

Chapter 7

Response to Comments

SCH# 2020079007

Volume 5

Raceway 2.0 Solar Project
By sPower Development Company

SPA 33, ZM 231; ZCC 154, ZM 231; CUP 116 ZM 231; SPA 34, ZM 231; SPA 35, ZM 231; ZCC 155, ZM 231;
CUP 117, ZM 231; SPA 36, ZM 231; SPA 37, ZM 231; ZCC 156, ZM 231; CUP 118, ZM 231; SPA 38, ZM 231;
CUP 119, ZM 231; CUP 4, ZM 231-20; SPA 39, ZM 231; SPA 3, ZM 231-20; SPA 5, ZM 231-21; SPA 5, ZM 231-28;
ZCC 3, ZM 231-21; ZCC 3, ZM 231-28; CUP 3, ZM 231-21; CUP 7, ZM 231-28; SPA 6, ZM 231-21; SPA 6,
ZM 231-28; SPA 7, ZM 231-21; ZCC 4, ZM 231-21; CUP 4, ZM 231-21;
Cancellation of a Williamson Act Contract 20-06;
Kern County Franchise Agreement



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June 2021

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**PLANNING AND NATURAL
RESOURCES DEPARTMENT**

Planning
Community Development
Administrative Operations

June 24, 2021

FILE: SPA #33, Map #231; and others;
S.D.: #2 - Scrivner

Addressee List (See Distribution List)

Re: Response to Comments for Draft Environmental Impact Report – Raceway 2.0 Solar Project by
sPower Development Company (PP17226)

Dear Interested Party:

Enclosed is a document entitled *Volume 7 – Chapter 7 – Response to Comments*, for the above referenced project. Section 15088 of the California Environmental Quality Act Guidelines requires the Lead Agency to evaluate comments on environmental issues received from persons who reviewed the Draft Environmental Impact Report (EIR) and prepare a written response addressing each comment. This document is Chapter 7 of the Final EIR.

Thank you for your participation in the environmental process for this project. If you have any questions regarding this project, please do not hesitate to contact me at (661) 862-8607 or via email at catesr@kerncounty.com.

Sincerely,

Terrance Smalls, Supervising Planner
Advanced Planning Division

COMMENTING AGENCIES AND INTERESTED PERSONS: California Department of Conservation, Division of Land Resource Protection; California Department of Fish & Wildlife; Defenders of Wildlife; Kern County Fire Department; County of Kern Public Works Department, Floodplain Management Section; Kern County Superintendent of Schools; Kern Audubon Society; East Kern Air Pollution Control District; Land Veritas Corporation

California Fish & Wildlife
1234 East Shaw Avenue
Fresno, CA 93710

Garry George
Director, Clean Energy Initiative
National Audubon Society
926 S. Citrus Ave
Los Angeles, CA 90036

Defenders of Wildlife
980 - 9th Street, Suite 1730
Sacramento, CA 95814

Kern County Superintendent of Schools
Attention School District Facility Svcs.
1300 17th Street
Bakersfield, CA 93301-4533

Kern Audubon Society
Attn: Franklin Bedard
13500 Powder River Avenue
Bakersfield, CA 93314

Kern County Public Works Department/
Building & Development/Floodplain

Land Veritas Corp
1001 Bridgeway, Suite 246
Sausalito, CA 94969

State of California Natural Resources
Agency
Department of Conservation
801 K Street, MS 24-01
Sacramento, CA 95814

East Kern Air Pollution
Control District

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June 2021

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Chapter 7

Response to Comments

7.1 Introduction

Purpose

As defined by Section 15050 of the *California Environmental Quality Act (CEQA) Guidelines*, the Kern County Planning and Natural Resources Department is serving as “Lead Agency” for the preparation of the Environmental Impact Report (EIR) for the Raceway 2.0 Solar Project (project or proposed project). The Final EIR presents the environmental information and analyses that have been prepared for the project, including comments received addressing the adequacy of the Draft EIR, and responses to those comments. In addition to the responses to comments, clarifications, corrections, or minor revisions have been made to the Draft EIR. The Final EIR which includes the responses to comments, the Draft EIR, and the Mitigation, Monitoring, and Reporting Program, will be used by the Planning Commission and the Board of Supervisors in the decision-making process for the proposed project.

Environmental Review Process

A Notice of Preparation (NOP)/Initial Study (IS) (SCH No. 2020079007) was circulated for a 30-day public review period beginning on July 1, 2020 and ending July 31, 2020. Ten individual written comment letters were received and used in the preparation of the Draft EIR. The Draft EIR for the proposed project was circulated for a 45-day public review period beginning on March 24, 2021 and ending May 7, 2021. A total of fifteen comment letters were received on the Draft EIR.

Section 15088 of the *CEQA Guidelines* requires that the lead agency evaluate comments on environmental issues received from persons and agencies that reviewed the Draft EIR and prepare a written response addressing the comments received. The response to comments is contained in this document — Volume 5, Chapter 7 of the Draft EIR. Volumes 1, 2, 3, 4, and 5 together constitute the Final EIR.

7.2 Revisions to the Draft EIR

The revisions that follow were made to the text of the Draft EIR. Amended text is identified by page number. Additions to the Draft EIR text are shown with underline and text removed from the Draft EIR is shown with ~~striketrough~~. The revisions, as outlined below, fall within the scope of the original project analysis included in the Draft EIR and do not result in an increase to any identified impacts or produce any new impacts. No new significant environmental impact would result from the changes or from a new mitigation measure proposed to be implemented. Therefore, no significant revisions have been made which would require recirculation of the Draft EIR pursuant to *CEQA Guidelines* Section 15088.5 (Recirculation of an EIR Prior to Certification).

Chapter 1, Executive Summary, Table 1-11: Summary of Impacts, Mitigation Measures, and Levels of Significance, Pages 1-70 through 1-72:

MM 4.4-5: ~~Preconstruction Desert Tortoise Surveys~~ Preconstruction Special-Status Plant Surveys. Within 14 days prior to the commencement of any ground-disturbing activities, the project operator shall conduct preconstruction surveys for special-status and protected plant species within the project area, including but not limited to western Joshua trees and alkali mariposa lily. After the preconstruction survey determines the exact location of these species, if present, on the project site and the number of individuals or populations present, the project proponent/operator shall submit written documentation to the Kern County Planning and Natural Resources Department confirming implementation of the measures described below.

- a. The project proponent/operator shall work with a qualified biologist to determine presence of and identify all known locations of western Joshua tree and alkali mariposa lily to establish “avoidance areas”. All special-status plants found within the project site shall be avoided by a buffer of 25 feet through micro-siting activities, with the exception of Joshua Trees, which will be avoided by a buffer of 290 feet per CDFW recommendations. Sturdy, highly visible, orange plastic construction fencing (or equivalent material verified by the authorized biologist) shall be installed around all locations of detected special-status plants to protect from impacts during the construction phase, until they can be relocated. The fence shall be securely staked and installed in a durable manner that would be reasonably expected to withstand wind and weather events and last at least through the construction period. Fencing shall be removed upon completion of the project construction.
- b. All alkali mariposa lilies that cannot feasibly be avoided in final project design shall have bulbs collected prior to construction. Additionally, a transplantation plan for alkali mariposa lily will be submitted and approved by the County prior to ground disturbance and bulb collection. The plan will include the following:
 1. Identify an area of occupied habitat to be preserved and removed;
 2. Identify areas of onsite or offsite preservation, restoration, or enhancement locations;
 3. Methods for preservation, restoration, enhancement, and/or translocation;
 4. Indicate a replacement ratio and success standard of 1:1 for impacted individuals;
 5. Establish a monitoring program to ensure mitigation success;
 6. Create an adaptive management and remedial measures in the event that performance standards are not achieved; and
 7. Ensure financial assurances and a mechanism for conservation of any mitigation lands required in perpetuity.
- c. Temporary ground disturbance associated with the gen-tie lines or collector lines shall be recontoured to natural grade (if the grade was modified during the temporary disturbance activity), and revegetated with an application of a native seed mix prior to or during seasonal rains to promote passive restoration of the area to pre-project conditions. However, if invasive plant species were present, these species would not be restored. An area subjected to temporary ground disturbance means any area that is

disturbed but will not be subjected to further disturbance as part of the project. This does not include areas already designated as urban/developed. Prior to seeding temporary ground disturbance areas, the qualified biologist will review the seeding palette to ensure that no seeding of invasive plant species, as identified in the most recent version of the California Invasive Plant Inventory for the region, will occur.

- d. The project operator shall correspond with the County to determine what is needed for project compliance with the Willow Springs Specific Plan.

Chapter 1, Executive Summary, Table 1-11: Summary of Impacts, Mitigation Measures, and Levels of Significance, Pages 1-72 through 1-74:

MM 4.4-6: Preconstruction Burrowing Owl Surveys. A qualified wildlife biologist (i.e., a wildlife biologist with previous burrowing owl survey experience) shall conduct preconstruction surveys of the permanent and temporary impact areas to locate active breeding or wintering burrowing owl burrows no fewer than 14 days prior to ground-disturbing activities (i.e., vegetation clearance, grading, tilling). The survey methodology shall be consistent with the methods outlined in the 2012 California Department of Fish and Wildlife (CDFW) Staff Report on Burrowing Owl Mitigation and shall consist of walking parallel transects 7 to 20 meters apart, adjusting for vegetation height and density as needed, and noting any potential burrows with fresh burrowing owl sign or presence of burrowing owls. Surveys may be conducted concurrently with the preconstruction clearance surveys. As each burrow is investigated, surveying biologists shall also look for signs of American badger and desert kit fox. Copies of the survey results shall be submitted to CDFW and the Kern County Planning and Community Development Department.

If active burrowing owl burrows are detected onsite, they shall be protected in place through the use of visual screens or through California Department of Fish and Wildlife-identified restricted activity dates and setback distances (presented in Table 4.4-5, Burrowing Owl Burrow Restricted Activity Dates and Setback Distances, below), or other measures as described in the 2012 California Department of Fish and Wildlife Staff Report to minimize disturbance impacts unless otherwise authorized by California Department of Fish and Wildlife. Burrowing owls shall not be moved or excluded from burrows during the breeding season.

TABLE 4.4-5: BURROWING OWL RESTRICTED ACTIVITY DATES AND SETBACK DISTANCES

<u>Time of Year</u>	<u>Level of Disturbance (m)</u>		
	<u>Low</u>	<u>Medium</u>	<u>High</u>
<u>April 1–August 15</u>	<u>200</u>	<u>500</u>	<u>500</u>
<u>August 16–October 15</u>	<u>200</u>	<u>200</u>	<u>500</u>
<u>October 16–March 31</u>	<u>50</u>	<u>100</u>	<u>500</u>

SOURCE: CDFW, 2012.

~~If burrowing owls are detected onsite, no ground-disturbing activities shall be permitted within a buffer of no fewer than 100 meters (330 feet) from an active burrow during the breeding season (i.e., February 1 to August 31), unless otherwise authorized by CDFW.~~

~~During the non-breeding (winter) season (i.e., September 1 to January 31), ground-disturbing work can proceed as long as the work occurs no closer than 50 meters (165 feet) from the burrow. Depending on the level of disturbance, a smaller buffer may be established in consultation with CDFW.~~

If burrow avoidance is infeasible during the non-breeding season or during the breeding season (February 1 through August 31) where resident owls have not yet begun egg laying or incubation, or where the juveniles are foraging independently and capable of independent survival, a qualified biologist shall implement a passive relocation program in accordance with Appendix E1 (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 CDFW Staff Report on Burrowing Owl Mitigation.

If passive relocation is required, a qualified biologist shall prepare a Burrowing Owl Exclusion and Mitigation Plan and a Mitigation Land Management Plan in accordance with the 2012 CDFW Staff Report on Burrowing Owl Mitigation, for review by CDFW prior to passive relocation activities. The Mitigation Land Management Plan shall include a requirement for the permanent conservation of offsite Burrowing Owl Passive Relocation Compensatory Mitigation. At a minimum, the following recommendations shall be implemented:

- a. Temporarily disturbed habitat shall be restored, if feasible, to pre-project conditions including decompacting soil and revegetating.
- b. Permanent impacts to nesting, occupied and satellite burrows and/or burrowing owl habitat shall be mitigated such that the habitat acreage, number of burrows and burrowing owl impacted are replaced based on a site-specific analysis and shall include permanent conservation of similar vegetation communities (grassland, scrublands, desert, urban, and agriculture) to provide for burrowing owl nesting, foraging, wintering, and dispersal (i.e., during breeding and non-breeding seasons) comparable to or better than that of the impact area, and with sufficiently large acreage, and presence of fossorial mammals.
- c. Permanently protect mitigation land through a conservation easement, deed restriction, or similar mechanism deeded to a nonprofit conservation organization or public agency with a conservation mission. If the project is located within the service area of a CDFW-approved burrowing owl conservation bank, the project operator may purchase available burrowing owl conservation bank credits. Land identified to mitigate for passive relocation of burrowing owl may be combined with other offsite mitigation requirements of the proposed project if the compensatory habitat is deemed suitable to support the species.

Chapter 1, Executive Summary, Table 1-11: Summary of Impacts, Mitigation Measures, and Levels of Significance, Pages 1-74 through 1-75:

MM 4.4-7: Nesting Birds and Raptors. If construction is scheduled to commence during the non-nesting season (i.e., September 1 to January 31), no preconstruction surveys or additional measures are required. To avoid impacts to nesting birds in the project area, a qualified wildlife biologist shall conduct preconstruction surveys of all potential nesting habitat

within the project site for construction activities that are initiated during the breeding season (i.e., February 1 to August 31). The raptor survey shall focus on potential nest sites (e.g., cliffs, large trees, windrows) within a 0.5-mile buffer around the project site. Swainson's hawk nest survey shall focus on potential nest sites (e.g., cliffs, large trees, windrows) within a 5-mile buffer around the project site and follow the 2010 Swainson's hawk protocol surveys (CEC and CDFG 2010). Surveys shall be conducted no more than ~~14~~ 10 days prior to construction activities. Surveys need not be conducted for the entire project site at one time; they may be phased so that surveys occur shortly before a portion of the project site is disturbed. The surveying biologist must be qualified to determine the status and stage of nesting by migratory birds and all locally breeding raptor species without causing intrusive disturbance. If active nests are found during the breeding season, a suitable buffer ~~(e.g., 200–300 feet for common raptors; 0.5 mile for Swainson's hawk; 30–50 feet for passerine species)~~ of 250 feet around active nests of non-listed bird species and a 500-foot-no-disturbance buffer around nests of non-listed raptor species shall be established around active nests and no construction within the buffer allowed until the breeding season has ended or a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). For non-listed species, encroachment into the avoidance buffer may occur at the discretion of a qualified biologist; however, for State-listed species, consultation with CDFW shall occur prior to encroachment into the aforementioned buffers.

Chapter 1, Executive Summary, Table 1-11: Summary of Impacts, Mitigation Measures, and Levels of Significance, Pages 1-75 through 1-78:

MM 4.4-8: **Swainson's Hawk Monitoring and Mitigation Plan.** ~~The project proponent/operator shall be required to prepare and implement a Swainson's Hawk Monitoring and Mitigation Plan in consultation with the California Department of Fish and Wildlife and the Kern County Planning and Community Development Department. The Plan shall be prepared by a qualified wildlife biologist approved by CDFW and the County and shall include the following in order to avoid and minimize impacts to Swainson's hawks in and near the project site:~~

The project proponent/operator shall perform preconstruction surveys to verify locations of Swainson's Hawks.

- a. ~~If a nest site is found,~~ The project proponent/operator shall design the project site to allow sufficient foraging and fledgling area to maintain the active Swainson's Hawk nest located on the project nest site.
- b. During the nesting season, ensure no new disturbances, habitat conversions, or other project-related activities that may cause nest abandonment or forced fledgling occur

within 0.5 miles of an active nest between March 1 and September 15. Buffer zones may be adjusted in consultation with CDFW and the County.

- c. ~~Do~~ The project proponent/operator shall not remove Swainson's hawk nest trees, unless avoidance measures are determined to be infeasible. Removal of such trees should occur only during the timeframe of October 1 and the last day in February.
- d. If an injured Swainson's hawk is found during project-related activities:
 1. A plan should be in place to call for immediate relocation to a raptor recovery center approved by CDFW
 2. A system should be set-up so that costs associated with the care or treatment of such injured Swainson's hawks will be borne by the project proponent/operator.
 3. Include appropriate contact information for immediate notification to CDFW and the County if a hawk injury incident occurs. Have an approved procedure in place to notify CDFW and the County outside of normal business hours. Notify the appropriate personnel via telephone or email, followed by a written incident report. Include the date, time, location, and circumstances of the incident in reports.
- e. ~~Plan will focus on providing~~ The project proponent/operator shall provide habitat management (HM) lands to mitigate the loss of available Swainson's Hawk foraging and nesting habitat. Lands which are currently in urban use or lands that have no existing or potential value for foraging Swainson's hawks will not require mitigation nor would they be suitable for mitigation. ~~The plans should call for mitigating project proponent/operator shall mitigate the~~ loss of Swainson's hawk foraging habitat by providing HM lands within the Antelope Valley Swainson's hawk breeding range at a minimum 1:1 ratio, based on the total approved area of the project, for ~~such foraging and nesting~~ habitat impacted within a 5-mile radius of the active Swainson's hawk nest(s) located within the project's boundaries. ~~The Department considers a nest active if it was used one or more times within the last 5 years.~~ Project developers may consider delegating responsibilities for acquisition and management of the HM lands to the Department or a third party, such as a nongovernmental organization dedicated to Mojave Desert habitat conservation. The project proponent/operator shall seek approval of such delegations from the Department and the appropriate lead agency. Approaches for acquisition and management of HM lands include the following:
 1. HM Land Selection Criteria. Identify the region within which lands would be acquired, and the type/quality of habitat to be acquired. Foraging habitat should be moderate to good with a capacity to improve in quality and value to Swainson's hawks, and must be within the Antelope Valley Swainson's hawk breeding range. Foraging habitat with suitable nest trees is preferred.
 2. Review and Approval of HM Lands Prior to Acquisition. Provide an acquisition proposal to the Department and the appropriate lead agency for their approval at least 3 months before acquiring the property. The proposal

should discuss the suitability of the property by comparing it to the selection criteria.

3. Land Acquisition Schedule and Financial Assurances. Complete acquisition of proposed HM lands before initiating ground-disturbing project activities. If an irrevocable letter of credit or other form of security is provided, complete land acquisition within 12 months prior to beginning ground-disturbing project activities. Provide financial assurances for dedicating adequate funding for impact avoidance, minimization and compensation measures required for project approval. ~~(see 3. d. below).~~
4. HM Lands Acquisition. Be prepared to provide a preliminary title report, initial hazardous materials survey report, biological analysis, at a minimum to the Department and the appropriate lead agency. The information will likely also be reviewed by the California Department of General Services, Fish and Game Commission and/or Wildlife Conservation Board. Fee title or conservation easement will likely be transferred to a Department of Fish and Game-approved non-profit third party and the Department, or solely to the Department. Be prepared to support enhancement and endowment funds for protection and enhancement of acquired lands. The Department will approve establishment and management of the funds, ensuring that qualified non-profit organizations or the Department will manage the funds in an appropriate manner. Contributed funds and any related interest generated from the initial capital endowment would support long-term operation, management, and protection of the approved HM lands, including reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law enforcement measures, and any other action designed to protect or improve the habitat values of the HM lands. Be prepared to reimburse the Department or other entities for all land acquisition costs.

Section 4.4, Biological Resources, Pages 4.4-42 and 4.4-43:

MM 4.4-5: Preconstruction Special-Status Plant Surveys. Within 14 days prior to the commencement of any ground-disturbing activities, the project operator shall conduct preconstruction surveys for special-status and protected plant species within the project area, including but not limited to western Joshua trees and alkali mariposa lily. After the preconstruction survey determines the exact location of these species, if present, on the project site and the number of individuals or populations present, the project proponent/operator shall submit written documentation to the Kern County Planning and Natural Resources Department confirming implementation of the measures described below.

- a. The project proponent/operator shall work with a qualified biologist to determine presence of and identify all known locations of western Joshua tree and alkali mariposa lily to establish “avoidance areas”. All special-status plants found within the project site shall be avoided by a buffer of 25 feet through micro-siting activities, with the exception of Joshua Trees, which will be avoided by a buffer of 290 feet per CDFW recommendations. Sturdy, highly visible, orange plastic construction fencing (or equivalent material verified by the

authorized biologist) shall be installed around all locations of detected special-status plants to protect from impacts during the construction phase, until they can be relocated. The fence shall be securely staked and installed in a durable manner that would be reasonably expected to withstand wind and weather events and last at least through the construction period. Fencing shall be removed upon completion of the project construction.

- b. All alkali mariposa lilies that cannot feasibly be avoided in final project design shall have bulbs collected prior to construction. Additionally, a transplantation plan for alkali mariposa lily will be submitted and approved by the County prior to ground disturbance and bulb collection. The plan will include the following:
 - 1. Identify an area of occupied habitat to be preserved and removed;
 - 2. Identify areas of onsite or offsite preservation, restoration, or enhancement locations;
 - 3. Methods for preservation, restoration, enhancement, and/or translocation;
 - 4. Indicate a replacement ratio and success standard of 1:1 for impacted individuals;
 - 5. Establish a monitoring program to ensure mitigation success;
 - 6. Create an adaptive management and remedial measures in the event that performance standards are not achieved; and
 - 7. Ensure financial assurances and a mechanism for conservation of any mitigation lands required in perpetuity.
- c. Temporary ground disturbance associated with the gen-tie lines or collector lines shall be recontoured to natural grade (if the grade was modified during the temporary disturbance activity), and revegetated with an application of a native seed mix prior to or during seasonal rains to promote passive restoration of the area to pre-project conditions. However, if invasive plant species were present, these species would not be restored. An area subjected to temporary ground disturbance means any area that is disturbed but will not be subjected to further disturbance as part of the project. This does not include areas already designated as urban/developed. Prior to seeding temporary ground disturbance areas, the qualified biologist will review the seeding palette to ensure that no seeding of invasive plant species, as identified in the most recent version of the California Invasive Plant Inventory for the region, will occur.
- d. The project operator shall correspond with the County to determine what is needed for project compliance with the Willow Springs Specific Plan.

Section 4.4, Biological Resources, Pages 4.4-43 and 4.4-44:

MM 4.4-6: Preconstruction Burrowing Owl Surveys. A qualified wildlife biologist (i.e., a wildlife biologist with previous burrowing owl survey experience) shall conduct preconstruction surveys of the permanent and temporary impact areas to locate active breeding or wintering burrowing owl burrows no fewer than 14 days prior to ground-disturbing activities (i.e., vegetation clearance, grading, tilling). The survey methodology shall be consistent with the methods outlined in the 2012 California Department of Fish and Wildlife (CDFW) Staff Report on Burrowing Owl Mitigation and shall consist of walking parallel transects 7 to

20 meters apart, adjusting for vegetation height and density as needed, and noting any potential burrows with fresh burrowing owl sign or presence of burrowing owls. Surveys may be conducted concurrently with the preconstruction clearance surveys. As each burrow is investigated, surveying biologists shall also look for signs of American badger and desert kit fox. Copies of the survey results shall be submitted to CDFW and the Kern County Planning and Community Development Department.

If active burrowing owl burrows are detected onsite, they shall be protected in place through the use of visual screens or through California Department of Fish and Wildlife-identified restricted activity dates and setback distances (presented in Table 4.4-5, Burrowing Owl Burrow Restricted Activity Dates and Setback Distances, below), or other measures as described in the 2012 California Department of Fish and Wildlife Staff Report to minimize disturbance impacts unless otherwise authorized by California Department of Fish and Wildlife. Burrowing owls shall not be moved or excluded from burrows during the breeding season.

TABLE 4.4-5: BURROWING OWL RESTRICTED ACTIVITY DATES AND SETBACK DISTANCES

<u>Time of Year</u>	<u>Level of Disturbance (m)</u>		
	<u>Low</u>	<u>Medium</u>	<u>High</u>
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<u>August 16–October 15</u>	<u>200</u>	<u>200</u>	<u>500</u>
<u>October 16–March 31</u>	<u>50</u>	<u>100</u>	<u>500</u>
<u>SOURCE: CDFW, 2012.</u>			

~~If burrowing owls are detected onsite, no ground disturbing activities shall be permitted within a buffer of no fewer than 100 meters (330 feet) from an active burrow during the breeding season (i.e., February 1 to August 31), unless otherwise authorized by CDFW. During the non-breeding (winter) season (i.e., September 1 to January 31), ground-disturbing work can proceed as long as the work occurs no closer than 50 meters (165 feet) from the burrow. Depending on the level of disturbance, a smaller buffer may be established in consultation with CDFW.~~

If burrow avoidance is infeasible during the non-breeding season or during the breeding season (February 1 through August 31) where resident owls have not yet begun egg laying or incubation, or where the juveniles are foraging independently and capable of independent survival, a qualified biologist shall implement a passive relocation program in accordance with Appendix E1 (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 CDFW Staff Report on Burrowing Owl Mitigation.

If passive relocation is required, a qualified biologist shall prepare a Burrowing Owl Exclusion and Mitigation Plan and a Mitigation Land Management Plan in accordance with the 2012 CDFW Staff Report on Burrowing Owl Mitigation, for review by CDFW prior to passive relocation activities. The Mitigation Land Management Plan shall include a requirement for the permanent conservation of offsite Burrowing Owl Passive Relocation

Compensatory Mitigation. At a minimum, the following recommendations shall be implemented:

- a. Temporarily disturbed habitat shall be restored, if feasible, to pre-project conditions including decompacting soil and revegetating.
- b. Permanent impacts to nesting, occupied and satellite burrows and/or burrowing owl habitat shall be mitigated such that the habitat acreage, number of burrows and burrowing owl impacted are replaced based on a site-specific analysis and shall include permanent conservation of similar vegetation communities (grassland, scrublands, desert, urban, and agriculture) to provide for burrowing owl nesting, foraging, wintering, and dispersal (i.e., during breeding and non-breeding seasons) comparable to or better than that of the impact area, and with sufficiently large acreage, and presence of fossorial mammals.
- c. Permanently protect mitigation land through a conservation easement, deed restriction, or similar mechanism deeded to a nonprofit conservation organization or public agency with a conservation mission. If the project is located within the service area of a CDFW-approved burrowing owl conservation bank, the project operator may purchase available burrowing owl conservation bank credits. Land identified to mitigate for passive relocation of burrowing owl may be combined with other offsite mitigation requirements of the proposed project if the compensatory habitat is deemed suitable to support the species.

Section 4.4, Biological Resources, Pages 4.4-44 through 4.4-45:

MM 4.4-7: Nesting Birds and Raptors. If construction is scheduled to commence during the non-nesting season (i.e., September 1 to January 31), no preconstruction surveys or additional measures are required. To avoid impacts to nesting birds in the project area, a qualified wildlife biologist shall conduct preconstruction surveys of all potential nesting habitat within the project site for construction activities that are initiated during the breeding season (i.e., February 1 to August 31). The raptor survey shall focus on potential nest sites (e.g., cliffs, large trees, windrows) within a 0.5-mile buffer around the project site. Swainson's hawk nest survey shall focus on potential nest sites (e.g., cliffs, large trees, windrows) within a 5-mile buffer around the project site and follow the 2010 Swainson's hawk protocol surveys (CEC and CDFG 2010). Surveys shall be conducted no more than ~~14~~ 10 days prior to construction activities. Surveys need not be conducted for the entire project site at one time; they may be phased so that surveys occur shortly before a portion of the project site is disturbed. The surveying biologist must be qualified to determine the status and stage of nesting by migratory birds and all locally breeding raptor species without causing intrusive disturbance. If active nests are found during the breeding season, a suitable buffer ~~(e.g., 200–300 feet for common raptors; 0.5 mile for Swainson's hawk; 30–50 feet for passerine species)~~ of 250 feet around active nests of non-listed bird species and a 500-foot-no-disturbance buffer around nests of non-listed raptor species shall be established around active nests and no construction within the buffer allowed until the breeding season has ended or a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). For non-listed species, encroachment into the avoidance buffer may occur at the

discretion of a qualified biologist; however, for State-listed species, consultation with CDFW shall occur prior to encroachment into the aforementioned buffers.

Section 4.4, Biological Resources, Pages 4.4-45 through 4.4-47:

MM 4.4-8: ~~Swainson's Hawk Monitoring and Mitigation Plan. The project proponent/operator shall be required to prepare and implement a Swainson's Hawk Monitoring and Mitigation Plan in consultation with the California Department of Fish and Wildlife and the Kern County Planning and Community Development Department. The Plan shall be prepared by a qualified wildlife biologist approved by CDFW and the County and shall include the following in order to avoid and minimize impacts to Swainson's hawks in and near the project site:~~

The project proponent/operator shall perform preconstruction surveys to verify locations of Swainson's Hawks.

- a. ~~If a nest site is found, The project proponent/operator shall design the project site to allow sufficient foraging and fledgling area to maintain the active Swainson's Hawk nest located on the project nest site.~~
- b. During the nesting season, ensure no new disturbances, habitat conversions, or other project-related activities that may cause nest abandonment or forced fledgling occur within 0.5 miles of an active nest between March 1 and September 15. Buffer zones may be adjusted in consultation with CDFW and the County.
- c. ~~Do~~ The project proponent/operator shall not remove Swainson's hawk nest trees, unless avoidance measures are determined to be infeasible. Removal of such trees should occur only during the timeframe of October 1 and the last day in February.
- d. If an injured Swainson's hawk is found during project-related activities:
 1. A plan should be in place to call for immediate relocation to a raptor recovery center approved by CDFW
 2. A system should be set-up so that costs associated with the care or treatment of such injured Swainson's hawks will be borne by the project proponent/operator.
 3. Include appropriate contact information for immediate notification to CDFW and the County if a hawk injury incident occurs. Have an approved procedure in place to notify CDFW and the County outside of normal business hours. Notify the appropriate personnel via telephone or email, followed by a written incident report. Include the date, time, location, and circumstances of the incident in reports.
- e. ~~Plan will focus on providing~~ The project proponent/operator shall provide habitat management (HM) lands to mitigate the loss of available Swainson's Hawk foraging and nesting habitat. Lands which are currently in urban use or lands that have no existing or potential value for foraging Swainson's hawks will not require mitigation nor would they be suitable for mitigation. ~~The plans should call for mitigating project proponent/operator shall mitigate the~~ loss of Swainson's hawk foraging habitat by providing HM lands within the Antelope Valley Swainson's hawk breeding range at a minimum 1:1 ratio, based on the total approved area of the project, for such foraging

and nesting habitat impacted within a 5-mile radius of the active Swainson's hawk nest(s) located within the project's boundaries. The Department considers a nest active if it was used one or more times within the last 5 years. Project developers may consider delegating responsibilities for acquisition and management of the HM lands to the Department or a third party, such as a nongovernmental organization dedicated to Mojave Desert habitat conservation. The project proponent/operator shall seek approval of such delegations from the Department and the appropriate lead agency. Approaches for acquisition and management of HM lands include the following:

1. HM Land Selection Criteria. Identify the region within which lands would be acquired, and the type/quality of habitat to be acquired. Foraging habitat should be moderate to good with a capacity to improve in quality and value to Swainson's hawks, and must be within the Antelope Valley Swainson's hawk breeding range. Foraging habitat with suitable nest trees is preferred.
2. Review and Approval of HM Lands Prior to Acquisition. Provide an acquisition proposal to the Department and the appropriate lead agency for their approval at least 3 months before acquiring the property. The proposal should discuss the suitability of the property by comparing it to the selection criteria.
3. Land Acquisition Schedule and Financial Assurances. Complete acquisition of proposed HM lands before initiating ground-disturbing project activities. If an irrevocable letter of credit or other form of security is provided, complete land acquisition within 12 months prior to beginning ground-disturbing project activities. Provide financial assurances for dedicating adequate funding for impact avoidance, minimization and compensation measures required for project approval. ~~(see 3. d. below).~~
4. HM Lands Acquisition. Be prepared to provide a preliminary title report, initial hazardous materials survey report, biological analysis, at a minimum to the Department and the appropriate lead agency. The information will likely also be reviewed by the California Department of General Services, Fish and Game Commission and/or Wildlife Conservation Board. Fee title or conservation easement will likely be transferred to a Department of Fish and Game-approved non-profit third party and the Department, or solely to the Department. Be prepared to support enhancement and endowment funds for protection and enhancement of acquired lands. The Department will approve establishment and management of the funds, ensuring that qualified non-profit organizations or the Department will manage the funds in an appropriate manner. Contributed funds and any related interest generated from the initial capital endowment would support long-term operation, management, and protection of the approved HM lands, including reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law enforcement measures, and any other action designed to

protect or improve the habitat values of the HM lands. Be prepared to reimburse the Department or other entities for all land acquisition costs.

Section 4.12, Noise, Page 4.12-5, Figure 4.12-1, Effects of Noise on People:

The Draft EIR included the incorrect figure instead of the correct Figure 4.12-1, *Effects of Noise on People*. The correct figure is included, below, and will replace the incorrect figure that was included in the public Draft EIR.



KERN COUNTY PLANNING AND NATURAL RESOURCES DEPARTMENT
RACEWAY SOLAR PROJECT

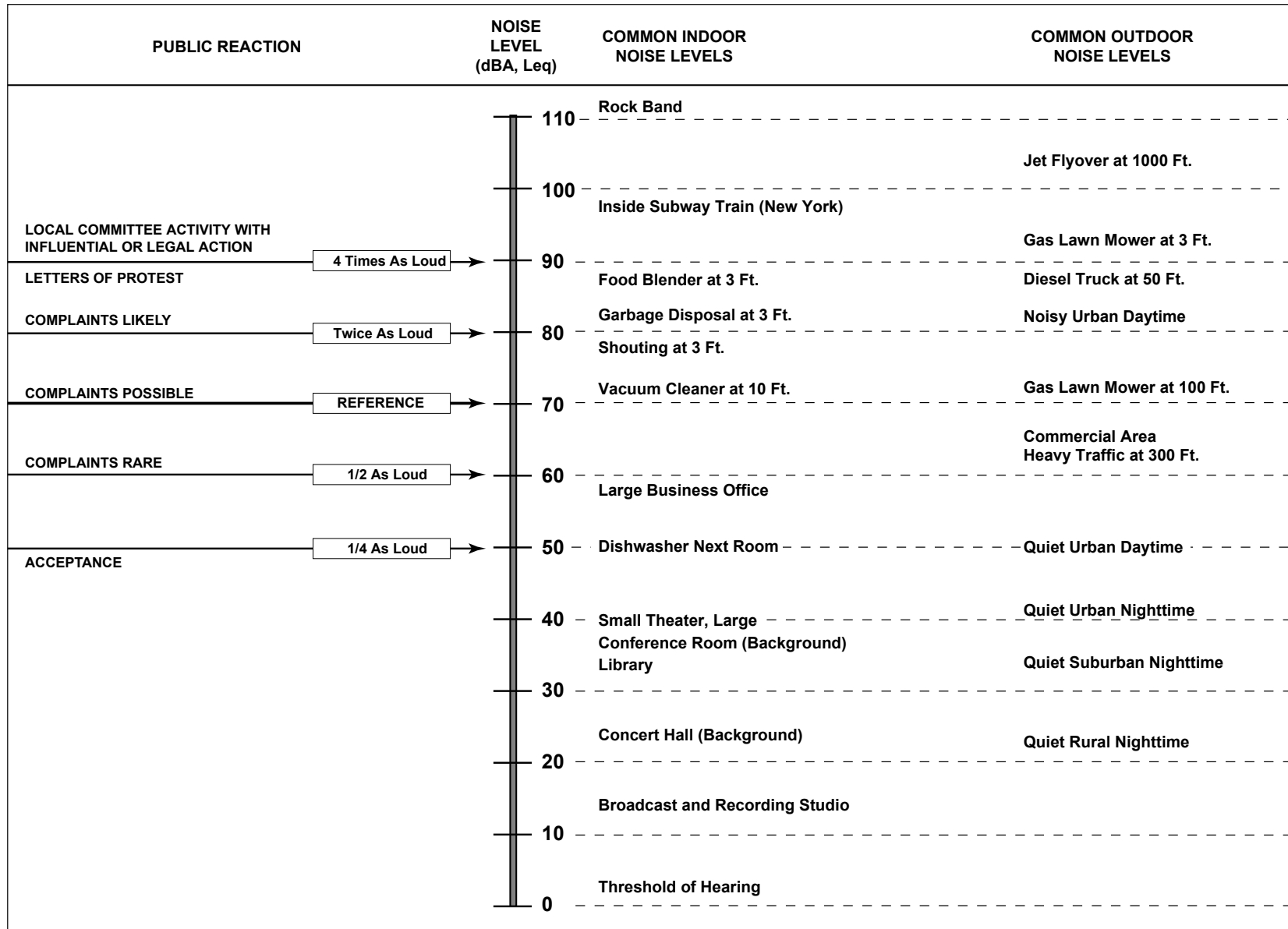


FIGURE 4.12-1: EFFECTS OF NOISE ON PEOPLE

7.3 Response to Comments

A list of agencies and interested parties who have commented on the Draft EIR is provided below. A copy of each numbered comment letter and a lettered response to each comment are provided following this list.

State Agencies

Letter 1 – California Department of Conservation, Division of Land Resource Protection (April 27, 2021)

Letter 2 – California Department of Fish and Wildlife (CDFW) (May 7, 2021)

Local Agencies

Letter 3 – Eastern Kern Air Pollution Control District (EKAPCD) (May 3, 2021)

Letter 4 – Kern County Public Works Department, Floodplain Management Section (March 26, 2021)

Letter 5 – Kern County Superintendent of Schools (March 19, 2021)

Interested Parties

Letter 6 – Defenders of Wildlife (May 7, 2021)

Letter 7 – Kern Audubon Society (May 7, 2021)

Letter 8 – Land Veritas Corporation (May 7, 2021)



APRIL 27, 2021

VIA EMAIL: SMALLST@KERNCOUNTY.COM

Kern County Planning and Natural Resources Department
Attn: Terrance Smalls, Sup. Planner
2700 "M" Street, Suite 100
Bakersfield, CA 93301

Dear Ms. Namvar:

DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE RACEWAY 2.0 SOLAR PROJECT, SCH#
2020079007

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the Draft Environmental Impact Report for the Raceway 2.0 Solar Project (Project). The Division monitors farmland conversion on a statewide basis, provides technical assistance regarding the Williamson Act, and administers various agricultural land conservation programs. We offer the following comments and recommendations with respect to the project's potential impacts on agricultural land and resources.

1-A

Project Description

The project includes land use applications to allow for the construction and operation of two solar photovoltaic power generating facilities and associated facilities that would generate a combined total of approximately 291 megawatts (MW) of renewable electrical energy on 1,330 acres of privately-owned land.

1-B

The project area contains approximately 247 acres that are currently designated as Prime Farmland by the Department of Conservation's Farmland Mapping and Monitoring Program.¹ A portion of the project site is also enrolled in a Williamson Act contract.

Department Comments

Although conversion of agricultural land is often an unavoidable impact under CEQA analysis, feasible alternatives and/or feasible mitigation measures must be considered.

1-C

¹ California Department of Conservation, Division of Land Resource Protection, Farmland Mapping and Monitoring Program, California Important Farmland Finder, <https://maps.conservation.ca.gov/DLRP/CIFF/>

In some cases, the argument is made that mitigation cannot reduce impacts to below the level of significance because agricultural land will still be converted by the project, and therefore, mitigation is not required. However, reduction to a level below significance is not a criterion for mitigation under CEQA. Rather, the criterion is feasible mitigation that lessens a project's impacts. As stated in CEQA guidelines, mitigation may include, "Compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements."²

1-C
(con.)

The conversion of agricultural land represents a permanent reduction in the State's agricultural land resources. As such, the Department advises the use of permanent agricultural conservation easements on land of at least equal quality and size as compensation for the loss of agricultural land. Conservation easements are an available mitigation tool and considered a standard practice in many areas of the State. The Department highlights conservation easements because of their acceptance and use by lead agencies as an appropriate mitigation measure under CEQA and because it follows an established rationale similar to that of wildlife habitat mitigation.

1-D

Mitigation via agricultural conservation easements can be implemented by at least two alternative approaches: the outright purchase of easements or the donation of mitigation fees to a local, regional, or statewide organization or agency whose purpose includes the acquisition and stewardship of agricultural conservation easements. The conversion of agricultural land should be deemed an impact of at least regional significance. Hence, the search for replacement lands should not be limited strictly to lands within the project's surrounding area.

A source that has proven helpful for regional and statewide agricultural mitigation banks is the California Council of Land Trusts. They provide helpful insight into farmland mitigation policies and implementation strategies, including a guidebook with model policies and a model local ordinance. The guidebook can be found at:

1-E

<http://www.calandtrusts.org/resources/conserving-californias-harvest/>

Of course, the use of conservation easements is only one form of mitigation that should be considered. Any other feasible mitigation measures should also be considered.

² California Code of Regulations, Title 14, Division 6, Chapter 3, Article 20, Section 15370(e), [https://govt.westlaw.com/calregs/Document/I07DD0C819A19416D9A128AAC4B52ADD9?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I07DD0C819A19416D9A128AAC4B52ADD9?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

Conclusion

Thank you for giving us the opportunity to comment on Draft Environmental Impact Report for the Raceway 2.0 Solar Project. Please provide this Department with notices of any future hearing dates as well as any staff reports pertaining to this project. If you have any questions regarding our comments, please contact Farl Grundy, Associate Environmental Planner via email at Farl.Grundy@conservation.ca.gov.

Sincerely,

Monique Wilber

Monique Wilber

Conservation Program Support Supervisor

1-F

Response to Comment Letter 1: California Department of Conservation, Division of Land Resource Protection (April 27, 2021)

1-A: This is an introductory comment which states that the Department of Conservation's Division of Land Resource Protection (Division) has reviewed the Draft EIR for the proposed project. The comment says the Division monitors farmland conversion on a statewide basis, provides technical assistance regarding the Williamson Act, and administers various agricultural land conservation programs. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

1-B: The commenter provides a summary of the project description and specifically identifies that the project area contains approximately 247 acres that are currently designated as Prime Farmland by the Department of Conservation's Farmland Mapping and Monitoring Program. Furthermore, a portion of the project site is also enrolled in a Williamson Act contract. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

1-C: The commenter states that, although conversion of agricultural land is often an unavoidable impact under CEQA analysis, feasible alternatives and/or feasible mitigation measures must be considered. Furthermore, in some cases, the argument is made that mitigation cannot reduce impacts to below the level of significance because agricultural land will still be converted by the project, and therefore, mitigation is not required. However, reduction to a level below significance is not a criterion for mitigation under CEQA. Rather, the criterion is feasible mitigation that lessens a project's impacts. As stated in CEQA guidelines, mitigation may include, "Compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements."

As discussed in Section 4.2, Agriculture and Forest Resources, of the Draft EIR, although implementation of the project would convert these areas of Prime Farmland, it would only result in loss of a small portion (less than 1 percent) of the harvested agricultural land within Kern County and as mentioned above, the project site has not been used for irrigated agriculture for the past 10 years; thus, parcels would not meet the criteria for "Prime Farmland", "Farmland of Statewide Importance", or "Unique Farmland." Disturbance to the designated farmland related to development of the project would be less than significant. Therefore, impacts related to converting designated farmland to nonagricultural use were determined to be less than significant. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

1-D: The commenter states that the conversion of conversion of agricultural land represents a permanent reduction in the State's agricultural land resources. As such, the Department advises the use of permanent agricultural conservation easements on land of at least equal quality and size as compensation for the loss of agricultural land.

As discussed above, although implementation of the project would convert these areas of Prime Farmland, it would only result in loss of a small portion (less than 1 percent) of the harvested agricultural land within Kern County and as mentioned above, the project site has not been used for irrigated agriculture for the past 10 years; thus, parcels would not meet the criteria for "Prime Farmland", "Farmland of Statewide Importance", or "Unique Farmland." Disturbance to the designated farmland related to development of the project would be less than significant. Therefore, impacts related to converting designated farmland to nonagricultural use were determined to be less than significant and no mitigation would be required. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 1-E:** The comment suggests that mitigation via agricultural conservation easements can be implemented by at least two alternative approaches: the outright purchase of easements or the donation of mitigation fees to a local, regional, or statewide organization or agency whose purpose includes the acquisition and stewardship of agricultural conservation easements. The conversion of agricultural land should be deemed an impact of at least regional significance. Hence, the search for replacement lands should not be limited strictly to lands within the project's surrounding area. Furthermore, the commenter states that a source that has proven helpful for regional and statewide agricultural mitigation banks is the California Council of Land Trusts.

As discussed above, although implementation of the project would convert these areas of Prime Farmland, it would only result in loss of a small portion (less than 1 percent) of the harvested agricultural land within Kern County and as mentioned above, the project site has not been used for irrigated agriculture for the past 10 years; thus, parcels would not meet the criteria for “Prime Farmland”, “Farmland of Statewide Importance”, or “Unique Farmland.” Disturbance to the designated farmland related to development of the project would be less than significant. Therefore, impacts related to converting designated farmland to nonagricultural use were determined to be less than significant and no mitigation would be required. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 1-F:** The commenter concludes by providing thanks for being allowed to comment on the Draft EIR for the proposed project, and requests that notices of any future hearing dates as well as any staff reports pertaining to this project be provided to the identified contact. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



May 7, 2021

Terrance Smalls
Kern County Planning and Natural Resources Department
2700 “M” Street Suite 100
Bakersfield CA, 93301

Subject: Raceway 2.0 Solar, by sPower Development Corporation, LLC (Project)
Draft Environmental Impact Report (DEIR)
SCH No.: 2020079007

Dear Mr. Smalls:

The California Department of Fish and Wildlife (CDFW) received a DEIR from the Kern County Planning and Natural Resources Department for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

CDFW ROLE

CDFW is California’s **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW’s lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). v Likewise, to the extent implementation of the Project as proposed may result in “take” as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code may be required.

2-C

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

PROJECT DESCRIPTION SUMMARY

Proponent: sPower Development Company, LLC

Project Description: The proposed project would involve construction and operation of two solar photovoltaic (PV) power-generating facilities, on six discontinuous sites, which would produce a combine total of approximately 291 megawatts (MW) of renewable electricity with up to 291 megawatt hours (MWh) energy storage on 1,330 acres of land in unincorporated Kern County.

2-D

Location: The proposed project is in the western extent of the Mojave Desert near Rosamond, California between Rosamond Boulevard and Avenue A, and between 70th Street West and 90th Street West in Sections: 20, 21, 28, 29 and 32, T9N/R13W in the eastern portion of unincorporated Kern County, California.

COMMENTS AND RECOMMENDATIONS

CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the State and Federally threatened desert tortoise (*Gopherus agassizii*); the State threatened Swainson’s Hawk (*Buteo swainsonii*); the State candidate for listing under CESA western Joshua tree (*Yucca brevifolia*); and the State species of special concern burrowing owl (*Athene cunicularia*). Mitigation Measures for these species, as proposed in the DEIR, may not reduce impacts to less than significant or result in unauthorized take. Our specific comments follow.

2-E

COMMENT 1: Western Joshua Tree (Joshua tree)

Table 4.4-3 states that no Joshua trees were observed on the Project site, but the species does occur within the gen-tie route. In addition, Table 4.4-1 lists 2.01 acres of Joshua tree

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woodland, a CDFW sensitive plant community, occurring within the gen-tie route. The DEIR cites measures from the Willow Springs Specific Plan that are applicable to Joshua tree. These measures include:

- Measure 15: Where possible, project development within the Specific Plan Update area shall be designed to avoid displacement or destruction of Joshua tree habitat, to the satisfaction of the Kern County Agricultural Commissioner's Office. Areas adjacent to the woodland shall have a 50-foot setback from the Joshua tree plants. Within that setback, a native plant cover should be restored to natural habitat values to serve as a buffer, if such plant cover is not present.
- Measure 16: A Joshua Tree Preservation and Transportation Plan shall be developed by the applicants for each parcel where Joshua trees are located on site. The plan shall be submitted to the Kern County Agricultural Commissioner's office for review and approval prior to grading permit issuance.
- Measure 23: A Joshua Tree Preservation and/or Transplantation Plan shall be developed by applicants of discretionary projects for each parcel where Joshua trees are located on site. The plan shall be submitted to the Kern County Agricultural Commissioner for review and approval prior to grading permit issuance.

2-E
(con.)

As noted above, Joshua tree is currently a candidate for listing pursuant to CESA. Candidate species are protected as if they were listed as a threatened or endangered species under CESA. Measures 16 and 23 would require take authorization from CDFW to relocate individual Joshua trees in order to comply with CESA. CESA applies to every life stage of a listed species, and for Joshua tree, this would include the seed bank. The 50-foot no-disturbance buffer from individual Joshua trees required in Measure 15 of the Willow Springs Specific Plan, as well as the 25-foot buffer listed in DEIR Mitigation Measure 4.4.-12 for special status plants, is likely insufficient to avoid impacts to the seedbank. Vander Wall et. al. 2006 documented 290 feet as maximum distance of seeds dispersed carried by rodents. A 290-foot buffer is warranted to not only avoid impacts to individual trees, but potential impacts to the seed bank as well. CDFW recommends the following edits to the DEIR.

Recommended Mitigation Measure 1: Western Joshua Tree Avoidance

CDFW recommends a no-disturbance buffer for individual western Joshua trees of 290 feet. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

2-F

Recommended Mitigation Measure 2: Western Joshua Tree Take Authorization

If a 290-foot buffer for Joshua tree is not feasible, consultation with CDFW is warranted to determine if the Project can avoid take of that species. If take cannot be avoided, take

2-G

Terrence Smalls
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Page 4

authorization would need to occur through acquisition of an Incidental Take Permit (ITP) from CDFW to comply with CESA and/or Fish and Game Code section 1900 and California Code of Regulations, title 14, section 786.9, subdivision (b). If Joshua trees will be translocated to comply with the Willow Springs Specific Plan, acquisition of an ITP is necessary to comply with CESA.

2-G
(con.)

COMMENT 2: Desert Tortoise

The DEIR (e.g., Table 4.4-3) states that the potential for desert tortoise to occur on-site is low because there is a lack of suitable habitat. The DEIR defines desert tortoise habitat as alluvial fans, washes, canyon bottoms, and hillsides. Desert tortoise have been observed in other habitat type and the lack of their presence does not preclude desert tortoise from occurring with the Project site. Based on the information provided, CDFW cannot conclude that desert tortoise is absent from the Project site. CDFW recommends the following edits to the DEIR.

2-H

Recommended Mitigation Measure 3: Desert Tortoise Protocol Surveys

CDFW recommends surveys for desert tortoise be conducted by a qualified wildlife biologist who understands and will follow the pre-project survey protocol as outlined in "Preparing for any action that may occur within the range of the Mojave Desert tortoise (*Gopherus agassizii*)" (USFWS, 2010) and has previous experience surveying for desert tortoise. Survey results are advised to be submitted to both CDFW and the USFWS.

2-I

Recommended Mitigation Measure 4: Desert Tortoise Take Authorization

If desert tortoise is found within the Project area during surveys advised in Recommended Mitigation 3 above, DEIR Mitigation Measure 4.4-4: Preconstruction Clearance Surveys, or construction activities, consultation with CDFW is advised to discuss how to implement the Project and avoid take; or if avoidance is not feasible, to acquire an ITP pursuant to Fish and Game Code section 2081 subdivision (b) prior to any vegetation- or ground-disturbing activities. Any take of desert tortoise without take authorization would be a violation of Fish and Game Code section 2080.

2-J

COMMENT 3: Swainson's Hawk (SWHA)

Table 4.4.-3 of the DEIR states that one active SWHA nest was observed on the Project site during 2020 burrowing owl surveys. The DEIR states that additional active nests occur within 5 miles of the Project site and that suitable foraging habitat occurs throughout the Project site. Several measures are provided as part of DEIR Mitigation Measure 4.4.-8: Swainson's Hawk Mitigation and Monitoring Plan. DEIR Mitigation Measure 4.4-8b requires "no new disturbances, habitat conversions, or other project-related activities that may cause nest abandonment or forced fledgling occur within 0.5 miles of an active nest between March 1 and September 15. Buffer zones

2-K

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 Kern County Planning and Natural Resources Department
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may be adjusted in consultation with CDFW and the County.” However, these Project activities are not defined and CDFW advises that the 0.5-mile buffer apply to all Project-related activities to avoid unauthorized take. We acknowledge that not all Project-related activities may require a 0.5-mile buffer, but the type of activity should be discussed as part of the consultation with CDFW and the County for a reduced buffer.

DEIR Mitigation Measure 4.4-8e requires habitat management (HM) lands to mitigate the loss of Swainson’s hawk foraging habitat by providing “HM lands within the Antelope Valley Swainson’s hawk breeding range at a minimum 1:1 ratio for such habitat impacted within a 5-mile radius of active Swainson’s hawk nest(s).” The Swainson’s Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California (CEC and CDFG 2010) recommends “mitigating loss of Swainson’s hawk foraging habitat by providing HM lands within the Antelope Valley Swainson’s hawk breeding range at a minimum 2:1 ratio for such habitat impacted within a five-mile radius of active Swainson’s hawk nest(s).” Based on the information provided in the DEIR, CDFW cannot conclude that a ratio lower than 2:1 will reduce impacts to Swainson’s hawk foraging habitat to less than significant. CDFW recommends the following edits to the DEIR.

2-K
(con.)

Recommended Mitigation Measure 5: SWHA No Disturbance Buffer

CDFW recommends that the type of activities for the 0.5-mile buffer in DEIR Mitigation Measure 4.4-8b are changed from “project-related activities that may cause nest abandonment or forced fledgling” to all “all Project activities.” CDFW recommends the nest buffer remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

2-L

Recommended Mitigation Measure 6: SWHA Foraging Habitat

CDFW recommends that the amount of foraging habitat mitigation required by DEIR Mitigation Measure 4.4-8e is increased from a minimum 1:1 ratio to a minimum 2:1 ration to reduce impacts to SWHA foraging habitat to less than significant based on Swainson’s Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California (2010).

2-M

Recommended Mitigation Measure 7: SWHA Take Authorization

If an active SWHA nest is detected and a 0.5-mile no-disturbance buffer around the nest cannot feasibly be implemented, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

2-N

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COMMENT 4: Burrowing Owl (BUOW)

DEIR Mitigation Measure 4.4-6: Preconstruction Burrowing Owl Surveys requires a buffer of no fewer than 100 meters (330 feet) from an active BUOW burrow during the breeding season (i.e., February 1 to August 31) and buffer of no fewer than 50 meters (165 feet) from a BUOW burrow during the non-breeding season. CDFW typically recommends greater no-disturbance buffers based on the “Staff Report on Burrowing Owl Mitigation” (CDFG 2012). No explanation was provided as why these reduced buffers are sufficient to avoid take of BUOW or nest failure. Therefore, CDFW recommends extending the BUOW no-disturbance buffers. CDFW recommends the following edits to the DEIR.

2-O

Recommended Mitigation Measure 8: BUOW Avoidance

CDFW recommends the no-disturbance buffers listed in DEIR Mitigation Measure 4.4-6 be expanded to the buffers recommended in the “Staff Report on Burrowing Owl Mitigation” and listed in the table below. Specifically, CDFW’s Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

2-P

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

Editorial Comments and/or Suggestions

Comment 5: Nesting birds

CDFW generally encourages Project implementation at individual Project sites occur during the bird non-nesting season if suitable nesting bird habitat is present. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project’s applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

2-Q

To evaluate Project-related impacts on nesting birds if suitable habitat is present, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that

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surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends the work causing that change cease and CDFW consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

2-Q

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

The types of information reported to CNDDDB can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

2-R

FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

2-S

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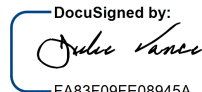
CDFW appreciates the opportunity to comment on the Project to assist the Kern County Planning and Natural Resources Department in identifying and mitigating the Project's impacts on biological resources.

↑
2-S
(con.)

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014, extension 291, or by electronic mail at Jaime.Marquez@wildlife.ca.gov.

2-T
↓

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

cc: Office of Planning and Research, State Clearinghouse, Sacramento

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LITERATURE CITED

CDFG. 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game.

California Energy Commission (CEC) and CDFG, 2010. Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California. California Energy Commission and Department of Fish and game, June 2, 2010.

USFWS. 2010. Preparing for any action that may occur within the range of the Mojave Desert tortoise (*Gopherus agassizii*). United States Fish and Wildlife Service.

Vander Wall et. al. 2006. Joshua tree (*Yucca brevifolia*) seeds are dispersed by seed-caching rodents. EcoScience. Vol.13 (4): 539-543

Attachment 1

**MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)
FOR CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MEASURES**

**PROJECT: Raceway Solar
SCH No.: 2020079007**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 2: Western Joshua Tree Take Authorization	
Mitigation Measure 3: Desert Tortoise Protocol Surveys	
Mitigation Measure 4: Desert Tortoise Take Authorization	
Mitigation Measure 6: SWHA Foraging Habitat	
Mitigation Measure 7: SWHA Take Authorization	
<i>During Construction</i>	
Mitigation Measure 1: Western Joshua Tree Avoidance	
Mitigation Measure 5: SWHA No Disturbance Buffer	
Mitigation Measure 8: BUOW Avoidance	

Response to Comment Letter 2: California Department of Fish and Wildlife (CDFW) (May 7, 2021)

- 2-A:** The commenter acknowledges receipt of the Draft EIR from Kern County Planning and Natural Resources and thanks the County for the opportunity to comment on the Draft Environmental Impact Report for the Raceway 2.0 Solar project (Draft EIR). No changes to the Draft EIR are required per this comment. The comment has been noted for the record.
- 2-B:** The comment identifies CDFW as California's Trustee Agency for fish and wildlife resources of the State and has jurisdiction over the conservation, protection, and management of said resources. The comment also clarifies that CDFW is charged by law to provide biological expertise during public agency environmental review of CEQA documents. No changes to the Draft EIR are required per this comment. The comment has been noted for the record.
- 2-C:** The comment identifies CDFW as a Responsible Agency under CEQA, which may need to exercise regulatory authority over resources such as lake and streambed, species protected by the California Endangered Species Act (CESA) and nesting birds, as defined by Fish and Game Code. No changes to the Draft EIR are required per this comment. The comment has been noted for the record.
- 2-D:** The comment correctly identifies the project proponent, project description (summary) and project location. No changes to the Draft EIR are required per this comment. The comment has been noted for the record.
- 2-E:** The commenter correctly identifies the absence of Joshua trees on the project site and the presence of 2.01 acres of Joshua tree woodland along the gen-tie route; however, it should be clarified that the Joshua tree woodland only occurs along the 100th Street West alternative, which is not the preferred alternative. The route down 110th Street West is likely the final alignment. No changes to the Draft EIR are required per this comment. The comment has been noted for the record.

The commenter also summarizes the measures from the Willow Springs Specific Plan that are applicable to Joshua tree, as described in the Draft EIR (i.e., avoidance/50-foot setback and Joshua Tree Preservation and/or Transportation Plan). No changes to the Draft EIR are required per this comment. The comment has been noted for the record.

The commenter also states that Joshua tree is listed as a candidate for listing under CESA and would require take authorization to remove or relocate individual trees at any stage of life, including the seed bank. CDFW states that the 50-foot no disturbance buffer prescribed in the Willow Springs Specific Plan as well as the 25-foot no disturbance buffer prescribed in Draft EIR Mitigation Measure MM 4.4-12 would be insufficient to avoid impacts. CDFW recommends a 290-foot buffer around Joshua trees to preserve the individual as well as the seed bank, and requests edits be made to the Draft EIR as described in responses 2-F and 2-G (below).

In compliance with this request, Mitigation Measure MM 4.4-5 has been revised to reflect this recommendation as follows:

- MM 4.4-5: Preconstruction Special-Status Plant Surveys.** Within 14 days prior to the commencement of any ground-disturbing activities, the project operator shall conduct preconstruction surveys for special-status and protected plant species within the project area, including but not limited to western Joshua trees and alkali mariposa lily. After the preconstruction survey determines the exact location of these species, if present, on the project site and the number of individuals or populations present, the project proponent/operator shall submit written documentation to the Kern

County Planning and Natural Resources Department confirming implementation of the measures described below.

- e. The project proponent/operator shall work with a qualified biologist to determine presence of and identify all known locations of western Joshua tree and alkali mariposa lily to establish “avoidance areas”. All special-status plants found within the project site shall be avoided by a buffer of 25 feet through micro-siting activities, with the exception of Joshua Trees, which will be avoided by a buffer of 290 feet per CDFW recommendations. Sturdy, highly visible, orange plastic construction fencing (or equivalent material verified by the authorized biologist) shall be installed around all locations of detected special-status plants to protect from impacts during the construction phase, until they can be relocated. The fence shall be securely staked and installed in a durable manner that would be reasonably expected to withstand wind and weather events and last at least through the construction period. Fencing shall be removed upon completion of the project construction.
- f. All alkali mariposa lilies that cannot feasibly be avoided in final project design shall have bulbs collected prior to construction. Additionally, a transplantation plan for alkali mariposa lily will be submitted and approved by the County prior to ground disturbance and bulb collection. The plan will include the following:
 - 1. Identify an area of occupied habitat to be preserved and removed;
 - 2. Identify areas of onsite or offsite preservation, restoration, or enhancement locations;
 - 3. Methods for preservation, restoration, enhancement, and/or translocation;
 - 4. Indicate a replacement ratio and success standard of 1:1 for impacted individuals;
 - 5. Establish a monitoring program to ensure mitigation success;
 - 6. Create an adaptive management and remedial measures in the event that performance standards are not achieved; and
 - 7. Ensure financial assurances and a mechanism for conservation of any mitigation lands required in perpetuity.
- g. Temporary ground disturbance associated with the gen-tie lines or collector lines shall be recontoured to natural grade (if the grade was modified during the temporary disturbance activity), and revegetated with an application of a native seed mix prior to or during seasonal rains to promote passive restoration of the area to pre-project conditions. However, if invasive plant species were present, these species would not be restored. An area subjected to temporary ground disturbance means any area that is disturbed but will not be subjected to further disturbance as part of the project. This does not include areas already designated as urban/developed. Prior to seeding temporary ground disturbance areas, the qualified biologist will review the seeding palette to ensure that no

seeding of invasive plant species, as identified in the most recent version of the California Invasive Plant Inventory for the region, will occur.

- h. The project operator shall correspond with the County to determine what is needed for project compliance with the Willow Springs Specific Plan.

This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and further revisions to the Draft EIR are not necessary.

2-F: CDFW recommends a 290-foot buffer around Joshua trees to preserve the individual as well as the underlying seed bank. If buffers cannot be maintained, then consultation with CDFW is requested to determine appropriate minimization and mitigation for impacts to special-status plant species (as described below in response 2-G). As stated above, in compliance with this request, Mitigation Measure MM 4.4-5 has been revised to reflect this recommendation. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

2-G: The comment clarifies that if a 290-foot buffer is not feasible, consultation with CDFW is warranted to determine if the project can avoid take of the species. If take cannot be avoided, and ITP would be required. CDFW further clarifies that an ITP would also be required should translocation be implemented to comply with the Willow Springs Specific Plan. Additionally, Mitigation Measure MM 4.4-12 requires the project proponent/operator develop a Joshua Tree Preservation Plan. This plan shall be prepared by an approved qualified biologist and shall identify methods utilized to comply with any CDFW CESA requirements and compensatory mitigation related to the protection or mitigation of impacted Joshua Trees. Although it is not anticipated that an ITP for Joshua trees will be required, in compliance with this request, the project would consult with CDFW if or when avoidance is not feasible. Should an incidental take permit be required MM 4.4-12 prescribes that this information be included in the Joshua Tree Presentation Plan and submitted to the Kern County Planning and Natural Resources Department for review and approval. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

2-H: The comment addresses the potential for desert tortoise to occur onsite and challenges the conclusion that the potential is “low” due to the lack of suitable habitat (i.e., alluvial fans, washes, canyon bottoms, and hillsides, as defined in the Draft EIR). CDFW states that desert tortoises have been observed in other habitat types and the lack of their presence does not preclude them from occurring on the project site. As discussed in Section 4.4, *Biological Resources*, of the Draft EIR, the project site falls within the historic range of the Mojave Desert population of the desert tortoise and within the Western Mojave Recovery Unit (USFWS, 2011). Habitat characteristics include gentle slopes with sparse, woody vegetation and sandy to gravelly soils below 5,500 feet (Germano et al., 1994; USFWS, 1994). Lower elevation habitat areas are dominated by creosote bush and white bursage, and higher elevation habitats are dominated by blackbrush and juniper woodlands (USFWS, 2009). No desert tortoises were observed during desert tortoise surveys for the Solar Star 1 and 2 Projects, southeast of the project site (AECOM, 2010); the Willow Springs Project (Ironwood Consulting, 2011a); or the Rosamond Solar Array Projects (Ironwood Consulting, 2011b). The project site does not represent suitable habitat for desert tortoise, and no suitable desert tortoise burrows, tortoise sign, or tortoises were observed during surveys. The most recent and closest California Natural Diversity Database (CNDDB) occurrence for desert tortoise is a single 2006 observation of an adult tortoise crossing Tehachapi Willow Springs Road approximately 2.75 miles northeast of the project site. Because of the lack of suitable habitat, the Draft EIR concluded that the desert tortoise has a low potential to occur in the project site. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 2-I:** CDFW recommends protocol surveys be conducted for desert tortoise following the pre-project survey protocol as outlined in “Preparing for any action that may occur within range of Mojave Desert Tortoise (*Gopherus agassizii*)” (USFWS 2010). In compliance with this request, the project’s qualified biologist would follow the pre-project survey protocol as outlined in “Preparing for any action that may occur within range of Mojave Desert tortoise (*Gopherus agassizii*)” (USFWS 2010), and would submit survey results to both CDFW and USFWS. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 2-J:** The commenter recommends that if a desert tortoise is found within the project area during surveys, that the project consult with CDFW to discuss how to implement the project and avoid take; or if avoidance is not feasible, the acquire an ITP. As discussed above under Response to Comment 2-H, the most recent and closest California Natural Diversity Database (CNDDDB) occurrence for desert tortoise is a single 2006 observation of an adult tortoise crossing Tehachapi Willow Springs Road approximately 2.75 miles northeast of the project site. Because of the lack of suitable habitat, the Draft EIR concluded that the desert tortoise has a low potential to occur in the project site. Although it is not anticipated that an ITP for desert tortoise will be required, in compliance with Mitigation Measure 4.4-4, the project would consult with CDFW if or when avoidance is not feasible. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 2-K:** The commenter cites the Draft EIR and states that one active SWHA nest was observed on the project site during the 2020 burrowing owl surveys. Furthermore, the comment states that additional active nests occur within 5 miles of the project site and that suitable foraging habitat occurs throughout the project site. Despite the inclusion of Mitigation Measure MM 4.4-8 in the Draft EIR, the comment suggests that the 0.5-mile buffer included in Mitigation Measure MM 4.4-8 apply to all project-related activities to avoid unauthorized take. Furthermore, CDFW recommends that Mitigation Measure MM 4.4-8 be revised to require a 2:1 replacement ratio instead of the lower 1:1 replacement ratio identified in Mitigation Measure MM 4.4-8.

The suggested habitat management lands compensation rate of 2:1 for loss of Swainson’s Hawk foraging habitat within a five-mile radius of an active nest is a recommendation per the *Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California*.

The Lead Agency has determined this recommendation is not feasible due to the amount of land within the Antelope Valley that is available, and of that land, an extensive amount is fallow farmland not considered habitat due to water issues, and therefore, provide no vegetation for SWA to either breed or forage.

While land uses in the Antelope Valley region are becoming urbanized with a population of 475,000 residents and the incorporated cities of Lancaster and Palmdale occupying over 128,550 acres, over 47,000 acres of available foraging habitat with similar characteristics (desert shrub/scrub) exists within 5 miles of the project in Kern alone. An additional 301,100 acres of military land, predominately desert scrub, is protected as Federal land on Edwards Air Force Base. And while approximately 6,800 acres of agricultural lands is available for Swainson’s hawk foraging within 5 miles of the project in Kern County, which is known to be the Swainson’s Hawk preferred foraging, the Antelope Valley adjudication mandates step downs for agricultural water use over the next 5 years which will impact continued agriculture. The total remaining irrigated farmland left within the Antelope Valley is only 10,000 acres, due to the adjudicated water basin and not all of that is of suitable crop or available to acquire as mitigation land.

Further urban and renewable land uses in the Kern County portion of the Antelope Valley are primarily unsuitable land for habitat acquisition and include the Boron Specific Plan area (929 acres), Rosamond Specific Plan area (17,870 acres), and renewable energy (both wind and solar) covering more than 12,300 acres within the 50,675-acre Willow Springs Specific Plan area.

The Raceway 2.0 Solar Project includes 1,311 acres of potential foraging habitat that will be lost in the Antelope Valley. At the suggested mitigation of a 2:1 compensation rate, 2,622 acres of land in the Antelope Valley would be required to be conserved and water guaranteed to preserve the habitat. This is infeasible considering the amount of land within the Antelope Valley that is available, and of that available land, an extensive amount is fallow farmland not considered habitat due to water issues and, therefore, provide no vegetation for SWA to either breed or forage.

As stated in Section 4.4, Biological Resources, of the Draft EIR, the project site is currently covered entirely by land that may serve as suitable grazing habitat for Swainson's hawk. Kern County has determined the project site foraging habitat to be of marginal value as it has been previously disked and does not consist of open grasslands or agricultural fields preferred by Swainson's Hawk for foraging. Therefore, the project will mitigation for the loss of Swainson's Hawk foraging habitat at a ratio of 1:1. In accordance with County requirements and Mitigation Measure MM 4.4-8, the project would provide 1:1 replacement for the entirety of the project's 1,311 acres. Therefore, impacts would remain less than significant. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 2-L:** CDFW recommends the type of activities for the 0.5-mile buffer in Draft EIR Mitigation Measure MM 4.4-8b be changed from "project-related activities that may cause nest abandonment or forced fledging" to "all project activities." Further, CDFW recommends the nest buffer remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant in the nest or parental care for survival. In compliance with this request, Mitigation Measure MM 4.4-8 will be revised as follows:

MM 4.4-8: ~~Swainson's Hawk Monitoring and Mitigation Plan. The project proponent/operator shall be required to prepare and implement a Swainson's Hawk Monitoring and Mitigation Plan in consultation with the California Department of Fish and Wildlife and the Kern County Planning and Community Development Department. The Plan shall be prepared by a qualified wildlife biologist approved by CDFW and the County and shall include the following in order to avoid and minimize impacts to Swainson's hawks in and near the project site:~~

The project proponent/operator shall perform preconstruction surveys to verify locations of Swainson's Hawks.

- a. ~~If a nest site is found,~~ The project proponent/operator shall design the project site to allow sufficient foraging and fledgling area to maintain the active Swainson's Hawk nest located on the project nest site.
- b. During the nesting season, ensure no new disturbances, habitat conversions, or other project-related activities that may cause nest abandonment or forced fledgling occur within 0.5 miles of an active nest between March 1 and September 15. Buffer zones may be adjusted in consultation with CDFW and the County.
- c. ~~Do~~ The project proponent/operator shall not remove Swainson's hawk nest trees, unless avoidance measures are determined to be infeasible. Removal of

~~such trees should occur only during the timeframe of October 1 and the last day in February.~~

- d. If an injured Swainson's hawk is found during project-related activities:
 1. A plan should be in place to call for immediate relocation to a raptor recovery center approved by CDFW
 2. A system should be set-up so that costs associated with the care or treatment of such injured Swainson's hawks will be borne by the project proponent/operator.
 3. Include appropriate contact information for immediate notification to CDFW and the County if a hawk injury incident occurs. Have an approved procedure in place to notify CDFW and the County outside of normal business hours. Notify the appropriate personnel via telephone or email, followed by a written incident report. Include the date, time, location, and circumstances of the incident in reports.
- e. ~~Plan will focus on providing~~ The project proponent/operator shall provide habitat management (HM) lands to mitigate the loss of available Swainson's Hawk foraging and nesting habitat. Lands which are currently in urban use or lands that have no existing or potential value for foraging Swainson's hawks will not require mitigation nor would they be suitable for mitigation. ~~The plans should call for mitigating~~ project proponent/operator shall mitigate the loss of Swainson's hawk foraging habitat by providing HM lands within the Antelope Valley Swainson's hawk breeding range at a minimum 1:1 ratio, based on the total approved area of the project, for such foraging and nesting habitat impacted within a 5-mile radius of the active Swainson's hawk nest(s) located within the project's boundaries. ~~The Department considers a nest active if it was used one or more times within the last 5 years.~~ Project developers may consider delegating responsibilities for acquisition and management of the HM lands to the Department or a third party, such as a nongovernmental organization dedicated to Mojave Desert habitat conservation. The project proponent/operator shall seek approval of such delegations from the Department and the appropriate lead agency. Approaches for acquisition and management of HM lands include the following:
 1. HM Land Selection Criteria. Identify the region within which lands would be acquired, and the type/quality of habitat to be acquired. Foraging habitat should be moderate to good with a capacity to improve in quality and value to Swainson's hawks, and must be within the Antelope Valley Swainson's hawk breeding range. Foraging habitat with suitable nest trees is preferred.
 2. Review and Approval of HM Lands Prior to Acquisition. Provide an acquisition proposal to the Department and the appropriate lead agency for their approval at least 3 months before acquiring the

property. The proposal should discuss the suitability of the property by comparing it to the selection criteria.

3. Land Acquisition Schedule and Financial Assurances. Complete acquisition of proposed HM lands before initiating ground-disturbing project activities. If an irrevocable letter of credit or other form of security is provided, complete land acquisition within 12 months prior to beginning ground-disturbing project activities. Provide financial assurances for dedicating adequate funding for impact avoidance, minimization and compensation measures required for project approval. ~~(see 3. d. below).~~
4. HM Lands Acquisition. Be prepared to provide a preliminary title report, initial hazardous materials survey report, biological analysis, at a minimum to the Department and the appropriate lead agency. The information will likely also be reviewed by the California Department of General Services, Fish and Game Commission and/or Wildlife Conservation Board. Fee title or conservation easement will likely be transferred to a Department of Fish and Game-approved non-profit third party and the Department, or solely to the Department. Be prepared to support enhancement and endowment funds for protection and enhancement of acquired lands. The Department will approve establishment and management of the funds, ensuring that qualified non-profit organizations or the Department will manage the funds in an appropriate manner. Contributed funds and any related interest generated from the initial capital endowment would support long-term operation, management, and protection of the approved HM lands, including reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law enforcement measures, and any other action designed to protect or improve the habitat values of the HM lands. Be prepared to reimburse the Department or other entities for all land acquisition costs.

This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 2-M:** CDFW recommends that the amount of foraging habitat mitigation required by Mitigation Measure MM 4.4-8 be increased from a minimum 1:1 ratio to a minimum 2:1 ratio. As described above under Response to Comment 2-K, the project site is currently covered entirely by land that may serve as suitable grazing habitat for SWHA. The infeasibility of locating up to 2,622 acres of SWHA foraging and nesting habitat in the Antelope Valley makes this request unattainable. The project will be required to provide habitat at a minimum ratio of 1:1 for all approved acreage. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary
- 2-N:** As stated in Section 4.4, Biological Resources, of the Draft EIR, the project site is currently covered entirely by land that may serve as suitable grazing habitat for SWHA. As described above under Response to Comment 2-K, the project site is currently covered entirely by land that may serve as suitable foraging habitat for SWHA, and would provide Habitat Management (HM) lands at a minimum ratio of 1:1 for all approved project acreage. Although it is not anticipated that an ITP

for SWHA will be required, in compliance with this request, the project would consult with CDFW if or when avoidance is not feasible. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 2-O:** The commenter cites the Draft EIR and states that Mitigation Measure MM 4.4-6 does not provide a sufficient buffer pursuant to the CDFW's "*Staff Report on Burrowing Owl Mitigation*". CDFW recommends that the project extend the no-disturbance buffers to be in compliance with the guidelines provided in the Staff Report. In compliance with this request, Mitigation Measure MM 4.4-6 will be revised as follows:

MM 4.4-6: Preconstruction Burrowing Owl Surveys. A qualified wildlife biologist (i.e., a wildlife biologist with previous burrowing owl survey experience) shall conduct preconstruction surveys of the permanent and temporary impact areas to locate active breeding or wintering burrowing owl burrows no fewer than 14 days prior to ground-disturbing activities (i.e., vegetation clearance, grading, tilling). The survey methodology shall be consistent with the methods outlined in the 2012 California Department of Fish and Wildlife (CDFW) Staff Report on Burrowing Owl Mitigation and shall consist of walking parallel transects 7 to 20 meters apart, adjusting for vegetation height and density as needed, and noting any potential burrows with fresh burrowing owl sign or presence of burrowing owls. Surveys may be conducted concurrently with the preconstruction clearance surveys. As each burrow is investigated, surveying biologists shall also look for signs of American badger and desert kit fox. Copies of the survey results shall be submitted to CDFW and the Kern County Planning and Community Development Department.

If active burrowing owl burrows are detected onsite, they shall be protected in place through the use of visual screens or through California Department of Fish and Wildlife-identified restricted activity dates and setback distances (presented in Table 4.4-5, Burrowing Owl Burrow Restricted Activity Dates and Setback Distances, below), or other measures as described in the 2012 California Department of Fish and Wildlife Staff Report to minimize disturbance impacts unless otherwise authorized by California Department of Fish and Wildlife. Burrowing owls shall not be moved or excluded from burrows during the breeding season.

TABLE 4.4-5: BURROWING OWL RESTRICTED ACTIVITY DATES AND SETBACK DISTANCES

<u>Time of Year</u>	<u>Level of Disturbance (m)</u>		
	<u>Low</u>	<u>Medium</u>	<u>High</u>
<u>April 1–August 15</u>	<u>200</u>	<u>500</u>	<u>500</u>
<u>August 16–October 15</u>	<u>200</u>	<u>200</u>	<u>500</u>
<u>October 16–March 31</u>	<u>50</u>	<u>100</u>	<u>500</u>
<u>SOURCE: CDFW, 2012.</u>			

~~If burrowing owls are detected onsite, no ground-disturbing activities shall be permitted within a buffer of no fewer than 100 meters (330 feet) from an active~~

~~burrow during the breeding season (i.e., February 1 to August 31), unless otherwise authorized by CDFW. During the non-breeding (winter) season (i.e., September 1 to January 31), ground-disturbing work can proceed as long as the work occurs no closer than 50 meters (165 feet) from the burrow. Depending on the level of disturbance, a smaller buffer may be established in consultation with CDFW.~~

If burrow avoidance is infeasible during the non-breeding season or during the breeding season (February 1 through August 31) where resident owls have not yet begun egg laying or incubation, or where the juveniles are foraging independently and capable of independent survival, a qualified biologist shall implement a passive relocation program in accordance with Appendix E1 (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 CDFW Staff Report on Burrowing Owl Mitigation.

If passive relocation is required, a qualified biologist shall prepare a Burrowing Owl Exclusion and Mitigation Plan and a Mitigation Land Management Plan in accordance with the 2012 CDFW Staff Report on Burrowing Owl Mitigation, for review by CDFW prior to passive relocation activities. The Mitigation Land Management Plan shall include a requirement for the permanent conservation of offsite Burrowing Owl Passive Relocation Compensatory Mitigation. At a minimum, the following recommendations shall be implemented:

- a. Temporarily disturbed habitat shall be restored, if feasible, to pre-project conditions including decompacting soil and revegetating.
- b. Permanent impacts to nesting, occupied and satellite burrows and/or burrowing owl habitat shall be mitigated such that the habitat acreage, number of burrows and burrowing owl impacted are replaced based on a site-specific analysis and shall include permanent conservation of similar vegetation communities (grassland, scrublands, desert, urban, and agriculture) to provide for burrowing owl nesting, foraging, wintering, and dispersal (i.e., during breeding and non-breeding seasons) comparable to or better than that of the impact area, and with sufficiently large acreage, and presence of fossorial mammals.
- c. Permanently protect mitigation land through a conservation easement, deed restriction, or similar mechanism deeded to a nonprofit conservation organization or public agency with a conservation mission. If the project is located within the service area of a CDFW-approved burrowing owl conservation bank, the project operator may purchase available burrowing owl conservation bank credits. Land identified to mitigate for passive relocation of burrowing owl may be combined with other offsite mitigation requirements of the proposed project if the compensatory habitat is deemed suitable to support the species.

This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and further revisions to the Draft EIR are not necessary.

- 2-P:** The commenter recommends that the no-disturbance buffers listed in Mitigation Measure MM 4.4-6 be expanded to the buffers recommended in the “*Staff Report on Burrowing Owl Mitigation*” as discussed in Response to Comment 2-O, above. In compliance with this request, Mitigation Measure MM 4.4-6 will be revised as identified under Response to Comment 2-O, above. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and further revisions to the Draft EIR are not necessary.
- 2-Q:** The comment addresses CDFW’s concern with impacting nesting birds protected by the federal Migratory Bird Treaty Act and relevant Fish and Game Code. CDFW recommends project implementation occur outside of the breeding season (February through mid-September). In response to this recommendation MM 4.4-7 has been revised to the following:

MM 4.4-7: Nesting Birds and Raptors. If construction is scheduled to commence during the non-nesting season (i.e., September 1 to January 31), no preconstruction surveys or additional measures are required. To avoid impacts to nesting birds in the project area, a qualified wildlife biologist shall conduct preconstruction surveys of all potential nesting habitat within the project site for construction activities that are initiated during the breeding season (i.e., February 1 to August 31). The raptor survey shall focus on potential nest sites (e.g., cliffs, large trees, windrows) within a 0.5-mile buffer around the project site. Swainson’s hawk nest survey shall focus on potential nest sites (e.g., cliffs, large trees, windrows) within a 5-mile buffer around the project site and follow the 2010 Swainson’s hawk protocol surveys (CEC and CDFG 2010). Surveys shall be conducted no more than ~~14~~ 10 days prior to construction activities. Surveys need not be conducted for the entire project site at one time; they may be phased so that surveys occur shortly before a portion of the project site is disturbed. The surveying biologist must be qualified to determine the status and stage of nesting by migratory birds and all locally breeding raptor species without causing intrusive disturbance. If active nests are found during the breeding season, a suitable buffer (e.g., ~~200–300 feet for common raptors; 0.5 mile for Swainson’s hawk; 30–50 feet for passerine species~~) of 250 feet around active nests of non-listed bird species and a 500-foot-no-disturbance buffer around nests of non-listed raptor species shall be established around active nests and no construction within the buffer allowed until the breeding season has ended or a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). For non-listed species, encroachment into the avoidance buffer may occur at the discretion of a qualified biologist; however, for State-listed species, consultation with CDFW shall occur prior to encroachment into the aforementioned buffers.

- 2-R:** The comment states that CEQA requires information developed in EIRs and Negative Declarations be incorporated into a database, which may be used to make subsequent or supplemental environmental determinations. To that end, the commenter asks that any special-status species and natural communities detected during project surveys be reported to the CNDDDB; links provided in the comment letter. The project proponent will submit all detected special-status biological resources to the CNDDDB, as required by CEQA. No changes to the Draft EIR are required per this comment. The comment has been noted for the record.
- 2-S:** The comment states that an assessment of filing fees will be necessary if it determined that the project has the potential to impact biological resources. Fees are payable upon filing the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by

CDFW. No changes to the Draft EIR are required per this comment. The comment has been noted for the record.

- 2-T:** The comment provides a website and CDFW staff contact information to obtain survey and monitoring protocols for sensitive species. No changes to the Draft EIR are required per this comment. The comment has been noted for the record.



Eastern Kern

Air Pollution Control District

Glen E. Stephens, P.E.
Air Pollution Control Officer

May 03, 2021

RECEIVED

MAY 20 2021

Terrance Smalls, Supervising Planner
Kern County Planning and Natural Resources Department
2700 "M" Street, Suite 100
Bakersfield, CA 93301

Kern County Planning &
Natural Resources Department

SUBJECT: Comments for Draft Environmental Impact Report for the Raceway 2.0 Solar by
sPower Development Corporation, LLC Located Approximately 3 Miles West of
Rosamond

Dear Mr. Smalls:

Eastern Kern Air Pollution Control District (District) is in receipt of the Draft Environmental
Impact Report (DEIR) for the Raceway 2.0 Solar Project.

Commercial solar power generation facilities 10 acres and larger are required to submit a
Fugitive Dust Emission Control Plan and apply for an Authority to Construct prior to
commencing construction of the facility. Additionally, a Fugitive Dust Emission Monitoring
Plan is required to be submitted to the District in order for the Permit to Operate to be issued.

3-A

Thank you for your cooperation in this matter. Should you have any questions, please telephone
Samuel Johnson of our office at (661) 862-5250

Sincerely,

A handwritten signature in blue ink, appearing to read "Glen Stephens".

Glen E. Stephens, P.E.
Air Pollution Control Officer

GES:SJ:tf

Response to Comment Letter 3: Eastern Kern Air Pollution Control District (EKAPCD) (May 3, 2021)

- 3-A:** The commenter confirms Eastern Kern Air Pollution Control District's (EKAPCD's) receipt of the Draft EIR. In addition, the commenter notes that solar facilities 10 acres and larger are required to submit a Fugitive Dust Emission Control Plan and apply for an Authority to Construct prior to commencing construction of the facility. Furthermore, stationary equipment that emits air pollutants may require a permit from the EKAPCD prior to installation and operation. As discussed in Section 4.3, *Air Quality*, of the Draft EIR, construction and operation of the proposed project would be conducted in compliance with applicable rules and regulations set forth by the EKAPCD, including all necessary permits. Additionally, fugitive dust would be reduced through implementation of Mitigation Measure MM 4.3-2, which would be implemented in conformance with the applicable EKAPCD plans and regulations and Kern County General Plan Policies 20 and 21. Specifically, Mitigation Measure MM 4.3-2 requires that prior to the issuance of grading or building permits, the project proponent shall provide a comprehensive Fugitive Dust Control Plan for review by the Kern County Planning and Natural Resources Department to reduce fugitive dust emissions resulting from wind erosion at the site. As noted, the proposed project would be required to comply with applicable EKAPCD plans and regulations and, as such, the project proponent would coordinate with the EKAPCD as necessary. This comment has been noted for the record and revisions to the Draft EIR are not necessary.

Office Memorandum

KERN COUNTY

To: Planning and Natural Resources
Department
Terrance Smalls

Date: March 26, 2021

From: Public Works Department
Floodplain Management Section
Kevin Hamilton, by Brian Blase

Phone: (661) 862-5098
Email: BlaseB@kerncounty.com

**Subject: Draft Environmental Impact Report
Raceway 2.0 Solar**

Our section has reviewed the attached subject documents and has the following comments:

The runoff of storm water from the site will be increased due to the increase in impervious surface generated by the proposed development.

The subject property is subject to flooding.

Therefore, this section recommends the following be included as Conditions of Approval for this project:

The applicant shall provide a plan for the disposal of drainage waters originating on site and from adjacent road right-of-ways (if required), subject to approval of the Public Works Department, per the Kern County Development Standards.

Associated flood hazard requirements will need to be incorporated into the design of this project per the Kern County Floodplain Management Ordinance.

4-A

Response to Comment Letter 4: County of Kern Public Works Department, Floodplain Management Section (March 26, 2021)

- 4-A** The commenter notes that the project site is subject to flooding, that runoff of storm water from the site would increase due to the increase in impervious surface generated by the proposed project, and requests that the following be included as Conditions of Approval for this project:

The applicant shall provide a plan for the disposal of drainage waters originating on site and from adjacent road right-of-ways (if required), subject to approval of the Public Works Department, per the Kern County Development Standards.

Associated flood hazard requirements will need to be incorporated into the design of this project per the Kern County Floodplain Management Ordinance.

The Draft EIR identifies that the proposed project will result in an increase in impervious surfaces, which in turn, would result in an increase in stormwater runoff. Specifically, new impervious surfaces would be associated with the project's energy storage systems and the operations and maintenance building. The vast majority of the project site would remain pervious and absorb most precipitation. Further, as described in Section 4.10, *Hydrology and Water Quality*, page 4.10-12 of the Draft EIR, the site engineering and design plans for the proposed project must comply with the requirements of the Kern County Code of Building Regulations, as well as with Kern County Development Standards and the Floodplain Management Ordinance.

Furthermore, page 4.10-12 of the Draft EIR, indicates that all site drainage plans would be required to comply with Division Four of the Kern County Development Standards, which establish guidelines including, but not limited to, site development standards and mitigation, flood control requirements, erosion control, and on-site drainage flow requirements. Therefore, with adherence to all existing regulations regarding erosion and site drainage, the proposed project would neither alter the course of a stream or river nor result in substantial erosion onsite or offsite. Implementation of Mitigation Measures MM 4.10-1, which requires preparation of a stormwater pollution prevention plan (SWPPP), as described in the Draft EIR and required to be implemented for the proposed project, would reduce impacts to a less-than-significant level. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.



Office of Mary C. Barlow ...advocates for children

March 19, 2021

Kern County Planning Department
Attn: Terrance Smalls, Sup. Planner
2700 M Street, Suite 100
Bakersfield, CA 93301

Our File No.: CO21-0036

RE: DEVELOPER FEES FOR: Draft EIR Raceway 2.0 Solar Project; Map No. 231-20, 21, 28, 29, 32
(Between Rosamond Blvd. and Ave. A and between 70th Street West and 90th Street West)

Dear Mr. Smalls,

This office represents the Southern Kern Unified School District with regard to the imposition of developer fees, and appreciates the opportunity to respond on behalf of the district regarding the proposed project. This letter is limited to addressing the possible effects which the project might have on school facilities created by students attributable to the project. It is not intended to address other possible environmental concerns which might be identified by the district(s) after reviewing it.

5-A

It is our determination that the above mentioned project proposing multiple amendments to the Willow Springs Specific Plan, Zone Classification Changes, Conditional Use Permits to allow for the construction and operation of 6 megawatt solar photovoltaic electrical generating facilities ranging from 15-160 MW, vacation of existing public access easements on the project site and Franchise Agreement for installation of generation tie lines in the County right-of-way will have no significant effects on either of the district's facilities and mitigation of this project's impacts on public school facilities will be limited to the collection of statutory fees authorized under Education Code Section 17620 and Government Code Sections 65995 et seq. at the time that building permits are issued. Currently, these fees are set at \$0.66 per square foot, an amount subject to COLA adjustment every two years.

5-B

Thank you for the opportunity to comment on the project. Should you have any questions, or if we can be of any further assistance in this matter, please contact me at 636-4599, or through e-mail at anwatson@kern.org.

Sincerely,

Mary C. Barlow
County Superintendent of Schools

A handwritten signature in blue ink that reads "Awatson".

Andrea Watson, Specialist
School District Facility Services

ALW
cc: District(s)

Response to Comment Letter 5: Kern County Superintendent of Schools (March 19, 2021)

- 5-A:** The commenter expresses appreciation for the opportunity to respond on behalf of the district regarding the proposed project. This comment clarifies that the letter's contents are intended to address possible effects which the project may have on school facilities, and not to comment on any other environmental concerns.
- 5-B:** The commenter provides a brief overview of the entitlements being requested by the project and concludes that no significant effect on the district's facilities would occur with project implementation, given the appropriate fees and regulations are complied with. As discussed in Section 4.13, *Public Services*, of the Draft EIR, an average of 500 daily construction workers and a peak workforce of 800 workers could be required for development of the proposed project. It is expected most of these workers would live in the region and would commute to the project site from where their children are already enrolled in school. Even if workers came from out of the area, they would likely return to their out-of-town residences once the facilities were built and would not take their children out of their current schooling situation. Therefore, temporary increases in population are not expected to adversely affect local school populations. Additionally, operation of the project would require approximately two to four part-time and/or full time employees to perform maintenance activities. Employees would likely commute to the project from their existing permanent residences, however, even if the maintenance employees were hired from out of the area and had to relocate to eastern Kern County, the resulting addition of potential families to this area would not result in a substantial increase in the number of users at local schools. Therefore, impacts would be less than significant. All fees applicable to implementation of the project will be collected when the project proponent/operator applies for required building permits. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.



California Program Office

980 Ninth Street, Suite 1730 | Sacramento, California 95814 | 916-313-5800

www.defenders.org

May 7, 2021

Kern County Planning and Natural Resources Department

Attn: Terrance Smalls, Sup. Planner

2700 M Street, Suite 100

Bakersfield, CA 93301

Sent via email to: SmallsT@kerncounty.com

Re: Raceway 2.0 Solar Project Draft Environmental Impact Report

Dear Mr. Smalls:

Thank you for the opportunity to review and submit comments on the Draft Environmental Impact Report (DEIR) for the proposed Raceway 2.0 Solar Project (Project). This comment letter is submitted by Defenders of Wildlife (Defenders) on behalf of its 2.2 million members and supporters in the U.S., including 323,000 in California.

Defenders is a national conservation organization founded in 1947 and dedicated to protecting all wild animals and plants in their natural communities. To this end, we employ science, public education and participation, media, legislative advocacy, litigation and proactive on-the-ground solutions to impede the accelerating rate of extinction of species, associated loss of biological diversity, and habitat alteration and destruction.

Brief description of the Project: The Project is a 291 MW photovoltaic facility located on 1,330 acres of undeveloped private land in the Antelope Valley of Kern County. The facility would be comprised of two separate solar projects located on six discontinuous sites. There are four options for delivering electricity to the existing transmission system operated by the Southern California Edison Company.

Under Alternative 3, the Reduced Acreage Alternative, the project's footprint would be reduced from 1,330 acres to 695 acres as development of the solar panels and associated facilities would only be allowed on Sites 1-3. The solar panels and associated infrastructure would all be located in the reduced project site. Gen-tie route options 1 through 4 would remain the same as proposed under the Project.

The entire project site is located within Agriculture Preserve No. 24, as is the standard practice in Kern County for any land that is zoned A (Exclusive Agriculture). The project would have a substantial adverse effect, either directly or through habitat modifications, on species identified as candidate, sensitive, or special status by the California Department of Fish (CDFW) and Wildlife or U.S. Fish and Wildlife Service.

Our comments on the DEIR for the Project are as follows:

6-A

6-B

1. Biological Resources Mitigation Requirements in General: CDFW is the Trustee Agency for all matters associated with management and protection of biological resources in California. CDFW acts as a Trustee Agency by providing requisite biological expertise to the Lead Agency (e.g., Kern County Planning and Natural Resources Department) on California Environmental Quality Act (CEQA) documents for projects, such as DEIRs.

Based on our review of DEIR's for various solar energy projects over the past 10 years, mitigation measures proposed to address potentially significant adverse impacts to various species of plants and animals, including especially those listed as threatened or endangered under the California Endangered Species Act (CESA), differ from recommendations submitted by CDFW during the CEQA issue scoping phase or on a project's DEIR, both of which constitute expert-level biological resources recommendations from the CEQA Trustee Agency for biological resources.

Proposed mitigation measures included in project DEIR's intended to avoid or minimize adverse impacts to biological resources, or compensate for significant and unavoidable adverse impacts, should be fully consistent with recommendations of CDFW, which rarely occurs. **We recommend that the Kern County Planning and Natural Resources Department fully adopt recommended impact mitigation measures provided by CDFW in its CEQA issue scoping comments or on project-level DEIRs.** The Kern County Planning and Natural Resources Department should refrain from substituting its preferred impact mitigation measures over those of experts within the CDFW.

2. Swainson's Hawk Impacts and Mitigation Measures: The DEIR indicates there are four Swainson's hawk nests within five miles of the Project, the distance that defines foraging habitat for the species for purposes of impact assessment and mitigation. The distance of the nests from the Project range from one within the Project boundary (which was active during the 2020 breeding season) to 4.6 miles north of the Project. The active nest within the project boundary was detected during surveys for the burrowing owl and not based on specific surveys for Swainson's hawk, including nests.

It appears the most recent Swainson's hawk nest surveys within five miles of the Project that were used to inform the DEIR impact analysis were completed in 2014 for the Willow Springs solar project, which was subsequently approved. Since the DEIR is based on those surveys, the entire Project area is considered suitable foraging habitat for Swainson's hawks. However, there is potential for additional nests to have been established in the seven intervening years. **We recommend that the Kern County Planning and Natural Resources Department contact the Central Regional Office of the CDFW to resolve any issues regarding lack of timely protocol surveys for Swainson's hawks, including surveys to detect nests within the past year, and especially within and extending to 0.5 mile from the Project boundary. CDFW considers Swainson's hawk to be active if they have been used by breeding pairs within the past five years.**

We recommend the final environmental impact report (FEIR) include or be consistent with key findings and recommendations included in the 2010 CDFW and California Energy Commission publication "*Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California*"¹, which included, in part:

¹ California Energy Commission and California Department of Fish and Game. 2010. Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los

6-C

6-D

6-E

6-F

“Antelope Valley Swainson’s hawks are known to have historically nested in Joshua tree woodlands and foraged in grasslands and native desert scrub communities. Currently, they nest in Joshua tree woodlands, ornamental roadside trees, and windrow or perimeter trees in active and historical agricultural areas. Foraging habitat includes dry land and irrigated pasture, alfalfa, fallow fields, low-growing row or field crops, new orchards, and cereal grain crops. Swainson’s hawks may also forage in grasslands, Joshua tree woodlands, and other desert scrub habitats that support a suitable prey base. Gophers dominate the prey base of agriculturally based pairs while Swainson’s hawks nesting in natural desert habitats consume a wider variety of prey species.”

“Potential impacts [to Swainson’s hawk from renewable energy project development] include loss of foraging habitat and disruption of breeding activities due to increased dust, noise, and human presence.”

*“Mitigation plans should focus on providing habitat management (HM) lands. Lands which are currently in urban use or lands that have no existing or potential value for foraging Swainson’s hawks will not require mitigation nor would they be suitable for mitigation. **The plans should call for mitigating loss of Swainson’s hawk foraging habitat by providing HM lands within the Antelope Valley Swainson’s hawk breeding range at a minimum 2:1 ratio for such habitat impacted within a five-mile radius of active Swainson’s hawk nest(s)**” (emphasis added).*

Mitigation Measure 4.4-8, Swainson’s Hawk Monitoring and Mitigation Plan, is included in the Project DEIR and requires the project proponent/operator to “... *prepare and implement a Swainson’s Hawk Monitoring and Mitigation Plan in consultation with the California Department of Fish and Wildlife and the Kern County Planning and Community Development Department. The Plan shall be prepared by a qualified wildlife biologist approved by CDFW and the County...*”

Defenders recommends that Mitigation Measure 4.4-8 be modified to require that CDFW not only be consulted in preparation and implementation of the monitoring and mitigation plan, but also to require that CDFW formally approve the final plan in writing via a letter from the Regional Manager for the Central Region in Fresno, California to the Project proponent and the Kern County Planning and Natural Resources Department. Kern County should replace its preferred compensatory mitigation ratio of a minimum of 1:1 for replacement foraging habitat for Swainson’s hawk with the CDFW recommended ratio of a minimum of 2:1 to ensure this measure fully offsets or compensates for lost foraging habitat.

In addition, **Defenders recommends that the component (a) of the recommended mitigation measure, “If a nest site is found, design the project site to allow sufficient foraging and fledgling area to maintain the nest site” be discussed with staff from the CDFW to determine what amount of habitat is needed to maintain a successful nest based on prey availability and a buffer from human activities.**

3. Cumulative Impact Assessments: Similar to previous comments on solar project DEIRs submitted by Defenders, we again stress the need to disclose the specific cumulative impacts to special status species within the Antelope Valley, and especially species listed under CESA (e.g., desert tortoise, Swainson’s hawk and Mohave ground squirrel), and the specific feasible impact mitigation measures considered necessary to reduce or mitigate for any increase in cumulative impacts.

6-F
(con.)

6-G

6-H

6-I

Cumulative impacts to these CESA-listed species accrue over time and increase when impacts from individual projects are not fully mitigated or offset as required under CEQA. Among the key purposes of CEQA is stated in Public Resources Code Section 21001(c): *preventing the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities.*

As CDFW stated in its 2016 status review of Swainson's hawk in California, "*At this time, the Department recommends retaining the Threatened classification for this species based on the following:*

- ***On-going cumulative loss of foraging habitats throughout California*** (emphasis added).
- *Significantly reduced abundance throughout much of the breeding range compared to historic estimates*
- *An overall reduction in the hawk's breeding range in California."*

In addition, in the 2010 publication by the California Energy Commission and CDFW (*Ibid.*), the agencies stated, *Significant habitat loss may result from individual projects and cumulatively, from multiple projects. Each project which contributes to a significant cumulative effect must offset its contribution to that effect in order to determine that the cumulative impacts have been avoided.* (emphasis added). Had the Kern County Planning and Natural Resources Department followed this recommendation in its previous permitting of individual solar energy projects in the Antelope Valley, it is possible the significant cumulative impacts to the Swainson's hawk due to loss of nesting and foraging habitat could have been avoided.

Conclusion: Defenders thanks for Kern County Planning and Natural Resources Department for proposing the Project applicant develop an impact monitoring and mitigation plan for the Swainson's hawk in coordination with the CDFW, including that the loss of foraging and nesting be compensated with off-site habitat. However, we recommend that loss of nesting and foraging habitat that would occur due to the Project be mitigated by requiring the applicant to purchase suitable nesting and foraging habitat for the species within 5 miles of known nests at a minimum ratio of 2:1, as per the recommendations of the CDFW. In addition, the applicant and Kern County Department of Planning and Natural Resources should consult with CDFW to determine how much of a buffer and foraging habitat is needed to maintain functionality of the active Swainson's hawk nest within the project. Once that determination is made, it should become the basis for additional mitigation measures in a supplemental DEIR or FEIR.

Thank you for your consideration of these comments.

Sincerely,



Jeff Aardahl
Senior California Representative
jaardahl@defenders.org

6-I
(con.)

6-J

Response to Comment Letter 6: Defenders of Wildlife (May 7, 2021)

- 6-A:** The commenter provides appreciation for the opportunity to review and submit comments on the Draft EIR, and acknowledges its dedication to protecting wildlife and plants in their communities. No changes to the Draft EIR are required per this comment. The comment has been noted for the record.
- 6-B:** The commenter provides a description of the project summarized from the Draft EIR. No changes to the Draft EIR are required per this comment. The comment has been noted for the record.
- 6-C:** The comment recommends the Kern County Planning and Natural Resources Department fully adopt recommended impact mitigation measures provided by CDFW in its CEQA issue scoping comments or on project-level Draft EIRs. As discussed above under Response to Comments 2-A through 2-T, the project would adopt the recommended mitigation measures provided by CDFW. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and further revisions to the Draft EIR are not necessary.
- 6-D:** Thank you, the commenter correctly states the number of Swainson's hawk nests within five miles of the Project. No changes to the Draft EIR are required per this comment. The comment has been noted for the record.
- 6-E:** The commenter recommends conducting CDFW Swainson's Hawk protocol level surveys following the California Energy Commission Publication "Swainson's Hawk Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California". Since a known active nest is known to occur within 5-miles of the project, the project site is already considered to be foraging habitat for Swainson's hawk. Any additional nest sites will be avoided during preconstruction nesting bird surveys as outlined in Mitigation Measure MM 4.4-7. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 6-F:** The commenter recommends that the amount of foraging habitat mitigation required by Mitigation Measure MM 4.4-8 be increased from a minimum 1:1 ratio to a minimum 2:1 ratio. As described above under Response to Comment 2-K, the project site is currently covered entirely by land that may serve as suitable grazing habitat for SWHA. The infeasibility of locating up to 2,622 acres of SWHA foraging and nesting habitat in the Antelope Valley makes this request unattainable. The project will be required to provide habitat at a minimum ratio of 1:1 for all approved acreage. Therefore, impacts would remain less than significant. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 6-G:** The commenter recommends the Swainson's Hawk Monitoring and Mitigation Plan to be approved in writing via a letter by CDFW. The Swainson's Hawk Monitoring and Mitigation Plan is being written by a qualified wildlife biologist approved by CDFW and the County. The Plan will also be conducted in consultation with CDFW. Additionally, the acquisition of HM lands will also be approved by CDFW. Therefore, CDFW approves specific steps within the Swainson's Hawk Monitoring and Mitigation Plan and is consulted during the process. Additionally, as described above under Response to Comment 2-K, the project site is currently covered entirely by land that may serve as suitable grazing habitat for SWHA. The infeasibility of locating up to 2,622 acres of SWHA foraging and nesting habitat in the Antelope Valley makes this request unattainable. The project will be required to provide habitat at a minimum ratio of 1:1 for all approved acreage. Therefore, impacts to Swainson's Hawk would remain less than significant. No other changes to the Draft EIR are required per this comment. The comment has been noted for the record.
- 6-H:** The commenter recommends Item 1 of Mitigation Measure MM 4.4-8 be discussed with CDFW to ensure sufficient habitat around an active nest site to maintain nest success. The Swainson's Hawk

Monitoring and Mitigation Plan is being written by a qualified wildlife biologist approved by CDFW and the County. The Plan will also be conducted in consultation with CDFW. Therefore, CDFW will be consulted in regards to the Swainson's Hawk Monitoring and Mitigation Plan including Item 1 in regards to allowing sufficient habitat around active nest sites. In addition, as discussed above under Response to Comment 2-O, the project would comply with the recommendations of CDFW regarding expanding the no-disturbance buffer pursuant to the "*Staff Report on Burrowing Owl Mitigation*", and Mitigation Measure MM 4.4-6 has been revised accordingly. No other changes to the Draft EIR are required per this comment. The comment has been noted for the record.

- 6-I:** The commenter acknowledges a need to full mitigate or offset impacts from individual projects in order to determine cumulative impacts have been avoided. The commenter notes that if offsetting impacts from previous projects had occurred then cumulative impacts would be avoided. No changes to the Draft EIR are required per this comment. The comment has been noted for the record.
- 6-J:** The commenter thanks the Kern County Planning and Natural Resources Department for proposing a Swainson's Hawk Monitoring and Mitigation Plan in coordination with CDFW. As discussed above in Responses to Comment 6-A through 6-I, the project would comply with the requests of the commenter and the CDFW. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.



May 7, 2021

Kern County Planning and Natural Resources Department
Attn: Terrance Smalls, Sup. Planner
2700 "M" Street, Suite 100
Bakersfield, CA 93301
(661) 862-8607
Via email: SmallsT@kerncounty.com

Dear Mr. Smalls:

The National Audubon Society protects birds and the places they need, today and tomorrow. Audubon works throughout the Americas using science, advocacy, education, and on-the-ground conservation. State programs, nature centers, chapters, and partners give Audubon an unparalleled wingspan that reaches millions of people each year to inform, inspire, and unite diverse communities in conservation action. A nonprofit conservation organization since 1905, Audubon believes in a world in which people and wildlife thrive.

7-A

Audubon's climate science at <https://climate.audubon.org> reveals that 389 species of N. American bird may go extinct if we can't keep warming to 1.5° Celsius. Audubon is committed to a goal of 100% clean energy and net zero greenhouse gas emissions.

Audubon supports renewable energy projects that are well-sited and operated to avoid, minimize, and mitigate effectively for the impacts on birds and the places birds need.

We appreciate the contribution Kern County has made to California's goal of 100% clean energy by 2045.

7-B

For the last 10+ years Audubon has engaged on solar and wind project environmental reviews of projects in Kern County to improve conditional use permits to avoid, minimize and mitigate effectively for those projects' impacts on birds.

We prioritize species and populations in Kern County that are declining due to changes in climate suitability of their wintering or breeding/nesting habitat (see <https://climate.audubon.org>) or whose local and statewide populations are declining such that a species is listed under U.S. Fish & Wildlife or California Endangered Species Act, or is identified as Bird of Conservation Concern or Sensitive Species by either agency. This designation indicates that without conservation they may become listed under either Act. If that happens, projects would require a higher level of permitting and mitigation than that of Kern County's

7-C

Conditional Use Permit so it is in the mutual benefit of conservation and rapid deployment of clean energy that these species are not allowed to decline to the level that would require listing.

We also consider that Kern County Planning and Natural Resources has an obligation not only to permit development but to protect Kern County's natural resources including birds and the places birds need. These birds provide ecological services of economic value including but not limited to removal of pests that impact agriculture as well as provide recreation and attendant economic income for Kern County local businesses and citizens.

We continue to advocate for lawful and thoughtful protections for birds by Kern County's Planning and Natural Resources Department, Planning Commission and Board of Supervisors in approving projects in the hopes that Kern County may someday value the natural resources of the County in permitting these projects to the extent that the County would consider a more programmatic approach with conservation and clean energy together, and with regulatory certainty for developers and the conservation community and agencies, rather than the current project by project approach.

Until then, we will continue to pursue full consideration for birds and the places that birds need on each and every that Kern County evaluates under CEQA, and we will continue to work with Applicants that see the value of combining conservation and clean energy .

Our priorities for comment are

- Swainson's hawk, listed as threatened under California Endangered Species Act. California Department of Fish & Game (CDFW) and California Energy Commission (CEC) issued a guidance document in 2010 entitled Swainson's Hawk Survey Prototols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California (CDFW & CEC guidance).
- Burrowing owl, identified by California Department of Fish & Wildlife as a [California Species of Special Concern](#)
- Tricolored Blackbird, listed as threatened under California Endangered Species Act in 2018

PROJECT LOCATION: The proposed project is in the western extent of the Mojave Desert near Rosamond, California between Rosamond Boulevard and Avenue A, and between 70th Street West and 90th Street West in Sections: 20, 21, 28, 29 and 32, T9N/R13W in the eastern portion of unincorporated Kern County, California.

PROJECT DESCRIPTION: The proposed project would involve construction and operation of two solar photovoltaic (PV) power-generating facilities, on six discontinuous sites, which would produce a combine total of approximately 291 megawatts (MW) of renewable electricity with up to 291 megawatt hours MWh energy storage on 1,330 acres of land in unincorporated Kern County.

Kern County is "Lead Agency" for the DEIR and AES is the "Applicant."

7-C
(con.)

7-D

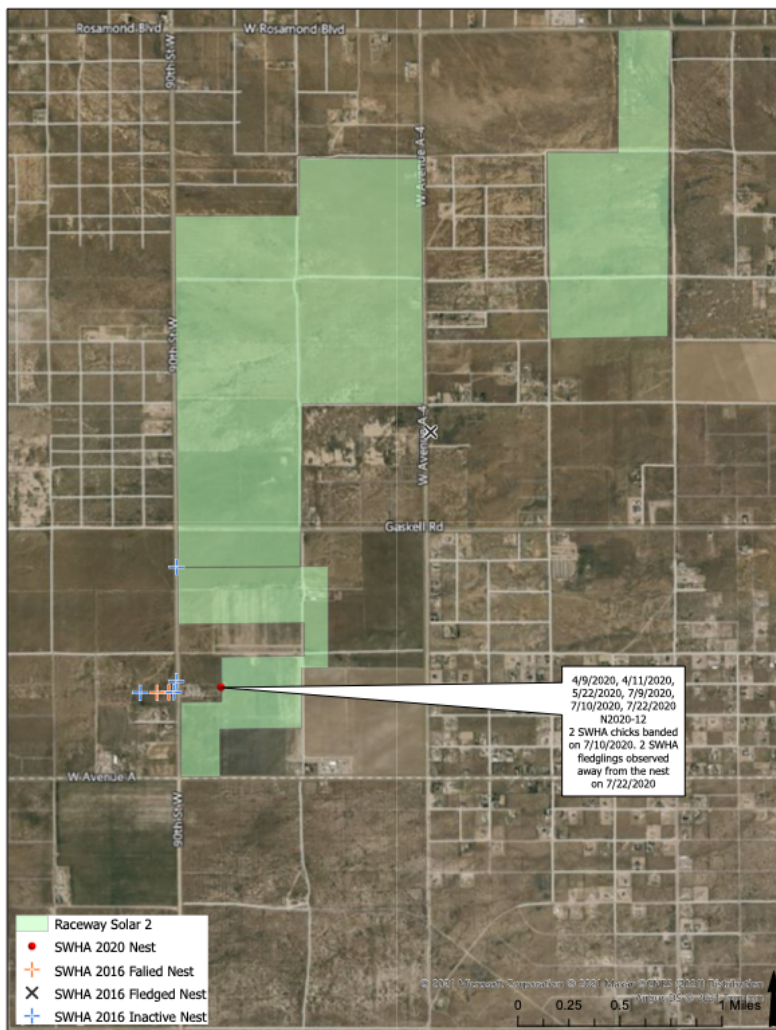
7-E

We provide these comments on the DEIR for the Raceway 2.0 solar project.

The DEIR fails to reduce the impacts Swainson's hawk nesting and foraging habitat.

1.The site contains at least two active nests within or directly adjacent to the project boundary.

- a. With our comments we provide a map based on 2020 nest data collected by Bloom Biological with research funds provided by EDF Renewables in an agreement between Audubon, Defenders of Wildlife, and EDF to support research and conservation of Swainson's hawk in the Antelope Valley. This data has also been incorporated in the CDFW CNDDDB database and spatial data can be obtained directly from Carie Battistone Carie.Battistone@wildlife.ca.gov.



7-E
(con.)

This data reveals that there are two active nests on or immediately adjacent to the project area in one area and another active nest adjacent to the project area in another part of the project.

In the DEIR, Lead Agency requires Applicant to prepare a Monitoring and Mitigation Plan (MMP) due to the fact that surveys have located a nest site.

We appreciate that Lead Agency has cited verbatim the guidelines for creating such an MMP from **Swainson’s Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California**, State of California, California Energy Commission and Department of Fish and Game May 13, 2010 (the Guidance).

However, we assert that the Project may actually “take” at least one of the nests either due to removal of the tree or the inability of the bird to nest in subsequent years due to removal of the tree or disturbance from operations of the Project.

The Monitoring and Mitigation Plan should be accompanied by consultation with CDFW for consideration of a “take” authorization of the nest.

The Guidance also states:

The Department considers a nest site to be active if it was used at least once during the past 5 years. Impacts to suitable habitat or individual birds within a five-mile radius of an active nest will be considered significant and to have the potential to “take” Swainson’s hawks as that term is defined in §86 of the DFG Code. Please consult with DFG when determining whether “take” authorization is warranted for a specific project.

CESA regulates the taking of state-listed species. “Take” is defined as to “hunt, pursue, catch, capture, or kill, or to attempt to hunt, pursue, catch, capture, or kill.” (Fish and Game Code §86). Incidental take authorization requires that all impacts to the species are minimized and fully mitigated and that mitigation is roughly proportional to the extent of the impacts of the taking. (14 CCR § 783.4). This “full mitigation” standard is intended to ensure that the status of the species is the same or better after project and mitigation implementation as it was prior to project implementation.

There are additional regulations regarding “take” of a nest in California code

Clearly, the loss of a nest site will not leave the species in better status after project and mitigation as it was prior to project implementation, and CDFW must be the regulatory authority in determining whether “take” is occurring and how to offset that “take”.

7-E
(con.)

7-F

7-G

Take of a nest of a Swainson's hawk without a permit from California Department of Fish & Wildlife can be prosecuted as a criminal act under Fish and Game Code section 3503 which states

"It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto."

MM 4.4-8 does not have the authority to authorize "take" of a Swainson's hawk nest. Since Lead Agency does not have this authority, this mitigation measure fails, and fails to reduce the level of significance of the impact to Swainson's hawk nests until CDFW authorizes take of the nest or nests.

7-G
(con.)

Additionally, the preparation of a Plan could be considered deferred mitigation under CEQA. However, Lead Agency could defer the mitigation if the County required and acknowledged compliance with CDFW's regulatory authority over take of a Swainson's hawk nest and not its own mitigation measures, which are not regulations. In *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, the Court of Appeal rejected plaintiff's challenge to a Revised EIR for a 64-acre, mixed use, high rise development project located along the Oakland Estuary but the Court noted that "a condition requiring compliance with regulations is a common and reasonable mitigation measure" (see also, *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912).

7-H

The MMP should be prepared for review in the FEIR as approved by CDFW, or Lead Agency should state clearly that CDFW's regulatory authority is the final authority to approve the Plan and any take permit for the nest.

Otherwise, the mitigation is deferred.

2. There are several Swainson's hawk nests within 5 miles of the project area and the project areas has qualified foraging habitat, the loss of which must be mitigated.

We appreciate MM 4-4.8 e. that requires Applicant to mitigate for loss of foraging habitat within 5 miles of the active nests that surround the Project site.

Thank you for recognizing this important measure for conserving Swainson's hawk in the Antelope Valley.

Mitigation measure 4-4.8 addresses that loss with a measure in the MMP that Lead Agency is requiring Applicant to prepare in consultation with CDFW and the County. From the measure:

Plan will focus on providing habitat management (HM) lands. Lands which are currently in urban use or lands that have no existing or potential value for foraging Swainson's hawks will not require mitigation nor would they be suitable

7-I

for mitigation. The plans should call for mitigating loss of Swainson's hawk foraging habitat by providing HM lands within the Antelope Valley Swainson's hawk breeding range at a minimum 1:1 ratio for such habitat impacted within a 5-mile radius of active Swainson's hawk nest(s). The Department considers a nest active if it was used one or more times within the last 5 years. Project developers may consider delegating responsibilities for acquisition and management of the HM lands to the Department or a third party, such as a non-governmental organization dedicated to Mojave Desert habitat conservation. (MM 4.4-8, p. 1-176)

7-I
(con.)

This measure, unlike others, is not consistent with the Guidance and Lead Agency has changed the ratio willfully and without consultation with CDFW. The Guidance actually states:

Mitigation plans should focus on providing habitat management (HM) lands. Lands which are currently in urban use or lands that have no existing or potential value for foraging Swainson's hawks will not require mitigation nor would they be suitable for mitigation. The plans should call for mitigating loss of Swainson's hawk foraging habitat by providing HM lands within the Antelope Valley Swainson's hawk breeding range at a minimum 2:1 ratio for such habitat impacted within a five-mile radius of active Swainson's hawk nest(s).

7-J

Again, we emphasize that CDFW has regulatory authority over the Plan as well as the mitigation ratio and the threatened species and again the mitigation recommended by Lead Agency for the Plan cannot be considered as reducing the impacts on loss of foraging habitat of Swainson's hawk under CEQA unless it requires compliance with regulations. As above cases cited, the court noted that "a condition requiring compliance with regulations is a common and reasonable mitigation measure"

Lead Agency's version of the mitigation ratio is not regulatory.

3. The cumulative impacts analysis is inadequate regarding biological resources, and specifically Swainson's hawk. The DEIR states:

Given the number of present and reasonably foreseeable future development projects in the Antelope Valley, the proposed project, when combined with other projects, would contribute to cumulative loss of foraging and nesting habitat for special-status species. Implementation of Mitigation Measures would reduce impacts to foraging and nesting habitat to less-than-significant levels for the proposed project. However, the proposed project, when combined with other related development projects proposed throughout the County, the cumulative impact foraging and nesting for special-status species. Thus, cumulative impacts would be significant and unavoidable.

7-K

We find that the statement is not clear and the syntax should be revised for the final FEIR.

↑
7-K
(con.)

Additionally, CEQA Guidelines Section 15130(b) provides the following parameters relative to cumulative impact analysis: the discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone. The discussion should be guided by standards of practicality and reasonableness, and should focus on the cumulative impact to which the identified related projects contribute, rather than the attributes of other projects which do not contribute to the cumulative impact.

CEQA Guidelines Section 15130 allows for the use of two alternative methods to determine the scope of projects to analyze cumulative impacts. List Method: A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency. Projection Method: A summary of projects contained in an adopted general plan or related planning document, or in a prior environmental document, that have been adopted or certified, which describe or evaluate regional or area-wide conditions contributing to the cumulative impact.

7-L

The FEIR should provide this information since Lead Agency has the data on the number of projects and numbers of acres that have contributed to the change in the environment that CEQA requires for cumulative impacts analysis.

We look forward to working with Lead Agency and the Applicant to provide any technical, conservation or scientific support for the avoidance of impacts to Swainson's hawk nesting and foraging habitat.

Sincerely,

Garry George
Director, Clean Energy Initiative
Audubon
garry.george@audubon.org

Franklin Bedard
Conservation Chair
Kern Audubon Society
13500 Powder River Avenue,
Bakersfield, California 93314
mbedard@bak.rr.com

Response to Comment Letter 7: Kern Audubon Society (May 7, 2021)

- 7-A:** The commenter identifies the work of the National Audubon Society to use science, advocacy, education, and on the ground conservation to protect birds and provides a statistic on the relation of climate change to bird extinction. This comment does not raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 7-B:** The commenter states support of renewable energy projects that are sited and operated to avoid, minimize, and mitigate potential impacts to bird, and acknowledges appreciation for Kern County's contributions to the state's clean energy goals. This comment does not raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 7-C:** The commenter acknowledges prioritization of birds declining and advocacy for protections provided by Kern County for these species. This comment does not raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 7-D:** The commenter identifies three species as the focus for their comments: Swainson's hawk, burrowing owl, and tricolored blackbird. This comment does not raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 7-E:** The commenter provides a summary of the project location and description. This comment states the Draft EIR fails to reduce the impacts to Swainson's hawk nesting and foraging habitat and provides a map with Swainson's hawk nest locations from 2016 through 2020 showing two active nests are within or directly adjacent to the project boundary. The commenter also states the Draft EIR requires a Monitoring and Mitigation Plan to be prepared because of located nest site. This comment is speculative and does not provide specific evidence on an issue in the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 7-F:** The commenter appreciates the verbatim language for the creation of the Swainson's hawk monitoring and mitigation plan from the Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California. However, the commenter states the project may 'take' at least one of the nests either due to the removal of the tree or the inability of the bird to nest in subsequent years due to disturbance from operations of the project. The commenter also recommends the Monitoring and Mitigation Plan should include 'take' authorization of the nest in consultation with CDFW. As discussed above under Comment Letter 2, the project would comply with this request and will consult with CDFW in the event that avoidance is not feasible. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 7-G:** The commenter mentions additional regulations for a 'take' of a nest under California Code and CDFW must be the regulatory authority to determine if 'take' can occur and how to offset any 'take'. The commenter states that 'take' of a Swainson's hawk nest without a permit can be prosecuted as a criminal act under Fish and Game Code section 350 and states Mitigation Measure MM 4.4-8 does not have the authority to authorize 'take' of a Swainson's hawk nest. The project would comply with the commenters request by ensuring that any take of a Swanson's hawk nest as a result of project implementation would occur with the required permits, and after first consulting with CDFW. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 7-H:** The commenter continues stating the preparation of the Plan could be considered deferred mitigation under CEQA. This comment does not raise a substantive issue on the content of the

Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 7-I:** The commenter states there are several Swainson's hawk nests within 5 miles of the project area which qualifies the project area as foraging habitat which must be mitigated. The commenter appreciates MM 4-4.8 e. and for the Applicant to recognize the importance of this measure to conserve Swainson's hawk in the Antelope Valley. The commenter then correctly writes out the MM 4-4.8 e language from the Draft EIR. This comment is speculative and does not provide specific evidence on an issue in the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 7-J:** The commenter states MM 4-4.8 is not consistent with Guidance because the ratio has been changed without consultation with CDFW. The commenter continues by stating that CDFW, as the regulatory authority over the Swainson's hawk monitoring and mitigation plan including the mitigation ratio, cannot consider the Plan as reducing the impacts on loss of foraging habitat for Swainson's hawk due to the ratio change and is not considered regulatory. As described above under Response to Comment 2-K, the project site is currently covered entirely by land that may serve as suitable grazing habitat for SWHA. The infeasibility of locating up to 2,622 acres of SWHA foraging and nesting habitat in the Antelope Valley makes this request unattainable. The project will be required to provide habitat at a minimum ratio of 1:1 for all approved acreage. . This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 7-K:** The commenter states cumulative impact analysis is inadequate regarding biological resources and call out Swainson's hawk specifically. The commenter then correctly writes out a paragraph from the Cumulative Impacts from the biological resources section of the Draft EIR. This comment is speculative and does not provide specific evidence on an issue in the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 7-L:** The commenter states the document does not analyze cumulative impacts in accordance with CEQA Guidelines Section 15130 as it does not use either of the methods to determine the scope of projects to analyze cumulative impacts. The commenter suggests the FEIR provides information on previous projects which would contribute to cumulative impacts. CEQA Guidelines Section 15130 dictates that the cumulative impacts of a project should be analyzed in the FEIR, and allows for the lead agency to choose one of two methods: either list form or a summary of projections. Chapter 3, *Project Description*, of DEIR contains a list of past, present and probable future projects that have the potential to produce related or cumulative impacts. As such, revisions to the Draft EIR are not necessary.



Land Veritas Corp.
1001 Bridgeway, Suite 246
Sausalito, CA 94969

May 7, 2021

Kern County Planning and Natural Resources Department
2700 M Street, Suite 100
Bakersfield, CA 93301-2370

Subject: Draft EIR for the Raceway 2.0 Solar Project, by sPower Development Corporation, LLC
(SCH #2020079007)

Dear Kern County Planning and Natural Resources Department:

Thank you for the opportunity to provide comments on the Draft Environmental Impact Report (EIR) for the Raceway 2.0 Solar Project (Project).

Land Veritas Corp. is the Bank Sponsor of the Petersen Ranch Mitigation Bank (Bank), located in Los Angeles County. The Bank was approved in 2016 by the Lahontan Regional Water Quality Control Board (RWQCB), United States Army Corps of Engineers (USACE), the United States Environmental Protection Agency (EPA), and the California Department of Fish and Wildlife (CDFW) to sell mitigation credits for impacts to protected resources. The Bank includes over 4,100 acres of natural habitats, the regular management and maintenance of which is funded through a non-wasting endowment. Importantly, the Bank's Service Area, defining the area in which the Bank can sell credits, covers the Antelope Valley where the Project is located.

8-A

The Bank sells credits which can be used to offset impacts regulated by Sections 401 and 404 of the Clean Water Act, Section 1602 of the California Fish and Game Code, the Porter Cologne Water Quality Act, the California Endangered Species Act (CESA) and the California Environmental Quality Act (CEQA). The Bank's credits include aquatic resources such as seasonal wetlands, ephemeral streams, alluvial floodplains, and riparian habitats, Swainson's hawk foraging credits, and covered habitats such as riparian forests, valley and foothill grasslands, mixed chaparral communities, and great basin scrub. Nearly all 4,100 acres of the Bank Property is credited for Swainson's hawk foraging habitat, and actively foraging Swainson's hawks have been observed onsite.

8-B

The Bank is located within important wildlife migratory corridors, and while it has already been credited for the resources listed above, it is also suitable habitat for several other wildlife species that the Project could potentially impact including but not limited to loggerhead shrike, burrowing owl, and northern harrier.

8-C



The Bank supports the Project and renewable energy development and was established to provide mitigation options for projects like the Raceway 2.0 Solar Project. We present the following options to help provide compensatory mitigation that may be required for this Project:

Mitigation Measure (MM) 4.4-11 states *“Compensatory mitigation for impacts to unvegetated streambeds/washes shall be identified prior to disturbance of the features at a minimum 1:1 ratio, as approved by the RWQCB or CDFW either through onsite or offsite mitigation, or purchasing credits from an approved mitigation bank.”*

Both the joint USACE and EPA 2008 Mitigation Rule (33 C.F.R. 325 and 332, 40 C.F.R. 230) and the state wetland policy for California (California State Water Resource Control Board, 2019) specify a preference for purchasing credits from approved mitigation banks over other forms of compensatory mitigation. This preference was established because mitigation banks avoid temporal loss of function to impacted resources, must be managed and funded in perpetuity, are protected via permanent conservation easement, and are subject to a high degree of regulatory oversight relative to other options. Purchasing credits from a mitigation bank over other forms of compensatory mitigation ensures that impacts due to temporal loss are less than significant. The Project is located within the Petersen Ranch Mitigation Bank’s approved Porter-Cologne, Section 1602, CEQA, and Swainson’s hawk service areas. Additionally, mitigation credits from Petersen Ranch Mitigation bank would mitigate Project impacts within the same watershed, consistent with state and federal guidance.

MM 4.4-8 Swainson’s Hawk Monitoring and Mitigation Plan: MM 4.4-8 identifies several methods to avoid, minimize, and mitigate impacts to Swainson’s hawks in and near the Project site. For unavoidable impacts to Swainson’s hawk foraging habitat, we recommend adding this language to the MM:

The purchase of credits from a CDFW approved mitigation bank within the Antelope Valley to mitigate for unavoidable impacts to Swainson’s hawk foraging habitat guarantees that (i) the impacted population of Swainson’s hawk is protected; (ii) the mitigation is permanently conserved with a restrictive easement; and (iii) an endowment is fully funded to provide land management and protection in perpetuity.

We thank you for the opportunity to provide comments on this project and hope you consider the Petersen Ranch Mitigation Bank as a future partner, as we can supply compensatory mitigation that achieves compliance while providing superior environmental outcomes. For more information on Petersen Ranch Mitigation Bank, please see the attached brochure (Appendix A)

Sincerely,

H. Tracey Brownfield
President, Land Veritas Corp.

tracey@landveritas.com

P: 415.729.3733

8-C
(con.)



References

- California State Water Resources Control Board. 2019. State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State. Online:
https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/procedures_conformet.pdf
- Department of the Army, Corps of Engineers. 2008. Compensatory Mitigation for Losses of Aquatic Resources; Final Rule. Department of Defense 33 C.F.R. 325 and 332. Online:
https://www.sac.usace.army.mil/Portals/43/docs/regulatory/Final_Mitigation_Rule.pdf
- Environmental Protection Agency. 2008. Compensatory Mitigation for Losses of Aquatic Resources; Final Rule. EPA 40 C.F.R. 230. Online:
https://www.sac.usace.army.mil/Portals/43/docs/regulatory/Final_Mitigation_Rule.pdf



Appendix A

PETERSEN RANCH MITIGATION BANK



Bank Sponsor:
Land Veritas Corp
Contact: Tracey Brownfield
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Permitting & Marketing Consultant:
WRA, Inc.
Contact: Nate Bello
bello@wra-ca.com

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PETERSEN RANCH MITIGATION BANK

Summary

Land Veritas (LV), a Women-Owned Business Entity, is the sponsor of The Petersen Ranch Mitigation Bank (Bank). The Bank was approved and received its first credit release in June 2016. The United States Army Corps of Engineers (Corps), Environmental Protection Agency (USEPA), Lahontan Regional Water Quality Control Board (Lahontan RWQCB) and California Department of Fish and Wildlife (CDFW) are signatory participants in the Interagency Review Team (IRT) that reviewed and approved the Bank over a 5+ year entitlement process.

Located in unincorporated Leona Valley, Los Angeles County, California, the Bank contains approximately 4,103 acres and consists of two properties: The Petersen Ranch Bank Property (approximately 3,789 acres) and the Elizabeth Lake Bank Property (approximately 314 acres), as shown in Exhibit A.

Implementing the Bank's Development Plan established/re-established, rehabilitated, enhanced, and/or preserved of hundreds of acres of aquatic features, including streams, wetlands, alluvial floodplains, and non-wetland riparian areas. These actions generated credits that can be used to mitigate for impacts authorized through Section 404 of the Clean Water Act (404 Credits), the Porter-Cologne Water Quality Control Act (PC Credits), Section 1600 of the California Fish and Game Code (1600 Credits), the California Environmental Quality Act (CEQA Credits) and the California Endangered Species Act (CESA Credits). The Bank Property contains habitat for Swainson's hawk (state threatened species) as well as other special-status species including, but not limited to, western pond turtle, tricolored blackbird and coast horned lizard, as well as several sensitive vegetation communities.

The Bank Properties are being established in multiple phases across six geographic areas (Areas A – F). Restoration of Area A of the Petersen Ranch Property and Area E of the Elizabeth Lake Property were completed in 2016. Phase 1 included Area A on the Petersen Ranch Property and Area E of the Elizabeth Lake Property. Subsequent phases will be constructed and incorporated into the Bank over time. The Bank Properties will be managed in perpetuity with funding provided by a non-wasting endowment. The Southwest Resource Management Association is a CDFW-approved non-profit land trust and holds both the conservation easement and endowment.



REGULATIONS COVERED

The Bank has five credits categories that can mitigate for impacts associated with the following regulations:

404 Credits:

- Section 10 of the Rivers and Harbors Act,
- Section 404 of the Clean Water Act,
- Section 401 of the Clean Water Act,

Porter Cologne Credits:

- the Porter Cologne Water Quality Control Act,

1600 Credits:

- Section 1600 et seq. of the California Fish and Game Code,

Swainson's Hawk Credits:

- the California Endangered Species Act,

CEQA Credits:

- the California Environmental Quality Act

Though not a signatory to the Bank, the Los Angeles Regional Water Quality Control Board has authorized permittees to purchase credits from the Bank to satisfy 401 certification requirements.

SERVICE AREA

Attached are service areas for each category of credits that are available. Service areas are the areas in which Mitigation and Conservation Banks can sell credits; however, impacts outside of the service areas can use Bank credits on a case-by-case basis upon regulatory approval.

The Elizabeth Lake property is an inholding within the Angeles National Forest and therefore suitable for mitigation on federal lands (see attached maps). While the Elizabeth Lake property is located within the Santa Clara River watershed, the Petersen Ranch property is located at the headwaters of two major watersheds, as the divide between the Santa Clara River and Antelope Valley-Fremont Valley watersheds bisects the Ranch. This results in a large service area in which the Bank's credits can be sold.



PRICING

Each of the Bank's credit categories overlap to form a bundled credit that can be used to mitigate for resources under multiple jurisdictions simultaneously. As a result, each credit is assigned a "Price Tier" based on the highest valued component within the bundle. For example; a Chaparral CEQA credit that overlaps with a 404 credit is assigned a higher Price Tier than a Chaparral CEQA credit that cannot be used for 404 mitigation. There are twelve different credit price tiers, ranging from the highest for 404 re-establishment credits to the lowest for Swainson's hawk credits. Credit prices vary across a wide range, and can be provided through a direct consultation with the Bank Sponsor.

404 CREDITS AND PORTER COLOGNE CREDITS

404 Credits and PC Credits can mitigate for impacts associated with waters and wetlands of the United States and waters and wetlands of the State. All 404 Credits are either classified as re-establishment or preservation, including riparian and upland buffer preservation credits. These credits cover numerous habitats including:

- **Alluvial Floodplains:** Diverse alluvial fan habitats containing complexes of braided ephemeral streams and riparian habitats.
- **Ephemeral Streams:** Single thread seasonal streams and associated riparian habitats.
- **Freshwater Marsh:** Seasonal to Perennial wetlands containing cattails and rushes and supporting special status species including western pond turtle and tri-colored blackbird.
- **Open Water:** Mostly perennial deeply ponded areas providing important food and water sources for wildlife and supporting aquatic habitat for western pond turtle and amphibians.
- **Seasonal Wetland:** Seasonally flooded depressions and large meadow complexes dominated with wetland grasses, rushes and sedges.
- **Wetland Riparian:** Wetland habitats with understory similar to seasonal wetlands and a diverse shrub and tree canopy of mulefat, willows, elderberry, cottonwoods and other riparian species.

1600 CREDITS

1600 credits can be used to offset impacts to CDFW regulated resources authorized under a Lake and Streambed Alteration Agreement. These credits include the following habitats which are the same as those described under the 404 Credits and PC Credits, except where noted:

- Alluvial Floodplain
- Ephemeral Stream
- Freshwater Marsh
- Open Water
- Seasonal Wetland
- Wetland Riparian



- **Non-wetland Riparian:** A diverse mixture of riparian habitats ranging from xeric desert riparian scrub to upland Fremont cottonwood forests.

For each of the above habitats the Bank has the following 1600 credit types:

- **Re-established:** Restoration of an upland habitat into an aquatic habitat in a location that was historically aquatic but had been converted to uplands through past human disturbance. This credit type comes from restoration activities that increase the amount of aquatic habitats within the Bank.
- **Rehabilitated:** Restoration of an existing, but degraded, aquatic habitat into a high quality habitat. This credit type comes from multiple restoration activities that work together to repair a previously impacted habitat to its natural condition.
- **Enhanced:** Improvement of an existing aquatic habitat through vegetation management or planting.
- **Preserved:** Protection of a high quality existing habitat.

SWAINSON'S HAWK CREDITS

Nearly the entire Bank generates foraging credits for Swainson's hawk. Potential nesting habitat has also been identified within the Bank, but nesting Swainson's hawks have not been observed.

CEQA CREDITS

CEQA credits can be used to offset impacts to natural vegetation communities. These credits cover multiple habitat types including the following:

- Bare Ground
- Chaparral
- Cismontane woodland, pinyon-juniper woodland
- Great Basin scrub
- Non-native woodland
- Open water
- Riparian forest
- Riparian scrub
- Seeps, meadows, marshes
- Valley and foothill grassland

Attachment 1: Figures

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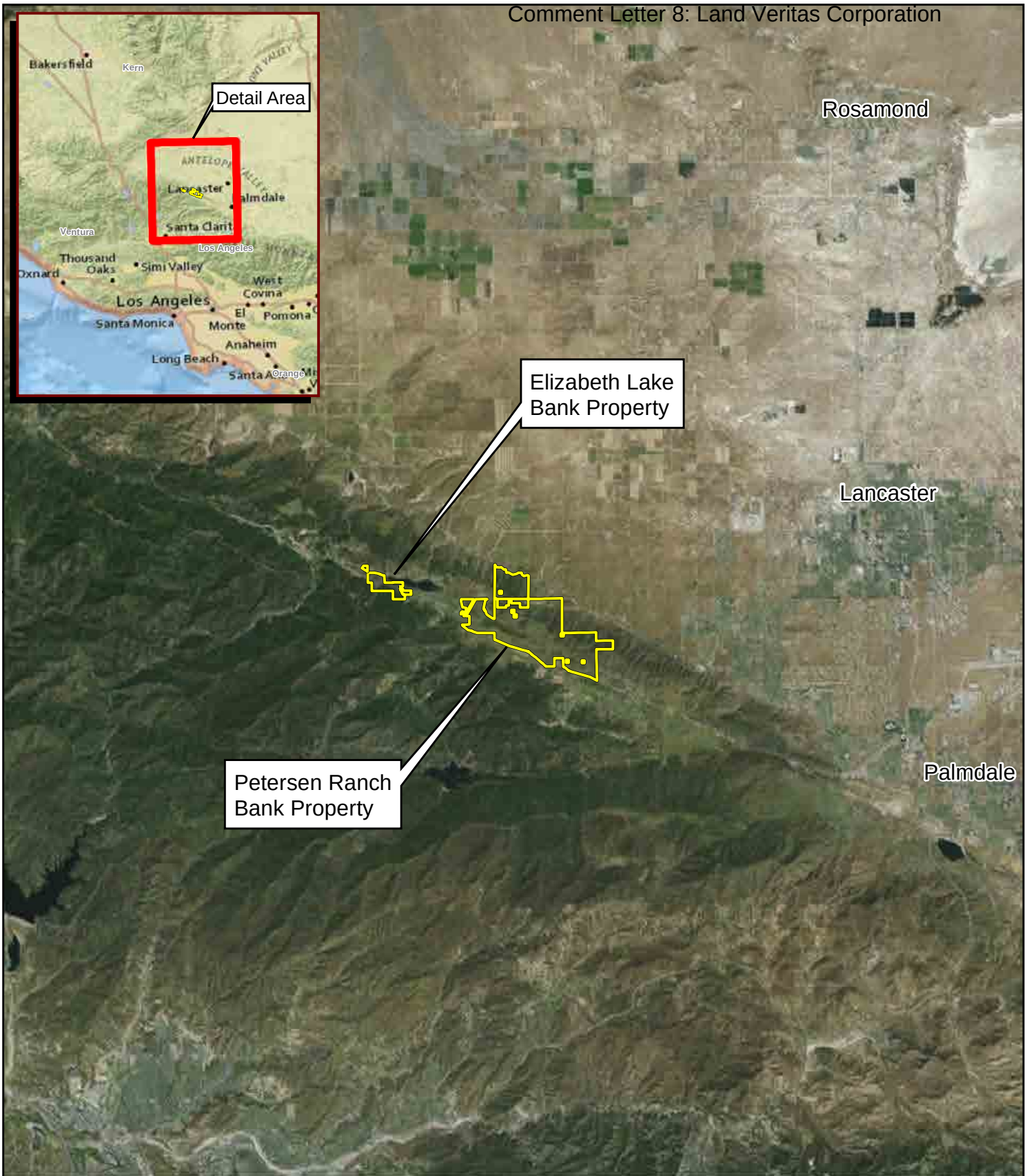
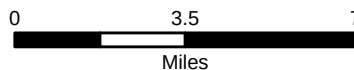


Figure 1: Location Map

Petersen Ranch Mitigation Bank
Los Angeles County, California



Map Date: June 2015
Map By: Chris Zumwalt
Base Source: ESRI Microsoft 5/8/2010

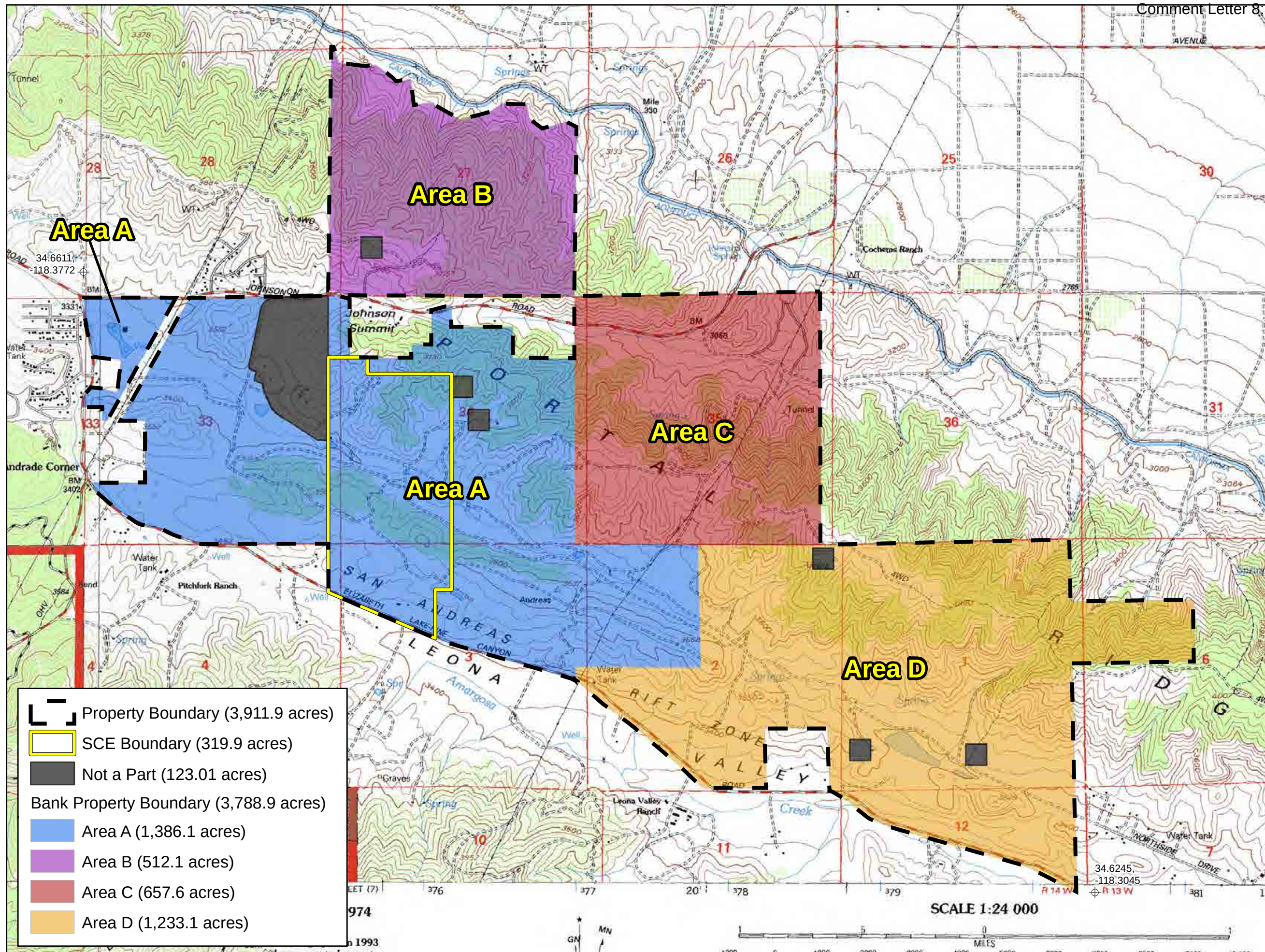


Petersen Ranch
Mitigation Bank

Los Angeles County,
California

Figure 2

Petersen Ranch
Bank Property Map

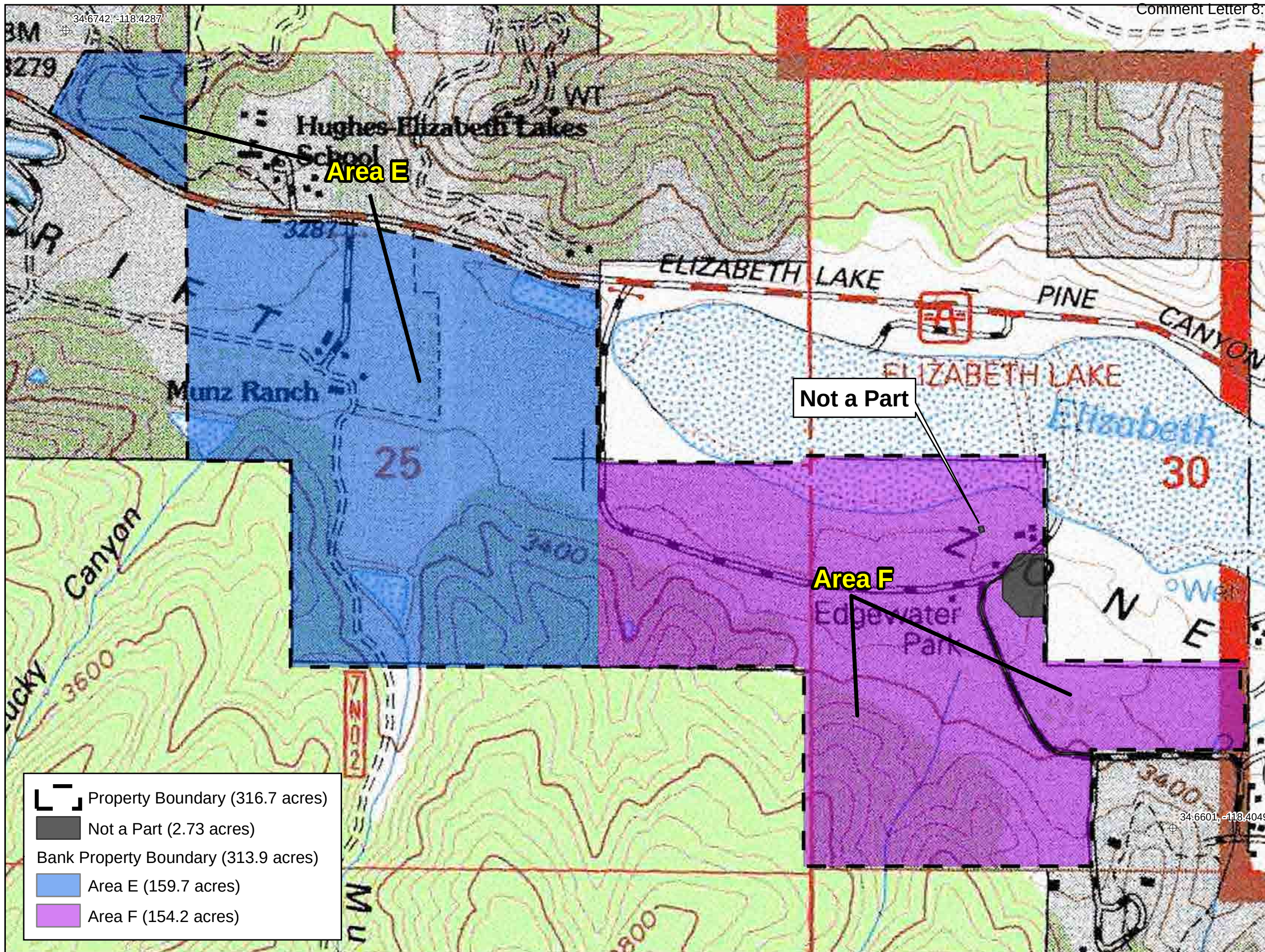


Petersen Ranch
Mitigation Bank

Los Angeles County,
California

Figure 3

Elizabeth Lake
Bank Property Map



-  Property Boundary (316.7 acres)
-  Not a Part (2.73 acres)
-  Bank Property Boundary (313.9 acres)
-  Area E (159.7 acres)
-  Area F (154.2 acres)



0 600 1,200
Feet

Map Date: June 2015
Map By: Chris Zumwalt
Base Source: USGS 7.5 min. quad

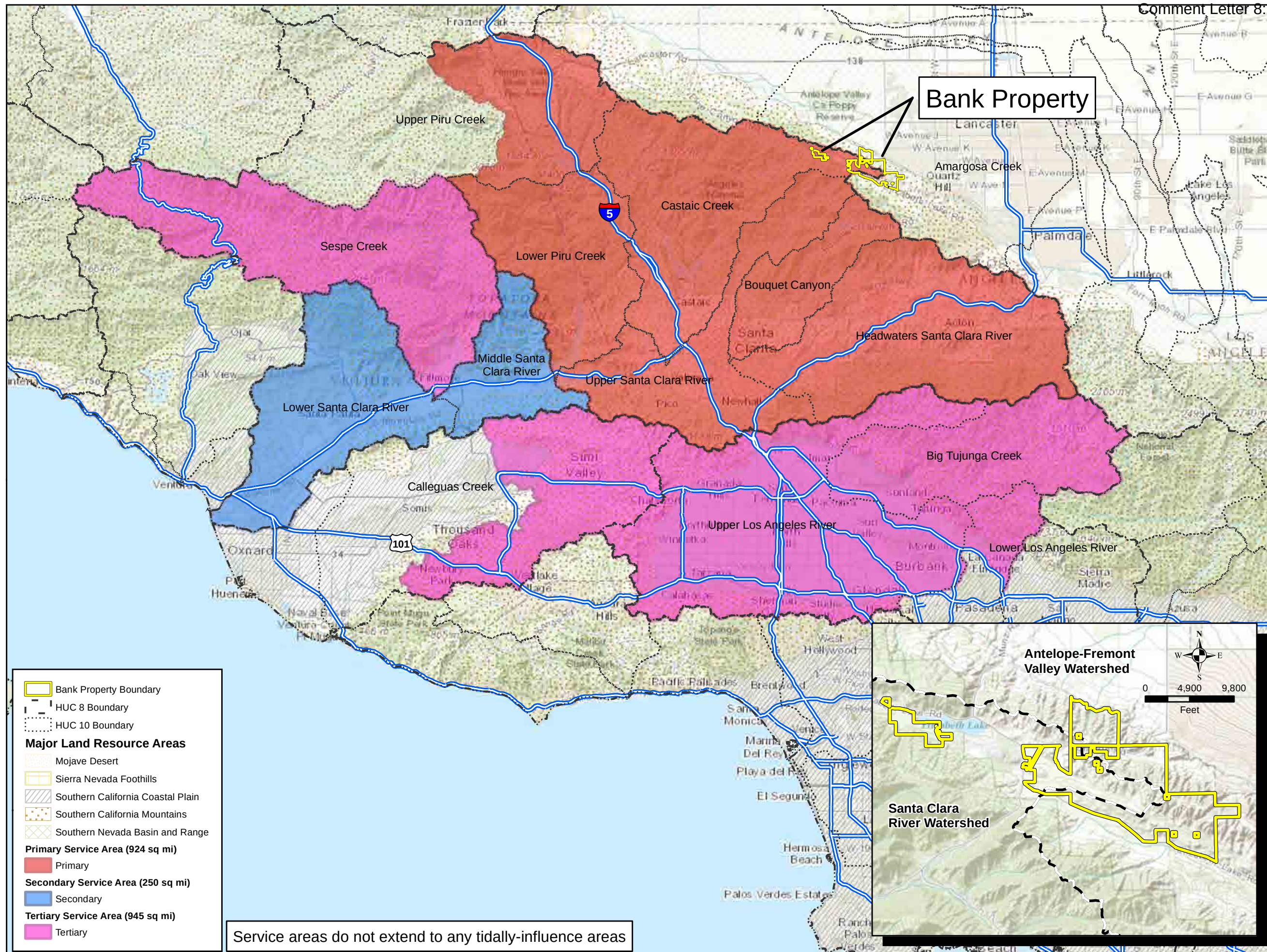


Petersen Ranch
Mitigation Bank

Los Angeles County,
California

Figure 4

Section 404
Service Area



- Bank Property Boundary
- HUC 8 Boundary
- HUC 10 Boundary
- Major Land Resource Areas**
 - Mojave Desert
 - Sierra Nevada Foothills
 - Southern California Coastal Plain
 - Southern California Mountains
 - Southern Nevada Basin and Range
- Primary Service Area (924 sq mi)**
 - Primary
- Secondary Service Area (250 sq mi)**
 - Secondary
- Tertiary Service Area (945 sq mi)**
 - Tertiary

Service areas do not extend to any tidally-influence areas

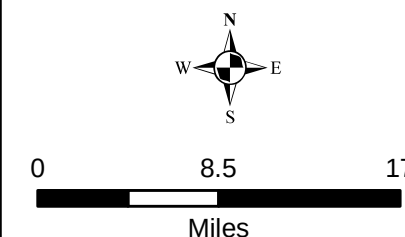
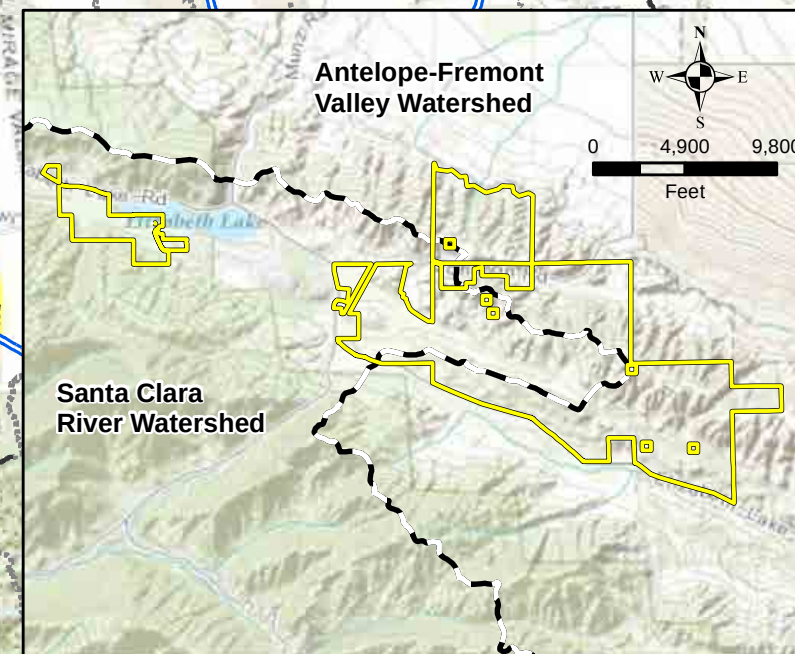
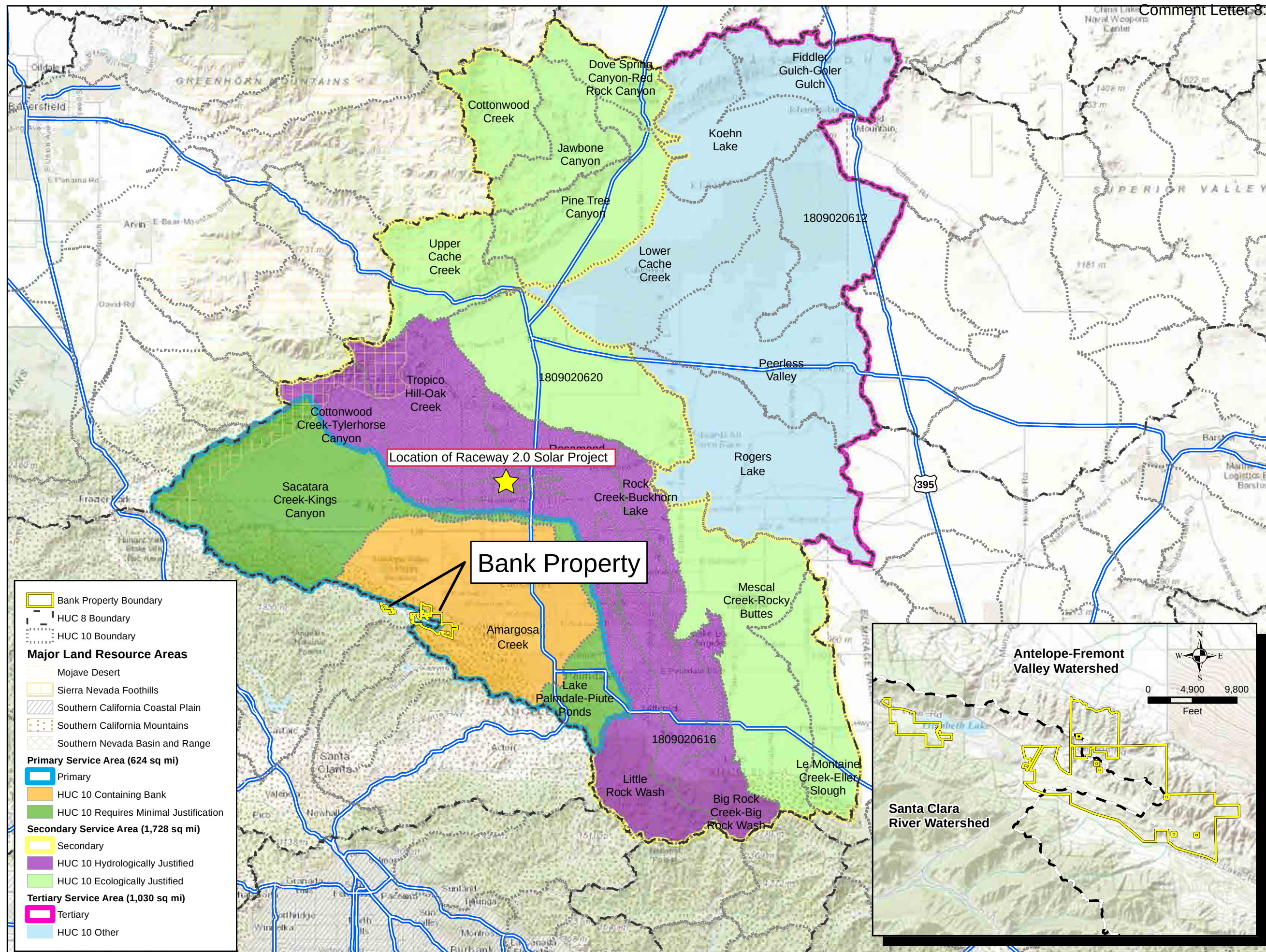


Petersen Ranch
Mitigation Bank

Los Angeles County,
California

Figure 5

Lahontan RWQCB
Service Area



Map Date: June 2015
Map By: Peter Kobylarz
Data Source: WRA, Inc.
Base Source: ESRI Streaming World Topo

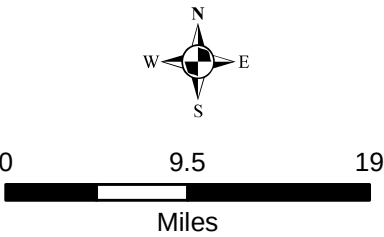
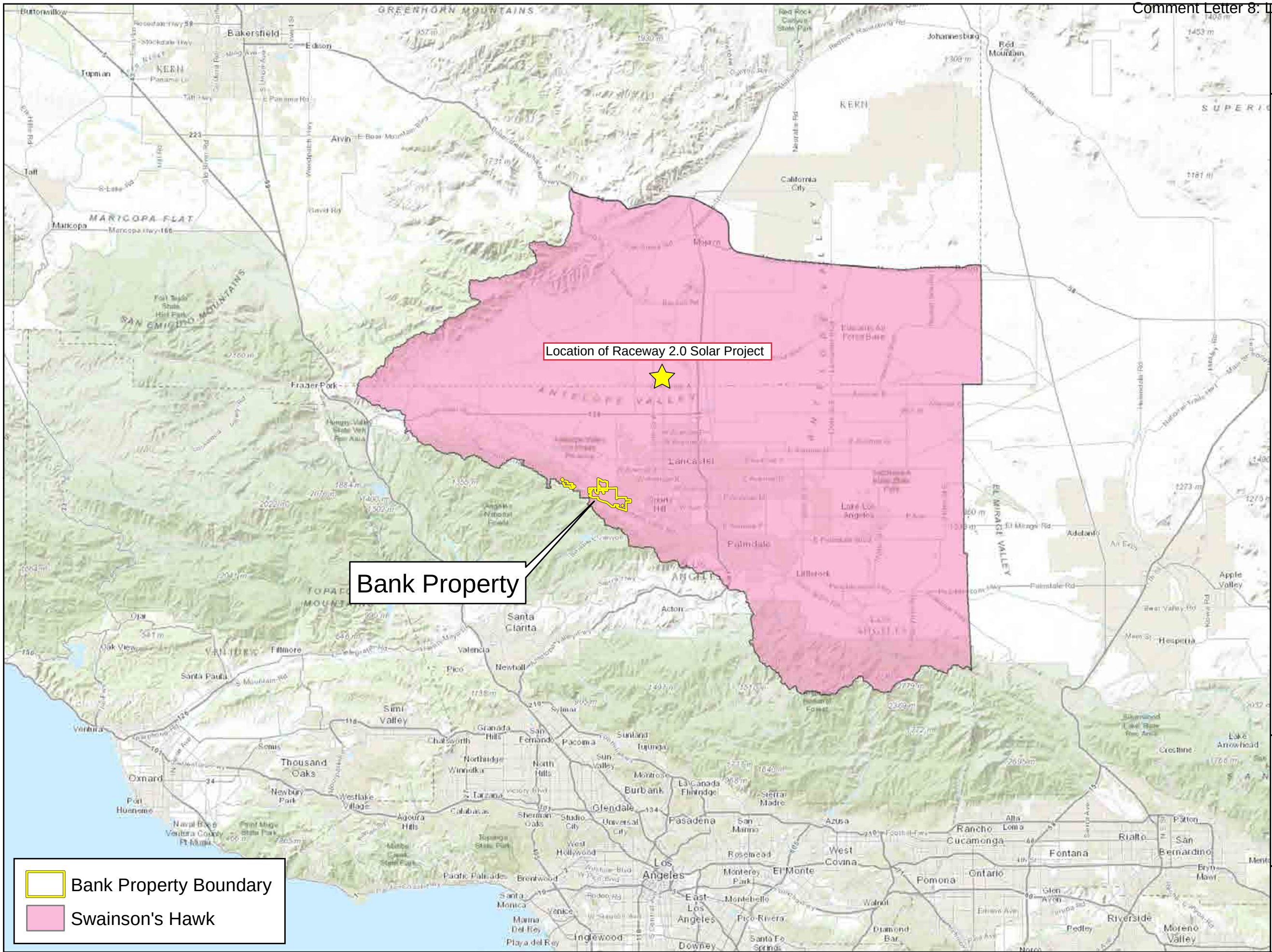


Petersen Ranch
Mitigation Bank

Los Angeles County,
California

Figure 6

Swainson's Hawk
Service Area



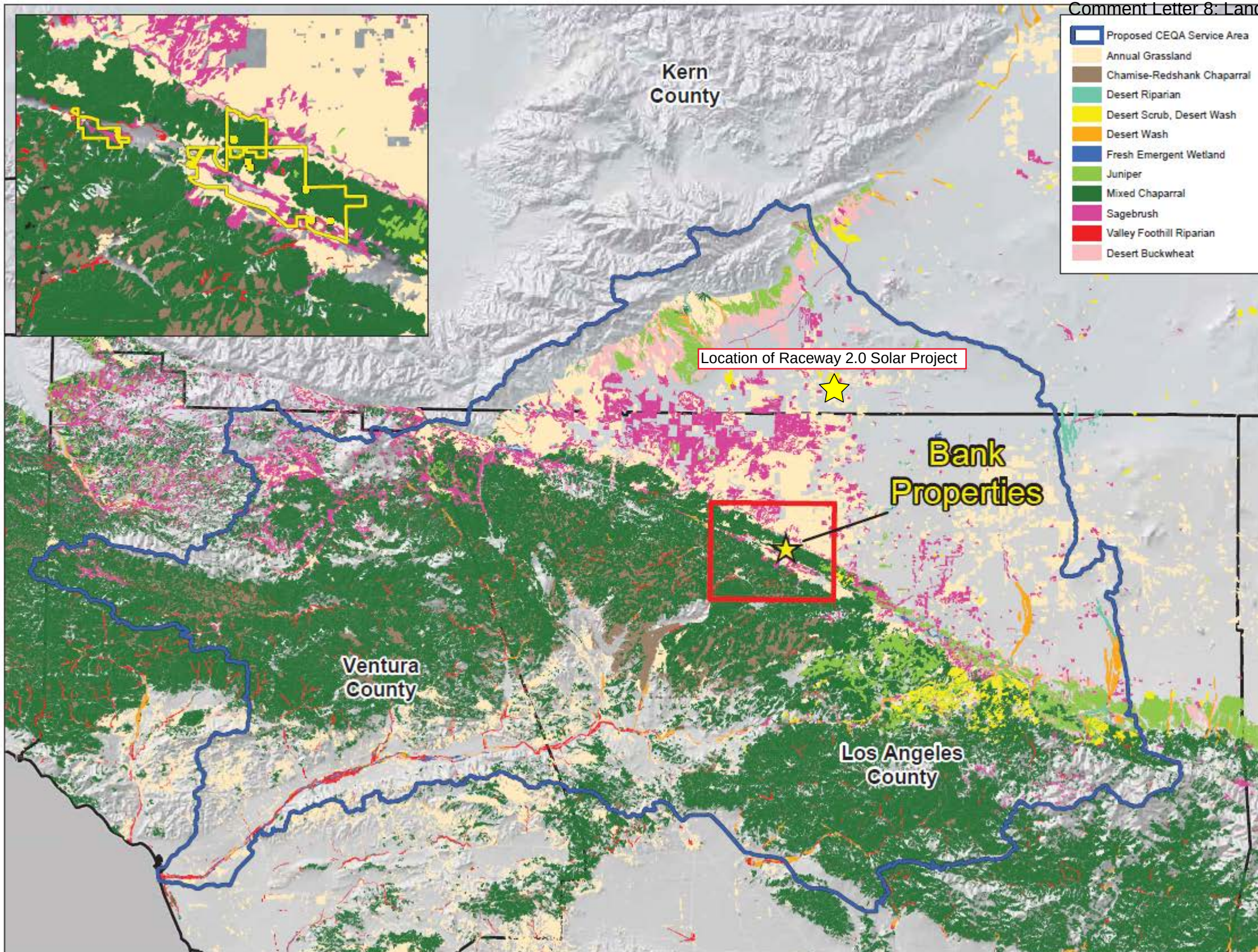
Map Date: June 2015
Map By: Peter Kobylarz
Data Source: WRA, Inc.
Base Source: ESRI World Topo map



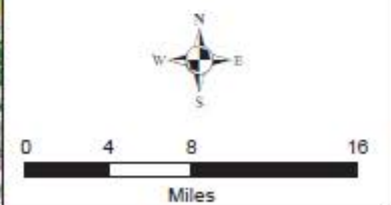
Petersen Ranch
Mitigation Bank

Los Angeles County,
California

Figure 7
CEQA Service
Area



- Proposed CEQA Service Area
- Annual Grassland
- Chamise-Redshank Chaparral
- Desert Riparian
- Desert Scrub, Desert Wash
- Desert Wash
- Fresh Emergent Wetland
- Juniper
- Mixed Chaparral
- Sagebrush
- Valley Foothill Riparian
- Desert Buckwheat



Map Date: June 2015
Map By: Chris Zumwalt
Data Source: WRA, Inc.
Base Source: USGS DEM



Petersen Ranch
Mitigation Bank

Los Angeles County,
California

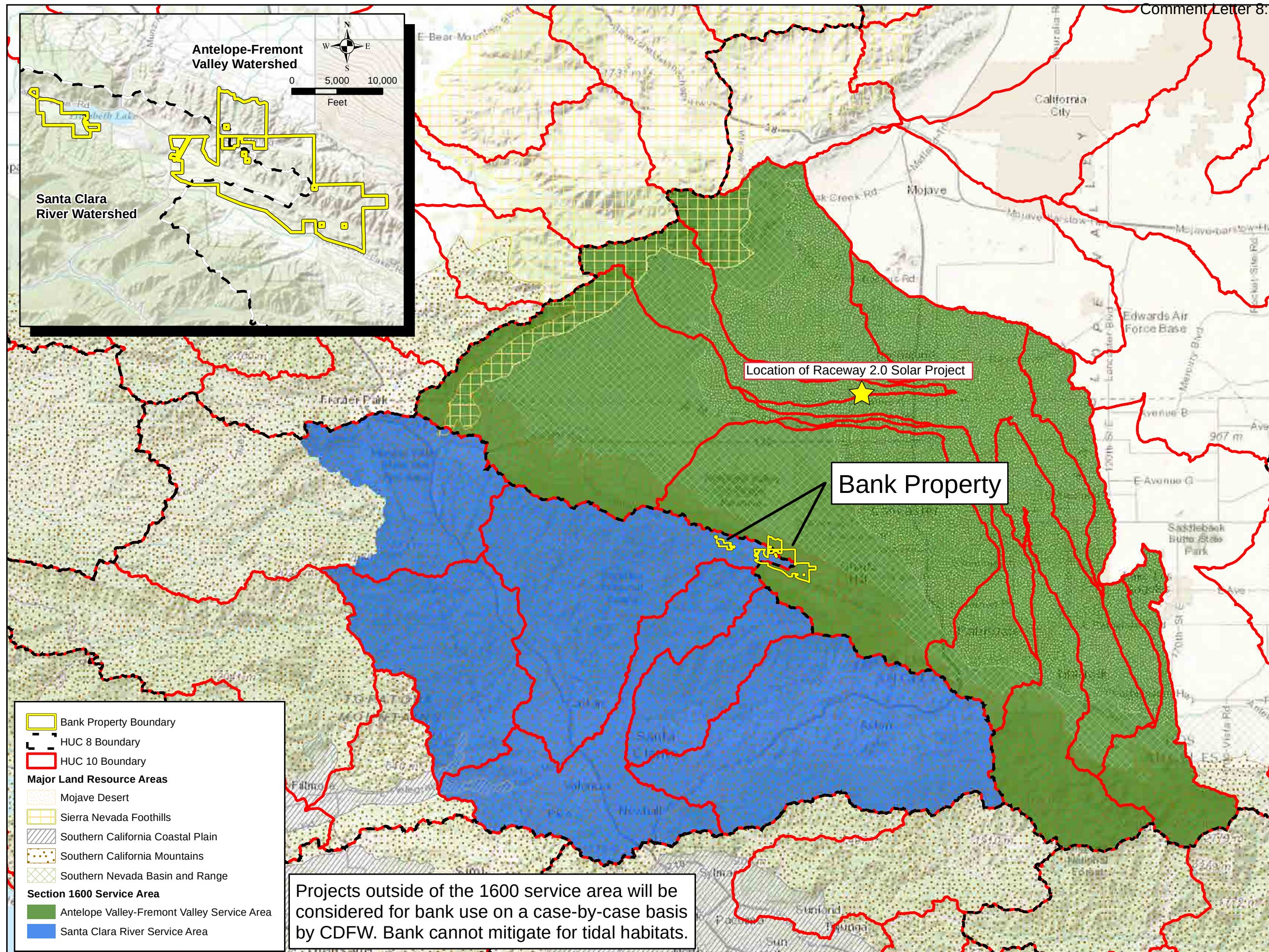
Figure 8

Section 1600
Service Area



0 6 12
Miles

Map Date: June 2015
Map By: Chris Zumwalt
Data Source: WRA, Inc.
Base Source: ESRI Streaming World Topo



Response to Comment Letter 8: Land Veritas Corporation (May 7, 2021)

- 8-A:** The commenter identifies itself as the Bank Sponsor of the Petersen Ranch Mitigation Bank, which has a service area that covers the Antelope Valley where the Project is located. No changes to the Draft EIR are required per this comment. The comment has been noted for the record.
- 8-B:** The commenter identifies itself as an entity which could sell credits to offset impacts regulated by Sections 401 and 404 of the Clean Water Act, Section 1602 of the California Fish and Game Code, the Porter Cologne Water Quality Act, the California Endangered Species Act and the California Environmental Quality Act. Credits include aquatic resources and Swainson's hawk foraging credits. Nearly all 4,100 acres of the Bank Property is credited for Swainson's hawk foraging habitat and the species has been observed onsite. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 8-C:** The commenter states the property is also suitable habitat for other species the project could potentially be impacted such as loggerhead shrike, burrowing owl, and northern harrier. The commenter would provide compensatory mitigation to cover Mitigation Measure MM 4.4-8, Swainson's Hawk Monitoring and Mitigation Plan, and Mitigation Measure MM 4.4-11, "Compensatory mitigation for impacts to unvegetated streambeds/washes shall be identified prior to disturbance of the features at a minimum 1:1 ratio, as approved by the RWQCB or CDFW either through onsite or offsite mitigation, or purchasing credits from an approved mitigation bank.". The commenter thanks the County for the opportunity and hopes to be considered as a future partner. This comment does not raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

