Appendix A

NOP, Scoping Meeting Materials, and Comments Received on the NOP

Kimley»Horn

County of San Bernardino

NOTICE OF PREPARATION OF A DRAFT EIR AND SCOPING MEETING

DATE: March 29, 2022

TO: Responsible Agencies and Interested Parties

SUBJECT: Notice of Preparation of a Draft Environmental Impact Report and Scoping Meeting

Pursuant to the California Environmental Quality Act (CEQA), the County of San Bernardino (County) must conduct a review of the environmental impacts of the Vidal Energy Project (Project). Implementation of the Project will require discretionary approvals from State and local agencies, and therefore, the Project is subject to the environmental review requirements of CEQA. As the lead agency under CEQA, and due to the involvement of potentially significant impacts to the environment, the County is therefore issuing this Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Project.

PROJECT TITLE: Vidal Energy Project - PROJ-2021-00012

PROJECT APPLICANT: CDH Vidal, LLC

ASSESSOR'S PARCEL NUMBERS: 0647-051-08 and 11; 0647-061-01 to 05, 08, 09, 13, 15, 16, 20, 22, 29, and 30; 0647-081-37; 0647-091-03 to 06; and 0490-223-33

PROJECT DESCRIPTION

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

Project Objectives

The following are the Project objectives:

- Utilize property within the County to site photovoltaic (PV) solar power-generating facilities and energy storage near existing utility infrastructure
- Support California's efforts to reduce greenhouse gas (GHG) emissions consistent with the timeline established by the California Global Warming Solutions Act under Assembly Bill 32, as amended by Senate Bill 32, which requires that Statewide GHG emissions be reduced to at least 40 percent below the Statewide GHG emissions limit by 2030
- Support California's Renewables Portfolio Standard (RPS) Program consistent with the timeline established by Senate Bill 100, which requires that by December 31, 2030, 60 percent of all electricity sold in the State shall be generated from renewable energy sources
- Develop an economically feasible and commercially financeable power-generating facility and energy storage system
- Provide solar-generated electricity to the California Independent System Operator (CAISO) grid and WAPA
- Promote the County's role as the State's leading producer of renewable energy
- Provide green jobs to the County and the State of California
- Site and design the Project in an environmentally responsible manner consistent with current County guidelines.

Project Site

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

Project Overview and Design

The Project includes the development of solar PV facilities, BESS, and associated infrastructure with the capacity to generate up to 160 MW of solar energy and up to 640

MWh of energy storage capacity rate. The Project would be fenced to prevent access by the public. Gates would be installed at the roads entering the Project site. Limiting access to the Project site would be necessary both to ensure the safety of the public and to protect the equipment from potential theft and vandalism. The Project consists of the following components:

Solar Generator and Power Conversion Stations (Inverters). The Project would develop PV modules utilizing either fixed tilt or tracker technology. Within the proposed solar arrays would be power conversion stations (PCS), also known as inverters, that would contain at a minimum one inverter and one transformer. Inverters would be housed within an enclosed structure. A PCS would also be anticipated to include an exhaust fan and a heating, ventilation, and air conditioning (HVAC) system, which would be mounted to the exterior of the enclosure.

Battery Storage. The Project's BESS would have a capacity of 640 MWh. The BESS would likely consist of containers housing batteries connected in strings and mounted on racks. The container would likely include a transformer, monitoring equipment, and lighting and cooling equipment. The Project would utilize up to 47 containers (depending on container dimensions), with each container being up to 80 feet long by 8 feet wide and 8 feet tall. Two different locations and methods of storage are proposed for the BESS, including: (1) all BESS containers would be consolidated within the Project substation area; or (2) BESS equipment would be distributed throughout the Project's solar arrays by collocating a single BESS container with each of the Project's block inverters with the BESS and inverter housed in a new or the same container. Method 1, if fully employed, would require approximately 7.1 acres within the Project substation area to house the BESS containers. Under Method 2, the BESS containers would contain batteries only, and the inverters would remain central to the solar array blocks. Project design would include shielded and motion-activated lighting and safety features within each container. The containers are equipped with a door on each end and include fire detection and fire suppression systems. Cables and cooling pipes would pass through the container floor.

Project Substations. The Project would include construction of one substation facility located in the southeastern corner of the Project Site boundary. The substation that would collect the power generated by the PV solar system blocks, transport the power via the underground/overhead power collection system, and then convert the power for transmission in WAPA's overhead 161-kV line. Equipment at the Project substation would include transformers, bus work, switches, breakers, and all associated equipment required to be compliant with utility-grade interconnection services. The substation facilities would house the power generation control and relaying equipment, station batteries, and Supervisory Control and Data Acquisition System (SCADA) and communication systems. The Project substation would be remotely operated and periodically maintained but would not be permanently staffed. The substation site would be cleared, graded, and graveled. A security fence would be installed around the perimeter for safety and security purposes. The fence would consist of an up to 6-foot

chain-link fence with up to three strands of barbed wire for a total maximum height of 8 feet. For safety purposes this fence would not be adapted for wildlife movement. Construction and operations of the Project substation would affect approximately 6 acres. The BESS may also be co-located within or adjacent to the substation yard.

Construction

Project construction is anticipated to be completed over a period of up to approximately 14 months. The on-site construction workforce is expected to peak at approximately 495 individuals; however, the average daily workforce on-site is expected to be approximately 220 workers per day. Construction would occur Monday through Friday, between 7:00 a.m. and 7:00 p.m. Any construction work performed outside of the normal work schedule would be coordinated with the appropriate agencies and would conform to the County Noise Ordinance.

Operations

Upon completion of construction and testing, the Project would be operated during daylight hours. Up to 12 full-time and/or part-time staff would be required for operation, inspection, security, maintenance, and system monitoring purposes. Typical O&M activities during Project operations include, but are not limited to, facility monitoring; administration and reporting; remote operations of inverters, BESS system and other equipment; site security and management; communication protocol; repair and maintenance of solar facilities, substation, electrical transmission lines, and other Project facilities; and periodic panel washing. Panel washing would utilize water that would be purchased from a local supplier using groundwater wells.

Decommissioning

At the end of the Project's operational term (anticipated to be approximately 35 years), CORE may choose to update site technology and recommission, or CORE will decommission the site and remove the systems and components. All decommissioning and restoration activities would adhere to the requirements of the appropriate governing authorities and be in accordance with all applicable federal, State, and County regulations. The Applicant will work with the County to ensure decommissioning of the Project after its productive lifetime complies with all applicable local, state, and federal requirements best management practices (BMPs).

EIR SCOPE

As set forth in the California Public Resources Code (PRC) Section et seq., and the CEQA Guidelines, codified in the California Code of Regulations, Title 14, Section 15000 et seq, the County has determined, based on substantial evidence and in light of the whole record before the lead agency, that the Project may have a significant effect on the environment and that an Environmental Impact Report shall be prepared for the Project. (PRC Sections 21080(d) and (e); 21802.2(d); 21083(b); and CEQA Guidelines Sections 15060(d) and 15081).

The Lead Agency has initially identified the following environmental considerations as potentially significant effects of the Project:

- Aesthetics
- Air Quality
- Biological Resources
- Cultural Resources
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Noise
- Transportation
- Tribal Cultural Resources

The EIR will assess the effects of the Project on the environment, identify potentially significant impacts, identify feasible mitigation measures to reduce or eliminate potentially significant environmental impacts, and discuss potentially feasible alternatives to the Project that may accomplish basic project objectives while lessening or eliminating any potentially significant project impacts.

RESPONSIBLE AGENCIES

A responsible agency means a public agency other than the lead agency, which has permitting authority or approval power over some aspect of the overall project. This Notice provides a description of the Project and solicits comments from responsible agencies, trustee agencies, federal, State and local agencies, and other interested parties on the scope and content of the environmental document to be prepared to analyze the environmental impacts of the project.

Comments received in response to this Notice will be reviewed and considered by the lead agency in determining the scope of the EIR. Due to time limits, as defined by CEQA, your response should be sent at the earliest possible date, but no later than thirty (30) days after publication of this Notice. We need to know the views of your agency as to the scope and content of the environmental information that is germane to you or to your agency's statutory responsibilities in connection with the Project. Your agency may need to use the EIR prepared by our agency when considering your permit or other approval for the Project.

OPPORTUNITY FOR PUBLIC REVIEW AND COMMENT

The NOP is available for public review on the County's website at:

http://cms.sbcounty.gov/lus/Planning/Environmental/Desert.aspx

Additionally, a copy of the NOP is available for public review at the following locations:

San Bernardino County High Desert Government Center
15900 Smoke Tree Street, Suite 1331
Hesperia, CA 92345

San Bernardino County Library
Barstow Branch
304 E. Buena Vista Street
Barstow, CA 92311

San Bernardino County
Government Center
385 North Arrowhead Avenue, Second Floor
San Bernardino, CA 92415

We would like to hear what you think. Comments and/or questions should be directed to Jim Morrissey, Planner, via U.S. mail or email **by no later than 5:00 p.m. on April 27, 2022**.

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

Please include the name, phone number, and address of your agency's contact person in your response.

PUBLIC SCOPING MEETING

The CEQA process encourages comments and questions from the public throughout the planning process. Consistent with Section 21083.9 of the CEQA Statute, a Public Scoping Meeting will be held to solicit public comments on the scope and content of the EIR. A virtual scoping meeting will be held for this Project. The date and meeting details are as follows:

Date and Time: April 12, 2022 from 6:00 p.m. to 8:00 pm (Pacific Time)

Place: Via Zoom: https://tinyurl.com/VidalEnergyPublicScoping

The zoom meeting may also be accessed through the zoom website by using the following:

Webinar ID: 926 8704 1371

Join by Telephone: 888 475 4499 (Toll Free)

If you require additional information please contact Jim Morrissey, Planner, at (909) 387-4234.

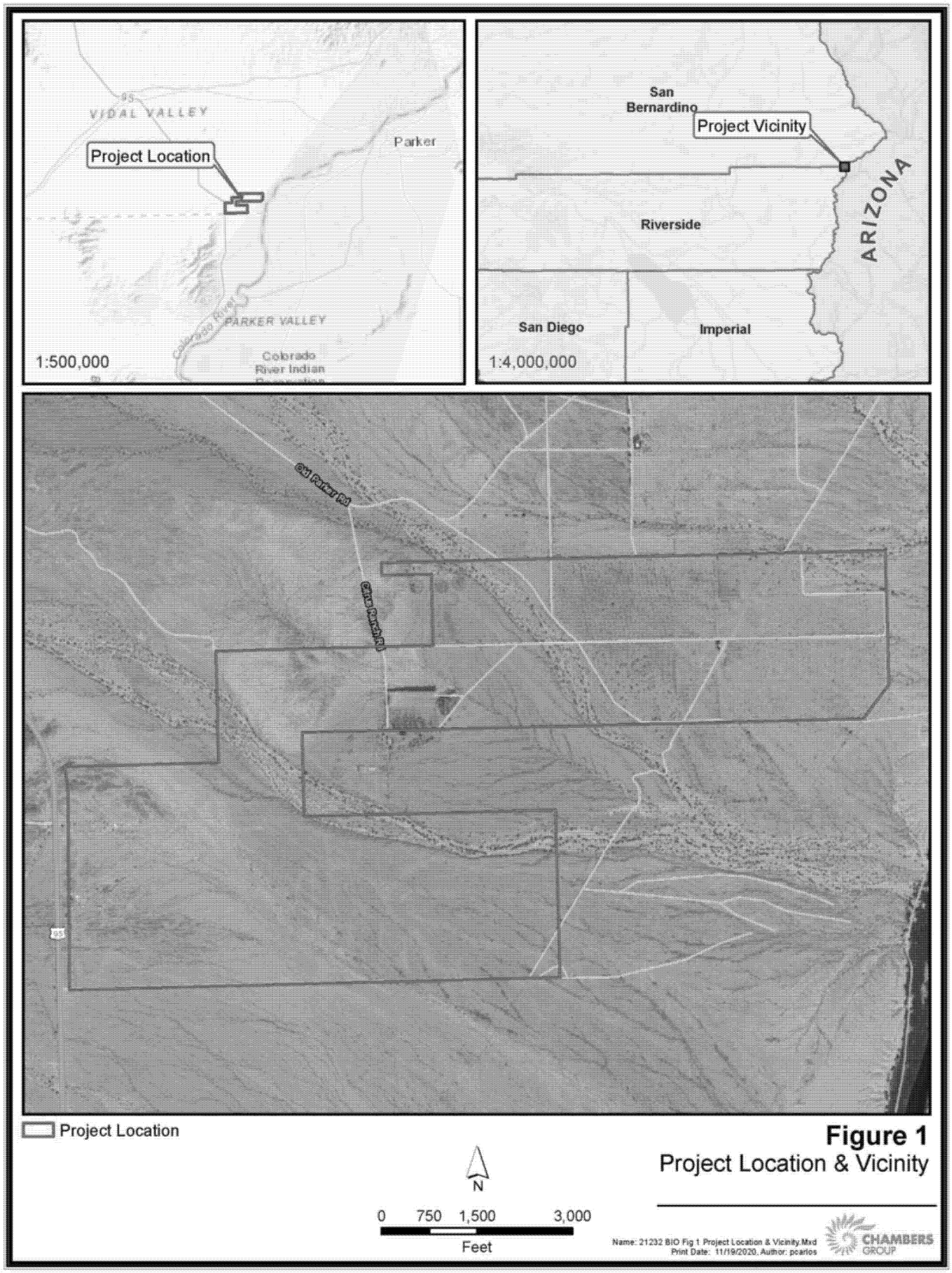

Figure 1
Project Location & Vicinity

SAN BERNARDINO COUNTY

Land Use Services Department
Planning Division

Public Scoping Meeting
Environmental Impact Report

PROJ-2021-00012

Applicant: CDH Vidal, LLC

Jim Morrissey
Contract Planner
April 12, 2022

www.SBCounty.gov

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Zoom Webinar Attendee Controls

Raise Hand: Raise your hand in the webinar to indicate that you want to make a comment.

Unmute/Mute: When the host gives you permission, you can unmute and all participants will be able to hear you talk. If the host allows you to talk, you will receive this notification - **click "unmute myself"**

Question & Answer: Open the Q&A window, allowing you to ask questions. The hosts can either reply via text in the Q&A window or answer your question live.

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Agenda

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- Introductions
- Purpose of a Public Scoping Meeting
- Project Overview
- California Environmental Quality Act (CEQA)
- CEQA Process
- EIR Scope and Content
- Public Comments

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Introductions

Page 4

- **Lead Agency:** County of San Bernardino Land Use Services Department
  - Jim Morrissey, Contract Planner
- **CEQA Consultant:** Kimley-Horn and Associates
  - Heidi Rous, CPP, Project Manager
  - Jessie Fan, ENV SP, Deputy Project Manager
- **Applicant:** CDH Vidal, LLC

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Purpose of a Public Scoping Meeting

- Provide information about the Vidal Energy Project
- Inform the public of the County's intent to prepare an Environmental Impact Report (EIR) in compliance with the California Environmental Quality Act (CEQA)
- Present an overview of the EIR process
- Identify environmental issues for analysis in the EIR
- Solicit public input on the environmental scope and content of the EIR

The Public Scoping Meeting is for community input only. The County is at the beginning of the environmental review process.

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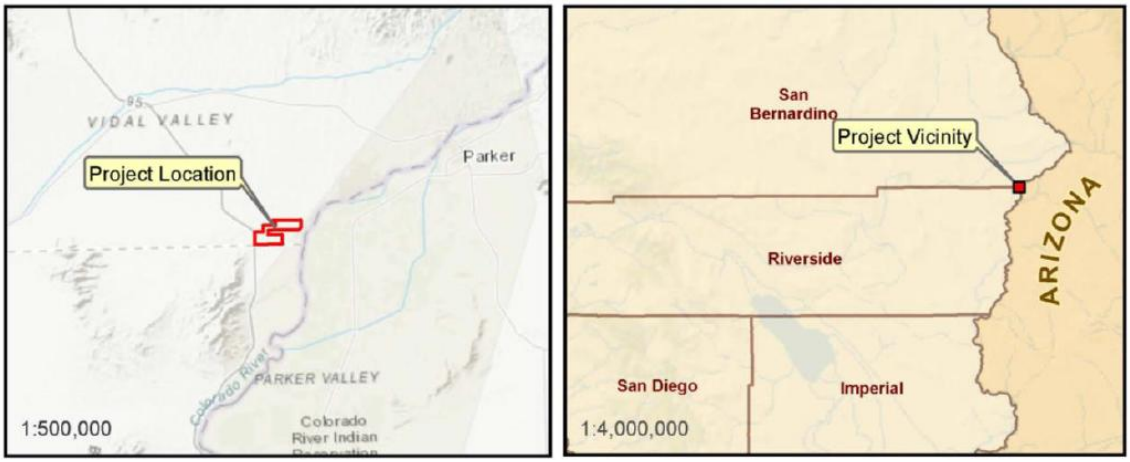
Project Location



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Project Site Boundaries

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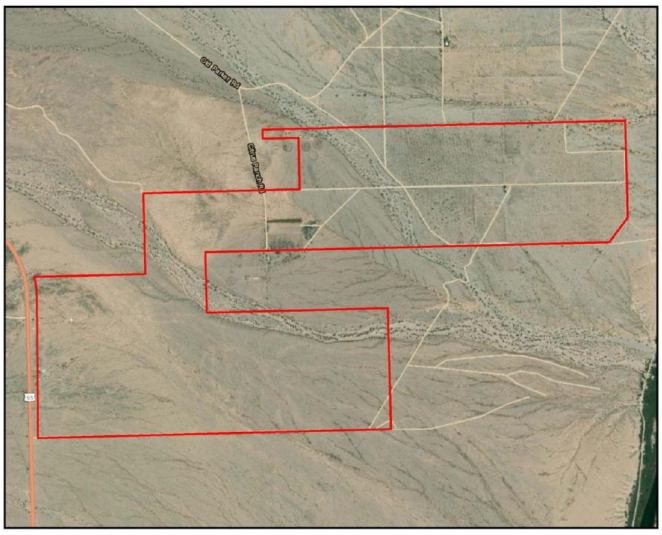

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Project Overview

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- Up to 160 MW PV solar
- Battery energy storage system to store up to 640 MWh
- Supported by adjacent Western Area Power Administration (WAPA) 161 kV overhead transmission corridor
- Construction of one on-site substation facility in southeastern corner of Project Site to collect and convert power for transmission
  - Substation would be remotely operated and periodically maintained
- Security fencing installed around the perimeter
- Construction is anticipated over 14 months

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California Environmental Quality Act (CEQA)

Purpose of CEQA Review:

- Informs decision-makers and the public of a project's potential environmental effects
- Increases public understanding of and participation in environmental review process
- Discloses potential impacts on the environment
- Identifies ways to avoid or reduce potential environmental impacts through mitigation measures or alternatives

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Contents of an EIR

An EIR is a public disclosure document that analyzes potential environmental effects of a proposed project:

- Short-term and long-term environmental impacts (construction and operation)
- Direct and indirect impacts
- Cumulative impacts
- Mitigation measures to reduce or avoid potential environmental impacts
- Project alternatives

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CEQA Process

- Notice of Preparation
- Scoping Meeting
- Public & Agency Input

- Technical Studies
- Draft EIR

- Public Comments
- Respond to Comments
- Final EIR Issuance

- Consider EIR and all comments
- Consider Project

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EIR Scope and Content

- Aesthetics
- Air Quality
- Biological Resources
- Cultural Resources
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Noise
- Transportation
- Tribal Cultural Resources

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Public Comments

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Due date for public comments on the scope of the EIR:
5:00 p.m. PDT on Wednesday, April 27, 2022

Please direct EIR comments to:
County of San Bernardino
Land Use Services Department
Jim Morrissey, Contract Planner
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415
Jim.Morrissey@lus.sbcounty.gov
(909) 387-4234

SAN BERNARDINO COUNTY
Land Use Services Department
Planning Division

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Zoom Webinar Attendee Controls

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Raise Hand: Raise your hand in the webinar to indicate that you want to make a comment.

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Question & Answer: Open the Q&A window, allowing you to ask questions. The hosts can either reply via text in the Q&A window or answer your question live.

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COLORADO RIVER INDIAN TRIBES

Colorado River Indian Reservation

26600 MOHAVE ROAD
PARKER, ARIZONA 85344
TELEPHONE (928) 669-9211
FAX (928) 669-1216

April 27, 2022

Via E-Mail and U.S. Mail

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

Re: Scoping Comments of the Colorado River Indian Tribes on San Bernardino County's Notice of Preparation of Draft EIR for the Vidal Energy Project, PROJ-2021-00012

Dear Mr. Morrissey:

On behalf of the Colorado River Indian Tribes (CRIT or the Tribes), I write to respond to San Bernardino County's (County) request for scoping comments on the County's Notice of Preparation of a Draft EIR for the Vidal Energy Project (Project). The Project proposes to construct and operate a solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 160 megawatts (MW) of a solar power and include up to 640 megawatt hours (MWh) of energy storage capacity rate in a battery energy storage system (BESS) on up to approximately 1,220 acres of land. The Project's permanent facilities would include PV panels, BESS, fencing, service roads, a power collection system, communication cables, overhead and underground transmission lines, electrical switchyards, a Project substation, and operations and maintenance (O&M) facilities.

The Project proponent is seeking discretionary approvals from the County and, therefore, the Project is subject to environmental review requirements of CEQA. The County has indicated its intent to prepare an Environmental Impact Report (EIR) for the Project, and has invited public comment on the same.

As a preliminary matter, the Colorado River Indian Tribes are a federally recognized Indian tribe comprised of over 4,440 members belonging to the Mohave, 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, we have a strong interest in protecting the land surrounding the CRIT reservation and ensuring that alternatives to the Project that do not implicate sacred cultural resources have been adequately considered. CRIT also has grave concerns regarding potential cultural resource and other environmental impacts associated with the Project, and has requested AB 52 consultation with the County to help guarantee that these significant impacts are adequately considered and mitigated.

As CRIT staff communicated to County representatives at the February 14, 2022 visit to the Project site, the Tribes have serious concerns regarding any development in the area of the proposed Project because of its high cultural resources sensitivity. CRIT's Tribal Historic Preservation Officer (THPO) is in the process of doing some walk-over surveying of the area, but a preliminary search of CRIT's records has confirmed that this is a highly sensitive cultural resource area, as documented in previous walk-over surveys. The details of those surveys and the cultural resources they identify are highly sensitive information, not appropriate for disclosure in a letter. For the purposes of these comments, CRIT reiterates its grave concerns about the cultural resource impacts of any development in this area and urges the County and Project applicant to seriously consider alternative locations for the development.

On a related note, the Tribes believe that the County is out of compliance with the requirements of AB 52. Upon receipt of the County's AB 52 notice letter, CRIT's THPO indicated the Tribes' interest in engaging in AB 52 consultation. THPO then scheduled a site visit with County staff and developer's representatives; as CRIT made clear, this staff-to-staff meeting was a precursor to AB 52 consultation, which allowed the Tribes to gather the requisite background information to brief Tribal Council for consultation. CRIT then subsequently reached out to County representatives to request formal, in-

person consultation under AB 52. As the Tribes' counsel pointed out to County staff numerous times, both CRIT's Consultation Policy and the Governor's Office of Planning and Research's guidance for tribal consultation state that consultation should occur in-person between government leaders for the Tribe and the County.[1] Yet, despite CRIT's clear Policy and the State's own mandates, County staff have refused the Tribes' repeated invitations to attend in-person AB 52 consultation meetings with CRIT's Tribal Council in Parker, Arizona. At the County's request, CRIT provided a Zoom link to its April 25, 2022 in-person Section 106 consultation meeting with the Western Area Power Administration, the federal agency reviewing the interconnection component of the Project. Despite presenting no compelling logistical reason as to why in-person consultation was not feasible, County staff chose instead to join this meeting remotely. Because the County has refused to acknowledge or comply with CRIT's Tribal Consultation Policy, the Tribes do not consider County staff's remote participation in the April 25, 2022 meeting to constitute AB 52 consultation.

The remainder of this letter provides general scoping comments for the County's environmental review of the proposed Project under CEQA.

I. The Project is Likely to Significantly Impact Cultural Resources.

Because of the Tribes' past, present, and future connection to the land on which the Project is proposed, CRIT has serious concerns about the Project's potential for significant cultural resource impacts. Specifically, CRIT is concerned about the construction and ground disturbance required to install all the proposed infrastructure for the Project in an area the Tribes know to contain sensitive cultural resources. The

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[1] *See* CRIT Consultation Policy at 3 ("Government-to-government consultation requires an in-person meeting between CRIT Tribal Council and the agency decision-maker with ultimate authority for a proposed project or action."), available at https://www.crit-nsn.gov/crit_contents/ordinances/Government%20to%20Government%20Consultation%20Policy%20(1).pdf; *see also* "Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA," Governor's Office of Planning and Research, at 6 ("Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty."), available at https://opr.ca.gov/ceqa/docs/20200224-AB_52_Technical_Advisory_Feb_2020.pdf; *see also* "Tribal Consultation Guidelines: Supplement to General Plan Guidelines," State of California, November 14, 2005, at 17 ("Tribal consultation should be done face-to-face.") and 21 ("Ask tribes whether they have existing consultation protocols."), available at http://nahc.ca.gov/wp-content/uploads/2019/04/SB-18-Tribal-Consultation-Guidelines.pdf.

interconnection line alone will extend across this sacred landscape through CRIT's Reservation, according to WAPA. This Project has the potential to significantly impact cultural resources in the Area of Potential Effects (APE), and CRIT strongly urges the County to consider alternative Project locations.

If the County does intend to move forward with the Project's current location, the Tribes are deeply troubled by the Project's potential to remove, damage, or destroy cultural resources and artifacts. These resources are sacred and finite. 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. Many of these cultural artifacts—those currently known and those yet to be unearthed—are intimately linked to current CRIT members.

The Vidal Project is one of dozens of energy projects either approved or under consideration by BLM, state, and local agencies in the area. The collective impact of this transformation of the desert has had, and will continue to have, considerable adverse impacts on the Tribes and the cultural, spiritual, and religious practices of CRIT members. CRIT continues to be concerned that federal and state governments intend to approve all energy projects, no matter what the cost to affected tribes, native plants and animals, and the desert ecosystem as a whole. The disturbance of new lands for this Project is likely to result in disturbance of additional cultural resources and, thus, raises serious concerns.

II. The DEIR Must Broadly Consider Impacts to Cultural Resources

CRIT is concerned about the cultural harm that will result from both the unearthing and destruction of prehistoric archaeological resources and the Project's impacts on other cultural resources. In preparing EISs and EIRs for other solar energy facilities in the region, BLM, state, and local agencies have artificially constrained the definition of "cultural resources," thereby undermining the accuracy and quality of subsequent analysis.

The California Environmental Quality Act ("CEQA") Guidelines, however, 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 that required under the CRHR criteria. CEQA Guidelines § 15064.5(a)(4). Specifically, the DEIR must take into consideration California Assembly Bill 52's amendments to CEQA by recognizing the proposed project's effect(s) on "tribal cultural resources," as defined in California Public Resources Code section 21074.

Such resources under either definition 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 trail-walking). While cremation sites are of unique importance to the Tribes, other types of artifacts, including groundstones, ceramics, and lithics, are also held sacred. Because of this, all cultural resources should be surveyed, inventoried, and evaluated in a manner that does not harm the resources or remove them from the site prior to preparation of the EIR so that the environmental analysis fully and adequately takes cultural resource impacts into account. CRIT's tribal monitors should be present in these surveying efforts, as well as all ground disturbing activities.

By using the correct definition of cultural resources for this Project, the County can ensure that impacts to a host of important tangible and intangible resources are properly considered.

In addition, the DEIR must avoid conflating eligibility for the CRHR and significant impacts under CEQA. Impacts to archaeological resources considered ineligible for listing on the CRHR—perhaps because of their lack of integrity—may nevertheless be significant for CEQA purposes.

III. The DEIR Must Ensure that Potential Impacts to Known and Unknown Cultural Artifacts Are Analyzed and Avoided.

CDFW should also ensure that cultural resource mitigation and treatment plans are in place prior to any ground disturbing activities at the sites.

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* (2011) 199 Cal.App.4th 48, 82-87. As a result, proposed mitigation measures must first require avoidance of cultural resources. Only if avoidance is infeasible may the Projects impact cultural resources. This feasibility assessment must be defined in the EIR as requiring a written evaluation, supported by substantial evidence, which is then available for tribal review and comment.

The County should also ensure that cultural resource mitigation and treatment plans are in place prior to any ground disturbing activities at the sites. These plans must be proactive, rather than reactive. The County should also ensure that all other mitigation measures are developed to ensure maximum protection for cultural resources. For

instance, the County should ensure that tribal monitors are used during all activities that have the potential to impact cultural resources, including but not limited to mowing, grading, excavation, and all other ground disturbing activities. The presence of tribal monitors will help ensure that all resources of value to the Tribes are recognized and treated with appropriate respect. In addition, the mitigation measures should allow for in-situ or adjacent reburial of prehistoric cultural resources, if such resources are located and cannot be avoided. Such measures help ensure that the footprint of the ancestors of Tribal members are not erased during construction.

IV. The DEIR Must Adequately Consider Cumulative Impacts to Cultural Resources.

The County must take a hard look at cumulative impacts to cultural resources. CEQA requires agencies to consider cumulative impacts, meaning "two of more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." CEQA Guidelines § 15355; *see also id.* § 15130. "Cumulatively considerable" means that the incremental effects of a project are significant when viewed in connection with the effects of past projects, other current projects, and probable future projects. CEQA Guidelines § 15130(a)(3); Pub. Resources Code, § 21083(b).

As CRIT has explained, the collective and continual destruction and removal of cultural resources from the Tribes' ancestral lands due to energy projects has already caused tremendous spiritual harm to CRIT members. In addition to triggering extensive cultural resource removal, these energy projects are often sited in a way that severs the connectivity between cultural resource sites—a connectivity that is vital to the traditional value of these cultural resources. In considering the potential cultural resources impacts of the Project, the County must analyze those impacts in light of other past, present, and reasonably foreseeable future actions impacting cultural resources in this region. The County must also describe the methodology used to assess cumulative impacts and list out the other projects considered in analyzing cumulative impacts.

V. Conclusion.

Thank you for your consideration. To understand how these comments were taken into account in your decisionmaking, we ask for a written response prior to a final decision. Given the sensitive cultural resource information alluded to in this letter, we further ask that you keep these comments confidential to the extent possible.

Please copy the Tribes' Attorney General Rebecca A. Loudbear, at rloudbear@critdoj.com and THPO Director Bryan Etsitty, at betsitty@crit-nsn.gov, on all correspondence to the Tribes.

Respectfully,

Colorado River Indian Tribes

Amelia Flores
Chairwoman

Cc: Tribal Council of the Colorado River Indian Tribes
Bryan Etsitty, THPO Director, Colorado River Indian Tribes
Rebecca A. Loudbear, Attorney General, Colorado River Indian Tribes

1499338.1

Fan, Jessie

From:	Ed Larue <ed.larue@verizon.net>
Sent:	Saturday, April 30, 2022 3:46 PM
To:	Morrissey , Jim
Subject:	Notice of Preparation of a Draft Environmental Impact Report for Vidal Energy Project - PROJ-2021-00012
Attachments:	Vidal Energy Project.4-30-2022.pdf

Dear Mr. Morrissey,

I am returning from a trip to New York and was just now able to comment on this project, three days late. Hopefully the County will still accept them.

Thank you for your consideration.

Ed LaRue
Ecosystems Advisory Committee
Desert Tortoise Council

DESERT TORTOISE COUNCIL
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Via email only

April 30, 2022

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

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

Dear Mr. Morrissey,

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

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

Project Description

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

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

Scoping Comments

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

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

Proposed Action and Alternatives Considered

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Affected Environment

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

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

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

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

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

Important points from these tables include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Standardized Surveys – Desert Tortoise and Other Species

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mojave Desert Tortoise Impacts Analysis:

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

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

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

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

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

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

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

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

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

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

Mitigation Plans

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Climate Change and Non-native Plants

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

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

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

Hydrology and Water Quality

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

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

Cumulative Effects

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

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

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

Respectfully,

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

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TRIBAL HISTORIC PRESERVATION OFFICE

VIA ELECTRONIC MAIL

Jim.Morrissey@lus.sbcounty.gov

June 1, 2022

MORONGO BAND OF MISSION INDIANS
A SOVEREIGN NATION

Jim Morrissey
County of San Bernardino
Land Use Services Department
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415

Re: Notice of Preparation of Environmental Impact Report for the Vidal Energy Project

Dear Mr. Morrissey:

The Morongo Band of Mission Indians (Tribe/MBMI) Tribal Historic Preservation Office received the County of San Bernadino (County) Notice of Preparation of an Environmental Impact Report (EIR) regarding the Vidal Energy Project (Project). The proposed Project is located near the ancestral territory and traditional use area of the Cahuilla and Serrano people of the Morongo Band of Mission Indians.

Tribal cultural resources are non-renewable resources and therefore of high importance to the Morongo Tribe, therefore, tribal participation (a.k.a. tribal monitors) is recommended during all ground disturbing activities. We look forward to working with the County of Riverside to protect these irreplaceable resources out of respect for ancestors of the Morongo people who left them there, and for the people of today and for generations to come.

Projects within this area are potentially sensitive for cultural resources regardless of the presence or absence of remaining surface artifacts and features. Our office requests to initiate government-to-government consultation under Assembly Bill (AB) 52 (California Public Resources Code § 21080.3.1) when the time is appropriate and requests the following from the County to ensure meaningful consultation:

- A records search conducted at the appropriate California Historical Resources Information System (CHRIS) center with at least a 1.0-mile search radius from the project boundary. If this work has already been done, please furnish copies of the cultural resource documentation (ArcMap Shapefiles, reports and site records) generated through this search so that we can compare and review with our records to begin productive consultation.
- Tribal participation (a.k.a. tribal monitors) during the pedestrian survey and testing, if this fieldwork has not already taken place. In the event that archaeological crews have completed this work, our office requests a copy of the current Phase I study or other cultural assessments (including the cultural resources inventory).
- Shapefiles of the Projects area of effect (APE)
- Geotechnical Report

This letter does not conclude consultation. Upon receipt of the requested documents the MBMI THPO may further provide recommendations and/or mitigation measures.

The lead contact for this Project is Bernadette Ann Brierty, Tribal Historic Preservation Officer (THPO). MBMI Cultural Resource Specialist Laura Chatterton, will be assisting the Tribe in the review of this project. Please do not hesitate to contact us at ABrierty@morongo-nsn.gov, THPO@morongo-nsn.gov, lchatterton@morongo-nsn.gov or (951) 663-2842, should you have any questions. The Tribe looks forward to meaningful government-to-government consultation with the County of San Bernardino.

Respectfully,

Bernadette Ann Brierty

Tribal Historic Preservation Officer

Morongo Band of Mission Indians

CC: Morongo THPO

12700 Pumarra Road – Banning, CA 92220 – (951) 755-5259 – Fax (951) 572-6004 – THPO@morongo-nsn.gov

From: Sharma, Shankar@Wildlife <Shankar.Sharma@wildlife.ca.gov>
Sent: Tuesday, August 02, 2022 8:06 AM
To: Morrissey , Jim <Jim.Morrissey@lus.sbcounty.gov>
Subject: Vidal Energy Project

Dear Mr. Morrissey,

Thank you for informing about the Vidal Energy Project. We will look forward to receiving the draft EIR. Feel free to contact me, if you have any questions.

Best wishes,
Dr. Sharma
CDFW-R6