

Addendum to Final SEIR No. 2010031008

Panoche Valley Solar Project

First Amended Development Agreement

County of San Benito

November 2017

## **PREVIOUS ENVIRONMENTAL DOCUMENTATION**

A Final Environmental Impact Report (FEIR) for the Panoche Valley Solar Project was prepared in accordance with the California Environmental Quality Act (CEQA). The San Benito County (County) Board of Supervisors certified the FEIR and adopted findings, a mitigation monitoring and reporting program, and a statement of overriding considerations in October 2010. The County approved a Conditional Use Permit (CUP) to construct and operate a 399-megawatt (MW) project described as Alternative A Revised in the 2010 FEIR. The County also approved the whole or partial cancellation of nearly 7,000 acres of California Land Conservation Act of 1965 (Williamson Act) contracts. Both the CUP and the approval of cancellation of the Williamson Act contracts associated with the project site were approved by the County Board of Supervisors in October and November 2010. The County also entered into a development agreement with Solargen Energy, Inc. (Solargen) governing development of the Panoche Valley Solar Project (Development Agreement). The County Board of Supervisors adopted an ordinance approving the Development Agreement in November 2010.

Subsequently, a Final Supplemental EIR (SEIR) was prepared in accordance with CEQA. The County Board of Supervisors certified the SEIR and adopted findings, a mitigation monitoring and reporting program, and a statement of overriding considerations in May 2015. The County approved an amendment to the CUP (CUP No. UP 1023-09-A) to construct and operate a 247-MW project described in the SEIR and referred to therein as the “Revised Project.” Together, the FEIR and the SEIR examined all environmental impacts of the project as compared to the existing environment in the vicinity of the Revised Project.

## **BACKGROUND: TRIGGERS FOR FURTHER ENVIRONMENTAL REVIEW**

In an effort to provide a degree of finality, CEQA includes a strong presumption against requiring any further environmental review once an EIR has been prepared and certified for a project. Specifically, once an EIR has been completed, the lead agency may not require preparation of a subsequent or supplemental EIR unless one of the three triggering conditions described below exists.

Section 15162 of the State CEQA Guidelines states:

*(a) When an EIR has been certified or negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:*

*(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;*

*(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or*

*(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:*

*(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;*

*(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;*

*(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or*

*(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but project proponents decline to adopt the mitigation measure or alternative.*

CEQA Guidelines Section 15164 states, in relevant part: *"The lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR have occurred."* Further, although not required under the law, a lead agency *may* prepare an addendum to an EIR to evaluate changes to a project, changes in circumstances, or new information, and to document the agency's determination that a subsequent or supplemental EIR is not required. See § Section 15164.

#### **ADDENDUM PURSUANT TO SECTION 15164**

Panoche Valley Solar, LLC (PVS) (the successor in interests to Solargen and the assignee of Solargen's rights and obligations under the Development Agreement) has applied to the County for an amendment to the Development Agreement. If agreed to by the parties, and adopted by ordinance of the County, the proposed amendment would result in changes to the Development Agreement, including re-titling of the Development Agreement as the "First Amended Development Agreement."

The proposed First Amended Development Agreement would change the Development Agreement to reflect the reduced size of the Revised Project, as it was described and analyzed in the SEIR. The First Amended Development Agreement would also make

certain other changes to the Development Agreement. Specifically, the main elements of the amendments in the First Amended Development Agreement would:

- govern a project up to 247 MW or such smaller project as PVS chooses to develop (but at least 123 MW) on specified property consisting of a footprint of up to approximately 1,888 acres;
- resolve the parties' dispute over the County's receipt of sales and use tax revenue as provided by the Development Agreement;
- update the name of the "Owner" (as that term is defined in the Development Agreement) from Solargen Energy, Inc. to Panoche Valley Solar, LLC;
- update references to the SEIR;
- amend provisions concerning the specified public benefits, provided to the County by PVS, regarding work to be done on Little Panoche Road; and
- amend provisions concerning the specified public benefits, provided to the County by PVS, regarding efforts to have sales and use tax occur in the County, a guarantee that PVS and its vendors, contractors, and subcontractors will collectively remit a minimum of \$4,250,000 of sales and use tax to the California Department of Tax and Fee Administration, a guarantee that PVS will pay the County \$2,500,000, and a guarantee that PVS will remit an annual payment-in-lieu-of-tax according to a certain schedule and subject to certain conditions.

The proposed First Amended Development Agreement would not change the Panoche Valley Solar Project from the Revised Project that was examined in detailed in the Supplemental EIR. The First Amended Development Agreement would not affect any of the effects examined in the Supplemental EIR. The First Amended Development Agreement would govern a project between 247 MW and 123 MW in size. The First Amended Development Agreement contemplates a project potentially smaller than 247 MW, but does not directly affect the size of the Panoche Valley Solar Project. The Development Agreement and the proposed First Amended Development Agreement do not, in and of themselves, authorize development of the Panoche Valley Solar Project.

If the Panoche Valley Solar Project were reduced in size from 247 MW, the permanent footprint, the temporary footprint, and construction activities analyzed in the SEIR would be reduced or not increased, and adverse impacts and the potential for adverse impacts would necessarily also be reduced.

For these reasons, the County has determined that none of the triggers under Section 15162 has occurred in connection with the County's consideration of the First Amended Development Agreement.

## FINDINGS

Pursuant to Section 15162 and 15164 of the CEQA Guidelines, the County has determined, on the basis of substantial evidence in light of the whole record, that:

(a) The proposed First Amended Development Agreement does not propose substantial changes to the Panoche Valley Solar Project which would require major revisions to the SEIR due to new or substantially more severe significant environmental effects than previously analyzed in the SEIR.

(b) There have been no substantial changes in circumstances under which the Panoche Valley Solar Project will be undertaken that will require major revisions to the SEIR due to new or substantially more severe significant environmental effects than previously analyzed in the SEIR.

(c) No new information of substantial importance as described in subsection (a)(3) of Section 15162 has been revealed that would require major revisions to the SEIR or its conclusion.

### *Evidence:*

*The Revised Project (regarding construction and operation of a 247-MW project) was previously analyzed by the County in the SEIR. No changes to the Panoche Valley Solar Project, nor any changes to the SEIR, would be required as a result of the adoption of the proposed First Amended Development Agreement.*

*If the Panoche Valley Solar Project were reduced in size from 247 MW, the permanent footprint, the temporary footprint, and construction activities analyzed in the SEIR would be reduced or not increased, and adverse impact and the potential for adverse impacts would necessarily also be reduced.*

*If the Panoche Valley Solar Project were reduced in size from 247 MW, the regional and local setting for the project would be unchanged. There would be no increase in the overall acreage of the project site. There would be no changes to the nature of the project facilities, as PV panels on single axis tracker supports and other facilities would be constructed on the project site analyzed in the SEIR. There would be no reduction in conservation lands. There would be no acceleration of construction schedule.*

In accordance with CEQA Guidelines Section 15164, this Addendum to the previously certified SEIR is appropriate to document the County's conclusions that no further environmental review has been triggered in connection with its consideration of the First Amended Development Agreement.