LAS CAMAS SOLAR PROJECT

FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT

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State Clearinghouse # 2021080196

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Acronyms and Abbreviations

AAQA	ambient air quality analysis
AMMs	avoidance and minimization measures
BMPs	best management practices
BNLL	blunt-nosed leopard lizard
California MUTCD	California Manual on Uniform Traffic Control Devices
CalRecycle	California Department of Resources Recycling and Recovery
Caltrans	California Department of Transportation
CARB	California Air Resources Board
CBIA	California Building Industry Association
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
CNDDB	California Natural Diversity Database
Community Plan EIR	Villages of Laguna San Luis Community Plan
County	County of Merced
CTS	California tiger salamander
CUP	Conditional Use Permit
DPM	diesel particulate matter
Final SEIR	Final Subsequent Environmental Impact Report
g/s	gram per second
GEA	Grassland Ecological Area
General Plan	Merced County General Plan
HCP	habitat conservation plan
HRA	health risk analysis
ITP	Incidental Take Permit
MFDU	multiple-family dwelling unit
MTBE	methyl tertiary-butyl ether
MWELO	Model Water Efficient Landscape Ordinance
NERC	North American Energy Reliability Corporation
NOP	Notice of Preparation
PG&E	Pacific Gas and Electric
PV	photovoltaic
RWA	Regional Waste Authority
SB	Senate Bill
SFDU	single-family dwelling unit
SJKF	San Joaquin kit fox
SLWD	San Luis Water District

SO_X	sulfur oxides
SR	State Route
SWHA	Swainson's hawk
TACs	toxic air contaminants
USA	United States of America
USGS	U.S. Geological Survey
USSE	utility-scale solar energy
VMT	vehicle miles traveled
WECC	Western Electricity Coordinating Council
WMA	water management agreement
WMP	wildfire mitigation plan
WSA	water supply assessment

Chapter 1
Introduction

This is the Final Subsequent Environmental Impact Report (Final SEIR) for the Las Camas Solar Project. The applicant has filed applications for a Conditional Use Permit (CUP) (CUP Application No. 20-011), Merced County General Plan (General Plan) amendment (General Plan Amendment Application No. 20-001), and zone change (Zone Change Application No. ZC 21-002) with the County of Merced (County) to allow for the construction, operation, and maintenance of the proposed solar project, which entails the long-term generation of clean renewable energy from solar power.

The proposed project includes two off-site components: 1) establishment of an off-site mitigation site of at least 1,498 acres as part of the solar project's habitat mitigation proposal and 2) a General Plan amendment to redesignate roughly 202.8 acres immediately south of the solar project site from low-density residential to high-density/medium-density residential (off-site General Plan Amendment/Community Plan Amendment).

Purpose and Format of Final SEIR

The purpose of the Final SEIR is to provide County decision-makers and the public with information about the proposed project and its significant environmental impacts. The SEIR identifies alternatives to the project that would result in lesser impacts. It also includes substantial mitigation measures that would reduce, but not completely avoid, the significant impacts identified in the Final SEIR.

Technically, the Final SEIR consists of two parts: this document and the Draft SEIR that was circulated for public review. For simplicity, this document is referred to as the Final SEIR. It contains three chapters: Chapter 1, *Introduction*; Chapter 2, *Comments and Responses to Comments*; and Chapter 3, *Draft SEIR Errata*. Both this Final SEIR and the Draft SEIR will be considered by the County Planning Commission during its deliberations on the project.

Opportunities for Public Involvement

The County distributed a notice of preparation (NOP) beginning on August 13, 2021, advising public agencies that an EIR would be prepared for this project. The NOP was distributed for a 30-day comment period that ended September 13, 2021. The comments on the NOP were considered in preparation of this SEIR. In addition, as required by the California Environmental Quality Act (CEQA), the County held a public scoping meeting on August 25, 2021, at which members of the public and public agency representatives were given the opportunity to review preliminary project plans and offer their comments.

Contents and Organization of the Final SEIR

The Final SEIR is organized in three chapters.

- Chapter 1, *Introduction*, describes the intent of the Final SEIR, summarizes the opportunities for public involvement to date, and outlines the contents of the Final SEIR.
- Chapter 2, *Comments and Responses to Comments*, provides the written comments of all agencies, organizations, and individuals who commented on the Draft SEIR. Each comment letter is presented with brackets that divide it into individual comments. Each letter is identified according to the type of commenter (agency, organization, or individual) and assigned a letter number and comment number. For example, comments in the first letter are numbered 1-1, 1-2, 1-3, and so on.
- Chapter 3, *Draft SEIR Errata*, contains changes made to the text of the Draft SEIR in response to comments received during the public review period or for purposes of clarification or correction. Changes to the Draft SEIR text are shown with ~~strikethrough~~ for text that has been deleted and underlining for new text that has been inserted. The revisions contain clarifications and corrections that have been identified, either through public comments or by the County, since publication of the Draft SEIR. The text revisions do not result in substantive changes to either the analyses or conclusions presented in the Draft SEIR.

  In order to assist the reader, Chapter 3 identifies the location in the Draft SEIR where each revision is being made, including the paragraph or paragraphs to which the revisions are being made to provide context of the revisions, as necessary.
- Chapter 4, *References,* provides a list of the new references cited in the Final SEIR.
- Appendices, including revised Draft SEIR appendices and new appendices, as described in Chapter 3.

CEQA Process

The Draft SEIR was made available for public review and comment for a period of 45 days, beginning May 3, 2024, and ending June 17, 2024. Before the County can take action to approve the project or one of the alternatives to the project, CEQA requires the County to certify the adequacy of the Final SEIR. The Planning Commission hearing on CUP Application No. 20-011, General Plan Amendment Application No. 20-001, and Zone Change Application No. ZC 21-002 will include the Planning Commission's consideration of the Final SEIR.

The public can submit comments on the Final SEIR prior to or during the Planning Commission hearing. Those comments will not be responded to in writing. However, they will be considered by the Planning Commission prior to making its decision on the proposed project.

If the project or an alternative to the project is approved, the County will adopt findings of fact, describing how it will address the significant environmental impacts that will result from the project or alternative; a statement of overriding considerations, describing the economic, legal, social, technological, or other benefits that the project or alternative will provide; and a mitigation monitoring or reporting program, ensuring that the mitigation measures identified in the Final SEIR will be implemented.

Chapter 2
Comments and Responses

Introduction and Organization of This Chapter

This chapter contains the comments on the Draft SEIR received by the County during the Draft SEIR review period and responses to those comments. A single letter or e-mail may contain several individual comments. Each comment has been given a number; the written responses identify which comment or comments the response addresses.

The County received 10 comment letters on the Draft SEIR. Commenters included state and local agencies, one organization, and two individuals. No comments were received from federal agencies. The comment letters received on the Draft SEIR are listed in Table 2-1.

Table 2-1. Agencies, Organizations, and Persons Commenting on the Draft SEIR

Letter Number	Commenter	Date
State and Local Agencies		
1	Julie A. Vance, Regional Manager, California Department of Fish and Wildlife	June 17, 2024
2	Tom Dumas, California Department of Transportation	May 30, 2024
3	Ricardo Ortega, General Manager, Grassland Water District	June 17, 2024
4	Stacie Guzman, Merced County Regional Waste Authority	June 17, 2024
5	Ryan Grossman, San Joaquin Valley Air Pollution Control District	June 12, 2024
6	Steven Sadler, San Luis Water District	June 14, 2024
10[a]	Stacie Guzman, Merced County Regional Waste Authority	July 12, 2024
Organizations		
7	Brendan Wilce, California Native Plant Society (CNPS) Sophia Markowska, Defenders of Wildlife	June 17, 2024
Individuals		
8	Larry Freeman	May 10, 2024
9	Gerald Bartholomew	June 11, 2024

[a] *This comment letter was received after the close of the Draft SEIR public review period on June 17, 2024. Notwithstanding, the County of Merced, in its discretion, has provided responses to the comment letter in this chapter.*

Where revisions to the Draft SEIR are appropriate to respond to comments, such changes are referenced in the response and shown in full in Chapter 3, *Draft SEIR Errata*. In other cases, where not otherwise specified, the information provided in the responses is deemed adequate in itself, and modification of the Draft SEIR text is not necessary. The proposed revisions in Chapter 3, *Draft SEIR Errata,* clarify or amplify information in the Draft SEIR; they do not warrant recirculation of the Draft SEIR pursuant to CEQA Guidelines Section 15088.5.

Written Comments and Responses

Responses to Comments from State and Local Agencies

Letter 1. Julie A. Vance, Regional Manager, California Department of Fish and Wildlife, dated June 17, 2024

DocuSign Envelope ID: 7FCDCE96-8B1B-4B43-BF20-E66F4AB39DF1

State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, CA 93710
(559) 243-4593
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

June 17, 2024

Tiffany Ho, Deputy Director of Planning
County of Merced, Department of Community and Economic Development
2222 M Street
Merced, California 95340
(209) 385-7654
Tiffany.Ho@countyofmerced.com

Subject: **Las Camas Solar Project (Project)**
Draft Subsequent Environmental Impact Report (DSEIR)
State Clearinghouse No. 2021080196

Dear Tiffany Ho:

The California Department of Fish and Wildlife (CDFW) received a DSEIR from Merced County, as Lead Agency, for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

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.

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.). 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 &

[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.

G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

As a responsible agency, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research,
- Efforts to recover a fully protected, endangered, or threatened species, live capture, and relocation of a bird species for the protection of livestock, or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515)

Additionally, specified types of infrastructure projects may be eligible for an Incidental Take Permit (ITP) for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the project planning process if an ITP may be pursued for the Project.

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).

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for the Project.

PROJECT DESCRIPTION SUMMARY

Proponent: EDP Renewables North America LLC

Objective: The proposed Project proposes to construct and operate a 200-megawatt (MW) alternating current (AC) ground-mounted solar photovoltaic (PV) power plant. The proposed Project also includes improvements to the Pacific Gas and Electric Company (PG&E) Los Banos Substation, and construction of access roads, solar PV panels, single-axis trackers, direct current (DC) to AC power collection wires and electrical inverters, lithium-ion batteries in either a DC-coupled battery energy storage system (BESS) or an AC coupled BESS system (referred to as the DC Option and the AC Option, respectively), battery enclosures, a 230-kilovolt gen-tie line, and a supervisory control and data acquisition (SCADA) system.

Location: The 1,741-acre Project site is located in western Merced County, approximately three miles southeast of the unincorporated community of Santa Nella, six miles west of the city of Los Banos, and approximately 30 miles southwest of the city of Merced, at the southwest corner of the intersection of State Route (SR) 33 and 152 and Interstate 5. The Project site can be accessed via Billy Wright Road off SR 33 and 152. The PG&E substation is located approximately 0.2 mile west of the Project site.

Timeframe: The proposed Project is anticipated to be operational in 2025 and expected to operate for 35 years.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Merced County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, indirect, and cumulative impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document.

PG&E Substation Improvements

1 The DSEIR included an evaluation for the PG&E substation improvements, which would occur on approximately 10 acres of PG&E property adjacent to the Project site and concluded that potential impacts to biological resources would be less than significant with the implementation of PG&E's Best Management Practices (BMPs). As the PG&E improvements are considered part of the overall Project, they are dependent on construction of the Project facilities, and are considered to be a connected action (i.e. the PG&E substation improvements are not considered a separate and complete project). While CDFW recognizes that this DSEIR evaluated the potential impacts associated with PG&E substation improvements, CDFW is concerned that PG&E's proposed BMPs are not adequate to reduce impacts to less than significant and avoid unauthorized take for special-status species. In particular, CDFW does not concur that PG&E's BMPs are adequate to reduce impacts to less than significant and avoid unauthorized take for the State threatened and federally endangered San Joaquin kit

1 cont.

fox (*Vulpes macrotis mutica*); the State threatened Swainson's hawk (*Buteo swainsoni*); the State fully protected and endangered and federally endangered blunt-nosed leopard lizard (*Gambelia sila*); the State and federally threatened California tiger salamander (*Ambystoma californiense*); the State candidate for listing Crotch's bumble bee (*Bombus crotchii*), and the State species of special concern burrowing owl (*Athene cunicularia*). As such, CDFW recommends that the mitigation measures outlined in the DSEIR, with the comments and recommendations provided below, be incorporated for the PG&E substation improvements.

Project (Including Project Facilities and PG&E Substation Improvements)

Currently, the DEIR acknowledges that the Project area is within the geographic range of several special-status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special-status animal species, including the State threatened and federally endangered San Joaquin kit fox; the State threatened Swainson's hawk; the State fully protected and endangered and federally endangered blunt-nosed leopard lizard; the State and federally threatened California tiger salamander; the State candidate for listing Crotch's bumble bee; and the State species of special concern burrowing owl.

San Joaquin Kit Fox

2

As discussed in CDFW's September 13, 2021 Notice of Preparation (NOP) comment letter for the Project (Attachment 1), and September 13, 2007 Draft Program Environmental Impact Report (DPEIR) for the Villages of Laguna San Luis Community Plan (Attachment 2), the area from around Los Banos Reservoir to the north of San Luis Reservoir, which incorporates the Project site, has been identified by CDFW and the United States Fish and Wildlife Service (USFWS) as a movement corridor critical to the continued existence and genetic diversity of the northern San Joaquin kit fox (SJKF) population – with the Santa Nella area being identified as a critical SJKF movement "pinch-point" within this area. The creation of the San Luis Reservoir and O'Neil Forebay resulted in a large barrier to the north-south movement of SJKF, and busy highways in the area such as SR 152 and 33 and Interstate 5, as well as the existing urban development further compounded this problem (HT Harvey and Associates 2004). As a result, any upland habitat in this area that could serve as movement or rest areas for SJKF has very high conservation value for this species.

CDFW would like to note that the DSEIR specifically states that the Project would pursue an ITP for SJKF, pursuant to Fish and Game Code section 2081(b). The DSEIR also includes an analysis of cumulative impacts to SJKF and proposes several measures to mitigate for impacts to the species and address CDFW's concerns

2 cont.

identified in Attachments 1 and 2. These mitigation measures include incorporating SJKF permeable fencing and maintaining several movement corridors through the Project site. Additionally, an approximately 1,498-acre mitigation site is proposed as part of a conservation strategy to mitigate impacts. The proposed mitigation site is situated close to the eastern and southern edges of the Los Banos Reservoir. The proposed mitigation site would be conserved with a perpetual conservation easement and the land managed to provide optimum habitat for SJKF.

While CDFW recognizes the Project has proposed measures to enhance SJKF connectivity and partially mitigate for impacts to SJKF, CDFW still has significant concerns related to permeability through the Project site, and whether the currently proposed mitigation site is sufficient to adequately mitigate for impacts and reach the "fully mitigated" standard necessary for issuance of an ITP under CESA. As such, CDFW would like to highlight that early consultation with CDFW is imperative to ultimately reach the "fully mitigated" standard and address CDFW's concerns identified in Attachments 1 and 2.

CDFW typically requires greater than 1:1 mitigation in ITPs to fully mitigate permanent impacts to SJKF, especially for permanent impacts to moderate to high quality SJKF habitat; and areas critical for connectivity often require enhanced mitigation amounts and the addition of specific elements. The DSEIR notes that an ITP is being pursued, and as such CDFW would assist with determining the appropriateness of the mitigation site during the consultation process to ensure impacts to SJKF are "fully mitigated". CDFW would also assist with identifying suitable movement corridors through the Project area, and ensure that these areas are protected in perpetuity via conservation easement, and managed for the purpose of providing ideal foraging, denning, and movement areas for SJKF.

Swainson's Hawk

3

Mitigation Measure BIO-1b proposes to mitigate for impacts to Swainson's hawk (SWHA), if an ITP is not obtained for the Project, by requiring preconstruction surveys, avoidance buffers, and consultation with CDFW. Additionally, the DSEIR notes that approximately 1,498 acres of mitigation land would be set aside that would provide suitable foraging habitat for SWHA. Mitigation Measure BIO-1b specifically states that, "If an active Swainson's hawk nest is discovered at any time within 0.5 mile of active construction, a qualified biologist shall complete an assessment of the potential for current construction activities to affect the nest. The assessment shall consider the type of construction activities (e.g., noise levels and duration), the location of construction relative to the nest and pre-existing disturbance levels (e.g., construction activities in historically agricultural land versus activities in non-agricultural land), the visibility of construction activities from the nest location (e.g., topography or vegetation that could block line of sight to the nest), the number of construction personnel required to perform

3 cont.

activities within the setback, and other existing disturbances in the area that are not related to construction activities of this project. Based on this assessment, the biologist shall determine if construction activities can proceed and the level of nest monitoring required. When conducting the assessment, the biologist shall consider the following levels of construction activity, with higher levels of activity requiring greater caution in determining setbacks:

- Light construction activity, such as fence installation and limited vehicle operation: Noise levels generated by these construction activities would very likely be similar to existing ambient noise levels closer to the occupied nests.
- Moderate and/or isolated construction activity, such as grading and construction/ installation of the substation, substation access road, inverter skids, and solar panels: Noise levels generated by these construction activities would very likely be similar to existing ambient noise levels beyond a moderate distance from the occupied nests.
- Heavy construction activity across a large area of the project site and/or the use of louder equipment, such as pile drivers, concrete saws, or jackhammers: Noise levels from these types of activities would depend on the location of the activities relative to the nest. Allowing these activities within the 0.5-mile setback would require coordination with CDFW.

If the assessment determines that construction activities could occur closer than 0.5 mile from an active nest, in no event shall construction activities occur within 500 feet of an active nest without conferring with CDFW. Full-time monitoring to evaluate the effects of construction activities on nesting Swainson's hawks shall be required. The qualified biologist shall have the authority to stop work if it is determined that project construction is disturbing nesting activities. Buffers may need to increase, depending on the sensitivity of the nesting Swainson's hawk to disturbances, at the discretion of the qualified biologist. No avoidance shall be needed if construction occurs near a known Swainson's hawk nest outside of the Swainson's hawk nesting season. In the event that take cannot be avoided, the proponent shall confer with CDFW on the need for an incidental take permit."

CDFW does not concur that this measure is sufficient to mitigate impacts to SWHA and avoid take. As such, in the event of an active SWHA nest is detected, and a 0.5 mile no-disturbance buffer is not feasible, 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. Additionally, as multiple active SWHA nests were documented within 0.5 mile of the Project during the biological

3 cont. studies conducted in support of the DSEIR, CDFW strongly recommends the Project proponent consult with CDFW to obtain an ITP.

Blunt-Nosed Leopard Lizard

The DSEIR notes that blunt-nosed leopard lizard (BNLL) have the potential to occur within the Project site, but no focused surveys appear to have been conducted to determine whether the species may be present. Mitigation Measures BIO-1a and BIO-1d were provided to mitigate for potential impacts to the species, yet neither measure included focused surveys. As such, CDFW does not concur that Mitigation Measures BIO-1a and BIO-1d are sufficient to mitigate for impacts to BNLL and recommends the following:

Recommended Mitigation Measure 1: BNLL Surveys

CDFW recommends that a qualified biologist conduct protocol surveys in accordance with the "Approved Survey Methodology for the Blunt-nosed Leopard Lizard" (CDFW 2019) prior to Project implementation. This survey protocol, designed to optimize BNLL detectability, reasonably assures CDFW that ground disturbance will not result in take of this fully protected species.

Recommended Mitigation Measure 2: BNLL Avoidance Buffer

4 CDFW recommends that any BNLL detection, known or potentially occupied burrows, or egg clutch sites have a minimum 395-acre buffer. This buffer is based on unpublished data from Dr. David Germano documenting that "male BNLL have home ranges up to 52 acres and that female BNLL have home ranges exceeding 98 acres, the known maximum home range sizes observed for the species, the unknown specific footprint of the individual BNLL's home range relative to where the lizard was observed on the surface, and the unknown location of the lizard underground when construction commences."

Given the size of the buffer recommendation outlined above relative to the overall size of the proposed Project, CDFW recommends the following if Project activities are anticipated to occur within or near occupied BNLL habitat:

Recommended Mitigation Measure 3: BNLL Take Authorization

With the passage of Senate Bill No. 147, the incidental take of BNLL may be authorized for certain categories of projects, including industrial solar photovoltaic projects. If BNLL protocol surveys find that the Project site is occupied, or the Project chooses to assume presence for BNLL, consultation with CDFW is recommended to discuss how to implement the Project and avoid take; or if avoidance is not feasible,

4 cont. to potentially acquire an ITP prior to any ground disturbing activities, pursuant Fish and Game Code section 2081 subdivision (b).

California Tiger Salamander

The DSEIR notes that a habitat assessment was conducted for California tiger salamander (CTS) and one season of focused surveys were conducted in accordance with the *Interim Guidance on Site Assessment and Field Surveys Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander* (USFWS 2003) guidance document (USFWS CTS Protocol). Based on the habitat assessment and survey results, CTS was considered to be absent from the Project site. CDFW does not concur with these conclusions and would like to note that the USFWS CTS Protocol requires more than one survey season. As such, CDFW recommends the following:

Recommended Mitigation Measure 4: Focused CTS Protocol-level Surveys

CDFW recommends that a qualified biologist conduct protocol-level surveys in accordance with the USFWS CTS Protocol (USFWS 2003) at the appropriate time of year to determine the existence and extent of CTS breeding and refugia habitat. CDFW advises that the protocol-level survey include a 100-foot buffer around the Project area in all areas of wetland and upland habitat that could support CTS. Please be advised that protocol-level survey results are viable for two years after the results are reviewed by CDFW.

Recommended Mitigation Measure 5: CTS Avoidance

5 If CTS protocol-level surveys as described in Recommended Mitigation Measure 4 are not conducted, CDFW advises that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within and/or adjacent to the Project site. Further, CDFW recommends potential or known breeding habitat within and/or adjacent to the Project site be delineated with a minimum 250-foot no-disturbance buffer. Both upland burrow and wetland breeding no-disturbance buffers are intended to minimize impacts to CTS habitat and avoid take of individuals.

Recommended Mitigation Measure 6: CTS Take Authorization

If through surveys it is determined that CTS are occupying or have the potential to occupy the Project site, consultation with CDFW is warranted to determine if the Project can 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)

5 cont. is necessary to comply with CESA . In the absence of protocol surveys, the applicant can assume presence of CTS within the Project site and obtain an ITP from CDFW.

Crotch's Bumble Bee

The DSEIR notes that Crotch's bumble bee (CBB) have the potential to occur within the Project site, but no focused surveys appear to have been conducted to determine whether the species may be present. Mitigation Measures BIO-1a and BIO-1d were provided to mitigate for potential impacts to the species, yet neither measure included focused surveys. As such, CDFW does not concur that Mitigation Measures BIO-1a and BIO-1d are sufficient to mitigate for impacts to CBB and recommends the following:

Recommended Mitigation Measure 7: CBB Surveys

CDFW recommends that a qualified biologist conduct focused surveys for CBB within areas of suitable habitat following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023).

6 **Recommended Mitigation Measure 8: CBB Avoidance Buffer**

If surveys cannot be completed, CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take.

Recommended Mitigation Measure 9: CBB Take Authorization

If CBB is identified during surveys, consultation with CDFW is warranted to determine if the Project can 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.

Burrowing Owl

7 The DSEIR notes that a burrowing owl (BUOW) individual was observed at the Project site in 2023. Mitigation Measures BIO-1c is provided to mitigate for potential impacts to the species. CDFW concurs with the portion of the measure that requires preconstruction surveys for the species but does not concur that the avoidance buffers

7 cont.

outlined in Mitigation Measure BIO-1c are sufficient to avoid impacts to BUOW. As such, CDFW recommends the following:

Recommended Mitigation Measure 10: BUOW Avoidance Buffer

CDFW recommends that no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), be implemented prior to and during any ground-disturbing activities. 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.

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)

Recommended Mitigation Measure 11: BUOW Consultation

If BUOW are found within these recommended buffers and avoidance is not possible, consultation with the CDFW is recommended for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation.

Editorial Comments and/or Suggestions

8 **California Natural Diversity Database:** Please note that the California Natural Diversity Database (CNDDB) is populated by records through voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDB but where there is suitable habitat features capable of supporting species. A lack of an occurrence record in the CNDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified biologist during the appropriate survey period(s) using the appropriate protocol survey methodology are warranted in order to determine whether or not any special-status species are present at or near the Project site.

9 **Federally Listed Species:** CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including, but not limited to the, SJKF,

9 cont. BNLL, and CTS. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any Project activities.

10 **Lake and Streambed Alteration:** The DSEIR notes that multiple streams that may be subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. are present within the Project vicinity and that Project activities would avoid these features. CDFW would like to note that Project activities that substantially change the bed, bank, and channel of any river, stream, or lake are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation): (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial and may include those that are highly modified such as canals and retention basins.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW's website (https://wildlife.ca.gov/Conservation/LSA) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

11 **Nesting birds:** CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), the Project 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 Code sections as referenced above.

If ground-disturbing activities occur during the nesting bird season (February 1 – September 15), CDFW recommends that a qualified biologist conduct pre-activity surveys for active nests no more than one week prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that 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 a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, odors, 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 Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

11 cont. If continuous monitoring of identified nests by a qualified 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 the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is a compelling biological or ecological reason to do so, such as when the Project site 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.

12 **Wildlife Movement and Connectivity:** As noted above, the Project area supports significant biological resources and contains important habitat connections and is important for wildlife movement across the broader landscape, sustaining both transitory and permanent wildlife populations, including Tule elk (*Cervus canadensis nannodes*).

The DSEIR analyzes impacts to Tule elk (elk) in Mitigation Measure BIO-1g and states, "to avoid and minimize the impact on tule elk and mountain lion movement in the project area, the project applicant shall coordinate with CDFW to implement measures that benefit tule elk and mountain lion. These may include the identifying fencing and barriers to be removed or reconstructed, determining the appropriateness of water guzzlers, and conducting or funding additional studies on wildlife connectivity and movement patterns along SR 152 within Merced County. Measures agreed upon by CDFW and the project applicant shall be initiated prior to the completion of construction activities, as verified by the Merced County Department of Public Works prior to the issuance of a construction permit."

CDFW concurs with these measures and strongly recommends coordination with CDFW regarding the implementation of these measures, including the installation and placement of water guzzlers within the Project vicinity.

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 CNDDB. The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals. 13

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is 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 environmental document filing fee is required in order 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.) 14

CONCLUSION

CDFW appreciates the opportunity to comment on the DSEIR to assist Merced County in identifying and mitigating Project impacts on biological resources.

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). Questions regarding this letter or further coordination should be directed to Kevin Hurt, Senior Environmental Scientist, Specialist, at (805) 458-5775 or Kevin.Hurt@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Julie Vance
FA83F09FE08945A...

Julie A. Vance
Regional Manager

ec: State Clearinghouse
Office of Planning and Research
state.clearinghouse@opr.ca.gov

U.S. Fish and Wildlife Service
Mathew Nelson, Mathew_nelson@fws.gov

REFERENCES

California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. Sacramento, California, USA.

California Department of Fish and Wildlife. 2019. Approved survey methodology for the blunt-nosed leopard lizard. California Department of Fish and Wildlife, Sacramento, California, USA.

California Department of Fish and Wildlife. 2023. Survey considerations for California endangered species act candidate bumble bee species. Sacramento, California, USA.

H.T. Harvey and Associates. 2004. Habitat Conservation Plan for the San Joaquin kit fox at the Arnaudo Brothers, Wathen-Castanos, and River East Holdings sites within, and adjacent to, the Santa Nella Community Specific Plan area. Prepared for Wathen Castanos, Arnaudo Brothers, and River East Holdings.

U.S. Fish and Wildlife Service. 2003. Interim guidance on site assessment and field surveys for determining presence or a negative finding of the California tiger salamander. U.S. Fish and Wildlife Service, Sacramento, USA.

Attachment 1

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

PROJECT: Las Camas Solar Project

SCH No.: 2021080196

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
Before Disturbing Soil or Vegetation	
BNLL	
Recommended Mitigation Measure 1: BNLL surveys	
Recommended Mitigation Measure 3: BNLL take authorization	
CTS	
Recommended Mitigation Measure 4: CTS focused protocol surveys	
Recommended Mitigation Measure 6: CTS take authorization	
CBB	
Recommended Mitigation Measure 7: CBB surveys	
Recommended Mitigation Measure 9: CBB take authorization	
BUOW	
Recommended Mitigation Measure 11: BUOW consultation	
During Construction	
BNLL	
Recommended Mitigation Measure 2: BNLL avoidance buffer	
CTS	
Recommended Mitigation Measure 5: CTS avoidance buffer	
CBB	
Recommended Mitigation Measure 8: CBB avoidance buffer	
BUOW	
Recommended Mitigation Measure 10: BUOW avoidance buffer	

ATTACHMENTS

CDFW Comment Letters for the Santa Nella Area

ATTACHMENT 1

DocuSign Envelope ID: 7FCDCE96-8B1B-4B43-BF20-E66F4AB39DF1

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

September 13, 2021

Tiffany Ho, Planner III
County of Merced, Department of Community and Economic Development
2222 M Street
Merced, California 95340
Tiffany.Ho@countyofmerced.com

Subject: Las Camas Solar Project (Project)
Notice of Preparation (NOP)
State Clearinghouse No. 2021080196

Dear Ms. Ho:

The California Department of Fish and Wildlife (CDFW) received a NOP from the Merced County Department of Community and Economic Development 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

[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.

Conserving California's Wildlife Since 1870

agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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.). 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 will be required.

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: EDP Renewables North America LLC

Objective: The Project proposes the construction, long-term operation, and eventual decommissioning of the Las Camas Solar Project west of Los Banos in Merced County. The Project is a solar photovoltaic (PV) facility that will generate electricity from ground-mounted, single axis tracking arrays and intermittently store electricity by charging and discharging lithium-ion batteries located on roughly 1,745 acres of undeveloped, privately owned land. The Project will have a solar PV capacity of approximately 200 megawatts (MW) alternating current and a battery storage capacity of approximately 100 MV direct current or alternating current. The Project will also include a 230-kilovolt transmission line running from a new substation within the Project site to Pacific Gas and Electric's Los Banos Substation located west of the Project site. The generation tie (gen-tie) line will convey electricity between the Project site and the larger grid. The length of the gen-tie line would range from 0.25 to 2 miles, depending on the location of the Project substation, which would either be located along the western boundary of the Project site or in the interior of the Project site. The Project also proposes transmission system upgrades around the Los Banos substation, including connecting the substation to the Project's gen-tie line, installing a new bay with new circuit breakers, and constructing a new control building.

Location: The Project site is located approximately 3 miles southeast of the community of Santa Nella, 6 miles west of the City of Los Banos, and approximately 30 miles southwest of the City of Merced. The Project site is at the southwest corner of the intersection of State Routes 33/152 and Interstate 5 and can be accessed via Billy Wright Road off State Route 33/152. The Project site includes the following Assessor's Parcel Numbers: 078-160-012, 078-160-013, 078-160-047, 078-160-056, 078-160-060, 078-172-001, 078-190-004, and 078-190-005 (excepting a portion of 078-172-001).

Timeframe: The proposed Project is anticipated to be operational in October 2024 and is expected to operate for 35 years.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the Merced County Department of Community and Economic Development in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

The Environmental Impact Report (EIR) that will be prepared will determine the likely environmental impacts associated with the Project. CDFW is concerned regarding potential impacts to special-status species from the ground-disturbing development activities, including but not limited to, the fully protected and State and federally endangered blunt-nosed leopard lizard (*Gambelia sila*), the State and federally endangered giant kangaroo rat (*Dipodomys ingens*), the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State and federally threatened California tiger salamander (*Ambystoma californiense*), the State threatened San Joaquin antelope squirrel (*Ammospermophilus nelson*) and Swainson's hawk (*Buteo swainsoni*), the State Candidate Species for listing mountain lion (*Puma concolor*) (Southern California/Central Coast Evolutionarily Significant Units), State species of special concern burrowing owl (*Athene cunicularia*) and tule elk (*Cervus canadensis nannodes*) and the rare and endemic Crotch bumble bee (*Bombus crotchii*), a Species of Greatest Conservation Need (CDFW 2015). Based on the limited information provided in the NOP, CDFW is not able to provide complete and/or substantive comments. Our preliminary comments follow.

San Joaquin Kit Fox (SJKF)

The area from around Los Banos Reservoir to the north of San Luis Reservoir has been identified by CDFW and the United States Fish and Wildlife Service (USFWS) as a migratory corridor critical to the continued existence and genetic diversity of the northern kit fox population – with the Santa Nella area being identified as a critical SJKF migratory "pinch-point" within this area. The creation of the San Luis Reservoir and O'Neil Forebay resulted in a large migratory barrier to the north-south migration of

SJKF, and busy highways in the area such as State Routes 152 and 33 and Interstate 5, as well as the existing urban development further compounded this problem (HT Harvey and Associates 2004). As a result, any upland habitat in this area that could serve as movement or rest areas for SJKF has very high conservation values for this species.

Because the Project site is within the San Luis Reservoir and Los Banos Reservoir migratory corridor, and that the CNDDB has multiple SJKF occurrences in the adjacent properties (CDFW 2021), SJKF have the potential to occur on the Project site. SJKF populations are known to fluctuate over years and a negative finding from biological surveys in any one year does not necessarily depict absence of kit fox on a site. It is important to note that SJKF may be attracted to any construction area due to the type and level of activity (pipes, excavation, etc.) and the loose, friable soils that are created as a result of intensive ground disturbance.

The NOP states the Project will pursue an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081(b), for SJKF. CDFW recommends the EIR quantify and describe the direct and indirect potential impacts to SJKF. The evaluation should include the cumulative impacts to SJKF, including those to the SJKF movement corridor, from other existing, planned and potential development from south of the Los Banos Reservoir to north of the San Luis Reservoir that may impact existing upland habitat and/or create barriers for SJKF dispersal. This information, in addition to adequate description of habitat features on the Project site, is essential to adequately assess Project impacts.

The NOP also states the Project will establish a 1,498-acre mitigation site as part of a conservation strategy to mitigate impacts to SJKF. The proposed mitigation site is situated close to the eastern and southern edges of the Los Banos Reservoir. The proposed mitigation site will be conserved with a perpetual conservation easement and the land managed to provide optimum habitat for SJKF. Please note that while the proposed mitigation site appears to provide suitable SJKF habitat based on aerial photography, the proposed mitigation location or acreage amount may not adequately mitigate impacts to the SJKF movement corridor or reduce impacts to SJKF habitat to less than significant. CDFW cannot make a determination about the adequacy of the mitigation site until we have reviewed the impact analysis for this Project, and a preliminary title report and associated documents for the proposed mitigation site.

CDFW typically requires greater than 1:1 mitigation in ITPs to fully mitigate permanent impacts to SJKF habitat, especially for permanent impacts to moderate to high quality SJKF habitat; areas in critical areas of connectivity often require enhanced mitigation amounts and the addition of specific elements. However, given the information provided to date, CDFW cannot make a final determination at this time about the adequacy of the proposed mitigation site to fully mitigate Project-related impacts.

CDFW can make this determination once an ITP application has been received by CDFW and Habitat Management (HM) Lands process has been completed on the proposed mitigation site.

Swainson's Hawk (SWHA)

SWHA exhibit high nest-site fidelity year after year in the San Joaquin Valley (CDFW 2016). The Project as proposed will involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA. Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include nest abandonment, and reduced nesting success (loss or reduced health or vigor of eggs or young) from loss of foraging habitat.

SWHA has been documented approximately one mile from the Project site (CDFW 2021). The Project is located within the range of SWHA and proposes development in suitable foraging habitat. CDFW recommends compensation for the loss of Swainson's hawk foraging habitat as described in the Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (CDFG 1994) to reduce impacts to foraging habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

- For projects within 1 mile of an active nest tree, a minimum of one acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of 0.75 acres of HM land for each acre of development is advised.
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of 0.5 acres of HM land for each acre of development is advised.

There are a few suitable nesting trees within and adjacent to the Project site, and SWHA are known to travel for miles to forage. Therefore, CDFW recommends surveys following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000) be conducted prior to project implementation. CDFW recommends a minimum no-disturbance buffer of 0.5-mile be delineated around active nests 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. If an active SWHA nest is detected during surveys, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the issuance of an ITP, pursuant to Fish and Game Code § 2081(b) is necessary to comply with CESA.

Other Wildlife Species

CDFW recommends the EIR evaluate potential impacts to blunt-nosed leopard lizard (BNLL), burrowing owl, California tiger salamander (CTS), Crotch bumble bee, giant kangaroo rat (GKR), mountain lion, San Joaquin antelope squirrel, and tule elk. CDFW recommends this evaluation include identifying any potential habitat in the Project area, the potential for these species to occur in the Project area, and what, if any, mitigation measures are necessary to reduce impacts to less to significant. For mountain lion and tule elk in particular, CDFW advises any evaluation include cumulative impacts and impacts to connectivity.

Please note that if suitable habitat is present and species surveys are warranted, some protocols require specific seasons and/or an extended period of time (e.g., BNLL, CTS). Frequently recommended survey and monitoring protocols for blunt-nosed leopard lizard, burrowing owl, and California tiger salamander can be found at https://wildlife.ca.gov/Conservation/Survey-Protocols. CDFW is also available for consultation about survey methods and mitigation measures prior to completion of the draft EIR.

Nesting birds

CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), the Project 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.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project 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 that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified 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 on-site 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 biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Federally Listed Species: CDFW also recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to BNLL, CTS, GKR, and SJKF. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

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 CNDDB. The CNDDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

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 in order 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).

CDFW appreciates the opportunity to comment on the Project to assist the Merced County Department of Community and Economic Development in identifying and mitigating the Project's impacts on biological resources.

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 Jim Vang, Environmental Scientist, at the address provided on this letterhead or by electronic mail at Jim.Vang@wildlife.ca.gov.

Sincerely,

Julie A. Vance
Regional Manager

Attachment 1

ec: Patricia Cole, USFWS
patricia_cole@fws.gov

State Clearinghouse
Governor's Office of Planning and Research
state.clearinghouse@opr.ca.gov

Carrie Swanberg
Jim Vang
California Department of Fish and Wildlife

LITERATURE CITED

California Department of Fish and Game (CDFG). 1994. Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo Swainsoni*) in the Central Valley of California. California Department of Fish and Game.

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Swainson's Hawk Technical Advisory Committee (SWHA TAC). 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. Swainson's Hawk Technical Advisory Committee, May 31, 2000.

Attachment 1

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

PROJECT: Las Camas Solar Project

SCH No.: 2021080196

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
Before Disturbing Soil or Vegetation	
Mitigation Measure: SJKF	
SJKF Evaluation	
SJKF Take Authorization	
Mitigation Measure: SWHA	
SWHA Surveys	
SWHA Foraging Habitat Loss	
SWHA Take Authorization	
During Construction	
Mitigation Measure: SWHA	
SWHA Avoidance	

Rev. 2013.1.1

ATTACHMENT 2

September 13, 2007

Robert King
County of Merced
2222 M Street
Merced, California 94530

Dear Mr. King:

Villages of Laguna San Luis Community Plan,
Draft Program Environmental Impact Report (DPEIR),
SCH No. 2005011074

The Department of Fish and Game (Department) has reviewed the DPEIR prepared for the Project referenced above. The Project site consists of 6,214 acres located immediately south of O'Neill Forebay and the Santa Nella Community Specific Plan (SNCSP) area in an unincorporated portion of western Merced County. Implementation of the proposed Project would result in 3,011 acres of residential development, 176 acres of commercial development, 204.5 acres of "employment generating land uses," 180 acres of schools, 41 acres for water and wastewater treatment facilities, and 109.6 acres for public facilities. The remainder of the site (2492 acres) would remain in open space "reserved for future urban development, parks, and roadways." The proposed community would be developed over 30 years, with seven (7) identified planning areas. Development is anticipated at an average rate of 1,000 units per year, and implementation plans would provide refined Project-level development plans which would be subject to additional environmental analysis under the California Environmental Quality Act (CEQA).

In addition, due to the unacceptable traffic Levels Of Service that would result from partial build-out of the proposed Project, the Project would also include funding for the reconstruction of the Interstate 5 (I-5)/State Route (SR) 152 interchange, and improvements to the following intersections: SR 152/Hilldale; SR 33/Plaza Drive; SR 33/I-5; SR 33/Henry Miller; SR 33/Vera Cruz Drive; SR 33/SR 152; SR 33/Southest Residential; I-5/Hilldale; SR 152/Billy Wright Road; SR 33/McCabe Road; SR 33/North Access, north of SR 152; and SR 33/South Access, north of SR 152. In addition, the applicant will provide partial funding for the widening of: SR 152, west of I-5 to SR 101, from 4 to 6 lanes; SR 152, east of I-5 to Los Banos, from 4 to 6 lanes; I-5, between SR 152 and Hilldale, from 4 to 6 lanes; I-5, between Hilldale and SR 33, to 8 lanes; and I-5, north of SR 33 to Interstate 580, to 6 lanes.

The loss of 3,890 acres of "suitable" and "marginal" kit fox habitat are proposed to be offset though preservation in perpetuity, management, and monitoring of 5,662 acres of high quality off-site habitat.

The Department has significant concerns with the proposed Project; implementation would result in significant and irreversible impacts to the State threatened San Joaquin kit fox (*Vulpes macrotis mutica*) (SJKF), by impacting the entire northern range of the species. In addition to

direct impacts to 2,400 acres of grassland habitat likely to support kit fox denning and foraging, as well as to an additional 3,083 acres of foraging habitat, the Project as a whole would create a significant movement barrier between the southern and northern kit fox populations. As noted in the DPEIR, the Santa Nella area has been identified by the Department and the United States Fish and Wildlife Service (USFWS) as a "pinch point" in the connectivity between the north and south populations of SJKF. There is a very narrow area remaining in the Santa Nella vicinity that is usable for kit fox north-south movement, and the proposed Project creates a major barrier between this remaining movement area and the Los Banos Valley core kit fox population. An influx of individuals from the Los Banos Valley is thought to be critical to the continued existence and genetic diversity of the northern kit fox population.

Since the grassland portions of the Project area are likely to support foraging and denning kit fox, prior to any ground-disturbing activities in this area that could result in "take," as defined by Section 86 of the Fish and Game Code, a State Incidental Take Permit would be required, in order to comply with the California State Endangered Species Act (CESA). The Department is prohibited by the California Code of Regulations, Title 14, Section 783.4(4)b to issue an Incidental Take Permit that would jeopardize the continued existence of this species. *As the Project is currently proposed, it is unlikely that the Department would be able to make a "No Jeopardy" finding, let alone certify that the mitigation meets the "fully mitigate" standard, both of which are necessary for issuance of an Incidental Take Permit.* We concur with the USFWS (letter dated August 13, 2007), for the reasons stated above, as well as those stated in our comment letter submitted in response to the Notice of Preparation (NOP) that Project implementation would, at a minimum, impact the entire 420,000 acres of kit fox range north of the Project area in addition to the Project footprint. In order to permit the Project under CESA, major Project modifications would be required, including but not limited to suitable movement corridors being established through the Project area, protected in perpetuity via conservation easement, and managed for the purpose of providing ideal foraging, denning, and movement areas for kit fox. It is important to note that the spector of a Jeopardy finding on this Project, as well as the non-attainment of Incidental Take Permit mitigation standards and other issuance criteria, creates potential permitting difficulties for any Project-related actions considered by the Caltrans, the Department of Water Resources, California State Parks, or other State or local agencies, both for their possible CESA permitting needs and also in relation to compliance with Fish and Game Code Section 2055 (conservation of threatened and endangered species by State Agencies, Boards, and Commissions). Our specific comments follow.

Department Jurisdiction

Trustee Agency Authority: The Department is a Trustee Agency with responsibility under CEQA for commenting on projects that could impact plant and wildlife resources. Pursuant to Fish and Game Code Section 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, the Department is responsible for providing, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities, as those terms are used under CEQA.

Responsible Agency Authority: The Department also has regulatory authority over projects that could result in the "take" of any species listed by the State as threatened or endangered, pursuant to Fish and Game Code Section 2081. If the Project could result in the "take" of any State-listed threatened or endangered species, the Department may need to issue a "take" permit for the Project. CEQA requires a Mandatory Finding of Significance, if a project is likely to impact threatened or endangered species (Sections 21001{c}, 21083, Guidelines Sections 15380, 15064, 15065). Impacts must be avoided or mitigated to less than significant levels, unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code Section 2080. State-listed species known to occur in the vicinity include the State threatened SJKF and Swainson's hawk (*Buteo swainsoni*). Specific remarks on Project-related "take" potential are included in the following comments.

The Department also has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource, pursuant to Fish and Game Code Section 1600 et seq. If construction activities are proposed that will involve work within the bed, bank or channel of any drainages that occur within the Project area, a Stream Alteration Agreement (SAA) may be necessary. The Project proponent should submit a Stream Alteration Notification to the Department for the Project. The Department is now required to comply with CEQA in the issuance or the renewal of an SAA. Therefore, for efficiency in environmental compliance, we recommend that the stream disturbance be described and mitigation for the disturbance be developed as part of the environmental review process. This will reduce the need for the Department to require extensive additional environmental review for an SAA for this Project in the future. For additional information on notification requirements, please contact our staff for the Stream Alteration Program at (559) 243-4593.

Bird Protection: The Department has jurisdiction over actions which may result in the disturbance or destruction of active nest sites or the unauthorized "take" of birds. Sections of the Fish and Game Code 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 non-game bird). Implementation of Mitigation Measure 5.8-4 in the DPEIR will likely avoid direct impacts to nesting birds. If the Project is approved, the Department requests that these measures be made a condition of Merced County's approval.

Additional Project Impacts and Recommendations

San Joaquin Kit Fox (SJKF): As stated above, implementation of the proposed Project, in conjunction with other development planned in the SNCSP area, as well as that proposed south of the proposed Project (including but not limited to Fox Hills Phases 1-3) would likely result in permanent fragmentation of the north-south migratory corridor of SJKF. The proposed Project would eliminate most of the remaining open space in the Santa Nella area that could be used for denning, resting, and foraging habitat and would block any viable movement corridors, including those incorporated into developments within the SNCSP area. Unless additional accommodations for SJKF movement are developed within the Project design, the proposed Project could result in extirpation of the northern range of SJKF.

The Department concurs that preservation in perpetuity of habitat in the area south of the proposed Project, as proposed, is important to the continued existence of the core kit fox population south of Santa Nella. The Department recommends that large blocks of contiguous habitat be conserved up front rather than having each phase of the proposed Project mitigate individually; the latter approach could result in smaller disconnected habitat blocks which would have less conservation value than that discussed in the DPEIR. The Department also recommends that off-site mitigation lands consist primarily of flat or gently rolling landscapes; areas with slopes of 30% or more should be avoided as kit fox mitigation lands.

Swainson's Hawk: The DPEIR acknowledges that the Project site is known to support foraging Swainson's Hawks. If the Project is approved, the Department requests that Mitigation Measure 5.8-2 (a-c) be made a condition of Merced County's approval.

Tule Elk: Tule elk (elk) were identified collectively with other unlisted species in the DPEIR, but Project-related impacts to elk were not considered as significant and were not addressed. Elk use much of the Project area south of Highway 152 during the spring through fall period, and development of this area will displace the elk. The direction of displacement and where they would be displaced to could result in significant impacts. For example, changing the seasonal shift from the winter use area below San Luis Dam into a northerly direction could result in elk crossing Highway 152. This would present a significant human safety hazard and could impact the elk population. In addition, elk crossing roadways within the proposed Project could also be a significant safety hazard. Development-induced shifts in elk use areas could increase movement distances and result in damage to properties crossed (fences, etc.).

Displacement of elk could have a significant impact on the overall health of this sub-herd. The Department has spent significant resources in re-establishment of elk within their historic range, and the elimination of the elk from this area would reverse some of the progress made in restoring elk in California. Elk require habitat that is not consistent with the mitigation habitat proposed. Mitigation habitat should be proposed that addresses elk displacement, habitat needs, and reduction in safety hazards, property damage, and depredation needs.

Currently the population of elk is managed by controlled hunting. Development can restrict areas where hunting is permitted, and for some people hunting is not compatible with their beliefs. Anti-hunting sentiments could pose a risk to herd management, increase Department response, and increase depredation issues. Housing, especially very low-density housing, will increase the depredation issues. Damage to property by wildlife (elk and deer) is potentially significant, especially in the most westerly area of the proposed Project. These impacts can be minimized by the reduction of development in the most westerly portion of the Project area and should be incorporated into the Project description.

Open Space Designation and State Lands: Exhibit 3-3 shows portions of the Department's Jasper Sears mitigation parcel, the Agua Fria mitigation bank (over which the Department holds Conservation Easements recorded as mitigation for other projects), and the United States Bureau of Reclamation-owned and State Parks and Recreation-managed OHV park as "open space." This exhibit improperly implies that the open space depicted represents developable areas set aside by the Project applicant for the purpose of open space preservation, which is

misleading. Parcels owned by the State and/or Federal governments or with State or Federally held conservation easements should be clearly indicated on the maps in the DPEIR. In addition, Page 3-10 states that approximately 1,200 acres of open space land would be "set aside" to provide habitat and movement corridors for SJKF, the majority of which would be provided in the western portion of the site. It appears that a significant portion of the kit fox corridor shown in Exhibit 3-4 to "be set aside," as well as the 1,059 acre kit fox open space preserve described on page 5.8-29 and shown on Exhibit 5.8-5, includes a significant amount of acreage that is already protected because it is owned by the State or Federal governments or because conservation easements have been recorded. Page 5.8-28 seems to clarify this issue by stating that the 215 acres of open space preserve that are privately owned and not protected will be put under conservation easement. The DPEIR then goes on to discuss having Pacific Gas and Electric and the United States Bureau of Reclamation (USBR) manage their properties in the open space preserve for kit fox. While it would be beneficial for this to occur, it is unclear that these entities are committed to this approach. As a result, without some formal level of commitment from the managing entities, this should not be included as a mitigation measure, as Section 15126.4 of the CEQA Guidelines states that mitigation measures should be fully enforceable through permit conditions, agreements, or other legally binding agreements. This same comment applies to the "kit fox habitat management plan" described on page 5.8-31.

Page 5.8-29 states that no new road crossings shall be constructed within the open space kit fox preserve without consultation with USFWS. It is important to note that no road crossings would be feasible on the portions of the open space preserve with Department-held conservation easements or the acreage owned by the Department.

Designating kit fox corridors in the electrical line easement areas is problematic, as these areas are subject to management activities required by the utility companies, and are not managed for the purposes of species conservation.

Urban Reserve and the Western Portion of the Project Area: The DPEIR identifies an urban reserve on the southern end of the Project area, which identifies land that "could in the future be developed with urban land uses." Urban development in this area would pose significant conflicts to the existing conservation properties in this area and would necessitate additional avoidance, minimization and mitigation measures. In addition, roads through the urban reserve area should not connect to Jasper Sears Road, as traffic on Jasper Sears would result in significant degradation to the values of existing conservation lands in that area as well as the identified "kit fox corridor" identified in the DPEIR.

The Department recommends that development in the most westerly portion of the Project area should not occur in order to minimize potential impacts to existing conservation lands. In addition, development in the most westerly portion of the Project should be avoided because: ingress/egress to this area will impact existing wildlife crossings for kit fox, tule elk, and other wildlife; development will significantly reduce the corridor width crossing SR152 and could jeopardize general wildlife movement; development will impact wildlife movement east and west into potential movement corridors; infrastructure construction (pipelines, etc.) in this area will impact existing open space corridors and conservation lands; growth inducing impacts into

adjacent properties could significantly impact wildlife in the region; depredation will be a significant issue in this area; and elk population management could be impacted.

Open Space Corridors: Open space corridors should be compatible with special status and other native wildlife species. Open space, if to be utilized as some on-site mitigation value for kit fox, should be protected in perpetuity via conservation easements.

Highway Improvements: The Highway improvements that will be necessary as a result of this Project are substantive and will result in significant impacts to the north-south connectivity of kit fox, perhaps more so than the Project itself. This is especially true for the widening of SR 152 and SR 33. While the timing and complete funding of the highway projects is uncertain, it is critical that Caltrans and the County formally agree, in advance of Project implementation, to utilize the avoidance, minimization, and mitigation measures associated with road impacts in the DPEIR, such as incorporating regular crossing structures for kit fox etc. With Caltrans, Department, County, and USFWS cooperation, the widening of SR 33 presents some opportunity to significantly improve kit fox crossing over O'Neill Forebay and the Aqueduct. With the widening of SR 33, there should be opportunities for incorporation of "green" crossings parallel to, but separate from, the additional traffic lanes.

The Department has reiterated these concerns, participated in discussions with Project designers and planners, and offered conceptual solutions to these issues for many years on earlier versions of this Project and on other related Santa Nella area development. We have also met with the Project applicant and the USFWS a few times in the past to discuss biological issues associated with the current version of this Project. We would like to work with the County, applicant, and the USFWS to arrive at solutions that address the outstanding biological issues associated with this Project. To arrange for such a discussion or if you have any questions regarding our comments, please contact Julie Vance, Senior Environmental Scientist, at the address provided on this letterhead or by telephone at (559) 243-4014, extension 222.

Sincerely,

W. E. Loudermilk
Regional Manager

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Responses to Comment Letter 1 – Julie A. Vance, Regional Manager, California Department of Fish and Wildlife

Response to Comment 1-1

The comment states that Pacific Gas and Electric's (PG&E's) best management practices (BMPs) are not adequate to reduce the impacts of the proposed PG&E substation improvements on special-status species and that the mitigation measures outlined in the Draft SEIR should be incorporated for the PG&E substation improvements.

PG&E implements standard avoidance and minimization measures (AMMs) and BMPs during construction and operation of projects in its service territory. The AMM/BMPs that would be implemented by PG&E during construction of the PG&E substation improvements are included on pages 2-23 through 2-32 in Chapter 2, *Project Description*, of the Draft SEIR. The County of Merced (County) does not have jurisdictional authority to impose mitigation within PG&E property.

As stated on page 3.4-48 of the Draft SEIR, habitat to support blunt-nosed leopard lizards and Crotch's bumble bee is considered marginal, and there are no recent occurrence records within 5 miles of the solar project site, including the PG&E substation improvement area. As stated on page 3.4-2, no occupied aquatic habitat for listed California tiger salamanders was identified at the solar project site or in the surrounding area, including the PG&E substation improvement area. Impacts on these species are considered unlikely. As stated on page 3.4-61, construction activities associated with the PG&E substation improvements could adversely affect Swainson's hawk, San Joaquin kit fox (SJKF), and western burrowing owl, but "[b]ecause of the small size of the expansion area (less than 10 acres), the impacts on special-status species from development of this site would be considered small." Further, PG&E would implement the following standard-practice AMMs/BMPs to avoid and minimize impacts on these and other special-status species:

- **PG&E AMM/BMP-19: Conduct Pre-Construction Survey(s) for Special-Status Species and Sensitive Resource Areas.** Biologists will conduct pre-construction survey(s) for special-status species and sensitive resource areas immediately prior to construction activities within suitable aquatic and upland habitat for special-status species.
- **PG&E AMM/BMP-20: Avoid Impacts on Nesting Birds.** Biologists will conduct nest detection surveys prior to project work scheduled during the nesting season and establish measures to avoid disturbance to nesting birds as needed.
- **PG&E AMM/BMP-21: Biological Monitoring.** Biologists will monitor initial ground-disturbing activities in and adjacent to sensitive habitat areas to ensure compliance with BMPs and AMMs, unless the area has been protected by barrier fencing to protect sensitive biological resources and has been cleared by the biologists.
- **PG&E AMM/BMP-22: Special-Status Species Protection.** Project areas will be inspected each workday for wildlife prior to construction activities within areas suitable for special-status species. In addition, the project area will be cleared of debris and secured to avoid impeding wildlife movement.
- **PG&E AMM/BMP-23. San Joaquin Kit Fox and Blunt-Nosed Leopard Lizard Protection.** Species-specific procedures (e.g., establishing exclusion zones) will be followed to avoid impacts on San Joaquin kit fox and blunt-nosed leopard lizard in areas with evidence that those species may be present.[1]

[1] Blunt-nose leopard lizard has a low potential to occur on the site. However, these are standard PG&E measures implemented on all projects and are therefore included in this document.

- **PG&E AMM/BMP-24: Dead or Injured Special-Status Wildlife.** Construction work will stop in the immediate vicinity of any dead or injured special-status wildlife or birds protected by the MBTA, pending coordination with the biologists and appropriate resource agency.

The comment claims that PG&E's AMM/BMPs are insufficient to mitigate impacts on SJKF, Swainson's hawk, blunt-nosed leopard lizard, California tiger salamander, Crotch's bumble bee, and burrowing owl but not does provide facts to support this claim. PG&E's standard AMM/BMPs have been developed and implemented over many years, based on collaboration with environmental experts, regulatory agencies, and stakeholders. They are designed to meet or exceed federal, state, and local regulations and are continually tracked and refined through ongoing monitoring and evaluation. Considering these facts, and the small size of the PG&E substation improvement area, the County finds that PG&E's AMM/BMPs are sufficient to avoid and minimize impacts on special-status species within the PG&E substation area. No revisions to the Draft SEIR are required.

The County also notes that, following preparation of the Draft SEIR, PG&E has agreed to implement a Take Avoidance Plan that includes additional measures that will be implemented prior to and during construction of the PG&E substation improvement to avoid taking SJKF. The Take Avoidance Plan includes measures such as a modified site design to minimize light spillage into adjacent open spaces; pre-construction surveys for sensitive species; worker education training, covering avoidance measures prior to construction; and on-site monitoring during construction to ensure avoidance measures developed per U.S. Fish and Wildlife Service (USFWS) guidelines to protect SJKF are implemented. Implementation of the Take Avoidance Plan will further avoid and reduce impacts on SJKF. The Take Avoidance Plan has been provided to CDFW, and is included in Appendix C of this Final SEIR.

Response to Comment 1-2

The comment states concerns about the suitability of the mitigation measures proposed for SJKF, Swainson's hawk, blunt-nosed leopard lizard, California tiger salamander, Crotch's bumble bee, and burrowing owl to adequately reduce impacts to less-than-significant and avoid unauthorized take. The commenter provides more specific comments regarding Swainson's hawk, blunt-nosed leopard lizard, California tiger salamander, Crotch's bumble bee, and burrowing owl in comments 1-3 to 1-7. The commenter's concerns for SJKF include those related to permeability through the project site and the suitability of the mitigation site to fully mitigate for impacts to SJKF. The comment does not allege that the SJKF mitigation identified in the Draft SEIR is insufficient to reduce impacts to less than significant levels, but rather that it has concerns whether the currently proposed mitigation "is sufficient to adequately mitigate for impacts and reach the 'fully mitigated' standard necessary for issuance of an ITP under CESA." The comment does not request revisions to the Draft SEIR, but instead the comment states that early consultation with the California Department of Fish and Wildlife (CDFW) is imperative and that CDFW would assist with determining the appropriateness of the mitigation site and determining movement corridors through the project site that are protected and managed for SJKF.

The project proponent understands that early consultation with CDFW is important to mitigate impacts on SJKF to a level that is "fully mitigated" to meet the requirements for an Incidental Take Permit (ITP) under CESA to be issued. The project proponent is actively engaged in ongoing consultation with CDFW. As the commentor states, an ITP for SJKF is being pursued, and impacts on moderate to high-quality SJKF habitat are fully mitigated at a greater than 1:1 ratio on the off-site mitigation site. As discussed on page 3.4-53 of Section 3.4.2, *Environmental Impacts*, in the Draft

SEIR, the project has been designed to facilitate movement of SJKF through the project site, via the movement corridors, by placing escape tunnels along the western boundary of the project fence and within the movement corridors and by using a fox-friendly fence design that is permeable to SJKF but not to their predators. Furthermore, the development of portions of the facility would replace agricultural lands with annual grasslands within the solar array area. This change in habitat would increase the habitat value from the baseline condition.

As discussed in Chapter 3, *Draft SEIR Errata*, of this Final SEIR, Chapter 2, *Project Description*, of the Draft SEIR has been revised to clarify that the off-site mitigation site would be *at least* 1,498 acres in size, pending ongoing consultation with CDFW. The only impacts identified in the Draft SEIR associated with establishment of the off-site mitigation site were impacts on cultural resources. Section 3.5, *Cultural Resources*, of the Draft SEIR has also been revised to indicate that, if the size of the off-site mitigation site is increased mitigation measures identified in the Draft EIR for impacts on cultural resources at the mitigation site would also apply to additional areas if the mitigation site were to be expanded and would also reduce impacts to a less-than-significant level, as described on page 3.5-13 of the Draft SEIR. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

Response to Comment 1-3

The comment states that the proposed Mitigation Measure BIO-1b is not sufficient to mitigate impacts and prevent take of Swainson's hawk (SWHA) and that if a 0.5-mile disturbance buffer is not possible, CDFW should be consulted about measures to avoid take. The comment also states that in the event that take cannot be avoided, an ITP will be required to comply with the California Endangered Species Act (CESA). The comment strongly recommends pursuing an ITP due to the presence of multiple active SWHA nests within 0.5 mile of the project. The comment does not request revisions to the Draft SEIR.

The project applicant is pursuing an ITP under CESA for expected take of SWHA and, as such, would be required to comply with the terms of that permit. The discussion for SWHA under Impact BIO-1 in Section 3.4.2, *Environmental Impacts*, has been updated to reflect this clarification that an ITP is being pursued; revised text can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

Response to Comment 1-4

The comment states that although blunt-nosed leopard lizard (BNLL) has the potential to occur on the project, no focused surveys were conducted and none are included in the proposed mitigation measures, and that additional mitigation measures should be incorporated, including those involving focused surveys, animal and burrow avoidance buffers, and take authorization if take of BNLL cannot be avoided.

A reconnaissance-level survey to evaluate habitat conditions to support BNLL was conducted in May 2019. As discussed on page 3.4-30 in Section 3.4, *Biological Resources*, the project is considered low-quality habitat for BNLL due to the history of ground-disturbing agricultural practices and the current lack of quality habitat features needed to support the species. Thus, BNLL is expected to have a low potential to occur on the project. In addition, the comment's assertions imply that CEQA requires new studies until all uncertainty regarding existing environmental conditions or a project's

impacts thereon have been removed. This is not the case. As the California Supreme Court has emphasized, an EIR need not achieve "technical perfection or scientific certainty." Sierra Club v. County of Fresno (2018) 6 Cal.5th 502, 515. Instead, CEQA requires "adequacy, completeness, and a good-faith effort at full disclosure." CEQA Guidelines §15003(i); see also Sierra Club v. City of Orange (2008) 163 Cal.App.4th 523, 544 ("CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive."). The appropriate degree of specificity and analysis a given issue warrants depends on "the nature of the project and the rule of reason." North Coast Rivers Alliance v. Kawamura (2015) 243 Cal.App.4th 647, 679; see also CEQA Guidelines Section 15151 ("An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible.").

"CEQA does not require a lead agency to conduct every recommended test and perform all recommended research to evaluate the impacts of a proposed project. The fact that additional studies might be helpful does not mean that they are required." *Ass'n of Irritated Residents v. Cty. of Madera,* (2003) 107 Cal. App. 4th 1383, 1396; see also Guidelines Section 15204(a) ("CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors.") As the California Supreme Court has explained, "A project opponent or reviewing court can always imagine some additional study or analysis that might provide helpful information. It is not for them to design the EIR. That further study . . . might be helpful does not make it necessary." Laurel Heights Improvement Assoc. v. Regents of U.C. (1988) 47 Cal.3d 376, 415. Consequently, CEQA does not contain a blanket requirement that agencies conduct exhaustive studies to cover every potentiality, nor does it contain a blanket requirement to conduct protocol-level surveys. See Madera, 107 Cal. App. 4th at 1396 (rejecting contention that "CEQA compels compliance with [CDFW] survey guidelines as a matter of law").

Therefore, additional studies are not warranted, and no revisions to the Draft SEIR are required. The commenter is also referred to Appendix D of this Final SEIR, which provides a summary of the biological surveys conducted for the project.

Response to Comment 1-5

The comment states that more than one season of focused surveys are required for California tiger salamander (CTS) to determine presence/absence per the U.S. Fish and Wildlife Service protocol and that therefore the results of the habitat assessment determining the species to be absent on the project site were inconclusive, and that additional mitigation measures should be incorporated, including those additional focused protocol-level surveys, upland burrow and wetland breeding habitat no-disturbance buffers, and take authorization if take of CTS cannot be avoided.

A formal site assessment for CTS was conducted in 2022. Two-year protocol-level aquatic surveys were conducted in 2023 and 2024 on the project site (2023 was an above-average rainfall year over the 2022/2023 wet season and 2024 was an average rainfall year) and no CTS were observed. The memorandum of results from the 2023 surveys is included as Appendix 3.4-4, *2023 California Tiger Salamander Habitat Assessment*, in the Draft SEIR. The memorandum of results from the 2024 surveys (which had not yet been completed at the time of the Draft SEIR public review) is included as Appendix E, *2024 California Tiger Salamander Habitat Assessment*, in this Final SEIR. Additional studies are therefore not warranted, and no revisions to the Draft SEIR are required.

As described in detail in Response to Comment 1-4, CEQA does not require additional studies until all uncertainty regarding existing environmental conditions or a project's impacts thereon have been removed, and CEQA does not include a blanket requirement to conduct protocol-level surveys. The commenter is also referred to Appendix D of this Final SEIR, which provides a summary of the biological surveys conducted for the project.

Response to Comment 1-6

The comment states that although Crotch's bumblebee has the potential to occur on the project, no focused surveys were conducted and none are included in the proposed mitigation measures, and that additional mitigation measures should be incorporated, including those involving focused surveys, mammal burrow and thatched/bunch grass avoidance buffers, and take authorization if take of Crotch's bumblebee cannot be avoided.

As discussed on page 3.4-37 and 3.4-38 in Section 3.4, *Biological Resources*, the project site is considered marginal habitat for Crotch's bumblebee because few, if any, of the host plant species needed to support the species are present. As confirmed during the site surveys conducted for other wildlife species in 2022, 2023, and 2024 (Swainson's hawk surveys and California tiger salamander surveys), the majority of the project site consists of invasive annual grasses, with wild mustard (*Sinapis arvensis*) the dominant flowering plant. Thus, Crotch's bumblebee is expected to have a low potential to occur on the project. In addition, here, as described above in detail in Response to Comment 1-4, CEQA does not require additional studies until all uncertainty regarding existing environmental conditions or a project's impacts thereon have been removed, and CEQA does not include a blanket requirement to conduct protocol-level surveys. Thus, additional studies are therefore not warranted. Notwithstanding, Mitigation Measure BIO-1a has been updated to clarify areas of bumblebee habitat to avoid (thatched/bunch grasses) and require biological monitor experience with the species; revised text can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

Response to Comment 1-7

The comment states that a burrowing owl was observed on the project site in 2023, and that while the preconstruction surveys proposed in Mitigation Measure BIO-1c are suitable, the avoidance buffers are insufficient to avoid impacts on burrowing owl and should be expanded along with recommending consultation with CDFW if a burrowing owl is found within these buffers and avoidance is not possible.

As stated on page 3.4-56 of the Draft SEIR in Section 3.4.2, *Environmental Impacts*, Mitigation Measure BIO-1c follows the general guidance for mitigation provided in the California Department of Fish and Game's 2012 *Staff Report on Burrowing Owl Mitigation* (Staff Report), but does propose avoidance buffers that are different than the ones presented in a table on page 9 of the Staff Report, which recommends a year-round 500 meter buffer from nesting sites for high levels of disturbance. These recommended buffers are based on a report done by Scobie and Faminow (2000) for Environment Canada (a department of the Canadian Government) to develop standardized guidelines for setback distances and timing restrictions to minimize impacts on sensitive species, including burrowing owl, from petroleum activities on the Canadian prairie. In the updated version of that report (Environment Canada 2009:4), the authors state that the setbacks and critical timing are based on a scenario where the area is deemed undisturbed where no previous development or other mitigative circumstances exist in the area.

The project site and surrounding areas do not fit into this category because of the ongoing and historic use of the site and adjacent lands for agricultural production. Furthermore, on page 9 of the Staff Report, CDFW acknowledges that there are instances where buffers may be adjusted based on site-specific information. It states: "The following general guidelines for implementing buffers should be adjusted to address site-specific conditions using the impact assessment approach described above. The CEQA lead agency and/or project proponent is encouraged to consult with the Department and other burrowing owl experts for assistance in developing site-specific buffer zones and visual screens." Mitigation Measure BIO-1c was drafted considering the historic and current levels of disturbance (i.e., discing and dry farming, sheep grazing operations, vehicle traffic) on the landscape and with assumption that any resident burrowing owls would have acclimated to these disturbances.

Mitigation Measure BIO-1c has been updated to clarify the commitments to establish no activity zones around burrows during the nesting season in coordination with CDFW, and to coordinate with CDFW in establishing avoidance buffers around occupied burrows during the nonbreeding season; revised text can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5. In addition, if burrowing owl becomes listed or a candidate species under the California Endangered Species Act, the project proponent may seek a state ITP if take of the species cannot be avoided.

Response to Comment 1-8

The comment states that the California Natural Diversity Database is populated from voluntary submissions of species detections, and as such, may not accurately indicate presence or absence of a species, and that focused surveys by a qualified biologist during appropriate survey period(s) and following appropriate protocol methodology are warranted to determine species presence or absence.

This informational comment does not contain questions or concerns regarding the adequacy of the Draft SEIR analysis. No revisions to the Draft SEIR are required. Please see also Response to Comment 1-4 regarding CEQA's requirements for focused surveys, and Appendix D of this Final EIR for a summary of the surveys conducted for the project.

Response to Comment 1-9

The comment recommends consulting with the U.S. Fish and Wildlife Service regarding potential impacts to federally listed species, including but not limited to SJKF, BNLL, and CTS, and states that take under the Federal Endangered Species Act is more inclusive of habitat alterations than under CESA, and that early consultation is advised well in advance of project activities. SJKF is the only federally listed species determined to have moderate to high potential to occur on the project site; as such, the project proponent is actively pursuing a Habitat Conservation Plan (HCP) and incidental take permit (ITP) from USFWS to cover potential take of the species.

This informational comment does not contain questions or concerns regarding the adequacy of the Draft SEIR analysis. No revisions to the Draft SEIR are required. Furthermore, the SEIR did not rely only upon CNDDB records for the above species. A habitat evaluation was conducted in May 2019 and protocol-level surveys of aquatic breeding habitat for CTS were conducted in 2023 and 2024. The results of the CTS surveys were negative.

Response to Comment 1-10

The comment notes CDFW's regulatory authority surrounding lake and streambed alterations and that the proposed project would avoid these features. The comment further notes the regulatory requirements that would be followed should these features not be avoided.

The Draft SEIR notes this on page 3.4-65 of the Draft SEIR, in discussing avoidance of jurisdictional water features in construction of the PG&E substation improvements.

As noted in the Draft SEIR (page 3.4-66), the solar project site contains a potential State jurisdictional non-wetland ephemeral drainage within the southeastern portion. This feature was also identified in the Community Plan EIR as an intermittent wash (Community Plan EIR Exhibit 5.8-3). As discussed in Chapter 3, *Draft SEIR Errata*, of this Final SEIR, the discussion on page 3.4-66 of the Draft SEIR has been revised to indicate that construction and operation of the solar project could affect this aquatic resource. Specifically, the solar project proposes a vehicular access point off Billy Wright Road that could intercept with this feature (see Figure 2-2 in Chapter 2, *Project Description*), although the applicant is exploring ways to avoid doing so (e.g., installing an above-ground crossing). As discussed in Chapter 3, *Draft SEIR Errata*, of this Final SEIR, the Community Plan EIR also identified impacts to this aquatic feature as significant and included Community Plan EIR Mitigation Measure 5.8-5, which is largely tailored to mitigating impacts on federally jurisdictional wetlands, which are not present on the solar project site. Therefore, the solar project would implement project-specific Mitigation Measure BIO-1h, which is based on Community Plan EIR Mitigation Measure 5.8-5 but tailored to mitigating impacts on State-jurisdictional features, in lieu of Community Plan EIR Mitigation Measure 5.8-5. Mitigation Measure BIO-1-h would ensure that the project applicant secures and complies with all necessary permits and regulatory approvals, as necessary, before conducting any construction activities that may impact jurisdictional aquatic resources. With implementation of project-specific Mitigation Measure BIO-1-h, no new or substantially more severe significant impacts would result beyond those identified in the previous EIR. Therefore, while this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

Response to Comment 1-11

The comment encourages the project applicant to conduct ground-disturbing activities during the bird non-nesting season. If that is not possible, the project applicant is encouraged to conduct pre-activity surveys for active nests within 7 days of ground disturbance in the area of direct and indirect impacts, conduct a survey to establish a behavioral baseline of all identified nests prior to the start of construction activities, continuously monitor nests once construction activities begin, or implement a no-disturbance buffer around active nests if continuous monitoring is not possible until the breeding season ends or the young have fledged. The comment also recommends CDFW coordination prior to implementation of any variation in these buffers. The comment does not, however, assert that these recommendations are required under CEQA.

Mitigation Measure BIO-1d has been revised to reflect these suggested dates and survey timelines; revised text can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

Response to Comment 1-12

The comment states that the project area contains important habitat connections and is important for wildlife movement. This comment concurs with the components of Mitigation Measure BIO-1g, which requires coordination with CDFW regarding implementation of specific measures. The measures include identifying areas of fencing that may act as wildlife movement impediments, identifying locations for water guzzlers, and conducting or funding additional studies on wildlife connectivity and movement.

Mitigation Measure BIO-1g has been revised to require the installation of water guzzlers in the project vicinity in response to the comment and ongoing consultation with CDFW; revised text can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

Response to Comment 1-13

The comment states that CEQA requires information developed in EIRs and negative declarations be incorporated into a database for future potential use in subsequent or supplemental environmental determinations, and requests that special-status species observations and natural communities be reported to the California Natural Diversity Database.

The project will comply with all required reporting requirements. This informational comment does not contain questions or concerns regarding the adequacy of the Draft SEIR analysis. No revisions to the Draft SEIR are required.

Response to Comment 1-14

The commenter indicates that, as described in the Draft SEIR, the Project would have an impact on fish and/or wildlife and assessment of environmental document filing fees is necessary. The commenter states required fees are payable upon filing the Notice of Determination pursuant to the following codes: California Code of Regulations, title 14 § 753.5; Fish and Game Code, § 711.4; Public Resources Code, § 21089.

The project will comply with all CDFW filing requirements as a condition of approval. This informational comment does not contain questions or concerns regarding the adequacy of the Draft SEIR analysis. No revisions to the Draft SEIR are required.

Letter 2. Tom Dumas, California Department of Transportation, dated May 30, 2024

CALIFORNIA STATE TRANSPORTATION AGENCY GAVIN NEWSOM, GOVERNOR

California Department of Transportation

OFFICE OF THE DISTRICT 10 DIRECTOR
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May 30, 2024

10-MER-152-PM 13.232
Las Camas Solar Project
SEIR
SCH#2021080196

Lorri Hammer
County of Merced
2222 M Street, 2nd Floor
Merced, CA 95340

Dear Ms. Hammer:

The California Department of Transportation appreciates the opportunity to review the SEIR for the proposed 1,745 acre solar project at the southwest corner of SR 33 and SR 152. The project will be accessible via Billy Wright Road. The Department has the following comments:

1. Please submit the pre- and post-construction stormwater runoff calculations for two (2) 10-year/24-hour storm events to Caltrans for review and comment prior to project approval. The proposed bioretention basin must have adequate capacity and freeboard. The applicant needs to ensure the existing State drainage facilities will not be significantly impacted by the project. 1

2. The proposed development indicates a major increase in the imperious (Gravel area) stormwater runoff area. 2
   a. Three (3) culvert systems along I-5 will be impacted: 390054001703, 390054001682, and 390054001674. No additional peak flow is allowed through these culverts, and any increase in runoff should be stored on-site. As indicated in the drainage report, the Group D soils have high runoff potential and low infiltration rates, being predominantly silts and clays. Soils within the project area are predominantly Apollo clay loam (82 percent). Adding gravel as a top layer will increase runoff and peak flow within the Caltrans right-of-way. The locations of these culverts can be seen in the attached picture.
   b. If historical undeveloped topography shows drainage from this site flowed into the State Right-of-Way (R/W), it may continue to do so with the conditions that peak flows may not be increased from the pre- 3

3 cont. construction quantity. Any increase in runoff generated by the proposed development should be stored/mitigated onsite. Caltrans will not allow additional runoff draining into the State R/W nor significantly impact the existing drainage patterns.

2. Please submit the following items for review and comment prior to project approval.
   a. Truck turning template for largest truck that will be used for all truck turning movements for the three intersections, SR 152 & Billy Wright Road, SR 152 & SR 165, SR 165 & Onramp to I-5.
   b. The AutoCAD files for the intersections mentioned above.
   c. A pavement delineation plan for any changes to current stripping along SR 152.

4

If you have any questions, please contact me at (209) 483-2582 or Nicholas Fung at (209) 986-1552.

Sincerely,

Tom Dumas
Chief, Office of Metropolitan Planning

Impacted culverts

Responses to Comment Letter 2 – Tom Dumas, California Department of Transportation

Response to Comment 2-1

The comment notes that the project will require pre- and post-construction stormwater runoff calculations for two 10-year, 24-hour storm events. The comment also notes that the proposed bioretention basin must have adequate capacity and freeboard. The comment does not include a question or comment about the adequacy of the Draft SEIR analysis.

The comment is acknowledged and has been conveyed to the project applicant. The analysis in Section 3.10, *Hydrology and Water Quality*, and Appendix 3.10-1 of the Draft SEIR shows stormwater runoff calculations for one 10-year, 24-hour storm event and one 100-year, 24-hour storm event (see pages 3.10-30 and 3.10-31). These calculations are sufficient for the CEQA analysis, which evaluates the change in peak flow and volume from existing to proposed conditions and whether the proposed change can be accommodated by existing infrastructure. Currently, bioretention basins are not proposed as part of the project. The project is required to comply with California Department of Transportation (Caltrans) drainage facility requirements. When the project applicant submits plans to Caltrans for review, runoff calculations requested by Caltrans will be provided.

Response to Comment 2-2

This comment from Caltrans states Caltrans own standards for their stormwater facilities. The commenter states that Caltrans will not allow any additional peak flow through the three existing Caltrans culverts along Interstate 5 and will require that any increase in runoff be stored on-site.

The SEIR evaluated whether the project would substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner that would i) result in a substantial erosion or siltation on- or off-site, ii) substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site, iii) create or contribute runoff water that would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff, or iv) impede or redirect floodflows. This is the threshold used in the Community Plan EIR and SEIR.

As stated on page 3.10-30 of the SEIR, the Community Plan EIR found that buildout of the Community Plan would result in an increase in impervious surfaces within the Community Plan area, which would lead to an alteration of then-existing drainage pattern of the area and increase in stormwater runoff compared to then-existing conditions. The increased surface runoff could result in a greater potential for off-site and on-site flooding, erosion, or siltation. However, the Community Plan includes flood control and drainage concepts and implementation of Community Plan policies that would prevent on-site flooding and erosion and would reduce project generated stormwater and stormwater-related flooding damage within the Community Plan area. Future implementation plans would provide additional site-specific design recommendations to ensure stormwater storage and discharge capacity sufficient to protect the site and capture additional sources of polluted runoff. The Community Plan would not impede or redirect floodflows because it is not located within a Federal Emergency Management Agency (FEMA)-designated Special Flood Hazard Areas (SFHAs) or mapped regulatory floodway. Therefore, no mitigation was required for Impact 5.5-2. Thus, overall the Community Plan EIR concluded that impacts would be less than significant.

The analysis in Section 3.10, *Hydrology and Water Quality*, and Appendix 3.10-1 of the Draft SEIR shows that a significant increase in peak flow or volume would not occur under proposed conditions under the solar project (see pages 3.10-30 through 3.10-33). Therefore, as with the Community Plan, impacts would be less than significant, and no mitigation is required. Accordingly, the SEIR concludes that no new or substantially more severe significant impacts would result beyond those identified in the previous EIR and no additional mitigation would be required.

The comment states that no increase in flow (even an insignificant increase) will be allowed through Caltrans' culverts. This comment concerns Caltrans standards for its facilities and does not include a question or comment about the adequacy of the Draft SEIR analysis, nor does it express disagreement with the SEIR conclusion.

The comment is acknowledged and has been conveyed to the project applicant. Currently, no additional storage is proposed on-site. The project is required to comply with Caltrans' drainage facility requirements. As a condition of approval, the project will not increase flows to Caltrans' culverts. When the project applicant submits plans to Caltrans for review, project design materials and runoff calculations requested by Caltrans will be provided. No revisions to the Draft SEIR are required.

Response to Comment 2-3

Similar to Comment 2-2, the comment notes that Caltrans will not allow any additional flow into state right-of-way facilities and that any increase in runoff generated by the proposed project will need to be stored or mitigated on-site. Please see Response to Comment 2-2 for a response to this comment.

Response to Comment 2-4

The comment requests truck turning templates, AutoCAD files, and a pavement delineation plan. The comment does not include a question or comment about the adequacy of the Draft SEIR analysis.

The comment is acknowledged and has been conveyed to the project applicant. The project is required to comply with all applicable Caltrans' requirements. The requested materials will be provided when the project applicant submits plans to Caltrans for review.

Letter 3. Ricardo Ortega, General Manager, Grassland Water District, dated June 17, 2014

200 W. Willmott Avenue
Los Banos, CA 93635

(209) 826-51
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Email: contact_us@gwdwater.o

June 17, 2024

VIA E-MAIL

Lorri Hammer, Contract Planner
Community and Economic Development Department
2222 M Street, 2nd Floor
Merced, CA 95340
(209) 385-7654
E-mail: Planning@countyofmerced.com

Re: Draft Supplemental Environmental Impact Report for the Las Camas Solar Project (Conditional Use Permit No. CUP-20-011; General Plan Amendment No. 20-001; and Zone Change Amendment No. ZC 21-002)

Dear Ms. Hammer:

Grassland Water District ("GWD") submits the following comments on the Draft Supplemental Environmental Impact Report ("DSEIR") for the Las Camas Solar Project ("Project"). **Other large solar projects in the vicinity of the GEA, including the Wright Solar Project and the Vega Solar Project, both located near this Project, agreed to develop Avian Protection Plans and associated Nighttime Lighting Plans to avoid and reduce impacts on migratory birds and nearby wetland habitats. This is similar to smaller projects at tomato processing and dairy facilities in the County that are close to the GEA. The County should require no less for his large solar Project, including comprehensive monitoring and reporting of bird injuries and deaths at the Project site, with adaptive mitigation as necessary to address any significant or unforeseen avian impacts.**

1

GWD delivers water to state, federal, and private lands within the Grassland Ecological Area ("GEA") of Merced County, for the purpose of managing wildlife habitat. The GEA covers 230,000 acres and contains the largest remaining wetland complex west of the Rocky Mountains. **At its closest point, the proposed Project is only 1.6 miles from the GEA**. GWD is concerned about industrial-scale solar developments in such close proximity to the GEA, because the GEA is one of the County's significant natural resources, providing irreplaceable habitat benefits for birds and other wildlife. GWD urges the County to give careful consideration to new solar developments near the GEA, and to ensure that they are appropriately sited and designed to minimize impacts to birds.

1 cont.

The DSEIR should acknowledge the ecological significance of the GEA, acknowledge the potential for significant impacts to migrating birds, and adequately describe or mitigate for Project impacts, including but not limited to nighttime lighting impacts. Given the sensitivity and high concentrations of migratory birds in the Project vicinity, a robust Avian Protection Plan and Nighttime Lighting Plan should be developed and disclosed to the public in advance of Project approval. GWD is willing to work with the Project proponent to develop these protection plans.

2

1. The DSEIR Fails to Acknowledge the Ecological Significance of the GEA

The existing environmental setting is the starting point from which a CEQA lead agency must measure whether a proposed Project may cause a significant environmental impact.[1] CEQA defines the environmental setting as the physical environmental conditions in the vicinity of the project, from both a local and regional perspective.[2] Describing the environmental setting accurately and completely is critical to a meaningful evaluation of environmental impacts. "It is only against this baseline that any significant environmental effects can be determined."[3]

The DSEIR must describe the existing environmental setting in sufficient detail to enable a proper analysis of the Project's impacts.[4] CEQA's regulatory guidelines provide that "[k]nowledge of the regional setting is critical to the assessment of environmental impacts."[5] This level of detail is necessary to "permit the significant effects of the Project to be considered in the full environmental context."[6]

The DSEIR fails to accurately and adequately describe the environmental setting for migratory waterfowl and wildlife habitat areas and omits highly relevant information regarding biological resources. The DSEIR should address the location of the Project in relation to surrounding bird habitat areas and migratory bird corridors.

The GEA is an Audubon-designated Important Bird Area.[7] It is listed as a major shorebird site by the Western Hemisphere Shorebird Reserve Network.[8] The GEA is designated by the United States as a Wetland of International Importance under the International Ramsar Convention on Wetlands.[9] In addition to containing four state wildlife areas and three national wildlife refuges, the GEA contains large tracts of privately managed wetlands within the Grassland Resource Conservation District and the Grasslands Wildlife Management Area, which

[1] *See, e.g., Communities for a Better Env't v. S. Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 316; *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1278 (citing Remy, et al., Guide to the Calif. Environmental Quality Act (1999) p. 165).
[2] CEQA Guidelines § 15125(a); *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1453.
[3] *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.
[4] *Galante Vineyards v. Monterey Peninsula Water Mgmt. Dist.* (1997) 60 Cal.App.4th 1109, 1121-22.
[5] CEQA Guidelines § 15125(d).
[6] *Id.*
[7] http://netapp.audubon.org/iba/Site/173
[8] http://www.whsrn.org/site-profile/grasslands
[9] http://www.ramsar.org/cda/en/ramsar-activities-wwds-two-new-us-ramsar-sites/main/ramsar/1-63-78%5E22428_4000_0__

2 cont.

was established by the U.S. Fish and Wildlife Service to "protect highly valuable and declining wetlands of California's San Joaquin Valley" and "assist in achieving goals for recovery of migratory waterfowl in North America's Pacific Flyway and federally listed threatened or endangered species."[10]

The GEA contains the majority of the wildlife refuge areas that are designated under federal law as "mitigation for fish and wildlife losses incurred as a result of construction, operation, or maintenance of the Central Valley Project."[11] The GEA and its ecological importance to the Pacific Flyway and to the Central Valley are also described and mapped in Merced County's General Plan.[12]

Without an accurate description of this environmental setting, the Project's potential impacts to biological resources are not fully disclosed. To comply with CEQA, the DSEIR must be revised to include a description of the GEA that accurately portrays its ecological significance. The DSEIR should also be revised to indicate that at its closest point, the Project site is only approximately 1.6 miles from the GEA boundaries.

2. The DSEIR Fails to Acknowledge the Potential for Significant Impacts to Migrating Birds

CEQA requires a DEIR to disclose all direct and indirect potentially significant environmental impacts of a project.[13] The discussion of impacts in a DEIR must be detailed, complete, and "reflect a good faith effort at full disclosure."[14] An adequate DEIR must contain facts and analysis, not just an agency's conclusions.[15]

3

There is growing concern about the "lake effect" that large solar projects have on migrating and water-associated birds. Early on, the U.S. Fish and Wildlife Service confirmed that the lake effect is a known and growing concern for all types of solar projects. It warned that the lake effect may be correlated with proximity to migratory stopover areas:

> Incidental fatalities are increasingly being documented and reported at a range of solar projects, including photovoltaic and parabolic trough technologies in Riverside and Imperial counties. What is commonly referred to as the "lake effect" or as "polarized light pollution" by Horvath et al. (2009), presents a hazard

[10] http://zero.eng.ucmerced.edu/snow/Tom/Web/website_102610/www/files/pdfs/4.1.1_GrasslandsPassport_Public_Document_Version.pdf; http://www.fws.gov/cno/refuges/grasslands/3%20Grasslands%20Expansion%20Final%20EA.pdf (p. 5 of 53).
[11] Central Valley Project Improvement Act, Pub. Law 102-575, Title 34, §§ 3406(a), (d).
[12] Merced County General Plan Background Report (2013), revised pages 4-22 to 4-26: http://zero.eng.ucmerced.edu/snow/Tom/Web/website_102610/www/files/pdfs/4.1.1_GrasslandsPassport_Public_Document_Version.pdf (pp. 22-26 of 134).
[13] Pub. Resources Code § 21100(b)(1); CEQA Guidelines § 15126.2(a).
[14] CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.
[15] See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.

3 cont.

> particularly in the desert to water-associated birds, and other species seeking available resident, seasonal, and/or migratory stopover habitat typically found along rivers and lakeshores (Service 2014). All [solar] technology types appear to present a hazard to water-associated bird species from the lake effect, based on the species composition of avian mortalities documented at ISEGS, Genesis (solar trough), and Desert Sunlight (photovoltaic) projects. *The magnitude of this lake effect remains unclear, but may be location specific and may be correlated with migratory flyways or the availability of other habitat for migratory stopovers. Desert Sunlight and Genesis in the vicinity of the proposed project are among those reporting the most incidental observations of water-associated mortalities, likely related to the proximity of wintering grounds for large numbers of migratory birds* in the Lower Colorado River Valley and Salton Sea Basin.[16]

Since then, the USFWS and other organizations such as Renewable Energy Wildlife Institute (REWI) have developed studies, guidance, and resources for solar projects. **A list of some of these only resources is provided in the Attachment to these comments.**

It is acceptable for the DSEIR to acknowledge that there is uncertainty and risk regarding potential avian impacts, and that mitigation should be implemented to address this uncertainty. It is not acceptable for the DSEIR to conclude that impacts will likely be minimal. Correcting the DSEIR will provide the reader with a more accurate understanding of the potential risks and uncertainties involved with constructing a very large photovoltaic power plant in a migratory bird corridor and in proximity to important wildlife habitat areas.

3. <u>Project Lighting Is Not Adequately Described; the County Should Require A Nighttime Lighting Plan That Includes Motion Detection Lights Instead of Fixed Nighttime Lighting</u>

4

In several places the DSEIR states that nighttime lighting will be installed, including around the Project's fence line and at the new substation associated with the Project. The DSEIR provides no indication of how many lights would be installed, and gives no explanation for why they must remain illuminated throughout the night. The DSEIR's Project description and analysis of lighting is inadequate. The Project is located in an important migratory bird stopover area, and increased nighttime would have potentially significant adverse effects on birds. Bird disorientation from nighttime lighting is a well-known phenomenon:

- "Light fixation is a constant bird hazard .... Hundreds of terrestrial bird species fly and migrate under cover of night. While the mechanisms for birds' attraction to artificial night lighting are not well understood, its hazards to birds have been well documented."

[16] Letter from Kennon Corey, U.S. Fish and Wildlife Service, to Christine Stora, California Energy Commission dated August 7, 2014 (emphasis added).

- "Our data show that chronic low intensities of light at night can dramatically affect the reproductive system [of birds]. … [W]e call for collaboration between scientists and policy makers to limit the impact of light pollution on animals and ecosystems."
- "Researchers have used radar imagery to determine how birds respond to lit environments. The observations found that once they fly through a lit environment they'll return to that lit source and then hesitate to leave it."
- "Artificial night lighting affects the natural behavior of many animal species. It can disturb development, activity patterns, and hormone-regulated processes, such as the internal clock mechanism; see references in Rich and Longcore (2006). Probably the best-known effect, however, is that many species are attracted to, and disoriented by, sources of artificial light, a phenomenon called positive phototaxis. Apart from insects, birds that migrate during the night are especially affected (Verheijen 1958). This may cause direct mortality, or may have indirect negative effects through the depletion of their energy reserves. Reviewing the literature, Gauthreaux and Belser (2006) conclude that "all evidence indicates that the increasing use of artificial light at night is having an adverse effect on populations of birds, particularly those that typically migrate at night."

4 cont.

A list of scientific publications about light impacts on birds is provided in the Attachment. Light pollution is considered a serious threat to ecological communities because it has the potential to alter physiology, behavior, and population ecology of wildlife. The DSEIR lacks adequate information about the lighting that will be installed at the Project site, including the abundance of lights, the maximum luminous emittance (intensity) of bulbs, and the location of light fixtures. This information is essential to assessing the impacts of the Project's lighting on sensitive biological resources.

An Avian Protection Plan ("APP") with robust protections for avian injury, death, and impacts from Nighttime Lighting is required. The lighting measures in the APP need to be clear and detailed, to ensure that feasible measures to mitigate Project impacts will in fact be implemented. GWD has worked with the proponents of other projects, including the Wright Solar Project, Liberty Packing Plant Project, and the Vega Solar Project, to develop lighting plans that were adopted and approved by the County Board of Supervisors during Final EIR approvals. Protective measures included equipping Project lighting with motion detection technology that will only illuminate when movement is detected, light colors that are least attractive to birds, and specifications for downward-facing lights and shielding (no more than 45 degrees from the horizon). These measures also included construction lighting requirements.

In sum, the DSEIR should be revised to provide more information about the number and location of Project lights, the intensity of nighttime lighting at the substation and similar facilities, and the expected frequency of nighttime lighting, and nighttime occupancy by staff. Compliance with an APP should be required, and the lighting measures in the APP should be consistent with other lighting requirements for similar projects in the County, including motion

5

4 cont. detection lights around the Project perimeter, and other measures to reduce the potential impacts of nighttime lighting.

4. Request for Avian Protection Plan Monitoring Components

The Project is one of the largest solar projects to be proposed in Merced County, and the largest development to take place this close to the GEA. Due to uncertainty and potential risks regarding how this large project will affect migrating and resident bird species, particularly due to the "lake effect" of large solar arrays, a robust monitoring and reporting program for avian injuries and deaths must be implemented.

The U.S. Fish and Wildlife Service ("USFWS") has issued its recommendations for "project-level monitoring objectives" on solar project sites. This is an evolving field, with recent contributions from REWI and other organizations (**see Attachment**). The USFWS convened a Solar Avian Mortality Monitoring Product Team to prepare solar monitoring guidelines to meet these objectives. The USFWS monitoring objectives indicate that monitoring "should be structured in order to provide information on seasonal differences in mortality rates and which species or taxonomic groups are most vulnerable," by implementing consistent monitoring throughout the annual cycle. The USFWS objectives also require "carcass persistence and searcher efficiency surveys" to determine if carcass search intervals should be adjusted. Finally, the USFWS objectives state that "systematic monitoring should be conducted for a minimum of 3 years unless information or adaptive management strategies warrant an alternative number of years of monitoring." Monitoring should also be used to evaluate the effectiveness of any adaptive management.

5

The DSEIR does not meet the USFWS monitoring objectives. Biological surveys should be undertaken throughout an annual cycle; carcass surveys should be designed to cover a large portion of the Project site and should include surveys "to estimate detection probabilities"; and the APP should require three years of monitoring. The DSEIR and APP for this Project should also reflect on data collected under the APP for the nearby Wright Solar Project, incorporate any monitoring lessons learned, and include adaptive measures needed to avoid avian entrapment, injury, and fatalities. The APP should acknowledge that monitoring protocols may need to be adjusted.

In addition to requiring conformity with relevant objectives, the APP should ensure that the Project's monitoring and reporting program is robust, transparent, and accurate: (1) The APP must ensure that staff are properly trained and required to report all bird observations on the Project site; (2) staff observations must be included in Avian Mortality Monitoring reports; (3) the APP should include an avian incident report form, which the developer will use to document and report avian injuries, mortality, and stranding; (4) biologist surveys must include a requirement to report any injured or stranded wildlife, not just mortalities; and (5) examples of adaptive management measures provided in the APP should include the possibility of modifications to monitoring protocols based on updated guidelines.

6

5 cont. Thank you for your consideration of these comments. Should you have questions regarding these comments, please feel free to contact GWD.

Sincerely,

Ricardo Ortega
General Manager
Grassland Water District

7

ATTACHMENT

(Comments of Grassland Water District)

List of Literature on Wildlife Disturbance, Behavioral Effects, and Mitigation

Online Resources:

Summary of existing literature on solar/wildlife interactions: https://rewi.org/resources/solar-energy-interactions-with-wildlife-and-their-habitats/

Solar REWI research plan: https://rewi.org/resources/national-solar-wildlife-research-plan-2023-2025/

USFWS Resources: Energy Development | U.S. Fish & Wildlife Service (fws.gov) and

Incidental Take Beneficial Practices: Solar | U.S. Fish & Wildlife Service (fws.gov)

Fatal Light Awareness Program (FLAP), *FLAP Canada Website*: https://flap.org/

Scientific Literature

Beier, Paul, *Effects of Artificial Night Lighting on Terrestrial Mammals* (2005)

Blumstein, Daniel T., *Developing an Evolutionary Ecology of Fear: How Life History and Natural History Traits Affect Disturbance Tolerance in Birds* (2006)

Borgmann, Kathi L., *A Review of Human Disturbance Impacts on Waterbirds* (2010)

Bruderer, Bruno et al., *Behaviour of Migrating Birds Exposed to X-Band Radar and a Bright Light Beam* (1999)

Da Silva, Arnaud, *Light Pollution Alters the Phenology of Dawn and Dusk Singing in Common European Songbirds* (2015)

DeLong, Anita K., *Managing Visitor Use & Disturbance of Waterbirds – A Literature Review of Impacts and Mitigation Measures – Prepared for Stillwater National Wildlife Refuge* (2002)

Dominoni, Davide M., *The Effects of Light Pollution on Biological Rhythms of Birds: An Integrated, Mechanistic Perspective* (2015)
Fleskes, Joseph P., *Pintail North-South Flight Paths in the Grassland Ecological Area* (2002)

Hockin, D. et al., *Examination of the Effects of Disturbance on Birds with Reference to Its Importance in Ecological Assessments* (1992)

Jones, Jenny, Impact of Lighting on Bats (2000)

Longcore, Travis and Rich, Catherine, *Ecological Light Pollution* (2004)

Lustick, Sheldon, *The Effect of Intense Light on Bird Behaviour and Physiology* (1973)

Novak, Annie, *The 9/11 Tribute in Light Is Helping Us Learn About Bird Migration* (2018)

Perry, Gad et al., *Effects of Artificial Night Lighting on Amphibians and Reptiles in Urban Environments* (2008)

Poot, Hanneke et al., *Green Light for Nocturnally Migrating Birds* (2008)

Powell, Hugh, *The Sky Above: It's Not Just Air, It's Habitat* (2018)

Shuford, W. David et al., *Patterns of Distribution, Abundance, and Habitat Use of Breeding Black-necked Stilts and American Avocets in California's Central Valley in 2003* (2004)

Stone, Emma Louise et al., *Impacts of Artificial Lighting on Bats – A Review of Challenges and Solutions* (2015)

Van Doren, Benjamin M. et al., *High-Intensity Urban Light Installation Dramatically Alters Nocturnal Bird Migration* (2017)

Wise, Sharon, *Studying the Ecological Impacts of Light Pollution on Wildlife: Amphibians as Models* (2007)

3

Responses to Comment Letter 3 – Ricardo Ortega, General Manager, Grassland Water District

Response to Comment 3-1

The comment states that solar projects in the vicinity of the Grassland Ecological Area (GEA), including the Wright Solar Project and Vega Solar Project, developed Avian Protection Plans and associated Nighttime Lighting Plans to avoid and reduce impacts on migratory birds and nearby wetland habitat, and that smaller non-solar projects developed similar plans. The comment states that the County should require the same of the Las Camas Solar Project. The comment discusses the ecological significance of the GEA and expresses concerns regarding the impacts of industrial-scale solar developments that are in proximity to the GEA. The comment states that the Draft SEIR should acknowledge the ecological significance of the GEA and evaluate and mitigate impacts on migrating birds—specifically, through development of an Avian Protection Plan and Nighttime Lighting Plan.

The comment serves as a general summary of the individual comments to follow. Responses to each of those comments are provided below.

Response to Comment 3-2

The comment states that the Draft SEIR fails to recognize the ecological significance of the GEA and that it must be included to complete the environmental setting section of the document and the evaluation of project impacts on migratory waterfowl. The comment also includes a description of the importance of the GEA.

The GEA, designated in 2005, is not discussed in the Community Plan EIR, although it existed at the time. Because impacts to the GEA were known or could have been known with the exercise of reasonable diligence at the time of the Community Plan EIR, CEQA does not require the SEIR to include that discussion. Notwithstanding, the *Regional Setting* subsection of Section 3.4.1, *Existing Conditions*, was revised to include a description of the GEA and its ecological significance; revised text can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. As discussed therein, the project site is approximately 1.6 miles from the GEA at the closest point. The majority of the GEA is located much further away from the project site. The project site does not include wetland habitat and has very limited foraging opportunities and habitat value for waterfowl and shorebirds. For these reasons, and for the reasons discusses below in Responses to Comments 3-3, 3-4, and 3-5, the project would not result in significant impacts on the GEA or sensitive species within the GEA. Therefore, while this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

Response to Comment 3-3

The comment states that the Draft SEIR fails to acknowledge the potential for significant impacts on migrating birds in regard to the "lake effect" and that, in addition to including corresponding discussion, mitigation should be implemented to address uncertainty in potential avian impacts as a result of the project.

Page 3.4-60, under Impact BIO-1 in Section 3.4.2, *Environmental Impacts*, of the Draft SEIR, includes a robust analysis of impacts related to the "lake effect." As discussed therein, the cause of avian death at solar farms is often unknown (Walston et al. 2015), and a study completed at the Kingbird solar facility in Kern County found no evidence that the project would result in levels of avian mortality that would cause population declines or significant biological impacts (Kern County Planning and Community Development Department 2014). In addition, the Wright Solar Park Project, approximately 1 mile south

of the project site and of a similar size, conducted post-construction monitoring to meet the requirements of the project's Avian Protection Plan. Over the course of monitoring, no collision-related mortalities involving waterfowl or shorebirds occurred, and point counts had a very low mean number of waterfowl and shorebird detections. Based on these results, and the findings noted in Walston et al. (2015) and Kern County Planning and Community Development Department (2014), significant impacts on avian mortality as a result of the lake effect are not anticipated, and mitigation is not required under CEQA. No revisions to the Draft SEIR are required.

Response to Comment 3-4

The comment states that project lighting is not adequately described, that an Avian Protection Plan that addresses impacts from nighttime lighting should be created, and that the Draft SEIR should be revised to include additional details about the nighttime lighting that would be used for the project, including the number and location of lights, the intensity of lighting at the substation and similar facilities, the expected frequency of lighting, and nighttime occupancy by staff.

As discussed on page 2-20 of Section 2.3.2, *Project Overview*, in Draft SEIR Chapter 2, *Project Description*, project lighting was designed to conform to National Electric Safety Code requirements and applicable County outdoor lighting codes. PG&E AMM/BMP-18, Light and Glare Reduction, discussed within Section 2.3.3, *Proposed PG&E Substation Improvements*, minimizes nighttime glare at the PG&E substation improvement area. In addition, AMM PD-4, discussed on page 5-3 of the HCP that is being pursued for SJKF, includes lighting requirements to avoid and minimize impacts on SJKF; these avoid and minimize nighttime lighting impacts on all wildlife within the project area. AMM PD-4 has been revised to include these additional specifications; revised text can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. The revised text provides specificity on project lighting that will meet the project security requirements and minimize impacts to wildlife species. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

Response to Comment 3-5

The comment states that, due to uncertainty and potential risks from impacts on migrating and resident bird species as a result of the project, in particular those due to the "lake effect" involving large solar arrays, an Avian Protection Plan with a minimum 3-year monitoring component must be implemented. The comment also describes suggested components of the Avian Protection Plan, includes closing remarks, and notes that the Grasslands Water District can be contacted with any questions.

Please see Response to Comment 3-3. As discussed therein, avian mortality monitoring (i.e., carcass surveys) was conducted for the adjacent Wright Solar Project, a project of similar size and in the same geographical location and with the same environmental conditions as the proposed project. The Wright Solar Project surveys found no collision-caused mortality from migrating waterfowl and shorebirds, the species most at risk of impact from the "lake effect," during the monitoring period, and counts of those species flying over the project were low overall. Other common avian species mortality detected at the site were also very low and likely attributed to predation and not from "lake effect". Due to the stated similarities, the proposed project is expected to have a similar less-than-significant impact on migratory and resident bird species and would not require mitigation (e.g., implementation of an Avian Protection Plan) under CEQA. No revisions to the Draft SEIR are required.

Letter 4. Stacie Guzman, Executive Director, Merced County Regional Waste Authority, dated June 17, 2024

MERCED COUNTY RWA
REGIONAL WASTE AUTHORITY

PH: 209.723.4481
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7040 N. Highway 59
Merced, CA 95348

Via Electronic Mail Planning@countyofmerced.com June 17, 2024

Lori Hammer, Contract Planner
Community and Economic Development Department
2222 M Street, 2nd Floor
Merced, CA 95340

Re: Notice of Preparation – Draft Subsequent EIR for Las Camas Solar Project (Conditional Use Permit No. 20-011; General Plan Amendment No. 20-001; Zone Change Amendment No. 21- 002)

Dear Ms. Hammer:

This comment letter is written in response to the Notice of Availability of Draft Subsequent EIR (SEIR) being prepared pursuant to the California Environmental Quality Act (CEQA) for the Las Camas Solar Project (Conditional Use Permit No. 20-011; General Plan Amendment No. 20-001; Zone Change Amendment No. 21-002) (the proposed project). I submit this letter on behalf of the Merced County Regional Waste Management Authority (RWA or Authority).

The Authority is generally in support of the project, and particularly the Reduced Footprint Alternative project.

I. Background

The Billy Wright Landfill has been in operation by the RWA since 1983. The Landfill primarily serves the cities of Dos Palos, Gustine, and Los Banos, the community of Santa Nella, and the unincorporated areas of western Merced County. The Landfill accepts Class III permitted wastes, non-hazardous solid waste, inert wastes, and nonfriable asbestos. At present, the Billy Wright Landfill is permitted to accept up to 3,000 tons per day of solid waste. This represents a large portion of the region's waste and represents the importance of the facility to the region and the County.

II. SEIR Comments

Based on the analysis provided, the Authority presents the following comments for consideration:

1

A. Evaluation of Change in Residential Density – Although the project involves a densification of residential land use capacity along Billy Wright Landfill, it does not assess the potential impacts for both potential residents and landfill operations as a result of the change. In general, the SEIR dismisses impacts associated with the change in use as the same as the Community Plan EIR although the solar project would likely not allow for internal circulation and the same distribution of vehicle trips to the degree of the adopted community plan. In

1 cont.

certain instances, the SEIR also dismisses mitigation that would apply to the change in use designation by stating that no change to the overall development potential of the community plan would occur.

2

For example, the SEIR states on page 3-39 that, because of the 2015 CBIA decision, consideration of potential health risks to the denser residential population to the east and south that would be made possible by the project is not necessary. However, there has been recent legislation related to unduly burdening disadvantaged communities, and the entire community plan area (by census tract) is designated as such (see https://oehha.ca.gov/calenviroscreen/sb535). The Authority is concerned that by providing for greater density of affordable housing (and associated vehicle trips) in an area that is downwind of a known stationary source, the project (by virtue of concentrating additional vehicle trips along Billy Wright Road) could contribute to existing TAC emissions in the area in a meaningful way, which could then result in potential health risks for residents.

B. Transportation Safety – The last paragraph on page 3.17-22 states:

Redistributing housing to the off-site residential redesignation area would not add new or different uses, such as farm equipment, or add more trips to the overall Community Plan area or to local or regional roadways, which have not materially changed since certification of the Community Plan EIR, because the overall amount of high-density/medium-density residential capacity would not change and no development has occurred since certification of the Community Plan EIR.

3

The Authority is concerned that redistribution of a considerable amount of the projected housing capacity of the community plan to the southern portion of the plan area and removing planned internal circulation (20+ roadway segments that would connect to each other, SR 152, and Billy Wright Road), implementation of the project (as identified in the SEIR) would likely place additional vehicle trips along Billy Wright Road and in close proximity to the existing landfill. While under the adopted landfill, the lower density uses and previously located residential densities to the west of Billy Wright Landfill may well have gone north and around the landfill, there is a potential for daily roadway volumes along Billy Wright Road to increase with the proposed increased residential density.

The current entrance to Billy Wright Landfill is a direct right turn (with no turn lane) into the landfill. Trucks exiting the landfill observe a stop sign before turning onto Billy Wright Road. There is no four-way stop control or other method of reducing potential conflicts between local commuter traffic and landfill operations due in part to the lack of existing vehicle trips along Billy Wright Road. With the potential increased density of residential uses along Billy Wright Road under the project and lack of alternative routes, the Authority is concerned that there may be a greater potential for vehicle conflicts and transportation safety hazards. The Authority is requesting additional information regarding how potential increased vehicle conflicts associated with the increased residential density could be addressed, either through additional safety measures and/or traffic control (e.g., funding or provision of dedicated turn lanes at the landfill entrance on Billy Wright Road, signalization of the landfill entrance prior to occupation of residences, etc.)

C. Future Solid Waste Capacity - The SEIR pages ES-17 and 3.19-24 through 3.19.29 and miscellaneous cross references throughout the SEIR, all contain assertions acknowledging that the proposed Solar Farm Project will generate solid waste in excess of state and local standards, or in excess of the capacity of local infrastructure. Specifically pages 3.19-24 through 3.19.29 include sections "Whole Project", "Impacts Identified in the Previous EIR", "Construction", "Operation" and "Decommissioning" wherein they conclusively readopt the EIR claims that no feasible mitigation is available without, however, any meaningful discussion and analysis. SEIR mitigation alternatives discussion fail to include any consideration of the inclusion of a reservation, dedication or set aside of portions of the proposed Project's overall footprint for current and future landfill capacity needs, maintenance and use. The EIR and SEIR simply default to a finding of "significant and unavoidable" impacts without appropriately analyzing the costs, benefits and feasibility of the aforementioned mitigation alternative. The SEIR stated bases for current and future estimates of landfill capacity for Billy Wright Landfill and Highway 59 Landfill are not reasonable representations of the respective landfill capacities, technology, solid waste sourcing, or applicable regulatory requirements for landfill operations, contracting and maintenance.

4

Merced County and the Authority are required by California Public Resources Code Article 9, Section 41460 to prepare a county solid waste facility capacity component which shall include, but is not limited to, a projection of the amount of disposal capacity which will be needed to accommodate the solid waste generated within the unincorporated area of the county preparing the element for a 15-year period, reduced by all of the following:
(a) Implementation of source reduction, recycling, and composting programs required by this part or through implementation of other waste diversion programs.
(b) Any permitted disposal or transformation capacity which will be available during the 15-year planning period.
(c) All disposal or transformation capacity which has been secured through an agreement with another city, county, or through an agreement with a solid waste enterprise.

Although the current plan adequately covers the 15-year period through 2039, the Authority intends to update this plan within the next 18-36 months, which will identify options for future disposal capacity within the County.

RWA appreciates this opportunity to provide comments on the SEIR for the Las Camas Solar Project and looks forward to working with your department to address the issues raised in this letter.

Sincerely,

DocuSigned by:
Stacie Guzman
F5098DD982C74F3...

Stacie Guzman
Executive Director

Responses to Comment Letter 4 – Stacie Guzman, Executive Director, Merced County Regional Waste Authority

Response to Comment 4-1

Referring to the proposed residential redesignation described on pages 2-40 through 2-42 in Chapter 2, *Project Description*, of the Draft SEIR, the comment states that the Draft SEIR does not address the potential impacts for both residents and landfill operations, dismisses impacts related to vehicular circulation, and dismisses mitigation that would apply to the residential redesignation by stating that no change to impacts identified in the prior EIR for the Villages of Laguna San Luis Community Plan (Community Plan EIR) would occur. Each of these issues is addressed in the responses that follow.

Of relevance to the commenter's concerns regarding the impacts associated with the residential redesignation, an alternative was considered that would relocate the residential redesignation to another area within the Community Plan. Refer to the Relocated Residential Redesignation Alternative on pages 4-6 and 4-7 in Chapter 4, *Alternatives Analysis*, of the Draft SEIR. The analysis states:

> "The County considered whether a Relocated Residential Redesignation Alternative that would upzone other parcels within the Community Plan area located further from the Billy Wright Landfill would be feasible. Although all of the project-specific significant impacts are related to the solar project, and none of are related to the off-site residential redesignation, this alternative was considered in response to comments received on the Notice of Preparation (NOP).
>
> One of the objectives of the Community Plan was "provide a diverse range and style of single- and multi-family housing units that reflect a variety of socioeconomic and design characteristics". The proposed off-site residential redesignation is proposed by the County in order to continue to meet this objective of the Community Plan.
>
> The Community Plan area includes approximately 1,903 acres of land designated for low-density residential use. Approximately ~~The majority (approximately~~ 611 acres~~)~~ (or approximately 1/3 of those 1,903 acres) are located within the solar project site. The remaining low-density areas are located north of SR 152, west of the PG&E substation, and south and southeast of the Billy Wright Landfill. The land north of SR 152 does not provide sufficient acreage to upzone to maintain overall housing capacity, given the amount residential acreage that would be occupied by the solar project. The land west of the PG&E substation is not a desirable or compatible location for increased density given its location adjacent to the Community Plan's open space preserve. This leaves the land south and southeast of the Billy Wright Landfill as the only area available for upzoning. Therefore, this alternative was rejected as infeasible because no other parcels suitable for upzoning exist within the Community Plan area."

Several of the following comments alleging that the Draft SEIR dismisses the impacts of the residential redesignation imply a misunderstanding of the scope of subsequent environmental review under CEQA. As discussed on page 1-3 in Chapter 1, *Introduction and Scope of Environmental Impact Report*, of the Draft SEIR, the Draft SEIR is a subsequent EIR, based on the Community Plan EIR and consistent with CEQA Guidelines Section 15162. The Community Plan EIR evaluated at a program level impacts from buildout of the Community Plan. The SEIR analyzes the potential significant environmental impacts of proposed changes to the previously evaluated project (i.e., buildout of the Community Plan). These changes include development of the solar project, the

proposed residential redesignation, and establishment of the off-site mitigation site (i.e., the proposed project). When evaluating whether changes to a project would result in new significant environmental impacts, the lead agency must consider the incremental difference between the original project and the project as modified. See *Benton v Board of Supervisors* (1991) 226 CA3d 1467, 1484. The agency's review is limited to new effects not previously considered. See *Temecula Band of Luiseño Mission Indians v Rancho Cal. Water Dist.* (1996) 43 CA4th 425, 437. That is, the project as reviewed in the prior EIR is effectively treated as part of the baseline for the subsequent environmental review. In many cases, the Draft SEIR identified significant impacts associated with the proposed project, including the proposed residential redesignation. However, the significant impacts were determined to be no more severe than the significant impacts already identified in the Community Plan EIR. This approach is consistent with the scope of subsequent environmental review defined by CEQA and CEQA case law.

Response to Comment 4-2

The comment asserts that recent legislation related to unduly burdening disadvantaged communities (Senate Bill [SB] 535) overrides CEQA's premise that impacts of the environment on a project are not significant impacts and requires an analysis of impacts from landfill-generated toxic air contaminants (TACs) on residential receptors in the residential redesignation area. It also asserts that such an analysis is required because the proposed residential redesignation would exacerbate existing TAC hazards (by virtue of increasing traffic along Billy Wright Road), thereby increasing potential health risks for future residents.

The commenter submitted a similar comment in a separate comment letter (see Comment 10-1). In that comment, the commenter references SB 1383 and SB 1000 in addition to SB 535. The comment also asserts that the proposed residential redesignation is inconsistent with the State's policy directives related to disadvantaged communities and environmental justice. The following response addresses both comments.

In the California Building Industry Association (CBIA) case referenced in the comments and on Draft SEIR pages 3.3-38 and 3.3-39, the California Supreme Court reiterated the fundamental CEQA principle that "CEQA does not generally require an agency to consider the effects of existing environmental conditions on a proposed project's future users or residents. What CEQA does mandate, consistent with a key element of the Resources Agency's interpretation, is an analysis of how a project might exacerbate existing environmental hazards." *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 392 ("CBIA"). Thus, CEQA directs the lead agency to focus on project impacts, including how the project might exacerbate existing environmental hazards.

In CBIA, the court specifically considered and rejected the argument that CEQA requires an analysis of whether, and to what extent, existing environmental conditions and hazards (such as TAC emissions) could adversely affect future residents of a residential project. In doing so, the court found the following language from former CEQA Guidelines Section 15162(a) to be "clearly erroneous and unauthorized under CEQA":

> [A]n EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there. *CBIA,* 62 Cal.4th at 385.

This requirement, the court found, impermissibly focused on the impacts of the environment on a project, not the impacts of the project on the environment. In contrast, the court also provided a helpful example of a scenario in which a project might exacerbate existing hazards, warranting CEQA analysis:

> "Suppose that an agency wants to locate a project next to the site of a long-abandoned gas station. For years, that station pumped gasoline containing methyl tertiary-butyl ether (MTBE), an additive—now banned by California—that can seep into soil and groundwater. . . .Without any additional development in the area, the MTBE might well remain locked in place, an existing condition whose risks—most notably the contamination of the drinking water supply—are limited to the gas station site and its immediate environs. But by virtue of its proposed location, the project threatens to disperse the settled MTBE and thus exacerbate the existing contamination. The agency would have to evaluate the existing condition—here, the presence of MTBE in the soil—as part of its environmental review. Because this type of inquiry still focuses on the project's impacts on the environment—how a project might worsen existing conditions—directing an agency to evaluate how such worsened conditions could affect a project's future users or residents is entirely consistent with this focus and with CEQA as a whole." *CBIA,* 62 Cal.4th at 389.

Impacts from landfill operations on future residential uses in the residential redesignation area would be an impact of the environment on the project. Consistent with CBIA, here the Draft SEIR appropriately focuses on the project's impacts on the environment. (The commenter's claims that the project would exacerbate exiting hazardous conditions related to landfill operation are addressed further below.)

The comment next suggests that "recent legislation related to unduly burdening disadvantaged communities" changes this fundamental CEQA principle. This is incorrect.

SB 535, the statute establishing California's cap-and-trade program, does not have this effect. Although SB 535 provides for the designation of disadvantaged communities, it does so not to modify CEQA's requirements, but instead to ensure that funds from California's cap-and-trade program flow to designated disadvantaged communities. Health & Safety Code, § 39713. Moreover, SB 535 was enacted in 2012, several years before the California Supreme Court's decision in CBIA.

SB 1383 pertains to reduction of methane emissions from landfills. It does not purport to modify the rule that CEQA does not require lead agencies to consider the impacts of the environment on users of a project. Instead, SB 1383's implementing regulations require communication with "disadvantaged communities that may be impacted by the development of new [recycling] facilities." 14 CCR 18992.1 (c)(3)(C). Likewise, the regulations include a requirement to hold a public meeting with any disadvantaged communities within 180 days of submitting a permit application package for a new or expanded solid waste facility. 27 CCR 21570(g). Here, the proposed project does not include a new or expanded recycling or solid waste facility. If the commenter or another entity were to propose a new recycling facility or a new or expanded solid waste facility in the future, then the applicable agency would need to communicate with any applicable disadvantaged communities at that time. (This would be the case whether or not the project, including the residential redesignation, is approved; the California EPA has designated virtually all of Merced County, including the entire Community Plan area, as a disadvantaged community.)

As the commenter notes, SB 1000 requires local governments to identify disadvantaged communities and address environmental justice in their general plans. Like SB 535 and SB 1383, SB 1000 does not modify CBIA's holding that CEQA analyses should focus on impacts of the project on the environment, not impacts of the existing environment on the project.

Even though CEQA directs the County to analyze the impacts of the project on the environment and not the impacts of the environment on future users of the project, the residential redesignation would not result in new or substantially increased significant impacts on potential future residents compared to those identified in the Community Plan EIR. Please see Response to Comment 4-1 regarding the scope of the subsequent environmental analysis.

Contrary to the commenter's suggestion in Comment 10-1, the proposed residential redesignation would not increase residential density within a disadvantaged community. Instead, as explained in the Draft SEIR, the proposed redesignation serves only to maintain the County's capacity for developing new high-density/medium density housing by moving Community Plan approved densities from one area to another to continue to accommodate the total number of approved medium- and high-density units within the plan area. And, as noted above, the entire Community Plan area is currently designated as a "disadvantaged community," – as is nearly all of the County. The proposed project does not propose the actual construction of new housing or any other type of physical development within the off-site residential redesignation area; an application for any such actual development has not been made by the project proponent and in any event would be subject to additional CEQA review and mitigation if any other party filed such an application.

The commenter is correct that the proposed residential redesignation would place residential uses generally downwind of the existing landfill and that these uses would be subject to stationary-source emissions associated with the landfill (see Comment 10-1). However, the commenter fails to note that this impact was already addressed in the Community Plan EIR as part of the Community Plan's rezoning of the parcels to residential use. As noted in Impact 5.12-4 of the *Draft Environmental Impact Report – Villages of Laguna San Luis Community Plan* (County of Merced 2007),

> "**Landfill Gas Control Measures".** Based on the data from the landfill DEIR, and because the nature and size of the future activities at the Billy Wright Landfill are unknown at this time, the potential of sources that would result in TAC emissions, and the close proximity of proposed sensitive land uses (e.g., residential and school uses), project implementation could result in the exposure of sensitive receptors to TAC emissions. As a result, this impact would be **potentially significant**."

Mitigation Measure 5.12-4a of the Villages of Laguna San Luis Community Plan FEIR states,

> "Prior to approval of the Implementation Plan that would develop lands within one mile of the Billy Wright landfill, the applicant shall ascertain the plans for the current and future configurations and operations of the landfill, which may include any or all of the existing condition, an expanded landfill, a transfer station, or other uses. The applicant shall incorporate mitigations to reduce TAC concentrations at proposed sensitive receptors to the SJVAPCD's satisfaction or shall obtain or prepare a HRA to evaluate the risk from each planned operation. The HRA shall identify the minimum distance of separation that would be required between the landfill and sensitive land uses (e.g., residential, parks, churches). If the HRA shows that areas proposed for development would have risks exceeding the SJVAPCD significance criteria (i.e., incremental cancer risk exceeding 10 in one million or a noncarcinogenic HI of 1 for the MEI),

> those areas shall be set back in accordance with the setback distances identified in the HRA or shall only be developed with non-sensitive land use-types (e.g., commercial, industrial, open space) for which the risk factors would be less than SJVAPCD's risk thresholds."

The *Draft Environmental Impact Report - Villages of Laguna San Luis Community Plan* states that implementation of Mitigation Measure 5.12-4a,

> "... would reduce the exposure of sensitive receptors to TAC emissions from on-site area-type sources .... to a **less than significant level** because the applicant is required to obtain or prepare a health-risk assessment that evaluates the risk from each source type."

As discussed in Response to Comment 4-1, the scope of the subsequent environmental analysis is to determine whether the project would result in new or substantially increased significant impacts on potential future residents compared to those identified in the Community Plan EIR. Both low-density residential and high/medium-density residential designations are considered "residential" sensitive receptors, according to SJVAPCD, and would be analyzed similarly in a health risk analysis (HRA) prepared pursuant to Community Plan EIR Mitigation Measure 5.12-4a. Implementation of Mitigation Measure 5.12-4 would therefore ensure that health risks at locations of proposed project "residential" sensitive receptors would remain less than significant regardless of housing density. Consequently, the residential redesignation would not result in new or substantially increased significant impacts on potential future residents compared to those identified in the Community Plan EIR.

The comment also claims that that the project would exacerbate TAC levels at the redesignation site through the addition of residential vehicle trips. In general, residential land uses result in a vehicle fleet mix composed predominantly of gas-powered light-duty automobiles and trucks, a minor percentage of diesel-powered vehicles, and an increasing percentage of electric vehicles which is expected to increase into the future. Approximately 25 percent of all new cars sold in California are zero-emission and continue to trend upwards (State of California Governor's Office 2024). Consequently, the residential land use vehicle fleet mix is a minor contributor of TAC emissions; thus high-density/medium-density housing would result in a minor increase in TAC emissions in the vicinity of the residential redesignation area compared to low-density housing due to the increase in dwelling units for the residential redesignation area even though vehicle trip rates per dwelling unit for high-density/medium-density housing are lower than for low-density housing (www.caleemod.com). Furthermore, as discussed in Response to Comment 10-3, the project would result in a net decrease in vehicle trips compared to buildout of the Community Plan. Therefore, the residential redesignation would not result in an overall increase in TAC emissions compared to those identified in the Community Plan EIR. Consequently, other existing and future residential receptors in the area would be exposed to fewer TACs due to the redistribution of residential vehicle trips, including the existing residences just north of the solar project site.

The comment also claims that that the project would exacerbate TAC levels at the redesignation site through the addition of truck trips for solid waste disposal. The increase in dwelling units associated with the replacement of low-density housing with high-density/medium-density housing would very likely require additional solid waste disposal truck trips to the residential redesignation area (e.g., two pickups a week instead of one). However, the duration of the trips would be shorter and that there would be less idling time because it takes less time to service a few large dumpsters compared to many individual waste bins. In addition, as described on pages 5.12-31 and 5.12-34 of the Villages of Laguna San Luis Community Plan DEIR, the project would be subject to California's solid waste collection vehicle rule and the California Air Resources Board's (CARB's) air toxics control measure limiting idling

to no longer than 5 minutes for heavy-duty diesel-powered vehicles, thereby limiting the exposure of sensitive receptors to TACs from solid waste disposal trucks. Further, because the residential redesignation area would be redistributing high-density/medium-density housing from the solar project site to the residential redesignation area, trucks would travel shorter distances to collect and dispose of trash generated by multi-family residences that would have otherwise been located farther from the landfill. Thus, TAC emissions at the residential redesignation area from solid waste disposal trucks would be similar between high-density/medium-density housing and low-density housing.

In addition, Mitigation Measure 5.12-4b of the Villages of Laguna San Luis Community Plan DEIR would be implemented with the proposed project and states,

- "Prior to approval of any final maps, proposed facilities (e.g., loading docks at commercial/convenience land uses) that would require the long-term use of diesel equipment and heavy-duty trucks shall develop and implement a plan to reduce emissions, which may include such measures as scheduling such activities when the residential uses are the least occupied, and requiring such equipment to be shut off when not in use and prohibiting heavy-trucks from idling, to levels below SJVAPCD's significance criteria at nearby sensitive receptors. The plan shall be submitted to and approved by the County before loading dock activities begin. Copies of the plan shall be provided to all residential dwellings located within 1,000 feet of loading dock areas. The applicant shall conduct a site-specific analysis of TACs from on-site on-road mobile sources. The analysis shall identify appropriate mitigation (e.g., landscape barrier, setback) to achieve excess cancer risk levels at sensitive uses of less than 10 in 1,000,000.

- Prior to approval of any final maps, proposed commercial/convenience land uses (e.g., loading docks) that have the potential to emit TAC emissions shall be located as far away as feasibly possible from existing and Villages of Laguna San Luis DEIR EDAW County of Merced 5.12-35 Air Quality proposed sensitive receptors and oriented where possible to place buildings or other obstructions between the trucking areas and normally downwind receptors.

- Prior to issuance of building permits for construction of any school, the relevant school district shall comply with the applicable sections of the CEC and PRC to identify sources of TACs within ¼ mile of the site, evaluate the health risks of those sources, and document the findings as required by the applicable laws and CEQA."

The *Draft Environmental Impact Report - Villages of Laguna San Luis Community Plan* states that implementation of Mitigation Measure 5.12-4b,

> "... would reduce the exposure of sensitive receptors to TAC emissions from on-site mobile sources .... to a **less than significant level** because the applicant is required to obtain or prepare a health-risk assessment that evaluates the risk from each source type."

Consequently, the residential redesignation would not result in new or substantially increased significant impacts on potential future residents compared to those identified in the Community Plan EIR.

Lastly, the commenter's statement of opinion that the proposed residential redesignation is inconsistent with the State's policy directives related to disadvantaged communities and environmental justice is noted. This is not a comment on the adequacy of the Draft SEIR, and no response is required in the Final SEIR.

Response to Comment 4-3

The commenter expresses concern that the off-site residential redesignation will increase traffic along Billy Wright Road by adding more residential density near the road and removing planned Community Plan circulation within the solar project area; the increased traffic could adversely affect access to the Billy Wright Landfill and increase the potential for vehicle collisions. More specifically, the commenter expresses concern about the movement of landfill-related trucks at the intersection of Billy Wright Road & the Billy Wright Landfill Driveway.

This issue is evaluated on page 3.17-22 in Section 3.17, *Transportation*, of the Draft SEIR, which states:

> "The proposed off-site residential redesignation would not result in the direct construction of housing or generation of a new population. It would allow the County to maintain high-density/medium-density housing development capacity. Although the proposed off-site residential redesignation would increase planned density within the residential redesignation area, it would not change the overall high-density/medium-density residential capacity of the approved Community Plan. Instead, it would redistribute already-approved high-density/medium-density residential capacity to a different area within the Community Plan area. Although the roads proposed within the solar project site would not be constructed, new roads could still be constructed within the off-site residential redesignation area, consistent with the Community Plan as amended. Thus, access to the areas that could still be developed would not be impeded.
>
> Redistributing housing to the off-site residential redesignation area would not add new or different uses, such as farm equipment, or add more trips to the overall Community Plan area or to local or regional roadways, which have not materially changed since certification of the Community Plan EIR, because the overall amount of high-density/medium-density residential capacity would not change and no development has occurred since certification of the Community Plan EIR. As shown in Figures 3.10-2 and 3.10-3 in Section 3.10, *Hydrology and Water Quality*, land in and around the project site was largely undeveloped, or in agriculture, when the Community Plan EIR was prepared, and remains so today. The proposed off-site residential redesignation area would be served by the same roadways as under the Community Plan with modifications reflected in the off-site residential redesignation to account for the proposed project's impacts on previously identified transportation facilities. Thus, additional conflicts between vehicles traveling to and from the off-site residential redesignation area and trucks traveling to and from the Billy Wright landfill would be unlikely to occur, thereby avoiding safety issues. In addition, future development within the off-site residential redesignation area would be subject to the policies in the Community Plan and the mitigation measures in the Community Plan EIR, ensuring that hazardous geometric design features are avoided. Therefore, impacts from the off-site residential redesignation would be less than significant, consistent with the Community Plan EIR conclusion. ***No new or substantially more severe significant impacts would result beyond those identified in the previous EIR and no additional mitigation would be required***."

The commenter refers to possible improvements at the intersection of Billy Wright Road & the Billy Wright Landfill Driveway, including four-way stop (i.e., multi-way stop) control, signalization, and a right-turn lane. The commenter is referred to Figure 5, SR 152 / Billy Wright Road Intersection Existing Plus Project Construction Traffic Volumes and Lane Configurations, of Appendix 3.17-1 of the Draft SEIR, Transportation Impact Analysis. Based on section 2B.07, Multi-Way Stop Applications, of the California Manual on Uniform Traffic Control Devices (California MUTCD)

(California Department of Transportation 2024), the volumes indicate multi-way stop control is not warranted at this intersection. Based on section 4C.04, Warrant 3, Peak Hour, of the California MUTCD, the volumes indicate signalization is not warranted at this intersection. As a result, the traffic study prepared for the SEIR would not support installing multi-way stop control at, or signalization of, the intersection of Billy Wright Road & the Billy Wright Landfill Driveway at this time. The projected traffic volumes account for development of the solar project but do not account for potential future development under the Community Plan, including in the residential redesignation area, for reasons discussed below.

With development of the off-site residential redesignation area, an increase in traffic volumes on Billy Wright Road would occur. However, determining whether multi-way stop control or signalization would be warranted at the intersection of Billy Wright Road & the Billy Wright Landfill Driveway with development of the off-site residential redesignation area would require quantification of volumes on Billy Wright Road and on the Billy Wright Landfill Driveway. Quantification of traffic volumes associated with the off-site residential redesignation would require specific information on the number of units and location of residential land use, and specific information on the location and size of roadways providing access to the residential land uses. As noted in the second full paragraph on page 3.17-14 of the DEIR, "The proposed off-site residential redesignation would not result in the direct construction of housing or generation of a new population." Similarly, the proposed off-site residential redesignation would not result in the direct construction of roadways providing access to the residential land uses. As a result, determining whether multi-way stop control or signalization would be warranted at the intersection of Billy Wright Road & the Billy Wright Landfill Driveway cannot be done until plans are prepared showing the number of units and location of residential land use, and specific information on the location and size of roadways providing access to the residential land uses. This is consistent with the *Draft Environmental Impact Report - Villages of Laguna San Luis Community Plan* (County of Merced 2007). Impact 5.14-11 of the Villages of Laguna San Luis Community Plan DEIR states,

> "**Internal Circulation Roadway and Intersection Operations.** Although internal project site roadways would be designed to accommodate future project volumes and operate at acceptable levels of service (LOS D or better), the specific design and layout of internal roadways within the project site are not known at this time and the project could result in unsatisfactory traffic patterns and operations. Therefore, this would be a **potentially significant** internal circulation impact. . .
>
> "Depending on the design and location of roadways within the project site, some project facilities could result in roadway segments or intersections operating at unacceptable levels. Therefore, this would be a **potentially significant** impact."

Mitigation Measure 5.14-11 of the Villages of Laguna San Luis Community Plan DEIR states,

> "a. Prior to approval of any final map, the project applicants shall demonstrate that the internal roadway circulation network would operate at an acceptable level of service (LOS D or better) under daily, AM and PM peak hour conditions.
>
> "b. As part of submittal of final maps, project applicants shall submit a traffic design study that identifies the LOS level of all on-site intersections. A signal warrant analysis shall be required as part of the traffic design study. The project applicant shall implement all design improvements that are recommended in the study and shall demonstrate to the County that all project intersection would operate acceptably."

Consistent with the approach specified in the Villages of Laguna San Luis Community Plan DEIR, needed improvements along Billy Wright Road and at the intersection of Billy Wright Road & the Billy Wright Landfill Driveway should be identified as part of the submittal of final maps for development of areas within the off-site residential redesignation area.

As noted above, the County does not recommend installing multi-way stop control at, or signalization of, the intersection of Billy Wright Road & the Billy Wright Landfill Driveway at this time. Installing multi-way stop control at, or signalization of, the intersection should be considered in the future as part of the submittal of final maps for development of areas within the off-site residential redesignation area. Other improvements, however, can be considered in the interim, even though they are not required to reduce project-level impacts to a less-than-significant level. Policy 1.A.3 of *The Villages of Laguna San Luis Community Plan* (County of Merced 2008) states,

> "Implement design measures that expand the traffic-carrying capacity at intersections, (e.g. synchronized signals, **right-turn lanes**, additional travel lanes)." (Emphasis added)

Implementation Measure 1.A.3.a of *The Villages of Laguna San Luis Community Plan* states,

> "In conjunction with each Implementation Plan prepare a Comprehensive Circulation Phasing Analysis that identifies the extent and timing of circulation improvements needed to mitigate impacts of traffic generated by the development phase proposed. The Comprehensive Circulation Phasing Analysis will also establish Transportation Demand Management (TDM) measures as described in this Circulation Plan, Section 4.4.5, as necessary."

The applicant has agreed to a condition of approval that requires the applicant to fund its pro-rata share of installation of an inbound right-turn lane from Billy Wright Road to the Billy Wright Landfill Driveway, if and when the County determines that such an improvement is needed, consistent with Policy 1.A.3 of The Villages of Laguna San Luis Community Plan, and in consultation with the Merced County Regional Waste Authority. These considerations should also include roadway design engineering aspects, right-of-way availability, and the possible need to relocate existing utility infrastructure (e.g., electrical utility equipment).

No revisions to the Draft SEIR are required.

Response to Comment 4-4

The comment restates the Draft SEIR's conclusions regarding the significant and unavoidable solid waste impacts of the proposed project and claims that the analysis is conclusory. The comment states the Draft SEIR does not evaluate feasible mitigation or alternatives to reduce or avoid the project's solid waste impacts. The comment also restates legal requirements for planning for solid waste disposal capacity.

The comment correctly notes that the Draft SEIR concludes that "the proposed Solar Farm Project will generate solid waste in excess of state and local standards, or in excess of capacity of local infrastructure." As described under Impact UT-4 in Section 3.19, *Utilities,* of the Draft SEIR, the Community Plan EIR determined that impacts on solid waste disposal capacity would be significant and unavoidable. Under the proposed project, this impact would remain significant and unavoidable and would be more severe than the significant and unavoidable impact identified in the Community Plan EIR due to the additional solid waste that would be generated by the project between 2054 and 2060 (landfill capacity in the County has not been identified beyond 2054). Please see Response to Comment 4-1 regarding the scope of the subsequent environmental analysis.

The comment claims that the Draft SEIR "conclusively readopt[s] the EIR claims that no feasible mitigation is available without, however, any meaningful discussion and analysis." The Draft SEIR analysis is supported by a quantitative estimate of the project's solid waste generation, based on 2022 California Department of Resources Recycling and Recovery (CalRecycle) waste generation rates (Draft SEIR pages 3.19-25 and 3.19-26). The Draft SEIR analysis describes landfill capacity conditions that have changed since certification of the Community Plan EIR (Draft SEIR page 3.19-24) and compares the project's waste generation to the current permitted daily intakes at the Billy Wright Landfill and Highway 59 Landfill. The basis for the significant and unavoidable determination is that the County has not yet identified landfill capacity beyond 2054; the project would generate solid waste through 2060. Therefore, any amount of solid waste beyond 2054 would result in a significant impact, and the SEIR's determination that no feasible mitigation is available is supported by facts.

The comment goes on to state that "the SEIR mitigation alternatives discussion fails to include any consideration of the inclusion of a reservation, dedication, or set aside of portions of the proposed Project's overall footprint for current and future landfill capacity needs, maintenance, and use." This is incorrect. As discussed on pages 4-18 and 4-19 in Chapter 4, *Alternatives Analysis*, the Draft SEIR evaluated a Reduced Footprint Alternative that would reduce the area available for solar panels in the southern portion of the solar project site, which abuts the western edge of the Billy Wright Landfill. Under the Reduced Footprint Alternative, the solar project site would be approximately 1,681 acres in size, compared to 1,741 acres under the proposed solar project (a reduction of approximately 60 acres). Page 4-19 of the Draft SEIR states:

> "As discussed in Section 3.11, *Land Use and Planning*, in its response to the Notice of Preparation (NOP) for the proposed project (see Appendix 1-2), the Merced County Regional Waste Authority (RWA), which operates the Billy Wright Landfill, indicated that it may in the future seek to expand the landfill. There are no approved expansion plans of the Billy Wright Landfill, nor has RWA formally proposed expansion of the landfill or conducted or initiated CEQA review. However, the Reduced Footprint Alternative would not preclude the landfill from expanding westward, should it pursue such a project in the future."

Page 4-19 of the Draft SEIR further states:

> "Because it would reduce the amount of ground disturbance, construction activities, and new solar development, this alternative was selected for analysis based on its potential to avoid all of the project-specific environmental impacts."

Page 4-28 of the Draft SEIR includes an analysis of the alternative's impacts on landfill capacity, stating:

> "With respect to solid waste, the proposed project's significant and unavoidable impact is primarily driven by decommissioning in 2060, because the county's solid waste capacity after 2054 is currently unknown. Under this alternative, this impact would be reduced as there would be fewer solar panels and equipment to decommission in 2060, and less waste generated. However, the impact would not be avoided because the county's solid waste capacity after 2054 remains unknown […] The Reduced Project Alternative would therefore have reduced impact on utilities and service systems, but it would not avoid the project's significant and unavoidable impact on landfill capacity."

As discussed on page 4-35 of the Draft SEIR, the Reduced Footprint Alternative was identified as the Environmentally Superior Alternative. In the introduction to the comment letter, the commenter acknowledges the Reduced Footprint Alternative, stating "[t]he Authority is generally in support of the project, and particularly the Reduced Footprint Alternative project." It is unclear why the commenter states that the Draft SEIR did not consider such an alternative.

In response to the comment, the discussion of the Environmentally Superior Alternative on page 4-35 of the Draft SEIR has been revised to note that the Reduced Footprint Alternative could facilitate a long-term solution to the County's solid waste capacity needs beyond 2054. The revised text can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

The commentor summarizes the requirements of California Public Resources Code Article 9, Section 41460, and states that the Merced County Regional Waste Authority (Authority), along with the County, is in compliance with the requirements until 2039. The commenter also notes that the Authority intends to update its 15-year plan within the next 18 to 36 months to include options for future disposal capacity within the county. The information in this comment is consistent with the discussion on page 3.19-26 in Section 3.19, *Utilities and Service Systems*, of the Draft SEIR. The discussion has been augmented to include details provided in the comment. The revised text can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5

Letter 5. Ryan Grossman, San Joaquin Valley Air Pollution Control District, dated June 12, 2024

San Joaquin Valley AIR POLLUTION CONTROL DISTRICT

HEALTHY AIR LIVING™

June 12, 2024

Lorri Hammer
County of Merced
Community and Economic Development
2222 M Street, 2nd Floor
Merced, CA 95340

Project: Las Camas Solar Project, Draft Subsequent Environmental Impact Report

District CEQA Reference No: 20240557

Dear Ms. Hammer,

The San Joaquin Valley Air Pollution Control District (District) has reviewed the Draft Subsequent Environmental Impact Report (DSEIR) from the County of Merced (County). Per the DSEIR, the project consists of developing, owning, and operating a 200-megawatt (MW) ground mounted solar photovoltaic (PV) power plant on 1,741 acres, including construction of a 0.4 mile, 230-kilovolt, gen-tie line to connect the power plant to a PG&E substation (Project). The Project is located at the southwest corner of the intersection of State Route (SR) 33/SR 152 and Interstate 5, in western Merced County, CA.

The District offers the following comments at this time regarding the Project:

1) **Construction Emissions**

1 The DSEIR, specifically page 3.11-24, states "*….would require construction contractors to use Tier 4 Final engines greater than 25 horsepower for off-road equipment to reduce construction-related exhaust emissions.*" Additionally, the DSEIR concludes Project emissions would be less than significant with the incorporation of Tier 4 Final equipment. However, it is unclear how the use of Tier 4 Final equipment would be enforced by the County. Therefore, the District recommends the DSEIR be revised to include a discussion on the County mechanism for enforcement to ensure Tier 4 Final equipment is utilized during Project construction.

Samir Sheikh
Executive Director/Air Pollution Control Officer

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2) Health Risk Screening/Assessment and Ambient Air Quality Analysis

The District reviewed the Health Risk Assessment (HRA) and Ambient Air Quality Analysis (AAQA) for the Project and has the following comments:

2

- A scalar of 1 was used to account for variable emissions from Project construction activities in the air dispersion model. However, applying a scalar of 1 for non-continuously operating sources will lead to an underestimation of the annual emissions when assessing the long-term average annual concentration and associated health impacts of those sources. Therefore, if the construction schedule is expected to occur non-continuously for 8 hours per day, 6 days per week, then a scalar of 3.51 should be applied to those operating hours in the model instead (e.g., 8,760 hours per year/ 2,496 hours per year = 3.51).

3

- Only Diesel Particulate Matter (DPM) emissions from on-road vehicles and propane-fueled emergency generators were evaluated in the HRA. However, there are typically other air toxic emissions associated with the combustion of propane fuel (e.g. Benzene, Ethyl Benzene, and Formaldehyde). The District recommends the HRA be revised to evaluate the health impacts from these additional air toxic emissions from the propane-fueled generators. District recommended toxic emissions factors for propane fueled equipment can be found online at: https://ww2.valleyair.org/permitting/emission-factors/

4

- Since carbon monoxide (CO) emissions from construction of the Project are expected to exceed 100 lbs/day, an AAQA was performed for CO emissions only. However, per District Policy APR 2030 (Project Ambient Air Quality Analysis Applicability Determination under CEQA) the District recommends an AAQA be performed for all criteria pollutants with an ambient air quality standard if one or more criteria pollutants, including ammonia, exceed the District ambient air quality threshold of 100 lbs/day for construction or operation. To ensure all potential ambient air quality impacts are addressed in the DEIR, the AAQA should be revised to evaluate Project construction emissions from all criteria pollutants with ambient air quality standards.

5

Modifications to the HRA and AAQA based on the deficiencies listed above have the potential to cause the Project to exceed District health risk thresholds and cause or contribute to an exceedance of an ambient air quality standard. Therefore, the District recommends the HRA and AAQA be revised to ensure the analysis is representative and adequately reflects the Project's potential air quality impacts.

3) District Rules and Regulations

6

The District issues permits for many types of air pollution sources, and regulates some activities that do not require permits. A project subject to District rules and regulations would reduce its impacts on air quality through compliance with the District's regulatory framework. In general, a regulation is a collection of individual rules, each of which deals with a specific topic. As an example, Regulation II

6 cont.

(Permits) includes District Rule 2010 (Permits Required), Rule 2201 (New and Modified Stationary Source Review), Rule 2520 (Federally Mandated Operating Permits), and several other rules pertaining to District permitting requirements and processes.

The list of rules below is neither exhaustive nor exclusive. Current District rules can be found online at: https://ww2.valleyair.org/rules-and-planning/current-district-rules-and-regulations. To identify other District rules or regulations that apply to future projects, or to obtain information about District permit requirements, the project proponents are strongly encouraged to contact the District's Small Business Assistance (SBA) Office at (559) 230-5888.

3a) District Rules 2010 and 2201 - Air Quality Permitting for Stationary Sources

Stationary Source emissions include any building, structure, facility, or installation which emits or may emit any affected pollutant directly or as a fugitive emission. District Rule 2010 (Permits Required) requires operators of emission sources to obtain an Authority to Construct (ATC) and Permit to Operate (PTO) from the District. District Rule 2201 (New and Modified Stationary Source Review) requires that new and modified stationary sources of emissions mitigate their emissions using Best Available Control Technology (BACT).

This Project may be subject to District Rule 2010 (Permits Required) and Rule 2201 (New and Modified Stationary Source Review) and may require District permits. Prior to construction, the Project proponent should submit to the District an application for an ATC. For further information or assistance, the project proponent may contact the District's SBA Office at (559) 230-5888.

3b) District Rule 9510 - Indirect Source Review (ISR)

The Project is subject to District Rule 9510 because it will receive a project-level discretionary approval from a public agency and will equal or exceed 9,000 square feet of space.

The purpose of District Rule 9510 is to reduce the growth in both NOx and PM emissions associated with development and transportation projects from mobile and area sources; specifically, the emissions associated with the construction and subsequent operation of development projects. The ISR Rule requires developers to mitigate their NOx and PM emissions by incorporating clean air design elements into their projects. Should the proposed development project clean air design elements be insufficient to meet the required emission reductions, developers must pay a fee that ultimately funds incentive projects to achieve off-site emissions reductions.

6 cont.

Per Section 5.0 of the ISR Rule, an Air Impact Assessment (AIA) application is required to be submitted no later than applying for project-level approval from a public agency. As of the date of this letter, the District has not received an AIA application for this Project. Please inform the project proponent to immediately submit an AIA application to the District to comply with District Rule 9510 so that proper mitigation and clean air design under ISR can be incorporated into the Project's design.

Information about how to comply with District Rule 9510 can be found online at: https://ww2.valleyair.org/permitting/indirect-source-review-rule-overview

The AIA application form can be found online at: https://ww2.valleyair.org/permitting/indirect-source-review-rule-overview/forms-and-applications/

District staff is available to provide assistance and can be reached by phone at (559) 230-5900 or by email at ISR@valleyair.org.

3c) District Rule 4601 (Architectural Coatings)

The Project may be subject to District Rule 4601 since it may utilize architectural coatings. Architectural coatings are paints, varnishes, sealers, or stains that are applied to structures, portable buildings, pavements or curbs. The purpose of this rule is to limit VOC emissions from architectural coatings. In addition, this rule specifies architectural coatings storage, cleanup and labeling requirements. Additional information on how to comply with District Rule 4601 requirements can be found online at: https://ww2.valleyair.org/media/tkgjeusd/rule-4601.pdf

3d) District Regulation VIII (Fugitive PM10 Prohibitions)

The Project proponent will be required to submit and receive approval of a Dust Control Plan prior to commencing any earthmoving activities as described in Regulation VIII, specifically Rule 8021 – *Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities.*

Since the Project will result in the disturbance of 5-acres or more, the Project proponent shall submit to the District a Dust Control Plan pursuant to District Rule 8021 (Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities). For additional information regarding the written notification or Dust Control Plan requirements, please contact District Compliance staff at (559) 230-5950.
The application for both the Construction Notification and Dust Control Plan can be found online at: https://ww2.valleyair.org/media/fm3jrbsq/dcp-form.docx

Information about District Regulation VIII can be found online at: https://ww2.valleyair.org/dustcontrol

3e) Other District Rules and Regulations

6 cont.

The Project may also be subject to the following District rules: Rule 4102 (Nuisance) and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations).

4) District Comment Letter

7

The District recommends that a copy of the District's comments be provided to the Project proponent.

If you have any questions or require further information, please contact Ryan Grossman by e-mail at Ryan.grossman@valleyair.org or by phone at (559) 230-6569.

Sincerely,

Tom Jordan
Director of Policy and Government Affairs

For Mark Montelongo
Program Manager

Responses to Comment Letter 5 – Ryan Grossman, San Joaquin Valley Air Pollution Control District

Response to Comment 5-1

The comment states that the Draft SEIR, specifically page 3.11-24, would require construction contractors to use Tier 4 Final engines greater than 25 horsepower for off-road equipment to reduce construction-related exhaust emissions. The comment also states that it is unclear how the use of Tier 4 Final equipment would be enforced by the County.

The Draft SEIR describes the requirement to use Tier 4 Final equipment in Section 2.3.4, *Project Construction*, of Chapter 2, *Project Description*, on page 2-33. Because it is a design feature, failure to use Tier 4 equipment would be a deviation from the project description and subject to enforcement, should the County decide to approve the project. Further, this requirement would be enforced as a condition of approval for the project. The text on page 3.3-20, as well as 2-33, has been updated to clarify the enforcement mechanism; revised text can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

Response to Comment 5-2

The comment states that a scalar of 1 was used to account for variable emissions from project construction activities in the air dispersion model for HRA and ambient air quality analysis (AAQA) modeling. The commenter states that a scalar of 3.51 should be applied to the air dispersion model instead of 1.

A scalar of 3.51 would be applicable if unitized diesel particulate matter (DPM) emissions rates of 1 gram per second (g/s) were used in the air dispersion model, but unitized emission rates were not used in the air dispersion model for construction sources of DPM. A scalar of 1 was used to account for variable emissions because actual DPM emission rates for construction sources of DPM were calculated on pages 404 and 405 of Appendix 3.03-1 and used in the air dispersion model.

No revisions to the HRA and AAQA modeling and Draft SEIR are required in response to this comment.

Response to Comment 5-3

The comment states that only DPM emissions from on-road vehicles and propane-fueled emergency generators were evaluated in the air dispersion model for HRA modeling. The commenter recommends the HRA be revised to evaluate the health impacts from other air toxic emissions associated with combustion of propane fuel from the propane-fueled generator.

The HRA has been revised to reflect the District's recommendations for including other air toxics from the operational propane-fueled emergency generator; revised text and results can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. The revised HRA results do not identify any new or substantially more severe impacts. Thus, while this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

Response to Comment 5-4

The comment states that, since carbon monoxide emissions are expected to exceed 100 lbs/day, per District Policy APR 2030 (Project Ambient Air Quality Analysis Applicability Determination under CEQA) the District recommends an AAQA be performed for all criteria pollutants with an ambient air quality standard. The commenter recommends the AAQA should be revised to evaluate Project construction emissions from all criteria pollutants with ambient air quality standards.

The AAQA has been revised to reflect District recommendations; revised text and results can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. The revised AAQA results do not identify any new or substantially more severe impacts. Thus, while this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

Response to Comment 5-5

The comment reiterates that the District recommends the HRA and AAQA be revised to ensure the analysis is representative and adequately reflects the Project's potential air quality impacts.

Please see the Responses to Comments 5-3 and 5-4 for a response to this comment and a description of the revisions to the Draft SEIR made in response to those comments.

Response to Comment 5-6

The comment describes the District rules and regulations that may apply to the Project.

All District rules and regulations described by the commenter are shown on pages 3.3-15 and 3.3-16 of the Draft SEIR, except District Rule 4601 (Architectural Coatings). A description of District Rule 4601 has been added to page 3.3-16; revised text and results can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

Response to Comment 5-7

The comment states the District recommends that a copy of the District's comments be provided to the Project proponent.

The comment is acknowledged, and a copy of this letter has been conveyed to the project applicant. No revisions to the Draft SEIR are required in response to this comment.

Letter 6. Steven Sadler, San Luis Water District, dated June 14, 2024

June 14, 2024

Lorri Hammer, Contract Planner
County of Merced Community & Economic Development Department
2222 M Street
Merced, CA 95340

Subject: Draft Supplemental Environmental Impact Report for the Las Camas Solar Project (Conditional Use Permit No. CUP-20-011; General Plan Amendment No. 20-001; and Zone Change Amendment No. ZC 21-002)

Dear Ms. Hammer:

The San Luis Water District ("SLWD") is pleased to provide the following comments on the Draft Supplemental Environmental Impact Report ("DSEIR") for the above-referenced project:

1 **Easement Encroachments and Crossings**. The DSEIR fails to identify potential project impacts to SLWD pipelines, water delivery turnouts, electrical cables, telemetry cables, and other SLWD facilities that are located within the site plan (as depicted in Figure 2-2). Construction of the project, as described, would conflict with these SLWD facilities and are incompatible with recorded easements held by SLWD. As an example, electrical conduits and telemetry cables are required to join different areas of the project and must cross SLWD pipelines, electrical power cables, and telemetry cables. These crossings are incompatible with SLWD's needs to excavate above, around, and below the entire easement area to effectuate investigation and repair of its large diameter pipeline. The pipeline is also connected to a cathodic protection system and these crossings may interfere with the impressed currents on the pipeline or induce undesired currents on the pipeline and rapidly accelerate the rate of corrosion of the 50-year-old pipeline and associated facilities. Under CEQA, it is required to review these impacts as they will alter local government facilities. SLWD has determined that, as presented in the DSEIR, the proposed project actions pose significant impact to these facilities and the ability of SLWD to maintain, repair, and/or replace the facilities when necessary and provide domestic potable water service for the San Luis Hills community.

SLWD requests the following:

a. The above-described impacts, referenced in the DSEIR as PS-1, be recognized as less than significant with mitigation.
b. A mitigation measure be added in the DSEIR for project proponents to enter into a Limited Crossing Consent with San Luis Water District for all project facilities, structures, and improvements that will cross or otherwise involve the District's easement.

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1 cont.

c. A mitigation measure be added in the DSEIR for the project proponents to modify the SLWD facilities where needed to avoid incompatible uses. Two examples are the installation of protective bollards around turnouts and other water delivery facilities and the installation of fencing around District-owned above-ground electrical equipment.
d. Other mitigation measures be added where appropriate to mitigate for other incompatible uses of the easement.
e. A condition be added to the Conditional Use Permit requiring the implementation of the previously stated mitigation measures.

2

Off-site Residential Redesignation Area. The project proposes an off-site residential redesignation area where the land use would change from single family residential land uses to high-density/medium density residential land uses. The present designation of the redesignation area as single family residential is not compatible with the current environment due to the well-documented, long-term unreliability of federal water supplies within the region. Future planned state and federal actions including the implementation of the San Joaquin and Sacramento River and Bay-Delta Water Quality Control Plans and the Biological Opinions governing Central Valley Project operations will cause the currently inadequate CVP allocations to diminish further.

On a long-term basis, SLWD is allocated only 40% of its contracted federal water supply. The aforementioned regulatory actions are expected to reduce contract allocations down to as little as 20% of contracted amounts. As a result, years where SLWD will receive no federal contract water will increase in frequency and periods of multi-year "regulatory drought" will increase in duration and frequency.

Given the current long-term severe inability to provide water for the existing Community Plan, the District has determined that reliance on the Community Plan, either in its current form or in a modified form as proposed, is not appropriate for numerous reasons including the lack of water supply available to serve the needs of the community proposed under the Community Plan.

The DSEIR does not address the incompatibility with the proposed action given the aforementioned water supply constraints. The DESIR fails to adequately evaluate current and future water supply characteristics and fails to consider existing land use relative to the location of the proposed Off-Site Residential Redesignation area. The DESIR fails to analyze the water supply requirements, availability, and reliability for the redesignation area. The assumption that the reduction of single family residential and conversion to high-density/medium-density would have a less than significant impact fails to evaluate the continued degradation of California's water supply due to the Sustainable Groundwater Management Act, Interim Operations of the Central Valley Project, Climate Change and several other regulatory and environmental impacts.

Additionally, the DESIR ignored current water supply conditions relative to the existing Community Plan and made the incorrect assumption that the changed land use to high-density/medium-density would have a less than significant impact. The General Plan Amendment and Zoning Change failed to include a comprehensive evaluation of the current and future water supply conditions and characteristics. The DSEIR does not address this deficiency and seeks to tier off of a flawed prior analysis.

SLWD requests the following:
a. Additional water supply analysis for the current and proposed land uses under the Community Plan be included in the document.

2 cont.

b. Utilize the additional water supply analysis to inform decisions on land use and zoning within the current and proposed Community Plan areas.
c. The County of Merced rescind the Community Plan and return the lands within the plan area to uses that are compatible with an insufficient and insecure water supply.
d. Alternately, the County of Merced retain the existing use and zoning and not redesignate the use from single family residential to high-density/medium density residential which is a more water intensive use.

3

Incompatibility with Landfill Uses. The location of the Off-Site Residential Redesignation Area is incompatible with the adjacent Billy Wright Landfill. The landfill takes little or no responsibility for the effects of its operations on the surrounding area. In addition to the litter that is encountered on roadways used to travel to and from the landfill and the litter on adjacent properties emanating from the landfill, users of the landfill will illegally dispose of their refuse within roadway easements and on properties near the landfill.

SLWD requests the following:
a. The DSEIR evaluate the compatibility of the Off-Site Residential Redesignation Area is incompatible with the adjacent Billy Wright Landfill.

4

Lack of Water and Wastewater Services. The DSEIR identifies the San Luis Water District as a provider of water and wastewater services. While this is the case for the San Luis Hills community, SLWD does not allow new connections to the treated water and wastewater facilities due to the lack of water described throughout this comment letter. This has been discussed thoroughly with the project proponent, the County of Merced, and various consultants involved in the project. The current statements included in the DSEIR convey the incorrect impression that water and wastewater service is available through SLWD.

SLWD requests the following:
a. The DSEIR be corrected to state that SLWD does not offer water or wastewater services and water and wastewater services are not available to the project from SLWD.
b. Reevaluate all appropriate analysis in the DSEIR taking into account that SLWD does not offer treated water or wastewater services.

5

Construction Period Impacts. The DSEIR fails to address potential physical impacts to San Luis Water District facilities during the construction period. The District's Lateral 7 and associated District facilities such as turnouts and cathodic protection equipment bisect the project site and are located along dirt roadways that will be used during construction. While the roadways may be sufficient for vehicle travel and occasional heavy equipment travel, the facilities and roadways may not be designed for the frequency of use and loading contemplated by the project. For construction watering alone, 30,140 round trips between the well and the solar project site are expected. Each of these round trips will enter the project site through the Highway 152 and 33 intersection travel along the paved San Luis Hills Drive and the unimproved dirt road which extends south of San Luis Drive. The sublateral pipeline providing raw water to the SLWD Treatment Plant lies within a District easement and beneath the paved and unpaved roadway. If the pipeline is damaged by construction traffic, the San Luis Hills community will lose its water supply until the pipeline can be repaired.

Further, The DSEIR fails to evaluate the structural impact from Project construction equipment use of the South San Luis Drive residential road and impacts to the business and homes adjacent

5 cont.

to South San Luis Drive. The roadway within the residential area is not designed for construction traffic and the lot and dirt roadway immediately south of the paved portion of San Luis Drive is not designed or intended for any traffic other than vehicular easement access.

SLWD requests the following:

a. A mitigation measure shall be added requiring the project proponents to avoid the use of roadways overlying District pipelines.
b. A mitigation measure be added restricting construction traffic on San Luis Drive and directing construction traffic to Jasper Sears Road.
c. A mitigation measure shall be added requiring temporary and/or permanent improvements for crossing District pipelines.
d. A condition be added to the Conditional Use Permit requiring the implementation of the previously stated mitigation measures.

6

Wildfire Risk. The DSEIR fails to adequately evaluate and mitigate the potential fire hazard during construction and operation. The San Luis Hills community and PG&E infrastructure are in close proximity to the Project and the area is subject to grass fires. The DSEIR provides a requirement for the preparation of a Fire Protection Plan; however, the provided plan does not address emergency response and appears to address small fires potentially caused by construction activities.

SLWD requests the following:

a. A mitigation measure be added requiring the project proponents to prepare a comprehensive fire protection plan and emergency response plan.
b. The Conditional Use Permit require a comprehensive fire protection plan and emergency response plan.

7

Off-Site Mitigation Area. The project proposes to create a 1,498-acre mitigation site situated close to the eastern and southern edges of the Los Banos Creek Reservoir. The mitigation site would be placed into a conservation easement in perpetuity and the land managed to provide habitat for the San Joaquin kit fox. During the public scoping process for the project, the District submitted comments in writing stating that the potential environmental effects of this action on SLWD and its existing and future facilities should be evaluated in the EIR. A discussion of these impacts was not included in the DSEIR.

Further, certain areas within and surrounding the district are subject to unauthorized off-road vehicle traffic. The unauthorized users of these lands damage district facilities and easements. Damages incurred include removal of fences, removal of locks, vandalism to gates, vandalism to above-ground facilities, unauthorized dumping of refuse, and graffiti. The DSEIR references existing fencing but does not address areas where the existing fencing is not maintained or inadequate to prevent unauthorized access.

SLWD requests the following:

a. Evaluate the impacts of the proposed off-site mitigation area on existing and future facilities and include a discussion of those impacts.
b. As a mitigation measure, the boundary of the off-site mitigation be set back 1,000 feet from San Luis Water District's boundary.

c. A mitigation measure be added to the document requiring the project proponent to provide and maintain access to District easements and facilities located within the Off-Site Mitigation Area.

7 cont. d. A condition be added to the Conditional Use Permit requiring the implementation of the previously stated mitigation measure.

Groundwater Use and Transportation. As a project alternative, the proposed project seeks to extract 370 acre-feet of groundwater from a groundwater well located southeast of the intersection of State Route 33 and McCabe Road to provide construction water to the site. According to page 6-1 of the Hydrology and Drainage Report, the groundwater extraction represents 0.24 percent of the annual average groundwater pumping volume in the Northern and Central Delta-Mendota Region GSP.

No analysis was made to determine if the extraction would impact, either singly or cumulatively, any of the groundwater sustainability criteria identified in the currently adopted groundwater sustainability plan or currently proposed groundwater sustainability plan. The Hydrology and Drainage Report dismisses the extraction amount as negligible when it is actually a considerable amount, equivalent to the groundwater consumed annually by the entire community of Santa Nella. Further, it is not equitable to the groundwater users in the County of Merced and the Delta-Mendota Subbasin to consider this usage as de-minimis when similar users will be limited in their groundwater extractions under provisions of the proposed groundwater sustainability plan. All extractions, regardless of the quantity, contribute to the overdraft conditions in the Delta-Mendota subbasin. Further, the Sustainable Groundwater Management Act only considers de-minimis users to be domestic water users extracting 2 acre-feet or less.

8 :SLWD requests the following:

a. The DESIR include further analysis to determine whether the groundwater extraction will cause or contribute to an exceedance of the sustainability criteria as outlines in the proposed groundwater sustainability plan.
b. If the well is extracting water from below the Corcoran Clay, the DESIR include further analysis to determine the impacts of the extraction of groundwater on local and regional subsidence.
c. Add mitigation measures as appropriate based on the additional information and analysis.
d. Add a mitigation measure requiring the project proponent intentionally recharge water into the aquifer and provide documentation of the recharge to the Central Delta-Mendota Groundwater Sustainability Agency to offset the groundwater used during the construction period and the operations period, plus a minimum additional 10% based on basin groundwater banking practices.
e. A condition be added to the Conditional Use Permit requiring the implementation of the previously stated mitigation measures.

District Rules and Regulations. The DSEIR fails to discuss compliance with the Rules and Regulations of the San Luis Water District, specifically Rule No. 24, Allocation Eligibility for Energy Generation and/or Energy Storage Project Parcel.

9

9 cont.

SLWD requests the following:

a. A condition shall be added to the Conditional Use Permit requiring the Project to comply with Rule 24 including the execution of the Water Management Agreement referenced in the rule.

Thank you for the opportunity to provide comment on the Draft Supplemental Environmental Impact Report for the Las Camas Solar Project. If you have any questions or wish to discuss this matter further, please do not hesitate to contact me by phone at (209) 826-4043 (option 7) or by e-mail at sstadler@slwd.net.

Sincerely,

Steven P. Stadler

Steven Stadler, P.E.
District Engineer

Responses to Comment Letter 6 – Steven Stadler, San Luis Water District

Response to Comment 6-1

The commenter states that the Draft SEIR fails to identify potential impacts on San Luis Water District (SLWD) pipelines, water delivery turnouts, electrical cables, telemetry cables, and other SLWD facilities within the project site. The commenter states that the project would pose significant impacts on these facilities and SLWD's ability to provide domestic potable water service to the community.

CEQA requires lead agencies to identify and discuss the "significant effects of the proposed project on the environment," and defines "environment" as the "physical conditions which exist within the area which will be affected by a proposed project" (Public Resources Code Sections 21060.5 and 21100[b][1]). Consequently, the SEIR need not address potential project impacts on SLWD easements or other realty interests absent physical impacts relevant to CEQA impact areas.

As described on page 2-1 and shown in Figure 2-2 of the Draft SEIR, a 70-foot-wide SLWD easement crosses through the western portion of the solar project site. As stated on page 3.19-3 in Section 3.19, *Utilities and Service Systems*, other SLWD facilities, including pipelines, water delivery turnouts, electrical cables, telemetry cables, and other facilities and their corresponding easements, cross the solar project site. Page 5.4-3 of the Community Plan EIR describes a 30-foot SLWD easement that "begins at the southeast edge of the [Community Plan Area] and traverses northwest and west through the central portion of the site. Within the easement is a 200-pound-per-square-inch, pre-tensioned-steel concrete-encased water line, varying in size from 42 inches within the eastern portion of the project site to 24 inches in the western portion. The lines terminate at a steel water storage reservoir within the most westerly part of the project site south of Gonzaga Road and east of the San Luis Reservoir State Recreation Area. Numerous pumps and valves to this raw water service infrastructure exist within the project site. The 42-inch line connects directly with the California Aqueduct for water supply." This information has been added to Chapter 2, *Project Description*, of the Draft SEIR, as described in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5. No new SLWD easements have been recorded on the project site since preparation of the Community Plan EIR.

As stated on page 2-19 in Chapter 2, *Project Description*, of the Draft SEIR, all already-recorded easements would be honored. The applicant would not interfere with SLWD easements without permission from the district, consistent with background principles of California real estate law. Further, as requested in the comment, as a condition of approval, the project applicant would enter into a limited crossing consent agreement with the SLWD prior to the initiation of construction activities that impact SLWD infrastructure. This text has been added to Chapter 3, *Draft SEIR Errata*, of this Final SEIR. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

These project design features would avoid interference with SLWD easements and facilities. Therefore, the project would not result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities or the need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, to maintain acceptable service ratios, response times, or other performance objectives for SLWD facilities. As described in Chapter 3, *Draft SEIR Errata*, of this Final SEIR, text has been added

to Impact PS-1 in Section 3.15, *Public Services*, of the Draft SEIR to further clarify this less-than-significant impact. For the same reasons, the project would not require or result in the relocation or construction of new or expanded SLWD water facilities to serve other SLWD customers, the construction or relocation of which could cause significant environmental effects. Text has been added to Impact UT-1 in Section 3.19, *Utilities and Service Systems*, of the Draft SEIR to further clarify this less-than-significant impact. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

As discussed above and in the text added to Chapter 3, *Draft SEIR Errata*, of this Final SEIR, the project would not result in environmental impacts due to interference with SLWD easements. Therefore, no new or substantially more severe significant impacts would result beyond those identified in the previous EIR, and no additional mitigation would be required.

Response to Comment 6-2

The comment describes the proposed residential redesignation and states that insufficient water supplies are available to serve high-density/medium-density uses in the redesignation area. The comment describes current water supply conditions that affect Central Valley Project allocations, including ongoing drought conditions, implementation of the San Joaquin and Sacramento River and Bay-Delta Water Quality Control Plans, and implementation of the biological opinions governing Central Valley Project operation. The comment states that the County's reliance on the Community Plan and the "flawed prior analysis" in the Community Plan EIR is inappropriate given water supply conditions. The comment further states that the Draft SEIR fails to analyze water supply requirements, availability, and reliability for the proposed residential redesignation and that the Draft SEIR fails to evaluate current and future water supply characteristics.

Please see Response to Comment 4-1. As discussed therein, the scope of the subsequent environmental analysis determines whether the project would result in new or substantially increased significant impacts compared to those identified in the Community Plan EIR. Certified EIRs do not expire under CEQA. Once certified, an EIR remains valid for tiering regardless of its age or perceived quality. However, pursuant to CEQA Guidelines Section 15162, a subsequent EIR must be prepared when substantial changes are proposed in a project and/or substantial changes in circumstances have occurred since preparation of the certified EIR. The SEIR addresses the effects of the proposed changes in the Community Plan project (i.e., the solar project, PG&E substation improvements, residential redesignation, off-site mitigation site), as well as changes in water supply conditions, that have resulted since preparation of the Community Plan EIR.

As discussed in Section 3.19, *Utilities and Service Systems*, a Water Supply Assessment (WSA) was prepared for the project and included as Appendix 3.19-1 of the Draft SEIR. The WSA is the basis for the water supply analysis summarized in Section 3.19, *Utilities and Service Systems*, of the Draft SEIR. Chapter 4 of the WSA includes a detailed discussion of current SLWD water supplies, including the specific supply challenges mentioned in the comment. As discussed on page 4-3 of the WSA:

> "The Reclamation contract for 125,080 AFY represents the SLWD's only long-term water supply. In recent years, drought conditions and impacts related to the Endangered Species Act have sharply constrained pumping from the Delta and reduced water supplies from the District's long-term CVP contract. These changes reduced CVP allocations to the SLWD from a historic average of 109,000 af (1956–2007) to about 33,000 af (2008–2016). As shown in Appendix D, in April 2021, Reclamation's 2021 CVP allocation for south-of-Delta agricultural contractors, including the SLWD,

which was 5 percent of their contract supply, was suspended because of drought conditions. The 2021 M&I allocation was 55 percent of the contract supply. In 2022, no water was allocated to south-of-Delta agricultural contractors, and M&I users received 33 percent of their contracted supply. In 2023, with changing hydrological conditions, agricultural users received 35 percent of their contracted supply, and M&I users received 75 percent. Supplemental water transfers have been used by the SLWD to address shortages in CVP allocations and have become the largest share of the SLWD's water portfolio. In 2020, outdoor water costs were $195/af and indoor water costs were $12,078/af."

Contrary to the comment, the SEIR does not conclude that the "reduction of single-family residential and conversion to high-density/medium-density would have a less-than-significant impact." Rather, the analysis of water supply impacts in the SEIR acknowledges the supply challenges described in the WSA and concludes that water supply impacts would remain significant and unavoidable. As stated on page 3.19-17:

"As was the case when the Community Plan EIR was prepared, water supply demands for the Community Plan may not be met by existing SLWD CVP water supplies, and no contracts are in place for ensuring potential water supply sources would be available to meet expected demands of buildout at the off-site residential redesignation area. Therefore, as was the case when the Community Plan EIR was prepared, impacts on water supply would remain ***significant and unavoidable*** [emphasis added] with the off-site residential redesignation. However, ***no new or substantially more severe significant impacts would result beyond those identified in the previous EIR and no additional mitigation would be required."***

The determination that "no new or substantially more severe significant impacts would result beyond those identified in the previous EIR and no additional mitigation would be required" is required for the subsequent environmental analysis (please see Response to Comment 4-1). The basis for this conclusion is stated on page 3.19-17 of the Draft SEIR:

"The proposed off-site residential redesignation would not result in the direct demand for water supply. While the proposed off-site residential redesignation would increase the planned density within the residential redesignation area, it would not increase the overall medium-density/high-density residential capacity or associated demand for water of the approved Community Plan. Instead, it would redistribute already approved medium-density/high-density residential capacity to a different area within the Community Plan area. The proposed off-site residential redesignation would ensure that the same number of medium-density/high-density housing units within the Community Plan area. Future development within the off-site residential redesignation area would be subject to the policies in the Community Plan and the mitigation measures in the Community Plan EIR. Therefore, the off-site residential redesignation would not increase the overall water demand from Community Plan buildout studied in the Community Plan EIR."

The Draft SEIR also explains why the significant water supply impact for the off-site residential redesignation area would not be substantially more severe than what was disclosed in the Community Plan EIR. As stated on page 3.19-17 of the Draft SEIR:

"Conditions at and around the off-site residential redesignation area have not changed materially since certification of the Community Plan EIR. Sufficient on-site groundwater supplies remain unavailable to serve the off-site redesignation area. The water sources identified in the Community Plan EIR to serve Community Plan buildout were CVP entitlement with groundwater banking to firm the supply, San Joaquin River Exchange Contractors Water Authority Water Transfer, and

> reclaimed water exchange. As was the case when the Community Plan EIR was prepared, water supply demands for the Community Plan may not be met by existing SLWD CVP water supplies, and no contracts are in place for ensuring potential water supply sources would be available to meet expected demands of buildout at the off-site residential redesignation area. Therefore, as was the case when the Community Plan EIR was prepared, impacts on water supply would remain significant and unavoidable with the off-site residential redesignation. However, ***no new or substantially more severe significant impacts would result beyond those identified in the previous EIR and no additional mitigation would be required***."

In summary, although the SEIR determines that water supply impacts associated with the residential redesignation would not be greater than the impacts identified in the Community Plan EIR, it still identifies impacts as significant and unavoidable, in part due to the current water supply challenges referenced in the comment.

The comment also states that the existing low-density residential land use is not compatible with the current water supply environment. The commenter asks for additional analysis of the current land use designation in relation to existing water supply conditions and requests that the County rescind the Community Plan and return the lands within the plan area to uses that are compatible with an insufficient and insecure water supply. This portion of the comment is outside the scope of the SEIR analysis.

No revisions to the Draft SEIR are required.

Response to Comment 6-3

The comment states that the location of the off-site redesignation area is incompatible with the adjacent Billy Wright Landfill stated in the Draft SEIR. As stated in the comment, the off-site residential redesignation is currently designated for low-density residential use. The Community Plan EIR evaluated land use compatibility impacts associated with locating residential uses adjacent to the landfill. As discussed on page 3.11-18 in Section 3.11, *Land Use and Planning*, of the SEIR, "The Community Plan EIR found that development under the Community Plan would result in the development of new urban land uses that could conflict with existing land uses, specifically planned uses that would occur adjacent to Billy Wright Landfill and surrounding agricultural and open space areas, due to the lack of setbacks or buffers between these uses. The Community Plan EIR found that this would be a potentially significant impact but that with implementation of Community Plan EIR Mitigation Measures 5.1-2a (Billy Wright Landfill) and 5.1-2b (Agricultural and Open Space Areas), sufficient setbacks/buffers would be implemented to minimize potential land use conflicts with the Billy Wright Landfill and surrounding agricultural areas, and the impact would be less than significant." The SEIR evaluated whether the proposed increase from low density to medium/high density would result in a new significant impact related to landfill capacity. As noted on page 3.11-19 of the Draft SEIR:

> "It is important to note that the proposed project itself does not include the construction of new housing or any other type of physical development as part of the off-site General Plan amendment. Therefore, the off-site residential redesignation area would not result in direct impacts related to land use conflicts. Nonetheless, future development under the off-site General Plan amendment could occur, resulting in potential land use conflicts with the Billy Wright Landfill and adjacent surrounding agricultural and open space uses. As required by the Community Plan, any future development under the amendment would require implementation plan approval for each specific area identified within the Community Plan. Implementation plans must not only be consistent

with the Community Plan, but also include specific implementation measures identified in the Community Plan. Implementation plan approval by the County is a discretionary action, and as explained in the Community Plan, supplemental environmental review will be required for approval of the implementation plans (refer to Community Plan EIR Table 5-02). Specifically, page 1-3 of the Community Plan EIR states, "no development may occur until such time as additional environmental review has been completed for each implementation plan in accordance with CEQA" (County of Merced 2007). Future development within the off-site residential redesignation area, should it occur, would be subject to this requirement, including any identified mitigation measures related to land use or mitigating an environmental effect identified as part of the CEQA review process. Further, future development under the off-site residential redesignation area would be subject to the policies in the Community Plan and the mitigation measures in the Community Plan EIR, such as Mitigation Measures 5.1-2a (Billy Wright Landfill) and 5.1-2b (Agricultural and Open Space Areas). Therefore, impacts would be less than significant, consistent with the Community Plan EIR conclusion. ***No new or substantially more severe significant impacts would result beyond those identified in the previous EIR and no additional mitigation would be required."***

The comment does not include a question or comment about the adequacy of the Draft SEIR analysis. Please see also the Responses to Comments 4-1, 4-2, 4-3, 10-2, and 10-3 from the Merced County Regional Waste Authority, which address the issue of compatibility with the landfill in detail.

The comment further states that the "landfill takes little or no responsibility for the effects of its operations on the surrounding area," including litter on roadways, litter on adjacent properties, and illegal dumping. This portion of the comment is on existing conditions, not an effect of the proposed project, and as such is outside the scope of the SEIR analysis.

No revisions to the Draft SEIR are required.

Response to Comment 6-4

The comment states that the SLWD cannot provide treated water or wastewater service to the solar project and that the Draft SEIR "convey[s] the incorrect impression that water and wastewater service is available through SLWD."

The solar project would not require treated water or wastewater service from SLWD or any other provider. The commenter's reference to prior discussions with the project proponent and the County are assumed to refer to discussions regarding the previously proposed operations and maintenance (O&M) building. The O&M building was included in the project description in the NOP and would have required new connections to SLWD's treated water and wastewater systems. However, based on discussions with the SLWD, the O&M building was removed from the solar project. Instead, as discussed on page 2-22 in Chapter 2, *Project Description*, of the Draft SEIR, employees from existing off-site O&M facilities would visit the solar project site to service and maintain the arrays. As stated on page 2-23 of the Draft SEIR, the solar project would not include any permanent wastewater fixtures.

As discussed in Chapter 3, *Draft SEIR Errata,* of this Final SEIR, Chapter 2, *Project Description*, of the Draft SEIR has been revised to clarify that the project's construction and operational water demand (i.e., water for irrigation and panel washing) would not require the use of potable water but could be served through connections to SLWD's non-potable system, which runs through the solar project site, should the SLWD grant the required approvals. If SLWD does not grant the required approvals, water would be trucked in from the Mid-Cal well, as discussed on pages 2-36 and 2-37 of the Draft SEIR. The

use of water from the Mid-Cal well would require approval of a groundwater export permit consistent with Merced County's Groundwater Mining and Export ordinance. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

The Draft SEIR also evaluates impacts on water and wastewater services to the residential redesignation area. As stated on pages 3.19-13 and 3.19-14 of the Draft SEIR:

> "The proposed off-site residential redesignation would not result in the direct construction of new or expanded water treatment, electric power, or natural gas facilities. While the proposed off-site residential redesignation would increase the planned density within the residential redesignation area, it would not change the overall medium-density/high-density residential capacity of the approved Community Plan. Instead, it would redistribute already approved medium-density/high-density residential capacity to a different area within the Community Plan area. Water, electricity, and natural gas demand were evaluated in the build out analysis of the Community Plan and would not increase with the proposed off-site residential redesignation. Future development within the off-site residential redesignation area would be subject to the policies in the Community Plan and the mitigation measures in the Community Plan EIR. Further, future development within the off-site residential redesignation area associated with the solar project would not change from the electricity, water, wastewater, or natural gas demand analyzed in Community Plan EIR, because it would not result in additional development beyond that contemplated in the Community Plan EIR. Therefore, impacts from the off-site residential redesignation would remain significant and unavoidable, consistent with the Community Plan EIR conclusion. ***No new or substantially more severe significant impacts would result beyond those identified in the previous EIR and no additional mitigation would be required***."

Please see Response to Comment 4-1 regarding the scope of the subsequent environmental analysis.

Response to Comment 6-5

The comment states that, because of their heavy loads, construction trucks and equipment associated with the proposed project could damage SLWD facilities within the solar project site and along San Luis Drive. The comment states that the Draft SEIR fails to address these potential impacts. The comment states that the project should avoid using roadways overlying district facilities and that construction traffic along San Luis Drive should be restricted.

It is also noted that construction traffic along San Luis Drive would occur only if the SLWD does not approve non-potable water service to the solar project and water is instead trucked in from the Mid-Cal well, as discussed on pages 2-36 and 2-37 of the Draft SEIR. As discussed on pages 2-34 through 2-36 of the Draft SEIR, all other construction trucks and vehicles would access the solar project site via Billy Wright Road.

As discussed in Response to Comment 6-1, as a Condition of Approval, prior to the initiation of construction activities, the project applicant would enter into a Limited Crossing Consent with SLWD to ensure all project facilities, structures, and improvements that cross or otherwise involve SLWD easements do not interfere with operation or maintenance of SLWD facilities. This would ensure that the project does not interfere with SLWD's ability to serve its customers. No further revisions to the Draft SEIR are required.

Response to Comment 6-6

The comment states that the Draft SEIR does not address emergency response and that a mitigation measure that would require preparation of a comprehensive fire protection plan and emergency response plan should be incorporated. The comment further states that the conditional use permit should require a comprehensive fire protection plan and emergency response plan.

Impacts related to emergency response are discussed under Impact WF-1 in Section 3.20, *Wildfire*. During solar project construction, a Construction Traffic Control Plan (CTCP) subject to Caltrans review and approval would be implemented, as described on page 2-35 in Chapter 2, *Project Description*, of the Draft SEIR. Implementation of the CTCP would ensure that emergency access to, and surrounding, the solar project site would be maintained. All perimeter roads and interior access roads within the solar project site would conform to Merced County and California Fire Code standards to ensure adequate emergency access to and from the project site would be provided during project operations. In addition, operation of the project would not remove or impede any existing roadways or emergency access or evacuation routes such as those identified in the Merced County Emergency Operations Plan. Furthermore, as detailed under Impact WF-3, in order to prepare personnel for dealing with emergency situations, including those related to wildfire, an emergency action plan would be developed prior to solar project operation in accordance with OSHA and National Fire Protection Association safety standards. This emergency action plan would be developed to effectively address all emergencies that may be reasonably expected to occur at the as a result of the Li-ion battery. Such a plan may include a designated emergency coordinator who would be responsible for notification of emergency personnel, safely evacuating solar project employees, and the proper use of fire extinguishers (if applicable). All personnel working on-site would receive instruction and training on the emergency action plan.

As noted by the commenter, the introduction of construction personnel and equipment in shoulder areas along public and private roadways could result in unintentional ignition of roadside vegetation, as described under Impact WF-2 and WF-3. Construction personnel and equipment would also be present during building of the Community Plan. The Community Plan EIR stated that 900 construction workers would be on-site during a peak activity day (Community Plan EIR page 5.2-6), which is substantially more than the 400 construction workers that would be associated with the proposed project (Draft SEIR page 3.14-6). Current activities undertaken by State and local agencies, such as prescribed burning and construction activities, are expected to follow fire management goals and policies set forth by the County General Plan, requirements of the California Building Standards Code, and other applicable fire and safety policies or regulations set to minimize risk of wildfire during project construction and operations. Compliance with these established goals, policies, and requirements would reduce potential impacts related to wildfire risks. Specifically, construction, operation, and decommissioning of the gen-tie line would adhere to Public Resources Code Sections 4292 and 4293, which require a firebreak around poles and lines; this would require clearing vegetation in an area no less than 10 feet in each direction from the outer circumference of a pole, tower, or line to minimize the risk of a wildfire ignited by a gen-tie line. In addition, the project would be required to implement Mitigation Measures WF-3a, *Fit Battery Containers with a Fire Suppression System*, and WF-3b, *Implement a Fire Protection Plan*, which would reduce impacts associated with construction, operation, and decommissioning of the proposed solar facility—specifically, impacts related to the Li-ion battery. Furthermore, the project would also be required to adhere to PG&E's 2022 Wildfire Mitigation Plan Update (WMP), which includes wildfire prevention strategies and programs, including vegetation management programs as well as inspection and maintenance programs, that PG&E would implement to mitigate the threat of infrastructure-ignited wildfire as a result of the project.

No revisions to the Draft SEIR are required.

Response to Comment 6-7

The comment describes proposed establishment of the off-site mitigation site, and states that the Draft SEIR does not evaluate impacts on SLWD facilities within the off-site mitigation site. The comment does not identify any such impacts. The comment also requests the establishment of setbacks and that the project adhere to SLWD access easements.

Based on a review of the SLWD's District Location Map, there appears to be minimal overlap between SLWD facilities and the off-site mitigation site (San Luis Water District 2020 [Appendix B]). To the extent there is overlap, activities within the off-site mitigation site would not have the potential to affect SLWD facilities. As stated on page 3.5-13 in Section 3.5, *Cultural Resources*, of the Draft SEIR:

> "With the exception of invasive plant species abatement and overland vehicle travel by biological monitors, no ground disturbance or construction would be required on the off-site mitigation site; rather, the site would be placed into a conservation easement in perpetuity and the land managed for the benefit of the San Joaquin kit fox and other covered species, as necessary. Invasive plant species abatement and overland vehicle travel would involve minimal to no ground disturbance."

Furthermore, Mitigation Measure CUL-2 restricts overland vehicle travel on existing roads during biological monitoring at the off-site mitigation site. The applicant would not interfere with SLWD easements without permission from the district, consistent with background principles of California real estate law. No setbacks would be required because nothing would be constructed. No impacts to SLWD facilities would occur, and no revisions to the Draft SEIR would be required. Please see also Response to Comment 6-1.

Response to Comment 6-8

The comment states that as a project alternative, the proposed project seeks to extract 370 acre-feet of groundwater from an off-site groundwater well (referred to in the Draft SEIR as the Mid-Cal well), and that the Draft SEIR does not evaluate whether the extraction would impact, either singly or cumulatively, any of the groundwater sustainability criteria identified in the currently adopted groundwater sustainability plan or currently proposed groundwater sustainability plan.

The proposed use of the Mid-Cal well is not a project alternative as defined by CEQA Guidelines Section 15126.6. Rather, it is a component of the project description to serve as a back-up plan in the event the SLWD is not able to serve the project. As discussed on page 2-22 in Chapter 2, Project Description, of the Draft SEIR:

> "Panel washing to remove dust particles from the solar panels would be expected to occur once every year. It is anticipated that water for panel washing would either by supplied by the SLWD through existing connections to the solar project site (Solar Water Management Agreement and Construction Management Agreement forgoing agricultural allocations on site), or pumped from the AKT irrigation well located adjacent to SR 33 at the northwest corner of AKT's Mid-Cal property, approximately 4.4 miles north of the solar project site (Mid-Cal well). Under the second option, the pumped water would be transported to the solar project site by 4,000-gallon water trucks and applied by up to four robotic sprayers."

Page 2-23 in Chapter 2, Project Description, of the Draft SEIR states:

> "It is anticipated that water for irrigation and fire flow would either by supplied by the SLWD through existing connections to the solar project site, or pumped from the Mid-Cal well described above and transported to the solar project site by water trucks as discussed above."

Page 2-37 in Chapter 2, Project Description, of the Draft SEIR states:

> "Water for construction would either be supplied by the SLWD through existing connections to the solar project site or transported to the solar project site via 4,000-gallon water trucks. As discussed in Section 3.19, Utilities and Service Systems, the use of SLWD water would require the approval of a Construction Water Agreement and Solar Water Management Agreement for the project by the SLWD. The use of water from the Mid-Cal well would require approval of a groundwater export permit by the Merced County Board of Supervisors consistent with Merced County's Groundwater Mining and Export ordinance. The method that is ultimately implemented will depend on which approvals are granted."

In the list of required discretionary approvals for the project on page 2-46 in Chapter 2, Project Description, the Draft SEIR states:

- "Water permits/approvals:
    - Construction Water Agreement and Solar Water Management Agreement pursuant to the San Luis Water District's Rules and Regulations, adopted pursuant to California Water Code Section 35423, to effect orderly, efficient, and equitable distribution and use of water, OR;
    - Merced County, Groundwater Export Permit. Merced County authorizes groundwater to be used outside of the groundwater basin from which it is withdrawn pursuant to a groundwater export permit."

The second open bullet has been revised to clarify that the Groundwater Export Permit is required pursuant to Merced County Code, Chapter 9.27; revised text can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR.

Contrary to the comment, multiple scenarios were evaluated in the February 7, 2023 Technical Memorandum by EMKO Environmental, Inc. entitled Evaluation of Potential Effects of Construction and Operational Water Demand on Regional Groundwater Supply to compare the effects of groundwater pumping for the project with groundwater sustainability criteria. As stated on page 3.10-1 of the Draft SEIR, the technical memorandum serves as a basis for the groundwater analysis in Section 3.10, Hydrology and Water Quality, and is summarized throughout that section. The technical memorandum is included in Appendix 3.10-2 of the Draft SEIR. On page 5 of the EMKO 2023 Technical Memorandum, there is a heading "Comparison of Project Effects on Groundwater Levels with GSP Sustainability Criteria". As described in that section, multiple analyses were conducted to compare the effects of pumping for the project on groundwater levels during wet, average, dry, and critically dry years. The overall changes in groundwater levels were compared to Measurable Objectives (MOs) and Minimum Thresholds (MTs) identified in the 2022 Northern and Central Delta-Mendota Groundwater Sustainability Plan (2022 GSP), the most recent GSP at the time of the analysis. That section of the Technical Memorandum concludes that "the Project water demand would not chronically or persistently cause a lowering of groundwater levels below the MT and would not cause levels to fall below the MO any more frequently than they would without the Project […] Thus, the groundwater demand for the Project would not conflict with the GSP and would not interfere with sustainable management of the GSP area." That analysis is summarized on Draft SEIR page 3.10-27.

In May 2024, during the Draft SEIR public review period, the Basin GSAs released a revised Draft GSP. The 2024 Final Delta-Mendota Subbasin GSP (2024 GSP) was released in July 2024. Because it was released after the Notice of Preparation (NOP) for the proposed project (August 2021), which established the baseline for the Draft SEIR analysis, CEQA does not require an analysis of project consistency with the 2024 GSP. Notwithstanding, an analysis is provided below for informational purposes.

In the 2024 GSP, several of the sustainable management criteria (SMCs) changed for Chronic Lowering of Groundwater Levels and for Reduction in Groundwater Storage. For Chronic Lowering of Groundwater Levels, the MT for Well 07-003 (i.e., the Mid-Cal well) increased from an elevation[2] of 62.5 ft to 68.6 ft due to a change in the base period from calendar year 2015 to water year 2016 (which includes October, November, and December 2015). The change in base period did not alter the MO of 89.9 ft. Comparing the actual measured water levels from Well 07-003 shown in Table 1 of the 2023 EMKO Technical Memorandum with the predicted water levels for Scenarios 1 through 3 demonstrates that pumping for the project would not cause the groundwater level to be lower than the 2024 GSP MT of 68.6 ft any more frequently than occurred in the measured data without the project. In the CEQA context, the project effects would be equal to the baseline conditions using the 2024 GSP SMCs for Chronic Lowering of Groundwater Levels and, therefore, there would be no impact on groundwater levels.

For Reduction in Groundwater Storage, the total basin storage increased significantly because the 2022 GSP only included the groundwater in storage for the Northern and Central Subbasin of the larger Delta-Mendota Groundwater Basin. For the 2022 GSP, the resulting MT for change in storage is -105,000 acre-feet, whereas for the 2024 GSP, the resulting MT for change in storage is -893,624 acre-feet, or an 8.5-fold increase due to the larger basin size and volume. As reported in the 2023 EMKO Technical Memorandum and Draft SEIR page 3.10-27, the first-year project demand of 245 acre-feet would be 0.233 percent of the change in storage from the 2022 GSP, but only 0.027 percent of the change in storage from the 2024 GSP. Thus, the overall effect of the project on groundwater storage is less relative to the 2024 GSP SMCs for groundwater storage.

Based on the discussion in the above two paragraphs, the conclusion from the EMKO 2023 Technical Memorandum that that "the Project water demand would not chronically or persistently cause a lowering of groundwater levels below the MT and would not cause levels to fall below the MO any more frequently than they would without the Project [...] Thus, the groundwater demand for the Project would not conflict with the GSP and would not interfere with sustainable management of the GSP area" is also applicable to the SMCs in the 2024 GSP.

Section 15 of the 2024 GSP describes Projects and Management Actions (abbreviated as P/MAs in the 2024 GSP) for achieving the SMCs. Section 16 describes how the 2024 GSP would be implemented (referred to as Plan Implementation). Tier 1 P/MAs are to be implemented prior to 2025. Tier 2 P/MAs are to be implemented by 2030, and subsequent tiers are to be implemented by 2040 or afterward as needed. Most of the P/MAs are either specific to individual GSAs and irrigation districts, or are focused on agricultural water use. The primary P/MAs that would apply to the solar project are Tier 1 Management Action ALL-1 and Tier 2 Management Action ALL-3. Under ALL-1, metering may be required for both the agricultural use and industrial use of the Mid-Cal well. The metering would provide information that would potentially be used to assess consistency with ALL-3 and for possible future water use fees to support a well mitigation

[2] All elevations are relative to NAVD 88.

policy and future GSP implementation costs (see Table PI-2 in the 2024 GSP). Use of the Mid-Cal well for the solar project would not conflict with Management Action ALL-1 and would not interfere with its implementation.

ALL-3 is a basin-wide pumping reduction plan that is to be developed by 2025. As such, the implementation details are not yet available. However, as described in Section 16.1.1.2 of the 2024 GSP, the plan involves a reduction in overall pumping of 42,000 acre-feet per year by 2030, with 20 percent of the total achieved each year from 2026 through 2030. Approximately 77 percent of the pumping reduction is to be achieved in the Lower Aquifer and the remaining 23 percent reduction is to be achieved from the Upper Aquifer. The 2023 EMKO Technical Memorandum concludes that the Mid-Cal well is completed within the Upper Aquifer. In addition, all water use for the solar project other than the ongoing 5 acre-feet per year maintenance use for panel washing would be completed by 2025. The annual maintenance water demand is only 0.012 percent of the 2030 overall pumping reduction and 0.053 percent of the Upper Aquifer pumping reduction to be achieved by 2030. This minimal volume for ongoing project maintenance would not measurably interfere with the implementation of Management Action ALL-3 and could be addressed through metering and other actions under ALL-1, if such requirements are included in the Implementation Plan to be developed by the GSA by 2025. Thus, the project would not conflict with Management Action ALL-3 and would not interfere with its implementation.

As noted above, the Mid-Cal well is completely within the unconfined Upper Aquifer, above the Corcoran Clay. Therefore, the temporary and intermittent use of the Mid-Cal well would not contribute to local or regional subsidence that is caused by groundwater extraction from deeper aquifers beneath the Corcoran Clay.

Since the technical analyses presented in and supporting the Draft SEIR did not identify any potentially significant impacts on groundwater supplies related to pumping for the project, and did not identify any inconsistencies with the GSP, the suggested mitigation measure for recharge to the aquifer is not warranted. No revisions to the Draft SEIR are required.

Response to Comment 6-9

As explained in the response to Comment 6-1, CEQA requires lead agencies to identify and discuss the "significant effects of the proposed project on the environment," and defines "environment" as the "physical conditions which exist within the area which will be affected by a proposed project." Although the CEQA Guidelines recommend discussion of whether a project would "cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental impact," the commenter does not argue that Rule 24 is such a regulation.

Rule 24 applies to "Energy Project Parcels," which the rule defines as all parcels proposed for or containing energy generation or storage so long as the parcel is at least three acres and the generation and/or storage is more than needed for on-site use. Rule 24 provides that the landowner of an Energy Project Parcel must enter into a water management agreement (WMA) consistent with District Rule 7 D(2). Rule 7 D(2) allows landowners of parcels with District water allotments to relinquish their allocations to the District for purposes of conveying management and control over the allocation to the District. Although the terms of a given WMA appear to be left to negotiations between the District and the landowner, Rule 24 does provide that when a landowner enters into a WMA, the Energy Project Parcel will be allocated water to be used for

dust control, pest control, panel cleaning, and other energy project O&M functions. The District can choose not to require a WMA for an Energy Project Parcel that maintains active agricultural operations (other than livestock grazing) that depend on District water supplies that meet specified conditions. Rule 24 does not appear to have been adopted for the purpose of avoiding or mitigating – or otherwise be relevant to – environmental impacts.

Should all or part of the project site become an "Energy Project Parcel" for purposes of the District's Rule 24, the applicable landowner(s) would be responsible for complying with Rule 24. The District has not indicated that any landowner would fail to comply, but in that event Rule 24 states that the District could discontinue services to the affected parcel(s).

In any event, the Draft SEIR provides a robust analysis of the Project's impacts on the environment with respect to water usage (see, e.g., pages 3.19-1 to 3.19-2, 3.19-12 to 3.19-21, Appendix 3.19), and specifically includes a discussion of District rules, including Rule 24 (see, e.g., pages 3.2-16 to 3.2-17, 3.19-11, 3.19-19). The comment does not indicate that the Project will result in a new or substantially increased significant environmental impact related to compliance with District rules. No additional analysis or mitigation is required.

Letter 10. Stacie Guzman, Executive Director, Merced County Regional Waste Authority, dated July 12, 2024

MERCED COUNTY RWA REGIONAL WASTE AUTHORITY

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Merced, CA 95348

Via Electronic Mail Planning@countyofmerced.com July 12, 2024

Lori Hammer, Contract Planner
Community and Economic Development Department
2222 M Street, 2nd Floor
Merced, CA 95340

Re: Notice of Preparation – Draft Subsequent EIR for Las Camas Solar Project (Conditional Use Permit No. 20-011; General Plan Amendment No. 20-001; Zone Change Amendment No. 21- 002)

Dear Ms. Hammer:

Please accept this letter as additional information in response to the Notice of Availability of Draft Subsequent EIR (SEIR) being prepared pursuant to the California Environmental Quality Act (CEQA) for the Las Camas Solar Project (Conditional Use Permit No. 20-011; General Plan Amendment No. 20-001; Zone Change Amendment No. 21-002) (the proposed project). These comments are being submitted in addition to those submitted on June 17, 2024.

The Authority is generally in support of the project, and particularly the Reduced Footprint Alternative project.

I. Background

The Billy Wright Landfill has been in operation by the RWA since 1983. The Landfill primarily serves the cities of Dos Palos, Gustine, and Los Banos, the community of Santa Nella, and the unincorporated areas of western Merced County. The Landfill accepts Class III permitted wastes, non-hazardous solid waste, inert wastes, and nonfriable asbestos. At present, the Billy Wright Landfill is permitted to accept up to 3,000 tons per day of solid waste. This represents a large portion of the region's waste and represents the importance of the facility to the region and the County.

II. SEIR Comments

Based on the analysis provided, the Authority presents the following additional comments for consideration:

1

A. **Toxic Air Contaminants** – The SEIR states on page 3-39 that, because of the 2015 CBIA decision, consideration of potential health risks to the denser residential population to the east and south that would be made possible by the project is not necessary. However, this is erroneous. There has been recent legislation related to unduly burdening disadvantaged communities, including SB 1383, SB 1000, and SB 535. An indicated in the SEIR, the project would provide for a greater

1 (cont.)

density of affordable housing within the County in a designated disadvantaged community. It would also allow for these units to occur generally downwind of the existing landfill and be subject to stationary source emissions associated with the landfill. As noted above, with the change in land use patterns resulting from the project, there would be a potential for additional vehicle trips, including truck trips (e.g., for solid waste disposal and other potential uses) that could result in (and exacerbate) potential health risks for residents of the identified affordable housing. Per CBIA, if a project would exacerbate the risk, it should not dismiss the potential future conditions and health risks to future residents in the area. However, the SEIR provides no analysis of the potential for this condition or evidence to support its conclusion, contrary to CEQA requirements.

In addition, the California Attorney General's Office has paid recent attention (since the passage of SB1000) to the need for consideration of environmental justice. Although this is only required within the context of CEQA for General Plans, and the County's General Plan precedes the passage of SB1000, the densification of affordable housing within the County in an area that is within the typical downwind path of landfill TACs and odors would seem contrary to the State's direction and guidance related to disadvantage communities.

2

B. **Odors** – The SEIR states on page 3.3-46 that it would not exacerbate existing odors from the landfill. Similar to the comment offered above for TACs, the SEIR does not provide evidence to support this conclusion. With the additional residential density, additional solid waste would be generated by on-site uses that would reasonably be anticipated to be disposed of at Billy Wright Landfill. In compliance with SB 1383, much of this additional waste would be composted proximate to the changed land use designation and residences. Composting, as well as solid waste disposal, is known to generate odors and TACs. As the project would contribute to solid waste disposal and composting in the project area, it could reasonably be anticipated to exacerbate these impacts. However, the SEIR does not provide any such evaluation and requires revision.

It also deems Mitigation Measure 5.12-5 as not applicable to the project, however, as part of this measure, it includes implementation of Mitigation Measure 5.1-2a, which requires establishment of appropriate minimum buffers between disposal areas of the landfill (i.e., the operational composting area along Billy Wright Road) and proposed residences. For this reason, this mitigation measure should be considered applicable since the project would involve a change in land use designation/density of development across Billy Wright Road.

3

C. **Vehicle Miles Travelled (VMT)** – Impact TRA-2, beginning on page 3.17-19 of the Draft SEIR, concludes that the proposed modification to the community plan would not result in a major shift in travel patterns. However, this analysis ignores the fact that the project would remove internal circulation within the community plan area, including 20+ roadway segments, and would prevent internal trip capture and VMT reduction that would have been achievable under the adopted plan. The project would essentially remove the southern central core of the community plan area, much of the commercial and business park developable area for the next 35 years, and push residential development into smaller areas within the southern portion of

3 (cont.)

the community plan area. On its face, this would (compared to the adopted community plan) push residents into cars in order to access other areas of the community plan and other necessary services in the area/region. However, none of this is evaluated in the SEIR other than to state that, "there could be a nominal change in the distribution of trips" (page 3.17-19). This conclusory statement does not fulfill CEQA's information objective, and no evidence has been provided to support the SEIR's conclusion.

RWA appreciates this opportunity to provide additional comments on the SEIR for the Las Camas Solar Project and looks forward to working with your department to address the issues raised in this letter.

Sincerely,

Stacie Guzman
Executive Director

Responses to Comment Letter 10 – Stacie Guzman, Executive Director, Merced County Regional Waste Authority

Response to Comment 10-1

Please see Response to Comment 4-2 regarding disadvantaged communities.

Response to Comment 10-2

As explained in the Draft SEIR, while the proposed off-site residential redesignation would increase the planned density within the residential redesignation area, it would not change the overall medium-density/high-density residential capacity of the approved Community Plan. Instead, it would redistribute already approved medium-density/high-density residential capacity to a different area within the Community Plan area. There would be no change to the total amount of solid waste generated by land uses associated with the approved Community Plan. Thus, the commenter is incorrect by asserting, "With the additional residential density, additional solid waste would be generated by on-site uses that would reasonably be anticipated to be disposed of at Billy Wright Landfill." Although this may be true for the waste generated specifically from the residential redesignation area, the waste stream going to the Billy Wright Landfill from the Community Plan as a whole would not increase. Thus, composting activities and potential odor generation would not increase. Furthermore, as discussed in Response to Comment 4-2, in *California Building Industry Assn. v. Bay Area Air Quality Management Dist.*, the California Supreme Court reiterated the fundamental CEQA principle that "CEQA does not generally require an agency to consider the effects of existing environmental conditions on a proposed project's future users or residents. What CEQA does mandate, consistent with a key element of the Resources Agency's interpretation, is an analysis of how a project might exacerbate existing environmental hazards*." California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 392 ("CBIA"). Thus, CEQA directs the lead agency to focus on project impacts, including how the project might exacerbate existing environmental hazards. As stated on page 3.3-46 of the SEIR, "The proposed project would not exacerbate existing odors from the landfill .... Therefore, no further evaluation of this issue is required under CEQA."

The commenter is also incorrect by stating, "It also deems Mitigation Measure 5.12-5 as not applicable to the project, however, as part of this measure, it includes implementation of Mitigation Measure 5.1-2a, which requires establishment of appropriate minimum buffers between disposal areas of the landfill (i.e., the operational composting area along Billy Wright Road) and proposed residences." As stated on page 3.3-46 of the Draft SEIR, "Future development within the off-site residential redesignation area would be subject to the policies in the Community Plan and the mitigation measure in the Community Plan EIR. The significant and unavoidable impact on on-site receptors was disclosed in the Community Plan EIR as part of approval of the Community Plan (and was based on impacts of the environment on the project, which is no longer considered an impact under CEQA). The proposed off-site residential redesignation would not increase the amount of development associated with buildout of the Community Plan, and therefore would not increase project-generated odors beyond those considered in the Community Plan EIR."

Mitigation Measure 5.12-5 of the Villages of Laguna San Luis Community Plan FEIR states,

> "Implement Mitigation Measure 5.1-2a for all properties."

Mitigation Measure 5.1-2a of the Villages of Laguna San Luis Community Plan FEIR states,

> "Implementation Plans shall include the preparation of a detailed plan that identifies the specific design elements and/or actions that would be implemented to minimize potential land use conflicts between the Billy Wright Landfill and proposed residential land uses. The plan shall be submitted to Merced County for review and approval. At a minimum the plan shall demonstrate to the County's satisfaction that potential land use conflicts between the landfill and proposed sensitive land uses (e.g., residences, schools) are minimized to the maximum extent practicable and consistent with County and State policies and shall include:
>
> - Establishment of appropriate minimum buffers between the edge of the landfill disposal area and proposed residences. The Community Plan provides for a minimum of a 300-foot buffer between the landfill disposal area and proposed sensitive land uses. The appropriateness of this buffer distance shall be determined in consultation with the County Planning Department and Public Works Department and shall take into consideration the final adopted plans for the operational footprint of Billy Wright Landfill. Additional buffer distance may be required to provide sufficient distance between landfill operations and adjacent residences such that odor and noise impacts would sufficiently attenuate to levels that would not conflict with county noise level standards;
> - Identify landscaping features (e.g., berm, trees, shrubs) that would be implemented along the edges of the landfill property but within project boundaries that would visually screen direct views of the landfill from proposed residences; and,
> - Title notification to residential buyers within 1,000 feet of the active landfill disposal area that a landfill currently operates within the area and that residents/occupants could, at times, be subject to nuisance effects associated with landfill operations including intermittent noise, odors, and vectors."

Consequently, the residential redesignation would not result in new or substantially increased significant impacts on potential future residents compared to those identified in the Community Plan EIR. No revisions to the Draft SEIR are required.

Response to Comment 10-3

The commenter states that the off-site residential redesignation would change the geographic location of future land uses and roadway access, that these changes would result in an increase in vehicle miles traveled (VMT), and that this increased impact is not sufficiently evaluated in the Draft SEIR.

The roadways used by future residents of the off-site residential redesignation area would be a mix of:

- Regional roadways, including State Route (SR) 152, SR 33, and Interstate 5; and
- Local roadways in the off-site residential redesignation area, which would be used to access regional roadways.

The majority of the length of trips made by residents would be on the regional roadways. The off-site residential redesignation would not affect the regional roadways, and would not affect travel on these roadways by future residents.

The off-site residential redesignation could affect the routes future residents use to access the regional roadways. That is, there could be a change in which local roadways are used by future residents. However, with information currently available, the change cannot be quantified, and it is not clear whether the change would result in an increase or a decrease in VMT.

Quantifying the change in VMT associated with the off-site residential redesignation would require specific information on the location of residential land use, and specific information on the location and size of roadways providing access to the residential land uses. As noted in the second full paragraph on page 3.17-14 of the Draft SEIR, "The proposed off-site residential redesignation would not result in the direct construction of housing or generation of a new population." Similarly, the proposed off-site residential redesignation would not result in the direct construction of roadways providing access to the residential land uses. As a result, determining the change in VMT cannot be done until plans are prepared showing the location of residential land use, and specific information on the location and size of roadways providing access to the residential land uses.

VMT associated with land use development is correlated to the number of vehicle trips generated by the land use. As noted above, the change in VMT associated with the off-site residential redesignation cannot be quantified. However, a preliminary estimate of the change in vehicle trips associated with the off-site residential redesignation has been prepared in response to the comment. The preliminary estimate was prepared using the following approach.

- The change in acreage for land use categories due to the off-site residential redesignation was quantified.
- Ratios of dwelling units per acre for different land use categories were applied to the change in acreage. This results in an approximation of the change in the number of dwelling units associated with the off-site residential redesignation.
- Vehicle trip generations rates were applied to the change in the number of dwelling units. The trip generation rates are from an industry-standard source, the Institute of Transportation Engineers (ITE) *Trip Generation Manual, 11th Edition* (Institute of Transportation Engineers 2021). Applying the trip generation rates to the estimated change in the number of dwelling units results in an approximation of the change in the number of vehicle trips by land use category.

Table 1 shows the calculation of the change in the number of dwelling units associated with the off-site residential redesignation (Shijo pers. comm.). This table shows the off-site residential redesignation would result in:

- A net increase of approximately 1,378 multiple family dwelling units (MFDUs); and
- A net decrease of approximately 3,825 single family dwelling units (SFDUs).

It should be noted the values shown in **Table 1** are only approximations. The actual number of dwelling units would likely be somewhat different with future specific development plans.

Table 1. Las Camas Solar Project Off-Site Residential Redesignation – Preliminary Estimate of Change In Dwelling Units

Category	Acres	Density in Units/Acre	Change in Units
Multiple-Family Dwelling Units (MFDUs)			
Medium-Density/High-Density Development Added In Residential Redesignation Area	202.8	18	3,650 MFDUs
Medium-Density Development Removed from Solar Project Site	-257	8	-2,056 MFDUs
High-Density Development Removed from Solar Project Site	-12	18	-216 MFDUs
		Net Change in MFDUs:	**1,378 MFDUs**
Single-Family Dwelling Units (SFDUs)			
Single-Family Residential Development Removed from Residential Redesignation Area	-202.8	4.7	-953 SFDUs
Single-Family Residential Development Removed from Solar Project Site	-611	4.7	-2,872 SFDUs
		Net Change in SFDUs:	**-3,825 SFDUs**

Table 2 shows the calculation of the change in the number of vehicle trips associated with the off-site residential redesignation (Shijo pers. comm.). This table shows the off-site residential redesignation would result in

- An increase of 9,288 trips per day due to the increase in the number of MFDUs;
- A decrease of 36,070 trips per day due to the decrease in the number of SFDUs; and
- A net total decrease of 26,782 trips per day due to the off-site residential redesignation.

Table 2. Las Camas Solar Project Off-Site Residential Redesignation – Preliminary Estimate of Change In Trip Generation

Change in Dwelling Units	Value
Net Change in Multiple-Family Dwelling Units	1,378
Net Change in Single-Family Dwelling Units	-3,825
Trip Generation Rates* (in Trips per Day per Dwelling Unit)	
Multiple-Family Dwelling Units (ITE Land Use Code 220)	6.74
Single-Family Dwelling Units (ITE Land Use Code 210)	9.43
Change in Trip Generation (in Trips per Day)	
Multiple-Family Dwelling Units	9,288
Single-Family Dwelling Units	-36,070
Net Change:	**-26,782**

*Source: Institute of Transportation Engineers (ITE) *Trip Generation Manual*, 11th edition

As noted above, it is not clear if the change in local roadways used by future residents and the locations to which future residents were to travel would result in an increase or a decrease in VMT. However, even if these changes - would result in an increase in VMT, this would be offset by the net total decrease of approximately 26,782 trips per day due to the change in residential land use.

Responses to Comments from Organizations

Letter 7. Brendan Wilce, California Native Plant Society (CNPS) and Sophia Markowska, Defenders of Wildlife, dated June 17, 2024

June 17, 2024

Tiffany Ho, Deputy Director
Merced County Community and Economic Development Department
2222 M Street
Merced, CA 95340
Delivered via email to: Tiffany.Ho@countyofmerced.com

RE: Draft Subsequent Environmental Impact Report – Las Camas Solar Project (SCH 2021080196)

Dear Ms. Ho:

Thank you for the opportunity to provide comments in response to the Draft Subsequent Environmental Impact Report (SEIR) for the proposed Las Camas Solar Project (Project). These comments are submitted on behalf of the California Native Plant Society (CNPS) and Defenders of Wildlife (Defenders).

We strongly support the development of renewable energy production. A low-carbon energy future is critical for California's economy, communities, and environment. Achieving this future—and *how* we achieve it—is critical for protecting California's internationally treasured biodiversity, landscapes and diverse habitats. We believe transitioning to a renewable energy future need not exacerbate the ongoing extinction crisis by thoughtfully planning projects while protecting habitat critical to species.

CNPS is a non-profit environmental organization with more than 12,500 members in 36 Chapters across California and Baja California, Mexico. CNPS's mission is to protect California's native plant heritage and to preserve it for future generations through the application of science, research, education, and conservation. We work closely with decision-makers, scientists, and local planners to advocate for well-informed policies, regulations, and land management practices. CNPS supports science-based, rational policies and actions, on the local, state, national, and international levels, that lead to the continued study and enjoyment of the state's botanical resources.

Defenders has 2.1 million members and supporters in the United States, 316,000 of which reside in California. Defenders is dedicated to protecting all wild animals and plants in their natural communities. To that end, Defenders employs science, public education and participation, media, legislative advocacy, litigation, and proactive on-the-ground solutions to prevent the extinction of species, associated loss of biological diversity, and habitat alteration and destruction.

The proposed 1,741-acre solar photovoltaic electric generating facility would generate up to 200 MW and include up to 100 MW of battery energy storage. The proposed Project includes transmission system improvements to PG&E's Los Banos Substation for connection to the solar project. The improvements include moving the existing substation fence outward on existing substation property to accommodate additional equipment required. This modification would add approximately 10.3 acres of fenced area. The proposed Project is on private land within the western portion of Merced County located at the southwest corner of the intersection of State Route 33/152 and Interstate 5.

Comments

We offer the following comments on the SEIR for the proposed Project:

1. **Project Acreage**

The SEIR states the project is located on 1,741 acres of land, but only 48.51 acres, approximately 2.8% of the site, would be developed. The SEIR also states the project will generate up to 200 MW of solar energy; however, solar generation typically requires 8.2 acres of land to produce 1 MW.[1] This would mean that approximately 1,640 acres would be required to generate the anticipated output of 200 MW, which is well above the estimated 48.51 acres of development for the proposed project.

On 05/09/2024, Defenders staff met with the County's contract planner (Rincon) to express concerns regarding the deceptive amount of acreage publicly disclosed to be developed with the anticipated generation output. We were informed that the 48.51 number is the amount of acreage where development will actually meet the ground and does not include the land area where solar panels will hover above the ground. An email from Rincon to Defenders staff, dated 06/06/2024, reiterates that the 48.51 average number is for permanently impacted areas, such as pole locations. This clarification, while appreciated, does not resolve the issue of misleading information in the SEIR. Underreporting the amount of development by cherry-picking only the acreage where equipment touches the ground does not meet the intent of the California Environmental Quality Act (CEQA). The entire acreage with solar panels and associated infrastructure will be permanently impacted, and it is incorrect and misleading to state only sites with infrastructure physically meeting the ground will have permanent impacts. Waiting until the Final EIR to clearly disclose the extent of the development footprint and permanent impacts is entirely insufficient, as the opportunity for public comment will have already passed.

1

The intent of CEQA is to "[i]nform governmental decision-makers and the public about the potential, significant environmental effects of proposed activities."[2] When misleading numbers are included within the description, it undermines the ability of decision-makers and the public to analyze the

[1] California Energy Commission. 2/16/2024. Presentation for SB 100 Inputs and Assumptions Workshop. https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=23-SB-100

[2] Cal. Code Regs. Tit. 14 § 15002

project and true environmental impacts adequately and make an informed decision. A recirculated EIR is required when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review but before certification.[3] Altering the development description from 48.51 acres in the Draft SEIR to 1,741 acres in the Final EIR would dramatically alter the scale of impacts that the Draft should have disclosed and analyzed. Save Our Capitol v. Department of General Services found that because the modified project description was only included in the final EIR, the conflicting descriptions in the earlier EIRs may have misled the public, and the public was foreclosed from commenting meaningfully on the project's impacts.[4] The SEIR specifically stating "[t]he proposed solar project would develop 48.51 acres out of 1,741 acres..." undeniably misleads the public into believing the entire project is restricted to the 48.51 acres and, therefore, could alter the public's decision to submit meaningful comments on the project's impacts.

1 cont.

Furthermore, County of Inyo v. City of Los Angeles stated, "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR."[5] The outrageously deceptive statement that the proposed Project would include only 48.51 acres of development produces an inaccurate project description, creating an insufficient EIR. The DEIR must be revised with accurate disclosure of acres that will be developed and, therefore, impacted and be recirculated. Recirculation is necessary so the EIR can appropriately analyze and disclose any significant impacts and allow for the public's right and ability to participate in the environmental review process. This revision is crucial to ensure the SEIR reflects the actual development and the true environmental impacts.

2. Project Objective

2

One of the Project's stated objectives is to "[p]rovide and maintain adequate habitat for regulated species such as San Joaquin kit fox." We appreciate the prioritization of providing and maintaining habitat for special status species and encourage the continued development of projects with objectives that prioritize sensitive biological resources.

3. Inadequate Surveys

3

The SEIR states that a field investigation survey was conducted in May 2019, and protocol-level surveys were conducted for California tiger salamander and Swainson's hawk (SWHA). Despite the potential for other special status species to occur on-site, no other protocol-level species-specific surveys were conducted. Findings cannot be made without species-specific protocol-level surveys as they are necessary to provide thorough and accurate results that support informed decision-making and enable the identification of appropriate minimization, avoidance, and mitigation measures for each species. To proceed without conducting species-specific surveys is folly, as it is impossible to fully identify the risk and location of significant impact.

[3] Cal. Code Regs. Tit. 14 § 15088.5
[4] Save Our Capitol v. Department of General Services (2023) 87 Cal.App.5th 655.
[5] County of Inyo v. City of Los Angeles. (1977) 71 Cal. App. 3d 185.

3 cont. Given the Project site contains sensitive biological resources, the biological resources surveys must adhere to wildlife agency-approved species-specific protocols and must identify the appropriate avoidance, minimization and mitigation measures based on survey results.

a. Blunt-Nosed Leopard Lizard (BNLL)

The BNLL is a federal and state-listed endangered species, and it is also a fully protected species that requires – under the recently revised fully protected statute – that take be avoided to the maximum extent possible. If take cannot be avoided to the maximum extent possible, then a project applicant must fully mitigate that take, ensure that all further measures necessary to satisfy the conservation standard of Section 2805(d) of the Fish and Game Code are in place, and provide for monitoring and adaptive management. It is impossible to ensure that take is avoided to the maximum extent possible or fully mitigated without conducting protocol-level surveys.

4 Furthermore, the SEIR states the species was determined to have a low probability of occurrence on the Project site. This determinization, however, is premature given the site contains a moderate probability of BNLL occurrence[6] and that the closest historical CNDDB records partially overlap with the site's northwest corner. Despite the possibility of BNLL occurring, no species-specific protocol-level surveys were conducted. Instead, the document relies on the May 2019 field investigations survey in which no BNLL was observed. The field survey was not species-specific and did not follow BNLL protocol. Additionally, the survey is considered outdated; the California Department of Fish and Wildlife (CDFW) BNLL survey methodology states that surveys must be completed no more than one year prior to the initiation of ground disturbance and construction.

b. Burrowing Owl (BUOW)

5 The Project site contains suitable BUOW habitat[7], and the SEIR states the potential for BUOW to occur is high, as BUOW was observed nesting in the northeast portion of the study area, and an additional active nest is located adjacent to the southwest portion of the study area. Given the species is known to occur on-site, protocol-level surveys that adhere to the *Burrowing Owl Survey Protocol and Mitigation Guidelines*[8] and the *Staff Report on Burrowing Owl Mitigation*[9] must be conducted.

[6] See https://databasin.org/datasets/e02db184ff08428eb9a6da4072a4ebfd/
[7] See https://databasin.org/maps/new/#datasets=421e63060890432d82027edc117dd661
[8] California Burrowing Owl Consortium. 1993. *Burrowing Owl Survey Protocol and Mitigation Guidelines*.
[9] California Department of Fish and Game. 2012. *Staff Report on Burrowing Owl Mitigation*.

c. Crotch's Bumble Bee (CBB)

6 CBB is a candidate species for listing under the California Endangered Species Act and, as such, must be accorded protection as if it were listed. The Project is located within the geographic range for CBB[10] and the SEIR states the site contains marginal habitat with abundant open grassland habitat. Despite the potential for CBB to occur, protocol-level surveys were not conducted. We request CBB surveys be conducted in accordance with CDFW methods as outlined in *Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species.*[11]

d. San Joaquin Kit Fox (SJKF)

7 The SEIR acknowledges that suitable SJKF habitat is present throughout the study area and states that 18 CNDDB records are located within 5 miles of the study area. Acknowledging the species has the potential to occur, and including compensatory mitigation does not negate the need for protocol-level surveys. It is impossible to determine if the amount of compensatory mitigation lands acquired is sufficient without conducting protocol-level surveys to understand the population status and make a fully informed decision. We request protocol-level surveys for the species be performed that, at a minimum, conform to the current survey standards established by the US Fish and Wildlife Service (USFWS).[12]

e. Special Status Plant Surveys

8 While the timing of the May 2019 botanical surveys were appropriate to identify the targeted special status plant species, there are several factors other than the timing of surveys that can affect the outcomes of the surveys that were not discussed in the SEIR. The surveys should have followed the updated 2018 California Department of Fish and Wildlife Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities[13] (CDFW Protocols). Neither the SEIR nor Appendix 3.4-1 Biological Resources Evaluation included the qualifications of the surveyor(s), methodology, or hours spent surveying, did not discuss the climatic conditions or how conditions could have affected the survey results, and did not mention the use of reference sites to ensure that target species would have been identifiable during the surveys. According to the CDFW Protocols, "botanical field surveys over a number of years may be necessary if the special status plant is an annual or short-lived plant having a persistent, long-lived seed bank and populations of the plant are

[10] See https://www.iucnredlist.org/species/44937582/46440211#geographic-range

[11] California Department of Fish and Wildlife. 2023. *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species*.

[12] U.S. Fish and Wildlife Service. 2011. *Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior To or During Ground Disturbance*. Sacramento, California.

[13] California Department of Fish and Wildlife. 2018 (updated 2021). *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities.* https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline

8 cont.

known to not germinate every year." Given that all of the special status species with the potential to occur on the project site are annual species that may not germinate in years with insufficient precipitation, the use of reference sites would have been needed to ensure that target species would have been present and identifiable during botanical surveys. To accurately disclose the baseline conditions of the project site, these surveys should be reconducted to include:

- Description(s) of reference site(s) and the phenological development of special status plant(s) at those reference sites to ensure that target species would be identifiable during surveys.
- Inclusion in the botanical survey report of a discussion of site conditions, including disease, drought, predation, fire, herbivory, or other disturbance that may also preclude the presence or identification of special status plants in any given year.
- Names and qualifications of botanical field surveyor(s) and dates of botanical field surveys (indicating the botanical field surveyor(s) that surveyed each area on each survey date), and total person-hours spent be included in the botanical survey report; surveyors for Special Status Native Plant Populations and Sensitive Natural Communities should possess the following qualifications:
  - Knowledge of plant taxonomy and natural community ecology;
  - Familiarity with plants of the region, including special status plants;
  - Familiarity with natural communities of the region, including sensitive natural communities;
  - Experience with the CNDDB, BIOS, and Survey of California Vegetation Classification and Mapping Standards;
  - Experience conducting floristic botanical field surveys as described in this document, or experience conducting such botanical field surveys under the direction of an experienced botanical field surveyor;
  - Familiarity with federal, state, and local statutes and regulations related to plants and plant collecting; and
  - Experience analyzing the impacts of projects on native plant species and sensitive natural communities.
- A discussion of the potential for a false negative botanical field survey and a discussion of how climatic conditions may have affected the botanical field survey results.

9

The draft SEIR does not provide any evidence that the establishment of the off-site mitigation site and invasive plant management activities would not have a substantial adverse effect on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations or by CDFW or USFWS. Any areas being proposed to be used as off-site mitigation sites need to be surveyed following CDFW Protocols prior to project approval to analyze and disclose any potential impacts of proposed mitigation activities and invasive plant management.

4. Revise PD-1

Mitigation Measure PD-1 states that security fences shall be designed to enable passage of SJKF but fails to provide specifics on the design. Elsewhere in the SEIR, the design is included to state the fencing would be installed with a 4-6 inch clearance between the ground and the bottom of the fence to encourage SJKF passage, and the bottom of the fencing would be knuckled to protect wildlife that passes. Although not mentioned elsewhere in the document, fences must not be electrified as they are not permeable and does not facilitate movement. We request that specifics on the SJKF-friendly fencing design be included in the measure.

10

"Security fences installed on the perimeter of the solar facility shall be designed to enable passage of kit foxes. **The fence shall have a 4-6" gap between the bottom of the fence and the ground. The bottom of the fence fabric shall be knuckled (wrapped back to form a smooth edge) to protect wildlife that passes under the fence. A buried apron fencing material shall extend up to 3 feet from the fence. Fencing shall not be electrified.** Fences shall be monitored regularly to ensure that any damage or vandalism is quickly repaired."

5. Revise GEN-10

USFWS recommends that night-time construction be minimized to the extent possible. SJKF are most active at night and, therefore, more vulnerable to construction and traffic-related incidents. To reduce the impact and significantly decrease potential mortality of SJKF population, the measures should specify night-time construction will only occur when necessary.

11

"Speed limits within the project site shall be limited to 15 miles per hour (mph) during the day**. To the extent possible, night-time construction-related activity shall be minimized, but if work must be conducted at night, the speed limit shall be** ~~and~~ 10 mph~~ at night~~. During construction, all project-related vehicles and equipment shall be restricted to established roads, construction areas, and designated staging areas."

6. Revise GEN-15

To ensure that the Revegetation Plan will not cause unintended impacts to habitat and natural resources, including but not limited to the risk of introducing invasive species and increased fire danger, this plan should be developed and analyzed under CEQA prior to project approval.

12

"A Revegetation Plan shall be prepared **and made available for public review prior to approval of** ~~for~~ the project. Prior to project commercial operation, all areas temporarily subject to ground disturbance, including staging areas, shall be reseeded **using locally collected native plant seed or nursery-produced seed grown from locally collected native plant species or planted with nursery stock grown from locally collected native plant species** ~~otherwise treated~~ to achieve a revegetated state according to the **standards and** timelines outlined in the Revegetation Plan."

7. Revise SJKF-3

Mitigation measure SJKF-3 provides exclusion zone measurements surrounding potential, known and natal/pupping dens. The natal/pupping den buffer measure states that USFWS should be contacted for technical advice but specifies that the buffer shall be at least 100 feet and not exceed 200 feet. This does not adhere to *USWFS Standardize Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance*[14]; the recommendations do not provide an upper limit to the buffer for natal/pupping dens. We request the measure be revised as follows:

13

"Natal/Pupping Den: USFWS shall be contacted for technical advice, but buffer shall be at least 100 feet ~~**and shall not exceed 200 feet**~~."

Furthermore, the measure fails to require flagging to be installed around known dens. We recommend flagging and/or stakes, with flagging attached, be installed between the work area and the known den site at a minimum distance of 100 feet from the den. The flagging will be maintained until construction-related disturbances have ceased.

8. Revise SJKF-7

The *USFWS Standardized Recommendation for Protection of the Endangered San Joaquin Kit Fox Prior To or During Ground Disturbance*[15] states that the USFWS and CDFW shall be contacted for any dead, injured or entrapped SJKF. We request revising the mitigation measure to adhere to the correct recommendation, as follows.

14

> "Immediately upon notification of the supervisory project biologist of an inadvertent killing**,** ~~**or**~~ injury**, or entrapment** involving San Joaquin kit fox, the supervisory project biologist shall contact the CDFW State Dispatch and the USFWS Endangered Species Division."

9. Revise BIO-1a

Measure BIO-1a states that vehicles and equipment shall be parked on pavement, existing roads and previously disturbed areas to the extent practical, and off-road travel shall be avoided to the extent feasible. We recommend that off-road travel and vehicle and/or equipment parking on undisturbed sites be prohibited.

15

- "Vehicles and equipment shall be restricted to ~~**be**~~ park~~**ed**~~ on pavement, existing roads, and previously distributed areas ~~**to the extent practicable**~~**.** **Parking shall be prohibited in undisturbed areas**.
- Off-road vehicle travel shall be **prohibited**~~**avoided to the extent feasible**~~."

[14] U.S. Fish and Wildlife Service. 2011. *Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior To or During Ground Disturbance*. Sacramento, California.
[15] Ibid.

10. Revise BIO-1b

Measure BIO-1b allows for construction activities to occur closer than 0.5 miles from an active SWHA nest, dependent on an assessment conducted by a qualified biologist. This is inconsistent with the typical recommendation outlined in CDFW comments on similar solar sites[16], which states a minimum of a 0.5-mile no-disturbance buffer should be delineated around active nests. We request that a minimum of a 0.5-mile buffer be established.

"If an active Swainson's hawk nest is discovered at any time within 0.5 mile of active construction, **a 0.5 mile no-disturbance buffer around the nest site shall be established to avoid disrupting nesting activities. No project-related activities (e.g., ground disturbance, loud noises, construction personnel) shall be allowed within the no-disturbance buffer.** ~~a qualified biologist shall complete an assessment of the potential for current construction activities to affect the nest. The assessment shall consider the type of construction activities (e.g., noise levels and duration), the location of construction relative to the nest and pre-existing disturbance levels (e.g., construction activities in historically agricultural land versus activities in non-agricultural land), the visibility of construction activities from the nest location (e.g., topography or vegetation that could block line of sight to the nest), the number of construction personnel required to perform activities within the setback, and other existing disturbances in the area that are not related to construction activities of this project. Based on this assessment, the biologist shall determine if construction activities can proceed and the level of nest monitoring required. When conducting the assessment, the biologist shall consider the following levels of construction activity, with higher levels of activity requiring greater caution in determining setbacks:~~

~~• Light construction activity, such as fence installation and limited vehicle operation: Noise levels generated by these construction activities would very likely be similar to existing ambient noise levels closer to the occupied nests.~~

~~• Moderate and/or isolated construction activity, such as grading and construction/installation of the substation, substation access road, inverter skids, and solar panels: Noise levels generated by these construction activities would very likely be similar to existing ambient noise levels beyond a moderate distance from the occupied nests.~~

~~• Heavy construction activity across a large area of the project site and/or the use of louder equipment, such as pile drivers, concrete saws, or jackhammers: Noise levels from these types of activities would depend on the location of the activities relative to the nest. Allowing these activities within the 0.5-mile setback would require coordination with CDFW.~~

~~If the assessment determines that construction activities could occur closer than 0.5 mile from an active nest, in no event shall construction activities occur within 500 feet of an active nest without conferring with CDFW.~~ Full-time monitoring to evaluate the effects of construction activities on nesting

16

[16] California Department of Fish and Wildlife. 2014. *Draft Environmental Impact Report (DEIR) for Wright Solar Park (Conditional Use Permit 12-017), State Clearinghouse No. 2013101071*.

16 cont.

Swainson's hawks shall be required. The qualified biologist shall have the authority to stop work if it is determined that project construction is disturbing nesting activities. Buffers may need to increase, depending on the sensitivity of the nesting Swainson's hawk to disturbances, at the discretion of the qualified biologist. No avoidance shall be needed if construction occurs near a known Swainson's hawk nest outside of the Swainson's hawk nesting season. In the event that take cannot be avoided, the proponent shall confer with CDFW on the need for an incidental take permit."

11. Revise BIO-1c

BIO-1c established a 250-foot no-activity zone surrounding a BUOW active burrow during the nesting season and a 150-foot no-activity zone during the non-breeding season. This buffer distance does not adhere to CDFW recommendations and would not be sufficient to prevent take of BUOW. CDFW recommended buffers are 164 to 1,640 feet (50 to 500 meters). Mitigation Measure BIO-1c must be revised to be consistent with the *Staff Report on Burrowing Owl Mitigation*.[17]

17

Table 1: Burrowing Owl Avoidance Buffers

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

The measure also allows for passive relocation during the breeding season if a biologist with BUOW experience, coordinating with CDFW, determines through site surveillance and/or scoping that the burrow is not occupied. Historically, CDFW does not recognize the method of passively relocating BUOW from active burrows during the breeding season as appropriate.[18] We, therefore, recommend that burrow exclusion occur only during the non-breeding season and prohibit burrow exclusion during the breeding season.

12. BNLL Exclusion Zones

18

PG&E AMM/BMP-23 states that a 50-foot exclusion zone will be established for BNLL for the substation improvements. The SEIR fails to provide measures for BNLL exclusions and buffers for the proposed

[17] California Department of Fish and Game. 2012. *Staff Report on Burrowing Owl Mitigation*.

[18] California Department of Fish and Wildlife. 2022. *Azalea Solar Project by SF Azalea, LLC (Project) Draft Environmental Impact Report (DEIR) State Clearinghouse No. 2021090602*.

18 cont.

solar site despite the potential for the species to occur. Male BNLL has a home range of up to 52 acres, and females may have a home range that exceeds 98 acres. On other solar projects within BNLL habitat, CDFW has recommended much larger buffers and exclusion zones around any BNLL detections based on the known maximum home range sizes observed for the species. For instance, on the Azalea Solar Project, CDFW recommended a minimum of a 395-acre buffer around BNLL detections.[19] We recommend consultation with CDFW on the appropriate no-work buffer surrounding BNLL burrows and egg clutch sites.

13. On-Site SJKF Corridors

19

Habitat connectivity is essential for SJKF viability as populations rely on movement corridors to sustain gene flow and/or to recolonize via dispersal.[20] CDFW and USFWS have identified the Santa Nella area as a "pinch point" in the connectivity between the north and south populations of SJKF. Despite the importance of this area for SJKF connectivity, the Santa Nella area contains very little remaining area for SJKF use due to reservoirs and aqueducts, highways, and development and infrastructure projects.[21] The previous EIR anticipated that significant impacts could occur to SJKF due to habitat fragmentation and loss and concluded that impacts to SJKF would be less than significant with the implementation of measures, including ensuring on-site conservation for habitat within the SJKF open space corridor. However, the SEIR specifies the on-site corridors would generally follow utility easements and one transmission easement. This is insufficient and may not reduce impacts to SJKF to a less than significant level, as these utility and transmission easements were not selected based on compatibility for SJKF use.

Furthermore, these corridors are not managed for SJKF use or protected in perpetuity under a conservation easement. Any SJKF corridors must be managed for the purpose of foraging, denning and movement for SJKF; specifically, we request the inclusion of artificial dens. We also request any SJKF corridors be protected in perpetuity by a qualified conservation organization as defined by CA Civil Code Section 815.3.

14. Compensatory mitigation

20

The SEIR states that approximately 1,498 acres of grassland habitat will serve as off-site mitigation and will be placed into a conservation easement for SJKF. As previously mentioned, the development of this project will significantly impact SJKF and will result in the permanent fragmentation of a pinch-point migratory corridor for SJKF. Despite the impacts to SJKF, mitigation lands were assigned without the completion of species-specific protocol-level surveys. This assignment of mitigation lands is premature, as it is impossible to establish an appropriate ratio for compensatory mitigation lands

[19] Ibid.

[20] Harrison, S., Cypher, B., and Phillips, S. 2011. *Enhancement of Satellite and Linkage Habitat to Promote Survival, Movement, and Colonization by San Joaquin Kit Foxes.*

[21] Constable, J., Cypher, B., Phillips, S., and Kelly, P. 2009. *Conservation of San Joaquin Kit Foxes in Western Merced County, California.*

absent protocol-level survey results. The SEIR also states the lands will serve as compensatory mitigation for other special status species, as needed. That is insufficient since it is impossible to know if the land serves as high-quality habitat and meets the required ratios for each individual species, without first identifying those species. We request consultation with CDFW to establish the appropriate ratio for compensatory mitigation lands for all special status species that may be affected by the Project.

20 cont.

Furthermore, the SEIR states the lands will be held in perpetuity but fails to establish requirements for the holder of the conservation easement. We request that the lands be held in perpetuity by a qualified conservation organization, as defined by CA Civil Code Section 815.3. Alternatively, credits could be purchased in a CDFW-approved mitigation bank.

21 Thank you once again for the opportunity to provide these comments on the proposed Las Camas Solar Project and for considering our comments. We urge the County to recirculate the EIR and look forward to reviewing the Recirculated EIR. We request to be notified when any future environmental documentation related to the project is available. Please feel free to contact us with any questions.

Respectfully submitted,

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Defenders of Wildlife
Smarkowska@defenders.org

Responses to Comment Letter 7 – Brendan Wilce, CNPS and Sophia Markowska, Defenders of Wildlife

Response to Comment 7-1

The commenter claims that the Draft SEIR is misleading because it states that the proposed project would develop only 48.51 acres of the 1,741-acre solar project site and therefore should be recirculated for that reason.

The commenter is incorrect. Table 2-4, *Temporary and Permanent Ground Disturbance*, *Acreages*, on page 2-7 in Chapter 2, *Project Description*, of the Draft SEIR clearly describes 48.51 acres of permanent *ground* disturbance within the solar project site and 1,228.6 acres of temporary *ground* disturbance within the solar project site (emphasis added). The paragraph above the table states:

> "The proposed solar project would develop 48.51 acres out of 1,741 acres, or approximately 2.8 percent of the total solar project site, with the on-site facilities described below under Section 2.3.2 (see Figure 2-2). In addition, approximately 1,229 acres within the solar project site would be temporarily disturbed during solar project construction, including temporary staging and laydown areas."

As noted in the comment, this includes areas where future development, including poles, foundations, and roadways, will permanently alter the ground surface. Contrary to the comment, the Draft SEIR provides these figures not to be misleading but because the distinction is important for the environmental analysis. Some environmental impacts, such as operational impacts on stormwater runoff, are driven by permanent ground disturbance rather than temporary ground disturbance. For example, the area of permanent ground disturbance would eliminate habitat for listed species such as SJKF and Swainson's hawk; the acreage would be used to calculate the amount of land that would need to be acquired and managed for the benefit of those species to fully mitigate the permanent loss of habitat.

The commenter's claim that the inclusion of the figure "undeniably misleads the public into believing the entire project is restricted to the 48.51 acres" is not supported by facts. Numerous figures in the Draft SEIR depict the entire 1,741-acre solar project site as the proposed area of development (e.g., Figure 2-2 in Chapter 2, *Project Description*, shows solar panels and related facilities across the entire 1,741-acre site). Every analysis in the Draft SEIR considers development of the complete solar project across 1,741 acres, including the analysis of aesthetics (Section 3.1), agricultural resources (Section 3.2), biological resources (Section 3.4), cultural resources (Section 3.5), geology, soils, and paleontological resources (Section 3.7), tribal cultural resources (Section 3.18), and wildfire (Section 3.20), to name a few. The number 1,741 is stated more than 40 times in the Draft SEIR, whereas the number 48.51 is stated four times.

No revisions to the Draft SEIR are required; therefore, recirculation of the Draft SEIR is not required pursuant to CEQA Guidelines Section 15088.5.

Response to Comment 7-2

The commenter acknowledges and appreciates one of the Project objectives prioritizes and maintains habitats for special status species such as SJKF. The commenter also encourages the continued development of projects with similar objectives of prioritizing sensitive biological resources.

The comment does not include a question or comment about the adequacy of the Draft SEIR analysis. No response is required in the Final EIR.

Response to Comment 7-3

The comment states that protocol-level surveys were conducted for CTS and SWHA; however, no other protocol-level species-specific surveys were conducted, despite the potential for other species to occur on the project site. The comment states that findings, including the identification of avoidance, minimization, and mitigation measures, cannot be made without these additional protocol-level surveys.

Please see Response to Comment 1-4. As discussed therein, CEQA does not require additional studies until all uncertainty regarding existing environmental conditions or a project's impacts thereon have been removed. CEQA does not include a blanket requirement to conduct protocol-level surveys. For the reasons explained in the Response to Comment 1-4, additional studies are not warranted. Revisions to the Draft SEIR are not required.

Response to Comment 7-4

The comment states that take of BNLL must be avoided to the maximum extent possible or fully mitigated if it cannot be avoided, and that protocol-level surveys are required to determine which is the case. The comment also states that BNLL has moderate probability of occurrence, as determined by a 2015 species distribution model; that historical California Natural Diversity Database (CNDDB) records partially overlap the project site; and that the May 2019 field survey was not species specific. Furthermore, the comment states that the May 2019 survey was completed outside of the 1-year window specified in CDFW survey methodology.

Please see Response to Comment 1-4. As discussed therein, CEQA does not require additional studies until all uncertainty regarding existing environmental conditions or a project's impacts thereon have been removed. CEQA does not include a blanket requirement to conduct protocol-level surveys. In addition, as discussed on page 3.4-31 in Section 3.4.1, *Existing Conditions*, the CNDDB occurrence record mentioned is from 1931 and broadly mapped to a non-specific area with a radius of 1 mile. As stated in Response to Comment 1-4, additional studies are not warranted. Furthermore, revisions to the Draft SEIR are not required.

Response to Comment 7-5

The comment states that the project site contains suitable habitat for burrowing owl and the species is known to occur on the site; therefore, the comment states, protocol-level surveys that follow the California Burrowing Owl Consortium's 1993 *Burrowing Owl Survey Protocol and Mitigation Guidelines* and the California Department of Fish and Game's 2012 *Staff Report on Burrowing Owl Mitigation* must be conducted.

Please see Response to Comment 1-4 and Response to Comment 1-7, which explain in detail why additional studies are not warranted. Revisions to the Draft SEIR are not required.

Response to Comment 7-6

The comment states that the project site is within the geographic range for Crotch's bumblebee and contains marginal habitat; however, protocol-level surveys were not conducted. They are therefore requested in accordance with CDFW's 2023 *Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species*.

Please see Response to Comment 1-4 and Response to Comment 1-6, which explain in detail why additional studies are not warranted. Revisions to the Draft SEIR are not required.

Response to Comment 7-7

The comment states that suitable habitat is present for SJKF, and 18 CNDDB records are from locations within 5 miles of the project site. Acknowledging that the species has the potential to occur and including compensatory mitigation does not negate the need for protocol-level surveys. The comment requests protocol-level surveys to inform the determination regarding compensatory mitigation and conform to the 2011 USFWS *Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox prior to or during Ground Disturbance*.

As described above in Response to Comment 1-4, CEQA does not require additional studies until all uncertainty regarding existing environmental conditions or a project's impacts thereon have been removed. CEQA does not include a blanket requirement to conduct protocol-level surveys. In addition, as discussed on page 3.4-54 of Section 3.4.2, *Environmental Impacts*, both a state ITP and federal HCP are being pursued for SJKF, which will further ensure the sufficiency of mitigation lands.

Additional studies are therefore not warranted. Revisions to the Draft SEIR are not required.

Response to Comment 7-8

The comment states that the timing of the May 2019 botanical surveys was appropriate; however, other factors that can affect the outcome of the surveys were not discussed in the Draft SEIR. The comment states that surveys should have followed the 2018 CDFW protocol. Furthermore, the comment states that additional information regarding surveyor qualifications and survey details/methodology was not discussed. The comment states that surveys should be conducted again with attention to the listed requirements.

As described above in Response to Comment 1-4, CEQA does not require additional studies until all uncertainty regarding existing environmental conditions or a project's impacts thereon have been removed. CEQA does not include a blanket requirement to conduct protocol-level surveys. As described in Appendix 3.4-1, *Biological Resources Evaluation for the Las Camas Solar Development Project,* of the Draft SEIR, the study area was thoroughly assessed during the 2019 focused botanical survey under ideal survey conditions by highly experienced botanists (surveys led by Dr. Robert Preston Ph.D.) and biologists; all plants expected from the online records searches were found to be absent. Additional studies are therefore not warranted. Revisions to the Draft SEIR are not required.

Response to Comment 7-9

The comment states that no evidence is provided in the Draft SEIR to confirm that establishment of the off-site mitigation site and invasive plant management activities would not have a substantial impact on special-status species. The comment also states that surveys following CDFW protocols should be conducted in order to analyze and disclose potential impacts prior to project approval.

As described above in Response to Comment 1-4, CEQA does not require additional studies until all uncertainty regarding existing environmental conditions or a project's impacts thereon have been removed. CEQA does not include a blanket requirement to conduct protocol-level surveys. In addition, as discussed on page 3.4-62 under the off-site mitigation site impacts (see Impact BIO-1, Section 3.4.2, *Environmental Impacts*), development of the site is not proposed; management of the site will occur under a habitat management plan that will be approved by CDFW and USFWS in accordance with the requirements of the ITP and HCP, respectively, which are being pursued.

Additional studies are therefore not warranted. Revisions to the Draft SEIR are not required.

Response to Comment 7-10

The comment states that Mitigation Measure PD-1 specifies a SJKF-friendly fence design but does not specify the requirements of the measure. The comment acknowledges that the Draft SEIR elsewhere specifies the design requirements for the fence and suggests the addition of those requirements to the mitigation measure itself, along with requirements that specify fences that are not electrified.

Mitigation Measure PD-1 was clarified as suggested; revised text can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

Response to Comment 7-11

The comment requests revising the Las Camas Solar HCP general avoidance and mitigation measure to specify that nighttime construction will be limited the extent possible. Mitigation Measure GEN-10 was updated to reflect the suggested edits; revised text can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

Response to Comment 7-12

The comment requests that Mitigation Measure GEN-15 be revised to state that the Revegetation Plan will be developed and analyzed under CEQA prior to project approval to ensure avoidance of unintended impacts on habitat and natural resources.

Contrary to the commenter's suggestion, the plan need not be circulated for public review and comment. As a general matter, an agency "can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval." Sacramento Old City Ass'n v. City Council (1991) 229 Cal.3d 1011, 1029. In other words, an EIR may defer finalizing the details of a specific mitigation measure as long as it commits to eventually designing it and specifies the performance standards pursuant to which it will be designed. Here, the mitigation measure required a revegetation plan that must meet specified standards, including ensuring that all areas subject to temporary ground disturbance must be reseeded to achieve a vegetated state prior to commercial operations commencing. Mitigation Measure GEN-15 was revised to further clarify that the Revegetation Plan will be developed in coordination with CDFW; revised text can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

Response to Comment 7-13

The comment states that Mitigation Measure SJKF-3 does not adhere to USFWS recommendations. The requested revisions include adjusting natal/pupping-den avoidance buffers and requiring the use of flagging and/or flagged stakes around known dens.

The USFWS does not have specific distance requirements for den avoidance buffers. Notwithstanding, Mitigation Measure SJKF-3 was revised as requested; revised text can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

Response to Comment 7-14

The comment requests revision of Mitigation Measure SJKF-7 to require that USFWS be notified in the event of entrapment of SJKF in accordance with USFWS recommendations.

Mitigation Measure SJKF-7 was clarified as requested; revised text can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

Response to Comment 7-15

The comment states that Mitigation Measure BIO-1a allows off-road travel but states that it should be avoided to the extent feasible. The comment recommends revising the measure to prohibit off-road travel and vehicle and/or equipment parking on undisturbed sites. Mitigation Measure BIO-1a was revised to clarify that vehicle and equipment travel and parking will be on existing pavement, roads, or other pre-planned and approved routes cleared by the biological monitor; revised text can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

Response to Comment 7-16

The comment states that Mitigation Measure BIO-1b allows construction activities to occur within 0.5 mile of an active Swainson's hawk nest and that this is inconsistent with typical CDFW recommendations for similar solar sites. The comment requests that the measure be revised to instead require a 0.5-mile exclusion buffer.

Please see Response to Comment 1-3. The discussion under Impact BIO-1 in Section 3.4.2, *Environmental Impacts*, has been updated to clarify that an ITP for Swainson's hawk is being pursued; revised text can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

Response to Comment 7-17

The comment states that the no-activity zone buffers and the allowance for passive relocation of burrowing owl during the breeding season set forth in Mitigation Measure BIO-1c do not follow CDFW recommendations. The comment requests revision of Mitigation Measure BIO-1c to address these concerns and reflect the CDFW-recommended buffers, with burrow exclusion occurring only during the non-breeding season.

Please see Response to Comment 1-7 for a partial response to this comment regarding buffers. As stated in Response to Comment 1-6, Mitigation Measure BIO-1c was updated to clarify the commitments to establish no activity zones around burrows during the nesting season in coordination with CDFW and to coordinate with CDFW in establishing avoidance buffers around occupied burrows during the nonbreeding season. Revised text can be found in Chapter 3, *Draft SEIR Errata*, of this Final SEIR. While this modification adds clarity to the SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

As stated in Mitigation Measure BIO-1c on page 3.4-57 in Section 3.4.2, *Environmental Impacts*, passive relocation through burrow exclusion would occur during the breeding season in coordination with CDFW after site surveillance and/or scoping determines that the burrow is not occupied. Only at that point would passive relocation occur, and burrow excavations would be conducted by hand to further reduce the potential for take of burrowing owl. In addition, as noted in Response to Comment 1-7, if burrowing owl becomes listed or designated as a candidate species under CESA, the project proponent may seek a state ITP if take of the species cannot be avoided. Thus, no additional revisions to the Draft SEIR are required.

Response to Comment 7-18

The comment states that PG&E AMM/BMP-23 establishes a 50-foot exclusion zone for BNLL for the substation improvements; however, BNLL exclusions and buffers are not provided for the remainder of the proposed project, despite the species' potential to occur. The comment also states that PG&E AMM/BMP-23 includes information about BNLL home range sizes and recommended buffers; consultation with CDFW is recommended to determine appropriate no-work buffers around BNLL burrows and egg clutch sites.

Please see Response to Comment 1-1 regarding the adequacy of PG&E's AMMs/BMPs and Response to Comment 1-4 regarding CEQA's requirements for additional surveys. As discussed, PG&E AMMs/BMPs are designed to meet or exceed federal, state, and local regulations. PG&E AMM/BMP-23 is a standard PG&E measure that is implemented on all projects and therefore included in this document, despite low potential for BNLL to occur. Buffers for BNLL are not warranted on the remainder of the project site, which is dominated by introduced annual grasses including purple needle grass. These dense grasslands do not provide open areas for BNLL foraging and basking. There are no open sandy washes or other natural habitat features preferred by BNLL. A large portion of the project site is intensively dryland farmed, which also diminishes the potential for BNLL to occur at the project site. No revisions to the Draft SEIR are required.

Response to Comment 7-19

The comment states that the Santa Nella area is a an important "pinch point" for movement of SJKF between northern and southern populations, that existing infrastructure within the area has reduced the habitat available for SJKF movement, and that designated on-site movement corridors for the project were not selected because of compatibility with respect to SJKF use. Furthermore, the comment states that the corridors are not managed or protected for SJKF under a conservation easement. The comment requests that artificial dens be included within the movement corridors and that they be protected in perpetuity by a qualified conservation organization.

No solar development will occur within movement corridors on the project site to facilitate movement of SJKF and other species, such as tule elk, through the project site. As discussed on page 3.4-45 under San Joaquin Kit Fox-Specific Avoidance and Minimization Measure SJKF-5 and on page 3.4-69 under Impact BIO-2 in Section 3.4.2, *Environmental Impacts*, artificial escape tunnels shall be installed within the project site to facilitate SJKF movement and maintain connectivity. In addition, as discussed on page 3.4-70 under Impact BIO-3 in Section 3.4.2, *Environmental Impacts*, Mitigation Measure BIO-1g proposes additional measures to avoid and minimize impacts on tule elk and mountain lion that would also benefit connectivity for SJKF (i.e., placement of water guzzlers, additional wildlife connectivity studies along SR 152 within Merced

County, and/or other measures developed in coordination with CDFW). Finally, as noted above, an ITP for SJKF is being pursued, and project impacts on moderate to high-quality SJKF habitat (even though temporary) are being permanently protected at a greater than 1:1 ratio on the off-site mitigation site under a permanent conservation easement. No revisions to the Draft SEIR are required.

Response to Comment 7-20

The comment states that the off-site mitigation lands were prematurely determined without specifies-specific protocol-level surveys and that surveys are needed in order to determine the habitat quality of the site and appropriate mitigation ratios for SJKF and other special-status species. The comment requests consultation with CDFW to establish appropriate compensatory mitigation ratios for all special-status species that may be affected by the project. The comment also states that the Draft SEIR does not establish requirements for the holder of the conservation easement and requests that the lands be held in perpetuity by a qualified conservation organization or credits purchased at a CDFW-approved mitigation bank.

Impacts on moderate- to high-quality SJKF habitat will be fully mitigated at greater than a 1:1 ratio on the off-site mitigation site, which will be protected under a conservation easement approved by CDFW and USFWS, and consultation with CDFW and USFWS is ongoing. Both a state ITP and federal HCP and ITP are being pursued for SJKF and Swainson's hawk, and management of the mitigation site will occur under a habitat management plan that will be approved by CDFW and USFWS in accordance with the requirements of the ITP and HCP. Monitoring at the off-site mitigation site was conducted in 2024 to gather data on species' presence and use of the site; the memorandum of results is included as Appendix A in this Final SEIR. During monitoring, SJKF, tule elk, and Swainson's hawk, among other species, were documented using the mitigation site. No revisions to the Draft SEIR are required.

Response to Comment 7-21

The commenter thanks Merced County for the opportunity and consideration of their comments to the Draft SEIR. The commenter urges the County to recirculate the Draft SEIR and to be notified when related future environmental documentation is available.

As described in detail in the responses to the specific comments in this letter, it is concluded that there is no significant new information within the meaning of CEQA Guidelines Section 15088.5 that would require recirculation of the Draft SEIR.

Responses to Comments from Individuals

Letter 8. Larry Freeman, dated May 10, 2024

From: Lorri Hammer
To: Lambright, Margaret; Mekkelson, Heidi
Cc: Ho, Tiffany
Subject: Fw: [EXT] Re: CUP20-011 NOA Request
Date: Wednesday, May 22, 2024 2:44:43 PM

For your use/information as requested. I have provided Mr. Kauffmans contact information as applicant and some project maps for his reference (from the EIR). I have informed him that you already have a pursued easement area and to reach out to Matthew if he desired to.

No further response required at this time.

From: Larry Freeman <larryfreeman490@gmail.com>
Sent: Friday, May 10, 2024 4:55 AM
To: Ho, Tiffany <Tiffany.Ho@countyofmerced.com>
Cc: Lorri Hammer <lhammer@rinconconsultants.com>; Gary Freeman <gfreeman270x@yahoo.com>
Subject: [EXT] Re: CUP20-011 NOA Request

CAUTION: This email originated from outside of Rincon Consultants. Be cautious before clicking on any links, or opening any attachments, until you are confident that the content is safe .

Hi Tiffany and Lorri
We are landowners in the vicinity of this project. We are in favor of this project and would like to get a look at the proposed site map and contact info regarding this project. We have 485 acres of range land bordering the Wright Solar (less than one mile from this proposed site) in which they put a wildlife easement on the land that borders us.. We are interested in doing a wildlife easement on our property if possible. Just trying to get involved in getting our property into the mix for an easement. I have provided my APN's as a backup as proof of my statements in this correspondence. Looking forward to hearing from you. 1

LARRY V FREEMAN TRUSTEE & GARY S FREEMAN TRUSTEE of the Freeman Living Trust

Regards Larry Freeman

078-190-024 / 10.00 Acres
078-190-043 / 39.28 Acres
088-010-006 / 155.50 Acres
078-190-042 / 281.00 Acres

078-120-024 / 20.00 Acres

On Thu, May 9, 2024 at 8:30 AM Ho, Tiffany <Tiffany.Ho@countyofmerced.com> wrote:
> Hello Mr. Freeman,

I'm reaching out because I understand you have received the Notice of Availability for the Las Camas Project (CUP20-011) and you have a request for some information. Please let myself and Lorri Hammer, copied, know how we can assist.

OUT OF OFFICE NOTICE: 5/27 (Memorial Day) – 5/31

Kind Regards,

Tiffany Ho

Deputy Director of Planning
Merced County Community & Economic Development
2222 "M" Street, 2nd Floor, Merced, CA 95340
209.385-7654 x. 4407 | Tiffany.Ho@countyofmerced.com
www.countyofmerced.com/planning

Responses to Comment Letter 8 – Larry Freeman, dated May 10, 2024

Response to Comment 8-1

The commenter voices support for the proposed project and would like to review the proposed site map and contact info for the project. The commenter has 485 acres of rangeland bordering the proposed project and express interest in exploring the possibility of a wildlife easement on his property. The comment does not include a question or comment about the adequacy of the Draft SEIR analysis. No response is required in the Final EIR.

Letter 9. Gerald Bartholomew, dated June 10, 2024

From: Theresa Bartholomew <tmbartholomew@yahoo.com>
Sent: Monday, June 10, 2024 3:23 PM
To: Planning <planning@countyofmerced.com>
Cc: Silveira, Scott <Scott.Silveira@countyofmerced.com>
Subject: Las Camas Solar Draft SEIR

My comments on the Draft SEIR are as follows.

1 I with my wife own two ten acre parcel's (APN 78 190 10 and 78 190 09) for the past 35 years, adjacent to the solar project southern boundary. We enjoy visiting the site for a getaway, recreation, and checking on the grandkids FFA livestock projects. We also enjoy viewing the wildlife in the area, especially the elk and birds of prey. Due to the topography, I object to having mirrors pointing toward my property and destroying my beautiful view. I see you also propose to change the zoning around my property to high density. With the solar next door who would buy them. I feel this will greatly reduce my property's worth as well. I am hoping the wildlife mitigation habitat will get more consideration as well if the project movers forward.

Sincerely, Gerald Bartholomew

1819 Monroe Cir
Los Banos, CA 93635
209-704-1708

Sent from my iPad

Responses to Comment Letter 9 – Gerald Bartholomew

Response to Comment 9-1

The commenter expresses concern over having what he terms mirrors pointing toward his property and the destruction of views due to the topography and implementation of the project. APNs 078-190-010 and 078-190-009 border the solar project site on the south.

As described in Section 3.1, *Aesthetics*, and shown in Figures 3.1-3 through 3.1-4, the project would not use mirrors, but instead would use darkly colored photovoltaic panels that would tilt and be oriented to face east-west. Therefore, the panels would not be directly angled toward the commenter's property, which is located south of the solar project site in a relatively flat area. As described under Impact AES-4, which has been revised for better clarity in Chapter 3, *Draft SEIR Errata*, "…When the sun is high in the sky (close to noon or in the summer) and the panel is low to the ground, any reflection would be upward toward the light source and back into the atmosphere away from terrestrial-based receptors. When the sun is low on the horizon (near dawn or dusk or in the winter), the sun's angle in the sky is low; reflected rays would still be directed away from terrestrial-based receptors because the maximum downward angle of the arrays would not be below 30 degrees." Figure 2-1, below, is a graphic that helps illustrate the concepts of what a reflection angle looks like when the sun is high in the sky or low on the horizon.

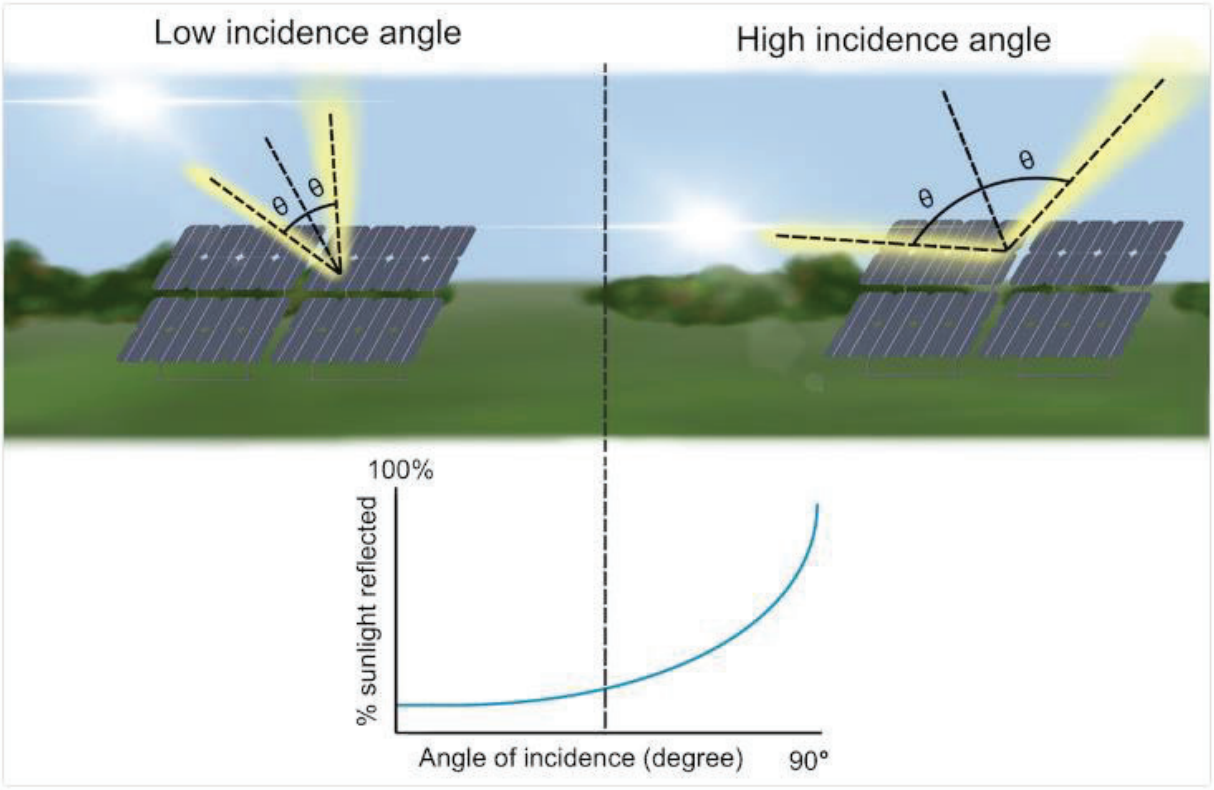

Figure 2-1: PV Panel Reflection Angle Illustration. Reflectance depends on incidence angle between panel normal (i.e. facing) and sun position. Large incidence angle yields more reflected sunlight (ForgeSolar. 2024).

There is also a 237-foot distance from the southern edge of where the panels would begin on the solar site, as shown in Draft SEIR Figure 2-2, and the commenter's property boundary. Therefore, due to panel orientation and the offset for where the panels begin, the surfaces of the solar panels would not point towards the commenter's property, even with the topography of the site. In addition, Impact AES-3 evaluated operational impacts under *Changes in Proposed Land Uses and Development from the Community Plan* starting on page 3.1-32 and under *Additional Proposed Development Outside of the Community Plan* starting on page 3.1-35 of the Draft SEIR, which evaluated the light and glare impacts. This analysis identified that the panels would be darkly colored, to absorb sunlight, and would receive an anti-reflective coating. The panels would not have the appearance of mirrors. The Draft SEIR found that no new or substantially more severe significant impacts would result beyond those identified in the previous EIR and no additional mitigation would be required.

Under CEQA, the threshold of impact is whether a project would degrade the existing visual character or quality of a site and its surroundings with respect to *public* views; impacts on private views are not within the scope of CEQA. The SEIR addresses the significant changes to public views in the project area under Impact AES-1, stating "…*operation of a solar PV power generation facility of this size would introduce a new source of infrastructure and anthropogenic features, altering the existing rural visual character of the landscape. It could be seen by viewers of high and moderate sensitivity and would reduce the existing scenic quality with the intrusion of human-made elements on land that is currently farmed and is largely undeveloped. The visual simulations indicate that the solar facility would impair the visual character of public views, including scenic vista views, toward the hillsides. In addition, it is possible that the facility would be more visible from locations where the viewer is closer to these project features and where scenic vista views are present. Impacts are therefore presumed to be significant*." As further stated, although mitigation to plant a landscape buffer along SR 152 is feasible, a planted landscape buffer along the entire fence perimeter is not feasible as mitigation to reduce visual impacts because of the potential to affect and limit kit fox movement through the site. As summarized in the analysis, impacts from operation of the solar project would be less than significant with mitigation and would not exceed the significant and unavoidable impacts identified in the Community Plan EIR. The comment does not contain questions or concerns regarding the adequacy of this analysis but is nonetheless noted. No revisions to the Draft SEIR are required.

The commenter also expresses concern over changing the zoning around his property to high density, questioning who would buy homes next to a solar field, and expressing worry over reducing their own property value. No further response required with respect to this portion of the comment because the evaluation of property values and/or economic impacts is outside the scope of CEQA.

The commenter states that he would like to see the wildlife mitigation habitat get more consideration if the project moves forward. As discussed in Response to Comment 7-20, monitoring of the mitigation site to determine use by special-status species is ongoing, as is consultation with CDFW and USFWS regarding suitability and management of the site. No revisions to the Draft SEIR are required.

Chapter 3
Draft SEIR Errata

This chapter contains revisions to the Draft SEIR that have been made to respond to the comments received or to otherwise make minor changes to the Draft SEIR. The revisions are organized according to their order of appearance in the Draft SEIR.

Revisions to the Draft SEIR

This section lists revisions that have been made to the Draft SEIR following the 45-day public comment period. Revisions were made either in response to comments received on the Draft SEIR or as staff-initiated changes to correct typographical errors.

The revisions to the text of the Draft SEIR are identified by Draft SEIR page number and section number, as applicable. Where practical, revisions are included in the full paragraph where they are found in the Draft SEIR. Deletions from the Draft SEIR are shown as "strikeout" (e.g., ~~strikeout~~) text; additions are underlined (e.g., addition).

These changes and minor errata do not result in significant new information with respect to the proposed project, including the level of significance of project impacts or any new significant impacts. Therefore, recirculation of the Draft SEIR pursuant to CEQA Guidelines Section 15088.5 is not required.

Specific Draft EIR Revisions by Section

Table of Contents

The following corrections have been made to page v in the Table of Contents of the Draft SEIR.

5.5 Significant and Unavoidable Impacts 5-28

~~5.5.1 Significant and Unavoidable Impacts Identified in Previous EIR ..... 5-28~~

~~5.5.2 Project Significant and Unavoidable Impacts ..... 5-30~~

The following corrections have been made to page vi in the Table of Contents, *List of Appendices* section of the Draft SEIR.

Appendix 3.4-6 Biological Technical Report for Proposed Mitigation Lands

The following corrections have been made to page vii in the Table of Contents *Table* section of the Draft SEIR.

Table 3.3-6a. Construction Nitrogen Dioxide AAQA Concentration Results

Table 3.3-6b. Construction Sulfur Dioxide AAQA Concentration Results

Table 3.3-6c. Construction Particulate Matter Less than 10 Microns AAQA Concentration Results

Table 3.3-6d. Construction Particulate Matter Less than 2.5 Microns AAQA Concentration Results

Executive Summary

The following revisions were made to the third paragraph of Section ES.1.1, *Summary Project Descriptions*, on page ES-1:

> The proposed project also includes two off-site components: establishment of ~~a roughly 1,498-acre,~~ an off-site mitigation site (off-site mitigation site) of at least 1,498 acres (pending ongoing consultation with CDFW) as part of the solar project's habitat mitigation proposal, and a General Plan amendment to redesignate roughly 202.8 acres immediately south of the solar project site from low-density residential to high-density/medium-density residential (offsite General Plan Amendment/Community Plan Amendment).

The text in Table ES-1, *Impacts and Mitigation Measures, by Resource Topic*, on page ES-7, under *Agricultural Resources*, has been revised as follows:

Impact AG-1: Conversion of important farmland to nonagricultural use	Significant and Unavoidable	No new or substantially more severe significant impacts	None. Community Plan Mitigation Measures would not apply to solar project.	None required	~~Significant and Unavoidable~~ Less than Significant

The text in Table ES-1, *Impacts and Mitigation Measures, by Resource Topic*, on page ES-8, under *Biological Resources*, has been revised as follows:

Impact BIO-2: Potential adverse effect on state or federally protected wetlands	Less than Significant	No new or substantially more severe significant impacts with implementation of project-specific mitigation	~~None. Community Plan Mitigation Measures would not apply to solar project.~~ Project-specific Mitigation Measures would replace Community Plan Mitigation Measures.	~~None required~~ Mitigation Measure BIO-1h: Comply With Requirements for Jurisdictional Aquatic Resources	Less than Significant

The following changes in the text (bullet list)in Section ES.3.3, Significant and Unavoidable Impacts, on page ES-15, have been made so that the summary list correctly reflects the findings of the EIR text:

- **Impact AES-1:** Potential to substantially degrade the existing visual character or quality of public views of the site and its surroundings (in nonurbanized areas), including scenic vistas. The solar project would introduce solar facilities within scenic vistas.

- **Impact AES-2:** Potential to substantially damage scenic resources (including trees, rock outcroppings, and historic buildings) within a state scenic highway. The solar project would introduce solar facilities within viewsheds from State Route (SR), a scenic highway.
- **Impact AES-3:** Introduction of a new source of substantial light or glare that would adversely affect daytime or nighttime views in the area. The solar project would introduce nighttime construction lighting near adjacent residential uses.
- **Impact AQ-1:** Conflict with or obstruct implementation of the applicable air quality plan. Impacts from future development within the off-site residential redesignation area would continue to be significant and unavoidable but would not exceed the significant and unavoidable impacts identified in the Community Plan EIR.
- **Impact AQ-2:** Result in a cumulatively considerable net increase of any criteria pollutant for which the project is a nonattainment area for an applicable federal or state ambient air quality standard. Impacts from future development within the off-site residential redesignation area would continue to be significant and unavoidable but would not exceed the significant and unavoidable impacts identified in the Community Plan EIR.
- **Impact AQ-3:** Expose sensitive receptors to substantial pollutant concentrations. Grading for the solar project could release spores of the *Coccidioides immitis* fungus, including additional grading outside the Community Plan area.
- **Impact AQ-4:** Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people. Impacts from future development within the off-site residential redesignation area would continue to be significant and unavoidable but would not exceed the significant and unavoidable impacts identified in the Community Plan EIR.
- ~~**Impact BIO-1:** Potential to adversely effect, either directly or through habitat modifications, on any special-status species. Construction and operation of the solar project could adversely affect golden eagle, Swainson's hawk, western burrowing owl, loggerhead shrike, American badger, and San Joaquin kit fox, including within potential habitat areas outside the Community Plan area.~~
- ~~**Impact BIO-3:** Potential disruption of wildlife movement corridor. Solar project features and lighting could disturb wildlife movement through the project area, including areas outside the Community Plan area.~~
- ~~**Impact CUL-1:** Potential to cause a substantial adverse change in the significance of a historical resource. Construction activities for the solar project could encounter unknown historical resources, including within areas outside the Community Plan area.~~
- ~~**Impact CUL-2:** Potential to cause a substantial adverse change in the significance of an archaeological resource. Construction activities for the solar project could encounter unknown archaeological resources, including within areas outside the Community Plan area.~~
- ~~**Impact CUL-3:** Disturbance of any human remains, including those interred outside of formal cemeteries. Construction activities for the solar project could encounter unknown human remains, including within areas outside the Community Plan area.~~
- ~~**Impact GEO-1:** Direct or indirect exposure of people or structures to potential substantial adverse effects involving strong seismic ground shaking, seismic-related ground failure, including liquefaction, or landslides. The solar project would introduce structures that are susceptible to strong seismic ground shaking and damage, including structures within areas outside the Community Plan area.~~

- ~~**Impact GEO-2:** Potential to result in substantial soil erosion or the loss of topsoil. Grading for the solar project could cause erosion, including additional grading outside the Community Plan area.~~
- ~~**Impact GEO-3:** Placement of project-related facilities on a geologic unit or soil that is unstable or that would become unstable as a result of the project and potentially result in an onsite or offsite landslide, lateral spreading, subsidence, liquefaction, or collapse. The solar project would introduce structures that are susceptible to seismic hazards and damage, including structures within areas outside the Community Plan area.~~
- ~~**Impact GEO-4:** Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property. The solar project would introduce structures that are susceptible to damage from expansive soils, including structures within areas outside the Community Plan area.~~
- ~~**Impact GEO-5:** Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature. Construction activities for the solar project could encounter unknown paleontological resources, including within areas outside the Community Plan area.~~
- ~~**Impact HAZ-3:** Emit hazardous emissions or involve handling hazardous or acutely hazardous materials, substances, or waste within 0.25 mile of an existing or proposed school. If future schools within the Community Plan area are constructed near the solar project, the schools could be exposed to health and safety impacts from solar project pipelines and electrical transmission lines.~~
- ~~**Impact WQ-1:** Violation of any water quality standard or WDR. Construction activities for the solar project could impair surface and groundwater quality, including within areas outside the Community Plan area.~~
- ~~**Impact WQ-5:** Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan. Construction activities for the solar project could impair surface and groundwater quality, including within areas outside the Community Plan area.~~
- ~~**Impact LU-2:** Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project adopted for the purpose of avoiding or mitigating an environmental effect. Because of the project-specific significant impacts included in this list, the project could conflict with County General Plan and Community Plan policies adopted for the purpose of avoiding or mitigating an environmental effect.~~
- **Impact NOI-1:** Generation of a substantial temporary or permanent increase in existing ambient noise levels in the project vicinity. The solar project could require emergency generator testing, which could result in noise levels that exceed the County's allowable noise levels.
- ~~**Impact TCR-1:** Impact a tribal cultural resource, defined in Public Resources Code section 21074, resources listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1. Construction activities for the solar project could encounter unknown tribal cultural resources, including within areas outside the Community Plan area.~~
- **Impact UT-1:** Construction or relocation of new water or wastewater treatment facilities, electric power, natural gas or telecommunication facilities, or expansion of existing facilities, with the potential to cause significant environmental effects. Impacts from future

development within the off-site residential redesignation area would continue to be significant and unavoidable but would not exceed the significant and unavoidable impacts identified in the Community Plan EIR.

- **Impact UT-2:** Sufficient available water supplies to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years. Impacts from future development within the off-site residential redesignation area would continue to be significant and unavoidable but would not exceed the significant and unavoidable impacts identified in the Community Plan EIR.
- **Impact UT-3:** Project-related exceedance of existing wastewater treatment capacity. Impacts from future development within the off-site residential redesignation area would continue to be significant and unavoidable but would not exceed the significant and unavoidable impacts identified in the Community Plan EIR.
- **Impact UT-4:** Project-related exceedance of the relevant landfill's permitted capacity. Landfill capacity in the County has not been identified beyond 2054. It is unknown whether sufficient landfill capacity will exist to serve project operation and decommissioning between 2054 and 2060.
- **Impact UT-5:** Inconsistency with federal, state, and local statutes and regulations related to solid waste. Landfill capacity in the County has not been identified beyond 2054. It is unknown whether sufficient landfill capacity will exist to serve project operation and decommissioning between 2054 and 2060.
- ~~**Impact WF-3:** Require the installation or maintenance of associated infrastructure that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment. Construction and operation of the solar project would introduce equipment, including Li-ion batteries, that could exacerbate the risk of wildfire, including in areas outside the Community Plan.~~

Chapter 2, Project Description

The third full paragraph on page 2-1, under Section 2.1, *Project Setting,* has been revised as follows:

Four underground utility easements cross the eastern portion of the solar project site and one transmission line easement crosses the southwestern portion of the site. ~~A~~ Two San Luis Water District (SLWD) water lines and corresponding ~~70-foot-wide~~ easement~~s~~ also cross~~es~~ through the ~~western portion of the~~ solar project site, including a 70-foot-wide easement that crosses through the western portion of the solar project site and a 30-foot-wide easement that crosses southeast–northwest through the central portion of the solar project site. Other SLWD facilities including pipelines, water delivery turnouts, electrical cables, telemetry cables, and other facilities and their corresponding easements cross the solar project site. A 70-foot-wide access easement for the Merced County Regional Waste Authority (RWA), which owns the Billy Wright Landfill to the south, traverses the solar project site from north to south (see Figure 2-2). The last paragraph on page 2-19 under *Site Security* has been revised as follows:

Site Access and Security

The solar project would be remotely monitored by the project applicant or an affiliated company. The solar project site would be secured with a 6- to 10-foot-high chain link fence perimeter fence, and a second perimeter fence with lighting would secure the solar project

substation. In accordance with Section 18.34.030 of the Merced County Unified Development Ordinance, a vegetated screen would be installed along the northern property line where the solar project site abuts adjacent residential uses. Manual swing gates would be constructed at the main entrance and in strategic areas, as required for access by property owners and for the convenience of utility companies in accessing and maintaining their facilities. All easements already recorded would be honored. As a Condition of Approval, prior to the initiation of construction activities, the project applicant would enter into a Limited Crossing Consent with SLWD to ensure all project facilities, structures, and improvements that cross or otherwise involve SLWD easements do not interfere with operation or maintenance of SLWD facilities. The Limited Crossing Consent would identify features to avoid incompatible uses, such as the installation of protective bollards around turnouts and other water delivery facilities and the installation of fencing around SLWD-owned aboveground equipment. Additional site security measures would include a monitored camera system at gates and entry points. This system would be remotely monitored, and security breaches would be reported to emergency responders as well as site operations. Furthermore, the solar project would comply with North American Energy Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC) requirements for regulatory control and security systems.

The last full paragraph on page 2-23, under *Water Demand and Storage,* is revised as follows:

In accordance with Section 18.34.030 of the Merced County Unified Development Ordinance, a vegetated screen would be installed along the northern property line where the solar project site abuts adjacent residential uses. The solar project's irrigation demand would be limited to this vegetated screen, which would be compliant with the State Model Water Efficient Landscape Ordinance (MWELO). As discussed above, the solar project's operational water demand would be approximately 5 acre-feet, or 1.6 million gallons, per year including panel washing and irrigation demand (EMKO Environmental, Inc. 2023). It is anticipated that water for irrigation and fire flow would either by supplied by the SLWD through existing connections to SLWD's non-potable system within the solar project site, or pumped from the Mid-Cal well described above and transported to the solar project site by water trucks as discussed above. One 5,000-gallon water tank would be permanently installed in the northwest portion of the solar project site to store water for irrigation and fire flow in accordance with Section 507.1 of the California Fire Code. Additional water tanks may be installed if required by the County Fire Department during site plan review, or if required by state law.

Page 2-33, Section 2.3.4, under *Construction Deliveries, Haul Routes, and Access,* is revised as follows:

Solar project components (e.g., PV solar panels, support structures, and electrical interconnection equipment), with the exception of pre-assembled components, would be brought to the solar project site and assembled. Water for dust control would either by supplied by the SLWD through existing connections to the solar project site, or delivered to the solar project site by trucks, as discussed below under Water. The number of employees working on the solar project at any time would vary, with a peak employee level of 400 persons. Under the greater impact scenario where water is being trucked in from the off-site well, on a peak day, approximately 1,373 daily trips are assumed for project construction-related automobiles and trucks, with 443 trips in the a.m. peak hour and 398 trips in the p.m. peak hour. This estimate includes construction trucks and vehicles associated with the PG&E substation improvements, discussed below under Proposed PG&E Substation Improvements Construction. The project (including the solar project and the PG&E substation

improvements) would require construction contractors to use Tier 4 Final engines greater than 25 horsepower for off-road equipment to reduce construction-related exhaust emissions as a Condition of Approval for the project.

The last paragraph on page 2-36, under *Water,* is revised as follows:

The solar project is anticipated to require 370 acre-feet (approximately 121 million gallons) of water during the entire construction period, or approximately 330,315 gallons per day; actual water consumption would depend on climatic conditions (EMKO Environmental, Inc. 2023).[1] Water usage during construction would be required for soil conditioning, road maintenance, dust suppression, and other uses. Water for construction would either be supplied by the SLWD through existing connections to SLWD's non-potable system within the solar project site or transported to the solar project site via 4,000-gallon water trucks. As discussed in Section 3.19, *Utilities and Service Systems*, the use of SLWD water would require the approval of a Construction Water Agreement and Solar Water Management Agreement for the project by the SLWD. The use of water from the Mid-Cal well would require approval of a groundwater export permit by the Merced County Board of Supervisors consistent with Merced County's Groundwater Mining and Export ordinance. The method that is ultimately implemented will depend on which approvals are granted. Under the well option, construction water would be provided from the Mid-Cal well located adjacent to SR 33 at the northwest corner of AKT's Mid-Cal property, approximately 4.4 miles north of the solar project site. The Mid-Cal well is just southeast of the intersection of State Route 33 and McCabe Road, north of Santa Nella in Merced County, California. The well currently provides water to irrigate corn used for dairy cattle feed. The most recent records available indicate that the Mid-Cal well produces approximately 502 acre-feet per year for irrigation (EMKO Environmental, Inc. 2023). During use of the Mid-Cal well to supply water for the proposed project, irrigation would not be curtailed or reduced in any way; there would be no effect on agricultural production.

The second and third paragraphs under Section 2.3.7, *Off-site Mitigation Site,* pages 2-42 and 2-43, are revised as follows:

The applicant has proposed the establishment of an off-site mitigation site for the San Joaquin kit fox and other covered species, as necessary. An area of ~~approximately~~ at least 1,498 acres of grassland habitat referred to as the "off-site mitigation site" would be placed into a conservation easement in perpetuity. The exact size of the off-site mitigation site is pending ongoing consultation with CDFW. The proposed permit term is 40 years, and encompasses construction, operation and maintenance, and decommissioning activities. The off-site mitigation site is located approximately 5 miles south of the solar project site, immediately south of Los Banos Reservoir (see Figure 2-2) (APNs 088-040-012, 088-040-014, 088-090-001, 088-070-092, and 088-070-052).

The off-site mitigation site is comprised primarily of annual grasslands that provide suitable habitat for covered species. A paved road bisects the site from east to west, and surface access roads span the center of the site and encompass the inside perimeter of the site. The site is currently used for livestock grazing. An existing barbed wire fence encompasses the entire acreage of the ~~1,498-acre~~ site.

[1] Daily water use during construction would vary, depending on weather conditions and time of year, both of which would affect the need for dust control. Hot, dry, windy conditions would require greater amounts of water.

The following bullet on page 2-46 in Section 2.4, *Required Approvals*, has been revised as follows:

- Water permits/approvals:
    - Construction Water Agreement and Solar Water Management Agreement pursuant to the San Luis Water District's Rules and Regulations, adopted pursuant to California Water Code Section 35423, to effect orderly, efficient, and equitable distribution and use of water, *OR*;
    - Merced County, Groundwater Export Permit pursuant to Merced County Code, Chapter 9.27. Merced County authorizes groundwater to be used outside of the groundwater basin from which it is withdrawn pursuant to a groundwater export permit.

Section 3.1, Aesthetics

The last full sentence on page 3.1-14 is revised as follows to ensure consistency with Policy 1.E.1 in the *Villages of Laguna San Luis Community Plan*:

> As identified in specific Mitigation Measure AES-1, the landscape buffer would be of a width appropriate to screen views of the solar project (~~up to 40~~ 50 feet wide); planted as close to the northern border of the solar project as possible, without restricting access to or shading the panels; and planted between the security fencing and the SR 152 corridor to screen views of both the solar panels and fencing.

Mitigation Measure AES-1 on pages 3.1-16 through 3.1-18 is revised as follows to ensure consistency with Policy 1.E.1 in the *Villages of Laguna San Luis Community Plan*:

> **Mitigation Measure AES-1: Install a landscape buffer along SR 152.**
>
> As identified in Chapter 2, *Project Description*, and in accordance with Section 18.36, *Landscaping*, of the Merced County Unified Development Ordinance, an opaque vegetated screen (Type A) would be installed along the northern property line where the solar project site abuts adjacent residential uses. This mitigation measure provides additional details to guide the design and installation of the landscape buffer. The project applicant shall plant a landscape buffer parallel to SR 152 and within the portions of the solar project site directly abutting SR 152. The landscape buffer will be planted approximately between postmile (PM) 12.26/South San Luis Drive and PM 12.49 and between PM 12.75 and PM13.63, avoiding the private property between PM 12.49 and PM 12.75. It shall be designed in a manner that incorporates attractive roadside landscaping. The landscape buffer shall serve as a visual buffer to screen views of solar project features and improve the visual quality of the roadway corridor while maintaining views of the surrounding hillsides and providing for kit fox passage. The Merced County Community and Economic Development Department shall review project designs prior to granting a building permit to ensure that the following elements are implemented in the landscape buffer along SR 152:
>
> - The landscape buffer shall be of a width appropriate to screen views of the solar project (~~up to 40~~ 50 feet wide); planted as close to the northern border of the solar project as possible, without restricting access to or shading the panels; and planted between the security fencing and the SR 152 corridor to screen views of both the solar panels and fencing.
> - Plant selection shall consist of shrubs and small trees that are no taller than 12 to 15 feet tall at maturity. This will ensure that the 13-foot-tall solar panels are screened while views of the surrounding hillsides are maintained.

- One hundred percent of the species composition shall reflect species that are native and indigenous to California. Native plant species can be used to create attractive spaces that are high in aesthetic quality and not only drought tolerant but able to attract more wildlife than traditional landscape plant palettes.
- The species list shall include small trees, shrubs, and an herbaceous understory of varying heights as well as both evergreen and deciduous types. Plant variety shall increase the effectiveness of the roadside planting areas by providing multiple layers, seasonality, diverse habitat, and reduced susceptibility to disease. However, per Section 18.36.050.F.3a, the Type A opaque screen shall be "opaque from ground level to a height of at least six feet, with intermittent visual obstructions from the opaque portion to a height with landscaping of at least 20 feet. The opaque screen may be composed of a wall, fence, and/or landscape berm densely planted with vegetation. Proposed planted screens will be judged on the basis of the average mature height and density of foliage of the subject species, or field observation of existing vegetation. The opaque portion of the screen must be opaque in all seasons of the year. At maturity, the screen should not contain any completely unobstructed openings more than five feet wide." Therefore, special attention shall be paid to plant choices to ensure compliance with Section 18.36.050.F.3a of the Merced County Unified Development Ordinance at plant maturity, and regular spacing of evergreen species shall be used to provide continual, year-round screening of the solar project (e.g., ceanothus, hollyleaf redberry, manzanita) while ensuring that kit fox passage between plants, at plant maturity, is not hindered. Deciduous plant species can be included within the design to provide visual accents and interest (e.g., western redbud).
- Deviations from the landscape buffer location, composition, and height requirements may be approved by the Merced County Community and Economic Development Department. However, under no circumstances shall any invasive plant species be used at any location.
- Vegetation shall be planted within the first year following solar project completion.
- An irrigation (e.g., truck watering, tank irrigation, piped irrigation) and maintenance program shall be implemented during the plant establishment period (3 to 5 years, based on weather conditions) and carried on, as needed, to ensure plant survival. However, the design of the landscaping plan shall try to maximize the use of planting zones that are water efficient.
- If an irrigation system is used, including a tank irrigation system, areas that are irrigated shall use a smart watering system that evaluates the existing site conditions and plant material against weather conditions to avoid overwatering of such areas. To avoid undue water flows, the irrigation system shall be managed in such a manner that any broken spray heads, pipes, or other components are fixed within 1 to 2 days, or the zone or system shall be shut down until it can be repaired.
- The project applicant shall replace dead or dying plants throughout the operation of the solar project, as needed, to ensure that the landscape buffer is effectively maintained.
- The project applicant shall notify the County that the landscape buffer has been planted so that the County can inspect the installed landscape buffer upon initial completion. The County shall then inspect the landscape buffer either annually or biannually to ensure that the landscape buffer is being effectively maintained and that dead and dying plants are being replaced by the project proponent.

The following paragraphs in the analysis of Impact AES-3, under *Changes in Proposed Land Uses and Development from the Community Plan-Operation* (second complete paragraph on page 3.1-33), and

Additional Proposed Development Outside of the Community Plan- Operation (fourth complete paragraph on Page 3.1-35), are revised as follows:

> The PV modules would be installed in rows that run north–south and use a tracking system that follows the sun in its path from east to west across the sky as the day progresses. Individual PV panels not installed in the north–south running rows are limited and would be oriented to face in a southerly direction to maximize solar gain. When the sun is high in the sky (close to noon or in the summer) and the panel is ~~low~~ flatter and more parallel to the ground, any reflection would be cast upward toward the light source and back into the atmosphere away from terrestrial-based receptors When the sun is low on the horizon (near dawn or dusk or in the winter), the sun's angle in the sky is low; reflected rays would still be directed away from terrestrial-based receptors because the maximum downward angle of the arrays would not be below 30 degrees. Because the maximum downward angle would not be below 30 degrees, the panels would not fully tilt westward. Therefore, glare would not be caused at dusk because the low sun angle would hit the back, and not the surface, of the panel.

Section 3.3, Air Quality

Page 3.3-20, Section 3.3.2, under *Mass Emissions Modeling,* is revised as follows:

> Construction activities for the project would occur within and under the jurisdiction of the SJVAPCD. Construction activities in the SJVAPCD would generate emissions of criteria pollutants (ROG, NO_X, CO, PM_{10}, $PM_{2.5}$, and sulfur oxides [SO_X]) and diesel particulate matter (DPM) that would result in short-term effects on ambient air quality in the study area. Emissions would originate from off-road equipment exhaust, employee and haul truck vehicle exhaust (on-road vehicles), and site grading and earth movement. These emissions would be temporary (i.e., limited to the construction period) and would cease when construction activities are complete. As a project commitment and a County Condition of Approval, the solar project and the PG&E substation improvements would require construction contractors to use Tier 4 Final engines greater than 25 horsepower for off-road equipment to reduce construction-related exhaust emissions.

Page 3.3-16, Section 3.3.1, under *Local,* is revised as follows:

- Rule 4201 and Rule 4202 (Particulate Matter Concentration and Emission Rates). These rules provide PM emission limits for sources operating within the district.
- Rule 4601—Architectural Coatings: This rule limits VOC emissions from architectural coatings and specifies architectural coatings storage, cleanup, and labeling requirements.
- Rule 4641—Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations: This rule applies to the manufacture and use of the aforementioned asphalt types for paving and maintenance operations.

The first full sentence on page 3.3-28 is revised as follows:

> Community Plan Mitigation Measures 5.12-1a would not be required for the solar project because ~~solar facilities are not subject to SJVAPCD's Indirect Source Review (ISR) rule~~ the solar project would not require approval of tentative maps, although as a matter of background law the solar project would still be required to comply with SJVAPCD's Indirect Source Rule (ISR).

Page 3.3-28, Section 3.3.2, under Impact AQ-1, is revised as follows:

The phases that could contribute to annual emissions in 2024 include site preparation, underground work, PV system installation, battery storage system installation, substation and gen-tie line installation, and PG&E substation modifications. Phases that could contribute to annual emissions in 2025 include underground work, PV system installation, battery storage system installation, substation and gen-tie line installation, PG&E substation modifications, and testing, commissioning, and project site restoration. Although maximum daily construction-generated emissions of CO would exceed SJVAPCD's daily threshold for requiring a site ambient air quality analysis (AAQA) (as shown in Table 3.3-5), CO, NO_2, and SO_2 concentrations would be below their respective CAAQS and NAAQS ~~for CO~~ (as shown in Tables 3.3-6 through 3.3-8). Because background concentrations of PM_{10} exceed CAAQS standards and background $PM_{2.5}$ concentrations exceed NAAQS standards, PM_{10} and $PM_{2.5}$ concentrations from project construction were compared to the applicable SJVAPCD significant impact levels (SILs). Fugitive PM SILs were used because the majority of PM emissions associated with construction are fugitive PM. As shown in Tables 3.3-9 and 3.3-10, project contributions to PM_{10} and $PM_{2.5}$ concentrations were below all applicable SIL values.

Page 3.3-30, Section 3.3.2, under Impact AQ-1, has the following tables added:

Table 3.3-6a. Construction Nitrogen Dioxide AAQA Concentration Results

	1-hour Average		Annual Average	
NO_2 Concentration (µg/m³)	**CAAQS**	**NAAQS**	**CAAQS**	**NAAQS**
Maximum Incremental Off-Site	65	31	0.1	0.1
Background[1]	73	72	13	13
Total Off-Site	138	102	13	13
Standard (µg/m³ equivalent)	339	188	57	100

[1] Background concentrations from the Merced air quality monitoring station at South Coffee Avenue from 2021– 2023.
Source: Modeling output provided in Attachment A to the AQR.
Note: Total may not add exactly due to rounding.
CAAQS = California Ambient Air Quality Standards; NAAQS = National Ambient Air Quality Standards; µg/m³ = micrograms (one-millionth of a gram) per cubic meter air.

Table 3.3-6b. Construction Sulfur Dioxide AAQA Concentration Results

	1-hour Average		24-hour Average	
SO_2 Concentration (µg/m³)	CAAQS	NAAQS	CAAQS	NAAQS
Maximum Incremental Off-Site	1	1	0.1	N/A
Background[1]	20	14	7	N/A
Total Off-Site	21	15	7	N/A
Standard (µg/m³ equivalent)	655	196	105	N/A

[1] Background concentrations from the Fresno air quality monitoring station at 3727 North First Street from 2021– 2023.
Source: Modeling output provided in Attachment A to the AQR.
Note: Total may not add exactly due to rounding.
CAAQS = California Ambient Air Quality Standards; NAAQS = National Ambient Air Quality Standards; µg/m³ = micrograms (one-millionth of a gram) per cubic meter air.

Table 3.3-6c. Construction Particulate Matter Less than 10 Microns AAQA Concentration Results

	24-hour Average		Annual Average	
PM_{10} Concentration (µg/m³)	CAAQS	NAAQS	CAAQS	NAAQS
Maximum Incremental Off-Site	6	3	0.1	N/A
Background[1]	109	81	31	N/A
Total Off-Site	115	84	31	N/A
Standard (µg/m³ equivalent)	50	150	20	N/A
Significant Impact Level (SIL)[2]	10.4	N/A	2.08	N/A
Exceeds SIL?	No	N/A	No	N/A

[1] Background concentrations from the Merced air quality monitoring station at South Coffee Avenue from 2021– 2023.
[2] The majority of project PM_{10} emissions are fugitive PM_{10} emissions; thus, project PM_{10} concentrations are compared to SJVAPCD's fugitive PM_{10} SILs.
Source: Modeling output provided in Attachment A to the AQR.
Note: Total may not add exactly due to rounding.
CAAQS = California Ambient Air Quality Standards; NAAQS = National Ambient Air Quality Standards; µg/m³ = micrograms (one-millionth of a gram) per cubic meter air.

Table 3.3-6d. Construction Particulate Matter Less than 2.5 Microns AAQA Concentration Results

	24-hour Average		Annual Average	
$PM_{2.5}$ Concentration (µg/m³)	CAAQS	NAAQS	CAAQS	NAAQS
Maximum Incremental Off-Site	N/A	0.1	<0.1	<0.1
Background[1]	N/A	51	11	10
Total Off-Site	N/A	51	11	10
Standard (µg/m³ equivalent)	N/A	35	12	9
Significant Impact Level (SIL)[2]	N/A	2.5	N/A	0.63
Exceeds SIL?	N/A	No	N/A	No

[1] Background concentrations from the Merced air quality monitoring station at South Coffee Avenue from 2021– 2023.
[2] The majority of project $PM_{2.5}$ emissions are fugitive $PM_{2.5}$ emissions; thus, project $PM_{2.5}$ concentrations are compared to SJVAPCD's fugitive $PM_{2.5}$ SILs.
Source: Modeling output provided in Attachment A to the AQR.
Note: Total may not add exactly due to rounding.
CAAQS = California Ambient Air Quality Standards; NAAQS = National Ambient Air Quality Standards; µg/m³ = micrograms (one-millionth of a gram) per cubic meter air.

Page 3.3-23, Section 3.3.2, under *Operational Health Risk Assessment,* is revised as follows:

All inputs and parameters used in AERMOD for the construction HRA apply to the operational HRA, which includes emissions of DPM associated with annual solar panel cleaning. Off-road equipment and on-road vehicles would conduct the solar panel cleaning activities. In addition, health risks from ROG emissions associated with the operational propane-fueled emergency generator were included in the operational HRA. The generator was modeled as a point source with a stack height of 3.66 meters, stack diameter of 0.183 meter, exit temperature of 740 Kelvin, and an exit velocity of 45.3 meters per second.

The first full sentence on page 3.3-34 is revised as follows:

Community Plan Mitigation Measures 5.12-1a would not be required for the solar project because ~~solar facilities are not subject to SJVAPCD's Indirect Source Review (ISR) rule~~ the solar project would not require approval of tentative maps, although as a matter of background law the solar project would still be required to comply with SJVAPCD's Indirect Source Rule (ISR).

Page 3.3-39, Section 3.3.2, under Impact AQ-3, the following table has been revised:

Table 3.3-9. Estimated Health Risk during Construction and Operations

Location	Cancer Risk (cases per million)	Chronic Hazard Index	Acute Hazard Index
Maximum Incremental Risk at Existing Receptors	0.6	0.0005~~8~~	0.1000
SJVAPCD Significance Thresholds	20.0	1.00	1.00

Source: Attachment B to the AQR.
SJVAPCD = San Joaquin Valley Air Pollution Control District.

Section 3.4, Biological Resources

Page 3.4-2, *Regional Setting*, is revised as follows:

3.4.1 Existing Conditions

The site for the Las Camas Solar Project is approximately 2 miles south of the community of Santa Nella and 5 miles west of the city of Los Banos in western Merced County, California (Figure 2-1). It is also within the San Luis Dam and Volta U.S. Geological Survey (USGS) 7.5-minute quadrangles. The project site, located on the western edge of the San Joaquin Valley, ranges in elevation from 200 to 500 feet above sea level. The area west of the site quickly transitions to rolling hills within the Coast Range. The area is rural in character. An isolated residential subdivision and a small commercial area are located near the junction of State Route (SR) 152 and SR 33, directly northwest of the study area. The community of Santa Nella~~,~~ is located approximately 2 miles north of the study area and the city of Los Banos is located 5 miles to the east. San Luis Reservoir and O'Neill Forebay are approximately 1.5 miles north of project site.

The project site is situated within a region of the northern San Joaquin Valley that is dominated by agricultural production but also supports the largest remaining block of wetlands in California's Central Valley, containing 70,000 acres of private wetlands and associated grasslands, known as the Grasslands Wildlife Management Area, and over 30,000

acres of state and federal lands (U.S. Fish and Wildlife Service 2024). These wetlands and associated grasslands include three national wildlife refuges and four state wildlife areas with 240,000 acres collectively known as the Grasslands Ecological Area (U.S. Fish and Wildlife Service 2024; Grassland Water District 2024). The National Audubon Society has recognized the Grasslands Ecological Area as an Important Bird Area for wintering waterfowl, and the Western Hemisphere Shorebird Reserve Network has recognized the Grasslands Ecological Area as being of international importance to shorebirds (National Audubon Society 2024; Western Hemisphere Shorebird Reserve Network 2019). The Grassland Ecological Area supports a half-million migratory ducks, geese, and swans each year between November and February (National Audubon Society 2024). This area also supports breeding and wintering tricolored blackbirds, wintering sandhill cranes, and wintering white-faced ibis and serves as major stopover site for shorebirds each fall, winter, and spring (National Audubon Society 2024). In mid-April, during the peak of spring migration, almost 50 percent of all shorebirds in California's Central Valley are found in the grassland (Western Hemisphere Shorebird Reserve Network 2019).

The project site is approximately 1.6 miles from the Grasslands Ecological Area at the closest point. The majority of the Grassland Ecological Area is located much further away from the project site. The project site does not provide similar wetland habitat and has very limited foraging opportunities for waterfowl and shorebirds. Waterfowl typically forage in flooded or moist habitats, including agricultural habitats such as rice, corn, or post-harvest flooded fields (Central Valley Joint Venture 2006). The project site provides very limited habitat for shorebirds due to the lack of extensive emergent wetlands (e.g., managed wetlands), seasonal wetlands, shallow flooded habitat (e.g., evaporation and sewage ponds), and flooded agricultural lands (e.g., rice, post-harvest flooded fields) that shorebirds in the Central Valley typically use (Shuford et al. 1998; Hickey et al. 2003).

The region generally reflects a Mediterranean climate, with cool, wet winters and warm, dry summers. The arid conditions of the region are due in part to a rain shadow effect in which moist air coming from the Pacific Ocean rises once it reaches the mountains of the California Coast Range. The water vapor condenses and falls as precipitation, resulting in arid conditions, or a rain shadow, on the leeward side of the mountains.

3.4.2 Environmental Impacts, Impacts and Mitigation

Page 3.4-43, Habitat Conservation Plan Project Design Feature PD-1, is revised as follows:

- **PD-1:** Security fences installed on the perimeter of the solar facility shall be designed to enable passage of kit foxes and their prey while impeding the passage of kit fox predators, such as coyotes and larger domestic dogs. All fencing will leave a 4- to 6-inch opening between the fence mesh and the ground. The bottom of the fence fabric will be knuckled (wrapped back to form a smooth edge) to protect wildlife that pass under the fence. Where topography results in a ground to fence fabric gap that is larger than 4 to 6 inches (e.g., at drainages or transitions between flat and steep slopes), hog-wire fencing with 4-inch by 4-inch openings may be used to achieve permeability. Fencing shall not be electrified. Fences shall be monitored regularly to ensure that any damage or vandalism is quickly repaired.

Page 3.4-43, Habitat Conservation Plan Project Design Feature PD-4, is revised as follows:

- **PD-4:** Lighting shall be used from dusk to dawn for the project substation to conform to National Electrical Safety Code requirements and all applicable Merced County outdoor lighting codes. Other lighting requirements specifically designed to minimize effects on San Joaquin kit fox ~~shall also be implemented~~ will include~~.~~:
    - The number of lighting fixtures shall be limited to the minimum required for worker safety and site security.
    - All illuminated areas not occupied on a continuous basis shall have switches to light the area only when it is occupied.
    - All lighting shall be designed so that exterior light fixtures are hooded, with lights directed downward or toward the area to be illuminated, and so that backscatter to the nighttime sky is minimized. The design of the lighting shall be such that the luminescence or light sources are shielded to prevent light trespass outside the project boundary and neither the lamp nor the reflector interior surface would be visible from outside the footprint of the facilities. Narrow spectrum bulbs shall be used to limit the range of species affected by lighting. All lighting poles, fixtures, and hoods shall be of dark-colored material.
    - Unless determined necessary by Merced County for safety or security reasons, any signs at the entry of the project site shall not be lit (reflective coating is acceptable).

Page 3.4-44, Habitat Conservation Plan General Avoidance and Minimization Measure GEN-10, is revised as follows:

- **GEN-10:** Speed limits within the project site shall be limited to 15 miles per hour (mph) during the day. To the extent possible, nighttime construction-related activity shall be minimized, but if work must be conducted at night, the speed limit shall be ~~and~~ 10 mph ~~at night~~. During construction, all project-related vehicles and equipment shall be restricted to established roads, construction areas, and designated staging areas.

Page 3.4-45, Habitat Conservation Plan General Avoidance and Minimization Measure GEN-15, is revised as follows:

- **GEN-15**: A Revegetation Plan shall be prepared for the project in coordination with CDFW. Prior to project commercial operation, all areas temporarily subject to ground disturbance, including staging areas, shall be reseeded or otherwise treated using a CDFW-approved seed mixture to achieve a revegetated state according to the timelines outlined in the Revegetation Plan.

Page 3.4-45, San Joaquin Kit Fox-Specific Avoidance and Minimization Measure SJKF-3, is revised as follows:

- **SJKF-3**: Construction activities shall be prohibited within exclusion zones around suitable burrows, based on their type. There would be an exception for vehicle traffic on roads that existed prior to discovery of the suitable burrow. The configuration of exclusion zones around San Joaquin kit fox dens should have the radius measured outward from the entrance or cluster of entrances, as follows.
    - Potential Den: A 50-foot avoidance buffer shall be used when kit fox occupation is expected but not confirmed.

- Known Den: A 100-foot avoidance buffer shall be used if kit fox activity is observed. Flagging and/or stakes with flagging attached shall be installed between the work area and the known den site at a minimum distance of 100 feet from the den. The flagging shall be maintained until construction-related disturbances have ceased
- Natal/Pupping Den: USFWS shall be contacted for technical advice to establish an appropriate buffer~~, but buffer shall be at least 100 feet and shall not exceed 200 feet~~.

Page 3.4-45, San Joaquin Kit Fox-Specific Avoidance and Minimization Measure SJKF-7, is revised as follows:

- **SJKF-7**: Immediately upon notification of the supervisory project biologist of an inadvertent killing~~, or~~ injury, or entrapment involving San Joaquin kit fox, the supervisory project biologist shall contact the CDFW State Dispatch and the USFWS Endangered Species Division.

Page 3.4-48, Impact BIO-1, Discussion of Impacts on Swainson's Hawk Blunt-Nosed Leopard Lizard, Blainville Horned Lizard, Pallid Bat, Townsend's Big-Eared Bat, Western Red Bat, Western Mastiff Bat, and Crotch's Bumblebee, is revised as follows:

Blunt-Nosed Leopard Lizard, Blainville Horned Lizard, Pallid Bat, Townsend's Big-Eared Bat, Western Red Bat, Western Mastiff Bat, and Crotch's Bumblebee ~~bumble bee~~

There are six special-status wildlife species with low potential for occurrence on the project site: blunt-nosed leopard lizard, Blainville horned lizard, Pallid bat, Townsend's big-eared bat, Western red bat, Western mastiff bat, and Crotch's bumble bee (Table 3.4-4). The habitat to support these species is considered marginal, and there are no recent occurrence records within 5 miles of the solar project site. Impacts on these species are considered unlikely; however, the following HCP measures would avoid or minimize a portion of the potential impacts on these species: PD-2, PD-3, PD-4, GEN-1, GEN-2, GEN-3, GEN-4, GEN-5 GEN-6, GEN-10, GEN-11, GEN-12, and GEN-15. The proposed establishment of a conservation easement on the off-site mitigation site would also minimize a portion of the potential impacts on these species because the habitat within the conservation easement would be of higher quality compared with the development site and able to potentially support these species. Mitigation Measures BIO-1a and ~~BIO-1d~~ BIO-1c would reduce the remaining impacts on blunt-nosed leopard lizard, Blainville horned lizard, pallid bat, Townsend's big-eared bat, Western red bat, Western mastiff bat, and Crotch's bumblebee to a less-than-significant level by requiring a biological monitor to be present during ground-disturbing activities and take specific actions. The biological monitor would be able to redirect construction activities if any of these species are identified in the work area during construction. The other measures discussed in Mitigation Measures BIO-1a and ~~BIO-1d~~ BIO-1c would also minimize impacts on these special-status species.

The solar project would implement project-specific Mitigation Measures BIO-1a and ~~BIO-1d~~ BIO-1c instead of Community Plan EIR Mitigation Measure 5.8-4, which requires future development under the Community Plan to implement measures to reduce or avoid impacts on nesting raptors and special-status wildlife species found in grassland habitat. The measures in project-specific Mitigation Measures BIO-1a and ~~BIO-1d~~ BIO-1c are more detailed and effective than the 2007 Community Plan EIR mitigation measure because they are based on site-specific field surveys and are tailored specifically to the solar project.

Page 3.4-52, Impact BIO-1, Discussion of Impacts on Swainson's Hawk, is revised as follows:

Swainson's Hawk

The following HCP measures would avoid or minimize a portion of the potential impacts on Swainson's hawk: PD-2, PD-3, PD-4, GEN-1, GEN-2, GEN-3, GEN-4, GEN-5, GEN-6, GEN-10, GEN-11, GEN-12, and GEN-15. However, impacts would remain potentially significant because development of the solar project could result in mortality if these special-status birds nest at or adjacent to the solar project site in the future. Thus, an ITP under Section 2081.1 of CESA is being pursued to mitigate for potential take of Swainson's hawk. Mitigation Measures BIO-1a, BIO-1b, BIO-1d, and BIO-1e would reduce the remaining impacts on Swainson's hawk to a less-than-significant level by requiring a biological monitor to be present during construction activities to redirect construction activities away from Swainson's hawk nest sites. Conducting vegetation clearing activities outside the nesting season, establishing avoidance buffers around active nests during construction, and constructing transmission towers, poles, and lines for the solar project in a manner that reduces avian electrocution would further reduce impacts on these special-status birds to a less-than-significant level. The solar project would implement project-specific Mitigation Measures BIO-1a, BIO-1b, BIO-1d, and BIO-1e instead of Community Plan EIR Mitigation Measure 5.8-2, which requires future development under the Community Plan to secure ITPs for Swainson's hawk if take would occur and implement other measures to reduce and avoid impacts on Swainson's hawk. Take of Swainson's hawk would be covered under the state ITP if it were to occur ~~The solar project would not result in take of Swainson's hawk~~, and the measures in project-specific Mitigation Measures BIO-1a, BIO-1b, BIO-1d, and BIO-1e are more detailed and effective than the 2007 Community Plan EIR mitigation measure because they are based on site-specific field surveys and are tailored specifically to the solar project based on updated research and best practices.

Page 3.4-54, Project-Specific Avoidance and Minimization Measure BIO-1a, is revised as follows:

Mitigation Measure BIO-1a: Avoid and minimize impacts on biological resources

To avoid and minimize potential impacts on wildlife and their habitats during construction and decommissioning, the solar project applicant shall require its construction contractors, as a condition of contract, to implement the following measures, subject to verification by the Merced County Department of Public Works prior to issuance of a construction permit.

- Employees and contractors performing construction and decommissioning activities shall receive environmental sensitivity training. Training shall include review of environmental laws, mitigation measures, permit conditions, and other requirements that must be followed by all personnel to reduce or avoid effects on wildlife resources during construction and decommissioning activities.
- Vehicles and equipment shall be parked on pavement, existing roads, and pre-planned and approved staging areas that are cleared by the biological monitor ~~previously disturbed areas to the extent practicable~~.
- Off-road vehicle travel shall be avoided to the extent feasible but, when required, shall occur on pre-planned and approved routes that are cleared by the biological monitor.
- Grading shall be restricted to the minimum area necessary.

- Prior to ground-disturbing activities, sensitive habitats (e.g., thatched/bunch grasses) shall be flagged by the biological monitor and temporary fencing shall be in place during construction to reduce the potential for vehicles and equipment to stray into these habitats. Materials shall not be stockpiled in these areas. Vehicles or equipment shall not be refueled within 100 feet of a wetland, stream, or other waterway unless a bermed and lined refueling area (i.e., a created berm made of sandbags or other removable material) is constructed.
- Erosion control measures shall be implemented to reduce sedimentation in nearby aquatic habitat when activities are the source of potential erosion. Plastic monofilament netting (i.e., erosion control matting) or similar material containing netting shall not be used at the project site. Acceptable substitutes include coconut coir matting or tackified hydroseeding compounds.
- Herbicides may be applied if noxious weeds impede construction or operations and maintenance, as well as solar array photovoltaic effectiveness, and cannot be controlled by other methods.
- The following shall not be allowed at or near work sites for project activities: trash dumping; open fires, such as barbecues; or hunting.
- A biological monitor shall be on-site during initial ground-disturbing activities within and adjacent to grassland areas and during the removal of any trees. The biological monitor shall be approved by CDFW and USFWS and have experience with wildlife within the region, including golden eagle, Swainson's hawk, western burrowing owl, loggerhead shrike, American badger, ~~and~~ San Joaquin kit fox, and Crotch's bumblebee. The biological monitor shall assist the crew, as needed, to comply with all project implementation restrictions and guidelines. In addition, the biologist shall be responsible for ensuring that the developer or its contractors maintain exclusion areas adjacent to sensitive biological resources and documenting compliance with all biological resources–related mitigation measures.

Pages 3.4-56 and 3.4-57, Project-Specific Avoidance and Minimization Measure BIO-1c, are revised as follows:

Mitigation Measure BIO-1c: Avoid, minimize, and compensate for potential impacts on western burrowing owl

The solar project applicant shall require its construction contractors, as a condition of contract, to implement I following measures, subject to verification by the Merced County Department of Public Works prior to issuance of a construction permit. The measures, which were based on the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012), shall be implemented to avoid or minimize potential adverse impacts on burrowing owls prior to and during solar project construction and decommissioning to the extent consistent with the terms of any state ITP that includes burrowing owl.

- A qualified biologist shall conduct preconstruction take avoidance surveys for burrowing owl no less than 14 days prior to and within 24 hours of initiating ground-disturbing activities. The survey area shall encompass the work area and a 500-foot buffer around this area. If project-related activities are suspended for more than 30 days, the biologist shall re-survey the project site.

- To the maximum extent feasible, construction activities within 500 feet of active burrowing owl burrows shall be avoided during the nesting season (February 1–August 31).
- If an active burrow is identified near a proposed work area and work cannot be conducted outside the nesting season (February 1–August 31), a no-activity zone shall be established by a biologist experienced with burrowing owls in coordination with CDFW. The no-activity zone shall be large enough to avoid nest abandonment and extend a minimum of 250 feet around the burrow.
- If burrowing owls are present at the proposed work site during the nonbreeding season (September 1–January 31), a qualified biologist shall establish a no-activity zone that extends a minimum of 150 feet around the burrow, in coordination with CDFW. The no-activity zone shall be large enough to avoid nest abandonment.
- If the designated no-activity zone for either breeding or non-breeding burrowing owls cannot be observed, a wildlife biologist experienced in burrowing owl behavior shall evaluate site-specific conditions and, in coordination with CDFW, recommend a smaller buffer (if possible) that still minimizes the potential to disturb the owls. The site-specific buffer shall consider the type and extent of the proposed activity occurring near the occupied burrow, the duration and timing of the activity, the sensitivity and habituation of the owls, and the dissimilarity of the proposed activity to background activities.
- If burrowing owls are present in the direct disturbance area and cannot be avoided during the non-breeding season (generally September 1–January 31), passive relocation techniques (e.g., installing one-way doors at burrow entrances) may be used. Passive relocation may also be used during the breeding season (February 1–August 30) if a biologist with burrowing owl experience, coordinating with CDFW, determines through site surveillance and/or scoping (California Burrowing Owl Consortium 1993) that the burrow is not occupied by burrowing owl adults, young, or eggs. Passive relocation shall be accomplished by installing one-way doors (e.g., modified dryer vents or other CDFW-approved method), which shall be left in place for a minimum of 1 week and monitored daily to ensure that the owls have left the burrow. Excavation of the burrow shall be conducted using hand tools. During excavation of the burrow, a section of flexible plastic pipe (at least 3 inches in diameter) shall be inserted into the burrow tunnel to maintain an escape route for any animals that may be inside the burrow.
- The destruction of unoccupied burrows outside the work area shall be avoided to the extent practicable, and visible markers shall be placed near burrows to ensure that they have not collapsed.
- Ongoing surveillance of the solar project site shall be conducted to locate burrowing owls during project activities. If additional owls are observed using burrows within 500 feet of construction, the on-site biological monitor shall determine, in coordination with CDFW, if the owls are or would be affected by construction activities and if additional exclusion zones are required.

Pages 3.4-57 and 3.4-58, Project-Specific Avoidance and Minimization Measure BIO-1d, are revised as follows:

Mitigation Measure BIO-1d: Avoid and minimize impacts on nesting birds

The solar project applicant shall require its construction contractors, as a condition of contract, to ~~implemeIthe~~ implement the following measures, subject to verification by the Merced County Department of Public Works prior to issuance of a construction permit. The measures shall be implemented during construction and decommissioning of the solar project to ensure that it does not have a significant impact on nesting special-status and non-special-status birds.

- Suitable nesting habitat (trees and ground vegetation) shall be removed during the non-breeding season (generally September ~~1~~16–January 31).
- To the extent feasible, construction activities in or near suitable or occupied nesting habitat shall be avoided during the breeding season of birds (generally February 1–~~August 31~~September 15).
- If construction activities (including vegetation removal, clearing, and grading) occur during the nesting season for migratory birds, a qualified biologist shall conduct preconstruction nesting bird surveys within ~~14~~7 days prior to construction activities within a given work area. Suitable habitat within the construction area and areas within a 500-foot buffer shall be surveyed for tree-nesting raptors, and a 50-foot buffer shall be surveyed for all other bird species. The initial survey shall be conducted ~~at least 14~~within 7 days prior to construction to allow adequate time to develop an avoidance strategy if nests are identified. A final survey to locate any additional nests and establish a behavioral baseline for all identified nests shall be conducted within 24 hours of ground-disturbing activities.
- If active nests are found during the survey or at any time during construction of the project, an avoidance buffer, ranging from 50 to 500 feet, may be required, with the avoidance buffer from any specific nest being determined by a qualified biologist. The avoidance buffer shall remain in place until the biologist has determined that the young are no longer reliant on adults or the nest or breeding attempts have otherwise been unsuccessful. Work may occur within the avoidance buffer under approval and guidance from the biologist, but full-time monitoring may be required. The biologist shall have the ability to stop construction if nesting adults show any sign of distress.
- All hollow vertical tubes, such as solar mount poles and chain-link fence poles, will be capped upon installation to prevent the entrapment of migratory birds.

Page 3.4-60, Discussion of Impact BIO-1, Operation Impacts, is revised as follows:

Operation

Vegetation maintenance around solar arrays could result in the disturbance and destruction of badger and burrowing owl dens and burrows, which could lead to abandonment and death of young and/or adults present within burrows. These activities have the potential to result in significant impacts because they could reduce the population size of local species identified as candidate, sensitive, or special-status species through direct mortality. For the reasons stated above under the analysis of construction impacts, impacts would less than significant with implementation of project-specific Mitigation Measures BIO-1c, ~~and~~ BIO-1e, and BIO-1f, consistent with the Community Plan EIR conclusion. ***No new or substantially more severe significant impacts would result beyond those identified in the previous EIR.***

Page 3.4-60 is revised as follows:

Bird deaths have been reported at solar power collection facilities in the California desert (Clarke 2013). The deaths of migrating waterfowl and other birds have been postulated to be the result of a "lake effect" in which birds mistake reflections from massed solar arrays for water. According to this hypothesis, upon landing, the birds are either directly preyed upon or unable to become airborne again and die of exposure and starvation. The causes of death documented at solar facilities include solar flux, impact trauma, predation trauma, electrocution, and emaciation; however, the cause of death is often unknown (~~Kagan et al. 2014 in Watson~~ Walston et al. 2015).The development of photovoltaic (PV) utility-scale solar energy (USSE) in the desert Southwest of the United States of America (USA) was thought to have the potential to negatively affect birds through habitat loss, habitat fragmentation, and collision mortality with infrastructure, similar to other forms of energy development. Although bird mortality was anticipated, the discovery of stranded or dead waterbirds was not expected as PV USSE facilities do not contain water-settling ponds as are found with other types of energy development (Kosciuch et al. 2021).

Page 3.4-64, Discussion of Impact BIO-2, Construction and Operation Impacts, is revised as follows:

Construction

The aquatic resource delineation (Draft SEIR Appendix 3.04-2) did not identify any potential federal CWA Section 404 and 401 USACE/RWQCB jurisdictional resources within the solar project site based on the current regulation defining the extent of waters of the United States (discussed on Draft SEIR pages 3.4-39 through 3.4-41). Therefore, the solar project site would not have an effect on federally protected wetlands through direct removal, filling, hydrological interruption, or other means. The solar project site contains a potential~~ly~~ State jurisdictional ephemeral drainage within the southeastern portion. This feature was also identified in the Community Plan EIR as an intermittent wash (Community Plan EIR Exhibit 5.8-3). The solar project ~~has been designed to avoid~~ proposes a vehicular access point off Billy Wright Road that could intercept with this feature (see Figure 2-2 in Chapter 2, *Project Description*), although the applicant is exploring ways to avoid doing so (e.g., installing an above-ground crossing). ~~In addition, this feature would be avoided during gen-tie line construction and decommissioning on the solar project site.~~ Therefore, the solar project ~~site would not~~ could have an effect on State- ~~or federally~~ protected ~~wetlands~~ aquatic resources through direct removal, filling, hydrological interruption, or other means. ~~Therefore, impacts from the solar project construction would be less than significant, consistent with the Community Plan EIR conclusion. ***No new or substantially more severe significant impacts would result beyond those identified in the previous EIR and no additional mitigation would be required.*** The solar project would not be required to implement Community Plan EIR Mitigation Measure 5.8-5 because on-site jurisdictional waters would be avoided.~~ As discussed above, the Community Plan EIR also identified impacts to jurisdictional waters as significant, and included Community Plan EIR Mitigation Measure 5.8-5 to mitigate the impact to a less-than-significant level. Community Plan EIR Mitigation Measure 5.8-5 is largely tailored to mitigating impacts on federally jurisdictional wetlands, which are not present on the solar project site. Therefore, the solar project would implement project-specific Mitigation Measure BIO-1h, which is based on Community Plan EIR Mitigation Measure 5.8-5 but tailored to mitigating impacts on State-jurisdictional features, in lieu of Community Plan EIR Mitigation Measure 5.8-5. With implementation of project-specific Mitigation Measure BIO-1-h, ***no new or substantially more severe significant impacts would result beyond those identified in the previous EIR.***

Operation

Operation of the solar project would not result in any additional land disturbance beyond what would occur during construction. ~~Avoidance of the potentially State jurisdictional ephemeral stream within the southeastern portion of the site would occur during operation as well as construction.~~ For the~~se~~ reasons stated above under *Construction*, project operation would not have a substantial adverse effect on ~~State or~~ federally protected wetlands (including, but not limited to, marshes, vernal pools, and coastal areas) through direct removal, filling, hydrological interruption, or other means, but could have an adverse effect on potential State-jurisdictional features. With implementation of project-specific Mitigation Measure BIO-1-h, ***no new or substantially more severe significant impacts would result beyond those identified in the previous EIR.*** ~~Therefore, impacts from the solar project operation would be less than significant, consistent with the Community Plan EIR conclusion.~~ ***~~No new or substantially more severe significant impacts would result beyond those identified in the previous EIR and no additional mitigation would be required.~~*** ~~The solar project would not be required to implement Community Plan EIR Mitigation Measure 5.8-5 because on-site jurisdictional waters would be avoided.~~

The following mitigation measure is recommended to reduce impacts on potential State-jurisdictional aquatic resources to a less-than-significant level.

Mitigation Measure BIO-1h: Comply With Requirements for Jurisdictional Aquatic Resources

The project applicant shall secure and comply with the following permits and regulatory approvals, as necessary, before conducting any construction activities associated with the proposed project that may impact jurisdictional aquatic resources, as verified by the Merced County Department of Public Works prior to the issuance of a construction permit:

1. Lake or Streambed Alteration Agreement with the California Department of Fish and Wildlife under Section 1600 et seq. of the California Fish & Game Code for impacts to any river, stream, or lake.

2. Waste Discharge Requirements, or a waiver therefrom, from the Central Valley Regional Water Quality Control Board for activities affecting waters of the state. For other mitigation measures aimed at maintaining water quality, including obtaining National Pollutant Discharge Elimination System (NPDES) permits, see Mitigation Measure WQ-1 in "Hydrology and Water Quality."

Page 3.4-70, Project-Specific Avoidance and Minimization Measure BIO-1g, is revised as follows:

Mitigation Measure BIO-1g: Avoid and minimize impacts on Tule Elk and Mountain Lions

To avoid and minimize the impact on tule elk and mountain lion movement in the project area, the project applicant shall coordinate with CDFW to implement measures that benefit tule elk and mountain lion. This shall include installation of one or more water guzzlers within the project region that will provide a source of drinking water for wildlife, including tule elk and mountain lions. The final locations of the guzzlers shall be determined in coordination with CDFW. ~~These may include the measures described below. Measures agreed~~

~~upon by CDFW and the project applicant shall be initiated~~ Water guzzlers shall be installed prior to the completion of construction activities, as verified by the Merced County Department of Public Works prior to ~~the issuance of a construction permit~~ operations.

- ~~Identify areas of fencing in the project region that may act as an impediment to the north/south movement of large animals like tule elk and mountain lions. Where feasible, fencing that creates a barrier to movement may be removed or reconstructed such that large animals, including tule elk and mountain lions, can cross these areas unimpeded.~~
- ~~Determine the appropriateness and location of one or two water guzzlers within the project region that will provide a source of drinking water for wildlife, including tule elk and mountain lions.~~
- ~~Conduct or fund additional studies on wildlife connectivity and movement patterns along SR 152 within Merced County.~~

Page 3.4-71, Discussion of Impact BIO-3, Decommissioning Impacts, is revised as follows:

Decommissioning

Decommissioning of the solar project would involve a substantial amount of disturbance, which could be equivalent to the disturbance that occurred during construction, resulting in nest and burrow abandonment and failure as well as direct injury or mortality for wildlife. For the reasons stated above under the analysis of Impact BIO-1, with implementation of project-specific Mitigation Measures BIO-1a through BIO-1d, BIO-1f, and BIO-1g, impacts from solar project decommissioning would be less than significant, consistent with the Community Plan EIR conclusion. ***No new or substantially more severe significant impacts would result beyond those identified in the previous EIR.***

Section 3.5, Cultural Resources

The following text has been added under the third paragraph of page 3.5-9:

On October 10, 2023, staff at the CCIC conducted a supplemental records search and literature review for the off-site mitigation site area and a 0.25-mile buffer surrounding the mitigation site. The records search indicated that four previous studies have been conducted within the last 10 years at the off-site mitigation site. The studies are clustered in the northern portion of the off-site mitigation site. No previous studies have been conducted in the southern half of the off-site mitigation site.

The final paragraph on page 3.5-13 has been revised as follows:

The proposed project would establish an off-site mitigation site in an area of ~~approximately~~ at least 1,498 acres located south of the solar project site. The size of the off-site mitigation site may be increased based on ongoing consultation with CDFW.

With the exception of invasive plant species abatement and overland vehicle travel by biological monitors, no ground disturbance or construction would be required on the off-site mitigation site; rather, the site would be placed into a conservation easement in perpetuity and the land managed for the benefit of the San Joaquin kit fox and other covered species, as necessary. Invasive plant species abatement and overland vehicle travel would involve minimal to no ground disturbance. No new cultural resources surveys were conducted for

the off-site mitigation site due to lack of access. A records search conducted for the off-site mitigation site indicates that there are 22 known cultural resources in the area and that approximately half of the off-site mitigation site has not been previously surveyed for cultural resources. Even though invasive plant species abatement and overland vehicle travel would require minimal ground disturbance, there is still potential for project activities to impact significant known and/or unknown cultural resources. Specific locations of project related activities to be conducted on the off-site mitigation site, and the extent of disturbance resulting from those activities are currently unknown. Therefore, the establishment of and conservation activities on the mitigation site could result in new or substantially more severe significant impacts on historical resources beyond those identified in the previous EIR and therefore, additional mitigation would be required in the form of Mitigation Measure CUL-2 and Mitigation Measure CUL-3. With implementation of these mitigation measures, the impact would be less than significant, consistent with the Community Plan EIR conclusions. Therefore, ***with implementation of project-specific mitigation, no new or substantially more severe significant impacts would result beyond those identified in the previous EIR.***

Section 3.15, Public Services

The following text has been added under the third full paragraph of page 3.15-10:

Other Governmental Facilities

As described in Chapter 2, *Project Description*, two San Luis Water District (SLWD) water lines and corresponding easements cross through the solar project site, including a 70-foot-wide easement that crosses through the western portion of the solar project site and a 30-foot-wide easement that crosses southeast–northwest through the central portion of the solar project site. Other SLWD facilities including pipelines, water delivery turnouts, electrical cables, telemetry cables, and other facilities and their corresponding easements cross the solar project site. All easements already recorded would be honored. The applicant would not interfere with SLWD easements without permission from the District, consistent with background principles of California real estate law. Further, as a Condition of Approval, prior to the initiation of construction activities, the project applicant would enter into a Limited Crossing Consent with SLWD to ensure all project facilities, structures, and improvements that cross or otherwise involve SLWD easements do not interfere with operation or maintenance of SLWD facilities. The Limited Crossing Consent would identify features to avoid incompatible uses, such as the installation of protective bollards around turnouts and other water delivery facilities and the installation of fencing around SLWD-owned above-ground equipment. Therefore, the project would not result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities or the need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, to maintain acceptable service ratios, response times, or other performance objectives for SLWD facilities. ***No new or substantially more severe significant impacts would result beyond those identified in the previous EIR and no additional mitigation would be required.***

The following text has been added under the third full paragraph of page 3.15-12:

Other Governmental Facilities

For the reasons stated above under the *Construction* analysis, operation of the solar project would not interfere with existing SLWD easements or infrastructure. Therefore, the project would not result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities or the need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, to maintain acceptable service ratios, response times, or other performance objectives for SLWD facilities. ***No new or substantially more severe significant impacts would result beyond those identified in the previous EIR and no additional mitigation would be required***.

Section 3.19, Utilities

The following paragraph has been added after the paragraph beginning on page 3.19-14:

No new or expanded water or wastewater treatment, storm water drainage, natural gas, or telecommunications facilities would be needed for operation of the project. Project construction and operation water may be supplied through a Construction Water Agreement and Water Management Agreement request to the SLWD. As an alternative, construction and operation water supply could be sourced from an existing private irrigation well on AKT's Mid-Cal property (known as the Mid-Cal well) through a pumping purchase agreement with AKT to allow for use of the pumped groundwater. No new wells would be drilled and no existing wells would be modified to serve the proposed project. As noted in the Project Description, one 5,000-gallon water tank would be permanently installed in the northwest portion of the solar project site to store water for panel washing, irrigation of the vegetated screen, and fire flow and would not require treatment. Increases in storm water discharge for the Billy Wright Road Drainage at the I-5 crossing would be absorbed into the on-site soils and therefore would not be significant. The nominal changes in peak discharge and runoff volume are not anticipated to exceed the capacity of the existing culvert. No new stormwater facilities are planned for construction. The project would not require modifications to wastewater treatment, storm drainage, or natural gas facilities, as the construction and operation of the solar project would not require connections to these utilities. Community Plan Mitigation Measure 5.7-2 applies to subdivision maps and would not apply to the solar project. Community Plan Mitigation Measure 5.7-6 applies to projects that would require building permits and use recycled water, and would not apply to the solar project.

As described in Chapter 2, *Project Description*, two San Luis Water District (SLWD) water lines and corresponding easements cross through the solar project site, including a 70-foot-wide easement that crosses through the western portion of the solar project site and a 30-foot-wide easement that crosses southeast-northwest through the central portion of the solar project site. Other SLWD facilities including pipelines, water delivery turnouts, electrical cables, telemetry cables, and other facilities and their corresponding easements cross the solar project site. All easements already recorded would be honored. The applicant would not interfere with SLWD easements without permission from the District, consistent with background principles of California real estate law. Further, as a Condition of Approval, prior

to the initiation of construction activities, the project applicant would enter into a Limited Crossing Consent with SLWD to ensure all project facilities, structures, and improvements that cross or otherwise involve SLWD easements do not interfere with operation or maintenance of SLWD facilities. The Limited Crossing Consent would identify features to avoid incompatible uses, such as the installation of protective bollards around turnouts and other water delivery facilities, and the installation of fencing around SLWD-owned above-ground equipment. Therefore, the project would not require or result in the relocation or construction of new or expanded SLWD water facilities to serve other SLWD customers, the construction or relocation of which could cause significant environmental effects. Therefore, impacts from operation of the solar project would be less than significant and would not exceed the significant and unavoidable impacts identified in the Community Plan EIR. ***No new or substantially more severe significant impacts would result beyond those identified in the previous EIR and no additional mitigation would be required***.

Page 3.19-26 has been revised as follows:

Waste disposal during the operation period would be consistent with applicable federal, state, and local recycling, reduction, and waste requirements and policies. Over the 35-year operational period, waste would be disposed of at the Billy Wright Landfill (with permitted capacity expected to be reached in 2054) and the Highway 59 Landfill site (with permitted capacity expected to be reached in 2030). These landfills would have sufficient capacity to accept anticipated project-generated waste since both landfills are permitted to receive 1,500 tons of waste per day each. The project's operational waste generation would be negligible compared to the permitted capacity of the landfills that serve the solar project area. Operation of the solar project would not generate solid waste in excess of state or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals. Project operation would comply with federal, state, and local management and reduction statutes and regulations related to solid waste. However, both landfills are expected to close prior to the project's decommissioning date in 2060. No other landfills with disposal capacity beyond 2054 have been identified in Merced County. Counties are required, under the California Integrated Waste Management Act, to prepare a Countywide Integrated Waste Management Plan that demonstrates sufficient capacity is available to serve all jurisdictions in the County. To comply with the California Integrated Waste Management Act, discussed in the Regulatory Setting above, Merced County would be required to continue to demonstrate, over a five-year reporting cycle, it has at least 15 years of remaining landfill capacity available in the County. In its June 17, 2024, comment letter on the Draft SEIR, the Regional Waste Authority indicated that it plans to update its current 15-year plan within the next 18–36 months (Guzman pers. comm.). Given this requirement as part of long-term strategic planning efforts, it is expected that additional landfill or other solid waste disposal capacities would be identified to address disposal demand following closure of these landfills and that the Project would utilize available capacity in regional landfills or other available solid waste facilities between 2054-2060. Nonetheless, because landfill capacity in the County has not been identified beyond 2054 and the project would operate until 2060, it is conservatively concluded that, as disclosed in the Community Plan EIR, operational impacts would be significant and unavoidable.

Chapter 4, Alternatives Analysis

The following changes in the text (bullet list) in Section 4.2, Significant Impacts, on pages 4-1 through 4-4, have been made so that the summary list correctly reflects the findings of the EIR text:

- **Impact AES-1:** Potential to substantially degrade the existing visual character or quality of public views of the site and its surroundings (in nonurbanized areas), including scenic vistas. The solar project would introduce solar facilities within scenic vistas.
- **Impact AES-2:** Potential to substantially damage scenic resources (including trees, rock outcroppings, and historic buildings) within a state scenic highway. The solar project would introduce solar facilities within viewsheds from State Route (SR), a scenic highway.
- **Impact AES-3:** Introduction of a new source of substantial light or glare that would adversely affect daytime or nighttime views in the area. The solar project would introduce nighttime construction lighting near adjacent residential uses.
- **Impact AQ-1:** Conflict with or obstruct implementation of the applicable air quality plan. Impacts from future development within the off-site residential redesignation area would continue to be significant and unavoidable but would not exceed the significant and unavoidable impacts identified in the Community Plan EIR.
- **Impact AQ-2:** Result in a cumulatively considerable net increase of any criteria pollutant for which the project is a nonattainment area for an applicable federal or state ambient air quality standard. Impacts from future development within the off-site residential redesignation area would continue to be significant and unavoidable but would not exceed the significant and unavoidable impacts identified in the Community Plan EIR.
- **Impact AQ-3:** Expose sensitive receptors to substantial pollutant concentrations. Grading for the solar project could release spores of the *Coccidioides immitis* fungus, including additional grading outside the Community Plan area.
- **Impact AQ-4:** Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people. Impacts from future development within the off-site residential redesignation area would continue to be significant and unavoidable but would not exceed the significant and unavoidable impacts identified in the Community Plan EIR.
- ~~**Impact BIO-1:** Potential to adversely effect, either directly or through habitat modifications, on any special-status species. Construction and operation of the solar project could adversely affect golden eagle, Swainson's hawk, western burrowing owl, loggerhead shrike, American badger, and San Joaquin kit fox, including within potential habitat areas outside the Community Plan area.~~
- ~~**Impact BIO-3:** Potential disruption of wildlife movement corridor. Solar project features and lighting could disturb wildlife movement through the project area, including areas outside the Community Plan area.~~
- ~~**Impact CUL-1:** Potential to cause a substantial adverse change in the significance of a historical resource. Construction activities for the solar project could encounter unknown historical resources, including within areas outside the Community Plan area.~~
- ~~**Impact CUL-2:** Potential to cause a substantial adverse change in the significance of an archaeological resource. Construction activities for the solar project could encounter unknown archaeological resources, including within areas outside the Community Plan area.~~

- ~~**Impact CUL-3:** Disturbance of any human remains, including those interred outside of formal cemeteries. Construction activities for the solar project could encounter unknown human remains, including within areas outside the Community Plan area.~~
- ~~**Impact GEO-1:** Direct or indirect exposure of people or structures to potential substantial adverse effects involving strong seismic ground shaking, seismic-related ground failure, including liquefaction, or landslides. The solar project would introduce structures that are susceptible to strong seismic ground shaking and damage, including structures within areas outside the Community Plan area.~~
- ~~**Impact GEO-2:** Potential to result in substantial soil erosion or the loss of topsoil. Grading for the solar project could cause erosion, including additional grading outside the Community Plan area.~~
- ~~**Impact GEO-3:** Placement of project-related facilities on a geologic unit or soil that is unstable or that would become unstable as a result of the project and potentially result in an onsite or offsite landslide, lateral spreading, subsidence, liquefaction, or collapse. The solar project would introduce structures that are susceptible to seismic hazards and damage, including structures within areas outside the Community Plan area.~~
- ~~**Impact GEO-4:** Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property. The solar project would introduce structures that are susceptible to damage from expansive soils, including structures within areas outside the Community Plan area.~~
- ~~**Impact GEO-5:** Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature. Construction activities for the solar project could encounter unknown paleontological resources, including within areas outside the Community Plan area.~~
- ~~**Impact HAZ-3:** Emit hazardous emissions or involve handling hazardous or acutely hazardous materials, substances, or waste within 0.25 mile of an existing or proposed school. If future schools within the Community Plan area are constructed near the solar project, the schools could be exposed to health and safety impacts from solar project pipelines and electrical transmission lines.~~
- ~~**Impact WQ-1:** Violation of any water quality standard or WDR. Construction activities for the solar project could impair surface and groundwater quality, including within areas outside the Community Plan area.~~
- ~~**Impact WQ-5:** Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan. Construction activities for the solar project could impair surface and groundwater quality, including within areas outside the Community Plan area.~~
- ~~**Impact LU-2:** Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project adopted for the purpose of avoiding or mitigating an environmental effect. Because of the project-specific significant impacts included in this list, the project could conflict with County General Plan and Community Plan policies adopted for the purpose of avoiding or mitigating an environmental effect.~~
- **Impact NOI-1:** Generation of a substantial temporary or permanent increase in existing ambient noise levels in the project vicinity. The solar project could require emergency generator testing, which could result in noise levels that exceed the County's allowable noise levels.

- ~~**Impact TCR-1:** Impact a tribal cultural resource, defined in Public Resources Code section 21074, resources listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1. Construction activities for the solar project could encounter unknown tribal cultural resources, including within areas outside the Community Plan area.~~
- **Impact UT-1:** Construction or relocation of new water or wastewater treatment facilities, electric power, natural gas or telecommunication facilities, or expansion of existing facilities, with the potential to cause significant environmental effects. Impacts from future development within the off-site residential redesignation area would continue to be significant and unavoidable but would not exceed the significant and unavoidable impacts identified in the Community Plan EIR.
- **Impact UT-2:** Sufficient available water supplies to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years. Impacts from future development within the off-site residential redesignation area would continue to be significant and unavoidable but would not exceed the significant and unavoidable impacts identified in the Community Plan EIR.
- **Impact UT-3:** Project-related exceedance of existing wastewater treatment capacity. Impacts from future development within the off-site residential redesignation area would continue to be significant and unavoidable but would not exceed the significant and unavoidable impacts identified in the Community Plan EIR.
- **Impact UT-4:** Project-related exceedance of the relevant landfill's permitted capacity. Landfill capacity in the County has not been identified beyond 2054. It is unknown whether sufficient landfill capacity will exist to serve project operation and decommissioning between 2054 and 2060.
- **Impact UT-5:** Inconsistency with federal, state, and local statutes and regulations related to solid waste. Landfill capacity in the County has not been identified beyond 2054. It is unknown whether sufficient landfill capacity will exist to serve project operation and decommissioning between 2054 and 2060.
- ~~**Impact WF-3:** Require the installation or maintenance of associated infrastructure that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment. Construction and operation of the solar project would introduce equipment, including Li-ion batteries, that could exacerbate the risk of wildfire, including in areas outside the Community Plan.~~

The following text has been added to the discussion of the Relocated Residential Redesignation Alternative on pages 4-6 and 4-7 of the Draft SEIR:

> The County considered whether a Relocated Residential Redesignation Alternative that would upzone other parcels within the Community Plan area located further from the Billy Wright Landfill would be feasible. Although all of the project-specific significant impacts are related to the solar project, and none of are related to the off-site residential redesignation, this alternative was considered in response to comments received on the Notice of Preparation (NOP).
>
> One of the objectives of the Community Plan was "provide a diverse range and style of single- and multi-family housing units that reflect a variety of socioeconomic and design characteristics". The proposed off-site residential redesignation is proposed by the County in order to continue to meet this objective of the Community Plan.

The Community Plan area includes approximately 1,903 acres of land designated for low-density residential use. Approximately ~~The majority (approximately~~ 611 acres~~)~~ (or approximately 1/3 of those 1,903 acres) are located within the solar project site. The remaining low-density areas are located north of SR 152, west of the PG&E substation, and south and southeast of the Billy Wright Landfill. The land north of SR 152 does not provide sufficient acreage to upzone to maintain overall housing capacity, given the amount residential acreage that would be occupied by the solar project. The land west of the PG&E substation is not a desirable or compatible location for increased density given its location adjacent to the Community Plan's open space preserve. This leaves the land south and southeast of the Billy Wright Landfill as the only area available for upzoning. Therefore, this alternative was rejected as infeasible because no other parcels suitable for upzoning exist within the Community Plan area.

The following text has been added to the discussion of the Environmentally Superior Alternative on page 4-35 of the Draft SEIR:

Based on the assessment included within this chapter, the Reduced Footprint Alternative is considered the Environmentally Superior Alternative. This alternative would reduce the area available to locate solar panels in the southern portion of the solar project site that abuts the Billy Wright Landfill by approximately 60 acres. Because of the reduced amount of temporary and permanent ground disturbance, and the reduced scale of construction activities, this alternative would reduce, but would not avoid, the project's significant impacts on air quality, biological resources, cultural resources, geology and soils, hydrology and water quality, water supply, and tribal cultural resources. Because of the reduced number of solar arrays, this alternative would reduce, but would not avoid, the project's significant impacts on hazards and hazardous materials, land use and planning, water supply, solid waste, and wildfire. The only significant impact of the project that would not be reduced under this alternative is the impact on aesthetics, since that impact would occur in the northern portion of the project site. Like the project, this alternative would still have a significant and unavoidable impact on landfill capacity, due to the waste that would be generated in 2060 during decommissioning of the solar project, but the significant impact would be reduced. However, by setting aside space on the solar project site that could accommodate a future expansion of the Billy Wright Landfill, the Reduced Footprint Alternative could facilitate a long-term solution to addressing the County's solid waste capacity needs beyond 2054. In sum, impacts in 12 resource areas would be reduced under the Environmentally Superior Alternative, including 9 of the significant impacts that would occur under the project.

Chapter 5, Other Required CEQA Considerations

The following changes in the text (bullet list)in Section 5.5, Significant and Unavoidable Impacts, on pages 5-28 through 5-30, have been made so that the summary list correctly reflects the findings of the EIR text:

~~5.5.1 Significant and Unavoidable Impacts Identified in Previous EIR~~

As discussed in Chapter 3, *Impact Analysis*, of this SEIR, the proposed project would result in the following significant and unavoidable impacts, all of which were identified as significant and unavoidable impacts in the Community Plan EIR and included in the Statement of Overriding Considerations (SOC) adopted by the County on September 2, 2008.

- **Impact AES-1:** Potential to substantially degrade the existing visual character or quality of public views of the site and its surroundings (in nonurbanized areas), including scenic vistas. The solar project would introduce solar facilities within scenic vistas.
- **Impact AES-2:** Potential to substantially damage scenic resources (including trees, rock outcroppings, and historic buildings) within a state scenic highway. The solar project would introduce solar facilities within viewsheds from State Route (SR), a scenic highway.
- **Impact AES-3:** Introduction of a new source of substantial light or glare that would adversely affect daytime or nighttime views in the area. The solar project would introduce nighttime construction lighting near adjacent residential uses.
- **Impact AQ-1:** Conflict with or obstruct implementation of the applicable air quality plan. Impacts from future development within the off-site residential redesignation area would continue to be significant and unavoidable but would not exceed the significant and unavoidable impacts identified in the Community Plan EIR.
- **Impact AQ-2:** Result in a cumulatively considerable net increase of any criteria pollutant for which the project is a nonattainment area for an applicable federal or state ambient air quality standard. Impacts from future development within the off-site residential redesignation area would continue to be significant and unavoidable but would not exceed the significant and unavoidable impacts identified in the Community Plan EIR.
- **Impact AQ-3:** Expose sensitive receptors to substantial pollutant concentrations. Grading for the solar project could release spores of the *Coccidioides immitis* fungus, including additional grading outside the Community Plan area.
- **Impact AQ-4:** Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people. Impacts from future development within the off-site residential redesignation area would continue to be significant and unavoidable but would not exceed the significant and unavoidable impacts identified in the Community Plan EIR.
- ~~**Impact BIO-1:** Potential to adversely effect, either directly or through habitat modifications, on any special-status species. Construction and operation of the solar project could adversely affect golden eagle, Swainson's hawk, western burrowing owl, loggerhead shrike, American badger, and San Joaquin kit fox, including within potential habitat areas outside the Community Plan area.~~
- ~~**Impact BIO-3:** Potential disruption of wildlife movement corridor. Solar project features and lighting could disturb wildlife movement through the project area, including areas outside the Community Plan area.~~
- ~~**Impact CUL-1:** Potential to cause a substantial adverse change in the significance of a historical resource. Construction activities for the solar project could encounter unknown historical resources, including within areas outside the Community Plan area.~~
- ~~**Impact CUL-2:** Potential to cause a substantial adverse change in the significance of an archaeological resource. Construction activities for the solar project could encounter unknown archaeological resources, including within areas outside the Community Plan area.~~
- ~~**Impact CUL-3:** Disturbance of any human remains, including those interred outside of formal cemeteries. Construction activities for the solar project could encounter unknown human remains, including within areas outside the Community Plan area.~~

- ~~**Impact GEO-1:** Direct or indirect exposure of people or structures to potential substantial adverse effects involving strong seismic ground shaking, seismic-related ground failure, including liquefaction, or landslides. The solar project would introduce structures that are susceptible to strong seismic ground shaking and damage, including structures within areas outside the Community Plan area.~~
- ~~**Impact GEO-2:** Potential to result in substantial soil erosion or the loss of topsoil. Grading for the solar project could cause erosion, including additional grading outside the Community Plan area.~~
- ~~**Impact GEO-3:** Placement of project-related facilities on a geologic unit or soil that is unstable or that would become unstable as a result of the project and potentially result in an onsite or offsite landslide, lateral spreading, subsidence, liquefaction, or collapse. The solar project would introduce structures that are susceptible to seismic hazards and damage, including structures within areas outside the Community Plan area.~~
- ~~**Impact GEO-4:** Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property. The solar project would introduce structures that are susceptible to damage from expansive soils, including structures within areas outside the Community Plan area.~~
- ~~**Impact GEO-5:** Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature. Construction activities for the solar project could encounter unknown paleontological resources, including within areas outside the Community Plan area.~~
- ~~**Impact HAZ-3:** Emit hazardous emissions or involve handling hazardous or acutely hazardous materials, substances, or waste within 0.25 mile of an existing or proposed school. If future schools within the Community Plan area are constructed near the solar project, the schools could be exposed to health and safety impacts from solar project pipelines and electrical transmission lines.~~
- ~~**Impact WQ-1:** Violation of any water quality standard or WDR. Construction activities for the solar project could impair surface and groundwater quality, including within areas outside the Community Plan area.~~
- ~~**Impact WQ-5:** Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan. Construction activities for the solar project could impair surface and groundwater quality, including within areas outside the Community Plan area.~~
- ~~**Impact LU-2:** Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project adopted for the purpose of avoiding or mitigating an environmental effect. Because of the project-specific significant impacts included in this list, the project could conflict with County General Plan and Community Plan policies adopted for the purpose of avoiding or mitigating an environmental effect.~~
- **Impact NOI-1:** Generation of a substantial temporary or permanent increase in existing ambient noise levels in the project vicinity. The solar project could require emergency generator testing, which could result in noise levels that exceed the County's allowable noise levels.

- ~~**Impact TCR-1:** Impact a tribal cultural resource, defined in Public Resources Code section 21074, resources listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1. Construction activities for the solar project could encounter unknown tribal cultural resources, including within areas outside the Community Plan area.~~
- **Impact UT-1:** Construction or relocation of new water or wastewater treatment facilities, electric power, natural gas or telecommunication facilities, or expansion of existing facilities, with the potential to cause significant environmental effects. Impacts from future development within the off-site residential redesignation area would continue to be significant and unavoidable but would not exceed the significant and unavoidable impacts identified in the Community Plan EIR.
- **Impact UT-2:** Sufficient available water supplies to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years. Impacts from future development within the off-site residential redesignation area would continue to be significant and unavoidable but would not exceed the significant and unavoidable impacts identified in the Community Plan EIR.
- **Impact UT-3:** Project-related exceedance of existing wastewater treatment capacity. Impacts from future development within the off-site residential redesignation area would continue to be significant and unavoidable but would not exceed the significant and unavoidable impacts identified in the Community Plan EIR.
- **Impact UT-4:** Project-related exceedance of the relevant landfill's permitted capacity. Landfill capacity in the County has not been identified beyond 2054. It is unknown whether sufficient landfill capacity will exist to serve project operation and decommissioning between 2054 and 2060.
- **Impact UT-5:** Inconsistency with federal, state, and local statutes and regulations related to solid waste. Landfill capacity in the County has not been identified beyond 2054. It is unknown whether sufficient landfill capacity will exist to serve project operation and decommissioning between 2054 and 2060.
- ~~**Impact WF-3:** Require the installation or maintenance of associated infrastructure that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment. Construction and operation of the solar project would introduce equipment, including Li-ion batteries, that could exacerbate the risk of wildfire, including in areas outside the Community Plan.~~

~~5.5.2 Project Significant and Unavoidable Impacts~~

Appendices

New Appendix 3.4-6, *Biological Technical Report for Proposed Mitigation Lands,* is included as Appendix A of this Final SEIR.

Revised Draft SEIR Appendix 1-1, *Proposed Draft HCP Avoidance and Minimization Measures,* is included as Appendix B of this Final SEIR.

The *Take Avoidance Plan for the PG&E Substation Modifications for the Las Camas Solar Project* is included as Appendix C of this Final SEIR.

The *Adequacy of Biological Surveys for the Las Camas Solar Project* memo is included as Appendix D of this Final SEIR.

The *2024 California Tiger Salamander Habitat Assessment* is included as Appendix E of this Final SEIR.

Chapter 4
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Shijo, Wayne. WK Shijo Consulting, LLC, Sacramento, CA. July 25, 2024—email (Response to 7/12/24 Merced County Regional Waste Authority Comment C) with attachment to Heidi Mekkelson, ICF International.

Appendix A

New Appendix 3.4-6, Biological Technical Report for Proposed Mitigation Lands

LAS CAMAS SOLAR PROJECT

BIOLOGICAL TECHNICAL REPORT FOR PROPOSED MITIGATION LANDS

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Acronyms and Abbreviations

asl	above sea level
BBS	Breeding Bird Survey
BTR	biological technical report
CALVEG	Classification and Assessment with LANDSAT of Visible Ecological Groupings
CBC	Christmas bird count
CDFW	California Department of Fish and Wildlife
CEQA	California Environmental Quality Act
CNDDB	California Natural Diversity Database
CNRA	California Natural Resources Agency
ESA	Endangered Species Act
GPS	Global Positioning System
HCP	habitat conservation plan
I-5	Interstate 5
MW	megawatt
NWI	National Wetland Inventory
NOAA	National Oceanic and Atmospheric Administration
NRCS	Natural Resources Conservation Service
Resevoir	Los Banos Creek Reservoir
USFS	U.S. Forest Service
USFWS	U.S. Fish and Wildlife Service
USGS	U.S. Geological Survey

Chapter 1
Introduction

EDPR CA Solar Park III, LLC, a wholly owned subsidiary of EDPR CA Solar Park III, LLC, North America, LLC, is proposing to develop the Las Camas Solar Project in Merced County, California. The project, which would generate up to 200 megawatts (MW) of electricity, would consist of photovoltaic solar arrays, a substation, and associated infrastructure (e.g., roads, battery storage systems, electrical transmission lines) within a 1,279-acre permit area. Impacts from project development are anticipated to affect several species, including San Joaquin kit fox (*Vulpes macrotis mutica*; federal endangered, state threatened), Swainson's hawk (*Buteo swainsonii*; state threatened), burrowing owl (*Athene cunicularia*; state species of special concern), and tule elk (*Cervus canadensis nannodes*), a big-game species of conservation interest. Conservation easements are used as habitat-based compensatory mitigation strategies to mitigate impacts on listed species, in compliance with Section 10(a)(1)(B) of the Endangered Species Act (ESA) and Section 15370 of the California Environmental Quality Act (CEQA).

A draft habitat conservation plan (HCP) has been developed to assess the potential effects construction, operation, and decommissioning could have on San Joaquin kit fox and devise a conservation strategy that would avoid, minimize, and mitigate those effects to the maximum extent practicable. One of the biological goals and objectives of the HCP is to increase the quantity and quality of kit fox habitat that is under permanent protection in western Merced County.

This biological technical report (BTR) describes the baseline biological conditions and habitat suitability of a proposed conservation easement (i.e., mitigation site) to mitigate impacts in the project permit area. Specifically, this BTR describes historical and current land uses, vegetation communities, invasive plant or animal species, soil types, water features such as streams or wetlands, habitats of special-status and common species, observations of special-status species, species survey results, and development on the mitigation site, along with other threats to biological resources (California Department of Fish and Wildlife [CDFW] 2023). The BTR provides details regarding the baseline condition of the habitat as well as information regarding occurrences of San Joaquin kit fox, Swainson's hawk, burrowing owl, and tule elk. It also describes how the mitigation site would benefit conservation of these species.

Environmental Setting

The 2,586-acre mitigation site is located along the western edge of the San Joaquin Valley, within two broad ecoregions (Griffith et al. 2016). The eastern portion of the mitigation area is within the Westside Alluvial Fans and Terraces of the Central California Valley Ecoregion, which is characterized by annual grasslands and gently sloping terraces and alluvial fans. The western portion of the mitigation area is within the Eastern Hills of the Central California Foothills and Coastal Mountain Ecoregion, which is characterized by low, steep mountains and foothills on the eastern side of the Diablo Range.

Historically, the conversion of native habitats to agricultural uses focused on areas east of Interstate 5 (I-5), toward the central portion of the San Joaquin Valley (Elkind et al. 2016). Therefore, the areas on the periphery of the valley that were left untilled due to poor soils, arability, or other factors that precluded agriculture were most often used for ranching or left as open space or areas for other types of development (e.g., water projects). Urban development, exurban expansion, and solar energy

development have stretched into the periphery of the valley to accommodate growing populations and respond to California's renewable energy initiatives (e.g., Senate Bills 100 and 1020). In addition, concerns have emerged over climate change and its threat to a number of broad resources in the valley, including agricultural operations, ecosystems, and water resources (Fernandez-Bou et al. 2021).

The environmental setting within 5 miles of the mitigation site is mostly rural, with the nearest community, Los Banos (population of 47,044 in 2022), located 3.65 miles to the northeast at its nearest point. The 620-acre Los Banos Creek Reservoir (Reservoir), managed by California State Parks as a State Recreation Area, is directly adjacent to the mitigation site (Bureau of Reclamation and California Department of Parks and Recreation 2012). Two conservation easements that abut the mitigation site to the west and north are managed by CDFW as open grasslands and closed to the public (Figure 1) (California Natural Resources Agency [CNRA] 2023). The 443-acre Salt Creek Conservation Easement to the west was established in 1997 and 1999, and the 85-acre Los Banos Conservation Easement to the north was established in 1995. The 3,200-acre Agua Fria Multi-Species Conservation Area and Bank, located approximately 2 miles north of the mitigation site, provides credits for San Joaquin kit fox and burrowing owl. The 482-acre Arotzarena Kit Fox Preserve conservation easement connects the Aqua Fria Conservation Area to the Los Banos Creek Reservoir and is managed for the protection and support of San Joaquin kit fox habitat. I-5 borders 0.5 mile of the mitigation site in the northeast corner and divides the primary land uses in the area, with agriculture east of I-5 and livestock grazing west of I-5. Other land uses include the operational 200 MW Wright Solar Park, located approximately 1 mile north of the mitigation site, and the California Aqueduct, located 0.35 mile east at the nearest point. Approximately a dozen homes and several commercial businesses are located within 5 miles of the mitigation site.

CDFW lists continued cattle grazing, expanding urban development, and construction of the proposed Los Banos Grandes Reservoir as threats to special-status species within the mitigation site and 5-mile study area. Los Banos Grandes Reservoir is a proposed water storage and energy project that would be upstream from Los Banos Creek Reservoir. It was initially proposed in 1983 but remains undeveloped and awaiting funding (California Water Code Section 11255).

Mitigation Site Characteristics

The mitigation site encompasses 2,586 acres of privately owned land in western Merced County. Specifically, it is undeveloped open space, consisting nearly entirely of annual grasslands where livestock grazing is the primary land use. Trees and shrubs are absent from the majority of the mitigation site, occurring only along an approximately 59-acre wetland complex in the northeast corner, below the dam at the Reservoir. A historical borrow pit forms the extent of the wetland complex, which extends from the Reservoir spillway, along Los Banos Creek, through an I-5 underpass, to the California Aqueduct. The wetland complex is periodically inundated through water releases from the dam and seasonal precipitation. Annual average precipitation in the vicinity of the mitigation site is low (0.023 inch per year), with the largest rainfall events (more than 0.3 inch per day) between October and March (National Oceanic and Atmospheric Administration [NOAA] 2024). Several tributaries in the eastern half of the mitigation site lead to Salt Creek, which is located along the site's southern border. The elevation increases from approximately 200 feet above sea level (asl) at the eastern end of the mitigation site to 900 feet asl at the western end. The topography is characterized as flat to rolling but interrupted by relatively steeper terrain that forms terraces and incised drainages that lead to the Reservoir and Salt Creek. A steep escarpment along the southern

shore of the Reservoir follows the extent of the mitigation site. Several high-voltage (230- and 500-kilovolt) electrical transmission corridors and an underground pipeline bisect the mitigation site.

Chapter 2
Results

Desktop Assessment

A desktop assessment was conducted at the mitigation site to document biological resources and land uses, compile historical records of species occurrences, and evaluate landscape connectivity and the movement of special-status species. A desktop assessment of publicly available data from state and federal agencies was used to identify and describe biological resources and historical species occurrences within the mitigation site and a 5-mile radius (i.e., study area). Queries included results for all special-status wildlife species,[1] with particular attention to San Joaquin kit fox and Swainson's hawk and their preferred habitats. Queries for land cover, wetlands, and soils were limited to the mitigation site. The primary data sources used to describe habitat associations and map potential habitat for special-status species within the mitigation site are outlined below.

Species Occurrence, Distribution, and Connectivity

- Audubon Christmas Bird Count (CBC) (National Audubon Society 2020)
- Bird Observation Checklist and Hot Spots (eBird 2024)
- California Biogeographic Information and Observation System (CDFW 2024a)
- California Conservation Easement Database (CNRA 2023)
- California Natural Diversity Database (CNDDB) (CDFW 2024b).
- California Wildlife Habitat Relationships Databases (CDFW 2021)
- Critical Linkages: Bay Area & Beyond (Penrod et al. 2013)
- Information for Planning and Consultation (U.S. Fish and Wildlife Service [USFWS] 2024a)
- North American Breeding Bird Survey (U.S. Geological Survey [USGS] 2024)

Other Biological Resources

- Classification and Assessment with LANDSAT of Visible Ecological Groupings (CALVEG) Existing Vegetation: Region 5 – Central Valley (U.S. Forest Service [USFS] 2019)
- National Wetlands Inventory (NWI) (USFWS 2024b).
- Web Soil Survey (Natural Resources Conservation Service [NRCS] 2022).

In addition to publicly available data, results from previous site-specific surveys of the mitigation site and immediate surroundings were reviewed and compiled. Previous surveys of the area included San Joaquin kit fox surveys (Constable et al. 2009), biological surveys for the Wright Solar Park (County of Merced 2014), and raptor nest surveys at the mitigation site (ICF 2022, 2023).

[1] Defined as any species that are legally protected under the federal ESA, California ESA, or other state, federal, and local regulations.

Field Surveys

Three types of field surveys were conducted at the mitigation site to evaluate biological resources. These included remote camera monitoring, raptor nest surveys, and a site reconnaissance survey.

Remote Camera Monitoring

Remote cameras were deployed in April 2024 at the mitigation site to photo document the presence of San Joaquin kit fox (USFWS 1999; Westall and Cypher 2017). Five cameras were secured 1 meter aboveground on metal t-posts in areas with low vegetation. Cameras were installed throughout the mitigation site along swales and drainages that funnel animal movement and serve as dispersal corridors (Westall and Cypher 2017). Two camera models were used, including Browning Dark Ops High-Definition Pro X and Browning Spec Ops Elite HP4, products of Browning Trail Cameras, Arncliffe, Australia. Cameras were motion activated and had an infrared flash to operate at night; cameras were set to three-photo bursts, high sensitivity, and continuous data captures. To attract fox, a long-distance scent lure (Caven's Gusto) was dripped in front of the camera. A three-ounce can of cat food was also placed in front of the camera to provide a novel object for defecation as well as an incentive to remain in the camera's field of view. Cameras were checked within 1 week following installation to ensure operation and swap digital data cards. Cameras remained in the field for 2 weeks, following the minimum recommendations from Westall and Cypher (2017). After deployment, photographs from each camera were inspected, and a list of all species detected by each camera was compiled.

Raptor Nest Surveys

Raptor nest surveys were conducted in spring 2022, 2023 and 2024 to document nest occupancy and potential nesting substrates within and immediately surrounding the mitigation site. In 2022 and 2023, the surveys focused on leased lands in the eastern half of the mitigation site. Six surveys were conducted by vehicle and on foot during two periods, as defined by the Swainson's Hawk Technical Advisory Committee (2000). In 2024, surveys occurred on all leased lands by vehicle and on foot and coincided with the site reconnaissance visit. During all surveys, areas with the highest potential to support raptor nests, including large trees, transmission towers, and rock outcrops along incised drainages, were scanned with the naked eye, binoculars, and a spotting scope to document nest occupancy. For each nest, a Global Positioning System (GPS) location was recorded. Nest occupancy was defined as occupied if evidence of nest tending, with eggs/fragments, nestlings, and/or an adult in incubating/brooding position, was present at the time of the survey or unoccupied if no evidence or characteristics of nest occupancy or nest tending were observed (Bird and Bildstein 2007).

Site Reconnaissance

Consistent with Stage 1 of CDFWs Habitat Management Land Acquisition process, site reconnaissance was conducted at the mitigation site in spring 2024 to document baseline conditions (CDFW 2023). Site reconnaissance evaluated vegetation communities for their suitability to support special-status wildlife species with potential to occur, with an emphasis on San Joaquin kit fox, Swainson's hawk, burrowing owl, and tule elk. Potential wildlife habitat evaluated included vegetation communities, unique topographic and geological features,

potential raptor nesting substrates, and habitat for prey populations. Potential NWI wetlands that were accessible from public roads were inspected, documenting the probable presence (or absence) of wetland vegetation. The predominant vegetative strata and dominant plant species were noted, along with the wetland hydrology (e.g., stream, pond, lake). While conducting the site reconnaissance, the biologist also noted all wildlife observations and dominant plant species. Representative photographs of the mitigation site are presented in Appendix C.

Chapter 3
Results

Desktop Assessment

The desktop assessment resulted in the discovery of numerous documents that described the ecological importance of western Merced County for a number of listed state and federal special-status species, including San Joaquin kit fox, burrowing owl, Swainson's hawk, and tule elk (Elkind et al. 2016; USFWS 2020, USFWS 2024). Large grasslands and reservoirs provide habitat and connectivity for species at the edge of the highly fragmented/modified San Joaquin Valley. Existing conservation easements and mitigation banks, as well as USFWS designated critical habitat, in the vicinity of the mitigation site are indicative of the unique landscape within this portion of the San Joaquin Valley.

California Natural Diversity Database

The CNDDB reported 119 records of special-status species and habitats within 5 miles of the mitigation site. Of these records, 29 records of San Joaquin kit fox, burrowing owl, and Swainson's hawk were located within 5 miles of the mitigation site (Figure 5). Two records of San Joaquin kit fox overlapped the mitigation site. A large area consisting of multiple observations (#145), dating back to the mid-1970s, overlaps the southern portion of the mitigation site, consisting of hundreds of burrows and observations. Multiple sightings of San Joaquin kit fox were documented at a remote camera station (Camera A) in spring 2024 that overlaps the polygon of the CNDDB record. The other kit fox record within the mitigation site (#587) consisted of a single vehicle-related fatality in 1999.

Land Cover

Based on a 2019 review of CALVEG, the dominant land cover type within the mitigation site is herbaceous, making up 99.6 percent of the total acreage (Table 3-1, Figure 2). The herbaceous land cover type is part of the annual grasses and forbs alliance characterized by species of exotic grasses, including species of wild oats (*Avena* spp.), various bromes (*Bromus* spp.), foxtail fescue (*Vulpia myuros*), and Kentucky bluegrass (*Poa pratensis*). Urban, which makes up 0.3 percent, is characterized by more than 50 percent non-vegetated cover along the electrical transmission corridor; barren was located along the exposed soils of Salt Creek.

Table 3-1. Land Cover Types at the Las Camas Mitigation Site, Merced County, California

Type	Acres	% Comp
Herbaceous	2,575.0	99.6
Urban	7.9	0.3
Barren [Rock/Soil/Sand]	3.4	0.1
Total	**2,586.3**	**100**

Wetlands

NWI data indicated approximately 32 acres of wetlands, representing less than 0.01 percent of the total mitigation site acreage (Table 3-2, Figure 3). The majority of wetlands occur as Riverine Wetland (72 percent), as found along the ephemeral drainages and swales throughout the mitigation site. Freshwater Emergent Wetland and Freshwater Pond make up approximately 8.9 acres of the wetland complex in the northeastern corner of the mitigation site, along Los Banos Creek. Open water in the mitigation site is limited to the northeastern wetland complex, which is fed by water releases from the Reservoir.

Table 3-2. Wetlands Located in the Las Camas Mitigation Site, Merced County, California

Wetland Type	Acres	% Comp
Riverine Wetland	22.8	72.0
Freshwater Emergent Wetland	6.2	19.6
Freshwater Pond	2.7	8.4
Total	**31.7**	**100**

Soils

A National Cooperative Soil Survey custom soil report was produced for the mitigation site (NRCS 2024) (Appendix B). The soil report contains map units that delineate areas dominated by one or more major kinds of soil. Soils having profiles that are almost alike make up a soil series having horizons that are similar in composition, thickness, and arrangement. Soil complexes are two or more soil series that occur in such an intricate pattern that they cannot be shown separately on maps. Soil series are divided into soil phases that can differ in the texture of the surface layer, slope, stoniness, salinity, degree of erosion, and other characteristics that affect their use. Most of the areas shown on the detailed soil maps are soil phases.

Soil characteristics in the mitigation site are indicative of moderate to deep well-drained soils on terraces and fan remnants found in the low foothills along the western edge of the San Joaquin Valley. Collectively, the Arburua loam soil series is the most predominant series (25 percent; 631 acres) in the mitigation area, consisting of well-drained, loamy soils that become increasing hard to dig into past 40 inches below the surface. The mitigation site is composed of 25 individual soil phases, of which Los Banos clay loam, 2 to 8 percent slope (13.4 percent); Wisflat-Rock outcrop-Arburua, 30 to 50 percent slope (12.9 percent); Arburua loam, 15 to 30 percent slope (11.9 percent); and San Timoteo-Wisflat sandy loams complex, 8 to 15 percent slope (10.4 percent), make up approximately 50 percent. Parent materials are typically derived from sandstone and shale. The land capability classifications of all soils are greater than Class IV, indicating the soils have low suitability for farmland. They are better suited for rangeland or wildlife habitat; however, 25 percent of the soils would be considered prime farmland if irrigated (Appendix B). Hydric soils that contain properties consistent with aquatic conditions make up approximately 8 percent (200 acres) and are found along Los Banos Creek and Salt Creek (Figure 4).

Regional Bird Data

The mitigation site's unique location in the western San Joaquin Valley, along the grassland foothills of the Diablo Mountains, before the expansive agricultural development of the valley and adjacent to a large perennial water source in an otherwise arid region, results in high bird and wildlife diversity. Long-term datasets from citizen science efforts reflect the bird diversity in the region and species that may also use the grassland and wetland habitats of the mitigation site. Incidental reporting at the Reservoir, a known birding hot spot in the region, reports 161 bird species over 16 years, including 21 special-status species listed or tracked by CDFW (Table 3-3) (eBird 2024). Special-status species documented at the Reservoir included grassland-associated species such as Swainson's hawk, loggerhead shrike, and grasshopper sparrow as well wetland-associated species such as tricolored blackbird. Standardized protocol surveys in the vicinity of the mitigation site recorded many of the same special-status species documented at the Reservoir. A USGS Breeding Bird Survey (BBS) route (Oro Loma #196), located 4 miles east at the nearest point, recorded 76 bird species over 6 years, including 10 special-status species (Table 3-3) (Sauer et al. 2022). The BBS survey route extends through the USFWS Grasslands Management Area, which contains habitats similar to those found on the mitigation site. An Audubon CBC survey area (Los Banos CALS), which overlaps the mitigation site, recorded 248 bird species over 45 years, including 25 special-status species, most of which (76 percent) were also recorded at the Reservoir (Table 3-3) (Audubon 2020). Long-term regional records of special-status bird species in habitats similar to those at the mitigation site indicate the potential for the mitigation site to provide nesting and foraging habitat for Swainson's hawk, burrowing owl, ferruginous hawk, grasshopper sparrow, tri-colored blackbird, and other species of CDFW conservation concern.

Table 3-3. Regional Bird Species Documented during Long-term Survey and Monitoring Programs within the Vicinity of the Mitigation Site, Merced County, California

Common Name	Scientific Name	CDFW Status[a]	LBCR[b]	BBS[b]	CBC[b]
American white pelican	*Pelecanus erythrorhynchos*	SSC	X		X
bald eagle	*Haliaeetus leucocephalus*	FP	X		X
Barrow's goldeneye	*Bucephala islandica*	SSC			X
burrowing owl	*Athene cunicularia*	SSC		X	X
cackling goose (Aleutian)	*Branta hutchinsii leucopareia*	WL			X
California gull	*Larus californicus*	WL	X	X	X
common loon	*Gavia immer*	SSC	X		X
Cooper's hawk	*Accipiter cooperii*	WL	X		X
double-crested cormorant	*Nannopterum auritum*	WL	X		X
ferruginous hawk	*Buteo regalis*	WL	X		X
golden eagle	*Aquila chrysaetos*	FP	X		X
grasshopper sparrow	*Ammodramus savannarum*	SSC	X		
loggerhead shrike	*Lanius ludovicianus*	SSC	X	X	X
long-billed curlew	*Numenius americanus*	WL	X	X	X
Merlin	*Falco columbarius*	WL	X		X
northern harrier	*Circus hudsonius*	SSC	X	X	X

Common Name	Scientific Name	CDFW Status[a]	LBCR[b]	BBS[b]	CBC[b]
Osprey	*Pandion haliaetus*	WL	X		X
prairie falcon	*Falco mexicanus*	WL	X		X
redhead	*Aythya americana*	SSC			X
short-eared owl	*Asio flammeus*	SSC			X
Swainson's Hawk	*Buteo swainsoni*	T	X	X	X
tricolored blackbird	*Agelaius tricolor*	T/SSC	X	X	X
white-faced ibis	*Plegadis chihi*	WL	X		X
white-tailed kite	*Elanus leucurus*	FP	X	X	X
yellow warbler	*Setophaga petechia*	SSC	X	X	X
yellow-headed blackbird	*Xanthocephalus xanthocephalus*	SSC	X	X	X

[a.] FP = Fully Protected; SSC = Species of Special Concern; T = Threatened; WL = Watch List; typically nesting and nesting colonies are protected (CDFW 2024c).

[b.] BBS = USGS Breeding Bird Survey (Sauer et al. 2022); CBC = Audubon Christmas Bird Count (Audubon 2020); LBCR = Los Banos Creek Reservoir (eBird 2024).

Wildlife Movement and Connectivity

A functional network of connected wildlands is essential to continued support of California's diverse natural communities in the face of human development and climate change. Corridors along drainages, valleys, and other features facilitate wildlife movement and connectivity between areas of suitable habitat; the corridors (e.g., linkages) and associated habitats are essential to population viability. Wildlife movement corridors and linkages that connect areas of suitable wildlife habitat are present within the mitigation site.

Multiple conservation planning initiatives modeled wildlife connectivity and movement in the San Joaquin Valley (Penrod et al. 2001; Spencer et al. 2010; Penrod et al. 2013; CDFW 2024). Models identified large areas of relatively natural habitat blocks that support native biodiversity (landscape blocks) and areas essential for ecological connectivity between them (linkages). Ecologically high-value areas within landscape blocks and linkages that lack formal protection but are essential to movement and connectivity were identified as part of the Critical Linkages Network. Although there is no definitive model to evaluate conservation planning opportunities for wildlife, various California assembly bills and pieces of legislation[2] have passed that require wildlife movement and habitat connectivity to be considered during permitting and land management actions.

A coalition of more than 125 organizations built upon previous modeling efforts to identify wildlife movement and habitat connectivity in the nine-county San Fransisco Bay Area and regions to the north and south to identify connectivity to the broader landscape (Penrod et al. 2013). Landscape blocks and linkages were modeled using a hierarchical framework that incorporated biological and human-built environments, including species-specific connectivity models for San Joaquin kit fox, tule elk, and burrowing owl. Potential cores and patches of breeding habitat were identified for each

[2] AB-2785 Wildlife Conservation: Habitat Connectivity (2008); AB-498 Wildlife Conservation: Wildlife Corridors (2015); AB-2087 Regional Conservation Investment Strategies (2016); CA Fish and Game Code §1930.5 (2021); SB-790 Wildlife Connectivity Actions: Compensatory Mitigation Credits (2021)

species. Potential breeding habitat was defined as an area that had a high habitat suitability ranking and was large enough to support breeding and other activities within the focal species' home range or territory. Potential breeding habitat was categorized in two size classes: 1) *potential core*, defined as a continuous area of suitable habitat large enough to sustain at least 50 individuals; potential cores are probably capable of supporting the species for several generations, and 2) *breeding patch*, defined as an area of suitable habitat large enough to support successful reproduction by a pair of individuals (perhaps more if home ranges overlap greatly) but smaller than a potential core area. Patches are useful to the species if they are linked through dispersal to other patches and core areas. Areas that did not meet the requirements for a potential core or breeding patch but still contributed to the landscape design were considered *less than patch*.

According to connectivity models, the mitigation site is located along the eastern edge of the Upper Inner Coast Range linkage, which is situated in the middle of the approximately 185-mile-long landscape block that connects the East Bay regional open space network to the north to the foothills of the Cholame Valley and Sunflower Valley in Monterey and Kings Counties to the south, respectively (Figure 6). Accordingly, movement corridors and linkages are oriented north/south to accommodate the topographic funnels of the Diablo Range, various valleys, and anthropogenic disturbances. The Upper Inner Coast Range linkage is the largest of the linkages (i.e., 1,500 square miles), and more than half of the area is enrolled in the Williamson Act rangeland program. The mitigation site is part of a Critical Linkages Network of privately managed lands that connect priority conservation habitat at the Simon Newman Ranch north of the mitigation site to lands south of the Reservoir (Penrod et al. 2013). The majority of the mitigation site has been identified as core connectivity habitat for San Joaquin kit fox that connects populations along the periphery of the San Joaquin Valley, and patch connectivity habitat for tule elk connecting foothill and coast range populations (Figure 6).

Roadways present barriers to wildlife movement and connectivity by fragmenting habitat; they also increase the likelihood of vehicle-related mortality (Lanman et al. 2022). State Route 152 and I-5 to the north and adjacent to the mitigation site are considered priority barriers to movement (Langner 2019; CDFW 2022). Underpasses, or undercrossings, beneath traffic infrastructure provide safe passage for wildlife and facilitate habitat connectivity. The concrete underpass along Los Banos Creek at the northeast corner of the mitigation site provides safe passage beneath I-5 and facilitates movement between the valley and foothill populations. Maintaining access to underpasses has been identified as a priority to reduce mortality and enhance habitat connectivity (CDFW 2022).

Field Surveys

Field surveys conducted at the mitigation site included remote camera monitoring to detect the presence of San Joaquin kit fox and other special-status species, multiple rounds of raptor nest surveys to document Swainson's hawk nest occupancy, and a site reconnaissance survey to evaluate the suitability of the habitat for species-status species (Table 3-4). Site visits to swap the camera data card and, in 2024, decommission the remote camera monitoring effort were concurrent with the raptor nest survey and site reconnaissance surveys.

Table 3-4. Biological Surveys Conducted at the Las Camas Mitigation Site, Merced County, California

Survey Type	Date Conducted
Remote Camera Monitoring	April 3– 17, 2024

Raptor Nest Survey	March 24, 30, 31, 2022 April 7, 12, 14, 2022 March 28, 30, 31, 2023 April 10, 12, 19, 2023 April 17, 2024
Site Reconnaissance Survey	April 3, 9, 17, 2024

Remote Camera Monitoring

Eleven species were photographed by the five remote camera stations throughout the mitigation site (Table 3-5). San Joaquin kit fox was documented by Camera A traveling along the electrical transmission corridor on April 4, 7, and 8. The fox was traveling mostly to the south along the corridor between 11:00 p.m. and 2:15 a.m. Several photographs documented the fox with a prey item in its jaws. Other species of special concern included American badger (*Taxidea taxus*), photographed by Camera D traversing the grassland adjacent to the Reservoir.

Table 3-5. Wildlife Detected on Remote Cameras Deployed at the Las Camas Mitigation Site, Merced County, California

		Camera ID				
Common Name	**Scientific Name**	**A**	**B**	**C**	**D**	**E**
American badger	*Taxidea taxus*				X	
bobcat	*Lynx rufus*			X	X	
common raven	*Corvus corax*	X			X	X
cottontail rabbit	*Sylvilagus* spp.		X	X		X
coyote	*Canis latrans*		X	X	X	
domesticated cattle	*Bos taurus*	X	X		X	X
feral hog	*Sus scrofa*		X	X		
jackrabbit spp.	*Lepus* spp.					X
mule deer	*Odocoileus hemionus*				X	
San Joaquin kit fox	*Vulpes macrotis*	X				
western meadowlark	*Sturnella neglecta*	X				X

Raptor Nest Surveys

Raptor nest surveys conducted in spring 2022 involved a comparatively smaller area in the eastern portion of the 2024 mitigation site and 0.5-mile buffer. Four occupied nests were documented along the Reservoir and Los Banos Creek, including nests for two great horned owls and two red-tailed hawks. The 2023 raptor nest survey documented three nests occupied by red-tailed hawk, Two of the nests were located outside the mitigation site and were occupied by red-tailed hawk in 2022; a third nest was located on a transmission tower in the northwest corner of the mitigation site but could not relocated in during 2024 surveys. The 2024 raptor nest survey documented two nests occupied by red-tailed hawk, five nests occupied by common raven, and six unoccupied nests that did not show signs of nesting during the current nesting season. The majority of nests were built on the top platforms of the electrical transmission towers that bisect the mitigation site. Trees that would be suitable for Swainson's hawk nesting are mostly absent from the mitigation site, except for gum (*Eucalyptus* spp.), western sycamore (*Platanus racemosa*), and Russian olive (*Elaeagnus angustifolia*) trees along Los Banos Creek. Burrows suitable for burrowing owls were found throughout the mitigation site; these consisted of burrows excavated by the numerous fossorial mammal species documented during the remote camera monitoring.

Site Reconnaissance

The site reconnaissance occurred over multiple days during the remote camera monitoring effort. Land cover types mapped by USFS (2019) were inconsistent with field conditions, particularly along Los Banos Creek where shrub scrub and aquatic habitats were present (Figure 7). Several fish-bearing water bodies were present along Los Banos Creek, which had cattails (*Typha* spp.), tules (*Schoenoplectus acutus*), and other aquatic vegetation lining its banks. Higher bird species richness was documented around the aquatic habitats of Los Banos Creek and the Reservoir. Swainson's hawk and bald eagle were observed separately as well as during antagonistic behaviors in the vicinity of the Reservoir, which indicates territory defense associated with nesting behavior.

Uplands habitats were consistent with the mapped land cover and included grasslands dominated by slim oat (*Avena barbata*), ripgut brome (*Bromus diandrus*), soft brome (*B. hordeaceus*), cheat grass (*B. tectorum*), spreading alkaliweed (*Cressa truxillensis*), saltgrass (*Distichlis spicata*), wall barley (*Hordeum murinum*), and beardless wild rye (*Elymus triticoides*). Forbs included mustards (*Brassicus* spp.), storksbill filaree (*Erodium cicutarium*), perennial pepperwood (*Lepidium latifolium*), and western salsify (*Tragopogon dubius*). Incidental observations of special-status species during site visits included multiple observations of Swainson's hawk perched on the ground and flying and a herd of 11 male tule elk bedded down and grazing along Salt Creek (Figure 7). Sign of American badger, California ground squirrel, and coyote were observed throughout the mitigation site, which provides nest burrows for burrowing owls. Small mammal populations including colonies of California ground squirrels, jackrabbit and hare species were documented throughout the mitigation site and provide an important prey base for Swainson's hawk and San Joaquin kit fox.

Conclusion

Given existing habitat conditions, documented biological resources, and the geographic location of the mitigation site, acquisition of the conservation easement would provide a strategic and biological benefit. The mitigation site in context with broader conservation initiatives, including the Aqua Fria Multi-Species Conservation Bank, CDFW-managed easements, and the Reservoir, would add to the large block of undeveloped lands on the western edge of the San Joaquin Valley and be consistent with conservation initiatives set forth by county, state, and federal management plans, all of which describe the need for habitat conservation and broader landscape connectivity.

Chapter 4
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Figures

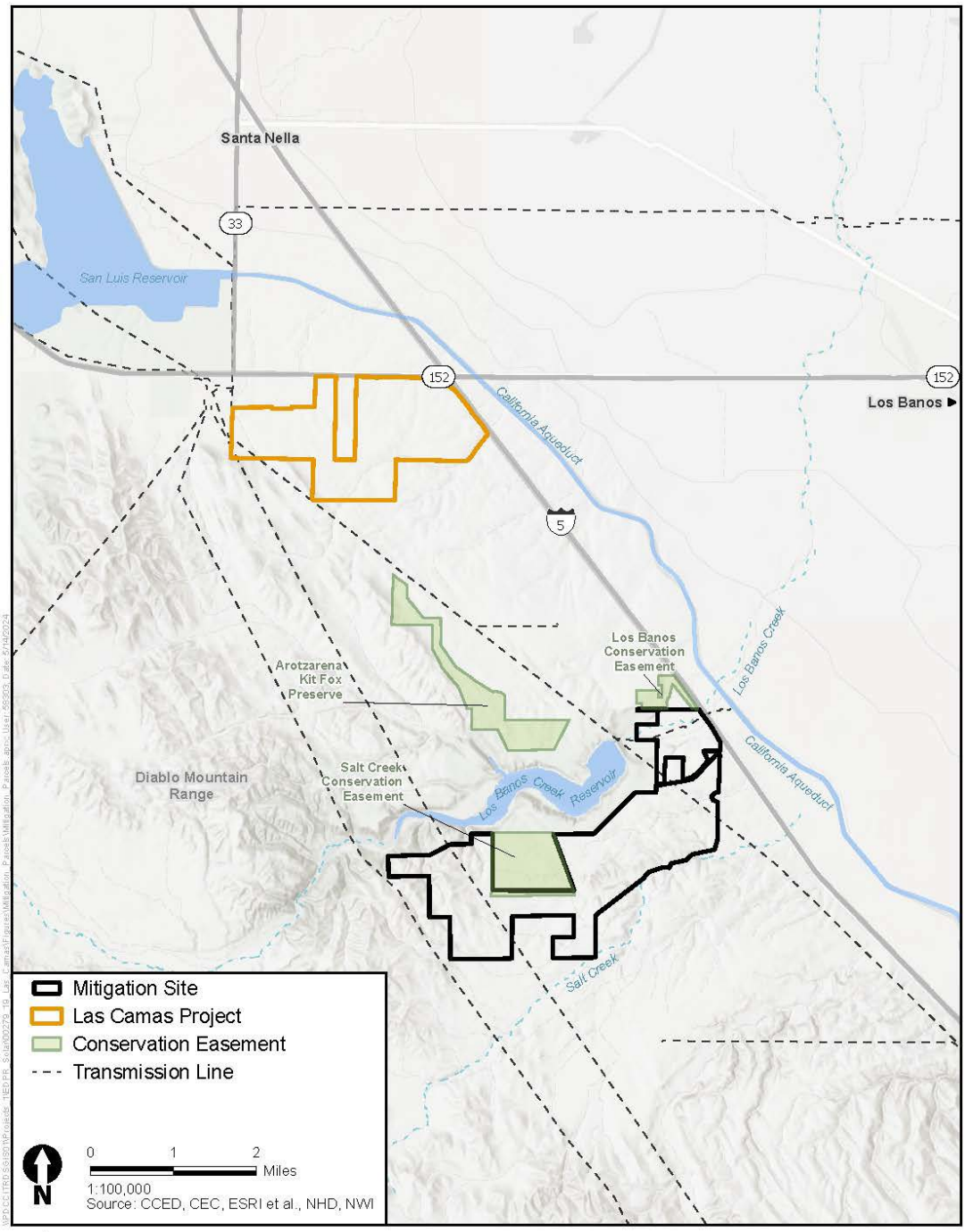

Figure 1
Vicinity Map

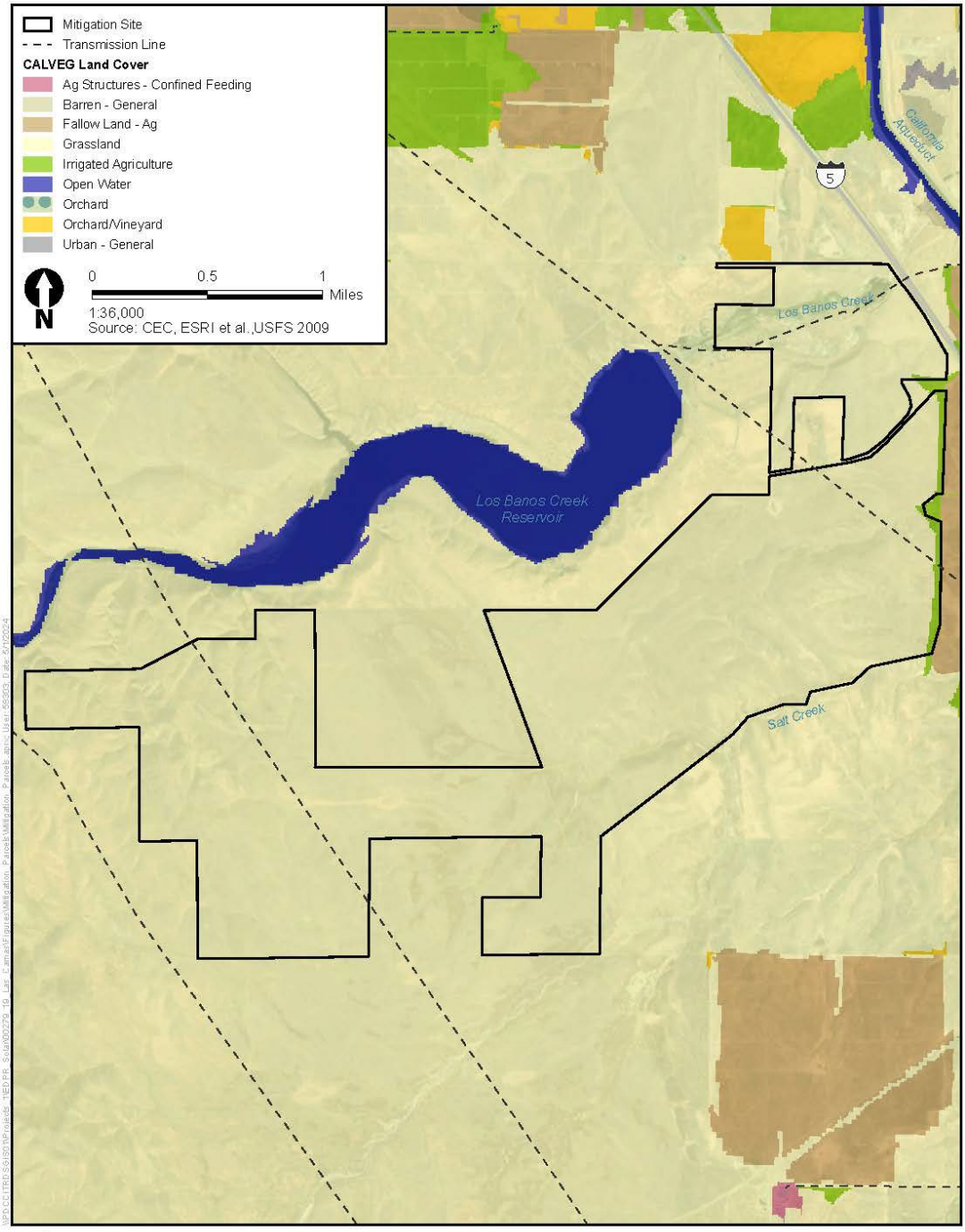

Figure 2
CALVEG Land Cover

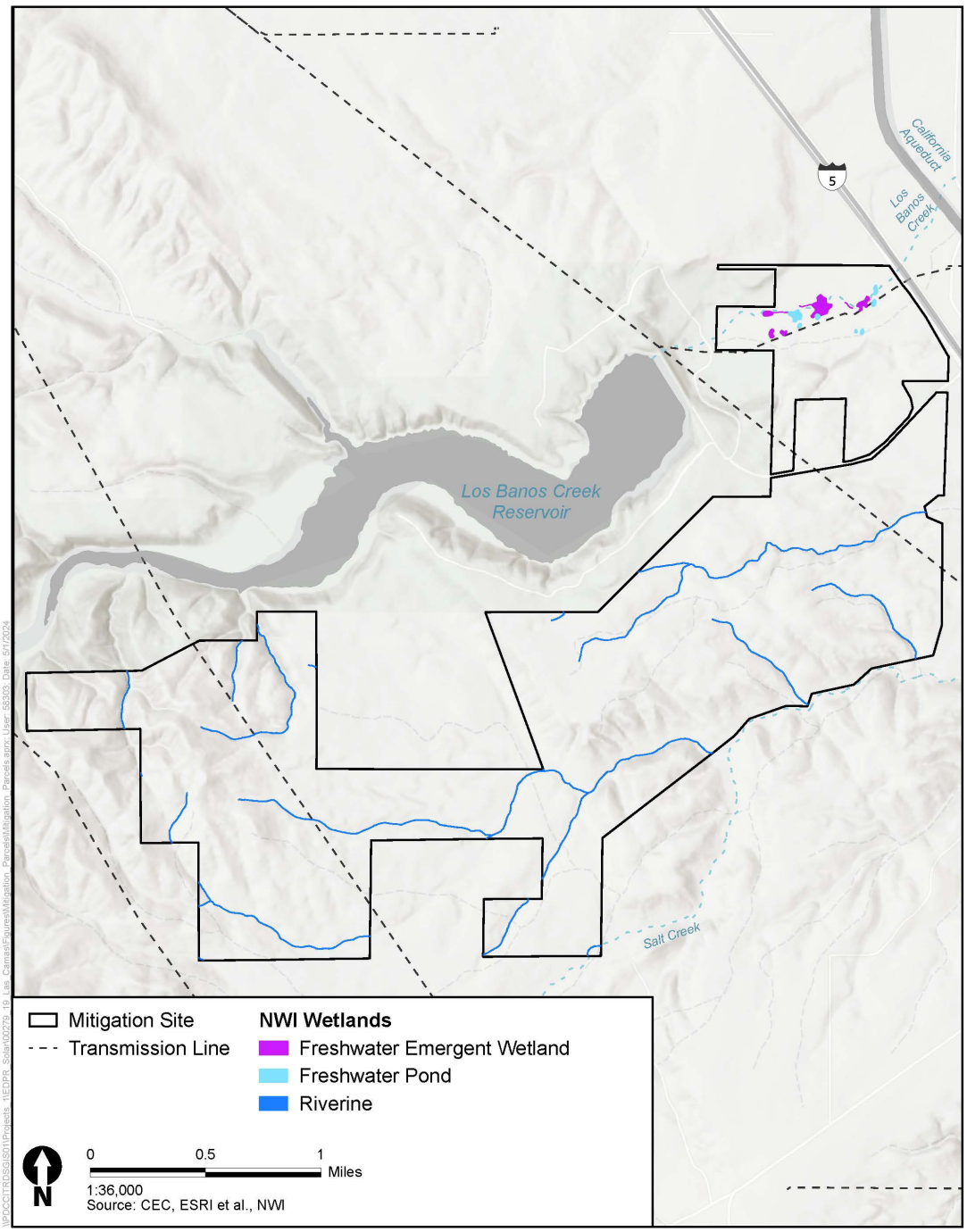

Figure 3
NWI Wetlands

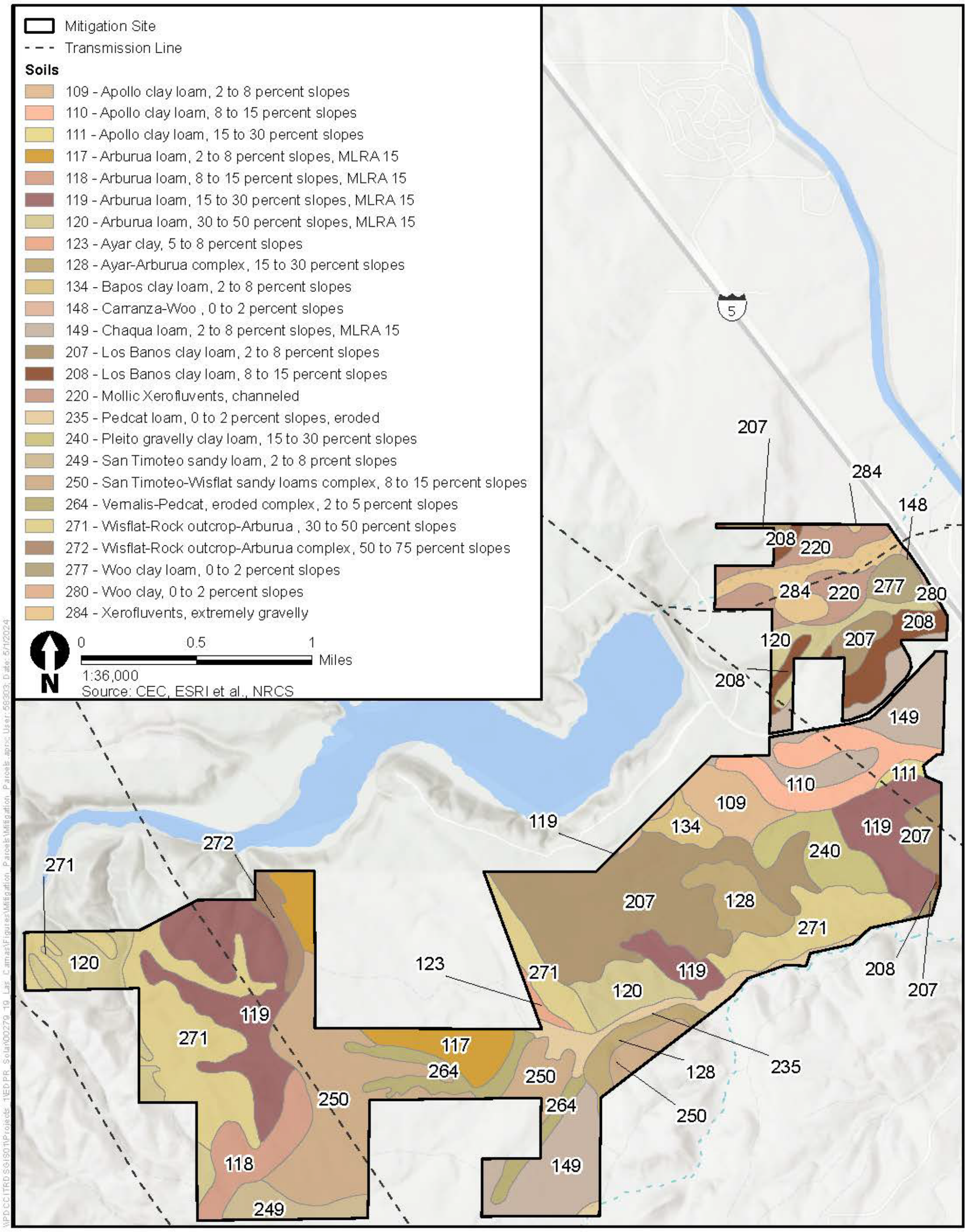

Figure 4
NRCS Soils

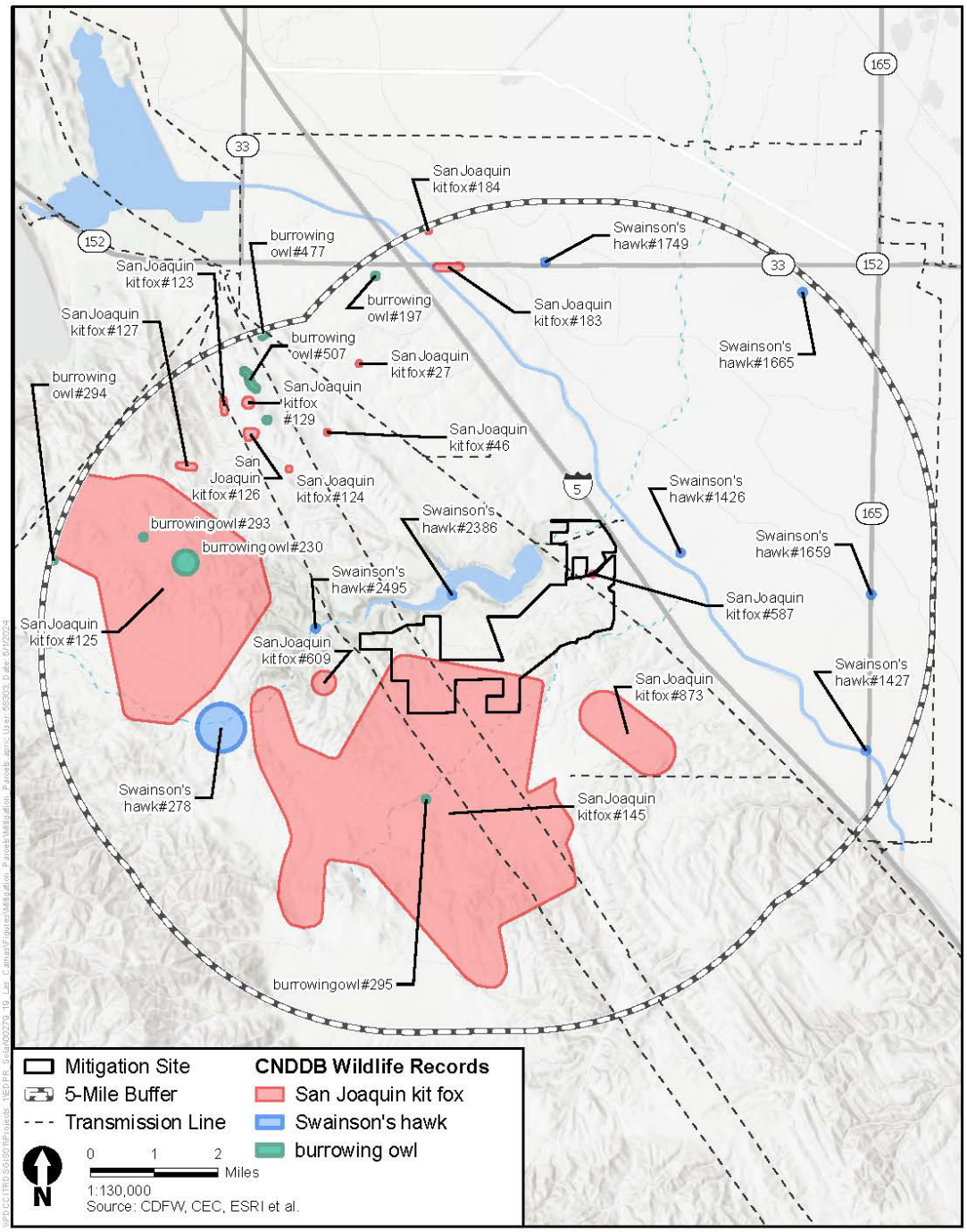

Figure 5
CNDDB Wildlife Records

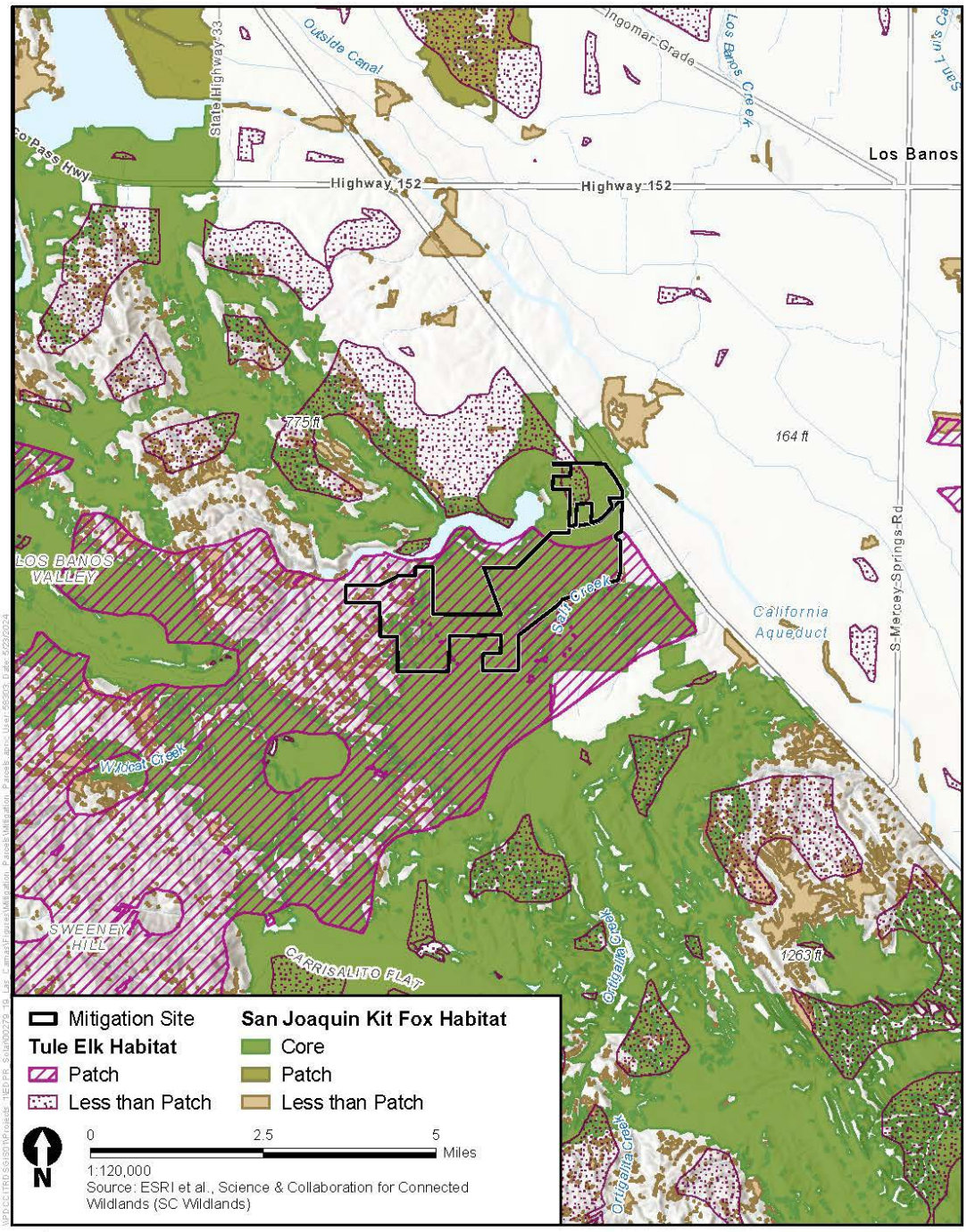

Figure 6
Movement and Connectivity

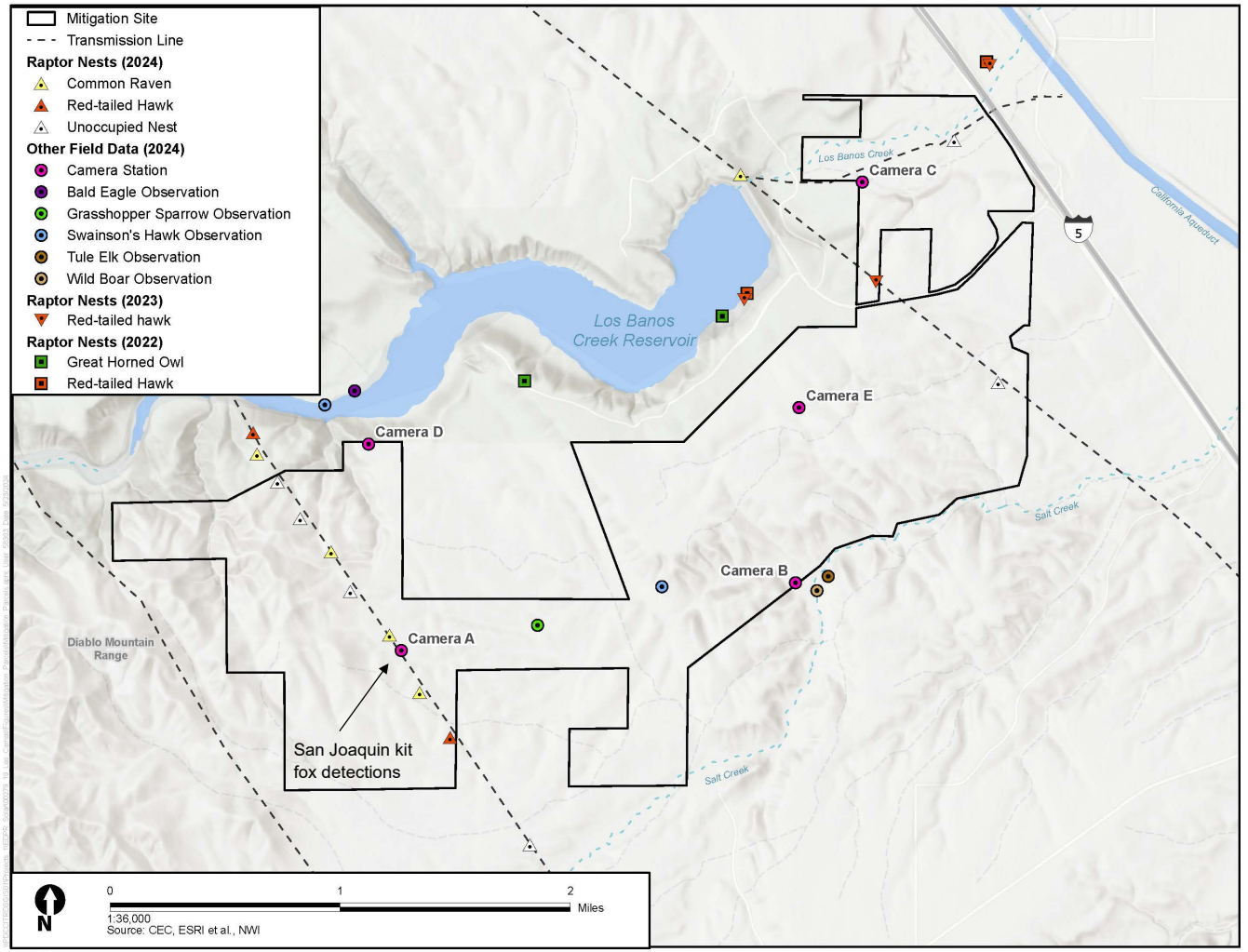

Figure 7
Field Survey Results

Appendix A
Wildlife Observed During Biological Surveys at the Proposed Mitigation Site

Appendix A. Wildlife Observed during Biological Surveys within the Las Camas Mitigation Site, Merced County, California

Common Name	Scientific Name
Birds	
American coot	*Fulica americana*
American crow	*Corvus brachyrhynchos*
bald eagle	*Haliaeetus leucocephalus*
black phoebe	*Sayornis nigricans*
black-necked stilt	*Himantopus mexicanus*
bufflehead	*Bucephala albeola*
cinnamon teal	*Anas cyanoptera*
common gallinule	*Gallinula galeata*
common goldeneye	*Bucephala clangula*
common raven	*Corvus corax*
European starling	*Sturnus vulgaris*
great blue heron	*Ardea herodias*
great egret	*Ardea alba*
great horned owl	*Bubo virginianus*
great-tailed grackle	*Quiscalus mexicanus*
horned lark	*Eremophila alpestris*
house sparrow	*Passer domesticus*
killdeer	*Charadrius vociferus*
mallard	*Anas platyrhynchos*
mourning dove	*Zenaida macroura*
pied-billed grebe	*Podilymbus podiceps*
red-tailed hawk	*Buteo jamaicensis*
red-winged blackbird	*Agelaius phoeniceus*
ruddy duck	*Oxyura jamaicensis*
Swainson's hawk	*Buteo swainsonii*
turkey vulture	*Cathartes aura*
western grebe	*Aechmophorus occidentalis*
western kingbird	*Tyrannus verticalis*
western meadowlark	*Sturnella neglecta*

Common Name	Scientific Name
Mammals	
American badger	*Taxidea taxus*
bobcat	*Lynx rufus*
California ground squirrel	*Otospermophilus beecheyi*
cottontail rabbit	*Sylvilagus* spp.
coyote	*Canis latrans*
feral hog	*Sus scrofa*
jackrabbit spp.	*Lepus* spp.
mule deer	*Odocoileus hemionus*
San Joaquin kit fox	*Vulpes macrotis*
tule elk	*Cervus canadensis nannodes*
Amphibians	
American bullfrog	*Lithobates catesbeianus*

Appendix B
NRCS Soils Data

Appendix B. Soils Capability Classes and Composition within the Las Camas Mitigation Site, Merced County, California

Map Unit	Map Unit Name	Capability Class	Total	Percent
111	Apollo clay loam, 15–30 percent slopes	6e	8.2	0.3%
109	Apollo clay loam, 2–8 percent slopes[a]	4e	62.3	2.4%
110	Apollo clay loam, 8–15 percent slopes	4e	92.2	3.6%
119	Arburua loam, 15–30 percent slopes	6e	308.1	11.9%
117	Arburua loam, 2–8 percent slopes	4e	83.2	3.2%
120	Arburua loam, 30–50 percent slopes	7e	164.8	6.4%
118	Arburua loam, 8–15 percent slopes	4e	74.8	2.9%
123	Ayar clay, 5–8 percent slopes[a]	4e	8.1	0.3%
128	Ayar-Arburua complex, 15–30 percent slopes	4e	88.3	3.4%
134	Bapos clay loam, 2–8 percent slopes	4e	25.9	1.0%
148	Carranza-Woo, 0–2 percent slopes	4s	2.4	0.1%
149	Chaqua loam, 2–8 percent slopes[a]	4e	223.1	8.6%
207	Los Banos clay loam, 2–8 percent slopes[a]	4e	347.4	13.4%
208	Los Banos clay loam, 8–15 percent slopes	4e	64.0	2.5%
220	Mollic Xerofluvents, channeled[b]	6w	84.9	3.3%
235	Pedcat loam, 0–2 percent slopes, eroded[b]	7w	52.0	2.0%
240	Pleito gravelly clay loam, 15–30 percent slopes	4e	68.3	2.6%
249	San Timoteo sandy loam, 2–8 percent slopes	4e	41.2	1.6%
250	San Timoteo-Wisflat sandy loams complex, 8–15 percent slopes	6e	268.8	10.4%
264	Vernalis-Pedcat, eroded complex, 2–5 percent slopes	4e	68.7	2.7%
271	Wisflat-Rock outcrop-Arburua, 30–50 percent slopes	7e	334.9	12.9%
272	Wisflat-Rock outcrop-Arburua complex, 50–75 percent slopes	7e	27.0	1.0%
277	Woo clay loam, 0–2 percent slopes	4s	25.7	1.0%
280	Woo clay, 0–2 percent slopes[a]	4c	1.7	0.1%
284	Xerofluvents, extremely gravelly[b]	6s	60.1	2.3%
		Total	**2,586.2**	**100.0%**

a. soils considered prime farmland, if irrigated;

b. hydric soil

Capability Class

- Class I soils have slight limitations that restrict their use.
- Class II soils have moderate limitations that reduce the choice of plants or require moderate conservation practices.
- Class III soils have severe limitations that reduce the choice of plant or require special conservation practices, or both.
- Class IV soils have very severe limitations that restrict the choice of plants or require very careful management, or both.
- Class V soils have little or no hazard or erosion, but they have other limitations, they are impractical to remove, and their use is limited mainly to pastureland, rangeland, forestland, or wildlife habitat.
- Class VI soils have severe limitations that make them generally unsuited to cultivation and limit their use mainly to pastureland, rangeland, forestland, or wildlife habitat.
- Class VII soils have very severe limitations that make them unsuited to cultivation and restrict their use mainly to rangeland, forestland, or wildlife habitat.
- Class VIII soils and miscellaneous areas have limitations that preclude their use for commercial plant production and limit their use mainly to recreation, wildlife habitat, water supply, or aesthetic purposes.

e = erosion, unless close-growing plant cover is maintained;

w = water in or on the soil interferes with plant growth or cultivation;

s = soil is limited mainly because it is shallow, droughty, or stony; and

c = chief limitation is climate that is very cold or very dry.

Appendix C
Representative Photographs


29.47 inHg
48°F
04/08/2023 02:13AM 0000A


29.75 inHg
71°F
04/10/2024 07:28PM 0000C


29.81 inHg
35°F
04/06/2024 01:49AM CAMERA1
29.79 inHg
50°F
04/06/2024 08:41AM CAMERA1

Appendix B

Revised Draft SEIR Appendix 1-1, Proposed Draft HCP Avoidance and Minimization Measures

Revised Appendix 1-1
Las Camas Solar Project Proposed Draft Habitat Conservation Plan (HCP) Avoidance and Minimization Measures

The Habitat Conservation Plan (HCP) and state incidental take permit for the solar project is being prepared as part of the incidental take permit process in coordination with the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW). ~~The Draft HCP will be released for public review and comment by USFWS in accordance with Endangered Species Act (ESA) requirements.~~ This appendix lists the proposed avoidance and minimization measures that are anticipated to be included in the ~~Draft~~ HCP to avoid or minimize the taking of covered species. The primary focus of these measures is to avoid or minimize take of individual kit foxes (i.e., death, injury, or harm) and impacts on habitat, such as grassland areas that may be affected by covered activities. While substantial changes to these measures are not anticipated, it is noted that these measures are subject to change based on feedback from USFWS and CDFW.

Any changes to the HCP since publication of the Draft SEIR affecting any impact identified in ~~this~~ the Draft SEIR ~~will be~~ are identified and evaluated in the Final SEIR along with any required changes to mitigation measures identified in the Draft SEIR.

Project Design Features

The following measures will be incorporated into the design of the project to avoid and minimize impacts on San Joaquin kit fox.

- **PD-1**: Security fences installed on the perimeter of the solar facility shall be designed to enable passage of kit foxes and their prey, while impeding the passage of kit fox predators, such as coyotes and larger domestic dogs. All fencing will leave a 4- 6-inch opening between the fence mesh and the ground. The bottom of the fence fabric will be knuckled (wrapped back to form a smooth edge) to protect wildlife that pass under the fence. Where topography results in a ground to fence fabric gap that is larger than 4- to 6-inches (e.g., at drainages or transitions between flat and steep slopes), hog-wire fencing with 4 x 4-inch openings may be used to achieve permeability. Fences shall be monitored regularly to ensure that any damage or vandalism is quickly repaired.
- **PD-2**: Areas of the project site not permanently converted to infrastructure or roads shall be reseeded as grassland and managed (e.g., grazed or mowed) to allow annual grassland species and prey species to recolonize the project site.
- **PD-3**: Three underground utility easements remain open with a total area of approximately 92.79 acres have been identified to facilitate wildlife passage through the permit site (Figure 2-4).
- **PD-4**: Lighting would be used from dusk to dawn for the project substation to conform to National Electrical Safety Code (NESC) requirements and all applicable Merced County outdoor lighting codes. Other lighting requirements specifically designed to minimize effects on San Joaquin kit fox ~~shall also be implemented~~ will include:

- The number of lighting fixtures shall be limited to the minimum required for worker safety and site security.
- All illuminated areas not occupied on a continuous basis shall have switches to light the area only when it is occupied.
- All lighting shall be designed so that exterior light fixtures are hooded, with lights directed downward or toward the area to be illuminated, and so that backscatter to the nighttime sky is minimized. The design of the lighting shall be such that the luminescence or light sources are shielded to prevent light trespass outside the project boundary and neither the lamp nor the reflector interior surface would be visible from outside the footprint of the facilities. Narrow spectrum bulbs shall be used to limit the range of species affected by lighting. All lighting poles, fixtures, and hoods shall be of dark-colored material.
- Unless determined necessary by Merced County for safety or security reasons, any signs at the entry of the project site shall not be lit (reflective coating is acceptable).

General Avoidance and Minimization Measures

The following avoidance and minimization measures will be implemented when covered activities occur.

■ **GEN-1**: All employees, consultants, and contractors shall receive environmental training prior to their participation in construction activities. The avoidance and minimization measures will be outlined in the training. All personnel on the construction site shall follow these measures to avoid or reduce effects on covered species. The training shall include a printed handout (printed in both English and Spanish) that will be handed to all personnel. All employees and contractors will be required to sign a sign-in sheet indicating that they attended the training and understand the material presented. The handout will contain the following information.

- Descriptions of the San Joaquin kit fox (including photographs) and its habitat needs.
- A current report of the occurrences of the San Joaquin kit fox in the permit area.
- An explanation of the protected status of San Joaquin kit fox under the federal and state endangered species acts and legal obligations.
- Avoidance and minimization measures that shall be followed to reduce impacts on San Joaquin kit fox during project activities for which the personnel is engaged: construction, O&M, and/or decommissioning, and the penalties for not following the avoidance and mitigation measures.
- Instructions on the procedures that will be implemented if a San Joaquin kit fox is found onsite, including contact information of a biological monitor, USFWS, and CDFW personnel.

■ **GEN-2**: At least 30 days prior to the onset of ground-disturbing (i.e. any activity which requires removal or relocation of topsoil and/or subsoil) construction, O&M, or decommissioning activities, permittee will submit to the Service for approval the name(s) and credentials of a supervisory project biologist responsible for overseeing biological avoidance and minimization measures. If needed, the supervisory project biologist would oversee additional project biological monitors.

- **GEN-3**: At least one approved biological monitor will be required onsite while ground disturbing construction activity is occurring. Monitoring may cease once all ground disturbing construction activity has ceased.

- **GEN-4**: Biological monitors will have the authority to halt construction activities and shall do so in the following instances: 1) the monitor observes activities that may result in mortality or harm to covered or other listed species or 2) the monitor observes any of the avoidance and minimization measures described in this HCP are not being implemented. Work shall not resume until the situation has been rectified to the satisfaction of the supervisory project biologist. If a biological monitor orders a halt to construction activities, he or she shall immediately contact the supervisory project biologist for further instructions. As directed by the biological monitor, construction activities may resume elsewhere so long as those activities comply with all relevant avoidance and minimization measures described herein.

- **GEN-5**: All construction-related activities shall occur within designated work areas, including designated traffic and access routes.

- **GEN-6**: All construction activities shall terminate 30 minutes before sunset and shall not resume until 30 minutes after sunrise, except as described below. Sunrise and sunset times are established by the U.S. Naval Observatory Astronomical Applications Department for the geographic area where the project is located. Some discrete maintenance activities must occur when the facility is not generating power, at night. Those activities are authorized provided they follow all other applicable avoidance and minimization measures described herein.

- **GEN-7**: To prevent inadvertent entrapment of San Joaquin kit foxes or other animals during the construction phase of the project, all excavated, steep-walled holes or trenches more than 2 feet deep shall be covered at the close of each working day by plywood or similar materials. Any covers that are installed will be able to be removed quickly by construction staff should the need arise. If covers require heavy equipment to lift them, some means of inspecting the inside of the hole shall be installed (e.g., Plexiglas windows) so that biological monitors can ensure no animals are trapped inside. Holes and trenches less than 2 feet deep may either be covered or be provided with escape ramps at a rate of one ramp every 100 feet. Escape ramps may be constructed of earth fill or wooden planks with a slope no steeper than 45 degrees. If wooden planks are used, perpendicular groves or rungs shall be provided to aid in traction. All holes and trenches, whether covered or uncovered, more than 2 feet deep shall be inspected prior to the start of the construction day, around midday, and at the end of each construction day as they are being covered for the night. These inspections shall occur whether or not work is occurring in that area. Before holes or trenches are filled, they shall be thoroughly inspected for trapped animals. Work shall not continue until trapped animals have moved out of or are removed from the open trench and relocated to a location outside of the active construction area.

- **GEN-8**: San Joaquin kit fox are attracted to den-like structures such as stored pipes. All construction pipes, culverts, or similar structures with a 4-inch or greater diameter that are stored at the construction site for one or more overnight periods shall be closed off at both ends and thoroughly inspected before they are buried, capped, or otherwise used or moved in any way. If a kit fox is discovered in a pipe, that section of pipe shall not be moved until the kit fox is allowed to leave on its own volition or the USFWS and CDFW have been consulted.

- **GEN-9**: All materials staged on the project site that have the potential to attract denning kit fox shall be inspected thoroughly by the biological monitor daily and prior to being moved.

- **GEN-10**: Speed limits within the project site shall be limited to 15 miles per hour (mph) during the day. To the extent possible, night-time construction-related activity shall be minimized, but if work must be conducted at night, the speed limit shall be ~~and~~ 10 mph ~~at night~~. During construction, all project-related vehicles and equipment shall be restricted to established roads, construction areas, and designated staging areas.

- **GEN-11**: Food-related trash shall be disposed of in closed containers and removed from the project site at least once daily.

- **GEN-12**: Construction personnel will not be permitted to bring pets or firearms onto the project site. Firearms may be carried by authorized security personnel if deemed necessary during construction or operations, so long as security personnel attend all training required herein.

- **GEN-13**: Within 1 working day of finding a dead, sick, or injured covered species on the project site, the biologist shall notify the USFWS and CDFW orally and within 3 working days in writing. Notification in writing shall include the date, time, and location where the specimen was found and information about the conditions under which it was found.

- **GEN-14**: A map of the location of all observations of covered species observed during preconstruction surveys and during monitoring shall be prepared and submitted to the USFWS and CDFW. This information will also be submitted to the California Natural Diversity Database.

- **GEN-15**: A Revegetation Plan shall be prepared for the project in coordination with CDFW. Prior to project commercial operation date, all areas temporarily subject to ground disturbance, including staging areas, will be reseeded or otherwise treated using a CDFW-approved seed mixture to achieve a revegetated state according to the timelines outlined in the Revegetation Plan. The plan will be informed by and consistent with any requirements under the Stormwater Pollution Prevention Plan for the project.

- **GEN-16**: Rodenticide use on site is prohibited.

San Joaquin Kit Fox-Specific Avoidance and Minimization Measures

The following measures will be incorporated during construction, O&M, and decommissioning of the facility to avoid and minimize effects on San Joaquin kit fox. The guidelines described in U.S. Fish and Wildlife Service 2011, or the most recent version of these guidelines will be implemented, except as modified by other measures below.

- **SJKF-1**: A preconstruction survey shall be conducted before the beginning of ground disturbance, or any activity likely to affect San Joaquin kit fox. The survey may be targeted in specific areas of the project planned for ground disturbing activities, and multiple surveys may be conducted to align with construction phasing. The biologists shall conduct den searches by systematically walking transects through the project site. Transect distance will be based on the height of vegetation such that 100% visual coverage of the project site is achieved. If a potential or known den is found during the survey, the biologist will measure the size of the den, evaluate the shape of the den entrances, and note tracks, scat, prey remains, and recent excavations at the den site. Dens will be classified into the den status categories defined by U.S. Fish and Wildlife Service (2011). A report of the preconstruction survey shall be submitted to the USFWS.

- **SJKF-2**: If potential San Joaquin kit fox den sites are located on the project site and within 200 feet of active construction, during or prior to ground disturbing activities, the status of the dens shall be evaluated and they shall be monitored by an approved biologist. The biologist will use an infrared

beam camera and track plates or powder, to determine if the den is currently being used. The camera and track plates will be placed at the burrow for a minimum of 5 consecutive days. Other signs of occupancy (e.g., scat, fur) will be searched for in and around the burrow and, if found, documented with photographs.

- **SJKF-3**: Construction activities shall be prohibited within exclusion zones around suitable burrows, based on their type. There would be an exception for vehicle traffic on roads that existed prior to discovery of the suitable burrow. The configuration of exclusion zones around San Joaquin kit fox dens should have the radius measured outward from the entrance or cluster of entrances, as follows.
    - *Potential den*: a 50-foot avoidance buffer will be used when kit fox occupation is expected but not confirmed.
    - *Known Den:* A 100-foot avoidance buffer shall be used if kit fox activity is observed. Flagging and/or stakes with flagging attached shall be installed between the work area and the known den site at a minimum distance of 100 feet from the den. The flagging shall be maintained until construction-related disturbances have ceased
    - *Natal/pupping den*: USFWS shall be contacted for technical advice to establish an appropriate buffer~~, but buffer shall be at least 100 feet and shall not exceed 200 feet~~.
- **SJKF-4**: When potential den sites are monitored as described above in measure SJKF-2, and it is determined that kit foxes are not using a den site, it will be demoted to the status of unoccupied burrow. Unoccupied burrows can be collapsed under the supervision of a biologist, provided no other listed species are inside, or they can be temporarily blocked with sandbags or similar methods, so that they do not become occupied during construction. This latter approach is preferred for unoccupied burrows that will not be excavated during construction activities.
- **SJKF-5**: The Applicant shall install artificial escape tunnels every 500 feet along the western boundary of the project fence and every 500 feet along each of the movement corridors inside of the project fence. The escape tunnels should be of similar design as those presented in Harrison et al. (2011).
- **SJKF-6**: The supervisory project biologist will be the contact for any employee or contractor who might inadvertently kill or injure a kit fox or who finds a dead, injured or entrapped kit fox. The supervisory project biologist will be identified during the employee education program and their name and telephone number shall be provided to all project employees.
- **SJKF-7**: Immediately upon notification to the supervisory project biologist of an inadvertent killing, ~~or~~ injury, or entrapment to a San Joaquin kit fox, the supervisory project biologist will contact the CDFW State Dispatch at (916) 445-0045 and the USFWS, Endangered Species Division, Sacramento California at (916) 414-6600.

Appendix C

Take Avoidance Plan for the PG&E Substation Modifications for the Las Camas Solar Project

TAKE AVOIDANCE PLAN FOR THE PG&E SUBSTATION MODIFICATIONS FOR THE LAS CAMAS SOLAR PROJECT

PREPARED FOR:

EDPR CA SOLAR PARK III LLC
Mr. Patrick Cousineau
Environmental Project Manager
710 NW 14th Ave., Suite 250
Portland, OR 97209
971.219.6702

PREPARED BY:

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Sacramento, CA 95814
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July 2024

Contents

Introduction

EDPR CA Solar Park III LLC, a wholly owned subsidiary of EDPR Renewables North America, (Proponent) is planning to construct and operate the Las Camas Solar facility located in western Merced County. The solar facility would be connected to the electrical grid via an approximately 0.4-mile generation tie ("gen-tie") line to the existing PG&E Los Banos Substation located northwest of the solar development (Figure 1).

Proponent will obtain Incidental take permits (ITPs) from the U.S. Fish and Wildlife Service and the California Fish Department of Fish and Wildlife for constructing the solar facility. Incidental take coverage will not be extended to the PG&E substation modification activities or included in the ITPs. PG&E will construct modifications to the existing Los Banos Substation to accommodate interconnection of the solar facility. The Proponent and PG&E are not seeking ITP coverage for the substation expansion because of the low-quality habitat that is present and because "take" in the form of direct mortality will be avoided. This avoidance plan (Plan) describes measures PG&E will implement to avoid direct mortality of state and federally listed species during construction of the PG&E substation modifications (Project).

The PG&E substation modification activities involves moving the existing fence line outward to the south and east on existing substation property, to accommodate the additional equipment required, including new electric equipment, circuit breakers, bus structures, 70-kilovolt disconnect switches, transformers, protective relaying, metering and control equipment, telemetering equipment, an electric grounding system, and underground conduits or trench systems. The area within the modified fence would be graveled and encompass an additional approximately 450,000 square feet (10.3 acres) of existing PG&E-owned substation property. Construction of the substation modifications is anticipated to occur in Fall 2024.

A field survey at the PG&E substation modification area (Survey Area) was conducted in April 2022. Land use is dominated by upland, non-native annual grassland habitat. The expansion area is located adjacent to the existing PG&E facility which is a graveled and paved facility with frequent human disturbance. A truck stop and housing development are located less than 500 feet east of the substation area and add additional human disturbance and domestic pets that reduce the suitability of the habitat in the substation expansion areas to support special status species.

No special-status species, or sign of special-status species, were observed within the Survey Area during the reconnaissance survey. Numerous California ground squirrel (*Otospermophilus beecheyi*) burrows were observed in the Project area during the survey. The Survey Area did not contain any burrows in 2022 that appeared to be utilized by San Joaquin kit fox (*Vulpes macrotis mutica,* FE/ST) (e.g., 5-8 inch openings displaying dirt berms and/or matted vegetation adjacent to entrances, kit fox tacks, scat, or prey remains) or burrowing owl (*Athene cunicularia,* SSC) (e.g., 4-6 inch openings displaying whitewash, feathers, prey remains, or pellets). However, due to known CNDDB occurrences of both species near the Survey Area, both species may utilize Survey Area for dispersal and foraging. Since the survey was conducted two years ago, the area has the potential to have burrows that may meet the size criteria to be considered potential denning habitat for San Joaquin kit fox (SJKF). The Survey Area is considered the northern extent of the SJKF's current range.

Kangaroo rat (*Dipodomys* spp.) burrows (e.g., relatively small openings with evidence of tracks or scat) were absent from the Survey Area. The blunt-nosed leopard lizard (*Gambelia silus*, FE/FP)

habitat within the Survey Area was marginal, since low, drought-tolerant shrubs were absent. Blunt-nosed leopard lizards were not included in this Plan due to the species range mostly occurring to the south, lack of recent records within 5 miles of the Project, and marginal upland habitat in the region to support this species. Swainson's hawk (*Buteo swainsoni,* ST) nesting habitat (e.g., large, mature trees) was absent from the Survey Area, but potential foraging habitat (e.g., annual grassland with rodent prey base) is present throughout the Survey Area and there is a known nesting occurrence located approximately 0.3 miles east of the Survey Area. California tiger salamanders (*Ambystoma californiense)* were not included in this Plan because suitable breeding habitat within 1.24-miles of the Project is not present, and 2-year protocol-level sampling of potential breeding habitat has not resulted in confirmed species presence.

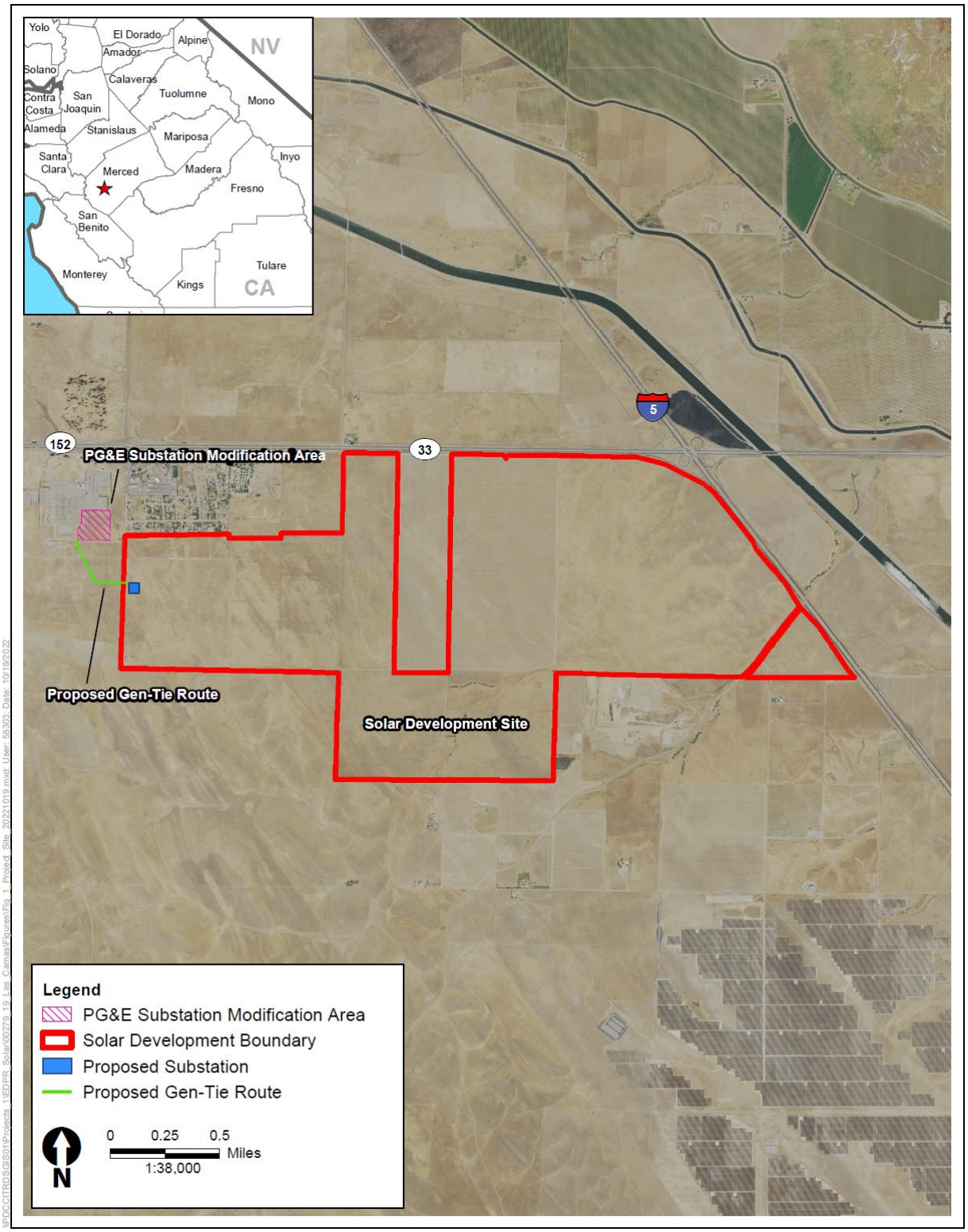


Figure 1. Project Site

The measures identified in this Plan have been used in agency consultation and CEQA compliance for the Las Camas solar project for SJKF and burrowing owl. This Plan is intended to address the following activities which, without Plan implementation, could result in injury or mortality to individuals of SJKF and burrowing owls:

- Clearing, grubbing, and grading the entire expansion site.
- Vehicular traffic which has the potential to strike individual SJKF or collapse burrows with SJKF and burrowing owls.
- Operation of construction equipment which could directly harm or disturb individual SJKF and burrowing owls.
- Trenching and digging during construction which could entrap SJKF if present.
- Trash management which has the potential to attract predators (coyotes, red foxes, or domestic dogs).
- Accidental spills of fuels, lubricants, or industrial chemicals that could directly or indirectly poison SJKF and burrowing owls or their prey.

To avoid injury or mortality to SJKF and burrowing owls from these activities, the following measures will be implemented prior to and during substation modifications activities.

Avoidance Measures and Species Survey Requirements

1. Prior to starting work at the Project, all construction personnel associated with the Project will attend a worker education training program, conducted by a qualified biologist, to train the personnel on the natural history of the SJKF and western burrowing owl, and all avoidance measures and best management practices. A species fact sheet will be developed prior to the training and will be distributed to all personnel that attend the training.
2. As described in the USFWS guidelines, the preconstruction survey for SJKF at the Project will be conducted no less than 14 days and no more than 30 days before the beginning of ground disturbance, or any activity likely to affect SJKF. The biologists will conduct den searches by systematically walking transects through the area proposed for disturbance and a buffer area of 200-feet. Transect distance should be based on the height of vegetation such that 100% visual coverage of the surveyed area is achieved. If a potential den is found during the survey, the biologists will measure the size of the den, evaluate the shape of the den entrances, and note tracks, scat, prey remains, and recent excavations at the den site. A potential den is defined as any subterranean hole within the species range that has entrances of appropriate dimensions for which available evidence is insufficient to conclude that it is being used or has been used by a SJKF. Potential dens shall include the following: (1) any suitable subterranean hole; or (2) any den or burrow of another species (e.g. coyote, badger, red fox, or ground squirrel) that otherwise has appropriate characteristics for SJKF use. The biologists will also determine the status of the dens and map the features. Dens will be classified using criteria defined by USFWS' 2011 Standardized Recommendations for Protection of the Endangered San Joaquin Kit guidance document (Seemeasure #6 for additional information).
3. Based on the results of the den search survey, the biologist will commence den monitoring. Den monitoring will occur for a minimum of four consecutive days to determine occupancy status. Potential dens will be monitored using a tack medium at the den entrance and with remote

cameras placed at the den entrance to capture any use of the den by SJKF. If, after four days of monitoring and no activity has been detected, the den should be fully excavated, filled with dirt and compacted to ensure that kit foxes cannot reenter or use the den during the construction period. If at any point during excavation, a kit fox is discovered inside the den, the excavation activity shall cease immediately., If any den initially considered to be a potential den is determined to be currently or previously used by a SJKF then all construction activities shall cease, and the USFWS and CDFW shall be notified immediately.

4. Upon the completion of the burrow monitoring effort, grading of the site and exclusion fencing would be installed around the Project such that the habitat would no longer be present and no SJKF would be able to enter the site. Temporary exclusion fencing or the permanent perimeter wall may be installed. A qualified biologist would be present during the fence installation and site grading. If the security wall is installed prior to grubbing and grading the site, the biologist will monitor the installation of the fence. Once the security wall is installed the site will not be accessible to SJKF and monitoring at the expansion site will no longer be required.
5. After completion of grading activities, all temporary exclusion fencing (until installation of the security wall is complete) at the Project will be inspected daily by trained construction staff. Any damage to the fencing will be repaired immediately such that no SJKF can enter the expansion site.
6. Exclusion zones will be established around potential and known dens outside the direct impact of the substation expansion area. The exclusion zones will include:
    - Potential den – 50 feet
    - Known den – 100 feet
    - Natal/Pupping den (occupied and unoccupied) – USFWS must be contacted.
7. Conduct a burrowing owl survey no less than 14 days prior to grubbing and grading the site.
8. Grubbing and grading the substation expansion area will occur outside the breeding season for burrowing owls.
9. Install one-way doors to passively remove any occupied nonbreeding, burrowing owls from the substation expansion area prior to grubbing and grading the site. Monitor the one-way doors for 48 hours.

Avoidance Measures During Construction

The following measures will be incorporated during substation modification to avoid effects on SJKF and burrowing owl.

1. Qualified biological monitor(s) will be onsite during all construction activities during installation of the exclusion fencing and grading.
2. During construction, the qualified biologist will have the authority to order a halt to construction activities in the following instances: (1) a biological monitor observes activities have caused or are likely to cause mortality or harm to a listed species, or (2) a biological monitor observes any of the avoidance measures described in this avoidance plan are not being implemented properly. Construction will resume when either the listed species moves out of harm's way on its own or the avoidance and minimization measures that are not being implemented properly are rectified.

3. Vehicles will not exceed a speed limit of 15 miles per hour (mph). All project-related vehicles and equipment will be restricted to established roads, construction areas, and established staging areas.
4. If any state or federally listed wildlife is found in the work area during construction the animal will be allowed to move outside of the work area on its own. Biologists will not be allowed to trap or move the listed species offsite.
5. SJKF are attracted to den-like structures such as pipes. All construction pipes, culverts, or similar structures with a 4-inch or greater diameter that are stored at the construction site (outside the exclusion fence area) for one or more overnight periods shall be thoroughly inspected before they are buried, capped, or otherwise used or moved in any way. If a SJKF is discovered in a pipe, that section of pipe shall not be moved until the SJKF is allowed to leave unimpeded.
6. Construction activities would be prohibited or greatly restricted within exclusion zones around suitable SJKF dens, based on their type that are located outside the substation expansion area. The configuration of exclusion zones around SJKF dens should have the radius measured outward from the entrance or cluster of entrances.
    - Potential den – 50 feet.
    - Known den – 100 feet.
7. Anyone who operates a motor vehicle or heavy equipment in the Project area prior to exclusion fencing being in place will check for listed species underneath parked vehicles/equipment before each use. If a listed species is found underneath a parked vehicle, the vehicle operator will contact the monitoring biologist immediately prior to moving the vehicle. The listed species will be allowed to move out of harm's way on their own prior to moving the vehicle.
8. To reduce attracting SJKF and increasing the presence of predators, trash will be disposed of in closed/covered containers.
9. No pets or firearms will be permitted on the project site.
10. Rodenticides will not be used on the project site.
11. Fueling of equipment will take place off-site or in the substation expansion area. Equipment will be checked for leaks prior to operation and repaired as necessary. Spill kits will be available to respond to potential and actual spills in accordance with the stormwater pollution prevention plan (SWPPP) and Spill Prevention, Control, and Countermeasure Plan.
12. Project, erosion, and sediment control best management practices will be implemented through the SWPPP.
13. No monofilament plastic will be used for erosion control.
14. Hazardous materials will be properly stored and disposed of. All spills of hazardous materials will be immediately cleaned, and any contaminated soil will be properly collected and disposed of at a licensed facility.

Summary Memorandum and Documenting Take

After the temporary exclusionary fencing or permanent perimeter wall has been installed, the designated biologist will prepare a memorandum that summarizes the findings of the survey work

and adherence to avoidance and minimization measures. Pre- during- and post-construction photos will be taken at representative locations within the substation expansion area.

If a listed species is found dead or injured on the Project, the designated biologist should be contacted immediately. The biologist will be the contact for any employee or contractor who might inadvertently kill or injure a listed species or who finds a dead, injured, or trapped listed species. The contact information for the designated biologist will be provided during environmental training and their name and phone number will be provided in the environmental handout. Upon such incident or finding, construction activities at the Project site would stop and the biologist will immediately contact PG&E and the Project Proponent who will contact USFWS and/or CDFW (one or both agencies would be notified depending upon the listing status of the animal) by telephone. The Sacramento USFWS office and/or CDFW will be notified in writing within 3 working days of the accidental death or injury of a listed species during project-related activities. Written notification to the agencies would include the date, time, and location of the incident, and any other pertinent information.

Appendix D

Adequacy of Biological Surveys for the Las Camas Solar Project Memo

Memorandum

To:	Patrick Cousineau, EDP Renewables
From:	Steve Avery Principal Wildlife Biologist, ICF
Date:	September 26, 2024
Re:	**Adequacy of Biological Surveys for the Las Camas Solar Project**

The Las Camas Solar Project (Project) proposes to develop an approximately 1,741-acre site situated on unincorporated land in western Merced County, California. During the public review process of the Project's Draft Subsequent Environmental Impact Report (SEIR; ICF 2024), the Project received comments from the California Department of Fish and Wildlife and California Native Plant Society regarding whether the biological surveys that were conducted for the Project were sufficient to determine species presence/absence at and use of the Project site. Special-status species including Crotch's bumble bee (*Bombus crotchii*), California tiger salamander (*Ambystoma californiense*), blunt-nosed leopard lizard (*Gambelia sila*), and burrowing owl (*Athene cunicularia*) in particular were named in the comments as species requiring additional focused surveys. Refer to Chapter 3, *Response to Comments*, in the Final SEIR (in preparation) for the full comment letters and responses.

As discussed within Chapter 3.4, *Biological Resources*, of the Project's Draft SEIR (ICF 2024), the Project site has a history of disturbance and is composed primarily of fallowed agricultural land that has become nonnative annual grassland with minimal plant diversity and a dense coverage generally throughout the site. In addition, portions of the site are undergoing continuing disturbance through grazing and dryland farming. Habitat suitability, including the presence of certain habitat components needed to meet a species' life history needs, and the potential for special-status wildlife to occur at the site, was assessed during Project field surveys. In addition to extensive Project botanical and aquatic resources surveys, the following wildlife surveys were conducted by ICF biologists between 2019 and 2023:

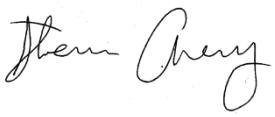
- General wildlife habitat assessment and potential for species occurrence surveys (2019)

- Protocol-level/formal habitat assessment for California red-legged frog and California tiger salamander (2019; field surveys and California tiger salamander assessment updated in 2022)
- 2-year protocol-level aquatic surveys for California tiger salamander (2023 and 2024)
- Protocol-level Swainson's hawk breeding surveys (2022 and 2023)

Surveys were conducted over multiple days across various years, seasons, and environmental conditions. The California tiger salamander and Swainson's hawk surveys were conducted multiple times within each season, providing the biologists with abundant opportunities to observe wildlife use of the Project site and the habitats found within the site. We do not recommend additional surveys to inform the analysis in the SEIR.

Data from the field surveys, in addition to the literature review conducted for the SEIR, which combine to provide an accurate picture of baseline conditions at the Project site, informed the analysis for each special-status species that was evaluated. Refer to Chapter 3.4, *Biological Resources*, of the Project's Draft SEIR (ICF 2024) for the literature review references, and for the results of each species' analysis. The historical and ongoing disturbance of the site in combination with the lack of species-specific habitat features (e.g., density of grass coverage and lack of exposed ground with abundant burrows or burrow surrogates), lack of nearby and/or recent occurrences, and negative surveys results for California tiger salamander, led to the conclusion that the site provided only marginal or unsuitable habitat for many of the special-status wildlife that might occur at the site.

Sincerely,



Steve Avery
Principal Wildlife Biologist

References

ICF. 2024. *Las Camas Solar Project Draft Subsequent Environmental Impact Report*. SCH: 2021080196. Draft. May. (ICF 104366.) Sacramento, CA. Prepared for County of Merced, Merced, CA.

Appendix E

2024 California Tiger Salamander Habitat Assessment

Memorandum

To:	Patrick Cousineau, EDP Renewables North America LLC
From:	Sean O'Brien, Senior Biologist, ICF
Date:	July 17, 2024
Re:	**Results of 2024 Aquatic Surveys for Larval California Tiger Salamander at the Las Camas Solar Development Project in Merced County, California (USFWS # RP-Las Camas Solar-2023-0301)**

Introduction

ICF was contracted to conduct aquatic surveys for the federally and state listed California tiger salamander (CTS, *Ambystoma californiense*) larvae at the Las Camas Solar Development Project (project) in Merced County (USFWS # RP-Las Camas Solar-2023-0301). The project proponent, EDPR CA Solar Park III LLC a wholly owned subsidiary of EDP Renewables, North America LLC, is proposing a solar development on the approximately 1,751-acre site. The project is located on the San Luis Dam and Volta U.S. Geological Survey 7.5-minute quadrangles (Attachment A). The approximate center of the project is Universal Transverse Mercator [UTM] Easting: 679142.51, UTM Northing: 4101436.37, UTM Zone: 10S.

Ten potential breeding habitats for CTS were previously identified within 1.24-miles of the proposed project area (Attachment B) (ICF 2023a). All habitats are artificial in nature and consist of stock ponds formed by placing berms within ephemeral drainages and topographic lows adjacent to or within roads. All 10 habitats were surveyed in 2023 when they were inundated during the above average 2022/2023 rainfall year (ICF 2023b). The purpose of the 2024 surveys is to determine if California tiger salamander is present in the vicinity of the project (i.e., within 1.24 miles) to inform environmental documents and avoidance and minimization measures. The remainder of this report discusses the methods and results of 2024 aquatic surveys for CTS larvae in the vicinity of the project area.

Methods

On March 6, 2024, ICF senior biologist Sean O'Brien submitted a request for authorization to the U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW) to conduct aquatic surveys for CTS at 10 potential breeding habitats. Mr. O'Brien received approval to conduct surveys from USFWS on March 12, 2024 (Attachment C). Aquatic surveys for CTS larvae were conducted in accordance with ICF Jones & Stokes permit # TE-795934-14 and Ms. Jennifer Hale's (formerly Haire) Memorandum of Understanding and scientific collecting permit

(#005452/SC-200960001-21267-001), on which Mr. O'Brien is listed as an independent researcher (Attachment B) (USFWS # RP-Las Camas Solar-2023-0301). Surveys followed the methodology in USFWS and CDFW's (2003) *Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of California Tiger Salamander*.

Surveys for larval California tiger salamanders were conducted by Mr. O'Brien and ICF wildlife biologist Andrew Manning on March 19, April 11, and May 7, 2024. CTS larvae sampling was conducted with either a seine or dipnets dependent on the sampled habitat's hydroperiod (inundation depth and duration). Dipnets were used in habitats that did not pond enough water to use seines or when vegetation was over abundant. The seine was 10 feet wide and 4 feet tall with 1/8-inch diameter mesh and were fitted with floats at the top and weights at the bottom (with the net bottom contacting the sediments and the net top at the water surface), which assists in keeping the net open. Habitats were sufficiently dipnetted and/or seined to detect CTS larvae presence while minimizing disturbance to the habitat and the risk of injuring larvae while sampling. After each seining and/or dipnetting event, the net was quickly viewed for organisms. Presence and abundance data were recorded for all observed amphibians and aquatic invertebrates captured while sampling. All captured organisms were quickly returned to the habitat from which they were collected after identification and enumeration.

Water depths (maximum and average [in inches]), water temperature (degrees Fahrenheit; °F), water turbidity (clear, tea colored, milky), and sampling method (seine or dipnet) of each habitat were recorded on standardized field data forms. Water depths were measured using net handles marked with one-inch increments and water temperature was measured using a digital thermometer. The approximate percent of the habitat sampled (by volume) using either seines or dipnets was also recorded. Information from the standardized field data forms was entered into Microsoft Excel spreadsheets (Attachment D). Additionally, representative photographs were taken of the monitored habitats and the species observed (Attachment E).

Results

Only two of the habitats surveyed (Aq.1 and Aq. 6a) were inundated during all survey visits. The other eight habitats do not inundate for sufficient durations to support CTS breeding (i.e., 10 weeks of continuous inundation) during average or below average rainfall years.

The larvae of Sierran treefrog (*Pseudacris sierra*), a non-special status species, was observed during the aquatic surveys. No CTS larvae were observed. Aquatic survey data is provided in Attachment D. Representative photographs of the habitats sampled and species observed are provided in Attachment E.

Discussion

The 2023/2024 wet-season was an overall above average rainfall year for the project vicinity (National Oceanic and Atmospheric Administration [NOAA] 2024), with approximately 108% of average rainfall (9.87 inches of rainfall during the 2023/2024 wet-season versus 9.15 inches of

rainfall during average wet-seasons). Thus, the 2024 aquatic surveys for larval CTS were conducted during a year that met the minimum of 70% of average wet-season rainfall requirement in USFWS and CDFW's (2003) guidance. There was sufficient precipitation in the project vicinity to allow for the successful detection of CTS larvae, if present. The absence of CTS larvae during 2023 (ICF 2023b) and 2024 indicates that the project does not support CTS during above average or average rainfall years.

For comparison to a reference site, CTS larvae were detected at the nearby Westervelt Ecological Services Dutchman Creek Conservation Bank (approximate center coordinates [WGS84] of CTS detection: 37.178362°, -120.397718° located approximately 32 miles to the northeast of the project on January 17 and 31, February 22, March 13 and 15, April 17 and 24, and May 16, 2024 (Marks pers. comm.). This information supports the conclusion that CTS larvae would have been detectable in the project vicinity if they were present.

REFERENCES

ICF. 2023a. *Biological Resources Evaluation for the Las Camas Solar Development Project*. Prepared for: EDPR CA Solar Park III LLC. Prepared by: ICF. Dated: February 2023.

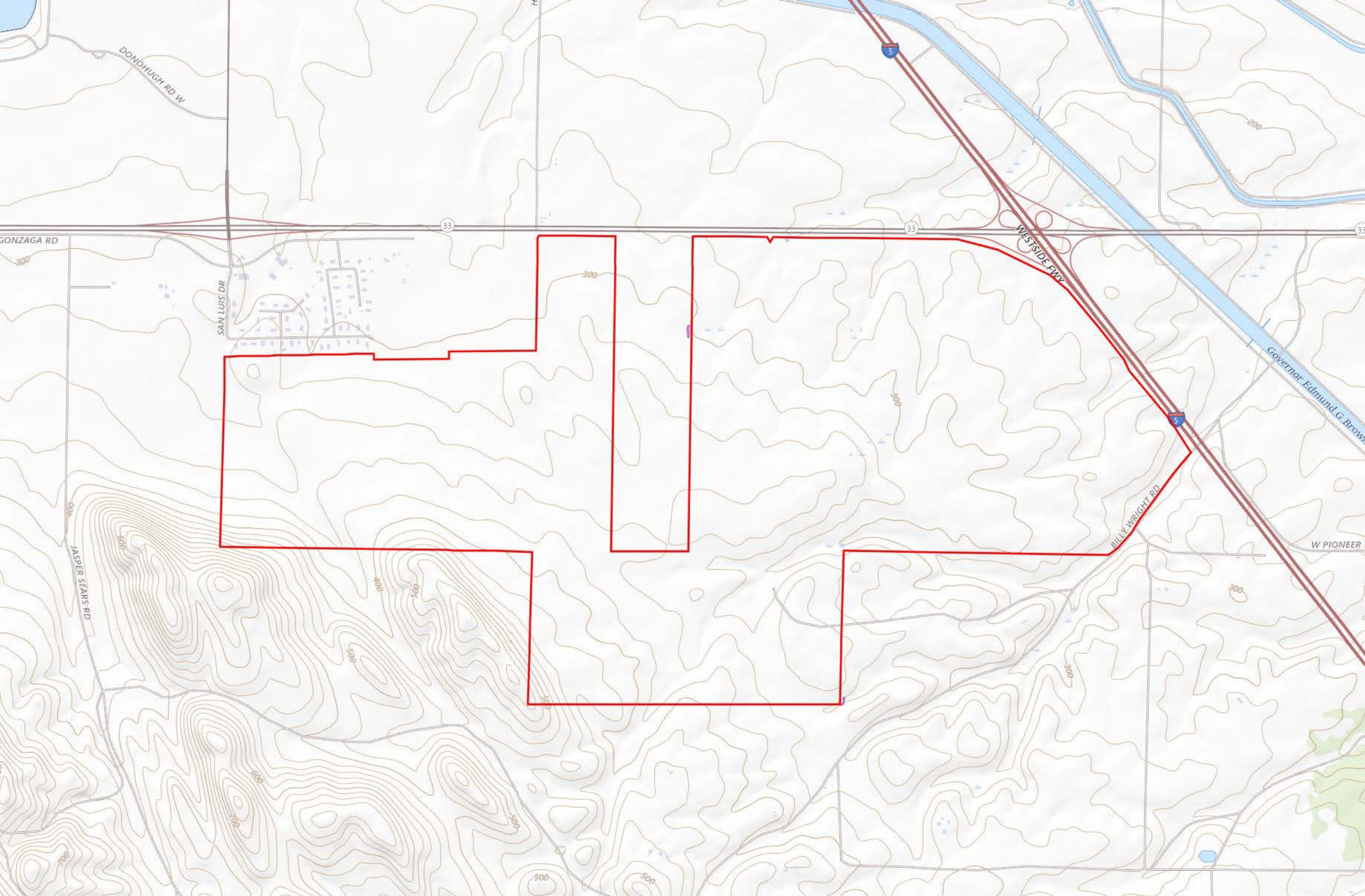
ICF. 2023b. Aquatic Surveys for Larval California Tiger Salamander at the Las Camas Solar Development Project in Merced County, California (USFWS # RP-Las Camas Solar-2023-0301). 33 pp. Dated: May 26, 2023.

National Oceanic and Atmospheric Administration. 2024. California Nevada River Forecast Center. Monthly Precipitation Summary Water Year 2024. Data from Los Banos Weather Station. Available online: https://www.cnrfc.noaa.gov/monthly_precip.php

U.S. Fish and Wildlife and California Department of Fish and Wildlife. 2003. Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of California Tiger Salamander. 11pp. Dated: October 2003.

Marks, Charlotte. Senior Ecologist. Westervelt Ecological Services. Sacramento, CA. May 21, 2024—Email with Sean O'Brien, ICF regarding California tiger salamander observations.

Attachment A: Las Camas Solar Development Project Location on USGS Topographic Map (Project Boundary shown in Red)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JASPER SEARS RD
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BILLY WRIGHT RD
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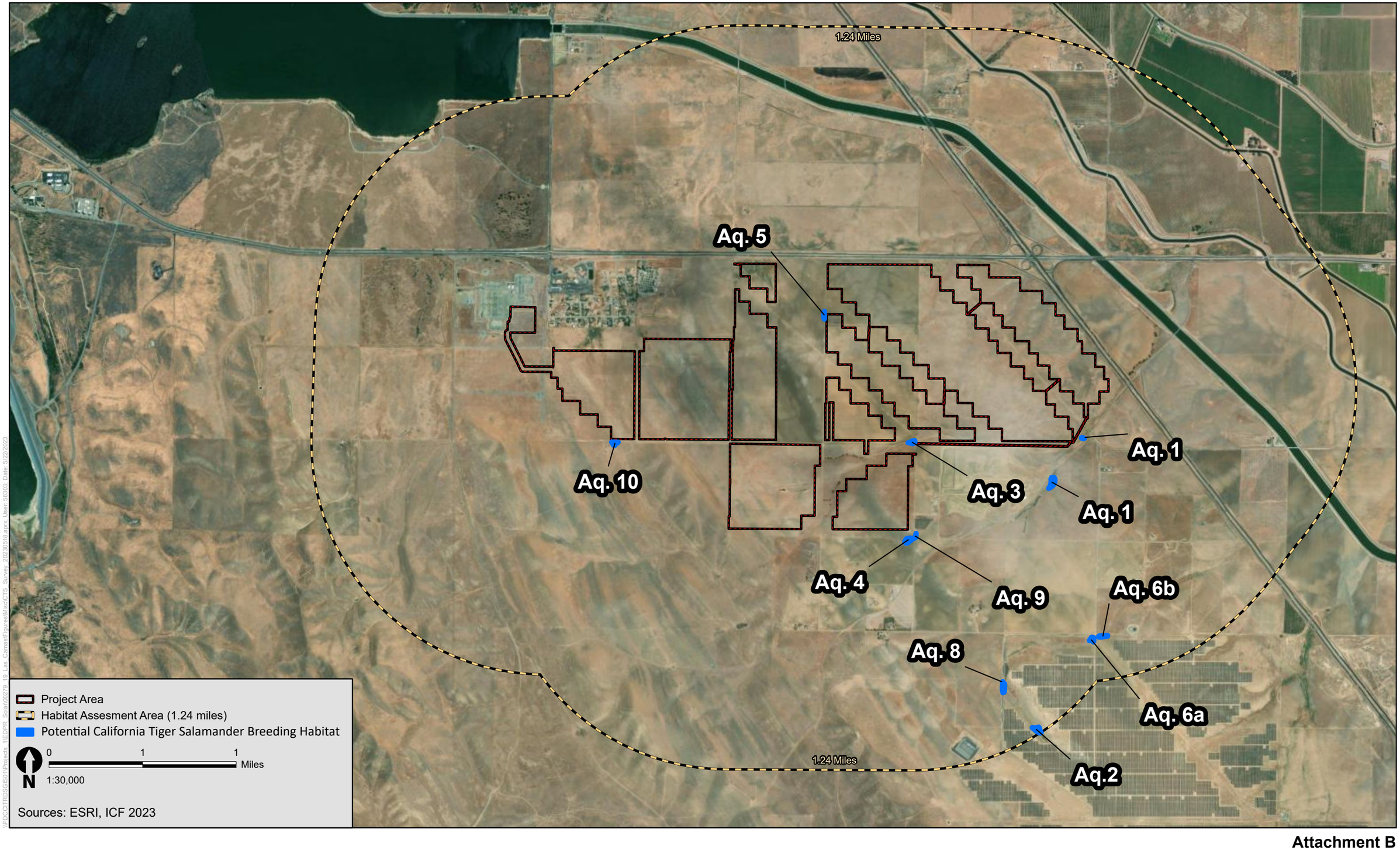
Attachment B: California Tiger Salamander Potential Aquatic Breeding Habitat within 1.24-Miles of the Project



Attachment B
California Tiger Salamander Occurrence Records and Potential Aquatic Breeding Habitat Within 1.24 Miles of the Project

Attachment C: USFWS Authorization

From:	SFWO Permits, FW8
To:	O"Brien, Sean; Garcia, Justin@Wildlife
Cc:	Cole, Patricia; Kong, Lauren M; Patterson, Laura@Wildlife; Sinclair, Crystal@Wildlife; Avery, Steve; Hale, Jennifer
Subject:	Re: [EXTERNAL] RE: Survey Request, RP-Las Camas Solar-2023-0301 , Wet CTS, # TE-795934-14
Date:	Tuesday, March 12, 2024 2:45:22 PM
Attachments:	image001.png image002.png

Sean O'Brien,
By this email message, you are authorized to conduct aquatic California tiger salamander surveys, as specified in your March 6, 2024 email request, per the conditions of recovery permits (795934-14). Surveys will be conducted at the Las Camas Solar Development Project in Merced County, CA. Please remember to carry a copy of your permit while doing the work and to follow the terms and conditions therein. This authorization does not include access to the property which must be arranged with the landowner or manager. Please let us know if the activities are not performed as authorized, or if they are done by a different permittee under a separate authorization.

Please send survey reports with the reference # RP-Las Camas Solar-2024-0312 to FW8_SFWO_Permits@fws.gov. Reports for vernal pool branchiopod surveys are due in 90 days. Reports for all other species are due in 45 days, unless otherwise specified in your permit. Reports should include, at minimum:

1. The reference number to help ensure that we correctly record the fulfillment of the reporting requirement under this authorization,
2. A copy of this email,
3. The names of all persons involved in each activity and their recovery permit numbers, if applicable,
4. A U.S. Geological Survey topographic map (1:24,000 scale or larger scale) depicting the location of the project site, survey area, and location(s) of species in as precise a manner as possible.
5. All other information required in the 45/90 Day Survey Report section of your permit.

Thank you,

Lauren

10(a)(1)(A) Recovery Permitting | **Sacramento Fish and Wildlife Office**
Pacific Southwest Region | U.S. Fish and Wildlife Service

Helpful Links: ePermits | Pacific Southwest Recovery Permitting | Minimum Qualifications | Survey Protocols | Vernal Pool Branchiopod Practical Exams

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From: O'Brien, Sean <Sean.O'Brien@icf.com>
Sent: Wednesday, March 6, 2024 8:37 AM
To: SFWO Permits, FW8 <FW8_SFWO_Permits@fws.gov>; Garcia, Justin@Wildlife <Justin.Garcia@wildlife.ca.gov>
Cc: Cole, Patricia <Patricia_Cole@fws.gov>; Kong, Lauren M <lauren_kong@fws.gov>; Patterson, Laura@Wildlife <laura.patterson@wildlife.ca.gov>; Sinclair, Crystal@Wildlife <Crystal.Sinclair@wildlife.ca.gov>; Avery, Steve <Steve.Avery@icf.com>; Hale, Jennifer <Jennifer.Hale@icf.com>
Subject: [EXTERNAL] RE: Survey Request, RP-Las Camas Solar-2023-0301 , Wet CTS, # TE-795934-14

Hello USFWS Recovery Permit Coordinator and Mr. Garcia,

Please see attached request for approval to commence aquatic surveys for California tiger salamander for the Las Camas Solar Development Project in Merced County, California under ICF Jones & Stokes permit # TE-795934-14 and Ms. Hale' s Memorandum of Understanding (MOU) associated with her scientific collecting permit (#005452/SC-200960001-21267-001).

No California tiger salamanders were found during last year's (2023) aquatic surveys (USFWS # RP-Las Camas Solar-2023-0301). ICF intends to re-survey potential California tiger salamander breeding habitats in 2024.

We would like to conduct the first survey in mid-March, therefore would appreciate an expedited response. If you have any questions, please let us know.

We appreciate your consideration,

Sean O'Brien, M.S. | Senior Biologist | Sean.O'Brien@icf.com | Mobile 916.626.2247
ICF | 980 9th Street Suite #1200, Sacramento, CA 95814 |

From: Kong, Lauren M <lauren_kong@fws.gov> **On Behalf Of** SFWO Permits, FW8
Sent: Wednesday, March 1, 2023 11:25 AM
To: O'Brien, Sean <Sean.O'Brien@icf.com>
Cc: Cole, Patricia <Patricia_Cole@fws.gov>; Kong, Lauren M <lauren_kong@fws.gov>
Subject: Survey Notification Approval, RP-Las Camas Solar-2023-0301 , Wet CTS

Sean O'Brien,

By this email message, you are authorized to conduct aquatic California tiger salamander surveys as specified in your February 16, 2023 email request, per the conditions of your recovery permit (TE-795934-13.2). Surveys will be conducted at the Las Camas Solar Development Project in Merced County, CA. Please remember to carry a copy of your permit while doing the work and to follow the terms and conditions therein. This authorization does not include access to the property which must be arranged with the landowner or manager. Please let us know if the activities are not performed as authorized, or if they are done by a different permittee under a separate authorization.

Please send survey reports with the reference # RP-Las Camas Solar-2023-0301 to FW8_SFWO_Permits@fws.gov and the San Joaquin Valley Division Supervisor, Patricia Cole (patricia_cole@fws.gov). Reports for vernal pool branchiopod surveys are due in 90 days. Reports for all other species are due in 45 days. Reports should include, at minimum:

1. The reference number to help ensure that we correctly record the fulfillment of the reporting requirement under this authorization,
2. A copy of this authorization letter,
3. The names of all persons involved in each activity and their recovery permit numbers, if applicable,
4. A U.S. Geological Survey topographic map (1:24,000 scale) depicting the location of the project site, survey area, and location(s) of species in as precise a manner as possible.
5. All other information required in the 45/90 Day Survey Report section of your permit.

Thank you,

Lauren

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10(a)(1)(A) Recovery Permitting
Sacramento Fish and Wildlife Office | USFWS
Pacific Southwest Recovery Permitting
Survey Protocols | Minimum Qualifications

notifications, reports, and permit inquiries to this email address: FW8_SFWO_Permits@fws.gov.

Attachment D: CTS Aquatic Survey Data Forms

Attachment D: 2024 Las Camas Aquatic Surveys for CTS Larvae (Round 1)

Date: 03/18/2024

Weather: Cloud Cover: 15%, Air Temperature: 63°F

Surveyors: Sean O'Brien, Andrew Manning

Habitat No.	Habitat Measurements						Species Relative Abundances[2]				
	Water Turbidity[1]	Water Temperature (°F)	Maximum Depth (in)	Average Depth (in)	S=Seine, D=Dipnet	Percent of Habitat Sampled	Sierra treefrog larvae	Backswimmers	Midge larvae	Predaceous diving beetle	Water boatmen
Aq. 1	TC	58	36	24	S/D	100	NC	C	NC	NC	C
Aq. 2	-	-	-	-	-	-					
Aq. 3	-	-	-	-	-	-					
Aq. 4	-	-	-	-	-	-					
Aq. 5	-	-	-	-	-	-					
Aq. 6a	TC	59	26	16	S/D	100	C	VC	R	NC	C
Aq. 6b	-	-	-	-	-	-					
Aq. 7	-	-	-	-	-	-					
Aq. 8	-	-	-	-	-	-					
Aq. 9	-	-	-	-	-	-					
Aq. 10	-	-	-	-	-	-					

[1]C = Clear, TC = Tea Colored, M = Milky

[2]R = rare (≤2 individuals), NC = not common (3-10 individuals), C = common (11-50 individuals), VC = very common (51 -100 individuals), A = abundant (100+ individuals)

"-" = Dry or less than 0.5 inches of ponding water at the time of sampling

Attachment D: 2024 Las Camas Aquatic Surveys for CTS Larvae (Round 2)

Date: 04/11/2024

Weather: Cloud Cover: 15%, Air Temperature: 74°F

Surveyors: Sean O'Brien, Andrew Manning

Habitat No.	Habitat Measurements						Species Relative Abundances[2]				
	Water Turbidity[1]	Water Temperature (°F)	Maximum Depth (in)	Average Depth (in)	S=Seine, D=Dipnet	Percent of Habitat Sampled	Sierra treefrog larvae	Backswimmers	Midge larvae	Predaceous diving beetle	Water boatmen
Aq. 1	TC	66	32	22	S/D	100	C	C	NC	NC	C
Aq. 2	-	-	-	-	-	-					
Aq. 3	-	-	-	-	-	-					
Aq. 4	-	-	-	-	-	-					
Aq. 5	-	-	-	-	-	-					
Aq. 6a	M	68	24	14	S/D	100	VC	VC	NC	NC	NC
Aq. 6b	-	-	-	-	-	-					
Aq. 7	-	-	-	-	-	-					
Aq. 8	-	-	-	-	-	-					
Aq. 9	-	-	-	-	-	-					
Aq. 10	-	-	-	-	-	-					

[1]C = Clear, TC = Tea Colored, M = Milky

[2]R = rare (≤2 individuals), NC = not common (3-10 individuals), C = common (11-50 individuals), VC = very common (51 -100 individuals), A = abundant (100+ individuals)

"-" = Dry or less than 0.5 inches of ponding water at the time of sampling

Attachment D: 2024 Las Camas Aquatic Surveys for CTS Larvae (Round 3)

Date: 05/7/2024

Weather: Cloud Cover: 0%, Air Temperature: 75°F

Surveyors: Sean O'Brien, Andrew Manning

Habitat No.	Habitat Measurements						Species Relative Abundances[2]				
	Water Turbidity[1]	Water Temperature (°F)	Maximum Depth (in)	Average Depth (in)	S=Seine, D=Dipnet	Percent of Habitat Sampled	Sierra treefrog larvae	Backswimmers	Midge larvae	Predaceous diving beetle	Water boatmen
Aq. 1	TC	67	30	20	S/D	100	VC	A	NC	NC	NC
Aq. 2	-	-	-	-	-	-					
Aq. 3	-	-	-	-	-	-					
Aq. 4	-	-	-	-	-	-					
Aq. 5	-	-	-	-	-	-					
Aq. 6a	M	69	20	12	S/D	100	VC	A	NC	NC	NC
Aq. 6b	-	-	-	-	-	-					
Aq. 7	-	-	-	-	-	-					
Aq. 8	-	-	-	-	-	-					
Aq. 9	-	-	-	-	-	-					
Aq. 10	-	-	-	-	-	-					

[1]C = Clear, TC = Tea Colored, M = Milky

[2]R = rare (≤2 individuals), NC = not common (3-10 individuals), C = common (11-50 individuals), VC = very common (51 -100 individuals), A = abundant (100+ individuals)

"-" = Dry or less than 0.5 inches of ponding water at the time of sampling

Attachment E: Representative Photographs

Photograph of Aq. 1 taken facing southwest on March 18, 2024 (1st survey round).

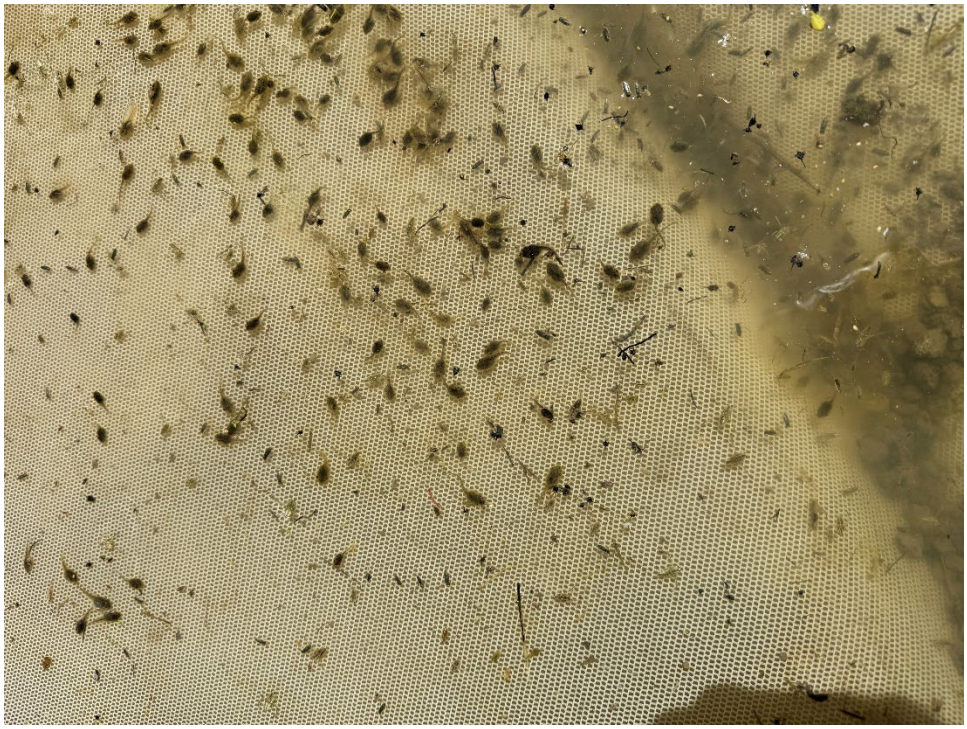
Photograph of Sierran treefrog (*Pseudacris sierra*) larvae observed in Aq. 1 on March 18, 2024 (1st survey round).

Photograph of Aq. 6a taken facing southwest on March 18, 2024 (1st survey round).

Photograph of Sierran treefrog (*Pseudacris sierra*) adult observed in Aq. 6a on March 18, 2024 (1st survey round).

Photograph of Aq. 1 taken facing southwest on April 11, 2024 (2nd survey round).

Photograph of Aq. 6a taken facing southwest on April 11, 2024 (2nd survey round).



Photograph of Sierran treefrog (*Pseudacris sierra*) larvae observed in Aq. 6a on April 11, 2024 (2nd survey round).

Photograph of Aq. 1 taken facing southwest on May 7, 2024 (3rd survey round).

Photograph of Sierran treefrog (*Pseudacris sierra*) larvae observed in Aq. 1 on May 7, 2024 (3rd survey round).

Photograph of Aq. 6a taken facing southwest on May 7, 2024 (3rd survey round).

Appendix F

Water Supply Assessment Addendum

LAS CAMAS SOLAR PROJECT, MERCED COUNTY, CALIFORNIA

ADDENDUM TO THE WATER SUPPLY ASSESSMENT

PREPARED FOR:

EDPR CA Solar Park III LLC
Development – Western Region
710 NW 14th Ave. Suite 250, Portland, OR 97209

Contact: Matthew Kauffman

PREPARED BY:

ICF
201 Mission Street, Suite 1500
San Francisco, CA 94105
Contact: Heidi Mekkelson

February 2025

ICF. 2025. *Las Camas Solar Project, Merced County, California, Addendum to the Water Supply Assessment*. February. (ICF 00214.21). Prepared for EDPR CA Solar Park III LLC.

Table of Contents

Acronyms and Abbreviations

af	acre-feet
afy	acre-feet per year
CEQA	California Environmental Quality Act
CVP	Central Valley Project
EIR	environmental impact report
ESA	Endangered Species Act
PG&E	Pacific Gas and Electric Company
SB	Senate Bill
SLWD or District	San Luis Water District
SWP	State Water Project
WMA	water management agreement
WSA	water supply assessment

Addendum to the Water Supply Assessment

1. Background

In February 2024, ICF prepared a water supply assessment (WSA) for the Las Camas Solar Project (solar project) to satisfy the requirements of Senate Bill (SB) 610. The WSA was included as Appendix 3.19-1 to the Draft Subsequent EIR (SEIR) prepared for the solar project by Merced County pursuant to the California Environmental Quality Act (CEQA). The Draft SEIR was made available for public review and comment for a period of 45 days, beginning May 3, 2024, and ending June 17, 2024.

The proposed project analyzed in the Draft SEIR includes the following components:

- the solar project;
- proposed off-site improvements to the Pacific Gas and Electric Company (PG&E) Los Banos Substation (PG&E substation improvements);
- establishment of a roughly 1,498-acre, off-site mitigation site as part of the solar project's habitat mitigation proposal (off-site mitigation site); and
- a General Plan amendment to redesignate roughly 202.8 acres immediately south of the solar project site from low-density residential to high-density/medium-density residential (off-site residential redesignation).

2. Clarification Regarding the Off-Site Residential Redesignation

The off-site residential redesignation is within the Villages of Laguna San Luis Community Plan (Community Plan), adopted in 2008. Any future development within the off-site residential redesignation area would therefore be subject to the policies in the Community Plan and the mitigation measures in the certified Community Plan EIR (State Clearinghouse No. 205511074).

As stated on page 2-2 of the WSA, "[t]he project does not propose any development within the off-site residential redesignation area. Future development in this area would be subject to independent review under CEQA. Therefore, the proposed redesignation would not directly generate an increased demand for water and is not addressed further in this WSA."

This addendum to the WSA further clarifies that:

- Any future residential projects with 500 dwelling units or more, if proposed, would require a separate water supply assessment specifically addressing the water demands

that would be created by such development and whether sufficient water is available to serve such demands pursuant to Water Code §10910 et seq. and Government Code §66473.7. Mitigation Measure 5.7-1 in the Community Plan EIR imposes an equivalent requirement for any future residential projects proposing fewer than 500 dwelling units.

- Nothing in the WSA or the Community Plan EIR should be interpreted to suggest that the Central Valley Project water, or any other known water supply available from the San Luis Water District (SLWD), is adequate to support residential development within the SLWD's boundaries, or that residential development within the District is favored. To the contrary, as explained in the Community Plan EIR, the Central Valley Project (CVP) water supply and other known water supplies available from the SLWD do not appear to be adequate to support such development, and for that reason the Community Plan requires an affirmative finding from the SLWD in the form of a can and will-serve letter supported by a separate WSA that adequate water is otherwise available to support any future residential development within the Community Plan area before it could occur.

3. Clarification Regarding to Solar Project Supply Analysis

The WSA identified the SLWD as the water provider for the solar project and evaluated whether sufficient supplies would be available to serve the solar project for the next 20 years during normal-year, single-dry-year, and multiple-dry-year conditions (Water Code §10910 et seq.). The SLWD obtains its water supply from surface water imported by the CVP or surface water transfers from other agencies.

As stated on page 5-1 of the WSA, "over a 20-year timeframe, approximately 465 af [acre-feet] of water will be required for construction and operation of the project, including 370 af for construction (245 af in Year 1 and 125 af in Year 2) and 5 AFY [acre-feet per year] for operation."

As stated on pages 5-2 through 5-3 of the WSA:

> *To address variability in CVP deliveries and water transfers year-to-year, SLWD determines whether new projects can be served on a case-by-case basis through the issuance of Construction Water Agreements and Water Management Agreements pursuant to the SLWD's Rules and Regulations (refer to Section 4.1). The Agreements consider known water supply and water demands, customer reallocations/conversions, and exchange programs to determine whether new projects can be served. The project applicant will submit a Construction Water Agreement and Water Management Agreement request to the SLWD for project construction and operation. The SLWD will review the requests and determine whether sufficient supplies are available. Under Rule No. 24, the project could receive up to 10 af. This would provide adequate supply for project operation (5 AFY) and a small portion of the 370 af construction water demand.*

> *Additional water transfers (e.g., reallocating agricultural supplies to M&I supplies), made at the sole discretion of SLWD, could serve the remaining construction demand of 360 af. If the SLWD issues a Construction Water Agreement and Water Management Agreement for the project, sufficient water supplies would be available to serve the project's construction and operational water demand. However, if the SLWD does not issue the Agreements, sufficient supplies would not be available, and additional water supplies would need to be acquired.*

Because the analysis in the WSA determined that sufficient supplies may not be available, the project applicant (EDPR CA Solar Park III LLC) was required to identify additional water supplies that could be acquired (Water Code §10911[a]). Accordingly, the project applicant identified a privately owned well located approximately 4.4 miles north of the project site (Mid-Cal Well) as a potential alternative water supply. The Mid-Cal well is in the Delta-Mendota Subbasin of the San Joaquin Valley Groundwater Basin. Under this scenario, the project applicant would enter into a pumping purchase agreement with the well owner, AKT, to allow for use of the pumped groundwater from the Mid-Cal well. Water would be transported to the solar project site from the Mid-Cal well by water trucks and stored on the project site in a 5,000-gallon water tank. As noted on page 5-4 of the WSA, a groundwater export permit consistent with Merced County's Groundwater Mining and Export ordinance would be required under this scenario. The WSA included an analysis of the well's water supply on pages 5-3 through 5-4 and determined that project water demands would not substantially decrease groundwater supplies, have any effect on the long-term management of the subbasin, or affect groundwater sustainability efforts.

Since the preparation of the WSA, additional details regarding potential pathways for providing SLWD water to the solar project have been identified partly due to the uncertainty of securing a groundwater export permit. This addendum to the WSA provides the following points of clarification:

- The SLWD can provide several water supply options that can be exercised by landowners depending on annual water supply conditions. The primary water supply feature would be the CVP agricultural water allocation issued to the underlying landowners and would be implemented by the landowner entering into one of two types of Water Management Agreements (WMA) (Martin, personal communication, 2025).
    - Under a Type I WMA, the agricultural allocation would be managed by the SLWD, and the District would issue a more reliable industrial water supply allocation to the landowner at a rate of 1 af per acre of developed solar facilities, not to exceed 10 af (Martin, personal communication, 2025).
    - Under a Type II WMA, the landowner would retain the agricultural allocation but would be responsible for providing the project with an adequate water supply for its operation (Martin, personal communication, 2025). The project is expected to receive water through a Type II WMA, whereby SLWD transfers water acquired privately by the project proponent to the project site.

- Under certain water supply conditions, the CVP agricultural water supply may be inadequate. The SLWD has several programs landowners can participate in to augment their water supply needs (Martin, personal communication, 2025).

    - If the landowner executes a Type II WMA, the landowner can preserve a portion of the CVP agricultural allocation, in an amount not to exceed 0.22 af to the acre, for storage in San Luis Reservoir for use in the following water year. The scheduling of water into the next water year provides an additional level of water supply certainty and drought mitigation. If the landowner executes a Type I WMA, the SLWD would facilitate the rescheduling on behalf of the landowner (Martin, personal communication, 2025).

    - Annually, the SLWD provides a supplemental water program where landowners can apply for water to supplement their CVP allocation. In most water years the SLWD is able to fulfill the requests for supplemental water (Martin, personal communication, 2025).

    - In addition to the previously listed programs, the SWLD offers a subscription program on an as-needed basis. When the supplemental water program is oversubscribed or when a unique water supply opportunity becomes available, the SLWD, in cooperation with landowners, pursues non-typical water supply options and offers the water to landowners by subscription (Martin, personal communication, 2025).

- The water supply provided to the solar project would be exclusively for construction, the cleaning of solar panels, dust control, and vegetation control, and not for health or human safety. Therefore, during conditions of extreme drought, water supplies can be scheduled for delivery based on water supply availability, not a real-time demand. The scheduling of water for the solar project would significantly improve water supply reliability. Starting in November through February, more water would become available due to flood operations, the relaxation of Endangered Species Act (ESA) anadromous fish constraints in the Sacramento Delta, and the initiation of fall water transfers due to the reduction of water demand in the CVP system (Martin, personal communication, 2025).

4. Conclusion

Based on the points of clarification provided in this addendum to the WSA, it is concluded that sufficient SLWD supplies would be available to serve the solar project for the next 20 years during normal-year, single-dry-year, and multiple-dry-year conditions. As a result, the option to export water from the Mid-Cal well is no longer expected to be needed. Further, while the information in this addendum to the WSA adds clarity to the WSA and SEIR, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

References

Martin, Lon. San Luis Water District. February 10, 2025—response to Heidi Mekkelson (ICF) regarding SLWD water supplies.