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| Date received: <u>11/27/2024</u> |
| Copied to: <u>W. Kettler, C. Motta, D. Peralta,</u> |
| Date copy sent: <u>12/2/2024</u> <u>A. Sawyer in</u> |
| Hearing set for: _____ |

NOTICE OF APPEAL OF PLANNING COMMISSION DECISION

Date: November 26, 2024

Appeal Fee: \$508 – Due when filing appeal

APPELLANT FILL IN BELOW THIS LINE, THIS SIDE ONLY – PLEASE PRINT OR TYPE

Project Site Address

| | | | |
|--------|------------------------------|------|-------------------------------------|
| | <u>Sonrisa Solar Project</u> | | <u>APNs 028-071-15; 028-071-02;</u> |
| Number | Street | City | Zip |
| | | | Assessor's Parcel Number |

Appellant's Information

Name: Mitchell M. Tsai Law Firm/Carpenters Local 701

Mailing Address: 139 S. Hudson Avenue, Suite 200
Pasadena, CA 91101

Telephone: 626-314-3821

Applicant's Information check if same as Appellant)

Name: EDPR CA Solar Park VI LLC

Mailing Address: 53 SW Yamhill Street
Portland, Oregon 97204

Telephone 503-222-9400

Subject of Appeal

I wish to appeal the Planning Commission's decision to Approve Deny

Variance Application No.* _____

Conditional Use Permit No. 3677

Director Review and Approval Application No. _____

Tentative Tract Application No. _____

Amendment Application No. _____

Amendment to Text Application No. _____

Other: Environmental Impact Report No. 7869

RECEIVED

NOV 27 2024

CLERK. BOARD OF SUPERVISORS

Date of Planning Commission Action November 14, 2024

Reason(s) for Appeal (Attach additional sheets if necessary)

See attached.

Appellant's Signature

* Fresno County Zoning Ordinance § 877(c) requires that any appellant, other than the applicant, County Department Director, or Board of Supervisors member, must be a property owner within a certain distance from the Variance Application property. The Department of Public Works and Planning will verify that the ordinance requirements are met. If the requirements are not met, the appeal fee will be returned and no date for appeal hearing before the Board of Supervisors will be set.

Please return completed form to Clerk of the Board, 2281 Tulare Street, Room 301, Fresno, CA 93721.

Additional Project APNs:

028-071-33; 028-071-40; 028-071-41; 028-071-43; 028-071-44; 028-071-45; 028-071-20; 028-071-07;
028-071-17; 028-071-16; 028-071-21; 028-071-06; 028-071-01; 028-071-04; 028-071-13; 028-101-84;
028-071-39; 028-111-01; 028-111-07; 028-111-10; 028-111-13; 028-111-14; 028-111-15; 028-111-16;
028-111-17; 028-111-19; and 028-071-47

P: (626) 314-3821
F: (626) 389-5414
E: info@mitshtsailaw.com



Mitchell M. Tsai
Law Firm

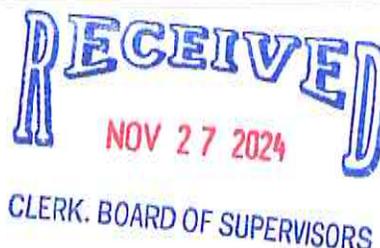
139 South Hudson Avenue
Suite 200
Pasadena, California 91101

VIA E-MAIL

November 26, 2024

Fresno County Clerk of the Board of Supervisors
2281 Tulare Street, Room 301
Fresno, CA 93721

Submitted Via Personal Delivery



RE: County of Fresno, Sonrisa Solar Project (SCH# 2020110008) Appeal Justification

Dear Board Members,

On behalf of the Carpenters Union Local #701 (“**Local 701**”), my Office is submitting this appeal justification letter for the County of Fresno’s (“**County**”) Sonrisa Solar Project (“**Project**”), which was approved during the November 14, 2024 Planning Commission meeting.

As noted in the DEIR, “[t]he Project consists of three main components: a solar PV facility with 200 MWAC generating capacity; an energy storage system with 184 MWAC battery storage capacity; and an extension to an existing gen-tie line connecting with the Tranquility Switching Station . . . Other necessary infrastructure would include a Project substation, a permanent operation and maintenance building, a Supervisory Control and Data Acquisition System (SCADA), meteorological data collection equipment, telecommunications infrastructure, access roads, parking, and security fencing.” (DEIR, p. 2-5).

Local 701 represents thousands of union carpenters in Fresno County and has a strong interest in well-ordered land use planning and in addressing the environmental impacts of development projects.

Individual members of Local 701 live, work, and recreate in the County and surrounding communities and would be directly affected by the Project’s environmental impacts.

Local 701 expressly reserves the right to supplement these comments at or prior to hearings on the Project, and at any later hearing and proceeding related to this Project.

Gov. Code, § 65009, subd. (b); Pub. Res. Code, § 21177, subd. (a); see *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199-1203; see also *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121.

Local 701 incorporates by reference all comments related to the Project or its CEQA review, including the Environmental Impact Report. See *Citizens for Clean Energy v City of Woodland* (2014) 225 Cal.App.4th 173, 191 (finding that any party who has objected to the project’s environmental documentation may assert any issue timely raised by other parties).

I. THE COUNTY ZONING ORDINANCE STATES THAT THE APPEAL HEARING SHALL BE DE NOVO

County Zoning Ordinance Section 876.6.050.E.1 notes that the appeal hearing will be de novo. The Board may “consider any issue(s) associated with the appeal, in addition to the specific grounds for the appeal.” As such, the hearing for this appeal shall be considered a new hearing.

II. THE COUNTY SHOULD REQUIRE THE USE OF A LOCAL WORKFORCE TO BENEFIT THE COMMUNITY’S ECONOMIC DEVELOPMENT AND ENVIRONMENT

The County should require the Project to be built by contractors who participate in a Joint Labor-Management Apprenticeship Program approved by the State of California and make a commitment to hiring a local workforce.

Community benefits such as local hire can also be helpful to reduce environmental impacts and improve the positive economic impact of the Project. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project site can reduce the length of vendor trips, reduce greenhouse gas emissions, and provide localized economic benefits. As environmental consultants Matt Hagemann and Paul E. Rosenfeld note:

[A]ny local hire requirement that results in a decreased worker trip length from the default value has the potential to result in a reduction of construction-related GHG emissions, though the significance of the reduction would vary based on the location and urbanization level of the project site.

March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling.

Workforce requirements promote the development of skilled trades that yield sustainable economic development. As the California Workforce Development Board and the University of California, Berkeley Center for Labor Research and Education concluded:

[L]abor should be considered an investment rather than a cost—and investments in growing, diversifying, and upskilling California’s workforce can positively affect returns on climate mitigation efforts. In other words, well-trained workers are key to delivering emissions reductions and moving California closer to its climate targets.¹

Furthermore, workforce policies have significant environmental benefits given that they improve an area’s jobs-housing balance, decreasing the amount and length of job commutes and the associated greenhouse gas (GHG) emissions. In fact, on May 7, 2021, the South Coast Air Quality Management District found that that the “[u]se of a local state-certified apprenticeship program” can result in air pollutant reductions.²

Locating jobs closer to residential areas can have significant environmental benefits. As the California Planning Roundtable noted in 2008:

People who live and work in the same jurisdiction would be more likely to take transit, walk, or bicycle to work than residents of less balanced communities and their vehicle trips would be shorter. Benefits would

¹ California Workforce Development Board (2020) Putting California on the High Road: A Jobs and Climate Action Plan for 2030 at p. ii, *available at* <https://laborcenter.berkeley.edu/wp-content/uploads/2020/09/Putting-California-on-the-High-Road.pdf>.

² South Coast Air Quality Management District (May 7, 2021) Certify Final Environmental Assessment and Adopt Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions Program, and Proposed Rule 316 – Fees for Rule 2305, Submit Rule 2305 for Inclusion Into the SIP, and Approve Supporting Budget Actions, *available at* <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2021/2021-May7-027.pdf?sfvrsn=10>.

include potential reductions in both vehicle miles traveled and vehicle hours traveled.³

Moreover, local hire mandates and skill-training are critical facets of a strategy to reduce vehicle miles traveled (VMT). As planning experts Robert Cervero and Michael Duncan have noted, simply placing jobs near housing stock is insufficient to achieve VMT reductions given that the skill requirements of available local jobs must match those held by local residents.⁴ Some municipalities have even tied local hire and other workforce policies to local development permits to address transportation issues. Cervero and Duncan note that:

In nearly built-out Berkeley, CA, the approach to balancing jobs and housing is to create local jobs rather than to develop new housing. The city's First Source program encourages businesses to hire local residents, especially for entry- and intermediate-level jobs, and sponsors vocational training to ensure residents are employment-ready. While the program is voluntary, some 300 businesses have used it to date, placing more than 3,000 city residents in local jobs since it was launched in 1986. When needed, these carrots are matched by sticks, since the city is not shy about negotiating corporate participation in First Source as a condition of approval for development permits.

Recently, the State of California verified its commitment towards workforce development through the Affordable Housing and High Road Jobs Act of 2022, otherwise known as Assembly Bill No. 2011 (“**AB2011**”). AB2011 amended the Planning and Zoning Law to allow ministerial, by-right approval for projects being built alongside commercial corridors that meet affordability and labor requirements. The County should consider utilizing local workforce policies and requirements to benefit the local area economically and to mitigate greenhouse gas, improve air quality, and reduce transportation impacts.

³ California Planning Roundtable (2008) Deconstructing Jobs-Housing Balance at p. 6, available at <https://cproundtable.org/static/media/uploads/publications/cpr-jobs-housing.pdf>

⁴ Cervero, Robert and Duncan, Michael (2006) Which Reduces Vehicle Travel More: Jobs-Housing Balance or Retail-Housing Mixing? Journal of the American Planning Association 72 (4), 475-490, 482, available at <http://reconnectingamerica.org/assets/Uploads/UTCT-825.pdf>.

III. THE PROJECT WAS APPROVED IN VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. Background Concerning the California Environmental Quality Act

The California Environmental Quality Act is a California statute designed to inform decision-makers and the public about the potential significant environmental effects of a project. 14 California Code of Regulations (“**CEQA Guidelines**”), § 15002, subd. (a)(1).⁵ At its core, its purpose is to “inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made.” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

1. *CEQA Requires Subsequent or Supplemental Environmental Review When Substantial Changes or New Information Comes to Light*

Section 21092.1 of the California Public Resources Code requires that “[w]hen significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 ... but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report” in order to give the public a chance to review and comment upon the information. (CEQA Guidelines § 15088.5.)

Significant new information includes “changes in the project or environmental setting as well as additional data or other information” that “deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative).” (CEQA Guidelines § 15088.5(a).) Examples of significant new information requiring recirculation include “new significant environmental impacts from the project or from a new mitigation measure,” “substantial increase in the severity of an environmental impact,” “feasible project alternative or mitigation measure considerably different from others previously analyzed” as well as when “the

⁵ The CEQA Guidelines, codified in Title 14 of the California Code of Regulations, section 15000 et seq., are regulatory guidelines promulgated by the state Natural Resources Agency for the implementation of CEQA. Cal. Pub. Res. Code, § 21083. The CEQA Guidelines are given “great weight in interpreting CEQA except when . . . clearly unauthorized or erroneous.” *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 217.

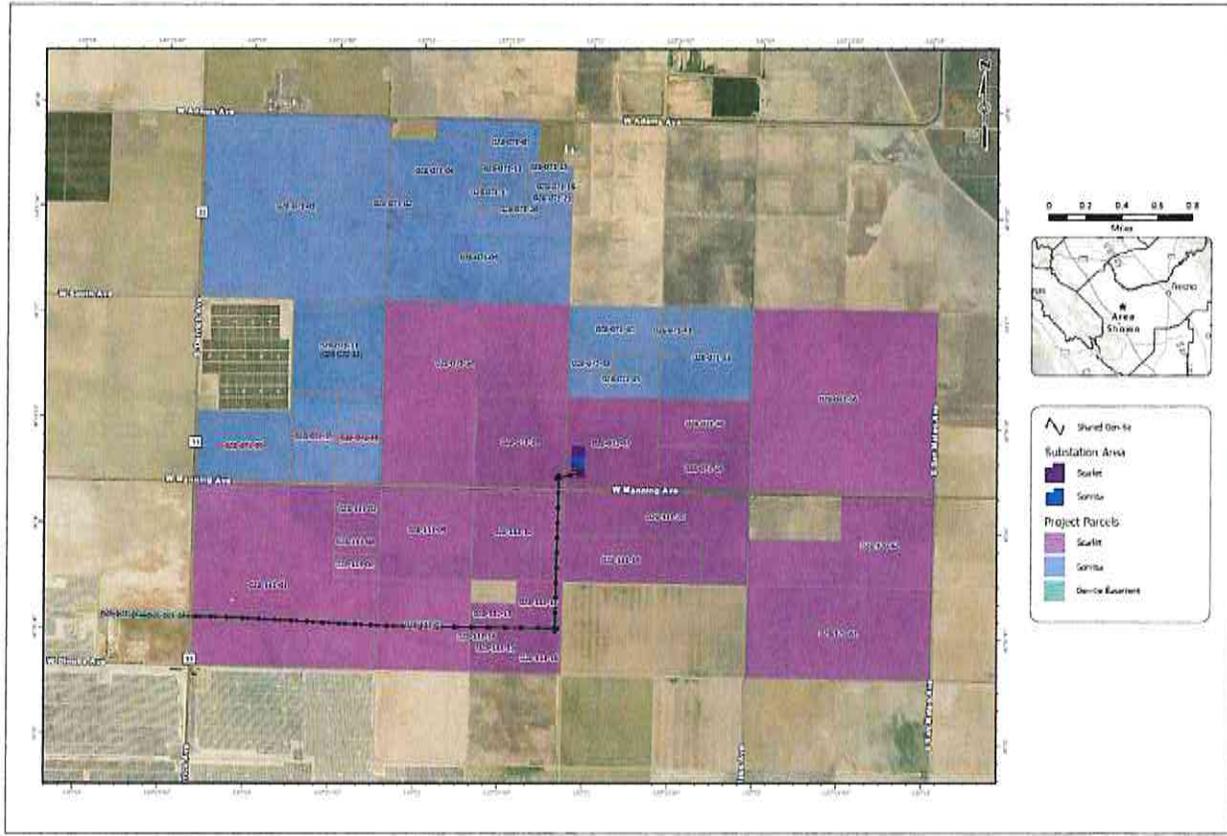
draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” (*Id.*)

An agency has an obligation to recirculate an environmental impact report for public notice and comment due to “significant new information” regardless of whether the agency opts to include it in a project’s environmental impact report. (*Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 95 [finding that in light of a new expert report disclosing potentially significant impacts to groundwater supply “the EIR should have been revised and recirculated for purposes of informing the public and governmental agencies of the volume of groundwater at risk and to allow the public and governmental agencies to respond to such information.”].) If significant new information was brought to the attention of an agency prior to certification, ***an agency is required to revise and recirculate that information as part of the environmental impact report.***

In this case, the FFIR includes changes that disrupt the existing Project Description.

“[A]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient” environmental document. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 200.) “A curtailed or distorted project description may stultify the objectives of the reporting process” as an accurate, stable and finite project description is necessary to allow “affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the “no project” alternative) and weigh other alternatives in the balance. (*Id.* at 192 – 93.) Courts determine *de novo* whether an agency proceeded “in a manner required by law” in maintaining a stable and consistent project description. (*Id.* at 200.)

Here, the Project has removed **three** parcels from the proposed site. As noted above, significant new information includes changes in the project that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect. (CEQA Guidelines § 15088.5(a).) In this case, the removal of these parcels results in a significant change to the project site that changes the applicability of the previously prepared analysis and reduces the likely benefits of the Project by reducing total area for solar production.



(FEIR, p. 3-3.)

The above figure depicts the Sonrisa Project's total area, which has been noted in blue. The parcels with red lines note the parcels that have since been removed from the Project, however, the reason for the removal of these parcels is *unclear*. The public has been deprived of the opportunity to properly evaluate the Project as the removal likely reduces the Project's ability to produce solar electricity. Local 701 requests the Board grant this appeal and correct the unstable Project description that arose when multiple parcels were removed from the Project without explanation.

2. *The FEIR Fails to Include Necessary Information Requested in Past Comment Letters.*

The County has addressed many of the concerns initially raised by Local 701 and other interested parties through the responses provided in the FEIR, including those surrounding the Project's potential noise and biological resources impacts. Specifically, the County addressed Local 701's concerns surrounding noise mitigation by revising the Project's measures to include specific performance standards. The County also revised the biological resource measures highlighted by Local 701 and

CDFW to ensure compliance with CDFW standards and ensure future surveys would be performed prior to any groundbreaking activity. Lastly, in response to Local 701's concerns about the Project's air quality impacts, the County revised a chart to correct to incorrect data points.

However, one area that remains unanswered is the applicant's non-compliance with SJVAPCD Rule 9510. Despite the County's repeated mention of the required submission of an Air Impact Assessment ("AIA") application *no later than applying for a final discretionary approval* with the public agency, no AIA has been provided to the public and no confirmation was provided by the County or the Applicant that the AIA was even submitted. Indeed, the comment letter submitted by SJVAPCD stated that no AIA had been submitted by the Developer as of August 2024. The County's response in the FEIR simply stated that the County was aware of the rule and that a link to the blank application forms had been included in the record.

This application, if already submitted, must be included in the FEIR to allow public review of the specific mitigation measures the Project proposes to reduce the NOx emissions. If not yet submitted, the AIA application must be completed and submitted to SJVAPCD prior to any future determinations on the Project. The Planning Commission's approval of the Project without compliance with the rule *limits SJVAPCD's ability to ensure proper mitigation and clean air design*. As such, Local 701 requests that the Board grant this appeal and require the Project Applicant to submit an AIA prior to any rehearing on the underlying entitlements and FEIR.

IV. CONCLUSION

Based on the foregoing, Local 701 requests that the Board of Supervisors grant this appeal and require revision and recirculation of the FEIR to address the areas of concern including the changing project size and the non-compliance with the SJVAPCD's Rule 9510. If the County has any questions, please reach out to my office.

Sincerely,



Grace Holbrook

Attorneys for Carpenters Local #701