

Comment Letter
for
Draft DRECP Document
and Related EIR/EIS
NEPA/CEQA

February 23, 2015

Prepared For:

California Energy Commission
Dockets Office, MS-4
Docket No. 09-RENEW EO-01
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Town of Apple Valley

A Better Way of Life

February 23, 2015

Via E-mail docket@energy.ca.gov and First Class Mail

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**Re: Draft DRECP document and related Environmental Impact Report/Statement
NEPA/CEQA**

Dear Commissioner Douglas, Director Bonham, Director Kenna, and Director Lohofener:

The Town of Apple Valley (Apple Valley or Town) is located in the heart of the Victor Valley in the High Desert of San Bernardino County (County). The Town's incorporated boundaries encompass 74 square miles with a Sphere of Influence (SOI)¹ of 128 square miles.

¹ Sphere of Influence is the probable ultimate physical boundary and service area of a local governmental agency.

The Town recently updated its General Plan to guide future development and economic growth. A recent amendment² to this planning effort included zoning of approximately 3.6 percent, or 6,600 acres, within the Plan Area for photovoltaic solar energy projects. The adoption of the General Plan also included the development and adoption of a Climate Action Plan.

In 2007, Apple Valley began preparing its own Multispecies Habitat Conservation Plan/Natural Community Conservation Plan (MSHCP/NCCP). It is being developed as a companion document to the General Plan to guide the Town's conservation efforts – allowing the Town to preserve open space, protect threatened and endangered species, and maintain its high-desert character. Apple Valley envisions that the General Plan and MSHCP/NCCP will work together and provide greater local control to ensure that the Town's vision for a "Better Way of Life" is achieved³. Because of this, the Town has been working closely with the wildlife agencies, County planning staff, and seeking stakeholder input throughout its planning efforts. The draft MSHCP/NCCP will be circulated for public comment and presented to the Town Council and County Board of Supervisors for guidance and review prior to developing the final plan.

MSHCP/NCCP

Apple Valley's MSHCP/NCCP Plan Area is within the Desert Renewable Energy Conservation Plan's (DRECP) Plan Area. Although the Town's planning effort stretches from Stoddard Wells in the north to the San Bernardino Mountains in the south, and from the Granite Mountains in the east to the Mojave River in the west, it is significantly smaller than the DRECP's. The Town's planning area covers approximately 227,000 acres (354 square miles), which includes its approximately 170,000-acre (265-square mile) Plan Area and identifies an additional 57,000 acres (89 square miles) of critical north-south and east-west linkages that extend beyond the MSHCP/NCCP boundaries. The Town has devoted significant time and resources to understand its planning area: its resources, its current uses, and its future opportunities.

Apple Valley's MSHCP/NCCP planning effort has focused on addressing landscape-scale conservation needs, climate change, and protection of species diversity. It is

² The amendment allows for photovoltaic (PV) solar farms that are ten (10) acres or less to be permitted with a Site Plan Review Permit or a Special Use Permit, both of which are administratively reviewed and approved. PV solar farms that are greater than ten (10) acres, but less than 400 acres, are conditionally permitted. The Conditional Use Permit requirement allows the Planning Commission to review and approve these larger projects to ensure that they maintain Apple Valley's rural character and quality of life.

³ The Town's General Plan was adopted and the EIR certified in August 2009. After several processing delays due to staffing issues within the agencies and requests by the agencies to track other planning initiatives in the desert, including DRECP, Apple Valley expects to adopt the MSHCP/NCCP in 2016.

approaching its final stages of completion⁴. Apple Valley has designed its MSHCP/NCCP to be a “cornerstone plan” in that it will provide a foundation for other communities in the Victor Valley Region to address their own resource conservation planning efforts. The County and other Victor Valley cities would be able to build upon the Town’s MSHCP/NCCP by: enlarging the linkage areas; protecting additional habitat areas; providing management of existing conservation lands; and/or identifying other conservation measures that support the needs of their communities and the region at large.

Apple Valley’s MSHCP/NCCP is a multi-jurisdictional plan. Its 265-square mile Plan Area includes Apple Valley and unincorporated San Bernardino County lands, including the Town’s SOI and a 63-square mile area to the north. The Town and the County entered into a Memorandum of Understanding (MOU) to facilitate coordination of MSHCP/NCCP activities on unincorporated County lands. The MOU provides that Apple Valley acts as the lead agency for planning, processing, and implementing the MSHCP/NCCP. Upon approval, both entities will amend their General Plans to ensure consistency with the MSHCP/NCCP.

Consistency with Desert Planning Efforts

In order to prepare its MSHCP/NCCP, Apple Valley and its representatives have attended, and continue to attend, all relevant meetings in the desert with stakeholders, agencies, etc. Apple Valley regularly attended Desert Managers Group meetings, the Desert Tortoise Council’s annual Desert Tortoise Symposia, a variety of desert workshops and conservation oriented webinars, proposed project meetings including those for the Southern California Edison’s (SCE) Coolwater-Lugo transmission line and the High Desert Corridor, and U.S. Fish and Wildlife Service (USFWS) Climate Smart Conservation and Vulnerability Assessment training programs. The Town also participated in the habitat conservation planning effort led by the County for private lands in the West Mojave between 2007 and 2009.

Because of its involvement with these planning efforts, Apple Valley has looked closely at conservation science and planning efforts that are taking place in the West Mojave Desert and elsewhere. This includes, among other things, becoming familiar with the threats to local species, their habitats, and other natural resources occurring in the MSHCP/NCCP Plan Area and studying the 2006 West Mojave Plan (WEMO), which covers Bureau of Land Management (BLM) lands within the West Mojave Desert, and the 2011 Revised Desert Tortoise Recovery Plan.

⁴ Apple Valley received a Section 6 grant to complete the Plan and will be holding outreach meetings and seeking public comment on the draft documents throughout this year.

Aside from being familiar with the science, the Town also has clear understanding of the various land use authorities in the desert. The Town is responsible for all land use decisions within its jurisdiction, works with the County on land use issues within its SOI, and is familiar with the conservation and management needs and mandates of all federal and state agencies in the desert. The Town regularly processes local and other government approvals, develops information regarding governmental activities, and coordinates with other governmental entities and the public. Because of these activities and the fact that the Town has been able to ground truth habitat conditions within its MSHCP/NCCP Plan Area, the Town understands the complexity of local land use issues. The Town also understands the magnitude of the Desert Renewable Energy Conservation Plan (DRECP) planning task and the effort it has taken to present this plan to the public. The Town believes that the draft DRECP is a start to a strategic conservation plan for the California desert.

DRECP-MSHCP/NCCP Consistency

The Town's planning area is approximately 170,000 acres of the DRECP's 22.5 million-acre planning area or 0.76 percent. At the time the DRECP was formed, Apple Valley was already actively preparing its MSHCP/NCCP. However, the planning guidelines for Habitat Conservation Plans (HCPs) and NCCPs state that HCPs and NCCPs covering the same ecoregion or species need a consistent conservation framework to ensure that impacts are accurately assessed and conservation actions are strategically beneficial to the covered species. This has made coordination with and review of the DRECP crucial to the Town's planning effort.

In recognition of this need for consistency, the DRECP and Apple Valley agreed that there was a benefit to each of their planning initiatives in sharing baseline data. To accomplish this, the Town, County, and the DRECP formed a working group for the purposes of data sharing. In April 2014, the Town signed an MOU with the Department of Interior (DOI), BLM, USFWS, the California Energy Commission (CEC), and the California Department of Fish and Wildlife (CDFW) to formalize this working relationship.

Apple Valley has participated in the DRECP planning process from the very beginning. The Town and its representatives have attended all DRECP stakeholder meetings, provided input regarding Apple Valley's planning effort, and submitted public comments during the DRECP's scoping period in 2011. Since the release of the DRECP's dEIR/EIS, the Town has devoted significant time and resources to review and analyze the draft documents, participate in all webinars, and attend public outreach meetings.

Apple Valley Comments on Draft DRECP and DEIR/EIS

Apple Valley has several objectives in providing comments on the draft DRECP. The Town's comments are largely made to ensure consistency between its MSHCP/NCCP and the DRECP; identify opportunities for step-downs from the DRECP's dEIR/EIS; identify issues related to local government land use authority; and make recommendations to clarify DRECP's governance, implementation, and reserve design options. They also are intended to offer suggestions and recommendations to improve and simplify the DRECP and its implementation based on a local government perspective. For these comments, the Town's primary review was focused on the MSHCP/NCCP Plan Area and the surrounding region.

In addition, the DRECP asked the Town for specific comments and recommendations due to the Town's experience developing its own Plan and participating with the desert planning efforts. These comments were requested to aid the DRECP to develop a strategy that includes local communities and their citizens in its conservation efforts.

To aid in the review of the Town's comments, attached are maps showing the MSHCP/NCCP Plan Area boundaries overlaid on the DRECP's proposed land designations for all alternatives.

BIOLOGICAL FRAMEWORK

Apple Valley's MSHCP/NCCP Plan Area is located in two subareas of the DRECP's planning area. Most of the Town's planning area is in the Pinto Lucerne and Eastern Slopes subarea with some portions across its northern border in the Western Mojave and Eastern Slopes subarea.

It is also in an area that was recently identified by the U.S. Geological Survey as one of ten genetic divergence and diversity hotspots in the West Mojave Desert⁵. These areas, due to the high degree of genetic diversity and divergence among species present, can be considered evolutionary hotspots.

The Town's planning area contains 21 plant communities as mapped by the DRECP. The Town is currently analyzing 50 special status species that are likely to occur in the MSHCP/NCCP Plan Area to determine which species should be included as covered species or as planning species. Of these species, the DRECP proposes to cover 17 listed species, addresses 17 special status species, and identifies 1 as a planning species.

Areas of Consistency Between Planning Efforts

Upon review of the draft DRECP and dEIR/EIS, the Town identified the following measures where the two planning efforts are generally consistent or the Town finds benefit in adopting measures proposed by the DRECP:

- The DRECP designates portions of the Town's planning area as part of the Interagency Plan-Wide Conservation Priority Area, which represent the agencies' highest priority areas for the creation and long-term management of habitat reserves within the DRECP's Plan-Wide Reserve Design Envelope (Reserve Design). The DRECP has designated the *San Bernardino-Granite Mountain Connection* and *Northern Lucerne Wildlife Linkage/Wild Wash Linkage* (see Landscape-Level Linkages section) as part of the Preferred Alternative's Interagency Plan-Wide Conservation Priority Area.
- The DRECP's habitat models confirmed the value of Apple Valley's north-south and east-west linkages that were identified after reviewing existing studies, land uses, and habitat values and by applying landscape-ecology principles.
- The biological baseline established by the DRECP helps ensure that consistent information and data will be used in both decision-making processes.

⁵ Vandergast, Amy G. et al. "Evolutionary Hotspots in the Mojave Desert." *Diversity* 5 (2013): 293-319.

- The DRECP's standardization of future study protocols for many activities/species (Appendix H.2.1) between the agencies is welcomed. This standardization will help ensure studies are done correctly the first time and comparable data is obtained from all sources.
- The DRECP's lists of project avoidance measures and recommendations are helpful. These lists are similar to the Town's MSHCP Interim Guidelines/Mitigation Measures and will further enhance efforts for consistency between the two Plans.
- The species range established by the DRECP is in agreement with Apple Valley's MSHCP/NCCP. For example, the DRECP shows no occurrence of the Mohave ground squirrel in Apple Valley's Plan Area, providing an opportunity for Apple Valley to step-down from this.

***Recommendation:** The DRECP lead agencies should adopt the agreed upon standardization of biological studies immediately through the signing of a Memorandum of Agreement. This will ensure that all proposed projects in the California Desert submit standardized information to agencies while the DRECP is being revised and processed.*

***Recommendation:** The DRECP should make all biological baseline information available to all local governments.*

Issues Needing Further Clarity and Evaluation

In reviewing the draft DRECP, the Town believes the following comments should be addressed, as they are fundamental to conservation and species recovery.

Environmental Baseline – Exclusion of Specific Land Uses

Upon review of the models used in DRECP and the designation of land uses, it is apparent that habitat located on military lands, open off-highway vehicle (OHV) areas, tribal lands, and undesignated lands were excluded from analysis. As a result, the habitat baseline used does not accurately reflect where habitat occurs within the entire planning area.

The 2012 Independent Science Panel stated that the expert-based Habitat Model (SM-R4) shows less habitat than currently exists in the western Mojave and northwestern Mojave desert regions. For example, "tortoises are present throughout much of the Marine Corps Air Ground Combat Center at 29 Palms, but this area is shown as not having tortoise habitat."

***Recommendation:** All lands in the desert, including those currently excluded, should be included in the habitat analysis to accurately portray the environmental baseline. In areas where valuable habitat is found on lands excluded by the DRECP, agencies should work with the*

appropriate land use authority administering those lands so that habitat values are maintained where they exist and in a manner that also preserves the excluded land uses.

Biological Goals and Objectives (BGOs)

While it appears that landscape level BGOs are for the most part sound, the Town is concerned that the step-down BGOs are too vague and lack specific actions and metrics. The only step-down that appears to have specific actions and metrics is that related to the establishment of linkages (Table C-1 DRECP Biological Goals and Objectives Landscape Features and Habitat Connectivity).

The 2012 Independent Science Panel also noted that “the quantitative metrics being proposed for Biological Objectives seem rather arbitrary and not grounded in functional, ecological goals.” The 2012 Panel also requested an explanation of how acreages were determined in the BGOs. The Town concurs with this request.

***Recommendation:** This level of detail needs to be provided for all BGOs. It is important for all who read and use the DRECP to understand how conservation measures will be implemented and evaluated so consistent standards are applied by all parties involved today and in the future.*

***Recommendation:** All BGOs and step-downs should be provided in sufficient detail to determine actions that will be taken and to provide the basis to determine whether these actions are successful.*

Changes Needed for Consistency with Town’s MSHCP/NCCP

Take of Raptors and Other Birds of Prey

Fairview Valley has been identified as a key nesting area for golden eagle and other raptor species and should be protected. While the DRECP has designated the mountains surrounding Fairview Valley as an Area of Critical Environmental Concern (ACEC), there are discrepancies between the conservation areas being identified by the Town's MSHCP/NCCP and the DRECP's Alternatives. For example, the DRECP's Preferred Alternative proposes a Development Focus Area (DFA) in Fairview Valley, which may impact nesting raptors and their foraging abilities. Furthermore, the DRECP's Preferred Alternative and all other Alternatives isolate Fairview Mountain from the Reserve Design and surround it on all sides with a designated DFA.

The Town's MSHCP/NCCP does not intend to include take for golden eagles and other raptors and plans to maintain existing land uses in Fairview Valley by designating Fairview Mountain and the Granite Mountains for conservation and allowing low-density rural residential development to continue on the valley floor.

***Recommendation:** To ensure compatibility with the MSHCP/NCCP, the DRECP should adopt the measures proposed by the Town in this location (i.e., no take of raptors).*

Mojave River

The Mojave River only surfaces in two locations: the Mojave Narrows, located along the Town's Southwestern border, and downstream past Barstow at the lower narrows as the river begins its way through Afton Canyon. The Mojave River is a unique resource in both plan areas and should be conserved, especially in the area of the Narrows where surface water supports riparian resources. The Town's MSHCP/NCCP will propose protection of the river and the Mojave Narrows by excluding all projects except for public infrastructure projects. Infrastructure projects would only be allowed when adequate mitigation is provided so there is no net loss of this vital riparian system. The DRECP's proposed blanket mitigation ratio of 1:1 for riparian resources does not provide adequate mitigation to ensure no net loss of these resources. According to the National Audubon Society, the Mojave River is an important bird area and "is notable for hosting one of the largest population of Brown-crested flycatchers in the state (at least 10 pairs along the Victorville Helendale stretch alone)."⁶ Specifically, the Mojave Narrows harbors the highest species diversity of the Town's MSHCP/NCCP Plan Area and is important habitat for both resident and neotropical migratory birds.

In addition, the Mojave River is considered a state water and water of the United States. As such, activities in the river will also require permits from the CDFW and U.S. Army Corps of Engineers (ACOE). Therefore, projects proposed in the river should meet the requirements of these agencies.

***Recommendation:** The DRECP should adopt the Town's measures for the Mojave River at this location: protection of the river except for public infrastructure projects and only when adequate mitigation is provided.*

***Recommendation:** The DRECP should review the recently published guidance from the Pacific Division of the ACOE on the establishment of mitigation ratios and the requirements of mitigation projects to ensure that the DRECP meets the standards for impacts to riparian resources.*

⁶ <http://netapp.audubon.org/IBA/Reports/211>

LANDSCAPE-LEVEL LINKAGES

The Town is situated ideally at the intersection of three landscape level linkages. These important features are critical for desert conservation. Their preservation will benefit the region by maintaining connectivity for plant and wildlife species and by helping mitigate impacts from climate change. The three linkages are (see attached maps):

- The *San Bernardino–Granite Mountain Connection* is a north–south linkage connecting the desert ranges to the coastal ranges via the Granite and San Bernardino Mountains. In 2005, South Coast Wildlands ranked this linkage as one of the top 15 southern California linkages for priority conservation.⁷ The linkage represents a landscape-level connection between the coastal and desert mountains. It facilitates the direct dispersal and multigenerational movement of over 14 focal species, including desert bighorn sheep, American badger, Pacific kangaroo rat, and Joshua tree.
- The *Northern Lucerne Wildlife Linkage/Wild Wash Linkage* is an east–west linkage created by a series of interconnected desert valleys that provides regional connectivity between three of the four Desert Wildlife Management Areas (DWMAs) in the West Mojave Desert. The Northern Lucerne Wildlife Linkage/Wild Wash Linkage incorporates the Wild Wash, the only natural and undeveloped I-15 undercrossing between Victorville and Barstow. This linkage has high quality tortoise habitat and is critical for mitigating the effects of climate change on desert tortoise populations. It is a multigenerational linkage between designated critical habitat units for desert tortoise. The linkage will also benefit the movement of other desert plants and animals allowing them to adjust to climate change.
- The *Mojave River Corridor* is a north–south linkage that is recognized as an important regional wildlife corridor in San Bernardino County. The Mojave River, specifically the Mojave Narrows, provides critical riparian habitat for a wide variety of resident and neotropical migrating birds. The portion of the Mojave River within the Town’s MSHCP/NCCP Plan Area supports the highest number of special status species in the Plan Area and is designated critical habitat for southwestern willow flycatcher.

These linkages connect approximately 2.4 million acres of federal lands currently managed for conservation of species and habitats.

⁷ Penrod, K., C. Cabañero, P. Beier, C. Luke, W. Spencer, and E. Rubin. 2005. South Coast Missing Linkages Project: A Linkage Design for the San Bernardino–Granite Connection. South Coast Wildlands, Idyllwild, CA. www.scwildlands.org.

Areas of Consistency Between Planning Efforts

The DRECP recognizes the importance of the regional linkages identified by the Town. It has designated the *San Bernardino–Granite Mountain Connection* and *Northern Lucerne Wildlife Linkage/Wild Wash Linkage* as part of the Preferred Alternative's Interagency Plan-Wide Conservation Priority Area. It is the Town's understanding after reviewing the dEIR/EIS that the Interagency Plan-Wide Conservation Priority Area represents the agencies' highest priority areas for the creation and long-term management of habitat reserves within the DRECP's Reserve Design.

The DRECP's Preferred Alternative also identifies the *Mojave River Corridor* as a Conservation Planning Area. The dEIR/EIS defines Conservation Planning Areas as private and non-federal lands whose acquisition would contribute to the DRECP's plan-wide Biological Goals and Objectives (BGOs). The DRECP indicates that these lands would be acquired from willing sellers.

Issues Needing Further Clarity and Evaluation

Terminology

It should be noted that it is easy to confuse the terms "Interagency Plan-Wide Conservation Priority Area" and "Conservation Planning Area" when reviewing the document. In discussion and webinars, the Town has noticed that the acronym CPA is used in reference to both designations by agency staff. For those who are not intimately knowledgeable with the intricacies of the Reserve Design, this is highly confusing and makes it difficult to understand the difference between the two designations, as well as which one serves as the basis for the "NCCP Conceptual Plan-Wide Reserve Design." The Town suggests that new and distinct terminology be used for each of these planning concepts in the next version of the DRECP, such as "Interagency Plan-Wide Reserve Priority Area" instead of "Interagency Plan-Wide Conservation Priority Area."

Recommendation: To avoid confusion, new and distinct terminology should be used for the terms "Interagency Plan-Wide Conservation Priority Area" and "Conservation Planning Area."

Changes Needed for Consistency with Town's MSHCP/NCCP

The importance of fully functional linkages within the desert is critical. Upon review of the draft DRECP and dEIR/EIS, it does not appear that the various DRECP Alternatives, including the Preferred Alternative, create linkages that make the landscape-level connections required to facilitate movement of species (daily, seasonal, multigenerational) across the desert.

***Recommendation:** It should be the responsibility of the Town to determine the land use designations within the Town's planning area and linkages and to provide the leadership role to conserve these areas. Should other parties/projects be needed to fully implement the Town's reserve design, the Town will be responsible, with coordination from the wildlife agencies, for developing the working group to do so.*

Northern Lucerne Wildlife Linkage/Wild Wash Linkage

The Town's MSHCP/NCCP has identified the Northern Lucerne Wildlife Linkage/Wild Wash Linkage as an important regional linkage for wildlife movement within the region, as it includes the only natural wash to cross under I-15 between Victorville and Barstow. This linkage connects critical desert tortoise habitat in the West Mojave Desert.

The DRECP's Northern Lucerne Wildlife Linkage generally overlaps with the Town's identified Wild Wash Linkage. This linkage is critical for Desert Tortoise and for populations of other wildlife and plants, listed and not listed, to migrate from the east side of I-15 to the west side. The DRECP recognizes that this area is important for maintaining long-term viability of desert tortoise populations and comprises large areas of intact desert tortoise habitat (Appendix D, Attachment B—Croft, 2013). However, in the Preferred Alternative and other Alternatives, the Northern Lucerne Wildlife Linkage/Wild Wash Linkage is incomplete and key areas of the linkage are designated as Development Focus Areas (DFA) or Study Areas. Only Alternative 1 removes DFA and Study Area designations from the linkage; however, none of the Alternatives provide for a full connection across the Mojave River and adjacent DWMA's.

Linkage is Incomplete

The Northern Lucerne Wildlife Linkage does not complete the connection between the Ord-Rodman DWMA in the east and the Fremont-Kramer DWMA in the west. The DRECP's Preferred Alternative and Alternatives 1-4 take the linkage as far as the Mojave Monkeyflower ACEC in Brisbane Valley, but do not extend the linkage northwest to make a full connection between DWMA's.

The Town intends to identify the full extent of this linkage in the Town's MSHCP/NCCP, and believes that doing so will provide the County and other communities in the Victor Valley the ability to address their environmental planning needs by aiding in completing, enlarging, and maintaining the linkage. This will result in full protection of the linkage over time.

***Recommendation:** This linkage should be completed to connect to the Ord Rodman DWMA in the east and the Fremont-Kramer DWMA to the northwest. Failing to do so will limit the value of the linkage for many desert species, both plant and animal. This includes removal of the DFA from the CSLC lands in Upper Lucerne Valley.*

***Recommendation:** Existing constraints to the linkage, such as the lack of crossings of the BNSF railroad and Route 66, should be addressed as future management actions. For example, appropriate crossings (undercrossings or overcrossings) could be installed when these transportation routes are upgraded in the future.*

DFA Designated in Key Areas of Linkage – East End

The eastern portion of the Northern Lucerne Wildlife Linkage/Wild Wash Linkage, as shown in the Preferred Alternative linkage design, may not be functional and provide for the movement of desert tortoise across its range. At present, the linkage as mapped in the Preferred Alternative is largely mountainous. While this area should remain in the linkage because these lands benefit the movement of species like desert big horn sheep, they are less likely to be used by desert tortoise. Therefore, the linkage design in this area needs to be expanded south to include the California State Lands Commission (CSLC) lands in upper Lucerne Valley and BLM lands directly southeast of these lands (east of Highway 247).

These lands should be included in the linkage design because they represent largely intact desert tortoise habitat that is highly ranked on the Desert Tortoise Habitat Suitability Index. The DRECP Desert Tortoise Linkage Evaluations report in Appendix D says, regarding the CSLC lands, “The portion of Upper Lucerne Valley, north of Highway 247, within the DFA, comprises large areas of intact desert tortoise habitat that are contiguous with the Ord-Rodman DWMA and the Future Assessment Area identified in item 3 [BLM lands]. In addition, the DFA portions of this intact linkage habitat comprise the areas of highest habitat potential” (Croft, 2013). Regarding the BLM lands, the report says: “The intact linkage habitat, south of Highway 247 (Barstow Road), and immediately adjacent to the Ord-Rodman DWMA are currently part of a Future Assessment Area. Because this area contains intact habitat, it is important for helping to maintain long-term viability of desert tortoise populations in the southern end of the DWMA. We recommend that this area not be opened to development” (Croft, 2013).

Rather than incorporating these lands into the Linkage, the DRECP’s Preferred Alternative designates a DFA over CSLC lands and a Future Assessment Area (FAA) on the BLM lands. Alternatives 2, 3, and 4 similarly place DFA and FAA designations in this region, though Alternatives 2 and 4 provide for partial protection of the BLM lands through either ACEC or National Landscape Conservation System (NLCS) designations. Allowing renewable energy development on these lands would greatly inhibit the value of the Northern Lucerne Wildlife Linkage/Wild Wash Linkage, as they provide ideal habitat for

desert tortoise. These designations also appear to be in conflict with CSLC's primary objectives for the DRECP as stated in Section I.1.4, State Objectives:

Reduce the biological and other environmental impacts of future utility-scale renewable energy developments in the Plan Area by designating appropriate areas for renewable energy development within the context of a landscape-scale conservation plan that are sufficient to accommodate the foreseeable demand for renewable energy in the DRECP through 2040.

Provide for the long-term conservation and management of Covered Species within the Plan Area and preserve, restore, and enhance natural communities and ecosystems in which those species are found by focusing renewable energy development away from areas of greatest biological importance or sensitivity; coordinating and standardizing biological avoidance, minimization, mitigation, compensation, conservation, and management requirements for Covered Activities within the Plan Area; and taking other actions to meet conservation planning requirements in state and federal law. (I.1.4)

***Recommendation:** The Town recommends that the DFA and Study Area designations on the eastern end of the linkage be entirely removed and the area be redesignated as an ACEC.*

***Recommendation:** If these designations are not removed, the DRECP should explain in detail why these areas are being designated as a DFA and Study Area despite the findings of the DRECP Desert Tortoise Linkage Evaluations report provided in Appendix D (Croft, 2013).*

DFA Designated in Key Areas of Linkage – West End

The western end of the Northern Lucerne Wildlife Linkage/Wild Wash Linkage is also affected by the designation of DFAs and Variance Lands in the Preferred Alternative and Alternative 4. The Preferred Alternative designates a large DFA in Brisbane Valley, the southern half of which overlaps the northwestern segment of the linkage identified by the Town's MSHCP/NCCP planning effort. Alternative 4 designates a DFA in a portion of this linkage and also designates Variance Lands throughout the linkage in Brisbane Valley and on the western side of the Mojave River.

Project development in the southern half of Brisbane Valley would have both direct and indirect impacts to the linkage and may make it unviable for species movement over time. Brisbane Valley was designated in the WEMO as a "Special Review Area," which indicated that it has high numbers of tortoises and warranted a heightened level of environmental review for new projects. Brisbane Valley is also noted in the DRECP Desert Tortoise Linkage Evaluations report, provided in Appendix D, as containing large areas of intact desert tortoise

habitat (Croft, 2013). Based on the Town's review of the dEIR/EIS, designating Brisbane Valley as a DFA contradicts the DRECP's objectives.

***Recommendation:** The DFA and Variance Lands identified in Brisbane Valley should be removed or modified to eliminate the southern third of this area so that they do not overlap and constrain the linkage or indirectly impact it. The area within and immediately adjacent to the linkage should be designated as an ACEC.*

Linkage Design Does Not Accurately Reflect Existing Habitat Values or Land Use

As discussed previously in the Biological Framework section, the exclusion of military lands, open OHV areas, tribal lands, and undesignated lands uses during DRECP's habitat analysis artificially altered where habitat was mapped. As a result, linkages identified do not always line up with existing habitat values on the ground and may not provide value to species.

For example, the Preferred Alternative (along with Alternatives 1, 3, and 4) indicates that the Northern Lucerne Wildlife Linkage/Wild Wash Linkage is located south of Stoddard Wells Open OHV Area and has designated this area as an ACEC (similarly, Alternative 2 designates most of this area as either NLCS or CPA). However, this area is heavily used by OHV and other recreational enthusiasts and does not provide the habitat values described in the dEIR/EIS.

This observation is supported by the DRECP Desert Tortoise Linkage Evaluations report in Appendix D, which states that "areas immediately south of the Johnson Valley OHV area and south of the Stoddard Valley OHV area contain extensive unauthorized OHV damage," and that "the OHV-impacted area south of the Stoddard Valley OHV Area is contained within a BLM proposed ACEC, which will likely require extensive law enforcement and restoration to be effective" (Croft, 2013).

The DRECP has also designated the Granite Mountains Recreation Management Zone (RMZ), a subdivision of the Stoddard/Johnson Valley Special Recreation Management Area (SRMA), over the Northern Lucerne Wildlife Linkage/Wild Wash Linkage in all Action Alternatives. While the RMZ and SRMA designations recognize that this area is used for recreational purposes, the allowed uses under this designation again do not reflect the high-intensity level of use that is occurring and has historically occurred in this area.

Preserving off-road and recreational use is important to Apple Valley residents, and the MSHCP/NCCP intends to look for ways to maintain this use while preserving habitat values where they occur. The Town believes that the Federal Land Policy and Management Act of 1976 (FLPMA), allows for such

coordination between the BLM and local governments. Section 202 of FLPMA (43 U.S.C. 1712) discusses Land Use Planning, and states that in the development and revisions of land use plans, the Secretary shall:

...to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C. 460l-4 et seq. note], and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

This standard for coordination provides a precedent for flexibility and cooperation between the BLM and local governments to address their land use planning needs so that multiple values can be maintained.

***Recommendation:** The DRECP should ground truth ACEC, NCLS, CPAs, and other land use designations to ensure that they are truly located in areas that benefit habitat and species.*

***Recommendation:** The DRECP should ground truth DFAs to assess their current habitat values to ensure they are in fact low-quality habitat.*

***Recommendation:** Land use designations within the Wild Wash Linkage south of Stoddard Wells Open OHV Area should provide the utmost flexibility in managing the area for both existing recreational and OHV uses and wildlife movement.*

***Recommendation:** The Town should be provided the flexibility to work with local stakeholders, OHV, and BLM to develop new solutions within the Wild Wash Linkage south of Stoddard Wells Open OHV Area that will meet both recreational needs and maintain the existing habitat and linkage values for wildlife.*

***Recommendation:** The DRECP should evaluate the possibility of designating a Study Area over the ACEC and areas of high value habitat within the open OHV area to determine how best to manage these lands for multiple uses. Decisions should be deferred until a collaborative process is allowed the opportunity to work through the issues. The Town understands that this is a complex issue but believes that a local and innovative solution is possible as long as the DRECP provides the flexibility to do so.*

San Bernardino–Granite Mountain Connection

The San Bernardino–Granite Mountain Connection is a critical landscape-level linkage connecting coastal and desert ecosystems and species. Apple Valley intends to protect this linkage under its MSHCP/NCCP.

The DRECP recognizes the importance of this landscape-level linkage and that it has been designated as an ACEC in the Preferred Alternative, and Alternatives 1, 3, and 4. Alternative 2 designated this linkage as a DFA, which would be inconsistent with the MSHCP/NCCP.

In addition, the linkage design used by DRECP diverges from what was proposed in South Coast Missing Linkages Project report (Penrod, 2005). Landownership within this linkage is also largely private which appears to be inconsistent with its inclusion in the BLM Land Use Plan Amendment (LUPA) designation. It is assumed that under the DRECP's Conservation Strategy acquisition of key parcels for conservation purposes will be the principle method to protect this important resource and meet the DRECP's BGOs.

***Recommendation:** The San Bernardino–Granite Mountain Connection should be designated as part of the Reserve Design in the Final Plan, and its mapping should be consistent with that proposed by the South Coast Missing Linkages report.*

***Recommendation:** Other measures/methods should be included in the DRECP that provide incentives for landowners to maintain habitat values on their lands if they choose not to sell their property.*

Fairview Valley

Fairview Valley is located entirely within the Town's Sphere of Influence and Apple Valley's MSHCP/NCCP Plan Area. Fairview Valley is an important biological resource as it provides prime nesting habitat for golden eagle and other raptor species. Apple Valley wants to ensure that this value is maintained in perpetuity.

As discussed in the Biological Framework section, there are discrepancies between the conservation areas being identified by the Town's MSHCP/NCCP and the DRECP's Alternatives. For example, the DRECP's Preferred Alternative (as well as all other Action Alternatives) proposes a DFA in Fairview Valley, which may impact nesting raptors and their foraging abilities. In addition, all of the DRECP's Action Alternatives isolate Fairview Mountain from the Reserve Design and surround it on all sides with designated DFA.

***Recommendation:** The DFA designations should be removed from Fairview Valley in the Final Plan and Fairview Mountain should be designated as an ACEC. This ACEC should connect to the larger Plan-Wide Reserve Design Envelope. This connection should occur by including lands in the northern half of the valley located between Fairview Mountain and the existing Bendire's Thrasher ACEC.*

Mojave River Corridor

The Mojave River is recognized as an important regional wildlife corridor in San Bernardino County, and the portion within the Town's MSHCP/NCCP Plan Area supports the highest number of special status species in the Plan Area and is designated critical habitat for southwestern willow flycatcher. The DRECP has designated the Mojave River as a Conservation Planning Area in all Action Alternatives.

***Recommendation:** The Mojave River is a unique resource in the DRECP Plan Area and should be protected. (See Biological Framework section)*

Designation of Variance Lands within Linkage

Under Alternative 4, Variance Lands are designated throughout much of the western portion of the Northern Lucerne Wildlife Linkage/Wild Wash Linkage, west of I-15 and east of the Mojave Monkeyflower ACEC, as well as throughout the San Bernardino–Granite Mountain Connection. The Draft DRECP Glossary states that "these lands are potentially available for renewable energy development, but projects on variance lands are not covered by the DRECP." Development on these lands would undermine the values of the linkages as identified by both the DRECP and the Town.

***Recommendation:** The Town recommends that no Variance Lands be designated within linkage areas. Linkage areas should be designated as an ACEC.*

CONSERVATION STRATEGY

It is the Town's understanding that the paramount focus of both the HCP planning process and NCCP planning process is species conservation. The development of a Conservation Strategy is critical to the success of a plan in that it provides both the biological goals and objectives and the measures designed to minimize and mitigate the effects of the proposed activities on the species being covered by the Plan, and sets the limits for take. As such, guidance from the agencies has been that mitigation measures should address specific conservation needs of the species and be manageable and enforceable.

Mitigation measures may take many forms, including, but not limited to, payment into an established conservation fund or bank; preservation (via acquisition or conservation easement) of existing habitat; enhancement or restoration of degraded or a former habitat; establishment of buffer areas around existing habitats; modifications of land use practices; and restrictions on access. Based on the size of the proposed impacts, the lack of clarity in the BGOs (see Biological Framework section) and the size of the conservation area, it is unclear if the conservation strategy being proposed is realistic, manageable, and enforceable.

Areas of Consistency Between Planning Efforts

The potential reserve design for the MSHCP/NCCP, which the Town has been discussing with agencies for some time, has been confirmed by the conservation planning efforts of the DRECP.

The DRECP provides for management activities on federal lands. This matches the Town's objectives for the MSHCP/NCCP. Based on the Town's experience and study of conservation and recovery efforts in the desert to date, management of existing conservation areas is critical to ensuring recovery of listed species and preservation of the desert environment.

Issues Needing Further Clarity and Evaluation

The Size of the Plan Area in Proportion to the Impacts Analyzed

The DRECP covers approximately 22.5 million acres of California's deserts, yet is only analyzing a development footprint of 177,000 acres. It is also proposing a 14.9 million-acre Reserve Design. The Town understands that principles of landscape ecology require taking the broader view to address conservation challenges that cross jurisdictional boundaries, such as habitat fragmentation, wildlife disease, and climate change, and applauds the agencies for applying these principles to the DRECP. Nevertheless, the amount of proposed development

covered by the DRECP seems out of proportion to the area it is proposing for conservation.

Recommendation: An analysis should be provided regarding the size of conservation area needed for the proposed development as well as the size of the development needed to implement the proposed conservation plan. This analysis should include a discussion of where the conservation areas should be located and what types of management activities should occur on them.

Recommendation: An analysis should be provided as to what mitigation the Plan can actually implement.

Long-Term Conservation

The Town is concerned that long-term conservation may not occur under the DRECP, for the following reasons:

- The DRECP doesn't provide for the full establishment of the Reserve Design.
- Funding may be inadequate.
- There is no guarantee that funds will be used for conservation on the ground.
- The DRECP appears to disregard recovery planning efforts and scientific recommendations.
- The DRECP follows an old model of prioritizing acquisition, when it is widely acknowledged that land management is the most critical activity for species recovery.
- The DRECP needs to provide a detailed management plan for each species on the lands to be conserved.

Recommendation: The DRECP documents need to provide a detailed discussion as to how each of these issues will be corrected and addressed before final adoption of the Plan.

Divergence from Agency Guidance Documents

It is the Town's understanding based upon review of HCP and NCCP guidance documents provided by the USFWS and CDFW that the conservation strategies created by an HCP or NCCP must include mitigation measures that reduce or address potential adverse effects of a proposed activity on species included in an HCP. While there is no hard and fast rule on mitigation ratios or standards, the guidance the Town has received indicates that the mitigation program must address specific needs of the species involved, be manageable and enforceable, and generate enough revenue to fully implement the MSHCP/NCCP over its lifetime (and in perpetuity).

The Town is concerned that the DRECP will not accomplish these basic tenets without modification. The DRECP has acknowledged that mitigation of impacts from its Covered Activities will not fully implement the DRECP's Reserve Design. This means that the DRECP will need to rely on future development and/or conservation planning efforts to complete and fully manage the Reserve Design.

If any local agency is to eventually tier off the DRECP's dEIR/EIS, the DRECP should be consistent with planning guidance provided by the agencies for permits under the Federal Endangered Species Act (FESA), the California Endangered Species Act (CESA), and the Natural Community Conservation Planning Act (NCCPA).

***Recommendation:** The DRECP should provide clear guidance on how local jurisdictions will be able to step-down from the DRECP's broad conservation strategy for renewable energy projects.*

***Recommendation:** The DRECP should provide clear guidance as to how planning efforts undertaken by counties and cities will be able to use the DRECP's analysis to cover activities other than utility-scale renewable energy projects and transmission within their jurisdiction.*

Limits of Take

The DRECP's dEIR/EIS does not specify or make clear what amount of take will be issued under the DRECP's General Conservation Plan (GCP) and Natural Community Conservation Plan (NCCP).

In regards to amount, the document only states: "In general, the metric for take resulting from the construction of Covered Activities is the estimated ground disturbance of modeled suitable habitat that will result after application of avoidance and minimization CMAs" (Volume II, Section II.3.1.6.3, p. II.3-263). The 177,000-acre number used for the impact analysis is not well explained by the document and it is unclear how it was calculated and whether it will be related to take limits.

Section II.3.1.6.3, Take Allocation Assumptions and Approach, states that "Take allocation under the DRECP will include a Plan-wide take limit with allocations for each species to each DRECP component (LUPA, NCCP, GCP) at the ecoregion subarea level (or other geographic unit such as recovery unit if appropriate for a particular species)" (Volume II, Section II.3.1.6.3, p. II.3-253). The document does not specify any particular number as a take limit, in general, for a particular species, or by ecoregion subarea. This information is needed to be able to evaluate future take remaining for other activities.

Furthermore, it is unclear how impacts of development on federal lands are to be evaluated. The NCCP, in particular, appears to provide take authorizations on both private and federal lands, yet it does not provide a clear understanding of how much will occur on each under the NCCP.

Because these numbers are not clear in the dEIR/EIS it is impossible to estimate how much take will be left for local governments and private projects once the DRECP is adopted. In the Town's experience in permitting under the FESA and CESA, there is an unspoken principle of "first in time, first in right" and that projects that are approved initially tend to have lesser conditions/compensation requirements than those that come later because they reset the biological baseline.

Since the DRECP only covers large-scale renewable energy development and its corresponding transmission needs, local governments need written assurances in the DRECP that take issued by the Plan does not impact their ability to pursue economic development on private lands within the DRECP Plan Area. Local governments also need assurances that the standards set in the DRECP will be applied to future FESA, CESA, and NCCPA permitting efforts occurring within the DRECP's Plan Area.

While the Town does not believe it is the DRECP's intent to limit the overall take within its 22.5 million-acre Plan Area to the 177,000 acres being analyzed by the Plan, this should be clarified in the document. Without clarification on this topic, it appears that the DRECP may limit local governments' ability to grow and pursue land use policies that benefit their communities. Local governments will want to ensure that they can fully develop their General Plans and that the take needed to do so will both be allowed and be counted separately from that analyzed under the DRECP.

***Recommendation:** More detail and information is needed to determine the adequacy of the number used in the impact analysis and a clear statement needs to be made regarding the amount of take to be provided based on this analysis.*

***Recommendation:** The take limit with allocations for each species to each DRECP component (LUPA, NCCP, GCP) at the ecoregion subarea level (or other geographic unit such as recovery unit if appropriate for a particular species) should be included in the document.*

***Recommendation:** The impacts of development on federal lands should be evaluated, especially for the NCCP to provide a clear understanding of how much take will be allowed for each under the NCCP.*

***Recommendation:** The DRECP should provide estimates regarding how much take will be left for local governments and private projects once the DRECP is adopted.*

Recommendation: The DRECP should provide assurances to local governments that they can fully develop their General Plans and that the take needed to do so will be available, be allowed, and be counted separately from that analyzed under the DRECP.

Compensation Ratios

Tables II.3-13 and II.3-14 note that that DRECP's Standard Compensation Ratio for both Covered Activities and Transmission Covered Activities is 1:1, with ratio exceptions for the desert tortoise, the Mohave ground squirrel, the flat-tailed horned lizard, and wetlands and for some subareas (Volume II, Section 3.1.2.5.1, p. II.3-87). These compensation ratios appear to be justified by limiting development to areas considered to have low resource values for special status wildlife species and by the proposed changes in land use designations, largely on BLM land. The WEMO used logic similar to the latter to determine their compensation ratios when it was approved, yet the compensation ratios in WEMO are larger than those proposed by the DRECP.

Despite the larger compensation ratios used in the WEMO, populations of the WEMO's covered species, many of which are also to be covered by this plan, are still declining. This implies that the low compensation ratios proposed by the DRECP, at least in the West Mojave Desert, are unjustified and potentially harmful to species' long-term survival. This could be especially true because some of the lands in the DFAs have high conservation values (see Landscape-Level Linkages section) for the desert tortoise.

In fact, it appears the DRECP is heavily weighted to the desert tortoise. The proposed mitigation ratio appears to largely be based on modeling of desert tortoise habitat rather than the needs of all of the covered species. Management actions that need to be done for tortoise mitigation may not benefit other species. For example, tortoise fencing won't benefit plants. Applicants will likely have to conduct separate mitigation for some species. This raises an additional question as to the adequacy of the mitigation ratio. Clarification is needed on how the mitigation ratio was established and additional analysis needs to be provided as to its adequacy for each covered species.

The low compensation ratios proposed by DRECP raise other issues. For example, the DRECP has a large Reserve Design and claims that its compensation ratios will be adequate. The document also states that compensation and fees for renewable energy projects can't guarantee completion of the Reserve Design. Therefore, the proposed conservation cannot be completed as described in the plan without inclusion of future planning efforts and permitted activities.

If the DFAs represent areas where renewable energy development should occur, one could assume that the approximately 1.63 million acres of “non-federal” lands within DFAs is also developable for future projects.

Once this analysis is done, the agencies should be able to determine if the compensation ratios proposed are realistic for all projects throughout the 22.5 million-acre Plan Area. If it turns out that higher mitigation ratios are needed to fully achieve the BGOs and complete the DRECP’s Reserve Design, they should be adopted in the DRECP versus being applied to subsequent development at a later date. This will ensure that there is parity across the desert and that future stakeholders and applicants are not unduly burdened by implementation of the DRECP.

It is also unclear what management activities will be implemented on federal and acquired lands within the conservation areas. Currently, the WEMO and the Desert Tortoise Recovery Plan provide a list of management actions for the West Mojave and/or for the desert tortoise. However, all of these management actions are unfunded mandates. An analysis needs to be provided as to which of these previous identified actions should be undertaken and how they will be incorporated into the overall program conservation strategy.

It also would be interesting to understand whether a conservation strategy that provides implementation of needed management activities on existing federal lands and acquisition of only critically important private lands (i.e., private lands needed to retain viable linkages) would be sufficient to offset the impacts associated with the proposed development. This alternative does not appear to have been evaluated and it should be.

Finally, the DRECP contains disproportionate compensation ratios for some management activities. For example, Table H-11 on page 103 in Appendix H states that, for the West Mojave Recovery Unit, ten miles of installation and maintenance of desert tortoise highway fencing with culverts is equivalent to 100 acres of land acquisition of tortoise habitat. Similarly, Table H-11 states that one mile of installation and maintenance of fencing and signs around desert tortoise conservation areas in the West Mojave Recovery Unit is equivalent to 100 acres of conservation.

***Recommendation:** An analysis needs to be provided as to which of the previous identified management actions (unfunded mandates) of the planning area and species should be undertaken and how they will be incorporated into the overall program conservation strategy.*

***Recommendation:** Clarification is needed on how the mitigation ratio was established and additional analysis needs to be provided as to its adequacy for each of the covered species. This*

analysis should include a comparison to previous ratios used in other approved planning documents and on individual project approvals.

Recommendation: *The DRECP should consider providing more flexibility in establishing project mitigation ratios if necessary.*

Recommendation: *If the DRECP cannot implement its full Reserve Design based on the impacts from its Covered Activities, the DRECP should clearly explain how it intends for future plans and projects to build on the conservation and mitigation strategies outlined in the dEIR/EIS.*

Recommendation: *The DRECP needs to clarify if the low mitigation ratios provided to Covered Activities will be extended by the agencies to future projects/activities that are not included in the DRECP.*

Recommendation: *The DRECP should consider analyzing what development of the 1.63 million acres of non-federal lands in DFAs would mean for covered species.*

Recommendation: *The above analysis should be compared to development projected in the local General Plans of the seven counties and 21 towns and cities within the Plan Area.*

Recommendation: *Better documentation and clearer discussions should be provided to address the validity of the disproportionate management to acquisition compensation ratios referenced above, including the assumptions used to develop them.*

Recommendation: *A conservation strategy that provides implementation of needed management activities on existing federal lands and acquisition of only critically important private lands (i.e., private lands needed to retain viable linkages) should be evaluated.*

LOCAL LAND USE AUTHORITY

The DRECP covers seven counties – San Bernardino, Inyo, Kern, Riverside, Imperial, Los Angeles, and San Diego – and 21 cities. All of these local jurisdictions have land use authority under California Development Code 65300 for the private lands within.

The 22.5 million-acre DRECP will define the land use for approximately 93 percent of the non-federal lands⁸ (approximately 4,423,000 acres⁹ according to table II.3-52) within the Plan Area as either a renewable energy development zone or as part of a vast conservation reserve design.

- In total, the DRECP designates approximately 2.0 million acres as DFAs for renewable energy development. According to Table II.3-19b, private lands make up approximately 1.6 million acres or 78 percent of the DFAs. Approximately 64,000 acres of local public and state lands are located in DFAs (3 percent).
- The DRECP also designates approximately 14.9 million acres as the Reserve Design where implementation of mitigation measures will occur. According to Table II.3-4, private lands are found in every conservation designation in the Reserve Design.¹⁰ Approximately 1.8 million acres of private lands are included in the Reserve Design, making up 12 percent of lands designated for conservation. Approximately 915,000 acres of local public and state lands are also included within the Reserve Design (6 percent). The primary mitigation measure identified by the conservation strategy is acquisition of these private lands.

Although there are over 13.9 million acres of federal lands (not including federal military lands) within the plan area to accommodate the 177,000 acres of proposed renewable energy projects, the DRECP directs these projects to private lands where it does not have land use authority.

⁸ Non-federal lands include private, local public, and state lands. However, using acreages provided in Tables II.3-4 and II.3-19b, private lands comprise 77 percent of non-federal lands analyzed in the Plan. Local public and state lands include county, municipal, public agency, special district, and state lands, each of which have mandates, jurisdiction, and authority to fulfill their public purpose. Local, public, and state lands comprise approximately 23 percent of non-federal lands analyzed.

⁹ Acreages of non-federal lands used throughout the document are not consistent, making proper analysis difficult.

¹⁰ Private lands, local public, and state lands included in the Reserve Design are largely found in CPAs and BLM LUPA conservation designations. Existing Conservation Areas include a limited amount of private lands (31,000 acres) and approximately 403,000 acres of local public and state lands (Table II.3-4).

The DFA and CPA Overlays¹¹

Volume II, Section II.3.1.5.2.6 in the dEIR/EIS states that “The DRECP will not affect local governments’ land use authority” and that “local governments will continue to have land use authority over most renewable energy projects on private lands (Volume II, Section II.3.1.5.2.6, p. II.3-222).” Furthermore, “local governments will usually be the CEQA lead agencies for such projects and will usually have the ultimate authority to approve or disapprove them (Volume II, Section II.3.1.5.2.6, p. II.3-222).”

In addition, the dEIR/EIS assures that “local government would have flexibility to define appropriate development areas for renewable energy projects and appropriate conservation areas for species covered by the DRECP, provided the local government’s plan is consistent with the DRECP’s biological goals and objectives and mitigation requirements (i.e. that it tiers from the DRECP) (Volume II, Section II.3.1.5.2.6, p. II.3-224).”

The DRECP identifies coordination with local governments as important for the success of the Plan. The decision to overlay private lands with DRECP planning areas appears to be ill-conceived in that it creates unnecessary conflict between the DRECP and counties and cities in the Plan Area.

Although the Town believes in and supports the DRECP’s objective of partnering with local government for desert conservation, the process, as proposed, has many unintended consequences for local government and private citizens. The Plan fails to recognize the role of local governments and the subtle relationship of statutes governing land use, general plans, and economic growth used by local governments.

These consequences, if not clearly addressed and specifically written into the Plan prior to its adoption, have the potential to undermine local land use authority because the document is too complex and vague in its future application. The DRECP’s relationship with local government cannot wait to be worked out after the DRECP is approved. This is because the acceptance of the Reserve Design, the step-downs from the programmatic EIR/EIS, and the creation of local conservation strategies all need to be clearly defined now for the DRECP to actually work and be effective.

¹¹ For purposes of simplicity, we are limiting our discussion of the multiple Reserve Design overlays created by the DRECP to CPAs. The concepts discussed here apply to any land use designation overlay applied by the DRECP to private and local public lands.

Areas of Consistency Between Planning Efforts

Both the Town's and the DRECP's planning areas are composed of a mix of public and private lands. Both planning efforts are consistent with the principles of strategic conservation planning in that both plans have taken the broad view to address resources issues.

Issues Needing Further Clarity and Evaluation

The DRECP fails to recognize the impacts this Plan, if adopted, may have on future local land use decisions. Local governments want to ensure that they can fully implement their General Plans and that their economic growth will not be hindered by the DRECP.

DRECP May Limit Local Government's Ability to Pursue Land Use Policies

In reality, the DRECP falls short in protecting local land use authority because existing laws, regulations, and policies require that all future planning efforts be consistent with established plans.

Here is why:

The DRECP appears to create two distinct overlays on top of local plans: DFAs and a Reserve Design.

A standard question in the California Environmental Quality Act (CEQA) process asks whether the proposed project (such as a development project or general plan update) is in conflict with provisions of an adopted Habitat Conservation Plan (HCP) or Natural Conservation Community Plan (NCCP). If the proposed project is in conflict with an adopted plan such as the DRECP, a finding of significant impacts must be made under CEQA. In order for the project to go forward, mitigation must be provided or a statement over-riding considerations must be adopted through the EIR/EIS review process.

In addition, should a local government choose to develop its own HCP and/or NCCP or seek a "take" permit from the wildlife agencies, existing planning guidance requires that their planning effort be consistent with previously adopted plans, in this case the DRECP.

If a local government considers allowing development that is not consistent with these two plan designations, such as a development project within the Reserve Design or even development within a proposed DFA that is not a renewable energy project, a case could be made under CEQA that the project would be in conflict with the DRECP. From this perspective, the 177,000 acres of impacts analyzed under the

DRECP could be interpreted as the maximum allowable build out of private land within the entire planning area. This is unacceptable and would prevent local governments from utilizing their authority to implement their general plans, zoning ordinances, and codes.

Recommendation: The DRECP needs to provide a clear statement with appropriate documentation that it is not to be considered a land use planning overlay and used as such in subsequent projects' CEQA reviews.

Recommendation: In order to ensure that the Town would have autonomy in its permitting process, a clearer description of how coordination with local governments holding HCPs and/or NCCPs would function is needed.

Development Caps

In addition, local government land use decision-making may be hampered by the placement of development caps within the designated Conservation Areas. Again, the proposed plan needs to be compared to existing local government land use planning efforts to see if the proposed caps are realistic – in that they may already have been reached in certain areas which would stop any future development proposed by a community. This analysis should be done for each County General Plan and each Town or City General Plan within the DRECP Plan Area to better understand the impacts of the DRECP planning effort on local jurisdictions.

Recommendation: The DRECP needs to be compared to existing local government land use planning efforts to see if the proposed development caps are realistic – in that they may already have been reached in certain areas which would stop any future development proposed by a community. Maps should be provided showing what percentage of the “development caps” have already been reached.

Partnerships with Local Government

It is the Town's understanding that partnerships with the DRECP may take three forms.¹²

1. Informal: Local government would come to Coordination Group to “pre-process” plans and projects to see if consistent with DRECP.
2. Formal: Adopt DRECP and amend General Plan for renewable energy projects.

¹² Section II.3.1.5.2.6, Partnership with Local Governments, indicates that there are four ways that local governments can partner with the DRECP. However, the 3 forms described above are most likely the main forms of partnership based on discussions with DRECP staff.

3. Amend DRECP: Prepare own HCP and/or NCCP to include renewable energy and other covered activities. Local entity would hold permits (from CDFW/USFWS).

Guidance on the preparation of HCP/NCCPs states that plans should be consistent with other plans in the project area. Since the DRECP overlays over 22.5 million acres of California's deserts, the DRECP must clearly define what *consistency with the DRECP* means in order for other jurisdictions to partner with it. For example, the following questions need to be addressed:

- Is *consistency* precise adherence to the lines/land uses established by the DRECP or are the land use designations adopted by the DRECP only guidance?
- What other development can be placed in the defined development zones?
- Can development be placed in a conservation area? What types and how much?
- Is there any flexibility in the development cap within conservation areas?
- Does any other development within a development zone have to assume that the baseline condition of the surrounding area includes a certain amount of future renewable energy development?
- How much take of the desert will ultimately be allowed for each species? Each subregion? The dEIR/EIS states that this will be developed but it is not provided in the document.
- Could the conservation requirements be met on existing federal lands by primarily implementing management activities that benefit covered species and focusing acquisition activities on key private lands that would ensure preservation of linkages identified? (See Conservation Strategy Section)
- Do the agencies foresee total build-out of the desert to be 2.0 million acres designated as DFAs? Something more? Something less? If the DRECP requires contribution from other activities not covered by the DRECP to fulfill its conservation goals, the amount of this contribution needs to be clearly defined.

In addition to these basic questions, the following should be described:

- Will a mitigation site for a project be in the vicinity of the impact?
- What will happen to that portion of the DRECP's planning area that is within a local jurisdiction's HCP/NCCP? Will it be removed from the DRECP?

Recommendation: *The Town would recommend that, like the LUPA, new HCP/NCCPs should automatically amend the DRECP; their adoption should not require an amendment process as long as the plans recognize the DRECP's biological baseline and are consistent with its conservation strategy. In conflicts between the DRECP planning effort and that of a local entity, priority should be given to finding a solution that meets the local entity's needs. Once adopted, the local entity's HCP/NCCP plan area should be carved out of the DRECP:*

- *The “take” allocation of species for activities in their plan area remains separate from that allocated by the DRECPs.*
- *They control implementation of their program.*
- *Funding (fees) stay with local jurisdiction.*
- *DRECP would only receive copy of annual reports.*

Recommendation: *If the local HCP/NCCP proposes a larger conservation area than can be implemented by the proposed development, other entities as well as the DRECP can aid in putting the conservation area together.*

The lack of clarity in the proposed DRECP and dEIS/EIR creates many unintended consequences for desert communities. In order to resolve these consequences so the desert can truly thrive, the DRECP needs meaningful collaboration with local government. Taking the time needed to find real solutions that can work—versus instituting a giant bureaucratic, cumbersome, and duplicative process that covers 22.5 million acres of the desert to develop approximately 177,000 acres of renewable energy—should be a priority during the DRECP's revision process. This will require modification of the existing plan and recirculation of the document.

Recommendation: *The DRECP needs meaningful collaboration with local government and must take the time necessary to find real solutions that can work for the desert.*

Public Access

The DRECP's BGOs do not include ways the public could be engaged or participate in managing the land for conservation, i.e., community outreach, education, programs for local residents. In order for the DRECP to be effective and achieve support, it needs to have buy-in from residents and local communities to ensure that public lands can remain “public” and be utilized and regulated in ways that the public will support.

DRECP Impacts to Private Lands

The DRECP's Plan Area is 22.5 million acres. It has focused its analysis on the development of approximately 177,000 acres within the approximately 2.0 million

acres designated as DFAs. The DFAs are largely located on private lands. It also establishes a 14.9 million-acre Reserve Design, which is predominately located on federal lands but also contains large blocks of private lands in both the BLM LUPA conservations designations and CPAs.

The total amount of non-federal lands included in the DRECP appears to be approximately 4.4 million acres as described in Table II.3-52, Preferred Alternative within GCP.¹³ According to Table II.3-52, the Preferred Alternative designates non-federal lands within the DRECP Plan Area in the following manner:

DRECP LAND USE DESIGNATIONS	ACREAGES (NON-FEDERAL LANDS)
DFA	1,632,000
Study Area Lands	77,000
Future Assessment Areas	70,000
Special Analysis Areas	7,000
DRECP Plan-Wide Reserve Design Areas	2,714,000
Existing Conservation Area (LLPA)	434,000
BLM LUPA Conservation Designations	1,200,000
Conservation Planning Areas	1,080,000
Total Acreage	4,423,000

As noted previously, the DRECP defines the land use of 93 percent of non-federal lands included in the Plan Area. Of the approximately 16.9 million acres designated as DFA or Reserve Design (excluding Study Area Lands), 20 percent (3,367,000 acres) are private lands and six percent (979,000 acres) are local public and state lands.¹⁴ Combined, these lands comprise 26 percent of lands included in DFAs and the Reserve Design, which is a substantial portion of the Plan Area.

¹³ Please note that there are substantial acreage discrepancies throughout the document in its analysis of non-federal lands. For example, page 10 of the Executive Summary indicates that the GCP covers 5,420,000 acres of non-federal lands, yet table II.3-52 describes GCP land use designations on approximately 4,423,000 acres of non-federal lands. This is a discrepancy of approximately 1 million acres in the description of lands covered by the GCP, and the reason for this discrepancy is not described in the document. Additionally, when acreages of non-federal lands (private, local public, and state lands) described in tables II.3-4 and II.3-19b are added together, the total of non-federal lands described equals 4,346,000 acres. While this number does not include non-federal lands included in Study Area Lands designations, when non-federal lands included in this designation as described in table II.3-52 are added, the total of non-federal lands covered equals 4,416,000 acres. The inconsistency in acreages used and varied levels of analysis provided throughout the document to describe land ownership categories and land use designations makes it difficult to review the document in a thorough manner.

¹⁴ This analysis is based on acreages provided in Tables II.3-4 and II.3-19b.

DFAs are designated largely over urban centers and areas identified for future local development (residential, commercial, industrial). It is likely that private, local public, and state lands included in the DRECP's Reserve Design are also designated for future local development. The Town, and many other local land use authorities, would like to have a clear picture of how the DRECP plan designations impact private lands within their jurisdictions.

***Recommendation:** The DRECP should provide a full analysis of how private lands will be utilized by the Plan and further break out its land ownership analysis to clearly show how many acres of private lands are included in each of the DRECP's land use designations. This analysis needs to be provided for each County and each Town or City within the DRECP Plan Area.*

***Recommendation:** The DRECP should further expand its analysis of non-federal lands. Grouping private, local public, and state lands together does not provide sufficient detail to local governments and local agencies as to how lands under their jurisdiction are affected by the DRECP.*

***Recommendation:** Review and analysis of the document is hampered because acreages cited throughout the document and noted in tables cannot be cross-referenced. Therefore, acreage discrepancies throughout the document should be corrected. If this is not possible, how each number was derived should be clearly described for each table. The reasons for the discrepancies between tables should also be explained.*

***Recommendation:** The DRECP should clearly explain how this overlay will affect local (county and city) land use authority on private lands, especially in terms of future CEQA compliance, development of their own HCPs and/or NCCPs, or in seeking Section 7 permits.*

Area-wide Economic Impacts

All conservation planning must include an economic evaluation of alternatives. The DRECP fails to provide an in-depth economic analysis of what it means to place DFA and CPA overlays over 4,423,000 million acres of private lands. What will removal of these private lands do to the region's economy and tax-base? A full in-depth economic analysis (conducted by an independent third party) is the only way local governments and the public can understand what the impacts of the DRECP mean to them.

While the Town appreciates the efforts of those who have worked hard to prepare the DRECP, the inclusion of only a brief summary of each County's economic profile is not adequate to fully address the economic impacts of such a far-reaching planning effort. The DRECP, as it's written now whether intended or not, has the potential to dramatically change the economic framework of the California Desert.

In addition, the Plan appears to be in contradiction with itself – the DRECP has stated that it will be funded through mitigation fees paid by developers and that it will focus on acquisition of more private lands. However, this strategy will be impossible without a thriving economy. Where will the funds come from to complete all the conservation and management activities called for in the Plan if local economic development is stunted by DRECP?

Recommendation: The DRECP should conduct an in-depth comprehensive analysis on the potential economic impacts caused by the DRECP and should seek guidance and input from the Counties and Cities in the Plan Area to define the scope of work for this analysis. This analysis should be completed and circulated for public review prior to the approval of the DRECP.

Recommendation: The DRECP should also work with local governments to identify means for private sector solutions that would generate jobs and economic benefit while furthering conservation goals and objectives.

Recommendation: The DRECP should collaborate with local government to identify ways for conservation to become an economic sector throughout its Plan Area that contributes to job generation and helps support a prosperous economy.

Changes Needed for Consistency with Town's MSHCP/NCCP

It is difficult to recommend changes when it remains unclear exactly what the DRECP is proposing and how its adoption will impact local land use authority. Further clarification or refinement of the DRECP is needed.

The Town is only defining land uses on private or locally owned lands within its jurisdiction. It is working with the County to implement land use decisions within the Town's SOI and identified linkage areas. The Town is also working with the BLM to assist in the maintenance of BLM lands in the MSHCP/NCCP Plan Area so they are fully managed for conservation purposes. The Town believes that these partnerships are essential, both for developing conservation strategies and for management, and even more so for implementation of these strategies. At this time, the Town is considering acquisition of only those private lands that are critically important for conservation purposes.

DFA Designations

The dEIR/EIS designates DFAs within the boundaries of the Town and its SOI under every Action Alternative. However, the Town's General Plan and North Apple Valley Industrial Specific Plan include zoning designations for photovoltaic solar farms that meet the Town's development code.

The Town is concerned that the DRECP's DFA designations do not take into account local zoning designations and plans. The development and operation of photovoltaic solar farms will be included in the Covered Activities under the Town's MSHCP/NCCP. Upon approval of the MSHCP/NCCP, the Town and the County will amend their General Plans to ensure consistency with it. No utility-scale renewable energy designations are currently zoned or will be zoned in the SOI. Since this is the case, the Town believes DFA designations within the Town's planning area should be removed.

***Recommendation:** The DRECP should remove DFA designations within the Town's MSHCP/NCCP Plan Area.*

CPA and Interagency Plan-Wide Conservation Priority Area Designations

As stated above, the Town is considering acquisition of only those private lands that are critically important for conservation purposes.

***Recommendation:** The DRECP should work with the Town to ensure the CPA and Interagency Plan-Wide Conservation Priority Area overlays are consistent with the Town's conservation and acquisition objectives.*

Local Autonomy

The Town expects that it will have autonomy to implement all aspects of its MSHCP/NCCP, once approved. This includes holding and managing compensation fees collected from covered activities, prioritizing and implementing mitigation and management activities based on local needs, and identifying key private lands for acquisition.

***Recommendation:** Clear language needs to be included in the DRECP that provides the Town and other local jurisdictions autonomy over implementation of approved HCP/NCCPs.*

STREAMLINING

Based on the Town's experience in streamlining its own development processing, the key to streamlining is clarity, certainty, consistency, and fairness. When project streamlining can be used and how it is applied must be clearly defined from the outset. If the applicant does everything as required, then the applicant can proceed. Every project is treated equally, which leads to fairness in the process. Streamlining requires close coordination between the approval authority and those seeking approvals. It also requires close coordination with the other agencies that may also have approval authority over portions of the project. Without everyone working together, and applying predictable rules and actions, the process doesn't work. These are the basic tenets the Town is using to develop its MSHCP/NCCP permitting process.

As stated previously, Apple Valley's goal is to be a one-stop-shop. Once the MSHCP/NCCP is approved the Town will be able to approve development projects and issue environmental permits at the same time. This will ensure that projects are designed from the outset in a manner that fully complies with the Town's and County's development codes as well as the federal and state Endangered Species Acts (FESA and CESA). This will save developers both time and money, which then contributes to job generation, economic growth, and conservation of important environmental resources.

Areas of Consistency Between Planning Efforts

As with the DRECP, the Town is seeking a method to streamline implementation of its General Plan. The type of streamlining the Town is attempting to achieve is the ability to set standards that will enable project proponents to acquire their FESA and CESA permits with their local approvals.

As mentioned in previous sections, the DRECP's planning effort standardizes biological studies to be undertaken with project development, describes avoidance and minimization mitigation measures, and proposes ratios for mitigation needed to offset the remaining project impacts. This type of standardization contributes to providing clarity, certainty, consistency, and fairness.

Issues Needing Further Clarity and Evaluation

Permitting Process

There are three different planning components that make up the DRECP: a LUPA, a GCP, and a NCCP. The three components have three distinct processing procedures and a project proponent must process its application with the agency who holds permit authority over their project area. While the DRECP's intention is to streamline permit processing for renewable energy projects located in DFAs, the

permitting process as described in the draft documents is very similar to the current process as it exists today.

The draft DRECP describes the application and review process in the “DRECP Integrated Project Proposal Submittal and Review Process” in Volume II, Section II.3.1.5.3.4:

- Applicants may submit a Project Proposal to the DRECP Coordination Group for an early, informal review for consistency with DRECP requirements. The Project Proposal stage will identify all relevant project information and review requirements, which will ensure that both applicants and reviewing agencies fully understand the project and relevant DRECP requirements at an early stage in the process.
- Within 30 days of submittal of a Project Proposal, the Coordination Group will provide feedback to the project applicant regarding the completeness of the submittal, including the impact analysis and consistency analysis.
- The project applicant may use the Project Proposal and results of the Coordination Group evaluation to prepare and submit an application to the agency responsible for issuing the permit or authorization (BLM, USFW, and CDFW) for the proposed Covered Activity. The agency/entity responsible for issuing the permit or authorization for the proposed Covered Activity will have final responsibility for determining whether the Covered Activity meets the requirements for the permit or authorization based on applicable laws and regulations.
- A Project Proposal that has completed the Coordination Group review process and received initial positive assessment regarding consistency with the DRECP, will be eligible for expedited review from DRECP participating agencies, BLM, USFWS, CDFW, CEC and/or CSLC, as applicable.

The DRECP anticipates that, “such agencies will review and take action with regard to submitted applications that are consistent with such Project Proposals within one year following the determination by the approval agency that the application is complete. Any additional project-level studies or CEQA/NEPA environmental review would have to be completed within this one-year period. Projects initially found to be consistent with the DRECP but requiring technical studies extending for more than one year (e.g. 2-year eagle studies) would have an extended review period as needed to complete the study(ies)” (Volume II, Section II.3.1.5.3.4, p.II.3-231).

Review of this process raises several questions regarding the mechanisms that will be applied to ensure that Project Proposals meet the one- to two-year processing schedule. For example:

- What does *expedited review* mean? Are there specific processes, steps, and timelines that will be applied consistently to qualifying projects?
- What happens if there is a backlog of project applications and there is not enough staffing to work on permit applications?
- What if a review process needs further extensions of time?
- How will the agencies assign staff to review permit applications? Will renewable energy project applications take precedent over all other applications, while project applications for development projects needing permits from USFWS, CDFW, and BLM, such as a HCP/NCCP, are delayed?
- Has the DRECP reviewed agency permitting process that could be adopted or modified to meet the DRECP's needs?

In the Town's experience of processing permits with the DRECP agencies, specifically CDFW and USFWS, the permitting process generally follows one of three patterns. The first, similar to the CDFW streambed alteration agreement program, provides a set number of days for the permitting authority to respond and if they fail to do so the need for the approval is considered to be waived. The second, similar to the processing of a Section 7 Consultation, provides the permitting authority a set number of days to respond to a request for consultation and if additional time is needed, one extension of time is provided by right. A second extension requires permission from the entity (or applicant) entering the consultation. The third, similar to processing a Section 10 permit, is that an applicant enters the permit process and the processing time is unlimited. Since time saved is the primary indicator of successful streamlining, the DRECP process needs to establish realistic, set timeframes and include reasonable, limited extensions.

***Recommendation:** The DRECP should provide a permitting process with more specific timeframes. Otherwise there is no assurance to the applicant that the application will be processed in a timely manner.*

Planning Process

A possible contradiction may occur if processing a project located on both public and private lands. Generally, large renewable energy projects require a combination of both public and private lands. The use of private lands adds another layer of entitlement processing at the local level. As most private lands in desert areas are not zoned to allow utility-scale renewable energy development, a zone change and

general plan amendment, which is only allowed four times a year, would be required with the local land use authority.

It is, therefore, misleading to suggest that over 2.0 million acres (78 percent of which is private land) are available for expedited renewable energy development when the Plan does not incorporate local land use designations and local land use processes into its approval process.

However, it is likely in most cases that the existing Section 7 Consultation could provide for the take permit or address impacts to designated critical habitat for many projects on both public lands. This process could be used to coordinate with CDFW to ensure that a Section 2081 consistency determination is made.

The process described above, is similar to the permit process that DRECP defines for federal lands. "BLM has determined it will develop a Biological Assessment for the purpose of evaluating the potential effects of its LUPA, a federal action subject to Section 7(a)(2), on species listed or proposed to be listed as threatened or endangered under the ESA, and on critical habitat that has been designated or proposed for designation within the Plan Area. If an action is likely to adversely affect listed species or critical habitat, consultation under Section 7(a)(2) would result in a Biological Opinion and/or Conference Opinion issued by the U.S. Fish and Wildlife Service to the federal action agency" (Volume I, Section I.2.1.3, p I.2-6).

***Recommendation:** Because this the DRECP primarily directs its covered activities to private lands, a clear roadmap with detailed steps needs to be provided on how proposed projects will navigate both the DRECP and local government processes. All approvals should be identified and have clearly defined time frames. The consequence of missing those timelines should also be described.*

***Recommendation:** To avoid conflicts with local government process, renewable energy development and mitigation should be focused on public lands where agency land use authority already exists. If a developer plans to locate their project on private lands, then the DRECP should provide a clear description of the existing local government process and how it interfaces with DRECP processes.*

***Recommendation:** In order to streamline the permitting process on private lands, the Section 7 Consultation process versus the Section 10 permit process should be utilized. Understanding that a federal nexus is necessary for a Section 7 Consultation, the DRECP should provide a step-down through its Programmatic EIR/EIS.*

***Recommendation:** The LUPA and its Section 7 Consultation should be available for public review and comment prior to the adoption of the DRECP.*

Need for Guidebook

The Town is working diligently to ensure that its streamlining process is clear and easy to follow and understand. The Town's goal is to avoid steps and processes that have the potential to lengthen its permit process. In thinking through the process as defined in the DRECP, the Town believes that both entities would benefit by developing a concise, precise guidebook, similar to a cookbook, so project applicants and agency staff will know exactly what is required in order to streamline projects.

Recommendation: Develop a DRECP guidebook that clearly and precisely details all steps and requirements of the permit process created by DRECP. The guidebook needs to include as many scenarios as possible to ensure that all potential permitting issues are addressed. It should also provide a process for resolving unanticipated issues not covered by the guidebook.

Changes Needed for Consistency with Town's MSHCP/NCCP

The Town needs to further develop its MSHCP/NCCP and review the responses to the recommendations for streamlining before it can suggest needed changes to ensure consistency between the planning efforts.

FUNDING, IMPLEMENTATION, AND GOVERNANCE

A required part of a HCP planning effort is that the applicant must describe how they will fund the mitigation and monitoring measures, including the adaptive management plan, and ensure that adequate funding for the plan will be provided. The NCCP planning guidance has a similar requirement in that a plan must contain provisions that ensure adequate funding to carry out the conservation actions identified in the plan. It is unclear based on the information provided in the DRECP that the HCP and NCCP funding requirements have been met. Similarly, the establishment of the proper governance body and creation of an implementation plan that is achievable is of critical importance to the success of the DRECP.

Areas of Consistency Between Planning Efforts

Both the Town and DRECP must address Funding, Implementation, and Governance to assure the success of their Plans.

Issues Needing Further Clarity and Evaluation

Proposed Funding & Costs

The dEIR/EIS discusses Cost and Funding in Volume II, Section II.3.1.8 and in Appendix I. These two sections provide an overview and analysis of the costs to purchase, restore, and manage lands in order to fulfill compensatory mitigation requirements. However, these sections do not include any other cost estimates or analysis. Instead, assumptions are made for the costs of land acquisition; habitat enhancement; fencing and signage; roost habitat creation, enhancement, and protection; and predator, cowbird, or starling control. These assumptions and estimates resulted in a set of tables showing a range of costs in Appendix I.

Most of the activities described in the funding analysis appear to describe costs related to desert tortoise mitigation activities. It does not appear that the funding analysis provided takes into account the costs to implement mitigation activities for species that have different habitat needs and management prescriptions from desert tortoise. If this is the case, the funding analysis provided may not be accurate and the estimated funding needed for plan implementation could be inadequate.

The dEIR/EIS also does not include a budget for Plan implementation, which should include funding for the Coordination Group and other governing committees. According to Volume II, Section II.3.1.5.2.4 in the dEIR/EIS, the DRECP Coordination Group "will be responsible for the day-to-day implementation of Plan-wide programs, coordination among Plan participants regarding implementation of each DRECP planning component (LUPA, GCP, and NCCP), coordination with public agencies and stakeholders, and public outreach" (Volume II, Section

II.3.1.5.2.4, p. II.3-213). There is an assumption that management activities would be fulfilled by the agencies, but a budget for these processes is not included in the document.

It is unclear why this omission was made. Agency budgets are based largely on annual appropriations. The agencies have all faced steep budget cuts and hiring freezes over the last several years. To ensure this program functions fully, each agency needs to ensure that their DRECP program is fully staffed. In addition, due to its complexity, it is likely that dedicated employees, who are adequately trained on the DRECP program, will need to be assigned to implement the DRECP program and process permits. Reliance on appropriated budgets may not be enough to ensure that agencies will ultimately be able to fulfill all their responsibilities as outlined in the DRECP. Without funding assurances for agency implementation and staffing, the program may not be functional.

The dEIR/EIS does provide a list of “potential sources that may be available to support the funding of the implementation actions” for the DRECP (Volume II, Section II.3.1.8.5, p. II.3-290). The section describes the following sources of funding for implementation of the DRECP: DRECP Implementation Fees; State and Federal Funding; and Other Funding Sources. Based on the descriptions provided in the document, there are no assurances that the funding sources are consistently reliable or realistic.

The main source of funding, outlined in Volume II, Section II.3.1.8.5.1, is DRECP Implementation Fees. Rather than being funded through a set of standard fixed fees, the DRECP will be funded by implementation fees determined on a project-by-project basis. The document states that “an implementation fee will be required for all Covered Activities. Revenues from implementation fees will be used to fund implementation of CMAs that provide compensatory mitigation for the impacts of the Covered Activities and provide for the conservation and management of Covered Species” (Volume II, Section II.3.1.8.5.1, p. II.3-291).

The implementation fee structure described above appears to be similar to an in-lieu fee program. Provisions in the document do not provide any clarity on how this program will be implemented and monitored. Historically, in-lieu fee programs have typically not met their mitigation and acquisition goals. They have fallen out of favor as a mitigation solution by resource agencies unless stringent requirements are met on funding, financial management, transparency, tracking of activities/acquisitions undertaken, reporting, etc.

In Volume II, Section II.3.1.8.5.2, the document describes relevant state and federal funding, such as the Cooperative Endangered Species Conservation Fund and the

Land and Water Conservation Fund. Both of these funds have to be appropriated by Congress, are typically not fully funded, and are highly competitive, which means that there is no assurance that these funds will be available for implementation of the DRECP. Additional funds described in this section include Federal Loan Guarantees for MSHCPs, State Tax Credit for Donation of Conservation Lands, and the California Greenhouse Gas Reduction Fund.

Implementation of the DRECP, including the activities of the Coordination Group, will require secure funding. While money for agency implementation needs to be provided, financial assurances must be made to ensure that adequate money is available for the required conservation (e.g., at least 80 percent of the amount collected goes towards implementing CMAs). Financial feasibility should be described fully in the dEIR/EIS in order to understand if this Plan meets the funding criteria for HCPs and NCCPs.

Recommendation: The Town recommends that the DRECP more clearly address the budget and funding required for Plan implementation.

Recommendation: Costs should include the program administration for all agencies involved. An analysis of these costs should be included in the documents. This should include dedicated staff positions from each agency that the DRECP budgets and funds. It is important that agencies also have staff available to process permits for other development activities so they can fulfill their mandates to the public.

Recommendation: An analysis based on real costs reflected in the Plan and an accurate fee schedule should be provided. This needs to include costs for the full spectrum of management activities that may be required by the plan to cover off on species with different habitat needs and management prescriptions than those for the desert tortoise.

Recommendation: The DRECP needs to demonstrate that the majority of funding raised goes directly to implement conservation management activities on the ground. The percentage of the amount of money based on the amount collected that will be used to implement conservation actions should be clearly stated.

Recommendation: DRECP needs to identify reliable and realistic funding strategies.

BLM Budget

BLM costs were not included in the costs and funding analysis (Volume II, Section II.3.1.8 and Appendix I). BLM's budget is reliant on funds appropriated by Congress. The BLM and many other federal agencies have faced deep budget cuts over the past several years. Economically, there are no assurances that the BLM will be fully funded by Congress in the near future. Nevertheless, the DRECP assumes that the BLM will be funded by its own budget, and does not include a budget or

describe a means for the BLM to attain the additional funding that will be necessary for it to implement the DRECP on public lands.

Recommendation: An analysis of the costs for BLM activities to administer and manage the Plan should be provided.

Recommendation: The DRECP should also provide funding to BLM to cover their costs.

Recommendation: A non-profit or a conservancy should be established to assist with BLM funding and management costs.

Dispute Resolution

Agencies will be required to work together and with outside parties in order to successfully implement the DRECP. A dispute resolution process is identified between agencies in Volume II, Section II.3.1.5.2.3, which states that the role of the Executive Policy Group will include “resolution of agency conflicts and policy conflicts that arise from implementation” (Volume II, Section II.3.1.5.2.3, p. II.3-212), but there is no dispute resolution process identified between project applicants and agencies.

Lack of Independent Oversight

Agency oversight of the Plan is determined by which lands the agencies oversee. Coordination between agencies will be mostly achieved through the Coordination Group. Oversight of the Coordination Group’s actions is not clearly described or provided. Upon review of the Implementation Structure described in Section II.3.1.5.2, it appears that the agencies make up both the DRECP Executive Policy Group and the DRECP Coordination Group; hold sole responsibility of administering the DRECP; and will also populate the various working groups created by the DRECP. This may result in an inherent conflict of interest or lack of checks and balances. For example, if agencies do not fulfill mitigation responsibilities (“Rough Proportionality”) under the in-lieu fee program, “CDFW and USFWS may suspend issuance of further incidental take authorizations or incidental take permits until the failure is remedied and Rough Proportionality is reestablished” (Implementing Agreement, Section 2.2.2.2, p. 11). However, who would make this finding is not described in the document.

The Implementation Structure described above is an atypical situation for most HCPs and NCCPs. Generally, a separate entity, such as a local government agency, administers the permit once granted, which allows the agencies to have oversight over implementation of the permit locally. This provides the agencies with the ability to enforce their permit conditions and ensure that the entity, who they granted the permit to, is fully implementing its permit as described.

A more realistic administration and implementation plan needs to be developed that provides legitimate oversight if the Plan isn't implemented appropriately. It may be that the DRECP needs to form some type of a joint powers authority to ensure that independent oversight of the DRECP permit exists. Establishment of a separate authority will provide agencies with permit oversight of the body created rather than having them policing themselves. It must be clear as to how the plan will be enforced and how permitting agencies will maintain independent oversight of the Plan's implementation.

Recommendation: The DRECP needs to develop a more realistic administration and implementation plan that provides legitimate oversight and accountability if the Plan isn't implemented appropriately

Recommendation: The DRECP needs to provide a clear path for implementation, accountability, and funding adequacy.

Changes Needed for Consistency with Town's MSHCP/NCCP

The Town needs to further develop its MSHCP/NCCP and review the responses to the recommendations before it can suggest needed changes to ensure consistency between the planning efforts.

CONCLUSION

Apple Valley has devoted significant time and resources to ensure consistency with all major land use and conservation planning efforts in the West Mojave Desert. The Town has brought that same level of commitment to its review and analysis of the DRECP. These comments are intended to offer suggestions and recommendations to improve and simplify the DRECP and its implementation based on the Town's own experience in working for the conservation of desert resources.

Due to the size and scope of the draft DRECP – a document of over 11,000 pages including appendices – these comments should not be considered exhaustive or complete. The Town hopes that the DRECP will receive these comments in the spirit of cooperation intended and continue working with the Town going forward to ensure consistency with Apple Valley's MSHCP/NCCP and throughout the DRECP's remaining 22.5 million-acre Plan Area.

Recommendation: The Town requests that the Draft DRECP be re-circulated, or a supplemental document be prepared, which addresses these issues discussed in this letter more thoroughly prior to the adoption of the DRECP.

Thank you for your assistance in the Town's planning efforts and for the opportunity to review the document. Please call me at (760) 240-7000, ext. 7204 or email me at llamson@applevalley.org if you have any questions or would like to discuss the Town's comments in more detail.

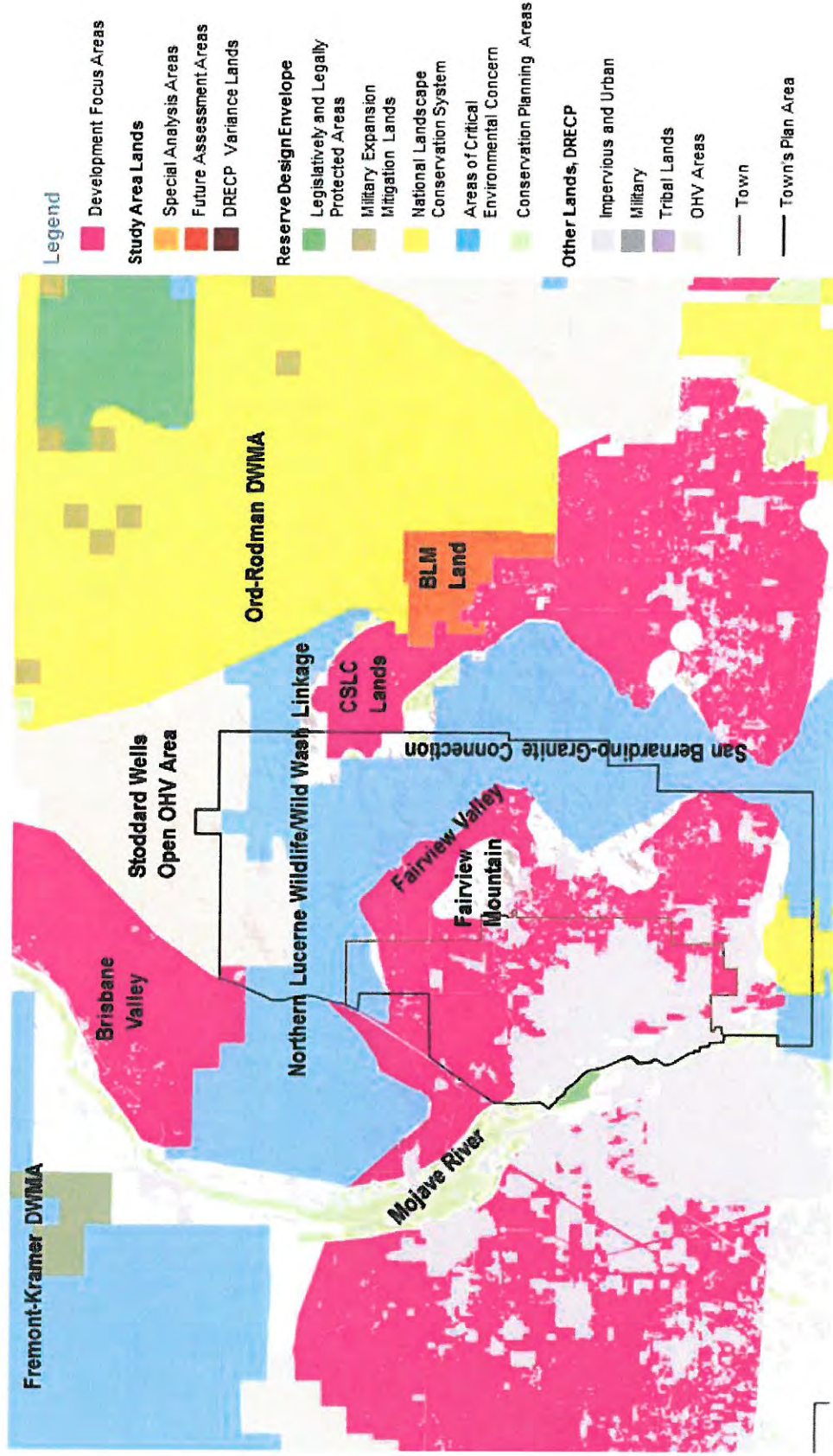
Sincerely,



Lori Lamson
Assistant Town Manager
Community and Development Services
Town of Apple Valley

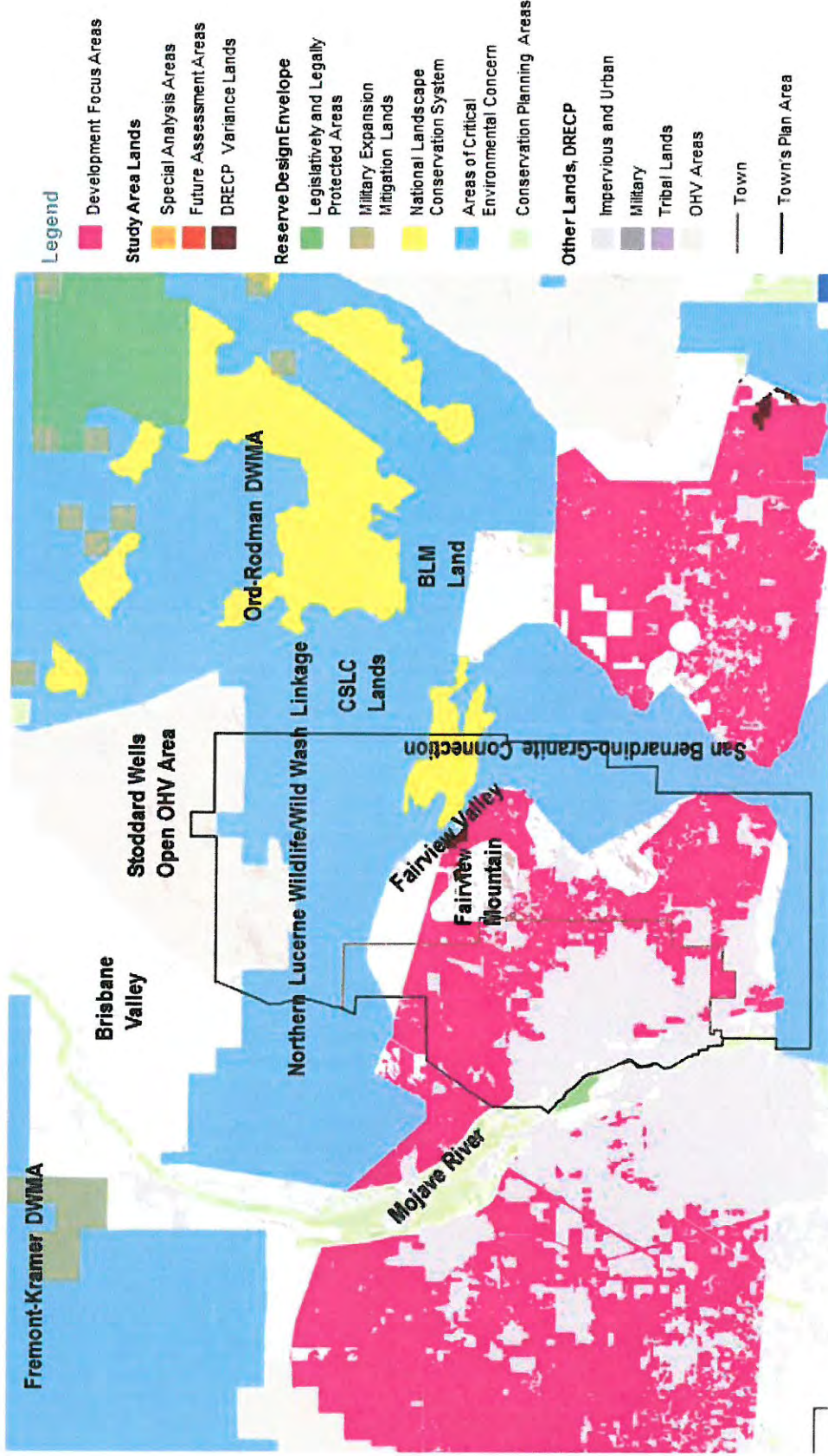
cc: Frank Robinson
Town Manager
Town of Apple Valley

Draft DRECP Preferred Alternative



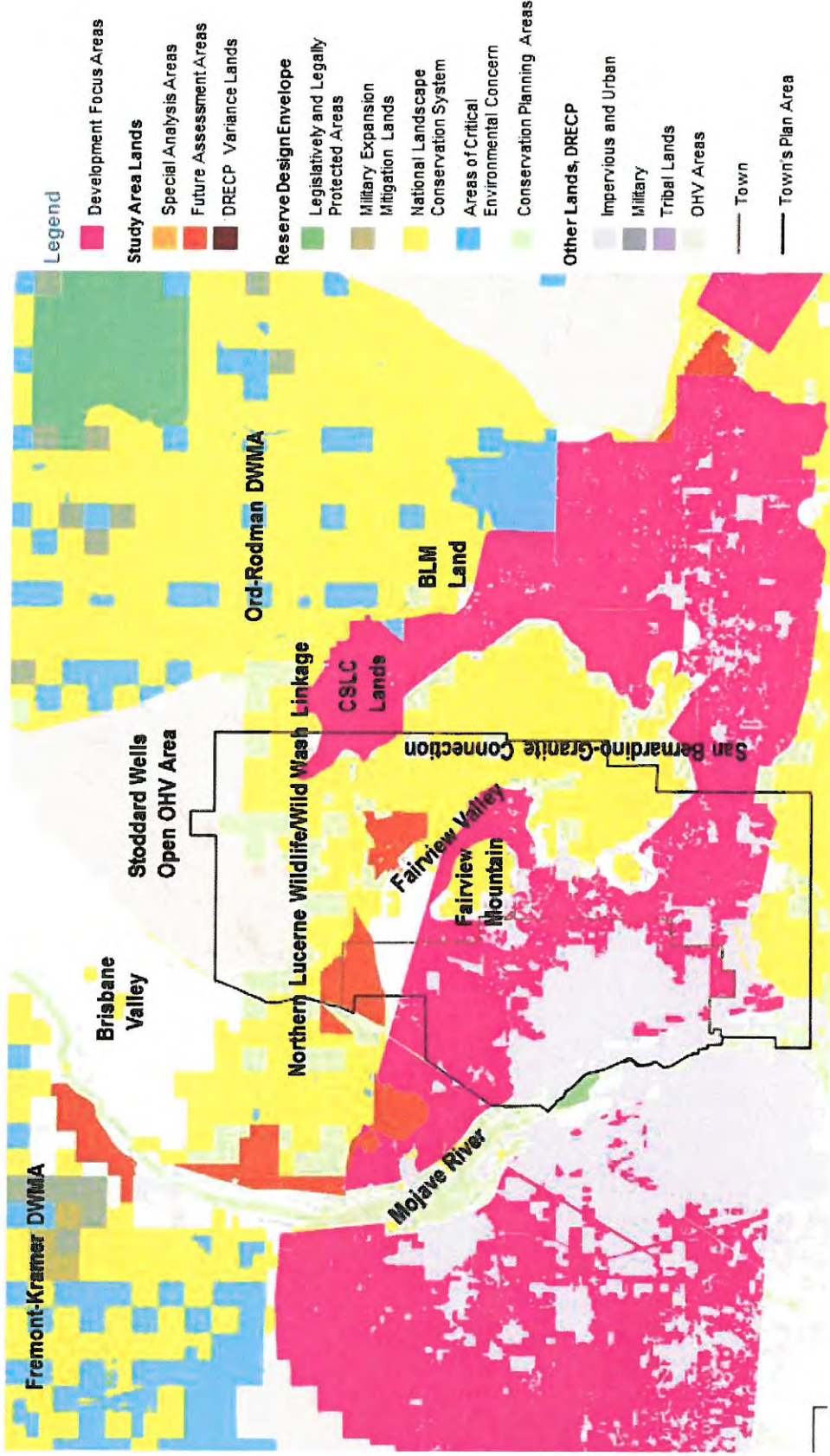
DATA BASIN

Draft DRECP Alternative 1



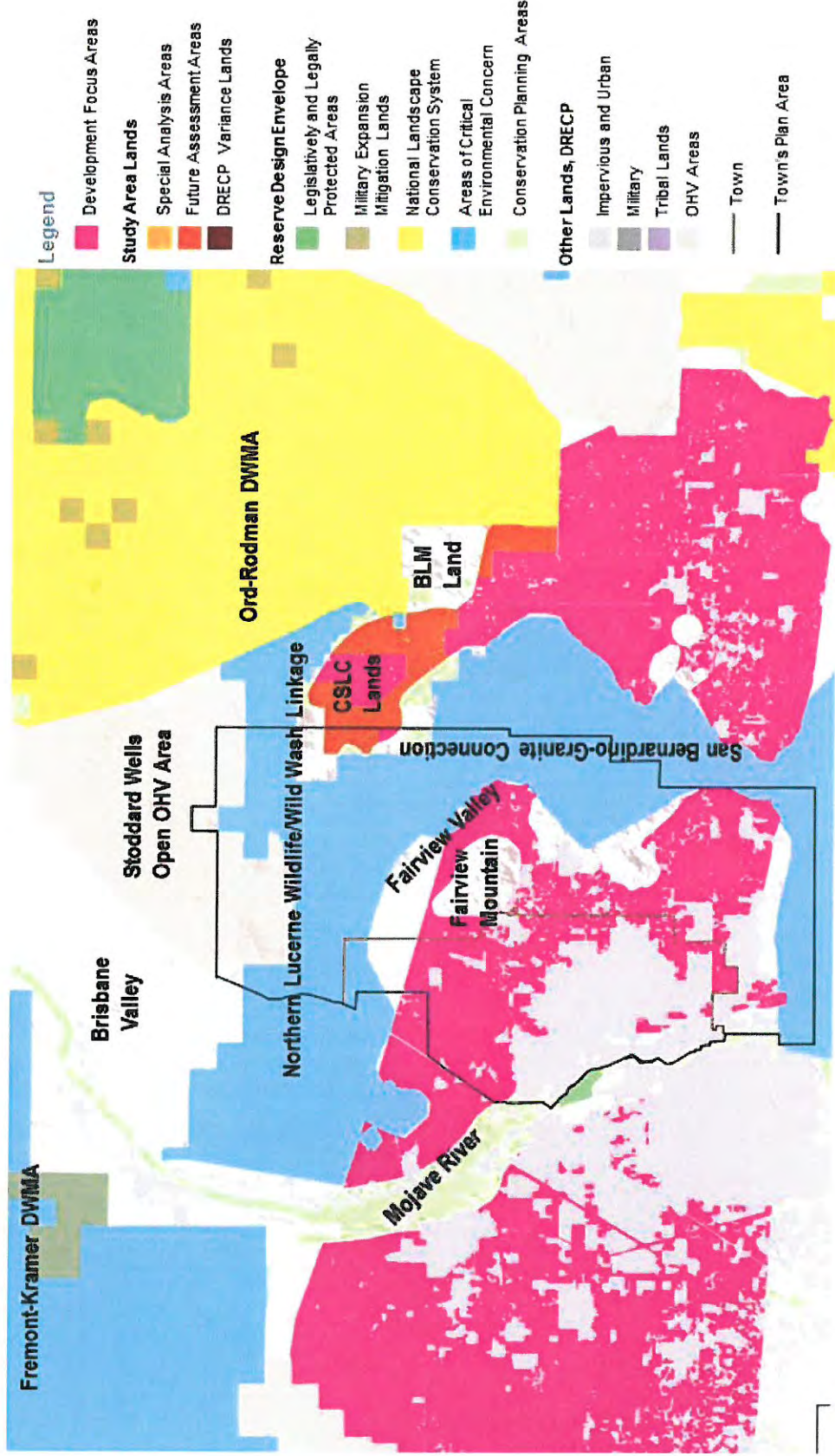
DATA BASIN

Draft DRECP Alternative 2

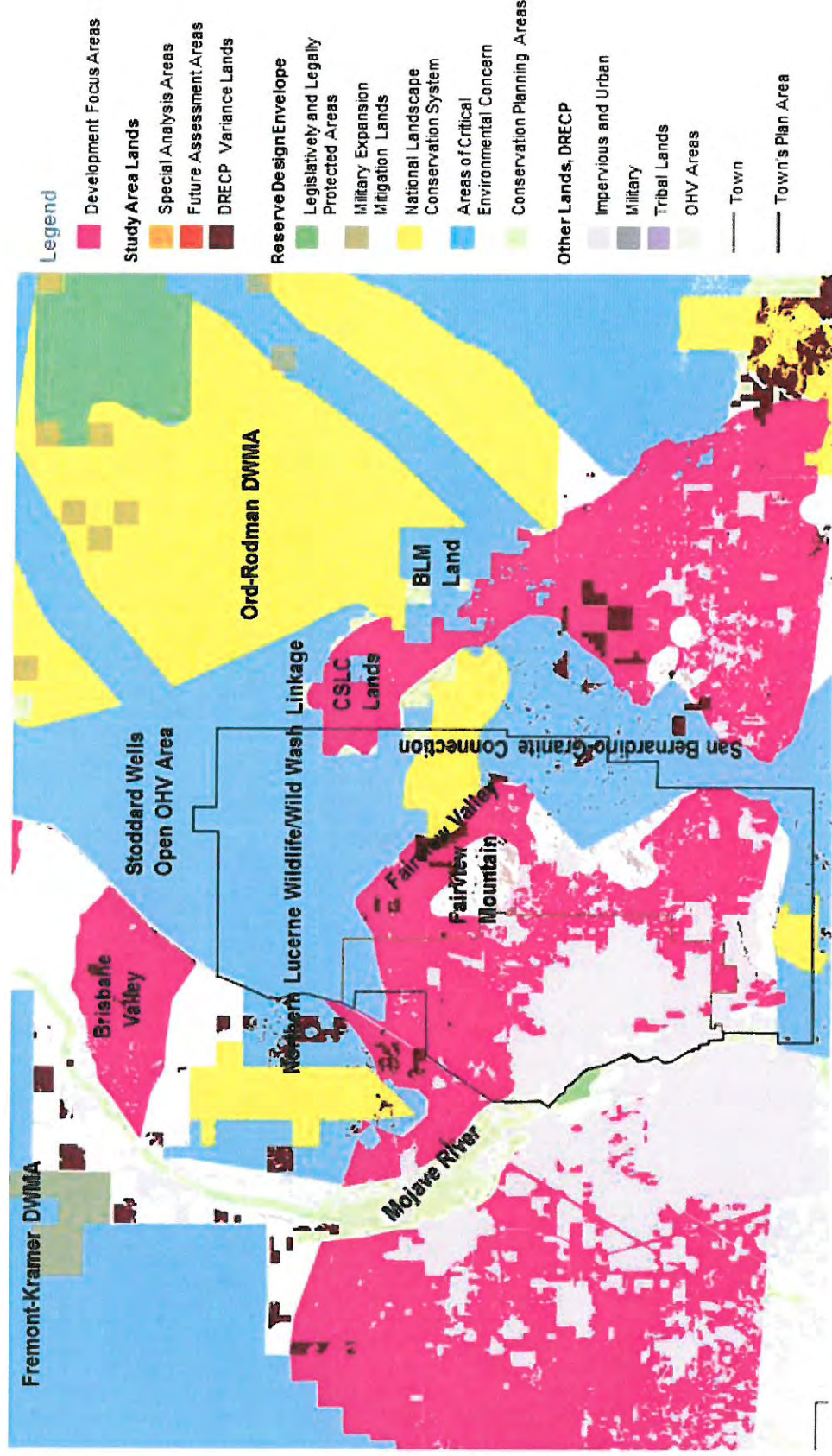


DATA BASIN

Draft DRECP Alternative 3



Draft DRECP Alternative 4



- Legend**
- Development Focus Areas
 - Study Area Lands
 - Special Analysis Areas
 - Future Assessment Areas
 - DRECP Variance Lands
 - Reserve Design Envelope
 - Legislatively and Legally Protected Areas
 - Military Expansion Mitigation Lands
 - National Landscape Conservation System
 - Areas of Critical Environmental Concern
 - Conservation Planning Areas
 - Other Lands, DRECP
 - Impervious and Urban
 - Military
 - Tribal Lands
 - OHV Areas
 - Town
 - Town's Plan Area

DATA BASIN