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March 25, 2009

DOCKET

08-AFC-4

DATE MAR 25 2009

RECD. MAR 25 2009

VIA EMAIL AND U.S. MAIL

Ms. Felicia Miller, Project Manager
California Energy Commission
c/o Commission Docket Unit, 4th Floor
1516 Ninth Street, MS-15
Sacramento, Ca 95814-5512

Re: Orange Grove Project (Docket No. 08-AFC-4)

Dear Ms. Miller:

This firm represents DFI Funding, Inc. ("DFI"), the holder of an interest in real property which is contiguous to the proposed Orange Grove Project ("Project"). DFI is a California Corporation engaged in the business of lending money. DFI is the holder of a security interest in real property commonly described as 36570 Pala Del Norte and 36211 Pala Del Norte, San Diego County, California and referred to as APNs 110-072-05-00, 110-072-13-00, 110-072-14-00 and 110-072-17-00 ("Pala Properties").

DFI previously submitted comments on the Staff Assessment for the Project on December 18, 2008. A copy of those comments are attached to this letter at Tab 1. DFI believes that the comments contained within the December 18, 2008 comment letter are directly applicable to the Presiding Member's Proposed Decision ("PMPD") issued February 2009 for the Project and such comments are incorporated by reference into this comment letter.

I. SUMMARY OF THE PROJECT

The Project, as described by the PMPD, will be located on 8.5 acres of a 41 acre parcel owned by San Diego Gas & Electric ("SDG&E") approximately 5 miles east of the community of Fallbrook and 2 miles west of the community of Pala.

The Project is a 96-megawatt simple-cycle electric generating facility designed as a peaking facility to serve loads during peak demand. The Project will use two combustion turbine generators that will be fueled with natural gas. Emissions from the Project will be controlled

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with a carbon monoxide (“CO”) emission oxidation catalyst, as well as an aqueous ammonia Selective Catalytic Reduction (“SRC”) system. Output of the generators will be connected to step-up transformers within an on-site switchyard that will require construction of an underground transmission circuit to be interconnected within an existing Pala substation. An approximately 2.4-miles underground natural gas pipeline will be constructed to provide gas from an existing SDG&E gas line. The power plant will use approximately 21.1 acre-feet per year of fresh water, up to a maximum of 62 acre-feet, obtained from Fallbrook Public Utility District which will be trucked to the site.

II. INTRODUCTION AND SUMMARY OF DFI’S POSITION.

DFI has a substantial interest as the holder of the security in property located immediately adjacent to the Project at 36570 Pala Del Norte and 36211 Pala Del Norte, San Diego County, California and referred to as APNs 110-072-05-00, 110-072-13-00, 110-072-14-00 and 110-072-17-00.

DFI is concerned about the failure of the CEC Committee and the Applicant to fully evaluate the impacts that will occur from siting a power plant at the site. The Staff Assessment analysis (which clearly has formed the basis for the PMPD) of the environmental impacts created by the Project, its analysis of mitigation measures and its conclusions regarding the significant of impacts is, in some instances, simply conclusory with no factual or legal basis.

More importantly, there is a questionable need for this Project. California is currently undertaking an aggressive approach to address the impacts of climate change within the state. Californians are being encouraged to “turn the tide” in the fight against global warming yet the Project, as proposed, does not directly or indirectly address the issues surrounding the impacts from greenhouse gas emissions. The Project fails to address energy alternatives that could lessen environmental impacts and meet the state goals of reducing greenhouse gas emissions by 30% in 2020. The Project, instead of providing a “green” form of energy, will significantly impact the environment through the use of natural gas, the use of portable water, an increase in noise, and increased traffic in the local area.

III. SITE CERTIFICATION PROCESS

As noted by the PMPD, during the certification proceedings, the CEC acts as lead state agency under the California Environmental Quality Act (“CEQA”) The Commission’s regulatory process, including the evidentiary record and associated analyses, is functionally equivalent to the preparation of an Environmental Impact Report (“EIR”).

CEQA is intended to inform governmental decision makers and the public about the potential, significant environmental effects of a proposed activity. (Public Resources Code §21000 et. seq.; CEQA Guidelines, Cal. Code Regs. Tit. 14 §15002 subd. (a)(1).) An EIR achieves this objective by “identifying possible ways to minimize the significant effects, and

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describing reasonable alternatives to the project” for consideration by the public and lead agency approving the project. (Guidelines §15121, subd. (a).)

DFI, as noted in its December 18, 2008 comments, is particularly concerned with the Project’s impacts on air quality (including greenhouse gas emissions), biological resources, cultural resources, land use, noise, public health, traffic, water quality and visual resources. DFI believes that the Assessment’s analysis of these issues is inadequate and often based on flawed technical studies and inadequate data. The Assessment has, in some cases, failed to consider or impose feasible mitigation measures to reduce impacts. In sum, the Assessment has failed to adequately inform the public and decision makers on the environmental impacts of the Project and should not be relied upon for the PMPD.

DFI, for purposes of this comment letter, has reviewed the PMPD and will focus on the following areas: greenhouse gas emissions, water resources, noise, fire protection, and traffic.

IV. THE PMPD’S CONCLUSIONS REGARDING THE ENVIRONMENTAL IMPACTS OF THE PROJECT ARE DEFICIENT.

In addition to the concerns noted in DFI’s December 18, 2008 comment letter, DFI wishes to re-affirm its concern with the following Project impacts:

A. GLOBAL WARMING AND GREENHOUSE GAS EMISSIONS

California is extremely vulnerable to the impacts of global warming and is also responsible for a significant portion of the U.S. and global emissions of greenhouse gases. The significant risks climate change poses to California as well as the considerable benefits the state could realize if it addresses these risks prompted Governor Schwarzenegger to issue Executive Order S-3-05 on June 1, 2005. The Executive Order called for specific emissions reductions and a periodic update on the state of climate change science and its potential impacts on sensitive sectors, including water supply, public health, coastal areas, agriculture and forestry. The Executive Order established the following greenhouse gas (GHG) emissions targets: by 2010, reduce GHG emissions to 2000 levels; by 2020, reduce GHG emissions to 1990 levels; and by 2050, reduce GHG emissions to 80 percent below 1990 levels. The California Global Warming Solutions Act of 2006 (AB 32), places a cap on California’s greenhouse gas emissions from utilities, oil refineries, and other major global warming polluters and thus brings the state closer to meeting these targets.

In response to Executive Order S-3-05, the California Environmental Protection Agency (“CalEPA”) formed a Climate Action Team with members from various state agencies and commissions. The Team has issued a series of reports, including a March 2006 Climate Action Team Report to Governor Schwarzenegger and the Legislature. This and other reports issued by CalEPA, the California Energy Commission (“CEC”), Department of Water Resources and other California agencies should be used when preparing environmental documents under CEQA.

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The Assessment and PMPD are inadequate because they neglect to analyze global warming and greenhouse gas emissions that are directly attributable to the Project. The Project will result in foreseeable and quantifiable emissions of carbon dioxide and other greenhouse gases during both construction and the lifetime of the project. These emissions, although relatively small in comparison to worldwide greenhouse gas emissions, will contribute directly and cumulatively to the increase in atmospheric greenhouse gases, and will thus contribute directly and cumulatively to global warming.

Under CEQA, it is irrelevant that the emissions associated with the project are small in comparison to total emissions. On the contrary, CEQA's cumulative impact analysis requirement exists to capture precisely this type of impact that may be individually small but cumulatively significant. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 721 ("The EIR improperly focused upon the individual project's relative effects and omitted facts relevant to an analysis of the collective effect this and other sources will have upon air quality.") Here, the Assessment and PMPD quantify the Project's cumulative contribution and includes some mitigation measures for those impacts. They fail, however, to conduct an analysis for the Project's greenhouse gas emissions. The Assessment and PMPD must calculate the Project's greenhouse gas emissions, and then avoid, minimize, and mitigate them to the maximum extent feasible. The analysis cannot begin and end with only a cumulative analysis.

The greenhouse gas emissions of each component and phase of the Project must be calculated. For example, the construction phase would include, but not be limited to: (1) the greenhouse gas emissions of construction vehicles and machinery; (2) the greenhouse gas emissions from manufacturing and transporting the Project's building materials; (3) the greenhouse gas emissions of the Project's planning and design. The operation phase would include but not be limited to: (1) the greenhouse gas emission from the operation of the power plant and (2) the greenhouse gas emissions from the vehicle trips generated by the Project.

The documents as a whole contain insufficient information for the reader to estimate the Project's total greenhouse gas emissions. For example, the documents could estimate average trip length and average fuel efficiency of the vehicles and then calculate their carbon dioxide emissions.

Another reference point for the Project's emissions is the State Climate Action Plan. The Assessment and PMPD should use the Initial Study checklist form in Appendix G of the State CEQA Guidelines to determine the significance of potential project-related air quality impacts. Based on these thresholds, the Project would result in a significant impact related to air quality if it would conflict with or obstruct implementation of the applicable air quality plan. The failure to mitigate greenhouse gas emissions conflicts with the State's Climate Action Plan. Pursuant to this State plan, the proper baseline for comparison is not today's emissions levels, but instead is the reductions in emissions that the state as a whole must achieve to avoid

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serious environmental consequences from climate change. According to the plan and Governor's executive order, this means: by 2010, reduce GHG emissions to 2000 levels; by 2020, reduce GHG emissions to 1990 levels; and by 2050, reduce GHG emissions to 80 percent below 1990 levels.

Because the Project's greenhouse gas emissions are likely to be significant after calculation given even just the vehicle trips generated, a revised Assessment and PMPD must consider and adopt feasible mitigation measures and/or an alternative that reduces the Project's contribution of greenhouse gases to the maximum extent feasible. This is required by CEQA.

B. WATER RESOURCES

When complete the Project will allegedly use between 21.1 and 62 acre feet of potable water per year. (Assessment, 4.9-22.) That is in addition to between 12.1 and 38.7 acre feet of tertiary recycled water that the Project will use. In addition to these figures, the Alternatives section of the Assessment claims that 87.3 acre feet of water per year will be trucked to the facility for cooling of gas turbines. The Assessment does not explain how it arrived at the 87.3 acre-foot figure, or why this figure does not match the numbers in the Soil and Water Resources section. This inconsistency should be addressed and public comment received before Project approval.

The amount of potable water that the Project will use is enough to serve 124 households for a year. This is at a time of State-wide drought, when:

- Water supplies from Northern California cannot be transferred to the region because of reductions in capacity in the Sacramento River Delta;
- The Colorado River Basin is experiencing a significant drought;
- Local agricultural operations are being denied irrigation water;
- Local water sources are increasingly needed to meet local drinking water demands; and
- The public agency supplying the water has already asked rate payers to make a 10% cut back on their use of water.

There is no discussion about what will occur if water cutbacks are ordered. There is no discussion in either document about whether or not provisions have been made if water, reclaimed or otherwise, is unavailable for the Project for long periods due to water rationing or cutbacks or, more significant, a permanent lack of water. An analysis of such a scenario should have been included in the Assessment and the PMPD should have recognized the absence of any analysis.

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Additionally, because the Project site is currently beyond the infrastructure boundary of any water district, operation of the Project will require water to be trucked to the power plant multiple times per day. A more wasteful allocation of resources is difficult to envision. Not only will the Project inappropriately rely on potable water as a cooling supply, it will require an enormous investment of energy from the multiple truck trips delivering water to the Project site. Approval of this Project with the use of water that is trucked in (something that has never been approved before) is setting a dangerous precedent...one that the CEC should carefully consider.

C. NOISE

The methodology used to perform the analysis of the Project's noise impacts is incomplete. The methodology fails to take into account the Single Event Noise Exposure Level (SENEL) and is instead based solely on a CNEL methodology. The Assessment and PMPD should also contain a SENEL descriptor in addition to the predicted average noise measurements in order to quantify the impact of single-event construction and ongoing operations on nearby residents. "The probability of being repeatedly awakened [or disturbed] by multiple single-event sounds can be calculated, given sufficient data." (*Berkeley Keep Jets Over the Bay v. Board of Port Commissioners* (2005) 91 Cal.App.4th 1377.) This calculation should not be ignored simply because the Project is located in a rural setting or because their duration is short or temporary.

D. TRAFFIC AND TRANSPORTATION

The Assessment summarily concludes that construction traffic will not degrade the LOS on I-15, or SR-76 below Caltrans and San Diego County acceptable standards or below the No Project level of service. An additional 154 to 310 vehicle trips per day will indisputably have a greater impact than the zero additional vehicle trips generated by the No Project alternative. The Assessment claims that LOS will not be degraded below Caltrans acceptable levels, but fails to explain what the LOS will be for I-15 and SR-76 during construction.

Notably, the Assessment devotes only a single paragraph to the installation of a 10-inch diameter natural gas pipeline across SR-76. Without analysis or evidence, the Assessment concludes that pipeline traffic impacts would be short-term, mitigated by cones and flagmen when necessary and would not significantly impact traffic flow. 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.

The Assessment states that access to the site would be via Pala Del Norte Road, a local private road. The Assessment does not state whether construction and operation vehicles have been authorized to utilize the private road or whether the Applicant will seek alternate access.

These issues must be resolved and public comment received before the Project can be approved.

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E. FIRE PROTECTION

Access to surrounding properties for fire protection has not been addressed in either document. While, it is noted that the Project is not currently within the jurisdiction of a fire department, the documents do not address the seriousness of the situation and instead infer that a fire protection district will be assigned in the future. However, if this is a requirement for approval there has been no such provision made in the Conditions of Certification. This is a serious issue for local residents and should not be deferred or summarily dismissed. Requirements for fire protection should be put in place before the Project is approved.

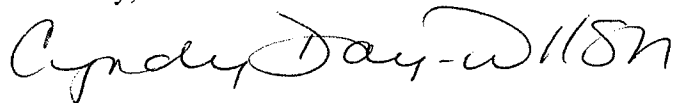
V. IMPACT OF PROJECT ON PALA PROPERTIES

The Pala Properties are contiguous to the Project. DFI has been informed that the owners of the Pala Properties, Prominence Partners, have been in the entitlement process with the County of San Diego over the past four years for the development of 30-four acre lots and is being processed as Tract Map 5331. DFI has also been informed that Prominence Partners intends to market and sell the 30-four acre lots upon final approval of Tract Map 5331 which is expected to be completed in 2010. DFI's land use consultant has advised that the value of the subdivision will be diminished by the construction of the proposed Project at its proposed location. This loss in value must be addressed by the Applicant.

VI. CONCLUSION

In summary, DFI wishes to make CEC aware of the significant issues that surround this Project. The Project will directly impact the public and DFI in significant ways that have not been fully addressed by the Applicant. DFI appreciates the opportunity to participate in the process and looks forward to addressing the Commission.

Sincerely,



Cyndy Day-Wilson
of BEST BEST & KRIEGER LLP

CDW:sb

TAB 1

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December 18, 2008

VIA EMAIL AND U.S. MAIL

Ms. Felicia Miller, Project Manager
California Energy Commission
c/o Dockets Unit, 4th Floor
1516 Ninth Street
Sacramento, Ca 95814-5512

Re: Orange Grove Project (08-AFC-4)

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On or about December 11, 2008, DFI learned that the California Energy Commission ("CEC") had scheduled an evidentiary hearing for December 19, 2008. As such, on December 16, 2008, DFI filed an Application for Intervention and has requested to participate in all hearings regarding the Project. Prior to December 11, 2008, DFI had no previous notice of the hearings currently scheduled before the CEC and therefore, seeks permission from the CEC to intervene at this time.

DFI, based on its Application for Intervention and as a member of the public, also submits this comment letter regarding the Staff Assessment ("Assessment") dated December 2008 for the Project. Since DFI did not learn of the December 19, 2008 evidentiary hearing until December 11, 2008, it has not had the opportunity to prepare a complete review of the Assessment and reserves its rights to supplement this comment letter as well as provide testimony.

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I. SUMMARY OF THE PROJECT

The Project, as described by the Assessment, will be located on 8.5 acres of a 41 acres parcel owned by San Diego Gas & Electric (“SDG&E”) approximately 5 miles east of the community of Fallbrook and 2 miles west of the community of Pala.

The Project is a 96-megawatt simple-cycle electric generating facility designed as a peaking facility to serve loads during peak demand. The power plant will use two combustion turbine generators that will be fueled with natural gas. Emissions from the Project will be controlled with a carbon monoxide (CO) emission oxidation catalyst, as well as an aqueous ammonia Selective Catalytic Reduction (“SRC”) system. Output of the generators will be connected to step-up transformers within an on-site switchyard that will require construction of an underground transmission circuit to be interconnected within an existing Pala substation. An approximately 2.4-miles underground natural gas pipeline will be constructed to provide gas from an existing SDG&E gas line. The power plant will use approximately 21.1 acre-feet per year of fresh water, up to a maximum of 62 acre-feet, obtained from Fallbrook Public Utility District which will be trucked to the site.

II. INTRODUCTION AND SUMMARY OF DFI’S POSITION.

DFI has a substantial interest as the holder of the security in property located immediately adjacent to the Project at 36570 Pala Del Norte and 36211 Pala Del Norte, San Diego County, California and referred to as APNs 110-072-05-00, 110-072-13-00, 110-072-14-00 and 110-072-17-00.

DFI is concerned about the failure of the CEC and the Applicant to fully evaluate the impacts that will occur from siting a power plant at the site. The Assessment’s analysis of the environmental impacts created by the Project, its analysis of mitigation measures and its conclusions regarding the significant of impacts is, in some instances, factually and legally defective. Further compounding the errors is the fact that DFI was not provided with the legally required notice so that it could participate in the review and approval process regarding the Project.

More importantly, there is a questionable need for this Project. California is currently undertaking an aggressive approach to address the impacts of climate change within the state. Californians are being encouraged to “turn the tide” in the fight against global warming yet the Project, as proposed, does not directly or indirectly address the issues surrounding the impacts from greenhouse gas emissions. The Project fails to address energy alternatives that could lessen environmental impacts and meet the state goals of reducing greenhouse gas emissions by 30% in 2020. The Project, instead of providing a “green” form of energy, will significantly impact the environment through the use of natural gas, the use of portable water, and increased truck traffic in the local area.

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III. ENVIRONMENTAL ANALYSIS FRAMEWORK

As noted by the Assessment, one of the purposes of the Assessment is to examine the environmental aspects of the Project. The information contained within the Assessment has been provided by the Applicant and other sources and contains analyses similar to those normally contained in an Environmental Impact Report ("EIR") required by the California Environmental Quality Act ("CEQA"). The CEC is the lead state agency under CEQA and its process is functionally equivalent to the preparation of an EIR.

CEQA is intended to inform governmental decision makers and the public about the potential, significant environmental effects of a proposed activity. (Public Resources Code §21000 et. seq.; CEQA Guidelines, Cal. Code Regs. Tit. 14 §15002 subd. (a)(1)) An EIR achieves this objective by "identifying possible ways to minimize the significant effects, and describing reasonable alternatives to the project" for consideration by the public and lead agency approving the project. (Guidelines §15121, subd. (a))

DFI is particularly concerned with the Project's impacts on air quality (including greenhouse gas emissions), biological resources, cultural resources, land use, noise, public health, traffic, water quality and visual resources. The Assessment's analysis of these issues is inadequate and often based on flawed technical studies and inadequate data. The Assessment has, in some cases, failed to consider or impose feasible mitigation measures to reduce impacts.

In sum, the Assessment fails to adequately inform the public and decision makers on the environmental impacts of the Project.

IV. THE STAFF'S ASSESSMENT OF THE ENVIRONMENTAL IMPACTS OF THE PROJECT ARE FACTUALLY AND LEGALLY DEFICIENT.

This comment letter sets forth the many factual and legal deficiencies that DFI has found in the Assessment. DFI is concerned with the following Project impacts:

A. AIR QUALITY

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). Such an analysis is legally required and must be included in the Assessment.

On July 26, 2007, ARB approved a regulation to reduce emissions from existing off-road diesel vehicles used in California in construction, mining, and other industries. In general, the regulation requires owners to modernize their fleets by replacing engines with newer, cleaner ones, replacing vehicles with newer vehicles equipped with cleaner engines, retiring older vehicles, or by applying exhaust retrofits that capture and destroy pollutants before they are emitted into the atmosphere. The Assessment does not state whether the Project's fleet complies with this regulation.

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In addition, no provision is made within the Assessment for compliance with new regulations that would be applicable to the Project's fleet such as 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 currently under consideration before ARB.

Cal. Code Regs Tit. 20 § 1720 also provides that the CEC must ensure that the Project meets ambient air quality standards. However, the Assessment has failed to identify and include in its analysis other projects in the vicinity of the Project. Without an analysis of the potential impacts from other projects along with the proposed Project the CEC cannot state that air quality standards will be met. For example, the Assessment fails to include any data referencing the emissions from the communities of Pala and Fallbrook. If either of these communities have data (and they presumably do because of federal reporting requirements) then that data should have been examined and the analysis included in the Assessment so that the cumulative impacts from all existing and proposed projects could be known.

The Assessment further fails to adequately address the Project's potential direct and cumulative impacts from Greenhouse Gas Emissions (GHG). State law (SB 97) is clear that this issue must be analyzed under CEQA which would include a direct and cumulative impact analysis. At a minimum, the Assessment should discuss cumulative impacts of the Project since there is a potential for an incremental effect that is cumulative considerable. (Guidelines §15130.) "Cumulatively considerable" means the effects of past projects, the effects of other current project, and the effects of probable future project." (Guidelines § 15065, subd. (a)).

There is no attempt made in the Assessment to quantify the Project's direct or cumulative contribution to GHGs. Instead the Assessment states that GHG emissions will only be reported as "the Air Resources Board develops greenhouse gas regulations and/or trading markets." This reasoning ignores the framework set by the State to address GHGs.

On September 27, 2006, Governor Schwarzenegger signed^{*} Assembly Bill 32, the Global Warming Solutions Act of 2006. AB 32 requires a reduction of GHG emissions to 1990 levels by 2020. ARB is the lead agency for implementing AB32. ARB first developed a list of early discrete actions to begin reducing GHGs, established GHG emission reporting requirements, and set 2020 emissions limits. ARB recently drafted a Scoping Plan which proposed a comprehensive set of actions designed to reduce overall greenhouse gas emissions in California, improve the environment, reduce our dependence on oil, diversify energy resources, save energy, create new jobs, and enhance public health.

This Scoping Plan calls for a reduction of California's carbon footprint which means a cut of approximately 30 percent of emission levels projected for 2020, or about 15 percent from today's levels. The Assessment, however, fails to address how the Project fits into the ARB Scoping Plan and meets the required carbon footprint reduction. The Assessment's plan to address such requirements "as these regulations become more fully developed and implemented"

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is nothing more than an impermissible deferral of feasible mitigation requirements that could be implemented now.

B. BIOLOGICAL RESOURCES

The Project's impacts to biological resources have not been adequately mitigated. The Project will require construction of a 2.4 mile natural gas pipeline to link it to an existing SDG&E transmission main, located near the intersection of Rice Canyon Road and SR 76. Heading west from the proposed site, the new pipeline route would parallel the transmission interconnection, traverse the hillside southwest of the substation (primarily along existing unpaved roads), and cross SR-76 0.4 miles south of the Pala substation. From there, the pipeline would follow the highway, in previously disturbed areas or in the SR 76 right-of-way.

Construction of the pipeline in the proposed path will result in the permanent destruction of 9.3 acres of coastal sage scrub habitat. An alternative pipeline route could avoid this impact. However, an alternative pipeline route has not been required or adequately considered. Although the Applicant claims that all other potential pipeline routes would result in greater environmental impacts, there has been no showing that this would be the case. Before the Project is approved, the Applicant should be required to conduct a meaningful investigation of potential alternative pipeline routes, and demonstrate that they would either result in greater environmental impacts, or that they would not be feasible.

C. CULTURAL RESOURCES

The Project will be built *on top of* 8.5 acres of territory formerly occupied by the Native American group known as the Luiseno. The Luiseno used an array of tools and adornments crafted from stone, wood, bone and shell, and the Native American Heritage Commission has already notified the Applicant in writing that cultural resources are known to exist in or near the project area. Moreover, the Cupa Cultural Center notified the Applicant in writing that the Project falls within the Pala Band of Mission Indians' traditional use area, and the San Luis Rey Band of Mission Indians identified the project area as of cultural interest. Furthermore, within one mile of the Project site, 35 archaeological sites have already been previously recorded. Of these, 13 were on or near the Project site or facilities routes and 22 were located within the half-mile buffer of the transmission line portion of the Project. One newly discovered prehistoric archaeological site, a bedrock milling station, was identified 20 meters from a proposed Project pole location.

The Assessment grossly underestimates the probability of encountering buried archaeological deposits despite evidence that the Project will be built *directly over* a historical site known to contain artifacts. The Assessment improperly relies on a 2005 study characterizing the probability for buried archaeological deposits in the *entire* San Luis Rey River floodplain as "moderate." The Assessment fails to distinguish the Project area from the remainder of the San Luis Rey River floodplain. The likelihood of discovering archaeological sites at the Project area, which is located atop a former Native American settlement and amongst myriad recorded

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archaeological sites, is much greater than the average likelihood of discovering archaeological features throughout the entire watershed.

The Assessment also improperly relies on data from four borings clustered along one 1,100-foot stretch of the approximately 9,200-foot natural gas pipeline alignment. According to the coarse sand and sandy silt identified in these borings, there is a "low" likelihood of encountering significant cultural resources during Project construction. This estimate fails to account for the remainder of the 8.5-acre Project area.

Additionally, the Assessment claims that the Applicant was unable to re-locate and re-identify by field survey eighteen previously recorded archaeological sites. The Assessment conveniently suggests that the sites either no longer exist or were misidentified in the first place. "[I]t is possible these sites were destroyed. Alternatively, the sites may have been erosion features incorrectly identified as cultural features." Even though the sites are within the gas line route or immediately adjacent to Project facilities, the Applicant failed to conduct subsurface surveys or further investigation beyond a field study. The Assessment merely recommends "caution" during construction activities.

The Assessment notes that the San Luis Rey Band of Mission Indians requested the Applicant to execute a "Pre-Excavation Agreement" with the Band in order to ensure protection of cultural resources. The Assessment does not agree to comply with this request, nor does it justify why Applicant cannot execute the Agreement prior to earth disturbing activities.

The Assessment identifies the 1940s-era citrus orchard located at the Project site as a potentially significant "built-environment" historical site. The Assessment acknowledges that the Project will *not* avoid destruction of the on-site orchard. However, according to the Assessment, the orchard is not actually a historical resource because the orchard "does not represent a large agricultural operation that is significant within the context of agriculture in the Pala area." Thus, the Assessment concludes that the Project's destruction of the orchard is environmentally insignificant. The Applicant should formally apply for listing in the California Register of Historic Resources ("CRHR") *before* unilaterally concluding that the citrus orchard is not an eligible cultural resource worth protecting.

The Project gas line will require open trenching to a maximum depth of approximately five to ten feet at or near 14 previously known, potentially CRHR-eligible archaeological sites. The Assessment recommends "archeological monitoring of construction-related ground disturbance." Monitoring will not protect the inevitable destruction of surface and subsurface extensions of each of these valuable cultural sites. The Project should avoid trenching or other ground disturbing activity at all known archeological sites.

The Assessment concludes that the Project will not significantly impact the integrity of Gregory Mountain, an ethnographic resource, because "development in the vicinity has already altered the setting of the resource." Applicant cannot rely on impacts from other projects to justify or minimize the Project impacts.

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The cumulative impacts portion of the cultural resources section claims that staff "has not reviewed the cultural resources studies for the two additional projects within one mile of the proposed Project site." An analysis of cumulative impacts is meaningless unless the other nearby past, present and reasonably foreseeable future projects are reviewed and studied.

Mitigation Measure CUL-5 mandates a Worker Environmental Awareness Program (WEAP) training for all workers at the Project site. Because cultural resources impacts are a major issue for this Project, CUL-5 should require this training be provided *before* commencement of work at the Project site and should require the training to be *separate* from other project-related safety trainings.

D. HAZARDOUS MATERIALS

All hazardous waste will be transported to and from the Project site via truck, delivered to the Project via SR 76. "Many types of hazardous materials will be transported to the site." (Assessment, 4.4-12.) Delivery of these hazardous materials to the Project site on a substandard road such as SR 76 puts both the public and the environment at risk. Because of the sensitive habitats in close proximity to the Project site, and the nature of SR 76, a hazardous waste spill would have significant, far reaching impacts.

Rather than evaluating the risk associated with deliveries on SR76, the Applicant (and the Assessment) have relied on data generated from California's highways in general. SR 76 is a two lane, largely rural road that is currently servicing a higher traffic volume than it was designed to accommodate. Consequently, the Assessment's analysis and conclusions regarding the likelihood of spills is flawed, and the risk associated with routine transportation of hazardous materials on this road has not been fully evaluated. Before the Project is approved, the Applicant should be required to assess the likelihood of an accident on SR 76. Failure to properly assess this risk puts the public and the environment at risk.

When operational, the Project will use "many" types of hazardous materials, including aqueous ammonia as part of the power generation process. Use and storage of these materials creates a risk of spill. As stated above, the Project site is in close proximity to the San Luis Rey River, and several of its tributaries. Arroyo toads, a federally designated endangered species and California Species of Special Concern, as well as other endangered (Least Bell Vireo) and sensitive species, have been observed in the area. (Assessment 4.2 – 11-B) If hazardous waste were discharged to either the San Luis Rey River or one of its tributaries, the impacts to sensitive species would be significant. To mitigate this possibility, additional Conditions of Certification should be added to restrict the use and storage of all types of hazardous materials. Although the Project will use and generate many types of hazardous waste, the Conditions of Certification for hazardous materials are largely directed at aqueous ammonia. While adequate containment of aqueous ammonia is extremely important, the Conditions of Certification should also explicitly restrict the storage and use of other hazardous materials.

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E. LAND USE

The Project is within the service area of the Rainbow Municipal Water District (“RMWD”). Because the site is in a remote area, several miles from the closest RMWD water main, the Applicant has proposed trucking water to the Project site when the Project is operating. Two trucks will deliver potable and tertiary recycled water to the proposed power plant once an hour when it is operational. RMWD regulations prohibit the permanent use of water on a parcel other than where the water is purchased. Because the water trucking is proposed on a permanent basis, the plan violates RWMD rules and regulations regarding the sale of water within its service area. To sidestep this problem, the Applicant has proposed purchasing water from the Fallbrook Public Utility District (“FPUD”). The Project is not in the FPUD service area, and is not consistent with applicable local water district regulations.

The Project site is zoned for agricultural use. The Applicant contends, and Assessment determined that the Project is nonetheless consistent with San Diego County’s zoning ordinances. This determination is based on the San Diego County Zoning Ordinance which allows major utility projects in areas zoned for agriculture if a Major Use Permit is issued for the project, and a letter from the San Diego County Department of Planning and Land Use recognizing this, and stating that the Proposed Project would be “compatible” with the Project site’s agricultural zoning. (Assessment, 4.5-27.) This conclusion is erroneous because a Major Use Permit would not be available in this case.

Pursuant to Section 7358 of the San Diego County Zoning Ordinance, the San Diego County Board of Supervisors cannot issue a Major Use Permit without making certain findings. Among other things, the Board of Supervisors must find 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 . . . *the availability of public facilities, services and utilities.*” (San Diego County Zoning Ordinance § 7358 [emphasis added]; Assessment, 4.5-22.)

As stated in comment E.1, above, the Project site is beyond the service area of any water district or potable water purveyor. As a result, the cooling water necessitated by the Project will be trucked to the Project site on an hourly basis. Because utility services are not available, the County of San Diego, and now the CEC cannot make the findings necessary for a Major Use Permit. The Project is therefore in violation of the San Diego County Zoning Ordinance.

F. NOISE AND VIBRATION

The methodology used to perform the analysis of the Project’s noise impacts is flawed. First, in order to establish a baseline for the comparison of predicted noise with existing ambient noise, the Applicant performed a noise survey measuring existing noise levels at five locations on April 18, 2007 and April 19, 2007. Since the power plant is expected to operate mainly during peak usage periods during summer months, the Assessment should have obtained and utilized baseline data from summer months for comparison. Additionally, the survey collected

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baseline data from the nearest residential site between the hours of 3:35pm and 5:04pm instead of the sensitive nighttime hours when residents are most likely to be home and disturbed by sounds and vibrations. Finally, the Applicant failed to actually monitor or obtain data from three of the five sites and instead merely "estimated the existing ambient noise levels at this location using values from similar locations and conditions." These numerous and significant flaws in the baseline survey invalidate the entire noise study from the outset.

The Assessment predicts construction noise levels between 27 dBA and 48 dBA at the Project's noise-sensitive receptors, but fails to describe the type and frequency of construction noise impacts. The Assessment should also contain a Single Event Noise Exposure Level (SENEL) descriptor in addition to the predicted average noise measurements in order to quantify the impact of single-event construction operations on nearby residents. "The probability of being repeatedly awakened [or disturbed] by multiple single-event sounds can be calculated, given sufficient data." (*Berkeley Keep Jets Over the Bay v. Board of Port Commissioners* (2005) 91 Cal.App.4th 1377.)

Condition of Compliance NOISE-3 requires the Applicant to establish a noise control program to reduce worker exposure to high noise levels during construction in accordance with OSHA and Cal-OSHA standards. NOISE-3 fails to provide any details of the noise control program. At a minimum, the program must ensure workers are not exposed to noise levels exceeding 85 dBA and must provide hearing protection devices, training and signage.

On December 1, 2008, staff granted the Applicant's request to revise proposed Condition of Compliance NOISE-4 to relax the Project noise limits in order to avoid possible nonconformance with the limits stated in the condition. In order to protect noise impacts on nearby receptors, staff should not have revised the original limits in NOISE-4.

G. PUBLIC HEALTH

The health risk assessments prepared by Applicant and staff identify emissions sources at the proposed Project as two combustion turbine generators, one black start engine and one diesel-fueled emergency firewater pump. This inventory should also include the diesel-fueled water trucks hauling water to the proposed site at a rate of two trucks per hour. Instead, the Assessment separately addresses cancer risks and chronic hazards due to emissions from diesel-fueled trucks and concludes that these risks are insignificant. The health risk assessment should evaluate impacts from *all* potentially harmful sources cumulatively.

The Assessment concludes that the Project will not cause a significant risk of cancer to the public despite unexplainable differences between data collected by staff and Applicant. According to the Assessment, "staff cannot explain the difference in the acute Hazard Index estimated by the Applicant and that found by staff using screening meteorological data." Staff and Applicant should each correct and repeat the inconsistent health risk assessments before conclusively presuming that public health will not be impacted.

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The Assessment identifies growth of Legionella bacteria as a potentially significant public health risk. The presence of even small numbers of Legionella bacteria can present a risk of disease similar to pneumonia in humans. According to a 2000 study, 40-60% of cooling towers contain Legionella bacteria unless the facility implements aggressive water treatment and biocide application programs. Condition of Compliance PUBLIC HEALTH-1 requires development of a Cooling Water Management Plan to minimize the potential for bacterial growth in cooling water but fails to describe the components of such a plan. PUBLIC HEALTH-1 should be expanded to explain the methodology that will be implemented to protect against Legionella bacteria at the Project facility.

The screening health risk assessment prepared by the Applicant indicates that short-term noncancerous health effects from the Project may be significant. The CEC should not approve a project with potentially significant and immitigable health effects.

H. SOCIOECONOMIC RESOURCES

The Assessment concludes that construction and operation of the Project would not displace any people or necessitate the construction of replacement housing elsewhere because workers would be hired locally. However, this analysis fails to consider that existing residents may relocate due to significant adverse impacts from the Project. The analysis fails to acknowledge that construction and operation of the power plant will degrade surrounding property values, thus impacting the socioeconomic setting.

I. SOIL AND WATER RESOURCES

Construction of the Project will result in significant alterations to existing drainage conditions on the site. Offsite storm water from the north of the site will be routed around the proposed facility using a diversion channel. (Assessment, 4.9-20.) Storm water runoff from within the Project will be directed to a detention basin designed to manage flows from a 100 year storm event. (Assessment, 4.9-20.) Changes to the volume and duration of runoff on a project site can impact downstream conditions. Depending on the changes, this can result in flooding, increases in erosion in downstream channels, or increases in sediment in formerly clear waters. A decrease in volume or discharge rates can have as many negative impacts as an increase, by increasing instream water temperatures and deposition of sediment in the streambed. This creates an environment that does not support the plants and animals otherwise present, and disrupts the food chain and local ecosystem.

The San Diego Regional Water Quality Control Board ("SDRWQCB") previously commented on the Project, and the Conditions of Certification listed in the Assessment. The SDRWQCB requested that approval of the Project be conditioned on the retention of pre-project hydrograph conditions on the completed project site. (Assessment, 4.9-28.) This has not been done. (See Conditions of Certification, Soil and Water 2 through 7.) Instead, project approval is conditioned on post-development runoff from the Project remaining less than or equal to pre-project discharges. (Assessment, 4.9-20.) This condition is not aimed at protecting water

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quality, but is instead designed to “not increase flood risks downstream from the project site.” (Assessment, 4.9-20.) The water quality aspects of the Project’s hydromodification impacts need to be mitigated. To achieve this, the Project should be conditioned on retention of pre-project storm water discharge rates and volumes.

The Project site is in close proximity to the San Luis Rey River. It is bordered by existing drainages that have been classified as Waters of the State, and Waters of the United States. (Assessment, 4.9-9.) The Project site has a 10% grade, dipping to the south. (Assessment, 4.9-16.) Soils at the main project site and along portions of the proposed gas pipeline are highly erosive, and construction of the linear portions of the project, (the gas pipeline) will result in a project that crosses multiple drainages, each with its own opportunity to cause erosion and sediment discharges during the course of construction. (Assessment, 4.9-17.) By all measures, this is an extremely difficult project site.

At difficult project sites, Best Management Practices (“BMPs”) often fail or are initially ineffective. It can take several storm events, and discharges of sediment laden water before the most effective BMPs are determined and properly implemented. Additionally, where grading and other construction work is taking place in close proximity to waterways, preventing some level of discharge is virtually impossible.¹ None of the proposed Conditions of Certification adequately mitigate these impacts.

One feasible mitigation measure not discussed in the Assessment, that would prevent discharges from the Project site is limiting construction to the dry season. Construction is anticipated to take approximately six (6) months. (Assessment 4.9-15.) If construction were limited to the dry season, the lack of precipitation would correspondingly limit the potential for construction related discharges. Without this limitation, the potential soil loss, erosion, and storm water impacts from project construction remain significant.

When complete, the Project will use between 21.1 and 62 acre feet of potable water per year. (Assessment, 4.9-22.) That is in addition to between 12.1 and 38.7 acre feet of tertiary recycled water that the Project will use. In addition to these figures, the Alternatives section of the Assessment claims that 87.3 acre feet of water per year will be trucked to the facility for cooling of gas turbines. The assessment does not explain how it arrived at the 87.3 acre-foot figure, or why this figure does not match the numbers in the Soil and Water Resources section.

The amount of potable water that the Project will use is enough to serve 124 households for a year. This is at a time of State-wide drought, when:

¹ The Clean Water Act implicitly recognizes this. Section 402 requires NPDES permittees to implement the Best Available Technology (BAT/BCT) to prevent discharges at construction sites. (33 U.S.C. § 1342.) The BAT/BCT standard does not categorically prohibit discharges, it merely requires that the best available technology be used to prevent discharges, and in so doing, recognizes that some discharges will occur during the course of construction regardless of whether BMPs are deployed.

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- Water supplies from Northern California cannot be transferred to the region because of reductions in capacity in the Sacramento River Delta;
- The Colorado River Basin is experiencing a significant drought;
- Local agricultural operations are being denied irrigation water;
- Local water sources are increasingly needed to meet local drinking water demands; and
- The public agency supplying the water has already asked rate payers to make a 10% cut back on their use of water.

The California Water Code requires that “water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented.” (Cal. Water Code § 100.) The Water Code additionally provides that “domestic use is the highest use and irrigation is the next highest use of water.” (Cal. Water Code § 1254.) By using potable water as a cooling source for the Project, the Project is denying water for other higher uses in the area, including domestic and agricultural uses.

Additionally, because the Project site is currently beyond the infrastructure boundary of any water district, operation of the Project will require water to be trucked to the power plant multiple times per day. A more wasteful allocation of resources is difficult to envision. Not only will the Project inappropriately rely on potable water as a cooling supply, it will require an enormous investment of energy from the multiple truck trips delivering water to the Project site. For that reason, the Project’s proposed use of potable water violates State Law.

Sections of the gas pipeline that will service the Project are within a 100 year floodplain. Anytime a utility line is exposed to flowing water, there is a possibility that it could be severed or damaged by the water itself or scour around the line. Because portions of the proposed gas pipeline will be located a 100 year floodplain, there is a possibility that it could be severed or damaged during a 100 year flood. The potential for this adverse impact needs to be discussed in the Assessment, and mitigated before the Project can be approved.

J. TRAFFIC AND TRANSPORTATION

The Assessment anticipates that construction traffic will add between 154 and 310 one-way vehicle trips per day for approximately six months. This figure underestimates traffic volume by assuming that approximately 20% of workers will carpool without citing any authority for this assumption. The Assessment also summarily concludes that construction traffic will not degrade the LOS on I-15 or SR-76 below Caltrans and San Diego County acceptable standards or below the No Project level of service. An additional 154 to 310 vehicle trips per day will indisputably have a greater impact than the zero additional vehicle trips

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generated by the No Project alternative. The Assessment claims that LOS will not be degraded below Caltrans acceptable levels, but fails to explain what the LOS will be for I-15 and SR-76 during construction.

The Assessment fails to account for the unique and dangerous character of the roads connecting the Project site. For instance, SR-76 contains slopes, curves, steep grades, hazards unique to a rural setting, is prone to high winds and is narrow in places. During operation, the Project will require deliveries from large, unwieldy 6,500-gallon water trucks at a rate of *two per hour*. Additionally, the Project will host two trucks per month carrying hazardous materials. The Assessment briefly notes that the water trucks will be capable of handling curves in the road and maintaining the appropriate speed to blend in with existing traffic. However, the Assessment fails to thoroughly study water truck or hazardous material truck safety in the context of all the particular features of roads to be used for the Project.

The Assessment devotes only a single paragraph to the installation of a 10-inch diameter natural gas pipeline across SR-76. Without analysis or evidence, the Assessment concludes that pipeline traffic impacts would be short-term, mitigated by cones and flagmen when necessary and would not significantly impact traffic flow. 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. Additionally, the Assessment must analyze how the use of cones and flagmen will impact ordinary traffic flow through SR-76, especially at peak hours. Finally, the Assessment should describe the dangers associated with installation of a natural gas pipeline at a major state highway and outline mitigation measures to protect drivers and workers.

The Assessment states that access to the site would be via Pala Del Norte Road, a local private road. The Assessment does not state whether construction and operation vehicles have been authorized to utilize the private road or whether the Applicant will seek alternate access.

K. TRANSMISSION LINE SAFETY AND NUISANCE

No comments.

L. VISUAL RESOURCES

The Project will change the existing visual character from natural grasses to manmade exhaust stacks, heat recovery steam generators and intake structures. These dominant features of the power plant will be visible to residents and motorists on SR-76 who currently enjoy views of surrounding hills, valley and skyline. The Assessment acknowledges that residents with long periods of viewing time will potentially suffer impacts on property values and that the overall visual sensitivity of this viewer group is moderate to high. Nonetheless, the Assessment characterizes the visual impacts to these residents as "moderate" due to "limited viewer numbers, distance from the Project site, and screening at the site." The Assessment fails to quantify viewer numbers or distance from the Project site, and fails to explain how tree and shrub

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screening at the site could possibly mitigate aesthetic impacts down to a “moderate” level for residents who currently enjoy sweeping landscape views.

The Assessment concludes that the Project will not impact scenic vistas because the Project viewsheds contain no scenic vistas, defined as “a distant view through and along a corridor or opening that exhibits a high degree of pictorial quality.” However, the Assessment later states that eastbound motorists on SR-76 at the Project location have “views of the rural countryside and hills.” The Assessment goes on to note that these rural views will be impacted by the “prominent and striking upper portions of the power plant.” The views of rural countryside hills described in the Assessment are by definition distant and pictorial scenic vistas. These scenic vistas will be impacted by the Project.

M. WASTE MANAGEMENT

See comment D.1 (above) discussing transportation of hazardous materials to and from the project site.

N. WORKER SAFETY

The Assessment improperly defers analysis and mitigation of fire safety impacts. (*See Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275.) The Assessment identifies operational risks for both small fires and major structural fires, and lists measures including sprinklers, fire detection sensors, CO2 suppression systems, fire extinguishers and water storage for fire prevention and suppression. However, staff proposes that the Applicant submit a final Fire Protection Plan that will accomplish general goals ranging from establishment of a fire hazard inventory to fire control requirements and procedures. Because the Project-specific Fire Protection Plan is not included in the Assessment, the public will not have an opportunity to review and comment on the fire safety analysis as required by CEQA and the State Energy Resources Conservation and Development Commission regulations. (*See* 20 CCR § 1752.) The Assessment similarly improperly defers preparation of a worker Injury and Illness Prevention Plan, Personal Protective Equipment Program and Emergency Action Plan. The CEC cannot approve the Project without a complete environmental review.

O. POWER PLANT EFFICIENCY

The Project would generate a nominal 96 MW of peak electric power to the San Diego Region. At full load operation, the Project will consume natural gas via pipeline from an existing SDG&E gas main at a rate of 860 million Btu per hour LHV. The Assessment fails to adequately analyze whether this substantial rate of natural gas consumption could potentially impact SDG&E energy supplies or require the development of additional energy supply capacity. The Assessment concludes that “SDG&E is a resource with adequate delivery capacity for a project of this size,” but fails to quantify what percentage of available SDG&E natural gas the Project will consume.

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This section devotes only one paragraph to consideration of alternative generating technologies for the Project. In addition to natural gas, the Assessment should thoroughly explore biomass, geothermal, hydroelectric, solar or wind technologies.

This section of the Assessment should also include a comprehensive examination of alternative gas turbine cooling mechanisms, such as air-cooling. As proposed, the Project will inefficiently haul water—a scarce resource—via polluting diesel truck for up to two truck trips *per hour* in order to cool the turbines. The Assessment fails to analyze whether alternative cooling options would be more efficient.

P. TRANSMISSION SYSTEM ENGINEERING

The Assessment improperly avoids and defers analysis and mitigation of transmission system impacts. (*See Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275.) The Assessment relies on studies and any review conducted by responsible agencies to determine the effect of the Project on the transmission grid. If the studies show that the interconnection of the Project causes the grid to be out of compliance with reliability standards, the studies will identify mitigation alternatives or ways in which the grid can be brought into compliance. The Assessment further provides that the CEC will conduct CEQA review of the mitigation measures as needed. This proposal fails to actually analyze or mitigate Project-specific transmission grid impacts. Instead, it relies on third-party studies and mitigation measures that have not yet been contemplated or analyzed for CEQA compliance.

Q. ALTERNATIVES

The Assessment only dedicates a single page to examination of renewable energy alternatives. The Assessment should thoroughly evaluate and explore solar, wind, geothermal, biomass and tidal/ wave technologies with fewer environmental impacts than the Project.

This section also fails to adequately analyze alternative gas turbine cooling technologies for the Project. As currently proposed, the Project will utilize a water cooling system requiring 87.3 acre-feet per year of water to be trucked to the site. A dry cooling system would reduce net consumption of 24 gallons per minute of water while reducing output by only 3.2 net MW. The Assessment should fully explore and analyze alternative cooling technologies such as dry cooling to substantially lessen environmental impacts of the Project.

Finally, the Assessment should thoroughly explore alternative project locations that would lessen the significant effects of the Project on residents and other receptors.

V. IMPACT OF PROJECT ON PALA PROPERTIES

The Pala Properties are contiguous to the Project. DFI has been informed that the owners of the Pala Properties, Prominence Partners, have been in the entitlement process with the County of San Diego over the past four years for the development of 30-four acre lots and is

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being processed as Tract Map 5331. DFI has also been informed that Prominence Partners intends to market and sell the 30-four acre lots upon final approval of Tract Map 5331 which is expected to be completed in 2010. DFI's land use consultant has advised that the value of the subdivision will be diminished by the construction of the proposed Project at its proposed location.

VI. CONCLUSION

In summary, DFI wishes to make CEC aware of the significant issues that surround this Project. The Project will directly impact the public and DFI in significant ways that should be addressed by the Applicant. DFI appreciates the opportunity to participate in the process.

Sincerely,

Sincerely,

Melissa W. Woo
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CDW:sb

DECLARATION OF SERVICE

I, San Barajas, declare that on March 25, 2009, I served and filed copies of the attached ~~DFT Comment Letter dated 3/25/09~~. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

[www.energy.ca.gov/sitingcases/orangegrovepeaker]. The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

sent electronically to all email addresses on the Proof of Service list;

by personal delivery or by depositing in the United States mail at _____ with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (**preferred method**);

OR

_____ depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

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



San Barajas



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**APPLICATION FOR CERTIFICATION
ORANGE GROVE POWER
PLANT PROJECT**

**DOCKET No. 08-AFC -4
PROOF OF SERVICE**
(Revised 2/17/09)

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