental review document is prepared and re-circulated for public review and comment.

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We reviewed the DEIR, its technical appendices, and the reference documents with the assistance of biologist Scott Cashen.⁴ Mr. Cashen provides substantial evidence of potentially significant effects that have not been adequately disclosed, analyzed, or mitigated. Mr. Cashen’s technical comments are attached hereto and are hereby submitted to the County, in addition to the comments in this letter. The County must respond to these consultants’ comments separately and individually.⁵

O12-6

I. STATEMENT OF INTEREST

Citizens for Responsible Wind Energy is an unincorporated association of individuals and labor organizations with members who may be adversely affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project. The association includes San Diego County residents and California Unions for Reliable Energy (“CURE”) and its members and families and other individuals that live, recreate and/or work in San Diego County (collectively “Citizens”).

Citizens supports the development of clean, renewable energy technology, including the use of wind power generation, where properly analyzed and carefully planned to minimize impacts on public health and the environment. Wind energy projects should avoid impacts to sensitive species and habitats, water resources, and public health, and should take all feasible steps to ensure unavoidable impacts are mitigated to the maximum extent feasible. Only by maintaining the highest standards can energy supply development truly be sustainable.

O12-7

The individual members of Citizens, including Doyle Mills, and the members of the affiliated labor organizations live, work, recreate and raise their families in San Diego County. They would be directly affected by the Project’s environmental and health and safety impacts. Individual members may also work constructing the Project itself. They will be first in line to be exposed to any health and safety hazards that may be present on the Project site. They each have a personal interest

⁴ Scott Cashen, Letter from Scott Cashen to Kyle C. Jones, Comments on the Draft Environmental Impact Report for the Campo Wind Project with Boulder Brush Facilities (January 30, 2020) (hereafter “Cashen Comments”) **Exhibit B**; Materials cited will be provided on a separate storage device in the mailing of these comments.

⁵ *Appalachian Mountain Club v. Brinegar* 394 F.Supp. 105 (D.N.H. 1975).

in protecting the Project area from unnecessary, adverse environmental and public health impacts.


The organizational members of Citizens and their members also have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for the members that they represent. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for industry to expand in the County, and by making it less desirable for businesses to locate and people to live and recreate in the County, including the Project vicinity. Continued degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduces future employment opportunities.

Finally, the organizational members of Citizens are concerned with projects that can result in serious environmental harm without providing countervailing economic benefits. CEQA provides a balancing process whereby economic benefits are weighed against significant impacts to the environment. It is in this spirit we offer these comments.


II. LEGAL BACKGROUND

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report (“EIR”) (except in certain limited circumstances).⁶ The EIR is the very heart of CEQA.⁷ “The foremost principle in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.”⁸

CEQA has two primary purposes, none of which is fulfilled by the DEIR. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.⁹ “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR “protects not only the environment



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O12-8

⁶ See, e.g., Pub. Resources Code § 21100.

⁷ *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.

⁸ *Comtys. for a Better Env' v. Cal. Res. Agency* (2002) 103 Cal. App.4th 98, 109 (“*CBE v. CRA*”).

⁹ CEQA Guidelines § 15002(a)(1).

but also informed self-government.”¹⁰ The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”¹¹

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures.¹² The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.”¹³ If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”¹⁴

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. *A clearly inadequate or unsupported study is entitled to no judicial deference.*”¹⁵ As the courts have explained, “a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.”¹⁶

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¹⁰ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

¹¹ *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹² CEQA Guidelines § 15002(a)(2) and (3); *see also Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.

¹³ CEQA Guidelines §15002(a)(2).

¹⁴ Pub. Resources Code § 21081; CEQA Guidelines § 15092(b)(2)(A) & (B).

¹⁵ *Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added), *quoting, Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391 409, fn. 12.

¹⁶ *Berkeley Jets*, 91 Cal.App.4th at 1355; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.

III. THE DEIR FAILS TO INCLUDE A COMPLETE PROJECT DESCRIPTION AND FAILS TO ANALYZE POTENTIALLY SIGNIFICANT IMPACTS FROM THE WHOLE PROJECT

The DEIR does not meet CEQA's requirements because it fails to include a complete project description, rendering the entire analysis inadequate. Without a complete project description, the environmental analysis under CEQA will be impermissibly narrow, thus minimizing the Project's impacts and undercutting public review.¹⁷

CEQA places the burden of environmental investigation on the government rather than the public. Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.¹⁸ CEQA requires that the project description contained in a CEQA document that is circulated for public review contain sufficiently detailed information to permit a meaningful evaluation and review of the potential environmental impacts of a proposed project.¹⁹ California courts have repeatedly held that "an accurate, stable and finite project description is the sine qua non of an informative and legally sufficient [CEQA document]."²⁰ In contrast, an inaccurate or incomplete project description renders the analysis of environmental impacts inherently unreliable. Without a complete project description, the environmental analysis under CEQA will be impermissibly narrow, thus minimizing the project's impacts and undercutting public review.²¹

Here, the County violates CEQA by omitting numerous aspects of the Project entirely, or merely mentioning aspects of the Project in passing without analyzing those Project component's potentially significant impacts, in in the DEIR.

A. The Campo Lease Agreement

The Project Description notes, but does not include, the Campo Lease as part of the Project.²² Later, the DEIR notes that the Campo Lease includes terms that

¹⁷ See, e.g., *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376.

¹⁸ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

¹⁹ CEQA Guidelines § 15124.

²⁰ *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193.

²¹ See, e.g., *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.

²² DEIR, p. 1.2.

O12-9

O12-10

exempt the Project from tribal regulations and land use plans. In response to our request for the lease, the regulations and the land use plans, the County responded that all of the documents were privileged and withheld the records from the public.²³ Thus, the DEIR fails to disclose the whole of the project by omitting changes in applicable tribal regulations plans and how those changes will impact the environment in violation of CEQA. The DEIR must be withdrawn and recirculated with an explanation of which regulations and land use policies would be changed, an analysis of the potentially significant impacts from these changes and a clear identification of mitigation for those significant impacts.

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B. Roads

The DEIR contains an inconsistent description of the Project's proposed roads and how much disturbance associated with roads would occur from the Project.²⁴ In some areas, the DEIR mentions a six-foot wide vegetation management area around access roads, whereas in others it mentions 20-feet of fuel modification.²⁵ Additionally, the DEIR does not disclose or mention road alterations outside of the Project boundary needed to transport wind turbine components, such as blades, that often require multiple vehicles and modifications of vegetation and roads along the route.²⁶ These aspects of the proposed Project are critical to the required analysis of potentially significant permanent and temporary direct and indirect impacts from the Project's required roads.

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C. Meteorological Towers

The DEIR states that the Project will include three permanent meteorological towers including lattice structures, fencing, and lighting that have the potential to impact species.²⁷ The DEIR does not depict where these towers are, preventing anyone from being able to evaluate their potentially significant impacts, which will increase and increase in greater degrees the closer the towers are located near

O12-12

²³ DEIR, p. 3.1.6-6; Email from Randall Sjoblom, San Diego County to Sheila Sannadan, Adams, Broadwell, Joseph & Cardozo, RE: [Confidential: Attorney-Client Communication] FW: Extension Letter re PRAR for Campo Wind Project DEIR-referenced records (Jan. 17, 2020) **Exhibit C**.

²⁴ Cashen Comments, p. 2.

²⁵ Cashen Comments, p. 2.

²⁶ Cashen Comments, p. 2.

²⁷ Cashen Comments, pp. 2-3.

turbines.²⁸ The Project's proposed meteorological towers are critical to the required analysis of potentially significant permanent and temporary direct and indirect impacts from the Project.

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D. Water Line

The DEIR states that the Project's Operations and Maintenance Facility would receive water via a water line but fails to disclose the route of the line or address any impacts from installation of the water line.²⁹ Presumably, the water line will extend to the Project's on-reservation groundwater wells, located miles away from the turbines at the southern end of the Campo Reservation.³⁰ The Project's proposed water line is critical to the required analysis of potentially significant permanent and temporary direct and indirect impacts from the Project.

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E. Retention Pond

The DEIR states that the Project includes a retention pond, but does not discuss its function, location, or dimensions, precluding the ability of the public to evaluate the retention pond's potentially significant impacts.³¹ This description is critical to the required analysis of potentially significant permanent and temporary direct and indirect impacts from the Project's proposed retention pond.

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F. Decommissioning

The DEIR describes Project decommissioning in vague terms, stating that it is subject to the terms of the Campo Lease, which was withheld from the public.³² For example, the DEIR states that the disturbed areas around turbines would be restored, which is inconsistent with the Project description provided in the BIA's DEIS, which does not require restoration.³³ The DEIR mentions revegetation with local seed sources *if feasible*, but this is improperly in the project description, there is no analysis in the DEIS or DEIR regarding potentially significant impacts from decommission in the first place, and there is no analysis of potentially significant

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²⁸ Cashen Comments, pp. 2-3.

²⁹ Cashen Comments, p. 3.

³⁰ DEIR, pp. 3.1.5-21-3.1.5-22, Appendix J-1, figure 9.

³¹ Cashen Comments, p. 3.

³² Cashen Comments, p. 4; **Exhibit C**.

³³ Cashen Comments, p. 4.

impacts if revegetation efforts with local seed sources is feasible and is not feasible.³⁴ Finally, no mitigation measure is identified to require revegetation.³⁵ These issues also violate CEQA by “compressing the analysis of impacts and mitigation measures into a single issue,”³⁶ which is discussed further below.

In sum, the DEIR fails to describe several components of the Project, which are necessary for the public and decision makers to understand, review and comment on the Project’s potentially significant impacts. Therefore, the DEIR fails to serve its purpose as an informational document. The DEIR must be withdrawn and recirculated with this Project information included.

IV. THE DEIR IMPERMISSIBLY PIECEMEALS THE PROJECT FROM THE TORREY WIND PROJECT

CEQA prohibits a project proponent from seeking approval of a large project in a smaller pieces in order to take advantage of environmental exemptions or lesser CEQA review for smaller projects.³⁷ California courts have repeatedly held that “an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document].”³⁸ CEQA requires that a project be described with enough particularity that its impacts can be assessed.³⁹ As articulated by the court in *County of Inyo v. City of Los Angeles*, “a curtailed, enigmatic or unstable project description draws a red herring across the path of public input.”⁴⁰ Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project’s impacts and undermining meaningful public review.⁴¹

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³⁴ Cashen Comments, p. 5.

³⁵ Cashen Comments, p. 5.

³⁶ *Lotus v. Dep't of Transp.* (2014) 223 Cal. App. 4th 645, 651-52.

³⁷ *Arviv Enterprises, Inc. v. South Valley Area Planning Com.*, 101 Cal. App. 4th 1337, 1340 (2002).

³⁸ *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 CalApp.3d 185, 193.

³⁹ *Id.* at 192.


⁴⁰ *Id.* at 197-198.

⁴¹ *See, e.g., Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376.

CEQA prohibits such a piecemeal approach and requires review of a Project's impacts as a whole.⁴² "Project" is defined as "the whole of an action," which has the potential to result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.⁴³ CEQA mandates "that environmental considerations do not become submerged by chopping a large project into many little ones -- each with a minimal potential impact on the environment -- which cumulatively may have disastrous consequences."⁴⁴ Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable phases of a project.⁴⁵

Courts have found improper piecemealing where a lead agency conducts separate CEQA reviews for related activities proposed by the same applicant in the same vicinity. In *Plan for Arcadia v. City Council of Arcadia*, a developer submitted two applications for developments on a 400-acre property, first a 72-acre shopping center and then a parking lot to serve a racetrack on the property.⁴⁶ A site plan showed that the owner had plans to redevelop the entire property.⁴⁷ Although both projects were exempt from CEQA because they predated CEQA's effective date, it was "clear" to the court that they were "related to each other and that in assessing their environmental impact they should be regarded as a single project under [CEQA]."⁴⁸

In *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora*, the court articulated "general principles" for determining whether two actions are one CEQA project, including "how closely related the acts are to the overall objective of the project," and how closely related they are in *time, physical location, and the entity undertaking the action*.⁴⁹ The court rejected arguments that a shopping center



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⁴² 14 Cal. Code Reg. § 15378, subd. (a); *Burbank- Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.

⁴³ 14 Cal. Code Reg., § 15378.

⁴⁴ *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283-84; *City of Santee v. County of San Diego*, (1989) 214 Cal.App.3d 1438, 1452.

⁴⁵ *Laurel Heights Improvement Assoc. v. Regents of the Univ. of Calif.* (1988) 47 Cal.3d 376, 396-97, 253 Cal.Rptr. 426 (EIR held inadequate for failure to assess impacts of second phase of pharmacy school's occupancy of a new medical research facility).

⁴⁶ *Plan for Arcadia v. City Council of Arcadia* (1974) 42 Cal.App.3d 712, 718, 721

⁴⁷ *Id.* at 719.

⁴⁸ *Id.* at 723, 726.

⁴⁹ *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1226-1227 ("*Tuolumne*").

and nearby road alignment were “separate and independent” projects, and held that (1) separate approvals do not sever the connections between two activities; (2) the broad definition of a CEQA “project” extends beyond situations where a future activity is “necessitated by” an earlier one (noting that when actions “actually will be taken,” the appropriate inquiry is whether they are related to one another, i.e. they comprise the “whole of an action” or “coordinated endeavor”); and (3) the applicable standard is not always whether two actions “could be implemented independently of each other.”⁵⁰

Here, the DEIR notes that part of the Boulder Brush facilities would be needed to connect the Torrey Wind Project to the grid in addition or alternatively to the Campo Wind Project.⁵¹ The Torrey Wind Project is also owned and proposed by the Applicant, Terra-Gen and located on the same parcels as the Boulder Brush facilities.⁵² The Torrey Wind Project is currently undergoing CEQA review by the County at the same time.⁵³ Thus, this Project and the Torrey Wind Project are extremely closely related as they are undergoing permitting at the same time, in the same physical location, and being proposed by the same Applicant. The Boulder Brush facilities are also partially necessary for the Torrey Wind Project. As such, the Boulder Brush Facilities, the Torrey Wind Project and the Campo Wind Project should be considered in a single EIR, as required by CEQA to ensure the County does not undermine the public’s ability to understand the impacts from these two projects.

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V. THE DEIS FAILS TO MEET THE REQUIREMENTS OF CEQA AND CANNOT BE USED FOR THE DEIR

CEQA allows the County to rely on an EIS, rather than requiring preparation of an EIR, only when the EIS has been prepared before the EIR would be completed

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⁵⁰ *Id.* at 1228-1230 (citing 14 Cal. Code Reg. § 15378(c) and analyzing *Sierra Club v. W. Side Irr. Dist.* (2005) 128 Cal.App.4th 690, 698-700).

⁵¹ DEIR, p. 1-5.

⁵² County of San Diego, Notice of Preparation Document for Torrey Wind, (Aug. 9, 2018), pp. 1-3, available at

<https://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/TorreyWind/TWNOP/Torrey%20Wind%20NOP%20and%20Initial%20Study%20Final%208-9-18.pdf>; see also DEIR, p. 1-99.

⁵³ County of San Diego, Notice of Preparation Document for Torrey Wind, (Aug. 9, 2018), available at <https://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/TorreyWind/TWNOP/Torrey%20Wind%20NOP%20and%20Initial%20Study%20Final%208-9-18.pdf>.

for the project, the EIS complies with the CEQA Guidelines.⁵⁴ Also, because NEPA does not require separate discussion of mitigation measures or growth inducing impacts, these points of analysis will need to be added, supplemented, or identified for the entire Project before the EIS can be used as an EIR.⁵⁵ Here, the County in the DEIR relies on the BIA's EIS for the portions of the Project on tribal land and, instead, incorporates by reference the DEIS. For numerous reasons, the County's reliance on the BIA's EIS rather than preparing its own draft EIR violates the CEQA Guidelines.

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A. The DEIS Has Not Been Completed and Does Not Comply with NEPA

First, the CEQA Guidelines only allow for use of an EIS instead of an EIR where the EIS has been prepared before an EIR has been completed for a project. Here, the EIS is still in draft form, subject to changes. It has not been completed and thus any conclusions incorporated by reference in the DEIR could be changed or removed entirely. Also, as explained in Citizens' comments on the DEIS that have been submitted to the BIA and are incorporated herein, the DEIS fails to comply with NEPA and must be substantially revised and recirculated prior to being considered by the BIA.⁵⁶ The County cannot rely on the fatally flawed draft EIS, as a substitute for analysis required by CEQA.

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B. The DEIS Does Not Comply with the CEQA Guidelines

Additionally, the County cannot rely on the DEIS as a substitute for the County's required analysis of the Project, pursuant to CEQA, because the DEIS does not comply with CEQA, as required by section 15221 of the CEQA Guidelines. In many resource areas, the DEIS' discussion was limited to analyzing impacts, as required by Federal laws, and not as required by state law or county requirements. For example, the DEIS only analyzes impacts to species listed under the Endangered Species Act, whereas CEQA requires the County to analyze whether the Project would have an adverse effect on state listed species and whether the project interferes with local resource protection ordinances.⁵⁷

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⁵⁴ CEQA Guidelines § 15221 subd. (a).

⁵⁵ CEQA Guidelines § 15221 subd. (b).

⁵⁶ See **Exhibit A**.

⁵⁷ CEQA Guidelines, Appendix G.

Second, the DEIS does not require mitigation for impacts from the project and instead merely recommends them. Further, the DEIR states that the County cannot ensure that these measures will be required by the BIA.⁵⁸ The DEIS and DEIR conflict with the CEQA Guidelines requirement that lead agencies eliminate or substantially lessen all significant effects on the environment before approving a project.⁵⁹ Not only is this a substantive problem, but it is procedural as well. The State has already recognized this discrepancy in its CEQA Guidelines, which state “[b]ecause NEPA does not require separate discussion of mitigation measures or growth inducing impacts, these points of analysis will need to be added, supplemented, or identified for the entire Project before the EIS can be used as an EIR.⁶⁰ Because the DEIS does not comply with the CEQA Guidelines, it cannot be used instead of the required analysis in the County’s DEIR. The County must withdraw and recirculate the DEIR with the proper analysis and identification of mitigation included in the DEIR itself.

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VI. THE DEIR FAILS TO DESCRIBE THE EXISTING ENVIRONMENTAL SETTING

The County describes the existing environmental setting incomplete, thereby skewing the County’s impact analysis in the DEIR. The existing environmental setting is the starting point from which the lead agency must measure whether a proposed Project may cause a significant environmental impact.⁶¹ CEQA defines the environmental setting as the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, from both a local and regional perspective.⁶²

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Describing the environmental setting accurately and completely for each environmental condition in the vicinity of the Project is critical to an accurate and meaningful evaluation of environmental impacts. The importance of having a stable, finite and fixed environmental setting for purposes of an environmental

⁵⁸ DEIR, pp. 8-2-8-2.

⁵⁹ CEQA Guidelines § 15092.

⁶⁰ CEQA Guidelines § 15221 subd. (b).

⁶¹ See, e.g., *Communities for a Better Env’t v. S. Coast Air Quality Mgmt. Dist.* (Mar 15, 2010) 48 Cal.4th 310, 316; *Fat v. City of Sacramento* (2002) 97 Cal.App.4th 1270, 1278, citing Remy, et al.; Guide to the Calif. Environmental Quality Act (1999) p. 165.

⁶² CEQA Guidelines §15125(a)(1); *Riverwatch v. City of San Diego* (1999) 76 Cal.App.4th 1428, 1453.

analysis was recognized decades ago.⁶³ Today, the courts are clear that “[b]efore the impacts of a Project can be assessed and mitigation measures considered, an [EIR] must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined.”⁶⁴

An EIR must also describe the existing environmental setting in sufficient detail to enable a proper analysis of project impacts.⁶⁵ The CEQA Guidelines provide that “[k]nowledge of the regional setting is critical to the assessment of environmental impacts.”⁶⁶ This level of detail is necessary to “permit the significant effects of the project to be considered in the full environmental context.”⁶⁷

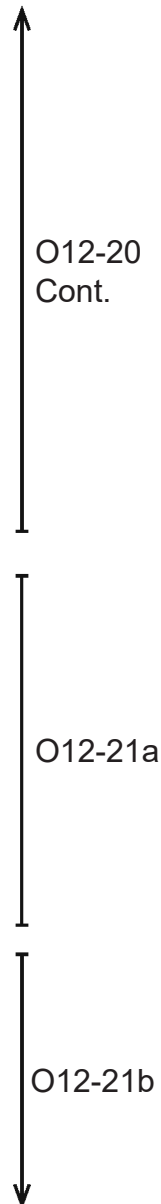
An accurate description of the affected environment is an essential prerequisite for an adequate analysis of Project impacts. Here, however, some critical baseline information is incomplete, outdated, or was never provided.

A. The DEIR Fails to Adequately Describe the Affected Environment for Biological Resources

The DEIR fails to accurately and adequately describe the area affected for numerous biological resources. Without an accurate description of the affected environment, there is no way to determine the Project’s impacts to biological resources and, therefore, no way to develop, apply and enforce appropriate mitigation for those impacts. The DEIR must be revised to include accurate and complete descriptions of baseline conditions for biological resources.

1. Special-Status Plants

The DEIR includes surveys for special-status plants, but Mr. Cashen notes that many of these surveys were done at times when several species were not blooming or fruiting.⁶⁸ For example, Tecate tarplant surveys were only conducted during the first three days in August 2018, which is the very edge of the time when



⁶³ *City of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.

⁶⁴ *City of Amador v. El Dorado City Water Agency* (1999) 76 Cal.App.4th 931, 952.

⁶⁵ CEQA Guidelines § 15125; *Galante Vineyards v. Monterey Peninsula Water Mgmt. Dist.* (1997) 60 Cal.App.4th 1109, 1121-22.

⁶⁶ CEQA Guidelines § 15125(c).

⁶⁷ *Id.*

⁶⁸ Cashen Comments, p. 5.

the plant blooms.⁶⁹ Further, this survey was conducted during a drought year, limiting detection even more.⁷⁰ Thus, the DEIR lacks substantial evidence to support its description of the environmental setting for special-status plants.

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2. Quino Checkerspot Butterfly

The DEIR lacks substantial evidence to support its description of the environmental setting for Quino Checkerspot Butterfly (“Quino”). The DEIR fails to properly explain to the public the importance of the Project site to Quino. Mr. Cashen explains that the site is a core occurrence complex of the Quino, with habitat that can support a greater number of the species than normal.⁷¹ Further, the drier nature of the Project area compared to other Quino population areas makes the Project region more important as its populations are better able to adapt to changing climate conditions.⁷² Urbanization and habitat fragmentation are the primary threats to the species in San Diego County.⁷³

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The DEIR also misleads the public by stating that the Quino surveys followed United States Fish and Wildlife Service (“USFWS”) guidelines, which is not correct.⁷⁴ Surveys were performed too close together and were conducted too quickly.⁷⁵ Surveys were also conducted on days where weather did not meet the requirements of the USFWS guidelines.⁷⁶ The DEIR thus fails to accurately assess the Quino’s use of the site and underestimates the importance of the region to the Quino.

3. Birds

The DEIR lacks substantial evidence to support its description of the environmental setting for bird species. The DEIR fails to include a survey report to show the data collected during point counts and, instead, only provides a list of

↑ O12-21d

⁶⁹ Cashen Comments, p. 5.

⁷⁰ Cashen Comments, p. 5.

⁷¹ Cashen Comments, pp. 6-7.

⁷² Cashen Comments, pp. 6-7.

⁷³ Cashen Comments, pp. 6-7.

⁷⁴ Cashen Comments, p. 7.

⁷⁵ Cashen Comments, pp. 7-8.

⁷⁶ Cashen Comments, p. 8

birds observed.⁷⁷ This prevents the public from being able to assess the frequency of use of the Project site by bird species,⁷⁸ which is essential for evaluating the potentially significant decreases in use of the Project site by bird species or, in other words, deaths of birds.

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4. Golden Eagle

The DEIR lacks substantial evidence to support its description of the environmental setting for golden eagles and nests. Golden eagle populations are declining through the western United States and are extremely sensitive to additional mortality because they occur at low densities, have late ages of maturity, and many juveniles do not survive until breeding age.⁷⁹ Compliance with USFWS guidance is necessary to avoid violations of the Bald and Golden Eagle⁸⁰ Protection Act.⁸¹ This guidance requires site-specific surveys of golden eagles in order to properly ascertain population data. The DEIR does not comply with this guidance because it did not rely on surveys conducted at all of the required times or for enough time.⁸² The DEIR attempts to count surveys used for small birds as indicative of existing golden eagles, which Mr. Cashen explains is ineffective because small birds have different activities than golden eagles.⁸³ Overall, the surveys fail to accurately document golden eagle use in the area.⁸⁴

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O12-21e

The DEIR also states, without substantial evidence, that there are no suitable trees for nesting in the Project's location.⁸⁵ The DEIR later notes that the site includes live oak woodland with trees up to 82 feet, which are tall enough to support golden eagle nests.⁸⁶ Despite the presence of these trees, the County did not attempt to locate golden eagle nests on site.⁸⁷ Publicly available data also shows that there was an active eagle nest within five miles of the Project site and

⁷⁷ Cashen Comments, p. 8.
⁷⁸ Cashen Comments, p. 8.
⁷⁹ Cashen Comments, p. 8.
⁸⁰ Cashen Comments, p. 9.
⁸¹ Cashen Comments, p. 9.
⁸² Cashen Comments, pp. 9-10.
⁸³ Cashen Comments, p. 9.
⁸⁴ Cashen Comments, p. 10.
⁸⁵ Cashen Comments, p. 10.
⁸⁶ Cashen Comments, p. 10.
⁸⁷ Cashen Comments, p. 10.

up to ten golden eagle nesting territories near the Project site.⁸⁸ Because golden eagle mortality from wind turbines is dependent on the proximity of nests to turbines, the County is required to obtain surveys of golden eagles that conform to USFWS guidance in order to properly establish the environmental setting for golden eagles.⁸⁹

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5. Bats

The DEIR relies on only one study for bats that was conducted for a separate wind project from 2011 and 2012.⁹⁰ This survey was insufficient to establish baseline information for the Project, because it involved two acoustic monitors in a single location.⁹¹ Mr. Cashen notes that the survey for the other project does not show the behavior of bats near the Project's proposed turbine locations, nor does it show the populations of bats that will be present in the Project area.⁹² Based off of this flawed data, the DEIR concludes that there are only 13 bat species present on the Project site, whereas the neighboring Tule Wind Project documented 22 species.⁹³ The DEIR also states that there is only one bat species with the potential to roost onsite, yet other studies in the area have documented numerous bat roosts in the Campo Corridor.⁹⁴ Therefore, the DEIR lacks substantial evidence to support its description of the existing setting for bat species.

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The County must obtain a survey following guidelines established by USFWS, California Energy Commission, and California Department of Fish and Wildlife to accurately provide data on the existing environmental setting.⁹⁵ Then, the County must recirculate a revised DEIR with a revised description of the setting and analysis of potentially significant impacts.

⁸⁸ Cashen Comments, p. 11.

⁸⁹ Cashen Comments, p. 11.

⁹⁰ Cashen Comments, p. 13.

⁹¹ Cashen Comments, p. 13.

⁹² Cashen Comments, pp. 13-14.

⁹³ Cashen Comments, p. 14.

⁹⁴ Cashen Comments, p. 15.

⁹⁵ Cashen Comments, pp. 13-15.

6. California Condor

The DEIR erroneously states that the California condor has a very low chance to occur, even though the condor has been documented on the Project site in the past and is expected to expand in population within the life of the Project.⁹⁶ Therefore, the DEIR lacks substantial evidence to support its description of the existing setting for condors. As a result, the DEIR fails to discuss the condor activity at the Project site and discuss the potential for condors in the future within the time frame of Project operation.⁹⁷ The DEIR must be revised and recirculated accordingly.

O12-21g

7. Wetlands

The County notes in the DEIR that the wetlands within the Campo Reservation *could* be impacted by the Project but does not bother to determine if any wetlands *actually exist* before summarily declaring the impact significant and unavoidable.⁹⁸ The County's DEIR fails to comply with CEQA, as clearly set forth by the Supreme Court in *Sierra Club v. Fresno*. CEQA requires the County to disclose the impacts, and thus a discussion of the existing environmental setting, even if an impact is found to be significant and unavoidable.⁹⁹ In order to disclose the impacts, the County must first start with accurately describing the existing environmental setting. Here, the County failed to do so for wetlands.

O12-21h

8. Movement Corridors

The County states in the DEIR that the Project site is not a readily identifiable wildlife movement corridor because the Project does not constrain movement.¹⁰⁰ The County's statement about wildlife corridors is not supported by substantial evidence. Mr. Cashen explains that the Project site is an Essential Connectivity Area that provides connectivity between large, natural habitat blocks.¹⁰¹ The County must revise the DEIR to disclose that the Project is within

O12-21i

⁹⁶ Cashen Comments, p. 12.

⁹⁷ Cashen Comments, p. 12.

⁹⁸ DEIR, p. 2.3-90.

⁹⁹ See *Sierra Club v. Fresno*, (2018) 6 Cal. 5th 502, 518-521.

¹⁰⁰ DEIR p. 2.3-33.

¹⁰¹ Cashen Comments, p. 15.

the Essential Connectivity Area as part of the existing setting and analyze the Project's potentially significant impacts on this important corridor.

In sum, the County fails to accurately and sufficiently describe the existing environmental setting, which is required for the County to conduct an adequate significant impact analysis in the DEIR. Therefore, the DEIR fails to serve its purpose as an informational document and must be withdrawn, revised and recirculated for public review.

O12-21i
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VII. THE COUNTY MUST DISCLOSE, ANALYZE, AND MITIGATE ALL POTENTIALLY SIGNIFICANT PROJECT IMPACTS IN THE DEIR

The County fails to consider all of the Project's significant and foreseeable environmental impacts to biological resources, public health and groundwater resources in the DEIR. In other instances, the County's conclusions regarding impacts in the DEIR are not supported by substantial evidence. The County also failed to require mitigation for potentially significant impacts to public health and the environment. Therefore, the County has failed to comply with CEQA. The County must revise its impacts analysis and issue a substantially revised DEIR for public review and comment.

O12-22a

A. The DEIS Fails to Adequately Disclose, Analyze, and Mitigate Potentially Significant Impacts to Biological Resources

The DEIR fails to adequately analyze and mitigate the Project's potentially significant impacts to numerous species. The DEIR must be revised accordingly.

1. Special-Status Plants

Mr. Cashen found many flaws with the County's analysis of the Project's potentially significant impacts on special-status plants. First, Mr. Cashen notes that the Project will disturb 41 percent of the Boulder Brush area, leading to significant fragmentation of plant populations within the Project site.¹⁰² Second, the DEIR notes that the Project would have indirect impacts on special-status

O12-22b

¹⁰² Cashen Comments, pp. 17-18.

plants but does not quantify the impacts, thereby failing as an informational document.¹⁰³ State law *requires* the County to evaluate significant indirect impacts:

Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration...¹⁰⁴

Mr. Cashen also found that the mitigation cited by the DEIR purporting to address indirect impacts to special-status plants would be unrealistic to actually mitigate impacts and that a minimum of a 200-foot buffer is required to ensure avoidance of significant impacts. Mr. Cashen concluded that the DEIR lacks substantial evidence to determine that these impacts have been mitigated to a level below significance.¹⁰⁵

Finally, for County-protected plants within the Campo Corridor, the DEIR notes that they exist, but did not attempt to survey or even estimate the amount of plants that would be impacted by the Project, failing as an informational document. The DEIR also improperly labels these impacts as significant and unavoidable without even disclosing the impacts, in violation of CEQA.¹⁰⁶ At a minimum, Mr. Cashen states that the County could have estimated the scope of potentially significant impacts to special-status plants within the Campo Corridor and required the Applicant to provide compensatory mitigation.¹⁰⁷

2. Quino Checkerspot Butterfly

The DEIR claims that the Project site contains almost 800 acres of Quino habitat, of which 327.6 acres would be impacted.¹⁰⁸ This was based on modeling that included numerous flaws and improperly excluded habitat from counting.



¹⁰³ Cashen Comments, p. 18.

¹⁰⁴ CEQA Guidelines § 15126.2, subd. (a).

¹⁰⁵ Cashen Comments, p. 18.

¹⁰⁶ See *Sierra Club v. Fresno*, (2018) 6 Cal. 5th 502, 518-521.


¹⁰⁷ Cashen Comments, p. 19.

¹⁰⁸ DEIR, p. 2.3-48.

The DEIR states that modeling was consistent with USFWS guidance, which is incorrect.¹⁰⁹ Mr. Cashen contacted the USFWS about the model which confirmed that it actually conflicts with USFWS guidance.¹¹⁰ Thus, the model used does not provide substantial evidence to show all Quino habitat within the Project site, nor does it allow the DEIR to fulfill its role as an informational document by disclosing the scope of impacts to the species.

After developing a flawed habitat model, the DEIR excludes the area claimed to be unsuitable for habitat, based on an outdated 2010 survey.¹¹¹ However, more recent surveys detected Quino or host plants in those areas that were excluded by the older survey.¹¹² More recent detection of the species and habitat necessarily shows that these areas are suitable for Quino, and impacts to these areas are required to be analyzed and mitigated under State law.¹¹³ Further, the authors of the 2010 survey found numerous flaws with their own survey, leading them to reassess the survey area in 2012 where they determined that there were 3,803 acres of Quino habitat in the Campo Corridor.¹¹⁴ Mr. Cashen found that the DEIR does not explain the 2,200 acre discrepancy in habitat.¹¹⁵ Therefore, the County lacks substantial evidence to support its conclusions.

The DEIR contains exclusion areas identified within a 2018 survey within the Campo Corridor, but does not define the process used to exclude areas as unsuitable.¹¹⁶ The public is unable to determine whether the whole area was surveyed and how and why areas were deemed unsuitable, and thus cannot verify that significant Project impacts are adequately documented.¹¹⁷ Also, the 2018 and 2019 surveys of the Boulder Brush Corridor failed to accurately document the scope of habitat on site. The County provided no map of host plants, and an accurate survey of 517 acres would have been impossible with just one biologist, as the DEIR claims.¹¹⁸ The DEIR thus failed to accurately account for all Quino habitat,



O12-22c
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¹⁰⁹ Cashen Comments, p. 20.

¹¹⁰ Cashen Comments, p. 21.

¹¹¹ Cashen Comments, p. 22.

¹¹² Cashen Comments, p. 23.

¹¹³ Cashen Comments, p. 23.

¹¹⁴ Cashen Comments, pp. 23-24.

¹¹⁵ Cashen Comments, p. 24.

¹¹⁶ Cashen Comments, p. 26.

¹¹⁷ Cashen Comments, p. 26.

¹¹⁸ Cashen Comments, p. 26.

excluded suitable habitat without justification and lacks substantial evidence to support its conclusions.

Mr. Cashen goes on to highlight that the assessment of impacts from the Project in the DEIR was unsupported and inconsistent with the DEIS. The scope of suitable habitat and impacts was not mapped so it cannot be verified whether all Project features were included and whether the impact estimates were correct.¹¹⁹ Areas of habitat identified in the DEIS were removed in the DEIR, suggesting that either the baseline values used were changed or one of the documents is incorrect.¹²⁰

The County's DEIR relies on the BIA's DEIS' analyses for impacts within the Boulder Brush Corridor but the BIA concluded, without any evidence, that Quino was not present within the Boulder Brush Corridor.¹²¹ The County's DEIR actually includes detection of five Quino within the Boulder Brush Corridor in 2019, leading to the complete refutation of its assertion that Quino was absent.¹²²

Additionally, the BIA's DEIS concluded that impacts to Quino would be temporary and not adverse because the area would be passively revegetated.¹²³ To the contrary, the DEIR – albeit summarily - concluded that impacts were permanent and potentially significant due to the lack of a revegetation plan within the DEIS even with enforceable success criteria.¹²⁴ Thus, the DEIR cannot rely on the DEIS for analysis of impacts to Quino since the County does not agree that the BIA was correct in describing the impacts as only temporary and not adverse.

The DEIR fails to accurately assess habitat and impacts from the Project on the Quino, failing as an informational document. The DEIR lacks substantial evidence to support its conclusions, whereas Mr. Cashen provides substantial evidence that impacts to the Quino would be significant and require further mitigation.

O12-22c
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¹¹⁹ Cashen Comments, pp. 27-28.

¹²⁰ Cashen Comments, pp. 28-29.

¹²¹ Cashen Comments, p. 30.

¹²² Cashen Comments, pp. 30-31.

¹²³ Cashen Comments, p. 31.

¹²⁴ Cashen Comments, p. 31.

3. Bats

The DEIR wrongly concludes that bat use is low on the site, despite failing to conduct required studies to adequately determine bat use.¹²⁵ From there, the DEIR asserts that impacts will not be significant, despite strong evidence that bats are significantly harmed by wind turbines.¹²⁶ Mr. Cashen found that a similar “low use” determination was found at the neighboring Tule Wind Project, yet the County found impacts to be significant in that document.¹²⁷ The County thus lacks substantial evidence to determine bat use and declare impacts are less than significant. The data is available, and an analysis is feasible. The County could have relied on post-construction mortality monitoring from neighboring wind projects to properly estimate impacts and guide mitigation measures.¹²⁸

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4. Tricolored Blackbird

The DEIR does not discuss or analyze impacts to the tricolored blackbird, which is protected under the California Endangered Species Act and was detected on site.¹²⁹ Mr. Cashen determined that improperly sited turbines could have a significant impact on the species.¹³⁰ The DEIR is inadequate as a matter of law.

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5. Habitat Fragmentation and Wildlife Corridors

The DEIR claims, without evidence, that habitat fragmentation is not anticipated to result from the Project, apparently based on the loss of habitat being small compared to the overall habitat in the region.¹³¹ Mr. Cashen found that the DEIR does not adequately analyze habitat fragmentation, especially given the scope of cumulative projects in the area and the connected Torrey Wind Project.¹³² The Project site is used by migratory birds and, if birds do not avoid the turbine field

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¹²⁵ Cashen Comments, p. 32.

¹²⁶ Cashen Comments, p. 32.

¹²⁷ Cashen Comments, p. 32.

¹²⁸ Cashen Comments, p. 32.

¹²⁹ Cashen Comments, p. 33.

¹³⁰ Cashen Comments, p. 33.

¹³¹ Cashen Comments, pp. 33-34.

¹³² Cashen Comments, pp. 33-34.

from the many projects in the area, there will be a significant impact from habitat fragmentation and an inability of species to migrate through the area.¹³³

The DEIR similarly claims that the Project will not impact terrestrial species, despite numerous studies showing exactly the opposite.¹³⁴

6. Golden Eagle

The DEIR relies on an assumption that direct impacts to habitat of 20 percent of an eagle territory would lead to take.¹³⁵ This impact determination is not supported by substantial evidence because it ignores that habitat can be functionally lost, which the DEIR notes is likely, without direct loss.¹³⁶ Thus the DEIR fails to consider functional loss of habitat for golden eagle as an impact when concluding that impacts are less than significant. The County must revise the DEIR to account for *all* impacts to golden eagle habitat when determining whether the loss meets its established threshold.

The DEIR did not conduct a proper cumulative impacts analysis, despite eagle territories having already been mapped for the Tule Wind Project.¹³⁷ The DEIR should have used the available mapping to determine how much habitat loss would occur in the impacted area.¹³⁸ The DEIR also failed to conduct surveys on eagle nests near the Project, yet concluded, without evidence, that the Project would not impact eagle nesting.¹³⁹ The DEIR concludes that the loss of eagle *foraging habitat* within the Boulder Brush Facilities would be significant.¹⁴⁰ This ignores the fact that a loss of foraging habitat can lead to *nest failure*; therefore, the DEIR should have found the impact on nesting to be significant as well.¹⁴¹ Finally, the DEIR conflicts with itself by finding that the loss of 69.8 acres of foraging habitat

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¹³³ Cashen Comments, p. 34.

¹³⁴ Cashen Comments, p. 34

¹³⁵ DEIR, pp. 2.3-56-2.3-57.

¹³⁶ Cashen Comments, p. 34.

¹³⁷ Cashen Comments, pp. 34-35.

¹³⁸ Cashen Comments, p. 35.

¹³⁹ Cashen Comments, p. 35.

¹⁴⁰ DEIR, p. 2.3-107.

¹⁴¹ Cashen Comments, p. 35.

within the Boulder Brush Corridor was significant but that the loss of 785.67 acres of foraging habitat within the Campo Corridor was not.¹⁴²

Given the threats to golden eagle and its status as a fully protected species, the County must comply with CEQA by conducting the necessary studies to provide substantial evidence to support its claims and disclosing the analysis in DEIR.

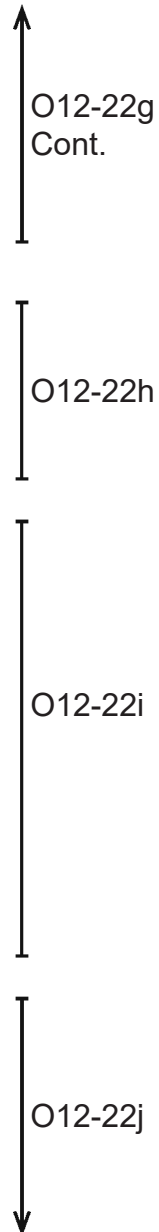
7. Noise

The County acknowledges in the DEIR that noise from wind turbines can cause impacts to wildlife. However, Mr. Cashen found that the County made no attempt to analyze Project noise levels and their impact on wildlife.¹⁴³

8. Other Birds

The DEIR provides virtually no analysis of the Project's collision hazard impacts on birds.¹⁴⁴ Despite this, the DEIR makes conclusions regarding the significance of collision hazard impacts. Unfortunately, the DEIR makes three different conclusions about the impacts, making it impossible for the public to determine or comment on the County's analysis. Mr. Cashen found four instances where impacts to birds were determined to either be less than significant, potentially significant or significant.¹⁴⁵ The DEIR must analyze potentially significant collision hazard impacts on birds, disclose potential mortality of birds and disclose and circulate for public review what the County's conclusion is regarding those impacts.

The County fails to disclose, analyze, and discuss mitigation for numerous impacts to biological resources. Where mitigation is discussed, many of these impacts remain significant after implementation of proposed mitigation. The County's assessment of the Project's impacts on biological resources violates CEQA because it is missing analysis or unsupported by substantial evidence. The County must revise the DEIR and recirculate the DEIR to the public with a legally



¹⁴² Cashen Comments, p. 35.

¹⁴³ Cashen Comment, pp. 38-39.

¹⁴⁴ Cashen Comments, p. 37.

¹⁴⁵ Cashen Comments, pp. 37-38.

adequate discussion of these significant impacts prior to consideration of the Project.

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B. The DEIR Fails to Adequately Disclose, Analyze, and Mitigate Impacts to Groundwater

The DEIR states that impacts to groundwater supplies would be less than significant.¹⁴⁶ The Groundwater Resources Evaluation, contradicts this claim by stating that “groundwater drawdown at off-site wells could exceed the County limit of 20 feet for fractured rock aquifers, if unmonitored and unmitigated.”¹⁴⁷ The DEIR provides mitigation measures to address this impact in the text of the analysis, but does not adopt the mitigation as a formal mitigation measure for the Project and continues to regard groundwater impacts as impacts not significant.¹⁴⁸ In contrast, the investigation into other watersheds that may be used for the Project find that impacts will not likely be significant and require a Groundwater Mitigation and Monitoring Plan. CEQA requires the County to disclose the potentially significant impacts on groundwater drawdown at off-site wells in the affected watershed in the DEIR and require mitigation to reduce those impacts as formal mitigation measures in a revised and recirculated DEIR.

O12-23

C. The DEIR Fails to Adequately Disclose, Analyze, and Mitigate Impacts to Public Health

The DEIR summarily dismisses the Project’s potentially significant public health impacts to the public, including worker and sensitive receptors in the Project area, from exposure of Valley Fever. The DEIR includes no feasible mitigation measures to lessen this significant impact. Valley Fever is a disease that can spread when people are exposed to spores during ground disturbance, such as this Project’s construction. San Diego County is a suspected endemic area for *Coccidioides* (CDC, 2014b).¹⁴⁹ Impacts to human health are severe, including possible death, and there is no known cure. Sensitive receptors near the Project

O12-24

¹⁴⁶ DEIR, pp. 3.1-25-3.1-26.

¹⁴⁷ DEIR, Appendix J, p. 33.

¹⁴⁸ See DEIR, Appendix J, p. 33.

¹⁴⁹ See <https://www.cdc.gov/fungal/diseases/coccidioidomycosis/maps.html>; see also https://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/references/rtcref/ch9.0/rtcrefaletters/O10%202014-12-19_CaliforniaDepartmentofPublicHealth2013.pdf.

site, including workers and those who live nearby are at risk from exposure from disturbed dust, both during construction and during high-wind events.

Despite this risk, the DEIR does not include any common mitigation measures to protect the public, including:

- 1) Reevaluating and updating the Injury and Illness Prevention Program to ensure Valley Fever safeguards are included,
- 2) Training all employees on Valley Fever related issues,
- 3) Adequately controlling dust exposure,
- 4) Preventing transporting deadly spores out of endemic areas, and
- 5) Improving medical surveillance for all employees.

The County's lack of adequate analysis of potentially significant impacts from the Project exposing people to Valley Fever and lack of feasible mitigation for Valley Fever renders the DEIR insufficient under CEQA. The County must revise and recirculate a DEIR to disclose and mitigate these serious public health impacts.

VIII. THE DEIR IMPROPERLY DEFERS MITIGATION OF SIGNIFICANT IMPACTS

It is generally improper to defer the formulation of mitigation measures.¹⁵⁰ An exception to this general rule applies when the agency has committed itself to specific performance criteria for evaluating the efficacy of the measures to be implemented in the future, and the future mitigation measures are formulated and operational before the project activity that they regulate begins.¹⁵¹ As the courts have explained, deferral of mitigation may be permitted only where the lead agency: (1) undertakes a complete analysis of the significance of the environmental impact; (2) proposes potential mitigation measures early in the planning process; and (3)

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O12-25

¹⁵⁰ 14 CCR § 15126.4(a)(1)(B); *POET v. CARB*, 218 Cal.App.4th at 735.

¹⁵¹ *POET*, 218 Cal.App.4th at 738.

articulates specific performance criteria that would ensure that adequate mitigation measures were eventually implemented.¹⁵²

Here, the DEIR defers mitigation measures for the Quino to the Section 7 consultation process.¹⁵³ While compliance with a regulatory program may be identified as mitigation, the lead agency must still identify and analyze the types of potential actions that can be feasibly achieved through the regulatory program.¹⁵⁴ The purpose of this requirement is to assess whether the mitigation measure itself would cause one or more significant effects in addition to those that would be caused by the project as proposed.¹⁵⁵ An EIR does not need to discuss the effects of the mitigation measures in the same amount of detail as the significant effects of the proposed project, but it must still complete the analysis.¹⁵⁶

O12-25
Cont.

Here, the County failed to discuss the potential measures that may be implemented through the section 7 consultation process. This prevents the public from being able to evaluate these measures, or the lack of measures, and their significant effects and does not meet the requirements for permissibly deferred mitigation.¹⁵⁷ In fact, there is no evidence that mitigation is feasible, since the County identified no available land that would be necessary to compensate for the Project's significant impacts to Quino habitat.¹⁵⁸ The DEIR must be revised to discuss the potential measures that may be implemented through the section 7 consultation process for the Quino.

IX. CONCLUSION

The DEIR fails as an informational document and lacks substantial evidence to support many of its claims, in violation of CEQA. The County fails to accurately describe the affected environment, does not fully and fairly describe the proposed action, provides incomplete analyses of some Project impacts and wholly omits discussion of other potentially significant impacts, and fails to adequately mitigate

O12-26

¹⁵² *Comtys. for a Better Env't v. City of Richmond* (2010) 184 Cal.App.4th 70, 95; *Cal. Native Plant Socy' v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 621.

¹⁵³ Cashen Comments, p. 41.

¹⁵⁴ CEQA Guidelines § 15126.4(a)(1)(B).

¹⁵⁵ *Id.* § 15126.4(a)(1)(D).

¹⁵⁶ *Ibid.*

¹⁵⁷ Cashen Comments, pp. 41-42.

¹⁵⁸ Cashen Comments, pp. 41-42.

February 3, 2020
Page 29

the Project's adverse impacts. The County must revise the DEIR to cure these deficiencies and must circulate the revised DEIR for public review and comment. We respectfully urge the County to do so prior to any further consideration of the Project.

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Sincerely,



Kyle C. Jones

KCJ:ljl

Exhibits