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Blythe and Palen Solar Projects 09-AFC-6, and 09-AFC-7

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Genesis Project 09-AFC-8

INTRODUCTION:

On behalf of over 50 clients who are stakeholders by virtue of their property ownership in environmentally sensitive areas, we would like to offer comments the SA/EIS of NextEra Genesis project, and Solar Millennium Blythe and Palen projects. We assume these comments will also to apply to First Solar Desert Sunlight project, however we have not seen their application or EIS. We will discuss Mitigation Security and Selection Criteria for Compensation Lands.

On Monday, May 10, 2010, I will participate in a review of a Market Study prepared for the Coachella Valley Conservation Commission, as part of their Nexus review over the approximately 1.2 million acres protected by the Coachella Valley Multiple Species Habitat Conservation Plan. As you know, a Market Study is not an appraisal but is prepared by an appraisal company, in this case, Capital Realty Analysts, a highly respected firm on our area. The facts presented in the Market Study should offer insights to the C.E.C. on Mitigation Security as outlined in BIO-12, Section 3, and elsewhere. We have done our own analysis as well. The Market Study should confirm two overarching points. 1.) Real Estate Markets are local. We believe the MS will show a wide variety of price ranges across all the various habitat/conservation communities. We believe staff's intention in quoting a per acre price for Chuckwalla Bench was not intended to extend that price estimate over the entire potential mitigation area, which stretches about 100 miles east to west, and 20 miles north to south. 2.) There is a distinct difference between appraised value sales, and open market sales. That difference will affect the success of solar mitigation.

3. Mitigation Security deposit from BIO-12, section 3. pg. C.2-177 .

While this would seem to be a relatively benign discussion, we believe the details merit examination. In referring back to Calculation of Security for Desert Tortoise Compensatory Mitigation from page C.2-74 (389 .pdf), it states in part that: “These costs include acquisition fees of \$500 per acre, a figure that reflects recent land sale in the Chuckwalla Bench.” We believe \$500/acre is an accurate representation of sales in the Chuckwalla Bench area that were based on appraised value. We do not believe that is an accurate representation of value for all the privately owned land in the Colorado Desert Recovery Unit—a very large area. We have identified 22 sales-based-on-appraised-value in the Mecca Hills and Orocopia Wilderness areas since 2007. Of those sales, there were 4 sales at \$500/acre or less totaling 2,070 acres. For the three-year period covered, that is an acquisition average of 690 acres per year. Thus, at \$500/acre it would statistically take 15.94 years to actually conserve the mitigation acreage required in the three SA/EIR reports already issued.

A survey mailed to 49 property owners in the subject area (out of a database of 1,100 parcels) revealed only 2 owners willing to sell at \$500 per acre. Both had experienced financial distress in the recent recession.

We also searched for sales that were not influenced by appraised value, open market sales, and located eleven, which accounted for 254 acres sold. The average price per acre of those sales was \$1,029.

Along with the sales mentioned above, there have been sales in 2008 and 2009 along the power corridor that ranged from \$600 per acre to \$4,200 per acre. There was also a 2010 transaction in Palm Springs for freeway overpass mitigation in a sand dune/transport area at about \$3,500 per acre (for the areas prone to flooding, the average per acre price for all land included in that sale was higher).

An appraiser could make the argument that these were not arms length sales, however, that misses the point. The point being that without eminent domain, the task of find enough willing sellers to accomplish the mitigation goals will be challenging without using appraised value, and if appraised value is the benchmark, it may take the 16 years estimated above—regardless of who the eventual buyer becomes.

The three projects now before CEC require about 11,000 acres of mitigation. The section, Calculation of Security for Desert Tortoise Compensatory Mitigation from page C.2-74, goes on to add (underline added): “It is important to note that these are estimates based on current costs; the requirement is defined in terms of acres, not dollars per acre, and actual costs may vary.” That may be a critical statement. The statistics we outlined seem to show that if the Mitigation Security amount is viewed solely as a deposit, then it may be too low. If it has to be converted for acquisition or become a basis for fees related to acquisition, it appears to be inadequate to achieve the goal of over 11,000 acres conserved and will necessitate use of the “cost overrun” language from C.2-74.

Note: The last line in BIO-12 Section 3. is somewhat unclear as written. It says, “The final amount due will be determined by the PAR analysis conducted pursuant to this condition.” The PAR is only one of the three associated costs, thus the language should include all three components for clarity. We suggest the language used in

BIO-22 2. beginning at, "These amounts may change based on changes in land costs or the estimated cost of enhancement and endowment."

We feel strongly that mitigation land acquisition is necessary to compensate for disturbance. We think that the Market Study undertaken by CVCC will provide a greater degree of certainty in pertinent areas and should be consulted as soon as it is approved and enters the public record.

While we are not qualified to factually discuss restoration or endowment, we do feel that there are certainly areas that would benefit from restoration, however, thousands of desert acres are still pristine. Also, long-term management on this cumulative scale could present opportunities for efficiencies that may lower the \$1,450 per acre amount.

Selection Criteria for Compensation Lands. from BIO-12, Section 1. pg. C.2-177.

a. We think the limitation on Desert Tortoise mitigation land to be purchased within the Colorado Desert Recovery Unit leaves out opportunities to fortify Joshua Tree DWMA and potential linkages at the western most protrusion of NECO that may become critical as climate change warms the area.

c. It should be noted that the Coachella Valley Multiple Species Conservation Plan is in place to protect most of the NECO area land from Berdoo Canyon Road in Joshua Tree, south across the Mecca Hills Wilderness, and east to approximately Red Cloud Road. This area should be highlighted for compensation mitigations due to its protected status. Also worth noting is that as the climate warms, tortoises and other species will tend to migrate upslope, so higher elevation habitat will become important to the future of those species. We think higher elevations deserve inclusion now.

We hope this has been informative and look forward to a response.

Respectfully Submitted,

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