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**Darden DIER Comments on Behalf of LCJA, CCEJN, and
Comunidades de Westside**

Additional submitted attachment is included below.



April 21, 2025

Submitted electronically to the CEC Docket and via email to STEPSiting@energy.ca.gov

California Energy Commission
715 P Street, MS 40
Sacramento, CA 95814

RE: Comments on Darden Clean Energy Project Staff Assessment and Draft Environmental Impact Report

Leadership Counsel for Justice and Accountability (LCJA), the Central California Environmental Justice Network (CCEJN), and Comunidades de Westside (Comunidades), (collectively “Commenters”) respectfully submit these comments to the Darden Clean Energy Project (the Project) Staff Assessment and Draft Environmental Impact Report (DEIR).

LCJA works alongside the most impacted communities and advocates for sound policy to eradicate injustice and secure equal access to opportunity regardless of wealth, race, income, and place. LCJA is a nonprofit organization that collaborates with communities in San Joaquin and Eastern Coachella Valleys to increase access to decision-making and elevate historically excluded communities. In Fresno County near the site of the proposed project, LCJA works with the communities of Cantua Creek and El Porvenir,¹ both of which are disadvantaged communities.

CCEJN is a non-profit organization dedicated to uplifting low-income communities of color in the San Joaquin Valley by ensuring access to clean air, water, land, and food sovereignty. CCEJN’s work centers on community-led change by addressing issues that have continually impacted disadvantaged, rural communities through community science, grassroots organizing, regulatory engagement, and legislative action. Regarding the proposed site of the project area in Fresno County, CCEJN works with the nearby communities of Five Points and Cantua Creek.

¹ Also known as Three Rocks.

Comunidades is an unincorporated association with members who reside in the communities of Cantua Creek, Five Points, and El Porvenir. According to its adopted bylaws, the purpose of Comunidades is for residents of these three communities “to advocate for the overall health and well being of their communities, including equitable energy policy, programs, and investments that protect public health, prevent climate change, and reduce risk of harm to residents.”

While Commenters appreciate the engagement from California Energy Commission (CEC) staff and Intersect Power LLC (Intersect) that has taken place to date, we note several deficiencies in the Staff Assessment and DEIR that must be adequately addressed and resolved. Absent revisions to address each of these issues, set forth in detail below, the DEIR fails to comply with law and is inadequate as an informational document.

I. Legal Background

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.² The EIR is the very heart of CEQA.³ “The foremost principle in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.”⁴

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.⁵ “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’”⁶ The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”⁷

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives⁸ and all feasible mitigation measures.⁹ The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage

² See, e.g., Pub. Res. Code § 21100.

³ *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.

⁴ *Communities. for a Better Env. v. Cal. Res. Agency* (2002) 103 Cal. App.4th 98, 109.

⁵ 14 Cal. Code Regs. (C.C.R.) § 15002(a)(1).

⁶ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

⁷ *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354; *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁸ 14 C.C.R. § 15126.6(e)(2).

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

can be avoided or significantly reduced.”¹⁰ If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”¹¹

The CEQA process is especially important for projects being proposed near environmental justice communities like Cantua Creek, El Porvenir, and Five Points, where residents are already disproportionately impacted by environmental impacts due to their location and proximity to various forms of pollution. For example, residents continue to be exposed to contaminated drinking groundwater, pesticide, dust, and poor air quality. These communities are not equipped with the resources to address this contamination thus the CEQA process is imperative to notify residents of project impacts and propose ways to mitigate or eliminate project impacts to not further exacerbate these concerns.

II. The Project Description Must Be Revised To Accurately Describe The Project.

“[A]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.”¹² On the other hand, “[a] curtailed, enigmatic or unstable project description draws a red herring across the path of public input.”¹³ “[O]nly through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives”¹⁴

Further, “[t]he project description must contain (1) the precise location and boundaries of the proposed project; (2) a statement of the objectives sought by the proposed project, including the underlying purpose; (3) a general description of the project's technical, economic, and environmental characteristics; and (4) a statement briefly describing the intended uses of the EIR.”¹⁵

¹⁰ 14 C.C.R.. §15002(a)(2).

¹¹ Pub. Res. Code § 21081; 14 C.C.R § 15092(b)(2)(A) & (B).

¹² *Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277, 287 quoting *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1052; *South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 332.

¹³ *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655.

¹⁴ *Id.*

¹⁵ *South of Market Community Action Network*, 33 Cal.App.5th at 332 citing CEQA Guidelines, § 15124; see also 14 Cal. Code Regs. (C.C.R.) § 15124(a) [An EIR must include a project description that provides “the precise location and boundaries of the proposed project.”]

The DEIR includes a description of the project that includes its proximity to certain nearby communities. However, this description is not “accurate, stable and finite” given the vacillating and incomplete description of the distance of the Project from nearby communities. For example, the DEIR variously describes the community of Cantua Creek as 3, 3.9, 5, and 10 miles from the project site.¹⁶ Similarly, the DEIR inconsistently describes the community of Five Points as 3 and 9 miles from the project site.¹⁷ As a result, the DEIR’s project description is inaccurate and unstable.

As an additional matter, the project description does not identify the community of El Porvenir at all, presumably referring to the community instead as Three Rocks. While we acknowledge that El Porvenir may properly be identified by either name, it should clarify that Three Rocks is also known as El Porvenir, especially given that this is the name that is preferred by residents of El Porvenir. Like Cantua Creek, Five Point, and Three Rocks, El Porvenir must also be included fully in all analysis of impacts, mitigation, and alternatives.

In addition to including a description of the project’s proximity to nearby communities, the project maps included in the DEIR, such as Figure 3-1 and Figure 3-2, provide a visual layout of the project components such as where the solar facility, battery energy and storage system (BESS), and step-up substation will be located. However, these maps fail to show where all three of the communities are located in relation to the project, lacking reference to Five Points and presumably referring to El Porvenir as Three Rocks. The DEIR must include each community’s exact distance from each of the project components in writing and in the related maps.

Further, with respect to the BESS, the project description states that “[t]he Tesla Megapack 2 XL, a lithium iron phosphate (LFP) battery technology, is anticipated to be used for the project... .”¹⁸ The battery technology to be used for the Project is a critical component of the project description, as different battery technologies pose different risks, particularly risk of fire.¹⁹ However, the use of the word “anticipated” implies that the use of Tesla Megapack 2 XL for the Project is not certain. And, in fact, the DEIR states in the Transmission System Engineering

¹⁶ Compare DEIR at 5.2-2; 5.8-15; 5.12-1; 5.16-1; and 5.11-4.

¹⁷ Compare DEIR at 5.2-2 and 5.14-1.

¹⁸ DEIR at 3-8.

¹⁹ See, e.g., Transcript from Darden Clean Energy Project Staff Assessment Public Meeting (Transcript), at 65:18-66:10 (Comments from Brett Fooks, Manager of Safety and Reliability Branch, CEC) [distinguishing the Project from the Moss Landing BESS which recently caught fire because, in part, “Moss Landing is different than the Darden Clean Energy Project. There are substantial differences. One being chemistry. They’re not the same, so I will mention one for Darden, which is lithium iron phosphate. Sorry, we’re getting kind of technical here. The one at Moss Landing was a nickel manganese cobalt. It’s a higher energy density.”]; Transcript at 66:11-25 (Comments from Chair David Hochschild, CEC) [distinguishing between the BESS at Moss Landing as compared to the Project, “That configuration, in my view, is the worst of all. So, this is a 2019 vintage NMC chemistry, which is, you know, higher risk of thermal runaways. ... So the new sets that’s going in is LFP, much better chemistry from that perspective.”].

section that “[t]he project would use commercially available battery technology such as lithium ion, lithium iron phosphate, nickel manganese cobalt, and nickel cobalt aluminum batteries.”²⁰ As the DEIR relies upon the type of BESS battery technology that is “anticipated” to be used for the Project, and as it appears that other battery technologies may in fact be used that are not evaluated in the DEIR, the project description is not accurate, stable and finite.

III. The DEIR’s Analysis Of Environmental Impacts Is Inadequate.

The determination of significance of impacts must be based on “careful judgment” and “scientific and factual data.”²¹ The lead agency must consider the views of the public,²² and must consider both direct and indirect effects.²³ The DEIR must consider short-term and long-term effects, relevant specifics about the area, and health and safety problems that result from the changes from the project.²⁴ The DEIR must analyze impacts associated with both construction and operations.²⁵

A. The Analysis Of Air Quality Impacts Is Inadequate.

A lead agency must take special care to determine whether the project will expose “sensitive receptors” to pollution.²⁶ With respect to air quality impacts, a key question is thus whether the project would “[e]xpose sensitive receptors to substantial pollutant concentrations.”²⁷ If it will, the impacts of that pollution are more likely to be significant.²⁸

Here, the DEIR fails to adequately analyze the air quality impact of increased vehicle traffic through the communities of Five Points, Cantua Creek, and El Porvenir. First, with respect to Five Points, the DEIR relies upon an unspecified Construction Traffic Control Plan in concluding that during construction a workforce of 2,011 will arrive in 1,006 vehicles.²⁹ In order to rely on this plan, the DEIR must analyze details about implementing and enforcing this plan. Without that, analysis must assume emissions from 2,011 vehicles.

²⁰ DEIR at 4.3-4.

²¹ 14 CCR 15064(b).

²² 14 CCR 15064(c).

²³ 14 CCR 15064(d).

²⁴ 14 CCR 15126.2 (a).

²⁵ CEQA Guidelines, Appx. G.

²⁶ *Id.*

²⁷ *Id.*

²⁸ See California Department of Justice, *Environmental Justice at the Local and Regional Level Legal Background*, available at https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf.

²⁹ As discussed in Section V.F., *infra*, it is not permissible under CEQA to defer formulation of plans to some future date.

Second, the DEIR analysis of the construction phase's impact on sensitive receptors is inadequate.³⁰ The analysis centers around emission standards generally in the area of the project. However, this analysis fails to take into account the impact on sensitive receptors from the localized concentration of vehicle traffic. The communities of Five Points, Cantua Creek, and El Porvenir, all disadvantaged communities, each include sensitive receptors. Similarly, the proposed route for significantly increased vehicle traffic during construction is approximately 0.3 miles from Westside Elementary School.³¹ Further, to the extent that the Kamm Avenue exit from Interstate 5 (I-5) is utilized, as discussed next, it appears that additional traffic would also pass in front of Cantua Elementary School on West Clarkson Avenue.

Third, for purposes of the forecast of road segment traffic volumes,³² the DEIR assumes that all associated construction and operations vehicle trips will travel to and from the construction site via SR-145 and Mount Whitney Avenue. This is concerning because: (a) this route passes directly through Five Points; and (b) this conflicts with the statement in the DEIR that I-5 will be used "extensively by heavy trucks during the construction phase" and that it has connectivity to West Kamm Avenue near the project site.³³ To the extent that a portion of the extensive truck traffic during construction does in fact utilize West Kamm Avenue, the most convenient route to the Project site likely passes directly through both El Porvenir and Cantua Creek, yet there is no acknowledgment or analysis of this fact in the DEIR.

The DEIR lacks credibility in its failure to analyze the air quality impacts, particularly on sensitive receptors, associated with an additional 180 heavy truck trips and up to 2,011 passenger vehicle trips per day, passing directly through Five Points, and in failing to analyze impacts of any additional truck and passenger vehicle trips associated with the Kamm Avenue exit from I-5. The DEIR must be revised to analyze the significant air quality impacts associated with additional vehicular traffic during both construction and operations.

B. The Analysis Of Impact on Climate Change and Greenhouse Gas Emissions Is Inadequate.

To determine the significance of greenhouse gas emissions, an EIR "shall make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project."³⁴ The EIR "should focus its analysis on the reasonably foreseeable incremental contribution of the project's

³⁰ DEIR at 5.1-32.

³¹ DEIR at 5.14-11.

³² *Id.*

³³ DEIR at 5.14-1.

³⁴ 14 CCR 15064.4(a).

emissions to the effect of climate change.”³⁵ The lead agency “must support its selection of a model or methodology with substantial evidence.”³⁶

The DEIR, in determining the significance of the project’s impacts on greenhouse gas emissions, incorporates the assumption that the project “would avoid the need to use fuel at a mix of flexible, dispatchable generating facilities using coal and natural gas.”³⁷ This assertion is conclusory and unsupported in the DEIR. Although the project would produce electricity, it does not lay out how the project would interact with retiring fossil fuel energy generation or overall energy demand trend. It is foreseeable that energy demand will continue to grow and energy producers will continue to use as much or more fossil fuels to produce energy as they would without this project.

The impact analysis must be amended to address these shortcomings and, if necessary, the project should incorporate additional mitigation measures to ensure that the additional energy production and storage capacity from this project will, in fact, contribute to the reduction of greenhouse gas emissions from fossil fuel energy production.

C. The Analysis of Hazards, Hazardous Waste, And Wildfire Is Inadequate.

In comments on the Notice of Preparation (NOP), LCJA provided evidence that the EIR needs to evaluate the risk of the project leaching heavy metals into soils.³⁸ Research suggests that the construction and operation of solar projects may leach heavy metals in soil and that the type of solar panels used may influence the risk of leaching.³⁹ The DEIR does not include an evaluation of this hazard which presents a potentially significant impact. It must be revised to include this evaluation.

Additionally, the DEIR concludes that, with mitigation, the risk of exposure of people and/or structures to fire is less than significant.⁴⁰ This is based in part on an evaluation of the fire risk associated with the Tesla Megapack 2 XL. But, as noted above,⁴¹ it appears that other battery technologies may in fact be used, and that the risk of fire depends on the battery chemistry and enclosure design. As the DEIR does not evaluate fire risk of alternate battery technologies that may in fact be used for the Project, it is inadequate and fails as an informational document.

Further, the DEIR’s analysis of fire impacts relies on the “distance separating the BESS facility from the public,” but does not specifically state the distance from the BESS facility from the public.⁴² It is unclear, especially given the various conflicting descriptions of the distance from

³⁵ 14 CCR 15064.4(b).

³⁶ 14 CCR 15064.4(c).

³⁷ DEIR at 5.3-15.

³⁸ LCJA Comments the NOP at 5. Dated October 22, 2024.

³⁹ Li et al., “A review of toxicity assessment procedures of solar photovoltaic modules” (February 15, 2024), <https://www.sciencedirect.com/science/article/pii/S0956053X23007717>.

⁴⁰ DEIR at 5.7-24.

⁴¹ See Section II., *supra*.

⁴² DEIR at 5.7-33.

the Project site to the communities of Cantua Creek, Five Points, and El Porvenir,⁴³ how far the BESS is from the public and to what extent the DEIR relies upon accurate information in making that determination. It is also unclear whether and the extent to which the DEIR considers the residences within 1,000 feet of the Project site⁴⁴ in its analysis of fire risk.

The analysis of fire risk in the DEIR fails for another reason, it fails to adequately consider the additional fire risk associated with conversion of agricultural lands to presumably unirrigated native/non-native grassland.⁴⁵ Specifically, despite acknowledging that “existing data demonstrates that grass fires have happened in areas of Fresno County with similar grasslands as the proposed project,” the DEIR relies upon the prior history of fires generally starting “where the hills begin to rise from the agricultural fields” in evaluating fire risk associated with the Project.⁴⁶ It fails to adequately analyze the increased fire risk associated with the conversion of irrigated agricultural lands to unirrigated native/non-native grassland, an issue compounded by the failure to adequately analyze fire risk associated with the BESS. If fires have traditionally occurred in the nearby hills, where native grasses typically grow, that fire risk may logically be associated more with the presence of dry grasses and less with the change from valley floor to grassland. The DEIR must be revised to fully analyze this question.

D. The Analysis Of Noise And Vibration Is Inadequate.

Project construction and operations will have a long lasting effect on communities near the project site due to the project’s proposed longevity. The project will be close to several communities and at least two schools, Cantua Creek Elementary and Westside Elementary School. The DEIR fails to analyze how the project will impact school activities as a result of the project’s construction and operations. For example, the proposed times for helicopter use from 6:00 am to 7:00 pm and pile driving activity from 6:00 am to 9:00 pm are during school hours. The DEIR explains that the PV panel system construction phase will reach a noise level of 80 dBA, pile driving can reach 104 dBA, and helicopter use can reach approximately 79 to 96 dBA, depending on the distance, and rightfully so indicates that the impacts would be significant. Furthermore, the DEIR inaccurately states that the San Joaquin airport can not result in excessive noise levels because it is 5.5 miles from the project site. This analysis fails to consider residents from the community of San Joaquin who live less than five miles from the airport and will be exposed to noise and vibrations.

The DEIR fails to include an analysis to indicate how the project will impact the health and well-being of residents and workers. For example, the analysis needs to include potential risks such as hearing damage, sleep disturbance, cardiovascular stress, health concerns from machinery usage, mental health impacts, and any other possible impacts.

⁴³ Section II., *supra*.

⁴⁴ DEIR at Appx. B-2.

⁴⁵ See DEIR at 3-18.

⁴⁶ DEIR at 4.4-15, 5.7-15.

E. The Analysis of Socioeconomics Impacts is Inadequate.

The Darden Clean Energy Project will require several resources to function properly, including but not limited to public services and housing availability. These resources are already limited in communities near the project site, and we anticipate the project will exacerbate the demand and need to access these resources.

The project proposes to hire workers from Madera, Fresno, and Kings County, covering an extensive area. Cantua Creek, Five Points and El Porvenir residents have vocalized their desire to prioritize workers from communities closest to the project site before reaching out to workers beyond these communities and other counties. There will be residents in the area who will be transitioned out of agricultural work if the project is approved and other possible similar projects and thus are seeking job security. For example, the majority of residents who live in Five Points, Cantua Creek, and El Porvenir are farmworkers. As agricultural lands increasingly go out of production within the West Fresno County area, workers have had to commute as far as Corcoran due to the limited employment opportunities around the area. If the project is approved, it places the job security of agricultural workers at risk.

Although the DEIR states that the proposed workforce of 1,200 to 1,500 construction workers may not lead to an increase in population in the study area, it fails to explain how short-term and transient housing can affect permanent housing availability. The DEIR does not acknowledge the Housing Element for unincorporated communities and cities in the project area and does not consider the need for additional housing to meet each jurisdiction's Regional Housing Needs Allocation numbers. This is important because the County and cities must zone land to make room for permanent housing in an area that already faces housing insecurity and the project's 18 to 36 construction period can encourage workers to relocate for this length. The project will contribute to a halt in community growth because the land where the project is being proposed could have welcomed additional housing to meet the housing needs of these communities, or the land could have been used to accommodate other types of projects that generate a larger number of permanent jobs (i.e. packing houses). Additionally, residents worry that this project and future solar farms in the area will contribute to a reduced housing market value due to the proximity of the project and the environmental impacts.

Furthermore, the magnitude of the project and the risk it poses to nearby communities when there is a need to address fire related incidents is tremendous. Five Points, Cantua Creek, and El Porvenir residents do not have access to a fire station in their community and are concerned that the project will contribute to an already delayed response time. Residents have difficulties getting their houses insured and are quoted higher rates for house insurance because there is not a fire station in their community. Insurance Companies share that if homes are lost due to fire related incidents, the house is considered a total loss and this financial burden is placed on property owners. The project will increase the likelihood of fire related incidents, potentially further increase home insurance rates, and pose a physical threat to the safety of nearby

communities and property. The DEIR must include these impacts and address these concerns to ensure the safety of residents.

F. The Analysis and Planning of Solid Waste Management is Inadequate.

The solid waste that will be generated during the construction and operation of the project must be overseen to the end of its life. During the construction process, the project will generate 20 tons of concrete, 20 tons of metal, 70,000 units of First Solar Series 7 PV solar panels, and 16,998 tons of wood.⁴⁷ In total 20,716 tons of solid waste would be generated during project construction. The operation process will generate less than half of the waste during construction with a total of 109 tons of solid waste. The DEIR states that the heat strengthened glass and galvanized steel from solar panels serve as a potential waste stream, but claims that the origin of this waste stream was not discussed.⁴⁸ The origin of the waste streams for these materials must be identified to determine whether they are hazardous or not. Furthermore, the disposal of each solar panel, including ones broken or damaged during construction, must be properly analyzed and documented, and should be overseen until it reaches the material recovery facility (MRF) for recycling or the landfill for disposal. The DEIR cites two landfills that would be the recipients of nonrecyclable, disposable waste: Waste Management Kettleman Hills B-17 and Waste Management Kettleman Hills Unit B-18. Residents within Kettleman City already experience significant distress and concern over the number of truck trips and loads that the surrounding landfills receive. The impact of additional truck trips for solid waste disposal must be evaluated, and include air quality impacts in already significantly overburdening rural communities within the San Joaquin Valley.

G. Transmission Line Safety and Nuisance Must be Thoroughly Considered.

Over the past few years, several wildfires have started due to aging PG&E power lines. This has raised concerns surrounding the procedure PG&E follows to maintain and upgrade power lines. Given this history, and that following the construction of the utility switchyard, the ownership and operations would transfer to PG&E, the DEIR must explain any impacts that will be associated with ongoing operations.

H. The DEIR Inadequately Analyzes Impacts On Transportation.

The DEIR determines that the project will not create significant impacts on traffic with the implementation of Conditions of Certification.⁴⁹ The DEIR concludes that, because large, slow agricultural equipment already uses the roads, the additional 180 trucks per day during construction will not have a significant impact on traffic, specifically hazards due to geometric design.⁵⁰

⁴⁷ DEIR at 5.12-4 and 5.12-5.

⁴⁸ DEIR at 5.12-5.

⁴⁹ DEIR at 5.14-19.

⁵⁰ DEIR at 5.14-14.

However, the project as a whole will add 1,186 vehicle trips each day, although that number is likely an undercount, as discussed in the air quality section of these comments.⁵¹ Further, the combination of existing agricultural traffic and truck traffic for the project would result in significant traffic impacts. Residents need to use these roads to access basic necessities and services, including transportation to and from school. An additional 180 trucks on these roads daily will foreseeably interfere with residents' ability to use roads to access basic needs and services. Residents of Five Points have shared that many students who attend Riverdale High School must get ready for the school bus by 6:00 AM to be on time for school by 8:00 AM. When the school day ends, students are picked up at 3:00 PM and arrive back in the community by 5:00 PM. With the additional 180 trucks a day added within the community, this will add an extra amount of commuting time for students who are already having to get up early in the morning and return home late in the day.

Moreover, the additional vehicle trips will have a negative impact on active transportation in nearby Cantua Creek, Five Points, and El Porvenir. The DEIR must analyze the impacts on residents who walk within the neighborhood. For example, the community of Five Points lacks critical road infrastructure such as elevated sidewalks and stop signs which makes it unsafe for children to walk to places like other residents homes, the Five Market, Gas, and Deli, and the local community center. The safety of residents must be analyzed when considering the addition of vehicle trips that pose a burden on residents trying to move freely around their neighborhoods.

Finally, the failure to analyze impacts on vehicle miles traveled during construction of the Project is concerning and inadequate. The DEIR concludes, without evidence or analysis that supports this approach, that "[c]onstruction trips are not analyzed in a VMT analysis because they are temporary and would not impact overall per capita VMT in the region."⁵² However, construction timelines extend either 18 or 36 months, depending on the construction schedule that is implemented.⁵³ Failure to analyze the impact on vehicle miles traveled of between 1,186 and 2,196 daily vehicle trips that may extend between 1.5 to 3 years is wholly inadequate. Failure to conduct a construction-related VMT analysis also bolsters the conclusion that the air quality analysis is also inadequate for failure to fully consider the air quality impacts associated with these vehicle trips, particularly with respect to sensitive receptors.

I. The Analysis Of Impacts On Water Resources Is Inadequate.

1. The DEIR Fails To Adequately Analyze Impacts on Groundwater Supply.

The DEIR relies on compliance with the Sustainable Groundwater Management Act (SGMA) in concluding that the Project is not expected to overdraft local groundwater resources or cause

⁵¹ See Section III.A., *supra*; DEIR at 5.14-11.

⁵² DEIR at 5.14-8.

⁵³ DEIR at 3-12.

disproportionate impacts on environmental justice communities due to overdraft.⁵⁴ This, despite the conclusion that the project would require 1,100 acre feet of groundwater during construction, and 35 acre feet per year during operations,⁵⁵ all from at least two groundwater wells presumably at or near the Project site.⁵⁶

However, reliance on SGMA implementation to ensure that there will be no localized impacts associated with groundwater extraction is inadequate. While the purpose of SGMA is to ensure sustainable groundwater management, the time frame for sustainability is lengthy, with full implementation only required by 2040 at the earliest.⁵⁷ Further, SGMA sets no standards for groundwater well siting or design, and legislative efforts to ensure that groundwater wells are far enough away from existing drinking water wells have so far been unsuccessful.⁵⁸

Rather than relying on implementation of SGMA, the DEIR must be revised to fully evaluate the impacts of additional groundwater extraction at the site of the planned groundwater wells. This analysis must include the location of groundwater extraction, the proximity of other groundwater wells to those locations (focused specifically on domestic and municipal supply wells), the depth of groundwater extractions relative to existing wells, the capacity of the planned groundwater wells, and any localized impacts on groundwater levels that may impact existing drinking water wells. This evaluation must include current and future monitoring of groundwater levels at the Project site, and a transparent method of providing this monitoring data to the public. The DEIR must also evaluate water supply alternatives, and fully mitigate any impacts identified in this evaluation. The DEIR must also be revised to consider what amount of additional water during operations is needed for the “supplemental water” to be used to irrigate the mix of native/non-native grassland to be planted below the solar arrays.⁵⁹

2. The DEIR Fails To Adequately Analyze Impacts on Groundwater Quality

The DEIR does not discuss or consider the impact of additional groundwater pumping on groundwater quality. Studies have shown that groundwater pumping and groundwater recharge activities (including on farm recharge through irrigation) may increase groundwater

⁵⁴ DEIR at 6-26.

⁵⁵ *Id.*

⁵⁶ DEIR at 4.4-14.

⁵⁷ Cal. Wat. Code § 10727.2(b)

⁵⁸ See, e.g., AB 2079 (Bennett, 2024), available at

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB2079&search_keyword=s=water

⁵⁹ DEIR at 3-18.

contamination.⁶⁰ The failure in the DEIR to discuss these potential impacts on groundwater quality renders the DEIR's analysis of water resources inadequate.

3. The DEIR Fails to Include An Analysis Of The Impacts Of The Project On Drinking Water Supplies Of Nearby Residences And Communities.

For over a decade, Cantua Creek and El Porvenir, residents have had contaminated drinking water. Five Points residents were notified on January 8, 2025 that their drinking water is contaminated. These three communities currently rely on surface water but will soon transition to groundwater. Thus, it is imperative to ensure that this project does not leave these three communities at risk of running out of water. Although the DEIR states that the project will “not decrease the likelihood of achieving a sustainability goal for the basin,”⁶¹ as discussed above, it fails to include how much groundwater will remain in the aquifer as a result of the actual transition of actively irrigated land to the project. It is important to include this data to inform future water usage of the project to ensure that nearby communities will still have access to water. Further, as discussed elsewhere in these comments, further analysis should be considered to determine potential effects of chemical leaching impacts to groundwater supply (i.e. PFAS contamination), if solar panels are not properly disposed of.⁶²

J. The DEIR Does Not Adequately Analyze the Impact on Visual Resources

The DEIR describes the impact that the project will have on the existing visual character and quality of public views.⁶³ Although the DEIR does acknowledge that the project will impact the rural and spacious aesthetics, it does not acknowledge the effect this will have on the quality of life of nearby residents. The DEIR must be revised to address this impact.

⁶⁰ See Smith et al., Overpumping Leads to California Groundwater Arsenic Threat, 9 Nature Communications 2089 (2018), available at <https://www.nature.com/articles/s41467-018-04475-3>; See Fakhreddine et al., Protecting Groundwater Quality In California, Management Considerations For Avoiding Naturally Occurring And Emerging Contaminants (2019), available at <https://www.edf.org/sites/default/files/documents/groundwater-contaminants-report.pdf> [“Recharging water, even clean water, into a previously uncontaminated aquifer can potentially alter the existing geochemistry and hydrology and subsequently cause the release of geogenic contaminants from soils and sediments.”]; Jurgens, Bryant C., et al. "Effects Of Groundwater Development On Uranium: Central Valley, California, USA," Groundwater 48.6 p. 913 (2010), available at <https://ngwa.onlinelibrary.wiley.com/doi/abs/10.1111/j.1745-6584.2009.00635.x>; “Groundwater Quality In The Sustainable Groundwater Management Act (SGMA): Scientific Factsheet on Arsenic, Uranium, and Chromium,” available at https://d3n8a8pro7vhmx.cloudfront.net/communitywatercenter/pages/293/attachments/original/1559328800/Groundwater_Quality_in_SGMA_Scientific_factsheet_on_arsenic_uranium_and_chromium.pdf?1559328800.

⁶¹ DEIR at 5.16-4.

⁶² See, PFAS waste from solar panels, available at:

<https://chemsec.org/pfas-waste-from-solar-panels-this-is-something-that-people-in-the-sector-dont-like-to-talk-about/>

⁶³ DEIR at 5.15-17.

K. The DEIR Fails to Address the Heat Island Effect

As discussed in our comments on the Notice of Preparation, there is evidence that large solar projects can increase the ambient air temperature.⁶⁴ The DEIR does not include any analysis of the potential significant impacts from increasing the ambient air temperature. For example, one study demonstrates that a 1 MW solar farm can increase the temperature 1.9 degrees celsius, however this effect dissipates after 300 meters.⁶⁵ Here the project is 1,150 MW. Commenters are not aware of studies that evaluate the heat island effect for a project this large. Given this, and in order to ensure that harmful impacts that are not currently well understood are fully analysed, the EIR must be revised to analyze the potential of impacts of the heat island effect.

Failure to conduct an analysis of the heat island effect could cause harmful impacts to nearby communities that are not adequately understood or mitigated, and inclusion of this analysis is especially important given the proximity of the project to DACs with particular vulnerability to extreme heat. Residents often lack access to air conditioning or cannot afford to use it and frequently work outdoors. Additionally, access to cooling centers is limited in these communities. As climate change worsens, residents expect these impacts to increase. For these reasons, and because CEQA requires such analysis, the DEIR must be revised to analyze the impact on extreme heat. According to the California Heat Assessment Tool, the region experiences an average maximum temperature ranging from 103.4°F to 107.69°F. Any additional increases in heat are likely to result in significant impacts.⁶⁶

IV. The DEIR's Analysis of Cumulative Impacts Excludes A Probable Future Project

Under CEQA, cumulative impacts exist when multiple effects, even when individually minor, compound or increase environmental impacts, whether as part of a single project or multiple projects.⁶⁷ A cumulative impact is defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency...or person undertakes such other actions.”⁶⁸

The DEIR improperly limits the cumulative impacts analysis, with respect to future projects, to projects that will be constructed within one year of Darden and which are within 15 miles of the project site.⁶⁹ This is inadequate and inconsistent with applicable case law. Specifically, an EIR

⁶⁴ LCJA NOP comments, citing Barron-Gafford *et al.*, “The Photovoltaic Heat Island Effect: Larger solar power plants increase local temperatures” (2016), <https://doi.org/10.1038/srep35070>.

⁶⁵ Fthenakis, Vasilis & Yu, Yuanhao. (2013). Analysis of the potential for a heat island effect in large solar farms. Conference Record of the IEEE Photovoltaic Specialists Conference. 3362-3366. 10.1109/PVSC.2013.6745171.

⁶⁶ Cal. Heat Assessment Tool, *Explore*, <https://www.cal-heat.org/explore>

⁶⁷ 14 C.C.R. § 15355.

⁶⁸ *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.* (9th Cir. 2008) 538 F.3d 1172, 1215; *see also* 14 C.C.R. § 15355(b).

⁶⁹ DEIR at A-2.

must include reasonably probable future projects which means “any future project where the applicant has devoted significant time and financial resources to prepare for any regulatory review...”⁷⁰ Further, a project must be considered in a cumulative impact analysis where the “proposed project is both probable and sufficiently certain to allow for meaningful cumulative impacts analysis.”⁷¹ There is thus “no single accepted definition of ‘probable future project,’”⁷² and the analysis is inherently fact specific.

Here, the DEIR does not include the Valley Clean Infrastructure Plan (VCIP) as part of the Cumulative Impact analysis.⁷³ VCIP is a probable future project which would include 130,000 acres of solar panels, energy storage, and transmission. VCIP filed a notice of preparation on February 2, 2024 and is currently preparing a DEIR.⁷⁴ This activity reflects a commitment of significant time and resources to prepare for regulatory review. CEQA requires VCIP’s inclusion in the cumulative impacts analysis due to VCIP’s massive scale and, given its similarities to this project, the likelihood of exacerbating each of the construction and operation impacts of the Project discussed above.

The project would be within 15 miles of Darden, within the boundaries described by the DEIR as relevant for cumulative impact analysis.⁷⁵ However, for the reasons stated above, CEQA requires the 15 mile radius be expanded to incorporate the entire VCIP project.

V. The DEIR Lacks Sufficient Mitigation

An EIR must include mitigation measures to minimize each significant adverse impact.⁷⁶ Mitigation measures must either be described in detail or include performance standards and agency oversight.⁷⁷ Here, DEIR’s mitigation measures must be amended as described below.

A. Air Quality Mitigation Measures are Insufficient

The DEIR determines that the project will create significant impacts on air quality especially during construction.⁷⁸ The DEIR adopts a mitigation measure to cease operations when local air quality is poor as a result of dust, wind, and other factors.⁷⁹ It does not specify how it will determine when local air quality will necessitate ceasing operations. CEQA requires mitigation measures to be described with as much specificity as is practicable. Further, residents nearby

⁷⁰ *Gray v. County of Madera*, 167 Cal.App. 4th 1099, 1127-1128.

⁷¹ *City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 435.

⁷² *East Oakland Stadium Alliance v. City of Oakland* (2023) 89 Cal.App.5th 1226, 1272.

⁷³ DEIR A-4 through A-9.

⁷⁴ VCIP NOP, figure 1, available at:

https://files.ceqanet.opr.ca.gov/295435-1/attachment/gfIOVJCKP1iY4iSWem5bxBenZvR1esvLsfT0SfavgyQ-VKlr36EeTAXNI9Rt0fi8nnNj5E_-2gcug6Kc0.

⁷⁵ DEIR at A-2.

⁷⁶ 14 C.C.R. § 15126.4 (1)(a).

⁷⁷ 14 C.C.R. § 15126.4(1)(b).

⁷⁸ DEIR at 5.1-19.

⁷⁹ DEIR at 5.1-50, AQ-7.

communities experience significant adverse health outcomes, in addition to the nuisance impacts from poor visibility, as a result of poor air quality. Therefore, the DEIR must be revised to include placing air quality and visibility monitoring equipment in nearby communities. This placement should ensure that the determination to cease operations is made with data inclusive of the impact on these communities.

The DEIR also states that certain construction equipment will be diesel powered, which will result in a significant impact on air quality.⁸⁰ The DEIR adopts a mitigation measure that would require an agreement with SJVAPCD to fund local electric vehicles programs or use electric vehicles at the project site.⁸¹ The DEIR also adopts a mitigation measure that diesel equipment comply with certain operational standards.⁸²

These mitigation measures are insufficient. As the DEIR acknowledges, the location of the project is out of compliance with National Ambient Air Quality Standards which has significant detrimental health impacts on residents. The project must ensure that no additional diesel equipment is used, especially during construction when the vehicle traffic will be highest. All equipment must be low or zero emission.

Further, all vehicle trips, including both trucks and personal vehicles, must be diverted to prevent air pollution and traffic from vehicles in close proximity to communities. Specifically, as discussed above, the community of Five Points will be subjected to a significant increase in vehicle pollution with 180 daily truck trips and up to 2,011 daily personal vehicle trips. The communities of Cantua Creek and El Porvenir will likely also see additional truck and vehicle trips near homes based on the use of the Kamm Avenue Exit from I-5. Rerouting the truck and personal vehicle traffic away from all three communities is the only way to ensure that the significant air quality impacts of the project are fully mitigated.

B. Noise and Fire Buffer Zone Mitigation Measures are Insufficient

The DEIR determines that the project will create significant impacts in the form of noise⁸³ and battery fire risk.⁸⁴ The DEIR includes mitigation measures for these impacts. However, these mitigation measures will be insufficient to prevent significant impacts on nearby communities. In order to sufficiently mitigate these impacts, the project must include buffer zones. These buffer zones must be designed to minimize noise, vibration, and risks of fires spreading to nearby communities.

Noise-1 states that before the start of ground disturbance, the project owner will notify residents near the project site via mail and telephone calls, but does not specify a distance. Cantua Creek, Five Points, and El Porvenir residents must be notified and included in all project

⁸⁰ DEIR at 5.1-22.

⁸¹ DEIR at 5.1-24, AQ-SC6.

⁸² DEIR at 5.1-47, AQ-SC5.

⁸³ DEIR at 5.9-7.

⁸⁴ DEIR at 5.7-32.

communications to stay informed of construction start and end dates, along with any other major project updates. This communication through mailers and the proposed telephone number to report any noise disturbances need to be in Spanish to ensure residents can understand and communicate their concerns in their native language. There also needs to be a plan in place to ensure residents can submit complaints after one year of the project being operational. Moreover, the noise complaint resolution form should also be translated into Spanish to provide residents with a copy they can read, especially since they will be asked to sign this form.

The DEIR must be revised to include the following mitigation measures: shortening hours when drones, helicopters, trucks, and other equipment are used during construction and operations (keeping school hours in mind), buffer zones between the project and nearby communities, vegetative and sound barriers, improvements to impacted households including upgrade windows, doors, and insulation, and rerouting of truck and vehicle traffic so that it does not pass through Five Points, Cantua Creek, or El Porvenir.

C. Visual Mitigation Measures are Insufficient

The DEIR includes mitigation measures intended to address impacts to visual resources.⁸⁵ As discussed above, the impact to nearby communities is significant. In order to mitigate these impacts, the project must incorporate buffer zones and vegetative barriers to preserve the rural and natural character of the area.

D. Transportation Mitigation Measures Must be Further Developed

The project's impact on transportation will be significant, as discussed above. The project will include at least 1,186 daily vehicle trips, including 180 heavy truck trips, either through or in close proximity to communities. Therefore, the DEIR must be revised to include mitigation measures to reduce this significant impact. Such a mitigation measure must include additional transportation options for residents, a publicly available schedule of truck traffic so that residents can identify how and when to travel, and safeguards to ensure residents can always access roadways in the event of an emergency, including evacuation, a path to a hospital, and access from emergency services. Moreover, the DEIR must require mitigation to reroute traffic to ensure that trucks and personal vehicles do not travel through Five Points, Cantua Creek, or El Porvenir.

E. Hazards, Hazardous Materials, and Wildfire Mitigation Must be Further Developed

The DEIR determines that the project will create significant hazard impacts that require mitigation.⁸⁶ The DEIR includes certain mitigation measures.⁸⁷ However, these mitigation measures are insufficient to mitigate the significant impacts to less than significant.

⁸⁵ DEIR at 5.15-64.

⁸⁶ DEIR at 5.7-26.

⁸⁷ DEIR at 5.7-54.

First, the DEIR states that, in the event of an emergency, formal evacuation routes are not necessary given the rural location of the project and the multiple routes available to evacuate.⁸⁸ This is insufficient. The DEIR needs to be revised to include formal evacuation routes in order for residents to be prepared in the event of an emergency. This is especially important given the significant increase in traffic caused by the project.

Second, in the event of an emergency, the DEIR must be revised to ensure notification of that emergency will reach nearby residents. Specifically, such notifications must be in all languages prevalently spoken in the area, at a minimum, Spanish and English. Such notifications must also be provided in phone notifications and on local television stations.

Finally, given the increased fire risk associated with the project, CEQA requires that the project include sufficient additional mitigation to reduce the risk of fire impacting nearby communities. As acknowledged in the DEIR, fire response times currently range from 30 to 45 minutes to the Project site. To ensure adequate fire protection and reduce fire risk associated with the Project, the DEIR must include mitigation measures to reduce response times and ensure adequate fire protection services. One such mitigation measure that the DEIR must analyze and implement, is to coordinate with Fresno County Fire to construct and operate a satellite fire station in or near Cantua Creek.

F. Documentation Related to Solid Waste Management Mitigation Measures Must be Public

The DEIR outlines proposed conditions of certification by adopting the mitigation, WASTE-1. It requires the project owner to prepare a Construction Waste Management Plan (CWMP) and an Operation Waste Management Plan (OPWM) for all wastes generated during the construction and operation of the facility. As further stated in the DEIR, both plans shall include descriptions of all waste streams and methods of managing each waste. Due to the scale of the waste generated by the project, both plans should be made available to the public in written format and in meetings to inform community members of the frequency and waste amounts generated from the various project components. This provides an opportunity for community members to provide feedback and raise concerns about each plan. Furthermore, annual compliance reports must be translated into Spanish and distributed in the surrounding communities in a timely manner.

G. Improve Inspection Requirements for Transmission Line Safety and Nuisance Mitigation Related Measures

Under mitigation TLSN-2, the DEIR states that the project owner only needs to provide documentation of inspection results for five years. For transparency and accountability purposes, this needs to be expanded beyond five years and over the duration of the project's existence.

⁸⁸ DEIR at 5.7-13 and 5.7-14.

There also needs to be a process of how often transmission lines will be inspected and updated to account for wear and tear and reduce impacts to nearby communities.

H. The DEIR Improperly Defers Formulation Of Mitigation Plans, Which Are Not Fully Enforceable.

“Formulation of mitigation measures shall not be deferred until some future time.”⁸⁹ Further, specific details regarding mitigation may be developed after project approval only where it is “impractical or infeasible” to include the details in the EIR and “the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure.”⁹⁰ Mitigation measures must also be “fully enforceable through permit conditions, agreements, or other legally binding instruments.”⁹¹

Here, the DEIR improperly defers certain mitigation measures to a future time and fails to commit to the mitigation in a way that is fully enforceable through permit conditions, agreements, or other legally binding instruments. In particular, the DEIR includes an analysis of “non-jurisdictional” components of the Project.⁹² For the “non-jurisdictional” Project components, the DEIR merely makes recommendations regarding mitigation measures, and notes that the “can and should be adopted by the agency with permitting authority over those components... .”⁹³ This constitutes both improper deferral of mitigation measures and lack of fully enforceable commitments to implement mitigation.

VI. Alternatives

A. The Project Objectives Are Impermissibly Narrow

⁸⁹ CEQA Guidelines (2025), § 15126.4(a)(1)(B); *see also* *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92 [An EIR is inadequate if “[t]he success or failure of mitigation efforts may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR.”].

⁹⁰ CEQA Guidelines (2025), § 15126.4(a)(1)(B).

⁹¹ CEQA Guidelines (2025), § 15126.4(a)(2).

⁹² The “non-jurisdictional” or “offsite” components of the Project include These components include the (1) construction of Pacific Gas and Electric Company’s (PG&E) utility switchyard, (2) the construction of a loop in and out line between the PG&E switchyard and the existing Los Banos-Midway 500kV line, and (3) the construction of a fiber optic communication line from the PG&E switchyard north to an existing splice point to the Panoche substation or south to the existing Gates substation.” They also include “downstream network upgrades to three existing substations, Los Banos, Midway and Gates or Manning as well as the addition of two transposition structures.” (DEIR at 5.1-1.)

⁹³ *See, e.g.*, DEIR at 2-3, 5.1-52, 5.2-230, 5.3-22, 5.7-55, 5.10-20, 5.12-22, 5.13-16, 5.13-18, 5.15-68, 5.16-24.

The project objectives are so narrow as to preclude any reasonable alternative other than the project as proposed by the proponent. An EIR must contain a statement of the project objectives.⁹⁴ The lead agency must then use this statement to help it, among other things, develop a reasonable range of alternatives to the proposed project to evaluate in the EIR.⁹⁵ As the California Supreme Court has stated, “[t]he process of selecting the alternatives to be included in the EIR begins with the establishment of project objectives by the lead agency. ‘A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings . . .’”⁹⁶

A DEIR must not evaluate alternatives on the basis of overly narrow project objectives. By limiting the project objective in this manner, a DEIR may improperly ensure “that the results of its alternatives analysis would be a foregone conclusion. It also, as a result, transformed the EIR’s alternatives section—often described as part of the ‘core of the EIR’ [citation omitted]—into an empty formality.”⁹⁷ Courts have rejected substantially similar DEIR’s with flawed project objectives because they “prejudicially prevented informed decision making and public participation.”⁹⁸

Here, the project objectives are largely limited to the production of energy to contribute to meet climate and clean energy targets.⁹⁹ The DEIR’s narrow definitions of the project objectives is prejudicial. It creates the inevitable result that the alternative that produces the most energy will be selected. The DEIR evaluates and rejects two alternatives: the no project alternative and the reduced footprint alternative. The no project alternative and reduced footprint alternative cannot be rejected simply because they produce less electricity.¹⁰⁰ The DEIR also fails to consider alternative sites.

The project objectives must be revised to consider a reasonable range of alternatives based on appropriate project objectives.

⁹⁴ 14 C.C.R. § 15124(b) “The objectives identified above “will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary”

⁹⁵ *Id.*

⁹⁶ *We Advoc. Through Env’t Rev. v. Cnty. of Siskiyou* (2022) 78 Cal. App. 5th 683, 691 (quoting *In re Bay-Delta etc.* (2008) 43 Cal. 4th 1143, 1163).

⁹⁷ *We Advoc. Through Env’t Rev.*, 78 Cal. App. at 692.

⁹⁸ *We Advoc. Through Env’t Rev.*, 78 Cal. App. at 694.

⁹⁹ DEIR at 3-5 to 3-6.

¹⁰⁰ DEIR at 8-1.

B. Evaluate Safer Battery Technologies to Reduce Potential Thermal Runaway Risks.

The DEIR considers but does not evaluate alternative battery technologies.¹⁰¹ The three alternative battery technologies were not evaluated because, according to the DEIR, those technologies are not proven at the scale of the project. However, because that redox flow batteries provide “low fire risk due to low flammability,”¹⁰² that would address the impacts associated with the batteries creating a thermal runaway event, putting residents at risk. The DEIR must be revised, at a minimum, to evaluate redox flow batteries as an alternative.

VII. Mandatory Opt-In Requirements

A. The Donation Agreements Do Not Comply With AB 205 (2022), And The DEIR Is Inaccurate As A Result.

Pursuant to Public Resources Code, § 25545.10:

The commission shall not certify a site and related facility under this chapter unless the commission finds that the applicant has entered into one or more legally binding and enforceable agreements with, or that benefit, a coalition of one or more community-based organizations, such as workforce development and training organizations, labor unions, social justice advocates, local governmental entities, California Native American tribes, or other organizations that represent community interests, where there is mutual benefit to the parties to the agreement.

The Staff Assessment proposes a finding of fact that this requirement is met because “[t]he applicant has entered into a legally binding and enforceable agreement with the Centro La Familia Advocacy Services, a California 501(c)(3) non-profit organization which is a qualified community-based advocacy organization under Public Resources Code section 25545.10(a).”¹⁰³

However, the Amended and Restated Donation Agreement with Centro la Familia Advocacy Services (Centro la Familia), as amended by Amendment Number 1 to that Agreement (the Agreement), does not include any scope of work that will be undertaken by Centro la Familia. In fact, the only conditions on the use of the “donation” to Centro la Familia is that the recipient

¹⁰¹ DEIR at 8-6 to 8-7.

¹⁰² DEIR at 8-6.

¹⁰³ DEIR at 10-11. The Staff Assessment also correctly concludes that the donation agreements with Tree Fresno, Central California Food Bank, Westside Elementary School, Central California Asthma Collaborative, Cornell University, Fresno Rural Transit Agency, and Fresno Housing Education Corps are not “legally binding and enforceable” because they may by their terms be terminated at any time by the Applicant. Additionally, like the agreement with Centro la Familia, these donation agreements are also unenforceable due to lack of consideration. *Id.*

shall not use “the Donation for the benefit of any owner, shareholder, officer, director, or employee of the Recipient” and a commitment that the “Recipient agrees to provide a statement or letter of support for the Darden Solar Project at the request of Donor.” Neither of these terms regarding the use of the donation to Centro la Familia constitute a benefit to a coalition of one or more community-based organizations. In fact, other than the commitment by Centro la Familia to provide a statement or letter of support for the Project, there is no contractual consideration whatsoever that would convert the Agreement from an unenforceable commitment to donate into a legally enforceable contract to exchange payment for services.

As a result, the AB 205 requirement for a “legally binding and enforceable” community benefits agreement is not met, and the CEC does not have the authority to certify the Project. Further, because the Staff Assessment and DEIR incorrectly conclude that the Centro la Familia Agreement is a legally binding and enforceable community benefits agreement, the DEIR is inaccurate and misleading, and fails as an informational document.

B. The Analysis of the Environmental Leadership Development Project Requirements is Inadequate to Conclude the Project Satisfies the Requirements

The DEIR, pursuant to Public Resources Code, § 21183 and § 21183.6, evaluates whether the project satisfies certain requirements to be deemed an Environmental Leadership Development Project and therefore receive the benefits of judicial streamlining. The DEIR’s analysis is adequate.

The analysis includes the proposed finding of fact that the project would displace energy from natural gas power plants.¹⁰⁴ As discussed earlier in these comments, in the discussion of Greenhouse Gas Emission Impacts, the DEIR fails to analyze how this project will, in fact, displace natural gas demand. Although it would produce energy, given the trend of increasing energy demand, it is not clear from the DEIR that the project would, necessarily, reduce the use of natural gas to generate electricity. Given the significant transportation emissions that would result from the construction of the project, the clear legislative intent was to protect nearby communities:

It is the intent of the Legislature, in enacting this section, to maximize the environmental and public health benefits from measures to mitigate the project impacts resulting from the emissions of greenhouse gases to those people that are impacted most by the project.¹⁰⁵

Therefore, the analysis here must be revised before determining if the project is entitled to the benefits of judicial streamlining.

¹⁰⁴ DEIR at 10-16.

¹⁰⁵ Cal. Pub. Res. Code § 21183.6(b)

C. The Public Benefits Description is Inadequate

Pursuant to Public Resources Code, § 24453(h):

The commission shall prepare a written decision after the public hearing on an application, which includes ...[a] discussion of any public benefits from the project including, but not limited to, economic benefits, environmental benefits, and electricity reliability benefits.

The Public Benefits section of the DEIR provides a brief recitation of benefits described in more detail in other sections of the DEIR. Based on this brief discussion, the DEIR fails to discuss material shortcomings with the project's supposed public benefits and how, without adjustments to the project, the project will fail to benefit the communities of Cantua Creek, El Porvenir, and Five Points.

First, the public benefits section of the DEIR does not make any reference on benefits to the local communities and instead focuses on the benefits of electrification and supporting California's climate goals. Specifically, there is no discussion of how, if at all, the project would benefit nearby communities' ability to access clean, reliable, affordable energy when located next to a 1,150 MW solar facility.

Second, the economic benefits analysis is limited to 16 permanent jobs which may or may not be available to residents in nearby communities, donations to non-profits, and tax revenue to Fresno County. The analysis does not show how any of these will provide economic benefit to the low income local residents, including those residents of Cantua Creek, El Porvenir, or Five Points. It is important to recognize that the substantial need for investment in public resources in these communities reflects the historic and current failure to invest there. It is therefore insufficient for the DEIR to rely on generating tax revenue for Fresno County as a public benefit without greater analysis on the communities most impacted by the project.

VIII. The Environmental Justice Analysis Must Align With CEC's JAEDI Values and Properly Consider the Potential Impact to Surrounding Environmental Justice Communities

The California Energy Commission's Justice Access Equity Diversity Inclusion (JAEDI) Framework¹⁰⁶ includes terms like energy justice, energy equity, and justice communities to lay out the CEC's intent to ensure that marginalized communities are included in and benefit from the clean energy transition and are not harmed in this process.

Commenters commend these goals while highlighting the importance of valuing community expertise to guide decision making decisions especially when the CEC staff will determine if the

¹⁰⁶ Available at https://www.energy.ca.gov/sites/default/files/2023-11/CEC-JAEDI-Framework_ada.pdf.

Darden project is approved. It is imperative that the CEC acknowledges, addresses, and effectively collaborates and communicates with communities to appropriately address their concerns. This will aid in meeting the CEC's goal "to ensure, through equal access to the decision-making process, everyone has equal protection from environmental and health hazards and can live, learn, play, and work in a healthy environment."¹⁰⁷

Furthermore, the Environmental Justice Project Screening¹⁰⁸ only accounts for people living in a six mile radius which is insufficient as it excludes communities like Canuta Creek, El Porvenir, and Five Points. As described above, the DEIR provides inconsistent information regarding the distance between communities and the project. Given the inconsistent information on project distance and the potential negative impact to communities beyond a six mile radius like Canuta Creek, El Porvenir, and Five Points, it is imperative that the analysis extends beyond the six mile radius. Not doing this is contradictory to the CEC's goal of including and protecting environmental justice communities.

The air quality environmental justice analysis overlooks the severity of potential environmental impacts to nearby communities. As noted in the DEIR, western Fresno County is already burdened with poor air quality and is in nonattainment for both state and federal ozone standards, as well as PM10 standards. Given this nonattainment status, any emissions contributing to elevated levels of ozone and PM10 are significant. This includes both temporary construction-related emissions and long-term project impacts on environmental justice communities. These impacts cannot be ignored and must be thoroughly addressed when evaluating project mitigations and the overall viability of the project.

The risks associated with exposure to emissions from diesel fueled engines and Valley Fever can be deadly and should not be underestimated. Canuta Creek, El Porvenir, and Five Points residents are already exposed to these two concerns and worry that the project will exacerbate health impacts. Residents share that they do routine testing for Valley Fever and do not want to continue being exposed and tested for Valley Fever. Once again, this is contradictory to the goal and right to "live, learn, play, and work in a healthy environment" and not be disregarded.

The impacts of disposing project material need to be carefully considered to ensure short and long term public safety. We reiterate the point to be responsible when disposing material beyond delivering it to landfills.

The Environmental Justice section of the DEIR must be revised to address these concerns.

¹⁰⁷ DEIR at 6-1.

¹⁰⁸ DEIR at 6-2.

IX. Conclusion

Based on the foregoing, the Staff Assessment and DEIR does not comply with AB 205 or CEQA, and must be revised consistent with the discussion above. We look forward to working with CEC staff and the Applicant to ensure that the Project fully complies with applicable law and benefits, rather than harms, nearby communities.

Respectfully Submitted,

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