VIDAL ENERGY PROJECT

FINAL ENVIRONMENTAL IMPACT REPORT

SCH# 2022030713

Lead Agency:

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DECEMBER 11, 2023

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CHAPTER 1 – INTRODUCTION

1.1 PURPOSE OF THE FINAL ENVIRONMENTAL IMPACT REPORT

The County of San Bernardino (County), as the Lead Agency under the California Environmental Quality Act (CEQA), has prepared this Final Environmental Impact Report (Final EIR) for the Vidal Energy Project (Project). This document, in conjunction with the Draft Environmental Impact Report (Draft EIR), comprise the Final EIR.

As described in CEQA Guidelines Sections 15088, 15089, 15090 and 15132, the Lead Agency must evaluate comments received on the Draft EIR and prepare written responses and consider the information contained in a Final EIR before approving a project. Pursuant to CEQA Guidelines Section 15132, a Final EIR consists of: (a) the Draft EIR or a revision of the Draft; (b) comments and recommendations received on the Draft EIR either verbatim or in summary; (c) a list of persons, organizations, and public agencies commenting on the Draft EIR; (d) the responses of the Lead Agency to significant environmental points raised in the review and consultation process; and (e) any other information added by the Lead Agency.

1.2 PROJECT SUMMARY

CDH Vidal LLC (CORE) plans to construct and operate an approximately 1,090-acre photovoltaic (PV) and battery energy storage system (BESS) facility to generate renewable energy in Vidal, San Bernardino County (the Project). The Project will provide 160 megawatts of alternating current (MW-AC) of renewable energy and would be supported by the existing, adjacent Western Area Power Administration (WAPA) 161 kilovolt (kV) overhead transmission corridor. The facility would include the construction of one onsite substation facility that would collect and convert the power generated onsite for transmission via an overhead or underground line to the WAPA transmission system and interconnection location. Upgrades associated with WAPA interconnection include replacement of existing fiber optic cable along the 52-mile Headgate Rock-Blythe 161 kV transmission line. The Project's permanent facilities would include PV panels, BESS, fencing, service roads, a power collection system, communication cables, overhead and underground transmission lines, electrical switchyards, a Project substation, and operations and maintenance facilities.

Project construction would begin when all necessary permits are obtained, expected to be 2023. Construction is expected to be complete within 14 months. Approximately 220 workers are anticipated per day with 495 workers during peak periods. Construction workers will commute to the site, and no workers will be housed on site.

1.3 OVERVIEW OF THE CEQA PUBLIC REVIEW PROCESS FOR THE DRAFT EIR

In compliance with the CEQA Guidelines, the County, as the Lead Agency for the Project, has provided opportunities for the public to participate in the environmental review process. As described below, throughout the environmental review process, an effort was made to inform, contact and solicit input from the public and various State, regional, and local government agencies and other interested parties on the Project.

Notice of Preparation

In accordance with CEQA Guidelines Section 15082, a Notice of Preparation (NOP) was distributed to initiate the County's CEQA review process for the Project, identify and seek public input for the Project's potential environmental effects, and identify a date for the Project's public scoping meeting. The NOP was distributed on March 29, 2022, to State, regional, local government agencies, and interested parties and identified a public review period for the NOP through April 27, 2022, in compliance with the State's mandatory 30-day public review period.

Scoping Meeting

A virtual scoping meeting was held to discuss the Project on April 12, 2022, from 6:00 p.m. to 8:00 p.m. via Zoom. A presentation was provided, including an overview of the Project and the CEQA process. Following the presentation, participants were encouraged to provide oral or written comments to aid the County in refining the scope of issues to be addressed in the EIR. No individuals from the public attended the scoping meeting. One comment letter was received during the public review period from the Colorado River Indian Tribes. Three comment letters were received after the public review period from the Desert Tortoise Council, Morongo Band of Mission Indians, and the California Department of Fish and Wildlife (Region 6). Key issues of environmental concern expressed by commenters include:

- Impacts to the desert tortoise
- Impacts to cultural and tribal cultural resources

The NOP, Scoping Meeting materials, and received comments are contained in Appendix A of the Draft EIR.

Draft EIR

In accordance with the provision of CEQA Guidelines Sections 15085(a) and 15087(a), the County, serving as the Lead Agency: (1) prepared and transmitted a Notice of Completion (NOC) to the State Clearinghouse; (2) published a Notice of Availability (NOA) of a Draft EIR which indicated that the Draft EIR was available for public review at the County's Planning Division Counter; (3) provided a copy of the NOA and Draft EIR to the Jerry Lewis High Desert Government Center; (4) posted the NOA and the Draft EIR on the County's Planning Division website: https://lus.sbcounty.gov/planning-home/environmental/desert-region/; (5) sent a NOA to all property owners within 1,300 feet of the Project Site boundary; (6) sent a NOA to the last known name and address of all organizations and individuals who previously requested such notice in writing or attended public meetings about the Project; and (7) filed the NOA with the County Clerk. The public review period commenced on December 9, 2022, and ended on January 23, 2023, for a total of 46 days.

During the Draft EIR public review period, the County received four (4) comment letters on the Draft EIR from: the California Department of Fish and Wildlife (CDFW), Defenders of Wildlife, the Desert Tortoise Council, and the Colorado River Indian Tribes. All written comments received during the public review

period are presented, and responses are provided **in Chapter 2: Comment Letters and Responses to Comments** of this Final EIR.[1]

1.4 ORGANIZATION OF THE FINAL EIR

The Final EIR is organized as follows:

- **Section 1.0: Introduction.** Describes the process and purpose of the Final EIR, provides a summary of the Project, summarizes the Final EIR public review process, and presents the contents of the Final EIR.
- **Section 2.0: Responses to Comments.** Provides responses to all comments received during the 46-day public review period of the Draft EIR (December 9, 2022 to January 23, 2023) that are related to the contents of the Draft EIR.
- **Section 3.0: Corrections and Additions to the Draft EIR.** Includes revisions to the Draft EIR that represent changes or additions in response to comments received on the Draft EIR. Changes to the Draft EIR are shown with ~~strikethrough~~ text for deletions and double underline text for additions. The changes do not add significant new information that would affect the analysis or conclusions presented in the Draft EIR.
- **Appendices.** Contains appendices as referenced throughout the Final EIR. As requested by the Colorado River Indian Tribes, the comment letters and responses to the comment letters from the Colorado River Indian Tribes are provided in a confidential appendix to be provided only to the Colorado River Indian Tribes and the County of San Bernardino decision makers.

[1] As requested by the Colorado River Indian Tribes, the comment letters and responses to the comment letters from the Colorado River Indian Tribes are provided in a confidential appendix to be provided only to the Colorado River Indian Tribes and the County of San Bernardino decision makers.

CHAPTER 2 – RESPONSES TO COMMENTS

CEQA Guidelines Section 15088(a) states that: "The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response." The written response must address the environmental issue(s) raised and provide a detailed response. Rationale must be provided when specific comments or suggestions (e.g., additional mitigation measures) are not accepted. In addition, the written response must be a good faith and reasoned analysis. As long as a good faith effort at full disclosure is made in the EIR (CEQA Guidelines Section 15204), lead agencies need only to respond to significant environmental issues associated with the project and do not need to provide all the information requested by commenters.

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

CEQA Guidelines Section 15088 also recommends that where the response to comments results in revisions to the Draft EIR, those revisions should be noted as a revision to the Draft EIR or in a separate section of the Final EIR. Revisions have been made to the Draft EIR in response to comments received on the Draft EIR. These revisions are provided in **Chapter 3: Corrections and Additions to the Draft EIR**.

Table 2-1: Comments Received on the Vidal Energy Project Draft EIR provides a list of the comment letters received and the corresponding issues that were raised in response to the Draft EIR.

Table 2-1: Comments Received on the Vidal Energy Project Draft EIR

Comment Letter	Commenting Agency or Organization	Date of Comment
A	California Department of Fish and Wildlife	January 20, 2023
B	Defenders of Wildlife	January 23, 2023
C1	Desert Tortoise Council	January 23, 2023
C2	Desert Tortoise Council	April 30, 2022 In Response to NOP
D1	Colorado River Indian Tribes	January 23, 2023
D2	Colorado River Indian Tribes	October 30, 2023

The individual letters received during the public comment period, and as listed in Table 2-1, are each assigned a number in chronological order, as indicated in Table 2-1. Each comment that requires a response is also assigned a number. For example, the first comment letter received was from the California Department of Fish and Wildlife (CDFW). Therefore, this is Comment Letter A, and the responses to each comment are correspondingly numbered (e.g., Response to Comment A-1, A-2, etc.). A copy of each comment letter is provided in Appendix A, Original Comment Letters, of this Final EIR. As requested by the Colorado River Indian Tribes, the comment letters and responses to the comment letters from the Colorado River Indian Tribes (Comment Letters D1 and D2) are provided in a confidential appendix to be provided only to the Colorado River Indian Tribes and the County of San Bernardino decision makers.

LETTER A

Alisa Ellsworth
Environmental Program Manager
State of California – Natural Resources Agency
Department of Fish and Wildlife
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
Letter dated January 20, 2023

Comment A-1

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from the County of San Bernardino (Lead Agency) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

Footnote 1: CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Response to Comment A-1

The commenter acknowledges receipt of the Draft Environmental Impact Report (EIR) and CDFW's opportunity to provide comments. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment A-2

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (Id., § 1802.) Similarly for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species

protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

Response to Comment A-2

The commenter accurately notes that they are a Trustee Agency per CEQA Guidelines Section 15386 (a) and Responsible Agency per CEQA Guidelines Section 15381. This is accurately represented on page 2-9 of Section 2.0: Project Description of the Draft EIR. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment A-3

PROJECT DESCRIPTION SUMMARY

Proponent: CDH Vidal, LLC (CORE) (Applicant)

Objective: The Project has the following objectives:

- Utilize property within the County to site photovoltaic (PV) solar power-generating facilities and energy storage near existing utility infrastructure.
- Support California's efforts to reduce greenhouse gas (GHG) emissions consistent with the timeline established by the California Global Warming Solutions Act under California AB 32, as amended by SB 32, which requires that Statewide GHG emissions are reduced to at least 40 percent below the Statewide GHG emissions limit by 2030.
- Support California's Renewable Portfolio Standard (RPS) Program consistent with the timeline established by SB 100.
- Develop an economically feasible and commercially financeable power-generating facility and energy storage system.
- Provide solar-generated electricity to the California Independent System Operator (CAISO) grid.
- Promote the County's role as the state's leading producer of renewable energy.
- Provide green jobs to the County and the state of California.
- Site and design the Project in an environmentally responsible manner consistent with current County guidelines.

Location: The Project is located approximately 2.5 miles southeast of Vidal, an unincorporated area of San Bernardino County; east of U.S. Route 95, north of the Riverside County border, and west of the Colorado River.

Timeframe: Project construction is anticipated to begin in 2023 and is expected to be complete within approximately 14 months. Once construction is complete, the Project has an anticipated operational life of up to 35 years, after which CORE may choose to update site technology and recommission, or decommission, the facility and remove the systems and their components.

Description: The Project includes the construction and operation of an approximately 1,090-acre solar photovoltaic (PV) electricity generation and battery energy storage system (BESS) facility. The Project will generate up to 160 megawatts (MW) of alternating current of solar power and include up to 640 megawatt hours (MWh) of energy storage capacity. The Project would be supported by the existing Western Area Power Administration (WAPA) 161 kilovolt (kV) overhead transmission corridor. The facility would include the construction of one onsite substation facility that would collect and convert the power generated onsite for transmission via an overhead or underground line to the WAPA transmission system and interconnection location. The Project's permanent facilities would include PV panels, BESS, fencing, service roads, a power collection system, communication cables, overhead and underground transmission lines, electrical switchyards, a Project substation, and operations and maintenance facilities.

Response to Comment A-3

The commenter describes the Project including the Project proponent, objectives, location, timeframe, and description. The commenters' understanding of the project background is accurate as described in Section 2.0: Project Description of the Draft EIR. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment A-4

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Lead Agency in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

Response to Comment A-4

The commenter introduces their comments and notes that the purpose of their comments is to assist the lead agency with adequately mitigating for Project impacts. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment A-5

Assessment of Impacts to Biological Resources

The DEIR bases its analysis of impacts to biological resources on the Biological Resources Report (Appendix D of the DEIR) prepared by Chambers Group, Inc. dated December 2020. A reconnaissance-level survey was conducted in April 2020; focused plant survey in May 2020; and desert tortoise and burrowing owl focused survey in May 2020, making these surveys nearly three years old. Note that CDFW generally considers field assessments for wildlife to be valid for a one-year period. Further, the report indicates that the focused desert tortoise and burrowing owl surveys were conducted concurrently. CDFW generally does not support the approach of the same personnel concurrently conducting surveys for multiple species, as protocol requirements vary and some sign may be missed.

Response to Comment A-5

The commenter notes that CDFW generally considers field assessment surveys for wildlife to be valid for a one-year period and that the last reconnaissance-level surveys (as detailed in Appendix D of the Draft EIR) were conducted in 2020. The reconnaissance-level survey, focused plant survey, and desert tortoise and burrowing owl focused survey were completed to inform the Biological Resources Report and the Draft EIR. As detailed in Mitigation Measure BIO-1, a biological monitor shall, prior to initiation of ground disturbing activities, demark the limits of disturbance boundaries. The biological monitor shall also be present to conduct pre-construction sweeps and inspect compliance with project protection measures. Additionally, as part of Mitigation Measure BIO-4, BIO-6, BIO-7, and BIO-12 (as amended as part of this Final EIR), pre-construction surveys (e.g., nesting birds, burrowing owl, and desert tortoise) shall be conducted to determine the presence of the respective species. Therefore, pre-construction surveys shall be conducted accordingly.

The commenter further notes that CDFW does not support concurrently conducting surveys for multiple species. Burrowing Owl (*Athene cunicularia*) and Desert Tortoise (*Gopherus agassizii*) were surveyed concurrently as the survey protocol requirements are similar for both species. Both surveys are conducted within similar suitable habitat and look for the presence of burrows and signs of species activity (e.g., scat). As outlined in Mitigation Measure BIO-6, a pre-construction survey for Burrowing Owl will be conducted prior to ground disturbing activities.

Regarding Desert Tortoise, as stated on page 4.3-15 of **Section 4.3: Biological Resources** of the Draft EIR, no live desert tortoises, active desert tortoise burrows, or other desert tortoise sign were identified in the Survey Area during the desert tortoise surveys. One potential desert tortoise burrow was observed in the survey buffer near the southwest corner of the Project Site. However, the burrow was filled with spider webs and appeared to have been in disuse for some time. Therefore, the potential for occurrence of a desert tortoise is unlikely. As stated in Comment A-14, the CDFW recommends conducting updated protocol surveys for desert tortoise. While the CDFW acknowledges that Mitigation Measure BIO-5 in the Draft EIR addresses sensitive species in general, the County recommends the addition of Mitigation Measure BIO-12, a Desert Tortoise-specific mitigation measure as shown below, to supplement Mitigation Measure BIO-5 and to be implemented in the Mitigation Monitoring and Reporting Program (MMRP). With adherence to these mitigation measures, future surveys will be conducted in a manner acceptable to CDFW. Additionally, a Raven Management Plan shall be implemented as part of Mitigation Measure BIO-12 to offset potential predatorial impacts from ravens, which are known predators of desert tortoises, and to decrease potential threats to desert tortoise recovery. Mitigation Measure BIO-12 is added as follows and is reflected in **Chapter 3: Corrections and Additions to the Draft EIR**:

> **Mitigation Measure BIO-12**: Pre-construction surveys for desert tortoise (*Gopherus agassizii*) shall be conducted by a qualified biologist no more than 30 days prior to construction activities. If desert tortoise are observed within the Project Site, the Applicant shall consult with CDFW and USFWS to determine compliance with State (CESA) and federal (FESA) law. Additionally, if desert tortoise are determined to be present, a Raven Management Plan shall be prepared, approved by CDFW and USFWS, and implemented to offset potential predatorial impacts to tortoises.

As discussed in **Chapter 3: Corrections and Additions to the Draft EIR**, under CEQA Guidelines Section 15088.5, "[re]circulation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR." As previously noted, the CDFW acknowledges that Mitigation Measure BIO-5 addresses sensitive species; therefore, Mitigation Measure

BIO-12 would not be considerably different from Mitigation Measure BIO-5 and would clarify and amplify that, in the unlikely event of the discovery of a desert tortoise, the Applicant would require consultation/approval from the CDFW and USFWS for regulatory compliance. Therefore, recirculation would not be required.

Comment A-6

Nesting Birds

Project implementation could result in the loss of nesting and/or foraging habitat for passerine and raptor species from the removal of desert scrub vegetation onsite. The biggest threat to birds includes habitat loss and the conversion of natural vegetation into commercial, residential and industrial land uses.

It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 et. seq.). In addition, sections 3503, 3503.5, and 3513 of the Fish and Game Code also afford protective measures as follows: Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by FGC or any regulation made pursuant thereto; Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by FGC or any regulation adopted pursuant thereto; and Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

Response to Comment A-6

The commenter describes the implications of Project construction on nesting birds and cites the protective laws that are related to birds and birds of prey, noting that CDFW's expectation for the Project is to comply with the laws described. As discussed in the Draft EIR and as required by Mitigation Measure BIO-4, and as revised below in Response to Comment A-8 and in the MMRP, the Project requires a qualified biologist conduct a nesting bird survey prior to ground-disturbing activities to comply with CDFW Code 3503, CDFW Code 3503.5, and the MBTA. Further, Mitigation Measure BIO-4 offers protective measures for nesting birds including that vegetation trimming/crushing take place outside of bird breeding season (February 15 to September 15).

Comment A-7

The final EIR should include specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise, sound walls, and buffers. The final EIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site.

Response to Comment A-7

The commenter indicates that the Final EIR should include specific avoidance and minimization measures to ensure no impacts to nesting birds should occur. Please refer to Response to Comment A-6.

Comment A-8

CDFW supports the inclusion of Mitigation Measure BIO-4, with minor edits (in ~~strikethrough~~ and **bold**) in the final EIR to avoid impacts to nesting birds:

Mitigation Measure BIO-4 – Vegetation trimming/crushing shall take place outside the general bird breeding season (February 15 to September 15), to the maximum extent practicable. ~~If this is not possible,~~ **Regardless of the time of year**, prior to ground-disturbing activities, a qualified biologist shall conduct a nesting bird survey to comply with CDFW Code 3503 and 3503.5 and the Migratory Bird Treaty Act. The survey shall occur no more than ~~30~~ **three (3)** days prior to initiation of proposed Project activities **and shall include any potential habitat (including trees, shrubs, the ground, or nearby structures).** Any occupied passerine and/or raptor nests occurring within ~~or adjacent to~~ the proposed Project area **or the Project's zone of influence (generally 100-300 feet)** shall be delineated **and a no-disturbance buffer zone (as determined by the avian biologist) shall be established and maintained during Project activities**. Additional follow-up surveys may be required by the resource agencies and the County of San Bernardino. ~~If an active nest is identified, an avoidance buffer zone around occupied nests (as determined by the avian biologist) shall be maintained during physical ground-disturbing activities.~~ The buffer zone shall be sufficient in size to prevent impacts to the nest. **A qualified biologist shall monitor active nests to determine whether construction activities are disturbing nesting birds or nestlings. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the no disturbance buffer shall be expanded.** Once nesting has ceased and the fledglings are no longer using the nest area **as confirmed by a qualified biologist**, the buffer may be removed. A nesting bird survey report shall be provided to the County of San Bernardino **and CDFW. If an active nest is encountered during construction, construction shall stop immediately until a qualified biologist can determine the status of the nest and when work can proceed without risking violation to state or federal laws**.

Response to Comment A-8

The commenter notes their support of Mitigation Measure BIO-4 and requests minor edits. Mitigation Measure BIO-4 is revised as follows and as reflected in **Chapter 3: Corrections and Additions to the Draft EIR**:

> **Mitigation Measure BIO-4:** Vegetation trimming/crushing shall take place outside the general bird breeding season (February 15 to September 15), to the maximum extent practical. ~~If this is not possible,~~ Regardless of the time of year, prior to ground-disturbing activities, a qualified biologist shall conduct a nesting bird survey to comply with CDFW Code 3503 and 3503.5 and the Migratory Bird Treaty Act. The survey shall occur no more than ~~30~~ three (3) days prior to initiation of proposed project activities~~, and any~~ and shall include any potential nesting habitat (including trees, shrubs, the ground, or nearby structures). Any occupied passerine and/or raptor nests occurring within ~~or adjacent to~~ the proposed project area or the Project's zone of influence (generally 100-300 feet) shall be delineated and a no-disturbance buffer zone (as determined by the avian biologist) shall be established and maintained during Project activities. Additional follow-up surveys may be required by the resource agencies and the County of San Bernardino. ~~If an active nest is identified, an avoidance buffer zone around occupied nests (as determined by the avian biologist) shall be maintained during physical ground-disturbing activities~~. The buffer zone shall be sufficient in size to prevent impacts to the nest. A qualified biologist shall monitor active nests to determine whether construction activities are disturbing nesting birds or nestlings.

If a nest shows signs of disturbance as determined by a qualified biologist, adaptive management methods may be used to ensure that the buffer distances are effective and no nests are disturbed. Once nesting has ceased and the fledglings are no longer using the nest area as confirmed by a qualified biologist, the buffer may be removed. A nesting bird survey report shall be provided to the County of San Bernardino and CDFW. If an active nest is encountered during construction, construction shall stop immediately until a qualified biologist can determine the status of the nest, avoidance buffer and when work can proceed without risking violation to State or federal laws.

Comment A-9

Burrowing Owl

The Project has the potential to adversely affect burrowing owl (*Athene cunicularia*), a CDFW Species of Special Concern. According to the DEIR, one round of burrowing owl surveys was conducted concurrently with the focused desert tortoise survey over a five-day period from May 11, 2020 through May 15, 2020. CDFW appreciates that surveys were conducted, however, as noted above, CDFW generally does not support the approach of concurrently conducting surveys for different species. Further, while the DEIR states that three potential burrows and sign were observed within the Project site and that impacts to burrowing owl could potentially be significant, it does not clearly identify the extent of suitable habitat within the Project site and therefore CDFW cannot determine the potential extent impacts. In areas where burrowing owl may be present, CDFW recommends that the Lead Agency follow the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (2012 Staff Report). The 2012 staff report specifies three steps for project impact evaluations: a habitat assessment; surveys; and an impact assessment. As stated in the *Staff Report*, the three progressive steps are effective in evaluating whether a project will result in impacts to burrowing owl, and the information gained from the steps will inform any subsequent avoidance, minimization, and mitigation measures. Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with Fish and Game Code sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of the proposed Project activity.

Response to Comment A-9

The commenter describes how the Project has the potential to affect Burrowing Owl and recommends that recommendations and guidelines provided in the 2012 Staff Report are followed which includes a habitat assessment, surveys, and an impact assessment. As detailed in Appendix D of the Draft EIR, protocol-level Burrowing Owl Surveys were conducted in 2020 and although no live Burrowing Owls were observed on site, four burrows with sign were observed within the Survey Area. Additionally, Appendix D of the Draft EIR, which includes the full Biological Resources Report from the survey efforts, and discusses suitable habitat for Burrowing Owls. Nonetheless, Mitigation Measure BIO-6, which has been revised per CDFW's request as shown in Response to Comment A-10, requires a pre-construction Take Avoidance Survey, in accordance with the 2012 Staff Report, for Burrowing Owl prior to the initiating of ground disturbing activities, which would reduce impacts on Burrowing Owl to less than significant.

Comment A-10

Burrowing owl are susceptible to impacts year-round as their breeding season generally extends from February 1 to August 31 and their overwintering period generally from September 1 to January 31. In

areas where burrowing owl may be present, ground disturbing activities should be avoided to the extent practicable. Solar development may be considered a high level of disturbance and an appropriate buffer should be determined to avoid take of the species. If burrowing owl are found within the Project area during pre-construction surveys or construction activities, and it is not possible to avoid active burrows, passive relocation and mitigation shall be implemented.

CDFW recommends the following edits to Mitigation Measure BIO-6 (in ~~strikethrough~~ and **bold**)

Mitigation Measure BIO-6 – **No less than 14 days** prior to ~~construction~~ **any ground disturbance activities**, a burrowing owl Take Avoidance Survey shall be conducted by a qualified biologist **in accordance with the *Staff Report on Burrowing Owl Mitigation* (California Department of Fish and Game 2012)**. ~~The survey shall be conducted no less than 14 days prior to initiating ground disturbance activities.~~ If burrowing owls are determined to be present where Project activities will occur, ~~minimization and avoidance measures shall be required including but not limited to a final survey within 24 hours prior to ground disturbance.~~ **site-specific non-disturbance buffer zones shall be established by the qualified biologist based on monitoring and assessments of the Project's effects on the burrowing owls. If it is not possible to avoid active burrows during the nonbreeding season, passive relocation shall be implemented.**

Response to Comment A-10

The commenter describes the impact that solar development may have on Burrowing Owls and recommends edits to Mitigation Measure BIO-6 to include the passive relocation of Burrowing Owls if they are found within the Project Site during pre-construction surveys. Mitigation Measure BIO-6 is revised as follows and as reflected in **Chapter 3: Corrections and Additions to the Draft EIR**:

> **Mitigation Measure BIO-6:** A Burrowing Owl Mitigation and Monitoring Plan shall be developed and submitted to CDFW for review 60 days prior to the start of ground disturbing activities. No less than 14 days ~~P~~prior to ~~construction~~ any ground disturbance activities, a burrowing owl (*Athene cunicularia*) Take Avoidance Survey shall be conducted by a qualified biologist in accordance with the California Department of Fish and Wildlife 2012 *Staff Report on Burrowing Owl Mitigation*. ~~The survey shall be conducted no less than 14 days prior to initiating ground disturbance activities.~~ If burrowing owls are determined to be present where Project activities will occur, ~~minimization and avoidance measures shall be required including but not limited to a final survey within 24 hours prior to ground disturbance.~~ site-specific non-disturbance buffer zones shall be established by the qualified biologist based on monitoring and assessments of the Project's effects on the burrowing owls. If it is not possible to avoid active burrows during the nonbreeding season, passive relocation shall be implemented once approved through coordination with CDFW.

Comment A-11

CDFW further recommends that the Project proponent prepare a Burrowing Owl Mitigation and Monitoring Plan to be submitted to CDFW for review 60 days prior to the start of ground disturbing activities.

Response to Comment A-11

The commenter recommends that a Burrowing Owl Mitigation and Monitoring Plan be developed and submitted to CDFW for review 60 days prior to the start of ground disturbing activities. Mitigation

Measure BIO-6 has been revised accordingly in Response to Comment A-10 and as reflected in **Chapter 3: Corrections and Additions to the Draft EIR**.

Comment A-12

Desert Kit Fox

Five active desert kit fox (*Vulpes macrotis arsipus*) burrow/burrow complexes were identified on the Project site during the desert tortoise and burrowing owl surveys. While the DEIR states that "..desert kit fox is a non-sensitive species…", please note that kit fox is in fact protected as a fur-bearing mammal pursuant to Title 14 of the California Code of Regulations section 460 and may not be taken (including trapping and handling) at any time. Because desert kit fox has high fidelity to natal dens, it is crucial to adequately assess whether desert kit fox is present on the Project site well in advance of commencing Project activities.

CDFW recommends the following edits to Mitigation Measure BIO-7 (in ~~strikethrough~~ and **bold**):

Mitigation Measure BIO-7 – **Prior to commencing Project activities, a qualified biologist shall conduct a focused survey for desert kit fox, including assessment of all burrows in the Project area. If potential burrows are located, they shall be monitored by the qualified biologist.** If any burrow/burrow complex is determined to house desert kit fox and the burrow/burrow complex is unavoidable, exclusionary devices (e.g., one-way doors) ~~should~~ **shall** be fitted on the active burrow openings, and once the burrow has been confirmed vacant **as determined by the qualified biologist and in consultation with CDFW**, the burrow should shall be carefully excavated to prevent re-entry/re-use of the burrow. These exclusion/excavation activities ~~should~~ **shall** only occur during the non-breeding season (July 2- January 15). If construction will occur during the breeding season, any active burrow/burrow complex that is unavoidable ~~should~~ **shall** be provided a 500-foot no work buffer until the end of breeding season (July 1) or until the burrow has been determined to be inactive (and does not contain pups) by the qualified biologist.

Response to Comment A-12

The commenter summarizes the results of the Desert Kit Fox (*Vulpes macrotis*) surveys that were previously conducted and notes that Desert Kit Fox is protected as a fur-bearing mammal pursuant to Title 14 of the California Code of Regulations Section 460. CDFW recommends edits to Mitigation Measure BIO-7, which addresses the Desert Kit Fox. Mitigation Measure BIO-7 is revised as follows and as reflected in **Chapter 3: Corrections and Additions to the Draft EIR**:

> **Mitigation Measure BIO-7:** A Desert Kit Fox Monitoring and Mitigation Plan shall be prepared and submitted to CDFW for review 60 days prior to the start of ground disturbing activities. Prior to commencing ground-disturbing activities, a qualified biologist shall conduct a focused survey for desert kit fox (*Vulpes macrotis*), including assessment of all burrows in the Project area. If potential burrows are located, they shall be monitored by the qualified biologist. If any burrow/burrow complex is determined to house desert kit fox and the burrow/burrow complex is unavoidable, exclusionary devices (e.g., one-way doors) ~~should~~ shall be fitted on the active burrow openings, and once the burrow has been confirmed vacant as determined by the qualified biologist and in consultation with CDFW, the burrow ~~should~~ shall be carefully excavated to prevent re-entry/re-use of the burrow. These exclusion/excavation activities ~~should~~ shall only occur during the non-breeding season (July 2 to January 15). If construction will occur during the

breeding season, any active burrow/burrow complex that is unavoidable ~~should~~ shall be provided a 500-foot no work buffer until the end of breeding season (July 1) or until the burrow has been determined to be inactive (and does not contain pups) by the qualified biologist.

Comment A-13

CDFW further recommends that the Project proponent prepare a Desert Kit Fox Monitoring and Mitigation Plan to be submitted to CDFW for review 60 days prior to the start of ground disturbing activities. The Plan should include a summary of desert kit fox occurrence in the Project area, and avoidance and minimization measures, including but not limited to pre-construction surveys, active den and burrow monitoring, excavation of inactive or unoccupied burrows, and details on passive relocation from active, non-natal dens and burrows.

Response to Comment A-13

The commenter recommends that a Desert Kit Fox Monitoring and Mitigation Plan be prepared and submitted to CDFW for review 60 days prior to the start of ground disturbing activities. Mitigation Measure BIO-7 has been revised accordingly in Response to Comment A-12 and as reflected in **Chapter 3: Corrections and Additions to the Draft EIR**.

Comment A-14

Desert Tortoise

The desert tortoise (*Gopherus agassizii*) is listed as threatened and a candidate as endangered under the California Endangered Species Act (CESA). CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to (CESA). A CESA Incidental Take Permit (ITP) is issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats. CDFW recommends that a CESA ITP be obtained if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and G. Code, §§ 2080 and 2085). If the Project, including the Project construction or any Project-related activity during the life of the Project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation through an ITP.

No live desert tortoises, active desert tortoise burrows or other desert tortoise sign were identified during focused surveys, but one potential desert tortoise burrow was observed within the survey buffer near the southwest corner of the Project. While the burrow was filled with spider webs and appeared to have been in disuse, this does not necessarily exclude use or occupation of the Project site by desert tortoise. Also, as noted above, the desert tortoise surveys are nearly three years old and CDFW recommends conducting updated protocol surveys for desert tortoise. The DEIR does not include any desert tortoise-specific mitigation measures, but Mitigation Measure BIO-5 address sensitive species in general, indicating that any sensitive species found will be relocated out of harm's way. Desert tortoise may not be moved or handled in any way without proper permits.

Response to Comment A-14

The commenter describes protection recommendations for the desert tortoise. Although no live desert tortoises or active burrows were encountered on the Project Site during the protocol-level survey, one potential unoccupied burrow was observed within the buffer, which does not necessarily exclude the occupation of the Project Site by desert tortoise. The commenter points out that although Mitigation Measure BIO-5 addresses sensitive species in general, there are no desert tortoise specific mitigation measures. See Response to Comment A-5 for Mitigation Measure BIO-12, which has been added to **Chapter 3: Corrections and Additions to the Draft EIR** and the MMRP.

Comment A-15

Lake and Streambed Alteration Program

The DEIR identifies five drainage systems as well as ephemeral drainages and washes within the Project site subject to CDFW jurisdiction, for a total of 123.85 acres. CDFW appreciates that the Project has been designed to minimize impacts to the largest washes onsite and that the DEIR indicates that impacts to all CDFW jurisdictional resources warrant the need for a 1602 Streambed Alteration Agreement.

Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your Project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code § 21065). To facilitate issuance of an LSA Agreement, if necessary, the DEIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to https://www.wildlife.ca.gov/Conservation/LSA/Forms.

Response to Comment A-15

The commenter summarizes the drainage system and washes within the Project Site and recognizes that the Project has been designed to minimize impacts to washes on site. The commenter also notes that the guidelines for a Fish and Game Code Section 1602 Streambed Alternation Agreement will be followed for any impacts to CDFW jurisdictional resources. As stated on page 4.3-17 of **Section 4.3: Biological**

Resources of the Draft EIR, the Project would implement Mitigation Measures BIO-8 through BIO-11 to reduce impacts on CDFW jurisdictional waters to less than significant.

Comment A-16

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

Response to Comment A-16

This comment describes the CEQA requirement for Project information to be incorporated into a database and that any special status species and natural communities detected during Project surveys be reported to CNDDB. The Project has, and will continue to follow all requirements of CEQA, including uploading documents to the State Clearinghouse (SCH) and the County of San Bernardino's website. This request is noted and has been provided to the Project's biological consultant. The County will require this as part of the Project's Conditions of Approval for the Applicant's biologist to file field survey results with the appropriate agencies and report any special status species detected prior to and during the construction phase to the agencies.

Comment A-17

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

Response to Comment A-17

The commenter notes that the Project is required to pay the CDFW filing fees. All required fees will be paid when the Notice of Determination is filed with the County Clerk.

Comment A-18

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist San Bernardino County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Rose Banks, Senior Environmental Scientist (Specialist) at (760) 218-0022 or Rose.Banks@wildlife.ca.gov.

Response to Comment A-18

The commenter concludes their comment letter with the contact information of the appropriate party if further questions regarding the comment letter are sought. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

LETTER B

Sophia Markowska
Senior California Representative
Defenders of Wildlife
California Program Office
P.O. Box 401
Folsom, CA 95763
Letter dated on January 23, 2023

Comment B-1

Thank you for the opportunity to provide comments in response to the Draft Environmental Impact Report (DEIR) for the proposed Vidal Energy Project (Project). Defenders of Wildlife (Defenders) is dedicated to protecting all wild animals and plants in their natural communities and has nearly 2.2 million members and supporters in the United States, 323,000 of which reside in California. We strongly support renewable energy development that will help meet California's emission reduction goals and avoids destruction of important wildlife habitat and loss of at-risk species. Achieving a low-carbon energy future is critical for protecting California's internationally treasured wildlife, landscapes, productive farmlands and diverse habitats.

Response to Comment B-1

This comment acknowledges receipt of the Draft EIR and the Defenders' opportunity to provide comment. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment B-2

Project Description

The proposed Project is a photovoltaic solar facility that would generate up to 160 MW of renewable energy, provide storage for up to 640 MWh and would be supported by the adjacent existing Western Area Power Administration (WAPA) overhead transmission corridor. The Project is located on 1,090 acres of privately-owned land in southeastern San Bernardino County in the East Desert Communities planning area. It is approximately 2.5 miles southeast of unincorporated community of Vidal and is located within the Vidal Wash and Upper Parker Valley-Colorado River watersheds. The Project site is comprised of mostly vacant and undeveloped land with existing rural access roads and contains scattered structures such as abandoned rural residence, garage (storage) areas, and several WAPA towers. Additionally, illegal dumping is occurring throughout the Project site and the wash areas are currently being used by off-highway vehicles.

The Project site may provide habitat to numerous special-status wildlife species, including but not limited to the following:[1]

Common Name	Scientific Name	Status
American badger	*Taxidea taxus*	State Species of Special Concern
Arizona Bell's vireo	*Vireo bellii arizonae*	State Endangered
Burrowing owl	*Athene cunicularia*	State Species of Special Concern
Desert tortoise	*Gopherus agassizii*	Federally and State Threatened
Gila woodpecker	*Melanerpes uropygialis*	State Endangered
Townsend's big-eared bat	*Corynorhinus townsendii*	State Species of Special Concern
Western yellow-billed cuckoo	*Coccyzus americanus occidentalis*	Federally Threatened and State Endangered
Yellow-breasted chat	*Icteria virens*	State Species of Special Concern

Footnote 1: California Natural Diversity Database. Accessed 1/19/2023. https://wildlife.ca.gov/Data/CNDDB/Maps-and-Data

Response to Comment B-2

The commenter accurately describes the Project, including the Project location, land use setting description, and lists special-status wildlife that potentially utilize habitat within the Project Site. The commenters' understanding of the Project background is accurate. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment B-3

Comments

As we transition toward a clean energy future, it is imperative that we consider the near-term impact of solar development on our biodiversity, fish and wildlife habitat, and natural landscapes while addressing the long-term impacts of climate change. Renewable energy projects must be planned, sited, developed and operated to avoid, minimize and mitigate adverse impacts to wildlife and lands with known high-resource values . *[sic]*

Response to Comment B-3

The commenter states the importance of considering potential impacts of solar development to minimize and mitigate adverse impacts to wildlife and lands. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment B-4

We offer the following comments on the DEIR for the Project:

1. Impact on Critical Habitat for Special-Status Species

The Project site is in close proximity to designated critical habitat for several special-status species, including critical habitat and linkage area for the desert tortoise, razorback sucker and western yellow-billed cuckoo. Desert tortoise critical habitat and the Chuckwalla to Chemehuevi linkage area are within 3 miles of the Project and critical habitat for the razorback sucker and western yellow-billed cuckoo is present within 0.5 miles of the Project.

Response to Comment B-4

The commenter indicates that the Project Site is within close proximity to critical habitat, noting habitat within 0.50 to 3 miles from the Project Site. As stated on page 4.3-10 of **Section 4.3: Biological Resources** of the Draft EIR, Chambers Group conducted a literature review; reconnaissance-level survey; jurisdictional waters delineation; and desert tortoise, burrowing owl, and focused plant survey. As described in more detail in Appendix D of the Draft EIR, the Survey Area for the desert tortoise and burrowing owl surveys include the Project Site and a 500-foot buffer around the Project Site (see Figure 10 within the Biological Resources Report), which complies with the CDFW requirements. The Survey Area did not overlap with critical habitat. See also Response to Comment B-5.

Comment B-5

The DEIR acknowledges the close proximity of the Project to important biological areas but states since the Project is not located within the critical habitat areas, there will be no impact and no further investigation is required. This is an incomplete analysis; although critical habitat is not located directly on the Project site, the Project has the ability to impact these special-status species and the critical habitat and linkage areas in close proximity to the Project site. Direct and indirect impacts to adjacent land from a solar project may include, but are not limited to, increased predation of special-status species, avian mortality due to lake effect[2], connectivity and linkage impacts, water pollution and run-off, and impacts from noise, light and dust. We request the DEIR analyze both direct and indirect impacts the Project may have on the critical habitat and linkage areas.

Footnote 2: Upton, J. 2014. Solar farms threaten birds. Scientific American. https://www.scientificamerican.com/article/solar-farms-threaten-birds/#:~:text=It%20was%20one%20of%20233,fatally%20crippled%20by%20the%20facilities.

Response to Comment B-5

This comment suggests the Draft EIR's conclusion that the Project will have no impacts on special status species is based on the Project not being located within critical habitat and that further analyses is needed. However, the "no impact" conclusion was reached following a literature search for special status species occurrences within a 5-mile buffer around the Project Site, a reconnaissance-level survey, and protocol level surveys. Impacts were analyzed for each special status wildlife species and any potential Project impacts, including those associated with noise, light, and dust, were found to be less than significant with the implementation of Project specific mitigation measures. Additionally, regarding water pollution and runoff, as stated on page 6-11 in **Chapter 6: Other CEQA Considerations**, the Project would be required to comply with the General Construction Permit which requires the development of a Stormwater Pollution Prevention Plan (SWPPP) to eliminate or reduce non-stormwater discharge off site into storm drainage or other water bodies. The Project would not violate any water quality standards or waste discharge requirements.

The commenter also suggests that the potential lake effect may impact avian mortality. The lake effect hypothesis states that PV solar panels are perceived as water by aquatic habitat birds creating a potential risk of collision with the panels.[1] Summarized data from 10 PV solar facilities over 13 study years found variability in the proportion of aquatic habitat bird fatalities among facilities.[2] The studies found that facilities closer to the Salton Sea, a known aquatic habitat bird stop-over site, had a higher proportion of aquatic habitat bird fatalities, whereas facilities located in areas largely devoid of water had no aquatic habitat bird fatalities.[3] The data suggested that potential collision risk was higher near the Salton Sea, but that none of the studies attempted to identify the cause of the collisions making broader inference limited. Surveys were conducted for live birds and carcasses at five PV solar facilities and paired reference areas found that aquatic habitat bird carcasses were found only at the PV solar facilities in the desert/scrub habitat, thus supporting that aquatic habitat birds were attracted to the PV facilities. Further, they found that the number of fatalities detected was low compared to the abundance of live birds observed at a small regional lake suggesting that at the facilities studied, the magnitude of attraction was low.

The Project is located in an area of desert habitat, and there is no large. The Colorado River would be located approximately 0.3 miles southwest from the Project Site boundary. Thus, the landscape setting at the Project is more similar to PV facilities located away from the Salton Sea than those located closer to the Salton Sea. Kosciuch et al. (2020) reported that PV facilities away from a large water body had very few aquatic habitat bird carcasses detected during the study.[4] Although there is support that aquatic habitat birds are attracted to PV solar facilities, given the landscape setting at the Project, it is unlikely that aquatic habitat birds would be exposed in large numbers, and no significant direct or indirect impact on aquatic habitat birds is anticipated.

Patterns of bird mortality at 10 PV solar facilities provide inference into the potential effects of the Project on migratory birds. The studies reported patterns that provide broader inference to other regions including: Three of the top four species detected were ground-dwelling birds that have populations in the millions, and that there was no evidence of a comparatively large-scale fatality event of nocturnal migrating passerines. Thus, based on the landscape setting of the Project, it is expected that fatalities, should they occur, would be similar to the patterns found at other PV facilities and include common ground-dwelling birds, and that this Project would not create a significant impact to water birds due to the hypothetical lake effect. Thus, no significant direct or indirect impact on migratory birds is anticipated.

Comment B-6

The increasing development of solar energy projects within San Bernardino County is having a significant impact on biological resources in the region. This Project is not an exception and would significantly add to the loss of important and declining biological resources. The DEIR analysis must include the cumulative

[1] Kosciuch K, Riser-Espinoza D, Moqtaderi C, Erickson W., Aquatic Habitat Bird Occurrences at Photovoltaic Solar Energy Development in Southern California, USA. Diversity. 13(11):524, 2021. Available at https://www.mdpi.com/1424-2818/13/11/524. Accessed February 16, 2023.

[2] Kosciuch K, Riser-Espinoza D, Gerringer M, Erickson W., A summary of bird mortality at photovoltaic utility scale solar facilities in the Southwestern U.S. PLoS ONE 15(4): e0232034, 2020. Available at https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0232034. Accessed February 16, 2023.

[3] Shuford WD, Warnock N, Molina KC, Mulrooney B, Black AE., 2019, Avifauna of the Salton Sea: abundance, distribution, and annual phenology. Final report for EPA Contract R826552-01-0; 2000. Available at https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=7311. Accessed February 16, 2023.

[4] Kosciuch K, Riser-Espinoza D, Gerringer M, Erickson W., A summary of bird mortality at photovoltaic utility scale solar facilities in the Southwestern U.S. PLoS ONE 15(4).

impacts to wildlife connectivity and critical habitat and provide appropriate mitigation measures. Furthermore, Defenders requests the analysis include a detailed map of existing and planned solar energy development that includes the remaining nearby habitat and linkage areas for desert tortoise.

Response to Comment B-6

The commenter requests that the Draft EIR analyze cumulative impacts to wildlife and provide appropriate mitigation measures. Page 4.3-18 of **Section 4.3: Biological Resources** of the Draft EIR details a cumulative impact analysis based on a list, summary, and figure of reasonably foreseeable projects in the vicinity of the Project Site that the County has determined could, in combination with the Project, potentially result in cumulative impacts (see Table 3-2: Related Projects in **Chapter 3: Environmental Setting of the Draft EIR**). As described on page 4.3-19, while most of the related projects would convert undeveloped land into renewable energy facilities, over time, vegetation communities would re-establish between the panels, fencing, and utility structures, allowing wildlife to continue inhabiting and foraging on the sites over the lifetime of the projects. Further, similar to the Project, the related projects would be required to avoid and/or mitigate impacts to special-status species and habitats in accordance with County, CDFW, and USFWS requirements. Therefore, the Project's less-than-significant impacts with mitigation incorporated, in combination with the related projects, would not result in significant cumulative impacts to special-status species or habitats.

Comment B-7

2. Revise Mitigation Measure BIO-6

Although no live burrowing owls were observed during surveying, potential burrows with sign of presence including cough pellets and/or whitewash was observed within the Project Site and within the survey buffer area. Since burrowing owl sign was found on and surrounding the Project site, it is reasonable to expect that the Project site provides suitable habitat and/or foraging for the species and burrowing owls may be determined as present during future surveys. To ensure the survival of burrowing owls, it is essential that proper mitigation measures and buffers are implemented, and necessary permits obtained if the species is found to be present. Defenders requests adherence to the recommended mitigation measures within the Staff Report on Burrowing Owl Mitigation.[3] We request this mitigation measure be revised to read:

"Prior to construction, a burrowing owl Take Avoidance Survey shall be conducted by a qualified biologist. The survey shall be conducted no less than 14 days prior to initiating ground disturbance activities. If burrowing owls are determined to be present where Project activities will occur, minimization and avoidance measures shall be required **in accordance with the measures outlined in the Staff Report on Burrowing Owl Mitigation**, including but not limited to a final survey within 24 hours prior to ground disturbance. **In addition, if burrowing owls are determined to be present, CDFW shall be consulted regarding the appropriate avoidance buffers around active burrows and for any necessary permits.**"

Footnote 3: California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation. The 7 March 2012 memo replacing 1995 staff report, State of California Natural resources Agency, Department of Fish and Wildlife. Sacramento, California.

Response to Comment B-7

The commenter provides proposed revisions to Mitigation Measure BIO-6. The proposed revisions are consistent with revisions recommended by CDFW. See Response to Comment A-10 for the revised Mitigation Measure BIO-6.

Comment B-8

3. Revise Mitigation Measure BIO-8

The Project site contains habitat suitable for special-status species. Where adverse impacts to habitat that is suitable for special-status species cannot be avoided, mitigation must be provided.

This project will result in the permanent conversion of burrowing owl habitat, as once the land is developed, the habitat will not return to the current state. This warrants permanent protection of habitat and foraging lands. The mitigation measure should be consistent with the Staff Report on Burrowing Owl Mitigation from the State of California that provides the permanent conservation of burrowing owl habitat should be included.[4] This conversion of burrowing owl habitat shall be comparable to or better than the impacted area to mitigate for the permanent impact to nesting habitat. We request this mitigation measure be revised to read:

"Temporary and permanent impacts to all jurisdictional resources **and impacts to habitat suitable for special-status species** shall be compensated through a combination of habitat creation (i.e., establishment), enhancement, preservation, and/or and restoration at a minimum of a 1:1 ratio or as required by the permitting agencies. Any creation, enhancement, preservation, and/or restoration effort shall be implemented pursuant to a Habitat Restoration Plan, which shall include success criteria and monitoring specifications, and **shall be approved by CDFW**. A habitat restoration specialist will be designated and approved by the permitting agencies and will determine the most appropriate method of restoration. **For the permanent conversion of burrowing owl habitat, habitat and foraging area that is comparable to or better than the impacted area shall be permanently conserved. This shall be done in accordance with the Staff Report on Burrowing Owl Mitigation."**

Footnote 4: California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation. The 7 March 2012 memo replacing 1995 staff report, State of California Natural resources Agency, Department of Fish and Wildlife. Sacramento, California.

Response to Comment B-8

The commenter notes that suitable habitat is present on the Project Site for special status species including the burrowing owl, and that any impacts to suitable habitat that cannot be avoided should be mitigated. The commenter further suggests changes to Mitigation Measure BIO-8. Focused surveys were conducted within suitable habitat on site, and the Draft EIR and Biological Resources Report concluded that suitable habitat is unoccupied by special status species. Additionally, CDFW, acting as a reviewing agency for the Project, reviewed the Project, potential impacts, and associated mitigation measures, and provided comments and edits to the proposed mitigation measures to further adequacy. CDFW had no additional comments on Mitigation Measure BIO-8 as proposed in the Draft EIR, but recommended revisions to Mitigation Measure BIO-6 related to a Burrowing Owl Mitigation and Monitoring Plan. No further revisions have been made to Mitigation Measure BIO-6 in addition to the revisions made in Response to Comment A-10.

Comment B-9

4. Desert Tortoise

The Project site is in close proximity to desert tortoise critical habitat and the Chuckwalla to Chemehuevi tortoise linkage area. It is reasonable to expect desert tortoises will utilize the project area in the future given the close proximity to critical habitat and linkage area. Therefore, Defenders requests the inclusion of additional desert tortoise mitigation measures, as follows.

a) Pre-Construction Survey

The DEIR fails to include a mitigation measure requiring pre-construction surveys specifically for desert tortoise completed by a desert tortoise qualified biologist. Given the possibility of the desert tortoise entering the Project area, Defenders requests desert tortoise specific pre-construction surveys to ensure that no desert tortoises have entered the Project site before construction begins. Furthermore, if any desert tortoises are found during pre-construction surveys, CDFW and USFWS must be consulted for any further desert tortoise specific mitigation measures and any required permits prior to commencement of construction activities.

Response to Comment B-9

The commenter requests pre-construction surveys for desert tortoise. See Response to Comment A-5 for Mitigation Measure BIO-12, which requires a pre-construction survey for desert tortoise.

Comment B-10

b) Raven Mitigation Plan

Ravens are known predators of desert tortoises and are likely a major impediment to desert tortoise recovery. Solar development and the associated infrastructure can be expected to increase raven threats to desert tortoises by providing raven hunting and nesting platforms. Ravens can fly at least 30 miles daily in search of food and water[5] and with desert tortoise critical habitat located within 3 miles of the Project site, it is likely the project would subsidize the raven population and create access to desert tortoises.

The DEIR must include a mitigation measure requiring the creation and implementation of a Raven Management Plan. This plan should include an analysis on the impact the Project could have on common ravens, identify Project design to discourage use by ravens for perching or nesting, the removal of inactive nests within the Project area and active site monitoring for raven presence. It is vital that the Project implement a Raven Management Plan to mitigate the impact of this project on surrounding desert tortoise populations.

Footnote 5: Boarman, W.I, M.A. Patten, R.J. Camp, and S.J. Collis. 2006. Ecology of a population of subsidized predators: Common ravens in the central Mojave Desert, California. Journal of Arid Environments 67 (2006) 248–261.

Response to Comment B-10

The commenter requests the inclusion of a Raven Management Plan. As stated in Mitigation Measure BIO-12 (see Response to Comment A-5), if desert tortoise are observed within the Project Site during pre-construction surveys, a Raven Management Plan will be implemented to offset potential predatorial impacts to tortoises. Additionally, Mitigation Measure BIO-3 is revised to include measures to reduce the potential for ravens to migrate into the Project Site. Mitigation Measure BIO-3 is revised as follows and as reflected in **Chapter 3: Corrections and Additions to the Draft EIR:**

> **Mitigation Measure BIO-3:** An environmental training program shall be developed and presented to all crew members prior to the beginning of all project construction. The training shall describe special-status wildlife species and sensitive habitats that could occur within project work areas, protection afforded to these species and habitats, and avoidance and minimization measures required to avoid and/or minimize impacts from the project. The training shall include a discussion on the reduction of trash and the elimination any food and standing water originating from a human source that may attract wildlife, including ravens, to the site. The training program will be approved by a qualified biologist. Records of training will be kept on-site.

Comment B-11

Conclusion

Thank you once again for the opportunity to provide comments on the DEIR for the Vidal Energy Project and for considering our comments. We look forward to reviewing the Final EIR and request to be notified when it is available. If you have any questions, please contact me at 408-603-4694 or via email at smarkowska@defenders.org.

Response to Comment B-11

The commenter concludes their comment letter with the contact information of the appropriate party if further questions regarding the comment letter are sought. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

LETTER C1

Edward L. LaRue, Jr., M.S.
Ecosystems Advisory Committee, Chairperson
Desert Tortoise Council
3807 Sierra Highway #6-4514
Acton, CA 93510
Letter dated January 23, 2023

Comment C1-1

The Desert Tortoise Council (Council) is a non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of desert tortoise species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

Both our physical and email addresses are provided above in our letterhead for your use when providing future correspondence to us. When given a choice, we prefer that San Bernardino County (County) email to us future correspondence, as mail delivered via the U.S. Postal Service may take several days to be delivered. Email is an "environmentally friendlier way" of receiving correspondence and documents rather than "snail mail."

We appreciate this opportunity to provide comments on the above-referenced project. We also appreciate that the Council was alerted to this project in an email notice from you on 12/2/2022. Given the location of the proposed project in habitats likely used by Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments pertain to enhancing protection of this species during activities funded, authorized, or carried out by the County, which we assume will be added to the Decision Record for this project as needed. Please accept, carefully review, and include in the relevant project file the Council's following comments for the proposed project.

The Mojave desert tortoise is among the top 50 species on the list of the world's most endangered tortoises and freshwater turtles. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers the Mojave desert tortoise to be Critically Endangered (Berry et al. 2021), as it is a "species that possess an extremely high risk of extinction as a result of rapid population declines of 80 to more than 90 percent over the previous 10 years (or three generations), population size fewer than 50 individuals, other factors." It is one of three turtle and tortoise species in the United States to be critically endangered. This status, in part, prompted the Council to join Defenders of Wildlife and Desert Tortoise Preserve Committee (Defenders of Wildlife et al. 2020) to petition the California Fish and Game Commission in March 2020 to elevate the listing of the Mojave desert tortoise from threatened to endangered in California.

We reviewed the Vidal Energy Project Draft Environmental Impact Report (DEIR) in eastern San Bernardino County, California that was prepared to comply with the California Environmental Quality Act (CEQA), and offer the following comments for your consideration and incorporation into the revised or final document.

Response to Comment C1-1

This comment introduces the organization, acknowledges receipt of the Notice of Availability of the Draft EIR and the Council's opportunity to provide comment. The commenter provides background on the special status history of the Mojave Desert tortoise. This comment serves as an introduction to the remainder of the letter. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment C1-2

Description of Proposed Project and Alternatives

According to the DEIR (San Bernardino County 2022), CDH Vidal LLC (CORE) plans to construct and operate the Vidal Energy Project (Project), a solar photovoltaic (PV) electricity generation and energy storage facility. The Project would produce up to 160 megawatts (MW) of electricity and include up to 640 megawatt hours (MWh) of energy storage capacity rate in a battery energy storage system (BESS). The Project's permanent facilities would include PV panels, BESS, fencing, service roads, a power collection system, communication cables, overhead and underground transmission lines, electrical switchyards, a Project substation, and operations and maintenance (O&M) facilities. Existing roads would be used to the greatest extent possible, potential new unpaved roads may need to be constructed off-site to serve as access roads from the existing road network to the Project Site.

The Project would be supported by the existing, adjacent Western Area Power Administration (WAPA) 161-kilovolt (kV) overhead corridor to distribute the energy. The Project would include the construction of one on-site substation facility, which would collect and convert the power generated on-site for transmission in an overhead or underground line to the WAPA transmission system and interconnection location. Upgrades associated with WAPA interconnection include replacement of existing fiber optic cable along the 52-mile Headgate Rock-Blythe 161 kV transmission line and construction of a new switchyard and associated interconnection facilities adjacent to the Project and to WAPA's existing Headgate Rock-Blythe 161-kV transmission line. WAPA would also work with the Bureau of Land Management (BLM) in the processing of the right-of-way (ROW) application to support these connections, as needed. WAPA would maintain and decommission its facilities.

Operations and maintenance of the Vidal Solar Project would occur for about 35 years, the expected life of the Project. If the facility is not updated and recommissioned, it would be decommissioned. Site infrastructure would be removed and Project roads would be restored to their pre-construction condition to the extent feasible unless the landowner elects to retain the improved roads. To that ends, we provide Abella and Berry (2016)[1] as an excellent resource to be shared with CORE as best management practices for arid lands restoration.

The Project would be located on up to approximately 1,090 acres of land. The Project Site is located approximately 2.5 miles southeast of Vidal, which is an unincorporated area of the County and located east of U.S. Route 95, north of the Riverside County border, and just west of the Colorado River. The Project Site encompasses 1,090 acres within 21 parcels (in their entirety and portions thereof) that are held under lease agreement by CORE. It is about 3 miles southeast of the Chemehuevi critical habitat unit (USFWS 1994) for the tortoise and Tortoise Conservation Area (TCA).

Footnote 1:
https://www.dropbox.com/s/nx1b5m2b5ehya12/%23Abella%20and%20Berry%202016.pdf?dl=0

Response to Comment C1-2

The commenter describes the Project. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment C1-3

Alternatives Evaluated in the DEIR: Four Alternatives were evaluated in the DEIR, including the proposed Project and:

- Alternative 1 – No Project Alternative. Under the No Project Alternative, CORE would not construct a PV and BESS facility and the Project's objectives would not be realized.
- Alternative 2 – Reduced Acreage Alternative. Under the Reduced Acreage Alternative, the Project Site would be reduced by 177 acres, and the Project's renewable energy generation capacity would be reduced by approximately 25 percent due to the installation of fewer PV panels. This alternative avoids siting the PV panels in the smaller washes.
- Alternative 3 – Offsite Alternative. Under the Offsite Alternative, the Offsite Alternative would be redesigned and relocated to approximately 1,100 acres of BLM-administered land outside of the City of Blythe, which is designated as a Development Focus Area (DFA) for renewable energy in the Desert Renewable Energy Conservation Plan (DRECP; BLM 2016).

Of the three action alternatives analyzed in the DEIR, the Council prefers the Reduced Acreage Alternative, because it would reduce impacts to washes used by the tortoise and other desert species for forage (increased diversity and abundance of native vegetation) and as movement corridors (please see our comments under "Appendix D – Biological Resources").

Response to Comment C1-3

The commenter notes that of the alternatives presented in **Chapter 5: Alternatives Analysis** of the Draft EIR, the commenter prefers Alternative 2 (the Reduced Acreage Alternative). As stated on pages 5-19 and 5-20 of the Draft EIR, the Reduced Acreage Alternative was conservatively found to be the environmentally superior alternative. However, it was noted that the Reduced Acreage Alternative would not realize certain environmental benefits and would not meet the Project objectives to the same extent as the Project. Alternative 2 would leave undeveloped underutilized land that has been planned for a solar energy facility, within an existing fenced area surrounded by similar renewable energy development. It was also concluded that the Reduced Acreage Alternative would contribute less than the Project in assisting California reach its renewable energy generation goals under Senate Bill (SB) 100. Nonetheless, the commenter's preference of the Reduce Acreage Alternative is noted.

Comment C1-4

Two other alternatives were considered but dismissed. One was a Fossil Fuel Alternative and the other a Distributed Generation Alternative.

Of the six alternatives described in the DEIR, the Council supports the Distributed Generation Alternative. This alternative installs smaller scale PV facilities at or near the point of energy use. According to the DEIR, this alternative was dismissed because (1) finding 16 or more separate sites for development of solar

power that produces 10 MW each to produce collectively 160 MW of electricity is not feasible due to the time, expense, and site control requirements associated with selecting such a large number of locations (emphasis added); and (2) CORE does not currently own or control any other such sites or land in San Bernardino County. We challenge the reasons given for dismissing this alternative. If CORE expended similar time and expense for the 16 Distributed Generation sites as it did for the 21 parcels for the proposed Project, it would likely be able to develop and implement the Distributed Generation Alternative. While CORE does not control any other sites in San Bernardino County, we are not sure why the project must be located in San Bernardino County. One of the viable alternatives in the DEIR is in Riverside County. In addition, if the County required applicants to first explore distributed generation, CORE and other applicants would focus their efforts on implementing this approach for the generation of solar energy rather than utility-scale solar with its greater impacts to biological resources and climate change (please see "Climate Change" and "Mitigation Measures" below) and fall short of requiring full mitigation for direct, indirect, and cumulative impacts. From the information provided in the DEIR, it appears the Distributed Generation Alternative was dismissed not because it is a non-viable alternative, but because it is not what CORE wanted to implement.

Response to Comment C1-4

The commenter notes that there were two additional alternatives initially considered, but ultimately rejected. The commenter notes that of these two, the Distributed Generation Alternative is preferred. As stated on page 5-3, distributed generation systems typically generate less than 10 MW, which would require at least 16 separate projects at 10 MW each, to equate to the Project's proposed 160 MW capacity. The commenter notes that Riverside County should have been evaluated as a viable option. However, finding 16 or more separate sites for development in either San Bernardino or Riverside County, of solar power is not feasible due to the time, expense, and site control requirements associated with selecting this number of locations. To be a viable alternative to the Project, the Applicant would need to own or control a sufficient amount of land to accommodate 160 MW of capacity. The Applicant, however, does not currently own or control any other such sites or land in San Bernardino County or Riverside County. Therefore, this alternative was, and still is, considered infeasible. Additionally, the commenter's assertion that CORE would likely be able to develop and implement the Distributed Generation Alternative is speculative. Under the Distributed Generation Alternative, the Applicant would be required to undergo the CEQA process for each separate site to determine if significant impacts would occur as compared to the analysis prepared for the singular Project Site as analyzed in this Draft EIR.

Comment C1-5

We question the need for 16 sites that generate 10 MW of electricity. Alternative 3, a viable alternative, is a Reduced Acreage Alternative with reduced energy output by 25 percent. If this alternative is feasible, then a Distributed Generation Alternative should be a viable alternative. For these reasons, we strongly request the County revise the DEIR and analyze the Distributed Generation Alternative as the Preferred Alternative in the CEQA document, as it appears to be a viable alternative.

Response to Comment C1-5

It should be noted that Alternative 2 is the Reduced Acreage Alternative, and Alternative 3 is the OffSite Alternative. The commenter notes that if the Reduced Acreage Alternative, at 25 percent reduction, is a viable alternative, then 16 sites should not be needed for the Distributed Generation Alternative. Please see Response to Comment C1-4. Additionally, as stated on pages 5-19 and 5-20 of **Chapter 5: Alternatives Analysis** of the Draft EIR, the Reduced Acreage Alternative was determined feasible, it would (1) leave

undeveloped, underutilized land planned for solar energy facility, (2) contribute less in assisting California reach its renewable energy generation goals, and (3) would not realize certain benefits and not meet the Project objectives to the same extent as the Project. Based on the estimates used to determine the acreage needed for the Reduced Acreage Alternative, a Distributed Generation Alternative with an output of 120 MW (or 25 percent reduction compared to the Project's 160 MW capacity) would still require up to 12 separate sites for development in either San Bernardino or Riverside County to accommodate a similar 120 MW capacity as described in the Reduced Acreage Alternative. Finding 12 separate sites suitable for solar power is not feasible due to the time, expense, and site control requirements associated with selecting this number of locations. This would still require a significant amount of land, of which the Applicant does not own or control in San Bernardino County or Riverside County. Therefore, the Distributed Generation Alternative would not be a viable alternative and was eliminated from further consideration in the Draft EIR.

Comment C1-6

Connected Project to Federal Action(s)

From the information presented in the DEIR, the Council believes the Project is a "connected" project to a federal action, because the WAPA upgrades needed to accept the electricity generated by the Project and need for a right-or-way (ROW) grant from the Bureau of Land Management (BLM) for upgrades. According to 40 Code of Federal Regulations 1508.25(a)(1), "[a]ctions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification."

From information presented in the DEIR, one or more of these three requirements appears to apply, making this Project a connected action. According to the Council on Environmental Quality (1997) "the range of actions that must be considered includes not only the project proposal but all connected and similar actions that could contribute to cumulative effects." Consequently, this would require that WAPA or BLM analyze all connected actions (the Project, upgrades, and ROW issuance) in a National Environmental Policy Act (NEPA) document. Consequently, we request that the DEIR be reissued as a NEPA/CEQA, joint EIR/EIS (environmental impact statement) document or explain in the Revised DEIR why the Project is not a connected action under NEPA regulations.

Response to Comment C1-6

The commenter asserts the Project is a connected action and that a joint CEQA / NEPA EIR / EIS be prepared and reissued. There is no requirement to have the prepared document be a joint CEQA/NEPA document. A separate NEPA analysis by WAPA has already been initiated. WAPA hosted a public scoping meeting on January 27, 2022. The public scoping period ended on February 9, 2022. WAPA has evaluated the public comments it received and is incorporating them into the Project's environmental review. WAPA determined that an Environmental Assessment (EA) is appropriate action and is preparing an EA.

Comment C1-7

Compliance with California Executive Order N-82-20

On October 7, 2020, Governor Newsom issued Executive Order N-82-20[2] to combat the biodiversity crisis. In the DEIR, the Project objectives are listed as renewable energy goals, creation of green jobs (we are not sure what green jobs would be created as construction and maintenance workers would need to commute during the estimated 14-month construction period and 35-year operations and maintenance period), and siting and designing the Project in an environmentally responsible manner consistent with current County guidelines. We found no information on compliance with this executive order on combating the biodiversity crisis, especially with respect to the Mojave desert tortoise and other wildlife species. Given the importance of this resource topic (e.g., Governor's October 7, 2020 Executive Order) and the rapid and substantial impacts to many Mojave Desert species and the ecosystem occurring from climate change (Smith et al. 2023), we request that an analysis of the proposed action on climate change and wildlife including the tortoise be included in the revised DEIR/EIS.

Footnote 2:
https://www.dropbox.com/s/wytoq87u36xhaya/%24Climate%20Change%20Eecutive%20Order%2010.07.2020-EO-N-82-20-.pdf?dl=0

Response to Comment C1-7

The commenter requests that the Project evaluate impacts to biodiversity by complying with Executive Order N-82-20. While biodiversity isn't specifically addressed in Appendix G of the CEQA Guidelines, the Draft EIR did evaluate impacts to biological resources in **Section 4.3: Biological Resource**s. The Draft EIR found that impacts to biological resources would be considered less than significant with mitigation incorporated. Further, mitigation measures have been revised at the request of CDFW and other commenters. These revisions are provided in **Chapter 3: Corrections and Additions to the Draft EIR**. With the incorporation of mitigation measures as written and revised in this Final EIR, impacts to special status species, would remain less than significant.

Comment C1-8

Climate Change

The DEIR has a section that analyzes impacts to air quality from a human health perspective. However, we found no section that analyzes the impacts of the proposed Project or alternatives, including the construction, operation and maintenance, and decommissioning phases, on climate change and effects on wildlife and habitats (e.g., invasive plant species, increased wildfire frequency/size/intensity, loss of habitat, etc.)

Vegetation sequesters carbon. Studies around the world have shown that desert ecosystems can play an important role in sequestering carbon. For example, the California deserts account for nearly 10 percent of the state's carbon sequestration; below ground in soil and root systems, and above ground in biomass. Protecting this biome can contribute to securing carbon stores in the state (MDLT 2021). However, when plants die, they release carbon from their roots, stems, and leaves into the atmosphere and contribute to climate change. Given the current climate change conditions, there is an increasing need for carbon sequestration, not carbon release; therefore, there is a growing need to increase the biomass of native plants including in plants int California deserts.

The proposed Project would result in the loss/degradation of native plants and their ability to sequester carbon for decades or longer. In addition, the proposed Project, when combined with the numerous actions that have occurred in the eastern Mojave and Colorado deserts in the County and southern California that destroy vegetation, would be contributing to climate change. Consequently, the County should conduct a cumulative impacts analysis of the proposed Project and alternatives with respect to climate change. Cumulative impacts should be analyzed and presented with referenced or supporting data in the revised DEIR/EIS. Given the importance of this resource topic (e.g., Executive Order N-82-20) and its rapid and substantial impacts to many Mojave Desert species and the ecosystem (Smith et al. 2023), we request that an analysis of the proposed Project and alternatives on the impacts to climate change and biodiversity, including the tortoise, be included in the revised DEIR/EIS. In addition, the Council requests the County develop and implement mitigation to avoid or fully offset the impacts to climate change from the proposed Project and alternatives.

Response to Comment C1-8

The commenter notes that the Draft EIR does not analyze the impacts of the Project or alternatives on climate change and effects on wildlife and habitats. **Section 4.6: Greenhouse Gas Emissions** of the Draft EIR addresses greenhouse gas (GHG) emissions and the potential impacts to global climate change resulting from Project construction, operation, and decommissioning. The analysis concluded that the Project's impacts related to GHG emissions would be less than significant. Further, as described under Threshold (b) on pages 4.6-16 through 4.6-19, the Project would be consistent with applicable plans, policies, regulations and GHG reduction actions/strategies, such as those outlined in the 2021 Regional GHG Reduction Plan, County Policy Plan, and the California Air Resources Board's 2017 Scoping Plan Update.

The comment further discusses the Project's potential impacts on carbon sequestration through the loss/degradation of native plants. The vegetation on the Project Site that have the more material effect on carbon sequestration is the living Palo Verde trees and larger biomass vegetation that is contained within the jurisdictional washes. The Project has been designed to avoid impacts to the majority of the vegetation contained in the washes (see Mitigation Measure BIO-2). Additionally, temporary and permanent impacts to all jurisdictional resources shall be compensated through a combination of habitat creation, enhancement, preservation, and/or restoration at a minimum of a 1:1 ratio or as required by the permitting agencies (see Mitigation Measure BIO-8).

Comment C1-9

Environmental Impact Analysis

As general observation, we were surprised at the paucity of scientific reports and journal articles cited in the DEIR to analyze impacts of the proposed Project and alternatives and the effectiveness of mitigation on the DEIR. We suggest the County revise the DEIR/EIS to include scientific citations in its analysis of impacts and mitigation effectiveness, and decisions.

Response to Comment C1-9

The commenter mentions that the Draft EIR be revised to include additional scientific citations. The analysis included in the Draft EIR, including those of impacts and mitigation effectiveness, relies on several technical studies prepared by industry experts, as well as many references. All cited references are included in **Chapter 7: References** of the Draft EIR.

Comment C1-10

Air Quality: In Chapter 4 – Environmental Impact Analysis under Air Quality, please note that U.S. Environmental Protection Agency has proposed to reduce the National Ambient Air Quality Standards for Particulate Matter (PM2.5) to 9.0 to *[sic]* 10.0 µg/m3 (https://www.epa.gov/pm-pollution/proposed-decision-reconsideration-national-ambient-air-quality-standards-particulate).

We request that the DEIR/EIS be updated to include this information.

Response to Comment C1-10

The commenter notes that the United States Environmental Protection Agency (EPA) has proposed to reduce the National Ambient Air Quality Standards (NAAQS) for Particulate Matter (PM 2.5) to 9.0 to 10.0 µg/m3. The Draft EIR was evaluated against current adopted regulations and standards. Therefore, the Draft EIR was not analyzed against proposed standards.

Comment C1-11

Aesthetics, Glint, and Glare: The DEIR discusses the impacts of glare to "[p]otential viewers of the facility primarily include motorists on U.S. Route 95 and residents." "The solar PV panels would not create a substantial source of glare due to the use of anti-reflective coating on the panels and the elevation of potential receptors relative to the facility." Potential receptors appear to be limited to where people are likely to be on the ground near the Project. We found no analysis of impacts to wildlife from glare such as "lake effect" to wildlife species, especially birds (Koscuich et al. 2020). Please revise the DEIR/EIS to include this impact.

Response to Comment C1-11

The commenter requests an analysis of glint and glare from solar PV panels on wildlife species. The Project's potential impacts on glint and glare are provided on page 4.1-19 of **Section 4.1: Aesthetics** of the Draft EIR. As stated therein, the solar PV panels would not create a substantial source of glare due to the use of anti-reflective coating on the panels and the elevation of potential receptors relative to the facility. Impacts were determined to be less than significant. Please refer to Response to Comment B-5 regarding the potential impacts to wildlife from the "lake effect." Therefore, based on the analysis on glint and glare provided in the Draft EIR and Response to Comment B-5 regarding "lake effect," impacts would be less than significant.

Comment C1-12

Mitigation Measures: Section 4.3.8 describes the mitigation measures that would be implemented to minimize potential impacts to biological resources. Those that when implemented would likely result in minimizing direct mortality of tortoises include:

- BIO-1. A biological monitor shall be present prior to initiation of ground disturbing activities to demark limit of disturbance boundaries, conduct pre-construction sweeps, and inspect compliance with project protection measures.

- BIO-2. Desert riparian vegetation shall be avoided to the greatest extent possible within Vidal Wash and Drainage Systems 5 and 6 to preserve habitat for the sensitive species with potential to nest and forage in these areas.

- BIO-3. An environmental training program shall be developed and presented to all crew members prior to the beginning of all project construction.

- BIO-5. If a sensitive species is found, the species shall be relocated out of harm's way according to the capture/relocation plan. Any mortalities shall be reported to the agencies and County of San Bernardino. A final monitoring report will be submitted to CDFW [California Department of Fish and Wildlife] and County of San Bernardino. The annual report shall include a summary of pre-construction surveys, biological monitoring, avoidance measures implemented, and whether the avoidance measures were effective.

- BIO-8. Temporary and permanent impacts to all jurisdictional resources shall be compensated through a combination of habitat creation (i.e., establishment), enhancement, preservation, and/or and restoration at a minimum of a 1:1 ratio or as required by the permitting agencies. Any creation, enhancement, preservation, and/or restoration effort shall be implemented pursuant to a Habitat Restoration Plan, which shall include success criteria and monitoring specifications, and shall be approved by the permitting agencies and County of San Bernardino.

- Temporarily impacted drainage features shall be recontoured to pre-construction conditions. Temporary impacts shall be restored sufficient to compensate for the impact to the satisfaction of the permitting agencies (depending on the location of the impact). If restoration of temporary impact areas is not possible to the satisfaction of the appropriate agency, the temporary impact shall be considered a permanent impact and compensated accordingly.

The DEIR concludes, that "[w]ith the implementation of Mitigation Measures BIO-1 through BIO-11, the Project's impacts on biological resources would be reduced to less than significant.

These proposed mitigation measures are standard mitigation measures that have been implemented for numerous years. They focus on direct impacts to biological resources. They do not mitigate indirect or cumulative impacts or the temporal loss of the functions and values of the biological resources destroyed/degraded. For the Mojave desert tortoise, its ongoing decline since listing (USFWS 2015, 2016, 2018, 2019, 2020, 2022a, 2022b; Allison and McLuckie 2018) is attributed to the direct, indirect, and cumulative impacts of human actions (USFWS 2011). While mitigating many of the direct impacts of proposed projects to the tortoise has been the practice for more than thirty years, this mitigation has been unsuccessful in halting the decline in tortoise abundance and density for numerous reasons including failure to mitigate indirect and cumulative impacts to the tortoise.

By attaching Appendix A to this comment letter, we would like to enter into the record an accounting of the science-based, observed declines in tortoise populations, which are intended to inform and be included in the new analysis in the DEIR/EIS. We note that this same information was provided to the County on 4/30/2022 in scoping comments by the Council (Desert Tortoise Council 2022[3]), yet there is nothing in the DEIR to suggest that our scoping comments were received, and certainly no evidence the information informed the analysis and decisions in the DEIR. We contend that the DEIR is deficient in this and other regards given herein, and is further evidence why a more detailed analysis is required in the DEIR/EIS.

Footnote 3: https://www.dropbox.com/s/t5emgaizjb33nxl/Vidal%20Energy%20Project.4-30-2022.pdf?dl=0

Response to Comment C1-12

The commenter summarizes the mitigation measures presented in **Section 4.3: Biological Resources** of the Draft EIR that are aimed at minimizing tortoise mortality. The commenter suggests that these mitigation measures do not take into consideration direct or cumulative impacts. The commenter further provides information in an appendix to the comment letter that describes the decline in desert tortoise populations and indicates that the decrease in tortoise habitat and linkage areas between habitats is contributing to their decline. As stated on pages 4.3-10 and 4.3-11 of **Section 4.3: Biological Resources** and Appendix D of the Draft EIR, a literature review was completed to inform the reconnaissance-level survey and desert tortoise focused surveys. The literature review included the most recent records of the CNDDB managed by the CDFW, the USFWS database – Carlsbad office, the National Wetlands Inventory, the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Web Soil Survey, and the California Native Plant Society's Electronic Inventory (CNPSEI) of Rare and Endangered Vascular Plants of California. These databases contain records of reported occurrences of federally and State listed endangered or threatened species, proposed endangered or threatened species, California Species of Special Concern (SSC), or otherwise sensitive species or habitats that may occur within or in the immediate vicinity of the Project. The data provided within the comment letter's appendix utilizes data from 1994 through 2018. The literature review that informed the Biological Resources Report and Draft EIR took into consideration the current (at the time the surveys and literature review were conducted) population status of the desert tortoise and is reflected in the analysis provided in the Draft EIR. Additionally, protocol level surveys were conducted for the desert tortoise, and none were observed on-site. Nonetheless, as described in Response to Comment A-5, Mitigation Measure BIO-12, a Desert Tortoise-specific mitigation measure, has been added to require pre-construction surveys for desert tortoise no more than 30 days prior to construction activities. See also Responses to Comment A-14 and B-4. Regarding cumulative impacts, see Response to Comment B-6.

Regarding the scoping comment provided by the commenter, as stated on page 1-2 of **Chapter 1: Introduction** of the Draft EIR, three comment letters were received after the public review period, including the referenced letter from the Desert Tortoise Council. The letter received was included in Appendix A of the Draft EIR, and the information therein was taken into account during preparation of the Biological Resources Report (Appendix D of the Draft EIR) and **Section 4.3: Biological Resources** of the Draft EIR. The NOP comment letter is included as Letter C2 and is responded to below.

Comment C1-13

In Appendix D - Biological Resources Report of the DEIR, the document says the tortoise is "considered absent from the Project Area." However, we were unable to find in the DEIR a conclusion that the Project would have no impact on the tortoise. The Council contends that given the published scientific research/studies on the tortoise, the proposed Project will adversely impact the tortoise. For example, the tortoise likely uses the Project Area but may not be a permanent resident of the Project Site. Please see our comments under "Appendix D – Biological Resources."

We request that the DEIR/EIS be revised and analyze the indirect and cumulative impacts to the tortoise and the temporal loss of the functions and values of the biological resources destroyed/degraded from

implementation of the proposed Project and alternatives. A few of the indirect impacts that should be analyzed are mentioned below.

Response to Comment C1-13

The commenter indicates that they were unable to find a conclusion regarding impacts to desert tortoise in the Draft EIR. See Response to Comment A-5.

Comment C1-14

Indirect Impact – Heat Sink Effect: The CEQA document should include an analysis of the heat sink effect from solar energy plants and how this would impact the tortoise and other wildlife species near the Project. This analysis is needed because of the biodiversity crisis and because climate change is resulting in increasing high temperatures that now exceed the physiological limits of many organisms, and even widespread species are threatened with extinction (Smith et al. 2023).

Response to Comment C1-14

The commenter requests an analysis of heat sink effect from solar energy plants be conducted to determine the impacts this could have on desert tortoise. The heat sink effect is not required to be analyzed under CEQA. Therefore, no further response is required.

Comment C1-15

Indirect Impact – Road Effects: A few hundred workers would be employed during the construction of the proposed Project. We presume that workers would travel from Blythe, or farther away on a daily basis. This increased traffic on roads to the Project Site may increase the risk of death or injury to the Mojave desert tortoise and other wildlife species. All direct and indirect impacts from the road effect zone should be analyzed in the revised DEIR and fully mitigated. Exclusion fencing for tortoises and other wildlife species and other mitigation measures should be considered to determine the most effective measures to implement. In that respect, we enter into the public record Appendix B, which provides a wealth of information about impacts associated vehicles, which we expect to be included in the revised DEIR/EIS.

Response to Comment C1-15

The commenter indicates that the increased traffic from workers traveling to the Project Site will result in an increase in tortoise death or injury. As stated on page 4.9-7 of **Section 4.9: Transportation** of the Draft EIR, site access would be provided via two access roads on the northern and southern portions of the west side of the Project Site. While existing unofficial roads would be utilized to the greatest extent possible, potential new unpaved roads may need to be constructed off site to serve as access roads from the existing road network to the Project. The construction period is constrained to a year, and within that year, desert tortoise are typically only expected to be above ground and migrating from April through May and September through October. As required in Mitigation Measure BIO-3, an environmental training program shall be developed and presented to crew members prior to the beginning of Project construction. The environmental training program, which includes special status species avoidance, will make crew members aware that desert tortoise may be encountered in the vicinity of the Project Site, and that avoidance and minimization measures will be required to avoid and/or minimize impacts from the Project. Appendix B of Letter C1 lists a bibliography of road impacts in desert ecosystems but does not

raise any specific issues with respect to the content and adequacy of the Draft EIR. No further response is warranted.

Comment C1-16

Indirect Impact – Subsidized Predators of the Tortoise and Other Wildlife: Common ravens (Corvus corax) are known predators of the Mojave desert tortoise and their numbers have increased substantially because of human subsidies of food, water, and sites for nesting, roosting, and perching to hunt (Boarman 1993, 2003; Kristan and Boarman 2003). Appendix D of the DEIR indicated common ravens were "commonly observed or detected on [the Project] site."

The transmission line to the WAPA transmission system (i.e., the gen-tie line) would include construction and maintenance of towers or poles. We request these structures be the tubular design monopole with a steep-pointed apex and insulators on down-sloping cross arms. These are preferable to lattice towers, which should not be used, as such towers provide substrates or platforms for nest construction by common ravens. This human subsidy of ravens and resulting mortality of tortoises from an increased number of predators is an example of an indirect impact that the DEIR did not analyze. We request that this analysis be include in the revised DEIR/EIS.

For local impacts, the revised DEIR/EIS should include mitigation that reduces/eliminates human subsidies of food and water, and for the common raven, sites for nesting, roosting, and perching to address local impacts (footprint of the proposed Project). This includes buildings, fences, and other vertical structures associated with the Project site. For example, under Project Construction, "Construction water usage is anticipated to be approximately 240 acre-feet (AF) during the construction period of 14 months." We request that at no time should water applied from a human source be allowed to pond or form puddles on the ground or on roofs.

Mitigation measures should include science-based monitoring and adaptive management throughout all phases of the Project or alternative selected to collect data on the effectiveness of the mitigation and implement changes to reduce/eliminate predation on the tortoise if existing measures are not effective.

For regional and cumulative impacts, the County should require CORE to participate in an effort to mitigate regional and cumulative impacts. For example, in California, the Project Proponent should contribute to the National Fish and Wildlife Foundation's Raven Management Fund to help mitigation for regional and cumulative impacts.

Response to Comment C1-16

This comment asserts the Project could increase predation on tortoises, specifically by ravens. Please see Response to Comment B-10 that addresses the concern for the reduction of human subsidies of food and water onsite (see revised Mitigation Measure BIO-3) and the addition of a Raven Management Plan if desert tortoises are observed during pre-construction surveys (see Mitigation Measure BIO-12). The commenter further requests that the transmission line to the WAPA transmission system include towers or poles that are tubular monopole with a steep-pointed apex and insulators on down-sloping cross arms as opposed to lattice towers to minimize substrates or platforms for nest construction by ravens. The design of the towers and poles is up to the discretion of WAPA and would not be within the control or regulation of the County. The comment is noted.

Comment C1-17

Appendix D – Biological Resources

According to the report in Appendix D, protocol level surveys were conducted to look for presence/sign of tortoise and burrowing owl in 2020. Based on the results of these surveys, the report concludes that tortoises were not present in the Project Area during the survey. We note the surveys were conducted 2+ years ago and should probably be conducted again in spring 2023 (see below).

Although the tortoise sign detected during the protocol pre-project survey was minimal, tortoises have been documented using washes as movement paths or corridors (Hromada et al. 2020). In addition, the Project Site is about three miles from designated critical habitat for the tortoise and the Chemehuevi Tortoise Conservation Area (TCA). Tortoises have been documented making periodic forays of more than 7 miles at a time (Berry 1986a) and travel up to 0.6 mile a day (Berry 1986b). Home range size is significantly reduced during drought years (Duda et al. 1999). Because southern California has been experiencing a drought for the last several years, with above average rainfall occurring in 2022-2023, tortoise survey efforts in spring 2023 would likely yield a different result than those from 2020.

Because of the duration of the proposed Project (i.e., 35 years for operations and maintenance plus addition time for construction and decommissioning), the presence of multiple washes of various sizes running through the Project site, the proximity of critical habitat and a TCA, and the documented multi-mile movements by tortoises in one year, and their use of some washes as paths or natural corridors for tortoise movements (Hromada et a. 2020), there is a likelihood that tortoises may occur on the Project Site during one or more of its phases. We request that the revised DEIR/EIS discuss the actions that would be implemented when a tortoise is encountered during construction, operations, and maintenance, or decommissioning phases of the Project. Such interactions would likely require coordination/consultation with U.S. Fish and Wildlife Service (USFWS). In addition, we request that information on tortoises using washes as movement paths or corridors (Jennings et al. 2015, among others) be added to the section in Appendix D on Wildlife Movement Corridors and Jurisdictional Waters – State Permits.

Response to Comment C1-17

The commenter requests updated surveys for desert tortoise and burrowing owl be conducted and for a discussion of the actions that would be implemented when a tortoise is encountered on the Project site. See Response to Comment A-5. Additionally, the commenter notes that the desert tortoise utilizes washes, which would be considered critical habitat. As detailed in Mitigation Measure BIO-2, the desert riparian vegetation shall be avoided to the greatest extent possible within Drainage 4 and Drainage Systems 5 and 6, the largest washes on-site. It should be noted that the washes have been left open, and the desert tortoise would be allowed to move throughout the corridors, unhindered by fencing. No critical habitat would be impacted by Project activities.

Comment C1-18

We request that the USFWS be included in the agencies consulted regarding the proposed Project. The Army Corps of Engineers is mentioned regarding the process of determining if waters are jurisdictional under the Clean Water Act. The USFWS should be listed as an agency that is consulted to determine compliance with the Federal Endangered Species Act (FESA).

If the proposed Project is a connected action to a federal action, the threshold for compliance with the FESA changes from whether the Project is likely to result in take of the tortoise to whether the Project is likely to adversely affect the tortoise. This adverse impact may be from direct, indirect, or cumulative impacts.

Response to Comment C1-18

The commenter is requesting that USFWS be included as a list of agencies consulted. Mitigation Measure BIO-12 would require that the Applicant consult with CDFW and USFWS to determine compliance with State (CESA) and federal (FESA) law. The commenter also notes the thresholds for compliance with the FESA change based on whether or not the Project is a connected action to a federal action. As discussed in Response to Comment C1-6, a NEPA analysis by WAPA has already been initiated. Therefore, the 'take' of the Desert Tortoise, although unlikely to occur, is appropriately referenced in the Draft EIR.

Comment C1-19

The biological report said a tortoise burrow was found but the burrow "was filled with spider webs and appeared to have been in disuse for some time." As experienced tortoise biologists know, spiderwebs can be constructed in a tortoise burrow in less than 24 hours. Because tortoises construct and use numerous burrows, know their locations, and reuse them at various times during the year(s) when traversing through their annual year or multiple year home ranges (Harless et al. 2009, Rautenstrauch et al. 2002), a burrow may not have been used by a tortoise for several days, weeks, or months. Please clarify this information in the revised DEIR/EIS.

Response to Comment C1-19

The commenter suggests that the potential tortoise burrow discovered during the pre-construction surveys may be an active burrow. The qualified biologist conducting the desert tortoise survey determined the burrow was inactive not only due to the presence of spider webs but also due to the lack of sign surrounding the burrow. Furthermore, the burrow was not discovered on the Project site but rather within the 500-foot buffer surrounding the Project Site. As stated in Mitigation Measure BIO-12, pre-construction surveys for desert tortoise will be conducted prior to ground disturbing activities and in the event that the burrow is observed to be active, minimization and avoidance measures will be implemented. For more details, see Response to Comment A-5.

Comment C1-20

Sections 5.6 Special Status Species and 6.4 Sensitive Species – Desert Kit Fox: We request that the following information be added to this section. The desert kit fox (*Vulpes macrotis*) is protected under Title 14 of the California Code of Regulations §460. "Fisher, marten, river otter, desert kit fox and red fox may not be taken at any time."

Response to Comment C1-20

The comment requests the addition of protective language to Appendix D: Biological Resources Report under Section 5.6 Special Status Species and 6.4 Sensitive Species- Desert Kit Fox to include that fisher, marten, river otter, desert kit fox and red fox may not be taken at any time. Fisher, marten, river otter, and red fox are not expected to occur within the Project Site. Nonetheless, Mitigation Measure BIO-7, as detailed in the Draft EIR, reduces potential impacts to desert kit fox to less than significant by avoiding

active burrows. Additionally, Mitigation Measure BIO-5 requires any found sensitive species be relocated out of harm's way according to the capture/relocation plan. Therefore, no addition to the Biological Resources Report is necessary.

Comment C1-21

Page 61 says – "An environmental training program shall be developed and presented to all crew members prior to the beginning of all project construction. The training shall describe special-status wildlife species and sensitive habitats that could occur within project work areas, protection afforded to these species and habitats, and avoidance and minimization measures required to avoid and/or minimize impacts from the project." We recommend this training program be presented to crew employed during operation, maintenance, and decommissioning as take of special-status species could occur during these phases of the Project.

Response to Comment C1-21

The commenter requests that the environmental training program be presented to crews employed during operation, maintenance, and decommissioning phases of the Project. During operation and maintenance of the Project, little to no ground disturbance would occur. The only onsite maintenance that would be required would be servicing, repair, security, and panel washing, most of which would only occur at most on a bi-annual basis and would not require heavy machinery, and, therefore, the likelihood of species being impacted during this time is very low. The Project is expected to be operational for up to 35 years at which point technology may be upgraded or the site may be decommissioned. The Project would be required to decommission and restore the Project Site adhering to the requirements of the appropriate governing authorities and in accordance with all applicable federal, State, and County regulations, which would include a decommissioning plan or something similar. Decommissioning plans typically include monitoring efforts for resources including biological resources. The Project would be required to implement recommendations at the time of decommissioning. No further revisions to Mitigation Measure BIO-3 are necessary.

Comment C1-22

In addition, we request that an incentive program for protection of special-status wildlife species be developed and implemented that would be applied to all employees and contractors. This program would add to the eyes and ears of qualified biologists and monitors present during the Project. Incentive programs have been used in the past during some construction projects and have been highly effective at eliminating take, mortality, and injury. Incentives for finding special status species and informing the authorized biologist or monitors have included monetary rewards but other incentives could be offered (e.g., additional vacation hours, etc.).

Response to Comment C1-22

The comment suggests an incentive program be developed for the Project in which employees and contractors are rewarded for finding special status species. The environmental training program presented in Mitigation Measure BIO-3 will ensure that all workers are educated on the protection of special status species which, based on experiences from qualified biologists, has proven sufficient to ensure that species are appropriately reported if observed on site. Further, it is possible that an incentive program could create unintended consequences such as over reporting of species or distraction from work which could compromise safety.

Comment C1-23

We appreciate this opportunity to provide comments on this Project and trust they will help protect tortoises during any resulting authorized activities. Herein, we reiterate that the Desert Tortoise Council wants to be identified as an Affected Interest for this and all other projects funded, authorized, or carried out by the County that may affect species of desert tortoises, and that any subsequent environmental documentation for this Project is provided to us at the contact information listed above. Additionally, we ask that you respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this project.

Response to Comment C1-23

The commenter concludes their comment letter. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

[The remainder of the comment letter includes appendices and citations that are referenced throughout the comment letter.]

LETTER C2

Edward L. LaRue, Jr., M.S.
Ecosystems Advisory Committee, Chairperson
Desert Tortoise Council
4654 East Avenue S #257B
Palmdale, CA 93552
Letter dated April 30, 2022

[This letter was received in response to the Notice of Preparation and is referenced above in Comment C1-12.]

Comment C2-1

The Desert Tortoise Council (Council) is a non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of desert tortoise species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

We appreciate this opportunity to provide scoping comments on the above-referenced project, which will be considered in a forthcoming Draft Environmental Impact Report (DEIR). Given the location of the proposed project in habitats likely occupied by Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments include recommendations that will enhance protection of this species and its habitat during activities authorized by the County of San Bernardino (County), which we recommend be added to project terms and conditions in the authorizing document (e.g., right of way grant, etc.) as appropriate. Please accept, carefully review, and include in the relevant project file the Council's following comments and attachments for the proposed project.

Response to Comment C2-1

This comment introduces the organization and the remainder of the comment letter. This comment serves as an introduction to the remainder of the letter. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment C2-2

Project Description

"CDH Vidal LLC (CORE) plans to construct and operate the Vidal Energy Project (Project), a solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 160 megawatts (MW) of solar power and include up to 640 megawatt hours (MWh) of energy storage capacity rate in a battery energy storage system (BESS) on up to approximately 1,220 acres of land. The Project would be supported by the existing, adjacent Western Area Power Administration (WAPA) 161-kilovolt (kV) overhead transmission corridor. The Project would include the construction of one on-site substation facility, which would collect and convert the power generated on-site for transmission in an overhead or underground line to the WAPA transmission system and interconnection location. The Project's permanent facilities would include PV panels, BESS, fencing, service roads, a power collection system,

communication cables, overhead and underground transmission lines, electrical switchyards, a Project substation, and operations and maintenance (O&M) facilities.

"The Project Site is located approximately 2.5 miles southeast of unincorporated Vidal, just east of U.S. Route 95, north of the Riverside County boundary, and west of the Colorado River (see Figure 1). The Project Site encompasses 1,220 acres within 21 privately owned parcels (in their entirety and portions of) that are in the process of lease acquisition by CORE. The County's Zoning Map identifies the zoning of the Project Site as Resource Conservation (RC), which provides sites for open space and recreational activities, single-family homes on very large parcels, and similar and compatible uses. Commercial renewable energy facilities are an allowable use within the RC land use zoning district. Existing development and disturbed areas within the Project Site include rural access roads that include access to the transmission line, scattered abandoned rural residences, garage (storage) areas, and several WAPA towers. The wash areas are currently being used by off-highway vehicles. Primary access to the Project would be provided via U.S. Route 95 onto a Project-controlled, dirt access road on the west side of the Project Site."

Response to Comment C2-2

The commenter describes the Project. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment C2-3

Scoping Comments

First, we understand that comments were due on April 27, 2022 and these comments are three days late. This tardiness is due to the busy schedule of our volunteer staff responsible to write this letter, and because we only recently learned about this project from a third party, not from the County. In any case, we hope these comments are still received as County planners consider the environmental analysis of this project.

The purpose of scoping is to allow the public to participate in an "early and open process for determining the scope of issues to be addressed, and for identifying the significant issues related to a proposed action" (40 Code of Federal Regulations (CFR) 1501.7). The DEIR should discuss how this proposed project fits within the management structure of the current land management plan for the area [e.g., California Desert Conservation Area Plan (CDCA Plan) (BLM 1980 as amended]. It should provide maps of critical habitat for the Mojave desert tortoise (USFWS 1994a), Areas of Critical Environmental Concern (ACECs), and other areas identified for special management by BLM [e.g., National Conservation Lands (NCLs)]; U.S. Fish and Wildlife Service (USFWS) (e.g., linkage habitats between desert tortoise populations); Nevada Department of Wildlife (NDOW); other federal, state, and local agencies; and tribal lands.

Response to Comment C2-3

The commenter explains the reasoning for submitting their comments and describes the purpose of scoping comments. As stated in Response to Comment C1-12, as stated on page 1-2 of **Chapter 1: Introduction** of the Draft EIR, the letter from the Desert Tortoise Council received on the NOP was included in Appendix A of the Draft EIR.

Regarding the area plans, as stated on page 4.3-18 of **Section 4.3: Biological Resources**, the Project Site is within the planning area of several adopted local plans, including the West Mojave Plan, the County

Countywide Plan/Policy Plan, and the Desert Renewable Energy Conservation Plan (DRECP). However, the West Mojave Plan and the DRECP apply only to Bureau of Land Management (BLM)-administered lands and, therefore, do not apply to the Project. Additionally, as stated on page 6-6 of **Chapter 6: Other CEQA Considerations**, the Project is not located within an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan. Figure 11: USFWS Critical Habitat of the Biological Resources Report maps the Project's location and its proximity to the USFWS critical habitat for the desert tortoise, razorback sucker, and western yellow-billed cuckoo. Further information related to areas identified for special management by BLM and Nevada Department of Wildlife do not apply to the Project and, therefore, are not discussed in the Draft EIR.

Comment C2-4

Proposed Action and Alternatives Considered

We fully expect that the County will comply with all applicable statutes, regulations, Executive and Departmental Orders, and other requirements as they pertain to this project. The County should demonstrate in the DEIR that the proposed project meets all these requirements with respect to the tortoise, that:

- The proposed project will be in conformance with decisions in current land use plan(s), including the Desert Renewal Energy Conservation Plan (DRECP), even though that plan is applicable to public lands managed by the Bureau of Land Management (BLM);
- the proposed project will be consistent with priority conservation, restoration, and/or adaptation objectives in the best available landscape-scale information (e.g., for tortoise population connectivity, etc.);
- the applicant has coordinated with governments and agencies, including consideration of consistency with officially adopted plans and policies (e.g., recovery plans);
- the proposed project is in an area with low or comparatively low resource conflicts and where conflicts can be resolved (e.g., it is our understanding that portions of the project are in the designated tortoise Fenner Critical Habitat Unit, even though how much is not revealed in the Notice of Preparation (NOP);
- the proposed project will be located in, or adjacent to, previously contaminated or disturbed lands;
- the proposed project will minimize adverse impacts on important fish and wildlife habitats and migration/movement corridors including the desert tortoise;
- the proposed project will minimize impacts on lands with wilderness characteristics and the values associated with these lands;
- the proposed project will not adversely affect lands donated or acquired for conservation purposes, or mitigation lands identified in previously approved projects such as translocation areas for desert tortoise;

- significant cumulative impacts on resources of concern should not occur as a result of the proposed project (i.e., exceedance of an established threshold such population viability for the tortoise and connectivity of tortoise populations among recovery units); and,

- the County's analysis would use current data on the tortoise for the project area, population, pertinent Recovery Unit, and range wide, as population numbers and densities have substantially declined in most recovery units, so the County must use data/knowledge currently available on what is needed for habitat linkages for the tortoise (Allison and McLuckie 2018; USFWS 2021, 2022a, and 2022b).

Response to Comment C2-4

The commenter asserts that the Draft EIR should demonstrate that the proposed Project meets all applicable statutes, regulations, Executive and Departmental Orders, and other requirements as they pertain to the Project. Pages 4.3-2 through 4.3-9 of **Section 4.3: Biological Resources** of the Draft EIR describe the regulatory framework surrounding the Project Site and the proposed Project. As stated throughout **Section 4.3: Biological Resources**, the Project would be required to comply applicable regulations listed therein, and where necessary, the Project would implement mitigation measures (e.g., Mitigation Measures BIO-1 through BIO-12, which is included in the MMRP) to reduce impacts from the Project to less than significant levels. See Response to Comment A-5 regarding the results of the desert tortoise surveys and the addition of Mitigation Measure BIO-12.

Comment C2-5

Whereas we understand that the County serves as the Lead Agency and there is (apparently) no BLM involvement, we have serious concerns about BLM's commitment to manage effectively for the sustained yield of the tortoise, which also affects projects permitted by the County. These concerns include past actions regarding:

- Mitigation to improve conditions within the connectivity areas, and if these options do not exist, mitigation may be applied toward the nearest tortoise conservation area (e.g., an ACEC for which tortoise had been identified in the Relevant and Important Criteria or critical habitat); and

- a plan included in the DEIR that would effectively monitor desert tortoise impacts, including verification that desert tortoise connectivity corridors are functional. The required Federal Endangered Species Act (FESA) consultation should further define this monitoring plan.

Regarding the first concern, we believe that a multiagency approach is best to ensure the County is meeting its obligations, soliciting review and input from pertinent federal and state resource agencies, Tribal governments/agencies, and non-governmental organizations (NGOs). Mitigation of impacts should include, in priority order, avoidance, minimization and compensation for unavoidable impacts. Mitigation should at a minimum offset all direct, indirect, and cumulative impacts, especially given the status and trend of the tortoise (please see *Affected Environment - Status of the Populations of the Mojave Desert Tortoise* below). The County should ensure it is effectively implementing its section 10(A)(1b) conservation mandate under the FESA.

Mitigation should be applied only in areas where the lands are effectively managed for the benefit of the tortoise for both the short-term and long-term. As currently managed, BLM ACECs in Nevada and the California Desert Conservation Area are not meeting this criterion. Consequently, mitigation should be

implemented on lands with a durable conservation designation, or on privately owned lands with a conservation easement or other legal instrument that ensures conservation in perpetuity. Please see *Mitigation Plans* below for additional concerns and requested requirements.

Regarding the second concern, a monitoring plan should (1) be scientifically and statistically credible; (2) be implementable; and (3) require the project proponent to implement adaptive management to correct land management practices if the mitigation is not accomplishing its intended purposes.

Response to Comment C2-5

The commenter expresses concerns about BLM's commitment to manage tortoise protection and believes that a multi-agency approach is best, and that appropriate mitigation and a mitigation and monitoring program be adopted for the Project. See Response to Comment A-5 regarding the desert tortoise survey and Mitigation Measure BIO-12. As stated therein, if desert tortoise are observed within the Project Site during the pre-construction survey, the Applicant shall consult with CDFW and USFWS to determine compliance with the State (CESA) and federal (FESA) law.

The mitigation measures presented in the Draft EIR and Mitigation Measure BIO-12 would mitigate the Project's potentially significant impacts on biological resources to a less than significant level. Therefore, the Project would not result in significant and unavoidable impacts.

Comment C2-6

The Council expects that the County will describe the purpose and need for this project and develop and analyze other viable alternatives, such as rooftop solar, which we believe constitute "other reasonable courses of actions" (40 CFR 1508.25).

The Council supports alternatives to reduce the need for additional solar energy projects in relatively undisturbed habitats in the Mojave Desert. For example, the City of Los Angeles has implemented a rooftop solar Feed-in Tariff (FiT) program, the largest of its kind in America. The FiT program enables the owners of large buildings to install solar panels on their roofs, and sell the power they generate back to utilities for distribution into the power grid.

We request that County include an urban solar alternative. Under this alternative, owners of large buildings or parking areas would grant the project proponent permission to install solar panels on their roofs and cover parking areas, and sell the power they generate back to utilities for distribution into the power grid.

This approach puts the generation of electricity where the demand is greatest, in populated areas. It may also reduce transmission costs, greenhouse gas emissions from constructing energy projects far from the sources of power demand and materials for construction, the number of affected resources in the desert that must be analyzed under the California Environmental Quality Act (CEQA), and mitigation costs for direct, indirect, and cumulative impacts; monitoring and adaptive management costs; and habitat restoration costs following decommissioning. The DEIR should include an analysis of where the energy generated by this project would be sent and the needs for energy in those targeted areas that may be satisfied by urban solar. We request that at least one viable alternative be analyzed in the DEIR where electricity generation via solar energy is located much closer to the areas where the energy will be used, including generation in urban/suburban areas.

In addition, the County should include another viable alternative of locating solar projects on bladed or highly degraded tracts of land (e.g., abandoned agricultural fields). Such an alternative would not result in the destruction of desert habitats and mitigation for the lost functions and values of these habitats. These losses and mitigation are costly from an economic, environmental, and social perspective. We strongly oppose developing this project in critical habitat, which would set a precedent in San Bernardino County.

These two alternatives are important to consider to minimize or avoid the loss of vegetation that sequesters carbon. Studies around the world have shown that desert ecosystems can act as important carbon sinks. For example, the California deserts account for nearly 10 percent of the state's carbon sequestration; below ground in soil and root systems, and above ground in biomass. Protecting this biome can contribute to securing carbon stores in the state (MDLT 2021). Given the current climate change conditions, there is an increasing need for carbon sequestration. Because vascular plants are a primary user of carbon and the proposed Project would result in the loss/degradation of more than a thousand acres of plants and their ability to sequester carbon for decades or longer unless successful measures are implemented to restore the same biomass of native vegetation as it is being destroyed, it is imperative that the proposed Project minimize the loss of vegetation.

Response to Comment C2-6

The commenter notes that the Draft EIR should describe the purpose and need for the Project. While "purpose and need" is language specific to NEPA analysis, the Draft EIR discusses the Project's objectives on pages 2-8 and 2-9 of **Chapter 2: Project Description**. The commenter also requests alternatives, including rooftop/urban solar and alternative location. Regarding the referenced City of Los Angeles rooftop solar FiT program, these programs would be implemented at a County-wide level and would require an independent action separate from the Project. Therefore, no additional response is required.

As discussed in **Chapter 5: Alternatives Analysis,** the Draft EIR considered five alternatives: Distributed Generation Alternative, Fossil Fuel Power Plant Alternative, No Project Alternative, Reduced Acreage Alternative, and Offsite Alternative. The first two alternatives were initially considered but determine to be infeasible. Of the latter three alternatives, the Reduced Acreage Alternative was found to be the environmentally superior alternative, after the No Project Alternative. However, as stated on pages 5-19 and 5-20, the Reduced Acreage Alternative would not realize certain environmental benefits and would not meet the Project objectives to the same extent as the Project and would leave undeveloped underutilized land that has been planned for a solar energy facility, within an existing fenced area surrounded by similar renewable energy development. Additionally, the Reduced Acreage Alternative would contribute less than the Project in assisting California reach its renewable energy generation goals under SB 100. See Response to Comment C1-5 regarding the potential for other locations for alternatives. See Response to Comment C1-8 regarding sequestration.

Comment C2-7

The DEIR should consider the monitoring results of recently developed solar projects where soils have been bladed versus those facilities where the vegetation has been mowed or crushed and allowed to revegetate the area. In the latter case, it may be appropriate to allow tortoises to enter the facilities and re-establish residency (i.e., repatriate) under the solar panels as vegetation recolonizes the area. This could be an *option* for the currently described project alternative. It should be designed/implemented as a scientific experiment to add to the limited data on this approach to determine the extent of effects on

Mojave desert tortoise populations and movements/connectivity between populations, which is an important issue for this species, particularly over the long-term (see *Desert Tortoise Habitat Linkages/Connectivity among Populations and Recovery Units* below). Long-term monitoring for the life of the project would need to be included to accurately evaluate the effectiveness of this strategy.

Response to Comment C2-7

The commenter requests that the soils be bladed versus mowing or crushing vegetation to help with revegetation particularly in the connectivity areas. See page 4.3-15 of **Section 4.3: Biological Resources** of the Draft EIR and Response to Comment A-5 regarding the presence of desert tortoise on the Survey Area. See Response to Comment C1-17 regarding Mitigation Measure BIO-2, which would avoid the desert riparian vegetation to the greatest extent possible within Drainage 4 and Drainage Systems 5 and 6, the largest washes on-site.

Comment C2-8

Affected Environment

Status of the Population of the Mojave Desert Tortoise: The Council provides the following information for the proponent so that these or similar data may be included in the DEIR. The Council believes that BLM's failure to implement recovery actions for the Mojave desert tortoise as given in the recovery plan (both USFWS 1994b and 2011) has contributed to tortoise declines between 2004 and 2014 (Table 1; USFWS 2015). There are 17 populations of Mojave desert tortoise described below that occur in Critical Habitat Units (CHUs) and Tortoise Conservation Areas (TCAs); 14 are on lands managed by the BLM; 8 of these are in the California Desert Conservation Area (CDCA).

Table 1. Summary of 10-year trend data for 5 Recovery Units and 17 CHUs/TCAs for Mojave desert tortoise. The table includes the area of each Recovery Unit and CHU/TCA, percent of total habitat for each Recovery Unit and CHU/TCA, density (number of breeding adults/km^2 and standard errors = SE), and the percent change in population density between 2004 and 2014. Populations below the viable level of 3.9 breeding individuals/km^2 (10 breeding individuals per mi^2) (assumes a 1:1 sex ratio) and showing a decline from 2004 to 2014 are in red.

Recovery Unit: Designated Critical Habitat Unit/Tortoise Conservation Area	Surveyed area (km^2)	% of total habitat area in Recovery Unit & CHU/TCA	2014 density/km^2 (SE)	% 10-year change (2004–2014)
Western Mojave, CA	**6,294**	**24.51**	**2.8 (1.0)**	**–50.7 decline**
Fremont-Kramer	2,347	9.14	2.6 (1.0)	–50.6 decline
Ord-Rodman	852	3.32	3.6 (1.4)	–56.5 decline
Superior-Cronese	3,094	12.05	2.4 (0.9)	–61.5 decline
Colorado Desert, CA	**11,663**	**45.42**	**4.0 (1.4)**	**–36.25 decline**
Chocolate Mtn AGR, CA	713	2.78	7.2 (2.8)	–29.77 decline
Chuckwalla, CA	2,818	10.97	3.3 (1.3)	–37.43 decline
Chemehuevi, CA	3,763	14.65	2.8 (1.1)	–64.70 decline
Fenner, CA	1,782	6.94	4.8 (1.9)	–52.86 decline
Joshua Tree, CA	1,152	4.49	3.7 (1.5)	+178.62 increase
Pinto Mtn, CA	508	1.98	2.4 (1.0)	–60.30 decline
Piute Valley, NV	927	3.61	5.3 (2.1)	+162.36 increase
Northeastern Mojave	**4,160**	**16.2**	**4.5 (1.9)**	**+325.62 increase**
Beaver Dam Slope, NV, UT, AZ	750	2.92	6.2 (2.4)	+370.33 increase
Coyote Spring, NV	960	3.74	4.0 (1.6)	+ 265.06 increase
Gold Butte, NV & AZ	1,607	6.26	2.7 (1.0)	+ 384.37 increase
Mormon Mesa, NV	844	3.29	6.4 (2.5)	+ 217.80 increase
Eastern Mojave, NV & CA	**3,446**	**13.42**	**1.9 (0.7)**	**–67.26 decline**
El Dorado Valley, NV	999	3.89	1.5 (0.6)	–61.14 decline
Ivanpah Valley, CA	2,447	9.53	2.3 (0.9)	–56.05 decline
Upper Virgin River	**115**	**0.45**	**15.3 (6.0)**	**–26.57 decline**
Red Cliffs Desert	115	0.45	15.3 (6.0)	–26.57 decline
Range-wide Area of CHUs - TCAs/Range-wide Change in Population Status	**25,678**	**100.00**		**–32.18 decline**

Table 2. Estimated change in abundance of adult Mojave desert tortoises in each recovery unit between 2004 and 2014 (Allison and McLuckie 2018). Decreases in abundance are in red.

Recovery Unit	Modeled Habitat (km^2)	2004 Abundance	2014 Abundance	Change in Abundance	Percent Change in Abundance
Western Mojave	23,139	131,540	64,871	-66,668	-51%
Colorado Desert	18,024	103,675	66,097	-37,578	-36%
Northeastern Mojave	10,664	12,610	46,701	34,091	270%
Eastern Mojave	16,061	75,342	24,664	-50,679	-67%
Upper Virgin River	613	13,226	10,010	-3,216	-24%
Total	**68,501**	**336,393**	**212,343**	**-124,050**	**-37%**

Important points from these tables include the following:

Change in Status for the Mojave Desert Tortoise Range-wide

- Ten of 17 populations of the Mojave desert tortoise declined from 2004 to 2014.
- Eleven of 17 populations of the Mojave desert tortoise are no longer viable. These 11 populations represent 89.7 percent of the range-wide habitat in CHUs/TCAs.

Change is Status for the Eastern Mojave Recovery Unit – Nevada and California

- This recovery unit had a 67 percent decline in tortoise density from 2004 to 2014, the largest decline of the five recovery units for the tortoise.
- Tortoises in this recovery unit have densities that are below viability.

Change in Status for the El Dorado Valley and Ivanpah Valley Tortoise Populations in the Eastern Mojave Recovery Unit.

- Both populations in this recovery unit experienced declines in densities of 61 percent and 56 percent, respectively from 2004 to 2014. In addition, there was a 67 percent decline in tortoise abundance.
- Both populations have densities less than needed for population viability.

Change in Status for the Mojave Desert Tortoise in California

- Eight of 10 populations of the Mojave desert tortoise in California declined from 29 to 64 percent from 2004 to 2014 with implementation of tortoise conservation measures in the Northern and Eastern Colorado Desert (NECO), Northern and Eastern Mojave Desert (NEMO), and Western Mojave Desert (WEMO) Plans.
- Eight of 10 populations of the Mojave desert tortoise in California are no longer viable. These eight populations represent 87.45 percent of the habitat in California that is in CHU/TCAs.
- The two viable populations of the Mojave desert tortoise in California are declining. If their rates of decline from 2004 to 2014 continue, these two populations will no longer be viable in about 2020 and 2031.

Change in Status for the Mojave Desert Tortoise on BLM Land in California

- Eight of eight populations of Mojave desert tortoise on lands managed by the BLM in California declined from 2004 to 2014.
- Seven of eight populations of Mojave desert tortoise on lands managed by the BLM in California are no longer viable.

Change in Status for Mojave Desert Tortoise Populations in California that Are Moving toward Meeting Recovery Criteria

- The only population of Mojave desert tortoise in California that is not declining is on land managed by the National Park Service, which has increased 178 percent in 10 years.

The Endangered Mojave Desert Tortoise: The Council believes that the Mojave desert tortoise meets the definition of an endangered species. In the FESA, Congress defined an "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range…" In the California Endangered Species Act (CESA), the California legislature defined an "endangered species" as a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant, which is in serious

danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes (California Fish and Game Code § 2062). Because most of the populations of the Mojave desert tortoise were non-viable in 2014, most are declining, and the threats to the Mojave desert tortoise are numerous and have not been substantially reduced throughout the species' range, the Council believes the Mojave desert tortoise should be designated as an endangered species by the USFWS and California Department of Fish and Wildlife (CDFW).

Mojave desert tortoise is now on the list of the world's most endangered tortoises and freshwater turtles. It is in the top 50 species. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers Mojave desert tortoise to be Critically Endangered (Berry et al. 2021), which is a "species that possess an extremely high risk of extinction as a result of rapid population declines of 80 to more than 90 percent over the previous 10 years (or three generations), a current population size of fewer than 50 individuals, or other factors." It is one of three turtle and tortoise species in the United States to be critically endangered.

The summary of data above indicates that BLM's current management actions for the Mojave desert tortoise are inadequate to help recover the desert tortoise. BLM has been ineffective in halting population declines, which has resulted in non-viable populations. The Council believes that these management actions are inadequate in preventing the extirpation of the Mojave desert tortoise in California and Nevada.

Response to Comment C2-8

The commenter provides information summarizing the population declines in desert tortoise and the commenter's assertion that the desert tortoise meets the definition of an endangered species. See Response to Comment C1-12 regarding the data provided in the comment and the literature review conducted in preparation of the Draft EIR. The remainder of the comment regarding the BLM's management actions are noted; however, as this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment C2-9

Standardized Surveys – Desert Tortoise and Other Species

For the DEIR to fully analyze the effects and identify potentially significant impacts, the following surveys must be performed to determine the extent of rare plant and animal populations occurring within areas to be directly and indirectly impacted.

Prior to conducting surveys, a knowledgeable biologist should perform a records search of the California Natural Diversity Data Base (CNDDB; CDFW 2022) for rare plant and animal species reported from the region. The results of the CNDDB review would be reported in the DEIR with an indication of suitable and occupied habitats for all rare species reported from the region based on performing the species-specific surveys described below.

CDFG (2010) lists hundreds of plant communities occurring in California, including those that are considered Communities of Highest Inventory Priority, or "CHIPs." Biologists completing surveys on behalf of the project proponent should document such communities where they occur, and indicate how impacts to them will be minimized.

The project proponent should fund focused surveys for all rare plant and animal species reported from the vicinity of the proposed project. Results of the surveys will determine appropriate permits from CDFW and USFWS and associated avoidance, minimization, and mitigation measures. Focused plant and animal surveys should be conducted by knowledgeable biologists for respective taxa (e.g., rare plant surveys should be performed by botanists), and to assess the likelihood of occurrence for each rare species or resource (e.g., plant community) that has been reported from the immediate region. Focused plant surveys should occur only if there has been sufficient winter rainfall to promote germination of annual plants in the spring. Alternatively, the environmental documents may assess the likelihood of occurrence with a commitment by the proponents to perform subsequent focused plant surveys prior to ground disturbance, assuming conditions are favorable for germination.

Specialized Reptile Surveys: If there are any loose, shifting sands within/near the impact areas of the panels, along the gen-tie lines, or access routes, focused surveys for Mojave fringe-toed lizards (Uma scoparia) should be performed (University of California, Riverside 2005, 2007).

Migratory Birds/Eagles: The County should ensure that all actions it authorizes are implemented in compliance with the Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, and associated regulations, executive orders, and policies (e.g., Driscoll 2010, Pagel et al. 2010) to avoid mortality or injury to migratory birds and harassment of eagles.

Burrowing owl: Surveys for western burrowing owl (Athene cunicularia) should be performed implementing available methods (CDFG 2012). In addition to the project footprint, the protocol requires that peripheral transects be surveyed at 30-, 60-, 90-, 120-, and 150-meter intervals in all suitable habitats adjacent to the subject property to determine the potential indirect impacts of the project on this species. If burrowing owl sign is found, CDFG (2012) describes appropriate minimization and mitigation measures that would be required. If burrowing owl sign is found, the County and the project proponent should develop a science-based mitigation/monitoring/adaptive management plan with the USFWS and CDFW and ensure that this plan is implemented.

Mojave Desert Tortoise Surveys: Formal protocol surveys for Mojave desert tortoise (USFWS 2019) must be conducted at the proper times of year. Because USFWS (2009) and CDFW require only experienced biologists to perform protocol surveys, USFWS and CDFW biologists should review surveyors' credentials prior to initiating the surveys. Per this protocol, since the impact area is larger than 500 acres, the surveys must be performed in the time periods of April-May or September-October so that a statistical estimate of tortoise densities can be determined for the "action area" (please see below). If any tortoise sign is found, the project proponent should coordinate with USFWS and CDFW to determine whether "take" under FESA or CESA is likely to occur from implementation of the proposed project. If tortoises are present, the project proponent must obtain a Section 10(a)(1)(B) incidental take permit from the USFWS for activities on federal lands/actions and a section 2081 incidental take permit from the CDFW prior to conducting any ground disturbance.

We request that protocol-level surveys be performed at the area of the proposed project *and the alternatives that are being considered* in the DEIR. The results of these surveys should be published in the DEIR and should include density estimates for each alternative assessed.

To determine the full extent of impacts to tortoises and to facilitate compliance with the FESA and CESA, authorized biologist(s) must consult with the USFWS to determine the action area for this project. The USFWS defines "action area" the Code of Federal Regulations and their Desert Tortoise Field Manual

(USFWS 2009) as "all areas to be affected directly or indirectly by proposed development and not merely the immediate area involved in the action (50 CFR §402.02)."

Response to Comment C2-9

The commenter notes the need for several surveys to determine the extent of rare plant and animal populations occurring within the Project Site. See Response to Comment B-4 regarding Chambers Group's methodology in conducting and preparing the Biological Resources Report, provided in Appendix D of the Draft EIR. The results of the surveys are provided in Appendix D of the Draft EIR, and the results were summarized in **Section 4.3: Biological Resources** of the Draft EIR. See Response to Comment A-5 regarding pre-construction surveys for desert tortoise.

The commenter also requests that protocol-level surveys be performed for the alternatives considered. However, in accordance with CEQA Guidelines Section 15126.6(d) and as stated on page 5-3 of **Chapter 5: Alternatives Analysis**, each alternative is evaluated in sufficient detail to determine whether the overall environmental impacts would be less, similar, or greater than the corresponding impacts of the Project. The alternatives were evaluated in sufficient detail in **Chapter 5: Alternatives Analysis** of the Draft EIR. No further response is warranted.

Comment C2-10

The Council's persisting concern is that proponents of solar projects continue to identify a single site for development without any attempt to identify alternative sites. As such, when focused studies reveal significant accumulations of tortoises on the proponent's selected site, because there is only one site identified for the project, there is no opportunity to select an alternative site where impacts would be minimized.

Too often, a single impact footprint is identified, all surveys are restricted to that site, and no alternative sites are assessed, as required by NEPA. We are concerned that this project has already pre-determined the project footprint, and, that an undisclosed part of the footprint is designated tortoise critical habitat. As such, there are likely other areas of lower tortoise densities where impacts could be minimized. However, those areas would not be considered if the project footprint is predetermined before survey data are available. As such, we request that more than one site, preferably three, be identified and analyzed in the DEIR and that the alternative with the fewest impacts to tortoises be adopted for development.

If that is not feasible, we ask that the "action area" of the proposed project be several times larger than the project footprint so that those portions of the site with fewer tortoises could be selected. Proponents of the Gemini Solar Site in southern Nevada, for example, ignored these recommendations, and displaced more than 100 tortoises, when based on their presence-absence tortoise surveys, a shift of the site to the east would have avoided many of those animals.

It is current management to require desert tortoise protocol surveys (USFWS 2019) on a given site, but all too often translocation sites are ignored. We feel strongly that protocol surveys should occur on multiple or enlarged sites as given above and on all proposed translocation sites, assuming tortoises will be translocated.

Response to Comment C2-10

The commenter expresses concern that other solar projects do not analyze an alternative site where impacts would be minimized. As stated in Response to Comment A-5, the potential for occurrence of a desert tortoise is unlikely. Nonetheless, Mitigation Measure BIO-12 would require a pre-construction survey to be conducted by a qualified biologist no more than 30 days prior to construction activities. Additionally, the Draft EIR analyzes an Offsite Alternative (Alternative 3 of the Draft EIR) on pages 5-12 through 5-17 of **Chapter 5: Alternatives Analysis**. As discussed on page 5-15 of the Draft EIR, the Offsite Alternative would result in similar impacts to those of the Project, and impacts would be reduced to less than significant with the implementation of mitigation measures. Therefore, as stated on page 5-1 of the Draft EIR, pursuant to CEQA Guidelines Section 15126.6, an EIR need not consider an alternative whose effects cannot be reasonably ascertained and whose implementation is remote and speculative. In accordance with CEQA Guidelines Section 15126.6(d) and as stated on page 5-3 of **Chapter 5: Alternatives Analysis**, each alternative is evaluated in sufficient detail to determine whether the overall environmental impacts would be less, similar, or greater than the corresponding impacts of the Project. The alternatives were evaluated in sufficient detail in **Chapter 5: Alternatives Analysis** of the Draft EIR. Additionally, the 500-foot buffer utilized for the desert tortoise survey is in accordance with USFWS Mojave Desert Tortoise Pre-project Survey Protocol methodology. Therefore, an additional survey area outside of the 500-foot buffer is not required. No further response is warranted.

Comment C2-11

Mojave Desert Tortoise Impacts Analysis:

Analysis of Direct and Indirect Impacts: The alternatives analysis should include an economic analysis that provides the total cost of constructing the proposed project versus other alternatives, so the public can see how much the total cost of each alternative is. This would include an analysis of the costs of replacing all biological resources that would be lost from granting the proposed project including direct, indirect, and cumulative impacts. Please note, this analysis would include habitat replacement or restoration costs including the time needed to achieve full replacement, not just acquisition, management, monitoring, and adaptive management costs.

The DEIR should include a thorough analysis of the status and trend of the tortoise in the action area, tortoise conservation area(s), recovery unit(s), and range wide. Tied to this analysis should be a discussion of all likely sources of mortality for the tortoise and degradation and loss of habitat from implementation of solar development including construction, operation and maintenance, decommissioning, and restoration of the public lands. The DEIR should use the data from focused plant and wildlife surveys in their analysis of the direct, indirect, and cumulative impacts of the proposed project on the Mojave desert tortoise and its habitat, other listed species, and species of concern/special status species.

We expect that the DEIR will document how many acres would be impacted directly by solar arrays, access roads to the site, administration/maintenance buildings, parking areas, transmission towers, switchyards, laydown areas, internal access roads, access roads along gen-tie lines, a perimeter road, perimeter fencing, substations, battery storage (e.g., the project footprint). We also request that separate calculations document how many acres of desert tortoise habitats would be temporarily and permanently impacted both directly and indirectly (e.g., "road effect zone," etc.) by the proposed Project. As given below, these acreages should be based on field surveys for tortoises and not just on available models.

Response to Comment C2-11

The commenter also notes that the alternatives analysis should include an economic analysis that provides the cost of constructing the Project versus the alternatives. Under CEQA, the lead agency is not required to analyze an economic impact associated with a project in the EIR; as CEQA Guidelines Section 15131(a) states: "Economic or social effects of a project shall not be treated as significant effects on the environment." Moreover, CEQA allows economic analysis in the administrative record only if the basis for infeasibility, and thus rejection of a mitigation or alternative, is economic, as described in CEQA Guidelines Sections 15091(a)(3) and 15364.

The commenter also requests the Draft EIR include a thorough analysis of the status and trends of the desert tortoise, as well as a discussion of likely sources of mortality for the tortoise and degradation and loss of habitat from solar development. The commenter also requests that the Draft EIR analyze direct, indirect, and cumulative impacts the Project may have on the desert tortoise. See Response to Comment A-14, B-4, and B-6. The commenter's requests on the Project's impacts on the desert tortoise are fully analyzed in **Section 4.3: Biological Resources** of the Draft EIR. No further response is warranted.

Comment C2-12

Road Effect Zone: We request that the DEIR include information on the locations, sizes, and arrangements of roads to the proposed project and within it, who will have access to them, whether the access roads will be secured to prevent human access or vandalism, and if so, what methods would be used. The presence/use of roads even with low vehicle use has numerous adverse effects on the desert tortoise and its habitats that have been reported in the scientific literature. These include the deterioration/loss of wildlife habitat, hydrology, geomorphology, and air quality; increased competition and predation (including by humans); and the loss of naturalness or pristine qualities.

Vehicle use on new roads and increased vehicle use on existing roads equates to increased direct mortality and an increased road effect zone for desert tortoises. Road construction, use, and maintenance adversely affect wildlife through numerous mechanisms that can include mortality from vehicle collisions, and loss, fragmentation, and alteration of habitat (Nafus et al. 2013; von Seckendorff Hoff and Marlow 2002).

In von Seckendorff Hoff and Marlow (2002), they reported reductions in Mojave desert tortoise numbers and sign from infrequent use of roadways to major highways with heavy use. There was a linear relationship between traffic level and tortoise reduction. For two graded, unpaved roads, the reduction in tortoises and sign was evident 1.1 to 1.4 km (3,620 to 4,608 feet) from the road. Nafus et al. (2013) reported that roads may decrease tortoise populations via several possible mechanisms, including cumulative mortality from vehicle collisions and reduced population growth rates from the loss of larger reproductive animals. Other documented impacts from road construction, use, and maintenance include increases in roadkill of wildlife species as well as tortoises, creating or increasing food subsidies for common ravens, and contributing to increases in raven numbers and predation pressure on the desert tortoise.

Please include in the DEIR analyses, the five major categories of primary road effects to the tortoise and special status species: (1) wildlife mortality from collisions with vehicles; (2) hindrance/barrier to animal movements thereby reducing access to resources and mates; (3) degradation of habitat quality; (4) habitat loss caused by disturbance effects in the wider environment and from the physical occupation of land by the road; and (5) subdividing animal populations into smaller and more vulnerable fractions (Jaeger et al.

2005a, 2005b, Roedenbeck et al. 2007). These analyses should be at the population, recovery unit, and rangewide levels.

In summary, road establishment/increased use is often followed by various indirect impacts such as increased human access causing disturbance of species' behavior, increased predation, spread of invasive species that alters/degrades habitat, and vandalism and/or collection. The analysis of the impacts from road establishment and use should include cumulative effects to the tortoise with respect to nearby critical habitat and other TCAs, areas identified as important linkage habitat for connectivity between nearby critical habitat units/TCAs as these linkage areas serve as corridors for maintaining genetic and demographic connectivity between populations, recovery units, and rangewide (see *Desert Tortoise Habitat Linkages/Connectivity among Populations and Recovery Units* below). These and other indirect impacts to the Mojave desert tortoise should be analyzed in the DEIR from project construction, operations and maintenance, decommissioning, and habitat restoration.

Response to Comment C2-12

The comment provides information on road mortality to desert tortoise and requests that the Draft EIR include detailed information about roadways associated with the Project Site. See Response to Comment C1-15.

Comment C2-13

Desert Tortoise Habitat Linkages/Connectivity among Populations and Recovery Units: The DEIR should analyze how this proposed project will impact the movement of tortoises relative to linkage habitats/corridors. The DEIR should include an analysis of the minimum linkage design necessary for conservation and recovery of the desert tortoise (e.g., USFWS 2011, Averill-Murray et al. 2013, Hromada et al. 2020), and how the project, along with other existing projects, would impact the linkages between tortoise populations and all recovery units that are needed for survival and recovery. We strongly request that the environmental consequences section of the DEIR include a thorough analysis of this indirect effect (40 Code of Federal Regulations 1502.16) and appropriate mitigation to maintain the function of population connectivity for the Mojave desert tortoise and other wildlife species be identified. Similarly, please document how this project may impact proximate conservation areas, such as BLM-designated ACECs.

Response to Comment C2-13

The commenter requests that the Draft EIR include an analysis of Project impacts to tortoise linkage habitats/corridors. See Response to Comment C1-17.

Comment C2-14

Jurisdictional Waters in California: A jurisdictional waters analysis should be performed for all potential impacts to washes, streams, and drainages. This analysis should be reviewed by the CDFW as part of the permitting process and a section 1600 Streambed Alteration Agreement acquired, if deemed necessary by CDFW.

Response to Comment C2-14

The comment notes that a jurisdictional waters analysis should be performed and for any potential impacts to washes, streams, and drainages. As described in pages 4.3-11 and 4.3-12 of **Section 4.3: Biological Resources** of the Draft EIR, an assessment of jurisdictional waters regulated by the United States Army Corps of Engineers (USACE), Regional Water Quality Control Board (RWQCB), and CDFW was conducted to determine the potential for jurisdictional waters to be found within the Project Site. See Response to Comment A-15.

Comment C2-15

Mitigation Plans

The DEIR should include effective mitigation for all direct, indirect, and cumulative effects to the tortoise and its habitats. The mitigation should use the best available science with a commitment to implement the mitigation commensurate to impacts to the tortoise and its habitats. Mitigation should include a fully-developed desert tortoise translocation plan, including protection of tortoise translocation area(s) from future development and human disturbance in perpetuity; raven management plan; non-native plant species management plan; fire prevention plan; compensation plan for the degradation and loss of tortoise habitat that includes protection of the acquired, improved, and restored habitat in perpetuity for the tortoise from future development and human use; and habitat restoration plan when the lease is terminated and the proposed project is decommissioned.

All plans should be provided in the DEIR so the public and the decisionmaker can determine their adequacy (i.e., whether they are scientifically rigorous and would be effective in mitigating for the displacement and loss of tortoises and degradation and loss of tortoise habitat from project implementation). Too often, such plans are alluded to in the draft environmental document and promised later, which does not allow the reviewers to assess their adequacy, which is unacceptable. If not available as appendices in draft documents, all indicated plans must be published in the final environmental documents. Their inclusion is necessary to determine their adequacy for mitigating direct, indirect, and cumulative impacts, and monitoring for effectiveness and adaptive management regarding the desert tortoise. If these plans are not provided, it is not possible for the County, other decisionmakers, and the interested public to determine the environmental consequences of the project to the tortoise.

These mitigation plans should include an implementation schedule that is tied to key actions of the construction, operation, maintenance, decommissioning, and restoration phases of the project so that mitigation occurs concurrently with or in advance of the impacts. The plans should specify success criteria, include an effectiveness monitoring plan to collect data to determine whether success criteria have been met, and identify/implement actions that would be required if the mitigation measures do not meet the success criteria.

Response to Comment C2-15

The commenter suggests the Draft EIR should include mitigation for all direct, indirect, and cumulative impacts to tortoise and tortoise habitats. See Response to Comment A-5.

The commenter also requests that plans be provided in the Draft EIR. **Chapter 2: Project Description** of the Draft EIR provides a detailed analysis of the Project, including the Project's location, site characteristics, and Project facilities. The figures and information provided in the Draft EIR, particularly

the maps and details provided in Appendix D: Biological Resources Report of the Draft EIR, provide the information necessary to analyze the Project's impacts on direct, indirect, and cumulative impacts. See also Response to Comment A-14, B-4, and B-6.

Comment C2-16

Translocation Plan - Translocated Tortoises & Translocation Sites: How many tortoises will be displaced by the proposed project? How long will translocated tortoises be monitored? Will the monitoring report show how many of those tortoises lived and died after translocation and over time? Are there any degraded habitats or barren areas that may impair success of the translocation? Are there incompatible human uses in the new translocation area that need to be eliminated or managed to protect newly-translocated tortoises? Were those translocation areas sufficiently isolated that displaced tortoises were protected by existing or enhanced land management? How will the proponent minimize predation of translocated tortoises and avoid adverse climatic conditions, such as low winter rainfall conditions that may exacerbate translocation success? Were tortoises translocated to a site where they would be protected from threats (e.g., off-highway vehicles, future development, etc.)? These questions and others should be answered in DEIR.

The project proponent should implement the USFWS' Translocation Guidance (USFWS 2020) and coordinate translocation with CDFW and USFWS. In addition, the proponent's project-specific translocation plan should be based on current data and developed using lessons learned from earlier translocation efforts (e.g., increased predation, drought). (see *Desert Tortoise Translocation Bibliography Of Peer-Reviewed Publications*[1] in the footnote).

The Translocation Plan should include implementation of a science-based monitoring plan approved by the Desert Tortoise Recovery Office that will accurately access these and other issues to minimize losses of translocated tortoises and impacts to their habitat. For example, the health of tortoises may be jeopardized if they are translocated during drought conditions, which is known to undermine translocation successes (Esque et al. 2010). If drought conditions are present at the time of project development, we request that the proponent confer with the USFWS/CDFW immediately prior to translocating tortoises and seek input on ways to avoid loss of tortoises due to stressors associated with drought. One viable alternative if such adverse conditions exist is to postpone site development until which time conditions are favorable to enhance translocation success.

Moving tortoises from harm's way, the focus of the Translocation Guidance, does not guarantee their survival and persistence at the translocation site, especially if it will be subject to increased human use or development. In addition to the Translocation Guidance and because translocation sites are mitigation for the displacement of tortoises and loss of habitat, these sites should be managed for the benefit of the tortoise in perpetuity. Consequently, a conservation easement or other durable legal designation should be placed on the translocation sites. The project proponent should fully fund management of the site to enhance it for the benefit of the tortoise in perpetuity.

Footnote 1: https://www.fws.gov/nevada/desert_tortoise/documents/reports/2017/peer-reviewed_translocation_bibliography.pdf

Response to Comment C2-16

The commenter requests information on the translocation of desert tortoise and recommends a translocation plan be implemented. As stated on page 4.3-15 of **Section 4.3: Biological Resources** of the

Draft EIR, no live desert tortoises, active desert tortoise burrows, or other desert tortoise sign were identified in the Survey Area during the desert tortoise surveys. As recommended by the CDFW, Mitigation Measure BIO-12 shall require a pre-construction survey to be conducted no more than 30 days prior to construction activities. In the unlikely event that desert tortoise are observed on the Project Site during pre-construction surveys, the Applicant shall consult with CDFW and USFWS to determine compliance with the State (CEQA) and federal (FESA) law. See Response to Comment A-5 regarding the desert tortoise.

Comment C2-17

Tortoise Predators and a Predator Management Plan: Common ravens are known predators of the Mojave desert tortoise and their numbers have increased substantially because of human subsidies of food, water, and sites for nesting, roosting, and perching to hunt (Boarman 2003). Coyotes and badgers are also predators of tortoises. Because ravens can fly at least 30 miles in search of food and water daily (Boarman et al. 2006) and coyotes can travel an average of 7.5 miles or more daily (Servin et al. 2003), this analysis should extend out at least 30 miles from the proposed project site.

The DEIR should analyze if this new use would result in an increase in common ravens and other predators of the desert tortoise in the action area. During construction, operations and maintenance, decommissioning, and restoration phases of the proposed project, the County should require science-based management of common raven, coyote, and badger predation on tortoises in the action area. This would include the translocation sites.

For local impacts, the Predator Management Plan should include reducing/eliminating human subsidies of food and water, and for the common raven, sites for nesting, roosting, and perching to address local impacts (footprint of the proposed project). This includes buildings, fences, and other vertical structures associated with the project site. In addition, the Predator Management Plan should include provisions that eliminate the pooling of water on the ground or on roofs. The Predator Management Plan should include science-based monitoring and adaptive management throughout all phases of the project to collect data on the effectiveness of the Plan's implementation and implement changes to reduce/eliminate predation on the tortoise if existing measures are not effective.

For regional and cumulative impacts, the County should require the project proponent to participate in efforts to address regional and cumulative impacts. For example, the project proponent should be required to contribute to the National Fish and Wildlife Foundation's Raven Management Fund to help mitigation for regional and cumulative impacts. Unfortunately, this Fund that was established in 2010 has not revised its per acre payment fees to reflect increased labor and supply costs during the past decade to provide for effective implementation. The National Fish and Wildlife Foundation should revise the per acre fee.

We request that for any of the transmission options, the project use infrastructure (particularly towers) that prevent raven nesting and perching for hunting. For example, for gen-ties/transmission lines the tubular design pole with a steep-pointed apex and insulators on down-sloping cross arms is preferable to lattice towers, which should not be used. New fencing should not provide resources for ravens, like new perching and nesting sites.

According to Appendix A of Common Raven Predation on the Desert Tortoise (USFWS 2010), "The BLM's biological assessments and the USFWS' biological opinions for the California Desert Conservation Area (CDCA) plan amendments reiterate the need to address the common raven and its potential impacts on desert tortoise populations." Please ensure that all standard measures to mitigate the local, regional, and

cumulative impacts of raven predation on the tortoise are included in this DEIR, including developing a raven management plan for this specific project. USFWS (2010) provides a template for a project-specific management plan for common ravens. This template includes sections on construction, operation, maintenance, and decommissioning (including restoration) with monitoring and adaptive management during each project phase (USFWS 2010).

Response to Comment C2-17

The comment requests that a predator management plan be implemented specifically to reduce predation of desert tortoise by ravens. As described in Mitigation Measure BIO-12, a Raven Management Plan shall be implemented to offset potential predatorial impacts from ravens, which are known predators of desert tortoises, and to decrease potential threats to desert tortoise recovery. See Response to Comment A-5 and B-10.

Comment C2-18

Fire Prevention/Management Plans: The proposed project could include numerous infrastructure components that have been known to cause fires. Lithium-ion batteries at the project site have the potential to explode and cause fires and are not compatible with using water for fighting fires. Photovoltaic panel malfunctions have caused vegetation to burn onsite. We request that the DEIR include a Fire Prevention Plan in addition to a Fire Management Plan specifically targeting methods to deal with explosions/fires produced by these batteries/panels as well as other sources of fuel and explosives on the project site.

Response to Comment C2-18

The commenter requests the Draft EIR include a Fire Prevention Plan in addition to a Fire Management Plan. As stated on page 4.7-14 of **Section 4.7: Hazards and Hazardous Materials** of the Draft EIR, the Project would be required to comply with the San Bernardino County Fire Protection District (SBCFPD) Code, 2019 California Fire Code (CFC), National Fire Code, and International Fire Code. These regulations implement state-of-the-art development and performance standards that ensure the safe installation, operations, and maintenance of utility scale battery energy storage systems (BESS). The Project would also implement fire and safety features at the Module Level, BESS Container Level, Site Level, and Operational Level. Compliance with the SBCFPD Fire Code, 2019 CFC, National Fire Code, and International Fire Code, as well as inclusion of the Project's fire and safety features, would reduce the potential for a wildland fire event to less than significant levels.

Comment C2-19

Habitat Compensation Plan: When the project proponent seeks an incidental take permit from the CDFW, because their project would result in take of a listed species under CESA, compensatory mitigation would be required. The mitigation lands must be occupied by the species and secured and managed in perpetuity for the listed species. Hence, the DEIR should include a Habitat Compensation Plan for the loss/degradation of habitat. This plan should calculate how it will fully mitigate for the impacts of the proposed project including direct, indirect, cumulative, and temporal impacts.]

Response to Comment C2-19

The commenter requests that a Habitat Compensation Plan be developed. A Habitat Compensation Plan is not currently required as no take has occurred. If a take were to potentially occur, as stated on page 4.3-5 of **Section 4.3: Biological Resources** of the Draft EIR, consultation with CDFW is required for projects with the potential to affect listed or candidate species. CESA prohibits the "take" of these species unless an Incidental Take Permit (ITP) is granted. Under CFGC Section 2081, CDFW can authorize the "take" of a listed species if the "take" of the listed species is incidental to carrying out an otherwise lawful project that has been approved under CEQA. Section 2080.1 allows for "take' once an applicant obtains a federal ITP which can be approved (Consistency Determination Letter) within 30 days by the CDFW Director. If the federal Incidental Take Statement is determined not to be consistent with CESA, then application for a State ITP (Section 2081) is required. See Response to Comment B-8 regarding impacts to suitable habitat and Mitigation Measure BIO-8 as it relates to compensation for habitat restoration.

Comment C2-20

Climate Change and Non-native Plants

Climate Change: We request that the DEIR address the effects of the proposed action on climate change warming and the effects that climate change may have on the proposed action. For the latter, we recommend including: an analysis of habitats within the project area that may provide refugia for tortoise populations; an analysis of how the proposed action would contribute to the spread and proliferation of nonnative invasive plant species; how this spread/proliferation would affect the desert tortoise and its habitats (including the frequency and size of human-caused fires); and how the proposed action may affect the likelihood of human-caused fires. We strongly urge that the County require the project proponent to develop and implement a management and monitoring plan using this analysis and other relevant data that would reduce the transport to and spread of nonnative seeds and other plant propagules within the project area and eliminate/reduce the likelihood of human-caused fires. The plan should integrate vegetation management with fire prevention and fire response.

Response to Comment C2-20

The commenter requests the Draft EIR address the effects of the Project on climate change. See Response to Comment C1-8.

Comment C2-21

Impacts from Proliferation of Nonnative Plant Species and Management Plan: The DEIR should include an analysis of how the proposed project would contribute to the spread and proliferation of non-native invasive plant species; how this spread/proliferation would affect the desert tortoise and its habitats (including the frequency and size of human-caused fires); and how the proposed project may affect the frequency, intensity, and size of human-caused and naturally occurring fires. For reasons given in the previous paragraph, we strongly urge that the County require the project proponent to develop and implement a management and monitoring plan for nonnative plant species. The plan should integrate management/enhancement of native vegetation with fire prevention and fire response to wildfires.

Response to Comment C2-21

The commenter requests the Draft EIR address potential impacts the Project may have on the proliferation of non-native species. As stated on page 4.3-18 of **Section 4.3: Biological Resources** of the Draft EIR, the Project would be consistent with Development Code Section 88.01.060 to conserve specified desert plant species. Additionally, Mitigation Measure BIO-3 would implement an environmental training program which would include training for protection afforded to special-status wildlife species and sensitive habitats, as well as avoiding and/or minimizing impacts from the project.

Comment C2-22

Hydrology and Water Quality

Regarding water quality of surface and ground water, the DEIR should include an analysis of the impacts of water acquisition, use, and discharge for panel washing, potable uses, and any other uses associated with this proposed project, and cumulative impacts from water use and discharge on native perennial shrubs and annual vegetation used for forage by the Mojave desert tortoise, including downstream and downstream impacts. The DEIR should analyze how much water is proposed to be used during construction and operation; how any grading, placement, and/or use of any project facilities will impact downstream/downslope flows that are reduced, altered, eliminated, or enhanced. This analysis should include impacts to native and non-native vegetation and habitats for wildlife species including the Mojave desert tortoise, for which washes are of particular importance for feeding, shelter, and movements.

Therefore, we request that the DEIR include an analysis of how water use during construction, operations and maintenance, decommissioning, and habitat restoration will impact the levels of ground water in the region. These levels may then impact surface and near-surface flows at springs, seeps, wetlands, pools, and groundwater-dependent vegetation in the basin. The analyses of water quality and quantity of surface and ground water should include appropriate measures to ensure that these impacts are fully mitigated, preferably beginning with avoidance and continuing through CEQ's other forms of mitigation (40 CFR 1508.20).

Response to Comment C2-22

The commenter requests an analysis of the impacts of water acquisition, use, and discharge. The County requires a Drainage Study as part of the Conditional Use Permit application process, as well as a Stormwater Pollution Prevention Plan (SWPPP) at the grading permit stage. Additionally, pages 6-11 through 6-13 of **Chapter 6: Other CEQA Considerations** address the Project's impacts to hydrology and water quality. As analyzed therein, the Project would not violate any water quality standards or waste discharge requirements, and impacts would be less than significant. Pages 6-18 through 6-19 address the Project's impacts on water use and discharge. As discussed therein, the Project would have sufficient water supplies available to serve the Project, and impacts would be less than significant. The Project would also not conflict with or obstruct implementation of the County's Desert Groundwater Management Ordinance or a future water quality control plan or sustainable groundwater management plan. The Project would also produce minimal wastewater as a result of panel washing for Project maintenance. Therefore, the Project would have a less than significant impact on hydrology, water quality, water, and groundwater.

Comment C2-23

Cumulative Effects

With regards to cumulative effects, the DEIR should list and analyze all project impacts within the region including future state, federal, and private actions affecting listed species on state, federal, and private lands. The Council asks that the relationship between this proposed project and the DRECP (BLM 2015) be analyzed, as the project area does not appear to be in a designated Development Focused Area (DFA) identified in the final Record of Decision by the BLM for the DRECP (BLM 2016). We also expect that the environmental documents will provide a detailed analysis of the "heat sink" effects of solar development on adjacent desert areas and particularly Mojave desert tortoise in addition to climate change.

Response to Comment C2-23

See Response to Comment B-6 regarding cumulative impacts. See Response to Comment C1-14 regarding the heat sink effect.

Comment C2-24

We appreciate this opportunity to provide scoping comments on this project and trust they will help protect tortoises during any resulting authorized activities. Herein, we reiterate that the Desert Tortoise Council wants to be identified as an Affected Interest for this and all other projects funded, authorized, or carried out by the County that may affect species of desert tortoises, and that any subsequent environmental documentation for this project is provided to us at the contact information listed above. Additionally, we ask that you respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this project.

Response to Comment C2-24

The commenter concludes their comment letter. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

[The remainder of the letter includes citations that are referenced throughout the comment letter.]

CHAPTER 3 – CORRECTIONS AND ADDITIONS TO THE DRAFT EIR

In accordance with the CEQA Guidelines Section 15132(a), this section of the Final EIR provides changes to the Draft EIR that have been made to clarify, correct, or supplement the information provided in that document. These changes and additions are to respond to comments received on the Draft EIR during the public review period. The changes described in this Chapter do not add significant new information to the Draft EIR that would require recirculation of the Draft EIR. More specifically, CEQA requires recirculation of a Draft EIR only when "significant new information" is added to a Draft EIR after public notice of the availability of the Draft EIR has occurred (refer to California Public Resources Code [PRC] Section 21092.1 and CEQA Guidelines Section 15088.5), but before the EIR is certified. CEQA Guidelines Section 15088.5 specifically states:

> *New information added to an EIR is not 'significant' unless the EIR is changed in a way 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) that the project's proponents have declined to implement. 'Significant new information' requiring recirculation includes, for example, a disclosure showing that:*
>
> - *A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.*
> - *A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted to reduce the impact to a level of insignificance.*
> - *A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.*
> - *The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.*

CEQA Guidelines Section 15088.5 also provides that "[re]circulation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR... A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record."

As demonstrated in this Final EIR, the changes presented in this Chapter do not constitute new significant information warranting recirculation of the Draft EIR as set forth in CEQA Guidelines Section 15088.5. Rather, the Draft EIR is comprehensive and has been prepared in accordance with CEQA.

Changes to the Draft EIR are indicated below under the respective EIR section heading, page number, and paragraph. Paragraph reference is to the first full paragraph on the page. Deletions are shown with ~~strikethrough~~ and additions are shown with <u>double underline</u>.

3.1 EXECUTIVE SUMMARY

1. Page ES-5, the third row under Biological Resources, the third column is revised as follows:

   Mitigation Measure BIO-2
   Mitigation Measure BIO-3
   Mitigation Measure BIO-4
   Mitigation Measure BIO-5
   Mitigation Measure BIO-6
   Mitigation Measure BIO-7
   Mitigation Measure BIO-12

2. Page ES-6, the first row, the third column is revised as follows:

   Mitigation Measure BIO-3
   Mitigation Measure BIO-4
   Mitigation Measure BIO-5
   Mitigation Measure BIO-6
   Mitigation Measure BIO-7
   Mitigation Measure BIO-12

3.2 SECTION 4.3: BIOLOGICAL RESOURCES

1. Page 4.3-17, the first paragraph under Threshold (d) is revised as follows:

   As mentioned in threshold a) above,… To avoid impacts during construction M**itigation Measures BIO-3, BIO-5, BIO-6, ~~and~~ BIO-7, and BIO-12** would be implemented.

2. Page 4.3-18, the first paragraph is revised as follows:

   With implementation of **Mitigation Measures BIO-2** through **BIO-7 and BIO-12**, impacts to the movement of wildlife species or the use of native wildlife nursery sites would be reduced to less than significant.

3. Page 4.3-18, the second paragraph under Threshold (e) is revised as follows:

   With implementation of **Mitigation Measures BIO-1** through **BIO-7 and BIO-12**, the Project would be consistent with the Renewable Energy and Conservation Element goals and policies to collaborate with appropriate federal and State agencies to facilitate mitigation/habitat conservation offsets on public lands where suitable habitat is available because the Project would not interfere with the County's programs to...

4. Page 4.3-18, the third paragraph under Threshold (e) is revised as follows:

   With implementation of **Mitigation Measures BIO-1** through **BIO-7 and BIO-12**, the Project would be consistent with Development Code Section 88.01.060 to conserve specified desert plant species as the Project would not impact special-status plants.

5. Page 4.3-19, the first paragraph is revised as follows:

   With implementation of **Mitigation Measures BIO-1** through **BIO-7 and BIO-12**, impacts would be reduced to less than significant.

6. Pages 4.3-19 and 4.3-20, Mitigation Measure BIO-3 is revised as follows:

   Mitigation Measure BIO-3: An environmental training program shall be developed and presented to all crew members prior to the beginning of all project construction. The training shall describe special-status wildlife species and sensitive habitats that could occur within project work areas, protection afforded to these species and habitats, and avoidance and minimization measures required to avoid and/or minimize impacts from the project. The training shall include a discussion on the reduction of trash and the elimination any food and standing water originating from a human source that may attract wildlife, including ravens, to the site. The training program will be approved by a qualified biologist. Records of training will be kept on-site.

7. Page 4.3-20, Mitigation Measure BIO-4 is revised as follows:

   Mitigation Measure BIO-4: Vegetation trimming/crushing shall take place outside the general bird breeding season (February 15 to September 15), to the maximum extent practical. ~~If this is not possible,~~ Regardless of the time of year, prior to ground-disturbing activities, a qualified biologist shall conduct a nesting bird survey to comply with CDFW Code 3503 and 3503.5 and the Migratory Bird Treaty Act. The survey shall occur no more than ~~30~~ three (3) days prior to initiation of proposed project activities~~, and any~~ and shall include any potential nesting habitat (including trees, shrubs, the ground, or nearby structures). Any occupied passerine and/or raptor nests occurring within ~~or adjacent to~~ the proposed project area or the Project's zone of influence (generally 100-300 feet) shall be delineated and a no-disturbance buffer zone (as determined by the avian biologist) shall be established and maintained during Project activities. Additional follow-up surveys may be required by the resource agencies and the County of San Bernardino. ~~If an active nest is identified, an avoidance buffer zone around occupied nests (as determined by the avian biologist) shall be maintained during physical ground-disturbing activities~~. The buffer zone shall be sufficient in size to prevent impacts to the nest. A qualified biologist shall monitor active nests to determine whether construction activities are disturbing nesting birds or nestlings. If a nest shows signs of disturbance as determined by a qualified biologist, adaptive management methods may be used to ensure that the buffer distances are effective and no nests are disturbed. Once nesting has ceased and the fledglings are no longer using the nest area as confirmed by a qualified biologist, the buffer may be removed. A nesting bird survey report shall be provided to the County of San Bernardino and CDFW. If an active nest is encountered during construction, construction shall stop immediately until a qualified biologist can determine the status of the nest, avoidance buffer and when work can proceed without risking violation to State or federal laws.

8. Page 4.3-20, Mitigation Measures BIO-6 and BIO-7 are revised as follows:

   Mitigation Measure BIO-6: A Burrowing Owl Mitigation and Monitoring Plan shall be developed and submitted to CDFW for review 60 days prior to the start of ground disturbing activities. No less than 14 days ~~P~~prior to ~~construction~~ any ground disturbance activities, a burrowing owl (*Athene cunicularia*) Take Avoidance Survey shall be conducted by a qualified biologist in accordance with the California Department of Fish and Wildlife 2012 *Staff Report on Burrowing Owl Mitigation*. ~~The survey shall be conducted no less than 14 days prior to initiating ground~~

~~disturbance activities.~~ If burrowing owls are determined to be present where Project activities will occur, ~~minimization and avoidance measures shall be required including but not limited to a final survey within 24 hours prior to ground disturbance.~~ site-specific non-disturbance buffer zones shall be established by the qualified biologist based on monitoring and assessments of the Project's effects on the burrowing owls. If it is not possible to avoid active burrows during the nonbreeding season, passive relocation shall be implemented once approved through coordination with CDFW.

Mitigation Measure BIO-7: A Desert Kit Fox Monitoring and Mitigation Plan shall be prepared and submitted to CDFW for review 60 days prior to the start of ground disturbing activities. Prior to commencing ground-disturbing activities, a qualified biologist shall conduct a focused survey for desert kit fox (*Vulpes macrotis*), including assessment of all burrows in the Project area. If potential burrows are located, they shall be monitored by the qualified biologist. If any burrow/burrow complex is determined to house desert kit fox and the burrow/burrow complex is unavoidable, exclusionary devices (e.g., one-way doors) ~~should~~ shall be fitted on the active burrow openings, and once the burrow has been confirmed vacant as determined by the qualified biologist and in consultation with CDFW, the burrow ~~should~~ shall be carefully excavated to prevent re-entry/re-use of the burrow. These exclusion/excavation activities ~~should~~ shall only occur during the non-breeding season (July 2 to January 15). If construction will occur during the breeding season, any active burrow/burrow complex that is unavoidable ~~should~~ shall be provided a 500-foot no work buffer until the end of breeding season (July 1) or until the burrow has been determined to be inactive (and does not contain pups) by the qualified biologist.

9. Page 4.3-21, Mitigation Measure BIO-12 is added as follows:

Mitigation Measure BIO-12: Pre-construction surveys for desert tortoise (*Gopherus agassizii*) shall be conducted by a qualified biologist no more than 30 days prior to construction activities. If desert tortoise are observed within the Project Site, the Applicant shall consult with CDFW and USFWS to determine compliance with State (CESA) and federal (FESA) law. Additionally, if desert tortoise are determined to be present, a Raven Management Plan shall be prepared, approved by CDFW and USFWS, and implemented to offset potential predatorial impacts to tortoises.

10. Page 4.3-21, the last paragraph is revised as follows:

With the implementation of **Mitigation Measures BIO-1** through **BIO-~~11~~12**, the Project's impacts on biological resources would be reduced to less than significant.

3.3 SECTION 4.4: CULTURAL RESOURCES

1. Page 4.4-15, Mitigation Measure CUL-1 is revised as follows:

Mitigation Measure CUL-1: Prior to the initiation of ground-disturbing activities, the Project Applicant and construction manager shall conduct a Worker Education Awareness Program (WEAP) to alert field personnel to the possibility of buried prehistoric or historic cultural deposits. Development of the WEAP shall include consultation with a Qualified Archaeologist meeting the Secretary of the Interior standards and the Colorado River Indian Tribes. The WEAP shall provide an overview of potential significant archaeological resources that could be encountered during ground disturbing activities, including how to identify prehistoric or historic cultural deposits, to facilitate worker recognition, avoidance, and subsequent immediate notification to the Qualified

Archaeologist. Prior to ground disturbing activities, the Project Applicant shall provide evidence to the San Bernardino County Land Use Services Department that construction personnel have conducted a WEAP. Documentation shall be retained demonstrating that construction personnel attended the training.

An archaeological monitor shall be present for all ground-disturbing activity conducted during Project implementation. In the event that cultural resources are discovered during Project activities, all work in the immediate vicinity of the find (within a 60-foot buffer) shall cease, and a Qualified Archaeologist meeting the Secretary of the Interior standards shall be hired to assess the find. The Qualified Archaeologist shall have the authority to stop or divert construction excavation as necessary. Work on the other portions of the Project outside of the buffered area may continue during this assessment period. Additionally, the ~~applicable~~ Colorado River Indian Tribes (as described in **Mitigation Measure TCR-1**) shall be contacted regarding any pre-contact and/or historic-era finds and be provided information after the Qualified Archaeologist makes their initial assessment of the nature of the find, so as to provide Tribal input with regard to significance and treatment.

2. Page 4.4-15, Mitigation Measure CUL-2 is revised as follows:

Mitigation Measure CUL-2: ~~If significant pre-contact and/or post-contact cultural resources, as defined by CEQA, are discovered, and avoidance cannot be ensured, the Qualified Archaeologist shall develop a Monitoring and Treatment Plan, the drafts of which shall be provided to the County Planning Division and applicable Indian Tribe for review and comment. The Qualified Archaeologist shall monitor the remainder of the Project and implement the plan accordingly.~~ Prior to Project implementation and the start of ground-disturbing activities, a Monitoring and Treatment Plan (MTP) shall be created by a Qualified Archaeologist meeting the Secretary of the Interior standards in coordination with the Colorado River Indian Tribes and the County Planning Division that outlines process for identification and treatment of inadvertently discovered cultural resources. The MTP shall include requirements outlined in **Mitigation Measures CUL-1, TCR-1, and TCR-2** and be followed throughout the life of the Project.

3.4 SECTION 4.10: TRIBAL CULTURAL RESOURCES

1. Page 4.10-3, the first three paragraphs are revised as follows:

CRIT did not provide written materials or maps subsequent to the two meetings that identified specific boundaries or details related to known tribal cultural resources, as they opted to provide information to the County verbally to ensure the information remained confidential.

The County received a response from MBMI in response to the NOP on June 1, 2022 wherein the MBMI noted that the Project is located near ancestral territory and traditional use area of the Cahuilla and Serrano people of the MBMI. The County provided a copy of the geotechnical report to MBMI for their review.

While CRIT and MBMI did not identify any specific boundaries or detailed information related to known tribal cultural resources (as defined in PRC Section 21074) within the Project Site during consultation with the County, CRIT highlighted concerns related to identified archaeological sites and the potential for additional buried cultural resources that may be tribal cultural resources within the Project area. As such, mitigation measures ~~to be implemented during Project~~

~~construction are~~ were included ~~below and~~ in Section 4.4, *Cultural Resources*, of the Draft EIR to address concerns related to the potential of tribal cultural resources that could be impacted during Project construction.

The County received a letter from CRIT in response to the Draft EIR on January 23, 2023, wherein CRIT identified continued concerns with potential impacts to tribal cultural resources as a result of the Project, the need to update Project mitigation, and the need to meet in-person to formally consult on the Project. A consultation meeting between County and CRIT representatives took place in-person on August 16, 2023 at the BLM offices in Palm Springs to discuss CRIT's concerns and potential updates to the Project mitigation measures for tribal cultural resources. In response to concerns and feedback provided by CRIT during consultation, the mitigation measures for tribal cultural resources have been revised within the Mitigation Monitoring and Reporting Program (MMRP).

The County received a letter from CRIT in response to the updates made by the County to the Project mitigation measures on October 30, 2023, wherein CRIT identified continued concerns to tribal cultural resources as a result of the Project, requested the need to further update Project mitigation, asserted that nothing short of an in-person meeting at an out-of-state location would be considered consultation per CRIT's consultation policy. While the County appreciates CRIT's latest comments on proposed mitigation measures, some of which have been modified based upon comments from CRIT, the County has determined that the updated mitigation measures proposed in the Final EIR are sufficient to mitigate impacts to tribal cultural resources. Because the parties have been unable to mutually agree on mitigation, the County has also considered mitigation identified in Public Resources Code Section 21084.3(b) and, where feasible, have included said measures in the Final EIR. It should also be noted that CRIT's consultation policy would continue to prevent the County from concluding consultation unless the County complied with the requirements described above. For these reasons, County concluded consultation with CRIT via a letter submitted to CRIT on December 5, 2023.

2. Page 4.10-8, the second paragraph is revised as follows:

Nonetheless, ~~the potential exists that there may be undiscovered~~ consultation revealed that there is potential for undiscovered tribal cultural resources ~~that could~~ to be unearthed during ground-disturbing activities during Project construction. Therefore, as there is potential for ground-disturbing activities to encounter buried or unknown tribal cultural resources, impacts would be considered potentially significant. The Project would be required to implement **Mitigation Measures TCR-1 and TCR-2** to reduce potential impacts to tribal cultural resources to a less-than-significant level during Project construction.

3. Pages 4.10-9 and 4.10-10, Mitigation Measure TCR-1 is revised as follows:

Mitigation Measure TCR-1: A Native American ~~tribal~~ monitor ~~from an applicable~~ representing the Colorado River Indian Tribes shall be ~~contacted,~~ present for all ground-disturbing activity conducted during Project implementation. ~~a~~As detailed in Mitigation Measure CUL-1, the Colorado River Indian Tribes shall be contacted if any pre-contact and/or historic-era cultural resources are discovered during Project implementation and be provided information regarding the nature of the find so as to provide Tribal input with regards to significance and treatment. ~~Should the discovery be deemed significant, as defined by the California Environmental Quality~~

~~Act (CEQA), a Monitoring and Treatment Plan, as detailed in Mitigation Measure CUL-2, shall be created by a Qualified Archaeologist, in coordination with an applicable Indian Tribe and the County Planning Division, and all subsequent finds shall be subject to this Plan. This Plan shall allow for a monitor to represent the applicable Indian Tribe for the remainder of the Project, should the applicable Indian Tribe elect to place a monitor on site.~~ The Native American monitor shall follow the processes outlined in the Monitoring and Treatment Plan (MTP) drafted by a Qualified Archaeologist in coordination with the Colorado River Indian Tribes and County Planning Division, as required in **Mitigation Measure CUL-2**.

If a pre-contact cultural resource is discovered during Project implementation, the following actions are required:

(a) Ground-disturbing activities shall be suspended 60 feet around the resource(s), and an Environmentally Sensitive Area (ESA) physical demarcation/barrier constructed;

(b) The Applicant shall develop a research design that shall include a plan to evaluate the resource for significance under CEQA criteria, and the County and ~~applicable~~ the Colorado River Indian Tribes shall review to indicate concurrence. Representatives from the ~~applicable~~ Colorado River Indian Tribes, the Applicant, and the County shall confer regarding the research design, as well as any testing efforts needed to delineate the resource boundary. Following the completion of evaluation efforts, all parties shall confer regarding the resource's archaeological significance, its potential as a Tribal Cultural Resource (TCR), and avoidance (or other appropriate treatment) of the discovered resource.

Should any significant resource and/or TCR not be a candidate for avoidance or preservation in place, and the removal of the resource(s) is necessary to mitigate impacts, the research design shall include a comprehensive discussion of sampling strategies, resource processing, analysis, and reporting protocols/obligations. Removal of any cultural resource(s) shall be conducted with the presence of a Tribal monitor representing the Colorado River Indian Tribes unless otherwise decided by the ~~applicable~~ Colorado River Indian Tribes. All plans for analysis shall be reviewed and approved by the Applicant and the ~~applicable~~ Colorado River Indian Tribes prior to implementation, and all removed material shall be temporarily curated on-site. The ~~applicable~~ Colorado River Indian Tribes shall indicate if it is the preference of the ~~applicable~~ Colorado River Indian Tribes that removed cultural material be reburied as close to the original find location as possible. However, should reburial within/near the original find location during Project implementation not be feasible, then a reburial location for future reburial shall be decided upon by the ~~applicable~~ Colorado River Indian Tribes, the landowner, and the County, and all finds shall be reburied within this location. Additionally, in this case, reburial shall not occur until all ground-disturbing activities associated with the Project have been completed, all monitoring has ceased, all cataloging and basic recordation of cultural resources have been completed, and a final monitoring report has been issued to the County, CHRIS, and the ~~applicable~~ Colorado River Indian Tribes. All reburials are subject to a reburial agreement that shall be developed between the landowner and the ~~applicable~~ Colorado River Indian Tribes outlining the determined reburial process/location and shall include measures and provisions to protect the reburial area from any future impacts (vis a vis project plans, conservation/preservation easements, etc.).

Should it occur that avoidance, preservation in place, and on-site reburial are not an option for treatment, the landowner shall relinquish all ownership and rights to his material and confer with

the ~~applicable~~ Colorado River Indian Tribes to identify an American Association of Museums (AAM)-accredited facility within the County that can accession the materials into their permanent collections and provide for the proper care of these objects in accordance with the 1993 CA Curation Guidelines. A curation agreement with an appropriately qualified repository shall be developed between the landowner and museum that legally and physically transfers the collections and associated records to the facility. This agreement shall stipulate the payment of fees necessary for permanent curation of the collections and associated records and the Applicant's obligation to pay for those fees.

All draft records/reports containing the significance and treatment findings and data recovery results shall be prepared by the archaeologist and submitted to the County and the ~~applicable~~ Colorado River Indian Tribes for their review and comment. After approval from all parties, the final reports and site/isolate records are to be submitted to the local CHRIS Information Center, the County, and the ~~applicable~~ Colorado River Indian Tribes.

4. Page 4.10-10, Mitigation Measure TCR-2 is revised as follows:

Mitigation Measure TCR-2: Any and all archaeological/cultural documents created as a part of the Project (isolate records, site records, survey reports, testing reports, etc.) shall be supplied to the Applicant, ~~and~~ County ~~for dissemination to the applicable~~ , and Colorado River Indian Tribes. The County and/or Applicant shall, in good faith, consult with the ~~applicable~~ Colorado River Indian Tribes throughout the life of the Project.

3.5 CHAPTER 5: ALTERNATIVES ANALYSIS

1. Page 5-9, the second to last paragraph is revised as follows:

Implementation of the Reduced Acreage Alternative would result in reduced impacts to biological resources when compared to the Project-related impacts…Impacts would remain less than significant, but would still require implementation of **Mitigation Measures BIO-1** through **BIO-~~11~~12** to reduce impacts to less than significant.

2. Page 5-15, the second to last paragraph is revised as follows:

The Offsite Alternative is within the planning area of several adopted local plans, including the Countywide Plan and the DRECP…Similar mitigation measures identified for the Project (**Mitigation Measures BIO-1** through **~~11~~12**) would be implemented to reduce impacts to a less than significant level. Therefore, the Offsite Alternative would result in similar impacts to those of the Project, and impacts would be reduced to less than significant.

Appendix A

Bracketed Comment Letters

State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

January 20, 2023
Sent via email

Jim Morrissey
San Bernardino County
385 N. Arrowhead Avenue, First Floor
San Bernardino, CA 92415
Jim.Morrissey@lus.sbcounty.gov

Subject: Draft Environmental Impact Report
Vidal Energy Project (Project)
State Clearinghouse No. 2022030713

Dear Mr. Morrissey:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from the County of San Bernardino (Lead Agency) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code. A-1

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. A-2

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: CDH Vidal, LLC (CORE) (Applicant)

Objective: The Project has the following objectives: A-3

- Utilize property within the County to site photovoltaic (PV) solar power-generating facilities and energy storage near existing utility infrastructure.
- Support California's efforts to reduce greenhouse gas (GHG) emissions consistent with the timeline established by the California Global Warming Solutions Act under California AB 32, as amended by SB 32, which requires that Statewide GHG

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

emissions are reduced to at least 40 percent below the Statewide GHG emissions limit by 2030.
- Support California's Renewable Portfolio Standard (RPS) Program consistent with the timeline established by SB 100.
- Develop an economically feasible and commercially financeable power-generating facility and energy storage system.
- Provide solar-generated electricity to the California Independent System Operator (CAISO) grid.
- Promote the County's role as the state's leading producer of renewable energy.
- Provide green jobs to the County and the state of California.
- Site and design the Project in an environmentally responsible manner consistent with current County guidelines.

Location: The Project is located approximately 2.5 miles southeast of Vidal, an unincorporated area of San Bernardino County; east of U.S. Route 95, north of the Riverside County border, and west of the Colorado River.

A-3 cont

Timeframe: Project construction is anticipated to begin in 2023 and is expected to be complete within approximately 14 months. Once construction is complete, the Project has an anticipated operational life of up to 35 years, after which CORE may choose to update site technology and recommission, or decommission, the facility and remove the systems and their components.

Description: The Project includes the construction and operation of an approximately 1,090-acre solar photovoltaic (PV) electricity generation and battery energy storage system (BESS) facility. The Project will generate up to 160 megawatts (MW) of alternating current of solar power and include up to 640 megawatt hours (MWh) of energy storage capacity. The Project would be supported by the existing Western Area Power Administration (WAPA) 161 kilovolt (kV) overhead transmission corridor. The facility would include the construction of one onsite substation facility that would collect and convert the power generated onsite for transmission via an overhead or underground line to the WAPA transmission system and interconnection location. The Project's permanent facilities would include PV panels, BESS, fencing, service roads, a power collection system, communication cables, overhead and underground transmission lines, electrical switchyards, a Project substation, and operations and maintenance facilities.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Lead Agency in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

A-4

Assessment of Impacts to Biological Resources

The DEIR bases its analysis of impacts to biological resources on the Biological Resources Report (Appendix D of the DEIR) prepared by Chambers Group, Inc. dated December 2020. A reconnaissance-level survey was conducted in April 2020; focused plant survey in May 2020; and desert tortoise and burrowing owl focused survey in May 2020, making these surveys nearly three years old. Note that CDFW generally considers field assessments for wildlife to be valid for a one-year period. Further, the report indicates that the focused desert tortoise and burrowing owl surveys were conducted concurrently. CDFW generally does not support the approach of the same personnel concurrently conducting surveys for multiple species, as protocol requirements vary and some sign may be missed.

A-5

Nesting Birds

Project implementation could result in the loss of nesting and/or foraging habitat for passerine and raptor species from the removal of desert scrub vegetation onsite. The biggest threat to birds includes habitat loss and the conversion of natural vegetation into commercial, residential and industrial land uses.

A-6

It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 et. seq.). In addition, sections 3503, 3503.5, and 3513 of the Fish and Game Code also afford protective measures as follows: Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by FGC or any regulation made pursuant thereto; Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by FGC or any regulation adopted pursuant thereto; and Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

A-6 cont

The final EIR should include specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise, sound walls, and buffers. The final EIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site.

A-7

CDFW supports the inclusion of Mitigation Measure BIO-4, with minor edits (in ~~strikethrough~~ and **bold**) in the final EIR to avoid impacts to nesting birds:

Mitigation Measure BIO-4 – Vegetation trimming/crushing shall take place outside the general bird breeding season (February 15 to September 15), to the maximum extent practicable. ~~If this is not possible,~~ **Regardless of the time of year**, prior to ground-disturbing activities, a qualified biologist shall conduct a nesting bird survey to comply with CDFW Code 3503 and 3503.5 and the Migratory Bird Treaty Act. The survey shall occur no more than ~~30~~ **three (3)** days prior to initiation of proposed Project activities **and shall include any potential habitat (including trees, shrubs, the ground, or nearby structures).** Any occupied passerine and/or raptor nests occurring within ~~or adjacent to~~ the proposed Project area **or the Project's zone of influence (generally 100-300 feet)** shall be delineated **and a no-disturbance buffer zone (as determined by the avian biologist) shall be established and maintained during Project activities**. Additional follow-up surveys may be required by the resource agencies and the County of San Bernardino. ~~If an active nest is identified, an avoidance buffer zone around occupied nests (as determined by the avian biologist) shall be maintained during physical ground-disturbing activities.~~ The buffer zone shall be sufficient in size to prevent impacts to the nest. **A qualified biologist shall monitor active nests to determine whether construction activities are disturbing nesting birds or nestlings. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the no disturbance buffer shall be expanded.** Once nesting has ceased and the fledglings are no longer using the nest area **as confirmed by a qualified biologist**, the buffer may be removed. A nesting bird survey report shall be provided to the County of San Bernardino **and CDFW. If an active nest is encountered during construction, construction shall stop immediately until a qualified biologist can determine the status of the nest and when work can proceed without risking violation to state or federal laws.**

A-8

Burrowing Owl

The Project has the potential to adversely affect burrowing owl (*Athene cunicularia*), a CDFW Species of Special Concern. According to the DEIR, one round of burrowing owl surveys was conducted concurrently with the focused desert tortoise survey over a five-day period from May 11, 2020 through May 15, 2020. CDFW appreciates that surveys were conducted, however, as noted above, CDFW generally does not support the approach of concurrently conducting surveys for different species. Further, while the DEIR states that three potential burrows and sign were observed within the Project site and that impacts to burrowing owl could potentially be significant, it does not clearly identify the extent of suitable habitat within the Project site and therefore CDFW cannot determine the potential

A-9

extent impacts. In areas where burrowing owl may be present, CDFW recommends that the Lead Agency follow the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (2012 Staff Report). The 2012 staff report specifies three steps for project impact evaluations: a habitat assessment; surveys; and an impact assessment. As stated in the *Staff Report*, the three progressive steps are effective in evaluating whether a project will result in impacts to burrowing owl, and the information gained from the steps will inform any subsequent avoidance, minimization, and mitigation measures. Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with Fish and Game Code sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of the proposed Project activity.

A-9 cont

Burrowing owl are susceptible to impacts year-round as their breeding season generally extends from February 1 to August 31 and their overwintering period generally from September 1 to January 31. In areas where burrowing owl may be present, ground disturbing activities should be avoided to the extent practicable. Solar development may be considered a high level of disturbance and an appropriate buffer should be determined to avoid take of the species. If burrowing owl are found within the Project area during pre-construction surveys or construction activities, and it is not possible to avoid active burrows, passive relocation and mitigation shall be implemented.

CDFW recommends the following edits to Mitigation Measure BIO-6 (in ~~strikethrough~~ and **bold**)

A-10

Mitigation Measure BIO-6 – **No less than 14 days** prior to ~~construction~~ **any ground disturbance activities**, a burrowing owl Take Avoidance Survey shall be conducted by a qualified biologist **in accordance with the *Staff Report on Burrowing Owl Mitigation* (California Department of Fish and Game 2012)**. ~~The survey shall be conducted no less than 14 days prior to initiating ground disturbance activities~~. If burrowing owls are determined to be present where Project activities will occur, ~~minimization and avoidance measures shall be required including but not limited to a final survey within 24 hours prior to ground disturbance.~~ **site-specific non-disturbance buffer zones shall be established by the qualified biologist based on monitoring and assessments of the Project's effects on the burrowing owls. If it is not possible to avoid active burrows during the nonbreeding season, passive relocation shall be implemented.**

CDFW further recommends that the Project proponent prepare a Burrowing Owl Mitigation and Monitoring Plan to be submitted to CDFW for review 60 days prior to the start of ground disturbing activities.

A-11

Desert Kit Fox

Five active desert kit fox (*Vulpes macrotis arsipus*) burrow/burrow complexes were identified on the Project site during the desert tortoise and burrowing owl surveys. While the DEIR states that "..desert kit fox is a non-sensitive species…", please note that kit fox is in fact protected as a fur-bearing mammal pursuant to Title 14 of the California Code of Regulations section 460 and may not be taken (including trapping and handling) at any time. Because desert kit fox has high fidelity to natal dens, it is crucial to adequately assess whether desert kit fox is present on the Project site well in advance of commencing Project activities.

A-12

CDFW recommends the following edits to Mitigation Measure BIO-7 (in ~~strikethrough~~ and **bold**):

Mitigation Measure BIO-7 – **Prior to commencing Project activities, a qualified biologist shall conduct a focused survey for desert kit fox, including assessment of all burrows in the Project area. If potential burrows are located, they shall be monitored by the qualified biologist.** If any burrow/burrow complex is determined to house desert kit fox and the burrow/burrow complex is unavoidable, exclusionary devices (e.g., one-way doors) ~~should~~ **shall** be fitted on the active burrow openings, and once the burrow has been

confirmed vacant **as determined by the qualified biologist and in consultation with CDFW**, the burrow ~~should~~ **shall** be carefully excavated to prevent re-entry/re-use of the burrow. These exclusion/excavation activities ~~should~~ **shall** only occur during the non-breeding season (July 2- January 15). If construction will occur during the breeding season, any active burrow/burrow complex that is unavoidable ~~should~~ **shall** be provided a 500-foot no work buffer until the end of breeding season (July 1) or until the burrow has been determined to be inactive (and does not contain pups) by the qualified biologist. A-12 cont

CDFW further recommends that the Project proponent prepare a Desert Kit Fox Monitoring and Mitigation Plan to be submitted to CDFW for review 60 days prior to the start of ground disturbing activities. The Plan should include a summary of desert kit fox occurrence in the Project area, and avoidance and minimization measures, including but not limited to pre-construction surveys, active den and burrow monitoring, excavation of inactive or unoccupied burrows, and details on passive relocation from active, non-natal dens and burrows. A-13

Desert Tortoise

The desert tortoise (*Gopherus agassizii*) is listed as threatened and a candidate as endangered under the California Endangered Species Act (CESA). CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to (CESA). A CESA Incidental Take Permit (ITP) is issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats. CDFW recommends that a CESA ITP be obtained if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and G. Code, §§ 2080 and 2085). If the Project, including the Project construction or any Project-related activity during the life of the Project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation through an ITP. A-14

No live desert tortoises, active desert tortoise burrows or other desert tortoise sign were identified during focused surveys, but one potential desert tortoise burrow was observed within the survey buffer near the southwest corner of the Project. While the burrow was filled with spider webs and appeared to have been in disuse, this does not necessarily exclude use or occupation of the Project site by desert tortoise. Also, as noted above, the desert tortoise surveys are nearly three years old and CDFW recommends conducting updated protocol surveys for desert tortoise. The DEIR does not include any desert tortoise-specific mitigation measures, but Mitigation Measure BIO-5 address sensitive species in general, indicating that any sensitive species found will be relocated out of harm's way. Desert tortoise may not be moved or handled in any way without proper permits.

Lake and Streambed Alteration Program

The DEIR identifies five drainage systems as well as ephemeral drainages and washes within the Project site subject to CDFW jurisdiction, for a total of 123.85 acres. CDFW appreciates that the Project has been designed to minimize impacts to the largest washes onsite and that the DEIR indicates that impacts to all CDFW jurisdictional resources warrant the need for a 1602 Streambed Alteration Agreement.

Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water. A-15

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your Project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code § 21065). To facilitate issuance of an LSA Agreement, if necessary, the DEIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to https://www.wildlife.ca.gov/Conservation/LSA/Forms.

A-15 cont

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

A-16

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

A-17

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist San Bernardino County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Rose Banks, Senior Environmental Scientist (Specialist) at (760) 218-0022 or Rose.Banks@wildlife.ca.gov.

A-18

Sincerely,

DocuSigned by:
Alisa Ellsworth
84FBB8273E4C480...

Alisa Ellsworth
Environmental Program Manager

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California Program Office
P.O. Box 401 Folsom, California 95763 | 916-313-5800
www.defenders.org

January 23, 2023

Jim Morrissey, Planner
County of San Bernardino, Land Use Services Department
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415
Delivered via email to: Jim.Morrissey@lus.sbcounty.gov

RE: Draft Environmental Impact Report – Vidal Energy Project
(SCH 2022030713)

Dear Mr. Morrissey,

Thank you for the opportunity to provide comments in response to the Draft Environmental Impact Report (DEIR) for the proposed Vidal Energy Project (Project). Defenders of Wildlife (Defenders) is dedicated to protecting all wild animals and plants in their natural communities and has nearly 2.2 million members and supporters in the United States, 323,000 of which reside in California. We strongly support renewable energy development that will help meet California's emission reduction goals and avoids destruction of important wildlife habitat and loss of at-risk species. Achieving a low-carbon energy future is critical for protecting California's internationally treasured wildlife, landscapes, productive farmlands and diverse habitats. B-1

Project Description

The proposed Project is a photovoltaic solar facility that would generate up to 160 MW of renewable energy, provide storage for up to 640 MWh and would be supported by the adjacent existing Western Area Power Administration (WAPA) overhead transmission corridor. The Project is located on 1,090 acres of privately-owned land in southeastern San Bernardino County in the East Desert Communities planning area. It is approximately 2.5 miles southeast of unincorporated community of Vidal and is located within the Vidal Wash and Upper Parker Valley-Colorado River watersheds. The Project site is comprised of mostly vacant and undeveloped land with existing rural access roads and contains scattered structures such as abandoned rural residence, garage (storage) areas, and several WAPA towers. Additionally, illegal dumping is occurring throughout the Project site and the wash areas are currently being B-2

used by off-highway vehicles.

The Project site may provide habitat to numerous special-status wildlife species, including but not limited to the following:[1]

Common Name	Scientific Name	Status
American badger	*Taxidea taxus*	State Species of Special Concern
Arizona Bell's vireo	*Vireo bellii arizonae*	State Endangered
Burrowing owl	*Athene cunicularia*	State Species of Special Concern
Desert tortoise	*Gopherus agassizii*	Federally and State Threatened
Gila woodpecker	*Melanerpes uropygialis*	State Endangered
Townsend's big-eared bat	*Corynorhinus townsendii*	State Species of Special Concern
Western yellow-billed cuckoo	*Coccyzus americanus occidentalis*	Federally Threatened and State Endangered
Yellow-breasted chat	*Icteria virens*	State Species of Special Concern

B-2 cont

Comments

As we transition toward a clean energy future, it is imperative that we consider the near-term impact of solar development on our biodiversity, fish and wildlife habitat, and natural landscapes while addressing the long-term impacts of climate change. Renewable energy projects must be planned, sited, developed and operated to avoid, minimize and mitigate adverse impacts to wildlife and lands with known high-resource values .

B-3

We offer the following comments on the DEIR for the Project:

1. **Impact on Critical Habitat for Special-Status Species**

   The Project site is in close proximity to designated critical habitat for several special-status species, including critical habitat and linkage area for the desert tortoise, razorback sucker and western yellow-billed cuckoo. Desert tortoise critical habitat and the Chuckwalla to Chemehuevi linkage area are within 3 miles of the Project and

B-4

[1] California Natural Diversity Database. Accessed 1/19/2023. https://wildlife.ca.gov/Data/CNDDB/Maps-and-Data

critical habitat for the razorback sucker and western yellow-billed cuckoo is present within 0.5 miles of the Project.

B-4 cont

The DEIR acknowledges the close proximity of the Project to important biological areas but states since the Project is not located within the critical habitat areas, there will be no impact and no further investigation is required. This is an incomplete analysis; although critical habitat is not located directly on the Project site, the Project has the ability to impact these special-status species and the critical habitat and linkage areas in close proximity to the Project site. Direct and indirect impacts to adjacent land from a solar project may include, but are not limited to, increased predation of special-status species, avian mortality due to lake effect[2], connectivity and linkage impacts, water pollution and run-off, and impacts from noise, light and dust. We request the DEIR analyze both direct and indirect impacts the Project may have on the critical habitat and linkage areas.

B-5

The increasing development of solar energy projects within San Bernardino County is having a significant impact on biological resources in the region. This Project is not an exception and would significantly add to the loss of important and declining biological resources. The DEIR analysis must include the cumulative impacts to wildlife connectivity and critical habitat and provide appropriate mitigation measures. Furthermore, Defenders requests the analysis include a detailed map of existing and planned solar energy development that includes the remaining nearby habitat and linkage areas for desert tortoise.

B-6

2. Revise Mitigation Measure BIO-6

Although no live burrowing owls were observed during surveying, potential burrows with sign of presence including cough pellets and/or whitewash was observed within the Project Site and within the survey buffer area. Since burrowing owl sign was found on and surrounding the Project site, it is reasonable to expect that the Project site provides suitable habitat and/or foraging for the species and burrowing owls may be determined as present during future surveys. To ensure the survival of burrowing owls, it is essential that proper mitigation measures and buffers are implemented, and necessary permits obtained if the species is found to be present. Defenders requests adherence to the recommended mitigation measures within the

B-7

[2] Upton, J. 2014. Solar farms threaten birds. Scientific American. https://www.scientificamerican.com/article/solar-farms-threaten-birds/#:~:text=It%20was%20one%20of%20233,fatally%20crippled%20by%20the%20facilities.

Staff Report on Burrowing Owl Mitigation.[3] We request this mitigation measure be revised to read:

"Prior to construction, a burrowing owl Take Avoidance Survey shall be conducted by a qualified biologist. The survey shall be conducted no less than 14 days prior to initiating ground disturbance activities. If burrowing owls are determined to be present where Project activities will occur, minimization and avoidance measures shall be required **in accordance with the measures outlined in the Staff Report on Burrowing Owl Mitigation,** including but not limited to a final survey within 24 hours prior to ground disturbance. **In addition, if burrowing owls are determined to be present, CDFW shall be consulted regarding the appropriate avoidance buffers around active burrows and for any necessary permits.**"

B-7 cont

3. Revise Mitigation Measure BIO-8

The Project site contains habitat suitable for special-status species. Where adverse impacts to habitat that is suitable for special-status species cannot be avoided, mitigation must be provided.

This project will result in the permanent conversion of burrowing owl habitat, as once the land is developed, the habitat will not return to the current state. This warrants permanent protection of habitat and foraging lands. The mitigation measure should be consistent with the Staff Report on Burrowing Owl Mitigation from the State of California that provides the permanent conservation of burrowing owl habitat should be included.[4] This conversion of burrowing owl habitat shall be comparable to or better than the impacted area to mitigate for the permanent impact to nesting habitat. We request this mitigation measure be revised to read:

B-8

"Temporary and permanent impacts to all jurisdictional resources **and impacts to habitat suitable for special-status species** shall be compensated through a combination of habitat creation (i.e., establishment), enhancement, preservation, and/or and restoration at a minimum of a 1:1 ratio or as required by the permitting agencies. Any creation, enhancement, preservation, and/or restoration effort shall

[3] California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation. The 7 March 2012 memo replacing 1995 staff report, State of California Natural resources Agency, Department of Fish and Wildlife. Sacramento, California.

[4] California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation. The 7 March 2012 memo replacing 1995 staff report, State of California Natural resources Agency, Department of Fish and Wildlife. Sacramento, California.

be implemented pursuant to a Habitat Restoration Plan, which shall include success criteria and monitoring specifications, and **shall be approved by CDFW.** A habitat restoration specialist will be designated and approved by the permitting agencies and will determine the most appropriate method of restoration. **For the permanent conversion of burrowing owl habitat, habitat and foraging area that is comparable to or better than the impacted area shall be permanently conserved. This shall be done in accordance with the Staff Report on Burrowing Owl Mitigation."**

B-8 cont

4. Desert Tortoise

The Project site is in close proximity to desert tortoise critical habitat and the Chuckwalla to Chemehuevi tortoise linkage area. It is reasonable to expect desert tortoises will utilize the project area in the future given the close proximity to critical habitat and linkage area. Therefore, Defenders requests the inclusion of additional desert tortoise mitigation measures, as follows.

a) Pre-Construction Survey

B-9

The DEIR fails to include a mitigation measure requiring pre-construction surveys specifically for desert tortoise completed by a desert tortoise qualified biologist. Given the possibility of the desert tortoise entering the Project area, Defenders requests desert tortoise specific pre-construction surveys to ensure that no desert tortoises have entered the Project site before construction begins. Furthermore, if any desert tortoises are found during pre-construction surveys, CDFW and USFWS must be consulted for any further desert tortoise specific mitigation measures and any required permits prior to commencement of construction activities.

b) Raven Mitigation Plan

B-10

Ravens are known predators of desert tortoises and are likely a major impediment to desert tortoise recovery. Solar development and the associated infrastructure can be expected to increase raven threats to desert tortoises by providing raven hunting and nesting platforms. Ravens can fly at least 30 miles daily in search of food and water[5] and with desert tortoise critical habitat located within 3 miles of the Project site, it is likely

[5] Boarman, W.I, M.A. Patten, R.J. Camp, and S.J. Collis. 2006. Ecology of a population of subsidized predators: Common ravens in the central Mojave Desert, California. Journal of Arid Environments 67 (2006) 248–261.

the project would subsidize the raven population and create access to desert tortoises.

The DEIR must include a mitigation measure requiring the creation and implementation of a Raven Management Plan. This plan should include an analysis on the impact the Project could have on common ravens, identify Project design to discourage use by ravens for perching or nesting, the removal of inactive nests within the Project area and active site monitoring for raven presence. It is vital that the Project implement a Raven Management Plan to mitigate the impact of this project on surrounding desert tortoise populations.

B-10 cont

Conclusion

Thank you once again for the opportunity to provide comments on the DEIR for the Vidal Energy Project and for considering our comments. We look forward to reviewing the Final EIR and request to be notified when it is available. If you have any questions, please contact me at 408-603-4694 or via email at smarkowska@defenders.org.

B-11

Respectfully submitted,

Sophia Markowska

Sophia Markowska
Senior California Representative

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Via email only

23 January 2023

Jim Morrissey, Contract Planner
San Bernardino County - Land Use Services
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415-0187
Jim.Morrissey@lus.sbcounty.gov

RE: Vidal Energy Project Draft Environmental Impact Report (SCH# 2022030713)

Dear Mr. Morrissey,

The Desert Tortoise Council (Council) is a non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of desert tortoise species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

Both our physical and email addresses are provided above in our letterhead for your use when providing future correspondence to us. When given a choice, we prefer that San Bernardino County (County) email to us future correspondence, as mail delivered via the U.S. Postal Service may take several days to be delivered. Email is an "environmentally friendlier way" of receiving correspondence and documents rather than "snail mail."

C1-1

We appreciate this opportunity to provide comments on the above-referenced project. We also appreciate that the Council was alerted to this project in an email notice from you on 12/2/2022. Given the location of the proposed project in habitats likely used by Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments pertain to enhancing protection of this species during activities funded, authorized, or carried out by the County, which we assume will be added to the Decision Record for this project as needed. Please accept, carefully review, and include in the relevant project file the Council's following comments for the proposed project.

The Mojave desert tortoise is among the top 50 species on the list of the world's most endangered tortoises and freshwater turtles. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers the Mojave desert tortoise to be Critically Endangered (Berry et al. 2021), as it is a "species that possess an extremely high risk of extinction as a result of rapid population declines of 80 to more than 90 percent over the previous 10 years (or three generations), population size fewer than 50 individuals, other factors." It is one of three turtle and tortoise species in the United States to be critically endangered. This status, in part, prompted the Council to join Defenders of Wildlife and Desert Tortoise Preserve Committee (Defenders of Wildlife et al. 2020) to petition the California Fish and Game Commission in March 2020 to elevate the listing of the Mojave desert tortoise from threatened to endangered in California.

C1-1 cont

We reviewed the Vidal Energy Project Draft Environmental Impact Report (DEIR) in eastern San Bernardino County, California that was prepared to comply with the California Environmental Quality Act (CEQA), and offer the following comments for your consideration and incorporation into the revised or final document.

Description of Proposed Project and Alternatives

According to the DEIR (San Bernardino County 2022), CDH Vidal LLC (CORE) plans to construct and operate the Vidal Energy Project (Project), a solar photovoltaic (PV) electricity generation and energy storage facility. The Project would produce up to 160 megawatts (MW) of electricity and include up to 640 megawatt hours (MWh) of energy storage capacity rate in a battery energy storage system (BESS). The Project's permanent facilities would include PV panels, BESS, fencing, service roads, a power collection system, communication cables, overhead and underground transmission lines, electrical switchyards, a Project substation, and operations and maintenance (O&M) facilities. Existing roads would be used to the greatest extent possible, potential new unpaved roads may need to be constructed off-site to serve as access roads from the existing road network to the Project Site.

The Project would be supported by the existing, adjacent Western Area Power Administration (WAPA) 161-kilovolt (kV) overhead corridor to distribute the energy. The Project would include the construction of one on-site substation facility, which would collect and convert the power generated on-site for transmission in an overhead or underground line to the WAPA transmission system and interconnection location. Upgrades associated with WAPA interconnection include replacement of existing fiber optic cable along the 52-mile Headgate Rock-Blythe 161 kV transmission line and construction of a new switchyard and associated interconnection facilities adjacent to the Project and to WAPA's existing Headgate Rock-Blythe 161-kV transmission line. WAPA would also work with the Bureau of Land Management (BLM) in the processing of the right-of-way (ROW) application to support these connections, as needed. WAPA would maintain and decommission its facilities.

C1-2

Operations and maintenance of the Vidal Solar Project would occur for about 35 years, the expected life of the Project. If the facility is not updated and recommissioned, it would be decommissioned. Site infrastructure would be removed and Project roads would be restored to their pre-construction condition to the extent feasible unless the landowner elects to retain the improved roads. To that ends, we provide Abella and Berry (2016)[1] as an excellent resource to be shared with CORE as best management practices for arid lands restoration.

[1] https://www.dropbox.com/s/nx1b5m2b5ehya12/%23Abella%20and%20Berry%202016.pdf?dl=0

The Project would be located on up to approximately 1,090 acres of land. The Project Site is located approximately 2.5 miles southeast of Vidal, which is an unincorporated area of the County and located east of U.S. Route 95, north of the Riverside County border, and just west of the Colorado River. The Project Site encompasses 1,090 acres within 21 parcels (in their entirety and portions thereof) that are held under lease agreement by CORE. It is about 3 miles southeast of the Chemehuevi critical habitat unit (USFWS 1994) for the tortoise and Tortoise Conservation Area (TCA).

C1-2 cont

Alternatives Evaluated in the DEIR: Four Alternatives were evaluated in the DEIR, including the proposed Project and:

- Alternative 1 – No Project Alternative. Under the No Project Alternative, CORE would not construct a PV and BESS facility and the Project's objectives would not be realized.

- Alternative 2 – Reduced Acreage Alternative. Under the Reduced Acreage Alternative, the Project Site would be reduced by 177 acres, and the Project's renewable energy generation capacity would be reduced by approximately 25 percent due to the installation of fewer PV panels. This alternative avoids siting the PV panels in the smaller washes.

- Alternative 3 – Offsite Alternative. Under the Offsite Alternative, the Offsite Alternative would be redesigned and relocated to approximately 1,100 acres of BLM-administered land outside of the City of Blythe, which is designated as a Development Focus Area (DFA) for renewable energy in the Desert Renewable Energy Conservation Plan (DRECP; BLM 2016).

C1-3

Of the three action alternatives analyzed in the DEIR, the Council prefers the Reduced Acreage Alternative, because it would reduce impacts to washes used by the tortoise and other desert species for forage (increased diversity and abundance of native vegetation) and as movement corridors (please see our comments under "Appendix D – Biological Resources").

Two other alternatives were considered but dismissed. One was a Fossil Fuel Alternative and the other a Distributed Generation Alternative.

Of the six alternatives described in the DEIR, the Council supports the Distributed Generation Alternative. This alternative installs smaller scale PV facilities at or near the point of energy use. According to the DEIR, this alternative was dismissed because (1) finding 16 or more separate sites for development of solar power that produces 10 MW each to produce collectively160 MW of electricity is not feasible due to the time, expense, and site control requirements associated with selecting such a large number of locations (emphasis added); and (2) CORE does not currently own or control any other such sites or land in San Bernardino County. We challenge the reasons given for dismissing this alternative. If CORE expended similar time and expense for the 16 Distributed Generation sites as it did for the 21 parcels for the proposed Project, it would likely be able to develop and implement the Distributed Generation Alternative. While CORE does not control any other sites in San Bernardino County, we are not sure why the project must be located in San Bernardino County. One of the viable alternatives in the DEIR is in Riverside County. In addition, if the County required applicants to first explore distributed generation, CORE and other

C1-4

applicants would focus their efforts on implementing this approach for the generation of solar energy rather than utility-scale solar with its greater impacts to biological resources and climate change (please see "Climate Change" and "Mitigation Measures" below) and fall short of requiring full mitigation for direct, indirect, and cumulative impacts. From the information provided in the DEIR, it appears the Distributed Generation Alternative was dismissed not because it is a non-viable alternative, but because it is not what CORE wanted to implement.

C1-4 cont

We question the need for 16 sites that generate 10 MW of electricity. Alternative 3, a viable alternative, is a Reduced Acreage Alternative with reduced energy output by 25 percent. If this alternative is feasible, then a Distributed Generation Alternative should be a viable alternative. For these reasons, we strongly request the County revise the DEIR and analyze the Distributed Generation Alternative as the Preferred Alternative in the CEQA document, as it appears to be a viable alternative.

C1-5

Connected Project to Federal Action(s)

From the information presented in the DEIR, the Council believes the Project is a "connected" project to a federal action, because the WAPA upgrades needed to accept the electricity generated by the Project and need for a right-or-way (ROW) grant from the Bureau of Land Management (BLM) for upgrades. According to 40 Code of Federal Regulations 1508.25(a)(1), "[a]ctions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.
(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
(iii) Are interdependent parts of a larger action and depend on the larger action for their justification."

C1-6

From information presented in the DEIR, one or more of these three requirements appears to apply, making this Project a connected action. According to the Council on Environmental Quality (1997) "the range of actions that must be considered includes not only the project proposal but all connected and similar actions that could contribute to cumulative effects." Consequently, this would require that WAPA or BLM analyze all connected actions (the Project, upgrades, and ROW issuance) in a National Environmental Policy Act (NEPA) document. Consequently, we request that the DEIR be reissued as a NEPA/CEQA, joint EIR/EIS (environmental impact statement) document or explain in the Revised DEIR why the Project is not a connected action under NEPA regulations.

Compliance with California Executive Order N-82-20

On October 7, 2020, Governor Newsom issued Executive Order N-82-20[2] to combat the biodiversity crisis. In the DEIR, the Project objectives are listed as renewable energy goals, creation of green jobs (we are not sure what green jobs would be created as construction and maintenance workers would need to commute during the estimated 14-month construction period and 35-year operations and maintenance period), and siting and designing the Project in an environmentally responsible

C1-7

[2] https://www.dropbox.com/s/wytoq87u36xhaya/%24Climate%20Change%20Eecutive%20Order%2010.07.2020-EO-N-82-20-.pdf?dl=0

manner consistent with current County guidelines. We found no information on compliance with this executive order on combating the biodiversity crisis, especially with respect to the Mojave desert tortoise and other wildlife species. Given the importance of this resource topic (e.g., Governor's October 7, 2020 Executive Order) and the rapid and substantial impacts to many Mojave Desert species and the ecosystem occurring from climate change (Smith et al. 2023), we request that an analysis of the proposed action on climate change and wildlife including the tortoise be included in the revised DEIR/EIS.

C1-7 cont

Climate Change

The DEIR has a section that analyzes impacts to air quality from a human health perspective. However, we found no section that analyzes the impacts of the proposed Project or alternatives, including the construction, operation and maintenance, and decommissioning phases, on climate change and effects on wildlife and habitats (e.g., invasive plant species, increased wildfire frequency/size/intensity, loss of habitat, etc.)

Vegetation sequesters carbon. Studies around the world have shown that desert ecosystems can play an important role in sequestering carbon. For example, the California deserts account for nearly 10 percent of the state's carbon sequestration; below ground in soil and root systems, and above ground in biomass. Protecting this biome can contribute to securing carbon stores in the state (MDLT 2021). However, when plants die, they release carbon from their roots, stems, and leaves into the atmosphere and contribute to climate change. Given the current climate change conditions, there is an increasing need for carbon sequestration, not carbon release; therefore, there is a growing need to increase the biomass of native plants including in plants int California deserts.

C1-8

The proposed Project would result in the loss/degradation of native plants and their ability to sequester carbon for decades or longer. In addition, the proposed Project, when combined with the numerous actions that have occurred in the eastern Mojave and Colorado deserts in the County and southern California that destroy vegetation, would be contributing to climate change. Consequently, the County should conduct a cumulative impacts analysis of the proposed Project and alternatives with respect to climate change. Cumulative impacts should be analyzed and presented with referenced or supporting data in the revised DEIR/EIS. Given the importance of this resource topic (e.g., Executive Order N-82-20) and its rapid and substantial impacts to many Mojave Desert species and the ecosystem (Smith et al. 2023), we request that an analysis of the proposed Project and alternatives on the impacts to climate change and biodiversity, including the tortoise, be included in the revised DEIR/EIS. In addition, the Council requests the County develop and implement mitigation to avoid or fully offset the impacts to climate change from the proposed Project and alternatives.

Environmental Impact Analysis

As general observation, we were surprised at the paucity of scientific reports and journal articles cited in the DEIR to analyze impacts of the proposed Project and alternatives and the effectiveness of mitigation on the DEIR. We suggest the County revise the DEIR/EIS to include scientific citations in its analysis of impacts and mitigation effectiveness, and decisions.

C1-9

Air Quality: In Chapter 4 – Environmental Impact Analysis under Air Quality, please note that U.S. Environmental Protection Agency has proposed to reduce the National Ambient Air Quality Standards for Particulate Matter (PM2.5) to 9.0 to 10.0 µg/m3 (https://www.epa.gov/pm-pollution/proposed-decision-reconsideration-national-ambient-air-quality-standards-particulate). We request that the DEIR/EIS be updated to include this information. C1-10

Aesthetics, Glint, and Glare: The DEIR discusses the impacts of glare to "[p]otential viewers of the facility primarily include motorists on U.S. Route 95 and residents." "The solar PV panels would not create a substantial source of glare due to the use of anti-reflective coating on the panels and the elevation of potential receptors relative to the facility." Potential receptors appear to be limited to where people are likely to be on the ground near the Project. We found no analysis of impacts to wildlife from glare such as "lake effect" to wildlife species, especially birds (Koscuich et al. 2020). Please revise the DEIR/EIS to include this impact. C1-11

Mitigation Measures: Section 4.3.8 describes the mitigation measures that would be implemented to minimize potential impacts to biological resources. Those that when implemented would likely result in minimizing direct mortality of tortoises include:

- BIO-1. A biological monitor shall be present prior to initiation of ground disturbing activities to demark limit of disturbance boundaries, conduct pre-construction sweeps, and inspect compliance with project protection measures.
- BIO-2. Desert riparian vegetation shall be avoided to the greatest extent possible within Vidal Wash and Drainage Systems 5 and 6 to preserve habitat for the sensitive species with potential to nest and forage in these areas.
- BIO-3. An environmental training program shall be developed and presented to all crew members prior to the beginning of all project construction.
- BIO-5. If a sensitive species is found, the species shall be relocated out of harm's way according to the capture/relocation plan. Any mortalities shall be reported to the agencies and County of San Bernardino. A final monitoring report will be submitted to CDFW [California Department of Fish and Wildlife] and County of San Bernardino. The annual report shall include a summary of pre-construction surveys, biological monitoring, avoidance measures implemented, and whether the avoidance measures were effective.
- BIO-8. Temporary and permanent impacts to all jurisdictional resources shall be compensated through a combination of habitat creation (i.e., establishment), enhancement, preservation, and/or and restoration at a minimum of a 1:1 ratio or as required by the permitting agencies. Any creation, enhancement, preservation, and/or restoration effort shall be implemented pursuant to a Habitat Restoration Plan, which shall include success criteria and monitoring specifications, and shall be approved by the permitting agencies and County of San Bernardino.
- Temporarily impacted drainage features shall be recontoured to pre-construction conditions. Temporary impacts shall be restored sufficient to compensate for the impact to the satisfaction of the permitting agencies (depending on the location of the impact). If restoration of temporary impact areas is not possible to the satisfaction of the appropriate agency, the temporary impact shall be considered a permanent impact and compensated accordingly.

C1-12

The DEIR concludes, that "[w]ith the implementation of Mitigation Measures BIO-1 through BIO-11, the Project's impacts on biological resources would be reduced to less than significant.

These proposed mitigation measures are standard mitigation measures that have been implemented for numerous years. They focus on direct impacts to biological resources. They do not mitigate indirect or cumulative impacts or the temporal loss of the functions and values of the biological resources destroyed/degraded. For the Mojave desert tortoise, its ongoing decline since listing (USFWS 2015, 2016, 2018, 2019, 2020, 2022a, 2022b; Allison and McLuckie 2018) is attributed to the direct, indirect, and cumulative impacts of human actions (USFWS 2011). While mitigating many of the direct impacts of proposed projects to the tortoise has been the practice for more than thirty years, this mitigation has been unsuccessful in halting the decline in tortoise abundance and density for numerous reasons including failure to mitigate indirect and cumulative impacts to the tortoise.

C1-12 cont

By attaching Appendix A to this comment letter, we would like to enter into the record an accounting of the science-based, observed declines in tortoise populations, which are intended to inform and be included in the new analysis in the DEIR/EIS. We note that this same information was provided to the County on 4/30/2022 in scoping comments by the Council (Desert Tortoise Council 2022[3]), yet there is nothing in the DEIR to suggest that our scoping comments were received, and certainly no evidence the information informed the analysis and decisions in the DEIR. We contend that the DEIR is deficient in this and other regards given herein, and is further evidence why a more detailed analysis is required in the DEIR/EIS.

In Appendix D - Biological Resources Report of the DEIR, the document says the tortoise is "considered absent from the Project Area." However, we were unable to find in the DEIR a conclusion that the Project would have no impact on the tortoise. The Council contends that given the published scientific research/studies on the tortoise, the proposed Project will adversely impact the tortoise. For example, the tortoise likely uses the Project Area but may not be a permanent resident of the Project Site. Please see our comments under "Appendix D – Biological Resources."

C1-13

We request that the DEIR/EIS be revised and analyze the indirect and cumulative impacts to the tortoise and the temporal loss of the functions and values of the biological resources destroyed/degraded from implementation of the proposed Project and alternatives. A few of the indirect impacts that should be analyzed are mentioned below.

Indirect Impact – Heat Sink Effect: The CEQA document should include an analysis of the heat sink effect from solar energy plants and how this would impact the tortoise and other wildlife species near the Project. This analysis is needed because of the biodiversity crisis and because climate change is resulting in increasing high temperatures that now exceed the physiological limits of many organisms, and even widespread species are threatened with extinction (Smith et al. 2023).

C1-14

Indirect Impact – Road Effects: A few hundred workers would be employed during the construction of the proposed Project. We presume that workers would travel from Blythe, or farther away on a daily basis. This increased traffic on roads to the Project Site may increase the

C1-15

[3] https://www.dropbox.com/s/t5emgaizjb33nxl/Vidal%20Energy%20Project.4-30-2022.pdf?dl=0

risk of death or injury to the Mojave desert tortoise and other wildlife species. All direct and indirect impacts from the road effect zone should be analyzed in the revised DEIR and fully mitigated. Exclusion fencing for tortoises and other wildlife species and other mitigation measures should be considered to determine the most effective measures to implement. In that respect, we enter into the public record Appendix B, which provides a wealth of information about impacts associated vehicles, which we expect to be included in the revised DEIR/EIS.

C1-15 cont

Indirect Impact – Subsidized Predators of the Tortoise and Other Wildlife: Common ravens (*Corvus corax*) are known predators of the Mojave desert tortoise and their numbers have increased substantially because of human subsidies of food, water, and sites for nesting, roosting, and perching to hunt (Boarman 1993, 2003; Kristan and Boarman 2003). Appendix D of the DEIR indicated common ravens were "commonly observed or detected on [the Project] site."

The transmission line to the WAPA transmission system (i.e., the gen-tie line) would include construction and maintenance of towers or poles. We request these structures be the tubular design monopole with a steep-pointed apex and insulators on down-sloping cross arms. These are preferable to lattice towers, which should not be used, as such towers provide substrates or platforms for nest construction by common ravens. This human subsidy of ravens and resulting mortality of tortoises from an increased number of predators is an example of an indirect impact that the DEIR did not analyze. We request that this analysis be include in the revised DEIR/EIS.

C1-16

For local impacts, the revised DEIR/EIS should include mitigation that reduces/eliminates human subsidies of food and water, and for the common raven, sites for nesting, roosting, and perching to address local impacts (footprint of the proposed Project). This includes buildings, fences, and other vertical structures associated with the Project site. For example, under Project Construction, "Construction water usage is anticipated to be approximately 240 acre-feet (AF) during the construction period of 14 months." We request that at no time should water applied from a human source be allowed to pond or form puddles on the ground or on roofs.

Mitigation measures should include science-based monitoring and adaptive management throughout all phases of the Project or alternative selected to collect data on the effectiveness of the mitigation and implement changes to reduce/eliminate predation on the tortoise if existing measures are not effective.

For regional and cumulative impacts, the County should require CORE to participate in an effort to mitigate regional and cumulative impacts. For example, in California, the Project Proponent should contribute to the National Fish and Wildlife Foundation's Raven Management Fund to help mitigation for regional and cumulative impacts.

Appendix D – Biological Resources

C1-17

According to the report in Appendix D, protocol level surveys were conducted to look for presence/sign of tortoise and burrowing owl in 2020. Based on the results of these surveys, the report concludes that tortoises were not present in the Project Area during the survey. We note the surveys were conducted 2+ years ago and should probably be conducted again in spring 2023 (see below).

Although the tortoise sign detected during the protocol pre-project survey was minimal, tortoises have been documented using washes as movement paths or corridors (Hromada et al. 2020). In addition, the Project Site is about three miles from designated critical habitat for the tortoise and the Chemehuevi Tortoise Conservation Area (TCA). Tortoises have been documented making periodic forays of more than 7 miles at a time (Berry 1986a) and travel up to 0.6 mile a day (Berry 1986b). Home range size is significantly reduced during drought years (Duda et al. 1999). Because southern California has been experiencing a drought for the last several years, with above average rainfall occurring in 2022-2023, tortoise survey efforts in spring 2023 would likely yield a different result than those from 2020.

Because of the duration of the proposed Project (i.e., 35 years for operations and maintenance plus addition time for construction and decommissioning), the presence of multiple washes of various sizes running through the Project site, the proximity of critical habitat and a TCA, and the documented multi-mile movements by tortoises in one year, and their use of some washes as paths or natural corridors for tortoise movements (Hromada et a. 2020), there is a likelihood that tortoises may occur on the Project Site during one or more of its phases. We request that the revised DEIR/EIS discuss the actions that would be implemented when a tortoise is encountered during construction, operations, and maintenance, or decommissioning phases of the Project. Such interactions would likely require coordination/consultation with U.S. Fish and Wildlife Service (USFWS). In addition, we request that information on tortoises using washes as movement paths or corridors (Jennings et al. 2015, among others) be added to the section in Appendix D on Wildlife Movement Corridors and Jurisdictional Waters – State Permits.

C1-17 cont

We request that the USFWS be included in the agencies consulted regarding the proposed Project. The Army Corps of Engineers is mentioned regarding the process of determining if waters are jurisdictional under the Clean Water Act. The USFWS should be listed as an agency that is consulted to determine compliance with the Federal Endangered Species Act (FESA).

C1-18

If the proposed Project is a connected action to a federal action, the threshold for compliance with the FESA changes from whether the Project is likely to result in take of the tortoise to whether the Project is likely to adversely affect the tortoise. This adverse impact may be from direct, indirect, or cumulative impacts.

The biological report said a tortoise burrow was found but the burrow "was filled with spider webs and appeared to have been in disuse for some time." As experienced tortoise biologists know, spiderwebs can be constructed in a tortoise burrow in less than 24 hours. Because tortoises construct and use numerous burrows, know their locations, and reuse them at various times during the year(s) when traversing through their annual year or multiple year home ranges (Harless et al. 2009, Rautenstrauch et al. 2002), a burrow may not have been used by a tortoise for several days, weeks, or months. Please clarify this information in the revised DEIR/EIS.

C1-19

Sections 5.6 Special Status Species and 6.4 Sensitive Species – Desert Kit Fox: We request that the following information be added to this section. The desert kit fox (*Vulpes macrotis*) is protected under Title 14 of the California Code of Regulations §460. "Fisher, marten, river otter, desert kit fox and red fox may not be taken at any time."

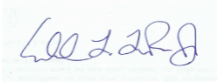
C1-20

Page 61 says – "An environmental training program shall be developed and presented to all crew members prior to the beginning of all project construction. The training shall describe special-status wildlife species and sensitive habitats that could occur within project work areas, protection afforded to these species and habitats, and avoidance and minimization measures required to avoid and/or minimize impacts from the project." We recommend this training program be presented to crew employed during operation, maintenance, and decommissioning as take of special-status species could occur during these phases of the Project. C1-21

In addition, we request that an incentive program for protection of special-status wildlife species be developed and implemented that would be applied to all employees and contractors. This program would add to the eyes and ears of qualified biologists and monitors present during the Project. Incentive programs have been used in the past during some construction projects and have been highly effective at eliminating take, mortality, and injury. Incentives for finding special status species and informing the authorized biologist or monitors have included monetary rewards but other incentives could be offered (e.g., additional vacation hours, etc.). C1-22

We appreciate this opportunity to provide comments on this Project and trust they will help protect tortoises during any resulting authorized activities. Herein, we reiterate that the Desert Tortoise Council wants to be identified as an Affected Interest for this and all other projects funded, authorized, or carried out by the County that may affect species of desert tortoises, and that any subsequent environmental documentation for this Project is provided to us at the contact information listed above. Additionally, we ask that you respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this project. C1-23

Respectfully,



Edward L. LaRue, Jr., M.S.
Ecosystems Advisory Committee, Chairperson
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Appendix A. Demographic Status and Trend of the Mojave Desert Tortoise (*Gopherus agassizii*)

We provide the following information on the status and trend of the listed population of the desert tortoise to assist the County with its analysis of the direct, indirect, and cumulative impacts of the Proposed Project on the Mojave desert tortoise.

BLM's implementation of a conservation strategy for the Mojave desert tortoise in its resource management plans through 2020 has resulted in the following changes in the status for the tortoise throughout its range and in Nevada from 2004 to 2014 (Table 1; USFWS 2015) and 2004 to 2020 (Table 2). There are 17 populations of Mojave desert tortoise described below that occur in the Critical Habitat Units (CHUs) and Tortoise Conservation Areas (TCAs); 14 are on lands managed by the BLM.

The Desert Tortoise Council (Council) has serious concerns about direct, indirect, and cumulative sources of human mortality for the Mojave desert tortoise given the status and trend of the species range-wide, within each of the five recovery units, and within the TCAs that comprise each recovery unit.

Densities of Adult Mojave Desert Tortoises: A few years after listing the Mojave desert tortoise under the Federal Endangered Species Act (FESA), the U.S. Fish and Wildlife Service (USFWS) published a Recovery Plan for the Mojave desert tortoise (USFWS 1994a). It contained a detailed population viability analysis. In this analysis, the minimum viable density of a Mojave desert tortoise population is 10 adult tortoises per mile^2 (3.9 adult tortoises per km^2). This assumed a male-female ratio of 1:1 (USFWS 1994a, page C25) and certain areas of habitat with most of these areas geographically linked by adjacent borders or corridors of suitable tortoise habitat. Populations of Mojave desert tortoises with densities below this density are in danger of extinction (USFWS 1994a, page 32). The revised recovery plan (USFWS 2011) designated five recovery units for the Mojave desert tortoise that are intended to conserve the genetic, behavioral, and morphological diversity necessary for the recovery of the entire listed species (Allison and McLuckie 2018).

Range-wide, densities of adult Mojave desert tortoises declined more than 32% between 2004 and 2014 (Table 1) (USFWS 2015). At the recovery unit level, between 2004 and 2014, densities of adult desert tortoises declined, on average, in every recovery unit except the Northeastern Mojave (Table 1). Adult densities in the Northeastern Mojave Recovery Unit increased 3.1% per year (SE = 4.3%), while the other four recovery units declined at different annual rates: Colorado Desert (–4.5%, SE = 2.8%), Upper Virgin River (–3.2%, SE = 2.0%), Eastern Mojave (–11.2%, SE = 5.0%), and Western Mojave (–7.1%, SE = 3.3%)(Allison and McLuckie 2018). However, the small area and low starting density of the tortoises in the Northeastern Mojave Recovery Unit (lowest density of all Recovery Units) resulted in a small overall increase in the number of adult tortoises by 2014 (Allison and McLuckie 2018). In contrast, the much larger areas of the Eastern Mojave, Western Mojave, and Colorado Desert recovery units, plus the higher estimated initial densities in these areas, explained much of the estimated total loss of adult tortoises since 2004 (Allison and McLuckie 2018).

At the population level, represented by tortoises in the TCAs, densities of 10 of 17 monitored populations of the Mojave desert tortoise declined from 26% to 64% and 11 have densities less than 3.9 adult tortoises per km^2 (USFWS 2015).

Population Data on Mojave Desert Tortoise: The Mojave desert tortoise was listed as threatened under the FESA in 1990. The listing was warranted because of ongoing population declines throughout the range of the tortoise from multiple human-caused activities. Since the listing, the status of the species has changed. Population numbers (abundance) and densities continue to decline substantially (please see Tables 1 and 2).

Table 1. Summary of 10-year trend data for 5 Recovery Units and 17 CHUs/TCAs for the Mojave desert tortoise, *Gopherus agassizii* (=Agassiz's desert tortoise). The table includes the area of each Recovery Unit and CHU/TCA, percent of total habitat for each Recovery Unit and CHU/TCA, density (number of breeding adults/km^2 and standard errors = SE), and the percent change in population density between 2004-2014. Populations below the viable level of 3.9 adults/km^2 (10 adults per mi^2) (assumes a 1:1 sex ratio) and showing a decline from 2004 to 2014 are in red (Allison and McLuckie 2018, USFWS 2015).

Recovery Unit Designated CHU/TCA	Surveyed area (km^2)	% of total habitat area in Recovery Unit & CHU/TCA	2014 density/km^2 (SE)	% 10-year change (2004–2014)
Western Mojave, CA	**6,294**	**24.51**	**2.8 (1.0)**	**–50.7 decline**
Fremont-Kramer	2,347	9.14	2.6 (1.0)	–50.6 decline
Ord-Rodman	852	3.32	3.6 (1.4)	–56.5 decline
Superior-Cronese	3,094	12.05	2.4 (0.9)	–61.5 decline
Colorado Desert, CA	**11,663**	**45.42**	**4.0 (1.4)**	**–36.25 decline**
Chocolate Mtn AGR, CA	713	2.78	7.2 (2.8)	–29.77 decline
Chuckwalla, CA	2,818	10.97	3.3 (1.3)	–37.43 decline
Chemehuevi, CA	3,763	14.65	2.8 (1.1)	–64.70 decline
Fenner, CA	1,782	6.94	4.8 (1.9)	–52.86 decline
Joshua Tree, CA	1,152	4.49	3.7 (1.5)	+178.62 increase
Pinto Mtn, CA	508	1.98	2.4 (1.0)	–60.30 decline
Piute Valley, NV	927	3.61	5.3 (2.1)	+162.36 increase
Northeastern Mojave	**4,160**	**16.2**	**4.5 (1.9)**	**+325.62 increase**
Beaver Dam Slope, NV, UT, AZ	750	2.92	6.2 (2.4)	+370.33 increase
Coyote Spring, NV	960	3.74	4.0 (1.6)	+ 265.06 increase
Gold Butte, NV & AZ	1,607	6.26	2.7 (1.0)	+ 384.37 increase
Mormon Mesa, NV	844	3.29	6.4 (2.5)	+ 217.80 increase
Eastern Mojave, NV & CA	**3,446**	**13.42**	**1.9 (0.7)**	**–67.26 decline**
El Dorado Valley, NV	999	3.89	1.5 (0.6)	–61.14 decline
Ivanpah Valley, CA	2,447	9.53	2.3 (0.9)	–56.05 decline
Upper Virgin River	**115**	**0.45**	**15.3 (6.0)**	**–26.57 decline**
Red Cliffs Desert	115	0.45	15.3 (6.0)	–26.57 decline
Total amount of land	**25,678**	**100.00**		**–32.18 decline**

Density of Juvenile Mojave Desert Tortoises: Survey results indicate that the proportion of juvenile desert tortoises has been decreasing in all five recovery units since 2007 (Allison and McLuckie 2018). The probability of encountering a juvenile tortoise was consistently lowest in the Western Mojave Recovery Unit. Allison and McLuckie (2018) provided reasons for the decline in juvenile desert tortoises in all recovery units. These included decreased food availability for adult female tortoises resulting in reduced clutch size, decreased food availability resulting in increased mortality of juvenile tortoises, prey switching by coyotes from mammals to tortoises, and increased abundance of common ravens that typically prey on smaller desert tortoises.

Declining adult tortoise densities through 2014 have left the Eastern Mojave adult numbers at 33% (a 67% decline of their 2004 levels) (Allison and McLuckie 2018, USFWS 2015). Such steep declines in the density of adults are only sustainable if there are suitably large improvements in reproduction and juvenile growth and survival. However, the proportion of juveniles has not increased anywhere in the range of the Mojave desert tortoise since 2007, and in the Eastern Mojave Recovery Unit the proportion of juveniles in 2014 declined from 14 to 11 percent (a 21% decline) of their representation since 2007 (Allison and McLuckie 2018).

The USFWS and Utah Division of Wildlife Resources have continued to collect density data on the Mojave desert tortoise since 2014. The results are provided in Table 2 along with the analysis USFWS (2015) conducted for tortoise density data from 2004 through 2014. These data show that adult tortoise densities in most Recovery Units continued to decline in density since the data collection methodology was initiated in 2004. In addition, in the Northeastern Mojave Recovery Unit that had shown an overall increase in tortoise density between 2004 and 2014, subsequent data indicate a decline in density since 2014 (USFWS 2016, 2018, 2019, 2020, 2022a, 2022b).

Table 2. Summary of data for Agassiz's desert tortoise, *Gopherus agassizii* (=Mojave desert tortoise) from 2004 to 2021 for the 5 Recovery Units and 17 CHUs/TCAs. The table includes the area of each Recovery Unit and CHU/TCA, percent of total habitat for each Recovery Unit and CHU/TCA, density (number of breeding adults/km^2 and standard errors = SE), and percent change in population density between 2004-2014 (USFWS 2015). Populations below the viable level of 3.9 breeding individuals/km^2 (10 breeding individuals per mi^2) (assumes a 1:1 sex ratio) (USFWS 1994a, 2015) or showing a decline from 2004 to 2014 are in **red.**

Recovery Unit: Designated CHU/TCA &	% of total habitat area in Recovery Unit & CHU/TCA	2014 density/ km^2 (SE)	% 10-year change (2004–2014)	2015 density/ km^2	2016 density/ km^2	2017 density/ km^2	2018 density/ km^2	2019 density/ km^2	2020 density/ km^2	2021 density/ km^2
Western Mojave, CA	**24.51**	**2.8 (1.0)**	**–50.7 decline**							
Fremont-Kramer	9.14	2.6 (1.0)	–50.6 decline	4.5	No data	4.1	No data	2.7	1.7	No data
Ord-Rodman	3.32	3.6 (1.4)	–56.5 decline	No data	No data	3.9	2.5/3.4*	2.1/2.5*	No data	1.9/2.5*
Superior-Cronese	12.05	2.4 (0.9)	–61.5 decline	2.6	3.6	1.7	No data	1.9	No data	No data
Colorado Desert, CA	**45.42**	**4.0 (1.4)**	**–36.25 decline**							
Chocolate Mtn AGR, CA	2.78	7.2 (2.8)	–29.77 decline	10.3	8.5	9.4	7.6	7.0	7.1	3.9
Chuckwalla, CA	10.97	3.3 (1.3)	–37.43 decline	No data	No data	4.3	No data	1.8	4.6	2.6
Chemehuevi, CA	14.65	2.8 (1.1)	–64.70 decline	No data	1.7	No data	2.9	No data	4.0	No data
Fenner, CA	6.94	4.8 (1.9)	–52.86 decline	No data	5.5	No data	6.0	2.8	No data	5.3
Joshua Tree, CA	4.49	3.7 (1.5)	+178.62 increase	No data	2.6	3.6	No data	3.1	3.9	No data

Recovery Unit: Designated CHU/TCA	% of total habitat area in Recovery Unit & CHU/TCA	2014 density/km^2 (SE)	% 10-year change (2004–2014)	2015	2016	2017	2018	2019	2020	2021
Pinto Mtn, CA	1.98	2.4 (1.0)	–60.30 decline	No data	2.1	2.3	No data	1.7	2.9	No data
Piute Valley, NV	3.61	5.3 (2.1)	+162.36 increase	No data	4.0	5.9	No data	No data	No data	3.9
Northeastern Mojave AZ, NV, & UT	**16.2**	**4.5 (1.9)**	**+325.62 increase**							
Beaver Dam Slope, NV, UT, & AZ	2.92	6.2 (2.4)	+370.33 increase	No data	5.6	1.3	5.1	2.0	No data	No data
Coyote Spring, NV	3.74	4.0 (1.6)	+ 265.06 increase	No data	4.2	No data	No data	3.2	No data	No data
Gold Butte, NV & AZ	6.26	2.7 (1.0)	+ 384.37 increase	No data	No data	1.9	2.3	No data	No data	2.4
Mormon Mesa, NV	3.29	6.4 (2.5)	+ 217.80 increase	No data	2.1	No data	3.6	No data	5.2	5.2
Eastern Mojave, NV & CA	**13.42**	**1.9 (0.7)**	**–67.26 decline**							
El Dorado Valley, NV	3.89	1.5 (0.6)	–61.14 decline	No data	2.7	5.6	No data	2.3	No data	No data
Ivanpah Valley, CA	9.53	2.3 (0.9)	–56.05 decline	1.9	No data	No data	3.7	2.6	No data	1.8

Recovery Unit: Designated CHU/TCA	% of total habitat area in Recovery Unit & CHU/TCA	2004 density/ km^2	2014 density/km^2 (SE)	% 10-year change (2004–2014)	2015	2016	2017	2018	2019	2020	2021
Upper Virgin River, UT & AZ	**0.45**		**15.3 (6.0)**	**–26.57 decline**							
Red Cliffs Desert**	0.45	29.1 (21.4-39.6)**	15.3 (6.0)	–26.57 decline	15.0	No data	19.1	No data	17.2	No data	
Range-wide Area of CHUs - TCAs/Range-wide Change in Population Status	**100.00**			**–32.18 decline**							

*This density includes the adult tortoises translocated from the expansion of the MCAGCC, that is resident adult tortoises and translocated adult tortoises.

**Methodology for collecting density data initiated in 1999.

Abundance of Mojave Desert Tortoises: Allison and McLuckie (2018) noted that because the area available to tortoises (i.e., tortoise habitat and linkage areas between habitats) is decreasing, trends in tortoise density no longer capture the magnitude of decreases in abundance. Hence, they reported on the change in abundance or numbers of the Mojave desert tortoise in each recovery unit (Table 2). They noted that these estimates in abundance are likely higher than actual numbers of tortoises, and the changes in abundance (i.e., decrease in numbers) are likely lower than actual numbers because of their habitat calculation method. They used area estimates that removed only impervious surfaces created by development as cities in the desert expanded. They did not consider degradation and loss of habitat from other sources, such as the recent expansion of military operations (753.4 km^2 so far on Fort Irwin and the Marine Corps Air Ground Combat Center), intense or large scale fires (e.g., 576.2 km^2 of critical habitat that burned in 2005), development of utility-scale solar facilities (as of 2015, 194 km^2 have been permitted) (USFWS 2016), or other sources of degradation or loss of habitat (e.g., recreation, mining, grazing, infrastructure, etc.). Thus, the declines in abundance of Mojave desert tortoise are likely greater than those reported in Table 3.

Table 3. Estimated change in abundance of adult Mojave desert tortoises in each recovery unit between 2004 and 2014 (Allison and McLuckie 2018). Decreases in abundance are in red.

Recovery Unit	Modeled Habitat (km^2)	2004 Abundance	2014 Abundance	Change in Abundance	Percent Change in Abundance
Western Mojave	23,139	131,540	64,871	-66,668	-51%
Colorado Desert	18,024	103,675	66,097	-37,578	-36%
Northeastern Mojave	10,664	12,610	46,701	34,091	270%
Eastern Mojave	16,061	75,342	24,664	-50,679	-67%
Upper Virgin River	613	13,226	10,010	-3,216	-24%
Total	**68,501**	**336,393**	**212,343**	**-124,050**	**-37%**

Habitat Availability: Data on population density or abundance does not indicate population viability. The area of protected habitat or reserves for the subject species is a crucial part of the viability analysis along with data on density, abundance, and other population parameters. In the Desert Tortoise (Mojave Population) Recovery Plan (USFWS 1994a), the analysis of population viability included population density and size of reserves (i.e., areas managed for the desert tortoise) and population numbers (abundance) and size of reserves. The USFWS Recovery Plan reported that as population densities for the Mojave desert tortoise decline, reserve sizes must increase, and as population numbers (abundance) for the Mojave desert tortoise decline, reserve sizes must increase (USFWS 1994a). In 1994, reserve design (USFWS 1994a) and designation of critical habitat (USFWS 1994b) were based on the population viability analysis from numbers (abundance) and densities of populations of the Mojave desert tortoise in the early 1990s. Inherent in this analysis is that the lands be managed with reserve level protection (USFWS 1994a, page 36) or ecosystem protection as described in section 2(b) of the FESA, and that sources of mortality be reduced so recruitment exceeds mortality (that is, lambda > 1)(USFWS 1994a, page C46).

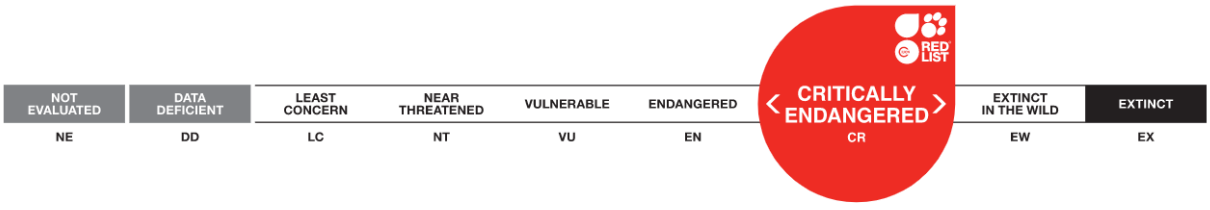
Habitat loss would also disrupt the prevailing population structure of this widely distributed species with geographically limited dispersal (isolation by resistance Dutcher et al. 2020).

Allison and McLuckie (2018) anticipate an additional impact of this habitat loss/degradation is decreasing resilience of local tortoise populations by reducing demographic connections to neighboring populations (Fahrig 2007). Military and commercial operations and infrastructure projects that reduce tortoise habitat in the desert are anticipated to continue (Allison and McLuckie 2018) as are other sources of habitat loss/degradation.

Allison and McLuckie (2018) reported that the life history of the Mojave desert tortoise puts it at greater risk from even slightly elevated adult mortality (Congdon et al. 1993; Doak et al. 1994), and recovery from population declines will require more than enhancing adult survivorship (Spencer et al. 2017). The negative population trends in most of the TCAs for the Mojave desert tortoise indicate that this species is on the path to extinction under current conditions (Allison and McLuckie 2018). They state that their results are a call to action to remove ongoing threats to tortoises from TCAs, and possibly to contemplate the role of human activities outside TCAs and their impact on tortoise populations inside them.

Densities, numbers, and habitat for the Mojave desert tortoise declined between 2004 and 2014 and densities continue to decline in most Recovery Units since 2014. As reported in the population viability analysis, to improve the status of the Mojave desert tortoise, reserves (area of protected habitat) must be established and managed. When densities of tortoises decline, the area of protected habitat must increase. When the abundance of tortoises declines, the area of protected habitat must increase. We note that the Desert Tortoise (Mojave Population) Recovery Plan was released in 1994 and its report on population viability and reserve design was reiterated in the 2011 Revised Recovery Plan as needing to be updated with current population data (USFWS 2011, p. 83). With lower population densities and abundance, a revised population viability analysis would show the need for greater areas of habitat to receive reserve level of management for the Mojave desert tortoise. In addition, we note that none of the recovery actions that are fundamental tenets of conservation biology has been implemented throughout most or all of the range of the Mojave desert tortoise.

IUCN Species Survival Commission: The Mojave desert tortoise is now on the list of the world's most endangered tortoises and freshwater turtles. It is in the top 50 species. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers Mojave desert tortoise to be Critically Endangered (Berry et al. 2021). As such, it is a "species that possess an extremely high risk of extinction as a result of rapid population declines of 80 to more than 90 percent over the previous 10 years (or three generations), a current population size of fewer than 50 individuals, or other factors." It is one of three turtle and tortoise species in the United States to be critically endangered. This designation is more grave than endangered.



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Via email only

April 30, 2022

County of San Bernardino, Land Use Services Department
Attn.: Jim Morrissey, Planner
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415
Email: Jim.Morrissey@lus.sbcounty.gov

RE: Notice of Preparation of a Draft Environmental Impact Report for Vidal Energy Project - PROJ-2021-00012

Dear Mr. Morrissey,

The Desert Tortoise Council (Council) is a non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of desert tortoise species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

C2-1

We appreciate this opportunity to provide scoping comments on the above-referenced project, which will be considered in a forthcoming Draft Environmental Impact Report (DEIR). Given the location of the proposed project in habitats likely occupied by Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments include recommendations that will enhance protection of this species and its habitat during activities authorized by the County of San Bernardino (County), which we recommend be added to project terms and conditions in the authorizing document (e.g., right of way grant, etc.) as appropriate. Please accept, carefully review, and include in the relevant project file the Council's following comments and attachments for the proposed project.

Project Description

"CDH Vidal LLC (CORE) plans to construct and operate the Vidal Energy Project (Project), a solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 160 megawatts (MW) of solar power and include up to 640 megawatt hours (MWh) of energy storage capacity rate in a battery energy storage system (BESS) on up to approximately 1,220 acres of land. The Project would be supported by the existing, adjacent Western Area Power Administration (WAPA) 161-kilovolt (kV) overhead transmission corridor. The Project would include the construction of one on-site substation facility, which would collect and convert the power generated on-site for transmission in an overhead or underground line to the WAPA transmission system and interconnection location. The Project's permanent facilities would include PV panels, BESS, fencing, service roads, a power collection system, communication cables, overhead and underground transmission lines, electrical switchyards, a Project substation, and operations and maintenance (O&M) facilities.

C2-2

"The Project Site is located approximately 2.5 miles southeast of unincorporated Vidal, just east of U.S. Route 95, north of the Riverside County boundary, and west of the Colorado River (see Figure 1). The Project Site encompasses 1,220 acres within 21 privately owned parcels (in their entirety and portions of) that are in the process of lease acquisition by CORE. The County's Zoning Map identifies the zoning of the Project Site as Resource Conservation (RC), which provides sites for open space and recreational activities, single-family homes on very large parcels, and similar and compatible uses. Commercial renewable energy facilities are an allowable use within the RC land use zoning district. Existing development and disturbed areas within the Project Site include rural access roads that include access to the transmission line, scattered abandoned rural residences, garage (storage) areas, and several WAPA towers. The wash areas are currently being used by off-highway vehicles. Primary access to the Project would be provided via U.S. Route 95 onto a Project-controlled, dirt access road on the west side of the Project Site."

Scoping Comments

First, we understand that comments were due on April 27, 2022 and these comments are three days late. This tardiness is due to the busy schedule of our volunteer staff responsible to write this letter, and because we only recently learned about this project from a third party, not from the County. In any case, we hope these comments are still received as County planners consider the environmental analysis of this project.

The purpose of scoping is to allow the public to participate in an "early and open process for determining the scope of issues to be addressed, and for identifying the significant issues related to a proposed action" (40 Code of Federal Regulations (CFR) 1501.7). The DEIR should discuss how this proposed project fits within the management structure of the current land management plan for the area [e.g., California Desert Conservation Area Plan (CDCA Plan) (BLM 1980 as amended]. It should provide maps of critical habitat for the Mojave desert tortoise (USFWS 1994a), Areas of Critical Environmental Concern (ACECs), and other areas identified for special management by BLM [e.g., National Conservation Lands (NCLs)]; U.S. Fish and Wildlife Service (USFWS) (e.g., linkage habitats between desert tortoise populations); Nevada Department of Wildlife (NDOW); other federal, state, and local agencies; and tribal lands.

C2-3

Proposed Action and Alternatives Considered

We fully expect that the County will comply with all applicable statutes, regulations, Executive and Departmental Orders, and other requirements as they pertain to this project. The County should demonstrate in the DEIR that the proposed project meets all these requirements with respect to the tortoise, that:

- The proposed project will be in conformance with decisions in current land use plan(s), including the Desert Renewal Energy Conservation Plan (DRECP), even though that plan is applicable to public lands managed by the Bureau of Land Management (BLM);
- the proposed project will be consistent with priority conservation, restoration, and/or adaptation objectives in the best available landscape-scale information (e.g., for tortoise population connectivity, etc.);
- the applicant has coordinated with governments and agencies, including consideration of consistency with officially adopted plans and policies (e.g., recovery plans);
- the proposed project is in an area with low or comparatively low resource conflicts and where conflicts can be resolved (e.g., it is our understanding that portions of the project are in the designated tortoise Fenner Critical Habitat Unit, even though how much is not revealed in the Notice of Preparation (NOP);
- the proposed project will be located in, or adjacent to, previously contaminated or disturbed lands;
- the proposed project will minimize adverse impacts on important fish and wildlife habitats and migration/movement corridors including the desert tortoise;
- the proposed project will minimize impacts on lands with wilderness characteristics and the values associated with these lands;
- the proposed project will not adversely affect lands donated or acquired for conservation purposes, or mitigation lands identified in previously approved projects such as translocation areas for desert tortoise;
- significant cumulative impacts on resources of concern should not occur as a result of the proposed project (i.e., exceedance of an established threshold such population viability for the tortoise and connectivity of tortoise populations among recovery units); and,
- the County's analysis would use current data on the tortoise for the project area, population, pertinent Recovery Unit, and range wide, as population numbers and densities have substantially declined in most recovery units, so the County must use data/knowledge currently available on what is needed for habitat linkages for the tortoise (Allison and McLuckie 2018; USFWS 2021, 2022a, and 2022b).

C2-4

Whereas we understand that the County serves as the Lead Agency and there is (apparently) no BLM involvement, we have serious concerns about BLM's commitment to manage effectively for the sustained yield of the tortoise, which also affects projects permitted by the County. These concerns include past actions regarding:

C2-5

- Mitigation to improve conditions within the connectivity areas, and if these options do not exist, mitigation may be applied toward the nearest tortoise conservation area (e.g., an ACEC for which tortoise had been identified in the Relevant and Important Criteria or critical habitat); and
- a plan included in the DEIR that would effectively monitor desert tortoise impacts, including verification that desert tortoise connectivity corridors are functional. The required Federal Endangered Species Act (FESA) consultation should further define this monitoring plan.

Regarding the first concern, we believe that a multiagency approach is best to ensure the County is meeting its obligations, soliciting review and input from pertinent federal and state resource agencies, Tribal governments/agencies, and non-governmental organizations (NGOs). Mitigation of impacts should include, in priority order, avoidance, minimization and compensation for unavoidable impacts. Mitigation should at a minimum offset all direct, indirect, and cumulative impacts, especially given the status and trend of the tortoise (please see *Affected Environment - Status of the Populations of the Mojave Desert Tortoise* below). The County should ensure it is effectively implementing its section 10(A)(1b) conservation mandate under the FESA.

C2-5 cont

Mitigation should be applied only in areas where the lands are effectively managed for the benefit of the tortoise for both the short-term and long-term. As currently managed, BLM ACECs in Nevada and the California Desert Conservation Area are not meeting this criterion. Consequently, mitigation should be implemented on lands with a durable conservation designation, or on privately owned lands with a conservation easement or other legal instrument that ensures conservation in perpetuity. Please see *Mitigation Plans* below for additional concerns and requested requirements.

Regarding the second concern, a monitoring plan should (1) be scientifically and statistically credible; (2) be implementable; and (3) require the project proponent to implement adaptive management to correct land management practices if the mitigation is not accomplishing its intended purposes.

The Council expects that the County will describe the purpose and need for this project and develop and analyze other viable alternatives, such as rooftop solar, which we believe constitute "other reasonable courses of actions" (40 CFR 1508.25).

The Council supports alternatives to reduce the need for additional solar energy projects in relatively undisturbed habitats in the Mojave Desert. For example, the City of Los Angeles has implemented a rooftop solar Feed-in Tariff (FiT) program, the largest of its kind in America. The FiT program enables the owners of large buildings to install solar panels on their roofs, and sell the power they generate back to utilities for distribution into the power grid.

C2-6

We request that County include an urban solar alternative. Under this alternative, owners of large buildings or parking areas would grant the project proponent permission to install solar panels on their roofs and cover parking areas, and sell the power they generate back to utilities for distribution into the power grid.

This approach puts the generation of electricity where the demand is greatest, in populated areas. It may also reduce transmission costs, greenhouse gas emissions from constructing energy projects far from the sources of power demand and materials for construction, the number of affected resources in the desert that must be analyzed under the California Environmental Quality Act (CEQA), and mitigation costs for direct, indirect, and cumulative impacts; monitoring and adaptive management costs; and habitat restoration costs following decommissioning. The DEIR should include an analysis of where the energy generated by this project would be sent and the needs for energy in those targeted areas that may be satisfied by urban solar. We request that at least one viable alternative be analyzed in the DEIR where electricity generation via solar energy is located much closer to the areas where the energy will be used, including generation in urban/suburban areas.

In addition, the County should include another viable alternative of locating solar projects on bladed or highly degraded tracts of land (e.g., abandoned agricultural fields). Such an alternative would not result in the destruction of desert habitats and mitigation for the lost functions and values of these habitats. These losses and mitigation are costly from an economic, environmental, and social perspective. We strongly oppose developing this project in critical habitat, which would set a precedent in San Bernardino County.

C2-6 cont

These two alternatives are important to consider to minimize or avoid the loss of vegetation that sequesters carbon. Studies around the world have shown that desert ecosystems can act as important carbon sinks. For example, the California deserts account for nearly 10 percent of the state's carbon sequestration; below ground in soil and root systems, and above ground in biomass. Protecting this biome can contribute to securing carbon stores in the state (MDLT 2021). Given the current climate change conditions, there is an increasing need for carbon sequestration. Because vascular plants are a primary user of carbon and the proposed Project would result in the loss/degradation of more than a thousand acres of plants and their ability to sequester carbon for decades or longer unless successful measures are implemented to restore the same biomass of native vegetation as it is being destroyed, it is imperative that the proposed Project minimize the loss of vegetation.

The DEIR should consider the monitoring results of recently developed solar projects where soils have been bladed versus those facilities where the vegetation has been mowed or crushed and allowed to revegetate the area. In the latter case, it may be appropriate to allow tortoises to enter the facilities and re-establish residency (i.e., repatriate) under the solar panels as vegetation recolonizes the area. This could be an *option* for the currently described project alternative. It should be designed/implemented as a scientific experiment to add to the limited data on this approach to determine the extent of effects on Mojave desert tortoise populations and movements/connectivity between populations, which is an important issue for this species, particularly over the long-term (see *Desert Tortoise Habitat Linkages/Connectivity among Populations and Recovery Units* below). Long-term monitoring for the life of the project would need to be included to accurately evaluate the effectiveness of this strategy.

C2-7

Affected Environment

Status of the Population of the Mojave Desert Tortoise: The Council provides the following information for the proponent so that these or similar data may be included in the DEIR. The Council believes that BLM's failure to implement recovery actions for the Mojave desert tortoise as given in the recovery plan (both USFWS 1994b and 2011) has contributed to tortoise declines between 2004 and 2014 (Table 1; USFWS 2015). There are 17 populations of Mojave desert tortoise described below that occur in Critical Habitat Units (CHUs) and Tortoise Conservation Areas (TCAs); 14 are on lands managed by the BLM; 8 of these are in the California Desert Conservation Area (CDCA).

Table 1. Summary of 10-year trend data for 5 Recovery Units and 17 CHUs/TCAs for Mojave desert tortoise. The table includes the area of each Recovery Unit and CHU/TCA, percent of total habitat for each Recovery Unit and CHU/TCA, density (number of breeding adults/km^2 and standard errors = SE), and the percent change in population density between 2004 and 2014. Populations below the viable level of 3.9 breeding individuals/km^2 (10 breeding individuals per mi^2) (assumes a 1:1 sex ratio) and showing a decline from 2004 to 2014 are in red.

Recovery Unit: Designated Critical Habitat Unit/Tortoise Conservation Area	Surveyed area (km^2)	% of total habitat area in Recovery Unit & CHU/TCA	2014 density/km^2 (SE)	% 10-year change (2004–2014)
Western Mojave, CA	**6,294**	**24.51**	**2.8 (1.0)**	**–50.7 decline**
Fremont-Kramer	2,347	9.14	2.6 (1.0)	–50.6 decline
Ord-Rodman	852	3.32	3.6 (1.4)	–56.5 decline
Superior-Cronese	3,094	12.05	2.4 (0.9)	–61.5 decline
Colorado Desert, CA	**11,663**	**45.42**	**4.0 (1.4)**	**–36.25 decline**
Chocolate Mtn AGR, CA	713	2.78	7.2 (2.8)	–29.77 decline
Chuckwalla, CA	2,818	10.97	3.3 (1.3)	–37.43 decline
Chemehuevi, CA	3,763	14.65	2.8 (1.1)	–64.70 decline
Fenner, CA	1,782	6.94	4.8 (1.9)	–52.86 decline
Joshua Tree, CA	1,152	4.49	3.7 (1.5)	+178.62 increase
Pinto Mtn, CA	508	1.98	2.4 (1.0)	–60.30 decline
Piute Valley, NV	927	3.61	5.3 (2.1)	+162.36 increase
Northeastern Mojave	**4,160**	**16.2**	**4.5 (1.9)**	**+325.62 increase**
Beaver Dam Slope, NV, UT, AZ	750	2.92	6.2 (2.4)	+370.33 increase
Coyote Spring, NV	960	3.74	4.0 (1.6)	+ 265.06 increase
Gold Butte, NV & AZ	1,607	6.26	2.7 (1.0)	+ 384.37 increase
Mormon Mesa, NV	844	3.29	6.4 (2.5)	+ 217.80 increase
Eastern Mojave, NV & CA	**3,446**	**13.42**	**1.9 (0.7)**	**–67.26 decline**
El Dorado Valley, NV	999	3.89	1.5 (0.6)	–61.14 decline
Ivanpah Valley, CA	2,447	9.53	2.3 (0.9)	–56.05 decline
Upper Virgin River	**115**	**0.45**	**15.3 (6.0)**	**–26.57 decline**
Red Cliffs Desert	115	0.45	15.3 (6.0)	–26.57 decline
Range-wide Area of CHUs - TCAs/Range-wide Change in Population Status	**25,678**	**100.00**		**–32.18 decline**

C2-8

Table 2. Estimated change in abundance of adult Mojave desert tortoises in each recovery unit between 2004 and 2014 (Allison and McLuckie 2018). Decreases in abundance are in red.

Recovery Unit	Modeled Habitat (km^2)	2004 Abundance	2014 Abundance	Change in Abundance	Percent Change in Abundance
Western Mojave	23,139	131,540	64,871	-66,668	-51%
Colorado Desert	18,024	103,675	66,097	-37,578	-36%
Northeastern Mojave	10,664	12,610	46,701	34,091	270%
Eastern Mojave	16,061	75,342	24,664	-50,679	-67%
Upper Virgin River	613	13,226	10,010	-3,216	-24%
Total	**68,501**	**336,393**	**212,343**	**-124,050**	**-37%**

Important points from these tables include the following:

Change in Status for the Mojave Desert Tortoise Range-wide
● Ten of 17 populations of the Mojave desert tortoise declined from 2004 to 2014.

● Eleven of 17 populations of the Mojave desert tortoise are no longer viable. These 11 populations represent 89.7 percent of the range-wide habitat in CHUs/TCAs.

Change is Status for the Eastern Mojave Recovery Unit – Nevada and California
● This recovery unit had a 67 percent decline in tortoise density from 2004 to 2014, the largest decline of the five recovery units for the tortoise.

C2-8 cont

● Tortoises in this recovery unit have densities that are below viability.

Change in Status for the El Dorado Valley and Ivanpah Valley Tortoise Populations in the Eastern Mojave Recovery Unit.
● Both populations in this recovery unit experienced declines in densities of 61 percent and 56 percent, respectively from 2004 to 2014. In addition, there was a 67 percent decline in tortoise abundance.

● Both populations have densities less than needed for population viability.

Change in Status for the Mojave Desert Tortoise in California
● Eight of 10 populations of the Mojave desert tortoise in California declined from 29 to 64 percent from 2004 to 2014 with implementation of tortoise conservation measures in the Northern and Eastern Colorado Desert (NECO), Northern and Eastern Mojave Desert (NEMO), and Western Mojave Desert (WEMO) Plans.

● Eight of 10 populations of the Mojave desert tortoise in California are no longer viable. These eight populations represent 87.45 percent of the habitat in California that is in CHU/TCAs.

● The two viable populations of the Mojave desert tortoise in California are declining. If their rates of decline from 2004 to 2014 continue, these two populations will no longer be viable in about 2020 and 2031.

Change in Status for the Mojave Desert Tortoise on BLM Land in California

● Eight of eight populations of Mojave desert tortoise on lands managed by the BLM in California declined from 2004 to 2014.

● Seven of eight populations of Mojave desert tortoise on lands managed by the BLM in California are no longer viable.

Change in Status for Mojave Desert Tortoise Populations in California that Are Moving toward Meeting Recovery Criteria

● The only population of Mojave desert tortoise in California that is not declining is on land managed by the National Park Service, which has increased 178 percent in 10 years.

The Endangered Mojave Desert Tortoise: The Council believes that the Mojave desert tortoise meets the definition of an endangered species. In the FESA, Congress defined an "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range…" In the California Endangered Species Act (CESA), the California legislature defined an "endangered species" as a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant, which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes (California Fish and Game Code § 2062). Because most of the populations of the Mojave desert tortoise were non-viable in 2014, most are declining, and the threats to the Mojave desert tortoise are numerous and have not been substantially reduced throughout the species' range, the Council believes the Mojave desert tortoise should be designated as an endangered species by the USFWS and California Department of Fish and Wildlife (CDFW).

C2-8 cont

Mojave desert tortoise is now on the list of the world's most endangered tortoises and freshwater turtles. It is in the top 50 species. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers Mojave desert tortoise to be Critically Endangered (Berry et al. 2021), which is a "species that possess an extremely high risk of extinction as a result of rapid population declines of 80 to more than 90 percent over the previous 10 years (or three generations), a current population size of fewer than 50 individuals, or other factors." It is one of three turtle and tortoise species in the United States to be critically endangered.

The summary of data above indicates that BLM's current management actions for the Mojave desert tortoise are inadequate to help recover the desert tortoise. BLM has been ineffective in halting population declines, which has resulted in non-viable populations. The Council believes that these management actions are inadequate in preventing the extirpation of the Mojave desert tortoise in California and Nevada.

Standardized Surveys – Desert Tortoise and Other Species

C2-9

For the DEIR to fully analyze the effects and identify potentially significant impacts, the following surveys must be performed to determine the extent of rare plant and animal populations occurring within areas to be directly and indirectly impacted.

Prior to conducting surveys, a knowledgeable biologist should perform a records search of the California Natural Diversity Data Base (CNDDB; CDFW 2022) for rare plant and animal species reported from the region. The results of the CNDDB review would be reported in the DEIR with an indication of suitable and occupied habitats for all rare species reported from the region based on performing the species-specific surveys described below.

CDFG (2010) lists hundreds of plant communities occurring in California, including those that are considered Communities of Highest Inventory Priority, or "CHIPs." Biologists completing surveys on behalf of the project proponent should document such communities where they occur, and indicate how impacts to them will be minimized.

The project proponent should fund focused surveys for all rare plant and animal species reported from the vicinity of the proposed project. Results of the surveys will determine appropriate permits from CDFW and USFWS and associated avoidance, minimization, and mitigation measures. Focused plant and animal surveys should be conducted by knowledgeable biologists for respective taxa (e.g., rare plant surveys should be performed by botanists), and to assess the likelihood of occurrence for each rare species or resource (e.g., plant community) that has been reported from the immediate region. Focused plant surveys should occur only if there has been sufficient winter rainfall to promote germination of annual plants in the spring. Alternatively, the environmental documents may assess the likelihood of occurrence with a commitment by the proponents to perform subsequent focused plant surveys prior to ground disturbance, assuming conditions are favorable for germination.

C2-9

Specialized Reptile Surveys: If there are any loose, shifting sands within/near the impact areas of the panels, along the gen-tie lines, or access routes, focused surveys for Mojave fringe-toed lizards (*Uma scoparia*) should be performed (University of California, Riverside 2005, 2007).

Migratory Birds/Eagles: The County should ensure that all actions it authorizes are implemented in compliance with the Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, and associated regulations, executive orders, and policies (e.g., Driscoll 2010, Pagel et al. 2010) to avoid mortality or injury to migratory birds and harassment of eagles.

Burrowing owl: Surveys for western burrowing owl (*Athene cunicularia*) should be performed implementing available methods (CDFG 2012). In addition to the project footprint, the protocol requires that peripheral transects be surveyed at 30-, 60-, 90-, 120-, and 150-meter intervals in all suitable habitats adjacent to the subject property to determine the potential indirect impacts of the project on this species. If burrowing owl sign is found, CDFG (2012) describes appropriate minimization and mitigation measures that would be required. If burrowing owl sign is found, the County and the project proponent should develop a science-based mitigation/monitoring/adaptive management plan with the USFWS and CDFW and ensure that this plan is implemented.

Mojave Desert Tortoise Surveys: Formal protocol surveys for Mojave desert tortoise (USFWS 2019) must be conducted at the proper times of year. Because USFWS (2009) and CDFW require only experienced biologists to perform protocol surveys, USFWS and CDFW biologists should review surveyors' credentials prior to initiating the surveys. Per this protocol, since the impact area is larger than 500 acres, the surveys must be performed in the time periods of April-May or

September-October so that a statistical estimate of tortoise densities can be determined for the "action area" (please see below). If any tortoise sign is found, the project proponent should coordinate with USFWS and CDFW to determine whether "take" under FESA or CESA is likely to occur from implementation of the proposed project. If tortoises are present, the project proponent must obtain a Section 10(a)(1)(B) incidental take permit from the USFWS for activities on federal lands/actions and a section 2081 incidental take permit from the CDFW prior to conducting any ground disturbance.

We request that protocol-level surveys be performed at the area of the proposed project *and the alternatives that are being considered* in the DEIR. The results of these surveys should be published in the DEIR and should include density estimates for each alternative assessed.

C2-9 cont

To determine the full extent of impacts to tortoises and to facilitate compliance with the FESA and CESA, authorized biologist(s) must consult with the USFWS to determine the action area for this project. The USFWS defines "action area" the Code of Federal Regulations and their Desert Tortoise Field Manual (USFWS 2009) as "all areas to be affected directly or indirectly by proposed development and not merely the immediate area involved in the action (50 CFR §402.02)."

The Council's persisting concern is that proponents of solar projects continue to identify a single site for development without any attempt to identify alternative sites. As such, when focused studies reveal significant accumulations of tortoises on the proponent's selected site, because there is only one site identified for the project, there is no opportunity to select an alternative site where impacts would be minimized.

Too often, a single impact footprint is identified, all surveys are restricted to that site, and no alternative sites are assessed, as required by NEPA. We are concerned that this project has already pre-determined the project footprint, and, that an undisclosed part of the footprint is designated tortoise critical habitat. As such, there are likely other areas of lower tortoise densities where impacts could be minimized. However, those areas would not be considered if the project footprint is predetermined before survey data are available. As such, we request that more than one site, preferably three, be identified and analyzed in the DEIR and that the alternative with the fewest impacts to tortoises be adopted for development.

C2-10

If that is not feasible, we ask that the "action area" of the proposed project be several times larger than the project footprint so that those portions of the site with fewer tortoises could be selected. Proponents of the Gemini Solar Site in southern Nevada, for example, ignored these recommendations, and displaced more than 100 tortoises, when based on their presence-absence tortoise surveys, a shift of the site to the east would have avoided many of those animals.

It is current management to require desert tortoise protocol surveys (USFWS 2019) on a given site, but all too often translocation sites are ignored. We feel strongly that protocol surveys should occur on multiple or enlarged sites as given above *and* on all proposed translocation sites, assuming tortoises will be translocated.

Mojave Desert Tortoise Impacts Analysis:

Analysis of Direct and Indirect Impacts: The alternatives analysis should include an economic analysis that provides the total cost of constructing the proposed project versus other alternatives, so the public can see how much the total cost of each alternative is. This would include an analysis of the costs of replacing all biological resources that would be lost from granting the proposed project including direct, indirect, and cumulative impacts. Please note, this analysis would include habitat replacement or restoration costs including the time needed to achieve full replacement, not just acquisition, management, monitoring, and adaptive management costs.

The DEIR should include a thorough analysis of the status and trend of the tortoise in the action area, tortoise conservation area(s), recovery unit(s), and range wide. Tied to this analysis should be a discussion of all likely sources of mortality for the tortoise and degradation and loss of habitat from implementation of solar development including construction, operation and maintenance, decommissioning, and restoration of the public lands. The DEIR should use the data from focused plant and wildlife surveys in their analysis of the direct, indirect, and cumulative impacts of the proposed project on the Mojave desert tortoise and its habitat, other listed species, and species of concern/special status species.

C2-11

We expect that the DEIR will document how many acres would be impacted directly by solar arrays, access roads to the site, administration/maintenance buildings, parking areas, transmission towers, switchyards, laydown areas, internal access roads, access roads along gen-tie lines, a perimeter road, perimeter fencing, substations, battery storage (e.g., the project footprint). We also request that separate calculations document how many acres of desert tortoise habitats would be temporarily and permanently impacted both directly and indirectly (e.g., "road effect zone," etc.) by the proposed Project. As given below, these acreages should be based on field surveys for tortoises and not just on available models.

Road Effect Zone: We request that the DEIR include information on the locations, sizes, and arrangements of roads to the proposed project and within it, who will have access to them, whether the access roads will be secured to prevent human access or vandalism, and if so, what methods would be used. The presence/use of roads even with low vehicle use has numerous adverse effects on the desert tortoise and its habitats that have been reported in the scientific literature. These include the deterioration/loss of wildlife habitat, hydrology, geomorphology, and air quality; increased competition and predation (including by humans); and the loss of naturalness or pristine qualities.

C2-12

Vehicle use on new roads and increased vehicle use on existing roads equates to increased direct mortality and an increased road effect zone for desert tortoises. Road construction, use, and maintenance adversely affect wildlife through numerous mechanisms that can include mortality from vehicle collisions, and loss, fragmentation, and alteration of habitat (Nafus et al. 2013; von Seckendorff Hoff and Marlow 2002).

In von Seckendorff Hoff and Marlow (2002), they reported reductions in Mojave desert tortoise numbers and sign from infrequent use of roadways to major highways with heavy use. There was a linear relationship between traffic level and tortoise reduction. For two graded, unpaved roads, the reduction in tortoises and sign was evident 1.1 to 1.4 km (3,620 to 4,608 feet) from the road. Nafus et al. (2013) reported that roads may decrease tortoise populations via several possible mechanisms, including cumulative mortality from vehicle collisions and reduced population growth rates from the loss of larger reproductive animals. Other documented impacts from road construction, use, and maintenance include increases in roadkill of wildlife species as well as tortoises, creating or increasing food subsidies for common ravens, and contributing to increases in raven numbers and predation pressure on the desert tortoise.

Please include in the DEIR analyses, the five major categories of primary road effects to the tortoise and special status species: (1) wildlife mortality from collisions with vehicles; (2) hindrance/barrier to animal movements thereby reducing access to resources and mates; (3) degradation of habitat quality; (4) habitat loss caused by disturbance effects in the wider environment and from the physical occupation of land by the road; and (5) subdividing animal populations into smaller and more vulnerable fractions (Jaeger et al. 2005a, 2005b, Roedenbeck et al. 2007). These analyses should be at the population, recovery unit, and rangewide levels.

C2-12 cont

In summary, road establishment/increased use is often followed by various indirect impacts such as increased human access causing disturbance of species' behavior, increased predation, spread of invasive species that alters/degrades habitat, and vandalism and/or collection. The analysis of the impacts from road establishment and use should include cumulative effects to the tortoise with respect to nearby critical habitat and other TCAs, areas identified as important linkage habitat for connectivity between nearby critical habitat units/TCAs as these linkage areas serve as corridors for maintaining genetic and demographic connectivity between populations, recovery units, and rangewide (see *Desert Tortoise Habitat Linkages/Connectivity among Populations and Recovery Units* below). These and other indirect impacts to the Mojave desert tortoise should be analyzed in the DEIR from project construction, operations and maintenance, decommissioning, and habitat restoration.

Desert Tortoise Habitat Linkages/Connectivity among Populations and Recovery Units: The DEIR should analyze how this proposed project will impact the movement of tortoises relative to linkage habitats/corridors. The DEIR should include an analysis of the minimum linkage design necessary for conservation and recovery of the desert tortoise (e.g., USFWS 2011, Averill-Murray et al. 2013, Hromada et al. 2020), and how the project, along with other existing projects, would impact the linkages between tortoise populations and all recovery units that are needed for survival and recovery. We strongly request that the environmental consequences section of the DEIR include a thorough analysis of this indirect effect (40 Code of Federal Regulations 1502.16) and appropriate mitigation to maintain the function of population connectivity for the Mojave desert tortoise and other wildlife species be identified. Similarly, please document how this project may impact proximate conservation areas, such as BLM-designated ACECs.

C2-13

Jurisdictional Waters in California: A jurisdictional waters analysis should be performed for all potential impacts to washes, streams, and drainages. This analysis should be reviewed by the CDFW as part of the permitting process and a section 1600 Streambed Alteration Agreement acquired, if deemed necessary by CDFW. C2-14

Mitigation Plans

The DEIR should include effective mitigation for all direct, indirect, and cumulative effects to the tortoise and its habitats. The mitigation should use the best available science with a commitment to implement the mitigation commensurate to impacts to the tortoise and its habitats. Mitigation should include a fully-developed desert tortoise translocation plan, including protection of tortoise translocation area(s) from future development and human disturbance in perpetuity; raven management plan; non-native plant species management plan; fire prevention plan; compensation plan for the degradation and loss of tortoise habitat that includes protection of the acquired, improved, and restored habitat in perpetuity for the tortoise from future development and human use; and habitat restoration plan when the lease is terminated and the proposed project is decommissioned.

All plans should be provided in the DEIR so the public and the decisionmaker can determine their adequacy (i.e., whether they are scientifically rigorous and would be effective in mitigating for the displacement and loss of tortoises and degradation and loss of tortoise habitat from project implementation). Too often, such plans are alluded to in the draft environmental document and promised later, which does not allow the reviewers to assess their adequacy, which is unacceptable. If not available as appendices in draft documents, all indicated plans must be published in the final environmental documents. Their inclusion is necessary to determine their adequacy for mitigating direct, indirect, and cumulative impacts, and monitoring for effectiveness and adaptive management regarding the desert tortoise. If these plans are not provided, it is not possible for the County, other decisionmakers, and the interested public to determine the environmental consequences of the project to the tortoise. C2-15

These mitigation plans should include an implementation schedule that is tied to key actions of the construction, operation, maintenance, decommissioning, and restoration phases of the project so that mitigation occurs concurrently with or in advance of the impacts. The plans should specify success criteria, include an effectiveness monitoring plan to collect data to determine whether success criteria have been met, and identify/implement actions that would be required if the mitigation measures do not meet the success criteria.

Translocation Plan - Translocated Tortoises & Translocation Sites: How many tortoises will be displaced by the proposed project? How long will translocated tortoises be monitored? Will the monitoring report show how many of those tortoises lived and died after translocation and over time? Are there any degraded habitats or barren areas that may impair success of the translocation? Are there incompatible human uses in the new translocation area that need to be eliminated or managed to protect newly-translocated tortoises? Were those translocation areas sufficiently isolated that displaced tortoises were protected by existing or enhanced land management? How will the proponent minimize predation of translocated tortoises and avoid adverse climatic conditions, such as low winter rainfall conditions that may exacerbate translocation success? Were tortoises translocated to a site where they would be protected from threats (e.g., off-highway vehicles, future development, etc.)? These questions and others should be answered in DEIR. C2-16

The project proponent should implement the USFWS' Translocation Guidance (USFWS 2020) and coordinate translocation with CDFW and USFWS. In addition, the proponent's project-specific translocation plan should be based on current data and developed using lessons learned from earlier translocation efforts (e.g., increased predation, drought). (see *Desert Tortoise Translocation Bibliography Of Peer-Reviewed Publications*[1] in the footnote).

The Translocation Plan should include implementation of a science-based monitoring plan approved by the Desert Tortoise Recovery Office that will accurately access these and other issues to minimize losses of translocated tortoises and impacts to their habitat. For example, the health of tortoises may be jeopardized if they are translocated during drought conditions, which is known to undermine translocation successes (Esque et al. 2010). If drought conditions are present at the time of project development, we request that the proponent confer with the USFWS/CDFW immediately prior to translocating tortoises and seek input on ways to avoid loss of tortoises due to stressors associated with drought. One viable alternative if such adverse conditions exist is to postpone site development until which time conditions are favorable to enhance translocation success.

C2-16 cont

Moving tortoises from harm's way, the focus of the Translocation Guidance, does not guarantee their survival and persistence at the translocation site, especially if it will be subject to increased human use or development. In addition to the Translocation Guidance and because translocation sites are mitigation for the displacement of tortoises and loss of habitat, these sites should be managed for the benefit of the tortoise in perpetuity. Consequently, a conservation easement or other durable legal designation should be placed on the translocation sites. The project proponent should fully fund management of the site to enhance it for the benefit of the tortoise in perpetuity.

Tortoise Predators and a Predator Management Plan: Common ravens are known predators of the Mojave desert tortoise and their numbers have increased substantially because of human subsidies of food, water, and sites for nesting, roosting, and perching to hunt (Boarman 2003). Coyotes and badgers are also predators of tortoises. Because ravens can fly at least 30 miles in search of food and water daily (Boarman et al. 2006) and coyotes can travel an average of 7.5 miles or more daily (Servin et al. 2003), this analysis should extend out at least 30 miles from the proposed project site.

The DEIR should analyze if this new use would result in an increase in common ravens and other predators of the desert tortoise in the action area. During construction, operations and maintenance, decommissioning, and restoration phases of the proposed project, the County should require science-based management of common raven, coyote, and badger predation on tortoises in the action area. This would include the translocation sites.

C2-17

For local impacts, the Predator Management Plan should include reducing/eliminating human subsidies of food and water, and for the common raven, sites for nesting, roosting, and perching to address local impacts (footprint of the proposed project). This includes buildings, fences, and other vertical structures associated with the project site. In addition, the Predator Management Plan should include provisions that eliminate the pooling of water on the ground or on roofs. The Predator Management Plan should include science-based monitoring and adaptive management throughout all phases of the project to collect data on the effectiveness of the Plan's implementation and implement changes to reduce/eliminate predation on the tortoise if existing measures are not effective.

[1] https://www.fws.gov/nevada/desert_tortoise/documents/reports/2017/peer-reviewed_translocation_bibliography.pdf

For regional and cumulative impacts, the County should require the project proponent to participate in efforts to address regional and cumulative impacts. For example, the project proponent should be required to contribute to the National Fish and Wildlife Foundation's Raven Management Fund to help mitigation for regional and cumulative impacts. Unfortunately, this Fund that was established in 2010 has not revised its per acre payment fees to reflect increased labor and supply costs during the past decade to provide for effective implementation. The National Fish and Wildlife Foundation should revise the per acre fee.

We request that for any of the transmission options, the project use infrastructure (particularly towers) that prevent raven nesting and perching for hunting. For example, for gen-ties/transmission lines the tubular design pole with a steep-pointed apex and insulators on down-sloping cross arms is preferable to lattice towers, which should not be used. New fencing should not provide resources for ravens, like new perching and nesting sites.

C2-17 cont

According to Appendix A of Common Raven Predation on the Desert Tortoise (USFWS 2010), "The BLM's biological assessments and the USFWS' biological opinions for the California Desert Conservation Area (CDCA) plan amendments reiterate the need to address the common raven and its potential impacts on desert tortoise populations." Please ensure that all standard measures to mitigate the local, regional, and cumulative impacts of raven predation on the tortoise are included in this DEIR, including developing a raven management plan for this specific project. USFWS (2010) provides a template for a project-specific management plan for common ravens. This template includes sections on construction, operation, maintenance, and decommissioning (including restoration) with monitoring and adaptive management during each project phase (USFWS 2010).

Fire Prevention/Management Plans: The proposed project could include numerous infrastructure components that have been known to cause fires. Lithium-ion batteries at the project site have the potential to explode and cause fires and are not compatible with using water for fighting fires. Photovoltaic panel malfunctions have caused vegetation to burn onsite. We request that the DEIR include a Fire Prevention Plan in addition to a Fire Management Plan specifically targeting methods to deal with explosions/fires produced by these batteries/panels as well as other sources of fuel and explosives on the project site.

C2-18

Habitat Compensation Plan: When the project proponent seeks an incidental take permit from the CDFW, because their project would result in take of a listed species under CESA, compensatory mitigation would be required. The mitigation lands must be occupied by the species and secured and managed in perpetuity for the listed species. Hence, the DEIR should include a Habitat Compensation Plan for the loss/degradation of habitat. This plan should calculate how it will fully mitigate for the impacts of the proposed project including direct, indirect, cumulative, and temporal impacts.]

C2-19

Climate Change and Non-native Plants

Climate Change: We request that the DEIR address the effects of the proposed action on climate change warming and the effects that climate change may have on the proposed action. For the latter, we recommend including: an analysis of habitats within the project area that may provide

C2-20

refugia for tortoise populations; an analysis of how the proposed action would contribute to the spread and proliferation of nonnative invasive plant species; how this spread/proliferation would affect the desert tortoise and its habitats (including the frequency and size of human-caused fires); and how the proposed action may affect the likelihood of human-caused fires. We strongly urge that the County require the project proponent to develop and implement a management and monitoring plan using this analysis and other relevant data that would reduce the transport to and spread of nonnative seeds and other plant propagules within the project area and eliminate/reduce the likelihood of human-caused fires. The plan should integrate vegetation management with fire prevention and fire response.

C2-20 cont

Impacts from Proliferation of Nonnative Plant Species and Management Plan: The DEIR should include an analysis of how the proposed project would contribute to the spread and proliferation of non-native invasive plant species; how this spread/proliferation would affect the desert tortoise and its habitats (including the frequency and size of human-caused fires); and how the proposed project may affect the frequency, intensity, and size of human-caused and naturally occurring fires. For reasons given in the previous paragraph, we strongly urge that the County require the project proponent to develop and implement a management and monitoring plan for nonnative plant species. The plan should integrate management/enhancement of native vegetation with fire prevention and fire response to wildfires.

C2-21

Hydrology and Water Quality

Regarding water quality of surface and ground water, the DEIR should include an analysis of the impacts of water acquisition, use, and discharge for panel washing, potable uses, and any other uses associated with this proposed project, and cumulative impacts from water use and discharge on native perennial shrubs and annual vegetation used for forage by the Mojave desert tortoise, including downstream and downstream impacts. The DEIR should analyze how much water is proposed to be used during construction and operation; how any grading, placement, and/or use of any project facilities will impact downstream/downslope flows that are reduced, altered, eliminated, or enhanced. This analysis should include impacts to native and non-native vegetation and habitats for wildlife species including the Mojave desert tortoise, for which washes are of particular importance for feeding, shelter, and movements.

C2-22

Therefore, we request that the DEIR include an analysis of how water use during construction, operations and maintenance, decommissioning, and habitat restoration will impact the levels of ground water in the region. These levels may then impact surface and near-surface flows at springs, seeps, wetlands, pools, and groundwater-dependent vegetation in the basin. The analyses of water quality and quantity of surface and ground water should include appropriate measures to ensure that these impacts are fully mitigated, preferably beginning with avoidance and continuing through CEQ's other forms of mitigation (40 CFR 1508.20).

Cumulative Effects

With regards to cumulative effects, the DEIR should list and analyze all project impacts within the region including future state, federal, and private actions affecting listed species on state, federal, and private lands. The Council asks that the relationship between this proposed project and the DRECP (BLM 2015) be analyzed, as the project area does not appear to be in a designated

C2-23

Development Focused Area (DFA) identified in the final Record of Decision by the BLM for the DRECP (BLM 2016). We also expect that the environmental documents will provide a detailed analysis of the "heat sink" effects of solar development on adjacent desert areas and particularly Mojave desert tortoise in addition to climate change.

C2-23 cont

We appreciate this opportunity to provide scoping comments on this project and trust they will help protect tortoises during any resulting authorized activities. Herein, we reiterate that the Desert Tortoise Council wants to be identified as an Affected Interest for this and all other projects funded, authorized, or carried out by the County that may affect species of desert tortoises, and that any subsequent environmental documentation for this project is provided to us at the contact information listed above. Additionally, we ask that you respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this project.

C2-24

Respectfully,

Edward L. LaRue, Jr., M.S.
Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

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Appendix B

Confidential Appendix Provided Only to the Colorado River Indian Tribes and the County of San Bernardino Decision Makers

Kimley»Horn