

From: [Slovick, Mark](#)
To: [Koutoufidis, Nicholas](#); [Smith, Ashley](#); [Brown, Bronwyn](#); [Sjoblom, Randall](#); [Harris, Susan](#)
Subject: Fwd: Human Kind Letter re JVR Energy Park
Date: Thursday, July 08, 2021 5:47:03 PM
Attachments: [JVRPCCommentLetterFEIR.dotx](#)

Thanks, Mark

From: Donna Jones <donna@donnajoneslaw.com>
Sent: Thursday, July 8, 2021 5:39 PM
To: Slovick, Mark
Subject: Human Kind Letter re JVR Energy Park

Hi Mark,

Hope all is well. I was just able to send out Human Kind's letter for tomorrow's hearing on the JVR Solar Farm. Sorry it went out so late but I sent it as soon as I finished it, without even being able to proofread it so hopefully no typos!

I'm going to send the enclosures separately as otherwise they have to go via google drive.

Best regards,
Donna

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July 8, 2021

VIA EMAIL

Chair Edwards and Planning Commissioners
County of San Diego
Planning & Development Services
5510 Overland Avenue, Suite 110
San Diego, CA 92123
[Ann.Jimenez@sdcounty.ca.gov/](mailto:Ann.Jimenez@sdcounty.ca.gov)

Re: JVR Energy Park (Log No. PDS2018-MUP-18-022) SCH No. 2019039044

Dear Chair Edwards and Commissioners:

On behalf of our client, We Are Human Kind, LLC (Human Kind), owner of the historic Jacumba Hot Springs Resort, we respectfully request that you recommend approval of the Jacumba Sponsor Group's Equity Balance Plan (Equity Alternative) as an alternative that would meet all of the basic objectives of the JVR Energy Project (Project) while reducing the otherwise significant and unmitigated acknowledged impacts to the community of Jacumba and all those who travel along I-8 and Old Highway 80 in the Mountain Empire subregion. In addition, we ask that you recommend denial of certification of the FEIR as currently drafted given serious issues that exist and are discussed below.

First, it's important to note that we believe that renewable energy and the community can co-exist, if the renewable energy projects are appropriately sited, and buffered. Renewable energy such as solar is a necessary resource for our region and, indeed, the world. That is not at issue. The question is, how can the County permit solar farms in a way that provides the energy sources needed without destroying a long-standing rural community that is also a vital constituent of this County. Unfortunately, the Community Buffer Alternative does not adequately address the significant aesthetic impacts the community that would result from allowing the land bordering Old Highway 80 to be converted to sea of solar panels, steel battery containers and unsightly infrastructure that is currently proposed under both the project and, to a lesser but still too large extent, the Community Buffer alternative.

It is all too easy to site renewable energy projects in Jacumba Hot Springs because it is near the Sunrise Power Link, has significant open space and abundant sun, and a small population. But the easiest solution is not the best, at least not in this situation.

While there is a place for this project— even in this same location, simply scaled back enough to provide a sufficient buffer that can allow the project to co-exist with the community in a way that lessens the otherwise significant impacts and continues to feasibly meet the basic project objectives. Although Bay Wa has falsely stated that it has community support, that is not the case. Rather than focusing on mitigation or alternatives that could accomplish most if not all of its objectives while respecting the history and culture and viability of its surroundings, it assumes the fact it wants the highest tax credits and is offering renewable energy allows it to downplay and ignore the significant impacts to the community and the project’s inconsistencies with the County’s General Plan and its Mountain Empire Subregional Plan (Subregional Plan). Although other County renewable energy projects have undergone General Plan amendments to address inconsistencies that otherwise would exist and the Notice of Preparation for this project said it would go through a similar process, that process has been short-circuited and the project before the Planning Commission this Friday is one that is not consistent with the General Plan or the Subregional Plan or, as currently proposed, the County’s Zoning Ordinance.

Bay Wa’s response to the community’s desire to maintain a reasonable quality of life by setting the solar arrays further from the town’s entrance along Old Highway 80, resulted in an increase to the setback by a mere 52 feet on the north and 122 feet on the south – that wouldn’t even make it to the 50-yard line of any football field. Bay Wa’s revised project does little to lessen the significant unmitigated impacts on the community.

Aesthetics

There are a number of policies in the General Plan and Subregional Plan – including that portion of the Subregional Plan that includes the Jacumba Hot Springs Vision Statement – with which the project does not comply, and as a result the FEIR’s conclusion that the project would have a less than significant impact related to compliance with applicable goals, policies or requirements of an applicable County Community Plan, Subregional Plan or Historic District’s zoning is incorrect. The conclusions in Table 2.1-1 are unsupported and there is, in fact, a significant impact due to the project’s inconsistent with the Subregional Plan (including the Jacumba Vision Statement)’s goals.

The Subregional Plan has a goal of establishing a network of scenic highway corridors within which scenic, historical and recreational resources are not only protected but enhanced, and Old Highway 80 is one of the named scenic highway corridors that is subject to that goal. In addition, the FEIR recognizes that “Old Highway 80, which parallels the Project site for approximately 1 mile, is also included in the County Scenic Highway System (County of San Diego 2011a).” FEIR at 2.1-8, and “Old Highway 80 is a designated California State Historic Route. In 2006, the state legislature granted this designation in recognition of the highway’s ‘outstanding natural, cultural, historic and scenic qualities.’” FEIR at 2.1-13.

The FEIR recognizes that the project would have significant impacts on for those traveling down Old Highway 80 or who live near it. And yet, despite this, the FEIR somehow concludes that the project is consistent with the policy of protecting and enhancing the very corridor it concedes it impacts because “there are no current local regulations governing development of lands along I-8 or Old Highway 80.” The Subregional Plan does not state

that it is only when the listed corridors are governed by some local regulations that the goal applies. And the other renewable projects that arguably also impact views in this general area are irrelevant. For one thing, those projects were much smaller than the project proposed here. In addition, the FEIR identified that this project site provided opportunities for long and broad scenic views from I-8 and from Old Highway 80, which was not the case for the Jacumba Solar project. Finally, the FEIR justifies its conclusion that having a significant visual impact on views along a scenic highway corridor that has been designated as such by the State is nonetheless consistent with a Scenic Highways Goal of protecting and enhancing those same highways by arguing that the County could still establish and designate Old Highway 80 as a scenic highway, even though the views which make it scenic would be gone. (See FEIR at Table 2.1-1 on page 2.1-73). That is twisted logic. No, it's unlikely once the reason for designating a highway as scenic is gone and the view is not of a rural desert environment but a sea of solar panels and energy infrastructure the County would at that point provide a local designation as a scenic highway but, more importantly, this whole discussion ignores the fact that the Subregional Plan goal is to protect and enhance the scenic highway and specifically I-8 and Old Highway 80 in this area, and the Project is, instead, replacing the scenic vista with solar panels and steel. The FEIR errs in finding the project consistent with the Scenic Highways Goal of the Subregional Plan – it is a significant, unmitigated impact as logic and a common sense reading of the policy against the FEIR's description of the view impacts makes clear.

The FEIR fails to discuss other portions of the Subregional Plan, including: “additional industrial development is not compatible with the goal of maintaining the rural character in the Subregion,” Subregional Plan at 12, and on page 14, where the Subregional Plan discusses the project site: “The Ketchum Ranch Specific Plan proposes a multi-use concept, a residential community with recreational and visitor oriented commercial uses on approximately 1,300 acres next to Jacumba. The Ketchum Ranch Specific Plan proposal shall create *a community in harmony with the existing town of Jacumba* and provide services to the existing residents of Jacumba. *It will also be sensitive in its design to the natural and historical resources of the Jacumba area.* Adequate provisions shall be made to prevent periodic flooding originating at the Mexican border.” Subregional Plan at 14 (emphasis added). Despite the fact the project is being built on this exact site, the FEIR ignores the direction in the Subregional Plan that development on that site be in harmony with the surrounding town and sensitive in its design to both the natural and historic resources of the area. The project is inconsistent with this policy and yet that inconsistency is not discussed.

The FEIR at 2.1-16 and 17 left out three of the paragraphs of the Vision Statement for Jacumba, which include the statements “We want ...[services] and still not lose the wonderful feeling that is Jacumba. Clean air, beautiful scenery We hope someday to become the jewel of the backcountry.” Subregional Plan (Jacumba) at 1 (emphasis added). The project is inconsistent with this Vision. It interferes with the area's “beautiful scenery”, and it converts more than 600 acres of rural land into a sea of solar panels and associated utility equipment, which no one would consider the path towards is creating a backcountry “jewel.” The FEIR omits Jacumba's vision statement from its analysis and from Table 2.1-1, treating it as if it is not a part of the Subregional Plan and therefore can be ignored because the County has not prepared a separate, standalone, community plan for Jacumba Hot Springs. That is not the case. Jacumba Hot Springs is a part of the Subregional Plan, and the project is

inconsistent with the community's vision of retaining its beautiful scenery and becoming the jewel of the backcountry. That impact is significant, and the inconsistencies of the project with the community's vision should have been disclosed.

Land Use

The Project Does Not Comply with the County's Zoning Ordinance.

The FEIR's conclusion that as a Major Impact Utility it may go anywhere it well pleases is tortured at best. The County's zoning ordinance Section 1350 states that utilities which have substantial impact "**may** be conditionally permitted in any zone" but only "when the public interest supersedes the usual limitations placed on land use and transcends the usual restraints of zoning for reasons of necessary location and community wide interest." County Zoning Ordinance Section 1350. Simply proposing a solar farm does not by itself satisfy the code's requirements. Rather, the Zoning Ordinance requires that before a project can transcend the limits typically placed on zoning, there must be a showing that the project site is the "necessary location" and has "community wide interest." Neither of those requirements is met here.

The project site is not the "necessary" location, while it is one possible location, there are others equally appropriate and with fewer impacts. As for the community-wide interest" requirement, 98% of the community opposes to project and does not find it in the community's interest. Should the project developer argue that in this case "community wide" really should be read to mean "county-side," the County was perfectly able to put the word "county" in place of "community" but did not.

In addition, the County's Zoning Code goes on to list the zones in which Major Impact Utilities are allowed, and the zoning of the property which would include the majority of the project is zoned Specific Plan Area (S88+). Specific Plan Area (S88+) is one of the very few zones which does not allow Major Impact Utilities, according to Section 2885 of the Zoning Ordinance and the accompanying Use & Enclosure Matrix. Major impact utilities are not among the uses expressly listed as being permitted by the S88 Use Regulations, and Zoning Ordinance's Use & Enclosure Matrix, which graphically portrays and specifically lists the use types allowed in each zone, similarly does not allow Major Impact Utilities in the S88+ zone. Major Impact Services and Utilities are permitted in virtually every other County zone. Major Impact Utilities are expressly allowed in: i) every residential zone, ii) every commercial zone except C42* Visitor Serving Commercial, iii) every industrial zone, iv) every Agricultural zone and v) six of the nine Special Purpose Zones. Major Impact Utilities are expressly not allowed in: i) S81 Ecological Resource Area, ii) land zoned S86 Parking, and iii) land zoned S88+ Specific Plan Area. *See* County Zoning Ordinance Use & Enclosure Matrix. The Use & Enclosure Matrix's graphic representation and the language of the Zoning Ordinance match – and neither allow Major Impact Utilities on S88+ zoned land.

The FEIR attempts to sidestep this problem by relying on "Special Provisions and Limitations: S88 Use Regulations," which arguably contradicts Section 2885 and allows a Major Use Permit to be granted on S88+ zoned land, but only if it meets one of two specific conditions. The project does not.

To qualify under Section 2888, a Major Impact Utility must have a Major Use Permit and must either remove all structures and improvements in a specified timeline or enter into a bonded agreement “...in an amount sufficient to ensure the removal of all buildings, structures, and other improvements within a specified time and/or under specified conditions when the decision-making body finds that such agreement will carry out the intent of this Ordinance and is enforceable by the County.” See County Zoning Ordinance Section 2888.

While the project is entering into a bonded agreement to remove parts of the overall project, it is not removing the Switchyard Facilities, which are permanent. As a result, it does not and cannot meet the requirements of Section 2888. The FEIR states that the project can get around this requirement because the Switchyard Facilities, even though they are operating under the Major Use Permit granted to the project, could theoretically be permitted under a Minor Use Permit under Section 2884, which allows Minor Impact Facilities with a Minor Use Permit. Except it’s unclear if the Switchyard Facilities would qualify as a Minor Impact Utility under a Minor Use Permit, but it’s impossible to know given that the applicant did not apply for such a permit. Instead, the Switchyard Facilities are part of the same project Major Use Permit, and the Switchyard Facilities will not be removed and therefore do not qualify under Section 2888. The project applicant argues that is acceptable because after construction the Switchyard Facilities will be transferred to SDG&E” and no longer subject to the County’s jurisdiction, FEIR 3.1.4-24, as if that solves the problem.

But it does not. The Switchyard Facility fails to meet both prongs of the requirements of Section 2888 – it will not be removed, and the County will not have jurisdiction to enforce its zoning ordinance against the Switchyard Facilities after they are built. Allowing a Major Impact Utility on property zoned S88 when S88 is one of the very few zones in which Major Impact Utilities are not expressly allowed does not “carry out the intent” of the Zoning Ordinance -- it contradicts it. This project does not fully meet the requirements of Zoning Code Section 1350, Section 2884, Section 2885, or Section 2888. The appropriate solution would be to rezone the property, as should have been done at the beginning, into a zone that does allow the project, including the Switchyard Facilities.

The Project is Not Consistent with The County General Plan

According to the County CEQA Guidelines, a significant land use impact would result if:

The proposed project directly conflicts with applicable land use plans, policies, or regulations of an agency with jurisdiction over the project (e.g., General Plan; Community or Subregional Plans; and the Zoning Ordinance), adopted for the purpose of avoiding or mitigating an environmental effect.

The EIR acknowledges two General Plan policies apply to the project, which were specifically adopted for the purpose of avoiding or mitigating impacts to scenic resources in the County:

- Policy COS-11.1: Protection of Scenic Resources. Require the protection of scenic highways, corridors, regionally significant scenic vistas, and natural features, including prominent ridgelines, dominant landforms, reservoirs, and scenic landscapes.

- Policy COS-11.3: Development Siting and Design. Require development within visually sensitive areas to minimize visual impacts and to preserve unique or special visual features, particularly in rural areas, through the following:

- o Creative site planning
- o Integration of natural features into the project
- o Appropriate scale, materials, and design to complement the surrounding natural landscape
- o Minimal disturbance of topography
- o Clustering of development so as to preserve a balance of open space vistas, natural features and community character
- o Creation of contiguous open space networks

Yet the project will be visible from both I-8 and Old Highway 80, which are both identified on Figure C-5 (Scenic Highways) of the General Plan Conservation and Open Space Element as part of the County Scenic Highway System. The project is inconsistent with the above-cited policies but could be modified to be consistent by increasing the buffers as presented in the Jacumba community's Equity Balance plan.

The Subregional Plan policy also applies to the project:

- Scenic Highways Goal. Establish a network of scenic highway corridors within which scenic, historical and recreational resources are protected and enhanced (specifically including Old Highway 80).

As part of that Subregional Plan, the Vision Statement for Jacumba also states:

- The community supports new development that is compatible with, and preserves the natural and historical environment, including water resources, and protects existing neighborhoods, manages growth to reinforce the rural small-town character of the area.

Despite demonstrating that the project would have significant and unavoidable aesthetics impacts, the FEIR concludes under Land Use that it "would be consistent with policies of the adopted San Diego County General Plan." In fact, FEIR goes on to say that "because the area has not been designated by local, state or federal agencies or organizations as containing or being of "significant" scenic value, the Project would not conflict with this policy." The word "significant" is emphasized in the land use consistency discussion in Table 3.1.4-4, which also states that the Project has been designed to minimize impacts to the scenic value of the area, to the extent practicable.

The FEIR also states that "implementation and operation of the Proposed Project would not prevent the County from continuing to establish and designate scenic highways and would not inhibit the County from

establishing regulations and/or development standards geared towards the protection and enhancement of scenic highways.” Given the significant and unavoidable impacts to aesthetics, those conclusions are clearly wrong. The FEIR should be revised to conclude that the project will have a significant land use policy impact as well.

Policy COS-11:3 nowhere states that it is designed only for officially designated scenic highways; instead, the policy requires all development within visually sensitive areas – which this one is – to minimize visual impacts and preserve special visual features “particularly in rural areas” The FEIR’s analysis ignores the rural setting of this beautiful property and the project’s transformation of a rural area into an industrial utility scale solar farm with its towers and acres and acres of black panels. If the project were set back from Old Highway 80 as the Jacumba Hot Springs Equity Balance Plan proposes, it may be able to satisfy this policy.

This project conflicts with the County’s General Plan policies COS-11.1 and COS-11.3, and, as been recognized with previous solar projects, therefore is required to do a General Plan Amendment. The creative way the project attempts to avoid its legal requirement to do a General Plan Amendment is to call the project an “interim” use. It is not an interim use. The FEIR concedes that the Switchyard Facilities are a permanent use. The project at a minimum would be in use a minimum of 38 years – a generation. Given that the Switchyard Facilities will remain in place, and the solar industry is continuing to extend the life of solar components, it is much more likely than not that solar will remain in place here permanently if it is allowed to be installed. Even if one ignores the permanence of the Switchyard Facilities and the 38 year-minimum life of the remainder, the law does not allow the County to approve a project that is inconsistent with the General Plan, and the attempt to avoid that conclusion by stamping an “interim” label on a 38-year-long inconsistent is not allowed.

The County is treating this solar project inconsistently with others. For example, the County required the removal of trackers from the area likely to be visible to trackers along I-8 in order to find consistency with General Plan policy COS-11.1 and COS-11.3 (cited above). See Rugged Solar Farm FEIR at 2.5-42.

For the LanEast Solar Farm, the County’s FEIR noted that “due to the proximity of the solar farm site to I-8, development of the site with solar facilities would conflict with County General Plan policies COS-11.1 (protection of scenic resources) and COS-11.3 (development siting and design). These policies require the protection of scenic highways, corridors, and scenic landscapes (COS-11.1) and the minimization of visual impacts particularly in rural areas (COS-11.3), and therefore, aesthetics impacts associated with the LanEast project would be inconsistent with these policies (see Section 2.1, Aesthetics). Accordingly, the LanEast solar farm would conflict with County General Plan policies, and a potentially significant impact (LU-LE-1) would result. As indicated in Table 1-11, Approvals/Permits Expected to be Obtained, LanEast would require a General Plan Amendment.” See LanEast Solar Farm FEIR at 2.5-45.

In addition, the County required the LanWest Solar Farm to obtain a General Plan Amendment, because of its proximity to I-8, saying: “The LanWest solar farm would be generally consistent with County General Plan policies. However, due to the proximity of the solar farm site to I-8, development of the site with solar facilities would

conflict with County General Plan policies COS-11.1 (protection of scenic resources) and COS-11.3 (development siting and design). These policies require the protection of scenic highways, corridors, and scenic landscapes (COS-11.1) and the minimization of visual impacts particularly in rural areas (COS-11.3), and therefore, aesthetics impacts associated with the LanWest project would be inconsistent with these policies (see Section 2.1, Aesthetics). **Accordingly, the LanWest solar farm would conflict with County General Plan policies, and a potentially significant impact (LU-LW-1) would result. As indicated in Table 1-11, Approvals/Permits Expected to be Obtained, LanWest would require a General Plan Amendment. Compliance with the County General Plan and other applicable land use plans and policies is a prerequisite for project approval.**” See LanWest Solar Farm FEIR at 2.5-47.

In contrast, the JV energy project has made no attempt to conform with County policies on scenic policy, despite that being required of other solar projects. A simple comparison of Figures 2.1-7 and 2.1-8A in the FEIR shows that the most visible part of the site is where the solar arrays has been sited, while the less visible portions are avoided. The project’s solution to these unmitigated impacts is to provide a 15-foot-wide landscape strip around the perimeter that parallels a chain-link fence with brown slats located within a setback from a County scenic highway. The revised project modifies the development footprint along Old Highway 80 by 3% and at the same time increases the power production above levels described in the DEIR. No attempt has been made to site the solar arrays in the less visible areas of the project site, similar to what was required of the Rugged solar farm. There are feasible mitigation measures and alternatives available that would offset the project’s impacts to scenic resources, as required by County Scenic Highway System policies, that have not been discussed and should be adopted, including by adoption of the Jacumba Equity Balance plan alternative.

Not only does the revised project not minimize its impacts to scenic resources and visual character for the community of Jacumba to the extent feasible, but there is also no rationale provided in the FEIR as to why an arbitrary 300-foot buffer would actually lessen the impacts to the County-designated scenic corridor along Old Highway 80.

The Land Use and Planning section of the FEIR concludes that the project is consistent with Policy COS-11-1 and COS-11.3 (both of which were adopted by the County for the purpose of avoiding or mitigating an impact to scenic resources) on the basis that the scenery is not significant enough; in contrast, the Aesthetics/Visual Quality section concludes the project’s impacts to scenic landscapes would be significant and unmitigable. This internal inconsistency is just one more example of why the FEIR’s conclusions of consistency is flawed.

As a result, the FEIR, as written, is deficient in terms of the defensibility of the land use policy analysis for scenic corridors and should be recirculated. Moreover, the project should process a GPA in order to gain an “exception from the scenic policies” similar to other solar farm projects processed by the County. The Major Use Permit Findings cannot be made where, as here, there are General Plan land use policy conflicts, especially given that they result in significant and unavoidable environmental impacts.

In fact, a clear and direct conflict with a mandatory provision of an applicable plan amounts to an inconsistency that precludes project approval. See Families Unafraid v. County of El Dorado (1998) 62 Cal. App. 4th 1332, 1341 (project must satisfy mandatory general plan policy that is fundamental and unambiguous and does not allow discretion in interpretation and application). The project's inconsistency must be cured before the project can be approved; a county cannot approve a project that is inconsistent with its general plan. Moreover, the inconsistency is evidence that the inconsistent project feature will result in a significant environmental effect on aesthetics and community character.

As discussed in Aesthetics, above, the project is also inconsistent with the Subregional Plan, including the Jacumba Vision Statement. The FEIR states that "[s]ince Jacumba Hot Springs does not have an adopted community plan and the Jacumba Vision Statement and Background does not contain goals or policies, only the applicable subregional plan (i.e., Mountain Empire Subregional Plan) is assessed in Table 2.1-1." FEIR at 2.1-47. By doing so, the FEIR ignores the Jacumba Vision Statement that itself is a goal and one that is most impacted by this project. The goal of the Jacumba portion of the Subregional Plan includes not losing "the wonderful feeling that is Jacumba. Clean air, beautiful scenery, superb climate, and no congestion or traffic." Subregional Plan (Jacumba) at 1. The FEIR fails to analyze the fact that the project would conflict with and is inconsistent with that vision, because the project would destroy the "beautiful scenery" that is a primary part of the vision for the community.

The Subregional Plan's Conservation Element Environmental Resources Goal Policies and Recommendation that "The Jacumba Hotel should be restored, if at all possible," Subregional Plan at 23, is also ignored in the analysis of consistency with applicable plans and policies. The ability to restore and have a thriving Jacumba Hotel is seriously impeded by the project's refusal to accommodate reasonable requests for sufficient setback to avoid the significant and unmitigated impacts the project would cause to the community and the Jacumba Hotel.

As discussed above, the project is also inconsistent with the Subregional Plan's goal of protecting and enhancing the Old Highway 80 scenic highway corridor. The FEIR concedes that the solar facility would be visible from both I-8 and Old Highway 80, and the "current electrical infrastructure visible is only the transmission lines, which are some distance away. To assert that the project is nonetheless consistent with this goal simply because there are no current local regulations governing development of lands along I-8 or Old Highway 80 and that there is other energy infrastructure visible from I-8 and Old Highway 80 is unsupportable. Creating a significant visual and aesthetic impact on I-8 and Old Highway 80 is in no way protecting or enhancing a scenic view as the goal requires. The fact that in other sections of those highways there may be other energy projects does not create consistency for this project. Here, both I-8 and Old Highway 80 were identified as providing opportunities for long and/or broad scenic views, and the FEIR noted that landscaping and slatted or screened fencing would only partially screen solar panels and project components from view of passing motorists, and yet found no inconsistency with a policy of preserving and enhancing the scenic view. That does not pass the reasonable person test, or the laugh test, or meet CEQA's requirements. The conclusion is made no better by the argument that degrading the view does not prevent the County from nonetheless establishing guidelines to avoid making it even

worse. That is not the issue here. The evidence shows that JVR Energy Park Project would be inconsistent with the Scenic Highways Goal of the Subregional Plan.

Similarly, the conclusion that the Switchyard Facilities are consistent with the County General Plan and the Subregional Plan is incorrect. Like the solar panels, battery storage containers, inverters and platforms and other utility-related infrastructure proposed as part of the project, the Switchyard Facilities are not in keeping with the rural desert environment that now exists and conflict with the same goals and policies as the rest of the project. Moreover, the Switchyard Facilities are permanent, as is their impact on the community, and the permanent location of the Switchyard Facilities make it even more likely solar farm will stay in this location long after the 38-year lifetime given in the FEIR, making the inconsistencies with the Subregional Plan, including the ability of Jacumba to achieve its Vision, permanent.

The significant unmitigated impacts to aesthetics that are acknowledged in the FEIR are evidence that no reasonable person would conclude that the project is nonetheless somehow consistent with the policies of the Subregional Plan and its Jacumba Vision Statement.

The FEIR's conclusion that the project is consistent with County General Plan Policy LU-1.9, which recognizes that projects should achieve the densities shown on the applicable Land Use Map, is also in error. Replacing the homes and other development planned for this property for at least the next 38 years with acres of solar panels and associated infrastructure, including permanent Switchyard Facilities, is counter to this policy. Meeting this land use policy has become ever more important as San Diego County's housing crisis has grown, and there is significant density planned for this site that definitely will not and cannot be developed for at least 38 more years – at least one generation. Moreover, there is little evidence to support a conclusion that anything close to the planned densities will ever be achieved on this site if this project is allowed to move forward either as proposed or as described in the Community Buffer Alternative. The applicant concedes that the Switchyard Facilities will remain in place even if the solar farm is decommissioned, and in addition to the footprint consumed by the Switchyard Facilities, the mere fact of having such a structure on the property will constrain future development of the planned Specific Plan. It is a fantasy to believe that the solar farm, once installed, would actually ever go away. The estimated life of the newer solar equipment is being extended all the time and, even if ultimately the proposed equipment needs to be replaced, it is more logical to conclude it will be replaced with updated solar farm equipment and not removed and replaced by a mixed-use community some 38+ years from now. It's more likely that the remainder of what is now the community of Jacumba Hot Springs will instead have been replaced, as few people who seek the character of San Diego's backcountry want to live instead next to a utility scale solar farm.

The FEIR acknowledges that “due to the wide distribution of solar panels within the 643 623-acre solar facility, the Proposed Project would substantially reduce the quality of existing views toward the solar facility from I-8 (Impact AE-3), Old Highway 80 (Impact AE-4), Jacumba Community Park (Impact AE-5), Anza- Borrego Desert State

Park (Impact AE-6), Round Mountain (Impact AE-7), Airport Mesa (Impact AE-8), and Table Mountain and the nearby mesa to the south (Impact AE-9).” FEIR at 2.1-70. The conclusion that there is no conflict with the Subregional Plan’s goals of protecting Jacumba’s natural assets and desert environment, that would not detract from the subregion’s rural charm and that would protect and enhance the I-8 and Old Highway 80 roadways in this location is unsupportable. These acknowledged impacts are inconsistent with those goals and policies and visions, and that inconsistency and the impact that results must be acknowledged. There is no basis for the FEIR’s conclusion on 2.1-71 that the project would have less than significant impacts related to compliance with applicable goals, policies or requirements of an applicable County Community Plan, Subregional Plan, or Historic District’s zoning and in fact the preceding page shows that in fact that is not the case. The impacts are significant, and the project is inconsistent with those policies and thus with the County General Plan.

Air Quality

Valley Fever

The FEIR’s discussion of Valley Fever downplays the risks from this infectious disease. Human infection results from inhalation of spores that have become airborne when dry, dusty soil or dirt is disturbed, such as by wind or construction. Even though about 60% of people infected are asymptomatic and do not seek medical attention, that does not mean there is no impact, just that the infection often goes untreated. According to the California Department of Public Health, reported suspect, probable, and confirmed cases of Valley Fever have steadily risen in recent years throughout California. Among the factors that may indicate a project’s potential to create Valley Fever impacts are disturbance of the topsoil of undeveloped land (to a depth of about 12 inches; undisturbed, non-urban areas; windy areas; and out-of-town construction workers exposed to the area.

The project will disturb topsoil, in a non-urban area that has not been disturbed for some time and will expose people from out of the area to the soil who come for construction. Moreover, Santa Ana winds are common. Not only does the construction risk exposing workers to the fever, but the disturbance of soil also could spread fugitive dust containing the spores to the nearby residences and businesses. The FEIR’s conclusion that “Valley Fever is not considered highly endemic to San Diego,” FEIR at 2.2-8, is hardly comforting, especially given that cases have steadily been on the rise. Nor does the FEIR’s conclusion that, “[e]ven if present at a site, earth-moving activities may not result in increased incidence of Valley Fever,” FEIR at 2.2-8, because the propagation of the spores depends on climatic conditions and exposure is highest after early season rains and long dry spells. The climatic conditions at the site are hot and dry and certainly within the type of conditions in which the spores thrive, and the dry spells are often long in the area. Nor is it comforting that “receptors must be exposed to and inhale the spores” – it is the construction workers disturbing the soil and the residents and workers and visitors to Jacumba in the vicinity of the project site that are breathing in the dust from the site that would be inhaling the spores. Nor does the fact that not every single person who is exposed to the spores are guaranteed to become ill. It is a potential impact to the health of the workers and the community that has been underplayed in the FEIR.

The range of Valley Fever complications based on information from the Valley Fever Center for Excellence are from 50-60% with no complications to 40-50% with acute pneumonia, 5% with Chronic Progressive Pneumonia, 5-10% with Pulmonary Nodules and Cavities and 1-5% Disseminated. See Valley Fever Center for Excellence, 2019.

Air Impacts Across and From the Border with Mexico

The U.S./Mexico Border does not somehow stop impacts from air emissions. The geographic extent of the analysis of cumulative impacts related to air quality is artificially limited in the FEIR to the U.S./Mexico border. FEIR at 2.2-34. Air emissions do not know to stop at an invisible line drawn on a map, and the emissions from this project will travel into Mexico, and the air quality in the area is impacted by emissions from projects located in Mexico that emit pollutants that similarly travel to this site. Due to the artificial limit of cumulative projects only to those on the U.S. side of the border, the cumulative analysis is inadequate.

Biological Resources

The property that Bay Wa proposes to convert to a mega solar farm teems with a variety of habitat and wildlife and serving as an important wildlife corridor for a variety of animals. Among those animals, we learn for the first time in the FEIR, are cougars. The FEIR states on page 2.3-30, in newly added language, that within some unspecified portion of the Project Area "...there are suitable rocky outcrops, irregular terrain, and good connectivity to large open spaces in adjacent areas that may serve as suitable habitat for this species." Although the FEIR states that the cougar habitat is unlikely to be in the development footprint, there is insufficient evidence supporting that conclusion. The FEIR states that cougars may traverse the project site, and yet concludes that removing the cougar's and impeding its corridors by adding more than 600 acres of solar panels to what now is open terrain would not impact the cougar because the animal conveniently prefers areas of the project that the applicant does not plan to use. While it is possible that the cougars may more often use areas outside of the development footprint, the conclusion that adding the development to its habitat will have no impact on the cougars in the area is not adequately supported. The FEIR did not conduct a focused wildlife corridor study (FEIR at 2.3-79) and instead bases its conclusion on general knowledge of the area, probably key wildlife species (without including the cougar until the FEIR) and typical movement patterns. FEIR at 2.3-79.

Impact B1-WLC-2 notes there would be permanent direct impacts on habitat connectivity and wildlife corridors, but the FEIR states that the project would not create any "unnatural" movement corridors despite creating a dead-end for wildlife traveling west to east along the northern portion of the project site and funneling the wildlife toward I-8 and an at-grade crossing, all because the project's fence will provide a 50-100-foot opening. It seems likely that building a fence across the area where wildlife cross but forcing them into what may be as small as a 50-foot opening somewhere along that fence is creating an "unnatural movement" corridor. It may still allow movement, but it's hardly natural. FEIR at 2.3-77. Moreover, the opening in the fence does not address the fact that placing a fence within the site disrupts the visual continuity of the site as a wildlife movement corridor and thus will impede movement to some degree regardless of whether or not the wildlife are able to find the opening in the fence.

Avian Fatalities

While the FEIR now discloses that there is a risk to golden eagles from collision with the gen-tie line during foraging or migration – a risk not disclosed in the DEIR – it does not adequately disclose that individual birds of all species may be injured or killed due to collisions or interactions with the solar panels themselves, or other infrastructure to be built on the site. Collision-related fatality has been observed at solar energy facilities of all technology types. Solar farms that may kill or injury all species of birds not only due to their transmission lines, but also through PV panels and poles, trough systems, fencing buildings and more. In fact, at solar facilities collision hazards to birds are greatest not due to the utility lines but due to the solar field arrays. And there is no evidence to suggest that the collisions are necessarily caused only by the so-called “lake effect,” but even if they were, the FEIR is wrong in concluding that the “lake effect” could not occur at this site.

Data from other solar projects in Southern California, including PV projects (Desert Sunlight, California Valley Solar Ranch, Blythe Solar Power, McCoy Solar Power, Solar Gen 2, Campo Verde, ISEC West and ISEC South) indicate that birds are susceptible to collisions with solar panels and structures as well as lines (Walston et al. 2016; Ironwood Consulting, Inc. 2014; Western Ecosystems Technology, Inc. 2018; Mortality Reporting 2014; Heritage Environmental Consultants, LLC 2014-2016; Dudek 2018 and 2019). Federal and State listed species as well as several species of special concern have been found dead on these sites during systematic avian mortality monitoring, and this data represents only what has been documented in the area in which the surveys were performed and only the birds found during those surveys or incidentally and thus do not represent every species or individual killed on a solar farm site as a result of the solar farm project.

It is not only the golden eagle that is impacted by the potential for injury or death due to collision with the solar panels and other infrastructure to be built at the site. Every single avian species that occurs or has the potential to occur on the site could be injured or killed by such collisions. The discussion of permanent direct impacts on nesting birds through direct grading, clearing or grubbing in preparation for construction – all short-term impacts – do not adequately describe the permanent impacts possible from collisions with the solar panels and other equipment that will be permanently on the site. The FEIR’s conclusion that potential permanent direct impacts to the golden eagle individuals – and its later conclusion in Impact B1-W-6 regarding permanent indirect impacts to special-status wildlife species, would be less than significant is not adequately supported.

Given that death and injury can occur from impact with the solar panels and other infrastructure, and not the lines alone, the fact there may be “minimal” overhead line or that the project incorporates mitigation measure PDF BIO-1 which is designed to reduce impacts to power lines does not fully mitigate the significant impact. Similarly, the FEIR briefly discusses potential collisions with utility poles but concludes that given there are only a “small number of poles” the impact would be less than significant. FEIR 2.3-59. However, there are a large number of solar panels on the project site, and yet the EIR contains absolutely no discussion of the potential for collision with those solar panels, despite reams of reports documenting the danger at other California solar farms.

As discussed above, the conclusion under Impact B1-W-6 that impact to avian species due to a “minor risk” of collision with a “small number” of utility poles fails to adequately disclose the direct significant impact that would occur to avian species from collision with the solar panels. The FEIR does not adequately discuss the well-known impacts to birds from collision with solar panels themselves. Incorporating the APLIC standards in PDF-BIO-1 will not address the impacts from the collision with solar panels.

As a result, mitigation for impacts from hitting the solar panels and other infrastructure must also be addressed and the FEIR recirculated once that information is included. This is also at issue in the FEIR’s discussion on page 2.3-78, in which it discusses only the potential for birds to collide with the gen-tie line during migration, which it assesses as low risk “due to the minimal overhead line,” and then finally discusses collision with solar panels, but in a way that is misleading and inaccurate. There are numerous reports documenting the devastating effects caused when solar panels and avian species collide, the FEIR downplays the issue by discussing only a “pseudo-lake effect” that it states may be caused by “certain types” of solar panels that appear like a body of water. The FEIR states that “there is little scientific information available regarding the pseudo-lake effect, and a detailed discussion of the impacts would be speculative.” FEIR at 2.3-78. This ignores the voluminous data from, among other solar projects in the area, Desert Sunlight, California Valley Solar Ranch, Blythe Solar Power, McCoy Solar Power, Solar Gen 2, Campo Verde, ISEC West and ISEC South that, contrary to the FEIR’s statements, shows that in fact birds are susceptible to collisions with solar panels and that Federal and State listed species as well as species of special concern have been found dead on these sites during systematic avian mortality monitoring. These include Walston et al. 2016; Iron wood Consulting, Inc. 2014; Western Ecosystems Technology, Inc. 2018, Mortality Reporting 2014; Heritage Environmental Consultants, LLC 2014-2016 and even Dudek in reports in both 2018 and 2019.

This issue led the Crimson Solar Project in its EIS/EIR/PA to conclude that there is sufficient data from existing projects that some level of avian fatalities will occur on site during the life of the Project and there is potential that some of the fatalities will be listed or special status species. Crimson Solar Project Draft EIS/EIR/PA at 3.3-34 (November 2019). That solar farm FEIR concluded that “the risk appears to be inherent to the infrastructure necessary to produce renewable electricity.” *Id.* That conclusion and the Project FEIR’s contrary conclusion cannot be reconciled. At a minimum, the evidence supporting the FEIR’s conclusory statements that “there is little scientific information available” and “discussion of the impacts would be speculative” (FEIR at 2.3-78) is contradicted by the evidence cited in the Crimson Solar Project document, including the assessment of avian mortality at utility scale solar energy facilities in the United States authored by Leroy J. Walston, Katherine E. Rollins, Kirk E. LaGory, Karen P. Smith, Stephanie A. Meyers, published in *Renewable Energy*, Volume 92 (2016) at 405-414 (ISSN 0960-1481) and available at <https://doi.org/10.1016/j.renene.2016.02.041> (<https://www.sciencedirect.com/science/article/pii/S0960148116301422>), which estimated that estimated that the hundreds of utility-scale solar farms around the US may kill nearly 140,000 birds annually. *Id.*

The mitigation measure proposed to mitigate these impacts to less than significant levels does not suffice to accomplish that result, given that the impacts are not limited to power lines and the mitigation measure does nothing to address the other causes of avian death and injury discussed above. Other solar farms have provided compensatory mitigation to help address this issue, for example, along with facility design elements to reduce the impacts and monitoring based information, none of which are provided here. The project reduces the likelihood of survival and recovery of listed species in the wild, as evidenced by the discussion of, among other things, avian deaths due to both collision with solar panels as well as overhead lines and other infrastructure, and could result in the killing of migratory birds as discussed above as well as take of golden eagles.

A Table listing recommended restricted activity dates for the bats should be added to the FEIR similar to the one provided in Table 2.3-6 for the Burrowing Owl restrictions.

Cultural Resources

This project is on land that is held sacred by Native American tribes. Carmen Lucas of the Kwaaymii Laguna Band of Mission Indians informed Dudek that Jacumba is a sacred area and in fact not only is Jacumba a sacred area but that “not one inch” of the area does not have cultural significance. She recommended not only that a qualified Native American monitor be present during surveys for the Proposed Project, but also that forensic dogs be used to identify human remains and that the dog analysis should dictate the design of the solar facility. However, forensic dogs were not used during the surveys, despite that request, and only pedestrian surveying was conducted.

The FEIR seems to take the position that because there used to be agricultural use in the area, and because a utility corridor transects the northern portion of the project site, there can be no impact from the project on the cultural resources and history of the area. That is not the case. The fact that the project footprint would largely be in area previously farmed is irrelevant to the drastic change in setting that the project as proposed, or even the Community Buffer Alternative, would bring about. The Community Buffer Alternative only buffers the nearest residents from the visual impact on setting that the project would cause and does nothing to mitigate the drastic transformation in setting along the entrances to the community at Old Highway 80, or as it impacts the Jacumba Hot Springs resort.

Aside from Native American cultural resources, there is also the issue of impacts to the Jacumba Hot Springs Resort. The destination resort, first built in the 1920s, attracted movie stars to the area for decades. It is now poised for redevelopment into its former glory as a visitor-serving and community enhancing destination resort, but the ability to accomplish that goal is threatened by the project’s wholesale change in the character and aesthetics of the immediate area, including the access to the resort. The impacts from the change from rural community to industrial utility-scale solar farm on the historic community and the Jacumba Hot Springs Resort itself was not analyzed, with the analysis instead being improperly narrowly focused only on structures within the property boundary itself, ignoring the project’s impact on the adjacent community resources.

Hazards and Hazardous Materials

The Project is within the Jacumba Airport AIA in both Review Area 1 and 2, and is in safety zones 2, 4 and 5. It is required to comply with the Jacumba ALUCP lot coverage requirements but uses the lack of precise discussions of solar farms in the ALUCP to mislead on the lot coverage issue. The FEIR states that, “Solar panel energy production,” while not specifically addressed in the ALUCP, “is most similar to the utility use ‘cell phone tower, wind turbines,’ which is marked compatible [in the ALUCP] and allowed with 50% lot coverage in Zone 2 and 70% lot coverage in Zones 4 and 5.2 and 4, respectively.” FEIR at 2.6-31-32.

The project is not most similar to a cell phone tower or a wind turbine. To assume that it is, as the FEIR does, underestimates and overlooks the project’s significant hazard to airport safety. There is little area between solar panels upon which a plane can land. While a glider or airplane can avoid a cell tower and land in an emergency situation on the open space surrounding that tower, or, similarly, a wind turbine, the space between solar panels is minimal. When added altogether, the small area between each solar panel when considered cumulatively as if it were all in one combined space may appear to meet the lot coverage requirements, but when looked at realistically, and individually as the pilot will have to do when he or she is in such a situation, it becomes clear that the lot coverage maximums are not close to being met.

The FEIR relies on the argument that “the area between each solar panel is not included as lot coverage because the ground is openly exposed to the sky and there is no vertical projection above grade.” While technically that may meet the County Zoning Ordinance’s definition of “lot coverage,” it does not meet the spirit or intent of the ALUCP’s safety concerns. The fact that the ALUCP itself does not give better direction on how to account for solar farms does not therefore allow the project to simply create a hazard that it avoids disclosing or analyzing by virtue of that fact.

As the Draft EIR acknowledged (though the language has been stricken from the FEIR), if the area of the solar panels, including the space between the panels, is included, the lot coverage for the project is more like 88%, which does not meet the requirements of the ALUCP. Taking advantage of the County’s lot coverage calculations (which were designed to address residential and typical commercial uses and not the unique characteristics of a utility-scale solar farm) to grossly understand the actual situation that would face a pilot in needing to make an emergency landing could lead to disastrous results. While the project was redesigned to attempt to address this issue, by increasing the Project’s internal access road in the vicinity of the west end of the airport runway to 80 feet in width and increasing setbacks along both the north and south sides of Old Highway 80, and that change is appreciated and would help with the safety concerns, the fact of the hazards posed has never been adequately discussed and the additional width now provided does not change the inappropriate calculation methodology used to get around the lot coverage restrictions of the ALUCP.

The FEIR proposes a new mitigation measure to address the glare issues to glider pilots that the DEIR had failed to discuss. While the measure may indeed address the issue, how can the reader (and pilots) be assured that the requirement will be monitored and enforced? The measure requires that all PV panels south of Old

Highway 80 use a minimum 20 degree east facing wake angle, and that all PV panels north of Old Highway 80 and south of the SDG&E Transmission Corridor have afternoon backtracking disabled and instead stay at their maximum 52 degree west facing rotational limit until after the sun has set. Will the County be sending a knowledgeable inspector to confirm that the PV panels in that location meet these criteria? It is a concern given that it almost certainly reduces the energy produced by constraining the panels in that location to meet these criteria, and it would not be typical, so assurance that it will be properly installed and set and that the panels continue to operate under these constraints is essential to ongoing safety.

Mineral Resources

It is unclear if the 40% waste factor is appropriate for the mineral resources lost to open space, given that the FEIR states that “boring logs are unavailable for the potential mineral resources” for that area. FEIR at 2.8-11. The FEIR also understates the impact by assuming that the loss is not permanent, by assuming that in 38 years or so the project (other than the Switchyard Facilities) would be decommissioned. As discussed elsewhere, however, it is unlikely once this project goes in that it will not either be updated with new equipment and its life extended, or a similar solar use taking advantage of the permanent Switchyard Facilities would then take its place. The FEIR also misleads the reader as to the scope of the issue by simply stating that the loss exceeds the County’s \$12 million threshold, without noting that it is a loss valued at \$216 million dollars – more than 18 times the threshold.

Noise

The noise mitigation measure fails to fully address the issue. M-NOI-2 states that “Affected property owners shall be notified in writing two weeks prior to the use of PV panel washing activity with 500 feet of their property boundaries.” FEIR at 2.9-41. But it’s not clear what the property owner is supposed to do once notified – move, with the provided two weeks’ notice if they do not want to be subjected to noise? Complain, in which case some change would be made? The only requirement is of notification, nothing is said as to what substantively would be done to prevent the noise from becoming a nuisance in the event that the PV panel washing is moved within 500 feet of a home.

Wildlife

The majority of the 623-acre solar facility would be constructed in areas classified as a High FHSZ by CAL FIRE (CAL FIRE 2007a). Although the western portion of the development footprint is classified as Moderate FHSZ, a portion along the western boundary of the development footprint is classified as a Very High FHSZ, and the lands adjacent to the west of the Project site are classified as very high FHSZ. According to the FEIR, the land surrounding the proposed solar facility is classified predominantly as Very High FHSZ to the west and High FHSZ to the east. The FEIR assumes that areas left undisturbed by the proposed project are not at any heightened risk due to development of the project, but that is not the case. Adding hundreds of thousands of solar panels adjacent to hundreds of high and very high fire areas is a recipe for disaster.

What could cause a fire to occur? A 100 MW solar farm hosting around 300,000 to +400,000 solar panels (modules) will generally have over 1,000,000 physical made electrical terminations. Each one of these terminations operates at around 1500 Volts and each termination could fail. Electrical equipment failure is well known to be linked to situations where abnormally high temperatures can be observed. Fire, sparking, arching or melting exposes electrical equipment to further damage and degradation exacerbated as moisture ingress occurs. Electrical failure can occur due to various factors and although the commonly seen issue will generally arise due to high resistive joints it is not uncommon to observe how the environment impacts equipment overtime. Electrical termination temperatures can reach over 120° Celsius, under these conditions, equipment will begin to deteriorate, over time plastics will have already begun to deform or melt and visible signs or smells will be present.

The importance of maintenance in large scale solar facilities isn't just about keeping the system online and generating. The responsibility extends to the environment directly surrounding the equipment and stretches past the boundary fence line. Grass fires for example could easily occur. A buildup of dry vegetation underneath single axis trackers or fixed tilt arrays can become a fuel load for an unwanted fire. Neglecting PV module health, visual inspections, periodic testing and quality control could also lead to failure. Animals like birds, possums, rats or mice could have built a grass nest underneath. Debris can lead to the perfect situation that leads to a fire. Electrical equipment installed out in an open field that use to be the location of a farm or rural area is always going to house a large array plants and animals, and any opening carelessly left unsealed creates the potential for electrical failure that can lead directly to a wildfire.

Historically underreported by the U.S. Fire Administration, Lawrence Shaw of Higher Powered, LLC has found that fires at solar installations rose 36% from 2017 to 2018. Since 2015 the Fire Administration has recorded 155 fires caused by solar installations.

Decommissioning/"Temporary" Nature of Project

The end of a solar project's life cycle will trigger either decommissioning of the system or re-commissioning or repowering (installation of a new system). While solar panels have a manufacturer's expected life of 20-25 years, the industry does not have much experience with decommissioning and re-commissioning of solar facilities because systems built more than 20-25 years ago are rare, and those systems came with no such warranty and are quite different from the panels with warranties today. In addition, useful life will vary among owners and will be dependent upon a particular system's production, an individual assessment of operating and maintenance costs, and costs and benefits of repowering the system. As an example, a system constructed on a school in Massachusetts is still producing about 90% of its original design output 29 years after being installed. For these reasons and more, including the permanent Switchyard Facilities that are planned to be built on-site, the most likely result is that if this project is built, the land will remain at solar farm as a permanent use.

The decommissioning assumptions used throughout the document are crucial to the adequacy of the analysis. For example, under Mineral Resources, the FEIR relies on decommissioning to state that mineral resources will not be permanently lost. See FEIR at 2.8-13 (“The Proposed Project components, with the exception of the Switchyard Facilities, would be decommissioned at the end of the Project life. Therefore, the Proposed Project is considered to be an interim use and would not result in a permanent loss of mineral resources.”) The FEIR definitively assumes the project will be decommissioned after 35 years, even though the Switchyard Facilities will remain. Where is the guarantee that the decommissioning will take place, especially if the equipment continues to have a viable life, and the location would now have a permanent switchyard as well as 138kv line?

Alternatives

An EIR’s alternatives must be able to implement most project objectives, but they need not be able to implement all of them. *Mira Mar Mobile Community v City of Oceanside* (2004) 119 CA4th 477, 489. The CEQA guidelines dictate that an EIR’s analysis should focus on alternatives that can eliminate or reduce significant environmental impacts even if they would impede attainment of project objectives to some degree or be more costly. 14 Cal Code Regs §15126.6(b). The significant, currently unmitigated impacts to aesthetics, including community character, as well as the project’s inconsistencies with the General Plan and Subregional Plan identified herein, can be mitigated to less-than-significant levels and be found consistent with the relevant policies, goals and vision statements of the applicable plans should the project set back the solar panels and associated equipment along the lines outlined in the Jacumba Sponsor Group’s Equity Balance Alternative. That Equity Balance Alternative reduces the project’s significant impacts while still allowing the project to attain most of its basic objectives. It may be a little more expensive to do so, or perhaps a little less convenient; it may produce 80 megawatts rather than “up to 90” megawatts, but 80 megawatts is “up to” 90 and 80 megawatts achieves most of the basic project objectives, which is all that CEQA requires. The FEIR’s project objectives are written specifically to enable it to reject any project that would still provide the region with renewable energy while also helping to protect the existing community and its goal for its future. The developer does not care about a small, rural community.

An alternative that would substantially reduce the project's significant environmental impacts should not be excluded from the analysis simply because it would not fully achieve the project's objectives. *Habitat & Watershed Caretakers v City of Santa Cruz* (2013) 213 Cal. App. 4th 1277, 1304. The CEQA Guidelines assume that the alternatives described in an EIR will not necessarily attain all of the project's objectives. *Watsonville Pilots Ass'n v City of Watsonville* (2010) 183 Cal. App. 4th 1059, 1087. There is no requirement that the alternatives included in an EIR satisfy every basic objective of the project. *California Native Plant Soc'y v City of Santa Cruz* (2009) 177 Cal. App. 4th 957, 991. The Jacumba’s Equity Balance Plan is consistent with the basic purposes of the project. The community’s alternative achieves the basic purposes – providing significant renewable energy to the region – in what would continue to be the largest solar farm ever approved in San Diego County.

The County should not use artificially narrow project objectives to preclude consideration of reasonable alternatives for achieving the project's underlying purpose. *North Coast Rivers Alliance v Kawamura* (2015) 243

Cal. App. 4th 647, 669 (EIR on program to protect plants from invasive insect pest failed to consider control as alternative to eradication); *County of Inyo v City of Los Angeles* (1977) 71 Cal. App. 3d 185, 203 (EIR for expansion of groundwater extraction program failed to consider water conservation as alternative to increased groundwater extraction). And certainly, the range of alternatives to be considered should not be limited by the timing of tax credits or rebates or a contract entered into prematurely. The range of alternatives analyzed in an EIR should not be confined by any prior contractual commitments that would impede the project proponent from implementing reasonable project alternatives, such as that proposed by the people that will bear the brunt of the impacts from the project. See *Kings County Farm Bureau v City of Hanford* (1990) 221 Cal. App. 3d 692, 736.

Mitigation and alternatives are the very core of CEQA, and "[I]t is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects" *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; *Watershed Caretakers v. City of Santa Cruz* (2013) 23 Cal. App. 4th 1277, 1302, 1304-05.

The Jacumba Equity Balance Plan meets all the requirements for an alternative under CEQA: It can substantially reduce significant environmental impacts; can attain most of the basic project objectives; is potentially feasible; and is reasonable and realistic. Its effects can be reasonably identified, its implementation is neither remote nor speculative, and it would achieve most of the basic project objectives while reducing the project's significant impacts. While the Community Buffer Alternative, as revised, addresses some of the project's significant impacts, particularly near the community park, it does not address the primary significant impacts to the community character and to views from the majority of the community and along Old Highway 80. The only way to do so is to increase the buffer more than the minimal 3% the project has proposed, and more and in a different locate than the Community Buffer alternative proposes.

The FEIR also improperly rejects the Distributed Generation alternative, saying that based on data for average systems installed in California in 2017, the average size of a residential rooftop PV system is 6.2 kW DC and therefore it would require too many home rooftop systems to achieve the desired capacity. First of all, the number of homes adding solar continues to increase. "In the last decade alone, solar has experienced an average annual growth rate of 42%," according to a Solar Energy Industries Association Report, which shows a significant increase in rooftop solar since 2017. Moreover, the FEIR ignores the potential for solar on commercial buildings, which a UC Davis study says is the future of solar. Indeed, companies such as Walmart, Apple, Target and Amazon are striving to meet their sustainability goals and often find rooftop solar on their large buildings the perfect way to accomplish their goals. This ability to produce the necessary renewable energy through placing solar farms on commercial rooftops, especially at large warehouses such as those owned by Walmart and Amazon, as well as the ability to place solar farms on brownfields, former mining sites and other areas without the natural resources in place here, were ignored in the FEIR's desire to prematurely reject distributed generation as a viable alternative to destroying the community of Jacumba's character, views and setting.

“I don’t think any ecologist in their right mind would be against renewable energy development,” Ecologist Steve Grodsky, a UC Davis postdoctoral scholar who is co-director of Wild Energy Initiative, a project of the UC Davis John Muir Institute of the Environment, has said. “There are ways we can site solar facilities that might lessen the impact on wildlife communities. But ultimately, I think we need to move away from developing renewable energy on undeveloped lands. There are plenty of marginalized lands where the ecological impacts would be far less.” Lots of places, according to research from the UC Davis lab: former landfills, superfund sites, already disturbed public lands, and perhaps most promising, existing rooftops. In fact, 40% of all energy consumption in the U.S. is associated with buildings. But, with the right incentives in place, buildings could become one of the largest renewable energy producers.

A study published in November 2015 by the Carnegie Institution for Science and Stanford University (Carnegie Study) showed that solar power developers in California have been using mostly undeveloped desert lands with sensitive wildlife habitat as sites for new solar power installations rather than building on less sensitive, previously developed open lands. That number has only increased since. The study shows the ecological footprint of solar power development could grow to more than 27,500 square miles — roughly the land area of South Carolina — if the U.S. were to adopt a more ambitious climate goal. When thousands of solar panels are built in undeveloped natural areas, the panels crowd out wildlife and destroy their habitat.

“Solar takes out a lot of territory, right? It obliterates everything,” University of California-Santa Cruz ecologist Barry Sinervo, who is unaffiliated with the study, said. “There is as much plant biodiversity in the Mojave as there is in a redwood forest. The key part of this is, do we want to tile out the last largest wilderness area that we have, which is the Western desert?”

The Carnegie study found that of the 161 planned or operating utility-scale solar power developments in California, more than half have been or will be built on natural shrub and scrublands totaling about 145 square miles of land, roughly the land area of the city of Bakersfield, Calif. About 28% have been built on agricultural land and 15 percent have been built in developed areas.

Yet areas that have already been developed and have little wildlife habitat would be better suited for solar development from an ecological standpoint, said study lead author Rebecca Hernandez, a postdoctoral fellow at University of California, Berkeley, and a former ecologist at the Carnegie Institution. “We see that ‘big solar’ is competing for space with natural areas,” Hernandez said. “We were surprised to find that solar energy development is a potential driver of the loss of California’s natural ecosystems and reductions in the integrity of our state and national park system.” Hernandez’s team found that there are more than 8,500 square miles of land throughout California that is less environmentally sensitive than desert scrubland and agricultural land that would be best suited for future solar power development. Those impacts show the need to not reject this alternative out of hand, as the FEIR has done.

A study by Stanford University published in the journal *Nature Climate Change* says that solar power plants could be built in developed areas between or atop buildings and homes without having to impact the desert, by

building in California’s cities, which are often overlooked as areas ideal for both utility-scale photovoltaic and concentrating solar power generations. The research looked at developed land more efficiently by encouraging the construction of utility-scale solar development there rather than building large solar installations in environmentally sensitive undeveloped places. The study specifically modeled land-use efficiency for solar only in California because the state leads the U.S. in solar power generation. See Hernandez, R., Hoffacker, M. & Field, C. Efficient use of land to meet sustainable energy needs. *Nature Clim Change* 5, 353–358 (2015). <https://doi.org/10.1038/nclimate2556>.

Just as technological improvements (bifacial modules and increased module wattage) between the circulation of the Draft EIR and the completion of the FEIR are now determined to enable the Community Buffer Alternative to maintain a 90 MW AC nameplate capacity, similar improvements could enable achievement of 90 MW with the Jacumba Equity Balance Plan alternative, or close to it. Or the power could be generated through placing the solar farm in another, more appropriate location, as the studies above discuss. Certainly, given the level of significant impacts this project as proposed causes, it should not be approved as currently proposed.

Recirculation is Required

The sheer number of revisions between the DEIR and the FEIR (the summary of changes alone is 78 pages) suggests that the public could benefit from recirculation and more time in which to review the many new pages of information. In addition, the Jacumba Equity Balance Plan is a feasible alternative that would mitigate most if not all of the remaining significant unmitigated impacts and if not adopted would require recirculation. See *Save Our Peninsula Comm. v Monterey County Bd. of Supervisors* (2001) 87 Cal. App. 4th 99, 131 (information on important new mitigation measure, added to record after EIR was completed, should have been included in EIR and circulated for public review and comment because of questions raised about its effectiveness and potential impacts).

Best regards,

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Enclosures:

1. Solar Energy Industries Association, “Solar Industry Research Data”
2. Climate Central, “Cities Could Be Ideal for Utility-Scale Solar Panels”
3. Climate Central, “Study Sees Ecological Risks as Solar Expands”
4. UC Davis, “Environmental Impacts of Utility-Scale Solar Energy”

