BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION FOR THE ORANGE GROVE POWER PLANT PROJECT BY ORANGE GROVE ENERGY, LP	DOCKET NO. 08-AFC-4 (AFC filed 06/20/08)

ORANGE GROVE ENERGY, L.P.'s RESPONSE TO COMMENTS BY DFI FUNDING, INC.

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On December 18, 2008, DFI Funding, Inc. ("DFI") filed a letter (the "DFI Letter") with the California Energy Commission ("Commission") containing its comments on the Orange Grove Power Plant Project (the "Project"). In an e-mail message from December 23, 2008, the Committee requested the parties to file a Response to Comments addressing DFI's concerns. Orange Grove Energy, L.P. ("Orange Grove") responded to DFI's comments in the area of soil and water resources in its opening brief, filed on January 9, 2009. This Response to Comments addresses DFI's comments in the remaining topic areas.

DFI generally argues that Orange Grove and Staff have failed to fully evaluate the impacts of siting a power plant at the Project site. DFI provides a list of comments indicating the areas in which it believes the analysis for the Project is inadequate. This Response to Comments takes DFI's comments into consideration and explains the analysis used by Orange Grove and Staff in concluding that the Project will not result in any significant unmitigated environmental impacts.

I. Areas of Particular Interest to the Committee

In its e-mail message from December 23, 2008, the Committee indicated that it is particularly interested in the responses to four of DFI's comments from its letter brief. The responses to these four comments appear under the relevant technical areas below.

II. Air Quality

In its comments on the Air Quality section of Exhibit 200, the December 2008 Amended Staff Assessment, DFI first contends that the Assessment does not include "any reference to whether or not the California Air Resources Board ("ARB") conducted an impact analysis for the Project pursuant to Cal. Code Regs § 922.5.3(b)." (DFI Letter at 3.) Orange Grove is unaware of any California regulation cited as "§ 922.5.3(b)." DFI does not provide a proper citation for this purported requirement, nor does it provide a Title number. Therefore, Orange Grove cannot directly respond to DFI's claims that the Assessment failed to include "an [ARB] impact analysis for the Project pursuant to Cal. Code Regs § 922.5.3(b)." However, Orange Grove believes DFI may be referring to section 1722.5(b) of Title 20 of the California Code of Regulations, which provides that ARB shall review and submit written comments on the local air district's report. Orange Grove responds that this section only requires ARB to review and submit comments on a report issued by the local air district in response to the filing of a notice of intention. (*See* 20 C.C.R. § 1722.5[b].) Orange Grove was not required to file a notice of intention for this project. (*See* Cal. Pub. Res. Code § 25540.6[a] [exempting from notice of intention requirements thermal power plants employing natural gas-fired technology and thermal power plants with generating capacity up to 100 megawatts].) Because the notice of intention requirements do not apply to the Project, the provision cited by DFI is inapplicable as well.[1]

DFI then references ARB's July 26, 2007 approval of "a regulation to reduce emissions from existing off-road diesel vehicles used in California in construction, mining, and other industries." (DFI Letter at 3.) DFI claims that the Assessment contains no language stating whether the Project's vehicle fleet complies with this regulation. Orange Grove responds that it intends to comply with this requirement, as stated in the AFC. (Exhibit 1 at 6.2-23.) Staff also addresses this regulation in its Assessment where it states "[t]he Applicant has also proposed construction equipment mitigation that relies on pollution control retrofit for older construction equipment as required by ARB's Regulation for In-Use Off-Road Diesel Vehicles." (Exhibit 200 at 4.1-31.) The Assessment includes a footnote containing a link to the ARB website

[1] The San Diego Air Pollution Control District's Preliminary Determination of Compliance ("PDOC") states that it sent notice regarding the PDOC to ARB, but that it only received comments from the public, Orange Grove and the Energy Commission. (PDOC at 19-20 and 49.)

specifically addressing the July 26, 2007 regulation. The Project will comply with all applicable LORS. (Exhibit 200 at 4.1-52.) Regulations such as the one discussed above apply to Orange Grove just as they would to any other developer in the State. Furthermore, Staff provides additional construction equipment mitigation measures in AQ-SC1 to AQ-SC5 that pertain to construction-related air quality impacts. (Exhibit 200 at 4.1-31 through 4.1-32.) Condition of Certification AQ-SC5 specifically addresses diesel-fueled engine controls. (Exhibit 200 at 4.1-56 through 57.)

DFI also asserts that the Assessment makes no provision regarding the Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, and Greenhouse Gases from In-Use Heavy-Duty Diesel-Fueled Vehicles which is currently under consideration before the ARB. (DFI Letter at 4.) Orange Grove notes that this regulation is still being considered by ARB and has not yet been adopted. However, both construction and operation vehicles will be required to comply with current and future state laws as they apply to diesel-fueled vehicles and/or retrofits. (*See* Ex. 200 at 4.1-96 and 4.1-100.)

DFI contends that the Assessment does not identify and analyze the potential air quality impacts from "other projects" in the vicinity of the Project. (DFI Letter at 4.) DFI specifically refers to the communities of Pala and Fallbrook as other "projects" within the vicinity of the Project. An existing community or municipality is not a "project" under the California Environmental Quality Act ("CEQA"), which defines a "project" as an "*activity* which may cause either a direct physical change in the environment . . . ." (Cal. Pub. Res. Code § 21065 [emphasis added].) An existing city or unincorporated community is not an "activity" and therefore is not a "project" for purposes of CEQA. Thus, the Assessment need not analyze their cumulative air quality impacts in conjunction with the Project.

Furthermore, the Assessment did identify and analyze potential air quality impacts from past, present and reasonably foreseeable projects. (*See* Exhibit 200 at 4.1-44 through 4.1-47.) The Assessment analyzes the air quality impacts of past and present projects through the use of ambient air quality monitoring data as the background for modeling. Staff, in consultation with Orange Grove and the San Diego Air Pollution Control District ("SDAPCD"), assessed reasonably foreseeable projects within six miles of the project site and determined reasonably

foreseeable projects to consist of Rosemary's Mountain Quarry ("RMQ") and Gregory Canyon Landfill ("GCL"). Orange Grove conducted modeling pursuant to an approved protocol and the results were appropriately considered in the Assessment. (*See* Exhibit 200 at 4.1-46, Tables 28 and 29; *see also* Exhibit 12.)

Single source modeling demonstrates that the Project's maximum air quality impacts occur close to the Project's property line. (Exhibit 200 at 4.1-30; Exhibit 1 at 6.16-12.) Cumulative modeling shows that, even considering the closest nearby sources (RMQ and GCL), the Project's contributions to the worst case impacts are less than significant. (Exhibit 1 at 6.2-19; Exhibit 200 at 4.1-45 through 47.) The monitored pollutant concentrations were added to the model-predicted concentrations in order to calculate the total concentrations for comparison to ambient air quality standards. (Exhibit 12 at 1-2.) Larger contributions will not occur in combination with other sources that are located further from the Project than RMQ and GCL such as the communities of Pala and Fallbrook located at two and five miles from the Project site. (Exhibit 200 at 1-1 and 1-2.) The cumulative modeling conducted demonstrates that the proposed Project, in combination with existing sources and proposed nearby sources, will comply with the applicable air quality regulations and will have only a de minimus cumulative contribution, if any, to existing and reasonably foreseeable projects. (Exhibit 12 at 2.)

Furthermore, SDAPCD issued its Final Determination of Compliance ("FDOC") on December 4, 2008. The FDOC determined that the Project would not violate any Ambient Air Quality Standard. (Exhibit 60 at 18-19.) As discussed above, the Assessment identifies and analyzes the cumulative impacts of two other projects in the region, the RMQ and GCL. (Exhibit 200 at 4.1-45.) These projects were specifically identified by the SDAPCD as potential projects in the area that could have air quality impacts. (Exhibit 1, Orange Grove Project Application for Certification ["AFC"] at 6.2-19 and Exhibit 200 at 4.1-45.) Therefore, DFI's claim that the "Assessment has failed to identify and include in its analysis other projects in the vicinity of the Project" is completely unsubstantiated.

III. Greenhouse Gas

DFI's Letter then moves on to a discussion of the Project's potential Greenhouse Gas ("GHG") emissions. (DFI Letter at 4.) The Project's potential direct and cumulative GHG

impacts were thoroughly analyzed in Staff's Assessment, as well as in the AFC (See Exhibit 200 at 4.1-91 to 4.1-103; Exhibit 1 at 6.2-19 to 6.2-20, and 6.2-25). The Assessment devotes an entirely separate Appendix to its discussion of GHG emissions. (*See* Exhibit 200, Air Appendix A - Greenhouse Gas Emissions, at 4.1-91 through 103.) This section first addresses the overall policy actions and decisions made by both the Commission and the California Air Resources Board (ARB) to comprehensively address greenhouse gas reductions from the electric industry in California including imported energy and follows with a discussion of the individual impacts of this Project.

In 2006 the California Legislature passed and Governor Schwarzenegger signed Assembly Bill (AB) 32. AB 32 set up a comprehensive green house gas reduction mandate for California. In addressing the electric industry AB 32 took a system-wide and comprehensive approach and required the ARB to take into account all emissions from electric production whether they occur in California or outside of California.

> "Statewide greenhouse gas emission" means the total annual emissions of greenhouse gases in the state, including all emissions of greenhouse gases from the generation of electricity delivered to and consumed in California, accounting for transmission and distribution line losses, whether the electricity is generated in state or imported.

(Cal. Health and Safety Code §38505[m].) Since enactment of AB 32, ARB as well as this Commission in conjunction with the California Public Utilities Commission (CPUC) have been developing greenhouse gas reporting regulations, early action measures and a scoping plan to guide the state toward reducing greenhouse gas (GhG) emissions to 1990 levels by 2020.

a. ARB, this Commission, and the CPUC have Developed a Comprehensive, Programmatic and System Wide Approach for the Electric Industry

On December 11, 2008 ARB approved with the Proposed Modifications to Climate Change Proposed Scoping Plan and Appendices the October ARB issued the *Proposed Scoping Plan, a framework for change* (collectively and as approved the "Scoping Plan"). In addition, the Commission and the CPUC approved the *Final Opinion and Recommendations on Greenhouse Gas Regulatory Strategies* D.08-10-037 (October 2008) ("Final Opinion"). Both the Scoping Plan and the Final Opinion take a comprehensive, programmatic and system wide

approach to reducing GhG emissions for the electric industry. Specifically, the Scoping Plan states, "The comprehensive approach in the plan reflects a balance among these and other important factors" including cost-effectiveness, minimization of leakage, and impacts on specific sectors like small business and disproportionately impacted communities. (Scoping Plan at ES-7.) The Scoping Plan includes both command and control and market based mechanisms to achieve GhG reductions in the electric industry. These strategies include expanding the renewable portfolio standard (RPS) to 33 percent, maximizing current energy efficiency and participating in the Western Climate Initiative regional cap-and-trade program. (Scoping Plan at 30 – 38 & 41-46.) This same mix of measures is included in the Final Opinion. (Final Opinion at 6-10.) The focus of both the Scoping Plan and the Final Decision on measures that apply to load serving entities such as RPS and requirements for individual emitters such as participation in a regional cap-and-trade program show the range and depth of the efforts by these agencies to meet the requirements of AB 32.

Under the Scoping Plan, the electric industry will be asked to contribute 40 percent of the GhG reductions needed to meet AB 32's goals even though the industry as a whole contributes between 23 and 25 percent of the annual GhG emissions. (Final Opinion at 2; Scoping Plan at 11 & 17.) This vast difference between the emissions contribution and reduction requirements placed upon the electric industry demonstrate how the Scoping Plan has fulfilled the mitigation requirements for GhG emissions from the electric industry.

Although the Commission has initiated a proceeding to establish CEQA GhG significance standards for power plant siting, this proceeding has just begun and will most likely be unable to provide guidance on this project. (See Docket # 08-GHG OII-01.) In the absence of specific guidance, we must use the available information from ARB, this Commission and the CPUC in addressing GhG impacts from the Project.

b. Construction Emissions are Short-Term and Mitigated through Conditions of Certification AQ-SC1, AQ-SC2 and AQ-SC5

DFI also comments that the Assessment fails to quantify the Project's direct contribution to GHGs. (DFI Letter at 4.) However, the Assessment clearly presents the Project's construction GHG emissions by pollutant within the text and in a table. (Exhibit 200 at 4.1-94;

see also Exhibit 200, Greenhouse Gas Table 1.) The total construction emissions are 803 metric tonnes CO2e (Exhibit 200 at 4.1-94 at Table 1). Orange Grove agrees with the analysis and conclusions reached by Staff in the Assessment regarding construction emissions. (Ex. 200 at 4.1-94 & 4.1-96.)

Like all construction projects, construction of the Project will result in short-term unavoidable vehicle and equipment GhG emissions. Furthermore, requirements to reduce the impacts from criteria pollutants included in the Assessment's Conditions of Certification AQ-SC1, AQ-SC2, and AQ-SC5 also reduce GhG emission such as decreased idling times and the use of newer more efficient equipment where appropriate (Exhibit 200 at 4.1-53 & 4.21-56 to 4.1-57). Orange Grove agrees with Staff that the emissions from construction will be insignificant because they are short term and will be reduced by Staff's Conditions of Certification. Even ARB, who is also conducting a proceeding to set significance levels for other industries, has not presented a zero emission increase as the significance threshold, noting that some definable level of emissions increase in the near term and at mid-century will still be consistent with climate stabilization. (Preliminary Draft Staff Proposal, Recommended Approaches for Setting Interim Significance thresholds for Greenhouse Gases under the California Environmental Quality Act at 4 [Oct. 24, 2008.].) Therefore, given the short-term nature of GhG emissions from construction and the benefits obtained by mitigation to reduce criteria pollutant emissions from construction, the GhG emissions from construction of the Project are not significant.

c. Attributing an Increase in GhG Emissions from the Project is Speculative

DFI also comments that the Assessment fails to quantify the Project's direct contribution to GHGs. (DFI Letter at 4.) However, the Assessment clearly presents the Project's operational GHG emissions by pollutant within the text and in a table. (Exhibit 200 at 4.1-95; *see also* Exhibit 200, Greenhouse Gas Table 2.) Based upon operation of the Project at 3,200 hours per year the emissions from the Project would be 307,264 metric tones CO2e (Exhibit 200 at 4.1-94 at Table 1). Since this Project is a peaking facility both Orange Grove and Staff assume the Project will operate considerably less than 3,200 hours per year. Staff used a 13.7% capacity factor which equates to 1,200 hours per year for mitigation requirements for criteria pollutants. (Exhibit 200 at 4.1-38.) The Project's potential direct and cumulative GHG impacts were

thoroughly analyzed in Staff's Assessment, as well as in the AFC. The Assessment devotes an entirely separate Appendix to its discussion of GHG emissions. (*See* Exhibit 200, Air Appendix A - Greenhouse Gas Emissions, at 4.1-91 through 103.)

In contrast to DFI's claim that the Assessment does not discuss the cumulative GHG impacts of the Project, Staff specifically states that "GHG emissions . . . are discussed in the context of cumulative impacts." (Exhibit 200 at 4.1-91.) The Assessment then discusses both the direct and cumulative GHG emissions impacts of the Project. (Exhibit 200 at 4.1-96 through 4.1-99.) Staff further addresses DFI's comment that the Assessment should discuss cumulative GHG impacts by citing CEQA and emphasizing that the "entire assessment is a cumulative impact assessment. The project alone would not be sufficient to change global climate, but would emit greenhouse gases and therefore has been analyzed as a potential cumulative impact in the context of existing GHG regulatory requirements and GHG energy policies." (Exhibit 200 at 4.1-99.)

Burning natural gas to produce power creates GhG emission from both the CO2 contained in the gas and the CO2 created as a byproduct of combustion. The only way to reduce GhG emissions from the Project is for the project to run less. The Commission recognized long ago that power plants do not drive demand for electricity but instead respond to demand. Electricity production must meet demand requirements at all times and cannot be produced in excess of what is needed. In order to meet California's demand several different types of resources are deployed. The state is expanding the use of renewable resources to serve load, and many resources such as wind, photovoltaic and solar thermal technologies do not have any or have very few GhG emissions. Even so, the Scoping Plan and the Final Opinion set a goal of meeting California's energy demand with 33 percent renewables, which leaves 67 percent of the electricity coming from another source. Although some of these other needs are served by large hydroelectric and nuclear assets, fossil-fired generation still fills a major part of the demand for electricity. (2007 IEPR at 64.)

Finally, electric generators work as part of a system (Exhibit 200 at 4.1-98). As noted in the 2007 IEPR, gas-fired peaking facilities are needed to support the addition of intermittent renewable generation sources, such as wind and solar. (2007 IEPR at 186.) This Project is just

the type of project recognized by the 2007 IEPR as needed to provide efficiency, environmental and other benefits to California. (2007 IEPR at 184; Ex. 200 at 4.1-54.) Furthermore, peaking generation is called to operate only when dispatched due to demand needs. (Ex. 200 at 4.1-53.) Therefore, the Project will only run when there is a reliability need or when running the Project would be more efficient than running the next available generator. The CAISO's dispatch order by heat rate ensures that the most efficient units run first. The addition of the Project, a more efficient unit, reduces the overall GhG emissions of the system. Furthermore, the Commission found in the Final Commission Decision on the Humboldt Bay Repowering Project (06-AFC-7) (September 2008) ("Humboldt Decision"):

> [E]ven if it were not replacing this existing facility, it would be speculative to conclude that the project would result in a cumulatively significant GHG impact. AB 32 emphasizes that GHG emissions reductions must be 'big picture' reductions that do not lead to 'leakage' of such reductions to other states or countries. If a gas-fired power plant is not built in California, electricity to serve the load will come from another generating source. That could be renewable generation like wind or solar, but it could also be from higher carbon emitting sources such as out-of-state coal imports that are still a significant part of the energy that serves California[2].

As stated by Staff "even considering if the project cannot be directly attributed to replace higher emitting existing local power plant capacity, it would be difficult to conclusively determine whether the project would result in a net increase in GHG emissions." (Ex. 200 at 4.1-98.)

Because each power plant operates as a part of a larger electric system; a comprehensive, programmatic and system-wide approach to GhG reductions is the most effective way to reduce GhG emissions from the electric power industry. Furthermore, the programmatic approach taken by ARB in the Scoping Plan, and this Commission and the CPUC in the Final Opinion provides for the electric power industry to contribute 40 percent of the GhG reductions for the state while the sector only contributes between 23 and 25 percent of the emissions. Therefore, emissions for

[2] Final Commission Decision Humboldt Bay Repowering Project (06-AFC-7) at 120 (September 2008).

this sector are being reduced by and mitigated through this comprehensive and system-wide approach.

Lastly, DFI comments that the Assessment's plan to address ARB Scoping Plan requirements as the regulations become more fully developed does not sufficiently conform to ARB's Scoping Plan. (DFI Letter at 4.) Orange Grove responds that Staff's plan to address ARB regulations as they become finalized is the only logical way to undertake compliance with regulations that have yet to be adopted. The Commission and its Staff have taken this approach in recent projects, including the Russell City Energy Center Amendment (*see* Final Commission Decision at 78-79) and the Victorville 2 Hybrid Power Project (*see* Final Commission Decision at 113-115.) It is impossible to comply with requirements that have not yet been implemented. Nonetheless, Staff recognized ARB is developing these regulations and that these regulations will apply to this Project. Staff's Condition of Certification GHG-1 represents a requirement that will ensure proper GHG emissions reporting until AB 32 is implemented and ARB finalizes its regulatory regime.

IV. Biological Resources

DFI's comments on the Biological Resources chapter of the Assessment focus on the Project's impacts related to the construction of the 2.4 mile natural gas pipeline. (DFI Letter at 5.) DFI believes that construction of the pipeline "will result in the permanent destruction of 9.3 acres of coastal sage scrub habitat" while an alternative route "could avoid this impact." (DFI Letter at 5.)

Orange Grove first responds that the Assessment does in fact address the quality of the impacted coastal sage scrub habitat. (Exhibit 200 at 4.2-27.) Staff states that the only intact and undisturbed coastal sage scrub habitat that will be affected is a 400-foot portion of the proposed alignment immediately west of the Pala Substation. (Exhibit 200 at 4.2-27 to 28.) Furthermore, upon completion of construction, the area will be allowed to revegetate and will therefore not create a substantial break in the connectivity of coastal sage scrub habitat. (Exhibit 200 at 4.2-28.) The small portion of coastal sage scrub habitat that will actually be affected is far less than what DFI portrays in its comments.

DFI goes on to claim that an alternative route could avoid this impact but then asserts that the Assessment did not adequately consider an alternative route. (DFI Letter at 5.) Both Orange Grove and Staff have provided adequate support for the proposed natural gas pipeline route. Staff provided its analysis of the alternative pipeline route in the Assessment, which summarizes and supports Orange Grove's more extensive discussion in the AFC. (Exhibit 200 at 6-9 through 10; Exhibit 1 at 5-23 through 24.) The alternative route was originally proposed as the preferred route but was not ultimately chosen due to heavy construction related traffic impacts and California Department of Transportation requirements. (Exhibit 1 at 5-23.) This alternative may only eliminate "direct" disturbance to native habitat. (Exhibit 1 at 5-23.) There is no guarantee that the alternative route's indirect impacts would be any less than those created by the proposed route.

V. Cultural Resources

DFI argues that the Assessment generally underestimates the probability of encountering archaeological resources during construction. First, DFI argues that the Project will be built "directly over a historical site known to contain artifacts." (DFI Letter at 5.) However, Staff has demonstrated that the Project will avoid all of the identified cultural resources and archaeological sites. (Exhibit 200 at 4.3-23; *see also* Cultural Resources Tables 1-3.)

Next, DFI argues that the Assessment "improperly relies on" a 2005 study that encompasses the entire San Luis Rey River floodplain without distinguishing the Project area from this floodplain. (DFI Letter at 5.) There is nothing improper in Staff's reference to this study. This study was merely a part of Staff's analysis of impacts to cultural resources, and the assessment in this study is relevant to evaluating the likelihood of the existence of buried cultural resources in the Project area. Orange Grove conducted other studies, such as the multiple project-specific archaeological field surveys and geoarchaeological field investigations, focused specifically on the Project site and linear facilities. (*See* Exhibit 200 at 4.3-13 through 18; Exhibit 1 at 6.7-22 through 26 and at Appendix 6.7-B; Exhibit 7 at Response to CEC Staff Data Requests 41-47; Exhibit 10 at 5-6.)

DFI argues that the Assessment "also improperly relies on data from four borings" taken along the natural gas pipeline. DFI contends that because these borings were conducted along

the pipeline, their results are not applicable to the remainder of the Project area. Orange Grove responds by noting that the results of these borings were intended to analyze the potential for buried cultural resources along the natural gas pipeline route. These borings alone were never intended to conclusively establish the lack of cultural resources for the entire Project site. Indeed, on October 16, 2008, Orange Grove's consultant conducted a second set of four geotechnical borings. (*See* Exhibit 15.) These borings were made along a completely different segment of the natural gas pipeline route. (*See id.*) This set of borings yielded Holocene alluvium deposited by the San Luis Rey River, which consists of fine to coarse sand, along with some sandy silt and some silt with sand. (*Id.* at 2.) The investigation of these borings found a low likelihood of cultural resources in the Holocene alluvium San Luis Rey River deposits along the pipeline route. (*Id.*) The findings of this geoarchaeological investigation are consistent with the other geoarchaeological assessments provided to the Commission. (*Id.*)

DFI claims that the Assessment states that "Applicant was unable to re-locate and re-identify by field survey eighteen previously recorded archaeological sites." (DFI Letter at 6.) However, the Assessment lists only four, not eighteen, sites which Orange Grove was unable to locate. (Exhibit 200 at 4.3-15.) DFI contends that the Assessment "conveniently suggests" that these sites no longer exist or were misidentified in the first place. (DFI Letter at 6.) However, the Assessment notes that the area had been considerably altered by bulldozing around 1994 to create terraces, and it is possible that these sites were destroyed during this activity. (Exhibit 200 at 4.3-15.) The purpose of CEQA is for agencies to identify and make available information relevant to the significant effects of a project, alternatives, and potential mitigation measures. (Cal. Pub. Res. Code § 21002.1[b].) The relevant inquiry for this Project's analysis is whether the archaeological sites exist, not how they were destroyed if they cannot be located. Orange Grove and Staff are not required to reconstruct every past event on the Project site.

DFI comments that the San Luis Rey Band of Mission Indians requested Orange Grove to execute a "Pre-Excavation Agreement" with the Band in order to ensure protection of cultural resources, yet in the Assessment Staff neither agrees to comply with this request nor explains its reason for not complying with this request. (DFI Letter at 6.) Staff has included proposed conditions of certification in the Assessment that are adequate to mitigate cultural resource impacts to a level that is less than significant. More specifically, Staff included in Condition of

Certification CUL-6 the requirement that a Native American monitor shall be obtained to monitor the Project's ground disturbance activity, and that preference in selecting a monitor shall be given to Native Americans with traditional ties to the area that shall be monitored. (*See* Exhibit 200 at 4.3-41.) Therefore, the appropriate Native American community representatives will be able to participate during the part of the process most critical to cultural resource preservation. Furthermore, Staff has required that prior to the start of ground disturbance, a Cultural Resource Monitoring and Mitigation Plan ("CRMMP") be submitted to the Commission's Compliance Project Manager ("CPM"), including a description of the manner in which Native American observers or monitors will be included, the procedures to be used to select them, and their roles and responsibilities. (*See* Exhibit 200 at 4.3-36 and 4.3-37.)

DFI commented that the Assessment improperly concluded that the orchard on the Project site is not a historical resource, and that Orange Grove should formally apply for listing in the California Register of Historic Resources ("CRHR") before making this conclusion. (DFI Letter at 6.) Both Staff and Orange Grove concluded that the orchard does not appear to be eligible for listing in the CRHR. The orchard was abandoned after it was used for field testing by the California Institute of Technology. (Exhibit 200 at 4.3-4.) It was a small-scale agricultural operation in the later part of the 1940s and 1950s, and its uses do not represent an important trend that would support listing in the CRHR. (See Exhibit 200 at 4.3-24.) A qualified historian evaluated the orchard, as described in the technical report submitted in response to CEC Staff Data Request Number 43. The qualified historian who conducted this evaluation concluded that the orchard probably is not eligible for listing in the CRHR because the orchard does not appear to be a significant example of the citrus industry in Pala or the greater San Diego region. (*See* Exhibit 7 at page 5 of Exhibit 41-1 and Attachment 2.) The report further noted that the trees do not appear to have constituted a major agricultural operation. (*Id.*)

DFI expresses concern that archaeological monitoring will be insufficient to protect the destruction of surface and subsurface extensions of the fourteen previously known archaeological sites located on or adjacent to the Project site. (DFI Letter at 6.) Orange Grove responds that Staff found such monitoring of ground-disturbing activities to be sufficient to mitigate impacts to as yet undiscovered CRHR-eligible subsurface archaeological resources.

(Exhibit 200 at 4.3-32.) This monitoring will reduce the Project's impact to such potential resources to less-than-significant levels. (*Id.*) In addition to monitoring requirements at the Project site, the Conditions of Certification also contain detailed requirements for full-time monitoring of all ground disturbance along the portions of the proposed natural gas pipeline route that crosses the floor of the San Luis Rey River Valley. (Exhibit 200 at 4.3-39 and 40.)

DFI contends that the Assessment improperly cites existing development in the vicinity of the Project as a reason why the Project will not significantly impact the integrity of Gregory Mountain. (DFI Letter at 6.) However, CEQA requires that impacts be examined against an existing setting, or "baseline." (14 C.C.R. 15125[a].) "Without a determination and description of the existing physical conditions on the property at the start of the environmental review process, the [CEQA document] cannot provide a meaningful assessment of the environmental impacts of the project." (*Save Our Peninsula Committee v. Monterey County Board of Supervisors*, 87 Cal.App.4th 99, 119 [2001].) Therefore, Staff appropriately took existing development into consideration when analyzing the Project's impacts to Gregory Mountain.

DFI comments that the cumulative impacts analysis for cultural resources is "meaningless" because Staff did not review the cultural resources studies for the two additional projects within one mile of the proposed Project site.[3] (DFI Letter at 7.) However, Staff notes the Project and other projects, both past and future, either avoid impacts to cultural resources or mitigate them to levels below significance. (Exhibit 200 at 4.3-31 and 32.) Therefore, Staff found that the impacts of the Project and the neighboring projects are not cumulatively considerable. (*Id*. at 4.3-32.) Because Staff concluded that these impacts are not cumulatively considerable, it need not analyze the cultural resources studies for the two additional projects within one mile of the Project site. Furthermore, even though Staff did not review the cultural resource environmental impact studies for these two additional projects, Staff reviewed the cultural resource field surveys for these projects in the evaluation of baseline conditions. The field surveys for these additional projects were obtained and reviewed by Staff via the cultural resources records reviews submitted to Staff under confidential cover as appendices to the AFC.

[3] The Assessment refers to one of these projects as "highway improvements along Highway 76 between I-15 and Rice Canyon Road." This project is formally known as "Rosemary's Mountain Quarry," and was known as "Palomar Aggregates" when the EIR and related cultural resource survey was completed.

(*See* Exhibit 1, Appendices 6.7-C and 6.7-D). These field surveys were also considered in the analysis of existing cultural resources conditions. (*See* Exhibit 200 at 4.3-11; *see also* Exhibit 1 at 6.7-10 through 6.7-16.)

DFI comments that the Worker Environmental Awareness Program ("WEAP") required by Condition of Certification CUL-5 should be provided before commencement of work at the Project site, and this training should be conducted separately from other Project-related safety trainings. (DFI Letter at 7.) This training will be provided prior to and for the duration of ground disturbance, and new workers will receive the training within their first week of employment at the Project site, laydown area, and along the linear facilities routes. (Exhibit 200 at 4.3-38 and 39.) There is no indication that this schedule for WEAP training is in any way inadequate.

VI. Hazardous Materials

DFI asserts that Staff's analysis of the likelihood of spills of hazardous materials during transportation to and from the Project site is flawed because it relies on data generated from California's highways in general. This assertion is inaccurate. Staff did analyze general statistics compiled on a state and national level. (Exhibit 200 at 4.4-13.) However, the Assessment also describes the transportation risk assessment model, developed by Staff, which allowed Staff to calculate the risk of an accident on a rural two-lane highway such as SR-76 and Pala Del Norte Road. (Exhibit 200 at 4.4-13.) This model was extremely conservative, and it still revealed that the risk of a transportation accident along roads such as these is insignificant. (*See id.*)

DFI also asserts that the Conditions of Certification regarding hazardous materials are directed at aqueous ammonia alone, and that the Conditions of Certification should address other hazardous materials as well. (DFI Letter at 7.) However, aqueous ammonia is the only acutely hazardous material proposed to be either used or stored at the Project site in quantities exceeding the reportable amounts defined in the California Health and Safety Code. (Exhibit 200 at 4.4-1.) Although other hazardous materials will be present at the proposed Project site, none of these materials pose significant potential for off-site impacts as a result of the quantities on site, their toxicity, their physical state, or their environmental mobility. (Exhibit 200 at 4.4-2.) Therefore,

aqueous ammonia is the primary hazardous material of concern at the Project site. Nevertheless, contrary to DFI's assertions, the Conditions of Certification do address other hazardous materials, including transportation and delivery procedures, a safety management plan, and security plans applicable to all hazardous materials. (*See* Exhibit 200 at 4.4-18 through 22.)

VII. Land Use

DFI hints at a Rainbow Municipal Water District ("RMWD") regulation that prohibits the permanent use of water on a parcel other than where the water is purchased, but fails to provide any citation. (DFI Letter at 8.) DFI mischaracterizes Orange Grove's agreement with the Fallbrook Public Utility District ("FPUD") as a "sidestep" around a "problem" with RMWD regulations. (DFI Letter at 8.) This is not the case. As explained in Orange Grove's Supplemental Reply Testimony, Orange Grove actively pursued transport of water to the project site via pipeline but eventually determined that it was infeasible due to land access issues and RMWD's policies that prohibit the issuance of will-serve letters or any guarantee to any use for delivery of water for an extended period of time as is required by the Commission. (Exhibit 23 at A8.) In addition, Orange Grove notes that the State Water Resources Control Board ("SWRCB") and the Commission strongly encourage the use of recycled water for power plant cooling. (SWRCB Policy 75-58.) RMWD does not provide recycled water, so the Project chose to obtain it from FPUD. (Exhibit 200 at 4.9-10.) For more information on this matter, please see Orange Grove's Opening Brief, filed January 9, 2009.

DFI asserts that the Project is "not consistent with applicable local water district regulations." (DFI Letter at 8.) Orange Grove understands this comment to refer to DFI's assertion discussed above that "RMWD regulations prohibit the permanent use of water on a parcel other than where the water is purchased." (DFI Letter at 8.) This assertion is misleading. RMWD stated that it is unable to supply water for trucking to the Project site. However, RMWD did not say that in all cases its regulations prevent other water districts from providing water for trucking to the Project site. (*See* Exhibit 52 at 1.) RMWD explained that it holds a "neutral position to the water purchase agreements between FPUD and Orange Grove Energy," assuming that they are considered an interim agreement. (*Id.*)

DFI next contends that a Major Use Permit ("MUP") would not be available for the project. (DFI Letter at 8.) DFI asserts that the findings set forth in Section 7358 of the San Diego County Zoning Ordinance ("Zoning Ordinance") do not permit the San Diego County Board of Supervisors to issue an MUP because of the lack of "public facilities, services and utilities." (DFI Letter at 8, quoting Section 7358 of the Zoning Ordinance.)

In this case, the Commission (instead of the Board of Supervisors) has the authority to make the findings required for an MUP. Pursuant to the Warren-Alquist Act, "the commission shall have the exclusive power to certify all sites and related facilities in the state, whether a new site and related facility or a change or addition to an existing facility." (Cal. Pub. Res. Code § 25500.) "The issuance of a certificate by the Commission shall be in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law, for such use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law." (*Id.*; Exhibit 200 at 2-2.)

In light of the fact that the Commission, in lieu of the Board of Supervisors here, must make the findings required for an MUP in this case, Staff made recommended MUP findings in its Assessment. (Exhibit 200 at 4.5-22 through 24.) Section 7358 of the San Diego Zoning Code states:

> Before any use permit except those filed pursuant to Regional land use Policy 3.8 may be granted or modified, it shall be found:
>
> a. That the location, size, design, and operating characteristics of the proposed use will be compatible with adjacent uses, residents, buildings, or structures, with consideration given to:
>
> . . .
>
> 2. The availability of public facilities, services and utilities;

Orange Grove emphasizes that in making these findings, the Commission need only "consider" the availability of public facilities. (*See* Section 7358 of the Zoning Ordinance.) The availability of public facilities is but one consideration in making the required finding that "the location, size, and design of the proposed use will not adversely affect or be materially

detrimental to the San Diego County General Plan, adjacent uses, residents, buildings, structures, or natural resources." (*See id.*) A power plant is in essence a public facility providing a publicly needed utility service since the power will be provided to San Diego Gas and Electric Company (Exhibit 1 at 1-1 to 1-2 and Appendix 5-A). A power plant by its nature uses very few public facilities and instead is more akin to a provider of utility services. In this instance the local water district does not provide pipeline service to this property. The Project initially proposed a pipeline to provide water to the facility from Rainbow Municipal Water District (RMWD) but found this option not feasible at this time (Exhibit 1 at 5-7). Furthermore, due to the request by Staff and in deference to Commission policy, the Project will use reclaimed water for inlet cooling (Exhibit 1 at 6.5-6). Reclaimed water is unavailable from RMWD and is only available to the site via truck. Therefore, the only way to receive water at the site is by truck.

In considering the availability of public facilities the question asked by Zoning Ordinance 7358 is will the use be compatible with adjacent uses? In this instance, the adjacent uses are only minimally impacted by trucking water to the site. The traffic analysis shows the water truck traffic will not create a significant adverse impact on local roadways (Exhibit 200 at 4.10-8). Furthermore, by virtue of using trucks to deliver water the water use at this facility will not impact the water service to adjacent property. Therefore, the proposed water use is consistent with adjacent uses with consideration given to the availability of pubic facilities, services and utilities. Staff also supports this conclusion. Staff has considered the availability of water to the Project site and has determined that "adequate public facilities, services and utilities have been identified to serve the project or will be assured through Conditions of Certification . . . ." (Exhibit 200 at 4.5-22.) Orange Grove has provided sufficient assurance that "public facilities, services and utilities" will be available to adequately serve the Project site, specifically the availability of cooling water from FPUD. (Exhibit 1 at 6.5-6 through 7, Table 6.9-7 and Appendix 6.5-G.1; Exhibit 2 at Section 4.0 and Exhibit F; and Exhibit 23.) Orange Grove has also suggested a water service method that will be compatible with adjacent uses by not impacting the current water supply to adjacent uses.

VIII. Noise and Vibration

DFI is concerned with the methodology used in the noise impact analysis. First, DFI suggests that the ambient noise monitoring was conducted during the wrong time of year, in April, given that the Project is expected to operate most during the summer months. (DFI Letter at 8.) However, there is no indication that the ambient noise levels in the area are significantly different from April to the summer months. The noise environment in the vicinity of the project site is dominated by transportation-related sources. (Exhibit 200 at 4.6-6; Exhibit 1 at 6.12-8, 6.12-13 through 15, 6.12-A-3, and 6.12-A-7.)

Next, DFI suggests that the studies conducted at the nearest residential site were conducted at the wrong time of day, between the hours of 3:35 p.m. and 5:04 p.m. (DFI Letter at 8-9.) This suggestion is erroneous. Monitoring was conducted over a twenty five hour period at the closest residential receptor, denoted as LT-1. (*See* Exhibit 1, Appendix 6.12-A, at 6.12-A-3 and 4.)

DFI contends that Orange Grove failed to actually monitor or obtain data from three of the five sites and instead merely estimated the existing ambient noise levels at these locations using values from similar locations and conditions. (DFI Letter at 9.) Orange Grove responds by noting that there is a difference between a measurement location (used during the ambient survey) and a potential receptor location (used for analysis purposes only). The closest actual residential receptor locations (denoted LT-1, ST-1, and ST-2) were included in the ambient survey. The measured ambient data from those locations is reported in the AFC and, in part, repeated in the Assessment. (*See* Exhibit 1 at 6.12-10 through 6.12-12 and Exhibit 200 at 4.6-7.) For completeness in the impact assessment, additional locations, farther away from the Project site (denoted as House B, House C, and Casino), were used for the predictive analysis to show noise compliance at both near and far receptor locations. (Exhibit 1 at 6.12-33 and 6.12-39; Exhibit 200 at 4.6-8, 4.6-10 and 11.) In the context of the Project site, because the traffic flow on SR-76 creates a well-defined and predominant controlling noise source and because the major factor in determining the sound level of traffic noise at a distant point usually is divergence, locations that have comparable propagation pathways and are approximately equivalent in distance from that predominant source can reasonably be assigned similar ambient noise levels.

(*See* Exhibit 1 at 6.12-52, referencing Harris, Cyril M., *Handbook of Acoustical Measurements and Noise Control*, Third Edition [1998] at pages 3.24-3.25.) For conservatism in the estimation process, Orange Grove selected the comparable measurement data that was toward the lower end of the record for a given time of day. (*See* Exhibit 1 at Figure 6.12-2.) Staff then applied additional conservatism by using the lowest value in that selected data range with which to conduct their L_{90}+5 dB assessment. (*See* Exhibit 200 at 4.6-7 Noise Table 2, as compared to 4.6-10 and 4.6-11 Noise Tables 4 and 5.)

DFI also asserts that the Assessment lacks analysis of the type and frequency of construction noise impacts. (DFI Letter at 9.) DFI claims the Assessment should also contain a Single Event Noise Exposure Level ("SENEL") descriptor in order to quantify the impact of single-event construction operations on nearby residents. SENEL is more commonly applied to discrete, specific noise events such as aircraft fly-overs or vehicle pass-bys, rather than to ongoing activities such as construction processes. (*See* Exhibit 1 at 6.12-52, referencing *Harris* at page 11.16.) Based on widely-used noise analysis guideline documents by the U.S. Department of Transportation/Federal Transit Administration and the Federal Highway Administration, the most common noise metrics for construction analyses are the L_{max} and L_{eq} metrics. Typically, the former defines individual noise sources and their sound emissions at 50 feet from the source, while the latter is used for assessing potential impacts at receptors. (*See* Exhibit 1 at 6.12-52, referencing Barnes, Miller, and Wood, *Prediction of Noise from Power Plant Construction*, prepared for the Empire State Electric Energy Research Corporation, Schenectady, NY; U.S. Environmental Protection Agency ["U.S. EPA"], *Noise from Construction Equipment and Operations, US Building Equipment, and Home Appliances* [1971], and *Harris* at page 48.6). The Project's noise analysis used these standardized metrics to assess potential impacts. The Project's noise impact assessment also used analysis processes outlined in the definitive reference document on the subject published by the U.S. Environmental Protection Agency. (*See* Exhibit 1 at 6.12-52, U.S. EPA [1971].)

Due to their limited duration, construction noise impacts are generally not considered to be significant if the construction activity is temporary and the use of heavy equipment and noisy activities is limited to daytime hours. (Exhibit 200 at 4.6-5.) For the Project in particular, the applicable local noise laws, ordinances, regulations, and standards ("LORS") limit noisy

construction to daytime hours (between 7:00 a.m. and 7:00 p.m. Monday through Friday). (Exhibit 200 at 4.6-3.) Furthermore, the Project's construction noise impacts will be well below the County's noise limit for noise-sensitive receptors near the project. (Exhibit 200 at 4.6-8.) The applicable LORS do not require a description of every sound that will be emitted from the Project's construction. The relevant inquiry is whether Project construction will have a significant noise impact. Both Staff and Orange Grove concluded that the noise impacts of the Project will be less than significant. (Exhibit 200 at 4.6-14; Exhibit 1 at 6.12-33.)

DFI is concerned that Condition of Certification NOISE-3 refers to a noise exposure program for reducing worker exposure to high noise levels, but without describing details about this program. (DFI Letter at 9.) DFI appears to be concerned that the Occupational Safety and Health Administration ("OSHA") and California Occupational Safety and Health Administration ("Cal-OSHA") requirements will not be met, since it mentions OSHA and certain requirements for hearing protection, signage, and training. (DFI Letter at 9.) NOISE-3 states that the noise control program shall be conducted "in accordance to the applicable OSHA and Cal-OSHA standards." (Exhibit 200 at 4.6-15.) These standards include the hearing protection and training requirements cited by DFI. (Exhibit 1 at 6.12-5 and 6.) Furthermore, the AFC states that the relatively few areas that may be above 85 dBA will be posted as high noise level areas and hearing protection will be required therein. (Exhibit 1 at 6.12-6.)

DFI expressed concern with the revision to NOISE-4 from December 1, 2008. On that date, Orange Grove and Staff agreed to revise the Project's noise limits as measured at receptors ST1 and ST2 in order to avoid possible nonconformance with the limits stated in the condition. (DFI Letter at 9.) DFI contends that Staff should not have revised the original limits in NOISE-4 in order to protect noise impacts on nearby receptors. (DFI Letter at 9.) Orange Grove responds that revisions were made to the noise levels in NOISE-4 because noise modeling predicted that the Project would be much quieter than necessary to avoid significant operational noise impacts at these receptors. (Exhibit 200 at 4.6-12.) Thus, the original limits in NOISE-4, created from modeling predictions rather than impact criteria, were much more restrictive than any applicable LORS for the Project. In some cases, the original condition limits (and the associated Project noise level contributions) would be so far below existing ambient levels as to be inaudible and extremely difficult, if not impossible, to even measure in the real world. Therefore, Orange

Grove and Staff agreed to revise the noise levels in NOISE-4 upward from the modeling results at some locations to account for: (a) real-world verification issues; (b) a reasonable margin of uncertainty; and (c) adherence to applicable LORS criteria to ensure that the Project's noise impacts remain less than significant. (*See id.*)

IX. Public Health

DFI argues that the health impacts from the diesel-fueled water trucks should not be addressed separately from the health impacts of the Project facilities, and instead should be addressed cumulatively. (DFI Letter at 9.) However, the effects from both the Project and the water trucks are so slight that even when considered cumulatively they would still be below the level of significance. The significance of noncancer health effects is established by calculating a hazard index, which is a ratio comparing exposure from facility emissions to the safe exposure level. (Exhibit 200 at 4.7-8.) A ratio of less than 1.0 is less than significant. For the Project's operation emissions (excluding the water trucks), Orange Grove found a maximum chronic HI of 0.0413. (Exhibit 200 at 4.7-12 and 13.) Staff found a maximum chronic HI of 0.049. (Exhibit 200 at 4.7-17.) For the water truck emissions, Orange Grove found a maximum chronic HI of 0.0025 and Staff found a chronic HI of 0.0038 using different assumptions of the number of truck trips. (Exhibit 200 at 4.7-19.) The risk of chronic non-cancer health impacts is so low based on the calculations of both Orange Grove and Staff that even when the emissions from Project operations and from the water trucks are considered together, the impact would be far less than significant. Combining the highest reported HI values from Orange Grove and Staff, 0.049 + 0.0038 = 0.0528. (*See* Exhibit 200 at 4.7-17.) Therefore, the HI is much less than 1.0. These individual HI values are not coincident in space and the actual, combined HI would be much lower. Also, Staff demonstrated that using the more accurate AERMOD dispersion model rather than the older and overly conservative HARP modeling approach, the predicted cancer risks and HI decrease by a factor of approximately seven. (*See* Exhibit 200 at 4.7-17.) Again, this demonstrates the very conservative nature of the risk assessment presented by Staff.

The result would likely be the same for cancer risk. Impacts to cancer risk are significant where the impacts are calculated to result in ten excess cases of cancer in an exposed population of 1,000,000, assuming lifetime exposure. (Exhibit 200 at 4.7-8.) Orange Grove and Staff found

the operations of the Project to create a cancer risk of 3.65 and 4.3 per million, respectively. Orange Grove and Staff calculated non-coincident cancer risks for the water trucks of 3.9 and 6.0 per million, respectively. (Exhibit 1 at 6.16-12; Exhibit 200 at 4.7-17.) Furthermore, Staff concluded that even in a cumulative context including other regional sources, the estimates for cancer and noncancer risk from the Project are less than significant. (Exhibit 200 at 4.7-21.)

DFI notes that Staff and Orange Grove conducted health impact studies that produced different results, which Staff could not explain in its Assessment. (DFI Letter at 9.) DFI takes issue with Staff's conclusion that the Project does not present a significant risk of cancer despite these differences. (*Id.*) Each entity conducted independent health risk assessments for the Project to evaluate the potential impacts. The completely independent analysis conducted by Staff provides a greater verification of the potential health impacts of the facility than simply reviewing the modeling effort conducted by Orange Grove. Even though the results differ the process provided a complete double check on the modeling conducted by Orange Grove. Furthermore, both Staff and Orange Grove found the risk of cancer to be far below the level of significance. (Exhibit 200 at 4.7-17.) Staff noted that the AERMOD air dispersion model is more accurate for complex terrain. (Exhibit 200 at 4.7-17.) As noted above, this model produced the lowest cancer and chronic HI figures of all. The AERMOD figures are mere fractions of the already-low risk figures produced by Orange Grove and Staff's ISC/HARP analyses. (Exhibit 200, Public Health Table 6, at 4.7-17.) With regard to non-cancer risks, Staff concluded that because its screening meteorology data found both the chronic and acute HIs to be well below significant, the Project will likewise not pose significant acute or chronic non-cancer risks to the public. (Exhibit 200 at 4.7-17.)

DFI is also concerned with potential health risks from the growth of Legionella bacteria in the Project's cooling towers. (DFI Letter at 10.) DFI asserts that Condition of Certification PUBLIC HEALTH-1 should be revised to explain the methodology that will be implemented to protect against Legionella bacteria at the Project facility. However, PUBLIC HEALTH-1 already indicates the methodology to be used by Orange Grove. PUBLIC HEALTH-1 provides that the management plan shall be consistent with either Staff's "Cooling Water Management Program Guidelines" or with the Cooling Technology Institute's "Best Practices for Control of Legionella." (Exhibit 200 at 4.7-22.) Orange Grove's program is therefore limited to complying

with one or both of these programs. In either case, state law requires that cooling systems using recycled water which could come into contact with employees or members of the public must employ a drift eliminator, and chlorine and other biocides must be used to minimize the growth of Legionella. (22 C.C.R. § 60306.) Furthermore, the plan must include sampling and testing for the presence of Legionella bacteria at least every six months. (Exhibit 200 at 4.7-22.) Orange Grove and Staff are not yet certain which methods will be most effective for controlling Legionella bacteria at the Project site. Therefore, PUBLIC HEALTH-1 affords some flexibility for the Legionella control methodology while still requiring compliance with established Legionella control programs.

DFI notes that the screening health risk assessment prepared by Orange Grove indicates that short-term noncancerous health effects from the Project may occur under worst-case emissions and meteorological conditions at locations near the project boundary, and argues that the Commission "should not approve a project with potentially significant and unmitigable health effects." (DFI Letter at 10.) As noted by Staff, "[a]cute effects are temporary in nature and include symptoms such as irritation of the eyes, skin and respiratory tract." (Exhibit 200 at 4.7-7.) If the acute HI is more than 1.0, short-term health effects may occur to the maximum exposed individual. These figures were obtained at or just beyond Project boundaries. (Exhibit 200 at 4.7-12; Exhibit 1 at 6.16-12.) However, the maximal HI for acute health risks at any real-world residential or public receptor is merely 0.538, which is well below the level of significance. (*Id.*) Therefore, the risk of acute health impacts to any actual receptor is low.

X. Socioeconomic Resources

DFI contends that the Assessment fails to take into consideration the possibility that nearby residents may relocate due to significant adverse impacts from the Project. (DFI Letter at 10.) However, no significant adverse health impacts from the Project are anticipated. (Exhibit 200 at 4.7-22.) Therefore, there is no indication that any nearby residents will relocate due to health impacts. Furthermore, the Project site is located in a primarily rural area and it will not displace any people. (Exhibit 200 at 4.8-6.) Therefore, it is unlikely that enough nearby residents would relocate as a result of the Project to cause a potentially significant socioeconomic impact on the area.

XI. Soil and Water Resources

DFI's comments regarding soil and water resources were addressed in Orange Grove's Opening Brief, filed on January 9, 2009.

XII. Traffic and Transportation

DFI claims that no authority exists for the Assessment's estimate that 20 percent of the Project's construction workers will carpool to the site. (DFI Letter at 12.) The 20 percent carpooling estimate is based on the planned ongoing carpooling program during construction, which will include incentives for carpooling. (Exhibit 1 at 6.11-12.) This carpooling estimate is consistent with carpooling rates estimated for similar peaking power plant construction projects. (*See* Riverside Energy Resource Center Units 3 & 4 [08-SPPE-1], SPPE Application at 6.9-20; Riverside Energy Resource Center [04-SPPE-1], SPPE Application at 251; Kings River Conservation District Peaking Plant [03-SPPE-2], SPPE Application at 13.)

DFI also takes issue with Staff's conclusion that construction traffic will not degrade the Level of Service ("LOS") on I-15 or SR-76 below the Caltrans and San Diego County acceptable standards or the No Project LOS, and asserts that the additional 154 average to 310 peak vehicle trips per day during construction "will indisputably have a greater impact than the zero additional vehicle trips generated by the No Project alternative." (DFI Letter at 12 and 13.) Orange Grove responds that the additional 154 average to 310 peak vehicle trips per day during construction is a small amount of additional traffic compared to the existing traffic flow and roadway capacity. The LOS modeling conducted in support of the AFC demonstrates that the impact will be less than significant because the LOS will not degrade below Caltrans and San Diego County acceptable standards or the No Project LOS. (Exhibit 200 at 4.10-5; Exhibit 1 at 6.11-10 through 13.)

DFI also claims that the Assessment fails to state what the LOS will be for I-15 and SR-76 during construction. (DFI Letter at 13.) However, the Assessment refers to the AFC, which contains an analysis of projected LOS conditions with and without the addition of project construction traffic trips. (Exhibit 200 at 4.10-5; Exhibit 1 at 6.11-13 and 6.11-14.) The AFC includes a detailed table comparing the LOS at many different locations both with and without

the Project. (Exhibit 1 at 6.11-13 and 14.) This table also describes the No Project LOS and the Project's construction impact to the No Project LOS. (*Id.*) In addition, the Assessment identifies the criteria for acceptable LOS under Caltrans and San Diego County guidance. (Exhibit 200 at 4.10-11.)

DFI contends that the Assessment fails to analyze the "unique and dangerous character" of the roads connecting the Project site, in light of the fact that trucks filled with water (and occasionally hazardous materials) will use these roads. This is not true, as the Assessment does address safety issues with regard to SR-76. As described above in the responses to comments regarding Hazardous Materials, Staff developed a transportation risk assessment model which allowed Staff to calculate the risk of an accident on a rural two-lane road such as SR-76 and Pala Del Norte Road. (Exhibit 200 at 4.4-13.) This model was extremely conservative, and it still revealed that the risk of a transportation accident along roads such as these is insignificant. Staff found the total annual risk of an accident causing a release of hazardous material due to delivery from the freeway to the facility along SR-76 and Pala Del Norte Road to be 3.2 in 1,000,000. (*See id.*) Furthermore, an independent traffic consultant conducted a Traffic Safety Assessment in October 2008, which is included in the Assessment. This analysis found that traffic accident rates on some sections of road that would be used by the water trucks are higher than the statewide average. (Exhibit 200 at 4.10-6.) However, the analysis notes that there are no sub-standard geometric features or conditions that would be incompatible with the types of trucks that will be using these roadways for access to the Project. (*Id.*) The Assessment also describes the water trucks serving the Project, which will be new and capable of maintaining the appropriate speed needed to blend in with existing traffic on the applicable roads, and will be able to handle curves in the roads without significantly slowing down traffic. (*Id.*) Proposed Condition of Certification TRANS-4 would require Orange Grove to conduct a demonstration that the loaded trucks can maintain a safe speed and handle the curves in the roads and not hamper existing traffic flow. (Evidentiary Hearing Transcript at 183:18-184:5.) Furthermore, under this same Condition of Certification, Orange Grove would be required to include a notice on the back of each water truck, including a phone number to call to register complaints. (*Id.*) There are no sensitive receptors along SR-76 between I-15 and the Project site which would be particularly susceptible to effects from an accident along the section of SR-76 serving the Project. (Exhibit 200 at 4.4-12.) Furthermore, Caltrans indicated to Staff that it will be changing

the Advisory for the local section of SR-76 to allow larger truck traffic. (Exhibit 200 at 4.10-6.) There has been a great deal of review of the safety of the roads serving the Project, and both Staff and Orange Grove have concluded that these roads will be able to support the Project safely.

DFI argues that the analysis of traffic impacts from pipeline construction is inadequate, claiming that the Assessment must explain "precisely how long the pipeline installation is expected to take, during what hours the construction will occur, and how the construction will interfere with or damage the roadway." (DFI Letter at 13.) With regard to the duration of the pipeline construction, the AFC states that pipeline construction activities will take approximately three months and be completed prior to the startup of the Project. (Exhibit 1 at 6.11-15.) With regard to the hours of pipeline construction, the Assessment provides that construction of the linear facilities would be limited to daytime hours. (Exhibit 200 at 4.6-9.) The Conditions of Certification limit heavy equipment operation and noisy construction work on any project features to between the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, with no construction allowed on weekends and Federal holidays, unless Orange Grove receives a special permit from San Diego County. (Exhibit 200 at 4.6-17.) With regard to the pipeline's effect on the roadway, the Assessment explains that where the gas pipeline crosses SR-76, horizontal drilling will be used so as not to disrupt traffic flow on the roadway. (Exhibit 200 at 4.9-7.) The Assessment provides that traffic impacts will be short term, mitigated by cones and flagmen when necessary, and will not significantly impact traffic flow. (Exhibit 200 at 4.10-7.) The AFC also contains information regarding the location and methods of the Project's traffic control measures, and Staff has recommended measures in Condition of Certification TRANS-1 to prevent unnecessary disruption of traffic flow. (Exhibit 200 at 4.10-12 ;s*ee also* Exhibit 1 at 2-37 and 6.11-15;.)

DFI also claims that the Assessment fails to describe the dangers associated with the installation of a natural gas pipeline along a "major state highway," and fails to outline mitigation measures to protect drivers and workers. (DFI Letter at 13.) The Assessment and the AFC describe activities within the Caltrans right-of-way and factors that ensure impacts will be less than significant during construction. Furthermore, the pipeline will be designed, constructed, and operated to meet U.S. Department of Transportation, Caltrans, and County

LORS. (Exhibit 1 at 2-14.) Staff concluded that compliance with the existing LORS (including the applicable Caltrans laws) are sufficient to protect against "minimal" risks of pipeline failure, and therefore that no additional mitigation measures are necessary to protect drivers and workers. (*See* Exhibit 200 at 4.4-8.)

DFI comments that the Project site is accessed by Pala Del Norte Road, a local private road. DFI questions whether construction and operation vehicles have been authorized to use the private road or whether Orange Grove will seek alternate access. (DFI Letter at 13.) As discussed in the AFC, operations access to the Project site will be via a driveway from Pala Del Norte Road. (Exhibit 1 at 2-5.) The Project will be constructed on land leased by Orange Grove from San Diego Gas and Electric ("SDG&E"). (Exhibit 1 at 1-1.2-1.) Figure 1.1-3 in the AFC demonstrates that the entire segment of Pala Del Norte Road that will be used to access the Project site lies on property owned by SDG&E, and is within the 202 acre property owned by SDG&E containing the Project site. (Exhibit 1 at Figure 1.1-3; Exhibit 200 at 1-1.)

XIII. Transmission Line Safety and Nuisance

DFI has no comments for this topic area.

XIV. Visual resources

DFI claims that the Assessment fails to quantify viewer numbers and distance from the Project site, and fails to explain how tree and shrub screening at the site would mitigate aesthetic impacts down to a "moderate" level. (DFI Letter at 13-14.) The Assessment characterizes the viewshed area as rural and describes the slopes and ridgelines that surround the site to the northeast, north and west. (*See* Exhibit 200 at 4.12-3 and Land Use Figure 3.) This topography blocks all but proximal views of the site from these directions. The AFC provides additional descriptions of the viewshed, and of the relatively limited receptors with opportunity for views of the Project. (*See* Exhibit 1, Appendix 6.13-A, at 6.13-A-2.) Furthermore, the Assessment does quantify viewer numbers. The Assessment notes that three homes on the ridgeline located to the north of the Project site would have a view of the site. (Exhibit 200 at 4.12-3.) The viewers from these sites are the only residents with substantial views of the Project site. (Exhibit 200 at 4.12-11.) The Assessment also notes the amount of vehicles that travel along SR-76 each day,

from which point motorists could potentially view parts of the Project. (Exhibit 200 at 4.12-8.) The few nearby residences and the travelers on SR-76 are the primary receptors of concern due to their proximity to the Project and because these receptors constitute the vast majority of receptors with potential views of the Project. The Conditions of Certification also include mitigation measures, such as surface treatment of Project structures and buildings to minimize contrast with the Project's surroundings. (Exhibit 200 at 4.12-17 through 19.) Staff has recommended proposed Conditions of Certification to assure that the final landscape plan places screening vegetation at strategic locations subject to approval by Staff to assure implementation of the screening requirements. (*See* Exhibit 1, Appendix 2-A at Drawing L100; Exhibit 200 at 4.12-18 and 4.12-19.) These measures will almost completely mitigate visual impacts to all but a few residents to the north, and they will lessen the visual effect of the Project to those few residents who have unobstructed views of the Project site. Furthermore, the residents who do have unobstructed views of the Project site also currently have views of other man-made features and disturbed areas, including the formal gravel quarry, SDG&E substation and storage area, electrical transmission lines, and agricultural lands. (Exhibit 1 at 6.13-5.) Therefore, the Project will have a less than significant impact on scenic vistas.

DFI also contends that because eastbound motorists on SR-76 have "views of the rural countryside and hills," these motorists are looking at a "scenic vista." (DFI Letter at 14.) However, this argument incorrectly assumes that "views of the rural countryside and hills" are the same as "scenic vistas." This is not necessarily true. As DFI noted in its Letter Brief, a scenic vista is "a distant view through and along a corridor or opening that exhibits a high degree of pictorial quality." (Exhibit 200 at 4.12-6.) Staff concluded that SR-76 affords "moderate" visual quality. (Exhibit 200 at 4.12-10.) SR-76 is not designated as a State Scenic Highway. (Exhibit 200 at 4.12-6.) Along most portions of SR-76, the Project site will be at least partially screened by existing tree canopy and terrain. (Exhibit 200 at 4.12-10.) The "prominent and striking" upper portions of the Project have the potential to draw viewers' attention toward the site only momentarily. (*Id.*) Furthermore, due to the curves in SR-76, the attention of motorists along that route tends to be drawn to the road rather than to their surroundings. (*Id*.) In sum, the Project will not have a significant impact on visual resources.

XV. Waste Management

Please see discussion above of DFI's comment regarding transportation of hazardous materials to and from the project site.

XVI. Worker Safety

DFI claims that the Assessment improperly defers analysis and mitigation of fire safety impacts by allowing Orange Grove to develop its Fire Prevention Plan[4] after the Assessment was issued. (DFI Letter at 14.) Therefore, DFI contends that the public will not have an opportunity to review and comment on this fire safety analysis "as required by CEQA and the [Commission's] regulations."[5] (*Id.*) Orange Grove responds that it is not attempting to improperly defer any analysis of fire protection issues, and Orange Grove's decision to wait to finalize its Fire Prevention Plan is proper for two reasons. First, the Fire Prevention Plan is but a relatively small part of the extensive fire prevention analysis conducted for the Project. Second, it would have been impracticable for Orange Grove to develop its Fire Prevention Plan at an earlier stage in the process.

DFI characterizes the Fire Prevention Plan as if it were the main component of the fire safety analysis for the Project – a component DFI claims was improperly deferred. (DFI Letter at 14.) This is simply untrue. The analysis of fire safety impacts conducted for the Project goes well beyond the Fire Prevention Plan, and is more than adequate to support a finding that the Project presents no significant fire safety impacts. The AFC describes the training that workers will receive, both before and during construction and during normal operations. (*See* Exhibit 1 at 6.17-1, 2, 11, and 12.) This training includes a fire safety orientation, other training required by Cal-OSHA, and fire extinguisher training. (Exhibit 1 at 6.17-2 and 6.) The AFC also describes spill prevention measures that will minimize the risk of fire due to spills of flammable liquids. (*See* Exhibit 1 at 6.17-12.) The Project will comply with all applicable fire protection LORS, including the California Fire Code, all applicable recommended National Fire Protection

[4] In its letter, DFI refers to a "Fire Protection Plan." However, Orange Grove believes DFI intended to refer to the Fire Prevention Plan required by 8 C.C.R. § 3221.

[5] The only citation provided by DFI in support of this contention, 20 C.C.R. § 1752, is inapplicable. That section merely lists the required contents of the Presiding Member's Proposed Decision, none of which addresses public participation in the fire safety analysis. (*See* 20 C.C.R. § 1752.)

Association ("NFPA") standards (including Standard 850 addressing fire protection at electric generating plants), Uniform Building Code, Cal-OSHA requirements, and all applicable County requirements. (Exhibit 1 at 2-28 and 6.10-13; Exhibit 200 at 4.14-2.) A fixed sprinkler system will be installed in administrative buildings in accordance with NFPA requirements. (Exhibit 200 at 4.14-12.) The combustion turbine generators will also be equipped with factory-supplied fire protection systems including flame detectors and a carbon dioxide fire protection system. (Exhibit 1 at 2-28; Exhibit 200 at 4.14-12.) The Project includes maintenance of an onsite fire water reservoir for fighting potential fires, a dedicated underground firewater piping loop, electric and backup diesel-driven fire water pumps, and a 24-Volt direct current battery-powered electric system to power the fire protection systems and other emergency systems in the event that primary power is disrupted. (Exhibit 1 at 2-28.) Preliminary locations for onsite fire hydrants are also provided in the AFC. (Exhibit 1 at Appendix 2-A, Drawing C100.) For more information and analysis regarding these and other fire prevention systems that the Project will employ, please see Exhibit 200 at 4.14-11 through 17, and Exhibit 1 at 2-28, 6.10-13 through 14, and 6.17-12 through 13. Furthermore, both Orange Grove and Staff analyzed the impact of the Project on fire service, and they both discussed the Project's sources of fire protection services. (Exhibit 200 at 4.14-13 through 14; Exhibit 1 at 6.10-13.) All of these potential impacts were analyzed cumulatively as well, and both Staff and Orange Grove concluded that the Project would not have any significant cumulative effects on the provision of fire protection services in the area. (*See id.*) Orange Grove consulted the local fire department, which evaluated potential demands on fire response that may occur from the Project. (Exhibit 7 at Response to CEC Staff Data Request Number 54.) The local fire department expects the Project to have a minimal impact based on the experience of other fire agencies with similar facilities. (*Id.*) The public has had ample opportunity to comment on this analysis, since the AFC was filed in June 2008 and Staff's Assessment first became available in November 2008. (*See* Exhibit 1 and Exhibit 200.)

DFI is correct that the Fire Prevention Plan has not yet been finalized. However, the specifics of the Fire Prevention Plan are currently under development and being reviewed by the County consistent with Conditions of Certification WORKER SAFETY-1 and -2 (Exhibit 200 at 4.14-14 to 4.14-15). The Commission has approved other projects without requiring a finalized Fire Prevention Plan at the time of certification. (*See, e.g.,* Colusa Generating Station [06-AFC-9], Final Commission Decision at 168; Walnut Creek Energy Park [05-AFC-2], Final

Commission Decision at 290-291; Victorville 2 Hybrid Power Project [07-AFC-1], Final Commission Decision at 167; Starwood Power Project [06-AFC-10], Final Commission Decision at 298-299.) Indeed, CEQA does not require an environmental document to contain every final detail of a project. "An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible." (14 C.C.R. § 15151.) "CEQA does not require technical perfection in an EIR, but rather adequacy, completeness, and a good-faith effort at full disclosure." (14 C.C.R. § 15003.) The analysis prepared by Orange Grove and Staff more than meets these requirements.

Staff's proposed Conditions of Certification would ensure that this plan will be completed for both the construction and operation phases of the Project. (Exhibit 200, Conditions of Certification WORKER SAFETY 1 and 2, at 4.14-14 through 15.) These conditions require Orange Grove to submit the Fire Prevention Plan to the North County Fire Protection District for review and comment before submission to the CPM. (*Id.*) As discussed above, this plan need not be finalized to adequately assess the Project's potential for significant environmental impacts in accordance with CEQA. The fire safety analysis for the Project has been extensive. The framework of fire protection measures that will be detailed in the Fire Prevention Plan are incorporated in the Project's design and considered in the AFC and the Assessment, including compliance with the California Fire Code, the County Fire Code and the National Fire Protection Association standards, and other fire safety measures. (*See* Exhibit 200 at 4.14-2 and 4.14-8.) These measures allow the Commission to ensure that all fire prevention measures are in place as needed to comply with CEQA and all applicable LORS. (*See* Exhibit 200 at 4.14-14 and 4.14-15; Exhibit 1 at 6.10-13 and 14.)

XVII. Power Plant Efficiency

DFI contends that the Assessment fails to adequately analyze whether the rate of natural gas consumed by the Project could potentially impact SDG&E energy supplies or require development of additional capacity. (DFI Letter at 14.) The Project was proposed by Orange

Grove in response to a Request For Offers ("RFO") from SDG&E. This RFO included provisions for a tolling agreement under which SDG&E has the right to deliver natural gas to the Project and to receive 100 percent of the energy produced by the Project. (*See* Exhibit 1 at 1-1 and 1-4.) SDG&E has indicated that the existing regional T1600 gas transmission line that will supply the Project has adequate excess capacity to meet the Project's needs. Staff considered the capacity of the T1600 gas transmission line and concluded that this pipeline has considerable capacity and will offer access to adequate supplies of natural gas. (*See* Exhibit 200 at 5.4-4.)

DFI also contends that the Assessment fails to thoroughly consider alternative sources of energy. (DFI Letter at 15.) The Assessment addresses these technologies in detail as alternatives to natural gas power. (*See* Exhibit 200 at 6-8.) However, Staff found that none of these alternatives is feasible in this case because of air quality issues or because of the Project's function as a peaking power plant. Biomass cannot meet air quality limitations, has a smaller generation capacity, and it would require fuel trucking from outside the area. (Exhibit 200 at 6-1.) Renewable energy sources cannot guarantee the availability of peaking power when it is needed. (*See* Exhibit 200 at 5.3-4.) The San Luis Rey River canyon has poor solar and wind resources, and lacks the extensive flat acreage needed for solar facilities. (Exhibit 200 at 6-1.) [Add refernces tp AFC and There are no adequate geothermal resources in the area, and tidal and wave resources are not available at an inland site. (*Id.*) Therefore, Staff concluded that none of these renewable technologies present feasible alternatives to the Project as proposed. (*Id.*)

DFI argues that the Assessment fails to include a comprehensive examination of alternative gas turbine cooling mechanisms, such as air cooling, which would reduce the amount of water consumed for cooling. (DFI Letter at 15.) First, it is important to be clear that cooling in this instance is only for reducing the temperature of the inlet air as the Project is a simple cycle peaking facility. When operating at full load, DFI is correct that it would require up to two water truck deliveries per hour. However, based on expected use of the plant, water hauling is expected to typically occur only approximately 60 days per year. (*See* Exhibit 200 at 5.4-4; Exhibit 1 at 2-19.) Furthermore, Orange Grove and Staff did analyze the comparative efficiencies of wet and dry inlet air cooling technologies. Orange Grove's evaluation of dry cooling technology found that, compared to the proposed cooling system, dry cooling would negatively affect power generation capability and fuel efficiency, and would have more adverse

environmental impacts to air, noise and visual resources. Dry cooling has a higher parasitic load and results in lower power output than water cooling. (Exhibit 1 at 5-9 and 5-11.) Dry cooling is even less effective during hot summer weather, when power from the Project will be needed most. (*Id.*) As described above, the Project makes efficient use of water by using recycled water for its cooling needs. (*See id.*) This water would otherwise be discharged into the Pacific Ocean. (*See id.* at 5-6.)

XVIII. Transmission System Engineering

DFI argues that Staff has improperly deferred analysis and mitigation of transmission system impacts by relying on studies by responsible agencies to determine the effect of the Project on the transmission system. (DFI Letter at 15.) DFI argues that this method fails to actually analyze or mitigate Project-specific transmission grid impacts. (*Id.*) This assertion is misleading. The California Independent System Operator ("CAISO") is the entity in California in charge of he transmission grid and is the only entity that can provide conclusive findings on requirements for transmission system impacts and required upgrades. The CAISO conducted a System Impact Study (SIS) and a Facilities Study (FS), which analyze Project impacts to the transmission system. (*See* Exhibit 1, Appendices 3-A and 3-B.) These studies found potential adverse impacts to the transmission system from the Project. (Exhibit 200 at 5.5-1). The studies also identified mitigation measures which Staff found would eliminate the Project's adverse impacts to the transmission system. These studies were submitted with the AFC and were referenced in the Assessment. In addition, SDG&E identified the specific upgrades that would be required including reconductoring and specific pole replacements. (*See* Exhibit 10, Attachment 11, at 1-4.) Staff also created an independent evaluation of impacts. (*See* Exhibit 7 at Response to CEC Staff Data Request Number 66; *see also* Exhibit 200 at 3-3, 4.2-10, 4.2-17, 4.2-22, 4.3-4, 4.3-15, 4.3-21 and 4.3-22.) The primary transmission system upgrade required is reconductoring of an existing transmission line. Because the reconductoring involves upgrading the conductors on an existing transmission line and because most reconductoring work occurs without ground disturbance, environmental impacts of the reconductoring work are minor.

XIX. Alternatives

DFI asserts that the Assessment inadequately examines renewable energy alternatives, such as solar, wind, geothermal, biomass and tidal/wave technologies. (DFI Letter at 15.) This issue was addressed above in the response to a similar comment from DFI under Power Plant Efficiency.

DFI argues that the Alternatives section of the Assessment fails to adequately analyze alternative gas turbine cooling technologies for the Project. (DFI Letter at 15.) This issue was addressed above in the response to a similar comment from DFI under Power Plant Efficiency.

DFI also argues that the Assessment should thoroughly explore alternative project locations that would lessen the significant effects of the Project on residents and other receptors. (DFI Letter at 15.) The Assessment did precisely this. Staff considered the six alternative sites identified by Orange Grove in the AFC. (Exhibit 200 at 6-4.) Staff then applied its criteria for identifying potential alternative sites to the SDG&E service territory, covering San Diego County and the southern part of Orange County. (*Id*.) Staff's analysis resulted in three additional potential alternative sites. (*Id.*) As the Assessment explains, six of the sites were not suitable because they had insufficient space or generation capacity, land use restrictions, or extensive infrastructure development requirements. (*Id.* at 6-1.) The remaining three sites generate potential impacts of their own (including impacts from water delivery) and do not offer significant advantages over the Orange Grove site. (*Id.* at 6-6.) Staff therefore has valid reasons for concluding that these alternative sites are not feasible, and it has set forth these reasons in the Assessment.

XX. Other Comment

DFI comments that because the properties owned by Prominence Partners are near the Project, the value of these properties will be diminished by the construction of the Project. (DFI Letter at 15-16.) DFI notes that Prominence Partners is currently in the process of subdividing its property into 30 four-acre lots. (*Id.*) However, at the time Orange Grove submitted its AFC, this subdivision project's future was uncertain, as San Diego County requested it to be removed from consideration due to issues with fire protection service and secondary access. (Exhibit 1 at

6.1-8.) DFI's statement that "the value of the subdivision will be diminished by the construction of the [Project]" is unsupported by any evidence or analysis, and is therefore speculation. A change which is speculative or unlikely to occur is not reasonably foreseeable, and need not be considered in a project's environmental review. (14 C.C.R. § 15064[d][3].) In addition, CEQA directs that economic changes resulting from a project "shall not be treated as significant effects on the environment." (14 C.C.R. § 15064[e].) Economic change may be used to determine that a physical change shall be regarded as a significant effect on the environment. (*Id.*) However, there is no evidence that the Project has the potential to create any significant change to the parcels owned by Prominence Partners.

DATED: January 29, 2009 DOWNEY BRAND LLP

By: /s/
Jane E. Luckhardt

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION ORANGE GROVE POWER PLANT	DOCKET NO. 08-AFC-4 **PROOF OF SERVICE (Revised 10/27/08)**

INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08-AFC-4
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Sacramento, CA 95814-5512
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DECLARATION OF SERVICE

I, Lois Navarrot, declare that on January 29, 2009, I deposited a copy of the attached **ORANGE GROVE ENERGY, L.P.'s RESPONSE TO COMMENTS BY DFI FUNDING, INC.** in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of the California Code of Regulations, title 20, sections 1209, 1209.5 and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.

/s/

Lois Navarrot

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