Appendix D.4

Responses to All Comments

D.4 Responses to All Comments

D.4.1 Responses to Comments from Public Agencies

Responses to Comment Set A1 – California Department of Fish and Wildlife

A1-1 The commenter notes that special emphasis should be placed on environmental resources that are rare or unique to the region, The commenter recommended multiple sources and methods to assess the area. The commenter states that the analysis should include a comprehensive, recent inventory of rare, threatened, endangered, and other sensitive species.

Please refer to Section 3.4.1 of the EIR for an inventory of sensitive and special-status species with potential to occur in the project area.

A1-2 The commenter notes that the species addressed in the EIR should include those that meet the CEQA definition, and surveys should be conducted at the proper time, and using procedures that are developed in consultation with CDFW and U.S. Fish and Wildlife Service.

Please refer to Section 3.4.1 of the EIR and to the BRTR (IP Oberon, 2021, Appendix F[1]) for a description of surveys and methods performed for the proposed project.

A1-3 The commenter recommends protocol level surveys for desert tortoise, following USFWS Desert Tortoise Field Manual guidelines. The commenter also recommends surveys for burrowing owl, with survey recommendations provided in the Staff Report on Burrowing Owl Mitigation.

Please refer to Section 3.4.1 of the EIR and to the BRTR (IP Oberon, 2021, Appendix F) for a description of surveys and methods performed for the proposed project.

A1-4 The commenter recommends development of a desert kit fox and American badger mitigation and monitoring plan to mitigate impacts to these protected species and species of special concern, respectively. The commenter also recommends a thorough, recent, floristic assessment of special status plants and natural communities, following CDFW protocols for surveying.

Please refer to MM BIO-13 in Section 3.4.7 of the EIR for mitigation measures related to desert kit fox and American badger monitoring and relocation.

Please refer to Section 3.4.1 of the EIR and to the BRTR (IP Oberon, 2021, Appendix F) for a description of surveys and methods performed for the proposed project.

[1] Oberon Renewable Energy Project. https://go.usa.gov/xfdH5.

A1-5 The commenter recommends that the Draft EIR discuss direct, indirect, and cumulative impacts to biological resources due to the project and include mitigation measures for adverse impacts that emphasize avoidance and reduction of project impacts. The commenter recommends on-site mitigation, if feasible, or off-site habitat acquisition, enhancement, conservation, and management. The commenter addressed specific issues that should be addressed, as well as factors that diminish the habitat value for the target species.

Please see Section 3.4.5 of the EIR for a description of direct and indirect impacts to biological resources. Please see Section 3.4.6 of the EIR for a discussion of cumulative impacts based on the cumulative scenario described in EIR Section 3.1. Please see Section 3.4.7 of the EIR for a list of biological resources mitigation measures.

A1-6 The commenter recommends that biological resources are fully analyzed by discussing potential impacts from lighting, noise, human activity, and wildlife-human interactions created by zoning of development projects or other project activities. The commenter also recommends that the project-related changes on drainage patterns is analyzed.

Please see EIR Section 3.4.5 regarding impacts from lighting, noise, human activity, wildlife-human interactions, and drainage patterns. Please see EIR Section 3.10 regarding analysis of impacts to hydrology.

A1-7 The commenter recommends that the Draft EIR include a discussion of potential indirect impacts on biological resources, such as impacts to adjacent areas, public lands, open space, natural habitats, etc.

Please see EIR Section 3.4.5 regarding indirect impacts to biological resources.

A1-8 The commenter recommends that the Draft EIR include an evaluation of impacts to adjacent open space lands from both the construction of the project and long term operational and maintenance needs.

Please see EIR Section 3.4.5 regarding impacts to biological resources in the project area. See EIR Section 3.4.6 for a discussion of cumulative impacts of existing and proposed projects in the vicinity.

A1-9 The commenter recommends that a cumulative effects analysis is included, that analyzes direct and indirect project related impacts to riparian areas, wetlands, vernal pools, alluvial fan habitats, wildlife corridors, wildlife movement areas, aquatic habitats, sensitive species/habitats, open lands and space, and adjacent natural habitats. The commenter recommends that

general and specific plans, as well as past, present, and anticipated future projects should be analyzed relative to their impacts.

Please see EIR Section 3.4.6 for a discussion of cumulative impacts to sensitive biological resources, which includes plans such as the Desert Center Area Plan described in Section 3.1.2 (Cumulative Scenario). The regulatory framework for biological resources is described in Section 3.4.2. Impact LU-1 in Section 3.11.5 discusses policy consistency as well.

A1-10 The commenter recommends that the potential loss in habitat expansion and population density changes with time should be accounted for. The commenter argues that to determine mitigation adequacy, there is a need to analyze spatial and temporal changes in habitat for species. The commenter recommends inclusion of risk analysis comparing the proposed project footprint with alternative project designs on various species and their habitat quality through the life cycle of the project.

Impacts to biological resources are discussed in Section 3.4.5 of the EIR. Alternatives are analyzed and compared to the proposed project in Section 4 of the EIR.

A1-11 The commenter notes that Burrowing Owl is a CDFW species of special concern and occurs year-round and as a winter visitor. The burrowing owl prefers dry, open, short-grass areas for burrowing, and in vacant lots near human habitation. The burrowing owl uses uninhabited mammal burrows for roosts and nests.

Burrowing owl is discussed in Section 3.4.1 of the EIR and impacts are discussed in Section 3.4.5. MM BIO-12 details measures to avoid and minimize impacts to burrowing owl. Descriptions of the burrowing owl submitted by the commenter are noted.

A1-12 The commenter notes that the northern harrier is a CDFW species of special concern, that is found in open habitats with dense ground cover, and they nest on the ground, with a preference for wetland habitat.

The northern harrier is discussed in Section 3.4.1 of the EIR and impacts are discussed in EIR Section 3.4.5. Descriptions of the northern harrier provided by the commenter are noted.

A1-13 The commenter notes that the black-tailed gnatcatcher is a CDFW watch list species, which remains in pairs all year, defending permanent territory. The commenter explains that the species prefers dry washes or desert brush, or tamarisk scrub.

Black-tailed gnatcatcher is described in Section 3.4.1 of the EIR and impacts to special-status birds are discussed in Section 3.4.5. Descriptions of the black-tailed gnatcatcher provided by the commenter are noted.

A1-14 The commenter notes that the loggerhead shrike is a CDFW species of special concern, which inhabits most of the continental U.S. and Mexico, and is an uncommon year-round resident of southern California. The loggerhead shrike prefers washes with scattered trees and shrubs, or valley floors as it requires open habitat with tall shrubs or trees for nesting. The bird lives in pairs in permanent territories. The commenter notes that the populations are declining due to urbanization and loss of habitat, as well as pesticide use.

Loggerhead shrike is described in Section 3.4.1 of the EIR, and impacts are discussed in EIR Section 3.4.5. Provided descriptions of loggerhead shrike are noted.

A1-15 The commenter notes that Le Conte's thrasher is a CDFW species of special concern, and a permanent resident in the San Joaquin Valley, Mojave, and Colorado Deserts of California and other neighboring areas. The bird requires undisturbed substrate for foraging under desert shrubs, and its ideal habitat is sparsely vegetated desert flats, dunes, sandy alluvial fans below desert mountains, alkaline dry lakes, or gently rolling hills.

Le Conte's thrasher is described in Section 3.4.1 of the EIR and impacts to special-status birds are discussed in Section 3.4.5. Provided descriptions of Le Conte's thrasher are noted.

A1-16 The commenter notes that American badger is a CDFW species of special concern, are widespread from the Great Lakes to the Pacific Coast and can be found in a variety of habitats. The populations and distributions have been declining due to habitat fragmentation from urbanization and development of roads.

American badger is discussed in Section 3.4.1 of the EIR. Provided descriptions of American badger are noted.

A1-17 The commenter notes that the Draft EIR should include mitigation measures for all impacts, direct, indirect, or cumulative, that are expected to occur as a result of the project. The commenter recommends that project activities described in the Draft EIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the project area. The commenter recommends that the Draft EIR fully analyze potential adverse impacts to fully protected species, and that mitigation is included to reduce possible indirect impacts to fully protected species.

Mitigation measures are detailed in Section 3.4.7 of the EIR. Section 3.4.5 describes how mitigation measures will avoid, minimize, and mitigate significant impacts to a level of less than significant.

A1-18 The commenter notes that sensitive plant communities have both local and regional significance. Plant communities with a statewide ranking of S-1, S-2, S-3, and S-4, should be considered sensitive and declining at the local and regional level, and can be found in the California Natural Diversity Database (CNDDB) or the Manual of California Vegetation. The commenter states that the Draft EIR should include measures to fully avoid and otherwise protect sensitive plant communities. The commenter states that the performance standard for mitigation will be no net reduction in size or viability of the local population.

Sensitive plant communities, more specifically desert dry wash (microphyll) woodlands, are described in EIR Section 3.4.1. Impacts are described in EIR Section 3.4.5 under Impact BIO-2.

A1-19 The commenter notes that the western Joshua tree is a candidate for threatened species under the California Endangered Species Act (CESA). The commenter recommends that the Draft EIR include a risk analysis showing comparative evaluation of adverse impacts of design layouts on various species and their habitat quality and sustainability over time. The commenter notes that avoidance of western Joshua tree would be the preferred approach. The commenter recommends that the assessment area cover the project area plus a 200-foot buffer, and that the assessment of impacts and associated mitigation should evaluate the number and size of western Joshua trees impacted and the overall quality of habitat. The commenter states that impacts include removal of western Joshua tree and its seedbank, and loss of occupied and suitable habitat. The commenter does not view relocation as adequate mitigation for impacts to western Joshua tree and its habitat and recommends the mitigation site is occupied and is of equivalent of higher value for western Joshua tree than the impact site.

The commenter recommends that the project proponent seek appropriate authorization prior to project implementation through an Incidental Take Permit (ITP).

Joshua trees do not occur on the project site; therefore, the EIR does not include a discussion of Joshua trees, and an ITP and/or mitigation for Joshua trees is not required.

A1-20 The commenter states that they consider adverse project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the Draft EIR should include mitigation measures for

adverse project related impacts to these resources. The mitigation should emphasize avoidance and reduction of project impacts, and off-site mitigation should be used only if onsite mitigation is not feasible. Specific issues that should be addressed include restrictions on access, land dedications, long-term monitoring and management, control of illegal dumping, water pollution, and human intrusion.

Impacts to biological resources are discussed in EIR Section 3.4.5. Mitigation measures related to biological resources are detailed in Section 3.4.7. The Mitigation Monitoring and Reporting Program is included in the Final EIR as Appendix E.

A1-21 The commenter recommends that the Draft EIR should require a CDFW approved qualified biologist be retained to be onsite prior to and during all ground and habitat disturbing activities to move special status species or other wildlife. Temporary relocation of onsite wildlife does not constitute effective mitigation for the purposes of offsetting project impacts associated with habitat loss.

MM BIO-1 details the qualifications and approvals for the project Lead Biologist, including approval by CDFW.

A1-22 The commenter states that CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the California Endangered Species Act. CDFW recommends that a CESA ITP is obtained if the project has the potential to result in "take." Proposed avoidance, minimization, and mitigation measures must be sufficient for CDFW to conclude that the project's impacts are fully mitigated and the measures, when taken in aggregate, must meet the full mitigation standard.

The Applicant has applied for an incidental take permit from CDFW for impacts to desert tortoise on the project site. See Section 3.4.5, under Impact BIO-1.

A1-23 The commenter recommends inclusion of mitigation measures to avoid a potentially significant impact to desert tortoise, a CESA listed species. The measures need to include specifics on surveys, address avoidance and minimization, and take. The project proponent should seek an ITP. The commenter recommends inclusion of a protocol level survey and a measure for a qualified biologist in the environmental document. If the survey confirms presence, the Applicant shall obtain an ITP for desert tortoise prior to the start of project activities, and if a desert tortoise is found on site, work shall be suspended, and the project proponent shall obtain an ITP for the species prior

to restarting project activities. The commenter states that all clearance surveys need to be conducted during the active season for desert tortoise.

The Applicant has applied for an incidental take permit from CDFW for impacts to desert tortoise on the project site. See Section 3.4.5, under Impact BIO-1. The Applicant is seeking a variance to the USFWS protocol and an exemption from BLM, as allowed in DRECP CMA LUPA-BIO-IFS-4, in order to perform clearance surveys outside of the desert tortoise activity window. (see Section 2.2.2.2 of the EIR).

A1-24 The commenter notes that burrowing owl is a CDFW Species of Special Concern, and potential construction-related direct impacts to burrowing owl could result from destruction of burrowing owl dens, destruction of nests, eggs, and young; and entombment of adults. CDFW recommends inclusion of mitigation measures to avoid potentially significant impacts to burrowing owls, The commenter includes suggestions for mitigation measures and guidelines for surveys. Eviction of burrowing owls is a potentially significant impact under CEQA. The commenter/CDFW recommends including a measure for a qualified biologist in the environmental document.

Impacts to burrowing owl are described in EIR Section 3.4.5, under Impact BIO-1. MM BIO-12 details measures related to avoidance and relocation of burrowing owl, including a Wildlife Relocation Plan to be approved by the resource agencies. Per MM BIO-1, the Lead Biologist would be approved by BLM, CDFW, and USFWS.

A1-25 The commenter notes that Le Conte’s thrasher is a CDFW Species of Special Concern, and that during the nesting season, surveys should be conducted by a Qualified Biologist. If nesting Le Conte’s thrashers are found, an exclusion buffer will be established around the nest site in any location where work may occur within 500 feet of the active nest. No work will be permitted within the buffer during the breeding season of January 15 through June 15 or until the young have fledged.

Impacts to special-status birds are discussed in Section 3.4.5 under Impact BIO-1 in the EIR. MM BIO-10 details the requirements of a Nesting Bird Management Plan that will direct pre-construction nesting surveys and nest buffers and avoidance.

A1-26 The commenter states that it is the project proponent’s responsibility to comply with all applicable laws related to nesting birds and birds of prey. The commenter describes measures that are required by various acts and Fish and Game code sections. The commenter notes that it is unlawful to take, possess, and destroy the nests or eggs of any birds-of-prey, or any migratory nongame bird. The commenter recommends that the analysis include the

results of avian surveys, as well as specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. The commenter includes recommendations for project-specific avoidance and minimization measures. The commenter recommends that the surveys be required no more than three days prior to vegetation clearing or ground disturbance activities.

Impacts to special-status birds are discussed in EIR Section 3.4.5 under Impact BIO-1. MM BIO-10 details the Bird and Bat Conservation Strategy and Nesting Bird Management Plan that will direct pre-construction nesting surveys, nest buffers and avoidance, and mortality monitoring and adaptive management. MM BIO-11 details compliance with standards and practices for design of gen-tie lines to minimize impacts to perching and nesting raptors.

A1-27 The commenter notes that the American badger is a Species of Special Concern, and desert kit fox is a protected species and may not be taken at any time. Project activities may have the potential to take both of these species, and development may result in loss of habitat and/or foraging habitat. The commenter recommends surveys prior to construction/ground disturbance and includes strategies to ensure that there is no take of these species and no disturbance of active burrows.

Impacts to American badger and desert kit fox are discussed in EIR Section 3.4.5 under Impact BIO-1. MM BIO-13 details measures to avoid and minimize impacts to these species through relocation and coordination with CDFW.

A1-28 The commenter states that the Biological Monitor(s) shall visually check all sections of pipe/construction materials for the presence of wildlife sheltering within them prior to the pipe sections being placed in the trench and attached together and shall be capped at the end of each day to prevent wildlife from entering and being trapped within the pipeline.

MM BIO-8 includes measures to prevent entrapment of wildlife during construction, including inspection of construction materials and pipes prior to use.

A1-29 The commenter states that at the end of each workday, the Biological Monitor(s) shall place an escape ramp at each end of the open trench to allow any animals that may have become entrapped in the trench to climb out overnight.

MM BIO-8 includes measures to prevent entrapment of wildlife during construction, including placing ramps into open trenches.

A1-30 The commenter notes that Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may substantially divert or change natural flows of any rivers, streams, or lakes, including ephemeral streams, desert washes, or watercourses with subsurface flow. To facilitate issuance of an Lake and Streambed Alteration Agreement (LSAA), if necessary, the Draft EIR should fully identify the potential impacts to the lakes, streams, dryland channels, riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments

Impacts to State jurisdictional waters are described in Section 3.4.5 of the EIR under Impact BIO-3. Mitigation measures are detailed in EIR Section 3.4.7.

A1-31 The commenter states that CEQA requires information developed into EIRs and negative declarations to be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. The commenter asked that any special status and natural communities detected during project surveys be reported to the California Natural Diversity Database (CNDDB).

Standard practice for surveys is monthly submittal for any sensitive resources found on project sites.

A1-32 The commenter states that fees are payable upon filing of the Notice of Determination by the Lead Agency to help defray the cost of environmental review by CDFW. The commenter expressed appreciation for the opportunity to comment.

The details on payment of fees are noted.

A1-33 The commenter states that CEQA filing fees are payable to CDFW upon issuance of the Notice of Determination. The RWQCB acknowledges the fees, as well as the CDFW contact information that was provided.

D.4.2 Responses to Comments from Groups, Organizations, and Companies

Responses to Comment Set B1 – Friends of the Desert Mountains

B1-1 The commenter describes the DRECP process and expresses concern about the proposed project-specific LUPA due to impacts to sensitive microphyll woodland. The commenter also points out that there are another 148,000 acres in the same renewable energy zone for developers to choose from, and the vast majority of those acres have no microphyll woodlands.

The commenter's concern about compliance with the DRECP CMAs is noted. A discussion of the Oberon Project's compliance with the DRECP CMAs and impacts to desert dry wash (microphyll) woodland is included in General Response GR-1. General Response GR-2 discusses the feasibility of development on the remaining acreage within the East Riverside Development Focus Area (DFA).

B1-2 The commenter states that encroaching over 600 acres into rare microphyll woodland and buffers just to expand the area of solar panels does not qualify as a "minor incursion" that might be allowed under DRECP. Minor incursions as defined by DRECP were contemplated only for essential infrastructure such as roads and transmission lines which could not be sited elsewhere.

The RWQCB agrees that the DRECP Glossary of Terms defines minor incursion as: "[s]mall-scale allowable impacts to sensitive resources, as per specific CMAs, that do not individually or cumulatively compromise the conservation objectives of that resource or rise to a level of significance that warrants development and application of more rigorous CMAs or a LUPA amendment. Minor incursions may be allowed to prevent or minimize greater resource impacts from an alternative approach to the activity. Not all minor incursions are considered unavoidable impacts." Microphyll woodland is commonly understood to include DDWW and the Glossary of Terms identifies the blue palo verde–ironwood alliance (which occurs on the site) as a microphyll woodland.

Please see General Response GR-1 regarding encroachment into microphyll woodland. The acreage of direct impacts, including minor incursion, would be approximately 90 acres. Approximately 223 acres within the solar facility fenceline, gen-tie ROW, collector lines and roads are encompassed in the 200-foot DDWW buffer area (138 acres of panel development).

The additional panel acreage between the Proposed Action and the Land Use Compliant Alternative (600 acres, which was cited by the commenter) is necessary to meet the project objectives because solar panels are modular.

The rectangular shape of the panel modules cannot conform to the intricate shape of the vegetation communities without some development in the DDWW and buffer areas. Avoidance of the full 200-foot buffer would cause significant further area to be undevelopable due to the size and layout of the modular panels. The EIR addresses the impacts of the incursion.

A decision on whether a LUPA is needed will be made by BLM and is a decision that is outside of the scope of the CEQA analysis and the RWQCB's jurisdiction (see General Response GR-1).

Encroachment into microphyll woodland habitat buffers established by a land use plan is not necessarily evidence of a significant environmental impact under CEQA. Similarly, although the DRECP may establish a preference for avoidance of microphyll woodland habitat, under CEQA, agencies and applicants have the option to mitigate significant and potentially significant impacts. Indeed, "inconsistency between a project and other land use controls does not in itself mandate a finding of significance. It is merely a factor to be considered in deciding whether a particular project may cause a significant environmental effect." (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1207; Guidelines App. G.) Whether or not the impacts proposed by the project are "minor incursions" as defined in the DRECP becomes irrelevant once the CEQA analysis has recognized that the incursions, minor or otherwise, are significant impacts that can be minimized through the Applicant's avoidance and mitigation package (see General Response GR-1).

B1-3 The commenter states that the notion that the acquisition of lands offsite in the Chuckwalla Bench somehow reduces impacts to a level of insignificance fails to recognize the unique value of the resources on the Oberon project site itself, a substantial portion of which is in a DRECP-designated multi-species wildlife connectivity corridor.

In addition to project design to avoid and minimize impacts to sensitive resources, the Oberon Project includes full compliance with most DRECP CMAs, as well as project-specific mitigation measures (see EIR Appendix E [MMRP] in the Final EIR) and offsite compensation lands.

Offsite compensation is incorporated into the DRECP analysis and conclusions in the DRECP Final EIS (2015) for habitat impacts, but not specifically for the wildlife corridor. In accordance with DRECP CMA LUPA-BIO-COMP-1, impacts to specified biological resources, including native habitat and designated critical habitat, are proposed to be compensated by IP Oberon, LLC, in a comprehensive mitigation package of approximately 6,200 acres compiled and managed by Wildlands, Inc. (see POD

Appendix AA on BLM's ePlanning website[2]). CEQA Guidelines section 15370(e) states that a category of "mitigation" includes compensating for the impact by replacing or providing a substitute resources or environments. The proposed off-site compensation is consistent with mitigation as defined by CEQA Guidelines.

As described in EIR Section 3.4.5, the compensation lands within the Wildlands mitigation package are much higher quality habitat than the designated critical habitat on the Oberon site. The designated critical habitat portion of the Oberon project area overlaps the multi-species linkage, is adjacent to the I-10 freeway, and contains existing energy transmission lines. Much of the area surrounding the project site, including portions of the designated critical habitat, is degraded and contains anthropogenic features and land uses, such as agriculture, residential, renewable energy, transmission lines, historic military operations, recreational development/ limited dispersed camping, BLM designated Off-Highway Vehicle (OHV) open routes, and the I-10 freeway. The USFWS determined that impacts to this area from renewable energy development would not jeopardize the continued existence of desert tortoise and approved a Programmatic Biological Opinion for take for the DRECP LUPA. On the other hand, the designated critical habitat portion of the Wildlands Mitigation Sites are partially located within the Chemehuevi ACEC, Mojave Trails National Monument, and Piute Mountains Wilderness Area and partially located within the Chuckwalla ACEC (POD Appendix AA in IP Oberon, 2021) on the Chuckwalla Bench and Smoke Tree Valley. Much of the area surrounding the Mitigation Sites are BLM-administered lands that have enhanced protections via ACEC and Wilderness Area designations. Additionally, there are many privately owned conservation lands adjacent and proximal to the Mitigation Sites that have similar habitat management goals. The remote nature of the Mitigation Sites has prevented anthropogenic impacts, such as trash disposal, OHV use, dispersed camping, or proliferation of invasive species.

Because these offsite compensation lands would be in addition to avoidance/ minimization through project design, compliance with DRECP CMAs, and implementation of project-specific mitigation measures, the function of the wildlife corridor would be maintained on the project site and additional habitat to support wildlife movement would be preserved in the region, within the same desert tortoise critical habitat unit. See also Response to Comment B3-4.

B1-4 The commenter requests that the Draft EIR be revised to fully acknowledge and analyze the harm from the proposed project, and to only approve a

[2] Oberon Renewable Energy Project. https://go.usa.gov/xfdH5

project that fully avoids onsite microphyll woodlands and buffers, as required by the DRECP, while also maintaining a functioning multi-species corridor wide enough to accommodate threatened desert tortoise traversing the site.

Direct, indirect, and cumulative impacts from the proposed project are detailed under 17 different issue areas in EIR Chapter 3. EIR Section 3.4 discusses impacts to microphyll woodlands and buffers and the multi-species corridor (see also General Responses GR-1 and GR-4, respectively). Section 3.4.5 discusses why the proposed smaller buffer may offer the same functional protection to the woodlands as the DRECP CMA's recommended 200-foot buffer and why the Oberon Project would not have a significant impact on the function of the multi-species linkage corridor. Furthermore, the EIR concludes that avoidance of approximately 1,200 acres of desert dry wash woodland in the project area and preservation of off-site habitat at a greater than 5:1 ratio would reduce and offset direct and buffer impacts to desert dry wash woodland.

The commenter's support for an alternative that would fully avoid microphyll woodland is noted. The Resource Avoidance Alternative and the Land Use Plan Compliant Alternative were developed in response to concerns about compliance with the DRECP CMAs that set forth the parameters for impacting microphyll woodland. Both alternatives were fully analyzed in Chapter 4 of the Draft EIR and would unquestionably comply with a strict interpretation of all DRECP CMAs. BLM is currently evaluating the project's compliance with the CMAs as well. Please see General Response GR-1, which discusses the authority for project-specific LUPAs to the California Desert Conservation Area (CDCA) plan, as amended.

Responses to Comment Set B2 – Mojave Desert Land Trust

B2-1 The commenter's concern about degradation of desert species, communities, and ecosystems and support for consistency with the DRECP land use plan amendment (LUPA) is noted. Please refer to General Responses GR-1 and GR-2, which address the impacts to microphyll woodland, the draft project-specific LUPA, and development of renewable energy within a DRECP DFA. Direct, indirect, and cumulative impacts from the proposed project are detailed under 17 different issue areas in EIR Chapter 3.

B2-2 The commenter expresses concerns about encroachment into microphyll woodland and in the multi-species linkage corridor. Please see Response to Comment B1-2 from Friends of the Desert Mountains regarding encroachment into microphyll woodland and minor incursion. Please see General Response GR-4 regarding effects to the wildlife corridor and future development.

B2-3 The commenter states that loss of connectivity which would occur, cannot be compensated for or offset by preserving land elsewhere on the Chuckwalla Bench. It is not comparable and thus not adequate mitigation.

See Response to Comment B1-3, which is a similar comment from Friends of the Desert Mountains regarding offsite compensation lands. The majority of the corridor, including the more valuable ribbons of microphyll woodland, would be preserved. As this corridor relies on culverts running beneath the I-10 freeway, species using the corridor are accustomed to navigating constrained channels adjacent to anthropogenic disturbances. The functionality of the corridor will be maintained and accordingly offsite compensatory mitigation lands offering better quality habitat are suitable mitigation.

B2-4 The commenter's support for an alternative that avoids the microphyll woodland, maintains the designated multi-species wildlife corridor, and complies with DRECP CMAs is noted. The Resource Avoidance Alternative, which is analyzed fully in Chapter 4 of the Draft EIR, would meet these criteria and will be considered by RWQCB decisionmakers.

Responses to Comment Set B3 – Desert Tortoise Council

B3-1 The purpose of CEQA scoping, which is kicked off with issuance of the Notice of Preparation by the RWQCB, is to solicit input from the public and affected parties on the scope of the environmental analysis and alternatives, such as the commenter's stated request to consider the project's potential impact to desert tortoise critical habitat, which has been discussed in the Draft EIR (see Section 3.4, Biological Resources). The Scoping Summary Report, which includes copies of all letters submitted, is included in the EIR as Appendix A.

In response to scoping comments, an alternative was developed and analyzed in EIR Section 4 called the Resource Avoidance Alternative that would avoid construction of the solar facility within designed desert tortoise critical habitat.

The acreages have been updated in the Final EIR to reflect the current project fenceline and components. Greater than 60% of the desert tortoise critical habitat in the project application area would not be impacted with approximately 589 acres impacted and 936 acres avoided.

Please refer to Response to Comment B1-2 for a discussion of the 600-acre difference between the proposed project and Land Use Plan Compliant Alternative.

The commenters' concern about impacts to critical habitat and its recommended avoidance are noted. However, at a programmatic level, the

USFWS has already authorized take for development of renewable energy projects in this area of critical habitat within a Development Focus Area (DFA).

B3-2 The commenters stated concerns about impacts to critical habitat with desert tortoise population declines in the project area and suggests development in impaired habitats and DFAs designated by the Desert Renewable Energy Conservation Plan (DRECP).

Please refer to General Response GR-2 regarding development of renewable energy in DFAs.

The Oberon Project is located within a DFA targeted for renewable energy development, which overlaps with a portion of designated desert tortoise critical habitat. The DRECP was developed as an interagency plan in 2016, and DFAs were designated, by the BLM, the U.S. Fish and Wildlife Service (USFWS), the California Energy Commission (CEC), and the California Department of Fish and Wildlife (CDFW). The project would impact approximately 590 acres of the Chuckwalla CHU. This impact is consistent with the DRECP FEIS Section IV.7.3.2.1 (page IV.7-134), which notes that approximately 8,000 acres of impacts to desert tortoise critical habitat could result from development of renewable energy and transmission including in the Chuckwalla CHU.

Siting of solar panels within the project area was performed in coordination with the USFWS and CDFW, beginning officially with the BLM second pre-application meeting on July 29, 2020. As described in EIR Appendix A (Scoping Summary Report), CDFW provided scoping comments on the project in April 2021. A Biological Assessment was submitted by BLM to the USFWS on September 4, 2021, which initiated formal consultation under Section 7 of the Endangered Species Act to coordinate impacts to desert tortoise and critical habitat should a LUPA be required. See EIR Table 1-1 for a list of permits and approvals from agencies for the Oberon Project.

The EIR and EA describe the desert tortoise as a federal and state listed threatened species. The DRECP CMAs do not require avoidance of desert tortoise critical habitat. Rather critical habitat must be compensated at a 5:1 ratio, as stated in CMA LUPA-BIO-COMP-1. This compensation is documented in the offsite mitigation package (POD Appendix AA). Please see Responses to Comments B8-33 and B8-41.

B3-3 The commenters state that the Draft EIR appears to minimize critical habitat that would be destroyed because of the proposed development. Furthermore, the commenter states that the words “critical habitat” appear only one time in

the Executive Summary; not in the context of a project impact, but as a statement as to how a dismissed alternative avoids critical habitat.

The Executive Summary discusses critical habitat in its explanation of the Resource Avoidance Alternative, which would avoid solar facility development in designated habitat. The Executive Summary points to Table ES-2 for a list of project impacts. Text has been added to the Executive Summary to briefly identify impacts to critical habitat.

The Executive Summary rightly includes a brief description of the proposed project (Section ES.5), areas of controversy (Section ES.4.3) including issues raised by agencies and the public, a summary of the significant unavoidable impacts of the proposed project (see Table ES-2), and a summary of alternatives evaluated in the EIR (Section ES.6 and ES.8). Section ES.4.3 (Areas of Controversy/Public Scoping Issues), explains that biological resources are an issue of concern and that a scoping report was prepared for the project and is provided in EIR Appendix A. Public scoping comments also are summarized in EIR Section 1.5 (Scoping Comments Summary) and in the individual resource topics addressed in Chapter 3 (Environmental Analysis). However, at the commenter's request, text has been added to Section ES.4.3 of the Final EIR to clarify that biological resources concerns include impacts to critical habitat.

A discussion of impacts to critical habitat is included under Impact BIO-1, Special-status Wildlife, in the Draft EIR. The location of the impact discussion within the document is not related to its level of importance but rather to the issue area it relates to (i.e., biological resources).

See Response to Comment B3-1 regarding the updated acreages of impacts to desert tortoise critical habitat by the proposed Oberon Project.

B3-4 The commenters state that loss of critical habitat, which at the very least comprises a CEQA-significant impact, is de-emphasized by the Draft EIR.

Please refer to Response to Comment B3-2. While the Oberon Project overlaps with designated critical habitat, a DFA was sited within this critical habitat in the DRECP LUPA. The DRECP Final EIS analysis evaluated development of renewable energy within the designated DFAs (see General Response GR-2), including the area of designated critical habitat on the Oberon site that is within the East Riverside DFA. The Oberon EA tiers to the DRECP's analysis (see also Response to Comment B3-7).

Under CEQA, EIR Section B.4.5 discusses the loss of critical habitat under Impact BIO-1 and concludes that impacts would be less than significant due to the quality of the critical habitat, its location within a DRECP designated DFA, and with implementation of MM BIO-6a (Compensation for Desert Dry

Wash Woodland and Desert Pavement Impacts), MM BIO-6b (Compensation for Desert Tortoise Habitat Impacts), and CMA LUPA-BIO-COMP-1, which require offset of project impacts to vegetation with permanent protection of comparable off-site habitat. Furthermore, the proposed compensation lands within the Wildlands mitigation package are much higher quality habitat than the designated critical habitat on the Oberon site.

POD Appendix AA on BLM's ePlanning website[3] includes a proposed mitigation package to allow the public to review the location and quality of the compensation lands. The final mitigation package would be reviewed and approved by BLM and the resource agencies upon final engineering. The offsite mitigation lands have been visited by the USFWS and RWQCB/BLM-contracted biologists and the following provides an explanation that the mitigation lands are objectively much higher quality than the critical habitat impacted on the project site.

Along the southern boundary of the proposed project and adjacent to the north of Interstate 10, there is an area of desert tortoise designated critical habitat within the solar facility development fence line and 500 kV gen-tie line. This area is within the Chuckwalla Desert Tortoise Critical Habitat Unit (CHU), but not within the Chuckwalla Area of Critical Environmental Concern (ACEC), as identified in the DRECP LUPA. The critical habitat boundaries (USFWS, 1994) within the proposed solar field follow section lines rather than natural habitat features or dispersal barriers (e.g., the I-10 freeway).

In the same area, the DRECP LUPA identifies the I-10 freeway as: (1) the southern boundary of the East Riverside DFA, and (2) the northern boundary of the Chuckwalla ACEC. The DRECP Biological Opinion (BO) by the United States Fish and Wildlife Service (USFWS, 2016) identifies the overlap area on a map (page 83, see the westernmost area of overlap) and discusses it in terms of Physical and Biological Features (PBFs) of critical habitat. PBFs (formerly called Primary Constituent Elements [PCEs]) are specific elements of physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species. The desert tortoise PBF criteria are used by USFWS to place lands within critical habitat designation.

The DRECP BO discusses three PBFs in the context of the Chuckwalla CHU and determines that they are not measurably affected by development in the overlap part of the CHU. The BO's reasoning is based on an assumption that the entire overlap area would be developed for solar energy, with the exception of some undefined area to be retained for wildlife connectivity. The

[3] Oberon Renewable Energy Project. https://go.usa.gov/xfdH5

BO concludes (p. 95): “After reviewing the current status of critical habitat, the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects, it is the Service’s biological opinion that the proposed action is not likely to result in the destruction or adverse modification of critical habitat of the desert tortoise.”

As described in EA Section 3.12.2, the conditions found within the onsite and compensation sites critical habitat areas were compared using the USFWS PBFs, as follow:

- PBF 1: Sufficient space to support viable populations within each of the six recovery units to provide for movement, dispersal, and gene flow
- PBF 2: Sufficient quantity and quality of forage species and the proper soil conditions to provide for the growth of such species
- PBF 3: Suitable substrates for burrowing, nesting, and overwintering
- PBF 4: Burrows, caliche caves, and other shelter sites
- PBF 5: Sufficient vegetation for shelter from temperature extremes and predators.
- PBF 6: Habitat protected from disturbance and human-caused mortality.

Oberon Site. The designated critical habitat portion of the Oberon project area is adjacent to the I-10 freeway and contains existing energy transmission lines. Much of the area surrounding the project site, including portions of the designated critical habitat, is degraded and contains anthropogenic features and land uses, such as agriculture, residential, renewable energy, transmission lines, historic military operations, recreational development/limited dispersed camping, BLM designated Off-Highway Vehicle (OHV) open routes, and the I-10 freeway.

Wildlands Mitigation Sites. The designated critical habitat portion of the Wildlands Mitigation Sites are partially located within the Chemehuevi ACEC, Mojave Trails National Monument, and Piute Mountains Wilderness Area and partially located within the Chuckwalla ACEC on the Chuckwalla Bench and Smoke Tree Valley. Much of the area surrounding the Mitigation Sites are BLM administered lands that have enhanced protections via ACEC and Wilderness Area designations. Additionally, there are many privately owned conservation lands adjacent and proximal to the Mitigation Sites that have similar habitat management goals. Overall, the remote nature of the Mitigation Sites have revealed very low anthropogenic impacts such as trash, OHV use, evidence of dispersed camping, or invasive species.

Unlike the Wildlands mitigation sites, which meet all six PBF criteria, only three of the six PBFs are fully met in the designated critical habitat on the

Oberon site. The remaining three PBF conditions are either not met or are partially met.

Because offsite compensation lands within the same desert tortoise critical habitat unit would be in addition to avoidance/minimization through project design, compliance with DRECP CMAs, and implementation of project-specific mitigation measures, the EIR concludes that impacts would be less than significant and no revision to the impact classification is necessary in the Final EIR. See also Response to Comment B1-3.

The solar projects in the area, including Arica and Victory Pass, are listed in the cumulative scenario in Section 3.1.2 and considered in the cumulative impact analysis under each issue area in EIR Chapter 3.

B3-5 The commenters state that the statement in the EIR and EA that the critical habitat on the Oberon site is not within a Tortoise Conservation Area (TCA) is incorrect, because TCA is a term used by the USFWS in the 2011 Recovery Plan that includes ACECs and DWMAs from the 1994 Recovery Plan. The USFWS identified and designated critical habitat to follow the Desert Wildlife Management Area (DWMA) boundaries. Thus, the Chuckwalla DWMA/TCA and critical habitat unit includes land north of I-10.

The DRECP LUPA supersedes the Northern and Eastern Colorado Desert Coordinated Management Plan (NECO) Plan, including its designations of DWMAs and Wildlife Habitat Management Areas (WHMAs). As noted in the DRECP Record of Decision (ROD), the DRECP developed a biological conservation strategy that is the approach for conserving DRECP Focus Species, BLM Special Status Species, vegetation types, and the landscape and ecological processes that support them. As part of the process, the Renewable Energy Action Team (REAT) agencies identified inputs into the development of the biological conservation framework map and included existing BLM land use planning designations (i.e., resource conservation areas identified through the CDCA and Resource Management Plans [RMPs]), Renewable Energy Transmission Initiative (RETI) planning products, REAT Agencies Starting Point Maps, the DRECP Preliminary Conservation Strategy map, and the Marxan reserve optimization analysis. This step in the conservation planning process would have reviewed the DWMAs and WHMAs as resources conservation areas identified in the NECO RMP and considered their role in the DRECP conservation areas which supersede the DWMAs and WHMAs. For this reason, the DWMAs and WHMAs were not addressed in the EIR.

As described above, the DRECP LUPA supersedes the NECO DWMAs and WHMAs and incorporates those areas into Areas of Critical Environmental Concern (ACECs). That is, the DRECP considered information from many

sources, including the DWMAs, critical habitat, and TCAs and used it to design the ACECs.

The DRECP FEIS, Section III.7.6.1.1, states: "Tortoise Conservation Areas (TCAs) include desert tortoise habitat within critical habitat, Desert Wildlife Management Areas, Areas of Critical Environmental Concern...." Text in the Final EIR, Section 3.4, has been revised to clarify that while the project site overlaps critical habitat, which is encompassed under a TCA, it is not within the Chuckwalla ACEC, as identified in the DRECP LUPA. Furthermore, this designation does not affect the quality of the habitat of the land north of the I-10, which is considered within the DRECP Biological Opinion by the USFWS (2016) that stated that its long-term function and value as critical habitat is compromised by its proximity to existing development and its location within a DRECP-designated DFA. That is, the DRECP LUPA recognized that the TCA and critical habitat are located north of the I-10, but determined that this land was better suited to target for renewable energy generation as a DFA.

B3-6 The commenters requested that specified data analyses of desert tortoise populations be included in the environmental document.

In response, a summary of referenced articles and recent USFWS status updates has been added to the text in EIR Section 3.4.1.

As referenced in the comment, during scoping the commenter stated (see Scoping Report in EIR Appendix A), "[a]lthough not revealed in the NOP, we understand from a public meeting on the project that 600 acres of critical habitat would be lost if the proposed configuration were adopted, which certainly must be revealed in the environmental documents." Acreages of impact were included in the Draft EIR and have been recalculated in the final document based on the current fenceline and in response to comments. As shown in EIR Table 4-1, approximately 589 acres of critical habitat would be impacted with the proposed project, which is in line with 600 acres. The CEQA and NEPA documents analyze a worst-case scenario for direct impacts to critical habitat, which will be further refined during final engineering and in the final compensation package approved by BLM and as part of biological resources permits.

B3-7 The commenters request that the Draft EIR and NEPA document include an analysis of the direct, indirect, and cumulative impacts to the Chuckwalla tortoise population in the Chuckwalla TCA and critical habitat unit, the Colorado Desert recovery unit, and the Mojave desert tortoise.

In support of this request, they cite *Union Neighbors United Inc v. Jewell*, 2016 U.S. App. LEXIS 14377 and *Friends of the Wild Swan v. Jewell*, 2014 U.S. Dist. LEXIS 116788. These cases, however, discuss the process and

requirements for obtaining an incidental take permit under Section 10 of the Endangered Species Act (ESA). The project, in contrast, will secure a biological opinion (BO) or concurrence with the DRECP Programmatic BO and incidental take statement under Section 7 of the ESA. The cases, and the obligation to prepare a Habitat Conservation Plan, among other things, do not apply here and the comment furthermore does not describe any failure to comply with CEQA. Nevertheless, the RWQCB offers the following observations.

There is very limited overlap between critical habitat and DFAs. The DRECP recognized that some desert tortoise critical habitat would be impacted if renewable energy were constructed in the DFAs. In order to address the loss of desert tortoise habitat (critical habitat or other areas), the DRECP incorporated preservation of desert tortoise habitat into the overall conservation design, along with other minimization and compensatory mitigation CMAs.

The DRECP FEIS Section IV.7.3.2 page IV.7.186 addresses desert tortoise. It states that, for Agassiz's desert tortoise, important areas were identified that include tortoise conservation areas (TCAs), desert tortoise linkages, and desert tortoise high priority habitat (see desert tortoise BGOs in DRECP Appendix C). DRECP EIS Table IV.7-33 provides a conservation analysis for these desert tortoise important areas, organized by desert tortoise Recovery Units: Colorado Desert, Eastern Mojave, and Western Mojave. Within the Colorado Desert Recovery Unit, 92% of TCAs, linkage habitat, and high priority habitat would be conserved under the DRECP Preferred Alternative.

DRECP CMAs require avoidance of TCAs, except for impacts associated with transmission or impacts in disturbed portions of TCAs. Additionally, the DRECP CMAs would prohibit impacts that affect the viability of desert tortoise linkages. Compensation CMAs would be required for impacts to desert tortoise, including desert tortoise important areas.

The critical habitat impacted by the project is separated from the bulk of the Chuckwalla CHU by the I-10. See Response to Comment B3-4 for a discussion of the CEQA EIR conclusions regarding critical habitat impacts. Additionally, an alternative to avoid the critical habitat is analyzed under the Resource Avoidance Alternative in both the EIR and EA.

Although the project will require site-specific analysis, it is worth noting that the analysis contained in the Programmatic Biological Opinion for the DRECP contemplated development in the areas where DFAs overlap with critical habitat and "[a]fter reviewing the current status of critical habitat, the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects, [concluded] that the proposed action is not likely

to result in the destruction or adverse modification of critical habitat of the desert tortoise." (DRECP BiOp at p. 95.) As explained therein, "[t]he isolated parcels of critical habitat to the north of Interstate 10 and Chuckwalla Valley Road [where the Oberon Project is located] do not, in and of themselves, provide sufficient space to support a viable population or to provide for movement, dispersal, and gene flow. Interstate 10 currently functions as a major barrier to movement, dispersal, and gene flow to the south; [although] conceivably, underpasses could provide connectivity between these parcels and the main block of the critical habitat unit south of Interstate 10." (*Id.* at p. 81.) Furthermore, "[t]he Nussear et al. (2009) model indicates that desert tortoises are less likely to be present in these portions of critical habitat than they are farther to the south. The westernmost parcels of the development focus area that overlap critical habitat have probabilities of 0.6 and 0.7 of supporting desert tortoises; to the east of these areas, the next parcel of the development focus area that overlaps critical habitat has probabilities of 0.5 to 0.6." (*Id.*) "[T]he nature of the habitat in this area" and the small amount of critical habitat in the Chuckwalla Critical Habitat Unit potentially affected by the DFA (0.44 percent of the critical habitat within the unit), among other things, further supported USFWS's conclusion that "the minor overlap of portions of the East Riverside Development Focus Area and the Chuckwalla Critical Habitat Unit would not have a measurable effect on the ability of the critical habitat unit to support viable populations or to provide for movement, dispersal, and gene flow." (*Id.* at p. 83.)Additionally, the project would meet the DRECP CMA requirement to mitigate critical habitat loss at a 5:1 ratio, higher than the ratio for non-critical desert tortoise habitat, which would offset direct impacts to critical habitat.

B3-8 The commenters express concern about impacts to critical habitat and how it is discussed in the EIR Executive Summary. See Responses to Comments B3-2 and B3-3.

B3-9 The commenter requests that loss of critical habitat be added to EIR Section ES.4.3. See Response to Comment B3-2 and B3-3. Additional text regarding critical habitat has been added to Section ES.4.3 in the Final EIR to address the commenter's concern.

B3-10 The commenters question the need for the Oberon project given the other solar projects in the Desert Center area, and states that the No Action Alternative fails to reveal that but for this project, 817 acres of critical habitat would not be lost to solar development in a full DFA. Finally, the commenters do not agree with the statement that the proponent's intent in Section ES.6.1 is to comply with the DRECP, which envisioned development on impaired habitats in DFAs, not designated critical habitat.

The list of projects considered in the cumulative scenario and analysis under each issue area in Chapter 3 is included in Section 3.1 and includes the Arica and Victory Pass Projects mentioned by the commenter.

Please see General Response GR-2 regarding development in DFAs. BLM's purpose is to respond to IP Oberon, LLC's, request under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. Section 1761(a)(4)) for a right-of-way (ROW) grant. Likewise, as explained in EIR Section 1.1, the project is also under the jurisdiction of the Colorado River Basin Regional Water Quality Control Board (RWQCB or Regional Water Board), who will issue Waste Discharge Requirements (WDRs) for the discharge of dredged or fill materials to waters of the State. The RWQCB is the lead agency responsible for environmental review of the project in compliance with the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq. The BLM and RWQCB are responding to applications submitted by IP Oberon, LLC, and evaluating the economics or need for the project is outside of the scope of CEQA. However, the agencies will consider the project in light of state and federal renewable energy generation and greenhouse gas reduction goals. In the RWQCB's CEQA Findings, it may consider the economic feasibility of alternatives and whether the benefits of the project outweigh any significant, unavoidable impacts.

The description of the No Project Alternative in Section 4.3 of the Draft EIR states, "[u]nder the No Project Alternative, the construction of the Oberon Renewable Energy Project and associated infrastructure would not occur. Because no project would be constructed, none of the construction, operation, and decommissioning impacts associated with the project would occur to any of the resources identified and discussed in Chapter 3." This statement applies to critical habitat impacts, as critical habitat is a resource identified and discussed in Section 3.4 (Biological Resources). Furthermore, EIR Table 4-1 includes a column of "Desert Tortoise Critical Habitat within Development Footprint (acres)" under each alternative and shows that this impact under the No Project/Action Alternative would be 0 acres. However, at the commenter's request, the text in Section 4.3.5 (Comparison of the Proposed Project and No Project Alternative) of the Final EIR has been revised to add that biological resources impacts would be "(e.g., impacts to desert dry wash woodland, multi-species linkage corridor, desert tortoise critical habitat)."

Please see Response to Comment B3-1 regarding the acreage of impacts to critical habitat. Please see General Response GR-1 regarding compliance with the DRECP; the intent of the Applicant's objectives is outside of the scope of CEQA and NEPA.

B3-11 The commenters request analysis of rooftop solar and request that the CEQA and NEPA documents compare the loss of carbon sequestration from solar development in desert habitat to rooftop development with no loss of carbon sequestration.

Please see EIR (Section 4.4.4) and Response to Comment C1-4 regarding distributed (rooftop) solar as an alternative to the proposed project.

The discussion on the potential loss of carbon sequestration due to land use conversion can be found in EIR Section 3.8.5. (See also the Air Quality Technical Report in POD Appendix R in IP Oberon, 2021 at p. 17.) The project includes biological resources measures for minimizing vegetation and habitat impacts, integrated weed management, and preventing the loss of desert pavement, which promotes maintenance of native plants and soils. These practices would minimize the potential loss of carbon sequestration due to land use conversion.

At the request of the commenter, text has been added under the discussion of distributed solar in Final EIR Section 4.4.4 to state that "[a]lternatives to the project that involve rooftop installation of solar generating facilities would avoid the loss of carbon sequestration that would otherwise occur due to the land use change related to construction and operation of the project development in desert habitat."

B3-12 The commenters question how a project that occurs exclusively on public lands managed by the BLM can be certified in an EIR without explaining why the analysis is not in a combined EIR/EIS (environmental impact statement). It is the commenters' belief that a combined EIR/EIS would have garnered more public review and input, that an EIS component still needs to be added, and that the Final EIR/EIS should explain why an EIR-only analysis was pursued for this project.

Please refer to General Response GR-5 regarding the adequacy of the environmental documents. Comments regarding the NEPA Environmental Assessment and tiering to the DRECP Final EIS are outside of the scope of CEQA. The commenter is correct that the project is located entirely on BLM-administered public land. However, because the project requires discretionary permits from the State (see EIR Table 1-1), including Waste Discharge Requirements from the Colorado River Basin RWQCB, the project must be evaluated under the California Environmental Quality Act (CEQA) as well.

Coordination and integration of related environmental reviews is encouraged to the fullest extent possible by CEQA, but a joint CEQA/NEPA document is not required. The BLM and the RWQCB have coordinated throughout the CEQA and NEPA processes, but based on agency timelines at the start of the

NEPA and CEQA processes, a decision was made to prepare separate environmental documents for the Oberon Project. All public input and review timeframes by the RWQCB and BLM have been in accordance with CEQA and NEPA requirements, respectively.

Note that discretionary permits are also required from the California Department of Fish and Wildlife (CDFW), a Trustee/Responsible Agency under CEQA for the Oberon Project. If a project involves discretionary actions by more than one agency, such as the case for the Oberon Project, one agency may be selected as the Lead Agency and the others would become Responsible Agencies (CEQA Guidelines section 15051). Following an independent review and approval, Responsible Agencies (e.g., CDFW) may rely on a CEQA document prepared by the Lead Agency (e.g., RWQCB) to meet their CEQA compliance requirements.

B3-13 The commenters question the compensation ratios and acreages included in the Draft EIR.

Revisions have been made to the Final EIR Section 2.2.1.3 to correct an inconsistency in acreage. Approximately 6,200 acres of compensation lands would be preserved in the Wildlands mitigation package, as is listed in EIR Table 4-1 (Summary of Alternatives Evaluated) and EA Table 2-4 and throughout the remainder of the EIR and EA. Additionally, the text of Mitigation Measure MM BIO-6b (Compensation for Desert Tortoise Habitat Impacts) in EA Appendix H and Draft EIR Section 3.4 provides a breakdown of the acreage of impacts, compensation ratios, and total of the compensation package acreage.

As discussed in MM BIO-6a and MM BIO-6b, compensation ratios are determined based on compliance with the requirements under DRECP CMA LUPA-BIO-COMP-1. Mitigation acreage is based on the acreage of land impacted. The project application area is approximately 5,000 acres, but the area of development that compensation lands are based on is approximately 2,700 acres. Further, if CDFW determines that additional compensation is required through the incidental take permitting process, additional lands will be provided and preserved.

B3-14 The commenters stated concerns that the proponent may opt to fence approximately 12 miles of Interstate 10 under MM BIO-6b, and also mentioned that Caltrans is fencing transportation corridors already as a high priority.

Text has been added to Section 3.12 in the Final EA to clarify the trade-off of fencing vs. compensatory mitigation. The mitigation measure (MM BIO-6b) provides flexibility to ensure that implementation is feasible and achieves the

goal of desert tortoise protection. The options in the measure include protecting desert tortoise in the immediate area and improving habitat with exclusion fencing, protecting habitat in an offsite location with acquisition and protection of compensation lands, or a combination of the two. By implementing exclusion fencing, habitat in the area would be improved by reducing the risk of vehicle strikes on the I-10 freeway. As a trade-off, acres of acquisition and protection of high-quality off-site compensation lands would be reduced as implementation of fencing is increased. Cost estimates of proposed feasible mitigation options are beyond the scope of NEPA and do not affect the reduction of potential impacts or the habitat value of the potential mitigation lands.

Any potential fencing that would be installed as a part of the Oberon Project along I-10 would require Caltrans coordination and thus would avoid duplicating any currently planned Caltrans effort.

B3-15 The commenter suggests adding a discussion of issuance of a Section 2081 incidental take permit prior to construction to EIR Section 2.2.2.1 (Construction Schedule and Workforce), which states, “[c]onstruction is anticipated to occur over an approximately 15- to 20-month period dictated by the Applicant’s Power Purchase Agreement (PPA) and financing requirements.”

Section 2.2.2.1 in the Final EIR has been revised to state that construction would start pending project approval and issuance of applicable permits and notices to proceed by BLM and the RWQCB. USFWS and CDFW permits would be required prior to issuance of a notice to proceed to begin installation of exclusion fencing described on page 2-12 of the Draft EIR. The Biological Opinion will be issued and included in BLM’s Decision Record on the project.

Finally, the commenters state that the statement about the construction schedule denies the possibility that the footprint should be modified to avoid critical habitat. The Resources Avoidance Alternative that would avoid development of the solar facility in critical habitat has been fully evaluated in the EIR and EA and can be considered for approval by the BLM and RWQCB decisionmakers.

B3-16 The commenters state that the project proponent may need to obtain a section 10(a)(1)B) incidental take permit (ITP) from the USFWS if the BLM has no regulatory authority over the proposed action on parcels that are not public land.

The Oberon Project is entirely located on BLM-administered public land. A list of required permits is included in Table 1-1 in the Draft EIR and Table 2 in POD Section 1.8 (EA Appendix F), which include an Incidental Take Permit

from CDFW for desert tortoise and consultation with USFWS under Section 7 of the Endangered Species Act that would conclude with USFWS issuance of a Biological Opinion. See also Response to Comment B3-19 regarding USFWS jurisdiction.

B3-17 The commenters note that minimization measures are not mitigation. Section 2081(a)(2) of the California Fish and Game Code requires that the impacts of the authorized take shall be minimized and fully mitigated. All required measures shall be capable of successful implementation.

Minimization is included as part of the definition of mitigation "(b) minimizing impacts by limiting the degree or magnitude of the action and its implementation" (CEQA Guidelines section 15370), along with four other strategies (avoiding the impact, rectifying the impact, reducing or eliminating the impact over time, and compensating for the impact). Mitigation of the project's impacts to desert tortoise would include a combination of these strategies, as described in the EA and EIR.

The same strategies are included in a Section 2018 Incidental Take Permit Application, submitted to CDFW for the project on September 13, 2021. Avoidance, minimization, and compensation measures are subject to CDFW review and approval, according to the CESA "fully mitigate" standard. No take of desert tortoise may occur without CDFW authorization.

B3-18 The commenters request that the project proponent obtain a section 2081 permit from CDFW before initiating any activity that may result in take of the tortoise and the requirement be included in the CEQA and NEPA documents.

Refer to Responses to Comments B09-16 and B09-17 regarding a discussion of Incidental Take Permit for desert tortoise that would be required prior to construction of the Oberon Project. As the requirement for an Incidental Take Permit (ITP) from CDFW is already described in the EIR and EA, no revisions are required in the Final EIR or EA in response to this comment.

B3-19 The commenters request that the project proponent develop and submit an HCP and application for an ITP for the proposed project that complies with the HCP handbook including fully mitigating the take.

The USFWS issues an ITP through Section 10 of the Endangered Species Act when non-Federal activities will result in "take."

Since the proposed activities for the Oberon Project would be Federal activities, the BLM is consulting with USFWS through Section 7 of the ESA. Per Section 7 formal consultation, a Biological Assessment was submitted the USFWS on September 4, 2021, to document impacts to federally listed threatened and endangered species and associated avoidance, minimization,

and mitigation measures. The USFWS will respond with a Biological Opinion stating whether BLM has insured that its action is not likely to jeopardize the continued existence of a listed species and/or result in the destruction or adverse modification of critical habitat.

Section 7 consultation is described under Impact BIO-1 in the EIR, "Desert tortoise and critical habitat," page 3.4-25. A description of the conclusions of the Biological Assessment for the project and the Biological Opinion for the DRECP LUPA have been added to the Final EA and EIR. As stated in the Draft EA Appendix H, upon issuance by USFWS, conservation measures contained in the Biological Opinion will also be included in the Final EA.

B3-20 The commenters provide a set of BMPs completed by the Desert Tortoise Council in 2017 that would reduce some direct and indirect impacts to tortoises, but the BMPs do not address the temporal degradation/loss of tortoise habitat that results from construction, operation and maintenance, and decommissioning activities.

The suggested BMPs to reduce direct and indirect impacts to tortoises have been reviewed and will be considered by the agencies during biological resources permitting. The commenter's concerns that the BMPs do not address temporal degradation and loss of habitat are noted and have been discussed in Responses to Comments B3-2, B3-7 and B3-11.

B3-21 With regards to Section 2.2.5.1 (Environmental Resources), which states, "[b]iological and cultural resources pedestrian surveys will be conducted after coordination with BLM, USFWS, and Native American tribes," the commenters ask that this statement be augmented to coordinate these and other actions with the CDFW.

Text in Section 2.2.5.1 has been updated in the Final EIR to state that these surveys have occurred. The biological resources surveys were done in coordination with and following all USFWS and CDFW protocols. Similar revisions to the verb tense have been made to Section 5.1 of the Plan of Development (EA Appendix F) to reflect that the surveys have occurred. The results of the surveys have since been incorporated into the project design.

B3-22 The commenters state that the proponent is obligated to implement specific measures identified in the DRECP for protection of creosote bush rings larger than 15 feet (4.5 meters) in diameter.

Section 3.4.1 of the EIR describes that two creosote rings under 5 meters were identified in the impact area. CMA LUPA-BIO-SVF-3 applies to creosote bush rings over 5 meters in diameter, therefore the CMA would not apply to the creosote bush rings on the Oberon site (see Table C-2 in POD Appendix C). The text of CMA LUPA-BIO-SVF-3 is also included in Section

II.3.4.2 (page II.3-179) of the Final EIS for the DRECP Proposed LUPA. Text has been added to Section 3.4.5 in the Final EIR to describe that this CMA would not apply to the Oberon Project.

B3-23 The commenters state that the CDFW will also need to review and approve the Lead Biologist and must be given that opportunity before the BLM's approved person can implement certain actions, including collapsing tortoise burrows or handling tortoises.

At the request of the commenter, CDFW and USFWS have been added to the list of approvers for the Lead Biologist in MM BIO-1 of the Final EA (see EA Appendix H) and Final EIR (see EIR Section 3.4.7).

B3-24 At the commenters' request, the Desert Tortoise Council has been added to the mailing list and a response was provided by Logan Raub, the RWQCB CEQA Project Manager, to acknowledge receipt of the letter.

Responses to Comment Set B4 – California Native Plant Society et al.

B4-1 The commenter provides a background on the DRECP planning process and objectives and states that compliance with its CMAs is extremely important. The commenter also states that the BLM has the authority to outright reject the project application.

The adequacy of the NEPA document and BLM's acceptance of Intersect Power's application is outside of the scope of CEQA; however, please see Response to Comment B4-25 for a similar comment submitted to BLM on the EA.

B4-2 The commenter states that the Draft EIR suffers from a fatal flaw, namely that only one project could satisfy the project objectives and also meet the definition of preferred alternative, namely that proposed by the applicant.

CEQA Guidelines Section 15124(b) states that an EIR must include the following regarding project objectives:

> *(b) A statement of the objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project and may discuss the project benefits.*

The RWQCB has considered the Applicants' project objectives in developing a reasonable range of alternatives to the project, as dictated in the CEQA Guidelines, while also taking into consideration the mission of the RWQCB "to develop and enforce water quality objectives and implementation plans that

will best protect the State's waters, recognizing local differences in climate, topography, geology and hydrology." Project Objectives #4, #5, and #8 (see EIR Section 1.3.2) that address minimization of environmental impacts encompass the RWQCB's mission. The term "maximum extent practicable" is used throughout the DRECP CMAs, including CMA LUPA-BIO-3, which is quoted by the commenter. Clarifying text has been added to Section 1.3.2 to add that the Applicant's objectives have been considered by the RWQCB in developing a reasonable range of alternatives.

Furthermore, CEQA Guidelines Section 15126.6(a) (see EIR Section 4.1) states that an EIR "shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain *most* of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives" [emphasis added]. CEQA does not require an alternative fully analyzed in the EIR or approved by the decisionmakers to meet *all* project objectives. This is evidenced by full analysis in Draft EIR Chapter 4 of the Land Use Plan Compliant Alternative and the Resource Avoidance Alternative with TCR Avoidance Option, which would produce 375 MW and 300 MW of solar generation, respectively. Any alternative fully evaluated in the EIR, such as the Land Use Plan Compliant Alternative and the Resource Avoidance Alternative with TCR Avoidance Option, may be considered for approval by the RWQCB decisionmakers. As described above, there is no fatal flaw in the project objectives or alternatives analysis in the Draft EIR.

The commenter's concerns about non-compliance with the DRECP CMAs is noted.

B4-3 The commenter states that the proposed project is inconsistent with the goals and objectives of the DRECP, the CMAs and BLM's right-of-way grant regulations, and requests that the RWQCB reject it.

The commenter's opposition to the proposed project is noted. Please see Responses to Comments B4-27 and B4-28, which are similar comments made regarding the DRECP LUPA objectives, CMAs, and BLM's right-of-way grant regulations. Impact LU-1 (Would the project cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?) in EIR Section 3.11.5 (Land Use and Planning) discusses the proposed project-specific LUPA that BLM will consider in its review of the proposed project. Please also see General Response GR-1.

B4-4 The commenter supports the inclusion of two action alternatives that would fully comply with the DRECP and its CMAs, but states that the Draft EIR

portrays them as inferior to the proposed project because they would produce less than 500 MW of renewable energy generation.

EIR Section 4.3.6 concludes that in accordance with section 15126.6 of the CEQA Guidelines, the Land Use Plan Compliant Alternative including implementation of the Prehistoric Resources/TCR Avoidance option would be the Environmentally Superior Alternative since it would result in fewer impacts to biological resources than the proposed project, would eliminate significant direct impacts to cultural resources that are also Tribal Cultural Resources, and would have a reduced level of ground disturbance. EIR Section 4.3.6 goes on to state that because the Land Use Plan Compliant Alternative with the Prehistoric Resources/TCR Option would achieve the project objectives, which include the provision of environmental benefits, to a lesser extent compared with the proposed project (see Section 4.3.2), the proposed project is considered preferred. A more detailed explanation of this statement is included in EIR 4.3.2 (Ability to Meet Project Objectives), which discusses each alternative's ability to meet each of the Applicant's stated objectives.

Although this EIR identifies an environmentally superior alternative, it is possible that the RWQCB decisionmakers could balance the importance of each impact area differently and reach different conclusions. All of the alternatives fully considered in the EIR may be considered for approval by the RWQCB and the CEQA environmental document is just one aspect of the administrative record that the RWQCB will consider in its decision the project.

B4-5 The commenter states that the proposed project appears to have been designed to make it appear more environmentally friendly due to the other action alternatives having been arbitrarily defined to exclude the same design features, such as wildlife friendly fencing, interruption of gravel on interior roadways, installation of cattle fencing along BLM Open Route DC 379, and a setback from I-10.

The design features listed by the comment are explained below and show that they were not included to make the proposed project appear more environmentally-friendly. Furthermore, Chapter 4 of the EIR concludes that Land Use Plan Compliant Alternative including implementation of the Prehistoric Resources/TCR option, not the proposed project, would be the Environmentally Superior Alternative.

Wildlife friendly fencing and installation of cattle fencing along BLM Open Route DC 379 are proposed for the proposed project. The Applicant has stated that the added costs of installation of wildlife friendly fencing and cattle fencing, as well as wildlife monitoring during O&M for the life of the project may not be economically feasible with a reduced generation project. Regardless, an alternative that does not include passage fencing and cattle

fencing is necessary to include so the alternatives cover a range of alternatives for the RWQCB's consideration and adoption. If wildlife friendly fencing is not installed and desert tortoise are excluded from the proposed project or an alternative, then the interruption of gravel would not be necessary. Vegetation management under the proposed project and the reduced footprint alternatives would be the same.

A setback from I-10 was proposed to allow space in the designated utility corridor, not because of visual resources impact as the commenter asserts. The 300-foot setback is not proposed for the reduced footprint alternatives, because the acreage in the utility corridor is necessary to maximize generation in the reduced project area to make up for the acreage lost with achieving the 200-foot setback from desert dry wash woodland, the multi-species linkage corridor, and/or critical habitat. Regarding the visual analysis, as shown in EIR Table 4-2 both reduced footprint alternatives were found to have fewer visual resources impacts despite being closer to I-10; however, EIR Section 4.2 explains that the types and level of impacts for aesthetics would be essentially the same, and the same mitigation would be required.

B4-6 The commenter states that installation of wildlife friendly fencing during O&M would likely expose desert tortoise to high risk of injury or mortality, and this fence modification is predicated on the unlikely approval by CDFW and USFWS.

The RWQCB and BLM are coordinating with USFWS and CDFW regarding wildlife passage and exclusion fencing and the commenter is correct that approval by the resource agencies is required prior to installation. See Response to Comment B5-103 regarding use of wildlife friendly fencing.

B4-7 The commenter requests that that two action alternatives to the proposed project should incorporate the same design features of vegetation mowing and regrowth, and fences across microphyll woodland to exclude off-highway vehicle use.

Please refer to Response to Comment B4-5 for a discussion of these design features and the ability of the RWQCB decisionmakers to approve these features as a part of an alternative.

The commenter is incorrect that the Draft EIR concludes that the proposed project is environmentally superior. EIR Section 4.3.6 concludes that Land Use Plan Compliant Alternative including implementation of the Prehistoric Resources/TCR option would be the Environmentally Superior Alternative.

B4-8 The commenter states that no evidence was provided in the Draft EIR that off-highway vehicle use in closed washes is occurring or is considered by BLM as a management issue.

Installation of cattle fencing to restrict OHV use in microphyll woodland areas along BLM Open Route DC 379 has been proposed by the Applicant, and thus, its installation has been analyzed in the CEQA document. Signs of modern camping in microphyll areas were observed during the cultural surveys and are noted in the recreation analysis in EIR Section 3.16. Whether this is a BLM management issue is outside of the scope of CEQA and the RWQCB's jurisdiction.

The commenter also supports the closure of BLM Open Route DC 379 to the public, which is noted. BLM Open Route DC 379 is an established roadway that parallels and provides access to two existing gen-tie lines and provides access to other solar facilities and gen-tie lines in the area. Therefore, closure of BLM Open Route DC 379 has not been proposed by the Applicant and is not under consideration at this time.

B4-9 The commenter states that the BLM Project Manager during a public meeting stated that the placement of solar panels is a compatible use in a utility corridor, and this statement contrasts with the EIR statement about how the setback would help preserve the corridor.

As the EIR states, the Oberon gen-tie line would be sited within the Section 368 Federal Energy Corridor, as established by the Westwide Energy Corridor Programmatic Environmental Impact Statement and Record of Decision (2009), which amended BLM land use plans to establish utility corridors for electrical transmission and other utility infrastructure. Section 368 energy corridors as the preferred location for development of energy transport projects on lands managed by the BLM.

There are no CMAs in the DRECP LUPA that prohibit development within a designated utility corridor that is located within a DFA, but pulling the solar facility fenceline 300 feet back from I-10 would preserve some space in the corridor for future utilities even if it is not a DRECP CMA requirement. POD Appendix W (ROW Corridor Conflict Analysis on BLM's ePlanning website[4]) addresses impacts of the proposed project on the federal utility corridor and nearby pending and approved ROWs.

As explained in Response to Comment B4-5, because the proposed project includes a setback from I-10 in the utility corridor, the RWQCB may consider and adopt this setback as a condition of any approved alternative. Due to a reduction in acreage under the Land Use Plan Compliant and Resource Avoidance Alternatives, the Applicant must utilize the acreage in the utility corridor that is outside of desert dry wash woodland to achieve 375 MW and 300 MW, respectively.

[4] Oberon Renewable Energy Project. https://go.usa.gov/xfdH5

The commenter also states that the effect of the CMA prohibiting development in the microphyll woodland protective setback should not be portrayed as an adverse impact needing to be offset. The EIR does not portray compliance with the microphyll woodland setback as an adverse effect that needs to be offset, as explained in Response to Comment B4-5. Furthermore, EIR Section 4.2.3 (Land Use Plan Compliant Alternative) concludes that the impacts to biological resources from the Land Use Plan Compliant Alternative would be somewhat less than the proposed project, because development would be reduced and farther from desert dry wash woodland habitat.

Please see General Response GR-2 regarding development in DFAs in meeting state and federal renewable energy goals.

B4-10 The commenter states that the Draft EIR falsely assumes that MWs not generated by Oberon would be sourced from other projects or sources utilizing fossil fuel and not renewable energy sources.

Section 4.2.2 in the Draft EIR does not state that renewable energy would not be developed in place of the project under the No Project Alternative; it states, *"[i]f energy that would have been produced by the proposed project is not replaced with provided from renewable sources,* the alternative energy projects could result in greater emissions from, for example, the burning of fossil fuels. Such replacement projects would not contribute to meeting state or federal GHG reduction goals" [emphasis added].

The comment points to a recent CPUC procurement order and California climate policies that promote demand for renewable energy. The proposed project would serve this demand and make renewable energy available to the load serving entities that are required to procure renewable energy in compliance with California's climate programs. The comment implies that the No Project Alternative somehow allows a substitute supply of renewable energy to come forth. However, under the No Project Alternative, there is no guarantee that another substitute project would materialize to add to the supply of renewable energy.

As this discussion illustrates, it is challenging to find suitable sites for utility-scale renewable energy projects, as even projects cited in designated development zones that have been identified as having low resource conflicts face opposition.

No revisions to the Final EIR are necessary.

B4-11 The commenter states that Draft EIR speculates that another solar energy project proposed within the same land area as Oberon would result in a similar project with similar impacts, and this is unreasonable and speculative.

The commenter leaves out that EIR Section 4.2.2 states that if a different solar project were to be constructed in this location, the impacts of that solar project would be evaluated under CEQA and NEPA. Those environmental review processes would evaluate impacts on a case-by-case basis, as the EIR describes. It is not speculative to assume that a solar project on the same site would encounter the same site constraints and types of potential impacts and mitigation/CMA requirements as the Oberon Project.

This is evident by the analysis under the Land Use Plan Compliant Alternative (EIR Section 4.2.3) and the Resource Avoidance Alternative (EIR Section 4.2.3), which conclude that except for the reduced amount of developed land, the types and level of impacts for most of the resources would be essentially the same, and the same mitigation would be required. Significant and unmitigable impacts would remain under aesthetics and cultural resources for the proposed project and alternatives on the site and all other potential impacts would be reduced to less than significant with the implementation of mitigation.

As evidenced by the project's PPAs and numerous state and federal policies promoting/requiring renewable energy development described in the EIR and these responses to comments, the demand and need for renewable energy projects will not go away if this project is denied or curtailed. The DRECP considered the entire California Desert public lands landscape and identified concentrated areas (DFAs) for development, usually near transmission and with lower resource conflicts. Given this context, it is logical to expect that if a solar project cannot be built within the project area, solar generation (or other forms of energy projects) will have to be built elsewhere, potentially in areas that have previously been avoided by agencies and applicants due to cost and conflict considerations. It is furthermore not illogical to conclude that smaller projects designed to fill the gaps left by reduced project alternatives will have, at a minimum, other impacts associated with edge effects, fragmented development, and increased transmission lines connecting dispersed projects.

While not necessary, in response to this comment, the language in Section 4.2.2 under the No Project Alternative in the Final EIR has been changed from "would be similar" to "may be similar."

B4-12 The commenter states that the Draft EIR is speculative and unreasonable in the effects analysis of the smaller alternatives to Oberon, because it describes Oberon as having an energy need, and that anything less than the 500 MW may result in the need to develop an additional solar project in another location within the same DFA to offset the reduced MW generation. This conclusion suggests that the Oberon applicant has made commitments

for delivery of 500 MW prior to the completion of the environmental review and permitting processes.

During the NEPA process, the Applicant stated that it has entered into multiple long-term power purchase agreements (PPAs) with multiple off-takers, but its request for 500 MW is because its "economic model depends on the full 500 MW capacity to achieve the economies of scale required to support (a) a 500 kV interconnection (there are no more interconnection positions left available at the Red Bluff Substation at the 230 kV level, so Oberon is interconnecting at 500 kV, which carries a much higher cost, and (b) being competitive with other wholesale generation projected to come online in 2023 including competing for long-term contracts with gas fired power plants, solar and wind projects sited on private land with lower land and mitigation costs, etc."

The project is located with a DRECP DFA that has been targeted for renewable energy development and has available transmission capacity. Given the infeasibility of development in some of the other DFAs (see General Response GR-2) and increasingly aggressive state and federal renewable energy goals, it is not speculative to assume that renewable energy would need to be developed, likely in the same DFA, to make up for a reduction in energy produced by the Oberon Project in order to achieve the same renewable energy goals. This assumption does not relate to the Applicant's PPAs.

B4-13 The commenter states that the Applicant is affiliated with two other solar projects within the East Riverside DFA that are planned to deliver power to Red Bluff Substation, Athos Renewable Energy Project and the proposed Easley Solar and Green Hydrogen project.

This statement is correct. Both of these projects are listed in the cumulative scenario in EIR Section 3.1.2 (Cumulative Scenario); however, note that the Athos Project was permitted by Intersect Power, but is now owned by SoftBank Energy US.

B4-14 The commenter states that we find no reason the same wildlife-friendly fence and wire fencing along segments of BLM Open Route DC 379 could not be included in the two action alternatives for smaller projects.

Please refer to Responses to Comments B45 and B4-7, which are similar comments about installation of wildlife friendly passage and cattle fencing and other mitigation measures that are warranted for the proposed project but not the alternatives.

B4-15 The commenter states that the analysis implies that the loss of 60 acres of microphyll woodland and up to 600 acres of the 200-foot protective buffer to

solar panel arrays is an unavoidable minor incursion that can be simply mitigated to a level of insignificance by compensatory mitigation elsewhere. The commenter further state that "We strongly disagree. Microphyll woodland habitat and the multiple species it supports was afforded special protection throughout the DRECP area, including in DFAs, as a sensitive habitat that occupies 5 percent of the landscape but supports 90 percent of the native species occurring in the greater Colorado-Sonoran region of the CDCA. We ask that an accurate and transparent account of the acres of impact or loss to sensitive habitats, including acres within the 200-foot protective setback or buffer surrounding all microphyll woodlands be provided for Oberon and each of the action alternatives."

Please see the impact analysis in EIR Section 3.4 (Biological Resources) and General Response GR-1 for a discussion about impacts to microphyll woodland and acreages. The analysis does not rely solely on compensation lands to mitigate impacts to less than significant. In addition to project design to avoid and minimize impacts to sensitive resources, the Oberon Project includes full compliance with most DRECP CMAs, as well as project-specific mitigation measures that go beyond the DRECP requirements (see Chapter 3 and Appendix E [MMRP] in the Final EIR) and offsite compensation lands. Taken together the function of the habitat and linkages would be maintained and compensation lands would further offset direct impacts, as dictated in DRECP CMA LUPA-BIO-COMP-1.

B4-16 The commenter is concerned that compensatory mitigation is erroneously portrayed in the Draft EIR as a component of Oberon that makes it environmentally superior to the two action alternatives that fully comply with the DRECP, namely with regard to microphyll woodland and critical habitat.

The EIR does not conclude that the proposed project would be environmentally superior; the Land Use Plan Compliant Alternative with Prehistoric Resources/TCR Avoidance Option was found to be the Environmentally Superior Alternative in EIR Section 4.3.6. Avoidance of desert tortoise critical habitat and the multi-species corridor is not required by the DRECP CMAs. Offsite compensation lands can mitigate for these impacts.

The commenter is correct that the two reduced footprint alternatives would comply with the DRECP CMAs. As detailed in EIR Section 4.2.4 (Resource Avoidance Alternative), the Land Use Plan Compliant Alternative was found to be preferred for biological resources due to the larger size and much higher quality of the offsite compensation package compared to preservation of the low value of critical habitat on the Oberon Site.

The commenter speculates that the conservation lands in the Applicant's mitigation package would be acquired by other conservation organizations, which is unknown and speculative. Please see Responses to Comments B1-3, B5-91, and B3-4, which address impacts to critical habitat and the quality difference in the habitat on the Oberon site compared to the offsite mitigation lands. General Response GR-1 addresses impacts to microphyll woodland.

The commenter recommends the sequencing of avoid, minimize, compensate for the Oberon Project, which would result in a project fully compliant with the DRECP LUPA. The Oberon Project does follow the suggested sequence. In addition to project design to avoid and minimize impacts to sensitive resources, the Oberon Project includes full compliance with most DRECP CMAs, as well as project-specific mitigation measures (see Chapter 3 and Appendix E [MMRP] in the Final EIR) and offsite compensation lands. Please refer to Response to Comment B4-25.

B4-17 The commenter disagrees with a statement in EIR Section 2.2.5.1 that states that there are no environmental resource conflicts and that surveys will be conducted.

All impacts and potential conflicts to environmental resources are discussed in EIR Chapter 3 under each issue area, so it is not necessary to include a statement in the project description (Chapter 2). Therefore, the referenced sentence has been deleted. In addition, text in Section 2.2.5.1 has been updated in the Final EIR to state that these surveys have occurred. The biological resources surveys were done in coordination with and following all USFWS and CDFW protocols. The results of the surveys were incorporated into the project design, and resulted in avoidance of more than 1,200 acres of the highest quality microphyll woodland. The project footprint was further refined after a complete set of cultural resources surveys were allowed to proceed to avoid important cultural and tribal historic resources.

The two sentences regarding the boundaries of the project that have been quoted by the commenter do not contradict one another but rather refer to project design of the solar and energy storage facility to avoid desert dry wash woodland to the maximum extent practicable. The RWQCB agrees with the commenter's statement that microphyll woodland supports many key species. Section 3.4.1 (Regional Setting) of the Draft EIR acknowledges that dry wash woodland supports more than desert tortoise and goes on to explain that desert dry wash woodland "habitat provides greater food, nesting, and cover, and its wildlife diversity is generally greater than in the surrounding desert. Examples of special-status species that depend in part on desert microphyll woodlands include black-tailed gnatcatcher and burro deer. In

addition, many of the species occupying the surrounding upland desert shrublands are found in greater numbers in microphyll woodlands. It is found throughout the project site, along the various ephemeral drainages."

However, in response to this comment, a clarification has been added to Section 3.4.1 of the Final EIR to state that the project's disturbance areas were designed to minimize impacts to desert dry wash woodland to achieve the intent of desert tortoise and other wildlife protection as provided in the DRECP LUPA.

A discussion of impacts to microphyll woodland is included under General Response GR-1.

B4-18 The commenter states that the loss of 60 acres of microphyll woodland due to solar panel arrays does not meet the DRECP definition of a minor incursion.

Impact LU-1 in EIR Section 3.11.5 (Land Use and Planning) recognizes that in order to consider areas of desert dry wash woodland for development as proposed, BLM may need to consider a LUPA to the CDCA, as amended, that would allow a project-specific variance to CMAs that restrict development in and around such areas (i.e., LUPA-BIO-RIPWET-1, LUPA-BIO-3 and LUPA-BIO-SVF-6). Table 4-1 also noted that a LUPA could be required to allow a buffer of only 50 feet, rather than the 200-foot buffer from microphyll woodlands required by the DRECP LUPA.

As explained in General Response GR-1, the DRECP allows only "minor incursions" into desert dry wash woodland (and also impacts when "there is no reasonable or practicable means of avoidance that is consistent with the basic objectives of the activity", although there is some discrepancy between LUPA-BIO-RIPWET-1 and LUPA-BIO-SVF-6 on this point). "Minor incursions" are "Small-scale allowable impacts to sensitive resources, as per specific CMAs, that do not individually or cumulatively compromise the conservation objectives of that resource or rise to a level of significance that warrants development and application of more rigorous CMAs or a LUPA amendment. Minor incursions may be allowed to prevent or minimize greater resource impacts from an alternative approach to the activity." The definition of "unavoidable impacts" in the DRECP further provides examples of minor incursions, including impacts as needed for a "road or pipeline extension across a sensitive resource required to serve an activity." But as the definition of minor incursions makes clear, "[n]ot all minor incursions are considered unavoidable impacts", meaning minor incursions are more expansive than unavoidable impacts.

Given how the DRECP defined minor incursions, whether an impact qualifies as such cannot be determined until it is known whether the impacts will

"compromise the conservation objectives of that resource or rise to a level of significance that warrants development and application of more rigorous CMAs . . . ." This is ultimately for BLM to determine. In drafting the DRECP, BLM also reserved the authority to accept "alternative methods to meet the purpose and objectives of the CMAs . . . ." (DRECP LUPA at p. 228 (recognizing that as "part of subsequent project-specific NEPA analyses, a project proponent may be able to propose alternative methods for compliance with a particular CMA"); see also DRECP ROD at p. 63 (same).) While the draft EIR needed to leave open the possibility that BLM might address any inconsistencies with the DRECP CMAs through a LUPA, the BLM's decision to find the proposed project consistent, if not in conformance, with the microphyll woodland avoidance CMAs and accept additional alternative methods for satisfying the conservation objectives underlying those CMAs definitively answers the question. It is appropriate for the RWQCB, as a lead agency under CEQA, to defer to BLM's interpretation of its own land use plan.

Ultimately, however, whether the development in microphyll woodlands constitutes a minor incursion or not under the DRECP is not the focus of an analysis under CEQA. Identifying inconsistency with a land use plan is merely a tool used to identify potential environmental impacts. Thus, whether the proposed project is consistent with the DRECP as written or amended, something only BLM can determine, is not particularly relevant once the EIR has examined the potential impacts and mitigation for impacts to microphyll woodland.

See Response to Comment B4-17 that explains that the surveys have occurred and been incorporated into project design, so there is no deferral of analysis.

B4-19 The commenter states that CEQA requires the lead agency to identify and analyze a range of reasonable alternatives to the proposed action. CEQA requires lead agencies to adopt alternatives to a proposed project that would substantially lessen the significant adverse environmental impacts, as required by Public Resources Code Sections 21002 and 21081.

The RWQCB agrees with the CEQA requirements stated by the commenter, as these same statutes are described in EIR Chapter 4 (Alternatives) and have guided the EIR alternatives analysis.

B4-20 The commenter is concerned that the proposed project is considered preferred because the two action alternatives would achieve the project objectives, which include the provision of environmental benefits, to a lesser extent compared with the proposed project and requests that the RWQCB state a Preferred Alternative.

As required by CEQA and included in EIR Section 4.3.6, the EIR prepared by the RWQCB identifies the Environmentally Superior Alternative as the Land Use Plan Compliant Alternative with the Prehistoric Resources/TCR Avoidance Option. Identification of a "Preferred Alternative" is not required under CEQA.

Please see Response to Comment D1-39 regarding the California Department of Fish and Wildlife's role and participation in the CEQA process.

B4-21 The commenter states that the description of the Federal Land Policy and Management Act (FLPMA) is incomplete because Title VI, Designated Management Areas, and specifically the CDCA is not included in Section 3.11.2 of the Draft EIR.

The commenter is incorrect, Section 3.11.2 (Regulatory Framework) in the Draft EIR includes the following standalone description of the CDCA, as amended, following the description of the FLPMA, and includes reference to Section 601.

> ***California Desert Conservation Area Plan, 1980 As Amended.*** *Section 601 of the FLPMA required preparation of a long-range plan for the CDCA. The CDCA Plan was adopted in 1980 to provide for the use of public lands and resources of the CDCA in a manner that enhances, wherever possible, and does not diminish, on balance, the environmental, cultural, and aesthetic values of the Desert and its productivity. The CDCA Plan is a comprehensive, long-range plan covering 25 million acres. Approximately 10.7 million acres of this total are public lands administered by the BLM on behalf of the CDCA.*
>
> *The CDCA Plan contains goals and specific actions for the management, use, development, and protection of the resources and public lands within the CDCA, and is based on the concepts of multiple use, sustained yield, and maintenance of environmental quality. The CDCA identifies ACECs as special management areas where attention is required to protect important historic, cultural, scenic, biological, or other natural resources. There are seven ACECs located near the project (see Section 3.16, Recreation: Table 3.16-1).*

The description quoted above from Section 3.11.2 of the Draft EIR summarizes the intent of key requirements listed by the commenter and is sufficient to provide the public with an understanding of the federal CDCA plan. However, reference to Title VI, Designated Management Areas, has been added to the FLPMA discussion in Section 3.11.2 of the Final EIR, which points to the summary of the CDCA, as amended.

B4-22 The commenter states that the Draft EIR says that the project would be located entirely on BLM-administered public lands; state laws, regulations, and policies do not apply, which is incorrect.

The RWQCB agrees with the commenter, as the regulations referenced are included in the Regulatory Framework discussions in other issue areas, such as Section 3.4.2 (Biological Resources) and 3.10.2 (Hydrology and Water Quality). As the regulatory framework was described for Land Use and Planning, the statement was intended to apply to land use policies only. Therefore, the text in Section 3.11.2 (Land Use and Planning) has been revised to clarify that the statement was referring to policies regarding land use and reference to the regulations cited by the commenter has also been added.

B4-23 Because of the inconsistencies and lack of clarity in the proposed project and alternatives, the commenter requests a revised Draft EIR be prepared that addresses the issues identified in this letter and recirculated to the public for comment.

Recirculation of a Draft EIR is required if there is significant new information or impact; substantial increase in severity of an impact; a feasible alternative or mitigation measure that is considerably different from those analyzed; or that the Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded (CEQA Guidelines section 15088.5(a)). As shown in Responses to Comments B4-1 through B4-22, the Draft EIR does not lack clarity that would necessitate recirculation of the Draft EIR. Insignificant edits have been made to the Final EIR to clarify or amplify the analysis that was already in the Draft EIR. Please refer to Response to Comment B4-2 for a discussion of project objectives. Please also see General Response GR-5.

The commenter's support for an alternative that complies with the DRECP CMAs and opposition to the proposed project are noted. Please see Responses to Comments B4-24 through B4-56 for responses, as applicable to CEQA, to the commenter's letter submitted to BLM on the NEPA Environmental Assessment.

The remaining comments and responses address a comment letter submitted on BLM's Draft EA/LUPA that has been included as an attachment to the Draft EIR comment letter (Comments B4-24 through B4-56). Responses to these comments may include items related to BLM's separate NEPA process outside of the RWQCB's jurisdiction and CEQA process and these topics have been included for informational purposes only.

B4-24 The commenter states that Oberon is unique because it is the first and only project where the applicant requested a right-of-way grant from BLM for a

project that would not comply with the DRECP because modifying the project to be compliant with the DRECP was not practicable.

Please see General Response GR-1 regarding the project-specific LUPA.

B4-25 The commenter states that BLM-authorized activities on public land must conform to the applicable land use plan. If the BLM receives an application for a project that does not conform to the land use plan, it may reject the application without additional analysis. If the BLM determines, however, that the proposal warrants further analysis, it must undertake a plan amendment, which includes a public process, as described in the land use planning regulations at 43 CFR 1610.2.

The Applicant submitted a ROW application to BLM for a 500 MW solar PV facility on approximately 5,000 acres of BLM-administered land. After biological and cultural resources surveys were performed and additional constraints, such as the utility corridor, were identified, the project was subsequently revised by the Applicant to remove over 2,300 acres from development and comply with the DRECP CMAs to the maximum extent practicable. To maintain 500 megawatts (MW), the Applicant also condensed the ground cover ratio (GCR) to approximately 47% (a 30% GCR is preferred to reduce panel shading by adjacent panels). The Applicant has stated that the Oberon Project would be designed at 5.4 acres/MW, where the industry standard is closer to 8 acres/MW.

In consultation with BLM and the resource agencies, the Applicant designed the panel layout to directly impact some desert dry wash (microphyll) woodland “slivers” that would have retained little or no residual habitat value (totaling approximately 74 acres for panel development), and instead open up other larger corridor areas of microphyll woodland in higher value habitat and within the multi-species linkage corridor. At this time, the Applicant determined that complete avoidance of the microphyll woodland buffer would not be feasible. Outside of the scope of CEQA, BLM will make the determination whether a project-specific LUPA is required. Factors to be considered by BLM in this determination, include the Applicant’s statement that microphyll woodland has been avoided to the maximum extent feasible and the Applicant’s avoidance and mitigation package. Please also see General Response GR-1.

As discussed in EIR Section 1.3.2 (Applicant’s Project Objectives), the purpose of the project is to generate, store, and transmit 500 MW of renewable energy to the statewide wholesale electricity grid. BLM’s purpose is to respond to IP Oberon, LLC’s, request under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. Section 1761(a)(4)) for a right-of-way (ROW) grant. In response, BLM has prepared an Environmental

Assessment (EA) of the project as proposed. Because the project is located in a Development Focus Area within the DRECP planning area, the EA tiers to the DRECP Final Environmental Impact Statement (FEIS) (see Section 1.5, Tiering and Incorporation by Reference). As described in EA Section 1.1.2, the DRECP FEIS analyzed the impacts of constructing, operating, and decommissioning solar projects throughout the CDCA and in the DFA in eastern Riverside County, where the project is located.

EA Section 1.3.2 explains that "the BLM Authorized Officer will review the Proposed Action (described in Section 2.3 as Alternative 2) and other alternatives and decide whether to deny the Applicant's application, approve the application, or approve the application with modifications. The BLM may include any terms, conditions, and stipulations it determines to be in the public interest and may modify the proposed use or change the route or location of the proposed facilities (43 CFR 2805.10(b)(1)). This decision will be an implementation decision. Furthermore, the BLM will decide as a land use planning decision whether to amend the CDCA Plan, as amended, as described below."

B4-26 The commenter states that the proposed project is the only alternative that would allow for a 500 MW solar project to be built and operate, which is what the applicant wanted. BLM had the authority to outright reject Intersect Power's 500 MW solar project application under both the DRECP ROD and its right-of-way regulations in 43 CFR 2800.

See Response to Comment B4-25 regarding BLM's purpose and need and decisions to be made, which are outside the scope of CEQA.

B4-27 The commenter states that the BLM's right-of-way grant regulations, specifically 43 CFR 2801.2, requires, in part, that allowable uses of the public lands be done in a manner that: (a) Protects the natural resources associated with public lands and adjacent lands; (b) Prevents unnecessary or undue degradation to public lands; (c) Promotes the use of rights-of-way in common considering engineering and technological compatibility, national security, and land use plans (i.e., the California Desert Conservation Area Plan, as amended); and (d) Coordinates, to the fullest extent possible, all BLM actions with state and local governments and interested individuals.

Please see Response to Comment B4-25 and General Response GR-2 regarding Development Focus Areas. BLM's multiple use mandate is discussed in General Response GR-1 but is outside of the scope of CEQA and the RWQCB's jurisdiction. In addition to project design to avoid and minimize impacts to sensitive resources in the application area, the Oberon Project includes full compliance with most DRECP CMAs as well as project specific mitigation measures (see EIR Appendix E, Mitigation Monitoring and

Reporting Program), plus the Applicant proposes a mitigation package (POD Appendix AA on BLM's ePlanning website[5]) of approximately 6,200 acres of higher quality offsite compensation lands in compliance with CMA LUPA-BIO-COMP-1 and is also proposing additional offsite compensation for indirect (buffer) impacts (see EA Section 3.12.2).

B4-28 The commenter states that among the resources given enhanced protection within the Oberon project area are microphyll woodlands, their associated special status or sensitive species, desert tortoise critical habitat and a multi-species wildlife linkage. The commenter states that that the project would not comply with DRECP Objective 1.4 to "Conserve unique landscape features, important landforms, and rare or unique vegetation types identified within the BLM Decision Area of ecological processes, Focus and BLM Special Status Species, and vegetation types."

The BLM has acknowledged the DRECP LUPA definition of "conserve." Please see Response to Comment B4-27. As in the DRECP LUPA ROD (page 8[6]) another objective of the DRECP as reflected in the LUPA (DRECP ROD p. 8) and BLM's multiple use mandate is to "[p]romote renewable energy and transmission development, consistent with federal renewable energy and transmission goals and policies, in consideration of state renewable energy targets."

B4-29 The commenter states that the project is inconsistent with the DRECP, the ROD, the CMAs, and BLM's right-of-way grant regulations. Accordingly, they recommend that BLM reject the project when considering a final decision on Oberon. In addition, the commenter states that significant adverse impacts associated with the project would require further analysis.

The commenter's request that BLM reject the application for the proposed project is noted. Please see Response to Comment B4-28, as well as General Response GR-5 regarding the adequacy of BLM's NEPA environmental analysis. Please see General Response GR-1 regarding BLM's determination of whether a project-specific LUPA would be required for the Oberon Project.

B4-30 The commenter states that the project is inconsistent with the CDCA Plan (as amended by DRECP). The commenter provides their reasoning why the project would not be consistent with LUPA-BIO-1. The commenter questions if the delineation of microphyll woodlands was based on the most current, existing information, and specifically the 2013 inventory of DRECP vegetation

[5] Oberon Renewable Energy Project. https://go.usa.gov/xfdH5

[6] DRECP LUPA ROD (September 2016). https://eplanning.blm.gov/public_projects/lup/66459/133460/163124/DRECP_BLM_LUPA_ROD.pdf.

communities. The commenter feels the analysis of impacts on microphyll woodlands appears to significantly underestimate loss of this sensitive vegetation community.

The DRECP mapped vegetation communities at a landscape scale over millions of acres. Consistent with DRECP CMA LUPA-BIO-1, a site-specific habitat assessment and more detailed mapping of suitable habitat was performed in 2019 and 2020 to inform siting and design considerations for the Oberon Project. The mapping was discussed and confirmed in the field with U.S. Fish and Wildlife Service (USFWS). A description of the survey and mapping protocols are described below.

Vegetation communities in the project site were mapped and classified by Ironwood botanists, using Holland (1986) and cross-referencing with A Manual of California Vegetation, 2nd edition (Sawyer et al., 2009) and the National Vegetation Classification System (NVCS) referenced in the DRECP (CDFW, 2017). Vegetation was mapped using those references and adjusting polygons on aerial images in the field as determined by the professional judgement of experienced botanists that were completed in conjunction with other surveys that required field verification. This includes the 10-m fall surveys for ground truthing the initial CDFW layer with minor adjustments, Jurisdictional Delineation mapping surveys across the entire project site (refined adjustments), and one last time with the 20-m plant surveys (ground truthing the last adjustments).

Desert dry wash woodland/microphyll woodland encompasses a few different vegetation alliances. In the case at Oberon, it includes the Parkinsonia florida-Olneya tesota woodland alliance (blue palo verde-ironwood woodland). There is a 2-3% absolute cover threshold of the tree canopy that must be met to be classified in that woodland alliance. The 3 ways to meet the membership thresholds, per CNPS definitions, include:

1. Ironwoods only, >3% must be absolute cover in the tall shrub or tree canopy and not exceeded by other tall tree shrubs or tree species;
2. Ironwoods and/or blue palo verdes, >2% absolute cover must occur in the canopy together or on their own and associated species may be similar in cover to ironwood and/or blue palo verde;
3. Blue palo verde only, is >3% absolute cover in the tree canopy and exceeds other tall shrubs or tree species.

Any vegetation map can be subject to imprecision and differences for several reasons:

- Vegetation types tend to intergrade on the landscape so that there are no true boundaries in the vegetation itself. In these cases, a mapped boundary represents best professional judgment.
- Vegetation types as they are named and described tend to intergrade; that is, a given stand of real-world vegetation may not fit into any named type in the classification scheme used. Thus, a mapped and labeled polygon is given the best name available in the classification, but this name does not imply that the vegetation unambiguously matches its mapped name.
- Vegetation types tend to be patchy. Small patches of one named type are often included within mapped polygons of another type. The size of these patches varies, depending on the minimum mapping units and scale of available aerial imagery.

In the end, mapping comes down to the best professional judgement of the botanists based on the criteria as outlined above. The mapping may be different from the model created by CDFW, but what was mapped by Ironwood was ground truthed and adjusted based on what was observed at the Oberon project site with the aerial imagery in hand using that model as the baseline.

B4-31 The commenter has provided comments stating the project is inconsistent with the CDCA Plan (as amended by DRECP). The commenter provides their reasoning why the project would not be consistent with LUPA-BIO-3. The commenter states the applicant purposely chose to violate this CMA and substituted the required 200-foot setback or buffer with a 50-foot setback. Then, the applicant chose to place solar panels within the microphyll woodland to offset what it claims to have lost due to the requirements of the DRECP itself. The commenter supports project alternatives that fully complies with the DRECP, even if less electricity can be generated compared to the proposed project.

Please refer to Response to Comment B4-18 for a discussion of the DRECP inconsistency analysis set forth in Impact LU-1, EIR Section 3.11.5 (Land Use and Planning). Please refer to Response to Comment B4-25 for a discussion of the evolution of project design following completion of biological and cultural surveys and the project's 500 MW generation capacity. BLM's purpose is to respond to the Applicant's ROW application following BLM's multiple use and sustained use principles. The intent of the Applicant is beyond the scope of NEPA. The commenter's support for alternatives that would fully comply with all DRECP CMAs is noted.

B4-32 The commenter has provided comments stating the project is inconsistent with the CDCA Plan (as amended by DRECP). The commenter provides their reasoning why the project would not be consistent with LUPA-BIO-13. The commenter states implementation of the CMA is required unless there is no reasonable or practicable means of doing so that is consistent with the basic objectives of the activity. The commenter states the projects fails to comply with this CMA to avoid microphyll woodland.

LUPA-BIO-13 requires that projects sited along the border of a biological linkage be configured "to maximize the retention of microphyll woodlands and their constituent vegetation type and inclusion of other physical and biological features conducive to Focus and BLM Special Status Species' dispersal. As described in Response to Comment B4-25, the Applicant has stated that it redesigned the project to avoid microphyll woodlands to the to the maximum extent practicable. Outside of the scope of CEQA, BLM will make a determination regarding whether a project-specific LUPA is required and will consider this documentation, which was also submitted as part of the NEPA process, as well as the Applicant's avoidance and mitigation package. Please also see General Response GR-1.

B4-33 The commenter has provided comments stating the project is inconsistent with the CDCA Plan (as amended by DRECP). The commenter provides their reasoning why the project would not maximize retention of microphyll woodlands to the extent feasible. The commenter states wildlife linkage would be lost due project facilities by failing to site project facilities along the edge of the identified linkage. The commenter states the applicant failed to recognize that the 1.5-mile-wide linkage is not limited to just microphyll woodland, but all native plant communities that constitute the linkage, including the more widespread Sonoran Creosote Bush Scrub.

Please refer to General Response GR-4 regarding the multi-species linkage corridor. Per the CMA, retention of the microphyll woodlands would be maximized and other physical features would be included, specifically wildlife friendly fencing as well as a setback from the I-10 freeway and its wildlife undercrossings (culverts), which would be conducive to species dispersal. Siting was also informed by updated detailed mapping of vegetation types (see Response to Comment B4-30) and protocol species surveys, and was designed to maximize connectivity through retained DDWW (see Response to Comment B4-25).

The function of the wildlife linkage area is not specific to vegetation types; in this case, the project design is intended to maximize wildlife linkage function by maximizing connectivity via undeveloped north-south trending DDWW corridors, while maintaining some wildlife movement opportunity (wildlife-

friendly fencing) through the developed parts of the site located on upland creosote bush scrub vegetation. Nothing about this strategy contradicts the DRECP's direction with regard to the wildlife linkage area.

B4-34 The commenter has provided comments stating the project is inconsistent with the CDCA Plan (as amended by DRECP). The commenter provides their reasoning why the project would not be consistent with LUPA-BIO-RIPWET-1. The commenter provides their reasoning why the project would ignore the DRECP mandate to avoid impacts to microphyll woodlands. The commenter states that unavoidable impacts are limited to minor incursions, such as a necessary road or pipeline extension across a sensitive resource required to serve an activity. The commenter states it is clear that the definition of minor incursions was intended to include infrastructure necessary to allow a solar project to be functional which, for Oberon and any other project, includes access roads, gen-tie or other linear facilities, and not the solar generating facility itself.

Please refer to Response to Comment B4-18 for a discussion of the DRECP consistency analysis set forth in Impact LU-1, EIR Section 3.11.5 (Land Use and Planning). BLM will also make the determination through the separate NEPA/FLPMA process as to whether or not a project-specific LUPA is required. The DRECP CMAs are applied to mitigate project related impacts on specific resources. Several of these CMAs contain exemptions to required setbacks or avoidance measures using terms such as "to the maximum extent practicable" or "except for minor incursions." BLM's evaluation of the CMAs indicates that not strictly adhering to the setback requirements, as well as direct impacts to microphyll woodland, could be considered by BLM in conformance with the land use plan provided certain criteria are met to maintain the intent of resource protection under the CMAs. BLM will make the determination whether or not the proposed project would meet these criteria. As part of this determination, BLM will consider the Applicant's offsite compensation at a 5:1 ratio for both direct impacts (in accordance with LUPA-BIO-COMP-1) as well as indirect impacts in the DDWW 200-foot buffer area (not required by DRECP CMAs). Please also see General Response GR-1.

See Response to Comment B4-25 on resource agency coordination regarding impacts to DDWW.

B4-35 The commenter provides their suggested reasoning on why the Applicant "chose to ignore" the DRECP CMA designed to avoid loss of microphyll woodland and the associated 200-foot protective buffer by designing a project that would result in the direct loss of approximately 60 acres of microphyll woodlands and approximately 349 acres of the 200-foot buffer due to

photovoltaic solar panels. The commenter states an opinion that these impacts do not constitute minor incursion because they are fully avoidable.

See General Response GR-1 for a discussion of CMA compliance and a project-specific LUPA, and Response to Comment B4-25 regarding project design revisions to avoid identified resources.

See Response to Comment B4-30 for a discussion of Ironwood's survey methodology that refines the DRECP landscape level habitat mapping based on aerial photography with project-specific ground-truthed mapping based on field surveys. The impact acreages in the EIR reflect Ironwood's refined mapping. See Response to Comment B4-34 regarding minor incursions. The Applicant has also provided an explanation regarding the orientation and modular nature of solar panels with respect to avoiding microphyll woodlands and other irregular, diagonally trending features on the project site.

B4-36 The commenter states the DRECP Final Environmental Impact Statement (FEIS) concluded that all microphyll woodlands, including their 200-foot protective setbacks or buffers, would remain protected due to CMAs that allowed for only minor incursions. As a result, the FEIS concluded there would be no loss of or impact to microphyll woodlands. The commenter states the FEIS also concludes that impacts to riparian vegetation would not occur since application of the CMAs would require that riparian vegetation be avoided to the maximum extent practicable in DFAs.

See General Responses GR-1 and GR-5 on the EIR analysis and tiering to the DRECP FEIS. Please refer to Response to Comment B4-18 for a discussion of the DRECP consistency analysis set forth under Impact LU-1 in EIR Section 3.11.5 (Land Use and Planning). To the extent that the DRECP FEIS represented at any point that there would be no loss of or impact to microphyll woodlands, this is inconsistent with the fact that the plan allows, at a minimum, for minor incursions. Interpreting the whole of the plan, along with additional mitigation measures not covered by the CMAs and proposed by the Applicant, BLM will determine outside of the scope of CEQA whether the impacts of the proposed project are within the scope of the DRECP's development plans and whether a project-specific LUPA is required.

B4-37 The commenter has provided comments stating the project is inconsistent with the CDCA Plan, as amended. The commenter provides their reasoning why the project would not be consistent with LUPA-BIO-SVF-6. The commenter has stated the project would not comply with this DRECP CMA because it would result in the loss of 60 acres of microphyll woodland (140 acres using the Center's GIS analysis) and 349 acres of the designated setback or buffer that do not meet the definition of a minor incursion.

Please refer to Response to Comment B4-18 for a discussion of the DRECP consistency analysis set forth in Impact LU-1, EIR Section 3.11.5 (Land Use and Planning). The commenter provides the DRECP definitions of microphyll woodland, minor incursions, and buffer or setback. See General Response GR-1 for a discussion of CMA compliance and a project-specific LUPA. See Response to Comment B4-30 for a discussion of Ironwood's survey methodology that refines the DRECP landscape level habitat mapping based on aerial photography with project-specific ground-truthed mapping based on field surveys.

The acreage calculations were rechecked by the BLM for the Revised EA and updated where applicable based on refined engineering by the Applicant. The overall acreages are consistent with the analysis in the Draft EA and the refinements do not affect any of the EA conclusions. Without GIS data from the commenter, the impact acreages in the EA reflect Ironwood's refined mapping, a more recent project fenceline, and thus differ from those calculated by the commenter.

B4-38 The commenter has provided comments stating the project is inconsistent with the CDCA Plan (as amended by DRECP). The commenter provides their reasoning why the project would not be consistent with LUPA-BIO-SVF-1. The commenter states that an independent analysis using the 2013 vegetation community inventory completed specifically for use in the DRECP showed that 140 acres of microphyll woodland would be lost under the project compared to 60 acres using the inventory from the EIR.

Throughout the NEPA and CEQA process, Lead Agency biologists have reviewed the survey methodologies and results, BRTR, Jurisdictional Delineation, and all other biological resources draft plans to ensure that the NEPA and CEQA analyses is accurate. Please refer to Responses to Comments B4-30 and B4-37.

B4-39 The commenter has provided comments stating the project is inconsistent with the CDCA Plan (as amended by DRECP). The commenter provides their reasoning why the project would not be consistent with LUPA-CUL-11. The commenter states that avoiding microphyll woodland only where feasible does not equate to promoting and protecting this sensitive vegetation community as the DRECP requires avoiding this resource to the maximum extent practicable.

BLM is evaluating compliance with DRECP CMAs through the NEPA process and has determined that the intent of this CMA is accomplished through compliance with NEPA, EX13175, EX13007 and all other applicable laws, regulations, and policies.

Within the approximately 5,000-acre application area, the project has been designed to avoid/protect approximately 1,200 acres of desert dry wash (microphyll) woodland to the maximum extent feasible with approximately 90 acres of direct impacts microphyll woodland from solar panels and minor incursion. All direct impacts to microphyll woodland would be compensated with higher value habitat at least a 5:1 ratio in accordance with DRECP CMA LUPA-BIO-COMP-1.

As stated in Comment B4-35, which quotes DRECP, “the purpose of the buffer or setback is to maintain the function and value of the resource features identified in the DRECP LUPA CMAs.” EIR Section 3.4.5 provides an explanation for why the function of the microphyll woodland areas would be maintained even with encroachment into the 200-foot buffer area and impacts would not be significant. Therefore, desert dry wash woodland habitat would be protected in accordance with LUPA-CUL-11. Note that the project is proposed in a Development Focus Area targeted in the DRECP LUPA for renewable energy development.

Please refer to Response to Comment B4-32 regarding the term maximum extent feasible/practicable.

B4-40 The commenter states the project fails to adequately analyze and mitigate impacts to the multi-species wildlife linkage and connectivity. The commenter states the project is located partially within the most westerly wildlife connectivity corridor and the analysis fails to identify the impact to the multi-species linkage from the proposed project. The commenter states the project fragments the linkage, making the linkage less functional for wildlife to move unimpeded through it.

Please see General Response GR-4 regarding the multi-species linkage corridor.

B4-41 The commenter states the analysis fails to identify that most of the gen-tie will be routed through the multi-species linkage, an impact that is analyzed in the context of only construction and avian impacts from collisions. The commenter feels both the gen-tie towers and lines as well as the array fencing provide new perching opportunities for predatory birds. The commenter states this impact is not identified or analyzed nor is the option of co-locating the project gen-tie with the Eagle Crest gen-tie.

The potential effect of project structures, including the gen-tie line, providing perch sites for opportunistic predators has been added to the Final EA analysis in Section 3.4.5. MM BIO-9 in EIR Section 3.4.7 includes the development of a Raven Management Plan that would manage raven subsidies and attractants. MM BIO-11 requires the gen-tie structures be

designed to discourage use by raptors for perching or nesting. If the southeastern substation option is constructed, then the project gen-tie would be less than 0.5 miles long crossing I-10 and entering Red Bluff Substation surrounded by other gen-tie lines and structures.

As stated in EIR Section 2.0 (Project Description), the Applicant plans to collocate the Oberon gen-tie line with the proposed Easley Solar and Green Hydrogen project gen-tie line or the Applicant may use capacity on the Oberon 500 kV gen-tie line for the Easley Project. Outside of the scope of CEQA, BLM may require other ROW holders to collocate with the Oberon solar facilities, should the BLM decide to issue IP Oberon, LLC, a ROW.

Any gen-tie collocation would occur pending financial negotiations, if the voltages, substation approaches, and timelines are similar. As stated in EIR Table 3.1-2, the FERC License for the Eagle Mountain Pumped Storage Project was issued June 2014 and the project was approved by BLM in August 2018. Eagle Crest's gen-tie line is 500 kV and would approach Red Bluff Substation's 500 kV transformer bank on its eastern side, similar to Oberon; however, the timing of the Eagle Crest Project is unknown. Eagle Crest's approved gen-tie line ROW into the north side of the Red Bluff Substation is not feasible given the location of the 500 kV transformer bank. Eagle Crest will need to design a revised gen-tie line approach into Red Bluff Substation in coordination with SCE and other adjacent ROW holders, then apply to the BLM for a revised ROW grant, and BLM will need to perform a NEPA analysis and issue a ROW grant prior to project construction. Pending approvals, the construction of the Oberon Project would begin in early 2022 with commercial operation before the end of 2023. The unknowns about the Eagle Crest schedule, its revised ROW, and additional NEPA analysis required make collocation of the Oberon gen-tie line with the Eagle Crest gen-tie line unlikely. Therefore, a specific discussion of collocation with the Eagle Crest line was not included in the EIR.

B4-42 The commenter states the analysis fails to recognize the BLM's designation is a multi-species linkage, yet it focuses on desert tortoise movement, while many other rare and common terrestrial and aerial species also rely on this linkage area for movement and use it in different ways. The commenter states the analysis wrongly assumes the multi-species linkage is based only on microphyll woodlands in washes.

The EIR discusses and accurately describes the corridor as a "multi-species" linkage under Wildlife Movement throughout EIR Section 3.4 (Biological Resources) and elsewhere. The Final EIR under Impact BIO-4 states that development within the linkage area would reduce the available wildlife movement habitat for many species, including desert tortoise and burro deer.

The EIR lists the overall acreage of the wildlife corridor impacted by the Oberon Project, not just within desert dry wash woodland. Furthermore, the description of wildlife friendly fencing in the EIR Section 2.2.3.3 and Section 3.4.5 states that it is anticipated that reptiles, birds, and small and medium sized mammals would easily pass through the fence gap and utilize a portion of the site during operations. The EIR also discusses impacts to bird in the corridor with potential collisions with the gen-tie line. The EIR adequately recognizes that the multi-species linkage is used by many terrestrial and aerial species. Additional text has been added in Section 3.4 of the Final EIR for clarification of the Draft EIR impact conclusions.

B4-43 The commenter states the analysis fails to adequately address measures to maintain the function of the multi-species linkage and fails to ensure the functionality of this multi-species wildlife corridor over the long-term. The commenter states the project must ensure that the function of this important multi-species corridor is retained, must require changes in the proposed project layout to remove infrastructure from the multi-species linkage and must fully analyze the new proposal.

Please refer to General Response GR-4 regarding the multi-species linkage.

B4-44 The commenter states the analysis fails to evaluate the potential extent of cumulative impacts from other existing and proposed renewable energy projects in the western Chuckwalla Valley. The commenter states an opinion that the cumulative impacts would completely eliminate the functionality of the multi-species linkage.

The DRECP Final EIS analysis evaluated development of renewable energy within the designated DFAs (see General Response GR-2). The Oberon EA tiers to the DRECP's analysis in BLM's NEPA process. See General Response GR-4 regarding the multi-species linkage corridor and Response to Comment B4-55 regarding cumulative impacts.

B4-45 The applicant states the supporting appendix titled *Applicability of DRECP Conservation and Management Actions* includes statements that are misleading, incorrect or subjective and requests corrections.

The introductory text in POD Appendix C has been revised in the Final EA to add "to the maximum extent feasible" when describing the Applicant's compliance with the DRECP CMAs.

B4-46 The commenter provided comments stating the project is inconsistent with the CDCA Plan (as amended by DRECP). The commenter provides their reasoning why the project would not be consistent with LUPA-BIO-3. The commenter states that an independent analysis shows the project overlaps

140 acres of microphyll woodland and 349 acres of the required 200-foot setback or buffer for microphyll woodlands with solar panel arrays.

For clarification, the extent of desert dry wash woodland is shown in EIR Figure 2-6 and in POD Appendix F (BRTR)[7]. As shown on the map, it occurs in a series of north-south trending polygons distributed across the site. In combination with the figure, the word “throughout” appropriately expresses this distribution. EA Table 3.12 1 (Construction Impacts to Vegetation Communities) provides impact acreages for each vegetation type and shows that Sonoran Creosote Bush Scrub is the most prevalent vegetation community on the project site. EA Section 1.6 discusses conformance with the DRECP CMAs, including CMA LUPA-BIO-3 and LUPA-BIO-RIPWET-1.

B4-47 The commenter has provided comments stating the project is inconsistent with the CDCA Plan (as amended by DRECP). The commenter provides their reasoning why the project would not be consistent with LUPA-BIO-13. The commenter states the project fails to avoid impacts to maximum extent practicable, not simply to the extent practicable, the latter of which is not used or defined in the DRECP.

Please refer to Response to Comment B4-32 for a discussion of maximum extent practicable. Please refer to General Response GR-4 regarding the multi-species linkage.

B4-48 The commenter has provided comments stating the project is inconsistent with the CDCA Plan (as amended by DRECP). The commenter provides their reasoning why the project would not be consistent with LUPA-BIO-RIPWET-1. The commenter states the CMA requires that microphyll woodland and its associated 200-foot protective setback or buffer be avoided to the maximum extent practicable and the project would not comply with this requirement.

Please see General Response GR-1 regarding the DDWW impact and related project-specific LUPA. Also see Response to Comment B4-46.

B4-49 The commenter has provided comments stating the project is inconsistent with the CDCA Plan (as amended by DRECP). The commenter provides their reasoning why the project would not be consistent with DRECP CMA LUPA-BIO-RIPWET-3. The commenter states this CMA requires surveys in microphyll woodlands that are within 0.25 miles of any project activity that has the potential to disrupt the nesting activity of Special Status Species of bird. If such bird species are found to be nesting, a 0.25-mile setback or buffer will be established where no activities are allowed that would disrupt nesting from

[7] Oberon Renewable Energy Project. https://go.usa.gov/xfdH5.

February 1-August 31. The commenter states that project compliance with this CMA appears to be based on compliance with other CMAs that require avoidance of project facilities within microphyll woodlands and the 200-foot protective setback or buffer, except for minor incursions.

Desert dry wash woodland would not be suitable for the riparian nesting birds that are the focus of the CMA. No construction-related disturbance to riparian nesting birds is expected. MM BIO-10 requires a Bird and Bat Conservation Strategy (BBCS) and Nesting Bird Management Plan (NBMP) to avoid and minimize impacts to migratory and nesting birds.

B4-50 The commenter stated that the project is inconsistent with the CDCA Plan (as amended by DRECP). The commenter provides their reasoning why the project would not be consistent with LUPA-BIO-SVF-6. The commenter states it is BLM's responsibility to determine if the project will compromise the microphyll woodlands in coordination with CDFW and the USFWS.

Please refer to General Responses GR-1 and GR-5 regarding impacts to desert dry wash woodland and a finite project description, respectively.

B4-51 The commenter stated that the project is inconsistent with the CDCA Plan (as amended by DRECP). The commenter provides their reasoning why the project would not be consistent with LUPA-BIO-IFS-1. The commenter states it is BLM's responsibility to determine if the project will compromise the long-term viability of both the desert tortoise population utilizing the linkage and the linkage function, in coordination with CDFW and the USFWS.

Please refer to General Response GR-4 regarding the multi-species linkage corridor. The EIR concludes that the impacts to wildlife movement from the Oberon Project would be significant without mitigation. Implementation of CMAs under the DRECP and mitigation measures, as described in EIR Section 3.4.7, would avoid, minimize, and mitigate impacts to less than significant.

The RWQCB and BLM have coordinated with USFWS and CDFW throughout the CEQA and NEPA processes. BLM is consulting with USFWS under Section 7 of the Endangered Species Act and the project will require an Incidental Take Permit for desert tortoise and a Lake and Streambed Alteration Agreement from CDFW.

B4-52 The commenter stated that the project is inconsistent with the CDCA Plan (as amended by DRECP). The commenter provides their reasoning why the project would not be consistent with LUPA-CUL-11. The commenter states the project fails to meet this standard because it will not avoid microphyll woodlands to the maximum extent practicable.

See Response to Comment B4-39 for a discussion of compliance with CMA LUPA-CUL-11.

B4-53 The commenter stated that the project is inconsistent with the NECO Plan Amendment goals and objectives for Other Special Status Animal and Plant Species, Natural Communities, and Ecological Processes are very specific and focus on conservation.

This comment focuses on BLM-administered plans, which are outside of the RWQCB's jurisdiction, so the following information has been included for informational purposes. The DRECP LUPA supersedes the NECO WHMA. As noted in the DRECP ROD, the DRECP developed a biological conservation strategy that is the approach for conserving DRECP Focus Species, BLM Special Status Species, vegetation types, and the landscape and ecological processes that support them. As part of the process, the Renewable Energy Action Team (REAT) agencies identified inputs into the development of the biological conservation framework map and included existing BLM land use planning designations (i.e., resource conservation areas identified through the CDCA and RMPs), Renewable Energy Transmission Initiative (RETI) planning products, REAT Agencies Starting Point Maps, the DRECP Preliminary Conservation Strategy map, and the Marxan reserve optimization analysis. This step in the conservation planning process would have reviewed the WHMAs as resources conservation areas identified in the NECO RMP and considered their role in the DRECP conservation areas which supersede the WHMAs. For this reason, the WHMAs were not addressed in the EA. No changes have been made to the EIR based on this comment.

B4-54 The commenter states that the project is inconsistent with the NECO Plan Amendment goals and objectives to Protect and Enhance Habitat.

See Response to Comment B4-53 regarding the NECO Plan and WHMAs. Note that there is no mapped Aeolian sand transport or playa habitat mapped within the Oberon application area as described in EIR Section 3.4 (Biological Resources).

B4-55 The commenter states the analysis fails to correctly evaluate the potential extent of cumulative impacts.

This comment is directed at the NEPA EA. EIR Section 3.1.2 (Cumulative Scenario) describes the cumulative methodology and scenario and presents a comprehensive list and description of all past, present, and reasonably foreseeable actions for cumulative effects that apply to all alternatives and for all resource impacts. The Oberon EIR does not defer to the cumulative analysis but rather includes an adequate analysis of cumulative impacts

under each issue area in Chapter 3 following the methodology described in EIR Section 3.1.

B4-56 The commenter states that because the project would not comply with the DRECP and its CMAs and other legal and regulatory requirements, the project would result in impacts that would prevent BLM from making a Finding of No Additional Significant Impact, and requiring the preparation of an Environmental Impact Statement and proposed amendments to the DRECP.

Please see Response to Comment B4-32 regarding maximum extent practicable. Refer to General Response GR-5 regarding the adequacy of the EIR and need for recirculation, and General Response GR-1 regarding a discussion of a project-specific LUPA. The commenter's support for an alternative that fully complies with the DRECP LUPA and its CMAs or BLM's rejection of the proposed ROW application is noted. Chapter 4 of the EIR evaluates two alternatives, the Land Use Plan Compliant Alternative and the Resource Avoidance Alternative, that would not require a LUPA and could be approved by the RWQCB; however, BLM's NEPA decision process is outside of CEQA and the RWQCB's jurisdiction.

Responses to Comment Set B5 – Basin & Range Watch / Western Watersheds Project

B5-1 The commenters accurately describe the project, their organizations, and the environmental review processes under CEQA and NEPA. No response is required.

B5-2 The commenter states that the Draft EIR and EA failed to adequately address the significant environmental impacts that would result from implementation of the project. The commenter also references a copy of the EA letter that is attached and requests it be made part of the administrative record.

The RWQCB acknowledges receipt of the EA letter as part of the administrative record for the Oberon Project. Please see Responses to Comments B5-59 through B5-124 for responses to the EA letter, as applicable to CEQA. Details regarding the commenter's specific concerns on the Draft EIR and responses to those concerns are addressed in the following Responses to Comment Set B5.

B5-3 The commenter states that the Project Description is not stable and finite, as selection of the battery storage and gen tie line have not been made and several components of the project have yet to be decided and are subject to change due to ongoing negotiations. The commenter's also requests an explanation for why the Oberon Project cannot use the Eagle Crest gen-tie line.

Optionality does not make a project description inconsistent. In compliance with CEQA, the EIR consistently describes the "basic characteristics" of the Project—"the project location, the existing character of the site, project features, site plans, project objectives, needed permits, and agencies with jurisdiction . . . ." (*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1055.) "'[F]or a project [description] to be stable, the DEIR, the FEIR, and the final approval must describe substantially the same project'", not exactly the same project, as this would defeat the purpose of CEQA – to consider alternatives and mitigation measures as needed to reduce the environmental effects of the proposed action. (*Washoe Meadows Community v. Dept. of Parks & Rec.* (2017) 17 Cal.App.5th 277, 288.) The project description can include both fixed elements and conceptual elements, with the latter subject to future revisions. (*Treasure Island*, *supra*, 227 Cal.App.4th at p. 1054.) An EIR is not required to resolve all hypothetical details. (*Id.*) Indeed, an EIR's project description can be broader than the project actually approved. (*Dusek v. Redevelopment Agency* (1985) 173 Cal.App.3d 1029, 1041.)

Please refer to Response to Comment B5-90, which addresses the project component options and collocation with the Eagle Crest gen-tie line.

B5-4 The commenter states that the project is negotiating land uses in ways that could increase the project impacts, such as a private inholding and two substation location option, and the Draft EIR does not have a stable, finite project description.

Please refer to Response to Comment B5-90, which addresses the substation options and the private inholding. Please see Response to Comment B5-3 regarding the stability of the Project Description in EIR Chapter 2. The EIR analysis ensures that all options are analyzed and included within the up to 2,700-acre "worst case scenario" development footprint.

B5-5 The commenter states that The Oberon Project's 500 kV gen-tie line would cross into the Chuckwalla Area of Critical Environmental Concern (ACEC) south of I-10, to tie into the existing Red Bluff Substation, rather than co-locating with other gen-tie lines. The Draft EIR fails to explain why the project gen-tie line is not co-locating with the Desert Harvest, Desert Sunlight or Eagle Crest gen-tie Lines, which would reduce impacts to the ACEC, and is instead proposing to co-locate with the Easley Project that is in early stages of review.

The Oberon gen-tie line is connecting to Red Bluff Substation at 500 kV (there are no interconnection positions available on the 230 kV transformer bank). The Desert Harvest and Desert Sunlight gen-tie lines are 230 kV. Gen-tie structure specifications are dictated by national and state standards. The

size of the structure is dictated by many factors, including the weight of the conductors, local seismic and wind conditions, and the need to maintain safe clearances between conductors and between conductors and the ground. Therefore, a 230 kV structure cannot support a 500 kV gen-tie line.

In addition, the Desert Harvest 230 kV gen-tie line already collocates with the Palen 230 kV gen-tie line between the Oberon Project and Red Bluff Substation within the Chuckwalla ACEC. The Desert Sunlight gen-tie line is an existing gen-tie line with single-circuit transmission structures that would not support any additional conductors, so collocation would not be feasible.

Please refer to Response to Comment B5-90 regarding the infeasibility of collocation with the Eagle Crest 500 kV gen-tie line.

B5-6 The commenter states that the Oberon Project as presented in the Draft EIR has gone through multiple permutations and manipulations to remove areas that were undevelopable for various environmental reasons. The Draft EIR deliberately misleads the public into believing that the northern portion of the project would not have met the applicant's goal, when in fact, the applicant already has another application on file to develop the northern portion as another solar project.

Please refer to General Response GR-3 regarding the background on the project design and the Applicant's decision to drop the northern parcel group.

The commenter also states that Intersect Power is still proposing to develop the northern portion at some point and this is made clear in the Plan of Development Mitigation Package, Appendix AA, which clearly identifies that there are two projects (Oberon I and Oberon II).

Oberon I and Oberon II referred to in the proposed offsite mitigation package that is quoted by the commenter are both part of the Oberon Renewable Energy Project. The mitigation land package only applies to the Oberon Project and covers the compensation acreage required under CMA LUPA-BIO-COMP-1. As is common on utility scale solar projects, sub-entities within the overall project are indicated on some permitting applications and post-CEQA documents, such as the referenced mitigation land acquisition package. The sub-entities simply split the project based on financing and Power Purchase Agreements (PPAs) and sometimes phasing. Taken together the sub-entities total the overall Oberon Project analyzed in the CEQA and NEPA environmental documents, and there is no piecemealing or manipulating of acreages in the Draft EIR.

B5-7 The commenter describes observations of the organization's biologist on the project site, noting that DDWW was dense and abundant with a high diversity of plants. The woodland was described as widespread across the site and not

confined to washes. The commenter suggests that the Draft EIR failed to adequately map the DDWW onsite, which is more extensive than illustrated in Figure 3.4-2.

This comment is similar to a comment from the EA, please refer to Response to Comment B5-82.

B5-8 The commenter references an independent review of the BRTR and a comparison of the resulting delineation of the DDWW based on the DRECP 2013 inventory versus the delineation presented in the BRTR. The commenter suggests that the acreage of DDWW calculated in the BRTR was an underestimate.

The EIR's conclusions need only be supported by substantial evidence in the record. Substantial evidence is "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (CEQA Guidelines, § 15384, subd. (a); *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722.) "When experts in a subject area dispute the conclusions reached by other experts whose studies were used in drafting the EIR, the EIR need only summarize the main points of disagreement and explain the agency's reasons for accepting one set of judgments instead of another." (*Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1391, citing CEQA Guidelines, § 15151; Remy et al., Guide to the Cal. Environmental Quality Act (10th ed. 1999) p. 353 (Guide to CEQA).)

This comment is similar to a comment from the EA, please refer to Response to Comment B4-30.

B5-9 The commenter notes that their independent field visits showed that critical habitat in the project site is excellent desert tortoise habitat and that the current drought will bias surveys in spring 2021, showing only a snapshot of poor forage conditions where a map cannot adequately show the "value" of tortoise habitat.

This comment is similar to a comment from the EA, please refer to Response to Comment B5-99. Text was added in Section 3.4.1 and 3.4.5 to clarify impacts to desert tortoise critical habitat.

B5-10 The commenter notes that a herpetologist from their organization observed an adult Mojave fringe-toed lizard on the project site and that the Draft EIR did not describe its potential to occur.

This comment is similar to a comment from the EA, please refer to Response to Comment B5-107. Text was added in Section 3.4.1 and 3.4.5 to clarify Mojave fringe-toed lizard potential for occurrence.

B5-11 The commenter writes that the Draft EIR does not mention potential for nearby areas to provide roosting bat habitat, citing the Chuckwalla Mountains and Eagle Mountains within 10 miles.

Text was clarified in Section 3.4.1 in the EIR to identify suitable roosting habitat in the vicinity.

B5-12 The commenter notes that the acreage of the multi-species linkage that overlaps the project site was not provided.

Text has been clarified in Section 3.4.1 and 3.4.5 in the EIR to identify acreage of the multi-species linkage that overlaps with the project application and development area. See General Response GR-4 regarding impacts to the multi-species linkage.

B5-13 The commenter notes that the Draft EIR did not include a CEQA threshold for conflicts with the DRECP. Please refer to Response to Comment B5-15.

B5-14 The commenter states that the Draft EIR analysis fails to acknowledge that the CDFW recognizes DRECP as a land use plan and relevant regional plan for purposes of CDFW's review as a Trustee Agency under CEQA. The Draft EIR for Arica and Victory Pass, the concurrent solar projects on BLM land immediately adjacent to Oberon correctly identifies this fact.

The CDFW is a Trustee Agency for projects, such as Oberon, Arica and Victory Pass, that involve or could have an effect on the fish and wildlife resources of the State, including designated rare or endangered native plants, game refuges, ecological reserves, and other areas it administers CEQA Guidelines section 15386). The CDFW is also the CEQA Lead Agency for the Arica and Victory Pass Projects. Here, the RWQCB is the Lead Agency responsible for environmental review of the Oberon Project in compliance with CEQA and CDFW is a Responsible Agency.

The DRECP LUPA is a federal plan that applies to BLM-administered land only. The commenter quotes the Arica and Victory Pass Draft EIR stating "CDFW recognizes the DRECP under federal law as a land use plan for BLM. It is also a relevant regional plan *for purposes of CDFW's lead agency review* of the Projects under CEQA" [emphasis added].

As no state or local agency, including CDFW, has adopted or approved the DRECP, CDFW is not the CEQA Lead Agency for this project, and CDFW has not stated such recognition of DRECP in its comments on the Draft EIR (see Comment Set A1), no revisions have been made to the Final EIR.

Please see Responses to Comments B6-4 and D1-39 for further information regarding consultation, permitting, and CDFW's role on the Oberon Project.

B5-15 The commenter questions whether land use and planning impact significance thresholds used in the Draft EIR are appropriate for the project but suggests no alternative thresholds. The commenter suggests that the CEQA Lead Agency has turned a blind eye to whether the project complies with the DRECP LUPA administered by BLM, and that non-compliance with the DRECP LUPA results in significant impacts that are not addressed in the Draft EIR, requiring revision and recirculation of the document. The commenter states that the "omission cannot be cured by the discussion in the land use section, which only addressed land use and not the resulting biological impacts."

Biological impacts are addressed in Draft EIR Section 3.4 Biological Resources and are not repeated in the land use and planning section. The effects of adopting the LUPA are discussed in Section 3.4, including impacts to desert dry wash (microphyll) woodland and compensation for natural habitat impacts. See also General Response GR-1 regarding the significance of impacts to microphyll woodland and its buffer area.

The land use discussion identifies whether the project would "conflict with any land use plan, policy, or regulation" and whether this conflict would cause a significant environmental impact as a result of such a conflict. As noted in Land Use and Planning Section 3.11.5 in the Draft EIR, the text concludes that the project would not conflict with plans, policies, and regulations *upon approval* by BLM of a project-specific LUPA or BLM makes the determination that the proposed project is consistent with the intent of the DRECP CMAs and therefore, no project-specific LUPA is required. The Draft EIR notes potential conflicts, but as explained in these responses to comments, the DRECP does not clearly establish allowable impacts to microphyll woodlands and further retained authority for BLM to rely on alternatives to the CMAs that achieve the same objectives.

The plan amendment process is used by BLM to revise an adopted plan to address a particular situation. The conclusion of EIR Section 3.11.5 notes that "the project is not inconsistent or incompatible with the site's existing, propose, or surrounding land uses." This is a valid conclusion, given that the entire area is designated as a DFA, has been identified as an area of high solar insolation, and supports numerous existing solar projects as well as transmission lines and a major electric substation.

Ultimately the project cannot be constructed without BLM issuing a project-specific LUPA to the CDCA, the State Director approving an alternative method of compliance with the applicable DRECP CMAs, or BLM determining

that certain BLM criteria that achieve the intent of the CMAs are met and thus a LUPA is not required.

Text to clarify BLM's discretion to consider a proposed alternative approach or design feature that would meet certain criteria to achieve the intent of a CMA has been added to the discussion under Impact LU-1 in Section 3.11.5 of the Final EIR.

In summary, the Draft EIR presents a valid conclusion that even if a LUPA is needed, the fact that numerous solar projects already exist in the vicinity and the additional design and mitigation measures, beyond CMAs that the project would implement would ensure that any impacts to Land Use and Planning would be less than significant.

B5-16 The commenter notes that failing to comply with the DRECP CMA's will result in significant unmitigated impacts, and that the project would impact microphyll woodland, instead of completely avoiding it, as CMAs require. This comment is similar to a comment from the EA, please refer to Response to Comment B5-83.

B5-17 The commenter notes that while unavoidable impacts are limited to minor incursions, the proposed project is not limiting its impacts to minor incursions. The commenter argues that desert dry wash woodland is not being avoided to the maximum extent practicable or feasible, and project components would be within microphyll woodland areas. The commenter also notes that the project does not comply with DRECP CMA LUP-BIO-SVF-6, CMA LUPA-BIO-RIPWET-1, or CMA LUPA-BIO-3, which means that the impacts will be greater than those assumed under the DRECP. This comment is similar to a comment from the EA, please refer to Response to Comment B4-34.

The commenter is correct that the project does not comply with CMA LUP-BIO-SVF-6, CMA LUPA-BIO-RIPWET-1, or CMA LUPA-BIO-3. Text has been clarified in EIR Section 3.4.3 and Section 3.4.5.

See General Response GR-1 regarding DDWW and minor incursion. Direct impacts to DDWW would be mitigated with offsite compensation at a ratio of 5:1. Indirect impacts to DDWW in the buffer area would also be mitigated given the Applicant's proposed mitigation at a ratio of 5:1. Note that the CMAs do not require mitigation of indirect impacts.

The BLM will consider the Applicant's proposed mitigation of indirect (buffer) impacts at a 5:1 ratio, implementation of project-specific mitigation measures, as well as their demonstration that they have avoided DDWW and the 200-foot buffer to the "maximum extent feasible," in its determination of whether or

not the intent of the CMAs for resource protection have been met and the function of the habitat has been maintained.

Regarding conclusions in the EA, please refer to Response to Comment B5-85.

B5-18 The commenter notes that impacts to jurisdictional waters analysis must disclose whether the impact is significant. Significance conclusions are identified under EIR Section 3.4.5, Impact BIO-3. Text has been added to clarify that without mitigation, impacts would be significant.

B5-19 The commenter notes that DRECP LUPA-BIO-RIPWET-1 calls for a 200-foot buffer from microphyll woodlands to avoid significant impacts, but the project proposes a 50-foot buffer (at some points). The commenter states that the Draft EIR fails to disclose that the project will not comply with the DRECP, which would result in significant impacts. This comment is similar to a comment from the EA; please refer to Responses to Comments B1-2 and B5-84. Text has been clarified in EIR Section 3.4.3 and Section 3.4.5 regarding compliance with DRECP CMAs.

B5-20 The commenter states that the Draft EIR indicates that cumulative impacts to vegetation and habitat are significant and that impacts would be offset. The commenter notes that the Draft EIR did not indicate if the project's contribution to cumulative impacts was cumulatively considerable. The commenter claims that the residual impacts will not be adequately minimized by mitigation measures. The commenter concludes that off-site compensation cannot adequately mitigate for the loss of important habitat and its function for connectivity and other ecological services on-site.

Section 3.4.6 of the Final EIR clarifies that impacts to biological resources would be cumulatively significant. However, with avoidance through project design and implementation of mitigation measures and the DRECP CMAs, the project contribution to cumulative impacts would not be considerable.

Please refer to General Response GR-1 for a discussion of mitigation measures to avoid, minimize, and compensate for impacts to sensitive vegetation. Impacts to on-site biological resources would be avoided, minimized, and mitigated with the implementation of mitigation measures as described in Section 3.4.5 of the EIR.

B5-21 The commenter identifies inconsistencies in acres of impact to microphyll woodlands, and notes that impact acres to buffer areas were not identified. The commenter suggests that the Draft EIR should identify mitigation for impacts to DDWW buffers, and that no amount of offsite compensatory mitigation can reduce this adverse significant impact to a level of insignificance.

The Final EIR text has been revised to clarify acreages of impacts to microphyll woodlands and identify separate acres of impacts to buffer areas in EIR Section 3.4.5.

Direct and indirect (buffer) impacts to DDWW habitat would be mitigated at a ratio of 5:1. Please refer to General Response GR-1 regarding offsite mitigation for indirect impacts to buffer habitat, for which the Applicant is proposing compensation as well. The commenter's opinion that no amount of offsite compensatory mitigation can reduce this adverse significant impact to a level of insignificance has been noted.

B5-22 The commenter notes that the Draft EIR did not quantify the impacts to DDWW from the electrical substation and battery storage system.

Acreages for the substation are described in Section 2.2.1.1 of the EIR. In the Biological Resources Section 3.4, Table 3.4-2, the acres of impact from the substation and battery storage system are included in the solar array calculations. These project features do not overlap with DDWW.

B5-23 The commenter notes that the Draft EIR does not discuss whether hydrologic and biologic functions of the riparian areas will be maintained, especially microphyll woodlands and desert dry wash woodland. The commenter also states that microphyll woodlands will have no habitat value if surrounded by solar arrays, as noted in CMA LUPA-BIO-RIPWET-1. This comment is similar to a comment from the EA, please refer to Response to Comment B5-86.

B5-24 The commenter notes that compensation lands, as required in CMA LUPA-BIO-COMP-1, are not adequately identified, in the document. The commenter states that the mitigation lands will be selected after construction has begun, which allows impacts to occur before mitigation. This comment is similar to a comment from the EA, please refer to Response to Comment B5-91.

B5-25 The commenter states that the Draft EIR alleges that cumulative impacts to the DRECP are less than significant without any analysis, namely the potential for the Oberon project to create a cumulatively considerable impact to desert dry wash woodland that was not addressed in the environmental review for the DRECP, because the DRECP EIS assumed compliance with the CMA's. The commenter goes on to state that until the Oberon Project was proposed, all other projects subject to the DRECP CMAs (and even one "grandfathered" project) have complied with the CMA's. Compromising the CMAs which were designed to avoid significant impacts would be a precedent setting action that could result in several more requests from solar developers to amend the plan and/or seek exemptions, including the Applicant for the Easley Project.

Please see General Response GR-1 regarding impacts to desert dry wash woodland, including cumulative impacts, and the precedence for future projects' DRECP CMA compliance.

B5-26 The commenter states that the project impacts critical habitat for desert tortoise as well as occupied habitat throughout the project site, and the Draft EIR fails to disclose that the project violates CMA LUPA-BIO-13. That is, the commenter claims that the project does not avoid, to the maximum extent practicable, the occupied and suitable habitat of desert tortoise.

The commenter does not state why it believes that the Applicant has not avoided occupied and suitable desert tortoise habitat to the "maximum extent feasible." The 2,700-acre project footprint within the 5,000-acre application area shows that considerable efforts have been made by the Applicant in coordination with the RWQCB, BLM, and resource agencies to reduce impacts (see EIR Figure 2-1). However, desert dry wash woodland is fingered throughout the Oberon site (see EIR Figure 2-6), which makes complete avoidance for the proposed 500 MW project within the application area infeasible.

As the project is located entirely on BLM-administered land, the BLM will make a final decision on whether the project would comply with the DRECP CMAs. With regard to CMA LUPA-BIO-13, the Oberon Project will avoid impacts to unique plant assemblages and climate refugia to the maximum extent practicable. The eastern area of the Oberon Project partially overlaps the 1.5-mile-wide species linkage to connect the Chuckwalla Mountains and the Chuckwalla Valley. The Applicant has been coordinating with the BLM and the resource agencies to design the project to maintain the connectivity function and associated habitat including microphyll woodland in that area. The Applicant has redesigned the solar facility to pull panels out of microphyll woodland throughout most of project site, including in the wildlife corridor area, and is proposing installation of fencing that would allow desert tortoise movement throughout the linkage area during operation. The Oberon Project would maximize retention of microphyll woodlands to the maximum extent feasible. The avoidance of microphyll woodland in the eastern project area maintains a portion of the wildlife linkage. Long-term night lighting would be minimized to the maximum extent feasible and coordinated with the BLM. Project disturbance areas will be flagged prior to construction. The project will use existing roads and shared infrastructure where feasible. Outside of CEQA, BLM will determine whether the modified project design will meet the intent of the CMA.

The commenter also states that the Draft EIR fails to disclose the amount of occupied and suitable desert tortoise habitat that is lost from implementation

of the project. The Draft EIR only discloses the amount of critical habitat that will be impacted. Acres of impact to desert tortoise habitat were clarified in the Final EIR in Sections 3.4.5 and 3.4.7.

Approximately 6,200 acres of compensation lands would be preserved in the Wildlands mitigation package, as is listed in EIR Table 4-1 (Summary of Alternatives Evaluated) and throughout the remainder of the EIR. Additionally, the text of Mitigation Measure MM BIO-6b (Compensation for Desert Tortoise Habitat Impacts) in EIR Section 3.4.7 provides a breakdown of the acreage of impacts, compensation ratios, and total of the compensation package acreage.

As discussed in MM BIO-6a and MM BIO-6b, compensation ratios are determined based on compliance with the requirements under DRECP CMA LUPA-BIO-COMP-1. Mitigation acreage is based on the acreage of land impacted. There is no requirement in the DRECP LUPA to compensate for occupied desert tortoise habitat that is not designated as critical habitat; however, the following other lands outside of critical habitat that would support desert tortoise are included in the compensation package (see MM BIO-6a and BIO-6b): Sonoran creosote bush scrub compensation (1:1); desert pavement compensation (1:1); desert dry wash woodland (5:1).

See Response to Comment B1-3 regarding the mitigation lands. CMA LUPA-BIO-COMP-1 states that “[c]ompensation for the impacts to desert tortoise critical habitat will be in the same critical habitat unit as the impact”.

B5-27 The commenter notes that impacts to desert tortoise will be cumulatively significant, but there is insufficient details regarding mitigation lands for compensation. They also state that the Draft EIR failed to quantify all significant impacts to desert tortoise, and therefore cannot calculate the amount of off-site mitigation needed. The commenter expressed concerns that the non-acquisition methods for compensation allowed through CMA LUPA-BIO-COMP-1 have failed to actually mitigate for desert tortoise. This comment is similar to a comment from the EA, please refer to Response to Comment B5-101.

B5-28 The commenter notes that the impacts will be allowed to occur before mitigation is provided. Consistent with mitigation timing described in CMA LUPA-COMP-1, compensation must be initiated within 12 months from the time the resource impact occurs (e.g., habitat removal). (Draft EIR, page 3.4-46).

Per MM BIO-6a and MM BIO-6b in Final EIR Section 3.4.7, consistent with mitigation timing described in CMA LUPA-COMP-1, compensation activities must be initiated or completed within 12 months from the time the resource

impact occurs. A 6-month extension may be authorized, subject to approval by the authorizing officer, dependent on the resources impacted and compensation due diligence of the project developer. Within 3 months of initiating construction, the Applicant or an approved third party will prepare a Compensation Plan identifying the proposed compensation option(s), including the proposed compensation lands, the land ownership, conservation easement terms, long-term management, and responsibility for funding or endowment. The Plan shall include a schedule for initiating and completing compensation within the timeframe agreed upon with BLM. The Compensation Plan will be submitted for review and approval to the BLM, CDFW, and USFWS.

Per the Mitigation Monitoring and Reporting Plan, Table Ap.E-1 in Appendix E of the EIR, MM BIO-6a and MM BIO-6b would be implemented "Prior to ground disturbance" (see Monitoring Phase/Timing).

B5-29 The commenter notes that the project proposes to develop within the Multi-Species Habitat Linkage Area, instead of avoiding it as required by the DRECP. The commenter states that the Draft EIR fails to quantify the impacts to the linkage area, and only retains narrow corridors of the linkage. The commenter also identifies inconsistencies between the BRTR and the EA regarding CMA requirements. This comment is similar to a comment from the EA, please refer to Response to Comment B5-102.

Please refer to General Response GR-4 regarding impacts to the multi-species linkage.

B5-30 The commenter notes that the Draft EIR must address how "narrow corridors" will maintain function and connectivity of the DRECP multi-species linkage for desert tortoise, burro deer, bighorn sheep, and other species. The commenter notes that the EIR should demonstrate how the narrow corridors of remaining habitat in the multi-species linkage will mitigate wildlife movement impacts. They state that: "… by definition off-site habitat cannot possibly serve as habitat connectivity through the site itself."

Please refer to General Response GR-4 regarding impacts in the multi-species linkage. Text regarding cumulative impact conclusions for burro deer and wildlife movement was clarified in Section 3.4.6 of the Final EIR.

B5-31 The commenter states that the Draft EIR does not address the significant impacts to desert pavement. They note that they have found desert pavement interspersed within microphyll wash vegetation communities and that it is important for carbon sequestration. They additionally state that disturbance of desert pavement could impact runoff making the soils less stable and in turn

impact the functionality of the desert dry wash woodland. The commenter notes the importance of desert pavement is recognized in the DRECP LUPA.

The discussion on the potential loss of carbon sequestration due to land use conversion is found in EIR Section 3.8.5 (Greenhouse Gas Emissions) under Emissions Related to Land Use Conversion. The project includes biological resources measures for minimizing vegetation and habitat impacts, integrated weed management, and preventing the loss of desert pavement, which promotes maintenance of native plants and soils. These practices would minimize the potential loss of carbon sequestration due to land use conversion. The design of the project minimized disturbance in the larger desert dry wash woodlands which in turn minimizes disturbance of desert pavement in these areas.

As noted in the EIR (Section 3.7.5, Geology, Soils, and Mineral Resources), the primary concerns from destruction of desert pavement would be erosion, generation of fugitive dust, and downstream sedimentation from exposed fine-grained sediments, however the EIR includes Mitigation Measures MMs AQ-1 (Fugitive Dust Control Plan), MM HWQ-1 (Drainage Erosion and Sedimentation Control Plan [DESCP]), and MM HWQ-4 (Project Drainage Plan). The Applicant has prepared and will implement a Dust Control Plan, and would comply with a project SWPPP to reduce erosion impacts related to disturbance of desert pavement. Additionally, MM BIO-5 (Vegetation Resources Management Plan) would require revegetation of disturbed areas which would reduce the potential for soil erosion in areas of disturbed desert pavement during project operation.

B5-32 The commenter states that the EIR does not disclose that the proposed project exceeds the 10% cap on desert pavement disturbance imposed by the DRECP LUPA.

Desert pavement was mapped on the project site during the biological field survey conducted for the Biological Resources Technical Report (POD Appendix F in IP Oberon, 2021). Approximately 175 acres of desert pavement were identified on the project site (all identified within the eastern half), with approximately 54.75 acres of desert pavement in areas of identified project disturbance based on current GIS data. This equates to approximately 31% of the total mapped desert pavement on the project site. As noted, this does exceed the LUPA-SW-9 minimum of 10%, however, as noted in the DRECP LUPA, BLM will determine whether the erosional and ecologic impacts of exceeding the 10% cap by the proposed amount would be significant. Text has been added to the EIR with the updated desert pavement disturbance number and to clarify the main concerns related to disturbance of desert pavement.

As noted in the EIR (Section 3.7.5) and discussed above in Response to Comment B5-31, the primary concerns from destruction of desert pavement would be erosion, generation of fugitive dust, and sedimentation downstream from exposed fine-grained sediments, however the EIR would require implementation of measures to control fugitive dust, reduce erosion, implement stormwater management, and provide and implement a drainage plan to limit erosion and scour due to flooding. Additionally, MM BIO-5 (Vegetation Resources Management Plan) would require revegetation of disturbed areas which would reduce the potential for soil erosion in areas of disturbed desert pavement during project operation and MM BIO-6 (Compensation for Natural Habitat Impacts) which would require a 1:1 acre compensation for impacts to desert pavement.

B5-33 The commenter states that the Draft EIR failed to provide analysis of Mojave fringe-toed lizards and expresses concerns about the species due to disturbance of habitat, disturbance of sand flows, and increase of invasive weeds. This comment is similar to a comment from the EA, please refer to Response to Comment B5-107. Text was added to the EIR Section 3.4.1 and 3.4.5 to address Mojave fringe-toed lizard.

B5-34 The commenter notes that the project violates CMA LUPA-BIO-13 and therefore does not avoid impacts to unique plant assemblages, such as Emory's crucifixion thorn. The mitigation measures given in the Draft EIR do not have any guarantee of success, and the Draft EIR does not give assurance that mitigation lands with Emory's crucifixion thorn are available. This comment is similar to a comment from the EA, please refer to Response to Comment B5-106.

Text was revised in the EIR Section 3.4.5 to clarify impacts to Emory's crucifixion thorn.

B5-35 The commenter notes that the Draft EIR states that there will be a cumulatively significant impact to regional special status plants, but does not include Emory's crucifixion thorn because there is a limited number of them on the site. The commenter expressed concerns that the mitigation measures for Emory's crucifixion thrown are not adequate to ensure impacts are reduced to below significance. This comment is similar to a comment from the EA, please refer to Response to Comment B5-106.

B5-36 The commenter states that significant impacts from fences and sand piling up on fences, on the Mojave fringe-toed lizard are not adequately analyzed or mitigated for.

This comment is similar to a comment from the EA, please refer to Response to Comment B5-107. Text was added to the EIR Section 3.4.1 and 3.4.5 to address Mojave fringe-toed lizard.

B5-37 The commenter states that the significance of the impact to Couch's spadefoot toad is not known, despite the potential for them to occur on the site, and no mitigation was provided. This comment is similar to a comment from the EA, please refer to Response to Comment B5-109.

Text was added to the EIR Section 3.4.1 and 3.4.2 to address Couch's spadefoot toad.

B5-38 The commenter notes that significant impacts to desert kit fox were not identified and that mitigation measures do not ensure no mortality to kit fox.

Impacts to desert kit fox are described in Section 3.4.5 in impact BIO-1. Text was revised to clarify the significance of impacts prior to mitigation. The methods for kit fox relocation are detailed in MM BIO-13. Per MM BIO-13, in Section 3.4.7 of the EIR, the Wildlife Relocation Plan must be reviewed and approved by lead agencies prior to ground-disturbance. Pre-construction surveys would be performed to identify dens and their status within 100 feet of the project boundary, and tracking, monitoring, and coordination with CDFW are outlined. The detailed methods presented are sufficient to avoid direct mortality of desert kit fox.

B5-39 The commenter notes that the Draft EIR failed to identify impacts to or mitigation for the California state endangered Gila woodpecker, and trees that the woodpecker are shown to nest in are present on the site. This comment is similar to a comment from the EA, please refer to Response to Comment B5-111.

Text was added to the EIR Section 3.4.1 and 3.4.5 to address Gila woodpecker.

B5-40 The commenter notes that the Draft EIR does not identify a significant impacts to bats, and that the project's contribution to cumulative impacts cannot be assessed if project-specific impacts are not addressed.

Impacts to special-status bats are described in Section 3.4.5 in Impact BIO-1. Text was revised to clarify the significance of impacts prior to mitigation. The significance conclusion "less than significant with mitigation" for Impact BIO-1 would not change.

B5-41 The commenter notes that bird diversity in the DDWW habitat has not been analyzed or mitigated. The commenter cites other studies of bird mortality at solar facilities. The commenter notes that the Draft EIR does not identify a significant impact due to the "lake effect" or associated mitigation measures.

The commenter states that the Draft EIR fails to demonstrate that the cumulative impacts are mitigated such that its contribution is not cumulatively considerable. They note that per the BBCS, monitoring of implemented measures would occur for 1 year before additional changes are made, allowing potential mortalities to continue.

This comment is similar to a comment from the EA, please refer to Response to Comment B5-111 regarding bird diversity in microphyll woodlands, and Response to Comment B5-112 regarding the theory of lake effect, mortality from solar facilities, and adaptive management in the BBCS.

B5-42 The commenter states that the potential "Heat Island Effect" was not analyzed in the Draft EIR and pointed to a study by Lu et al. (2020). A possible temperature increase could impact the public health of Desert Center. It could also impact the microphyll ecosystem.

Please see Response to Comment B5-119, which discusses the heat island effect as it relates to the research letter by Lu et al. (2020), which is attached as Comment B5-125.

B5-43 The commenter notes that the EIR fails to adequately address impacts to the Colorado River Basin area and that utility-scale photovoltaic solar projects at times need more groundwater than originally estimated. The commenter states that overuse of groundwater from the Chuckwalla Valley could impact the Colorado River. The commenter provided a BLM news release from August 17, 2014, that announces a scoping meeting and discusses the request for an increase in groundwater use by the Desert Sunlight Solar Farm Project as an example.

Although it is unlikely that groundwater use for projects in the Chuckwalla Valley would draw groundwater from the PVMGB and thus cause withdrawal of groundwater from below the Colorado River Accounting Surface, mitigation was included in the Draft EIR (Section 3.10.7, MM HWQ-2, Mitigation of Impacts to the Palo Verde Mesa Groundwater Basin (PVMGB)) to prevent the potential for this and to provide compensatory mitigation should it occur. This potential impact is adequately addressed and mitigated; no revisions have been made to the Final EIR.

B5-44 The commenter provides a discussion on groundwater use for the Genesis Solar Project as it related to the PVMGB and Colorado River water and provides a summary of models and water estimates for that project. The commenter states that there would be impacts in the areas of subsidence, water quality, and local well owner well-use, and noted that the California Energy Commission recommended recovery recharge in the groundwater model as part of their Conditions of Certification.

This comment seems to be mostly a statement of facts about groundwater modeling that occurred on the Genesis Solar Project. The comment seems to relate primarily to concerns regarding groundwater impacts from solar farms to the PVMGB and to Colorado River water. The Water Supply Assessment for the Oberon Solar Project include a discussion of outflow to the PVMGB from the CVGB, which is assumed to be 400 acre-feet/year to be conservative, the same as the Genesis Solar Project, and includes an analysis of cumulative extraction including proposed and existing projects (including the Genesis Solar Project) for a variety of precipitation/recharge scenarios, including a 30-year budget using a repeat of the 30 driest years on record for precipitation/recharge.

Although unlikely, due to the project's location at the western end of the Chuckwalla Valley, the EIR discusses the potential for impacts to the PVMGB and induced flows from the Colorado River related to project groundwater extraction in Section 3.10.5 and includes implementation of a mitigation measure (MM HWQ-2: Mitigation of Impacts to the Palo Verde Mesa Groundwater Basin (PVMGB)) to monitor groundwater extractions from Applicant owned and/or operated well(s) and prevent, replace, or mitigate project impacts that deplete the PVMGB groundwater budget as related to extraction of groundwater from below the Colorado River Accounting Surface. MM HWQ-2 requires monitoring of water levels and states that no pumping of groundwater below the accounting surface shall occur without compensatory mitigation according to the plan approved by the U.S. Bureau of Reclamation and BLM. Toward ensuring that no allocated water from the PVMGB (Colorado River) is consumed without entitlement to that water, should the project consume any water from within or below the Colorado River Accounting Surface measures will be taken to reduce and replace water on an acre-foot to acre-foot basis.

In order to minimize potential impacts to local wells within the CVGB, the EIR recommends implementation of MM HWQ-3 (Groundwater Monitoring, Reporting, and Mitigation Plan), which will require monitoring of project related groundwater extraction and water levels of wells proximal to the extraction well(s), and mitigation of any adverse effects to local wells including reduced pumping, or compensation for physical modifications to local wells and/or for increased pumping costs.

B5-45 The commenter states that cumulative impacts to groundwater and cumulative impacts to the connected basins and the Colorado River need to be analyzed.

As is stated in Section 3.10.6 under Groundwater, the conclusions of the EIR cumulative analysis are based on the results of a project-specific Water

Supply Analysis (POD Appendix O on BLM's ePlanning website[8]). Connection of the CVGB to the PVMGB (Colorado River area) is discussed in the Water Supply Assessment. Cumulative water use in the CVGB by the Oberon Project and other projects in the groundwater basin is presented in the following tables of the Water Supply Assessment:

- Table 10, Cumulative Projects Water Use Summary;
- Table 11, 30-Year Projected CVGB Groundwater Budget for Solar Energy Projects Plus Cumulative Projects Using Adopted Precipitation and Underflow Recharge Estimates; and
- Table 12, Multiple Dry Year Groundwater Budget Analysis with the Arica and Victory Pass Solar Projects and All Cumulative Projects in Place, Assuming Adopted Recharge and Inflow Estimates)

B5-46 The commenter indicates that the EIR fails to analyze impacts from stormwater runoff and flash floods. The commenter provides examples of incidents where flooding caused damage to the Genesis Solar Energy Project and Desert Sunlight Solar Project.

Surface water flow to the proposed project site is generally from the mountains to the south of the proposed project and is conducted through seven box culvert underpass crossings located along I-10 south of the project site. The washes in crossing the project site are largely channelized due to these culverts. The project has been designed to avoid major washes, which is where the preliminary project-specific hydrological study (POD Appendix CC) indicates the greatest level of flooding in a 100-year flood event would occur.

As part of the CEQA environmental analysis, the EIR addresses whether the environmental impacts of the proposed project may alter flooding patterns and whether the proposed project may be affected by existing flooding patterns. The EIR provides an analysis of these affects to and from project components based on the preliminary project specific hydrology study (POD Appendix CC). Appropriate Mitigation Measures to reduce flooding effects to less than significant as related to flooding were developed for the project:

- MM HWQ-4 (Project Drainage Plan) which requires a detailed site hydraulic study and a plan for site improvements to convey flood and stormwater through and around the site, appropriate flood retention features, and fencing that allows passage of flood debris or breaks away to reduce diversion of flooding to other properties; and

[8] Oberon Renewable Energy Project. https://go.usa.gov/xfdH5.

- MM HWQ-5 (Flood Protection) which requires project buildings and the BESS to be situated outside of 100-yr flood hazard zones or sufficiently protected, structures be protected against flood scour, solar panels be situated 1 foot above the highest anticipated flood levels, and compliance with Riverside County ordinances for projects within Special Flood Hazard Area or floodplain.

B5-47 The commenter notes that there are questions about how the solar project would impact microphyll woodland, surficial wash hydrology, and other resources in the event of a flash flood. The commenter also stated that a discussion of connectivity of wash plant communities as related to flow of floodwaters needs to be included.

As noted in the EIR, the Applicant's proposed layout of solar panels and other facilities would largely maintain existing hydrologic patterns with respect to runoff, avoiding washes, stream beds, and stream banks, where feasible. The siting of the project to avoid most desert dry wash woodland also avoids the major washes across the site. The washes in this area are largely channelized due to the culverts under the I-10 freeway and the preliminary hydrology study for the proposed project indicates that flooding would occur primarily along these major washes. Floods generally would follow the existing hydrologic patterns, with most flood flow along the major washes and sheet flow between the washes.

B5-48 The commenter states that the Draft EIR fails to disclose whether impacts to biological resources are significant or less than significant prior to providing mitigation. Instead, the Draft EIR concludes "less than significant with mitigation."

Text has been clarified in Section 3.4.5, for Impacts BIO-1 to BIO-5, to identify that impacts to biological resources are significant prior to mitigation. As described, with implementation of mitigation measures, impacts would be less than significant.

B5-49 The commenter states that a fundamental purpose of an EIR is to identify ways in which a proposed project's significant environmental impacts can be avoided or mitigated. Compliance with DRECP CMAs has been required on all projects subject to the DRECP. In fact, adjacent solar projects are avoiding all impacts to desert dry wash woodland except for necessary infrastructure "required to serve an activity," and are proceeding simultaneously without the need to amend the DRECP. The commenter also states that the Draft EIR fails to disclose why compliance with CMAs and avoidance of significant impacts is not possible for the proposed project. Without this discussion, the Draft EIR jumps directly to mitigation in the form of offsite compensation. But the resources cannot be replaced by offsite compensation, as the habitat and

its onsite function cannot be simply replanted elsewhere. Furthermore, the Draft EIR lacks specificity with regard to quality of the habitat onsite, the magnitude of the impacts, and the location and quality of offsite mitigation in order for the public to determine if the mitigation is reasonable.

Precedence for future LUPAs is addressed in General Response GR-1. Oberon, Arica, and Victory Pass are the first new solar projects on BLM-administered land to be permitted under the DRECP LUPA. The desert dry wash woodland present on the Arica and Victory Pass sites is not fingered throughout the application area, as is the case on the Oberon site (see EA Figure 2-6 and the BRTR in POD Appendix F), which makes complete avoidance for the proposed 500 MW project within the application area infeasible.

Please see Response to Comment B5-15 regarding policy consistency with the DRECP LUPA as it relates to DRECP CMA compliance, which was addressed in Section 3.11.5 of the Draft EIR under Impact LU-1 and found to be less than significant. BLM will determine through the NEPA process whether or not a project-specific LUPA is required for the Oberon Project.

The project does not jump directly to offsite compensation as the commenter alleges. In addition to project design to avoid and minimize impacts to sensitive resources, the Oberon Project includes full compliance with most DRECP CMAs, as well as project-specific mitigation measures (see Chapter 3 and Appendix E [MMRP] in the Final EIR) and offsite compensation lands, including recently proposed compensation at a ratio of 5:1 for indirect impacts to the 200-foot buffer. Please refer to Responses to Comments B4-25 and B5-26.

See Response to Comment B1-3 regarding the quality of land onsite and compared to the mitigation lands. The mitigation lands would be acquired in compliance with the DRECP CMA LUPA-BIO-COMP-1 and the EIR mitigation measures (see EIR Section 3.4.7) and would be subject to approval by BLM and the RWQCB to ensure that they are high quality and meet the habitat requirements. Additional text has also been added to Section 3.4.5 under Impact BIO-1 in the Final EIR to describe the quality and quantity of habitat onsite compared to the mitigation lands.

B5-50 The commenter states that rather than rejecting the Oberon application for failure to comply with the DRECP LUPA, BLM allowed Intersect Power to relinquish 1,500 acres of the original application to a separate application and also acquiesced to process Oberon’s non-conforming application. The Draft EIR fails to address this conflict as it results in significant impacts that have not been addressed in the Draft EIR and should result in a major revision and recirculation of the document.

See Response to Comment B4-25 regarding BLM's purpose and need and decisions to be made, which are outside the scope of CEQA. Please see Response to Comment B5-15 regarding policy consistency, which was addressed in Section 3.11.5 of the Draft EIR under Impact LU-1 and found to be less than significant. BLM will determine through the NEPA process whether or not a project-specific LUPA is required for the Oberon Project. No major revisions or changes to significance conclusions have been made in the Final EIR that would necessitate document recirculation.

B5-51 The commenter states that the Resource Avoidance Alternative (which is assumed herein to mean the Land Use Plan Compliant Alternative) would establish the 200-foot setback from microphyll woodland as required under the DRECP, which would reduce the project footprint by 600 acres and the substation, BESS and gen-tie line would remain the same. The smaller amount of habitat impacts will result in a smaller amount of offsite compensation lands. The Draft EIR claims that the impacts from the land use compliant alternative would be "qualitatively similar" even though "by increasing the buffer distance, this alternative would avoid development near desert dry wash woodland, and would thus allow for increased wildlife movement in the desert dry wash woodland corridors across the project site.

The commenter indicates that this comment applies to the "Resource Avoidance Alternative," but the discussion appears to relate to the Land Use Plan Compliant Alternative, so this response relates to the Land Use Plan Compliant Alternative. The commenter describes the Draft EIR analysis without an apparent comment requiring a response. It is true that the types of impacts would be qualitatively similar with a reduced footprint alternative. Note that impacts to biological resources for the Land Use Plan Compliant Alternative are described in EIR Section 4.2.3 and conclude that with mitigation, the impacts to biological resources would be reduced to less than significant under both the proposed project and the Land Use Plan Compliant Alternative. Overall, the impacts to biological resources from the Land Use Plan Compliant Alternative would be "somewhat less than the proposed project, because development would be reduced and farther from desert dry wash woodland habitat, yet the overall habitat compensation package would not be substantially reduced." The Land Use Plan Compliant Alternative with Prehistoric Resources/TCR Option was found to be environmentally superior in EIR Section 4.3.6.

The commenter states solar panels would be installed within the utility corridor area north of and adjacent to I-10 instead of being 300 feet from the corridor under the Land Use Plan Compliant Alternative, but the increase in footprint next to I-10 is not quantified. The Draft EIR claims that wildlife movement would be restricted between the freeway underpass culverts along

the north side of I-10, but it is questionable how much restriction will result from moving the project closer to the I-10 freeway. A review of the Draft EIR figures does not clearly identify the difference between the proposed project and the Land Use Compliant Alternative and the I-10 freeway (Figure 2.1 versus Figure 4.1), nor does it supply acreages. No comparison can be made.

The difference in acreages between the proposed project and Land Use Plan Compliant Alternative are listed in EIR Table 4-1 (Summary of Alternatives). The acreage of solar panel development within the 300-foot setback in the utility corridor would be 47 acres. However, it is the restriction of movement by the location of the panels adjacent to I-10 rather than the acreage that is described.

The commenter is correct in noting that the alternative would avoid microphyll woodland and buffer areas near the I-10 freeway, and that the culverts are aligned to capture flood flows from the dry washes that support microphyll woodland. The culverts themselves would not be restricted, but the area to move around between the culverts along the north side of I-10 within the wildlife linkage corridor would be reduced by eliminating the 300-foot setback.

Section 4.2.3 (Land Use Plan Compliant Alternative) under Biological Resources in the Final EIR has been clarified to state that construction of solar panels adjacent to I-10 would restrict east-west wildlife movement between freeway underpass culverts along the north side of I-10 that connect to the desert dry wash woodland corridors within the multi-species linkage.

B5-52 The commenter notes that the Land Use Compliant Alternative would no longer include wildlife friendly fencing that would facilitate movement, and would instead include tortoise exclusion fencing. They note that the Draft EIR does not quantify how much of the site would be restricted from movement under this alternative compared to the proposed project. They add that wildlife friendly fencing of solar fields is experimental and have not been shown to successfully allow passage of wildlife.

The commenter questions the Draft EIR's "arbitrary" decision to use exclusion fencing in the alternatives as a means to downplay the benefits to wildlife movement from the Land Use Compliant Alternative.

The commenter notes that the Draft EIR did not identify significant impacts to microphyll woodlands and buffer areas, and underestimates the value of avoiding them. The commenter suggested that the Draft EIR did not provide evidence that the Land Use Compliant Alternative will result in less wildlife movement.

Please refer to Response to Comment B4-5 regarding the other action alternatives having been arbitrarily defined to exclude the same design

features, such as wildlife friendly fencing. Please refer to Response to Comment B5-103 regarding the experimental nature of wildlife friendly fencing.

Text was clarified in EIR Section 3.4.5 and Section 4.2.3 to describe the area of exclusion vs. wildlife friendly fencing for the proposed project and alternatives. Table 3.4-1 was added to identify the impacts to sensitive resources from each alternative. Discussions of impacts significance were clarified in Section 3.4.5, in Impact BIO-2, to note that without mitigation impacts would be significant, but implementation of mitigation would ensure that the impact would be less than significant.

Section 4.2.3 states that "By increasing the buffer distance, this alternative would avoid development near desert dry wash woodland, and would allow for increased wildlife movement in the desert dry wash woodland corridors across the project site."

B5-53 The commenter described the Resource Avoidance Alternative. The commenter noted the Draft EIR stated that the impacts would be qualitatively similar to the proposed project and that desert tortoise exclusion fencing would be used.

Please refer to the previous comment B5-52. Please refer to Response to Comment B4-5 regarding the other action alternatives having been arbitrarily defined to exclude the same design features, such as wildlife friendly fencing. Impacts described as "qualitatively similar" refer to the type of impact that would occur due to construction and O&M, such as (generally) grading, vegetation removal, increased dust and noise, etc. The impacts of the Land Use Compliant Alternative and Resource Avoidance Alternative relative to the proposed project were clarified in EIR Section 4.2.3 and 4.2.4.

Note that EIR Section 4.3.6 concludes that Land Use Plan Compliant Alternative including implementation of the Prehistoric Resources/TCR option would be the Environmentally Superior Alternative.

B5-54 The commenter notes that the Draft EIR describes the surrounding area as impacted by anthropogenic uses and that habitat is compromised, but that other portions of Draft EIR describe the essential nature of connectivity corridors.

Descriptions of linkages in Section 3.4.1, under Wildlife Movement, are describing the features and value of wildlife linkages generally and regionally. Descriptions of the Chuckwalla Valley, as quoted, include a description of anthropogenic barriers and land uses that impede or prevent movement. Site-specific descriptions of the project area are subsequently described in Section 3.4.5, noting the anthropogenic uses in the surrounding area. Please refer to

General Response GR-4 for discussion of impacts in the multi-species linkage.

B5-55 The commenter notes that the presence of the I-10 freeway underpasses and the associated DDWW may be why the multi-species linkage was designated in this area. They note that their site visit indicated high quality resources and connectivity on-site. The commenter further states that the Draft EIR fails to provide evidence of the quality and mitigation lands, and that there is no support for the Draft EIR conclusion that by avoiding significant impacts, the Resource Avoidance Alternative would result in greater impacts because its mitigation package is smaller.

Please refer to General Response GR-4 for discussion of the north-south wildlife movement under the I-10 freeway and through the project site. Please refer to Response to Comment B5-91 regarding quality of mitigation lands.

Please refer to Section 3.4.3 and the BRTR (IP Oberon, 2021, Appendix F) for a description of survey methods and the assessment of habitats on-site.

The impacts of the Land Use Compliant Alternative and Resource Avoidance Alternative relative to the proposed project were clarified in EIR Section 4.2.3 and 4.2.4.

B5-56 The commenter states that the proposed project does not meet objective number 8, because it does not conform to the DRECP. It does not even conform “to the maximum extent practicable,” nor does it balance energy generation with conservation of sensitive habitat. It does not minimize environmental impacts and so does not meet objective 4. It does not meet objective number 5, because Secretarial Order 3285A1 required the Department of Interior “develop best management practices for renewable energy and transmission projects on the public lands to ensure the most environmentally responsible development and delivery of renewable energy.” Given that the project is not complying with the DRECP, it is not ensuring the most environmentally responsible development and delivery of renewable energy. The proposed project fails to meet objectives 4, 5 and 8.

The commenter’s opinion about the project’s failure to meet the specified objectives is noted. The Oberon Project is located within a Development Focus Area targeted for renewable energy development in the DRECP LUPA (see General Response GR-2). Please see General Response GR-1, which describes the project design and shows that it would comply with the DRECP CMAs to the maximum extent practicable and meets the criteria for the most environmentally responsible development and delivery of renewable energy.

B5-57 The commenter states that both the Land Use Plan Compliant Alternative and the Resource Avoidance Alternative would meet all of the Applicant’s

objectives except number 1. Therefore, there is no basis to reject these alternatives for failure to comply with the Applicant's objectives.

Please refer to Response to Comment B4-2 for a discussion of project objectives, and Response to Comment B4-4 regarding the environmentally superior alterative, which demonstrates that the alternatives have not been eliminated for failure to comply with the Applicant's objectives.

B5-58 The commenter states that the Draft EIR is woefully inadequate and must be revised and recirculated.

Recirculation of a Draft EIR is required if there is significant new information or impact; substantial increase in severity of an impact; a feasible alternative or mitigation measure that is considerably different from those analyzed; or that the Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded (CEQA Guidelines section 15088.5(a)). As shown in Responses to Comments B5-1 through B5-58, the Draft EIR does not lack clarity that would necessitate recirculation of the Draft EIR. Insignificant edits have been made to the Final EIR to clarify or amplify the analysis that was already in the Draft EIR. Responses to Comments B5-59 to B5-124 address the commenter's letter submitted to BLM for the NEPA EA.

The remaining comments and responses address a comment letter submitted on BLM's Draft EA/LUPA that has been included as an attachment to the Draft EIR comment letter (Comments B5-59 through B5-124). Responses to these comments may include items related to BLM's separate NEPA process outside of the RWQCB's jurisdiction and CEQA process and these topics have been included for informational purposes only. As explained in RTC B1-2, inconsistency with a land use plan, if it exists, is not in and of itself a significant impact under CEQA.

B5-59 The commenter proposes an alternative that would have utilized the California Energy Efficiency Strategic Plan, which is already state law. The commenter summarizes the intent of BLM's DRECP LUP. The commenter states the Oberon Renewable Energy Project seeks to completely destroy the premise of the DRECP LUP by violating the fundamental "durable regulatory mechanisms" upon which the long-term conservation of resources within the DRECP was based.

Please see General Response GR-1 for a discussion of BLM's multiple use mandate. With respect to Conservation and Demand-Side Management, the analysis states that "this alternative is not technically feasible as a replacement for the proposed project because California utilities are already required to achieve aggressive energy efficiency goals. Even if additional energy efficiency beyond that occurring in the baseline condition may be technically possible, it is speculative to assume that energy efficiency alone

would achieve the necessary greenhouse gas reduction goals. With population growth and increasing demand for energy, conservation and demand management alone is not sufficient to address all of California's energy needs. Furthermore, conservation and demand-side management would not by themselves provide the renewable energy required to meet the California renewable energy goals, a stated project objective. Moreover, affecting consumer choice to the extent that would be necessary for a conservation and demand-side management solution would be beyond the BLM, RWQCB, and/or the Applicant's control. For those reasons, conservation and demand-side management has been eliminated from detailed analysis."

B5-60 The commenter states the Oberon Project as proposed has numerous problems associated with its application in the DRECP DFA, namely that the EA grossly underestimates the acreage and quality of microphyll woodland on site.

Please see Response to Comment B5-89 regarding the mapping of impacts to microphyll woodland.

B5-61 The commenter states that instead of completely avoiding microphyll woodlands as called for in the DRECP LUP, the project proposes to destroy approximately 80 acres of this protected habitat.

Please see General Response GR-1 and Response to Comment B5-84 for a discussion of impacts to microphyll woodland.

B5-62 The commenter states that instead of providing a 200-foot buffer from microphyll woodlands as called for in the DRECP LUP, the project proposes a mere 50-foot buffer in some locations.

Please see Response to Comment B5-84.

B5-63 The commenter states instead of causing only minor incursions into buffer areas, as required under the DRECP LUP habitat, the project would cause major incursions that amount to hundreds of acres of buffer.

Please see General Response GR-1 and Response to Comment B5-84 for a discussion of impacts to microphyll woodland.

B5-64 The commenter states that instead of avoiding on-site critical habitat for the desert tortoise, the project proposes to develop the critical habitat.

The DRECP CMAs do not require avoidance of desert tortoise critical habitat. Rather critical habitat must be compensated at a 5:1 ratio, as stated in CMA LUPA-BIO-COMP-1 and assumed in the offsite mitigation package (POD

Appendix AA in IP Oberon, 2021). Please see Responses to Comments B5-92 and B5-100.

B5-65 The commenter states that instead of avoiding the on-site multi-species habitat linkage area as required by the DRECP LUP, the project proposes to develop within the linkage area.

Please refer to General Response GR-4 regarding impacts to the multi-species linkage corridor.

B5-66 The commenter states that instead of minimizing impacts to the desert pavement on-site as required under the DRECP LUP, the project proposes to destroy most of the on-site desert pavement.

Please see Response to Comment B5-105.

B5-67 The commenter states the EA fails to analyze several potentially significant adverse impacts.

This comment does not specify what potentially significant adverse impacts are not analyzed. General Response GR-5 discusses the adequacy of the environmental analysis.

B5-68 The commenter states the EA fails to include a clearly understandable and stable project description and analysis of impacts.

Please refer to General Response GR-5. Without specifics it is not known what is unclear to the commenter. See also Response to Comments B5-90 that pertain to the EIR project description.

B5-69 The commenter states that in failing to comply with the LUP, the project violates the entire premise of the DRECP.

Please refer to General Response GR-1 regarding a project-specific LUPA.

B5-70 The commenter proposes that the project be reviewed with an environmental impact statement, and that a new alternative be considered by the BLM that includes an amendment to the DRECP LUP for this property that designates this part of Chuckwalla Valley as a solar exclusion zone.

Please refer to General Response GR-5 regarding preparation of an Environmental Impact Statement and Response to Comment B5-120 regarding designation of a DRECP exclusion zone. Concerns with the Oberon Project are addressed as they are raised in Responses to Comments B5-72 through B5-124.

B5-71 The commenter states the EA threatens the durability of conservation agreements in the CDCA Plan, as amended by the DRECP. The commenter

states amending the CDCA Plan and DRECP Plan and compromising the CMAs would be a precedent setting action that could result in several more requests from solar developers to amend the plan. The commenter states other solar projects to date have complied with the DRECP LUP, including the adjacent Victory Pass Project. The commenter states the Oberon Project should not qualify for streamlined review under the LUP that it seeks to undermine. The proposed amendment should not qualify for streamlined review and should be subject to a full EIS which analyses the impact of the proposed amendment.

The goals of the DRECP LUPA are described by the commenter. Precedence for future project-specific LUPAs is addressed in General Response GR-1 and the adequacy of the environmental documents is addressed in General Response GR-5. Oberon, Arica, and Victory Pass are the first new solar projects on BLM-administered land to be permitted under the DRECP LUPA.

Regarding the comment about the amendment being available for public review, public comment was received on the draft EA and draft LUPA. The EA and project-specific LUPA, if required, will be published along with the unsigned Finding of No New Significant Impacts (FONNSI) for a 30-day protest period and 60-day Governor's Consistency Review prior to issuance of a Decision Record by BLM.

B5-72 The commenter states the project needs to be reviewed with an environmental impact statement.

BLM has prepared an EA that tiers to the DRECP Final Environmental Impact Statement (FEIS) under a separate NEPA process that is outside of the scope of CEQA. Please see General Response GR-5 regarding the adequacy of the environmental documents as it pertains to the EIR.

B5-73 The commenter states the Oberon Project meets some of the ten considerations defining "Intensity" and justifying an EIS. The commenter states fugitive dust from the project could compromise the public health of the community of Desert Center.

Potential impacts of dust and other forms of air pollution and strategies to avoid adverse health effects of valley fever are described in the EA Section 3.2 and EIR Section 3.3 (Air Quality).

B5-74 The commenter states the Oberon Project has unique characteristics of the geographic area per 40 CFR 1508.27(b)(3), defined as "unique characteristics" are generally limited to those that have been identified through the land use planning process or other legislative, regulatory, or planning process. The commenter states the site has old growth microphyll woodlands containing desert ironwood trees over 1,000 years old.

The DRECP FEIS Table IV.7-18 (page IV.7-119) states that there is 124,000 acres of Sonoran-Coloradan semi-desert wash woodland/scrub within the DRECP Planning Area. EA Section 3.12 (Vegetation and Wildlife) discusses that desert dry wash woodland is important, because it supports greater food, nesting, cover, and wildlife diversity than the surrounding desert. Within the 5,000-acre application area, the project has been designed to avoid microphyll woodland to the maximum extent feasible resulting in nearly 90 acres of direct impacts to microphyll woodland across the 2,700-acre development footprint. These direct impacts and indirect (buffer) impacts from panel development (138 acres) would be compensated at a 5:1 ratio as part of a comprehensive 6,200-acre offsite habitat compensation package. Therefore, impacts to microphyll woodland and other sensitive habitats are addressed through both onsite project design and mitigation (see MM BIO-1 through MM BIO-14 in EIR Section 3.4.7) and an offsite mitigation compensation package (see POD Appendix AA on BLM's ePlanning website[9]).

B5-75 The commenter states the project has the degree to which effects are likely to be highly controversial (40 CFR 1508.27(b)(4)): Amending the CDCA and DRECP are very controversial. The commenter states that developing desert tortoise Critical Habitat is very controversial and destroying microphyll woodlands is very controversial.

A determination of the level of controversy is subjective and will be considered by the BLM during the NEPA process based on comment received during scoping and the Draft EA comment period. With project design features, implementation of the DRECP CMAs and mitigation measures, and acquisition of offsite compensation lands, impacts to critical habitat and microphyll woodland would be reduced thus maintaining the function of those habitats and reducing controversy. There have been many amendments to the CDCA Plan, as amended. The DRECP FEIS Section II.3.7.1 (LUPA Implementation) acknowledges that if the BLM determines that the proposed activity is not in conformance with the land use plan, the BLM can amend the land use plan. The BLM must follow the land use plan amendment process, as detailed in 43 CFR 1610.5-5. Therefore, an amendment itself is included in the DRECP LUPA process and in and of itself is not necessarily controversial.

B5-76 The commenter states the project fulfills the degree to which effects are highly uncertain or involve unique or unknown risks (40 CFR 1508.27(b)(5)): Big risks are associated with fugitive dust and public health. The commenter states there is also a risk of extirpating local populations of plant and animal species.

[9] Oberon Renewable Energy Project. https://go.usa.gov/xfdH5.

Potential impacts of dust and other forms of air pollution and strategies to avoid adverse health effects of valley fever are described in EIR Section 3.3 (Air Quality). Please refer to General Response GR-5 regarding the adequacy of the environmental documents.

B5-77 The commenter states the project requires consideration of whether the action may establish a precedent for future actions with significant impacts (40 CFR 1508.27(b)(6)): Amending the DRECP to reduce the requirements of the CMA's and allowing solar developers to access a Critical Habitat will set the precedent of other developers making similar requests.

Please refer to General Response GR-1 regarding future actions with significant impacts and project-specific LUPAs. Please refer to Response to Comment B5-65 regarding desert tortoise critical habitat.

B5-78 The commenter states the project requires consideration of whether the action is related to other actions with cumulatively significant impacts (40 CFR 1508.27(b)(7)): Development and removal of wildlife connectivity corridors could impact the desert tortoise, burro deer, bighorn sheep and other wildlife. Furthermore, this disturbance will cause a spike of invasive weed proliferation such as Sahara mustard. The commenter states this will cause a weed invasion to adjacent microphyll woodlands and the Chuckwalla Critical Habitat.

The Oberon EA tiers to the DRECP FEIS analysis including the cumulative analysis of multi-species linkage corridors. See General Response GR-4 regarding the multi-species linkage corridor and Response to Comment B4-55 regarding cumulative impacts.

Herbicides may be used on site during construction and operation and maintenance to control the spread of noxious weeds and other non-native invasive plant species and would involve the targeted use of BLM-approved herbicides applied to foliage using backpack sprayers as outlined in the Integrated Weed Management Plan (IWMP) that is required under MM BIO-4 and that must be approved by the RWQCB, BLM, and CDFW. The Draft EIR Section 3.4 states that any herbicide use would need to comply with existing BLM plans and permits including the *Vegetation Treatments Using Herbicides* (2007) and *Vegetation Treatment Using Aminopyralid, Fluroxypyr, and Rimsulfuron* (2016b) including requiring a Pesticide Use Permit approved by the BLM and adhere to the BLM design features included in the EIS. Text has been added to EIR Section 3.4.5 regarding the potential effects of herbicide and pesticide application. Pesticide use would be in accordance with an approved Pesticide Use Proposal by BLM.

B5-79 The commenter states the project requires consideration of scientific, cultural, or historical resources, including those listed in or eligible for listing in the National Register of Historic Places (40 CFR 1508.27(b)(8)): This entire region is considered a “Cultural Landscape for all of the Native American Tribes in the area.

The commenter’s view that the entire region is considered a “cultural landscape” for all Native American tribes is noted. As discussed in EIR Section 3.5 (Cultural Resources) the RWQCB acknowledges that tribes have expressed their views and concerns about the importance and sensitivity of specific cultural resources to which they attach religious and cultural significance. Tribes have also expressed the view that these resources are connected to the broader landscape within and near the proposed project area.

B5-80 The commenter states the project requires consideration of threatened or endangered species and their critical habitat (40 CFR 1508.27(b)(9)): The proposed action would develop 600 acres of the Chuckwalla Critical Habitat for the desert tortoise!

Please refer to Response to Comment B5-64 regarding desert tortoise critical habitat.

B5-81 The commenter states the project requires consideration of any effects that threaten a violation of federal, State, or local law or requirements imposed for the protection of the environment (40 CFR 1508.27(b)(10)): Surface hydrology altercations would violate the Clean Water Act. Fugitive dust would violate the Clean Air Act and developing a critical habitat for the desert tortoise would violate the Endangered Species Act.

The project would create minor alterations to surface hydrology, and to minor unvegetated ephemeral dry washes and desert dry wash woodland that cross the site; however, the project has been designed to avoid the major washes that cross the site. The Applicant will obtain a Lake or Streambed Alteration Agreement (LSAA) from the CDFW and a Waste Discharge Requirements (WDR) permit from the Colorado River Basin RWQCB.

Dust control practices would be implemented with measures and strategies that are consistent with SCAQMD Rule 403, which protects against causing a violation of the federal Clean Air Act.

The BLM is currently consulting with the USFWS under Section 7 of the Endangered Species Act outside of the CEQA process.

B5-82 The commenter states the project grossly underestimates the acreage and quality of microphyll woodland onsite. The commenter states these ironwood-

rich microphyll habitats are excellent bird habitat for nesting and wintering habitat. The area is excellent wildlife connectivity corridor habitat, and herds of burro deer, bobcats, and other wildlife have been photographed in trail cameras on the project site.

Please refer to General Response GR-1 regarding impacts to microphyll woodland. Please refer to Responses to Comments B5-89 and B6-9 regarding underestimation of impacts to microphyll woodland. Please refer to Response to Comment B4-30 regarding survey methods for vegetation communities. EIR Section 3.4 describes the importance of microphyll woodland habitat. Regardless of the quality of the habitat, all mapped DDWW habitat would be compensated at a 5:1 ratio in accordance with CMA LUPA-BIO-COMP-1.

B5-83 The commenter states that instead of completely avoiding microphyll woodlands as called for in the DRECP LUP, the project proposes to destroy approximately 80 acres of this protected habitat. The commenter states the DRECP requires impacts to be avoided “to the maximum extent practicable or feasible”, which means that they are to be avoided unless there is no reasonable or practicable means of doing so that is consistent with the basic objectives of the activity. The commenter states the Oberon project is only avoiding microphyll woodlands “to the extent feasible” instead of the to the maximum extent feasible. The commenter states the Arica and Victory Pass Projects were redesigned to entirely avoid the desert dry wash woodland with a 200-foot buffer, reducing the projects from 4,000 acres to 2,700 acres.

Please refer to General Response GR-1 regarding impacts to microphyll woodland. Please refer to Response to Comment B4-32 for a discussion of the term maximum extent feasible.

Note that the desert dry wash woodland present on the Arica and Victory Pass sites is not fingered throughout the application area, as is the case on the Oberon site (see EIR Figure 2-6), which makes complete avoidance for the proposed 500 MW project within the application area infeasible.

B5-84 The commenter states instead of providing a 200-foot buffer from microphyll woodlands as called for in the DRECP LUPA, the project proposes a mere 50-foot buffer in some locations. The commenter states the DRECP setbacks were identified to avoid and minimize the adverse effects to specific biological resources. (DRECP LUPA, page 106). The commenter states only minor incursions into the setback area are permitted.

. See General Response GR-1 regarding impacts to the DDWW buffer and Response to Comment B4-18. It should be noted that the proposed project

would directly impact less than 90 acres of DDWW with solar panels and gen-tie line, collector lines, and roads.

B5-85 The commenter states while the BLM can consider modifications to the CMAs, the modifications must result in lesser impacts, not greater impacts, as in this case. The commenter states that the Oberon Project proposes to destroy microphyll woodland and reduce the buffer area beyond a minor incursion, resulting in greater impacts than those described in the FEIS for the DRECP LUPA, should be enough to trigger the need for an EIS for the Oberon Project.

The adequacy of the NEPA analysis is outside of the scope of CEQA.

B5-86 The commenter states there is no scientific data to confirm that a distance of 50 feet is great enough to preserve hydrologic function. The commenter states a discussion of the connectivity of wash plant communities needs to be included in the EA, because the solar field would block flow of flood waters in washes, potentially cutting off water-dependent microphyll woodland and killing patches on the other side of the proposed solar fields.

Please refer to General Response GR-1 regarding impacts of reduced setbacks. Development areas were designed to be set back from microphyll woodland habitats that provide important hydrologic functions within the application area. In coordination with USFWS, the development footprint was refined to avoid desert dry wash woodland areas with a minimum 50 foot and average of 134-foot (rather than 200 foot) buffer between such areas and the nearest solar panels. While the proposed buffer averages less than 200 feet, which was identified for the DRECP based on a large-scale analysis, site specific buffer areas that were delineated at 50 feet were determined to have lower habitat quality, whereas areas delineated with over 200-foot buffers had higher quality and function. Implementation of mitigation measures related to revegetation (MM BIO-5) and reducing dust (MM AQ-1), invasive weeds (MM BIO-4), noise and vibration, night lighting, and trash (MM BIO-8) would support the functions of the buffer where the 200-foot setback is not achieved.

In addition, since publication of the Draft EIR, the Applicant has proposed to mitigate impacts to the buffer that constitute indirect impacts to DDWW through offsite compensation at a ratio of 5:1.

A project Hydrology Study is included in POD Appendix CC on BLM's Oberon ePlanning website[10]. The project has been designed to avoid the major washes that cross the site and hydrology of these washes would be maintained, where most of the microphyll woodlands are located. The major

[10] Oberon Renewable Energy Project. https://go.usa.gov/xfdH5.

washes across the site are fed by drainage passing through culverts beneath the I-10 freeway and there are currently no projects directly upstream that would alter the existing hydrology and the avoidance of the major washed onsite would reduce any impacts to changes in hydrology downstream of the site. The EIR incorporates Mitigation Measures HWQ-1, HW-4, and HWQ-5 (EIR Section 3.10.7), which pertain to surface water, to protect existing drainage features where feasible and provide a plan to convey water across the site without altering flow patterns to downstream properties.

B5-87 The commenter states the Joshua Tree National Park comment letter was concerned that ground disturbance at this project and other nearby projects could cause significant adverse impacts. The commenter states the EA has failed to provide the requested analysis regarding how the project will impact water flow and stormwater connectivity and therefore has no scientific support for the claim that the function of the microphyll woodlands will continue after project development.

Please see Response to Comment B5-86.

B5-88 The commenter states the failure of the DRECP to describe the reasoning behind the buffer in the context of microphyll woodlands does not mean that there is no science behind the selection buffer size. The commenter states the research for ACEC buffer size no doubt informed the selection of buffers for the entire DRECP LUP.

The reference in the EA to determination of buffers within ACECs is noted. ACECs are a federal designation and thus, this comment is specific to NEPA outside of the scope of CEQA. The onsite DDWW within the solar development footprint is not within an ACEC and an ACEC disturbance cap is not under consideration for the solar facility, so comments regarding buffer distances and disturbance caps for ACECs are out of context for this project. The Oberon solar and BESS facility is located within a DFA and separated from the Chuckwalla ACEC by Interstate 10, please refer to General Response GR-2 regarding DFA Development.

B5-89 The commenter states in numerous areas, the EA is vague and fails to provide adequate data to understand the project. The commenter states using the numbers in the EA only leaves one frustrated and unsure about what is exactly the impact to microphyll woodland. The commenter states offsite compensatory mitigation acreages are wrong.

The EA text has been revised to correct acreages of avoided impact to microphyll woodlands from 2,100 to 1,200 acres in Section 3.12 to match the BRTR and other acreages throughout the EA.

Please see General Response GR-1 regarding encroachment into microphyll woodland. The acreage of direct impacts, including minor incursion, is nearly 90 acres (acreages have been revised from the Draft EIR to reflect refined engineering); 223 acres are also encompassed in the buffer area (138 acres of panel development). The additional panel acreage between the Proposed Action and the Land Use Compliant Alternative (600 acres) is necessary to meet the project objectives because solar panels are modular. The rectangular shape of the panel modules that must be oriented in a north-south string direction to optimize collection of incident sunlight cannot conform to the intricate shape of the vegetation communities without some development in the DDWW and buffer areas and at a rate much higher than a 1:1 ratio of acres of panels lost to DDWW avoided. Avoidance of the full 200-foot buffer would cause significant further area to be undevelopable due to the size and layout of the modular panels. The EA and the EIR address the environmental impacts of the incursions.

B5-90 The commenter states that although they do not take issue with the EA's quantification of the impacts for individual segments of the project, all of the project's impacts, including the collector lines, gen-tie line and access roads, must still be attributed to the Applicant, and given the total number of acres impacted, cannot be considered minor incursions.

The EIR provides a breakdown of the types of direct impacts to desert dry wash woodland to separate panel development from minor incursion (roads, collector lines, gen-tie line), but includes the total when discussing the impacts to DDWW in the environmental analysis. See EIR Table 3.4-1 (Construction Impacts to Vegetation Communities). Likewise, the EIR Section 3.4 states that preservation of approximately 450 acres of off-site habitat would reduce and offset impacts to desert dry wash woodland, which equates to nearly 90 acres of DDWW directly impacted by the project at a 5:1 compensation ratio.

The commenter also questions why the project gen-tie line is not co-locating with the Eagle Crest Gen-Tie Line. As stated in EIR Section 2.1 (Introduction), the Applicant plans to collocate the Oberon gen-tie line with the proposed Easley Solar and Green Hydrogen project gen-tie line or the Applicant may use remaining capacity on the Oberon 500 kV gen-tie line for the Easley Project. The EA goes on to state that pursuant to 43 CFR §§ 2805.15(b) and 2805.14(b), the BLM may require other ROW holders to collocate with the Oberon solar facilities, should the BLM decide to issue IP Oberon, LLC, a ROW.

Any gen-tie collocation would occur pending financial negotiations, if the voltages, substation approaches, and timelines are similar. As stated in EIR

Table 3.1-2 in Section 3.1, the FERC License for the Eagle Mountain Pumped Storage Project was issued June 2014 and the project was approved by BLM in August 2018. Eagle Crest's gen-tie line is 500 kV and would approach Red Bluff Substation's 500 kV transformer bank on its eastern side, similar to Oberon; however, the timing of the Eagle Crest Project is unknown. Eagle Crest's approved gen-tie line ROW into the north side of the Red Bluff Substation is not feasible given the location of the 500 kV transformer bank. Eagle Crest will need to design a revised gen-tie line approach into Red Bluff Substation in coordination with SCE and other adjacent ROW holders, then apply to the BLM for a revised ROW grant, and BLM will need to perform a NEPA analysis and issue a ROW grant prior to project construction. Pending approvals, the construction of the Oberon Project would begin in early 2022 with commercial operation before the end of 2023. The unknowns about the Eagle Crest schedule, its revised ROW, and additional NEPA analysis required make collocation of the Oberon gen-tie line with the Eagle Crest gen-tie line unlikely. Therefore, a specific discussion of collocation with the Eagle Crest line was not included in the EA.

Where the Eagle Crest gen-tie line will be sited and when the process will be completed are outside of the Oberon NEPA process. The Eagle Crest ROW is located within the Oberon application area near the project substation/BESS. Thus, the EA analyzes panel development in this area to allow the Applicant flexibility to develop parcels within the former Eagle Crest ROW that are outside of desert dry wash woodland and its buffer should the ROW relinquishment timing work out. This area is shown on EIR Figure 2-1 and analyzed in the environmental document. Development in this area would help maximize renewable energy generation and would provide additional siting flexibility during final engineering to avoid any newly identified constraints or resources.

Assuming the Applicant acquires the private inholding, there is no development, improvements, or any project components proposed on the private parcel. Dedicated access is not shown on EIR Figure 2-1 and the EIR analysis assumes purchase of the property since IP is in final negotiations. Either way, the area of access to the property is assumed to be disturbed by either an access road or solar panels in the environmental analysis.

Finally, the Applicant requested to retain two substation options, which would not affect the overall project acreage and would retain flexibility pending negotiations with other ROW holders, which is outside of the scope of CEQA and NEPA. The EIR analysis considers both route/substation options and in general assumes a worst-case scenario of the longer gen-tie line option (e.g., EIR Section 3.2, Aesthetics).

Overall, the development footprint would remain at up to 2,700 acres, as analyzed in the Draft EIR.

B5-91 The commenter states another area in which the EA is vague is the location and quality of the mitigation lands. The commenter questions the EA claims that the mitigation lands have been selected and are of higher quality than the existing site. The commenter states the proposed compensation lands are within designated critical habitat and are of much higher quality than the designated critical habitat on the Oberon site, as described in the offsite habitat mitigation package. The commenter states the offsite habitat mitigation package in POD Appendix AA (IP Oberon, 2021), at least the version available to the public, only mentions "Potential Mitigation Properties" without any description of the properties at all. The map indicates numerous disjointed properties separated by several miles may be selected.

POD Appendix AA includes a proposed mitigation package to allow the public to review the location and quality of the compensation lands. The final mitigation package would be reviewed and approved by BLM and the resource agencies upon final engineering. The offsite mitigation lands have been visited by the USFWS and Ironwood biologists and the following provides an explanation that the mitigation lands are objectively much higher quality than the critical habitat impacted on the project site. As part of the site visit on September 4, 2021, that is referenced in Responses to Comments B5-83 and B5-121, the commenter visited both the Oberon site and some of the proposed mitigation lands.

Please see Response to Comment B3-4 for a discussion of the quality of critical habitat on the Oberon site and the proposed mitigation lands. While it is true that the mitigation lands consist of separate parcels as the commenter asserts, the intervening lands are mostly BLM-administered land and mostly within critical habitat that is not within a DRECP DFA. By transferring these private lands (now possibly subject to a future development proposal) into permanent conservation management, they will be (1) preserved in perpetuity, per the requirements of the durable compensation agreement between CDFW and BLM, and (2) prevent future edge effects or ingress-egress effects to adjacent public lands. The net effect will be to enhance the overall habitat characteristics of an extensive remote area.

B5-92 The commenter states BLM's stated purpose and need in the EA do not and should not include achieving an applicant's specific megawatt goal. In fact, the BLM expressly has discretion to reject a non-DRECP-conforming project. The commenter states the purpose and need statement should prioritize protecting microphyll woodlands, wildlife connectivity corridors, and tortoise habitat, and minimize the need for large-scale solar projects on public lands.

The commenter states the statement should focus on the need to follow the CMAs of the DRECP. The commenter states the statement should make stronger commitments to adhering to the Land Use Plan without amending it, and without significantly impacting natural resources such as desert tortoise critical habitat and high- value microphyll woodland vegetation communities.

Please see Response to Comment B5-94 and General Response GR-2 regarding Development Focus Areas. Although outside of the CEQA analysis and the RWQCB's jurisdiction, BLM's multiple use mandate is discussed in General Response GR-1. General Response GR-3 discusses the Applicant's original application.

B5-93 The commenter states the project has been designed by Intersect Power to make the reduction in the 200-foot buffer appear necessary. The commenter states the full build alternative would have greatly increased impacts to desert dry wash woodland, desert tortoise habitat, and wildlife connectivity habitat. The commenter states solar panels would be developed adjacent to I-10 further restricting the utility corridor in desert tortoise critical habitat, and a greater number of prehistoric cultural resources would be directly affected. The commenter states that the Intersect Power removed the northern property from this application so that the property could be added to a different Intersect Power development application. The commenter states the Applicant has an objective of constructing a 500 MW facility, but gave up 1,500 acres that it could have used towards reach its objective.

Please refer to Response to Comment B4-25 and General Response GR-3 regarding the original Oberon application.

B5-94 The commenter states the Applicant has piecemealed the project and manipulated the acreage of the proposed project described within the EA in order to claim that it cannot comply with the CMA's. The commenter states the Applicant deliberately added microphyll woodland "fingers" to the project footprint:

The comment expresses opinions about the project design process but does not address the adequacy of the EA, nor recommend feasible alternatives or mitigation. Please see General Response GR-3 regarding the northern parcel group. The Applicant submitted a ROW application to BLM for a 500 MW solar PV facility on approximately 5,000 acres of BLM-administered land. After biological and cultural resources surveys were performed and additional constraints, such as the utility corridor, were identified, the project was subsequently revised by the Applicant to remove over 2,300 acres from development and comply with the DRECP CMAs to the maximum extent practicable. To maintain 500 megawatts (MW), the Applicant also condensed the ground cover ratio (GCR) to approximately 47% (a 30% GCR is preferred

to reduce panel shading by adjacent panels). The Applicant has stated that the Oberon Project would be designed at 5.4 acres/MW, where the industry standard is closer to 8 acres/MW.

In consultation with BLM and the resource agencies, the Applicant designed the panel layout to directly impact some desert dry wash (microphyll) woodland "slivers" that would have retained little or no residual habitat value (totaling approximately 77 acres), and instead open up other larger corridor areas of microphyll woodland in higher value habitat and within the multi-species linkage corridor. At this time, the Applicant determined that complete avoidance of the microphyll woodland buffer would not be feasible.

As discussed in EA Section 1.3.1 (BLM's Purpose and Need), BLM's purpose is to respond to IP Oberon, LLC's, request under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. Section 1761(a)(4)) for a right-of-way (ROW) grant. In response, BLM has prepared an Environmental Assessment (EA) of the project as proposed. Because the project is located in a Development Focus Area within the DRECP planning area, the EA tiers to the DRECP Final Environmental Impact Statement (FEIS) (see Section 1.5, Tiering and Incorporation by Reference). As described in EA Section 1.1.2, the DRECP FEIS analyzed the impacts of constructing, operating, and decommissioning solar projects throughout the CDCA and in the DFA in eastern Riverside County, where the project is located.

EA Section 1.3.2 explains that "the BLM Authorized Officer will review the Proposed Action (described in Section 2.3 as Alternative 2) and other alternatives and decide whether to deny the Applicant's application, approve the application, or approve the application with modifications. The BLM may include any terms, conditions, and stipulations it determines to be in the public interest and may modify the proposed use or change the route or location of the proposed facilities (43 CFR 2805.10(b)(1)). This decision will be an implementation decision. Furthermore, the BLM will decide as a land use planning decision whether to amend the CDCA Plan, as amended, as described below."

B5-95 The commenter states while both the Land Use Plan Compliant alternative (Alternative 3) and the Resource Avoidance alternative (Alternative 4) would result in less land being available for power generation (375 MW or 300 MW respectively, compared to 500 MW), the alternatives would still be consistent with the basic objective of the activity, which is for the BLM to respond to the ROW grant.

The commenter describes the balance of environmental and renewable energy policy objectives that the BLM decisionmakers must consider. As described in EA Section 1.3.2, "[t]he BLM Authorized Officer will review the

Proposed Action (described in Section 2.3 as Alternative 2) and other alternatives and decide whether to deny the Applicant's application, approve the application, or approve the application with modifications."

B5-96 The commenter states that the Policy Objectives of Executive Order 14008 require that the Secretary of the Interior "ensure robust protection" for our lands and biodiversity. Therefore, Executive Order 14008 cannot be used as justification for issuing a right-of-way grant that violates the DRECP Land Use Plan despite the desire to increase renewable energy production on public lands.

Text has been added to Section 1.3.1 to state that the Executive Order would support robust climate action while ensuring robust protection for our lands, waters, and biodiversity. This is in line with the objectives of the DRECP LUPA and BLM's multiple use mandate discussed in EA Section 1.3 as well as in General Response GR-1.

B5-97 The commenter states compliance with the DRECP LUP would also further the following BLM policy objectives:

- Conserve biological, physical, cultural, social, and scenic resources.
- Promote renewable energy and transmission development, consistent with federal renewable energy and transmission goals and policies, in consideration of state renewable energy targets.
- Comply with all applicable federal laws, including the BLM's obligation to manage the public lands consistent with the FLPMA's multiple use and sustained yield principles, unless otherwise specified by law.
- Comply with Congressional direction regarding management of the CDCA in Section 601 of FLPMA, including to "[p]reserve the unique and irreplaceable resources, including archaeological values, and conserve the use of the economic resources" of the CDCA (FLPMA 601[a][6]; 43 United States Code [U.S.C.]1781(a)(6).
- Identify and incorporate public lands managed for conservation purposes within the CDCA as components of the National Landscape Conservation System (NLCS), consistent with the Omnibus Public Land Management Act of 2009 (Public Law 111-11) ("Omnibus Act").
- Amend land use plans consistent with the criteria in FLPMA and the CDCA Plan. (DRECP ROD, page 8, emphasis added)

The objectives of DRECP stated by the commenter are listed in EA Section 1.5 (Tiering and Incorporation by Reference).

B5-98 The commenter states the EA alludes to the Energy Act of 2020 as another facture regarding the decision to consider the DRECP LUP change. The commenter states, “According to the DRECP, the development focus areas are capable of providing enough area for 27 gigawatts in California alone” (DRECP ROD, page 32). The commenter states the Energy Act of 2020 is nationwide, and the Secretary is not limited to California when approving projects to comply with the Act.

Please refer to General Response GR-2 regarding development of renewable energy in DFAs. The Oberon Project is located within a DFA targeted for renewable energy development and the majority of the land may be developed with solar generation.

B5-99 The commenter states instead of avoiding on-site critical habitat for the desert tortoise, the project proposes to develop the critical habitat. The commenter states building a large solar field inside and on top of a 600-acre block of Critical Habitat would set an example for future solar developers to disregard this important land management designation, one of the best tools for conserving the California Desert from further encroachment and disturbance.

Very little critical habitat overlaps DFAs. Please refer to Response to Comment B5-92. Designated critical habitat for desert tortoise overlaps the project site along the southern boundary, north of Interstate 10. This area is within the Chuckwalla Desert Tortoise Critical Habitat Unit (CHU), but not within the Chuckwalla Area of Critical Environmental Concern (ACEC) or within a Tortoise Conservation Area as identified in the DRECP LUPA. The critical habitat boundaries that overlap the proposed solar field follow section lines rather than natural habitat features or dispersal barriers (e.g., the I-10 freeway). Due to its location north of the freeway, this critical habitat land is partially isolated from the remainder of the CHU by the I-10 freeway. Its long-term function as critical habitat is compromised by its proximity to existing development, and its location within a DRECP designated Development Focus Area further compromises its future habitat value.

CMAs do not require avoidance of critical habitat, but compensation at a ratio of 5:1. Impacts to critical habitat on the project site are compensated at a 5:1 ratio with higher value habitat in an offsite mitigation package, as required by CMA LUPA-BIO-COMP-1. The proposed project is in conformance with the DRECP CMAs with regard to designated critical habitat.

Additionally, the BO for the DRECP states, “...it is the Service’s biological opinion that the proposed action is not likely to result in the destruction or adverse modification of critical habitat of the desert tortoise. We have reached this conclusion because the amount of affected critical habitat comprises

approximately 0.44 percent of the amount of the critical habitat within the Chuckwalla Critical Habitat Unit...” (page 95).

B5-100 The commenter states the project violates CMA LUPA-BIO-13, General Siting and Design which requires projects to avoid impacts to the maximum extent practicable to “occupied habitat and suitable habitat for Focus and BLM Special Status Species (see “avoid to the maximum extent practicable” in Glossary of Terms).” The commenter states he proposed project (Alternative 2) does not avoid occupied desert tortoise habitats.

Please refer to General Response GR-4 regarding the multi-species habitat linkage and wildlife movement. Please refer to Response to Comment B3-9 for a discussion of maximum extent practicable. Please see Response to Comment B5-100 regarding desert tortoise critical habitat.

B5-101 The commenter states even though CMA LUPA-BIO-COMP-1 allows compensation acreage requirements to be fulfilled through non-acquisition (i.e., restoration and enhancement), land acquisition (i.e., preservation), or a combination of these options, the non-acquisition methods have failed to actually mitigate anything. The commenter states Mojave desert tortoises continue to decline range wide, despite attempts to fence roads, close illegal routes, put of signs warning drivers of tortoises crossing roads, and other mitigation measures which are not efficacious in recovering the tortoise. The commenter states the application of herbicides along will significantly impact tortoise Critical Habitat, reducing and elimination important food plants such as annual forbs and grasses.

Please refer to Response to Comment B5-100 regarding compliance with critical habitat CMAs. The DRECP CMAs do not require avoidance of critical habitat, but compensation at a ratio of 5:1. The BO for the DRECP concluded that it is not likely to destroy or adversely modify critical habitat of the desert tortoise (page 95).

EIR Section 2.2.5.4 (Integrated Weed Management and Pesticide Use Proposal) describes herbicide and pesticide use for the project. Impacts from herbicide use would be minimized with implementation of MM BIO-4: Integrated Weed Management Plan (IWMP). Text has been added to Section 3.4.5 of the Final EIR to discuss impacts from herbicide application on wildlife.

The recommendation of an amendment to the DRECP removing critical habitat from the DFAs is outside the scope of CEQA.

B5-102 The commenter states they see no evidence that BLM actually undertook an environmental review of how the loss of 598 acres of multi-species linkage will impact desert tortoise, Burro deer, bighorn sheep, and other species, much less did the EA demonstrate how the function of the corridor would be

maintained. The commenter states the narrowing of the linkage, in combination with other projects that also narrow the linkage would result in blocking and fragmenting genetic linkages, and indirectly causing impacts due to edge effects, construction and operation disturbance, altered surface hydrology of washes, invasive species, and facilitating raven predation.

Please refer to General Response GR-4 regarding impacts to the multi-species linkage. The commenter quotes language from the Oberon EA and BRTR (POD Appendix F) that are consistent. The POD and EA in the NEPA process, as well as the EIR in the CEQA process, identify the solar project's reduced development footprint within the application area where it overlaps with the linkage area consistent with quoted language from the BRTR. The BRTR documents biological resources existing on the site to inform the siting and design of the project; it does not constitute a final determination on compliance with CMAs or project design features.

B5-103 The commenter states they asked that all I-10 underpasses be mapped, and impacts of the solar project analyzed to wildlife connectivity. The commenter states Desert tortoises and other wildlife, including desert bighorn sheep, have been photographed in camera trap surveys as using freeway underpasses. The commenter states this connectivity should be maintained in both the wildlife corridor and Critical Habitat. The commenter states that wildlife permeable fencing of solar fields in certain alternatives of the project design are completely experimental, and have not been shown to successfully allow free passage of wildlife through a developed industrial energy project with mechanized activity, disturbed ground and vegetation.

The I-10 underpasses are mapped in Figure 2-6 (Fencing Plan) in the Draft EIR and in POD Appendix F (BRTR) in EA Appendix F on BLM's ePlanning website. EIR Section 3.4 discusses wildlife connectivity, and the multi-species linkage corridor is also addressed in General Response GR-4.

The commenter is correct that wildlife friendly fencing has not been used in the Desert Center area. It has been used on a few other solar projects, such as in the Carrizo Plain and in Nevada. EIR Section 3.4 states that revegetated areas within the wildlife friendly fence line would provide some marginal habitat to support movement within and through the site. Therefore, after a set level of revegetation, wildlife friendly fencing may provide some additional habitat for smaller wildlife, which will help maintain the function of the wildlife linkage corridor, but the conclusions in the EA regarding the function of the wildlife corridor are not dependent on permeable fencing alone.

B5-104 The commenter states they know of no scientific support for the use of alleged "strategic avoidance" to maintain the function and value of the wildlife linkage.

The term “strategic avoidance” is not used in the EA or EIR analyses or conclusions. It is used in POD Appendix C discussion of DRECP CMAs applicability in the NEPA process to describe that the proposed project has been designed to pull back from I-10 and avoid most development in the biological linkage within the project area that is primarily DDWW habitat leading to freeway underpasses to maintain connectivity under the I-10. Please see General Response GR-4 for an explanation of the function and value of the wildlife linkage with respect to the Oberon Project.

BLM is conducting a separate before-after/control-impact (BACI) scientific research study at several solar project sites, including the Oberon site, to enhance public, solar industry, and agency knowledge of how desert wildlife interact with an operating solar facility, resulting in potential recommendations for best practices or design features and adaptive management. The study will focus on bats, birds, carnivores, lizards, invertebrates (e.g., ants), pollinators (e.g., bees), and ungulates, not federally listed species. Results of this study will help inform BLM about how wildlife moves through the wildlife linkage that is within project area.

B5-105 The commenter states instead of minimizing impacts to the desert pavement on-site as required under the DRECP LUPA, the project proposes to destroy most of the on-site desert pavement. The commenter states the EA does not adequately disclose that all of the on-site desert pavement is to be destroyed, in violation of the DRECP LUPA. The commenter states the Oberon Project intends to impact approximately 71 acres of desert pavement or 41% of the 175 acres of total desert pavement within the total project area, which is a violation of the DRECP LUPA.

Desert pavement was mapped on the project site during the biological field survey conducted for the Biological Technical Resources Report (POD Appendix F). Approximately 175 acres of desert pavement were identified on the project site (all within the eastern half), with approximately 54.75 acres of desert pavement in areas of identified project disturbance based on new GIS data. This equates to approximately 31% of the total mapped desert pavement on the project site. As noted, this does exceed the LUPA-SW-9 minimum of 10%, however as noted in the LUPA BLM will determine whether the erosional and ecologic impacts of exceeding the 10% cap by the proposed amount would be insignificant. As noted in the EIR Section 3.10.2, the primary concern from destruction of desert pavement would be erosion and generation of fugitive dust from exposed fine-grained sediments, however the EA includes Mitigation Measures (Appendix H) MMs AQ-1 (Fugitive Dust Control Plan), MM HWQ-1 (Drainage Erosion and Sedimentation Control Plan [DESCP]), MM HWQ-4 (Project Drainage Plan) and would comply with a

project SWPPP to reduce erosion impacts related to disturbance of desert pavement.

B5-106 The commenter states mitigation for Emory's Crucifixion Thorn is Deferred. The commenter states the project violates CMA LUPA-BIO-13, General Siting and Design, in not avoiding impacts to unique plant assemblages such as Emory's crucifixion thorn (Castela emoryi) communities.). The commenter states BLM presents no analysis that Emory's crucifixion thorn salvage from other solar projects was successful, nor any reports from Rancho Santa Ana Botanic Garden (now California Botanic Garden) regarding success or failure of salvage and relocation efforts.

Protocol surveys were performed for the Oberon Project and no crucifixion thorn stands with greater than 100 individuals were found onsite. CMA LUPA-BIO-SVF-7 requires avoidance of stands of 100 or more Emory's crucifixion thorn. Therefore, CMA LUPA-BIO-SVF-7 and CMA LUPA-BIO-13 are not applicable with regard to Emory's crucifixion thorn.

Regardless, the EIR recommends Mitigation Measure MM BIO-7 in EIR Section 3.4.8, which requires the applicant to mitigate any impacts to Emory's crucifixion thorn through one or more of the three strategies described and would ensure mitigation of the project's potential impacts to these plants to the extent feasible. An Emory's Crucifixion Thorn Salvage Plan would identify several methods for salvage, relocation, propagation, and planting based on results of the most recent salvage efforts from nearby projects. Note that MM BIO-7 has been revised in the Final EIR to state "California Botanic Garden," as its name is no longer Rancho Santa Ana Botanic Garden and the text has been revised to clarify the requirements in the Emory's Crucifixion Thorn Salvage Plan.

B5-107 The commenter states significant impacts to Mojave fringe-toed lizard are not avoided or mitigated. The commenter states cumulative significant impacts on removing fringe-toed lizard habitat, disturbance and blockage of sand flows, and the increase of invasive weeds, needs to be analyzed, as this group of populations could be a new undescribed taxon when finer genetic studies are undertaken in the future.

The comment reports a single Mojave fringe-toed lizard (MFTL) on the site, observed in poorly suitable habitat where neither windblown sand nor stabilized aeolian sand occur (see BRTR Figure 7 in POD Appendix F for DRECP model MFTL habitat). The observation is consistent with MFTL's occurrence in low numbers in marginally suitable habitats surrounding its primary sandfield and dune habitats. A brief summary of this observation and potential impacts have been added to Section 3.4 of the EIR. Nonetheless, the project would not affect sand transport corridor, sand dunes, or stabilized

sandfields, and no mitigation for MFTL or its habitat is required. Regarding cumulative impacts, the EA tiers to the DRECP FEIS, which analyzes cumulative impacts to MFTL. The comment speculates that the local MFTL population may be an undescribed taxon and recommends further studies. However, those taxonomic studies are beyond the scope of this EA.

B5-108 The commenter states different information is presented about special status bats in adjacent solar project environmental reviews.

The comment refers to other project sites where habitat and potential project impacts differ substantially from the Oberon site. Although there was evidence of an unidentified bat species using the site, there is no suitable roosting habitat for special-status bats known in the area. The report that special-status bats were detected in the vicinity of the Palen Solar Project is consistent with the statement in Oberon EIR Section 3.4 that special-status bats could fly over the site. The comment does not present new information nor does it identify a potentially significant impact to biological resources.

B5-109 The commenter states Couch's spadefoot toad was not observed during surveys, but eight areas were identified as potential breeding habitat where water may accumulate after rainfall. The commenter also states golden eagles could forage at the site at any time of year, and one eagle was observed flying over the project site. The commenter states three burrowing owl burrows were observed; two of the burrows had a live individual and whitewash was observed at the third burrow.

EIR Section 3.4 states that golden eagles could forage at the Oberon site at any time of year, and one eagle was observed flying over the project site. These eagles could include eagles that nest in Joshua Tree NP. EIR Section 3.4.5 of the Draft EIR states that impacts to raptors and golden eagles would include loss of foraging habitat.

Text regarding Couch's spadefoot toad, golden eagles, and burrowing owl was included in the Draft EIR, Sections 3.4.1 and 3.4.5. Text was added for Couch's spadefoot toad in Section 3.4.1 to note recent observations of rainfall and lack of ponds suitable for breeding. Text was added to Section 3.4.5 to document potential impacts if toads are present. Impacts would be less than significant with implementation of mitigation measures.

B5-110 The commenter states additional notable CDFW special-status wildlife present in the project site include burro deer (CPGS) and desert kit fox (CPF). The commenter states suitable burrows for American badger (SSC) were identified, but no badgers were observed.

These species are mentioned in EIR Section 3.4. Please see General Response GR-5 regarding the adequacy of the environmental documents.

B5-111 The commenter states impacts to the California state endangered Gila Woodpecker were not well analyzed or mitigated. The commenter states the microphyll woodlands in the Desert Center area are not identified as Important Bird Areas in the DRECP or elsewhere (DRECP FEIS Figure III.7-15), whereas many of the other DRECP areas with microphyll are identified as important bird areas, and the environmental setting in the DRECP FEIS was focused on the value of these important bird areas as they relate to microphyll woodlands.

Text was added to Section 3.4 to clarify the impacts to gila woodpecker.

A nesting bird management plan is included in the BBCS (POD Appendix K), which will be extracted during pre-construction compliance as a separate plan and implemented to minimize and mitigate impacts to nesting birds in all impacted habitats. The project will either avoid vegetation clearing during the nesting season, or conduct pre-construction nest surveys of potential habitat and implement no-disturbance buffer areas around active nests. Pre-construction surveys for sensitive resources will be conducted per MM BIO-8 (Wildlife Protection).

Bird diversity is presented in the BRTR (POD Appendix F), as noted. Please refer to General Response GR-1 regarding incursions into microphyll woodlands. Bird diversity in microphyll woodland would not be substantially impacted as the project design largely and strategically avoids the microphyll woodland on-site. Microphyll woodland loss would be limited and impacts would be mitigated through avoidance and compensation.

B5-112 The commenter states that the EA, which is assumed to apply here to the EIR, fails to adequately analyze and mitigate avian-solar impacts. The commenter provides independent analysis regarding this topic.

The impact due to “lake effect” is analyzed in the EIR Section 3.4.

As noted therein, “while bird fatalities may be expected to occur due to collisions with project facilities and equipment, the risk of significant impact to avian populations is minimal.” More specifically, however, “[n]o large mortality events have been documented at PV solar facilities” and any “‘false-lake effect,’ wherein birds may mistake PV panels for water bodies and consequently be attracted to them . . . has not been verified.”

The cause of avian mortality associated with solar arrays is currently under investigation. The preliminary data reported in the Draft EIR on 13 projects is inconclusive because, as noted by CDFW in its August 2021 Draft EIR for the Arica Solar Project and Victory Pass Solar Project, “(1) mortality data has been collected over a relatively short period and still is being evaluated; (2) in many cases, the cause of death is not outwardly clear; (3) solar sites can vary

in habitat type, migration corridor, species, climate, and other factors, which can cause variation of mortality information from one project location to another project location; and (4) mortality data is collected on a subset of a project site, and collected for 2–3 years of a project's operational life, which is typically 30–50 years." The applicant estimated for the 2,724-acre area that includes both of the projects evaluated in that EIR that those projects could result in 907 avian mortalities per year. CDFW predicted that mortality for special-status birds would range from 16 to 83 birds per year and from 800 to 4,150 birds over the 50-year operational life of the Arica and Victory Pass Projects.

Based on the available information and mortality predictions, CDFW concluded that

> While bird fatalities are expected to occur due to collisions with Project facilities and equipment, no substantial adverse effect on any avian species is expected. There is no current evidence demonstrating that PV solar facilities in California or elsewhere have caused or have the potential to cause a population, species-level, or broader ecological significant impact due to avian collision with project facilities. Avian collision with Project facilities and equipment is expected, but that effect, while adverse, is less-than-significant for purposes of CEQA. Due to the uncertainties related to the causal mechanism resulting in bird collision and because the effects would not cause population, species-level, or broader ecological effects on special-status bird species, the potential impact is less than significant without mitigation.

Given that the Oberon Project is adjacent to the Arica and Victory Pass facilities, it stands to reason that it, too, would have a less than significant effect on avian populations due to collusions. The RWQCB accordingly takes this opportunity to clarify that this is what was meant by its determination that the risk of significant impacts to avian populations is minimal. Furthermore, like the Arica and Victory Pass Projects, incorporation of mitigation is identified in the Oberon BBCS (POD Appendix K on the BLM ePlanning website[11]), including a monitoring plan and adaptive management, and other collision mitigation measures related to the gen-tie line, would further reduce this less-than-significant effect on special-status bird species to the extent feasible.

The discussion in the EA is consistent with the attachments included in Comment B5-66.

[11] Oberon Renewable Energy Project. https://go.usa.gov/xfdH5.

Regarding suggested mitigation measures, additional space between panels would necessitate a larger project footprint to generate the same amount of electricity, resulting in additional habitat impacts without altering the possible "lake effect" as perceived by birds. Likewise, the commenter does not provide evidence to support to that wavy panels or the speculation that a white frame around panels could affect bird perception.

In summary, there is no scientific basis for assuming the mitigation measures proposed by Basin and Range Watch would reduce bird collisions or that mitigation is needed given that the impact would not be significant. The project will nevertheless implement adaptive management through the USFWS's approved BBCS and the Technical Advisory Group (TAG) to address unforeseen impacts and the science continues to evolve on impacts and potential and need for mitigation.

See Response to Comment B5-108 regarding bats.

B5-113 The commenter disagrees that because the project site is located within a DFA near an existing substation with available capacity for additional energy transmission, if the project were not constructed, a different solar developer may apply to for a right-of-way to construct a similar solar project at this location.

Please refer to General Response GR-2 regarding DFA development. The designation of the project area as an exclusion zone would be a separate DRECP and CDCA land use plan amendment process outside the scope of the Oberon NEPA analysis. Project-specific environmental review proceedings are not a forum for litigating the unaltered application of the approved plan. No DDWW would be impacted with the grading of the substation and BESS areas.

B5-114 The commenter questions how night lighting would be mitigated for bat species, insects and migrating songbirds to reduce strikes from I-10.

See MM BIO-8 (Wildlife Protection), which requires that night lighting be designed, installed, and maintained to prevent side casting of light towards surrounding wildlife habitat. Per MM VIS-1, a Night Lighting Management Plan would be implemented to mitigate any potential night lighting impacts for all alternatives and includes methods to reduce lighting beyond the project sites and consultation with the NPS Night Sky Program Manager.

B5-115 The commenter questions how herbicide use will this impact microphyll woodlands, desert tortoise, migrating birds, insects and human health.

EIR Section 2.2.5.4 (Integrated Weed Management and Pesticide Use Proposal) describes herbicide and pesticide use for the project. Impacts from

herbicide use would be minimized with implementation of MM BIO-4: Integrated Weed Management Plan (IWMP). Text has been added to Section 3.4.5 of the Final EIR to discuss impacts from herbicide application on wildlife.

Risks to both workers and to the public from the use of herbicides currently available or proposed for use by the BLM were analyzed by BLM in a separate NEPA process that is addressed in the EA. The selected herbicides are not indicated to pose a health risk when applied at the typical application rate. With the use of the identified application protocols, taking into consideration the generally low toxicity of these herbicides, restricted use in select treatment areas, and the non-routine access of these areas by maintenance workers and the general public, the presence of residual herbicide in soil and airborne dust would not present a negative adverse health risk."

B5-116 The commenter states the project would create a collision risk for birds. The commenter states birds could be attracted to adjacent microphyll woodlands and this could represent a collision trap.

The potential for bird collision from project components, included under the Resource Avoidance Alternative, is analyzed in EIR Section 3.4. Please refer to General Response GR-1 regarding impacts to DDWW and its buffer. The commenter's preference for the No Action Alternative, which is analyzed as the No Project Alternative in EIR Chapter 4, is noted.

B5-117 The commenter disagrees with the EA rejecting the Distributed Energy alternative.

Please see Response to Comment B5-62 regarding distributed solar generation as an alternative to the Oberon Project. The alternative assumed that the distributed solar could be on BLM-administered land or private land; however, the BLM lacks jurisdiction to authorize a solar project on private lands.

As EIR Section 4.4.4 concludes, although there is potential to achieve up to 500 MW of distributed solar energy, the limited number of existing facilities makes it unlikely to be feasible or present environmental benefits. The location of public land where BLM would have jurisdiction is an additional potential constraint. Because of the challenges associated with the implementation of a distributed solar technology, which include widely varying codes, standards, and fees; environmental requirements and permitting concerns; interconnection of distributed generation; inefficiencies; and integration of distributed generation. As a result, this technology was eliminated from detailed analysis as an alternative to the proposed project.

B5-118 The commenter states here are not enough KOP visual contrast simulations with this landscape. The commenter asks for KOPs from nearby Wilderness Areas, as well as nighttime visual impact assessments that could harm night-sky viewing. The commenter states a KOP from Joshua Tree National Park should also be included.

The comment states that there are insufficient KOPs/simulations to analyze the project and requests additional KOPs be established in nearby Wilderness Areas and Joshua Tree National Park (JTNP). The comment also requests additional nighttime visual assessments to address potential night-sky viewing impacts.

The KOPs used to evaluate the Oberon Project were selected in consultation with the BLM and RWQCB and take into consideration those locations from which the project would actually be seen by the vast majority of the viewing public. It was determined that the selected KOPs were adequate in addressing the project's visual impacts. The elevated viewpoints from nearby wilderness areas were considered less useful to the Oberon analysis given the existing development context and viewing circumstances for the project (see below) and that the number of public viewers that could potentially view the project from these elevated perspectives would be extremely low. Therefore, absent a compelling reason to establish an additional viewpoint at an elevated but rarely visited location, the selection of viewpoints carried into the Oberon analysis was considered reasonable and adequate to characterize the visual impacts of the proposed Oberon project. Therefore, no additional KOPs have been added, and the Oberon analysis and conclusions have not been changed.

The following paragraphs briefly address some pertinent factors taken into consideration in not selecting an elevated viewpoint in the nearby wilderness areas.

The proposed Oberon Project is approximately seven miles distant from the elevated wilderness vantage points in the Eagle and Coxcomb mountains (JTNP). By comparison, views from these wilderness areas in JTNP would see the visually more prominent Desert Sunlight and Desert Harvest solar projects at viewing distances of approximately 2.5 miles and 3.5 miles, respectively. Within the structural context established by these existing solar projects, it was determined that the analysis of the less visually impacting Oberon Project (when viewed from JTNP in the Eagle and Coxcomb mountains) would not significantly benefit from additional KOP/simulation analyses from these locations, particularly in light of the limited visitation to these areas. It should also be noted that the visual impact on JTNP is

addressed in the Cumulative Effects Section (EIR Section 3.2.6) of the visual analysis.

Similarly, at an approximately 11-mile viewing distance, the Oberon Project would not be visually prominent when viewed from the Palen Mountains (Palen McCoy Wilderness) and would be seen within the existing structural context of the much more visually prominent Palen Solar Project. Therefore, it was determined that the Oberon visual analysis would not materially benefit from an additional KOP established in the (project-facing) Palen Mountains (an area which also receives very limited visitation).

Although the Chuckwalla Mountains Wilderness is located approximately two miles south of the Oberon Project, there is very little access and visitation to the north side of the northernmost ridge that would provide elevated perspectives of the Oberon Project and northern Chuckwalla Valley. Access to the Chuckwalla Mountains Wilderness is primarily from the Corn Springs Campground on the south side of the northernmost ridge in the wilderness area, and the campground has no views to the north toward the northern Chuckwalla Valley. While it was determined that the Oberon visual analysis would not materially benefit from an additional KOP established in the Chuckwalla Mountains, KOP 3 was established on Alligator Rock to provide a slightly elevated view of the project and to assess the visual impacts on the Alligator Rock ACEC (at the base of the Chuckwalla Mountains) south of the Oberon Project.

With respect to the potential night-sky viewing impacts on JTNP and the Chuckwalla Valley, in general, the visual analysis addresses the potential for visible night lighting impacts under Impact AES-4 in EIR Section 3.2.5. The discussion also specifically notes the required Conservation and Management Actions (CMAs) and Visual Resource Best Management Practices (BMPs) and commits to the preparation of a Night Lighting Management Plan, including consultation with the NPS Night Sky Program Manager, all of which would substantially minimize the potential for visible night lighting impacts. As a result, it was concluded that the project visual analysis would not materially benefit from an additional nighttime visual assessment.

B5-119 The commenter states the Heat Island Effect was not analyzed in the EA. The commenter states a possible temperature increase could impact the public health of Desert Center. The commenter states it could also impact the microphyll ecosystem.

The study referenced in the comment measured air temperatures underneath solar panels (about 8 feet) over unvegetated ground and compared those temperatures to an undisturbed desert environment and a nearby parking lot. The study found that air temperatures under the panels exceeded the air

temperature above both the parking lot and desert environment, with the greatest difference occurring at night. Temperature differences between areas varied significantly depending on time of day and month of the year, but the solar facility was always greater than or equal in temperature to the other sites analyzed in the study. A separate Heat Island Study, "Analysis of Potential for a Heat Island Effect in Large Solar Farms" showed that the annual average of air temperatures in the center of a PV project can reach up to 1.9°C (approximately 3.5°F) above the ambient temperature measured at 8 feet above ground surface and that this thermal energy completely dissipates to the environment at heights of 5 to 18 meters (16 – 60 feet) above ground surface. The study also found temperatures approaching (within 0.3°C) the ambient at about 300 meters (984 feet) away from the perimeter of the solar facility. The study found that temperature differences between the modules and the surrounding air vary throughout the year, but the module temperatures are consistently higher than those of the surrounding air during the day (e.g., at the roads between panel arrays), cool to temperatures below ambient at night, and would not induce a day-after-day increase in ambient temperature. (Columbia, 2013). The two studies discussed above found air temperatures within solar facilities were greater than the ambient temperature at a height of 2.5 meters (about 8 feet) between 1.9°C to 2.4°C (approximately 3.4 to 4.2°F), although they differed in whether there was a heating effect that persisted overnight. Further, the PV Heat Island Study did not calculate how far off-site the photovoltaic heat island effect persisted, while the Columbia PV Heat Island Study found dissipation of thermal energy with distance from the solar facility, with the air temperatures approaching (within 0.3°C) the ambient at about 300 meters (984 feet) away from the perimeter of the solar facility. Given the limited number of studies regarding this effect, there is no evidence of any possible increase in ambient temperature from the project that would significantly impact human health or the environment, especially given the distance between the project and any residences.

B5-120 The commenter states the BLM must conclude that the Oberon project will result in new significant impacts not previously analyzed and disclosed in the previous DRECP FEIS, as conceded in the EA. The commenter requests the BLM to require an EIS for review of this right-of-way request in order to analyze the significant adverse impacts that would result if the project were implemented.

Please refer to General Response GR-5 regarding the adequacy of the environmental documents. The designation of this area as an exclusion zone would require a separate DRECP and CDCA land use plan amendment process outside the scope of the Oberon NEPA analysis. Project-specific

environmental review proceedings are not a forum for litigating the unaltered application of the approved plan.

B5-121 The commenter provided photographs from September 4, 2021, site visit.

The RWQCB notes the photographs included of the habitat on the project site, including microphyll woodland, and the Interstate 10 underpasses.

B5-122 The commenter provided PowerPoint presentations from the following:

- Multiagency Avian-Solar Collaborative Working Group: Stakeholder Workshop
- A Review of Avian Monitoring and Mitigation Information at Existing Utility-Scale Solar Facilities
- Update on Solar-Avian Interactions in Southern California
- Research to Address Wildlife Interactions with Solar Energy Facilities
- Ongoing Engagement with Multiagency Avian-Solar Collaborative Working Group
- Development of Tools, Training, and Outreach to Address Solar Glare and Flux-Related Avian Impacts
- Wind Energy/Wildlife Interactions: Overview of the Challenges and Current Efforts to Address Them
- Conceptual Understanding of Avian-Solar Interactions
- Agency Management Questions and Related Research Needs
- Multiagency Avian-Solar Collaborative Working Group: Stakeholder Workshop

Please refer to Response to Comment B5-112 regarding avian risk from solar development. Impacts to birds from wind turbines is not relevant to Oberon as it is a solar PV project.

Note that researchers at Cornell University, U.S. Geological Survey (USGS), and University of California at Davis Wild Energy Initiative are collaborating with BLM California to conduct a three-year before-after/control-impact (BACI) scientific research study on wildlife responses to solar energy development (e.g., site preparation, management actions, and conservation measures) on federal lands in the East Riverside DFA, with possibility of extended period of performance pending additional funding. The Applicant has committed to allowing access to the Oberon site during construction and operations so the research team can perform the fieldwork necessary to design and conduct a BACI study in order to better understand post-construction wildlife responses

relative to pre-construction baselines and to inform adaptive and conservation measures.

B5-123 The commenter provided Gila Woodpecker Breeding Habitat Use Profile, mapping, and general information

Please refer to Response to Comment B5-112.

B5-124 The commenter provided a Manual of California Vegetation by the California Native Plant Society (second edition) except on crucifixion thorn stands.

Please refer to Response to Comment B5-107.

The commenter also attached the Department of the Interior Bureau of Land Management Case Recordation (MASS) Serial Register Page for CACA-058539, which is the Oberon Project and is noted.

B5-125 The commenter attached a geophysical research letter entitled Impacts of Large-Scale Sahara Solar Farms on Global Climate and Vegetation Cover by Zhengyao Lu, Qiong Zhang, Paul A. Miller, Qiang Zhang, Ellen Berntell, and Benjamin Smith (2020). The study submitted by the commenter used Earth-system model simulations to evaluate the global impacts of Sahara solar farms, which indicated a redistribution of precipitation and global surface temperature rise, among other far-reaching effects. The study concludes that understanding these responses within the Earth system provides insights into the site selection concerning any massive deployment of solar energy in the world's deserts.

Please see Response to Comment B5-119, which discusses the heat island effect as it relates to the attached research letter (Lu et al., 2020) and the Oberon Project.

Responses to Comment Set B6 – Audubon

B6-1 The commenter's concerns about the value of irreplaceable microphyll woodlands habitat and the precedent involved in granting exceptions for the first project ever be permitted under the Desert Renewable Energy Conservation Plan (DRECP) are noted.

Please refer to General Response GR-1, which discusses impacts to microphyll woodland and compliance with the DRECP Conservation and Management Actions (CMAs).

Responses to the commenter's letter submitted on the Draft Environmental Assessment (EA) are found in Responses to Comments B6-8 to B6-15.

B6-2 The commenter provides DRECP Final Environmental Impact Statement (FEIS) Glossary definitions for microphyll woodlands, minor incursion,

setback, and unavoidable impacts to resources, as well as the text of DRECP CMA LUPA-BIO-RIPWET-1 (Riparian and Wetland Vegetation Type CMA) and a list of the three Draft EIR alternatives. The RWQCB acknowledges this background information.

B6-3 The commenter states that the Draft EIR and EA did not fully analyze impacts of the incursions on the buffer zone protecting microphyll woodlands nor the significance of that impact of the proposed project in terms of loss of hydrologic function, benefits to wildlife that use the woodlands for nesting, shade, corridors or foraging, loss of carbon sequestration or other quantifiable environmental benefits of the vegetation.

Please refer to General Response GR-1 regarding impacts to microphyll woodland, including the 200-foot setback.

B6-4 The commenter states that The Final EIR should incorporate the terms and conditions of a Streambed Alteration Agreement by California Department of Fish & Wildlife (CDFW) before analyzing the impacts on hydrology or wildlife of the project. This Agreement may alter the project and is foreseeable and RWQCB as a California agency must consult with CDFW before issuing the Final EIR.

CDFW is a Responsible Agency under CEQA for the Oberon Project and provides the requisite biological expertise to review and comment upon CEQA environmental documents prepared by another Lead Agency[12]. Following issuance of the CEQA Notice of Preparation in March 2021, CDFW submitted a letter during the 30-day scoping period (see EIR Appendix A, Scoping Report). The RWQCB also met with CDFW during preparation of the Draft EIR to discuss the project, mitigation approach, and biological permitting concerns. CDFW submitted comments on the Draft EIR in Comment Set A1.

Please refer to Response to Comment D1-39 regarding CDFW's permitting authority and incorporation of permit requirements.

B6-5 The commenter states that the Final EIR should incorporate or report on a consultation with indigenous people of the Colorado River area of California and the impacts on the project on their use of microphyll woodlands.

Tribal consultation by the RWQCB for the Oberon Project is summarized in Section 3.5.3 (Methodology for Analysis) of the Draft EIR under Project Notification and AB 52 Native American Tribal Consultation. See also Comment Set D1 from the Colorado River Indian Tribes, and specifically

[12] CDFW Environmental Review and Permitting. https://wildlife.ca.gov/Conservation/Environmental-Review

Response to Comment D1-42 and D1-43 regarding biological resources that have important cultural purposes and values.

B6-6 The commenter states that the Final EIR must correct the conclusion of Impact LU-1, because the project may cause a significant environmental effect due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect if the project does not comply to the DRECP CMAs regarding microphyll woodlands.

Please refer to General Response GR-1 for an explanation of the significance determination regarding potential impacts to microphyll woodlands. See also Response to Comment B5-15 which explains that approval of a project-specific LUPA by BLM would ensure that the Oberon Project would not conflict with any land use plan, policy, or regulation. Note that BLM will make the determination as to whether or not the DRECP encompasses the project as proposed. As explained in Response to Comment B4-18, whether a proposed project is consistent with a land use plan is not a CEQA issue. The EIR need not be revised.

B6-7 The commenter states that "a revised DEIR that includes an alternative that prepares a Land Use Plan Amendment in order not to comply with the DRECP needs to be prepared. The Applicant and BLM are considering the preparation of a Land Use Plan Amendment under the California Desert Conservation Area plan in order to approve the project without compliance with the CMAs regarding microphyll woodlands in the DRECP. The DEA released by BLM analyzes this alternative and its potentially significant impacts on the resources, especially microphyll woodlands. The DEIR does not and should."

The commenter appears to be describing the proposed project. The DRECP CMAs generally require avoidance of microphyll woodland and a 200-foot buffer, except for minor incursions and unavoidable impacts. The DRECP also empowers BLM to accept comparable, alternative CMAs. The commenter suggested and the Draft EIR considered that a project-specific LUPA to the California Desert Conservation Area (CDCA) plan, as amended, could be required for the project to be constructed.

Chapter 4 of the Draft EIR also analyzes two alternatives in addition to the No Project Alternative that would occupy a reduced footprint on the project site and would not require a LUPA to the CDCA, as amended, the Land Use Plan Compliant Alternative and the Resource Avoidance Alternative with TCR Avoidance Option.

The remaining comments and responses address a comment letter submitted on BLM's Draft EA/LUPA that has been included as an attachment to this Draft EIR comment letter (Comments B6-1 through B6-7). Responses to these comments may include items related to BLM's separate NEPA process outside of the RWQCB's jurisdiction and CEQA process and these topics have been included for informational purposes only.

B6-8 The commenter states that BLM's decision on the Oberon project will set an important precedent for all future projects in the DRECP Plan Area. Choosing the Proposed Action of adopting a LUPA to the CDCA and revising CMA LUPA-BIO-RIPWET-1 and CMA LUPA-BIO-SVF-6 to remove protections for microphyll woodlands through allowing a 50-foot buffer rather than a 200-foot buffer as provided in the DRECP LUPA and Record of Decision (ROD) is setting a damaging precedent that would encourage any Applicant to propose a LUPA to alter any CMA that may limit their development.

The commenter's concern about the land use plan amendment "precedent" is noted. Please refer to General Response GR-1 regarding a project-specific LUPA.

B6-9 The commenter states they found an additional impact of approximately 324 acres where project infrastructure could incur into the buffer zone of 200 feet from the microphyll woodland edge. The commenter states that impact on microphyll woodlands of the Proposed Action Alternative has not been analyzed in the EA. The commenter states should BLM adopt a LUPA to approve the project, it would allow an impact which has not been analyzed in the EA, potentially misuse a land use plan decision, undermine the state and federal conservation partnership achieved through the DRECP, re-write the buffer zone from 200 feet to 50 feet with no scientific evidence, possibly force a recalculation of the amount of potential energy development in the Riverside East Development Focus Area (DFA) and undermine the scientific integrity of the DRECP.

Acres of proposed buffer were re-calculated based on the distance from the edge of the DDWW to the solar panels with the current project fence line and data. This definition of setback is defined in the DRECP FEIS. The buffer encompasses 223 acres of the solar facility, gen-tie line, collector lines and roadways (138 acres of panel development). The impact of a reduced buffer on microphyll woodlands was clarified in EIR Section 3.4. See General Response GR-1 regarding the reduced buffer and maintaining the function of DDWW habitat.

As for requiring a recalculation of the amount of potential energy development in the Riverside East DFA, the DRECP only generally recognized that application of CMAs could reduce the limited amount of development lands compared to conservation lands. The project analysis has resulted in the

determination that 2,300 acres of the 5,000-acre project site thought to be developable are not; therefore, the proposed project does expand the DFAs.

B6-10 The commenter states the EA underestimates the amount of microphyll woodlands present while at the same time overstating the minimization of impacts to microphyll woodlands from the Proposed Action. The EA states: The project would have a long-term impact to approximately 60 acres of microphyll woodland that would be developed with solar panels. The commenter states the BLM decision whether to adopt a LUPA or not does not depend on whether the 60 acres are "minor incursions." The commenter submits that the 80+ acres are not "minor incursions" as defined in the DRECP LUPA glossary. The commenter states the BLM failed to accurately measure, describe, and analyze the impacts to the buffer zone adopted in the DRECP LUPA of the proposed project.

Acres of impacts to DDWW and acres of the buffer were recalculated, and text was clarified in Section 3.4 of the Final EIR regarding impacts to the buffer zone. Approximately 90 acres of DDWW would be developed with panels, gen-tie line, collector lines, and roads, which would be a permanent direct impact to DDWW. Approximately 138 acres of the solar facility fence line would be encompassed in the DDWW 200-foot buffer, which would be indirectly impacted by temporary construction activities and directly impacted by panel development and long-term O&M. Note that any direct impacts in the buffer would be an indirect impact to adjacent DDWW. Please see General Response GR-1 regarding minor incursion and the Applicant's proposal to mitigate indirect DDWW impacts of panel development to the buffer (138 acres) through offsite compensation at a 5:1 ratio.

B6-11 The commenter states the BLM must determine whether these 324 additional acres of impact (as calculated by the commenter) are "unavoidable impacts" which may be mitigated at 5:1, "minor incursions" as defined in the Glossary of the DRECP ROD, whether they are permanent such as fencing or panels or temporary such as construction activities, or not allowable at all under the CMA or some combination of these, and include this decision in the EA in choosing Alternative 3, the Compliance with the DRECP alternative.

Text was added to EIR Section 3.4 in the Final EIR to clarify the impacts to the buffer zone. See Response to Comment B6-3.

B6-12 The commenter states the EA must provide credible scientific evidence and citations for the statements and rationale in the section titled Sensitive Vegetation Communities beginning on page 100 of the Draft EA. The commenter states it is unclear whether BLM is providing rationale or reciting an alternative proposal for conformance to the CMA by the Applicant. The commenter states all microphyll woodlands are important for birds even if special status species have not been recorded as present in a particular stand

or string of microphyll woodland, as is the case with the project area. The commenter states BLM must correct this Sensitive Vegetation Communities section of the EA.

Citations and references to specific sections in the DRECP FEIS have been added where applicable, but they are not necessary in the CEQA document, because the EIR does not tier to the DRECP FEIS. This comment does not challenge the analysis in the Draft EIR.

B6-13 The commenter states the EA fails to incorporate or report on a consultation with indigenous people of the Colorado River area of California and the impacts on the project on their use of microphyll woodlands. The commenter states the plants, seeds, beans, and fruits of the ironwood, scrub mesquite, paloverde, and other plants in the desert dry washes may be important for collecting for cultural purposes, and if so, these values should be incorporated in the EA.

Please see Response to Comment B6-5, addressing a similar comment submitted on the Draft EIR.

B6-14 The commenter states the BLM should meet federal and State orders related to conserving lands and waters. The commenter states BLM should incorporate these values and directives in their decision-making process as well as meeting clean energy goals to achieve the balance that our President, Governor, Department of the Interior and current leadership strives for. The commenter states the Proposed Action must be rejected if it can only be enacted through a Land Use Plan Amendment.

State and federal renewable energy and greenhouse gas reduction goals are discussed under project objectives in EIR Section 1.3 as well as in EIR Chapter 4 (Alternatives). These values and directives will be considered by the RWQCB in the decision-making process. Please see General Response GR-5 regarding the adequacy of the environmental documents. The commenter's opposition to the project if it requires a project-specific LUPA is noted.

B6-15 The commenter states that assuming all direct impacts of microphyll woodland removal to install solar cell arrays within the proposed development footprint of the Oberon project would be mitigated at a 5:1 ratio, and that this is deemed sufficient by the BLM, vegetation removal and ground disturbance within the 200-foot buffer around these areas is no longer a minor incursion since the community being protected would no longer exist adjacent to the buffer. The commenter states the total area of microphyll woodlands incursions is 324 acres.

See Responses to Comments B6-2 and B6-3 regarding incursions by the project into the 200-foot desert dry wash woodland buffer.

D.4.3 Responses to Comments from Private Citizens

Responses to Comment Set C1 – Form Letter 1

C1-1 The commenter's concern about the Oberon Project and support for development of renewable energy on public lands are noted.

As the commenter notes, the Land Use Plan Compliant and Resource Avoidance Alternatives analyzed in Section 4 of the Draft EIR both would comply with a strict interpretation of the Desert Renewable Energy Conservation Plan (DRECP) Conservation and Management Actions (CMAs) and would not require a Land Use Plan Amendment (LUPA) by BLM.

C1-2 The commenter expresses concern about impacts to microphyll woodland and suggests utilizing the 1,500-acre parcel to the north that was part of Oberon's original application. The commenter is correct that the original project area encompassed approximately 6,500 acres of BLM-administered land for the solar facility, including the currently proposed site, as well as a parcel group to the north of the proposed project. The southern and northern parcel groups would have been connected by a 3.3-mile 34.5 kV medium voltage collector line across private land and Highway 177/Rice Road. The northern parcel group and associated 34.5 kV collector gen-tie line were eliminated from the project in late 2020 by the Applicant due to financial and ROW constraints and to consolidate the development footprint, shorten the length of gen-tie lines required, and locate the project entirely on federal land. Eliminating the northern parcel group and gen-tie lines reduced the proposed project area to approximately 5,000 acres.

As background, the DRECP LUPA designated 6,527,000 acres of conservation land and 388,000 acres of land as Development Focus Areas (DFAs) targeted for renewable energy development, within which the Oberon site is located. The DRECP LUPA estimated that the 388,000 acres of DFAs would accommodate 27,000 megawatts (MW) of generation, which was defined based on the 50% California Renewable Portfolio Standard (RPS) established under Senate Bill (SB) 350 in 2015. The DRECP Record of Decision (ROD) designated DFAs and BLM has a specific DRECP Objective to facilitate the development of renewable energy while also conserving millions of acres of the California desert.

Assuming solar generation at 7 acres per MW (the current average productivity of solar panels), 189,000 acres would be needed to generate 27,000 MW. This is 49% of the available lands designated as DFA in the DRECP LUPA ROD.

The East Riverside DFA is an area that BLM identified for potential renewable energy development under DRECP LUPA and renewable energy development has been concentrated in this target area. The East Riverside DFA (covering nearly 148,000 acres, or about 38% of total DFA land in the California Desert Conservation Area [CDCA] Planning Area) is the most economic for solar development, which is evident based on the large number of solar generation projects and applications in that area. Development within most other DFAs is severely limited by proximity to transmission with capacity to carry additional power. Overall, CMA/mitigation constraints have resulted in less than half of the DFA land being available for development, which will make it challenging for California to meet its RPS targets and BLM's DRECP renewable energy objectives.

C1-3 The commenter states that the BLM Environmental Assessment (EA) is benefiting from a streamlined process under the National Environmental Policy Act (NEPA) process yet is setting a dangerous precedent for future projects by not complying with all of the DRECP CMAs. The adequacy of the BLM EA is outside of the scope of the CEQA process. For informational purposes only, please see General Response GR-5, which discusses the adequacy of the environmental documents. General Response GR-1 discusses the project-specific LUPA and GR-2 discusses Development Focus Areas (DFAs) identified in the DRECP LUPA, including the East Riverside DFA in which the Oberon Project is located.

C1-4 The commenter expressed support for energy conservation, efficiency, and ramping up renewable energy and storage at load centers, and states that BLM has an obligation to protect our public lands from undue degradation by ensuring renewable development facilitated by DRECP respects its conservation framework.

The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. Section 1761(a)(4)) establishes the authority and provides guidance for how public lands are to be managed by the BLM. BLM's multiple use mandate to manage public lands based on multiple use and sustained yield as the commenter suggests is outside of the scope of CEQA and the RWQCB's jurisdiction; however, the RWQCB decisionmakers will consider compliance with DRECP CMAs as they consider the Land Use Plan Compliant Alternative and Resource Avoidance Alternative, both of which would comply with the DRECP CMAs and have been analyzed in EIR Chapter 4 (Alternatives).

Distributed solar technology, which would provide renewable energy at load centers as recommended by the commenter, was considered but eliminated from detailed analysis in the EIR Section 4.4.4 (Alternative Solar Technologies). Achieving federal climate change goals and the State's

mandated Renewable Portfolio Standard (RPS) program goals require incentive programs and energy generation from a mix of renewable sources and not merely one to the exclusion of others. Various agency publications identify the need to increase renewable generating capacity from distributed generation (e.g., rooftop solar) and utility-scale sources. While distributed generation could be an alternative for any individual project, it would not, by itself achieve the RPS goals.

The EIR (Section 4.4.4) describes the challenges associated with the implementation of a distributed solar technology include widely varying codes, standards, and fees; environmental requirements and permitting concerns; interconnection and integration of distributed generation; and inefficiencies. Furthermore, the significant barriers to consolidating power generated through a distributed network of sites would make it unlikely that the project could achieve its storage goals and provide energy when the sun is not shining. As a result, a distributed solar (rooftop) technology was eliminated from detailed analysis as an alternative to the proposed project.

Likewise, EIR Section 4.4.6 (Conservation and Demand-Side Management) considers and eliminates Conservation and Demand-Side Management from consideration in the Draft EIR, because this alternative is not technically feasible as a replacement for the proposed project because California utilities are already required to achieve aggressive energy efficiency goals. Section 4.4.6 of the Draft EIR goes on to state that “[e]ven if additional energy efficiency beyond that occurring in the baseline condition may be technically possible, it is speculative to assume that energy efficiency alone would achieve the necessary greenhouse gas reduction goals. With population growth and increasing demand for energy, conservation and demand management alone is not sufficient to address all of California’s energy needs. Furthermore, conservation and demand-side management would not by themselves provide the renewable energy required to meet the California renewable energy goals, a stated project objective. Moreover, affecting consumer choice to the extent that would be necessary for a conservation and demand-side management solution would be beyond the BLM, Regional Water Quality Control Board, and/or the Applicant’s control. For those reasons, conservation and demand-side management has been eliminated from detailed analysis.”

Responses to Comment Set C2 – Thomas Budlong

C2-1 The commenter expresses concern about impacts to desert dry wash (microphyll) woodland. EIR Section 3.4 (Biological Resources) discusses that desert dry wash woodland is important, because it supports greater food, nesting, cover, and wildlife diversity than the surrounding desert.

Within the 5,000-acre application area, the proposed project has been designed to avoid microphyll woodland to the maximum extent feasible resulting in less than 90 acres of direct impacts to microphyll woodland across the 2,700-acre development footprint. These direct impacts would be compensated at a 5:1 ratio as part of a comprehensive 6,200-acre offsite habitat compensation package. Plus, the Applicant has proposed additional mitigation for impacts to the 200-foot buffer area by solar panels (138 acres) at a 5:1 ratio. Therefore, impacts to microphyll woodland and other sensitive habitats are addressed through both onsite project design and mitigation (see Mitigation Measure [MM] BIO-1 through MM BIO-14 in EIR Section 3.4.7) and an offsite mitigation compensation package discussed in EIR Section 2.2.1.3 (see also POD Appendix AA on BLM's ePlanning website[13]).

C2-2 The commenter has included the form letter submitted as Comment Set C1. Please refer to Responses to Comments C1-1 through C1-4 for specific responses to concerns raised in the letter.

Responses to Comment Set C3 – Katie Quint

C3-1 The commenter states that BLM has a responsibility to the wildlife and resources that rely on our public lands under your care and management. BLM's responsibility for management of public lands is outside of the scope of CEQA and the RWQCB's jurisdiction; however, the following information has been included for informational purposes only.

The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. Section 1761(a)(4)) establishes the authority and provides guidance for how public lands are to be managed by the BLM. Furthermore, it defines BLM's mission to manage public lands on the basis of multiple use and sustained yield. Energy development is one of those uses. That is, BLM has a responsibility under the FLPMA to act as a steward for the development, conservation, and protection of federal lands, by implementing multiple use principles and recognizing, among other values, the Nation's need for development of renewable energy from the public lands.

C3-2 The commenter has included the form letter submitted as Comment Set C1. Please refer to Responses to Comments C1-1 through C1-4 for specific responses to concerns raised in the letter.

Responses to Comment Set C4 – Steve Bardwell

C4-1 The commenter's support for renewable energy and concern for the protection of biological resources, including microphyll woodland, are noted.

[13] https://go.usa.gov/xfdH5

Please see Response to Comment C2-1 for a discussion about the EIR's stated importance of microphyll woodland.

The commenter also suggests placement of renewable energy resources within the built environment to avoid transmission loss over long distances. The project is located with a DRECP Development Focus Area (DFA) identified for renewable energy generation and nearby to a regional substation and transmission lines with available capacity. See Response to Comment C1-4 regarding consideration of distributed solar as an alternative to the Oberon Project.

C4-2 The commenter has included the form letter submitted as Comment Set C1. Please refer to Responses to Comments C1-1 through C1-4 for specific responses to concerns raised in the letter.

Responses to Comment Set C5 – Robert Taylor

C5-1 The commenter suggests that the Oberon Project should comply with the DRECP LUPA and not to set a precedence for future projects to bend the rules.

The commenter's request for compliance with the DRECP LUPA is noted. The Resource Avoidance Alternative and the Land Use Plan Compliant Alternative were developed in response to concerns about compliance with the DRECP CMAs. Both alternatives would comply with all DRECP CMAs and were fully analyzed in Chapter 4 of the Draft EIR. Please see General Response GR-1, which discusses the precedence for project-specific LUPAs to the California Desert Conservation Area (CDCA) plan, as amended.

C5-2 The commenter has included the form letter submitted as Comment Set C1. Please refer to Responses to Comments C1-1 through C1-4 for specific responses to concerns raised in the letter.

Responses to Comment Set C6 – Robin Kobaly

C6-1 The commenter expresses concern about impacts to microphyll woodlands in the desert, including impacts to carbon sequestration at depths down to groundwater with removal of the deep-rooted, long-lived trees. The commenter supports protection of microphyll woodland and compliance with the DRECP CMAs.

Please refer to General Response GR-1 regarding impacts to microphyll woodland and its buffer. The commenter's support for compliance with the DRECP CMAs is noted. The Resource Avoidance Alternative and the Land Use Plan Compliant Alternative were developed in response to concerns about compliance with the DRECP CMAs and proposed LUPA. Both

alternatives would comply with all DRECP CMAs and were fully analyzed in Chapter 4 of the Draft EIR.

The discussion on the potential loss of carbon sequestration due to land use conversion is found in Section 3.8.5 (Greenhouse Gas Emissions) of the Draft EIR. The project includes biological resources measures for minimizing vegetation and habitat impacts (see EIR Section 3.4.7, Mitigation Measures), integrated weed management, and preventing the loss of desert pavement, which promotes maintenance of native plants and soils. These practices would minimize the potential loss of carbon sequestration due to land use conversion.

Also, text has been added to under the discussion of distributed solar in Final EIR Section 4.4.4 to state that "[a]lternatives to the project that involve rooftop installation of solar generating facilities would avoid the loss of carbon sequestration that would otherwise occur due to the land use change related to construction and operation of the project development in desert habitat."

C6-2 The commenter has included the form letter submitted as Comment Set C1. Please refer to Responses to Comments C1-1 through C1-4 for specific responses to concerns raised in the letter.

D.4.4 Responses to Comments from Tribal Governments

Responses to Comment Set D1 – Colorado River Indian Tribes

D1-1 The commenter expresses concern about the removal of artifacts from the project area and requests that all cultural resources be avoided if feasible. The commenter's concerns are consistent with the MM CUL-10 (Flag and Avoid) which requires the avoidance of cultural resources and MM CUL-11 (Reburial of Artifacts) which requires the reburial of artifacts collected from archaeological sites when they cannot be avoided.

The commenter also requests that ethnographic studies and archaeological surveys of the project area and adjacent areas be conducted so as to facilitate the protection of prehistoric resources. An ethnographic study and cultural resources surveys of the project area were conducted, and the results are presented in EIR Section 3.5 (Cultural Resources and Tribal Cultural Resources). As requested by the commenter, CRIT tribal monitors participated in the cultural resource surveys.

D1-2 The commenter states that the Draft EIR fails to inform decisionmakers and the public of the environmental consequences of the proposed action or identify ways to mitigate or avoid those impacts.

The efforts to identify cultural resources and tribal cultural resources that might be affected by the project as well as 13 mitigation measures developed in consultation with tribes are presented in EIR Section 3.5 (Cultural Resources and Tribal Cultural Resources). Therefore, potential direct, indirect, and cumulative impacts to these resources have been adequately analyzed as part of the impact analysis in Section 3.5 of the Draft EIR.

D1-3 The commenter notes that the project area is located in a landscape that is important to members of CRIT, and that the construction of the project would damage and destroy resources that are part of this landscape.

The commenter's concerns are consistent with the Draft EIR Section 3.5 (Cultural Resources and Tribal Cultural Resources) which discusses the prehistoric landscape described by the commenter, and states that the Prehistoric Trails Network Cultural Landscape/Historic District (PTNCL) is a CRHR-eligible districts that encompass the CEQA Area of Direct and Indirect Impacts. While 13 mitigation measures have been developed to address potential impacts, the Draft EIR acknowledges that some impacts would remain significant and unavoidable even with implementation of the mitigation measures.

D1-4 The commenter states that artifacts that are collected from archaeological sites during development are stored in distant locations where CRIT members

are unable to view them. The commenter's concerns are noted. MM CUL-11 (Reburial of Artifacts) was developed to address this concern and specifically requires the reburial of artifacts associated with prehistoric resources as near as possible to the original location and be protected from future impacts with BLM's consent.

The commenter notes that the traditional value of cultural resources is associated with maintaining connectivity between resources, which requires tribal members to have physical access to these resources. The commenter also requests that the RWQCB assists CRIT with communicating the importance of these issues with BLM. The comment is noted.

D1-5 The commenter states that the Draft EIR concludes that cultural resources are only important for their data potential, and that Tribal Cultural Resources were not analyzed as an independent category.

EIR Section 3.5 (Cultural Resources and Tribal Cultural Resources) concludes that all of the 51 prehistoric resources in the CEQA Area of Direct Impacts were identified as Tribal Cultural Resources as part of AB 52 consultation, and therefore are individually eligible for the CRHR and are contributors to a large prehistoric landscape that encompasses the project area, the PTNCL historic district. While these resources are considered important for their data potential (Criterion 4), these resources are also considered important for their broad contributions to the unique historic events that shape Native American understanding of their ancestor's lifeways, and the deep oral tradition that is understood to be related to their ancestors (Criterion 1). Mitigation Measures (MM) CUL-11 (Reburial of Artifacts), MM CUL-12 (Historic District for Prehistoric Rock Rings) and MM TCR-1 (Traditional Knowledge Workshops), were developed during AB 52 consultation specifically to address impacts to Tribal Cultural Resources that are not associated with data potential.

The commenter also notes that CRIT's Mohave members consider isolated artifacts to be important resources, while data-driven analyses tend to deemphasize the importance of these resources. MM CUL-11 (Reburial of Artifacts), was developed to address this concern. This measure requires that all prehistoric isolated artifacts and all artifacts associated with prehistoric resources that are not considered eligible for the NRHP that will be directly impacted by construction will be collected by archaeological and Native American monitors, and reburied to the extent allowed by BLM. Section 3.5.6 of the EIR was revised to clarify that impacts to isolated prehistoric artifacts would contribute a small but measurable way to the destruction of the PTNCL as a whole, and would be addressed by MMs CUL-11 and TCR-1.

D1-6 The commenter states that the Draft EIR does not identify any cultural landscapes in the vicinity of the project.

EIR Section 3.5 (Cultural Resources and Tribal Cultural Resources) discusses the prehistoric landscape described by the commenter, and states that the Prehistoric Trails Network Cultural Landscape/Historic District (PTNCL) is a CRHR-eligible districts that encompass the CEQA Area of Direct and Indirect Impacts. Furthermore, the EIR concludes that all 51 prehistoric resources in the project area are contributors to this landscape, and that they will be impacted by the project.

D1-7 The commenter notes that the project is within the boundaries of cultural landscapes identified as part of previous projects and that prehistoric sites that will be impacted by the project are contributors to those landscapes.

Please refer to Response to Comment D1-6.

D1-8 The commenter states that damage to prehistoric archaeological sites that are contributors to landscapes and removal of isolated artifacts constitutes a significant impact.

Please refer to Responses to Comments D1-5 and D1-6.

D1-9 The commenter is concerned that the Draft EIR only analyzes impacts to resources that are eligible for the CRHR, and as such, does not consider impacts to isolated artifacts.

Please refer to Response to Comment D1-5.

D1-10 The commenter is concerned that isolated artifacts are not analyzed in the EIR because they are not considered individually eligible for the CRHR.

Please see Response to Comment D1-5.

D1-11 The commenter states that the Draft EIR does not analyze the impacts on any of the Areas of Critical Environmental Concern (ACEC) and then states that it analyzes the impacts on ACECs as recreational areas, despite the fact that many ACECs were designated because of their cultural resource importance. Given that part of the project would be located in the Chuckwalla ACEC, the project will impact resources, including areas that are sacred to area tribes grounded in an undisturbed cultural landscape.

Draft EIR Section 3.11 (Land Use and Planning) describes that the project would be located in the Chuckwalla ACEC (Section 3.11.1) and goes on to state that the California Desert Conservation Area (CDCA) plan identifies ACECs as special management areas where attention is required to protect important historic, cultural, scenic, biological, or other natural resources.

Impact LU-1 in Section 3.11.5 explains that there is no feasible route to interconnect with the Red Bluff Substation, which is located within the Chuckwalla ACEC, without entering the ACEC. The project and the gen-tie line would be consistent with the CDCA as amended by the DRECP LUPA, and its CMAs for the ground disturbance within the ACEC. Since this land is specifically designated for development, such as the proposed project, there would be no conflicts with BLM land use, and the action would not conflict with federal policies, regulations, and goals.

Although the project would comply with BLM policies regarding ACECs from the land use perspective, impacts within the ACECs to specific resources, including biological, cultural, and recreational resources are discussed within their respective issue areas in EIR Chapter 3.

Cultural resources surveys were performed to identify known cultural resources in the project area of potential effects (APE), which includes the gen-tie line corridor that would cross into the Chuckwalla ACEC. EIR Section 3.5 (Cultural Resources and Tribal Cultural Resources) discusses the prehistoric landscape described by the commenter, and states that the Prehistoric Trails Network Cultural Landscape/Historic District (PTNCL) is a CRHR-eligible district that encompass the CEQA Area of Direct and Indirect Impacts. Notable resources in the 1-mile buffer beyond the CEQA Area of Direct Impacts include the North Chuckwalla Mountains Petroglyph National Register District (CA-RIV-01383) and segments of the Coco-Maricopa/Halchidoma Trail (CA-RIV-0053T), which have been determined individually eligible for the NRHP and CRHR and are also contributors to the PTNCL.

BLM-administered ACECs are not considered a cultural resource under CEQA; however, the EIR analyzes resources within them individually.

Furthermore, EIR Section 3.5.6 (Cumulative Impacts) concludes that the effects of the proposed project or an alternative when combined with impacts from past, present, and reasonably foreseeable projects, contribute to the cumulatively considerable adverse impacts to two cultural landscapes/historic districts in eastern Riverside County. The commenter's concerns are consistent with the Draft EIR, which states that "[t]he addition of more industrial components to the Chuckwalla Valley contributes in a small but measurable way to a visual intrusion upon the setting of the PTNCL, a defining characteristic of the resource under Criterion 1. This visual intrusion compromises the integrity of the resource. Cumulative impacts to the PTNCL as a result of visual intrusion would be addressed with implementation of Mitigation Measure (MM) CUL-11 (Reburial of Artifacts), MM CUL-12 (Historic District for Prehistoric Rock Rings) and MM TCR-1 (Traditional Knowledge

Workshops), which would reduce the contribution of the project but the cumulative impact would remain significant."

More generally, it is worth noting that ACECs are designated by BLM pursuant to its land management authority under FLPMA. They carve out the necessary area for protection and impose appropriate use restrictions to ensure that protection. The specific ACECs at issue here were furthermore adopted or refined on a landscape level in the DRECP LUPA, which contemplated renewable energy development in neighboring DFAs.

Therefore, potential direct, indirect, and cumulative impacts to prehistoric resources and the cultural landscape within the Chuckwalla ACEC have been adequately analyzed as part of the impact analysis in Section 3.5 of the EIR and no revisions are necessary in the Final EIR in response to this comment.

D1-12 The commenter is concerned that impacts to cultural resources as a result of increased erosion, has not been analyzed.

The Geoarchaeological Assessment[14] conclude that 14 percent of the project area consists of Quaternary Intermediate Alluvium which are very stable and have been subject to little or no erosion for thousands of years. Twenty-three percent of the project area consists of low-to-moderate energy sheetflood deposits composed of relatively young alluvium. Sixty-three percent of the project area consists of younger alluvium primarily formed in moderate-to-high energy depositional environments. Impacts to cultural resources as a result of erosion have primarily been addressed through project design, which allows existing washes to flow through the project area, without redirecting the water flow, as was the case with the Genesis Solar Energy Project. Further, EIR Section 3.7 (Geology, Soils, and Mineral Resources) provides that the project site is nearly level to gently sloping, so no massive grading would be request; however, site preparation would still expose soil and increase the potential for wind and water erosion (see Impact GS-2). MM HWQ-1 (Drainage Erosion and Sedimentation Control Plan), MM HWQ-4 (Project Drainage Plan), and MM BIO-5 (Vegetation Resources Management Plan) would mitigate potential erosion impacts to less than significant.

D1-13 The commenter states that the Draft EIR understates the nature of the cumulative impacts associated with the project because the analysis does not identify how many resources were ultimately impacted during each project during construction.

[14] Bengston, Ginny and Megan S. Fuller. 2021. Arica, Victory Pass, and Oberon Ethnographic Assessment. Prepared by Applied Cultural Ecology, LLC. Prepared for Aspen Environmental Group and US Department of the Interior, Bureau of Land Management, Palm Springs, California.

EIR Section 3.5.6 (Cumulative Impacts) concludes that the effects of the proposed project or an alternative when combined with impacts from past, present, and reasonably foreseeable projects, contribute to the cumulatively considerable adverse impacts to the prehistoric landscape PTNCL — which includes all prehistoric resources in the project area as well as many of the prehistoric resources in the nearby projects included in the cumulative impacts analysis. These cumulative impacts to the PTNCL would be addressed with implementation of Mitigation Measure (MM) CUL-11 (Reburial of Artifacts), MM CUL-12 (Historic District for Prehistoric Rock Rings) and MM TCR-1 (Traditional Knowledge Workshops), which would reduce the contribution of the project but the cumulative impact would remain significant.

Note that CEQA Guidelines (Section 15130[b]) states that the cumulative discussion need not provide as great detail as is provided for the effects attributable to the project alone.

Therefore, potential direct, indirect, and cumulative impacts to prehistoric resources and the cultural landscape have been adequately analyzed as part of the impact analysis in Section 3.5 of the Draft EIR.

D1-14 The commenter is concerned that cumulative impacts associated with the destruction or movement of isolated artifacts are not analyzed in the EIR.

The EIR has been revised to clarify how impacts to isolated artifacts have been incorporated into the cumulative impacts analysis. Please also refer to Responses to Comments D1-5 and D1-13.

D1-15 The commenter states that the Draft EIR does not adequately mitigate for significant impacts to cultural resources through the preferred method of avoidance, including isolated artifacts and other resources that are not eligible for the CRHR.

MM CUL-10 (Flag and Avoid) requires the avoidance of specific prehistoric CRHR-eligible resources. While the EIR does not require the avoidance of isolated artifacts, impacts to those resources are addressed by CUL-11 (Reburial of Artifacts).

In addition, the commenter requests revisions to the mitigation measures to specify that culturally affiliated tribes will be consulted before decisions about the eligibility or treatment of newly identified resources. MM CUL-2 (Prepare and Implement a Plan for Archaeological Monitoring, Tribal Participation, Post-Review Discovery, and Unanticipated Effects), MM CUL-6 (Post-Review Discovery and Unanticipated Effects), MM CUL-9 (Inadvertent Discovery of Human Remains) have been revised to clarify that AB 52 consulting tribes will be consulted as part of decisions about CRHR-eligibility and treatment of resources.

D1-16 The commenter requests revisions to the MM CUL-1 to clarify when tribal monitors shall be required to be present and how the monitors will be notified of construction schedules.

MM CUL-5 (Native American Monitoring) requires native American monitoring during ground disturbing activities. MM CUL-2 (Prepare and Implement a Plan for Archaeological Monitoring, Tribal Participation, Post-Review Discovery, and Unanticipated Effects) requires that the Monitoring Plan will specify how tribal monitors will schedule their work and coordinate with construction staff and archaeological monitors. MM CUL-2 has been clarified to include AB 52 consulting tribes in plan participation; no revisions to MM CUL-1 are required.

D1-17 The commenter requests revisions to MM CUL-2 to require that the CRS consult with affiliated tribes during the development of the Plans required by that measure.

RWQCB will conduct government-to-government consultation with any AB 52 consulting tribes, including during preparation of a Plan for Archaeological Monitoring and Tribal Participation. MM CUL-2 has been clarified to include AB 52 consulting tribes in this plan participation.

D1-18 The commenter requests revisions to MM CUL-2 (Prepare and Implement a Plan for Archaeological Monitoring, Tribal Participation, Post-Review Discovery, and Unanticipated Effects) to make it clear that tribal monitors have the authority to halt ground disturbance if a cultural resource is found during construction.

The requested language is already included in MM CUL-5 (Native American Monitoring) which requires that: “[i]n conjunction with the Archaeological Monitor(s), the Native American Monitor(s) shall have the authority to temporarily divert, redirect or halt the ground disturbance activities to allow identification, evaluation, and potential recovery of cultural resources.” Multiple other mitigation measures have been clarified that RWQCB will consult with AB 52 consulting tribes regarding the evaluation and treatment of newly identified resources. No additional revisions to MM CUL-2 are necessary.

D1-19 The commenter requests revisions to MM CUL-2 (Prepare and Implement a Plan for Archaeological Monitoring, Tribal Participation, Post-Review Discovery, and Unanticipated Effects) to remove discussions of resource removal and to replace them with language emphasizing reburial.

MM CUL-11 (Reburial of Artifacts) was developed in order to make it clear that RWQCB supports reburial as directed by culturally affiliated tribes. However, the Oberon Project is entirely located on BLM-administered public land, and the RWQCB has no jurisdiction over BLM. MM CUL-11 was written

to acknowledge this distinction, requiring reburial "if BLM allows." In addition, as more than one tribe has advocated for reburial, the RWQCB will consider the requests of all AB 52 consulting tribes when making decisions about where, how and who will participate in any reburial activities, as allowed by BLM. No additional revisions to MM CUL-2 are necessary.

D1-20 The commenter requests revisions to MM CUL-3 (Develop and Implement Cultural Resources Environmental Awareness Training) to require tribal input during the preparation of the Environmental Awareness Training.

MM CUL-3 was revised to clarify that tribal input shall be incorporated into the Environmental Awareness Training Program.

D1-21 The commenter requests revisions to MM CUL-4 (Archaeological Monitoring) that clarify the relationship between the archaeological monitor and the tribal monitor. In addition, the commenter requests that this measure be revised to state that RWQCB will consult with culturally affiliated tribes in the event of an unanticipated discovery during construction.

MM CUL-2 (Prepare and Implement a Plan for Archaeological Monitoring, Tribal Participation, Post-Review Discovery, and Unanticipated Effects) requires that any Plans developed for the project will outline the responsibilities between project construction management and the mitigation and monitoring team. The mitigation and monitoring team includes both archaeological monitors and the tribal monitors.

Multiple other mitigation measures specify that RWQCB will consult with AB 52 consulting tribes regarding the evaluation and treatment of newly identified resources, including MM CUL-2. No revisions are necessary in the Final EIR in response to this comment.

D1-22 The commenter requests revisions to MM CUL-4 (Archaeological Monitoring) to prohibit the CRS from decreasing the monitoring effort.

Any decisions about monitoring intensity will ultimately be made by BLM and RWQCB. The CRS will make recommendations and will implement the decisions of the regulatory agencies. No revisions to MM CUL-4 are necessary.

D1-23 The commenter requests revisions to MM CUL-5 (Native American Monitoring) to state that a tribal monitor shall be present during all ground disturbing activities.

The requested language is already included in MM CUL-5 (Native American Monitoring). Some methods, such as pile or stake driving, are not included in the measure because these methods do not result in sediments that can be examined by a monitor. Others – such as blasting and the use of high-

pressure water – are not included in the measure because they are not proposed in the project description. No revisions to MM CUL-5 are necessary.

D1-24 The commenter requests revisions to MM CUL-5 (Native American Monitoring) to clearly define the term “Native American Monitor.”

The requested revisions to MM CUL-5 define a Native American Monitor as an individual who is presented as a representative of a tribal government for one of the AB 52 consulting tribes for the Oberon Project and who has received specialized training approved by that tribal government to serve as a monitor.

D1-25 The commenter requests revisions to MM CUL-5 (Native American Monitoring) to state that the tribal monitor with have the authority to temporarily halt construction.

Please refer to Response to Comment D1-18.

D1-26 The commenter requests that MM CUL-5 (Native American Monitoring) be revised to state that RWQCB will consult with culturally affiliated tribes, including CRIT, about cultural resource treatment decisions in the event of an unanticipated discovery during construction. In addition, the commenter requests that the timeline for notification of discoveries be specified.

Please refer to Responses to Comments D1-18 and D1-21.

D1-27 The commenter requests that MM CUL-6 (Post-Review Discovery and Unanticipated Effects) be revised to state that RWQCB will consult with culturally affiliated tribes, including CRIT, in the event of an unanticipated discovery during construction.

Please refer to Responses to Comments D1-21.

D1-28 The commenter requests that MM CUL-7 (Cultural Resources Monitoring Report and Cultural Resources Report) be revised to state that Cultural Resources Monitoring Report and any other cultural resources reports generated for the Oberon Project be provided to CRIT and other culturally affiliated tribes.

The Oberon Project is entirely located on BLM-administered public land. Cultural Resources Report contain confidential information about resources that are managed by BLM. As such, all cultural resource reports for the Oberon Project will be disseminated by BLM.

D1-29 The commenter requests that MM CUL-8 (Long-Term Management Plan) be revised to clarify how CRIT and other culturally affiliated tribes be notified about the opportunity to participate in the development of the LTMP.

MM CUL-8 (Long-Term Management Plan) has been revised to address this comment. The new text states that RWQCB will provide the draft plan to AB 52 consulting tribes for review and comment.

D1-30 The commenter requests that MM CUL-8 (Long-Term Management Plan) be revised to state that the LTMP will be conducted in compliance with AB 52 consulting tribal government-to-government policies.

Please refer to response to comment D1-29.

D1-31 The commenter requests that MM CUL-10 MM (Flag and Avoid) be revised to state that the archaeological staff shall re-establish the boundary of each site to be avoided with a tribal monitor.

RWQCB has no objection to the participation of tribal monitors while archaeological site boundaries are being re-established. However, this task is intended to visually mark known resource boundaries so that those resources can be adequately avoided. Archaeological monitors have specific specialized training in this sort of task, while tribal monitors may not. As such, this effort is most appropriately led by archaeological monitors. No revisions to MM CUL-10 are necessary.

D1-32 The commenter requests that MM CUL-10 MM (Flag and Avoid) be revised to clarify which monitor is tasked with enforcing avoidance of flagged areas.

MM CUL-10 MM (Flag and Avoid) has been revised to state that an archaeological monitor shall enforce avoidance of flagged areas.

D1-33 The commenter requests that MM CUL-10 MM (Flag and Avoid) be revised to provide tribal monitors with the authority to temporarily halt construction in the event of an inadvertent discovery during construction.

Please refer to Response to Comment D1-18.

D1-34 The commenter requests that MM CUL-11 (Reburial of Artifacts) be revised to state that CRIT has the authority to make the final decision regarding the reburial of artifacts.

As more than one tribe has advocated for reburial, the RWQCB will consider the requests of all AB 52 consulting tribes when making decisions about where, how and who will participate in any reburial activities. No revisions to MM CUL-11 are necessary.

D1-35 The commenter requests that MM TCR-1 (Traditional Knowledge Workshops) be revised to state that all culturally affiliated tribes, including CRIT, will be involved in developing workshops or provide another opportunity for other tribes to develop and host a separate workshop.

MM TCR-1 (Traditional Knowledge Workshops) has been revised to state that all AB 52 consulting tribes can participate in the traditional knowledge workshops.

D1-36 The comment notes that the aesthetics impacts analysis ignores the resources' cultural significance.

Additional text has been added to the Aesthetics section (Subsection 3.2.1.3 Viewshed and Potentially Affected Viewers) to acknowledge the cultural and spiritual significance of the Chuckwalla Valley and surrounding slopes and ridgelines to the Colorado River Indian Tribes and are, therefore, included in the assessment that *"…the introduction of new features exhibiting an industrial character would typically be perceived as an adverse visual change"* (last sentence of Subsection 3.2.1.3). Additionally, the impact significance with respect to cultural values is now addressed in the consistency analysis of Riverside County General Plan Land Use Element Policy LU 9.1 (Table 3.2-2 Consistency with Regulatory Plans, Policies, and Standards).

D1-37 The comment notes that the consistency analysis for Policy LU 9.1 doesn't consider the Tribes' ancestral homelands.

See Response to Comment D1-36 above with respect to the consistency determination presented for Riverside County Land Use Policy LU 9.1 and its relevance to visual impacts on cultural values.

The commenter also states that the project would disrupt "physical access" to the Tribe's ancestral lands. RWQCB acknowledges that the construction of the proposed project would disrupt physical access to some resources in the project area, as a result of their destruction and project security fencing. However, tribal representatives have indicated that some part of this physical connection might be retained if the artifacts are collected, moved, and reburied prior or during construction. MM CUL-11 (Reburial of Artifacts) was developed to address this concern.

D1-38 The comment acknowledges that the Aesthetics section concludes that cumulative impacts on visual resources would be significant and unavoidable; however, the EIR ignores "lower footprint alternatives" and continues to recommend the proposed project.

With respect to the comment's reference to alternatives, the reader is referred to the EIR section addressing Alternatives (Chapter 4), which fully analyzes two reduced footprint alternatives (Land Use Plan Compliant Alternative and Resource Avoidance Alternative) as well as the No Project Alternative.

EIR Section 4.3.2 (Ability to Meet Project Objectives) concludes that the No Project Alternative would not meet any of the Applicant's objectives for the

project and would not contribute to achieving any of the State's energy generation goals or GHG reduction goals under Senate Bill 350, Senate Bill 100, and AB 32. The Land Use Plan Compliant Alternative and Resource Avoidance would meet the project's objectives; however, they would achieve these objectives, which include the provision of environmental benefits, to a lesser extent compared with the proposed project. For these reasons, EIR Section 4.3.6 concludes that the proposed project is preferred.

However, all of the alternatives fully considered in the EIR may be considered for approval by the RWQCB and the CEQA environmental document is just one aspect of the administrative record that the RWQCB decisionmakers will consider in its decision the project.

D1-39 The commenter states that the EIR should have discussed CDFW's permitting/consultation process and any potential mitigation or project modifications that may be required by the agency.

The Oberon Project is entirely located on BLM-administered public land. Likewise, as explained in Draft EIR Section 1.1, the project is also under the jurisdiction of the Colorado River Basin Regional Water Quality Control Board (RWQCB or Regional Water Board), who will issue Waste Discharge Requirements (WDRs) for the discharge of dredged or fill materials to waters of the State. The RWQCB is the lead agency responsible for environmental review of the project in compliance with the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq. CDFW is a Trustee Agency, as well as a Responsible Agency for the project under CEQA[15]. The RWQCB and BLM have been coordinating with CDFW and USFWS throughout the CEQA and NEPA processes. CDFW submitted comments on the Draft EIR in Comment Set A1.

In addition to the discussion in EIR Section 3.4 (Biological Resources) that is quoted by the commenter, an explanation and list of required permits by federal, state and local agencies is included in Table 1-1 in Section 1.7 (Agencies Relying on the EIR; Anticipated Permits and Approvals) of the Draft EIR, which include a Lake and Streambed Alteration Agreement and an

[15] A Responsible Agency under CEQA is a public agency with some discretionary authority over a project or a portion of it, but which has not been designated the Lead Agency (CEQA Guidelines Section 15381). Because Responsible Agencies will take discretionary actions regarding a project, they are also required to comply with CEQA. CEQA allows Responsible Agencies to rely on a CEQA document prepared by the Lead Agency to meet their CEQA compliance requirements. However, Responsible Agencies must independently review and approve the CEQA document, and not rely automatically on the Lead Agency's judgments. According to CEQA, a Responsible Agency complies with CEQA "by considering the EIR or negative declaration prepared by the Lead Agency and by reaching its own conclusions on whether and how to approve the project involved" (CEQA Guidelines section 15096(a)).

Incidental Take Permit from CDFW for desert tortoise. See also Responses to Comments B3-15 and B3-17, which discuss mitigation and CDFW's permitting authority.

In Response to Comment B3-15, the text in Section 2.2.2.1 in the Final EIR has been revised to state that construction would start pending project approval and issuance of applicable permits and notices to proceed by BLM and the RWQCB. CDFW permits (LSAA and ITP) would be required after EIR certification and CEQA approval by the RWQCB and prior to issuance of a notice to proceed to begin installation of exclusion fencing described on page 2-12 of the Draft EIR. Any permit conditions required by CDFW, or other agencies would be incorporated into the project's Mitigation Monitoring and Reporting Program for implementation upon permit approval. Accordingly, the Draft EIR adequately described the permits and approvals required for the Oberon Project and no additional revisions have been made in response to this comment.

D1-40 The commenter states that the Draft EIR does not adequately explain, analyze, or mitigate the project's violation of the setback requirements and a reduced setback would have a significant impact.

Please refer to General Response GR-1 regarding the level of impact to microphyll woodland and compliance with DRECP CMAs, including the 200-foot setback. EIR Section 3.4.5, under Impact BIO-2, discusses impacts to microphyll woodlands and buffer.

D1-41 The commenter states that the proposed mitigation measures do not adequately address impacts to desert dry wash woodland, and that off-site compensation does not mitigate the impacts to woodlands on the site. Because acquisition of off-site compensation lands would be in addition to avoidance/minimization through project design, compliance with DRECP CMAs, and implementation of project-specific mitigation measures, the function of the desert dry wash woodland would be maintained on the project site and additional habitat to support wildlife movement would be preserved in the region, within the same desert tortoise critical habitat unit. The EIR concludes that avoidance of approximately 1,200 acres of desert dry wash woodland corridors in the project area and preservation of approximately 450 acres of off-site habitat would reduce and offset direct impacts to nearly 90 acres of desert dry wash woodland.

D1-42 The commenter states that the Draft EIR does not identify and analyze impacts to culturally important plants and animals.

RWQCB acknowledges that plants and animals can be considered part of landscapes that are identified as Tribal Cultural Resources. However,

concern about specific plants and animals was not expressed during AB 52 consultation for this project. As such the Draft EIR does not discuss plants and animals in EIR Section 3.5 (Cultural Resources and Tribal Cultural Resources).

D1-43 The commenter states that piecemeal mitigation measures proposed in the Draft EIR will not adequately alleviate the stress of large-scale renewable energy projects on sensitive desert species, and that cumulative and compounding impacts must be discussed.

Cumulative impacts to biological resources, in consideration of past, present, and future projects in the area, are discussed in Section 3.4.6.

D1-44 The commenter describes the California law that requires local agencies to consider issues of fairness and environmental justice in the planning process. The commenter states that the Draft EIR does not include any analysis or mitigation related to the project's environmental justice impacts. The commenter is specifically concerned about the tangible cultural resources and wholesale transformation of the ancestral homelands of Indian Tribes. The commenter is concerned that the project will provide little to no benefit to the residents of the Colorado River Indian Reservation and the profits will not benefit the community. The commenter suggested that the RWQCB and BLM adopt a mitigation measure to give employment preferences to Indians, as well as any necessary job training programs. They also suggest a mitigation measure to ensure that the project developer sources construction materials from tribal enterprises. The commenter questions whether the project will bring jobs to the area close to the Reservation, and requests that additional information is provided about the nature of the jobs related to the project that may be available for Tribal members. The commenter states that these jobs must be made available to Tribal members to ensure that some benefits of the project flow back to the disadvantaged minority community on the reservation.

The commenter's concern about Environmental Justice issues, including suggested mitigation measures to give employment preferences to Indian Tribes and ensure that project materials come from tribal enterprises is noted. MM CUL-6 (Native American Monitoring) addresses Native American monitoring during ground disturbing activities. There are currently no formal requirements or procedures to evaluate potential environmental justice impacts under CEQA. However, while not covered by CEQA, tribal consultation under Assembly Bill 52 provides for special consideration of these interests.

D1-45 The commenter states that the project's narrow purpose impedes an adequate alternatives analysis and that the Draft EIR does not give any reasons for its failure to consider an off-site alternative.

CEQA requirements for alternatives, including the CEQA Guidelines quoted by the commenter, are discussed in Section 4.1 of the Draft EIR. EIR Section 4.1 explains that "an EIR need not consider every conceivable alternative to a project. Rather, it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation. An EIR is not required to consider alternatives that are infeasible. The CEQA Guidelines state that factors that may be considered when determining the feasibility of alternatives are "site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context) and whether the proponent can reasonably acquire, control, or otherwise have access to the alternative site (or the site is already owned by the proponent)" [CEQA Guidelines Section 15126.6(f)(1)]."

Section 4.3.3 of the Draft EIR describes that the proposed project would result in significant impacts to aesthetics and cultural/tribal cultural resources, as analyzed in EIR Chapter 3. The Draft EIR fully evaluates the No Project Alternative and two reduced footprint alternatives that would comply with all DRECP Conservation and Management Actions (CMAs) and would not require a land use plan amendment. Furthermore, a TCR Avoidance Option was also analyzed that would reduce significant direct impacts to prehistoric resources that are also considered Tribal Cultural Resources.

Several alternatives were considered but eliminated from further analysis, as described in Section 4.4 of the Draft EIR. These include both federal and private land offsite alternatives in Section 4.4.1 and Section 4.4.2, respectively. An alternative that would develop the solar facility on private lands was not considered further, because it is considered speculative and infeasible based on the number of landowners whose agreement would be required to establish a reasonably consolidated amount of acreage and the fact that the Applicant does not have any site control. In addition, another site may have environmental impacts equal to or greater than the proposed site, which is surrounded by proposed and approved solar generation projects and located on BLM-administered land that is within the DRECP DFA, and thus, targeted for renewable energy development. Likewise, the Draft EIR concludes that a Federal Land Alternative would not present significant environmental advantages over the proposed project and has potential feasibility issues associated with site control.

In addition to offsite utility-scale solar PV alternatives, the Draft EIR Section 4.4 considered and eliminated a Full Build Alternative, Alternative Solar Technologies, Alternative Renewable Energy Technologies, and Conservation and Demand-Side Management, several of which would also be constructed offsite. Given the robust range of alternatives considered in EIR Chapter 4, no additional analysis is required in the Final EIR.

D1-46 The commenter states that the RWQCB must adopt the environmentally superior alternative unless it is infeasible.

As presented Section 4.3.6 of the Draft EIR and stated by the commenter, the Draft EIR concluded that the Environmentally Superior Alternative for the proposed project would be the No Project Alternative, because no substantially adverse and long-term impacts would occur to the environment under the No Project Alternative. However, the Draft EIR Section 4.3.5 also explains that the No Project Alternative would fail to meet the Applicant's objectives for the project and would not contribute to achieving any of the state or federal energy generation goals or GHG reduction goals, and thus, is not a feasible alternative to the project. This explanation regarding the infeasibility of the No Project Alternative has been added to Section 4.3.6 at the commenter's request.

A similar statement was made by the commenter about the Land Use Plan Compliant Alternative with the Prehistoric Resources/TCR Option, which Draft EIR Section 4.3.6 concluded would be the Environmentally Superior Alternative absent the No Project Alternative (CEQA Guidelines section 15126.6), since it would result in fewer impacts than the proposed project due to the smaller footprint and reduction in direct impacts namely to cultural resources that are also Tribal Cultural Resources and biological resources.

As explained in EIR Section 4.3.1, "[a]lthough this EIR identifies an environmentally superior alternative, it is possible that the decisionmakers could balance the importance of each impact area differently and reach different conclusions. In other words, the lead agency is not required to select the environmentally superior alternative. CEQA's "substantive mandate" only requires the selection of one alternative over others if that alternative is feasible, based on a list of statutory factors, and if it will avoid one or more significant effects on the environment compared to other alternatives." (CEQA Guidelines, § 15126.6, subd. (c*); Citizens for Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566 (*Goleta II*) [observing that an agency need only consider alternatives that "(1) offer substantial environmental advantages over the project proposal; and (2) ... [are capable of being] 'feasibly accomplished in a successful manner' considering the economic, environmental, social and technological factors involved"].)

A discussion of the balancing of impacts will be part of the CEQA Findings of Fact for the Oberon Project required under CEQA Guidelines section 15091 should the project be approved. (See *Los Angeles Conservancy v. City of West Hollywood* (2017) 18 Cal.App.5th 1031, 1041 ["In the context of project approval, a public agency may find that an alternative is 'infeasible' if it determines, based upon the balancing of the statutory factors, that an alternative cannot meet project objectives or '"is impractical or undesirable from a policy standpoint."'"], quoting *Cal. Native Plant Soc'y v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001 and citing *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 948-949 [upholding a decision to reject a reduced project alternative that failed to meet a project objective to "[c]reate an opportunity for synergistic mix of retail and restaurant tenants"] and *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 401, 417 [upholding an infeasibility determination where general plan amendment alternatives would conflict with the city's growth management program, which embodied policy objectives and planning goals]; *The Flanders Found. v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 621-622 ["Before a legislative body may approve a project with a significant environmental impact, it is required to make findings identifying the [s]pecific considerations that make infeasible the environmentally superior alternatives...." (internal quotation marks omitted)]; *Cal. Native Plant Soc'y*, *supra*, 177 Cal.App.4th at pp. 1007-1008 ["CEQA d[oes] not require the [agency] to choose the environmentally superior alternative. It simply required the [agency] to consider environmentally superior alternatives, explain the considerations that led it to conclude that those alternatives were infeasible, weigh those considerations against the environmental harm that the [project] would cause, and make findings that the benefits of those considerations outweighed the harm." (conc. opn. of Mihara, Acting P.J.)]; see also Pub. Resources Code, § 21081, subd. (a)(3) [explaining that an agency can approve a project with significant effects on the environment if "[s]pecific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report"].)

D1-47 The commenter stated that despite severe cumulative impacts, the agencies move forward with the proposed project, ignoring alternatives with fewer impacts.

EIR Section 5.1 describes significant and unmitigable effect of the project based on the analysis in Chapter 3. As the commenter notes, the EIR concludes that aesthetics and cultural resources have significant impacts that cannot be mitigated to a less-than-significant level. When considering other

existing and planned projects in the region, aesthetics and cultural resources also have a cumulatively considerable contribution to a significant cumulative impact.

Please see Responses to Comments D1-38 and D1-46 regarding consideration of alternatives.

D1-48 The commenter states that the Draft EIR improperly narrows the analysis of growth-inducing impacts from the project.

EIR Section 5.3 has been prepared in accordance with CEQA Guidelines section 15126.2(d). However, in response to this comment, informational text has been added to Section 5.3 (Growth Inducing Impacts) in the Final EIR to explain that installation of a solar facility and associated gen-tie line for one project is usually unlikely to trigger additional development of other projects, because the gen-tie line is normally sized to the capacity of the electric generator facility that it serves and it occupies an interconnection position at the regional substation (i.e., Red Bluff Substation). Any additional electric generator facilities would likely require their own gen-tie line and would need space to interconnect into the substation, separate from the project-specific gen-tie line.

The Oberon Project is connecting into the Red Bluff Substation at 500 kV, because there are no more interconnection positions available at the 230 kV level. As stated in EIR Section 2.1, IP Oberon, LLC, plans to collocate the Oberon gen-tie line with the proposed Easley Solar and Green Hydrogen Project gen-tie line and would utilize either the existing gen-tie structures or remaining capacity on the line. While the Applicant currently plans to collocate the lines, the Easley Project has a 2025-2026 commercial operation date (compared to 2023 for Oberon), is a completely separate project from Oberon, and could move forward with or without construction of the Oberon gen-tie line. Therefore, the Oberon gen-tie line is not considered growth inducing.

Furthermore, both the Oberon and Easley project sites are located within a DRECP DFA targeted for renewable energy development, and the DRECP LUPA assumed full development within DFAs. Therefore, future renewable energy projects are likely to be developed within the Desert Center area whether or not the Oberon Project is built. If the Oberon Project is not built, another solar project could be constructed on the site. The Oberon Project would not affect the development of these future solar projects.

D1-49 The commenter states that the RWQCB has not adequately consulted with CRIT or other culturally affiliated tribes.

EIR Section 3.5.3 (Methodology for Analysis – Tribal Cultural Resources) describes the steps taken by RWQCB to conduct government-to-government

consultation as part of compliance with AB 52 for the Oberon Project. As discussed in this section, only 2 of 17 tribes notified about this project formally requested to consult under AB 52. The remaining 15 tribes either did not respond to the notification or they responded that they did not wish to consult on this project.

RWQCB sent a formal notice and invitation to consult on the Oberon Project to CRIT on December 31, 2020. No reply to this correspondence was received. However, CRIT did provide comments as part of the CEQA and NEPA scoping process on April 20, 2020. This letter expresses a willingness to schedule government-to-government consultation meetings with RWQCB if the agency reviews and acknowledges the CRIT tribal consultation policy. The letter, addressed to RWQCB and BLM, does not request to consult as part of AB 52 for the Oberon Project. In addition, our review of the consultation policy found the document to reference federal agencies, laws, guidelines and policies but not California state law, CEQA or AB 52. As such it was unclear how or if this policy would apply to a CEQA lead agency such as RWQCB.

Regardless, the RWQCB responded in a letter dated October 28, 2021, that it would be interested in meeting with the CRIT to discuss its concerns with the project and its comments on the Draft EIR. This meeting is not considered to be AB 52 statutory consultation per Public Resources Code section 21080.3.1, as the 30-day period to request to consult as part of AB 52 elapsed in February 2021.

D1-50 At the commenter's request the Tribes' Attorney General, Deputy Attorney General, and THPO Director will be added to tribal correspondences.

D1-51 The commenter included an Exhibit A (Reburial Policy for Cultural Resources and/or Archeological Artifacts of the Colorado River Indian Tribes).

The RWQCB acknowledges receipt of this policy. See Response to Comment D1-49 regarding AB 52 consultation with the RWQCB.