APPENDIX H – Applicable Regulations

Air Quality Applicable Regulations, Plans, and Standards

Federal

National Ambient Air Quality Standards (NAAQS) are set by the Environmental Protection Agency (EPA) Office of Air Quality Planning and Standards, as required by the federal Clean Air Act (CAA). Ambient air quality standards define the allowable concentrations of criteria pollutants in ambient air. There are NAAQS in place for seven "criteria" pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particle pollution—further defined as particles having diameters equal to or less than 10 micrometers (PM_{10}) and particles having diameters equal to or less than 2.5 micrometers ($PM_{2.5}$)—and sulfur dioxide (Table 5). Standards are classified as primary and secondary. Primary standards are designed to protect public health, including sensitive individuals, such as children and the elderly, whereas secondary standards are designed to protect public welfare, such as visibility and crop or material damage. The EPA sets the NAAQS based on a process that involves science policy workshops, a risk/exposure assessment (REA) that draws on the information and conclusions of the science policy workshops to development quantitative characterizations of exposures and associated risks to human health or the environment, and a policy assessment by EPA staff that bridges the gap between agency scientific assessments and the judgments required of the EPA administrator, who then takes the proposed standards through the federal rulemaking process.

The Clean Air Act requires the EPA to routinely review and update the NAAQS in accordance with the latest available scientific evidence. For example, the EPA revoked the annual PM10 standard in 2006 due to a lack of evidence linking health problems to long-term exposure to PM10 emissions. The 1-hour standard for O3 was revoked in 2005 in favor of a new 8-hour standard that is intended to better protect public health.

CAA Section 182(e)(5) allows the EPA administrator to approve provisions of an attainment strategy in an extreme area that anticipates development of new control techniques or improvement of existing control technologies if the state has submitted enforceable commitments to develop and adopt contingency measures to be implemented if the anticipated technologies do not achieve planned reductions.

Nonattainment areas that are classified as "serious" or "worse" are required to revise their air quality management plans to include specific emission reduction strategies to meet interim milestones in implementing emission controls and improving air quality. The EPA can withhold certain transportation funds from states that fail to comply with the planning requirements of the act. If a state fails to correct these planning deficiencies within two years of federal notification, the EPA is required to develop a Federal Implementation Plan for the identified nonattainment area or areas.

State

The California Clean Air Act of 1988 requires all air pollution control districts in the state to aim to achieve and maintain state ambient air quality standards for O_3, CO, and NO_2 by the earliest practical date and to develop plans and regulations specifying how the districts will meet this goal. There are no planning requirements for the state PM_{10} standard. California Air Resources Board (CARB), which became part of the California Environmental Protection Agency in 1991, is responsible for meeting state requirements of the federal Clean Air Act, administrating the California Clean Air Act, and establishing the California Ambient Air Quality Standards (CAAQS). The California Clean Air Act, amended in 1992, requires all air districts in the state to endeavor to achieve and maintain the CAAQS. The CAAQS are generally stricter than national standards for the same pollutants, but there is no penalty for nonattainment. Similar to the federal process, the standards for the CAAQS are adopted after review by CARB staff of the scientific literature produced by agencies such as the Office of Environmental Health Hazard Assessment (OEHHA),

the Air Quality Advisory Committee, which is comprised of experts in health sciences, exposure assessment, monitoring methods, and atmospheric sciences appointed by the Office of the President of the University of California, and public review and comment.

An important component of the MDAQMD's air quality planning strategy is contained in the State Implementation Plan (SIP) for the State of California. The federal Clean Air Act requires all states to submit a SIP to the EPA. This statewide SIP is often referred to as an "infrastructure" SIP. Infrastructure SIPs are administrative in nature and describe the authorities, resources, and programs a state has in place to implement, maintain, and enforce the federal standards. It does not contain any proposals for emission control measures.

In addition to infrastructure SIPs, the Clean Air Act requires submissions of SIPs for areas that are out of compliance with the NAAQS. These area attainment SIPs are comprehensive plans that describe how an out-of-compliance area will attain and maintain the particular NAAQS standard(s) it does not conform to. Once an out-of-compliance area has attained the standard in question, a maintenance SIP is required for a period of time to ensure the area will continue to meet the standard.

State Implementation Plans are not single documents. They are a compilation of new and previously submitted plans, programs (such as monitoring, modeling, permitting, etc.), district rules, state regulations, and federal controls. Many of California's SIPs rely on the same core set of control strategies, including emission standards for cars and heavy trucks, fuel regulations, and limits on emissions from consumer products. State law makes CARB the lead agency for all purposes related to SIPs. Local air districts and other agencies prepare SIP elements and submit them to CARB for review and approval. CARB forwards those revisions to the EPA for approval and publication in the CFR.

Table 5 compares the state and federal criteria pollutant standards while also discussing the relevant effects of pollutants on persons.

The MDAB is designated as either in attainment or unclassified for all federal air quality standards, and all state air quality standards with the exceptions of Ozone and PM_{10} (CARB 2020). Section 176(c) of the Clean Air Act (42 U.S.C. 7401 et seq.) requires federal agencies to comply with the General Conformity Regulations and demonstrate conformity for the projects in nonattainment areas; otherwise, the projects cannot proceed.

Biological Resources-Vegetation Applicable Regulations, Plans, and Standards

Federal

Federal Endangered Species Act of 1973

When a private Project that has no federal funding and for which no federal action is required may affect a listed species, the private applicant may receive authorization for incidental take of species listed under the Federal Endangered Species Act (FESA). In these situations, Section 10 of the FESA provides for issuance of incidental take permits (ITPs) to private entities with the development of a Habitat Conservation Plan (HCP). An ITP allows take of the species that is incidental to another authorized activity.

State

California Desert Native Plants Act

The California Desert Native Plants Act, Division 23 of the California Food and Agriculture Code, is intended to "protect California desert native plants from unlawful harvesting on both public and privately owned lands." The Act regulates the harvesting, transport, and sale of specific species of native plants in California

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California Native Plant Protection Act

The Native Plant Protection Act (NPPA) of 1977 (Fish and Wildlife Code Sections 1900-1913) directs the CDFW to "preserve, protect and enhance rare and endangered plants in this State." The NPPA gives the California Fish and Wildlife Commission the power to designate native plants as "endangered" or "rare" and protected endangered and rare plants from take.

Desert Renewable Energy Conservation Plan

The Desert Renewable Energy Conservation Plan (DRECP) is a multi-agency plan formed by the Renewable Energy Action Team composed of the California Energy Commission, CDFW, USFWS, and the Bureau of Land Management with the goal of facilitating the development and minimizing the environmental impact of the development of renewable energy resources within the desert regions of California. The plan consists of multiple components targeting varying aspects of development, including but not limited to the following: General Conservation Plan (GCP) and a NCCP. The overall goal is to conserve biological, physical, cultural, social, and scenic resources within the plan area. As this applies to biological resources, the plan intends to achieve six primary objectives: (1) Locate renewable energy development to disturbed lands or those with low biological conflict; (2) Identify plan-wide biological goals and objectives; (3) identify a DRECP Plan-Wide Reserve Design Envelope for each alternative; (4) contribute to the long-term conservation and management of covered species and natural communities; (5) preserve, restore, and enhance natural communities and ecosystems; and (6) identify and incorporate climate change adaption research and management objectives and/or policies (Renewable Energy Action Team 2016).

Local

County of San Bernardino General Plan

The San Bernardino County Countywide Plan describes the following policies regarding biological resources:

Policy NR-5.1 Coordinated habitat planning. We participate in landscape-scale habitat conservation planning and coordinate with existing or proposed habitat conservation and natural resource management plans for private and public lands to increase certainty for both the conservation of species, habitats, wildlife corridors, and other important biological resources and functions and for land development and infrastructure permitting.

Policy NR-5.2 Capacity for resource protection and management. We coordinate with public and nongovernmental agencies to seek funding and other resources to protect, restore, and maintain open space, habitat, and wildlife corridors for threatened, endangered, and other sensitive species.

Policy NR-5.3 Multiple-resource benefits. We prioritize conservation actions that demonstrate multiple resource preservation benefits, such as biology, climate change adaptation and resiliency, hydrology, cultural, scenic, and community character.

Policy NR-5.6 Mitigation banking. We support the proactive assemblage of lands to protect biological resources and facilitate development through private or public mitigation banking. We require public and private conservation lands or mitigation banks to ensure that easement and fee title agreements provide funding methods sufficient to manage the land in perpetuity.

Policy NR-5.7 Development review, entitlement, and mitigation. We comply with state and federal regulations regarding protected species of animals and vegetation through the development review, entitlement, and environmental clearance processes.

Policy NR-5.8 Invasive species. We require the use of non-invasive plant species with new development and encourage the management of existing invasive plant species that degrade ecological function.

San Bernardino County Development Code

Desert Native Plant Protection (88.01.060). This Section provides regulations for the removal or harvesting of specified desert native plants in order to preserve and protect the plants and to provide for the conservation and wise use of desert resources. The provisions are intended to augment and coordinate with the Desert Native Plants Act (Food and Agricultural Code Section 80001 et seq.) and the efforts of the State Department of Food and Agriculture to implement and enforce the Act.

The following desert native plants or any part of them, except the fruit, shall not be removed except under a Tree or Plant Removal Permit in compliance with Section 88.01.050 (Tree or Plant Removal Permits). In all cases the botanical names shall govern the interpretation of this Section. (1) The following desert native plants with stems 2 inches or greater in diameter or 6 feet or greater in height: Dalea spinosa (smoke tree), all species of the genus Prosopis (mesquites). (2) All species of the family Agavaceae (century plants, nolinas, yuccas). (3) Creosote Rings, 10 feet or greater in diameter. (4) All Joshua trees. (5) Any part of any of the following species, whether living or dead: Olneya tesota (desert ironwood), all species of the genus Prosopis (mesquites), all species of the genus Cercidium (synonym: Parkinsonia, palo verde).

County of San Bernardino General Plan – Renewable Energy and Conservation

The County of San Bernardino General Plan Renewable Energy Conservation Element describes the following policies regarding Environmental Compatibility:

> RE Policy 4.7: RE Project site selection and site design shall be guided by the following priorities relative to habitat conservation and mitigation:
>
> - avoid sensitive habitat, including wildlife corridors, during site selection and Project design.
> - where necessary and feasible, conduct mitigation on-site.
> - when on-site habitat mitigation is not possible or adequate, establish mitigation off-site in an area designated for habitat conservation.

Biological Resources- Wildlife Applicable Regulations, Plans, and Standards

Federal

Federal Endangered Species Act of 1973

When a private project that has no federal funding and for which no federal action is required may affect a listed species, the private applicant may receive authorization for incidental take of species listed under the FESA. In these situations, Section 10 of the FESA provides for issuance of incidental take permits (ITPs) to private entities with the development of a Habitat Conservation Plan (HCP). An ITP allows take of the species that is incidental to another authorized activity.

Bald and Golden Eagle Protection Act of 1940

The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668[c]) was enacted in 1940 (and amended several times since) and prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" bald or golden eagles, including their parts (including feathers), nests, or eggs. The Act provides criminal penalties for persons who "take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle ... [or any golden eagle], alive or dead, or any part (including feathers), nest, or egg thereof." The Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb." Regulations further define

"disturb" as “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior" (50 CFR 22.6). The U.S. Fish and Wildlife Service issues and maintains permits for eagle “take.”

Migratory Bird Treaty Act, as Amended

The Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 United States Code [USC] 703-711), provides legal protection for almost all bird species occurring in, migrating through, or spending a portion of their life cycle in North America by restricting the killing, taking, collecting, and selling or purchasing of native bird species or their parts, nests, or eggs. The United States Fish and Wildlife Service (USFWS) determined it was illegal under the MBTA to directly kill or destroy an active nest (nest with eggs or nestlings) of nearly any bird species (with the exception of non-native species) through the MBTA Reform Act of 2004. Certain game bird species are allowed to be hunted for specific periods determined by federal and state governments. The intent of the MBTA is to eliminate any commercial market for migratory birds, feathers, or bird parts, especially for eagles and other birds of prey. As authorized by the MBTA, the USFWS issues permits to qualified applicants for the following types of activities:

- falconry
- raptor propagation
- scientific collecting
- special purposes, such as rehabilitation, education, migratory game bird propagation, and salvage
- take of depredating birds, taxidermy, and waterfowl sale and disposal

The regulations governing migratory bird permits can be found in Title 50, Part 13 (General Permit Procedures) and Part 21 (Migratory Bird Permits) of the CFR.

State

California Endangered Species Act

The California Endangered Species Act (CESA; California Fish and Wildlife Code Sections 2050-2116) parallels the FESA. As a responsible agency, the California Department of Fish and Wildlife (CDFW) has regulatory authority over species state listed as endangered and threatened. The State Legislature encourages cooperative and simultaneous findings between state and federal agencies. Consultation with CDFW is required for projects with the potential to affect listed or candidate species. CDFW would determine whether a reasonable alternative would be required for the conservation of the species. CESA prohibits the “take” of these species unless an ITP is granted. Under California Fish and Wildlife Code Section 2081 (ITP), CDFW can authorize the “take” of a listed species (with exception to fully protected species) if the “take” of the listed species is incidental to carrying out an otherwise lawful project that has been approved under the California Environmental Quality Act (CEQA). Section 2080.1 allows for “take” once an applicant obtains a federal ITP which can be approved (Consistency Determination letter) within 30 days by the CDFW Director. If the federal Incidental Take Statement is determined not to be consistent with CESA, then application for a State ITP (2081) is required.

The California Fish and Wildlife Code outlines protection for fully protected species of mammals, birds, reptiles, amphibians, and fish. Species that are “fully protected” may not be taken or possessed at any time. CDFW has designated certain species native to California as Species of Special Concern to “focus attention on wildlife at conservation risk by the Department, other State, Local and Federal governmental entities, regulators, land managers, planners, consulting biologists, and others; stimulate research on

poorly known species; achieve conservation and recovery of wildlife before they meet CESA criteria for listing as threatened or endangered."

State Fully Protected Species

The State of California designated species as Fully Protected (FP) prior to the creation of CESA and FESA. Lists of FP species were initially developed to provide protection to species that were rare or faced possible extinction/extirpation. Most FP species have since been state listed as threatened or endangered species. Under California Fish and Wildlife Code Section 4700, FP species may not be taken or possessed at any time.

In September 2011, the California Legislature sent the Governor legislation authorizing CDFW to permit the incidental take of 36 FP species pursuant to a Natural Community Conservation Plan (NCCP) approved by CDFW (Senate Bill 618 [Wolk]). The legislation gives FP species the same level of protection as provided under the NCCP Act for endangered and threatened species (California Fish and Wildlife Code Section 2835). The NCCP Act, enacted in the 1990s, authorizes the incidental take of species "whose conservation and management" is provided for in a conservation plan approved by CDFW.

Sections 1600-1602 of the California Fish and Wildlife Code

Pursuant to Division 2, Chapter 6, Sections 1600-1602 of the California Fish and Wildlife Code, CDFW regulates all diversions, obstructions, or changes to the natural flow or bed, channel, or bank of any river, stream, or lake, which supports fish or wildlife. CDFW defines a "stream" (including creeks and rivers) as "a body of water that flows at least periodically or intermittently through a bed or channel having banks and supports fish or other aquatic life. This includes watercourses having surface or subsurface flow that supports or has supported riparian vegetation." CDFW's definition of "lake" includes "natural lakes or man-made reservoirs." CDFW limits of jurisdiction include the maximum extent of the uppermost bank-to-bank distance or riparian vegetation dripline.

California State Fish and Game Code Sections 3503, 3503.5, 3513, and 3800

California Fish and Game Code Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird. California Fish and Game Code Section 3800 affords protection to all nongame birds, which are all birds occurring naturally in California that are not resident game birds, migratory game birds, or fully protected birds. California Fish and Game Code Section 3513 upholds the MBTA by prohibiting any take or possession of birds that are designated by the MBTA as migratory nongame birds except as allowed by federal rules and regulations promulgated pursuant to the MBTA.

Desert Renewable Energy Conservation Plan

The Desert Renewable Energy Conservation Plan (DRECP) is a multi-agency plan formed by the Renewable Energy Action Team composed of the California Energy Commission, CDFW, USFWS, and BLM with the goal of facilitating the development and minimizing the environmental impact of the development of renewable energy resources within the desert regions of California. The plan consists of multiple components targeting varying aspects of development, including but not limited to the following: General Conservation Plan (GCP) and a NCCP. The overall goal is to conserve biological, physical, cultural, social, and scenic resources within the plan area. As this applies to biological resources, the plan intends to achieve six primary objectives: (1) Locate renewable energy development to disturbed lands or those with low biological conflict; (2) Identify plan-wide biological goals and objectives; (3) identify a DRECP Plan-Wide Reserve Design Envelope for each alternative; (4) contribute to the long-term conservation and management of covered species and natural communities; (5) preserve, restore, and enhance natural communities and ecosystems; and (6) identify and incorporate climate change adaption research and management objectives and/or policies (Renewable Energy Action Team 2016).

Local

San Bernardino County Countywide Plan - Biological Resources

The San Bernardino County Countywide Plan describes the following policies regarding biological resources:

Policy NR-5.1 Coordinated habitat planning. We participate in landscape-scale habitat conservation planning and coordinate with existing or proposed habitat conservation and natural resource management plans for private and public lands to increase certainty for both the conservation of species, habitats, wildlife corridors, and other important biological resources and functions and for land development and infrastructure permitting.

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Policy NR-5.8 Invasive species. We require the use of non-invasive plant species with new development

County of San Bernardino General Plan – Renewable Energy and Conservation

The County of San Bernardino General Plan Renewable Energy Conservation Element describes the following policies regarding Environmental Compatibility:

> RE Policy 4.7: RE project site selection and site design shall be guided by the following priorities relative to habitat conservation and mitigation:
>
> - avoid sensitive habitat, including wildlife corridors, during site selection and project design.
> - where necessary and feasible, conduct mitigation on-site.
> - when on-site habitat mitigation is not possible or adequate, establish mitigation off-site in an area designated for habitat conservation.

Cultural Resources Applicable Regulations, Plans, and Standards

Federal

National Historic Preservation Act of 1966

Enacted in 1966, the NHPA (16 U.S.C §§ 470 et seq.) declared a national policy of historic preservation and instituted a multifaceted program, administered by the Secretary of the Interior, to encourage the achievement of preservation goals at the federal, state, and local levels. The NHPA authorized the expansion and maintenance of the National Register of Historic Places (NRHP), established the position of State Historic Preservation Officer (SHPO), provided for the designation of State Review Boards, set up a

mechanism to certify local governments to carry out the purposes of the NHPA, assist Native American tribes in preserving their cultural heritage, and created the Advisory Council on Historic Preservation (ACHP).

The NHPA establishes the nation's policy for historic preservation and sets in place a program for the preservation of historic properties by requiring federal agencies to consider effects to significant cultural resources (i.e., historic properties) prior to undertakings.

Section 106 of the National Historic Preservation Act

Section 106 of the NHPA states that federal agencies with direct or indirect jurisdiction over federally funded, assisted, or licensed undertakings must take into account the effect of the undertaking on any historic property that is included in, or eligible for inclusion in, the NRHP and that the ACHP and SHPO must be afforded an opportunity to comment, through a process outlined in the ACHP regulations at 36 Code of Federal Regulations (CFR) Part 800, on such undertakings.

National Register of Historic Places

The NRHP was established by the NHPA of 1966 as "an authoritative guide to be used by federal, state, and local governments, private groups, and citizens to identify the Nation's cultural resources and to indicate what properties should be considered for protection from destruction or impairment." The NRHP recognizes properties that are significant at the national, state, and local levels. To be eligible for listing in the NRHP, a resource must be significant in American history, architecture, archaeology, engineering, or culture. Districts, sites, buildings, structures, and objects of potential significance must also possess integrity of location, design, setting, materials, workmanship, feeling, or association. A property is eligible for the NRHP if it is significant under one or more of the following criteria:

- Criterion A: It is associated with events that have made a significant contribution to the broad patterns of our history.
- Criterion B: It is associated with the lives of persons who are significant in our past.
- Criterion C: It embodies the distinctive characteristics of a type, period, or method of construction; represents the work of a master; possesses high artistic values; or represents a significant and distinguishable entity whose components may lack individual distinction.
- Criterion D: It has yielded, or may be likely to yield, information important in prehistory or history.

Notwithstanding Criteria Considerations, in general cemeteries, birthplaces, or graves of historic figures; properties owned by religious institutions or used for religious purposes; structures that have been moved from their original locations; reconstructed historic buildings; and properties that are primarily commemorative in nature are not considered eligible for the NRHP unless they satisfy certain conditions. In general, a resource must be at least 50 years of age to be considered for the NRHP, unless it satisfies a standard of exceptional importance.

In addition to the four National Register Criteria noted above, qualifying resources must maintain elements of integrity. Integrity is the ability of a property to convey its significance. "The evaluation of integrity is sometimes a subjective judgment, but it must always be grounded in an understanding of a property's physical features and how they relate to its significance" (NPS 1997:44). The National Register Bulletin (NPS 1990, revised 1997) identifies seven aspects of integrity that a property should retain, and include: Location, Design, Setting, Materials, Workmanship, Feeling, and Association. While maintenance of all aspects of integrity is not required, a property should possess most of the aspects that are integral to its ability to convey its significance. Understandably, not all aspects of integrity are applicable across the range of buildings, structure, objects, or sites under evaluation. Aspects such as design or feeling likely

would not be integral to understanding the significance of an archaeological deposit, whereas these would be essential in understanding a significant building, or landscape.

The Bulletin further exemplifies how to broadly assess the integrity of eligible resources when applying the qualifying National Register Criteria. Under Criteria A and B, a property that is significant for its historic association is eligible if it retains the essential physical features that made up its character or appearance during the period of its association with the important event, historical pattern, or person(s). If the property is a site (such as a treaty site) where there are no material cultural remains, the setting must be intact. Eligible archaeological sites must be in overall good condition with excellent preservation of features, artifacts, and spatial relationships to the extent that these remains are able to convey important associations with events or persons.

Under Criterion C, a property important for illustrating a particular architectural style or construction technique must retain most of the physical features that constitute that style or technique. A property that has lost some historic materials or details can be eligible if it retains most of the features that illustrate its style in terms of the massing, spatial relationships, proportion, pattern of windows and doors, texture of materials, and ornamentation. The property is not eligible, however, if it retains some basic features conveying massing but has lost the majority of the features that once characterized its style. Eligible archaeological sites must be in overall good condition with excellent preservation of features, artifacts, and spatial relationships to the extent that these remains are able to illustrate a site type, time period, method of construction, or work of a master.

Properties eligible under Criterion D, including archaeological sites and standing structures studied for their information potential, less attention is given to their overall condition, than if they were being considered under Criteria A, B, or C. Archaeological sites do not exist today exactly as they were formed. There are numerous cultural and natural processes that may have altered the deposited materials and their spatial relationships. For properties eligible under Criterion D, integrity is based upon the property's potential to yield specific data that addresses important research questions, such as those identified in the historic context documentation, or in the research design, for projects meeting the Secretary of the Interior's Standards for Archeological Documentation (NPS 1997:46).

Native American Graves Protection and Repatriation Act of 1990

The NAGPRA of 1990 sets provisions for the intentional removal and inadvertent discovery of human remains and other cultural items from federal and tribal lands. It clarifies the ownership of human remains and sets forth a process for repatriation of human remains and associated funerary objects and sacred religious objects to the Native American groups claiming to be lineal descendants or culturally affiliated with the remains or objects. It requires any federally funded institution housing Native American remains or artifacts to compile an inventory of all cultural items within the museum or with its agency and to provide a summary to any Native American tribe claiming affiliation.

State

Assembly Bill 4239

AB 4239 established the Native American Heritage Commission (NAHC) as the primary government agency responsible for identifying and cataloging Native American cultural resources. The bill authorized the NAHC to act in order to prevent damage to and insure Native American access to sacred sites and authorized the NAHC to prepare an inventory of Native American sacred sites located on public lands.

Public Resources Code 5097.97

No public agency and no private party using or occupying public property or operating on public property under a public license, permit, grant, lease, or contract made on or after July 1, 1977, shall in any manner whatsoever interfere with the free expression or exercise of Native American religion as provided in the United States Constitution and the California Constitution; nor shall any such agency or party cause severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, except on a clear and convincing showing that the public interest and necessity so require.

Public Resources Code 5097.98 (b) and (e)

Public Resources Code (PRC) 5097.98 (b) and (e) require a landowner on whose property Native American human remains are found to limit further development activity in the vicinity until he/she confers with the NAHC-identified Most Likely Descendants (MLDs) to consider treatment options. In the absence of MLDs or of a treatment acceptable to all parties, the landowner is required to reinter the remains elsewhere on the property in a location not subject to further disturbance.

California Health and Safety Code, Section 7050.5

California Health and Safety Code, Section 7050.5 makes it a misdemeanor to disturb or remove human remains found outside a cemetery. This code also requires a project owner to halt construction if human remains are discovered and to contact the county coroner.

Local

San Bernardino County Development Code

Development Code Chapter 82.12, Cultural Resources Preservation (CP) Overlay, includes regulations pertaining to the identification and preservation of important archaeological and historical resources. The chapter outlines application requirements for a project proposed within a CP Overlay, as well as development standards and an explanation of the need for a Native American monitor. The Development Code states that the CP Overlay may be applied to areas where archaeological and historic sites that warrant preservation are known or are likely to be present. Specific identification of known cultural resources is indicated by listing in one or more of the following inventories: California Archaeological Inventory, California Historic Resources Inventory, California Historical Landmarks, California Points of Historic Interest, and/or National Register of Historic Places.

County of San Bernardino Countywide Plan

The Countywide Plan is organized around two main documents, (1) the Policy Plan, and (2) the Business Plan. The Policy Plan serves as the County's general plan – a blueprint for meeting the County's long-term vision for the future – but in a much more comprehensive way. The Cultural Resources Element of the Policy Plan establishes direction on notification, coordination, and partnerships to preserve and conserve cultural resources; provides guidance on how new development can avoid or minimize impacts on cultural resources; and provides direction on increasing public awareness and education efforts about cultural resources. The Proposed Action and proposed Project are consistent with all applicable policies and goals in the Cultural Resources Element of the County of San Bernardino Countywide Plan.

Visual ResourcesApplicable Regulations, Plans, and Standards

State

Senate Bill 1467

Senate Bill 1467 established the Scenic Highway Program. SB 1467 declares: “The development of scenic highways will not only add to the pleasure of the residents of this state but will also play an important role in encouraging the growth of the recreation and tourism industries upon which the economy of many users of this State depends”.

According to Section 263.1 of the Streets and Highways Code, U.S. 62 from I-10 in White Water to the Arizona state line is included in the State Scenic Highway System as an eligible state scenic highway(Caltrans 2019).

County of San Bernardino General Plan

The Countywide Plan is organized around two main documents, (1) the Policy Plan, and (2) the Business Plan. The Policy Plan serves as the County’s general plan – a blueprint for meeting the County’s long-term vision for the future – but in a much more comprehensive way. The Natural Resources Element, Land Use Element, and Renewable Energy & Conservation Element of the Countywide Policy Plan provide specific goals and objectives for maintaining and protecting the aesthetic character of the region. Table 13 analyzes the consistency of the Project with specific policies contained in the Policy Plan associated with aesthetics.

County of San Bernardino Development Code

Section 83.07.040, Glare and Outdoor Lighting – Mountain and Desert Regions

Section 83.07.040 establishes standards for outdoor lighting in the County’s Mountain and Desert Regions (the proposed Project site is located in the Desert Region). This section requires new permitted lighting for construction and operational lighting to be fully shielded to preclude light pollution or light trespass on adjacent property, other property within the line of sight (direct or reflected) of the light source, or members of the public who may be traveling on adjacent roadways or rights-of-way.

Section 84.29.035, Required Findings for Approval of a Commercial Solar Energy Facility

Section 84.29.035 includes the following provisions:

a) In order to approve a commercial solar energy generation facility, the Planning Commission shall, in addition to making the findings required under Section 85.06.040(a) of the San Bernardino County Development Code, determine that the location of the proposed commercial solar energy facility is appropriate in relation to the desirability and future development of communities, neighborhoods, and rural residential uses, and will not lead to loss of the scenic desert qualities that are key to maintaining a vibrant desert tourist economy by making each of the findings of fact in subdivision (C).

b) In making these findings of fact, the Planning Commission shall consider:

1. The characteristics of the commercial solar energy facility development site and its physical and environmental setting, as well as the physical layout and design of the proposed development in relation to nearby communities, neighborhoods, and rural residential uses; and

2. The location of other commercial solar energy generation facilities that have been constructed, approved, or applied for in the vicinity, whether within a city of unincorporated territory, or on state or federal land.

c) The finding of fact shall include the following:

1. The proposed commercial solar energy generation facility is either:

> A. Sufficiently separated from existing communities and existing/developing rural residential areas so as to avoid adverse effects, or
>
> B. Of a sufficiently small size, provided with adequate setbacks, designed to be lower profile than otherwise permitted, and sufficiently screened from public view so as to not adversely affect the desirability and future development of communities, neighborhoods, and rural residential use.

2. Proposed fencing, walls, landscaping, and other perimeter features of the proposed commercial solar energy generation facility will minimize the visual impact of the Project so as to blend with and be subordinate to the environment and character of the area where the facility is to be located.

3. The siting and design of the proposed commercial solar energy generation facility will be either:

> A. Unobtrusive and not detract from the natural features, open space and visual qualities of the area as viewed from communities, rural residential uses, and major roadways and highways, or
>
> B. Located in such proximity to already disturbed lands, such as electrical substations, surface mining operations, landfills, wastewater treatment facilities, etc., that it will not further detract from the natural features, open space and visual qualities of the area as viewed from communities, rural residential uses, and major roadways and highways.

4. The siting and design of Project site access and maintenance roads have been incorporated in the visual analysis for the Project and shall minimize visibility from public view points while providing needed access to the development site.

5. The proposed commercial solar energy generation facility will avoid modification of scenic natural formations.

Section 84.29.040, Solar Energy Development Standards

Section 84.29.040 includes the following standards applicable to the proposed Project:

b) Glare. Solar energy facilities shall be designed to preclude daytime glare on any abutting residential land use zoning district, residential parcel, or public right-of-way.

c) Night Lighting. Outdoor lighting within a commercial solar energy generation facility shall comply with the provisions of Chapter 83.07 of the Development Code.

San Bernardino County Ordinance No. 3900

Because desert and mountain residents value the night sky conditions, the County adopted Ordinance No. 3900, also known as the Night Sky Ordinance. This ordinance outlines specific standards relating to glare and outdoor lighting. These standards are included in the sections of the Development Code described previously.