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*Comment Received From: Leadership Counsel for Justice and Accountability
Submitted On: 10/22/2024
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Comments on Notice of Preparation re Darden Clean Energy Project

See attached.

Additional submitted attachment is included below.



October 22, 2024

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 Notice of Preparation of Draft Environmental Impact Report
Darden Clean Energy Project (CEC Docket No. 23-OPT-02)**

Dear Ann Crisp:

Leadership Counsel for Justice and Accountability (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. We work closely with community residents in Cantua Creek and El Porvenir,¹ two disadvantaged communities located near the project site. We submit these comments concerning the Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) for the Darden Clean Energy Project (“the project”). We offer recommendations to aid in completing an EIR that takes into account environmental health impacts on nearby communities and ensures there are actionable measures and a plan to mitigate negative impacts.

LCJA submits these comments, recognizing the recent notice of removal of the hydrogen component of the project.² Should the hydrogen component return, LCJA reserves the right to provide additional comments on the impacts of hydrogen production, storage, and use. Further, as the environmental review process is just beginning, we reserve the right to provide additional comments regarding the project description, potential impacts, mitigation, alternatives, and all other aspects of environmental review required by the California Environmental Quality Act (CEQA) and all other applicable laws.

I. Project Description

“[A]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” (*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.) On the other hand, “[a] curtailed,

¹ Also known as Three Rocks.

² See Docket No. 23-OPT-02, Updated Darden Clean Energy Project Description (October 9, 2024).

enigmatic or unstable project description draws a red herring across the path of public input.” (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655.) “[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” (*Id.*)

While the NOP includes a project description that notes that it is south of the community of Cantua Creek, it fails to recognize proximity to El Porvenir and does not describe the distance between the project boundaries or specific project components and these two disadvantaged communities. The project description in the EIR must include this information.

II. The EIR Must Analyze the Environmental Effects of the Project on the Public

A. Air Quality

The project is located in Fresno County where communities already experience some of the worst air quality in the nation. The NOP states that project construction impacts include exceeding emission thresholds set by the San Joaquin Valley Air Pollution Control District during the 18 and 36 month construction period. Therefore, the EIR must fully analyze all construction air quality impacts, describe a plan to fully mitigate them, and ensure this project will not directly contribute to the region’s continued failure to comply with federal air quality standards.

Additionally, air quality impacts during operations must be fully analyzed and mitigated. In particular, the EIR must evaluate whether and the extent to which converting farmland to solar and energy storage will increase dust, PM 2.5, and PM 10-related impacts, and should evaluate cover cropping, buffer zones between the project and nearby communities, and other alternatives and mitigation measures to prevent any significant dust impacts during operations. The EIR must also fully analyze the air quality impacts associated with the operation of fossil fuel generators, analyze alternatives that could supply emergency backup power without reliance on fossil fuels, and mitigate any significant impacts. The EIR must further include the emission reduction agreement and fugitive dust control plan being proposed by the applicant and provide alternatives if these measures are not enough to address air quality impacts.

B. Noise and Vibration

Project construction and operations will contribute to noise and vibration in nearby communities. For example, the project proposes the use of drones and helicopter activities that will exacerbate noise levels for residents in communities like Cantua Creek and El Porvenir who already experience noise disturbances from aerial pesticide sprayers. Furthermore, there will be an increase in truck usage in the area to deliver and maintain equipment leading to an increase in noise and vibration levels. The EIR must analyze how noise and vibration impacts will affect the health and well-being of residents and wildlife near the project site. Possible alternatives and mitigation measures that should be evaluated include, but are not limited to, shortening hours when drones, helicopters, trucks, and other equipment are used during construction and

operations, buffer zones between the project and nearby communities, vegetative and sound barriers, and improvements to impacted households including upgrade windows, doors, and insulation.

C. Public Health

The EIR must analyze the human health impacts associated with the project. (*See Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1220 [“[a]fter reading the EIR's (sic), the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin.”].) The EIR must also explain the degree and magnitude of the impact. (*Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413, 432.)

As such, during both construction and operations, the EIR must fully analyze the potential for public health impacts related to mobilized dust, PM 2.5, PM 10, and valley fever, which is associated with inhaling soil-dwelling fungi that may be mobilized by wind. We note that residents of communities like Cantua Creek and El Porvenir already experience health problems due to years of exposure to pesticides and other air quality impacts associated with nearby agricultural practices, as well as exposure to contaminated drinking water. Residents experience elevated risk of hair loss, cancer, headaches, asthma, and other health impacts associated with exposure to pollutants. The EIR must fully evaluate the potential of the project to exacerbate these health impacts. The well-being of residents needs to be of utmost priority and the public needs to be notified of any potential public health impacts during construction and operations. The EIR must evaluate all reasonable alternatives and mitigation measures to reduce or eliminate potential heat impacts. Possible mitigation measures include upgraded doors, windows, and insulation; energy bill credits for nearby low-income households; and community microgrids; each of which would better protect access to energy needed for adequate cooling and avoid exposure to poor air quality.

D. Socioeconomics

The NOP discusses impacts on socioeconomics related to the potential for additional strain on emergency services. The EIR must consider both the additional frequency and severity of emergencies given the scale of the project and its use of electricity and hazardous materials. Cantua Creek and El Porvenir residents lack access to emergency services such as a fire station or medical services. Residents of Cantua Creek and El Porvenir access to these essential services is already limited, with the closest nearby service providers being over 30 minutes to an hour away. In fact, residents have reported increased property insurance costs due to lack of access to and/or proximity fire station services. Therefore, the project's potential to exacerbate existing service deficiencies is concerning, and the proposed emergency services agreement needs to include a plan to ensure emergency services will have a response rate of less than 15 minutes from the project site.

E. Transportation

The project will likely have significant and unavoidable traffic impacts during both the construction and operations. The EIR must analyze and provide estimated daily truck trips and

vehicle miles traveled (VMT) generated by a project during both construction and operations and include all feasible mitigation measures that reduce any significant impacts. Some of those mitigation measures must include, but not be limited to, public transit stops at and near the project, connective trails and bike lanes throughout the project area, electric car and bike charging stations, local hiring provisions, a walk/ride to school program, and a community rideshare program. The EIR should also include safety features for pedestrians and bicyclists. These measures would include, but not be limited to, HAWK Systems, adequate sidewalks, protected bike lanes, adequate pedestrian safety signage, and school crossing guards.

F. Water Resources

There are small water systems, community water systems, and domestic wells near the project that are mostly or fully groundwater dependent. The EIR must analyze all potential impacts on small water systems, community water systems, and domestic wells, including but not limited to, potential for groundwater overdraft, degraded groundwater quality as a result of groundwater depletion, and groundwater pollution caused by project construction or operations. Adequate mitigation measures must be included in the EIR and must not be delegated to other processes, including but not limited to coordination with the relevant groundwater sustainability agency (GSA) in ensuring full funding for its mitigation programs, and coordination with the State Water Resources Control Board and Regional Water Quality Control Board to ensure full funding for drinking water projects by augmenting the Safe and Affordable Funding for Equity and Resilience (SAFER) program and by ensuring that all discharges comply with water quality regulations.

The EIR must analyze impacts on groundwater levels, surface water supply, and groundwater quality, as well as be transparent regarding the amount of water that will be required. Furthermore, the EIR must outline how the project will meet or exceed all legal standards for groundwater protection, including but not limited to the Reasonable and Beneficial Use Doctrine, the Porter-Cologne Water Quality Control Act, the state and federal Antidegradation Policy, the Nonpoint Source Policy, Clean Water Act, and the Public Trust Doctrine.

The EIR must provide accurate information about the amount of water that will be used, where these resources will come from, and how much groundwater will remain in the aquifer as a result of the actual transition of actively irrigated land to the project. The EIR must also include a holistic analysis of all water resources to be used for the implementation of the project, including but not limited to water used during construction, water needed for project operations, and water used for cleaning and/or cooling of solar panels.

Last, given the critical overdraft in the region and that Cantua Creek and El Porvenir are in the process of transitioning to a small groundwater-dependent community water system, project developers must ensure any groundwater that will be utilized for implementation of the project, does not put the community water systems of Cantua Creek or El Porvernir at risk of being dewatered. Therefore, the EIR must include all groundwater pumping required for the implementation of the project, the location of the groundwater pumping, and the assessment of any potential impacts to Cantua Creek and El Porvenir's community water systems, including both water supply and quality impacts.

G. Hazards and Hazardous Materials

The EIR must include an analysis of any hazardous materials and solid waste generated by the construction and operation of the project, including the movement and disposal of these materials both on and off-site and any threats to human health or the environment from these materials. In particular, the EIR must analyze the potential for fires associated with energy storage and transmission, hazards associated with retiring solar and energy storage components at the end of their useful life, and the above ground storage of fuel for emergency generators. All significant impacts must be mitigated, and a reasonable range of alternatives that reduce or eliminate risks must be evaluated.

H. Greenhouse Gas Emissions

While the construction of solar and energy storage facilities have the potential to reduce greenhouse gas emissions, project construction and operations have the potential to create emissions from additional truck trips and the operation of emergency generators. The EIR must include an analysis of any additional greenhouse gas emissions caused by the construction and operation of the project.

I. Geology and Soils

The EIR must include an analysis of the impacts on the area's geology and soils. 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.³ Additionally, the installation and operation of lithium-ion energy storage facilities could be associated with impacts to soils. The EIR must fully evaluate these risks and evaluate mitigation measures and reasonable alternatives, including the potential to reduce risks by using various types of solar panels and/or energy storage.

J. Fire Hazards

Installation of solar, energy transmission, and energy storage facilities carry the risk of fire hazard. These impacts must be thoroughly studied and analyzed. The analysis in the EIR should include a discussion of how project construction and operation will comply with: the California Fire Code (24 C.C.R. § 9), the California Strategic Fire Plan, Sections 13000 et seq. of the California Health and Services Code, the Fresno County General Plan, Fresno County's Emergency Operation Plans, the Fresno County's Disaster Preparedness Plan, and other pertinent and applicable national, state, and local plans, rules and guidelines. The project should also include appropriate mitigation measures to reduce fire hazard risks. Such measures should include but are not limited to, an evacuation plan, emergency preparedness plan, emergency utility shut-offs, strategic buffer zones, and preventative fuel management. The EIR must also ensure adequate local services such as fire, medical, and police are sufficiently available to serve the project and nearby communities.

³ Li et al., "A review of toxicity assessment procedures of solar photovoltaic modules" (February 15, 2024), <https://www.sciencedirect.com/science/article/pii/S0956053X23007717>.

K. Heat

Heat-related illnesses and death are on the rise throughout the San Joaquin Valley, and will only continue to go up as temperatures increase due to climate change. Large-scale solar farms can pose the risk of creating heat island effects and increasing local temperatures.⁴ This could pose a serious health threat to communities living near the project. As such, the EIR must analyze the risk of causing heat island effects and incorporate mitigation measures to protect residents and the community at large from extreme heat. These measures should include, but not be limited to, a community resilience center, holistic home upgrades to ensure adequate insulation and air conditioning, native vegetation and cover crops, reflective paints and ground cover to reduce the heat island effect, and adequate medical services.

III. Cumulative Impacts

“CEQA requires that an EIR contain an evaluation of the cumulative impacts caused by other past, present and reasonably foreseeable probable future projects including those projects outside the control of the agency.” (*City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 397 *citing inter alia* CEQA Guidelines, §§ 15130 (a); 15355.) “The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence...” (Code Regs., tit. 14, § 15130(b).) As a result, the EIR must evaluate cumulative impacts associated with this project and other reasonably foreseeable projects, including but not limited to the Valley Clean Infrastructure Plan and any and all associated industrial development.⁵

IV. Mitigation

CEQA requires the identification of “feasible mitigation measures.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 402.) “Mitigation” may include “(a) Avoiding the impact altogether by not taking a certain action or parts of an action; (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation; (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment; (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; [and] (e) Compensating for the impact by replacing or providing substitute resources or environments.” (Code Regs., tit. 14, § 15370.) The term “feasible” means “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” (Code Regs., tit. 14, § 15364.)

Additionally, “[f]ormulation of mitigation measures should not be deferred until some future time.” (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92 *quoting* CEQA Guidelines, § 15126.4(a)(1)(B).) An EIR is inadequate if “[t]he success or

⁴ Barron-Gafford *et al.*, “The Photovoltaic Heat Island Effect: Larger solar power plants increase local temperatures” (2016), <https://doi.org/10.1038/srep35070>.

⁵ See Valley Clean Infrastructure Plan, Notice of Preparation (February 5, 2024), <https://ceqanet.opr.ca.gov/2024020124#:~:text=The%20proposed%20Valley%20Clean%20Infras tructure,delivery%20capacity%20of%20up%20to>.

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.” (*Communities for a Better Environment*, 184 Cal.App.4th at 92.)

As such, and as discussed above for each potentially significant impact, the EIR must discuss and commit to feasible mitigation measures to eliminate, or at a minimum reduce, all significant impacts. Specific mitigation measures have been proposed above, and we reserve the right to propose additional mitigation measures as the environmental review process progresses.

V. Alternatives

The DEIR must analyze “a reasonable range of alternatives to the project, or to the location of the project, which could feasibly attain the basic objectives of the project and evaluate the comparative merits of the alternatives.” (*Laurel Heights*, 47 Cal.3d at 400; Guidelines, § 15126(d).) Moreover, “[t]hese alternatives must be discussed, ‘even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.’” (*Id.*)

The EIR thus must discuss a reasonable range of alternatives, including but not limited to modifications to the project footprint to include buffer zones between project components and nearby communities, modifications to project design to reduce or eliminate air quality and heat impacts, and modifications to the solar and storage technologies used to reduce risks to nearby residents in Cantua Creek and El Porvenir.

* * * * *

Thank you for your attention to our comments. Please contact us if you would like to find a time to discuss our letter. Please also include LCJA on any and all listservs for the distribution of additional information about the project.

Sincerely,

Jamie Katz
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Leadership Counsel for Justice and Accountability

Mariana Alvarenga
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Leadership Counsel for Justice and Accountability