CHAPTER 9.0 LETTERS OF COMMENT AND RESPONSES

This chapter contains all comments received on the Draft Environmental Impact Report (DEIR) and responses thereto and is organized as follows:

- 9.1 List of Agencies and Individuals that Commented on the DEIR
- 9.2 Common Responses
- 9.3 Comment Letters Received and Responses to Comments

The focus of the responses to comments in Chapter 9.0 is on the disposition of significant environmental issues raised in the comments, as specified by Section 15088(c) of the CEQA Guidelines. Detailed responses are not provided to comments on the merits of the Proposed Project. When a comment is not directed to significant environmental issues, the responses indicate that the comment has been acknowledged and no further response is necessary.

This section of the Final EIR (FEIR) presents copies of comments on the DEIR received in written form during the public review period, and it provides the County of San Diego's responses to those comments. Each comment letter is lettered and the issues within each comment letter are bracketed and numbered. Comment letters are followed by responses, which are numbered to correspond with the bracketed comment letters.

The County's responses to comments on the DEIR represent a good-faith, reasoned effort to address the environmental issues identified by the comments. Under the California Environmental Quality Act (CEQA) Guidelines, the County is not required to respond to all comments on the DEIR, but only those comments that raise environmental issues. In accordance with CEQA Guidelines 15088 and 15204, the County has independently evaluated the comments and prepared the attached written responses describing the disposition of any significant environmental issues raised. CEQA does not require the County to conduct every test or preform all research, study, and experimentation recommended or demanded by commenters. Rather, CEQA requires the County to provide a good faith, reasoned analysis supported by factual information. To fulfill these requirements, the County experts in planning and environmental sciences consulted with and independently reviewed analysis responding to the DEIR comments prepared by Dudek and other experts identified in the DEIR's list of preparers, which include experts in planning, aesthetics, agriculture, air quality, biology, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use planning, mineral resources, noise, population and housing, public services, recreation, transportation and traffic, utilities and service systems, energy, and environmental studies, each of whom has years of educational and field experience in these categories of environmental sciences; is familiar with the project and the environmental conditions in the vicinity of the project; and is familiar with the federal, state and local rules and regulations (including CEQA)

applicable to the Project site. The following is a link that describes Dudek's services and experience with regard to the aforementioned planning and environmental sciences: http://www.dudek.com/services/az-index/. Accordingly, the County staff's final analysis provided in this response to comments are backed by substantial evidence. Likewise, the County Counsel's Office prepared and/or independently reviewed legal analysis supplementing the expert-supported factual response to the DEIR comments.

In the case of specific comments, the County has responded with specific analysis; in the case of a general comment, the reader is referred to a related response to a specific comment, if applicable. The absence of a specific response to every comment does not violate CEQA if the response would merely repeat other responses.

9.1 List of Agencies and Individuals that Commented on the DEIR

This section identifies all written comments received during the public comment period. Table 9-1 provides an index to commenters and comment letters.

Table 9-1
Commenters and Comment Letters

Letter Number	Organization/Commenter
F1	United States Fish and Wildlife Service, Karen Goebel
T1	Viejas Band of Kumeyaay Indians
S1	California Department of Transportation, Jacob Armstrong
S2	California Department of Fish and Wildlife, South Coast Region
S3	State Clearinghouse
L1	Jacumba Community Service District
C1	Boulevard Community Planning Group, Donna Tisdale
O1	Citizens for Responsible Industry, Adams Broadwell Joseph and Cardozo, 5/19/2015
O2	Citizens for Responsible Industry, Adams Broadwell Joseph and Cardozo, 5/27/2015
O3	Backcountry Against Dumps, Stephan Volker
O4	Endangered Habitats League, Dan Silver
O5	Citizens for Responsible Industry, Adams Broadwell Joseph and Cardozo
O6	Desert Protective Council, Terry Weiner
O7	San Diego County Archaeological Society, James Royle
O8	San Diego Gas and Electric
I1	Howard Cook, 5/20/2015
I2	Howard Cook, 5/20/2015
I3	Howard Cook, 5/22/2015
I4	Howard Cook, 5/28/2015
I5	Howard Cook, 5/31/30215
I6	Danielle Cook
I7	Edie Harmon

Table 9-1
Commenters and Comment Letters

Letter Number	Organization/Commenter
I8	Cherry Diefenbach
I9	Marty Kennell
I10	Derik Martin
I11	Paul Ruelas
I12	Evelyn Sepin
I13	Mark Ostrander
I14	Frank J. Salazar III
X1	Imperial Valley Desert Museum

Arconyms: F = Federal Agency; T= Tribes; S = State Agency; L = Local Agency; C= Community; O = Organization; I = Individual; X = Submitted after the close of public review.

Changes have been made to EIR in response to comments and to provide updates and clarifications to information provided herein. Table 9-2 below provides a summary of the areas within the FEIR that are update for the Draft EIR.

Table 9-2
Summary of EIR Text Changes

Section (Page)	Change	Reason for Change
Section S (page S-5) and Section 1 (page 1-19)	Updated to include the most recent Census data, from 2010 to note an increase in total population from approximately 400 to 561 (http://censusviewer.com/city/CA/Jacumba%20(Jacumba%20Hot%20Springs)	Update
Section S (Table S-1 page S-9 through S-38)	Updated mitigation measures per changes in RTCs.	Update and clarification
Section 1 (page 1-3)	Last paragraph edited	Clarification
Section 1 (page 1-13)	Second to last paragraph edited	Clarification
Section 1 (page 1-16)	Second to last paragraph edited to clarify fixed nature of proposed panels.	Clarification
Section 1 (page 1-22)	Second to last paragraph edited	Clarification
Section 1 (Table 1-6, page 1-27)	Corrected name of fire and emergency protection services agreement.	Correction
Section 1 (Table 1-7, page 1-27)	Updated cumulative projects status and included Tierra del Sol	Update
Sections 1, 2, and 3 Cumulative	Updated status of ECO substation and ESJ Phase 1 projects and added Tierra del Sol project	Update
Section 2.1 (page 2.1-44)	Clarification of limitations of other measures considered.	Clarification

Table 9-2
Summary of EIR Text Changes

Section (Page)	Change	Reason for Change
Section 2.1 (M-AE-3 page 2.1-43)	Added to the MM: "required by the Minor Stormwater Management Plan (SWMP) to prevent significant impacts to water Quality. These include but are not limited to: erosion controls, sediment controls, off-site sediment tracking controls, general site and materials management, minimize impervious surfaces, and outlet protection."	Clarification
Section 2.1 (pages 2.1-45 through 2.1-51)	Added analysis of secondary impacts to all topics from Decommissioning (mitigation measure M-AE-3) - Also provided technical memorandums as Appendices 9.1 thru 9.6.	Clarification and update
Section 2.2 (page 2.2-4)	Removal of footnote	Update
Section 2.2 (page 2.2-23) and Appendix 2.2.1	Revised to state larval host plants instead of adult nectar plants - based on field notes	Clarification
Section 2.2 Biology (page 2.2-23)	Closest QCB observation location along the ECO transmission line - based on field notes	Clarification
Section 2.2 (page 2.2-56)	Added text regarding purpose of setbacks from burrowing owl nests	Clarification
Section 2.2 (page 2.2-66 and 2.2-68)	Added text clarifying distinction of fence encumbering large and small animals	Clarification
Section 2.2 (page 2.2-67 and 2.2-72)	Text moved (from 2.2-67 to 2.2-72)	Correction
Section 2.2 (M-BI-1, page 2.2-81)	Revisions to temporary fencing reference	Clarification and update
Section 2.2 (M-BI-3, page 2.2-85)	Changed from temporary to permanent	Clarification and update
Section 2.2 (M-BI-2, page 2.2-83)	Added text clarifying timing requirements for SWPPP	Clarification
Section 2.2 (M-BI-6, page 2.2-86)	Added text clarifying timing and adherence to CDFG 2012 guidelines	Clarification
Section 2.2 (M-BI-6, page 2.2-87)	The sentence restricting application of nest protection has been deleted from the EIR, which now includes protection for all nests	Update and clarification
Section 2.2 (M-BI-8, page 2.2-88)	Added to Mitigation M-BI-8: "Application of the soil stabilizer shall be undertaken strictly to the manufacturer's directions for application and cognizant of the weather forecast to avoid application immediately before a rain event. "	Update
Section 2.2 (M-BI-11, page 2.2-89)	Added text clarifying qualifications of pest control adviser	Clarification
Section 2.2 (M-BI-12, page 2.2-90)	Added text referring to County's light pollution code	Clarification
Section 2.2 (M-BI-13, page 2.2-90)	Added text clarifying intent of APLIC guidelines	Clarification
Section 2.2 (M-BI-15, page 2.2-91)	Added text regarding commitment rather than requirement of M-BI-15)	Clarification

Table 9-2
Summary of EIR Text Changes

Section (Page)	Change	Reason for Change
Section 2.2 (M-BI-16, page 2.2-92)	Revisions to plants listed in mitigation measure M-BI-16	Clarification
Section 2.2 (M-BI-17, page 2.2-93)	Added text, measure M-BI-17 commitment, not mitigation	Update and clarification
Biological Resources Appendix 2.2-1	The potential to occur table (Appendix G) included in Appendix 2.2-1 to the EIR has been revised to more clearly explain the low potential to occur determination	Clarification
Section 2.3 and Apx 2.3-1	Updated site refs CA-SDI-6119/19627, to be CA-SDI-7074/6119/19627 (also note typo errors with 19637 corrected to 19627) and corresponding text descriptions of the site, as well as reference to the number of sites revised down by 1)	Update
Section 2.3 (page 2.3-1)	Corrected reference	Correction
Section 2.3 (page 2.3-14) and Apx 2.3	Revised text regarding sites and in response to comments, clarifying that portions of the site that are potentially eligible are outside the gen-tie alignment corridor	Update and clarification
Section 2.4 (page 2.4-22)	Clarification of incompatible uses	Clarification
Sections 2.4.3.1 and 2.4.3.3 (page 2.4-20 and 2.4-25)	Included information that battery storage units are enclosed and the enclosures include a fire suppression system	Clarification
Section 2.4.3 (page 2.4-29 and 2.4-30)	The previously planned construction of the new fire station is expected to provide improved fire response services to the region, rather than additional services. The co-location of the Boulevard Fire Department station, apparatus and staff and the CAL FIRE White Star resources will result in a more streamlined, cost efficient operation for fire and emergency medical response in the area. The location of the station is within the General Plan travel time standard for the project, and the resources anticipated at the new co-located station will be at least equivalent to the existing, in terms of apparatus. It is expected that staffing capabilities will be complimented by the closer day to day training and interactions resulting from the co-location of career and reserve firefighters.	Clarification
Section 2.4 (pages 2.4-30 and 2.4-31)	Clarification regarding emergency services aircraft	Clarification
Section 2.4 (pages 2.4-38 and 2.4-39)	Text revisions to, and referring to, M-HZ-1 and M-HZ-2	Clarification
Section 2.4 (page 2.4-40)	Included County prior experience and reference	Clarification
Section 2.5 (page 2.5-7 and 2.5-8)	Added text further describing how construction activities would be achieved	Clarification
Section 2.5 (M-N-1, page 2.5-17)	Revised text regarding trigger for updated analysis requirements	Clarification
Section 3.1.1 (page 3.1.1-13 through 3.1.1-16)	Revised discussion of Cancer Risk	Update and clarification

Table 9-2
Summary of EIR Text Changes

Section (Page)	Change	Reason for Change
Section 3.1.1 (page 3.1.1-20) [Also Appendix 3.1-1 and 9-7]	Revised text regarding soils and grading assumptions	Clarification
Section 3.1.1 (page 3.1.1-24) [Also Appendix 3.1-1 and 9-7]	Added discussion regarding dust emissions and cancer risk	Update and clarification
Section 3.1.1 (Tables 3.1.1-6 through 3.1.1-9, page 3.1.1-40 and 3.1.1-41) [Also Appendix 3.1-1 and 9-7]	Updated tables per updated emissions modelling	Update
Air Quality Appendix 3.1-1 page 47	Last sentence of first paragraph deleted, to avoid confusion regarding cumulative approach.	Correction
Section 3.1.2 (page 3.1.2-17)	Clarified source of referenced design criteria	Clarification
Section 3.1.3 (page 3.1.3-10)	Added GHG regulation updates	Update
Section 3.1.3 (page 3.1.3-14 through 3.1.3-16, and Tables 3.1.3-2 and 3.1.3-3, page 3.1.3-20)	Added decommissioning emissions and updated project pro-rated total	Clarification and Update
Section 3.1.3 (page 3.1.3-16 through 3.1.3-17)	Added text regarding General Plan policies related to GHG	Clarification
Section 3.1.4 (page 3.1.4-1)	Deleted text identifying erroneous incorporation by reference of Water Supply Evaluation (sentence under the bullets)	Correction
Section 3.1.4 (page 3.1.4-28)	100,000 gal per ~~min~~ revised to 100,000 gal per day	Correction
Section 3.1.4 (page 3.1.4-28)	Added text regarding JCSD and the Water Services Agreement	Update and clarification
Section 3.1.4 (page 3.1.4-27 and 3.1.4-30)	Added further text describing JCSD new wells project and capacity	Clarification
Section 3.1.5 (page 3.1.5-19)	Updated discussion to include information regarding the recent approval of a resolution to support a state grant for improvements at the Jacumba Airport (http://www.sandiegocounty.gov/content/dam/sdc/bos/agenda/sop/031815sop.pdf)	Update
Section 3.1.6 (page 3.1.6-2)	"Additional" was changed to "improved'	Correction

Table 9-2
Summary of EIR Text Changes

Section (Page)	Change	Reason for Change
Section 3.1.6 (page 3.1.6-7)	Added text regarding new facilities referencing Section 2.4	Clarification
Section 3.1.6 (page 3.1.6-11)	Added text regarding impacts related to response times ratios	Clarification
Section 3.1.6 (page 3.1.6-12)	Added text regarding workforce and communities served by existing hospitals	Clarification
Section 3.1.7 (page 3.1.7-7)	Footnote added clarifying County requirements for a Traffic Impact Study (TIS)	Clarification
Section 3.1.7 (page 3.1.7-10)	Clarified relevance of ADT for Old Highway 80 section included in Table 3.1.7-1	Clarification
Section 3.1.7 (pages 3.1.7-17 and 3.1.7-18)	Restated conclusion sentence.	Clarification
Section 3.2 Cumulative	Included cumulative analysis for effects not found to be significant	Update
Section 4 (page 4-1)	Added text regarding reasonable range of alternatives	Clarification
Section 4 (page 4-2)	Deleted "public services" from first full paragraph	Correction
Section 4 (page 4-9)	Added the word 'substantial' in front of daytime glare	Clarification
Section 4 (page 4-12)	Restated part of the summary description of Alternative 2	Clarification
Section 4 (page 4-14)	Revised text regarding comparative impacts to biological resources from Alternative 2	Clarifications
Section 4 (page 4-16)	Revised text regarding 'gross' MW generation for Alternative 2 and expectations associated with a no project alternative (Alternative 3)	Clarifications
Section 7 (page 7-1)	Deleted ref to SDG&E as applicant	Correction
Section 7 -	Added "and decommissioning" to all MMs applied to construction	Update
Section 7	Updated Mitigation Measures per changes in RTC as indicated per section/RTC below.	Responses, clarifications and updates
Section 8	Consolidated discussions of Significant Impacts that cannot be mitigated to less than significant, Irreversible Changes, Growth inducing effects and Energy Conservation (added Chapter 8 for the FEIR)	Provide consolidation of information
Section 9, and Appendicies 9-1 through 9-7	Responses to Comments	Responses, updates, and clarifications
Appendix 3.1.4-1	Clarifying text on page 35, updated Tables 9 and 10, and Figures 8 and 9	Clarifications and update

Note: Items not listed above include typographical and editorial corrections made throughout the EIR and items such as header and footer updates.

9.2 Common Responses

A number of the comments received on the Draft EIR addressed the same or similar issues and environmental concerns. Rather than repeat responses to recurring comments in each letter, the common responses outlined in Sections 9.2.1 through 9.2.6 were prepared. The common response section numbers and topics are as follows and include common response codes (e.g., ALT) for each topic:

- 9.2.1 Alternatives (ALT)
- 9.2.2 Aesthetics (AES)
- 9.2.3 Biological Resources (BIO)
- 9.2.4 Water Resources (WR)
- 9.2.5 Recirculation (RCR)
- 9.2.6 Cultural Resources (CR)

9.2.1 Alternatives

ALT1 – Several commenters expressed that the environmentally superior alternative should be selected as it would meet the project Objectives. To explain the selection of alternatives and to further clarify the relative importance of the Project objectives, the Proposed Project objectives are identified as "Underlying Fundamental" and "Other Basic" Project objectives as follows:

Underlying Fundamental Project Objectives

1. Develop approximately 20 megawatts (MW) of renewable solar energy that can operate during on-peak power periods to indirectly reduce the need to emit greenhouse gases (GHGs) caused by the generation of similar quantities of electricity from either existing or future non-renewable sources to meet existing and future electricity demands.
2. Develop a solar energy project that can meet the criteria to achieve the maximum federal solar Investment Tax Credit which is intended to decrease the cost of renewable energy generation and delivery, promote the diversity of energy supply, decrease dependence of the United States on foreign energy supplies and improve United States security.
3. Balance the development of the solar energy facility with the protection of resources, which may include preservation of on-site biological and cultural resources and the establishment of a wildlife movement corridor.
4. Develop a utility-scale solar energy project that improves local electrical reliability for the San Diego region by providing a source of local generation as near as possible to the East County (ECO) Substation and other recent regional transmission improvements.

5. Provide a new source of energy storage that assists the state in achieving or exceeding the energy storage target of 1.3 gigawatts of energy by 2020, consistent with the terms of Assembly Bill (AB) 2514.

Other Basic Project Objectives

6. Assist in directly achieving or exceeding the state's Renewable Portfolio Standard (RPS) and GHG emissions reduction objectives by developing and constructing California RPS-qualified solar generation, approved under Senate Bill (SB) X1 2, which established renewable energy targets of 20 percent total electricity sold to retail customers by the end of 2013, 25 percent by the end of 2016, and 33 percent of total electricity sold to retail customers by 2020.
7. Site solar power plant facilities in areas within the County of San Diego (County) that have excellent solar attributes, including but not limited to high direct normal irradiance (DNI), in order to maximize productivity.
8. Develop a utility-scale solar facility within San Diego County supporting the economy by investing in the local community, creating local construction jobs, and increasing property tax revenue.

Splitting the project objectives into these two categories is consistent with the CEQA Guidelines and CEQA case law (see *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal. App. 4th 1, 14). CEQA contemplates that basic catagories of project objectives help determine if the alternatives selected from the scoping process qualify for more detailed analysis in the EIR's Alternatives Section on the grounds that they "feasibly accomplish most of the basic objectives of the project." The category of "Underlying Fundamental Project Objectives" is contemplated in CEQA Guidelines 15124 and by the California Supreme Court (*In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings, 43 Cal.4th 1143, 1165*) as further grounds for determining whether or not an alternative (of any type) is ultimately feasible. Further, as explained by the court in *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981, the feasibility of alternatives is considered at two stages in the CEQA process. First, the EIR identifies and evaluates alternatives that are "potentially feasible" in that they are capable of meeting some project objectives while reducing significant impacts. (*Id. at p. 999.)* Then, at the project approval stage, it is the role of the decision-making body to determine whether alternatives are "actually feasible" after taking into consideration fundamental project objectives and specific economic, legal, social, technological, or other considerations. (*Id*.)

Summary of the Reduced 15 MW Project Alternative

This alternative would reduce impacts related to aesthetics, biological resources, hydrology and water quality, and noise. However, any impacts would still require the same mitigation as the

Proposed Project to reduce to a level of less than significant. This alternative would not meet Underlying Fundamental Objectives 1 and 2, though it would generally meet Underlying Fundamental Objectives (4 and 5), although not to the degree that the Proposed Project would. For example, this alternative would assist the state in achieving its energy storage target (Underlying Fundamental Project Objective 5), though not to the same degree as the Proposed Project. It would also develop utility scale solar in close proximity to the ECO Substation meeting (Underlying Fundamental Project Objective 4), though again the reduced scale of this alternative reduces the degree to which this alternative achieves Underlying Fundamental Project Objective 4. This alternative would create more open space than the Proposed Project aiding in preserving biological and cultural resources, per Underlying Fundamental Objective 3.

This alternative would also meet all of the Other Basic Project Objectives, including meeting the state's RPS and GHG reduction objectives (Other Basic Project Objective 6). This alternative would also meet Other Basic Objectives 7 and 8 by siting the facility in an area of the County well-suited for solar, investing money into the local economy, and providing local construction jobs in a variety of trades. However, the reduced size would result in a reduction of the efficacy of the solar facility to meet each of these objectives.

This alternative does not meet Underlying Fundamental Objective 1 because it would not provide 20 MW of renewable solar energy. The Reduced 15 MW Project would only generate 75 percent of the 20 MW goal of the project. While the goal does not require the project to produce exactly 20 MW, a reduction of 25 percent is not "approximately" 20 MW. Approximately is defined by Merriam-Webster's Dictionary to mean "located close together" or "nearly correct or exact." The Cambridge Dictionary defines approximately to mean "almost exact." It defines "almost" to mean "nearly, but not quite" and "exact" to mean "in perfect detail; complete and correct." The generation of 15 MW reduced from 20 MW, would result in a reduced capital expenditure and reduction in qualification for the federal solar Investment Tax Credit compared to the Proposed Project. This reduction compared to the Proposed Project results in a reduced efficacy at decreasing the cost of renewable energy generation and delivery, promoting the diversity of energy supply, decreasing dependence of the United States on foreign energy supplies and improving United States security. This alternative would not meet the criteria to achieve the maximum federal solar Investment Tax Credit (Fundamental Project Objective 2) as the amount of that credit is proportional to the MW generated and thus the maximum feasible would be achieved with the generation of 20 MW rather than 15 MW.

This alternative has been designed to reduce the overall project footprint and specifically to reduce impacts to biological resources. Under this alternative, fewer sensitive habitat types would be disturbed. Although it reduces the severity of the biological impact by reducing the footprint, it does not change the conclusion regarding the level of significance.

In summary, while this alternative would meet most of the project objectives, it would not meet some of the Underlying Fundamental Project Objectives the County considers most important,

specifically Fundamental Project Objectives 1 and 2.

Summary of the North Layout Project Alternative

The North Layout Project Alternative (Alternative 2) would generally result in similar or slightly reduced impacts to the environmental resource areas considered within this EIR compared to the Proposed Project, except for aesthetics where impacts would be increased. This alternative would reduce impacts related to all the issue areas but the same mitigation would be required to reduce to less-than-significant levels. This alternative reduces the potential impacts to larger known cultural resources sites and reduces overall severity of impacts to cultural resources, although it does not change the conclusion regarding the level of significance. Under this alternative, although there would be a reduction in cultural resource impacts, it would result in an increase in visual impacts from Old Highway 80 because the area of disturbance and the location of the project elements would be closer to Old Highway 80 and significantly more visible than the Proposed Project, increasing the severity and level of aesthetic impacts. Impacts to biological resources, specifically non-wetland waters of the US would also be increased under this alternative compared to the Proposed Project.

This alternative would generally meet all the project objectives, with the exception of Underlying Fundamental Project Objectives 3 and 5, although not to the degree that the Proposed Project would.

This alternative would develop approximately 20 MW of renewable solar energy that can operate during on-peak power periods, indirectly reducing the need to emit GHGs caused by the generation of similar quantities of electricity from either existing or future non-renewable sources to meet existing and future electricity demands, consistent with Underlying Fundamental Project Objective 1. This alternative would meet the criteria to achieve the maximum federal solar Investment Tax Credit, consistent with Underlying Fundamental Project Objective 2. Similar to the Proposed Project, this alternative would develop a utility-scale solar energy project to improve local electrical reliability for the San Diego region by providing a source of local generation as near as possible to the ECO Substation and other recent regional transmission improvements, consistent with Underlying Fundamental Project Objective 4.

Consistent with Other Basic Project Objectives 6 and 7 this alternative would assist in achieving or exceeding the state's RPS and GHG reduction objectives by developing and constructing California RPS-qualified solar generation and would site a solar power plant facility in an area within the County that has excellent solar attributes. Under this alternative, there would be an investment in the local economy that would support jobs and create local construction jobs for a variety of trades, the same as the Proposed Project and consistent with Other Basic Project Objective 8.

However, this alternative would compromise the ability to preserve contiguous open space (Underlying Fundamental Project Objective 3), resulting in a smaller Open Space Preserve compared to the Proposed Project, and because it lacks a battery storage component, this alternative would not meet Underlying Fundamental Objective 5.

In summary, while this alternative would meet most of the Other Basic Project Objectives (6-8), it would not meet some of the Underlying Fundamental Project Objectives the County considers most important, specifically Underlying Fundamental Project Objectives 3 and 5.

ALT2 - The County acknowledges that several comments have been submitted advocating for distributed generation energy projects over the Proposed Project. The County analyzed whether the distributed generation alternative would meet the objectives of the Proposed Project. (DEIR, pp. 4.4 – 4-5.) The County considered the feasibility of distributed solar photovoltaic installations as well as other distributed generation technologies as alternatives to the Proposed Project. (Id. at pp. 4-6 - 4.7.) The County has determined that the distributed generation as an alternative would not meet the most basic project objectives, specifically Underlying Fundamental Project Objectives 3, 4, or 5, and Other Basic Project Objectives 6, 7, or 8, and provided the reasoning behind its determination. The County eliminated the distributed generation alternative from further consideration because it would not meet most of the basic project objectives, was highly speculative, the technology was not within the control of the Applicant, and it could not be accomplished by the Applicant in a reasonable period of time. (Id. at pp. 4.0-4 - 4.0-6.) CEQA "does not require in-depth review of alternatives which cannot be realistically considered and successfully accomplished." *Id*. at 575; *Cherry Valley Pass Acres & Neighbors v. City of Beaumont*, 190 Cal.App.4th 316, 348 ("CEQA does not require analysis of every *imaginable* alternative"; emphasis in original; internal quotation omitted). Where a lead agency has "reasonably determined" that a particular alternative "cannot achieve the project's underlying fundamental purpose," it need not study that alternative in detail. *In re Bay-Delta, etc*., 43 Cal.4th 1143, 1165; *Cherry Valley Pass Acres & Neighbors v. City of Beaumont*, 190 Cal.App.4th 316, 348.

The County's elimination of the distributed generation alternative met the requirements of CEQA: "The EIR should also identify any alternatives that were considered by the Lead Agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the Lead Agency's determination…Among the factors that may be used to eliminate alternatives from detailed consideration are (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts." (CEQA Guidelines § 15126.6(c).)

It may be within the County's purview to incentivize or otherwise provide for the expansion of distributed generation through County policies. Nevertheless, the DEIR is not analyzing such a

project; the DEIR is evaluating the potential impacts of the Proposed Project that is being proposed by the Applicant, as defined in Chapter 1.0 of the DEIR. It is not the responsibility of the DEIR, which analyzes the Proposed Project, to implement a distributed generation policy. It is also not the purview of commenters to redefine the County objectives for the project to suit commenter's preference for distributive generation policies that exclude utility-scale solar developments. Accordingly the County disagrees that creating utility-scale solar energy will impede rather than foster the promotion of solar energy and improvement in reliability in the San Diego region. As indicated in Section 1.1 of this EIR, specific objectives of the Proposed Project include creating utility-scale solar energy to improve reliability for the region by providing a source of local generation. A summary of the inconsistency of distributed generation with project objectives is provided below.

Underlying Fundamental Project Objective 1: Develop approximately 20 MW of renewable solar energy that can operate during on-peak power periods to indirectly reduce the need to emit greenhouse gasses caused by the generation of similar quantities of electricity from either existing or future non-renewable sources to meet existing and future electricity demands. A distributed generation project could not develop approximately 20 MW of renewable solar energy within a reasonable period of time and therefore cannot satisfy Underlying Fundamental Project Objective 1.

Underlying Fundamental Project Objective 2: Develop a solar energy project that can meet the criteria to achieve the maximum federal solar Investment Tax Credit which is intended to decrease the cost of renewable energy generation and delivery, promote the diversity of energy supply, decrease dependence of the United States on foreign energy supplies and improve United States security. A distributed generation project could not develop an equitable amount of renewable solar energy within a reasonable period of time. The distributed generation would take four to five or more years to realize in terms of an applicant obtaining site control over sufficient roof space under existing programs or in terms of investigating and creating a new County-level incentive program for distributive generation, which would require time to plan, time to gather public opinion, time to find funds in the County budget for staff to run the program, time to find funds in the County budget to support the financial incentive to give future applicants, and time to plan what reductions might be needed in other existing programs to create room in the budget for the incentive program, and time to balance whether the impacts of budget reductions in those existing programs are less desirable than any benefit from creating a new County-level distributive solar energy generation program. In contrast, the Proposed Project could be built within 6- 7 months and use the existing, already functioning federal solar Investment Tax Credit. Thus distributed generation program could not be implemented within and reasonable period of time and would not maximize federal solar Investment Tax Credit because the full credit expires in 2019 at which time the credit decreases. Therefore, a distributed generation project fails to satisfy Underlying Fundamental Objective 2.

Underlying Fundamental Project Objective 3: Balance the development of the solar energy facility with the protection of resources, which may include preservation of on-site biological and cultural resources and the establishment of a wildlife movement corridor. A distributed generation program could avoid direct impacts to biological and cultural resources but would not include on-site preservation of such resources. Therefore, a distributed generation project fails to satisfy Underlying Fundamental Project Objective 3.

Underlying Fundamental Project Objective 4: Develop a utility-scale solar energy project that improves local electrical reliability for the San Diego region by providing a source of local generation as near as possible to the East County (ECO) Substation and other recent regional transmission improvements. A distributed generation project would not be a utility-scale energy project and therefore fails to satisfy Underlying Fundamental Porject Objective 4.

Underlying Fundamental Project Objective 5: Provide a new source of energy storage that assists the state in achieving or exceeding the energy storage target of 1.3 gigawatts of energy by 2020, consistent with the terms of Assembly Bill (AB) 2514. A distributed generation project would not include energy storage and, therefore, would not satisfy this Underlying Fundamental Project Objective.

Other Basic Project Objective 6: Assist in directly achieving or exceeding the state's Renewable Portfolio Standard (RPS) and GHG emissions reduction objectives by developing and constructing California RPS-qualified solar generation, approved under Senate Bill (SB) X1 2, which established renewable energy targets of 20 percent total electricity sold to retail customers by the end of 2013, 25 percent by the end of 2016, and 33 percent of total electricity sold to retail customers by 2020. A distributed generation project is not a RPS qualified project under SB X1 2. Reliance on net-metering to indirectly further the State's RPS until July 1, 2017 does not meet other Basic Project Objective 6. Furthermore, most rooftop solar is currently ineligible for contribution to RPS and the market for renewable energy credits is not sufficiently developed to replace utility scale projects.

Other Basic Project Objective 7: Site solar power plant facilities in areas within the County of San Diego (County) that have excellent solar attributes, including but not limited to high direct normal irradiance (DNI), in order to maximize productivity. The County acknowledges that distributed generation facilities can be located in areas with excellent solar attributes, but it would not be able to require that installations be located where excellent solar attributes exist. As a result, an even greater number of distributed generation systems may be required to generate 20 MW as the Project would. Furthermore, the component of the objective referring to solar power plant facilities would not be satisfied by distributed generation.

Other Basic Project Objective 8: Develop a utility-scale solar facility within the County of San Diego (County) supporting the economy by investing in the local community, creating local construction jobs, and increasing property tax revenue. The County cannot assure that rooftop solar will contribute to the property tax revenues because homes are not reassessed for property tax purposes after installation of solar facilities pursuant to SB 871. Additionally, a distributed generation project would not be a utility-scale solar as Other Basic Project Objective 8 contemplates.

ALT3 – Several commenters expressed that they considered project Underlying Fundamental Project Objectives 1 and 4 to be too narrow. The objectives are not too narrow because the project is implementing General Plan policies encouraging offsite renewable energy generation and the Mountain Empire Subregional Plan policy regarding building by the ECO Substation (Goal 5, Policy 4). The range of alternatives considered in an EIR must be considered in light of applicable policies, including those expressed in relevant land use plans such as the General Plan and the Mountain Empire Subregional Plan. (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 988 [project objectives and alternatives considered that master plan contemplated paved, multi-use, ADA-compliant trails running in east-west direction]; *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477 [planning goal for high density development.) It is reasonable to adopt objectives that align with General Plan policies, the purpose of which is to guide development within the County that are not too narrow and are based on sound public policy and planning principles. Further the objectives do not impede a reasonable range of alternatives as an alternative need only meet most of the objectives, not all. The alternatives studied constitute a reasonable range because they contain enough variation to facilitate informed decision making and public participation that leads to a reasoned choice. (CEQA Guidelines, 15126.6(a)-(f), *California Native Plant Society v. Ctiy of Santa Cruz* (2009) 177 Cal.App.4th 957; *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477; *Mann v. Community Redevelopment Agency* (1991) 23 Cal.App.3d 1143, 1151.) Objectives 1 and 4 are restated below followed by the rationale, in addition to General Plan and community plan alignment, as to why they are not too narrow.

Underlying Fundamental Project Objective 1: Develop approximately 20 MW of renewable solar energy that can operate during on-peak power periods to indirectly reduce the need to emit greenhouse gasses caused by the generation of similar quantities of electricity from either existing or future non-renewable sources to meet existing and future electricity demands.

Underlying Fundamental Project Objective 4: Develop a utility-scale solar energy project that improves local electrical reliability for the San Diego region by providing a source of local generation as near as possible to the East County (ECO) Substation and other recent regional transmission improvements.

These objectives are not too narrow because a range of projects are possible and could be adopted that are consistent with both of these objectives. Project Objective 1 contemplates a

solar project with approximately 20 MW of solar generation. Slightly lower generations of 19 MW or 18 MW or slightly higher generations of 21 MW or 22 MW would satisfy this Underlying Fundamental Project Objective. Similarly, a variety of projects could be located in proximity to ECO and other regional transmissions improvements, including as analyzed in the reduced generation and alternative layout project alternatives studied in the EIR.

It is reasonable to include Project Objectives 1 and 4 because they both implement the County's Solar Ordinance encouraging large offsite renewable energy generation [Ordinance No. 10072 adopted September 15, 20141], General Plan policies on providing for regional energy and infrastructure, and encouraging development projects that use photovoltaic energy [General Plan policies LU-4.6, COS-14.6] and the Mountain Empire Subregional Plan policy regarding locating land uses next to substations that are compatible with the substation (Goal 5, Policy 4). Because implementing the County's Solar Ordinance and using General Plan and other applicable land use plan policies to guide development decisions on individual projects is exactly what such policies were created to do, it is entirely reasonable for the County to identify Project Objectives that help it implement its ordinances and land use plans. The General Plan is implemented through ordinances, local land use plans, individual project permitting decisions and courts have recognized that it is proper to use land use plans for the purpose of establishing project objectives and alternatives. (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 988 [project objectives and alternatives considered that master plan contemplated paved, multi-use, ADA-compliant trails running in east-west direction]; *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477 [planning goal for high density development].)

The objectives described in the project EIR do not impede a reasonable range of alternatives as they foster alternatives with enough variation to facilitate informed decision-making and public participation about the environmental trade-offs between the proposed project and the alternatives. (CEQA Guidelines, 15126.6(a)-(f), *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957; *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477; *Mann v. Community Redevelopment Agency* (1991) 23 Cal.App.3d 1143, 1151.)

> To be legally sufficient, the consideration of project alternatives in an EIR must permit informed agency decision-making and informed public participation. What CEQA requires is enough of a variation to allow informed decision making... The range of project alternatives in the EIR [is judged] against "a rule

[1] "Section 1. The Board of Supervisors finds and determines that solar power is an important renewable source of energy and the Zoning Ordinance should be amended to allow for the placement of solar energy systems. The ordinance is consistent with existing State laws that encourage the construction of Solar Energy Systems to conserve energy. The amendments made by this ordinance are intended to . . . improve and enhance public welfare and safety, and to implement the San Diego General Plan…."

> of reason." *The selection will be upheld*, unless the challenger demonstrates that the alternatives are manifestly unreasonable and that they do not contribute to a reasonable range of alternatives." (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 988 [internal citations and quotations omitted; emphasis added].)

The EIR's alternatives are not "manifestly unreasonable" and they "contribute" to a reasonable range of alternatives precisely because they inform the decision-makers and the public about the environmental trade-offs between the proposed 20 MW project in its proposed configuration and how some significant environmental impacts are reduced and others are increased if the configuration is changed, the megawatts are reduced, energy storage is included, or no project is constructed at all. This is the subject of the more than 20 pages of analysis in EIR Chapter 4 and its Table 4-1 summarizing the relative impacts of these alternatives. There is nothing "manifestly unreasonable" about the County decision-makers exploring the relative environmental consequences of a reduced scale project in the vicinity of the ECO substation. Likewise, there is nothing "manifestly unreasonable" about the County decision-makers exploring the relative environmental consequences of the project with a different configuration near the ECO substation. Furthermore, there is nothing "manifestly unreasonable" about the County decision-makers exploring the relative environmental consequences of a project without the energy storage component near the ECO substation.

The fact that some commenters desire to expand the alternative analysis to include alternative locations and distributed generation does not make the County's project objectives unreasonable, too narrow, or incapable of facilitating informed decision-making and public participation. An agency need not consider "every conceivable alternative to a project" and may determine how many alternatives constitute a reasonable range. (*Citizens of Goleta Valley v. Bd. of Sup.* (1990) 52 Cal. 3d 553, 566.) The law does not require consideration of a particular number of alternatives to satisfy the reasonable range of alternatives. CEQA vests the lead agency with significant discretion when it comes to identifying a reasonable range of alternatives to study in an EIR and permits the lead agency to reject proposed alternatives from more detailed analysis provided the process used to select the alternatives is briefly discussed in the EIR and the decision is supported by evidence in the record. (Pub. Res. Code 15126.6 (c).) Alternatives sites were considered but rejected, the Applicant does not have site control and the process of acquiring site control would take several years even if third parties with site control were willing to relinquish control or if the County had legal authority to compel a transfer of site control, which it does not. Accordingly, it is both legally infeasible and infeasible because it cannot be accomplished within a reasonable period of time. The Draft EIR fully considered three alternatives: the Reduced 15 MW Project Alternative, North Layout Project Alternative and the No Project Alternative. (DEIR, Chapter 4.) An additional 5 alternatives were considered but rejected, including distributed generation alternatives. (Id.) Alternative locations were also

considered. Please see RTC 03-24 and Chapter 4 of the Draft EIR for further discussion of the Project Alternatives, the relative impacts of adopting an alternative instead of the proposed project, and a discussion about why certain alternatives were rejected from a more detailed analysis. All this analysis; the selection of project objectives that help implement the County's Solar Ordinance, General Plan and local land use plan policies; and selection of three alternatives has fostered high levels of public participation as evidenced by the hundreds of pages of comment letters and responses to comments included in the Final EIR and elsewhere in the record, which will all be available for the Board of Supervisors to consider prior to their decision on whether to certify the EIR. Accordingly, the EIR represents an adequate, good faith, analysis of the Project and its alternatives in a manner designed to foster public participation and informed decision-making.

9.2.2 Aesthetics (Decommissioning)

AES1 - Several commenters expressed that the environmental effects of decommissioning were not evaluated in the DEIR and that effects would be similar to those identified for construction activities. In response to these comments the County clarifies that, the DEIR accurately identified decommissioning as a mitigation measure (M-AES-3) for aesthetic impacts. CEQA makes it clear that secondary impacts from implementing mitigation measures are not required to be analyzed in the same level of detail as the project. CEQA Guidelines 15126.4(a)(1)(D) states, "[i]f a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed, *but in less detail than the significant effects of the project as proposed*." (emphasis added). Indirect effects are changes to the physical environment that occur later in time or farther removed in distance than direct effects. 14 Cal Code Regs §15358(a)(2)

Accordingly, because project decommissioning is a mitigation measure that will not be implemented until decades from project approval, there is limited analysis regarding its indirect, secondary impacts that can be foreseen. Nevertheless, in response to comments and in a good faith effort to provide an adequate analysis that further clarifies the impacts from the decommissioning mitigation measure, the FEIR includes additional information about impacts related to decommissioning (including air quality impacts related to soil disturbance activities) and mitigation measures have been amended to address any potentially significant indirect, secondary impacts.

The revised Section 2.1 Aesthetics, which is further supported by technical memorandums for air quality and GHG, biological resources, cultural resources, hazards (fire), noise, and paleontological resources addresses the secondary environmental impacts associated with decommissioning. The DEIR does include a description of the anticipated water demand for decommissioning, Section 1 Project Description, and includes evaluation of the effects of

drawing that water supply in sections 3.1.4 Hydrology and Water Quality and 3.1.8 Utilities and Service Systems. Because decommissioning would not increase the disturbance footprint and would generally involve reduced activity compared to construction, the secondary impacts would not include new or substantially increased severity of impacts than those identified in the DEIR for construction. The supplemental, clarifying analyses provided in attached memorandums [Appendices 9.1-1 through 9.1-7] do not identify any new impacts or mitigation measures. For clarity the mitigation measures identified for construction activities throughout the DEIR have been revised to include decommissioning activities.

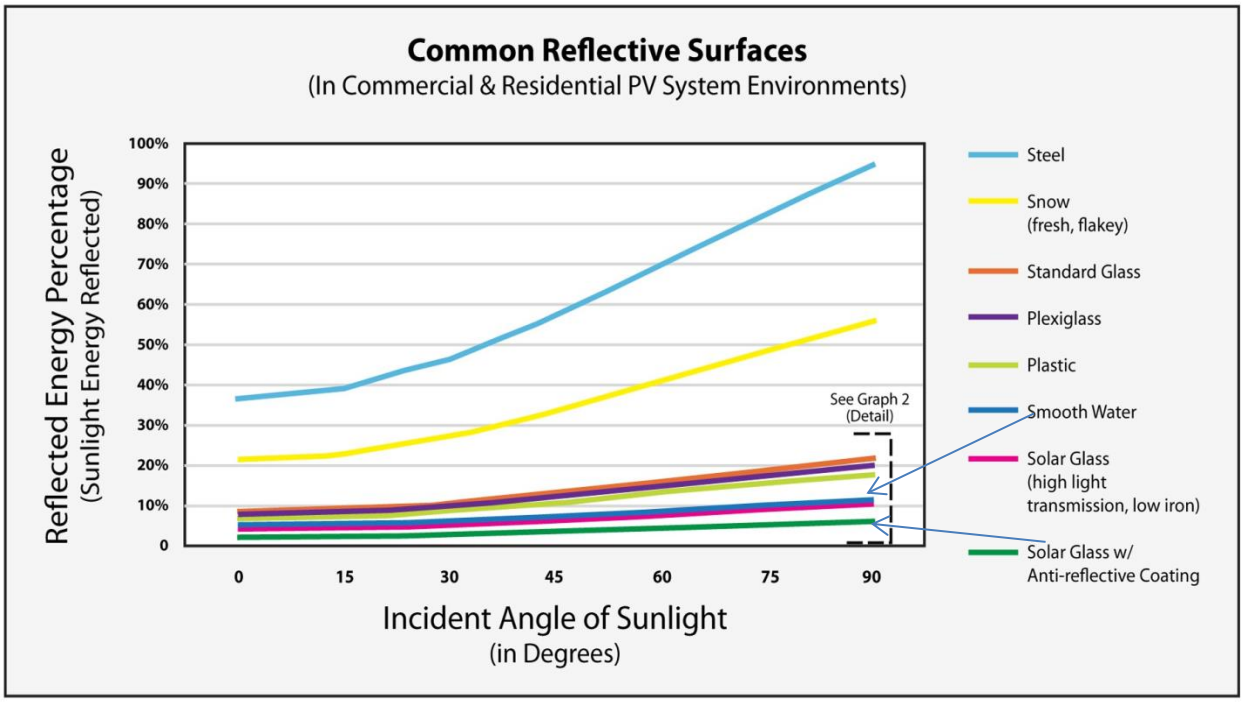
9.2.3 Biological Resources

BIO1- Pseudo-Lake Effect. As described in DEIR page 2.2-34, the Proposed Project area is located within the Pacific Flyway for migratory avian species; however, the Proposed Project site is located east of the main coastal migration route and west of the primary route between the Gulf of California and the Salton Sea. The potential effects of the pseudo-lake effect are discussed on pages 2.2-46 and 2.2-47 of the DEIR. The analysis acknowledges anecdotal evidence of wetland species colliding with or becoming stranded in solar fields, that some have hypothesized is possibly because birds might be attracted to the solar arrays if the solar arrays mimic water bodies. Little is known about whether avian species and individuals that are negatively affected by glare or the hypothesized pseudo-lake effect of PV arrays. The USFWS recognizes the lack of data on the effects of solar facilities on migratory bird mortality and has provided guidance on monitoring migratory bird mortalities at solar facilities (Nicolai et al. 2011). The April 2015 National Renewable Energy Laboratory (NREL) report on Avian Monitoring and Mitigation at solar facilities states, "[l]astly, it has also been hypothesized that utility-scale PV facilities may attract migrating waterfowl and shorebirds through what has been called the "lake effect" (Kagen et al. 2014), whereby migrating birds perceive the reflective surfaces of PV panels as bodies of water and collide with project structures as they attempt to land on the panels. To date, however, no empirical research has been conducted to evaluate the attraction of PV facilities to migrating birds." (NREL 2014 at p. 11.).

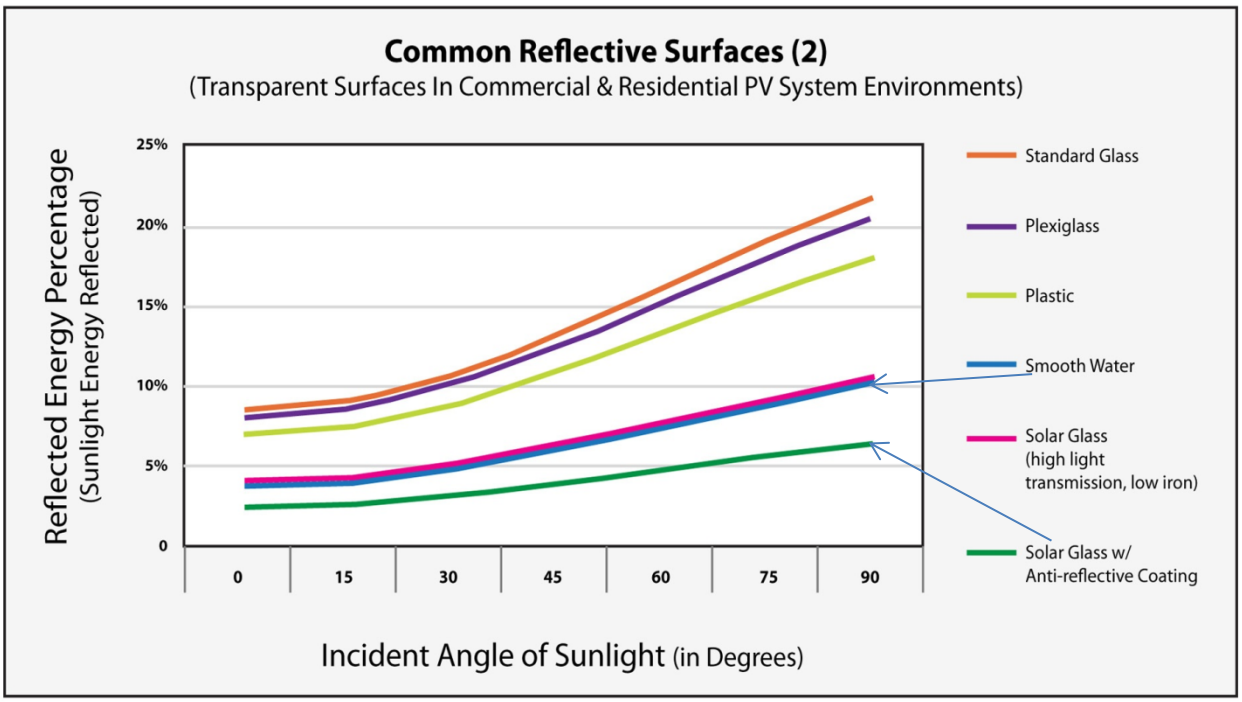
Accordingly, the experts that prepared the DEIR reviewed the available literature and found no credible evidence that the Project creates a significant pseudo lake effect threat to avians and therefore CEQA does not require alterations to the Project's location or design to mitigate an impact that is not significant or too speculative for evaluation. CEQA Guidelines 15126.4(a)(3) states, "[m]itigation measures are not required for effects which are not found to be significant." The CEQA Guidelines further specify that "if, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact." (CEQA Guidelines, §15145.) When determining whether an EIR complies with applicable legal requirements, courts may not interpret CEQA or the CEQA Guidelines in a manner that would impose procedural or substantive requirements

beyond those explicitly stated in the statute or the Guidelines. Pub. Res. Code §21083.1; California Oak Found. v Regents of Univ. of Cal. (2010) 188 Cal App 4th 227, 265; Western Placer Citizens for an Agric. & Rural Env't v County of Placer (2006) 144 Cal App 4th 890, 899; Martin v City & County of San Francisco (2005) 135 Cal App 4th 392, 402; Dry Creek Citizens Coalition v County of Tulare (1999) 70 Cal App 4th 20, 36; Los Angeles Unified Sch. Dist. v City of Los Angeles (1997) 58 Cal App 4th 1019, 1029; Chaparral Greens v City of Chula Vista (1996) 50 Cal App 4th 1134, 1145. Therefore, because there is no CEQA requirement to impose mitigation to reduce a speculative impact to avian species, it is within the County's discretion to simply require the applicant to monitor and record any avian mortalities without further analysis of whether that requirement is effective in mitigating any speculative impact to below a level of significance. CEQA Guidelines CEQA Guidelines, §15145 simply informs the agency to "terminate the analysis." To clarify, for the sake of convenience and tracking project requirements, the County has placed this avian monitoring and reporting requirement in the MMRP, but does not rely on it for mitigation because there is no finding of a significant impact to avian species from the pseudo-lake effect. To the extent there will be any avian mortalities at the project site, the County and the applicant will contribute to the data that can assist future decision makers in determining the cause of an avian mortality and setting a policy that is not based on speculation.

Furthermore, the Proposed Project is backed up between a mountain and a large existing fence (International Border Fence). The Proposed Project would have solar units that are uniformly dark in color, coated to be non-reflective, and designed to be highly absorptive of all light that strikes their glass surfaces so they would not appear like water from above, as water displays different properties by both reflecting and absorbing light waves. (See DEIR, p. 2.2-47.) The Proposed Project's panels are approximately 12.5 feet apart, which breaks up sky reflection from a single continuous surface to individual separate units and reduces the image of a continuous body of water. The charts included below demonstrate the low reflectivity of PV panels with anti-reflective coatings like the ones for this Project compared to other surfaces, including water (Common Reflective Surfaces Source: SUNPOWER 2010, PV Systems: Low Levels of Glare and Reflectance vs. Surrounding Environment).



Graph 1 - Common Spectral Surfaces



Graph 2 - (Detail) Common Spectral Surfaces with Highly Spectral Surfaces Removed

BIO2 – Several comments asserted that the biological survey efforts were not appropriate based on protocols and conditions established by state and federal resource agencies. The County clarifies that the DEIR's biological analysis is not inadequate based upon whether or not the

biological experts conducted surveys according to a state or federal agency's protocol because the state or federal agency is not the lead agency. The biological expert is to focus on meeting the County's requirement. Lead agencies have discretion to determine the appropriate way to evaluate an environmental impact. Lead agencies are not required to use analytical methods recommended by regulatory agencies, and a lead agency's analysis and choice of methodology will be upheld if supported by substantial evidence. Courts have applied these general rules to the analysis of biological impacts. In reviewing the biological impact analyses in EIRs, for example, courts have held that lead agencies are not required to conduct all possible tests or exhaust all research methodologies in evaluating impacts. *Save Panoche Valley v San Benito County* (2013) 217 Cal App 4th 503, 524. Courts have also applied these general rules in resolving claims that a lead agency's analysis of biological resource impacts is inadequate because the lead agency did not follow recommendations of wildlife resource agencies. *North Coast Rivers Alliance v Marin Mun. Water Dist.* (2013) 216 Cal App 4th 614, 642; *California Native Plant Soc'y v City of Rancho Cordova* (2009) 172 Cal App 4th 603, 626. Similarly, a site-specific analysis by a lead agency's biologist was sufficient to support the agency's determination that loss of habitat would not be significant, notwithstanding the federal designation of the land as critical habitat. *Banning Ranch Conservancy v City of Newport Beach* (2012) 211 Cal App 4th 1209, 1233. Furthermore, there is no legal requirement that a lead agency preparing an EIR undertake a protocol-level survey for endangered species, and an agency may conclude that other survey methodologies, such as reconnaissance-level field surveys, are sufficient, provided that its choice of methodology is supported by substantial evidence. *Association of Irritated Residents v County of Madera* (2003) 107 Cal App 4th 1383, 1396. An agency is also not required to agree with suggestions from the Fish and Wildlife Service that a take might occur, and that a take permit should therefore be obtained. "CEQA neither requires a lead agency to reach a legal conclusion regarding 'take' of an endangered species nor compels an agency to demand an applicant to obtain an incidental take permit from another agency." 107 Cal App 4th at 1397.

Nevertheless, the County believes that all field surveys were completed according to federal and County requirements, even if the commenter disagrees with the County's interpretation of those requirements. The survey's included directed searches and habitat assessments for the County list of potential special-status faunal and floral species. The entire Project site was surveyed by personnel qualified to perform biological surveys. Special-status biological resources were mapped and analyzed together with the Project plans (PDS2014-MUP-14-041). In addition, focused pre-construction surveys were conducted in 2015 in accordance with the December 2014 QCB Protocol Survey Guidelines. The latest survey results, which were negative for Quino checkerspot butterfly, are provided as part of the FEIR. As noted in the comment, under USFWS protocol, the USFWS *may* discount the survey results based upon the drought, but the USFWS comment letter does not discount the survey results, nor was any such feedback provided by the

USFWS after the 45-day survey report was submitted to the USFWS in 2013 (see Appendix H of Appendix 2.2.1). Further, as explained on DEIR 2.2-4, where negative survey results are not conclusive or are not conducted, the County's guidelines provide additional guidance. (See Appendix 2.2.1).

The County's guidance identifies that during a particular calendar year if inaccurate or inconclusive survey results are expected due to unsuitable environmental conditions such as fires, floods, or droughts, staff will work with project applicants to determine the best course of action. Options may include one or more of the following, determined on a case-by-case basis:

- Relying on previous year surveys.
- Resurveying the property the following year (assuming proper environmental conditions).
- Using the County's Species Predictive Model to determine presence/absence (access to data from this model is coordinated through the Planning and Development Services staff biologist).
- Reviewing records from the California Native Plant Society, California Natural Diversity Database, San Diego Plant Atlas, or other reliable sources.

The County's Species Predictive Model was was used for this projct in combination with requiring preconstruction surveys. Comments have also confused the results of surveys and mis-interpreted the survey methodologies. The County clarifies that no additional focused surveys, for rare plants for example, were conducted simultaneously with Quino checkerspot butterfly surveys. The purpose of the 2002 USFWS's survey protocol statement that "surveys should not be conducted concurrently with any other focused survey (e.g., a coastal California gnatcatcher survey)" is not to preclude recording host and nectar plants for the butterfly. In fact, the 2002 survey protocol requires that the survey report include "a list of larval host plants, nectar plants, and plant communities observed on site" (USFWS 2002). As such, it is good practice to record all host and/or nectar plants during butterfly surveys and this does not invalidate the Quino survey results. Vegetation mapping was undertaken separately and completed prior to conducting the Quino checkerspot butterfly surveys. Furthermore, the timing of surveys for particular purposes influenced whether or not those surveys were undertaken considering the status of the current drought. For example the DEIR (pp. 2.2-50) clearly states that rare plant surveys, which are necessarily conducted in spring for certain species and fall for others, were not conducted because of survey limitations that include suitable rainfall conditions (or lack thereof). Surveys for Quino checkerspot butterfly were conducted in 2013 and 2015, based on a later season for surveys, following some late season rains in the County. The protocol limitations are less rainfall dependent and more daily weather conditions centric., The the USFWS reserves the right to reject all surveys in any given season for reasons including climatic context, but have not in any of the surveyed instances.

9.2.4 Water Resources

WR1 - Several comments referred to the current drought conditions across the state and the Executive Order B-29-15 issued by the Governor addressing the mandatory water conservation in response to the drought. The County provided a water supply analysis with respect to implementation of the project within Section 3.1.4 of the DEIR. In order to ensure extended drought conditions were analyzed as part of the project's proposal to obtain groundwater from a non-potable well owned and operated by the JCSD, the water supply analysis was based on historical precipitation records from July 1982 through June 2012 toestimate recharge within the groundwater basin. (DEIR, p. 3.1.4-28 to 29.) Using 30 years of historical precipitation data ensures that a reasonably foreseeable drought condition will be evaluated. The period from 1983 to 1990 (seven years) and 1998 to 2004 (six years) were two extended drought periods that were included in the analysis. Based on groundwater levels that have been measured at JCSD Well 4, the historic all time recorded low water level of about 22.5 feet below the top of casing was recorded in September 2005 following six years of drought. As of June 18, 2015, the water level in Well 4 was 10 feet below top of casing which indicate current drought conditions have not impacted water levels in this well as severely as the previous drought from 1998 to 2004 which was included the groundwater analysis for this project. Accordingly, the County has a strong understanding of the surplus ground water levels in the basin during drought years.

The Executive Order B-29-15 directs the reduction in use of potable water by 25 percent across the state and directs restrictions on the use of potable water for landscape irrigation purposes. The proposed project does not contemplate use of potable water. Potential water sources include either a combination of water from a non-potable groundwater well from Jacumba Community Services District (JCSD) and recycled water from Padre Dam Municipal Water District (PDMWD). (DEIR, p. 3.1.4-29.) The project may also be entirely sourced by recycled water from PDMWD. The project would be using water for construction purposes primarily. Minimal operational water is proposed for soil stabilization and panel washing. (DEIR, pp. 3.1.4-26 to 29.)

9.2.5 Recirculation

RCR1 – Several comments called for recirculation of the DEIR, based on assertions that additional information and evaluation of potential impacts needs to be added to the EIR. The County has made revisions to the DEIR in response to public review comments to clarify, amplify, or make insignificant modifications to the EIR. The County disagrees with the assertions that the Jacumba Solar Project DEIR must be recirculated as none of the conditions identified in CEQA Guidelines Section 15088.5, requiring recirculation are met.

CEQA requires an EIR to be recirculated when the addition of new information deprives the public of a meaningful opportunity to comment on substantial adverse project impacts or feasible mitigation measures or alternatives that are not adopted. (*Laurel Heights Improvement Ass'n v*

Regents of Univ. of Cal. (1993) 6 C4th 1112; CEQA Guidelines, §15088.5(a). The critical issue in determining whether recirculation is required is whether any new information added to the EIR is "significant." If added information is significant, recirculation is required under Public Resources Code section 21092.1. The purpose of recirculation is to give the public and other agencies an opportunity to evaluate the new data and the validity of conclusions drawn from it. (*Silverado Modjeska Recreation & Park Dist. v County of Orange* (2011) 197 Cal.App.4th 282, 305; *Save Our Peninsula Comm. v Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 131; *Sutter Sensible Planning, Inc. v Board of Supervisors* (1981) 122 Cal.App.3d 813, 822.)

In Laurel Heights Improvement Ass'n v Regents of Univ. of Cal. (1993) 6 Cal.4th 1112, 1130 (Laurel Heights II), the Supreme Court gave four examples of situations in which recirculation is required:

When the new information shows a new, substantial environmental impact resulting either from the project or from a mitigation measure;

When the new information shows a substantial increase in the severity of an environmental impact, except that recirculation would not be required if mitigation that reduces the impact to insignificance is adopted;

When the new information shows a feasible alternative or mitigation measure, considerably different from those considered in the EIR, that clearly would lessen the significant environmental impacts of a project and the project proponent declines to adopt it; and

When the draft EIR was "so fundamentally and basically inadequate and conclusory in nature" that public comment on the draft EIR was essentially meaningless.

After *Laurel Heights II*, these examples were incorporated into the CEQA Guidelines. (CEQA Guidelines §15088.5(a).)

Any new information that has been added to the EIR since circulation of the DEIR serves simply to clarify or amplify information already found in the DEIR or improve the Project and its protection of the environment. The new information added does not raise important new issues about significant adverse effects on the environment without providing corresponding mitigation to maintain the proper finding that the impact is below the level of significance. The ultimate conclusion about the project's significant impacts do not change in light of any new information added to the EIR. Therefore, any new information in the EIR is insignificant for purposes of recirculation, particularly as set forth in Section 15088.5(b) of the CEQA Guidelines.

9.2.6 Cultural Resources

CR1 - During the course of public review the County received documents and comments expressing concerns regarding discovery of archaeological resources, including the potential presence of underground thermal features (sometimes referred to as agave roasting pits). As described in Section 2.3 Cultural Resources of the EIR, a subsurface testing methodology was developed and implemented that included specifically exploring known agave roasting pits. This EIR summarizes the Cultural Resources Technical Report Appendix 2.3-1, which evaluated the significance and potential impacts to archaeological resources, including agave roasting its. As provided in table 2.3-2 of Section 2.3 in this EIR, the pits were evaluated and not found to be significant. However, in accordance with County practice, and recognizing the potential to discover unknown resources, the mitigation measure for CULT#GR-2(b) at DEIR, pp. 2.3.24-25 will be implemented. This mitigation measure states: "The Research Design and Data Recovery Program (Program) shall be prepared by the Project Archaeologist in consultation with the Native American monitor. The County Archaeologist shall review and approve the Program, which shall be carried out using professional archaeological methods." This ensures that should any underground thermal features be discovered, they would be evaluated to determine significance and treated accordingly. The mitigation measure further includes specific performance standards based upon professional archaeological methods; "The Program shall include (1) avoidance of Traditional Cultural Properties, (2) reasonable efforts to preserve (avoidance) "unique" cultural resources pursuant to CEQA Section 21083.2(g) or Sacred Sites, (3) the capping of identified Sacred Sites or unique cultural resources and placement of development over the cap, if avoidance is infeasible, and (4) data recovery for non-unique cultural resources. The preferred option is preservation (avoidance)." No changes to the EIR are necessary in response to concerns directed at thermal resources or roasting pits.