

SIERRA CLUB



KERN-KAWEAH CHAPTER



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Paul Johnson,
Supervising Planner
PLANNING AND COMMUNITY
DEVELOPMENT DEPARTMENT
Lorelei H. Oviatt, AICP, Director
2700 "M" STREET, SUITE 100
BAKERSFIELD, CA 93301-2323
Phone: (661) 862-8600
FAX: (661) 862-8601
E-Mail:

JohnsonPa@co.kern.ca.us

LORELEIO@co.kern.ca.us

planning@co.kern.ca.us

RE: Kern River Valley Specific Plan and DEIR

Dear Mr. Johnson;

Sequoia ForestKeeper (SFK) and the Kern-Kaweah Chapter of the Sierra Club (the Club) thank you for the opportunity to comment on the **Kern River Valley Specific Plan and DEIR (2011)**.

We pointed out many concerns, suggested changes, and questions, which were overlooked and not included in the current DEIR, in our previous comment letters to Ted James dated:

(1) 29 January 2005 RE: Opportunities & Constraints Report for the Kern River Valley Specific Plan,

(2) 3 February 2006 RE: DRAFT Kern River Valley Specific Plan, and

(3) 9 February 2007 RE: Revised DRAFT Kern River Valley Specific Plan.

We incorporate these above listed comment letters herein in their entirety by reference, in an effort to have our comments, suggestions, and questions incorporated into the EIR.

Sections below in blue print are quoted directly from the draft Kern River Valley Specific Plan or the DEIR. Our comments and responses follow.

GLOBAL WARMING

It is by now well-settled that “the harms associated with climate change are serious and well recognized.” Massachusetts v. EPA (2007) 549 U.S. 497, 521; *see also* Health & Safety Code § 38501(a) [California Legislature declaring that “[g]lobal warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California.”].¹ Climate change is the classic example of a cumulative problem; emissions from numerous sources combine to create the most pressing environmental and societal problem of our time. Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin. (9th Cir. 2008) 538 F.3d 1172, 1217² [“the impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct.”].)

Global warming is an “effect on the environment” under CEQA, and an individual project’s incremental contribution to global warming can be cumulatively considerable. PRC § 21083.05(a). California has recognized that global warming is an urgent problem requiring immediate steps to reduce our total GHG emissions. See, California Global

¹ For a summary of the impacts California is expected to experience from global warming under a range of greenhouse gas emission scenarios, see California Climate Change Center, *Our Changing Climate: Assessing the Risks to California* (July 2006), available at http://www.climatechange.ca.gov/publications/biennial_reports/index.html.

² “[S]ince CEQA was modeled on the Natural Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.), California courts have consistently treated judicial and administrative interpretation of the latter enactment as persuasive authority in interpreting CEQA.” (Del Mar Terrace Conservancy, Inc. v. City Council (1992) 10 Cal.App.4th 712, 732.)

Warming Solutions Act of 2006 (“AB 32”, Health & Safety Code §38500, et seq.) and Executive Order S-3-05. *Ibid.* It is generally believed that in order to reduce the risk of the most catastrophic outcomes of climate change, we must achieve substantial reductions in the concentrations of GHGs by mid-century. AB32 declared that

Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.

H&S Code §38501(a). To address the threat posed by global warming, Executive Order S-3-05 mandates significant state-wide GHG emission reductions: reductions to 1990 levels by 2020, and 80% below 1990 levels by 2050.

Enacted in August 2007, Senate Bill 97 requires the Governor’s Office of Planning and Research (“OPR”)³ to prepare guidelines “for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions *as required by* [CEQA], including, but not limited to, effects associated with transportation or energy consumption.” (Sen. Bill. No. 97 (2007-2008 Reg. Sess.), codified as Pub. Res. Code § 21083.05 (emphasis added).) Senate Bill 97 “confirm[s] that GHG emissions are a significant adverse effect under” CEQA. (Sen. Floor Analysis on Sen. Bill. No. 97 (2007-2008 Reg. Sess.) Aug. 22, 2007, available at http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0051-0100/sb_97_cfa_20070822_142622_sen_floor.html.) Senate Bill Analysis for SB 97 recognized that “[t]he analysis of GHG impacts under laws like CEQA, and its federal counterpart NEPA, is not new, nor did it commence with the passage of the California Global Warming Solutions Act of 2006.” (*Id.*⁴)

In June 2008, OPR issued a Technical Advisory calling for lead agencies to first “make a good-faith effort, based on available information, to calculate, model, or estimate the

³ Through its State Clearinghouse Unit, OPR is charged with providing regulatory guidelines and technical assistance on land use planning and CEQA matters. (*See, e.g.*, Pub. Res. Code §§ 21083, 21159.9.)

⁴ As CEQA mandates consideration of all potential environmental impacts, including those that may not have been foreseen at the time CEQA was enacted, SB 97 merely affirmed the existing obligation to analyze greenhouse gas impacts resulting from new projects. (*See Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1196, 1204-1205 [tracing judicial recognition of CEQA application to urban blight impacts and noting that “[w]ater contamination and air pollution, now recognized as very real environmental problems, were once scoffed at as the alarmist ravings of environmental doomsayers.”].)

amount of CO₂ and other GHG emissions from a project” and then determine whether these emissions “constitute[] a significant impact.” (OPR, Technical Advisory, *CEQA & Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review* (June 17, 2008) at 5-6, available at <http://opr.ca.gov/index.php?a=ceqa/index.html>.) Where a project’s greenhouse gas impacts are significant, “[t]he lead agency must impose all [feasible] mitigation measures that are necessary to reduce GHG emissions to a less than significant level.” *Id.* at 7.

Pursuant to SB 97, the California Natural Resources Agency released draft CEQA Guidelines on the treatment of greenhouse gas impacts under CEQA in July 2009. (See <http://ceres.ca.gov/ceqa/guidelines/>.) With regard to mitigation measures related to greenhouse gas emissions, proposed Guideline § 15126.4(c) contemplates the potential use of on and off-site measures to mitigate greenhouse gas impacts. (Cal. Natural Resources Agency, *Final Text of Proposed Guideline Amendments* (July 2009), available at <http://ceres.ca.gov/ceqa/guidelines/>.)

The Initial Statement of Reasons accompanying the proposed guidelines on greenhouse gas mitigation notes that “a lead agency must support its choice of, and its determination of the effectiveness of, any reduction measures with substantial evidence. Substantial evidence in the record must demonstrate that any mitigation program or measure is reasonably likely to result in actual emissions reductions.” (Cal. Natural Resources Agency, *Initial Statement of Reasons for Regulatory Action, Proposed Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97* (July 2009) at § 15126.4, available at <http://ceres.ca.gov/ceqa/guidelines/>.)

CEQA Guidelines regarding analysis and mitigation of climate change impacts went into effect in March 2010. These guidelines make clear that lead agencies must seriously consider (i.e. identify and quantify) the impact of their land use decisions on climate change, and in all but those minority of cases where the impact is truly de minimus, consider and adopt sufficient feasible mitigation measures to address those impacts. The State of California has compiled an impressive library of technical and guidance documents on climate change. Please refer to for a complete list. <http://www.climatechange.ca.gov/>. The governor’s office has also compiled a detailed list of potentially feasible mitigation measures that the County can easily access through the same portal.

The EIR fails to quantify and analyze the significance of the Project’s impact on climate change. Despite a clear legal mandate to quantify and analyze the significance of the Project’s impact on climate change, the EIR makes only a very cursory and inadequate analysis of the Project’s impacts. The EIR’s analysis of the Project’s contribution to climate change is inadequate as a matter of law. As more fully explained below, the EIR violates CEQA also because it fails to adequately analyze a reasonable range of potentially feasible alternatives and mitigation measures, and the mitigation measures that it does propose for adoption are inadequate as a matter of law.

Mitigation Measures

The EIR claims that some of the proposed implementation measures will mitigate some of the Project's impacts on climate change. The EIR is inadequate because it does not consider a reasonable range of potentially feasible mitigation measures and alternatives, and impermissibly defers the formulation of mitigation measures and fails to include any adequate standards or threshold by which to judge the efficacy and feasibility of any future mitigation plan. The EIR violates CEQA also because some of the proposed mitigation measures (i.e. implementation measures) are inadequate as a matter of law because they are too vague, indefinite and unenforceable. Finally, the EIR violates CEQA because it fails to assess and quantify the expected reductions on the Project's impact on climate change that would result from the implementation of the proposed mitigation measures.

"The Legislature has declared "it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects....Los Angeles Unified School Dist. v. City of Los Angeles (1997) 58 Cal.App.4th 1019, 1028-1029 ("LA Unified"). To implement this policy, CEQA requires that agencies "mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." PRC § 21002.1(b); Napa Citizens for Honest Gov't v. Napa County Bd. Of Supervisors, (2001) 91 Cal.App.4th 342, 360 ("the EIR must propose and describe mitigation measures that will minimize the significant environmental effects that the EIR has identified.") A discussion of how to mitigate the significant impacts identified in the environmental review carried out under CEQA is "[t]he core of an EIR." Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 564.

"CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are **truly infeasible**." City of Marina v. Board of Trustees of the California State University (2006) 39 Cal.4th 341, 368-369 ("Marina"). (Emphasis added.) See, also CEQA Guidelines §15126.4(a)(1) ("An EIR shall describe feasible measures which could **minimize** significant adverse impacts . . .") (Emphasis added.) Feasible "means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." CEQA Guideline §15364.

Examples of inadequate mitigation measures:

Implementation 11.1.2: In its review of new development, the County will seek to encourage use of sustainable energy sources and technologies while promoting the economic benefits of conservation.

Many proposed policies and implementation measures use the word "encourage" and are therefore so weak as to be ineffectual. The measure above is one such example. The word "encourage" should be edited out of the document and the associated policies strengthened. In Implementation measure 11.1.2, replace the phrase "seek to encourage" by the word "require".

Implementation 11.1.3: Encourage all new development to implement green building practices which reduce the environmental impact of renovations and new construction by reducing energy and water use, reducing the release of harmful emissions, incorporating sustainable materials in construction, reducing heat island impacts, reducing stormwater quality and quantity impacts, as well as other improvements.

Implementation 11.1.5: The County shall encourage building designs that incorporate natural lighting and energy-efficient fixtures into architectural designs to reduce energy use.

To pass muster under CEQA, implementation Measures 11.1.3 and 11.1.5 and all other references to implementing measures to address climate change must be revised by replacing the word “encourage” with the word “require,” or similar mandatory language. Otherwise,

Implementation 11.1.7: The County shall proceed with development of a Greenhouse Gas/Climate Change Action Plan to identify methods to mitigate future greenhouse gas emissions. Upon adoption of the Greenhouse Gas/Climate Change Action Plan, all new development shall comply with the Plan and adhere to the Plan’s requirements.

Implementation measure 11.1.7 defers developing a Climate Action Plan (CAP) until an unspecified future time and contains no specific performance standards. The California Attorney General FAQ document at http://ag.ca.gov/globalwarming/pdf/CEQA_GP_FAQs.pdf states:

“If a city or county intends to rely on a Climate Action Plan as a centerpiece of its mitigation strategy, it should prepare the Climate Action Plan at the same time as its general plan update and EIR. This is consistent with CEQA’s mandate that a lead agency must conduct environmental review at the earliest stages in the planning process and that it not defer mitigation. In addition, we strongly urge agencies to incorporate any Climate Action Plans into their general plans to ensure that their provisions are applied to every relevant project.”

Mitigating future greenhouse gas emissions will not reduce or eliminate the Climate Change impacts; mitigating will just compensate for continued production of greenhouse gas emissions.

We urge the County to follow the Attorney General’s advice and prepare a CAP as part of the Kern River Valley Specific Plan. This is particularly critical since the draft Plan and EIR contain no specific performance standards for the deferred CAP, making it impossible for the public and decision-makers to understand the impact of the Plan on climate change.

We remark that, as a result of a Sierra Club lawsuit, Tulare County Superior Court recently set aside the City of Tulare’s General Plan Update and EIR partially because the City’s climate change policies failed to include specific performance criteria.

The California Attorney General document referenced above states further:

“To allow for streamlined review of subsequent individual projects, we recommend that the Climate Action Plan include the following elements: an emissions inventory (to assist in developing appropriate emission targets and mitigation measures); emission targets that apply at reasonable intervals through the life of the plan; enforceable GHG control measures; monitoring and reporting (to ensure that targets are met); and mechanisms to allow for the revision of the plan, if necessary, to stay on target.”

Implementation 11.1.8: The County shall implement the following policies for achieving its 2030 sustainability strategy:

Develop a set of policies and a program of incentives that will encourage developers to build in a more energy- and resource-efficient manner, including the reduction of total water consumption (potable and non-potable) by requiring features such as low-flow fixtures and drought-tolerant landscaping.

Replace the word “encourage” by the word “require” or similar mandatory term to ensure this proposed mitigation measures would actually be enforced. This measure should contain specific performance standards. Without such performance standards, it is impossible for the public and decision-makers to understand the impact of the Plan on energy and resource efficiency.

Reduce the use of nonrenewable energy by incorporating elements such as photovoltaic panels. Reduce energy consumption by designing buildings that take advantage of features such as better insulation (e.g., green roofs), natural ventilation, natural day lighting, efficient lighting fixtures, and solar rather than gas water heaters.

This measure should contain specific performance standards. Without such performance standards, it is impossible for the public and decision-makers to understand the impact of the Plan on reducing the use of non-renewable energy. Moreover, this and similar implementation measures should include mandatory and enforceable terms to ensure these measures would be mandatory and enforceable.

Incorporate Leadership in Energy and Environmental Design (LEED) for Neighborhood Development program requirements into development plans of greater than ten homes if feasible.

Delete the phrase “of greater than ten homes if feasible”. We believe green building design is clearly feasible for all homes. There is no evidence to suggest implementing green building design is feasible only for larger developments. If the County intends to exempt individual residential units or those fewer than 10 homes, the EIR should include an analysis of this issue and support the County’s conclusions with objective facts and data, rather than pure speculation. Likewise, if the County contends that green building standards are potentially infeasible, it must explain and justify this conclusion with citations to facts and analysis.

Implementation measure 5.5.10 states, ‘Require that discretionary projects use a combination of measures determined by the Planning and Community Development Department and the Eastern Kern Air pollution Control District to reduce GHG emissions from the “business as usual conditions.”’ The “business as usual” condition is problematic for reasons that include the following

- This measure contains no specific performance standards for reductions from “business as usual”, making it impossible for the public and decision-makers to understand the impact of the Plan on climate change.
- Determining significance based on comparison to hypothetical “business as usual” (BAU) violates CEQA. CEQA requires significance determination to be made by comparing the project’s impact to existing conditions, conditions that, in the case of global climate change, do not allow the atmosphere to absorb additional greenhouse gasses without risking catastrophic long-term consequences. Even small GHG emissions should be considered cumulatively significant. The California Attorney General, in a December 8, 2009, letter to San Diego County available at http://ag.ca.gov/globalwarming/pdf/comments_Merriam_Mountains_Specific_Plan.pdf states, “The appropriate baseline under CEQA is not a hypothetical future project, but rather existing physical conditions.” The Attorney General states in the same San Diego letter, “The EIR’s use of an inappropriate baseline based on a hypothetical project rather than existing conditions, also means that the EIR’s conclusion that the Project will not have significant climate change-related impacts is invalid under CEQA. In short, the EIR concludes that the Project will not have significant impacts because it is better than a hypothetical “straw” project.”
- The notion of significance determination based on comparing hypothetical BAU with a proposed project is inconsistent with the mandates of CEQA. The California Attorney General, in a November 4, 2009, letter to the SJVAPCD opined that such an approach “will not withstand legal scrutiny and may result in significant lost opportunities for . . . local governments to require mitigation of greenhouse gas (GHG) emissions.” The AG’s letter can be accessed at http://ag.ca.gov/globalwarming/pdf/comments_SJVAPCD_threshold_proposal.pdf.
- Comparisons to hypothetical projects that represent the maximum extent of potential development frustrate CEQA’s informational purpose by encouraging gaming and incentivizing “project proponents to artificially inflate the hypothetical project to show that the proposed project is, by comparison, GHG-efficient.” (Attorney General Letter to SJVAPCD, page 4.)
- On page 4.17-11, the DEIR states, “Any mitigation measure that identifies the reduction of GHG emissions beyond 2020 is considered speculative as there is no assurance that the mitigation measure would be any more effective than changes to State and/or federal law or through the development of new technologies.” The EIR should explain how it determines 2020 to be the cutoff point between the nonspeculative and the speculative. Why wouldn’t 2013 or 2050 be an equally good cutoff year? Moreover, the 2020 emission reduction targets set forth in AB 32 mark only a first and interim step toward avoiding dangerous climate change. Greenhouse gas (GHG) emission reduction targets extend beyond 2020 and are much larger than the 2020 target; Executive Order S-3-05 sets an 80% reduction

of GHG from 1990 levels in 2050 as a goal. In order to achieve GHG emission reduction goals beyond 2020, the County should require feasible mitigation measures that would reduce GHG emissions beyond the 2020 below BAU requirement.

Project Impacts Related to Consistency with Kern County General Plan

Table 4.17-2 provides an analysis of the consistency of the proposed project with the relevant goals and policies of the General Plan. As indicated in Table 4.17-2, the proposed project would be consistent with the relevant goals and policies of the General Plan related to air quality and the effects of GHG emissions. Therefore, the impacts of the proposed project would be considered less than significant.

Regarding the above paragraph from the Kern River Valley Specific Plan DEIR, the General Plan contains no goals, policies, or implementation measures specific to global warming, and it contains no Climate Action Plan. Moreover, there is no substantial evidence supporting the conclusion that implementation of the General Plan, in its current permutation, will not result in a host of significant impacts on the environment, including impacts on climate change. Consistency of the Kern River Valley Specific Plan with a General Plan that does not address global warming is irrelevant when determining the Specific Plan's impact on GHG emissions. The EIR's conclusion that the Project will not result in a substantial impact on climate change because of the Project's putative consistency with the General Plan is unsubstantiated and not supported by any adequate analysis or substantial evidence in the record.

Likewise, the EIR's conclusion of the Project's impact on air quality is insignificant is not supported by any adequate explanation or substantial evidence. Kern County air quality is among the worst in the nation. To be consistent with a General Plan that has not and cannot adequately address the County's polluted air and has not succeeded in addressing this major impact on the health of the citizens of Kern County is of marginal value, at best. The Specific Plan must consider and incorporate additional mitigation measures to adequately address the air pollution that will result from the implementation of the Specific Plan. A number of Kern County developers have agreed to mitigate criteria pollutants to zero, and the Specific Plan should require sizable new projects to do so the same.

On page 4.17-30 the DEIR states, "The specific effects as a result of future development proposals would be determined on a case-by-case basis as the land uses defined in the Specific Plan Land Use Plan are addressed during the planning and environmental process by the County prior to the approval of any discretionary permits. The identified impacts related to GHG emissions would be addressed through mitigation measures provided in the planning and environmental documentation for future development projects in the Specific Plan Area. Upon compliance with State law, local regulatory requirements, the Specific Plan goals, policies, and implementation measures, and the implementation of mitigation measures identified on a case-by-case basis, the potential long-term impacts to global climate change as a result of GHG emissions would be considered less than significant."

The EIR's deferral of mitigation measures to address the Project's GHG emissions and the resulting impact on climate change is in violation of CEQA. The impact on global warming of the buildout projections and other effects of the Kern River Valley Specific Plan, along with a discussion of potentially feasible mitigation measures and alternatives should be addressed in this EIR; these discussions should not be deferred. Postponing discussion of this important impact until specific projects are proposed violates CEQA's prohibition against deferral. Moreover the EIR's attempt to defer the adoption of feasible mitigation measures to a later date fails to achieve CEQA's requirements to adopt all feasible mitigation measures prior to approval of a project. Pub. Res. Code §§ 21002, 21002.1. At the very least, the Specific Plan and the EIR should list specific criteria and performance standards that the new Plan would be expected to achieve, so that the public and decision makers could know what to expect from the Specific Plan in this regard. The County should then make specific commitments to achieve these performance standards. The conclusion of insignificance of the project's 41,347 tons per year of GHG emissions is unsubstantiated.

Table 4.17-4:

Building Energy Efficiency Standards in Place and in Progress: Public Resources Code 25402 authorizes the CEC to adopt and periodically update its building energy efficiency standards (that apply to newly constructed buildings and additions to and alterations to existing buildings).

Applicable and Feasible. The Specific Plan provides goals, policies, and implementation measures that require energy efficiency that exceeds the requirements of Title 24.

To which goals, policies, and implementation measures does this statement refer? Implementation measure 5.5.7 only requires energy efficiency that satisfies, not exceeds, Title 24 requirements. While it is clear that new projects will have to meet the requirements of Title 24, the Plan provides no specific criteria or performance standards for exceeding the requirements of Title 24. Green building measures should require that buildings be at least 35% more energy efficient than Title 24 standards current when permits are pulled.

Green Buildings Initiative: Green Building Executive Order, S-20-04 (CA 2004), sets a goal of reducing energy use in public and private buildings by 20 percent by the year 2015, as compared with 2003 levels.

Applicable but Infeasible. Although individual property owners within the future development as a result of the proposed project may elect to install green building features, requiring all new development to implement green building features is considered infeasible at the present time because of cost and maintenance concerns. However, the Specific Plan provides policies and implementation measures that require future discretionary projects to utilize design features and siting to reduce energy use and GHG emissions.

CEQA requires that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects." CEQA requires that agencies "mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." Pub. Res. Code §21002.1(b).

CEQA requires that “the EIR must propose and describe mitigation measures that will minimize the significant environmental effects that the EIR has identified.” *Napa Citizens for Honest Gov’t v. Napa County Bd. Of Supervisors*, 91 Cal.App.4th 342, 360 (2001). Several developers in Bakersfield have agreed through private agreements to green building requirements. Both Bakersfield Commons and Rio Bravo Ranch have agreed to LEED Silver standards for commercial buildings and 90 points on the BuildItGreen checklist for residential buildings. Thus, it is quite feasible to require green building standards, and the EIR is in error in its determination of infeasibility. The Specific Plan should require specific green building performance standards for new buildings.

California Solar Initiative: Installation of 1 million solar roofs or an equivalent 3,000 MW by 2017 on homes and businesses; increased use of solar thermal systems to offset the increasing demand for natural gas; use of advanced metering in solar applications; and creation of a funding source that can provide rebates over 10 years through a declining incentive schedule.

Applicable and Feasible. Individual property owners within the future development as a result of the proposed project may elect to install solar panels in order to reduce GHG emissions.

The County does not need a Plan in order for individual property owners to elect to install solar panels. If the Kern River Valley Specific Plan is to have any effect in this regard, it should incentivize the installation of solar panels in order to reduce GHG emissions. For example, it should require new commercial, industrial, and residential development projects to install solar PV. It is feasible for such projects to do so; the Bakersfield Commons and Rio Bravo Ranch projects have agreed to install solar PV under private agreements with the Sierra Club.

On page 4.17-38, the DEIR states, “Without the necessary science and analytical tools, it is not possible to assess with certainty whether the proposed project’s contribution would be cumulatively considerable within the meaning of CEQA Guidelines Sections 15065(a)(3) and 15130.” It further states, “the effect of 41,347 metric tons of CO₂e per year could be considered cumulatively considerable. This determination is based on the lack of clear scientific or other criteria for determining the significance of the proposed project’s contribution to GHG emissions . . . “. On page 4.17-39, the DEIR states, “Cumulative impacts related to global climate change are not known with certainty.” We disagree; as we note in the next paragraph, cumulative global warming impacts are known with scientific certainty. In the California Global Warming Solutions Act of 2006, the State has declared, “Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California.” This legislation requires statewide greenhouse gas (GHG) emissions to be reduced to 1990 levels by 2020. Executive Order S-3-05 sets an 80% reduction of GHG from 1990 levels in 2050 as a goal.

CEQA calls for the identification of “any critical thresholds for the health and safety of the people of the state.” Pub. Res. Code § 21000(d). With regard to GHGs, this critical threshold is avoiding dangerous anthropogenic interference (DAI) with the climate system. Article 2 of the United Nations Framework Convention on Climate Change (UNFCCC) calls for “stabilization of greenhouse gas concentrations in the atmosphere at

a level that would prevent dangerous anthropogenic interference (DAI) with the climate system.”¹ With the United States and over 180 other countries as signatories, the UNFCCC’s objective of avoiding DAI with the climate is widely viewed as the international regulatory standard for protecting the global climate. The best available science most strongly supports a threshold of zero. The further a threshold is from zero, the more tenuous the evidence to support a determination that the threshold is effective at meeting the environmental objective of avoiding dangerous climate change. Indeed, as determined by CAPCOA, a 90% reduction from business-as-usual, effective immediately, is necessary to meet the emission reduction targets set by Executive Order S-3-05 (CAPCOA 2008 at page 33). According to the International Panel on Climate Change, developed countries need to reduce emissions to 25-40% below 1990 levels by 2020 to stabilize atmospheric greenhouse gas concentrations at 450 ppm CO₂e². A stabilization target of 450 ppm CO₂e provides only a 50/50 chance of limiting global average temperature increase to 2°C (3.6° F) from preindustrial levels and a 30% chance that global average temperature would rise more than 3°C (5.4° F)³. The consequences of a 2°C temperature increase include the displacement of millions of people due to sea level rise, irreversible loss of entire ecosystems, the triggering of multiple climatic “tipping points” such as complete loss of summer Arctic sea ice and the irreversible melting of the Greenland ice sheet, loss of agricultural yields, and increased water stress for billions of people.⁴ As dire as the projected impacts are from a 2°C average temperature increase, increases above 2°C would result in impacts exponentially more devastating. At a 3°C temperature increase from pre-industrial levels, 22 percent of ecosystems would be transformed, losing 7 to 74 percent of their extent.⁵ An additional 25 to 40 million people would be displaced from coasts due to sea level rise, an additional 1.2 – 3 billion people would suffer an increase in water stress, and 65 countries would lose 16 percent of their agricultural gross domestic product.⁶ Accordingly, leading scientists warn that “to preserve a planet for future generations similar to that in which civilization developed and to which life on Earth is adapted . . . CO₂ will need to be reduced from its current 385 ppm to at most 350 ppm.”⁷ The U.S. Global Change Research Program recently affirmed this finding.⁸ A significance threshold for greenhouse gases must reflect the grave threats posed by the cumulative impact of additional new sources of emissions into an environment where deep reductions from existing emission levels are necessary to avert the worst consequences of global warming. *See Communities for Better Env’t v. California Resources Agency*, 103 Cal. App. 4th 98, 120 (2002) (“the greater the existing environmental problems are, the lower the threshold for treating a project’s contribution to cumulative impacts as significant.”); *see also Center for Biological Diversity v National Highway Traffic Safety Administration*, 508 F.3d 508, 550 (9th Cir. 2007) (“we cannot afford to ignore even modest contributions to global warming.”). The failure to immediately and significantly reduce emissions from existing levels, including those emission reductions required by AB 32, will result in devastating consequences for the economy, public health, natural resources, and the environment. Based on scientific and factual data, thresholds that are not highly effective at reducing emissions are inadequate in the face of the profound threats posed by global warming. The County needs to explain why it does not propose a threshold that truly reduces the impacts of the project.

There are several websites with important information about global warming/climate change and/or the California Environmental Quality Act (CEQA).

We noted above that the State of California regards reducing global warming emissions to be a statewide priority. The Attorney General website, <http://ag.ca.gov/globalwarming/ceqa.php>, contains much useful information, including lists of potential mitigation measures and modeling tools.

The California Air Pollution Control Officers (CAPCOA) website, www.capcoa.org, contains a White Paper entitled *CEQA and Climate Change*. This 155-page document from January 2008 is subtitled *Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act*.

Recent scientific assessments have outstripped the predictions issued by the Nobel Prize-winning U.N. Intergovernmental Panel on Climate Change in 2007 according to a recent report by the United Nations Environment Program. The report can be found at <http://www.unep.org/compendium2009/>.

Climate change will mean that California will have less water, experience a loss of cropland and see soaring wildfire rates, as documented by an August, 2009, CEC research paper at the website <http://www.energy.ca.gov/2009publications/CEC-500-2009-014/CEC-500-2009-014-F.PDF>.

The Environmental Protection Agency has recently issued a finding that greenhouse gasses endanger public health and welfare. See the website <http://epa.gov/climatechange/endangerment.html>.

These websites and the information they contain make it all the more critical that this project's adverse GHG impact be fully addressed. This information should be integrated into the environmental documents for the Kern River Valley Specific Plan project and into the County's decision on the project.

On page 4.17-11, the DEIR states, "mitigation measures identified in a project-specific CEQA analyses will utilize the 29 percent GHG standards identified in AB 32 which establishes a target reduction of GHG emissions to 1990 levels by the year 2020." Neither law nor logic supports the idea that compliance with AB32 is per se adequate mitigation. More and more, the evidence suggests that achieving the goals set by AB 32 may not be adequate mitigation. The websites above and the information they contain make it all the more critical that projects' adverse GHG impacts be fully addressed.

In spite of much hemming and hawing, the DEIR considers the cumulative impacts of the project on global climate change to be significant. CEQA requires that "the EIR must propose and describe mitigation measures that will minimize the significant environmental effects that the EIR has identified." *Napa Citizens for Honest Gov't v. Napa County Bd. Of Supervisors*, 91 Cal.App.4th 342, 360 (2001). On page 4.17-38, the DEIR states, "CEQA Guidelines Section 15130 notes that sometimes the only feasible

mitigation for cumulative impacts may involve the adoption of ordinances or regulations rather than the imposition of conditions on a project-by-project basis.” Furthermore, the DEIR states, “in accordance with Section 15130, any further feasible mitigation would be accomplished through CARB regulations pursuant to AB 32.” Several points should be made:

- There are a number of feasible mitigation measures listed below that the Kern River Valley Specific Plan could and should adopt as policies leading to County ordinances or regulations.
- By abandoning mitigation for this significant effect to CARB, the County is violating its CEQA obligation to “mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.” Pub. Res. Code §21002.1(b).
- The Kern River Valley Specific Plan should incorporate specific performance standards that would reduce its significant cumulative impact on global warming.

CEQA requires that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.”

Given the seriousness of the global warming issue, the County should be addressing the issue with specific feasible GHG policies and implementation measures. GHG associated with large new projects should be quantified and mitigated. There are a number of potential feasible measures, including:

- Green building measures. Earn at least 90 points on the Build It Green “Green Points Checklist” rating scale for new residential units (see the website www.builditgreen.org). Measures might include requiring that buildings be at least 35% more energy efficient than Title 24 standards current when permits are pulled. Satisfy LEED standards (Silver or higher) on new commercial and industrial buildings.
- Design features for new development to reduce Vehicle Miles Traveled (VMT). Such features might include relatively dense housing clustered around major traffic corridors with adjacent bus stops and/or other public transportation. Such housing could include affordable housing, condominiums, and apartments. Environmental documents should determine the amount of such transit-oriented housing that would make public transportation economically feasible, and it should determine GHG reductions associated with such transit-oriented development.
- A requirement that solar photovoltaics (PV) and solar water heating be built into every new structure. Every kilowatt of solar PV power offsets about a ton per year of global warming gasses that would have otherwise been produced by a fossil fuel-fired power plant (according to Environment California Research and Policy Center in a publication entitled *The Economics of Solar Homes in California*).
- A transfer fee requirement on new residential units that would be applied at each sale of a residential unit in the future. Transfer fee monies could go to SJVAPCD or some other appropriate entity to fund projects that would offset GHG emissions. A transfer fee policy is feasible; the Bakersfield Land Investment

project recently approved by Kern County has agreed to such a transfer fee in a private agreement with the Sierra Club.

- A requirement of new development for partial funding of an area energy efficiency program creating equivalent reductions in carbon emissions.
- A requirement that new projects partially subsidize public transportation in order to reduce area VMT. Subsidies could come from a transfer fee.
- A requirement that the developer of a new project retrofit solar PV on existing area buildings. Retrofitting existing area buildings with solar PV would effectively offset emissions associated with this project in much the same way as the SJVAPCD uses ISR funds to fund offsite projects to offset criteria pollutants associated with development projects.
- A condition that new parking lots be covered and that parking lot roofs contain solar PV. Such a policy is feasible; both Bakersfield College and California State University Bakersfield have recently constructed parking lots covered with solar PV.
- A requirement that a new project developer contributes funding for area solar PV incentives. Most solar PV incentive programs use funding rebates to encourage PV construction. The City of Lemoore has such a program. In the absence of a local solar PV incentive program, we suspect that Lemoore would be pleased to accept a contribution from developers to boost their program.
- A requirement that a new project developer contribute a GHG fee to the San Joaquin Valley Air Pollution Control District or some other appropriate entity to be used to fund projects that would reduce GHG emissions elsewhere. This could be built in to a criteria pollutant development mitigation contract as the Air District has suggested in the past. Such a policy is feasible; the Bakersfield Commons project agreed to contribute \$500,000 to the Rose Foundation for offsite GHG mitigation.
- A requirement that a new project developer purchase high quality, reliable carbon offsets to make up for remaining CO_{2e} emissions. There are a number of issues regarding the quality of carbon offsets that should be addressed. See *A Consumer's Guide to Retail Carbon Offset Providers*. Clean Air-Cool Planet, 2006.
- Other mitigation measures as listed on the California Attorney General website and in the CAPCOA White Paper.

AIR QUALITY

Project Impacts from Section 4.3.6

Table 4.3-8 lists total operational emissions in 2030 expected from the project as 49.11 tons per year of ROG, 25.93 tons per year of NO_x, and 8,132.84 tons per year of PM₁₀, all over the EKAPCD significance thresholds. Based on the values in this table, the DEIR concludes:

- “Impacts to regional air quality from mobile source emissions as a result of operation of future development would be significant and unavoidable.”
- “Impacts to regional air quality from total emissions (combined mobile source and area source emissions) as a result of operations of future development would be significant and unavoidable.”

- “Cumulative impacts to regional air quality as a result of operations of future development would be significant and unavoidable.”

Mitigation measures MM 4.3-1 through 4.3-4 apply only to construction emissions, and the Plan contains no specific mitigation measures or performance standards to address the significant operational emissions above. CEQA requires that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” There are a number of feasible mitigation measures in effect elsewhere that the EIR should address. These include:

- In the San Joaquin Valley, the SJVAPCD requires that sizeable projects offset about 50% of their emissions through the Indirect Source Review program. Compliance with the ISR, however, only results in a reduction of less than 50% for some of the criteria pollutants. Under CEQA, the County cannot rely on compliance with the ISR alone to mitigate the Project’s air quality impacts.
- A number of Kern County developers have entered into private agreements (Voluntary Emission Reduction Agreements, or VERA) to pay an air fee to the Rose Foundation or the SJVAPCD, the fee to be used to fund offsite air pollution reduction projects. We recommend that County adopt a policy of requiring larger projects, such as projects subject to the ISR, to enter into VERAs to fully mitigate the Project’s air emission impacts For smaller projects or individual residents, we recommend the County adopt a policy of requiring a payment of a an air impact fee, payable to the SJVAPCD, to address the a
- A number of Kern County developers have signed agreements with the SJVAPCD to reduce criteria pollutant emissions to zero or to below the significance threshold.

These and other measures to reduce air pollution, like a ban on pesticides and chemical based fertilizers on commercial crops should be included in the Kern River Valley Specific Plan and addressed in the EIR.

FARMLAND CONVERSION

Policy 5.2.9 states, “Voluntary conservation easements are recognized as a tool to preserve open space and agricultural lands.” Recent court decisions have made it clear that the County, in order to preserve open space and agricultural lands, can require conservation easements as mitigation for conversion of farmland to other uses. Delete the word “voluntary” from the policy, and focus Implementation measure 5.2.4 on requiring permanent conservation easements as mitigation for farmland loss.

Implementation measure 5.2.4 states, “All Specific Plan Amendments proposing to convert Prime Farmland, as defined by the California Environmental Quality Act (CEQA) Public Resources Code Section 21060.1, to a nonagricultural designation and/or any discretionary proposal for development which would place non-agricultural uses on property that has been planted within the last five years shall be accompanied by a Farmland Conversion Study (prepared using County Guidelines for Agricultural Soils/Farmland Conversion Studies) as part of a development application. Mitigation for

the loss of agricultural land shall be at a ratio of 1:1 for net acreage before conversion and may include one or more of the following to satisfy this requirement:

- a. Funding and purchase of agricultural conservation easements (to be managed and maintained by an appropriate entity);
- b. Purchase of credits from an established agricultural farmland mitigation bank;
- c. Contribution of agricultural land or equivalent funding to an organization that provides for the preservation of farmland in California; or
- d. Participation in any agricultural land mitigation program adopted by Kern County that provides equal or more effective mitigation than the measures listed above.”

Mitigation for conversion of farmland at the rate of 1:1 may not be sufficient in all circumstances. We agree with the Department of Conservation’s conclusion that additional mitigation would be needed where the converted land is under Farmland Protection or Williamson Act contracts, or where the Project would have an adverse impact on neighboring farming operations such, making it infeasible or difficult to continue agricultural operations. In such instances, adequate mitigation may be achieved only at the rate of 1:2 or 1:3.

Implementation measure 5.2.4 should be strengthened in several ways:

1. As written, the measure only applies to conversion of prime farmland. Other mapping categories deserve similar mitigation. For example, much of the area farmland is grazing land, and this grazing land heavily influences the unique character of much of the area, a quality that the Kern River Valley Specific Plan should preserve. For that matter, on page 5-3, the Plan itself states, “Agriculture and ranching activities are a historical part of the Valley and should continue to be acknowledged as an important use.” The measure should apply to each of the mapping categories.
2. The Plan should include a performance standard that specifies the quality of the preserved replacement mitigation land. The measure should require the replacement land to be of at least equal quality as the converted land; i.e., if the converted land is prime farmland, then the replacement land should be prime farmland.
3. Implementation measure 5.2.4 does not require qualifying agricultural replacement land to be at any imminent risk of development. The developer could satisfy this condition by buying an unnecessary conservation easement on farmland that is so far away from urban areas that there is little or no development pressure on it, and, since it would be cheaper for the developer to purchase an easement on land not at risk of development, this is the likely outcome of the measure. This circumstance would undercut the presumed intention of the measure to preserve farmland from conversion to urban use and protect our area’s agricultural economy. The County should require that replacement land have considerable conservation easement value. Preserving farmland that does not need to be preserved, that is under no development pressure and will almost certainly remain farmland even without a conservation easement, does not compensate for the loss of farmland; it is feasible to require that mitigation land be under significant development pressure.
4. The measure would allow land outside of the local area to be used as mitigation land, even land outside the San Joaquin Valley. While we concur that the

- problem of farmland conversion is a global one, there are several reasons to require mitigation land to be local, if not in the Kern River Valley, at least in the southern San Joaquin Valley. For one thing, if mitigation lands are far flung, it will be very hard to monitor and enforce the condition. A local land trust working with local land is much more accountable to the local public good than is one many hundreds of miles away. In addition, preservation of local farmland helps to protect our own area's very important agricultural economy and helps makes it possible for local consumers to buy fresher locally grown produce. Of course, the aesthetic worth of farmland as open space is something that we should value locally. Since the impact is here, we fail to see why we should provide these benefits to Madera County or Fresno County or Imperial County when we could equally well provide them closer to home.
5. In order to be more certain that the mitigation measure satisfies CEQA requirements for farmland conversion mitigation, the County should require that the ratio be higher; i.e., that more than one acre of equally good, equally at risk farmland be preserved elsewhere for every acre of agricultural land converted to urban use.
 6. Farmland under Williamson Act contract or Farmland Security Zone contract should be replaced at a higher than one-to-one ratio, as the California Department of Conservation routinely requests.

Ranchette development:

The EIR is deficient in that it does not address the impact of ranchette development allowed by the General Plan and the Kern River Valley Specific Plan on farmland conversion.

Allowing 1 dwelling unit per 20 acres would encourage development of 20-acre ranchettes and the many adverse environmental impacts associated with ranchette development. American Farmland Trust (AFT), in its recent study *Paving Paradise*, <http://www.farmland.org/programs/states/ca/Feature%20Stories/PavingParadise.asp> considers the spread of rural ranchette development to be one of three “key issues” involved in California farmland conversion. They argue that ranchette development (i) is inefficient, (ii) makes “agricultural production more difficult and expensive”, and (iii) creates “an additional market demand for rural land that in many regions is inflating its price to a level above what commercial agriculture can pay and still remain economically viable.”

The Plan should incorporate policies regulating ranchette development, including identifying areas where ranchettes should be prohibited, and where they might be permitted if appropriately regulated. An AFT policy statement containing suggestions for such policies can be found at http://www.farmland.org/programs/states/ca/documents/Ranchettes_San_Joaquin_Valley_May31_06.pdf,

We recommend use of this well-respected document for developing ranchette regulation policies for the Kern River Valley Specific Plan.

Policy 2.1.22 states, “Maintain a development pattern that recognizes a separation and identity of community boundaries within the Specific Plan Area.” We find no implementation measures for this policy, nor are there any specific performance standards that would enable the public and decision makers to know what to expect from the Specific Plan in this regard. The Plan should contain details of the implementation procedures for this policy, and the EIR should address the impact of these procedures on farmland preservation, air quality, and global warming.

Policy 2.3.9 states, “Discourage premature encroachment of residential development proposals into agriculturally designated areas.” The word “discourage” in this policy makes it so weak as to be ineffectual. Replace the word “discourage” with the word “prohibit”. We find no implementation measures for this policy, nor are there any specific performance standards that would enable the public and decision makers to know what to expect from the Specific Plan in this regard. Specific standards defining premature encroachment should be included in the Plan. The Plan should contain details of the implementation procedures for this policy, and the EIR should address the impact of these procedures on farmland preservation, air quality, and global warming.

LIGHT POLLUTION

While we appreciate the County’s efforts to address light pollution in Policy 2.1.19 and Implementation measure 2.1.8, the Plan contains few specific performance standards regarding light pollution. The International Dark Sky Association (www.darksky.org) has guidelines that should be incorporated into the Plan. Some of them include the following:

- Exterior lighting originating on a property should be limited to a maximum of 0.5-foot candles at a distance of 25 feet beyond the property lines.
- All lights should be full cutoff fixtures; i.e., there should be no light emitted above the horizontal and not much light (generally < 4%) at angles greater than 75° above the vertical.
- Streetlights should be flat-lens, full cutoff fixtures installed in a level position. Energy efficient lamps should be used. They should be mounted at a height of 30 feet or at the lowest height allowed by applicable codes.
- Advertising signs should be illuminated from above and should be off between 11 p.m. and sunrise unless the business is open to the public at that time.
- Lighting should be rated “Dark Sky Friendly” by the International Dark Sky Association.

The Plan should evaluate and the EIR should address these potential implementation measures.

1 United Nations Framework Convention on Climate Change, art. 2, May 9, 1992, available at

http://unfccc.int/essential_background/convention/background/items/1349.php.

2 S. Gupta et al., *Policies, Instruments and Co-operative Arrangements*, in CLIMATE CHANGE 2007:

MITIGATION, CONTRIBUTION OF WORKING GROUP III TO THE FOURTH ASSESSMENT REPORT OF THE INTERNATIONAL PANEL ON CLIMATE CHANGE 776 (2007) (by 2050, emissions would need to be reduced to 80 to 95% below 1990 levels).

3 UNION OF CONCERNED SCIENTISTS, HOW TO AVOID DANGEROUS CLIMATE CHANGE: A TARGET FOR U.S. EMISSIONS 16 (2007); Malte Meinshausen, *What Does a 2°C Target Mean for Greenhouse Gas Concentrations? A Brief Analysis Based on Multi-Gas Emission Pathways and Several Climate Sensitivity Uncertainty Estimates*, in AVOIDING DANGEROUS CLIMATE CHANGE 270-72 (2006).

4 Rachel Warren, *Impacts of Global Climate Change at Different Annual Mean Global Temperature Increases* in AVOIDING DANGEROUS CLIMATE CHANGE 95, 98 (2006). 5 *Id.* at 99. 6 *Id.* at 96–97.

7 James Hansen et al., *Target Atmospheric CO₂: Where Should Humanity Aim?* 2 OPEN ATMOSPHERIC SCI. J. 217, 226 (2008). 450 CO₂eq is approximately equivalent to 400 ppm CO₂ stabilization, and 400 CO₂eq is approximately equivalent to 350–375 ppm CO₂ stabilization. Michel den Elzen & Malte Meinshausen, *Multi-Gas Emission Pathways for Meeting the EU 2°C Climate Target*, in AVOIDING DANGEROUS CLIMATE CHANGE 300, 305 (2006).

8 U.S. Global Change Research Program, GLOBAL CLIMATE CHANGE IMPACTS IN THE UNITED STATES at 23 (2009) (finding that “atmospheric concentration of carbon dioxide would need to be stabilized in the long term at around today’s levels” to have a “good chance (but not a guarantee)” of avoiding severe, widespread, and irreversible impacts).

Discretionary and Ministerial Decision System of Kern County General Plan has Failed to Protect the Kern River Valley

The system of discretionary and ministerial decisions established for decisionmaking in the Kern County General Plan has failed to protect the Tubatulabal Cultural Landscape and the resources of the Kern River Valley. A multi-million dollar water diversion project in the South Fork Valley has no Lead Agency.

We asked Kern County Planning in 2009 about the unpermitted grading work that was being done in the South Fork Valley near Onyx, California without any permits but with millions of dollars worth of equipment over months and years to which Lorelei Oviatt responded on 17 November 2009, “We have no proposed or approved project on this site. At a minimum they should have obtained a grading permit or requested an exemption. Certainly CDFG would need to have issued a permit. There is nothing in our files. I will let you know the results of the Code Compliance visit.” to which Kern County Code Compliance responded without investigation – only parroting back what Renewable Resources (Re-Nu Resources) told them that Cal Trans is the lead agency and exempting the work being done to create a “water bank” without any permits or oversight.

<u>Item</u>	<u>Date of Action</u>	<u>User</u>	<u>Type of Action</u>	<u>Date of Next</u>
7	03/31/2010	Bradley, Ricky	Progress Report	
		Violation:		
		Notes:	Responsible party came into office on 12-07-09 and meet with Kern County Engineering Department (Aaron Leicht) and Dee Benson to discuss grading issue. The rep said they will move the piles of dirt into an area not considered the floodplain. Per K. Rasmussen BID, no permit needed for the distribution box being cemented. Aaron Leicht stated the representative indicated the location of the irrigation distribution box was not in the Kern River but within a privately maintained irrigation ditch next to Highway 178 and the culvert are under Hwy 178. Any tie to a CalTrans facility would require approval by that agency. The piles of dirt are identified as spoil material from maintenance of the ditch according to representative and this would not require a permit. But since the material was placed in a floodway it does represent a violation in the floodplain.	

And:

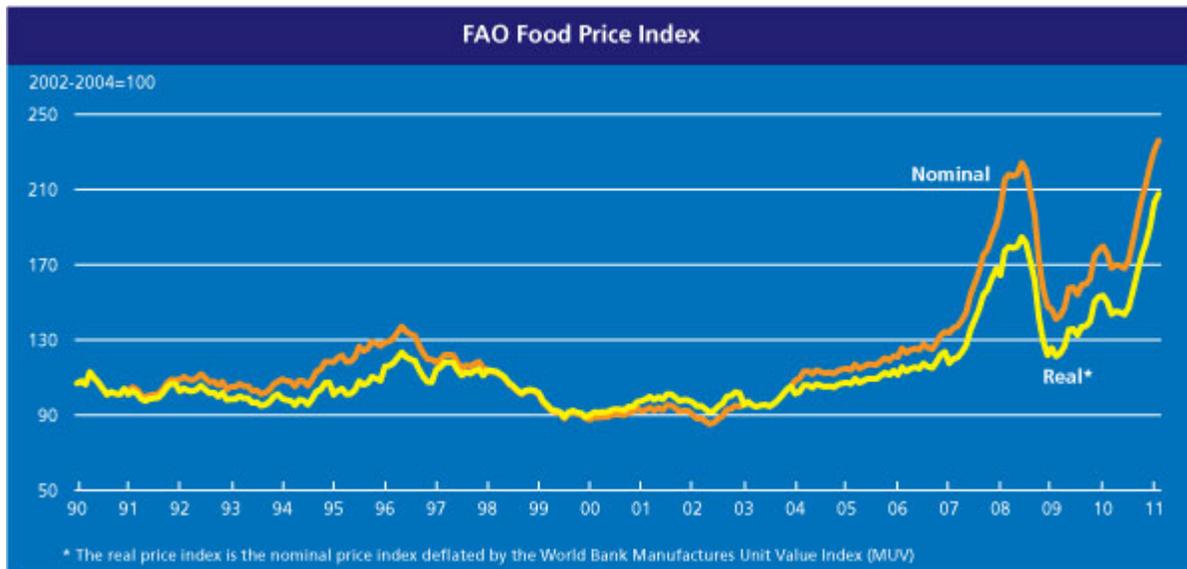
04/22/2010	Lackey, Chuck	Progress Report	
		Violation:	
		Notes:	<p>Aaron's comments 1)The first 4 photos in the set show improvements to an existing irrigation ditch about a mile east of Fay Ranch Road.</p> <p>2)The next photo shows the irrigation water distribution box constructed on the south side of 178 near Onyx. You can see the new pipe they added which ties onto the Caltrans pipe.</p> <p>3)The next photo shows the outlet structure from a pipe which ties to the afore mentioned distribution box.</p> <p>4)The next nine photos show the work done on the north side of 178 immediately adjacent to the distribution box. In this set you will see a set of new irrigation pumps placed down in an old irrigation ditch. The pumps deliver water to a buried box at the top of the hill next to 178 which routes the water to the distribution box on the south side of 178. I was told the soil disturbance represents a redistribution of material taken from the utility ditch dug for the pipe which comes from the pumps.</p> <p>From what I saw I believe the work is exempt from County Grading Permit process under the agricultural exemption and the exemption for excavations associated with the construction of wells, tunnels and utilities. None of the work was done in the Floodway. I did tell the foreman (Mike Young) that he may need to file an NOI with the State for NPDES Construction Activities but since I wasn't that familiar with the State's agricultural exemptions he should read up on it. Mike said that they were going to re-seed the disturbed area with a pasture mix. I suggested he get it down quickly in order to take advantage of the in-coming rains.</p>
04/22/2010	Lackey, Chuck	Close	

The set of irrigation pumps discussed above in the Kern County Code Compliance report can pump 7,500 gallons per minute of water from the South Fork Kern River and can be seen, along with some of the bulldozed riparian areas and one of the unpermitted concrete weirs (dams) built across the South Fork Kern River, in the Picasa web album at the following address:

<https://picasaweb.google.com/lh/sredir?uname=115573495597255674558&target=ALBUM&id=5470177212411927489&authkey=Gv1sRgCLqX2-a324bKsAE&feat=email>

be an act of social injustice. The rising food costs are shown below and at the following we site of the Food and Agriculture Organization of the United Nations.

<http://www.fao.org:80/worldfoodsituation/wfs-home/foodpricesindex/en/>



Plan must Prohibit Water Transfers, Sales, and Banking

Policy 11.1.8: Encourage agricultural practices that require reduced water demand and utilize the most efficient irrigation practices.

Implementation 11.1.8: The County shall implement the following policies for achieving its 2030 sustainability strategy:

First, “Encourage” must be changed to “Require” or the policy is meaningless because it could fail to protect the local food production capacity of the Kern River Valley.

Second, each proposed section of Implementations 11.1.8 fails to speak to the issue of agricultural practices, but instead speaks to issues regarding households and developers practice.

This measure should contain specific requirements and performance standards for protecting the surface and ground water of the Kern River Valley. Without such performance standards, it is impossible for the public and decision-makers to understand the impact of the Plan on water demand, efficient irrigation practices, resource conservation, and maintenance of the water table in the irrigable agricultural lands of the Kern River Valley.

In addition, well water depth monitoring must be immediately established for wells in the irrigable agricultural lands of the Kern River Valley, so a known baseline is established against which any changes in water depth in the irrigable agricultural lands of the Kern River Valley and surrounding residential areas can be measured or compared. This is an

important characteristic of the Kern River Valley which must be known and monitored to determine if excessive uses are being implemented and not reported.

San Luis Obispo County has implemented such a plan which includes groundwater monitoring.

<http://www.prcity.com/government/departments/publicworks/water/pdf/PasoBasinGWL-MonitoringNetworkPln.pdf>

“The preparation of the Paso Robles Basin Groundwater Management Plan (Plan) is one of the current activities to improve groundwater management.

The Plan was prepared coincident with the preparation of the Resource Capacity Study as well as other ongoing studies to develop a stakeholder-driven voluntary plan to provide a framework for future groundwater management activities.

Groundwater management requires groundwater level and other data collected and analyzed on a routine basis (typically annually) to establish the current conditions of the groundwater basin. This information is tracked and reported to agencies, interested parties, and stakeholders.”

A new section must be added to Implementation 11.1.8 “Prohibit water transfers, water sales, and creation of water banks and water banking in the Kern River Valley.”

For the Kern River Valley to sustainably produce food on local agriculture lands, into the future, the Plan must set policies to prohibit water transfers, sales, and banking in the Kern River Valley.

Plan must Prohibit use of Pesticides to Protect Groundwater and Air Quality

Goal 11.1.3: Encourage landscape design and maintenance and agricultural practices that reduce or eliminate the use of pesticides and herbicides, as well as conserving water.

Policy 11.1.5: Promote organic agriculture in order to minimize use of chemical pesticides and herbicides and to encourage agritourism.

Pesticide and other chemicals degrade water quality in the Kern River Valley and contribute to air pollution, water pollution, and the increase in health care costs.

Goals and policies that do not prohibit use of pesticides will not protect the air and water quality of the Kern River Valley.

The Plan must prohibit use of pesticides in order to protect the water, wildlife, and residents of the Kern River Valley and provide local farmland that is capable of growing local organic food and to reduce transportation miles required for residents to acquire healthy food and to reduce Greenhouse Gas emissions to reduce global Climate Change.

Plan shows Fiscal Irresponsibility

Kern County is responsible to manage the assets and resources of Kern County in a fiscally responsible manner. This is the third draft Specific Plan for the Kern River

Valley and this draft, as with the other drafts, fail to incorporate many of the comments provided by the public. Producing multiple draft plans is a fiscally irresponsible manner of managing the Kern County assets and is a waste of time and resources of the agency and the residents of Kern County as well as increasing the probability that more money and time will be wasted when a lawsuit is initiated to prevent the implementation of a faulty plan.

The public requested that Planning must create a clear and unambiguous Specific Plan for the Kern River Valley, one that clearly defines the terms used in the plan so the public and the decision makers have clear guidance on what can and cannot be done to carry out the plan. But the Draft includes vague direction and implementation strategies that require judgment or deliberation and fails to include in the glossary the two most important terms used in decision making that the public needs to understand as they try to comprehend the Draft: the terms are Discretionary and Ministerial.

Failing to include these two definitions is not only fiscally irresponsible because it wastes time as it wastes resources of the agency and the public, but it also obscures the real meaning and implications of the plan.

On February 08, 2011, you emailed the definitions of Discretionary and Ministerial.

Mr. Marderosian,

Thank you for your comment. At this time, I would like to note that Appendix E of the Kern River Valley Specific Plan contains the Glossary. However, as you eluded, the terms "discretionary" and "ministerial" are not defined.

The Kern County Zoning Ordinance, Section 19.04.216, defines a **discretionary decision** as: "**A decision requiring the exercise of judgment or deliberation when the public official or body decided to approve or disapprove a particular activity.**" This includes proposed actions that require consideration by the Kern County Planning Commission and/or the Kern County Board of Supervisors before being approved or denied.

Section 19.04.459 of the Zoning Ordinance defines a **ministerial decision** as: "**A decision requiring the application of the statutes, ordinances, or regulations to the facts as prescribed and involving little or no personal judgment by the public official or decision-making body as to the wisdom or manner of carrying out a project.**" This includes, but is not limited to, actions that can be approved or denied by the Planning & Community Development Department Director.

The Zoning Ordinance is available online at the following link:
<http://www.co.kern.ca.us/planning/pdfs/KCZOMar09.pdf>

Your concern is noted for the record and your email will be included and addressed in Chapter 7, Response to Comments (RTC) of the final Environmental Impact Report for the Kern River Valley Specific Plan. Additionally, the Specific Plan will be revised accordingly. A copy of the RTC will be provided to the Planning Commission and Board of Supervisors for their consideration of the proposed project. Furthermore, a copy of the RTC will be provided to you in advance of the Planning Commission hearing for your review.

Paul

Paul J. Johnson, Supervising Planner

The definitions shown above indicate that a ministerial decision follows the statutes, ordinances, or regulations and requires little or no personal judgment. But a discretionary decision requires “judgment or deliberation when the public official or body decided to approve or disapprove a particular activity.” The Draft plan includes so many vague, non-specific, ambiguous, or equivocating terms that many decisions would require judgment or deliberation, which will not only waste precious agency resources and time, but will most likely cause the plan to be frequently modified or changed.

Instead of using the vague, nonspecific, ambiguous, or equivocating terms that fail to provide planning and decision making guidance, like seek, consider, promote, encourage, discourage, pursue, minimize, “to the greatest extent possible,” may, and should, the plan must use the unequivocal terms like must, will, require, and prohibit. Otherwise, more time and resources will be unnecessarily wasted in communicating, planning, decision making, appealing, and litigating decisions that could be saved with fiscally responsible planning documents that protect the resources of residents and the agency.

Other Examples of Changes from Equivocal to Unequivocal Terminology

Page 2-11 says,

“General Land Policies

Policy 2.1.2: Development adjacent to existing agricultural uses shall minimize potential impacts which could be detrimental to the continuation of agricultural operations and activities.”

Policy 2.1.2 should be changed to the following: Policy 2.1.1: Development adjacent to existing agricultural uses shall be prohibited if potential impacts could be detrimental to the continuation of agricultural operations and activities.

Pages 5-4 and 5-5 say,

“Policy 5.2.8: When evaluating Specific Plan Amendment proposals to change a Map Code 8.1 (Intensive Agriculture) designation to accommodate residential, commercial, or industrial development, the County shall consider the following factors:

- a. Approval of the proposal will not unreasonably interfere with agriculture operations on surrounding lands.
- b. Necessary public services (fire, sheriff, etc.) and infrastructure are available to adequately serve the project.”
- c. There is a demonstrated need for the proposed project at the proposed location based upon population projections, market studies and other indicators.
- d. The requested change in land use designation is accompanied by a zone change or other implementing land use applications for a specific development proposal.
- e. The site is contiguous to properties that are developed or characterized by nonagricultural land uses. If not contiguous, there are unique site features which warrant nonagricultural use.
- f. Past agricultural use of the site has led to soil infertility or other soil conditions which render the property unsuitable for long-term agricultural use.
- g. Approval of the proposed project outweighs the need to retain the land for long-term agricultural use.
- h. Where adjacent or within proximity (1/2 mile) to existing urban areas, the County shall discourage agricultural conversion that is discontinuous with urban development.

Policy 5.2.8 should be changed to read the following:

Policy 5.2.8: When evaluating Specific Plan Amendment proposals to change a Map Code 8.1 (Intensive Agriculture) designation to accommodate residential, commercial, or industrial development, the County shall prohibit residential, commercial, and industrial development on agricultural land.

Policy 2.3.9 states, “Discourage premature encroachment of residential development proposals into agriculturally designated areas.” The word “discourage” in this policy makes it so weak as to be ineffectual. Replace the word “discourage” with the word “prohibit”. We find no implementation measures for this policy, nor are there any specific performance standards that would enable the public and decision makers to know what to expect from the Specific Plan in this regard. Specific standards defining premature encroachment should be included in the Plan. The Plan should contain details of the implementation procedures for this policy, and the EIR should address the impact of these procedures on farmland preservation, future food prices, air quality, and Climate Change.

Plan has Conflicting Objectives

Page 1-2 lists objectives of the plan.

Ensure that development is managed to conserve the scenic, biological, watershed and other features of the natural environment.

Manage future growth responsibly, and encourage an appropriate balance among private property rights, community development, the natural environment, and social objectives.

The second objective is contradictory to the first objective to “conserve the Natural Environment.” As is discussed below, the objective to “manage future growth responsibly, and encourage an appropriate balance among private property rights and community development, the natural environment, and social objectives” cannot protect the natural environment when it compromises the natural environment in favor of development. Thus as written, the second objective conflicts with the first objective to conserve the natural environment.

The Specific Plan must be crafted with tight language in its direction that prevents degrading the environment. Items 1 and item 2 are impossible to simultaneously implement. If the Specific Plan allows development and growth to occur, the natural environment will be impacted, degraded, and not protected. Any so-called “balance” that is reached will inevitably not be able to conserve some portion of the natural environment; therefore this Specific Plan cannot conserve the natural environment. Specific Plan Objective number 1 is only “lip service” and cannot be achieved if growth is allowed by the Specific Plan.

Plan Must Adopt a Decentralized Renewable Power Generation Policy

The Specific Plan must also require all new structures and parking areas to include PV solar panels and, rather than enable large area industrial/commercial concentrated solar power facilities that require new transmission lines and construction to take place on open space that should be preserved in the Kern River Valley, the agency should adopt the fiscally responsible land use policy of implementing decentralized, distributed energy generation in the Kern River Valley Specific Plan – and for that matter in Kern County.

In December 2010, *Sierra Club California Energy-Climate Committee* and the *Local Clean Energy Alliance* endorsed “COMMUNITY POWER Decentralized Renewable Energy in California,” by Al Weinrub (attached as Exhibit A). We encourage you to adopt decentralized renewable energy for the Kern River Valley Specific Plan and for all of Kern County. To do otherwise would be fiscally irresponsible and would detrimentally reduce the Kern County farmland and its ability to produce food, which would cause food prices to increase and would drastically reduce Kern County open space and wildlife habitat due to the unnecessary requirement for additional covered acreage for concentrated, centralized renewable power facilities and the transmission lines they would require.

Plan must Prohibit New Power Transmission Lines

The Draft Plan says,

“Scenic Resources

The Valley contains many natural and scenic resources that create a picturesque natural setting: prominent ridgelines, scenic corridors and canyons, rivers, forests, wildflowers, lakes, view corridors and vista points, roadways through undisturbed habitat, and native habitats. These resources are also valuable to the identity and economy of the Valley. They enhance the visual character of local communities and provide distinguishing characteristics.”

In order to protect the scenic resources of the Kern River Valley, one of the major reasons why we all moved here, the Specific Plan must prohibit new transmission lines that would diminish this valuable resource which attracts thousands of visitors to the Kern River Valley every year. Power transmission lines would be unnecessary, if photovoltaic solar panels were placed on existing structures and over parking areas.

Plan is NOT a VISION - It can change with each Discretionary Decision

The Draft page 1-1 says it is the "Vision."

Specific Plan Objectives/Vision

This Specific Plan was prepared in response to issues and concerns expressed by Kern River Valley residents. The 2004 series of public workshops held in South Fork, Lake Isabella, and Kernville, subsequent resident letters, and community based documents have collectively articulated specific concerns and issues to be addressed in this Specific Plan. In 2000, graduate students from Cal Poly, Pomona developed recommended planning objectives for the Kern River Valley, many of which are validated in the development of this Specific Plan.

The purpose of this plan is to provide a vision and guidance for directing future growth and development of the Kern River Valley over the next 20 years. This vision is intended to balance the natural character of the Valley with future growth, and promote a rural lifestyle while protecting the solitude and privacy of residents living in this mountain community. The following objectives identify general concepts and ideas, which provided the guidance for the development of this plan.

But a "Vision" for the future of the Kern River Valley cannot be changed every time a "discretionary" decision to change the "Plan" is made by any three Supervisors. If the Plan is the "Vision" and the Vision can be changed at the whim of interpretation by three residents of Kern County who may not even be residents of the Kern River Valley, the Plan is not the Vision. And while the Plan does mention the Cal Poly study, the Plan does not include all of its recommendations and will not retain the recommendations that were included.

We incorporate herein in its entirety the report titled, **“A Vision for the Kern River Valley - Principles for Economic and Ecological Sustainability”** June 2000 by the Department of Landscape Architecture's 606 Studio at the California State Polytechnic University, Pomona. The entire document is found at the following web site:
http://krvr.org/index.php?option=com_joomlaboard&Itemid=26&func=view&catid=3&id=17532

The Vision for the Kern River Valley page 127 says,

“Open Space

The defined open space element exemplifies the true character of the community. They can be as commonplace as grazing areas, agricultural fields, wildflower plains, and unscarred lands, but they

are integral to the fabric of the local community. They are the places people love, miss when they are away, and identify with as “home.””

Page 2-5 says, “To achieve the vision and objectives set forth in this Specific Plan, the County will make land use decisions consistent with the land use designations, policies and development standards set forth in the Specific Plan.”

The Kern River Valley Specific Plan cannot be the Vision for the next 20 years of the Kern River Valley. The Vision identified for the future of the Kern River Valley was derived through a multi-year study by students from Cal Poly, Pomona who developed recommended planning objectives for the Kern River Valley by interviewing residents of the community about why they moved to the Kern River Valley and what they wanted to see in the future. The Vision for the Kern River Valley can only be modified through the same process. The Vision for the Kern River Valley must be fixed and steadfastly held to until the community modifies its Vision of the future of the Kern River Valley. The Vision is not one that can be modified by “discretionary” decisions decided by three members of the Board of Supervisors at any time a developer requests a change in the Vision.

Plan Fails to Protect the Tubatulabal Cultural Landscape

The Kennedy Meadow/Rockhouse Basin area is included in the territory occupied aboriginally by the Tubatulabal (Kroeber 1925:606, Plate 47; Voegelin 1938:8, fig. 1: Smith 1978). This area is on the northern limits of the Tubatulabal territory, a region that was utilized to a lesser degree. It is a strong possibility that the indigenous people inhabiting the western Great Basin used this region as a trans-Sierran corridor for trade and travel (Decker 1971; Steward 1938). Ethnographically these tribes would have been the Owens Valley Paiute, Eastern Mono and/or Panamint Shoshone. **The Tubatulabal traditional lands extended from the Kern River Valley including the South Fork of the Kern River source**, at the foot of Mt. Whitney, to the terminus of Kern Canyon, northeast of Bakersfield. This area incorporates nearly 3364 km (1300 square miles) ranging in elevation from 610 to 4421 m (2,000 to 14,500 feet). (Voegelin, E.W. 1938 Tubatulabal Ethnography. Berkeley: University of California Anthropological Records 2(1): 1-84)

Draft Plan Page 2-12 says, “**General Land Use Implementation**

Implementation 2.1.1: The Kern County Planning and Community Development Department shall work with local Native American groups and historic organizations to inventory a specific list of historic resources and sites utilizing community input. The list of historic resources and sites shall be protected **to the greatest extent possible**. New discretionary projects shall incorporate protective measures for those historic resources and sites **identified**.

Implementation 2.1.1 should be modified to include protective measures for the cultural resources and the Cultural Landscape that is a major and important part of the Kern River Valley. Therefore, 2.1.1 should be modified as follows:

Implementation 2.1.1: The Kern County Planning and Community Development Department shall work with local Native American groups and historic organizations to document the location of the Cultural Landscape that will be protected and inventory a specific list of cultural resources, historic resources and sites utilizing community input. The Cultural Landscape, cultural resources, historic resources, and sites shall be protected from residential, commercial, and industrial development. New discretionary projects shall incorporate protective measures for those cultural and historic resources and sites identified. All discretionary development proposals shall be reviewed for compatibility with the identified Cultural Landscape, cultural and historic resources, and sites. Appropriate limitations and conditions shall be incorporated in discretionary development projects to address compatibility with Cultural Landscape, cultural and historic resources, and sites. Incompatible uses shall not be permitted.

The Draft Specific Plan page 2-25 says “Policy 2.5.8: Urban Industrial land use designations are inappropriate adjacent to Highway 178, east of Sierra Way.”

The DIER should retain the current uses for lands in the Kelso and South Fork Valleys east of Sierra Way. All industrial uses should be prohibited in agricultural zones in order to preserve the agricultural production capacity, rural quality, open space, potential for National Scenic Byway designations, and Cultural Landscape in the Kelso and South Fork Valleys east of Sierra Way and other “Cultural Landscape” areas of the Tubatulabal Tribe in the Kern River Valley.

We are concerned about the entire Cultural Landscape because heavy equipment could obliterate much of the evidence of these Historic, cultural resources in the Kern River Valley. The Tubatulabal Indian tribe had at least three camps in Fay Canyon alone and many more camps throughout the South Fork and Kelso Valleys where food was processed and prepared. The South Fork and Kelso Valleys also contain numerous trails which Tubatulabal Tribe members used for transporting food and supplies from one gathering place to another where Tubatulabal Tribe members assembled. The South Fork and Kelso Valleys were the Cultural Landscape in which Tubatulabal Tribe members performed ceremonial rituals and rites.

Portions of these South Fork and Kelso Valley drainages are included in a Cultural Landscape eligible for listing in the National Register of Historic Places and Highway 178 is eligible for listing in the National Register of Scenic Highways. There are at least a dozen Native American Indian cultural middens, numerous associated pictographs, rock mortars, and ceremonial sites, such as the one that is accessible by the public off Kelso Valley Road just north of the South Fork Middle School, which are primary features of this Cultural Landscape. A number of other historic and pre-historic cultural resources also exist in these drainages. Cultural Landscape elements would be affected by any industrial project that would be approved in the South Fork and Kelso Valley drainages.

Allowing any new homes, solar power plants of any size (other than those placed on existing structures and parking lots), industrial wind turbine farms, or any other commercial development of any type or classification would be a blight on the Tubatulabal Cultural Landscape, on local farmland, and on open space, which would be

as egregious an impact as the checker board of clearcuts is on the landscape of the Giant Sequoia National Monument and another crime against society.

Policy measure 2.5.8 should be replaced with the following: “Industrial land use designations are prohibited east of Sierra Way.”

Page 2-11 says,

“Policy 2.1.9: Maintain and revitalize historic structures, uses, and significant architectural elements to enhance the heritage of the Kern River Valley.”

Policy 2.1.9 should be replaced with the following: Maintain, prohibit the destruction of, and revitalize historic structures, uses, and significant architectural elements, Cultural Landscape, cultural resources, and sites to enhance the heritage of the Kern River Valley.”

Plan must Prohibit Industrial Development in Agricultural Lands

The EIR is deficient in that it does not address the impact of industrial development allowed by the General Plan and the Kern River Valley Specific Plan on farmland, which would allow temporary or permanent farmland conversion.

Allowing any industrial or commercial development or infrastructure changes would encourage industrial development and the many adverse environmental impacts associated with industrial development. Like ranchette development (discussed above), industrial development on farmland would allow temporary or permanent farmland conversion.

The Plan should incorporate policies regulating industrial development, including identifying areas where industries should be prohibited, like in any farmland where food production would be decreased and food prices would increase due to the conversion, and where they might be permitted if appropriately regulated.

Plan must Consider 2010 Census Data

Page 10-1 of the Draft Specific Plan says the following:

“Nearly 20 percent of the housing units in Valley were identified within the 2000 Census as solely for seasonal or occasional use. The average vacancy rate among the Valley communities is approximately 31 percent. These characteristics are indicative of the large number of residents with vacation homes and the large influx of tourists that come to the Valley to participate in outdoor recreational activities during the summer peak period. The County has prepared a comprehensive countywide housing plan with the Kern County Housing Element which includes both the Metropolitan Bakersfield General Plan and the County General Plan areas. This Element was updated in 2002 and requires a comprehensive review by the County and approval by the State Department of Housing and Community Development in 2008. This Element plays a special role in the continued development of Kern County and affordable housing. Due to

State mandates, this Element is kept separate from all other mandatory elements due to the 5 year comprehensive update and review time period. This Element is maintained with information provided by the Kern County Community and Economic Development Department.

The goals, policies, and implementation programs in the Housing Element address all types of housing needs, from rehabilitation of aging units to new construction to meeting the housing needs of lower-income residents. These goals, policies, and programs are incorporated into this Specific Plan in their entirety by reference. Development review measures set forth in the Land Use Element and Community Facilities and Services Element pertaining to the availability of necessary public services will also ensure that new housing is supported with adequate infrastructure and community facilities.”

The Plan relies on the 2000 Census data for projections and need requirements and fails to mention the impact of the 2008 world economic collapse caused by a lack of regulation. The Kern River Valley Specific Plan must reflect the reality of the housing foreclosures, lost jobs and the incomes, and rising food and fuel costs, which have a considerable impacts on future needs of the Kern River Valley.

Plan fails to follow Blueprint Planning Program

Regional Blueprints are collaborative planning processes that engage residents of a region in articulating a vision for the long term future of their region. Kern County failed to include such a process in the planning for the Kern River Valley Specific Plan even though one meeting was held in 2007 in Lake Isabella.

The Summary Report prepared by Kern County Council of Governments (**KERN REGIONAL BLUEPRINT PROGRAM - TOWN HALL MEETING - PHASE 2 - KERN RIVER VALLEY October 24, 2007**) indicates that the residents of Lake Isabella who attended the Regional Blueprint program meeting want the valley protected.

http://www.kerncog.org/blueprint/events/KRV_Ph2_SummaryFinal-040708.pdf

Conserve energy and natural resources, and develop alternatives

Participants identified water as the natural resource critical to the community. Participants agreed the lake is the life of the valley and natural resources bring in tourism. Some participants that wind and solar energy production was possible in the Kern River Valley. Some identified the need to preserve the air quality and conserve water and minerals.

Conserve undeveloped land and spaces

Participants agreed that the undeveloped land and spaces makes Kern River Valley what it is with snow and streams. Participants expressed a desire to protect the Kern River Valley watershed. Participants also agreed that generally they want to keep the night skies visible – no light pollution.

Missing principles

Participants identified the following missing principles:

Protect/preserve historical and prehistoric sites and artifacts.

Kern County Fails to Comply with SB-18

SB-18 Local and Tribal Intergovernmental Consultation for Protection of Traditional Tribal Cultural Places - SB-18 requires cities and counties to contact and consult with “California Native American Tribes” on the contact list maintained by the California Native American Heritage Commission before adopting or amending a General Plan, or when designating land as Open-Space, for the purpose of protecting Native American Cultural Places. Kern County has failed to engage in consultation with the Tubatulabal Tribe at the earliest opportunity.

“The intent of SB 18 is to provide all California Native American tribes, as identified by the NAHC, an opportunity to consult with local governments for the purpose of preserving and protecting their cultural places.”

“California Native American Tribes

SB 18 uses the term, California Native American tribe, and defines this term as “a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission” (NAHC). “Federal recognition” is a legal distinction that applies to a tribe’s rights to a government-to-government relationship with the federal government and eligibility for federal programs. All California Native American tribes, whether officially recognized by the federal government or not, represent distinct and independent governmental entities with specific cultural beliefs and traditions and unique connections to areas of California that are their ancestral homelands. SB 18 recognizes that protection of traditional tribal cultural places is important to all tribes, whether federally recognized or not, and it provides all California Native American tribes with the opportunity to participate in consultation with city and county governments for this purpose. As used in this document, the term “tribe(s)” refers to a California Native American tribe(s)”

Thank you for considering these issues of greatest concern.

Respectfully submitted,

Gordon L. Nipp, Ph.D.
Vice-Chair and **Chapter Contact**
Kern-Kaweah Chapter Sierra Club
P.O. Box 3357
Bakersfield, CA 93385
gnipp@bak.rr.com

And



Mr. Ara Marderosian
Local Contact
Kern-Kaweah Chapter Sierra Club
And
Executive Director
Sequoia ForestKeeper
P.O. Box 2134
Kernville, CA 93238
(760) 376-4434
ara@sequoiaforestkeeper.org
www.sequoiaforestkeeper.org

EXHIBIT A

7 April 2010

Mr. Ted James, Director
Kern County Planning Department
2700 M Street, Suite 100
Bakersfield, CA 93301-2370
Contact: Jaymie Brauer, Planner
(661) 862-8629
planning@co.kern.ca.us

RE: Sequoia ForestKeeper & Kern-Kaweah Chapter of the Sierra Club Scoping
Comments on the

Weldon Solar Project EIR —Notice of Preparation
Zone Change Case No, 3, Conditional Use Permit No. 1, Map 42-13; Zone.
Change Case No. 1, Conditional Use Permit No. 1, Map 42-24
Renewable Resource Group (wo # PP10244)
<http://www.co.kern.ca.us/planning/noticeprep.asp>

Dear Mr. James:

The Kern County Planning Department (KCPD) held a meeting at 1:30 p.m. on March 26, 2010, in Conference Room 1A, the Agenda for which indicated that it was a “Scoping Meeting” for the New Case Weldon Solar Project EIR.:

The Agenda said, “The process of determining the scope, focus, and content of the EIR is known as “scoping.” Scoping helps to identify the range of actions, alternatives, environmental effects, methods of assessment, and mitigation measures to be analyzed in depth, and eliminate from detailed study those issues that are not important to the decision at hand. “

We are concerned about all of the categories listed on the Kern County Environmental Check List form for review in the Project Issues Discussed in the Notice of Preparation

(NOP), especially those that indicate No Aesthetic and No Scenic Impact, with which we strongly disagree, and those issues that are not listed for review. But we are also concerned about the issues discussed below, which we recommend be studied and then considered, discussed, and analyzed in the Draft Environmental Impact Report (DEIR). The following are our Scoping Comments of important issues of concern and alternatives regarding the environmental effects of the Weldon Solar Project that should be considered and analyzed in the DEIR for the Weldon Solar Project by Renewable Resources ZCC 3, CUP 1, Map 42-13 ZCC 1, CUP 1, Map 42-24.

Concerns:

Failure to Inform Local Citizens of Scoping for Project: We are concerned because the public in the Kern River Valley was not informed about and notified about scoping for the Weldon Solar Project in advance of the public meeting, so citizens could attend the meeting, ask questions, and submit letters of concerns, which would be analyzed in the DEIR for the project.

Supervisor McQuiston's office, in the person of Judy Hyatt, indicated in an email dated March 22, 2010, to members of the Kern River Valley Revitalization the purpose of the "Scoping Meeting" held at 1:30 pm on March 26, 2010 is for agencies to comment. "Just to clarify the purpose of the meeting - the Planning Department sends out a NOP so agencies that have jurisdiction or interests in the project area can make comment." (See Exhibit A)

The California Environmental Quality Act (CEQA) was established to get input from agencies and the public for proposed projects that could impact California. In order to get input on proposed projects, California State governmental agencies and county governments notify other agencies and the public and request their input. "Scoping has been found to be an effective way to bring together and resolve the concerns of affected federal, state, and local agencies, the proponent of the action, and other interested persons including those who might not be in accord with the action on environmental grounds." (CEQA)

Why doesn't Supervisor McQuiston and the Kern County Planning Department give the local citizens of the county who are most impacted by projects the earliest opportunity to voice their concerns about projects by informing them about projects well in advance of scoping, so the citizens feel that their county government is serving them rather than overlooking them and so the public's concerns are considered in the DEIR along with those of agencies? Why doesn't Supervisor McQuiston and the Kern County Planning Department define the "Purpose of Scoping" for CEQA the same way as the California Department of Fish and Game, California State Water Resources Control Board, Shasta County, and other agencies define the Purpose of Scoping?

The California Department of Fish and Game defines the "Purpose of Scoping" per CEQA as follows: "Purpose of Scoping - Provide the public and agencies an opportunity to provide input into the scope and content of the DEIR, and associated regulatory updates"

<http://www.dfg.ca.gov/suctiondredge/docs/Suction-Dredge-Scoping-Mtg-Presentation.pdf>

The California State Water Resources Control Board defines the “Purpose of Scoping” as follows: “Purpose of Scoping - Solicit public feedback to help guide environmental analysis of our Basin Plan Amendment Identify reasonably foreseeable significant adverse environmental impacts from this Basin Plan amendment.

http://www.swrcb.ca.gov/rwqcb6/water_issues/programs/basin_plan/docs/pest_scoping.pdf

Shasta County defines the “Purpose of Scoping” as follows: “The purpose of scoping is to solicit input from experts and the public, including agencies, organizations, and individuals, to identify the range of actions, alternatives, environmental effects, methods of assessment, and mitigation measures to be analyzed in depth in the EIR.”

http://www.co.shasta.ca.us/departments/resourcegmt/drm/Hatchet%20Ridge/DEIR/Ch1_Intro.pdf

Why did Kern County interpret CEQA differently and fail to provide the public, most directly impacted by the project, with an opportunity to input concerns about the project on scoping? We recommend that Kern County keep the comment period(s) open for public comment until after the public is notified and a sufficient number of public meetings are held, or begin the scoping process again for the Weldon Solar Project and any other of the solar projects that were presented on the web site:

<http://www.co.kern.ca.us/planning/noticeprep.asp>

Weldon is an under-served community that was not informed by those in Kern County government who are supposed to be serving all elements of the community. As a community, we want notification of upcoming meetings. Communication with Kern River Valley residents is essential, if the existing opposition to the project has any hope of being overcome. Please make sure the entire community is informed well in advance of all up-coming meeting.

The community wants “Preservation Not Mitigation”

Loss of Prime Agricultural Land: The purchasers of the land acquired it knowing that the land was prime agricultural land. But now they want Kern County to “give” them zone changes to convert this agricultural land to non-agricultural uses, which will cause impacts to other beneficial uses in the community. The community wants no zone change to eliminate prime agricultural land and its potential to grow food, which could cause the price of food to artificially rise because the acreage for growing food is reduced.

A study on the impacts on other beneficial uses of the zone changes on agricultural land needs to be done, up-front. This up-front study needs to include the ideas of local residents (via focus groups, public meetings, etc.) as they stand to be the most impacted on a day to day basis. The results need to be presented in the proposed Weldon Solar Project DEIR, so the Public can/may further respond. Local knowledge ... on the project site needs to be incorporated in the study findings and presented in the proposed Weldon Solar Project DEIR, so the Public can/may further respond

Many public meeting should be scheduled in Weldon before comments are due on the DEIR in order to completely explain the project to local residents and hear the concerns of the public.

Cumulative Impacts of the Loss of Prime Agricultural Land: The NOP page 23 says, “All answers must take account of the whole action involved, including offsite as well as onsite, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.” The NOP page 61 says, “Does the project have impacts that are individually limited, but cumulatively considerable? (“Cumulatively considerable” means that the incremental effects of a project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)” The Kern County Planning Department web site lists NOP’s for 11 solar projects in Kern County. (<http://www.co.kern.ca.us/planning/noticeprep.asp>)

Notice of Preparation

The Kern County Planning Department as Lead Agency (per CEQA Guidelines Section 15052) has required that Environmental Impact Reports (per CEQA Guidelines Section 15161) be prepared for the following solar projects:

[Antelope Valley Solar by Renewable Resources Group](#)

[Desert Solar Projects by enXco](#)

[Lost Hills Solar Project by NexLight](#)

[Maricopa Sun Solar Project by Maricopa Sun, LLC](#)

[Monte Vista Solar Array by First Solar, Inc.](#)

[Ridge Rider Solar Park by Global Real Estate, LLC](#)

[Rosamond Solar Array by First Solar, Inc](#)

[Rosamond Solar Project by SGS Antelope Valley](#)

[Valley Solar Projects by enXco](#)

[Weldon Solar Project by Renewable Resources](#)

[Willow Springs Solar Array by First Solar, Inc.](#)

There is a dire need for a comprehensive analysis of the cumulative impact of all of the 11 proposed solar plants, in addition to the past and probable and expected residential and commercial growth projects that will also adversely impact agriculture, particularly by conversion of farmlands. The comprehensive analysis of the cumulative impact of all the proposed solar plants and past and probable and expected residential and commercial growth projects in Kern County must consider and analyze the cumulative loss of agricultural land from all proposed and expected project for Kern County. In addition to the impacts to agricultural land, the cumulative analysis should include, but not be limited to all the categories of concerns discussed in this comment letter of concerns.

Loss of Rural Scenic View from Public Vantage Points: The NOP, page 16, says, “I. AESTHETICS. Would the project:

a. Have a substantial adverse effect on a scenic vista? [No Impact]

b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? [No Impact]

Discussion:

a. . . according to the Kern County General Plan (KCGP), the site is not located within an area designated for, or identified as having, a scenic vista or scenic views. Therefore no impact would occur and no further discussion is warranted in the EIR.”

The NOP also indicates on page 11 that, “The technology would consist of silicon thin-film tracker panels that are encased in anti-glare glass.” This statement fails to be specific about what the reflectivity of the anti-glare surface of glass would be. With 500 acres of glass, where none previously existed, there would be a significant and major reflective surface seen from many of the surrounding public lands, roads, and trails, causing a major loss of rural scenic view from public vantage points due to the impacts from the reflectivity of the solar panels.

The fact that the Kern County General Plan (KCGP) does not reference the high quality of the scenic vistas or scenic views of the South Fork Valley is a regrettable omission in the KCGP and not an on-the-ground fact. Page 43 of the book “Exploring the Southern Sierra: East Side” says, “Upon reaching the peak, read the plaque explaining its place-name origin. In 1973 the U.S. Board of Geographic Names accepted the name to honor the memory of Weldon F. Heald. Although his chief bailiwick was the American Southwest, Heald took an active roll in the fight to preserve wilderness in the Southern Sierra.” Impacts on scenic vistas and scenic views should definitely be addressed in the project DEIR.

The project would degrade views from public vantage points, particularly from roads, parks, open space, trails, ecological areas, nearby recreation areas, and the roads and/or trails leading to them, including but not limited to the following:

- California Highway 178
- Kelso Valley Road (Kern County)
- Kelso Creek Road (Kern County)
- Fay Ranch Road (Kern County)
- California Department of Fish and Game FAY CANYON ECOLOGICAL RESERVE
- Audubon-California KERN RIVER PRESERVE (borders the proposed project area)
- California Department of Fish and Game ECOLOGICAL RESERVE ACREAGE (within 0.3 mi. of the project boundary)
- USDA-Forest Service-Sequoia National Forest DOMELAND WILDERNESS acreage (within 3 miles of the project boundary)
- USDA-Forest Service-Sequoia National Forest-SOUTH FORK WILDLIFE AREA (within +/- 3 miles of the project boundary)
- USDA-Forest Service-Sequoia National Forest KIAVAH WILDERNESS acreage (within 5-5.5 miles of the project boundary)
- USDA-Forest Service-Sequoia National Forest Piute Mountains acreage (2.5 miles of the project boundary)
- USDI-Bureau of Land Management DOME LAND WILDERNESS acreage (within 2 mi. of the project boundary)
- USDI-Bureau of Land Management KIAVAH WILDERNESS acreage (within 2 mi. of the project boundary)
- South Fork Kern River Valley AGRICULTURAL LANDS and RURAL CHARACTER amenities (found both within and bordering the project boundary)
- The wildlife Corridor between the Piute Mountains and Domeland Wilderness

- Hiking trails cited in the book by J.C. Jenkins and Ruby Johnson Jenkins titled "Exploring the Southern Sierra: East Side" published by Wilderness Press, Berkeley, CA, including Sequoia National Forest Old Pacific Crest Trail or Fay Creek Trail to Cane Meadow, Onyx Peak Trail, Cannell Point Trail to Point Smiley Rogers, Nicolls Peak Trail, and Bartolas Point Trail.

- Driving Tour through the Kern River Valley - Jenkins' book, "Exploring the Southern Sierra: East Side" page 34, describes a car trip through the Kern River Valley along Highway 178 past Kelso Valley Road, the Weldon Methodist Church, and Fay Ranch Road, and describes the Nature Conservancy (Now Audubon) and its riparian holdings purchased "to preserve it in its natural state." "Exploring the Southern Sierra: East Side" page 39 describes the "Kelso Valley Car and Bicycle Tour" which leads to the tour to Nichols peak where "sweeping views of the South Fork Valley are spread out before you, extending both west into Lake Isabella and east behind Onyx Peak." "Exploring the Southern Sierra: East Side" page 136, "Day Hike to Bartolas Viewpoint" (Road 24S14) says "From this point the land falls away dramatically, offering spectacular views of the South Fork Valley." (See Picasa internet link [Views of South Fork Valley \(Weldon\) from Public Trails](http://picasaweb.google.com/lh/sredir?uname=ara.marderosian&target=ALBUM&id=5457415381839522705&authkey=Gv1sRgCLvXoqD38b21mwE&feat=email)

(<http://picasaweb.google.com/lh/sredir?uname=ara.marderosian&target=ALBUM&id=5457415381839522705&authkey=Gv1sRgCLvXoqD38b21mwE&feat=email>) Photo from Bartolas Point trail of South Fork Valley (IMG_4343.JPG)) Page 134, "Cannel Point Climb" says, "Climbers in search of sculpted granite, photographers stalking unusual views of Lake Isabella and geomorphologists seeking an overview of the southwest tip of the Kern Plateau and the Kern River Valley will find this trip ideal." (See Picasa internet link [Views of South Fork Valley \(Weldon\) from Public Trails](http://picasaweb.google.com/lh/sredir?uname=ara.marderosian&target=ALBUM&id=5457415381839522705&authkey=Gv1sRgCLvXoqD38b21mwE&feat=email) Photo from Cannell Point trail of South Fork Valley (IMG_4315.JPG)) "Exploring the Southern Sierra: East Side" page 41 "Nicolls Peak Climb" says, "Climbers on this short but taxing adventure of tackling Nicolls Peak from the east are rewarded first with a tungsten mine to explore, then with a breathtaking view of the South Fork Valley and Lake Isabella."

Click the following link to go to approximately 20647 Highway 178 in Google Maps, the location of the Weldon Southern Baptist Church, just east of the project site, and eventually to the (360 degree) view from Highway 178 of the Sierra mountains to the north of Highway 178, which will be drastically altered by the Weldon Solar Project, if approved. Cannell Point is the tallest peak in the opening view and one frame to the right of the opening view the tallest peak is Bartolas Point; links to pictures from both locations are above. http://maps.google.com/maps?layer=c&cbll=35.667053,-118.270432&cbp=12,,1,&ved=0CBoQ2wU&sa=X&ei=3tC8S9rvLoSItQPI4_2vDA

These recreational amenities should be listed in the up-front study on the impacts of this project on the scenic view and recreational amenities, in part due to the degradation of their entryway. The results of the study needs to be presented in the proposed Weldon Solar Project DEIR, so the Public can/may further respond and help shape a best result. The project DEIR needs to address the impacts of the project on the preceding list of areas, on the motoring public enjoying the scenic backdrops provided by these amenities, and on the visiting public's enjoyment of the South Fork Valley floor from these amenities.

Loss of Rural Scenic View and Property Values: While CEQA may not directly address concern for views of private individuals, our Kern County Supervisors should be concerned because the zone changes would impact individual citizen constituents, neighbors to the project who will experience a change in the scenic integrity of the rural character from the unnatural industrial complex surrounded by chain link topped with barbed wire and impacts from the reflectivity of the solar panels (especially at sunset).

Residents who look at, are adjacent to, or are in the same valley with the Weldon Solar Project, especially those who look down on and live off Mile High Road above Kelso Valley Road and who live in Fay Canyon, who would see this massive industrial complex of reflective surfaces and night-time security lighting, could experience a direct loss of property values due to the loss of rural quality view, which was one of the reasons why we all moved to this area.

An up-front study of the impacts of the project, with involvement of local residents (focus groups, etc.) needs to be completed on the impacts of the project on scenic vistas and scenic views to protect scenic integrity of the rural character and wilderness backdrop of the area. The results of the study should be presented in the proposed Weldon Solar Project DEIR, so the Public can/may further respond and help shape a best result.

Loss of Dark Skies: What kind of protection for maintaining dark skies will there be? What kind of night lighting will there be? A study needs to be done, up-front to consider, and analyze the impacts of night-time security lighting on the value of dark skies, which is one of the reasons why residents of the Kern River Valley (KRV) moved here. This up-front study needs to include the ideas of local residents (via focus groups, public meetings, etc.) as they stand to be the most impacted on a day to day basis. The results need to be presented in the proposed Weldon Solar Project DEIR, so the Public can/may further respond. The community does not want to lose its view of the Milky Way.

Loss of Rural Values: We are concerned that the rural values in the developing KRV Specific Plan are not being addressed. The project should consider and analyze the conflict with the rural values principals based on “A VISION FOR THE KERN RIVER VALLEY: AN ECOLOGICAL AND ECONOMIC SUSTAINABILITY STRATEGY” that the community endorsed for the Kern River Valley Specific Plan (KRVSP). The Specific Plan is supposed to be out for public comment around the end of April 2010. It is not the fault of the residents of the Kern River Valley that the KRVSP has been in process from concept to reality for nearly ten years. If the KRVSP were already in place, the guidelines for the project proposers, the Kern County Planning Department (KCPD), and residents of the Kern River Valley would provide a higher degree of certainty. In the meantime, projects continue to go through the KCPD process absent the KRVSP. The wishes of the residents of the Kern River Valley, as reflected in the KRVSP, could be negated due to the timing of the Weldon Solar Project proposal (and other KRV projects over the years) submitted before the finalization of the KRVSP. The pending finalization of the plan and what it recommends needs to be addressed in the project DEIR. The content in the Cal-Poly “A Vision for the Ken River Valley” should be used as a reference in preparation of the Weldon Solar Project DEIR as has been done during the ongoing preparation of the Kern River Valley Specific Plan.

Impacts to School Children, Church Members, and Public Health: What impact to the churches and schools will there be? The project nearly surrounds the Weldon Methodist Church and the Weldon Southern Baptist Church farther east on Highway 178 and the cumulative impacts to these institutions and their values, including their rural view of nature, which this project would directly impact, must be analyzed.

The project is 0.25 miles from the South Fork Elementary School and 0.5 miles from the South Fork Middle School and surrounds the pre-school that is part of the Weldon Methodist Church, and the cumulative impacts to those institutions and their values, including their rural view of nature, which this project would directly impact, must be considered.

Air Quality Impacts: We are concerned about dust storms and other air quality impacts from the construction of the project and during maintenance, including the airborne particulates that would be wind-whipped into the dust storms that make regular cleaning of the panels a requirement.

A study needs to be completed addressing potential hazardous dust and particulates issues. This study needs to be presented in the proposed Weldon Solar Project DEIR, so the Public can/may further respond and help shape a best result.

Traffic Impacts: Transportation during construction and impacts on others during construction needs to be addressed in the project DEIR. Highway 178 is the major artery through the South Fork Valley. Some of the impacts of the project would be on school bus transportation timing, commuters to Bakersfield, and commuters to the Indian Wells Valley (China Lake Naval Weapons Center, Ridgecrest). What changes would occur to traffic patterns as a result of the project? The cumulative impacts analysis must disclose and consider how traffic would increase and patterns of traffic change as a result of the project.

A study needs to be completed on transportation impacts during construction and impacts on others during construction. The study should include, but not be limited to, impacts on school bus transportation timing, commuters to Bakersfield, and commuters to the Indian Wells Valley (China Lake Naval Weapons Center, Ridgecrest). This study needs to be presented in the proposed Weldon Solar Project DEIR, so the Public can/may further respond and help shape a best result.

Loss of Quiet Rural Qualities: The Weldon Solar Project would expose local residents to increased noise levels. A study needs to be conducted on the issue of the effects of the proposed Weldon Solar Project regarding noise production including effective mitigation. This study needs to be presented in the proposed Weldon Solar Project DEIR, so the Public can/may further respond and help shape a best result.

Loss of Biological Resources and Values: The meadows attract sensitive species of birds. This project creates global impacts to migratory birds. The requested zone change for the Weldon Solar Project would convert fields and meadows to industrial from prime agricultural land that is adjacent to the Kelso Creek wetlands and its riparian habitat and

the Audubon Kern River Preserve and the South Fork Kern River riparian area, which is “the largest remaining riparian forest in California.”

(<http://articles.latimes.com/2007/dec/28/sports/sp-outdoors28>) These areas collectively attract sensitive bird species and millions of birds, including hundreds of song bird species, on their annual, global, spring migration through Weldon and the Kern River Valley. The project must analyze the cumulative impact to these unique resources, which are the basis for global tourism to the Kern River Valley.

The entire project area is used as foraging habitat for two California Department of Fish and Game California Species of Special Concern: “Kern” Red-winged Blackbird and Tricolored Blackbird. “Kern” Red-winged Blackbird has nested on the project site. A study needs to be completed up-front to determine the impacts of the loss of 500 acres of foraging habitat and areas of nesting habitat for these two Species of Special Concern with the study findings presented in the proposed Weldon Solar Project DEIR.

The solar panels proposed for the wetland in the southwest corner of the project area will have to be removed from the project proposal in order to maintain the integrity of this wetland.

A study needs to be completed up-front to determine the impacts of the proposed project on these two Species of Special Concern, including local knowledge of the use of the wetlands on the project site by these two species incorporated in the study, and the study findings presented in the proposed Weldon Solar Project DEIR, so the Public can/may further respond and help shape a best result.

A study of the proposed Weldon Solar Project area wetlands and their associated amenities (e.g.: hydrology, plants, wildlife) and the impacts of the proposed project on them needs to be completed up-front. In addition to generic wetlands evaluation, local knowledge of the use of the wetlands on the project site needs to be incorporated in the study. The study needs to be presented in the proposed Weldon Solar Project DEIR, so the Public can/may further respond and help shape a best result.

Loss of Recreation Resources and Values: As the Kern River Valley is recognized as having numerous recreation amenities attaining regional, statewide, national, and world class significance for eco-tourism, the visual impacts on this major entryway through the Kern River Valley must be addressed. Having to drive through a corridor formed by accompanying features such as “A standard 6 foot chain-link fence topped with barbed wire (2 feet tall)...” could have a major negative impact on “the visitor experience” and the volume of eco-tourism visitations to the area, especially Weldon. The decision made several years ago to stop pursuing the placement of a prison in the Kern River Valley (KRV) was largely based on the public’s desire to maintain the KRV’s rural character and attraction to visitors versus the all but guaranteed significantly increased economic, jobs, and tax population base benefits of locating a prison in the KRV. All of the preceding needs must be addressed in the project DEIR.

An up-front study needs to be completed with local public involvement (focus groups, etc.) on the impacts of the project on current recreation resource values and presented in

the proposed Weldon Solar Project DEIR, so the Public can/may further respond and help shape a best result.

Project would Physically Divide the Community: The proposed project will physically divide and impact this rural, agricultural community right down the middle ... agricultural lands, ranches, and more concentrated residential areas east and west of the project site via the proposed project's location on both sides of CA Highway 178 right in the idle of the South Fork Valley. An up-front study with involvement by local residents (focus groups, etc.) needs to be completed to determine the impacts, on the community, of being physically divided by the Weldon Solar Project. This study needs to be presented in the proposed Weldon Solar Project DEIR, so the Public can/may further respond and help shape a best result.

Construction in a Primary Flood Zone: The project is proposed for a primary flood zone and the cumulative impacts of construction and alterations in drainage patterns caused by this project must be considered.

Soils Study: A comprehensive soils analysis/study needs to be completed up-front to make sure the project area is suitable for the proposed construction.

Geo-Hydrologic Study: A geo-hydrology analysis/study needs to be completed up-front to make sure the project area is suitable for the proposed construction.

Undefined Type of PV Solar: What are the bases, in hours per day of sunlight and watts consumed per household, for the statements in the NOP that the system is a 60 megawatt photovoltaic solar facility and that "the project would produce enough energy to power approximately 20,000 household?" The NOP says, "The technology would consist of silicon thin- film tracker panels that are encased in anti-glare glass." The NOP fails to disclose the type of photovoltaic solar system panels that would be used in the Weldon Solar Project. The project DEIR should disclose the type of thin-film photovoltaic solar system panels proposed for use in the Weldon Solar Project, including the materials (glass, plastic, silicon, minerals, etc.) being used for the panels, and the tested life cycle of the panels. In addition, the country of manufacture of each panel and component in the system, including all raw materials that make up each panel and component should also be disclosure in the DEIR.

Thermodynamic Efficiency and Impacts to Climate Change: What is the thermodynamic efficiency of the solar system from beginning to end – not just the solar conversion efficiency - how much energy (in Kilo-calories) is needed to produce the whole system, including mining, refining, and shipping of the raw materials, manufacture of the ingredients, components, and modules of the Weldon Solar Project system, energy needed to maintain the system throughout the life of the panels, and how much energy do they produce over their lifetime? What is the historic life expectancy of the panels being specified for use in the system? In other words, how long have previous systems of this design been continuously in service without down time or need for replacement?

The project should consider and analyze the impacts of the costs to global climate change of the manufacturing of the solar panels, including the production of the photovoltaic materials from raw materials to finished product and its impact on global climate change.

Ownership and Responsibility: On 25 November 2009, in a personal conversation with Kristi Creighton, Kristi disclosed that he husband, Tom Creighton, is the Onyx Ranch manager who is overseeing the work being done. Kristi said that Tom is being directed on which tasks to carry out for “this water project” by Rick Wegis and Mike Young of WAY Farms of Button Willow, California. Kristi said that WAY Farms works for the City of Los Angeles.

Who owns the land on which the Weldon Solar Project is proposed for development? Who are the responsible parties involved in the Weldon Solar Project? Who financially benefits from the development of the Weldon Solar Project? Please identify each of the entities involved in the Weldon Solar Project (Onyx Ranch, Renewable Resources Group, CIM, The Swiller-CIM partnership, CIM Group, The City of Vernon, ReNu, ReNu Resources LLC. enXco, The Los Angeles Department of Water and Power, Way Farms, the City of Los Angeles) and how does the funding and profit flow from and to each?

The Controversy over Water Rights and Jurisdiction: The Resource Renewable Group, a private company, also known as CIM, purchased the 68,000 acre Onyx Ranch in Kern County, California, 38,021 acres of which they retained in the Kern River Valley. (See the Los Angeles Times article).

<http://www.latimes.com/news/local/la-me-wind15-2009sep15,0,839175.story?track=rss>

The Los Angeles Times article names many individuals and entities in the complicated and lengthy, potentially court-contested, purchase (Onyx Ranch, Renewable Resources Group, CIM, The Swiller-CIM partnership, CIM Group, The City of Vernon, ReNu, ReNu Resources LLC. enXco, The Los Angeles Department of Water and Power) and concludes by saying, “The Swiller-CIM partnership closed escrow on Onyx Ranch in October 2008 and within days sold the portion to Vernon. But it held on to something that one official described as highly valuable: the ability to pump water out of the Onyx Ranch ground and sell it.” Lorelei Oviatt, division chief of the Kern County Planning Department, said those rights are "a priceless commodity right now."

While the Onyx Ranch has historically been using diverted water from the South Fork of the Kern River in Onyx to water agricultural fields for cattle grazing, in 2009, work began and continues to be done to increase water diversions for this and other purposes that could impact the environment and impact other beneficial uses.

The Kern River Valley and in particular, the South Fork Kern River is home to California's largest lowland riparian forest. The Kern River Valley is home to the Audubon Kern River Preserve along the South Fork of the Kern River, which was one of the first ten sites in the U.S. to receive "Globally Important Bird Area" (GIBA) recognition. Bird species numbering 332 have been recorded here. Most significantly, 200 species nest in the riparian habitat along the South Fork of the Kern River including major breeding populations of Yellow-billed Cuckoo, Summer Tanager, and the Southwest Willow Flycatcher. An up-front study to determine the impacts of the

proposed Weldon Solar Project on the Federally Endangered Southwestern Willow Flycatcher, “Kern” Red-wing Blackbird (DFG California Species of Special Concern), and Tricolored Blackbird (DFG California Species of Special Concern) needs to be completed. The results of the study need to be presented in the proposed Weldon Solar Project DEIR, so the Public can/may further respond and help shape a best result. The impacts on the qualities which qualify the South Fork Valley as a GIBA should be addressed in the DEIR.

The Southwest Willow Flycatcher was the subject of a successful lawsuit against the US Army Corps of Engineers’ for management of the dam at Isabella reservoir that flooded a portion of this riparian habitat and threatened the trees where the endangered flycatcher nests. (Southwest Center for Biological Diversity v Colonel Dorothy Klasse U.S. Army Corps of Engineers 1999 U.S. District Court Eastern District of California CIV. S-97-1069 GEB JFM, April 1, 1999)(1999 WL 34689321 (E.D.Cal.))

The NOP says, “The panels may be cleaned up to two times per year, if necessary to optimize output. Each cleaning would require approximately 3-5 acre-feet of water taken from a groundwater well located adjacent to the project site.” Under the heading of “IX. HYDROLOGY AND WATER QUALITY” the document asks under part “b” “Would the Project Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level that would not support existing land uses or planned uses for which permits have been granted)?” The answer given is “marked as “Less than Significant Impact,”

Precisely where is the groundwater well located adjacent to the project site? How long has that well been in operation? What is the historic depth from which water has been pumped from that well? How are groundwater and surface water in the Kern River Valley connected or interrelated for this property. What is the interrelationship between the property owner and the project developer for the Weldon Solar Project? Who is/are the water rights holder(s) for the surface water that passes through the property on which the Weldon Solar Project would be constructed? Is the surface water riparian or appropriative? From what point(s) of origin on the South Fork of the Kern River is the surface water taken, by what diverter, and with what kind of water right? What agencies have jurisdictional responsibilities over the water being used or passing through the property on which the Weldon Solar Project is proposed for development?

The NOP indicates that ground water from a nearby well is necessary to clean the panels. What ground water changes will be studied? Research to determine the impacts (especially changes in water level) to adjacent wells in the area should be undertaken. What water rights does Renewable Resources have? What is the limit on the water that can be drawn by Renewable Resources? Will Renewable Resources have rights to transport any water?

Onyx Ranch Failure to Acquire Proper Approvals for Work: Illegal streambed alteration work that would provide more water to the diversion ditches of the Kern River Valley agricultural lands, including the land proposed for the Weldon Solar Project, has

taken place by the Onyx Ranch in 2009. (See Exhibit B the CDF&G Streambed Alteration Report on the Onyx Ranch Violation) Also, in the Kern River Valley in 2009, diversion ditches taking surface water from the South Fork of the Kern River, including on land proposed for the Weldon Solar Project, were enlarged without a grading permit. The attached email dated November 17, 2009, from Lorelei Oviatt, division chief of the Kern County Planning Department, says, “We have received another question about this work and I referred it to Code Compliance for an investigation. We have no proposed or approved project on this site. At a minimum they should have obtained a grading permit or requested an exemption. Certainly CDFG would need to have issued a permit. There is nothing in our files.” (See Exhibit C)

Since the end of 2008, millions of dollars of heavy equipment has been performing thousands of hours of ground disturbing activity, streambed alterations, surface water diversion ditch construction, reconstruction, and enlargement on Onyx Ranch and other ranch properties throughout the Kern River Valley, affecting the surface and ground water flows and aquifer of the Kern River Valley, including the land and diversion ditches on land where the Weldon Solar Project is to be built, and causing air polluting dust storms to occur, all without any permits or agreements from responsible agencies or disclosure of the activities to the public. (See photos of ground disturbing activity at the following link:

<http://picasaweb.google.com/lh/sreDIR?uname=ara.marderosian&target=ALBUM&id=5404076265100725473&authkey=Gv1sRgCOXq65CmlL6CmAE&feat=email>)

How does enlarging the diversion ditches on Onyx Ranch land throughout the Kern River Valley, including the land proposed for the Weldon Solar Project, change the historic patterns and beneficial uses of the already “fully allocated” water of the South Fork Kern River? What permits were acquired for the changes to the historic water diversion ditches, which have been enlarged, over the past year or so, to a bulldozer-width from the historic “shovel’s-width,” that transport water from the South Fork of the Kern River and into the Weldon Solar Project area?

Kern County Code Compliance Fails to Visit Site as Activity Takes Place: After being notified on November 18, 2009 that ground disturbing activity was taking place, the Kern County Code Compliance Department disclosed on April 2, 2010, that no site visit had taken place. (See Exhibit D) The Code Compliance email indicated that a letter was sent on November 18, 2009 to inform the Renewable Resources Group of the complaint, but no representative of Kern County actually visited the site to see the equipment and massive amount of ground disturbing work that triggered and continues to trigger air polluting dust storms for local residents.

Renewable Resources claims that they “obtained approval from Caltrans for that work.” While these water diversion ditches may have been connected to a culvert going under Highway 178, most of the work was well beyond the right of way for the highway and had nothing to do with Caltrans. How could Caltrans have the authority to authorize hundreds of acres of ground disturbing activity beyond the right of way for Highway 178, just because the new diversion ditches connect to a culvert under a highway?

Any site visits by Code Compliance that might now take place will be after the evidence of heavy equipment has been removed and the activity has ceased. Why did Code Compliance wait to see the site until the activity had ended when all they had to do was drive down Highway 178 to view the activity that had been taking place for more than a year? Please disclose to the public the future report by Kern County Code Compliance of the after-the-fact site visit investigation of this un-permitted activity in the Kern River Valley, including on Onyx Ranch and the Weldon Solar Project site.

Job Potential Insignificant Compared to Lost Values: With 50 temporary jobs and 3 proposed permanent jobs, would even one be a local person hired for the job? If the Weldon Solar Project were permitted, the increase in jobs for locals that could be provided would be insignificant compared to the costs to the community and loss of other values and resources in the Kern River Valley. The proposed zone changes are not in the best interest of the community. The creation of temporary and ongoing full-time jobs accompanying this project needs to be measured against the possible job loss in the tourism industry due to the degradation of the rural character of the South Fork Valley.

Weldon is an under-served community; we were not even been informed by those in Kern County government who are supposed to be serving us. We as a community want notification of upcoming meetings. Communication with Kern River Valley residents is essential, if the existing opposition to the project has any hope of being overcome. Please make sure the entire community is informed well in advance of all up-coming meetings.

Ground Treatments: The NOP page 36 says, “The geotechnical report will provide recommendations on treating the soil to ensure that the foundations of the O&M building, solar subarrays, and ancillary structures would be sound and would not create substantial risks to life or property.” The NOP page 43 says, “During final design of the project, the project proponent would identify post-construction treatment, control, and design measures that would minimize surface water pollution to be approved by the Kern County Engineering and Survey Department to ensure that operational surface water quality would be below applicable water quality standards. Implementation of the SWPPP and adherence to applicable regulations would reduce potential water quality impacts to a less-than-significant level. No further analysis will be warranted.” The NOP page 41 says, “Additionally, weeds would be abated from the project site as part of project site’s routine maintenance. As a result, the project would not expose structures to a significant risk of loss, injury, or death involving wildland fires.”

What are all the possible “treatments” and “abatements” that could be used for the project? What is the anticipated use of petroleum products, poisons, pesticides, herbicides, defoliants, and other toxins on the project site land proposed for construction of the project? In what quantities would petroleum products, poisons, pesticides, herbicides, defoliants, and other toxins be used? What would be the impact to the air, groundwater and surface water passing through the project site, and natural areas from the regular use of petroleum products, poisons, pesticides, herbicides, defoliants, and other toxins? A study on the impacts on other beneficial uses of the zone changes and the subsequent use of petroleum products, poisons, pesticides, herbicides, defoliants, and other toxins on this agricultural land needs to be done, up-front, with input from local

members of the Public. The results need to be presented in the proposed Weldon Solar Project DEIR, so the Public can/may further respond.

Additional Question:

Was there an earlier EIR to which the Weldon Solar Project DEIR can be tiered as mentioned in the NOP?

What percentage of electricity will go to the Kern River Valley community?

What infrastructure is needed for the solar project to be built?

Additional Recommendations:

Resource Extraction Fee: How much solar energy strikes the ground in the area where the facility is proposed for construction? Forty percent of that energy should voluntarily be given to the residents of the Kern River Valley as compensation because the view shed and rural values of the Kern River Valley would be impacted by this facility.

Alternative to be considered: The project should consider and analyze the alternative of distributed power generation in the form of solar panels on roof-tops of existing structures like the IKEA and Famous Footwear warehouses, at the bottom of the grapevine, and parking structures as well as all public buildings that already receive unused solar radiation that could be converted into electricity.

Power Transmission Capacity: A transmission capability development study needs to be done, up-front. This up-front study needs to include the ideas of local residents (via focus groups, public meetings, etc.) as the local residents stand to be the most impacted on a day to day basis. Local knowledge on the project site needs to be incorporated in the study findings and presented in the proposed Weldon Solar Project DEIR, so the Public can/may further respond."

Thank you for considering these issues of greatest concern.

Respectfully submitted,



Mr. Ara Marderosian

Local Contact and Principal Author of the letter (with contributions from many others)

Kern-Kaweah Chapter Sierra Club

And

Executive Director

Sequoia ForestKeeper

P.O. Box 2134

Kernville, CA 93238

(760) 376-4434

ara@sequoiaforestkeeper.org

www.sequoiaforestkeeper.org

And

Gordon L. Nipp, Ph.D.
Vice-Chair and **Chapter Contact**
Kern-Kaweah Chapter Sierra Club
P.O. Box 3357
Bakersfield, CA 93385
gnipp@bak.rr.com

Exhibit A – March 22, 2010, Judy Hyatt email on the purpose of the “Scoping Meeting”
Exhibit B – January 19, 2010, CDF&G Onyx Ranch Streambed Alteration Violation
Exhibit C – November 17, 2009, Lorelei Oviatt, Kern County Planning Department
Exhibit D – April 2, 2010, Kern County Code Compliance, no site visit had taken place.