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California Energy Commission

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09-RENEW EO-1

TN 74825

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Re: Comments on the Draft Desert Renewable Energy Conservation Plan Environmental Impact Report/Environmental Impact Statement (SCH No. 2011071092; BLM/CA/PL-2014/025+1793; FWS-R8-ES-2014-N165)

Dear Sir or Madam:

We are writing on behalf of the California Unions for Reliable Energy (“CURE”) to provide comments on the Draft Desert Renewable Energy Conservation Plan (“DRECP”) Environmental Impact Report/Environmental Impact Statement (“DEIR/DEIS”) prepared by various state and federal agencies, including the California Energy Commission (“CEC”) as the lead agency for environmental review under the California Environmental Quality Act (“CEQA”). We limit these comments to deficiencies with the DRECP, deficiencies under the Natural Community Conservation Planning Act (“NCCPA”), and deficiencies under CEQA, and thus refer to the DEIR/DEIS simply as the DEIR.

As explained more fully below, the DRECP is flawed in several ways, and the DEIR does not comply with the requirements of the CEQA. Therefore, the CEC and other agencies cannot approve the DRECP and its DEIR until the deficiencies discussed herein are resolved.

I. INTRODUCTION

The DRECP is a statewide program to facilitate streamlined permitting of renewable energy projects such as solar, wind, and geothermal, and to cover “take”

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of species incidental to those projects. It is a collaborative effort being developed by the CEC, the Fish and Wildlife Service (“FWS”), the Bureau of Land Management (“BLM”), the California Department of Fish and Wildlife (“CDFW”), and other agencies. BLM’s participation is through a Land Use Plan Amendment (“LUPA”), FWS’ participation is through a General Conservation Plan (“GCP”), and CDFW’s participation is through a Natural Community Conservation Plan (“NCCP”). A program-level DEIR/DEIS was prepared for the DRECP under CEQA and National Environmental Policy Act (“NEPA”), given that both state and federal actions are needed to implement the DRECP.¹

The DRECP area covers approximately 22 million acres in the Mojave and Colorado/Sonoran desert regions of Southern California and anticipates the permitting of 20,000 megawatts (“MW”) of power through 2040.² The DRECP identifies areas appropriate for renewable energy development, as well as conservation areas intended to protect 37 species of sensitive plants and wildlife and 31 natural communities. The DRECP provides Conservation and Management Actions (“CMAs”) that describe avoidance and minimization measures for renewable energy projects. The DEIR also provides additional mitigation measures to further minimize impacts.

The DRECP is severely flawed and the DEIR does not comply with CEQA for several reasons. First, the program-level analysis and conclusions are not supported by substantial evidence. The DEIR makes wide-ranging assumptions regarding future individual renewable energy projects and it makes unsupported significance findings in many different resource areas. Second, the DRECP lacks transparency and adequate public participation in its centralized decision-making process, and the DEIR does not provide an adequate description of this process in violation of CEQA. Third, the DRECP does not comply with the requirements of the Natural Community Conservation Planning Act (“NCCPA”), under which the NCCP would be developed. The CEC and other participating agencies must resolve the issues discussed below and recirculate the DRECP and DEIR for further public review.

¹ Desert Renewable Energy Conservation Plan (hereinafter “DRECP”), p. I.0-1 – 2.

² *Id.*, at II.3-203.

II. STATEMENT OF INTEREST

CURE is a coalition of labor unions whose members encourage responsible and sustainable development that protects the environment where the coalition members and their families live, work, and recreate. CURE helps solve California's energy problems by building, maintaining, and operating conventional and renewable energy power plants. However, poorly designed power plants may degrade the environment by reducing ambient air quality, releasing hazardous and toxic substances into soils, groundwater and surface waters, and causing noise and visual intrusion. This in turn jeopardizes future development by causing construction moratoriums and otherwise reducing future employment opportunities for CURE's members.

Additionally, union members live, recreate and work in the the Mojave and Colorado/Sonoran desert regions of Southern California, where the DRECP is proposed and have a direct interest in protecting the air, water, and soil resources on and around the area. Union members also have a direct interest in ensuring a safe workplace for workers during construction and operation of individual renewable energy projects. Finally, CURE members are concerned about projects that risk serious environmental harm without providing countervailing economic benefits. The CEQA process allows for a balanced consideration of a project's socioeconomic and environmental impacts, and it is in this spirit that we offer these comments.

Based on these concerns, CURE has a strong interest in ensuring projects comply with CEQA, as well as other applicable federal, state, and local laws and regulations. While CURE recognizes the benefits of efficient power generation processes, it is also cognizant of the health and safety and environmental risks associated with intensive industrial processes, such as those involved in the activities anticipated under the DRECP.

III. THE PROGRAM-LEVEL ANALYSIS FOR PROJECT-LEVEL IMPACTS IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

The DEIR provides a program-level analysis for the DRECP with the intention that future analysis for specific projects would "tier" from the DEIR. Tiering is the process of using the analysis of general matters in broader CEQA or NEPA analyses in the development of a subsequent, narrower CEQA or NEPA

document.³ Under CEQA, the purpose of a program EIR is to allow a lead agency to “consider broad policy alternatives and program-wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts.”⁴ The subsequent analysis then incorporates the program-level environmental analysis by reference from the broader CEQA document and concentrates solely on the site-specific issues identified for the subsequent project that have not been analyzed in the program-level CEQA document.⁵

Project-specific impacts that are speculative at the time of the program EIR should be deferred to future project-level environmental review. The California Supreme Court has found that “[t]iering is properly used to defer analysis of environmental impacts and mitigation measures to later phases when the impacts or mitigation measures are not determined by the first-tier approval decision but are specific to the later phases.”⁶

The DEIR’s program-level review for the DRECP’s impacts is flawed because it relies on nonexistent project-level information. Thus, the DEIR’s significance findings regarding those impacts are not supported by substantial evidence, as discussed below.

A. DRECP Program-Level Review

An EIR must be supported by substantial evidence. Substantial evidence is “relevant information and reasonable inferences” such that “a fair argument can be made to support a conclusion.”⁷ Substantial evidence is not “argument, speculation, unsubstantiated opinion or narrative, or evidence which is clearly erroneous or inaccurate.”⁸

The initial purpose of the DRECP was to provide guidance for renewable energy project siting while avoiding environmentally sensitive areas in the

³ See CEQA Guidelines, §15152.

⁴ 14 CCR 15168(b)(4).

⁵ See 40 CFR 1508.28; 43 CFR 46.140; Cal. Pub. Res. Code §21093–21094; 14 CCR 15152 and 15169.

⁶ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431.

⁷ CEQA Guidelines, §15384.

⁸ *Id.* ((a) Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence).

California desert. The DRECP has now expanded to cover a vast array of non-biological impacts from renewable energy projects. The DEIR purports to analyze these impacts, making assumptions throughout the document based on impacts from other renewable energy facilities around the state.

However, as the DRECP acknowledges, “impacts related to renewable energy projects would vary depending on technology use, the specific location and timing of the project, degree of disturbance, and the size and complexity of constructed facilities and land alterations.”⁹ Yet, the DRECP purports to make significance findings based on projected or anticipated impacts of individual projects. The DEIR’s analysis and significance findings for future individual renewable energy project impacts are unsupported by substantial evidence.

As with most program-level environmental analyses, details of the subsequent individual renewable energy projects in the DRECP area are unknown and speculative at this time. Furthermore, the DRECP cannot know, nor can it now acquire, the information necessary to fully analyze potentially significant impacts associated with individual projects. Although the DRECP does state that future environmental review will be conducted,¹⁰ it does not specify the level of environmental review that will be required, and thus leaves the door open for incomplete or inadequate assessment of individual projects under its streamlined program. Given the vast amount of potential impacts from renewable energy projects in the California desert, it is clear that the “*may affect*” threshold under CEQA, which triggers the EIR process,¹¹ would be met with renewable energy projects that will be sited in the DRECP area. For that reason, all future individual renewable energy projects being proposed in the DRECP area must be analyzed for potentially significant impacts *in an EIR* wherever the project-level details were unknown or too speculative at the program level.¹²

B. DRECP Significance Findings

The DRECP cannot determine the extent of an impact, nor whether mitigation measures would be effective at reducing significant impacts, when the location, design, and size of subsequent individual renewable energy projects

⁹ DRECP, p. IV.22-4.

¹⁰ DRECP, p. II.3-225; IV.2-1.

¹¹ Cal. Pub. Res. Code §§21080(d), 21082.2(d); CEQA Guidelines §§ 15002(k)(3), 15064(f)(1) and (h)(1).

¹² CEQA Guidelines, §15168(c)(1).

remains entirely unknown at the program level. Assumed similarity between potential future projects and current renewable energy projects does not constitute substantial evidence upon which to make these findings.¹³ The findings made in the DEIR for the Preferred Alternative that are unsupported by substantial evidence include the following.

1. *Agriculture*

The DEIR concludes that AG-1, the potential conversion of Important Farmland to nonagricultural use, would be significant and unavoidable. The DEIR also concludes that AG-2, impacts to adjacent agricultural operations, would be less than significant with mitigation.¹⁴ These findings are unsupported because the locations of all Important Farmland and other agricultural uses in relation to project sites are unknown and cannot be known until projects are actually sited. The DRECP itself recognizes that “site-specific analysis and local permitting processes would determine when Important Farmland would be affected.”¹⁵ Thus, the significance findings are unsupported.

2. *Air Quality*

The DEIR concludes that overall impacts to air quality due to construction and operation of the individual projects, AQ-1 – AQ-5, would be less than significant with mitigation under the Preferred Alternative.¹⁶ The DRECP calculates anticipated construction emissions based on typical renewable energy projects, as reflected by MW power. For example, the DRECP anticipates 0.29 tons of NO_x per MW of capacity; 0.07 tons of VOC per MW; 0.20 tons of PM₁₀ per MW; and 0.04 tons of PM_{2.5} per MW.¹⁷ The DRECP also concluded that even under the No-Project Alternative, air quality impacts for renewable energy projects would be less than significant with typical mitigation measures.¹⁸

However, renewable energy projects in California have been found through project-level CEQA review to have significant and unavoidable air quality impacts using similar mitigation measures. For instance, the EIR for the California Flats

¹³ CEQA Guidelines, §15384.

¹⁴ DRECP, p. IV.12-21.

¹⁵ *Id.*, at IV.12-1.

¹⁶ *Id.*, at IV.2-30 – 31.

¹⁷ *Id.*, at IV.2-5.

¹⁸ *Id.*, at IV.2-18 – 19.

Solar Project, a 280-megawatt photovoltaic solar facility, concluded that “construction of the proposed project would result in the temporary generation of air pollutants, which would affect local air quality. Short-term emissions of NOX and PM10 during the construction period would exceed [Monterey Bay Unified Air Pollution Control District] thresholds.”¹⁹ This is in direct conflict with the DRECP’s assumption that air quality impacts from all renewable energy projects would be mitigated to less than significant levels.

The DEIR admits that both “construction and operation activities would increase the amounts of particulate matter and precursors to PM10 and PM2.5, pollutants for which many air basins are in nonattainment,”²⁰ but purports to know the emissions levels of each project such that it can make a determination on the overall impact after the incorporation of mitigation measures. This is simply too speculative to withstand legal scrutiny, and could lead to the underestimation of air quality impacts in future CEQA review.

3. *Meteorology and Climate Change*

The DEIR correctly states that the “[p]roject- or location-specific factors that vary considerably from site to site cannot feasibly be analyzed in a programmatic document on this scale.” It further states that the “impact analysis considers broad activities, not site-specific issues associated with particular projects.”²¹ However, the DEIR concludes that the generation of greenhouse gas “GHG” emissions (MC-1), and conflicts with an applicable plan, policy, or regulation intended to address climate change (MC-2), would both be less than significant. The DEIR’s conclusion is unsupported.

GHG emissions from construction can vary greatly depending on the level and type of activity occurring at an individual project’s site. GHG emissions can also vary due to the different kinds of equipment being operated. Although the DEIR assures that it does not conduct site-specific analysis, it still make significance findings which are based on anticipated number of megawatt-hours “likely to be produced” by 2040 and the loss of carbon uptake from anticipated vegetation

¹⁹ EIR, California Flats Solar Project (2014), p. 4.3-1, *available at* http://www.co.monterey.ca.us/planning/major/California%20Flats%20Solar/California_Flats_Solar.htm.

²⁰ DRECP, p. IV.2-4.

²¹ *Id.*, at IV.3-1.

removed as a result of ground disturbance.²² The DEIR's conclusion is speculative and is not supported by substantial evidence.

4. *Geology and Soils*

The DEIR finds that DRECP components would expose people or structures to injury or damage from seismic, volcanic, or landslide activity (SG-1); soil or sand erosion would be triggered or accelerated due to plan components (SG-2); DRECP components would expose people or structures to injury or damage from corrosive or expansive soils (SG-3); and DRECP components would destroy or disturb desert pavement (SG-4).²³ However, the DEIR concludes that all impacts would be less than significant with mitigation. The DEIR's conclusion is speculative and not based on substantial evidence.

Geological and soil conditions for project sites are not known and cannot be known until site-specific analysis is conducted for each site. The DEIR admits that “[t]he specific impacts of renewable energy facility development would depend on a variety of factors, including project location within [Development Focus Areas (“DFAs”)], technology and scale employed, size of the development, and site-specific soil conditions.”²⁴ The DEIR further states that “[d]ue to the uncertainty of specific location of development within DFAs, impact analysis is based on the total acreage of land that could be affected within DFAs.”²⁵ However, the overall impact analysis is necessarily based on anticipated conditions on individual project sites. The specific conditions of each site, such as erosion potential, are needed to assess the impacts. However, individual project information is unknown at this time; thus, the DEIR's findings regarding geology and soil impacts are unsupported.

5. *Flood Hazard, Hydrology, and Drainage*

The DEIR concludes that all impacts related to flood hazards, hydrology, and drainage (Impacts FH-1 – FH-3) can be mitigated to less than significant levels with CMAs, mitigation measures, and existing regulations. However, the DEIR cannot make assumptions regarding the increase of flooding, alteration of surface water features, or the potential for release of contaminants into water bodies

²² *Id.*

²³ *Id.*, at IV.4-35.

²⁴ *Id.*, at IV.4-1.

²⁵ *Id.*

without knowing specific project site information. The DEIR states that a “more detailed quantification of potential effects would be required at a project-specific level of environmental assessment” for impacts to surface water. The DEIR also states that because the “data is not available,” the quantification method used in the DEIR “can potentially underestimate the effects.”²⁶ Therefore, the DEIR’s finding that impacts related to flood hazards, hydrology and drainage are less than significant are based on incomplete data and weak assumptions, and not supported by substantial evidence.

6. *Groundwater, Water Supply, and Water Quality*

The DEIR concludes that most impacts related to groundwater, water supply and water quality can be mitigated to less than significant levels.²⁷ Geothermal water use impacts would remain significant under the DRECP because of “current limitations to the use of dry cooling.”²⁸ The DEIR states that the analysis “uses estimated water use as the primary indicator of potential impacts on groundwater, water supply, and water quality but recognizes that in some locations any increased water use, regardless of technology type, can affect the resource.”²⁹ Furthermore, the DEIR states that “[g]roundwater impacts generally occur at the scale of a groundwater basin rather than at the scale of a DRECP ecoregion subarea or DFA” and that “[s]ome impacts occur at a scale even smaller than a groundwater basin.”³⁰

The DEIR admits that “[q]uantifying these impacts requires site- and project-specific details,” but then it assumes water requirements based on other renewable energy projects. For example, water use for cleaning solar photovoltaic facilities is anticipated to be 0.05 acre feet per year (“AFY”) per MW.³¹ Without site-specific studies of groundwater and water supply conditions, however, these assumptions cannot be compared to the existing conditions in order to constitute substantial evidence to support the DEIR’s findings.

²⁶ *Id.*, at IV.5-3.

²⁷ *Id.*, at IV.6-43.

²⁸ *Id.*, at IV.6-44.

²⁹ *Id.*, at IV.6-1.

³⁰ *Id.*

³¹ *Id.*, at IV.6-3.

7. *Biological Resources*

The DEIR concludes that all biological impacts (Impacts BR-1 – BR-9) can be mitigated to less than significant levels with the incorporation of CMAs and mitigation measures.³² These impacts include the loss of native vegetation; adverse effects to jurisdictional waters and wetlands; degradation of vegetation; loss of sensitive plants, wildlife, and nesting birds; adverse impacts to habitat linkages and wildlife movement corridors, the movement of fish, and native wildlife nursery sites; habitat fragmentation and isolation of sensitive species; increased predation of listed and sensitive wildlife species; and avian and bat injury and mortality from collisions, thermal flux or electrocution at generation and transmission facilities.

These impacts must be reviewed on a project-level basis before the DEIR can make any significance findings for all future renewable energy development projects. For instance, in order for the DEIR to accurately analyze loss of sensitive plants and wildlife for future projects under the DRECP, surveys would need to be conducted for specific project sites. This has not been done. As with other impacts, the DEIR merely assumes certain impacts exist based on similar renewable energy projects by using a “proportional impact analysis approach.”³³ This approach includes “calculating the proportion of the DFAs in each ecoregion subunit expected to be developed” and then “multiplying each subunit-specific impact proportion across the biological resources within the DFAs in that ecoregion subunit.”³⁴ The DEIR’s conjecture based on the “expectation” of development is speculative and does not constitute substantial evidence.

8. *Cultural and Paleontological Resources*

Adverse impacts to historic period built-environment resources, CR-1, were found to be less than significant with mitigation in the DEIR. However, the remaining impacts to cultural resources, CR-2 – CR-4, were found to be significant and unavoidable.³⁵ These include impacts to prehistoric and historic period archaeological resources; disturbance to human remains or cultural items, including funerary objects, sacred objects, and objects of cultural patrimony; and impacts to

³² *Id.*, at IV.7-463.

³³ *Id.*, at IV.7-4.

³⁴ *Id.*

³⁵ *Id.*, at IV.8-51.

cultural landscapes. In addition, all impacts to paleontological resources were found to be less than significant with mitigation (PR-1 – PR-3).

Cultural resources include “sites and deposits, structures, artifacts, rock art, trails, and other traces of Native American human behavior”³⁶ and paleontological resources include “fossilized remains, traces, or imprints of organisms.”³⁷ These items can only be thoroughly identified through site-specific assessment. The DEIR claims that the analysis is based on known resources in the DRECP area.³⁸ But given the difficulty of identifying resources in 22 million acres, the DEIR clarifies that it “*estimates* of the number of resources that may be present in the [DRECP] Area.”³⁹ Furthermore, regarding cultural resources, the DEIR states that “large portions of the California Desert region remain unsurveyed” and “identification, evaluation, and treatment of cultural resources would need to be conducted on a project-specific level to ensure proper compliance with cultural resources regulations.”⁴⁰ Regarding paleontological resources, the DEIR states that “[i]ndividual future renewable energy projects seeking approval from land management agencies would be required to evaluate paleontological resources at a project-level of detail and would need to use the most detailed geologic and paleontological data available as part of project-level assessments.”⁴¹

This analysis is not detailed enough to make a significance finding when further cultural or paleontological resources could be identified during project-level analysis. The DEIR attempts to justify its approach by stating that “large-scale, landscape-focused analyses for cultural resources have been supported by recent federal and state policies.”⁴² However, the Department of the Interior’s support for “advanced landscape-level planning that identifies areas suitable for development because of relatively low natural or cultural resource conflicts”⁴³ does not necessarily include making specific significance determinations under CEQA regarding project-level impacts on cultural and paleontological resources. The

³⁶ *Id.*, at III.8-1.

³⁷ *Id.*, at III.10-1.

³⁸ *Id.*, at III.8-68; III.10-2.

³⁹ *Id.*, at III.8-68 (*emphasis added*).

⁴⁰ *Id.*, at III.8-69.

⁴¹ *Id.*, at III.10-2.

⁴² *Id.*, at IV.8-1.

⁴³ Department of the Interior, Order No. 3330, *Improving Mitigation Policies and Practices of the Department of the Interior* (2013), available at <http://www.doi.gov/news/upload/secretarial-order-mitigation.pdf>.

extensive background information on the regulatory scheme and historical context for cultural and paleontological resources, as well as the general identification of suitable development lands, is no doubt beneficial for tiering project-level analysis for future projects. However, the DEIR should not purport to make significance findings that may underestimate resources, potentially thwarting adequate project-level review in the future, without site-specific information.

9. *Land Use and Policies*

The DEIR found that any conflicts between the DRECP and existing and planned land uses and related plans and policies (LU-1) would be mitigated to less than significant levels. However, the DEIR acknowledges that “there are many variables (e.g. location, site resources or topography, type of project, jurisdiction, etc.) and a high potential for land use changes that may cause a land use conflict.”⁴⁴ In fact, much of the DRECP depends on local jurisdictions amending their land use plans in order to be consistent with the DRECP. Since specific locations of individual projects are unknown at this time, any potentially significant impacts associated with land use inconsistencies must be evaluated at a project level. Thus, the DEIR’s finding that any conflicts between the DRECP and existing and planned land uses and related plans and policies (LU-1) would be mitigated to less than significant levels is unsupported by substantial evidence.

10. *Mineral Resources*

The DEIR concludes that impacts from the potential access restrictions from renewable energy and transmission development (MR-1) would generally be less than significant with mitigation.⁴⁵ However, the DEIR also found that “Future Assessment Areas may result in impacts to mineral resources, particularly high potential mineral areas, high priority mineral areas, rare earth element areas (specifically Molycorp Mountain Pass rare earth mine), and leasable mineral areas.”⁴⁶ Therefore, impacts created by the reserve design and conservation components would remain significant and unmitigable “because they would restrict access to large areas of mineral resources.”⁴⁷

⁴⁴ DRECP, p. IV.11-24.

⁴⁵ *Id.*, at IV.15-36.

⁴⁶ *Id.*

⁴⁷ *Id.*

The DEIR's analysis is based on "potential effects"⁴⁸ of renewable energy projects and it acknowledges that "[b]ecause project sites are yet to be determined, it is possible that impacts to mineral resources may be avoided altogether within the DFAs."⁴⁹ Or alternatively, the impacts could be greater than anticipated because mineral resources may not be avoided to the extent expected under the DEIR. Thus, the DEIR could be significantly underestimating or overestimating impacts to mining resources. Until site-specific information such as location and size is known, the DEIR cannot make a significance finding that is supported by substantial evidence.

11. *Livestock Grazing*

Impacts related to the loss of livestock grazing acres, LG-1, and impacts to adjacent grazing lands, LG-2, were determined to be less than significant with mitigation.⁵⁰ As with agricultural impacts and land use conflicts, locations of specific projects are not known at this time, and thus impacts to certain land uses cannot be determined. The DEIR states that the livestock grazing analysis is "primarily for typical impacts and does not evaluate the site-specific impacts of specific projects."⁵¹ Therefore, the significance finding made in the DEIR is not supported by substantial evidence, but only speculative assumptions.

12. *Outdoor Recreation*

The DEIR concludes that the DRECP would have a less than significant impact on recreation with the development of Special Recreation Management Areas ("SRMA") and Extensive Recreation Management Areas ("ERMA") (OR-1). However, the DRECP states that "[b]ecause it is impossible to predict where renewable energy development projects may occur within the DFAs, it is possible that lands managed for recreation would be avoided."⁵² The opposite could also be true; renewable energy projects could encroach on recreational areas more than anticipated in the DEIR. Furthermore, the DEIR states that the "high visibility of these projects would conflict with recreationists' expectations of pristine and expansive desert vistas, creating a significant and unmitigable impact."⁵³ The DEIR

⁴⁸ *Id.*, at IV.15-1.

⁴⁹ *Id.*, at IV.15-2.

⁵⁰ *Id.*, at IV.16-27.

⁵¹ *Id.*, at IV.16-1.

⁵² *Id.*, at IV.18-1.

⁵³ *Id.*, at IV.18-37.

otherwise finds that remaining impacts would be less than significant with mitigation or beneficial in the case of enhancing management of recreational focus areas (OR-2 and OR-3).

For impacts that are directly related to where a project is sited, the DEIR cannot know the true impacts until project-level analysis is completed. Furthermore, the DEIR states that the success of mitigation is dependant upon “site- and project-specific conditions,” thus undermining any final significance finding until the conditions are known.

13. Transportation and Public Access

Impacts related to traffic were found to be less than significant with mitigation. These impacts include modification of local circulation patterns or degrading the performance of the local road network (TR-1); altering the availability or accessibility of BLM routes of travel (TR-2); substantial traffic volumes on highway segments designated as part of a Congestion Management Plan (TR-3); and increasing hazards and the risk for a traffic incident or inhibiting emergency response (TR-4).

Traffic and public access issues are extremely site-specific, and there are examples of large renewable energy facilities that have resulted in significant and unavoidable traffic impacts.⁵⁴ The DEIR acknowledges that “[p]otential impacts of project development depend on several factors: project location; project size; the delivery of equipment, materials, and supplies; and the daily commute for workers,”⁵⁵ none of which are known or could be known at this time. The DEIR further states that “[p]roject-specific changes will undergo CEQA and NEPA documentation and consistency review with comprehensive transportation and travel management or resource management plans.” However, impacts related to traffic could change substantially from what is assumed in the DEIR depending on the location and size of individual projects and areas in which they are sited. Program-level analysis does not work here, and the DEIR’s conclusions with respect to traffic and public access are speculative and unsupported by substantial evidence at this time.

⁵⁴ EIR, California Flats Solar Project (2014), p. 4.3-1, *available at* http://www.co.monterey.ca.us/planning/major/California%20Flats%20Solar/California_Flats_Solar.htm.

⁵⁵ DRECP, p. IV.19-1.
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14. *Visual Resources*

According to the DEIR, visibility of activities, materials, equipment, dust, and construction night lighting would result in short-term diminished scenic quality (VR-1). The DEIR is unclear, but it appears that it determines the impacts to be less than significant with mitigation. Impact VR-2, long-term visual contrast with surrounding undeveloped land and long-term diminished scenic quality, was found to be significant and unavoidable.

Visual resources are another important example of where site-specific analysis is absolutely necessary in order for the DEIR to make a significance finding. As the DEIR acknowledges, visual impacts vary “in intensity, frequency, and duration” and also “based on the technology used.”⁵⁶ It is impossible to measure the impacts of future projects in the DRECP area without knowing the specific project information. Therefore, the DEIR’s finding that impacts are both less than significant with mitigation and significant and unavoidable are unsupported.

15. *Noise and Vibration*

The DEIR concludes that all impacts associated with noise and vibration would be reduced to less than significant levels with mitigation (NV-1 – NV-3).⁵⁷ The impacts were analyzed “based on the area of potential development and the summary of common noise impacts associated with all renewable energy developments as well as potential technology-specific impacts.”⁵⁸ Furthermore the DEIR states that “[i]mpacts related to renewable energy projects and associated facilities would vary depending on the technology proposed, specific location of the project site, the time and degree of disturbance resulting from development, and the size and complexity of the facilities.”⁵⁹ Because the location of individual projects, and thus the location of sensitive receptors, are unknown, the assumption that speculative impacts will affect an unknown number of receptors does not constitute substantial evidence to support the DEIR’s finding that impacts associated with noise and vibration would be reduced to less than significant levels with mitigation.

⁵⁶ *Id.*, at IV.20-4.

⁵⁷ *Id.*, at IV.21-31.

⁵⁸ *Id.*, at IV.21-1.

⁵⁹ *Id.*

16. *Public Safety and Services*

Impacts related to hazardous materials or conditions that could result in a hazard to the public or environment (PS-1) were found to be less than significant with mitigation and compliance with applicable laws. The DEIR states that project development may encounter existing site contamination, thus forming the basis of its significance finding, but a Phase I Environmental Site Assessment is needed to adequately determine the presence of hazards on project sites. Anything other than actual knowledge of project site conditions is mere speculation.

The remaining impacts related to public safety and services were also found to be less than significant with mitigation and compliance with applicable laws (PS-2 – PS-5). However, specific information, such as the location and size of individual projects, is necessary to make a significance finding that is supported by substantial evidence. Unless the DEIR can rely on project-specific information, its finding that impacts are less than significant is unsupported and violates CEQA.

17. *Socioeconomics and Environmental Justice*

Impacts such as inducing substantial population growth in an area, displacing substantial numbers of existing housing or persons, and impacts disproportionately borne by minority or low-income populations were all found to be less than significant with mitigation in the DEIR. The DEIR assumes that “any necessary land acquisitions [for removing housing] would be completed prior to an application for development, with both parties agreeing to such purchases. Furthermore, it is assumed developers and utilities would seek sites that require minimal residential purchases and relocations for development.”⁶⁰ However, this assumption still cannot assess the number of people displaced because the location and size of individual projects is unknown. Furthermore, the DEIR risks underestimating impacts on communities that already bear a disproportionate amount of impacts, because projects may be sited closer to those communities than anticipated. The DEIR cannot make significance findings that could undermine future environmental review for Projects seeking streamlined take permits under the DRECP.

⁶⁰ *Id.*, at IV.23-26.
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The above-mentioned impacts are the kind that the California Supreme Court found would need to be deferred to later project-specific analysis.⁶¹ In order for the DEIR to make significance determinations for these resource areas, it must contain substantial evidence, which in turn must include site-specific assessments. In sum, the analysis and conclusions for resource area impacts that are based on speculative assumptions about future project-specific impacts do not provide substantial evidence to support the findings in the DEIR. Therefore, the program DEIR fails to meet the requirements of CEQA.

IV. THE DRECP PERMITTING PROCESS LACKS TRANSPARENCY AND THE PROJECT DESCRIPTION IS INADEQUATE UNDER CEQA

The DRECP presents a plan for streamlining environmental review for individual renewable energy projects. However, there are many areas where the information provided for streamlined permitting and the decision-making process is severely lacking in detail and is too vague. First, the role of local governments is not adequately defined and there are no clear limitations on a local government's use of the DRECP. Second, the central Coordination Group created through the DRECP has many important responsibilities and expansive decision-making power, but there is very little information in the DRECP regarding transparency mechanisms and opportunities for public review of the Coordination Group's decisions. Third, the modification and amendment process for the DRECP are vague and require further clarification. Fourth, public participation in areas such as streamlined permitting, various Coordination Group decisions, and FWS take permits should be clarified and expanded to allow more transparency and public input, particularly where previously existing opportunities are being limited by the new DRECP process.

These deficiencies result in the DEIR's failure to meet CEQA's project description requirements because it fails to include a clear and complete project description, which is necessary to perform an evaluation of a project's potential impacts.⁶² The courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document]."⁶³ "Only through an accurate view of the project may affected outsiders

⁶¹ *Vineyard Area Citizens*, 40 Cal.4th at 431.

⁶² *See, e.g., Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.

⁶³ *County of Inyo v. County of Los Angeles* (1977) 71 Cal.App.3d 185, 193.
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and public decision makers balance the proposal's benefit against its environmental costs.”⁶⁴ Therefore, not only is the DRECP itself deficient in information on streamlined permitting and the decision-making process, but the DEIR for the DRECP also fails as an informational document under CEQA.

A. Role of Local Governments

For renewable energy projects within the land use jurisdiction of a local government, the local government would retain its discretionary authority under the DRECP. As is typical for projects now, local governments will usually be the CEQA lead agencies for individual projects and will usually have the ultimate authority to approve or disapprove them. Alternatively, after the DRECP is approved, a local government could also elect to prepare its own NCCP. The local government could prepare a plan that covers not just renewable energy projects, but also other private development and public infrastructure projects.⁶⁵ In addition, local governments could choose to use the DRECP for other purposes, such as “developing land use plans or policies, developing local requirements for renewable energy projects, identifying conservation priorities, identifying sensitive habitat areas, or identifying appropriate mitigation areas for the impacts of locally approved projects.”⁶⁶

However, the DRECP's approach with local governments is flawed in several ways. First, without county sign-on to the DRECP, regular environmental review and permitting would apply to projects and applicants would not be eligible for the DRECP's streamlined procedures, likely reducing the amount of applicant interest in that county. The DRECP does not provide requirements for legally binding land acquisition goals, nor does it provide detailed consequences of the failure to acquire private lands. This is imperative particularly because of the lack of current sign-on to the DRECP. Several counties have expressed concerns over elements of the DRECP, or have not participated in any meaningful way.⁶⁷ Without county participation, development under the DRECP may be limited to public lands, thus

⁶⁴ *Id.*, at 192-193.

⁶⁵ DRECP, p. II.3-223 – 224.

⁶⁶ *Id.*, at II.3-224 – 225.

⁶⁷ DRECP Website, Local Government Documents and Comments, <http://drepcp.org/documents/public.html>; DRECP Meeting Transcript, Oct. 20, 2014, p. 44, Comment By Imperial County Representative Andy Horne, http://drepcp.org/meetings/2014-10-20_meeting/DRECP_2014-10-20_El_Centro_transcript.pdf.

reducing opportunities for renewable energy development on disturbed and degraded private lands.

Second, the DRECP does not fully explain the limitations on local governments should they choose to prepare their own plan or otherwise use the DRECP in an alternative way. The DRECP is vague on the degree to which local governments could use the DRECP for development in their jurisdictions. Given that the significance findings in the DEIR are severely flawed as explained above, this option for local governments could undermine adequate environmental review if local governments rely on admittedly unjustified assumptions regarding existing environmental conditions, impacts from individual renewable energy projects, and feasible mitigation measures and alternatives to reduce significant impacts. Furthermore, the DRECP does not clearly set limitations on a local government's ability to rely on renewable energy project mitigation for non-renewable development.

In sum, the heavy reliance on county sign-on, without further measures to ensure sign-on, could limit the DRECP's goals. Both conservation and development on private land could be secured through legally-binding commitments from specific counties. Furthermore, the DRECP is too vague regarding its obvious limitations for use by local governments in making findings on whether a Project complies with the requirements of CEQA. The DEIR must provide a more detailed analysis of the kinds of uses anticipated under the DRECP in local government jurisdictions in order to comply with CEQA's requirements to provide a sufficiently adequate project description.

B. Coordination Group

The Coordination Group includes members from participating agencies and is responsible for day-to-day implementation of the DRECP and for coordination among participating entities. The Coordination Group has many important responsibilities and will implement various aspects of the DRECP including:

Mitigation land acquisition; Implementation of non-acquisition mitigation measures; DRECP Conservation Area monitoring, management, and habitat restoration; adaptive management; Data management and access; and Finances, including receipt and management of mitigation fee revenues and endowments. Permittees

under the GCP will participate in the Plan-wide programs by providing funding, through payment of the mitigation fee, to support those programs.⁶⁸

The Coordination Group also implements a streamlined option for future project applicants. The DRECP provides for an integrated project proposal review process for all development on BLM lands under the LUPA and NCCP, and on nonfederal lands under the NCCP and GCP.⁶⁹ An applicant can choose to have a proposal pre-reviewed by the Coordination Group for consistency with the DRECP before officially submitting it. A proposal that has completed the Coordination Group review process, and received initial positive assessment regarding consistency with the DRECP, would be eligible for a fast-track review from agencies. This process is fraught with problems related to public disclosure and government accountability.

One example of Coordination Group oversight is that the Coordination Group will monitor the DRECP's Conservation Area, which will include permittee-funded mitigation lands and implementation of appropriate non-acquisition mitigation measures. Each permittee must prepare and submit an annual monitoring report to the FWS, which would then provide a copy to the Coordination Group, which would then post the reports to the DRECP's website. Another specific example of the Coordination Group's powers found in the DRECP states that "[e]xemption or modification of desert tortoise exclusion fencing requirements may be obtained from the DRECP Coordination Group on a case-by-case basis. The DRECP Coordination Group may require substitute measures, such as on-site biological monitors in the place of the fencing requirement."⁷⁰

Aside from the DRECP's assurance that the Coordination Group will post reports to the website, there appears to be no enforceable transparency mechanisms allowing the public to review and comment on the decisions made by the Coordination Group. The Coordination Group is an integral part of the DRECP. Although agencies have responsibility over projects in their jurisdiction, the Coordination Group acts as an overseeing entity with many responsibilities and ultimately gives the green light for projects to move forward.⁷¹ Furthermore, the

⁶⁸ DRECP, Appendix M, p. 17.

⁶⁹ DRECP, p. II.3-225.

⁷⁰ *Id.*, p. II.3-64.

⁷¹ *Id.*, at II.3-213 – 214.

Coordination Group's abilities to change or modify mitigation measures, such as desert tortoise fencing, could lead to conflicts with CEQA if there is no public review and comment of such activities.

Therefore, transparency and the availability of public review of the Coordination Group's activities are extremely important and required. The DRECP must explain in further detail the process by which the Coordination Group would be subject to public review and comment and, hence, accountability for its decisions.

C. Modifications and Amendments

The DRECP contains several attributes that result in the DRECP's failure to achieve short and long term integrity, some of which are explained above. One potential problem area is modification or amendment of the DRECP. Under the DRECP, the Coordination Group can propose modifications or amendments to the DRECP.⁷² The DRECP also allows for proposals from agencies to modify or amend the LUPA, GCP, and NCCP, which would then be reviewed by the Coordination Group and the Executive Policy Group.⁷³ Modifications under the DRECP are considered to be "administrative changes or negligible, technical details that do not differ significantly" from the DRECP, including changes to renewable energy activities or changes to incidental take permit ("ITP") permit conditions.⁷⁴ Modifications would not require additional environmental review or other analysis under applicable laws and regulations.⁷⁵

Amendments, on the other hand, are considered to be substantive proposed changes to the DRECP or permits issued thereunder. Not only can agencies propose changes, but permittees can also propose changes to permit terms and conditions.⁷⁶ The DRECP provides that an amendment would require a formal review and approval process, including public review, NEPA and CEQA compliance, endangered species consultation, and revised CDFW NCCP findings, as appropriate.⁷⁷ Ultimate decisions over amendments to the DRECP are supposed to be made by the agency with decision making power.

⁷² DRECP, Appendix M, p. 23 – 24.

⁷³ DRECP, p. II.3-247.

⁷⁴ DRECP, Appendix M, p. 24.

⁷⁵ *Id.*

⁷⁶ *Id.*, at 23 – 25.

⁷⁷ *Id.*, at 25.

However, the DEIR does not clearly explain the decision-making process regarding modifications and amendments, and whether there are opportunities for public participation for modifications, or review of decisions as to whether a change is a modification or an amendment. The DRECP states that the Coordination Group will review, and in some cases may propose, modifications or amendments to the DRECP.⁷⁸ Other DRECP working groups, agencies, or local governments may also propose changes.

On the one hand, the DRECP states that “[t]he Coordination Group may make minor modifications to the DRECP” and where other entities propose a modification, “the Coordination Group will review the proposal and *decide* what action, if any, should be taken based on the proposal.”⁷⁹ On the other hand, the DRECP states that “the final decision about whether a proposed change is an amendment or a modification, will be made by the agency or agencies with authority to make that decision under applicable laws and regulations.”⁸⁰ The DRECP should clarify the Coordination Group’s precise role in deciding on proposals for modifications and whether the Coordination Group or the responsible agency makes the determination of whether a change is a modification or amendment. Then, the DEIR’s project description and analysis must be revised accordingly.

In addition, the DRECP enables the Coordination Group to review whether potential changes should be processed as a modification, rather than an amendment. However, the DRECP must be precise as to the distinction. The fact that the Coordination Group appears to have extensive decision making power in this regard speaks to the need for transparency and public review and comment opportunities.

D. Public Participation

1. Streamlined Permitting

The DRECP explains that projects initially assessed as consistent with the DRECP during the application process could be eligible for permit streamlining, but would be required to comply with DRECP avoidance, minimization, and mitigation

⁷⁸DRECP, p. II.3-220.

⁷⁹ *Id.*, at II.3-221 (*emphasis added*).

⁸⁰ *Id.*, at II.3-222.

requirements. The DRECP assures that its process does not completely supplant statutory requirements.⁸¹ However, the streamlined permitting process does appear to circumvent certain aspects of current state and federal permitting and environmental review processes to the detriment of the public.

Based on the DRECP's project planning guidelines and requirements for a project site, an initial proposal for a project must report the status and results of all project-level studies required for the site, including biological studies, so its consistency with the DRECP can be analyzed by the Coordination Group.⁸² However, the DRECP anticipates that not all project-level studies may be *complete* at the proposal stage.⁸³ The example given in the DRECP is for projects on BLM lands, stating "applicants may not be provided with access to lands for project-level studies until a formal application process with BLM is underway."⁸⁴ Under the DRECP, the purpose of including information on project-level studies at the proposal stage is to provide opportunity for review of studies and to ensure a common understanding of project-level study requirements and details, not to mention impacts and available mitigation. However, the DRECP admits that not all project-level studies may be available at the proposal stage.

The DRECP assumes the Coordination Group would assess whether a proposal is consistent with the DRECP *before environmental review occurs*. The purposes of this pre-CEQA review is to determine whether a project qualifies for streamlined permitting. Although the DRECP does account for the possibility of projects needing two-year reviews and thus exceeding the one year target,⁸⁵ it is unclear how the Coordination Group would determine an initial proposal's consistency without all the necessary project-level information. Furthermore, there is no indication of whether the Coordination Group's consistency determinations would be reviewable by the public.

The DRECP must provide further detailed explanation of transparency mechanisms for Coordination Group consistency determinations. This is particularly important because the Coordination Group may determine a project to be consistent with the DRECP and thus eligible for streamlined review when there

⁸¹ *Id.*, at II.3-225

⁸² *Id.*, at II.3-230.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

could be serious hazardous conditions or a highly important biological resources on a project site that are not identified at the time of determination.

2. *Other Coordination Group Decisions*

As explained above, the Coordination Group has decision-making power in a myriad of areas, in addition to initially assessing project consistency with the DRECP. The DRECP provides that the Coordination Group will “conduct community outreach to inform and engage local communities” and will “make information available to the public at large, through a DRECP website and other appropriate means . . .”⁸⁶ However, as explained above, there is no clear indication of how much information the Coordination Group will make available to the public and whether its decisions will be subject to public review and comment. Given that the Coordination Group has such an important decision-making role under the DRECP, there should be more detailed information in both the DRECP and the DEIR as to public participation and accountability, as required by CEQA.

3. *General Conservation Plan*

The GCP provides a framework for streamlining compliance with the Endangered Species Act (“ESA”) for nonfederal renewable energy applicants proposing projects within the GCP area. If approved by FWS, the GCP would provide direction on the maximum levels of incidental take that would be permitted for renewable energy projects and mitigation for impacts to covered species.⁸⁷

CEC and the California State Lands Commission (“CSLC”) are submitting separate applications for ITPs under the GCP, which they could then extend to renewable energy projects under CEC jurisdiction and within CSLC’s existing land ownership, respectively.⁸⁸ After FWS approves the GCP, it can then issue permits to CEC and CSLC and begin considering streamlined issuance of permits to future applicants for renewable energy proposals that are consistent with the GCP. As described in the DRECP, the administrative record for each individual permit application decision will contain an “individual Findings statement summarizing how the application is consistent with the terms and conditions of the GCP,

⁸⁶ *Id.*, at II.3-220.

⁸⁷ DRECP, Appendix M, p. 4.

⁸⁸ *Id.*, at 1, 11.

including how the application meets ESA incidental take issuance criteria.”⁸⁹ FWS will also prepare a “similar Findings statement summarizing how the application meets NEPA requirements through consistency with the analysis contained in the Final DRECP and Final EIR/EIS.”⁹⁰ Since the DEIR is nearly unsupported in its assumptions regarding existing conditions, impacts, and feasible mitigation, this process of repeating the findings in the DEIR would clearly violate CEQA.

Furthermore, if a local government signs onto the DRECP and is then issued a permit under the GCP, the county or city could extend their incidental take authorization to renewable energy developers in their jurisdiction, obviating the need for individual applicants to go through FWS.⁹¹

It is unclear under the DRECP whether the CEC and CSLC and local governments also need to release a findings statement when issuing take authorization to third parties. FWS policy on GCPs indicates that only one findings statement and NEPA document connected to the GCP will be released for public review, thus eliminating any opportunities for public review for each renewable energy project, as would be the case with typical Habitat Conservation Plans (“HCPs”).⁹² If this is the case under the DRECP, it does not provide adequate opportunities for public review with regard to federal incidental take authorization.

Similarly, under the DRECP, FWS would provide quarterly public notices in the Federal Register of permits issued under the GCP. However, the DRECP is unclear whether the Federal Register list of permits will include all take permits issued to third parties from other agencies or local governments, or only take permits issued directly from FWS.

The DRECP states that other agencies and local governments, if issued a master permit, are ultimately responsible for the compliance of all third parties to which they extend incidental take authorization. The third parties must apparently report activities to the FWS, but the DRECP is unclear as to FWS’ role in overseeing master permits and whether FWS would serve any monitoring or enforcement role in light of master permit holder reports. These issues must be clarified where necessary and revised to incorporate more public participation

⁸⁹ *Id.*, at 14 – 15.

⁹⁰ *Id.*

⁹¹ DRECP, p. II.3-210.

⁹² 16 U.S.C. §1539(a)(2)(B). General Conservation Plans are in essence large-scale Habitat Conservation Plans.

options. Once the DRECP process is adequately defined, the DEIR must be revised to properly evaluate the DRECP's potential impacts from not providing notice and comment opportunities to the public.

V. THE DRECP DOES NOT FULFILL ITS LEGAL REQUIREMENTS UNDER THE NATURAL COMMUNITY CONSERVATION PLANNING ACT

Should the CDFW approve the NCCP, incidental take authorization for covered activities within the plan area would be accomplished through Section 2835 of the NCCPA. The NCCPA was enacted to implement broad-based, landscape-level planning that conserves and manages fish and wildlife, their habitats, and natural communities, while allowing for appropriate and compatible development and growth.⁹³ Under the NCCPA, an NCCP must provide for “the creation of habitat reserves and long-term management of habitat reserves” or conservation measures.⁹⁴

As the DRECP acknowledges, “[t]he primary objective of the NCCPA is to conserve covered species and natural communities at the ecosystem scale while accommodating compatible land uses.”⁹⁵ This indicates that conservation of species comes first, and then covered activities would be allowed to occur within an NCCP area. However, the DRECP further states that “[t]he conservation strategy for an NCCP must avoid or minimize and mitigate the impacts of covered activities to covered species in the plan area and contribute to the recovery of those species.”⁹⁶ This is misleading because it indicates two flawed assumptions. First, it indicates that an NCCP need only minimize and mitigate impacts of *covered activities* without considering non-covered impacts. Second, it indicates that the DRECP need only “contribute” to the recovery of species. This is contrary to the purpose of the NCCPA.

The NCCPA requires an expansive approach to conservation, which is not limited to impacts of covered activities, in this case renewable energy projects.⁹⁷ The NCCPA does not limit conservation measures to address only the impacts of the covered activities. The NCCPA equates conservation to recovery, and an NCCP

⁹³ Cal. Fish and Game Code §2805.

⁹⁴ Cal. Fish & Game Code § 2820(a)(3); see also Cal. Fish & Game Code § 2810(b)(2).

⁹⁵ DRECP, p. I.2-29.

⁹⁶ *Id.*

⁹⁷ Cal. Fish & Game Code § 2820(a)(3); see also Cal. Fish & Game Code § 2810(b)(2).

must not only mitigate certain impacts, but must contain measures that will achieve recovery within the plan area.⁹⁸ The DRECP does not approach conservation from the perspective of the species' status, as required under the NCCPA, but rather from impacts of renewable energy projects. The DRECP must look at all reasonably foreseeable impacts that could hinder species recovery, such as non-renewable development and climate change. In addition, the DRECP must not merely contribute to recovery to species within the DRECP area, but facilitate it through expansive recovery measures. An NCCP that does not provide for the recovery of species as the primary objective, and with consideration of all potential impacts, does not comply with the requirements of the NCCPA.

Therefore, the DRECP must account for non-renewable energy project impacts and must take more expansive steps to facilitate species recovery; otherwise it will not achieve its conservation goals and will fail as an NCCP. Unless the NCCP complies with the NCCPA, the CDFW cannot provide incidental take authorization for renewable energy projects through Section 2835.

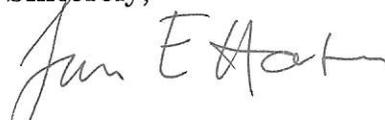
VI. CONCLUSION

For all of the reasons discussed above, the DRECP is flawed in several ways and the DEIR does not meet CEQA requirements. Unsupported significance findings must be revised or clarified that future project-level environmental review will occur in a process that ensures public participation and decision-maker accountability. Once the DRECP's process is further defined, CEQA requires that the transparency and public participation mechanisms, along with other required Project features, be sufficiently and clearly explained in a revised and recirculated DEIR. Until this occurs, the CEC and participating agencies may not lawfully certify the EIR and approve the DRECP.

⁹⁸ See Cal. Fish & Game Code §§ 2805(h) (Plan "shall identify and provide for those measures necessary to conserve . . . within the plan area"); 2805(d) (defining conservation as recovery); 2820(a)(4) (requiring Plan to contain "measures in the plan areas . . . "as needed for the conservation of species"); 2820(a)(6) (requiring plan to contain "specific conservation measures that meet the biological needs of covered species"); 2835 (authorizing the Department to issue a take permit for a covered species if they find that the covered species' "conservation and management is provided for in a [Plan]").

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Sincerely,

A handwritten signature in cursive script, appearing to read "Laura E. Horton".

Laura E. Horton

LEH:clv