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Iain Fisher
California Public Utilities Commission
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COMMENTS ON THE JOINT DRAFT ENVIRONMENTAL IMPACT REPORT AND STATEMENT FOR THE SDG&E EAST COUNTY SUBSTATION, TULE WIND, AND THE ENERGIA SIERRA JUAREZ (ESJ) GEN-TIE PROJECTS

Dear Mr. Fisher,

The County of San Diego (County) reviewed the Joint Draft Environmental Impact Report and Draft Environmental Statement (DEIR/DEIS) published December 24, 2010, for the above listed projects. The County provides these comments as a Responsible Agency under the California Environmental Quality Act (CEQA) and as a Cooperating Agency in accordance with the National Environmental Policy Act (NEPA).

As you are aware, the County has discretionary permitting authority over aspects of the Tule Wind project and the entirety of the ESJ project in California. This letter includes an attached matrix that address technical deficiencies in the DEIR/EIS and revisions that are needed to make the DEIR/EIS comply with CEQA (See Attachment A). This letter also includes reference to several technical documents that were provided to the County a few days prior to the circulation of the DEIR/EIS. These technical documents are specific information related to the ESJ water extraction site and Tule Wind Project and should be considered when making clarifications to the DEIR/EIS (See Attachments B-G).

As a permitting agency and CEQA Responsible Agency, the County has serious concerns related to the adequacy of the DEIR/EIS unless changes are made that provide sufficient information to support the analysis and conclusions. Specifically, the County has major concerns about the lack of information and analysis of the projects' impacts, and the lack of conclusions as to the significance of the impacts for the two following issues: (1) Construction water sources; and (2) Low Frequency Noise analysis. The DEIR/EIS fails to identify the amount of construction water needed and the location of the source of the construction water for the East County Substation and

the Tule Wind projects. These projects are located well east of the County Water Authority's service area. Consequently, if groundwater resources are proposed for construction water, the impact on groundwater should have been analyzed in the DEIR/EIS, which would require additional permitting by the County. The DEIR/EIS also does not include an analysis of high and low frequency noise sources (dBC weighted noise analysis) for the wind turbines located within the County's jurisdiction. The DEIR/EIS should have analyzed whether the project would cause a substantial permanent or periodic increase in ambient noise levels (high or low frequency) in the project vicinity above existing noise levels (CEQA Guideline Appendix G (Section XII)).

The examples provided below regarding deficiencies in the DEIR/EIS generally fall within the following two categories: Deferral of Analysis and Mitigation, and Unsubstantiated Conclusions for Significant and Unmitigated Impacts.

- 1. Deferral of Analysis and Mitigation:** Many of the sections of the DEIR/EIS fail to include a full analysis of the impact because of the lack of technical documentation of the potential impact. Consequently, these sections lack sufficient information to support the conclusion as to the significance of the potential impact. In some sections, the technical analysis has been deferred and is to be prepared in the future as part of a mitigation measure. In other sections, the necessary studies and field surveys were not fully completed before the DEIR/EIS was released for public review. The failure to include sufficient analysis of the projects' potential impacts is a violation of CEQA. All subject areas should have been fully analyzed with supporting technical studies before the DEIR/EIS was released for public review. The point of public review is to allow the public and responsible agencies to review and comment on the adequacy of the analysis. Omitting the complete analysis or providing it in the future defeats one of the main purposes of public review.

An EIR must "describe feasible mitigation measures which could minimize significant adverse impacts." CEQA Guidelines, section 15126.4(a)(1). "Formulation of mitigation measures should not be deferred until some future time." CEQA Guidelines, section 15126.4(a)(1)(B). See *Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296, 306-307 (1988). An EIR can "defer" mitigation in the sense that mitigation measures "may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way." *Ibid*.

As the court in *Endangered Habitats League, Inc. v County of Orange* 131 Cal.App. 4th 777, 793 (2005), explained, "Deferral of the specifics of mitigation is permissible where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan. On the other hand, an agency goes too far when it simply requires a project applicant to obtain a study or report and then comply with any recommendations that may be made in the report."

Furthermore, although mitigation measures may be “deferred” under certain limited circumstances as explained above, the analysis of the project’s potential impacts may not be deferred. “In general ‘the EIR must contain facts and analysis, not just the agency’s bare conclusions or opinions.’” *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, 568 (1990). See also CEQA Guidelines, section 15126.2(a).

- a. MM HYD-3 Identification of sufficient water supply, states, “Prior to construction, the applicant will prepare comprehensive documentation that identifies one or more confirmed, reliable water sources that when combined meet the project’s full water supply construction needs. Documentation will consist of the following: Preparation of a groundwater study or Documentation of Purchased Water Source(s).” The DEIR/EIS fails to analyze the impacts to Groundwater Resources. The required analysis is improperly deferred to a mitigation measure and also provides unanalyzed options in-lieu of preparation of a study. The DEIR/EIS should have identified all sources of water for construction, should have identified the amount of water needed for construction, should have analyzed potential impacts of using that amount of water and should have identified feasible mitigation measures to reduce any potential significant impacts.
- b. MM BIO-1d requires the impact to be mitigated by revegetation pursuant to a future Habitat Restoration Plan. This mitigation simply requires the applicant to obtain reports and then to comply with whatever recommendations are made in the reports. In fact, the mitigation measure even defers the development of success criteria and monitoring specifications to the future Habitat Restoration Plan. As explained above, this is improper deferral of mitigation. Furthermore, the DEIR/EIS’ failure to comply with CEQA’s mitigation requirements will make it impossible for the County to make the required finding that this mitigation measure is effective. Without more specific details to measure success of the revegetation (performance standards), it is not clear that the plan is achievable. See CEQA Guidelines, section 15091(a)(1).

The County requests that the schedule for preparing the Final EIR/EIS allow sufficient time for the project applicants to complete and provide the required technical studies, implementation plans, or specific information that would provide sufficient documentation to support the analysis of the project impacts and to provide the basis for the conclusions regarding the significance of the impacts for the following subject areas: MM BIO-4a Dust Control Plan, MM BIO-2b Wetland Mitigation Plan, MM BIO-10b Avian Protection Plan, MM TR-1, a Conceptual Traffic Control Plan, MM HYD 5-6 SWMP, and MM HYD-3 Groundwater Study or specific comment numbers : 6-8,9,12-15, 18,23, 26, 27, 31-35, 37, 75, 114-116, 118, 119, 121, 132, 133, 152, 171-175, 177-179, 182, 186, 187, 197, 199-201.

2. Unsubstantiated Conclusions for Significant and Unmitigated Impacts:

In accordance with CEQA, the DEIR/EIS must include substantial evidence to support the conclusions that ALL impacts identified as Class I are significant, unmitigable, and that all methods for protecting the environment have been considered (CEQA Guidelines Section 15002.h). The analysis of each potentially significant impact must include a discussion of potential mitigation measures, why each mitigation measure would be effective, why the mitigation measure would be infeasible or why there are no feasible mitigation measures. The DEIR/EIS does not provide sufficient facts and analysis to support the conclusions that certain significant impacts can be mitigated and that certain other significant impacts cannot be mitigated. If the impact cannot be mitigated, then the DEIR/EIS needs to clearly state this conclusion and provide the facts and analysis to support the conclusion that mitigation is infeasible.

The comments below provide examples of how the DEIR/EIS does not provide appropriate conclusions supported by all possible mitigation opportunities:

- a. Section D.3, Visual Resources, Table D.3-7 describes significant and unmitigable impacts associated with the ECO Substation component of the Proposed PROJECT; however, the discussion should also include any potential mitigation measures, such as screening or different and less impactful designs and treatments. The DEIR/EIS states, "other than undergrounding the transmission line... the impact could not be reduced to below a level of significance." This statement refers to an alternative to the Proposed PROJECT, which would reduce the impact. The required discussion of potentially feasible mitigation measures is missing.
- b. Section D.7 Impact CUL-3: Traditional Cultural Properties Impact. The DEIR/EIS states, "The scope, nature, and extent of any TCPs associated with the APE are not presently known. Therefore, potential NRHP eligibility of unknown TCPs must be assumed...Under CEQA, impacts would be significant and cannot be mitigated to a level that is considered less than significant." In this case, there is a lack of information and analysis of the potential impacts. Instead, the document jumps to an unsubstantiated conclusion that there would be residual impacts to the unknown areas. As explained above, an EIR must include facts and analysis and not just use bare conclusions opinions. Preparation of the Final EIR/EIS should allow adequate time to obtain the proper information to determine if TCPs are present and, if so, if they impacts to them would still be significant and unmitigable.

In order for the County to make the required CEQA Findings in accordance with CEQA Guidelines, section 15091, the discussion of potential mitigation measures must include facts and analysis to explain that the mitigation measures will be effective, that is that the impacts have been or could be reduced below a level of significance. The DEIS/EIR should provide a clear and specific rationale explaining how each mitigation measure avoids, minimizes,

rectifies, and/or reduces the significant environmental effect to a level below significance. The document should also include a specific CEQA conclusion that states the implications of the unmitigated impact and the reasons why the project is still being proposed without an alternative design (CEQA Guidelines §15126(b)). Many of the sections analyzing potential impacts need to be revised accordingly. See the following comments in the checklist for an exhaustive list of the sections that need to be revised pursuant to this comment: 6-8, 9, 12-15, 18,23, 26, 27, 31-35, 37, 75, 114-116, 118, 119, 121, 132, 133, 152, 171-175, 177-179, 182, 186, 187, 197, 199-203.1

A mitigation measure must be "required in, or incorporated into, the project," and the measure "must be fully enforceable through permit conditions, agreements, or other legally binding instruments." (14 CCR section 15126.4). The following are to examples provided below that have unsubstantiated conclusions:

- Section D.3, Visual Resources, Table D.3-6 presents the mitigation monitoring, compliance, and reporting program for each impact and mitigation measure included in that chapter. However, the preceding text in the analysis for each section fails to provide factual support and rationale for all the CEQA conclusions/determinations stated. Specifically, each mitigation measure described in this table includes "effectiveness criteria" but these statements merely restate the impact and mitigation measure without providing the needed rationale as to why or how these measures would serve to reduce the impact. Consequently, his mitigation measure cannot be found (or relied upon) to mitigate impacts to a less than significant level.
- MM BIO-5b references an "agency-approved plan" for special status plant species compensation. Further, it states that this plan will occur through plant salvage, relocation, and off-site land preservation. The County typically does not accept plant salvage and relocation as feasible mitigation because of the low success rate of transplantation and the fact that it does not create the same viable habitat that was lost. However, if the Conceptual Revegetation Plan provides evidence that relocation is feasible, such mitigation may be accepted. This information must be included in the Final EIR/EIS in order for a CEQA finding to be made that impacts to these resources would be mitigated to a level less than significant.
- FF-3 Impacts to Fire Fighting Effectiveness: The mitigation provided for this impact does not directly mitigate the impact, but merely reduces the risk for initially striking a fire. The DEIR/EIS must provide mitigation that directly decreases the level of significance of the facilities affecting fire-fighting ability. If further mitigation cannot be provided because it is infeasible, then the DEIR/EIS must disclose this.

The County appreciates this opportunity to provide comments on the DEIR/EIS and looks forward to working with the CPUC to resolve any questions that may arise from the provided comments. If you have any questions please contact the County Project Manger Patrick Brown at (858) 694-3011, or by email at: Patrick.Brown@sdcounty.ca.gov

Sincerely,



Eric Gibson, Director
Department of Planning and Land Use
Attachments:

A. Public Review Comment Matrix

Electronic Attachments:

- B. Groundwater Investigation Report, Tule Wind LLC, prepared by Geo-Logic Associates, dated December 2010.
- C. Traffic Impact Study, Tule Wind LLC, prepared by Linscott Law and Greenspan, dated September 13, 2010.
- D. Stormwater Management Plan, Tule Wind LLC, prepared by HDR Engineering Inc. dated November 2010.
- E. CEQA Drainage Study, Tule Wind LLC, prepared by HDR Engineering Inc. dated November 2010.
- F. Archaeological and Historical Investigations for the ESJ Gen-Tie Project prepared by AECOM dated March 2011.
- G. Biological Letter Report for ESJ Gen-tie Project prepared by AECOM dated February 2011.

cc:

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