

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



**ITEM: 21.1
(ID # 11108)**

MEETING DATE:

Tuesday, October 29, 2019

FROM: TLMA-PLANNING:

SUBJECT: TRANSPORTATION & LAND MANAGEMENT AGENCY/PLANNING: Conditional Use Permit No. 3721, Development Agreement No. 1900017, Ordinance No. 664.62 - EIR No. 544 - Applicant: Desert Quartzite, LLC - Engineer/Representative: URS Corporation - Fourth Supervisorial District - Chuckwalla Zoning Area - Palo Verde Valley Area Plan: Agriculture (AG) - Location: The overall solar facility is located south of Interstate 10 and west of Mesa Drive - 160 gross acres (County Jurisdiction) - Zoning: Controlled Development Areas, 10-acre minimum (W-2-10) - REQUEST: Conditional Use Permit No. 3721 is a proposal for development of a 160-acre portion of a 450 megawatt photovoltaic solar facility on 5,275 total acres. Development Agreement No. 1900017 and Ordinance No. 664.62 is a proposal for the applicant entering into a development agreement with the County for the Project, consistent with the County's solar power plant program and includes terms regarding public benefit payments and increases. APN: 879-110-001. District 4. [Applicant fees 100%]

RECOMMENDED MOTION: That the Board of Supervisors:

1. **ADOPT RESOLUTION NO. 2019-232 CERTIFYING ENVIRONMENTAL IMPACT REPORT (EIR) NO. 544 FOR THE DESERT QUARTZITE SOLAR PROJECT (EIR00544)**, adopting environmental findings pursuant to the California Environmental Quality Act, and adopting a Mitigation Monitoring and Reporting Program;

ACTION:Policy

Charissa Leach, Assistant TLMA Director

10/17/2019

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Perez, seconded by Supervisor Jeffries and duly carried, IT WAS ORDERED that the above matter is approved as recommended and Ordinance No. 664.62 is approved as introduced with waiver of the reading.

Ayes: Jeffries, Spiegel, Washington and Perez
Nays: None
Absent: Hewitt
Date: October 29, 2019
xc: Planning, COB

Kecia R. Harper
Clerk of the Board

By:
Deputy

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2. **APPROVE CONDITIONAL USE PERMIT NO. 3721**, subject to the attached conditions of approval and advisory notification document and based upon the findings and conclusions incorporated in the staff report and in Resolution No. **2019-232**; and
3. **INTRODUCE, READ TITLE and WAIVE FURHTER READING OF, and ADOPT** on successive weeks **ORDINANCE NO. 664.62**, an Ordinance of the County of Riverside Approving Development Agreement No. **1900017**, based upon the findings and conclusions incorporated in the staff report and in Resolution No. **2019-232**.

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A
NET COUNTY COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A
SOURCE OF FUNDS: Applicant Fees 100%			Budget Adjustment No	
			For Fiscal Year: N/A	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

This Project is commonly referred to as the Desert Quartzite Solar Project, which encompasses a total of 5,275 acres divided between County of Riverside and Bureau of Land Management jurisdiction. The total development proposal would occupy approximately 2,666 acres. Of this 2,666 acre area, 2,436 acres is proposed for the solar facility on BLM land, 66.8 acres for the 230 kV transmission line on BLM land, 3.3 acres for buried telecommunications line and possible above-ground electrical service on BLM land, and 160 acres of the solar facility on private land under the jurisdiction of the County of Riverside. The EIR considered development of 2,622 acres of BLM land and 160 acres of private land. Upon further refining the project layout, First Solar has represented that 2,506 acres of BLM land and 160 acres of private land meet the definition of Solar Power Plant Net Acreage.

The project proposes the construction and operation of a 450 megawatt (MW) commercial solar photovoltaic (PV) electrical generation facility. The solar panels will be a single-axis, tracking design aligned in north-south rows. The panels would be a maximum height of 13 feet at a maximum tilt position and a minimum clearance of approximately 1.5 feet beneath the panels would be provided. The panels would be connected to each other and would transmit the power generated via underground direct current (DC) cables that would lead to a Power Conversion Station (PCS) that would be situated within each larger group of rows of panels. The PCS would use an inverter to convert the DC power from the panels into alternative current (AC). A transformer at each PCS would step up the voltage to medium voltage AC (MVAC) at 34.5 kV and then transmitted to one of several Photovoltaic Combining Switchgear (PVCS) which would collect the power from a group of arrays and transmit to the on-site substation through overhead lines. The on-site substation is proposed within a 2.6 acre area at the northwestern portion of the Project site within BLM land. The voltage would be further stepped up at the substation to match Southern California Edison (SCE) regional transmission grid levels of 230 kV. The power

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would then be transmitted via a 3.94-mile long transmission line (gen-tie line) to the Colorado River Substation located to the west of the site, with the entirety of the transmission line within BLM land.

Primary access to the Project would be from Interstate 10 via the Neighbours Boulevard/SR-78 exit to 16th Avenue/Seeley Avenue and west approximately 5 miles to the facility entrance. Secondary/emergency access to the Project would be from 22nd Avenue from SR-78 via a new 0.7 mile long road that would be constructed from Gravel Pit Road to an entrance near the southern end of the Project. The intersection of 16th Avenue/Seeley and State Route 78 would be improved to allow for a left turning lane for eastbound traffic on 16th Avenue/Seeley Avenue turning onto State Route 78 and a right turning lane for southbound traffic on Route 78 turning onto 16th Avenue/Seeley Avenue. The Project will also require appropriate dust suppression stabilizers for existing roads that may not be required to be paved to minimize the creation of dust from construction and operational traffic.

An operations and maintenance (O&M) building is proposed adjacent to the on-site substation in the northwest portion of the Project Site. This building would be used for parts storage, facility security systems, and monitoring equipment and would include offices, restroom, and storage area within a 120 foot by 50 foot footprint. Additional storage containers would be located outside of the building. An above-ground water tank would be located at the building for drinking water and sanitary purposes. A septic system is also proposed to serve the building.

2,436 acres of the Project area would be fenced with a seven foot high chain-link or wire fence. Where required, the base of the fence may include tortoise exclusionary fencing material anchored below the ground surface consistent with United States Fish and Wildlife Service (USFWS) guidelines. Temporary construction staging areas near the O&M building would be fenced as well.

Construction would be preceded by the surveys as noted in the EIS/EIR and installation of exclusionary fencing where appropriate and the location of the project's development boundaries and temporary construction impacts marked to properly contain activities during construction. Two separate construction staging areas would be developed to support construction activities. Construction would begin with site preparation to remove vegetation and create a flat and compacted surface. Trenching and installation of underground cables and preparation of cement foundations for connection and support equipment will occur following site preparation and subsequently the support structures and arrays would be installed. Power distribution equipment would be installed at the predesignated and prepared locations. The gen-tie line would be installed to provide the connection to the Colorado River Substation with laydown areas for materials for the towers within the Project area. Construction of the solar facility and the gen-tie line is anticipated to occur simultaneously and construction is anticipated to be over a 25 to 48 month period.

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Operations and maintenance of the Project is anticipated to be minimal with up to five full time workers. Activities would include cleaning of panels, anticipated twice a year, as well as soil stabilization and vegetation restoration.

If the BLM Right-of-Way (ROW) grant is not renewed beyond the 30-year operational period or the Project otherwise ceases operations, the ROW grant holder would be responsible for removal of the Project facilities and restoration of the BLM land and the private land based on the Draft Decommissioning and Site Reclamation Plan prepared for the project that would be updated and finalized prior to decommissioning to ensure it meets all applicable regulations in place at that time.

The portion of the Project within the County's land use jurisdiction not on BLM land is comprised of the following land use cases:

CONDITIONAL USE PERMIT NO. 3721 (CUP03721) is a proposal for the approximate 160-acre portion of the overall Desert Quartzite Solar Project that is under jurisdiction of the County of Riverside. This portion is anticipated to generate 20 MW with approximately 125 acres covered by solar arrays. 12 PCS and 1 PVCS is proposed within the 160-acre area. Overhead lines to collect and transmit the power off-site include poles at a maximum height of 70'. Pursuant to the requirements of the W-2 Zone and Section 18.34 of Ordinance No. 348, an application for a Conditional Use Permit may include a request for a greater height limit in accordance with the limitations of the zone classification. Under Section 15.2, additional structure height beyond 50' and up to 105' may be allowed if it is included in the description for the Conditional Use Permit and noticed as such in all notices regarding the permit. Here, the application for the Conditional Use Permit includes a request for a greater height limit of 70' for the collector poles, which is within the 50'-105' limitations set forth in Ordinance No. 348 Section 15.2. This area is currently surrounded by existing berms on all 4 sides that would remain and that are presumed to have been associated with the prior jobo farm that operated on the site.

DEVELOPMENT AGREEMENT NO. 1900017 (DA1900017) is a proposal for the applicant entering into a development agreement with the County for the Project, consistent with the County's solar power plant program. Board of Supervisors Policy No. B-29 regarding solar power plants states, "[N]o approval required by Ordinance No. 348 shall be given for a solar power plant unless the Board first approves a development agreement with the solar power plant owner and the development agreement is effective." County Staff has negotiated terms and provisions with the applicant, for the Board's consideration, consistent with Board Policy B-29. The DA has a term of 30 years and will grant the applicant vesting rights to develop the Project in accordance with the terms of the agreement. DA No. 1900017 contains terms consistent with Board of Supervisors Policy No. B-29, including terms regarding public benefit payments and increases (Section 4.2 of DA No. 1900017). The Public Benefits included in the DA includes an initial payment to the County of \$169 per acre (in 2019) prior to grading permit or building permit, whichever occurs first based on the solar power plant net acreage of 2,666 acres. This amount may be divided up if the development is phased and would be based on the acreage of each phase. Following the initial payment, subsequent annual payments with 2%

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annual increases will be based on the development area constructed for the 30-year term of the agreement. The DA also includes provisions for applicable sales and use taxes to be reporting and remitting these taxes for proper allocation to the County of Riverside to the maximum extent possible under the law (Section 4.3 of DA No. 1900017). The DA establishes an adjusted Development Impact Fee (DIF) total of \$259,875 and an additional Community Benefit Fee (CBF) also at a total of \$259,875, which would both be paid prior to grading or building permit, whichever occurs first. The adjusted DIF and CBF amounts are applicable within the first five years of the agreement and after that 5 year period the project would be subject to the regular DIF applicable to the project. Approval and use of Conditional Use Permit No. 3721 is conditioned upon DA No. 1900017 being entered into and effective. Per state law, a development agreement is a legislative act that must be approved by ordinance. Proposed Ordinance No. 664.62, an Ordinance of the County of Riverside Approving Development Agreement No. 1900017, incorporates by reference DA No. 1900017 consistent with Government Code section 65867.5.

The County has reviewed the Project and has determined that it is consistent with all zoning standards, the General Plan, Board of Supervisor's Policy B-29 – Solar Power Plants, and all other applicable ordinances. Additionally, the Joint EIS/EIR has been completed in accordance with and consistent with the California Environmental Quality Act (CEQA) requirements and National Environmental Policy Act (NEPA).

As an environmental benefit, the Project would help the State achieve its renewable energy goals and mandates. The production of renewable energy has the added benefit of reducing air quality impacts and GHG emissions that would be produced by fossil-fuel based generation facilities. The Project is within close proximity to urban development within the City of Blythe, existing transmission infrastructure, and existing access roads.

The Project would also provide other important benefits to the local and regional economy from the purchase of equipment and supplies and sales tax revenue and from as agreed upon in the terms of the Development Agreement. Additionally, the Project will result in the contribution of significant development impact fees as adjusted with the Development Agreement as well as an additional Community Benefit Fee established with the Development Agreement. Indirectly the County and region would benefit from the employment of daily workers during peak construction period and would provide permanent, full time jobs upon operation. Other economic benefits include workers utilizing local and regional commercial services such as hotels and restaurants.

Environmental Impact Statement/Environmental Impact Report

A joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) has been prepared for this project (EIR00544) in accordance with the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA). The EIS/EIR represents the independent judgement of Riverside County in coordination with the Bureau of Land Management (BLM). It was determined as part of the EIS/EIR analysis that the Project would result in a significant impact that cannot be fully mitigated (unavoidable). All other impacts have been addressed through project design or incorporated mitigation measures. Below is a

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summary of these significant impacts identified in the EIS/EIR:

Air Quality - AQMP Consistency

The Project would have the potential to result in or cause National Ambient Air Quality Standards (NAAQS) or California Ambient Air Quality Standards (CAAQS) violations due to the project's exceedance of regional construction emission thresholds for NO_x, PM₁₀, and PM_{2.5}. Therefore, the Project would have a significant and unavoidable cumulative effect on regional air pollution. All feasible mitigation has been adopted. However, impacts related to AQMP consistency would remain significant and unavoidable.

Air Quality – Construction Emissions-Regional

Although operational emissions are anticipated to be below a level that does not exceed emission thresholds, construction emissions for NO_x, PM₁₀, and PM_{2.5} are not able to be mitigated to a level below emission thresholds as no feasible mitigation exists to reduce these emissions. Therefore, impacts related to construction emissions would remain significant and unavoidable.

Aesthetics – Substantially degrade the existing visual character or quality of the site and its surroundings

The Project would be visible from portions of the nearby Mule Mountain and McCoy Mountain as well as from the nearby residential development and along a four mile segment of Interstate-10. The broad, flat form of the solar panels along with the dark grey color of the panels would strongly contrast from the desert landscape that surrounds the Project and would be dominant in the views from the mountains in particular due to the size of the project and the relative elevation difference. There are no feasible project design or mitigation measures that could substantially alter the appearance of the Project that could reduce these impacts below a level that could be determined to be less than significant.

Twenty-four (24) comment letters were received during the 90-day (due to NEPA/BLM requirements) public review period and, as of the date of this staff report, two comment letters have been received following the close of the public review period. These comments were reviewed, and detailed responses to each comment were prepared. Responses to the 24 comment letters received during the 90-day review period were included in the Final EIR and separate responses to the two other comment letters were prepared, which were posted on September 27, 2019 and with mailed notices to commenters sent on September 27, 2019.

For the reasons set forth above and in the EIR prepared for this Project, the proposed project will potentially have a significant effect on the environment related to Air Quality and Aesthetics. Mitigation Measures from the EIS/EIR have been incorporated as conditions of approval on the project.

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Due to the potentially significant impacts of the project, if the Board of Supervisors is to approve the project, it will be required to adopt Findings with a Statement of Overriding Considerations consistent with State CEQA Guidelines sections 15093, 15216(b), and 15126.2(b) and discussed in the Final EIS/EIR Section 15132 is required (Resolution No. 2019-232). The Statement of Overriding Considerations would clarify what benefits the project is providing that the Board of Supervisors could determine outweigh the potentially significant environmental impacts of the project. Benefits of the project would include but are not limited to: employment, efficient renewable energy, displacement of greenhouse gas emissions, local sales and use taxes, and facilitation of meeting state renewable energy and greenhouse reduction goals.

Impact on Residents and Businesses:

All potential project impacts have been studied under CEQA and noticed to the public pursuant to the requirements of the County. As stated above, the Project would help the State achieve its renewable energy goals and mandates. The production of renewable energy has the added benefit of reducing air quality impacts and GHG emissions that would be produced by fossil-fuel based generation facilities. The Project would also provide other important benefits to the local and regional economy from the purchase of equipment and supplies and sales tax revenue as agreed upon in the terms of Development Agreement No. 1900017.

SUPPLEMENTAL:

Additional Fiscal Information

As stated above, the applicant and County staff have reached an agreement on the provisions of DA No. 1900017. Under DA No. 1900017, the applicant will submit annual public benefit payments of \$150 per acre, increased annually by 2% from and after 2013 (currently \$169 per acre in 2019), based on the solar power plant net acreage amount of 2,666 acres at full build-out. The total "solar power plant net acreage" agreed upon by the applicant, was calculated using the definition in Board of Supervisors' Policy No. B-29. If the development of the Solar Power Plant occurs in phases, the Annual Public Benefits Payments shall be based on the Solar Power Plant Net Acreage of each defined phase. The initial annual public benefit payments will be based on the solar power plant net acreage included in each phase until complete build-out. The applicant will also take agreed upon actions to ensure that local sales and use taxes are directly allocated to the County to the maximum extent possible under the law. Additionally, the applicant will submit an agreed upon adjusted Development Impact Fee (DIF) payment of \$259,875. In addition, the applicant has agreed to pay an Additional Community Benefit Fee of \$259,875. The timing of the DIF payment and Additional Community Benefit Fee are set forth DA No. 1900017.

Staff labor and expenses to process this project are paid by the applicant; there is no General Fund obligation.

Contract History and Price Reasonableness

N/A

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ATTACHMENTS:

- A. Board of Supervisors Staff Report Package
- B. Conditional Use Permit No. 3721 Exhibits
- C. Final EIS/EIR
- D. Adams-Broadwell Draft EIR Comments and Responses
- E. Resolution No. 2019-232
- F. Ordinance No. 664.62
- G. Development Agreement No. 1900017



Jason Farin, Senior Management Analyst

10/23/2019



Gregory V. Priamos, Director County Counsel

10/17/2019

2
3 **RESOLUTION NO. 2019-232**

4 **CERTIFYING FINAL ENVIRONMENTAL IMPACT REPORT NO. 544 (SCH**
5 **#2015031066), ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE**
6 **CALIFORNIA ENVIRONMENTAL QUALITY ACT, ADOPTING A**
7 **MITIGATION MONITORING AND REPORTING PROGRAM, AND ADOPTING**
8 **THE PROPOSED PROJECT**

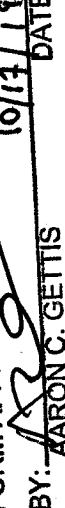
9
10 **WHEREAS**, pursuant to the provisions of Government Code Section 655350 *et seq.*, public
11 hearings were held before the Riverside County Board of Supervisors in Riverside California on August XX,
12 2019; and,

13 **WHEREAS**, all the procedures of the California Environmental Quality Act (CEQA) and Riverside
14 County Rules to Implement CEQA have been met, and Environmental Impact Report No. 544 (EIR No.
15 544), prepared for the Project is sufficiently detailed so that all the potentially significant effects of the
16 Project on the environment and measures necessary to avoid or substantially lessen such effects have been
17 evaluated in accordance with CEQA and the above referenced rules; and,

18 **WHEREAS**, the Riverside County Planning Department circulated a Notice of Preparation (NOP)
19 for a 30-day public review period commencing on March 13, 2015.

20 **WHEREAS**, Desert Quartzite, LLC (the Applicant) filed an Application for Land Use and
21 Development with the Riverside County Planning Department seeking Conditional Use Permit No. 3721
22 (CUP) and has proposed to enter into a development agreement with the County of Riverside to implement the
23 Desert Quartzite Solar Project (Project); and

24 **WHEREAS**, the Project consists of an up-to-450 megawatt (MW) photovoltaic (PV) solar energy
25 generating facility and related infrastructure in unincorporated Riverside County, California on a
26 combination of private lands under the jurisdiction of Riverside County and public lands managed by the
27 Bureau of Land Management; and

FORM APPROVED COUNTY COUNSEL
BY:  DATE 10/13/19

1 **WHEREAS**, pursuant to Section 21067 of the Public Resources Code, and Section 15367 of the
2 California Environmental Quality Act (CEQA) Guidelines (14 Cal. Code Regs. Section 15000 *et seq.*), the
3 County is the lead agency for the Project; and

4 **WHEREAS**, the County solicited comments (including input about the scope and content of the
5 environmental review, as well as potential feasible alternatives and Mitigation Measures) from responsible
6 agencies, trustee agencies, and the public in a NOP of the EIR for the Project, which was filed on March 13,
7 2015 and circulated for a period of 30 days pursuant to State CEQA Guidelines sections 15082(a)
8 and 15375; and

9 **WHEREAS**, a total of eleven comment letters were received by the County in response to the NOP,
10 which assisted the County in refining the issues and alternatives for analysis in the Draft Environmental
11 Impact Report (DEIR) for the Project; and

12 **WHEREAS**, pursuant to Public Resources Code Section 21083.9 and State CEQA Guidelines
13 sections 15082(c) and 15083, the County held public scoping meetings on April 23 and 24, 2015, to solicit
14 further input on the scope of information and analysis to be included in the DEIR; and

15 **WHEREAS**, in compliance with CEQA (Public Resources Code Section 21000 *et seq.*) and the
16 State CEQA Guidelines (14 Cal. Code Regs. Section 15000 *et seq.*), the County prepared a DEIR to analyze
17 the potential environmental effects of the Project; and

18 **WHEREAS**, the DEIR was completed and released for public review on August 10, 2018, and the
19 County initiated a 90-day public comment period by filing a Notice of Completion and Availability with the
20 State Office of Planning and Research and the Riverside County Assessor-Clerk-Recorder's Office; and

21 **WHEREAS**, pursuant to Public Resources Code Section 21092, the County also provided a Notice
22 of Availability to all organizations and individuals who had previously requested such notice, and published
23 the Notice of Availability in the Palo Verde Valley Times, a newspaper of general circulation in the Project
24 area; and

25 **WHEREAS**, during the 90-day comment period, the County consulted with and requested
26 comments from responsible and trustee agencies, other regulatory agencies and other interested parties
27 pursuant to the State CEQA Guidelines section 15086. The 90-day public comment period closed on
28 November 8, 2018; and

1 **WHEREAS**, during the official public review period for the DEIR, the County received 24 written
2 comment letters; and

3 **WHEREAS**, pursuant to Public Resources Code Section 21092.5 and State CEQA Guidelines
4 section 15088(b), the County provided each public agency that provided comments on the DEIR with written
5 responses to the agency's comments at least 10 days before considering the Final EIR for certification; and,

6 **WHEREAS**, pursuant to the State CEQA Guidelines section 15132, the County released the Final
7 EIR (hereinafter, the "EIR"), which consists of the DEIR, a list of all agencies and individuals who
8 commented on the DEIR, comments received on the DEIR, and written responses to all significant
9 environmental points raised in the review and consultation processes for the DEIR; and

10 **WHEREAS**, all potentially significant adverse environmental impacts of the Project were
11 sufficiently analyzed in the EIR; and

12 **WHEREAS**, as contained herein, the County has endeavored in good faith to set forth the basis for
13 its decision on the Project; and

14 **WHEREAS**, all requirements of the Public Resources Code and the State CEQA Guidelines have
15 been satisfied in the EIR, which is sufficiently detailed so that all of the potentially significant environmental
16 effects of the Project, as well as feasible alternatives and Mitigation Measures, have been adequately
17 evaluated; and

18 **WHEREAS**, the EIR prepared in connection with the Project sufficiently analyzes both the feasible
19 Mitigation Measures necessary to avoid or substantially lessen the Project's potentially significant
20 environmental impacts and a reasonable range of potentially feasible alternatives capable of eliminating or
21 reducing these effects in accordance with CEQA and the State CEQA Guidelines; and

22 **WHEREAS**, all of the findings and conclusions made by the Board of Supervisors pursuant to this
23 Resolution are based upon the administrative record as a whole and not based solely on the specific evidence
24 cited in this Resolution; and

25 **WHEREAS**, environmental impacts identified in the EIR that the County finds will either have no
26 impact or will be less than significant and so do not require mitigation are described in the EIR and below
27 in this resolution; and
28

1 **WHEREAS**, the environmental impacts identified in the EIR as potentially significant but which
2 the County finds can be mitigated to a less-than-significant level through the implementation of Mitigation
3 Measures identified in the Mitigation Monitoring and Reporting Program are described in the EIR and below
4 in this resolution; and

5 **WHEREAS**, the Project's contributions toward significant and less-than-significant cumulative
6 environmental impacts identified are described in the EIR and in this resolution; and

7 **WHEREAS**, growth-inducing impacts identified are described in the EIR and in Section VII.
8 below; and

9 **WHEREAS**, alternatives to the Project that might eliminate or reduce significant environmental
10 impacts are described in the EIR and below; and

11 **WHEREAS**, the County has identified Alternative 2 as the Environmentally Superior Alternative;
12 and

13 **WHEREAS**, the Mitigation Monitoring and Reporting Program sets forth the Mitigation Measures
14 that the County shall require as binding obligations of the Applicant in connection with the Project, is
15 adopted in this resolution, and is attached hereto as Exhibit "A"; and

16 **WHEREAS**, prior to taking action, the Board of Supervisors has heard, been presented with,
17 reviewed, and considered all of the information and data in the administrative record, including the EIR, and
18 all oral and written evidence presented to it during all meetings and hearings; and

19 **WHEREAS**, the EIR reflects the independent judgment of the Board of Supervisors and is deemed
20 adequate for purposes of making decisions on the merits of the Project; and

21 **WHEREAS**, the County has not received any further comments or information that produced
22 substantial new information requiring recirculation under Public Resources Code Section 21092.1 and State
23 CEQA Guidelines section 15088.5 since the publication of the EIR; and

24 **WHEREAS**, on August 27, 2019 the Board of Supervisors conducted duly noticed public hearings
25 on this Resolution, at which time all persons wishing to testify were heard, and the Project was fully
26 considered; and

27 **WHEREAS**, all other legal prerequisites to the adoption of this Resolution have occurred.
28

1 **NOW, THEREFORE, BE IT RESOLVED, FOUND, DETERMINED, AND ORDERED** by
2 the Board of Supervisors that the following environmental impacts associated with the EIR are determined
3 to have no environmental impacts in consideration of existing regulations and proposed Best Management
4 Practices.

5 **SECTION I**

6 **INTRODUCTION**

7 **A. Project Description**

8 Desert Quartzite LLC, (the "Applicant") would construct, operate, maintain, and decommission a
9 photovoltaic (PV) solar energy generating facility with a capacity up to 450 megawatts (MW) and
10 necessary ancillary facilities, including a generation tie line, access road, and switch yard in the
11 unincorporated County. The precise generation capacity or megawatts would depend on the
12 technology selected and efficiencies available. The Project would be developed on approximately
13 154 acres of private land subject to the land use jurisdiction of Riverside County and on
14 approximately 3,616 acres of public land administered by BLM. The facilities to be located on the
15 private land subject to Riverside County's jurisdiction would include solar arrays. The approximate
16 2.79-mile generation tie line, with a right-of-way width of 100 feet, would require approximately
17 54 acres of public lands. The Project would generate and deliver solar power to the California
18 electrical grid through an interconnection at the Colorado River Substation (CRSS).

19 The proposed Project would be located south of Interstate 10, approximately 8 miles southwest of
20 the city of Blythe in Riverside County, California. The proposed Project area is bounded on the
21 southwest and southeast by existing electrical transmission lines and access roads, including the
22 Devers-Palo Verde Transmission Lines No. 1 (DPV1) and No. 2 (DPV2). An existing 7.5-MW solar
23 PV project, the NRG Blythe Solar Power Plant, is located on 200 acres adjacent to the northern
24 boundary of the Project site. A portion of the Blythe Mesa Solar Project, a 485-MW, 3,660-acre PV
25 project approved by the County in 2014 and by the BLM in 2015, is located on a keyhole-shaped
26 parcel of land that is surrounded on three sides (the north, west, and south) by the Project site. The
27 Project is located within the Riverside East Solar Energy Zone (SEZ), and within a Development
28 Focus Area (DFA) as identified in the BLM's Desert Renewable Energy Conservation Plan

1 (DRECP).

2 The Applicant worked with BLM and the County to develop multiple alternatives for review and
3 consideration through the BLM's environmental review process under the National Environmental
4 Policy Act (NEPA) and the County's environmental review process under CEQA. The proposed
5 Project, as described above, represents Alternative 1. Alternative 2, the Resource Avoidance
6 Alternative, which is also BLM's Preferred Alternative and the County's Environmentally Superior
7 Alternative, was developed to maintain a proposed 450 MW facility while also avoiding identified
8 resources, including cultural resources identified during the BLM Class III surveys, microphyll
9 woodlands and isolated strands of sensitive plan species. Alternative 3, the Reduced Project
10 Alternative, would reduce the overall Project size to achieve further resource avoidance, but after
11 analysis in the Environmental Impact Statement (EIS)/EIR prepared jointly by the County and BLM,
12 it was evident that Alternative 3 would not reduce any of the Project's significant impacts below a
13 level of significance.

14 Although Alternative 2 also would not reduce any of the Project's significant impacts below a level
15 of significance, it would avoid important resources and still allow the Applicant to substantially
16 meet its objectives. The Applicant has furthermore agreed with BLM and the County to treat
17 Alternative 2 as the Project to be approved. In addition, the Applicant has proposed that the Project
18 to be considered for approval should be modified to include a potential generation tie-line alignment,
19 which would shift an approximately one mile portion of the proposed route to the south to avoid
20 conflicts with existing and approved lines. Accordingly, for purposes of the following CEQA
21 findings and analysis, Alternative 2 with a modified gen-tie line is the Project being considered.

22 **B. Legal Requirements**

23 Pursuant to section 15091 of the State CEQA Guidelines, the County may only approve or carry out
24 a project for which an EIR has been completed that identifies any significant environmental effects
25 if the County makes one or more of the following written finding(s) for each of those significant
26 effect accompanied by a brief explanation of the rationale for each finding:

- 27 I. Changes or alterations have been required in, or incorporated into, the project which
28 will avoid or substantially lessen the significant environmental impact as identified

1 in the EIR; or

2 2. Such changes or alterations are within the responsibility and jurisdiction of a public
3 agency other than the County, and such changes have been adopted by such other
4 agency, or can and should be adopted by such other agency; or

5 3. Specific economic, social, legal or other considerations make infeasible the
6 mitigation measure or project alternatives identified in the EIR.

7 Notably, Public Resources Code section 21002 requires an agency to “substantially lessen or avoid”
8 significant adverse environmental impacts. Thus, mitigation measures that “substantially lessen”
9 significant environmental impacts, even if not completely avoided, satisfy section 21002's mandate.
10 (*Laurel Hill Homeowners Association v. City Council* (1978) 83 Cal.App.3d 515, 521 (“CEQA does
11 not mandate the choice of the environmentally best feasible project if through the imposition of
12 feasible mitigation measures alone the appropriate public agency has reduced environmental
13 damage from a project to an acceptable level”); *Las Virrrenes Homeowners Federation. Inc. v.*
14 *County of Los Angeles* (1986) 177 Cal.App.3d 300, 309 (“[t]here is no requirement that adverse
15 impacts of a project be avoided completely or reduced to a level of insignificance . . . if such would
16 render the project unfeasible”).)

17 The Public Resources Code requires that lead agencies adopt feasible mitigation measures or
18 alternatives to substantially lessen or avoid significant environmental impacts. An agency need not,
19 however, adopt infeasible mitigation measures or alternatives. (State CEQA Guidelines § 15091 (a),
20 (b).) Public Resources Code section 21061.1 defines “feasible” to mean “capable of being
21 accomplished in a successful manner within a reasonable period of time, taking into account
22 economic, environmental, social, and technological factors.” State CEQA Guidelines section 15091
23 adds “legal” considerations as another indicia of feasibility. (See also *Citizens of Goleta Valley v.*
24 *Board of Supervisors* (1990) 52 Cal.3d 553, 565.) Project objectives also inform the determination
25 of “feasibility.” (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 401, 407.)
26 “[F]easibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a
27 reasonable balancing of the relevant economic, environmental, social, and technological factors.”
28 (*Id.*; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 2 Cal.App.4th 704, 715.)

1 Environmental impacts that are less than significant do not require the imposition of mitigation
2 measures. (*Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337, 1347.)
3 The California Supreme Court has stated, "[t]he wisdom of approving . . . any development project,
4 a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of
5 the local officials and their constituents who are responsible for such decisions. The law as we
6 interpret and apply it simply requires that those decisions be informed, and therefore balanced."
7 (*Citizens of Goleta Valle v. Board of Supervisors* (1990) 52 Cal.3d 553, 576.) In addition, perfection
8 in a project or a project's environmental alternatives is not required; rather, the requirement is that
9 sufficient information be produced "to permit a reasonable choice of alternatives so far as
10 environmental aspects are concerned." Outside agencies (including courts) are not to "impose
11 unreasonable extremes or to interject [themselves] within the area of discretion as to the choice of
12 the action to be taken." (*Residents Ad Hoc Stadium Com. v. Board Of Trustees* (1979) 89 Cal.App.3d
13 274, 287.)

14 **C. Summary of Environmental Findings**

15 This document contains the findings required under CEQA and the State CEQA Guidelines. Public
16 Resources Code section 21081.6 requires the County to prepare and adopt a Mitigation Monitoring
17 and Reporting Program for any Project for which mitigation measures have been imposed to assure
18 compliance with the adopted mitigation measures. The County adopts a Mitigation Monitoring and
19 Reporting Program for the Project in Section IX of this Resolution.

20 As explained above, the Applicant modified the gen-tie line in public lands in response to comments
21 on the project regarding potential conflicts with other transmission lines. This change will also
22 impact less habitat of the Mojave fringe toed lizard (MFTL). The County does not believe that this
23 change constituted "significant new information" requiring recirculation pursuant to State CEQA
24 Guideline section 15088.5. No new significant environmental impacts were identified, no
25 substantial increase in the severity of any environmental impacts would occur, and no feasible
26 mitigation measures or Project alternatives as defined in CEQA Guideline section 15088.5 were
27 rejected.
28

1 **SECTION II**

2 **FINDINGS REGARDING ENVIRONMENTAL IMPACTS**

3 **NOT REQUIRING MITIGATION**

4 Section 15091 of the State CEQA Guidelines does not require specific findings to address
5 environmental effects that an EJR identifies as have "no impact" or a "less than significant" impact.
6 Nevertheless, these findings fully account for all resource areas, including resource areas that were
7 identified in the EIR to have either no impact or a less than significant impact on the environment.
8 The Board of Supervisors hereby finds that the Project would either have no impact or a less-than-
9 significant impact, in light of consideration of existing regulations and proposed Best Management
10 Practices, in the following impact areas:

11 **A. Air Quality**

12 *Impact AIR-1: The Project would not conflict with or obstruct implementation of the*
13 *applicable air quality plan.*

14 **Findings of Fact: No Impact(s).**

15 Because the Project is located in the Federal attainment/unclassified area, there is no
16 applicable air quality plan and State Implementation Plan (SIP) from Mojave Desert Air
17 Quality Management District (MDAQMD) and the California Air Resources Board (ARB).
18 Therefore, the Project would not conflict or obstruct implementation of the applicable air
19 quality plan. There would be no impact (DEIR p. 4.2-16).

20
21 *Impact AIR-4 and AIR-6: The Project would not expose sensitive receptors to substantial*
22 *pollutant concentrations or expose sensitive receptors that are located within one mile of*
23 *the Project site to substantial point source emissions.*

24 **Findings of Fact: Less than Significant.**

25 The Project would not expose sensitive receptors within 1,000 feet of the Project to
26 substantial pollutant concentrations, including TACs. Though construction-related
27 emissions from the Project would result in emissions in excess of MDAQMD thresholds for
28 NO_x, PM₁₀, and PM_{2.5}, there are no sensitive receptors within 1,000 feet of the Project

1 area. The closest residence (apparent occupied mobile home trailer) is located
2 approximately 3,200 feet north of the northeast corner of the Project boundary. The next
3 two closest sensitive air quality receptors are located in the residential community of
4 Nicholls Warm Springs/Mesa Verde approximately 4,800 north of the northeast corner of
5 the Project boundary. Impacts associated with construction, which would be even further
6 from these residences for a majority of the construction cycle, would be less than significant
7 (DEIR p. 4.2-17).

8 The MDAQMD CEQA guidelines specify that industrial projects within 1,000 feet of
9 existing or planned sensitive receptor land uses, including residences, must be evaluated for
10 this criterion. As discussed prior, there are no sensitive receptors within 1,000 feet of the
11 Project site, nor does the Project involve construction of sensitive receptor land uses.
12 Construction of the Project would not emit a significant amount of emissions, and once
13 operational, any emissions would be minimal. Therefore the Project would result in a less
14 than significant impact (DEIR p. 4.2-18).

15
16 *Impact AIR-5: The Project would not create objectionable odors affecting a substantial*
17 *number of people.*

18 Findings of Fact: Less than Significant.

19 The Project could create mild odors in areas on and adjacent to the Project site due to
20 exhaust from construction equipment and use of building materials such as asphalt paving,
21 adhesives and binders, and protective coatings. Construction odors would be temporary
22 and not overly offensive. Due to the sparse population in the vicinity of the site, these mild
23 odors would not affect a substantial number of people. In regard to Project operation,
24 equipment and other Project activities would not include significant odor-producing
25 sources. Few odor sources would be activated during decommissioning. Impacts would be
26 less than significant (DEIR p. 4.2-18).

1 *Impact AIR-7: The Project would not involve the construction of a sensitive receptor*
2 *located within one mile of an existing substantial point source emitter.*

3 Findings of Fact: No Impact(s).

4 The Project would not establish a use classified as a sensitive receptor; as such, there would
5 be no impact. Therefore, this criterion is not discussed in detail in the EIR (DEIR pp. 4.2-
6 18).

7
8 **B. Biological Resources**

9 *Impact BIO-2: The Project would not effect riparian habitat or other sensitive natural*
10 *community identified in local or regional plans, policies, or regulations or by CDFW or*
11 *USFWS.*

12 Findings of Fact: No Impact(s).

13 The Project would not directly impact the *Parkinsonia florida – Olneya tesota* alliance,
14 which is identified in DRECP as microphyll woodland. There would be no impacts. (DEIR
15 p. 4.3-16).

16
17 *Impact BIO-4: The Project would not interfere substantially with the movement of any*
18 *native resident or migratory fish or wildlife species or with established native resident or*
19 *migratory wildlife corridors, or impede the use of native wildlife nursery sites.*

20 Findings of Fact: Less than Significant.

21 There are no perennial water features on the solar facility site and no corridors for aquatic
22 species movement. No nursery sites have been identified on or in the vicinity of the solar
23 facility site, nor is the Project site located within a known wildlife migration corridor or
24 linkage connecting large open space areas. Therefore, implementation of the Project,
25 including its fencing, would not substantially restrict wildlife movement or interfere with
26 any nursery sites. Impacts would be less than significant (DEIR pp. 3.4-48).

27
28 *Impact BIO-5: The Project would not conflict with local policies or ordinances protecting*

1 *biological resources, such as a tree preservation policy or ordinance.*

2 Findings of Fact: No Impact(s).

3 The Project would not conflict with any local policies or ordinances protecting biological
4 resources, such as a tree preservation policy or ordinance. Regional resource planning
5 documents prepared by Federal, state, and local agencies were reviewed, including the
6 CDCA Plan, the NECO amendment to the CDCA Plan, the Riverside County General Plan,
7 and USFWS Recovery Plans. Impacts would not be significant (DEIR p. 4.3-17).

8
9 *Impact BIO-6: The Project would not conflict with the provisions of an adopted habitat
10 conservation plan; natural community conservation plan; or other approved local,
11 regional, or State habitat conservation plan.*

12 Findings of Fact: No Impact(s).

13 The Project is not located within areas that contain provisions of an adopted habitat
14 conservation plan, natural community conservation plan, or other approved local, regional,
15 or State habitat conservation plan. No conservation plans (local, regional, or State)
16 encompass the Study area; therefore, none would be impacted by the Project. No impact
17 would occur (DEIR pp. 4.3-17).

18
19 **C. Tribal Cultural Resources**

20 *Impact TCR-1: The proposed Project would not cause adverse change in the significance
21 of a Tribal Cultural Resource (TCR) determined by the Lead Agency with implementation
22 of mitigation measures.*

23 Findings of Fact: No Impact.

24 The Project site encompasses three archaeological sites that are eligible for the National
25 Register of Historic Places (NRHP) and California Register of Historic Places (CRHR) and
26 also qualify as TCRs. The solar field and gen-tie construction, operation, and
27 decommissioning, would not directly cause disturbance or damage to these resources under
28 the chosen Alternative No. 2. Indirect impacts are still possible, but would be avoided.

1 Regardless of the No Impact determination, Mitigation Measure CULTURAL-6 would
2 require that Tribes be given an opportunity to designate Tribal Observer(s) to monitor the
3 Project and ensure avoidance of any undiscovered resources that may be located during
4 ground-disturbance. If avoided as proposed, there would be no impact. (Draft EIR p. 4.5-
5 10).

6
7 ***Impact TCR-2:** The Project would not cause a substantial adverse change in a resource*
8 *identified through consultation with any California Native American Tribe that is*
9 *traditionally and culturally affiliated with the geographic area of the Project.*

10 Findings of Fact: No Impact(s).

11 The comment letter of the Colorado River Indian Tribes (CRIT) on the DEIR indicates that
12 the Project vicinity is located within their traditional use areas. More specifically, the CRIT
13 indicated that the impact of the Project on use of the Mule Mountains will substantially
14 burden the exercise of religious freedom in violation of the Religious Freedom Restoration
15 Act. However, the comment letters, the Sacred Lands File search conducted by the
16 California Native American Heritage Commission, and other comment letters received from
17 Native American groups did not indicate the presence of specific Native American sacred
18 sites within the Project area, nor do they indicate that there are any existing religious or
19 sacred uses within the Project area. Additionally, consultation with the local historical
20 society did not indicate the presence of areas of known religious or sacred uses. The Project
21 will not impact any onsite religious or sacred resources. Therefore, no impacts are
22 anticipated from the Project with respect to restricting existing religious or sacred uses
23 within the Project area.

24
25 **D. Geology and Soils**

26 ***Impact GEO-1 d), GEO-7, and GEO-8:** The Project would not expose people or structures*
27 *to potential substantial adverse effects, including the risk of loss, injury, or death, involving:*

- 28 • *Landslides.*

- *Change topography or ground surface relief features.*
- *Create cut or fill slopes greater than 2:1 or higher.*

Findings of Fact: No Impact(s).

Landslides may be induced by strong vibratory motion produced by earthquakes. Research and historical data indicate that seismically induced landslides tend to occur in weak soil and rock on sloping terrain. The potential for seismically induced landslides and debris flows at the Project site is not considered likely because of the relatively flat terrain. The Project would require only minor grading and would not permanently change the topography or ground surface relief features of the site or create cut or fill slopes greater than 2:1 or higher which could weaken the integrity of the soil and increase landslide hazards. In addition, no landslides, debris flows, or rock falls are known to be present on the site. No impacts would occur (DEIR pp. 4.7-4).

Impact GEO-6: The Project would not be subject to geologic hazards, such as seiche, mudflow, or volcanic hazard.

Findings of Fact: No Impact(s).

Seiche waves occur on enclosed or semi-enclosed bodies of water which are not present on or near the Project site. Mudflows are debris flows that have high water content and based on the flat topography of the site and surrounding area would not be likely at the Project site. There are no volcanic hazards in the region of the Project site that could adversely affect the Project. As a result, there would be no impact (DEIR pp. 4.20-20).

E. Greenhouse Gas Emissions

Impact GHG-1: The Project would not generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.

Findings of Fact: Less than Significant.

The main source of GHG emissions associated with the Project would be combustion of fossil fuels during construction. To ensure that the construction emissions of this Project

1 would not constitute a significant impact, the total construction emissions were amortized
2 over the life of the Project and measured against the MDAQMD threshold. GHG emissions
3 due to construction would not represent a substantial source of GHG emissions and would
4 be substantially less than the MDAQMD-recommended threshold of 100,000 metric tons
5 per year of CO₂e. Emissions associated with operations would be substantially less.
6 Therefore, operational emissions would not exceed the GHG significance threshold during
7 Project operations. Decommissioning of the Project would require removal of the solar
8 equipment and facilities (including gen-tie structures) and transportation of all components
9 off-site. Equipment used for decommissioning generally would be similar to that used for
10 construction, although the overall short-term GHG emissions during decommissioning
11 would be much less in comparison to construction GHG emissions. According to the
12 County of Riverside Climate Action Plan (CAP), in order to reach the reduction target,
13 Riverside County must offset this growth in emissions and reduced community-wide
14 emissions to 5,960,998 MT CO₂e by the year 2020. The Project would result in a net
15 GHG displacement through the replacement of fossil-fuel generated electricity with solar
16 electricity. Operation of the Project would therefore result in a substantial net reduction
17 (displacement) in GHG emissions in the region with the implementation of the Project's
18 solar facility, when compared to a conventional fossil-fuel combustion power plant.
19 Impacts would be less than significant (DEIR pp. 4.8-10 to -11).

20
21 *Impact GHG-2: The Project would not conflict with an applicable plan, policy, or*
22 *regulation adopted for the purpose of reducing the emissions of greenhouse gases.*

23 Findings of Fact: No Impact(s).

24 The Project would not conflict with an applicable plan, policy, or regulation adopted for the
25 purpose of reducing the emissions of GHGs. Since the proposed Project would result in a
26 significant offset of regional air emissions associated with energy production from fossil
27 fuels, a net reduction in GHG emissions regionally would result. The Project would serve
28 to meet the State's goals for the Renewable Portfolio Standard (RPS), which has been

1 identified by the State as a means of meeting the goals of AB 32 to reduce emissions to
2 1990 levels by the year 2030. Therefore, no impact would occur (DEIR pp. 4.8-11).

3
4 **F. Hazards and Hazardous Materials**

5 *Impact HAZ-3: The Project would not emit hazardous emissions or handle hazardous or*
6 *acutely hazardous materials, substances, or waste within one-quarter mile of an existing or*
7 *proposed school.*

8 Findings of Fact: No Impact(s).

9 No schools are located within one-quarter mile of the Project area. The Project furthermore
10 does not include land uses that would involve the routine use, storage, or transport of
11 hazardous materials that represent a significant hazard to the public or the environment.
12 Construction of the Project will emit less than significant levels of toxic air contaminants
13 and, once operational, only minor levels of emissions would result. Therefore, the Project
14 would not result in hazardous emissions or require the handling of hazardous materials that
15 would adversely affect any existing schools in the site vicinity; no impact would occur
16 (DEIR pp. 4.9-24).

17
18 *Impact HAZ-4: The Project would not be located on a site which is included on a list of*
19 *hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as*
20 *a result, would not create a significant hazard to the public or the environment.*

21 Findings of Fact: No Impact(s).

22 A database search was conducted for the Project and the results did not identify any
23 hazardous materials sites in the Project area, including any sites compiled pursuant to
24 Government Code section 65962.5. Therefore, no impact would occur (DEIR pp. 4.9-25).

25
26 *Impact HAZ-6: The Project would not be located within the vicinity of a private airstrip,*
27 *and would not result in a safety hazard for people residing or working in the project area.*
28

1 Findings of Fact: No Impact(s).

2 The Project would not be located within the vicinity of a private airstrip and therefore would
3 not result in a safety hazard for people residing or working in the Project area. No impact
4 would occur (DEIR pp. 4.9-25).

5
6 *Impact HAZ-7: The Project would not impair implementation of or physically interfere
7 with an adopted emergency response plan or emergency evacuation plan.*

8 Findings of Fact: No Impact(s).

9 The Project site is located in a remote area with alternative access roads that would allow
10 vehicles and personnel onto the site in the event of an emergency. Access would be
11 maintained throughout construction, and appropriate detours would be provided in the event
12 of potential road closures. The Project would not interfere with an adopted emergency
13 response plan or emergency evacuation plan. There would be no impact. (DEIR p. 4.26).

14
15 *Impact HAZ-9: The Project would not result in an inconsistency with an Airport Master
16 Plan.*

17 Findings of Fact: No Impact(s).

18 In November 2015, the Riverside County Airport Land Use Commission (ALUC) found
19 the Project to be consistent with the Riverside County Airport Land Use Compatibility Plan
20 (RCALUCP). Subsequently, the RCALUC reviewed Alternative 2 and Alternative 3, and
21 determined on October 21, 2016 that both are consistent with the RCALUCP. On May 9,
22 2019, RCALUC confirmed that the realigned gen-tie line proposal (2000 feet south and 900
23 feet west of the original proposal and thus farther from the Blythe Airport) would also be
24 consistent with the RCALUCP. Impacts would be less than significant, as no impact would
25 occur (See Appendix K) (DEIR pp. 4.9-26).

26
27 **G. Lands, Realty, and Agriculture and Forestry Resources**

28 *Impact LU-1: The Project would not physically divide an established community.*

1 Findings of Fact: No Impact(s).

2 The closest residential community is the Nicholls Warm Springs/Mesa Verde neighborhood
3 and no part of any of the Alternatives would be within this area. Due to the remote location
4 of the proposed Project, the solar facility would not physically divide an established
5 community, nor would the gen-tie line or access roads. No impacts would occur (DEIR pp.
6 3.10-17).

7
8 *Impact LU-2: The Project would not conflict with applicable land use plans, policies, or*
9 *regulations of agencies with jurisdiction over the Project adopted for the purpose of*
10 *avoiding or mitigating an environmental effect.*

11 Findings of Fact: Less than Significant.

12 The BLM portion of the Project would be subject to the CDCA Plan and its amendments
13 (but not the DRECP). The private land portion of the Project would be subject to the RCGP
14 and PVVAP and is located within the W-2-10 (Controlled Development Areas [10 Acre
15 Min.]) zoning designation. With the approval of a Conditional Use Permit, the Project
16 would be consistent with the W-2-10 (solar facility and gen-tie line) zone. Further, the
17 Project site is located within the Riverside Airport Land Use Compatibility Plan and Blythe
18 Municipal Airport's Airport Influence Area, and would adhere to the Federal Aviation
19 Administration Part 77 Review. The Project gen-tie line would be sited almost entirely
20 within BLM's Utility Corridor K/30-52. Because the CRSS is sited approximately 1,500
21 feet south of the southern boundary of Corridor K/30-52, the portion of the gen-tie corridor
22 between Corridor K/30-52 and the CRSS would be located outside of the utility corridor,
23 and would require consideration through the CDCA Plan Amendment process. In addition,
24 a short segment of the gen-tie line extending north from the On-Site Substation to the
25 corridor would be located outside of the corridor. The CDCA Plan would also be amended
26 to identify the development footprint as suitable for the proposed type of solar energy use.
27 Impacts would be considered less than significant. (DEIR pp. 4.10-7 to -8).

1 ***Impact LU-3: The Project would not conflict with any applicable habitat conservation plan***
2 ***or natural community conservation plan.***

3 **Findings of Fact: No Impact(s).**

4 The Project would not be within the jurisdiction of any adopted habitat conservation plan
5 or natural community conservation plan; therefore, no impacts would occur (DEIR pp. 3.10-
6 17).

7
8 ***Impact LU-4: The Project would not result in a substantial alteration of the present or***
9 ***planned land use of an area.***

10 **Findings of Fact: Less than Significant.**

11 The Project would be located on private lands and would be consistent with the Riverside
12 County General Plan and Palo Verde Valley Area Plan with issuance of a CUP. The portion
13 of the Project located on BLM-managed lands would be within the Riverside East SEZ and
14 a designated utility corridor, except that parts of the gen-tie line (near the CRSS and the
15 Project substation) would be located outside of Corridor K/30-52 and would require a land
16 use plan amendment. The Project would also require a CDCA Plan amendment to identify
17 the development footprint as suitable for the proposed type of solar energy use, consistent
18 with provisions already included in the CDCA Plan (if approved under the DRECP, no
19 amendment would be needed as this area has already been identified a suitable for solar
20 development that follows the requirements of that plan). To the extent these plans and
21 regulations are intended to protect environmental resources, the Project would not cause
22 any significant impacts because the Project does not conflict with those plans and
23 regulations. Therefore, the Project would be consistent with present and planned land use
24 of the area and impacts would be less than significant (DEIR p. 4.10-8).

25
26 ***Impact LU-5: The Project would not affect land use within a city sphere of influence and/or***
27 ***within adjacent city or county boundaries.***
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Findings of Fact: No Impact(s).

The Project is not located within the City of Blythe's sphere of influence. No impacts would occur (DEIR p. 4.10-8).

Impact LU-6: The Project would be consistent with the site's existing or proposed zoning.

Findings of Fact: No Impact(s).

The proposed solar facility located on private lands would be consistent with the existing zoning for the Riverside County General Plan and Palo Verde Valley Area Plan, since the use is allowed with a CUP in the existing zone. The solar facility and gen-tie line located on land under the management of BLM would be consistent with the CDCA Plan and the NECO Plan if BLM approves a plan amendment in accordance with the terms of these plan. To the extent these plans and regulations are intended to protect environmental resources, the Project would not cause any significant impacts because the Project does not conflict with those plans and regulations. Therefore, the Project would be consistent with the site's existing zoning. There would be no impact (DEIR p. 4.10-8).

Impact LU-7: The Project would not be incompatible with surrounding zoning.

Findings of Fact: No Impact(s).

The zoning surrounding the Project is similar to that of the Project area; therefore, the Project would be compatible with existing surrounding zoning. These similar surrounding uses include the Blythe Energy Center, Blythe Solar Project (owned by NRG), Blythe Substation, and electrical transmission lines. No impacts would occur (DEIR pp. 3.10-17).

Impact LU-8: The Project would not disrupt or divide the physical arrangement of an established community (including a low-income or minority community).

Findings of Fact: No Impact(s).

The Project is located in a remote area of unincorporated Riverside County and would not disrupt or divide the physical arrangement of an established community, including a low-

1 income or minority community. No impacts would occur (DEIR p. 4.10-9).

2
3 *Impact AG-1: The Project would not convert Prime Farmland, Unique Farmland, or*
4 *Farmland of Statewide Importance, as shown on the maps prepared pursuant to the*
5 *Farmland Mapping and Monitoring Program of the California Resources Agency, to*
6 *nonagricultural use.*

7 Findings of Fact: No Impact(s).

8 There is no designated Prime Farmland, Unique Farmland, or Farmland of Statewide
9 Importance within the Project area according to the California Division of Land Resource
10 Protection, Farmland Mapping and Monitoring Program Important Farmland map. The 160-
11 acre private property inholding within the Project area was formerly used to grow jojoba,
12 but is not designated Prime Farmland, Unique Farmland, or Farmland of Statewide
13 Importance. No impact would occur. (DEIR p. 4.10-9).

14
15 *Impact AG-2: The Project would not conflict with existing zoning for agricultural use, or a*
16 *Williamson Act contract.*

17 Findings of Fact: No Impact(s).

18 There are no Williamson Act contracts on lands within or adjacent to the Project area. The
19 privately-owned inholding within the proposed Project area is currently zoned Controlled
20 Development Areas (W-2-10) (10-acre minimum). Within the zoning ordinance under e.
21 Public Utilities Uses, (2) Structures and the pertinent facilities necessary and incidental to
22 the development and transmission of electrical power and gas such as hydroelectric power
23 plants, booster or conversion plants, transmission lines, pipe lines and the like are allowed
24 within the W-2 zone with issuance of the conditional use permit. Therefore, the Project
25 would not conflict with existing zoning or a Williamson Act contract. No impacts would
26 occur. (DEIR, p. 4.10-9).

27
28

1 **Impact AG-3:** *The Project would not conflict with existing zoning for, or cause rezoning of*
2 *forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined*
3 *in Public Resources Code section 4526); or timberland zoned Timberland Production (as*
4 *defined by Government Code section 51101(g)).*

5 Findings of Fact: No Impact(s).

6 The proposed Project would not conflict with existing zoning for, or cause rezoning of,
7 forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined
8 by Public Resources Code section 4526), or timberland zoned Timberland Production (as
9 defined by Government Code section 51104(g)) (DEIR pp. 4.10-9 to -10).

10
11 **Impact AG-4:** *The Project would not result in the loss of forest land or conversion of forest*
12 *land to non-forest use.*

13 Findings of Fact: No Impact(s).

14 The proposed Project would not result in the loss of forest land or conversion of forest land
15 to non-forest use. The Project would not be located on land zoned specifically as either
16 forest land or timberland. The Project would be located primarily on land zoned for
17 agricultural production. Although timber production is an allowable activity within an
18 agricultural zone, the Project would not be used for timber production, nor is the site
19 forested. Furthermore, crops grown in the Project area are irrigated because of the arid
20 climate. It is unlikely that the land could support 10 percent native tree cover under natural
21 (i.e., non-irrigated) conditions. Therefore, the Project does not meet the definition of “forest
22 land.” The same land is not considered timberland because the land is not zoned Timberland
23 Production Zone (TPZ). No impact to forest land would occur (DEIR pp. 4.10-7).

24
25 **Impact AG-5:** *The Project would not involve other changes in the existing environment*
26 *which, due to their location or nature, could result in conversion of Farmland to*
27 *nonagricultural use or forestland to non-forest use.*
28

1 Findings of Fact: No Impact(s).

2 The Project site does not contain any forest land as defined by Public Resources Code
3 Section 12220(g), timberland as defined by Public Resources Code Section 4526, or land
4 zoned Timberland Production as defined by Government Code Section 51104(g). The
5 Project would not conflict with these zoning types or cause rezoning of these lands.
6 Although the 160-acre private property inholding was formerly used to grow jojoba, the
7 property is not currently used for agriculture and its use as a solar project would not convert
8 Farmland to a nonagricultural use. The Project would not involve other changes in the
9 existing environment that may result in the conversion of other agricultural lands to non-
10 agricultural uses. No impact would occur (DEIR, p. 4.10-10).

11
12 *Impact AG-6: The Project would not conflict with land within a Riverside County*
13 *Agricultural Preserve.*

14 Findings of Fact: No Impact(s).

15 The proposed Project would not conflict with land within a Riverside County Agricultural
16 Preserve. There are no Riverside County-designated agricultural preserves in the Project
17 area; the Project would not convert preserve lands to non-agricultural use; no impacts would
18 occur (DEIR pp. 4.10-10).

19
20 *Impact AG-7: The Project would not cause development of non-agricultural uses within*
21 *300 feet of agriculturally zoned property (Ordinance No. 625, "Right-to-Farm").*

22 Findings of Fact: Less than Significant.

23 As explained earlier, the proposed Project would not create use conflicts with agricultural
24 use or otherwise interfere with use of agricultural-zoned property adjacent to the Project.
25 The proposed renewable energy Project would be allowed as a conditional use on County
26 lands zoned for W-2. The Project would not create use conflicts with agricultural use or
27 otherwise interfere with use of agriculturally zoned property adjacent to the Project area. It
28 would not lead to a determination that existing uses would be deemed a nuisance.

1 Accordingly, the impact would be less than significant (DEIR, p. 4.10-10).

2
3 **H. Mineral Resources**

4 *Impact MR-1: The Project would not result in the loss of availability of a known mineral*
5 *resource that would be of value to the region and the residents of the state.*

6 Findings of Fact: No Impact.

7 The Project site is not delineated as a locally important mineral resource recovery site and
8 it is not used for mineral production or under a claim, lease, or permit for the production of
9 locatable, leasable, or saleable mineral or mineral materials. Resources Zone (MRZ)
10 Classification of MRZ-4, which is defined as an area where there is not enough information
11 available to determine the presence or absence of mineral deposits; therefore, the Project
12 would not result in the loss of the availability of a known mineral resource classified by the
13 State. Furthermore, use of the site as a solar PV energy facility would not appreciably
14 reduce or restrict the availability of sand and gravel resources from outside the Project area
15 and any potential on-site sand and gravel resources would become available again following
16 decommissioning of the Project. As there is no information to indicate that the sand and
17 gravel located on the site is of unique or higher quality value than other similar deposits in
18 eastern Riverside County, no impact would occur (DEIR p. 4.11-2).

19
20 *Impact MR-2, MR-3, and MR-4; GEO13 and GEO-14: The Project would not result in the*
21 *loss of availability of a locally important mineral resource recovery site delineated on a*
22 *local general plan, specific plan or other land use plan; be an incompatible land use*
23 *adjacent to a state classified or designated area or existing surface mine; or expose people*
24 *or property to hazards from proposed, existing or abandoned mines.*

25 Findings of Fact: No Impact(s).

26 The Project site is not delineated in the Palo Verde Valley Area Plan or the RCGP as a
27 locally important mineral resource recovery site; therefore, the loss of availability of a
28 delineated locally important mineral resource recovery site would not occur. No impact

1 would occur. In addition, there are no existing, planned or abandoned mines within the
2 Project site and the Project would not be located adjacent to State classified existing surface
3 mines. Therefore, no impact would occur (DEIR pp. 4.11-2).
4

5 **I. Noise**

6 *Impact NOI-1: Construction of the Project would not result in exposure of persons to or*
7 *generation of noise levels in excess of standards established in the local general plan or*
8 *noise ordinance, or applicable standards of other agencies*

9 Findings of Fact: No Impact(s).

10 The applicable noise ordinance is Riverside County Ordinance No. 847, which includes a
11 daytime or nighttime noise limit of 45 dBA Lmax as the maximum decibel level allowed in
12 Rural Residential areas, but only if the distance between the Project site and the nearest inhabited
13 dwelling is less than one quarter-mile. The Project is exempt from this ordinance because the
14 nearest sensitive receptor is more than one quarter-mile away (approximately 3,200 feet) from
15 the Project boundary. As illustrated in the Draft EIR, given this distance to the receptors,
16 significant increases in noise during construction would not be substantial and once operational,
17 only very minimal noise potential from the relatively passive solar system would occur. There
18 would be no impact. (DEIR, p. 4.12-11).
19

20 *Impact NOI-3: The Project would not expose persons to or generate excessive ground-*
21 *borne vibration or ground-borne noise levels.*

22 Findings of Fact: Less than Significant.

23 Temporary sources of ground-borne vibration and noise during construction and
24 decommissioning would result from operation of conventional heavy construction
25 equipment such as the vibratory post driver, graders, bulldozers, and loaded haul trucks.
26 However, vibration levels at the closest residence (4,300 feet away) would be well below
27 the peak particle velocity (PPV) thresholds. These pieces of equipment can generate
28 vibration levels of up to 0.09 in/sec at a distance of 25 feet, but it attenuates within a short

1 distance of the source. Operation and maintenance would not introduce any new sources of
2 perceivable ground-borne vibration to the area surrounding the Project. Therefore, the
3 Project would result in less-than-significant impacts with regard to ground-borne vibration
4 and noise (DEIR p. 4.12-12).

5
6 *Impact NOI-4: The Project would not be located within an airport land use plan, which
7 could result in the exposure of people working in the Project area to excessive noise levels*

8 Findings of Fact: Less than Significant.

9 The Project would be located approximately 1.5 miles from the Blythe Airport. Given this
10 distance, noise from construction, operations and maintenance, and decommissioning
11 would attenuate to below ambient noise levels at the airport. Therefore, noise impacts during
12 construction, operation and decommissioning of these alternatives would be less than
13 significant. (DEIR p. 4.12-12).

14
15 *Impact NOI-5: The Project would not create a substantial permanent increase in ambient
16 noise levels in the Project vicinity above levels existing without the Project.*

17 Findings of Fact: Less than Significant.

18 The Project would generate noise associated with the operation and maintenance of the
19 tracker unit motors, substation transformers, modular power block inverters, medium
20 voltage transfers, transmission line corona discharge, and maintenance activities. As noise
21 attenuates with distance, the Project would not result in a substantial permanent increase in
22 ambient noise levels in the Project vicinity above levels existing without the Project.
23 Impacts would be less than significant (DEIR p. 4.12-12 to -13).

24
25 *Impact NOI-6: The Project would not be located within the vicinity of a private airstrip,
26 and would not expose people residing or working in the Project area to excessive noise
27 levels.*

1 Findings of Fact: No Impact(s).

2 The Project would not be located within the vicinity of a private airstrip and therefore would
3 not result in a safety hazard for people residing or working in the Project area and would
4 not result in an excessive volume of airplane noise to people residing or working in the area.
5 No impact would occur (DEIR pp. 4.9-25; p. 4.12-12).

6
7 *Impact NOI-7: The Project would not result in impacts from railroad or highway noise.*

8 Findings of Fact: Less than Significant.

9 The Project would not utilize railroad service for delivery of materials or workers; therefore,
10 no impacts related to railroad noise would occur from the construction, operation,
11 maintenance, and decommissioning of the Project. Construction workers commuting to the
12 Project area and delivery of materials would result in a slight increase in traffic along State
13 Route 78. The anticipated change in daily and afternoon peak hour traffic noise levels (Leq)
14 for the Project would be less than 10 dBA (2.85 and 7.34 dBA, respectively) at the State
15 Route 78/16th Avenue/Seeley Avenue intersection. Impacts would be less than significant
16 (DEIR p. 4.12-13).

17
18 **J. Paleontological Resources**

19 *Impact PALEO-1: The Project would not directly or indirectly destroy a unique*
20 *paleontological resource or site or unique geologic feature.*

21 Findings of Fact: Less than Significant.

22 Construction activities that may affect paleontological resources include excavation, heavy
23 equipment usage and movement, drilling, and trenching for utilities. Grading for access
24 roads could also directly impact paleontological resources. Old Terrace deposits within the
25 Project footprint (geologic unit Qot), have Very High potential for the discovery of
26 unknown significant paleontological resources (DEIR p. 4.13-7).

27 The implementation of APMs Paleo-1, Paleo-2, Paleo-3, and Paleo-4 would minimize the
28 impact of construction-related activities by providing a mechanism for significant fossils to

1 be identified before ground disturbance takes place; identifying areas with high potential
2 for significant resources, which can be the focus of monitoring; training construction
3 workers to identify fossil resources, including measures to take if they identify such
4 resources; and ensuring that a qualified paleontologist is present for all earth disturbing
5 work in sensitive paleontological areas. When implemented, the pre-construction survey to
6 be conducted as part of APM Paleo-2, and the PRMMP required as part of APM Paleo-1,
7 as well as onsite monitoring as part of Paleo-3 and post-construction reporting under APM
8 Paleo-4, would reduce adverse construction-related impacts on paleontological resources to
9 a level that is less than significant.

10 Implementation of the above APMs would reduce the Project's impacts to less than
11 significant by requiring the presence of a paleontological monitor on-site during
12 construction in sensitive areas to ensure compliance with the Paleontological Resources
13 Monitoring and Mitigation Plan (PRMMP). The PRMMP includes procedures to monitor,
14 avoid, and/or recover unique paleontological resources discovered during ground-
15 disturbing activities. Such procedures include requirements for excavation in areas
16 underlain by geologic units identified as having a high paleontological sensitivity under
17 Society of Vertebrate Paleontology guidelines and requirement for a report to be prepared
18 documenting all finds with permanent retrievable paleontological storage for curation of
19 specimens.

20
21 **K. Recreation and Public Access**

22 *Impact REC-2 and REC-3: The Project would not:*

- 23 • *Include recreational facilities or require the construction or expansion of*
24 *recreational facilities which might have an adverse physical effect on the*
25 *environment.*
- 26 • *Located within a CSA or recreation and park district with a Community Parks and*
27 *Recreation Plan (Quimby fees).*

1 Findings of Fact: No Impact(s).

2 The proposed Project does not include recreational facilities or require the construction or
3 expansion of recreational facilities. The proposed Project would be located in
4 unincorporated Riverside County and would not be located within a CSA or recreation and
5 park district with a Community Parks and Recreation Plan. No impact would occur (DEIR
6 pp. 4.14-8).

7
8 **L. Social and Economic Effects (Population and Housing)**

9 *Impact SOC-1: The Project would not induce substantial population growth in an area,*
10 *either directly or indirectly.*

11 Findings of Fact: Less than Significant.

12 The majority of the construction, operation and maintenance, and decommissioning
13 workforce is expected to come from the existing labor pool in eastern Riverside County and
14 Imperial County, California, and from La Paz County, Arizona. Due to the temporary
15 nature of construction work, workers are not expected to relocate permanently to the local
16 area in order to build the Project. Permanent employees, if recruited from areas outside the
17 Blythe area, may choose to relocate to the area. There is a sufficient supply of housing
18 either for sale or rent to accommodate those workers. The Project would not induce
19 substantial population growth or create a demand for additional housing. Therefore, this
20 impact would be less than significant (DEIR p. 4.15-11).

21
22 *Impact SOC-2, SOC-4 and SOC-6: The Project would not displace substantial numbers of*
23 *existing housing, necessitating the construction of replacement housing elsewhere; the*
24 *Project would not create a demand for additional housing, particularly housing affordable*
25 *to households earning 80% or less of the County's median income; the Project would not*
26 *cumulatively exceed regional or local population projections.*

27 Findings of Fact: No Impact(s).

28 The Project area and gen-tie corridor do not contain residential housing. Due to the

1 temporary nature of Project construction activities, it is unlikely that construction workers
2 would permanently relocate closer to the Project area with their families. Operation of the
3 Project would require a nominal workforce and is not anticipated to increase the local
4 population. Therefore, the Project would not create a demand for additional housing and
5 would not displace existing housing or necessitate the need for construction of replacement
6 housing elsewhere and would not exceed regional or local population projections. No
7 impact would occur (DEIR pp. 4.15-12).

8
9 *Impact SOC-3: The Project would not displace substantial numbers of people, necessitating
10 the construction of replacement housing elsewhere.*

11 Findings of Fact: No Impact(s).

12 The proposed Project does not contain a residential component, nor would it displace
13 existing housing or people. No impact would occur (DEIR pp. 4.15-11, -16).

14
15 *Impact SOC-5: The Project would not affect a County Redevelopment Project Area.*

16 Findings of Fact: No Impact(s).

17 The Project area and immediate vicinity would not be located within a County
18 Redevelopment Project Area. No impact would occur. (DEIR pp. 4.15-12)

19
20 **M. Transportation and Traffic**

21 *Impact TRA-2: The Project would not conflict with an applicable congestion management
22 program.*

23 Findings of Fact: Less than Significant.

24 The Riverside County Transportation Commission's (RCTC's) adopted minimum LOS
25 threshold is LOS E. When a Congestion Management Plan (CMP) street or highway
26 segment falls to LOS F, a deficiency plan is required. The Project would result in operation
27 of the intersection of SR-78 and 16th Avenue at a LOS F during peak PM hours, in the
28 absence of Applicant Proposed Measures (APMs). This reduction in LOS would exceed the

1 thresholds established in the County CMP, and would constitute a significant impact.
2 However, implementation of APM TRA-1 would reduce the number of vehicles leaving the
3 Project in the afternoon peak hours to a level that allows the intersection to operate at LOS
4 D. With implementation of this APM, the impact on the intersection would not conflict with
5 an applicable congestion management program established by the County congestion
6 management agency for designated roads or highways, and impacts of the Project would be
7 less than significant. (DEIR, p. 4.17-11).

8
9 *Impact TRA-3 and TRA-7: The Project would not alter waterborne or rail traffic. The*
10 *Project would not result in a change in air traffic patterns, including either an increase in*
11 *traffic levels or a change in location that results in substantial safety risks; result in a*
12 *change in air traffic levels or a change in location and result in substantial safety risks.*

13 Findings of Fact: No Impact(s).

14 There is no waterborne traffic in the vicinity of the Project. The Project would not utilize
15 waterborne traffic to transport materials or the workforce and would not utilize or alter any
16 rail traffic; no impact would occur (DEIR pp. 4.17-13). The Project would not result in a
17 change in air traffic patterns, including either an increase in traffic levels or a change in
18 location that results in substantial safety risks. Construction equipment that would be
19 utilized for the Project would not obstruct navigable air space. No impacts would occur
20 (DEIR, p. 4.17-11).

21
22 *Impact TRA-4: The Project would not substantially increase hazards due to a design*
23 *feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm*
24 *equipment).*

25 Findings of Fact: No Impact(s).

26 The Project would not require modification of roadways or intersections, or incompatible
27 uses of the public roadways. No impacts would occur. (DEIR pp. 4.17-11 to -12).

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Impact TRA-6 and TRA-9: The Project would not conflict with adopted policies, plans, or programs regarding public transit, bicycle or pedestrian facilities, or otherwise decrease the performance or safety of such facilities; the Project would not affect any bike trails.

Findings of Fact: No Impact(s)/Less than Significant.

Pedestrian and bicycle facilities currently do not exist in the Project area and therefore would not be impacted by the Project; no impact would occur. The existing pedestrian network does not currently provide sidewalks connecting adjoining land uses. Construction traffic would increase delays at intersections on SR-78 (Neighbours Boulevard), which is used as a bus route by the Palo Verde Valley Transit Agency (PVVTA). The additional delay for buses at these intersections would be nominal (around 30 seconds). During operation, the proposed solar panels would be fenced in and portions of existing dirt access roads would be closed. Access along paved roads would remain open and accessible, and impacts would be less than significant (DEIR p. 4.17-12).

N. Public Services and Utilities

Impact USS-1(1), (2), (3), and (5): The Project would not:

- *Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board.*
- *Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.*
- *Require or result in the construction of new stormwater drainage facilities or expansion of existing facilities;*
- *Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments.*

1 Findings of Fact: No Impact(s):

2 Construction of the Project would require ground-disturbing activities, including, solar
3 array installation, and construction of access roads. Grading could alter naturally occurring
4 drainage patterns and result in soil erosion, sedimentation, long-term siltation, and increased
5 stormwater runoff. Erosion and other potential alteration of the bed and bank would be
6 avoided or minimized through implementation of protective measures (described in the
7 requirements for a Drainage, Erosion, and Sedimentation Control Plan and Storm Water
8 Pollution Prevention Plan). It is not anticipated that these proposed stormwater drainage
9 facilities would result in significant adverse effects to the environment or require new
10 facilities or an expansion of facilities elsewhere that would have any significant
11 environmental effects.

12 The O&M buildings would generate a minimum volume of wastewater as result of daily
13 activities once operational. Wastewater would be treated via a septic system permitted
14 through the Riverside County Department of Environmental Health Services, and would be
15 in compliance with Department requirements. The Project would not require construction
16 or expansion of public water treatment and/or service systems. Restroom facilities during
17 Project construction and decommissioning would be provided by portable units to be
18 serviced by licensed providers. The Project would not exceed wastewater treatment
19 requirements during construction, operation, maintenance, and decommissioning because
20 the Project would not be connected to a public sewer system. No impact would occur with
21 respect to any of these considerations. (DEIR pp. 4.18-6)

22
23 *Impact USS-3: The Project would not conflict with any adopted energy conservation plans.*

24 Findings of Fact: No Impact(s).

25 The Project would progress the goals of the California Renewable Portfolio Standard
26 (RPS) and other similar renewable programs in the state. The Project operation would have
27 an overall beneficial effect on the electricity supply to the grid and would help decrease
28 reliance on coal power. Therefore, the Project would not conflict with adopted energy

1 conservation plans. No impact would occur (DEIR pp. 4.18-9).

2
3 *Impact PS-1: The Project would not result in substantial adverse physical impacts*
4 *associated with the provision of new or physically altered governmental facilities; and/or*
5 *result in the need for new or physically altered governmental facilities, the construction of*
6 *which could cause significant environmental impacts, in order to maintain acceptable*
7 *service ratios, response times or other performance objectives for public services.*

8 Findings of Fact: Less than Significant.

9 Construction of the Project temporarily could affect the demand for public services due to
10 the increased population and traffic associated with construction worker vehicle trips, which
11 could create the need for expansion of or additional governmental facilities. However, it is
12 anticipated that the construction workforce would be drawn from communities within
13 Riverside County, with a smaller portion drawn from Imperial County and La Paz County
14 and would not induce permanent growth to the regional population levels. Impacts would
15 be less than significant.

16 As there would be sufficient vacant housing units located within local communities to
17 support the number of construction workers, the Project would not trigger the need for new
18 housing. Therefore, the Project would not induce substantial population growth to the
19 regional population levels, and would not be anticipated to increase school enrollment
20 sufficiently to require new schools to be constructed or existing schools to be physically
21 altered. Further, the Project would not result in the need for construction of new school
22 facilities or physically altered school facilities during operation and maintenance, as the
23 Palo Verde Unified School District is not currently at enrollment capacity. Impacts would
24 be less than significant.

25 Construction of the Project temporarily could increase demands on police services.
26 However, on-site security would include trained, uniformed, and unarmed personnel whose
27 primary responsibility would be to control ingress and egress of personnel and vehicles,
28 perform fire and security watch during off hours, and perform security badge

1 administration, which would minimize the potential need for assistance from the Blythe
2 Police Department and Riverside County Sherriff Department. Because Project
3 construction is not anticipated to permanently increase the local population, no new or
4 expanded law enforcement facilities or increased staff levels within the Project's regional
5 or local study area would be required. Once operational, the Project site would include
6 security fencing, controlled access gates, and security lighting, which would minimize the
7 potential need for the City of Blythe Police Department's and the Riverside County Sheriff
8 Department's assistance. As previously described, operation and maintenance of the
9 Project would not increase the local population or require the need for new or expanded law
10 enforcement facilities or staff levels within the Project's regional or local study areas.
11 Impacts would be less than significant.

12 During construction of the Project, there would be the potential for both small fires and
13 major structural fires. Electrical sparks, combustion of fuel oil, hydraulic fluid, mineral oil,
14 or insulating fluid at substations, or flammable liquids, explosions, and over-heated
15 equipment may cause small fires. The Project would result in an increase in demand for
16 fire protection services over existing levels during construction. The Project would not
17 cause population growth sufficient to generate a need for new or expanded fire protection
18 facilities. A Fire Safety Plan would be developed to identify potential hazards and accident
19 scenarios that would exist at the facility during construction. Further, the Applicant would
20 be required to pay a development impact fee for fire services, pursuant Riverside County
21 Ordinance No. 659.

22 During operation and maintenance of the Project, there would be the potential for both small
23 fires and major structural fires. The O&M buildings would include their own emergency
24 power, fire suppression, and potable water systems. As part of the Project, implementation
25 of a Fire Safety Plan, would ensure that emergency fire precautions are employed during
26 Project operation and maintenance. The Project would include emergency access and other
27 safety features and plans for fire protection. Notification procedures and emergency fire
28 precautions would ensure that operation of the Project does not inhibit the ability of fire

1 protection or emergency medical personnel to respond to the Project area and vicinity. No
2 new or physically altered public facilities would be needed to address such fires. Impacts
3 would be less than significant during Project construction, operation, maintenance, and
4 decommissioning.

5 As discussed above, the Project's construction workforce would be hired from the available
6 regional workforce. There could be temporary in-migration that would increase the local
7 population during construction; however, it would not warrant the need for new or expanded
8 parks and recreational facilities within the Project's regional or local study area. During
9 operation and maintenance of the Project, no population in-migration would occur that
10 would increase the local population or would require the need for new or physically altered
11 parks and recreational facilities or staff levels within the Project's regional or local study
12 area. Additionally, the Project would not eliminate any lands designated for recreational
13 use. Impacts would be less than significant during construction, operation, maintenance,
14 and decommissioning.

15 Although Project construction temporarily would increase the number of people within the
16 Palo Verde Valley, it would not substantially increase the population and would not require
17 new or expanded library facilities within the area. During operation and maintenance,
18 consistent with the impacts previously discussed for construction, the Project would not
19 include a residential component that would substantially increase the population, and would
20 not require new or expanded library facilities or personnel within the area. Impacts would
21 be less than significant (DEIR p. 4.18-7 to -8).

22
23 *Impact USS-1(4): The Project would have sufficient water supplies available to serve the*
24 *project from existing entitlements and resources.*

25 Findings of Fact: Less than Significant.

26 A Water Supply Assessment conducted for the Project determined that adequate water
27 supplies exist to serve the Project's non-potable water demand, whether the Project is served
28 through groundwater extraction or water delivered by truck, which is not anticipated.

1 Project construction and operation would require a total of approximately 2,940 AF of water
2 over the construction period plus the 30-year operation period. This volume of water
3 represents about 0.04 percent of the total groundwater storage (6.84 million AF) available
4 in the PVGB. The maximum annual use of 700 AFY represents 0.16 percent of the annual
5 groundwater balance in the basin, and approximately 6.3 percent of the 11,100 AFY that is
6 withdrawn from the basin to support agriculture, municipal, and domestic uses. That level
7 of water use would occur only temporarily during the 25 month construction period, and
8 would then be reduced to 38 AFY, which represents 0.3 percent of total agriculture,
9 municipal, and domestic uses during Project operations. No water would be used to irrigate
10 landscaping. The Project would not access water from a public water supply system, and
11 would therefore not have any impacts on existing public water supply systems. This impact
12 is less than significant (DEIR pp. 4.18-2 to -4).

13
14 *Impact USS-1(6) and (7): The Project would be served by a landfill with sufficient*
15 *permitted capacity to accommodate the project's solid waste disposal needs and would*
16 *comply with federal, state, and local statutes and regulations related to solid waste.*

17 Findings of Fact: Less than Significant.

18 The Project would generate solid waste during construction, operation, maintenance, and
19 decommissioning and is anticipated, more specifically, to generate up to approximately 25
20 cubic yards of solid waste per week during construction and 0.6 cubic yard of non-hazardous
21 solid waste per week during operations. The closest landfill to the Project area is the Blythe
22 Sanitary Landfill. According to the California Department of Resources Recycling and
23 Recovery (CalRecycle), the remaining capacity of the Blythe Sanitary Landfill is 4,159,388
24 cubic yards (cy) and is estimated to operate until year 2047. Therefore, sufficient capacity
25 is anticipated to be available for waste disposal. The Project would comply with applicable
26 federal, State, and local regulations related to solid waste. In addition, the Project would
27 recycle to the maximum extent feasible. This impact would be less than significant (DEIR
28 p. 4.18-4).

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O. Visual Resources

Impact VIS-1: The Project would not have a substantial adverse effect on a scenic vista.

Findings of Fact: No Impact(s).

The Project would not be located in a designated scenic vista and neither the Riverside County General Plan nor the Palo Verde Valley Area Plan has designated the Project area as an important visual resource. No scenic vistas were identified in the visual resources study area, therefore no impacts would occur. Impacts to views from I-10, which has been identified by the County of Riverside as eligible for designation as a scenic corridor, would not be significant due to existing, similar projects in the area and the fact that the Project would not block views of scenic resources such as significant trees, rocks, historic buildings, or prominent topographic features (DEIR pp. 4.19-17).

Impact VIS-2: The Project would not substantially damage scenic resources, including but not limited to trees, rock outcroppings, and historic buildings within a state scenic highway.

Findings of Fact: Less than Significant.

Construction, operation, maintenance, and decommissioning of the Project would not strongly increase the visual contrast of the area and would not substantially degrade the existing previously disturbed and human-made visual character along I-10. Additionally, the Project would be consistent with visual policies contained in the Riverside County General Plan, the Palo Verde Valley Area. Plan, and the City of Blythe General Plan 2025, which contain policies to protect the scenic quality of views from designated and eligible scenic highways. There are no scenic resources such as significant trees, rocks, historic buildings, or prominent topographic features that would be degraded as a result of the Project. Therefore, no substantial adverse effects to scenic resources would occur, and impacts during construction, operation, maintenance, and decommissioning would be less than significant (DEIR, pp. 4.19-17).

1 *Impact VIS-4 and VIS-6: The Project would not create a new source of substantial light*
2 *or glare which would adversely affect day or nighttime views in the area; the Project would*
3 *not interfere with nighttime use of the Mt. Palomar Observatory.*

4 Findings of Fact: Less than Significant/No Impact(s).

5 Construction of the Project generally would occur during the daytime hours and could occur
6 as late as 7:00 p.m. in order to meet the construction schedule. No overnight construction
7 would occur. In the event that work is performed at a time before 7:00 p.m. that requires
8 supplemental lighting, the construction crew would use only the minimum illumination
9 needed to perform the work safely. All lighting would be directed downward and shielded
10 to focus illumination on the desired work areas only, and to prevent light spillage onto
11 adjacent properties. With the implementation of Best Management Practices (BMPs) and
12 because lighting would be shielded and focused downward and lighting used to illuminate
13 work areas would be turned off by 7:00 p.m., light or glare created by construction lighting
14 would be minimal and would not adversely affect day or nighttime views in the area.
15 Therefore, impacts would be less than significant. Similarly, once operational, the solar
16 facility and security lighting would be designed to provide minimum illumination needed
17 to achieve safety and security objectives and would be directed downward and shielded to
18 focus illumination on the desired areas only and avoid light trespass into adjacent area. No
19 impacts would occur with regard to ground-based viewers or residences as the closest
20 receptors would be farther than 500 feet from the closest source of glare. Therefore, the
21 solar array would not create substantial glint or glare during normal operations that would
22 be visible from sensitive viewpoints, including residences with views of the Project, I-10,
23 and recreational facilities; no adverse impacts to sensitive viewpoints related to glare would
24 result from the Project. As part of the Project, BMP-11 (Project structures and building
25 surfaces) would minimize the potential for glare from any structure or building surfaces,
26 resulting in a less than significant impact (DEIR pp. 3.1-39 to 3.1-41).

27
28

1 *Impact VIS-5: The Project would not result in the creation of an aesthetically offensive site*
2 *open to public view.*

3 Findings of Fact: Less than Significant.

4 Construction of the Project would change the existing visual character of the site due to the
5 presence of equipment, materials, and workers. However, these short-term impacts would
6 occur only throughout the construction period and BMPs would reduce potential impacts to
7 visual resources. During operation and maintenance of the Project, the broad, flat form of
8 the solar panels, along with the dark grey color of the panels would contrast with the desert
9 landscape surrounding the Project and would be apparent in or dominate the landscape and
10 would reduce the scenic quality of the Project area due to an increase in man-made
11 development at the otherwise natural appearing site (with the exception of the private lands).
12 However, the experience of viewers at most of the locations where the Project would be
13 visible would be intermittent. The Project area is also being subjected to an increased
14 amount of similar development with additional solar projects and transmission lines
15 anticipated for construction in the near future. Therefore, overall visual impacts of the
16 Project would not result in an aesthetically offensive site to public viewers and impacts
17 would be less than significant (DEIR, p. 4.19-19).

18
19 *Impact VIS-7: The Project would not expose residential property to unacceptable light*
20 *levels.*

21 Findings of Fact: Less than Significant.

22 Construction and operation of Alternatives 1, 2, or 3 would utilize minimal lighting.
23 Additionally, the proposed Project facilities would be close to existing sources of light, such
24 as the Blythe Energy Center, Blythe Substation, the NRG Blythe Solar PV Project, and the
25 Blythe Airport. Therefore, residential property would not be exposed to unacceptable light
26 levels, and impacts would be less than significant. (DEIR, p. 4.19-19).

1 **P. Water Resources**

2 *Impact HYD-7: The Project would not place housing within a 100-year flood hazard area*
3 *as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other*
4 *flood hazard delineation map.*

5 Findings of Fact: No Impact(s).

6 The proposed Project would not include the construction of any residential units, and would
7 not introduce new housing to the area; therefore, no impact would occur to housing placed
8 within a 100-year flood hazard area (DEIR pp. 4.20-19).

9
10 *Impact HYD-8: The Project would not place within a 100-year flood hazard area structures*
11 *which would impede or redirect flood flows.*

12 Findings of Fact: No Impact(s).

13 The Project site is classified by FEMA as Zone D, indicating that there are possible but
14 undetermined flood hazards (FIRM map 06065C Panel 06065C3200G). A drainage study
15 conducted for the Project shows presence of large natural depressions that range from one
16 to five feet deep. These large depressions store significant volumes of water which would
17 attenuate the increased runoff. In addition, sediment transport would be less than the pre-
18 Project conditions due to soil compaction during construction. Mitigation Measure
19 WATER3 would be implemented to reduce impacts to structures from flooding, but the
20 Project itself would not redirect or impede floodwaters (DEIR pp. 4.20-19).

21
22 *Impact HYD-9: The project would not expose people or structures to a significant risk of*
23 *loss, injury or death involving flooding, including flooding as a result of the failure of a*
24 *levee or dam.*

25 Findings of Fact: Less than Significant.

26 The Project would not involve working in the vicinity of a levee or dam, nor would the
27 Project be located such that it would expose people or structures to significant risk of loss,
28 injury, or death involving flooding. Large depressions existing within the Project footprint

1 that are capable of storing significant volumes of water; however, structures would not be
2 located in these areas. The Project will not cause or exacerbate any potential for flooding.
3 In addition, Mitigation Measure WATER-3 would be implemented to reduce impacts to the
4 Project from flooding (beyond potential impacts caused by the failure of a levee or dam).
5 This impact would be less than significant (DEIR p. 4.20-19).

6
7 *Impact HYD-10: The Project would not be at risk of inundation by seiche, tsunami, or*
8 *mudflow.*

9 Findings of Fact: No Impact(s).

10 The Project would not be in a location that could be affected by a tsunami or seiche. The
11 Project would be in an area characterized by well-drained soils and low precipitation and
12 although sudden, intense storms can create runoff, the areas where runoff would originate
13 are composed of metamorphic and granitic rocks and are less prone to mudflows. The
14 Project would therefore not be affected by or result in a mudflow; no impact would occur
15 (DEIR, pp. 4.20-20).

16
17 *Impact HYD-11: The Project would not include new or retrofitted Stormwater Treatment*
18 *Control BMPs (e.g., water quality treatment basins, constructed treatment wetlands), the*
19 *operation of which could result in significant environmental effects (i.e., increased vectors*
20 *and/or odors)*

21 Findings of Fact: No Impact(s).

22 The Project would retention basins that would contain water only after large storm events
23 and shortly thereafter. Vectors and/or odors would not have sufficient time to form in these
24 areas. Therefore, no impact resulting from their use would occur (DEIR pp. 4.20-20).

25
26 **Q. Wildland Fire**

27 *Impact FIRE-1 and HAZ-8: The Project would not expose people or structures to a*
28 *significant risk of loss, injury, or death involving wildland fires, including where wildlands*

1 *are adjacent to urbanized areas or where residences are intermixed with wildlands.*

2 Findings of Fact: No Impact(a).

3 The solar facility would be designed and constructed to industry safety design standards
4 (i.e., Institute of Electrical and Electronic Engineers, National Electric Code) and Riverside
5 County Building and Safety Department requirements to reduce the risk of electrical fires
6 at the site. Implementation of a WEAP, as would further reduce wildfire risks to less than
7 significant levels. Accordingly, the proposed Project is not expected to expose people or
8 structures, directly or indirectly, to a significant risk of loss, injury, or death involving
9 wildland fires. Therefore, there would be no impacts (DEIR p. 4.9-26).

10
11 **SECTION III**

12 **FINDINGS REGARDING ENVIRONMENTAL IMPACTS**

13 **REQUIRING MITIGATION**

14 **BE IT FURTHER RESOLVED** by the Board of Supervisors that the following environmental
15 impacts identified in the EIR are potentially significant but can be mitigated to a less-than-significant level.
16 The potentially significant impacts and the Mitigation Measures that would reduce them to a less-than-
17 significant level are set out in the EIR and are summarized as follows:

18 **R. Biological Resources**

19 *Impact BIO-1: The Project, with mitigation, would not have a substantial adverse effect,*
20 *either directly or through habitat modifications, on species identified as a candidate,*
21 *sensitive, or special-status species in local or regional plans, policies, or regulations, or by*
22 *CDFW or USFWS.*

23 Findings of Fact: Less than Significant with Mitigation.

24 Potential temporary, indirect impacts to special-status plant species could arise from
25 unmitigated runoff and sedimentation, erosion, fugitive dust, and unauthorized access
26 outside of the disturbance area by construction workers. Runoff, sedimentation, and erosion
27 can adversely impact plant populations by damaging individuals or by altering site
28 conditions sufficiently to favor other species (native and non-natives) that would

1 competitively displace the special-status species. Construction-generated fugitive dust can
2 adversely affect plants by reducing the rates of metabolic processes, such as photosynthesis
3 and respiration, and may affect their nutritional qualities for wildlife. Impacts to special-
4 status plant species before implementation of Mitigation Measures would be significant.
5 Construction of the Project would result in the permanent loss of potential and/or occupied
6 habitat for desert tortoise, Mojave fringe-toed lizards, Western Burrowing Owls, raptor
7 species, American badger, desert kit fox, and nesting migratory birds. These impacts would
8 be potentially significant. The Project site may be recolonized by special-status species
9 such as protected nesting birds during operation, which would require the implementation
10 of protection measures during decommissioning. If special-status species have recolonized
11 the Project site during decommissioning there would be a potential for significant impacts
12 to these species during decommissioning. APMs BIO-1 (Environmental Inspection and
13 Compliance Monitoring Program and Plan) and BIO-3 (Construction-Related BMPs) would
14 limit some of these impacts, but would not eliminate them. (DEIR pp. 4.4-16, -19 to -21).
15 Polarized Light Pollution (PLP) has been postulated as a causal factor in injuries to and
16 mortalities of water birds at some solar facilities in the California Desert. The
17 hypothesis that PLP creates a "lake effect" that mimics the reflective characteristics of
18 water and causes migrating birds to attempt to land, and instead collide with solar panels
19 or other structures, resulting in injury or death has not been proven by a significant
20 amount of data collected to date on solar projects in the desert. This impact would be
21 less than significant. (DEIR, pp. 4.4-12 to -15). In addition, a Bird and Bat
22 Conservation Strategy (BBCS) would be developed to provide measures to protect
23 sensitive bird species.

24 Mitigation: In addition to APMs, Mitigation Measures VEG-1 through VEG-10, WIL-3
25 (Project Notification and Reporting), WIL-8 (American Badger and Desert Kit Fox
26 Protection), WIL-9 (Burrowing Owl Protection and Mitigation), and WIL-12 (Couch's
27 Spadefoot Toad Protection and Mitigation) would be implemented to further reduce
28 impacts. The Mitigation Measures would reduce the Project's impacts to special-status

1 species to a less-than-significant level. The Mitigation Measures reflect changes or
2 alterations that the County has required, or incorporated into, the Project that would avoid
3 or substantially lessen the potentially significant impact as identified in the EIR (State
4 CEQA Guidelines section 15091(a)(1)). Mitigation Measures VEG-1 through VEG-10;
5 WIL-3, WIL-8, WIL-9, and WIL-12, as described in Exhibit A attached hereto, are hereby
6 incorporated by reference.

7 Rationale: Implementation of the above Mitigation Measures would reduce the Project's
8 impact to special-status plant and wildlife species to a less than significant level by requiring
9 the identification of a Designated Biologist that would be dedicated to biological monitoring
10 during construction, preconstruction surveys for special status wildlife species, avoidance
11 and minimization of special status wildlife species impacts, avoidance and minimization of
12 rare plant impacts, off-site compensatory mitigation, and a worker training program.

13
14 *Impact BIO-3: The Project would not have a substantial adverse effect on federal protected*
15 *wetlands, as defined by Section 404 of the CWA, or State-protected jurisdictional areas not*
16 *subject to regulation under Section 404 of the CWA through direct removal, filling,*
17 *hydrological interruption, or other means.*

18 Findings of Fact: Less than Significant with Mitigation.

19 The Federal jurisdictional delineation indicated that potential waters were isolated,
20 therefore not under CWA jurisdiction. The Project does, however, encompass 0.39 acres of
21 potentially jurisdictional abandoned channels made up of about 80 small watercourses. If
22 CDFW determines that these channels are jurisdictional, overlays of permanent and
23 temporary construction areas, volumes of soil disturbance, and restoration and mitigation
24 plans would be provided to CDFW as part of the Streambed Alteration Agreement
25 application.

26 Mitigation: Mitigation measure VEG-10 (Measures for Riparian Habitat and State Waters)
27 requires compensation for impacts, at a ratio to be determined by CDFW. VEG-10 would
28 reduce the Project's potential impact to state jurisdictional waters, if any, to a less-than-

1 significant level. The Mitigation Measures reflect changes or alterations that the County
2 has required, or incorporated into, the Project that would avoid or substantially lessen the
3 potentially significant impact as identified in the EIR (State CEQA Guidelines
4 section 15091(a)(1). Mitigation Measure VEG-10, as described in Exhibit A attached
5 hereto, is hereby incorporated by reference.

6 Rationale: Implementation of the above Mitigation Measure would reduce potential
7 significant impacts to a less-than-significant level by requiring compensation for any
8 impacts and imposing other limits on development through a Lake and Streambed
9 Alteration Agreement with CDFW.

10
11 *Impact BIO-7: The Project would not substantially reduce the habitat of a fish or wildlife*
12 *species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to*
13 *eliminate a plant or animal community; or substantially reduce the number or restrict the*
14 *range of an endangered, rare, or threatened species.*

15 Findings of Fact: Less than Significant with Mitigation.

16 Although the Project will impact 2,605 acres of the *Larrea tridentata* and *Larrea tridentata-*
17 *Ambrosia dumosa* alliances and 2.3 acres of the *Pleuraphis rigida* alliance under Alternative
18 2, those affected vegetation alliances and plant species have relatively wide distributions
19 throughout the Sonoran desert, and would not be eliminated or reduced in numbers below
20 self-sustaining levels. (DEIR p. 4.3-17 to -18; 4.4-23 to -24).

21 Mitigation: Implementation of the APMs and the Mitigation Measures discussed previously
22 for impacts to vegetation alliances would also provide impact avoidance, minimization, and
23 compensation measures to offset any population-level impacts to plant species. Impacts
24 would be less than significant. The Mitigation Measures reflect changes or alterations that
25 the County has required, or incorporated into, the Project that would avoid or substantially
26 lessen the potentially significant impact as identified in the EIR (CEQA Guidelines
27 Section 15091(a)(1)). Mitigation Measures VEG-1 through VEG-10; WIL-1, WIL-2, WIL-
28 7, WIL-8, WIL-9, WIL-10, and WIL-12, as described in Exhibit A attached hereto, are

1 hereby incorporated by reference.

2 Rationale: Implementation of Mitigation Measures identified above would reduce impacts
3 to a less-than-significant level by requiring avoidance, minimization, and compensation.
4

5 **S. Cultural and Paleontological Resources**

6 *Impact CUL-1 and CUL-2: The Project would not cause a substantial adverse change in*
7 *the significance of a historical or archaeological resource, as defined in CEQA Guidelines*
8 *Section 15064.5.*

9 Findings of Fact: Less than Significant with Mitigation.

10 No California Register of Historic Places (CRHR)-eligible historic resources would be
11 located within the direct Area of Potential Effect (APE). Three prehistoric sites eligible for
12 the CRHR fall within the APE and may be indirectly affected, potentially creating
13 significant impacts. However, significant impacts are not anticipated because direct impacts
14 to these resources would be avoided, and no unique archaeological resources have been
15 identified. Therefore, impacts to eligible resources would be less than significant. Because
16 of the existence of historic and cultural resources in the APE, the potential for inadvertent
17 discovery of historic resources is considerable and a potentially significant impact of the
18 Project. The disturbance could not feasibly be avoided because the likelihood of
19 undiscovered resources exists throughout the Project area; reconfiguring the Project area
20 would not reduce the impact. If any such resources are present in the Project area and qualify
21 as historical resources or unique archaeological resources, any impacts to the resources
22 resulting from the Project could be significant (DEIR pp. 4.5-9 to -10).

23 Mitigation: The Mitigation Measures identified below would reduce the Project's impact to
24 historic and archaeological resources to a less-than-significant level. The Mitigation
25 Measures reflect changes or alterations that are within the responsibility and jurisdiction of
26 another public agency (i.e., the County of Riverside), have been adopted by the County, and
27 avoid or substantially lessen the potentially significant impact as identified in the EIR (State
28 CEQA Guidelines section 15091(a)(2)). Mitigation Measures CULTURAL-1 through

1 CULTURAL-7, as described in Exhibit A attached hereto, are hereby incorporated by
2 reference.

3 Rationale: Implementation of Mitigation Measures CULTURAL-1 through CULTURAL-
4 7 would address potential impacts to historic properties and reduce the Project's impact to
5 historic and archaeological resources to a less-than-significant level through the use of
6 environmental monitoring during construction, operation and maintenance, and
7 decommissioning, and through the preparation of a Cultural Resources Management Plan
8 (CRMP) for any cultural resources that can be avoided during construction. Specifically,
9 CULTURAL-1 would require the development of a MOA, to include the County and Native
10 American tribes. The MOA would include measures to avoid, minimize, and mitigate
11 adverse effects to both NRHP and CRHR-eligible historic properties. CULTURAL-2 would
12 require a HPTP for both NRHP- and CRHR-eligible and listed historic properties that
13 cannot be protected from indirect effects by Project redesign. CULTURAL-6 would require
14 that the Applicant make a good faith effort to enter into a contract with and retain monitors
15 designated by Tribal representatives. CULTURAL-7 requires a Cultural Resources
16 Monitoring Report (CRMP) that meets BLM Manual requirements and also complies with
17 the current Riverside County Planning Department's requirements for Phase IV Cultural
18 Resource Monitoring Reports.

19 Project grading could temporarily alter naturally occurring drainage patterns and result in
20 soil erosion, sedimentation, long-term siltation, and increased stormwater runoff, which
21 could result in indirect impacts to historical resources and/or unique archaeological
22 resources. As discussed above, implementation of Mitigation Measures and BMPs would
23 minimize ground disturbance from road construction at streams, washes, and irrigation
24 channels as well as reduce potential for erosion and sedimentation from stormwater draining
25 from the substations. This would reduce indirect impacts to historical resources and unique
26 archaeological resources as a result of erosion to less than significant.

27
28

1 *Impact CUL-3: Implementation of the proposed Project would not result in the disturbance*
2 *of human remains.*

3 Findings of Fact: Less than Significant with Mitigation.

4 The Project would not disturb known human remains. The land use designations for the
5 Project components do not include cemetery uses, and no known human remains exist
6 within the Project area. However, since the nature of the Project would involve ground-
7 disturbing activities, it is possible that such actions could unearth, expose, or disturb
8 previously unknown human remains. In the event that human remains are discovered during
9 construction activities, the human remains could be inadvertently damaged, which could be
10 a significant impact (DEIR pp. 3.5-31).

11 Mitigation: The Mitigation Measure identified below would reduce the Project's potential
12 impact to currently unknown human remains to a less-than-significant level. The Mitigation
13 Measure reflects changes or alterations that the County has required, or incorporated into,
14 the project that would avoid or substantially lessen the potentially significant impact as
15 identified in the EIR (State CEQA Guidelines section 15091(a)(1)). Mitigation Measure
16 CULTURAL-3, as described in Exhibit A attached hereto, is hereby incorporated by
17 reference.

18 Rationale: Implementation of the above Mitigation Measure would reduce the Project's
19 impact to currently unknown human remains to less than significant by requiring the halt or
20 diversion of construction and CEQA and other requirements implemented in the event that
21 prehistoric or historic resources/human remains are discovered on the portion of the Project
22 site under County jurisdiction. In the event of inadvertent discovery of human remains on
23 the Project site, Mitigation Measure CULTURAL-3 would require work to stop and
24 arrangements made to protect the remains in place until their disposition has been arranged.
25 If the coroner determines that the remains may be Native American, the NAHC would be
26 contacted to identify the most likely descendants. Construction, operation, maintenance,
27 and decommissioning activities would occur in full compliance with the Mitigation
28 Measure CULTURAL-3 and with all applicable standards and requirements.

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T. Geology and Soils

Impact GEO-1(a): The Project would not expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death, involving rupture of a known earthquake fault.

Findings of Fact: Less than Significant Impact(s) with Mitigation Measures.

The Project is located within a seismically active area, but not within a known Alquist-Priolo Fault Zone, and there are no known active or potentially active faults that intersect the Project area. Therefore, the potential for surface ground rupture and lurching or cracking of the ground surface at the solar facility and gen-tie lines is considered very low. In addition, the Project will not cause or exacerbate any potential for rupture. (DEIR pp. 4.7-9 to -10).

Mitigation: The Mitigation Measure identified below would reduce the Project's impact to geological resources to a less-than-significant level. The Mitigation Measure reflects changes or alterations that are within the responsibility and jurisdiction of another public agency (i.e., the County of Riverside), have been adopted by the County, and avoid or substantially lessen the potentially significant impact as identified in the EIR (State CEQA Guidelines section 15091(a)(2)). Mitigation Measure GEO-1, as described in Exhibit A attached hereto, is hereby incorporated by reference.

Rationale: Implementation of Mitigation Measure GEO-1 would require the Applicant's site-specific geotechnical report to determine the physical and chemical characteristics of the site's soils, ground response to earthquakes, as well as the appropriate seismic design parameters necessary to develop adequate engineering designs and construction plans for the Project. Mitigation Measure GEO-1 would ensure compliance with the appropriate CBC, and would be sufficient to minimize risks associated with ground-shaking. With implementation of Mitigation Measure GEO-1, impacts would be reduced to less than significant levels.

1 *Impact GEO-1(b): The Project would not expose people or structures to potential*
2 *substantial adverse effects, including the risk of loss, injury, or death, involving strong*
3 *seismic ground shaking.*

4 Findings of Fact: Less than Significant Impact(s) with Mitigation Measures.

5 Due to the potential for severe ground shaking along the faults located within the Project
6 area, the site may be subject to moderately intense earthquake-related ground shaking at
7 some point during the Project's operating lifetime (DEIR p. 4.7-9 to -10).

8 Mitigation: The Mitigation Measure identified below would reduce the Project's impact
9 associated with seismic ground shaking to a less-than-significant level. The Mitigation
10 Measures reflect changes or alterations that the County has required, or incorporated into,
11 the Project that would avoid or substantially lessen the potentially significant impact as
12 identified in the EIR (State CEQA Guidelines section 15091(a)(1)). Mitigation Measure
13 GEO-1, as described in Exhibit A attached hereto, is hereby incorporated by reference.

14 Rationale: Implementation of the above Mitigation Measures would reduce the Project's
15 potential impact associated with seismic ground shaking to less than significant by requiring
16 the incorporation of site-specific geotechnical study results into final design consistent with
17 County requirements and state building codes.

18
19 *Impact GEO-1(c): The Project would not expose people or structures to potential*
20 *substantial adverse effects, including the risk of loss, injury, or death, involving*
21 *liquefaction.*

22 Findings of Fact: Less than Significant Impact(s) with Mitigation Measures.

23 The liquefaction potential within the Project area is low, and there would be a less-than-
24 significant impact related to liquefaction. However, the geotechnical report recommends
25 subsequent geotechnical work to determine site specific parameters for foundation design
26 and engineering including confirmation of findings with respect to liquefaction potential.
27 Potential impacts related to liquefaction and liquefaction-induced settlement would be
28 potentially significant (DEIR p. 4.7-10).

1 Mitigation: Mitigation Measure GEO-1 through GEO-3 would reduce the Project's impact
2 associated with liquefaction to a less-than-significant level. The Mitigation Measures
3 reflects changes or alterations that the County has required, or incorporated into, the Project
4 that would avoid or substantially lessen the potentially significant impact as identified in
5 the EIR (State CEQA Guidelines section 15091(a)(1)). Mitigation Measures GEO-1
6 through GEO-3, as described in Exhibit A attached hereto, is hereby incorporated by
7 reference.

8 Rationale: Implementation of Mitigation Measure GEO-1 through GEO-3 would ensure
9 future provisions with regard to an in-depth geotechnical study be performed which would
10 recommend appropriate and feasible design features necessary to reduce the potential for
11 liquefiable, expansive, or corrosive soils. Impacts would be reduced to less than significant.
12

13 *Impact GEO-2 and GEO-11: The Project would not be susceptible to wind and water*
14 *erosion which could result in substantial soil erosion or the loss of topsoil; or result in an*
15 *increase in water erosion on- or off-site.*

16 Findings of Fact: Less than Significant Impact(s) with Mitigation Measures.

17 The Project site contains soils that could be susceptible to wind and water erosion during
18 construction, operation and maintenance, and decommissioning. The Project would
19 increase in the potential for wind and water erosion during construction due to earth-moving
20 activities and removal of vegetative cover. Wind and water erosion would be substantially
21 reduced during operations due to soil compaction and drainage design measures. (DEIR
22 p. 4.7-10).

23 Mitigation: Implementation of a construction SWPPP (as required by Mitigation Measure
24 WATER-1) and integration of stormwater management controls into the Project design (as
25 required by Mitigation Measure WATER-2) would prevent erosion of onsite soils, as well
26 as prevent the potential for increasing stormwater flow rates which could increase erosion
27 in downstream areas. Wind erosion would be managed through implementation of the
28 Applicant's Dust Control Plan, as required by Mitigation Measure AQ-1. These measures

1 would reduce the Project's impact associated with erosion or the loss of topsoil to a less-
2 than-significant level. These Mitigation Measures reflect changes or alterations that the
3 County has required, or incorporated into, the Project that would avoid or substantially
4 lessen the potentially significant impact as identified in the EIR (State CEQA Guidelines
5 section 15091(a)(1)). Mitigation Measures WATER-1, WATER-2, and AQ-1, as described
6 in Exhibit A attached hereto, is hereby incorporated by reference.

7 Rationale: Implementation of Mitigation Measures AQ-1, WATER-1 and WATER-2 would
8 reduce the Project's potential impact associated with erosion and loss of topsoil by requiring
9 the implementation of a Comprehensive Drainage, Stormwater, and Sedimentation Control
10 Plan, which would identify site surface water runoff patterns and implement temporary soil
11 and erosion control Best Management Practices to prevent excessive and unnatural soil
12 deposition and erosion throughout Project-related construction areas and downslope of the
13 Project Area.

14
15 *Impact GEO-3: The Project would not be located on a geologic unit or soil that is unstable,*
16 *or that would become unstable as a result of the Project, and potentially result in on-or off-*
17 *site landslide, lateral spreading, subsidence, liquefaction, or collapse.*

18 Findings of Fact: Less than Significant Impact(s) with Mitigation Measures.

19 Soil units underlying the Project site are potentially susceptible to subsidence. Based on
20 the geotechnical report, the Project is geotechnically feasible provided that the
21 recommendations in the geotechnical report are incorporated into the preliminary design of
22 the Project (DEIR pp. 3.6-19 to 3.6-20). See impact discussions above related to liquefaction
23 and seismic impacts.

24 Mitigation: Mitigation Measures GEO-1 through GEO-3, would reduce the Project's impact
25 associated with unstable geologic units or soils to a less-than-significant level. The
26 Mitigation Measures reflect changes or alterations that the County has required, or
27 incorporated into, the project that would avoid or substantially lessen the potentially
28 significant impact as identified in the EIR (State CEQA Guidelines section 15091(a)(1)).

1 Mitigation Measures GEO-1 through GEO-3, as described in Exhibit A attached hereto, is
2 hereby incorporated by reference

3 Rationale: Implementation of Mitigation Measures GEO-1 through GEO-3 would reduce
4 the Project's potential impact associated with unstable geologic units or soils by requiring
5 the incorporation of site-specific geotechnical study results into final design consistent with
6 County requirements and state building code. The site-specific subsurface geotechnical
7 evaluation would be required to assess the potential for subsidence and/or the presence of
8 earth fissures underlying the Project area and recommend appropriate and feasible design
9 features if necessary.

10
11 ***Impact GEO-4:*** *The Project would not be located on expansive soil, as defined in Table*
12 *18-1-B of the Uniform Building Code (1994), creating substantial risks to life and property.*

13 Findings of Fact: Less than Significant Impact(s) with Mitigation Measures.

14 Soils within the Project site consist of granular alluvial deposits, and therefore exhibit low
15 shrink/swell potential. However, if expansive soils are present on the site, they could cause
16 damage to proposed facilities (DEIR p. 4.7-5).

17 Mitigation: Mitigation Measure GEO-1 would reduce the Project's impact associated with
18 expansive soils (if any) to a less-than-significant level. The Mitigation Measures reflect
19 changes or alterations that the County has required, or incorporated into, the Project that
20 would avoid or substantially lessen the potentially significant impact as identified in the
21 EIR (State CEQA Guidelines section 15091(a)(1)). Mitigation Measure GEO-1, as
22 described in Exhibit A attached hereto, is hereby incorporated by reference.

23 Rationale: Implementation of Mitigation Measure GEO-1 would reduce the Project's
24 potential impact associated with expansive soils by requiring the incorporation of site-
25 specific geotechnical study results into final design consistent with County requirements
26 and state building code.

27
28

1 *Impact GEO-5 and GEO-9: The Project would not have soils that are incapable of*
2 *adequately supporting the use of septic tanks or alternative waste water disposal systems*
3 *where sewers are not available for the disposal of waste water or result in grading that*
4 *affects or negates subsurface sewage disposal systems.*

5 Findings of Fact: Less than Significant Impact(s) with Mitigation Measures.

6 The Project would include the construction of a septic tank to treat domestic wastewater
7 from the O&M building, which would require soils capable to adequately supporting the
8 use of septic tanks (DEIR p. 4.6-11).

9 Mitigation: Mitigation Measure GEO-1 would reduce the Project's impact associated with
10 the development of a septic tank (if any) to a less-than-significant level. The Mitigation
11 Measures reflect changes or alterations that the County has required, or incorporated into,
12 the Project that would avoid or substantially lessen the potentially significant impact as
13 identified in the EIR (State CEQA Guidelines section 15091(a)(1)). Mitigation Measure
14 GEO-1, as described in Exhibit A attached hereto, is hereby incorporated by reference.

15 Rationale: Implementation of Mitigation Measure GEO-1 would ensure compliance with septic
16 tank requirements and would ensure the septic tank is placed in soils capable of adequately
17 supporting the septic system. As part of the septic system permit requirements described in the
18 Mitigation Measure, the system would be required to be placed in soil capable of adequately
19 supporting the septic system.

20
21 *Impact GEO-10: The Project would not change deposition, siltation or erosion that may*
22 *modify the channel of a river or stream or the bed of a lake.*

23 Findings of Fact: Less than Significant with Mitigation.

24 Project facilities and solar panels would not impact any ephemeral washes. Impacts to
25 streams would be limited to abandoned channels, many of which are only a few inches long
26 and that may or may not qualify as waters of the State. However, the Project site is relatively
27 flat, and has large natural depressions which store stormwater flow and attenuate outflow
28 from the site. Outflow off of the Project site could increase up to 2.6 percent under

1 Alternative 1 and these impacts would be even less under the Project. (DEIR pp. 4.7-12).

2 Mitigation: The Mitigation Measures reflect changes or alterations that the County has
3 required, or incorporated into, the project that would avoid or substantially lessen the
4 potentially significant impact as identified in the EIR (State CEQA Guidelines
5 section 15091(a)(1)). Mitigation Measures WATER-1 and WATER-2, as described in
6 Exhibit A attached hereto, is hereby incorporated by reference.

7 Rationale: The Mitigation Measures identified above would reduce the Project's potential
8 impact to streams to a less-than-significant level. Any increase in flows would be mitigated
9 through onsite drainage basins and a Comprehensive Drainage, Stormwater, and
10 Sedimentation Control Plan.

11
12 *Impact GEO-12: The Project would not result in an increase in wind erosion and blowsand
13 from project either on or off site.*

14 Findings of Fact: Less than Significant Impact(s) with Mitigation Measures.

15 Implementation of the Project would result in an increase in the potential for wind erosion
16 during construction due to earth-moving and removal of vegetative cover. Wind erosion
17 would be managed through implementation of the Applicant's Dust Control Plan, as
18 required by Mitigation Measure AQ-1. Wind erosion would be substantially reduced during
19 operations of the Project due to soil compaction. (See also discussion below for analysis of
20 erosion or loss of topsoil potential from wind or water forces) (DEIR pp. 4.7-10).

21 Mitigation:

22 The Mitigation Measure identified below would reduce the Project's potential impact to due
23 to erosion to a less-than-significant level. The Mitigation Measure reflects changes or
24 alterations that the County has required, or incorporated into, the project that would avoid
25 or substantially lessen the potentially significant impact as identified in the EIR (State
26 CEQA Guidelines section 15091(a)(1)). Mitigation Measure AQ-1, as described in Exhibit
27 A attached hereto, is hereby incorporated by reference.

1 Rationale: The dust control measures in AQ-1 would manage wind erosion and ensure that
2 sand in an around the Project does not negatively impact the environment.

3
4 **U. Hazards and Hazardous Materials**

5 *Impact HAZ-1: The Project would not create a significant hazard to the public or the*
6 *environment through the routine transport, use, or disposal of hazardous materials.*

7 Findings of Fact: Less than Significant Impact(s) with Mitigation Measures.

8 The use, storage, and disposal of hazardous materials and wastes associated with the Project
9 could result in potential adverse health and environmental impacts if these materials were
10 used, stored, or disposed of improperly, causing accidents and spills. Potential direct and
11 indirect impacts of such releases could degrade soil and water quality or expose humans
12 and wildlife to the harmful effects of hazardous materials. The Applicant, however, has
13 developed preliminary management plans related to the routine transport, use, and disposal
14 of hazardous materials. There would be no routine emissions of hazardous materials from
15 the facility. Specifications and procedures for storage, use, transport, and disposal of
16 hazardous materials and waste would be defined in the Hazardous Materials Management
17 and Emergency Response Plan, HMBP, SWPPP, and SPCC Plans. The only routine waste
18 discharge would be associated with sanitary wastes disposed in the septic system. (DEIR p.
19 3.9-23).

20 Mitigation: The Mitigation Measures identified below would reduce Project-related hazards
21 associated with the transport, use, or disposal of hazardous materials to a less-than-
22 significant level. The Mitigation Measures reflect changes or alterations that the County
23 has required, or incorporated into, the project that would avoid or substantially lessen the
24 potentially significant impact as identified in the EIR (State CEQA Guidelines
25 section 15091(a)(1)). Mitigation Measures HAZ-1, HAZ-2, and WATER-1, as described in
26 Exhibit A attached hereto, is hereby incorporated by reference.

27 Rationale: Implementation of the above Mitigation Measures would reduce the Project's
28 potential impact associated with the transport, use, or disposal of hazardous materials to less

1 than significant by requiring the implementation of a Phase II report to evaluate the potential
2 presence of pesticides or herbicides, and establish a WEAP, which would further reduce
3 wildfire risks and reduce the risk of contracting Valley Fever through the inclusion of a
4 personal protective equipment (PPE) program, an Emergency Action Plan (EAP), and an
5 Injury and Illness Prevention Program (IIPP).

6
7 *Impact HAZ-2: The Project would not create a significant hazard to the public or the*
8 *environment through reasonably foreseeable upset and accident conditions involving the*
9 *release of hazardous materials into the environment.*

10 Findings of Fact: Less than Significant with Mitigation.

11 Potential impacts that may result from construction, operation, maintenance, and
12 decommissioning of the Project could include the accidental release of hazardous materials
13 such a fuels, oils, lubricants, and solvents, if not managed properly. However, as required
14 by the National Pollutant Discharge Elimination System (NPDES) General Construction
15 Permit, construction and decommissioning activities would be required to adhere to a Storm
16 Water Pollution Prevention Plan (SWPPP) which would include APMs/BMPs for the safe
17 handling and storage of hazardous materials during construction. Because of the relatively
18 low volumes of hazardous materials and fuels onsite at any time, requirements for
19 immediate response to releases, and flat topography that limits site runoff, it is unlikely that
20 any accidental releases would extend beyond the boundaries of the Project area before they
21 are identified and addressed. The impacts would accordingly be less than significant with
22 mitigation. (DEIR 4.9-23 to -24).

23 Mitigation: Mitigation Measures HAZ-1, HAZ-2, and WATER-1, which require monitoring
24 and control of hazardous materials releases and impacted media, will ensure that impacts
25 would be less than significant. The Mitigation Measures reflects changes or alterations that
26 the County has required, or incorporated into, the Project that would avoid or substantially
27 lessen the potentially significant impact as identified in the EIR (State CEQA Guidelines
28 section 15091(a)(1)). Mitigation Measures HAZ-1, HAZ-2, and WATER-1, as described in

1 Exhibit A attached hereto, is hereby incorporated by reference.

2 Rationale: Mitigation Measure WATER-1 would further require that all refueling and
3 maintenance would occur at a designated area, within secondary containment with a volume
4 sufficient to contain the largest fuel tank. Spill response and reporting requirements of the
5 Hazardous Materials Business Plan (HMBP), SPCC, SWPPP, and WATER-1 would ensure
6 that the Applicant notifies BLM within 24 hours of any release outside of containment.
7 Mitigation Measure WATER-1 would also require periodic sampling and analysis of
8 groundwater to verify that Project construction, operations, and decommissioning do not
9 release contamination. HAZ-1 requires the Applicant to prepare and implement a site-
10 specific Hazardous Materials Management and Emergency Response Plan, which would
11 minimize potential exposures to existing hazardous materials if such materials are found to
12 be present on site. If the Applicant chooses to use CdTe PV panels or panels containing
13 another potentially toxic semiconductor material, implementation of Mitigation Measure
14 HAZ-2, which requires the Applicant to prepare and implement a Broken PV Module
15 Detection and Handling Plan, would minimize the potential for semiconductor leaching
16 from damaged panels. Implementation of the above Mitigation Measures would ensure that
17 the limited use of hazardous materials onsite would not result in significant, uncontrolled
18 releases that could impact the environment.

19
20 *Impact HAZ-5 and HAZ-10: The Project is located within an airport land use plan and*
21 *would not result in a safety hazard for people residing or working in the project area and*
22 *it would be reviewed by the Airport Land Use Commission.*

23 Findings of Fact: Less than Significant Impact(s) with Mitigation Measures.

24 Construction of a portion of the Project would occur within the Blythe Airport Compatibility
25 Zone E, including a segment of the gen-tie line 1.08 miles long, and would require the use of
26 cranes to install gen-tie support poles up to 135 feet in height. An additional 2.81 miles of
27 transmission line would be outside of Zone E. During pole installation, the total height of the
28 cranes would extend higher than the proposed towers. In such a situation, a separate notice to

1 the FAA is required. The FAA would consider the proposed construction method, including
2 use of cranes, in its safety assessment. (DEIR p. 4.9-25).

3 Mitigation: Mitigation Measure HAZ-3, which requires that the Applicant receive a
4 “Determination of No Hazard to Air Navigation” from the FAA in order to proceed, will
5 ensure that impacts would be less than significant. The Mitigation Measure identified below
6 would reduce the Project-related hazards associated with Blythe Municipal Airport to a less-
7 than-significant level. The Mitigation Measure reflects changes or alterations that the
8 County has required, or incorporated into, the Project that would avoid or substantially
9 lessen the potentially significant impact as identified in the EIR (State CEQA Guidelines
10 section 15091(a)(1)). Mitigation Measure HAZ-3, as described in Exhibit A attached hereto,
11 is hereby incorporated by reference.

12 Rationale: Implementation of the above Mitigation Measure would ensure compliance with
13 the applicable Airport Land Use Compatibility Plan associated with the RCALUC and FAA
14 by requiring all plans and proposals be submitted to the Riverside County Airport Land Use
15 Commission (RCALUC) and the Federal Aviation Administration (FAA) for Title 14 CFR
16 Federal Aviation Regulations (FAR) Part 77 review and approval.

17
18 **V. Water Resources**

19 *Impact HYD-1: The Project would not violate water quality standard or waste discharge*
20 *regulation.*

21 Findings of Fact: Less than Significant with Mitigation.

22 Construction activities would potentially loosen existing surface soils and sediments,
23 increasing the potential for erosion during storm events. Additionally, the use of
24 construction equipment may involve the accidental release of fuel, oils, brake dust,
25 lubricants, antifreeze, and other potentially hazardous substances at the construction site.
26 These water quality pollutants could become entrained in surface water during storm events,
27 and/or be infiltrated into groundwater and the underlying aquifer, resulting in the
28 degradation of water quality. A septic system is another potential source of contamination,

1 but it will be permitted by Riverside County, as needed, and soil percolation tests would be
2 performed in order to demonstrate that an on-site septic system and leach field is feasible at
3 the planned location. (DEIR pp. 4.20-15 to -16).

4 Mitigation: Mitigation Measures WATER-1 and WATER-2 would reduce Project-related
5 impacts associated with water quality standards and waste discharge requirements to a less-
6 than-significant level. The Mitigation Measures reflect changes or alterations that the
7 County has required, or incorporated into, the project that would avoid or substantially
8 lessen the potentially significant impact as identified in the EIR (State CEQA Guidelines
9 section 15091(a)(1)). Mitigation Measures WATER-1 and WATER-2, as described in
10 Exhibit A attached hereto, is hereby incorporated by reference.

11 Rationale: The nominal increases in post-Project flow depths and velocities should not
12 overcome the decreased erosion potential due to compaction during operations. During
13 construction, Mitigation Measure WATER-2 will be implemented to ensure that the
14 retention basins and other design features retain stormwater (and any contaminants) onsite.
15 WATER-1 similarly requires a SWPPP that will also control the flow of potential
16 contaminants offsite.

17
18 *Impact HYD-2 and HYD-13: The Project would not substantially deplete groundwater*
19 *supplies or interfere substantially with groundwater recharge such that there would be a*
20 *net deficit in aquifer volume or a lowering of the local groundwater table; the Project would*
21 *not cause changes in the amount of surface water in any water body. .*

22 Findings of Fact: Less than Significant with Mitigation.

23 Construction and operation of the Project would create a new but small area of impermeable
24 surfaces (nominal compared to the overall solar facility surface area) that could theoretically
25 interfere with groundwater recharge. The very small area that would become impermeable
26 would not significantly interfere with groundwater recharge. The Project would not reduce
27 infiltration to the groundwater basin from agricultural irrigation recharge because the
28 existing agricultural land is not in use. Groundwater may be used for dust control and other

1 construction activities. Pumping simulations were modeled for both a 25-month and 48-
2 month construction scenarios with 30 years of operation. Results from both scenarios
3 indicated that the model-predicted drawdown outside of the solar field boundary would be
4 less than 0.1 foot at the end of construction and at the end of operational pumping. The
5 cumulative change in flow through the PVID drains represents 0.0037 percent of the 12.8
6 million AF of the throughput in the PVID drains over 32 years (30 years of operation plus
7 two years of construction) and 0.0039 percent of the 13.5 million AF of the modeled
8 throughput in the PVID drains over 34 years (four years of construction). Furthermore,
9 WATER-5 requires the Project Owner to develop a Colorado River Water Supply Plan to
10 prevent, replace or mitigate project impacts that deplete the Palo Verde Mesa Groundwater
11 Basin (PVMGB) groundwater budget. The amount of PVMGB depletion requiring
12 mitigation shall be equal to the amount of withdrawals from below the Colorado River
13 Accounting Surface as determined by the Groundwater Monitoring and Mitigation Plan
14 (WATER-4). To ensure that groundwater levels are not impacted by the Project, Mitigation
15 Measure WATER-4 (Groundwater Monitoring and Mitigation Plan) and WATER-5
16 (Impacts to the Palo Verde Mesa Groundwater Basin) would be implemented and impacts
17 would be less than significant with this mitigation (DEIR pp. 4.20-16 to -17).

18 Mitigation: The Mitigation Measures reflect changes or alterations that the County has
19 required, or incorporated into, the Project that would avoid or substantially lessen the
20 potentially significant impact as identified in the EIR (State CEQA Guidelines
21 section 15091(a)(1)). Mitigation Measures WATER-4 and WATER-5, as described in
22 Exhibit A attached hereto, is hereby incorporated by reference.

23 Rationale: Based on Project-specific modeling, the groundwater supplies are expected to be
24 more than sufficient to meet Project needs. The monitoring required by WATER-4 and the
25 development of a Colorado River water supply plan by WATER-5 will ensure that the
26 Project does not unexpectedly deplete groundwater stores nor alter the amount of surface
27 water in any water body.
28

1 ***Impact HYD-3: The Project would not substantially alter the existing drainage pattern of***
2 ***the site or area, including through the alteration of the course of a stream or river, in a***
3 ***manner which would result in substantial erosion or siltation on or off site.***

4 **Findings of Fact: Less than Significant with Mitigation.**

5 Construction of the Project would require ground-disturbing activities such as grading and
6 excavation followed by solar array installation, substation and O&M building construction,
7 and construction of access roads. Construction of the Project would not permanently alter
8 the course of any of the drainages. Large, natural depressions on site would not be disturbed
9 and can store significant volumes of water, which would attenuate the increased runoff.
10 (DEIR p. 4.20 -17). Nevertheless, because micrograding and similar activities would be
11 used in some areas of the Project, there is potential for impacts to existing drainage.

12 **Mitigation:** The Mitigation Measure identified below would reduce Project impacts
13 associated with water quality standards and waste discharge requirements, to a less-than-
14 significant level. The Mitigation Measures reflects changes or alterations that the County
15 has required, or incorporated into, the Project that would avoid or substantially lessen the
16 potentially significant impact as identified in the EIR (State CEQA Guidelines
17 section 15091(a)(1)). Mitigation Measures WATER-1 and WATER-2, as described in
18 Exhibit A attached hereto, is hereby incorporated by reference.

19 **Rationale:** Implementation of the above Mitigation Measures would reduce the Project's
20 potential impact associated significant adverse impacts to existing drainage patterns to less
21 than significant, as they would require the preparation of a drainage, erosion, and
22 sedimentation control plan. Further, implementation of the above Mitigation Measures
23 would minimize ground disturbance from road construction at streams, washes, and
24 irrigation channels as well as reduce potential for erosion and sedimentation from
25 stormwater draining from the substations. Impacts would be reduced to a less than
26 significant level.

1 *Impact HYD-4 and HYD-12: The project would not substantially alter the existing*
2 *drainage pattern of the site or area, including through the alteration of the course of a*
3 *stream or river, and substantially increase the rate or amount of surface runoff in a manner*
4 *which would result in flooding on or off site; the Project would not cause changes in*
5 *absorption rates or the rate and amount of surface runoff.*

6 Findings of Fact: Less than Significant with Mitigation.

7 Construction of the Project would require ground-disturbing activities such as grading and
8 excavation followed by solar array installation, substation and O&M building construction,
9 and construction of access roads, which may impact the ephemeral washes. Further, the
10 Project may cause slight changes in the absorption rates and amount of surface water to
11 onsite or offsite drainages due to compaction (DEIR pp. 3.9-21 to 3.9-22; 4.20-20).

12 Mitigation: The Mitigation Measures outlined above would reduce Project impact
13 associated with the alteration of existing drainages which would result in potential flooding
14 to a less-than-significant level. The Mitigation Measures reflects changes or alterations that
15 the County has required, or incorporated into, the Project that would avoid or substantially
16 lessen the potentially significant impact as identified in the EIR (State CEQA Guidelines
17 section 15091(a)(1)). Mitigation Measures WATER-1 and WATER-2, as described in
18 Exhibit A attached hereto, is hereby incorporated by reference.

19 Rationale: Implementation of WATER-1 and WATER-2 would reduce the Project's
20 potential impact by requiring the preparation of Comprehensive Drainage, Stormwater, and
21 Sedimentation Plan prior to the initiation of construction (or decommissioning as relevant),
22 and ensuring that recommendations of that plan are implemented. The nominal post-Project
23 increases in flow depth, velocity, and outflow would be mitigated with onsite retention
24 basins sized with at least 20 acre-feet of combined storage capacity. Further, the
25 implementation of the above Mitigation Measures would reduce alteration of existing
26 drainage patterns resulting from road construction and stormwater drainage from the
27 substations, and minimize potential for flooding on-or off-site to a less than significant level.

1 *Impact HYD-5: The Project would not create or contribute runoff water which would*
2 *exceed the capacity of existing or planned stormwater drainage systems or provide*
3 *substantial additional sources of polluted runoff.*

4 Findings of Fact: Less than Significant with Mitigation.

5 Installation of the new substations and the O&M building would create new areas of
6 impermeable surfaces with potential to increase the rate of stormwater runoff, leading to
7 increased erosion and long-term siltation and flooding downstream of the new impermeable
8 areas, and contribute additional sources of polluted runoff Maintenance of access roads and
9 structure pads (e.g., gravelling and vegetation clearance) would contribute additional
10 sources of runoff (DEIR pp. 4.20-18).

11 Mitigation: The Mitigation Measures WATER-1 and WATER-2 identified below would
12 reduce the Project's potential impacts on stormwater drainage systems to a less-than-
13 significant level. The Mitigation Measures reflect changes or alterations that the County
14 has required, or incorporated into, the Project that would avoid or substantially lessen the
15 potentially significant impact as identified in the EIR (State CEQA Guidelines
16 section 15091(a)(1)). Mitigation Measures WATER-1 and WATER-2, as described in
17 Exhibit A attached hereto, is hereby incorporated by reference.

18 Rationale: Implementation of Mitigation Measures WATER-1 and WATER-2 would
19 reduce the Project's potential impacts on stormwater drainage systems to less than
20 significant by minimizing the volume of stormwater runoff and reducing the potential for
21 polluted stormwater to leave the Project site. Further, the project will prepare a Drainage,
22 Erosion, and Sedimentation Control Plan, which would ensure stormwater drainage from
23 the property would be collected and controlled by surface improvements.

24
25 *Impact HYD-6: The project would not substantially degrade water quality.*

26 Findings of Fact: Less than Significant with Mitigation.

27 Ground disturbance related to construction of Alternatives 1, 2, or 3 could potentially
28 degrade water quality through the inadvertent release of hazardous materials. The potential

1 for the Project to result in water quality degradation is evaluated under Impact HYD-1.
2 (DEIR, p. 4.20-19) Also see the discussions for the following impacts above:

- 3 • *Violate Water Quality Standards or Waste Discharge Requirements During*
- 4 *Construction*
- 5 • *Alter Existing Drainage Pattern Resulting in Substantial Erosion*
- 6 • *Exceed Capacity of Existing or Planned Stormwater Drainage Systems*

7 Mitigation: Mitigation Measure WATER-4 would reduce the Project's potential impacts on
8 groundwater to a less-than-significant level. The Mitigation Measure identified below
9 reflect changes or alterations that the County has required, or incorporated into, the Project
10 that would avoid or substantially lessen the potentially significant impact as identified in
11 the EIR (State CEQA Guidelines section 15091(a)(1)). Mitigation Measure WATER-4, as
12 described in Exhibit A attached hereto, is hereby incorporated by reference.

13 Rationale: Implementation of Mitigation Measure WATER-4 would reduce the Project's
14 potential impacts to water quality to less than significant by reducing the potential for
15 polluted stormwater to leave the Project site, minimizing ground disturbance from road
16 construction at streams, washes, and irrigation channels as well as reducing potential for
17 erosion and sedimentation from stormwater draining from the substations, and using
18 existing drainage crossings at streams, washes, and irrigation channels to reduce adverse
19 impacts to water quality. Further, the Project will prepare a Drainage, Erosion, and
20 Sedimentation Control Plan (BMP-1), which would ensure stormwater drainage from the
21 property would be collected and controlled by surface improvements. Impacts would be
22 reduced to a less than significant level.

23
24 **V. Noise**

25 *Impact NOI-2: Construction of the Project would not create a substantial temporary or*
26 *periodic increase in ambient noise levels in the Project vicinity above levels existing without*
27 *the Project.*
28

1 Findings of Fact: Less than Significant with Mitigation.

2 Project construction temporarily would increase ambient noise levels in the Project vicinity
3 above existing levels. Impacts would be considered significant (DEIR pp. 4.12-11 to -12).

4 Mitigation: The Mitigation Measures identified below would reduce the Project's potential
5 impacts on noise to a less-than-significant level. The Mitigation Measure reflects changes
6 or alterations that the County has required, or incorporated into, the Project that would avoid
7 or substantially lessen the potentially significant impact as identified in the EIR (State
8 CEQA Guidelines section 15091(a)(1)). Mitigation Measure NOISE-1, as described in
9 Exhibit A attached hereto, is hereby incorporated by reference.

10 Rationale: Implementation of the above Mitigation Measure would reduce the Project's
11 impacts to less than significant by placing restrictions on construction activity. By orienting
12 the post installation equipment as discussed in Section 4.12.2 of the DEIR, the sound levels
13 will be approximately 7 dBA quieter at the back end of the equipment when compared to
14 the front end, and therefore the aggregate construction noise level is expected to increase
15 by less than 10 dBA. Mitigation Measure NOISE-1 would require monitoring during
16 construction to verify that the orientation of the post installation equipment has this effect.

17
18 **W. Public Services and Utilities**

19 *Impact USS-2: The Project would not result in construction of new facilities or the*
20 *expansion of the existing following facilities:*

- 21 • Electricity;
 - 22 • Natural gas;
 - 23 • Communications systems;
 - 24 • Storm water drainage;
 - 25 • Street lighting;
 - 26 • Maintenance of public facilities, including roads; or
 - 27 • Other governmental services.
- 28

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Findings of Fact: Less than Significant with Mitigation.

The Project would generate renewable energy that would have an overall beneficial effect on the electricity supply. The Project would not use any sources of natural gas. The Project would not generally require expansion of existing or new lighting, storm water drainage or other public facilities. To maintain the condition and prevent degradation of 16th Avenue/Seeley Avenue, however, the EIR recognizes that mitigation would be required. In addition, closure of the current access routes to the Mule Mountains could result in increased use. (DEIR pp. 4.18-8 to -9)

Mitigation: The Mitigation Measures outlined below would reduce Project impacts associated with the maintenance of public facilities and government services (specifically, public roads and public recreation facilities) to a less-than-significant level. The Mitigation Measures reflects changes or alterations that the County has required, or incorporated into, the Project that would avoid or substantially lessen the potentially significant impact as identified in the EIR (State CEQA Guidelines section 15091(a)(1)). Mitigation Measures REC-1 and TRN-4, as described in Exhibit A attached hereto, are hereby incorporated by reference.

Rationale: To maintain the condition of 16th Avenue/Seeley Avenue, TRN-4 would require that the Applicant pave the intersection of 16th Avenue/Seeley Avenue and State Route 78 and create a turn lane off of 16th Avenue/Seeley Avenue onto State Route 78. In addition, the Applicant will use palliatives, water, or other road improvements, potentially including paving, to improve the roads and control dust in accordance with County standards. To ensure that alternative access to the Mule Mountains is accessible and known to persons wishing to access the area, Mitigation Measure REC-1 requires that the Applicant perform light clearing and grading prior to Project construction, and then periodically as needed during construction, operations, and decommissioning.

1 **X. Recreation**

2 *Impact REC-1: The Project would not increase the use of existing neighborhood and*
3 *regional parks or other recreational facilities such that substantial physical deterioration*
4 *of the facility would occur or be accelerated.*

5 Findings of Fact: Less than Significant with Mitigation.

6 Project impacts to neighborhood and regional parks would be temporary and limited to the
7 construction period, when an influx of workers combined with route closures within the
8 Project footprint might increase the use of more limited resources. Generally speaking, it
9 is unlikely that the additional workers would be concentrated in a single location, and
10 therefore no one recreation facility would receive an increased level of use that would lead
11 to the substantial physical deterioration of the facility. However, Both Wiley Well and
12 Coon Hollow LTV areas have limited water supplies (for toilets, washing, etc.), and it is
13 unlikely these LTVAs can accommodate significantly higher use by Project workers, who
14 might also impede use by other visitors. (DEIR p. 4.14-7).

15 Mitigation: Mitigation Measure REC-1 would ensure that the alternative access roads to
16 recreational areas in the Mule Mountains would remain accessible. Mitigation Measure
17 REC-3 would require the Applicant to encourage workers to utilize local housing
18 opportunities or private RV parks in nearby communities instead of public lands, and to
19 coordinate with the County to address any deterioration in the condition of the access roads.
20 REC-3 would also require that the workers supply their own potable water, limiting the
21 impact on the limited water available at the LTVAs.

22 The Mitigation Measures outlined above and below would reduce Project impacts
23 associated with the maintenance of public facilities and government services (specifically,
24 public roads and public recreation facilities) to a less-than-significant level. The Mitigation
25 Measures reflects changes or alterations that the County has required, or incorporated into,
26 the Project that would avoid or substantially lessen the potentially significant impact as
27 identified in the EIR (State CEQA Guidelines section 15091(a)(1)). Mitigation Measures
28 REC-1 and REC-3, as described in Exhibit A attached hereto, are hereby incorporated by

1 reference.

2 Rationale: The potential impacts of the Project on recreation facilities are related to (1) loss
3 of ATV routes due to development, (2) overcrowding on alternative routes, and (3) limited
4 resources to support use of LTVAs. Although these recreation facilities are not heavily
5 used right now, the existing capacity to accommodate new users is constrained. With
6 monitoring of impacts and corrective actions associated with Mitigation Measures REC-1
7 and REC-3, the impacts of Project workers on the limited recreation facilities would be
8 reduced to less than significant for the Project.

9
10 **Y. Transportation and Traffic**

11 *Impact TRA-5 and TRA-8: The Project would not result in inadequate emergency access*
12 *or result in the need for new or altered maintenance of roads.*

13 Findings of Fact: Less than Significant with Mitigation.

14 Because 16th Avenue/Seeley Avenue is unimproved and would be subjected to intensive use
15 by trucks, construction could result in degradation of the condition of the road to the extent
16 that it could become unusable by emergency vehicles, resulting in significant impacts to
17 emergency access. In addition, Route 660703, which is along an existing transmission line,
18 may need to be temporarily closed to pull and string the gen-tie line. A temporary closure
19 of the route could affect emergency access. With the following mitigation measures, these
20 impacts would be less than significant. (DEIR, p. 4.17-12).

21 Mitigation: To maintain the condition of the road, Mitigation Measure TRN-4 would require
22 that the Applicant pave the intersection of 16th Avenue/Seeley Avenue and State Route 78
23 and create a turn lane off of 16th Avenue/Seeley Avenue onto State Route 78. In addition,
24 the Applicant will use palliatives, water, or other road improvements, potentially including
25 paving, to improve the roads and control dust in accordance with County standards.
26 Mitigation Measure REC-2 would require that the Applicant coordinate any closure of
27 Route 660703 with applicable emergency response agencies. The Mitigation Measures
28 outlined above and below would reduce Project impacts associated with the maintenance of

1 public roads and emergency access along impacted roads to a less-than-significant level.
2 The Mitigation Measures reflects changes or alterations that the County has required, or
3 incorporated into, the Project that would avoid or substantially lessen the potentially
4 significant impact as identified in the EIR (State CEQA Guidelines section 15091(a)(1)).
5 Mitigation Measures TRN-4 and REC-2, as described in Exhibit A attached hereto, are
6 hereby incorporated by reference.

7 Rationale: Impacts to the existing roads would be fully mitigated through road
8 improvements (paving) required to ensure that those roads are available for use by
9 emergency services. The temporary impacts to Route 660703 when stringing the gen-tie
10 line would be brief and by coordinating with emergency services personnel, the Applicant
11 will be able to ensure that emergency services are not impaired during construction.

12
13 *Impact TRA-1 and TRA-9: The Project would not conflict with an applicable plan,*
14 *ordinance, or policy establishing measures of effectiveness for the performance of the*
15 *circulation system; the Project would not cause an effect upon circulation during*
16 *construction.*

17 Findings of Fact: Less than Significant with Mitigation.

18 Significant impacts would occur during Project construction and decommissioning at the
19 intersection of SR-78 and 16th Avenue, which would operate at an unacceptable LOS F
20 during peak PM hours in the absence of APMs and mitigation. The Riverside County CMP
21 and Riverside County General Plan have set a Plan target of LOS C along County-
22 maintained roads and state highways, so this would constitute a significant impact. (DEIR
23 pp. 4.17-9 to -11).

24 Mitigation: The Mitigation Measures identified below would reduce the Project's impacts
25 associated with increased roadway hazards to a less-than-significant level. The Mitigation
26 Measures reflect changes or alterations that the County has required, or incorporated into,
27 the Project that would avoid or substantially lessen the potentially significant impact as
28 identified in the EIR (State CEQA Guidelines section 15091(a)(1)). Mitigation Measures

1 TRA-3 and TRA-4, as described in Exhibit A attached hereto, are hereby incorporated by
2 reference.

3 Rationale: Implementation of APM TRA-1 would reduce the number of vehicles leaving
4 the Project to a level that allows the intersection of SR-78 and 16th Avenue to operate at
5 LOS D. The measure would also improve the LOS at the intersection of SR-78 and 14th
6 Avenue. However, even with implementation of APM TRA-1, the Project would result in
7 LOS D, which would still not comply with the Riverside County General Plan target of LOS
8 C along County-maintained roads and state highways. According to the Riverside County
9 Traffic Impact Analysis Preparation Guide, when Project traffic, added to existing traffic,
10 will deteriorate the LOS to below the target LOS, and impacts are not mitigated, the impact
11 is considered significant. Mitigation Measure TRN-3 would modify APM TRA-1 to further
12 reduce the number of construction worker vehicles leaving the Project site during the PM
13 peak hour, such that the intersection of SR-78/16th Avenue operates at LOS C or better. In
14 addition, Mitigation Measure TRN-4 would require paving of the intersection of 16th
15 Avenue/Seeley Avenue and State Route 78 to create a turn lane off of 16th Avenue/Seeley
16 Avenue onto State Route 78, as well as other improvement of the intersection of SR-78/16th
17 Avenue including the use of palliatives, water, or other road improvement in accordance
18 with County standards.

19
20 **BE IT FURTHER RESOLVED** by the Board of Supervisors that the following impacts potentially
21 resulting from the adoption of the EIR cannot be fully mitigated and will be only partially avoided or
22 lessened in consideration of existing regulations, Project Design Features or mitigation measures specified
23 in Attachment A (Mitigation Monitoring and Reporting Program, incorporated by reference into this
24 document). Accordingly, and as further explained below, the County makes the following findings as to
25 each of the following impacts as allowed by State CEQA Guidelines section 15091(a): "Changes or
26 alterations [that might further reduce Project impacts] are within the responsibility and jurisdiction of
27 another public agency and not the [County]. Such changes have been adopted by such other agency"; or
28 Specific economic, legal, social, technological, or other considerations, make infeasible the mitigation

1 measures or project alternatives identified in the final EIR.” Therefore, a statement of overriding
2 considerations consistent with State CEQA Guidelines sections 15093, 15216(b), and 15126.2(b) and
3 discussed in the Final EIR Section 15132 is required and included herein:

4 **A. Visual Resources**

5 *Impact VIS-3: The Project would substantially degrade the existing visual character or*
6 *quality of the site and its surroundings.*

7 **Findings of Fact: Significant and Unavoidable.**

8 The Project would be visible from portions of the nearby mountains (Mule and McCoy
9 Mountains KOPs 3 and 4), the adjacent housing development (Nicholls Warm
10 Springs/Mesa Verde KOP 6), and along a 4-mile stretch of I-10 (KOP 1a-h) due to an
11 elevation above the Project site and/or close proximity to the Project site. The broad, flat
12 form of the solar panels, along with the dark grey color of the panels would strongly contrast
13 with the desert landscape surrounding the Project and would dominate the landscape from
14 the mountain views due to the large scale of the project and would be apparent from the I-
15 10 and nearby development views. During construction of the Project, the density and
16 movement of construction workers and vehicles, as well as the appearance of cleared/graded
17 areas, would contrast with the surrounding desert landscape. While the Project has
18 incorporated a number of mitigation measures (see Attachment A), no mitigation measure
19 or Project alternative can reduce these impacts to an insignificant level. Therefore, during
20 both construction and operation, the Project would degrade the existing visual character of
21 the site and surrounding areas, particularly from elevated positions where the Project would
22 be visible. (DEIR, pp. 4.19-17 to -18).

23 Mitigation: Mitigation Measures VIS-1 through VIS-4, as described in Exhibit A attached
24 hereto, are hereby incorporated by reference.

25 Rationale: This impact will remain significant and unavoidable despite the incorporation of
26 all feasible mitigation. These mitigation measures have been adopted and will reduce this
27 impact, but not to a less-than-significant level. This impact is overridden by Project benefits
28 as set forth in the statement of overriding considerations.

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B. Air Quality

Impact AIR-2: The Project during construction would violate an air quality standard or contribute substantially to an existing or projected air quality violation when added to the local background.

Findings of Fact, Significant and Unavoidable:

Emissions associated with Project construction activities are expected to exceed applicable MDAQMD daily and annual thresholds for NOx, PM10, and PM2.5 emissions. These emissions estimates already account for the APMs related to watering and speed limits to reduce dust. Even with mitigation measures AQ-1, AQ-2, and TRN-4, emissions for NOx, PM10, and PM2.5 during construction would exceed the MDAQMD daily and annual thresholds, and these emission levels could cause localized exceedances, or contribute significantly to existing exceedances, of the state or Federal air quality standards, including PM10 for which the Project area is already within the non-attainment area for CAAQS for PM10. Emissions associated with Project operations would not exceed applicable MDAQMD thresholds and would provide renewable energy, which would reduce statewide emissions associated with power generation compared to fossil fuel power generation. The impacts of emissions during operations would be less than significant. Therefore, the Project would have temporary significant and unavoidable NOx, PM10, and PM2.5 impacts during construction. (DEIR, p. 4.2-16).

Mitigation: Mitigation Measures AQ-1, AQ-2 and TRN-4, as described in Exhibit A attached hereto, are hereby incorporated by reference.

Rationale: This impact will remain significant and unavoidable despite the incorporation of all feasible mitigation. These mitigation measures have been adopted and will reduce this impact, but not to a less-than-significant level. This impact is overridden by Project benefits as set forth in the statement of overriding considerations.

1 impression of a relatively unimpaired, isolated desert landscapes. The cumulative scenario
2 includes many large-scale solar plants and transmission lines whose scale and pervasiveness
3 would have adverse cumulative effects. The Project would not contribute to adverse
4 cumulative effects on any scenic vistas or on scenic resources within a State scenic highway,
5 would not contribute to cumulative creation of an aesthetically offensive site open to public
6 view, and would not contribute to interference with nighttime use of the Mt. Palomar
7 Observatory. But if it and all the other projects were implemented, they would substantially
8 degrade the visual character and general scenic appeal of the existing landscape, resulting
9 in the conversion of a relatively undeveloped desert landscape into a more industrialized
10 appearance.

11 In some viewing cases, the visibility and apparent scale of the projects would be diminished
12 somewhat by favorable topographic relationships and vegetative screening. For other
13 viewing opportunities, some projects would appear reduced in visual prominence due to
14 their viewing distances and low angle of view. In still other cases, projects would blend in
15 with the vegetation or horizon line of the desert floor, and the rugged mountains would
16 remain the dominant visual features in the landscape.

17 As a result, the proposed Project in combination with other local and regional energy
18 projects would result in significant cumulative visual impacts when viewed by sensitive
19 viewing populations along I-10 and in the surrounding mountains and wilderness. Impacts
20 would result from the introduction of substantial visual contrast associated with discordant
21 geometric patterns in the landscape; large-scale, built facilities with prominent industrial
22 character; un-natural lines of demarcation in the desert floor landscape; inconsistent color
23 contrasts; and visible night lighting within the Palo Verde Mesa. For many travelers along
24 I-10, the scenic experience would be substantially degraded due to the perceived
25 "industrialization" of the desert landscape.

26 Even with implementation of Mitigation Measures VIS-1, 2, 3 and 4, the incremental impact
27 of the Project when added to other past, present, and reasonably foreseeable future projects
28 would be cumulatively considerable.

1 Effective implementation of Mitigation Measures VIS-1, -2, -3 and -4 would reduce the
2 severity of the cumulative visual effects. However, even with implementation of the above
3 mitigation measures, there would be significant cumulative visual impacts when viewed by
4 sensitive viewing populations along I-10 and in the surrounding mountains and wilderness.
5 (DEIR, pp. 4.19-20 to -25).

6
7 **B. Air Quality**

8 **Cumulative Impact Finding: Cumulatively considerable**

9 As described in Draft EIR, cumulative air quality impacts could occur when overlapping
10 construction schedules of multiple projects conflict with an applicable air quality plan,
11 exposes a large number of people to objectionable odors, or if the Project results in a net
12 increase of any criteria pollutant for which the project region is non-attainment under an
13 applicable federal or state ambient air quality standard. The Project's contribution to overall
14 cumulative construction emissions (*Impacts AIR-1, AIR-2, and AIR-3*), including all
15 activities within the MDAB as identified in the emissions budget, would exceed MDAQMD
16 thresholds from months 6 to 22 of the 25 month construction period and would thus have
17 an adverse effect. In addition, emissions of PM10 would exceed the *de minimis* level, and
18 would also contribute to the non-attainment for PM10 in the area under CAAQS. Even with
19 implementation of APM and mitigation measures (AQ-1, AQ-2, and TRN-4), the PM10
20 emissions during construction would exceed the MDAQMD regional significance threshold
21 of 82 pounds/day.

22 The Project would not contribute to a conflict with or obstruction of implementation of an
23 applicable air quality attainment or maintenance plan (AIR-1), would not be a source of
24 substantial point source emissions (impact AIR-6), and would not result in placing sensitive
25 receptors within one mile of an existing substantial point source emitter (impact AIR-7).
26 Therefore, the impact of the Project with respect to these criteria would not be cumulatively
27 considerable. Aggressive dust control measures will, however, be needed to minimize the
28 impacts on air quality from emissions from the construction of cumulative projects (solar

1 and others). (DEIR pp. 4.2-19 to -24).

2
3 **C. Biological Resources**

4 **Cumulative Impact Finding:** Not cumulatively considerable

5 Areas in eastern Riverside County where existing and cumulative projects occur or are
6 anticipated provide habitat for numerous special-status wildlife species, including Mojave
7 desert tortoise, Mojave fringe-toed lizard, golden eagle, burrowing owl, American badger,
8 desert kit fox, and Desert bighorn sheep. Generally, existing and cumulative projects have
9 been sited outside of many sensitive areas that support these species, which include the
10 ACECs, wilderness areas, and other Special Designation areas, but wildlife populations that
11 occur outside of these managed and protected areas are vulnerable to habitat loss and
12 degradation, or other threats. The total projected habitat loss in the cumulative study area
13 for wildlife resources includes approximately 1.5 percent of habitat for Mojave desert
14 tortoise, 3.3 percent of habitat for Mojave fringe-toed lizard in the Palo Verde Valley, 13.7
15 percent of foraging habitat for golden eagle, and 9.8 percent of habitat for burrowing owl,
16 American badger, and desert kit fox. A total loss of 8.4 percent of the *Larrea tridentata* and
17 *Larrea tridentata-Ambrosia dumosa* alliances, 1.6 percent of the *Parkinsonia florida-*
18 *Olneya tesota* alliance, and 5.2 percent of the *Pleuraphis rigida* alliance in the cumulative
19 analysis area is projected to occur as a result of existing and foreseeable future projects. The
20 Project would contribute to cumulative impacts on these resources, but not significantly so.
21 In addition, implementation of surveys and compliance monitoring programs, avoiding
22 habitat take, and post-decommissioning restoration would reduce impacts to sensitive
23 wildlife species and their habitat. (DEIR pp. 4.3-18 to -22; 4.4-24 to -32).

24
25 **D. Cultural Resources**

26 **Cumulative Impact Finding:** Not cumulatively considerable

27 As described in Draft EIR Section 3.5, cultural resources are non-renewable; any loss or
28 physical damage to these resources is permanent. They would be subject to direct impacts

1 primarily during Project construction; however, impacts could occur during any ground-
2 disturbing activities during operation and maintenance and decommissioning. The Palo
3 Verde Valley and Palo Verde Mesa contain a significant archaeological and historical
4 record that, in many cases, has not been well documented or recorded. As discussed above,
5 there is the potential for ongoing and future development projects in the vicinity to disturb
6 landscapes that may contain known or unknown cultural resources. Many of these resources
7 could provide information that would contribute to the understanding of regional research
8 themes, and could qualify as historical resources or unique archaeological resources. While
9 it is not possible based on available data to fully quantify how many cultural resources have
10 been or could be impacted by past, present, and reasonably foreseeable projects, it is likely
11 that the cumulative loss of cultural resources as a result of these projects could result in a
12 loss of important information necessary to a full understanding of regional history. In
13 addition, past, present, and reasonably foreseeable projects within the geographic area of
14 analysis could impact prehistoric and historic landscapes and resources of special
15 importance to Native American groups. The Project would, however, avoid all known
16 NRHP-and CRHR-eligible resources. The incremental contribution to direct and indirect
17 cumulative impacts to historical resources is thus relatively minor and would not be
18 cumulatively considerable. In addition, mitigation measures CULTURAL-1 through
19 CULTURAL-7 would further reduce the Project's impacts. (DEIR pp. 4.5-12 to -15).

20
21 **E. Geology, Soils, and Mineral Resources**

22 **Cumulative Impact Finding:** Not cumulatively considerable

23 As described in the Draft EIR, the Project area, as well as those of other projects in the
24 region, would be located in a seismically active region, and people and structures could be
25 exposed to seismic ground shaking and subsequent seismic-related ground failure. A
26 seismic event on any one of these faults could potentially result in effects that are observed
27 at the Project area or any of the cumulative project sites. The Project, as well as other
28 current and future development projects in the cumulative scenario, would be required to

1 comply with applicable State and local requirements including, but not limited to, the
2 NPDES General Construction Permit, the CBC, and the County of Riverside Municipal
3 Code. The Project would be subject to the same regulatory requirements and therefore the
4 incremental contribution of the Project to cumulative geotechnical and soils impacts would
5 not be cumulatively considerable. In addition, while impacts from erosion or loss of top
6 soil for other cumulative projects in the geographic scope may require site-specific analysis
7 to determine the underlying permeability, slope angle and length, extent of groundcover,
8 and human influence on the sites; all projects in the cumulative setting would be required
9 to adhere to similar erosion control requirements of a Drainage, Erosion, and Sedimentation
10 Control Plan, as would the proposed Project. Compliance with appropriate BMPs and
11 regulatory requirements would minimize potential impacts related to expansive soil during
12 construction and decommissioning of the proposed Project. The Project's incremental
13 contribution to cumulative geology, soil, and mineral related impacts from construction and
14 decommissioning would not be cumulatively considerable with implementation of
15 Mitigation Measures WATER-1 and WATER-2. In addition, because soil erosion would
16 be controlled on each individual project in a similar manner, the potential for cumulative
17 soil erosion impacts would be low, and the Project would not contribute to cumulative
18 impacts associated with soil erosion

19 Impacts to mineral resources would not be considered cumulatively significant within the
20 geographic scope and the Project would not have a cumulatively considerable contribution
21 for the following reasons: 1) deposits of similar age and lithology that are likewise potential
22 sources of sand and gravel are estimated to underlie a large portion of eastern Riverside
23 County; 2) there is no information to indicate that the sand and gravel underlying the site
24 are unique, of higher quality, or any more marketable than other similar deposits that are
25 widespread throughout eastern Riverside County; 3) there is an existing producer of sand
26 and gravel within ten miles of the Blythe Landfill, which likely would be able to serve local
27 future demand for sand and gravel; 4) following the decommissioning of the Project, the
28 land occupied by the Project would again be made available for applications to the BLM

1 for exploration or production of aggregate construction materials (DEIR pp. 4.7-14 to -15;
2 4.11-3 to -4).

3
4 **F. Greenhouse Gas Emissions**

5 **Cumulative Impact Finding:** Not cumulatively considerable

6 As described in Draft EIR, by their nature, GHG emissions impacts are cumulative, as GHG
7 emissions are aggregated across the global atmosphere and cumulatively contribute to
8 climate change. Construction of the proposed Project would contribute approximately
9 20,084 metric tons of CO₂e, which would not contribute to a cumulative GHG impact.
10 This results in annualized construction emissions of 669 MT per year over the 30 year
11 duration of the Project. Lower levels of GHG emissions would be anticipated during
12 decommissioning due to the decreased level of activity, as well as technological and
13 regulatory advances designed to reduce CO₂ emissions that would be implemented over the
14 life of the Project. Onsite emissions are estimated to be 1.3 tons per year of CO₂e, and
15 offsite emissions are estimated to be 306 tons per year of CO₂e.

16 Construction, operation, maintenance, and decommissioning of the Project would also
17 avoid the GHG emissions associated with the current on-site agricultural activities, which
18 would be more intensive than those associated with the proposed Project. Since GHG
19 emissions are aggregated across the global atmosphere and cumulatively contribute to
20 climate change, it is not possible to determine the specific impact on global climate change
21 from GHG emissions associated with the proposed Project presented, or in conjunction with
22 the identified cumulative projects. Implementation of the proposed Project would likely
23 lead to a net reduction in GHG emissions in the State overall, and thus a net benefit to global
24 climate change, by displacing GHG emissions from non-renewable power sources;
25 therefore, the Project would not result in cumulatively considerable impact to global climate
26 change when considered with other closely related past, present, and reasonably foreseeable
27 probable future projects (DEIR pp. 4.8-11 to -12).
28

1 **G. Hazards and Hazardous Materials**

2 **Cumulative Impact Finding:** Not cumulatively considerable

3 As described in the Draft EIR, compliance with existing BMPs and agency regulations that
4 address the handling of hazardous materials would ensure that the Project would not create
5 a significant hazard to the public or the environment related to the handling or accidental
6 release of hazardous materials. Past, present, and reasonably foreseeable future projects are
7 also subject to existing agency regulations that address the handling and accidental release
8 of hazardous materials; therefore, existing regulations would ensure that the combined
9 effects to hazards and hazardous materials from the cumulative projects within the
10 geographic scope of analysis would not be considered cumulatively significant. Further,
11 when considered in addition to the anticipated impacts of other projects in the cumulative
12 scenario, the Project's incremental contribution to impacts in terms of hazard to the public
13 or environment related to the handling or accidental release of hazardous materials would
14 not be cumulatively considerable. Potential fire hazards associated with the proposed
15 project facilities would be required to comply with applicable Riverside County and BLM
16 requirements relating to fire hazards. In addition, projects in the cumulative scenario would
17 similarly be required to comply with fire hazard policies and therefore, the related projects
18 impacts would not be considered cumulatively significant, and the Project's incremental
19 contribution related to impacts associated with fire hazards would not be cumulatively
20 considerable

21 Reflection and glare from solar projects in close proximity to the Blythe Municipal Airport
22 may contribute to reflection and glare impacts to pilots flying in and out of the Blythe
23 Municipal Airport\ . This impact would not be considered cumulatively significant. It is
24 anticipated that the Blythe Solar Power Project and Palo Verde Mesa Solar Project would
25 not result in glare patterns that could intersect the approach slopes associated with the
26 Blythe Municipal Airport at the same time as the Project. In addition, the Project's
27 contribution would be reduced through implementation of Mitigation Measure HAZ-3,
28 which requires that the Applicant receive a "Determination of No Hazard to Air

1 Navigation” from the Federal Aviation Administration, which will address the
2 “Cumulative impact resulting from the proposed construction or alteration of a structure
3 when combined with the impact of other existing or proposed structures.”

4 Following implementation of Mitigation Measures HAZ-1, HAZ-2, HAZ-3, UXO-1,
5 and TSLN1, as well as AQ-1, AQ-2, and WATER-2, potential impacts related to
6 hazards and hazardous materials would be avoided or substantially reduced and the
7 impacts of the Project would not be cumulatively considerable. (DEIR pp. 4.9-26 to-
8 29).

9
10 **H. Water Resources**

11 **Cumulative Impact Finding:** Not cumulatively considerable

12 As described in the Draft EIR, an assessment was conducted to evaluate the collective
13 water supply requirements by multiple proposed renewable and other energy projects
14 within the geographic area of the Palo Verde Mesa/Valley. The cumulative project list
15 was prepared as part of the groundwater modeling report conducted for the Project and
16 in coordination with the BLM. In addition to the proposed Project, six other energy
17 projects were identified on the mesa. Project schedules, operational and construction
18 water supply requirements, and the source of the water supply were evaluated for each
19 project identified. Cumulative impacts to hydrology and water quality include the impacts
20 of the Project together with those likely to occur as a result of other existing, proposed, and
21 reasonably foreseeable projects. In addition to water use, these projects could also
22 contribute to increased runoff due to increases in impervious surfaces. However, all
23 reasonably foreseeable future projects in the sub watershed would be required to implement
24 similar measures as the proposed Project when obtaining the required permits to use
25 groundwater and comply with the RWQCB NPDES requirements. These NPDES
26 requirements were developed to reduce the cumulative impacts to water quality, and to
27 ensure that the incremental effects of individual projects do not cause a substantial
28 cumulative impact related to water quality. Given the saturated thickness of the alluvial

1 deposits of several hundred feet in the area, the estimated 6.84 million AF of
2 groundwater storage capacity of the PVGB, and the small cumulative change in flow
3 through the PVID drains, the Project would not contribute to cumulative impacts to
4 groundwater levels and recharge during construction and operation. In addition,
5 pumping of groundwater for the Project on the mesa would not impact the quality of the
6 groundwater during construction and operation. During decommissioning, the
7 cumulative impacts to groundwater would be similar to those during construction
8 because groundwater would be used for decommissioning activities. Therefore, the
9 combined effects to water quality from the cumulative projects within the geographic scope
10 would not be considered significant (DEIR pp. 4.20-21 to -24).

11
12 **I. Lands, Realty, and Agricultural and Forestry Resources**

13 **Cumulative Impact Finding:** Not cumulatively considerable

14 The Project would not contribute to the conversion of farmlands to a non-agricultural use,
15 and would not conflict with a Williamson Act contract. The Project would not conflict with
16 zoning for, or cause rezoning of, forest land, and would not result in the loss of forest land
17 or conversion of forest land to non-forest use. The Project would not involve other changes
18 in the existing environment that, due to their location or nature, could result in conversion
19 of Farmland to non-agricultural use or forest land to non-forest use; conflict with land within
20 the Riverside County Agricultural Preserve; or cause development of non-agricultural uses
21 within 300 feet of agriculturally zoned property. The Project would not impact agriculture
22 or forestry resources, therefore, the proposed Project's incremental contribution to impacts
23 to these resources would not be cumulatively considerable (DEIR pp. 4.10-11 to -13).

24 As described in the Draft EIR, the Project would occupy approximately 2,622 acres, and
25 the other projects on public lands formerly classified as MUC-M would occupy
26 approximately 25,000 acres, for a total of approximately 27,622 acres. Of the total
27 MUC-M lands in eastern Riverside County, the Project represents less than 1 percent,
28 with a total cumulative effect of approximately 8 percent. Since more than 350,000

1 acres of MUC-M lands in eastern Riverside County would remain available for other
2 uses (and since a significant portion of that acreage has since been reclassified for
3 development, conservation and other purposes under the DRECP); and since upon
4 completion of decommissioning these lands would be available for other uses, no
5 significant cumulative impact would result from the contribution of the Project to the
6 impact of the past, present, and reasonably foreseeable future projects. The location of
7 the gen-tie line within Corridor K/30-52 would not have significant impacts, as it is
8 consistent with existing uses and co-locates several transmission lines. The Project
9 would not divide a community and would be consistent with the goals and policies of the
10 RCGP, and other applicable local land use plans, policies, and regulations. In addition, with
11 approval of all discretionary requests, the Project would be an allowable use that would not
12 conflict with the land use or zoning classifications for the site. Therefore, the Project's
13 incremental contribution to impacts to land use would not be cumulatively considerable
14 (DEIR pp. 4.10-11 to -13).

15
16 **J. Noise**

17 **Cumulative Impact Finding: Not cumulatively considerable**

18 As described in the Draft EIR, cumulative noise impacts could occur when overlapping
19 construction schedules of multiple projects create a temporary or permanent increase in
20 ambient noise levels or expose persons to or generate excessive ground-borne vibration or
21 ground-borne noise levels, resulting in cumulatively considerable noise impacts to sensitive
22 receptors. The following projects were identified as reasonably foreseeable and could be
23 constructed and operated simultaneously with the Project: Blythe Mesa Solar Project, RE
24 Crimson Solar Project, NRG Blythe PV Project, Desert Southwest 500 kV Transmission
25 Line, and Devers-Palo Verde #2 500 kV Transmission Line. If all of these projects were
26 constructed at the same time, the combined effects to noise from the cumulative projects
27 within the geographic scope of analysis would be considered significant. However, it is
28 important to note that because of different permitting timelines and power delivery

1 obligations, it is unlikely the projects will be constructed at the same time. Also, the other
2 cumulative projects would be at a greater distance from the existing sensitive receptors that
3 would experience negligible noise levels from construction, operation, maintenance, and
4 decommissioning of the Project. Additionally, the primary noise sources in the Project area
5 are traffic from I-10 and airplane noise from the Blythe Municipal Airport. Therefore, it is
6 unlikely that the Project's incremental contribution to noise levels in the cumulative
7 scenario would be cumulatively considerable or would result in a combined noise level that
8 would cause an adverse effect. Noise levels during decommissioning would be similar to
9 those projected during Project construction, since it is anticipated that the equipment used
10 during decommissioning would be similar to that used during construction, and even less
11 likely to overlap with the decommissioning of the other projects (DEIR pp. 4.12-13 to -15).

12
13 **K. Paleontological Resources**

14 **Cumulative Impact Finding:** Not cumulatively considerable

15 As described in the Draft EIR, paleontological resources are non-renewable and any loss or
16 physical damage to these resources is permanent. There is a potential for paleontological
17 resources on the Project site and gen-tie line to be impacted during ground disturbing
18 activities associated with construction. In general, however, the cumulative projects are
19 expected to have a minor adverse impact on paleontological resources, because of the
20 volume of ground disturbance is small as compared to the overall volume of potentially
21 fossil-bearing sediments. If all of the projects in the cumulative scenario were to be
22 implemented, the resulting area of ground disturbance could amount to as much as
23 316,675 acres, 225,000 of which would be for the purpose of renewable energy
24 development. The contribution of the Project to this total would be 3,831 acres, or about
25 one percent of the total land area. Although the total land area occupied by the
26 cumulative projects represents a considerable amount of land, there are approximately
27 1,544,000 acres of land underlain by Quaternary geologic units within eastern Riverside
28 County. With implementation of APM Paleo-1 and Paleo-2, paleontological resource

1 impacts would be reduced to a less than significant level. The proposed Project, as well as
2 other development projects, would also be required to provide mitigation for any impacts
3 to paleontological resources in accordance with provisions of CEQA, as well as comply
4 with regulations currently implemented by the County of Riverside and the proposed
5 guidelines of the Society of Vertebrate Paleontology. The Project's incremental
6 contribution to cumulative impacts for paleontological resource would not be cumulatively
7 considerable based on the degree of protection afforded by these requirements (DEIR pp.
8 4.13-7 to -9).

9
10 **L. Social and Economic Effects (Population and Housing)**

11 **Cumulative Impact Finding:** Not cumulatively considerable

12 As described in the Draft EIR, short-term impacts to population and housing would occur
13 during the construction and decommissioning periods when overlapping construction
14 schedules of multiple projects create a demand for workers that cannot be met by the local
15 labor force. There are currently eight BLM renewable energy projects are identified in
16 the cumulative project scenario for the social and economic analysis. In addition, eight
17 other projects are also identified that could require workers with similar skills to the
18 Project, including non-BLM renewable energy projects, transmission lines, and
19 electrical substations. Under the conservative assumption that peak construction periods
20 overlap for all reasonably foreseeable projects there would be an increased demand for
21 temporary housing units in the cumulative area. The geographic scope of the cumulative
22 impacts analysis includes populated areas within a 2-hour commute distance of any of
23 these projects, which would extend as far west as Moreno Valley, given the locations
24 of the cumulative projects. There are over 9,000 vacant housing and hotel units within this
25 geographic area, which is more than sufficient to house the maximum workforce for each
26 project simultaneously. Available housing supply in the study area would far exceed
27 conservative estimates of cumulative demand. Therefore, cumulative impacts in the
28 cumulative scenario on housing are projected to be less than significant. The Project would

1 contribute an additional peak month labor need of 810 workers. Given the availability of
2 housing units, the incremental effects of the Project, when considered together with other
3 past, present, and reasonably foreseeable future projects, would not be cumulatively
4 considerable (DEIR pp. 4.15-13 to -20).

5
6 **M. Public Services and Utilities**

7 **Cumulative Impact Finding:** Not cumulatively considerable

8 As described in the Draft EIR, the Project and other projects in the cumulative scenario
9 would increase demand for public services and utilities in eastern Riverside County due to
10 increases in workers within the area during construction; this could result in a significant
11 cumulative impact to public services and utilities. Construction of present and reasonably
12 foreseeable future projects may overlap with construction of the Project in the context of
13 existing demands on services caused by past projects.

14 The greatest potential for fires and fire hazards would exist at these sites during construction
15 because the on-site workforce would be at its peak, which would create human presence-
16 related hazards, including in connection with the variety of equipment used that could create
17 sparks or other potential fire hazards. The combined effects of the increased cumulative
18 demand for fire, law enforcement, and emergency medical services from the cumulative
19 projects within the geographic scope of analysis could be cumulatively significant.
20 However, the incremental effects of the Project would not be cumulatively considerable
21 because, following the implementation of Project-specific BMPs and payment of the
22 development impact fee (the amount of which is intended to offset Project-related impacts)
23 and other fees, the residual Project-related demand for fire, law enforcement, and
24 emergency medical services from construction would not exceed established service ratios
25 or require new or physically altered facilities, the construction of which could cause
26 environmental impacts.

27 The temporary placement of construction workers within existing housing units, motel and
28 hotel rooms, RV parks, and campsites would not result in adverse impacts to schools and

1 libraries, since these facilities have already been accounted for in existing plans for public
2 services and utilities.

3 A Water Supply Assessment conducted for the Project determined that adequate water
4 supplies exist to serve the Project's non-potable water demand, whether the Project is served
5 through groundwater extraction or trucked water, which is not anticipated. The assessment
6 demonstrated that ample water is available for the Project. Therefore, there is no potential
7 for the Project to cause or contribute to cumulative impacts to water or wastewater systems
8 (DEIR pp. 4.18-9 to -12).

9
10 **N. Recreation and Public Access**

11 **Cumulative Impact Finding:** Not cumulatively considerable

12 As described in the Draft EIR, during construction and decommissioning activities, the
13 cumulative projects would introduce a substantial amount of workers to the area. Any
14 simultaneous activities could temporarily increase the population that may utilize existing
15 neighborhood or regional parks or other recreational facilities in the study area. Increased
16 demand for recreation resources and the displacement of dispersed recreation from the other
17 projects' development footprints could reduce the availability of short-term recreational
18 uses for other visitors to the area. However, the effects related to displacing dispersed
19 recreation would be minor due to the low observed recreation on the Project area and the
20 temporary nature of construction. Any increase in use of recreational facilities is anticipated
21 to be temporary and only used during construction and decommissioning. The combined
22 effects to recreation from the cumulative projects within the geographic scope of analysis
23 would not be considered significant. Further, when added to the cumulative scenario
24 described above, the effects of the proposed Project's incremental contribution to recreation
25 impacts from construction and decommissioning would not be considered cumulatively
26 considerable. Labor needs for operation and maintenance of the reasonably foreseeable
27 future projects in conjunction with the proposed Project are substantially less than
28 construction and decommissioning labor needs; therefore, the cumulative impact of

1 operations is not anticipated to be significant, and the proposed Project's incremental
2 contribution to recreational impacts from operations would not be cumulatively
3 considerable. See also REC -1 and REC -2.

4 The influx of labor could also impact recreation facilities if workers use campgrounds for
5 temporary housing. Mitigation Measure REC-3 accordingly requires that the developer
6 discourage this practice to ensure that impacts are not cumulatively considerable. (DEIR
7 pp. 4.14-8 to -11).

8
9 **O. Traffic and Transportation**

10 **Cumulative Impact Finding:** Not cumulatively considerable

11 As described in the Draft EIR, should the peak construction schedules of the cumulative
12 projects listed in Tables 4.1-1 and 4.1-2 overlap, construction traffic from these projects
13 would result in increased traffic within several miles or more along I-10 and regional
14 roadways. The Project's construction phases would produce the highest amount of traffic;
15 the operational traffic would be similar to existing conditions. The worst-case scenario
16 would involve concurrent peak construction of all the cumulative projects. Under this
17 scenario, the Project would contribute to significant cumulative traffic impacts at the
18 intersections of 14th and 16th Avenue with SR-78 and the intersection of SR-78 and I-10.
19 The Project's incremental contributions to the cumulative scenario would therefore be
20 cumulatively considerable (significant) during the temporary construction period.

21 Based on the short-term nature of construction, any increase in vehicle trips and
22 transportation-related impacts would be temporary. However, during that time, the Project
23 could result in a cumulatively considerable contribution to traffic impacts to the surrounding
24 road network. Implementation of APM TRA-1 combined with Mitigation Measure TRN-
25 3 would reduce the number of construction worker vehicles leaving the Project site
26 during the PM peak hour, and Mitigation Measure TRN-4 would require paving of the
27 intersection of 16th Avenue/Seeley Avenue and State Route 78 to create a turn lane off of
28 16th Avenue/Seeley Avenue and other improvements that would improve traffic flow at

1 the intersection and lessen impacts on the Level of Service. Mitigation Measure TRN-
2 2 would require further coordination of trips to reduce congestion. These measures
3 combined would reduce the Project's construction-related contribution to cumulative traffic
4 impacts to a less-than-cumulatively considerable level.

5 Project operation would result in a nominal increase in traffic and would generate
6 substantially less traffic than construction activities and the cumulative projects that would
7 utilize the same intersections would similarly have a limited workforce for operations. No
8 adverse impacts would occur due to traffic generated during the operation phase of the
9 Project.

10 Decommissioning impacts from the Project would have similar impacts as construction. It
11 is very unlikely that decommissioning of all cumulative projects would occur at the same
12 time; however, it is assumed that decommissioning impacts from the cumulative projects
13 would be similar to construction, but would be less intense and of a shorter duration. Based
14 on the short-term nature of decommissioning, any increase in vehicle trips and
15 transportation-related impacts would be temporary. However, during that time, the Project
16 would still implement APM TRA-1 and Mitigation Measures TRN-1 through TRN-3 to
17 reduce the Project's decommissioning-related contribution to cumulative traffic impacts to
18 a less-than-cumulatively considerable level (DEIR pp. 4.17-14 to -20).

20 SECTION V.

21 **BE IT FURTHER RESOLVED** by the Board of Supervisors that it has considered the following
22 alternatives identified in the Draft EIR in light of the environmental impacts which cannot be avoided or
23 substantially lessened and has rejected those alternatives as failing to meet most of the Project's objectives,
24 as failing to reduce or avoid the Project's significant impacts or as infeasible for the reasons hereinafter
25 stated:

- 26 A. Pursuant to Public Resources Code Section 21002 and State CEQA Guidelines
27 section 15126.6(a), an EIR must assess a reasonable range of alternatives to the project
28 actions or location. Section 15126.6(a) places special emphasis on focusing the discussion

1 on alternatives which provide opportunities for eliminating any significant adverse
2 environmental impacts, or reducing them to a level of insignificance, even if the alternative
3 would impede to some degree the attainment of the project objectives, or would be more
4 costly. In this regard, the EIR must identify an environmentally superior alternative among
5 the other alternatives. As with cumulative impacts, the discussion of alternatives is
6 governed by the "rule of reason." The EIR need not consider an alternative whose effect
7 cannot be reasonably ascertained, or does not contribute to an informed decision-making
8 and public participation process. The range of alternatives is defined by those alternatives
9 which could feasibly attain the most of the objectives of the project (State CEQA Guidelines
10 section 15126.6(a)).

11 When significant impacts can be mitigated by the adoption of Mitigation Measures, the lead
12 agency has no obligation to consider the feasibility of alternatives with respect to that impact
13 in its findings, even if the alternative would mitigate the impact to a greater degree than the
14 proposed Project. (Public Resources Code Section 21002; Kings County Farm Bureau v.
15 City of Hanford (1990) 221 Cal.App.3d 692, 730-731; Laurel Heights Improvement
16 Association v. Regents of the University of California (1988) 47 Cal.3d 376, 400-403;
17 Laurel Hills Homeowners Association v. City Council (1978) 83 Cal.App.3d 515, 521.) The
18 County has adopted Mitigation Measures to avoid or substantially lessen (to a level of
19 insignificant impact) the potentially significant environmental impacts identified in the EIR.

20 B. The following objectives (as described in the DEIR Chapter 2, *Project Description*) have
21 been established for the Project:

- 22 • To generate up to 450 MW of electricity using PV solar technology and sell that
23 power at the most competitive, low-cost price.
- 24 • To locate the Project in a manner that maximizes operational efficiencies, furthers
25 the objectives of landscape-level smart-siting planning efforts, avoids Desert
26 Wildlife Management Areas, Areas of Critical Environmental Concern and
27 National Conservation Lands where feasible, and minimizes water use, new linear
28 developments, and environmental impacts in general.

- 1 • To minimize environmental impacts and land disturbance by, among other things,
2 siting the facility on relatively flat, contiguous lands with high solar insolation, in
3 close proximity to established utility corridors, existing transmission lines with
4 available capacity to facilitate interconnection, and accessible roads.
- 5 • To assist, to the greatest extent possible, with achieving greenhouse gas (GHG)
6 reduction objectives, including the requirements under SB X1-2 to increase the
7 state's Renewable Portfolio Standard (RPS) to 33 percent by 2020 and under SB
8 350 to increase the state's RPS to 50 percent by 2030.
- 9 • To further the purpose of Secretarial Order 3285A1, establishing the development
10 of environmentally responsible renewable energy as a priority for the Department
11 of the Interior.
- 12 • To increase local short-term and long-term employment opportunities.
- 13 • To provide economic benefits to Riverside County, in accordance with Policy
14 B-29 and the motivations for its adoption, by stimulating spending at local
15 businesses, increasing tax revenues, and generating development fees.

16 There are two types of alternatives evaluated in the EIR. First are the alternatives that were
17 considered but rejected from further consideration. Reasons for elimination included failure
18 to meet basic project objectives, infeasibility, or inability to avoid significant environmental
19 impacts (State CEQA Guidelines section 15126.6(c)), as well as conflicts with land use
20 plans, policies, or regulations; lack of reasonable access to an alternative site; or remote or
21 speculative implementation. Those alternatives were:

- 22 • Alternate Site on Private Lands
- 23 • Alternate Site on BLM-managed Lands
- 24 • Brownfield Redevelopment Alternative
- 25 • Migratory Bird and Special Status Species Protection Alternative
- 26 • Solar Thermal Power Tower Technology
- 27 • Stirling Dish Technology
- 28 • Linear Fresnel Technology

- 1 • Parabolic Trough Technology
- 2 • Geothermal Technology
- 3 • Biomass
- 4 • Fossil Fuels (Coal and Natural Gas)
- 5 • Nuclear
- 6 • Wave
- 7 • Tidal
- 8 • Distributed Solar Photovoltaic Alternative
- 9 • Conservation and Energy Demand Reduction
- 10 • Wind Generated Power Alternative

11 Second are the alternatives that were considered in detail. Those alternatives are:

- 12 • No Project Alternative
- 13 • Reduced Project Alternative
- 14 • Resource Avoidance Alternative

15 The Project objectives were defined consistent with the development proposal for this
16 location and consistent with the need to provide extraordinary benefits.

17 As directed in State CEQA Guidelines section 15126.6(a), and EIR shall include
18 alternatives to the project that could avoid or substantially reduce one or more of the
19 significant effects. Because not all significant effects can be substantially reduced to a less-
20 than-significant level, either by adoption of Mitigation Measures, proposed Best
21 Management Practices (applicant proposed measures), existing regulations, or by standard
22 conditions of approval, the following section considers the feasibility of the Project
23 alternatives as compared to the proposed Project. As explained below, these findings
24 described and reject, for reasons documented in the Final EIR and summarized below, each
25 one of the Project alternatives. The evidence supporting these findings is presented in
26 Chapter 5, Alternatives, of the Draft EIR and elsewhere in the administrative record as
27 whole.
28

1 **C. Alternative 1 – Proposed Project**

- 2 1. The Proposed Project/Action Alternative would occupy approximately 3,770
3 acres (3,560 acres for the portion of the solar facility on BLM land, 154 acres
4 for the portion of the solar facility on private land, 2 acres for the offsite portion
5 of a buried telecommunications line and possible aboveground electrical service
6 line on BLM land, and 54 acres for the gen-tie line corridor) and generate
7 approximately 450 MW of power.
- 8 2. Compared to the Resource Avoidance and Reduced Project Alternatives, the
9 Proposed Project would impact State jurisdictional waters (drainages) and sand
10 dunes in the northwestern portion of the Project area, as well as cultural
11 resources in the southwestern portion of the Project area.

12 The Board of Supervisors rejects Alternative 1, the Proposed Project Alternative on the
13 following ground, which provides sufficient justification for rejection of this alternative:
14 because the alternative would have greater impacts on the environment compared to other
15 alternatives that can fully achieve the Project objectives (State CEQA Guidelines section
16 15126.6(c)(i)). Therefore, Alternative 1 is eliminated from further consideration.

17 **D. Alternative 3 – Reduced Project Alternative**

- 18 1. The Reduced Project Alternative reduces the acreage of the solar arrays, with
19 elimination of the proposed solar arrays primarily in the northern portion of the
20 area to maintain habitat for the Mojave fringe-toed lizard and Harwood's
21 eriastrum, a BLM Sensitive Species plant. The gen-tie line would be longer
22 (4.18 miles) compared to other alternatives and the energy output would be less
23 (approximately 285 MW).
- 24 2. Similar to the proposed Project, Alternative 3 would include the construction of a
25 solar facility, electrical collection system (combiners, inverters, and transformers),
26 34.5 kV underground distribution system, 230 kV gen-tie to the Colorado River
27 Substation, O&M building, and Project substations; however, these Project
28 components could be reduced in number or size. It is anticipated that the daily

1 construction workforce and truck deliveries (truck traffic) would be similar to the
2 proposed Project, but would occur over a shorter duration for Alternative 3.
3 Alternative 3 also would require a CUP from the County and right-of-way (ROW)
4 grant from the BLM.

5 3. Alternative 3, the Reduced Project Alternative, has the potential to meet the Project
6 objectives of constructing a solar energy facility to meet renewable energy
7 standards and goals, which would assist with GHG reduction objectives; however,
8 it would contribute less to meeting the RPS goals and GHG reduction than the
9 Project. Given the importance of attainment of renewable energy mandates and
10 objectives, a reduction in the Project's solar energy production would be less
11 effective in meeting the Project objective of supporting renewable energy goals than
12 the proposed 450 MW facility. The Reduced Project Alternative would reduce
13 some impacts associated with the Project, but it would have the same significant,
14 immitigable impacts as the Project. Specifically, the impacts of Alternative 3 to
15 the *Pleuraphis rigida* vegetation alliance, state jurisdictional waters, occupied
16 habitat for the Harwoods eriastrum, occupied habitat for the Mojave fringe-toed
17 lizard, CRHR-eligible cultural resources, and groundwater use would be the
18 same as Alternative 2 (the Project). Long-term air quality and GHG emissions
19 would be greater with the Reduced Project Alternative compared to the Project as
20 it would not offset as many emissions generated by fossil-fuel-based sources of
21 energy as compared to the Project, and the Reduced Project Alternative would
22 contribute comparatively less to meeting the RPS goals and GHG reduction than
23 the Project.

24 The Board of Supervisors rejects Alternative 3, the Reduced Project Alternative on the
25 following grounds, each of which individually provide sufficient justification for rejection
26 of this alternative: because the alternative would be less effective at meeting the basic
27 Project objectives, as compared to the Project (State CEQA Guidelines
28 section 15126.6(c)(i)) and would not reduce significant impacts of the Project to a level of

1 significance. Therefore, Alternative 3 is eliminated from further consideration.

2 **A. Alternative 4 – No Project Alternative**

3 1. Alternative 1, the No Project Alternative, would avoid impacts from the
4 construction, operation, maintenance, and decommissioning of the Project.
5 Although this alternative would result in no Project-related impacts to any resource
6 area, it also would not realize the beneficial impacts of the Project relating to
7 improved air quality and a long-term reduction in greenhouse gas emissions. The
8 No Project Alternative would not help facilitate meeting State and federal
9 renewable energy standards and goals or otherwise achieve any of the other
10 economic benefits of the Project to the community.

11 2. The Board of Supervisors rejects Alternative 4, the No Project Alternative on the
12 following ground, which individually provides sufficient justification for rejection
13 of this alternative: Alternative 4 Fails to meet any of the Project objectives.
14 Therefore, Alternative 1 is eliminated from further consideration.

15
16 **SECTION VI.**

17 **BE IT FURTHER RESOLVED** by the Board of Supervisors that it has, pursuant to State CEQA
18 Guidelines section 15093, balanced the “economic, legal, social, technological, and other benefits” of the
19 Project, against the unavoidable adverse environmental effects described herein, and has determined that
20 each and every one of the following benefits individually outweigh and render acceptable each and every
21 one of those environmental effects:

22 A. The Project will generate approximately 800 jobs during peak construction including
23 project management staff and building trades, and five fulltime jobs during operations. The
24 workers are estimated to earn a total of approximately \$115 million in wages and benefits.

25 B. The Project will use a proven and available solar photovoltaic technology that provides
26 efficient solar energy to the State. Solar photovoltaic systems are a common technology
27 used on homes and school rooftops and an effective and reliable means to generate
28 electricity in an arid climate with minimal water use. The Project is anticipated to provide

1 upwards of 450 MW of installed electrical capacity and generating up to 2,250,000 MWh/yr
2 of clean renewable energy, sufficient to power 180,000 California homes.

3 C. The Project would displace up to 2,248,720 metric tons of carbon dioxide equivalents per
4 year that may otherwise be emitted by power plants currently generating electricity in the
5 California system.

6 D. The Project is estimated to yield up to \$864,000 of local sales and use taxes annually to the
7 County during construction; \$565,000 annually to the County through a negotiated
8 development agreement; and up to \$207,000 annually to the County through property tax
9 revenue.

10 E. During construction, the Project is estimated to generate roughly \$72.5 million annually in
11 economic benefits to the County. Furthermore, in addition to direct employment and related
12 spending, the Project will purchase materials and equipment for installation, and will
13 stimulate additional economic effects through what are called multiplier effects. Multiplier
14 effects include indirect effects that result from additional rounds of spending by businesses
15 that are within the Project's supply chain and induced economic effects from household
16 spending by new employees. In total, the Project's multiplier effects in the County's
17 economy are expected to result in a total of \$241 million of economic output.

18 F. The Project will construct a solar energy facility to facilitate meeting State and federal
19 renewable energy standards and goals. The Project will assist the state in meeting its RPS
20 and GHG emissions reduction targets, including the requirements set forth in Senate Bill
21 100 (Clean Energy and Pollution Reduction Act of 2015), requiring public utilities to
22 procure at least 33% renewable power by 2020, 50% by 2026, and at least 60% renewable
23 power by 2030, with the ultimate goal to reach 100% by 2045), Assembly Bill 32 (California
24 Global Warming Solutions Act of 2006, establishing a statewide GHG emissions reduction
25 goal of 1990 levels by 2020), Executive Order B-30-15 (establishing an interim statewide
26 GHG emissions reduction goal of 40 percent below 1990 levels by 2030), and Executive
27 Order S-3-05 (establishing a statewide GHG emissions reduction goal of 80 percent below
28 1990 levels by 2050). The Project will decrease the State's reliance on fossil fuels as a

1 primary source of energy, reducing the State's overall GHG emissions related to the
2 production of electric power.

3
4 **SECTION VII.**

5 **BE IT FURTHER RESOLVED** by the Board of Supervisors that the State CEQA Guidelines
6 section 15126(g) requires an EIR to discuss how a proposed project could directly or indirectly lead to
7 economic, population, or housing growth. A project may be growth inducing if it removes obstacles to
8 growth, taxes, community serve facilities, or encourages other activities which cause significant
9 environmental effect. This discussion is as follows:

10 Implementation of the Project would involve the construction, operation and maintenance, and
11 decommissioning of a solar PV plant with a capacity of up to 450 MW. After completion of construction,
12 operation of the solar facility would require five full-time personnel. As noted in the discussion of
13 population and housing impacts in Section 3.13 of the EIR, construction of the solar facility and connection
14 to the 230kV gen-tie line is anticipated to occur over a two to four-year period, of which peak construction
15 would require up to approximately 810 daily workers to be present on the site. The average construction
16 worker number would be 450 daily workers. After the completion of construction, operation of the solar
17 facility would require five full-time personnel. This population increase during construction would be
18 temporary and is not projected to create a need for additional housing. The Project is located in the
19 unincorporated area of Riverside County and does not involve the development of a residential component
20 that would result in direct population growth in the area. Additionally, the Project would not involve the
21 development of new roadways, water systems, or sewer systems other than those designed specifically to
22 serve the Project. Infrastructure improvements to serve the Project would be limited and would not generally
23 be available to serve surrounding areas, with the exception of limited paving of 16th Avenue. As such, the
24 Project would not induce substantial population growth in the area. The Project's solar facility would
25 produce electricity and would connect to the regional electric grid via Southern California Edison's Colorado
26 River Substation.

27 The County finds that the Project would not induce growth for the following reasons:

- 28 1. The additional energy would be used to ease the burdens of meeting existing energy

1 demands within and beyond the area of the Project;

2 2. The energy would be used to support already-projected growth;

3 3. The energy produced would be used to offset the use of fossil fuels to meet California's
4 Renewable Portfolio Standard and Executive Order S-14-08; and

5 4. The factors affecting growth are so multifarious that any potential connection between
6 additional energy production and growth would necessarily be too speculative and tenuous
7 to merit extensive analysis.

8
9 **SECTION VIII.**

10 **BE IT FURTHER RESOLVED** by the Board of Supervisors that through imposition of conditions
11 of approval, Project design features, APMs/BMPs, and Mitigation Measures, the Project would be consistent
12 with Land Use Policies of the "Open Space Rural" and Multiple-Use Class M (Moderate Use) land use
13 designations, and the Project is consistent with these land use designations. The Board adopts the discussion
14 of General Plan consistency contained in the EIR and in staff reports. Some of the salient General Plan
15 policies discussed in the document are as follows:

- 16 a. Provide a broad range of land uses, including a range of residential, commercial, business,
17 industry, open space, recreation and public facility uses (General Plan Policy LU 2.1.c).
- 18 b. Ensure that development does not exceed the ability to adequately provide supporting
19 infrastructure and services, such as libraries, recreational facilities, educational and day care
20 centers, transportation systems, and fire/police/medical services (General Plan Policy LU
21 5.1).
- 22 c. Require land uses to develop in accordance with the Riverside County General Plan (RCGP)
23 and area plans to ensure compatibility and minimize impacts (General Plan Policy LU 7.1).
- 24 d. Public facilities shall also be allowed in any other land use designation except for the Open
25 Space – Conservation and Open Space – Conservation Habitat land use designations. For
26 purposes of this policy, a public facility shall include all facilities operated by the federal
27 government, the State of California, the County of Riverside, any special district governed
28 by the County of Riverside or any city, and all facilities operated by any combination of

1 these agencies (General Plan Policy LU 7.2).

- 2 e. Accommodate the development of a balance of land uses that maintain and enhance the
3 County's fiscal viability, economic diversity and environmental integrity (General Plan LU
4 8.1).
- 5 f. Provide for permanent preservation of open space lands that contain important natural
6 resources, cultural resources, hazards, water features, watercourses including arroyos and
7 canyons, and scenic and recreational values (General Plan Policy LU 9.1).
- 8 g. Require that development protect environmental resources by compliance with the
9 Multipurpose Open Space Element of the RCGP and federal and state regulations such as
10 CEQA, NEPA, the Clean Air Act, and the Clean Water Act (General Plan Policy LU 9.2).
- 11 h. Require that new development contribute their fair share to fund infrastructure and public
12 facilities such as police and fire facilities (General Plan Policy LU 10.1).
- 13 i. Preserve and protect outstanding scenic vistas and visual features for the enjoyment of the
14 traveling public (General Plan Policy LU 14.1).
- 15 j. Require new or relocated electric or communication distribution lines, which would be
16 visible from Designated and Eligible State and County Scenic Highways, to be placed
17 underground (General Plan Policy LU 14.5).
- 18 k. Permit and encourage solar energy systems as an accessory use to any residential,
19 commercial, industrial, mining, agricultural or public use (General Plan Policy LU 17.1).
- 20 l. Permit and encourage, in an environmentally and fiscally responsible manner, the
21 development of renewable energy resources and related infrastructure, including but not
22 limited to, the development of solar power plants in the County of Riverside (General Plan
23 Policy LU 17.1).
- 24 m. Enforce the state Solar Shade Control Act, which promotes all feasible means of energy
25 conservation and all feasible uses of alternative energy supply sources (General Plan Policy
26 OS 11.1).
- 27 n. Support and encourage voluntary efforts to provide active and passive solar access
28 opportunities in new developments (General Plan Policy OS 11.2).

- 1 o. Permit and encourage the use of passive solar devices and other state-of-the-art energy
2 resources (General Plan Policy OS 11.3).
- 3 p. Encourage site-planning and building design that maximizes solar energy use/potential in
4 future development applications (General Plan Policy OS 11.4).

5 The Project is being pursued in accordance with land use amendments recently adopted by Riverside
6 County. These include General Plan Amendment (GPA) 1080, which added Land Use Policy LU-
7 17.2, stating: "Permit and encourage, in an environmentally and fiscally responsible manner, the
8 development of renewable energy resources and related infrastructure, including but not limited to,
9 the development of solar power plants in the County of Riverside." In connection with GPA 1080,
10 Riverside also enacted Ordinance No. 348.4705, which amended the zoning code to allow a solar
11 power plant on a lot 10 acres or larger in certain zoning districts,¹ upon issuance of a use permit
12 (DEIR pp. 1-21 to -22).

13 Here substantial evidence in the record—including the following—demonstrates that the Project is
14 consistent with the County's General Plan Policies:

- 15 • The Project would be a conditionally permitted use within the Open Space Rural (OS-RUR)
16 use designations with approval of a CUP and completion of an environmental review.
- 17 • The proposed Project would be a conditionally permitted use under the W-2-10 (solar
18 facility and gen-tie line) as described in the Palo Verde Valley Area Plan. No conflicts with
19 the Riverside County Zoning Ordinance would occur.
- 20 • I-10 has been identified by the County of Riverside as eligible for designation as a scenic
21 corridor; however it is not a State or County Designated scenic highway. The Project would
22 not be located in a designated scenic vista and neither the Riverside County General Plan
23 nor the Palo Verde Valley Area Plan has designated the Project area as an important visual
24 resource. No scenic vistas were identified in the visual resources study area, therefore no
25 impacts would occur. Impacts to views from I-10, which has been identified by the County

26 ¹ The zoning classifications are: General Commercial (C-1/C-P), Commercial Tourist (C-T), Scenic Highway
27 Commercial (C-P-S), Rural Commercial (C-R), Industrial Park (I-P), Manufacturing Servicing Commercial (M-SC),
28 Medium Manufacturing (M-M), Heavy Manufacturing (M-H), Mineral Resources (M-R), Mineral Resource and
Related Manufacturing (M-R-A), Light Agriculture (A-1), Light Agriculture with Poultry (A-P), Heavy Agriculture
(A-2), Agriculture-Dairy (A-D), Controlled Development (W-2), Regulated Development Areas (R-D), Natural Assets
(N-A), Waterways and Watercourses (W-1), and Wind Energy Resource Zone (W-E).

1 of Riverside as eligible for designation as a scenic corridor, are addressed in Impact VIS-1
2 (Scenic Vistas) and are summarized in this resolution.

- 3 • The Project is located within the Riverside County General Plan's (RCGP) Open Space
4 Rural (OS-RUR) land use designation. The County's General Plan Policies do not forbid
5 development. The Project is a conditionally permitted use under the W-2-10 zone. It would
6 be authorized pursuant to the approval of a CUP in compliance with Riverside County
7 Board of Supervisor's Policy B-29. The majority of the planning area within the Palo Verde
8 Valley is devoted to agriculture and is regulated through the Riverside County Palo Verde
9 Valley Area Plan, which provides for agricultural land use designations along with
10 residential densities and uses. On BLM-managed lands, the gen-tie line would be largely
11 located within a designated utility corridor and within the jurisdiction of the CDCA Plan.
12 With implementation of the Project, land zoned for open space uses would be subjected to
13 solar uses allowed as conditional uses in such zones.
- 14 • The Riverside County ALUC found the Project to be consistent with the Airport Land Use
15 Plan. Since the Project is within the Blythe Municipal Airport's Airport Influence Area
16 (AIA), it is required to adhere to FAA Part 77 review. Part 77 FAA review includes a
17 review of projects for the potential for incompatible land uses that are proposed within the
18 area of influence. Incompatible land uses can include wastewater ponds, municipal flood
19 control channels and drainage basins, sanitary landfills, solid waste transfer stations,
20 electrical power substations, water storage tanks, golf courses, and other bird attractants.
21 Incompatible land uses can be denied or require modifications See Section 3.8, *Hazards*
22 *and Hazardous Materials*, for more information. See also Section 3.4, *Biological*
23 *Resources*, for discussion of impacts to birds.

24 Accordingly, as confirmed by substantial evidence in the record and as stated in the EIR prepared
25 and circulated for the Project, the Project is consistent with the County's "Open Space - Rural" land
26 use designations of the Riverside County General Plan. The design features of the Project, as well
27 as applicable laws, ordinances, regulations, and standards, and the use of industry standard operating
28 procedures would avoid or reduce impacts related to construction and operation of the Project.

1 The Project is consistent with and will further the overall objectives and policies of the General Plan
2 as a whole. The County has adopted County-wide policies that are specific to solar resources, such
3 as those provided by the Project. General Plan Policy LU 17.2 states: "Permit and encourage in an
4 environmentally and fiscally responsible manner, the development of renewable energy resources
5 and related infrastructure, including but not limited to the development of solar power plants in the
6 County of Riverside." The Project is consistent with the General Plan's encouragement of the
7 development of solar plants.

8 Additionally, General Plan Policy LU 9.2 states: "Require that development protect environmental
9 resources by compliance with the Multipurpose Open Space Element of the General Plan and
10 Federal and State regulations such as CEQA, NEPA, the Clean Air Act, and the Clean Water Act."

11 The Project has undergone comprehensive CEQA, NEPA and related environmental review as part
12 of the County's consideration of the Project. Moreover, construction of the Project (a solar power
13 plant) will reduce the region's reliance on electricity generated by fossil fuels as well as the
14 pollutants that fossil fuel dependent generation creates. Accordingly, the Project is consistent with
15 the County's "Sustainability and Global Environmental Stewardship" vision statement and furthers
16 this mission, as well.

17 18 SECTION IX.

19 **BE IT FURTHER RESOLVED** by the Board of Supervisors that that EIR No. 544 also discusses,
20 pursuant to State CEQA Guidelines section 15126(c), significant irreversible environmental changes and
21 provides in Draft EIR Chapter 5, Other CEQA Considerations, the following:

- 22 A. An analysis of proposed energy consumption for the Project.
- 23 B. The following summary of findings relating to energy use and efficiency was provided in
24 the analysis in Draft EIR pp. 5-2 to -5. The energy consumed during construction would be
25 greater than the baseline value used at the site. However, energy used during this phase of
26 the Project would be necessary to implement the Project, and none of the proposed energy-
27 consuming activities associated with construction would be a wasteful, inefficient, or
28 unnecessary use of energy. After the Project is operational, and throughout operation, the

1 Project would be a net renewable electricity producer, and would have a beneficial effect
2 during peak electricity demand periods, particularly on warm, sunny days when demand for
3 air-conditioning increases and Project output is at its highest. Additionally,
4 decommissioning would restore the site to baseline conditions. The Project would not have
5 a significant impact with respect to fuel and electrical energy requirements or on local or
6 regional energy supplies.

7 C. Accordingly, pursuant to State CEQA Guidelines Appendix F, this Project will not result in
8 the wasteful or inefficient use or consumption of energy.

9
10 **SECTION X.**

11 **BE IT FURTHER RESOLVED** by the Board of Supervisors that the proposed Project is consistent
12 with the Riverside County General Plan and the Palo Verde Valley Area Plan.

13
14 **SECTION XI.**

15 **BE IT FURTHER RESOLVED** by the Board of Supervisors that it has reviewed and considered
16 EIR No. 544 in evaluating the proposed Project, and has determined that EIR No. 544 is an accurate and
17 objective statement that complies with the California Environmental Quality Act and reflects the County's
18 independent judgment, and that EIR No. 544 is incorporated herein by this reference.

19
20 **SECTION XII.**

21 **BE IT FURTHER RESOLVED** by the Board of Supervisors that it CERTIFIES the EIR and
22 ADOPTS the Mitigation Monitoring and Reporting Plan attached as Attachment A hereto. To the extent
23 that there are any inconsistencies between the Mitigation Measures as set forth in EIR No. 544, and those
24 set forth in the Mitigation Monitoring and Reporting Program, the Mitigation Monitoring and Reporting
25 Program shall control.

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SECTION XIII.

BE IT FURTHER RESOLVED by the Board of Supervisors that the custodian of the documents upon which this decision is based are the Clerk of the Board of Supervisors and the County Planning Department.

SECTION XIV.

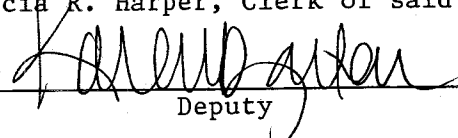
THE BOARD OF SUPERVISORS HEREBY DIRECTS STAFF to prepare, execute, and file a Notice of Determination with the Riverside County Clerk's Office and the Office of Planning and Research within five (5) working days of adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Board of Supervisors held on the 29th day of October, 2019.

ROLL CALL:

Ayes: Jeffries, Spiegel, Washington and Perez
Nays: None
Absent: Hewitt

The foregoing is certified to be a true copy of a resolution duly adopted by said Board of Supervisors on the date therein set forth.

Kecia R. Harper, Clerk of said Board
By  Deputy



OFFICE OF
CLERK OF THE BOARD OF SUPERVISORS
1ST FLOOR, COUNTY ADMINISTRATIVE CENTER
P.O. BOX 1147, 4080 LEMON STREET
RIVERSIDE, CA 92502-1147
PHONE: (951) 955-1060
FAX: (951) 955-1071

KECIA R. HARPER
Clerk of the Board of Supervisors

KIMBERLY A. RECTOR
Assistant Clerk of the Board

October 15, 2019

THE DESERT SUN
ATTN: LEGALS
P.O. BOX 2734
PALM SPRINGS, CA 92263

TEL : (760) 778-4578
E-MAIL: legals@thedesertsun.com

RE: NOTICE OF PUBLIC HEARING: CUP 3721

To Whom It May Concern:

Attached is a copy for publication in your newspaper for **one (1) time on Friday, October 18, 2019.**

We require your affidavit of publication immediately upon completion of the last publication.

Your invoice must be submitted to this office, WITH TWO CLIPPINGS OF THE PUBLICATION.

NOTE: PLEASE COMPOSE THIS PUBLICATION INTO A SINGLE COLUMN FORMAT.

Thank you in advance for your assistance and expertise.

Sincerely,

Karen Barton

Deputy Clerk of the Board to:
KECIA R. HARPER, CLERK OF THE BOARD



OFFICE OF
CLERK OF THE BOARD OF SUPERVISORS
1ST FLOOR, COUNTY ADMINISTRATIVE CENTER
P.O. BOX 1147, 4080 LEMON STREET
RIVERSIDE, CA 92502-1147
PHONE: (951) 955-1060
FAX: (951) 955-1071

KECIA R. HARPER
Clerk of the Board of Supervisors

KIMBERLY A. RECTOR
Assistant Clerk of the Board

October 15, 2019

PALO VERDE VALLEY TIMES
ATTN: LEGALS
P.O. BOX 1159
BLYTHE, CA 92226

TEL : (800) 398-7193
E-MAIL: classifieds@pvvt.com

RE: NOTICE OF PUBLIC HEARING: CUP 3721

To Whom It May Concern:

Attached is a copy for publication in your newspaper for **one (1) time on Wednesday, October 23, 2019.**

We require your affidavit of publication immediately upon completion of the last publication.

Your invoice must be submitted to this office, WITH TWO CLIPPINGS OF THE PUBLICATION.

NOTE: PLEASE COMPOSE THIS PUBLICATION INTO A SINGLE COLUMN FORMAT.

Thank you in advance for your assistance and expertise.

Sincerely,

Karen Barton

Deputy Clerk of the Board to:
KECIA R. HARPER, CLERK OF THE BOARD

NOTICE OF PUBLIC HEARING BEFORE THE BOARD OF SUPERVISORS OF RIVERSIDE COUNTY ON A CONDITIONAL USE PERMIT, DEVELOPMENT AGREEMENT AND ADOPTION OF AN ORDINANCE IN THE CHUCKWALLA ZONING AREA, FOURTH SUPERVISORIAL DISTRICT

NOTICE IS HEREBY GIVEN that a public hearing at which all interested persons will be heard, will be held before the Board of Supervisors of Riverside County, California, on the 1st Floor Board Chambers, County Administrative Center, 4080 Lemon Street, Riverside, on **Tuesday, October 29, 2019 at 10:00 A.M.** or as soon as possible thereafter, to consider the Planning Department's recommended approval on **Conditional Use Permit No. 3721**, which proposes the development of a 160-acre portion of a 450 megawatt photovoltaic solar facility on 5,275 total acres. **Development Agreement No. 1900017 and Ordinance No. 664.62** is a proposal for the applicant entering into a development agreement with the County for the project, consistent with the County's solar power plant program and includes terms regarding public benefit payments and increases. This project is located South of Interstate 10 and West of Mesa Drive in the Chuckwalla Zoning Area of the Fourth Supervisorial District.

The Planning Department recommends that the Board of Supervisors approve the project and adopt **Resolution No. 2019-232, Certifying Environmental Impact Report No. 544 for the Desert Quartzite Solar Project.**

The project case file may be viewed from the date of this notice until the public hearing, Monday through Friday, from 8:00 a.m. to 5:00 p.m. at the Riverside County Planning Department at 4080 Lemon Street, 12th Floor, Riverside, California 92501.

FOR FURTHER INFORMATION REGARDING THIS PROJECT, PLEASE CONTACT RUSSELL BRADY, PROJECT PLANNER, AT (951) 955-3025 OR EMAIL RBrady@rivco.org

Any person wishing to testify in support of or in opposition to the project may do so in writing between the date of this notice and the public hearing, or may appear and be heard at the time and place noted above. All written comments received prior to the public hearing will be submitted to the Board of Supervisors and the Board of Supervisors will consider such comments, in addition to any oral testimony, before making a decision on the project.

If you challenge the above item in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence to the Planning Commission or Board of Supervisors at, or prior to, the public hearing. Be advised that as a result of the public hearing and the consideration of all public comment, written and oral, the Board of Supervisors may amend, in whole or in part, the project and/or the related environmental document. Accordingly, the designations, development standards, design or improvements, or any properties or lands within the boundaries of the project, may be changed in a way other than specifically proposed.

Alternative formats available upon request to individuals with disabilities. If you require reasonable accommodation, please contact Clerk of the Board at (951) 955-1063, at least 72 hours prior to hearing.

Please send all written correspondence to: Clerk of the Board, 4080 Lemon Street, 1st Floor, Post Office Box 1147, Riverside, CA 92502-1147 or email cob@rivco.org

Dated: October 15, 2019

Kecia R. Harper, Clerk of the Board
By: Karen Barton, Deputy Clerk of the Board

CERTIFICATE OF POSTING

(Original copy, duly executed, must be attached to
the original document at the time of filing)

I, Karen Barton, Deputy Clerk of the Board to Kecia R. Harper, Clerk of the Board of Supervisors, for the County of Riverside, do hereby certify that I am not a party to the within action or proceeding; that on October 16, 2019, I forwarded to Riverside County Clerk & Recorder's Office a copy of the following document:

NOTICE OF PUBLIC HEARING

CUP 3721

to be posted in the office of the County Clerk at 2724 Gateway Drive, Riverside, California 92507. Upon completion of posting, the County Clerk will provide the required certification of posting.

Board Agenda Date: October 29, 2019 @ 10:00 a.m.

SIGNATURE: Karen Barton DATE: October 16, 2019
Karen Barton

CERTIFICATE OF MAILING

(Original copy, duly executed, must be attached to
the original document at the time of filing)

I, Karen Barton, Deputy Clerk of the Board, for the County of Riverside, do hereby certify that I am not a party to the within action or proceeding; that on October 16, 2019, I mailed a copy of the following document:

NOTICE OF PUBLIC HEARING

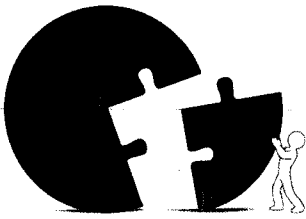
CUP 3721

to the parties listed in the attached labels, by depositing said copy with postage thereon fully prepaid, in the United States Post Office, 3890 Orange St., Riverside, California, 92501.

Board Agenda Date: October 29, 2019 @ 10:00 a.m.

SIGNATURE: *Karen Barton*
Karen Barton

DATE: October 16, 2019



RIVERSIDE COUNTY PLANNING DEPARTMENT

*Charissa Leach, P.E.
Assistant TLMA Director*

Hearing Date: October 29, 2019

To: Clerk of the Board of Supervisors

From: Planning Department – Riverside (Planner: Russell Brady)

MinuteTraq #: 11108

Project Description:

Conditional Use Permit No. 3721 is a proposal for development of a 160-acre portion of a 450 megawatt photovoltaic solar facility on 5,275 acres total. Development Agreement No. 1900017 and Ordinance No. 664.62 is a proposal for the applicant entering into a development agreement with the County for the Project, consistent with the County's solar power plant program and includes terms regarding public benefit payments and increases.

The attached item(s) require the following action(s) by the Board of Supervisors:

- | | |
|---|--|
| <input type="checkbox"/> Place on Administrative Action | <input checked="" type="checkbox"/> Set for Hearing (Legislative Action Required; CZ, GPA, SP, SPA) |
| <input type="checkbox"/> Receive & File | |
| <input type="checkbox"/> EOT | |
| <input type="checkbox"/> Labels provided If Set For Hearing | <input checked="" type="checkbox"/> Publish in Newspaper: |
| <input type="checkbox"/> 10 Day <input type="checkbox"/> 20 Day <input type="checkbox"/> 30 day | (4th Dist-Ely) Desert Sun and Palo Verde Times |
| <input type="checkbox"/> Place on Consent Calendar | <input checked="" type="checkbox"/> Environmental Impact Report |
| <input type="checkbox"/> Place on Policy Calendar (Resolutions; Ordinances; PNC) | <input checked="" type="checkbox"/> 10 Day <input type="checkbox"/> 20 Day <input type="checkbox"/> 30 day |
| <input type="checkbox"/> Place on Section Initiation Proceeding (GPIP) | <input checked="" type="checkbox"/> Notify Property Owners (app/agencies/property owner labels provided) |

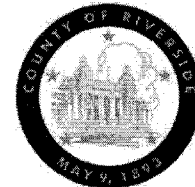
Designate Newspaper used by Planning Department for Notice of Hearing:
(4th Dist-Ely) Desert Sun and Palo Verde Times

Riverside Office · 4080 Lemon Street, 12th Floor
P.O. Box 1409, Riverside, California 92502-1409
(951) 955-3200 · Fax (951) 955-1811

Desert Office · 77-588 Duna Court, Suite H
Palm Desert, California 92211
(760) 863-8277 · Fax (760) 863-7040

"Planning Our Future... Preserving Our Past"

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM

(ID # 11108)

MEETING DATE:

Tuesday, October 29, 2019

FROM : TLMA-PLANNING:

SUBJECT: TRANSPORTATION & LAND MANAGEMENT AGENCY/PLANNING: Conditional Use Permit No. 3721, Development Agreement No. 1900017, Ordinance No. 664.62 - EIR No. 544 - Applicant: Desert Quartzite, LLC - Engineer/Representative: URS Corporation - Fourth Supervisorial District - Chuckwalla Zoning Area - Palo Verde Valley Area Plan: Agriculture (AG) - Location: The overall solar facility is located south of Interstate 10 and west of Mesa Drive - 160 gross acres (County Jurisdiction) - Zoning: Controlled Development Areas, 10-acre minimum (W-2-10) - REQUEST: Conditional Use Permit No. 3721 is a proposal for development of a 160-acre portion of a 450 megawatt photovoltaic solar facility on 5,275 total acres. Development Agreement No. 1900017 and Ordinance No. 664.62 is a proposal for the applicant entering into a development agreement with the County for the Project, consistent with the County's solar power plant program and includes terms regarding public benefit payments and increases. - APN: 879-110-001 [Applicant fees 100%]

RECOMMENDED MOTION: That the Board of Supervisors:

1. **ADOPT Resolution No. 2019-232 CERTIFYING ENVIRONMENTAL IMPACT REPORT (EIR) No. 544 FOR THE DESERT QUARTZITE SOLAR PROJECT (EIR00544)**, adopting environmental findings pursuant to the California Environmental Quality Act, and adopting a Mitigation Monitoring and Reporting Program; and
2. **APPROVE CONDITIONAL USE PERMIT NO. 3721**, subject to the attached conditions of approval and advisory notification document and based upon the findings and conclusions incorporated in the staff report and in Resolution No. **2019-232**; and
3. **INTRODUCE and ADOPT on successive weeks **ORDINANCE NO. 664.62**, an Ordinance of the County of Riverside Approving Development Agreement No. **1900017**, based upon the findings and conclusions incorporated in the staff report and in Resolution No. **2019-232**.**

ACTION:

MINUTES OF THE BOARD OF SUPERVISORS

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A
NET COUNTY COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A
SOURCE OF FUNDS: Applicant Fees 100%			Budget Adjustment No	
			For Fiscal Year: N/A	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

This Project is commonly referred to as the Desert Quartzite Solar Project, which encompasses a total of 5,275 acres divided between County of Riverside and Bureau of Land Management jurisdiction. The total development proposal would occupy approximately 2,660 acres. Of this 2,660 acre area, 2,436 acres is proposed for the solar facility on BLM land, 66.8 acres for the 230 kV transmission line on BLM land, 3.3 acres for buried telecommunications line and possible above-ground electrical service on BLM land, and 154 acres of the solar facility on private land under the jurisdiction of the County of Riverside. The EIR considered development of 2,622 acres of BLM land and 160 acres of private land. Upon further refining the project layout, First Solar has represented that 2,506 acres of BLM land and 154 acres of private land meet the definition of Solar Power Plant Net Acreage.

The project proposes the construction and operation of a 450 megawatt (MW) commercial solar photovoltaic (PV) electrical generation facility. The solar panels will be a single-axis, tracking design aligned in north-south rows. The panels would be a maximum height of 13 feet at a maximum tilt position and a minimum clearance of approximately 1.5 feet beneath the panels would be provided. The panels would be connected to each other and would transmit the power generated via underground direct current (DC) cables that would lead to a Power Conversion Station (PCS) that would be situated within each larger group of rows of panels. The PCS would use an inverter to convert the DC power from the panels into alternative current (AC). A transformer at each PCS would step up the voltage to medium voltage AC (MVAC) at 34.5 kV and then transmitted to one of several Photovoltaic Combining Switchgear (PVCS) which would collect the power from a group of arrays and transmit to the on-site substation through overhead lines. The on-site substation is proposed within a 2.6 acre area at the northwestern portion of the Project site within BLM land. The voltage would be further stepped up at the substation to match Southern California Edison (SCE) regional transmission grid levels of 230 kV. The power would then be transmitted via a 3.94-mile long transmission line (gen-tie line) to the Colorado River Substation located to the west of the site, with the entirety of the transmission line within BLM land.

Primary access to the Project would be from Interstate 10 via the Neighbours Boulevard/SR-78 exit to 16th Avenue/Seeley Avenue and west approximately 5 miles to the facility entrance.

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

Secondary/emergency access to the Project would be from 22nd Avenue from SR-78 via a new 0.7 mile long road that would be constructed from Gravel Pit Road to an entrance near the southern end of the Project. The intersection of 16th Avenue/Seeley and State Route 78 would be improved to allow for a left turning lane for eastbound traffic on 16th Avenue/Seeley Avenue turning onto State Route 78 and a right turning lane for southbound traffic on Route 78 turning onto 16th Avenue/Seeley Avenue. The Project will also require appropriate dust suppression stabilizers for existing roads that may not be required to be paved to minimize the creation of dust from construction and operational traffic.

An operations and maintenance (O&M) building is proposed adjacent to the on-site substation in the northwest portion of the Project Site. This building would be used for parts storage, facility security systems, and monitoring equipment and would include offices, restroom, and storage area within a 120 foot by 50 foot footprint. Additional storage containers would be located outside of the building. An above-ground water tank would be located at the building for drinking water and sanitary purposes. A septic system is also proposed to serve the building.

2,436 acres of the Project area would be fenced with a seven foot high chain-link or wire fence. Where required, the base of the fence may include tortoise exclusionary fencing material anchored below the ground surface consistent with United States Fish and Wildlife Service (USFWS) guidelines. Temporary construction staging areas near the O&M building would be fenced as well.

Construction would be preceded by the surveys as noted in the EIS/EIR and installation of exclusionary fencing where appropriate and the location of the project's development boundaries and temporary construction impacts marked to properly contain activities during construction. Two separate construction staging areas would be developed to support construction activities. Construction would begin with site preparation to remove vegetation and create a flat and compacted surface. Trenching and installation of underground cables and preparation of cement foundations for connection and support equipment will occur following site preparation and subsequently the support structures and arrays would be installed. Power distribution equipment would be installed at the predesignated and prepared locations. The gen-tie line would be installed to provide the connection to the Colorado River Substation with laydown areas for materials for the towers within the Project area. Construction of the solar facility and the gen-tie line is anticipated to occur simultaneously and construction is anticipated to be over a 25 to 48 month period.

Operations and maintenance of the Project is anticipated to be minimal with up to five full time workers. Activities would include cleaning of panels, anticipated twice a year, as well as soil stabilization and vegetation restoration.

If the BLM Right-of-Way (ROW) grant is not renewed beyond the 30-year operational period or the Project otherwise ceases operations, the ROW grantholder would be responsible for removal of the Project facilities and restoration of the BLM land and the private land based on

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

the Draft Decommissioning and Site Reclamation Plan prepared for the project that would be updated and finalized prior to decommissioning to ensure it meets all applicable regulations in place at that time.

The portion of the Project within the County's land use jurisdiction not on BLM land is comprised of the following land use cases:

CONDITIONAL USE PERMIT NO. 3721 (CUP03721) is a proposal for the approximate 154-acre portion of the overall Desert Quartzite Solar Project that is under jurisdiction of the County of Riverside. This portion is anticipated to generate 20 MW with approximately 125 acres covered by solar arrays. 12 PCS and 1 PVCS is proposed within the 160-acre area. Overhead lines to collect and transmit the power off-site include poles at a maximum height of 70'. Pursuant to the requirements of the W-2 Zone and Section 18.34 of Ordinance No. 348, an application for a Conditional Use Permit may include a request for a greater height limit in accordance with the limitations of the zone classification. Under Section 15.2, additional structure height beyond 50' and up to 105' may be allowed if it is included in the description for the Conditional Use Permit and noticed as such in all notices regarding the permit. Here, the application for the Conditional Use Permit includes a request for a greater height limit of 70' for the collector poles, which is within the 50'-105' limitations set forth in Ordinance No. 348 Section 15.2. This area is currently surrounded by existing berms on all 4 sides that would remain and that are presumed to have been associated with the prior jobo farm that operated on the site.

DEVELOPMENT AGREEMENT NO. 1900017 (DA1900017) is a proposal for the applicant entering into a development agreement with the County for the Project, consistent with the County's solar power plant program. Board of Supervisors Policy No. B-29 regarding solar power plants states, "[N]o approval required by Ordinance No. 348 shall be given for a solar power plant unless the Board first approves a development agreement with the solar power plant owner and the development agreement is effective." County Staff has negotiated terms and provisions with the applicant, for the Board's consideration, consistent with Board Policy B-29. The DA has a term of 30 years and will grant the applicant vesting rights to develop the Project in accordance with the terms of the agreement. DA No. 1900017 contains terms consistent with Board of Supervisors Policy No. B-29, including terms regarding public benefit payments and increases. The Public Benefits included in the DA includes an initial payment to the County of \$150 per acre prior to grading permit or building permit, whichever occurs first. In total this could be up to \$399,000 and may be divided up if the development is phased and would be based on the acreage of each phase. Following the initial payment, subsequent annual payments of an equal amount based on the development area constructed for the 30-year term of the agreement. The DA also includes provisions for applicable sales and use taxes to be reporting and remitting these taxes for proper allocation to the County of Riverside to the maximum extent possible under the law. The DA establishes an adjusted Development Impact Fee (DIF) total of \$259,875 and an additional Community Benefit Fee (CBF) also at a total of \$259,875, which would both be paid prior to grading or building permit, whichever occurs first. The adjusted DIF and CBF amounts are applicable within the first five years of the agreement

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

and after that 5 year period the project would be subject to the regular DIF applicable to the project.

The County has reviewed the Project and has determined that it is consistent with all zoning standards, the General Plan, Board of Supervisor's Policy B-29 – Solar Power Plants, and all other applicable ordinances. Additionally, the Joint EIS/EIR has been completed in accordance with and consistent with the California Environmental Quality Act (CEQA) requirements and National Environmental Policy Act (NEPA).

As an environmental benefit, the Project would help the State achieve its renewable energy goals and mandates. The production of renewable energy has the added benefit of reducing air quality impacts and GHG emissions that would be produced by fossil-fuel based generation facilities. The Project is within close proximity to urban development within the City of Blythe, existing transmission infrastructure, and existing access roads.

The Project would also provide other important benefits to the local and regional economy from the purchase of equipment and supplies and sales tax revenue and from as agreed upon in the terms of the Development Agreement. Additionally, the Project will result in the contribution of significant development impact fees as adjusted with the Development Agreement as well as an additional Community Benefit Fee established with the Development Agreement. Indirectly the County and region would benefit from the employment of daily workers during peak construction period and would provide permanent, full time jobs upon operation. Other economic benefits include workers utilizing local and regional commercial services such as hotels and restaurants.

Environmental Impact Statement/Environmental Impact Report

A joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) has been prepared for this project (EIR00544) in accordance with the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA). The EIS/EIR represents the independent judgement of Riverside County in coordination with the Bureau of Land Management (BLM). It was determined as part of the EIS/EIR analysis that the Project would result in a significant impact that cannot be fully mitigated (unavoidable). All other impacts have been addressed through project design or incorporated mitigation measures. Below is a summary of these significant impacts identified in the EIS/EIR:

Air Quality - AQMP Consistency

The Project would have the potential to result in or cause National Ambient Air Quality Standards (NAAQS) or California Ambient Air Quality Standards (CAAQS) violations due to the project's exceedance of regional construction emission thresholds for NO_x, PM₁₀, and PM_{2.5}. Therefore, the Project would have a significant and unavoidable cumulative effect on regional air pollution. All feasible mitigation has been adopted. However, impacts related to AQMP consistency would remain significant and unavoidable.

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

Air Quality – Construction Emissions-Regional

Although operational emissions are anticipated to be below a level that does not exceed emission thresholds, construction emissions for NO_x, PM₁₀, and PM_{2.5} are not able to be mitigated to a level below emission thresholds as no feasible mitigation exists to reduce these emissions. Therefore, impacts related to construction emissions would remain significant and unavoidable.

Aesthetics – Substantially degrade the existing visual character or quality of the site and its surroundings

The Project would be visible from portions of the nearby Mule Mountain and McCoy Mountain as well as from the nearby residential development and along a four mile segment of Interstate-10. The broad, flat form of the solar panels along with the dark grey color of the panels would strongly contrast from the desert landscape that surrounds the Project and would be dominant in the views from the mountains in particular due to the size of the project and the relative elevation difference. There are no feasible project design or mitigation measures that could substantially alter the appearance of the Project that could reduce these impacts below a level that could be determined to be less than significant.

Twenty-four (24) comment letters were received during the 90-day (due to NEPA/BLM requirements) public review period and, as of the date of this staff report, two comment letters have been received following the close of the public review period. These comments were reviewed, and detailed responses to each comment were prepared. Responses to the 24 comment letters received during the 90-day review period were included in the Final EIR and separate responses to the two other comment letters were prepared, which were posted on September 27, 2019 and with mailed notices to commenters sent on September 27, 2019.

For the reasons set forth above and in the EIR prepared for this Project, the proposed project will potentially have a significant effect on the environment related to Air Quality and Aesthetics. Mitigation Measures from the EIS/EIR have been incorporated as conditions of approval on the project.

Due to the potentially significant impacts of the project, if the Board of Supervisors is to approve the project, it will be required to adopt Findings with a Statement of Overriding Considerations consistent with State CEQA Guidelines sections 15093, 15216(b), and 15126.2(b) and discussed in the Final EIS/EIR Section 15132 is required (Resolution No. 2019-232). The Statement of Overriding Considerations would clarify what benefits the project is providing that the Board of Supervisors could determine outweigh the potentially significant environmental impacts of the project. Benefits of the project would include but are not limited to: employment, efficient renewable energy, displacement of greenhouse gas emissions, local sales and use taxes, and facilitation of meeting state renewable energy and greenhouse reduction goals.

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

Impact on Residents and Businesses:

All potential project impacts have been studied under CEQA and noticed to the public pursuant to the requirements of the County. As stated above, the Project would help the State achieve its renewable energy goals and mandates. The production of renewable energy has the added benefit of reducing air quality impacts and GHG emissions that would be produced by fossil-fuel based generation facilities. The Project would also provide other important benefits to the local and regional economy from the purchase of equipment and supplies and sales tax revenue as agreed upon in the terms of Development Agreement No. 1900017.

SUPPLEMENTAL:

Additional Fiscal Information

As stated above, the applicant and County staff have reached an agreement on the provisions of DA No. 1900017. Under DA No. 1900017, the applicant will submit annual public benefit payments of \$150 per acre. The total "solar power plant net acreage" agreed upon by the applicant, was calculated using the definition in Board of Supervisors' Policy No. B-29. If the development of the Solar Power Plant occurs in phases, the Annual Public Benefits Payments shall be based on the Solar Power Plant Net Acreage of each defined phase. The initial annual public benefit payments will be based on the solar power plant net acreage included in each phase until complete build-out. The applicant will also take agreed upon actions to ensure that local sales and use taxes are directly allocated to the County to the maximum extent possible under the law. Additionally, the applicant will submit an agreed upon adjusted Development Impact Fee (DIF) payment of \$259,875. In addition, the applicant has agreed to pay an Additional Community Benefit Fee of \$259,875. The timing of the DIF payment and Additional Community Benefit Fee are set forth DA No. 1900017.

Staff labor and expenses to process this project are paid by the applicant; there is no General Fund obligation.

Contract History and Price Reasonableness

N/A

ATTACHMENTS:

- A. Board of Supervisors Staff Report Package**
- B. Conditional Use Permit No. 3721 Exhibits**
- C. Final EIS/EIR**
- D. Adams-Broadwell Draft EIR Comments and Responses**
- E. Resolution No. 2019-232**
- F. Ordinance No. 664.62**
- G. Development Agreement No. 1900017**

PROPERTY OWNERS CERTIFICATION FORM

I, VINNIE NGUYEN certify that on July 23, 2019,

The attached property owners list was prepared by Riverside County GIS,

APN (s) or case numbers CUP03721 for

Company or Individual's Name RCIT - GIS,

Distance buffered 2400'

Pursuant to application requirements furnished by the Riverside County Planning Department. Said list is a complete and true compilation of the owners of the subject property and all other property owners within 600 feet of the property involved, or if that area yields less than 25 different owners, all property owners within a notification area expanded to yield a minimum of 25 different owners, to a maximum notification area of 2,400 feet from the project boundaries, based upon the latest equalized assessment rolls. If the project is a subdivision with identified off-site access/improvements, said list includes a complete and true compilation of the names and mailing addresses of the owners of all property that is adjacent to the proposed off-site improvement/alignment.

I further certify that the information filed is true and correct to the best of my knowledge. I understand that incorrect or incomplete information may be grounds for rejection or denial of the application.

TITLE: GIS Analyst

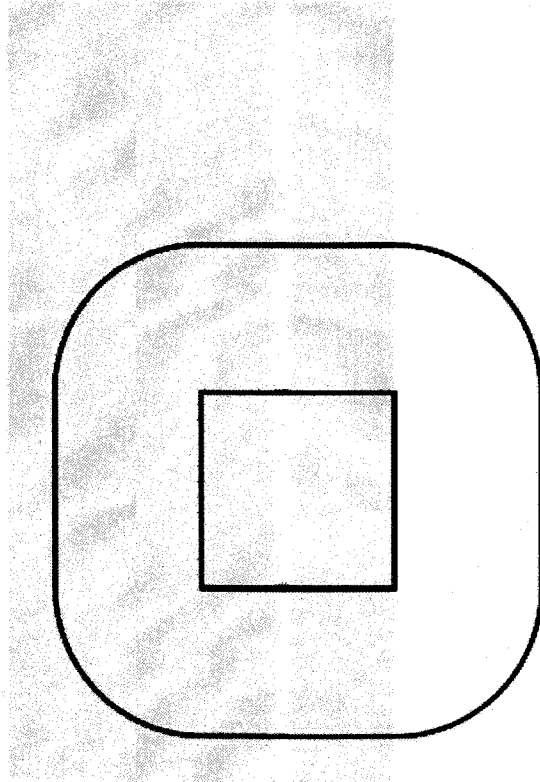
ADDRESS: 4080 Lemon Street 9TH Floor

Riverside, Ca. 92502

TELEPHONE NUMBER (8 a.m. – 5 p.m.): (951) 955-8158

Riverside County GIS Mailing Labels

CUP03721 (2400 feet buffer)



Legend

-  County Boundary
-  Cities

Notes



0

3,009

6,019 Feet

IMPORTANT Maps and data are to be used for reference purposes only. Map features are approximate, and are not necessarily accurate to surveying or engineering standards. The County of Riverside makes no warranty or guarantee as to the content (the source is often third party), accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained on this map. Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user.

REPORT PRINTED ON... 7/23/2019 10:10:07 AM

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Easy Peel Address Labels
Bend along line to expose Pop-up Edge

Go to avery.com/templates
Use Avery Template 5162

879110001
A YUAN KAO CHAO
21725 MARJORIE AVE
TORRANCE CA 92503

879090033
USA 879
DEPT OF INTERIOR
WASHINGTON DC 21401

879110006
USA 879
US DEPT OF INTERIOR
WASHINGTON DC 21401



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Go to avery.com/templates
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Desert Quartzite LLC
135 Main Street, 6th Floor
San Francisco, CA 94105

Desert Quartzite LLC
135 Main Street, 6th Floor
San Francisco, CA 94105

Ayuan K Chao
21725 Marjorie Avenue
Torrance, CA 90503

Ayuan K Chao
21725 Marjorie Avenue
Torrance, CA 90503

URS Corporation
130 Robin Hill Road, Suite 100
Santa Barbara, CA 93117

URS Corporation
130 Robin Hill Road, Suite 100
Santa Barbara, CA 93117

Sheila Sannadan
Adams Broadwell Joseph & Cardozo
520 Capitol Mall, Suite 350
Sacramento, CA 95814-4721

Sheila Sannadan
Adams Broadwell Joseph & Cardozo
520 Capitol Mall, Suite 350
Sacramento, CA 95814-4721

AFFP
NOTICE OF PUBLIC HEARING BEFOR

Affidavit of Publication

STATE OF CA }
COUNTY OF RIVERSIDE } SS

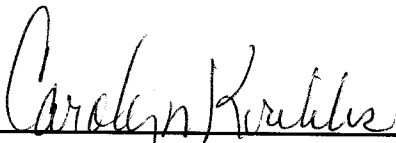
Carolyn, being duly sworn, says:

I am a citizen of the United States and am employed by a publication in the county aforesaid. I am over the age of eighteen years and I am not a party to, nor interested in the above entitled matter. That she is Principal Clerk of the Printer of the Palo Verde Valley Times, a newspaper of general circulation, printed and published in Blythe, Riverside County, CA; and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Riverside, State of California under the date of June 20, 1952, Case No. 54744, that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:

October 23, 2019

That said newspaper was regularly issued and circulated on those dates.

I declare under penalty of perjury, that the foregoing is true and correct this 23rd day of October 2019.



Carolyn , Kribbs, Riverside County, CA

00021437 00182517 (951) 955-1071

Karen Barton
Deputy Clerk of the Board
4080 Lemon Street
1st Floor, Room 127
Riverside Mail Stop #1010, CA 92501

NOTICE OF PUBLIC HEARING BEFORE THE BOARD OF SUPERVISORS OF RIVERSIDE COUNTY ON A CONDITIONAL USE PERMIT, DEVELOPMENT AGREEMENT AND ADOPTION OF AN ORDINANCE IN THE CHUCKWALLA ZONING AREA, FOURTH SUPERVISORIAL DISTRICT

NOTICE IS HEREBY GIVEN that a public hearing at which all interested persons will be heard, will be held before the Board of Supervisors of Riverside County, California, on the 1st Floor Board Chambers, County Administrative Center, 4080 Lemon Street, Riverside, on Tuesday, October 29, 2019 at 10:00 A.M. or as soon as possible thereafter, to consider the Planning Department's recommended approval on Conditional Use Permit No. 3721, which proposes the development of a 160-acre portion of a 450 megawatt photovoltaic solar facility on 5,275 total acres. Development Agreement No. 1900017 and Ordinance No. 664.62 is a proposal for the applicant entering into a development agreement with the County for the project, consistent with the County's solar power plant program and includes terms regarding public benefit payments and increases. This project is located South of Interstate 10 and West of Mesa Drive in the Chuckwalla Zoning Area of the Fourth Supervisorial District.

The Planning Department recommends that the Board of Supervisors approve the project and adopt Resolution No. 2019-232, Certifying Environmental Impact Report No. 544 for the Desert Quartzite Solar Project.

The project case file may be viewed from the date of this notice until the public hearing, Monday through Friday, from 8:00 a.m. to 5:00 p.m. at the Riverside County Planning Department at 4080 Lemon Street, 12th Floor, Riverside, California 92501.

FOR FURTHER INFORMATION REGARDING THIS PROJECT, PLEASE CONTACT RUSSELL BRADY, PROJECT PLANNER, AT (951) 955-3025 OR EMAIL RBrady@rivco.org

Any person wishing to testify in support of or in opposition to the project may do so in writing between the date of this notice and the public hearing, or may appear and be heard at the time and place noted above. All written comments received prior to the public hearing will be submitted to the Board of Supervisors and the Board of Supervisors will consider such comments, in addition to any oral testimony, before making a decision on the project.

If you challenge the above item in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence to the Planning Commission or Board of Supervisors at, or prior to, the public hearing. Be advised that as a result of the public hearing and the consideration of all public comment, written and oral, the Board of Supervisors may amend, in whole or in part, the project and/or the related environmental document. Accordingly, the designations, development standards, design or improvements, or any properties or lands within the boundaries of the project, may be changed in a way other than specifically proposed.

Alternative formats available upon request to individuals with disabilities. If you require reasonable accommodation, please contact Clerk of the Board at (951) 955-1063, at least 72 hours prior to hearing.

Please send all written correspondence to: Clerk of the Board, 4080 Lemon Street, 1st Floor, Post Office Box 1147, Riverside, CA 92502-1147 or email cob@rivco.org

Dated: October 15, 2019 Kecia R. Harper, Clerk of the Board
By: Karen Barton, Deputy Clerk of the Board

Planning
10/29/19 21.1

2019 OCT 25 AM 10:47
RECEIVED RIVERSIDE COUNTY
CLERK / BOARD OF SUPERVISORS



PROOF OF PUBLICATION

STATE OF CALIFORNIA SS. COUNTY OF RIVERSIDE

RIVERSIDE COUNTY-BOARD OF SUP. 4080 LEMON ST

RIVERSIDE CA 92501

I am over the age of 18 years old, a citizen of the United States and not a party to, or have interest in this matter. I hereby certify that the attached advertisement appeared in said newspaper (set in type not smaller than non paniel) in each and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

10/18/19

I acknowledge that I am a principal clerk of the printer of The Desert Sun, printed and published weekly in the City of Palm Springs, County of Riverside, State of California. The Desert Sun was adjudicated a Newspaper of general circulation on March 24, 1988 by the Superior Court of the County of Riverside, State of California Case No 191236.

I certify under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on this 18th of October 2019 in Green Bay, WI, County of Brown.

Jana Kametz
DECLARANT

Ad#:0003848321
P.O.:
of Affidavits :1

Planning
10/29/19 21.1

2019 OCT 28 PM 12:18
CLERK/BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE

NOTICE OF PUBLIC HEARING BEFORE THE BOARD OF SUPERVISORS OF RIVERSIDE COUNTY ON A CONDITIONAL USE PERMIT, DEVELOPMENT AGREEMENT AND ADOPTION OF AN ORDINANCE IN THE CHUCKWALLA ZONING AREA, FOURTH SUPERVISORIAL DISTRICT

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Dated: October 15, 2019
Kecia R. Harper, Clerk of the Board
By: Karen Barton, Deputy Clerk of the Board
Pub: 10/18/2019

Riverside County Board of Supervisors Request to Speak

Submit request to Clerk of Board (right of podium), Speakers are entitled to three (3) minutes, subject to Board Rules listed on the reverse side of this form.

SPEAKER'S NAME: JIM RUSH

Address: 4035 HAMILSON ST

City: RIVERSIDE Zip: 92503

Phone #: 951 544-7225

Date: 10-29-19 Agenda # 21.1

PLEASE STATE YOUR POSITION BELOW:

Position on "Regular" (non-appealed) Agenda Item:

Support Oppose Neutral

Note: If you are here for an agenda item that is filed for "Appeal", please state separately your position on the appeal below:

Support Oppose Neutral

I give my 3 minutes to: _____

BOARD RULES

Requests to Address Board on "Agenda" Items:

You may request to be heard on a published agenda item. Requests to be heard must be submitted to the Clerk of the Board before the scheduled meeting time.

Requests to Address Board on items that are "NOT" on the Agenda/Public Comment:

Notwithstanding any other provisions of these rules, a member of the public shall have the right to address the Board during the mid-morning "Oral Communications" segment of the published agenda. Said purpose for address must pertain to issues which are under the direct jurisdiction of the Board of Supervisors. YOUR TIME WILL BE LIMITED TO THREE (3) MINUTES. Donated time is not permitted during Public Comment.

Power Point Presentations/Printed Material:

Speakers who intend to conduct a formalized Power Point presentation or provide printed material must notify the Clerk of the Board's Office by 12 noon on the Monday preceding the Tuesday Board meeting, insuring that the Clerk's Office has sufficient copies of all printed materials and at least one (1) copy of the Power Point CD. Copies of printed material given to the Clerk (by Monday noon deadline) will be provided to each Supervisor. If you have the need to use the overhead "Elmo" projector at the Board meeting, please ensure your material is clear and with proper contrast, notifying the Clerk well ahead of the meeting, of your intent to use the Elmo.

Individual Speaker Limits:

Individual speakers are limited to a maximum of three (3) minutes. Please step up to the podium when the Chairman calls your name and begin speaking immediately. Pull the microphone to your mouth so that the Board, audience, and audio recording system hear you clearly. Once you start speaking, the "green" podium light will light. The "yellow" light will come on when you have one (1) minute remaining. When you have 30 seconds remaining, the "yellow" light will begin to flash, indicating you must quickly wrap up your comments. Your time is up when the "red" light flashes. The Chairman adheres to a strict three (3) minutes per speaker. *Note: If you intend to give your time to a "Group/Organized Presentation", please state so clearly at the very bottom of the reverse side of this form.*

Group/Organized Presentations:

Group/organized presentations with more than one (1) speaker will be limited to nine (9) minutes at the Chairman's discretion. The organizer of the presentation will automatically receive the first three (3) minutes, with the remaining six (6) minutes relinquished by other speakers, as requested by them on a completed "Request to Speak" form, and clearly indicated at the bottom of the form.

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Riverside County Board of Supervisors Request to Speak

Submit request to Clerk of Board (right of podium), Speakers are entitled to three (3) minutes, subject to Board Rules listed on the reverse side of this form.

SPEAKER'S NAME: Rob Bernheimer
Address: 45025 Manitow Dr #3
City: Indian Wells Zip: 92020
Phone #: 760 360-7666
Date: 10/29/19 Agenda # 21.1

PLEASE STATE YOUR POSITION BELOW:

Position on "Regular" (non-appealed) Agenda Item:

Support Oppose Neutral
Applicant #1

Note: If you are here for an agenda item that is filed for "Appeal", please state separately your position on the appeal below:

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I give my 3 minutes to: _____

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Riverside County Board of Supervisors Request to Speak

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SPEAKER'S NAME: ROBERT HOLBROOK

Address: 941 Quarry St

City: Petaluma Zip: 94954

Phone #: 510 329 4918

Date: 10/29/2019 Agenda # 21.1

PLEASE STATE YOUR POSITION BELOW:

Position on "Regular" (non-appealed) Agenda Item:

Support Oppose Neutral

Applicant #2

Note: If you are here for an agenda item that is filed for "Appeal", please state separately your position on the appeal below:

Support Oppose Neutral

I give my 3 minutes to: _____

BOARD RULES

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SHUTE, MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

SARA A. CLARK
Attorney
Clark@smwlaw.com

October 25, 2019

Via Overnight Mail and Email

BLM Director (210)
Attn: Protest Coordinator
20 M Street SE, Room 2134LM
Washington, DC 20003
Email: protest@blm.gov

Via U.S. Mail and Email

Riverside County Board of Supervisors
4080 Lemon St., 5th Floor
Riverside, CA 92501
Email: cob@rivco.org

Russell Brady, Project Planner
Riverside County Planning Department
4080 Lemon St., 12th Floor
Riverside, CA 92501

**RE: Protest Letter and CEQA Comments from the Colorado River Indian Tribes
Regarding the Desert Quartzite Solar Project Final Environmental Impact
Statement/Environmental Impact Report**

To Whom It May Concern:

Shute, Mihaly and Weinberger LLP submits this protest letter on behalf of its client, the Colorado River Indian Tribes ("CRIT" or the "Tribes"), under 43 C.F.R. § 1610.5-2 for the Final Supplemental Environmental Impact Statement/Environmental Impact Report ("FEIS/EIR") for the Desert Quartzite Solar Project (the "Project"). The Firm likewise submits this comment letter to the Riverside County Board of Supervisors pursuant to the California Environmental Quality Act ("CEQA") and State Planning and Zoning Laws. After carefully reviewing the FEIS/EIR and the responses to our comments on the Draft Environmental Impact Statement/ Environmental Impact Report ("DEIS/EIR"), the Tribes have concluded that the FEIS/EIR continues to fail to meet the requirements of the National Environmental Policy Act ("NEPA"), the National Historic Preservation Act ("NHPA"), CEQA, and other federal, state, and local laws.

As noted in the Tribes' comment letter on the DEIS/EIR, CRIT is a federally recognized Indian tribe comprised of over 4,440 members belonging to the Mohave,

10/29/19 21.1
2019-11-145120

October 25, 2019

Page 2

Chemehuevi, Hopi, and Navajo Tribes. The almost 300,000-acre Colorado River Indian Reservation sits astride the Colorado River between Blythe, California and Parker, Arizona. The ancestral homelands of the Tribes' members, however, extend far beyond the Reservation boundaries. Significant portions of public and private lands in California, Arizona, and Nevada were occupied by the ancestors of the Tribes' Mohave and Chemehuevi members since time immemorial. These landscapes remain imbued with substantial cultural, spiritual, and religious significance for the Tribes' current members and future generations. For this reason, the Tribes are deeply concerned about the Project's impacts on cultural and other resources.

CRIT raised several issues with respect to the DEIS/EIR released for this Project on August 10, 2018. FEIS/EIR, Appendix Z at 155-186. In reviewing BLM's response to these comments, it appears that BLM's efforts amount to little more than a summary or recitation of the concerns raised by the Tribes. This effort violates NEPA. 40 C.F.R. § 1503.4; *State of California v. Block*, 690 F.2d 753, 773 (9th Cir. 1982) (lead agency must provide "good faith, reasoned analysis in response" to comments raised on draft environmental review documents) (internal citations and quotations omitted). As BLM staff failed to address the serious concerns raised by the Tribes, CRIT is compelled to file this protest letter seeking additional review.

Moreover, CRIT's comment letter also raised serious concerns under CEQA and other state and local laws. As far as the Tribes can tell, however, Riverside County has not separately considered or addressed these issues. This effort likewise violates CEQA. CEQA Guidelines § 15088(b).

CRIT urges BLM and the County to deny the proposed Project, which has the potential to transform a significant cultural landscape to an industrial one. In the event the Project does move forward, however, the agencies must delay their approval until after numerous incomplete studies, plans, and consultations can be finalized and the serious inadequacies in the FEIS/EIR can be addressed. To proceed otherwise would result in a violation of NEPA, NHPA, CEQA, and other federal, state, and local laws, as discussed below.

The FEIS/EIR Remains Inadequate under NEPA and CEQA

I. The FEIS/EIR Fails to Adequately Analyze or Mitigate for the Project's Impacts on Cultural Resources.

The proposed Project analyzed in the FEIS/EIR is a 450 MW solar project bounded by the McCoy Mountains to the north, the Mule Mountains to the southwest, and the Colorado River to the east. FEIS/EIR at 3.3-1. The southwestern edge of CRIT's reservation is approximately 10 miles from the Project site. Consequently, CRIT is traditionally and culturally affiliated with the Project area as the ancestors of CRIT's Mohave and Chemehuevi members have lived and traveled in the Project area since time immemorial. *See, e.g.*, DEIS at 3.5-6 ("The Patayan cultural materials and archaeological assemblage are recognized as directly ancestral to the contemporary Native American cultures of the region.")

A. The FEIS/EIR Fails to Adequately Analyze or Mitigate for Impacts to the Mule Mountains and Surrounding Area

The Mule Mountain Area of Critical Environmental Concern, "established to manage cultural resources," is located "approximately one mile southwest of the [Project] site." FEIS at 3.16-2. The Mule Tank Discontiguous Rock Art District, P-33-000504 and P-33-00073, is also located one mile southwest of the Project. FEIS at 4.5-6. As BLM recognized in establishing this ACEC and in adopting the DRECP, the Mule Mountains have tremendous cultural significance for area tribes, including CRIT.¹ Because of this, the proximity of the proposed Project to the Mule Mountains, also known as Avi Ismalyk, is alarming to the Tribes. The dance circles, trails, petroglyphs, and intaglios associated with Avi Ismalyk play an integral role in Mohave cultural and spiritual beliefs, in addition to the plants and animals of the area. The landscape is identified in Mohave songs and stories. The DEIS acknowledges this connection:

"Mojave religious beliefs were especially well developed and emphasized a basic connection between the natural world and the world of the supernatural . . . During [dream state] travels, the Mojave would see important places and identify key geographical locations where certain important springs or mountains were situated. . . Oral traditions of the Mojave people are generally rich with detail, with mythical occurrences commonly associated

¹ Relevant documents available at:

https://www.drecp.org/finaldrecp/lupa/Appendix_B/Colorado%20Desert%20Subregion_AppB.pdf.

with identifiable places and landmarks Many stories are part of traditional song cycles, and the landmarks identified in the stories include those within traditional Mojave territory as well as places in the surrounding region. This strong identification with the landscape of traditional Mojave territory continues today.” DEIS at 3.5-13.

Indeed, BLM recently recognized “the area of dense cultural resources associated with the Mule Mountains south of Blythe” in its environmental review of the proposed Ten West Link Project. That proposed project would have run along the southwestern edge of the Desert Quartzite Project right of way, in the area immediately adjacent to the Mule Mountains. To avoid some impacts to the Mule Mountains, BLM specifically selected an alternative that avoided the area entirely, sticking close to the I-10 Corridor and the agricultural fields near Blythe. *See* Ten West Link EIS at ES-4.²

While the Tribes appreciate that effort to avoid cultural resource impacts, CRIT must continue to voice its opposition to the development of this Project in any form on this sensitive landscape. As this letter describes further below, the Tribes remain troubled by the Project’s potential to remove, damage, or destroy cultural resources and artifacts. These resources are sacred and finite, and together make up the cultural footprint of the Tribes’ ancestors. According to the belief system of CRIT’s Mohave members, the disturbance of any cultural resources affiliated with their ancestors is taboo, and thus considered a severe cultural harm. CRIT therefore cannot support any project that will likely result in the disturbance or destruction of cultural resources and artifacts.

Moreover, despite the FEIS/EIR’s attempt to downplay the possibility of unanticipated cultural resource discoveries, CRIT has every reason to fear that cultural resource impacts will be worse than the analysis predicts. As the DEIS acknowledged, the Project area is in a region of significant prehistoric human activity. *See, e.g.,* DEIS at 3.5-5, 3.5-7 to -8 (“The trail network connected not only major pilgrimage locations, but also villages, springs, and important resource collection areas . . . including village sites in the study area . . .”). This not only increases the likelihood that previously undiscovered resources will be unearthed during Project construction but enhances the cultural significance of this landscape to Tribal members as a means of connection to their ancestors. This is a high stakes location for cultural resource discoveries and for significant cultural harm if those resources are disturbed. CRIT has seen that pattern play out all too often with projects like Genesis Solar, in which almost 3,000 cultural artifacts

² Document available at: https://eplanning.blm.gov/epl-front-office/projects/nepa/59013/20003312/250003944/Final_EIS_Ten_West_Link.pdf.

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were collected from the site during development and are now being stored in a museum hundreds of miles away where CRIT's members are not even allowed to view them. BLM's reliance on the archaeological surveys conducted for the Genesis project does little to alleviate the Tribes' fears. FEIS/EIR at 3.5-2.

In addition, and as discussed further below, the area surrounding Mule Mountains is important not just because of the presence of physical artifacts, but because of the status of this area as a uniquely sacred cultural landscape.

Despite the Tribes' grave concerns and the close proximity of the Project to such a sensitive cultural resource area, the FEIS/EIR continues to repeatedly elevate potential direct impacts to archaeological resources above all other potential harms. For example, the FEIS/EIR concludes that the Project "will not have an adverse effect to the Mule Tank District" because the Rock Art District is "located outside of the Project area." *See, e.g.*, FEIS at 4.5-6. Yet, this analysis fails to consider the risks to cultural resources that come from being in the vicinity of a large development: vandalism, destruction, visual intrusion, loss of cultural value and tribal connection to the landscape, etc. Such impacts will be exacerbated by the inclusion of a southeastern access road, which will bring workers and potentially members of the public closer to sensitive resources in the Mule Mountains. FEIS/EIR at 2-6 (noting 0.7 miles of new road along the southeastern boundary). The FEIS/EIR analysis must be revised to adequately consider these impacts.

BLM's response to comments dismisses these concerns as merely "speculative and not supported by evidence, substantial or otherwise." FEIS/EIR, Appendix AA at 85 (Index No. 19-4). BLM deems it satisfactory that "[c]onstruction activities and workers will be within the Project fence line and the Project will only provide access to cultural sites as needed to replace existing access that might be impaired by development." FEIS/EIR, Appendix AA at 85 (Index No. 19-4). However, this does not take into account of potential impacts to the sensitive cultural area surrounding the Project. Instead, BLM relies on the belief that "laws in place to protect resources and property will be obeyed." FEIS/EIR, Appendix AA at 85 (Index No. 19-4). This response does not address CRIT's specific concerns and is therefore inadequate. Moreover, this response is inconsistent with other BLM statements recognizing the potential for indirect impacts such as vandalism, destruction, and visual intrusion. *E.g.*, Ten West Link Programmatic Agreement, Attachment 2 (defining indirect effects to include "increased vandalism and looting resulting from increased access" and noting the potential of "additional roads and visitors to the area (construction personnel, recreationists, etc.) [to]

increase opportunities for impacts from pot hunting, vandalism of historic properties, and disruption of spiritually important sites.”).³

Further, BLM states that it will continue to consult Tribes “in the development of mitigation, monitoring, and discovery plans outlined in mitigation measure CULTURAL-5 to address any discoveries during construction and operation of the facility.” FEIS/EIR, Appendix AA at 85 (Index No. 19-4). However, there is no discussion of the parameters for including Tribes within mitigation measure CULTURAL-5 or any indication of what these mitigation plans will actually do. This improper deferral of mitigation violates both NEPA and CEQA. *City of Long Beach v. Los Angeles Unified School Dist.*, 176 Cal.App.4th 889, 915-16 (2009) (“Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR.”); *see also Endangered Habitats League, Inc. v. County of Orange*, 131 Cal.App.4th 777, 794 (2005) (requiring report without established standards is impermissible delay); *Defend the Bay v. City of Irvine*, 119 Cal.App.4th 1261, 1275 (2004) (requiring biological report and compliance with *any* recommendations in the report is impermissible deferral of mitigation measure); *City of Carmel-By-The-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1154 (9th Cir. 1997) (An EIS cannot “omit a reasonably thorough discussion of mitigation measures because to do so would undermine the action-forcing goals of [NEPA].”); *South Fork Band Council of W. Shoshone of Nevada v. U.S. Dep’t of Interior*, 588 F.3d 718, 727 (9th Cir. 2009) (NEPA “require[s] that an EIS discuss mitigation measures, with ‘sufficient detail to ensure that environmental consequences have been fairly evaluated.’”) (citation omitted).

Moreover, much of the traditional value of these cultural resources to the Tribes comes from maintaining the connectivity between cultural resource sites stretching from Spirit Mountain in Nevada to Blythe. The Mule Mountains play a key role in maintaining this connectivity within Tribal members’ ancestral landscape. The Mohave lived all along the river corridor, including the area close to the Mule Mountains. There will thus be cremation sites in this region, given that the Mohave have traditionally been cremated wherever they lived. For these reasons and many others, the connection that Mohave members have to this area and to the broader range of cultural resource sites of which Mule Mountain is a part remains very real. In the response to comments, BLM argues that impacts to landscape connectivity would not substantially burden religion. FEIS/EIR,

³ Document available at: https://eplanning.blm.gov/epl-front-office/projects/nepa/59013/20003308/250003940/Appendix_1-6_and_8_Ten_West_Link.pdf.

Appendix AA at 85 (Index No. 19-4). However, to the extent that this proposed Project and its impacts prevent access to the Mule Mountains for traditional practitioners or destroy the landscape connectivity necessary to traditional cultural practices, and thereby present a substantial burden on their religious free exercise, the federal government violates the Religious Freedom Restoration Act. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 157-159; FEIS/EIR, Appendix Z at 2 (Index No. 1-2) (noting previous vandalism in the area).

B. The FEIS/EIR Incorrectly Determines that All Impacted Cultural Resources Are Valuable for Data Recovery Only.

Despite acknowledging that “the potential for inadvertent discovery of historic resources is considerable and a potentially significant impact of the Project,” the FEIS/EIR relies heavily on mitigation measures that emphasize data recovery and resource curation as a means of alleviating the Project’s effects. FEIS/EIR at 4.5-9. As the FEIS/EIR blithely states, “although an important resource is lost forever [due to Project impacts], some of the information about that resource is retained [through the proposed data recovery].” FEIS/EIR at 4.5-10. For the reasons discussed below, this proposed form of mitigation is not only grossly inadequate, but culturally devastating to Tribal members. BLM’s focus solely on the scientific value of cultural resources violates state and federal law. In the response to comments, BLM continues to assert that “curation is an appropriate measure to mitigate the loss of information those resources possess” and fails to address CRIT’s concerns. FEIS/EIR, Appendix AA at 86 (Index No. 19-5).

1. The Project Will Significantly Impact Prehistoric Cultural Landscapes.

Both state and federal law recognize that cultural resources include cultural landscapes. *See* National Register Bulletin, “Guidelines for Evaluating and Documenting Traditional Cultural Properties”⁴ (“A culturally significant natural landscape may be classified as a site” eligible for the National Register); Pub. Res. Code § 21074(a) (tribal cultural resources include “cultural landscapes”). Indeed, evaluation and protection of such landscapes is necessary to ensure adequate protection of both individual resources and their historic context. Recently, the California Office of Historic Preservation

⁴ Document available at: <https://www.nps.gov/nr/publications/bulletins/pdfs/nrb38.pdf>.

recognized the need for cultural resource professionals working on renewable energy projects to shift focus from a site level to the landscape level of assessment. Sustainable Preservation: California's Statewide Historic Preservation Plan, 2013-2017.⁵ While the FEIS/EIR briefly mentions that cultural landscapes may be protected under new state law (FEIS/EIR at 3.5-21), the FEIS/EIR makes no effort to identify or define any cultural landscapes in the vicinity of the Project. This omission is contrary to law, and not supported by the significant evidence available to the agencies.

BLM does not explain why it has failed to consider the cultural landscapes in its impact analysis. Rather, BLM argues that CRIT failed to identify specific cultural landscapes and the resources they include or identify a defined area that meets the definition of a cultural landscape under the definition provided by the National Parks Service. FEIS/EIR, Appendix AA at 87 (Index No. 19-6). Contrary to BLM's contention, CRIT identified specific examples that would indicate that the Project site should be considered a cultural landscape. Other commenters provided similar information. FEIS/EIR, Appendix Z at 34-35 (Index No. 10-3) (referencing proximity of Coco-Maricopa Trail and Quechan Trail). As previously discussed, the DEIS's cultural resource section likewise reveals abundant evidence to support a cultural landscape eligibility determination. As the DEIS notes "[t]en prehistoric or historic trails are documented within the proposed Project solar facility site or within the vicinity of the Project, [and t]hree prehistoric trails fall within the Project boundaries Ethnographic studies within the Project area have identified trails as having an important economic and spiritual use in both prehistoric and historic times." DEIS at 3.5-7. Other agencies have recently made cultural landscape designations under the NRHP and CRHR in this region based on much the same trail system. *See* Palen Solar Electric Generating System Revised Presiding Member's Proposed Decision (PMPD) at 6.3-34 to -48⁶ (recognizing a California Register of Historic Resources-eligible cultural landscape based on primary trail corridors and "mosaics of contributing elements that may include single archaeological deposits, ethnographic places, or built-environment resources, thematic subgroups or districts of such deposits, places, or resources, thematically pertinent biological populations, or mineral or water resources, and broad expanses of the land that

⁵ Document available at:

https://ohp.parks.ca.gov/pages/1069/files/SustainablePreservation_CaliforniaStatePlan_2013to2017.pdf.

⁶ Document available at:

<https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=09-AFC-07C>
(Document number 201434).

physically, visually, and intellectually bind the unique suite of elements for each mosaic”).

The cultural landscape is the Tribes’ way of life. The trails, which pass through the site, link the petroglyphs and rock shelters found on each surrounding mountain. The ancestors who created the petroglyphs in the boulders each had ties to the area and reasons for doing so and the entire landscape remains important to each tribal member individually and the Tribes collectively.

Instead of addressing CRIT’s concerns, BLM directs CRIT to section 4.5.3.1 (Direct and Indirect Impacts) to demonstrate that it has taken into account cultural resources into its analysis of impacts. FEIS/EIR, Appendix AA at 87 (Index No. 19-6). However, BLM’s claim that it has analyzed the “direct, indirect, and cumulative effects to cultural resources” is undermined by the fact that it has utterly failed to consider the impacts at a landscape level. Project by project, the Tribes’ cultural footprint is being erased and this Project is no exception. The FEIS/EIR’s omission of any discussion of cultural landscapes violates both NEPA and CEQA and is therefore highly prejudicial. The analysis must be revised to properly account for and mitigate these impacts.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 159-160.

2. As the Prehistoric Sites Destroyed by the Project Contribute to Cultural Landscapes, Their Removal Constitutes a Significant Impact.

The California Environmental Quality Act (“CEQA”) requires lead agencies to identify significant impacts to “historic resources” and mitigate these impacts. *See, e.g.*, CEQA Guidelines § 15064.5. Moreover, CEQA *requires* lead agencies to use preservation in place for archaeological resources if feasible, unless other mitigation would be more protective. CEQA Guidelines § 15126.4(b); *Madera Oversight Coal. v. County of Madera*, 199 Cal.App.4th 48, 82-87 (2011).

The FEIS/EIR explains that there are 95 known prehistoric sites, 10 known multi component sites, and 158 known prehistoric isolates within the APE.⁷ FEIS/EIR at 4.5-5. Of those, 10 prehistoric sites are considered by BLM to be eligible under NRHP and/or CRHR criteria. FEIS/EIR at 4.5-6. Though the analysis acknowledges that “[i]f the loss of these resources cannot be fully mitigated, the impacts would be significant,” the proposed mitigation centers almost exclusively on “eligible” resources. FEIS/EIR at 4.5-9. This focus on NRHP/CRHR-eligible resources as the only impacts requiring mitigation is arbitrary and capricious, and not supported by substantial evidence.

Indeed, the FEIS/EIR’s analysis inappropriately silos these archaeological resources. Under its logic, if an individual resource is not *independently* significant, it does not merit protection. In ignoring the connective and cumulative value of these resources, the FEIS/EIR fails to evaluate whether any of these non-eligible prehistoric archaeological sites or isolates contribute to the cultural landscapes discussed in the prior section. Even if these resources are not significant on their own—a characterization that the Tribes do not support—the FEIS/EIR must be revised to evaluate whether these resources are significant because of their contribution to a broader cultural landscape.

The FEIS/EIR’s focus only on “eligible” resources misconstrues state and federal law. The FEIS/EIR must avoid conflating eligibility for the CRHR with significant impacts analysis under CEQA. Impacts to archaeological resources considered non-eligible for listing on the CRHR—perhaps because of their lack of integrity—may nevertheless be significant for CEQA purposes. Pub. Resources Code § 21074(2). Similarly, BLM must not equate significant cultural resources with only those buildings, sites, structures, objects, and districts eligible for inclusions on the NRHP. NEPA guidelines specify that EISs must address impacts to “historic *and* cultural resources” (40 C.F.R. § 1502.16(g) (emphasis added)), thus requiring a more expansive analysis than the one undertaken for National Historic Preservation Act purposes. The FEIS/EIR must be revised to properly consider these resource impacts under CEQA and NEPA, respectively.

⁷ The FEIS/EIR does not make these totals readily apparent, instead providing a piecemeal accounting of survey results. In order to better inform the public regarding potential cultural resource impacts, the FEIS/EIR should be revised to include a concluding paragraph to the Cultural Resources section that clearly sets out the number of prehistoric, historic, and multi-component sites and isolates that will be impacted by each of the Project alternatives.

The agencies fail to respond to any of these concerns. Rather, the response to comments directs CRIT to section 4.5.3.1 of the FEIR/EIS, which only continues to discuss the impacts to cultural resources that are NRHP eligible. FEIS/EIR, Appendix AA at 88 (Index No. 19-7).

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 160-161.

3. The Project Will Significantly Impact Areas of Critical Environmental Concern.

The FEIS/EIR notes that twelve areas of critical environmental concern are located within 20 miles of the Project area. FEIS/EIR at 3.14-3. Seven were designated in 2016 as part of the DRECP and added to the analysis after release of the draft EIS/EIR. *Id.* However, despite the concerns raised by CRIT analysis of the Project's impacts on the five areas of critical environmental concern previously identified, the FEIS/EIR continues to conclude that none of the ACECs will be significantly impacted by the Project. However, BLM provides little to no explanation to support its conclusions, especially with respect to the Mule Mountain ACEC. FEIS/EIR at ES-8, 4.14-4, 4.14-10, 4.16-1, 4.16-2, 4.16-3.

The FEIS/EIR offers no explanation for why the significant cultural resources protected by these ACECs may not be indirectly and adversely impacted by the proposed Project. As demonstrated above, these cultural resources include areas sacred to area tribes, linked to cultural practices, and grounded in the undisturbed cultural landscape. The addition of a massive, industrial system to the area directly adjacent to the Mule Mountains has the real potential to adversely impact these values. However, BLM fails to address any of these concerns. Rather, in the response to comments, BLM directs CRIT to sections 4.16.3.1 and 4.5.3.1 and other sections in the prior DEIS/EIR. FEIS/EIR, Appendix AA at 88 (Index No. 19-8). However, none of these sections have been updated to take into account the issues raised by CRIT. Moreover, CRIT is aware that BLM has been out conducting further cultural resource surveys as recently as late September 2019, and that the further surveying changed BLM's cultural resource designations and mapping to a degree. While the Tribes very much support additional surveying, CRIT is concerned that BLM has not allowed enough time to incorporate any new information into the FEIS/EIR. Indeed, the very fact that BLM was finding additional resources and new information indicates the need for further study to adequately understand the Project's potential cultural resource impacts. Thus, CRIT requests that the agencies undertake further cultural source surveying and consultation, and then consider any new impacts in a revised FEIS/EIR.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 161.

4. The Project Will Significantly Impact Tribal Cultural Resources.

Finally, the FEIS/EIR fails to adequately consider the proposed Project's potential to adversely impact Tribal Cultural Resources, which are specifically protected under CEQA. As the FEIS/EIR explains, "[t]ribal cultural resources (TCRs) include sites, features, places, cultural landscapes, and sacred places or objects that have cultural value or significance to a Tribe. To qualify as a TCR, the resource must either: (1) be listed on, or be eligible for listing on, the California Register of Historical Resources or other local historic register; or (2) constitute a resource that the lead agency, at its discretion and supported by substantial evidence, determines should be treated as a TCR (PRC § 21074(a)(2)). Native American tribes that are traditionally and culturally affiliated with a geographic area can provide lead agencies with expert knowledge of TCRs." FEIS/EIR at 3.5-21. Despite acknowledging CEQA's requirement to consider impacts to Tribal Cultural Resources and despite input from multiple tribes regarding the importance of the cultural landscapes in the Project area, the FEIS/EIR fails to analyze or identify any TCRs in its impact analysis. As further noted in the response to comments, BLM has not yet identified any eligible Tribal Cultural Properties or Places (TCPs) in the FEIS/EIR. FEIS/EIR, Appendix AA at 89 (Index No. 19-9). The FEIR/EIS merely identifies one site as potentially eligible for TCP and TCR designation. FEIS/EIR at 3.5-21.

The agencies argue that BLM is not obligated to seek out TCRs. FEIS/EIR, Appendix AA at 89 (Index No. 19-9). However, this gross omission ignores the wealth of information available to the agencies regarding tribal cultural resources in the vicinity of the Project. This comment letter alone provides substantial evidence upon which the agencies can and should designate Tribal Cultural Resources. Proper consultation with tribes, including CRIT, will further support those designations. BLM contends that it has consulted and continues to consult with CRIT and other affected tribes. However, as further discussed below, neither BLM nor Riverside County has adequately consulted with the Tribes, including about designation of TCRs.

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Additionally, as mentioned above, CRIT is aware that BLM is still conducting site testing as recently as the last week of September 2019, and that these surveys have resulted in BLM expanding a few of the already identified cultural sites near the Project. This further indicates that the FEIS/EIR does not include a complete description of known cultural resources in the project area. Given the significant potential cultural resource impacts of the Project, BLM should take time to finish this surveying and conduct follow-up studies in order to get a better sense of potential resource impacts. This updated information must then be shared with tribes and the public in a revised and recirculated DEIR.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 161-162.

5. The FEIS/EIR Fails to Adequately Analyze Cultural Resource Impacts from Increased Erosion.

The FEIS/EIR recognizes that the geomorphology of the Project area is controlled by fluvial erosion and deposition. FEIS/EIR at 3.7-1. In layman's terms, this means that the site's topography can be modified by annual monsoon rains, in which heavy rains and runoff cause erosion and deposition.

As BLM is aware, such events can exacerbate exposure of cultural resources. At the Genesis Solar Energy Project, annual monsoon rains overwhelmed the project's stormwater drainage plans, resulting in significant erosion and exposure of cultural resources. BLM brought in tribes for consultation, asking what should be done to the resources that were exposed. Overwhelmingly, the response was that BLM should have better reviewed the designs of the project in the first place, to ensure that the project did not exacerbate runoff and erosion.

Unfortunately, it does not appear that BLM has learned this lesson. While the EIR recognizes the potential for flash floods exacerbated by the Project to impact surface or subsurface cultural resources (FEIS/EIR at 4.5-5), it does not appear as the agencies have taken any steps to remediate or address this problem. This omission is magnified by the FEIS/EIR's claim that proposed mitigation measures will reduce the impacts to less than significant. FEIS/EIR at 4.5-7. Given the agencies' failure to discuss any mechanism to address this issue, this conclusion is not supported by the evidence in the record.

Previous comments in record: FEIS/EIR, Appendix Z at 127 (Index No. 15-52), at 262-63 (Index No. 23-13 to -25).

6. The FEIS/EIR Fails to Adequately Mitigate for the Project's Significant Cultural Resource Impacts.

The Tribes continue to have serious concerns about the mitigation measures proposed to reduce the Project's significant cultural resource impacts. The FEIS/EIR relies on numerous mitigation measures to purportedly reduce the Project's significant cultural resource impacts. *See, e.g.*, FEIS/EIR at 4.5-9 to -11. BLM's responses and the mitigation measures are wholly inadequate.

- CRIT reiterates that the only way to truly avoid cultural resource impacts is to deny Project approval outright. Moreover, the FEIS/EIR's emphasis on protecting only NRHP- or CRHR-eligible resources ensures that any avoidance policy will do nothing to prevent the wholesale destruction of countless cultural resources—resources that are significant to CRIT and its members—on the Project site. These isolates and non-eligible resources make up the cultural footprint of many Tribal members' ancestors. Unless avoidance extends to these cultural resources as well, this measure does not provide effective mitigation of the Project's significant cultural resource impacts. BLM failed to provide any response to this concern.
- BLM's proposed mitigation measures emphasize the Western scientific and archaeological value of any given artifact without recognizing the broader cultural value that these resources have for tribes, regardless of their eligibility for a historical registry. The Tribes have seen firsthand how following only “the laws in place” can lead to wholesale destruction of cultural resources, devastating spiritual impacts to tribal members, and the erasure of CRIT's ancestral footprint from the land. In the most recent example, a number of “non-diagnostic” cultural resources have been unearthed during construction of the nearby Desert Harvest project. Rather than allowing the tribal monitors to halt construction, temporarily collect the isolates and other artifacts in harm's way, and allow for reburial at a safe, nearby location, BLM has insisted—per the agency's unwritten “plans and policies”—that the resources not be avoided or removed. This is exactly the type of widespread cultural resource destruction that CRIT fears will happen at Desert Quartzite.
- BLM continues to rely on data recovery, removal of resources, and long-term curation as “mitigation” for impacts to prehistoric cultural resources. *See, e.g.*, Appx. G-41 (“Resolution of adverse effects to historic properties will be developed in consultation and may include research and documentation, data recovery excavations, curation, public interpretation, or use or creation of historic

contexts.”); *id.* (“An example of treatment is data recovery at affected sites.”). BLM attempts to paint data recovery as a way to “teac[h] us about the lives of historic people,” all while ignoring the very real cultural and spiritual impacts on the living descendants of those people. FEIS/EIR at 4.5-10. As CRIT has repeatedly informed BLM, such efforts do not—in any way—mitigate for the significant cultural harms caused by removing the footprint of tribal members’ ancestors from the landscape. Indeed, such measures cause more harm than good. BLM has informed CRIT that it is “required” by law to curate such resources, and that it cannot allow such resources to be reburied or otherwise left on-site. As CRIT has previously explained to BLM, this position is not supported by the Archaeological Resources Protection Act (ARPA), curation regulations, or any ongoing or prior litigation.⁸ Moreover, the U.S. House of Representatives recently passed the La Paz County Land Conveyance Act, H.R. 2630, which specifically authorized reburial of cultural resources unearthed on 8,800 acres of federal land transferred to La Paz County for commercial development. Consequently, the Tribes respectfully requested that BLM reconsider its position on reburial and revise CUL-1, CUL-2, CUL-5, and CUL-7 accordingly. At the very least, the agencies should permit reburial of any isolates or other non-eligible prehistoric archaeological resources. BLM Arizona recently worked cooperatively with CRIT to develop language permitting such reburial at the Ten West Link Transmission Line Project.⁹ And First Solar has offered explicit assurances that it supports such

⁸ In responding to a similar issue on the Ten West Link Transmission Line Project, BLM cited to “ongoing litigation” as a reason why reburial could not be accommodated. Further explanation included citations to CRIT’s challenges to the Blythe and Genesis projects. Both court cases have been resolved, and neither involved a determination regarding the propriety of reburial on public lands.

⁹ Specifically, Programmatic Agreement Section IV.D.1.b provides: “Materials that are archaeological resources under ARPA, NAGPRA materials, or historic properties under the NHPA are subject to the processes and procedures set forth in the applicable laws and regulations. In accordance with 43 C.F.R. 7.33, the BLM land manager may determine that certain materials are not or are no longer of archaeological interest and therefore not considered archaeological resources. For those materials that are determined to not be archaeological resources under 43 C.F.R. 7.33, ***the BLM land manager may determine appropriate conservation measures, including, but not limited to, avoidance, leaving materials in situ or relocated nearest the discovery locale as practicable, reburial,*** (footnote continued on next page)

reburial policies. FEIS/EIR, Appendix Z at 201 (Index No. 20-11). BLM and the County have offered no explanation for why they could not adopt a similar policy here.

- Moreover, BLM's response to comments cites inapplicable laws and regulations. FEIS/EIR, Appendix AA at 90 (Index No. 19-11). The ARPA does not require permits for excavation or removal activities that occur as part of an otherwise lawful activity—which the Project's construction and operation would be. 43 C.F.R. 7.3(a)(6). In this case, the land manager is referred specifically to the Native American Graves Protection and Repatriation Act (NAGRPA), which protects only certain artifacts and allows reburial. 43 C.F.R. 73(a)(6). CRIT strongly requests that BLM reconsider its interpretation of these laws and allow tribal reburial of artifacts as an alternative to long-term curation, at least for previously unknown resources with no formal treatment plan. Examples from other projects highlight CRIT's concerns over BLM's failure to adopt a reburial policy. Most recently, as described above, BLM's failure to adopt a reburial policy for Desert Harvest Solar Project resulted in the destruction of disturbed cultural resources in the area. CRIT seeks to prevent the same type of destruction from occurring at the Project site.
- CRIT next commented that archaeological monitoring and tribal monitoring would be required for all ground disturbing activities, including grading, disc and roll, and pile or stake driving, mechanical excavation, drilling, digging, trenching, blasting, or using high pressure water to cut into the ground. Given that the project site will be disturbed to a depth of 12 feet in some locations (FEIS/EIR at 3.5-1), comprehensive monitoring is necessary. A mitigation measure that fails to use tribal monitors for *all* ground disturbing activities will result in significant impacts, and BLM and the County cannot conclude that partial monitoring will reduce impacts to the extent feasible. To reduce impacts to the extent feasible, tribal monitors must be present for all the activities described above and whenever machines are active. The FEIS/EIR, including CUL-1 (Measure 3), CUL-4, and

curation, or any other measure as the BLM land manager deems appropriate under applicable laws, regulations, and BLM policies related to such activity. Any reburial or conservation decisions will be conducted by or in consultation with the relevant Tribes or their representatives, as provided for in the Tribal Participation Plan.” (emphasis added).

CUL-6, must be revised accordingly. BLM has failed to revise such mitigation measures to take into account CRIT's concerns. Rather, BLM's response to comments indicates that "monitoring protocols will be addressed in monitoring plans." FEIS/EIR, Appendix AA at 90 (Index No. 19-12). Thus, CRIT reiterates that archaeological monitoring and tribal monitoring must be required for all ground disturbing activities and that CUL-1, CUL-4, and CUL-6 are revised accordingly.

- CRIT noted that any historic properties treatment plans and monitoring and discovery plans must be circulated for review and comment in advance of Project approval, so that tribes and the public could evaluate whether the plans minimized impacts and reduced significant impacts to the extent feasible. To date, however, CRIT has not received any treatment, monitoring, or discovery plans. The FEIS/EIR instead proposes to defer the development of historic properties treatment plans and a monitoring and discovery plan until just "prior to the issuance of the NTP or a County Grading Permit." See CUL-2, CUL-5. This deferral is unlawful, particularly because neither CUL-2 nor CUL-5 provides any performance standards or other mechanisms for determining whether these plans are sufficient to mitigate the proposed Project's impacts. *E.g., Communities for a Better Environment v. City of Richmond*, 184 Cal.App.4th 70 (2010); see also 43 U.S.C. §§ 1732(b), 1732(d)(2)(a) (requiring BLM to minimize impacts pursuant to FLPMA). Consequently, the Tribes insist that any historic properties treatment plans and monitoring and discovery plans be developed (in consultation with area tribes), circulated to tribes for further feedback, and revised accordingly—all prior to issuance of a final ROD.
- CUL-4, Procedure 2 states that "[t]he BLM alone shall determine the appropriate treatment for cultural resources on BLM-managed lands." Appx. G-42. In order to comply with the NHPA, CRIT requested that this mitigation measure be revised to state that BLM shall make cultural resource treatment decisions in consultation with local area tribes. Similarly, CRIT requested that CUL-4, Procedure 3 be revised to state that ground disturbance shall not resume in the area of the discovery until this consultation is completed. BLM's response to comments stated that all three components of mitigation measure CUL-4 "specifically state that consultation would occur in the event of post review discoveries." BLM does not respond to CRIT's specific request to update CUL-4, Procedure 2 to explicitly

state that local area tribes should be involved in determining the appropriate treatment for cultural resources on BLM-managed lands, rather than just BLM alone. Additionally, BLM does not respond to CRIT's specific request to update CUL-4, Procedure 3 to explicitly state that ground disturbance *shall not resume* in the area of the discovery until a consultation with local area tribes is completed. These failures render the final mitigation measures inconsistent with the NHPA.

- CRIT noted that BLM has traditionally required tribal representatives participate in the WEAP Training (CUL-7), to educate and ensure that construction personnel can identify tribal cultural resources and other prehistoric properties and requested that mitigation measure CUL-7 be modified to include this requirement. BLM responded to CRIT's request by updating mitigation measure CUL-8, providing for the option for a Native American Tribal Monitor to participate in the training as a trainee. CRIT believes that this update is inadequate; tribal participation in *development and execution* of the WEAP training and other education efforts must be mandatory.
- CRIT next explained that BLM must update CULs -4 and -6 to provide tribal monitors with the authority to halt construction, at least until there can be the opportunity for review by CRS, alternate CRS, or other field staff. Without this power, the tribal monitors will be unable to minimize the potential impacts of the proposed Project. Likewise, CRIT requested that CUL-4 be clarified to provide that tribes must receive notice of newly discovered prehistoric resources within 24 hours of the notification to BLM. Without this time requirement, tribes will be unable to effectively participate in the determination of how to treat any newly discovered prehistoric resource. However, BLM declined to revise these mitigation measures. Rather BLM only indicated that the applicant will develop an archaeological monitoring plan that will be in effect during construction, and that archaeological monitors would coordinate with tribal monitors on discoveries and determine if stopping work is necessary. FEIS/EIR, Appendix AA at 91 (Index No. 19-17). But, as the recent Desert Harvest example shows, those types of monitoring plans can fall short of offering cultural resource protection. In situations where construction or project operations unearth a large number of previously unidentified cultural resources, tribal monitors need the ability to halt construction in order for agencies and tribes to confer and determine the best option to avoid further harm to those resources. Construction equipment and other

machinery can destroy fragile cultural resource items in seconds; it is imperative that tribal monitors be allowed to temporarily stop these activities before the opportunity to protect newly discovered resources is lost. BLM's failure to update the mitigation measures is inadequate, given that otherwise the applicant will have no requirement to ensure that tribal monitors will have the authority to halt construction.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 162-164.

B. The FEIS/EIR Fails to Support Its Conclusion that the Project Will Not Have Cumulative Adverse Effects on Cultural Resources

The FEIS/EIR acknowledges that “[n]umerous significant archaeological and historical resources have been previously discovered within the Project’s broader geographical area, although many are not thoroughly documented.” FEIS/EIR at 4.5-12. Cultural resources represent a direct linkage between present-day tribal members and their ancestors. Removal of these resources from the landscape is removal of the Tribes’ footprint. Once such resources are gone, it will be difficult, if not impossible, for the Tribes to prove that these lands are part of their ancestral homeland, and that their ancestors lived and worked on these lands since time immemorial. This type of wholesale resource destruction erases CRIT members’ connection with the land and causes irreparable spiritual damage to the Tribes. Moreover, BLM’s piecemeal approach of identifying only known cultural resource sites—rather than entire cultural resource corridors, as CRIT has urged—provides an inaccurate sense of these projects’ true cumulative impact on cultural resources in the region. *Communities for a Better Environment v. City of Richmond*, 184 Cal.App.4th 70, 98 (2010) (“CEQA mandates that environmental considerations do not become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.”) (internal quotation marks and citations omitted).

The FEIS/EIR analysis summarizes the cumulative impacts of “seven past projects” in the vicinity of the Project. DEIS at 4.5-12 to -13. Yet, in doing so, the FEIS/EIR provides an inaccurate picture of cumulative cultural resource impacts in three significant ways: (1) by relying on the cultural resource numbers from the various project FEISs, rather than providing information as to how many cultural resources were actually discovered and/or disturbed when those projects were constructed, (2) by focusing solely

on NRHP- and/or CRHR-eligible resources and ignoring non-eligible and isolate discoveries, and (3) by ignoring impacts to cultural landscapes, as discussed above.

As BLM is very aware, it is impossible to predict the location of undiscovered cultural resources and, therefore, actual cultural resource impacts can only be known once project construction has concluded. For the vast majority of the projects that the FEIS/EIR lists in its cumulative analysis, those final impact numbers are readily available. Yet, the agencies instead provide the cultural resource information from the respective project FEISs, effectively guaranteeing that cumulative impacts are understated.

Moreover, the FEIS/EIR's discussion of only eligible resources ignores the broader cumulative cultural impact of these projects for CRIT's members. The disturbance, destruction, and/or removal of any cultural resource—including isolates and non-eligible artifacts—contributes to the steady erosion of Tribal members' cultural footprint from their ancestral landscape. The FEIS/EIR's methodology fails to acknowledge this devastating impact and provides the public with an inaccurate cumulative picture.

Finally, much of this failure comes back to the agencies' refusal to identify and designate the Tribal Cultural Landscapes in the region. Without recognizing the spiritual and environmental connectivity behind these landscapes, the agencies will not have an accurate sense of the Project's cumulative impacts.

Unsurprisingly, given this faulty analysis, the FEIS/EIR then concludes that “the Project's contribution to impacts would not be cumulatively considerable.” FEIS/EIR at 4.5-13. The FEIS/EIR appears to reach this conclusion because the Project's direct destruction of cultural resources is only a small fraction of the overall total of cultural resources in the study area. *Id.* at 4.5-13. But this is the exact circumstance in which a cumulative impact should be recognized—where the individual project's contribution looks tiny on its own, but *together with other projects* represents a significant impact on a resource. *E.g., Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692 (1990). The FEIS/EIR must be revised to recognize the Project's cumulatively significant impact.

The agencies' position is wholly inconsistent with EISs and EIRs prepared for other similar projects. For instance, the California Energy Commission concluded that the Palen Project's impacts on cultural landscapes were cumulatively considerable and could not be mitigated. *E.g., Presiding Member's Proposed Decision* (December 2013), at 6.3-

33.¹⁰ Likewise, BLM recognized that development of renewable energy resources in the I-10 Corridor, as encouraged by the Desert Renewable Energy Conservation Plan, would result in cumulative impacts to cultural resources. DRECP Proposed LUPA and Final EIS IV.25-80¹¹ (“The operation and maintenance of multiple renewable energy projects could result in cumulative, long-term impacts to the visual integrity of prehistoric trails, traditional cultural landscapes, and sacred sites.”). The agencies have provided no colorable reason for a different outcome here.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 164-165.

II. The FEIS/EIR’s Analysis of Impacts to Visual Resources Is Inadequate.

The Visual Resources section of the FEIS/EIR does not address the cultural implications of the Project’s disruption of the visual landscape. While the FEIS/EIR considers impacts to general “viewer groups,” it fails to consider the Project’s visual impact on Tribal members. FEIS/EIR at 3.19-1. The Mule and McCoy Mountains are more than a recreational resource for the Tribes; they have longstanding cultural and spiritual significance as ancestral lands. Any large-scale visual alteration to this space disturbs the sanctity of the outdoor environment, degrades cultural values, and constitutes a significant impact. Despite this special significance, the FEIS/EIR does not mention the visual impact on CRIT members in the Visual Resources section. BLM must consult with the Tribes to determine the full significance of the visual landscape of the Mule and McCoy Mountains as cultural resources, and to explore possible additional or alternative mitigation that would best minimize visual impacts as a whole.

BLM failed to update the Visual Resources section of the FEIS/EIR to take into account of the Project’s visual impacts on Tribal members. Rather, BLM purports to address these concerns by updating Sections 3.5 and 4.5.3.1 to include additional information summarized in the addendums 2 and 3 of the Class III report prepared for the Desert Quartzite Solar Project. FEIS/EIR, Appendix AA at 92 (Index No. 19-19). However, neither of these sections discuss or address the Project’s visual impact on Tribal members and the cultural landscape.

¹⁰ Document available at:

<https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=09-AFC-07C>
(Document Number 201434).

¹¹ Document available at: https://www.drecp.org/finaldrecp/zip_files/Volumes/ (click on “04 Volume IV Environmental Consequences and Effects Analysis.zip” then “IV.25_Cumulative_Impacts_Analysis.pdf”).

Additionally, the FEIS/EIR downplays the visual resources impacts by assigning the Project footprint “a Class III Interim VRM Objective,” despite the fact that the “Project site is located in an area designated as VRI Class II, indicating a high scenic value.” FEIS/EIR at 3.19-2. The Class III designation was reached through a systematic process that documents the landscape through three factors: scenic quality, public sensitivity, and visibility. DEIR at 3.19-3. Each of the three factors is evaluated separately and then combined through an overlay analysis to determine the Class. *Id.* By narrowly focusing on a single factor and describing the scenery as C-Quality, the description in the FEIS/EIR downplays the other two factors. In fact, the project area is assigned a high visual sensitivity level and the distance zone is assigned “foreground/middleground” due to the short distance to I-10 and other local roads. FEIS/EIR at 3.19-2. The sensitivity level is the highest possible and the foreground/middleground is the closest and most disruptive distance zone. It is misleading to only refer to one factor in the Class rating system when describing the impacts on visual resources in the FEIS/EIR. *Id.*

The FEIS/EIR also fails to adequately study the Project’s likely visual resource impacts. The EIS/EIR relies on “key observation points” to evaluate the Project’s likely intrusion into the landscape. However, the Project is modeled in direct sunlight, when the Project is unlikely to result in any glare impacts—the likely greatest impact on the surrounding area. Consequently, the KOPs greatly downplay the potential impacts from the Project.

BLM fails to directly respond to CRIT’s concerns regarding the rating system used to determine the impacts on visual resources. Rather, BLM refers CRIT to the description of the approach in the DEIS/EIR. FEIS/EIR, Appendix AA at 92 (Index No. 19-20). BLM also directs CRIT to Master Response Number 3, which rebuts concerns regarding the need to take into consideration impacts to nearby ACECs and Wilderness Areas by arguing that the VRM classification is based on the “area physically affected by the Project, not the VRM Class Objective(s) on adjacent lands.” FEIS/EIR, Appendix AA at 137-139. Not only does Master Response Number 3 fail to address CRIT’s concerns regarding the misleading nature of the rating system, but it also underscores CRIT’s concerns regarding BLM’s failure to take into account of the visual impacts to nearby ACECs and Wilderness Areas. Moreover, BLM further adds that the current classification for the Project under DRECP is Class IV, and thus, argues that the DEIS/EIR’s evaluation of the project as an interim VRM Class II resulted in a higher level of adverse impact. FEIS/EIR, Appendix AA at 92 (Index No. 19-20). This

justification does not respond to CRIT's concerns that the Project should be analyzed under Class II.

BLM must update the Visual Resources section of the FEIS/EIR to take into account of the Project's visual impacts on Tribal members and evaluate the Project according to VRM Class II management objectives.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 165-166; FEIS/EIR, Appendix Z at 69 (Index Number 11-84).

III. The FEIS/EIR Fails to Recognize the Environmental Justice Impacts of the Project on Tribes.

A. The Environmental Justice Analysis is Overly Narrow.

Under NEPA, BLM must consider, to the extent practicable, whether there is or will be an impact on the natural or physical environment that significantly and adversely affects Native American tribes. Specifically, BLM must consider whether significant environmental effects may have an adverse impact on Native American tribes that appreciably exceeds those on the general population. *See, e.g.*, EPA's 1998 Environmental Justice Guidance; Executive Order 12898. These analyses are required for an adequate consideration of environmental justice impacts.

Similarly, California law requires that local agencies consider issues of fairness and environmental justice in the planning context. *See* Cal.Gov. Code § 11135. "Environmental justice" is defined in the Government Code as "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." Gov. Code § 65040.12(e). Likewise, CEQA and its implementing Guidelines require lead agencies to consider the public health burdens of a project as they relate to environmental justice for certain communities. A 2012 report from the California Attorney General discussing environmental justice concerns under CEQA explained that, "where a local agency has determined that a project may cause significant impacts to a particular community or sensitive subgroup, the alternative and mitigation analyses should address ways to reduce or eliminate the project's impacts to that community or subgroup." "Environmental Justice at the Local and Regional Level: Legal Background," State of CA DOJ, at 4.

As a preliminary matter, Chapter 3.6—which lays the groundwork for the FEIS/EIR’s environmental justice analysis—does not recognize that tribes face unique environmental justice burdens. The Chapter only looks at “demographic and income data [from the Colorado River Indian Reservation] . . . since sections of the Reservation are located in Blythe CCD.” FEIS/EIR at 3.6-1. This Chapter must be revised to specifically evaluate which tribes may be adversely and inequitably affected by the proposed Project, including any potential sociocultural impacts.

In addition, the Environmental Justice analysis fails to recognize that the proposed Project will result in adverse impacts on CRIT that appreciably exceed those of the general population. The FEIS/EIR contains no discussion specific to Native American groups whatsoever, choosing instead to move topically through a number of potential environmental justice issues: Air Resources, Geology and Soils, Hazards and Hazardous Materials, Noise, Recreation and Public Access, Social and Economic Effects, Transportation and Traffic, Visual Resources, and Water Resources. FEIS/EIR at 4.6-2 - 3. Yet, even in its discussion of Social and Economic Issues, the FEIS/EIR limits its discussion to housing and makes no mention of the unique impacts that this kind of development has on tribal groups. FEIS/EIR at 4.6-4.

This gross omission renders the analysis inadequate under federal and state law. Unlike most members of the public, tribal members maintain long-standing ancestral and traditional practices that connect their identities to *specific environments*. Tribal members cannot easily shift their use and enjoyment of public lands to other, non-industrialized areas, as may be the case for many members of the public. Once these ancestral ties are severed, either by the removal of cultural resources or the fencing and development of the entire site, they cannot be regained. Consequently, the FEIS/EIR must be revised to recognize the significant environmental justice impacts of the proposed Project on CRIT and other affected tribes.

The agencies failed to address any of CRIT’s concerns in the FEIS/EIR. Instead, the response to comments states that the agencies already took into account of the environmental justice impacts to CRIT by extending the area of interest to include the Reservation, even though it is situated outside of the area normally considered to be the primary affected area. FEIS/EIR, Appendix AA at 93 (Index No. 19-21). The agencies provide no basis or evidence demonstrating that it took into account of the concerns raised by CRIT. Thus, the FEIS/EIR must be revised to recognize and address the significant environmental justice impacts of the proposed Project on CRIT and other affected tribes.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 166-167.

B. As Mitigation for the Project's Significant Environmental Justice Impacts, the FEIS/EIR Must Consider Preferential Hiring for Both Construction and Permanent Jobs.

BLM had an opportunity to include in the mitigation measure requirements to give employment preferences to Indians, as well as access to any necessary job training programs to ensure performance and experience requirements can be met. However, rather than embracing this opportunity, BLM directed the Tribes to reach out to the applicant for employment information.

One of the most substantial environmental costs of the proposed Project is the destruction of tangible cultural resources and the wholesale transformation of the ancestral homelands of Indian tribes, including CRIT. This cost is borne exclusively by tribal members. To begin to right this imbalance, CRIT urges BLM and Riverside County to adopt a mitigation measure to give employment preferences to Indians, as well as access to any necessary job training programs to ensure performance and experience requirements can be met. The agencies should also adopt mitigation measures that ensure that the project developer sources construction materials from tribal enterprises. CRIT continues to have serious questions as to whether the proposed Project will bring much needed construction and permanent jobs to an area close to the Reservation. At a minimum, CRIT requested additional information about the nature of the jobs related to the Project to ensure that Tribal members may be available for hire.

However, BLM failed to address CRIT's concerns regarding the imbalanced allocation of costs and benefits on tribal members. Rather than affirmatively adopting mitigation measures to address the disproportionate impact on tribal members, BLM merely suggests CRIT to contact the applicant about the selection of a construction contractor and means for applying for construction employment. FEIS/EIR, Appendix AA at 93 (Index No. 19-22). In the response to comments, BLM also claims that mitigation measure CUL-5 includes a Tribal Participation Plan for the Monitoring and Discovery Plan. However, the FEIS/EIR does not include any discussion or reference to the Tribal Participation Plan under mitigation measure CUL-5. Additionally, BLM failed to provide additional information about the nature of these jobs to ensure that Tribal members may be available for hire. BLM's response to CRIT's concerns are inadequate and must be addressed.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 167.

IV. The Project Is Not Exempt from the DRECP and the Western Solar Plan.

BLM entirely ignores the Tribes' specific comment on this issue and instead points to one of its master responses which discusses the plan amendment requirements generally.

The FEIS/EIR claims that the Project qualifies as a "pending" application that is not subject to either the Western Solar Plan or the Desert Renewable Energy Conservation Plan (DRECP). FEIS/EIR at ES-2. The FEIS/EIR justifies this exemption from the Western Solar Plan and DRECP by explaining that "[t]he initial project application was filed before June 30, 2009, the Project is located within a SEZ, and the amendments contemplated by the Desert Quartzite Solar PV proposal either do not affect the project boundaries (e.g., change in project developer) or are related to avoiding resource or land use conflicts or adapting the Project to the third-party-owned infrastructure complaints." *Id.*

However, BLM should not apply these exceptions to the proposed Project. The original ROW grant application—the one that pre-dated the Western Solar Plan and DRECP—was originally filed for 7,245 acres on September 28, 2007. FEIS/EIR at ES-1. As presented in the 2015 Scoping Report, applicant First Solar sought a right-of-way for a 300 MW photovoltaic solar Project on 4,853 acres of public land and 160 acres of private land. Desert Quartzite Scoping Report, May 2015, at 1. Yet, the Project evaluated in the FEIS/EIR seeks approval for approximately 5,115 acres of BLM land and 160 acres of private land. FEIS/EIR at ES-1. Moreover, the parameters of the Project itself appear to have changed, as First Solar now seeks to produce 450 MW using "advances in photovoltaic (PV) solar technology." *Id.* The ROW application has been pending for over a decade, and the FEIS/EIR evaluates a substantially different Project than the one originally proposed in 2007. As such, it should be evaluated under the Western Solar Plan and the DRECP. The DRECP was intended to mitigate impacts across a broad range of development activities, and BLM should be applying the Conservation and Management Actions (CMAs) at every opportunity, regardless of when a project application was first submitted.

Even if BLM views the Project changes as minor, evaluating all ongoing solar projects under these new standards will ensure the type of region-wide, programmatic conservation and consistency that the Western Solar Plan and DRECP were designed to promote. For this reason, BLM should have at least analyzed an alternative that applied

the DRECP CMAs, as the agency recently did in the Palen Solar Project SEIS/SEIR. The Tribes recognize BLM's inclusion of Appendix E, which discusses the Project's relationship to the DRECP, but this is not a substitute for a full and adequate analysis of the application of the DRECP's requirements to the Project within the body of the FEIS/EIR. The FEIS/EIR must be revised to analyze such an alternative. *E.g., Habitat and Watershed Caretakers v. City of Santa Cruz*, 213 Cal.App.4th 1277, 1305 (2013) (Under CEQA, "[a] potentially feasible alternative that might avoid a significant impact must be *discussed* and *analyzed* in an EIR so as to provide information to the decision makers about the alternative's potential for reducing environmental impacts."); *Alaska Wilderness Recreation & Tourism Ass'n v. Morrison*, 67 F.3d 723, 729 (9th Cir. 1995) (NEPA mandates that lead agencies consider feasible alternatives that would reduce the project's significant environmental impacts).

The agencies failed to respond to CRIT's concerns. Rather, the FEIS/EIR directs CRIT to the agencies' rationale for exemption and the manner in which the project and alternatives conform to the DRECP as previously discussed in Appendix B of the DEIS/EIR. BLM also directed CRIT to Master Response 4, which does not address the Tribes' specific concern that the Project is not exempt from the DRECP and the Western Solar Project. The master response merely discusses the plan amendment requirements generally. This omission must be addressed.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 168.

V. The Alternatives Section is Unlawful.

A. The Project's Narrow Purpose Impedes an Adequate Alternatives Analysis under NEPA.

The Tribes are concerned that the purpose and need for the Project was too constrained and that BLM did not adequately consider a reasonable range of alternatives that would result in fewer impacts. In BLM's responses to comments, it failed to explain why it could not analyze a broader range of alternatives, but rather justified its authority to determine the purpose and need of the proposed action. FEIS/EIR, Appendix AA at 140-142.

An agency cannot unreasonably narrow the objective of the proposed action to limit the range of alternatives considered. *See Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1066 (9th Cir. 1998) ("[T]he discretion we have afforded agencies to define the purposes of a project is not unlimited . . . [A]n agency cannot define its

objectives in unreasonably narrow terms.” (internal citations omitted)); *Simmons v. United States Army Corps of Eng’rs*, 120 F.3d 664, 666 (7th Cir. 1997) (“One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing ‘reasonable alternatives’ out of consideration (and even out of existence.)”); *see also Methow Valley Citizens Council v. Regional Forester*, 833 F.2d 810, 815 (9th Cir. 1987) (EIR inadequate for failure to analyze alternative sites).

BLM’s purpose and need for the Project “is to respond to the Applicant’s application under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 USC §1761(a)(4)) for a ROW grant to construct, operate, maintain, and decommission a solar photovoltaic (PV) facility on public lands in compliance with FLPMA, BLM ROW regulations, and other applicable Federal laws, policies and plans.” FEIS/EIR at 1-2. The FEIS/EIR also lists various management objectives the Project would allegedly further. FEIS/EIR at 1-3. While it says that BLM will consider “changing the route or the location of the proposed facilities,” the agency unreasonably narrowed the objective of the proposed action by focusing on this particular application, rather than the public goals of providing renewable energy. FEIS/EIR at 1-7. This narrowing limited the range of reasonable alternatives considered.

BLM states that “[o]ther alternative sites, technologies and methods . . . were considered by the BLM but eliminated from detailed analysis under NEPA.” FEIS/EIR at 2-39. The alternative locations considered were all rejected. FEIS/EIR at 2-41 to -44. Relying on its improperly narrow statement of purpose and need, BLM failed to consider alternative technologies, projects, or locations that could meet the same renewable energy goals as the proposed Project without the same devastating environmental and cultural impacts. The FEIS/EIR analysis must be revised to correct this error.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 168-169.

B. The Alternatives Analysis Is Similarly Inadequate under CEQA.

The Tribes had similar concerns regarding the alternatives analysis under CEQA. And, once again, the agencies failed to respond adequately. BLM’s response to comments directs CRIT to Master Response 5a, which does not address why it could not analyze a broader range of alternatives, but rather justifies its authority to determine the purpose and need of the proposed action.

CEQA requires an EIR to include analysis of alternative locations. CEQA Guidelines, § 15126.6(f)(2). The EIR must ask if “any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location.” CEQA Guidelines, § 15126.6(f)(2). Only if the lead agency concludes that there are no feasible alternatives, may the agency avoid reviewing at least one alternative site. CEQA Guidelines, § 15126.6(f)(2); see *Laurel Heights Improvement Ass’n v. The Regents of the University of California*, 47 Cal. 3d 376, 399-407 (1988) (finding that the EIR should have explored the potential to locate the project somewhere other than the Laurel Heights property; fact that the University owned the Laurel Heights property did not exempt it from analyzing use of other sites). And, if the agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion in the EIR. CEQA Guidelines, § 15126.6(f)(2).

For this reason, Riverside County must take care in crafting its project objectives to ensure that the FEIS/EIR properly considers an adequate range of alternatives. *Cal. Oak Foundation v. Regents of Univ. of Cal.* (2010) 188 Cal.App.4th 227, 277 (“CEQA clearly recognizes the agency will look to the proposed project’s particular objectives when developing its range of project alternatives.”); *Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 196-97 (“The process of selecting the alternatives to be included in the EIR begins with the establishment of project objectives by the lead agency.”); see also CEQA Guidelines §§ 15124(b), 15126.6(f). Yet, here, the County has artificially constrained its alternatives analyses by stating that the purpose of the Project is to “construct and operate a solar energy facility.” FEIS/EIR at 1-2. The County’s basic objectives for the Project cite to a number of state and federal renewable energy goals and orders, including AB 32’s greenhouse gas reduction targets and Secretarial Order 3285A1. While these state laws and policies all emphasize renewable energy and may encourage the development of utility-scale renewable energy projects, they do not require it, particularly when renewable energy projects will have significant and adverse environmental consequences. The FEIS/EIR’s project objectives should include a commitment to protecting cultural and biological resources, as well as the visual integrity of the desert landscape.

Here, the County has failed to adopt the kind of project objectives that allow for the consideration of a broad range of CEQA alternatives. Rather than focusing on the public benefits to be achieved—reduction in greenhouse gas emissions, increased energy independence, and economic development, the County narrowly focuses on “generat[ion of] up to 450 MW of electricity using PV solar technology,” thereby improperly precluding discussion of both distributed generation and disturbed lands alternatives. FEIS/EIR at 1-3. Such a limited range of alternatives violates CEQA’s mandates because

it fails to consider projects that can achieve the same goals as utility-scale solar projects, but with far fewer impacts to cultural and environmental resources. *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings*, 43 Cal.4th 1143, 1166 (2008); *North Coast Rivers Alliance v. Kawamura*, 243 Cal.App.4th 647, 669-70 (2015). Given the agencies' failure to respond to CRIT's concerns, the FEIS/EIR must be revised to correct this inadequacy.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 169-170.

C. The FEIS/EIR Must Be Revised to Include a Reduced Acreage Alternative Located Further from the Mule Mountains.

The agencies likewise should have considered and analyzed a reduced acreage alternative, similar to Alternative 3, located further from the Mule Mountains. As previously discussed, NEPA requires an agency to consider a reasonable range of alternatives. *See Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1065 (9th Cir. 1998) ("The agency must look at every reasonable alternative within the range dictated by the nature and scope of the proposal. The existence of reasonable but unexamined alternatives renders an EIS inadequate.") (citations omitted); *Simmons v. United States Army Corps of Eng'rs*, 120 F.3d 664, 666 (7th Cir. 1997) ("When a federal agency prepares an Environmental Impact Statement (EIS), it must consider 'all reasonable alternatives' in depth."). Similarly, CEQA requires an EIR to evaluate "a range of reasonable alternatives to the project ... which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project." (Guidelines § 15126.6(a).) *See also Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1089 ("While the lead agency may ultimately determine that the potentially feasible alternatives are not actually feasible due to other considerations, the actual infeasibility of a potential alternative does not preclude the inclusion of that alternative among the reasonable range of alternatives."). All of the alternatives considered in the FEIS/EIR are located close to the Mule Mountains. This is extremely concerning for the Tribes, given the Project's potential to remove, damage, and destroy cultural resources and artifacts within the Mule Mountains and the surrounding area and the Project's known indirect impacts to this critical cultural landscape. The agencies have failed to justify or explain why a reduced acreage alternative located further from the Mule Mountains was not considered. Thus, in compliance with NEPA's and CEQA's requirements to consider a reasonable range of alternatives that would reduce significant environmental impacts, FEIS/EIR should be

revised to include a reduced project alternative located further from the Mule Mountains in order to reduce cultural resources impacts.

VI. The Biological Resources Analysis Is Inadequate under CEQA.

The California Department of Fish and Wildlife (“CDFW”) has the authority to regulate projects that may impact species protected by the California Endangered Species Act. Under CEQA case law, the DEIS should have discussed CDFW’s permitting process and any potential mitigation or project modifications that may be required by the agency. Specifically, the EIR project description must include a list of consultation requirements and “to the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.” CEQA Guidelines § 15124(d)(1)(C); *see Banning Ranch Conservancy v. City of Newport Beach*, 2 Cal.5th 918, 936-942 (2017). In *Banning Ranch*, the city ignored its “obligation to integrate CEQA review with the requirements of the Coastal Act” (specifically the Coastal Act’s habitat designation requirements). *Id.* at 936. The Court invalidated the City’s CEQA analysis because the “omission resulted in inadequate evaluation of project alternatives and mitigation measures. Information highly relevant to the Coastal Commission’s permitting function was suppressed. The public was deprived of a full understanding of the environmental issues raised by the Banning Ranch project proposal.” *Id.* at 942.

The FEIS/EIR notes that the California Department of Fish and Wildlife (CDFW) “has the authority to regulate potential impacts to species that are protected under the California Endangered Species Act.” FEIS/EIR at 1-9. It further mentions CDFW’s jurisdiction over modifications to stream and lake beds under § 1602 of the California Fish and Game Code, as well as CDFW’s oversight of certain native plant harvesting activities. *Id.* The FEIS/EIR acknowledges that the Project applicant will need to comply with the requirements of a “Streambed Alteration Agreement . . . independent of and in addition to mitigation measures included in the PA/EIS/EIR,” and also notes the possibility of CDFW requiring an Incidental Take Permit for species impacts and/or a permit for removal of native plants. *Id.*

However, the FEIS/EIR analysis fails to discuss the results of its consultation with CDFW for the project. Indeed, the only discussion of consultation is a declaration that it “will occur” in the future. FEIS/EIR at 1-22. The FEIS/EIR includes an analysis of areas potentially subject to jurisdiction under CDFW’s Streambed Alteration Program in Appendix N but contains no substantive discussion of the additional mitigating requirements that will be imposed through consultation with and permitting from CDFW. Similarly, the FEIS/EIR discusses mitigating actions, such as selection of Mojave desert

tortoise translocation areas, that will be “approved through the ESA Section 7 consultation process, and via the development of the Project’s Desert Tortoise Translocation Plan (Mitigation Measure WIL-2).” FEIS/EIR at 4.4-6. Yet, where that consultation has not yet taken place, and the results of said consultation and its resulting plans are not included in the FEIS, this delay undermines the functions of both CEQA and NEPA—to inform both the decisionmakers and the public as to the true environmental impacts of the Project. 40 C.F.R. § 1502.1; CEQA Guidelines § 15002(a)(1). As in *Banning Ranch*, where there was “ample evidence” that sensitive coastal habitat was present, here there is ample evidence of occupied habitat for a number of sensitive species, and “the decision to forego discussion of these topics cannot be considered reasonable.” See *Banning Ranch*, 2 Cal. 5th at 937; FEIS/EIR at 4.4-5.

The response to comments notes that CDFW actively participated during the development of the DEIS/EIR and resulting mitigation measures since the beginning of the project. However, the FEIS/EIR fails to include analysis or substantive discussion of CDFW’s participation and the results of that participation. The FEIS/EIR must be revised to discuss the consultation with CDFW and compliance with its requirements, as well as those of any other local, state, or federal agency with jurisdiction over the Project. Unfortunately, the agencies have failed to complete this consultation, or include discussion of any consultation in the FEIS/EIR, before the final environmental review document was issued so that decisionmakers and the public are fully informed of Project impacts. Until it does so, the FEIS/EIR’s conclusions that biological impacts will be less than significant are unsupported.

The FEIS/EIR also fails to acknowledge the cultural significance of these desert species to local tribes—either in the cultural resources analysis or the biological impacts discussion. A number of the animals at greatest risk from the proposed project (Mojave desert tortoise, Mojave fringe-toed lizards, golden eagles, Western burrowing owls, American badgers, desert kit foxes, and other various birds) are important to tribal culture because they hold power and spiritual value in Native American, including Mohave, belief systems and oral traditions. The CEQA Guidelines explain that a historic resource need not be eligible for the California Register of Historical Resources (“CRHR”) to be a “historic resource” under Public Resources Code sections 5020.1(j) or 5024.1; “historic resources” thus require a more expansive analysis than the one required under the CRHR criteria. CEQA Guidelines § 15064.5(a)(4). Such resources necessarily include viewsheds and landscapes, plants and animals used in and/or central to cultural and religious practices and creation stories, and religious and customary practices (e.g., hunting and gathering, religious ceremonies, and trailwalking). The FEIS/EIR must be revised to

apply the correct definition of cultural resources for this Project and properly analyze these impacts.

A number of the plants at the project site also hold cultural value for CRIT. For example, the FEIS/EIR explains that “[v]egetation in the Project area is primarily composed of creosote scrub and open desert.” FEIS/EIR at 3.19-1. Creosote has topical and internal medicinal purposes for tribal members and was traditionally used by Mohave and Chemehuevi craftspeople for a number of utilitarian purposes, including waterproofing of baskets, cordage objects, and pottery. Once these and other desert sensitive plants have been destroyed through surface disturbing activities, this loss of traditional cultural lifeways cannot be readily mitigated.

The agencies fail to respond to CRIT’s concerns about acknowledging and taking into account the cultural significance of these desert species to local tribes. Rather, the FEIS/EIR references discussion of impacts to wildlife, viewsheds, and vegetation that was previously included in the DEIS/EIR. FEIS/EIR, Appendix AA at 96 (Index No. 19-27). The agencies also assert that their definition of cultural resources, which they deem compliant with California Resources Code section 21074, does not include natural resources and therefore fails to take into account CRIT’s concerns about the previously discussed wildlife and vegetation. FEIS/EIR, Appendix AA at 96 (Index No. 19-27). The FEIS/EIR analysis must be revised to consider these impacts to culturally significant species.

Moreover, CRIT continues to have serious concerns that the piecemeal mitigation measures proposed in the FEIS/EIR will adequately alleviate the tremendous stress that these large-scale renewable energy projects place on sensitive desert species. Much of FEIS/EIR’s analysis of potential biological impacts relies on surveys to determine what species are present in the Project area, yet this methodology does not necessarily capture the extent to which other solar projects in the vicinity have already destroyed habitat and impacted the future viability of these desert species. BLM fails to address these concerns in the FEIR/EIS, but rather responds by referencing a discussion of cumulative impacts to biological resources as analyzed in the DEIS/EIR. FEIS/EIR, Appendix AA at 96 (Index No. 19-27). The FEIS/EIR analysis must be revised to consider these devastating impacts.

Finally, CRIT is concerned about the breadth of legal issues raised by other organizations and agencies in the record regarding biological resources on and near the Project site. For example, Basin and Range Watch and Western Watersheds Project highlight serious discrepancies in the description of existing biological resources, raising

concerns that the agencies lack an adequate baseline by which to compare the Project's potential impacts. They also raise significant questions about the FEIS/EIR's analysis of the lake effect and its impact on imperiled and culturally important avian species.

The Desert Tortoise Council likewise provides significant information about the status and potential recovery of the desert tortoise. Their comments highlight inappropriate deferral of studies and mitigation measures, lack of study of some important aspects of tortoise recovery, such as heat island impacts, weedy vegetation management, roads, and edge effects.

The Center for Biological Diversity notes that the FEIS/EIR fails to take the necessary "hard look" at the potential impacts of the proposed Project, including impacts to the desert tortoise, the Mojave fringe-toed lizard, the sand transport system, burrowing owls, migratory birds, badger and desert kit foxes. They also criticize the agencies for failing to provide necessary mitigation in the FEIS/EIR, instead choosing to defer development of numerous plans to a future date, outside of the public process.

The California Native Plant Society documents numerous inadequacies with the FEIS/EIR's analysis of impacts to California's native plants. The letter raises concerns that the Project inadequately mitigates for impacts to rare species such as Harwood's eriastrum, Harwood's milkvetch, ribbed cryptantha, and sensitive natural communities.

The Tribes have reviewed the agencies' responses to these comments, and largely finds them to be inadequate and unpersuasive. As with cultural resources, the agencies largely refer the commenter's back to the exact analysis in the EIS/EIR previously criticized as inadequate. Little to no explanation is given as to why the agencies believe the comments are incorrect or unjustified. Without this information, CRIT is left to conclude that the biological resource analysis and mitigation measures is unlawful, as described in the referenced comment letters.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 170-172. FEIS/EIR, Appendix Z at 40-71, 74-97, 100-137, 143-150.

VII. The FEIS/EIR Improperly Narrows the Analysis of Growth-Inducing Impacts from the Project.

An EIR must discuss the ways in which the proposed project could foster growth-inducing impacts. Pub. Resources Code § 21100(b)(5); CEQA Guidelines §§ 15126(d), 15126.2(d). The FEIS/EIR limits its analysis of growth-inducing impacts to population

growth, housing capacity, infrastructure, and service capacity. FEIS/EIR at 5-5 to -6. However, CEQA requires an agency to also “discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively.” CEQA Guidelines § 15126.2(d).

The FEIS/EIR should consider the characteristic of this project to induce further solar development. Specifically, the construction of the gen-tie line may “encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively.” *See* CEQA Guidelines § 15126.2(d). Similarly, the viability of the proposed project could also serve to attract new project applicants to the area or ease the way for approval of other nearby projects, such as Crimson Solar. The analysis must consider future solar projects, which are constructed due to the growth-inducing effect of this Project, and their impacts to the environment.

The agencies fail to address CRIT’s concerns in the FEIS/EIR. Rather, they continue to justify their conclusion that the Project will not have significant growth-inducing impacts. The FEIS/EIR states that the Project site was selected for solar development due to its proximity to the existing Colorado River Substation (CRSS) and transmission lines. The Project’s proximity to the CRSS and transmission lines only suggests that there may be future solar projects, given the applicant’s stated desirability of the location. Further, without presenting any evidence, the FEIS/EIR states the Project will not “create a need for power, or for renewable power sources.” FEIS/EIR, Appendix AA at 96 (Index No. 19-29). The agencies also reason that the Project will not “provide substantial infrastructure that could be used by other facilities, so does not encourage additional applications.” FEIS/EIR, Appendix AA at 96 (Index No. 19-29). Without any evidence to support its justifications, CRIT’s concerns continue to remain unaddressed. Given these completely unanalyzed impacts, the Tribes’ protest should be sustained.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 172.

VIII. Neither BLM Nor Riverside County Has Adequately Consulted with the Tribes.

As detailed in the Tribes comment letter on the DEIS/EIR, government-to-government consultation for this Project has been inadequate. In May 2016, the Colorado River Indian Tribes adopted a government-to-government consultation policy to manage its relationship with federal agencies. *See* FEIS/EIR, Appendix Z at 174-79. CRIT requested that each federal agency acknowledge the policy prior to conducting government-to-government consultation with its Tribal Council. The Tribes informed BLM that it would

not meet with BLM decisionmakers until BLM acknowledged the policy. The purpose of this request was to ensure that BLM was aware of CRIT's definition of adequate consultation *prior* to spending the time and resources engaging in consultation. Contrary to responses to comment, CRIT has not yet received any indication that the BLM office responsible for this Project acknowledged the policy.¹² While CRIT is very open to conducting in-person, government-to-government consultation with BLM regarding this Project, any consultation meeting would need to include acknowledgment and discussion of this policy.

The FEIS/EIR describes a June 10, 2015 field visit with CRIT in which three members and one elder were in attendance. FEIS/EIR at 6-3. The FEIS/EIR further discusses the Tribes' August 29, 2016 letter "notifying the BLM of their intent to conduct additional tribal surveys," and the presence of a CRIT monitor during the additional April 2018 testing. FEIS/EIR at 6-4. Yet, despite having received the Tribes' consultation policy and a written request from CRIT for Section 106 government-to-government consultation in an April 2015 letter, BLM has failed to fulfill its obligations under the law to engage in this meaningful consultation with CRIT. In its analysis of whether the Project would cause a substantial adverse change to a resource identified through consultation with any California Native American tribe that requests consultation, BLM mentions only its consultation with Twenty-Nine Palms Band of Mission Indians Tribe. FEIS/EIR at 4.5-11. Despite the Tribes' repeated requests for Section 106 consultation on this Project, BLM only reached out to CRIT to set up government-to-government consultation in September 2018, once the DEIS had already been issued. FEIS/EIR at 6-5. Such a delay defeats the purposes of Section 106 consultation, which is meant to give tribes an opportunity to provide valuable input that will be meaningfully considered in the planning process. *See* 36 C.F.R. § 800.1(c) ("The agency official shall ensure that the section 106 process is initiated *early in the undertaking's planning*, so that a broad range of alternatives may be considered during the planning process for the undertaking."); *see also* FEIS/EIR, Appendix Z at 174-79. Waiting until the DEIR has already been issued and much of the analysis has already been undertaken is not in keeping with BLM's consultation responsibilities.

In response, BLM asserts that it reviewed CRIT's consultation policy and the District Manager, California Desert District, sent a response letter to CRIT. However, the Tribes did not receive this letter of acknowledgment. Rather, during a 2016 Moreno Valley meeting between CRIT's THPO staff and Palm Springs Field Manager Doug

¹² Other BLM offices, including the BLM Arizona State Office, have officially acknowledged the CRIT Policy.

Herrema, CRIT staff were told that BLM's federal offices had specifically instructed the agency *not* to acknowledge CRIT's consultation or reburial policies. Thus, CRIT once again renews its request that BLM acknowledge the consultation policy and engage in meaningful consultation about the Project. Until this request is complied with, the onus is on BLM for the lack of adequate consultation.

The FEIS/EIR also contends that consultation under AB 52 is not applicable to the proposed Project because the date of the NOP pre-dated the effective date of AB 52. *See* FEIS/EIR at 1-22, 3.5-7. Nevertheless, the FEIS/EIR notes that "the County did consult with interested Tribes" after "[n]otices regarding the Project were mailed to 11 Tribes who had requested notifications regarding projects located within their Traditional Use Areas." FEIS/EIR at 3.5-7. BLM states that it re-sent the original September 12, 2016 letter by e-mail on February 21, 2019. However, to the best of our knowledge, CRIT did not receive this letter. Please provide a copy of the 2016 correspondence.

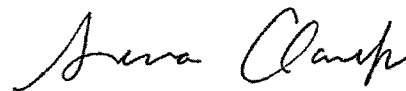
Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 172-173; FEIS/EIR, Appendix Z at 265 (EPA urging adequate consultation with tribes).

Conclusion

CRIT urges BLM to abandon this ill-conceived Project altogether. In the absence of a No Project alternative, the Tribes ask that BLM revise the Final EIS/EIR to correct the many identified violations of federal and state law to address the concerns of CRIT and other affected Tribes. Thank you for your consideration. Please copy the Tribes' Attorney General, Rebecca A. Loudbear, at rloudbear@critdoj.com, Deputy Attorney General Antoinette Flora, aflora@critdoj.com, and Acting THPO Director Bryan Etsitty, at betsitty@crit-nsn.gov, on all correspondence to the Tribes.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Sara A. Clark

NOTICE: This communication is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this communication is not the intended recipient or the employee or agent responsible for delivering this communication to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by reply email or by telephone and immediately delete this communication and all its attachments.

From: Crystal Ludlow <CLudlow@smwlaw.com>
Sent: Friday, October 25, 2019 3:57 PM
To: COB <COB@RIVCO.ORG>
Cc: Sara A. Clark <Clark@smwlaw.com>; Gibbons, Tori <Gibbons@smwlaw.com>; Rica Garcia <RGarcia@smwlaw.com>; rloudbear@critdoj.com; AFlora@critdoj.com
Subject: Protest Letter and CEQA Comments from the Colorado River Indian Tribes Regarding the Desert Quartzite Solar Project Final Environmental Impact Statement/Environmental Impact Report

Good Afternoon,

Attached please find correspondence regarding the above-referenced matter.

Crystal Ludlow
Legal Secretary
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102-4421
v: 415/552-7272
www.smwlaw.com

Please consider the environment before printing this e-mail or attachments.

Maxwell, Sue

From: Maxwell, Sue
Sent: Monday, October 28, 2019 10:24 AM
To: Russell Brady (rbrady@RIVCO.ORG); COB-Agenda (COB-Agenda@rivco.org); George Johnson (GAJohnson@RIVCO.ORG); Leach, Charissa (cleach@RIVCO.ORG); Perez, Juan (JCPEREZ@RIVCO.ORG); Young, Alisa; District 4 Supervisor V. Manuel Perez (District4@RIVCO.ORG); District2; District3; District5; Supervisor Jeffries - 1st District (district1@rivco.org)
Subject: October 29, 2019 Item No 21.1 - Public Comment Opposing Quartzite Solar, Ordinance 664.62 (Shute, Mihaly & Weinberger LLP)
Attachments: DESQ Protest Letter on FEIS_EIR (10-25-19).PDF

Please see attached for the October 29, 2019 Board Hearing, Agenda Item No 21.1 (MT 11108), which has been printed and included with Agenda back-up.

Thank you kindly,

Sue Maxwell
Board Assistant
Riverside County Clerk of the Board of Supervisors
(951) 955-1069 Fax (951) 955-1071
cob@rivco.org



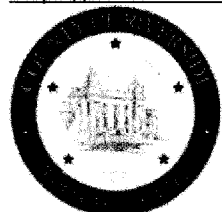
From: COB
Sent: Monday, October 28, 2019 10:16 AM
To: 'Crystal Ludlow' <CLudlow@smwlaw.com>
Cc: Sara A. Clark <Clark@smwlaw.com>; Gibbons, Tori <Gibbons@smwlaw.com>; Rica Garcia <RGarcia@smwlaw.com>; rloudbear@critdoj.com; AFlora@critdoj.com
Subject: RE: Protest Letter and CEQA Comments from the Colorado River Indian Tribes Regarding the Desert Quartzite Solar Project Final Environmental Impact Statement/Environmental Impact Report

Good morning,

The Clerk of the Board of Supervisors is in receipt of your letter sent via email regarding Quartzite Solar and Ordinance 664.62, and has included it in the record for October 29, 2019.

Sincerely,

Sue Maxwell
Board Assistant
Clerk of the Board of Supervisors
4080 Lemon Street, 1st Floor, Room 127
Riverside, CA 92501
(951) 955-1069 Fax (951) 955-1071
Mail Stop #1010
cob@rivco.org
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<https://www.facebook.com/RivCoCOB/>



Maxwell, Sue

From: Perez, Juan
Sent: Tuesday, October 29, 2019 8:17 AM
To: Maxwell, Sue; Brady, Russell; COB-Agenda; Johnson, George; Leach, Charissa; Young, Alisa; District 4 Supervisor V. Manuel Perez; District2; District3; District5; Supervisor Jeffries - 1st District
Subject: RE: October 29, 2019 Item No 21.1 - Public Comment Opposing Quartzite Solar, Ordinance 664.62 (Shute, Mihaly & Weinberger LLP)
Attachments: Memo to BOS Item 21.1 Response to CRIT Comments.pdf

Supervisors,

Attached is the response memo to this 37-page letter that we received yesterday. Thank you.

Juan C. Perez
Assistant CEO – TLMA Director
Transportation and Land Management Agency
County of Riverside
JCPerez@RIVCO.org
951-955-6742



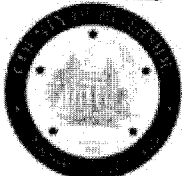
How are we doing? Click the link to tell us

From: Maxwell, Sue
Sent: Monday, October 28, 2019 10:24 AM
To: Brady, Russell <rbrady@RIVCO.ORG>; COB-Agenda <COB-Agenda@RIVCO.ORG>; Johnson, George <GAJohnson@RIVCO.ORG>; Leach, Charissa <cleach@rivco.org>; Perez, Juan <JCPEREZ@RIVCO.ORG>; Young, Alisa <AYOUNG@co.riverside.ca.us>; District 4 Supervisor V. Manuel Perez <District4@RIVCO.ORG>; District2 <District2@Rivco.org>; District3 <District3@Rivco.org>; District5 <District5@Rivco.org>; Supervisor Jeffries - 1st District <district1@RIVCO.ORG>
Subject: October 29, 2019 Item No 21.1 - Public Comment Opposing Quartzite Solar, Ordinance 664.62 (Shute, Mihaly & Weinberger LLP)

Please see attached for the October 29, 2019 Board Hearing, Agenda Item No 21.1 (MT 11108), which has been printed and included with Agenda back-up.

Thank you kindly,

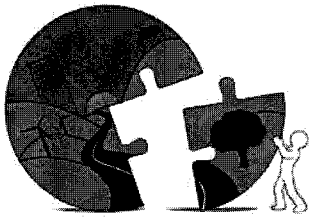
Sue Maxwell
Board Assistant
Riverside County Clerk of the Board of Supervisors
(951) 955-1069 Fax (951) 955-1071
cob@rivco.org



From: COB
Sent: Monday, October 28, 2019 10:16 AM
To: 'Crystal Ludlow' <CLudlow@smwlaw.com>

Comment: Failure to recognize the spiritual and environmental connectivity behind cultural landscapes results in an inaccurate sense of the Project's cumulative impacts.

Response: Ultimately, a lead agency's analysis under CEQA must be grounded in substantial evidence. Passing references to trail networks and observations that something that is not listed in a register may still be historic do not give an agency enough of an evidentiary basis to understand the potential significance of a resource and how another Project might need to be modified or mitigated for in response. It is not the CEQA lead agency's job to go out and study every commenter's concern. The onerous is on the commenter to come up with at least some substantial evidence in support of the impact they allege.



RIVERSIDE COUNTY PLANNING DEPARTMENT

Charissa Leach, P.E.
Assistant TLMA Director

Memorandum

DATE: October 29, 2019
TO: Board of Supervisors
FROM: Russell Brady, Project Planner
RE: Item 21.1 – Response to CRIT Comments

A letter from Shute, Mihaly and Weinberger LLP representing the Colorado River Indian Tribes (CRIT) was submitted to staff and the Board of Supervisors yesterday with comments on the Desert Quartzite Final EIS/EIR. Staff and the applicant's team have reviewed the comments and provide the following responses to include for the record. The comments made and the responses provided by staff do not require any further revisions to the CEQA analysis or the recommendations of staff.

As an initial matter, it is worth noting that while CEQA requires the lead agency to consider the whole of the action, including necessary project components it cannot control, the 2,782 acre solar project includes only 160 acres of private land within the County's jurisdiction. The County has no authority over the BLM, which manages the remaining public lands. The County cannot, for example, require BLM to consult with Native American tribes or permit reburial of isolate artifacts on public lands. Furthermore, although the language of the Desert Renewable Energy Conservation Plan (DRECP) clearly exempts the Desert Quartzite Project as proposed, and logically any smaller alternative ultimately adopted, it is not the County's place to tell BLM how to apply its land use plan on public lands, even if it had a different interpretation.

Several comments allege that the scope of Project alternatives was too narrow. CRIT claims that the agencies should have considered a DRECP-compliant alternative and an alternative further away from the Mule Mountains. These alternatives are not, however, tied to significant, otherwise unmitigated impacts of the Project.

There is no *per se* rule that agencies must consider alternative project locations. Instead, a rule of reason governs the range of alternatives under CEQA, with the goal being to identify *feasible* alternatives that further informed decision making. An agency need not consider alternatives that (i) fail to meet most of the basic project objectives, (ii) are infeasible, or (iii) cannot avoid significant environmental impacts. In addition, offsite alternative proposals must be specific enough to allow the lead agency to assess their feasibility and impacts.

The significant, unavoidable environmental impacts of the Project include air impacts during construction and visual/aesthetic impacts from certain view points in the McCoy and Mule Mountains. The comments fail to explain how a DRECP-compliant alternative could address these impacts, especially given that the DRECP identified the project area as a preferred site for solar development compared to the other

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areas within BLM's jurisdiction with higher resource values that were conserved as part of the plan. Indeed, under the DRECP, the VRM Class for the Project would be IV and the area would allow a contrast demands that attention, will not be overlooked, and is dominant in the landscape. In some instances, including ones relevant to the CRIT's protest, the DRECP would allow more significant impacts. The comment furthermore ignores that because the existing alternatives largely complied with the DRECP (some almost entirely), there would be limited marginal benefits to a DRECP-compliant alternative, as concluded in the EIS/EIR. Similarly, the comments are not specific enough regarding a "farther from the Mule Mountains" alternative to assess feasibility. Given the transmission constraints and size requirements of utility-scale solar projects, alternative sites are limited. The fact that BLM has limited the options for solar development through the DRECP further constrains the areas in the County where such projects can be developed.

Other more specific new comments, and responses, include the following:

Comment: The inclusion of a southeastern access road will bring workers and potentially members of the public closer to sensitive resources in the Mule Mountains, which may be impacted by vandalism, destruction, visual intrusion, and loss of cultural value and tribal connection to the landscape.

Response: The Project is not proposing to build new roads in the southeastern area. The Project will in fact close roads. (4.14-2 to 4.14-4). The project impacts one route across the southern end of the project that provides access to the Mule Mountains through two routes that will also be closed. Multiple existing routes will facilitate access to the Mule Mountains from 22nd Ave instead of 20th Ave. There is low use of these existing routes and increased use as a result of the Project is not expected. As for workers, they will be within the fence of the Project and the Project thus will not provide convenient access to the Mule Mountains.

Comment: The plans required by CULTURAL-2 and CULTURAL-5 are not specific enough regarding the role of Tribes and other issues to be addressed and constitute deferred mitigation.

Response: CULTURAL-2 requires a Historic Properties Treatment Plan ("HPTP") and CULTURAL-5 requires a Monitoring and Discovery Plan ("MDP"). The contents of the MDP are set forth in detail in CULTURAL-1 and CULTURAL-5. As for the HPTP, CULTURAL-2 provides examples of treatments that might be included in the plan once it is developed and approved by relevant decision makers. Moreover, the EIR identifies seven CULTURAL measures that require multiple, inter-related plan to address anticipated and unanticipated cultural resource finds, some of which will be prepared with expert agency oversight (e.g., from SHPO).

Comment: BLM has refused to consider cultural landscapes identified by commenters, reasoning that these areas (loosely described trail networks) have not been sufficiently defined.

Response: While the County has discretion to identify TCRs that are not listed, it is not obligated to seek out TCRs and if presented with one by a commenter, it still has discretion to decide whether substantial evidence demonstrates that the resource is significant, meaning although it is not listed, it nevertheless meets the criteria for listing. The limited information provided in the CRIT's comment letters does not provide a basis for the County to determine that the suggested TCR is particularly significant.

Comment: The EIR recognizes the potential for flash floods exacerbated by the Project to impact surface or subsurface cultural resources, but fails to mitigate or avoid these impacts.

Response: After careful analysis of drainage issues in Appendix V, the EIR concludes that "[t]he Project site experiences relatively shallow and slow flows, so the nominal increases in Post Project flow depths

and velocities do not overcome the decreased erosion potential due to compaction.” In addition, unlike at projects where flooding has been an issue, “[w]here feasible to use these methods, vegetation would be mowed or disked under, mulched or composted, and retained onsite to assist in erosion control” (FEIR at p. 2-14; see also 2-29.)

Comment: BLM’s current practices do not allow tribal monitors to halt construction, temporarily collect isolates and other artifacts in harm’s way, and allow for reburial at a safe, nearby location.

Response: These comments are not tied to an explanation of significant, unmitigated environmental impacts and appear to be related to a policy dispute between BLM and CRIT, with BLM claiming that the law prevents them from allowing tribal collection and reburial of isolates and the CRIT saying otherwise. The County does not have a role to play in this dispute. For purposes of CEQA, however, the CRIT appears to be arguing that BLM should declare isolates to be “no longer of archaeological interest and therefore not considered archaeological resources.” In this case, any impacts to these declassified resources, whatever they end up being, would not be significant from an environmental standpoint.

Comment: More generally, CRIT asks for a more substantive monitoring role with more authority to determine treatment plans for resources and establish construction moratoriums (all to be achieved through modifications to CULTURAL-4).

Response: The comment does not tie this request to a Project impact in need of further mitigation. While the CRIT understandably wants a larger role in this process, they have not demonstrated that the other monitors and work-stop requirements are inadequate.

Comment: Areas of Critical Environmental Concern (ACECs) were created by BLM on public lands as a result of the DRECP in 2016 and added to the draft EIS/EIR.

Response: the agencies published the draft EIS/EIR for this Project in August, 2018, long after publication of the DRECP. As in their prior comments, CRIT again fails to identify any management objectives of the ACECs that the Project would impair.

Comment: BLM must update the Visual Resources section of the FEIS/EIR to take into account of the Project’s visual impacts on Tribal members and evaluate the Project according to VRM Class II management objectives.

Response: CEQA does not recognize impacts of Projects on particular individuals. The impact must be on the environment as perceived by the larger population. There is no requirement to consider the visual impacts on a Tribal member as opposed to a recreational user and the analysis in the EIR considers impacts on users of the Mule Mountains. As for whether BLM appropriately exercised its discretion in establishing the VRM objectives for the site, the County is not in a position to evaluate another agency’s administration of their own plans and policy. Notably, however, the analysis recognizes that the Mule Mountains is an area of high visual sensitivity; it cannot be said that the EIR underestimated the value of views from this point. Also, BLM’s designation of a Class category determines what objectives will be used to manage visual impacts. CEQA is concerned with whether there is a significant impact on the environment, which the EIR concludes there is here, regardless of what classification BLM has used. In particular, although there is significant development in the area, the EIR nevertheless recognizes that the Project will significantly further degrade views. The proposed VIS mitigation measures will not be enough to reduce impacts to a level of insignificance, but the Project will implement several recommendations and Alternative 2, the BLM preferred alternative,

backs away significantly from the sensitive Mule Mountains area. The visual impacts of the Project have been taken into account.

Comment: BLM should mandate hiring preferences for Native Americans to address the disproportionate environmental justice impacts on tribal members.

Response: The EIR considered whether environmental and public health burdens of the Project might specially affect certain communities and concluded that the Project will not have is proportionately high or adverse impacts on minority and/or low-income populations. There is thus no impact to mitigate. As CRIT's comments make clear, the basis for their call for more environmental justice impacts mitigation is not public health impacts, but the loss of potentially culturally significant artifacts. These impacts are addressed directly in the chapter on cultural and historic resource impacts. Furthermore, the County understands that the developer intends to work with CRIT and other tribes to maximize employment opportunities.

Comment: The EIS/EIR fails to consider alternative technologies, projects, or locations that could meet the same renewable energy goals as the proposed Project without the same environmental and cultural impacts.

Response: BLM's DRECP considered how to best site a variety of renewable energy projects on land within the California Desert Conservation Area ("CDCA"). The Project site is identified on a programmatic level for solar. Furthermore, the comment does not demonstrate how "other technologies" (comments need to be more specific) would lessen the significant impacts of the project to a less than significant level. There are also feasibility considerations, as the project applicant is exclusively a solar developer.

Comment: The FEIS/EIR must be revised to discuss the consultation with CDFW and compliance with its requirements, as well as those of any other local, state, or federal agency with jurisdiction over the Project.

Response: This comment misconstrues CDFW's permitting process and assumes that it operates similarly to consultation with USFWS under Section 7 of the Endangered Species Act. While the federal action agency must consult with USFWS when there is a possibility that its actions may affect endangered species, consultation under the state Endangered Species Act is between CDFW and the project applicant. Although CDFW has participated in the development of the EIR, the project proponent is responsible for securing permits issued by CDFW, as needed. CDFW, as a responsible agency under CEQA, will rely on the EIR prepared by the County to make any discretionary decisions required by the Project.

Comment: The agencies fail to respond to CRIT's concerns about acknowledging and taking into account the cultural significance of desert species to local tribes and furthermore the breadth of legal issues raised by other commenters suggests that the biological resource impacts analysis was inadequate.

Response: The Resource Avoidance Alternative preferred by BLM made careful cuts to the Project to avoid special status and endangered species, including plant species. In addition, BLM designed the DRECP to conserve the areas where resources are more abundant and allow development in lower quality habitat. As a result, sites like the Project site – where no live tortoises were observed during surveys – was selected for possible development. If the Project will not have significant, unmitigated impacts on the species of concern, as the EIR and CEQA findings conclude, then it stands to reason that sufficient abundance will remain to meet CRIT's needs.

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October 25, 2019

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2019 OCT 29 PM 3:03

RE: Protest Letter and CEQA Comments from the Colorado River Indian Tribes Regarding the Desert Quartzite Solar Project Final Environmental Impact Statement/Environmental Impact Report

To Whom It May Concern:

Shute, Mihaly and Weinberger LLP submits this protest letter on behalf of its client, the Colorado River Indian Tribes (“CRIT” or the “Tribes”), under 43 C.F.R. § 1610.5-2 for the Final Supplemental Environmental Impact Statement/Environmental Impact Report (“FEIS/EIR”) for the Desert Quartzite Solar Project (the “Project”). The Firm likewise submits this comment letter to the Riverside County Board of Supervisors pursuant to the California Environmental Quality Act (“CEQA”) and State Planning and Zoning Laws. After carefully reviewing the FEIS/EIR and the responses to our comments on the Draft Environmental Impact Statement/ Environmental Impact Report (“DEIS/EIR”), the Tribes have concluded that the FEIS/EIR continues to fail to meet the requirements of the National Environmental Policy Act (“NEPA”), the National Historic Preservation Act (“NHPA”), CEQA, and other federal, state, and local laws.

As noted in the Tribes’ comment letter on the DEIS/EIR, CRIT is a federally recognized Indian tribe comprised of over 4,440 members belonging to the Mohave,

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Chemehuevi, Hopi, and Navajo Tribes. The almost 300,000-acre Colorado River Indian Reservation sits astride the Colorado River between Blythe, California and Parker, Arizona. The ancestral homelands of the Tribes' members, however, extend far beyond the Reservation boundaries. Significant portions of public and private lands in California, Arizona, and Nevada were occupied by the ancestors of the Tribes' Mohave and Chemehuevi members since time immemorial. These landscapes remain imbued with substantial cultural, spiritual, and religious significance for the Tribes' current members and future generations. For this reason, the Tribes are deeply concerned about the Project's impacts on cultural and other resources.

CRIT raised several issues with respect to the DEIS/EIR released for this Project on August 10, 2018. FEIS/EIR, Appendix Z at 155-186. In reviewing BLM's response to these comments, it appears that BLM's efforts amount to little more than a summary or recitation of the concerns raised by the Tribes. This effort violates NEPA. 40 C.F.R. § 1503.4; *State of California v. Block*, 690 F.2d 753, 773 (9th Cir. 1982) (lead agency must provide "good faith, reasoned analysis in response" to comments raised on draft environmental review documents) (internal citations and quotations omitted). As BLM staff failed to address the serious concerns raised by the Tribes, CRIT is compelled to file this protest letter seeking additional review.

Moreover, CRIT's comment letter also raised serious concerns under CEQA and other state and local laws. As far as the Tribes can tell, however, Riverside County has not separately considered or addressed these issues. This effort likewise violates CEQA. CEQA Guidelines § 15088(b).

CRIT urges BLM and the County to deny the proposed Project, which has the potential to transform a significant cultural landscape to an industrial one. In the event the Project does move forward, however, the agencies must delay their approval until after numerous incomplete studies, plans, and consultations can be finalized and the serious inadequacies in the FEIS/EIR can be addressed. To proceed otherwise would result in a violation of NEPA, NHPA, CEQA, and other federal, state, and local laws, as discussed below.

The FEIS/EIR Remains Inadequate under NEPA and CEQA

I. The FEIS/EIR Fails to Adequately Analyze or Mitigate for the Project's Impacts on Cultural Resources.

The proposed Project analyzed in the FEIS/EIR is a 450 MW solar project bounded by the McCoy Mountains to the north, the Mule Mountains to the southwest, and the Colorado River to the east. FEIS/EIR at 3.3-1. The southwestern edge of CRIT's reservation is approximately 10 miles from the Project site. Consequently, CRIT is traditionally and culturally affiliated with the Project area as the ancestors of CRIT's Mohave and Chemehuevi members have lived and traveled in the Project area since time immemorial. *See, e.g.*, DEIS at 3.5-6 ("The Patayan cultural materials and archaeological assemblage are recognized as directly ancestral to the contemporary Native American cultures of the region.")

A. The FEIS/EIR Fails to Adequately Analyze or Mitigate for Impacts to the Mule Mountains and Surrounding Area

The Mule Mountain Area of Critical Environmental Concern, "established to manage cultural resources," is located "approximately one mile southwest of the [Project] site." FEIS at 3.16-2. The Mule Tank Discontiguous Rock Art District, P-33-000504 and P-33-00073, is also located one mile southwest of the Project. FEIS at 4.5-6. As BLM recognized in establishing this ACEC and in adopting the DRECP, the Mule Mountains have tremendous cultural significance for area tribes, including CRIT.¹ Because of this, the proximity of the proposed Project to the Mule Mountains, also known as Avi Ismalyk, is alarming to the Tribes. The dance circles, trails, petroglyphs, and intaglios associated with Avi Ismalyk play an integral role in Mohave cultural and spiritual beliefs, in addition to the plants and animals of the area. The landscape is identified in Mohave songs and stories. The DEIS acknowledges this connection:

"Mojave religious beliefs were especially well developed and emphasized a basic connection between the natural world and the world of the supernatural . . . During [dream state] travels, the Mojave would see important places and identify key geographical locations where certain important springs or mountains were situated. . . . Oral traditions of the Mojave people are generally rich with detail, with mythical occurrences commonly associated

¹ Relevant documents available at:

https://www.drecp.org/finaldrecp/lupa/Appendix_B/Colorado%20Desert%20Subregion_AppB.pdf.

with identifiable places and landmarks Many stories are part of traditional song cycles, and the landmarks identified in the stories include those within traditional Mojave territory as well as places in the surrounding region. This strong identification with the landscape of traditional Mojave territory continues today.” DEIS at 3.5-13.

Indeed, BLM recently recognized “the area of dense cultural resources associated with the Mule Mountains south of Blythe” in its environmental review of the proposed Ten West Link Project. That proposed project would have run along the southwestern edge of the Desert Quartzite Project right of way, in the area immediately adjacent to the Mule Mountains. To avoid some impacts to the Mule Mountains, BLM specifically selected an alternative that avoided the area entirely, sticking close to the I-10 Corridor and the agricultural fields near Blythe. *See* Ten West Link EIS at ES-4.²

While the Tribes appreciate that effort to avoid cultural resource impacts, CRIT must continue to voice its opposition to the development of this Project in any form on this sensitive landscape. As this letter describes further below, the Tribes remain troubled by the Project’s potential to remove, damage, or destroy cultural resources and artifacts. These resources are sacred and finite, and together make up the cultural footprint of the Tribes’ ancestors. According to the belief system of CRIT’s Mohave members, the disturbance of any cultural resources affiliated with their ancestors is taboo, and thus considered a severe cultural harm. CRIT therefore cannot support any project that will likely result in the disturbance or destruction of cultural resources and artifacts.

Moreover, despite the FEIS/EIR’s attempt to downplay the possibility of unanticipated cultural resource discoveries, CRIT has every reason to fear that cultural resource impacts will be worse than the analysis predicts. As the DEIS acknowledged, the Project area is in a region of significant prehistoric human activity. *See, e.g.*, DEIS at 3.5-5, 3.5-7 to -8 (“The trail network connected not only major pilgrimage locations, but also villages, springs, and important resource collection areas . . . including village sites in the study area . . .”). This not only increases the likelihood that previously undiscovered resources will be unearthed during Project construction but enhances the cultural significance of this landscape to Tribal members as a means of connection to their ancestors. This is a high stakes location for cultural resource discoveries and for significant cultural harm if those resources are disturbed. CRIT has seen that pattern play out all too often with projects like Genesis Solar, in which almost 3,000 cultural artifacts

² Document available at: https://eplanning.blm.gov/epl-front-office/projects/nepa/59013/20003312/250003944/Final_EIS_Ten_West_Link.pdf.

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were collected from the site during development and are now being stored in a museum hundreds of miles away where CRIT's members are not even allowed to view them. BLM's reliance on the archaeological surveys conducted for the Genesis project does little to alleviate the Tribes' fears. FEIS/EIR at 3.5-2.

In addition, and as discussed further below, the area surrounding Mule Mountains is important not just because of the presence of physical artifacts, but because of the status of this area as a uniquely sacred cultural landscape.

Despite the Tribes' grave concerns and the close proximity of the Project to such a sensitive cultural resource area, the FEIS/EIR continues to repeatedly elevate potential direct impacts to archaeological resources above all other potential harms. For example, the FEIS/EIR concludes that the Project "will not have an adverse effect to the Mule Tank District" because the Rock Art District is "located outside of the Project area." *See, e.g.*, FEIS at 4.5-6. Yet, this analysis fails to consider the risks to cultural resources that come from being in the vicinity of a large development: vandalism, destruction, visual intrusion, loss of cultural value and tribal connection to the landscape, etc. Such impacts will be exacerbated by the inclusion of a southeastern access road, which will bring workers and potentially members of the public closer to sensitive resources in the Mule Mountains. FEIS/EIR at 2-6 (noting 0.7 miles of new road along the southeastern boundary). The FEIS/EIR analysis must be revised to adequately consider these impacts.

BLM's response to comments dismisses these concerns as merely "speculative and not supported by evidence, substantial or otherwise." FEIS/EIR, Appendix AA at 85 (Index No. 19-4). BLM deems it satisfactory that "[c]onstruction activities and workers will be within the Project fence line and the Project will only provide access to cultural sites as needed to replace existing access that might be impaired by development." FEIS/EIR, Appendix AA at 85 (Index No. 19-4). However, this does not take into account of potential impacts to the sensitive cultural area surrounding the Project. Instead, BLM relies on the belief that "laws in place to protect resources and property will be obeyed." FEIS/EIR, Appendix AA at 85 (Index No. 19-4). This response does not address CRIT's specific concerns and is therefore inadequate. Moreover, this response is inconsistent with other BLM statements recognizing the potential for indirect impacts such as vandalism, destruction, and visual intrusion. *E.g.*, Ten West Link Programmatic Agreement, Attachment 2 (defining indirect effects to include "increased vandalism and looting resulting from increased access" and noting the potential of "additional roads and visitors to the area (construction personnel, recreationists, etc.) [to]

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increase opportunities for impacts from pot hunting, vandalism of historic properties, and disruption of spiritually important sites.”³

Further, BLM states that it will continue to consult Tribes “in the development of mitigation, monitoring, and discovery plans outlined in mitigation measure CULTURAL-5 to address any discoveries during construction and operation of the facility.” FEIS/EIR, Appendix AA at 85 (Index No. 19-4). However, there is no discussion of the parameters for including Tribes within mitigation measure CULTURAL-5 or any indication of what these mitigation plans will actually do. This improper deferral of mitigation violates both NEPA and CEQA. *City of Long Beach v. Los Angeles Unified School Dist.*, 176 Cal.App.4th 889, 915-16 (2009) (“Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR.”); *see also Endangered Habitats League, Inc. v. County of Orange*, 131 Cal.App.4th 777, 794 (2005) (requiring report without established standards is impermissible delay); *Defend the Bay v. City of Irvine*, 119 Cal.App.4th 1261, 1275 (2004) (requiring biological report and compliance with *any* recommendations in the report is impermissible deferral of mitigation measure); *City of Carmel-By-The-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1154 (9th Cir. 1997) (An EIS cannot “omit a reasonably thorough discussion of mitigation measures because to do so would undermine the action-forcing goals of [NEPA].”); *South Fork Band Council of W. Shoshone of Nevada v. U.S. Dep’t of Interior*, 588 F.3d 718, 727 (9th Cir. 2009) (NEPA “require[s] that an EIS discuss mitigation measures, with ‘sufficient detail to ensure that environmental consequences have been fairly evaluated.’”) (citation omitted).

Moreover, much of the traditional value of these cultural resources to the Tribes comes from maintaining the connectivity between cultural resource sites stretching from Spirit Mountain in Nevada to Blythe. The Mule Mountains play a key role in maintaining this connectivity within Tribal members’ ancestral landscape. The Mohave lived all along the river corridor, including the area close to the Mule Mountains. There will thus be cremation sites in this region, given that the Mohave have traditionally been cremated wherever they lived. For these reasons and many others, the connection that Mohave members have to this area and to the broader range of cultural resource sites of which Mule Mountain is a part remains very real. In the response to comments, BLM argues that impacts to landscape connectivity would not substantially burden religion. FEIS/EIR,

³ Document available at: https://eplanning.blm.gov/epl-front-office/projects/nepa/59013/20003308/250003940/Appendix_1-6_and_8_Ten_West_Link.pdf.

Appendix AA at 85 (Index No. 19-4). However, to the extent that this proposed Project and its impacts prevent access to the Mule Mountains for traditional practitioners or destroy the landscape connectivity necessary to traditional cultural practices, and thereby present a substantial burden on their religious free exercise, the federal government violates the Religious Freedom Restoration Act. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 157-159; FEIS/EIR, Appendix Z at 2 (Index No. 1-2) (noting previous vandalism in the area).

B. The FEIS/EIR Incorrectly Determines that All Impacted Cultural Resources Are Valuable for Data Recovery Only.

Despite acknowledging that “the potential for inadvertent discovery of historic resources is considerable and a potentially significant impact of the Project,” the FEIS/EIR relies heavily on mitigation measures that emphasize data recovery and resource curation as a means of alleviating the Project’s effects. FEIS/EIR at 4.5-9. As the FEIS/EIR blithely states, “although an important resource is lost forever [due to Project impacts], some of the information about that resource is retained [through the proposed data recovery].” FEIS/EIR at 4.5-10. For the reasons discussed below, this proposed form of mitigation is not only grossly inadequate, but culturally devastating to Tribal members. BLM’s focus solely on the scientific value of cultural resources violates state and federal law. In the response to comments, BLM continues to assert that “curation is an appropriate measure to mitigate the loss of information those resources possess” and fails to address CRIT’s concerns. FEIS/EIR, Appendix AA at 86 (Index No. 19-5).

1. The Project Will Significantly Impact Prehistoric Cultural Landscapes.

Both state and federal law recognize that cultural resources include cultural landscapes. *See* National Register Bulletin, “Guidelines for Evaluating and Documenting Traditional Cultural Properties”⁴ (“A culturally significant natural landscape may be classified as a site” eligible for the National Register); Pub. Res. Code § 21074(a) (tribal cultural resources include “cultural landscapes”). Indeed, evaluation and protection of such landscapes is necessary to ensure adequate protection of both individual resources and their historic context. Recently, the California Office of Historic Preservation

⁴ Document available at: <https://www.nps.gov/nr/publications/bulletins/pdfs/nrb38.pdf>.

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recognized the need for cultural resource professionals working on renewable energy projects to shift focus from a site level to the landscape level of assessment. Sustainable Preservation: California's Statewide Historic Preservation Plan, 2013-2017.⁵ While the FEIS/EIR briefly mentions that cultural landscapes may be protected under new state law (FEIS/EIR at 3.5-21), the FEIS/EIR makes no effort to identify or define any cultural landscapes in the vicinity of the Project. This omission is contrary to law, and not supported by the significant evidence available to the agencies.

BLM does not explain why it has failed to consider the cultural landscapes in its impact analysis. Rather, BLM argues that CRIT failed to identify specific cultural landscapes and the resources they include or identify a defined area that meets the definition of a cultural landscape under the definition provided by the National Parks Service. FEIS/EIR, Appendix AA at 87 (Index No. 19-6). Contrary to BLM's contention, CRIT identified specific examples that would indicate that the Project site should be considered a cultural landscape. Other commenters provided similar information. FEIS/EIR, Appendix Z at 34-35 (Index No. 10-3) (referencing proximity of Coco-Maricopa Trail and Quechan Trail). As previously discussed, the DEIS's cultural resource section likewise reveals abundant evidence to support a cultural landscape eligibility determination. As the DEIS notes "[t]en prehistoric or historic trails are documented within the proposed Project solar facility site or within the vicinity of the Project, [and t]hree prehistoric trails fall within the Project boundaries Ethnographic studies within the Project area have identified trails as having an important economic and spiritual use in both prehistoric and historic times." DEIS at 3.5-7. Other agencies have recently made cultural landscape designations under the NRHP and CRHR in this region based on much the same trail system. *See* Palen Solar Electric Generating System Revised Presiding Member's Proposed Decision (PMPD) at 6.3-34 to -48⁶ (recognizing a California Register of Historic Resources-eligible cultural landscape based on primary trail corridors and "mosaics of contributing elements that may include single archaeological deposits, ethnographic places, or built-environment resources, thematic subgroups or districts of such deposits, places, or resources, thematically pertinent biological populations, or mineral or water resources, and broad expanses of the land that

⁵ Document available at:

https://ohp.parks.ca.gov/pages/1069/files/SustainablePreservation_CaliforniaStatePlan_2013to2017.pdf.

⁶ Document available at:

<https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=09-AFC-07C>
(Document number 201434).

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physically, visually, and intellectually bind the unique suite of elements for each mosaic”).

The cultural landscape is the Tribes’ way of life. The trails, which pass through the site, link the petroglyphs and rock shelters found on each surrounding mountain. The ancestors who created the petroglyphs in the boulders each had ties to the area and reasons for doing so and the entire landscape remains important to each tribal member individually and the Tribes collectively.

Instead of addressing CRIT’s concerns, BLM directs CRIT to section 4.5.3.1 (Direct and Indirect Impacts) to demonstrate that it has taken into account cultural resources into its analysis of impacts. FEIS/EIR, Appendix AA at 87 (Index No. 19-6). However, BLM’s claim that it has analyzed the “direct, indirect, and cumulative effects to cultural resources” is undermined by the fact that it has utterly failed to consider the impacts at a landscape level. Project by project, the Tribes’ cultural footprint is being erased and this Project is no exception. The FEIS/EIR’s omission of any discussion of cultural landscapes violates both NEPA and CEQA and is therefore highly prejudicial. The analysis must be revised to properly account for and mitigate these impacts.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 159-160.

2. As the Prehistoric Sites Destroyed by the Project Contribute to Cultural Landscapes, Their Removal Constitutes a Significant Impact.

The California Environmental Quality Act (“CEQA”) requires lead agencies to identify significant impacts to “historic resources” and mitigate these impacts. *See, e.g.*, CEQA Guidelines § 15064.5. Moreover, CEQA *requires* lead agencies to use preservation in place for archaeological resources if feasible, unless other mitigation would be more protective. CEQA Guidelines § 15126.4(b); *Madera Oversight Coal. v. County of Madera*, 199 Cal.App.4th 48, 82-87 (2011).

The FEIS/EIR explains that there are 95 known prehistoric sites, 10 known multi component sites, and 158 known prehistoric isolates within the APE.⁷ FEIS/EIR at 4.5-5. Of those, 10 prehistoric sites are considered by BLM to be eligible under NRHP and/or CRHR criteria. FEIS/EIR at 4.5-6. Though the analysis acknowledges that “[i]f the loss of these resources cannot be fully mitigated, the impacts would be significant,” the proposed mitigation centers almost exclusively on “eligible” resources. FEIS/EIR at 4.5-9. This focus on NRHP/CRHR-eligible resources as the only impacts requiring mitigation is arbitrary and capricious, and not supported by substantial evidence.

Indeed, the FEIS/EIR’s analysis inappropriately silos these archaeological resources. Under its logic, if an individual resource is not *independently* significant, it does not merit protection. In ignoring the connective and cumulative value of these resources, the FEIS/EIR fails to evaluate whether any of these non-eligible prehistoric archaeological sites or isolates contribute to the cultural landscapes discussed in the prior section. Even if these resources are not significant on their own—a characterization that the Tribes do not support—the FEIS/EIR must be revised to evaluate whether these resources are significant because of their contribution to a broader cultural landscape.

The FEIS/EIR’s focus only on “eligible” resources misconstrues state and federal law. The FEIS/EIR must avoid conflating eligibility for the CRHR with significant impacts analysis under CEQA. Impacts to archaeological resources considered non-eligible for listing on the CRHR—perhaps because of their lack of integrity—may nevertheless be significant for CEQA purposes. Pub. Resources Code § 21074(2). Similarly, BLM must not equate significant cultural resources with only those buildings, sites, structures, objects, and districts eligible for inclusions on the NRHP. NEPA guidelines specify that EISs must address impacts to “historic *and* cultural resources” (40 C.F.R. § 1502.16(g) (emphasis added)), thus requiring a more expansive analysis than the one undertaken for National Historic Preservation Act purposes. The FEIS/EIR must be revised to properly consider these resource impacts under CEQA and NEPA, respectively.

⁷ The FEIS/EIR does not make these totals readily apparent, instead providing a piecemeal accounting of survey results. In order to better inform the public regarding potential cultural resource impacts, the FEIS/EIR should be revised to include a concluding paragraph to the Cultural Resources section that clearly sets out the number of prehistoric, historic, and multi-component sites and isolates that will be impacted by each of the Project alternatives.

The agencies fail to respond to any of these concerns. Rather, the response to comments directs CRIT to section 4.5.3.1 of the FEIR/EIS, which only continues to discuss the impacts to cultural resources that are NRHP eligible. FEIS/EIR, Appendix AA at 88 (Index No. 19-7).

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 160-161.

3. The Project Will Significantly Impact Areas of Critical Environmental Concern.

The FEIS/EIR notes that twelve areas of critical environmental concern are located within 20 miles of the Project area. FEIS/EIR at 3.14-3. Seven were designated in 2016 as part of the DRECP and added to the analysis after release of the draft EIS/EIR. *Id.* However, despite the concerns raised by CRIT analysis of the Project's impacts on the five areas of critical environmental concern previously identified, the FEIS/EIR continues to conclude that none of the ACECs will be significantly impacted by the Project. However, BLM provides little to no explanation to support its conclusions, especially with respect to the Mule Mountain ACEC. FEIS/EIR at ES-8, 4.14-4, 4.14-10, 4.16-1, 4.16-2, 4.16-3.

The FEIS/EIR offers no explanation for why the significant cultural resources protected by these ACECs may not be indirectly and adversely impacted by the proposed Project. As demonstrated above, these cultural resources include areas sacred to area tribes, linked to cultural practices, and grounded in the undisturbed cultural landscape. The addition of a massive, industrial system to the area directly adjacent to the Mule Mountains has the real potential to adversely impact these values. However, BLM fails to address any of these concerns. Rather, in the response to comments, BLM directs CRIT to sections 4.16.3.1 and 4.5.3.1 and other sections in the prior DEIS/EIR. FEIS/EIR, Appendix AA at 88 (Index No. 19-8). However, none of these sections have been updated to take into account the issues raised by CRIT. Moreover, CRIT is aware that BLM has been out conducting further cultural resource surveys as recently as late September 2019, and that the further surveying changed BLM's cultural resource designations and mapping to a degree. While the Tribes very much support additional surveying, CRIT is concerned that BLM has not allowed enough time to incorporate any new information into the FEIS/EIR. Indeed, the very fact that BLM was finding additional resources and new information indicates the need for further study to adequately understand the Project's potential cultural resource impacts. Thus, CRIT requests that the agencies undertake further cultural source surveying and consultation, and then consider any new impacts in a revised FEIS/EIR.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 161.

4. The Project Will Significantly Impact Tribal Cultural Resources.

Finally, the FEIS/EIR fails to adequately consider the proposed Project's potential to adversely impact Tribal Cultural Resources, which are specifically protected under CEQA. As the FEIS/EIR explains, "[t]ribal cultural resources (TCRs) include sites, features, places, cultural landscapes, and sacred places or objects that have cultural value or significance to a Tribe. To qualify as a TCR, the resource must either: (1) be listed on, or be eligible for listing on, the California Register of Historical Resources or other local historic register; or (2) constitute a resource that the lead agency, at its discretion and supported by substantial evidence, determines should be treated as a TCR (PRC § 21074(a)(2)). Native American tribes that are traditionally and culturally affiliated with a geographic area can provide lead agencies with expert knowledge of TCRs." FEIS/EIR at 3.5-21. Despite acknowledging CEQA's requirement to consider impacts to Tribal Cultural Resources and despite input from multiple tribes regarding the importance of the cultural landscapes in the Project area, the FEIS/EIR fails to analyze or identify any TCRs in its impact analysis. As further noted in the response to comments, BLM has not yet identified any eligible Tribal Cultural Properties or Places (TCPs) in the FEIS/EIR. FEIS/EIR, Appendix AA at 89 (Index No. 19-9). The FEIR/EIS merely identifies one site as potentially eligible for TCP and TCR designation. FEIS/EIR at 3.5-21.

The agencies argue that BLM is not obligated to seek out TCRs. FEIS/EIR, Appendix AA at 89 (Index No. 19-9). However, this gross omission ignores the wealth of information available to the agencies regarding tribal cultural resources in the vicinity of the Project. This comment letter alone provides substantial evidence upon which the agencies can and should designate Tribal Cultural Resources. Proper consultation with tribes, including CRIT, will further support those designations. BLM contends that it has consulted and continues to consult with CRIT and other affected tribes. However, as further discussed below, neither BLM nor Riverside County has adequately consulted with the Tribes, including about designation of TCRs.

Additionally, as mentioned above, CRIT is aware that BLM is still conducting site testing as recently as the last week of September 2019, and that these surveys have resulted in BLM expanding a few of the already identified cultural sites near the Project. This further indicates that the FEIS/EIR does not include a complete description of known cultural resources in the project area. Given the significant potential cultural resource impacts of the Project, BLM should take time to finish this surveying and conduct follow-up studies in order to get a better sense of potential resource impacts. This updated information must then be shared with tribes and the public in a revised and recirculated DEIR.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 161-162.

5. The FEIS/EIR Fails to Adequately Analyze Cultural Resource Impacts from Increased Erosion.

The FEIS/EIR recognizes that the geomorphology of the Project area is controlled by fluvial erosion and deposition. FEIS/EIR at 3.7-1. In layman's terms, this means that the site's topography can be modified by annual monsoon rains, in which heavy rains and runoff cause erosion and deposition.

As BLM is aware, such events can exacerbate exposure of cultural resources. At the Genesis Solar Energy Project, annual monsoon rains overwhelmed the project's stormwater drainage plans, resulting in significant erosion and exposure of cultural resources. BLM brought in tribes for consultation, asking what should be done to the resources that were exposed. Overwhelmingly, the response was that BLM should have better reviewed the designs of the project in the first place, to ensure that the project did not exacerbate runoff and erosion.

Unfortunately, it does not appear that BLM has learned this lesson. While the EIR recognizes the potential for flash floods exacerbated by the Project to impact surface or subsurface cultural resources (FEIS/EIR at 4.5-5), it does not appear as the agencies have taken any steps to remediate or address this problem. This omission is magnified by the FEIS/EIR's claim that proposed mitigation measures will reduce the impacts to less than significant. FEIS/EIR at 4.5-7. Given the agencies' failure to discuss any mechanism to address this issue, this conclusion is not supported by the evidence in the record.

Previous comments in record: FEIS/EIR, Appendix Z at 127 (Index No. 15-52), at 262-63 (Index No. 23-13 to -25).

6. The FEIS/EIR Fails to Adequately Mitigate for the Project's Significant Cultural Resource Impacts.

The Tribes continue to have serious concerns about the mitigation measures proposed to reduce the Project's significant cultural resource impacts. The FEIS/EIR relies on numerous mitigation measures to purportedly reduce the Project's significant cultural resource impacts. *See, e.g.*, FEIS/EIR at 4.5-9 to -11. BLM's responses and the mitigation measures are wholly inadequate.

- CRIT reiterates that the only way to truly avoid cultural resource impacts is to deny Project approval outright. Moreover, the FEIS/EIR's emphasis on protecting only NRHP- or CRHR-eligible resources ensures that any avoidance policy will do nothing to prevent the wholesale destruction of countless cultural resources—resources that are significant to CRIT and its members—on the Project site. These isolates and non-eligible resources make up the cultural footprint of many Tribal members' ancestors. Unless avoidance extends to these cultural resources as well, this measure does not provide effective mitigation of the Project's significant cultural resource impacts. BLM failed to provide any response to this concern.
- BLM's proposed mitigation measures emphasize the Western scientific and archaeological value of any given artifact without recognizing the broader cultural value that these resources have for tribes, regardless of their eligibility for a historical registry. The Tribes have seen firsthand how following only "the laws in place" can lead to wholesale destruction of cultural resources, devastating spiritual impacts to tribal members, and the erasure of CRIT's ancestral footprint from the land. In the most recent example, a number of "non-diagnostic" cultural resources have been unearthed during construction of the nearby Desert Harvest project. Rather than allowing the tribal monitors to halt construction, temporarily collect the isolates and other artifacts in harm's way, and allow for reburial at a safe, nearby location, BLM has insisted—per the agency's unwritten "plans and policies"—that the resources not be avoided or removed. This is exactly the type of widespread cultural resource destruction that CRIT fears will happen at Desert Quartzite.
- BLM continues to rely on data recovery, removal of resources, and long-term curation as "mitigation" for impacts to prehistoric cultural resources. *See, e.g.*, Appx. G-41 ("Resolution of adverse effects to historic properties will be developed in consultation and may include research and documentation, data recovery excavations, curation, public interpretation, or use or creation of historic

contexts.”); *id.* (“An example of treatment is data recovery at affected sites.”). BLM attempts to paint data recovery as a way to “teac[h] us about the lives of historic people,” all while ignoring the very real cultural and spiritual impacts on the living descendants of those people. FEIS/EIR at 4.5-10. As CRIT has repeatedly informed BLM, such efforts do not—in any way—mitigate for the significant cultural harms caused by removing the footprint of tribal members’ ancestors from the landscape. Indeed, such measures cause more harm than good. BLM has informed CRIT that it is “required” by law to curate such resources, and that it cannot allow such resources to be reburied or otherwise left on-site. As CRIT has previously explained to BLM, this position is not supported by the Archaeological Resources Protection Act (ARPA), curation regulations, or any ongoing or prior litigation.⁸ Moreover, the U.S. House of Representatives recently passed the La Paz County Land Conveyance Act, H.R. 2630, which specifically authorized reburial of cultural resources unearthed on 8,800 acres of federal land transferred to La Paz County for commercial development. Consequently, the Tribes respectfully requested that BLM reconsider its position on reburial and revise CUL-1, CUL-2, CUL-5, and CUL-7 accordingly. At the very least, the agencies should permit reburial of any isolates or other non-eligible prehistoric archaeological resources. BLM Arizona recently worked cooperatively with CRIT to develop language permitting such reburial at the Ten West Link Transmission Line Project.⁹ And First Solar has offered explicit assurances that it supports such

⁸ In responding to a similar issue on the Ten West Link Transmission Line Project, BLM cited to “ongoing litigation” as a reason why reburial could not be accommodated. Further explanation included citations to CRIT’s challenges to the Blythe and Genesis projects. Both court cases have been resolved, and neither involved a determination regarding the propriety of reburial on public lands.

⁹ Specifically, Programmatic Agreement Section IV.D.1.b provides: “Materials that are archaeological resources under ARPA, NAGPRA materials, or historic properties under the NHPA are subject to the processes and procedures set forth in the applicable laws and regulations. In accordance with 43 C.F.R. 7.33, the BLM land manager may determine that certain materials are not or are no longer of archaeological interest and therefore not considered archaeological resources. For those materials that are determined to not be archaeological resources under 43 C.F.R. 7.33, ***the BLM land manager may determine appropriate conservation measures, including, but not limited to, avoidance, leaving materials in situ or relocated nearest the discovery locale as practicable, reburial,*** (footnote continued on next page)

reburial policies. FEIS/EIR, Appendix Z at 201 (Index No. 20-11). BLM and the County have offered no explanation for why they could not adopt a similar policy here.

- Moreover, BLM's response to comments cites inapplicable laws and regulations. FEIS/EIR, Appendix AA at 90 (Index No. 19-11). The ARPA does not require permits for excavation or removal activities that occur as part of an otherwise lawful activity—which the Project's construction and operation would be. 43 C.F.R. 7.3(a)(6). In this case, the land manager is referred specifically to the Native American Graves Protection and Repatriation Act (NAGRPA), which protects only certain artifacts and allows reburial. 43 C.F.R. 73(a)(6). CRIT strongly requests that BLM reconsider its interpretation of these laws and allow tribal reburial of artifacts as an alternative to long-term curation, at least for previously unknown resources with no formal treatment plan. Examples from other projects highlight CRIT's concerns over BLM's failure to adopt a reburial policy. Most recently, as described above, BLM's failure to adopt a reburial policy for Desert Harvest Solar Project resulted in the destruction of disturbed cultural resources in the area. CRIT seeks to prevent the same type of destruction from occurring at the Project site.
- CRIT next commented that archaeological monitoring and tribal monitoring would be required for all ground disturbing activities, including grading, disc and roll, and pile or stake driving, mechanical excavation, drilling, digging, trenching, blasting, or using high pressure water to cut into the ground. Given that the project site will be disturbed to a depth of 12 feet in some locations (FEIS/EIR at 3.5-1), comprehensive monitoring is necessary. A mitigation measure that fails to use tribal monitors for *all* ground disturbing activities will result in significant impacts, and BLM and the County cannot conclude that partial monitoring will reduce impacts to the extent feasible. To reduce impacts to the extent feasible, tribal monitors must be present for all the activities described above and whenever machines are active. The FEIS/EIR, including CUL-1 (Measure 3), CUL-4, and

curation, or any other measure as the BLM land manager deems appropriate under applicable laws, regulations, and BLM policies related to such activity. Any reburial or conservation decisions will be conducted by or in consultation with the relevant Tribes or their representatives, as provided for in the Tribal Participation Plan.” (emphasis added).

CUL-6, must be revised accordingly. BLM has failed to revise such mitigation measures to take into account CRIT's concerns. Rather, BLM's response to comments indicates that "monitoring protocols will be addressed in monitoring plans." FEIS/EIR, Appendix AA at 90 (Index No. 19-12). Thus, CRIT reiterates that archaeological monitoring and tribal monitoring must be required for all ground disturbing activities and that CUL-1, CUL-4, and CUL-6 are revised accordingly.

- CRIT noted that any historic properties treatment plans and monitoring and discovery plans must be circulated for review and comment in advance of Project approval, so that tribes and the public could evaluate whether the plans minimized impacts and reduced significant impacts to the extent feasible. To date, however, CRIT has not received any treatment, monitoring, or discovery plans. The FEIS/EIR instead proposes to defer the development of historic properties treatment plans and a monitoring and discovery plan until just "prior to the issuance of the NTP or a County Grading Permit." See CUL-2, CUL-5. This deferral is unlawful, particularly because neither CUL-2 nor CUL-5 provides any performance standards or other mechanisms for determining whether these plans are sufficient to mitigate the proposed Project's impacts. *E.g., Communities for a Better Environment v. City of Richmond*, 184 Cal.App.4th 70 (2010); see also 43 U.S.C. §§ 1732(b), 1732(d)(2)(a) (requiring BLM to minimize impacts pursuant to FLPMA). Consequently, the Tribes insist that any historic properties treatment plans and monitoring and discovery plans be developed (in consultation with area tribes), circulated to tribes for further feedback, and revised accordingly—all prior to issuance of a final ROD.
- CUL-4, Procedure 2 states that "[t]he BLM alone shall determine the appropriate treatment for cultural resources on BLM-managed lands." Appx. G-42. In order to comply with the NHPA, CRIT requested that this mitigation measure be revised to state that BLM shall make cultural resource treatment decisions in consultation with local area tribes. Similarly, CRIT requested that CUL-4, Procedure 3 be revised to state that ground disturbance shall not resume in the area of the discovery until this consultation is completed. BLM's response to comments stated that all three components of mitigation measure CUL-4 "specifically state that consultation would occur in the event of post review discoveries." BLM does not respond to CRIT's specific request to update CUL-4, Procedure 2 to explicitly

state that local area tribes should be involved in determining the appropriate treatment for cultural resources on BLM-managed lands, rather than just BLM alone. Additionally, BLM does not respond to CRIT's specific request to update CUL-4, Procedure 3 to explicitly state that ground disturbance *shall not resume* in the area of the discovery until a consultation with local area tribes is completed. These failures render the final mitigation measures inconsistent with the NHPA.

- CRIT noted that BLM has traditionally required tribal representatives participate in the WEAP Training (CUL-7), to educate and ensure that construction personnel can identify tribal cultural resources and other prehistoric properties and requested that mitigation measure CUL-7 be modified to include this requirement. BLM responded to CRIT's request by updating mitigation measure CUL-8, providing for the option for a Native American Tribal Monitor to participate in the training as a trainee. CRIT believes that this update is inadequate; tribal participation in *development and execution* of the WEAP training and other education efforts must be mandatory.
- CRIT next explained that BLM must update CULs -4 and -6 to provide tribal monitors with the authority to halt construction, at least until there can be the opportunity for review by CRS, alternate CRS, or other field staff. Without this power, the tribal monitors will be unable to minimize the potential impacts of the proposed Project. Likewise, CRIT requested that CUL-4 be clarified to provide that tribes must receive notice of newly discovered prehistoric resources within 24 hours of the notification to BLM. Without this time requirement, tribes will be unable to effectively participate in the determination of how to treat any newly discovered prehistoric resource. However, BLM declined to revise these mitigation measures. Rather BLM only indicated that the applicant will develop an archaeological monitoring plan that will be in effect during construction, and that archaeological monitors would coordinate with tribal monitors on discoveries and determine if stopping work is necessary. FEIS/EIR, Appendix AA at 91 (Index No. 19-17). But, as the recent Desert Harvest example shows, those types of monitoring plans can fall short of offering cultural resource protection. In situations where construction or project operations unearth a large number of previously unidentified cultural resources, tribal monitors need the ability to halt construction in order for agencies and tribes to confer and determine the best option to avoid further harm to those resources. Construction equipment and other

machinery can destroy fragile cultural resource items in seconds; it is imperative that tribal monitors be allowed to temporarily stop these activities before the opportunity to protect newly discovered resources is lost. BLM's failure to update the mitigation measures is inadequate, given that otherwise the applicant will have no requirement to ensure that tribal monitors will have the authority to halt construction.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 162-164.

B. The FEIS/EIR Fails to Support Its Conclusion that the Project Will Not Have Cumulative Adverse Effects on Cultural Resources

The FEIS/EIR acknowledges that “[n]umerous significant archaeological and historical resources have been previously discovered within the Project’s broader geographical area, although many are not thoroughly documented.” FEIS/EIR at 4.5-12. Cultural resources represent a direct linkage between present-day tribal members and their ancestors. Removal of these resources from the landscape is removal of the Tribes’ footprint. Once such resources are gone, it will be difficult, if not impossible, for the Tribes to prove that these lands are part of their ancestral homeland, and that their ancestors lived and worked on these lands since time immemorial. This type of wholesale resource destruction erases CRIT members’ connection with the land and causes irreparable spiritual damage to the Tribes. Moreover, BLM’s piecemeal approach of identifying only known cultural resource sites—rather than entire cultural resource corridors, as CRIT has urged—provides an inaccurate sense of these projects’ true cumulative impact on cultural resources in the region. *Communities for a Better Environment v. City of Richmond*, 184 Cal.App.4th 70, 98 (2010) (“CEQA mandates that environmental considerations do not become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.”) (internal quotation marks and citations omitted).

The FEIS/EIR analysis summarizes the cumulative impacts of “seven past projects” in the vicinity of the Project. DEIS at 4.5-12 to -13. Yet, in doing so, the FEIS/EIR provides an inaccurate picture of cumulative cultural resource impacts in three significant ways: (1) by relying on the cultural resource numbers from the various project FEISs, rather than providing information as to how many cultural resources were actually discovered and/or disturbed when those projects were constructed, (2) by focusing solely

on NRHP- and/or CRHR-eligible resources and ignoring non-eligible and isolate discoveries, and (3) by ignoring impacts to cultural landscapes, as discussed above.

As BLM is very aware, it is impossible to predict the location of undiscovered cultural resources and, therefore, actual cultural resource impacts can only be known once project construction has concluded. For the vast majority of the projects that the FEIS/EIR lists in its cumulative analysis, those final impact numbers are readily available. Yet, the agencies instead provide the cultural resource information from the respective project FEISs, effectively guaranteeing that cumulative impacts are understated.

Moreover, the FEIS/EIR's discussion of only eligible resources ignores the broader cumulative cultural impact of these projects for CRIT's members. The disturbance, destruction, and/or removal of any cultural resource—including isolates and non-eligible artifacts—contributes to the steady erosion of Tribal members' cultural footprint from their ancestral landscape. The FEIS/EIR's methodology fails to acknowledge this devastating impact and provides the public with an inaccurate cumulative picture.

Finally, much of this failure comes back to the agencies' refusal to identify and designate the Tribal Cultural Landscapes in the region. Without recognizing the spiritual and environmental connectivity behind these landscapes, the agencies will not have an accurate sense of the Project's cumulative impacts.

Unsurprisingly, given this faulty analysis, the FEIS/EIR then concludes that "the Project's contribution to impacts would not be cumulatively considerable." FEIS/EIR at 4.5-13. The FEIS/EIR appears to reach this conclusion because the Project's direct destruction of cultural resources is only a small fraction of the overall total of cultural resources in the study area. *Id.* at 4.5-13. But this is the exact circumstance in which a cumulative impact should be recognized—where the individual project's contribution looks tiny on its own, but *together with other projects* represents a significant impact on a resource. *E.g., Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692 (1990). The FEIS/EIR must be revised to recognize the Project's cumulatively significant impact.

The agencies' position is wholly inconsistent with EISs and EIRs prepared for other similar projects. For instance, the California Energy Commission concluded that the Palen Project's impacts on cultural landscapes were cumulatively considerable and could not be mitigated. *E.g., Presiding Member's Proposed Decision* (December 2013), at 6.3-

33.¹⁰ Likewise, BLM recognized that development of renewable energy resources in the I-10 Corridor, as encouraged by the Desert Renewable Energy Conservation Plan, would result in cumulative impacts to cultural resources. DRECP Proposed LUPA and Final EIS IV.25-80¹¹ (“The operation and maintenance of multiple renewable energy projects could result in cumulative, long-term impacts to the visual integrity of prehistoric trails, traditional cultural landscapes, and sacred sites.”). The agencies have provided no colorable reason for a different outcome here.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 164-165.

II. The FEIS/EIR’s Analysis of Impacts to Visual Resources Is Inadequate.

The Visual Resources section of the FEIS/EIR does not address the cultural implications of the Project’s disruption of the visual landscape. While the FEIS/EIR considers impacts to general “viewer groups,” it fails to consider the Project’s visual impact on Tribal members. FEIS/EIR at 3.19-1. The Mule and McCoy Mountains are more than a recreational resource for the Tribes; they have longstanding cultural and spiritual significance as ancestral lands. Any large-scale visual alteration to this space disturbs the sanctity of the outdoor environment, degrades cultural values, and constitutes a significant impact. Despite this special significance, the FEIS/EIR does not mention the visual impact on CRIT members in the Visual Resources section. BLM must consult with the Tribes to determine the full significance of the visual landscape of the Mule and McCoy Mountains as cultural resources, and to explore possible additional or alternative mitigation that would best minimize visual impacts as a whole.

BLM failed to update the Visual Resources section of the FEIS/EIR to take into account of the Project’s visual impacts on Tribal members. Rather, BLM purports to address these concerns by updating Sections 3.5 and 4.5.3.1 to include additional information summarized in the addendums 2 and 3 of the Class III report prepared for the Desert Quartzite Solar Project. FEIS/EIR, Appendix AA at 92 (Index No. 19-19). However, neither of these sections discuss or address the Project’s visual impact on Tribal members and the cultural landscape.

¹⁰ Document available at:

<https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=09-AFC-07C>
(Document Number 201434).

¹¹ Document available at: https://www.drecp.org/finaldrecp/zip_files/Volumes/ (click on “04 Volume IV Environmental Consequences and Effects Analysis.zip” then “IV.25_Cumulative_Impacts_Analysis.pdf”).

Additionally, the FEIS/EIR downplays the visual resources impacts by assigning the Project footprint “a Class III Interim VRM Objective,” despite the fact that the “Project site is located in an area designated as VRI Class II, indicating a high scenic value.” FEIS/EIR at 3.19-2. The Class III designation was reached through a systematic process that documents the landscape through three factors: scenic quality, public sensitivity, and visibility. DEIR at 3.19-3. Each of the three factors is evaluated separately and then combined through an overlay analysis to determine the Class. *Id.* By narrowly focusing on a single factor and describing the scenery as C-Quality, the description in the FEIS/EIR downplays the other two factors. In fact, the project area is assigned a high visual sensitivity level and the distance zone is assigned “foreground/middleground” due to the short distance to I-10 and other local roads. FEIS/EIR at 3.19-2. The sensitivity level is the highest possible and the foreground/middleground is the closest and most disruptive distance zone. It is misleading to only refer to one factor in the Class rating system when describing the impacts on visual resources in the FEIS/EIR. *Id.*

The FEIS/EIR also fails to adequately study the Project’s likely visual resource impacts. The EIS/EIR relies on “key observation points” to evaluate the Project’s likely intrusion into the landscape. However, the Project is modeled in direct sunlight, when the Project is unlikely to result in any glare impacts—the likely greatest impact on the surrounding area. Consequently, the KOPs greatly downplay the potential impacts from the Project.

BLM fails to directly respond to CRIT’s concerns regarding the rating system used to determine the impacts on visual resources. Rather, BLM refers CRIT to the description of the approach in the DEIS/EIR. FEIS/EIR, Appendix AA at 92 (Index No. 19-20). BLM also directs CRIT to Master Response Number 3, which rebuts concerns regarding the need to take into consideration impacts to nearby ACECs and Wilderness Areas by arguing that the VRM classification is based on the “area physically affected by the Project, not the VRM Class Objective(s) on adjacent lands.” FEIS/EIR, Appendix AA at 137-139. Not only does Master Response Number 3 fail to address CRIT’s concerns regarding the misleading nature of the rating system, but it also underscores CRIT’s concerns regarding BLM’s failure to take into account of the visual impacts to nearby ACECs and Wilderness Areas. Moreover, BLM further adds that the current classification for the Project under DRECP is Class IV, and thus, argues that the DEIS/EIR’s evaluation of the project as an interim VRM Class II resulted in a higher level of adverse impact. FEIS/EIR, Appendix AA at 92 (Index No. 19-20). This

justification does not respond to CRIT's concerns that the Project should be analyzed under Class II.

BLM must update the Visual Resources section of the FEIS/EIR to take into account of the Project's visual impacts on Tribal members and evaluate the Project according to VRM Class II management objectives.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 165-166; FEIS/EIR, Appendix Z at 69 (Index Number 11-84).

III. The FEIS/EIR Fails to Recognize the Environmental Justice Impacts of the Project on Tribes.

A. The Environmental Justice Analysis is Overly Narrow.

Under NEPA, BLM must consider, to the extent practicable, whether there is or will be an impact on the natural or physical environment that significantly and adversely affects Native American tribes. Specifically, BLM must consider whether significant environmental effects may have an adverse impact on Native American tribes that appreciably exceeds those on the general population. *See, e.g.*, EPA's 1998 Environmental Justice Guidance; Executive Order 12898. These analyses are required for an adequate consideration of environmental justice impacts.

Similarly, California law requires that local agencies consider issues of fairness and environmental justice in the planning context. *See* Cal.Gov. Code § 11135. "Environmental justice" is defined in the Government Code as "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." Gov. Code § 65040.12(e). Likewise, CEQA and its implementing Guidelines require lead agencies to consider the public health burdens of a project as they relate to environmental justice for certain communities. A 2012 report from the California Attorney General discussing environmental justice concerns under CEQA explained that, "where a local agency has determined that a project may cause significant impacts to a particular community or sensitive subgroup, the alternative and mitigation analyses should address ways to reduce or eliminate the project's impacts to that community or subgroup." "Environmental Justice at the Local and Regional Level: Legal Background," State of CA DOJ, at 4.

As a preliminary matter, Chapter 3.6—which lays the groundwork for the FEIS/EIR’s environmental justice analysis—does not recognize that tribes face unique environmental justice burdens. The Chapter only looks at “demographic and income data [from the Colorado River Indian Reservation] . . . since sections of the Reservation are located in Blythe CCD.” FEIS/EIR at 3.6-1. This Chapter must be revised to specifically evaluate which tribes may be adversely and inequitably affected by the proposed Project, including any potential sociocultural impacts.

In addition, the Environmental Justice analysis fails to recognize that the proposed Project will result in adverse impacts on CRIT that appreciably exceed those of the general population. The FEIS/EIR contains no discussion specific to Native American groups whatsoever, choosing instead to move topically through a number of potential environmental justice issues: Air Resources, Geology and Soils, Hazards and Hazardous Materials, Noise, Recreation and Public Access, Social and Economic Effects, Transportation and Traffic, Visual Resources, and Water Resources. FEIS/EIR at 4.6-2 - 3. Yet, even in its discussion of Social and Economic Issues, the FEIS/EIR limits its discussion to housing and makes no mention of the unique impacts that this kind of development has on tribal groups. FEIS/EIR at 4.6-4.

This gross omission renders the analysis inadequate under federal and state law. Unlike most members of the public, tribal members maintain long-standing ancestral and traditional practices that connect their identities to *specific environments*. Tribal members cannot easily shift their use and enjoyment of public lands to other, non-industrialized areas, as may be the case for many members of the public. Once these ancestral ties are severed, either by the removal of cultural resources or the fencing and development of the entire site, they cannot be regained. Consequently, the FEIS/EIR must be revised to recognize the significant environmental justice impacts of the proposed Project on CRIT and other affected tribes.

The agencies failed to address any of CRIT’s concerns in the FEIS/EIR. Instead, the response to comments states that the agencies already took into account of the environmental justice impacts to CRIT by extending the area of interest to include the Reservation, even though it is situated outside of the area normally considered to be the primary affected area. FEIS/EIR, Appendix AA at 93 (Index No. 19-21). The agencies provide no basis or evidence demonstrating that it took into account of the concerns raised by CRIT. Thus, the FEIS/EIR must be revised to recognize and address the significant environmental justice impacts of the proposed Project on CRIT and other affected tribes.

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Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 166-167.

B. As Mitigation for the Project's Significant Environmental Justice Impacts, the FEIS/EIR Must Consider Preferential Hiring for Both Construction and Permanent Jobs.

BLM had an opportunity to include in the mitigation measure requirements to give employment preferences to Indians, as well as access to any necessary job training programs to ensure performance and experience requirements can be met. However, rather than embracing this opportunity, BLM directed the Tribes to reach out to the applicant for employment information.

One of the most substantial environmental costs of the proposed Project is the destruction of tangible cultural resources and the wholesale transformation of the ancestral homelands of Indian tribes, including CRIT. This cost is borne exclusively by tribal members. To begin to right this imbalance, CRIT urges BLM and Riverside County to adopt a mitigation measure to give employment preferences to Indians, as well as access to any necessary job training programs to ensure performance and experience requirements can be met. The agencies should also adopt mitigation measures that ensure that the project developer sources construction materials from tribal enterprises. CRIT continues to have serious questions as to whether the proposed Project will bring much needed construction and permanent jobs to an area close to the Reservation. At a minimum, CRIT requested additional information about the nature of the jobs related to the Project to ensure that Tribal members may be available for hire.

However, BLM failed to address CRIT's concerns regarding the imbalanced allocation of costs and benefits on tribal members. Rather than affirmatively adopting mitigation measures to address the disproportionate impact on tribal members, BLM merely suggests CRIT to contact the applicant about the selection of a construction contractor and means for applying for construction employment. FEIS/EIR, Appendix AA at 93 (Index No. 19-22). In the response to comments, BLM also claims that mitigation measure CUL-5 includes a Tribal Participation Plan for the Monitoring and Discovery Plan. However, the FEIS/EIR does not include any discussion or reference to the Tribal Participation Plan under mitigation measure CUL-5. Additionally, BLM failed to provide additional information about the nature of these jobs to ensure that Tribal members may be available for hire. BLM's response to CRIT's concerns are inadequate and must be addressed.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 167.

IV. The Project Is Not Exempt from the DRECP and the Western Solar Plan.

BLM entirely ignores the Tribes' specific comment on this issue and instead points to one of its master responses which discusses the plan amendment requirements generally.

The FEIS/EIR claims that the Project qualifies as a "pending" application that is not subject to either the Western Solar Plan or the Desert Renewable Energy Conservation Plan (DRECP). FEIS/EIR at ES-2. The FEIS/EIR justifies this exemption from the Western Solar Plan and DRECP by explaining that "[t]he initial project application was filed before June 30, 2009, the Project is located within a SEZ, and the amendments contemplated by the Desert Quartzite Solar PV proposal either do not affect the project boundaries (e.g., change in project developer) or are related to avoiding resource or land use conflicts or adapting the Project to the third-party-owned infrastructure complaints." *Id.*

However, BLM should not apply these exceptions to the proposed Project. The original ROW grant application—the one that pre-dated the Western Solar Plan and DRECP—was originally filed for 7,245 acres on September 28, 2007. FEIS/EIR at ES-1. As presented in the 2015 Scoping Report, applicant First Solar sought a right-of-way for a 300 MW photovoltaic solar Project on 4,853 acres of public land and 160 acres of private land. Desert Quartzite Scoping Report, May 2015, at 1. Yet, the Project evaluated in the FEIS/EIR seeks approval for approximately 5,115 acres of BLM land and 160 acres of private land. FEIS/EIR at ES-1. Moreover, the parameters of the Project itself appear to have changed, as First Solar now seeks to produce 450 MW using "advances in photovoltaic (PV) solar technology." *Id.* The ROW application has been pending for over a decade, and the FEIS/EIR evaluates a substantially different Project than the one originally proposed in 2007. As such, it should be evaluated under the Western Solar Plan and the DRECP. The DRECP was intended to mitigate impacts across a broad range of development activities, and BLM should be applying the Conservation and Management Actions (CMAs) at every opportunity, regardless of when a project application was first submitted.

Even if BLM views the Project changes as minor, evaluating all ongoing solar projects under these new standards will ensure the type of region-wide, programmatic conservation and consistency that the Western Solar Plan and DRECP were designed to promote. For this reason, BLM should have at least analyzed an alternative that applied

the DRECP CMAs, as the agency recently did in the Palen Solar Project SEIS/SEIR. The Tribes recognize BLM's inclusion of Appendix E, which discusses the Project's relationship to the DRECP, but this is not a substitute for a full and adequate analysis of the application of the DRECP's requirements to the Project within the body of the FEIS/EIR. The FEIS/EIR must be revised to analyze such an alternative. *E.g., Habitat and Watershed Caretakers v. City of Santa Cruz*, 213 Cal.App.4th 1277, 1305 (2013) (Under CEQA, "[a] potentially feasible alternative that might avoid a significant impact must be *discussed* and *analyzed* in an EIR so as to provide information to the decision makers about the alternative's potential for reducing environmental impacts."); *Alaska Wilderness Recreation & Tourism Ass'n v. Morrison*, 67 F.3d 723, 729 (9th Cir. 1995) (NEPA mandates that lead agencies consider feasible alternatives that would reduce the project's significant environmental impacts).

The agencies failed to respond to CRIT's concerns. Rather, the FEIS/EIR directs CRIT to the agencies' rationale for exemption and the manner in which the project and alternatives conform to the DRECP as previously discussed in Appendix B of the DEIS/EIR. BLM also directed CRIT to Master Response 4, which does not address the Tribes' specific concern that the Project is not exempt from the DRECP and the Western Solar Project. The master response merely discusses the plan amendment requirements generally. This omission must be addressed.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 168.

V. The Alternatives Section is Unlawful.

A. The Project's Narrow Purpose Impedes an Adequate Alternatives Analysis under NEPA.

The Tribes are concerned that the purpose and need for the Project was too constrained and that BLM did not adequately consider a reasonable range of alternatives that would result in fewer impacts. In BLM's responses to comments, it failed to explain why it could not analyze a broader range of alternatives, but rather justified its authority to determine the purpose and need of the proposed action. FEIS/EIR, Appendix AA at 140-142.

An agency cannot unreasonably narrow the objective of the proposed action to limit the range of alternatives considered. *See Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1066 (9th Cir. 1998) ("[T]he discretion we have afforded agencies to define the purposes of a project is not unlimited . . . [A]n agency cannot define its

objectives in unreasonably narrow terms.” (internal citations omitted)); *Simmons v. United States Army Corps of Eng’rs*, 120 F.3d 664, 666 (7th Cir. 1997) (“One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing ‘reasonable alternatives’ out of consideration (and even out of existence.)”); *see also Methow Valley Citizens Council v. Regional Forester*, 833 F.2d 810, 815 (9th Cir. 1987) (EIR inadequate for failure to analyze alternative sites).

BLM’s purpose and need for the Project “is to respond to the Applicant’s application under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 USC §1761(a)(4)) for a ROW grant to construct, operate, maintain, and decommission a solar photovoltaic (PV) facility on public lands in compliance with FLPMA, BLM ROW regulations, and other applicable Federal laws, policies and plans.” FEIS/EIR at 1-2. The FEIS/EIR also lists various management objectives the Project would allegedly further. FEIS/EIR at 1-3. While it says that BLM will consider “changing the route or the location of the proposed facilities,” the agency unreasonably narrowed the objective of the proposed action by focusing on this particular application, rather than the public goals of providing renewable energy. FEIS/EIR at 1-7. This narrowing limited the range of reasonable alternatives considered.

BLM states that “[o]ther alternative sites, technologies and methods . . . were considered by the BLM but eliminated from detailed analysis under NEPA.” FEIS/EIR at 2-39. The alternative locations considered were all rejected. FEIS/EIR at 2-41 to -44. Relying on its improperly narrow statement of purpose and need, BLM failed to consider alternative technologies, projects, or locations that could meet the same renewable energy goals as the proposed Project without the same devastating environmental and cultural impacts. The FEIS/EIR analysis must be revised to correct this error.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 168-169.

B. The Alternatives Analysis Is Similarly Inadequate under CEQA.

The Tribes had similar concerns regarding the alternatives analysis under CEQA. And, once again, the agencies failed to respond adequately. BLM’s response to comments directs CRIT to Master Response 5a, which does not address why it could not analyze a broader range of alternatives, but rather justifies its authority to determine the purpose and need of the proposed action.

CEQA requires an EIR to include analysis of alternative locations. CEQA Guidelines, § 15126.6(f)(2). The EIR must ask if “any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location.” CEQA Guidelines, § 15126.6(f)(2). Only if the lead agency concludes that there are no feasible alternatives, may the agency avoid reviewing at least one alternative site. CEQA Guidelines, § 15126.6(f)(2); *see Laurel Heights Improvement Ass’n v. The Regents of the University of California*, 47 Cal. 3d 376, 399-407 (1988) (finding that the EIR should have explored the potential to locate the project somewhere other than the Laurel Heights property; fact that the University owned the Laurel Heights property did not exempt it from analyzing use of other sites). And, if the agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion in the EIR. CEQA Guidelines, § 15126.6(f)(2).

For this reason, Riverside County must take care in crafting its project objectives to ensure that the FEIS/EIR properly considers an adequate range of alternatives. *Cal. Oak Foundation v. Regents of Univ. of Cal.* (2010) 188 Cal.App.4th 227, 277 (“CEQA clearly recognizes the agency will look to the proposed project’s particular objectives when developing its range of project alternatives.”); *Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 196-97 (“The process of selecting the alternatives to be included in the EIR begins with the establishment of project objectives by the lead agency.”); *see also* CEQA Guidelines §§ 15124(b), 15126.6(f). Yet, here, the County has artificially constrained its alternatives analyses by stating that the purpose of the Project is to “construct and operate a solar energy facility.” FEIS/EIR at 1-2. The County’s basic objectives for the Project cite to a number of state and federal renewable energy goals and orders, including AB 32’s greenhouse gas reduction targets and Secretarial Order 3285A1. While these state laws and policies all emphasize renewable energy and may encourage the development of utility-scale renewable energy projects, they do not require it, particularly when renewable energy projects will have significant and adverse environmental consequences. The FEIS/EIR’s project objectives should include a commitment to protecting cultural and biological resources, as well as the visual integrity of the desert landscape.

Here, the County has failed to adopt the kind of project objectives that allow for the consideration of a broad range of CEQA alternatives. Rather than focusing on the public benefits to be achieved—reduction in greenhouse gas emissions, increased energy independence, and economic development, the County narrowly focuses on “generat[ion of] up to 450 MW of electricity using PV solar technology,” thereby improperly precluding discussion of both distributed generation and disturbed lands alternatives. FEIS/EIR at 1-3. Such a limited range of alternatives violates CEQA’s mandates because

it fails to consider projects that can achieve the same goals as utility-scale solar projects, but with far fewer impacts to cultural and environmental resources. *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings*, 43 Cal.4th 1143, 1166 (2008); *North Coast Rivers Alliance v. Kawamura*, 243 Cal.App.4th 647, 669-70 (2015). Given the agencies' failure to respond to CRIT's concerns, the FEIS/EIR must be revised to correct this inadequacy.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 169-170.

C. The FEIS/EIR Must Be Revised to Include a Reduced Acreage Alternative Located Further from the Mule Mountains.

The agencies likewise should have considered and analyzed a reduced acreage alternative, similar to Alternative 3, located further from the Mule Mountains. As previously discussed, NEPA requires an agency to consider a reasonable range of alternatives. *See Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1065 (9th Cir. 1998) ("The agency must look at every reasonable alternative within the range dictated by the nature and scope of the proposal. The existence of reasonable but unexamined alternatives renders an EIS inadequate.") (citations omitted); *Simmons v. United States Army Corps of Eng'rs*, 120 F.3d 664, 666 (7th Cir. 1997) ("When a federal agency prepares an Environmental Impact Statement (EIS), it must consider 'all reasonable alternatives' in depth."). Similarly, CEQA requires an EIR to evaluate "a range of reasonable alternatives to the project ... which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project." (Guidelines § 15126.6(a).) *See also Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1089 ("While the lead agency may ultimately determine that the potentially feasible alternatives are not actually feasible due to other considerations, the actual infeasibility of a potential alternative does not preclude the inclusion of that alternative among the reasonable range of alternatives."). All of the alternatives considered in the FEIS/EIR are located close to the Mule Mountains. This is extremely concerning for the Tribes, given the Project's potential to remove, damage, and destroy cultural resources and artifacts within the Mule Mountains and the surrounding area and the Project's known indirect impacts to this critical cultural landscape. The agencies have failed to justify or explain why a reduced acreage alternative located further from the Mule Mountains was not considered. Thus, in compliance with NEPA's and CEQA's requirements to consider a reasonable range of alternatives that would reduce significant environmental impacts, FEIS/EIR should be

revised to include a reduced project alternative located further from the Mule Mountains in order to reduce cultural resources impacts.

VI. The Biological Resources Analysis Is Inadequate under CEQA.

The California Department of Fish and Wildlife (“CDFW”) has the authority to regulate projects that may impact species protected by the California Endangered Species Act. Under CEQA case law, the DEIS should have discussed CDFW’s permitting process and any potential mitigation or project modifications that may be required by the agency. Specifically, the EIR project description must include a list of consultation requirements and “to the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.” CEQA Guidelines § 15124(d)(1)(C); *see Banning Ranch Conservancy v. City of Newport Beach*, 2 Cal.5th 918, 936-942 (2017). In *Banning Ranch*, the city ignored its “obligation to integrate CEQA review with the requirements of the Coastal Act” (specifically the Coastal Act’s habitat designation requirements). *Id.* at 936. The Court invalidated the City’s CEQA analysis because the “omission resulted in inadequate evaluation of project alternatives and mitigation measures. Information highly relevant to the Coastal Commission’s permitting function was suppressed. The public was deprived of a full understanding of the environmental issues raised by the Banning Ranch project proposal.” *Id.* at 942.

The FEIS/EIR notes that the California Department of Fish and Wildlife (CDFW) “has the authority to regulate potential impacts to species that are protected under the California Endangered Species Act.” FEIS/EIR at 1-9. It further mentions CDFW’s jurisdiction over modifications to stream and lake beds under § 1602 of the California Fish and Game Code, as well as CDFW’s oversight of certain native plant harvesting activities. *Id.* The FEIS/EIR acknowledges that the Project applicant will need to comply with the requirements of a “Streambed Alteration Agreement . . . independent of and in addition to mitigation measures included in the PA/EIS/EIR,” and also notes the possibility of CDFW requiring an Incidental Take Permit for species impacts and/or a permit for removal of native plants. *Id.*

However, the FEIS/EIR analysis fails to discuss the results of its consultation with CDFW for the project. Indeed, the only discussion of consultation is a declaration that it “will occur” in the future. FEIS/EIR at 1-22. The FEIS/EIR includes an analysis of areas potentially subject to jurisdiction under CDFW’s Streambed Alteration Program in Appendix N but contains no substantive discussion of the additional mitigating requirements that will be imposed through consultation with and permitting from CDFW. Similarly, the FEIS/EIR discusses mitigating actions, such as selection of Mojave desert

tortoise translocation areas, that will be “approved through the ESA Section 7 consultation process, and via the development of the Project’s Desert Tortoise Translocation Plan (Mitigation Measure WIL-2).” FEIS/EIR at 4.4-6. Yet, where that consultation has not yet taken place, and the results of said consultation and its resulting plans are not included in the FEIS, this delay undermines the functions of both CEQA and NEPA—to inform both the decisionmakers and the public as to the true environmental impacts of the Project. 40 C.F.R. § 1502.1; CEQA Guidelines § 15002(a)(1). As in *Banning Ranch*, where there was “ample evidence” that sensitive coastal habitat was present, here there is ample evidence of occupied habitat for a number of sensitive species, and “the decision to forego discussion of these topics cannot be considered reasonable.” See *Banning Ranch*, 2 Cal. 5th at 937; FEIS/EIR at 4.4-5.

The response to comments notes that CDFW actively participated during the development of the DEIS/EIR and resulting mitigation measures since the beginning of the project. However, the FEIS/EIR fails to include analysis or substantive discussion of CDFW’s participation and the results of that participation. The FEIS/EIR must be revised to discuss the consultation with CDFW and compliance with its requirements, as well as those of any other local, state, or federal agency with jurisdiction over the Project. Unfortunately, the agencies have failed to complete this consultation, or include discussion of any consultation in the FEIS/EIR, before the final environmental review document was issued so that decisionmakers and the public are fully informed of Project impacts. Until it does so, the FEIS/EIR’s conclusions that biological impacts will be less than significant are unsupported.

The FEIS/EIR also fails to acknowledge the cultural significance of these desert species to local tribes—either in the cultural resources analysis or the biological impacts discussion. A number of the animals at greatest risk from the proposed project (Mojave desert tortoise, Mojave fringe-toed lizards, golden eagles, Western burrowing owls, American badgers, desert kit foxes, and other various birds) are important to tribal culture because they hold power and spiritual value in Native American, including Mohave, belief systems and oral traditions. The CEQA Guidelines explain that a historic resource need not be eligible for the California Register of Historical Resources (“CRHR”) to be a “historic resource” under Public Resources Code sections 5020.1(j) or 5024.1; “historic resources” thus require a more expansive analysis than the one required under the CRHR criteria. CEQA Guidelines § 15064.5(a)(4). Such resources necessarily include viewsheds and landscapes, plants and animals used in and/or central to cultural and religious practices and creation stories, and religious and customary practices (e.g., hunting and gathering, religious ceremonies, and trailwalking). The FEIS/EIR must be revised to

apply the correct definition of cultural resources for this Project and properly analyze these impacts.

A number of the plants at the project site also hold cultural value for CRIT. For example, the FEIS/EIR explains that “[v]egetation in the Project area is primarily composed of creosote scrub and open desert.” FEIS/EIR at 3.19-1. Creosote has topical and internal medicinal purposes for tribal members and was traditionally used by Mohave and Chemehuevi craftspeople for a number of utilitarian purposes, including waterproofing of baskets, cordage objects, and pottery. Once these and other desert sensitive plants have been destroyed through surface disturbing activities, this loss of traditional cultural lifeways cannot be readily mitigated.

The agencies fail to respond to CRIT’s concerns about acknowledging and taking into account the cultural significance of these desert species to local tribes. Rather, the FEIS/EIR references discussion of impacts to wildlife, viewsheds, and vegetation that was previously included in the DEIS/EIR. FEIS/EIR, Appendix AA at 96 (Index No. 19-27). The agencies also assert that their definition of cultural resources, which they deem compliant with California Resources Code section 21074, does not include natural resources and therefore fails to take into account CRIT’s concerns about the previously discussed wildlife and vegetation. FEIS/EIR, Appendix AA at 96 (Index No. 19-27). The FEIS/EIR analysis must be revised to consider these impacts to culturally significant species.

Moreover, CRIT continues to have serious concerns that the piecemeal mitigation measures proposed in the FEIS/EIR will adequately alleviate the tremendous stress that these large-scale renewable energy projects place on sensitive desert species. Much of FEIS/EIR’s analysis of potential biological impacts relies on surveys to determine what species are present in the Project area, yet this methodology does not necessarily capture the extent to which other solar projects in the vicinity have already destroyed habitat and impacted the future viability of these desert species. BLM fails to address these concerns in the FEIR/EIS, but rather responds by referencing a discussion of cumulative impacts to biological resources as analyzed in the DEIS/EIR. FEIS/EIR, Appendix AA at 96 (Index No. 19-27). The FEIS/EIR analysis must be revised to consider these devastating impacts.

Finally, CRIT is concerned about the breadth of legal issues raised by other organizations and agencies in the record regarding biological resources on and near the Project site. For example, Basin and Range Watch and Western Watersheds Project highlight serious discrepancies in the description of existing biological resources, raising

concerns that the agencies lack an adequate baseline by which to compare the Project's potential impacts. They also raise significant questions about the FEIS/EIR's analysis of the lake effect and its impact on imperiled and culturally important avian species.

The Desert Tortoise Council likewise provides significant information about the status and potential recovery of the desert tortoise. Their comments highlight inappropriate deferral of studies and mitigation measures, lack of study of some important aspects of tortoise recovery, such as heat island impacts, weedy vegetation management, roads, and edge effects.

The Center for Biological Diversity notes that the FEIS/EIR fails to take the necessary "hard look" at the potential impacts of the proposed Project, including impacts to the desert tortoise, the Mojave fringe-toed lizard, the sand transport system, burrowing owls, migratory birds, badger and desert kit foxes. They also criticize the agencies for failing to provide necessary mitigation in the FEIS/EIR, instead choosing to defer development of numerous plans to a future date, outside of the public process.

The California Native Plant Society documents numerous inadequacies with the FEIS/EIR's analysis of impacts to California's native plants. The letter raises concerns that the Project inadequately mitigates for impacts to rare species such as Harwood's eriastrum, Harwood's milkvetch, ribbed cryptantha, and sensitive natural communities.

The Tribes have reviewed the agencies' responses to these comments, and largely finds them to be inadequate and unpersuasive. As with cultural resources, the agencies largely refer the commenter's back to the exact analysis in the EIS/EIR previously criticized as inadequate. Little to no explanation is given as to why the agencies believe the comments are incorrect or unjustified. Without this information, CRIT is left to conclude that the biological resource analysis and mitigation measures is unlawful, as described in the referenced comment letters.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 170-172. FEIS/EIR, Appendix Z at 40-71, 74-97, 100-137, 143-150.

VII. The FEIS/EIR Improperly Narrows the Analysis of Growth-Inducing Impacts from the Project.

An EIR must discuss the ways in which the proposed project could foster growth-inducing impacts. Pub. Resources Code § 21100(b)(5); CEQA Guidelines §§ 15126(d), 15126.2(d). The FEIS/EIR limits its analysis of growth-inducing impacts to population

growth, housing capacity, infrastructure, and service capacity. FEIS/EIR at 5-5 to -6. However, CEQA requires an agency to also “discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively.” CEQA Guidelines § 15126.2(d).

The FEIS/EIR should consider the characteristic of this project to induce further solar development. Specifically, the construction of the gen-tie line may “encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively.” *See* CEQA Guidelines § 15126.2(d). Similarly, the viability of the proposed project could also serve to attract new project applicants to the area or ease the way for approval of other nearby projects, such as Crimson Solar. The analysis must consider future solar projects, which are constructed due to the growth-inducing effect of this Project, and their impacts to the environment.

The agencies fail to address CRIT’s concerns in the FEIS/EIR. Rather, they continue to justify their conclusion that the Project will not have significant growth-inducing impacts. The FEIS/EIR states that the Project site was selected for solar development due to its proximity to the existing Colorado River Substation (CRSS) and transmission lines. The Project’s proximity to the CRSS and transmission lines only suggests that there may be future solar projects, given the applicant’s stated desirability of the location. Further, without presenting any evidence, the FEIS/EIR states the Project will not “create a need for power, or for renewable power sources.” FEIS/EIR, Appendix AA at 96 (Index No. 19-29). The agencies also reason that the Project will not “provide substantial infrastructure that could be used by other facilities, so does not encourage additional applications.” FEIS/EIR, Appendix AA at 96 (Index No. 19-29). Without any evidence to support its justifications, CRIT’s concerns continue to remain unaddressed. Given these completely unanalyzed impacts, the Tribes’ protest should be sustained.

Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 172.

VIII. Neither BLM Nor Riverside County Has Adequately Consulted with the Tribes.

As detailed in the Tribes comment letter on the DEIS/EIR, government-to-government consultation for this Project has been inadequate. In May 2016, the Colorado River Indian Tribes adopted a government-to-government consultation policy to manage its relationship with federal agencies. *See* FEIS/EIR, Appendix Z at 174-79. CRIT requested that each federal agency acknowledge the policy prior to conducting government-to-government consultation with its Tribal Council. The Tribes informed BLM that it would

not meet with BLM decisionmakers until BLM acknowledged the policy. The purpose of this request was to ensure that BLM was aware of CRIT's definition of adequate consultation *prior* to spending the time and resources engaging in consultation. Contrary to responses to comment, CRIT has not yet received any indication that the BLM office responsible for this Project acknowledged the policy.¹² While CRIT is very open to conducting in-person, government-to-government consultation with BLM regarding this Project, any consultation meeting would need to include acknowledgment and discussion of this policy.

The FEIS/EIR describes a June 10, 2015 field visit with CRIT in which three members and one elder were in attendance. FEIS/EIR at 6-3. The FEIS/EIR further discusses the Tribes' August 29, 2016 letter "notifying the BLM of their intent to conduct additional tribal surveys," and the presence of a CRIT monitor during the additional April 2018 testing. FEIS/EIR at 6-4. Yet, despite having received the Tribes' consultation policy and a written request from CRIT for Section 106 government-to-government consultation in an April 2015 letter, BLM has failed to fulfill its obligations under the law to engage in this meaningful consultation with CRIT. In its analysis of whether the Project would cause a substantial adverse change to a resource identified through consultation with any California Native American tribe that requests consultation, BLM mentions only its consultation with Twenty-Nine Palms Band of Mission Indians Tribe. FEIS/EIR at 4.5-11. Despite the Tribes' repeated requests for Section 106 consultation on this Project, BLM only reached out to CRIT to set up government-to-government consultation in September 2018, once the DEIS had already been issued. FEIS/EIR at 6-5. Such a delay defeats the purposes of Section 106 consultation, which is meant to give tribes an opportunity to provide valuable input that will be meaningfully considered in the planning process. *See* 36 C.F.R. § 800.1(c) ("The agency official shall ensure that the section 106 process is initiated *early in the undertaking's planning*, so that a broad range of alternatives may be considered during the planning process for the undertaking."); *see also* FEIS/EIR, Appendix Z at 174-79. Waiting until the DEIR has already been issued and much of the analysis has already been undertaken is not in keeping with BLM's consultation responsibilities.

In response, BLM asserts that it reviewed CRIT's consultation policy and the District Manager, California Desert District, sent a response letter to CRIT. However, the Tribes did not receive this letter of acknowledgment. Rather, during a 2016 Moreno Valley meeting between CRIT's THPO staff and Palm Springs Field Manager Doug

¹² Other BLM offices, including the BLM Arizona State Office, have officially acknowledged the CRIT Policy.

Herrema, CRIT staff were told that BLM's federal offices had specifically instructed the agency *not* to acknowledge CRIT's consultation or reburial policies. Thus, CRIT once again renews its request that BLM acknowledge the consultation policy and engage in meaningful consultation about the Project. Until this request is complied with, the onus is on BLM for the lack of adequate consultation.

The FEIS/EIR also contends that consultation under AB 52 is not applicable to the proposed Project because the date of the NOP pre-dated the effective date of AB 52. *See* FEIS/EIR at 1-22, 3.5-7. Nevertheless, the FEIS/EIR notes that "the County did consult with interested Tribes" after "[n]otices regarding the Project were mailed to 11 Tribes who had requested notifications regarding projects located within their Traditional Use Areas." FEIS/EIR at 3.5-7. BLM states that it re-sent the original September 12, 2016 letter by e-mail on February 21, 2019. However, to the best of our knowledge, CRIT did not receive this letter. Please provide a copy of the 2016 correspondence.

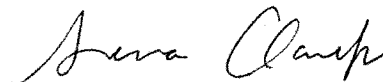
Previous comments in record: CRIT DEIS Comment Letter, at FEIS/EIR, Appendix Z at 172-173; FEIS/EIR, Appendix Z at 265 (EPA urging adequate consultation with tribes).

Conclusion

CRIT urges BLM to abandon this ill-conceived Project altogether. In the absence of a No Project alternative, the Tribes ask that BLM revise the Final EIS/EIR to correct the many identified violations of federal and state law to address the concerns of CRIT and other affected Tribes. Thank you for your consideration. Please copy the Tribes' Attorney General, Rebecca A. Loudbear, at rloudbear@critdoj.com, Deputy Attorney General Antoinette Flora, aflora@critdoj.com, and Acting THPO Director Bryan Etsitty, at betsitty@crit-nsn.gov, on all correspondence to the Tribes.

Very truly yours,

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