

Final Environmental Impact Report

SCH No. 2022080337

Veteran's Affairs Community-Based Outpatient Medical Clinic Project

City of Bakersfield, California

Lead Agency:

City of Bakersfield
1715 Chester Avenue, 2nd Floor
Bakersfield, CA 93301

August 28, 2023

FINAL ENVIRONMENTAL IMPACT REPORT
SCH No. 2022080337

Veterans Affairs Community-Based Outpatient Clinic

Site Plan Review No. 21-0399

Lead Agency
City of Bakersfield
Development Services Department
Attn: Louis Ramirez, Associate Planner II
1715 Chester Avenue, 2nd Floor
Bakersfield, CA 93301

CEQA Consultant
T&B Planning, Inc.
3200 El Camino Real, Suite 100
Irvine, CA 92602

Project Applicant
SASD Development Group, LLC
4895 Pacific Highway
San Diego, CA 92110

Lead Agency Discretionary Permits
Site Plan Review No. 21-0399

Final EIR
August 28, 2023

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F.0 FINAL ENVIRONMENTAL IMPACT REPORT

F.1 INTRODUCTION

This Final Environmental Impact Report (FEIR) was prepared in accordance with the California Environmental Quality Act (CEQA) as amended (Public Resources Code Section 21000 *et seq.*) and CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 *et seq.*).

According to CEQA Guidelines Section 15132, the FEIR shall consist of:

a. The Draft EIR (DEIR) or a revision of the draft;

b. Comments and recommendations received on the DEIR either verbatim or in summary;

c. A list of persons, organizations, and public agencies commenting on the DEIR;

d. The responses of the Lead Agency to significant environmental points raised in the review and consultation process; and

e. Any other information added by the Lead Agency.

In accordance with the above-listed requirements, this FEIR for the Veterans Affairs Community-Based Outpatient Clinic Project (hereafter, the "Project") and associated discretionary and administrative actions, consists of the following:

a. Comment letters and responses to public comment; and

b. The circulated Veterans Affairs Community-Based Outpatient Clinic Project DEIR and Technical Appendices, SCH No. 20220801337, with revised pages indicating additions shown as <u>underlined text</u> and deletions shown as ~~stricken text~~. Refer to Subsection F.3, *Additions, Corrections, and Revisions to the Draft EIR*, for a summary of the changes to the EIR since the DEIR was circulated for public review.

This FEIR document was prepared in accordance with CEQA and the CEQA Guidelines and represents the independent judgment of the CEQA Lead Agency (City of Bakersfield).

F.2 RESPONSES TO DEIR COMMENTS

The City of Bakersfield received five (5) comment letters in response to the DEIR. A list of the agencies, organizations, and persons that submitted comments on the DEIR is presented in Table F-1, *Organizations, Persons, and Public Agencies that Commented on the DEIR*.

Table F-1 Organizations, Persons, and Public Agencies that Commented on the DEIR

Comment Letter	Commenting Party	Date
A	San Joaquin Valley Air Pollution Control District	June 15, 2023
B	Kern County Public Works	June 20, 2023
C	Channel Law Group, LLP	June 14, 2023
D	Channel Law Group, LLP on Behalf of Progress for Bakersfield Veterans	June 20, 2023
E	California Department of Fish and Wildlife	June 30, 2023

F.2.2 CEQA Requirements

CEQA Guidelines Section 15088 requires the Lead Agency (City of Bakersfield) to evaluate comments received from public agencies and interested parties who reviewed the DEIR and to provide written responses with good faith and reasoned analysis to comments that relate to significant environmental issues.

CEQA Guidelines Section 15204(a) outlines the parameters for public agencies and interested parties to submit comments and the Lead Agency's responsibility for responding to specific comments. Per CEQA Guidelines Section 15204(a), comments should be related to:

> *[T]he sufficiency of the document in identifying and analyzing possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible…CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or suggested by commenters. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.*

CEQA Guidelines Section 15204(c) further advises that, "[r]eviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to CEQA Guidelines Section 15064, an effect shall not be considered significant in the absence of substantial evidence." Additionally, CEQA Guidelines Section 15204(d) notes that, "[e]ach responsible agency and trustee agency shall focus its comments on environmental information germane to that agency's statutory responsibility;" but, pursuant to CEQA Guidelines Section 15204(e), "[t]his section shall not be used to restrict the ability of reviewers to comment on the general adequacy of a document or of the lead agency to reject comments not focused as recommended by this section [CEQA Guidelines Section 15204]."

Per CEQA Guidelines Section 15088(c), the level of detail contained in the response may correspond to the level of detail provided in the comment: "A general response may be appropriate when a comment does not

contain or specifically refer to readily available information, or does not explain the relevance of evidence submitted with the comment."

F.2.3 RESPONSES TO DEIR COMMENTS

Copies of each of the comment letters referenced in Table F-1 are provided on the following pages, followed by responses to each individual comment. CEQA Guidelines Section 15088.5 requires recirculation when "significant" new information is added to an EIR, meaning the EIR is changed in a way that deprives the public of a meaningful opportunity to comment on a substantial adverse environmental effect or a feasible way to avoid such an effect, including a feasible project alternative, that the applicant declines to implement. "Significant" new information requiring recirculation includes (1) a new significant environmental impact; (2) a substantial increase in the severity of an environmental impact; (3) a feasible project alternative or mitigation measure that would clearly lessen the significant environmental impacts of the project, but the applicant declines to adopt it; or (4) a fundamentally and basically inadequate and conclusory draft EIR (CEQA Guidelines Section 15088.5; see also, *Laurel Heights Improvement Assn. v. Regents of University of California* [1993] 6 Cal. 4th 1112). None of the responses to the comment letters submitted to the City required the addition of significant new information to the DEIR or otherwise meet the requirements of CEQA Guidelines Section 15088.5. Instead, these responses to comments supplement the draft EIR's analysis of the same potentially significant impacts already disclosed therein. Therefore, recirculation is not required.

COMMENT LETTER A

San Joaquin Valley AIR POLLUTION CONTROL DISTRICT

HEALTHY AIR LIVING™

June 15, 2023

Louis Ramirez
City of Bakersfield
Development Services Department
1715 Chester Avenue, 2nd Floor
Bakersfield, CA 93301

Project: Draft Environmental Impact Report for Veteran's Affairs Community Based Outpatient Medical Clinic, Site Plan Review No. 21-0399

District CEQA Reference No: 20230447

Dear Mr. Ramirez:

The San Joaquin Valley Air Pollution Control District (District) has reviewed the Draft Environmental Impact Report (DEIR) from the City of Bakersfield (City) for the above mentioned project. Per the DEIR, the project consists of a 39,648 square foot United States Department of Veterans Affairs community based outpatient medical clinic. (Project). The Project is located 5512 Knudsen Drive in Bakersfield, CA. A-1

The District offers the following comments regarding the Project:

1) Project Related Emissions A-2

Based on information provided to the District, Project specific annual criteria pollutant emissions from construction and operation are not expected to exceed any of the significance thresholds as identified in the District's Guidance for Assessing and Mitigating Air Quality Impacts (GAMAQI): https://www.valleyair.org/transportation/GAMAQI.pdf.

1a) Construction Emissions

The District recommends, to further reduce impacts from construction-related diesel exhaust emissions, the Project should utilize the cleanest available off-road construction equipment, including the latest tier equipment.

Samir Sheikh
Executive Director/Air Pollution Control Officer

Northern Region
4800 Enterprise Way
Modesto, CA 95356-8718
Tel: (209) 557-6400 FAX: (209) 557-6475

Central Region (Main Office)
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Southern Region
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Bakersfield, CA 93308-9725
Tel: (661) 392-5500 FAX: (661) 392-5585

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COMMENT LETTER A

2) Vegetative Barriers and Urban Greening

There are single-family residential units and an elementary school (San Lauren Elementary School) located west of the Project. The District suggests the City consider the feasibility of incorporating vegetative barriers and urban greening as a measure to further reduce air pollution exposure on sensitive receptors (e.g., residential units and nearby elementary school).

While various emission control techniques and programs exist to reduce air quality emissions from mobile and stationary sources, vegetative barriers have been shown to be an additional measure to potentially reduce a population's exposure to air pollution through the interception of airborne particles and the update of gaseous pollutants. Examples of vegetative barriers include, but are not limited to the following: trees, bushes, shrubs, or a mix of these. Generally, a higher and thicker vegetative barrier with full coverage will result in greater reductions in downwind pollutant concentrations. In the same manner, urban greening is also a way to help improve air quality and public health in addition to enhancing the overall beautification of a community with drought tolerant, low-maintenance greenery.

A-3

3) Clean Lawn and Garden Equipment in the Community

The Project may involve the use of gas-powered lawn and garden equipment, which have the potential to result in an increase of NOx and PM2.5 emissions. Utilizing electric lawn care equipment can provide residents with immediate economic, environmental, and health benefits. The District recommends the Project proponent consider the District's Clean Green Yard Machines (CGYM) program which provides incentive funding for replacement of existing gas powered lawn and garden equipment. More information on the District CGYM program and funding can be found at:
http://valleyair.org/grants/cgym-commercial.htm.

A-4

4) On-Site Solar Deployment

It is the policy of the State of California that renewable energy resources and zero-carbon resources supply 100% of retail sales of electricity to California end-use customers by December 31, 2045. While various emission control techniques and programs exist to reduce air quality emissions from mobile and stationary sources, the production of solar energy is contributing to improving air quality and public health. The District suggests that the City consider incorporating solar power systems as an emission reduction strategy for the Project.

A-5

5) Electric Vehicle Chargers

To support and accelerate the installation of electric vehicle charging equipment and development of required infrastructure, the District offers incentives to public

A-6

COMMENT LETTER A

agencies, businesses, and property owners of multi-unit dwellings to install electric charging infrastructure (Level 2 and 3 chargers). The purpose of the District's Charge Up! Incentive program is to promote clean air alternative-fuel technologies and the use of low or zero-emission vehicles. The District recommends that the City and project proponents install electric vehicle chargers at project sites, and at strategic locations.

Please visit www.valleyair.org/grants/chargeup.htm for more information.

A-6 (CONT.)

6) District Rules and Regulations

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 (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: www.valleyair.org/rules/1ruleslist.htm. 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 (661) 392-5665.

A-7

6a) 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 (661) 392-5665.

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6b) District Rule 9510 - Indirect Source Review (ISR)

The Project is subject to District Rule 9510 because it will receives a project-level discretionary approval from a public agency and will equal or exceed 20,000 square feet of medical office 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.

A-8

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: http://www.valleyair.org/ISR/ISRHome.htm.

The AIA application form can be found online at: http://www.valleyair.org/ISR/ISRFormsAndApplications.htm.

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

6c) 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: http://www.valleyair.org/rules/currntrules/r4601.pdf

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COMMENT LETTER A

6d) District Regulation VIII (Fugitive PM10 Prohibitions)

The project proponent may be required to submit a Construction Notification Form or 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.*

Should the project result in at least 1-acre in size, the project proponent shall provide written notification to the District at least 48 hours prior to the project proponents intent to commence any earthmoving activities pursuant to District Rule 8021 (Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities). Also, should the project result in the disturbance of 5-acres or more, or will include moving, depositing, or relocating more than 2,500 cubic yards per day of bulk materials, 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://www.valleyair.org/busind/comply/PM10/forms/DCP-Form.docx

Information about District Regulation VIII can be found online at:
http://www.valleyair.org/busind/comply/pm10/compliance_pm10.htm

A-10

6e) Other District Rules and Regulations

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).

A-11

Comment Letter A

7) District Comment Letter

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 Harout Sagherian by e-mail at Harout.Sagherian@valleyair.org or by phone at (559) 230-5860.

Sincerely,

Brian Clements
Director of Permit Services

Mark Montelongo
Program Manager

A-12

RESPONSES TO COMMENT LETTER A:
San Joaquin Valley Air Pollution Control District

A-1 The San Joaquin Valley Air Pollution Control District (District) provides an accurate, brief Project summary. This general comment is acknowledged.

A-2 The District reiterates the DEIR's conclusion under Subsection 4.2, *Air Quality*, Threshold b, pp. 4.2-20 to 4.2-22, without disagreement, that the Project's construction and operational activities would not exceed any of the significance thresholds identified in the District's Guidance for Assessing and Mitigating Air Quality Impacts. The District recommends that the cleanest available off-road construction equipment be used during the Project's construction. This recommendation is already included in the DEIR as Mitigation Measure GHG MM-1, which requires that construction equipment greater than 150 horsepower achieve or is equivalent to or better than EPA/CARB Tier 4 emissions standards, or Tier 3 standards if Tier 4 equipment is not available at the time of construction. Also, Mitigation Measure GHG MM-2 requires that construction contractors use electric-powered hand tools, forklifts, and pressure washers.

A-3 The District suggests that the City consider incorporating vegetative barriers and urban greening as a measure to reduce air pollution exposure on nearby residential and school sensitive receptors. The City appreciates this suggestion and the Project is already designed to include an ample amount of landscaping. As stated in DEIR Subsection 3.0, *Project Description*, p. 3-6, and shown on DEIR Figure 3-4, *Conceptual Landscape Plan*, and on detailed landscape plans on file with the City as part of the Project's application materials, the Project's landscaping plan includes trees, shrubs, groundcovers, and accent plants. A mix of shade trees, palm trees, small evergreens trees, screen trees, shrubs, and groundcover would be planted along the perimeter of the Project site. Landscaping, featuring shade trees, small evergreen trees, accent trees, shrubs, perennials, groundcover, and irrigated turf, would also occur at the building entries and around the perimeter of the building. A healing garden is proposed on the northeast side of the building which would include garden paths, benches, screen trees, shade trees, accent trees, shrubs, groundcover, and irrigated turf.

A-4 The District recommends that the Project proponent consider the District's Clean Green Yard Machine Program that provides incentive funding for replacement of existing gas-powered lawn and garden equipment with electric equipment. The City appreciates this recommendation and has advised the Project applicant about this voluntary incentive program offered by the District. California's Assembly Bill (AB) 1346 was enacted in 2021, which bans the sale of gas-powered lawn equipment beginning in 2024.[1] Because the Project would not be built and operational until after 2024, it is reasonably expected that any new lawn maintenance equipment introduced at the Project site would be electric in compliance with the mandatory requirements of AB 1346.

A-5 The District suggests that the City consider incorporating solar power systems as an emission reduction strategy for the Project. As described in DEIR Subsection 4.7, *Greenhouse Gas Emissions*, p. 4.7-22, it is not feasible for the City to require substantive physical modifications to the Project's building

[1] California Assembly Bill 1346. https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1346

design (such as the addition of solar panels) because the Project's building design was determined by the federal government as part of the already concluded federal procurement process. As a result, the City has no jurisdiction or ability to unilaterally require the addition of improvements such as rooftop solar panels, as without U.S. Department of Veterans Affairs approval, it would conflict with the building design approved by the VA / federal government. It should be noted, however, that the federal requirements do include, and the Project will incorporate, various environmental sustainability features that will reduce the Project's air pollutant and GHG emissions, although to be as conservative as possible and because it is difficult to precisely calculate emission reductions from various sustainability features due to limitations in the computer modeling programs used to calculate emissions, the air quality and GHG reductions that will result from inclusion of the proposed sustainability features were not specifically quantified as part of the DEIR's analyses.

As provided in Attachment A to this FEIR, the government solicitation for the VA Clinic included, among other items, the following sustainable design features, which will (and in fact must) be included in the Project:

- The Project design will meet federal mandates for sustainability and energy efficiency. An ASHRAE 90.1-2013 base-case energy model and an as-designed energy model were required and reviewed by the federal government, targeting compliance with the 30% energy reduction goal, or exceeding the goal. Water use analysis and daylighting calculations also were required and reviewed by the federal government. A final ASHRAE 90.1-2013 base-case energy model and an as-designed energy model will be required based on the Project's construction documents, including all assumptions used, demonstrating compliance with the 30% energy reduction goal.

- Energy Star® targets are required to be met.

- Energy use reduction by 30% is required compared to the baseline building performance rating per the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., (ASHRAE) and the Illuminating Engineering Society of North America (IESNA) Standard 90.1-2013, Energy Standard for Buildings Except Low-Rise Residential.

- Energy Star and FEMP-designated Energy Efficient Products will be used, as available.

- Per the Energy Independence and Security Act (EISA) Section 523, at least 30% of the hot water demand is required to be met through the installation of solar hot water heaters, when life-cycle cost-effective.

- Per the Energy Policy Act of 2005 (EPAct) Section 103, building level utility meters will be installed to track and continuously optimize performance. Actual performance data is required to be reported from the first year of operation with the energy design target. After one year of occupancy, all new major installations are required to be measured using the Energy Star® Portfolio Manager for building and space types covered by Energy Star®. This data is required to be annually provided to the VA.

- Compliance with the Energy Independence and Security Act (EISA; Oct 2016) is required, which establishes requirements for Government leases relating to energy efficiency standards and

potential cost effective energy efficiency and conservation improvements. Unless one of the statutory exceptions of the EISA applies as listed in Attachment A to this FEIR, a federal government lease may awarded for a building only if the building has earned the ENERGY STAR® label conferred by the U.S. Environmental Protection Agency (EPA) within the most recent year prior to the due date for final proposal revisions. The term "most recent year" means that the date of award of the ENERGY STAR® label by EPA must not be more than 1 year prior to the due date of final proposal revisions. For example, an ENERGY STAR® label awarded by EPA on October 1, 2010, is valid for all lease procurements where final proposal revisions are due on or before September 30, 2011. In lieu of the above, all new buildings being specifically constructed for the Federal Government must achieve an ENERGY STAR® label within 18 months after occupancy by the Government. In addition, Offerors of the following Buildings shall also have up to 18 months after occupancy by the Government, or as soon thereafter as the Building is eligible for Energy Star® consideration, to achieve an Energy Star® label:

Notwithstanding the foregoing energy efficiency requirements, the City is adding the following Mitigation Measure, as further discussed in Response to Comment D-47:

GHG MM-4 The building roof shall, upon the approval of a design modification by the U.S. Department of Veterans Affairs (VA), be outfitted with a solar photovoltaic system of the maximum size feasible to provide power to the building and given the constraints of applicable Building Code requirements, clearance requirements around roof-mounted equipment, PG&E interconnection regulations, and other code compliance requirements. Should the VA not approve a design modification to add a rooftop PV system, the building may be constructed and operated without a PV system.

Mitigation Measure GHG MM-4 represents the maximum possible the City is able to do with respect to requiring an onsite solar power system. If approved by the VA, installation of solar would likely reduce the Project's impacts on GHG to a less than significant level, but because it is currently uncertain if the VA will approve this change and the City cannot force the federal government to do so, the City and EIR still assumes that the Project's GHG impacts will be significant and unavoidable. This conclusion is also based on an extremely conservative net-zero significance threshold, as explained in detail in DEIR Subsection 4.7, *Greenhouse Gas Emissions*.

A-6 The District recommends that the City and Project proponents install electric vehicle chargers on the Project Site. In compliance with the 2021 California Green Building Standards Code[2], and as shown on DEIR Figure 3-1, *Overall Conceptual Site Plan*, 29 electric vehicle charging spaces and clean air stalls will be provided.

A-7 The District informs that the Project may be subject to, and require District permits for, District Rule 2010 (Permits Required), which requires operators of emission sources to obtain an Authority to

[2] California Building Standards Commission. 2021 California Green Building Standards Code. https://codes.iccsafe.org/content/CAGBC2022P1

Construct and Permit to Operate from the District, and District Rule 2201 (New and Modified Stationary Source Review), which requires that new and stationary sources of emissions mitigate their emissions using Best Available Control Technology. These Rules and their potential applicability to the Project is noted. The Project is not expected to require a stationary source permit, but compliance with District Rule 2201 is mandatory should such a permit be required.[3] The DEIR disclosed the potential need for District approvals and permits in DEIR Table 3-1 (DEIR p. 3-3), including those required by Rule 2010. The unlikely but potential need for a stationary source permit under Rule 2201 has been added to Table 3-1 in the FEIR.

- Approve Stationary Source Permits (if such permits are required).

A-8 The District states that the Project is subject to District Rule 9510 (Indirect Source Rule), which requires developers to mitigate their NO_X and PM emissions by incorporating clean air design elements into their projects, and informs that an Air Impact Assessment application ("ISR Application") is required to be submitted. This Rule and its applicability to the Project is noted. DEIR Subsection 4.2, *Air Quality*, p. 4.2-26, provides regulatory requirement AIR RR-1 that addresses mandatory compliance with SJVAPCD Rule 9510. Typically, the ISR Application is submitted after City approval of the land use entitlements, but the Project's ISR Application was submitted to the District on July 14, 2023. A copy of the submitted ISR Application is included as Attachment B to this FEIR.

A-9 The District informs that the Project may be subject to District Rule 4601, which limits VOC emissions from architectural coatings and specifies storage, cleanup, and labeling requirements.[4] This Rule and its potential applicability to the Project is noted and although mandatory compliance to applicable SJVAPCD Rules is assumed in the DEIR's analyses, compliance with Rule 4601 is added to the FEIR as AIR-RR-2, Item a.

AIR-RR-2: The Project is required to be constructed and operated in compliance with all applicable SJVAPCD Rules, including but not limited to the following:

a. SJVAPCD Rule 4601, *Architectural Coatings*, which limits VOC emissions from architectural coatings.

b. SVAPCD Rule 4102, *Nuisance*, which prohibits the discharge of air contaminants and other materials which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such person or the public or which cause or have a natural tendency to cause injury or damage to business or property.

c. SJVAPCD Rule 4641, *Cutback, Slow Cure and Emulsified Asphalt, Paving and Maintenance Operations*, which limits VOC emissions by restricting the application and manufacturing of certain types of asphalt for paving and maintenance operations.

[3] SJVAPCD Rule 2201. https://www.valleyair.org/rules/currntrules/r2201.pdf
[4] SJVAPCD Rule 4601. https://www.valleyair.org/rules/currntrules/r4601.pdf

A-10 The District informs that the Project may be required to submit a Construction Notification Form, required for projects at least 1-acre in size, or submit and receive approval of a Dust Control Plan, required for a disturbance of 5 acres or more or projects relocating more than 2,500 cubic yards per day, prior to commencing any earthmoving activities. This information and its potential applicability to the Project is noted. The DEIR disclosed the potential need for District approvals and permits in DEIR Table 3-1 (DEIR p. 3-3) and the potential need for a Dust Control Plan has been added to Table 3-1 in the FEIR.

- Approve a Dust Control Plan.

A-11 The District informs that the Project may be subject to District Rule 4102 (Nuisance)[5] and District Rule 4641 (Cutback, Slow Cure and Emulsified Asphalt, Paving and Maintenance Operations)[6]. These Rules and their potential applicability to the Project are noted and although mandatory compliance to applicable SJVAPCD Rules is assumed in the DEIR's analyses, compliance with Rule 4102 and Rule 4641 are added to the FEIR as AIR-RR-2, Items b. and c., as indicated above in Response A-9.

A-12 The District recommends that a copy of the District's comments be provided to the Project proponent, and provides contact information for the District. The City has provided a copy of the District's letter to the Project applicant as requested. The SJVAPCD's contact information is acknowledged.

[5] SJVAPCD Rule 4012. https://www.valleyair.org/rules/currntrules/r4102.pdf
[6] SJVAPCD Rule 4641. https://www.valleyair.org/rules/currntrules/r4641.pdf

COMMENT LETTER B

KERN COUNTY / Public Works

Joshua Champlin, P.E.
INTERIM DIRECTOR OF PUBLIC WORKS

June 20, 2023

City of Bakersfield – Development Services Department
Attn: Louis Ramirez, Associate Planner II
1715 Chester Avenue, 2nd Floor
Bakersfield, CA 93301

Subject: **Veteran's Affairs Community-Based Outpatient Medical Clinic; Site Plan Review No. 21-0399.**

Dear Mr. Ramirez,

This Department has reviewed the traffic impact study by Ruettgers & Schuler (dated February 2023) for subject project and have the following comments:

1. The County does acknowledge the project funding in the Regional Transportation Facilities List for an expanded intersection at Knudsen Drive and Olive Drive. If improvements are constructed at this location, reimbursement from the Metropolitan Bakersfield Traffic Impact Fee may be available.

Thank you for the opportunity to comment on this project. If you have any questions or comments, please contact me at paulc@kerncounty .com or (661) 862-8869

Sincerely,

Paul Candelaria

B-1

GROUNDED & BOUNDLESS

2700 M Street, #400, Bakersfield, CA. 93301 | 661.862.5100 | www.KernPublicWorks.com

RESPONSES TO COMMENT LETTER B:
Kern County Public Works

B-1 Kern County Public Works informs that if public roadway improvements are constructed at Knudsen Drive and Olive Drive, reimbursement from the Metropolitan Bakersfield Traffic Impact Fee may be available. The comment is noted.

COMMENT LETTER C

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Writer's Direct Line: (310) 982-1760
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June 14, 2023

VIA ELECTRONIC MAIL

Louis Ramirez, Associate Planner II
City of Bakersfield – Development Services Department
1715 Chester Avenue, 2nd Floor
Bakersfield, CA 93301
lramirez@bakersfieldcity.us

Re: Inadequacy of the Comment Period for the DEIR for the Veteran's Affairs Community-Based Outpatient Medical Clinic; Site Plan Review No. 21-0399

Dear Mr. Ramirez:

On May 5, 2023 the City of Bakersfield ("City") released the Draft Environmental Impact Report ("DEIR") for the Veteran's Affairs Community-Based Outpatient Medical Clinic; Site Plan Review No. 21-0399 ("Project") and specified that the end of the comment period is Monday, June 19, 2023. June 19, 2023 is Juneteenth, a federal holiday in the United States commemorating the emancipation of enslaved African Americans. Pursuant to §15015(a) the California Environmental Quality Guidelines, the public review period for a DEIR "shall not be less than 45 days." Additionally, the courts have held that if the ending date for the required review period would otherwise fall on a weekend or other legal holiday, the ending date must be extended to the next date when the lead agency's offices are open (*Rominger v County of Colusa* (2014) 229 CA4th 690, 708). The City has therefore failed to comply with comment period requirements for the DEIR and the public review period is thus legally insufficient. C-1

In addition, the City has not made the whole of the DEIR available to the public and reviewing agencies. Documents cited as included in the Technical Appendices, in either the body of the DEIR or the Technical Appendices, are not included in those appendices. For example, the Project Health Risk Calculations and AERMOD output files are missing from Appendix B of the DEIR. Also, not all of the cultural resource studies are included in Appendix D. DEIR page 4-4.1 states that: C-2

Comment Letter C

> The analysis and information in this Subsection 4.4 are based primarily on a technical study prepared by Duke Cultural Resources Management (hereinafter "Duke CRM"), titled "Cultural Resources Assessment for the Veterans Affairs Bakersfield Community Based Outpatient Clinic Project, City of Bakersfield, County of Kern, California," dated November 23, 2022. This technical report is included as *Technical Appendix D* to this EIR (Duke CRM, 2022).

However only a Duke CRM Report dated April 1, 2022 is included in Appendix D. Appendix D needs to contain all of the Duke CRM reports for the Project, including the November 23, 2022 report with appropriate redactions. There may be additional referenced studies, in addition to those noted, missing from the Technical Appendices, which the City must identify and include. The public and reviewing agencies have therefore been deprived of the ability to review the adequacy and accuracy of the technical analyses.

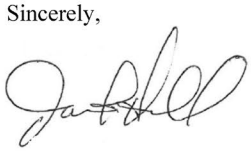
C-2 (CONT.)

The City should therefore recirculate the entire DEIR, including any and all missing cited appendices to the technical studies and Technical Appendices for the required 45-day comment period. Please advise how the City intends to proceed, and include Channel Law on the list to receive any noticing regarding the Project and the environmental review.

I may be contacted at 310-982-1760 or at jamie.hall@channellawgroup.com if you have any questions, comments or concerns.

C-3

Sincerely,



Jamie T. Hall

cc: Virgina Gennaro (via vgennaro@bakersfieldcity.us)

RESPONSES TO COMMENT LETTER C:
Channel Law Group, LLP

C-1 Channel Law Group comments that the end of the DEIR public comment period was set as Monday, June 19, 2023, which is Juneteenth, a federal holiday. Although the City of Bakersfield and State of California were open for business on June 19, 2023, the City of Bakersfield extended the DEIR public comment period to June 20, 2023, as a courtesy to allow the public additional time to submit public comments on the DEIR. The Notice of Time Extension of Public Review was posted on the City's website and the State Clearinghouse website on June 14, 2023, posted at the Kern County Clerk on June 15, 2023, and the City sent notification of the extended public review period to The Channel Law Group by email.

C-2 Channel Law Group comments on two of the DEIR's technical appendices posted for public review stating that: 1) the AERMOD computer model printouts were omitted from Technical Appendix B; and 2) Technical Appendix D was dated April 1, 2022, rather than November 23, 2022, as cited in the DEIR. Regarding Technical Appendix B, the AERMOD modeling results were available in the Project's publicly available administrative record on file with the City of Bakersfield and were available for public review upon request. Upon receiving this comment, the City added a note to its website where the DEIR was posted noting "AERMOD and HARP2 files are available upon request by contacting Louis Ramirez, lramirez@bakersfieldcity.us." The Channel Law Group requested the AERMOD and HARP2 files on June 15, 2023 via email, and they received the files from the City on the same day. Regarding Technical Appendix D, upon receiving this comment, the November 23, 2022, version of the Project's Cultural Resources report was posted to the City of Bakersfield's website and the State Clearinghouse website on June 14, 2023. The November 23, 2022, Cultural Resources Report included the same content as the April 1, 2022, version of the report but with the addition of cultural resources records search results, which indicated that no Native American cultural resources were identified on or near the Project Site. Thus, the November 23, 2022, report did not disclose any information relating potentially significant impacts that was not already available in the April 1, 2022, version of the report.

C-3 Channel Law Group requests recirculation of the DEIR and requests to receive future notices concerning the Project. The City has added Channel Law Group to the mailing list for public notices concerning the Project. As indicated in Response C-1, the City extended the DEIR public review period by one day to June 20, 2023, as a courtesy, but the DEIR was not required to be recirculated. According to CEQA Guidelines Section 15088.5, a lead agency is not required to recirculate a DEIR unless significant new information is added that would change the DEIR in a way that would have deprived the public of a meaningful opportunity to comment upon a substantial adverse environmental effect or a feasible way to mitigate or avoid such an effect. The AERMOD modeling results were available for public inspection by contacting the City, and omission of the computer modeling result printouts from the City's website and State Clearinghouse website did not deprive the public from a meaningful opportunity to comment upon the Project's environmental effects and the contents and conclusions of the DEIR. A summary of the modeling results was provided in DEIR Technical Appendix B and in the DEIR under Subsection 4.2, *Air Quality*, and Subsection 4.7, *Greenhouse Gas Emissions*. Channel Law Group submitted no comments on the DEIR's analyses or conclusions in this comment letter. The

cultural records search results available in the November 23, 2022, version of the Project's Cultural Resources Report indicated that no Native American cultural resources were identified on or near the Project Site; as such, the public was not deprived of a meaningful opportunity to comment upon the environmental effects and the contents and conclusions reached in the DEIR pertaining to this subject matter. In summary, the DEIR was not required to be recirculated.

COMMENT LETTER D

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June 20, 2023

VIA ELECTRONIC MAIL

Louis Ramirez, Associate Planner II
City of Bakersfield – Development Services Department
1715 Chester Avenue, 2nd Floor
Bakersfield, CA 93301
lramirez@bakersfieldcity.us

Re: Comments on the DEIR for the Veteran's Affairs Community-Based Outpatient Medical Clinic; Site Plan Review No. 21-0399; SCH No. 2022080337

Dear Mr. Ramirez:

This letter is submitted on behalf of Progress for Bakersfield Veterans, LLC ("PBV") and documents defects in the Draft Environmental Impact Report ("DEIR") for the Department of Veteran's Affairs ("VA's") Community-Based Outpatient Medical Clinic ("Project") as well as the environmental review process for the Project. D-1

City Has Failed to Make DEIR and Supporting Materials Available for Public Review

On June 14, 2023 we sent a letter to the City explaining that the City's public comment period for the DEIR was legally inadequate because it ended on a federal holiday and also that the DEIR was missing key appendices to the technical studies and studies listed as included in the Technical Appendices thereby depriving the public and reviewing agencies of important information regarding the analytic route taken in reaching impact decisions and the ability to review the appropriateness of that analytic route. D-2

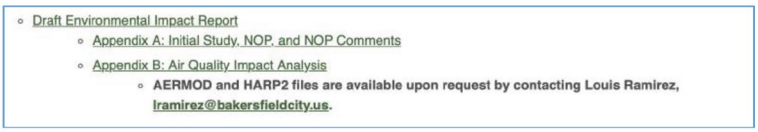
At 11:25 a.m. on June 15, 2023 we received a notice from the City stating that the comment period had been extended one day and stating:[1]

[1] https://content.civicplus.com/api/assets/4cb559f5-57d6-45d2-8125-b74188cf8461

Comment Letter D

> The purpose of this notice is to announce that the public comment period has been extended to Tuesday, June 20, 2023 at 5:00 PM as a courtesy to allow the public additional time to submit public comments on the Draft EIR, as June 19, 2023, is Juneteenth. The City of Bakersfield offices and State offices, however, are open on June 19, 2023. The Draft EIR and its Technical Appendices are available for review at the following website, additionally including Project Health Risk Calculations and AERMOD output files to accompany Technical Appendix B and the November 23, 2022 version of Technical Appendix D.

However, the missing model output was not provided on the City's website, which instead directs the reader to request the data, as shown in the following screengrab taken at 5:45 p.m. on June 15th:



The City's response does not correct for the fact that members of the public and reviewing agencies were only given access to the missing technical data and studies on the Thursday before a three-day weekend, and still have not been provided model output. In addition, it does not appear that the City has reviewed the DEIR in order to identify any other missing materials which the DEIR states are included in the Appendices.

Members of the public and reviewing agencies have thus received inadequate time to review the supporting studies, as they have not been circulated for the required 45-day period. Please provide information on when, how and to whom notification was provided regarding the extension of the comment period.

D-2 (CONT.)

The Proposed Project

The proposed Project is the result of issuance of a lease by the United States Department of Veterans Affairs ("VA"). As explained in the Notice of Availability ("NOA") for the proposed Project:

> The Project involves the development of a ±39,648 square foot (s.f.) medical outpatient facility to serve as a Department of Veterans Affairs (VA) Community-Based Outpatient Medical Clinic, with associated parking and other site improvements on ±10.05 gross acres, located east of Knudsen Street, west of Landco Drive, north of Hageman Road and south of Olive Drive. APNs: 365-020-30, and -28. The site is presently vacant.
>
> The application filed with the City of Bakersfield includes the following:
>
> - **Site Plan Review No. 21-0399** is a proposed site plan for the development of a ±39,648 s.f. medical outpatient facility on ±10.05 gross-acres. Other features include a covered drop-off,

D-3

COMMENT LETTER D

bicycle racks, a covered ambulatory pick-up area, an outdoor physical therapy area, an outdoor dining area, and an elevated loading dock. Landscaping is proposed along the perimeter of the Project site, around the building, and throughout the parking areas. In addition, a healing garden is proposed on the east side of the building, which would include a garden path and benches.

D-3 (CONT.)

The Project is located on an environmentally sensitive parcel, as evidenced by the parcel's location within the boundaries of the Metropolitan Bakersfield Habitat Conservation Plan, which expired on January 1, 2023.

Project History

Pages 1-2 to 1-3 of the DEIR provide a partial history of the Project, but are not complete. Please update the information to provide a full history of the VA's efforts to issue a lease to the Project Applicant for construction of a Community-Based Outpatient Medical Clinic ("CBOC"), including the dates of lease solicitations, awards, and recissions, and the City's processing of the resulting Site Plan Review request. Information included in Section 1.3 Background should include, but not be limited to the following Project history:

- On September 28, 2018 the VA awarded a $39,732,000 20-year lease to the San Diego-based SASD Development Group LLC ("Project Applicant") to build a proposed 30,100 square foot Community-Based Outpatient Clinic (CBOC) on the Project parcel, as announced by Congressman Kevin McCarthy on October 2, 2018.[2]

- On January 24, 2019, the VA sent a letter to the GAO stating that the contracting officer for the procurement had determined that corrective action was required and the VA would pay the reasonable costs associated with pursuing the bid protest, the total relief to which the protestor was entitled.

- In February 2019, the VA conceded that PBV was entitled to further corrective action in the form of payment for all reasonable costs associated not only with the costs of proposal preparations, but fees for pursuing its protests, including consultant and expert witness costs, in addition to its attorney's fees.

- In March of 2019, PBV asked the Court of Federal Claims to require the VA to properly evaluate PBV's bids. In response to PBV's protest, the VA informed the court it would take further corrective action beyond paying the fees associated with PBV's protests and bids by reversing the decision to eliminate PBV's proposals. The VA also conceded that PBV was not given the opportunity to engage in discussions with the VA or submit proposal revisions.

D-4

[2] https://kevinmccarthy.house.gov/media-center/press-releases/mccarthy-announces-lease-award-for-new-veterans-outpatient-clinic-in#:~:text=Today%2C%20Congressman%20Kevin%20McCarthy%20announced,Bakersfield%20and%20Kern%20County%20veterans.

COMMENT LETTER D

- In June of 2019, the VA once again amended its corrective action, this time informing the Court of Federal Claims it was cancelling the solicitation and restarting the bidding process, rather than proceeding with the corrective actions to which it had previously committed.
- On October 7, 2019, Congressman, and current Speaker of the House, Kevin McCarthy announced that the VA had recently terminated the lease for the new CBOC on the Project site after determining that the award the VA had made did not meet its requirements and that the VA would move forward with a new solicitation,[3] and urged that the VA move forward with that new solicitation.
- In testimony on September 9, 2019 before the House Committee on Veterans Affairs, Rep. McCarthy spoke in favor of SASD's proposal and against the incumbent's proposal to renovate the existing VA clinic.
- A new Solicitation For Offers ("SFO") was issued December 9, 2019 ultimately resulting in award of the subsequent lease to the Project Applicant for development of the new CBOC on the Project site. Please provide the date of the award.
- The Project Applicant filed an application with the City in 2020 for Site Plan Review No. 20-0102. Please provide the date the application was filed.
- On December 4, 2020, the City of Bakersfield released a Mitigated Negative Declaration ("MND") for a 39,648 square foot CBOC on the Project site – then Site Plan Review 20-0102. The MND concluded that the Project would result in no significant impacts after application of three cultural resource impact mitigation measures and the City's Site Plan Conditions of Approval.
- On January 7, 2021 the City's Planning Commission adopted the MND and the Site Plan Review was approved by the City's Development Services Director on January 8, 2021.
- The decisions were ultimately appealed to the City Council, which denied the appeal on March 3, 2021.
- On April 7, 2021 a lawsuit was filed by PBV challenging the adequacy of the MND.
- In April of 2021, the VA announced that it had again awarded a lease contract for the proposed Project. Congressman Kevin McCarthy responded by indicating his support and commitment to "continue to work in Congress to ensure that the new CBOC becomes a reality as soon as possible."[4] Please provide information on when the prior lease award was rescinded and the date of the lease award.
- In July of 2021 the City decided to rescind the MND and Site Plan No. 20-0102 approval and to prepare an EIR for the Project. Please include the specific dates of the formal actions.

D-4
(CONT.)

[3] https://kevinmccarthy.house.gov/media-center/press-releases/mccarthy-statement-on-va-clinic-in-bakersfield
[4] http://www.desertnews.com/news/article_6f39c8de-a8ec-11eb-af31-9378c91dac4c.html
https://kevinmccarthy.house.gov/media-center/press-releases/mccarthy-statement-on-new-cboc-in-bakersfield

COMMENT LETTER D

- The Draft EIR for the Project was released for public review and comment on May 5, 2023. The Draft EIR indicated that the Project would result in the following significant impacts, thus vindicating PBV's concerns regarding the adequacy of the MND:
    - Significant Unmitigable Greenhouse Gas Emissions
    - Significant, but mitigatable biological resource impacts in the form of impacts to special-status species and migratory birds.
    - Significant but mitigatable cultural resource impacts in the form of possible impacts to unknown subsurface historic and archeological resources.
    - Significant but mitigatable paleontological resource impacts in the form of possible impacts to unknown subsurface resources.
    - Significant but mitigatable tribal cultural resource impacts in the form of possible impacts to unknown subsurface resources.

D-4 (CONT.)

Improper Post-Hoc Rationalization

The Project's history, which includes the granting of a series of leases for a CBOC on the Project site to the Project Applicant, represents defacto federal approval of the Project prior to adequate environmental review, and the ensuing financial, political and bureaucratic momentum and pressure has impacted the nature and quality of the analysis in the EIR, including but not limited to the analysis of biological resource impacts and the alternatives. This flaw in the review process has also constrained both the alternatives and mitigations considered to reduce Project impacts. This history and the issuance of federal lease(s) for the Project has provided a strong incentive to downplay environmental concerns and to provide post-hoc rationalization for a decision already made on both the federal and local levels. As noted by the court:

> A fundamental purpose of an EIR is to provide decision makers with information they can use in deciding *whether* to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved. If postapproval environmental review were allowed, EIR's would likely become nothing more than *post hoc* rationalizations to support action already taken. We have expressly condemned this use of EIR's. (*No Oil, supra*, 13 Cal.3d at p. 79.) (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 394 [253 Cal.Rptr. 426, 764 P.2d 278].)

D-5

As documented herein, the DEIR for the proposed Project and the Project's history evidence characteristics of improper post-hoc rationalization that has affected the accuracy of the analysis in the DEIR. This is evidenced in both the analysis and in simple statements such as the following on DEIR page 1-3, which cannot be cured by simple editing:

> As a result of the pending lawsuit, on July 14, 2021, legal counsel for the Project Applicant (SASD Development Group, LLC) attended the Bakersfield City Council meeting and requested that the City Council rescind the MND (Resolution No. 029-2021) and Site Plan No. 20-0102

Comment Letter D

> (Resolution No. 030-2021), so that an EIR could be prepared for the project in an effort to avoid further litigation, and ensure that all of the Project's potential impacts are fully disclosed, analyzed and mitigated, **even though the Project generally results in limited impacts**. This EIR is the resulting EIR.

Improper post-hoc rationalization is also evidenced by statements such as the following on DEIR page 4.7-22, which cannot be corrected by editing, which demonstrate how post-hoc rationalization has limited the specification of mitigation measures for Greenhouse Gas impacts:

> After detailed analysis of all possibilities, it has been determined that no other feasible mitigation measures that could further reduce the Project's GHG emissions exist, for several reasons. First, **physical modifications to the Project are not possible because the Project applicant is limited to the design improvements approved by the federal government as part of the already concluded federal procurement process. As a result, the City has no jurisdiction or ability to require adding improvements such as rooftop solar panels, as it would conflict with the Project approved by the VA / federal government.**

It is inaccurate, as a matter of law, to assert that the City "has no jurisdiction or ability to require adding improvements" to the project. Although the clinic is being constructed using, in part, federal funds, the developer is a private party that is fully subject to the jurisdiction of the City.

D-5 (CONT.)

Improper post-hoc rationalization has also resulted in the rejection of impact reducing alternatives. For example, in evaluating the Net Zero Alternative, the DEIR on page 6-15 states:

> The Net Zero Alternative would reduce the Project's significant and unavoidable cumulatively-considerable GHG impacts to a less than significant level. The Net Zero Alternative would also reduce the Project's less than significant impacts to air quality, energy, and noise. All other impacts from the Net Zero Alternative would be similar to the Project.
>
> . . .
>
> . . . **The feasibility of selecting this Alternative is outside of the jurisdictional authority of the City of Bakersfield** because the physical characteristics of a feasible Project are determined by the U.S. Department of Veterans Affairs (the VA). Modifications to the Project by the City of Bakersfield are not possible because the Project applicant is limited to the design improvements approved by the federal government as part of the already concluded federal procurement process. **As a result, the City has no jurisdiction or ability to select this Alternative because it would conflict with the Project approved by the VA / federal government**. . .

Similar statements were also made regarding the Renewable Energy System Project Design Alternative. Indeed, such statements are in the introduction to the DEIR. See, for

COMMENT LETTER D

example, Page 1-13, which states, "The City has no ability to require an alternative location for the Project, including remodeling the existing clinic, as that is entirely within the jurisdiction of the federal government." The statements above illustrate both the DEIR's function as post-hoc rationalization, and the need for a joint NEPA/CEQA document that considers a range of feasible alternatives to the Project, including the other bids received by the VA, and does so before commitment to a specific project.

D-5 (CONT.)

Need for a Joint NEPA/CEQA Document

The proposed Project is subject to the National Environmental Policy Act ("NEPA"). NEPA "applies to projects which are carried out, financed, or approved in whole or in part by federal agencies."[5] Federal approvals for the Project include but are not limited to the granting of a lease by the VA, any required permitting for Incidental Take of sensitive species on the Project site, and possible Section 106 consultation should resources that are covered by the National Historic Preservation Act (NHPA) be discovered during Project grading and excavation.

CEQA encourages the preparation of joint CEQA/NEPA documents. The CEQA Guidelines § 15226 states:

> **15226. JOINT ACTIVITIES**
>
> State and local agencies should cooperate with federal agencies to the fullest extent possible to reduce duplication between the California Environmental Quality Act and the National Environmental Policy Act. Such cooperation should, to the fullest extent possible, include:
>
> 1. (a) Joint planning processes,
> 2. (b) Joint environmental research and studies,
> 3. (c) Joint public hearings,
> 4. (d) Joint environmental documents.

D-6

The DEIR should detail all actions taken to-date by the VA regarding NEPA compliance for the proposed Project and all cooperative actions taken by the VA and City regarding the Project and the environmental documentation for the Project.

Under NEPA there are three levels of environmental review documents: a Categorical Exclusion ("CATEX"), an Environmental Assessment ("EA") which lead to a Finding of No Significant Impact ("FONSI") and an Environmental Impact Statement ("EIS"). As explained on page 9 of the VA's "NEPA Interim Guidance for Projects":[6]

> **Categorical Exclusions (CATEXs)** are actions that a federal agency has determined to be very unlikely to individually or cumulatively have a significant impact on the environment. If a federal agency knows a particular type of action will not generate a significant environmental impact, based on agency experience, then the agency may elect to

D-7

[5] CEQA Guidelines Section 15220.
[6] https://www.cfm.va.gov/environmental/NEPAGuidance.pdf
VA's NEPA implementing regulations are codified in the Federal Register at 38 CFR Part 26.

COMMENT LETTER D

> categorically exclude the action from further environmental review. Agencies generate agency-specific lists of categorical exclusions based on experience and these lists are formalized through the regulatory process. VA's current CATEX list can be found in 38 CFR Part 26. If the action does not clearly meet the agency-specific criteria, or seemingly does but has "extraordinary circumstances," then the action must be evaluated through completion of an EA.

While the issuance of a lease is typically eligible for a CATEX[7], NEPA requires the VA to "evaluate any such action for extraordinary circumstances in which a normally excluded action may have a significant effect."[8] The VA has, by its own regulations, determined that the "potential presence of an endangered species, archeological remains or other protected resources" is an "extraordinary circumstance."[9]

As shown on the VA's Review of Site Environmental Information and Recommended NEPA Documentation form included as **Attachment A**, the VA determined that there was inadequate information regarding cultural resources and wildlife and habitat on which to make a determination as to whether a CATEX could be justified and indicated the need for more information including a "bio field survey for SJKF, TIKER, BNLL; maybe GIGS, BACU, SJWT." The City must provide any updated VA environmental determinations and documents.

The potential for the proposed Project to result in impacts to the federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*) ("SJKF") was assessed in the biological resource study prepared for the DEIR. Based on a reconnaissance survey conducted on October 26, 2021, the biological resources assessment included in DEIR Appendix C concludes that the Project site contains suitable denning habitat for the SJKF and that "if the site becomes occupied, Project activities could result in harm or injury to kit fox."[10] A CATEX for the Project is therefore inappropriate.[11] An EIS is required for the Project.

D-7 (CONT.)

CEQA Guidelines §15222 specifies that for projects also subject to NEPA:

> **15222. PREPARATION OF JOINT DOCUMENTS**
>
> If a Lead Agency finds that an EIS or Finding of No Significant Impact for a project would not be prepared by the federal agency by the time when the Lead Agency will need to consider an EIR or Negative Declaration, the Lead Agency should try to prepare a combined EIR-EIS or Negative Declaration-Finding of No Significant Impact. To avoid the need for the federal agency to prepare a separate document for the same project, the Lead Agency must involve the federal agency in the preparation of the joint document. The Lead Agency may also enter into a Memorandum of Understanding with the federal agency to ensure that both federal and state

D-8

[7] 38 CFR 26.6(b)(1)(ix) In addition, it should be noted that this is not a typical lease as it results in funding for the construction of a new CBOC rather than the leasing of an existing facility.
[8] 40 CFR 1501.4(b)
[9] 38 CFR 26.6(b)(3)(v).
[10] DEIR Appendix C, page 33.
[11] 40 CFR 1501.4(b)(1).

COMMENT LETTER D

requirements are met. This involvement is necessary because federal law generally prohibits a federal agency from using an EIR prepared by a state agency unless the federal agency was involved in the preparation of the document.

The City should be preparing a joint CEQA/NEPA document. This is particularly true, given that CEQA Guidelines §15003(h) state that the "lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect. (*Citizens Assoc. For Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151)." The VA's issuance of the lease and lease terms is part of the whole of the action.

D-8 (CONT.)

Failure to Address Impact-Related Issues Raised During the Administrative Process

The City's administrative process for this project began with its processing of the Project Applicant's application for what was then called Site Plan Review No. 20-0102. All documents related to that application, including the MND and legal challenge of the MND, are incorporated herein by reference.

During the administrative process, the law firm of Soluri Meserve submitted a detailed letter entitled Letter in Support of Appeal of Mitigated Negative Declaration and Appeal of Approval of Site Plan Review No. 20-0102 Proposed Veterans Affairs Clinic on Knudsen Drive dated March 1, 2021. The DEIR has failed to address all of the environmental issues raised in that letter, which is included as **Attachment B** to this comment letter. We hereby request detailed responses to all of the issues raised in that letter since they remain applicable to the EIR.

D-9

Initial Study/DEIR Fails to Provide Substantial Evidence to Support No Impact or Less Than Significant Impact Judgements Included in the Initial Study in Appendix A to the DEIR

The Initial Study for the Project, included in DEIR Appendix A, indicated the potential for the project to result in impacts in the following 11 issue areas: aesthetics, air quality, biological resources, cultural resources, energy, geology/soils, greenhouse gas emissions, hazards & hazardous materials, hydrology/water quality, transportation/traffic and tribal cultural resources.

In determining the Project would have less than significant impacts in the area of agricultural resources, land use/planning, mineral resources, noise, population/housing, public services, recreation, utilities/service systems and wildfire, the Initial Study and DEIR Section 5.4 often rely on conclusionary statements unsupported by substantial evidence or information contradicted by comments provided on the Notice of Preparation/Initial Study. For example:

- DEIR page 5-5 and Initial Study page 10-11 states that there is no farmland on the project site. However, the Phase 1 site assessment in DEIR Appendix F1, at page 2 indicates that the Project site was used for agricultural purposes from at least 1937 until at least 1973.

D-10

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- Initial Study page 17 states: "The existing drainage pattern on the Project site would be altered by construction of the Project. Stormwater would be managed by the Project's stormwater drainage system, preventing any reasonable possibility of causing flooding on- or off-site. Although the Project would alter the Project site's internal drainage patterns, such changes would not result in substantial flooding on- or off-site, either during construction or during long-term operation. Accordingly, implementation of the Project would result in a less than significant impact associated with flooding, and further analysis of this topic is not required." No substantial evidence is provided to support these contentions. D-11

- The Initial Study concluded that the Project was consistent with the General Plan designation and zoning for the site, ignoring evidence provided during the administrative process that the Project is not allowed in the current M-2 General Manufacturing land use designation. (See **Attachment B**, pages 4-5). Moreover, the DEIR concedes that, "At the time this EIR was prepared, the City of Bakersfield was preparing a General Plan Update." (DEIR 2-5) There is no discussion as to the effect of the new General Plan on the conclusions set forth in the DEIR. D-12

- Initial Study page 18 explains that in ruling out the need to address mineral resources in the EIR that: "the region is a major oil-producing area, with substantial oil and gas fields existing within the Metropolitan Bakersfield area. The Project site is located within the Fruitvale oil/gas field and an oil and gas well that has been plugged is located just south of the proposed Project (CalGEM, 2020). However, according to the California Geologic Energy Management Division (Cal-GEM) there are no known oil, gas, or injection wells located within the boundaries of the Project site (CALGEM, 2020)). Therefore, the proposed Project would not result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state, and there would be no impact. No further discussion is warranted in the EIR."

  However, the NOP letter received from the California Department of Conservation included in DEIR Appendix A indicates that: "CalGEM's Well Finder map indicates Borel 1 (0402952455), is located within the project's parcel boundaries" although this abandoned well is located outside the proposed work area. Please provide a figure showing the location of the abandoned well on the site plan for the proposed Project.

  The agency also indicates that in addition to the plugged and abandoned well, there might be pipelines associated with oil and gas production. Please provide a map showing the location of any pipelines or transmission lines present on the Project site.

  The DEIR therefore fails to address the potential loss of access to mineral resources resulting from the location of the Project within the Fruitvale oil/gas field and the potential for the project to impact any transmission pipelines. D-13

- The Initial Study on page19 concluded that Project would not result in any noise impacts without providing any substantial evidence to support these conclusions, relying in part of the 2012 Kern County Airport Land Use Compatibility Plan. The City rightly chose to address noise in the DEIR, despite the unsupported conclusion of no impacts included in the Initial Study. D-14

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- The Initial Study on page 20 fails to provide substantial evidence to support the conclusion that public services such as fire and police would not be impacted by the project. Although the Initial Study provides information regarding the Project's proximity to existing fire and police stations, it fails to provide evidence that there is existing capacity to support the additional demand that will result from the proposed Project and that response times will remain adequate. The potential for impacts remains. D-15

- Initial Study page 22 fails to provide substantial evidence that the proposed Project will not impact utility systems, fails to address the utility-related issues raised during the administrative process (see **Attachment B**) and fails to indicate where the utility-related construction impacts will be addressed in the DEIR, stating: "The Project would construct an on-site network of water and sewer pipes and stormwater facilities that would connect to existing water, sewer and storm water drains. The Project would also install connections to existing electricity, natural gas, and communications infrastructure that already exist in the area. The installation of water and sewer line connections, stormwater drainage facilities, electricity, natural gas, and communications infrastructure as proposed by the Project would result in physical impacts to the environment; however, these impacts are considered to be part of the Project's construction phase and are evaluated under the individual environmental topic areas addressed in this Initial Study. In instances where potential significant environmental impacts have been identified for the Project's construction phase, a detailed analysis will be provided in the EIR. There are no components of the Project's proposed utility connections that would result in significant environmental effects beyond what already will be evaluated in the required EIR for the Project's construction phase under associated environmental topic areas. Therefore, no further analysis of this topic is required." However, the Initial Study fails to establish that there is sufficient service capacity to support the Project. D-16

As noted on DEIR page S-1, the City of Bakersfield determined that the scope of the EIR should cover 13 subject areas, stating that scope of the DEIR "includes all of the subject areas listed in Appendix G to the CEQA Guidelines that the City determined could be significantly and adversely affected by the Project, taking into consideration public comment received by the City in response to this EIR's Notice of Preparation (NOP)." The City therefore appropriately decided that the DEIR should also addresses Land Use and Planning and Noise, which the Initial Study indicated would have less than significant impacts. D-17

Inadequate Project Description

Please provide a detailed description of the services to be provided by the proposed Project. The Project must be conditioned or provide mitigation to limit allowable services to those described in the EIR, since some of the impact conclusions are dependent on the nature of services provided. D-18

Please provide information on the anticipated Project employment and the average and maximum number of staff and patients anticipated to be on-site daily and at one time. DEIR page 4.8-11 indicates the "it is expected that only 150 persons (50 employees and 100 patients) would visit the Project site on any given day. However, Figure 3-1 indicates that the Project includes 207 parking spaces. Please explain the apparent excess parking. Moreover, according D-19

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to Table 1, on page 7 of the Traffic Study included in DEIR Appendix I, the Project would generate 1,457 average daily trips, or 728 average daily two-way trips. Please explain the apparent discrepancies regarding the number of persons likely to visit the site on a daily basis and the number of persons expected to be on-site at any given time.

D-19 (CONT.)

Please also provide detailed information regarding the Project specifications provided in the VA's lease for the Project. The VA's specifications for the construction of the Project have been used to inappropriately constrain the specification of mitigation measures and alternatives analysis. The VA's action was not the simple issuance of a lease for an existing facility. Based on the information provided in the DEIR, the VA's lease appears to be defacto subcontracting for the construction and operation of a new facility meeting specific VA specifications.

D-20

Please provide information regarding ownership of the site. Does the Project Applicant currently own the site, or does the Project Applicant merely have an agreement with the site owners and if so, what are the specifics of the agreement? This is important as it affects the range of alternatives that should have been specified in the DEIR.

D-21

Air Quality and Health Risk Analysis

The air quality modeling conducted for the project included unsubstantiated input parameters which are likely to result in an underestimate of Project impacts. The Greenhouse Gas analysis was deficient as it failed to include feasible mitigation measures to reduce impacts.

D-22

The DEIR and air quality analysis are also flawed because the DEIR improperly assumes that environmental impacts caused by operating the existing clinic will cease upon the VA vacating the existing clinic and moving to the proposed new facility. This assumption is inaccurate. For example, in its discussion of air quality emissions, the DEIR states, "once the Project begins operation, the existing VA clinic at 1801 Westwind Drive would permanently close, and therefore, all of its operational air quality emissions would cease." (DEIR Page 4.2-21; see also Pages 4.5-7, 4.5-8, 4.7-17) To the contrary, if and when the VA vacates the existing clinic, the existing clinic will be leased to another operator, likely a medical user given the building's existing medical improvements, who should be assumed to generate environmental impacts substantially the same as the existing clinic. The DEIR should be revised and the environmental impacts assessed of having multiple nearby medical clinics operating concurrently.

D-23

Inadequate Biological Resource Analysis and Failure to Identify and Mitigate Significant Biological Resource Impacts

The biological resource assessment for the Project contained in DEIR Appendix C is inadequate. Only the results of a single reconnaissance survey that was performed on October 26, 2021 is reported in the Biological Resource Assessment. This is insufficient to assess the potential biological species on the site, including the presence of special-status species. For example, burrowing owls are much more difficult to detect in late October and the survey was undertaken during an inactive time for the Crotch's bumble bee.

D-24

According to page 3-12: "The entire Project site would be disturbed for construction of the Project, in addition to off-site areas along Knudsen Drive, Landco Drive, and proposed Street A for the construction of roadway improvements and utility connections." It does not appear that the biological resource assessment addressed the full extent of the area impacted by the Project.

D-25

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In addition, given the Project footprint and proposed landscaping, it appears that current biological values on the site would be largely lost as a result of the proposed Project.

The single reconnaissance survey predates the August 11, 2022 issuance of the Notice of Preparation for the EIR by almost ten months. The DEIR has therefore failed to describe the existing biological conditions of the Project site, as required by CEQA Guidelines §15125, which specifies that the "lead agency should describe the physical environmental conditions as they exist at the time the notice of preparation is published."

In addition, October of 2021 represented a period of peak biological stress for the site, resulting from the extreme drought of 2021,[12] rather than the improved conditions present at the time the NOP was issued. The Biological Resource Assessment is thus unlikely to have resulted in an accurate picture of the biological value of the site. Conclusions that no suitable habitat for various species exists on the Project site are thus not supported by substantial evidence and are based on conditions during extreme drought conditions and post-disking.[13] Furthermore, the biological resource assessment failed to meet most of CDFW's (2018)[14] minimum standards for reconnaissance surveys directed toward plant species, and therefore must be redone. Similarly, none of the minimum standards of CDFW (2012)[15] have been met for burrowing owl surveys. The DEIR's characterization of the existing environmental setting is therefore inaccurate and misleading, resulting in an underestimate of Project impacts.

The DEIR also fails to disclose why the Biological Resource Assessment only reports on the findings of a single reconnaissance survey in 2021 when it appears that at least two additional reconnaissance surveys were performed by McCormick Biological (2020 and in 2022). The DEIR should provide information on any and all biological surveys conducted during the administrative process.

The reporting of the survey methodology in the biological resource assessment is incomplete and fails to accurately document the analytic method used in reaching the study's conclusions. The DEIR must include information on the time the survey(s) began and their duration as well as weather conditions at the time, so the likely usefulness of the survey(s) can be assessed. More importantly, reconnaissance surveys are an insufficient method for ruling out the presence of special-status species.

The reported literature/data base search for potential special-status and wildlife species was also incomplete, resulting in an incomplete assessment of potential biological resource impacts. At a minimum, the following special-status species are likely to be easily observed on the Project site with more robust surveys:

D-25 (CONT.)
D-26
D-27
D-28
D-29
D-30

[12] See: https://water.ca.gov/-/media/DWR-Website/Web-Pages/Water-Basics/Drought/Files/Publications-And-Reports/091521-Water-Year-2021-broch_v2.pdf
[13] Page 16 of Appendix C indicates that evidence of periodic disking was observed during the reconnaissance survey.
[14] CDFW (California Department of Fish and Wildlife). 2018. Protocols for surveying and evaluating impacts to special status native plant populations and sensitive natural communities. https://nrm.dfg.ca.go
[15] CDFW (California Department of Fish and Wildlife). 2012. Staff Report on Burrowing Owl Mitigation. Sacramento, California.

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Species	*Scientific name*	Status[a]
Monarch butterfly	*Danaus plexippus*	FC
California gull	*Larus californicus*	BCC, TWL
Double-crested cormorant	*Phalacrocorax auratus*	TWL
Turkey vulture	*Cathartes aura*	BOP
Cooper's hawk	*Accipiter cooperi*	TWL, BOP
Red-tailed hawk	*Buteo jamaicensis*	BOP
Barn owl	*Tyto alba*	BOP
American kestrel	*Falco sparverius*	BOP
Merlin	*Falco columbarius*	TWL, BOP
Peregrine falcon	*Falco peregrinus*	BCC, CFP, BOP
Loggerhead shrike	*Lanius ludovicianus*	BCC, SSC2
California horned lark	*Eremophila alpestris actia*	TWL
San Joaquin kit fox	*Vulpes macrotis mutica*	FE, CT

FE = federal endangered, FC = federal Candidate species for listing as Endangered under the Endangered Species Act, BCC = federal Bird Species of Conservation Concern, CT = California threatened, CFP = California Fully Protected (CFG Code 3511), SSC2 = California Bird Species of Special Concern priority 2 (Shuford and Gardali 2008), BOP = Birds of prey (CFG Code 3503.5), TWL = Taxa to Watch List (Shuford and Gardali 2008).

The biological resource assessment thus fails to adequately assess the project's potential to significantly impact wildlife through habitat loss, to recognize the wildlife movement value of the Project parcel and associated Project impacts, to address potential impacts associated with wildlife-automobile collision mortality or bird-window mortality and associated Project impacts, or to address the Project's potential cumulative impacts to wildlife and habitat fragmentation. The biological assessment fails to adequately recognize that the Project site's value to wildlife remains very high due to its location within an historic natural wildlife movement corridor, which due to development in the area, likely supports even more strongly concentrated wildlife movement than it has in the past (Smallwood 2015).[16] Additionally, the site is likely to serve as a wildlife movement corridor for the Monarch butterfly with is a Candidate for listing under the federal Endangered Species Act, and as foraging habitat for gulls and raptors. Use of the site as a corridor for these special status species is not addressed in the DEIR.

D-30 (CONT.)

Conclusions in the biological resource assessment are not supported by substantial evidence or adequate or accurate analysis and understate and fail to identify the full range of the Project's biological resource impacts. The biological resource assessment must be redone and corrected to identify the full range of significant Project biological resource impacts and the DEIR recirculated for public review.

D-31

Applicant's Repeated Disking of the Site Has Impacted the Accuracy of the Biological Resource Assessment

Please provide the dates and details of any and all ground-disturbing activities conducted by the Project Applicant, site owners, or their representatives on the Project site, since the initiation of the original environmental analysis prepared for the Project, including the prior

D-32

[16] Smallwood, K. S. 2015. Habitat fragmentation and corridors. Pages 84-101 in M. L. Morrison and H. A. Mathewson, Eds., Wildlife habitat conservation: concepts, challenges, and solutions. John Hopkins University Press, Baltimore, Maryland, USA.

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application for Site Plan Review No. 20-0102. This should include the dates of all ground disturbing activities, including but not limited to, disking of the site.

The disking has occurred on multiple occasions throughout the MND and EIR process for the Project. Fire protection services for the site are provided by the Kern County Fire Department. Property owners within Kern County are subject to the Fire Department's Fire Hazard Reduction Program Requirements.[17] These requirements apply to properties within State responsibility areas. As noted on page 23 of the Initial Study in DEIR Appendix A, the Project site is not located in or near State responsibility areas or lands classified as very high fire hazard severity zones. Even if it were, the Fire Department's requirements only require property owners of vacant land to provide 10 feet of brush clearance along the property line if there are structures on neighboring properties within 100 feet of the property line.[18] It therefore appears that the Project Applicant has engaged in improper disking of the Project site, with an intent to discourage or exterminate species on the Project site or use by species, plants and wildlife.

These site disturbances have affected the accuracy of the biological resource assessment for the Project. Evidence of disking was observed by the DEIR's biological resource consultant (Appendix C, page 16) and was noted as reducing the potential for several special status species, including:

- Bakersfield legless lizard, *Anniella grinnelli* – per Appendix C, page 24: ". . . and frequent disking reduce the potential for this species."
- American badger, *Taxidea taxus* - per Appendix C, page 26: "Although badgers will utilize a variety of habitats (including agriculture) the majority of the Project site is regularly disked which makes the site unsuitable (see Section 4.4.2)."
- The fact that the "Project site is typically fallow and undergoes routine disking for fire control" in noted on Appendix C, page 32 when discounting the potential for special-status plant species.

D-32 (CONT.)

There is a reason that BIO MM-1, BIO MM-2, BIO MM-3 and BIO MM-4 require sensitive species-specific surveys to be conducted by a professional biologist in consultation with CDFW no more than 30 days prior to any ground disturbance activities on the Project site – to ensure that such activities do not impact or remove such species and to ensure that Project impacts are identified and addressed. However, the Project site has been disked on multiple occasions since initiation of environmental review of the Project following the 2018 lease award. This activity has artificially reduced the biological value of the Project site and impacted the accuracy of the biological resource's assessment included in the DEIR. Impacts to biological resources are thus underestimated in the DEIR for the Project. A reasonable amount of time must be allowed to pass without any further disking or other ground disturbances of the site in order to properly assess the full extent of biological resources present at the site. After such time, more accurate and complete biological studies should be performed. Thereafter, an updated DEIR should be circulated for review with accurate and complete information about the biological resources of the site.

D-33

[17] https://kerncountyfire.org/fire-prevention/hazard-reduction/
[18] https://kerncountyfire.org/wp-content/uploads/2021-Defensible-Space-Guidelines.pdf

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Inadequate Biological Resource Mitigation

Subject to the need for a more accurate disclosure regarding biological resources, as discussed above, mitigation measures in the DEIR still fail to address all potentially present special status species that could be impacted by the Project. For instance, Mitigation Measure BIO MM-1 only addresses burrowing owls, BIO-MM-2 only addresses migratory birds, MM-3 only addresses Crotch's bumblebee and BIO-4 only addresses the San Joaquin kit fox. New mitigation measures are needed to restrain disking and require performance of additional grading/pre-ground modification full biological assessments which addresses all of the species with the potential to occur on the site, and that in the event that sensitive species other than those addressed in MM-1 to MM-4 are identified as present or likely to occur on the site, require that any issuance of grading, construction and occupancy permits, shall be suspended until a supplemental or subsequent EIR is prepared for the Project and appropriate mitigation identified and implemented. D-34

Subject to the need for a more accurate disclosure regarding biological resources, as discussed above, the preconstruction surveys specified in BIO MM-1 to MM-4 are inadequate for detecting special-status species. The mitigation measures need to be corrected to require protocol-level detection surveys prior to any preconstruction surveys. D-35

Subject to the need for a more accurate disclosure regarding biological resources, as discussed above, BIO MM-1 must be corrected, given the avian breeding season recognized by the California Department of Fish and Wildlife is now 1 February through 15 September. The proposed mitigation measure of passive exclusion would be inconsistent with the recommendations of CDFW (2012), which warns that implementation of such a measure could be interpreted by CDFW as take of burrowing owls. D-36

Subject to the need for a more accurate disclosure regarding biological resources, as discussed above, BIO MM-2 lacks adequate nest protections. In addition, the DEIR's conclusion that preconstruction surveys would reduce the potential impacts to nesting birds to less-than-significant is unsubstantiated and is contradicted by the difficulty of locating the nests of grassland birds. Impacts, while reduced would remain significant after mitigation and must be identified as such. D-37

Subject to the need for a more accurate disclosure regarding biological resources, as discussed above, BIO MM-1 to MM-5 represent improperly deferred mitigation, because they rely on future surveys without specification of appropriate standards. These mitigations also represent improper deferral of analysis as the specified surveys should have been completed prior to issuance of the DEIR. These mitigations also wrongly propose that preconstruction surveys should substitute for detection surveys that are consistent with US Fish and Wildlife Service requirements. D-38

Subject to the need for a more accurate disclosure regarding biological resources, as discussed above, additional mitigation in the form of compensatory provision of an equal area of open space protected in perpetuity as close to the Project site as possible should also be required to address the Project's conversion of habitat for special status species impacts. D-39

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Subject to the need for a more accurate disclosure regarding biological resources, as discussed above, the current mitigation measures, as specified in the DEIR are inadequate and biological resource impacts remain significant.

D-40

DEIR Fails to Demonstrate that Mitigation is Feasible

The DEIR acknowledges the Project's potential to impact the following species: Crotch's bumble bee, burrowing owl, San Joaquin Kit Fox (SJKF), and American badger. Mitigation Measure Bio MM-5 requires in part:

> Compensation for habitat disturbance acceptable to CDFW (state listed species) and/or USFWS (federal listed species) at a ratio of no less than 3:1 for permanent impacts and 1.1:1 for temporary impacts to listed species habitat. The only existing approved conservation bank for impacts to San Joaquin kit fox habitat in Kern County is the Kern Water Bank Authority Conservation Bank. Lands used to mitigate for San Joaquin kit fox must be contiguous with other potentially occupied lands, provide suitable foraging and denning habitat for San Joaquin kit fox, and be located in the southern San Joaquin Valley portion of Kern County below 1,500' in elevation;
>
> Compensation land shall be funded for maintenance, protection, and management through establishment of a long-term funding mechanism such as an endowment. The endowment must be a non-wasting account that is acceptable to both CDFW and USFWS.

D-41

Given the Project's location in the expired Metropolitan Bakersfield Habitat Conservation Plan area, the loss of habitat from construction of the Project is clearly significant. Given that the mitigation mechanisms in the HCP are no longer available, the DEIR must demonstrate that sufficient mitigation, including without limitation compensation land, is available to address each of the potential biological resources/sensitive-species impacts of the Project. The DEIR notes the requirements for "[c]ompensation for habitat disturbance acceptable to CDFW (state listed species) and/or USFWS (federal listed species)," but does not identify any such compensation. In short, the DEIR must demonstrate that mitigation is feasible. Without such a demonstration, biological resource impacts cannot be classified as Less-than-Significant with Mitigation Incorporated.

Deficiencies in the Biological Resource Assessment and Biological Mitigation Measures Necessitate Correction and Recirculation of the DEIR

For the reasons stated, the DEIR has failed to provide accurate and complete information about the biological resources on the site. The biological context has been improperly impacted by disking. The DEIR has failed to identify significant biological resource impacts of the Project, has underestimated impacts, and has not provided adequate mitigation to reduce impacts to less-than significant levels. Section 15088.5 of California Environmental Quality Act

D-42

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("CEQA") Guidelines specifies when recirculation of an EIR is required prior to certification. CEQA Guidelines Section 15088.5 states in part:[19]

> (a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:
>
> (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
>
> (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
>
> (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
>
> (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (Mountain Lion Coalition v. Fish and Game Com. (1989) 214 Cal.App.3d 1043).

D-42 (CONT.)

The DEIR also states that "If California or Federal listed threatened or endangered specifies…could be injured or killed due to Project-related activities, the CDFW and/or USFWS (as appropriate) shall be contacted for further guidance. The DEIR fails to specify whether the CDFW and/or USFWS were contacted and, if so, what guidance they provided.

D-43

Correction of the biological resource section of the DEIR to acknowledge and address omitted impacts thus necessitates revision and recirculation of the DEIR.

[19] CEQA Guidelines Section 15088.5(e) specifies: A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record.

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Cultural Resources Analysis

The DEIR must provide details regarding the dates of any and all tribal consultation that was conducted. Among other defects in the cultural resource analysis of the DEIR, tribal consultation is inadequately documented in the DEIR. The DEIR must provide documentation that required AB52 and Section 106 consultation has occurred. D-44

As noted in the DEIR, there are several scattered prehistoric resources within a one-half-mile radius of the Project. The nearest recorded prehistoric resource is located only 575 feet to the south of the Project site. It is therefore imperative that the DEIR include adequate mitigation to ensure that cultural resource impacts can be mitigated to less than significant levels and that the potential for impacts be accurately assessed. D-45

It is odd, given that evidence of disking was observed prior to the biological reconnaissance survey and the biological survey was conducted at a time when the site "was nearly devoid of any vegetation,"[20] that the field work for the Cultural Resources Assessment was conducted at a time when tall grasses led to low to moderate visibility obscuring the ability of the surveyor to detect possible on-site cultural resources. As noted in DEIR Appendix D, the March 22, 2022 cultural resource survey was conducted at a time when there was only 20 to 40 percent ground visibility. How were the survey times for the biological survey and the cultural resource survey selected? They both appear to have been conducted when the likelihood of detecting resources was minimized. Given the proximity of known cultural resources to the Project site, and the poor site conditions at the time the cultural resource field work was done, it is likely that the DEIR underestimates the Project's cultural resource impacts. D-46

Failure to Include Feasible Mitigations to Reduce Greenhouse Gas Impacts

Greenhouse Gas impacts are identified as a Significant and Unavoidable Cumulatively Considerable Impact. CEQA Guidelines §15370 defined mitigation as:

> **15370. MITIGATION**
> "Mitigation" includes:
> (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
> (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
> (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
> (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
> (e) Compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements.

CEQA Guidelines §15902(b) requires in part: D-47

[20] DEIR Appendix C, page 16.

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b) A public agency shall not decide to approve or carry out a project for which an EIR was prepared unless either:
(1) The project as approved will not have a significant effect on the environment, or
(2) The agency has:
(A) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091, and . . .

D-47 (CONT.)

The Sierra Club, in its letter on the NOP for the Project (included as **Attachment C**) provided a number of mitigation concepts for lessening greenhouse gas impacts, yet the DEIR fails to evaluate or adopt these measures. The DEIR must specify any mitigations or combination of mitigations that would substantially lessen the significant impact. Please specifically address each of the mitigation concepts suggested to reduce Greenhouse Gas impacts.

Failure to Identify Significant Land Use and Planning Impacts

D-48

Please see and address the specific comments regarding the Project's lack of consistency with the General Plan land use designation and zoning for the Project site contained in **Attachment B**, pages 4-5.

Please see discussion below regarding the Project's lack of consistency with the Noise Element of the General Plan.

Inadequate Noise Analysis and Failure to Identify Significant Noise Impacts

D-49

> **Noise Threshold C**: "For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the Project expose people residing or working in the project area to excessive noise levels?"

As noted on page VII- of the City's General Plan,[21] the "median noise level (L_{50}) is the criterion commonly used in noise ordinances or in other types of performance standards to assess the acceptability of noise sensitive land uses located in proximity to commercial or industrial noise sources." Goal 2 of the City's Noise Element is to: "Protect the citizens of the planning area from the harmful effects of exposure to excessive noise, and protect the economic base of the area by preventing the encroachment of incompatible land uses near known noise-producing roadways, industries, railroads, airports and other sources." Policy 2 of the City's Noise Element is to: "Prohibit new noise-sensitive land uses in noise-impacted areas unless effective mitigation measures are incorporated into project design to reduce noise to acceptable levels."

Although the proposed CBOC is located well outside of the 60dBA CNEL noise level contour boundary shown in the 2012 Airport Land Use Compatibility Plan (ALUCP), the 2012 ALUCP does not represent existing noise conditions at the time the NOP was released. Conditions at the time the NOP was released are more closely captured by the noise readings

[21] The General Plan is available at: https://content.civicplus.com/api/assets/37a2e20d-e610-431f-a222-9f4f2ecd2ddd

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taken by the DEIR's noise consultant (DEIR Table 4.11-1) in the Project vicinity and the noise consultant's with-Project and with-out Project operational noise level estimates for the Project site.

As noted on DEIR page 4.11-11, the City's stationary source noise level standards are shown on Table 4.11-2, *General Plan Noise Element Performance Standards*, and included in Appendix 3.1 of *Technical Appendix H* (UC, 2023, p. 15). Table 4.11-2 is reproduced below:

Table 4.11-2 General Plan Noise Element Performance Standards

Time Period	Exterior Noise Level Standards (dBA)[1]				
	L_{50} (30 mins)	L_{25} (15 mins)	L_8 (5 mins)	L_2 (1 min)	L_{max} (Anytime)
Daytime (7:00 a.m. to 10:00 p.m.)	55	60	65	70	75
Nighttime (10:00 p.m. to 7:00 a.m.)	50	55	60	65	70

1 Metropolitan Bakersfield General Plan Noise Element Table VII-2 Noise Level Performance Standards (Appendix 3.1 of *Technical Appendix H*.
(UC, 2023, Table 3-1)

As shown in DEIR Table 4.11-6, with and without Project noise levels in the Project vicinity exceed the City's exterior noise standards (L_{50}):

Table 4.11-6 Daytime Project Operational Noise Level Increases

Receiver Location[1]	Total Project Operational Noise Level[2]	Measurement Location[3]	Reference Ambient Noise Levels[4]	Combined Project and Ambient[5]	Project Increase[6]	Increase Criteria[7]	Increase Criteria Exceeded?
R1	37.0	L1	63.3	63.3	0.0	3.0	No
R2	44.9	L2	66.9	66.9	0.0	1.5	No
R3	49.4	L3	58.1	58.7	0.6	5.0	No
R4	40.0	L4	65.2	65.2	0.0	1.5	No
R5	32.3	L5	66.3	66.3	0.0	1.5	No

[1] See Figure 4.11-2 for the receiver locations.
[2] Total Project daytime operational noise levels.
[3] Reference noise level measurement locations as shown on Figure 4.11-1.
[4] Observed daytime ambient noise levels as shown on Table 4.11-1.
[5] Represents the combined ambient conditions plus the Project activities.
[6] The noise level increase expected with the addition of the proposed Project activities.
[7] Significance increase criteria as shown on Table 4.11-3.
Source: (UC, 2023, Table 9-5)

Construction of the Project in this location would therefore expose people working at the Project site and patients to noise levels in excess of the City's exterior noise standards. The proposed Project includes outdoor uses including: an outdoor physical therapy area, an outdoor dining area, and a "healing garden." Impacts under Noise Threshold C are therefore significant and unmitigated. The Project therefore also results in a Noise Element compatibility impact. The DEIR needs to be corrected to acknowledge these impacts and recirculated.

D-49 (CONT.)

Inadequate Alternatives Analysis

CEQA Guidelines §15126.6(a) – Consideration and Discussion of Alternatives to the Proposed Project requires in part:

> (a) Alternatives to the Proposed Project. An EIR shall **describe a range of reasonable alternatives to the project, or to the location of the project,**

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> **which would feasibly attain most of the basic objectives of the project** but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.

In the instant case, the DEIR rejected all of the Project alternatives because they are not the Project already selected by the VA and are thus deemed infeasible. The DEIR has therefore failed to comply with the requirements of CEQA Guidelines §15126.6(a). For example, as stated on DEIR page 6-11 the No Project Alternative is rejected in the DEIR because:

> As mentioned above, the **VA has** also already specifically **rejected** a proposal to remodel the existing clinic or otherwise keep the existing clinic at the existing location.

The DEIR rejects alternative sites proposed in response to the VA's solicitation of proposals for the CBOC, despite the fact that they meet most of the project objectives, because they do not meet one of the vary narrowly defined project objectives:

> Establish a new VA community-based outpatient medical clinic in Bakersfield **<u>on a site that has been vetted by</u>** **<u>and selected</u>** by the U.S. Government . . .

D-50 (CONT.)

Project objectives cannot be so narrowly defined that they preclude consideration of reasonable alternatives for achieving the project's underlying purpose. The courts have held that an EIR may not describe the project objectives so narrowly that "the results of its alternatives analysis would be a foregone conclusion." (*We Advocate Through Envt'l Review v County of Siskiyou* (2022) 78 CA5th 683, 692.) That is what has happened here. Here the objectives have been defined so narrowly that they preclude consideration of alternatives that could achieve the project's underlying purpose, such as the four proposals shown in the Table on DEIR page 6-4. The VA rated the four lease proposals as follows:

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Offeror	Technical Quality	Q&PP	O&M Plan	Socio-Economic Status
PBV's existing facility	Marginal	Successful	Successful	Neutral
PBV's 1801 Westwind #1 facility	Marginal	Marginal	Successful	Neutral
PBV's 1801 Westwind #2 facility	Poor	Marginal	Successful	Neutral
SASD	Highly Successful	Highly Successful	Successful	Neutral

However, the DEIR rejected consideration of these alternative site alternatives. As stated on DEIR page 6-5:

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> It is beyond the jurisdictional scope and authority of the City of Bakersfield as the CEQA lead agency to evaluate other sites that have not been offered to or selected by the VA, particularly those that have been rejected after a long and thorough federal administrative and legal process, specifically including remodeling and rebuilding a clinic on the existing site at 1801 Westwind Drive. As such, no alternative sites are feasible because the VA has already selected the Project site for the Project, and an alternative sites analysis is thus not required in this EIR.

D-51 (CONT.)

The DEIR similarly rejected each of the on-site project alternatives, because they are not the proposed Project. The DEIR has rejected the Net Zero Alternative, despite the fact that it would meet the project objectives, stating on DEIR page 6-15:

> The Net Zero Alternative would meet all of the Project's other objectives. The feasibility of selecting this Alternative is outside of the jurisdictional authority of the City of Bakersfield because the physical characteristics of a feasible Project are determined by the U.S. Department of Veterans Affairs (the VA). Modifications to the Project by the City of Bakersfield are not possible because the Project applicant is limited to the design improvements approved by the federal government as part of the already concluded federal procurement process. As a result, the City has no jurisdiction or ability to select this Alternative because it would conflict with the Project approved by the VA / federal government.

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The DEIR similarly rejected the Renewable Energy System Project Design Alternative, despite the fact that it meets most of the project objectives, stating on DEIR page 6-20:

> The Renewable Energy System Project Design Alternative would meet the Project Objectives except for Objective B because it does not meet the VA's physical design requirements. The feasibility of selecting this Alternative is outside of the jurisdictional authority of the City of Bakersfield because the physical characteristics of a feasible Project are determined by the VA. Modifications to the Project by the City of Bakersfield are not possible because the Project applicant is limited to the design improvements approved by the federal government as part of the already concluded federal procurement process. As a result, the City has no jurisdiction or ability to select this Alternative because it would conflict with the Project approved by the VA / federal government.

D-53

The alternatives analysis in the DEIR is thus fatally flawed. Given that CEQA requires analyzing the whole of an action, it would be more appropriate for the City and VA to prepare a joint CEQA/NEPA document that addresses the full impacts of the lease and any consequent construction including the Project as proposed. The DEIR should be redone and recirculated as a joint CEQA/NEPA document and should include alternatives which address the other bids made for the lease, including an alternative which addresses the continued operation of the existing CBOC. This is particularly true, given that the No Project Alternative was identified as the environmentally superior alternative. As stated on page 6-20:

> As discussed herein, implementation of the No Project Alternative would result in no physical environmental impacts beyond those that have

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historically occurred on the property, and those that occur from the operation of the existing VA clinic at 1801 Westwind Drive. Because the No Project Alternative would avoid most of the Project's impacts, it warrants consideration as the "environmentally superior alternative."

The DEIR should have considered, as a project alternative, rather than as a No Project Alternative, an alternative that included a lease for continuation of operations at 1801 Westwind Drive with improvements, consistent with the lease bid by PBV, as suggested by the Sierra Club in comments on the NOP.

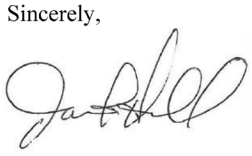
D-54 (CONT.)

The failure to prepare a joint CEQA/NEPA document and the failure to prepare that document before the VA's commitment to a particular Project has inappropriately constrained the range of alternatives considered and rendered the DEIR an improper post-hoc rationalization for a decision already made. This is a failing of the document that cannot be cured by editing, as it reflects the reality of the current situation. This is unacceptable and will result in unnecessary and avoidable impacts to the environment and has resulted in a failure of the DEIR to accurately identify all of the significant impacts of the Project, including a number of unmitigated biological resource and noise impacts. The DEIR must be corrected and recirculated as a joint CEQA/NEPA document.

***

I may be contacted at 310-982-1760 or at jamie.hall@channellawgroup.com if you have any questions, comments or concerns.

Sincerely,



Jamie T. Hall

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Attachments:

A. VA's Review of Site Environmental Information and Recommended NEPA Documentation Form
B. Soluri Meserve, Letter in Support of Appeal of Mitigated Negative Declaration and Appeal of Approval of Site Plan Review No. 20-0102 Proposed Veterans Affairs Clinic on Knudsen Drive dated March 1, 2021.
C. Sierra Club NOP letter, undated.

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Attachment A

VA's Review of Site Environmental Information and Recommended NEPA Documentation Form

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REVIEW OF SITE ENVIRONMENTAL INFORMATION and RECOMMENDED NEPA DOCUMENTATION

Project title: Bakersfield OPC | **Project (solicitation) number:** RLP 36C10F19R0067

Brief project description: Construct and operate under a long-term lease a 39,648-GSF outpatient clinic on one floor with 214 surface parking spaces. The 6.92-acre site is currently undeveloped.

Name of offeror: SASD Development Group LLC

Site address: West of Landco, 1 block S of Olive, Bakersfield, CA 93308 (Kern County)

Adequacy of Environmental Information Received and Assessment of Conditions

Resource	Adequacy of Information		Assessment (see key)			Notes
	Adequate	Inadequate	Green	Yellow	Red	
Aesthetics	⊙	○	⊙	○	○	
Air quality	⊙	○	⊙	○	○	Nonattainment for ozone, PM2 5; maintenance for PM10
Cultural resources*	○	⊙	○	⊙	○	Pending CFM-HPO review
Geology & soils	⊙	○	⊙	○	○	Prime farmland if irrigated.
Hydrology & water quality	⊙	○	⊙	○	○	
Wildlife & habitat	○	⊙	○	⊙	○	Bio field survey for SJKF, TIKR, BNLL; maybe GIGS, BACU, SJWT
Noise	⊙	○	⊙	○	○	
Land use	⊙	○	⊙	○	○	Zoned M-2 Medium Industrial, includes OPCs. Adj to M-3 Heavy Industrial.
Floodplains, wetlands, & coastal zone management	⊙	○	⊙	○	○	FEMA zone X. No wetlands. Not in CZ.
Socioeconomics	⊙	○	⊙	○	○	
Community services	⊙	○	⊙	○	○	In city limits.
Solid waste & hazardous substances	⊙	○	⊙	○	○	No RECs.
For real property acquisition, Phase 1 environmental site assessment reviewed and concurred:	Christine M Modovsky 1744994 Digitally signed by Christine M Modovsky 1744994 Date: 2020.02.11 01:23:56 -05'00'					
Transportation & parking	⊙	○	⊙	○	○	
Utilities	⊙	○	⊙	○	○	
Environmental justice	⊙	○	⊙	○	○	
Cumulative impacts	⊙	○	⊙	○	○	
Potential for generating substantial controversy	⊙	○	⊙	○	○	

Assessment key:
- Green: Does not appear that the site/building has any known environmental conditions.
- Yellow: May have environmental conditions; more information needed.
- Red: Concerns about environmental conditions.

Recommended NEPA Document

◉ **Categorical exclusion** ○ **Environmental assessment** ○ **Environmental impact statement**

Notes: *Needs CR review. *Needs bio survey. Likely CATEX pending bio survey and possible FWS concurrence.

VA Environmental Officer Reviewer: Christine M Modovsky 1744994 Digitally signed by Christine M Modovsky 1744994 Date: 2020.02.11 01:20:07 -05'00'

[redacted]

AR 33225

D-56 (CONT.)

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Attachment B

**Soluri Meserve, Letter in Support of Appeal of Mitigated Negative Declaration and Appeal of Approval of Site Plan Review No. 20-0102
Proposed Veterans Affairs Clinic on Knudsen Drive dated March 1, 2021**

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COMMENT LETTER D

SOLURI MESERVE
a law corporation

tel: 916.455.7300 · fax: 916.244.7300
510 8th Street · Sacramento, CA 95814

March 1, 2021

SENT VIA EMAIL (pjohnson@bakersfieldcity.us, kgale@bakersfieldcity.us, wlawson@bakersfieldcity.us, DEVPln@bakersfieldcity.us, vking@bakersfieldcity.us)

City Council, City of Bakersfield
Paul Johnson, Planning Director
1715 Chester Ave.
Bakersfield, CA 93301

RE: Letter in Support of Appeal of Mitigated Negative Declaration and Appeal of Approval of Site Plan Review No. 20-0102 Proposed Veterans Affairs Clinic on Knudsen Drive

Dear City Council Members:

This letter is submitted on behalf of Progress for Bakersfield Veterans, LLC ("PBV") in support of its appeal from the January 7, 2021 Planning Commission decision to adopt the Mitigated Negative Declaration ("MND") for Site Plan Review No. 20-0102 ("SPR"), as well as the Planning Commission's denial of PBV's appeal of the SPR approval by the Development Services Director for a Department of Veterans Affairs ("VA") outpatient clinic located at 5512 Knudsen Drive ("Project"). This letter supplements previously submitted information to the Planning Commission, including but not limited to, the letter from my firm dated January 7, 2021, explaining the inadequacies of the MND under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq. ["CEQA"]), as well as the January 26, 2021 letter submitted by the Hagan Law Group explaining the inadequacies of the City's SPR approval, all of which are incorporated herein by reference.

D-57 (CONT.)

PBV owns the outpatient clinic currently operated by the VA located on Westwind Drive.[1] (See Exhibit A, p. 3.) PBV has significant concerns regarding the integrity of

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[1] Under its current contract with the VA, PBV is prohibited from improving the existing buildings or operations. The VA is solely responsible for all aspects of the operation of the existing VA Clinic, and for the manner in which medical services are provided to veterans at the facility. There is no basis to conclude that the quality or timeliness of medical services provided at the proposed new clinic will be any different than the quality or timeliness of medical services provided at the clinic proposed by PBV.

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the approval process undertaken for this Project, including both adoption of the MND and approval of the SPR for the Project.

The Project would result in the relocation of the current VA clinic, which is in an established office park in one of Bakersfield nicest areas, surrounded by other professional office buildings, to a new, less central site about four (4) miles to the northwest. The new Project site is on industrial zoned land, located between a 7-11 and a self-storage facility, and has been used for various industrial purposes in the past. In addition to being poorly located, the proposed new location poses potential health concerns due to the past industrial uses of the site, and would be an insult to our veterans.

The principals of PBV own a significant amount of property in Bakersfield, including multiple medical facilities, and have a strong commitment to the health and safety of those who live or work in Bakersfield, which motivates them to advocate for the protection of the local environment. In addition to the existing VA outpatient clinic on Westwind, which is dedicated to the well-being of the local veterans' community, they also own a 5-story medical building adjacent to the Mercy Hospital Campus in downtown Bakersfield. They also own several other buildings in Bakersfield consisting of approximately 600,000 square feet of office and retail property. They therefore have a strong vested interest in ensuring that Bakersfield continues to be a place where people enjoy living and doing business, and that the environment promotes their continued health and well-being.

D-58
(CONT.)

There is no need to relocate the current VA clinic to the unsuitable location proposed on Knudsen Drive. PBV has proposed to completely renovate and reuse the existing Westwind Drive facility with a modern, efficient layout and all the latest technology and equipment.[2] (See Exhibit A, pp. 3-5.) The outpatient clinic proposed by PBV will look essentially the same as the one proposed by SASD, but will save taxpayers millions of dollars and will be delivered to the veteran community many months sooner. It will have all of the same departments and provide all of the same services as proposed for the Knudsen Drive site, and will be substantially bigger than the SASD proposal. PBV's as-new renovation of the existing clinic was designed by, and will be constructed by, local Bakersfield companies and employ local talent. Such a renovation could be done in a fraction of the time and cost, and without causing significant impacts on the environment and posing hazards to veterans. Using the existing VA site would also conserve natural resources and help maintain the vitality of Bakersfield's existing commercial properties. The VA's formal process for selection of a contract to provide

[2] PBV has alternately proposed a completely new clinic at Stockdale Tower, should the VA choose not to remain at the Westwind Drive location. (See Exhibit A, p. 6.)

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continued VA clinic services to veterans is ongoing and, therefore, any action by the City on the Project would be premature and prejudicial.[3]

For the reasons set forth herein, it is requested that the City Council grant the appeal, determine that the MND is inadequate, determine that Site Plan approval was improperly issued and require further review of the Project's environmental impacts in accordance with the minimum requirements of CEQA.

D-58 (CONT.)

I. The City's Site Plan Review Approval of the Project Violates Procedural and Substantive Standards

The basis for PBV's appeal to the SPR rests on both procedural and substantive grounds. Although a written request for notification of various actions associated with the Project was filed by counsel for PBV, the City failed to provide PBV with notice of the application for SPR, Notice of Preparation of the MND, or any other City actions on the Project. Furthermore, approval of the SPR has resulted in a misapplication of the City's zoning regulations and development standards. A detailed analysis of the bases upon which PBV seeks to overturn the SPR approval is set forth in the letter submitted by PBV's counsel to the Planning Commission, dated January 26, 2021, which is incorporated herein by reference. (See Exhibit B.) A summary of the arguments is set forth below.

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A. SPR Issuance was Based on a Faulty Project Description

The Project site is located in a M-2 General Manufacturing Zone. (See Municipal Code, Ch. 17.30.) Based on an inaccurate Project description provided by the applicant, the City incorrectly determined that the proposed use is allowed by right in a M-2 Zone. However, the Project description relied upon by the City fails to disclose that the clinic would treat patients with contagious diseases, those suffering from drug and/or alcohol addiction, as well as provide mental health services. A review of the VA's Solicitation for Offers for a Community-Based Outpatient Clinic in Bakersfield, dated December 19, 2019, confirms that these services must be provided by the applicant as a condition of being awarded the contract. (See Exhibit B, Attachment 3.) The provision of such services changes the land use compatibility analysis and requires a zone change to accommodate the Project on the proposed site. Therefore, approval of the SPR was not in accordance with the City's zoning regulations. (See Municipal Code, Ch. 17.08.080(E)(3).)

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[3] See Exhibit I, Press Clips Compilation, for additional details regarding the development of a new or rehabilitated Bakersfield VA Clinic.

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B. The Project Constitutes a Prohibited Use in a M-2 Zone

Uses permitted within a M-2 zone include any "permitted use" in the M-1 zone, in addition to those uses specifically enumerated in the M-2 code provision. (See Municipal Code, Ch. 17.30.020.) The City's Zoning Code specifically defines a "permitted use" as "a use listed as such and ***allowed by right*** which only requires compliance with the zoning ordinance." (Municipal Code, Ch. 17.04.494, emphasis added.) In other words, uses requiring the issuance of a Conditional Use Permit ("CUP") are not "permitted uses" as defined in the Zoning Code. Therefore, only uses ***allowed by right*** within the M-1 zone are permitted uses in a M-2 zone.

The Project does not fit within any of the specifically enumerated by-right uses listed in the M-2 or M-1 zoning provisions. (See Municipal Code, Ch. 17.30.020(B) and Ch. 17.28.020(B).) The following use is permitted in a M-1 zone, but only upon the issuance of a CUP:

> Clinics, hospitals, sanitariums or other buildings ***for contagious, mental, drug or liquor addiction cases***.

(Municipal Code, Ch. 17.28.030(A)(6), emphasis added.) Because the foregoing use is not allowed by right in the M-1 zone, it is not allowed at all in the M-2 zone.

The City is improperly relying on one of the enumerated uses in a C-O zone to conclude that the Project constitutes an allowed use and that no additional land use entitlements are required. Specifically, the City contends the Project falls within the use described as "medical, dental, psychiatric and other health practitioner offices and clinics, including chiropractic, acupuncture, massage therapy and blood banks." (Municipal Code, Ch. 17.20.020(A)(21).) This conclusion fails to take into account the subspecialty medical services that would be provided at the facility, which constitute a separate and distinct use addressed under the more intensive M-1 zone designation and requires the issuance of a CUP.

The more specific use described in the M-1 zoning provision, which requires the issuance of a CUP, controls over the more generalized use described in the less intensive C-O zoning designation, which the City relied upon. (See Code Civ. Proc., § 1859; *Estate of Kramme* (1978) 20 Cal.3d 567, 576.) This means that this use can only be granted via a CUP in the specified M-1 zone, and not in any other zone. (See Ordinance 5008 Materials June-August 2020, attached as Exhibit M, pdf p. 2, explaining the scope of the City's authority to issue CUPs for certain land uses.) A zone change to the M-1 zone and a CUP is required. (*Ibid.*)

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(CONT.)

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Contrary to the position taken by the City and the applicant before the Planning Commission, there is nothing to substantiate that the use described in the M-1 zoning provision only applies to in-patient facilities and is inapplicable to this Project, which will provide out-patient services. A plain language review of the zoning code provision defeats this argument. Furthermore, the City's historic practice, if any, of interpreting the M-1 zoning provision in this way would be of no legal consequence when the language of the zoning provision clearly makes no such distinction between in-patient and out-patient services. (See *Stockburger v. Jordan* (1938) 10 Cal.2d 636, 648.) Reference to the zoning designations of other medical clinics, including the current VA clinic, would not be relevant for purposes of considering this appeal.

The term 'clinic' is not defined by the City Code. (See Municipal Code, Ch. 17.04.) The Merriam Webster definition of a 'clinic' is (3a) "a facility (as of a hospital) for diagnosis and treatment of outpatients,"[4] and the definition of 'outpatient' is "a patient who is not hospitalized overnight but who visits a hospital, clinic, or associated facility for diagnosis or treatment."[5] Thus, the City's claim that City Code anticipates another kind of clinic with overnight facilities that would require a CUP is contradicted by the plain meaning of 'clinic' and 'outpatient'.

On August 12, 2020, the City Council adopted Ordinance No. 5008, amending portions of the Zoning Code to improve the CUP application process. (See Exhibit M.) In connection with examining ways to improve the CUP process, Staff was directed to evaluate the previous five (5) years of CUPs to determine whether certain uses needed to be included in the list of "permitted" or "conditionally permitted" uses in each zone. (See Exhibit M, pdf p. 3.) Although Chapter 17.28.030 was amended by Ordinance No. 5008, there was no language added to clarify that subsection (A)(6), pertaining to medical facilities that treat contagious, mental, drug or liquor addiction cases, applies to in-patient facilities only. (See Exhibit M, pdf pp. 20, 39.) Presumably the City would have amended this section of the Zoning Code to clearly draw a distinction between in-patient versus out-patient facilities if, as alleged, the City had a historic practice of interpreting the Zoning Code in this way.

The operation of a clinic that treats contagious, mental, drug or liquor addiction cases is not a use allowed by right in a M-1 zone and, therefore, is not a permitted use in a M-2 zone. This Project cannot be approved in the absence of a zone change and the issuance of a CUP prior to project development. Based thereon, approval of the SPR violated the City's zoning regulations and PBV's appeal should be granted.

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(CONT.)

[4] See https://www.merriam-webster.com/dictionary/clinic.
[5] See https://www.merriam-webster.com/dictionary/outpatient.

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C. The Site Plan and Related Conditions Do Not Adequately Address Access and Fire Safety Concerns

California Fire Code section 503.1.1 requires that fire apparatus access roads must be located within 150 feet of all portions of the exterior walls of the first story of a building such as this one. In its conditions of approval, the City required that each of the new streets shown on the Site Plan comply with the City's Fire Code for access by emergency vehicles on such new roads. (Section IX.f., Hazards and Hazardous Materials.) However, the new roads shown on the Site Plan do not comply with the Fire Code in several respects.

First, the new roads depicted on the Site Plan do not provide multiple means of access to the Project site and are otherwise not expressly required to be improved by the Project applicant in accordance with the California Fire Code. The Site Plan shows a new Street A, a new Landco Drive and a new unnamed street on the north side of the Project. Although each of these streets is identified by future intersections, those intersections do not currently exist, and are not required to be constructed by the applicant as a condition of Project approval. The new unnamed street does not connect to Knudsen Drive or to Olive Drive. Landco Drive dead ends and will not ever connect to Olive Drive given the proximity to the southbound on-ramp to State Route ("SR") 99. (See Exhibit G, Compilation of Email Correspondence Between City Staff Regarding Project, pdf pp. 2, 4-5.) As such, for purposes of compliance with the Fire Code, these streets have a single point of access, and must be treated as a single emergency access road. Under the circumstances, more than one fire apparatus access road should be required pursuant to the authority granted the Fire Chief under the Fire Code. (See Cal. Fire Code, § 503.1.2 ["fire code official is authorized to require more than one fire apparatus access road based on the potential for impairment of a single road by vehicle congestion, condition of terrain, climatic conditions or other factors that could limit access."].) Designation of Landco Drive as the only fire apparatus road to serve this Project ignores the safety risks that would result from a closure of Knudson Drive and the inability to access Landco Drive via Street A.

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Second, the new roads violate the Fire Code's requirements as to turn-around for emergency vehicles. The California Fire Code, adopted as the fire code for the City, requires dead-end fire apparatus access roads in excess of 150 feet in length to include an approved turnaround in accordance with the Code's Appendix D. (See Municipal Code, Ch. 15.65.010; Cal. Fire Code, § 503.2.5.) Appendix D establishes the width and turnaround requirements based on the actual length of the dead-end fire apparatus access road. (See Cal. Fire Code, § 503.2.5, Appendix D, Table D103.4.) Although Landco Drive exceeds 150 feet in length and would serve as a fire apparatus access road, the Site Plan does not show a compliant turnaround and the SPR conditions are silent as to any

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requirements of the developer to ensure that a proper turnaround is constructed in accordance with Fire Code standards. (See Exhibit B, Attachment 5.) The Site Plan violates the turnaround requirements in Fire Code Section 503.2.5.

D-61 (CONT.)

D. The Approved SPR Fails to Condition On- and Off-Site Improvements and Road Dedications Necessary to the Project

There is nothing set forth in the conditions of approval that specifically require the Project applicant to complete construction of all improvements noted on the approved site plan. To ensure that the Project is built in accordance with the plan provided to and approved by the City, a condition requiring the completion of all on-site and off-site improvements prior to issuance of the occupancy certificate is required. In the absence of such a condition, there is nothing that holds the Project applicant accountable for building out the facility in accordance with the representations made in the site plan and upon which SPR approval was based.

D-62

The Planning Commission failed in its duty to require that the Project follow the California Fire Code or require resolution of those defects. That failure was based, in part, on the failure to require a complete Project Description and associated supporting documents, such as a detailed site access plan, street design and storm drainage plan before Project approval. This is evidenced by the requests for that information after the January 7, 2021 hearing. (See Exhibit G, pdf pp. 6-8.)

II. The MND Does Not Meet Minimum CEQA Standards

The MND is entirely inadequate to support approval of the Project. Preparation of a full environmental impact report ("EIR") is required.

A. Standards Applicable to Mitigated Negative Declarations

The MND fails to include relevant information and fully disclose Project impacts as required by CEQA. In particular, several potentially significant impacts are associated with the Project, necessitating preparation and circulation of an EIR prior to any further proceedings by the City regarding the Project.

D-63

Under CEQA, an EIR is required whenever substantial evidence supports a "fair argument" that a proposed project may have a significant effect on the environment, even when other evidence supports a contrary conclusion. (See, e.g., *No Oil*, *Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 74 [*No Oil I*].) This "fair argument" standard creates a "low threshold" for requiring the preparation of an EIR. (*Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.) Thus, a project need not have an

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"important or momentous effect of semi-permanent duration" to require an EIR. (*No Oil I*, *supra*, 13 Cal.3d at 87.) Rather, an agency must prepare an EIR "whenever it perceives some substantial evidence that a project may have a significant effect environmentally." (*Id*. at p. 85.) An EIR is required ***even if*** a different conclusion may also be supported by evidence.

The fair argument test is the least deferential to the lead agency; importantly, "substantial evidence in the record supporting a fair argument" is not the same as the deferential "substantial evidence" standard applicable to the adequacy of EIRs. (*No Oil I*, *supra*, 13 Cal.3d at 82–87.) The fair argument test is a question of law, not fact, and the courts owe no deference to the lead agency's determination. Review is de novo, with a preference for resolving doubts in favor of environmental review. (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927 [*Pocket Protectors*].)

To lawfully carry out a project based on a MND, a CEQA lead agency must approve mitigation measures sufficient to reduce potentially significant impacts "to a point where ***clearly*** no significant effects would occur." (Cal. Code Regs. Tit. 14 ["CEQA Guidelines"], § 15070, subd. (b)(1), emphasis added.)[6] This is assured by incorporation into a Mitigation Monitoring and Reporting Plan ("MMRP"). (Pub. Resources, Code, § 21081.6(a)(1).) "The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded." (*Federation of Hillside & Canyon v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.)

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(CONT.)

Furthermore, an agency cannot hide behind its own failure to gather relevant data. Specifically, "deficiencies in the record [such as a deficient initial study] may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311

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[6] A lead agency may satisfy its CEQA obligations by preparing a MND instead of an EIR if: (1) revisions in the project would mitigate the effects of the proposed project to a point "where clearly no significant effects on the environment will occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." (Pub. Resources Code, § 21064.5.) The City must also adopt a legally adequate MMRP in compliance with CEQA. (CEQA Guidelines, § 15074, subd. (d).) To comply with CEQA the MMRP "shall be designed to ensure compliance during project implementation." (Pub. Resources Code, § 21081.6, subd. (a)(1); CEQA Guidelines, §§ 15074, subd. (d), 15097, subd. (a).) The City may not simply rely on a "summary" that merely relists the various mitigation measures in the absence of a discussion of implementation or evidence that the measures will be enforced.

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[*Sundstrom*].) For example, in *Sundstrom*, the court held that the absence of information explaining why no alternative sludge disposal site is available "permits the reasonable inference that sludge disposal presents a material environmental impact." (*Ibid*.)

Substantial evidence of a fair argument may come in various forms. Comments from experts presenting evidence that significant impacts may occur is generally considered to be substantial evidence. (See *Sierra Club v. California Dept. of Forestry* (2007) 150 Cal.App.4th 370; see also *City of Livermore v. Local Agency Formation Comm'n* (1986) 184 Cal.App.3d 531, 541.) Opinions, based on relevant expertise, that a project could have significant effects also qualifies as substantial evidence of a fair argument. (See *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1582–1587 [expert predictions by three separate "sludge generators" constituted a fair argument that the project would have significant environmental effects] [*County Sanitation Dist. No. 2*]; *Pocket Protectors*, *supra*, 124 Cal.App.4th at 34 [planning commission's findings of fact and testimony of an architect regarding project consistency with applicable land use policies constituted fair argument of significant environmental effects].) Substantial evidence can also come in the form of public comments, so long as such comments are based on personal observations on nontechnical subjects. (*Id*. at 937–39 [personal observations by area residents constitute evidence of a fair argument of significant aesthetic impacts].)

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(CONT.)

For each resource area discussed below, there is substantial evidence supporting a fair argument of a potentially significant impact. Moreover, the mitigation measures included are not legally adequate and do not sufficiently address the potential impacts. Therefore, an EIR is necessary in order to adequately analyze, disclose and mitigate the Project's potentially significant environmental impacts.

B. The MND Does not Include an Adequate Project Description

An MND must include a complete, accurate description of the Project. (CEQA Guidelines, § 15071.) An accurate, stable and finite project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity. (See *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645,655; *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193 (*County of Inyo*) ["(a)n accurate, stable and finite project description is the Sine qua non of an informative and legally sufficient" CEQA document].) The court in *County of Inyo* explained why a thorough project description is necessary:

> A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's

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> benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the 'no project' alternative) and weigh other alternatives in the balance.

(*County of Inyo*, *supra*, 71 Cal.App.3d at 192-93.) The three paragraph description of the Project on page 2 of the MND fails to describe all elements of the Project, including but not limited to, the critical missing information discussed below.

1. Services to be Provided by SASD VA Clinic

The MND fails to include a description of the services that would be provided at the proposed VA clinic. As explained in section I.A above, the MND simply describes the Project as an outpatient clinic, without reference to the services provided. The specific proposed services to be offered are relevant to the Project's environmental review and permitting requirements. For example, the clinic could include onsite laboratory services that could involve the use, storage, and disposal of radioactive and hazardous chemicals, and biological wastes. Similarly, the presence of onsite dispensaries or pharmacies can involve the use, storage, and disposal of hazardous chemicals and pharmaceuticals with special restrictions.

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Thus, the Project description must include the full range of services and activities contemplated by the Project for the MND to adequately review the potentially significant impacts of the Project.

2. Drainage, Utilities and Other Service Plans

The January 7, 2021 Planning Commission Staff Report ("Jan. 7, 2021 SR") explained that:

> Utilities and Service Systems. The MND concluded ***the project would require the construction of new water, storm water drainage, sewer facilities; above and/or belowground electrical facilities, natural gas facilities, and telecommunications***; however, ***the project would not require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities***.

(Jan. 7, 2021 SR, p. 6, emphasis added.) This statement is both nonsensical and internally inconsistent.

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Clearly, new drainage systems will need to be constructed, yet those systems are not described in the MND. The Conceptual Site Plan figures for the Project show significant areas of impermeable surface from the building, walkways, parking, and roads. Similarly, the Conceptual Grading Plan shows "conceptual" storm drains and flow lines, as well as bio-retention drainage basins. These 'plans' further fail to identify the Project roadway drainage requirements for Landco Drive and Street 'A'. These conceptual renderings do not substitute for an actual drainage plan, which was apparently not submitted by the applicant. City staff noted the absence of drainage plans before adoption of the MND (see Exhibit G, pdf pp. 1, 6), and continued to discuss the means by which water would be managed, and who would be responsible for such management, after the Planning Commission adopted the MND (see Exhibit G, pdf pp. 6-9).

The MND and the Project application materials fail to disclose and define areas of impermeable surface, design storm events, flow volumes, period of storage, and volumes of onsite capacity identified in the information provided by the City. As a result, there is no means by which to substantiate any analysis as to the Project's hydrologic impacts. In any case, the features shown in the conceptual figures referenced above contradict the Planning Commission Staff Report's contention (quoted above) that there are no new facilities being built for storm water drainage. Conversely, a potential off-site detention basin, with undisclosed environmental impacts, is discussed by the Public Works Department, but these impacts are not discussed in the MND. (See Exhibit G, pdf pp. 2-3.) Perhaps as a result of the lack of detailed information provided by the applicant regarding Project drainage, the MND relies on the Design Manual as the basis for its "analysis" of this impact. (MND, p. 32.) The Design Manual cannot substitute for a description of the particular actions proposed as part of this Project that may result in effects on the environment.

The Conceptual Grading Plan identifies that in the South-South Eastern corner of the property there would be a: "Storm Drain to Discharge to Offsite Detention Basin as Part of the Overall Development Either by Lift Station or Gravity Flow". This is an undisclosed facility with potentially significant impacts to the environment. The MND does not disclose how large the basin would be, or where it would be located. As a result, no environmental analysis of potential impacts associated with this facility can occur.

Similarly, the site will require power, including some form of high voltage transformation. None of this is described in the MND. The means by which wastewater and drinking water services would be provided are also not described in the MND. Instead, the nature and extent of environmental impacts from the provision of utilities are passed off in the MND as being the responsibility of other parties. (MND, p. 32.) The Project description should be corrected to describe how these services would be provided so that analysis of the environmental impacts from those actions can occur.

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3. Measures Relied Upon for Mitigation

In addition, the public must be able to review the final proposed conditions and site plans alongside the MND in order to assess the MND's adequacy under CEQA. The MND fails to include the conditions applicable to the Project. Draft Site Plan Review Conditions were included as Appendix A to the MND, and the MND appears to rely on these conditions to reduce Project impacts to less than significant levels, yet is unclear whether these conditions will be adopted as depicted in Appendix A, or in some modified form. Furthermore, conditions set forth in Appendix A that are necessary for the Project's compliance with CEQA should be incorporated into and made a part of the MMRP to the extent they are relied upon to reduce Project impacts.

The MND should clearly describe the mitigation measures relied upon to reach less than significant conclusions. As explained in the *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655-57 (*Lotus*), an environmental review document should not incorporate "the proposed mitigation measures into its description of the project and then conclude that any potential impacts from the project will be less than significant." The failure to include mitigation measures relied upon precludes both identification of potential environmental consequences arising from the project and also thoughtful analysis of the sufficiency of measures to mitigate those consequences." (*Id.* at 655-57.) CEQA does not allow the MND to avoid analysis of the relative effectiveness of any mitigation benefits claimed from the conditions of approval in comparison with other mitigation strategies.

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(CONT.)

Many important commitments are also included in the site plans and elevations attached to the MND, yet the approving Resolution does not refer to these documents. The Resolution should include a condition that no changes be made to the site plans and elevation drawings, and that all of the onsite and offsite improvements shown on the site plans and elevation drawings are a condition to issuance of a certificate of occupancy for the Project. (See also Section I.D above.) Otherwise, the MND will have been based on an incorrect or misleading initial study for the project.

C. The MND Fails to Provide Adequate Information about the Project's Environmental Setting

The description of the environmental setting sets the stage for assessing a project's impacts. (See *Galante Vineyards v. Monterey Peninsula Water Mgmt. Dist.* (1997) 60 Cal.App.4th 1109, 1123 [inadequate description of environmental setting made analysis of project impacts impossible]; Guidelines, § 15125, subd. (c) [knowledge of regional setting critical to assessment of environmental impacts].) Similarly, an accurate project

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description is necessary for fully understanding a project's impacts. (See *County of Inyo v. City of L.A.* (1977) 71 Cal.App.3d 185, 192 [*County of Inyo*].) Therefore, on review, the adequacy of a CEQA document's description of the environmental setting should be considered prior to the document's treatment of impacts.

Before the impacts of a project can be assessed and mitigation measures considered, an initial study must also describe the existing environment. (CEQA Guidelines, § 15063, subd. (d)(2).) It is only against this baseline that any significant environmental effects can be determined. (CEQA Guidelines, §§ 15125, 15126.2, subd. (a); see also *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.) According to CEQA Guidelines, section 15125, subdivision (a): "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published." This same requirement applies to a Negative Declaration. (*Communities for a Better Environment v. SCAQMD* (2010) 48 Cal.4th 310, 319.) As the Supreme Court has explained, a comparison must be made between "existing physical conditions without the [project] and the conditions expected to be produced by the project. Without such a comparison, the EIR will not inform decision makers and the public of the project's significant environmental impacts, as CEQA mandates." (*Id*. at p. 328.)

Here, the MND includes just one paragraph regarding the Project setting, which describes the surrounding land uses. (MND, p. 3, #9.) The MND fails to include adequate setting information, including but not limited to, the setting relative to biological resources, land use/planning, and hazards and hazardous materials.

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1. Inadequate Setting Information on Biological Resources

The MND fails to describe the setting for biological resources, and contains no description of the site from a biological perspective. (MND, pp. 16-18.) Though a Biological Evaluation was prepared for the MND (McCormick 2020), that evaluation is insufficient to support an analysis of the biological impacts of the Project and was not included as an attachment to the MND, thus precluding easy public and agency review of the Biological Evaluation.

As explained by Dr. Sean Smallwood's Report on Biological Resources (Exhibit C), "no detection or Protocol surveys were performed for any of the special status species with potential to occur on the site." (Exhibit C, p. 6.) In addition, the McCormick Biological (2020) report "does not disclose who conducted the surveys, the surveyors' qualifications, what time of day they arrived, or how long they stayed" and fails to include the "basic information that a wildlife ecologist would need for assessing whether the survey met due diligence standards." (Exhibit C, pp. 4-5.)

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In an indication of just how inadequate the McCormick Biological (2020) survey was, Dr. Smallwood explains how the "McCormick Biological (2020) field survey prepared for the MND detected only 3 species of wildlife, including common raven, California ground squirrel and common side-blotched lizard." In contrast, in just two hours, Dr. Smallwood saw 21 species of vertebrate wildlife. (Exhibit C, Table 1.) Reviewing available eBird and iNaturalist records, Dr. Smallwood also compiled a much longer list of special status species with occurrence likelihoods on or near the proposed project site. (Exhibit C, Table 2.)

Dr. Smallwood's report explains how he would have detected more species had he visited longer, at different times of day, or on different days or seasons. (Exhibit C, p. 1; see also pp. 5-7.) Moreover, Dr. Smallwood opines that "given the large number of California ground squirrels on site, in my experience the site is probably used by Swainson's hawks, a special status species." (Exhibit C, p. 1.)

Dr. Smallwood also explains how McCormick Biological (2020) took a narrowly constrained view of what constitutes habitat. (Exhibit C, p. 7.) For example, the McCormick Biological (2020) report only considered habitat to be present if the bird species were expected to nest on the site. (Exhibit C, p. 7.) As explained by Dr. Smallwood, "animals cannot successfully breed without finding sufficient forage, cover and stopover opportunities; none can breed without finding sufficient forage to survive both the breeding and nonbreeding seasons." (Exhibit C, p. 7.) McCormick Biological also overlooked the value of foraging habitat for Swainson's hawks provided by the numerous ground squirrels on the site, and the potential for American badger to also hunt for ground squirrels on the site. (Exhibit C, p. 8.) McCormick Biological (2020) also misstates the activity periods for burrowing owls, (Exhibit C, p. 8), demonstrating a lack of knowledge about the species.

Dr. Smallwood concluded that "The environmental setting for purposes of analysis was not accurately characterized by the McCormick Biological field survey." (Exhibit C, p. 5.) As the MND relies entirely on McCormick Biological (2020) survey to provide biological setting information for the Project, the MND is inadequate.

2. Inadequate Setting Information on Land Use

The MND states that the Project is a permitted use in the M-2 zone district (MND, p. 27), indicating that the Project could be approved with a SPR. (See generally Zoning Code, Chapter 17.08.) The January 7, 2020 Planning Commission staff report described the Project as an "outpatient clinic providing basic clinical services." (Jan. 7, 2021 SR, p. 3.) The staff report also states that "no deviations from zoning ordinance standards have been requested." As described above in section I.A, the Project is not permitted by the

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existing zoning of the site, and a rezone would be necessary. The MND therefore fails to provide adequate setting information against which the Project's Land Use impacts could be analyzed.

Although the MND does indicate that the Project site and parcels to the east have a General Plan Land Use Designation of SI (Service Industrial) (MND, p. 27), the MND fails to explain that this Land Use Designation is described in the City's General Plan as for: "Industrial activities which involve outdoor storage or use of heavy equipment. Such uses produce significant air or noise pollution and are visually obtrusive."[7] The MND thus fails to properly evaluate the location of a VA Clinic adjacent to land with an SI Land Use Designation. The project site's SI Land Use Designation further illustrates why this type of land use is not allowed under the City's zoning in the M2 zone.

There is no information in the MND regarding the location of the Project, which is surrounded on three sides (west, north and east) by land in unincorporated Kern County. (See Planning Commission Resolution, Exhibit A: Location Map.) This location could entail growth inducing impacts, including the eventual annexation of additional lands into the City. The potential for growth-inducing impacts is furthered by the Project's extension of utilities to serve the site, and the fact that there is additional land between the project site, which is located on the edge of the existing City limits, and the City's adopted Sphere of Influence boundary as shown in the following figure.[8] The MND admits that the project "involves incremental urban growth within the City of Bakersfield's jurisdiction" (MND, p. 11), but fails to address the environmental impacts of such growth induced by the Project. The potential for growth-inducing impacts necessitates preparation of an EIR.

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[7] City of Bakersfield General Plan, p. II-8, available at: https://content.civicplus.com/api/assets/37a2e20d-e610-431f-a222-9f4f2ecd2ddd.

[8] The Project site was part of a 2012 annexation of land into the City boundary.

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Project Location at Edge of City in Relation to Sphere of Influence[9]

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3. Inadequate Setting Information on Site Hazards

The MND also entirely skirts the issue of the setting with respect to hazards and hazardous materials. In particular, the implications of constructing the Project on a site directly and indirectly subject to contamination are not disclosed. As explained further below in the discussion of impacts from Hazards and Hazardous Materials in section II.D.6 below and in the Updated Phase 1 Environmental Site Assessment ("Updated ESA") prepared by Soil Pacific Inc. (attached as Exhibit D), potentially significant hazards impacts are associated with the Project. These impacts are left undisclosed in large part because the MND fails to describe the Project setting with respect to hazards and hazardous materials and ignores the Department of Toxic Substance Control's ("DTSC") December 4, 2020 request for an analysis of site soil samples for toxic substances.

According to the MND:

The EnviroStor (DTSC 2019) and Cortese (CalEPA 2019) lists pursuant to

[9] Available at: Bakersfield GIS System: https://cob.maps.arcgis.com/apps/webappviewer/index.html?id=9fbb25e825e3425a84e7dea631e42f7b.

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> Government Code (GC) Section 65962.5 were reviewed. No portion of the project site is identified on either list, which provides the location of known hazardous waste concerns. Therefore, the project would not be located on a site which is included on a list of hazardous materials sites compiled pursuant to GC Section 65962.5 and, as a result, create a significant hazard to the public or the environment.

(MND, p. 24.) This conclusion ignores the complex history of the site and the immediately surrounding area for industrial uses. These prior uses are part of the Project setting and must be described in the hazards setting section (or elsewhere) in the MND.

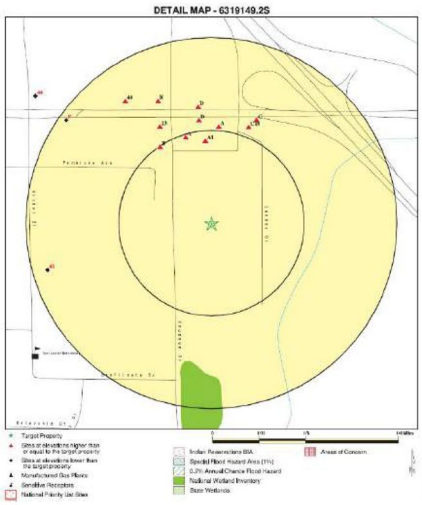
The Updated Phase I ESA included as Exhibit D identifies upgradient hazardous sites, as well as a site history that includes oil production, and use as an automotive repair, dismantling, or wrecking yard. (Updated ESA, Site Summary, p. 2.) The MND also fails to mention the potential for Vapor Encroachment Conditions and potential contamination from fire retardants on the site, along with the need for additional screening. (Exhibit D, p. 2.) Furthermore, the MND fails to describe the nature and extent of the obvious potential soil and water impacts of this history as part of the Project setting.

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Hazard mapping in the Updated ESA shows 3 upgradient hazard sites within 1/8th mile, and a total of 11 upgradient hazard sites within ¼ mile. (Exhibit D, pdf p. 84.)



A junkyard identified also operated on the same parcel, in the southern portion of the proposed site for the Project (Exhibit D, pdf p. 9.)



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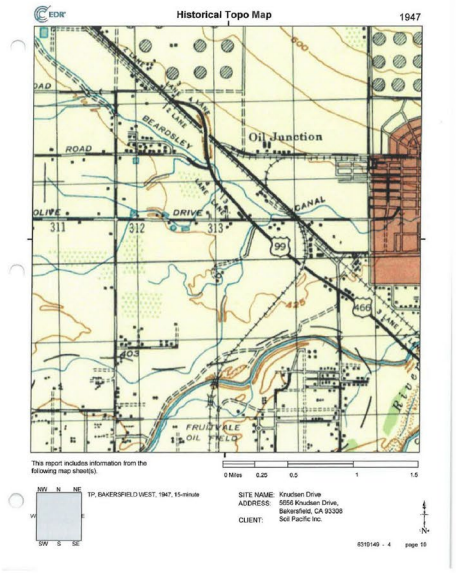
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Historical aerial photos also show extensive site development for agriculture and numerous adjoining industrial uses in 1994 (Exhibit D, pdf p. 14):



A historical topo map shows site development for agriculture and extensive local petroleum operations and storage uses in 1947. (Exhibit D, pdf p. 31.)



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Information contained in the Updated Phase I ESA makes clear that numerous hazards are present on or near the Project site. The omission of this critical information renders the MND's analysis of hazards and hazardous materials impacts inadequate and has resulted in the failure to identify or mitigate potentially significant impacts.

4. Inadequate Setting Information Regarding Location in Proximity to Key Infrastructure

The MND's setting section fails to provide a clear description of the following key infrastructure and its proximity to the Project site: CA-99, the railway, Beardsley Canal, Kern River, Meadows Field Airport, Bakersfield Municipal Airport, and San Lauren Elementary School. These facilities, their plans or operations have the potential to be in conflict with the proposed Project and need to be analyzed. A clear description of each of these facilities and their proximity to the Project site is therefore necessary to an adequate assessment of the potential for Project impacts.

* * *

The omission of critical setting information renders the MND deficient as an informational document.

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D. The MND's Analysis of Potentially Significant Environmental Impacts is Defective and Mitigation Measures are Inadequate to Reduce Project Impacts to Less than Significant

1. The Project May Result in Significant Air Quality Impacts

The MND concludes that the Project would not result in any significant air quality impacts and no mitigation is required. (MND, pp. 12-16.) However, these conclusions are not supported by any attached technical study or by page references to a source. The MND thus fails to show the analytic route to the conclusions presented and fails to support conclusions with substantial evidence. However, there is substantial evidence to support potentially significant air quality impacts.

The MND air quality discussion recognizes the potential for impacts, but fails to either call the impacts significant or to require the necessary mitigation in the MND. For example, the MND on page 14 under the discussion of Air Quality issue (a), states:

> Specific to this project, the Small Project Analysis Level (SPAL) Assessment (Trinity Consultants 2020) outlines a number of **recommended measures to ensure that the project complies with the air quality plan**.

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> The Site Plan Review will include a standard condition of approval (Condition B.12) requiring that the developer meet all regulations of the SJVAPCD concerning dust suppression during construction of the project. Therefore, impacts would be less than significant. (Emphasis added).
>
> Similarly, the MND, as part of the discussion of Air Quality issue (b), states:
>
> SJVAPCD Rule 9510 requires the reduction of emissions of nitrogen oxides (NOX) and particulate matter smaller than ten microns in aerodynamic diameter (PM10) associated with construction and operational activities of development projects occurring within the San Joaquin Valley. Rule 9510 applies to new development projects that would equal or exceed specific size limits called applicability thresholds (e.g., developing more than 2,000 square feet of commercial space, 25,000 square feet of light industrial space, 10,000 square feet of heavy industrial space, or 50 residential units). The project is subject to SJVAPCD Rule 9510 **because it exceeds the applicability threshold**. **Accordingly, the project must reduce a portion of the emissions** occurring during construction and operational phases through on-site measures, or pay off-site mitigation fees.

(MND, p. 15, emphasis added.)

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The MND then improperly defers specification of the required mitigation measures and fails to determine whether emissions can successfully be reduced to less than significant levels through on-site measures, or whether payment of an off-site mitigation fee is required, and the amount and timing of such payment. The MND thus identifies a significant unmitigated impact of the proposed project in the narrative, but improperly fails to classify it as such. The discussion of Air Quality issues (c) and (d) are purely conclusionary and lacking in substantial evidence; the MND fails to support the conclusions by specific citations to an analysis provided to the reader.

Furthermore, the MND's conclusions are inappropriate as they are based on inaccurate and outdated information regarding air quality impacts. (MND, pp. 12-14.) Deficiencies in the MND's analysis of the Project's air quality impacts is provided in the EPS Technical Memorandum on Air Quality prepared by Senior Air Quality Consulting Engineer, Ray Kapahi (See Exhibit E, pp. 1-2, 4.)

The Small Project Analysis Level Assessment ("SPAL") prepared for the Project fails to follow current San Joaquin Valley Air Pollution Control District ("SJVAPCD") guidance on determining potential significant impacts and potential mitigation of significant impacts in its Guidance for Assessing and Mitigating Air Quality Impacts ("GAMAQI"). (Exhibit E, p. 2; MND, pp. 12-14.) The SJVAPCD created the SPAL

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screening tool to streamline air quality assessments of commonly encountered projects to identify the level at which they have no possibility of exceeding the emissions thresholds and can qualify as a "small project." (*Ibid.*) A project that is found to be "less than" the established parameters has "no possibility of exceeding criteria pollutant emissions thresholds." (*Ibid.*)

The SPAL Assessment prepared for the Project relies on outdated guidance for determining potential impacts and potential mitigation of these impacts. The Project's SPAL Assessment, prepared in July 2020 and updated in October 2020, followed SJVAPCD SPAL guidance adopted in 2015 despite SJVAPCD's adoption of new SPAL guidelines on November 13, 2020. (See, e.g., Project SPAL Assessment, pp. 1-2, 3-1; Exhibit E, p. 2.)[10] The Project and the MND must comply with current SPAL guidelines.[11] As the MND's analysis is based on outdated guidelines, the MND is deficient as an informational document.

For example, according to the October 2, 2020, Trip Generation Analysis prepared for the Project, the Project is expected to generate approximately 1,511 daily trips, adding 130 daily trips during the p.m. peak hour and 146 trips during the a.m. peak hour on a typical weekday. (Project Trip Generation Analysis, p. 2; Exhibit E, p. 2.) Current SJVAPCD SPAL guidance states that a medical office building that generates over 1,000 trips does not qualify as a small project. (November 13, 2020 SPAL Guidance, Table 2; Exhibit E, p. 2.) As the MND relies on the outdated Project SPAL Assessment, instead of the current standards, it fails to appropriately and accurately measure the Project's potentially significant air quality impacts.

The MND fails to assess and analyze the public health risks associated with air pollution during construction. (MND, pp. 12-16.) For example, during construction of the Project, 2.56 tons of NOx emissions would be released close to businesses and homes. (Exhibit E, p. 2.) There is a high probability that the ambient air quality for NOx would be violated in these locations. (*Ibid.* [the state standard for NOx is only 0.18 parts per million for 1-hour].) In addition, the MND fails to consider public health risks

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[10] San Joaquin Valley Air Pollution Control District, Small Project Analysis Levels (Nov. 13, 2020), available at: http://valleyair.org/transportation/CEQA%20Rules/GAMAQI-SPAL.pdf.

[11] In mandamus proceedings "the law to be applied is that which is current at the time of judgment in the appellate court." (*Callie v. Board of Supervisors* (1969) 1 Cal.App.3d 13, 18-19; see also *Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1255-1257, fn. 12, ["where no vested rights will be impaired, it is appropriate for an appellate court to apply the law in existence at the time of its decision rather than at the time an approval was issued"].)

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associated with the release of diesel particulate matter, which is a carcinogen. (Exhibit E, pp. 2-3.) The reviewing agency is required to make a determination and has failed to do so. (*Ibid.*)

The MND fails to consider, analyze, or mitigate the likely health effects from air pollution associated with the Project's location 700 feet from SR 99. (MND, pp. 12-16; Exhibit E, p. 3.) The Project's siting would lead to increased cancer risks that fall above the threshold of significance for Kern County and SJVAPCD, establishing a fair argument that the air quality impact of the Project is potentially significant. (Exhibit E, p. 3 [Project's siting is in the range of 50 to 70 excess cancers per million and the threshold of significance for Kern County and SJVAPCD is 10 cancers per million].)

The project site is within the San Joaquin Valley Air Pollution Control District. According to the Governor's Office of Planning and Research, cities and counties within the San Joaquin Valley Air Pollution Control District ("SJVAPCD") jurisdiction are required by state law to include air quality measures in their general plans.[12] The SJVAPCD developed the *Air Quality Guidelines for General Plans* to assist these cities and counties in meeting these requirements. The MND is required to include an analysis of the Project's consistency with the City's Air Quality Element of its General Plan.[13] In the absence of such an analysis, the Project's consistency with the City's Air Quality Element, cannot be assumed and a potentially significant impact exists.

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All of the air quality impacts of the Project, including emissions during construction and operation, must be adequately disclosed and analyzed before any action on the Project is taken. The MND fails as an informational document as it does not include necessary information regarding air quality impacts, inadequately addresses the impacts, and uses inaccurate and outdated modes of assessment.

2. The Project's Potentially Significant Biological Impacts are Not Disclosed

The Project's Biological impacts are not disclosed, and there is insufficient mitigation to reduce the Project's impacts to biological resources to less than significant

[12] See pages 1 and 185, available at: https://opr.ca.gov/docs/OPR_C4_final.pdf.

[13] It appears that the City of Bakersfield has failed to comply with the requirement to address air quality within its General Plan as there is no Air Quality Element. The City's General Plan was prepared in 2002 with limited updates. Processing of all applications should be suspended until the City's General Plan is brought into conformance with State Law. (See Bakersfield General Plan at: https://content.civicplus.com/api/assets/37a2e20d-e610-431f-a222-9f4f2ecd2ddd/.)

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levels as claimed in the MND. As discussed in section II.D.2 above, the biological setting information in the MND is entirely inadequate. (See Exhibit D, pp. 1-11.) According to Dr. Smallwood, "A fair argument can be made for the need to prepare an EIR to appropriately assess the environmental baseline and to analyze potential project impacts to biological resources." (Exhibit D, p. 8.)

In addition, the biological resources report supporting the MND, which was not attached to the MND or circulated for public review, was not accurately characterized, and the MND ignores potential project impacts to wildlife. As explained by Dr. Smallwood, the MND overlooks site use by wildlife by relying on a demonstrably defective site survey, ignores the potential environmental impacts on the hosts of species observed occupying the site in just a two-hour period, and fails to avoid or mitigate for impacts on species likely to occur on the site. Additionally, defects in the MND's approach are described below.

a. The MND Overlooks Impacts to Burrowing Owls

Of particular concern is the MND's deficient analysis of Project impacts to burrowing owls. The MND does identify the potential presence of the burrowing owl, a special status species, which was confirmed by Dr. Smallwood's field survey. (MND, pp. 16-17.) Yet, it does not thereafter recommend or require a survey to determine the presence of the burrowing owl to avoid take prior to construction. Notably, the owl is not covered under the Metropolitan Bakersfield Habitat Conservation Plan ("MBHCP"); as a result, participation in the MBHCP provides no mitigation for impacts to burrowing owls. The potential for significant impacts to this species of concern therefore remains.

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The MND references protection for the burrowing owl species as required under the Migratory Bird Treaty Act ("MBTA"). (MND, p. 17.) But the MND fails to describe protections afforded the burrowing owl under the California Fish & Game Code section 1801 (§§ 86, 3503, 3503.5 and 3513), as a California Bird Species of Special Concern (Gervais, et al. 2008) and Federal Bird of Conservation Concern (U.S. Fish and Wildlife Service 2002). The MND then ignores the appropriate protocols to avoid take:

> The following three progressive steps are effective in evaluating whether projects will result in impacts to burrowing owls. The information gained from these steps will inform any subsequent avoidance, minimization and mitigation measures. The steps for project impact evaluations are: 1) habitat assessment, 2) surveys, and 3) impact assessment. Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and

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> to avoid take in accordance with [Fish & Game Code] sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of a proposed CEQA Project.

(Staff Report on Burrowing Owl Mitigation, State of California Natural Resources Agency, Department of Fish and Game, March 7, 2012, attached as Exhibit L.[14,15])

Instead of following these guidelines once the analysis identified the potential impacts to owls (McCormick 2020, p. 31; see also Exhibit D, Updated ESA, pdf p. 57 [showing rubble ideal for Burrowing owl]), the MND defers any further action to SPR Development Services Condition B.9. (MND, p. 17, and Appendix A, Site Plan Review Conditions of Approval, Conditions of Ordinance Compliance ("SPR Conditions"), p. 6.) Condition B.9 "generally requires that project related disturbance at active nesting territories be reduced or eliminated during the critical phases of the nesting cycle (March 1-August 15, annually)." Section b of Condition B.9 does not follow the survey protocol and instead creates its own new, limited criteria that does not have *any breeding bird survey for compliance with MBTA* or any form of survey for the burrowing owl.

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Condition B.9 also fails to incorporate specific mitigation measures identified in the Biological Evaluation prepared for the Project. (McCormick 2020, pp. 31-34.) This includes BIO-1 (Pre-construction Survey for the owls) and BIO-2 (Pre-construction breeding bird survey). Not only are the McCormick burrowing owl or breeding bird mitigation measures not explicitly applied, neither does the MND take into account the mitigation measures identified in BIO-3, BIO-4 or BIO-5. A rationale for ignoring the Biological Evaluation and associated mitigation measures prepared for the Project is never discussed in the MND.

In addition, Condition B.9 does not meet any performance standard criteria; instead, it is simply an aspiration to "generally require" reduction of disturbance. How,

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[14] Gervais, J.A., D.K. Rosenberg, and L. Comrack. 2008. Burrowing Owl (*Athene cunicularia*), In Shuford, W.D. and T. Gardali. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento, available at: https://wildlife.ca.gov/Conservation/SSC/Birds.

[15] U.S. Fish and Wildlife Service. 2002. Birds of Conservation Concern 2002. Division of Migratory Bird Management, Arlington, Virginia, available at: https://www.fws.gov/midwest/wind/references/BCC2002.pdf.

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for how long, and under what conditions, is left entirely up to the applicant. If the owl were exclusively covered by the MBTA, which it is not, then it still would not be protected from harm by project construction, and its take would not be covered by the MBHCP.

The MND identifies the appropriate conditions for burrowing owls to nest, yet doesn't apply the appropriate survey and monitoring protocols to appropriately identify the potential Project impacts and then avoid impacts to this species. Condition B.9b mischaracterizes the guidance, and sets a new standard of avoidance of "violation of the provisions of these laws," and provides no effective Project impact avoidance or mitigation.

The ambiguous language in Condition B.9b fails to prohibit project related disturbance, without a survey to identify if MBTA-protected birds or burrowing owls specifically are present or absent. Instead, Condition B.9b, merely explains what is generally required to avoid violation of the California Fish and Game Code, without actually requiring that those actions be required of the proposed project, stating:

> b. Burrowing Owl Notification: The burrowing owl is a migratory bird species protected by international treaty under the Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703-711). The MBTA makes it unlawful to take, possess, buy, sell, purchase, or barter any migratory bird listed in 50 C.F.R. Part 10 including feathers or other parts, nests, eggs, or products, except as allowed by implementing regulations (50 C.F.R. 21). Sections 3503, 3503.5, and 3800 of the California Fish and Game Code prohibit the taking, possession, or destruction of birds, their nests or eggs. To avoid violation of the provisions of these laws generally requires that project related disturbance at active nesting territories be reduced or eliminated during critical phases of the nesting cycle (March 1-August 15, annually). Disturbance that causes nest abandonment and/or loss of reproductive effort (e.g., killing or abandonment of eggs or young) may be considered "taking" and is potentially punishable by fines and/or imprisonment.

Survey protocols have been developed to address the difficulty in accurately assessing presence or absence. (See California Department of Fish and Game, Guidance for Burrowing Owl Conservation (April 14, 2008) attached as Exhibit K, pp. 8-9; Department of Fish and Game, Staff Report on Burrowing Owl Mitigation (March 7, 2012), attached as Exhibit L, pp. 28-30.) Failure to require these protocol surveys, or require any survey for any breeding birds prior to construction, means that the impacts to

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the species have not been adequately analyzed, and that no mitigation for impacts have been applied.

Conversely, Condition B.9c applies specific enforceable standards for pre-construction surveys for San Joaquin kit foxes. Given the likelihood of presence of burrowing owls on the site, there is no justification for the lack of surveys and other mitigation measures to address potential impacts to burrowing owls.

The MND fails to apply the City's own standards for protection of bird species, ignores a special-status species with unique survey needs and lack of coverage under the HCP, and further ignores its own consultant's Mitigation Measures BIO-1, BIO-2, BIO-3, BIO-4 and BIO-5, all without substantiating analysis.

b. Other Deficiencies Related to the Project's Significant Biological Impacts

Dr. Smallwood identified the following additional defects in the MND's analysis and its conclusions with respect to biological resources:

- The MND fails to analyze the loss of avian productivity due to habitat loss. (Exhibit C, pp. 7, 12.)
- The MND applies a false CEQA standard to its analysis of impacts to wildlife movement. (Exhibit C, pp. 7, 13, 19.)
- The MND fails to analyze impacts to wildlife likely to be caused by Project-generated traffic in an expanding area of northern Bakersfield. (Exhibit C, pp. 13-16.)
- The MND fails to analyze bird strikes from the Project's excessive use of glass windows on its building façades. (Exhibit C, pp. 7, 16-17, 19.)
- The MND does not consider cumulative impacts from habitat fragmentation, and wrongly assumes that cumulative impacts are mere residual impacts of insufficient mitigation measures implemented to address project-specific direct impacts. (Exhibit C, p. 17.)
- To the extent the MBHCP is relied upon to mitigate cumulative biological impacts, the MBHCP could not project potential contributions of cumulative impacts to the 68 special-status species with the potential to occur on the Project site according to the list compiled by Dr. Smallwood in Table 2, which are not covered by the MBHCP. (Exhibit C, p. 17.)

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c. The MND Fails to Incorporate *Any* Mitigation Measures for the Project's Significant Biological Impacts

Due to the Project's significant effects on biological resources, mitigation is required. The MND does not include adequate mitigation for these impacts. The MND does, however, refer to participation in the MBHCP (MND, p. 17), which is also referenced in Condition B.9.a of the Conditions and Ordinance Compliance adopted for the Project. Participation in the MBHCP, could potentially help mitigate the Project's impacts to the San Joaquin kit fox, for instance. But as pointed out by Dr. Smallwood, an incidental take permit under the MBHCP would not cover 68 of the 70 special-status species listed in Table 2. In addition, the MBHCP provides no mitigation for wildlife mortality impacts from project-generated traffic and the Project's extensive use of glass windows, leaving most of the project's impacts to wildlife unmitigated. (Exhibit C, pp. 17-18.)

As specified in Condition B.9.a, for the MBHCP mitigation to be available, the fees must be paid by August 31, 2021 and the covered activities must be completed by February 28, 2022, the date the MBHCP expires. (MND, p. 17.) Given the scale of the Project, it is highly unlikely that all construction and disturbance could be completed by approximately one year from today or whether the project will be ready to be issued an urban development permit, grading plan approval, or building permit by August 31, 2021, as required in order to be eligible to pay fees under the current MBHCP. The potential for impacts remains.

In addition, *Lotus*, *supra*, 223 Cal.App.4th at 655-57, disapproved the blurring of distinction between impacts and mitigation measures, as is done in the MND and Conditions of Approval and specified that an environmental review document should not incorporate "the proposed mitigation measures into its description of the project and then conclude[] that any potential impacts from the project will be less than significant," as stated throughout the MND.

Without explanation, the MND fails to incorporate any mitigation suggested in the Project's Biological Evaluation (McCormick 2020). For instance, standard preconstruction surveys were recommended by McCormick Biological 2020 (pp. 31-32), but this recommendation was ignored in the MND. (See Exhibit C, p. 18.) Appropriate mitigation for burrowing owls is also not included in the MND, despite the acknowledged potential presence of this species. (See Exhibit K, pp. 10-15, Exhibit L, pp. 8-14, 30-34.)

Among other mitigation, Dr. Smallwood recommends that the MND provide mitigation for adverse impacts on regional movement of wildlife. (Exhibit C, p. 19.) According to Dr. Smallwood, "substantial compensatory mitigation is needed in response

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to the project's impacts to wildlife movement, including impacts to birds and bats using the site for stop-over or staging during migration. The proposed project site is within a patch of open space connecting to a larger expanse of open space to east and southeast, and so is likely important to birds and bats on long-distance dispersal or migration flights." (Exhibit C, p. 19.) Funding for a roadway mortality mitigation fund would also be appropriate, given the Project's likely impacts. The Project should also adhere to available Bird-Safe Guidelines to reduce the potential for collisions with the building. (Exhibit C, p. 19.)

3. Project Impacts to Tribal Cultural Resources and Geology/Soils Not Disclosed

The MND identifies that the Project may have impacts to Cultural Resources, namely archeological resources, and the disturbance of human remains. (MND, p. 7.) A field-level cultural and historic resources survey should be required prior to construction. According to a May 20, 2020 letter to the applicant, an Archeological Evaluation/Study was requested:

> d. **Archaeological Evaluation/Study.** The Planning Division will require an Archaeological Evaluation/Study that includes an evaluation by a qualified consultant of any historic and archaeological resources that may be present at the site. As part of the study, please consult with the California State University – Bakersfield Archeological Information Center.

(See Exhibit J.) The MND does refer to a "Cultural Resources Records Search", referenced as (SSJVIC 2020) on page 18. This reference is listed on page 25 of the MND as: "24. SSJVIC (Southern San Joaquin Valley Information Center) 2020. Steven Doctor/Record Search 20-243 - for Site Plan Review 20-0102. June 29." Steven Doctor is a principal of the applicant entity, SASD. To the extent that the applicant provided the search result, there is no evidence that the applicant is a "qualified consultant of any historic and archeological resources that may be present at the site." In addition, there is no evidence that the Bakersfield Archeological Information Center was consulted.

Even if the search was performed by the applicant (ostensibly a layperson), the desktop analysis is the first step in a resources analysis and is intended to result in a field survey for assessment. Field surveys provide direct confirmation of the presence or absence of cultural, historic and paleontological resources on the surface of the site. The desktop analysis is simply an evaluation as to what has been previously documented and reported to California Historical Resources Information System ("CHRIS") and others, not as a tool to determine what is not present at the site.

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As the State Office of Historic Preservation explains:

> However, a resource does not need to have been identified previously either through listing or survey to be considered significant under CEQA. In addition to assessing whether historical resources potentially impacted by a proposed project are listed or have been identified in a survey process, lead agencies have a responsibility to evaluate them against the California Register criteria prior to making a finding as to a proposed project's impacts to historical resources (PRC Section 21084.1, 14 CCR Section 15064.5(3)).[16]

The MND acknowledges that a desktop analysis is not a substitute for a field survey, but instead makes the following unsubstantiated claim:

> In addition, the project site has been disturbed by disking, fire, and other uses provided the site is surrounded by urban development. Therefore, it is unlikely that a surface pedestrian survey would provide reliable data on the likelihood of subsurface cultural resources.

(MND, p. 18.) This finding that the site burned condition and disturbance precludes a survey from being reliable is unsubstantiated and incorrect. Burned and tilled sites can provide exactly the kind of direct information needed for an effective survey because the resources are now visible.

The MND identifies a mitigation measure which requires a qualified individual for its execution, *but only* if a construction worker who has received minimal training makes a field determination that the cultural, historic or paleontological feature discovered meets the standards. This approach is backwards; the City improperly failed to follow its own requirement for an expert to screen the site and instead placed the onus to detect and classify resources on the least qualified person, a construction worker. The MND states as follows:

> Cultural Resources Impact Mitigation Measures:
>
> 1. Prior to construction and as needed throughout the construction period, a construction worker cultural awareness training program shall be provided to all new construction workers within one week of employment at the project site. The training shall be prepared and conducted by a qualified cultural resources specialist.

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[16] Available at: https://ohp.parks.ca.gov/?page_id=21724.

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> 2. During construction, if buried paleontological or cultural resources are encountered during construction or ground disturbance activities, all work within 50 feet of the find shall immediately cease and the area cordoned off until a qualified cultural and/or paleontological resource specialist that meets the Secretary of the Interior's Professional Qualification Standards can evaluate the find and make recommendations. If the specialist determines that the discovery represents a potentially significant resource, additional investigations **may** be required. These additional studies **may** include avoidance, testing, and excavation. All reports, correspondence, and determinations regarding the discovery shall be submitted to the California Historical Resources Information System's Southern San Joaquin Valley Information Center at California State University Bakersfield.

(MND, p. 1, emphasis added.)

Mitigation Measure 2 does not require additional studies if resources are discovered, stating only that they "may" be required. Mitigation Measure 2 also fails to: mandate the contents of such studies, indicate who with any power to require action based on the results of such study shall be provided with the study, specify who will review the study for accuracy and completeness, require action based on the recommendations of such study be completed prior to the re-initiation of work in the vicinity of the find, or justify the appropriateness of the 50-foot specification in the mitigation. The mitigation is thus insufficient to ensure that significant impacts will not occur.

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Geology and Soils "mitigation measures" have been inserted into Cultural Resources in the above citation. This resource should be treated independently for purposes of mitigation. The MND analysis is as follows:

> According to the California Department of Conservation's Geologic Map of California, the project site consists of Quaternary nonmarine sedimentary geologic formations. This geological formation consists of older alluvium deposits that have the potential to contain unknown paleontological resources or unique geologic features.

(MND, p. 21.)

The MND identifies the potential presence of "paleontological resources or unique geologic features" but then fails to adequately assess these features at the site with a qualified expert, delegates the evaluation assessment to a construction worker, and fails to use experts unless the worker makes and reports a discovery. The conflation of the

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two mitigation measures deliberately leaves out "unique geologic features" and the special expertise needed to understand and protect those features from project impacts. The mitigation measures are inadequate to protect cultural resources, and paleontological and unique geologic features.

4. The Project's Energy Impacts are Not Disclosed

The MND fails to properly discuss and analyze the potentially significant energy impacts generated by the construction of and operation of the Project. (MND, pp. 7, 19.) The MND should consider "energy consuming equipment and processes which will be used during construction, operation and/or removal of the project. If appropriate, this discussion should consider the energy intensiveness of materials and equipment required for the project." (*California Clean Energy Committee v. City of Woodland*, (2014) 225 Cal.App.4th 173, 210 [*CCEC*], citing CEQA Guidelines, App. F .) The MND should also consider whether the project involves unavoidable adverse effects which include "wasteful, inefficient and unnecessary consumption of energy during the project construction, operation, maintenance and/or removal that cannot be feasibly mitigated." (*Ibid.*) The considerations should include "whether it [the project] should be constructed at all, how large it should be, where it should be located, whether it should incorporate renewable energy resources, or anything else external to the building's envelope." (*Id.* at 211 [includes energy impacts associated with additional square footage of project construction].) The review must also contain discussion of potentially significant energy considerations such as renewable energy options, energy use attributable to vehicle trips generated by the project, and the resulting energy impacts from these trips. (*Id.* at 213; *Ukiah Citizens for Safety First v. City of Ukiah*, (2016) 248 Cal.App.4th 256, 263-265 [*Ukiah*].)

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Commencing in 2019, the CEQA Guidelines expressly require substantive analysis of a project's energy impacts:

> Energy Impacts. If analysis of the project's energy use reveals that the project may result in significant environmental effects due to wasteful, inefficient, or unnecessary use of energy, or wasteful use of energy resources, the EIR shall mitigate that energy use. This analysis should include the project's energy use for all project phases and components, including transportation-related energy, during construction and operation. In addition to building code compliance, other relevant considerations may include, among others, the project's size, location, orientation, equipment use and any renewable energy features that could be incorporated into the project. (Guidance on information that may be included in such an analysis

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> is presented in Appendix F.) This analysis is subject to the rule of reason and shall focus on energy use that is caused by the project.

(CEQA Guidelines, § 15126.2, subd. (b).)

The MND's perfunctory analysis of energy falls short of CEQA's substantive mandates, and therefore fails as an informational document. The MND briefly discusses energy impacts of construction and the new development project, and concludes that the impacts would be less-than-significant. (MND, pp. 7, 19.) This brief discussion is inadequate as it provides no information of the adverse energy impacts from construction, incorporation of renewable energy resources, energy use attributed to vehicle trips associated with construction, the energy impacts associated with additional square footage of the Project, and the designs by which the Project will undertake energy efficiency. The MND also fails to consider whether energy impacts of the Project may be avoided through alternate means, such as renovation, or LEED-quantified efficiency improvements.

The MND fails to quantify the Project's energy consumption, thereby providing no information as to whether the Project's energy consumption is inefficient, wasteful or unnecessary. No information is provided to assess the Project's energy consumption; the MND provides only that "[c]linic construction will require temporary energy demands typical of other office and/or commercial construction projects that occur throughout the state." (MND, p. 19.) The MND fails to provide any information as to the "typical" standard of energy demands and only provides that these demands will not "result in inefficient or unnecessary consumption of energy resources beyond typical construction." (*Id.*) The MND provides no information as to how these energy demands will avoid unnecessary or inefficient consumption. Due to this deficiency, the analysis of the energy demands must be revised to include a comprehensive view as to the impacts and energy consumption. As no information is provided concerning the Project's energy consumption, there is no way to confirm that the Project will not result in a less-than-significant impact on the environment.

The MND also fails to provide sufficient information regarding the Project's plans for renewable energy and energy efficiency. (MND, p. 19.) The MND does not discuss the process by which energy efficiency or renewable energy measures will be undertaken. Instead, the MND provides only that the development will "adhere to modern building standards related to energy efficiency." (MND, p. 19.) There is no information which establishes "modern building standards" and how the Project will comply with these standards. The deficiency in information does not provide an adequate discussion of potentially significant energy considerations for the building standards and does not require compliance with energy efficient undertakings. (*Ukiah*, *supra*, 248 Cal.App.4th

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at 263-265.) The MND's analysis of energy must be revised to provide sufficient information for the renewable energy and energy efficiency measures.

5. The MND's Analysis of Greenhouse Gas Impacts Violates CEQA

Climate change is behind the increase in intensity of recent wildfires and heatwaves in California. Average global temperature has increased by around 1°C, and the planet is currently on a path toward a world with a 4°C increase. Buildings account for around 40 percent of GHG emissions on the demand side.

a. The MND's Analysis under the First GHG Threshold does not Comply with CEQA

The MND's Greenhouse Gas ("GHG") discussion considers whether the Project would "***Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment***?" (MND, p. 22, emphasis added.) The MND states that the mitigated Project would conform to AB 32 goals and result in a 50.9 percent reduction in GHG emissions in comparison to "Business-As-Usual ("BAU"), which is greater than the AB 32-mandated 29 percent reduction. (MND, p. 22.) The MND concludes that "the impacts of this project are not considered significant given the efforts made to reduce emissions of GHG from the project through design measures and standards, plus further mitigation accomplished at the statewide level through California Air Resources Board (CARB) regulations adopted pursuant to AB 32."

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This analysis violates CEQA under the rules set by the California Supreme Court in *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204 (*Newhall*). That case involved the GHG analysis for Newhall Ranch, a large new City proposed to be built in northern Los Angeles County. The EIR for Newhall Ranch said that Newhall would build the project in a certain way (business as usual or "BAU"); therefore there was no need to consider GHG emissions. The lead agency claimed that the BAU project was legal under current building codes and regulations. (*Id*. at 218.)

But the project Newhall proposed to build would emit 31 percent less GHG than the BAU project. The EIR adopted a threshold of 30 percent below BAU, based on the CARB Scoping Plan's assessment that, to be consistent with the GHG-reduction goals of AB 32, the State as a whole would need to reduce GHG emission by 29 percent. (*Id*. at 225.) The court held that this type of threshold for GHG complied with CEQA, but faulted the Newhall EIR because it failed to demonstrate that the project-level reduction of 31 percent was consistent with reducing GHG emissions 29 percent across the entire State. (*Ibid.*)

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Here, if the 50.9 percent reduction in GHG emissions claimed in the MND (MND, pp. 22-23) are assumed to come from physical changes to the Project that reduced its GHG emissions, the situation would be identical to the *Newhall* case: the GHG analysis violates CEQA without a showing in the record, based on substantial evidence, that the project-level reduction is consistent with reaching the State's GHG-reduction goal. The reasons for the Supreme Court's holding that the *Newhall* EIR's GHG analysis violated CEQA equally apply here. In addition, some of the claimed reductions below BAU in this case come from State actions unrelated to the Project, and should not count toward the reductions needed to meet the Project's threshold of significance. Further, the MND does not state where the figures on GHG emissions came from, or what measures are taken to reduce emissions from 2005 BAU to 2022 operations.

In any event, the City's reliance on AB 32 as a significance criterion is flawed as it only covers emissions up to the year 2020. The City should have referenced and applied the SB 32 and the 2017 California Air Resources Board ("CARB") scoping plan. Our Supreme Court pointed out in 2015 that, in time, consistency with the State's 2020 GHG reduction goals will not make a Project's emissions insignificant:

> A qualification regarding the passage of time is in order here. Plaintiffs do not claim it was improper for this EIR, issued in 2010, to look forward only to 2020 for a guidepost on reductions in greenhouse gas emissions, and we therefore do not consider the question whether CEQA required the EIR to address the state's goals beyond 2020. Nevertheless, over time consistency with year 2020 goals will become a less definitive guide, especially for long-term projects that will not begin operations for several years. An EIR taking a goal-consistency approach to CEQA significance may in the near future *need* to consider the project's effects on meeting longer term emissions reduction targets.

(*Newhall*, *supra*, 62 Cal.4th at p. 223; see fn. 6 [referring to SB 32]; see *also Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 519 [SB 32's 2030 goal is "a necessary interim target"].)

Five years after the *Newhall* opinion was written, the "near future" is here. California has met its 2020 AB 32 goals; it has reduced statewide GHG emissions below 1990 levels. It makes no sense to use, as a threshold, whether the Project will impede those goals, because the goals have already been achieved. The MND uses compliance with AB 32's goals to determine that the Project's GHG emissions will not be significant. But 2021 is the earliest possible start date for the Project.

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In SB 32 (Stats. 2016, ch. 249, § 2), enacted September 8, 2016, the Legislature declared that CARB "shall ensure that statewide greenhouse gas emissions are reduced to at least 40 percent below the statewide greenhouse gas emissions limit no later than December 31, 2030." (Health & Saf. Code, § 38566.) AB 32 required reducing statewide GHG emissions to 1990 levels by 2020. SB 32 requires reducing ***them 40 percent below 1990 levels by 2030***.

SB 32 had been in effect for over four years when the City issued the Notice of Completion and the MND for the Project on December 4, 2020. The MND was required to acknowledge the relevance of SB 32 and should have used the 2017 Scoping Plan for guidance on interpreting it, instead of the outdated 2014 Scoping Plan. The general rule for land-use entitlements is that changes in the legal and regulatory environment apply to a project through the entitlement process, until the applicant acquires a vested right by performing significant work in reliance on a building permit. (*Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 793.)

CEQA Guidelines section 15064.4, subdivision (b) also requires the City to consider, in its GHG analysis, "a timeframe that is appropriate for the project." The AB 32 compliance timeline chosen by the City, which has already passed, is inappropriate and unlawful. With an ordinary 50-year lifetime, the Project's emissions would last well past 2045, when Executive Order B-55-183 has declared a policy that emissions must be reduced to net zero.

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b. The MND's Analysis Under the Second GHG Threshold Violates CEQA By Not Considering the State's Most Important GHG Reduction Plan

The second threshold in the MND evaluating the significance of the Project's GHG emissions is whether the Project ***would conflict with any statewide policy, regional plan, or local guidance or policy adopted for the purpose of reducing GHG emissions***. (MND, pp. 22-23, emphasis added.) This threshold is consistent with CEQA Guidelines, section 15064.4, subdivision (b)(3), which directs the lead agency to consider:

> …the extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. . .. Such requirements must be adopted by the relevant public agency through a public review process and must reduce or mitigate the project's incremental contribution of greenhouse gas emissions.

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The second threshold, and the CEQA Guidelines, do not give the City the discretion to determine with which plans the Project must be consistent. The MND completely fails to analyze whether the Project is consistent with the CARB 2017 Scoping Plan, based on current law, ***SB 32***. The MND erroneously uses ***AB 32*** as the significance criterion. CARB's 2017 Scoping Plan is the State's most significant and important plan for reducing GHGs, and the MND is inadequate because it fails to consider it.

The deficient analysis and erroneous selection of significance criteria is an abuse of discretion, reviewed de novo. (*Newhall*, *supra*, 6 Cal.4th at p. 219.)

c. All Feasible Mitigation Is Required, Since the Project's GHG Impacts Are Significant

As described above, the MND fails to substantiate a less than significant GHG impacts determination. When a project has significant environmental effects, the lead agency must adopt all feasible mitigation. (Pub. Resources Code, §§ 21002, 21002.1, subd. (b).) An agency's failure to require all feasible mitigation is a failure to follow the procedures required by CEQA, and thus is a failure to proceed in the manner required by law. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512-513.)

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The standard for whether a proposed mitigation measure is feasible is whether adoption of the proposed measure would render the project unprofitable:

> Economic unfeasibility is not measured by increased cost or lost profit, but upon whether the effect of the proposed mitigation is such that the project is rendered impractical. (*Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1181, 243 Cal.Rptr. 339).... [I]f the project can be economically successful with mitigation, then CEQA requires that mitigation.... (*Ibid.*)

(*Maintain Our Desert Env't v. Town of Apple Valley* (2004) 124 Cal.App.4th 430, 449.) Since the Project's GHG emission impacts are significant, the City must require the applicant to adopt all feasible GHG mitigation measures for the Project.

6. The Project Would Result in Potentially Significant Hazards and Hazardous Materials Impacts

The MND fails to disclose potentially significant impacts associated with hazards and hazardous materials. (MND, pp. 8, 23-25.) In particular, the MND fails to disclose or analyze impacts associated with construction and operation of the Project on a site that likely contains various hazards as a result of prior onsite uses and upgradient offsite

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sources. The MND also fails to address whether the Project, as proposed, provides sufficient emergency access to ensure the protection of life and property, and compliance with local and regional emergency response plans.

a. The MND Disregards Potential Site Contamination

December 23, 2020 comments submitted by the California Department of Conservation, Geologic Energy Management Division state that there is "1 known oil or gas wells located within the project boundary" and that the "Division categorically advices [sic] against building over, or in any way impeding access to, oil, gas, or geothermal wells." The MND must be revised to address the hazards associated with construction of the Project on a site with an oil or gas well. Pending such an analysis, the potential for impacts remains.

Condition of Approval 11 is inadequate to address potential impacts associated with the capped well on the project site. Condition 11 states:

> 11. In the event a previously undocumented oil/gas well is uncovered or discovered on the project, the developer is responsible to contact the California Geologic Energy Management Division (CalGEM). The developer is responsible for any remedial operations on the well required by CalGEM. The developer shall also be subject to provisions of BMC Section 15.66.080.B.
>
> (**Note:** A capped well is near Street "A". Prior to the approval of Public Works plans, the applicant shall provide the location of the capped well to the Public Works Department and resolve any adverse impacts to the public and site improvements.)

The Condition thus acknowledges the potential for impacts, yet the City has improperly deferred the analysis of those impacts, the development of mitigations to address such impacts, and review of both the analysis and proposed mitigation by the responsible State agency. The MND has thus failed as an informational document and is fatally flawed.

Furthermore, as explained in the Updated ESA prepared by Soil Pacific Inc. (Exhibit D), the site has the potential to have been contaminated from a variety of offsite and onsite sources. Specifically, "surrounding properties on the north, south, and west have been developed or used to store hazardous materials that are considered environmentally concerned." The MND fails to explain how these hazards have been addressed. Instead, the MND appears to rely on the lack of listing *of the site* on the EnviroStor and Cortese lists to conclude there are no hazardous waste concerns. (MND,

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p. 24.) As explained by Dr. Kabir's review of the available site history, "there is evidence of site contamination that could pose potentially significant risks to human health and the environment." (Exhibit D, Summary Report, p. 3.)

Directly to the south, and part of the same parcel, there was up until recently an automotive repair, dismantling or wrecking yard. According to Soil Pacific Inc., "Based on our experience with other wrecking yards, such activities can create a potential for heavy metal, oil, and hydrocarbon contamination that is usually costly to remediate." (Exhibit D, p. 2.) Junkyards typically contain many hazardous materials including lead batteries, mercury from light switches, anti-freeze, Freon from cooling systems, Polychlorinated Biphenyls (PCBs), Chlorofluorocarbons ("CFCs"), asbestos found in the brake pads and lining of older cars, motor oil, and heavy other metals. (*Ibid*.)

During construction, some of these potentially hazardous materials would remain on the surface and other can be transported through the soil to the groundwater. That means that the threats to the environment would be exposed during construction, such as during trenching and grading, and in the case of vapor, exposure would occur during operations of the facilities if adequate mitigation is not implemented. A Phase II ESA for site soils at the surface, to the maximum depth of the utility trenching, the presence of vapor, and the presence of contaminants in the site groundwater is required. Based on available information, there is simply no way to determine the significance of those hazards, and no effective means to adequately mitigate for their impacts.

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For example, without defining the actual hazardous contaminants and their threats, the trenches themselves could have harmful vapor that could expose workers directly, or the vapor could be a more chronic threat to the hospital workers and patients. Similarly, site watering activities for dust control could drive surface contaminants into the soil.

As explained above, an agency cannot hide behind its own failure to gather relevant data and "deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Sundstrom*, *supra*, 202 Cal.App.3d at 311.) The need for an analysis of potential soil contamination was also noted by DTSC in its December 4, 2020 letter on the MND, yet the City has failed to prepare the requested analysis. The MND's bare conclusion that there is no potential for a significant impact despite the site's contamination history and offsite contamination sources "permits the reasonable inference" there is a potentially significant impact. (*Ibid*.)

Soil Pacific Inc. notes the obvious issues associated with constructing a medical clinic on a potentially contaminated site. It states, "Because those who seek the services of a medical clinic are presumably suffering from one or more conditions that adversely

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affect their health or well-being, medical use is a particularly sensitive use for environmental review purposes. Indeed, a medical clinic is a use that is much more sensitive to existing environmental conditions than manufacturing and/or industrial uses." Soil Pacific Inc. therefore concludes that: "**In my professional opinion, use of the property as a medical clinic should not be approved until after appropriate testing of soil and groundwater on the property**." Moreover, Soil Pacific "**strongly advises performing a Phase II site assessment to determine the potentially significant impacts of such land use.**" (Exhibit D, p. 3, emphasis added.) Without such an assessment, a fair argument of a potentially significant impact exists and the MND cannot conclude that there is no potential for significant impacts from hazards and hazardous materials at the Project site.

b. The MND Fails to Address Emergency Access Requirements to Ensure Compliance with Emergency Response Plans

As discussed previously in Section I.C above, access to and from the Project in an emergency event is inadequate and the MND fails to ensure compliance with emergency response plans. (MND, p. 24.). In the event of an emergency, vehicles would only be able to access the Project through Knudsen Drive as Landco Drive dead ends. (See Exhibit G, pdf pp. 1-2, 4-5.) The single access point through Knudsen Drive creates a potential hazard in that emergency vehicles could be prevented from accessing the site. Due to inadequate access, emergency vehicles would be unable to access or leave the site, creating undisclosed safety risks to the general population, as well as to first responders.

In addition to the limited access points, there are hazard concerns regarding possible insufficient width and turnaround area in the cul-de-sac located at the end of Landco Drive. As that the City has not required the developer to ensure that the turnaround be constructed in accordance with the Fire Code, there is a risk that emergency vehicles would be unable to safely and quickly respond to emergencies. (See Municipal Code, Ch. 15.65.010; Cal. Fire Code, § 503.2.5 [requires dead-end fire apparatus access roads in excess of 150 feet in length to include an approved turnaround].) Due to the failure to designate alternate fire apparatus access roads, the Project creates a risk that emergency response plans would not be able to be safely implemented. The MND fails to provide for appropriate access roads which would prevent emergency response plans from being successfully undertaken. As the Project lacks alternate access routes, fails to provide for safe ingress and egress of emergency vehicles, and ultimately creates a hazardous emergency access route, the MND cannot conclude that there are no significant impacts at the Project site. (MND, p. 24.)

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c. The MND's Analysis of Hazards Associated with Location in Proximity to Meadows Field Airport is Inaccurate and Fails to Identify a Significant Impact

The MND notes in section (e) of the hazards analysis that the project is located within Compatibility Area C of Meadows Field Airport, as shown in the Kern County *Airport Land Use Compatibility Plan* (APLUCP) (Kern County 2012), but incorrectly concludes that the project land use is consistent with the APLUCP. (MND, p. 24.) According to Table 2A on page 2-2 of the APLUCP, schools, hospitals and nursing homes are prohibited uses with Compatibility Area C; normally acceptable uses are only: aircraft tiedown aprons, pastures, field crops, vineyards, automobile parking, agricultural uses, warehousing, truck terminals, two-story offices, single-family homes on an existing lot, parks, playgrounds, most retail uses, duplexes and medium-density apartments, and two-story motels.[17] (See APLUCP Table 2A, attached as Exhibit H.) The proposed project is a Department of Veterans Affairs (VA) medical outpatient facility on a site zoned M-2, and is thus not an allowed use in APLUCP Compatibility Area C. Location of a medical facility in Compatibility Area C would constitute an unmitigated hazards impact.

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7. The Project's Hydrology/Water Quality Impacts are not Disclosed

The MND's analysis of potential drainage impacts is not supported by substantial evidence. The MND on page 26 states:

> In order to comply with the MS4 Permit, the City requires compliance with adopted building codes, including complying with an approved drainage plan, which avoids on- and offsite flooding, erosion, and siltation problems. Therefore, the project would not substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on- or offsite.

However, a drainage plan had not been completed for the Project at the time the MND was adopted. Rather than analyze the ability of the drainage plan to avoid impacts, the MND instead assumes, without providing the plan, performance standards or substantial evidence, that the drainage plan will provide adequate mitigation. Thus, there is no specific analysis in the MND regarding the Project's likely hydrologic impacts.

[17] The APLUCP is available at: https://www.liveuptehachapi.com/DocumentCenter/View/3400/ALUCP2012?bidId=.

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As described in section II.D.6 above, nearby hazardous sites could influence the movement of hazardous chemicals, change drainage patterns or impact lands not evaluated. There are several other environmental considerations that must be evaluated, depending on the location and character of these hazardous sites. The MND's analysis points instead to an unsubstantiated claim that the project somehow meets the threshold of significance. The MND claims that:

> …the project would not create or contribute runoff water that would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff.

(MND, p. 26.)

Yet, there is no substantial evidence presented in the MND that could be the foundation for that determination. Instead, given the many potential sources of hazardous chemicals from adjacent sources, and the significant increases in water volume from the Project itself, there is evidence that the Project may provide substantial additional sources of polluted runoff. The SPR Public Works Condition E.8 attempts to require that all storm water will be maintained onsite, but does not require it, providing instead that all storm water be maintained onsite **unless** otherwise allowed by the Public Works Department. (Jan. 7, 2021, PC SR, Attachment A, p. 11.) As specified, Public Works Condition E.8 is an example of improper deferral of mitigation. With no drainage plan prepared, it is impossible to know if containing all stormwater onsite would be possible. Indeed, email correspondence between the City and the applicant indicates that a "combination of a city responsibility and the developer's responsibility," suggesting that storm water would not be completely maintained onsite. As explained in the Updated ESA, "[s]torm water run on to the property or runoff from the property could be related to additional hazard impacts." (Exhibit D, Summary Report, p. 3.) Thus, there is a fair argument of potentially significant hydrologic impacts associated with run-on and run-off from the Project site.

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In addition, the MND has failed to provide an analysis of the proposed project's potential impacts on the nearby Beardsly Channel as a result of any project runoff exiting the project site.

8. The Project Would Result in Potentially Significant Land Use Impacts

Substantial evidence supports a fair argument that the Project conflicts with applicable land use policies, requiring preparation of an EIR. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 617–

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618 (*San Joaquin Raptor I*); *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 151; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602–1603; see also CEQA Initial Study Checklist [CEQA Guidelines, appen. G, § IX, subd. (b)] [may project conflict "with any applicable land use plan, policy or regulation . . . adopted for the purpose of avoiding or mitigating an environmental effect."].) The Project must conform with applicable plans.

The MND claims that the Project "is a permitted use within the M-2 (General Manufacturing) zone district, and is consistent with the SI (Service Industrial) land use designation." (MND, p. 27.) As explained in section I.B above, the City may not permit this Project via SPR because, among other reasons, "Clinics, hospitals, sanitariums or other buildings for contagious, mental, drug or alcohol addiction cases are not permitted uses in the M-2 zone. (See Zoning Code, §§ 17.28.030, 17.30.020.) Thus, the MND must be revised to correctly disclose the relationship of the Project to the current zoning of the site.

Substantial evidence supports a fair argument that the Project conflicts with applicable land use policies, and thus an EIR is required. (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 931.) In addition, the MND fails to analyze the project's consistency with other required General Plan Elements including Environmental Justice and Air Quality, perhaps because these required elements appear to be missing from the City's General Plan, which was prepared in 2002.

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9. The Analysis of Noise Impacts is Not Supported by Substantial Evidence

The MND fails to contain a project-specific noise analysis. (MND, pp. 27-28.) No information is provided regarding existing noise levels in the project vicinity and nearby residential areas. The noise analysis in the MND is conclusionary in nature, and appears to rely on a false assumption that application of "building codes for medical facilities" will take into consideration noise." (Exhibit G, pdf. p. 10.) Noise contour information for the nearby CA-99 freeway and the nearby rail line are not provided. It is therefore unknown whether or not the proposed Project would be located in an area that exceeds noise standards or would contribute to an exceedance of those standards.

Both the City's General Plan and General Plan EIR (adopted in 2002), are outdated, and thus do not provide current noise contour information. The MND's conclusions regarding the proposed Project's lack of noise-related impacts is therefore not supported by substantial evidence. In the absence of the necessary analysis, and given the project's location in an area with a General Plan Land Use Designation of SI (Service Industrial) – i.e., "Industrial activities which involve outdoor storage or use of heavy equipment and which are described in the land use designation description as uses

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that "**produce significant air or noise pollution** and are visually obtrusive,"[18] it is possible that the existing noise conditions, or noise conditions resulting from cumulative development in the area, would exceed or approach exceedance of the noise standards for more sensitive uses and/or would expose project occupants to noise levels in exceedance of standards. In the absence of a Project-specific noise analysis, the potential for impacts remains.

Development Services Condition of Approval 12 in fact acknowledges the Project's potential to result in significant noise impacts that the MND fails to identify, stating:

> 12. An acoustical consultant, approved by the Building Division, shall be contacted to prepare and include with the final building plans **measure[s] that mitigate noise exposures** for all buildings on the project site that are subject to noise levels of 65 db or greater as delineated by the CNEL contour maps of the city. These implementation measures shall comply with the requirements of Title 24 of the California Building Code.

(Emphasis added).

The proposed Project has the potential to result in noise impacts that are not adequately analyzed, identified or mitigated in the MND.

10. The Project May Have Potentially Significant Impacts on Transportation/Traffic

The MND transportation analysis is flawed as it contains inaccurate information predicated on methods that are not used and fails to address public safety concerns regarding traffic. Without this information, the MND's conclusion that the transportation impacts are less than significant is unsubstantiated and inappropriate. (MND, pp. 30-31.)

The MND's reliance on the traffic study prepared by Ruettgers and Schuler Civil Engineers which was revised on October 2, 2020, is inappropriate as the study does not contain the current standard of Vehicle Miles Traveled ("VMT") or the former standard of Level-Of-Service ("LOS") analysis. (Exhibit F, Smith Engineering & Management Report on Transportation Impacts, pp. 1-2; MND pp. 30-31.) Without this information,

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[18] City of Bakersfield General Plan page II-8, available at: https://content.civicplus.com/api/assets/37a2e20d-e610-431f-a222-9f4f2ecd2ddd, emphasis added.

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the Project's transportation impacts are not clear and the conclusion that the Project will result in less than significant impacts is not supported.

In order for the Project's transportation impacts to be less than significant, a VMT analysis must be conducted or alternatively the Project must meet a "screening threshold." (Exhibit F, p. 2.) The thresholds include, Small Project Screening, Map-Based Screening, or Transit Priority Area ("TPA") Screening. (*Ibid.*). The Project does not meet Small Project Screening as the standard requires projects to generate or attract fewer than 110 trips per day while the Project is expected to generate 1,511 daily trips. (Exhibit F, pp. 2-3.)

Next, the Project likely does not meet the Map-Based Screening because "there is no evidence that the City currently maintains a citywide map indicating areas of low VMT" therefore the Project would not be eligible. (Exhibit F, p. 3.) Lastly, the Project fails to meet the threshold for TPA Screening as the project is not in a TPA, seeks a low floor area ratio, and has more parking spaces than required. (*Ibid.*) As the Project does not qualify for a VMT exemption, the failure to adequately analyze VMT establishes that the MND is inadequate. (Exhibit F, pp. 3-4.)

The traffic study, which was not attached to the MND circulated for agency and public review, also fails to conform to LOS analysis, the traffic convention that existed prior to adoption of the VMT analysis, further emphasizing the insufficiency of the MND. (Exhibit F, p. 4.) Instead, the traffic analysis only references trip generation analysis and distribution and assignment of peak hour trips to intersections. (*Ibid.*) As the traffic study upon which the MND is based lacks sufficient information and analysis, the conclusions based on the study are inappropriate and incomplete.

The MND fails to appropriately address the safety impacts associated with the public's access to the Project. (MND, pp. 30-31.) The Project is proposed to be located at the intersection of Olive Drive and Knudsen Drive, which already suffers from traffic congestion and delay. The public access to the Project is limited to Knudsen Drive, therefore if traffic operations were disrupted, general and emergency access to the site would be compromised. (Exhibit F, p. 6.) In addition, the MND describes proposed developments in the neighboring area which raises concerns regarding access to and from the Project. (Exhibit F, pp. 6-7; MND pp. 30-31.) Failing to analyze the traffic impacts of the Project along with the traffic from neighboring developments constitutes improper segmentation or piecemealing. (Exhibit F, p. 7.) The MND fails to analyze the safety and transportation impacts associated with the area.

According to the MND, there would be no significant impacts to transportation and traffic from the Project. (MND, p. 30.) The MND claims that the number of average

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daily vehicle trips is 1,149 (MND, p. 31), which is almost 500 trips less than the 1,511 average daily trips disclosed in the October 2, 2020, Trip Generation Analysis prepared for the Project. According to the MND, the Project's participation in the Regional Transportation Impact Fee ("RTIF") Program and payment of Local Mitigation Fees would render traffic impacts less than significant. Yet payment of such fees is neither listed as a mitigation measure nor as a condition of approval.

Moreover, the MND's reliance on participation in the RTIF Program and payment of Local Mitigation Fees to mitigate the Project's significant cumulative and project-level transportation impacts is inappropriate. While a lead agency may rely on "fair share" payments to mitigate cumulative impacts, CEQA requires the MND to provide specific information about the "fair share" program to ensure that the payment of the impact fee is sufficiently tied to actual mitigation and therefore effective. (See *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173 [*Anderson First*].) *Anderson First* identified the information that is required in an EIR to establish the adequacy of a "fair share" mitigation measure, and includes: (i) an identification of the required improvements; (ii) an estimate of the total cost of the required improvements; (iii) the project's individual contribution to the total improvement cost; and (iv) information establishing that the fees are part of a reasonable, enforceable plan or program sufficiently tied to the actual mitigation. (*Anderson First*, *supra*, 130 Cal.App.4th at 1188-89.)

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Preparation of a MND instead of an EIR is contingent upon all impacts being less than significant. (Pub. Resources Code, § 21080, subd. (c).) Here, the MND fails to provide the required information to ensure that the payment of the impact fee would be sufficiently tied to actual mitigation and would therefore be effective in reducing impacts to less than significant levels. The MND does not describe how payment of the mitigation fee would address the transportation impacts caused by the Project at this busy intersection. The MND fails to appropriately analyze traffic impacts under the current VMT or former LOS standards. The failure to do so establishes that there is no substantiation for the MND's conclusion that the Project would create a less than significant impact. Preparation of a MND is inappropriate as the impacts are not less than significant.

In fact, the project Traffic Conditions of Approval contain measures that are clearly mitigation for undisclosed project impacts. For example, Condition 9 includes the following project-specific mitigation measure:

> 9. On Knudsen Drive, striping for left turn channelization shall be provided for any access leading to a development which, at build out, generates more than 50 peak hour trips.

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The MND fails to provide an accurate and complete analysis of Project traffic-related impacts, has continued to rely on Conditions of Approval in lieu of mitigation measures so as to conclude a lack of impacts, and has thus failed to identify and described the potential impacts of the proposed project. Preparation of a MND is inappropriate as the impacts are not less than significant.

11. The MND Fails to Address the Potential for Direct and Indirect Utility and Service System Impacts

The MND's discussion of utility and service system impacts fails to provide substantial evidence supporting the conclusions contained therein. MND acknowledges that the "project would require the construction of new water, storm water drainage, sewer facilities; above and/or belowground electrical facilities, natural gas facilities, and telecommunications (e.g., cable, fiber optics, phone, etc.) typical of residential development." (MND, p. 32.) However, the Project utility demands would logically be far in excess of a "residential" development, and the MND fails to provide any details on the nature of the required construction. No information is provided as to where existing water, storm water, sewer, electrical, natural gas and telecommunications lines terminate. Nor does the MND contain any information regarding the need for supporting infrastructure such as step-down transformers and pumping stations to meet these demands.

The MND fails to provide any information on whether construction activities would encroach on adjacent properties or roadways, or require temporary street closures, or the amount of trenching that would be required. As a result, it is likely that this construction activity has not been properly accounted for in the air quality analysis. As a result, the MND fails adequately address both the direct and indirect impacts of needed utility and service system extensions. Instead, the MND relies on the fact that water, storm water, and sewer structures would have to be designed to meet the City's *Current Subdivision & Engineering Design Manual* (Bakersfield 1999) and assumes that compliance "with the Design Manual would ensure that the such facilities would not result in significant environmental effects." However, such compliance does not eliminate the potential for direct and indirect utility and service system-related impacts.

F. The MND Fails to Address the Project's Cumulative Impacts

The lead agency must assess "whether a cumulative effect" of the project will result in a significant environmental impact, and thus require an EIR. (CEQA Guidelines, § 15064, subd. (h)(1).) CEQA requires analysis of "[t]he cumulative impact from several projects" which "can result from individually minor but collectively significant projects taking place over a period of time." (CEQA Guidelines, §§ 15355, 15130.) "Proper cumulative impact analysis is vital 'because the full environmental

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impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.' [Citations.]" (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214.)

Despite this mandate, the entirety of the MND's cumulative impacts analysis in the Mandatory Findings of Significance section is:

> Less-than-significant impact. As described in the responses above, the project has no impacts that would be defined as individually limited, but cumulatively considerable.

(MND, p. 33.)

Though cumulative impacts are mentioned under the Air Quality and Greenhouse Gas analyses (pp. 12-15, 22-23), the MND includes no discussion of the interaction between the proposed Project and other past, present, and probable future projects *producing related or cumulative impacts*. It does not appear that the City considered potentially cumulative impacts for any individual resource impacted by the Project. An agency must "determine[] whether the incremental impacts of the project are cumulatively considerable by evaluating them against the backdrop of the environmental effects of other projects. The question is . . . whether the effects of the individual project are considerable." (*San Joaquin Raptor I*, *supra*, 42 Cal.App.4th at 624 [internal quotations and emphasis omitted].) While the City did not need to "conduct some sort of grand statistical analysis of the combined purported environmental impacts, if any, of all other" projects in the surrounding area, it should have included some analysis into whether this Project's incremental effects could be considerable in light of other projects. (*Id.* at 624-625.)

There is evidence of other nearby development plans, which combined with the Project, could produce cumulatively significant effects not disclosed or analyzed in the MND. As shown by Figure 2, Site Development Plan (Jan. 7, PC SR), the 3 large parcels immediately east of the SASD site (see below) are owned by Walmart. The City's email correspondence also confirms these future related projects. (Exhibit G, pdf p. 4 ["Landco will need to be installed, even more so, to serve adjacent properties to the East of Landco in the County."].) It is reasonably foreseeable that Walmart intends to build a Walmart SuperCenter on that site. (Exhibit G, pdf pp. 2, 5.) Access to and from the Walmart Supercenter may be via Street A. In addition, there are major other proposed

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developments on the lands just south of Street A and immediately east of Landco Drive, which would also require access. (See Exhibit F, pp. 6-7.)



Proposed VA Project Site



Adjacent Proposed Walmart Site and Other Future Development

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Instead of analyzing the cumulative traffic, air quality and other impacts of these planned development projects, the MND summarily concludes that the Project "has no impacts that would be defined as individually limited, but cumulatively considerable." (MND, p. 33.) Analysis of potentially significant cumulative impacts tailored to specific resources is required by CEQA, a requirement ignored in the MND.

G. The MND Fails to Adequately Discuss Related Review Processes and the City Failed to Consult with Trustee Agencies

A CEQA document must disclose related environmental review and consultation requirements of other jurisdictions, and integrate these related requirements into CEQA review. (CEQA Guidelines, § 15124, subd. (d)(1)(C); see *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 936 [*Banning Ranch*].) Failing to discuss other regulatory and permitting regimes with authority over the project violates the information disclosure requirements of CEQA and is a prejudicial error depriving the public of a full understanding of a project. (*Id*. at 942.)

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Further, the City has failed to consult with trustee agencies. The California Department of Fish and Wildlife ("CDFW") is a trustee agency and the City owes a duty to consult with and notify CDFW. Under CEQA Guidelines section 15386, a trustee agency is:

> a state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California. Trustee agencies include: (a) The California Department of Fish and Game with regard to the fish and wildlife of the state, to designated rare or endangered native plants, and to game refuges, ecological reserves, and other areas administered by the department.

Public Resources Code, section 21080.3 requires that: "Prior to determining whether a negative declaration or environmental impact report is required for a project, the lead agency shall consult with all responsible agencies and trustee agencies." Thus, the City must consult with the CDFW regarding the documented potential impacts on special-status species.

The City cannot rely on a finding of no significant impacts as a basis not to consult with a trustee agency. This was decided in *Gentry v. Murrieta* (1995) 36 Cal.App.4th 1359, 1387:

> We conclude that natural resources can be "affected by" a project, and hence the lead agency may have duties toward "trustee agencies," even if the lead agency believes the project will have no significant effect on the environment. This broad construction of "trustee agency" serves the statutory purpose of fostering interagency consultation. Potential trustee agencies should have input at an early stage in the process into the question of whether the project affects resources within their jurisdiction, and hence into the very question of whether they are, in fact, trustee agencies.

Moreover, the MND must be revised to disclose applicable federal requirements for the Project. Here, the Project purpose is to provide a VA outpatient facility. As a federal agency, the VA is subject to numerous federal requirements pertaining to issues such as contracting, funding, and environmental review. The MND is completely silent on these related processes, depriving the public of a full understanding of the Project. As a result, the MND must be revised to include this critical information.

The MND also fails to describe the relationship between review of the Project in the MND and the City's own Site Plan Review process in Zoning Code Chapter 17.08. Under CEQA, the same body (here, the Planning Commission) that takes a discretionary

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action must also first consider the proposed negative declaration along with any public comments. The CEQA Guidelines provide in relevant part:

> Prior to approving a project, the decision making body of the lead agency shall consider the proposed negative declaration or mitigated negative declaration together with any comments received during the public review process. The decision making body shall adopt the proposed negative declaration or mitigated negative declaration only if it finds on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the negative declaration or mitigated negative declaration reflects the lead agency's independent judgment and analysis.

(CEQA Guidelines, 15074, subd. (b).) The MND should, but does not, explain how preparation of the MND relates to other City approvals required by the Project.

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The City's review process for the MND and underlying Project approvals must comply with mandated disclosure and consultation processes.

III. Conclusion

The MND fails to meet the most basic standards for adequacy under CEQA and fails to adequately inform the public and decisionmakers about the Project itself, related Project approvals, and the potentially significant impacts of the Project. This letter describes these informational deficiencies and includes substantial evidence supporting a fair argument of potentially significant impacts, making preparation of an EIR the only appropriate method of evaluating the Project's impacts. Alternatives and mitigation measures that would avoid and/or lessen the potentially significant impacts of the Project have not been, but must be, considered. As a result, PBV respectfully requests that City Council uphold the appeal and reverse the Planning Commission's adoption of the MND and denial of PBV's appeal of the SPR so that the deficiencies described in this letter can be cured.

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Please feel free to contact this office regarding any questions about these comments and potential means to address the concerns stated herein.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By: Osha R. Meserve

ORM/wra

Exhibits:*

Exhibit A	Map, Site Aerials/Photos, and PBV Renderings
Exhibit B	January 26, 2021 SPR Appeal Letter submitted by the Hagan Law Group (Attachments accessible here: https://www.dropbox.com/sh/nx9zqpt6q4v1ouf/AABu3Mi0cNqedTp_EsjvVtbqa?dl=0)
Exhibit C	Dr. Sean Smallwood Report on Biological Resources
Exhibit D	Soil Pacific, Inc. Updated Phase I Environmental Site Assessment
Exhibit E	EPS Technical Memorandum on Air Quality
Exhibit F	Smith Engineering & Management Report on Transportation Impacts
Exhibit G	Compilation of Email Correspondence Between City Staff Regarding Project
Exhibit H	Table 2A, Page 2-2 Kern County *Airport Land Use Compatibility Plan* (APLUCP) (Kern County 2012)
Exhibit I	Press Clips Compilation
Exhibit J	CEQA Studies Request Letter (April 20, 2020)
Exhibit K	California Department of Fish and Game, Guidance for Burrowing Owl Conservation (April 14, 2008)
Exhibit L	Department of Fish and Game, Staff Report on Burrowing Owl Mitigation (March 7, 2012)
Exhibit M	Ordinance 5008 Materials (June-August 2020)

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* This entire letter and its exhibits are available here:
https://www.dropbox.com/sh/g5ft9krbr1lns5b/AAC4eBOBbLJ_4LGUBn8Nuisua?dl=0

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Attachment C

Sierra Club NOP Letter, Undated

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COMMENT LETTER D

SIERRA CLUB
KERN-KAWEAH CHAPTER

P.O. Box 3357
Bakersfield, CA 93385
September 12, 2022

VIA ELECTRONIC MAIL

City of Bakersfield – Development Services Department
Attn: Kassandra Gale, Principal Planner
1715 Chester Avenue, 2nd Floor
Bakersfield, CA 93301

Re: Notice of Preparation for Veteran's Affairs Community-Based Outpatient Medical Clinic; Site Plan Review No. 21-0399

Dear Planners:

The proposed Veteran's Affairs Community-Based Outpatient Medical Clinic Project involves the development of a 39,648 square foot medical outpatient facility to serve as a Department of Veterans Affairs (VA) Community-Based Outpatient Medical Clinic, with associated parking and other site improvements. The project site is in Bakersfield, on ±9.0 gross acres located east of Knudsen Street, west of Landco Drive, north of Hageman Road and south of Olive Drive.

Considering the potential short term and long-term impacts of this development on the environmental health of Kern County and surroundings, the EIR for this project should address numerous issues including:

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GREENHOUSE GAS EMISSIONS

Global warming is a serious issue, perhaps the most serious issue that we as a species will ever have to face. Dr. James Hansen, Director of the NASA Goddard Institute for Space Studies writes, "The stakes, for all life on the planet, surpass those of any previous crisis. The greatest danger is continued ignorance and denial, which could make tragic consequences unavoidable." Many scientists say that the world is reaching tipping points beyond which global temperature increases will be irreversible (see http://www.reuters.com/article/2012/03/26/climate-thresholds-idUSL6E8EQ4GA20120326?feedType=RSS&feedName=everything&virtualBrandChannel=11563).

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California courts have ruled, "the greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant."

Given the climate crisis' seriousness, the City must require a GHG study and should be addressing the issue with specific feasible greenhouse gas (GHG) mitigation measures. We list below a number of potential feasible GHG mitigation measures, many of which address criteria pollutant emissions as well; the City should evaluate these mitigation measures and **require this project to adopt a sufficient number of effective climate change measures to offset cumulative impacts**.

The EIR should examine and consider a number of possible potential feasible mitigation measures, including:

- **A requirement that structures contain enough solar photovoltaics (PV) and solar water heating to significantly offset energy usage,** with a capacity that matches the maximum allowed for distributed solar connections to the grid.
- A condition that parking lots be covered and that parking lot roofs contain solar PV both to protect parked vehicles from heating and to generate clean energy for the project.
- In order to encourage the use of non-polluting electric vehicles, the City should require this project to include fast charge Level 3 **EV charging facilities** open and accessible to the public. This project is close to Highway 99, and such fast charge facilities could reduce pollution by encouraging intercity EV travel. See http://www.wind-works.org/cms/index.php?id=84&tx_ttnews%5Btt_news%5D=3401&cHash=ae60686195244d8cb5d31cad14e4aa92.
- In order to encourage the use of non-polluting electric vehicles, the City should require parking lots for all facets of this project to include dedicated EV parking and charging.
- Green building measures should be used, including passive solar design and a requirement that buildings be at least 25% more energy efficient than Title 24 standards current when permits are pulled.
- Satisfy LEED Silver or higher standards on the commercial buildings.
- Design features to reduce Vehicle Miles Traveled (VMT). Such features might include adjacent bus stops and/or other public transportation and should include bicycle-friendly features.
- A requirement that the buildings meet the State goal of Zero Net Energy.
- A requirement that the buildings be all-electric.

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- A requirement for partial funding of an area energy efficiency program (perhaps in a nearby environmental justice community) creating equivalent reductions in carbon emissions.
- A requirement that the project partially subsidize public transportation in nearby communities in order to reduce area VMT.
- A requirement that the developer retrofit solar PV on existing area buildings. Retrofitting existing area buildings with solar PV would effectively offset emissions associated with this project in much the same way as the SJVAPCD uses ISR funds to fund offsite projects to offset criteria pollutants associated with development projects.
- A requirement that the developer contribute funding for area solar PV incentives. Most solar PV incentive programs use funding rebates to encourage PV construction.
- A requirement that the developer contribute a GHG fee to the San Joaquin Valley Air Pollution Control District to be used to fund projects that would reduce GHG emissions elsewhere. This could be built into a criteria pollutant VERA as the Air District has suggested in the past.

D-66 (CONT.)

For the public and the decision-makers to be able to decide on the efficacy of the measures on climate change and on the energy sector, specific requirements should be presented before the project is approved.

The environmental documents must evaluate these potential mitigation measures in order to require sufficient mitigation to substantially reduce the impact of the project on the climate crisis.

AIR POLLUTION

The southern San Joaquin Valley fights it out every year with Los Angeles for having the worst air pollution in the nation. See the American Lung Association report at http://www.lung.org/our-initiatives/healthy-air/sota/city-rankings/states/california/. Since our extreme air pollution affects the health of many residents, the EIR must thoroughly address the issue.

In a region with arguably the dirtiest air in the nation and where 31% of Kern County children have asthma, any air pollution additions must be considered significant. The EIR must require a thorough Air Study and must adopt specific enforceable mitigation measures. **The EIR should examine and consider the following feasible methods to reduce the impact**:

- Operational NOx emissions are primarily related to mobile sources. The project should provide regular bus routes between the project and local low-income and minority communities (for example, Shafter, Wasco, Southeast Bakersfield) to

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transport patients and workers. The buses should be electric vehicles charged from the project's photovoltaic panels.

- A requirement that the project partially subsidize public transportation in order to reduce area VMT.
- All service equipment should be zero emission.
- The project should encourage workers to drive low-emission vehicles, perhaps furnishing electric vehicles with no emissions whatsoever with onsite charging stations.
- In order to encourage areawide use of non-polluting electric vehicles (EVs), the project should be required to incorporate Level 3 EV fast-charging stations open to the public and accessible to EV drivers on Highway 99.
- The developer can reduce project emissions to zero by entering into a Developer Mitigation Contract (DMC) with the SJVAPCD. A DMC should include specific enforceable measures and should not allow the developer to defer the development and implementation of these measures to a later date.
- Many of the potential feasible GHG mitigation measures listed in a previous section also reduce criteria pollutants, should be considered as air pollution reduction measures, and addressed as such in the EIR.

D-67 (CONT.)

The EIR must evaluate these and similar mitigation measures to reduce the impact of this project on air pollution.

An enormous body of evidence documents that low-income and/or minority communities are disproportionately exposed to various sources of air pollution. Assembly Bill 617 (AB 617) was designed to directly address ongoing issues of local air pollution in disadvantaged communities. The Shafter region, just northwest of this proposed project, is one of the 15 communities in the state's AB 617 environmental justice program. The EIR must address this project's air and climate impact to the AB 617-designated Shafter region.

The Beardsley Elementary School and Junior High School and San Lauren Elementary School are each within a mile of this project. The EIR must address the project's air pollution impact on these sensitive receptors and on nearby housing.

Dust mitigation as described in most EIRs is not efficient in reducing the threat of Valley fever. The EIR should require soil testing for Valley fever.

Forest preservation is one of the best ways to naturally sequester atmospheric carbon. Trees and other plants in increasing elevation are negatively impacted by mobile and stationary source pollution from motor vehicles and industry. Sequoia National Forest and Sequoia-Kings Canyon National Parks are the most polluted parks and forests in the federal system. This pollution is directly attributed to San Joaquin Valley activities. See, for example, http://www.elsevier.com/books/ozone-air-pollution-in-the-sierra-nevada-

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distribution-and-effects-on-forests-2/bytnerowicz/978-0-08-044193-1 or http://www.fs.fed.us/psw/southernsierrascience/speakers/pdf/cisneros.pdf. The EIR must examine and mitigate the cumulative air pollution effects of this project on forest resources.

The EIR must address the project's cumulative impact to air pollution. While this cumulative impact is certainly significant, it is not unavoidable. We offer the above suggestions as some feasible methods to reduce the cumulative impact. Were project emissions reduced to zero via a DMC or other methods, then the project would have no cumulative air pollution impact since zero project-specific impact could not add to the cumulative impact.

D-67 (CONT.)

ALTERNATIVES

The EIR must thoroughly discuss the feasibility of a range of alternatives to the project, including the "**Existing Veterans Clinic Alternative".** This proposed project would presumably replace an existing more centrally located Veterans Clinic. The EIR should explore the potential for remodeling and expanding the existing clinic in this alternative. This alternative could reduce VMT, could reduce the exposure of sensitive receptors to substantial pollutant concentrations, and could reduce localized air quality impacts. We note that "[a] potential alternative should not be excluded from consideration merely because it 'would impede to some degree the attainment of the project objectives or would be more costly" even when that alternative includes Project development on an alternative site. *Save Round Valley Alliance v. County of Inyo*, 157 Cal. App. 4th 1437, 1456-57 (2007).

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CUMULATIVE IMPACTS

We include a cumulative list of several of the additional current new and/or proposed projects within the Highway 99 area:

- Malibu Vineyards Industrial Parkway Project on 739 acres one mile north of Bakersfield adjoining Highway 99.
- 99 Houghton Industrial Park Project on 314.30 acres adjoining Highway 99 (Kern County) (https://ceqanet.opr.ca.gov/2009051005/3)
- Ware Malcomb Industrial Project in unincorporated Kern County at the intersection of Houghton Road and Wible Road.
- Majestic Gateway Project on ±90.6 acres located east of SR-99, west of South H Street in Bakersfield.
- CUP 20-0379, a truck stop project on 16 acres on Taft Highway west of Highway 99 (City of Bakersfield)
- GPA ZC 19-0158 at South Union and Berkshire Road (City of Bakersfield)

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- GPA ZC 19-0009 at Taft Highway and Ashe Road (City of Bakersfield)
- GPA ZC 19-0035 at Hosking and Wible (City of Bakersfield)
- Mettler Station project located at 1841 Mettler Frontage Road (USDA)
- Numerous such projects in the Tejon Industrial Complex
- The EIR for the 99 Houghton Industrial Park Project lists 14 pages of pending projects with 6 miles of that project.

There are likely other such projects of which we are not aware.

The cumulative impacts of this project, of those listed above, and of other area projects on air pollution, traffic, climate change, biological resources, and other issues must be thoroughly addressed.

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BIOLOGICAL RESOURCES

Many sensitive and special status species have occurred historically in the vicinity of the project site.

Special-status species such as San Joaquin kit fox, blunt-nosed leopard lizard, grasshopper sparrow, golden eagle, Tulare grasshopper mouse, burrowing owl, and loggerhead shrike may occur in the proposed project areas. The sharp-shinned hawk, burrowing owl, prairie falcon, and northern harrier were observed during surveys for the proposed 99 Houghton Industrial Park project. Given the special status of these species, the EIR should require pre-construction surveys to observe CDFW protocols and to be extended to a buffer area surrounding the sites.

The EIR should investigate whether the project site contains potential foraging habitat and/or nesting habitat for the Swainson's hawk. Mitigation measures might include requiring the project to plant trees that could serve as Swainson's hawk nesting sites and requiring the project to purchase conservation easements on nearby Swainson's hawk foraging habitat.

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Loss of habitat is a major reason for species decline. While many of these species may have been driven out of the project site by mowing and disking operations, the EIR should consider reintroducing some of the native plant species by replanting them in project open space areas. In addition, landscaping should include drought-tolerant and/or native plants.

According to the publication *Conservation Strategies for San Joaquin Kit Foxes in Urban Environments* by Brian Cypher, Christine Van Horn Job, and Scott Phillips at http://esrp.csustan.edu/publications/pdf/cypher_etal_2012_urban_kitfox_conservation_esrp.pdf, "To the extent practical and possible, urban planners could design new developments in a manner that facilitates use by kit foxes." This project should be

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designed with urban kit fox conservation measures in mind, perhaps including artificial kit fox dens and movement corridors as suggested in the above document.

It is possible that kit fox dens are located on the site. If a den cannot be avoided, will it be excavated and the kit foxes relocated? The publication *Feasibility and Strategies for Translocating San Joaquin Kit Foxes to Vacant or Restored Habitats* by Samantha Bremner-Harrison and Brian Cypher at http://esrp.csustan.edu/publications/pdf/esrp_2007_kitfoxreloction_w.pdf gives evidence that kit fox relocation is complex and will likely not be successful. The EIR should address this evidence.

D-70 (CONT.)

TRAFFIC

The EIR should include a comprehensive traffic study. The traffic study should analyze the project's cumulative traffic impact on Highway 99 and other area roads, including anticipated traffic from other proposed or existing area projects.

In particular, the Governor's Office of Planning and Research states, "Lead agencies should not truncate any VMT analysis because of jurisdictional or other boundaries, for example, by failing to count the portion of a trip that falls outside the jurisdiction or by discounting the VMT from a trip that crosses a jurisdictional boundary." (https://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf) In addition, if travel patterns are substantially affected outside of the area of analysis, the area of analysis should be expanded to include the full affected area. **When assessing trip based VMT, include the full trip, even if it goes beyond a jurisdictional boundary**.

Please place the Sierra Club on the distribution list for the Malibu Vineyards Industrial Parkway Project to receive any noticing of meetings, hearings, availability of documents, and to receive the environmental documents. We prefer email communications and electronic formatting of documents. Thank you for your consideration and for the opportunity to comment.

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Sincerely,

Gordon L. Nipp

Gordon L. Nipp, Ph.D.

Vice-Chair

gnipp@bak.rr.com

661-872-2432

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RESPONSES TO COMMENT LETTER D:
Channel Law Group, LLP on behalf of Progress for Bakersfield Veterans

D-1 This introductory comment identifies that the comment letter is submitted on behalf of Progress for Bakersfield Veterans, LLC ("PBV"), the owner and landlord for the existing Veterans Affairs clinic in the City, located at 1801 Westwind Drive Bakersfield, CA 93301-3028, and unsuccessful bidder for a new or remodeled clinic. Additional background material from the applicant regarding PBV's prior attempts to stop the award of the Project to the Project applicant is attached hereto as Attachment J. The comment is acknowledged.

D-2 Channel Law Group referenced their previously submitted letter, dated June 14, 2023 (Comment Letter C), and the City's immediate response to their letter which extended the DEIR public comment period by one day and provided information about how to obtain the requested technical information. Channel Law Group asserts that because the City made the AERMOD and HARP2 air quality modeling files available upon request and did not post the computer modeling printouts online, the DEIR should be recirculated. This is an incorrect assertion, as CEQA does not require that highly technical information such as the computer modeling files that are appendices to appendices be posted on websites; the information was in the Project's administrative record on file with the City of Bakersfield and was made available for public review upon request. The results of the computer modeling were summarized in DEIR Technical Appendix B and in the DEIR itself, in Subsection 4.2, *Air Quality*, and Subsection 4.7, *Greenhouse Gas Emissions*. An EIR may contain a summary of information in a technical report without appending the report to the EIR or incorporating the technical information into the EIR or its appendices (see *Mount Shasta Bioregional Ecology Ctr. v County of Siskiyou* (2012) 210 CA4th 184, 219.) The City determined that the DEIR's public review period was sufficient for adequate public review of the DEIR and further extension of the review period was unnecessary and not required by CEQA. Also refer to Response C-3.

D-3 Channel Law Group provides a summary of the Project and states that the Project site is located in an environmentally sensitive area due to its location within the Metropolitan Bakersfield Habitat Conservation Plan (HCP) boundaries and acknowledges that the HCP expired on January 1, 2023. The summary is noted. For clarification, the HCP, before it expired, covered a 405-square-mile area of the City of Bakersfield/County of Kern jurisdiction including many urban areas, and the fact that a property was located within the HCP boundaries did not in and of itself indicate or otherwise imply that the property was environmentally sensitive.[7] The commenter is referred to DEIR Subsection 4.3, *Biological Resources*, for information on the Project site's existing biological condition.

D-4 Channel Law Group provides a detailed history of the VA's process to select the Project site as the preferred location for the proposed Project. The commenter states that the Project history provided in the DEIR is incomplete and suggests that the complete history be included. The DEIR provides Project background information in DEIR Section 1.0, *Introduction*, on pp. 1-2 and 1-3. This background

[7] City of Bakersfield, 1994. Metropolitan Bakersfield Habitat Conservation Plan. https://docs.bakersfieldcity.us/weblink/0/edoc/625001/Metropolitan%20Bakersfield%20Habitat%20Conservation%20Plan.pdf

includes relevant information to provide the DEIR reader with an understanding of the pertinent history of the proposed Project. The additional material that the commenter suggests be added does not directly contribute to the analysis of an environmental effect, and only background that is material to an environmental effect is necessary to include in an EIR. Related to the commenter's statement that the DEIR discloses impacts from the Project that were not disclosed in the prior MND, the comment is irrelevant. Approximately two years passed between publication of the prior MND and publication of the DEIR, within which time there were changes in regulatory requirements, analysis methodologies, analytical tools, and the environment. Further, generally speaking, an EIR is a more comprehensive environmental document than an MND, and therefore often contains more detail. The DEIR presents the most current information about the Project and its potential environmental effects, and is the basis upon which the City will make its CEQA compliance determination concerning the Project. This represents the City's deliberative process working as intended by CEQA, and as a result, the DEIR presents the most complete picture possible of the Project's potential impacts on the environment.

D-5 Channel Law Group incorrectly states that the Project's history represents defacto federal approval of the Project prior to environmental review. While the Department of Veterans Affairs (VA) solicitation that resulted in the federal government's selection of the Project applicant's proposal for the Project and Project site as the preferred location for the Project, it did not influence the analysis that was provided in the DEIR. As stated in the DEIR, Section S.0, *Executive Summary*, the DEIR was prepared in accordance with CEQA Guidelines Article 9, Sections 15120-15132 to evaluate the potential environmental impacts associated with planning, constructing, and operating the proposed Project. Although the VA selected the Project site as its preferred location for the Project, selected the Project applicant's proposal for the Project itself, and issued specifications for the Project's building design, the Project cannot be implemented with a separate, independent Site Plan Review approval process by the City of Bakersfield, which is a discretionary review process intended to ensure that the Project's design has met all of the City's requirements, does not conflict with the City's General Plan, and complies with the City's Municipal Code. The federal government's selection of the Project Site as the preferred location of the Project and the federal government's design specifications for the proposed Project's building design do not in any way compel or obligate the City to approve the Project Applicant's Site Plan Review application. However, according to Bakersfield Municipal Code Section 17.08.080, a Site Plan may only be denied if a project does not comply with City codes, standards or policies, or CEQA. The City of Bakersfield cannot impose mitigation measures or select a project alternative that falls outside of its jurisdictional authority or is infeasible. As the federal government has issued strict design specifications for the proposed building, which the City has verified complies with its General Plan and Municipal Code, it is not feasible for the City to add a mitigation measure that obligates the federal government to change its design specifications to add solar panels to the building roof. However, the City has further retained its full discretion under CEQA to impose all feasible mitigation measures, approve an alternative instead of the proposed Project, or refuse to approve the Project because it cannot make the required findings under CEQA, including supporting a statement of overriding considerations. Simply put, nothing about the federal approval process forces the City to approve the Project, and instead the City must – and has – comply with CEQA.

Notwithstanding the foregoing, the City is adding the following Mitigation Measure, as further discussed in Response to Comment D-47:

GHG MM-4 The building roof shall, upon the approval of a design modification by the U.S. Department of Veterans Affairs (VA), be outfitted with a solar photovoltaic system of the maximum size feasible to provide power to the building and given the constraints of applicable Building Code requirements, clearance requirements around roof-mounted equipment, PG&E interconnection regulations, and other code compliance requirements. Should the VA not approve a design modification to add a rooftop PV system, the building may be constructed and operated without a PV system.

This Mitigation Measure GHG MM-4 represents the maximum possible the City is able to do with respect to requiring an onsite solar power system. If approved by the VA, installation of solar would likely reduce the Project's impacts on GHG to a less than significant level, but because it is currently uncertain if the VA will approve this change and the City cannot force the federal government to do so, the City and EIR still assumes that the Project's GHG impacts will be significant and unavoidable. This conclusion is also based on an extremely conservative net-zero significance threshold, as explained in detail in DEIR Subsection 4.7, *Greenhouse Gas Emissions*.

D-6 Channel Law Group states that the Project is subject to NEPA, that per CEQA Guidelines Section 15226 a joint CEQA/NEPA document should be prepared, and requests that the DEIR detail actions taken by the VA regarding NEPA compliance and cooperative actions taken by the VA and the City regarding the Project and the environmental documentation for the Project. This is not correct, because the VA has already determined the Project is exempt from NEPA, and that determination has not been challenged. Refer to Responses D-7 and D-8 for the requested information.

D-7 Channel Law Group describes three levels of NEPA documents and refers to the VA's Categorical Exemption (CATEX) for the Project, claiming that the VA should have evaluated extraordinary circumstances including the presence of protected species or resources and prepared an Environmental Impact Statement (EIS) instead of a CATEX. Although the commenter is correct that the proposed Project is subject to NEPA, they are incorrect that a CATEX from NEPA is inappropriate for this Project. Ultimately, the commenter relies on outdated and incomplete information in attempting to challenge the validity of the CATEX, rather than the final CATEX approved by the VA.

Channel Law Group argues that as "shown on the VA's Review of Site Environmental Information and Recommended NEPA Documentation form" (attached as Attachment A to their letter), "the VA determined that there was inadequate information regarding cultural resources and wildlife and habitat on which to make a determination as to whether a CATEX could be justified and indicated the need for more information." This included the need for a biological field study discussing the San Joaquin kit fox and several other species of wildlife. However, this form cited by the commenter was completed and signed by a VA Environmental Officer in February 2020. Meanwhile, the approved CATEX for this Project (included as Attachment C to this FEIR) was signed by the same VA Environmental Officer almost a year later in January 2021, after additional consultation with federal agencies and the performance of a biological study.

In June 2020, a biological study ("Study") was conducted by ECORP Consulting, Inc. ("ECORP"). Pursuant to this Study, ECORP concluded that "[a]lthough the site contains several burrows that are potentially suitable for San Joaquin kit fox, the potential for kit fox occupancy is considered low due to the presence of intense urban development in the immediate site vicinity." (ECORP Letter, p. 6.) Even with such a low probability, ECORP recommended the Project comply with the following mitigation measure:

> CATEX MM-01: When applying for a grading or building permit from the City of Bakersfield, the developer would also initiate actions to comply with the Metropolitan Bakersfield Habitat Conservation Plan ("MBHCP"), including paying the Habitat Mitigation Fee as required, performing/submitting a Biological Clearance Survey, and implementing Species Protection Measures during construction, as well as all other MBHCP requirements.

This Study prepared by ECORP was shared with the United States Fish & Wildlife Services (USFWS) in June 2020 as part of the VA's request for formal consultation. (VA Letter to USFWS, dated June 11, 2020; p. 1.) In this request, the VA stated "a field survey identified no suitable habitat for 10…species identified on the IPaC Official Species List for this location" and had therefore concluded "no effect" to those species.

In regards to the San Joaquin kit fox, the consultation letter specified that the developer will obtain third party coverage under the MBHCP for the project's potential effects to the kit fox when acquiring development permits from the City, which includes paying the required habitat mitigation fee and implementation of all measures included in the MBHCP to reduce impacts to the kit fox. (Id., p. 2.) The USFWS responded that it had "reviewed the proposed [P]roject and…determined that it is consistent with the development activities covered in the MBHCP and associated intra-Service biological opinion." (USFWS Letter in Response to VA Consultation, dated June 2020; p. 2.) Thus, as long as the required habitat mitigation fees needed to obtain third-party coverage under the MBHCP are paid, no further action was required by the VA and the VA's obligation under section 7 of the Endangered Species Act was complete. (Id.)

Therefore, after additional consultation with the USFWS, the preparation of a biological study, and the continued adherence to the recommended mitigation measure, the VA was correct in determining that a CATEX was all that was required, as all extraordinary circumstances had been properly addressed. Moreover, the VA's determination was never challenged, thus it is immune from collateral attack. It is also completely outside the City's jurisdiction to determine whether or not the VA made the correct determination under NEPA, although here, the City is of the opinion that the VA did in fact comply with NEPA.

Finally, it bears noting that CEQA is generally much more rigorous and protective of the environment than NEPA, as evidenced by the preparation of a full EIR for the Project under CEQA, in comparison to a CATEX under NEPA. Stated differently, the preparation of the DEIR for the Project pursuant to CEQA has fully disclosed, analyzed and mitigated (to the extent feasible) all of the Project's impacts on the environment, and preparation of a joint EIR/EIS here would not only be legally improper, but it

would not disclose any additional impacts or otherwise afford any additional protection to the environment.

D-8 Channel Law Group requests that the City prepare a joint CEQA/NEPA document because the VA's issuance of the lease and lease terms is part of the whole of the action defined in CEQA Guidelines Section 15003(h). The commenter is referred to Response D-7, wherein it is explained that a CATEX was properly prepared and approved as the NEPA compliance document for the Project.

D-9 Channel Law Group states that the administrative process for the Project began with the application for Site Plan Review No. 20-0102, references a letter submitted by the law firm of Soluri Meserve, and requests detailed responses to the issues raised in that letter. Responses to the Soluri Meserve letter, dated March 1, 2021, are provided below, starting at Response D-57. Many of the comments in the letter are no longer applicable as the MND, having SCH No 2020120042 and which was approved by the City's Planning Commission on January 7, 2021 and Site Plan Review No. 20-0102, approved by the City's Development Services Director on January 8, 2021, have since been rescinded. The DEIR and updated technical reports for the current Project have been prepared in an effort to ensure that all of the Project's potential impacts are fully disclosed, analyzed, and mitigated, as well as specifically address comments received in the 2020 and 2021 administrative process, including the Soluri Meserve letter.

D-10 Channel Law Group states that the DEIR relies on conclusionary statements unsupported by substantial evidence when concluding that there is no Farmland on the Project site and that impacts to Farmland would be less than significant. To the contrary, the DEIR relied upon substantial evidence provided by the California Department of Conservation (CDC), Important Farmland Finder[8], which indicates that there is no Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland) located on the Project site (DEIR, p. 5-4). Additionally, the Project site is not designated or zoned for agricultural uses by the City's General Plan or Zoning Ordinance. Therefore, although agricultural activities occurred on the Project Site 50 to 80 years ago (approximately 1937 to 1973), there has not been any farming activity or agricultural uses on the Project Site for the past 50 years and the CDC does not designate the Site as Farmland. Accordingly, and as correctly concluded in DEIR Section 5.4, *Effects Found Not to be Significant During the EIR Scoping Process*, the Project does not, on the basis of substantial evidence including mapping information provided by the CDC, have the potential to directly or indirectly convert Farmland to non-agricultural use, and no impact would occur.

While not required, to avoid all doubt, the City's consultant has prepared a LESA Analysis for the 9.0 acres of the Project site based on its APN parcel size, but excluding approximately 1.5 acres of fronting roadway right-of-way that also falls within the boundaries of the 10.5-acre Project site but which are precluded from agricultural by virtue of the use being roadway (see Attachment I to this FEIR). The LESA Model was used to determine if the subject property qualifies as an important agricultural resource. The Project site received a LESA score of 24.5. Lands that receive a LESA score between 0 and 39 are not considered significant agricultural land resources under CEQA. Thus, the Project site was determined to not have important agricultural land resources. Therefore, Project impacts on

[8] California Department of Conservation, Important Farmland Finder. https://maps.conservation.ca.gov/dlrp/ciff/

agricultural land resources and the conversion of agricultural land to non-agricultural use would not be considered significant, as properly concluded in the DEIR.

D-11 Channel Law Group comments that the Initial Study's less-than-significant conclusion under the topic of Hydrology, Threshold b(ii), is not supported by substantial evidence. The commenter is referred to DEIR Subsection 4.9, *Hydrology and Water Quality*, where a detailed evaluation of this subject matter is disclosed. The conclusions of DEIR Subsection 4.9 are based on substantial evidence contained in a technical study entitled "Hydrology & Hydraulics Report, VA Bakersfield Community Based Outpatient Clinic," prepared by EA Engineers, dated June 11, 2020 (DEIR Technical Appendix G2) and an update letter to the Hydrology & Hydraulics Report, dated January 24, 2023, prepared by EA Engineers (DEIR Technical Appendix G1). The Hydrology and Hydraulics Report calculates the pre-development and post-development hydrology conditions for the Project site; quantifies the impact of the development on hydrology conditions on the Project site; and quantifies the increase in flow rates in the 10-year/24-hour storm and 100-year/24-hour storm events. As concluded by the Hydrology and Hydraulics Report prepared by professional experts at EA Engineers, the structures, landscaping, and impervious surfaces proposed on the Project site would not increase peak discharge rates taking into consideration the proposed installation of two drainage basins at the southeast and southwest corners of the Project Site (DEIR Technical Appendix G2, p. 5). Additionally, it was determined by EA Engineers that the Project will not substantially alter the existing drainage pattern of the site or area (DEIR Technical Appendix G2, p. 6).

D-12 Channel Law Group contends that the Initial Study's conclusion that the Project is consistent with the Project Site's General Plan designation and zoning ignored evidence provided during the administrative process implying that the Project is not allowed in the M-2 land use designation and that there is no discussion of the effect of the City's pending General Plan Update. To the contrary, the City of Bakersfield has confirmed that the Project is consistent with the Project Site's General Plan designation of Service Industrial (SI) and zoning designation of General Manufacturing (M-2) as explained in detail in DEIR Subsection 4.10, *Land Use and Planning* (DEIR pp. 4.10-8 to 4.10-15). The M-2 zoning classification, which under the City's Euclidean pyramid zoning structure, allows all uses permitted in the C-O zone, including medical clinics. The City, as it must in order for its Euclidean pyramid zoning structure to properly function, interprets its General Plan in a similar manner as its zoning, meaning that less intensive uses are generally allowed in, and considered consistent with, more intensive land use designations. As stated in the DEIR, p. 4.10-2, the Metropolitan Bakersfield General Plan (MBGP) designates the Project Site as SI. The SI land use designation allows for industrial activities as well as other less intensive uses. Many existing health care facilities in the City of Bakersfield are located in the SI land use designation, as well as in the Light Industrial (LI) land use designation including but not limited to Good Samaritan Hospital, Old Town Kern Community Health Center, Kern Rehab, Centre for Neuro Skills, and Accelerated Urgent Care. The proposed Project is a consistent land use in the SI land use designation under the City's Euclidean pyramid zoning structure, which necessarily includes a "pyramid" interpretation of General Plan land use designations, where less intensive uses are generally consistent with land use designations that allow more intensive uses. In other words, less intensive uses are generally consistent with more intensive MBGP land use designations by implication, as such an interpretation is both logical and necessary for the City's zoning structure to be consistent with the MBGP.

The commenter also questions relevancy of the City's pending MBGP Update. As stated in DEIR Section 2.0, Environmental Setting, p. 2-5, and in Subsection 4.10, Land Use and Planning, p. 4.10-2, at the time the EIR was prepared, the City of Bakersfield was preparing a General Plan Update; however, the adopted MBGP was the pertinent long-range planning document for the purposes of evaluation in the DEIR. Per the City of Bakersfield website, the 2045 General Plan Update isn't expected to be adopted by City Council legislative action until Winter 2024[9], which is well past the completion date of the Project's EIR.

D-13 Channel Law Group requests a map showing the location of the abandoned well (Borel 1). The requested map from CalGEM is shown below, indicating that the abandoned well (indicated by the black dot and number "1") is located off-site to the south of the Project Site (CalGEM Well Finder website)[10]. Accordingly, as correctly concluded on DEIR pp. 5-5 and 5-6, there are no known oil, gas, or injection wells located within the boundaries of the Project Site and the Project would not result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the State. The commenter also requests a map showing evidence of oil/gas transmission pipeline absence on the Project Site. The Project Site's ALTA Survey, provided as Attachment D to this FEIR, does not show any wells or transmission lines crossing the Project site.



[9] City of Bakersfield, General Plan Update Timeline: https://bakersfield2045.com/general-plan/
[10] California Department of Conservation, Geologic Energy Management Division (CalGEM), Well Finder: https://maps.conservation.ca.gov/doggr/wellfinder/

D-14 Channel Law Group comments that the Initial Study lacks substantial evidence to show that the Project's noise impacts would be less than significant and commends the City for analyzing the topic of Noise in the DEIR, Subsection 4.11. The noise analysis was based on a technical report titled, "VA Medical Clinic, Noise and Vibration Analysis, City of Bakersfield," dated February 21, 2023, prepared by Urban Crossroads, Inc. (DEIR Technical Appendix H). The Noise Report supplies substantial evidence for the conclusion that the Project would result in less-than-significant noise impacts.

D-15 Channel Law Group comments that the Initial Study lacks substantial evidence to support the conclusion that there is existing fire and police capacity to support the additional demand that would result from the Project. As indicated on DEIR p. 5-7, fire protection services and police services are provided to the Project Site through joint implementation measures between the City of Bakersfield and Kern County. The Project, which would serve existing residents and replace the services offered at the currently existing VA Clinic in the City on Westwind Drive, would not cause the need for the physical construction of a new fire or police station or require physical alteration of an existing station, because the Project would not materially increase, if at all, demand for fire or police services in the City. Refer to Attachment E for letters from the Bakersfield Fire Department and Bakersfield Police Department. The Bakersfield Fire Department letter states that the Project would have no significant impact on fire department operations and that existing resources and infrastructure would be more than capable of meeting the fire safety and emergency response demands of the Project. The Bakersfield Police Department letter states that the Project will have no significant impact on Police Department operations and that the existing resources and infrastructure are more than sufficient to meet the policing needs of the Project and the community it will serve.

D-16 Channel Law Group comments that the Initial Study lacks substantial evidence that the Project would result in less-than-significant impacts associated with the provision of wet and dry utilities to the Project site. As demonstrated on the Project's Site Plan Review application materials, all utility connection points are site adjacent and all physical ground disturbances to connect the Project to utility systems would occur within the Project's physical disturbance impact footprint analyzed in the DEIR. As such and as correctly stated in the DEIR in Subsection 5.4.6, *Utilities and Service Systems*, physical impacts related to construction and installation of utilities is addressed throughout DEIR Section 4.0, *Environmental Analysis*. Each environmental topic area analyzes impacts from construction and operation of the Project, which would include the installation and operation of utility systems. Regarding service capacity, DEIR Appendices J and K are will-serve letters from California Water Service (Cal Water) and Pacific Gas and Electric (PG&E).

D-17 Channel Law Group commented that the City appropriately decided that the DEIR should address the topics of Land Use and Planning and Noise, which the Initial Study indicated would have less-than-significant impacts. The topic of Land Use and Planning was analyzed in DEIR Subsection 4.10 and the topic of Noise was analyzed in DEIR Subsection 4.1. Additionally, a Noise and Vibration Analysis is included as DEIR Technical Appendix I.

D-18 Channel Law Group requests a detailed description of the services to be provided by the VA on the Project site. As described in DEIR Section 3.0, *Project Description*, p. 3-5, services would include audiology, mental health, telehealth, ambulatory (outpatient) medical care, an eye clinic, physical and

occupational therapy, prosthetics, dental services, a lab and pharmacy, and ancillary and diagnostic services. Similar detail is also provided in the documents from the federal bidding process relating to the Project (*i.e.,* the VA' bid specifications and the Project applicant's accepted proposal), which are part of administrative record. This is a reasonably foreseeable range of services to inform analysis in the DEIR and there are no anticipated services that would provide any greater degree of environmental effects than those considered. To provide a list of services that may be provided into the future beyond the current list of services anticipated by the VA would be pure speculation.

D-19 Channel Law Group requests information be provided on Project's anticipated employment and the average and maximum number of staff and patients to be on-site daily and at one time and questions why there are more parking spaces in the Project's design and more daily vehicle trips assumed than the anticipated building's occupancy. As stated on DEIR p. 4.8-11, the facility is estimated to employ approximately 50 persons and serve 100 patients on any given day, on average. As shown on DEIR Figure 3-1, *Overall Conceptual Site Plan*, based on the building's square footage, 194 parking spaces are required per City of Bakersfield standards, and 203 parking spaces are required per VA standards. The Project Applicant designed the building with 207 parking spaces, meeting both City of Bakersfield and VA standards. The number of parking spaces are ample to serve the facility's approximately 50 employees, 100 daily patients, and visitors and guests, including on days where the Project services a higher than average number of patients. Trip generation rates, provided in DEIR Appendix I, were calculated using the Institute of Transportation Engineers (ITE) Trip Generation. ITE Land Use Code 630, for a Clinic development. Based on these modeling results, it was estimated that the Project would generate 1,457 daily trips, which includes all trips entering and exiting the site, and which also include multiple trips by the same vehicle, as well as service or vendor vehicles traveling to the Project that are not necessarily employees or patients. The commenter provides no evidence that the Project would have any greater environmental effects than disclosed in the DEIR related to employee or patient count, parking, or trip generation. Instead, the comment actually shows that the DEIR is quite conservative and more protective of the environment because it likely overestimates impacts by relying on a daily trip rate higher than the actual vehicle trips likely to be generated by the Project on a given day. This likely overestimates the Project's air quality, greenhouse gas and transportation impacts, at a minimum.

D-20 Channel Law Group requests detailed information on the Project's specifications provided in the VA's lease for the Project. The specifications for the VA Clinic were provided in Solicitation No. 36C10F19Q0134, having a response date of October, 17, 2019, and which is on file with the City and available for public review by request as part of the Project's administrative record. The City will provide a copy to the commenter.

D-21 Channel Law Group requests information regarding the ownership of the Project Site and whether the Project Applicant owns the Site or has an agreement with the Site owners. This not relevant for the purposes of analyzing the Project's impacts pursuant to CEQA. Nonetheless, according to the City's records, SASD Development Group, LLC is the Project Applicant and has an equitable interested in the Project Site.

D-22 Channel Law Group introduces their concerns regarding the Project's air quality modeling and mitigation for greenhouse gas (GHG) emissions. Refer to Response D-23.

D-23 Channel Law Group states that the DEIR and air quality analysis are flawed because they assumed that the environmental impacts of the existing VA clinic would cease when the VA moves out; however, the commenter asserts that the vacated space would likely be leased by another medical user and generate environmental impacts similar to the existing clinic. While the DEIR states that the existing VA clinic would close in its existing location and that the air pollutant and GHG emissions emitted by VA clinic operations at is existing location would cease, the DEIR discloses the total gross air pollutant emissions of the Project, and provides the net emissions discounting for the closure of the existing VA clinic for informational purposes only. All emissions and potential impacts presented in the DEIR and Technical Appendix B are conservative estimates based only on the emissions generated by new VA clinic, with or without closure of operational activities in the building space currently occupied by the VA clinic in its existing location. In sum, the DEIR does not rely on any "net" emissions when disclosing, analyzing or mitigating impacts, and therefore the comment is incorrect and based on a fundamental misunderstanding of the analysis in the DEIR.

D-24 Channel Law Group states that the Project's biological resource assessment is inadequate because only one reconnaissance survey was performed which was insufficient to assess potential biological species on the Site, including the burrowing owl and Crotch's bumble bee. McCormick Biological disagrees and attests that the surveys were adequate. The site conditions were assessed based on the single reconnaissance level survey and the Biological Resources Evaluation (BRE) (Appendix C to the DEIR), which provides background detail regarding the habitat requirements for each special-status species. A complete literature review was conducted to identify all of the potentially occurring special-status species in the region of the Project. The literature review resulted in identification of several species that could occur in the region of the Project. This list was further analyzed to assess each species' potential to occur based on whether the Project site is in the published range and contains habitat requirements to support each species and the observations of the physical and biotic environment during the reconnaissance survey. Appropriately qualified biologists can assess potential occurrence on an individual site based on experience over years in a region. The impact analysis in the BRE acknowledges that one site visit cannot be used to determine that a species is not present and assumes that site use or occupation may indeed occur prior to site development. For the species identified with any potential to occur, potential impacts were analyzed. The BRE provides a sufficient amount of baseline information for each of these species to determine if the described existing conditions could support special-status species.

As stated in the BRE, burrowing owls are year-round residents in much of California, including the Central Valley, and California is important to wintering owls (Shuford & Gardali, 2008). As such, this species could occupy the California ground squirrel burrows found during the reconnaissance survey at any time of the year. Therefore, the BRE reached the accurate conclusion that suitable habitat was present and the species has potential to occupy the site. Given the site conditions, no number of negative surveys during any season would eliminate the potential for this species to occur onsite. As such, impacts were properly identified and mitigation measures proposed to reduce the potential impacts to burrowing owls that may subsequently occupy the site to less than significant.

A site visit to assess presence of bumble bees due to the potential for Crotch's bumble bee (*Bombus crotchii*) was conducted on May 26, 2023. The survey was conducted by Randi McCormick and Ashleigh Pryor, biologists with McCormick Biological, Inc. Habitat was found to be poor for the species based on lack of likely floral resources. No bumble bees of any species were observed during the survey. A complete results letter is included in Attachment H and will be placed in the Project's administrative record with the City of Bakersfield prior to certification of the FEIR.

D-25 Channel Law Group questions whether the biological resource assessment covered the full extent of the Project's proposed physical disturbance footprint and comments that current biological values on the Site would be largely lost as a result of the Project. McCormick Biological has confirmed that the Project's full impact footprint was studied with the results disclosed in Technical Appendix C and concurs that with implementation of the Project, the existing biological resources located on the site would be removed. Section 3.2 on Page 15 of the Biological Resources Evaluation, included as Appendix C to the DEIR, states that the Project footprint identified (shown on Figures 1-1 and 1-3 of Appendix C) and a 100-foot buffer were walked if accessible and the buffer was evaluated using binoculars if not accessible. No fences or other hindrances were noted and the resulting area walked included the entire Project site, with the exception of the existing pavement on Knudsen Drive. The 100-foot buffer covered the future alignments of Landco Drive and Street "A".

D-26 Channel Law Group states that the single biological reconnaissance survey predates the August 11, 2022, issuance of the EIR Notice of Preparation (NOP) by almost 10 months and thus fails to describe the existing conditions of the Project site at the time the NOP was published. Regarding the baseline conditions as they pertain to biological resources, the conditions at the time of the NOP (August 2022) would not have been more conducive to special-status species occurring than those observed during the documented site visit, as there was periodic disking and other urban disturbances that occurred on the Project site prior to the October 2021 site visit as well as over the subsequent months.

According to the Project's principal biologist, Randi McCormick, who has 35 years of experience in the urban Bakersfield area, remnant patches of open space that remain in the urban area take years to substantially change in vegetation composition and/or habitat quality without active protection and management (see resume in Attachment H to this FEIR). They are typically former agricultural lands which have ceased production for decades, but the effects of that disturbance and continued disturbance from human access, domestic dogs and cats, unauthorized dumping, and offroad access do not allow for substantial recovery. Taking those observations into consideration, the 10 months between the October 2021 site visit and the August 2022 NOP is not substantial enough to materially improve site conditions or habitat quality at this location. Further, higher than normal rainfall in the winter of 2022-23 and spring of 2023 did not result in a substantial improvement in the site conditions based on a site visit conducted on May 26, 2023 by MBI Senior Biologist Ashleigh Pryor and Principal Biologist Randi McCormick. Although there was an observable response by vegetation and the overall vegetative height and cover was higher than observed during the previous site visit, the composition remained dominated by non-native mustards and invasive weeds.[11] The overarching influence on habitat quality remains the surface management.

[11] McCormick Biological, Inc. 2023. *Biological Response to Comments.* July 31, 2023.

D-27 Channel Law Group states that October 2021, when the biological resources assessment was completed, represented a period of peak biological stress for the Project site due to the extreme drought of 2021, rather than the improved conditions at the time the NOP was issued, resulting in an inaccurate picture of the biological value of the Site and an underestimate of Project impacts. The "potential to occur" determination for special-status plant species was not made based only on the conditions at the time of the site visit. Habitat type, soils, topography, and the disturbance level in general were considered in the determination, as stated in the Biological Resources Evaluation (Appendix C to the DEIR). It should be noted that while drought conditions may affect presence in any given year making the timing of the surveys to determine presence important, drought conditions are not used to determine overall suitability or potential to occur. The conditions that were used in the Biological Resources Evaluation to determine suitability for the identified special-status plants do not change with the precipitation, as existing physical characteristics and site history were used to determine suitability along with the resulting potential to occur. It is appropriate and necessary to use professional judgment on any site, regardless of ephemeral observations, to draw conclusions regarding the potential for any given species to occur. Further, see Response D-26 above regarding immaterial changes from 2021 to the site visit on May 26, 2023, following an extremely wet 2022-23 rainy reason.

CDFW's (2018) minimum standards cited by the commentor contain a process for determining when botanical surveys to detect special-status plants and sensitive natural communities would be needed prior to project initiation. These standards provide the following guidance:

> Evaluate the need for botanical field surveys prior to the commencement of any activities that may modify vegetation, such as clearing, mowing, or ground-breaking activities. It is appropriate to conduct a botanical field survey when:
> - Natural (or naturalized) vegetation occurs in an area that may be directly or indirectly affected by a project (project area), and it is unknown whether or not special status plants or sensitive natural communities occur in the project area;
> - Special status plants or sensitive natural communities have historically been identified in a project area; or
> - Special status plants or sensitive natural communities occur in areas with similar physical and biological properties as a project area.

The Biological Resources Evaluation clearly identifies the existing site conditions and why these conditions preclude the occurrence of any special-status plant species, showing that it is not unknown whether any such species occur on the project (refer to bullet 1, above). Addressing the above bullet 2, no special-status plants or sensitive natural communities have been documented on the Project site, and addressing the above bullet 3, no special status plants or sensitive natural communities were identified that occur in areas with similar physical and biological properties compared to the Project site. Therefore, conducting multiple surveys is not warranted to identify potential impacts to special-status plants or sensitive natural communities.

D-28 Channel Law Group states that the DEIR fails to disclose why the biological resource assessment only reports on the findings of a single reconnaissance survey in 2021, when two additional reconnaissance

surveys were conducted in 2020 and 2022. A detailed response to this comment is provided above in Responses D-24, 26, and D-27.

D-29 Channel Law Group comments that the survey methodology provided in the biological resource assessment is incomplete and must include information on the time the survey began, the duration, weather conditions. For all species considered, Tables 4-1 and 4-2 of the Biological Resources Evaluation, included as Appendix C to the DEIR, describe species habitat requirements and compare those requirements to observed physical conditions documented during the October 2021 reconnaissance survey. Conclusions shown in these tables are drawn from habitat requirements compared to existing conditions with further analysis in the text for special status species with any potential to occur. While the time of day and temperature would have no influence on the observed conditions or physical characteristics documented, the site visit was conducted on a partly cloudy day between 10:32 am and 11:54 am with a temperature of 60°F and light winds. From the photos included in Appendix D of the Biological Resources Evaluation, the conditions were partly cloudy and visibility was more than adequate to view the entire site.

D-30 Channel Law Group provided a table of special status species likely to occur on the Project site; comments that the literature/database search for potential special status and wildlife species was incomplete; that the biological resource assessment fails to address the Project's impact to habitat loss, wildlife movement, wildlife-automobile collision mortality, bird-window collision mortality, or cumulative impacts; and that the Project site is likely to serve as a wildlife movement corridor for the Monarch butterfly, and as a foraging habitat for gulls and raptors. All of the special-status species identified in the literature review conducted for the October 2021 reporting were considered. The following table prepared by McCormick Biological addresses the species identified in the comment letter. No significant impacts would reasonably occur as a result of the Project after mitigation. Mitigation measures included in the DEIR would result in protection of all of the listed species below that may occur on or near the Project:

Species	Status	Notes
Monarch butterfly *Danaus plexippus*	FC	Wintering has been reported to the California Natural Diversity Database (CNDDB) (CDFW, 2023) approximately 4.5 miles east- southeast of the Project in eucalyptus trees at a city park. No eucalyptus or other suitable trees were found onsite for overwintering. No milkweed (*Asclepias* spp.) plants were identified during site visits and no breeding has been recorded in a 10-mile radius. The site does not support any identified Monarch butterfly nectar sources. Therefore, this species is not expected, and no impacts are anticipated.
California gull *Larus caifornicus*	BCC, LC	No nesting by this species has been reported within a 10-mile radius of the Project (CNDDB) and no nesting habitat is present (Zeiner et al., 1990). Although the Project site meets the minimum requirements for foraging, this species is likely to forage throughout the city of Bakersfield in landfills, stormwater and water treatment impoundments, fields, and parking lots and has been documented throughout the city (iNaturalist, 2023a, ebird, 2023). No significant impacts are anticipated.

Double-crested cormorant *Nannopterum auritum*	WL, LC	This species winters in the interior of California, including Bakersfield but is not expected to nest on or near the Project site as no suitable nesting habitat is present. The Project site additionally does not meet the minimum requirements for foraging (Zeiner et al., 1990). Sightings in the vicinity are concentrated around the Kern River and other permanent water sources (iNaturalist, 2023b, ebird 2023) and this species' population trend is increasing (BirdLife International, 2018a). Therefore, no impacts are anticipated.
Turkey vulture *Cathartes aura*	BOP, LC	No suitable nesting habitat is present on the Project site. The Project site meets the minimum requirements for foraging and the species is likely to occasionally forage in the vicinity (Zeiner et al., 1990). Sightings of the species are relatively common throughout all seasons in and around Bakersfield (ebird, 2023) and its worldwide population status is considered stable (BirdLife International, 2018b). Although occasional foraging may occur on or near the Project site, the loss of this habitat would not result in significant impacts to the species.
Cooper's hawk *Accipiter cooperi*	WL, BOP, LC	No suitable nesting habitat is present on the Project site and typical foraging habitat for this species is not currently present (Zeiner et al., 1990). Cooper's hawks are known to nest and forage in mature trees and throughout the urban area of Bakersfield where vegetation is suitable. Sightings of the species are relatively common throughout all seasons in and around established neighborhoods in the city (ebird, 2023) and its population trend is increasing (BirdLife International, 2016a). Development of the Project with its associated landscaping may actually increase the availability of suitable habitat for this species in the vicinity. No significant impacts are anticipated.
Red-tailed hawk *Buteo jamaicensis*	BOP, LC	This species is extremely common throughout all habitat types in California. It is very flexible in selection of nesting substrate, from relatively undisturbed forests and riparian areas to manmade structures (Zeiner et al., 1990). No likely trees or structures are present on the Project site and no unoccupied raptor nests were observed on the Project site or surrounding area during the site visits. Foraging habitat is present throughout the city of Bakersfield including on the Project site. Its population trend is considered increasing (BirdLife International, 2016b). The loss of the Project site as foraging habitat for this species would not be significant. Implementation of BIO MM-2 would result in avoiding impacts to nesting individuals should they subsequently nest on or near the Project site.

Barn owl *Tyto alba*	BOP, LC	This species' requirements are flexible, and it is extremely common throughout all habitat types, including urban situations. In urban areas, nesting typically occurs in structures, crevices, on ledges of structures, or in trees or snags. Roosts in similar locations and is active year-round (Zeiner et al., 1990). No likely trees or structures are present on the Project site and nesting onsite is not expected. Foraging habitat is present throughout the city of Bakersfield including on the Project site. This species' population trend is considered stable (BirdLife International, 2019). The loss of the Project site as foraging habitat for this species would not be significant. No impacts would occur.
American kestrel *Falco sparverius*	BOP, LC	This species is extremely common throughout all habitat types in California. It is very flexible in selection of nesting substrate, nesting in cavities and crevices trees and manmade structures (Zeiner et al., 1990). No likely trees or structures are present on the Project site and no potentially suitable cavities were observed on the Project site or surrounding area during the site visits. Foraging habitat is present throughout the City of Bakersfield including on the Project site. This species' population trend is considered stable (BirdLife International, 2016c). The loss of the Project site as foraging habitat for this species would not be significant. Implementation of BIO MM-2 would result in avoiding impacts to nesting individuals should they subsequently nest on or near the Project site.
Merlin *Falco columbarius*	WL, BOP, LC	California is not included in the breeding range of this species (Zeiner et al., 1990). Main prey consists of small birds, with some other items selected (Zeiner et al., 1990). This species is occasionally observed during winter in the city (ebird, 2023) and its population status is considered stable (BirdLife International, 2021a). The loss of the Project site as winter foraging habitat would not be significant.
Peregrine falcon *Falco peregrinus*	BCC, CFP, LC	Kern County is not included in the breeding range of this species (Zeiner et al., 1990). This species occasionally reported in city (ebird, 2023) and its population status is considered increasing (BirdLife International, 2021b). The loss of the Project site as winter foraging habitat would not be significant.
Loggerhead shrike *Lanius ludovicianus*	BCC, SSC, SSC2, NT	This species nests in shrubs or low trees with dense foliage (Zeiner et al., 1990), none of which are present on the Project site. They are occasionally observed within the city, primarily in association with the Kern River, and rarely in urban situations (ebird, 2023). The population trend is decreasing (BirdLife International, 2020). This species is not expected on or near the Project and no impacts would occur.

California horned lark *Eremophila alpestris actia*	WL, LC	The horned lark (*Eremophila alpestris*) nests on the ground in the open, typically in association with grassland or other open, sparse habitats (Zeiner et al., 1990). The breeding season distribution of the California horned lark (*Eremophila alpestris actia*) is limited to the northwestern and southwestern corners of Kern County (Grinnell and Miller, 1944); therefore, the Project is outside of the breeding range for this race. This race of horned larks may forage outside of the breeding range, and horned larks in general are infrequently reported in the city. As such, the loss of the Project site as potential foraging habitat for this species would not be significant. No impacts would occur.
San Joaquin kit fox *Vulpes macrotis mutica*	FE, CT	This species was evaluated and potential impacts addressed in the Biological Resources Evaluation (Appendix C of the DEIR) and DEIR.

Abbreviations:
BOP – Birds of Prey
BCC – USFWS Bird Species of Conservation Concern
CT – State listed as threatened
FC – Federal Candidate for Listing
FE – Federally listed as endangered
LC – Least Concern (International Union of Concerned Scientists Red List)
SSC – California Species of Special Concern
SSC2 – California Bird Species of Special Concern priority 2 (Shuford and Gardali, 2008)
NT – Near Threatened (International Union of Concerned Scientists Red List)
WL - Watch List (Shuford and Gardali, 2008)

Lack of observations during the reconnaissance survey does not change the potential for impacts and more extensive surveys are not likely to reveal unidentified impacts given the findings shown in the table above.

The Project site is not, in fact, part of a wildlife connectivity corridor. Its proximity near State Route 99, surrounding urban uses, general disturbed nature of other open lands, train tracks, and extremely heavily trafficked roads creates a risk to any terrestrial wildlife that may inhabit the site. The wildlife that typically inhabit this type of site undertake smaller movements and, other than San Joaquin kit fox, do not require large blocks of habitat to persist. While San Joaquin kit fox may require larger habitat blocks to persist in natural lands, within the City of Bakersfield, they use urban landscapes such as schools, golf courses, open lots, canals, railroad rights-of-way, and other areas impacted by urban development. The area is already heavily urbanized, and human pressures are well-established. As described above, the sensitive bird species that are known from the city are found throughout the urban area and there is no reason to suspect that the development of this Project site will alter those occurrences and the potential for those species to continue using the urban area is various capacities.

The site is not in or associated with any known wildlife corridors nor is it identified as an "Essential Connectivity Area" in the statewide strategy for preserving such areas (Spencer et al., 2010).

D-31 Channel Law Group states that the biological resource assessment must be redone to identify the full range of impacts and the DEIR should be recirculated because the conclusions are not supported by substantial evidence or adequate analysis and fail to identify the full range of impacts. A detailed response to this comment is provided above in Responses D-24, D-26, D-27, D-29, and D-30.

D-32 Channel Law Group requests dates and details of ground-disturbing activities conducted on the Project site since the initiation of environmental analysis prepared for the Project, implying that disturbances were conducted to discourage or exterminate sensitive species on the Project Site. Nothing illegal or inappropriate has occurred on the Project Site. Refer to Responses D-26 and D-27. Further, disking is a requirement set forth in Bakersfield Municipal Code, Chapter 8.28, as without disking, the existing condition of the Project site would be considered a public nuisance (and a fire hazard).

D-33 Channel Law Group comments that a reasonable amount of time must be allowed to pass without any further disking or other ground-disturbances on the Project site to properly access the full extent of the biological resources present with more accurate biological studies, upon which time, the DEIR should be recirculated. This has no basis in the law, and the City has determined that the proper baseline is the existing condition of the Project Site, which is well within its discretion under CEQA. The commenter's suggestion that existing conditions of the Project Site, and therefore the baseline for analysis of the Project under CEQA, must be altered after the DEIR has already been released has no support, either by substantial evidence (*i.e.,* expert opinion) or under the law. According to CEQA Guidelines Section 15088.5, a lead agency is not required to recirculate a DEIR unless significant new information is added that would change the DEIR in a way that would have deprived the public of a meaningful opportunity to comment upon a substantial adverse environmental effect or a feasible way to mitigate or avoid such an effect. There is no requirement that the Project site be changed so that it would result in "new" information, and further, even if the Project Site was left completely undistributed (which would be in violation of the City's requirements discussed in Response to Comment D-33), it is highly unlikely the biological resources on the Project site would materially change. The adequacy of the existing condition is further substantiated, biologically, by the Project's principal biologist, Randi McCormick, who has 35 years of experience in the urban Bakersfield area as discussed in Responses D-26 and D-27, as well as Response D-30.

D-34 Channel Law Group comments that mitigation measures in the DEIR fail to address all the potentially present special status species that could be impacted by the Project and that new mitigation measures are needed to restrain disking and require performance of additional grading/pre-ground modification full biological assessments. See also Responses to Comments D-32 and D-33 regarding the suggestion that disking should or can be stopped, which it cannot because disking for fire fuel management and general nuisance abatement is a requirement of Bakersfield Municipal Code, Chapter 8.28.

D-35 Channel Law Group states that the pre-construction surveys specified in BIO MM-1 and MM-4 are inadequate for detecting special status species and should require protocol-level detection surveys prior to any pre-construction surveys. As stated in Responses D-24 and D-30, burrowing owls and kit fox may occupy areas in this part of California with potentially suitable habitat at any time. As such, mitigation measures that addresses potential occupation at the time of initial project disturbance is appropriate for implementation of avoidance of individual burrowing owls and kit fox.

D-36 Channel Law Group requests that BIO MM-1 be corrected because it is inconsistent with the California Department of Fish and wildlife recognized avian breeding season of February 1 through September 15. Although BIO MM-1 appropriately notes the breeding season as ending in this portion of Kern

County per CDFW protocol on August 31 of each calendar year, BIO MM-1 and MM-2 have nonetheless been revised out of an abundance of caution to extend the mitigation requirement to September 15.

BIO MM-1 Surveys to detect burrowing owls shall be conducted by a professional biologist in consultation with CDFW no more than 30 days prior to any ground disturbance activities on the Project site and can be conducted concurrently with the pre-activity surveys required per BIO MM-2, BIO MM-3 and BIO MM-4. Occupied burrows shall not be disturbed during the nesting season (February 1 through ~~August 31~~ September 15) unless a professional biologist verifies….

BIO MM-2 If vegetation clearing or initial ground-disturbing construction activity occurs during the migratory bird nesting season (February 1 to ~~August 31~~ September 15) a professional avian biologist shall conduct a nesting bird survey…

D-37 Channel Law Group comments that BIO MM-2 lacks adequate nest protections and that the DEIR conclusions that pre-construction surveys would reduce potential impacts to nesting birds to less than significant is unsubstantiated. As is intended by the name, migratory birds are migratory, meaning that they can potentially occupy suitable habitat at any time. As such, a mitigation measures that addresses potential occupation at the time of initial project disturbance is appropriate to ensure adequate mitigation. In addition, this approach is consistent with the mandatory requirements of the federal Migratory Bird Treaty Act (DEIR p. 4.3-4), makes the take of migratory birds illegal except under the terms of a valid permit issued pursuant to federal regulations. BIO MM-2 requires that a qualified avian biologist perform the pre-construction survey(s) and qualified avian biologists have the necessary qualifications to identify migratory birds and their nests.

D-38 Channel Law Group asserts that BIO MM-1 to MM-5 represent improperly deferred mitigation, improper deferral of analysis, and wrongly propose that pre-construction surveys should substitute for detection surveys. This is an incorrect assertion as explained in Responses D-24 through D-23. Burrowing owl and kit fox are detectable all times of the year and pre-construction surveys for these species and for migratory birds are required to ensure that individuals are not present, or protected if present, prior to construction. Finding and avoiding the actual species individuals just prior to construction achieves mitigation, whereas conducting additional surveys at a time long before construction when species can migrate on or off the site does not achieve actual mitigation.

D-39 Channel Law Group requests additional mitigation in the form of compensatory provision of an equal area of open space in perpetuity as close to the Project Site as possible. The City and the Project's principal biologist, Randi McCormick, who has 35 years of experience in the urban Bakersfield area, have determined that compensatory mitigation is not required to reduce the Project's biological impacts to less than significant. Furthermore, open space in general is not necessarily compensable if the habitat being lost is not occupied by listed species. Compensation is included in BIO MM-5 for impacts to San Joaquin kit fox habitat, if known dens are found. Compensation for habitat disturbance for Crotch bumble bee presence would be speculative as to the effectiveness based on the current known

information about Crotch bumble bee; regardless, no Crotch bumble was detected on the site during a survey conducted in May 2023. For the remainder of the potentially occurring special-status species, the mitigation measures set forth in the EIR are adequate to reduce the impacts of the project to less than significant.

D-40 Channel Law Group states that the current DEIR mitigation measures are inadequate and biological resource impacts remain significant. The City and the Project's principal biologist, Randi McCormick, who has 35 years of experience in the urban Bakersfield area, disagree as explained in Responses D-24 through D-39.

D-41 Channel Law Group comments that due to the Project's location in the expired Metropolitan Bakersfield Habitat Conservation Plan area, loss of habitat due to the Project's construction is significant and that the DEIR must demonstrate that mitigation is feasible. Refer to Response D-39. Mitigation in the form of compensation land, if required for a project, has been standard practice throughout the life of the MBHCP and throughout the San Joaquin Valley, including Kern County through other similar FESA and CESA permits (BLM Programmatic Oil and Gas Biological Opinion; California High Speed Rail Fresno to Bakersfield ITP and BO, and several individual project permits). The discontinuation of the MBHCP does not diminish the effectiveness of this standard approach to mitigating the loss of habitat for listed species, should occupied habitat be present. BIO MM-1 through MM-7 set forth adequate mitigation to reduce all potential impacts to sensitive biological resources to below a level of significance. Expiration of a regulatory document does not change the physical biological realities on the ground.

D-42 Channel Law Group states that the DEIR has failed to provide accurate and complete information about biological resources on the Project site; the site has been improperly impacted by disking; and the DEIR failed to identify significant biological resources impacts. Responses to this general comment are supplied in Responses D-24 though D-41 and specifically refer to Responses D-32 and D-33 regarding the suggestion that disking should or can be stopped. Disking for fire fuel management is a requirement of Bakersfield Municipal Code, Chapter 8.28.

D-43 Channel Law Group comments that the DEIR fails to specify whether the CDFW and/or USFWS were contacted and, if so, what guidance they provided. The commenter is referred to Response D-7, describing VA's correspondence and formal consultation with USFWS (included as Attachment F to this FEIR). The DEIR addresses the CDFW's NOP comments in DEIR Subsection 4.3, Biological Resources. MBI had no direct contact with agencies. However, a comment letter was received from CDFW (October 18, 2022). All three state listed species and one California species of special concern identified in the comment letter were addressed in the Biological Resources Evaluation (Appendix C of the DEIR).

D-44 Channel Law Group contends that the DEIR must provide details regarding the dates of any and all tribal consultation that was conducted and must provide documentation that AB 52 and Section 106 consultation occurred. DEIR Subsection 4.4, *Cultural Resources*, on p.4.4-8 discloses that no Native American tribes requested consultation regarding the Project and refers the reader to Subsection 4.13, *Tribal Cultural Resources*. As stated in DEIR Subsection 4.13, on p. 4.13-3, "As part of the AB 52

consultation process required by State law, the City of Bakersfield did not receive any request for consultation from any tribes regarding the Project." Section 106 consultation occurred with the State Historic Preservation Officer (SHPO) and in a letter dated October 3, 2018, the SHPO concurred with the VA's finding of no historic properties affected pursuant to 36 CFR Part 800.4(d)(1) (included as Attachment G to this FEIR).

D-45 Channel Law Group comments that the DEIR must include adequate mitigation to ensure that cultural resource impacts can be mitigated to less than significant levels. The DEIR includes such mitigation. DEIR Subsection 4.4, *Cultural Resources*, p. 4.4-10, includes Mitigation Measures CR MM-1 and CR MM-2 which will ensure proper identification and subsequent treatment of any significant historical or archaeological resources that may be encountered during ground disturbing activities associated with Project construction. Additionally, Mitigation Measure CR MM-3 presented on DEIR p. 4.4-11 requires compliance with the applicable provisions of California Health and Safety Code § 7050.5 and California Public Resources Code § 5097 et. seq. in the unlikely event that Native American human remains are discovered during construction activities.

D-46 Channel Law Group states that it appears odd that the biological reconnaissance survey was conducted when there was little vegetation on the Project site, but the cultural resources assessment was conducted when there were tall grasses, leading to low to moderate visibility, and questions how the times for the resource surveys were selected. The commenter also contends that cultural resource impacts may be underestimated due to visibility limitations.

The biological resource survey was conducted on the Project site in October 2021, and the cultural resource survey was conducted on the Project site in March 2022. Timing was based on availability of the report preparers to conduct the work. Observations of the field surveyors are documented by pictures contained in the respective technical reports attached as DEIR Technical Appendices C and D, with the biological field surveyor indicating that ground conditions in October 2021 were influenced by recent fire abatement disking activity (Technical Appendix C, p. 16). Further, while winter 2021-22 was generally dry, March 2022 would have been during the general rainy season ranging from December 2021 to April 2022, while October 2021 is before. As explained in Response D-24, 26, D-27, and D-30, conditions and methodology were appropriate to adequately disclose existing biological conditions.

Regarding cultural resources, the presence of vegetation is a typical condition encountered when conducting field surveys and lack of full visibility of the ground surface is not the only indicator of a site's cultural sensitivity. Duke CRM Tech concluded based on their professional opinion that the Project site is considered to have a low potential for the presence of prehistoric and historic era archaeological resources given the lack of previously or newly identified cultural resources within or near the Project area (Technical Appendix D, p. 2).

D-47 Channel Law Group comments that the DEIR must specify mitigation measures that would substantially lessen the Project's significant GHG impacts, including the mitigation concepts suggested by the Sierra Club in its comment letter on the NOP. An analysis of the Project's expected GHG emissions was conducted by Trinity Consultants and entitled "Small Project Analysis Level

Assessment, VA Community Outpatient Clinic, Bakersfield, CA," The study is dated April 2023 and is included as Technical Appendix B to the DEIR. As discussed in DEIR Subsection 4.7, *Greenhouse Gas Emissions*, the analysis determined that the Project would generate approximately 946.85 MT CO_{2e} (83.15 net new MT CO_{2e}) annual GHG emissions, which is significant on a cumulatively-considerable basis based on the City's highly conservative net zero threshold of significance. It bears noting that the Project's gross emissions of 956.85 MT CO2e would be considered less than significant under virtually any numerical threshold currently used by other public agencies as a threshold of significance, including the threshold of 3,000 MT CO_{2e} developed by the South Coast Air Quality Management District ("SCAQMD") and widely accepted and relied on by lead agencies within that District. After the City's consideration of various possible mitigation measures to reduce GHG emissions to net zero, the City determined that no other feasible mitigation measures with a proportional nexus to the Project's impacts and that are within the City of Bakersfield's authority to assure could measurably reduce the Project's GHG emissions, for several reasons. Most notably, the City cannot compel the federal government to make physical modifications to the Project's building design because the design was approved by the federal government as part of the already concluded federal procurement process. As a result, the City cannot assure that the federal government will agree to make changes to the Project's design, as it would conflict with the design specifications approved by the VA / federal government. It should be noted, however, that the federal requirements do include, and the Project will incorporate, various environmental sustainability features that will reduce the Project's GHG emissions, although based on the limitations of computer models to calculate GHG emission reductions as a result of these features, those reductions were not specifically quantified as part of the DEIR.

Suggested individual mitigation measures presented in the Sierra Club's NOP comment letter are discussed below. To reduce GHG emissions the Sierra Club suggests the following.

- The Sierra Club suggests the addition of building rooftop and parking lot roof solar photovoltaics (PV). As previously stated above and discussed in DEIR Subsection 4.7, p. 4.7-22, the City cannot assure that the federal government will agree to add PV features to the federally-approved Project design. The City has added the following mitigation measure to the Final EIR, but notes that because it cannot compel the federal government to implement the mitigation, the Project's GHG impact will remain significant and unavoidable.

  GHG MM-4 The building roof shall, upon the approval of a design modification by the U.S. Department of Veterans Affairs (VA), be outfitted with a solar photovoltaic system of the maximum size feasible to provide power to the building and given the constraints of applicable Building Code requirements, clearance requirements around roof-mounted equipment, PG&E interconnection regulations, and other code compliance requirements. Should the VA not approve a design modification to add a rooftop PV system, the building may be constructed and operated without a PV system.

- The Sierra Club suggests the addition of fast charge Level 3 EV charging facilities that are accessible to the public. The Sierra Club does not provide evidence that this feature would reduce GHG emissions from the Project. Electric vehicles (EV) would still be welcome at the Project site regardless of whether there are Level 3 EV chargers. Further, the California Building Standards Code (CALGreen) Title 24 requires the installation of raceway to EV designated spaces, and not the charging units themselves. The following is required by CALGreen, effective January 1, 2023:

    - Title 24, Section 5.106.5.2: Designated parking for clean air vehicles. In new projects or additions to alterations that add 10 or more vehicular parking spaces, provide designated parking for any combination of low-emitting, fuel-efficient and carpool/van pool vehicles as shown in Table 5.106.5.2.[12]

    - Title 24, Section 5.106.5.3: EV charging stations. New construction shall facilitate the future installation of EV supply equipment. The compliance requires empty raceways for future conduit and documentation that the electrical system has adequate capacity for the future load. The number of spaces to be provided for is contained in Table 5.106. 5.3.3 (5.106.5.3). [12]

  In accordance with CALGreen requirements and as shown on DEIR Figure 3-1, *Overall Conceptual Site Plan*, the Project provides for 29 future EVSC+S and Clean Air parking stalls.

- The Sierra Club suggests that the City require green building measures that exceed Title 24 standards by at least 25%. This suggestion is rejected because CALGreen's Title 24 goes through an update and approval process every three years by the California Energy Commission and the changes are subsequently ratified by the California Building Standards Commission to become State law. The most recent approved updates consist of the 2022 Energy Efficiency Standards and 2022 CALGreen Code, which became effective on January 1, 2023. Each update of Title 24 ensures a higher level of energy efficiency than the prior version. The State assures that CALGreen standards provide a high level of energy efficiency. The Sierra Club does not provide substantial evidence that exceeding CALGreen Title 24 requirements would result in any demonstrable, quantifiable reduction in the Project's operational air pollutant or GHG emissions. Therefore, consideration of the suggestion is unjustified and rejected as infeasible.

- The Sierra Club suggests that the City require the Project's buildings to satisfy LEED Silver or higher standards. The Sierra Club does not provide substantial evidence that achieving LEED Silver standards would result in any demonstrable, quantifiable reduction in the Project's operational GHG emissions above and beyond mandatory compliance with CALGreen Title 24. CALGreen Therefore, consideration of the suggestion is unjustified. LEED is a program of the United States Green Building Council, with standards for LEED certification similar to the mandatory measures required by CALGreen.

[12] CALGreen, Title 24; https://codes.iccsafe.org/content/CAGBC2019JUL21S/chapter-5-nonresidential-mandatory-measures

- The Sierra Club suggests design features to reduce vehicle miles traveled (VMT) including the addition of transit stops and bicycle parking and storage. As disclosed in DEIR Subsection 2.0, *Environmental Setting*, p. 2-17, bus service in the Project area is available along Olive Drive via Golden Empire Transit District Route 61. The recommendation for bike racks has already been included in the DEIR as Regulatory Requirement GHG RR-4 on DEIR p. 4.7-22, which specifies the requirement to comply with the California Green Building Standards Code (CALGreen) Title 24 Energy Efficiency Standards. According to Title 24, mandatory measures for non-residential uses include[13]:

    - Short-term bicycle parking. If the new project or an additional alteration is anticipated to generate visitor traffic, provide permanently anchored bicycle racks within 200 feet of the visitors' entrance, readily visible to passers-by, for 5% of new visitor motorized vehicle parking spaces being added, with a minimum of one two-bike capacity rack (Title 24 Section 5.106.4.1.1).

    - Long-term bicycle parking. For new buildings with tenant spaces that have 10 or more tenant-occupants, provide secure bicycle parking for 5% of the tenant-occupant vehicular parking spaces with a minimum of one bicycle parking facility (Title 24 Section 5.106.4.1.2).

- The Sierra Club suggests requiring the Project to have net zero energy use. The Sierra Club does not provide any substantial evidence to show that the Project can be feasibly, physically or technologically constructed and operated with net zero energy usage. Therefore, consideration of the suggestion is unjustified. Nonetheless, and as noted above, Mitigation Measure MM GHG-4 has been added to the FEIR to require the installation of rooftop PV to provide power to the building, should the VA approve a design modification to allow installation of rooftop PV.

- The Sierra Club suggests a potential mitigation measure of requiring the building to be all electric. This suggestion is rejected due to the need to provide gas service to fulfill the VA / federal government's design specifications for the building. Additionally, it would not be feasible for the Project to provide the full range of all the needed services to City veterans with only electric power, and no natural gas. The Sierra Club does not provide substantial evidence that powering the building by all electric sources would result in any demonstrable, quantifiable reduction in the Project's operational air quality and GHG emissions. Further, the Project will be compliant with CALGreen's Title 24 which assures a high level of energy efficiency in all new construction projects in California.

- The Sierra Club suggests that the City require the Project Applicant to partially fund an area energy efficiency program, but does not provide a suggestion to a specific program. The City

[13] California Green Building Standards Code; https://codes.iccsafe.org/content/CAGBC2019JUL21S/chapter-5-nonresidential-mandatory-measures

is not aware of any such program in which a fee payment would have proportional nexus to the Project's impacts and that would result in a demonstrable, quantifiable reduction in the Project's air pollutant and GHG emissions.

- The Sierra Club suggests that the City require the Project Applicant to partially subsidize public transportation in nearby communities but does not provide a suggestion to a specific program. The City is not aware of any such program. Further, the City could not assure that a subsidy payment for public transit would actually reduce VMT to and from the Project site, as public transit ridership cannot be assured or enforced by the City's jurisdictional authority.

- The Sierra Club suggests that the City require the Project Applicant to retrofit existing buildings with solar PV systems, without making reference to any existing buildings that the Sierra Club suggests be retrofitted, without any verification that the roofs of such unidentified buildings are capable of supporting the weight and technological specifications of solar PV panels and that the electrical rooms of such unidentified buildings are sufficiently sized and equipped to accommodate the additional electrical panels that would be required to run a solar PV system. The City rejects this suggestion because requiring PV solar installations on existing structures that are owned by a third party is not feasible. Neither the Project Applicant nor the City can compel a third party to agree to such an arrangement. However, Mitigation Measure MM GHG-4 has been added to the FEIR to require the installation of rooftop PV on the Project's building to provide power to the building, should the VA approve a design modification to allow installation of rooftop PV.

- The Sierra Club suggests that the Project Applicant contribute funding for solar PV incentives. The City has no jurisdiction or ability to require funding for solar PV incentives. Therefore, consideration of the suggestion is unjustified and rejected as infeasible.

- The Sierra Club suggests that the City require the Project Applicant to pay a GHG fee to the SJVAPCD to fund a project that would reduce GHG emissions elsewhere. The City has no jurisdiction or ability to require a voluntary fee agreement by third parties such as the SJVAPCD. The Project is, however, subject to SJVAPCD Rule 9510 (Indirect Source Rule (ISR)), which requires developers to mitigate NOx and PM emissions from their projects. The proposed Project's ISR Application was submitted to the SJVAPCD on July 14, 2023.

To reduce air pollution emissions, the Sierra Club suggests the following.

- The Sierra Club suggests that the City require regular bus routes between the Project and local low-income and minority communities and that carpool opportunities be provided for Project site workers. Regular bus service is already provided in close proximity to the Project Site. As stated in Response D-66, bus service in the Project area is available along Olive Drive via Golden Empire Transit District Route 61. Encouragement and incentives for carpooling would fall within the purview of the building operator (the VA) and not the City of Bakersfield.

- The Sierra Club suggests that the City require the Project applicant to partially subsidize public transportation. The City is not aware of any such subsidy program. Further, the City could not assure that a subsidy payment for public transit would actually reduce air pollutant and GHG emissions from the Project, as public transit ridership cannot be assured or enforced by the City's jurisdictional authority.

- The Sierra Club suggests the potential mitigation measure of zero emission service equipment, without specific reference to any particular type of equipment. If the reference is to landscape maintenance equipment, California's Assembly Bill (AB) 1346 was enacted in 2021, which bans the sale of gas-powered lawn equipment beginning in 2024.[14] Because the Project would not be built and operational until after 2024, it is reasonably expected that any new lawn maintenance service equipment introduced at the Project site would be electric in compliance with the mandatory requirements of AB 1346. The City is unaware of other types of service equipment the Sierra Club may be referring to by this general recommendation.

- The Sierra Club suggests that Project site workers should be encouraged to drive low-emission vehicles and that the Project incorporate Level 3 fast charging stations. As indicated above in the second bullet point of the Sierra Club's GHG reduction recommendations, the Project will comply with CALGreen, effective January 1, 2023, which requires designated parking for clean air vehicles and the installation of empty raceways and electrical system capacity for the future installation of EV chargers. As shown on DEIR Figure 3-1, *Overall Conceptual Site Plan*, the Project provides for 29 future EVSC+S and Clean Air parking stalls.

- The Sierra Club suggests that the Project Applicant enter into a Developer Mitigation Contract (DMC) with the SJVAPCD to reduce air pollutant emissions to net zero. The City has no jurisdiction or ability to require a voluntary fee agreement by third parties such as the SJVAPCD. The Project is, however, subject to SJVAPCD Rule 9510 (Indirect Source Rule (ISR)), which requires developers to mitigate NOx and PM emissions from their projects. The proposed Project's ISR Application was submitted to the SJVAPCD on July 14, 2023.

- The Sierra Club suggests soil testing for Valley Fever. As provided in DEIR Subsection 4.2, *Air Quality*, on page 4.6-8, under existing conditions, the Project site is vacant, has no or little vegetative cover due to the disturbed nature of the site, and contains loose and dry topsoil conditions, and thus, has the potential to contribute windblown soil and sand. Development of the Project would result in grading and construction activities which would disturb soils on the property. Disturbed soils would be subject to potential erosion during rainfall events or high winds due to the removal of stabilizing vegetation and exposure of these erodible materials to wind and water. However, any risk of spreading Valley Fever spores would not be increased due to Project construction when compared to existing conditions. The DEIR's analysis of the potential impacts of PM_{10} and $PM_{2.5}$ included any potential risk from Valley Fever spores in the dust particles. As indicated on DEIR page 4.2-20, Project construction activities would not exacerbate the risk of Valley Fever any more than natural wind conditions, and furthermore, it

[14] California Assembly Bill 1346. https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1346

is a natural condition not caused by the Project. Once the Project is constructed and thus developed/paved, risks from Valley Fever would be substantially reduced as compared to the existing vacant conditions.

D-48 Channel Law Group requests that their opinion that the Project is inconsistent with the Site's General Plan land use designation and zoning, is addressed. The commenter is referred to Response D-12 and Response D-60 for a response and explanation that the Project is consistent with the Site's General Plan land use designation and zoning classification.

D-49 Channel Law Group conflates aircraft noise contours under the Airport Land Use Compatibility Plan, noise compatibility guidelines given in the MBGP stationary noise sources in sensitive areas, and significance thresholds used in the EIR, to draw a significance conclusion for the topic of noise under CEQA, in an attempt to build an argument that the existing noise environment at the Project site is too loud to establish a medical clinic project. First, CEQA does not require analysis of the impact of existing environmental conditions on a proposed project unless the project will exacerbate existing environmental hazards. In the context of this comment, the proposal to establish a community-based outpatient clinic on the Project site would not exacerbate any existing noise impact, and thus the analysis of the impacts of existing noise on the Project is not required under CEQA (see *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369). Further, MBGP Figure VII-1, *Land Use Compatibility for Community Noise Environments* (MBGP, p. VII-9) establishes that for hospitals and nursing homes (the most similar land use to the Project), a noise environment up to 70 dBA CNEL is acceptable. As disclosed in DEIR Subsection 4.11, Table 4.11-6, *Daytime Project Operational Noise Level Increases*, and Table 4.11-7, *Nighttime Project Operational Noise Level Increases*, ambient noise levels at the measured locations are all below the acceptable level of 70 dBA CNEL. The Project would generate daytime operational noise level increases ranging from 0.0 to 0.6 dBA Leq at the nearest receiver locations with ambient noise levels all being below 70 dBA CNEL. The Project would generate nighttime operational noise level increases ranging from 0.0 to 1.0 dBA Leq at the nearest receiver locations, also with ambient noise levels all being below 70 dBA CNEL. Based on the substantial evidence contained in the DEIR and in the technical noise analysis contained in DEIR Technical Appendix H, Project-related noise impacts would be less than significant, included any purported "impacts" of existing ambient noise on the Project.

D-50 Channel Law Group states that the DEIR rejected all of the Project alternatives because they were not selected by the VA and thus infeasible, thereby failing to comply with the CEQA Guidelines requirement to study a reasonable range of alternatives. The commenter is incorrect in their assertion that the DEIR does not contain a reasonable range of alternatives. The alternatives discussed in the DEIR represent a reasonable range regardless of the reasons why the alternatives may or may not be dismissed as part of the Findings of Fact and Statement of Overriding Considerations that will be deliberated upon as part of the FEIR's certification process. As provided in DEIR Subsection 6.0, *Alternatives*, the DEIR conducted a thorough analysis of three alternatives to the Project, the No Project Alternative, the Net Zero Alternative, and the Renewable Energy System Project Design Alternative.

The No Project Alternative considered the scenario in which the Project does not proceed; however, this alternative would fail to meet the Project objectives. Under this alternative, the existing VA clinic

would continue to operate at the existing facility at 1801 Westwind Drive although it is outdated and does not provide the full suite of services needed by the City's veterans, who are instead currently traveling outside the Bakersfield area to obtain needed services, resulting in additional impacts on the environment. The Net Zero Alternative considered the development of a VA Clinic on the Project site with a design that would achieve net zero GHG emissions, which would reduce the size of the clinic by 3,648 s.f. and construct a 36,000 s.f. clinic (approximately 9% smaller than the proposed Project at 39,648 s.f.). The Renewable Energy System Project Design Alternative considers the development of a VA clinic on the Project site with the same site design as proposed with the Project, but with the addition of a solar system on the building roof, the addition of canopy covers over parking areas equipped with solar panels, and the addition of on-site battery storage such that site operations could be powered without connecting to the electrical grid. The DEIR provides information regarding the alternatives' abilities to meet Project objectives. Reasons to reject the alternatives, should the City opt to do so, will be provided in the Findings of Fact and Statement of Overriding Considerations that will be deliberated upon as part of the FEIR's certification process by the Bakersfield City Council.

D-51 Channel Law Group states that the Project's objectives are too narrowly defined and asserts that the DEIR should have studied alternative sites for the Project that the VA/federal government has already rejected. The federal procurement process conducted by the federal government for this Project defined the geographic boundaries of the area acceptable for the location of the Project. The Project location was selected by the federal government after a long and thorough federal administrative and legal process, which included evaluating all proposals submitted to the Solicitation for Offers, as well as consideration and ultimate rejection of bid protests and associated legal challenges. As such, no alternative sites were feasible for the DEIR to evaluate because the VA had already selected the Project applicant's proposal, and Project site as its preferred location for the Project. Nonetheless, the No Project Alternative serves as an alternative site analysis because it evaluates continuation of the existing VA clinic at the existing facility at 1801 Westwind Drive in lieu of implementing the Project.

D-52 Channel Law Group states that the DEIR rejected each of the on-site Project alternatives presented in the DEIR because they are not the proposed Project and rejected the Net Zero Alternative even though it would meet all of the Project objectives. For clarification, the DEIR provides information regarding the alternatives' abilities to meet Project objectives, and the Net Zero Alternative would not meet all the Project objectives because of its smaller size, preventing the Project from providing the full suite of services to as many patients/veterans as desired by the VA. Reasons to reject the alternatives, should the City opt to do so, will be provided in the Findings of Fact and Statement of Overriding Considerations that will be deliberated upon as part of the FEIR's certification process by the Bakersfield City Council.

D-53 Channel Law Group comments that the DEIR rejected the Renewable Energy System Project Design Alternative, even though it meets most of the Project objectives. As provided in DEIR Subsection 6.0, *Alternatives*, the DEIR conducted a thorough analysis of three alternatives to the Project, the No Project Alternative, the Net Zero Alternative, and the Renewable Energy System Project Design Alternative. The DEIR provides information regarding the alternatives' abilities to meet Project objectives. Reasons to reject the alternatives, should the City opt to do so, will be provided in the Findings of Fact

and Statement of Overriding Considerations that will be deliberated upon as part of the FEIR's certification process by the Bakersfield City Council.

D-54 Channel Law Group states that the Project and alternatives analyses contained in the DEIR should have been presented in a joint CEQA/NEPA document and that the DEIR should have included a Project Alternative that included a lease for the continuation of operations at 1801 Westwind Drive. Related to NEPA compliance, please refer to Response D-7. Related to the request to study an alternative that considers retaining the VA clinic facility at 1801 Westwind Drive, please refer to the DEIR's discussion of the No Project Alternative. Under the No Project Alternative, the existing VA clinic would continue to operate at the existing facility at 1801 Westwind Drive although it is outdated and does not provide the full suite of services needed by the City's veterans, who are instead currently traveling outside the Bakersfield area to obtain needed services. This comment is a retread by the commenter – who represents PBV, the owner of 1801 Westwind Drive – of similar assertions made during the federal bidding and approval process, seeking to "relitigate" a process that has already concluded. As set forth in Attachment J, PBV many attempts to change the VA's decision regarding the Project award decision, specifically including attempts to convince the VA to award the Project to PBV at the existing location or elsewhere, have been consistently and repeatedly denied. The City has no ability to force the VA to approve the commenter's (already rejected) proposal to remodel the existing clinic, or any other proposal other than the proposed Project, the sole proposal/project approved by the VA.

D-55 Channel Law Group's concluding comment states that failure to prepare a joint CEQA/NEPA document before the VA's commitment to a particular Project has inappropriately constrained the range of alternatives considered and rendered the DEIR an improper post-hoc rationalization for a decision already made. While the City cannot force the VA to reconsider its decision, the VA likewise cannot force the City to approve the Project. See Response to Comment D-5. Additionally, please refer to Response D-7, which addresses the Project's NEPA compliance process. Because the Project required approvals from a federal agency, compliance with NEPA, the federal equivalent of CEQA, applied, and the Project was found to qualify for a NEPA CATEX. Sometimes a joint EIR/EIS can be used to satisfy the requirements of both CEQA and NEPA, but joint documents are not required and furthermore, an EIS was not required under NEPA as explained in Response D-7.

D-56 Channel Law Group provided VA's Review of Site Environmental Information and Recommended NEPA Documentation Form, as Attachment A to their letter. The attachment indicates that a Categorical Exclusion (CATEX) be prepared for the Project, which was completed. As indicated in Response D-7, the CATEX that this Project is relying on is (included as Attachment C to this FEIR) the legally compliant and adequate NEPA compliance document for the Project.

D-57 Channel Law Group attached a letter from Soluri Meserve (Attachment B), dated March 1, 2021, which was previously submitted to the City in support of an appeal to a Mitigated Negative Declaration (MND) previously prepared for the Project. Approvals of the MND, having SCH No 2020120042, and Site Plan Review No. 20-0102, were rescinded, and an EIR, having SCH No. 2022080337, was prepared in an effort to ensure that all of the Project's potential impacts are fully disclosed, analyzed,

and mitigated in full compliance with CEQA. Although the letter is not directly commenting on the DEIR, responses are provided below.

D-58 Soluri Meserve commented that PBV owns the existing VA Clinic, has several other available properties in the City of Bakersfield which are more suitable locations for the VA Clinic, and requests the City Council to grant the appeal, determine that the MND is inadequate, determine that the Site Plan approval was improperly issued, and require further review of the Project's environmental impacts. This comment is no longer applicable. The MND, having SCH No 2020120042, which was approved by the City's Planning Commission on January 7, 2021, and Site Plan Review No. 20-0102, approved by the City's Development Services Director on January 8, 2021, were rescinded, and an EIR, having SCH No. 2022080337, was prepared in an effort to avoid further litigation and to ensure that all of the Project's potential impacts are fully disclosed, analyzed, and mitigated. See also, Response to Comment D-54 regarding alternative sites.

D-59 Soluri Meserve stated that the City failed to provide PBV with notice of the SPR application, Notice of Preparation of the MND, or other City actions on the previous project. This comment is no longer applicable because the MND has been rescinded. The Notice of Preparation of an EIR was released on August 11, 2022, pertaining to the current Project to notify agencies, organizations, and interested parties that the City of Bakersfield, as Lead Agency, was preparing an EIR for the newly submitted Project and to request input regarding the scope and content of the EIR.

D-60 Soluri Meserve asserted that the Applicant provided an inaccurate project description and incorrectly determined that the proposed use is allowed by right in a M-2 zone. The commentor was incorrect because the M-2 zone permits all of the uses permitted by the M-1 zone, and in turn, all uses permitted by the C-O, C-1 and C-2 zone[15]. The C-O zone permits, by right, "[m]edical, dental, psychiatric and other health practitioner offices and clinics, including chiropractic, acupuncture, massage therapy and blood banks," which City staff has properly determined includes the Project[16]. Notably, this use description expressly includes psychiatric clinics as part of the overall permitted use, contrary to PBV's arguments that mental health services somehow trigger a CUP. The C-O zone also permits "medical and dental laboratories[17]" and "pharmacies, in conjunction with medical clinics.[18]" Of note, the existing clinic at 1801 Westwind Drive does not have a CUP.

Medical (and psychiatric) clinics and offices are not specifically defined in the City's Municipal Code, but the City has consistently interpreted "[m]edical, dental, psychiatric and other health practitioner offices and clinics" to mean a medical use where a patient receives outpatient medical care, as opposed to overnight stays. The previous project and current Project have not been inaccurately described to fit this definition – the Project would only be open from 7 a.m. to 5 p.m., and closed all nights and

[15] Bakersfield Municipal Code, Section 17.30.020(A) [M-2 permits "[a]ny use permitted in the M-1 zone"]; Section 17.28.020(A) [M-1 zone permits "[a]ny use permitted in the C-O, C-1 and C-2 zones"]; Section 17.28.020(A) [M-1 zone permits "[a]ny use permitted in the C-O, C-1 and C-2 zones"]. https://bakersfield.municipal.codes/Code.
[16] Bakersfield Municipal Code, Section 17.20.020(A)(21). https://bakersfield.municipal.codes/Code.
[17] Bakersfield Municipal Code, Section 17.20.020(A)(22): https://bakersfield.municipal.codes/Code.
[18] Bakersfield Municipal Code, Section 17.20.020(A)(25): https://bakersfield.municipal.codes/Code.

weekends. City staff's interpretation of its own zoning code, which it is charged with implementing, is entitled to significant deference[19].

Nonetheless, because a CUP is required for "[c]linics, hospitals, sanitariums or other buildings for contagious, mental, drug or liquor addiction cases" in the M-1 zone[20], PBV contends that a CUP was required here. However, the term "sanitarium hospital" is specifically defined in the City's Municipal Code as "any institution, place, building or agency which maintains and operates organized facilities for diagnosis, care and treatment of human illness, including convalescence and including care during and after pregnancy or which maintains and operates organized facilities for any such purpose and to which persons may be admitted for overnight stay or longer. Hospital includes nursing home, maternity home and lying-in asylum.[21]" Contrary to PBV's arguments, and as made plain by the foregoing definition, a CUP is required for any medical use that involves an overnight stay, not a medical clinic that operates only during business hours.

PBV's attempts to focus on the Municipal Code's use of the terms "mental, drug or liquor addiction cases" ignores the proceeding clause, which discusses those types of cases in the context of hospitals and sanitariums[20]. As a result, the reference to "contagious, mental, drug or liquor addiction cases" clearly refers to facilities where patients suffering from those ailments stay overnight (*i.e.,* sober living facilities), particularly when considering that the permitted use "[m]edical, dental, psychiatric and other health practitioner offices and clinics" specifically includes psychiatric clinics and offices, demonstrating that mental health services do not automatically trigger the need for a CUP. Further, the use of the word "contagious" also shows that the phrase "contagious, mental, drug or liquor addiction cases" cannot mean that all uses that treat such cases require a CUP – if that was true, no medical clinic or office would be permitted by right, as all such clinics inevitably treat contagious diseases.

Whether or not a medical use involves an overnight stay is critical distinction that the City staff has consistently drawn between a permitted "[m]edical, dental, psychiatric and other health practitioner offices and clinics" and "[c]linics, hospitals, sanitariums or other buildings for contagious, mental, drug or liquor addiction cases" requiring a CUP. As pointed out by City staff, this interpretation dates back to at least 1991, when the existing VA clinic was approved for the PBV's property, then zoned M-1, and no CUP was required. Given that the proposed Project and the existing VA clinic are substantially the same use, this further emphasizes the both the weakness and the disingenuous nature of the commenter's arguments. Further, the City's distinction based upon overnight stays is also supported by sound logic, because the entire purpose of requiring a CUP is to mitigate potential impacts of uses that have more impacts on surrounding properties than uses permitted by right. Obviously, facilities open 24 hours a day, seven days a week, like hospitals, have far more impacts than those only open 7 a.m. to 5 p.m. on weekdays.

Finally, it bears noting that, while the Project complies with the City's Municipal Code and all applicable City regulations, there is an argument that, as lessor to the federal government, the Project

[19] *See, e.g., City of Walnut Creek v. Cty. of Contra Costa* (1980) 101 Cal.App.3d 1012, 1020; *MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 219.
[20] Bakersfield Municipal Code, Section 17.28.030(A)(6): https://bakersfield.municipal.codes/Code.
[21] Bakersfield Municipal Code, Section 17.04.340. https://bakersfield.municipal.codes/Code.

is not required to comply with City zoning requirements [22]. Under federal law, the VA is only required to *consider* local substantive land use and zoning laws[23]. Local officials may recommend measures necessary to satisfy local zoning and building ordinances, but the VA is not bound to comply with the recommendations[24]. However, here, the Project applicant has agreed to comply with all City regulations, zoning and otherwise.

D-61 Soluri Meserve commented that the site plan and related conditions did not adequately address access and fire safety concerns. Pursuant to Bakersfield Municipal Code Section 17.08.080, a Site Plan Review (SPR) application is submitted to the Site Plan Review Committee which consists of the Planning Director, Building Director, Fire Chief, and Public Works Director, or their designated representatives. The plans are required to be reviewed and approved prior to approval of the Project. SPR No. 20-0102 was approved by the Development Services Director on January 8, 2021 and on February 4, 2021, the Planning Commission unanimously rejected the appeal of the SPR brought by PBV; however, on July 14, 2021, the SPR was rescinded, so that an EIR could be prepared. The current site plan, SPR No 21-0399, will be subject to the same site plan review and approval process to ensure compliance with all access and fire safety regulations, to the satisfaction of the City's subject matter experts.

D-62 Soluri Meserve commented that the previously approved SPR failed to condition on and off-site improvements and road dedications necessary to the Project. This comment is no longer applicable. Site Plan Review No. 20-0102 was rescinded on July 14, 2021, so that an EIR could be prepared for the Project. The current Project includes all required on-site and off-site roadway improvements to service the Project.

D-63 Soluri Meserve commented that the MND did not meet minimum CEQA standards. This comment is no longer applicable. The MND, having SCH No 2020120042, which was approved by the City's Planning Commission on January 7, 2021, and Site Plan Review No. 20-0102, approved by the City's Development Services Director on January 8, 2021, were rescinded, and an EIR, having SCH No. 2022080337, was prepared in an effort to avoid further litigation and to ensure that all of the Project's potential impacts are fully disclosed, analyzed, and mitigated. New technical reports, prepared in association with the EIR and new SPR No. 21-0399, were released for public review along with the EIR and posted on the State Clearinghouse website on May 5, 2023[25].

D-64 Soluri Meserve listed several exhibits and provided a weblink for the entire letter and exhibits. This comment is acknowledged. No response is needed.

D-65 Channel Law Group provided an undated Sierra Club, Kern Kaweah Chapter, NOP letter as Attachment C, which begins with a brief Project summary. No response is required. The NOP comment

[22] *See, e.g.*, *Thanet Corp. v. Bd. Of Adjustment* (N.J. Super. Ct. Law. Div. 1969) 249 A.2d 31, *affd*. (N.J. App. Div. 1969) 260 A.2d 1.
[23] (40 U.S.C. § 3312(c); *see also* 41 C.F.R. § 102-76.20(c).
[24] (40 U.S.C. §§ 3312(e), (f).
[25] State Clearinghouse website, Veteran's Affairs Community-Based Outpatient Medical Clinic Project EIR, SCH No. 2022080337, posted May 5, 2023. https://ceqanet.opr.ca.gov/2022080337/2

letter was included as part of DEIR Technical Appendix A and summarized in DEIR Table 1-1, *Summary of NOP Comments* (DEIR pp. 1-5 and 1-6).

D-66 Sierra Club requests that a GHG study be conducted and provides several potential mitigation measures. An analysis of GHG emissions was conducted by Trinity Consultants and entitled "Small Project Analysis Level Assessment, VA Community Outpatient Clinic, Bakersfield, CA," The study is dated April 2023, and is included as Technical Appendix B in the DEIR. As discussed in DEIR Subsection 4.7, *Greenhouse Gas Emissions*, the analysis determined that the Project would generate approximately 946.85 MT CO_{2e} (83.15 net new MT CO_{2e}) annual GHG emissions, which is significant on a cumulatively-considerable basis based on the City's highly conservative net zero threshold of significance. After the City's consideration of various possible mitigation measures to reduce GHG emissions to net zero, the City determined that no other feasible mitigation measures with a proportional nexus to the Project's impacts and that are within the City of Bakersfield's authority to assure could measurably reduce the Project's GHG emissions, for several reasons. Most notably, the City cannot compel the federal government to make physical modifications to the Project's building design because the design was approved by the federal government as part of the already concluded federal procurement process. As a result, the City cannot assure that the federal government will agree to make changes to the Project's design, as it would conflict with the design specifications approved by the VA / federal government. It should be noted, however, that the federal requirements do include, and the Project will incorporate, various environmental sustainability features that will reduce the Project's GHG emissions, although based on the limitations of computer models to calculate GHG emission reductions as a result of these features, those reductions were not specifically quantified as part of the DEIR. Responses to the suggested individual mitigation measures presented in the Sierra Club's NOP comment letter are provided in Response D-47, and the FEIR is including new Mitigation Measure GHG-4 requiring rooftop solar if approved by the VA, described therein. The commenter is referred to Response D-47.

D-67 The Sierra Club discussed broad air pollution issues in the San Joaquin Valley, states that the EIR must thoroughly address the issue of air pollution, and suggests several methods to reduce air quality impacts. Responses to the commenter's suggested individual mitigation measures are provided in Response D-47. The commenter is referred to Response D-47.

D-68 The Sierra Club comments that the EIR must thoroughly discuss a range of alternatives to the Project including an Existing Veterans Clinic Alternative. As stated in DEIR Section 6.0, *Alternatives*, on pp. 6-4 and 6-5, the VA issued a Solicitation for Offers for the VA Clinic and evaluated the four proposals that were received, two of which included renovation of the existing VA Clinic at 1801 Westwind Drive which were not selected. It is beyond the jurisdictional scope and authority of the City of Bakersfield as the CEQA lead agency to evaluate other sites that have not been offered to or selected by the VA, particularly those that have been rejected after a long and thorough federal administrative and legal process, specifically including remodeling and rebuilding a clinic on the existing site at 1801 Westwind Drive. As such, no alternative sites are feasible because the VA has already selected the Project applicant's proposal and Project site as the preferred location for the Project, and an alternative sites analysis is thus not required in the EIR. Nonetheless, the DEIR's discussion of the No Project

Alternative evaluates retaining the VA clinic at its existing location, which constitutes an alternative site.

D-69 The Sierra Club provided a cumulative list of several current new and/or proposed projects within the Highway 99 area and requests that the cumulative impacts of these projects be addressed. As stated in DEIR Section 4.0, *Environmental Analysis*, CEQA Guidelines § 15130(b) describes two acceptable methods for identifying a study area for purposes of conducting a cumulative impact analysis. These two approaches include: 1) a list of past, present, and probable future projects producing related or cumulative impacts, including if necessary, those projects outside the control of the agency ('the list of projects approach'), or 2) a summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or area-wide conditions contributing to the cumulative impact ('the summary of projections approach').

The summary of projections approach was used in the EIR because there were no known projects with proposed General Plan Amendments or zoning designation changes within an approximately 3.0-mile radius of the Project site, and projects that are General Plan-conforming and zone-conforming fall within the assumptions of jurisdictions' General Plans and their associated CEQA compliance documents as well as the Kern COG future model for the evaluation of transportation effects. That said, the following transportation improvement project near the Project site that is planned and approved but not yet funded and constructed was specifically considered due to proximity.

- Hageman Flyover: This 1.5-mile Caltrans District 6 project includes the planned construction of a four-lane road from Hageman Road and Knudsen Drive to Golden State Avenue, including a new bridge over the railroad line and SR-99 freeway. The project includes widening of the bridge over Airport Drive and modifying ramps at the Airport Drive/Golden State Avenue interchange. The project also includes a bike route across SR-99. An EIR for this project was prepared and certified by Caltrans having SCH No. 2014011036. The Hangman Flyover project is recognized in the Metropolitan Bakersfield General Plan Circulation Element.

The summary of projections approach plus Hageman Flyover project methodology was determined to be appropriate by the City of Bakersfield because the City of Bakersfield and Kern County (unincorporated) long-range planning documents contain a sufficient amount of information to enable an analysis of cumulative effects for all subject areas evaluated in this EIR.

D-70 The Sierra Club comments that many sensitive and special status species have historically occurred in the Project vicinity and that the EIR should require pre-construction surveys, investigate whether the Project site contains foraging and/or nesting habitat for the Swainson's hawk, consider reintroducing native plant species, and address San Joaquin kit fox relocation. The DEIR analyzed biological resources based on a technical report prepared by McCormick Biological, Inc. titled "Biological Evaluations for VA Community-Based Outpatient Clinic, City of Bakersfield, Kern County, California," dated December 2022. The technical report documented biological resources identified during the literature review and reconnaissance-level survey that was conducted within the Project site to identify the potential for special-status resources to be present, identified potential impacts to those

resources due to the proposed Project, and recommended avoidance and minimization measures for implementation prior to and during Project activities. As discussed in DEIR Subsection 4.3, Biological Resources, on pages 4.3-7 and 4.3-8, the Project site contains suitable habitat for Crotch bumble bee, burrowing owl, San Joaquin kit fox, and American badger. With implementation of mitigation measures BIO MM-1 through BIO MM-7, provided on pages 4.3-12 through 4.3-17 of the DEIR, the Project's potential impacts to Crotch bumble bee, burrowing owl, SJKF, and American badger would be reduced to less than significant.

D-71 The Sierra Club comments that the DEIR should include a comprehensive traffic study, analyzing the Project's cumulative traffic impacts on Highway 99 and other area roads, and requests that the full trip be included when analyzing trip based VMT, even if it goes beyond a jurisdictional boundary. Analysis of Transportation, in DEIR Subsection 4.13, was based on technical report prepared by Ruettgers & Schuler Civil Engineers (R&S), entitled, "Traffic Study, VA Community-Based Outpatient Clinic, Knudsen Drive, Bakersfield, California," dated February 2023, and included as Technical Appendix I in the EIR. The detailed VMT analysis was conducted using the KernCOG travel demand model. As shown on page 4.12-4 of the DEIR, the Project VMT/employee of 12.0 is less than the countywide significance threshold of 14.56 VMT/employee. This analysis is highly conservative and overstates actual impacts because it does not "net out" the VMT that will be eliminated when the VA clinic's current location on Westwind Drive closes when the Project begins operations. Further, the proposed Project would actually reduce overall VMT in the area because the proposed VA community-based outpatient clinic is programmed to provide medical services not currently offered at the current location on Westwind Drive (in addition to replacing the same services offered at the existing facility), which will allow veterans to receive local care and eliminate long drives to other VA facilities in distant geographic areas to receive medical care. Therefore, the VMT associated with the Project was determined to have a less-than-significant impact.

COMMENT LETTER E

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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

June 30, 2023

Louis Ramirez
City of Bakersfield
1715 Chester Avenue
Bakersfield, California 93308

Subject: Veteran Affairs Medical Clinic (Project)
Draft Environmental Impact Report (DEIR)
SCH No. 2022080337

Dear Louis Ramirez:

The California Department of Fish and Wildlife (CDFW) received a DEIR from the City of Bakersfield 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. While the comment period may have ended, CDFW would appreciate if you would still consider our comments.

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

E-1

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

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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 may 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).

E-1 (CONT.)

PROJECT DESCRIPTION SUMMARY

Proponent: SASD Development Group, LLC

Objective: The Project entails a proposed Site Plan for the development of a 39,648 square foot medical outpatient facility. Other features include a covered drop-off, bicycle racks, a covered ambulatory pick-up area, an outdoor physical therapy area, an outdoor dining area, and an elevated loading dock. Landscaping is proposed along the perimeter of the site, around the building, and throughout the parking areas. In addition, a healing garden is proposed on the east side of the building, which would include a garden path and benches.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Bakersfield 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 CEQA document prepared for this Project.

There are special-status species that have been observed in the Project area and may be present at the Project Site. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes.

E-2

CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*) and the State threatened Swainson's hawk (*Buteo swainsoni*). In order to adequately assess any potential impact to biological resources, focused biological surveys should be conducted by a qualified biologist during the appropriate survey period(s) in order to determine whether any special-status species may be present within the Project area. Properly conducted biological surveys, and the

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information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys, and to identify any Project-related impacts under CESA and other species of concern.

E-2 (CONT.)

I. Environmental Setting and Related Impact

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service (USFWS)?

COMMENT 1: San Joaquin Kit Fox (SJKF)

BIO MM-4 states that pre-construction surveys for San Joaquin kit fox (SJKF) will be conducted by a "professional" biologist. According to the "Standardized Recommendations for Protection of the Endangered San Joaquin kit fox Prior to or During Ground Disturbance" all surveys and monitoring need to be performed by a qualified biologist (USFWS 2011). CDFW recommends changing the measure to prevent inadvertent take of the species.

BIO MM-5 states that "If California or Federal listed threatened or endangered species are found occupying burrows, dens, or nests on the Project site or any such species could be injured or killed due to Project related activities, the CDFW and/or USFWS (as appropriate) shall be contacted for further guidance." If an Incidental Take Permit (ITP) has not been acquired and SJKF are detected on the project site, all Project related activities must be stopped and CDFW must be notified in order to acquire an ITP pursuant to Fish and Game Code section 2081 subdivision (b) to prevent inadvertent take of species and prior to work at the Project Site resuming.

E-3

According to CNDDB there are multiple recorded instances of San Joaquin kit fox less than one mile from the Project site (CDFW 2023); there is a robust and well studied urban population of SJKF within the City of Bakersfield. Any ground-disturbing or Project related activities have the potential to impact SJKF. Loose friable soils created as a result of Project related activities could potentially attract SJKF after any pre-construction surveys have been completed. CDFW strongly recommends pursuing an ITP pursuant to Fish and Game Code section 2081 subdivision (b) to prevent inadvertent take of species in advance of any Project construction.

COMMENT 2: Swainson's Hawk (SWHA)

The DEIR does not specifically address Swainson's hawk (SWHA) in any of its measures. The City of Bakersfield is within the habitat range of SWHA and any trees within 0.5 mile of the Project site could be potential nest sites (CDFW 2023). BIO-MM-5 generally addresses nests of any threatened or endangered species, but these measures do not propose surveys that are adequate for detection of SWHA.

E-4

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CDFW recommends referencing our NOP comment letter sent October 18, 2022 regarding survey protocols for SWHA. If SWHA are detected during these surveys CDFW recommends pursuing an ITP prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b). E-4 (CONT.)

II. Editorial Comments and/or Suggestions

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the 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. E-5

FILING FEES

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

CDFW appreciates the opportunity to comment on the Project to assist the City of Bakersfield 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 Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, or by electronic mail at Jaime.Marquez@wildlife.ca.gov. E-6

Sincerely,

DocuSigned by:
Julie Vance
FA83F09FE08945A...

Julie A. Vance
Regional Manager

ec: See Page Five

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

Jaime Marquez
California Department of Fish and Wildlife

E-6
(CONT.)

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REFERENCES

California Department of Fish and Wildlife. 2023. Biogeographic Information and Observation System (BIOS). https://www.wildlife.ca.gov/Data/BIOS. Accessed June 13, 2023.

United States Fish and Wildlife Service. 2011. Standard Recommendations for the Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance. United States Fish and Wildlife Service. January 2011.

E-6
(CONT.)

RESPONSES TO COMMENT LETTER E:
California Department of Fish and Wildlife (CDFW)

E-1 CDFW provides introductory remarks, summarizes their role as a Trustee Agency for fish and wildlife resources and as a Responsible Agency under CEQA, informs the City of the CDFW's jurisdiction over nesting birds, and provides a brief Project summary. These general, factual comments are acknowledged.

E-2 CDFW comments that there are special status species that may be present on the Project site, including the San Joaquin kit fox and the State threatened Swainson's hawk, and that focused biological surveys should be conducted to determine if any special status species may be present within the Project area. All required biological survey work has been conducted, with the results presented in the DEIR and this FEIR. CDFW is referred to DEIR Subsection 4.3, *Biological Resources*, DEIR Technical Appendix C., *Biological Evaluation*, and FEIR Attachment H, *Biological Resources Response to Comments and Crotch's Bumble Bee Survey Results Letter.* Specific to San Joaquin kit fox and Swainson's hawk, the technical report prepared by McCormick Biological, Inc. titled "Biological Evaluations for VA Community-Based Outpatient Clinic, City of Bakersfield, Kern County, California," dated December 2022, and included as DEIR Technical Appendix C, documents the literature review and reconnaissance-level surveys that were conducted within the Project area to identify the potential for special-status resources to be present. DEIR Subsection 4.3 identifies potential impacts to biological resources due to the proposed Project, and sets forth avoidance and minimization mitigation measures for implementation prior to and during Project construction activities. As discussed in DEIR Subsection 4.3, the Project site contains suitable habitat for Crotch's bumble bee, burrowing owl, San Joaquin kit fox, and American badger. With implementation of mitigation measures BIO MM-1 through BIO MM-7, provided on pages 4.3-12 through 4.3-17 of the DEIR, the Project's potential impacts to these species would be reduced to less than significant. Pertaining to the potential presence of Swainson's hawk, refer to Technical Appendix C, page 25. As stated, there is marginal foraging habitat on the Project site and no suitable nesting habitat. In the unforeseen event that this species is nesting near the site, mandatory compliance with the Migratory Bird Treaty Act and adherence to mitigation measure BIO MM-2 would ensure that impacts from the Project are less than significant. BIO MM-2 has been expanded in the FEIR to address recommended survey protocol for Swainson's hawk. Given the large range of the species from the Sacramento Valley through Central and South America, the loss of foraging habitat on the Project site is less than significant.

> BIO MM-2 ….sensitivity of the nest areas. <u>Specific to Swainson's hawk, if the Project's vegetation clearing or initial ground-disturbance construction activity will commence during the migratory bird nesting season, the pre-construction nesting bird survey shall follow survey methodology developed by the species' SWHA Technical Advisory Committee (SWHA TAC 2000). If Swainson's hawk is nesting within one-half mile of the Project site, construction activities many not commence unless an ITP is obtained from the CDFW or 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.</u>

E-3 CDFW recommends that the text of BIO MM-4 be revised from stating "professional biologist" to "qualified biologist." Although this wording change was not made in the Final EIR, the City will ensure that the Project's conditions of approval clarify that the professional biologist must be qualified to conduct the survey work. CDFW also states that if an incidental take permit (ITP) has not been required and San Joaquin kit fox are detected on the Project site, all Project related activities must be stopped and CDFW contacted, and because there have been multiple records of the San Joaquin kit fox within one-mile of the Project site, CDFW recommends pursuing an ITP. CDFW is referred to mitigation measure BIO MM-5 for the detailed mitigation measure concerning the potential presence of San Joaquin kit fox. Also, CDFW's recommendation is already required under mitigation measure BIO MM-7, part p), which requires CDFW to be immediately notified if any suspected federally or State protected plant or animal species is found to be present during Project-related construction activities.

E-4 CDFW comments that the DEIR does not specifically address Swainson's hawk in any of the mitigation measures and suggests that protocol surveys be conducted. As indicated in Response to Comment E-3, BIO MM-2 has been expanded in the FEIR to address recommended pre-construction survey protocol for Swainson's hawk, even though qualified biologists at McCormick Biological, Inc. have determined that there is no reasonable possibility of the species to nest near the Project site. Qualified biologists from McCormick Biological, Inc. who are experienced with Swainson's hawk identification frequent the area within a two-mile radius of the Project site several times per week and have done so for several years. None of McCormick Biological, Inc's. staff have recorded any incidental sightings of Swainson's hawk in a two-mile radius of the Project site during any season and although individuals may pass through during migration, the qualified biologists have never observed any individuals. The office of McCormick Biological, Inc. is located approximately 2.0 miles from the Project site and as such, qualified biologists from McCormick Biological, Inc. have driven by the Project site every week for approximately the past 10 years (Randi McCormick, 2023).

E-5 CDFW requests the reporting of any special-status species and natural communities detected during Project surveys be reported to CNDDB. The comment is acknowledged and the Project's biologists at McCormick Biological, Inc. have been requested to submit the requested information.

E-6 CDFW provides information on filing fees associated with the posting of a CEQA Notice of Determination. The fees are acknowledged and will be paid as required.

F.3 ADDITIONS, CORRECTIONS, AND REVISIONS TO THE DEIR

Substantive changes made to the text, tables, and/or exhibits of the DEIR in response to public comments are itemized in Table F-2, *Errata Table of Additions, Corrections, and/or Revisions to the DEIR*. Additions are shown in Table F-2 as underline text and deletions shown as ~~stricken~~ text. Minor changes to the DEIR (e.g., corrections of non-substantive typographical errors) are not listed in Table F-2. No corrections or additions made to the DEIR are considered substantial new information requiring recirculation or additional environmental review under CEQA Guidelines Section 15088.5.

Table F-2 Errata Table of Additions, Corrections, and/or Revisions to the DEIR

Page(s)	Section(s)	Additions, Corrections, and/or Revisions to the DEIR
S-28; 4.7-22	*S.0, Executive Summary;* *4.7, Greenhouse Gas Emissions*	Based on comment from SJVAPCD, the following mitigation measure was added to the Final EIR: GHG-4 The building roof shall, upon the approval of a design modification by the U.S. Department of Veterans Affairs (VA), be outfitted with a solar photovoltaic system of the maximum size feasible to provide power to the building and given the constraints of applicable Building Code requirements, clearance requirements around roof-mounted equipment, PG&E interconnection regulations, and other code compliance requirements. Should the VA not approve a design modification to add a rooftop PV system, the building may be constructed and operated without a PV system.
S-8; 4.2-26	*S.0, Executive Summary;* *4.2, Air Quality*	Based on comment from SJVAPCD, the following regulatory requirement was added to the Final EIR: AIR-RR-2 The Project is required to be constructed and operated in compliance with all applicable SJVAPCD Rules, including but not limited to the following: a. SJVAPCD Rule 4601, *Architectural Coatings*, which limits VOC emissions from architectural coatings. b. SVAPCD Rule 4102, *Nuisance*, which prohibits the discharge of air contaminants and other materials which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such person or the public or which cause or have a natural tendency to cause injury or damage to business or property. c. SJVAPCD Rule 4641, *Cutback, Slow Cure and Emulsified Asphalt, Paving and Maintenance Operations*, which limits VOC emissions by restricting the application and manufacturing of certain types of asphalt for paving and maintenance operations.

Table F-2 Errata Table of Additions, Corrections, and/or Revisions to the DEIR

Page(s)	Section(s)	Additions, Corrections, and/or Revisions to the DEIR
3-3	*3.0, Project Description*	Based on comment from SJVAPCD, the following have been added to Table 3-1: • Approve Stationary Source Permits (if such permits are required). • Approve a Dust Control Plan
4.1-16	*4.1, Aesthetics*	The following change has been made to the Aesthetics section: • Screening of Storage Areas. The M-2 zone regulations require that any open storage areas be surrounded and screened by a wall or fence. A low masonry wall with green screen above is proposed around the loading dock and trash enclosure area on the southeast~~west~~ facing side of the building.
4.3-12	*4.3, Biological Resources*	Two mitigation measures have been revised to extend a timing requirement. BIO MM-1 Surveys to detect burrowing owls shall be conducted by a professional biologist in consultation with CDFW no more than 30 days prior to any ground disturbance activities on the Project site and can be conducted concurrently with the pre-activity surveys required per BIO MM-2, BIO MM-3 and BIO MM-4. Occupied burrows shall not be disturbed during the nesting season (February 1 through ~~August 31~~ September 15) unless a professional biologist verifies…. BIO MM-2 If vegetation clearing or initial ground-disturbing construction activity occurs during the migratory bird nesting season (February 1 to ~~August 31~~ September 15) a professional avian biologist shall conduct a nesting bird survey….
4.3-13	*4.3, Biological Resources*	A mitigation measure was expanded as recommended by the CDFW. BIO MM-2 ….sensitivity of the nest areas. Specific to Swainson's hawk, if the Project's vegetation clearing or initial ground-disturbance construction activity will commence during the migratory bird nesting season, the pre-construction nesting bird survey shall follow survey methodology developed by the species' SWHA Technical Advisory Committee (SWHA TAC 2000). If Swainson's hawk is nesting within one-half mile of the Project site, construction activities shall not commence unless an ITP is obtained from the CDFW or 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.
S-3; 3-5;	*S.0, Executive Summary;* *3.0, Project Description;*	The following addition has been made to the Project Objectives:

Table F-2 Errata Table of Additions, Corrections, and/or Revisions to the DEIR

Page(s)	Section(s)	Additions, Corrections, and/or Revisions to the DEIR
6-6 and 6-23	*6.0, Alternatives*	E. Develop a <u>modern, state of the art</u> VA medical clinic that is capable of providing a diverse range of consolidated outpatient services, such as audiology, mental health, telehealth, ambulatory care, an eye clinic, physical and occupational therapy, prosthetics, dental services, a lab and pharmacy, and ancillary and diagnostic services, avoiding the need for veterans to travel out of the Bakersfield area for these services.
6-5	*6.0, Alternatives*	The following addition has been made to the Alternatives Section: <u>Furthermore, even completely setting aside the federal bid selection process, no significant effects of the Project would be avoided or substantially lessened by putting the Project in another location. None of the Project's impacts – and in particular, its sole significant impact, GHG emissions – are due to where the Project is located, or would be reduced in a different location. Instead, the same Project located anywhere in the City would have *identical* GHG impacts to the proposed Project on the Project Site. Thus, on this independent basis, further consideration of an alternative site was not warranted. (*See,* CEQA Guidelines Section 15126.6(f)(2) ["Only locations that would avoid or substantially lessen any of the significant effects of the project need to be considered for inclusion in the EIR"]).</u>

F.4 NO RECIRCULATION OF DEIR REQUIRED

CEQA Guidelines Section 15088.5 describes the conditions under which a DEIR that was circulated for public review is required to be re-circulated for additional public review and comment. CEQA Guidelines Section 15088.5 states that new information added to a DEIR is not significant unless the DEIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation includes, for example, a disclosure showing that:

1. A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented;
2. A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance;
3. A feasible project alternative or mitigation measure considerably different from the others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it; and/or
4. The DEIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

Based on the comment letters received by the City of Bakersfield and the responses thereto (presented in Subsection F.2, above) and the minor revisions made to the DEIR (presented in SubsectionF.3, above), there

were no public comments or changes to the text or analysis presented in the DEIR that resulted in the identification of any new significant environmental effect or a substantial increase in the severity of an environmental effects that were disclosed in the DEIR. The minor revisions to the DEIR merely clarified and amplified information that was already disclosed in the DEIR. Additionally, the DEIR was fundamentally and basically adequate, and all conclusions within the DEIR were supported by evidence provided within the DEIR or the administrative record for the proposed Project. Furthermore, public comment letters on the DEIR did not identify any alternatives to the proposed Project considerably different from those analyzed in the DEIR that would substantially lessen the significant environmental impacts of the proposed Project while still attaining the Project's basic objectives. Based on the foregoing, recirculation of the DEIR is not warranted according to the guidance set forth in Section 15088.5 of the CEQA Guidelines.

Changed Pages of the Draft EIR

- South: West on E. Brundage Lane, continuing on Brundage Lane to the intersection of Brundage Lane and SR-99.

- West: The intersection of Gosford Road and White Lane, north to where Gosford Road becomes Coffee Road, north to Olive Drive.

B. Establish a new VA community-based outpatient medical clinic that has a minimum size of 30,100 net usable square feet, and meets the VA's physical design requirements.

C. Provide high quality patient care for veterans in a safe, advanced-care medical facility throughout the Bakersfield area and surrounding communities.

D. Enable veterans to receive health care at a medical facility that is easily accessible and nearby a State highway system to reduce out of area health trips.

E. Develop a modern, state of the art VA medical clinic that is capable of providing a diverse range of consolidated outpatient services, such as audiology, mental health, telehealth, ambulatory care, an eye clinic, physical and occupational therapy, prosthetics, dental services, a lab and pharmacy, and ancillary and diagnostic services, avoiding the need for veterans to travel out of the Bakersfield area for these services.

F. Create a comprehensively planned, advanced-care VA medical clinic that provides community vitality, economic growth, and employment opportunities in the City of Bakersfield.

G. Construct a VA medical clinic with maximum operational efficiency to optimize health care outcomes and create a space for increased patient and staff satisfaction.

S.4 AREAS OF CONTROVERSY AND ISSUES TO BE RESOLVED

Substantive issues raised in response to this EIR's NOP are summarized in Table 1-1 in Section 1.0, *Introduction*. Based on comments received in response to the NOP, concerns were raised regarding potential impacts to the environment pertaining to the topics of: Air Quality, Biological Resources, Cultural Resources, Tribal Cultural Resources, Greenhouse Gas Emissions, Hazards and Hazardous Materials, and Transportation. No other areas of concern or controversy related to environmental effects were identified pertaining to the proposed Project, beyond the comments summarized in Table 1-1. Based on the Project's background (refer to Subsection 1.3 in Section 1.0, *Introduction*), a controversial item associated with the Project expressed by the owner of the building at 1801 Westwind Drive (where the VA's outpatient clinic is currently located), is alternative site locations for the proposed Project.

THRESHOLD	MITIGATION MEASURES (MM) DESIGN FEATURES (DF) AND REGULATORY REQUIREMENTS (RR)	RESPONSIBLE PARTY	MONITORING PARTY	IMPLEMENTATION STAGE	LEVEL OF SIGNIFICANCE
	can be reduced by using less polluting construction equipment, which can be achieved by utilizing addon controls, cleaner fuels, or newer lower emitting equipment. b. Related to operational emissions, NO_X emissions shall be reduced by 33.3% of the project's operational baseline NO_X emissions over a period of ten years as quantified in the approved AIA. PM_{10} emissions shall be reduced by 50% of the project's operational baseline PM_{10} emissions over a period of ten years as quantified in the approved AIA. **AIR-RR-2**: The Project is required to be constructed and operated in compliance with all applicable SJVAPCD Rules, including but not limited to the following: a. SJVAPCD Rule 4601, *Architectural Coatings*, which limits VOC emissions from architectural coatings. b. SVAPCD Rule 4102, *Nuisance*, which prohibits the discharge of air contaminants and other materials which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such person or the public or which cause or have a natural tendency to cause injury or damage to business or property. c. SJVAPCD Rule 4641, *Cutback, Slow Cure and Emulsified Asphalt, Paving and Maintenance Operations*, which limits VOC emissions by restricting the application and manufacturing of certain types of asphalt for paving and maintenance operations.				

THRESHOLD	MITIGATION MEASURES (MM) DESIGN FEATURES (DF) AND REGULATORY REQUIREMENTS (RR)	RESPONSIBLE PARTY	MONITORING PARTY	IMPLEMENTATION STAGE	LEVEL OF SIGNIFICANCE
	list to the City's Development Services Director confirming that the equipment used is compliant.				
	GHG MM-2: Construction contractors shall assure that hand tools, forklifts, and pressure washers used for construction are electric-powered and shall designate an area of the construction site where electric-powered construction vehicles and equipment can charge. The City of Bakersfield shall verify the location of the designated charging area in association with grading and building permit issuance.	Construction contractors	City of Bakersfield or its designee	Prior to issuance of a grading permit and prior to issuance of a building permit, and during construction	
	GHG MM-3: Project construction contractors shall tune and maintain all construction equipment in accordance with the equipment manufacturer's recommended maintenance schedule and specifications. Maintenance records for all pieces of equipment shall be kept on-site for the duration of construction activities and shall be made available for periodic inspection by City of Bakersfield or its designee.	Construction contractors	City of Bakersfield or its designee	Prior to issuance of a grading permit and prior to issuance of a building permit, and during construction	
	GHG-4: The building roof shall, upon the approval of a design modification by the U.S. Department of Veterans Affairs (VA), be outfitted with a solar photovoltaic system of the maximum size feasible to provide power to the building and given the constraints of applicable Building Code requirements, clearance requirements around roof-mounted equipment, PG&E interconnection regulations, and other code compliance requirements. Should the VA not approve a design modification to add a rooftop PV system, the building may be constructed and operated without a PV system.				

3.2 SUMMARY OF REQUESTED APPROVAL ACTIONS

The City of Bakersfield has primary approval responsibility for the proposed Project. As such, the City of Bakersfield serves as the Lead Agency for this EIR pursuant to CEQA Guidelines Section 15050. The role of the Lead Agency was previously described in Section 1.0 of this EIR. As part of the approval process for the proposed Project, the City's Planning Commission will hold a public hearing to consider the Final EIR and proposed Site Plan Review No. 21-0399. The Planning Commission will make a decision to certify or reject the Final EIR with or without modifications. Should the Planning Commission's decision be appealed, the Final EIR would be considered by the City Council, to be certified or rejected. Following certification of the Final EIR, the City's Development Services Director will decide whether to approve Site Plan Review No. 21-0399.

Should these actions be approved, additional discretionary and ministerial actions by the City and other agencies would be required to implement the Project. Table 3-1, *Matrix of Project Approvals/Permits*, lists the authorities and agencies that are expected to use this EIR and provides a summary of subsequent actions associated with the Project. This EIR covers all federal, State, and local government and quasi-governmental approvals which may be needed to construct and implement the Project, whether or not they are explicitly listed in Table 3-1 or elsewhere in this EIR (CEQA Guidelines § 15124(d)).

Table 3-1 Matrix of Project Approvals/Permits

Agency	Approvals and Decisions
City of Bakersfield Discretionary Approvals	
Planning Commission	• Certify or reject the Project's EIR.
Development Services Director	• Approve, conditionally approve, or not approve Site Plan Review No. 21-0399.
Subsequent City of Bakersfield Approvals	
Development Services Director	• Approve, conditionally approve, or not approve any subsequent Site Plan Reviews or modifications thereto pertaining to the Project site.
Development Services Department and Public Works Department	• Issue grading permits. • Issue building permits. • Accept public right-of-way dedications. • Approve road improvement plans. • Issue encroachment permits.
Other Agencies – Subsequent Approvals and Permits	
U.S. Department of Veterans Affairs	• Approve facility operations.
Central Valley Regional Water Quality Control Board	• Issue a Construction Activity General Construction Permit. • Confirm Compliance with National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements.
San Joaquin Valley Air Pollution Control District	• Approve permits to construct and permit to operate (if such permits are required). • Approve Stationary Source Permits (if such permits are required). • Approve a Dust Control Plan

D. Enable veterans to receive health care at a medical facility that is easily accessible and nearby a State highway system to reduce out of area health trips.

E. Develop a modern, state of the art VA medical clinic that is capable of providing a diverse range of consolidated outpatient services, such as audiology, mental health, telehealth, ambulatory care, an eye clinic, physical and occupational therapy, prosthetics, dental services, a lab and pharmacy, and ancillary and diagnostic services, avoiding the need for veterans to travel out of the Bakersfield area for these services.

F. Create a comprehensively planned, advanced-care VA medical clinic that provides community vitality, economic growth, and employment opportunities in the City of Bakersfield.

G. Construct a VA medical clinic with maximum operational efficiency to optimize health care outcomes and create a space for increased patient and staff satisfaction.

3.5 DESCRIPTION OF PROJECT CHARACTERISTICS

The Project Applicant proposes to develop 10.05 gross acres located at 5512 Knudsen Drive, approximately 0.15-mile west of State Route 99 (SR-99) and 250 feet southeast of the intersection of Olive Drive and Knudsen Drive with a community-based outpatient medical clinic for lease by the VA. The proposed clinic would be a single-story facility that would provide primary and specialty care clinical services. Services would include audiology, mental health, telehealth, ambulatory care, an eye clinic, physical and occupational therapy, prosthetics, dental services, a lab and pharmacy, and ancillary and diagnostic services. The proposed gross building floor area is 39,648 s.f. with a net usable area of 30,100 s.f. The building is designed to feature a covered drop-off, bicycle racks, a covered ambulatory pick-up area, an outdoor physical therapy area, an outdoor dining area, and an elevated loading dock. The structure would have a maximum height of 31 feet. The building is designed in a contemporary style and would be painted shades of white, gray and blue. Sloped high roofs and glass curtain walls would be featured at the main entrance.

The proposed Site Plan Review No. 21-0399 application submitted to the City of Bakersfield to entitle the Project for development is described below. An illustration of the proposed, resulting development concept is provided in Figure 3-1, *Overall Conceptual Site Plan.* The principal approval action requested of the City of Bakersfield to implement the Project includes a Site Plan Review for the VA community-based outpatient medical clinic, as described herein. Additional discretionary and administrative actions that would be necessary to implement the Project are listed in Table 3-1. A full set of Project application materials are on file with the City of Bakersfield, Development Services Department, 1715 Chester Avenue, 2nd Floor, Bakersfield, CA 93301.

3.5.1 SITE PLAN REVIEW NO. 21-0399

Pursuant to Bakersfield Municipal Code §17.08.060, the approval of a Site Plan is required for uses in the M-2 zone. Site Plan Review No. 21-0399 is a proposed site plan for the development of a VA community-based medical outpatient clinic on the 10.05-acre Project site with a M-2 zoning classification. Refer to Figure 3-1.

proposed along the perimeter of the Project site. A mix of shade trees, palm trees, small evergreen trees, screen trees, shrubs, and groundcover would be planted along the perimeter. Shade trees, accent trees, shrubs, and groundcover would be planted in the parking areas. Landscaping, featuring shade trees, small evergreen trees, accent trees, shrubs, perennials, groundcover, and irrigated turf, would also occur at the building entries and around the perimeter of the building. A healing garden is proposed on the northeast side of the building which would include garden paths, benches, screen trees, shade trees, accent trees, shrubs, groundcover, and irrigated turf.

- Screening of Storage Areas. The M-2 zone regulations require that any open storage areas be surrounded and screened by a wall or fence. A low masonry wall with green screen above is proposed around the loading dock and trash enclosure area on the southeast~~west~~ facing side of the building.

- Screening of Rooftop Equipment. The M-2 zone regulations require that any rooftop areas of structures adjacent to properties zoned or designated for residential development be completely screened from view by parapets or other finished architectural features. Although the Project is not adjacent to properties zoned or designated for residential development, property zoned for residential development is located to the southwest of the Project site, at the corner of Basilicata Drive and Knudsen Drive. As such, and according to the Site Plan Review's proposed architectural elevations, parapets are proposed along the western side of the building's roofline to provide visual screening of rooftop equipment.

4. Metropolitan Bakersfield General Plan (MBGP) Land Use Element

The MBGP Land Use Element goals and policies focus on establishing a built environment that achieves a compatible functional and visual relationship among individual building and sites, encourages high-quality design and landscaping, and minimizes light pollution. Refer to the discussion above regarding Project design, landscaping, and lighting. Streetscape landscaping also is discussed below under Item 6, and light and glare also is discussed below under Threshold (d).

5. Metropolitan Bakersfield General Plan (MBGP) Circulation Element

The MBGP Circulation Element discuses providing and maintaining landscaping on both sides and in the median of arterial streets and on both sides of collector streets. The Project site is located west of SR-99 and Landco Drive, south of Olive Drive, east of Knudsen Drive, north of Hageman Road, and north of proposed Street 'A'. The developer of the Project would install landscaping along the entire perimeter of the Project site during construction of the Project including along the street frontages with Knudsen Drive, Landco Drive, and proposed Street A.

As part of construction of the Project, Landco Drive would be extended along the east side of the Project Site and Street A would be constructed along the south side of the Project site to connect Knudsen Drive and Landco Drive. On Knudsen Drive to the west, a left turn lane would be added to southbound Knudsen Drive to eastbound Street A, an additional northbound thru lane would be added, and a deceleration/acceleration lane for vehicles making a right turn in or right turn out of the main Project site entrance. The northbound deceleration/acceleration lane would merge into the northbound thru lane at the north end of the Project site. These proposed improvements are consistent with the MBGP Circulation Element.

AIR -RR-1 In compliance with SJVAPCD Rule 9510 (Indirect Source Review (ISR)), the Project Applicant or its successor in interest shall submit an Air Impact Assessment (AIA) application to the SJVAPCD, which will identify emission reduction measures for emissions of NO_X and PM_{10}. The performance measures listed below can be met through any combination of on-site emission reduction measures or off-site fees.

a) Related to construction-related emissions, the exhaust emissions for construction equipment greater than fifty (50) horsepower used or associated with the project shall be reduced by the following amounts from the statewide average as estimated by the ARB: 20% of the total NO_X emissions, and 45% of the total PM_{10} exhausts emissions. Construction emissions can be reduced by using less polluting construction equipment, which can be achieved by utilizing addon controls, cleaner fuels, or newer lower emitting equipment.

b) Related to operational emissions, NO_X emissions shall be reduced by 33.3% of the project's operational baseline NO_X emissions over a period of ten years as quantified in the approved AIA. PM_{10} emissions shall be reduced by 50% of the project's operational baseline PM_{10} emissions over a period of ten years as quantified in the approved AIA.

AIR-RR-2: The Project is required to be constructed and operated in compliance with all applicable SJVAPCD Rules, including but not limited to the following:

a) SJVAPCD Rule 4601, *Architectural Coatings*, which limits VOC emissions from architectural coatings.

b) SVAPCD Rule 4102, *Nuisance*, which prohibits the discharge of air contaminants and other materials which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such person or the public or which cause or have a natural tendency to cause injury or damage to business or property.

c) SJVAPCD Rule 4641, *Cutback, Slow Cure and Emulsified Asphalt, Paving and Maintenance Operations*, which limits VOC emissions by restricting the application and manufacturing of certain types of asphalt for paving and maintenance operations.

Threshold d: No Impact. There is no potential for the Project to interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites because the Project site does not function as part of a wildlife movement corridor.

Threshold e: No Impact. There is no potential for the Project to conflict with any local policies or ordinance protecting biological resources because no such policies or ordinances are in place that have applicability to the Project site.

Threshold f: No impact. The Project would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan because not such plans are in place that have applicability to the Project site.

4.3.7 MITIGATION

BIO MM-1 Surveys to detect burrowing owls shall be conducted by a professional biologist in consultation with CDFW no more than 30 days prior to any ground disturbance activities on the Project site and can be conducted concurrently with the pre-activity surveys required per BIO MM-2, BIO MM-3 and BIO MM-4. Occupied burrows shall not be disturbed during the nesting season (February 1 through ~~August 31~~ September 15) unless a professional biologist 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. If burrowing owls are observed using burrows during the surveys, owls shall be excluded from all active burrows through the use of exclusion devices placed in occupied burrows in accordance with CDFW protocols, *Staff Report on Burrowing Owl Mitigation*, shall be implemented. In such case, exclusion devices shall not be placed until the young have fledged and are no longer dependent upon the burrow, as determined by a professional biologist. Specifically, exclusion devices, utilizing one-way doors, shall be installed in the entrance of all active burrows. The devices shall be left in the burrows for at least 48 hours to ensure that all owls have been excluded from the burrows. Each of the burrows shall then be excavated by hand and refilled to prevent reoccupation. Exclusion shall continue until the owls have been successfully excluded from the site, as determined by a professional biologist.

BIO MM-2 If vegetation clearing or initial ground-disturbing construction activity occurs during the migratory bird nesting season (February 1 to ~~August 31~~ September 15) a professional avian biologist shall conduct a nesting bird survey to identify any active nests present within the proposed work area. If active nests are found, initial ground disturbance shall be postponed or halted within a buffer area, established by the professional avian biologist, that is suitable to the particular bird species and location of the nest, until juveniles have fledged or the nest has been abandoned, as determined by the biologist. The construction avoidance area shall be

construction personnel shall be instructed on the sensitivity of nest areas. Specific to Swainson's hawk, if the Project's vegetation clearing or initial ground-disturbance construction activity will commence during the migratory bird nesting season, the pre-construction nesting bird survey shall follow survey methodology developed by the species' SWHA Technical Advisory Committee (SWHA TAC 2000). If Swainson's hawk is nesting within one-half mile of the Project site, construction activities shall not commence unless an ITP is obtained from the CDFW or 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.

BIO MM-3 Prior to vegetation clearing or initial ground-disturbing construction activities, a professional biologist shall conduct a survey to determine the presence of suitable foraging, nesting, or over-wintering habitat for the Crotch bumblebee (CBB) within or immediately adjacent to the work limits. If suitable habitat is present, at least 2 visual surveys shall be conducted by a professional biologist between April 1 and May 30 to detect CBB on or within 100 feet of the work limits prior to vegetation removal/initial ground disturbance. The surveys shall target the peak flowering period of CBB preferred nectar plants and shall be conducted by a professional biologist who is familiar with CBB behavior and life history to determine presence/absence of CBB within one year of vegetation removal/initial ground disturbance. CBB individuals shall only be handled for identification if appropriate authorizations are issued. Surveys shall be conducted under suitable conditions for observation of bumble bees. Methods shall be in accordance agency protocols if issued. If no agency protocols have been issued at the time of the surveys, the following survey parameters will be applied: the professional biologist will walk slow (≤2 mph) meandering transects covering all portions suitable habitat within and immediately adjacent to the work limits containing suitable habitat; surveys will be conducted no earlier than 2 hours after sunrise and 3 hours before sunset, on mostly sunny days with temperature between 65° and 90°F; surveys will not be conducted on cloudy days (≥90% cloud cover) or under wet or windy conditions (≥8 mph). Surveyors will search for bumble bees in flight and potential nest sites.

All potential CBB nests found in small mammal burrows, under thatched grasses, brush piles or other suitable ground locations shall be further examined based on observations of entering or exiting CBB. Observations of potential CBB nest sites shall be conducted for no less than 15 minutes per location where CBB are possibly entering/exiting, or a longer period as determined by the professional biologist. If no CBB or their nests are detected, no further measures will be necessary provided that vegetation removal/initial ground disturbance occurs prior to March 1 of the year following the negative survey. If vegetation/initial ground disturbance does not occur before March 1 of the year following the negative survey, the survey shall be repeated following the above procedure. If CBB is found to be present, BIO MM-5 shall apply.

BIO MM-4 No more than 30 days prior to vegetation clearing or initial ground-disturbing construction activities, pre-construction surveys for San Joaquin kit fox and American badger shall be conducted by a professional biologist. The purpose of the preconstruction survey is to provide

GHG MM-4 The building roof shall, upon the approval of a design modification by the U.S. Department of Veterans Affairs (VA), be outfitted with a solar photovoltaic system of the maximum size feasible to provide power to the building and given the constraints of applicable Building Code requirements, clearance requirements around roof-mounted equipment, PG&E interconnection regulations, and other code compliance requirements. Should the VA not approve a design modification to add a rooftop PV system, the building may be constructed and operated without a PV system.

4.7.8 Design Features and Regulatory Requirements

The City of Bakersfield is required to assure that implementing development complies with the assumptions relied upon herein and applicable regulatory requirements pertaining to the topic of Greenhouse Gas Emissions, which include the following:

GHG RR-4 The building shall be constructed in compliance with Title 24 of the Uniform Building Code to minimize total consumption of energy. The City of Bakersfield shall confirm Title 24 compliance prior to the issuance of building permits.

4.7.9 Significance of Impacts After Mitigation

Threshold a: Significant and Unavoidable Cumulatively-Considerable Impact. Although the Project's GHG emissions would only be a very small fraction of the global GHG emissions that contribute to climate change, the City is using a net-zero threshold. Because the Project would result in a net increase in GHG emissions as compared to existing conditions even with implementation of mitigation measures, the Project's impacts due to GHG emissions would be significant and unavoidable on a cumulatively-considerable basis. After detailed analysis of all possibilities, it has been determined that no other feasible mitigation measures that could further reduce the Project's GHG emissions exist, for several reasons. First, physical modifications to the Project are not possible because the Project applicant is limited to the design improvements approved by the federal government as part of the already concluded federal procurement process. As a result, the City has no jurisdiction or ability to require adding improvements such as rooftop solar panels, as it would conflict with the Project approved by the VA / federal government. It should be noted, however, that the federal requirements do include, and the Project will incorporate, various "green" features that will reduce the Project's GHG emissions, although to be as conservative as possible, those reductions have not been specifically quantified as part of this EIR. Second, while carbon/GHG credits or offsets existing on certain marketplaces for purchase, recent Court of Appeal decisions have cast considerable doubt on the use of such offsets to mitigate GHG impacts from land use development projects. In light of such uncertainty, the City finds that carbon offsets are not a feasible method for mitigating the Project's GHG emissions.

PBV protested the VA's determination in several iterations administratively, and in the United States Court of Federal Claims, Case No. 20-1050C. All appeals and challenges were denied, as detailed in the January 7, 2021 decision by the Court of Federal Claims.

It is beyond the jurisdictional scope and authority of the City of Bakersfield as the CEQA lead agency to evaluate other sites that have not been offered to or selected by the VA, particularly those that have been rejected after a long and thorough federal administrative and legal process, specifically including remodeling and rebuilding a clinic on the existing site at 1801 Westwind Drive. As such, no alternative sites are feasible because the VA has already selected the Project site for the Project, and an alternative sites analysis is thus not required in this EIR.

Furthermore, even completely setting aside the federal bid selection process, no significant effects of the Project would be avoided or substantially lessened by putting the Project in another location. None of the Project's impacts – and in particular, its sole significant impact, GHG emissions – are due to where the Project is located, or would be reduced in a different location. Instead, the same Project located anywhere in the City would have *identical* GHG impacts to the proposed Project on the Project Site. Thus, on this independent basis, further consideration of an alternative site was not warranted. (*See,* CEQA Guidelines Section 15126.6(f)(2) ["Only locations that would avoid or substantially lessen any of the significant effects of the project need to be considered for inclusion in the EIR"]).

6.3 ALTERNATIVE ANALYSIS

The discussion on the following pages compares the environmental impacts expected from each alternative considered by the Lead Agency relative to the impacts of the Project. A conclusion is provided for each topic as to whether the alternative results in one of the following: (1) reduction of elimination of the Project's impact, (2) a greater impact than would occur under the Project, (3) the same impact as the Project, or (4) a new impact in addition to the Project's impacts. Table 6-1 at the end of this section compares the impacts of the alternatives against those of the Project and identifies the ability of the alternative to meet the basic objectives of the Project. As previously listed in EIR Section 3.0, the Project's basic objectives are:

A. Establish a new VA community-based outpatient medical clinic in Bakersfield on a site that has been vetted by and selected by the U.S. Government within the following delineated area:

- North: East on Olive Drive, southeast on Roberts Lane, southeast on Manor Street and then northeast on Panorama Drive to Fairfax Road.
- East: South on Fairfax Road to E. Brundage Lane
- South: West on E. Brundage Lane, continuing on Brundage Lane to the intersection of Brundage Lane and SR-99.
- West: The intersection of Gosford Road and White Lane, north to where Gosford Road becomes Coffee Road, north to Olive Drive.

B. Establish a new VA community-based outpatient medical clinic that has a minimum size of 30,100 net usable square feet and meets the VA's physical design requirements.

C. Provide high quality patient care for veterans in a safe, advanced-care medical facility throughout the Bakersfield area and surrounding communities.

D. Enable veterans to receive health care at a medical facility that is easily accessible and nearby a State highway system to reduce out of area health trips.

E. Develop a modern, state of the art VA medical clinic that is capable of providing a diverse range of consolidated outpatient services, such as audiology, mental health, telehealth, ambulatory care, an eye clinic, physical and occupational therapy, prosthetics, dental services, a lab and pharmacy, and ancillary and diagnostic services, avoiding the need for veterans to travel out of the Bakersfield area for these services.

F. Create a comprehensively planned, advanced-care VA medical clinic that provides community vitality, economic growth, and employment opportunities in the City of Bakersfield.

G. Construct a VA medical clinic with maximum operational efficiency to optimize health care outcomes and create a space for increased patient and staff satisfaction.

6.3.1 No Project Alternative

The No Project Alternative considers a scenario in which the proposed Project does not proceed. In this circumstance, the VA clinic would continue to operate in its existing location at 1801 Westwind Drive and the Project site would remain undeveloped.

A. Aesthetics

Under the No Project Alternative, the visual character and quality of the Project site would be maintained in its existing condition. No structure, landscaping or lighting would be introduced on the Project site. The Project site does not contain any unique aesthetic resources, nor does it serve as a prominent scenic vista. As such, impacts on scenic vistas would be less than significant under both the Project and the No Project Alternative, although impacts would be reduced under the No Project Alternative because no new structures that could interfere with distant views of visual resources would be constructed on the site under the No Project Alternative. There are no designated or eligible State scenic highways within the Project site's immediate vicinity; thus, neither the Project nor the No Project Alternative would substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a State scenic highway, and the level of impact would be similar. Because no new development is proposed on site as part of the No Project Alternative, the No Project Alternative would have no potential to conflict with applicable zoning and other regulations governing scenic quality. Impacts due to a conflict with zoning or other regulations would not occur under either the Project or the No Project Alternative, and the level of impact would be similar. Additionally, because no new development would occur on site, the No Project Alternative would not result

• West: The intersection of Gosford Road and White Lane, north to where Gosford Road becomes Coffee Road, north to Olive Drive.			
Objective B: Establish a new VA community-based outpatient medical clinic that has a minimum size of 30,100 net usable square feet and meets the VA's physical design requirements.	No	No	No
Objective C: Provide high quality patient care for veterans in a safe, advanced-care medical facility throughout the Bakersfield area and surrounding communities.	No	Yes	Yes
Objective D: Enable veterans to receive health care at a medical facility that is easily accessible and nearby a State highway system to reduce out of area health trips.	No	Yes	Yes
Objective E: Develop a modern, state of the art VA medical clinic that is capable of providing a diverse range of consolidated outpatient services, such as audiology, mental health, telehealth, ambulatory care, an eye clinic, physical and occupational therapy, prosthetics, dental services, a lab and pharmacy, and ancillary and diagnostic services, avoiding the need for veterans to travel out of the Bakersfield area for these services.	No	No	Yes
Objective F: Create a comprehensively planned, advanced-care VA medical clinic that provides community vitality, economic growth, and employment opportunities in the City of Bakersfield.	No	Yes	Yes
Objective G: Construct a VA medical clinic with maximum operational efficiency to optimize health care outcomes and create a space for increased patient and staff satisfaction.	No	No	Yes

Reference Material Supporting the FEIR

Attachment A:
Excerpts from the Government Solicitation for the VA Clinic

and penetrations with architectural, mechanical, plumbing, and electrical work. Indicate major mechanical, electrical, and other special equipment items; and show chases or shafts. Show framing and support required at those locations. Show locations and sizes of lateral force resisting elements.

Submit final design narrative including basis for selection of proposed structural system. Submit calculations for gravity and lateral design.

Submit draft specifications for structural materials.

C. Architectural

Submit completed design development floor plans (minimum 1/8-inch scale) for each floor showing all rooms, room names, room numbers, door locations and swings, smoke and fire rated partitions, and fire extinguisher cabinets. Label departments or services. Show all rooms and chases for mechanical, electrical, and low-voltage (communications) equipment. Show wall thickness and chase walls. Show plumbing fixtures and equipment occupying floor space. Indicate handrails and corner guards. Show column grid with columns indicated.

Submit completed equipment plans, elevations (minimum ¼-inch scale), and schedules. List any changes or deviations from Schedule B for review and approval by the Contracting Officer or designee. Any item addressed in SFO but not noted on Schedules B, C, and F shall be considered shell cost items. A/E shall provide equipment planner to coordinate all design issues related to both Contractor-furnished and VA-furnished equipment.

Submit completed design development roof plan, exterior elevations, building and wall sections, and key details. Submit room finish, door, and window schedules. Submit general notes, symbol legends, and abbreviations.

Submit final design narrative.

Submit draft specification sections.

D. Interior Design

Submit interior design narrative. Discuss information gathered during interior design programming with the VAMC project coordinator and interior designer including, but not limited to the following: interior and exterior design and materials, light, safety, patient profile, customer's "vision" or desired image, public vs. private spaces, signage, regional influences, etc.

Present the preliminary design solution for the primary areas of the project. Use broad categories of materials, finishes, color palettes, patterns, textures, and scales. Include primary and secondary corridors, lobbies, waiting rooms, offices, exam and treatment rooms, and toilet rooms. Discuss the relationship among departments and functions, and between public and private spaces.

E. Sustainable Design & Energy Efficiency

Submit narrative addressing how the design will meet Federal Mandates for sustainability and energy efficiency. Submit refined ASHRAE 90.1-2013 base-case energy model and as-designed energy model, including all assumptions used, targeting compliance with the 30%

energy reduction goal, or exceeding the goal. Submit refined water use analysis and daylighting calculations. Submit preliminary commissioning specifications.

F. Fire Protection/Life Safety

Submit completed fire protection narrative. Indicate NFPA 220 and UBC fire resistive rating of the building, NFPA 101 occupancy type, and fire protection code analysis to assess compliance with NFPA 101. Provide information to meet JCAHO requirements, e.g., location of all fire rated barriers, smoke barriers, exit signs, fire extinguishers, manual pull stations, smoke detectors, and sprinkler flow switches.

Submit completed design development fire protection plans/drawings illustrating: sprinkler zones, fire alarm zones, smoke zones, building water supply, sprinkler/standpipe riser supply piping, termination of sprinkler main and inspector test drains, sprinkler alarm valves, waterflow and tamper switches, sprinkler system fire department connections, sprinkler design hazards per NFPA 13, exit signs and emergency lighting, fire sprinklers, fire hydrants, fire pumps, post indicator valves, sectional valves, fire extinguisher cabinets, electromagnetic door hold open devices, wall sections indicating fire resistive ratings, and evacuation plan signage.

Submit draft specifications for fire alarm and suppression systems.

G. Mechanical

Submit completed design narrative and calculations for HVAC systems. Include room-by-room, peak zone-by-zone, and building block heating and cooling loads. Discuss selection of HVAC equipment and provide catalog cuts of equipment. Provide room-by-room heating and cooling loads, zone–by-zone heating and cooling loads; and building block heating and cooling loads. Include Psychometric chart for air handling unit, coil entering and leaving conditions, fan motor heat gains, consumption of humidification loads, sound/acoustic analysis. Provide room-by-room air balance charts. Show supply, return, exhaust, make-up, and transfer quantities with intended pressure relationships, i.e., positive, negative, or zero with respect to adjoining spaces.

Submit completed design development drawings indicating: main supply, return and exhaust ductwork, volume dampers, fire and smoke partitions, fire and smoke dampers, smoke detectors, automatic control dampers, air quantities for each room, air inlets/outlets, rises and drops in ductwork, and interconnection of HVAC equipment with fire protection equipment (see fire protection). Provide plan and section of mechanical equipment rooms and building corridors (show routing of main ductwork, plumbing, fire protection, major conduit or cable tray runs). Provide schematic flow and riser diagrams, schematic control diagrams, and equipment schedules. Indicate required seismic bracing. Provide legends, symbols, and abbreviations.

Submit draft specifications for mechanical systems and equipment.

H. Plumbing

Submit completed design narrative addressing plumbing systems including supply, waste, and medical or laboratory gas systems. Submit calculations for piping systems and equipment.

Submit completed design development drawing. In addition to the requirements of the first design development submittal, show the following: size of pipe, equipment schedule, fire and smoke partitions, riser diagrams, legend, notes, and details; location and size of sprinkler riser,

project. Securely adhere all samples with a strong adhesive and/or double sided foam tape. Place exterior materials on a separate board. Assign a color and material code to all samples.

Sample Boards

Use mat board, foam core or any other suitable lightweight material. Board size should not exceed 30" x 40". Use a white board. Backer boards of other colors may be used for bordering. Do not use frames.

Signage and Wayfinding

Submit drawing(s), specifications, and narrative to illustrate the wayfinding concept and signage systems proposed for the project. Include all graphics and signage that are to be provided as part of the solicitation.

E. Sustainable Design and Energy Efficiency

Where proposed Credits will not achieve all federally-mandated strategies for sustainability and energy efficiency, submit documentation showing compliance with federally-mandated strategies. Submit final ASHRAE 90.1-2013 base-case energy model and as-designed energy model based on the Construction Documents, including all assumptions used, demonstrating compliance with the 30% energy reduction goal. Submit final models for all other systems. Submit final commissioning specifications.

F. Fire Protection/Life Safety

Submit 75% complete fire protection drawings. In addition to the drawing requirements of the Second Design Development submission, include the following:

Door and window schedule indicating fire rating and whether fire rated glazing will be provided;

Height and configuration of storage racks and shelving in relation to fire sprinkler heads;

Reference note to HVAC drawings that indicates interconnection of HVAC system components (dampers, fans) with duct smoke detectors and/or fire alarm system;

When fire pump is required, submit details of the fire pump system, including elevation and isometric detail of fire pump, and interconnection of the fire pump system to the fire alarm system;

Show zoning of each fire alarm initiating device, single line riser diagram for the fire alarm system, and detail of annunciator panel;

Interconnection of kitchen fire extinguishing system to the fire alarm system;

Provide final calculations.

Submit fire protection specifications.

G. Mechanical

Provide complete and final engineering calculations of all systems. In addition to specifications, provide complete selection data, including catalog cuts and calculations, for all HVAC equipment and drawings showing all equipment schedules. Complete the coordination requirements with

and passive HVAC equipment and controls, plumbing systems, lighting and daylighting controls, domestic hot water systems, and onsite renewable energy systems.

Plumbing systems shall also be integrated into the commissioning plan. The commissioning plan shall define pressure test procedures for all pipe systems, shower or bathroom basin leakage tests, plumbing fixture carrier installation, plumbing fixture flow rate adjustment, system chlorination and flush, *Legionella* disinfection, booster pump package, backflow prevention devices tested by a third party and reports included in the final commissioning report, thermostatic mixing valves, vacuum system, medical air system, oral evacuation system, dental compressed air system, natural gas and fuel system, and special water systems.

B. Optimize Energy Performance

Energy Efficiency

Establish a whole building performance target that takes into account the intended use, occupancy, operations, plug loads, other energy demands, and design to earn the Energy Star® targets for new construction and major renovation where applicable. For new construction, reduce the energy use by 30% compared to the baseline building performance rating per the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., (ASHRAE) and the Illuminating Engineering Society of North America (IESNA) Standard 90.1-2013, Energy Standard for Buildings Except Low-Rise Residential. If available, use Energy Star and FEMP-designated Energy Efficient Products.

Per the Energy Independence and Security Act (EISA) Section 523, meet at least 30% of the hot water demand through the installation of solar hot water heaters, when life-cycle cost-effective.

Measurement and Verification

Per the Energy Policy Act of 2005 (EPAct) Section 103, install building level utility meters in new major construction and renovation projects to track and continuously optimize performance. Per EISA Section 434, include meters for natural gas and steam, where appropriate.

Compare actual performance data from the first year of operation with the energy design target. After one year of occupancy, measure all new major installations using the Energy Star® Portfolio Manager for building and space types covered by Energy Star®.

Annually provide data to VA.

C. Protect and Conserve Water

Indoor Water

Employ strategies that in aggregate use a minimum of 20% less potable water than the indoor water use baseline calculated for the building, after meeting the EPAct 1992, Uniform Plumbing Codes 2006, and the International Plumbing Codes 2006 fixture performance requirements. The installation of water meters is encouraged to allow for the management of water use during occupancy.

Outdoor Water

Use water efficient landscape and irrigation strategies, including water reuse and recycling, to reduce outdoor potable water consumption by a minimum of 50% over that consumed by

10% (based on cost) of the total value of the materials in the project. If EPA-designated products meet performance requirements and are available at a reasonable cost, a preference for purchasing them should be included in all solicitations relevant to construction, operation, maintenance of, or use in the building.

Biobased Content

For USDA-designated products, use products meeting or exceeding USDA's biobased content recommendations. For other products, use biobased products made from rapidly renewable resources and certified sustainable wood products. If these designated products meet performance requirements and are available at a reasonable cost, a preference for purchasing them should be included in all solicitations relevant to construction, operation, maintenance of, or use in the building.

Environmentally Preferable Products

Use products, such as low-emitting materials or products containing no toxic metals, that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose.

Construction Waste and Materials Management

During a project's planning stage, identify local recycling and salvage operations that could process site-related construction and demolition materials. Program the design to recycle or salvage at least 50% of the non-hazardous construction, demolition, and land clearing materials, excluding soil, where markets or onsite recycling opportunities exist. Provide salvage, reuse, and recycling services for waste generated from major renovations, where markets or onsite recycling opportunities exist.

Ozone Depleting Compounds

Eliminate the use of ozone depleting compounds during and after construction where alternative environmentally preferable products are available, consistent with either the Montreal Protocol and Title VI of the Clean Air Act Amendments of 1990, or equivalent overall air quality benefits that take into account life-cycle impacts.

4.8 ENERGY INDEPENDENCE AND SECURITY ACT (OCT 2016)

A. The Energy Independence and Security Act (EISA) establishes requirements for Government leases relating to energy efficiency standards and potential cost effective energy efficiency and conservation improvements.

B. Unless one of the statutory exceptions listed in sub-paragraph C below applies, GSA may award a lease for a Building only if the Building has earned the ENERGY STAR® label conferred by the U.S. Environmental Protection Agency (EPA) within the most recent year prior to the due date for final proposal revisions. The term “most recent year” means that the date of award of the ENERGY STAR® label by EPA must not be more than 1 year prior to the due date of final proposal revisions. For example, an ENERGY STAR® label awarded by EPA on October 1, 2010, is valid for all lease procurements where final proposal revisions are due on or before September 30, 2011. In lieu of the above, all new Buildings being specifically constructed for the Government must achieve an ENERGY STAR® label within 18 months after occupancy by the Government. In addition, Offerors of the following Buildings shall also have up to 18 months after occupancy by the Government, or as soon thereafter as the Building is eligible for Energy Star® consideration, to achieve an Energy Star® label: 1) All existing Buildings that have had an Energy Star®

label but are unable to obtain a label in the most recent year (i.e., within 12 months prior to the due date for final proposal revisions) because of insufficient occupancy; 2) Newly built Buildings that have used Energy® Star's Target Finder tool and either achieved a "Designed to Earn the Energy Star®" certification or received an unofficial score (in strict adherence to Target Finder's usage instructions, including the use of required energy modeling) of 75 or higher prior to the due date for final proposal revisions and who are unable to obtain a label in the most recent year because of insufficient occupancy; 3) An existing Building that is unable to obtain a label because of insufficient occupancy but that can produce an indication, through the use of energy modeling or past utility and occupancy data input into Energy Star's® Portfolio Manager tool or Target Finder, that it can receive an unofficial score of 75 or higher using all other requirements of Target Finder or Portfolio Manager, except for actual data from the most recent year. ENERGY STAR® tools and resources can be found at https://www.energystar.gov/.

C. EISA allows a Federal agency to lease Space in a Building that does not have an ENERGY STAR® Label if:

1. No Space is offered in a Building with an ENERGY STAR® Label that meets RLP requirements, including locational needs;

2. The agency will remain in a Building it currently occupies;

3. The Lease will be in a Building of historical, architectural, or cultural significance listed or eligible to be listed on the National Register of Historic Places; or

4. The Lease is for 10,000 RSF or less.

D. If one or more of the statutory exceptions applies, and the offered Space is not in a Building that has earned the ENERGY STAR® Label within one year prior to the due date for final proposal revisions, Offerors are required to include in their lease proposal an agreement to renovate the Building for all energy efficiency and conservation improvements that it has determined would be cost effective over the Firm Term of the Lease, if any, prior to acceptance of the Space (or not later than one year after the Lease Award Date of a succeeding or superseding lease). Such improvements may consist of, but are not limited to, the following:

1. Heating, Ventilating, and Air Conditioning (HVAC) upgrades, including boilers, chillers, and Building Automation System (BAS)/Monitoring/Control System (EMCS).

2. Lighting Improvements.

3. Building Envelope Modifications.

NOTE: Additional information can be found on http://www.gsa.gov/leasing under "Green Leasing."

E. The term "cost effective" means an improvement that will result in substantial operational cost savings to the landlord by reducing electricity or fossil fuel consumption, water, or other utility costs. The term "operational cost savings" means a reduction in operational costs to the landlord through the application of Building improvements that achieve cost savings over the Firm Term of the Lease sufficient to pay the incremental additional costs of making the Building improvements.

F. Instructions for obtaining an ENERGY STAR® Label are provided at http://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/earn-

recognition/energy-star-certification (use "Portfolio Manager" to apply). ENERGY STAR® tools and resources can be found at https://www.energystar.gov/. The ENERGY STAR® Building Upgrade Manual (http://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/save-energy/comprehensive-approach/energy-star) and Building Upgrade Value Calculator (http://www.energystar.gov/buildings/tools-and-resources/building-upgrade-value-calculator) are tools which can be useful in considering energy efficiency and conservation improvements to Buildings.

G. If one or more of the statutory exceptions applies, and the offered Space is not in a Building that has earned the ENERGY STAR® Label within one year prior to the due date for final proposal revisions, the successful Offeror will be excused from performing any agreed-to energy efficiency and conservation renovations, and benchmarking with public disclosure (as provided in (I) below, if it obtains the ENERGY STAR® Label prior to the Government's acceptance of the Space (or not later than one year after the Lease Award Date for succeeding and superseding leases).

H. If no improvements are proposed, the Offeror must demonstrate to the Government using the ENERGY STAR® Online Tools why no energy efficiency and conservation improvements are cost effective. If such explanation is unreasonable, the offer may be rejected.

I. As described in Section 3 of the Lease, successful Offerors meeting one of the statutory exceptions above must agree to benchmark and publicly disclose the Building's current ENERGY STAR® score, using EPA's Portfolio Manager online software application. See the Lease for additional details.

J. All new Buildings being specifically constructed for the Government must achieve the ENERGY STAR® Label within 18 months after occupancy by the Government.

Attachment B:
ISR Application

San Joaquin Valley AIR POLLUTION CONTROL DISTRICT

HEALTHY AIR LIVING™

Indirect Source Review (ISR) - Air Impact Assessment (AIA) Application

A. Applicant Information

Applicant/Business Name: **SASD Development Group, LLC**			
Mailing Address: **1094 Cudahy Place, Suite 318**	City: **San Diego**	State: **CA**	Zip: **92110**
Contact: **Steven Doctor**	Title: **Member**		
Is the Applicant a licensed state contractor? ☒ No ☐ Yes, please provide State License number:			
Phone: **619.220.4161**	Email: **csdoctor01@gmail.com**		

B. Agent Information (if applicable)

Agent/Business Name:			
Mailing Address:	City:	State:	Zip:
Contact:	Title:		
Phone:	Email:		

C. Project Information

Project Name: **Veteran's Affairs Community Based Outpatient Medical Clinic**			
Project Location	Street: **5512 Knudsen Drive**	City: **Bakersfield**	Zip: **CA**
Cross Streets: **Olive Drive**		County: Kern	
Permitting Agency: City of Bakersfield	Planner: **Kassandra Gale**	Contact Number:	
Permit Type and Number (if known):			
Subject to Project-Level Discretionary Approval? ☒ Yes ☐ No		Last Project-Level Discretionary Approval Date:	
		Last Project-Level Ministerial Approval Date:	

D. Project Description

Please briefly describe the project (e.g.: 300 multi-family residential units apartments or 6 miles road widening):
Development of a 39,648 square foot medical outpatient facility.

For **Residential/Non-Residential/Mixed-Use** please check the box next to each applicable land use below:

☐ Commercial / Retail	☐ Educational	☐ Office	☐ Warehouse
☐ Residential	☐ Government	☐ Industrial	☐ Distribution Center
☐ Recreational (e.g. park)	☒ Medical	☐ Manufacturing	☐ Other: ____

For **Transportation/Transit** please check the box next to each applicable land use below:

☐ New Road Construction	☐ Expansion to an Existing Road	☐ Bridge / Overpass	☐ Interchange or Intersection Improvements

Select land use setting: ☒ Urban ☐ Rural

E. Notice of Violation

Is this application being submitted as a result of receiving a Notice of Violation (NOV)? ☒ No ☐ Yes, NOV #:

FOR DISTRICT USE ONLY

Filing Fee Received: _____ Date Paid: _____ Applicant #: _____	Check #: _____ Project #: _____	Date Stamp: Finance	Date Stamp: Permit

F. Voluntary Emission Reduction Agreement (VERA)

Is this project part of a larger project for which there is a VERA with the District? ☒ No ☐ Yes, VERA #:

G. Optional Section

Do you want to receive information about the Healthy Air Living Business Partners Program? ☒ No ☐ Yes

H. Parcel and Land Owner Information

	APN (000-000-00 Format)	Gross Acres	Land Owner
1.	**365-020-28**	**3.15**	**SASD Development Group, LLC**
2.	**365-020-30**	**10.02**	**SASD Development Group, LLC**
3.			

Additional sheets for listing APN numbers can be found on the District's website at www.valleyair.org/ISR.

I. Project Development and Operation

Will the project require demolition of existing structures?	☐ Yes, *complete J*
	☒ No, *complete K*

J. Demolition

Total square feet of building(s) footprint to be demolished:	Number of Building Stories:
Demolition Start Date (Month/Year):	Number of Days for Demolition:

K. Timing

Expected number of work days per week during construction? ☒ 5 days ☐ 6 days ☐ 7 days	
For **Transportation/Transit** projects, *please complete L-1*	
For **Residential/Non-Residential/Mixed-Use** projects, will it be developed in multiple phases?	☒ No, *complete L-2*
	☐ Yes, *complete L-3*

L-1. Transporation / Transit Development and Timing Details

Please note that development timelines provided within this section should reflect actual work time, and should not account for possible project delays.

Start of Construction (Month/Year):	End of Construction (Month/Year):
Number of actual construction days:	
Length of road being constructed: miles	Width of road being constructed: feet
Predominant Soil Type (choose one): ☐ Sand Gravel ☐ Weathered Rock – Earth ☐ Blasted Rock	
Amount of soil imported: cubic yards	Amount of soil exported: cubic yards
Amount of asphalt imported: cubic yards	Amount of asphalt exported: cubic yards
Total area to be disturbed: acres	Maximum area disturbed per day: acres
Average truck capacity: cubic yards	Will water trucks be used? ☐ Yes ☐ No

L-2. Single Phase Development

Start of Construction (Month/Year): **10/23**	Gross Acres: **13.458**
End of Construction (Month/Year): **1/25**	Net Acres (area devoted to buildings/structures): **0.91**
First Date of Occupation (Month/Year): **2025**	Paved Parking Area (# of Spaces): **214**
Building Square Footage: **39,648**	Number of Dwelling Units:

L-3. Phased Site Development and Building Construction

In addition to the information below you can submit phase specific activity timeline found on District's website at www.valleyair.org/ISR.

1	Start of Construction (Month/Year):	Gross Acres:
	End of Construction (Month/Year):	Net Acres (area devoted to buildings/structures):
	First Date of Occupation (Month/Year):	Paved Parking Area (# of Spaces):
	Building Square Footage:	Number of Dwelling Units:
2	Start of Construction (Month/Year):	Gross Acres:
	End of Construction (Month/Year):	Net Acres (area devoted to buildings/structures):
	First Date of Occupation (Month/Year):	Paved Parking Area (# of Spaces):
	Building Square Footage:	Number of Dwelling Units:
3	Start of Construction (Month/Year):	Gross Acres:

	End of Construction (Month/Year):	Net Acres (area devoted to buildings/structures):
	First Date of Occupation (Month/Year):	Paved Parking Area (# of Spaces):
	Building Square Footage:	Number of Dwelling Units:
4	Start of Construction (Month/Year):	Gross Acres:
	End of Construction (Month/Year):	Net Acres (area devoted to buildings/structures):
	First Date of Occupation (Month/Year):	Paved Parking Area (# of Spaces):
	Building Square Footage:	Number of Dwelling Units:

Additional sheets for phasing information can be found on the District's website at www.valleyair.org/ISR.

M. On-Site Emission Reduction Measures (Mitigation Measures)

Listed below are categories of possible mitigation measures for applicants to implement that will reduce a project's impact on air quality. Check "Yes" next to any measure that will be utilized for this project, and please complete the corresponding page in this form to identify specifics related to that measure. If a category is not applicable to the project, check "No" and provide justification for not selecting the measure. Also, the applicant is encouraged to provide any mitigation measures including supporting documentation that are not listed on this application form for District consideration. For reference, see www.valleyair.org/ISR for potential additional mitigiation measures.

Clean Construction Fleet Mitgation Measure below can be selected for all development types

1. Clean Construction Fleet (Note: Making a commitment to using less polluting construction equipment)
☒ Yes, *please complete mitigation measure 1 below*
☐ No, *please provide justification why not selected:*_____

Operational Mitgation Measure below can be selected for all development types, except for transportation and transit projects

2. Clean On-Road Trucks (e.g. Heavy Duty Trucks, Medium Duty Trucks, and Light Duty Trucks)
Note: Operational fleet will use zero and/or near-zero emissions for all or part of its activities.
☐ Yes, *please complete applicable mitigation measure 2a through 2c below*
☒ No, *please provide justification why not selected:* ***Project will not operate a truck fleet.***

3. On-Site Zero Emission Off-Road Vehicles and Equipment (e.g. electric forklifts and electric yard trucks)
☐ Yes, *please complete applicable mitigation measure 3 below*
☒ No, *please provide justification why not selected:* ***Project will not operate off-road vehicles and equipment***

4. Solar Panels (e.g. incorporate solar panels in the project)
☐ Yes, *please complete applicable mitigation measure 4 below*
☒ No, *please provide justification why not selected:*
Project is contracted with the federal government, project design has been finalized and cannot be modified

5. Electric Vehicle (EV) Chargers (e.g. incorporate onsite EV charging infrastructure)
☐ Yes, *please complete applicable mitigation measure 5 below*
☒ No, *please provide justification why not selected:*
Project is contracted with the federal government, project design has been finalized and cannot be modified

6. Clean Lawn and Garden Equipment (e.g. eletric mowers, electric leaf blowers, electric trimmers, etc.)
☒ Yes, *please complete applicable mitigation measure 6 below*
☐ No, *please provide justification why not selected:*_____

7. Land Use/Location (e.g. increased density, improve walkability design, increase transit, etc.)
☒ Yes, *please complete applicable mitigation measures 7a through 7f below*
☐ No, *please provide justification why not selected:*_____

8. Neighborhood/Site Enhancements (e.g. improve pedestrial network, traffic calming measures, NEV network, etc.)
☒ Yes, *please complete applicable mitigation measures 8a through 8c below*
☐ No, *please provide justification why not selected:*_____

9. Parking Policy/Pricing (e.g. parking cost, on-street market pricing, limit parking supply, etc.)
☐ Yes, *please complete applicable mitigation measure 9a through 9e below*
☒ No, *please provide justification why not selected:*
Project is contracted with the federal government, project design has been finalized and cannot be modified

10. Commute Trip Reduction Programs (e.g. workplace parking charge, employee vanpool/shuttle, ride sharing program, etc.)
☐ Yes, *please complete applicable mitigation measures 10a through 10f below*
☒ No, *please provide justification why not selected:*
Project is contracted with the federal government, project design has been finalized and cannot be modified

11. Hearth (e.g. woodstoves or fireplaces)
☐ Yes, *please complete mitigation measure 11 below*

☒ No, *please provide justification why not selected:* ***Not*** *Applicable to Project type.*

12. Exceed Title 24 (e.g. exceed California Title 24 required energy efficiency for building(s) associated with the project)
☐ Yes, *please complete applicable mitigation measures 12 below*
☒ No, *please provide justification why not selected:*
Project is contracted with the federal government, project design has been finalized and cannot be modified

N. Review Period

You may request a five (5) day period to review a draft of the District's analysis of your project before it is finalized. However, if you choose this option, it will delay the project's finalization by five (5) business days.

☒ I request to review a draft of the District's analysis.

O. Fee Deferral Schedule

If the project's on-site air pollution reductions (mitigation measure) insufficiently reduced air pollution as outlined in Rule 9510, an off-site fee is assessed based on the excess air pollution. The money collected from this fee will be used by the District to reduce air pollution emissions 'off-site' on behalf of the project.

An Applicant may request a deferral of all or part of the 'off-site' fees up to, but not to exceed, the start date of construction. The start of construction is any of the following, whichever occcurs first: start of grading, start of demolition, or any other site development activities not mentioned above.

☒ I request a Fee Deferral Schedule, and have enclosed the Fee Deferral Schedule Application.

The Fee Deferral Schedule Application, can be found on the District's website at www.valleyair.org/ISR.

P. Change of Project Developer

The Applicant assumes all responsibility for ISR compliance for this project. If the project developer changes, the Applicant must notify the Buyer, and both Buyer and Applicant must file a 'Change of Project Developer' form with the District. If there is a change of project developer, and a 'Change of Project Developer' form is not filed with the District, the Applicant will remain liable for ISR compliance.

The Change of Project Developer form can be found on the District's website at www.valleyair.org/ISR.

Q. Attachments

Required:

☒ Tract Map or Project Design Map

☒ Vicinity Map

☒ Application Filing Fee
$841.00 for mixed use / non-residential / transporation / transit projects
OR
$562.00 for residential projects only

If applicable:

☐ Letter from Applicant granting Agent authorization

☒ Fee Deferral Schedule Application

☐ Monitoring & Reporting Schedule

☒ Supporting documentation for selected Mitigation Measures

R. Certification Statement

I certify that I have reviewed and completed the entire application and hereby attest that the information relayed within is true and correct to the best of my knowledge. I commit to implementation of those on-site mitigation measures that I have selected above. I am responsible for notifying the District if I will be unable to implement these mitigation measures. If a committed mitigation measure is not implemented, the project may be re-assessed for air quality impacts.

(An authorized Agent may sign the form in lieu of the Applicant if an authorization letter signed by the Applicant is provided).

Name (printed): Steve Doctor	Title: Member
Signature: 	Date: 07/14/2023

Mitigation Measures

Mitigation Measure 1: Construction Clean Fleet

Will the project use a construction clean fleet to achieve the emission reductions required by District Rule 9510?
(By checking "yes" the Applicant is commiting to achieving the following emission reduction requirements: 20% for NOx and 45% for PM10 compared to the statewide average.)

☐ No, *please complete justification in Section M above*
☒ Yes*, *please be aware of the requirements below:*

***If yes**, daily records of the total hours of operation for each piece of equipment greater than 50-horsepower being used on the project site during construction must be maintained. Within 30-days of completing construction of each project phase, a report summarizing total hours of operation by equipment type, equipment model year and horsepower for each piece of construction equipment greater than 50-horsepower must be submitted to the District. To assist in this recordkeeping, the *Construction Clean Fleet Data Template* is available on the District's website at www.valleyair.org/ISR.

Please note: if the required construction emission reductions under Rule 9510 cannot be achieved, fees are required in order to mitigate the remaining balance of emissions. For each project phase, the District will verify that the fleet details achieved the required emission reductions

Mitigation Measure 2a: Clean On-Road Heavy Duty Trucks

Will the project use any operational clean Heavy Duty Trucks (On-road vehicles with a gross vehicle weight greater than 26,000 pounds)?
For example, zero-emission electric trucks and/or near-zero emission trucks meeting CARBs established emission standard of 0.02 g/bhp-hr NOx.

☒ No, *please complete justification in Section M above*
☐ Yes*, *please complete section below:*

1. Number of trucks for Project:

zero emission trucks: _____	**near-zero** emission trucks: _____	**other types** of trucks: _____

2. Trip length in miles each of the following types of trucks will travel one way for the Project:

zero emission trucks: _____	**near-zero** emission trucks: _____	**other types** of trucks: _____

3. Expected number of one-way trips per year for each of the following types of trucks for the Project:

zero emission trucks: _____	**near-zero** emission trucks: _____	**other types** of trucks: _____

***If yes**, by selecting this measure there will be a condition placed on the monitoring and reporting schedule to ensure compliance. Records of the fleet data, including truck type, will be required to be submitted to the District on an annual basis.

Please note: by selecting this measure, you are certifying to the District that the above operational clean fleet vehicles have not been funded by state or District grant programs.

Mitigation Measure 2b: Clean On-Road Medium Duty Vehicles

Will the project use any operational clean Medium Duty Vehicles (On-road vehicles with a gross vehicle weight between 14,001 pounds and 26,000 pounds)?
For example, zero-emission electric vehicles, zero emission last mile delivery trucks or vans and/or near-zero emission vehicles meeting CARB's established emission standard of 0.02 g/bhp-hr NOx.

☒ No, *please complete justification in Section M above*
☐ Yes*, *please complete section below:*

1. Number of trucks for Project:

zero emission trucks: _____	**near-zero** emission trucks: _____	**other types** of trucks: _____

2. Trip length in miles each of the following types of trucks will travel one way for the Project:

zero emission trucks: _____	**near-zero** emission trucks: _____	**other types** of trucks: _____

3. Expected number of one-way trips per year for each of the following types of trucks for the Project:

zero emission trucks: _____	**near-zero** emission trucks: _____	**other types** of trucks: _____

***If yes**, by selecting this measure there will be a condition placed on the monitoring and reporting schedule to ensure compliance. Records of the fleet data, including truck type, will be required to be submitted to the District on an annual basis.

Please note: by selecting this measure, you are certifying to the District that the above operational clean fleet vehicles have not been funded by state or District grant programs.

Mitigation Measure 2c: Clean On-Road Light Duty Vehicles

Will the project use any operational clean Light Duty Vehicles (On-road vehicles with a gross vehicle weight below 14,000 pounds)? For example, zero-emission electric vehicles, zero emission last mile delivery trucks or vans and/or near-zero emission vehicles meeting CARBs established emission standard of 0.02 g/bhp-hr NOx.

☒ No, *please complete justification in Section M above*

☐ Yes*, *please complete section below:*

1. Number of trucks for Project:

zero emission trucks: _____	**near-zero** emission trucks: _____	**other types** of trucks: _____

2. Trip length in miles each of the following types of trucks will travel one way for the Project:

zero emission trucks: _____	**near-zero** emission trucks: _____	**other types** of trucks: _____

3. Expected number of one-way trips per year for each of the following types of trucks for the Project:

zero emission trucks: _____	**near-zero** emission trucks: _____	**other types** of trucks: _____

***If yes**, by selecting this measure there will be a condition placed on the monitoring and reporting schedule to ensure compliance. Records of the fleet data, including truck type, will be required to be submitted to the District on an annual basis.

Please note: by selecting this measure, you are certifying to the District that the above operational clean fleet vehicles have not been funded by state or District grant programs.

Mitigation Measure 3: On-Site Zero Emission Off-Road Vehicles and Equipment

Will the project use any operational on-site zero emission Off-Road Vehicles and Equipment? (e.g. electric forklifts, electric yard trucks, electric aerial lifts)

☒ No, *please complete justification in Section M above*

☐ Yes, *please complete section below:*

Type of Zero Emission Vehicles and Equipment	No. of Vehicles and Equipment	Hours/Day	Days/Year	Horsepower	Fuel Type (CNG, Hydrogen, or Electric)
1. Yard Truck					
2. Forklifts					
3. Aerial Lifts					
4. Other Equipment					

Please note: by selecting this measure, you are certifying to the District that the above operational off-road vehicles have not been funded by state or District grant programs.

Additional sheets for listing On-Site Zero Emission Vehicles/Equipment can be found on the District's website at www.valleyair.org/ISR.

Mitigation Measure 4: Solar Panels

Will the project include the installation of solar panels?

☒ No, *please complete justification in Section M above*

☐ Yes, *please complete section below:*

- Total power output of solar panels to be installed: _____ kW *(e.g.: 200 homes x 3kW=600kW.)*
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☐ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Mitigation Measure 5: Electric Vehicle (EV) Chargers

Will the project include the installation of electric vehicle (EV) charger(s)?

☒ No, *please complete justification in Section M above*

☐ Yes, *please complete section below:*

- Number of charging outlet(s) to be installed *(Note: a charger may have one or more charging outlets)*: _____
- Charging level (e.g.: Level 1, Level 2, or DC Fast Charge): _____
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☐ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Mitigation Measure 6: Clean Landscape Equipment

Will the project utilize clean landscaping equipment? (e.g. electric lawn mowers, electric leaf blowers, etc.) *(Note 3% is the assumed statewide average for landscape equipment)*

☐ No, *please complete justification in Section M above*

☒ Yes, *please complete section below:*

- Percent of electric lawnmower that will be electrically powered: **3%**
- Percent of leaf blower that will be electrically powered: **3%**
- Percent of electric chainsaw that will be electrically powered: **3%**
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☒ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Documentation: Please attach supporting documentation if claiming greater than 3% over statewide average.	☐ Attached

Mitigation Measure 7a: Increase Density

Will the Project be located within 1/2 mile radius of increased density? Density is measured in terms of dwelling units or jobs per acre. A project located in areas of increased density may reduce emissions associated with traffic.
*Note: There are approximately 502.4 acres in a 1/2 mile radius.

☒ No, *please complete justification in Section M above*

☐ Yes, *please complete section below:*

1.	Number of Dwelling Units within 1/2 radius of Project:	
2.	Number of Jobs within 1/2 mile radius of Project:	
3.	Density: *Density is the 'Number of Dwelling Units' or 'Number of Jobs' within ½ mile radius divided by 502.4 acres.*	**Dwelling Units per Acre:** **Jobs per Acre:**

- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☐ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Documentation: Please attach supporting documentation (e.g.: map) to justify the provided jobs and housing.	☐ Attached

Mitigation Measure 7b: Increase Diversity

This mitigation measure applies to a project in an *Urban Area only*. Will the project be predominantly characterized by properties on which various uses, such as office, commercial, institutional, and residential are present within ¼ mile?
Mixed-use development should encourage walking and other non-auto modes of transport and minimize need for external trips.

☐ No, *please complete justification in Section M above*
☒ Yes, *please complete section below:*

- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☒ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Documentation: Please attach supporting documentation (e.g.: map) to justify the project is characterized by various uses, such as office, commercial, institutional, and residential are within ¼ mile that encourage walking and non-auto modes of transport.	☒ Attached

Mitigation Measure 7c: Improve Walkability Design

Will the project improve walkability?

☐ No, *please complete justification in Section M above*
☒ Yes, *please complete section below:*

1. Square Miles within the Study Area:
   a. If the distance from the center of the project out to its farthest boundary is less than or equal to ½ mile then the Square Miles within the Study Area will be 0.79. (Enter this value in the blank to the right.)
   b. If the distance from the center of the project out to its farthest boundary is greater than ½ mile then calculate the area value by: Study Area Square Miles = 3.14 x radius(squared). (Enter this value in the blank to the right.)

   Square Miles: 0.79

2. Intersection within the Study Area:
   Number and type of intersections within the project area:

Number of 3-Way Intersections:	19	x 3 =	**57**
Number of 4-Way Intersections:	2	x 4 =	**8**
Number of 5-Way Intersections:	0	x 5 =	**0**
Total Intersections (sum of above) = 65			

3. Intersection Density within the Study Area:
   Intersection Density is the Study Area's 'Total Intersections' value (B.) divided by the 'Square Miles' value (A.):

   82.3 Intersections / sq. mi.

- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☒ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Documentation: Please attach supporting documentation (e.g.: map) to justify number of intersections within ½ mile of the project.	☒ Attached

Mitigation Measure 7d: Improve Destination Accessibility

Will the project be located within 12 miles from downtown or a job center? The location of the project may increase the potential for pedestrians to walk and bike to these destinations and therefore reduce VMT.

☐ No, *please complete justification in Section M above*
☒ Yes, *please complete section below:*

- Distance to Downtown/Job Center (miles): **0.88**
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☒ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Documentation: Please attach supporting documentation (e.g: map) to justify the distance of the project to the Downtown/Job Center.	☒ Attached

Mitigation Measure 7e: Increase Transit Accessibility

Will the project be located near a transit station/stop at least within ¼ mile or near a rail at least within ½ mile that will facilitate the use of transit by people traveling to or from the project site?

☐ No, *please complete justification in Section M above*

☒ Yes, *please complete section below:*

- Distance to Rail Station (miles): ☐ ½ mile or less ☐ between ½ mile and 3 miles
- Distance to Transit Station (miles): ☒ ¼ mile
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☒ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Documentation: Please attach supporting documentation (e.g.: map) to justify the project is located within ¼ mile of a transit station or within ½ mile of a rail from the project site.	☒ Attached

Mitigation measure 7f: Integrate Below Market Rate Housing

Will the project require all or a portion of the residential units designated as deed-restricted below-market-rate (BMR) housing?

☒ No, *please complete justification in Section M above*

☐ Yes, *please complete section below:*

- Percentage of total dwelling units deed-restricted below market rate: _____%
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☐ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Documentation: Please attach supporting documentation to justify all or a portion of the residential units that are designated as deed-restricted below-market-rate housing.	☐ Attached

Mitigation Measure 8a: Improve Pedestrian Network

Will the project provide a pedestrian access network that internally links all uses and connects to all existing or planned external streets and pedestrian facilities contiguous with the project site?

☐ No, *please complete justification in Section M above*

☒ Yes, *please complete section below:*

- Select one of the following areas, where pedestrian accommodations will be provided:
  ☐ within Project Site ☒ within Project Site and Connecting Off-Site ☐ Project Site is within a Rural setting
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☒ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Mitigation Measure 8b: Provide Traffic Calming Measures

Will this project provide traffic calming measures which encourage people to walk or bike instead of using a vehicle (e.g., marked crosswalks, count-down signal timers, curb extensions, speed tables, raised crosswalks, raised intersections, median islands, tight corner radii, roundabouts or mini-circles, on-street parking, planter strips with street trees, chicanes/chokers, and others)?

☒ No, *please complete justification in Section M above*

☐ Yes, *please complete section below:*

- % Streets with Improvement within ½ mile of project site: ☐ 25% ☐ 50% ☐ 75% ☐ 100%
- % Intersections with Improvement within ½ mile of project site: ☐ 25% ☐ 50% ☐ 75% ☐ 100%
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☐ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Mitigation Measure 8c: Implement Neighborhood Electric Vehicle (NEV) Network

Will the project provide a NEV network including the necessary infrastructure such as parking, charging facilities, striping, signage, and educational tools?

*Note: NEVs are classified in the California Vehicle Code as a "low speed vehicle".

☒ No, *please complete justification in Section M above*

☐ Yes, *please complete section below:*

- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☐ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Mitigation Measure 9a: Limit Parking Supply

Will the Will the project provide fewer parking spaces than the rate provided by the Institute of Transportation and Engineering (ITE) Parking Generation Handbook?

☒ No, *please complete justification in Section M above*

☐ Yes, *please complete section below:*

- % Reduction in Spaces: _____
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☐ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Mitigation Measure 9b: Unbundle Parking Cost

Will the project implement a monthly/annual parking charge?

☒ No, *please complete justification in Section M above*

☐ Yes, *please complete section below:*

- Monthly Parking Cost for Project Site ($):_____
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☐ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Mitigation Measure 9c: On-Street Market Pricing

Will this project and the city (in which the project is located) implement a pricing strategy which will increase the on-street public parking (e.g.: meter parking) by at least 25%?

☒ No, *please complete justification in Section M above*

☐ Yes, *please complete section below:*

- % Increase in Price: ☐ 25% ☐ 30% ☐ 40% ☐ 50%
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☐ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Mitigation Measure 9d: Transit Subsidy

Will the project provide subsidized/discounted daily or monthly public transit passes?

☒ No, *please complete justification in Section M above*

☐ Yes, *please complete section below:*

- % of employees to receive public transit passes: _____
- Please select the closest expected Daily Transit Subsidy Amount ($): ☐ $0.75 ☐ $1.50 ☐ $3 ☐ $6
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☐ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Mitigation Measure 9e: Implement Employee Parking "Cash-Out"

Will the project require employers to offer employee parking "cash-out"?
The term "cash-out" is used to describe the employer providing employees with a choice of forgoing their current subsidized/free parking for a cash payment.

☒ No, *please complete justification in Section M above*

☐ Yes, *please complete section below:*

- % of employees to receive "cash-out": _____
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☐ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Mitigation Measure 10a: Workplace Parking Charge

Will the project implement workplace parking pricing at its employment centers (e.g., explicitly charging for parking for its employees, not providing employee parking and transportation allowances, educating employees about available alternatives)?

☒ No, *please complete justification in Section M above*

☐ Yes, *please complete section below:*

- % of employees paying for parking: _____
- Please select the closest expected Daily Cash out Amount ($): ☐ $1 ☐ $2 ☐ $3 ☐ $6
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☐ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Mitigation Measure 10b: Implement School Bus Program

Will the project work with the school district to restore or expand school bus services in the project area and local community?

☒ No, *please complete justification in Section M above*

☐ Yes, *please complete section below:*

- % of families expected to using school bus program (those currently attending the school district): _____
- Please select the closest expected Daily Cash out Amount ($): ☐ $1 ☐ $2 ☐ $3 ☐ $6
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☐ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Mitigation Measure 10c: Encourage Telecommuting and Alternative Work Schedules

Will the project include the use of telecommuting or alternative work schedules to reduce the number of commute trips by employees?

☒ No, *please complete justification in Section M above*

☐ Yes, *please complete section below:*

- Percent of employees to participate in a 9/80 work schedule: ☐ 1% ☐ 3% ☐ 5% ☐ 10% ☐ 25%
- Percent of employees to participate in a 4/40 work schedule: ☐ 1% ☐ 3% ☐ 5% ☐ 10% ☐ 25%
- Percent of employees to participate in telecommuting 1.5 days: ☐ 1% ☐ 3% ☐ 5% ☐ 10% ☐ 25%
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☐ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Mitigation Measure 10d: Market Commute Trip Reduction Option

Will the project implement marketing strategies to reduce commute trips (e.g., new employee orientation of trip reduction and alternative mode option, event promotions, publications)?
This measure should promote and educate employees on alternative transportation options

☒ No, *please complete justification in Section M above*

☐ Yes, *please complete section below:*

- % of Employees Eligible: _____
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☐ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Mitigation Measure 10e: Employee Vanpool/Shuttle

Will this project implement an employer-sponsored vanpool or shuttle?
Employer-sponsored vanpool programs entail an employer purchasing or leasing vans for employee use, and often subsidizing the cost of at lease program administration, if not more. Rider charges are normally set on the basis of vehicle and operating cost.

☒ No, *please complete justification in Section M above*

☐ Yes, *please complete section below:*

- % of employees participating in the vanpool program: _____
- % of vehicles for vanpooling: _____
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☐ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Mitigation Measure 10f: Provide Ride Sharing Program

Will the project include a ride-sharing program?

☒ No, *please complete justification in Section M above*

☐ Yes, *please complete section below:*

- % of Employees participating in the ride-sharing program: _____
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☐ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Mitigation Measure 11: Hearth

Will the project include any woodstoves or fireplaces?

☒ No, *please complete justification in Section M above*

☐ Yes, *please complete section below:*

- ☐ Only natural gas hearth
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☐ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Mitigation Measure 12: Exceed Title 24

Will the energy efficiency rating of the project's building(s) be greater than California Title 24 requirements?

☒ No, *please complete justification in Section M above*

☐ Yes, *please complete section below:*

- Percent of increase greater than California Title 24 requirements: _____
- Will this mitigation measure be required as a condition of approval by the land use agency, by other county or municipal codes, or other?
  - ☐ No, (*note: if checked "no" this mitigation measure will require District enforcement)*
  - ☐ Yes, Name of enforcing agency: _____
    Source of Requirement: _____

Documentation: Please attach relevant analysis or summary pages of Title 24 documentation.	☐ Attached

San Joaquin Valley AIR POLLUTION CONTROL DISTRICT

HEALTHY AIR LIVING™

Indirect Source Review (ISR) - Fee Deferral Schedule (FDS)

A. Applicant Information

Applicant/Business Name: **SASD Development Group**			
Mailing Address: **1094 Cudahy Place, Suite 318**	City: **San Diego**	State: **CA**	Zip: **92110**
Contact: **Steven Doctor**	Title: **Member**		
Is the Applicant a licensed state contractor? ☐ No ☐ Yes, please provide State License number:			
Phone: **619.220.4161**	Email: **csdoctor01@gmail.com**		

B. Project Information

Project Name: **Veteran's Affairs Community Based Outpatient Medical Clinic**			
Project Location	Street: **5512 Knudsen Drive**	City: **Bakersfield**	Zip: **CA**
Cross Streets: **Olive Drive**		County: **Kern**	
ISR Project Number (if known):			

C. Payment Dates

For each project phase identified in the Air Impact Assessment (AIA) Application form, please provide the following information.

Phase Number	Proposed Payment Date (mm/dd/yy) (no later than construction start date)	Estimated Payment Amount (if known)
1	**2023 Construction – Clean Fleet**	**-**
2	**2024 Construction – Clean Fleet**	**-**
3	**1/17/2025**	**$37,574.16**

D. Change of Project Developer

The applicant assumes all responsibility for ISR compliance for this project. If the project developer changes, the applicant must notify the buyer, and both buyer and applicant must file a 'Change of Project Developer' form with the District. If the project developer changes, and a 'Change of Project Developer' form is not filed with the District, the applicant remains liable for ISR compliance.

E. Project Termination

In the event that a project is terminated or cancelled, and no construction has taken place, and the use has never occupied the site, the applicant is entitled to a refund of the entire paid off-site fee, and the 4% fee less any administrative costs incurred by the APCO. To qualify for a refund, the applicant must provide a written request for refund, with proof of project termination, within thirty (30) calendar days of the termination. Proof of project termination may consist of confirmation by the local agency of permit cancellation.

F. Fee Payment

Fees are to be paid in full on or before the dates established in the approved Fee Deferral Schedule (FDS). Failure to satisfy the terms of the approved FDS may be deemed a violation of Rule 9510 and subject to District compliance procedures. Failure to satisfy terms of the FDS does not apply to projects that have been terminated.

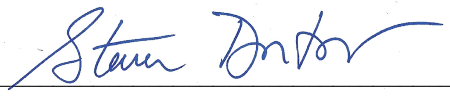
G. Project Delay

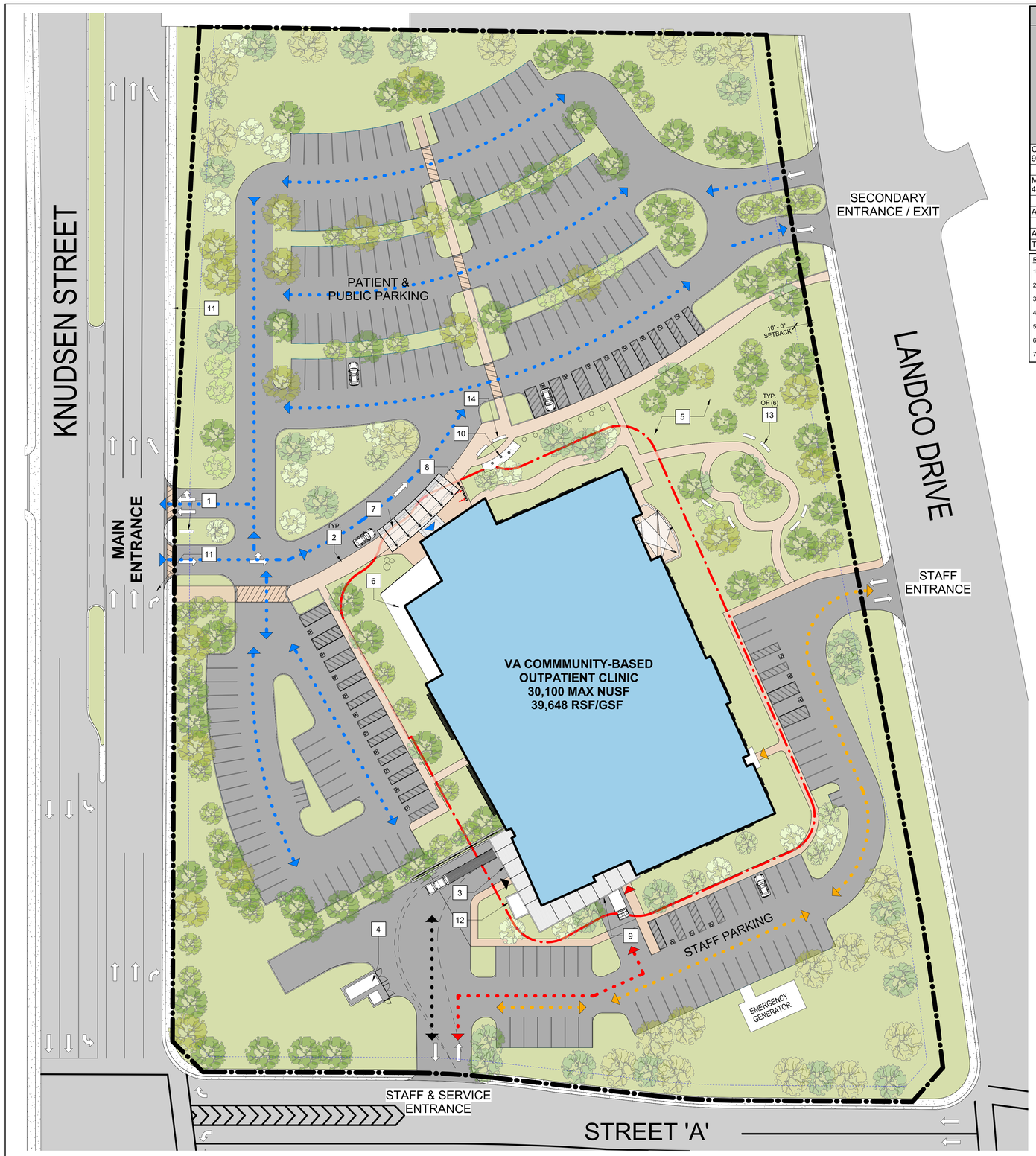
The applicant is responsible for notifying the District of project delays. Notification must include a new start of construction and/or anticipated build-out date for each phase of the project. The applicant may propose a new FDS, and if not, the District shall prepare and provide the applicant with a revised FDS within 30 calendar days of receipt of notification of project delay. The applicant is responsible for completing and returning the revised FDS within 30 days of the receipt of the revised FDS.

H. Certification Statement

I certify that I have reviewed and completed the entire application and hereby attest that the information relayed within is true and correct to the best of my knowledge.

(An authorized Agent may sign the form in lieu of the Applicant if an authorization letter signed by the Applicant is provided).

Name (printed): Steve Doctor	Title: Member
Signature: 	Date: 07/14/2023



PARKING CALCULATIONS

PROVIDED SPACES - SPACE TYPE	DIMENSIONS		SPACES REQUIRED				SPACES PROVIDED			
				VA REQUIREMENTS						
	LENGTH	WIDTH	CITY REQUIRED SPACES	PUBLIC / PATIENT	STAFF	TOTAL REQUIRED SPACES	PUBLIC/PATIENT	STAFF	TOTAL	REMARKS
CITY STANDARD SPACE - 9'-0" X 20'-0"	20' - 0"	9' - 0"	190	132	45	203	138	46	184	1,3,6
MOTORCYCLE SPACE - 4'-6" X 8'-0"	8' - 0"	4' - 6"	25% OR 5 MIN.	3	2	4	4	2	6	2,6
ACCESSIBLE - STANDARD	20' - 0"	9' - 0"	17	13	4	17	14	5	19	4,6
ACCESSIBLE - VAN	20' - 0"	9' - 0"	2	3	1	4	4	1	5	5,6
TOTAL NUMBER OF SPACES PROVIDED: 214							160	54	214	

REMARKS

1. VA STANDARD SPACE IS 9'-0" WITH 63'-0" BAY WIDTH
2. VA REQUIRES NO MORE THAN 1 MOTORCYCLE SPACE FOR EVERY 60 STANDARD SPACES
3. DROP-OFF SPACES DO NOT COUNT TOWARD TOTAL
4. VA ACCESSIBLE SPACE REQUIRES 5'-0" ACCESS AISLE ON BOTH SIDES
5. VA VAN ACCESSIBLE SPACE REQUIRES 8'-0" ACCESS AISLE ON BOTH SIDES
6. VA DOES NOT SPECIFY THE RATIO OF PUBLIC TO STAFF PARKING
7. VA REQUIRES THE GREATER OF 203 SPACES TOTAL, INCLUDING VAN AND STANDARD ACCESSIBLE SPACES AND MOTORCYCLE SPACES.



PROJECT APPROACH

SCALE: 1" = 25'-0"

SHEET NOTES

1. MONUMENT SIGN, WITH CMU BASE AND METAL SIDING, COMPATABLE WITH BUILDING DESIGN AND LANDSCAPE SCHEME PER SFO SECTION 5.6
2. VEHICLE BARRIER - BOLLARDS
3. ELEVATED LOADING DOCK WITH CANOPY
4. EXTERIOR TRASH AND RECYCLING WITH 6 FT. HIGH CMU ENCLOSURE WITH METAL GATES
5. HEALING GARDEN
6. COVERED OUTDOOR PATIO
7. COVERED DROP-OFF (CANOPY SHOWN DASHED)
8. BICYCLE RACK
9. COVERED AMBULATORY PICK-UP
10. FLAGPOLES - (2) 30' AND (1) 35' HEIGHT ABOVE GROUND WITH EXTERIOR LIGHTING PER SFO SECTION 5.4.1
11. PUBLIC WAY
12. SMOKING SHELTER FOR PATIENTS, VISITORS, VOLUNTEERS, EMPLOYEES PER SFO SECTION 5.4.2
13. BENCHES SERVING HEALING GARDEN
14. CONCRETE SEAT WALL AND VEHICULAR BARRIER

LEGEND

- 25'-0" STAND-OFF SETBACK
- PROPERTY LINE ASSUMED
- PATIENT CIRCULATION
- STAFF CIRCULATION
- SERVICE CIRCULATION
- PEDESTRIAN
- EMERGENCY
- SET BACK OR EASEMENT PER CITY STANDARDS & REGULATIONS
- LIGHTED BOLLARD
- STANDARD BOLLARD
- LANDSCAPE BOULDER / VEHICLE BARRIER
- STAFF ENTRY
- PUBLIC / PATIENT ENTRY
- SERVICE ENTRY
- EMERGENCY ENTRY

NORTH

SITE PLAN

SCALE: 1" = 25'-0"

No.	Description	Date

CONSULTANTS:

DEVELOPER:
SASD Development Group, LLC

ARCHITECT/ENGINEERS:

NICHOLS • MELBURG • ROSSETTO
ARCHITECTS + ENGINEERS
300 KNOLLCREST DRIVE
REDDING, CA. 96002
(530) 222-3300 (530) 222-3538 FAX
http://www.nmrdesign.com
NMR Project Number: 17-9009

STAMP:

Office of Construction and Facilities Management

VA U.S. Department of Veterans Affairs

Drawing Title	OVERALL CONCEPTUAL SITE PLAN
Phase	BEST AND FINAL OFFER NOT FOR CONSTRUCTION
Approved:	FULLY SPRINKLERED
Project Title	VA BAKERSFIELD COMMUNITY BASED OUTPATIENT CLINIC
SFO Number	36C10F19R00677
Location	KNUDSEN STREET & OLIVE DRIVE
Issue Date	MAY 1, 2020
Checked	Team
Drawn	Team
Drawing Number	AS101

Plot Date: 5/1/2020 8:17:25 AM
File Name: D:\Users\Yasmeen\BDocuments\A_VA BAKERSFIELD_Initial Offer_barakatP788Q.rvt

Vicinity Map



ISR - AIA Application

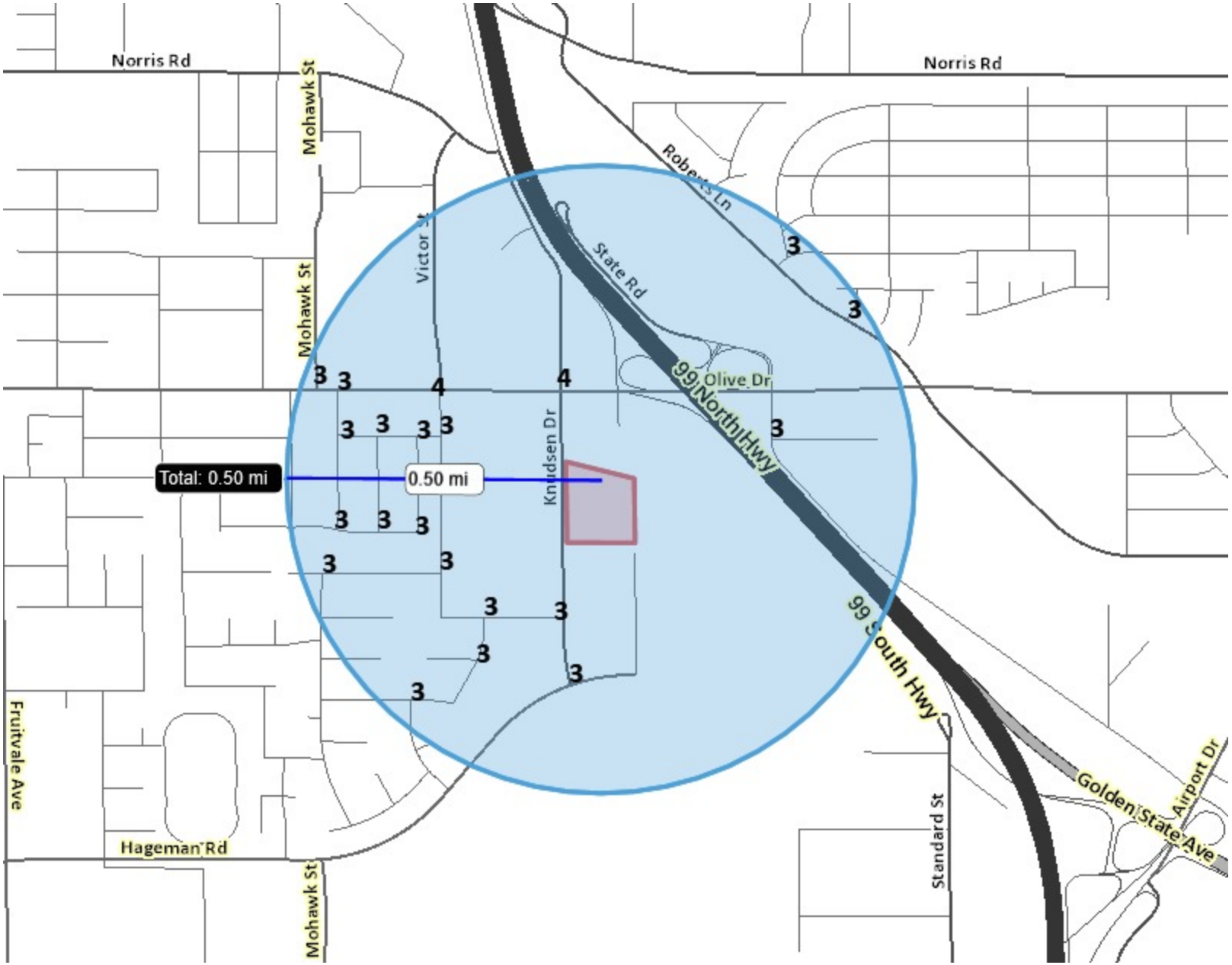
Supporting documentation for selected mitigation measures.



Kern County
Online Mapping System

Intersection Map





Legend

Roads 10k-24k

- Freeway
- Highway
- Major
- Minor
- Local
- Ramp
- Unpaved

1: 18,056

0.6 0 0.28 0.6 Miles

WGS_1984_Web_Mercator_Auxiliary_Sphere

© Latitude Geographics Group Ltd.

This map is a user generated static output from an Internet mapping site and is for general reference only. The County of Kern assumes no liability for damages, incurred by the user of this information, which occur directly or indirectly as a result of errors, omissions or discrepancies in the information.

Notes

San Joaquin Valley
AIR POLLUTION CONTROL DISTRICT

HEALTHY AIR LIVING™

August 16, 2023

Steven Doctor
Sasd Development Group, Llc
4895 Pacific Highway
San Diego, CA 92110

Re: Notice of Receipt of Complete Application
ISR Project Number: C-20230239
Land Use Agency: City of Bakersfield
Land Use Agency ID Number: Unknown

Dear Mr. Doctor:

The San Joaquin Valley Air Pollution Control District (District) has deemed your Air Impact Assessment (AIA) application complete for the following project, Veteran's Affairs Community Based Outpatient Medical Clinic, located at 5512 Knudsen Drive, Bakersfield, California. The project consists of the development of a 39,648 sq. ft. medical outpatient facility. The next step in the process is for the District to quantify emissions from the project and to calculate applicable off-site fees, if any. During processing your application, the District may request additional information to clarify, correct or otherwise supplement the information on file. We will begin processing your AIA application as soon as possible.

Please pay close attention to the following important information:

- **This letter is not an AIA approval.** Upon completion of the District's AIA analysis and determination of applicable offsite fees, the District will issue an AIA approval letter.

- Generating emissions, such as starting ground disturbance for construction, before receiving an approved AIA and paying the required Off-site Fees, if any, is a violation of District regulations and is subject to enforcement action.

For your convenience, a document is enclosed which addresses frequently asked questions regarding Indirect Source Review (ISR). This may be used as a reference to better understand ISR, and how the District will process your application.

Samir Sheikh
Executive Director/Air Pollution Control Officer

Northern Region
4800 Enterprise Way
Modesto, CA 95356-8718
Tel: (209) 557-6400 FAX: (209) 557-6475

Central Region (Main Office)
1990 E. Gettysburg Avenue
Fresno, CA 93726-0244
Tel: (559) 230-6000 FAX: (559) 230-6061

Southern Region
34946 Flyover Court
Bakersfield, CA 93308-9725
Tel: (661) 392-5500 FAX: (661) 392-5585

www.valleyair.org www.healthyairliving.com

If you have any questions, please contact Mr. Jacob M Torrez by telephone at (559) 230-6558 or by email jacob.torrez@valleyair.org.

Sincerely,

Brian Clements
Director of Permit Services



For: Mark Montelongo
Program Manager

Enclosures

Attachment C:
VA Clinic Categorical Exclusion (CATEX)

U.S. Department of Veterans Affairs: Categorical Exclusion from NEPA Requirement for EA or EIS

Project title:	Project number:	Date:
Bakersfield CBOC		01/05/2021

Location:
Address or intersection
1 block S of Olive between Landco and Knudsen
City, State
Bakersfield CA
ZIP 93308
County Kern

Description: VA proposes to construct, under a long-term build-to-suit lease, and operate a 39,648-gross-square-foot community-based outpatient clinic with 214 surface parking spaces. The approximately 7-acre site is undeveloped. The developer is required to comply with the Metropolitan Bakersfield Habitat Conservation Plan (MBHCP), including paying the Habitat Mitigation Fee as required, performing/submitting a Biological Clearance Survey, and implementing Species Protection Measures during construction, as well as all other MBHCP requirements. The developer will provide documentation of compliance with this requirement to the on-site VA Senior Resident Engineer, Robert Pulver (Robert.Pulver@va.gov) and the VA Director of Environmental Programs, Glenn Elliott (Glenn.Elliott@va.gov).

Type(s) of project:

- ☐ Operations/maintenance
- ☐ Repairs/renovation
- ☒ New construction
- ☒ Lease
- ☐ Grant
- ☐ Other (*describe*)

Specify applicable categorical exclusion(s) (38 CFR 26.6(b)(1)):

- ☐ Electrical
- ☐ Components or site elements within VA property line
- ☐ Routine maintenance
- ☐ Procurement for routing facility
- ☐ Interior construction/renovation
- ☒ New construction ≤75,000 GSF
- ☐ Cemetery development ≤20 acres existing property; development ≤5 acres new land
- ☐ Support/appurtenances for normal operations
- ☐ Leases, licenses, permits, and easements
- ☐ Reduction in force
- ☐ Policies, actions, studies with no significant environmental effect
- ☐ Regulations/guidance implement requirements from higher VA levels or other agencies
- ☐ No expenditure of federal funds

Review for extraordinary circumstances (38 CFR 26(b)(3)) - *Check each box to confirm review and item is not applicable*:

- ☒ NA: Greater scope or size than normally experienced for a particular categorical exclusion
- ☒ NA: Actions in highly populated or congested areas
- ☒ NA: Potential for degradation, although slight, or existing poor environmental conditions
- ☒ NA: Use of unproven technology
- ☐ NA: Potential presence of an endangered species, archaeological remains, or other protected resources
- ☒ NA: Potential presence of hazardous or toxic substances

List other potentially significant environmental effects reviewed, if any:

The mitigation identified in the project description is required to ensure no adverse effects to the federally listed endangered San Joaquin kit fox.

Indicate (check box) whether the proposed activity would involve or generate any of the following:

- ☐ Air emissions including GHGs
- ☐ Asbestos
- ☐ Excess noise
- ☒ Utility modification
- ☒ Soil disturbance
- ☐ Water treatment
- ☐ Water flow modification
- ☐ Liquid effluent
- ☐ Petroleum storage
- ☐ Solid waste
- ☐ Hazardous waste
- ☒ Biological resources
- ☐ Radioactive waste
- ☐ Mixed waste
- ☐ RCRA or CERCLA site
- ☐ Wetlands
- ☐ Permit modification
- ☐ Chemical use/storage
- ☐ Aesthetics
- ☐ Water/well use
- ☐ Historic property
- ☐ Other (describe):

Determination

- ◉ **The proposed project qualifies as a categorical exclusion (specified above) with no extraordinary circumstances.**
- ○ **The proposed project MAY have a significant effect on the environment. Therefore, an environmental assessment will be prepared.**
- ○ **Environmental impact statement.**

Reviewed by VA Environmental staff
Signature (electronic) Christine M Modovsky 1744994
Digitally signed by Christine M Modovsky 1744994
Date: 2021.01.05 13:32:28 -08'00'
Title Environmental Engineer, VA-CFM

Approval
Signature (electronic) Eric C ROBERTS 1406931
Digitally signed by Eric C ROBERTS 1406931
Date: 2021.01.05 17:15:37 -05'00'
Title Branch Chief - Team 2

Attachment D:
ALTA Survey

A.L.T.A./N.S.P.S. LAND TITLE SURVEY
COUNTY OF KERN, STATE OF CALIFORNIA

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF KERN, CITY OF BAKERSFIELD AND DESCRIBED AS FOLLOWS:

PARCEL 1:

ALL THAT PORTION OF LOT 1 AS SHOWN ON THE SALES MAP OF LANDS OF THE KERN COUNTY LAND COMPANY FILED APRIL 8, 1892 IN THE OFFICE OF THE KERN COUNTY RECORDER, ALSO BEING A PORTION OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 29 SOUTH, RANGE 27 EAST, MOUNT DIABLO BASE AND MERIDIAN, COUNTY OF KERN, STATE OF CALIFORNIA, AS SHOWN AS PARCEL B OF A CERTIFICATE OF COMPLIANCE RECORDED JULY 17, 1990 IN BOOK 6407, PAGE 459, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 15, THENCE NORTH 89° 10' 32" WEST ALONG THE NORTH LINE OF SAID SECTION 15 AND THE CENTER LINE OF OLIVE DRIVE, 663.86 FEET TO A POINT ON THE NORTHERLY PROLONGATION OF THE WESTERLY LINE OF SAID LOT 1; THENCE SOUTH 00° 13' 29" WEST ALONG SAID WEST LINE, 292.17 FEET TO THE TRUE POINT OF BEGINNING; THENCE DEPARTING FROM SAID WEST LINE, SOUTH 89° 10' 32" EAST PARALLEL WITH THE NORTH LINE OF SAID SECTION 15, 477.59 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF LANDCO DRIVE AS SHOWN ON THE MAP OR PROPOSED COUNTY ROAD 3199 (6-1A 3199 MI) ON FILE IN THE OFFICE OF THE KERN COUNTY SURVEYOR, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1855.00 FEET FROM WHICH POINT A RADIAL BEARS NORTH 84° 19' 54" EAST; THENCE NORTHERLY ALONG SAID WESTERLY LINE AND SAID CURVE THROUGH A CENTRAL ANGLE OF 5° 15' 19" AN ARC LENGTH OF 170.14 FEET TO A POINT OF CUSP AND TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF THE ACCESS ROAD SHOWN ON STATE HIGHWAY MAP FILED IN BOOK 2, PAGE 14, IN THE OFFICE OF THE KERN COUNTY SURVEYOR, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 110.00 FEET FROM WHICH POINT A RADIAL BEARS NORTH 69° 48' 25" EAST; THENCE ALONG SAID SOUTH RIGHT OF WAY LINE OF THE ACCESS ROAD, SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 74° 23' 19" AN ARC DISTANCE OF 142.82 FEET TO THE BEGINNING OF A NON-TANGENT CURVE EASTERLY HAVING A RADIUS OF 1745.00 FEET FROM WHICH POINT A RADIAL LINES BEARS NORTH 87° 12' 23" EAST, SAID CURVE BEING IN THE EAST RIGHT OF WAY LINE OF SAID LANDCO DRIVE; THENCE SOUTHERLY ALONG SAID EASTERLY RIGHT OF WAY LINE AND SAID CURVE THROUGH A CENTRAL ANGLE OF 7° 51' 44", AN ARC DISTANCE OF 239.45 FEET; THENCE SOUTH 10° 39' 21" EAST, CONTINUING ALONG SAID EASTERLY RIGHT OF WAY LINE 287.12 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 15 AND THE EAST LINE OF SAID LOT 1; THENCE DEPARTING FROM SAID EAST RIGHT OF WAY LINE SOUTH 00° 15' 53" WEST, ALONG SAID EAST LINES, 614.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1; THENCE DEPARTING FROM SAID EAST LINES, NORTH 89° 10' 28" WEST ALONG THE SOUTH LINE OF SAID LOT 1, 662.94 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE DEPARTING FROM SAID SOUTH LINE, NORTH 00° 13' 29" EAST, ALONG THE WEST LINE OF SAID LOT 1, 1033.54 FEET TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION AS DEEDED TO THE STATE OF CALIFORNIA IN DEED DATED JUNE 11, 1990 AND RECORDED DECEMBER 4, 1990 IN BOOK 6460, PAGE 2213, OF OFFICIAL RECORDS, DOCUMENT NO. 075229.

ALSO EXCEPTING THEREFROM THAT PORTION AS DEEDED TO THE CITY OF BAKERSFIELD, A MUNICIPAL CORPORATION BY THAT CERTAIN GRANT DEED RECORDED DECEMBER 28, 2004 AS INSTR. # 0204320775, OF OFFICIAL RECORDS AND RERECORDED JANUARY 30, 2014 AS INSTR. # 0214010987, OF OFFICIAL RECORDS.

EXCEPT THEREFROM ALL OIL, GAS AND HYDROCARBON SUBSTANCES AND MINERALS AS RESERVED IN DEEDS RECORDED JUNE 11, 2003 AS INSTR. # 0203114063 AND MARCH 7, 2006 AS INSTR. # 0206054328, OF OFFICIAL RECORDS.

PARCEL 2:

THAT PORTION OF LOT 1 IN THE N.E. 1/4 OF SECTION 15, T. 29 S., R. 27 E., M.D.M., AS SHOWN ON THE SALES MAP OF LANDS OF THE KERN COUNTY LAND COMPANY FILED APRIL 8, 1892 IN THE OFFICE OF THE KERN COUNTY RECORDER DESCRIBED AS:

A STRIP OF LAND 300 FEET IN WIDTH LYING SOUTHERLY OF AND CONTIGUOUS TO THE FOLLOWING DESCRIBED LINE:

COMMENCING FOR REFERENCE AT THE NORTHEAST CORNER OF SAID SECTION; THENCE (1), ALONG THE NORTH LINE OF SAID SECTION, N. 89° 10'32" W., 663.86 FEET TO THE NORTHERLY PROLONGATION OF THE WEST LINE OF SAID LOT 1;

THENCE (2), ALONG SAID NORTHERLY PROLONGATION AND SAID WEST LINE, S. 00°13'29" W., 292.17 FEET TO THE TRUE POINT OF BEGINNING OF THE LINE TO BE DESCRIBED;

THENCE (3), PARALLEL WITH THE NORTH LINE OF SAID SECTION, S. 89°10'32" E., 533 FEET, MORE OR LESS, TO THE CENTERLINE OF LANDCO DRIVE AS SHOWN ON THE MAP OF PROPOSED COUNTY ROAD 3199 (6-IA 3199 MI) ON FILE IN THE OFFICE OF THE KERN COUNTY SURVEYOR.

THE SIDELINES OF SAID STRIP OF LAND SHALL BE PROLONGED OR SHORTENED SO AS TO BEGIN IN SAID WEST LINE AND END IN SAID CENTERLINE.

EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCK OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN, AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT, HOWEVER THE RIGHT TO DRILL, MINE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 100 FEET OF THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED OR OTHERWISE IN SUCH MANNER AS TO ENDANGER THE SAFETY OF ANY HIGHWAY THAT MAY BE CONSTRUCTED ON SAID LANDS.

SURVEYOR'S NOTE

1. *DISTANCES SHOWN ARE IN FEET AND DECIMALS THEREOF.*
2. *NO DISTANCES OR ANGLES SHOWN HEREON MAY BE ASSUMED BY SCALING.*
3. *NO EVIDENCE OF EARTHMOVING WORK, BUILDING CONSTRUCTION, OR BUILDING ADDITIONS WERE OBSERVED ON THIS SITE.*
4. *NO OBSERVED EVIDENCE OF A SOLID WASTE DUMP, SUMP OR SANITARY LANDFILL.*
5. *NO OBSERVED EVIDENCE OF CEMETERIES.*
6. *NO OBSERVED EVIDENCE OF WETLANDS AT TIME OF SURVEY*

UNLESS THIS PLAN HAS THE SEAL AND SIGNATURE OF THE SURVEYOR RESPONSIBLE FOR ITS PREPARATION. THIS IS NOT AN AUTHENTIC COPY OF THE ORIGINAL SURVEY AND SHALL NOT BE DEEMED RELIABLE.

THIS ALTA/NSPS LAND LAND SURVEY IS FOR TITLE INSURANCE PURPOSES ONLY. NOT TO BE USED FOR CONSTRUCTION. DESIGN OR ENGINEERING FOR FUTURE DEVELOPMENT OF SITE.

THIS SURVEY DOES NOT CONTAIN SUFFICIENT DETAIL FOR DESIGN PURPOSES. THE BOUNDARY DATA AND TITLE MATTERS AS SHOWN HEREON HAVE BEEN DEVELOPED FROM THE REFERENCED TITLE REPORT ONLY. ADDITIONAL RESEARCH, FIELD AND OFFICE SURVEY WILL BE REQUIRE.

THE RELATIVE POSITIONAL ACCURACY OF CALLED OUT IMPROVEMENTS SHOWN ON THE SURVEY IS WITHIN 0.1' +/- OF THEIR ACTUAL LOCATIONS.

T&M SURVEYING ASSUMES NO LIABILITY FOR THE ACCURACY OR COMPLETENESS OF ANY THIRD PARTY INFORMATION REFERENCED OR REPRESENTED HEREON. ANY OF SAID INFORMATION SHOWN HEREON HAS BEEN PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

ZONING

THE SUBJECT PROPERTY IS ZONED M-2 PD

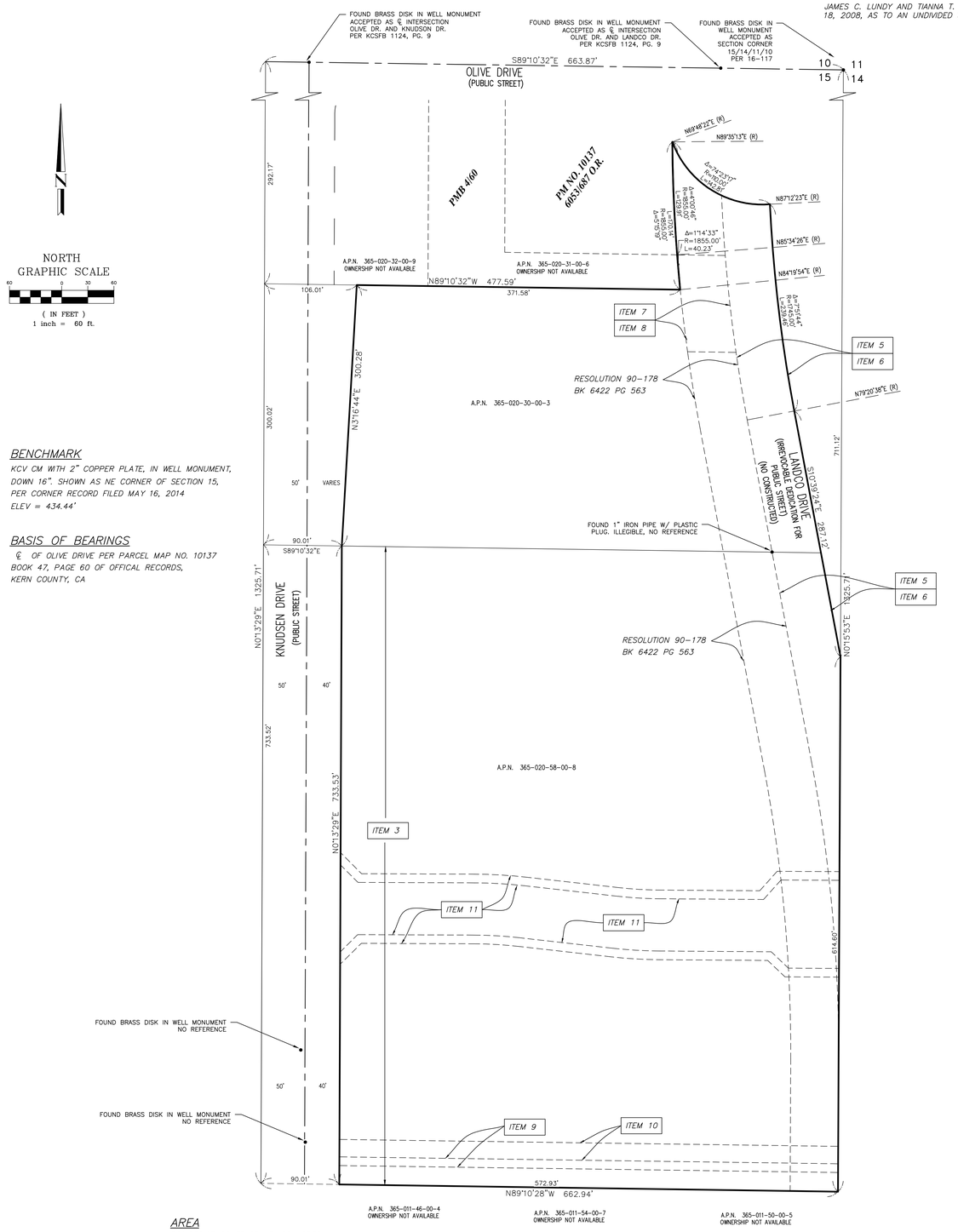
MEDIUM INDUSTRIAL - PRECISE DEVELOPMENT COMBINING

COUNTY OF KERN, CALIFORNIA.

CONTACT CITY OF KERN PLANNING & NATURAL RESOURCE DEPT. FOR PARTICULAR INFORMATION THIS AREA (661)862-8600

FLOOD ZONE

THE SUBJECT PROPERTY LIES WITHIN THE COUNTY OF KERN OF FLOOD INSURANCE RATE MAP PANEL NUMBER 06037C1700F, HAVING AN EFFECTIVE DATE OF 09/26/2008, IN BAKERSFIELD, CALIFORNIA. ZONE "X" AREA OF MINIMAL FLOOD HAZARD.



BENCHMARK

KCV CM WITH 2" COPPER PLATE, IN WELL MONUMENT, DOWN 16". SHOWN AS NE CORNER OF SECTION 15, PER CORNER RECORD FILED MAY 16, 2014
ELEV = 434.44'

BASIS OF BEARINGS

℄ OF OLIVE DRIVE PER PARCEL MAP NO. 10137 BOOK 47, PAGE 60 OF OFFICAL RECORDS, KERN COUNTY, CA

AREA

586,239.67 SQ FT OR 13.458 ACRES±

TOPOGRAPHIC NOTE

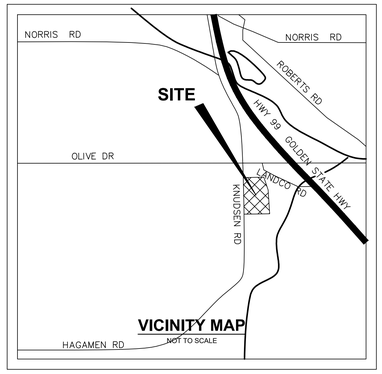
THE TOPOGRAPHY AND CONTOURS SHOWN HEREON ARE BASED ON 1' CONTOUR INTERVALS FROM AERIAL PHOTOGRAMMETRY

TITLE TO SAID ESTATE OR INTEREST IS VESTED IN

THOMAS CAROSELLA AND LISA M. CAROSELLA, TRUSTEES OF THE CAROSELLA TRUST, DATED OCTOBER 29, 2014, AS TO AN UNDIVIDED 50% INTEREST, AS TO PARCEL 1 AND 100% INTEREST AS TO PARCEL 2

AND

JAMES C. LUNDY AND TIANNA T. LUNDY, TRUSTEES OF THE LUNDY FAMILY TRUST DATED SEPTEMBER 18, 2008, AS TO AN UNDIVIDED 50% INTEREST, AS TO PARCEL 1



TITLE INFORMATION

THE FOLLOWING TITLE INFORMATION WAS DERIVED FROM A PRELIMINARY REPORT FOR TITLE INSURANCE PREPARED BY STEWARD TITLE OF CALIFORNIA, INC., ORDER NO.: 01180-289485 DATED OCTOBER 19, 2018 AT 7:30 AM

SCHEDULE B EXCEPTIONS

[ ]	*INDICATES ITEMS PLOTTED HEREON*
ITEM 1	*WATER RIGHTS, CLAIMS OR TITLE TO WATER IN OR UNDER SAID LAND, WHETHER OR NOT SHOWN BY THE PUBLIC RECORDS.*
ITEM 2	*MINERALS OF WHATSOEVER KIND, SUBSURFACE AND SURFACE SUBSTANCES, INCLUDING BUT NOT LIMITED TO COAL, LIGNITE, OIL, GAS, URANIUM, CLAY, ROCK, SAND AND GRAVEL IN, ON, UNDER AND THAT MAY BE PRODUCED FROM THE LAND, TOGETHER WITH ALL RIGHTS, PRIVILEGES, AND IMMUNITIES RELATING THERETO, WHETHER OR NOT APPEARING IN THE PUBLIC RECORDS OR LISTED IN SCHEDULE B. THE COMPANY MAKES NO REPRESENTATION AS TO THE PRESENT OWNERSHIP OF ANY SUCH INTERESTS. THERE MAY BE LEASES, RANTS, EXCEPTIONS OR RESERVATIONS OF INTERESTS THAT ARE NOT LISTED.*
ITEM 3	*AN EASEMENT FOR ERECT POLES AND STRING ELECTRICAL TRANSMISSION WIRES AND RIGHTS INCIDENTAL THERETO IN FAVOR OF KERN COUNTY LAND COMPANY, A CORPORATION AS SET FORTH IN A DOCUMENT RECORDED IN BOOK 80, PAGE 299, OF DEEDS, AFFECTS THE SOUTH HALF OF SAID LOT 1.*
ITEM 4	*RIGHTS OF THE PUBLIC IN AND TO THAT PORTION OF THE HEREIN DESCRIBED LAND LYING WITHIN: LANDCO DRIVE.*
ITEM 5	*AN EASEMENT FOR INGRESS, EGRESS AND ROAD PURPOSES AND RIGHTS INCIDENTAL THERETO IN FAVOR OF THE PUBLIC IN GENERAL AND COUNTY OF KERN AS SET FORTH IN A DOCUMENT RECORDED APRIL 18, 1984 AS INSTRUMENT NO. 041470, IN BOOK 5650, PAGE 1733, OF OFFICIAL RECORDS, AFFECTS PORTION OF SAID LAND.*
ITEM 6	*AN IRREVOCABLE OFFER TO DEDICATE REAL PROPERTY RECORDED APRIL 18, 1984 AS INSTRUMENT NO. 041470, IN BOOK 5650 AND PAGE 1733, OF OFFICIAL RECORDS, WHEREIN A PORTION OF SAID LAND WAS OFFERED FOR FILE NO.: 01180-289485 DEDICATION TO PUBLIC USE FOR INGRESS, EGRESS AND ROAD PURPOSES, WHICH AFFECTS PORTION OF SAID LAND.*
ITEM 7	*AN EASEMENT FOR DRAINAGE AND RIGHTS INCIDENTAL THERETO IN FAVOR OF COUNTY OF KERN AS SET FORTH IN A DOCUMENT RECORDED MAY 6, 1987 AS INSTRUMENT NO. 056128 IN BOOK 6001, PAGE 882, OF OFFICIAL RECORDS, AFFECTS PORTION OF SAID LAND.*
ITEM 8	*AN IRREVOCABLE OFFER TO DEDICATE REAL PROPERTY RECORDED MAY 6, 1987 AS INSTRUMENT NO. 056128, IN BOOK 6001, PAGE 882, OF OFFICIAL RECORDS, WHEREIN A PORTION OF SAID LAND WAS OFFERED FOR DEDICATION TO PUBLIC USE FOR DRAINAGE PURPOSES, WHICH AFFECTS PORTION OF SAID LAND.*
ITEM 9	*AN EASEMENT FOR PERMANENT EASEMENT AND RIGHTS INCIDENTAL THERETO IN FAVOR OF NORTH OF RIVER SANITARY DISTRICT NO. 1 AS SET FORTH IN A DOCUMENT RECORDED APRIL 1, 1998 AS INSTR. # 019840993, OF OFFICIAL RECORDS, AFFECTS THE SOUTH 10 FEET OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 15.*
ITEM 10	*AN EASEMENT FOR CONSTRUCTION EASEMENT AND RIGHTS INCIDENTAL THERETO IN FAVOR OF NORTH OF RIVER SANITARY DISTRICT NO. 1 AS SET FORTH IN A DOCUMENT RECORDED APRIL 1, 1998 AS INSTR. # 019840993, OF OFFICIAL RECORDS, AFFECTS THE NORTH 20 FEET OF THE SOUTH 30 FEET OF THE NORTHEAST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 15.*
ITEM 11	*AN EASEMENT FOR (AS THEREIN PROVIDED) AND RIGHTS INCIDENTAL THERETO AS SET FORTH IN A DOCUMENT RECORDED SEPTEMBER 11, 2007 AS INSTR. # 0207187416, OF OFFICIAL RECORDS, AFFECTS SAID LAND.*
	SUB TERMS AND PROVISIONS AS CONTAINED IN THE ABOVE MENTIONED EASEMENT.
ITEM 12	*THE MATTERS CONTAINED IN AN INSTRUMENT ENTITLED "GRANT OF EASEMENT" DATED DECEMBER 30, 2014, BY AND BETWEEN THOMAS CAROSELLA AND LISA M. CAROSELLA, AS TRUSTEES OF THE CAROSELLA TRUST, DATED OCTOBER 29, 2014, JAMES C. LUNDY AND TIANNA T. LUNDY, AS TRUSTEES OF THE LUNDY FAMILY TRUST DATED SEPTEMBER 18, 2008 AND WAL-MART STORES, INC., A DELAWARE CORPORATION UPON THE TERMS THEREIN PROVIDED RECORDED DECEMBER 30, 2014 AS INSTRUMENT NO. 000214162594 OF OFFICIAL RECORDS.*
ITEM 13	*RIGHTS OR CLAIMS OF PARTIES IN POSSESSION AND EASEMENTS OR CLAIMS OF EASEMENTS NOT SHOWN BY THE PUBLIC RECORDS, BOUNDARY LINE DISPUTES OVERLAPS, ENCROACHMENTS, AND ANY MATTERS NOT OF RECORD, WHICH WOULD BE DISCLOSED BY AN ACCURATE SURVEY, AND INSPECTION OF THE LAND.*
ITEM 14	*MATTERS WHICH MAY BE DISCLOSED BY AN INSPECTION OR BY A SURVEY OF SAID LAND SATISFACTORY TO THIS COMPANY OR BY INQUIRY OF THE PARTIES IN POSSESSION THEREOF.*

SURVEYOR'S CERTIFICATE

THE UNDERSIGNED, BEING A REGISTERED LAND SURVEYOR IN THE STATE OF CALIFORNIA, CERTIFIES TO:

THOMAS CAROSELLA AND LISA M. CAROSELLA, TRUSTEES OF THE CAROSELLA TRUST, JAMES C. LUNDY AND TIANNA T. LUNDY, TRUSTEES OF THE LUNDY FAMILY TRUST, AND STEWART TITLE OF CALIFORNIA, INC.

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2016 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 2, 3, 4, 6A, 8, 9, 13, 14, 15, 16, 17 & 18 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON 10/16/2018.

DATE OF PLAT/MAP: 11/05/2018.

DRAFT

TY E. THOMAS
P.L.S. 9309 EXP. 09/30/2020

11-05-2018
DATE

PROFESSIONAL LAND SURVEYOR TY E. THOMAS No. 9309 Exp. 9/30/2020 STATE OF CALIFORNIA

REVISIONS		
REV	DATE	DESCRIPTION

PREPARED BY:
T&M SURVEYING
531 E. TRENTON AVE.
ORANGE, CA.
O-714-906-8771 C-714-906-8771
WWW.TNMSURVEYING.COM

T&M SURVEYING

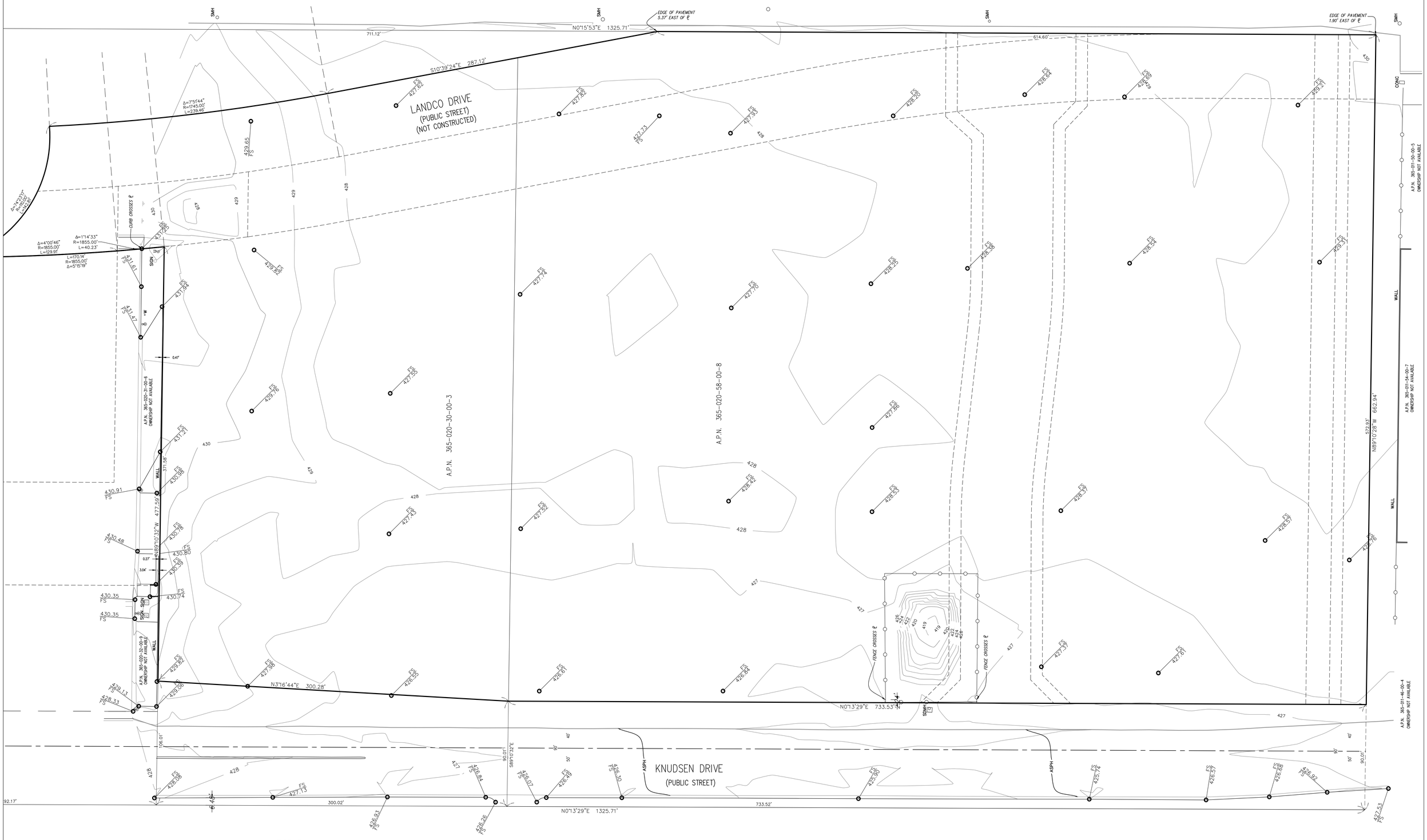
ALTA / NSPS LAND TITLE SURVEY

APN 365-020-30
BAKERSFIELD, CALIFORNIA

PROJECT NO. -370

SHEET 1 OF 2

A.L.T.A./N.S.P.S. LAND TITLE SURVEY
COUNTY OF KERN, STATE OF CALIFORNIA



NORTH
GRAPHIC SCALE
30 0 15 30
(IN FEET)
1 inch = 30 ft.

LEGEND

ASPH	ASPHALT
CONC	CONCRETE
SDMH	STORM DRAIN MANHOLE
SMH	SEWER MANHOLE
	SIGN
	SPOT ELEVATION
U	UTILITY SERVICE
W	WATER METER
	PARKING LIGHT
	FENCE

BENCHMARK

KCV CM WITH 2" COPPER PLATE, IN WELL MONUMENT, DOWN 16". SHOWN AS NE CORNER OF SECTION 15, PER CORNER RECORD FILED MAY 16, 2014
ELEV = 434.44'

REVISIONS		
REV	DATE	DESCRIPTION

PREPARED BY:
T&M SURVEYING
531 E. TRENTON AVE.
ORANGE, CA.
OFFICE 714-906-8771 CELL 714-906-8771
WWW.TNMSURVEYING.COM

ALTA / NSPS LAND TITLE SURVEY

APN 365-020-30
BAKERSFIELD, CALIFORNIA

PROJECT NO. -370
SHEET 2 OF 2

Attachment E:
Bakersfield Fire Department and Police Department Letters

John Frando
■ Fire Chief ■

Deputy Fire Chief
Kevin Albertson
Operations
661-326-3655

Deputy Fire Chief
Jimmy Cherry
Support Services
661-326-3687

Deputy Fire Chief
Paul Briones
Specialized Services
661-326-3698

Fire Department Headquarters
2101 H Street, Floor 1
Bakersfield, CA 93301
(661) 326-3911 (main)
(661) 852-2170 (fax)

Fire Department Community Services / Public Information
2101 H Street, Floor 1
Bakersfield, CA 93301
(661) 326-3688 (office)
(661) 852-2170 (fax)

Fire Prevention Division
2101 H Street, Floor 2
Bakersfield, CA 93301
(661) 326-3979 (main)
(661) 852-2171 (fax)

Fire Training Division
5642 Victor Street (ODFTF)
Bakersfield, CA 93308
(661) 399-4697 (main)
(661) 399-5763 (fax)

Arson Division
2101 H Street
Bakersfield, CA 93301
(661) 326-3911 (main)
(661) 852-2172 (fax)

To: City of Bakersfield Planning Division
Attn: Louis Ramirez
lramirez@bakersfieldcity.us
1715 Chester Ave
Bakersfield, CA 93301

Subject: Assessment of Impact on Fire Department Services for Proposed Clinic

Dear Mr. Ramirez,

We, at City of Bakersfield Fire Department, have thoroughly evaluated the potential impact of the proposed Veteran's Affairs Community-Based Outpatient Medical Clinic Project (5512 Knudsen Drive) on our ability to provide fire department services to the community. We are pleased to inform you that after careful analysis, we have determined that there will be no significant impact on our operations.

Our assessment considered various factors, including the proposed clinic's location, size, scope of services, and its expected impact on the surrounding area. We also considered the potential increase in population density and traffic flow due to the clinic's presence. Based on our findings, we are confident that our current resources and infrastructure are more than capable of meeting the fire safety and emergency response demands of the proposed clinic and the community it will serve.

We remain committed to maintaining our high standard of service and ensuring the safety of all residents and businesses in the area. Our dedicated team of firefighters, paramedics, and support staff will continue to respond promptly to any emergency situations that may arise, be it at the clinic or elsewhere in the vicinity.

Should any changes or updates occur in the future, and you believe they may have an impact on our ability to provide fire department services, we kindly request that you keep us informed so that we can reassess and adapt our plans accordingly.

Thank you for providing us with the opportunity to assess the potential impact of the proposed clinic. If you have any questions or require further information, please do not hesitate to contact our office at (661) 326-3611.

Fire Department:

Thank You,
Ernie Medina
Plans Examiner
Bakersfield Fire Department

City of Bakersfield
email: emedina@bakersfieldfire.us
web: www.bakersfieldcity.us
phone: 661-326-3682

CITY OF BAKERSFIELD

POLICE DEPARTMENT

GREG TERRY
CHIEF OF POLICE

1601 Truxtun Avenue, Bakersfield CA 93301
(661) 326-3880 | FAX (661) 852-2152

August 1, 2023

City of Bakersfield Planning Division
Attn: Louis Ramirez
lramirez@bakersfieldcity.us
1715 Chester Ave
Bakersfield, CA 93301

Subject: Assessment of Impact on Police Department Services for Proposed Clinic

Dear Mr. Ramirez,

The Bakersfield Police Department has diligently evaluated the potential impact of the proposed Veteran's Affairs Community-Based Outpatient Medical Clinic Project (5512 Knudsen Drive) on our ability to provide Police Department services to the community. It brings us great satisfaction to inform you that our assessment has concluded that there will be no significant impact on our operations.

Our comprehensive analysis took into account various crucial factors, including the location, size, services offered, and the expected impact of the clinic on the surrounding area. We also considered any potential changes in crime patterns, traffic flow, and public safety concerns that might arise due to the presence of the clinic. After careful consideration, we are confident that our existing resources and infrastructure are more than sufficient to meet the policing needs of the proposed clinic and the community it will serve.

As always, we are fully committed to upholding public safety and maintaining law and order in our community. Our highly trained Police Officers and support staff will continue to provide swift and effective responses to any emergencies or incidents that may arise, both within the clinic premises and its vicinity. Furthermore, we encourage a collaborative approach with the clinic management to foster a strong partnership between law enforcement and healthcare providers. Together, we can develop tailored safety plans, establish clear protocols, and engage in community outreach efforts to enhance overall safety and security.

Should there be any future developments or changes related to the proposed clinic that might impact our ability to provide police services, we kindly request that you keep us informed. This will enable us to reassess the situation and make any necessary

adjustments to ensure the continued safety and well-being of all residents and visitors in the area.

Thank you for giving us the opportunity to evaluate the potential impact of the proposed clinic. If you have any questions or require further information, please feel free to contact our office at 661-326-3880 or via email at gterry@bakersfieldpd.us. We look forward to working collaboratively to ensure the success of the proposed clinic and to continue serving our community with dedication and professionalism.

Sincerely,

Greg Terry
Chief of Police

Attachment F:
USFWS Section 7.0 Consultation Letter

United States Department of the Interior
FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Suite W-2605
Sacramento, California 95825-1846
SFWO_mail@fws.gov

In Reply Refer to:
08ESMF00-
2020-F-2169

June 2020

Christine Modovsky
U.S. Department of Veteran Affairs
Office of Construction and Facilities Management
Facilities Planning (003C2)
810 Vermont Street NW
Washington DC 20420
christine.modovsky@va.gov

Subject: Formal Consultation on the Bakersfield Outpatient Clinic, Kern County, California

Dear Ms. Modovsky:

This letter is in response to the U.S. Department of Veterans Affairs' (VA) June 11, 2020, request for initiation of formal consultation with the U.S. Fish and Wildlife Service (Service) on the proposed Bakersfield Outpatient Clinic in Kern County, California. At issue are the proposed project's effects on the federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*) (kit fox). This response is provided under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), and in accordance with the implementing regulations pertaining to interagency cooperation (50 CFR 402).

The federal action on which we are consulting is the construction and operation under a long-term lease of a VA outpatient clinic and associated parking on 6.92 acres in Bakersfield, California. Pursuant to 50 CFR 402.12(j), you submitted a biological assessment for our review and requested concurrence with the findings presented therein. These findings conclude that the proposed project may affect, and is likely to adversely affect the kit fox.

In considering your request, we based our evaluation on the following:

1) The June 11, 2020, letter from VA initiating consultation

2) The June 10, 2020, biological study conducted by ECORP Consulting, Inc

3) Other information available to the Service

As stated in the consultation initiation letter, the developer will obtain third party coverage under the Metro Bakersfield Habitat Conservation Plan (MBHCP) for the project's effects to the kit fox when acquiring development permits from the City of Bakersfield. This includes paying the required habitat mitigation fee and implementation of all measures included in the MBHCP to reduce impacts to the kit fox.

The Service issued an Incidental Take Permit (Permit Number PRT-786634) to the City of Bakersfield and Kern County on August 24, 1994, pursuant to section 10 of the Act. This permit authorized the incidental taking of kit fox " in the course of otherwise lawful development and conservation activities…" During issuance of the permit to the City of Bakersfield and Kern County the Service analyzed the effects of permitted activities on federally listed species, including the kit fox, within the permit area in an intra-Service biological opinion issued on August 23, 1994.

The Service has reviewed the proposed project and has determined that it is consistent with the development activities covered in the MBHCP and associated intra-Service biological opinion. As such, as long as the required habitat mitigation fees needed to obtain third party coverage under the MBHCP are paid, no further action is required from the VA, and the VA may consider its obligations under section 7 of the Act with regard to the proposed project to be complete. However, if the developer does not pay the necessary fees for the project to be covered under the MBHCP, additional formal consultation under section 7 of the Act would be necessary.

If you have any questions regarding this biological opinion, please contact Justin Sloan, Senior Fish and Wildlife Biologist, at (559) 221-1828 or the letterhead address.

Sincerely

Patricia Cole

,

Patricia Cole
Chief, San Joaquin Valley Division

U.S. Department of Veterans Affairs

Office of Construction & Facilities Management
Facilities Planning (003C2)
810 Vermont Street NW, Washington DC 20420

June 11, 2020 (by email to jennifer_norris@fws.gov.)

Jennifer Norris, Field Supervisor
U.S. Fish & Wildlife Service
Sacramento Fish and Wildlife Office
2800 Cottage Way
Sacramento, California 95825

Reference: Consultation Code: 08ESMF00-2020-SLI-1788
Event Code: 08ESMF00-2020-E-05536
Project Name: Bakersfield Outpatient Clinic

Subject: Request for formal consultation

Dear Ms. Norris:

This letter requests initiation of formal consultation with the U.S. Fish and Wildlife Service (FWS) on a proposed project to construct and operate a U.S. Department of Veterans Affairs (VA) outpatient clinic in Bakersfield, CA (further described in #1 below). VA has determined that the project will result in adverse effects to the San Joaquin kit fox. Construction would comply with the Metropolitan Bakersfield Habitat Conservation Plan (MBHCP).[1]

A field survey identified no suitable habitat for 10 other listed species identified on the IPaC Official Species List for this location (attached); therefore, we have concluded "no effect" to those species.

The following information is provided to support formal consultation in accordance with Section 7(a)(2) of the Endangered Species Act and FWS implementing regulations (50 CFR Part 402):

1. ***Purpose of proposed project***
   VA proposes to construct and operate under a long-term lease a 39,648-gross-square-foot outpatient clinic on one floor with 214 surface parking spaces in Bakersfield (Kern County), CA.

2. ***Location***
   GPS coordinates: 35.410770, -119.057766 (latitude, longitude).
   Map showing extent of proposed project area: attached.

   The site is on the east side of Knudsen Drive, south of Olive Drive, in Bakersfield, CA 93308 (Kern County).

3. ***Description of habitat in proposed area***
   The proposed 6.92-acre project site is directly adjacent to commercial development on the north and across Knudsen Drive from a municipal fire training facility to the west. The property is zoned M-2 Medium Industrial and is adjacent to property zoned M-3 Heavy Industrial to the west.

[1] https://bakersfieldcity.us/gov/depts/community_development/habitat.htm

The parcel is undeveloped but is highly disturbed with many non-native grasses and weeds.

A biological field survey was conducted the week of April 27, 2020, by a qualified field biologist who walked the entire site. Several burrow complexes were observed that are currently occupied by common California ground squirrels. These burrows also appeared suitable for occupation by San Joaquin kit. No kit fox or their sign (scat, tracks, prey remains) were observed; therefore, these burrows are considered to be "potential dens" for the San Joaquin kit fox. These potential dens are not avoidable in the proposed project's design.

4. How the project would be carried out

When applying for a grading or building permit from the City of Bakersfield, the developer would also initiate actions to comply with the MBHCP, including paying the Habitat Mitigation Fee as required, performing/submitting a Biological Clearance Survey, and implementing Species Protection Measures during construction, as well as all other MBHCP requirements.

5. Photographs



Google street view, from west – image captured May 2019



Photograph, from north – photo taken February 2020

We look forward to receiving your response. If you need additional information, please contact me at (202) 632-5352 or by email at christine.modovsky@va.gov.

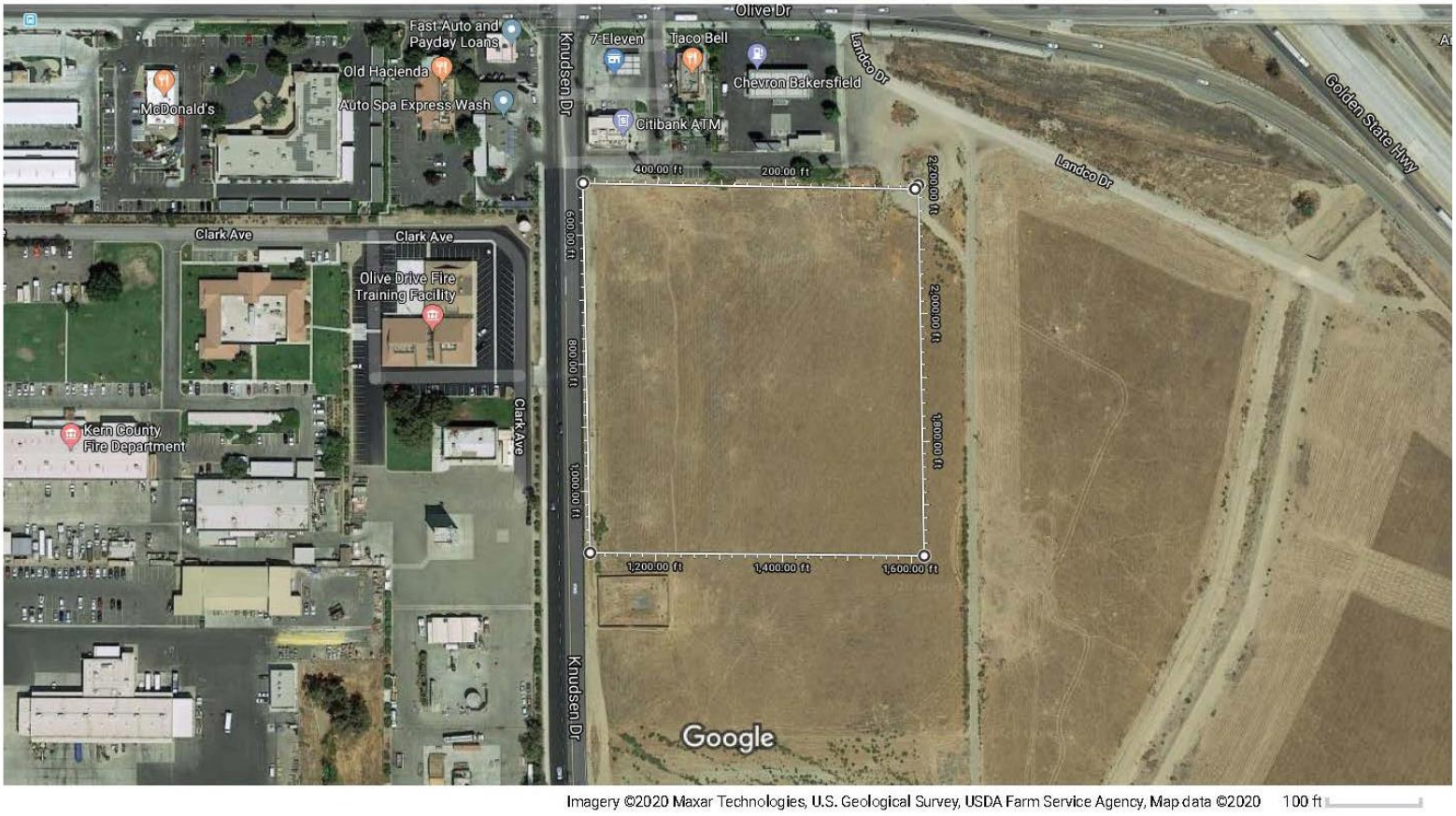
Sincerely,

Christine Modovsky
Environmental Engineer
VA Office of Construction & Facilities Management

Attachments:

1. Map of project area
2. FWS Official Species List
3. Biological field survey

Map of Project Area



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Sacramento Fish And Wildlife Office
Federal Building
2800 Cottage Way, Room W-2605
Sacramento, CA 95825-1846
Phone: (916) 414-6600 Fax: (916) 414-6713

In Reply Refer To: May 01, 2020
Consultation Code: 08ESMF00-2020-SLI-1788
Event Code: 08ESMF00-2020-E-05536
Project Name: Bakersfield Outpatient Clinic

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, under the jurisdiction of the U.S. Fish and Wildlife Service (Service) that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the Service under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Please follow the link below to see if your proposed project has the potential to affect other species or their habitats under the jurisdiction of the National Marine Fisheries Service:

http://www.nwr.noaa.gov/protected_species/species_list/species_lists.html

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*), and projects affecting these species may require development of an eagle conservation plan (http://www.fws.gov/windenergy/eagle_guidance.html). Additionally, wind energy projects should follow the wind energy guidelines (http://www.fws.gov/windenergy/) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at: http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm; http://www.towerkill.com; and http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List

Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Sacramento Fish And Wildlife Office
Federal Building
2800 Cottage Way, Room W-2605
Sacramento, CA 95825-1846
(916) 414-6600

Project Summary

Consultation Code: 08ESMF00-2020-SLI-1788

Event Code: 08ESMF00-2020-E-05536

Project Name: Bakersfield Outpatient Clinic

Project Type: DEVELOPMENT

Project Description: VA proposes to construct and operate under a long-term lease a 39,648-gross-square-foot outpatient clinic on one floor with 214 surface parking spaces. The 6.92-acre site is extensively disturbed but undeveloped.

Project Location:

Approximate location of the project can be viewed in Google Maps: https://www.google.com/maps/place/35.41072539841197N119.05776770355138W



Counties: Kern, CA

Endangered Species Act Species

There is a total of 11 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries[1], as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

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1. NOAA Fisheries, also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

Mammals

NAME	STATUS
San Joaquin Kit Fox *Vulpes macrotis mutica* No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/2873	Endangered
Tipton Kangaroo Rat *Dipodomys nitratoides nitratoides* No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7247 Species survey guidelines: https://ecos.fws.gov/ipac/guideline/survey/population/40/office/11420.pdf	Endangered

Birds

NAME	STATUS
Southwestern Willow Flycatcher *Empidonax traillii extimus* There is **final** critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6749	Endangered
Yellow-billed Cuckoo *Coccyzus americanus* Population: Western U.S. DPS There is **proposed** critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/3911	Threatened

Reptiles

NAME	STATUS
Blunt-nosed Leopard Lizard *Gambelia silus* No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/625	Endangered
Giant Garter Snake *Thamnophis gigas* No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/4482	Threatened

Amphibians

NAME	STATUS
California Red-legged Frog *Rana draytonii* There is **final** critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/2891 Species survey guidelines: https://ecos.fws.gov/ipac/guideline/survey/population/205/office/11420.pdf	Threatened

Fishes

NAME	STATUS
Delta Smelt *Hypomesus transpacificus* There is **final** critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/321	Threatened

Crustaceans

NAME	STATUS
Vernal Pool Fairy Shrimp *Branchinecta lynchi* There is **final** critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/498	Threatened

Flowering Plants

NAME	STATUS
Bakersfield Cactus *Opuntia treleasei* No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7799	Endangered
San Joaquin Wooly-threads *Monolopia (=Lembertia) congdonii* No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/3746	Endangered

Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

ECORP Consulting, Inc.
ENVIRONMENTAL CONSULTANTS

June 10, 2020
2020-087

Richard Banchoff
Project Manager
ISI Professional Services
8280 Willow Oaks Corporate Drive, Suite 150
Fairfax, VA 22031
Via email: rbanchoff@isiwdc.com

Subject: Biological Resources Documentation for a Community-Based Outpatient Clinic (Solicitation #36C10F19Q0134), City of Bakersfield, California

Dear Mr. Banchoff:

On behalf of ISI Professional Services (ISI), ECORP Consulting, Inc. (ECORP) conducted a biological study for the proposed Community-Based Outpatient Clinic being proposed along Knudsen Street in Bakersfield, Kern County, California (Attachment A: Figure 1. *Project Vicinity*). The U.S. Department of Veteran's Affairs (VA) is seeking a lease for a build-to-suit facility on a site that is approximately 6.92 acres in size. The official species list obtained from the U.S. Fish and Wildlife Service's Information for Planning and Consultation (IPaC) system (consultation code 08ESMF00-2020-SLI-1788) identified threatened or endangered (T-E) plant and/or wildlife species that need to be evaluated in order to determine whether they may be affected by the proposed project.

Under Section 7 of the Endangered Species Act of 1973 (ESA), a Federal agency (in this case, VA) or its designated representative needs to determine whether their proposed projects may affect threatened and endangered species or designated Critical Habitat. The VA understands that there is a requirement to evaluate the project in accordance with ESA Section 7, as well as determine if there is a potential for significant environmental effects as defined in the regulations implementing the National Environmental Policy Act (42 U.S.C. 4332(2) (c)).

In accordance with Section 7 of the ESA, an analysis of project effects on T-E species is required to encompass direct, indirect, interrelated, interdependent, and cumulative effects and to draw a conclusion and determination regarding listed federal species within a project action area. Effects determinations can be "No Effect", "May Affect, Is Not Likely to Adversely Affect", or "May Affect, Is Likely to Adversely Affect." This report provides an effects determination for the T-E species identified as having potential to occur by the USFWS.

PROJECT LOCATION

The project area is located within Bakersfield, Kern County, California, on the east side of Knudsen Drive and south of Olive Drive. The site corresponds to portions of Section 15 of Township 29 south, Range 27 east, Mt. Diablo Meridian and Baseline, of the Oildale, CA 7.5-minute quadrangle (U.S. Geological Survey [USGS] 1971[1]) (Attachment A: Figure 2. *USGS 7.5' Quadrangles*). For reference, the approximate center of the Project is located at latitude 35.410299° and longitude -119.057907.

The proposed 6.92-acre project site is directly adjacent to commercial development on the north and across Knudsen Drive from a municipal fire training facility to the west. The property is zoned M-2 Medium Industrial and is adjacent to property zoned M-3 Heavy Industrial to the west.

METHODS

Literature Review

ECORP completed a literature review for the project site and surrounding area by using the USFWS IPaC online tool to identify a list of threatened or endangered (T-E) plant and/or wildlife species identified for the site which need to be evaluated for this study. ECORP also queried the latest versions of the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDB) and California Native Plant Society (CNPS) Electronic Inventory.

In addition, the biologist conducting the literature review researched available information on existing or proposed federal or state nature preserves or scenic rivers, unique ecological sites, geologic features, breeding animal concentrations, champion trees, parks, forests, or wildlife areas on the site or in the site vicinity. ECORP also examined aerial photography that was publicly available, in order to assess the potential habitat areas that were present on the site. Several of the species identified during the data search were eliminated from consideration as potentially occurring based on lack of habitat shown in aerial imagery.

Based on the literature review, the biologists at ECORP identified a list of sensitive and/or listed species that could occur on the proposed project site prior to conducting the field survey.

[1] USGS. 1955, photorevised 1971. "Oildale, California" 7.5-minute Quadrangle. Geological Survey. Denver, Colorado.

Field Survey

An ECORP biologist with knowledge of the species and resources within the Bakersfield portion of the Central Valley of California visited the site and checked for visually obvious signs of T-E species that were potentially occurring in accordance with the literature review. The biologist walked the entire site, taking notes on the habitats present, signs of any T-E species occupancy and taking photographs to document the site conditions. A list of plant and wildlife species observed within the project area was also maintained during the site visit. Any special-status species detected were documented using a handheld Global Positioning System (GPS) device.

The survey also identified potential for any areas of suitable habitat for T-E species that could require focused wildlife surveys in order to definitively determine presence.

FINDINGS

Literature Review

The IPaC list (see Attachment B) identified the following 11 T-E species for the project site: San Joaquin kit fox (*Vulpes macrotis mutica*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), Southwestern willow flycatcher (*Empidonax traillii extimus*), Yellow-billed cuckoo (*Coccyzus americanus*), Blunt-nosed leopard lizard (*Gambelia silus*), Giant garter snake (*Thamnophis gigas*), California red-legged frog (*Rana draytonii*), Delta smelt (*Hypomesus transpacificus*), Vernal pool fairy shrimp (*Branchinecta lynchi*), Bakersfield cactus (*Opuntia treleasei*) and San Joaquin wooly-threads (*Monolopia congdonii*). No Critical Habitats for T-E species were identified as present within the IPaC list for the site. Critical Habitat encompasses the geographic areas occupied by a T-E species at the time it was listed that contain the physical or biological features that are essential to the conservation of specific T-E species and that may need special management or protection.

According to the CNDDB, a total of 19 special-status species have been recorded within the Oildale, California USGS quadrangle. Most of these species are not listed at the federal level but are considered to be California state species of special concern or are listed by other entities and have relatively low levels of sensitivity. The exceptions are the San Joaquin kit fox, Bakersfield cactus and blunt-nosed leopard lizard. The search also identified the crotch bumblebee (*Bombus crotchii*), which is a candidate species for federal listing, as being recorded within the quadrangle.

The CNPS Online Inventory identified five plant species that have been recorded within the Oildale, California quadrangle, including Bakersfield cactus and San Joaquin woolly-threads, both of which are federally listed as endangered species. The search also identified California jewelflower (*Caulanthus californicus*), Hoover's eriastrum (*Eriastrum hooveri*) and San Joaquin bluecurls (*Trichostema ovatum*). None of these latter three species are listed at the federal level, nor are they listed at state levels.

Based on our review of public information, there are no existing or proposed federal or state nature preserves or scenic rivers, unique ecological sites, geologic features, breeding animal concentrations, champion trees, parks, forests, or other special wildlife areas on the site or in the site vicinity.

Field Survey

ECORP biologist/mammal expert Phil Wasz visited the site on April 29, 2020. Mr. Wasz is a wildlife biologist with nine years of experience surveying for wildlife throughout the Western United States. He specializes in leading and conducting biological surveys, construction monitoring, and habitat assessments for listed and sensitive wildlife species in southern California, including Mohave ground squirrel, giant kangaroo rat, burrowing owl, desert tortoise, kit fox, nesting birds, and various other small mammal, reptile, amphibian, and bird species. Mr. Wasz has conducted numerous similar surveys within California's Great Central Valley, for both public and private entities.

The site was highly disturbed with many non-native grasses and weeds present and is considered to be a non-native grassland vegetation community, with disturbed areas mainly present along the boundaries of the site near Knudsen Drive. Common plant species observed included wild brome (*Bromus* sp.), tumbleweed (*Salsola tragus*) and other similar weedy species. Due to being completely surrounded by urban developments, the site is considered an island of habitat that is otherwise isolated from similar habitat areas.

Special Status Species

During the field survey, none of the species on the IPaC list were observed, nor were any other special status species observed. Due to the site being highly disturbed, most special status species are expected to be absent. No sign or habitat for any federal listed species was found on the site but potential habitat for the San Joaquin kit fox, consisting of suitable potential burrows, was observed.

Several burrows and burrow complexes occur across most of the site, most of which are of suitable size and distribution to be potentially used by San Joaquin kit fox, however no kit fox or their sign (scat, tracks, prey remains) were observed anywhere on the project site. These burrows could have been formerly occupied kit fox, though they did not appear to be occupied at the time of the survey. The burrows were mostly occupied by California ground squirrels (*Otospermophilus beecheyi*), as indicated by visual presence of these animals and by presence of sign such as scat and/or tracks. Nevertheless, these burrows and burrow complexes are considered to be "potential dens" for the San Joaquin kit fox.

Because the dens prevail across the majority of the site, and the entire property is proposed to be developed, these potential dens are not avoidable in the proposed project's design.

PROJECT EFFECTS

The following table (Table 1) provides a summary of the potential effects of the project on species identified during the IPaC search.

Table 1: Determination of Project Effects on Federally Listed Species

Common Name	Scientific Name	Status	Habitat Present/ Absent	Determination
PLANTS				
Bakersfield cactus	*Opuntia treleasei*	FE	A	No Effect
San Joaquin woolly-threads	*Monolopia congdonii*	FE	A	No Effect
INVERTEBRATES				
Vernal pool fairy shrimp	*Branchinecta lynchi*	FE	A	No Effect
AMPHIBIANS				
California red-legged frog	*Rana draytoni*	FT	A	No Effect
REPTILES				
Blunt-nosed leopard lizard	*Gambelia silus*	FE	A	No Effect
Giant garter snake	*Thamnophis gigas*	FT	A	
FISH				
Delta smelt	*Hypomesus transpacificus*	FT	A	No Effect
BIRDS				
Southwestern willow flycatcher	*Empidonax traillii extimus*	FE, SE	A	No Effect
Western yellow-billed cuckoo	*Coccyzus americanus*	FT, SE	A	No Effect
MAMMALS				
San Bernardino kangaroo rat	*Dipodomys nitratoides nitratoides*	FE	A	No Effect
San Joaquin kit fox	*Vulpes macrotic mutica*	FE	P	May Affect, Likely to Adversely Affect

U.S. Fish and Wildlife Service
FE Federal Endangered
FT Federal Threatened
FC Federal Candidate

California Department of Fish and Game
SE State Endangered
SSC California Species of Concern

Habitat Absent/Present
P Present
A Absent
CH Critical Habitat

Of all the T-E species identified within the literature search, only the San Joaquin kit fox has the potential to be affected by the project. Potential dens that could be used by kit fox are not avoidable in the proposed project's design.

RECOMMENDATIONS

Although the site contains several burrows that are potentially suitable for San Joaquin kit fox, the potential for kit fox occupancy is considered low due to the presence of intense urban development in the immediate site vicinity. Even though the kit fox appears to be absent from the site at this time, due to lack of evidence of occupation, the time of site-clearing and subsequent development is currently unknown. Therefore, the determination for kit fox for the project, at this project site, is "May Affect, Likely to Adversely Affect." For these reasons we recommend completing the following mitigation measure:

> **MM-01**: When applying for a grading or building permit from the City of Bakersfield, the developer would also initiate actions to comply with the Metropolitan Bakersfield Habitat Conservation Plan (MBHCP),[2] including paying the Habitat Mitigation Fee as required, performing/submitting a Biological Clearance Survey, and implementing Species Protection Measures during construction, as well as all other MBHCP requirements.

We recommend formal Section 7 consultation with the USFWS on kit fox use of the site as early as possible. Thank you for the opportunity to submit this report. If you have any questions regarding this proposal, please contact me at (909) 307-0046 or staylor@ecorpconsulting.com.

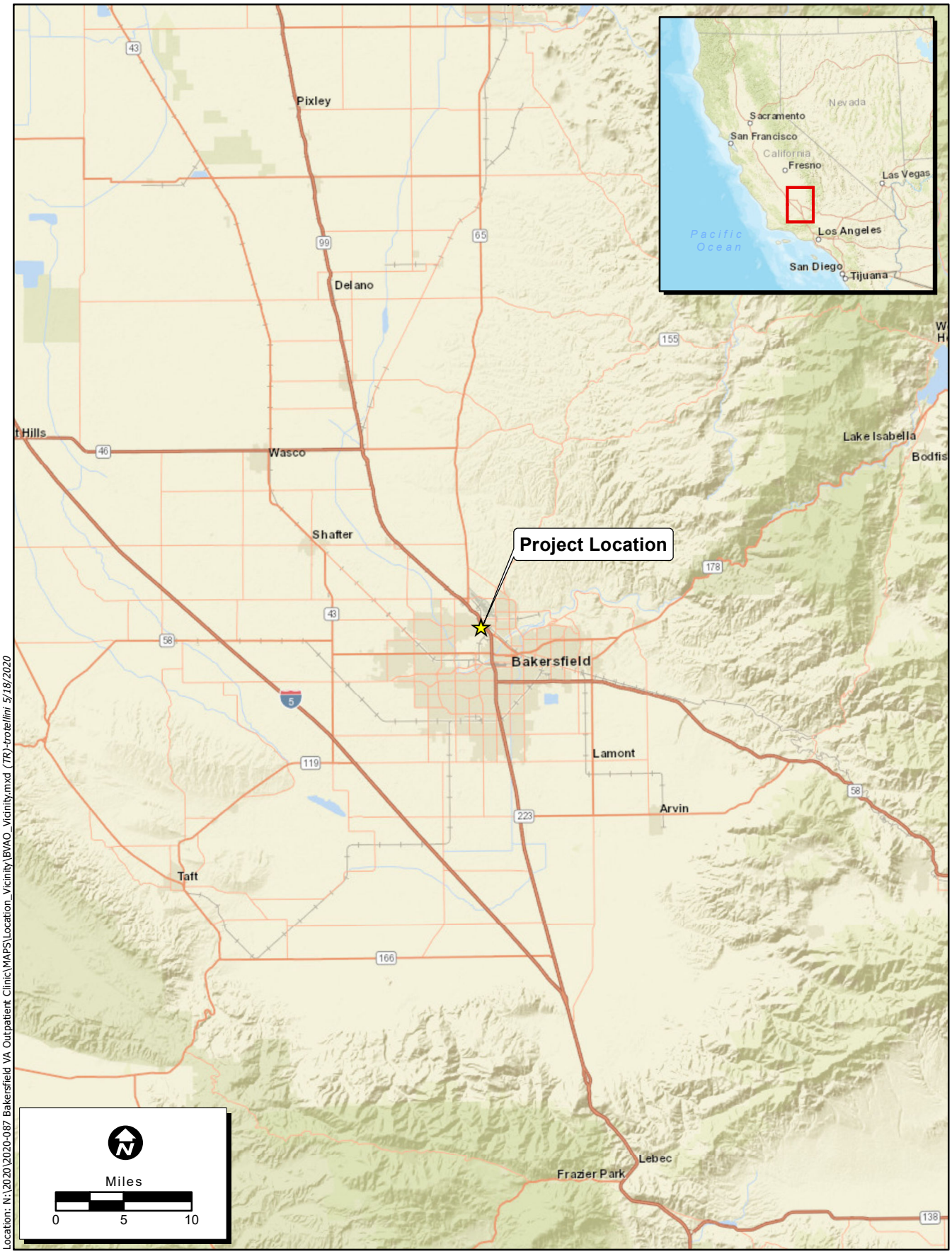
Sincerely,

ECORP Consulting, Inc.

Scott I. Taylor
Senior Biological Program Manager

[2] https://bakersfieldcity.us/gov/depts/community_development/habitat.htm

ATTACHMENT A – FIGURES



Location: N:\2020\2020-087 Bakersfield VA Outpatient Clinic\MAPS\Location_Vicinity\BVAO_Vicinity.mxd (TR)-trotellini 5/18/2020

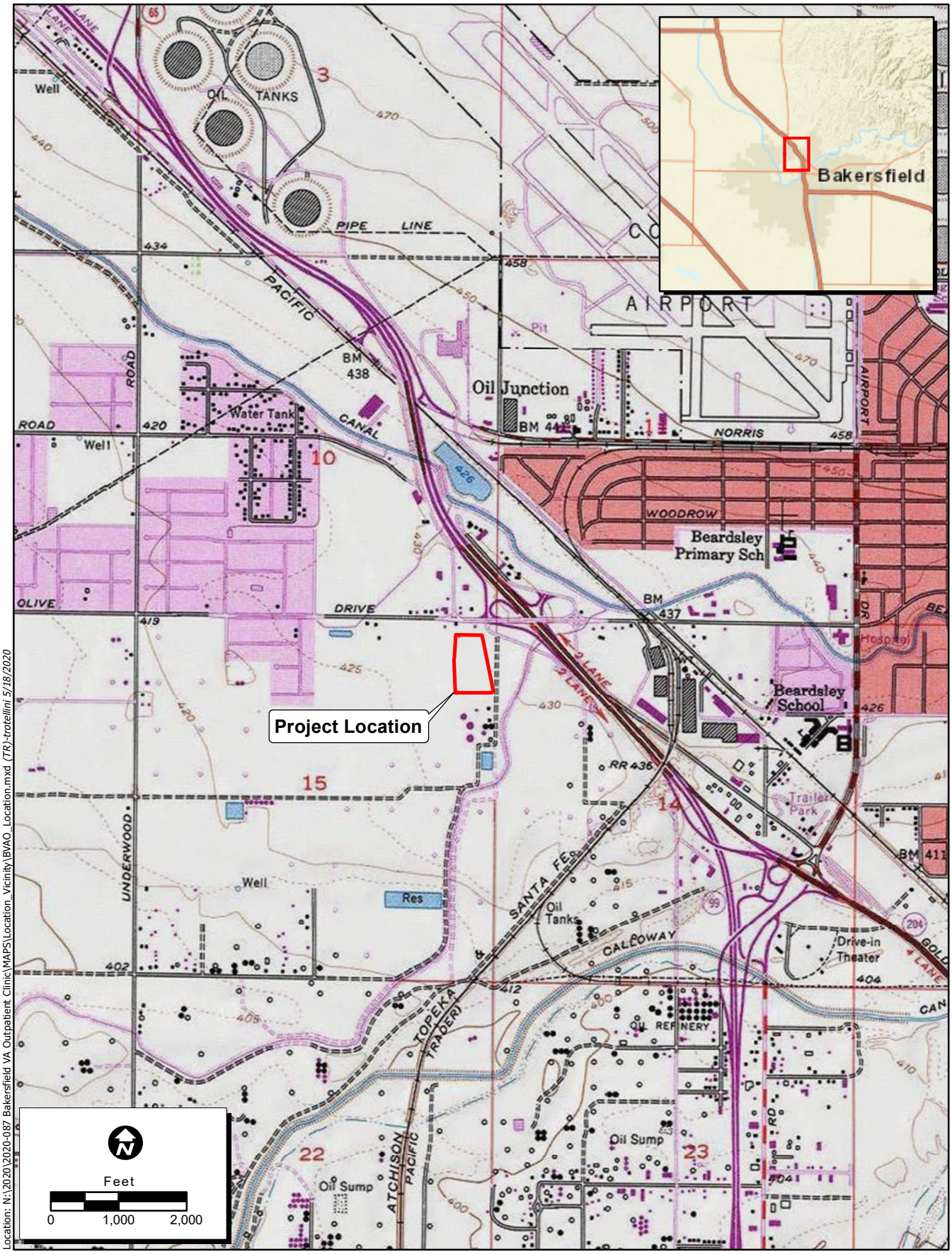
Map Date: 5/18/2020

Service Layer Credits: Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

ECORP Consulting, Inc.
ENVIRONMENTAL CONSULTANTS

Figure 1. Project Vicinity

VA Bakersfield Community-Based Outpatient Clinic



Location: N:\2020\2020-087 Bakersfield VA Outpatient Clinic\MAPS\Location_Vicinity\BVAO_Location.mxd (TR)-trotellini 5/18/2020

Map Date: 5/18/2020

Service Layer Credits: Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

ECORP Consulting, Inc.
ENVIRONMENTAL CONSULTANTS

Figure 2. Project Location

VA Bakersfield Community-Based Outpatient Clinic

ATTACHMENT B – IPaC List

ATTACHMENT C - CNDDB Search Results

Summary Table Report

California Department of Fish and Wildlife

California Natural Diversity Database

Query Criteria: Quad IS (Oildale (3511941))

Name (Scientific/Common)	CNDDB Ranks	Listing Status (Fed/State)	Other Lists	Elev. Range (ft.)	Total EO's	Element Occ. Ranks						Population Status		Presence		
						A	B	C	D	X	U	Historic > 20 yr	Recent <= 20 yr	Extant	Poss. Extirp.	Extirp.
Anniella grinnelli Bakersfield legless lizard	G2G3 S2S3	None None	CDFW_SSC-Species of Special Concern	393 410	20 S:7	0	0	4	0	0	3	2	5	7	0	0
Arizona elegans occidentalis California glossy snake	G5T2 S2	None None	CDFW_SSC-Species of Special Concern	400 900	260 S:3	0	0	0	0	0	3	3	0	3	0	0
Astragalus hornii var. hornii Horn's milk-vetch	GUT1 S1	None None	Rare Plant Rank - 1B.1 BLM_S-Sensitive	400 400	28 S:1	0	0	0	0	1	0	1	0	0	0	1
Athene cunicularia burrowing owl	G4 S3	None None	BLM_S-Sensitive CDFW_SSC-Species of Special Concern IUCN_LC-Least Concern USFWS_BCC-Birds of Conservation Concern	380 540	1989 S:4	0	2	1	0	0	1	1	3	4	0	0
Bombus crotchii Crotch bumble bee	G3G4 S1S2	None Candidate Endangered		400 900	276 S:2	0	0	0	0	0	2	2	0	2	0	0
Buteo swainsoni Swainson's hawk	G5 S3	None Threatened	BLM_S-Sensitive IUCN_LC-Least Concern USFWS_BCC-Birds of Conservation Concern	400 400	2518 S:1	0	0	0	0	0	1	1	0	1	0	0
Chloropyron molle ssp. hispidum hispid salty bird's-beak	G2T1 S1	None None	Rare Plant Rank - 1B.1 BLM_S-Sensitive	400 400	35 S:1	0	0	0	0	0	1	1	0	1	0	0
Eriastrum hooveri Hoover's eriastrum	G3 S3	Delisted None	Rare Plant Rank - 4.2 SB_RSABG-Rancho Santa Ana Botanic Garden		47 S:1	0	0	0	0	1	0	1	0	0	0	1
Eumops perotis californicus western mastiff bat	G5T4 S3S4	None None	BLM_S-Sensitive CDFW_SSC-Species of Special Concern WBWG_H-High Priority		296 S:1	0	0	0	0	0	1	1	0	1	0	0
Gambelia sila blunt-nosed leopard lizard	G1 S1	Endangered Endangered	CDFW_FP-Fully Protected IUCN_EN-Endangered	40 750	380 S:2	0	0	1	0	0	1	2	0	2	0	0

Summary Table Report

California Department of Fish and Wildlife

California Natural Diversity Database

Name (Scientific/Common)	CNDDB Ranks	Listing Status (Fed/State)	Other Lists	Elev. Range (ft.)	Total EO's	Element Occ. Ranks						Population Status		Presence		
						A	B	C	D	X	U	Historic > 20 yr	Recent <= 20 yr	Extant	Poss. Extirp.	Extirp.
Helminthoglypta callistoderma Kern shoulderband	G1 S1	None None	IUCN_EN-Endangered	375 375	3 S:1	0	0	0	0	0	1	1	0	1	0	0
Imperata brevifolia California satintail	G4 S3	None None	Rare Plant Rank - 2B.1 SB_RSABG-Rancho Santa Ana Botanic Garden SB_SBBG-Santa Barbara Botanic Garden USFS_S-Sensitive	400 400	32 S:1	0	0	0	0	0	1	1	0	1	0	0
Lasiurus cinereus hoary bat	G5 S4	None None	IUCN_LC-Least Concern WBWG_M-Medium Priority	400 400	238 S:1	0	0	0	0	0	1	1	0	1	0	0
Monolopia congdonii San Joaquin woollythreads	G2 S2	Endangered None	Rare Plant Rank - 1B.2 SB_UCBG-UC Botanical Garden at Berkeley	400 400	111 S:1	0	0	0	0	1	0	1	0	0	1	0
Opuntia basilaris var. treleasei Bakersfield cactus	G5T1 S1	Endangered Endangered	Rare Plant Rank - 1B.1 SB_RSABG-Rancho Santa Ana Botanic Garden	420 915	62 S:7	0	0	3	3	1	0	1	6	6	0	1
Perognathus inornatus San Joaquin Pocket Mouse	G2G3 S2S3	None None	BLM_S-Sensitive IUCN_LC-Least Concern	610 623	127 S:2	0	0	0	0	0	2	0	2	2	0	0
Spea hammondii western spadefoot	G3 S3	None None	BLM_S-Sensitive CDFW_SSC-Species of Special Concern IUCN_NT-Near Threatened	378 378	1359 S:1	0	0	0	1	0	0	1	0	1	0	0
Taxidea taxus American badger	G5 S3	None None	CDFW_SSC-Species of Special Concern IUCN_LC-Least Concern		592 S:1	0	0	0	0	0	1	1	0	1	0	0
Vulpes macrotis mutica San Joaquin kit fox	G4T2 S2	Endangered Threatened		380 890	1018 S:21	0	7	5	1	0	8	6	15	21	0	0

Attachment G:
SHPO Letter

State of California • Natural Resources Agency
Edmund G. Brown Jr., *Governor*

DEPARTMENT OF PARKS AND RECREATION
OFFICE OF HISTORIC PRESERVATION
Lisa Ann L. Mangat, *Director*

Julianne Polanco, State Historic Preservation Officer
1725 23rd Street, Suite 100, Sacramento, CA 95816-7100
Telephone: (916) 445-7000 FAX: (916) 445-7053
calshpo.ohp@parks.ca.gov www.ohp.parks.ca.gov

October 3, 2018

Reply in Reference To: VA_2018_0629_001

Samuel Perminter
Department of Veteran Affairs
Team Lead Western Division
Office of Real Property
425 I Street NW, Room 6W.511
Washington, D.C. 20001

Re: Section 106 Consultation for Construction of Community Based Outpatient Clinic, 5303 East Brundage Lane or 5252 Knudsen Drive, Bakersfield, Kern County

Dear Mr. Perminter:

The Department of Veterans Affairs (VA) is continuing consultation in compliance with Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. §306108), as amended, and its implementing regulation found at 36 CFR Part 800.

After reviewing the VA's most recent response (September 20. 2018) to the SHPO's request for additional supporting documentation for the proposed construction of a Community Based Outpatient Clinic in Bakersfield, the SHPO concurs with the VA's finding of no historic properties affected pursuant to 36 CFR Part 800.4 (d)(1). Please be advised that under certain circumstances, such as an unanticipated discovery or a change in project description, the VA may have future responsibilities for this undertaking under 36 CFR Part 800.

If there are any questions, contact Ed Carroll at (916) 445-7006 or Ed.Carroll@parks.ca.gov.

Sincerely,

Julianne Polanco
State Historic Preservation Officer

DEPARTMENT OF VETERANS AFFAIRS
Office of Construction & Facilities Management
Washington DC 20420

September 20, 2018

Julianne Polanco
State Historic Preservation Officer
California Office of Historic Preservation
Department of Parks & Recreation
1725 23rd Street, Suite 100
Sacramento, California 95816

RE: Section 106 Consultation for Leasing of properties
5303 East Brundage Lane or 5252 Knudsen Drive, Bakersfield, Kern County, CA for the future construction of Community Based Outpatient Clinic, (VA 2018 0629 00)

Dear Ms. Polanco,

On September 13, 2018, the U.S. Department of Veterans Affairs (VA) received from the California State Historic Preservation Office (SHPO) a letter requesting further information on our August 24, 2018 Section 106 consultation letter for the referenced undertaking. We hope these responses will clarify your questions. The following where the questions your office submitted (*italics*) and our responses.

1. *According to their letter, the VA do not "currently have a design for the proposed development but will initiate consultation with the SHPO pursuant to 36 CFR Part 800 to address any potential adverse effects when the site and preliminary designs are known and the VA is ready to proceed." The SHPO requests the VA clarify this proposed course of action in consideration of the fact that the VA previously initiated consultation requesting the SHPO's concurrence with their finding of effect.*

   This procurement is a lease back procurement, where a developer is selected through a competitive procurement process, at which time the winning developer will purchase the land and build the facility that VA will lease back from the developer over a specified period. The developer, in their proposal, has only provided a "conceptual" site plan as to how they think the site might be developed, but they have not completed any extensive consultation with city at this point to determine exactly how the site will be developed. So, at this point it has not been determined where the building might be situated on the site. VA will not purchase or ever own the land. VA is will provide the Bakersfield Clinic site design to the California Office of Historic Preservation once it is available.

2. *The VA state that the "recommended Tribes will be contacted as well." The SHPO requests a representative copy of the dated letter sent to the tribes and that the VA make the SHPO aware of any comments received through this step.*

   Please see attachments. As of the date of this letter we have not had any responses from the listed tribes. We will notify the SHPO if we receive any comments.

3. *The VA modified its finding of effect from no historic properties affected to that of no adverse effect to "built resources." This is not a valid finding of effect under 36 CFR Part 800 and an undertaking may not have separate findings of effect for subsurface and built environment resources.*

   The SHPO is correct our initial consultation (July 20, 2018) for a finding of no historic properties affected is still our official determination. We are sorry that the August 24 letter had the incorrect statement of no adverse effect to "built resources".

4. *The SHPO continues to object to the VA's finding of effect. Again, the SHPO requests that the VA revise this submittal in accordance with National Historic Preservation Act regulations and resubmit it for review.*

We hope these responses will comply with the SHPOs submittal requirements.
If you have any questions regarding this VA undertaking, please contact me at (202) 632-5440 or samuel.perminter@va.gov. Thank you for your ongoing support of Veterans and your work to preserve the historic resources of California.

Sincerely,

Samuel Perminter
Team Lead Western Division
Office of Real Property (0031C1E), Office of Construction and Facilities Management
425 I Street NW, Room 6W.511
Washington, DC 20001

CC:
Ed Carroll, California State Historic Preservation Office
Angela McArdle, Advisory Council on Historic Preservation



Figure 5. Brundage Lane



Figure 6. Knudsen Drive

Attachment H:
Biological Resources Response to Comments and Crotch's Bumble Bee Survey Results Letter

McCORMICK
BIOLOGICAL, INC.
Biological Sciences – Inventory, Permitting, and Planning

August 2, 2023

Mr. Steve Doctor
SASD Development Group, LLC
4895 Pacific Hwy
San Diego, CA 92110

Subject: **Bakersfield VA Community-Based Outpatient Clinic EIR - Biological Resources Response to Comments**

Mr. Doctor,

McCormick Biological, Inc. (MBI) has prepared responses to selected comments received in Comment Letter D pertaining to biological resources. These responses represent MBI's professional opinion regarding the resources of the Project site and vicinity. For reference, my resume containing selected experience is attached (Attachment 1).

Comment D-24: The site conditions were assessed based on the single reconnaissance level and the Biological Resources Evaluation (BRE) provides background detail regarding the habitat requirements for each special-status species. A complete literature review was conducted to identify all of the potentially occurring special-status species in the region of the Project. The literature review resulted in identification of several species that could occur in the region of the project. This list was further analyzed to assess each species' potential to occur based on whether the project is in the published range and contains habitat requirements to support each species. The observations of the physical and biotic environment during the reconnaissance survey by an appropriately qualified biologists (those with years of experience in a region) is a standard approach to assessing potential occurrence on an individual site. The impact analysis in the Biological Resources Evaluation acknowledges that one site visit cannot be used to determine that a species is not present and assumed that site use or occupation may indeed occur prior to site development. For the species identified with any potential to occur, potential impacts were analyzed. The BRE provides a sufficient amount of baseline information for each of these species to determine if the described existing conditions could support special-status species.

As stated in the BRE, burrowing owls are year-round residents in much of California, including the Central Valley and California is important to wintering owls (Shuford & Gardali 2008). As such, this species could occupy the California ground squirrel burrows found during the reconnaissance survey at any time of the year. Therefore, the BRE reached the accurate conclusion that suitable habitat was present and the species has potential to occupy the site. Given the site conditions, no number of negative surveys during any season would eliminate the potential for this species to occur onsite. As such, impacts were properly identified and mitigation measures proposed to reduce the potential impacts to burrowing owls that may subsequently occupy the site to less than significant.

A site visit to assess presence of bumble bees due to the potential for Crotch's bumble bee (*Bombus crotchii*) was conducted on May 26, 2023. The survey was conducted by Randi McCormick and Ashleigh Pryor, biologists with McCormick Biological, Inc. Habitat was found to be poor for the species based on lack of likely floral resources. No bumble bees of any species were observed during the survey. A complete results letter will be submitted under separate cover.

Comment D-25: Section 3.2 on Page 15 of the BRE states that the project footprint identified (see Figures 1-1 and 1-3) and a 100-foot buffer were walked if accessible and the buffer was evaluated using binoculars if not accessible. No fences or other hindrances were noted and the resulting area walked included the entire project with the exception of the existing pavement on Knudsen Drive. The 100-foot buffer covered the future alignments of Landco Drive and Street "A".

Comment D-26: Regarding the baseline conditions as they pertain to biological resources, the periodic disking and other urban disturbances that occurred on the project prior to the October 2021 site visit and over the subsequent months, the conditions at the time of the NOP (August 2022) would not have been more conducive to special-status species occurring than those observed during the documented site visit.

Based on my 35 years of experience in the urban Bakersfield area, remnant patches of open space that remain in the urban area take years to substantially change in vegetation composition and/or habitat quality without active protection and management (see attached resume). They are typically former agricultural lands which have ceased production for decades, but the effects of that disturbance and continued disturbance from human access, domestic dogs and cats, unauthorized dumping, and offroad access don't allow for substantial recovery. Taking those observations into consideration, the 10 months between the October 2021 site visit and the August 2022 NOP is not substantial enough to materially improve site conditions or habitat quality at this location. Further, higher than normal rainfall in the winter and spring of 2023 did not result in a substantial improvement in the site conditions based on a site visit conducted on May 26, 2023 by MBI Senior Biologist Ashleigh Pryor and Principal Biologist Randi McCormick. Although there was an observable response by vegetation and the overall vegetative height and cover was higher than observed during the previous site visit, the composition remained dominated by non-native mustards and invasive weeds. The overarching influence on habitat quality remains the surface management.

Comment D-27: The "potential to occur" determination for special-status plant species was not made based only on the conditions at the time of the site visit. Habitat type, soils, topography, and the disturbance level in general were considered in the determination, as stated in the Biological Resources Evaluation. It should be noted that while drought conditions may affect presence in any given year making timing of surveys to determine presence important, drought conditions are not used to determine overall suitability or potential to occur. The conditions that were used in the Biological Resources Evaluation to determine suitability for the identified special-status plants do not change with the precipitation, as existing physical characteristics and site history were used to determine suitability along with the resulting potential to occur. It is appropriate and necessary to use professional judgment on any site, regardless of ephemeral observations, to draw conclusions regarding the potential for any given species to occur.

CDFW's (2018) minimum standards cited by the commentor contain a process for determining when botanical surveys to detect special-status plants and sensitive natural communities would be needed prior to project initiation. These standards provide the following guidance:

> Evaluate the need for botanical field surveys prior to the commencement of any activities that may modify vegetation, such as clearing, mowing, or ground-breaking activities. It is appropriate to conduct a botanical field survey when:
>
> - Natural (or naturalized) vegetation occurs in an area that may be directly or indirectly affected by a project (project area), and it is unknown whether or not special status plants or sensitive natural communities occur in the project area;
> - Special status plants or sensitive natural communities have historically been identified in a project area; or
> - Special status plants or sensitive natural communities occur in areas with similar physical and biological properties as a project area.

The Biological Resources Evaluation clearly identifies the existing site conditions and why these conditions preclude the occurrence of any special-status plant species, showing that it is not unknown whether any such species occur on the project (bullet 1). Addressing bullet 2, no special-status plants or sensitive natural communities have been documented on the project and bullet 3, no special status plants or sensitive natural communities were identified that occur in areas with similar physical and biological properties compared to the project site. Therefore, conducting multiple surveys is not warranted to identify potential impacts to special-status plants or sensitive natural communities.

Comment D-29: For all species considered, Tables 4-1 and 4-2 of the Biological Resources Evaluation describe species habitat requirements and compare those requirements to observed physical conditions documented during the October 2021 reconnaissance survey. Conclusions shown in these tables are drawn from habitat requirements compared to existing conditions with further analysis in the text for special status species with any potential to occur. While the time of day and temperature would have no influence on the observed conditions or physical characteristics documented, the site visit was conducted on a partly cloudy day between 10:32 am and 11:54 am with a temperature of 60°F and light winds. From the photos included in Appendix D of the Biological Resources Evaluation, the conditions were partly cloudy and visibility was more than adequate to view the entire site.

Comment D-30: All of the special-status species identified in the literature review conducted for the October 2021 reporting were considered. The following table addresses the species identified in the comment letter. No significant impacts are anticipated to occur as a result of the Project after mitigation. Mitigation measures included in the DEIR would result in protection of all of the species below that may occur on or near the Project:

Species	Status	Notes
Monarch butterfly *Danaus plexippus*	FC	Wintering has been reported to the California Natural Diversity Database (CNDDB) (CDFW 2023) approximately 4.5 miles east-southeast of the Project in eucalyptus trees at a city park. No

		eucalyptus or other suitable trees were found onsite for overwintering. No milkweed (*Asclepias* spp.) plants were identified during site visits and no breeding has been recorded in a 10-mile radius. The site does not support any identified Monarch burrerfly nectar sources. Therefore, this species is not expected, and no impacts are anticipated.
California gull *Larus caifornicus*	BCC, LC	No nesting by this species has been reported within a 10-mile radius of the Project (CNDDB) and no nesting habitat is present (Zeiner et al. 1990). Although the Project site meets the minimum requirements for foraging, this species is likely to forage throughout the city of Bakersfield in landfills, stormwater and water treatment impoundments, fields, and parking lots and has been documented throughout the city (iNaturalist 2023a, ebird 2023). No significant impacts are anticipated.
Double-crested cormorant *Nannopterum auritum*	WL, LC	This species winters in the interior of California, including Bakersfield but is not expected to nest on or near the Project as no suitable nesting habitat is present. The Project additionally does not meet the minimum requirements for foraging (Zeiner et al. 1990). Sightings in the vicinity are concentrated around the Kern River and other permanent water sources (iNaturalist 2023b, ebird 2023) and this species' population trend is increasing (BirdLife Interational 2018a). Therefore, no impacts are anticipated.
Turkey vulture *Cathartes aura*	BOP, LC	No suitable nesting habitat is present on the Project site. The Project site meets the minimum requirements for foraging and the species is likely to occasionally forage in the vicinity (Zeiner et al. 1990). Sightings of the species are relatively common throughout all seasons in and around Bakersfield (ebird 2023) and it worldwide population status is considered stable (BirdLife International 2018b). Although occasional foraging may occur on or near the Project site, the loss of this habitat would not result in significant impacts to the species.
Cooper's hawk *Accipiter cooperi*	WL, BOP, LC	No suitable nesting habitat is present on the Project site and typical foraging habitat for this species is not currently present (Zeiner et al. 1990). Cooper's hawks are known to nest and forage in mature trees and throughout the urban area of Bakersfield where vegetation is suitable. Sightings of the species are relatively common throughout all seasons in and around established neighborhoods in the city (ebird 2023) and its population trend is increasing (BirdLife International 2016a). Development of the Project with its associated landscaping may actually increase the availability of suitable habitat for this species in the vicinity. No significant impacts are anticipated.
Red-tailed hawk *Buteo jamaicensis*	BOP, LC	This species is extremely common throughout all habitat types in California. It is very flexible in selection of nesting substrate, from relatively undisturbed forests and riparian areas to manmade structures (Zeiner et al. 1990). No likely trees or structures are present on the Project site and no unoccupied raptor nests were observed on the Project or surrounding area during the site visits. Foraging habitat is present throughout the city of Bakersfield including on the Project site. Its population trend is considered increasing (BirdLife International 2016b). The loss of the Project site as foraging habitat for this species would not be significant.

		Implementation of BIO MM-2 would result in avoiding impacts to nesting individuals should they subsequently nest on or near the Project site.
Barn owl *Tyto alba*	BOP, LC	This species' requirements are flexible, and it is extremely common throughout all habitat types, including urban situations. In urban areas, nesting typically occurs in structures, crevices, on ledges of structures, or in trees or snags. Roosts in similar locations and is active year-round (Zeiner et al. 1990). No likely trees or structures are present on the Project site and nesting onsite is not expected. Foraging habitat is present throughout the city of Bakersfield including on the Project site. This species' population trend is considered stable (BirdLife International 2019). The loss of the Project site as foraging habitat for this species would not be significant. No impacts would occur.
American kestrel *Falco sparverius*	BOP, LC	This species is extremely common throughout all habitat types in California. It is very flexible in selection of nesting substrate, nesting in cavities and crevices trees and manmade structures (Zeiner et al. 1990). No likely trees or structures are present on the Project site and no potentially suitable cavities were observed on the Project or surrounding area during the site visits. Foraging habitat is present throughout the city of Bakersfield including on the Project site. This species' population trend is consider stable (BirdLife International 2016c). The loss of the Project site as foraging habitat for this species would not be significant. Implementation of BIO MM-2 would result in avoiding impacts to nesting individuals should they subsequently nest on or near the Project site.
Merlin *Falco columbarius*	WL, BOP, LC	California is not included in the breeding range of this species (Zeiner et al. 1990). Main prey consists of small birds, with some other items selected (Zeiner et al. 1990). This species is occasionally observed during winter in the city (ebird 2023) and its population status is considered stable (BirdLife International 2021a). The loss of the Project site as winter foraging habitat would not be significant.
Peregrine falcon *Falco peregrinus*	BCC, CFP, LC	Kern County is not included in the breeding range of this species (Zeiner et al. 1990). This species occasionally reported in city (ebird 2023) and its population status is considered increasing (BirdLife International 2021b). The loss of the Project site as winter foraging habitat would not be significant.
Loggerhead shrike *Lanius ludovicianus*	BCC, SSC, SSC2, NT	This species nests in shrubs or low trees with dense foliage (Zeiner et al. 1990), none of which are present on the Project site. They are occasionally observed within the city, primarily in association with the Kern River, and rarely in urban situations (ebird 2023). The population trend is decreasing (BirdLife International (2020). This species is not expected on or near the Project and no impacts would occur.
California horned lark *Eremophila alpestris actia*	WL, LC	The horned lark (*Eremophila alpestris*) nests on the ground in the open, typically in association with grassland or other open, sparse habitats (Zeiner et al. 1990). The breeding season distribution of the California horned lark (*Eremophila alpestris actia*) is limited to the northwestern and southwestern corners of Kern County (Grinnell and Miller 1944); therefore, the Project is outside of the

		breeding range for this race. This race of horned larks may forage outside of the breeding range, and horned larks in general are infrequently reported in the city. As such, the loss of the Project site as potential foraging habitat for this species would not be significant. No impacts would occur.
San Joaquin kit fox Vulpes macrotis mutica	FE, CT	This species was evaluated and potential impacts addressed in the Biological Resources Evaluation and DEIR.

Abbreviations:
BOP – Birds of Prey
BCC – USFWS Bird Species of Conservation Concern
CT – State listed as threatened
FC – Federal Candidate for Listing
FE – Federally listed as endangered
LC – Least Concern (International Union of Concerned Scientists Red List)
SSC – California Species of Special Concern
SSC2 – California Bird Species of Special Concern priority 2 (Shuford and Gardali 2008)
NT – Near Threatened (International Union of Concerned Scientists Red List)
WL - Watch List (Shuford and Gardali 2008)

Lack of observations during the reconnaissance survey does not change the potential for impacts and more extensive surveys are not likely to reveal unidentified impacts given the findings shown in the table above.

The Project site is not, in fact, part of a wildlife connectivity corridor. Its proximity near State Route 99, surrounding urban uses, general disturbed nature of other open lands, train tracks, and extremely heavily trafficked roads creates a risk to any terrestrial wildlife that may inhabit the site. The wildlife that typically inhabit this type of site undertake smaller movements and, other than San Joaquin kit fox, do not require large blocks of habitat to persist. While San Joaquin kit fox may require larger habitat blocks to persist in natural lands, within the City of Bakersfield, they use urban landscapes such as schools, golf courses, open lots, canals, railroad rights-of-way, and other areas impacted by urban development. The area is already heavily urbanized, and human pressures are well-established. As described above, the sensitive bird species that are known from the city are found throughout the urban area and there is no reason to suspect that the development of this Project site will alter those occurrences and the potential for those species to continue using the urban area is various capacities.

The site is not in or associated with any known wildlife corridors nor is it identified as an “Essential Connectivity Area” in the statewide strategy for preserving such areas (Spencer et al. 2010).

Comment D-35: As stated in the response to comment D-24, burrowing owls may occupy areas in this part of California with potentially suitable habitat at any time. As such, a mitigation measure that addresses potential occupation at the time of initial project disturbance is appropriate for implementation of avoidance of individual burrowing owls.

Comment D-39: Open space in general is not necessarily compensable if not occupied by listed species. Compensation is included in BIO MM-5 for impacts to San Joaquin kit fox habitat if known dens are found. Compensation for habitat disturbance may indeed occur if a consultation is required due to Crotch bumble bee presence; however, this would be speculative as to the effectiveness based on the current known information about Crotch bumble bee. For the remainder of the potentially occurring special-status species,

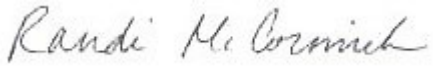
either no significant impacts are identified or mitigation measures have been proposed to reduce the impacts to these species to a level of less than significant.

Comment D-41: See D-39. Mitigation in the form of compensation land has been standard practice throughout the life of the Metropolitan Bakersfield Habitat Conservation Plan and throughout the San Joaquin Valley, including Kern County through other similar FESA and CESA permits (BLM Programmatic Oil and Gas Biological Opinion; California High Speed Rail Fresno to Bakersfield ITP and BO, and several individual project permits). The expiration of the MBHCP does not diminish the effectiveness of this standard approach to mitigating for loss of habitat for listed species.

Comment D-43: MBI had no direct contact with agencies. However, a comment letter was received from CDFW (October 18, 2022). All three state listed species and one California species of special concern identified in the comment letter were addressed in the Biological Resources Evaluation.

Please let me know if you have any questions regarding the information contained in this letter.

Thank you,



Randi McCormick
Principal Biologist

Attachment 1

Randi McCormick Resume

Randi McCormick *Principal Biologist*

rmccormick@mcbioinc.com

Education

- **California State University–Bakersfield (CSUB)**
  Bachelor of Science–Biology, 1990
- **Texas A&M University–College Station**
  Civil Engineering/Geology, 1980–1985 (no degree)

Permits

- **Larry Saslaw**
  CDFW SCP No. SC-002411; Approved Field Assistant – San Joaquin (=Nelson's) antelope squirrel (Ammospermophilus nelsoni, SJAS)
- **McCormick Biological, Inc. (MBI)**
  California Department of Fish and Wildlife (CDFW) Scientific Collecting Permit (SCP) Number (No.) SC-009231
  Short-nosed kangaroo rat
- **MBI**
  Federal Fish and Wildlife Permit Number (No.) TE-59559C-1; California red-legged frog
- **CDFW–Plant Voucher Collecting**
  Permit No. 2081(a)-23-053-V

Designated/Approved Biologist

- **Pacific Gas and Electric Company 30995749 HPR RBLD Panoche Rd. #2, 2022**
  California Endangered Species act (CESA) Incidental Take Permit (ITP) No. 2081-2022-002-04
  Designated Biologist (DB) - Giant kangaroo rat (GKR); SJAS; San Joaquin kit fox (SJKF)
- **Pacific Gas and Electric Company ID-78/Spans 24 and 27, L-300, 2021**
  CESA ITP No. 2081-2019-020-04
  DB - GKR; SJAS; SJKF
- **Southern California Gas Company Line 85 Milepost 75.75/75.94 Pipe Recoat Project**
  CESA ITP No. 2081-2020-043-04
  Tipton kangaroo rat (TKR); SJAS
- **Metropolitan Bakersfield Habitat Conservation Plan (MBHCP)**
  CESA ITP No. 2081-2013-058-04
  SJKF
- **Berry Petroleum Company**
  CESA ITP No. 2081-2011-037-04
  SJKF, SJAS, GKR

Profile

Ms. McCormick has 35 years of biological consulting experience specializing in inventory, evaluation of impacts and mitigation strategy for biological resources of the valleys, foothills, and deserts of Central California. MBI was founded by Ms. McCormick in 2001 and has grown to its current staff of 23 biologists with additional on-call, seasonal, and support staff. MBI's network of specialists and field technicians allows the company to staff additional personnel during seasonal work, or in response to client needs.

Selected Project Experience

Chevron Business Partner, Biological Consulting Services (2001–Present)

Ms. McCormick is the principal for MBI under an on-call contract for biological consulting services to Chevron North America Production and Exploration, and associated companies in Central California. Services have included inventories, focused surveys, permits, and monitoring in Kern, Kings, Monterey, and Fresno Counties. She has conducted several evaluations and notifications under Fish and Game Code Section 1602 and led the monitoring effort on emergency clean-up operations within state jurisdictional water features associated with oil and gas production activities. She has handed off daily project management to one of the MBI senior team members and performs oversight and technical assistance. Other specialized projects that Ms. McCormick has worked on under this contract include an Ecosystem Services analysis for a reverse osmosis water treatment project, habitat evaluation for conservation banking, and real estate due diligence in regard to endangered species values.

Mediacom Onyx to Inyokern Fiber Optic Installation, Kern County, CA (2018 - 2022)

Ms. McCormick stepped in to assist with permitting this project that had been attempting to complete a California Fish and Game Code Lake and Streambed Alteration Agreement since 2011. The project consisted of a fiber optic installation project constructed through sensitive habitats in eastern Kern County, California, from the town of Onyx to Inyokern. Ms. McCormick provided the documentation for 36 state jurisdictional stream crossings, worked with the applicant on the project descriptions required by CDFW for each different type of crossing, coordinated with the engineers and construction contractor to design and implement measures to avoid federal and state listed species, and provided oversight to MBI's team during implementation of preconstruction and construction monitoring tasks. The crossings ranged from dry intermittent streambeds to perennial named creeks. Riparian vegetation that required avoidance was present on some of the crossings. Listed species addressed included desert tortoise (*Gopherus agassizii*), Mohave ground squirrel (*Xerospermophilus mohavensis*), western yellow-billed cuckoo (*Coccyzus americanus*), and southwestern willow flycatcher (*Empidonax traillii extimus*). Additional resources such as nesting birds, golden eagle (*Aquila chrysaetos*), and burrowing owl (*Athene cunicularia*) were also addressed. LSAA proposed measures had to be consistent with NEPA and CEQA documents, as well as CALTRANS and BLM authorizations.

Xerces Society Bumble Bee Watch (volunteer) (2022–2023)

Under CDFW Scientific Collecting Permit, Specific Use Permit ID S-210530001-21053-001 and Memorandum of Understanding, Ms. McCormick has conducted sampling surveys targeting bumble bees following CDFW approved methods in this ongoing volunteer project. Collection methods include capturing using a net, chilling bees, photographing, and releasing bees near capture location. Holding times are prescribed to reduce the potential for harming bumble bees. Incidental sightings are recorded via photographing the pertinent markings on bumble bees required for identification. All gear is sanitized between sampling locations and photographs are examined for species identification in an office setting. Checklists with photographs are uploaded to the Bumble Bee Atlas site as part of data gathering for the project. Bumble bee experts review identifications as part of the process. The project is sponsored by the Xerces Society, with training

- **Topaz Solar Project**
  CESA ITP No. 2081-2011-041-04
  United States Fish and Wildlife Service (USFWS) Biological Opinion (BO) No. 81420-2011-F-0625
  SJKF
- **CED Lost Hills Solar**
  CESA ITP No. 2081-2015-054-04
  SJKF, SJAS
- **Panoche Valley Solar**
  CESA ITP No. 2081-2014-035-04
  SJKF, SJAS, GKR
- **Cymric Well 1913N Well Blowout Remediation**
  CESA ITP No. 2081-2008-01-04
  SJKF, SJAS
- **High Speed Rail**
  CESA ITP No. 2081-2015-024-04
  USFWS BO No. 08ESMF00-2021-F-0247-R006 Project Biologist approved for all species

Continuing Education/Professional Development

- **Plant Diversity Documentation**
  Friends of the Jepson Herbarium (Susan Fawcett, Bruce Baldwin, Nina House), 2023
- **Bumble Bee Field Course**
  The Wildlife Society (TWS) Western Section (Rich Hatfield, Leif Richardson), 2022
- **California Botany for Wildlifers**
  TWS Western Section, Randi McCormick – Co-Instructor with Lynne Dee Althouse, Dr. Tara Schoenwetter, Amy Patten, Ivan Parr, 2022
- **Yellow-billed Cuckoo Survey Workshop and Training Session**
  Southern Sierra Research Station, Mary Whitfield instructor, 2021
- **California Native Plant Society (CNPS) Conservation Conference**
  CNPS, 2018, 2022
- **Tracking in the Carrizo Plain**
  Earth Skills, 2018
  Jim Lowery
- **Advanced Tracking Workshop**
  Earth Skills, 2018
  Jim Lowery
- **Level II California Red-legged Frog Field Workshop**
  Jeff Alvarez and Jeff Wilcox, 2017
- **Buena Vista Lake Ornate Shrew Orientation**

provided via online videos and other resources. In addition, Ms. McCormick attended a joint Xerces Society and Western Section of The Wildlife Society bumble bee workshop prior to conducting sampling, experiencing hands-on field training with species experts. As part of a team, Ms. McCormick has sampled 7 locations, collecting and observing four species of bumble bee: Crotch's bumble bee (*Bombus crotchii*), yellow-faced bumble bee (*B. vosnesenskii*), Van Dyke bumble bee (*B. vandykei*), and indiscriminate cuckoo bumble bee *(B. insularis*). She has handled 6 Crotch's bumble bees and observed 24, with one observation recorded as an incidental sighting without capture.

Dudek/Dragados Flatiron Joint Venture, California High Speed Rail CP 2-3 (2017–2023)

Ms. McCormick functioned as the Project Biologist for Construction Package 2-3, with approximately 66 miles of the California High Speed Rail project in Kings, Tulare, and Fresno Counties. She reviewed biological pre-construction surveys, nesting bird surveys, focused species surveys, construction monitoring reports, monthly/annual reporting, permit compliance, mitigation implementation, and species-specific mitigation implementation. Ms. McCormick had oversight responsibility for compliance with the CESA ITP and USFWS BO, along with review of nesting bird monitoring from nest establishment through fledging. Species included in one or both ESA permits consisted of Swainson's hawk (*Buteo swainsoni*), San Joaquin antelope squirrel (*Ammospermophilus nelsoni*, SJAS), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*, TKR), Buena Vista Lake ornate shrew (*Sorex ornatus relictus*), San Joaquin kit fox (*Vulpes macrotis mutica*, SJKF), California tiger salamander (*Ambystoma californiense*, CTS), blunt-nosed leopard lizard (*Gambelia sila*, BNLL), vernal pool fairy shrimp (*Branchinecta lynchi*), She additionally provided biological technical representation for this portion of the project during agency meetings.

Kleinfelder (PG&E) ID-78 and Spans Pipeline Repair Project (2021)

Ms. McCormick assisted the prime contractor (Kleinfelder) and PG&E with preparation of the CESA ITP Application and evaluating PG&E HCP compliance. She led the team of biologists completing biological reconnaissance surveys and implementing Habitat Conservation Plan and CESA ITP requirements for this gas transmission repair project in San Benito County, California. Her duties included supervising the team of biologists conducting GKR/SJAS burrow excavations, identification of translocation release sites, monitoring construction, including installation of wildlife exclusion fencing.

PG&E San Joaquin Valley HCP, Biological Consulting Services (2011–Present)

As a subcontractor under several prime contractors, MBI has provided biological consulting services on more than 100 projects in Kern, Kings, Tulare, San Luis Obispo, and Fresno Counties. Ms. McCormick directs biological pre-activity surveys, nesting bird surveys, focused species surveys, construction monitoring, report preparation, permit applications, mitigation implementation, and species monitoring.

SCE Vegetation Management, Grid Resiliency, and Deteriorated Pole Program Support (2017–Present)

Ms. McCormick has coordinated and participated in biological support for these SCE programs under several prime contractors. Ms. McCormick provides field support for waters identification and monitoring, jurisdictional evaluations, nesting bird surveys, botanical surveys, focused wildlife surveys, WEAP program training, and all reporting aspects for these projects. MBI has supported emergency response efforts for the Creek Fire and Castle Fire (both southern Sierra Nevada Mountains), including initial surveys to set up operation yards and coordinating deployment of biological consultants. Ms. McCormick additionally oversees training of MBI personnel and provides quality control oversight. Geographically, areas of work have been concentrated in the southern Sierra Nevada Mountains from Shaver Lake to Lake Isabella, Tehachapi Mountains, eastern and southern San Joaquin Valley (Fresno, Tulare, and Kern Counties), and the western Mojave Desert.

Brian Cypher, 2017

- **TWS Western Section**
  Section President-elect (2022)
  Section President (2023)
  San Joaquin Chapter Representative (2019-2023)
- **Western Section Annual Conference**
  The Wildlife Society (TWS), 1989–2002, 2004–2008, 2010–2011, 2014–2022
  Conference Chair: 2023
- **Instructor, TWS–San Joaquin Chapter Workshops**
  May 2007, 2009, 2013, 2016, 2018, 2022 (blunt-nosed leopard lizard; BNLL); September 2010 and 2012 (Small Mammal)
- **California Environmental Quality Act (CEQA) Impact Assessment**
  California Native Plant Society (CNPS), 2015
- **Advanced CEQA**
  Association of Environmental Professionals (AEP), 2013–2014
- **Western Section Raptor Symposium**
  TWS, 2011
- **Endangered Species Permitting: Strategies and Successful Negotiations**
  TWS–Western Section/Chapman University/Roger C. Hobbs Institute, 2006
  ECORP Consulting, Inc./Solutions Strategies
- **CNPS–State Board and Chapter Leadership Positions**
  State Vice President of Chapter Relations, 1996–1997
  Kern County Chapter Conservation, Programs, and Plant Sale Chair, 1996–2000
  Kern County Chapter President, 1993–1994
- **USACE Wetland Delineation Certification Training Program**
  Environmental Technology Center, Instructor – Richard Chinn; February 12-16, 1996
- **The Future of California Floristics and Systematics**
  The Friends of the Jepson Herbarium, 1994
- **Environmental Law I & II**
  CSUB, 1992–1993
- **Habitat Conservation Planning**
  TWS, 1992

Chevron Environmental Management Company, EPC Landfill–lead agency, DTSC (2006–2020)

This is a 240-acre project that involves proper closure of a landfill located northeast of Bakersfield, California. Ms. McCormick is the lead biologist preparing a biological resource assessment for CEQA compliance, CDFW Section 1600 Lake and Streambed Alteration (LSA) Notification, CESA ITP Application, Preliminary Wetland Determination, and Federal Endangered Species Act Authorization through the Kern Water Bank HCP. Surveys completed have included BNLL focused surveys, SJKF detection surveys, rare plant surveys, field identification of ordinary high-water mark associated with road crossings and vegetation mapping.

PG&E Central Valley Region, Wood Pole Replacement Project (2006–2015)

Ms. McCormick served as Senior Field Scientist coordinating completion of pre-activity surveys on sites including an area near the Kern River, and an ecologically sensitive ecosystem preserve. Focused surveys were conducted for blunt-nosed leopard lizard following the CDFW (2004) survey protocol. A report of survey results was prepared for the Bureau of Land Management (BLM) and appropriate forms for PG&E records. Subsequent to project permitting, Ms. McCormick supervised the completion of a preconstruction survey meeting BLM requirements and coordinated project construction monitoring by MBI staff. Some project areas required creative problem solving to assist PG&E crews with power pole access, coordination with the mineral lessee, and coordination issues among PG&E staff, construction personnel, MBI field personnel, and land management. golden eagle and other species covering approximately 26,000 acres of project and conservation lands. Ms. McCormick led a team of 8 botanists completing an early spring rare plant survey on the 2,506-acre project footprint during 2015. She designed field data collection procedures and provided oversight for field work supporting baseline data for CDFW Lake and Streambed Notification documents and data used USACE determinations for approximately 40 ephemeral drainages on site, some of which were determined to be waters of the U.S. in addition to waters of the State. She participated in some of the surveys that she designed, including surveys targeting rare plants, BNLL surveys, GKR burrow surveys, trapping and excavations, and golden eagle point counts. Ms. McCormick worked with the project developer to make design adjustments intended to minimize impacts to listed species and waters and coordinated GKR follow-up trapping at the translocation site (CESA ITP No. 2081-2014-035-04). She was one of the project's agency-approved Designated Biologists (DB).

Althouse and Meade, Kern High School District, Chevron Environmental Management Company, Chevron Technology Ventures, Duke Energy, First Solar, KP Environmental, Nextlight Renewable Power LLC, Rockland Capital, enXco Development Corporation, SunEdison; Various Solar Projects (2010–Present)

Ms. McCormick has been the lead biologist and/or a biologist on teams of environmental professionals responsible for design and implementation of surveys intended to detect the presence of SJKF, BNLL, SJAS, GKR, Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*, TKR), listed and sensitive plants, and several other special-status species for several proposed solar projects located in Kern, San Luis Obispo and Fresno Counties, California. MBI has worked on several of these projects in the design phase through to implementation of avoidance, minimization, and mitigation measures. Projects have ranged from 40 acres to 14,000 acres of habitat evaluated by teams conducting general habitat assessment and focused surveys for potential solar array and ancillary facility installation. Protocol and focused surveys for special-status plants, SJKF, SJAS, GKR, BNLL, and golden eagle were conducted to evaluate over 20,000 acres over those projects between 2010 and 2016.

Kern County Department of Public Works - Roads Department, On-call Biological Consulting Services (2002–Present)

Ms. McCormick has been the principal biologist directing biological pre-activity surveys, report preparation, permit applications, mitigation implementation, and biological monitoring for over 30 projects throughout Kern County along county road rights-of-way. MBI was established as an *on-call* vendor in 2006 based on contract performance. Continuing field-related consulting services include pre-project surveys, vegetation and habitat assessments, construction monitoring, post-

construction compliance surveys, and revegetation. She is responsible for preparing worker education materials for projects that target SJKF, TKR, GKR, SJAS, desert tortoise (*Gopherus agassizii*), Mohave ground squirrel (*Xerospermophilus mohavensis*), riparian/stream habitat, and several other special-status wildlife and plant species. Monitoring experience includes supervising monitors responsible for environmental compliance during asphalt capping, resurfacing, shoulder installation, and shoulder repair work.

She assisted Kern County Department of Public works with avoiding impacts to Caliente Creek waters during repaving activities required as follow-up to emergency flood repairs after flooding in 2017. She worked with Kern County Public Works personnel and contractors to mark potentially jurisdictional areas for avoidance during road repair activities. She also identified riparian and wetland vegetation as part of the evaluation of potential impacts, as well as working with a Tehachapi slender salamander expert during confirmation of habitat features to avoid for that species.

MBHCP Compliance Assistance; Quad Consultants, The Planning Center, Independent Consultant, MBI (1993–Present)

While with Quad Consultants, Ms. McCormick was a field surveyor on baseline surveys conducted between 1993–1994 for rare plants, SJAS, TKR, SJKF and other special-status species during the preparation of the Environmental Impact Report (EIR) and HCP application for this project. During the interim implementation period, she monitored and excavated hundreds of SJKF dens while monitoring methods were in the formative stages. She was among the first biologists in Bakersfield to conduct backhoe-aided den excavations and active den discouragement with nighttime excavations. Since that time, Ms. McCormick has conducted and supervised field work and written clearance reports for hundreds of projects within the Metropolitan Bakersfield area under this permit. Until the expiration of the CESA ITP, she oversaw MBI's recommendations and implementation of the MBHCP and CESA ITP (CESA ITP No. 2081-2013-058-04) amendments.

DiLeo and Moran, CDFW Carrizo Plain Ecological Reserve Resource Management Plan (2013–2014)

Ms. McCormick provided technical review regarding San Joaquin Valley special-status plants and wildlife for this management plan and CEQA document covering 39,500 acres of lands managed by the CDFW. She reviewed and provided recommendations regarding impacts and mitigation measures for SJKF, BNLL, GKR, SJAS, San Joaquin woolly threads, and California jewelflower, among other special-status species. The ecological reserve covers three bio-regions: the South Inner Coast Ranges, the San Joaquin Valley, and the Transverse Range from the Elkhorn Plain/Carrizo Plain area west to the Chimineas Ranch

EMC Planning Group, Monterey County SJKF Study (2012–2013)

Ms. McCormick was the lead biologist responsible for conducting and supervising a study to detect the presence and distribution of SJKF in Monterey County, California. Because no access to private property was available, Ms. McCormick worked with EMC Planning Group to devise an extensive camera station and spotlight survey using public roads located throughout the County. A total of 42 camera stations and 477 camera nights plus approximately 80 miles of spotlight routes were surveyed. Photo evaluations were conducted on approximately 30,000 images captured during the camera study. Over 20 vertebrate species were detected including SJKF, gray fox, red fox, coyote, badger, and bobcat.

URS, Chevron Lokern Habitat Conservation Plan and Environmental Impact Statement (EIS) /Environmental Impact Review (EIR) (2005–2016)

Ms. McCormick functioned as a technical expert providing document preparation and review of the biological resources section and supporting documentation. The project involved collaboration with agency personnel, legal counsel, the client and the applicant involved in Federal Endangered Species Act (FESA) and CESA permitting for oil and gas production activities in Kern and Kings Counties, California. Ms. McCormick's involvement was due to her understanding of industry practices and practical knowledge of regional biological resource issues. Along with providing oversight and technical expertise, she was instrumental in designing the conservation strategy for all of the special-status species being considered in this HCP. Her duties included regular meetings with Chevron's HCP team and wildlife agencies during HCP development. Proposed federal and state listed covered species included SJAS, TKR, GKR, SJKF, San Joaquin woolly threads (*Monolopia congdonii*), California jewelflower (*Caulanthus californicus*), Kern mallow (*Eremalche kernensis*) and Bakersfield cactus (*Opuntia basilaris* var. *treleasei*). Ms. McCormick was responsible for review of all biological resource technical information and occupancy modeling prepared for each species.

Seneca Resources, Sespe Pipeline and Tanks Projects (2013)

Ms. McCormick was the biological lead performing and supervising evaluations for this project involving removal and replacement of old tanks and pipelines. This infrastructure served oil and gas wells on Los Padres National Forest adjacent to the Sespe Wilderness Area. Consultation included providing a Biological Evaluation and Biological Assessment to the United States Forest Service Ojai Ranger District regarding potential project effects on California condor, California red-legged frog, arroyo toad, and steelhead.

Quad Knopf, Southern California Edison Cross Valley Loop Project (2011–2013)

Ms. McCormick was a biologist on a biological survey crew that conducted surveys targeting SJKF, burrowing owl, Swainson's hawk, and other raptors along a transmission line route of approximately 23 miles in Tulare County, California. She monitored construction crews and coordinated

deployment and scheduling of MBI monitors as a subcontractor to Quad Knopf during surveying, geological investigation activities, and construction activities.

RMT, Aero Energy, Western Wind; Windstar Wind Energy Project–lead agency (2007–2012)

Ms. McCormick was the lead biologist coordinating a team that worked on all phases of this wind energy project located southeast of Tehachapi, California. Work included floristic surveys, focused burrowing owl surveys, nesting bird surveys, bird use and migratory bird counts, desert tortoise clearance surveys, and bat surveys. Ms. McCormick prepared all biological technical documents, the CESA ITP Application, endangered species orientation materials, and construction monitoring reports. She coordinated a team of monitors during the construction phase including monitoring for desert tortoise, and compliance with the project's LSAA, CESA ITP, and CEQA Mitigation Monitoring Plan. Biological documents addressed potential impacts, avoidance and mitigation measures for desert tortoise, Mohave ground squirrel, burrowing owl, California condor, southwestern willow flycatcher, and others. Ms. McCormick performed site inspections to evaluate compliance with the SAA, SWPP measure field compliance, and revegetation status.

Kern County Roads Department, Seventh Standard Road Widening from Quinn Road (at State Route 99) to Wings Way (2003–2004)

Ms. McCormick prepared a Natural Environment Study and Biological Assessment for this project in support of Kern County Roads Department CEQA and National Environmental Policy Act (NEPA) documents. Biological studies were completed and the proposed project site was assessed for occurrence of SJKF, TKR, and other special-status species of the San Joaquin Valley. Documents were prepared in coordination with Kern County, the California Department of Transportation (CALTRANS), the CDFG and the USFWS. The biological assessment prepared for this project was used as one of the supporting documents in formal consultation between the United States Department of Transportation and the USFWS which resulted in a *no jeopardy* opinion being issued for SJKF.

Selected Project Experience – Prior to MBI

The Morro Group, Independent Consultant; AT&T Fiber Optic Cable Upgrade from Mojave to San Luis Obispo (1999)

Ms. McCormick was the lead biologist for the peer review team with The Morro Group on behalf of the San Luis Obispo County Planning Department to review and comment on applicant-prepared biological studies for this project involving the removal of copper cable and installation of fiber optic lines on a route stretching for 175 miles between Mojave and San Luis Obispo, California. Ms. McCormick was the technical expert for species of the San Joaquin Valley and her primary responsibilities were the review of biological baseline data, impacts, and proposed mitigation measures for approximately 100 miles of the project from the east side of the Tehachapi Mountains to the western end of the Carrizo Plain.

Quad Consultants, Chevron South Midway Sunset, Cymric, and Kettleman Seismic Surveys in Kern, San Luis Obispo and Kings Counties (Chevron USA)

Ms. McCormick served as a field biologist and moved into the field lead position on several 2D seismic exploration projects conducted across natural lands supporting several listed species including SJKF, SJAS, GKR, BNLL, and listed plant species such as Kern mallow. The field portion involved walking transects to identify potential habitat and sign of occupation by these species along approximately 50 miles of proposed seismic routes for cross country vehicle travel. The projects were located in southern Kern County near Maricopa; from State Route 33, across the Temblor Range to the Carrizo Plain, and from Kettleman City into the Kreyenhagen and Pyramid Hills.

Quad Consultants, The Planning Center, Independent Consultant; Chevron Business Partner, Biological Consulting Services (1993–2001)

Prior to establishing MBI, Ms. McCormick supplied biological consulting services to Chevron through other employers and as an independent contractor. Services included inventories, focused surveys, permits, and monitoring in Kern, Kings, Monterey, and Fresno Counties. Ms. McCormick provided technical expertise regarding SJKF, BNLL, GKR, TKR, and SJAS occurrence and potential effects for land evaluations of Chevron holdings throughout the operational area from northern Fresno County south to southern Kern County and west to Monterey County. Projects that included field evaluation components include Ciervo Hills (approximately 5,000 acres, Fresno County), Pyramid Hills and Kreyenhagen Hills (approximately 2,000 acres, Kings/Fresno Counties), Kettleman Middledome (approximately 1,200 acres, Kings County). She continues to provide technical expertise for current Chevron projects throughout Central California as part of MBI.

Edwards Air Force Base (EAFB) Air Force Flight Test Center, Kern, Los Angeles and San Bernardino Counties (1994-1996)

As a contractor to Computer Sciences Corporation, Ms. McCormick prepared Environmental Assessments (EA) evaluating the potential effects and designing mitigation measures for several projects, including closing the Jet Propulsion Laboratory's (JPL) Edwards Facility, relocation of the EAFB wastewater treatment plant, disposal of waste materials associated with the JPL, the reauthorization of the SR71 ("Blackbird") testing program, and several other EAs documenting NEPA compliance.

AT&T, Victorville to Bakersfield Fiber Optic Removal and Installation (1993–1994)

Ms. McCormick served as the project manager for the monitoring crew on a project which involved the removal of existing copper cable and installation of fiber optic cable between Victorville and Bakersfield, California. The project included pre-activity surveys, mitigation implementation and monitoring, and monitoring of revegetation. Up to five monitors were required on the project for some construction phases due to the sensitivity of the project areas. The project was required to comply with the USFWS BO, as well as a project-specific CDFG Section 2081 Management Agreement. Special-status species included desert tortoise, Mohave ground squirrel, SJKF and BNLL, as well as sensitive plant species. Impacts to state and federal jurisdictional waters were included impact assessment and permitting, requiring implementation of mitigation measures from these documents.

Attachment 2

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McCORMICK
BIOLOGICAL, INC.
Biological Sciences – Inventory, Permitting, and Planning

August 7, 2023

Mr. Steve Doctor
SASD Development Group, LLC
4895 Pacific Highway
San Diego, CA 92110

Subject: **Results Crotch's Bumble Bee Survey – Bakersfield VA Community-Based Outpatient Clinic**

At your request, McCormick Biological, Inc. (MBI) completed a site visit and visual survey to assess for Crotch's bumble bee (*Bombus crotchii*) at the VA Community-Based Outpatient Clinic (Project) property located in Bakersfield, California.

The project is located within the range of Crotch's bumble bee, a species that formerly occurred extensively throughout much of California (rarely in the deserts or far northern California) but has been reduced to scattered occurrences in a portion of its former range (Xerces Society 2023a). This species is a state candidate for listing as threatened or endangered (CNDDB 2023). Bumble bees use small mammal burrows, debris piles (such as wood or rock), and other cover for nesting during the spring and summer. The period that colonies are generally active ranges from April through August (CDFW 2023).

The entire site was surveyed on foot, with survey methods consisting of walking belt transects spaced approximately 100 feet apart over the entire proposed project location, including and a 100-foot buffer where access was permitted. Plants were identified at least to genus, and 100% of the site was visually evaluated to assess potential suitability for Crotch's bumble bee. Surveyors walked at a slow pace, and attempted to locate and identify all flying insects. Additionally, all small mammal burrows and debris piles were examined to assess whether bumble bees were entering or exiting.

The site was surveyed on May 26, 2023 by Randi McCormick and Ashleigh Pryor, two biologists familiar with Crotch's bumble bee identification and habitat preferences (Attachment 1). Conditions during the site visit were clear, temperature ranged between 75 and 78°F, and winds were low (0-4 mph).

The site is located in a disked field that had some recovering vegetation (Photos, Attachment 2). Several plant species were observed flowering during the survey. Plant species identified during the survey are shown in Table 1. None of the genera observed are typical of those known to be associated with Crotch's bumble bee (Xerces Society 2023b). Several insects were observed (butterflies, wasps, lady bug, dragonfly, European honey bee, grasshopper, damselfly); however, no bumble bees of any species were observed. Several California ground squirrel burrows were observed. Each of these burrow complexes were monitored for potential bumble bee occupation, but no bumble bees were found.

Table 1. Plant Species Observed During Site Visit Conducted on May 26, 2023

Scientific name	Common name
Amaranthus sp.	
Amsinckia sp.	Farmer's fireweed
Avena barbatus	Slender wild oats
Bromus rubens	Red brome
Bromus diandrus	Ripgut brome
Datura wrightii	Jimson weed
Erodium cicutarium	Red-stemmed filaree
Heterotheca grandiflora	Telegraph weed
Hirschfeldia incana	Summer mustard
Hordeum murinum	Farmer's foxtail
Salsola sp.	Russian thistle
Sisymbrium irio	London rocket
Vulpia myuros	Rat-tail fescue

Overall, habitat conditions onsite were poor. Although small mammal burrows were present, the flowering resources were not typical of those known to be used by Crotch's bumble bee. Site occupation by this species is not suspected at this time.

Thank you for the opportunity to provide biological consulting services. If you have any questions or require additional information, please do not hesitate to call.

Respectfully,

Randi McCormick
Principal Biologist

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Attachment 1

Resumes

Randi McCormick *Principal Biologist*

rmccormick@mcbioinc.com

Education

- **California State University–Bakersfield (CSUB)**
  Bachelor of Science–Biology, 1990
- **Texas A&M University–College Station**
  Civil Engineering/Geology, 1980–1985 (no degree)

Permits

- **Larry Saslaw**
  CDFW SCP No. SC-002411; Approved Field Assistant – San Joaquin (=Nelson's) antelope squirrel (Ammospermophilus nelsoni, SJAS)
- **McCormick Biological, Inc. (MBI)**
  California Department of Fish and Wildlife (CDFW) Scientific Collecting Permit (SCP) Number (No.) SC-009231
  Short-nosed kangaroo rat
- **MBI**
  Federal Fish and Wildlife Permit Number (No.) TE-59559C-1; California red-legged frog
- **CDFW–Plant Voucher Collecting**
  Permit No. 2081(a)-23-053-V

Designated/Approved Biologist

- **Pacific Gas and Electric Company 30995749 HPR RBLD Panoche Rd. #2, 2022**
  California Endangered Species act (CESA) Incidental Take Permit (ITP) No. 2081-2022-002-04
  Designated Biologist (DB) - Giant kangaroo rat (GKR); SJAS; San Joaquin kit fox (SJKF)
- **Pacific Gas and Electric Company ID-78/Spans 24 and 27, L-300, 2021**
  CESA ITP No. 2081-2019-020-04
  DB - GKR; SJAS; SJKF
- **Southern California Gas Company Line 85 Milepost 75.75/75.94 Pipe Recoat Project**
  CESA ITP No. 2081-2020-043-04
  Tipton kangaroo rat (TKR); SJAS
- **Metropolitan Bakersfield Habitat Conservation Plan (MBHCP)**
  CESA ITP No. 2081-2013-058-04
  SJKF
- **Berry Petroleum Company**
  CESA ITP No. 2081-2011-037-04
  SJKF, SJAS, GKR

Profile

Ms. McCormick has 35 years of biological consulting experience specializing in inventory, evaluation of impacts and mitigation strategy for biological resources of the valleys, foothills, and deserts of Central California. MBI was founded by Ms. McCormick in 2001 and has grown to its current staff of 23 biologists with additional on-call, seasonal, and support staff. MBI's network of specialists and field technicians allows the company to staff additional personnel during seasonal work, or in response to client needs.

Selected Project Experience

Chevron Business Partner, Biological Consulting Services (2001–Present)

Ms. McCormick is the principal for MBI under an on-call contract for biological consulting services to Chevron North America Production and Exploration, and associated companies in Central California. Services have included inventories, focused surveys, permits, and monitoring in Kern, Kings, Monterey, and Fresno Counties. She has conducted several evaluations and notifications under Fish and Game Code Section 1602 and led the monitoring effort on emergency clean-up operations within state jurisdictional water features associated with oil and gas production activities. She has handed off daily project management to one of the MBI senior team members and performs oversight and technical assistance. Other specialized projects that Ms. McCormick has worked on under this contract include an Ecosystem Services analysis for a reverse osmosis water treatment project, habitat evaluation for conservation banking, and real estate due diligence in regard to endangered species values.

Mediacom Onyx to Inyokern Fiber Optic Installation, Kern County, CA (2018 - 2022)

Ms. McCormick stepped in to assist with permitting this project that had been attempting to complete a California Fish and Game Code Lake and Streambed Alteration Agreement since 2011. The project consisted of a fiber optic installation project constructed through sensitive habitats in eastern Kern County, California, from the town of Onyx to Inyokern. Ms. McCormick provided the documentation for 36 state jurisdictional stream crossings, worked with the applicant on the project descriptions required by CDFW for each different type of crossing, coordinated with the engineers and construction contractor to design and implement measures to avoid federal and state listed species, and provided oversight to MBI's team during implementation of preconstruction and construction monitoring tasks. The crossings ranged from dry intermittent streambeds to perennial named creeks. Riparian vegetation that required avoidance was present on some of the crossings. Listed species addressed included desert tortoise (*Gopherus agassizii*), Mohave ground squirrel (*Xerospermophilus mohavensis*), western yellow-billed cuckoo (*Coccyzus americanus*), and southwestern willow flycatcher (*Empidonax traillii extimus*). Additional resources such as nesting birds, golden eagle (*Aquila chrysaetos*), and burrowing owl (*Athene cunicularia*) were also addressed. LSAA proposed measures had to be consistent with NEPA and CEQA documents, as well as CALTRANS and BLM authorizations.

Xerces Society Bumble Bee Watch (volunteer) (2022–2023)

Under CDFW Scientific Collecting Permit, Specific Use Permit ID S-210530001-21053-001 and Memorandum of Understanding, Ms. McCormick has conducted sampling surveys targeting bumble bees following CDFW approved methods in this ongoing volunteer project. Collection methods include capturing using a net, chilling bees, photographing, and releasing bees near capture location. Holding times are prescribed to reduce the potential for harming bumble bees. Incidental sightings are recorded via photographing the pertinent markings on bumble bees required for identification. All gear is sanitized between sampling locations and photographs are examined for species identification in an office setting. Checklists with photographs are uploaded to the Bumble Bee Atlas site as part of data gathering for the project. Bumble bee experts review identifications as part of the process. The project is sponsored by the Xerces Society, with training

- **Topaz Solar Project**
  CESA ITP No. 2081-2011-041-04
  United States Fish and Wildlife Service (USFWS) Biological Opinion (BO) No. 81420-2011-F-0625
  SJKF
- **CED Lost Hills Solar**
  CESA ITP No. 2081-2015-054-04
  SJKF, SJAS
- **Panoche Valley Solar**
  CESA ITP No. 2081-2014-035-04
  SJKF, SJAS, GKR
- **Cymric Well 1913N Well Blowout Remediation**
  CESA ITP No. 2081-2008-01-04
  SJKF, SJAS
- **High Speed Rail**
  CESA ITP No. 2081-2015-024-04
  USFWS BO No. 08ESMF00-2021-F-0247-R006 Project Biologist approved for all species

Continuing Education

- **Plant Diversity Documentation**
  Friends of the Jepson Herbarium (Susan Fawcett, Bruce Baldwin, Nina House), 2023
- **Bumble Bee Field Course**
  The Wildlife Society (TWS) Western Section (Rich Hatfield, Leif Richardson), 2022
- **California Botany for Wildlifers**
  TWS Western Section, Randi McCormick – Co-Instructor with Lynne Dee Althouse, Dr. Tara Schoenwetter, Amy Patten, Ivan Parr, 2022
- **Yellow-billed Cuckoo Survey Workshop and Training Session**
  Southern Sierra Research Station, Mary Whitfield instructor, 2021
- **California Native Plant Society (CNPS) Conservation Conference**
  CNPS, 2018
- **Tracking in the Carrizo Plain**
  Earth Skills, 2018
  Jim Lowery
- **Advanced Tracking Workshop**
  Earth Skills, 2018
  Jim Lowery
- **Level II California Red-legged Frog Field Workshop**
  Jeff Alvarez and Jeff Wilcox, 2017
- **Buena Vista Lake Ornate Shrew Orientation**
  Brian Cypher, 2017
- **Natural Communities Conference**

provided via online videos and other resources. In addition, Ms. McCormick attended a joint Xerces Society and Western Section of The Wildlife Society bumble bee workshop prior to conducting sampling, experiencing hands-on field training with species experts. As part of a team, Ms. McCormick has sampled 7 locations, collecting and observing four species of bumble bee: Crotch's bumble bee (*Bombus crotchii*), yellow-faced bumble bee (*B. vosnesenskii*), Van Dyke bumble bee (*B. vandykei*), and indiscriminate cuckoo bumble bee *(B. insularis*). She has handled 6 Crotch's bumble bees and observed 24, with one observation recorded as an incidental sighting without capture.

Dudek/Dragados Flatiron Joint Venture, California High Speed Rail CP 2-3 (2017–2023)

Ms. McCormick functioned as the Project Biologist for Construction Package 2-3, with approximately 66 miles of the California High Speed Rail project in Kings, Tulare, and Fresno Counties. She reviewed biological pre-construction surveys, nesting bird surveys, focused species surveys, construction monitoring reports, monthly/annual reporting, permit compliance, mitigation implementation, and species-specific mitigation implementation. Ms. McCormick had oversight responsibility for compliance with the CESA ITP and USFWS BO, along with review of nesting bird monitoring from nest establishment through fledging. Species included in one or both ESA permits consisted of Swainson's hawk (*Buteo swainsoni*), San Joaquin antelope squirrel (*Ammospermophilus nelsoni*, SJAS), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*, TKR), Buena Vista Lake ornate shrew (*Sorex ornatus relictus*), San Joaquin kit fox (*Vulpes macrotis mutica*, SJKF), California tiger salamander (*Ambystoma californiense*, CTS), blunt-nosed leopard lizard (*Gambelia sila*, BNLL), vernal pool fairy shrimp (*Branchinecta lynchi*), She additionally provided biological technical representation for this portion of the project during agency meetings.

PG&E San Joaquin Valley HCP, Biological Consulting Services (2011–Present)

As a subcontractor under several prime contractors, MBI has provided biological consulting services on more than 100 projects in Kern, Kings, Tulare, San Luis Obispo, and Fresno Counties. Ms. McCormick directs biological pre-activity surveys, nesting bird surveys, focused species surveys, construction monitoring, report preparation, permit applications, mitigation implementation, and species monitoring.

SCE Vegetation Management, Grid Resiliency, and Deteriorated Pole Program Support (2017–Present)

Ms. McCormick has coordinated and participated in biological support for these SCE programs under several prime contractors. Ms. McCormick provides field support for waters identification and monitoring, jurisdictional evaluations, nesting bird surveys, botanical surveys, focused wildlife surveys, WEAP program training, and all reporting aspects for these projects. MBI has supported emergency response efforts for the Creek Fire and Castle Fire (both southern Sierra Nevada Mountains), including initial surveys to set up operation yards and coordinating deployment of biological consultants. Ms. McCormick additionally oversees training of MBI personnel and provides quality control oversight. Geographically, areas of work have been concentrated in the southern Sierra Nevada Mountains from Shaver Lake to Lake Isabella, Tehachapi Mountains, eastern and southern San Joaquin Valley (Fresno, Tulare, and Kern Counties), and the western Mojave Desert.

Kern County Department of Public Works - Roads Department, On-call Biological Consulting Services (2002–Present)

Ms. McCormick has been the principal biologist directing biological pre-activity surveys, report preparation, permit applications, mitigation implementation, and biological monitoring for over 30 projects throughout Kern County along county road rights-of-way. MBI was established as an *on-call* vendor in 2006 based on contract performance. Continuing field-related consulting services include pre-project surveys, vegetation and habitat assessments, construction monitoring, post-construction compliance surveys, and revegetation. She is responsible for preparing worker education materials for projects that target SJKF, TKR, GKR, SJAS, desert tortoise (*Gopherus*

TWS–San Joaquin Chapter, 2015–2019; 2021-2022
Presenter; 2016

- **Western Section Annual Conference**
  The Wildlife Society (TWS), 1989–2002, 2004–2008, 2010–2011, 2014–2019
- **Instructor, TWS–San Joaquin Chapter Workshops**
  May 2007, 2009, 2013, 2016, 2018, 2022 (blunt-nosed leopard lizard; BNLL); September 2010 and 2012 (Small Mammal)
- **California Environmental Quality Act (CEQA) Impact Assessment**
  California Native Plant Society (CNPS), 2015
- **Regulatory Program Workshop**
  United States Army Corps of Engineers (USACE), 2014
- **Advanced CEQA**
  Association of Environmental Professionals (AEP), 2013–2014
- **Western Section Raptor Symposium**
  TWS, 2011
- **Endangered Species Permitting: Strategies and Successful Negotiations**
  TWS–Western Section/Chapman University/Roger C. Hobbs Institute, 2006
  ECORP Consulting, Inc./Solutions Strategies
- **CNPS–State Board and Chapter Leadership Positions**
  State Vice President of Chapter Relations, 1996–1997
  Kern County Chapter Conservation, Programs, and Plant Sale Chair, 1996–2000
  Kern County Chapter President, 1993–1994
- **USACE Wetland Delineation Certification Training Program**
  Environmental Technology Center, Instructor – Richard Chinn; February 12-16, 1996
- **The Future of California Floristics and Systematics**
  The Friends of the Jepson Herbarium, 1994
- **Environmental Law I & II**
  CSUB, 1992–1993
- **Habitat Conservation Planning**
  TWS, 1992

agassizii), Mohave ground squirrel (*Xerospermophilus mohavensis*), riparian/stream habitat, and several other special-status wildlife and plant species. Monitoring experience includes supervising monitors responsible for environmental compliance during asphalt capping, resurfacing, shoulder installation, and shoulder repair work. She assisted Kern County Department of Public works with avoiding impacts to Caliente Creek waters during repaving activities required as follow-up to emergency flood repairs after flooding in 2017. She worked with Kern County Public Works personnel and contractors to mark potentially jurisdictional areas for avoidance during road repair activities. She also identified riparian and wetland vegetation as part of the evaluation of potential impacts, as well as working with a Tehachapi slender salamander expert during confirmation of habitat features to avoid for that species.

MBHCP Compliance Assistance; Quad Consultants, The Planning Center, Independent Consultant, MBI (1993–Present)

While with Quad Consultants, Ms. McCormick was a field surveyor on baseline surveys conducted between 1993–1994 for rare plants, SJAS, TKR, SJKF and other special-status species during the preparation of the Environmental Impact Report (EIR) and HCP application for this project. During the interim implementation period, she monitored and excavated hundreds of SJKF dens while monitoring methods were in the formative stages. She was among the first biologists in Bakersfield to conduct backhoe-aided den excavations and active den discouragement with nighttime excavations. Since that time, Ms. McCormick has conducted and supervised field work and written clearance reports for hundreds of projects within the Metropolitan Bakersfield area under this permit. Until the expiration of the CESA ITP, she oversaw MBI's recommendations and implementation of the MBHCP and CESA ITP (CESA ITP No. 2081-2013-058-04) amendments.

AMEC Foster Wheeler, Duke Energy, Energy Renewal Partners, Panoche Valley Solar, Burns and McDonnell; Panoche Solar Project (2012–2017)

Ms. McCormick functioned as one of the technical experts regarding sensitive species of the San Joaquin Valley, for the permitting phase of a proposed solar project in the Panoche Valley area of San Benito and Fresno Counties. She designed and coordinated focused surveys for BNLL, GKR, golden eagle and other species covering approximately 26,000 acres of project and conservation lands. Ms. McCormick led a team of 8 botanists completing an early spring rare plant survey on the 2,506-acre project footprint during 2015. Ms. McCormick designed field data collection procedures and oversight for field work supporting baseline data for CDFW Lake and Streambed Notification documents and data used USACE determinations for approximately 40 ephemeral drainages on site, some of which were determined to be waters of the U.S. in addition to waters of the State. In addition to designing surveys and deploying teams, she participated in surveys targeting rare plants, BNLL surveys, GKR burrow surveys, trapping and excavations, and golden eagle point counts. Ms. McCormick worked with the project developer to make design adjustments intended to minimize impacts to listed species and waters, and coordinated GKR follow-up trapping at the translocation site (CESA ITP No. 2081-2014-035-04). She was one of the project's agency-approved Designated Biologists (DB).

DiLeo and Moran, CDFW Carrizo Plain Ecological Reserve Resource Management Plan (2013–2014)

Ms. McCormick provided technical review regarding San Joaquin Valley special-status plants and wildlife for this management plan and CEQA document covering 39,500 acres of lands managed by the CDFW. She reviewed and provided recommendations regarding impacts and mitigation measures for SJKF, BNLL, GKR, SJAS, San Joaquin woolly threads, and California jewelflower, among other special-status species. The ecological reserve covers three bio-regions: the South Inner Coast Ranges, the San Joaquin Valley, and the Transverse Range from the Elkhorn Plain/Carrizo Plain area west to the Chimineas Ranch

URS, Chevron Lokern Habitat Conservation Plan and Environmental Impact Statement (EIS) /Environmental Impact Review (EIR) (2005–2016)

Ms. McCormick functioned as a technical expert providing document preparation and review of the biological resources section and supporting documentation. The project involved collaboration with agency personnel, legal counsel, the client and the applicant involved in Federal Endangered Species Act (FESA) and CESA permitting for oil and gas production activities in Kern and Kings Counties, California. Ms. McCormick's involvement was due to her understanding of industry practices and practical knowledge of regional biological resource issues. Along with providing oversight and technical expertise, she was instrumental in designing the conservation strategy for all of the special-status species being considered in this HCP. Her duties included regular meetings with Chevron's HCP team and wildlife agencies during HCP development. Proposed federal and state listed covered species included SJAS, TKR, GKR, SJKF, San Joaquin woolly threads (*Monolopia congdonii*), California jewelflower (*Caulanthus californicus*), Kern mallow (*Eremalche kernensis*) and Bakersfield cactus (*Opuntia basilaris* var. *treleasei*). Ms. McCormick was responsible for review of all biological resource technical information and occupancy modeling prepared for each species.

RMT, Aero Energy, Western Wind; Windstar Wind Energy Project–lead agency (2007–2012)

Ms. McCormick was the lead biologist coordinating a team that worked on all phases of this wind energy project located southeast of Tehachapi, California. Work included floristic surveys, focused burrowing owl surveys, nesting bird surveys, bird use and migratory bird counts, desert tortoise clearance surveys, and bat surveys. Ms. McCormick prepared all biological technical documents, the CESA ITP Application, endangered species orientation materials, and construction monitoring reports. She coordinated a team of monitors during the construction phase including monitoring for desert tortoise, and compliance with the project's LSAA, CESA ITP, and CEQA Mitigation Monitoring Plan. Biological documents addressed potential impacts, avoidance and mitigation measures for desert tortoise, Mohave ground squirrel, burrowing owl, California condor, southwestern willow flycatcher, and others. Ms. McCormick performed site inspections to evaluate compliance with the SAA, SWPP measure field compliance, and revegetation status.

Selected Project Experience – Prior to MBI

The Morro Group, Independent Consultant; AT&T Fiber Optic Cable Upgrade from Mojave to San Luis Obispo (1999)

Ms. McCormick was the lead biologist for the peer review team with The Morro Group on behalf of the San Luis Obispo County Planning Department to review and comment on applicant-prepared biological studies for this project involving the removal of copper cable and installation of fiber optic lines on a route stretching for 175 miles between Mojave and San Luis Obispo, California. Ms. McCormick was the technical expert for species of the San Joaquin Valley and her primary responsibilities were the review of biological baseline data, impacts, and proposed mitigation measures for approximately 100 miles of the project from the east side of the Tehachapi Mountains to the western end of the Carrizo Plain.

Quad Consultants, Chevron South Midway Sunset, Cymric, and Kettleman Seismic Surveys in Kern, San Luis Obispo and Kings Counties (Chevron USA)

Ms. McCormick served as a field biologist and moved into the field lead position on several 2D seismic exploration projects conducted across natural lands supporting several listed species including SJKF, SJAS, GKR, BNLL, and listed plant species such as Kern mallow. The field portion involved walking transects to identify potential habitat and sign of occupation by these species along approximately 50 miles of proposed seismic routes for cross country vehicle travel. The projects were located in southern Kern County near Maricopa; from State Route 33, across the Temblor Range to the Carrizo Plain, and from Kettleman City into the Kreyenhagen and Pyramid Hills.

Quad Consultants, The Planning Center, Independent Consultant; Chevron Business Partner, Biological Consulting Services (1993–2001)

Prior to establishing MBI, Ms. McCormick supplied biological consulting services to Chevron through other employers and as an independent contractor. Services included inventories, focused surveys, permits, and monitoring in Kern, Kings, Monterey, and Fresno Counties. Ms. McCormick provided technical expertise regarding SJKF, BNLL, GKR, TKR, and SJAS occurrence and potential effects for land evaluations of Chevron holdings throughout the operational area from northern Fresno County south to southern Kern County and west to Monterey County. Projects that included field evaluation components include Ciervo Hills (approximately 5,000 acres, Fresno County), Pyramid Hills and Kreyenhagen Hills (approximately 2,000 acres, Kings/Fresno Counties), Kettleman Middledome (approximately 1,200 acres, Kings County). She continues to provide technical expertise for current Chevron projects throughout Central California as part of MBI.

Edwards Air Force Base (EAFB) Air Force Flight Test Center, Kern, Los Angeles and San Bernardino Counties (1994-1996)

As a contractor to Computer Sciences Corporation, Ms. McCormick prepared Environmental Assessments (EA) evaluating the potential effects of several projects, including closing the Jet Propulsion Laboratory's Edwards Facility, relocation of the EAFB wastewater treatment plant,

disposal of hazardous material associated with the JPL, the reauthorization of SR71 testing program, and several other EAs documenting NEPA compliance. Issues evaluated included all aspects of demolition and/or removal of many facilities with associated potential effects.

AT&T, Victorville to Bakersfield Fiber Optic Removal and Installation (1993–1994)

Ms. McCormick served as the project manager for the monitoring crew on a project which involved the removal of existing copper cable and installation of fiber optic cable between Victorville and Bakersfield, California. The project included pre-activity surveys, mitigation implementation and monitoring, and monitoring of revegetation. Up to five monitors were required on the project for some construction phases due to the sensitivity of the project areas. The project was required to comply with the USFWS BO, as well as a project-specific CDFG Section 2081 Management Agreement. Special-status species included desert tortoise, Mohave ground squirrel, SJKF and BNLL, as well as sensitive plant species. Impacts to state and federal jurisdictional waters were included impact assessment and permitting, requiring implementation of mitigation measures from these documents.

Ashleigh Pryor *Senior Biologist*

APryor@mcbioinc.com

Education

- **Johns Hopkins University**
  Master of Environmental Science and Policy, 2019
- **University of California–Davis**
  Bachelor of Science–Biology, 2010
- **Bakersfield College**
  Associate of Science–Biology, 2007

Relevant Experience

- **McCormick Biological, Inc. (MBI)**
  Senior Biologist, 2019-Present
  Associate Biologist, 2018–2019
  Staff Biologist, 2013–2018
- **West Kern Environmental**
  Field Biologist, 2012

Permits

- **Larry Saslaw**
  CDFW SCP No. SC-002411; Approved Field Assistant – San Joaquin (=Nelson's) antelope squirrel (Ammospermophilus nelsoni, SJAS)
- **MBI**
  Federal Fish and Wildlife Permit Number (No.) TE-59559C-1; conservancy fairy shrimp, longhorn fairy shrimp, Riverside fairy shrimp, San Diego fairy shrimp, vernal pool fairy shrimp, vernal pool tadpole shrimp
- **William Vanherweg**
  Federal Fish and Wildlife Permit Number (No.) TE-787644-7.1
  Giant kangaroo rat (GKR), Tipton kangaroo rat (TKR), Fresno kangaroo rat
- **MBI**
  California Department of Fish and Wildlife (CDFW) Scientific Collecting Permit (SCP) No. SC-009231
  Short-nosed kangaroo rat

Designated/Approved Biologist

- **Metropolitan Bakersfield Habitat Conservation Plan (MBHCP)**
  California Endangered Species Act (CESA) Incidental Take Permit (ITP) No. 2081-2013-058-04
  San Joaquin kit fox (SJKF), San Joaquin antelope squirrel (=Nelson's antelope squirrel; SJAS), Tipton kangaroo rat (TKR)
- **High Speed Rail**
  CESA ITP No. 2081-2015-024-04
  Designated Biologist (DB): SJKF, SJAS, TKR; Monitor: California tiger salamander

Profile

Ms. Pryor has 11 years of biological consulting experience in central California, including the Central and San Joaquin Valleys, surrounding foothills, mountains, and western Mojave Desert. Since joining MBI in 2013 she her focus has been inventory, field evaluation, construction monitoring, documentation of special-status biological resources, along with agency and client coordination. She leads crews, trains staff and provides coordination and scheduling support on projects including oil and gas development, utility construction and maintenance projects, solar projects, and urban development. She is one of MBI's leads in working with land management partners to provide inventory and monitoring of special-status wildlife. She is MBI's project manager for the Chevron San Joaquin Business Unit on-call contract that includes work in all areas of Kern, San Luis Obispo, Kings, and Fresno counties.

Selected Project Experience

Chevron San Joaquin Valley Business Unit, On-Call Biological Consulting Services–Chevron USA (2013–Present)

Ms. Pryor coordinates MBI's biological surveys and construction monitoring for oil and gas production activities in Kern, Kings, and Fresno Counties. Oil fields within the contract include Kern River, Cymric-McKittrick, Midway Sunset, Lost Hills, and Coalinga. She serves as the lead field biologist for biological surveys evaluating sites for potentially occurring sensitive species; creates inventories of sensitive natural resources; and implements avoidance and mitigation measures. Primary special-status species present have included SJKF, SJAS, and BNLL, among others.

Dudek DWR Habitat Assessment and Special-status Wildlife Surveys (2022)

MBI worked as a subcontractor to Dudek on habitat assessments and species-specific focused surveys in central California. Ms. Pryor has participated in sampling surveys for vernal pool branchiopods along the California Aqueduct and at the Clifton Court Forebay. She is additionally an agency-approved designated biologist on the B.F. Sisk Dam Project at San Luis Reservoir.

Xerces Society Bumble Bee Watch (volunteer) (2022–2023)

Under CDFW Scientific Collecting Permit, Specific Use Permit ID S-210530001-21053-001 and Memorandum of Understanding, Ms. Pryor has conducted surveys targeting bumble bees following CDFW approved methods in this ongoing volunteer project. Collection methods include capturing using a net, chilling bees, photographing, and releasing bees near capture location. Holding times are prescribed to reduce the potential for harming bumble bees. Incidental sightings are recorded via photographing the pertinent markings on bumble bees required for identification. All gear is sanitized between sampling locations and photographs are examined for species identification in an office setting. Checklists with photographs are uploaded to the Bumble Bee Atlas site as part of data gathering for the project. Bumble bee experts review identifications as part of the process. The project is sponsored by the Xerces Society, with training provided via online videos and other resources.

In addition, Ms. Pryor attended a joint Xerces Society and Western Section of The Wildlife Society bumble bee workshop prior to conducting sampling, experiencing hands-on field training with species experts. As part of a team, Ms. Pryor has sampled 8 locations, collecting and observing four species of bumble bee: Crotch's bumble bee (*Bombus crotchii*), yellow-faced bumble bee (*B. vosnesenskii*), Van Dyke bumble bee (*B. vandykei*), and indiscriminate

(CTS). United States Fish and Wildlife Service (USFWS) Biological Opinion (BO) No. 08ESMF00-2021-F-0247-R006
Approved Biologist: SJKF, TKR, Buena Vista Lake ornate shrew, Monitor: blunt-nosed leopard lizard (BNLL), Branchiopods, CTS.
CESA 2081-2013-025-04
Designated Biologist, SJKF
BO 08ESMF00-2012-F-0248-18
Approved Biologist, SJKF

- **Wright Solar Park**
  CESA ITP No. 2081-2018-014-04
  SJKF
- **CED Lost Hills Solar**
  CESA ITP No. 2081-2015-054-04
  SJKF, SJAS
- **Berry Petroleum Company**
  CESA ITP No. 2081-2011-037-04
  SJKF, SJAS, GKR
- **Main Camp to Fairfield A 6-inch and 8-inch Pipelines**
  CESA ITP No. 2081-2017-035-04
  DB: SJKF, Monitor: SJAS

Continuing Education

- **Bumble Bee Field Course**
  The Wildlife Society (TWS) Western Section (Rich Hatfield, Leif Richardson), 2022
- **PG&E Corporate Contractor Safety Orientation (SAFE0101)**
  ISNetworld, 2018
- **Tracking in the Carrizo Plain**
  Earth Skills, 2018, 2020
  Jim Lowery
- **Natural Communities Conference**
  The Wildlife Society (TWS)–San Joaquin Chapter, 2013, 2015, 2017, 2018
- **Western Section Annual Conference**
  TWS, 2014, 2016–2019
- **San Francisco State University (SFSU)–Conservation and Ecology of California Bats**
  SFSU Sierra Nevada Field Campus, 2016
- **California Anostraca and Notostraca**
  Identification Class, 2013, 2015, 2016
  Mary Schug Belk (Test Score = 100%)
- **Rattlesnake Handling Certification**
  Dr. Julius Frazier 2014-2018
  Dr. Emily Taylor, Cal Poly San Luis Obispo 2019
- **Annual Bat Symposium**
  North American Society for Bat Research, 2015
- **California Bat Survey Techniques**
  Bat Conservation and Management, 2015

cuckoo bumble bee *(B. insularis)*. She has handled 13 Crotch's bumble bees and observed 24, with one observation recorded as an incidental sighting without capture.

In addition, Ms. McCormick attended a joint Xerces Society and Western Section of The Wildlife Society bumble bee workshop prior to conducting sampling, experiencing hands-on field training with species experts. During the workshop, one of the course participants located a bumble bee nest in a small mammal burrow, and Ms. McCormick was able to observe bees entering and exiting the nest.

Southern Company, Garland Solar (2017–2018)

Ms. Pryor served as part of a team of botanists conducting revegetation sampling for this solar project located near Rosamond in Kern County, CA. Monitoring was conducting per the requirements stated in the 2015 RE Garland LLC & RE Garland A LLC Re-vegetation and Landscaping Plan. Sampling included use of line intercept and sampling quadrats to assess vegetation recovery under and between panels. In addition, vigor of shrub plantings was assessed. Natural communities sampled on the solar facility and adjacent habitat included Joshua Tree Woodland, Rubber Rabbitbrush Scrub, and Fallow Agricultural Field.

California High Speed Rail Construction Package (CP) 1D and CP 2-3 (2017–Present)

Ms. Pryor functioned as a Designated Biologist for Construction Package 2-3, an approximately 66-mile portion of the California High Speed Rail project in Kings, Tulare, and Fresno Counties. She conducted biological pre-construction surveys, nesting bird surveys, focused species surveys, construction monitoring, permit compliance, mitigation implementation, and species monitoring. Covered species include; SJKF, TKR, BNLL, SJAS, Buena Vista Lake ornate shrew (*Sorex ornatus relictus*), vernal pool branchiopods. On CP1D, she is an approved SJKF Designated Biologist conducting preconstruction surveys, construction monitoring, and burrow excavations.

State-wide Townsend's Big-Eared Bat Survey–Volunteer, CDFW (2016)

Ms. Pryor assisted in conducting surveys intended to locate and assess known and potential roost sites of the Townsend's big-eared bat (*Corynorhinus townsendii*). Ms. Pryor conducted daytime assessments for 8 potential roost sites and was responsible for evaluating shelter characteristics (such as temperature) for potential to support the species, and recording observed sign (e.g., guano, prey remains). The target species was detected during surveys conducted by Ms. Pryor.

Center For Natural Lands Management Annual Invertebrate Sampling, Lokern Preserve (2016)

Ms. Pryor placed pitfall traps, collected invertebrates, and identified captures to the maximum extent possible. Identifying over 20 families represented in the samples. She identified 143 of the samples to at least genus, and the remainder of the 250 samples to family.

Bolthouse Properties, Grand Island Village Commercial Development (2015)

Ms. Pryor served as a CDFW-approved biologist for SJKF activities intended to avoid impacts to a natal den observed following the discovery of 2 SJKF pups in a trench by the applicant. The project was located in Bakersfield, CA, and covered by the MBHCP. Individuals with appropriate permits relocated the pups back to their den, which was found within 100 feet of ongoing construction. A total of 4 pups and 2 adults occupied the den at that time. MBI continued to provide assistance in developing a plan to facilitate completion of construction while the den was active. Data gathered to form the plan involved 24-hour biological monitoring for several consecutive days to track SJKF activity. Ms. Pryor participated as a 24-hour den monitor during data gathering, as well as the on-site biological monitor during active construction activities, and spent approximately 30 hours onsite.

- **Southwestern Desert Bats**
  Maturango Museum, 2014–2015
- **Desert Tortoise Symposium**
  Desert Tortoise Council, 2014
- **Basic (2014) and Advanced (2018) Tracking Workshop**
  Earth Skills, Jim Lowery
- **Intro to Desert Tortoise Field Techniques**
  Desert Tortoise Council, 2013

Center for Natural Lands Management (CNLM); Semitropic, Lokern and Panoche Preserve Monitoring – Small Mammal Trapping (2014–2022)

Ms. Pryor has assisted by participating on a team of biologists during CNLM's annual detection trapping on permanently established grids on the Semitropic and Lokern Preserves. Target species include state and federal endangered TKR, GKR and other nocturnal small mammals on the two preserves. Trapping is conducted during August and September each year. Over the last 9 years, Ms. Pryor has recorded handling of 117 TKR, 221 GKR, 125 short-nosed kangaroo rats (*Dipodomys nitratoides brevinasus*), 154 San Joaquin antelope squirrels (*Ammospermophilus nelsoni*), and several other species of small mammals found on the grids.

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Blunt-nosed Leopard Lizard Species-specific Survey Experience (2012-2023)

Ms. Pryor has conducted focused BNLL surveys during the past 12 survey seasons (2012–2023). Since joining MBI in April of 2013, she has conducted more than 2,000 survey-hours for the detection of BNLL. Surveys have been conducted for over 150 projects including proposed oil and gas, urban development, conservation land, and solar. Her experience includes a substantial portion of the species' known range in Kern, San Luis Obispo, Kings, Tulare, Fresno, and San Benito Counties.

Mendoza and Associates, NV5, Parsons Engineering; Thomas Roads Improvement Program (TRIP) Bakersfield Projects (2013–Present)

Ms. Pryor is a biologist approved for SJKF tasks by the CDFW and is assigned to conduct SJKF and burrowing owl pre-activity surveys, focused surveys for BNLL, SJKF den monitoring and excavation, and project monitoring duties for this road construction project in and around the City of Bakersfield. Ms. Pryor's duties include monitoring construction activities for compliance with SJKF protective measures, and documentation of site activities. During monitoring activities, daily forms are prepared that document construction activities and verify implementation of protective measures.

Duke Energy/Energy Renewal Partners/AMEC, Panoche Solar Project (2013–2016)

Ms. Pryor participated in biological surveys for a proposed solar project in the Panoche Valley area of San Benito County. Biological surveys included working on teams evaluating several thousand acres of potential project site and conservation lands for special-status species. Species targeted included SJKF, GKR, SJAS, burrowing owl (*Athene cunicularia*) and BNLL, among other special-status species of the region. Focused surveys included those to detect GKR burrow activity and BNLL surveys following CDFW guidelines.

Attachment 2

Photographs

	
Photo 1. Representative Site Photo	Photo 2. Representative Site Photo.

Attachment I:
Land Evaluation and Site Assessment (LESA)

2023

Land Evaluation and Site Assessment Model

VETERANS AFFAIRS COMMUNITY-BASED OUTPATIENT CLINIC

PREPARED BY: T&B PLANNING, INC.

Land Evaluation and Site Assessment Model for the Veterans Affairs Community-Based Outpatient Clinic Project

City of Bakersfield, California

Prepared For:
SASD Development Group, LLC
4895 Pacific Highway
San Diego, CA 92110

Prepared By:

T&B Planning, Inc.
3200 El Camino Real, Suite 100
Irvine, CA 92602

August 1, 2023

Abstract

The Veterans Affairs Community-Based Outpatient Clinic Project site encompasses a total of approximately 10.05 gross acres within the City of Bakersfield, Kern County. It should be noted that a study area of 9.0 acres was used in this report as the 10.05 gross acres includes road improvements (1.05 acres) on the perimeter of the site; agriculture cannot occur on public roads. The Project site comprises two (2) contiguous parcels located west of State Route 99 (SR-99) and southeast of the intersection of Olive Drive and Knudsen Drive. The Project consists of an application for a Site Plan Review (Site Plan Review No. 21-0399). Approval of this application would allow for the development of a community-based medical outpatient clinic designed to have a gross building floor area of up to 39,648 square feet (s.f.) with a net usable area of 30,100 s.f. The Project's design would include 214 parking stalls, including 184 standard stalls, 6 motorcycle stalls, 19 accessible standard stalls, and 5 accessible van stalls. The Project is subject to review under the California Environmental Quality Act (CEQA). In this report, the California Land Evaluation and Site Assessment (LESA) Model is used as an evaluation tool to determine if the subject property qualifies as an important agricultural land resource. Based on the methodology established by the California LESA Model, this report concludes that the Project site does not qualify as an important agricultural land resource; Project impacts on important agricultural land resources and conversion of agricultural land to non-agricultural use would not be considered significant.

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1.0 INTRODUCTION

1.1 Document Purpose

The Veterans Affairs Community-Based Outpatient Clinic Project (hereafter, "Project") includes an application for a Site Plan Review (Site Plan Review No. 21-0399). Approval of this application would allow for the development of a community-based medical outpatient clinic designed to have a gross building floor of up to 39,648 square feet (s.f.) with a net usable area of 30,100 s.f. The Project's design would include 214 parking stalls, including 184 standard stalls, 6 motorcycle stalls, 19 accessible standard stalls, and 5 accessible van stalls. The purpose of this Land Evaluation and Site Assessment (LESA) Model is threefold: 1) to determine the presence or absence of important agricultural land resources on the Project site; 2) assess potential effects, if any, to any important agricultural land resources that may be present on the Project site; and 3) if any impacts to important agricultural land resources would occur, determine the significance of impacts under the California Environmental Quality Act (CEQA).

CEQA Guidelines § 15126.2(a) requires that environmental documentation "*identify and focus on the significant environmental effects*" of a proposed project. The CEQA Guidelines definition of environment "means the physical conditions which exist within the area which will be affected by a proposed project including *land*, air, water, minerals, flora, fauna, ambient noise, and objects of historical or aesthetic significance." (*emphasis added*, CEQA Guidelines § 15360). Per the CEQA Guidelines, the Project will result in a significant effect on the environment if the site contains important agricultural land resources that would be converted to a non-agricultural use.

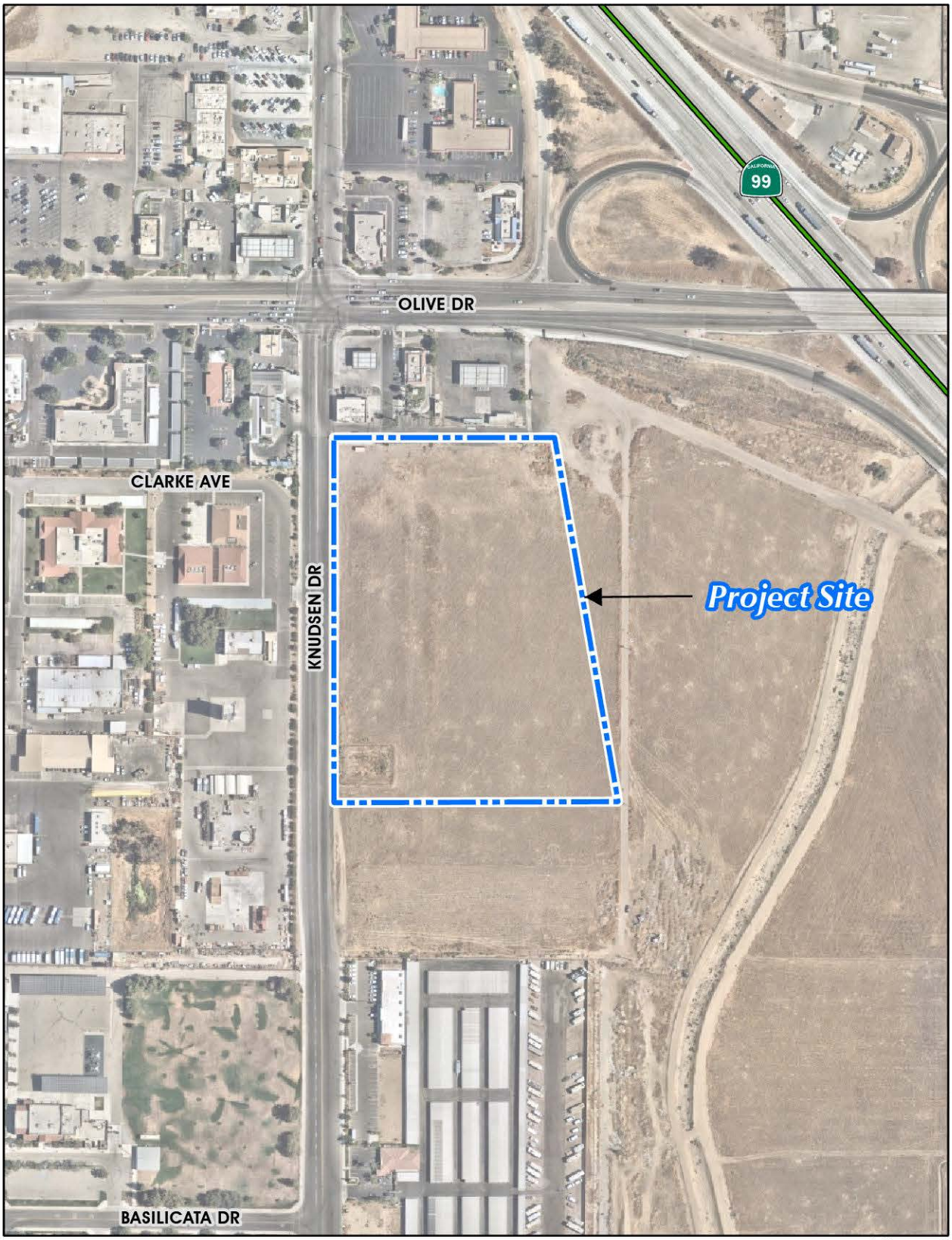
According to CEQA Guidelines § 21060.1(a), "agricultural land" is defined as Prime Farmland, Farmland of Statewide Importance, or Unique Farmland as defined by the United States Department of Agriculture land inventory and monitoring criteria, as modified for California.

1.2 Project Location

The 10.05 gross-acre Project site consists of two (2) contiguous parcels west of State Route 99 (SR-99) and southeast of the intersection of Olive Drive and Knudsen Drive in the City of Bakersfield, Kern County, California. Specifically, the Project site encompasses Assessor's Parcel Numbers (APNs) 365-020-28 and -30. (See Figure 1, *Aerial Photograph*). It should be noted that the study area used in this report encompasses 9.0 acres within the APN boundaries as the 10.05 gross acres includes road improvements (1.05 acres) on the perimeter of the site; agriculture cannot occur on public roads.

1.3 Project Summary

The Project involves Site Plan Review No. 21-0399 to allow for the development of a Veteran Affairs (VA) community-based medical outpatient clinic on the 10.05-acre Project site within the General Manufacturing zone district (M-2). The proposed outpatient facility would include a 39,648 s.f. single-story building (net usable 30,100 s.f.), a covered drop-off area, bicycle racks, a covered ambulatory pick-up area, an outdoor physical therapy area, an outdoor dining area, and an elevated loading dock. The Project would include 214 parking stalls, including 184 standard stalls, 6 motorcycle stalls, 19 accessible standard stalls, and 5 accessible van stalls. Landscaping is proposed along the perimeter of the Project site, around the building, and throughout the parking areas. In addition, a healing garden is proposed on the east side of the building, which would include a garden path and benches.



Source(s): Esri, Nearmap (2023)

Figure 1

0 75 150 300 Feet

Aerial Photograph

2.0 AGRICULTURE IN CALIFORNIA

2.1 Williamson Act

In 1965, the California Assembly established the California Land Conservation Act, also known as the Williamson Act, in response to the increasing pressure occurring throughout California during the post-World War II period to convert agricultural lands to urban development. The Williamson Act allows local governments to enter contracts with landowners to restrict property to agricultural or related open space uses for a minimum of 10 years in exchange for a lower property tax assessment to the landowner. After the initial 10-year contract term, the contract remains in effect until canceled by the landowner or the local government. Once canceled, a contract winds down over a period of 10 years (CDC, 2019a). The Project site is not subject to a Williamson Act contract or agricultural preserve. (CDC, 2022)

2.2 Farmland Classification

As part of the State's efforts to protect agricultural resources, the Farmland Mapping and Monitoring Program (FMMP) was established in 1982 to provide data to public, academia, and government entities for the purposes of making informed decisions regarding the use of California's agricultural land resources. The FMMP is required by California Government Code § 65570 to report on the conversion of agricultural lands in the *California Farmland Conversion Report* and maintain the *Important Farmland Maps* database system to record changes in the use of agricultural lands over time (CDC, 2019b).

- Prime Farmland: "Farmland with the best combination of physical and chemical features able to sustain long term agricultural production. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date."
- Farmland of Statewide Importance: "Farmland similar to Prime Farmland but with minor shortcomings, such as greater slopes or less ability to store soil moisture. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date."
- Unique Farmland: "Farmland of less quality soils used for the production of the state's leading agricultural crops. This land is usually irrigated. Land must have been cropped at some time during the four years prior to the mapping date."
- Farmland of Local Importance: "Land of importance to the local agricultural economy as determined by each county's board of supervisors and local advisory committee."
- Grazing Land: "Land on which the existing vegetation is suited to the grazing of livestock. This category was developed in cooperation with the California Cattlemen's Association, University of California Cooperative Extension, and other groups interested in the extent of grazing activities."

According to the California Department of Conservation (CDC) Important Farmland Finder Map (see Figure 2, *Farmland Monitoring and Mapping Program Map*), the Project site is classified as "Vacant or Disturbed Land" and "Urban and Built-Up Land" (CDC, 2020).



Source(s): CA Department of Conservation (2018), Esri, Nearmap (2023)

Figure 2

0 75 150 300 Feet

Farmland Monitoring and Mapping Program Map

3.0 ASSESSMENT METHODOLOGY

3.1 LESA Model

The LESA Model is a point-based approach that uses measurable factors to quantify the relative value of agricultural land resources and assist in the determination of the significance of agricultural land conversions. Many states have developed LESA Models specific to their local contexts. The California LESA Model was created as a result of Senate Bill 850 (Chapter 812/1993) and provides lead agencies with an optional methodology to ensure that potentially significant effects on the environment associated with agricultural land conversions are quantitatively and consistently considered in the environmental review process (CDC, 1997, p. 4). The California LESA Model is the methodology used by the City of Bakersfield to determine whether important agricultural land resources are present on a property.

3.2 California LESA Model Scoring System

The California LESA Model is made up of two components, known as "Land Evaluation" (LE) and "Site Assessment" (SA), that are scored and weighted separately to yield a total LE subscore and SA subscore. The Final LESA Score is the sum of the LE and SA subscores and has a maximum possible score of 100 points. Based on the Final LESA Score, numerical thresholds are used to determine the significance of a project's impacts on agricultural resources (CDC, 1997, p. 31).

3.2.1 Land Evaluation (LE)

The LE subscore consists of two factors, including the Land Capability Classification (LCC) rating and the Storie Index rating, which were devised to measure the inherent soil-based qualities of land as they relate to agricultural production. The LCC Rating and Storie Index rating scores are based upon the soil map unit(s) identified on a property and the acreage of each soil mapping unit relative to the property's total acreage. Data for the soil map unit(s), LCC, and Storie Index are obtained from soil survey data provided by the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) (CDC, 1997, pp. 7-9).

A. LCC Rating

There are eight (8) classes of LCC (I through VIII). Soils designated "I" have the fewest limitations for agricultural production and soils designated "VIII" are least suitable for farmland. The LCC is further divided into subclasses (designated by lowercase letters *e, w, s,* or *c*) to describe limitations, including a soil's susceptibility to erosion ("e"), limitations due to water in or on the soil ("w"), shallow or stony soils ("s"), or climate ("c") (USDA, 2023).

Once the LCC for each soil mapping unit is obtained from the USDA NRCS soil survey, the LCC classification is converted into a numeric score established by the California LESA Model. Table 3-1, *Numeric Conversion of Land Capability Classification Units*, summarizes the LCC numeric conversion scores used by the LESA model. The LCC Score accounts for 25 percent of the total California LESA Model Score (CDC, 1997, p. 7).

Table 3-1 Numeric Conversion of Land Capability Classification Units

LCC	I	IIe	IIs, w	IIIe	IIIs, w	IVe	IVs, w	V	VI	VII	VIII
Rating	100	90	80	70	60	50	40	30	20	10	0

Source: (CDC, 1997)

For properties with multiple soil mapping units, the LCC Score used in the LESA Model is determined by multiplying the LCC Rating for each map unit by the corresponding map unit's proportion of the property's total acreage. The LCC Score for each map unit is summed together for a total, single LCC Score for the property (CDC, 1997, p. 7).

B. Storie Index Rating

The Storie Index is a quantitative method of rating the agricultural capability of soils. The Storie Index has been used in California for over 50 years, with the most recent version of the Storie Index being published in 1978. The Storie Index is based on four factors: 1) degree of soil profile development; 2) surface texture; 3) slope; 4) other soil and landscape conditions including drainage, alkalinity, nutrient level, acidity, erosion, and microrelief. Soils are graded on a 100-point scale that represents the relative value of a given soil when used for intensive agricultural purposes (University of California, 1978, p. 1). The Storie Index Score accounts for 25 percent of the total California LESA Model Score (CDC, 1997, p. 12).

For properties with multiple soil mapping units, the Storie Index Score is calculated by multiplying the Storie Index rating by the map unit's proportion of the property's total acreage. The Storie Index Score for each map unit is added together to provide a single Storie Index Score for the property (CDC, 1997, p. 12).

3.2.2 Site Assessment (SA)

The SA subscore consists of four (4) factors that measure social, economic, and geographic features that contribute to the overall value of agricultural land. The SA factors include Project Size, Water Resource Availability, Surrounding Agricultural Land, and Protected Resource Land (CDC, 1997, p. 13).

A. Project Size

The Project Size rating evaluates the potential viability of potential agricultural productivity on a property. Generally, high quality soils (high rate of economic return per acre planted) only need to be present in relatively small quantities on a property to be considered important, whereas lower quality soils (low or moderate rate of economic return per acre planted) need to be present in larger quantities to be considered important.

The Project Size rating corresponds with the acreage of each LCC Class identified on a property. Table 3-2, *Project Size Scoring*, summarizes the different Project Size scoring combinations. For properties with multiple map units within the subject property, the mapping unit that generates the highest Project Size score is used as the final Project Size score for the Project site. The Project Size score accounts for 15 percent of the total California LESA Model Score (CDC, 1997, pp. 13-15).

Table 3-2 Project Size Scoring

LCC Class I or II soils		LCC Class III soils		LCC Class IV or lower	
Acreage	Points	Acreage	Points	Acreage	Points
80 or above	100	160 or above	100	320 or above	100
60-79	90	120-159	90	240-319	80
40-59	80	80-119	80	160-239	60
20-39	50	60-79	70	100-159	40
10-19	30	40-59	60	40-99	20
Fewer than 10	0	20-39	30	Fewer than 40	0
		10-19	10		
		Fewer than 10	0		

Source: (CDC, 1997)

B. Water Resources Availability

The Water Resources Availability rating measures the reliability of a property's water resources that could be used for agricultural production during non-drought and drought years (water availability score) and the proportion of the property served by each water source (weighted availability score). The water availability score established by the California LESA Model is summarized in Table 3-3, *Water Resources Availability Scoring.* The total Water Resources score is the sum of the weighted availability score(s). The Water Resources Availability score accounts for 15 percent of the total California LESA Score (CDC, 1997, pp. 16, 29).

Table 3-3 Water Resources Availability Scoring

Non-Drought Years			Drought Years			SCORE
Restrictions			Restrictions			
Irrigation Feasible	Physical Restrictions	Economic Restrictions	Irrigation Feasible	Physical Restrictions	Economic Restrictions	
YES	NO	NO	YES	NO	NO	100
YES	NO	NO	YES	NO	YES	95
YES	NO	YES	YES	NO	YES	90
YES	NO	NO	YES	YES	NO	85
YES	NO	NO	YES	YES	YES	80
YES	YES	NO	YES	YES	NO	75
YES	YES	YES	YES	YES	YES	65
YES	NO	NO	NO	-- --	-- --	50
YES	NO	YES	NO	-- --	-- --	45
YES	YES	NO	NO	-- --	-- --	35
YES	YES	YES	NO	-- --	-- --	30
Irrigated production not feasible, but rainfall adequate for dryland production in both drought and non-drought years						25
Irrigated production not feasible, but rainfall adequate for dryland production in non-drought years (but not in drought years)						20
Neither irrigated nor dry land production feasible						0

Source: (CDC, 1997)

C. Surrounding Agricultural Land

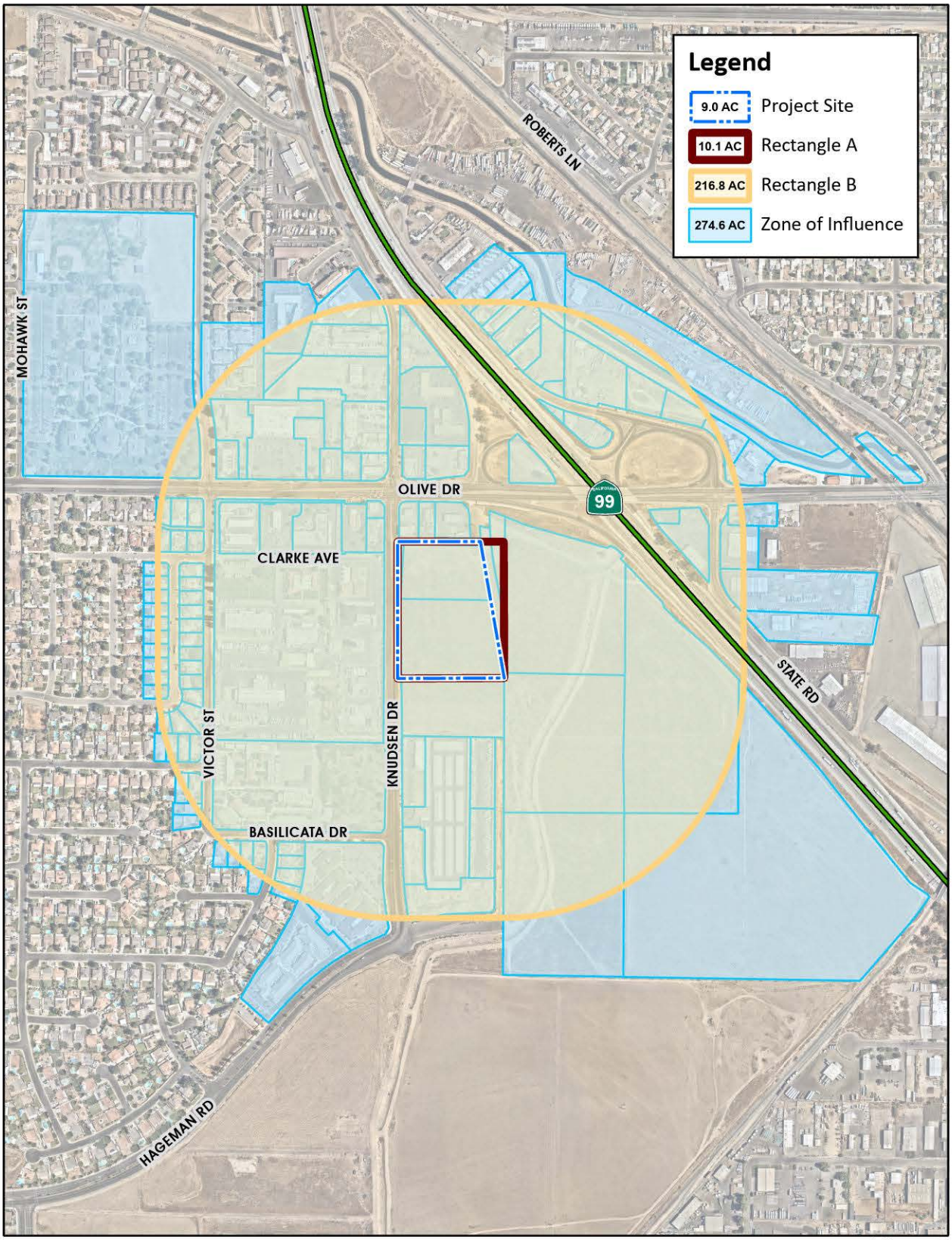
The Surrounding Agricultural Land rating accounts for the potential effect of development on properties containing important agricultural resources that surround a project site. The Surrounding Agricultural Land rating is dependent on the amount of agricultural land or related open space within a project's "Zone of Influence" (ZOI). The ZOI is determined by drawing the smallest rectangle that will completely contain the Project site on a map (Rectangle A) and creating a second rectangle that extends 0.25-mile beyond Rectangle A on all sides (Rectangle B). All parcels that are within or intersected by Rectangle B are included within the project's ZOI (CDC, 1997, pp. 23-25). The ZOI for the Project site is illustrated on Figure 3, *Zone of Influence*.

The Surrounding Agricultural Land rating is determined by the proportion of land within a project's ZOI that is currently used for agricultural production. The Surrounding Agricultural Land score established by the California LESA Model is summarized in Table 3-4, *Surrounding Agricultural Land Score*. Data for surrounding agricultural land can be obtained from the Department of Conservation's Important Farmland Map Series, the Department of Water Resources' Land Use Map Series, locally derived maps, and/or inspection of the site. The surrounding agricultural land score accounts for 15 percent of the total California LESA Model Score (CDC, 1997, pp. 26, 29).

Table 3-4 Surrounding Agricultural Land Score

Percent of Project's ZOI in Agricultural Use	Surrounding Agricultural Land Score
90 – 100 percent	100 Points
80 – 89	90
75 – 79	80
70 – 74	70
65 - 69	60
60 - 64	50
55 - 59	40
50 - 54	30
45 - 49	20
40 - 44	10
<40	0

Source: (CDC, 1997)



Source(s): Esri, Nearmap (2023)

Figure 3

0 200 400 800 Feet

Zone of Influence

D. Surrounding Protected Resource Land

Similar to the Surrounding Agricultural Land rating, the California LESA Model considers the potential effect of development on protected resource lands surrounding a project site. Protected resource lands include Williamson Act contracted lands, publicly owned lands maintained as park, forest, or watershed resources, and lands with natural resource easements (e.g., agricultural, wildlife habitat, open space).

The Surrounding Protected Resource Land rating is determined by the proportion of protected resource lands within a project's ZOI. The Surrounding Protected Resource Land scoring system established by the California LESA Model is summarized in Table 3-5, *Surrounding Protected Resource Land Score*. The Surrounding Protected Resource Land score accounts for 5 percent of the total California LESA Score (CDC, 1997, pp. 28-29).

Table 3-5 Surrounding Protected Resource Land Score

Percent of Project's ZOI Defined as Protected	Surrounding Protected Resource Land Score (Points)
90 – 100	100
80 – 89	90
75 – 79	80
70 – 74	70
65 - 69	60
60 - 64	50
55 - 59	40
50 - 54	30
45 - 49	20
40 - 44	10
<40	0

Source: (CDC, 1997)

4.0 PROJECT SITE EVALUATION

In this section, the California LESA Model is applied to the Project site to evaluate whether the Project site contains important agricultural resources.

4.1 Land Evaluation (LE)

As discussed in Subsection 3.2.1, the LE subscore measures the agricultural suitability of soils identified on a property by using the LCC Rating and Storie Index for each present soil map unit. The Project study area consists of one soil map, Kimberlina fine sandy loam, 0 to 2 percent slopes MLRA 17 (174).

4.1.1 Land Capability Classification

Refer to Table 4-1, *Land Capability Classification Score,* below, for the LCC Scores of the Project site. The Project site's overall LCC Score is 10.0.

Table 4-1 Land Capability Classification Score

Soil Map Unit	Acres	Proportion of Project Site (percent)	LCC	LCC Rating	LCC Score
174	9.0	100	VIIe	10	10
Totals	**9.0**	**100[1]**			**10**

Source: (USDA, 2023)

[1]Rounded to the nearest 10th.

The non-irrigated LCC was utilized because under existing conditions, the Project site does not have an irrigation system.

4.1.1 Storie Index

Refer to Table 4-2, *Storie Index Score*, below, for the total Storie Index scores for the Project site. The Project site's overall Storie Index score is 88.0.

Table 4-2 Storie Index Score

Soil Map Unit	Acres	Proportion of Project Site (percent)	Storie Index	Storie Index Score
174	9.0	100	88	88
Totals	**9.0**	**100[1]**		**88**

Source: (USDA, 2023)

[1]Rounded to the nearest 10th.

4.2 Site Assessment (SA)

As previously noted, the SA subscore is based on a combination of a property's size, the availability of water resources, the presence/absence of surrounding agricultural lands, and the presence/absence of surrounding protected resource lands.

4.2.1 Project Size

Refer to Table 4-3, *Project Size Score*, below, for the total Project Size scores for the Project site. The Project's overall Project Size score is 0.

Table 4-3 Project Size Score

	Soil Class		
	LCC Class I-II	**LCC Class III**	**LCC Class IV-VIII**
Acres of Project site	0	0	9.0
Project Size Scores	0	0	0

Source: (USDA, 2023)
Refer to Table 3-2 for Project Size Scoring, which is based on LCC Class and acreage.

4.2.2 Water Resource Availability

The Project site does not have existing irrigation systems; therefore, the California LESA model considers irrigated production to be infeasible on the Project site (CDC, 1997, p. 18). Notwithstanding, the LESA Model analyzes the potential for dryland production. The City of Calimesa is characterized as having an arid climate and receives little rainfall throughout the year. The average annual precipitation in the general Project site vicinity is approximately 7 inches (Best Places, 2023). Dryland farming can be productive with as little as 10-12 inches of rain per year (CAWSI, 2022). Accordingly, at the Project site, irrigated and dryland farming are considered infeasible, which corresponds to Water Resources Availability score of 0 (refer to Table 3-3).

4.2.3 Surrounding Agricultural Land

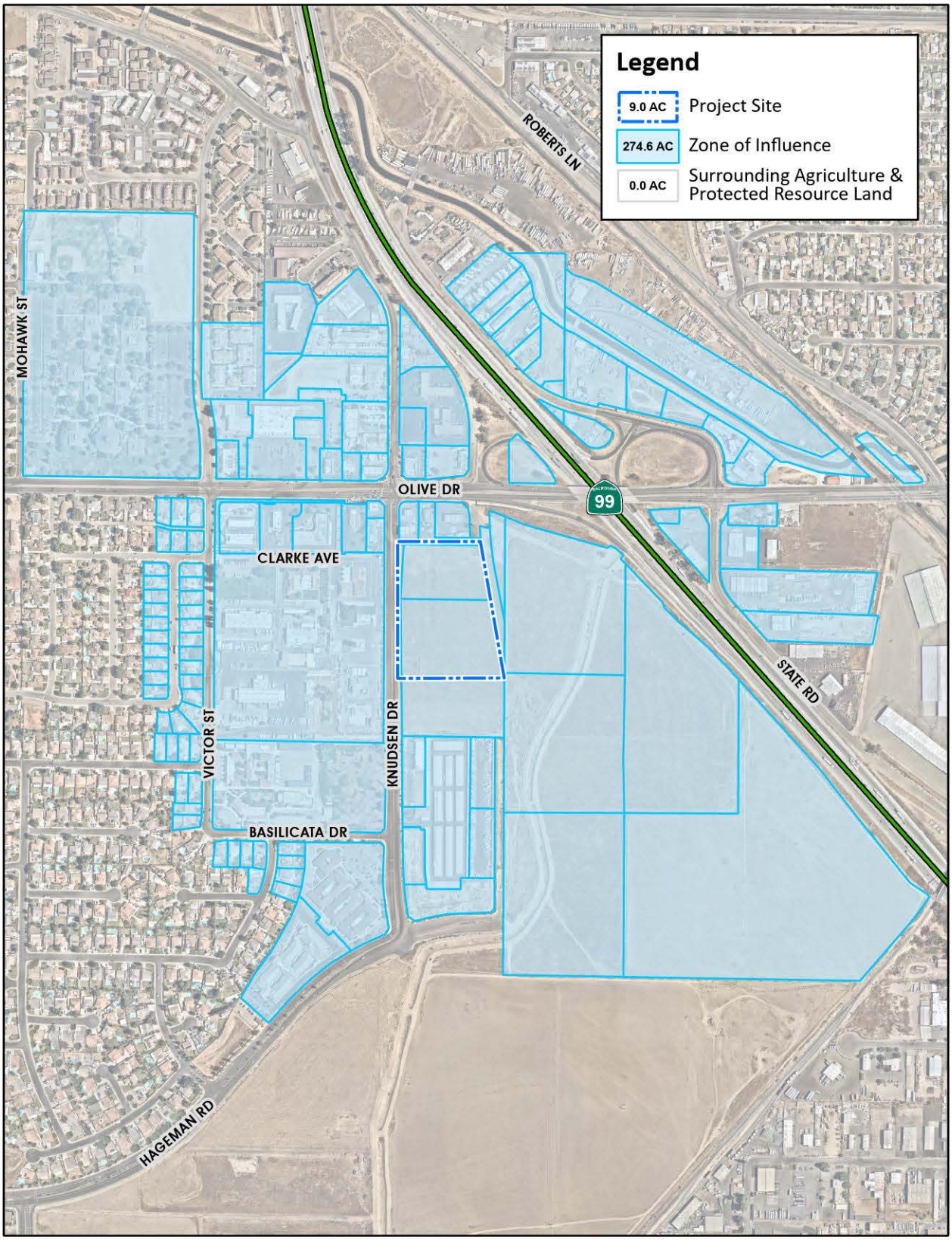
The Surrounding Agricultural Land score is dependent on the presence or absence of active agricultural production land within a project's ZOI. Figure 4, *Surrounding Agricultural and Protected Resources Land*, illustrates the active agricultural production lands in the ZOIs for the Project site. Table 4-4, *Surrounding Agricultural Land Score*, summarizes the Surrounding Agricultural Land score for the Project site; the Project site's Surrounding Agricultural Land score is 0.

Table 4-4 Surrounding Agricultural Land Score

Zone of Influence			Surrounding Agricultural Land Score
Total Acres	**Acres of Surrounding Agricultural Land**	**Percent Surrounding Agricultural Land**	
274.6	0	0.0	0

4.2.4 Surrounding Protected Resource Land

The Surrounding Protected Resource Land score is dependent on the presence or absence of lands within a project's ZOI that have long-term use restrictions that are compatible with or supportive of agricultural uses. Figure 4 illustrates the protected resource lands in the Project site's ZOI. As illustrated on Figure 4, there are no protected resource lands within the Project site's ZOI. Table 4-5, *Surrounding Protected Resource Land Score*, summarizes the Surrounding Protected Resource Land score for the Project site; the Project site's Surrounding Protected Resource Land score is 0.



Source(s): Esri, Nearmap (2023)

Figure 4

Surrounding Agricultural and Protected Resources Land

Table 4-5 Surrounding Protected Resource Land Score

Zone of Influence			Surrounding Protected Resource Land Score
Total Acres	Acres of Protected Resource Land	Percent Protected Resource Land	
274.6	0	0.0	0

4.3 Total LESA Score

The total LESA Score is calculated by summing the Project site's LE and SA subscores. The Project site's LESA subscores are summarized in Table 4-6. The Project site's final LESA score is 24.5.

Table 4-6 Total LESA Score Sheet – Project Site

	Factor Scores	Factor Weight	Weighted Factor Scores
LE Factors			
LCC	10	0.25	2.5
Storie Index	88	0.25	22.0
		LE Subtotal	*24.5*
SA Factors			
Project Size	0	0.15	0
Water Resource Availability	0	0.15	0
Surrounding Agricultural Land	0	0.15	0
Protected Resource Land	0	0.05	0
		SA Subtotal	*0*
Final LESA Score			**24.5**

5.0 CONCLUSION

The Project site received a LESA score of 24.5. As shown in Table 5-1, land that receives a LESA score between 0 and 39 are not considered significant agricultural land resources under CEQA. Thus, the Project site is determined to not have important agricultural land resources. Therefore, Project impacts on agricultural land resources and the conversion of agricultural land to non-agricultural use would not be considered significant.

Table 5-1 California LESA Model Scoring Thresholds

Total LESA Score	Scoring Decision
0 to 39	**Not Considered Significant**
40 to 59	Considered Significant only if LE and SA subscores are each greater than or equal to 20 points
60 to 79	Considered Significant unless either LE or SA subscore is less than 20 points
80 to 100	Considered Significant

Source: (CDC, 1997, Table 9)

6.0 REFERENCES

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Attachment J:
Additional Factual Background from Project Applicant

PROGRESS FOR BAKERSFIELD VETERANS LLC'S REPEATED USE OF FEDERAL PROCUREMENT PROTESTS AGAINST THE DEPARTMENT OF VETERANS AFFAIRS' NEW COMMUNITY-BASED OUTPATIENT CLINIC IN BAKERSFIELD, CALIFORNIA

Congress authorized a new Community Based Outpatient Clinic ("CBOC") for Bakersfield, California, along with 14 other locations, in late 2009. Today, only the Bakersfield CBOC remains undelivered. The disappointed incumbent contractor in Bakersfield, Progress for Bakersfield Veterans LLC ("PBV"), has repeatedly used federal procurement protests and other litigation tactics to stop progress for Bakersfield veterans and the new, state-of-the-art CBOC they need and deserve. PBV has benefited from the stalled project because it continues to be compensated for operating the outdated CBOC in Bakersfield while it has used litigation to delay the new CBOC.

Since 2018, PBV has filed **15** procurement protests against the Bakersfield CBOC project and VA's award of the new CBOC lease to SASD Development Group LLC ("SASD"). For nearly five years, PBV has tried – but failed – to overturn VA's award to SASD through nine bid protests to the U.S. Government Accountability Office ("GAO"), three bid protests to the U.S. Court of Federal Claims ("COFC"), and two appeals to the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit"). PBV also filed an unsuccessful challenge to SASD's small business eligibility with the U.S. Small Business Administration ("SBA").

Below is a chronology of PBV's litany of unsuccessful protests against the new Bakersfield CBOC.

September 28, 2018 VA notified PBV of its intent to award the Bakersfield CBOC lease to SASD.

October 4, 2018 PBV protested to SBA challenging SASD's small business eligibility for the procurement.

October 22, 2018 PBV filed two protests to GAO challenging VA's decisions to eliminate PBV's two offers from consideration and to award the lease to SASD.

October 31, 2018 SBA dismissed PBV's October 4, 2018 protest because PBV was not an interested party to file the protest. SBA nevertheless decided to conduct a size determination on SASD, which is a detailed examination that required a significant volume of information from SASD and took several months.

January 28, 2019 GAO dismissed PBV's October 22, 2018 protest because VA's signed lease with SASD did not contain a termination for convenience clause, meaning even if GAO sustained PBV's protest the only relief it could provide to PBV was payment for its costs incurred in preparing its proposal and pursuing the protest.

February 12, 2019 SBA issued a size determination finding that SASD was an eligible small business for the procurement.

February 14, 2019 VA directed SASD to resume work on the lease. Pursuant to the Competition in Contracting Act, PBV's October 22, 2018 protest to GAO had triggered an automatic suspension of performance on SASD's lease during the pendency of the GAO protest. After GAO dismissed the protest on January 28, 2019, VA then waited for the conclusion of the SBA size determination before directing SASD to resume work.

March 4, 2019 PBV filed a protest with the COFC challenging VA's elimination of its offers from consideration and award of the lease to SASD.

March 6, 2019 VA issued a stop work order to SASD based on the government's decision to voluntarily suspend performance on SASD's lease pending the conclusion of PBV's March 4, 2019 protest.

March 27, 2019 VA notified the COFC that it intended to take corrective action by agreeing to reinstate PBV's offers to the competitive range, permitting PBV to submit revised offers, and reevaluating all offers.

April 3, 2019 PBV opposed VA's planned corrective action, asserting that VA should be required to terminate its lease with SASD.

April 10, 2019 COFC sided with the government and granted its motion to dismiss PBV's March 4, 2019 protest based on VA's planned corrective action.

June 7, 2019 VA notified the COFC that it intended to cancel the solicitation and issue a new solicitation for the Bakersfield CBOC.

June 10, 2019 PBV filed a notice of appeal to the Federal Circuit challenging the COFC's dismissal of its March 4, 2019 protest.

June 17, 2019 PBV protested to GAO challenging VA's June 7, 2019 decision to cancel the solicitation and issue a new solicitation for the Bakersfield CBOC.

July 19, 2019 GAO dismissed PBV's June 17, 2019 protest because of PBV's June 10, 2019 notice of appeal to the Federal Circuit. GAO's rules require dismissal of a protest that is the subject of litigation before the COFC or another court of competent jurisdiction.

May 1, 2020	After VA issued a new solicitation for the Bakersfield CBOC in December 2019, and PBV and SASD submitted new offers in January 2020, PBV protested to GAO challenging VA's April 21, 2020 decision to eliminate all of PBV's offers from the competition.
May 18, 2020	PBV filed a supplemental protest with GAO.
June 1, 2020	PBV filed a second supplemental protest with GAO.
June 11, 2020	PBV filed a third supplemental protest with GAO.
July 27, 2020	GAO dismissed PBV's May and June 2020 protests based on VA's decision to take corrective action by reevaluating offers.
August 20, 2020	PBV filed a protest with the COFC challenging VA's plan to take corrective action in response to PBV's GAO protests.
December 22, 2020	The COFC dismissed and denied PBV's August 20, 2020 protest.
April 26, 2021	VA again awarded the Bakersfield CBOC lease to SASD.
May 6, 2021	PBV protested to GAO challenging VA's award of the lease to SASD.
May 24, 2021	PBV filed a supplemental protest with GAO.
August 11, 2021	GAO dismissed and denied PBV's May 2021 protests.
November 8, 2021	PBV effectively appealed GAO's August 11, 2021 decision by filing a protest with the COFC challenging VA's award to SASD. PBV also challenged VA's elimination of PBV's offers from the competition even though the COFC had already considered and rejected those arguments in its December 22, 2020 decision that denied and dismissed PBV's August 20, 2020 protest.
March 11, 2022	The COFC dismissed and denied PBV's November 8, 2021 protest.
May 10, 2022	PBV filed a notice of appeal with the Federal Circuit challenging one aspect of the COFC's March 11, 2022 ruling.
May 4, 2023	Three days after holding oral arguments, the Federal Circuit summarily denied PBV's appeal and affirmed the COFC's March 11, 2022 decision.