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California Energy Commission
Dockets Office, MS-4
Docket No. 09-RENEW EO-01
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**Re: Comments of the Large-scale Solar Association on the Draft
Desert Renewable Energy Conservation Plan Environmental Impact Report /
Environmental Impact Statement**

To whom it may concern:

Clean solar energy is one of the primary tools we have to combat and mitigate climate change. Large-scale solar energy projects have made major contributions to this effort. The Large-scale Solar Association (“LSA”), described in more detail below, has worked successfully with conservation organizations and numerous state and federal agencies over the last six years, including those involved in the Renewable Energy Action Team (“REAT”), to foster the responsible development of utility-scale solar projects in the right places in California and the West. These efforts have resulted in the successful siting of more than 5,000 megawatts (“MW”) of Solar Energy in California alone and the adoption of a federal Programmatic Environmental Impact Statement for solar energy (“Solar PEIS”) that embraced a landscape-scale planning approach to siting solar projects.

The Desert Renewable Energy Conservation Plan (“DRECP” or “the Plan”) was conceived by Governor Arnold Schwarzenegger and Department of the Interior Secretary Ken Salazar as an ambitious process with the dual purpose of advancing the timely and robust development of renewable projects while protecting the California desert. The DRECP also came to be viewed as a refinement to and further development of the Solar PEIS planning process. Renewable energy developers, conservation organizations, and other stakeholders have invested heavily in the development of the Plan and eagerly anticipated the release of the draft Plan in September,

2014. After reviewing the draft and meeting with several REAT agency members in an attempt to better understand the Plan's contours, however, LSA regrettably concludes that we cannot support the DRECP as currently drafted.

I. Introduction

Regional planning on the scale contemplated in the DRECP is unprecedented. The largest similar land use plans completed to date covered only a fraction of the area that the DRECP seeks to implement and those plans took much longer to develop. It would have been truly remarkable if the agencies had succeeded in drafting a Plan in such a relatively short time that sufficiently laid the groundwork for achieving both renewable energy development and resource conservation goals over such an expansive area. But simply put, the Plan is not ready for adoption.

LSA has two chief concerns: (1) the lack of developable land in the DRECP, given the lack of consideration of cultural issues, local land use regulation, and the practicality of assembling land, as well as insufficient Development Focus Area ("DFA") acreage in the Plan at the outset and a paucity of detailed information on biological resources; and (2) the lack of clarity regarding the permitting pathways and costs of development under the Plan, including the significant probability that permitting will take longer and be more costly in DFAs under the Plan than is the case absent the DRECP now.

LSA fails to see how the layers of onerous pre-application review and long lists of survey requirements imposed under the DRECP might improve an entitlement process that well-sited solar projects have completed under current conditions and in less time than the DRECP proposal. The lack of local government support for, and in some cases opposition to, the Plan as drafted could further impair the efficiency promised by the DRECP, as local permitting proceedings would still presumably follow their usual course after satisfying DRECP pre-requisites. Unanswered questions regarding how the Plan will fund the mitigation and conservation measures designed to counter-balance development add additional uncertainty, and furthermore appear to create legal vulnerabilities that will undermine the Plan's stability and its usefulness for years to come.

In exchange for questionable permitting benefits, the DRECP would impose significant geographic barriers based almost exclusively on incomplete biological data. The amount of land allotted to developable DFAs, ranging from 1.1 to 2.4 million acres depending on the alternative, but with only 177,000 acres slated for development within those areas, may sound significant in absolute terms, but DFAs constitute only a small sliver of the 22.5 million acres encompassed by the Plan. Although the Plan reserves a limited amount of land (183,000 acres) for potential future expansion, it is much more likely that DFAs will shrink as time passes. Indeed, not only do the limited developable areas identified in the Plan include undevelopable urban hardscapes, they were selected with little regard for cultural and other resource conflicts. In addition, inconsistencies with existing land use designations, once resolved (after unaccounted for delays), will further shrink developable areas. The reality is that only a fraction of the land within the proposed DFAs would actually be eligible for development once project-specific environmental and land use reviews are completed. As a practical matter, the DFAs also fail to account for existing development and the reality that small, scattered parcels are not easily acquired or

amassed into a site suited for the kind of utility-scale development the DRECP is intended to support. The Draft DRECP needs much more work to make it a useful tool that establishes a roadmap for timely, environmentally responsible, and technically and economically feasible utility-scale solar siting and permitting in California over the long-term.

At the same time, LSA recognizes that the study process that generated the DRECP, and the experiences of the past six years, have resulted in strides towards addressing the concerns that led to the initiation of the Plan. LSA's concerns regarding the DRECP arise from the conclusions it threatens to draw from incomplete data – not the data itself, and from the top-heavy procedural and cost burdens that seem to be associated with the Plan. For these reasons, we recommend that the REAT agencies either:

(i) adopt a “No Further Action” alternative that recognizes that the work done to date on a landscape level to characterize the California desert and provide tools to help guide permitting and conservation efforts in the future, or

(ii) develop additional alternatives that offer a certain and feasible pathway to timely permit developable renewable energy projects over sufficient land areas, while also providing the necessary means to achieve conservation objectives, and issue/recirculate supplemental review documents incorporating these alternatives for further notice and comment.

The following discussion provides additional detail to explain why further work on the DRECP is necessary and guidance on how LSA believes the identified development issues can and should be addressed in a manner consistent with the DRECP's conservation priorities.

II. Background on the Large-scale Solar Association

LSA is a non-partisan, solar advocacy association whose purpose is to support the development of utility-scale solar technologies through appropriate policy mechanisms. Member companies in the LSA represent leaders in the utility-scale solar industry who share a common understanding of and concern in the issues facing development of the solar industry. LSA companies are leaders in the industry, working with both photovoltaic and solar thermal technologies and strengthening markets to facilitate significant penetration of renewable energy into the western United States power sector. LSA is actively involved in California, as well as in select regional and federal venues and other states when appropriate. In these venues, LSA has collaborated with government agencies and environmental interest groups to ensure the appropriate policy pathways are in place to support climate-friendly solar development.

III. Comments

LSA appreciates the work of the federal and state agencies on the DRECP, and of the many stakeholders that have contributed to the process. This effort has already produced volumes of information that should benefit both renewable energy development and conservation efforts, and advance our collective understanding of energy and conservation needs, as well as of the nature of the desert itself. In particular, the new DRECP Gateway, to the extent it is founded on current, accurate data, can provide stakeholders with a starting database of information that can

help to guide renewable energy development and conservation actions in the California desert for years to come and serve as a resource for the biological component of decisions on activities in this important area. Government agencies and stakeholders participating in the development of the DRECP have also gained a deeper understanding of renewable energy resources and the needs of the dynamically-changing energy system that serves California and the West in general.

Notwithstanding these accomplishments, LSA has concluded that none of the action alternatives in the DRECP as drafted would further improve prospects for renewable energy in the California desert. After discussing the Plan with various conservation-oriented stakeholders, we are additionally concerned that these alternatives would also fall short of achieving the DRECP's conservation objectives.

Our specific concerns regarding the action alternatives are discussed below. It may be possible, after consideration of these and other stakeholder comments, to develop new alternatives that would sufficiently advance renewable energy and conservation goals to merit the expense and burden of their implementation. LSA would welcome the consideration of such alternatives in a supplemental document, subject to review and comment. Alternatively, we urge the REAT agencies to recognize the work done to date in a "No Further Action" alternative, and to carry on with future renewable energy and conservation decisions on this foundation, which by itself would be an improvement over the status quo at the time that the DRECP was initiated.

A. Inadequate Land, Potentially Increased Permitting Burdens and Potentially Increased Costs Would Deter Renewable Energy Development if Any of the Draft DRECP Action Alternatives are Adopted

As renewable energy developers, our primary concern regarding the Preferred Alternative and the other action alternatives is their effect on renewable energy development. We believe that contrary to the intent of the DRECP, the action alternatives currently under consideration would tend to deter, rather than support, renewable energy development in the DRECP planning area. This deterrence would result from multiple factors, including unclear, and potentially more complex and time-consuming permitting pathways; insufficient high-value renewable energy resource land truly available for development; unclear costs of developing in the DRECP area; lack of clarity of the role of local governments in the DRECP area; apparent lower priority given to projects outside of DFAs, despite the issues associated with developing projects within DFAs; and inadequate consideration and planning for transmission.

1. Permitting Pathways Appear to Increase Complexity and Permitting Time, and are Unclear

The primary benefit of the DRECP is that it offers a General Conservation Plan ("GCP") to support compliance with the federal Endangered Species Act and a Conceptual Plan-Wide Natural Community Conservation Plan ("NCCP") to comply with state law protections for threatened and endangered species. It also provides several Land Use Plan Amendments ("LUPAs") to address federal land set asides for both development and conservation. To qualify for coverage under these benefits, however, developers must site their projects in designated DFAs, which, at least with respect to private lands, were selected because of their low resource conflicts, including limited likelihood of conflicts with habitat occupied by endangered species.

In other words, to qualify for the benefits of the DRECP, developers generally must site their projects in a very limited number of areas where the streamlined permitting offered by the DRECP, if it exists, is not needed.

The assertion that the DRECP will offer a streamlined permitting process is suspect. Moreover, even for projects that might be proposed in areas with more challenging biological issues, the DRECP does not appear to offer many improvements over the status quo, as it simply replaces current practices with a new, demanding regimen. Specifically, to secure coverage under the plan, developers must endure a multiple-step process that begins with a pre-application approval overseen by a new interagency and intergovernmental consortium christened the “DRECP Coordination Group.” The DRECP Coordination Group will be made up of one representative from each of the DRECP-implementing agencies – the California Energy Commission (“CEC”), California Department of Fish and Wildlife (“CDFW”), United States Bureau of Land Management (“BLM”), and the United States Fish and Wildlife Service (“FWS”), and the California State Lands Commission (“CSLC”). Among its other responsibilities, the DRECP Coordination Group will ensure that potentially eligible project proposals are supported by required project-level studies, meet applicable Conservation Management Actions (“CMAs”) addressing avoidance, disturbance caps, and setback requirements (*see* Draft DRECP App. H, among other sources), and incorporate applicable operations standards. (*See* Draft DRECP at ES-25 for a summary of key requirements). Only after “initial positive conclusion of consistency by [the] DRECP Coordination Group” would a developer be allowed to submit the usual project permit application and undergo applicable site-specific environmental review (under National Environmental Policy Act, the California Environmental Quality Act, or both).

The DRECP represents that the approval agency’s permitting process should typically be complete within one year of the DRECP Coordination Group’s consistency determination, but fails to place any formal time constraints on the length of the consistency determination phase overall,¹ which could potentially involve endless data requests and thus further delays. Moreover, given that the “streamlined” permitting and mitigation cost control measures established by the DRECP would pertain only to biological impacts (*see* Draft DRECP at ES-38), analysis and mitigation of impacts to other resources, especially cultural resources, could draw out the approving agency’s timeline. On paper, the permitting process proposed by the DRECP is daunting and does not clearly provide for any improved efficiencies compared to the status quo.

To increase confidence in the Plan and ensure that the environmental review documents provide sufficient detail to permit informed decisionmaking and public participation, the REAT agencies must, in a supplemental document, clarify several aspects of the permitting process and the basis for concluding that permitting under the DRECP will improve upon existing conditions. Among other things, a supplemental DRECP for recirculation should detail the procedures for opting out of the Plan on a project-specific basis and explain how the typical environmental review process for projects that elect to proceed under the Plan will be compressed (e.g., the final DRECP should be robust enough to commit to permitting projects within DFAs using an Environmental Assessment or Mitigated Negative Declaration). A revised DRECP should also include a

¹ The draft contemplates a 30-day consistency review period following a 30-day period to assess application completeness. (Draft DRECP at II.3-228.)

transparent discussion of the benefits of permitting under the Plan that identifies, inter alia, how the survey and study requirements, assessments, mitigation plans, and permitting timeline under the Plan compare to current circumstances and future conditions that will govern development outside of DFAs. The DRECP cannot just baldly claim to offer a better permitting paradigm; such claims must be proven.

2. The DFAs Do Not Provide Sufficient Truly Developable Land to Provide the Flexibility Needed to Achieve the DRECP's Renewable Energy Objectives

Assuming that, notwithstanding the concerns highlighted above, the DRECP did offer significant timing advantages, the scope of the program is extremely limited when compared to the size of the Plan area overall. The DRECP would only facilitate development in DFAs, which are currently proposed in the Preferred Alternative in limited geographic areas (including the West Mojave (Kern and Los Angeles Counties), Victorville/Barstow, the Riverside East Solar Energy Zone ("SEZ") (I-10 Corridor), and Imperial Valley). The 2,024,000 acres of DFA land in the Preferred Alternative is furthermore made up of over 80% private land, with most of that land concentrated in agricultural areas that local governments and residents might not be willing to take out of production. On the public lands side of the equation, the DRECP would reduce California's 766,078 acres of variance lands identified under the Solar PEIS to 106,000 acres (identified in the DRECP as part of the "Study Area Lands").

The DRECP also effectively removes almost seven million acres of public and private land from potential renewable energy development by designating significant swaths for conservation (National Conservation Lands, Areas of Critical Environmental Concern, and Conservation Planning Areas ("CPAs")) and recreation management. Contacts at the CEC have suggested that these limitations on private lands (lands within the CPAs) are not as dire as they might seem, as such lands will remain open for development per the usual, pre-DRECP local permitting process. However, this fact, if true, is not evident from the language of the DRECP, which defines CPAs as the areas of "nonfederal lands from which permittee mitigation lands would be acquired from willing sellers by fee title or conservation easement." (Draft DRECP at ES-35.) Unless the DRECP can clearly justify exactly why every acre of land with a CPA designation deserves such a designation, and what the implications of that designation are, that designation should be removed from the DRECP.

The DRECP purports to over-estimate the amount of renewable energy development needed during the life of the Plan, providing for "about 20% more [megawatts] than predicted by renewable energy calculator scenarios" (i.e., 20,000 megawatts of new generation and transmission). (Draft DRECP at ES-16.) It further represents that the area required to support this development, approximately 177,000 acres, is only 9% of the DFAs (which total 2,024,000 acres under the Preferred Alternative). (Draft DRECP at IV.7-215.) At first blush, this approach might appear to create a sufficient cushion to account for all of the development impediments that have not been fully inventoried in the DRECP (e.g., cultural resource conflicts, General Plan classifications, including prime and important agricultural lands, where development is either discouraged or prohibited). In reality, however, when permitting agencies layer on these additional conflict considerations, the amount of development accommodated by the DRECP could rapidly decline. For example, the DRECP recognizes that under the Preferred Alternative,

almost 60,000 acres of expected development would be expected to occur on Important Farmland and Williamson Act Land. This would more than double the amount of renewable energy development in important agricultural areas compared to the No Action Alternative. (Draft DRECP at IV.12-6.) Whether developers recognize the challenges of developing on agricultural lands in advance or in the midst of a permitting process, they will inevitably discover that the developable areas under the DRECP are significantly smaller than advertised.

In addition to the concerns about unanalyzed conflicts, experience has taught developers that development areas identified in programmatic plans will inevitably shrink as a result of project-specific evaluations. For example, recent efforts to develop the first projects in SEZs under the Solar PEIS have shown that despite an agency's best intentions, site-specific data can wreak havoc on a facilitated development plan. In particular, after undertaking a pilot project to identify and compensate for the impacts expected to result from the development of the designated 5,717-acre Dry Lake SEZ in southern Nevada, BLM determined that site-specific resource conflicts required a downward adjustment of the SEZ acreage to only 3,471 acres. Given the landscape level of analysis that has informed the boundaries of the DFAs, LSA fully expects to see similar adjustments in the developable acreage of the DRECP over time. Indeed, through unprecedented resource setback requirements, especially those applicable to a variety of riparian and wetland features, the DRECP already incorporates mechanisms that are designed to whittle down DFAs. (See Draft DRECP at II.3-48 to II.3-49.)

When it comes to the size of DFAs, the question the REAT agencies should be asking is not whether they have set aside enough land for development, but whether, based on scientific evidence, it is *necessary* to prohibit development in certain areas for conservation reasons. The DRECP should not arbitrarily bar development based on a (potentially mistaken or misinformed) belief that the DFAs are simply big enough.

To right-size DFAs in a future iteration of the DRECP, LSA recommends that the REAT agencies re-assess what lands are developable in the Plan area and only exclude from development those lands where resources conflicts are truly intractable and lands that must be conserved to meet state and federal legal requirements. Alternatively, if the REAT agencies feel compelled to, and are justified in, selecting more restrictive development zones, the DRECP must document how the agencies expect development to proceed in designated areas. Specifically, the agencies must develop a plan for addressing cultural resource impacts, the difficulties of assembling parceled land (for DFAs made up of scattered development areas), local government opposition to land use designations in the DRECP, and conflicts with General Plans and local zoning ordinances. In addition to demonstrating that DFAs are truly developable, the DRECP should also bake in the flexibility to account for corrections that will inevitably be required in response to site-specific data. More precisely, the DRECP should allow for the reconfiguration and/or expansion of DFAs on a 1:1 basis to replace lands within the DFAs that are later determined to be undevelopable.

3. Costs of Developing in DRECP Area Are Unclear

The promises that the DRECP will provide more certainty and predictability regarding mitigation costs also appear to be misleading. The DRECP offers a wide expected range of per acre mitigation fees (\$5,000-\$12,000/acre), which leaves room for significantly variable mitigation

costs. Additional cost uncertainty can be attributed to adaptive management requirements, which could significantly increase mitigation costs over time. (*See, e.g.*, Draft DRECP at IV.7-45 (recognizing that “[a]t present, there is insufficient evidence to assess the impact and make mitigation recommendations for the effects of solar flux on insects and natural communities” but nevertheless concluding that “solar flux impacts are inherently site-specific” and should be mitigated “by the effective siting and design of individual projects such that important bird habitat, migratory routes, and flight paths are avoided”).) Finally, the CPAs identified as targets for compensatory mitigation are all inholdings, with some exceptions in the West Mojave and Owens Valley (*see* Figure 9, Draft DRECP at ES-35). This suggests that projects will be expected to assemble mitigation parcel by parcel. Such negotiations will be time consuming and expensive for developers.

As currently drafted, the DRECP additionally does not provide a baseline for project development costs that might be used to allow developers to evaluate the savings allegedly attributable to the DRECP. The Plan also fails to provide an explanation of how the costs of administering the Plan will be allocated to projects and how those costs correlate with the burden imposed by development. These details must be included in the DRECP to ensure that the DRECP has considered how its economic impacts might affect siting decisions (and the concomitant environmental effects of those decisions) and ensure that the costs imposed on projects meet legal requirements to avoid uncompensated takings and improper imposition of taxes.

4. The Role of Local Government, Whether or Not Participating in the DRECP, is Unclear

Although the DRECP clearly provides that local governments with general permitting authority (authority over conditional use permits, etc.) would continue to be the lead agency for the purposes of satisfying the California Environmental Quality Act (*see* Draft DRECP at II.3-222), the DRECP does not account for the impact that this structure could have on the supposedly streamlined permitting process that the DRECP seeks to facilitate. With approximately 80% of DFAs proposed on private land under the permitting jurisdiction of local governments, the participation of these governments in the DRECP is essential to its success as a tool for streamlined permitting.

More importantly, however, the support of local governments is also critical to the legal viability of the DRECP in light of the authority they have over conservation on private lands that make up part of the NCCP Reserve and are necessary to minimize and mitigate for the impacts of development. If cities and counties refuse to implement the conservation provisions in the DRECP on private lands, CDFW will not be able to rely on the private lands portion of the DRECP Conservation Strategy to justify take and other species impact permits. The final DRECP must include local government commitments, especially by the relevant counties, to carry out the private lands component of the Conservation Strategy in order to meet the NCCP requirements. To get local governments on board, the DRECP needs to provide more clarity and detailed quantitative analysis regarding the impact of the Plan on county objectives, as explained in more detail in the “County of San Bernardino Position Paper on the Draft Desert Renewable Energy Conservation Plan,” dated February 3, 2015. (*See* <http://www.sbcounty.gov/main/Energy.pdf>.)

5. Suggested “Deprioritizing” of non-DFA Projects is Inappropriate

The DRECP’s commitment to provide priority processing for projects in DFAs on BLM lands, presumably at the expense of projects in the Study Area Lands, is inappropriate. (Draft DRECP at ES-17, II.3-304.) As LSA has argued in other utility-scale solar planning proceedings, a viable, agency-supported variance process is critical to compensate for the fact that programmatic planning efforts have limitations that can result in under-inclusive zones. If a developer identifies a suitable site for renewable energy development that was overlooked in the planning process, efforts to permit that site should not be unnecessarily delayed because projects within DFAs have priority. In addition, applications where adjacent private land, combined with non-DFA federal land, can provide sufficient acreage for a project or where the inclusion of federal land adjacent to, but not within, a DFA would minimize impacts in the DFA should not be handicapped as a rule. If the BLM and the DRECP provide well-crafted incentives for development in DFAs, these incentives will steer most development to these areas without prejudicing other valuable applications. All new applications that are not in designated exclusion zones should be timely processed.

6. The DRECP Fails to Adequately Address Transmission Needs and Impacts

To be attractive for development, the DRECP must sufficiently demonstrate that adequate transmission lines exist or are planned to serve DFAs. Among the many lessons learned from the Solar PEIS is that many of the development zones (SEZs) identified in that painstaking process are currently of limited or no value to renewable development due to transmission constraints, among other reasons. Transmission availability should be a central element of the DRECP, as it is one of the most valuable, and therefore most effective, incentives the government might use to direct development to particular locations.

The DRECP attempts to advance the necessary transmission planning by providing a preliminary impacts analysis for the transmission that would be needed to turn DFAs into viable project sites. Significantly, the “DRECP Transmission Technical Group Report - Conceptual Transmission Plan for DRECP Alternatives” (Appendix K) was prepared in consultation with regional transmission planning entities including the California Independent System Operator Corporation (“CAISO”). Ultimately, however, the transmission planning process has a long way to go before it might be firm enough to support the critical energy planning decisions proposed in the DRECP. As recognized in Appendix K, “The new transmission lines identified through this exercise have not been evaluated for their specific locations, constructability, desirability, cost, or likelihood of their successful permitting. They also have not been studied by transmission planning groups to identify reliability concerns or effects on other transmission systems.” (Draft DRECP App. K at iv.)

Pledges to participate in transmission planning efforts do not provide the meaningful commitment to develop transmission to DFAs that is needed to support the development actions proposed in the DRECP. A DFA that lacks adequate access to existing or planned transmission is a cemetery for utility-scale solar projects and including such areas in the developable acreage count is wholly misleading. The DRECP should require that DFAs have some plausible transmission options before representing that these areas are suitable for project development.

B. Conservation and Mitigation Measures Recommended in the DRECP are in some instances Unwarranted and in others Potentially Inadequate, Increasing Uncertainty for Renewable Energy Development

Under the Preferred Alternative, unavoidable impacts to biological resources would be compensated according to the usual ratios required for prior projects. Certain alternatives, however, would significantly increase the established amounts, with some proposals calling for compensatory mitigation ratios to as high as 5:1. (Draft DRECP App. H at H-52 to H-62.) Whether ratios remain the same, or are increased, packaging sufficient mitigation lands to meet these compensatory requirements, and securing agency approval for the same, has been extremely challenging on prior projects. Although the DRECP identifies priority CPAs, it does not provide assurances that specific lands in the CPAs will be acceptable to meet the continuing (and substantial) mitigation requirements. Affordable, pre-approved mitigation options would significantly contribute to the streamlined permitting goals of the DRECP.

In addition to doing more to provide certain and demonstratively cheaper mitigation options as an incentive to develop in DFAs, the DRECP mitigation measures should be revised to address the following issues:

1. Institutionalization of Unproven Hypotheses Regarding Project Impacts Could Unnecessarily Hinder Development and Represent an Increase in Permitting Burdens Compared to the Status Quo

The Preferred Alternative measures for addressing impacts to birds and bats include requirements that the industry has repeatedly argued have no basis in fact. Chief among these offending conclusions are:

(1) “Evaluation and installation of the best available bird and bat detection and deterrent technologies available at the time of construction. For solar power tower projects, these detection and deterrent systems will be configured to minimize bird species from flying over the site by day, and especially from flying into the project’s concentrating radiant flux zone. Passive deterrents may be configured to break up light polarizing surfaces to minimize avian recognition and collision conflicts.” and

(2) “Utilizing project designs and project operations that minimize the reflectivity (acoustic and visual/polarizing) and exposure duration of reflective surfaces to avian species (e.g., vertically aligning solar panels during the night and reduced reflectivity resulting from material choices or applications).”

(Draft DRECP at II.3-43.) These measures are largely premature, as the industry is still actively working with FWS and BLM to diagnose the problem, if any, before jumping to solutions.

The Draft DRECP additionally proposes to impose annual bird and bat monitoring (i.e., a Bird and Bat Conservation Strategy (“BBCS”)) for all projects and would further impose an unspecified fee, based on the monitoring results and due every five years, “to fund compensatory mitigation.” (Draft DRECP at II.3-8.) These expenses are not predictable and, as the industry has argued elsewhere, not warranted. The government does not need to study the impacts of

every individual project to determine whether the data suggests a link between solar facilities and bird deaths, which should be the starting point for any compensatory mitigation requirements. Moreover, the obligation to prepare a BBCS should be based on site specific data and governing authorities. Under the status quo, many projects were and are not obligated to prepare a BBCS, so a blanket requirement to prepare such plans for all projects in DFAs would increase permitting requirements, contrary to the streamlined permitting approach promised by the DRECP.

2. Mitigation Measures must be Justified by a Demonstrated Nexus between Cost to the Projects and Impacts

The DRECP does not, as required by the laws governing the NCCP process, include “[p]rovisions to ensure that implementation of mitigation and conservation measures on a plan basis is roughly proportional in time and extent to the impact on habitat or covered species authorized under the plan.” *See* Cal. Fish & Game Code §§ 2820(b)(9), 2821(b), 2801(d), 2805(c). In particular, the Cost and Funding analysis in Appendix I (http://www.drecp.org/draftdrecp/files/Appendix_I_Cost_and_Funding.pdf) lacks the aforementioned nexus analysis. The REAT agencies simply cannot, legally speaking, move forward with the DRECP without developing additional information regarding the suitability of proposed mitigation and providing an opportunity for public comment on the same.

3. The DRECP Fails to Provide Backstop Funding Mechanisms to Ensure Delivery of the Mitigation Required to Compensate for Take and Meet other Legal Requirements

The Plan identifies only roughly estimated implementation fees for development, which are intended to include parcel purchase prices and mitigation costs, among other things. Aside from funds for the more direct costs of development, the DRECP does not appear to identify other funding sources necessary to meet the Plan objectives regarding the provision of durable, permanent conservation and management actions for habitats and species. Implementation fees, alone – even in a robust DRECP environment – consequently will not cover the \$2.4 billion expected cost for conservation measures. Absent other mechanisms and sources to make up the difference, this potential funding gap could undermine both the feasibility of the Plan and developer certainty regarding durable mitigation that must extend through, and perhaps beyond, the life of each operating project. The DRECP should be revised to include additional provisions to ensure that implementation fee-purchased mitigation will be lasting and that developers will be held harmless if for some reason the management funding beyond the project does not materialize.

4. The DRECP must do More to Ensure that Conservation Measures are Sufficiently Durable

To satisfy various federal environmental laws, federal agencies, including BLM and FWS, can accept a variety of mitigation/minimization measures, including proposals to enhance existing habitat as opposed to actually acquiring and preserving habitat. In contrast, CDFW interprets its statutory mandate to require the acquisition of mitigation lands, and protection of the same in perpetuity. (*See* California Department of Fish & Game, Departmental Bulletin No. 2012-02,

Policy for Mitigation on Publicly Owned, Department Owned, and Conserved Lands (Mar. 1, 2012), at http://www.water.ca.gov/floodsafe/fessro/docs/flood13_dfg.pdf (determining that to meet the California Endangered Species Act requirement to fully mitigate impacts to certain species, “[t]he fish and wildlife resources or environments replaced or substituted for those impacted must be maintained in perpetuity”).) In addition, the laws establishing the NCCP program require that, in exchange for authorization to “take” species covered by the Plan, the Plan must provide for the conservation and management of habitat, natural communities and species diversity through the *creation and long-term management* of habitat reserves or other equivalent conservation measures. (Cal. Fish & Game Code, § 2820(a)(2), (3) and (4) and §2825.)

As currently drafted, the conservation designations proposed for public lands managed by BLM do not appear to provide clear, measurable commitments regarding the durability of the designations. In addition, the DRECP does not explain the conservation contributions that designated areas might make to the overall conservation strategy. To meet California state law requirements, the DRECP should be revised to identify the species, landscape processes, communities and other features conserved by each conservation area as well as the biological goals expected to be achieved by the conservation method applicable to each designated area, and, as discussed above, how those goals will be funded. Revisions to the DRECP should also analyze the legal mechanisms that will be used under the DRECP to ensure the durability of mitigation and conservation measures proposed on public lands.

C. Additional Considerations: The Governance Structure Proposed for the DRECP Requires More Detail

As a final matter, LSA has concerns that the governance structure for administering the DRECP is too nebulous and fails to provide sufficient guidance to ensure that the Plan is carried out as intended. As depicted on page II.3-207 of the Draft DRECP, BLM, the CEC and CSLC, and CDFW all would retain some authority over their specific permitting programs. Coordination of activities that have an impact on the NCCP overall, or its implementation, would be managed by a DRECP Executive Policy Group (ensuring coordination among plan participants and providing “policy-level support and oversight implementation of Plan-wide programs”) and a DRECP Coordination Group (“responsible for the day-to-day implementation of Plan-wide programs, coordination among Plan participants regarding implementation of each DRECP planning component (LUPA, GCP, and NCCP), coordination with public agencies and stakeholders, and public resources”).

The Coordination Group, consisting of representatives from already over-taxed government agencies, would be tasked with an enormous amount of responsibility for a wide range of administrative activities, with support being provided by a staff of unknown origin, size and skill sets, all paid for with unreliable funding sources. Beyond these details, the DRECP does not explain how decisions will be made, how other entities (e.g., counties) might be folded into the governance structure, or the role of scientific advisors, who will be critical in making adaptive management decisions as the Plan evolves. The governance structure must be described in more detail in a revised Plan, and circulated for public comment, so that stakeholders can evaluate and provide input on the organization of the DRECP’s administrative body, as this structure could significantly impact the environmental impacts of the Plan.

IV. Conclusion

The REAT agencies, especially the CEC and BLM, have been incredible allies in the renewable energy industry's efforts to combat climate change and its causes. LSA and its member companies are immensely grateful for all the REAT agencies have done to facilitate the permitting of more than 5,000 MW of utility-scale solar in California in the last decade alone. The agencies have demonstrated relentless dedication to tackling the mounting problems wrought by our dependence on pollution-heavy generation sources and have bravely supported innovative efforts to transform our electrical grid.

The DRECP, however, threatens to undermine the agencies' support for renewable energy development. The Plan largely focuses on where and how to conserve resources and artificially limits renewable energy development to a fraction of the Plan area, where significant, unconsidered questions about the feasibility of development, apart from biological resource conflict concerns, loom large.

After six years of intense work on the DRECP, the REAT agencies are understandably anxious to have some closure. But when the future of land use for 22.5 million acres is about to be written, it is extremely important to get the programs right. To put this all in perspective, since the inception of the NCCP program in 1991, CDFW has approved just nine plans totaling just under 3.9 million acres, with the largest plan (the Western Riverside Multiple Species Habitat Conservation Plan) topping the charts at 1.2 million acres (*see* <http://www.wildlife.ca.gov/Conservation/Planning/NCCP>). That plan took seven years to develop from the time the relevant government agencies entered into a planning agreement until the CDFW issued its NCCP permit. The Coachella Valley Multiple Species Habitat Conservation Plan, covering 1.1 million acres, took a decade to complete.

In light of the time it has taken to prepare regional plans that are significantly less ambitious and orders of magnitude smaller and less complex than the DRECP, the REAT agencies should not be surprised to hear that after only six years, LSA strongly believes that more time must be spent on the DRECP if the agencies intend to publish it in a form that will succeed in its goals. No matter how hard the agencies have worked, it is simply inconceivable that an unprecedented effort to plan for development and conservation on *22.5 million acres* could take less time – and by some comparisons significantly less time – and fewer resources than prior efforts permit plans for just over one million acres.

The work that has been done on the DRECP to date is valuable in its own right, and standing alone would and will improve the environmental outcomes of renewable energy permitting and development in the future. If the REAT agencies feel compelled to make a final decision on the DRECP in the immediate future, they could justify selecting a “No Further Action” alternative, as described above. Under this approach, they would still have made a lasting, indelible impact on conservation and renewable energy development in California. But if the agencies cannot be satisfied with this solution and are motivated to move forward with an alternative that adopts a final plan, then significantly more work is needed to clarify numerous aspects of the Plan and develop new alternatives that offer clear, viable pathways to development, as promised by the Plan's design documents.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Shannon Eddy". The signature is written in a dark ink and is positioned above the typed name.

Shannon Eddy, Executive Director
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