2.1 LIST OF COMMENT LETTERS

The Draft EIR was made available for review and comment beginning November 17, 2014 and ending January 2, 2015 (see Final EIR Appendix 1.0 for public notices and confirmations). The following comment letters were received in response to the Draft EIR:

Letter	Agency/Organization/Individual	Date
A	Gregor Blackburn, CFM, Branch Chief Floodplain Management and Insurance Branch US Department of Homeland Security, FEMA Region IX	November 20, 2014
B	Kate Kelly, Energy and Land Use Consultant Defenders of Wildlife Laura Crane, Director, California Renewable Energy Initiative The Nature Conservancy	December 18, 2014
C	Andrew Christie, Director Santa Lucia Chapter of the Sierra Club	December 23, 2014
D	Eric Greening	December 26, 2014
E	David Chipping, Chapter Conservation Committee California Native Plant Society	December 30, 2014
F	Melissa Guise, Air Quality Specialist San Luis Obispo County Air Pollution Control District	December 31, 2014
G	Brian Leveille, AICP, Senior Planner City of San Luis Obispo, Community Development Department	December 31, 2014
H	Lynda L. Auchinachie, Agriculture Department County of San Luis Obispo Department of Agriculture/Weights and Measures	January 2, 2015
I	David Chipping, Chapter Conservation Committee California Native Plant Society	January 7, 2015 ***(after close of comment period)***
J	Jeffrey R. Single, PhD, Regional Manager California Department of Fish and Wildlife	January 15, 2015 **(*after close of comment period*)**

2.2 COMMENTS AND RESPONSES

REQUIREMENTS FOR RESPONDING TO COMMENTS ON A DRAFT EIR

State CEQA Guidelines Section 15088 requires that lead agencies evaluate all comments on environmental issues received on the Draft EIR and prepare a written response. The written response must address the significant environmental issue raised and must be detailed, especially when specific comments or suggestions (e.g., additional mitigation measures) are not accepted. In addition, there must be a good faith and reasoned analysis in the written response. However, lead agencies need only respond to significant environmental issues associated with the project and do not need to provide all the information requested by

commenters, as long as a good faith effort at full disclosure is made in the EIR (State CEQA Guidelines Section 15204).

State CEQA Guidelines Section 15204 recommends that commenters provide detailed comments that focus on the sufficiency of the Draft EIR in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. State CEQA Guidelines Section 15204 also notes that commenters should provide an explanation and evidence supporting their comments. Pursuant to State CEQA Guidelines Section 15064, an effect shall not be considered significant in the absence of substantial evidence supporting such a conclusion.

State CEQA Guidelines Section 15088 also recommends that where a response to comments results in revisions to the Draft EIR, those revisions be incorporated as a revision to the Draft EIR or as a separate section of the Final EIR.

RESPONSES TO COMMENT LETTERS

Comment letters received in response to the Draft EIR are reproduced on the following pages. County responses follow each letter and correspond to the margin coding that has been added to each letter.

Where changes to the Draft EIR text result from responding to comments, those changes are included in the response and demarcated with revision marks (underline for new text, ~~strikeout~~ for deleted text).

Letter A

U.S. Department of Homeland Security
FEMA Region IX
1111 Broadway, Suite 1200
Oakland, CA. 94607-4052

FEMA

November 20, 2014

James Caruso
San Luis Obispo County
Department of Planning and Building
976 Osos Street, Room 200
San Luis Obispo, California 93408

Dear Mr. Caruso:

This is in response to your request for comments regarding the San Luis Obispo County Renewable Energy Streamlining Program SCH No. 2014041090 (LRP2014-00015) project in San Luis Obispo County, California.

Please review the current effective countywide Flood Insurance Rate Maps (FIRMs) for the County of San Luis Obispo (Community Number 06030), Maps revised November 16, 2014. Please note that the County of San Luis Obispo, California is a participant in the National Flood Insurance Program (NFIP). The minimum, basic NFIP floodplain management building requirements are described in Vol. 44 Code of Federal Regulations (44 CFR), Sections 59 through 65.

A summary of these NFIP floodplain management building requirements are as follows: **A-1**

- All buildings constructed within a riverine floodplain, (i.e., Flood Zones A, AO, AH, AE, and A1 through A30 as delineated on the FIRM), must be elevated so that the lowest floor is at or above the Base Flood Elevation level in accordance with the effective Flood Insurance Rate Map.

- If the area of construction is located within a Regulatory Floodway as delineated on the FIRM, any ***development*** must not increase base flood elevation levels. **The term *development* means any man-made change to improved or unimproved real estate, including but not limited to buildings, other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, and storage of equipment or materials.** A hydrologic and hydraulic analysis must be performed *prior* to the start of development, and must demonstrate that the development would not cause any rise in base flood levels. No rise is permitted within regulatory floodways.

www.fema.gov

Letter A Continued

James Caruso
Page 2
November 20, 2014

- All buildings constructed within a coastal high hazard area, (any of the "V" Flood Zones as delineated on the FIRM), must be elevated on pilings and columns, so that the lowest horizontal structural member, (excluding the pilings and columns), is elevated to or above the base flood elevation level. In addition, the posts and pilings foundation and the structure attached thereto, is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components.

- Upon completion of any development that changes existing Special Flood Hazard Areas, the NFIP directs all participating communities to submit the appropriate hydrologic and hydraulic data to FEMA for a FIRM revision. In accordance with 44 CFR, Section 65.3, as soon as practicable, but not later than six months after such data becomes available, a community shall notify FEMA of the changes by submitting technical data for a flood map revision. To obtain copies of FEMA's Flood Map Revision Application Packages, please refer to the FEMA website at http://www.fema.gov/business/nfip/forms.shtm.

A-1 cont.

Please Note:

Many NFIP participating communities have adopted floodplain management building requirements which are more restrictive than the minimum federal standards described in 44 CFR. Please contact the local community's floodplain manager for more information on local floodplain management building requirements. The San Luis Obispo County floodplain manager can be reached by calling Tim Tomlinson, Floodplain Manager, at (805) 781-5271.

If you have any questions or concerns, please do not hesitate to call Jane Hopkins of the Mitigation staff at (510) 627-7183.

Sincerely,

Gregor Blackburn, CFM, Branch Chief
Floodplain Management and Insurance Branch

cc:
Tim J. Tomlinson, Floodplain Manager, San Luis Obispo County
Ed Perez, State of California, Department of Water, South Central Region Office
Jane Hopkins, NFIP Planner, DHS/FEMA Region IX
Alessandro Amaglio, Environmental Officer, DHS/FEMA Region IX

www.fema.gov

RESPONSE TO LETTER A – FEMA REGION IX

Response to Comment A-1

The comment is acknowledged. The applicability of the NFIP and Federal Emergency Management Agency (FEMA) jurisdiction would remain unchanged with adoption of the RESP. See Draft EIR Section 3.11, Water Resources, regarding the evaluation of drainage and flooding impacts.

Letter B

December 18, 2014

James Caruso, Senior Planner
San Luis Obispo County
Department of Planning and Building
976 Osos Street, Room 300
San Luis Obispo, CA 93408

Delivered via email to: JHolland@co.merced.ca.us

RE: Renewable Energy Streamlining Plan (RESP)

Dear Mr. Caruso:
On behalf of the Defenders of Wildlife (Defenders) and California Chapter of The Nature Conservancy, thank you for the opportunity to comment on the Draft Renewable Energy Streamlining Program (RESP) for San Luis Obispo County. Our organizations are deeply engaged in the statewide discussion of renewable energy facility siting and natural resource conservation.

Defenders is dedicated to protecting all wild animals and plants in their natural communities. To that end, Defenders employs science, public education and participation, media, legislative advocacy, litigation, and proactive on-the-ground solutions in order to prevent the extinction of species, associated loss of biological diversity, habitat alteration, and destruction. As part of that work we produced the *Smart from the Start: Responsible Renewable Energy Development in the Southern San Joaquin Valley*[1] report.

The Nature Conservancy ("Conservancy") is a global, non-profit organization dedicated to the conservation of biodiversity. We seek to achieve our mission through science-based planning and implementation of conservation strategies that provide for the needs of people and nature. The Conservancy has been actively involved in conservation planning and management in San Luis Obispo County, including especially at the Carrizo Plain National Monument where we are a Managing Partner along with the Bureau of Land Management and the California Department of Fish and Wildlife, for the past 30+ years. The Conservancy has also been actively involved in planning for renewable energy within the Western San Joaquin Valley of California. Most recently,

[1] Defenders of Wildlife, *Smart from the Start: Responsible Renewable Energy Development in the Southern San Joaquin Valley*, http://www.defenders.org/sites/default/files/publications/smartfromthestartreport12_print.pdf

Letter B Continued

the Conservancy has produced the report, *Western San Joaquin Valley Least Conflict Solar Energy Assessment*[2]. The results of this assessment and accompanying map, which includes eastern San Luis Obispo County, are publicly available on the Conservancy's Science for Conservation website (link).

As we transition toward a clean energy future, it is imperative for our future and the future of our wild places and wildlife that we strike a balance between addressing the near term impact of industrial-scale solar development with the long-term impacts of climate change on our biological diversity, fish and wildlife habitat, and natural landscapes. To ensure that the proper balance is achieved, we need smart planning for renewable power that avoids and minimizes adverse impacts on wildlife and lands with known high-resource values.

Our organizations strongly support the development of renewable sources of energy to mitigate the increasing threat of climate change. However, if not located, built, and operated responsibly, energy projects can negatively impact biodiversity, harm wildlife and their important habitats, and diminish water resources.

We appreciate and support San Luis Obispo County's (County) efforts to plan for future renewable energy development and to incentivize well sited projects which do not degrade ecosystems, agricultural resources and other environmental resources. We have reviewed the draft RESP and offer the following comments.

Tiering

We support the tiered permitting approach which favors small, localized distributed renewable energy projects. We understand that County Planning Staff is preparing an errata sheet for the RESP and reserve our comments on the specific provisions of the RESP tiers until after the errata sheet is available. **B-1**

Renewable Energy Combining Designation

We strongly support and advocate for landscape-level planning for renewable energy such as being done in the desert via the Desert Renewable Energy Conservation Plan and as The Conservancy produced in its' *Western San Joaquin Valley Least Conflict Solar Energy Assessment*. The proposed Renewable Energy Combining Districts (RE CD) appear to be primarily designed around the location of substations with capacity available for additional energy generation. The proposed RE CDs show little consideration of environmental constraints that create conflicts with renewable energy development and require arduous permitting and mitigation. By directing renewable energy development to these "preferred" areas for renewable energy development, without incorporating environmental constraints into the evaluation, the County is setting projects up for conflict with existing state and federal environmental regulations, which will negate any project streamlining that is intended to serve as an incentive for siting in these locations. We strongly urge the County to **B-2**

[2] Butterfield, H.S., D. Cameron, E. Brand, M. Webb, E. Forsburg, M. Kramer, E. O'Donoghue, and L. Crane. 2013. Western San Joaquin Valley least conflict solar assessment. Unpublished report. The Nature Conservancy, San Francisco, California. 27 pages. http://scienceforconservation.org/downloads/WSJV_Solar_Assessment

Letter B Continued

revisit the proposed RE CDs and redesign them to provide more granular direction to development areas which are least impactful to biological, cultural, and agricultural resources. Moving forward without incorporating these constraints into the identification of RE CDs is likely to result in highly contentious projects located in environmentally sensitive lands. **B-2 cont.**

Performance Based Streamlining

Performance based streamlining is a meaningful tool to incentivize well sited, well designed projects and we support its use in the RESP. Unfortunately, due to the overly broad, and largely indiscriminate extent of the proposed RE CDs we expect that the majority of projects located within the RE CDs will not qualify for streamlining. This in turn results in little incentive for renewable energy developers to proactively site and design projects which avoid or minimize impacts to high value biological, agricultural, and cultural resources. To achieve performance based streamlining, we recommend that the County refine the RE CDs to provide greater assurances to developers that their projects will move forward quickly in these areas. **B-3**

Conclusion

Thank you for the opportunity to submit these comments. We support the County's efforts to engage in thoughtful planning for renewable energy and strongly encourage the County to revisit the criteria and design of the proposed Renewable Energy Combining Districts. Please include each of our groups on the notification list for the RESP. If you have any questions, please contact Kate Kelly at (530) 902-1615 or via email at kate@kgconsulting.net or Scott Butterfield at (707) 266-2003 or via email at scott_butterfield@tnc.org. **B-4**

Respectfully submitted,

Kate Kelly
Energy and Land Use Consultant
Defenders of Wildlife

Laura Crane
Director, California Renewable Energy Initiative
The Nature Conservancy

Cc
Pablo S. Gutierrez, CA Energy Commission

RESPONSE TO LETTER B – DEFENDERS OF WILDLIFE AND THE NATURE CONSERVANCY

Response to Comment B-1

The tiered approach presented in Chapter 2.0, Project Description, of the Draft EIR has not substantially changed. Minor revisions and clarifications to the RESP and Chapter 2.0 are discussed in Chapter 3.0, Revisions to the Draft EIR, of this Final EIR. All RESP errata are also contained in Appendix 2.0 to this Final EIR. As noted, the revisions provide updates and clarifications aimed at improving future implementation of the RESP, but do not represent changes that affect the findings of the EIR or trigger recirculation of the Draft EIR under CEQA Guidelines Section 15088.5.

Response to Comment B-2

Contrary to the assertion, the RE Combining Designation was designed specifically to identify locations where renewable energy development would avoid sensitive environmental resources. The location of substation infrastructure was a practical starting point for examining RE Combining Designation boundaries, but extensive environmental screening for a multitude of resources followed to refine (i.e., restrict) the boundaries of the combining designation. The Program employed two approaches to identify projects eligible for streamlining: (1) placement of the RE Combining Designation boundary, and (2) studies and standards proposed in the RESP that would further identify and avoid sensitive resources. By using both approaches, the RESP seeks to streamline projects only where not preempted by state or federal regulations.

Subsection 2.6.1 of the Draft EIR presents the environmental criteria the County assessed for development of the RE Combining Designation boundary. To identify appropriate locations for the combining designation, the County first identified lands that did not contain sensitive resources such as areas covered by conservation easements, areas intended for preservation for unique biological values, or areas with Prime Farmland. For sites meeting these qualifying criteria, the RESP then provides streamlining only when the project meets the additional qualifying criteria and development standards proposed in 22.14.100.F and 22.32.

For example, as identified in both Subsection 22.14.100.F (for projects proposed in the RE Combining Designation) and Section 22.32.040.D (for projects proposed anywhere in the unincorporated county except the Coastal Zone), if state or federally listed species or designated critical habitat are present as identified in a biological report (prepared by a County-approved biologist), the project is ineligible for streamlining under the Program. This approach defers to state and federal listings of species, while identifying a category of project that could be eligible for streamlining when no listed species are present. Section 22.14.100.F also requires submission of a cultural resources report for ground-mounted solar electric facilities (SEFs). The report would identify avoidance of resources or, where resources were not avoided, proposed mitigations to identify site-specific considerations.

Response to Comment B-3

This comment does not raise any issues specific to the EIR, but rather questions the effectiveness of the Program. The commenter is referred to response to comment B-2 with respect to the design of the RE Combining Designation and avoidance of biological, agricultural, and cultural resources.

Response to Comment B-4

The criteria and design of the RESP have been revisited based on comments received in response to the Draft EIR and in an effort to provide greater clarification and implementation effectiveness to the Program. These minor revisions are summarized in Chapter 3.0 of this Final EIR. Complete revisions to the RESP are included as errata in Appendix 2.0 to this Final EIR.

While there is no "notification list" per se for the RESP, the commenters will be mailed these responses at least 10 days prior to any adoption action of the RESP per CEQA requirements, and the County will notice all public hearings on the RESP in accordance with standard requirements.

Letter C

From: "Santa Lucia Chapter of the Sierra Club" <sierraclub8@gmail.com>
To: <jcaruso@co.slo.ca.us>
Date: 12/23/2014 03:33 PM
Subject: Sierra Club comment on RESP EIR

Dear James,

We congratulate the County for creating a Renewable Energy Streamlining Program and appreciate the effort to find the appropriate balance between the commendable goal of increasing the proportion of local, distributed renewable energy generation and protecting agricultural and natural resources.

To that end, we support the Ag Preserve Review Committee's amendments proposing to limit to 20 acres those Tier 3 REF Projects that can be approved on a Site Plan Review. A facility of up to 10 acres could be processed ministerially, and facilities over 20 acres should require a Minor Use Permit. C-1

We believe this strikes the right balance between the need to streamline the permitting process for distributed renewable energy projects and the need to protect the county's agricultural and environmental resources.

Thank you for this opportunity to comment,

Andrew Christie, Director
Santa Lucia Chapter of the Sierra Club
P.O. Box 15755
San Luis Obispo, CA 93406
(805) 543-8717

RESPONSE TO LETTER C – SANTA LUCIA CHAPTER OF THE SIERRA CLUB

Response to Comment C-1

The comment does not raise any specific issues in the EIR, but rather suggests changes to the design of the RESP ordinance and tier standards. The criteria and design of the RESP have been revisited based on comments received in response to the Draft EIR and in an effort to provide greater clarification and implementation effectiveness to the Program. These minor revisions are summarized in Chapter 3.0 of this Final EIR. Complete revisions to the RESP are included as errata in Appendix 2.0 to this Final EIR. The suggested changes in the comment were not included, as the County feels the acreages, in the context of the strict siting criteria and environmental performance standards included in the RESP, will limit ministerial review eligible projects to those that avoid impacts.

Letter D

From: elquadrillo@charter.net
To: jcaruso@co.slo.ca.us
Date: 12/26/2014 08:15 AM
Subject: Comments from Eric Greening on the Renewable Energy Streamlining Program DEIR

Dear Mr. Caruso,

Thank you for the opportunity to comment on this document! Unfortunately, I have major concerns about it, and don't think it can be certified in its present form, or that the needed overriding considerations can be found. My main issues have to do with Agricultural Resources and Biological Resources, and with a state Renewable Energy Standard that makes the assumptions underlying overriding considerations tenuous at best. **D-1**

Class I impacts are admitted for Agricultural Resources with the impact of the conversion of agricultural soils to non-agricultural uses. I would point out that pre-empting productive agricultural land for solar production actually pre-empts the solar production that is agriculture! Plants, by photosynthesizing, make solar energy available for the use of humans and other creatures, and that specific form of solar production should not be lightly tossed aside!! **D-2**

I don't believe Class I impacts can be avoided for an impact that the DEIR wrongly claims won't rise to that level: "Implementation of the proposed program could conflict with existing zoning for agricultural use or with the Williamson Act Program." I would ask that the staff reports and minutes for the relevant meetings of the SLO County Ag Preserve Review Committee, both those that have already occurred and those that take up the issue in the future prior to the issuance of a Final EIR on the RESP, be included in the record of this EIR, and responded to therein. The meeting of July 14th, 2014 is particularly enlightening. The minutes reflect that Terry Wahler promised that the changes to our County's Rules of Procedure would have their own environmental review. When I inquired as to the status of that review, I was told by Kami Griffin that, in fact, the environmental review of those changes is simply incorporated into this DEIR on the RESP. If that is the case, where is the needed analysis? Have any other counties in California implemented a similar program on which Williamson Act lands are eleigible for streamlined conversion to non-photosynthesis energy production? If so, what is their track record? If not, are we the first county to do this, and how can we be sure the impacts won't rise to the level of Class I? Where is the inventory of specific parcels appropriate for this conversion? If there is to be no further CEQA review thereon, I see no evidence that the needed CEQA review of the site-specific impacts to agricultural resources, and to the county-wide viability of our Willimason Act program, exists herein. Given the long time-frame for non-renewal, would contract cancellation be employed to streamline the conversion to non-photosynthesis energy production, and, if so, what would be the impact of these cancellation dominoes falling one after another? **D-3**

Relative to Biological Impacts, I question the avoidance of Class I impacts claimed for: "Implementation of the proposed program could result in the loss of habitat for unique and special status species" and "Implementation of the proposed program could reduce the extent, diversity, or quality of native vegetation or other important resources." I fail to see how the public can be assured that these impacts will be kept insignificant. **D-4**

On Page 3.4-34, the DEIR states: "Parcels intended for inclusion in the combining **D-5**

Letter D Continued

designation were screened to ensure there were no conservation easements or existing or intended biological conservation areas." Where is the evidence of this site-specific screening, or the record thereof? Where are the non-eligible parcels mapped? The maps in the DEIR seem to show even such obvious non-eligible areas as a slice of the Carrizo Plains National Monument as being within the combining designation. **D-5 cont.**

On Page 3.4-35, the DEIR states: "The expectation of the RESP is that adherence to the proposed perfomance standards in the LUO will ensure the impacts to biological resources will be less than significant. Those projects that could have significant impacts to biological resources are required to obtain approval through the minor oe conditional use process. The permit process requires site-specific biological reports that may result in mitigation measures specific to the projects."

If these mitigation measures are anything other than flat-out avoidance, their effectiveness is speculative. At what point would the public have access to the biological reports, and, if they are not part of a CEQA process, how would the public be able to respond to reports or proposed mitigations that raised questions. What resources exist within the County to insure mitigation monitoring and the effectiveness of the mitigations, over time, at keeping biological impacts insignificant? We are talking about conversion of significant areas from natural vegetation and wildlife habitat to industrial uses; other than avoidance, what mitigation can offer ASSURANCE, on every site, of keeping impacts insignificant such that Class I impacts need not be considered at the present time? **D-6**

What is the justification for exempting the San Joaquin Kit Fox Recovery Area from even the minimal level of attention given other listed species habitat? **D-7**

I do not believe overriding considerations can be found for this project because the projects done pursuant to this program will not likely reduce greenhouse gas emissions or meet the larger goal of containing climate change. This is because the California Renewable Energy Standard does not requre the subtraction of impacts; it is an ADDITIVE standard. Renewable projects do not replace non-renewable projects, but are in addition to existing ones, and allow for the creation of further ones so long as 1/3 of our electicity is renewably generated by 2020. In other words, the massive delpoyment of industrial-scale renewable energy facilities could actually spawn an expansion of non-renewable (fossil-fueled) energy production, at a 2-1 ratio favoring the non-renewable emitters. **D-8**

This program and the analysis of its impacts require a huge amount of rethought!!

Many thanks, Eric Greening

RESPONSE TO LETTER D – ERIC GREENING

Response to Comment D-1

This is an introductory comment that is responded to in detail below. Agricultural and biological resource issues are adequately addressed in the EIR. Concerns regarding certification of the EIR and statement of overriding considerations are acknowledged but do not pertain to the content of the EIR.

Response to Comment D-2

As stated in the comment, the EIR discloses that significant environmental impacts would result due to the conversion of certain agricultural lands to renewable energy facility uses. The County does not dismiss the value of agriculture. The EIR concludes that the cumulative impact of the Program would not significantly diminish the county's agricultural resources (Draft EIR p. 3.2-53). The commenter provides no analysis or information to counter the conclusions of the Draft EIR.

Response to Comment D-3

Impacts related to the Program's potential to conflict with the Williamson Act program are addressed on page 3.2-51 of the Draft EIR. The EIR concludes that impacts would be less than significant. As shown in Chapter 3.0 of this Final EIR, revisions to the Program clarify that land under a Williamson Act contract would only be eligible for streamlined site plan review for a renewable energy facility application if: (1) the property meets and maintains the current eligibility criteria in the Rules of Procedure; (2) the project area does not exceed 10 percent of total acreage within the Williamson Act land contract; (3) the project is no more than 10 acres in site area; and (4) the project meets other environmental criteria codified by the Program. All other proposed renewable energy projects on Williamson Act contract lands would be subject to discretionary approvals and represent no change from existing practices. The commenter provides no analysis or information to counter the conclusions of the Draft EIR.

The question as to whether other counties in California have adopted similar programs does not pertain to the EIR content or analysis.

Response to Comment D-4

Based on the proposed Program's strict siting requirements and performance standards for avoidance of biological resources that renewable energy project applications must meet in order to be eligible for streamlined reviews built into the Program, the EIR concludes in Section 3.4 that significant impacts would not result. The comment provides no specific point of question or challenge with information contained in the EIR.

Response to Comment D-5

GIS datasets that map conservation easements were used as one of the screening tools to limit the reach of the Renewable Energy Combining Designation (CD). The maps included in the printed version of the Draft EIR are intended to give the reader an understanding of the boundaries of the CD. However, because of the large land areas covered by the CD, it is impractical to include parcel-level detail in the maps. The maps in the electronic version of the EIR on the County's website allow the reader to zoom in to view areas with greater detail, and

the maps that will be maintained by the County for use in implementing the RESP will allow parcel-level accuracy. No part of the Carrizo Plains National Monument is included in the Renewable Energy Combining Designation.

Response to Comment D-6

No mitigation measures are required in the EIR because the RESP includes strict performance standards to ensure that Tier 1–3 projects are only eligible for streamlining where they would not impact biological resources. If a biological report required of a proposed renewable energy project seeking streamlined reviews identifies sensitive biological resources, the project would not be eligible for streamlining and the ensuing CEQA process and public review components would be no different than under existing County practices.

Response to Comment D-7

The San Joaquin Kit Fox Recovery Area has specific programmatic requirements for mitigation; those would remain unchanged with adoption of the RESP. The species is not given any less importance and is not exempted in any way.

Response to Comment D-8

The comment does not address any specific issue of analysis in the EIR. The County believes the Program will help the County to exceed the Renewables Portfolio Standard by fostering renewable energy production for local use. With a focus on distributed generation (less than 20 MW), the County anticipates that much of the energy production indirectly resulting from adoption of the Program would meet on-site, local energy needs while putting more renewable energy into the grid. Fostering renewable production for local use is a goal established by the County that the Program addresses.

Adoption of the proposed Program would enable streamlined reviews and approvals of SEF and WECS facility projects. These facilities produce energy from renewable sources using cleaner methods than traditional fossil fuel-based power plants and by their nature do not produce GHG emissions at the point of electricity production. Instead they reduce emissions by decreasing the need for energy from fossil fuel–based power plants, which is considered a beneficial impact regionally and statewide. When compared to non-renewable energy plants, the GHG emissions reduction realized by of the use of the potential SEF and WECS facilities allowed by the proposed Program would more than offset the GHG emissions generated by their construction and ongoing operations (Draft EIR Table 3.7-5).

AB 32 is a legal mandate requiring that statewide GHG emissions be reduced to 1990 levels by 2020. In adopting AB 32, the legislature determined the necessary GHG reductions for the State to make in order to sufficiently offset its contribution to the cumulative climate change problem to reach 1990 levels.

San Luis Obispo County adopted a GHG reduction plan, the EnergyWise Plan, which is based on the AB 32 reduction target. The County believes the RESP will help achieve the GHG reduction targets established by the State and adopted at the County level.

Letter E

CALIFORNIA
NATIVE PLANT SOCIETY

December 30, 2014

TO: James Caruso
Department of Planning and Building
976 Osos Street, Room 300
San Luis Obispo, CA 93408

FROM: David Chipping: President, San Luis Obispo Chapter, CNPS
1530 Bayview Heights Drive
Los Osos, CA St., 93402

REF: RESP Draft EIR
Comments from San Luis Obispo Chapter of the California Native Plant Society

From our perspective, the RESP violates the basic principles of CEQA by limiting public participation and the opportunity for review. While fast tracking may be desirable for some small projects, the RESP allows 20 to 40 acre projects to be subject to only a diminished review, based solely on the proximity of the project to the electrical grid. The program, as proposed, draws large circles around these grid entry points so that it essentially encompasses most of the county, and the DEIR makes the unjustified claim that such large units of habitat will, 'in total', have no significant impact. **E-1**

It appears that the County is trying to do the equivalent of a Natural Community Conservation Plan, where development is facilitated by science-based determination of areas suitable for development and for mitigation. NCCP plans require the lead agency to have a basic knowledge of the consequences of the proposed land use plan, which includes a reasonable botanic evaluation of the entire area encompassed by the plan. However, it is not clear how the County would determine the species that might be found within the projects allowed in each of these circles. We are concerned that the RESP appears to promise greater certainty of outcome to the developer and to limit public review of biological reports. **E-2**

Regarding the DEIR, several issues require clarification for the Final EIR.

(1) There is no mention of plant species listed under the California Rare Plant Rank (formerly CNPS Listed) that are currently treated under CEQA as being equivalent to plants formally listed under the California and Federal Endangered Species Acts (CESA and FESA.) CNPS assumes that consideration of these species, together with mitigation for any significant impacts to such species, will continue under CEQA as before. CNPS requests that the FEIR affirm that performance standards such as 22.14.100 C will treat California listed species (Lists 1B through List 2) under the same standards as current **E-3**

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Letter E Continued

CALIFORNIA
NATIVE PLANT SOCIETY

CEQA review. The FEIR document could be strengthened and freed of ambiguity if CNPS 1B listed plants and vegetation communities (i.e. CEQA protected) were explicitly mentioned as full membership in the "special-status" category,. CNPS is concerned that the extensive coverage of Federal regulated taxa in the DEIR and the failure to allocate space to the treatment of species and plant communities covered by CEQA is an issue of balance that must be addressed in the FEIR. **E-3 cont.**

An addition that states "CEQA Review required" to Tier 1-2-3 categories in the (untitled) table at would provide unambiguous clarity that documentation of impacts will be needed to be professionally reviewed and subject to CEQA guidelines.

(2) CNPS is concerned about an apparent conflict between the RESP goal: "The goal of streamlining is to increase the certainty of the permitting process" and the a-priori Statement of Impact 3-3-4 that impacts will be "less than significant" and that no mitigation will be required. If a project proposed under RESP will impact species, one would hope that the County would require redesign and avoidance, or sufficient mitigation, and so it cannot be said that either the program goal would be met or that the Statement 3-3-4 would remain true. **E-4**

(2) If RESP were to change in any way the ability of interested parties to review submitted biological and botanical project surveys, this change in procedure should be clearly spelled out in the final document. Thus the equivalent ability of comment on a Draft EIR should be maintained in the RESP process. **E-5**

(3) CNPS understands that qualified botanists must conduct botanical surveys, but would prefer that an applicant to the RESP process not be permitted to choose in-house consultants due to an inherent conflict-of -interest. Under current CEQA conditions a project proponent may submit botanical survey reports, but these are subject to review by an independent CEQA consultant in the EIR process. **E-6**

(4) In the event that a Tier 1 Solar project is proposed to be subject to RESP by the developer, it is unclear how the County will determine that a project conforms to Proposed LUO 22.32.050.A.3.a. under the requirement that that land was both "previously developed for industrial or commercial purposes and degraded or contaminated and then abandoned or underused". While it is clear what the language intended, it should clarified that any old and ceased industrial use from past centuries does not qualify the land for inclusion. CNPS suggests adding language to limit to parcels that are currently zoned industrial/commercial and which remain in a degraded condition. **E-7**

(5) The DEIR uses a lot of space to describe plant communities while failing to list any that would receive special attention. This would be useful if some are identified as being of higher priority for conservation, but no such strategy is identified in the document. Apparently the only protection is given to designated wetlands. The FEIR might better explain how this section on vegetation types is to be used, and also why the designations **E-8**

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Letter E Continued

CALIFORNIA
NATIVE PLANT SOCIETY

given by the Manual of California Vegetation are not utilized, which is increasingly becoming the industry standard. **E-8 cont.**

(6) The FEIR should discuss how the County can prevent a large project proponent from piecemealing; that is, breaking the project down into a series of smaller projects and then submit each component to the County for approval to avoid a more exhaustive review. **E-9**

We thank you for this opportunity to comment, a process that we hope will continue under RESP.

David H Chipping

David Chipping
Chapter Conservation Committee

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RESPONSE TO LETTER E – CALIFORNIA NATIVE PLANT SOCIETY

Response to Comment E-1

This EIR has been prepared to evaluate the potential indirect and reasonably foreseeable impacts that would occur with adoption of the proposed Program. Preparation of this document and the public process associated with it are in full compliance with CEQA. The analysis in the Draft EIR is based on technical reports, analysis, expert opinion, and other evidence to support its conclusions. Future projects that would be eligible for streamlining via a ministerial process that does not include a public review and comment component would be strictly limited to projects which meet the biological resource avoidance criteria.

Contrary to the assertion, the RE Combining Designation was designed specifically to identify locations where renewable energy development would avoid sensitive environmental resources. The location of substation infrastructure was a practical starting point for examining RE Combining Designation boundaries, but extensive environmental screening for a multitude of resources followed to refine (i.e., restrict) the boundaries of the combining designation. The Program employed two approaches to identify projects eligible for streamlining: (1) placement of the RE Combining Designation boundary, and (2) studies and standards proposed in the RESP that would further identify and avoid sensitive resources. By using both approaches, the RESP seeks to streamline projects only where not preempted by state or federal regulations.

Section 2.6.1 of the Draft EIR presents the environmental criteria the County assessed for development of the RE Combining Designation boundary. To identify appropriate locations for the combining designation, the County first identified lands that did not contain sensitive resources such as areas covered by conservation easements, areas intended for preservation for unique biological values, or areas with Prime Farmland. For sites meeting these qualifying criteria, the RESP then provides streamlining only when the project meets the additional qualifying criteria and development standards proposed in 22.14.100.F and 22.32.

For example, as identified in both Subsection 22.14.100.F (for projects proposed in the RE Combining Designation) and Section 22.32.040.D (for projects proposed anywhere in the unincorporated county except the Coastal Zone), if state or federally listed species or designated critical habitat are present as identified in a biological report (prepared by a County-approved biologist), the project is ineligible for streamlining under the Program. This approach defers to state and federal listings of species (including the California Rare Plant Rank Lists IB through 2), while identifying a category of project that could be eligible for streamlining when no listed species are present.

Response to Comment E-2

Contrary to the statement, the Program is not similar to a NCCP and is not intended to function as one. An NCCP is designed to allow a clear process that can enable projects within a plan area to impact protected species or habitat if specific mitigation measures are implemented and specific processes followed. In contrast, the RESP requires avoidance of species and habitat in order for projects to be eligible for streamlined reviews. If state or federally listed species (including those listed under the California Rare Plant Rank) or designated critical habitat are present as identified in a biological report prepared by a County-approved biologist, the project is ineligible for streamlining under the Program. The commenter is referred to response to comment E-1.

Response to Comment E-3

The omission of the California Rare Plant Rank listed species in the EIR discussion of the biological resources setting was not intended to dismiss the standing and treatment of the lists under CEQA. The County affirms the commenter's assumption that the lists will continue to be given consideration in biological studies as they currently are. The CNPS California Rare Plant Rank lists for San Luis Obispo County have been added as Appendix 3.4 to the Final EIR and text revisions have been included in Chapter 3.0 of the Final EIR as well.

Chapter 3.0, Revisions to the Draft EIR, includes additional text on page 3.4-1 to acknowledge the California Rare Plant Rank (Lists 1B through 2):

> Sensitive species also include species afforded protection or considered sensitive under various laws (e.g., CEQA, Migratory Bird Treaty Act (MBTA)) or those species recognized as locally important or sensitive by the California Native Plant Society (CNPS), which defines and categorizes rarity in California's flora in their California Rare Plant Ranks (formerly known as CNPS Lists), lists 1B through 2. The CNPS California Rare Plant Rank lists 1B through 2 list a total of 131 rare plants throughout the county. This list is included in Appendix 3.4 of this EIR.
>
> Due to the programmatic nature of this EIR, it is not feasible to map each special-status plant species identified in the California Rare Plant Rank lists. Instead, vegetation and habitat areas have been mapped on a programmatic level and generally indicate where special-status species may occur (Figures 3.4-1 through 3.4-4). As a general rule, conservation of listed threatened and endangered species takes highest priority and will conserve habitats and other resources for many lower-priority special-status species. Therefore, listed species and designated critical habitat are used in this analysis as a proxy for all special-status species.

Response to Comment E-4

As stated previously, the RESP requires avoidance of species and habitat in order for projects to be eligible for streamlined reviews. If state or federally listed species (including those listed under the California Rare Plant Rank) or designated critical habitat are present on the site as identified in a biological report prepared by a County-approved biologist, the project is ineligible for streamlining under the Program. These requirements do not detract from the goals of the RESP to streamline eligible projects and provide more certainty in the process, but rather ensure the goal that streamlining and increased certainty only be provided to suitably sited projects that avoid biological impacts.

Response to Comment E-5

The public review process and implementation of CEQA will not be changed for projects subject to discretionary review. Those projects that qualify for ministerial reviews would not be subject to public review and comment unless required biological reports are not able to demonstrate the absence and avoidance of protected species and habitat, in which case discretionary review would be triggered and proceed according to existing practices. The environmental impacts of establishing the program that would allow ministerial reviews and no further environmental review were addressed in the Draft EIR. The commenter provides no analysis or information to counter the conclusions of the Draft EIR.

Response to Comment E-6

Biological reports prepared for projects under the RESP must be prepared by biologists on the County's approved consultant lists to ensure adequacy, thoroughness, and the avoidance of conflict of interest issues.

Response to Comment E-7

No changes to the definition are required, as the intent is clear and the County does not want to preclude use of properties that may otherwise meet the criteria but are not zoned industrial or commercial. The following Tier 1 eligibility criteria has been revised, however, to provide clarification of other qualifying terms in this regard: "Is located on land that is graded~~,~~ or disturbed, ~~or altered; or~~ (consistent with Title 22 definitions for "grading" and "site disturbance**"**)." (Refer to Chapter 3.0, Revisions to the Draft EIR.)

Response to Comment E-8

The plant communities listed in the EIR are intended to give the reader an understanding of the botanic setting in the different planning areas of the county. As previously stated, if state or federally listed species (including those listed under the California Rare Plant Rank) or designated critical habitat are present as identified in a biological report prepared by a County-approved biologist, the project is ineligible for streamlining under the Program.

Response to Comment E-9

The practice of piecemealing is not allowed. County staff would continue to employ alertness to potential piecemealing as they currently do with all development applications, regardless of project type. The commenter provides no analysis or information to demonstrate piecemealing would occur under the Program.

Letter F

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San Luis Obispo County

December 31, 2014

James Caruso
San Luis Obispo County Department of Planning & Building
976 Osos Street, Room 200
San Luis Obispo, CA 93408-2040

SUBJECT: SLOAPCD Comments Regarding the San Luis Obispo County Renewable Energy Streamlining Program (ED13-196) Draft Environmental Impact Report

Dear Mr. Caruso,

Thank you for including the San Luis Obispo County Air Pollution Control District (SLOCAPCD) in the environmental review process. We have completed our review of the Draft Environmental Impact Report for the above referenced project. The Program will encourage and streamline permitting of certain renewable energy projects in the most suitable locations in the unincorporated area of the county. This will be accomplished through ordinance revisions and associated update to policies. The Program will include development of a new Renewable Energy (RE) Combining designation to identify the locations of the most suitable area for renewable energy development. The Program will also revise related County codes and procedures, including the Williamson Act Rules of Procedure. Additionally, special attention will be given to streamlining the permitting of on-site renewable energy facilities, such as parking lot-covered solar and small wind generators.

The following are SLOCAPCD comments that are pertinent to this NOP.

GENERAL COMMENTS

As a commenting agency in the California Environmental Quality Act (CEQA) review process the SLOCAPCD assesses air pollution impacts from both the construction and operational emissions with separate significant thresholds for each. **Please address the action items contained in this letter, with special attention to items that are highlighted by bold and underlined text**.

SPECIFIC COMMENTS

CONSTRUCTION PHASE EMISSIONS
Page 3.3-21 through 3.3-23
The DEIR lists SLOCAPCD construction mitigation measures that might be applicable to a project under the Renewable Energy Streamlining Program. In addition to the measures **F-1**

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Letter F Continued

SLO County Renewable Energy Streamlining Program
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listed on pages 3.3-21 through 3.3-2, **the following measures may also be applicable and should be added to this section**.

Construction Permit Requirements
Portable equipment, 50 horsepower (hp) or greater, used during construction activities may require California statewide portable equipment registration (issued by the California Air Resources Board) or a SLOCAPCD permit. Operational sources may also require SLOCAPCD permits.

The following list is provided as a guide to equipment and operations that may have permitting requirements, but should not be viewed as exclusive. For a more detailed listing, refer to the Technical Appendices, page 4-4, in the SLOCAPCD's 2012 CEQA Handbook.

- Power screens, conveyors, diesel engines, and/or crushers
- Portable generators and equipment with engines that are 50 hp or greater
- Electrical generation plants or the use of standby generator
- Internal combustion engines
- Rock and pavement crushing
- Unconfined abrasive blasting operations
- Tub grinders
- Trommel screens
- Portable plants (e.g. aggregate plant, asphalt batch plant, concrete batch plant, etc)

To minimize potential delays, prior to the start of the project, please contact the SLOCAPCD Engineering Division at (805) 781-5912 for specific information regarding permitting requirements.

Demolition of Asbestos Containing Materials
Demolition activities can have potential negative air quality impacts, including issues surrounding proper handling, demolition, and disposal of asbestos containing material (ACM). Asbestos containing materials could be encountered during demolition or remodeling of existing buildings. Asbestos can also be found in utility pipes/pipelines (transite pipes or insulation on pipes). **If building(s) are removed or renovated; or utility an/or underground pipelines are scheduled for removal or relocation, this project may be subject to various regulatory jurisdictions, including the requirements stipulated in the National Emission Standard for Hazardous Air Pollutants (40CFR61, Subpart M - asbestos NESHAP).** These requirements include, but are not limited to: 1) written notification, within at least 10 business days of activities commencing, to the SLOCAPCD, 2) asbestos survey conducted by a Certified Asbestos Inspector, and, 3) applicable removal and disposal requirements of identified ACM. Please contact the SLOCAPCD Enforcement Division at (805) 781-5912 for further information.

F-1 cont.

Developmental Burning
Effective February 25, 2000, **the SLOCAPCD prohibited developmental burning of vegetative material within San Luis Obispo County.** If you have any questions regarding these requirements, contact the SLOCAPCD Enforcement Division at 781-5912.

Hydrocarbon Contaminated Soil
Should hydrocarbon contaminated soil be encountered during construction activities, the SLOCAPCD must be notified as soon as possible and no later than 48 hours after affected

Letter F Continued

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material is discovered to determine if a SLOCAPCD Permit will be required. In addition, the following measures shall be implemented immediately after contaminated soil is discovered:

- Covers on storage piles shall be maintained in place at all times in areas not actively involved in soil addition or removal;
- Contaminated soil shall be covered with at least six inches of packed uncontaminated soil or other TPH –non-permeable barrier such as plastic tarp. No headspace shall be allowed where vapors could accumulate;
- Covered piles shall be designed in such a way to eliminate erosion due to wind or water. No openings in the covers are permitted;
- The air quality impacts from the excavation and haul trips associated with removing the contaminated soil must be evaluated and mitigated if total emissions exceed the SLOCAPCD's construction phase thresholds;
- During soil excavation, odors shall not be evident to such a degree as to cause a public nuisance; and,
- Clean soil must be segregated from contaminated soil.

The notification and permitting determination requirements shall be directed to the SLOCAPCD Engineering Division at (805) 781-5912.

Construction Phase Idling Limitations
If the projects will have diesel powered construction activity in close proximity to any sensitive receptor, the project shall implement the following mitigation measures to ensure that public health benefits are realized by reducing toxic risk from diesel emissions:

To help reduce sensitive receptor emissions impact of diesel vehicles and equipment used to construct the project, the applicant shall implement the following idling control techniques:

1. California Diesel Idling Regulations
   a. ***On-road diesel vehicles*** shall comply with Section 2485 of Title 13 of the California Code of Regulations. This regulation limits idling from diesel-fueled commercial motor vehicles with gross vehicular weight ratings of more than 10,000 pounds and licensed for operation on highways. It applies to California and non-California based vehicles. In general, the regulation specifies that drivers of said vehicles:
      1. Shall not idle the vehicle's primary diesel engine for greater than 5 minutes at any location, except as noted in Subsection (d) of the regulation; and,
      2. Shall not operate a diesel-fueled auxiliary power system (APS) to power a heater, air conditioner, or any ancillary equipment on that vehicle during sleeping or resting in a sleeper berth for greater than 5.0 minutes at any location when within 1,000 feet of a restricted area, except as noted in Subsection (d) of the regulation.

   b. ***Off-road diesel equipment*** shall comply with the 5 minute idling restriction identified in Section 2449(d)(2) of the California Air Resources Board's In-Use off-Road Diesel regulation.

F-1 cont.

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c. Signs must be posted in the designated queuing areas and job sites to remind drivers and operators of the state's 5 minute idling limit.

d. The specific requirements and exceptions in the regulations can be reviewed at the following web sites: www.arb.ca.gov/msprog/truck-idling/2485.pdf and www.arb.ca.gov/regact/2007/ordiesl07/frooal.pdf.

2. Diesel Idling Restrictions Near Sensitive Receptors
In addition to the State required diesel idling requirements, the project applicant shall comply with these more restrictive requirements to minimize impacts to nearby sensitive receptors:
a. Staging and queuing areas shall not be located within 1,000 feet of sensitive receptors;
b. Diesel idling within 1,000 feet of sensitive receptors shall not be permitted;
c. Use of alternative fueled equipment is recommended; and
d. Signs that specify the no idling areas must be posted and enforced at the site.

F-1 cont.

Dust Control
Dust control measures were outlined on page 3.3-14 and 3.3-15. Since water use is a concern due to drought conditions, where possible, the applicant should implement SLOCAPCD's approved dust control measures, other than the use of water, on areas such as roads. If also possible, paving of high-use roads would be extremely beneficial for air quality. To improve the dust suppressant's long-term efficacy, the applicant shall also implement and maintain design standards to ensure vehicles that use the on-site unpaved road are physically limited (e.g., speed bumps) to a posted speed limit of 15 mph or less.

Project Decommissioning
It is unclear from the data presented if the emissions associated with the decommissioning of the project are accounted for in the DEIR. Many of the potential actions required as part of the decommissioning efforts could cause air quality emissions (trenching, backfilling, removal of concrete pads etc.). **The emissions from potential decommissioning activities should be estimated and compared against the SLOCAPCD construction thresholds**.

F-2

OPERATIONAL PHASE EMISSIONS
Operational sources may require SLOCAPCD permits. The following list is provided as a guide to equipment and operations that may have permitting requirements, but should not be viewed as exclusive. For a more detailed listing, refer to the Technical Appendix, page 4-4, in the SLOCAPCD's 2012 CEQA Handbook.

- Portable generators and equipment with engines that are 50 hp or greater;
- Electrical generation plants or the use of standby generator;
- Internal combustion engines; and
- Cogeneration facilities.

Most facilities applying for an Authority to Construct or Permit to Operate with stationary diesel engines greater than 50 hp, should be prioritized or screened for facility wide health risk impacts. A diesel engine-only facility limited to 20 non-emergency operating hours per year or that has demonstrated to have overall diesel particulate emissions less than or equal to 2 lb/yr does not need to do additional health risk assessment. **To minimize potential delays, prior to the start of**

F-3

Letter F Continued

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the project, please contact the SLOCAPCD Engineering Division at (805) 781-5912 for specific information regarding permitting requirements.

Unpaved Roads and Unpaved Areas
For larger projects, dust associated with unpaved roads could be an issue. If PM thresholds are exceeded on larger projects which include unpaved roads, one of the following should be implemented:

F-3 cont.

a. For the life of the project, pave and maintain the operational roads; or,
b. For the life of the project, maintain the private unpaved operational roads with a dust suppressant (See Technical Appendix 4.3 for a list of SLOCAPCD-approved suppressants) such that fugitive dust emissions do not impact off-site areas and do not exceed the SLOCAPCD 20% opacity limit.

Again, water use is a concern due to its limited supply and need for other uses, such as agriculture. Where at all possible, the applicant should implement SLOCAPCD's approved dust control measures, other than the use of water, on areas such as roads. If also possible, paving of high-use roads would be extremely beneficial for air quality. To improve the dust suppressant's long-term efficacy, the applicant shall also implement and maintain design standards to ensure vehicles that use the on-site unpaved roads are physically limited (e.g., speed bumps) to a posted speed limit of 15 mph or less.

F-4

Thank you for the opportunity to comment on this proposal. If you have any questions or comments, feel free to contact me at 781-4667.

Sincerely,

for

Melissa Guise
Air Quality Specialist

MAG/arr

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RESPONSE TO LETTER F – SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT

Response to Comment F-1

It is acknowledged that all future renewable energy projects under the proposed Program would be required to implement all applicable measures to reduce air pollutant emissions established by the San Luis Obispo Air Pollution Control District (SLOAPCD). The following language has been added to Draft EIR page 3.3-21:

> Use alternatively fueled construction equipment on-site where feasible, such as compressed natural gas (CNG), liquefied natural gas (LNG), propane, or biodiesel.
>
> In addition, portable equipment, 50 horsepower (hp) or greater, used during construction activities may require California statewide portable equipment registration (issued by CARB) or a SLOAPCD permit. The following list is provided as a guide to equipment and operations that may have permitting requirements but should not be viewed as exclusive.
>
> - Power screens, conveyors, diesel engines, and/or crushers
> - Portable generators and equipment with engines that are 50 hp or greater
> - Electrical generation plants or the use of standby generator
> - Internal combustion engines
> - Rock and pavement crushing
> - Unconfined abrasive blasting operations
> - Tub grinders
> - Trommel screens
> - Portable plants (e.g., aggregate plant, asphalt batch plant, concrete batch plant)
>
> If the estimated emissions from the actual fleet for a given construction phase are expected to still exceed the SLOAPCD thresholds of significance after the Standard Mitigation Measures are factored into the estimation, then Best Available Control Technology (BACT) is required to be implemented to further reduce these impacts. The SLOAPCD BACT measures can include:

The following language has been added to Draft EIR page 3.3-25:

> Furthermore, as previously stated larger development projects would be required to comply with SLOAPCD BACT measures requiring the use of Tier 3 and Tier 4 construction equipment which substantially reduce the amount of generated exhaust emissions. In addition, County Code Section 22.52.160, Construction Procedures, establishes measures to address potential impacts to sensitive receptors within 1,000 feet of most construction sites, as described under the Regulatory Setting subsection above. County Code Section 22.60.050 also calls for APCD review of ~~site plans~~ discretionary development projects. According to the SLOAPCD, if the future renewable energy projects would have diesel-powered construction activity in close proximity to any sensitive receptor, the project

would be required to implement the following measures to ensure that public health benefits are realized by reducing toxic risk from diesel emissions:

- **California Diesel Idling Regulations** – On-rood diesel vehicles would be required to comply with Section 2485 of Title 13 of the California Code of Regulations. This regulation limits idling from diesel-fueled commercial motor vehicles with gross vehicular weight ratings of more than 10,000 pounds and licensed for operation on highways, and applies to California- and non-California-based vehicles. In general, the regulation specifies that drivers of said vehicles (1) shall not idle the vehicle's primary diesel engine for greater than 5 minutes at any location, except as noted in Subsection (d) of the regulation; and (2) shall not operate a diesel-fueled auxiliary power system (APS) to power a heater, air conditioner, or any ancillary equipment on that vehicle during sleeping or resting in a sleeper berth for greater than 5 minutes at any location when within 1,000 feet of a restricted area, except as noted in Subsection (d) of the regulation. In addition, off-road diesel equipment must comply with the 5-minute idling restriction identified in Section 2449(d)(2) of the California Air Resources Board's In-Use Off-Road Diesel regulation, and signs must be posted in the designated queuing areas and on job sites to remind drivers and operators of this requirement.

- **Diesel Idling Restrictions Near Sensitive Receptors** – Project applicants must comply with these more restrictive requirements to minimize impacts to nearby sensitive receptors. For instance, staging and queuing areas cannot be located within 1,000 feet of sensitive receptors, diesel idling within 1,000 feet of sensitive receptors is not permitted, the use of alternative-fueled equipment is recommended, and signs that specify the no idling areas must be posted and enforced at the site.

For these reasons and because diesel fumes disperse rapidly over relatively short distances, diesel particulate matter generated by construction activities, in and of itself, would not be expected to create conditions where the probability of contracting cancer is greater than 10 in 1 million for nearby receptors, the statewide significance threshold (please refer to Draft EIR Section 3.8, Hazards and Hazardous Materials, for a discussion on potential impacts to construction workers).

The following language has been added to page 3.3-26 of the EIR:

For these reasons, potential impacts from NOA would be less than significant.

In addition to NOA, demolition activities associated with future renewable energy projects can have potential negative air quality impacts surrounding proper handling, demolition, and disposal of asbestos-containing material (ACM). Asbestos-containing materials could be encountered during demolition or remodeling of existing buildings. Asbestos can also be found in utility pipes/pipelines (transite pipes or insulation on pipes). If building(s) are removed or renovated, or utility and/or underground pipelines are scheduled for removal or relocation, such activity may be subject to various regulatory jurisdictions, including the requirements stipulated in the National Emission Standard for Hazardous Air Pollutants (40 CFR 61 Subpart M – Asbestos NESHAP). These requirements include, but are not limited to, (1) written notification, within at least 10 business days of activities commencing, to the SLOAPCD, (2) an asbestos survey conducted by a certified

asbestos inspector, and (3) applicable removal and disposal requirements for identified ACM.

Response to Comment F-2

While the Draft EIR does present estimated construction emissions associated with the greatest amount of disturbance proposed for the construction of a single Tier 3 SEF project (160 acres), it is also acknowledged on Draft EIR pages 3.3-19 to 3.3-20 that it is not possible to establish the exact proportion of the proposed Program that would be solar projects and wind projects or the actual phasing of future facilities allowed under the proposed Program at this time. Furthermore, as stated on page 3.3-19 of the Draft EIR, permanent buildings may or may not be required. For these reasons, air pollutant emissions that would be generated during decommissioning activities cannot be accurately quantified on a project-specific basis, since it is not known what specific actions will be required during the decommissioning process (e.g., whether permanent buildings would need to be removed and if so, the size of the buildings, and/or the proportion of solar panels to wind turbines that would be removed). However, the decommissioning process would not be expected to generate emissions any greater than those associated with the construction of the project and would likely be substantially lower. Since construction emissions related to the Program were shown to be well below SLOAPCD thresholds and decommissioning would inherently occur independently of construction, decommissioning phase emissions would similarly be below SLOAPCD thresholds.

As stated on Draft EIR pages 3.3-14 to 3.3-15, Section 22.52.160 of the County Code establishes standard measures for the control of fugitive dust emissions generated during construction activities. Section 22.52.160 requires that all surfaces and materials be managed to ensure fugitive dust emissions are adequately controlled to below the 20 percent opacity limit identified in the SLOAPCD's Rule 401, Visible Emissions, and to ensure dust is not emitted off-site. Required fugitive dust control measures include the use of water trucks or sprinkler systems in sufficient quantities to prevent airborne dust from leaving the site. As stated on page 3.3-15 of the Draft EIR, reclaimed (non-potable) water will be used whenever possible. The Program represents no change in how these rules and measures would be applied for all construction practices, including the decommissioning of renewable energy projects.

Response to Comment F-3

This comment is acknowledged. The Program represents no change in how these requirements are applied.

Response to Comment F-4

As stated on Draft EIR pages 3.3-14 to 3.3-15, Section 22.52.160 of the County Code establishes standard measures for the control of fugitive dust emissions generated during construction activities. Section 22.52.160 requires that all surfaces and materials be managed to ensure fugitive dust emissions are adequately controlled to below the 20 percent opacity limit identified in the SLOAPCD's Rule 401, Visible Emissions, and to ensure dust is not emitted off-site. Required fugitive dust control measures include the use of water trucks or sprinkler systems in sufficient quantities to prevent airborne dust from leaving the site. As stated on page 3.3-15 of the Draft EIR, reclaimed (non-potable) water will be used whenever possible. The Program represents no change in how these rules and measures are applied.

Letter G

Community Development
919 Palm Street, San Luis Obispo, CA 93401-3249
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slocity.org

December 31, 2014

James Caruso
County of San Luis Obispo, Department of Planning and Building
976 Osos St., Rm. 200
San Luis Obispo, CA 93408

SUBJECT: Comments regarding San Luis Obispo County Renewable Energy Streamlining Program, SCH No. 2014041090 (LRP2014-00015)

This letter serves as the City of San Luis Obispo's comment letter on the Draft Environmental Impact Report (DEIR) prepared for the San Luis Obispo County Renewable Energy Streamlining Program (RESP) Draft Environmental Impact Report.

The Community Development Department has noted several issue areas which should be addressed. Specifically, the City is concerned aspects of the Renewable Energy Streamlining Program (RESP) could result in adverse scenic resource impacts in the San Luis Obispo area. The RESP and associated County code revisions may also preclude the City's ability to identify and provide comments on renewable energy projects which have the potential to result in adverse effects on scenic resources. **G-1**

City scenic resource protection policies should be incorporated into the regulatory setting discussion and effects of the RESP project on the City of San Luis Obispo should be included in aesthetic and visual resource impact analysis. The City of San Luis Obispo recently certified the Final Environmental Impact Report (FEIR) for the Land Use and Circulation Element Update Project (LUCE). The LUCE FEIR contains an updated discussion and analysis of the visual setting around San Luis Obispo including scenic corridors, visual landmarks, and scenic roads and vistas. The analysis and discussion in the LUCE Update EIR provides a consolidated and programmatic level discussion which could be readily incorporated into the discussion of the RESP EIR[1]. **G-2**

The August 2005, City/County Memorandum of Agreement should be considered in the RESP as project review levels are modified from discretionary to ministerial review. The 2005 MOA states that discretionary projects in the Planning Area should be referred to the City of San Luis Obispo. Streamlining proposals in the RESP and associated code revisions would modify certain projects from a discretionary level review to a ministerial level review, and may preclude the City from identifying and commenting on proposals with the potential to have significant scenic resource impacts to the City of San Luis Obispo. As an example, under proposed code revisions in County code section 22.32, review of Tier 1-Tier 3 Solar Electric Facilities (SEF) of up to 160 acres in size could be reviewed as a ministerial permit through the **G-3**

[1] Section 4.1, Aesthetics, SLO 2035 Land Use and Circulation Element Update Draft Environmental Impact Report. Available at www.slo2035.com

Letter G Continued

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site plan review process[2] if within the RE combining designation and consistent with site criteria of Section 22.14.100. Tier 1 Wind Energy Conversion systems mounted on uninhabited structures would have no height limitation and could receive ministerial site plan review. Based on recent discussions with County staff, the City understands a correction will be made for the review level of Tier 2 – (up to 100 foot tall, ground mounted) Wind Energy Conversion Systems (WECS) to require minor use permit review (shown incorrectly as site plan review). Renewable energy projects meeting qualifying criteria would not be eligible for the site plan review if within visual Sensitive Resource Areas, but it is not clear based on mapping provided in the RESP DEIR which areas are designated as visual Sensitive Resource Areas. County Sensitive Resource Area mapping does not coincide with City scenic roads and vistas, scenic corridors, and visual landmarks. It should also be clarified that RE projects in the San Luis Obispo Planning Area reviewed at the minor use permit and conditional use permit level will be referred to the City for review and comment. **G-3 cont.**

The range of potential renewable energy projects, in terms of type, size, and location around the City of San Luis Obispo (and potentially affecting scenic corridors and visual landmarks such as the Irish Hills) could have specific and unique impacts which cannot be fully evaluated and disclosed in the scope of a County-wide Programmatic level EIR; and, therefore should be retained as discretionary level projects subject to further CEQA review at a specific project level. Retaining discretionary level review for projects which have the potential to impact the City of San Luis Obispo would also preserve consistency with the stated intent of the 2005 Memorandum of Agreement for development review coordination.[3] **G-4**

Thank you for the opportunity to comment on the RESP DEIR. The City is ready to collaborate on the RESP project to identify project modifications and/or mitigation measures that could address impacts to the City.

The City requests to continue to be notified of any upcoming hearings on this project.

Please feel free to contact me if you have any questions or would like to arrange a meeting. I can be contacted by phone at 805-781-7166, or by e-mail: bleveille@slocity.org

Sincerely,

Brian Leveille, AICP
Senior Planner
City of San Luis Obispo, Community Development Department

CC: San Luis Obispo City Council
Derek Johnson, Community Development Director

[2] County Code Section 22.62.040 identifies site plan review as a ministerial review
[3] Exhibit B of August 2005 Memorandum of Agreement between the City and County of San Luis Obispo

RESPONSE TO LETTER G – CITY OF SAN LUIS OBISPO

Response to Comment G-1

Proposed standards for the RE Combining Designation in Section 22.14.100 and SEFs in Section 22.32 seek to minimize impacts to visual resources, expand existing visual standards for renewable energy facilities, and encourage distributed generation in appropriate land use categories and locations.

These standards would apply to projects subject to both ministerial and discretionary permits. For example, proposed standards in Subsection 22.32.050.D require all SEFs to use nonreflective surfaces that minimize glare. Rooftop SEFs must be integrated with roofing materials and architectural form, while SEFs requiring discretionary permits would be sited to be screened from residences, Sensitive Resources Areas for visual resources, and areas subject to Highway Corridor Design Standards.

Within the RE Combining Designation, both the location of the combining designation and proposed standards are geared toward protecting visual resources. Parcels located within Sensitive Resource Areas for visual resources were excluded from the RE Combining Designation boundary and are ineligible for streamlined reviews. Site plan review would be required for larger SEFs up to 160 acres in size in the RE Combining Designation that are consistent with design standards, including proposed standards that protect visual resources.

Standards proposed for Subsection 22.14.100.F include a requirement that all SEFs be screened from residences to the greatest extent feasible. The County's approach to impose new standards for protection of visual resources, together with the approach to select areas for inclusion in the combining designation, supports the avoidance of sensitive visual resources and the minimization of visual impacts.

The commenter also states that the RESP may preclude the City's ability to identify and comment on renewable energy projects in the San Luis Obispo Planning Area. Projects that would be eligible for streamlined ministerial reviews must adhere to the standards discussed above. As a result, these projects would not impact scenic resources in the city and would not warrant discretionary review by the County and input from the City.

Response to Comment G-2

The EIR provides a program-level discussion of the regulatory setting and physical setting for visual and aesthetic resources in the context of renewable energy development in the unincorporated county. Proposed standards in the RESP represent County staff's recommendations for the design, siting, and facilitation of distributed generation in a manner that protects natural resources and implements adopted County policy. RESP recommendations are based on existing goals and policies, including the goals of the County of San Luis Obispo Conservation and Open Space Element for the designation and protection of areas with renewable energy resources and the encouragement of renewable energy development. While the City's General Plan elements and associated environmental review documents provide an additional level of detail of the visual setting within the City's purview, they do not necessitate revisions to the Program's EIR setting or analyses. The EIR acknowledges the documents as supplemental information that can be found at www.slo2035.com.

Response to Comment G-3

The comment letter presents concern with the City's ability to comment on ministerial renewable energy projects with potentially significant scenic resource impacts. The RESP addresses this issue by limiting projects that qualify for ministerial review. The RESP also provides greater protections for visual quality with new standards that would apply to both ministerial and discretionary projects. Response to comment G-1 above summarizes proposed standards that would address the visual quality of renewable energy facilities and strengthen existing regulations.

The comment letter asserts concern with permit requirements and provides an example, noting that Tier 1 through Tier 3 SEFs up to 160 acres could be reviewed as a ministerial permit. However, the RESP provides limitations on the types of projects that would qualify for ministerial review for each tier. Only projects meeting strict location criteria and consistent with the siting and design standards of the RESP would qualify for ministerial review as follows:

- Tier 1 SEFs would qualify for site plan review on unincorporated land only up to 20 acres when located on disturbed or graded land, or on land previously developed for industrial or commercial purposes.
- Tier 2 SEFS would qualify for ministerial review up to 40 acres in the RE Combining Designation, while Tier 3 SEFs would qualify for ministerial review up to 160 acres in the RE Combining Designation only on Commercial Service (CS), Industrial (IND), or Agriculture (AG) land use designations. Neither Tier 2 nor Tier 3 would qualify for ministerial review when proposed on Important Agricultural Soils as designated by the Conservation and Open Space Element, unless sited solely on Highly Productive Rangeland.

Again, even if a project meets the eligibility standards described above, it must still meet the strict visual resource protection standards outlined in Sections 22.32 and 22.14 (see response to comment G-1). As a result, ministerial approvals would only be granted where visual impacts would be minimized or avoided, and this highly restricted category of projects would not be subject to the MOA.

The commenter states that Tier 1 WECS on uninhabited structures are not subject to height limitations and could receive ministerial review. In fact, Tier 1 WECS are limited to a height of 10 feet above the building for agricultural, rural, and public facilities for a maximum height of 45 feet, and no more than 5 feet above the building for a maximum height of 40 feet for residential and commercial land uses (proposed County Code Section 22.32.060.C). As noted in the comment letter, Tier 2 WECS will require a minor use permit. This permit requirement is established in Section 22.32.030. Proposed revisions to the RESP submitted to the include an edit to Section 22.32.060.A for consistency to clarify that Tier 2 WECS would require a minor use permit, a discretionary level of review (see Final EIR Appendix 2.0).

The comment letter accurately states that renewable energy projects would not be eligible for site plan review if located within visual Sensitive Resource Areas. For more information on the location of visual Sensitive Resource Areas, the proposed map of the Renewable Energy Combining Designation in the San Luis Obispo Planning Area is included on page 16 of Appendix 2.0 to the Draft EIR. Parcels within a visual Sensitive Resource Area are excluded from the RE Combining Designation area and fall within the "Area Not Included" of the map.

To further ensure protection of visual Sensitive Resource Areas, proposed criteria in Subsection 22.14.100.B of the RESP identify that parcels in visual Sensitive Resource Areas do not qualify for site plan review in the RE Combining Designation. For projects outside of the RE Combining Designation, Section 22.32.020 notes the applicability of other combining designation standards to energy generating facilities. Further documentation of the County's aesthetic and scenic resources is available in Section 3.1 of the Draft EIR and the County's Renewable Energy Streamlining Program Opportunities and Constraints Technical Study (OCTS), including Figure 6-1.1. Additional context for the County's visual resource policies and designations is available in Chapter 9 of the Conservation and Open Space Element, Visual Resources.

The comment letter notes that County mapping of visual and aesthetic resources does not align with City mapping of similar resources. The County has developed a program that is consistent with and implements the adopted County Conservation and Open Space Element and the existing Land Use Ordinance. These adopted documents provide direction for the County to protect and address areas with unique County designations, including areas subject to the County's Highway Corridor Design Standards and visual Sensitive Resource Areas. County maps may not align with City maps in all cases.

The commenter requests clarification that renewable energy projects in the San Luis Obispo Planning Area being reviewed at the minor use permit and conditional use permit level be referred to the City for review and comment. For purposes of discretionary review, the RESP does not propose changes to existing processes for coordination with the City. The County would continue to follow the 2005 City/County Memorandum of Agreement, which identifies a commitment to refer discretionary projects in the Planning Area to the City of San Luis Obispo.

Response to Comment G-4

The reader is referred to responses to comments G-1 through G-3 above. The RESP seeks to streamline the review of renewable energy facilities in locations that do not adversely affect scenic resources. Proposed standards for visual resources include triggers that would dictate discretionary review where such impacts may occur. The commenter provides no analysis or information to counter the conclusions of the Draft EIR.

Letter H

COUNTY OF SAN LUIS OBISPO
Department of Agriculture/Weights and Measures
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Martin Settevendemie
Agricultural Commissioner/Sealer
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JAN – 6 2015

DATE: January 2, 2015
TO: James Caruso, Project Manager
FROM: Lynda L. Auchinachie, Agriculture Department
SUBJECT: San Luis Obispo County Renewable Energy Draft Environmental Impact Report (1766)

The Agriculture Department has raised several concerns regarding the lack of clarity in the Draft Environmental Impact Report (DEIR) relative to impacts to agricultural land. Of particular concern is the identification of potential soil resource impacts. The DEIR evaluates impacts to Highly Productive Rangeland Soils (HPRS) without clarifying that there can be multiple other soil classifications that are also classified as HPRS. Based on our discussions, clarity will be provided by making changes to the proposed ordinance language to ensure protection of agricultural resources. These changes will state that site plan development could occur on Important Agricultural Soils designated solely as Highly Productive Rangeland Soils. Such changes should also be reflected in the DEIR so that impacts to agricultural resources are not misleading. **H-1**

Our department continues to have concerns relating to the mitigation measures proposed for impacts to agricultural resources. Agricultural easements are complex and adequate mitigation should be based on consideration of several site specific factors including but not limited to soil resources; water quality, quantity, and infrastructure; climate; limitations on uses, and surrounding land use compatibility. It is unclear how such an easement could be implemented through the ministerial site plan review process and therefore provide adequate mitigation for impacted resources. Additionally, there needs to be a definition of "active agricultural use." **H-2**

Comments and recommendations are based on policies in the San Luis Obispo County Agriculture Element, Conservation and Open Space Element, the Land Use Ordinance, the California Environmental Quality Act (CEQA), and on current departmental policy to conserve agricultural resources and to provide for public health, safety and welfare while mitigating to the extent feasible the negative impacts of development to agriculture. **H-3**

If you have questions, please call 781-5914.

RESPONSE TO LETTER H – COUNTY OF SAN LUIS OBISPO, DEPARTMENT OF AGRICULTURE/WEIGHTS AND MEASURES

Response to Comment H-1

The EIR has been revised (Table 2.0-1, Table 3.2-5, and associated text changes) to reflect the RESP revision that the Tier 2 and 3 projects referred to in the comment are not eligible for streamlining via the site plan review process if located on Important Agricultural Soils, unless those soils are solely designated as Highly Productive Rangeland Soils (see Final EIR Chapter 3.0, Revisions to the Draft EIR). This clarified eligibility standard is in addition to the other requirements listed that remain unchanged.

Response to Comment H-2

Section 22.14.100.F.9 of the proposed ordinance details the requirements for agricultural easements. Additional detail and clarification has been added (see Final EIR Appendix 2.0) to address the concerns presented in the comment. Specifically, language has been added requiring consultation with the Agriculture Department, and the following language has been added as guidance in site selection for easements:

> To determine the suitability of proposed easement sites for purposes of addressing the conversion of agricultural uses or Highly Productive Rangeland, the Agriculture Department shall evaluate criteria related to the intensity and suitability of the site for agriculture, including but not limited to soil capability, available water supply, existing on-site land uses, parcel size, and land use designation.

Regarding the need for a definition of "active agricultural use," while there may be some level of subjectivity as to whether an agricultural land use is active, planning staff will make a determination of active use where land is clearly active. Where not clearly active, staff will consult with the Agriculture Department in making the determination.

Response to Comment H-3

This comment does not provide specific comments on the EIR. However, the purpose of the EIR was to evaluate the proposed Program's impact to agricultural resources, public health, and safety, among other issues and resources, and to identify ways, in concert with the Program, to avoid or lessen adverse effects.

Letter I

CALIFORNIA
NATIVE PLANT SOCIETY

January 7, 2015

TO: Members of the San Luis Obispo County Planning Commission

FROM: David Chipping: Conservation, San Luis Obispo Chapter, CNPS
1530 Bayview Heights Drive
Los Osos, CA St., 93402

REF: RESP Draft EIR and Energy Fast Tracking, Hearing January 8, 2015
Comments from San Luis Obispo Chapter of the California Native Plant Society

The San Luis Obispo Chapter of the California Native Plant Society is in favor of increasing the proportion of non-carbon based energy that is produced in the County. However we believe that this approach before you today, is not only wrong, but sets a dangerous precedent in destroying the intent of the California Environmental Quality Act.

The core thesis the County is presenting is that the existing process under CEQA takes too long and must be short-circuited. Currently a project is examined through the Draft EIR process, there follows public and agency input and criticism of the content of the DEIR, and then a more fully informed FEIR is prepared before being brought before your Commission. Only for very small projects are Negative Declarations and Mitigated Negative Declarations handled in a Ministerial way. We have no problem with the current process. **I-1**

The County now proposed to evaluate and process large projects solely by County Staff and handled in a ministerial way with no apparent way to give public input. Such things can be possible under such processes as Natural Community Conservation Plans, where an initial and detailed data assessment is made of an entire area. On the basis of this, the areas of habitat 'take' and areas of conservation and mitigation are delineated, and only then are projects allowed to fast track. The subsequent ministerial decisions are informed by the prior scrutiny under NCCP. **I-2**

On the other hand, County staff will have no prior knowledge of which animals and plants will exist in the footprints of projects coming before them. The DEIR being presented today has no maps or even species lists, and the document is extremely opaque as to the species that are to be covered. The document makes no mention of California Listed Plants (the old CNPS Lists) and implies that protection is only extended to FESA/ESA listed species, except that in Appendix 2, p.37 on the changes in Title 22, they show up. The DEIR uses a lot of space describing plant communities, but no further **I-3**

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Letter I Continued

CALIFORNIA
NATIVE PLANT SOCIETY

discussion of why they are considered or covered by the provisions of the proposed fast-track process. **I-3 cont.**

The DEIR states that 'take' of Class I and II soils will not have to be mitigated if a project is under 20 acres, and gives no mention of mitigation of species take in these projects. However the DEIR shows no justification for the assertion with plant take will have no significant impact. This assertion in Mitigations to Impacts 3-4-1 and 3-4-2 has no founding in fact and, on this issue alone, should lead to some major problems down the road. **I-4**

For larger project it appears that the County will require a biological report when a project is submitted. The DEIR does not in any way define that there should be some degree of separation between the preparer of the report and the project submitter besides requiring that the preparer be qualified. The County lacks the in-house scientific staff, or might in the future lack the staff, to perform ministerial oversight of sufficient breadth, and there are no standards about when surveys would be made. In this narrow issue, CNPS would prefer that biological consultants be selected by the County and not by the project submitter. However this is still not satisfactory, as CNPS, other agencies, neighbors and other interested parties will be unable to even comment on the content of these reports. The scoping letter submitted by CDFW and USFWS in the appendices also suggests that the project would not meet their requirements. However, as time and money is to be spent on creating the project submitter's biological report, it is unclear if time is saved by the streamlining process. The only intent appears to be to exclude public comment and the time needed to gather comments and respond to them. **I-5**

In other matters the Project fails on the Consistency Requirement, as the fast track program violates much of the Conservation and Open Space Element of the General Plan and probably on other aspects of Title 22 such as Grading and Tree Removal. Article 6 of Title 22 provides Land Use and Permit Procedures including agricultural buffers etc., and in fulfilling these requirements. If our concerns are unjustified, CNPS would ask that the FEIR address and clarify this issue. **I-6**

Lastly, no other county appears to be attempting this badly conceived approach. Most action statewide has been to facilitate the sort of projects described under Tier 1 of this project. In Sacramento AB 2188 was signed in 2014 to specifically enable fast processing of rooftop and similar projects. If the County simply removed Tier 2-4 from this project, and concentrated only on Tier 1, it would be in compliance with the intent of AB 2188 **I-7**

David H Chipping

David Chipping ; Chapter Conservation Committee

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RESPONSE TO LETTER I – CALIFORNIA NATIVE PLAN SOCIETY (FOLLOW-UP LETTER TO LETTER E, RECEIVED AFTER THE CLOSE OF THE PUBLIC COMMENT PERIOD)

Response to Comment I-1

Please refer to response to comment E-1, a similar comment provided by the same commenter. Contrary to the assertion and inference provided in comment I-1, an EIR is not required of all projects other than "very small" projects, which the commenter states are processed via negative declarations and in a ministerial way. Projects are subject to CEQA only if they are subject to a discretionary action and have the potential to result in environmental impacts. An EIR is then only required where factual evidence indicates such a project could result in at least one significant and unavoidable adverse impact. As such, the size of a project in and of itself does not determine whether an EIR is required, rather it's whether the project could result in significant impacts – whether or not the project is "large" or "small."

Response to Comment I-2

Contrary to the statement, the Program is not similar to a NCCP and is not intended to function as one. An NCCP is designed to allow a clear process that can enable projects within a plan area to impact protected species or habitat if specific mitigation measures are implemented and specific processes followed. In contrast, the RESP requires avoidance of species and habitat in order for projects to be eligible for streamlined reviews. If state or federally listed species (including those listed under the California Rare Plant Rank) or designated critical habitat are present as identified in a biological report prepared by a County-approved biologist, the project is ineligible for streamlining under the Program.

Response to Comment I-3

Contrary to the assertion, the RESP requires demonstrated absence and avoidance of species and habitat in order for projects to be eligible for the site plan review streamlining process. If state or federally listed species (including those listed under the California Rare Plant Rank) or designated critical habitat are present as identified in a biological report prepared by a County-approved biologist, the project is ineligible for streamlining under the Program (see response to comment E-3).

The omission of the California Rare Plant Rank listed species in the EIR discussion of the biological resources setting was not intended to dismiss the standing and treatment of the lists under CEQA. The lists will continue to be given consideration in biological studies as they currently are. The CNPS California Rare Plant Rank lists for San Luis Obispo County have been added as Appendix 3.4 to the Final EIR and text revisions have been included in Chapter 3.0 of the Final EIR as well (see response to comment E-3).

Response to Comment I-4

A solar electric facility that is 20 acres or less may be eligible for ministerial approval via the site plan review process only if: (1) it is located on land that is graded or disturbed or located on land that was previously developed for industrial or commercial purposes and degraded or contaminated and then abandoned or underused; and (2) a biological report prepared for the site by a County-approved biologist demonstrates absence and avoidance of species and habitat. Based on these criteria of the proposed RESP, the EIR concludes that significant impacts

to biological resources would not occur (Draft EIR, pp. 3.4-35 to 3.4-42). The commenter provides no analysis or information to counter the conclusions of the Draft EIR.

Response to Comment I-5

Biological reports prepared for projects under the RESP must be prepared by biologists on the County's approved consultant lists to ensure adequacy, thoroughness, and the avoidance of conflict of interest issues. Ministerial-level approvals would only be granted if, among other criteria, the biological report demonstrates the absence and avoidance of species and habitat. If species are present, the project would not qualify for streamlined review under the Program and would be subject to current CEQA review requirements. A public review process is not included in the ministerial review process, as this runs counter to the goals of streamlining suitably sited projects that avoid biological impacts.

Response to Comment I-6

The EIR evaluates the proposed Program's consistency with the General Plan throughout the environmental analysis sections of the EIR (Sections 3.1 through 3.11). The RESP includes updates and changes to policies and planning documents, including the Conservation and Open Space Element (Draft EIR p. 2.0-19 and analyses in Sections 3.1 through 3.11). No changes to the grading or tree removal ordinance are included in the RESP, and the RESP is considered consistent with these code provisions. The comment does not identify any specific inconsistencies to respond to or any specific parts of the EIR the commenter feels are inadequate.

Response to Comment I-7

The comment does not identify any issues with the EIR. The suggestion to limit the RESP to Tier 1 projects was not considered, as this would not meet the primary objectives of the Program. Please refer to Draft EIR Chapter 4.0, Alternatives, for more details on the objectives and alternatives that were studied.

Letter J

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EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director

January 15, 2015

James Caruso
San Luis Obispo County
Department of Planning and Building
976 Osos Street, Room 200
San Luis Obispo, California 93408-2040
jcaruso@co.slo.ca.us

Subject: Draft Programmatic Environmental Impact Report (PEIR)
San Luis Obispo County Renewable Energy Streamlining Program (ED13-196)
SCH No. 2014041090

Dear Mr. Caruso:

The California Department of Fish and Wildlife (CDFW) has reviewed the Draft PEIR for the San Luis Obispo County Renewable Energy Streamlining Program (ED13-196) (RESP). The RESP would create a new Renewable Energy (RE) Combining Designation in the Land Use Ordinance (LUO) to provide ministerial approval for a range of solar and wind energy facilities. Discretionary review may be triggered by larger projects that require additional standards or conditions of approval. The Program will require revisions to the inland LUO (Title 22) for the development of distributed renewable energy resources, and wind energy and biomass conversion facilities that are either connected to the electric grid or serve on-site uses in stand-alone applications.

Although this comment letter is being sent after the end of the official comment deadline period, responses to which would need to be addressed in the Final PEIR, our comments are within the time frame which allows for their consideration by the County in their approval process, and may affect the streamlining program as it relates to the County's responsibilities to the CDFW as Responsible Agency. CDFW respectfully requests the County consider our comments in preparation of the Final PEIR and prior to PEIR approval. Our goal is to assist the County in their streamlining program by identifying classes of projects for which no additional permits would be required. Additionally, it is our intent to help protect project proponents from engaging in unknowing violations of other statutory and regulatory requirements if they participate in the County's streamlining process. **J-1**

The RE Combining Designation, in providing only ministerial approval for certain classes of projects in certain locations, will result in a number of projects having no further environmental review per the California Environmental Quality Act (CEQA). The designation of areas and types of projects for which no further environmental review is necessary is part of the Project being reviewed in the PEIR. The PEIR would not be programmatic for those projects that would become ministerial because there would be no further review of those projects; therefore, the effects of those projects to become ministerial should be evaluated not at a programmatic level, but at a level sufficient to disclose the impacts of implementing the full range of hypothetical projects that would become ministerial as a result of the County proposed action. Evaluation of **J-2**

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Letter J Continued

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January 15, 2015
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the environmental effects of reclassifying areas and classes of projects as ministerial will need to rely on a level of detail sufficient to accurately identify the direct, indirect, and cumulative effects of streamlining the approval of such projects; and for identification of appropriate mitigation measures, including avoidance and minimization measures. Additionally, CDFW recommends that standards and criteria for all new projects include a "pre-screening" process, including sufficient survey information, which would support the qualification of specific projects as appropriate for ministerial approval, and provide the basis for subsequent environmental review of those projects which would not qualify for ministerial approval. Except for small solar rooftop projects that involve no ground disturbing activities, CDFW recommends the RESP require that a qualified biologist conduct biological studies to determine the potential for each individual project to impact species listed under the California Endangered Species Act (CESA), species listed under the federal Endangered Species Act (ESA), species included on other special-status lists, or impact sensitive habitat features (e.g., wetlands). If the biological studies determine that potential exists for special-status species or sensitive habitat features to occur on or near the project site, CDFW recommends that the project be excluded from ministerial consideration because of the potential for significant impacts. Additional species-specific surveys may be warranted and if species listed under CESA or ESA have the potential to occupy a site, consultation with CDFW and the United States Fish and Wildlife Service (USFWS), which administers ESA, would be necessary to determine avoidance measures or if a State or federal incidental take permit is necessary to comply with CESA and ESA, respectively. **J-2 cont.**

Page ES-2 of the Draft PEIR states that implementation of the RESP may result in impacts to aesthetics and visual resources, agricultural resources, and land use planning that are considered significant, unavoidable, and adverse. However, statements of overriding consideration were not included in the PEIR. **J-3**

Pages ES-2 and ES-3 of the Draft PEIR state that small solar energy facilities (SEFs) would not be required to participate in the conservation effort to preserve agricultural resources because it would be costly and limit the streamlining effort undertaken through implementation of the RESP. Choosing not to attempt to mitigate for the loss of agricultural resources does not make the impact unavoidable, only significant and adverse. CDFW recommends that projects with significant impacts be excluded from ministerial consideration. **J-4**

The Draft PEIR identifies all RESP-related impacts to Biological Resources to be less than significant with incorporation of development standards. CDFW does not agree that implementation of the development standards as proposed would reduce significant impacts to less than significant levels. The RE Combining Designation in the Carrizo Plain area bisects identified natural landscape blocks and a wildlife movement corridor for pronghorn, San Joaquin kit fox (*Vulpes macrotis mutica*), a species listed as threatened pursuant to CESA, and birds. The only development standard is to keep fencing to a height of no greater than 42 inches. To help make the development standard more effective for pronghorn and other land animals, CDFW recommends the County include language that wildlife friendly fencing be constructed where the bottom of the fence is raised 18 inches from the ground with a smooth bottom wire and no greater than 42 inches in height. Please note that the fencing standard may help movement of adult pronghorn and other terrestrial wildlife through an RE facility, it does not improve chances for migrating birds or bats to navigate around wind turbines and these impacts may be significant. The RESP also requires a contribution to a conservation effort for San **J-5** **J-6**

Letter J Continued

James Caruso
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Page 3

Joaquin kit fox when the project is located in a San Joaquin Kit Fox Habitat Area as identified by the County. While this effort is commendable and encouraged, it does not provide sufficient avoidance and minimization measures necessary to reduce potential impact and does not necessarily meet the requirements of CDFW or the USFWS for permitting purposes. Without avoidance, minimization, or if necessary, take authorization, the projects could result in significant impacts to the State and federally listed San Joaquin kit fox. Additionally, this approach may lead project proponents into a violation of the state and federal Endangered Species Acts if take of listed species occurs without the appropriate take authorization. CDFW recommends the County remove the San Joaquin kit fox language from the LUO and other documents as a path to a ministerial determination. **J-6 cont.**

Pages 1.0-1 and 1.0-2 of the Draft PEIR includes a list of responsible agencies as defined in CEQA guidelines. CDFW is a responsible agency for purposes of issuing Lake and Streambed Alteration Agreements pursuant to Fish and Game Code sections 1600 et seq. and Incidental Take Permits pursuant to Fish and Game Code section 2081. CDFW requests that the County add us, as identified in the trustee agency list, to the list of responsible agencies in the Final PEIR. **J-7**

The Draft PEIR indicates that all subsequent individual RE projects being proposed will be evaluated at the time of their proposal to determine if they are eligible for streamlined (ministerial) approval or if subsequent environmental review under CEQA is required. However, there does not appear to be any requirement for conducting studies to determine the potential for impacts to biological resources for individual projects. Page 2.0-9 of the Draft PEIR states that the RE Combining Designation will require additional biological studies where sensitive species may be present. If a proposed project will involve ground-mounted facilities, other ground disturbing activities, or use of wind turbines, the project has the potential to impact wildlife species and sensitive wildlife habitat such as riparian or vernal pool. Additionally, there is language in the Draft PEIR and the LUO that allows the Director to waive the need to submit information that will help determine eligibility for ministerial approval at the request of the applicant. The Department recommends that the option to waive a biological study be removed, because the potential for significant impacts to biological resources can not be determined without these studies. As mentioned above, CDFW recommends the County include a requirement in the Final PEIR and in the LUO and other affected documents for biological studies to be included in the submittal of any project, except for small, roof-mounted solar that does not involve ground-disturbing activities, for screening for ministerial or discretionary approval. **J-8**

Table 3.4-1 in the Draft PEIR includes standards that need to be incorporated into RE projects, but most only specifically address those projects needing discretionary action and not ministerial projects. CDFW recommends that local policies be changed to include ministerial projects as well. **J-9**

Pages 3.4-36 and 3.4-37 of the Draft PEIR indicate that Tier 1 wind energy conversion systems (WECSs) will be limited in height and therefore impacts to biological resources would be considered less than significant. Although Tier 1 WECS are defined as having a certain height limit depending on location and land use designation, it does not limit the number of WECs that can be installed. Even one wind turbine can cause a significant impact on bird or bat species if it is located in or near migratory paths, riparian areas, or stopover locations, and also has the **J-10**

Letter J Continued

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January 15, 2015
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potential to result in take of a listed species. Bird and bat impacts cannot be evaluated without site specific information and analysis. CDFW recommends the County make this a requirement for all WECS installations, including single, roof mounted WECSs. **J-10 cont.**

The third sentence in the last paragraph on Page 3.4-43 of the Draft PEIR states that discretionary approval would be needed for proposed projects needing additional environmental approvals, but then precludes streambed alteration agreements and wetland fill permits. CDFW recommends this third sentence be changed to read, "This would **include** streambed alteration permits and wetland fill permits." **J-11**

Figure 3.11-2 is a map showing impaired surface waters within the County. Many of these flow through RESP areas. These and other surface waters may require greater setbacks for adequate protection of water quality, aquatic species, and riparian habitat beyond the design standard of 50 feet. **J-12**

LUO 22.14.10.F.3. requires the wildlife friendly fencing to allow wildlife movement through RE projects. CDFW recommends this language include a requirement to maintain an 18-inch gap between the bottom of the fencing and the surface and include a smooth wire as the bottom strand. **J-13**

LUO 22.14.10.F.5. requires a 500-foot buffer around certain features, including those occupied by special-status species. CDFW recommends that this be specifically extended to all seasonal or perennial streams, wetlands, drainages, vernal pools or other jurisdictional features when they are occupied, potentially occupied, or provide habitat for special-status species. **J-14**

LUO 22.14.10.F.6. requires a 50-foot setback from any seasonal or perennial wetland, drainage, vernal pool, or other jurisdictional features. Even without the presence or potential presence of species, this setback requirement may not be sufficient to protect the integrity of the water feature. For example, allowing construction of a WECS that requires a six-foot deep concrete foundation 51 feet from a vernal pool may compromise the impermeable layer that makes up the vernal pool habitat. If the hydrology cannot be maintained, the vernal pool's ability to function as before is compromised and prohibits its use by special-status species. In this example, vernal pool habitat is a sensitive habitat that if not appropriately protected would result in significant impacts. CDFW recommends the County increase the required setback distance to 250 feet from the top of banks or the outer edges of riparian habitat, whichever is greater to maintain hydrology, water quality, and associated riparian habitat. **J-15**

LUO 22.14.10.F.8. provides for revegetation requirements for vegetation defined as sensitive or that may support special-status wildlife species. However, F.8.a. and F.8.b provide "offset ratios" and it is unclear to CDFW what exactly is required from these subsections of the LUO. CDFW recommends that if sensitive habitat or vegetation that may support special-status species is to be removed, that those impacts be mitigated through conservation of like vegetation/habitat at an off-site location to be protected and managed in perpetuity, with management funded through an endowment. If species listed as threatened or endangered pursuant to CESA or ESA may be impacted through habitat modification or vegetation removal (or other ground-disturbing activities), acquisition of an incidental take permit from CDFW and/or USFWS, respectively, may be warranted. **J-16**

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LUO 22.14.10.F.9. allows placement of RE projects on Highly Productive Rangelands with some, but not all projects, requiring mitigation in the form of on-site or off-site conservation easements that focus on soils. Highly Productive Rangelands also provide high quality habitat for a host of listed wildlife species such as California tiger salamander (*Ambystoma californiense*) and San Joaquin kit fox. CDFW recommends consultation with us prior to project implementation within Highly Productive Rangelands to determine if an incidental take permit is warranted. If so, the proposed conservation mitigation may not be sufficient to meet the fully mitigated standard of CESA and additional mitigation would be required through the permit process. **J-17**

LUO 22.32.020.A.2 allows for accessory renewable energy generation facilities to be constructed without obtaining a Land Use Permit or other County approvals unless the project meets one or more of the conditions provided in 22.32.020.A.2.b. One of those conditions (8) is if the project is subject to environmentally related permits. It is unclear to CDFW how this will be determined and by whom for each proposed project. It is the jurisdiction of CDFW to determine whether or not an incidental take permit is warranted for take of state listed species or whether a Lake or Streambed Alteration Agreement is necessary. The USFWS is responsible for determining if take authorization is warranted for federally listed species and the United States Army Corps of Engineers has jurisdiction over wetlands that may be impacted during project implementation. CDFW recommends that LUO 22.32.020.A.2 require Projects to consult with the appropriate regulatory agency to determine if additional environmentally related permits are required. **J-18**

LUO 22.32.030.B provides application content for proposed projects. LUO 22.32.030.B.4 addresses RE projects and subjects them to certain standards provided in other sections of the LUO (22.60.040.B, 22.60.040.D, and 22.62.040), but only for those projects seeking Site Plan Review. The referred to sections of the LUO are not included for review. None of the LUO sections included as part of this Draft PEIR require completion of biological studies and submittal for review as part of project evaluation. CDFW recommends the County make it clear that all projects, except small roof-mounted solar with no ground disturbance associated with it, are required to have a qualified biologist conduct biological studies and submit the results to the County, CDFW, and USFWS to help the County determine if a project may impact biological resources and if it should be excluded from the ministerial process because of additional avoidance, minimization, and mitigation measures may be necessary to reduce impacts to less than significant.. **J-19**

LUO 22.32.040.C.2. exempts RE projects from the Minor Use Permit process, thereby considering it ministerial, if the project is located in a San Joaquin Kit Fox Habitat Area as designated by the County. As mentioned above, CDFW does not agree that the mitigation required in these areas will preclude the need for incidental take authorization from CDFW or USFWS. The mitigation requirement for these Areas also does not off-set potential impacts to other listed species that may occupy the same habitat. CDFW recommends this and similar language be removed from the LUO as a means of obtaining ministerial approval. **J-20**

LUO 22.60.040.E. reportedly gives the Director the ability to waive application content at the request of the applicant. As mentioned earlier in this letter, CDFW recommends that all proposed projects be subject to biological studies and submittal of the survey results as part of the screening process when determining if a project is subject to ministerial or discretionary **J-21**

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approvals. The possible exemption is for small, roof-mounted solar projects that will involve no ground-disturbing activities, including trenching for electrical lines. **J-21 cont.**

CDFW makes the following additional recommendations to avoid and minimize impacts to wildlife associated with RESP implementation:

- Use free-standing towers for Wind Energy Conversion Systems (WECS) (avoid designs with guy wires, which increase the rate of bird mortalities);
- Use flashing red lights if lighting is required on WECS; **J-22**
- Prohibit the use of rodenticides since they have the potential to harm or kill non-target species, including those that are threatened or endangered;
- Require that all hollow vertical structures be capped immediately upon installation to prevent the entrapment and death of birds.

CDFW Jurisdiction and Additional Recommendations

Trustee Agency Authority: CDFW is a Trustee Agency with the responsibility under the California Environmental Quality Act (CEQA) for commenting on projects that could impact plant and wildlife resources. Pursuant to Fish and Game Code Section 1802, CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, CDFW is responsible for providing, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities, as those terms are used under CEQA.

Responsible Agency Authority: CDFW has regulatory authority over projects that could result in the "take" of any species listed by the State as threatened or endangered pursuant to Fish and Game Code Section 2081. If a project could result in the "take" of any species listed as threatened or endangered under the California Endangered Species Act (CESA), CDFW may need to issue an Incidental Take Permit (ITP) for the project. CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (Sections 21001{c}, 21083, Guidelines Sections 15380, 15064, 15065). Impacts must be avoided or mitigated to less than significant levels unless the CEQA Lead Agency makes and supports a Statement of Overriding Consideration (SOC). The CEQA Lead Agency's SOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code Section 2080. If the County classifies projects as ministerial and those projects would result in take of state- and federal- listed species, such as, but not limited to, California tiger salamander and San Joaquin kit fox, then CDFW would likely be the CEQA lead agency completing a focused or supplemental CEQA review to support ITP issuance. This will add significant time to ITP issuance and preclude the streamline process that the County is attempting to facilitate. **J-23**

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CDFW also has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource, pursuant to Fish and Game Code Section 1600 *et seq*. If Project activities are proposed that will involve work within the bed, bank, or channel of any watercourse, a Lake or Streambed Alteration Agreement may be necessary. The Project proponent should submit a Lake or Streambed Alteration Notification to CDFW for the Project. CDFW is required to comply with CEQA in the issuance or the renewal of a Lake or Streambed Alteration Agreement. Therefore, for efficiency in environmental compliance, we recommend that any stream disturbance be described, and mitigation for the disturbance be developed as part of the environmental review process. This will reduce the need for CDFW to require extensive additional environmental review for a Lake or Streambed Alteration Agreement for this Project in the future.

Fully protected species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited and CDFW cannot authorize their take. If fully protected species have the potential to be impacted through implementation of any project, fully address the species and provide appropriate avoidance measures in the environmental documents prepared for each project. Fully protected species in the study area include, but are not limited to, peregrine falcon (*Falco peregrinus*), bald eagle (*Haliaeetus leucocephalus*), golden eagle (*Aquila chrysaetos*), blunt-nosed leopard lizard (*Gambelia sila*), and California condor (*Gymnogyps californianus*).

Bird protection: CDFW has jurisdiction over actions which may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Sections of the Fish and Game Code that protect birds, their eggs and nests include Sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). **J-23 cont.**

If activities associated with individual projects will occur during the bird breeding season defined as January 1 through September 15, CDFW recommends surveys for active nests be conducted by a qualified wildlife biologist no more than 10 days prior to the start of the of the Project commencing and that the surveys be conducted in a sufficient area around the work site to identify any nests that are present and to determine their status. A sufficient area means any nest within an area that could potentially be affected by the Project. In addition to direct impacts, such as nest destruction, nests might be affected by noise, vibration, odors, and movement of workers or equipment. We recommend that identified nests be continuously surveyed for the first 24 hours prior to any construction related activities to establish a behavioral baseline. Once work commences, CDFW recommends all nests be continuously monitored to detect any behavioral changes as a result of the Project. If behavioral changes are observed, we recommend the work causing that change cease and CDFW consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no disturbance buffer of 250 feet around active nests of non-listed bird species and a 500 foot no-disturbance buffer around the nests of unlisted raptors until the breeding season has ended, or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from

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these no disturbance buffers may be implemented when there is compelling biological or ecological reason to do so, such as when the Project area would be concealed from a nest site by topography. Any variance from these buffers is advised to be supported by a qualified wildlife biologist and it is recommended CDFW be notified in advance of implementation of a no disturbance buffer variance. **J-23 cont.**

We note that one of the proposed tiers for wind energy development is for turbines less than 100 feet tall. Turbines of similar height in the Altamont Pass region of California were the first at which high avian fatality rates were identified as a result of wind turbine operations. We would like to discuss further with you the specifications of wind turbines that the County may propose classifying as ministerial projects. **J-24**

CDFW may have additional species-specific recommendations based on the results of the biological studies conducted for each Program project. **J-25**

Thank you for the opportunity to provide input on this Draft PEIR for the RESP. If you have any questions regarding these comments, please contact Lisa Gymer, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (559) 243-4014 extension 238 or by email at Lisa.Gymer@wildlife.ca.gov. **J-26**

Sincerely,

for Jeffrey R. Single, Ph.D.
Regional Manager

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Julie Vance, California Department of Fish and Wildlife
Lisa Gymer, California Department of Fish and Wildlife

RESPONSE TO LETTER J – CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE *(RECEIVED AFTER THE CLOSE OF THE PUBLIC COMMENT PERIOD)*

Response to Comment J-1

As noted, because this letter was submitted nearly two weeks after the close of the public and agency comment period, the County is not required to provide written responses. However, the County has elected to respond in good faith and appreciates the CDFW's support of the proposed Program.

Response to Comment J-2

This EIR has been prepared to evaluate the potential indirect and reasonably foreseeable impacts that would occur with adoption of the proposed Program. Preparation of this document and the public process associated with it are in full compliance with CEQA. The analysis in the Draft EIR is based on technical reports, analysis, expert opinion, and other evidence to support its conclusions. Future projects that would be eligible for streamlining via a ministerial process that does not include a public review and comment component would be strictly limited to projects which meet the biological resource avoidance criteria.

The RE Combining Designation was designed specifically to identify locations where renewable energy development would avoid sensitive biological resources. The location of substation infrastructure was a practical starting point for examining RE Combining Designation boundaries, but extensive environmental screening for a multitude of resources followed to refine (i.e., restrict) the boundaries of the combining designation. The Program employed two approaches to identify projects eligible for streamlining: (1) placement of the RE Combining Designation boundary, and (2) studies and standards proposed in the RESP that would further identify and avoid sensitive resources. By using both approaches, the RESP seeks to streamline projects only where not preempted by state or federal regulations.

Subsection 2.6.1 of the Draft EIR presents the environmental criteria the County assessed for development of the RE Combining Designation boundary. To identify appropriate locations for the combining designation, the County first identified lands that did not contain sensitive resources such as areas covered by conservation easements, areas intended for preservation for unique biological values, or areas with Prime Farmland. For sites meeting these qualifying criteria, the RESP then provides streamlining only when the project meets the additional qualifying criteria and development standards proposed in 22.14.100.F and 22.32.

For example, as identified in both Subsection 22.14.100.F (for projects proposed in the RE Combining Designation) and Section 22.32.040.D (for projects proposed anywhere in the unincorporated county except the Coastal Zone), if state or federally listed species or designated critical habitat are present on the project site as identified in a biological report (prepared by a County-approved biologist), the project is ineligible for streamlining under the Program. This approach defers to state and federal listings of species (including the California Rare Plant Rank Lists IB through 2), while identifying a category of project that could be eligible for streamlining when no listed species are present. Thus, contrary to the statement that there would be "no further review of those projects" deemed eligible for ministerial reviews, additional biological reviews would be required.

Biological reports prepared for projects under the RESP must be prepared by biologists on the County's approved consultant lists to ensure adequacy, thoroughness, and the avoidance of conflict of interest issues. Ministerial-level approvals would only be granted if, among other criteria, the biological report demonstrates the absence and avoidance of species and habitat. If species are present on the site, the project would not qualify for streamlined review under the Program and would be subject to current CEQA review requirements, including notification of responsible and trustee agencies, such as the CDFW, and public review and comment periods. A public review process is not included in the ministerial review process, as this runs counter to the goals of streamlining suitably sited projects that avoid biological impacts.

Response to Comment J-3

As part of the RESP adoption process, the County will adopt Findings of Fact and a Statement of Overriding Considerations (SOC) for significant and unavoidable impacts to aesthetics and visual resources, agricultural resources, and land use and planning. The Findings of Fact and SOC are not required to be included in the EIR.

Response to Comment J-4

The comment is correct that the significant impact identified for Tier 1 SEF conversion of Important Agricultural Soils is avoidable. However, as stated on pages ES-2 and ES-3 of the Draft EIR, the means of avoidance would entail either removing these agricultural lands from eligibility or requiring a conservation easement for compensatory mitigation. Both options would run counter to the primary objectives of the Program to allow landowners to achieve streamlined approvals of small renewable energy projects on their property. Because these measures are not feasible without changing one of the primary components of the Program, the impact is also considered unavoidable.

The Draft EIR evaluated a program alternative (Alternative 1) that would, among other things, require that Tier 1 ground-mounted SEFs not be located on Important Agricultural Soils. Because this alternative would not allow ministerial approvals for ground-mounted Tier 1 SEF projects located on Important Agricultural Soils, the potential impact on agricultural resources would be less than that of the proposed project and would reduce the Class I impact to Class III (Draft EIR, p. 4.0-4). However, consistent with the discussion noted on pages ES-2 and ES-3, this alternative would not meet the objectives of the proposed Program to further the intent of encouraging renewable energy generation in more areas of the county (Draft EIR, p. 4.0-6).

It should be additionally noted that while Tier 1 SEFs could technically be located on Important Agricultural Soils, they must also be located on land that is graded or disturbed and was previously developed for industrial or commercial purposes and degraded or contaminated and then abandoned or underused (Draft EIR, Table 2.0-1).

Response to Comment J-5

The comment notes disagreement with findings that the RESP as proposed would avoid significant impacts to biological resources, noting the presence of natural landscape blocks and a wildlife movement corridor for pronghorn, San Joaquin kit fox, and birds. The commenter recommends revising the wildlife fencing requirements of Section 22.14.100.F.3 to read that the bottom of the fence is raised 18 inches from the ground with a smooth bottom wire and the

fence is no greater than 42 inches in height. The County has incorporated the recommendation into Section 22.14.100.F.3 (see Final EIR Appendix 2.0).

The comment further states that this fencing measure would not be effective at improving chances for migrating birds or bats to navigate around wind turbines, and such impacts may be significant. However, only Tier 1 wind energy conversion systems (WECS) would qualify for ministerial review. These WECS would have to be no more than 5 or 10 feet in height, (depending on underlying land use category), must be mounted to a roof or other existing conforming structure, and would be limited to specified land use categories (Sections 22.32.030 and 22.32.060). Tier 2 and Tier 3 WECS would always be subject to discretionary review and the CEQA process, as they would be under existing conditions. As a result, no changes to the analysis and conclusions contained in the Draft EIR are warranted. While it is acknowledged that large freestanding WECS can be a potential hazard to birds and bats, the commenter provides no evidence or analysis that Tier 1 WECS that would be mounted to existing structure would present a new significant hazard to birds or bats.

Response to Comment J-6

Neither the proposed Program nor the Draft EIR requires the contribution of fees to the Kit Fox Mitigation Program in order to allow take of the fox as stated by the commenter. Instead, as described on page 3.4-35 of the Draft EIR, Section 22.14.100.F.2 of the RESP states "a project will not be eligible for streamlining under the RESP if it has the potential to result in direct or indirect impacts to any special-status species, sensitive native vegetation, or jurisdictional wetlands or waters, or to disrupt wildlife movement and migration corridors. If a project is located in the San Joaquin Kit Fox Habitat Area, complies with the standard mitigation ratio and all kit fox conditions, and the biological resources report does not indicate the presence of any additional state or federally listed wildlife or plant species or designated critical habitat, it would also qualify for streamlining." The proposed project would not change any of the provisions of the Kit Fox Mitigation Program explained on the County's website: http://www.slocounty.ca.gov/planning/environmental/San_Joaquin_Kit_Fox.htm.

The information on the website explains that "the County worked with the California Department of Fish and Game (CDFG) to develop measures (mitigation measures) that will reduce impacts to kit fox habitat from these activities to an insignificant level. These mitigation measures are described in the information brochure titled *A Guide to San Luis Obispo County San Joaquin Kit Fox Mitigation Procedures for the California Environmental Quality Act (CEQA)*. The mitigation measures **only apply when the project site is located within the kit fox habitat area and when no kit foxes are present on the project site. Implementation of the CEQA mitigation measures does not authorize the applicant to take kit fox**" [emphasis in the original]. As stated in the Draft EIR on page 3.4-35, and in the proposed LUO at 22.14.100.F, all projects in kit fox habitat are subject to the provisions of this program.

As the Kit Fox Mitigation Program is an adopted program of the County of San Luis Obispo developed in coordination with the CDFW specifically to address potential impacts to the San Joaquin kit fox, it would be inappropriate to remove the requirement to comply with the program from either the LUO or the Draft EIR as suggested by the comment. The Kit Fox Mitigation Program applies to projects less than 40 acres in size, and all Tier 1 ground-mounted solar projects must be 20 acres or less in size. Provided all of the other provisions of the program are met, the potential impacts to the kit fox are less than significant.

Response to Comment J-7

As noted, the CDFW is a responsible agency for purposes of issuing Lake and Streambed Alteration Agreements and Incidental Take Permits. Any project that requires such an agreement or permit would not be eligible for streamlining under the proposed Program. For other tiers of projects subject to discretionary reviews, the CDFW may be a responsible agency if permits are required. This process would remain unchanged from existing practices. The CDFW is a trustee agency in its capacity for reviewing the proposed Program since no development projects or permits are contemplated in the EIR. The CDFW has been added to the list of potential responsible agencies in Section 1.0, Introduction, of the EIR (see Final EIR Chapter 3.0, Revisions to the Draft EIR).

Response to Comment J-8

Current County permit processes require a biological study for all projects applying for Site Plan Review, a Minor Use Permit, or a Conditional Use Permit. The Planning Director may only waive this requirement as provided in current Section 22.60.040, where unique project considerations render studies unnecessary, or where the department already has such files on record. Page 2.0-9 of the Draft EIR has been edited for clarity as follows:

> Section 22.14.100 of the proposed Land Use Ordinance identifies project ~~site~~ eligibility characteristics and ~~that would trigger additional studies or standards that must be achieved, often referred to as~~ performance standards. For instance, Section 22.14.100.F requires that biological surveys be prepared and that the avoidance of sensitive species be documented or the project loses eligibility for streamlining (Section 22.32.040.D). ~~the RE Combining Designation would require additional biological studies, setbacks, and/or mitigation when sensitive species such as the San Joaquin kit fox may be present.~~

Response to Comment J-9

Table 3.4-1 of the Draft EIR includes a list of land use codes and General Plan and community Plan policies relating to planning and management of biological resources in the non-Coastal Zone unincorporated county. These policies are listed in the regulatory setting subsection of the chapter to present an overview of existing plans and policies. The table is not a list of standards that need to be incorporated into all renewable energy projects, both discretionary and ministerial, as stated in the comment.

Response to Comment J-10

Tier 1 WECS are limited to a height of 10 feet above the building for Agricultural (AG), Rural Lands (RL), and Public Facilities (PF) land use categories for a maximum height of 45 feet, and no more than 5 feet above the building for a maximum height of 40 feet for residential and commercial land use categories (proposed County Code Section 22.32.060.C). Although special-status species could collide with these facilities, the magnitude of these effects is expected to be extremely low and not represent a substantial difference or increase in frequency of collisions with other structures in the built environment occurring under existing conditions (Kenneth A. Anderson. 2008. *A Study of the Potential Effects of a Small Wind Turbine on Bird and Bat Mortality at Tom Ridge Environmental Center, Erie, Pennsylvania*). As a result, the Draft EIR concludes bird and bat impacts related to Tier 1 WECS would be less than significant (Draft EIR, pp. 3.4-36 to 3.4-37). While it is acknowledged that large freestanding WECS can be a

potential hazard to birds and bats, the commenter provides no evidence or analysis that Tier 1 WECS that would be mounted to existing structures would present a new significant hazard to birds or bats.

Response to Comment J-11

The sentence at issue on page 3.4-43 of the Draft EIR has been revised as follows to provide greater clarity:

> The RESP specifically precludes any project from the Program if it needs a state or federal permit for approval, such as~~. This would preclude~~ streambed alteration permits and wetland fill permits." [See Final EIR Chapter 3.0, Revisions to the Draft EIR.]

Response to Comment J-12

The commenter suggests that greater setbacks from surface waters, beyond 50 feet, may be required. The comment provides no other specifics and does not take issue with any of the analysis or content of the EIR. Analysis in the Draft EIR concludes that conformance with the County Code as well as with the requirements of state and federal water quality regulations would reduce the risk of violation of water quality standards to less than significant levels (Draft EIR pp. 3.11-24 to 3.11-27).

Response to Comment J-13

See response to comment J-5.

Response to Comment J-14

The proposed performance standard at issue (Section 22.14.100.F.5) requires a 500-foot setback from any sensitive vegetation and habitat that could support special-status species. It is not necessary to amend this section of the code to specifically include bodies of water that provide habitat for special-status species, as this is already encapsulated by the code. The comment does not identify any specific parts of the EIR the commenter feels are inadequate.

Response to Comment J-15

The hypothetical example given of a WECS that requires a 6-foot-deep concrete foundation would not be eligible for ministerial review streamlining under the proposed Program because it wouldn't be mounted to an existing structure and thus would be a Tier 2 or Tier 3 WECS subject to discretionary review and CEQA review, representing no difference from existing processes. See also responses to comments J-12 and J-14 regarding setbacks. The commenter provides no evidence to justify the 250-foot setback distance.

Response to Comment J-16

RESP sections 22.14.100.F.8.A and 22.14.100.F.8.B have been deleted to ensure consistency with the Program's intent and other sections of the RESP that indicate projects are not eligible for streamlining if sensitive habitat cannot be avoided (see Final EIR Appendix 2.0).

Response to Comment J-17

The potential placement of projects on Highly Productive Rangeland soils and conservation easement requirements can only be considered if a project is otherwise determined eligible for ministerial streamlined reviews, including avoidance of sensitive biological resources subject to 22.32.040.D.

Response to Comment J-18

In addition to the addition of strict siting requirements and other performance standards required for accessory renewable energy projects to be eligible for Zoning Clearance (specified in proposed RESP Section 22.32.020), the project can't entail any action that would require any of the permits listed in the comment. The determination would continue to be made via the same process in which it is currently made for any accessory structure application, via an application checklist and review by a County planner.

Response to Comment J-19

The RESP requires biological studies for all classes of ground-mounted renewable energy projects, except for accessory RE projects, provided they are less than 3 acres and are an accessory to an existing use on the property. Additionally, the accessory use is not permitted within open space or recreation designated land uses or within a Flood Hazard or Sensitive Resource Area Combining Designation. Moreover, the use cannot be subject to any environmentally related permits (see response to comment J-18). For all other ground-mounted renewable energy projects, if state or federally listed species or designated critical habitat is present as identified in a biological report prepared by a County-approved biologist, the project is ineligible for streamlining under the Program. If absence and avoidance cannot be demonstrated, the project would be subject to discretionary review and the CDFW would be consulted for review of biological reports within the CEQA process as occurs under existing practices.

Sections 22.60.040.B, 22.60.040.D, and 22.62.040 that are referenced in the comment were not included in the EIR because these are existing sections of the code that present the current County permit review process. The RESP does not recommend changes to the current permit review process. Existing Section 22.60.040 of Title 22 presents the County's requirements for application preparation and filing of all land use permits. As established by Section 22.60.040 and reiterated in Chapter 22.62 (Permit Approval or Disapproval), biological reports are required for Site Plan Review, a Minor Use Permit, and a Conditional Use Permit (all land use permits except Zoning Clearance). Subsection 22.60.040.E presents a process for the Planning Director to waive some or all requirements if appropriate based on unique site characteristics or if the information is already available in the Department of Planning and Building. Cross-references in the RESP are provided for purposes of clarity.

Adding a new requirement for biological reports for Zoning Clearance review would not be consistent with existing countywide practice and would also be contrary to the RESP objectives of streamlining appropriate projects. The RESP only provides Zoning Clearance for roof-mounted SEFs or WECS or for accessory REFs meeting the strict siting and performance standard criteria of Section 22.32.020.

Response to Comment J-20

See response to comment J-6.

Response to Comment J-21

As stated in response to comment J-19, the RESP does not recommend changes to the current permit review process. Existing Section 22.60.040 of Title 22 presents the County's requirements for application preparation and filing of all land use permits. Subsection 22.60.040.E presents a process for the Planning Director to waive some or all requirements if appropriate based on unique site characteristics or if the information is already available in the Department of Planning and Building.

Response to Comment J-22

The recommendation to require that all hollow vertical structures be capped immediately upon installation to prevent the entrapment and death of birds has been added to the renewable energy development standards in Section 22.32.060.D (see Final EIR Appendix 2.0).

The recommendation to prohibit the use of rodenticides has not been added. While the County encourages actions that would help protect threatened and endangered species, prohibiting the use of rodenticides for all projects without supporting evidence could result in unintended environmental consequences. For example, if only a portion of a site is developed with a renewable energy use, the remainder of the site would not have a prohibition on rodenticides. In urban and agricultural environments where most projects are likely to occur, a prohibition on only a portion of a site would both create a gap in rodent protection for the site as a whole and result in poisoned rodents succumbing to the rodenticide in the restricted area and in turn eaten by other species. Further, rodenticides are regulated by the federal and state governments and require a license to apply and use correctly. At this time, lacking substantial evidence to support a prohibition on the use of rodenticides, the proposed Program will not be revised to prohibit their use. However, the County is amenable to discussing the matter further with the CDFW and has the ability to amend the Program at a later date if evidence is provided to support the prohibition of rodenticides.

The recommendations to use free-standing towers for WECS that avoid designs with guy wires and to use flashing red lights if lighting is required on WECS are already included in the proposed RESP as Sections 22.32.060.D.8.C and D. These provisions are included below for reference:

C. Guy wires shall be avoided to the extent possible. If they are necessary, all guy wires shall be marked with bird deterrent devices as recommended by the US Fish and Wildlife Service or the California Department of Fish and Wildlife.

D. No exterior lighting shall be allowed except for lighting required by the Federal Aviation Administration, which shall be at the lowest allowable intensity.

Response to Comment J-23

The CDFW's status as a trustee and responsible agency under CEQA is acknowledged in the EIR (see Final EIR Chapter 3.0, Revisions to the Draft EIR). Furthermore, nothing in the RESP is proposed to supersede any other public agency's jurisdiction or authority, including that of the CDFW as detailed in the Fish and Game Code. As stated previously, the RESP requires avoidance of species and habitat in order for projects to be eligible for streamlined review. If state or federally listed species or designated critical habitat is present as identified in a biological report prepared by a County-approved biologist, the project is ineligible for streamlining under the Program. Protection of birds, eggs, and nests is included in the range of covered resources to be evaluated. If nesting bird surveys are required, they would need to be conducted sufficiently to demonstrate the absence and avoidance of species.

Response to Comment J-24

Tier 1 WECS are the only tier of wind energy conversion systems eligible for streamlining, and those wind energy conversion systems are limited to a maximum of 5 or 10 feet above the roofline of the structure on which they are mounted, depending on the underlying land use designation. Taller wind turbines of the sort indicated in the comment would fall under Tier 2 or 3 WECS and would be subject to CEQA review and consultation with the CDFW. The conditions associated with Altamont Pass are unique to that area and are not applicable to the County within the context of the proposed Program.

Response to Comment J-25

The comment is acknowledged; however, recommendations for future projects are not the subject of this EIR.

Response to Comment J-26

Contact information for Lisa Gymer, Senior Environmental Scientist (Specialist), is acknowledged for questions on the CDFW's comments.