

**Rio Mesa Solar Electric Generating Facility (RMSEGF)
(11-AFC-4)**

Applicant's Specific Comments on the Preliminary Staff Assessment

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SPECIFIC COMMENTS

1. **Page 4.5-2, Land Use Table 1, Federal LORS rows:** The following LORS are addressed in Traffic and Transportation and Biology, respectively, but should be addressed and/or referred to in Land Use. Please add the following LORS to the Land Use Table 1:

Federal	
<u>Federal Aviation Regulations, Title 14, Part 77: Objects Affecting Navigable Airspace</u>	<u>Requires notification of construction or alteration to regional Federal Aviation Administration office based on notification requirements.</u>
<u>Wild Horse and Burro Act of 1971, as amended</u>	<u>Herd Areas (HAs) are those geographic areas where wild horses and/or burros were found at the passage of the Wild Horse and Burro Act in 1971. Herd Management Areas are those areas within HAs where the decision has been made, through land use plans, to manage for populations of wild horses and/or burros.</u>

In addition, Applicant requests that Staff please evaluate each LORS for compliance under “Proposed Project’s Consistency with LORS” section beginning on Page 4.5-16. Please include the following analysis on Page 4.5-17 as “C” and “D” under “B.”

C. Federal Aviation Regulations, Title 14, Part 77: Objects Affecting Navigable Airspace.

The purpose of the Federal Aviation Administration (FAA) regulations in 14 Code of Federal Regulations (CFR) Part 77 is to establish standards and notification requirements for objects affecting navigable airspace. This notification serves as the basis for evaluating the effects of construction or alteration on operating procedures; determining the potential hazardous effect of the proposed construction on air navigation; identifying mitigating measures to enhance safe air navigation; and charting of new objects. The project required notification because construction or alteration exceeds 200 feet above ground level.

Consistency Discussion

On February 22, 2012 Applicant received a determination of no hazard to air navigation from the FAA. This determination applied to RMS 1 and RMS 2 plants for a height of up to 820 feet above ground level. The project solar power towers will reach 760 feet above ground level; therefore, the proposed project will comply with FAA regulations for objects affecting navigable airspace.

D. Wild Horse and Burro Act of 1971

According to NECO Map 2-25, the project site is within the Chocolate-Mule Mountains Herd Area (HA). HAs are limited to areas of the public lands identified as being habitat used by wild horses and burros at the time of the passage of the Wild Horse and Burro Act in 1971.

According to NECO Map 2-25, the project site is located approximately 10 miles north of the Chocolate-Mule Mountains Herd Management Area (HMA). The HMA is established only in HAs, within which wild horses and/or burros can be managed for the long term. The BLM

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manages the HMAs by establishing Appropriate Management Levels based on monitoring and evaluations.

Consistency Discussion

As the project site is located on private land approximately 10 miles north of the HMA, outside the BLM management area for wild horses and burros; therefore, the proposed project will comply with the Wild Horse and Burro Act.

2. **Page 4.5-2, Land Use Table 1, State LORS rows:** As stated in Applicant’s Environmental Enhancement Proposal (BS 2012v), page 5.6-15, Applicant will cause the submittal of a one-lot parcel map to evidence the establishment of a single parcel under common ownership. The PSA should not focus only on a “Reversion to Acreage” as some parcels may not have been legally subdivided, rendering a “reversion” inapplicable. Please revise to reference the entire Subdivision Map Act, including its chapters 2 through 4. Please revise the section to include the entire Subdivision Map Act and revise the State LORS as follows:

State	
California Government Code Sections 66410 – 66499.2937 (State Subdivision Map Act) - Chapter 6. Reversions and Exclusions	Regulation and control of the design and improvement of subdivisions are vested in the legislative bodies of local agencies. Each local agency shall by ordinance regulate and control the initial design and improvement of common interest developments as defined in Section 1351 of the Civil Code and subdivisions for which this division requires a tentative and final or parcel map.

3. **Page 4.5-2, Land Use Table 1, Local LORS rows:** The LORS table should reference the entire General Plan, not merely a few individual policies included therein. Accordingly, please delete the General Plan policies from the LORS table. These policies should be discussed to show compliance with the Riverside County General Plan, which is the applicable LORS for this project, under “Proposed Project’s Consistency with LORS” section beginning on Page 4.5-16. Additionally, please revise Ordinance 460 (“Ordinance No. 460.147151”) and 659 (“as amended through 659.89”) to include citation of the most recent ordinances as amended. Please revise the table as follows:

Local	
County of Riverside General Plan	The General Plan describes the future growth and development within the County over the long term. It acts as a constitution for both public and private development, and provides the foundation upon which county leaders will make growth and use related decisions.
General Plan – Chapter 3 Land Use Element – Fiscal Impacts	Land Use Policy 9.1. Requires that new development contributes its fair share to fund infrastructure and public facilities such as police and fire facilities.
General Plan – Chapter 3 Land Use Element – Solar Energy Resources	Land Use Policy 15.15. Permits and encourages, in an environmentally and fiscally responsible manner, the development of renewable energy resources and related infrastructure, including but not limited to, the development of solar power plants in the County of Riverside.
County of Riverside Ordinance 348 Land Use Ordinance of Riverside County	The ordinance establishes zone classifications in the unincorporated areas of the county regulating the use of land, height of buildings, area of lots and building site.

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<p>County of Riverside Ordinance No. 460 Regulating The Division Of Land Of The County Of Riverside As Amended through Ordinance No. 460.147151, effective February 1, 2007 June 3, 2010</p>	<p>All land divisions in the unincorporated area of the county of Riverside are subject to the applicable provisions of the State Subdivision Map Act and this ordinance. All land divisions shall conform to the Riverside County General Plan, with all applicable specific plans, with the requirements of the Land Use Ordinance and other ordinances, and the requirements of this ordinance.</p>
<p>County of Riverside Ordinance No. 659 (as amended through 659.89) An Ordinance of The County of Riverside, Amending Ordinance No. 659 (as amended through 659.8) Establishing A Development Impact Fee Program</p>	<p>The ordinance establishes and sets forth policies, regulations, and fees relating to the funding and installation of facilities and the acquisition of open space and habitat necessary to address the direct and cumulative environmental effects generated by new development projects described and defined in this ordinance. It establishes the authorized uses of the fees collected.</p>

4. **Page 4.5-4, Second Full Paragraph, Third Sentence:** The emergency and construction electrical power supply line and access road will traverse both public and private lands. Please revise as follows:

The proposed project’s generation interconnection tie line, a portion of the emergency and construction electrical power supply line, and a portion of the vehicle access road are proposed to be located on a 1,300-acre right-of-way on public land administered by the BLM.

5. **Page 4.5-5, Sixth Paragraph, “Land Use and Planning” section, 4th Sentence:** Please revise as follows:

The proposed project would not physically divide Palo Verde or any other community and, therefore, would not create a significant effect on the environment under this CEQA criterion.

6. **Page 4.5-5, Seventh Paragraph, “California Desert Conservation Area Plan” section, First Sentence:** The emergency and construction electrical power supply line and access road will traverse both public and private lands. Please revise as follows:

The proposed project’s generation interconnection tie line, a portion of the emergency and construction electrical power supply line, and a portion of the access road would be located on public land administered by the BLM (ESH 2012e, p. 2-1-3).

7. **Page 4.5-6, First Partial Paragraph, Third Sentence:** The 161 kV gen-tie line as the basis for a CDCA Plan Amendment seems misleading. A Plan Amendment will be required, but not because the gen-tie line is greater than 161 kV. The CDCA Plan refers to new transmission towers and cables over 161 kV as allowed within designated utility corridors and in conformance with the adopted corridor system. However, half of the 161 kV line is outside of a designated utility corridor, which would trigger a Plan Amendment. Additionally, all sites associated with power generation or transmission not identified in the CDCA Plan will be considered through the Plan Amendment process. Please revise the sentences as follows:

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As part of this process, the BLM would need to amend the California Desert Conservation Area (CDCA) for a gen-tie line greater than 161 kV outside of an existing utility corridor. Additionally, all sites associated with power generation or transmission not identified in the Plan will be considered through the Plan Amendment process (USBLM 1980, p. 15 and 93).

8. **Page 4.5-6, Third Full Paragraph, Third and Seventh Sentences:** RMS will not be constructed on BLM land. This sentence is not relevant to project compliance with the CDCA Plan. The project will require a Plan Amendment for compliance. Please revise this sentence as follows:

Within Class L solar electric generation plants may be allowed a generation interconnection tie line, emergency and construction electrical power supply line, and access road are allowable uses once NEPA requirements are met and the CDCA Plan is amended (USBLM 1980, p.13 and p.1593). ... Within Class M all types of electrical generation plants may be allowed in accordance with state, federal, and local laws a generation interconnection tie line, emergency and construction electrical power supply line, and access road are allowable uses once NEPA requirements are met and the CDCA Plan is amended (Ibid).

9. **Page 4.5-8, First Full Paragraph, First Sentence:** Please revise Land Use Figure 6 to include N-A zoning in the legend and on the figure as represented as dark green.

10. **Page 4.5-8, Second Full Paragraph, First Sentence:** Please revise the sentence as follows:

The project ~~appears to be~~ is consistent with the allowable uses identified above; therefore, the project would not create a significant effect on the environment under this CEQA criterion.

11. **Page 4.5-8 through 4.5-10:** Please refer to Applicant's General Comment #2.

12. **Page 4.5-9, Third Paragraph:** Please indent the entire paragraph. This reads as an introduction to the LESA model that Staff performed, not a quote associated with the 34th Avenue access road and agriculture.

13. **Page 4.5-14, Second Paragraph:** Please move this entire paragraph summarizing conflicts with the NECO Plan to page 4.5-13 above the heading titled "Riverside East Solar Energy Development Zone." This paragraph reads like a summary of compliance with the NECO Plan and has nothing to do with the Solar Energy Zone discussion. Please provide a paragraph in place of this paragraph to conclude the Solar Energy Zone discussion as follows:

The project is located in a "Variance" area according to the Solar Energy Programmatic Environmental Impact Statement (Solar PEIS); however, in accordance with the Solar PEIS the project is considered an "existing" project (initial SF-299 filed prior to release of the Supplement to the Draft Solar PEIS in October of 2011), and is, therefore, not subject to the Solar PEIS. Because the project is not located within the Riverside East SEZ, and not subject to the Solar PEIS "Variance" process, it would not contribute cumulative impacts to the SEZ planning area or the Solar PEIS.

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14. **Page 4.5-15, Second Paragraph, First Sentence:** Please revise the sentence to refer to soil types found within the project site as follows:

The Soil Conservation Service, Soil Survey of Palo Verde Area, California, General Soil Map shows soils within the project site as primarily ~~to largely be~~ Rositas-Aco-Carrizo association and some Rositas-Gilman association.

15. **Page 4.5-16, Last Paragraph, First Sentence:** The emergency and construction electrical power supply line and access road will traverse both public and private lands. Please revise as follows:

The proposed project's generation interconnection tie line, a portion of the emergency and construction electrical power supply line, and a portion of the access road are to be located on public land administered by the BLM and are subject to their approval.

16. **Page 4.5-17, Fourth Paragraph, Third Sentence:** The project site is located on private land. Please revise the sentence as follows:

The proposed ~~3,805-acre project site is~~ generation interconnection tie line, a portion of the emergency and construction electrical power supply line, and a portion of the access road are located within both the CDCA Plan "Multiple-Use Class L" (Limited Use) and "Multiple-Use Class M" (Moderate Use).

17. **Page 4.5-17, Fifth Paragraph, First Sentence:** The emergency and construction electrical power supply line and access road will traverse both public and private lands. Please revise as follows:

The proposed project's generation interconnection tie line, a portion of the emergency and construction electrical power supply line, and a portion of the access road will require use of public land administered by the BLM.

18. **Page 4.5-17, 5th Paragraph, Second Sentence:** The project will need a CDCA Plan Amendment in addition to the ROW Grant. Please revise the sentence as follows:

The proposed project would be consistent with the CDCA Plan if the BLM approves a POD and Standard Form SF-299, and amends the CDCA Plan.

19. **Page 4.5-17, Subsection C:** Please update the Subdivision Map Act to include the entire Map Act. Please delete reference to Chapter 6, as Applicant will seek a one-lot parcel map to evidence the merger of all parcels, as shown below:

C. California Government Code Sections 66410 – 66499.29 37(State Subdivision Map Act)– ~~Chapter 6. Reversions and Exclusions~~

20. **Page 4.5-18, Second Full Paragraph:** Applicant will cause the submittal of a one-lot parcel map to evidence the merger. Please revise the citation to Applicant's Environmental Enhancement Proposal which discusses the use of a one-lot parcel map. Please revise the paragraph as follows:

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The applicant has indicated in the AFC and Environmental Enhancement Proposal that parcels within the project site will be merged into one parcel pursuant to Energy Commission siting regulations. A ~~Reversionary Map~~ one-lot parcel map in accordance with the State Subdivision Map Act will be prepared and submitted to Riverside County for review and ministerial approval (~~BS 2011a, p. 26~~BS 2012v, p. 5.6-15).

21. **Page 4.5-18, Third Full Paragraph:** Please revise to include the one-lot parcel map:

Therefore, the proposed project would be consistent with the State Subdivision Map Act and the California Energy Commission's regulation with the filing of a ~~Reversionary Map~~ one-lot parcel map; see staff's proposed Condition of Certification **LAND-2**.

22. **Page 4.5-20, Second Paragraph:** In light of the great deference afforded local agencies with respect to the interpretation of their general plan, please revise this paragraph as follows:

~~Although the proposed project would conflict with LU 20.1, LU 20.2, and LU 20.4, t~~The proposed project is a use permitted within the "Agriculture" and "Open Space-Rural" land use designation as per Riverside County General Plan policy LU 15.15. LU 15.15 permits and encourages, in an environmentally and fiscally responsible manner, the development of renewable energy resources and related infrastructure, including but not limited to, the development of solar power plants in the County of Riverside. Although the proposed project would arguably conflict with some policies of the general plan if such policies are considered individually and in a vacuum (e.g., LU 20.1, LU.2 and LU 20.4), on balance the proposed project can be considered consistent with the General Plan overall. The "policies in the general plan reflect a range of competing interests" and local agencies "must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purpose." Friends of Lagoon Valley v. City of Vacaville (2007) 154 Cal.App.4th 807, 816.

23. **Page 4.5-21, Fifth Paragraph, below subsection b:** Please include the minimum setbacks for the W-2 Zone (these are not stated in Ordinance 348, but found at the Planning Department website under "Zoning Description and Requirements. Please add subsection "c" below "b":

c. Minimum Setbacks: front 20 feet, side 5 feet, rear 10 feet.

24. **Page 4.5-21, Sixth Paragraph, First Sentence:** Omission, please revise sentence as follows:

The proposed project is a large-scale solar thermal electric generating facility to be constructed on a lot greater than 10 acres.

25. **Page 4.5-24, Second Paragraph, Section F and Section 18.7:** Please update with the current Ordinance 460 amendment. The correct section is not 18.7. Applicant will seek to merge 29 contiguous parcels under common ownership. However, Section 18.7 provides guidance for merging four or fewer contiguous parcels under common ownership. Section 18.6 provides guidance for final map procedures, including guidance to file the one-lot parcel map. Please revise as follows:

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F. Ordinance No. 460 Regulating The Division Of Land Of The County of Riverside As Amended through Ordinance No. 460.147151, effective ~~February 1, 2007~~ June 3, 2010
~~Section 18.7 – Merging of Contiguous Parcels~~ Section 18.6 – Final Map Procedures

26. **Page 4.5-24, Fifth Paragraph:** Provided that the County treats the issuance of the parcel map as a ministerial act and imposes no additional conditions or exactions on the issuance of the parcel map, Applicant will cause the submittal of a one-lot parcel map to evidence the merger. In the event that the County does not intend to treat the issuance of the parcel map as a ministerial act, the Applicant will request an override. Please include a citation to Applicant's Environmental Enhancement Proposal which discusses the use of a one-lot parcel map, and revise the paragraph as follows:

The applicant has indicated in the AFC and Environmental Enhancement Proposal that parcels within the project site will be merged into one parcel pursuant to Energy Commission siting regulations. A Reversionary Map one-lot parcel map in accordance with the State Subdivision Map Act will be prepared and submitted to Riverside County for review and ministerial approval (~~BS 2011a, p. 26~~ BS 2012v, p. 5.6-15).

27. **Page 4.5-25, Second Paragraph, Section G:** Please update Ordinance 659 to include the most current amendment:

G. Ordinance No. 659 An Ordinance of The County of Riverside, Amending Ordinance No. 659 (as amended through 659.89) Establishing A Development Impact Fee Program (Year 2001 Development Impact Fee Ordinance)

28. **Page 4.5-25, Third Paragraph through Page 4.5-26 2nd Paragraph:** Please revise to reflect DIF based on acres upon which the development will be assessed DIF Fees and reflect the reasons for the DIF as it is set forth by the County to compensate for impacts to a specific list of issues associated with proposed developments within the County.

Section 7 DEVELOPMENT IMPACT FEE (DIF)

In order to assist in providing revenue to acquire or construct facilities, purchase regional parkland, and preserve habitat and open space, Development Impact Fees shall be paid for each residential unit, development project, or a portion thereof to be constructed. Four categories of fees are defined which are: Single Family Residential ("SFR"), Multi-Family Residential ("MFR"), Commercial, and Industrial. For each of these categories, the amount of the DIF will vary depending upon the location of the property upon which the development unit or a portion thereof will be constructed. Within each Area Plan, the following DIF amounts shall be paid for each Development Project within each Area Plan. The project site is within Area Plan 9 Desert Center/CV Desert~~14 – Palo Verde Valley~~.

Consistency Discussion

1. Ordinance No. 659 designates the N-A Zone and the W-2 Zone as an "commercial industrial zone" for the purposes of the development impact fee (DIF) calculation (RCODIF 2010, p. 3). The Development Impact Fee provides revenue to acquire or construct facilities, purchase regional parkland, and preserve habitat and open space. The current commercial industrial zone fee for Area Plan 9 Desert Center/CV Desert~~14 – Palo Verde Valley~~ for a "Public Facilities" type use is \$12,7696,694 per acre. Staff has

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calculated the applicant's development impact fee for the proposed project to be \$25,470,670 (\$6,694 x 3,805 acres = \$25,470,670). Riverside County defines the areas of impact from Utility Scale Solar projects such as Rio Mesa as including both "Occupied" and "Industrial" areas. They are defined as follows.

- "Occupied" area is everything within the fenceline.
- "Industrial" area includes paved roads, power blocks, inverters, substations, and O&M Buildings; It does not include solar arrays, roads through the arrays for access and cleaning, ponds, settling basins or the like.

Riverside County Planning Department determines the DIF under Ordinance NO. 659 for solar power plants based on the "Industrial" component as defined above. The DIF for Rio Mesa using the County's approved methodology would be based on approximately 87 acres. County is currently offering an incentive to businesses to locate within Riverside County through a reduction in the DIF of 50 percent.

Energy Commission staff has not identified a potential significant effect according to CEQA pertaining to public services and facilities created by the proposed project (see the **Socioeconomics** section in Part A of the PSA). Given this assessment by Staff, and understanding that the DIF specifically compensates County for an array of public services and conservation efforts the DIF paid by the applicant in compliance with Ordinance No. 659 will offset on a dollar for dollar basis the compensatory mitigation required under Conditions of Certification BIO-3 and WATER SUPPLY-6.

~~In addition, biology conditions of certification for the proposed project require the applicant to acquire compensation lands for impacts to habitat for the desert tortoise, golden eagle and burrowing owl, and for jurisdictional waters of the State of California. The acquiring of these compensation lands requires the posting of a financial security totaling approximately \$30 million to guarantee completion of these acquisitions (refer to the **Biological Resources** section in this PSA for a detailed discussion including conditions of certification).~~

~~No development impact fee would be required because no new or expanded public facilities are necessary, and the proposed project will be required to offset its impacts to sensitive biological species and their habitat. The approximate \$30 million mitigation cost would be substantially consistent with full payment of the approximate \$25 million development impact fee.~~

35. **Page 4.5-28, Second Paragraph, Noteworthy Public Benefits:** The PSA mentions that development of the project is intended to address the requirements of federal and state mandates to develop renewable energy sources, but incorrectly notes that no noteworthy public benefits created by the project have been identified for this analysis (land use). The PSA land use section should recognize that the project will put under-utilized private property owned by Metropolitan Water District to productive use, will increase property and sales and use tax revenues for local government, will create jobs, and will advance state and federal renewable energy generation goals.

36. **Land Use Figure 2:** "Roads" and "Streams" appear over each other in the legend. Please revise.

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37. **Land Use Figure 6:** Please add the N-A Zone to the legend and map. It appears on the map as the dark green color, but is absent from the legend and map.
38. **Land Use Figure 7:** Please describe where the photo is taken from and what direction the viewer is looking.
39. **Land Use Figure 9:** Please update “Palo Verde Mesa Solar” CA 051967 to the most current name for CA 051967, “Sonoran West SEGS.”