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Via E-Mail and U.S. Mail

Mr. Robert Hingtgen
County of San Diego
Planning and Development Services
5510 Overland Avenue, Suite 110
San Diego, CA 92123
E-Mail: Robert.Hingtgen@sdcounty.ca.gov

Re: Cleveland National Forest Foundation's Comments of the Soitec Solar Development Program Draft EIR

Dear Mr. Hingtgen:

This firm represents the Cleveland National Forest Foundation ("CNFF"), which promotes sustainable regional land use planning in order to stem the tide of urban encroachment into San Diego County's backcountry. The purpose of this letter is to inform the County of San Diego that its Draft EIR for the Soitec Solar Development Program ("Project") fails to comply with the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 et seq., and the CEQA Guidelines, California Code of Regulations, title 14, § 15000 et seq. ("Guidelines"). For the reasons set forth below, we request that the County delay further consideration of the Project until such time as a legally adequate EIR is prepared that fully complies with CEQA.

I. Introduction

CNFF fully supports renewable energy as a means to combat global warming. CNFF would like to see SDG&E meet—and exceed—the state's Renewable Portfolio Standard ("RPS"), which establishes a 33% renewable energy target by 2020. Unfortunately, the Project completely fails to push the needle forward on either goal.

Instead, the Project supplements the region's existing energy supply without proposing any commensurate reductions in non-renewable sources, i.e. "dirty

energy." As a result, the EIR presents no evidence that the Project will make any headway towards achieving the 33% RPS target.

The EIR also violates CEQA: it obfuscates the scope of the Project, ignores its growth inducing impacts, and fails to support its conclusion that the Project will have a positive impact on curbing climate change. Let's be frank: unless the County commits to replace a commensurate amount of "dirty" energy, this Project will simply enable sprawl development.

II. The Project Description Omits and Obscures Critical Information.

An EIR must include a clear and comprehensive description of the proposed project, which is critical to meaningful public review. *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193. The court in *Inyo* explained why a thorough project description is necessary:

> "A curtailed or distorted project description may stultify objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance." d. at 192-93. Thus, "[a]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 830.

The EIR fails to satisfy CEQA's rigorous standard. First, the EIR states that its #1 objective is to help SDG&E meet the state's 33% RPS. DEIR at 1.0-1. To do so, the Project's renewable energy would need to replace existing sources of "dirty" energy. Unfortunately, the EIR provides no evidence that the Project would do so. Instead, the EIR admits that the project would "supplement the region's in-basin energy supply." *Id.* at 1.0-40. As a result, the EIR's suggestion that this Project would help achieve the 33% RPS is unsupported and misleading.

Second, the EIR obliquely refers to a 25-year Power Purchasing Agreement (DEIR at 1.0-17) but provides no useful information about the terms of the Agreement.

Who will purchase the power? For what purpose? At what cost? The EIR's revised project description should describe these and other fundamental terms.

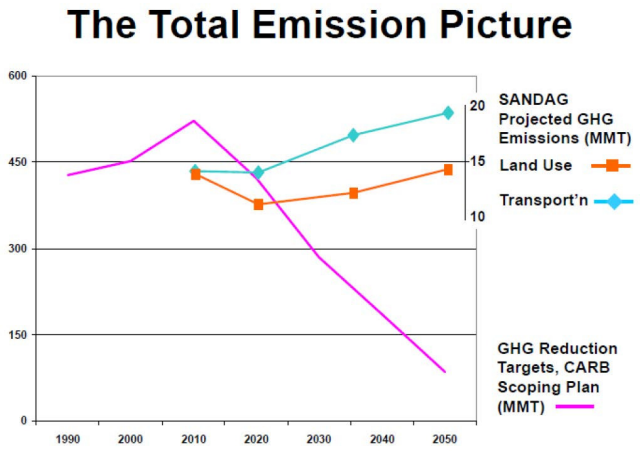
III. The Draft EIR Fails to Adequately Analyze Growth Inducing Impacts.

An EIR must discuss the "Growth-Inducing Impact of the Proposed Project." Guidelines § 15126(d). To meet this requirement, the EIR must "[d]iscuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment . . . ." Guidelines § 15126.2(d). Of particular relevance, the Guidelines note that a project can induce growth by "remov[ing] obstacles to population growth," such as by expanding a waste water treatment plant to allow more construction within its service area. *Id.*

The EIR claims that the Project will not be growth-inducing because it will not "remove a restriction to or encourage population growth in an area. . ." DEIR at 1.0-39. The EIR's conclusion is unsupported and nonsensical. Growth in San Diego's backcountry cannot occur without energy to fuel, light, warm and cool new homes. For example, the proposed 1,746-unit Accretive/Lilac Hills project and the 430-unit Castlerock project will be served by energy from the grid—not from individual generators. Similarly, the County is considering an amendment to the County General Plan that would dramatically "upzone" certain private inholdings in the Cleveland National Forest. Namely, the Forest Conservation Initiative amendment would re-designate land to accommodate an additional 2,893 dwelling units in Alpine (Staff Recommendation), many of which would be served by energy from the grid.

According to the EIR for the County's General Plan Update, SDG&E's goal is to reduce peak energy demand by a total of 268 MW. GPU DEIR at 2.16-28. In contrast, this Project will add 168.5 MW to the region's existing supply of energy (DEIR at 1.0-1 and 1.0-40), without commensurately removing an existing non-renewable source. How is that movement in the opposite direction of SDG&E's stated goal not growth inducing? Furthermore, the County is making no progress towards achieving the state-imposed 33% RPS, or the County's Greenhouse Gas ("GHG") reductions assumed in the County's Climate Action Plan.

Other regional agencies, such as SANDAG, have analyzed the growth-inducing impacts of providing transportation facilities. According to SANDAG, San Diego region's land use pattern and resulting vehicle miles traveled ("VMT") will result in a long term GHG emission picture as follows:



If SANDAG can determine the GHG impacts of regional patterns of growth, what is preventing the County from doing the same thing? The EIR should analyze the role that energy availability plays in these same growth patterns, and the resulting impacts.

Please include this corrected analysis of growth inducing impacts in the revised and recirculated draft.

IV. The Draft EIR Fails to Adequately Analyze and Mitigate Climate Change Impacts.

The DEIR fails to analyze how the project is consistent with San Diego County's Climate Action Plan, which assumes SDG&E will fully comply with the state's 33% RPS, and that such compliance will result in a reduction of 200,605 MT CO2(eq). The Revised DEIR should include this analysis.

V. The DEIR Uses An Improper Baseline.

Making matters worse, the DEIR uses a future indeterminate baseline to calculate project impacts—in violation of CEQA. CEQA requires "a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation [NOP] is published . . ." Guidelines § 15125(a). In *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* 57 Cal.4th 439 (2013), the California Supreme Court recognized that, under limited circumstances, a departure from existing conditions (i.e., NOP date) may be appropriate. But only when "justified by

substantial evidence that an analysis based on existing conditions would tend to be misleading or without informational value to EIR users." *Id.* at 445.

Here, the EIR analyzes impacts based on some future date when the ECO Transmission Line, Rebuilt Boulevard Substation, and Tule Wind projects are all on line. DEIR at 1.0-36. But the EIR fails to explain when these projects will be online, or why this Project must wait until the others are operational. Nor does it explain why it would be misleading to use existing conditions as the baseline. As such, the EIR provides no substantial evidence to support its departure from using the NOP date as the baseline.

VI. The DEIR Must Include a Distributed Generation Alternative.

The Project proposes massive solar farms on relatively pristine backcountry habitat. It would result in significant environmental impacts related to biological and cultural resources, land use, air quality, and aesthetics. The Project will require massive amounts of water, threatening local groundwater supplies. The County must not approve such a project when feasible alternatives—such as rooftop solar—exist.

CEQA requires every EIR to analyze a reasonable range of project alternatives. *See* § 21100(b)(4); Guidelines § 15126.6(a). The alternatives analysis lies at "[t]he core of an EIR" because it informs the decisionmakers and the public about ways of accomplishing some or all of the proposed project's objectives with fewer environmental impacts. *Citizens of Goleta Valley v. County of Santa Barbara*, 52 Cal.3d 553, 564 (1990); Guidelines § 15126.6(b). To be considered "reasonable," the range of alternatives analyzed in an EIR must provide enough variation from the proposed project "to allow informed decisionmaking." *Mann v. Community Redevelopment Agency*, 233 Cal.App.3d 1143, 1151 (1991). The project alternatives must also avoid or substantially lessen the project's significant environmental impacts while attaining most of the project's basic objectives. *See* § 21100(b)(4); Guidelines § 15126.6(a) & (b). Finally, the lead agency must publicly disclose its reasoning for selecting the alternatives included in an EIR.

To achieve an adequate range of alternatives to the proposed Project, the County must evaluate a "distributed generation" alternative. Distributed generation ("DG") is a method of generating electricity from multiple small energy sources very near to where the electricity is actually used. The most common example of DG is rooftop solar. DG can accomplish the same goals as utility-scale solar projects—i.e ., the development of large quantities of renewable energy—but with substantially reduced environmental

impacts as it does not require developing undeveloped land. Thus, the revised EIR must analyze the feasibility of a DG alternative.

VII. Conclusion

For the foregoing reasons, CNFF urges the County to delay further consideration of the Project unless and until it prepares and recirculates a revised draft EIR that fully complies with CEQA.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

/s/

Catherine C. Engberg, P.E., Esq.

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