

Chapter 7

Response to Comments

SCH# 2019090215

Volume 7

AVEP Solar Project
By Chaparral Solar, LLC and Rabbitbrush Solar, LLC

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ZCC 3, Map 231-18
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Nonsummary Vacations of Public Access Easements (Chaparral Site), Map 232
Nonsummary Vacations of Public Access Easements (Rabbitbrush Site), Map 232



Kern County
Planning and Natural Resources Department
Bakersfield, California

March 2021

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**PLANNING AND NATURAL
RESOURCES DEPARTMENT**

Planning
Community Development
Administrative Operations

March 25, 2021

FILE: SPA 1, Map 231-18; ZCC 3, Map 231-18; CUP 1, Map 231-18;
SPA 2, Map 231-18; SPA 25, Map 232; SPA 27, Map 232;
ZCC 40, Map 232; ZCC 41, Map 232; CUP 33, Map 232;
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Nonsummary Vacations of Public Access Easements (Chaparral Site), Map 232;
Nonsummary Vacations of Public Access Easements (Rabbitbrush Site), Map 232
S.D.: #2 - Scrivner

Addressee List (See Distribution List)

**Re: Response to Comments for Draft Environmental Impact Report – AVEP Solar Project by
Chaparral Solar, LLC and Rabbitbrush Solar, LLC (PP18141)**

Dear Interested Party:

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

A public hearing has been scheduled with the Kern County Planning Commission to consider this request on April 8, 2021, at 7:00 p.m., with a public hearing before the Kern County Board of Supervisors tentatively scheduled for April 27, 2021.

Due to COVID-19 and subsequent local emergency declarations by the Kern County Board of Supervisors, Staff is evaluating the possibility of facilitating an alternative form of public participation during this hearing. If you have any questions about the format of the hearing and/or wish to get more information please contact the Staff Planner.

Thank you for your participation in the environmental process for this project. If you have any questions regarding this project, please do not hesitate to contact me at (661) 862-8612 or via email at catesr@kerncounty.com.

Sincerely,



Randall Cates, Planner III
Advanced Planning Division

COMMENTING AGENCIES AND INTERESTED PERSONS: Antelope Valley-East Kern Water Agency; California Department of Fish & Wildlife; Defenders of Wildlife; Kern County Fire Department; County of Kern Public Works Department, Administration and Engineering Division; County of Kern Public Works Department, Floodplain Management Section; Kern County Superintendent of Schools; Kern Audubon Society; East Kern Air Pollution Control District; Los Angeles Department of Water & Power; Southern California Gas Company, Transmission Technical Services Department; National Audubon Society

Antelope Valley-East Kern
Water Agency
6500 West Avenue N
Palmdale, CA 93551

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

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

Kern County Fire Dept.
Michael Nicholas,
Assistant Fire Marshal

Kern County Public Works Department/
Administration and Engineering Division

Kern County Public Works Department/
Building & Development/Floodplain

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

Kern Audubon Society
Attn: Franklin Bedard
P.O. Box 3581
Bakersfield, CA 93385

East Kern Air Pollution
Control District

Los Angeles Department of
Water & Power
PO Box 51111
Los Angeles, CA 90051-5700

Southern California Gas Company
Transmission Technical Services Dept.
9400 Oakdale Ave
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Kern County
Planning and Natural Resources Department
Bakersfield, California

March 2021

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7.1 Introduction

Purpose

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

Environmental Review Process

A Notice of Preparation (NOP)/Initial Study (IS) (SCH No. 2019090215) was circulated for a 30-day public review period beginning on September 10, 2019 and ending October 10, 2019. Twenty-three individual written comment letters were received and used in the preparation of the Draft EIR. The Draft EIR for the proposed project was circulated for a 45-day public review period beginning on January 11, 2021 and ending February 25, 2021. A total of twelve comment letters were received on the Draft EIR.

Section 15088 of the *CEQA Guidelines* requires that the lead agency evaluate comments on environmental issues received from persons and agencies that reviewed the Draft EIR and prepare a written response addressing the comments received. The response to comments is contained in this document — Volume 7, Chapter 7 of the Draft EIR. Volumes 1, 2, 3, 4, 5, 6, and 7 together constitute the Final EIR.

7.2 Revisions to the Draft EIR

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

Global Edits

- Kern County Planning and ~~Community Development Department~~ Natural Resources Department
- Mitigation Measure MM ~~4.4-14~~ 4.4-12

Chapter 1, Executive Summary, Table 1-7: Summary of Impacts, Mitigation Measures, and Levels of Significance, Pages 1-44 through 1-53:

Implementation of Mitigation Measures MM 4.1-5 through MM 4.1-7, 4.4-12, and MM 4.9-2 would be required (see Sections 4.1, *Aesthetics*, and 4.9, *Hazards and Hazardous Materials*, for full mitigation measure text).

MM 4.4-5: Preconstruction Special-Status Plant Surveys. Within 14 days prior to the commencement of any ground-disturbing activities, the project operator shall conduct preconstruction surveys for special-status and protected plant species within the project area, including but not limited to Joshua trees, cholla, beavertail cactus, alkali mariposa lily, Clokey's cryptantha, Rosamond eriastrum, sagebrush loeflingia, spreading navarretia, Latimer's woodland-gilia, salt spring checkerbloom, short-joint beavertail, and recurved larkspur. After the preconstruction survey determines the exact location of these species, if present, on the project site and the number of individuals or populations present, the project proponent/operator shall submit written documentation to the Kern County Planning and Natural Resources Department confirming implementation of the measures described below.

- a. The project proponent/operator shall work with a qualified biologist to determine presence of Clokey's cryptantha, Rosamond eriastrum, sagebrush loeflingia, spreading navarretia, Latimer's woodland-gilia, salt spring checkerbloom, short-joint beavertail, and recurved larkspur and identify all known locations of alkali mariposa lily to establish "avoidance areas". All special-status plants found within the project site shall be avoided by a buffer of 25 feet. Sturdy, highly visible, orange plastic construction fencing (or equivalent material verified by the authorized biologist) shall be installed around all locations of detected special-status plants to protect from impacts during the construction phase, until they can be relocated. The fence shall be securely staked and installed in a durable manner that would be reasonably expected to withstand wind and weather events and last at least through the construction period. Fencing shall be removed upon completion of the project construction.
- b. The project proponent/operator shall pay the required fee to remove Joshua trees, cholla, and beavertail cactus in accordance with the California Desert Native Plant Act prior to construction activities. If CESA-listed plant species are found onsite during pre-construction surveys or biological monitoring activities and cannot be avoided with an adequate buffer during construction, then consultation with CDFW shall be initiated to obtain the necessary incidental take permit authorizations or provide evidence that such a permit is not required.
- c. During the appropriate bloom period for alkali mariposa lily, prior to the start of project construction, a survey will be performed to delineate the boundaries of the identified alkali mariposa lily population(s). All alkali mariposa lilies that cannot feasibly be avoided in final project design shall have bulbs collected prior to construction. Additionally, a translocation plan for alkali mariposa lily will be submitted and approved by the County prior to ground disturbance and bulb collection. The plan will include the following:
 - i. Identify an area of occupied habitat to be preserved and removed;
 - ii. Identify areas of onsite or offsite preservation, restoration, or enhancement locations;
 - iii. Methods for preservation, restoration, enhancement, and/or translocation
 - iv. Indicate a replacement ratio and success standard of 1:1 for impacted to individuals
 - v. Establish a monitoring program to ensure mitigation success
 - vi. Create an adaptive management and remedial measures in the event that performance standards are not achieved Kern County Section 4.4. Biological Resources Draft Environmental Impact Report January 2021 AVEP Solar Project 4.4-51
 - vii. Ensure financial assurances and a mechanism for conservation of any mitigation lands required in perpetuity.
- d. Any Clokey's cryptantha, Rosamond eriastrum, sagebrush loeflingia, Latimer's woodland-gilia, salt spring checkerbloom, short-joint beavertail, and recurved larkspur onsite individuals or populations that cannot feasibly be avoided in final project design shall have seed collected prior to construction for sowing into suitable onsite habitat or in nearby suitable offsite habitat covered with a conservation

easement. A seed harvesting and storage plan including a planting plan shall be prepared and approved by the County, prior to ground disturbance of these areas.

- e. If any spreading navarretia individuals or populations are found onsite and cannot feasibly be avoided in final project design, consultation with the U.S. Fish and Wildlife Service will be required prior to ground disturbing activities.
- f. Temporary ground disturbance associated with the gen-tie lines or collector lines shall be recontoured to natural grade (if the grade was modified during the temporary disturbance activity), and revegetated with an application of a native seed mix prior to or during seasonal rains to promote passive restoration of the area to pre-project conditions. However, if invasive plant species were present, these species would not be restored. An area subjected to temporary ground disturbance means any area that is disturbed but will not be subjected to further disturbance as part of the project. This does not include areas already designated as urban/developed. Prior to seeding temporary ground disturbance areas, the qualified biologist will review the seeding palette to ensure that no seeding of invasive plant species, as identified in the most recent version of the California Invasive Plant Inventory for the region, will occur.
- g. The project operator shall correspond with the County to determine what is needed for project compliance with the Willow Springs Specific Plan

MM 4.4-6: Preconstruction Desert Tortoise Surveys. Within 14 days prior to the commencement of any ground-disturbing activities, the project operator shall conduct preconstruction surveys for desert tortoise within the entire project area. The surveys shall be conducted in accordance with U.S. Fish and Wildlife Service (USFWS) protocol (2011); survey results shall be submitted to both CDFW and USFWS. If no burrows or tortoises are discovered during preconstruction surveys, no further mitigation is necessary. The desert tortoise is a federally and state threatened species and, consequently, impacts that would cause “take” of the species would require the issuance of Incidental Take Permits from both USFWS and the California Department of Fish and Wildlife (CDFW) to comply with the federal Endangered Species Act and California Endangered Species Act. If burrows or tortoises are identified on the project site during preconstruction surveys, the project operator shall be required to consult with USFWS and CDFW regarding take coverage, and adhere to the following minimum conditions:

- a. Develop a plan for desert tortoise translocation and monitoring prior to project construction. The plan shall provide the framework for implementing the following measures:
 - i. If, upon consultation with USFWS and CDFW, it is determined by both resource agencies that a permanent tortoise proof exclusion fence is required, a fence shall be installed around all construction and operation areas prior to the initiation of earth disturbing activities, in coordination with a qualified biologist. The fence shall be designed in such a manner to allow other wildlife to access through the permanent security fence and be constructed of 0.5-inch mesh hardware cloth and extend 18 inches above ground and 12 inches below ground. Where burial of the fence is not possible, the lower 12 inches shall be folded outward against the ground and fastened to the ground so as to prevent desert tortoise entry. The fence shall be supported sufficiently to maintain its integrity, be checked at least monthly during construction and operations, and maintained when necessary by the project operator to ensure its integrity. Provisions shall be made for closing off the fence at the point of vehicle entry. Common raven perching deterrents shall be installed as part of the fence construction.
 - ii. An Authorized Biologist shall conduct a preconstruction survey for desert tortoise within the construction site, as well as before and after installation of desert tortoise exclusionary fencing (if required to be installed) and project security fencing. An Authorized Biologist has the appropriate education and experience to accomplish biological monitoring and mitigation tasks and is approved by CDFW and USFWS. Two surveys without finding any desert tortoises or new desert tortoise sign shall occur prior to declaring the site clear of desert tortoises.
 - iii. All burrows that could provide shelter for a desert tortoise shall be hand-excavated prior to ground-disturbing activities.
 - iv. An Authorized Biologist shall remain onsite until all vegetation necessary for the construction of the project is cleared and, at a minimum, conduct site and fence inspections on a monthly basis throughout construction in order to ensure project compliance with mitigation measures.

- v. An Authorized Biologist shall remain on-call throughout fencing and grading activities in the event a desert tortoise wanders onto the project site.
- vi. Mitigation for permanent loss of occupied desert tortoise habitat shall be mitigated at a 1:1 ratio to reduce potential effects to less-than-significant levels. Mitigation can be achieved through purchase of credit from an existing mitigation bank, such as the Desert Tortoise Natural Area, private purchase of mitigation lands, or onsite preservation, as approved by the resource agencies.
- b. A Raven Management Plan shall be developed for the project site. This plan shall include at a minimum:
 - i. Identification of all common raven nests within the project area during construction.
 - ii. Weekly inspections during construction under all nests in the project area for evidence of desert tortoise predation (e.g., scutes, shells, etc.). If evidence of desert tortoise predation is noted, a report shall be submitted to USFWS, CDFW, and Kern County Planning and Community Development Department within five calendar days; and
 - iii. Provisions for the management of trash that could attract common ravens during the construction, operations and maintenance, and decommissioning phases of the proposed project.

Chapter 1, Executive Summary, Table 1-7: Summary of Impacts, Mitigation Measures, and Levels of Significance, Page 1-90:

MM 4.14-3: Written verification of ownership of the project shall be submitted to the Kern County Planning and Natural Resources Department by April 15 of each calendar year. If the project is sold to a city, county, or utility company with assessed taxes that total less than \$3,000 per megawatt per year, then a Supplemental Cumulative Impact Charge (SCIC) shall be paid for the difference annually up to \$3,000 per megawatt. The SCIC payments shall be made annually directly to the County Administrative Office Fiscal Division (CAO) and labeled "Supplemental Cumulative Impact Charge (SCIC)" with the project name and phase number~~then that entity shall pay the taxes plus the amount necessary to equal the equivalent of \$3,000 per megawatt. The amount shall be paid for all years of operation. The fee shall be paid to the Kern County Auditor/Controller by April 30 of each calendar year.~~

Chapter 3, Project Description, Page 3-13:

Figure 3-4, Existing Willow Springs Specific Plan Designation, has been revised to label the northernmost parcel of the Chaparral Site as Specific Plan Map Code Designation 5.3/4.4/2.1 instead of 5.3/4.4.

Chapter 3, Project Description, Page 3-17:

Figure 3-7, Proposed Zoning, has been revised to label the southernmost parcel of the Chaparral Site as Zoning Classification A FPS instead of E (2 1/2) RS FP.

Chapter 3, Project Description, Page 3-33:

Figure 3-14, Chaparral Facility Layout, has been revised to visually clarify that the project has been designed to meet the stated setback conditions requested by LADWP.



KERN COUNTY PLANNING AND NATURAL RESOURCES DEPARTMENT
KERN SOLAR AVEP

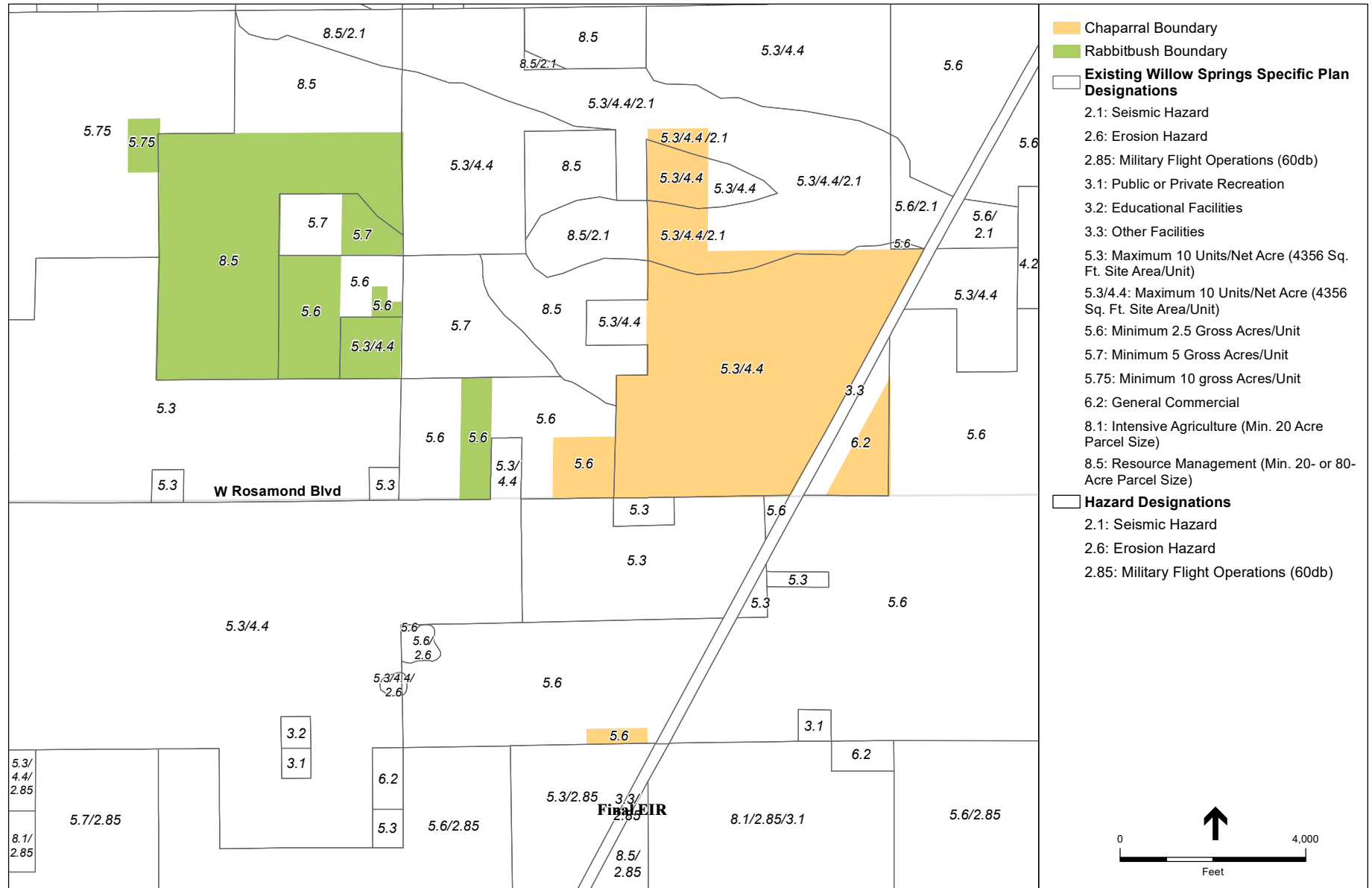


Figure 3-4: EXISTING WILLOW SPRINGS SPECIFIC PLAN DESIGNATIONS





Chapter 3, Project Description, Pages 3-38 and 3-40;

1. Potential and/or existing well(s) on each individual facility site and/or well(s) which may be shared by the two facilities.
2. Existing well(s) on the Willow Springs Solar Project site. If water is supplied from the Willow Springs Project site, it will be piped via temporary construction pipeline(s) or trucked.
3. Trucked ~~Antelope Valley East Kern Water Agency (AVEK)~~ Mojave Public Utility District water collected at one of the nearby locations owned by ~~AVEK~~ Mojave Public Utility District.

Chapter 3, Project Description, Page 3-40:

The project's operational water consumption is expected to be approximately 20 acre-feet per year to be used for toilets and hand washing facilities, fire protection, and potentially for PV solar panel washing. Water storage tank(s) may be installed at the O&M areas to store water. Potable water would be imported for O&M staff consumption as necessary. Operations water for the two solar facilities will be supplied from one or more of the following options:

1. Potential and/or existing well(s) on each individual facility site and/or well(s) which may be shared by the two facilities.
2. Existing well(s) on the Willow Springs Solar Project site. If water is supplied from the Willow Springs Project site, it will be piped via temporary construction pipeline(s) or trucked.
3. Trucked ~~Antelope Valley East Kern Water Agency (AVEK)~~ Mojave Public Utility District water collected at one of the nearby locations owned by ~~AVEK~~ Mojave Public Utility District.

Section 4.3, Air Quality, Page 4.3-47:

Regarding health effects of criteria air pollutants, the project's potential to result in regional health effects associated with ROG, NO_x, PM₁₀ and PM_{2.5} on specific vulnerable populations cannot be calculated given existing scientific constraints. A scientific method to calculate the exact number of individuals in a vulnerable population that will get sick has not been developed, and therefore, it is assumed localized health effects associated with NO_x, PM₁₀, and PM_{2.5} emissions from project implementation could occur. The project proposes the construction and operation of a large-scale utility solar project that would require dust-generating construction activities such as pile-driving, mowing, and grading, over a large area. Due to the open nature of the project site, blowing dust could occur and result in the dispersal of criteria air pollutants such as PM_{2.5} and potentially contribute to the transmission of respiratory diseases like COVID-19. While COVID-19 is thought to spread mainly through close contact from person-to-person, the CDC is still learning how the virus spreads and the severity of the illness it causes (CDC, 2020b). COVID-19 research and causality is still in the beginning stages. A nationwide study by Harvard University found a linkage between long term exposure to PM_{2.5} as air pollution and statistically significant increased risk of COVID-19 death in the United States (Harvard, 2020). While, construction dust suppression measures would be implemented in Mitigation Measure MM 4.3-2, exposure to dust during construction could still occur which could increase the health susceptibility and increase the severity of the disease. While ~~there is no~~ are vaccines to date for COVID-19, they are currently only available to public meeting certain criteria and not readily available to all public. In addition to implementation of Mitigation Measure MM 4.3-2, the project would implement Mitigation Measure MM 4.3-3, which requires implementation of a COVID-19 Health

and Safety Plan in accordance with the Kern County Public Health Services Department and Kern County Health Officer mandates.

Section 4.4, Biological Resources, Page 4.4-40:

Construction

Special-Status Plants

The project site contains four special-status or protected plant species: alkali mariposa lily, western Joshua tree, cholla, and beavertail cactus. Additionally, the project site contains habitat for eight other special-status plants with a moderate potential to occur onsite: Clokey's cryptantha, Rosamond eriastrum, sagebrush loeflingia, spreading navarretia, Latimer's woodland-gilia, salt spring checkerbloom, short-joint beavertail, and recurved larkspur. Direct impacts to the special-status plants and their habitat may include mortality of individuals as a result of permanent removal or damage to root structures during the construction phase of the project through activities like clearing vegetation and removal of suitable habitat, trampling by construction vehicles or personnel, or unauthorized collection. Other direct impacts may include clearing and grading activities that could disturb and compress soils, potentially destroying seed banks and preventing or reducing future utilization of the area by these species. Indirect impacts may include construction-related dust, erosion, runoff, and introduction of invasive species on disturbed soils. Increased dust during construction activities could decrease a plant's ability to photosynthesize. This could result in diminished reproduction or loss of special-status plants. Construction equipment, vehicles, or imported materials could introduce and spread non-native invasive plant species within the project area, which could outcompete special-status plants for resources such as water and space. In addition, suitable habitat could become monotypic, thereby reducing quality and diversity of native vegetation communities onsite.

Direct and indirect impacts to alkali mariposa lily, western Joshua tree, cholla, and beavertail cactus would be considered significant. Similar direct and indirect impacts to Clokey's cryptantha, Rosamond eriastrum, sagebrush loeflingia, spreading navarretia, Latimer's woodland-gilia, salt spring checkerbloom, short-joint beavertail, and recurved larkspur would also be considered significant, if present. As proposed, western Joshua trees and protected cactus occur throughout the project site and removal will be mitigated, as applicable by obtaining a harvest permit, creation and submittal/approval of a Joshua Tree Preservation plan, and adherence to applicable State (CDFW) protection and mitigation requirements. To reduce potential significant impacts to special-status plant species, Mitigation Measures MM 4.4-1 through MM 4.4-5, and MM 4.4-124 would be implemented. With the implementation of these mitigation measures, which include monitoring, worker environmental awareness training, preconstruction clearance survey, general biological resources avoidance measures, preconstruction special-status plant surveys, and creation of a Joshua Tree Preservation Plan impacts would be less than significant.

Other special-status plants that have a low potential to occur include Lancaster milk-vetch (*Astragalus preussii* var. *laxiflorus*). The potential impacts could be mitigated to a less-than-significant level through implementation of avoidance and protection measures detailed in Mitigation Measure MM 4.4-4. With implementation of Mitigation Measures MM 4.4-1 through MM 4.4-5, and MM 4.4-124 impacts to special-status plant species would be less than significant.

Section 4.4, Biological Resources, Pages 4.4-41 through 4.4-42

Swainson's Hawk. As described in Section 4.4-3, Special Status Species, the project site contains desert scrub communities, which are considered marginal foraging quality for Swainson's hawk and nesting habitat is limited to a few larger Joshua trees. Neither facility contains, or is adjacent to, agricultural areas which are the preferred foraging habitat for the species, therefore although Swainson's hawks occur in the area, the project site has a low potential to provide nesting habitat for this species. Although the species has had a decreasing presence in this area Also as described in Section 4.4-3, Special Status Species, Swainson's hawks ~~continue to~~ have been demonstrated to nest around agricultural areas in the Antelope Valley, with the majority of nests found adjacent to agricultural fields. Swainson's hawks show nest site fidelity and typically forage in suitable habitat adjacent to their nest sites. ~~Although the~~ The project site may contain some suitable nesting habitat for Swainson's hawk in a few larger Joshua trees within the site; however, it is unlikely that this species would nest at the project site given the absence of agricultural fields in the immediate vicinity of the project site.

As described in Section 4.4-3, Special Status Species, in the Antelope Valley region of Southern California, nests are typically placed in Joshua trees, roadside trees, and windrow or perimeter trees along agricultural areas (CEC and CDFG, 2010), and foraging habitat within the Antelope Valley includes pastures, alfalfa fields, fallow fields, row crops, new orchards, and grain crops. Although site development would result in the permanent loss of creosote bush scrub with smaller amounts of annual and perennial grassland, white bursage scrub, and alkaline mixed scrub, this loss is expected to have a minimal effect, if any, on this species' habitat availability in the immediate area and this reduction in habitat would not be considered a significant impact. For example, in the analysis shown in Table 4.4-4 below, the National Land Cover Database data was used to quantify the percentage of landcover types within a buffer around the project area. The project area was buffered by 5 miles and the buffer was clipped to Kern County to exclude area in Los Angeles County. Operating or permitted solar energy projects were considered in the analysis and the entire area within these projects is considered 'solar development' and not a natural landcover type. Of the approximately 70,554 acres within the 5-mile buffer, approximately 66 percent are scrub (46,937 acres), 10 percent are landcover types associated with preferred Swainson's hawk foraging habitat (herbaceous, hay/pasture, cultivated crops; 6,843 acres), and 15 percent is solar development (10,618 acres).

Table 4.4-4: Landcover types within 5-mi buffer of the Project in Kern County.

<u>Land Cover Class</u>	<u>Area (Sq Km)</u>	<u>Area (Acres)</u>	<u>%</u>
<u>Shrub/Scrub</u>	<u>189.95</u>	<u>46936.73</u>	<u>66.53</u>
<u>Developed, Open Space</u>	<u>19.44</u>	<u>4802.9</u>	<u>6.81</u>
<u>Herbaceous</u>	<u>17.23</u>	<u>4258.06</u>	<u>6.04</u>
<u>Hay/Pasture</u>	<u>6.62</u>	<u>1635.32</u>	<u>2.32</u>
<u>Cultivated Crops</u>	<u>3.84</u>	<u>949.71</u>	<u>1.35</u>
<u>Barren Land</u>	<u>2.69</u>	<u>665.87</u>	<u>0.94</u>
<u>Developed, Low Intensity</u>	<u>2.24</u>	<u>554.23</u>	<u>0.79</u>
<u>Developed, Medium Intensity</u>	<u>0.39</u>	<u>95.63</u>	<u>0.14</u>
<u>Evergreen Forest</u>	<u>0.12</u>	<u>30.68</u>	<u>0.04</u>
<u>Developed, High Intensity</u>	<u>0.02</u>	<u>5.73</u>	<u>0.01</u>

Table 4.4-4: Landcover types within 5-mi buffer of the Project in Kern County.

<u>Land Cover Class</u>	<u>Area (Sq Km)</u>	<u>Area (Acres)</u>	<u>%</u>
<u>Open Water</u>	<u>0</u>	<u>0.67</u>	<u>0.00</u>
<u>Emergent Herbaceous Wetlands</u>	<u>0</u>	<u>0.22</u>	<u>0.00</u>
<u>Solar development</u>	<u>42.97</u>	<u>10618.06</u>	<u>15.05</u>
<u>Total</u>	<u>285.52</u>	<u>70553.81</u>	<u>100.00</u>

The project would have the potential to directly impact this species through mortality or injury of individuals, if not able to fly out of harm's way. Indirect impacts from construction and decommissioning activities include disturbance to nesting individuals related to increase dust, noise, vibrations, and increase human presence. Potential impacts would be avoided through implementation of Mitigation Measure MM 4.4-78, which includes nesting surveys. Potential impacts would be further reduced through implementation of Mitigation Measures MM 4.4-2 through MM 4.4-4, which include monitoring, education awareness training, preconstruction clearance survey, and general biological resources avoidance measures. With implementation of these mitigation measures, project level impacts to Swainson's hawk would be less than significant.

Section 4.4, Biological Resources, Page 4.4-45:

Mitigation Measures

Implement Mitigation Measures MM 4.1-5 through MM 4.1-7, MM 4.4-1 through 4.4-9, MM 4.4-12, and MM 4.9-2.

Section 4.4, Biological Resources, Pages 4.4-50 and 4.4-51

MM 4.4-5: Preconstruction Special-Status Plant Surveys – subsection (c.)

- c. During the appropriate bloom period for alkali mariposa lily, prior to the start of project construction, a survey will be performed to delineate the boundaries of the identified alkali mariposa lily population(s). All alkali mariposa lilies that cannot feasibly be avoided in final project design shall have bulbs collected prior to construction. Additionally, a translocation plan for alkali mariposa lily will be submitted and approved by the County prior to ground disturbance and bulb collection. The plan will include the following:
 - i. Identify an area of occupied habitat to be preserved and removed;
 - ii. Identify areas of onsite or offsite preservation, restoration, or enhancement locations;
 - iii. Methods for preservation, restoration, enhancement, and/or translocation
 - iv. Indicate a replacement ratio and success standard of 1:1 for impacted to individuals
 - v. Establish a monitoring program to ensure mitigation success
 - vi. Create an adaptive management and remedial measures in the event that performance standards are not achieved
 - vii. Ensure financial assurances and a mechanism for conservation of any mitigation lands required in perpetuity.

MM 4.4-6: Preconstruction Desert Tortoise Surveys. Within 14 days prior to the commencement of any ground-disturbing activities, the project operator shall conduct preconstruction surveys for desert tortoise within the entire project area. The surveys shall be conducted in accordance with U.S. Fish and Wildlife Service (USFWS) protocol (2011); survey results shall be submitted to both CDFW and USFWS. If no burrows or tortoises are discovered during preconstruction surveys, no further mitigation is necessary. The desert tortoise is a federally and state threatened species and, consequently, impacts that would cause “take” of the species would require the issuance of Incidental Take Permits from both USFWS and the California Department of Fish and Wildlife (CDFW) to comply with the federal Endangered Species Act and California Endangered Species Act. If burrows or tortoises are identified on the project site during preconstruction surveys, the project operator shall be required to consult with USFWS and CDFW regarding take coverage, and adhere to the following minimum conditions:

- a. Develop a plan for desert tortoise translocation and monitoring prior to project construction. The plan shall provide the framework for implementing the following measures:
 - i. If, upon consultation with USFWS and CDFW, it is determined by both resource agencies that a permanent tortoise proof exclusion fence is required, a fence shall be installed around all construction and operation areas prior to the initiation of earth disturbing activities, in coordination with a qualified biologist. The fence shall be designed in such a manner to allow other wildlife to access through the permanent security fence and be constructed of 0.5-inch mesh hardware cloth and extend 18 inches above ground and 12 inches below ground. Where burial of the fence is not possible, the lower 12 inches shall be folded outward against the ground and fastened to the ground so as to prevent desert tortoise entry. The fence shall be supported sufficiently to maintain its integrity, be checked at least monthly during construction and operations, and maintained when necessary by the project operator to ensure its integrity. Provisions shall be made for closing off the fence at the point of vehicle entry. Common raven perching deterrents shall be installed as part of the fence construction.
 - ii. An Authorized Biologist shall conduct a preconstruction survey for desert tortoise within the construction site, as well as before and after installation of desert tortoise exclusionary fencing (if required to be installed) and project security fencing. An Authorized Biologist has the appropriate education and experience to accomplish biological monitoring and mitigation tasks and is approved by CDFW and USFWS. Two surveys without finding any desert tortoises or new desert tortoise sign shall occur prior to declaring the site clear of desert tortoises.
 - iii. All burrows that could provide shelter for a desert tortoise shall be hand-excavated prior to ground-disturbing activities.
 - iv. An Authorized Biologist shall remain onsite until all vegetation necessary for the construction of the project is cleared and, at a minimum, conduct site and fence inspections on a monthly basis throughout construction in order to ensure project compliance with mitigation measures.
 - v. An Authorized Biologist shall remain on-call throughout fencing and grading activities in the event a desert tortoise wanders onto the project site.

- vi. Mitigation for permanent loss of occupied desert tortoise habitat shall be mitigated at a 1:1 ratio to reduce potential effects to less-than-significant levels. Mitigation can be achieved through purchase of credit from an existing mitigation bank, such as the Desert Tortoise Natural Area, private purchase of mitigation lands, or onsite preservation, as approved by the resource agencies.
- b. A Raven Management Plan shall be developed for the project site. This plan shall include at a minimum:
 - i. Identification of all common raven nests within the project area during construction.
 - ii. Weekly inspections during construction under all nests in the project area for evidence of desert tortoise predation (e.g., scutes, shells, etc.). If evidence of desert tortoise predation is noted, a report shall be submitted to USFWS, CDFW, and Kern County Planning and Community Development Department within five calendar days; and
 - iii. Provisions for the management of trash that could attract common ravens during the construction, operations and maintenance, and decommissioning phases of the proposed project.

Section 4.4, Biological Resources, Page 4.4-54:

Level of Significance after Mitigation

With implementation of Mitigation Measures MM 4.1-5 through MM 4.1-7, MM 4.4-1 through MM 4.4-9, MM 4.4-12, and MM 4.9-2, impacts would be less than significant.

Section 4.4, Biological Resources, Page 4.4-58:

One local plan (Willow Springs Specific Plan) falls within the project site. This plan requires avoidance of Joshua trees when possible and to create a Preservation and Transplantation Plan. Direct impacts to Joshua trees could occur due to project activities such as Joshua tree removal and root damage due to construction activities. Indirect impacts include dust and soil compaction leading to habitat degradation. However, removal of Joshua trees would be mitigated and temporary ground disturbance would be addressed as stated in Mitigation Measure MM 4.4-5 and ~~MM 4.4-11~~MM 4.4-12. Therefore, these impacts would be mitigated to a level of less than significant through the implementation of Mitigation Measures MM 4.4-5 and MM 4.4-12.

Section 4.5, Cultural Resources, Page 4.5-25:

As discussed above under Impact 4.5-1, 29 archaeological resources were identified within the project area, including 11 archaeological sites and 18 isolates. Two of the archaeological sites (P-15-019556 and -019559) are eligible for listing in the California Register and, as such, are considered historical resources under CEQA, as discussed above. The remaining 9 archaeological sites and the 18 isolates are not eligible for listing in the California Register and also are not considered unique archaeological resources. As indicated above, in the absence of mitigation, impacts to either P-15-019556 ~~and~~ or P-15-019559 would constitute a significant impact on the environment. However, according to current design plans, both resources would not be impacted by project-related activities. As discussed under Impact 4.5-1, there also is a potential for the project to impact previously unknown, buried archaeological deposits. However, with implementation of Mitigation Measures MM 4.5-1 through MM 4.5-4, which require cultural resources sensitivity training for construction workers,

avoidance of prehistoric archaeological sites P-15-019556 and P-15-019559, archaeological and Native American monitoring during construction, and appropriate treatment of unearthened archaeological resources during construction, potential impacts would be reduced to less than significant.

Section 4.9, Hazards and Hazardous Materials, Page 4.9-28:

Impact 4.9-7: The project would expose people or structures, either directly or indirectly, to a significant risk of loss, injury, or death involving wildland fires, ~~including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.~~

Section 4.10, Hydrology and Water Quality, Page 4.10-16:

Water quality could also be degraded by non-hazardous materials during operation activities. During dry periods, impervious surfaces (i.e., hardscape surfaces such as foundations and buildings) can collect greases, oils, and other vehicle-related pollutants. During storm events, these pollutants can mix with stormwater and degrade water quality. However, per Mitigation Measure MM ~~4.10-14.10-2~~, a drainage plan would be prepared in accordance with the Kern County Development Standards and Kern County Code of Building Regulations. Therefore, the drainage plan would include post-construction structural and nonstructural BMPs that could include features such as drainage swales for collection of runoff prior to offsite discharge. Adherence to these requirements would minimize potential for operation period water quality degradation. Apart from infrequent cleaning of panels with water that would result in minimal runoff, no other discharges would occur when the project is operational. Therefore, with the implementation of Mitigation Measures MM 4.9-1, ~~and~~ MM 4.10-1, and MM 4.10-2, project operation would not violate water quality standards or waste discharge requirements, or otherwise degrade water quality.

Section 4.10, Hydrology and Water Quality, Page 4.10-18

The Chaparral and Rabbitbrush Solar Facilities are primarily located on undeveloped lands (with the exception of two residences and residential accessory structures) that currently do not have a water demand. Construction of the project is anticipated to use approximately 300 AF of water from each of the two project sites for a total of 600 AF over the construction period of approximately 12 months, and the project's operational water requirements is expected to be approximately 20 AFY. Water supply needed for both construction and operation is expected to be either from new and/or existing wells on each individual project site, existing wells on the Willow Springs Solar project site, or from water trucked from the AVEK Mojave Public Utility District. According to the Water Supply Assessment prepared for the project, groundwater rights were allocated by the Antelope Valley Watermaster and the resources are sufficient to meet the project demands. However, the Basin is in a designated state of overdraft. Per Mitigation Measure MM 4.10-1, the project proponent would be required to comply with any restrictions that might result from the Watermaster's oversight of the basin and compliance with the Basin Adjudication Judgement.

Section 4.10, Hydrology and Water Quality, Page 4.10-22

As noted above, the project site is located within the Antelope Valley Groundwater Basin, most of which is in an adjudicated area for groundwater management. The adjudication provides a framework to

sustainably manage the basin and reduce groundwater level declines and subsidence. To administer the judgment, the court directed appointment of the Watermaster (a five-member board). In 2016, the Watermaster board and an advisory committee (both entities required under the Judgment) were formed. The board hired Todd Groundwater as Watermaster engineer (required by the judgment) at the end of April 2017 to provide hydrogeological and technical analyses and to guide administrative functions to fulfill the judgment. Under the judgment, the Watermaster engineer has the responsibility of preparing annual reports to the court, the most recent of which was published in 2018 for the 2017 water year. The project would require water for construction and operation phases that is expected to be either from new and/or existing wells on each individual project site, existing wells on the Willow Springs Solar project site, or from water trucked from the AVEP Mojave Public Utility District. According to the Water Supply Assessment prepared for the project, groundwater rights were allocated by the Antelope Valley Watermaster and the resources are sufficient to meet the project demands. Therefore, the project would not conflict with the groundwater management of the area and the potential impacts would be less than significant.

Section 4.11, Land Use and Planning, Page 4.11-38, Table 4.11-2

TABLE 4.11-2: CONSISTENCY ANALYSIS WITH KERN COUNTY GENERAL PLAN FOR LAND USE

Goals and Policies	Consistency Determination	Project Consistency
KERN COUNTY GENERAL PLAN CHAPTER 1, LAND USE, OPEN SPACE AND CONSERVATION ELEMENT		
Policy 1: New discretionary development will be required to pay its proportional share of the local costs of infrastructure improvements required to service such development.	Consistent with implementation of Mitigation Measures MM 4.14-2 through MM 4.14-4.	The proposed project would construct and operate two combined 250 MW solar facilities. The proposed project would consider several options for gen-tie routes, although only one route would be constructed. All options involve the proposed project connecting to existing solar infrastructure. All infrastructure improvements associated with the proposed project would be fully funded by the project proponent. No further improvements are anticipated as a part of the project. However, should improvements be made, the project proponent would coordinate with the County to ensure that the cost of the infrastructure improvement is properly funded. Additionally, as discussed in Section 4.14, <i>Public Services</i> , the project would implement Mitigation Measure MM 4.14-2 to provide a Cumulative Impact Charge (CIC) to provide funding for the county budget for services that are not funded due to the State of California Active Solar Energy Exclusion provision on property taxes that the county would otherwise receive for services and facilities thereby supporting a prosperous economy and assuring the provision of adequate public services. The project would also implement Mitigation Measures MM 4.14-3 and MM 4.14-4, if the project is sold to a

TABLE 4.11-2: CONSISTENCY ANALYSIS WITH KERN COUNTY GENERAL PLAN FOR LAND USE

Goals and Policies	Consistency Determination	Project Consistency
		city, county, or utility company with assessed taxes that total less than \$3,000 per megawatt per year, <u>then a Supplemental Cumulative Impact Charge (SCIC) shall be paid for the difference annually up to \$3,000 per megawatt. The SCIC payments shall be made annually directly to the County Administrative Office Fiscal Division (CAO) and labeled “Supplemental Cumulative Impact Charge (SCIC)” with the project name and phase number</u> then that entity shall pay the taxes plus the amount necessary to equal the equivalent of \$3,000 per megawatt. The amount shall be paid for all years of operation.

Section 4.11, Land Use and Planning, Page 4.11-49, Table 4.11-2**TABLE 4.11-2: CONSISTENCY ANALYSIS WITH KERN COUNTY GENERAL PLAN FOR LAND USE**

Goals and Policies	Consistency Determination	Project Consistency
KERN COUNTY GENERAL PLAN CHAPTER 1, LAND USE, OPEN SPACE AND CONSERVATION ELEMENT		
1.3 Physical and Environmental Constraints		
1.10.5 Threatened and Endangered Species		
Policy 27: Threatened or endangered plant and wildlife species should be protected in accordance with State and federal laws.	Consistent with implementation of Mitigation Measures MM 4.4-1 through MM 4.4-124.	Biological resource impacts are evaluated in Section 4.4, <i>Biological Resources</i> , of this EIR. This EIR serves to comply with this policy and reduce potential impacts with mitigation. Additionally, the project would be developed and operated in accordance with all local, state and federal laws pertaining to the preservation of sensitive species.

TABLE 4.11-2: CONSISTENCY ANALYSIS WITH KERN COUNTY GENERAL PLAN FOR LAND USE

Goals and Policies	Consistency Determination	Project Consistency
Policy 28: County should work closely with State and federal agencies to assure that discretionary projects avoid or minimize impacts to fish, wildlife, and botanical resources.	Consistent with implementation of Mitigation Measures MM 4.4-1 through MM 4.4-124.	Biological Resource impacts are evaluated in Section 4.4, <i>Biological Resources</i> , of this EIR. This EIR serves to comply with this policy and reduce potential impacts with mitigation. As part of the biological resources evaluation and habitat assessment conducted for the project, relevant state and federal agencies were contacted to ensure that appropriate information about the project site were being gathered. Specifically, an NOP of this EIR was sent to state and federal agencies requesting their input on the biological resource evaluation. Similarly, this EIR will also be circulated to these agencies, and staff will have the opportunity to comment on the biological resources evaluation. Therefore, the County is complying with this policy for the project.
Policy 29: The County will seek cooperative efforts with local, State, and federal agencies to protect listed threatened and endangered plant and wildlife species through the use of conservation plans and other methods promoting management and conservation of habitat lands.	Consistent with implementation of Mitigation Measures MM 4.4-1 through MM 4.4-124.	Biological resource impacts are evaluated in Section 4.4, <i>Biological Resources</i> , of this EIR. The project site is located within the Willow Springs Specific Plan Area. Consistency with the applicable policies of the Willow Springs Specific Plan Area are discussed below. Additionally, implementation of Mitigation Measures MM 4.4-1 through MM 4.4-124 would further increase cooperative efforts with local, State, and federal agencies to support threatened and endangered plant and wildlife.
Measure R: Consult and consider the comments from responsible and trustee wildlife agencies when reviewing a discretionary project subject to CEQA.	Consistent with implementation of Mitigation Measure MM 4.4-1 through MM 4.4-124.	Biological resource impacts are evaluated in Section 4.4, <i>Biological Resources</i> , of this EIR. Consistent with this measure, the project would implement mitigation measures that require consultation with the California Department of Fish and Wildlife. The County has and will respond to all comments from reviewing agencies during the CEQA process.

TABLE 4.11-3: CONSISTENCY ANALYSIS WITH WILLOW SPRINGS SPECIFIC PLAN FOR LAND USE

Goals and Policies	Consistency Determination	Project Consistency
WILLOW SPRINGS SPECIFIC PLAN		
Land Use Element		
Policy 11: Retain vegetation until actual construction begins.	Consistent with implementation of Mitigation Measures MM 4.4-1 through MM 4.4-124.	Biological resource impacts are evaluated in Section 4.4, <i>Biological Resources</i> , of this EIR. This EIR serves to comply with this policy and reduce potential impacts to vegetation with mitigation. Additionally, the project would be developed and operated in accordance with all local, state and federal laws pertaining to the preservation of sensitive species.
Resource		
Measure 15: Where possible, project development within the Specific Plan Update area shall be designed to avoid displacement or destruction of Joshua tree habitat, to the satisfaction of the Kern County Agricultural Commissioner's Office. Areas adjacent to the woodland shall have a 50-foot setback from the Joshua tree plants. Within that setback, a native plant cover should be restored to natural habitat values to serve as a buffer, if such plant cover is not present.	Consistent with implementation of special-status plant avoidance and minimization measures described in Mitigation Measure MM 4.4-1 through MM 4.4-124.	Biological resource impacts are evaluated in Section 4.4, <i>Biological Resources</i> , of this EIR. This EIR serves to comply with this measure and reduce potential impacts with mitigation. As discussed in Section 4.4, significant impacts could occur to plant species including Joshua trees, silver cholla, and beavertail cactus on the project site. However, these impacts would be mitigated to a level of less than significant through the implementation of Mitigation Measures MM 4.4-1 through MM 4.4-124.
Measure 16: A Joshua Tree Preservation and Transportation Plan shall be developed by the applicants for each parcel where Joshua trees are located on site. The plan shall be submitted to the Kern County Agricultural Commissioner's office for review and approval to grading permit issuance.	Consistent with implementation of special-status plant avoidance and minimization measures described in Mitigation Measure MM 4.4-1 through MM 4.4-124.	See Resources, Measure 15, above. Biological resource impacts are evaluated in Section 4.4, <i>Biological Resources</i> , of this EIR.
Measure 23: A Joshua Tree Preservation and/or Transplantation Plan shall be developed by applicants of discretionary projects for each parcel where Joshua trees are located on site. The plan shall be submitted to the Kern County Agricultural Commissioner for review and approval prior to grading permit issuance.	Consistent with implementation of special-status plant avoidance and minimization measures described in Mitigation Measure MM 4.4-1 through MM 4.4-124.	See Resources, Measure 15, above. Biological resource impacts are evaluated in Section 4.4, <i>Biological Resources</i> , of this EIR.

TABLE 4.11-3: CONSISTENCY ANALYSIS WITH WILLOW SPRINGS SPECIFIC PLAN FOR LAND USE

Goals and Policies	Consistency Determination	Project Consistency
Biological Resources		
Policy 1: Where possible, development shall be designated to avoid displacement of sensitive species.	Consistent with implementation of Mitigation Measures MM 4.4-1 through MM 4.4-124.	Biological resource impacts are evaluated in Section 4.4, <i>Biological Resources</i> , of this EIR. This EIR serves to comply with this policy and reduce potential impacts with mitigation. Additionally, the project would be developed and operated in accordance with all local, state and federal laws pertaining to the preservation of sensitive species.
Residential		
Policy 4: Encourage the maintenance of natural vegetation until actual construction begins.	Consistent with implementation of Mitigation Measures MM 4.4-1 through MM 4.4-124.	See Land Use Element, Policy 11, above. Further, biological resource impacts are evaluated in Section 4.4, <i>Biological Resources</i> , of this EIR. This EIR serves to comply with this policy and reduce potential impacts to vegetation with mitigation. Additionally, the project would be developed and operated in accordance with all local, state and federal laws pertaining to the preservation of sensitive species.

Section 4.11, Land Use and Planning, Table 4.11-2, Page 4.11-79**TABLE 4.11-3: CONSISTENCY ANALYSIS WITH WILLOW SPRINGS SPECIFIC PLAN FOR LAND USE**

Goals and Policies	Consistency Determination	Project Consistency
Measure 10: New development shall contribute its pro rata share for circulation improvements, school impact fees, park land dedications/fees, and possible biota impact fees. As additional impact fees are adopted, they shall be incorporated into the Specific Plan text.	Consistent with implementation of Mitigation Measure MM 4.14-2.	Consistent with this policy, the project proponent would fund improvements to on-site driveways that provide access to County, city, or State roads. The project would implement Mitigation Measure MM 4.14-2 which would require the project to provide a Cumulative Impact Charge (CIC) to provide funding for the county budget for services that are not funded due to the State of California Active Solar Energy Exclusion provision on property taxes that the county would otherwise receive for services and facilities. The project would also implement Mitigation Measures MM 4.14-3 and MM 4.14-4, if the project is sold to a city, county, or utility company with assessed taxes

that total less than \$3,000 per megawatt per year, then a Supplemental Cumulative Impact Charge (SCIC) shall be paid for the difference annually up to \$3,000 per megawatt. The SCIC payments shall be made annually directly to the County Administrative Office Fiscal Division (CAO) and labeled "Supplemental Cumulative Impact Charge (SCIC)" with the project name and phase number~~then that entity shall pay the taxes plus the amount necessary to equal the equivalent of \$3,000 per megawatt. The amount shall be paid for all years of operation.~~

Section 4.11, Land Use and Planning, Table 4.11-2, Pages 4.11-84 and 4.11-85

TABLE 4.11-3: CONSISTENCY ANALYSIS WITH WILLOW SPRINGS SPECIFIC PLAN FOR LAND USE

Goals and Policies	Consistency Determination	Project Consistency
		Water Agency (AVEK—Mojave Public Utility District) water collected at one of the nearby locations owned by AVEK—Mojave Public Utility District .

Section 4.14, Public Services, Page 4.14-13

The project operator would be required to pay a Kern County cumulative impact fee (CIC), through implementation of Mitigation Measure MM 4.14-2 to provide funding for the county budget for services that are not funded due to the State of California Active Solar Energy Exclusion provision on property taxes that the county would otherwise receive for services and facilities thereby supporting a prosperous economy and assuring the provision of adequate public services and facilities. In addition, if the project is sold to a city, county, or utility company with assessed taxes that total less than \$3,000 per megawatt per year, then a Supplemental Cumulative Impact Charge (SCIC) shall be paid for the difference annually up to \$3,000 per megawatt. The SCIC payments shall be made annually directly to the County Administrative Office Fiscal Division (CAO) and labeled “Supplemental Cumulative Impact Charge (SCIC)” with the project name and phase number~~then that entity shall pay the taxes plus the amount necessary to equal the equivalent of \$3,000 per megawatt. The amount shall be paid for all years of operation, through implementation of Mitigation Measure MM 4.14-3.~~

Section 4.14, Public Services, Page 4.14-15

In addition, if the project is sold to a city, county, or utility company with assessed taxes that total less than \$3,000 per megawatt per year, then a Supplemental Cumulative Impact Charge (SCIC) shall be paid for the difference annually up to \$3,000 per megawatt. The SCIC payments shall be made annually directly to the County Administrative Office Fiscal Division (CAO) and labeled “Supplemental Cumulative Impact Charge (SCIC)” with the project name and phase number~~then that entity shall pay the taxes plus the amount necessary to equal the equivalent of \$3,000 per megawatt. The amount shall be paid for all years of operation, through implementation of Mitigation Measure MM 4.14-3. Through implementation of Mitigation Measure MM 4.14-4, The project proponent/operator shall work with the County to determine how the use of sales and use taxes from construction of the project can be maximized. Impacts would be less than significant.~~

Section 4.14, Public Services, Page 4.14-16

In addition, if the project is sold to a city, county, or utility company with assessed taxes that total less than \$3,000 per megawatt per year, then a Supplemental Cumulative Impact Charge (SCIC) shall be paid for the difference annually up to \$3,000 per megawatt. The SCIC payments shall be made annually directly to the County Administrative Office Fiscal Division (CAO) and labeled “Supplemental Cumulative Impact Charge (SCIC)” with the project name and phase number~~then that entity shall pay the taxes plus the amount necessary to equal the equivalent of \$3,000 per megawatt. The amount shall be paid for all years of operation, through implementation of Mitigation Measure MM 4.14-3.~~

Section 4.14, Public Services, Page 4.14-18

MM 4.14-3: Written verification of ownership of the project shall be submitted to the Kern County Planning and Natural Resources Department by April 15 of each calendar year. If the project is sold to a city, county, or utility company with assessed taxes that total less than \$3,000 per megawatt per year, then a Supplemental Cumulative Impact Charge (SCIC) shall be paid for the difference annually up to \$3,000 per megawatt. The SCIC payments shall be made annually directly to the County Administrative Office Fiscal Division (CAO)

~~and labeled “Supplemental Cumulative Impact Charge (SCIC)” with the project name and phase number then that entity shall pay the taxes plus the amount necessary to equal the equivalent of \$3,000 per megawatt. The amount shall be paid for all years of operation. The fee shall be paid to the Kern County Auditor/Controller by April 30 of each calendar year.~~

Section 4.17, Utilities and Service Systems, Pages 4.17-14, 4.17-16, and 4.17-19

The majority of water use for the project would occur during the initial 12 to 24-month construction phase. Construction activities for the proposed project are anticipated to require approximately 600 acre-feet of water. The water supply for the project during construction would be supplied from one or more of the following options: 1) potential and/or existing well(s) on each individual facility site and/or well(s) which may be shared by the two facilities; 2) existing well(s) on the Willow Springs Solar project site. If water is supplied from the Willow Springs project site, it will be piped via temporary construction pipeline(s) or trucked; and 3) Trucked ~~Antelope Valley East Kern Water Agency (AVEK)~~ Mojave Public Utility District water collected at one of the nearby locations owned by ~~AVEK~~ Mojave Public Utility District. As discussed in the WSA (see Appendix L), the total water available through offsite water rights acquired is expected to be 4,123 acre-feet in 2020, well above the construction water requirements for construction of the project. Therefore, construction of the project would not require or result in the relocation or construction of new or expanded water facilities, the construction or relocation of which could cause significant environmental effects. Impacts would be less than significant.

Chapter 6, Alternatives, Page 6-15:

Hazards and Hazardous Materials

Under the No Project Alternative, the project site would remain undeveloped, and no construction or operational activities would occur. The project site would remain in its current condition. As such, this alternative would not involve use, transport, and disposal of hazardous materials associated with the project site; create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment; or expose people or structures, either directly or indirectly, to significant risk of loss, injury, or death involving wildland fires. Therefore, there would no impact and the No Project Alternative would result in less impacts related to hazards and hazardous materials compared to the proposed project.

7.3 Response to Comments

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

State Agencies

Letter 1 – California Department of Fish and Wildlife (CDFW) (February 25, 2021)

Local Agencies

Letter 2 – County of Kern Public Works Department, Administration and Engineering Division (February 23, 2021)

Letter 3 – County of Kern Public Works Department, Floodplain Management Section (January 22, 2021)

Letter 4 – Kern County Superintendent of Schools (January 14, 2021)

Letter 5 – Kern County Fire Department (February 17, 2021)

Letter 6 – Eastern Kern Air Pollution Control District (EKAPCD) (February 24, 2021)

Interested Parties

Letter 7 – Defenders of Wildlife (February 23, 2021)

Letter 8 – Kern Audubon Society (February 24, 2021)

Letter 9 – National Audubon Society (February 25, 2021)

Letter 10 – Antelope Valley-East Kern Water Agency (February 26, 2021)

Letter 11 – Los Angeles Department of Water and Power (LADWP) (March 5, 2021)

Letter 12 – Southern California Gas (SoCalGas) (March 8, 2021)

Letter 13 – San Manuel Band of Mission Indians 1 (March 3, 2021)

Letter 14 – San Manuel Band of Mission Indians 2 (March 23, 2021)

Comment Letter No. 1: California Department of Fish and Wildlife (CDFW)

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State of California – Natural Resources Agency
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GAVIN NEWSOM, Governor
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February 25, 2021

Randall Cates
Kern County Planning and Natural Resources Department
2700 "M" Street Suite 100
Bakersfield California, 93301

**Subject: AVEP Solar Project by Chaparral Solar, LLC and Rabbitbrush Solar, LLC
(Project)
Draft Environmental Impact Report (DEIR)
SCH No.: 2019090215**

Dear Mr. Cates:

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

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

CDFW ROLE

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

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

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CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). 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.

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. CDFW prohibits and cannot authorize take of any fully protected species.

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

PROJECT DESCRIPTION SUMMARY

Proponent: Chaparral Solar, LLC and Rabbitbrush Solar, LLC

Objective: a) Three (3) Specific Plan Amendments (SPA) to the Willow Springs Specific Plan to designations from 5.3/4.4 (Maximum 10 Units per Net Acre/Comprehensive Planning Area) to 5.3 (Maximum 10 Units per Net Acre) on 10 acres (SPA 1, Map 231-18), 5.3/4.4 (Maximum 10 Units per Net Acre/Comprehensive Planning Area) to 5.3 (Maximum 10 Units per Net Acre) on 591.96 acres and 5.3/4.4/2.1 (Maximum 10 Units per Net Acre/Comprehensive Planning Area/Seismic Hazard) to 5.3/2.1 (Maximum 10 Units per Net Acre/Seismic Hazard) on 72.15 acres (SPA 25, Map 232), and 5.3/4.4 (Maximum 10 Units per Net Acre/Comprehensive Planning Area) to 5.3 (Maximum 10 Units per Net Acre) on 40 acres (SPA 27, Map 232);

b) Three (3) Zoning Classification Changes (ZCC), from the existing Zone District of E (2 ½) RS FPS to A FPS on 10 acres (ZCC 3, Map 231- 18), from the existing Zone District of E (2 ½) RS FPS to A FPS on 120 acres (ZCC 40, Map 232), and from the existing Zone District of E (2 ½) RS FPS, E (5) RS FPS and E (10) RS FPS to A FPS on 222 acres (ZCC 41, Map 232);

c) Three (3) Conditional Use Permits (CUP), to allow for the construction and operation of a 125 megawatt solar photovoltaic electrical generating facility within the A (Exclusive Agriculture) zone district on the Chaparral Site (CUP 1, Map 231-18, and CUP 33, Map 232), and to allow for the construction and operation of a 125 megawatt solar photovoltaic

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electrical generating facility within in an A (Exclusive Agriculture) District on the Rabbitbrush Site (CUP 35, Map 232), pursuant to Section 19.12.030.G of the Kern County Zoning Ordinance;

d) Two (2) CUPs, each to allow for the construction and operation of a communication tower (Section 19.12.030.F) in an A District (CUP 34, Map 232; CUP 36, Map 232);

e) Two (2) requests for non-summary vacation of public access easements on the project site, one corresponding to each of the two solar facilities;

f) Three (3) Specific Plan Amendments to the Circulation Element of Willow Springs Specific Plan to remove Section and mid-section line road reservations as follows: 1) The portion of the Section line between Section 18, T9N, R13W and Section 13, T9N, R14W lying north of Truman Road, the south half of the Section line between Section 18, T9N, R13W and Section 7, T9N, R13W, lying west of property owned by the City of Los Angeles Department Water and Power (Specific Plan Amendment 2, Map 231-18); 2) The west quarter of the Section line between Section 13, T9N, R14W and Section 12, T9N, R14W, the east three quarters of the south half of the Section line between Section 13 T9N,R14W and Section 12 T9N/R14W; the east-west mid-section line of Section 13, T9N, R14W, the north-south mid-section line of Section 13, T9N, R14W; the east one-eighth of the south half of the east-west mid-section line of Section 14, T9N, R14W (Specific Plan Amendment 26, Map 232); 3) The south half of the north-south mid-section line of Section 10, T9N, R14W; the north half of the north-south mid-section line of Section 15, T9N, R14W; the north half of the east-west mid-section line of Section 15, T9N, R14W; the west half of the east half of the west half of the south half of the east-west mid-section line of Section 14, T9N, R14W (Specific Plan Amendment 28, Map 232).

g) The project's permanent facilities would include service roads, two communication towers, communication cables, overhead and underground transmission lines, and operations and maintenance facilities.

Location: The project site is located approximately 5.5 miles west of the unincorporated community of Rosamond; also, being located within portions of Section 18 of Township 9 North, Range 13 West, San Bernardino Base and Meridian (SBBM), and within portions of Sections 9, 10, 12, 13, 14 15, and 23 of Township 9 North, Range 14 West, SBBM, County of Kern, State of California.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the County of Kern County Planning and Natural Resources Department 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.

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

CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the State and Federally threatened desert tortoise (*Gopherus agassizii*); the State threatened Mojave ground squirrel (*Sterna antillarum browni*), and Swainson's Hawk (*Buteo swainsonii*), the State candidate for listing as threatened western Joshua tree (*Yucca brevifolia*), the State fully protected golden eagle (*Aquila chrysaetos*), and the State species of special concern LeConte's thrasher (*Toxostoma lecontei*), mountain plover (*Charadrius montanus*), long-eared owl (*Asio otus*) and loggerhead shrike (*Lanius ludovicianus*) and special status townsend's big-eared bat (*Corynorhinus townsendii*); as well as the desert kit fox (*Vulpes macrotis ssp. macrotis*), which is protected under California Code of Regulations (CCR), Title 14, Chapter 5, Section 460. Our specific recommendations follow.

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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: Desert Tortoise

Issue: The Project site is within the range of desert tortoise and, based on aerial imagery, appears to contain suitable habitat. Desert tortoise are most common in desert scrub, desert wash, and Joshua tree habitats (CDFW, 2018). Section 4.2.3.1 of appendix E of the DEIR states that surveys were done from 2017 to 2019 and resulted in 100% visual coverage of all the proposed Project areas (Chaparral Solar, Rabbitbrush Solar, and Tumbleweed Solar). Based on the language in the DEIR, it appears that 100% visual coverage surveys of all three of the Project sites were not completed during a single individual calendar year. CDFW generally recognizes desert tortoise surveys to be valid for 1-2 years. Therefore, due to the time elapsed between when surveys were conducted and the release for public review of the DEIR, CDFW cannot conclude that desert survey results are currently valid and that desert tortoise are absent from the Project site.

Specific impact: Potentially significant impacts that may result from Project-related activities include loss of foraging habitat, habitat degradation and fragmentation, burrow destruction, and direct mortality.

Evidence impact is potentially significant: Human impacts to desert tortoise include habitat conversion to agriculture, energy development, and urban lands, degradation of habitat by off-highway vehicles (OHV), intentional killing of tortoises, and killing by cars

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and OHV (Doak, Kareiva, Kleptka, 1994). Habitat conversion to agriculture results in the loss of habitat and may lead to an increase in the predator raven population, drawdown of water table, introduction of pesticides and other toxic chemicals, and the potential introduction of invasive plants (Boarman, 2002). Project activities may result in the loss of potential desert tortoise habitat through conversion and may increase habitat fragmentation.

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Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to desert tortoise, CDFW recommends including the following changes to the EIR.

Mitigation Measure (MM) 4.4-6: Preconstruction Desert Tortoise Surveys

Given that desert tortoise surveys did not cover 100% of the three Project sites in 2019, CDFW recommends that preconstruction surveys required by MM 4.4-6 clearly state they will cover 100% of the Project area. CDFW recommends these surveys be conducted by a qualified wildlife biologist who has previous experience surveying for desert tortoise using survey protocols outlined in "Preparing for any action that may occur within the range of the Mojave Desert tortoise (*Gopherus agassizii*)" (USFWS, 2010). Survey results are advised to be submitted to both CDFW and the USFWS.

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In addition, MM 4.4-6 states that if desert tortoises or their burrows are identified on the Project site during preconstruction surveys, the Project operator shall be required to consult with USFWS and CDFW regarding take coverage. If desert tortoise is found within the Project area during surveys or construction activities, all ground- and vegetation-disturbing should stop to avoid unauthorized take of the species and not resume until consultation with CDFW is complete it is determined if the Project can avoid take. If avoidance is not feasible, acquisition of an Incidental Take Permit (ITP) pursuant to Fish and Game Code section 2081 subdivision (b) prior to any vegetation- or ground-disturbing activities is necessary to comply with CESA. Any take of desert tortoise without take authorization would be a violation of Fish and Game Code section 2080.

COMMENT 2: Mohave Ground Squirrel (MGS)

Issue: Appendix E section 3.2.3.12 of the EIR states that the Project is 11 miles outside the known range for MGS (as described in Leitner 2015), and therefore, surveys are not warranted because the CDFW recommended protocol states that surveys should be conducted within 5 miles of the boundary of the geographic range of the species. However, it is important to note that reports of MGS sightings have been verified beyond where they have been recently expected to occur (e.g., Canebrake Ecological Reserve – Ferranti 2021, pers. comm.). The 5-mile survey suggestion is a recommendation and CDFW advises that a Project proceeds at its own risk whenever suitable habitat features are present and surveys were not conducted.

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Specific impact: Without appropriate avoidance and minimization measure for MGS, potential significant impacts associated with the Project's construction include burrow collapse, inadvertent entrapment, reduced reproductive success, and mortality of individuals.

Evidence impact is potentially significant: Major threats to MGS are drought, habitat destruction, habitat fragmentation, and habitat degradation (Gustafson, 1993). MGS is restricted to a small geographic range and the greatest habitat loss has occurred near desert towns including California City (Gustafson, 1993). Natural cycling is anticipated in MGS populations therefore the true indicators of the status of the species are the quantity, pattern of distribution, and quality of habitat (Gustafson, 1993). Project activities may result in the loss of potential MGS habitat through conversion and may increase habitat fragmentation.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to MGS, CDFW recommends including the following measure in the EIR.

Recommended Additional Mitigation Measure 1: MGS Take Authorization

Due to what appears to be a major expansion into its historical range, CDFW recommends that a qualified biologist, with appropriate permits, conduct protocol surveys for MGS following the methods described in the "Mohave Ground Squirrel Survey Guidelines" (CDFG, 2003) during the appropriate survey season and that these surveys be conducted in areas of potential habitat, including marginal habitat covering the entire Project site, including the gen-tie line and collection line corridors. Because of the large size of the Project site, CDFW recommends the Project applicant propose a surveying methodology that includes use of remote camera stations. CDFW recommends submittal of the proposed survey methodology to CDFW for review and approval prior to implementation, to avoid expenditure of funds on an inadequate survey effort. We also recommend that the results of these surveys be submitted to CDFW for evaluation. If MGS are found within the Project area during protocol level surveys, preconstruction surveys or construction activities, CDFW recommends that all ground- and vegetation-disturbing activities stop and consultation with CDFW occur to discuss how to implement the Project and avoid take. If avoidance is not feasible, acquisition of an ITP pursuant to Fish and Game Code section 2081 subdivision (b) prior to any ground- or vegetation-disturbing activities to comply with CESA is warranted. Any take of MGS without take authorization would be a violation of Fish and Game Code section 2080.

COMMENT 3: Swainson's Hawk (SWHA)

Issue: Appendix E section 4.1.5 of the EIR states that Swainson's Hawk surveys were conducted in 2017 and 2018 according to the Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California (CEC and CDFG 2010).

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It also states that only a single survey was warranted in 2019. The survey guidelines require that at least two surveys be conducted, with each of the two surveys to be done in separate nesting periods. The DEIR offers no explanation why a single survey was warranted. The survey protocol states “surveys should be repeated within the 5 mile radius if a survey season ensues or elapses before the onset of project related activities.” Given that the last protocol surveys were conducted in 2018, additional surveys seem warranted. Appendix E section 5.1.2.5 of the EIR states that three active nests were detected within the five-mile survey area of the Project site. The survey protocol states that a nest is considered active for five years after a sighting.

Specific impacts: Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality. Any take of SWHA without appropriate incidental take authorization would be a violation of Fish and Game Code.

Evidence impact is potentially significant: SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat in the San Joaquin Valley limits their local distribution and abundance (CDFW 2016). The Project as proposed will involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA.

Recommended Potentially Feasible Mitigation Measure(s)

Because suitable habitat for SWHA is present throughout the Project site, CDFW recommends including the following changes to the EIR.

Mitigation Measure (MM) 4.4-8: Nesting Birds and Raptors

Mitigation Measure 4.4-8 requires preconstruction surveys for SWHA 14 days prior to the start of Project activities. The Swainson’s Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California states “To meet the minimum level of protection for the species, surveys should be completed for at least the two survey periods immediately prior to a project’s initiation. For example, if a project is scheduled to begin on June 1, you should complete three surveys in Period II and three surveys in Period III.” Therefore, CDFW recommends that a qualified wildlife biologist conduct surveys for at least two survey periods immediately prior to Project implementation as described in the survey protocol. CDFW has no objection to additional preconstruction surveys prior to construction, but they do not provide the same certainty as the recommended protocol. The recommended survey protocol includes early season surveys to provide the best opportunity to identify SWHA nests and maximize the amount of time prior ground-disturbing activities to adequately implement necessary avoidance and minimization measures. CDFW recommends these surveys for all construction related activities that have the potential to disturb

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nesting SWHA, including construction, operations and maintenance, and decommissioning.

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Recommended Additional Mitigation Measure 2: SWHA Take Authorization

MM 4.4-8 also states that a no disturbance buffer of 0.5-mile to be delineated around active nests until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. CDFW recommends that in the event an active SWHA nest is detected during surveys and the 0.5-mile no-disturbance buffer around the nest cannot feasibly be implemented, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA. Similar to surveys above, CDFW recommends no-disturbance buffers and take authorization consultations for all Project activities including construction, operations and maintenance, and decommissioning.

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Recommended Additional Mitigation Measure 3: SWHA Monitoring and Mitigation Plan

If a Swainson's hawk nest is detected within 5 miles of the Project, CDFW recommends the Project operator develop a Swainson's hawk monitoring and mitigation plan in consultation with CDFW as described in Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California. Any monitoring criteria, if necessary, will likely vary based on proximity to the Project area.

1-L

Recommended Additional Mitigation Measure 4: SWHA Foraging Habitat

CDFW recommends that the Project mitigate the loss of suitable habitat within 5 miles of the above mentioned active nests, and any additional nests identified by surveys conducted as part of Recommended Additional Mitigation Measure 4, at a 2:1 ratio in accordance with Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California to reduce impacts to SWHA foraging habitat to less than significant. The entire Project site appears to be suitable SWHA foraging habitat based on available aerial imagery. Therefore, CDFW recommends that any portion of the Project area within 5 miles of an active SWHA nest provide habitat compensation at a 2:1 ratio. CDFW recommends that habitat compensation lands follow the recommendations for Habitat Management (HM) Lands described in the survey protocol.

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Recommended Additional Mitigation Measure 5: SWHA Nest Tree Replacement

CDFW advises that the removal of known SWHA nest trees, even outside of the nesting season, is a potentially significant impact. Therefore, CDFW recommends that any known SWHA nest tree that is removed as part of Project activities be replaced with an appropriate replacement tree species planting at a ratio of 3:1 at or near the Project site or in another area that will be protected in perpetuity to reduce impacts resulting from the loss of nesting habitat.

1-N

COMMENT 4: Special-Status Plant Species

Issue: Section 3.2.2 of appendix E of the EIR states western Joshua tree occur within the Project site and the surrounding area. The DEIR states “western Joshua trees and protected cactus occur throughout the project site and removal will be mitigated, as applicable by obtaining a harvest permit, creation and submittal/approval of a Joshua Tree Preservation plan, and adherence to applicable State (CDFW) protection and mitigation requirements.” Western Joshua tree is currently a candidate for listing as threatened pursuant to CESA and as such take of the species, including any translocation, would require acquisition of an ITP to be in compliance with CESA. Additionally, the proposed preconstruction botanical surveys may not be adequate to detect special status plant species, which may impede the ability to implement other mitigation measures (e.g., buffers) and subsequently not reduce impact significance.

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Specific impact: Without appropriate avoidance and minimization measures potential impacts to special-status plant species include inability to reproduce and direct mortality. Unauthorized take of species listed as threatened, endangered, or rare pursuant to CESA or the Native Plant Protection Act is a violation of Fish and Game Code.

Evidence impact would be significant: Special-status plant species are threatened with habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, and introduction of non-native plant species (CNPS 2020), all of which may be unintended impacts of the Project. Therefore, impacts of the Project have the potential to significantly impact populations of the species mentioned above.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to special-status plants associated with the Project, CDFW recommends the following changes to the EIR.

Mitigation Measure (MM) 4.4-5: Preconstruction Special-Status Plant Surveys

MM 4.4-5 states that surveys for special status plants will occur no more than 14 days prior to the start of Project activities. The appropriate timing for plant surveys is dependent on the individual species and seasonal conditions. Surveys conducted 14 days prior to the start of Project activities may not be conducted at the appropriate time to detect all the special-status plant species that have the potential to occur in the

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Project area. If species are not accurately identified or specific locations are not detected, the buffers proposed as part of MM 4.4-5 cannot be effectively implemented. CDFW recommends the Project area be surveyed for special-status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities" (CDFW 2018) during the appropriate season immediately prior to the start of Project. This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary. In addition, CDFW recommends special-status plant species be avoided whenever possible by delineation and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species rather than the 25 feet proposed in MM 4.4-5.

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Recommended Additional Mitigation Measure 6: Western Joshua Tree Buffers

Based on MM 4.4-5, the Project operator intends to remove western Joshua trees from the Project area. As previously stated, western Joshua tree is a candidate for listing pursuant to CESA and take of the species is currently prohibited without take authorization obtained through the acquisition of an ITP pursuant to Fish and Game Code section 2081 subdivision (b). If the Project will pursue an ITP, please refer to Recommended Additional Mitigation Measure 7 below. If the Project operator elects to avoid western Joshua trees rather than obtain an ITP, CDFW recommends a no-disturbance buffer for individual western Joshua trees of 290 feet. A 290-foot buffer is warranted to not only avoid impacts to individual trees, but potential impacts to the seed bank as well. The no-disturbance buffer is based on the documented 290 feet as the maximum distance of seeds dispersed carried by rodents (Vander Wall et. al. 2006). Based on the density and distribution of western Joshua tree in the DEIR, CDFW does not believe that full avoidance of western Joshua tree and its seed bank is feasible or possible. Therefore, CDFW advises that the project consult with CDFW to acquire an ITP pursuant to Fish and Game Code section 2081 subdivision (b) prior to any vegetation- or ground-disturbance activities.

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Recommended Mitigation Measure 7: Special-Status Plant Take Authorization

As stated above, western Joshua tree occurs throughout the Project area and trees will be removed as part of Project activities. MM 4.4-5 states that the Project will "pay the required fee to remove Joshua trees, cholla, and beavertail cactus in accordance with the California Desert Native Plant Act prior to construction activities." Be advised that this fee does not provide take authorization for western Joshua tree or other plant species listed pursuant to CESA. Removal of western Joshua tree without take authorization through the acquisition of an ITP is a violation of Fish and Game Code. Therefore, consultation with CDFW is warranted to discuss take authorization for this species through issuance of an ITP to comply with CESA. If another State-listed plant species is identified during botanical surveys, consultation with CDFW is warranted to

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determine if the Project can avoid take of that species. If take cannot be avoided, take authorization would need to occur through issuance of an ITP by CDFW to comply with CESA and/or Fish and Game Code section 1900 and California Code of Regulations, title 14, section 786.9, subdivision (b).

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COMMENT 5: Special-Status Bat Species

Issue: Townsend's big-eared bat and other special status bats have been documented to occur near the Project vicinity (CDFW 2021). In addition, foraging habitat suitable for the species is present throughout the Project area.

Specific impact: Without appropriate avoidance and minimization measures for special-status bat species, potential significant impacts resulting from ground- and vegetation-disturbing activities associated with Project construction include habitat loss, inadvertent entrapment, roost abandonment, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals.

1-S

Evidence impact is potentially significant: Townsends and other bats are known to roost under bridges (Lewis 1994 and Gruver 2006). Project activities on or around bridges have the potential to affect habitat upon which special-status bat species depend on for successful breeding, and the potential to impact individuals and local populations.

Recommended Potentially Feasible Mitigation Measure(s)

CDFW recommends editing the EIR include the following measures and that these be made conditions of approval for the Project.

Recommended Additional Mitigation Measure 8: Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment well in advance of Project implementation to determine if an individual Project site or its immediate vicinity contains suitable habitat for special-status bat species.

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Recommended Additional Mitigation Measure 9: Focused Bat Surveys

If suitable habitat is present, CDFW recommends assessing presence/absence of special-status bats by conducting protocol-level surveys during the appropriate seasonal period of bat activity.

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Recommended Additional Mitigation Measure 10: Bat Consultation

Detection of special-status bat species warrants consultation with CDFW prior to any activity that may disturb bats. CDFW recommends submitting a Bat Eviction Plan to CDFW for written approval prior to project implementation, and that the Eviction Plan

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include details for excluding bats from the roost site, and a monitoring plan to ensure that all bats have exited the roost prior to the start of activity and will be unable to re-enter the roost until activity is completed. CDFW also recommends that Project or bat eviction activities be timed to avoid lactation and young rearing.

1-V
cont.

COMMENT 6: Other Species of Special Concern

Issue: LeConte's thrasher, loggerhead shrike, mountain plover, and long-eared owl have the potential to occur in the project area. These species have been documented near the area and suitable habitat exists within the project area (CNDDDB 2021).

Specific impact: Without appropriate avoidance and minimization measures for these special status species potentially significant impacts associated with the Project's activities could include site abandonment which may result in reduced health or vigor of eggs and/or young, and/or direct mortality.

1-W

Evidence impact is potentially significant: The Project area has the capacity to support the species and thus, subsequent ground-disturbing activities involved with the Project have the potential to impact the species.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to these special status species, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Additional Mitigation Measure 11: Species Specific Surveys

If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for each of these species and their requisite habitat features using the appropriate survey protocol to evaluate potential impacts resulting from Project-related activities.

1-X

Recommended Mitigation Measure 12: Special-Status Species Avoidance

Avoidance whenever possible is encouraged via delineation however, a qualified biologist with the appropriate handling permit may relocate special status species out of the project area into a nearby area with suitable habitat.

1-Y

II. Editorial Comments and/or Suggestions

Desert Kit Fox: Desert kit fox (*Vulpes macrotis arsipus*) is protected under the California Code of Regulations, Chapter 5, section 460, which prohibits "take" of the species for any reason. In addition to requirements for desert kit fox listed in Mitigation Measures 4.4-2, 4.4-3, and 4.4-4, CDFW recommends that no den excavation occur during the pupping season. Kit fox are known to use multiple dens during this time and vacant dens may be

1-Z

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needed when kit fox relocate their pups. If any pupping dens are found on the Project site, consultation with CDFW is warranted for guidance on take avoidance measures for the desert kit fox.

1-Z
cont.

Golden Eagle: Golden eagle (*Aquila chrysaetos*) is a fully protected species in California and is granted further protection under the federal BGEPA thus, if any active or potential nests are detected within 0.5 mile of the Project area consultation is required with CDFW to determine the measures to be implemented for full avoidance.

1-A2

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

1-B2

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

1-C2

To evaluate Project-related impacts on nesting birds if suitable habitat is present, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends the work causing that change cease and CDFW consulted for additional avoidance and minimization measures.

1-D2

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

1-E2

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do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

1-E2
cont.

ENVIRONMENTAL DATA

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

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

1-F2

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).

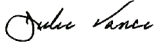
1-G2

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

1-H2

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

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

Attachment

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cc: United States Fish and Wildlife Service
2800 Cottage Way, Suite W-2605
Sacramento, California 9582

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

PERSONAL COMMUNICATIONS

Ferranti, Annee. Mohave ground squirrel confirmed at Canebrake Ecological Reserve. February 22, 2020. Phone call.

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Attachment 1

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

PROJECT: AVEP Solar
SCH No.: 2019090215

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Additional Mitigation Measure 1: MGS Take Authorization	
Additional Mitigation Measure 2: SWHA Take Authorization	
Additional Mitigation Measure 3: SWHA Monitoring and Mitigation Plan	
Additional Mitigation Measure 4: SWHA Foraging Habitat	
Additional Mitigation Measure 5: SWHA Nest Tree Replacement	
Additional Mitigation Measure 7: Special-Status Plant Take Authorization	
Additional Mitigation Measure 8: Habitat Assessment	
Mitigation Measure 9: Focused Bat Surveys	
Additional Mitigation Measure 10: Bat Consultation	
Additional Mitigation Measure 11: Species Specific Surveys	
<i>During Construction</i>	
Additional Mitigation Measure 6: Joshua Tree Buffer	
Additional Mitigation Measure 12: Special-Status Species Avoidance	

Response to Comment Letter 1: California Department of Fish and Wildlife (CDFW) (February 25, 2021)

- 1-A:** This is an introductory comment thanking Kern County for the opportunity to comment on the Draft EIR. The County acknowledges receipt of the CDFW comment letter and detailed responses to each comment are provided below.
- 1-B:** The comment clarifies CDFW's jurisdiction as a CEQA Trustee Agency for fish and wildlife resources. As a Trustee Agency, CDFW holds those resources in trust by statute for all the people of the State (Fish & G. Code, Subsection 711.7, subd. (a) & 1802; Pub. Resources Code, Section 21070; CEQA Guidelines Section 15386, subd. (a)). In its trustee capacity, CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., Section 1802.). The comment clarifies that CDFW is also submitting comments as a Responsible Agency under CEQA (Pub. Resources Code, Section 21069; CEQA Guidelines, Section 15381.) and that CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, stating for example that to the extent that 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, Section 2050 et seq.), related authorization as provided by the Fish and Game Code will be required. The project may also be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, Section 1600 et seq.).

The County acknowledges CDFW's role and responsibilities as a CEQA Trustee Agency and a Responsible Agency pursuant to the CEQA Guidelines. Furthermore, the County acknowledges that 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, 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). The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 1-C:** The comment provides a brief summary of the proposed project's objectives, location, and timeframe. This comment does not raise an issue related to the adequacy of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 1-D:** This comment expresses concern for potential impacts to a list of 11 special-status species which have been documented in the project vicinity, and for which the commenter has provided their recommendations in subsequent comments. This summary is noted and detailed responses to each comment are provided below in Response to Comment 1-E through 1-E2.
- 1-E:** The commenter asserts that the proposed project site is within desert tortoise range and, based upon aerial imagery, appears to contain suitable habitat. The comment notes that desert tortoise are most common in desert scrub, desert wash, and Joshua tree habitats. The commenter suggests that 100 percent visual coverage surveys of all three of the project areas were not completed within one calendar year, and due to the time elapsed between when surveys were initiated and release of the Draft EIR, survey results are no longer valid. While the surveys took place between 2017 and 2019 over the (now two) project areas, this was done to ensure 100 percent coverage of each evolving project area (e.g., additional surveys were performed on an expanded project footprint). The commenter suggests that mitigation measure language should be clarified to state that preconstruction surveys will cover 100 percent of the project area; Response to Comment 1-F below addresses this comment.

The County acknowledges the range of desert tortoise and presence of suitable habitats that can be occupied by the species including habitat within the project limits. Although the proposed project site falls within the Western Mojave Recovery Unit boundaries, it is outside of the current known

range for the desert tortoise. Historically, desert tortoise may have occurred in the region; however, anthropogenic disturbances in the proposed project vicinity, including agriculture, OHV recreation, roads, utility corridors, energy and residential development, sheep grazing, and illegal trash dumping, appear to have reduced habitat suitability and limited desert tortoise populations in the region; in addition, as stated in Section 2.3.1 of the project's Biological Resources Technical Report, areas on the project site, particularly in the eastern portion of the Chaparral Solar facility site, have been degraded by evidence of heavy grazing.

The closest reported desert tortoise occurrence to the project, based on a search of the CNDDDB, is a 2006 observation of a single adult tortoise crossing Tehachapi-Willow Spring Road approximately 4.2 miles (6.8 km) northeast of Chaparral Solar facility site. Additionally, several adult desert tortoises were recorded approximately 4.5 miles (7.3 km) to the north of Rabbitbrush Solar and Chaparral Solar facility sites during surveys for the nearby Pacific Wind Energy Project, Catalina Renewable Energy Project, and Avalon Wind Energy Project (WEST, 2019). Protocol-level desert tortoise surveys have been conducted at a number of sites proposed for solar energy development in the immediate vicinity of the proposed project including the southern adjoining Rosamond Solar Project (Ironwood Consulting, 2011a), the nearby Willow Springs Solar Project (Ironwood Consulting, 2011b), and the northern adjoining Big Beau Solar Project (ESA, 2018). No desert tortoises, carcasses, or sign (e.g., scat, burrows, courtship rings, or drinking pallets) were detected at any of these nearby projects. As described in Section 4.4, *Biological Resources*, of the Draft EIR, protocol surveys for desert tortoise were completed for the entire project in April 2017 as well as for additional/refined proposed project areas and linears in April, 2018 and April, 2019; all surveys were negative. Mitigation Measure MM 4.4-6, Preconstruction Desert Tortoise Surveys, will ensure that no impacts to desert tortoise will occur in connection with construction of the proposed project. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 1-F:** The comment states that CDFW recommends that preconstruction surveys required by MM 4.4-6 clearly state they will cover 100 percent of the project area. CDFW also recommends these surveys be conducted by a qualified wildlife biologist who has previous experience surveying for desert tortoise using survey protocols outlined in "Preparing for any action that may occur within the range of the Mojave Desert tortoise (*Gopherus agassizii*)" (USFWS, 2010), and advises that survey results be submitted to both CDFW and the USFWS. Regarding the qualified wildlife biologist portion of this comment, Mitigation Measure 4.4-1 and 4.4-6 requires that an Authorized Biologist oversee compliance with protection measures for all listed and other special-status species. An Authorized Biologist is, by definition under the U.S. Fish and Wildlife Service (USFWS) "Desert Tortoise Monitor and Biologist Responsibilities and Qualifications", a biologist who must keep current with the latest information on USFWS tortoise protocols and guidelines; per MM 4.4-1 and 4.4-6, this Authorized Biologist must be present on the project site to oversee compliance with protection measures for all listed and other special-status species. Also, Mitigation Measure MM 4.4-6 already states that the preconstruction surveys will be conducted in accordance with the USFWS 2011 protocol. Therefore, this comment is noted and no changes are to the Draft EIR are warranted. However, in response to the request that Mitigation Measure MM 4.4-6 clearly state that preconstruction surveys will cover 100 percent of the project area, and that survey results be submitted to both CDFW and USFWS, the first paragraph of MM 4.4-6 in the Draft EIR has been revised as follows:

Section 4.4, Biological Resources, Pages 4.4-51 through 4.4-53:

- MM 4.4-6: Preconstruction Desert Tortoise Surveys. Within 14 days prior to the commencement of any ground-disturbing activities, the project operator shall conduct preconstruction surveys for desert tortoise within the entire project area. The surveys shall be conducted in accordance with U.S. Fish and Wildlife Service (USFWS) protocol (2011); survey results shall be

submitted to both CDFW and USFWS. If no burrows or tortoises are discovered during preconstruction surveys, no further mitigation is necessary. The desert tortoise is a federally and state threatened species and, consequently, impacts that would cause “take” of the species would require the issuance of Incidental Take Permits from both USFWS and the California Department of Fish and Wildlife (CDFW) to comply with the federal Endangered Species Act and California Endangered Species Act. If burrows or tortoises are identified on the project site during preconstruction surveys, the project operator shall be required to consult with USFWS and CDFW regarding take coverage, and adhere to the following minimum conditions:

The commenter next states that, as set forth in Mitigation Measure MM 4.4-6, should desert tortoise or burrows be identified during preconstruction surveys, all ground- and vegetation-disturbing activities should cease and consultation with USFWS and CDFW required. Mitigation Measure MM 4.4-6 of the Draft EIR discusses USFWS and CDFW consultation requirements, including take coverage, as well as the establishment of a suitable buffer by a qualified biologist to avoid impacts to any special-status species observed during construction. Mitigation Measure MM 4.4-1 further requires construction monitoring by a qualified biologist that would ensure construction work halts to avoid impacts to any special-status species, including desert tortoise, and work resumes only after special-status species are no longer at risk. Other mitigation measures provide general avoidance and protective measures designed to avoid impacts to special status wildlife, including desert tortoise. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 1-G:** The commenter quotes Appendix E section 3.2.3.12 of the Draft EIR, which states that the project is approximately 11 miles outside of the known range for Mohave ground squirrel (MGS), and therefore surveys are not warranted because CDFW protocol states that surveys should be conducted within 5 miles of the boundary of the geographic range of the species. The commenter asserts that MGS sightings have reportedly been verified beyond where the species has been recently expected to occur, that the 5-mile survey suggestion is a recommendation, and that a project would proceed at its own risk whenever suitable habitat features are present and surveys are not conducted.

The comment further provides background regarding threats to MGS, including habitat conversion and fragmentation, and states that the species is restricted to a small geographic range and the greatest habitat loss has occurred near desert towns including California City.

The County acknowledges the range of MGS and suitable habitats that can be occupied by the species as documented by third party studies and that individual MGS sightings may occur outside of this range. However, as stated in the Biological Resources Technical Report prepared for the project’s Draft EIR, “In the past ten years, extensive trapping efforts in a number of areas south of State Highway 58 have revealed that the only significant population of Mohave ground squirrels remaining within their historic range is in one region in the eastern portion of Edwards Air Force Base located approximately 20 miles from the Project area (Desert Managers Mohave Ground Squirrel Working Group n.d.). The species appears to be absent from extensive portions of its historic range in the Antelope Valley, Lancaster, and Palmdale regions. There has never been any documented record of the species to the west of State Route 14 between Mojave and Palmdale, in spite of extensive protocol trapping over much of this area (Leitner 2015). In the past seven years, this species has not been identified during protocol-level trapping surveys on numerous commercial solar projects in the western Antelope Valley.” Protocol surveys for the Mohave ground squirrel were conducted for the immediately adjoining Big Beau Solar Project (County of Kern, 2020), the southern adjoining Rosamond Solar Project (County of Kern, 2014), and nearby Valentine Solar

(County of Kern, 2016) projects. The surveys of these adjacent or nearby solar projects resulted in no observations of Mohave ground squirrel, and no Mohave ground squirrels were trapped on those sites. Based on the results of previous surveys conducted in the area and the location of the project site relative to the accepted range of the Mohave ground squirrel, Mohave ground squirrels are likely absent from the project and further surveys are not warranted beyond the 5-mile area recommended by CDFW protocol. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 1-H:** The commenter recommends that the County include a new MGS-specific mitigation measure that requires protocol-level surveys of MGS prior to construction. The commenter further recommends that, due to the large size of the project sites, the project applicant propose to CDFW for its review and approval, a surveying methodology for MGS that includes use of remote camera stations, and that the results of these surveys be provided to CDFW. The commenter further recommends that if MGS are found during protocol level surveys, preconstruction surveys, or construction activities, that ground- or vegetation-disturbing activities cease and consultation with CDFW occur to discuss how to avoid take and/or acquire an ITP.

The County disagrees that the recommended MGS survey is warranted for reasons described under Response to Comment 1-G above. In addition, the Draft EIR contains mitigation measures to survey for, and, if necessary, mitigate impacts to or obtain appropriate take permit authorization from USFWS or CDFW for special-status species including MGS. For example, Mitigation Measure MM 4.4-4 in Section 4.4, *Biological Resources*, of this Draft EIR, requires pre-construction surveys for special-status species including MGS and establishment of a suitable buffer by a qualified biologist to avoid impacts to any special-status species observed during construction. Mitigation Measure MM 4.4-1 further requires construction monitoring by a qualified biologist that would ensure construction work halts to avoid impacts to any special-status species, including MGS, and work resumes only after special status species are no longer at risk. Mitigation Measure MM 4.4-3 requires the avoidance of impacts to listed species and, if necessary, consultation with USFWS and/or CDFW regarding permit and take authorization. Other mitigation measures provide general avoidance and protective measures designed to avoid impacts to special-status wildlife, including MGS. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 1-I:** The comment asserts that additional Swainson's hawk (SWHA) protocol surveys should be conducted to further supplement those protocol surveys conducted for the project in 2017, 2018 and 2019. The Big Beau Solar Project, located in the immediate vicinity of the project (immediately to the north of the Rabbitbrush facility portion of the project), also completed protocol surveys in 2018. In addition, pre-construction surveys were completed within 0.5 mile of the southern adjoining Rosamond Solar project in 2018; updates to the California Natural Diversity Database (CNDDB) were required as a permit condition for this project. No nesting individuals were identified within 0.5-mile of the AVEP project sites in any of these surveys performed. As the commenter later states, SWHA exhibit high nest-site fidelity year after year, so conducting additional surveys is not expected to yield substantially different results. In addition, as discussed in the "Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California" (CDFW, 2010), the recommended survey methods "may be flexible depending on surveyor experience and/or already-known nesting status for a given site."

The County acknowledges this comment and understands that any take of SWHA without prior take permit authorization is a violation of CESA. Based on surveys completed in 2017, 2018 and 2019, no nesting individuals were found within 0.5 mile of the project site. Pre-construction surveys identified in Mitigation Measure MM 4.4-8 will ensure no take of SWHA will occur without proper authorization by CDFW. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 1-J:** The comment asserts that because suitable habitat for SWHA is present throughout the project site, changes to Mitigation Measure MM 4.4-8 are warranted to include the requirement for additional protocol surveys within at least two survey periods as recommended in the CDFW (2010) publication. As described in Response to Comment 1-I above, conducting additional surveys is not expected to yield substantially different results than the numerous protocol/focused surveys that have been completed in the area during 2017, 2018 and 2019. Nests observed during area surveys are primarily located in large trees adjacent to agricultural fields, and no nests have been observed within 0.5 mile of the project. As described in Section 4.4, *Biological Resources*, of the Draft EIR, the project site has generally low-quality habitat for SWHA nesting and foraging. In addition, SWHA show very strong site fidelity and, as no nests have been observed within 0.5-mile of the project, it is not anticipated that SWHA will nest within 0.5 mile of the project. During the nesting season, Mitigation Measure MM 4.4-8 will be utilized to avoid take of SWHA. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 1-K:** The comment states that in the event an active SWHA nest is detected during surveys and the project cannot avoid the nest by a minimum 0.5-mile buffer, consultation with CDFW is warranted to discuss how to implement the project and avoid take. The comment notes that if take cannot be avoided, take authorization through the issuance of an ITP, pursuant to Fish and Game Code section 2081 (b) is necessary to comply with CESA. The County acknowledges that if take of SWHA cannot be avoided, then consultation with CDFW and an ITP would be required as set forth in Mitigation Measure MM 4.4-8. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 1-L:** The comment states that if a Swainson's hawk nest is detected within 5 miles of the project, CDFW recommends the project operator develop a Swainson's Hawk monitoring and mitigation plan in consultation with CDFW as described in CDFW (2010). The comment notes that any monitoring criteria, if necessary, will likely vary based on proximity to the project area.

Although Swainson's hawks occur in the area, the project site has a low potential for nesting for this species, which has typically nested around agricultural areas in the Antelope Valley. Although the project site may contain some suitable nesting habitat for Swainson's hawk in the onsite Joshua trees, it is unlikely that this species would nest at the project site due to its distance from agricultural fields or other preferred foraging habitats. Swainson's hawks typically forage in suitable habitat adjacent to their nest sites and exhibit a high degree of nest site fidelity. In addition, as described in Response to Comment 1-I above, protocol and focused surveys completed in 2017, 2018 and 2019 did not observe active nests within 2 miles of the proposed project. As detailed below in Response to Comment 1-M, although site development would result in the permanent loss of Mojave Creosote Bush Scrub with Joshua trees, this loss is expected to have a minimal effect, if any, on this species' habitat availability in the immediate area and this reduction in habitat would not be considered a significant impact as 66 percent of the habitat within a five-mile buffer of the project site is scrub habitat. Implementation of Mitigation Measure MM 4.4-8 will ensure that no take of SWHA or other raptor nests will occur.

The County also notes that both the Kern Audubon Society and National Audubon have provided letters indicating their support for the project applicant's conservation efforts relative to the Swainson's hawk. The project applicant has joined with other solar PV developers and has entered into an agreement with National Audubon and Kern Audubon to benefit nesting and foraging Swainson's hawk in the Antelope Valley through support and funding for the development of a Conservation Plan and a Conservation Fund. The Conservation Plan will set forth conservation strategies to maintain or increase the population of Swainson's hawk in the Antelope Valley and the Conservation Fund will support landowner stewardship programs and/or acquisition of fee title or conservation easements to lands identified in the Conservation Plan that support Swainson's hawk. The agreement is not mitigation and is voluntary by the project applicant in the interest of enhancing biodiversity in the area and improved conservation science. In addition, as summarized in Response to Comment 1-Q and 1-P below, the project is presently subject to compensatory

mitigation for the western Joshua tree under the California Fish and Game Commission's emergency take regulation adopted for solar energy projects, 14 C.C.R. Section 749.10 (2084 permit); therefore, mitigation for loss of Joshua trees as potential future nesting trees would occur as required by CDFW. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 1-M:** The commenter recommends that the proposed project mitigate for the loss of suitable habitat for any portion of the project that is within 5 miles of an active Swainson's hawk nest, at a ratio of 2:1 in accordance with the CDFW (2010) publication to reduce impacts to SWHA foraging habitat to less than significant. The comment states that CDFW recommends that habitat compensation lands follow the recommendations for Habitat Management (HM) Lands described in the survey protocol.

The County notes that the CDFW (2010) publication references that SWHA have historically nested in Joshua trees and foraged in grasslands and native desert scrub communities, but that SWHA *currently* nest in Joshua tree woodlands, ornamental roadside trees, and windrow or perimeter trees in active and historical agricultural areas. None of these types of current nesting trees are located on the project site. The CDFW (2010) publication also states that SWHA *may* also forage in grasslands, Joshua tree woodlands, and other desert scrub habitats that *support a suitable prey base*. Regarding the potential for loss of foraging habitat, the desert scrub foraging habitat onsite is not the *current* habitat as discussed in the CDFW (2010) publication. Also, as stated in Section 2.3.1 of the project's Biological Resources Technical Report, areas on the project site, particularly in the eastern portion of the Chaparral facility, have been degraded by evidence of heavy grazing.

As described in Section 4.4, *Biological Resources* of the Draft EIR, the project site contains marginal habitat for SWHA foraging, and has limited nesting substrate consisting of a few scattered Joshua trees large enough to support this species' nest. SWHA prefer open grasslands and agricultural fields for foraging, typically nesting nearby in isolated trees or rows of trees, particularly those near water sources. Neither facility contains, or is adjacent to, agricultural areas which are the preferred foraging habitat for the species. The closest active nest to the project site is approximately 2 miles to the northeast adjacent to an agricultural field. Desert scrub is not demonstrated to be a preferred cover type for SWHA foraging as desert scrub supports a lower density and less predictable prey base than irrigated agricultural fields. Utilizing the National Land Cover Database (NLCD), based on an analysis of land cover types within 5 miles of the project, approximately 66 percent (or 47,000 acres) of this area is composed of desert scrub cover types, which accounts for current and planned solar facilities. The 1,204-acre project represents only 3 percent three percent of this remaining desert scrub habitat in the surrounding landscape. Also, agricultural cover types, the SWHA's preferred foraging habitat is uncommon in the region, representing only approximately 6,800 acres (or approximately 10 percent) of land within 5 miles of the project, suggesting the area is unlikely to support a robust breeding population. Section 4.4, *Biological Resources*, Pages 4.4-41 through 4.4-42 has been modified to provide this information:

Section 4.4, Biological Resources, Pages 4.4-41 through 4.4-42:

Swainson's Hawk. As described in Section 4.4-3, Special Status Species, the project site contains desert scrub communities, which are considered marginal foraging quality for Swainson's hawk and nesting habitat is limited to a few larger Joshua trees. Neither facility contains, or is adjacent to, agricultural areas which are the preferred foraging habitat for the species, therefore although ~~Although~~ Swainson's hawks occur in the area, the project site has a low potential to provide nesting habitat for this species. ~~Although the species has had a decreasing presence in this area~~ Also as described in Section 4.4-3, Special Status Species, Swainson's hawks continue to have been demonstrated to nest around agricultural areas in the Antelope Valley, with the majority of nests found

adjacent to agricultural fields. Swainson's hawks show nest site fidelity and typically forage in suitable habitat adjacent to their nest sites. ~~Although the~~ The project site may contain some suitable nesting habitat for Swainson's hawk in a few larger Joshua trees within the site; however, it is unlikely that this species would nest at the project site given the absence of agricultural fields in the immediate vicinity of the project site.

As described in Section 4.4-3, Special Status Species, in the Antelope Valley region of Southern California, nests are typically placed in Joshua trees, roadside trees, and windrow or perimeter trees along agricultural areas (CEC and CDFG, 2010), and foraging habitat within the Antelope Valley includes pastures, alfalfa fields, fallow fields, row crops, new orchards, and grain crops. Although site development would result in the permanent loss of creosote bush scrub with smaller amounts of annual and perennial grassland, white bursage scrub, and alkaline mixed scrub, this loss is expected to have a minimal effect, if any, on this species' habitat availability in the immediate area and this reduction in habitat would not be considered a significant impact. For example, in the analysis shown in Table 4.4-4 below, the National Land Cover Database data was used to quantify the percentage of landcover types within a buffer around the project area. The project area was buffered by 5 miles and the buffer was clipped to Kern County to exclude area in Los Angeles County. Operating or permitted solar energy projects were considered in the analysis and the entire area within these projects is considered 'solar development' and not a natural landcover type. Of the approximately 70,554 acres within the 5-mile buffer, approximately 66 percent are scrub (46,937 acres), 10 percent are landcover types associated with preferred Swainson's hawk foraging habitat (herbaceous, hay/pasture, cultivated crops; 6,843 acres), and 15 percent is solar development (10,618 acres).

TABLE 4.4-4: LAND COVER TYPES WITHIN 5-MILE BUFFER OF THE PROJECT IN KERN COUNTY

<u>Land Cover Class</u>	<u>Area (Sq Km)</u>	<u>Area (Acres)</u>	<u>%</u>
<u>Shrub/Scrub</u>	<u>189.95</u>	<u>46936.73</u>	<u>66.53</u>
<u>Developed, Open Space</u>	<u>19.44</u>	<u>4802.9</u>	<u>6.81</u>
<u>Herbaceous</u>	<u>17.23</u>	<u>4258.06</u>	<u>6.04</u>
<u>Hay/Pasture</u>	<u>6.62</u>	<u>1635.32</u>	<u>2.32</u>
<u>Cultivated Crops</u>	<u>3.84</u>	<u>949.71</u>	<u>1.35</u>
<u>Barren Land</u>	<u>2.69</u>	<u>665.87</u>	<u>0.94</u>
<u>Developed, Low Intensity</u>	<u>2.24</u>	<u>554.23</u>	<u>0.79</u>
<u>Developed, Medium Intensity</u>	<u>0.39</u>	<u>95.63</u>	<u>0.14</u>
<u>Evergreen Forest</u>	<u>0.12</u>	<u>30.68</u>	<u>0.04</u>
<u>Developed, High Intensity</u>	<u>0.02</u>	<u>5.73</u>	<u>0.01</u>
<u>Open Water</u>	<u>0</u>	<u>0.67</u>	<u>0.00</u>
<u>Emergent Herbaceous Wetlands</u>	<u>0</u>	<u>0.22</u>	<u>0.00</u>
<u>Solar development</u>	<u>42.97</u>	<u>10618.06</u>	<u>15.05</u>
<u>Total</u>	<u>285.52</u>	<u>70553.81</u>	<u>100.00</u>

There is more suitable nesting habitat occurring outside of the project site to the northeast and south at locations where potential nest trees exist near agricultural fields. As explained in Response to Comment 1-J above, SWHA have tended to nest around agricultural areas in the Antelope Valley. Thus, although Swainson's hawks occur in the area and the project site may contain limited nesting habitat for Swainson's hawks in onsite Joshua trees, it is unlikely that this species would nest at or in the vicinity of the project site. Given the lack of preferred nesting substrate in proximity to the project site and the vast amount of desert still undeveloped in the Antelope Valley, any loss of foraging habitat caused by the project would be less than significant and therefore does not warrant compensatory mitigation at the commenter's recommended 2:1 ratio. Moreover, as detailed in Response to Comment 1-Q and 1-R below, the project is presently subject to take coverage and compensatory mitigation requirements for the western Joshua tree under the Fish and Game Commission's emergency take regulation; therefore, mitigation for loss of Joshua trees as potential future nesting trees would occur to the extent required by CDFW. As described in Response to Comment 1-I above, the County also notes that Kern Audubon and National Audubon have provided letters indicating their support of the project applicant's conservation efforts relative to the Swainson's hawk, which includes the project applicant's support and funding for the development of a SWHA Conservation Plan and Conservation Fund. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 1-N:** The comment recommends that the removal of known SWHA nest trees, even outside of the nesting season, be replaced with an appropriate native tree species planting at a ratio of 3:1 at or near the project area or in another area that will be protected in perpetuity to reduce impacts resulting from the loss of nesting habitat.

The County notes that no known SWHA nest trees are proposed for removal by the project as no active nests were observed within the project site during protocol surveys and no historical SWHA nest trees are known to occur in the project site, as described in Section 4.4, *Biological Resources*, of the Draft EIR. As explained in Response to Comments 1-I to 1-M, the site also provides low quality foraging habitat and does not contain the preferred nesting habitat of SWHA in the region (i.e., mature trees adjacent to agricultural areas), and, thus, it is not expected that SWHA would nest at the project site. Finally, as described in Response to Comment 1-L above and 1-Q and 1-R below, the project will be mitigating for all Joshua trees – including small and medium sized trees – on the project site as required pursuant to the Fish and Game Commission's emergency take regulation which provides take coverage for the project. As a result, tree replacement is not proposed or warranted. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 1-O:** The comment addresses the presence of and mitigation for western Joshua tree, protected cactus, and other protected plant species on the project site. As detailed in Response to Comment 1-Q and 1-N below, the project has obtained take authorization for the western Joshua tree pursuant to the California Fish and Game Commission's emergency take regulation adopted for solar energy projects, and will adhere to the requirements contained in the regulation. As discussed in Section 4.4, *Biological Resources* of the Draft EIR and required by MM 4.4-12, in addition to County-specific Joshua tree mitigation, the project is required to "comply with any CDFW CESA take requirements and compensatory mitigation related to the protection or mitigation of impacted Joshua trees and documentation of any such CDFW take authorization and mitigation shall be provided to the Kern County Planning and Natural Resources Department." The comment has been noted for the record and revisions to the Draft EIR are not necessary.

The comment further asserts that the proposed preconstruction botanical surveys may not be adequate to detect special status plant species, which may impede the ability to implement other mitigation measures (e.g., buffers) and subsequently not reduce impact significance. As summarized in Table 4.4-2 and Table 4.4-3 of Section 4.4, *Biological Resources* of the Draft EIR, two special status plants were documented to occur on the project site – the western Joshua tree and the alkali mariposa lily. A full census level survey will be conducted for the western Joshua

tree as required by the emergency take authorization for this species. Protocol surveys for special status plant species were conducted in 2017, 2018, and 2019, and the project has been designed to avoid the population of alkali mariposa lily documented during those surveys.

The commenter states that without appropriate avoidance and minimization measures, potential impacts to special-status plant species include inability to reproduce and direct mortality, and that impacts of the Project have the potential to significantly impact populations of special status plant species. As described above, protocol surveys conducted for special status plants, and two were documented to occur. The avoidance and minimization measures described in Mitigation Measures 4.4-5 and 4.4-12 reduce the potential impacts to special-status plant species known or suspected to occur. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

1-P: The commenter asserts that preconstruction surveys for special status plants may not be conducted at the appropriate time to detect all protected species that have the potential to occur in the project area, and suggests a revision of MM 4.4-5 to include a requirement for protocol surveys during the appropriate season immediately prior to the start of the project. As discussed in Response to Comment 1-O above, protocol surveys were conducted on the project site in 2017, 2018, and 2019, finding only two special status plants to be present. Surveys covered 100 percent of the site and were conducted during appropriate bloom periods during years with adequate rainfall. In addition, protocol surveys for the western Joshua tree will be performed as required by the California Fish and Game Commission's emergency take regulation adopted for solar energy projects, and the project has been designed around the known locations of the alkali mariposa lily. CEQA does not demand exhaustive surveys or demand that environmental conditions must be optimal for analysis. Mitigation Measure 4.4-5 in the Draft EIR contains measures requiring preconstruction surveys, avoidance of rare plants when possible, preservation and mitigation requirements if the alkali mariposa lily is present and cannot be avoided, and salvage of rare plants if found to be present on site and when avoidance is not feasible. The County therefore finds that additional special-status plant protocol surveys are not warranted for purposes of this Draft EIR.

However, the Lead Agency acknowledges that preconstruction special-status plant surveys performed outside of an appropriate season for the alkali mariposa lily may not provide adequate and current information for the project to avoid species that have the potential to occur; therefore, subsection c. of Mitigation Measure MM 4.4-5 is being modified as shown below.

Section 4.4, Biological Resources, Pages 4.4-50 and 4.4-51

MM 4.4-5: Preconstruction Special-Status Plant Surveys – subsection (c.)

- c. During the appropriate bloom period for alkali mariposa lily, prior to the start of project construction, a survey will be performed to delineate the boundaries of the identified alkali mariposa lily population(s). All alkali mariposa lilies that cannot feasibly be avoided in final project design shall have bulbs collected prior to construction. Additionally, a transplantation plan for alkali mariposa lily will be submitted and approved by the County prior to ground disturbance and bulb collection. The plan will include the following:
 - i. Identify an area of occupied habitat to be preserved and removed;
 - ii. Identify areas of onsite or offsite preservation, restoration, or enhancement locations;
 - iii. Methods for preservation, restoration, enhancement, and/or translocation
 - iv. Indicate a replacement ratio and success standard of 1:1 for impacted to individuals
 - v. Establish a monitoring program to ensure mitigation success

- vi. Create an adaptive management and remedial measures in the event that performance standards are not achieved
- vii. Ensure financial assurances and a mechanism for conservation of any mitigation lands required in perpetuity.

The commenter further suggests that the special-status plant species that will be avoided by project activities be protected by a 50-foot buffer rather than the 25 feet proposed in MM 4.4-5, however the commenter offers no rationale for this increased buffer size. The County has determined that a 25-foot buffer offers adequate protection for individual plants as well as seed propagation. Therefore, no changes regarding special status plant buffer size requirements are warranted for the Draft EIR.

1-Q: The comment addresses the proposed project's potential impacts to Joshua trees, which are currently a candidate species being considered for listing as threatened or endangered pursuant to CESA and for which "take" is prohibited without take authorization obtained through the acquisition of an incidental take permit under CESA. As discussed in the Draft EIR and required by Mitigation Measure MM 4.4-12, in addition to County-specific Joshua tree mitigation, the Project is required to "comply with any CDFW CESA take requirements and compensatory mitigation related to the protection or mitigation of impacted Joshua Trees and documentation of any such CDFW take authorization and mitigation shall be provided to the Kern County Planning and Natural Resources Department." Notably, the proposed project has take authorization pursuant to the California Fish and Game Commission's emergency take regulation adopted for solar energy projects pursuant to the Commission's authority under California Fish and Game Code Section 2084. See Special Order Relating to Take of Western Joshua Tree (*Yucca brevifolia*) During Candidacy Period, 14 C.C.R. Subsection 749.10, 749.10(a)(1)(E) and (H) (identifying the Chaparral Solar Facility and Rabbitbrush Solar Facility as covered projects). The comment has been noted for the record and revisions to the Draft EIR are not necessary.

1-R: The comment addresses special status plant species, including potential impacts to Joshua trees, cholla, and beavertail cactus, and advises that the payment of the County-required mitigation fee for the take of CESA-listed species does not provide take authorization for Joshua tree or other plant species listed pursuant to CESA. See Response to Comment 1-Q above with regard to potential Joshua tree impacts and CESA take coverage. With regard to potential impacts to other CESA-listed plant species, implementation of Mitigation Measure MM 4.4-5 will reduce impacts to less than significant. If preconstruction surveys identify special status plant species that are present and cannot be avoided with an adequate buffer, then the proposed project would be required to consult with CDFW regarding CESA coverage for any potential take of such species.

Mitigation Measure MM 4.4-5 is being modified to include the following sentence at the end of subsection (b):

MM 4.4-5: Preconstruction Special-Status Plant Surveys. Within 14 days prior to the commencement of any ground-disturbing activities, the project operator shall conduct preconstruction surveys for special-status and protected plant species within the project area, including but not limited to Joshua trees, cholla, beavertail cactus, alkali mariposa lily, Clokey's cryptantha, Rosamond eriastrum, sagebrush loeflingia, spreading navarretia, Latimer's woodland-gilia, salt spring checkerbloom, short-joint beavertail, and recurved larkspur. After the preconstruction survey determines the exact location of these species, if present, on the project site and the number of individuals or populations present, the project proponent/operator shall submit written documentation to the Kern County Planning and Natural

Resources Department confirming implementation of the measures described below.

- a. The project proponent/operator shall work with a qualified biologist to determine presence of Clokey's cryptantha, Rosamond eriastrum, sagebrush loeflingia, spreading navarretia, Latimer's woodland-gilia, salt spring checkerbloom, short-joint beavertail, and recurved larkspur and identify all known locations of alkali mariposa lily to establish "avoidance areas". All special-status plants found within the project site shall be avoided by a buffer of 25 feet. Sturdy, highly visible, orange plastic construction fencing (or equivalent material verified by the authorized biologist) shall be installed around all locations of detected special-status plants to protect from impacts during the construction phase, until they can be relocated. The fence shall be securely staked and installed in a durable manner that would be reasonably expected to withstand wind and weather events and last at least through the construction period. Fencing shall be removed upon completion of the project construction.
- b. The project proponent/operate shall pay the required fee to remove Joshua trees, cholla, and beavertail cactus in accordance with the California Desert Native Plant Act prior to construction activities.
- c. During the appropriate bloom period for alkali mariposa lily, prior to the start of project construction, a survey will be performed to delineate the boundaries of the identified alkali mariposa lily population(s). All alkali mariposa lilies that cannot feasibly be avoided in final project design shall have bulbs collected prior to construction. Additionally, a transplantation plan for alkali mariposa lily will be submitted and approved by the County prior to ground disturbance and bulb collection. The plan will include the following:
 - i. Identify an area of occupied habitat to be preserved and removed;
 - ii. Identify areas of onsite or offsite preservation, restoration, or enhancement locations;
 - iii. Methods for preservation, restoration, enhancement, and/or translocation
 - iv. Indicate a replacement ratio and success standard of 1:1 for impacted to individuals
 - v. Establish a monitoring program to ensure mitigation success
 - vi. Create an adaptive management and remedial measures in the event that performance standards are not achieved
 - vii. Ensure financial assurances and a mechanism for conservation of any mitigation lands required in perpetuity.
- d. Any Clokey's cryptantha, Rosamond eriastrum, sagebrush loeflingia, Latimer's woodland-gilia, salt spring checkerbloom, short-joint

beavertail, and recurved larkspur onsite individuals or populations that cannot feasibly be avoided in final project design shall have seed collected prior to construction for sowing into suitable onsite habitat or in nearby suitable offsite habitat covered with a conservation easement. A seed harvesting and storage plan including a planting plan shall be prepared and approved by the County, prior to ground disturbance of these areas.

- e. If any spreading navarretia individuals or populations are found onsite and cannot feasibly be avoided in final project design, consultation with the U.S. Fish and Wildlife Service will be required prior to ground disturbing activities.
- f. Temporary ground disturbance associated with the gen-tie lines or collector lines shall be recontoured to natural grade (if the grade was modified during the temporary disturbance activity), and revegetated with an application of a native seed mix prior to or during seasonal rains to promote passive restoration of the area to pre-project conditions. However, if invasive plant species were present, these species would not be restored. An area subjected to temporary ground disturbance means any area that is disturbed but will not be subjected to further disturbance as part of the project. This does not include areas already designated as urban/developed. Prior to seeding temporary ground disturbance areas, the qualified biologist will review the seeding palette to ensure that no seeding of invasive plant species, as identified in the most recent version of the California Invasive Plant Inventory for the region, will occur.
- g. The project operator shall correspond with the County to determine what is needed for project compliance with the Willow Springs Specific Plan.

1-S: This comment addresses Townsend's big-eared bat and other special status bat species that the commenter asserts have been documented near the project area and suggests that suitable foraging habitat is present. The comment further states that bats are known to roost under bridges, and that project activities on or around bridges have the potential to have a significant impact on the habitat and breeding success of Townsend's big-eared bat and other bat species. While there are no bridges or other suitable roosting features within the project site, the County acknowledges that Townsend's big-eared bat and other bat species may forage within the project site. Townsend's big-eared bat and Pallid, both state species of special concern, have been documented as occurring on Soledad Mountain (Brown and Berry 2007), located approximately eight miles to the northeast of the project. While Townsend's big-eared bats were observed exiting several of the mines at Soledad Mountain, no large concentrations were discovered. Pallid bats were recorded acoustically at Soledad Mountain and likely roost in the rock crevices on the Mountain. Roosting habitat (e.g., caves, mines, or rock crevices) for both species is absent from the project site. Additionally, as summarized in Response to Comment 1-M above, because this project site is small compared to the regional habitat available for this species, and because these permanent impacts would not result in the long-term decline of this species, there would be no significant permanent impacts to Townsend's big-eared bat as a result of the project. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 1-T:** This comment recommends including an additional mitigation measure requiring that a qualified biologist conduct a habitat assessment “well in advance of project implementation to determine if an individual project site or its immediate vicinity contains suitable habitat for special-status bat species.” CEQA does not require a lead agency to conduct every recommended test and perform all recommended research to evaluate the impacts of a proposed project. The fact that additional studies might be helpful does not mean that they are required.” *Ass’n of Irrigated Residents v. Cty. of Madera*, (2003) 107 Cal. App. 4th 1383, 1396, 133 Cal. Rptr. 2d 718. Special status bat species are not documented to be present in the project area, and the project area comprises only a small amount of the available habitat available to the species in the area. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 1-U:** This comment recommends including an additional mitigation measure to assess the presence/absence of special-status bats by conducting protocol-level surveys during the appropriate seasonal period of bat activity. As noted in Response to Comment 1-T above, CEQA does not require a lead agency to conduct every recommended test and perform all recommended research to evaluate the impacts of a proposed project. In addition, implementation of Mitigation Measures MM 4.4-1 through 4.4-5 would minimize potential impacts to the Townsend’s big-eared and other bats in the area. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 1-V:** This comment recommends that CDFW be consulted prior to any activity that may disturb bats, submittal of a Bat Eviction Plan with eviction activities timed to avoid lactation and young rearing. Implementation of Mitigation Measure MM 4.4-1, Biological Monitoring, and Mitigation Measure MM 4.4-4, Preconstruction Clearance Surveys includes stop work authority for the project’s Lead Biologist to ensure special status species protection measures are followed, as well as preconstruction surveys to identify and avoid all special status species. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 1-W:** This comment addresses the presence of and potential significant impacts to LeConte’s thrasher, loggerhead shrike, mountain plover, and long-eared owl without appropriate avoidance and minimization measures. The potential for impacts to these four species was analyzed in the Draft EIR. The County acknowledges that the project could result in direct or indirect adverse effects to these species, including injury or mortality due to collisions with vehicles, damage to nests/roost structures, or loss of habitat, that would be considered significant. However, with implementation of Mitigation Measures 4.4-1 through 4.4-4, potential impacts would be reduced to less than significant. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 1-X:** This comment recommends an additional mitigation measure to include focused surveys for each of the species listed in Response to Comment 1-W above, and their requisite habitat features using appropriate survey protocol to evaluate potential impacts resulting from project-related activities. As noted in Response to Comment 1-T above, CEQA does not require a lead agency to conduct every recommended test and perform all recommended research to evaluate the impacts of a proposed project. With the implementation of Mitigation Measures 4.4-1 through 4.4-4, potential impacts would be reduced to less than significant. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 1-Y:** This commenter encourages avoidance through the delineation of special-status species, and further that a qualified biologist with the appropriate handling permit may relocate special status species out of the project area into a nearby area with suitable habitat. The County agrees with this comment and notes that Mitigation Measures MM 4.4-1 through MM 4.4-8 address this issue. Therefore, this comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 1-Z:** This commenter notes that “take” of the kit fox is prohibited under the California Code of Regulations. The comment acknowledges Mitigation Measures 4.4-2 through 4.4-4, but

recommends that no den excavation occur during the pupping season. The comment also states that if pupping dens are found on the proposed project site, consultation with CDFW will be warranted.

As discussed in the Draft EIR, the project could potentially result in adverse effects on the desert kit fox. Should adverse impacts to the species occur, including loss of habitat, and to individuals, including injury or mortality due to collisions with vehicles or crushing of dens, such impacts would be considered significant. However, with implementation of Mitigation Measures 4.4-1 through 4.4-4, potential impacts would be reduced to less than significant. For example, MM 4.4-1 ensures that the Lead Biologist can halt all activities that are in violation of the special-status species protection measures. Work shall proceed only after hazards to special-status species are removed and the species is no longer at risk. Also, MM 4.4-4 requires preconstruction surveys, the implementation of protective buffers, and passive relocation of kit foxes from active dens. Finally, the project is expected to begin construction in fall of 2021, outside of kit fox pupping season. The comment has been noted for the record and revisions to the draft EIR are not necessary.

- 1-A2:** This comment notes that the golden eagle is a fully protected species in California and under the federal BGEPA. CDFW recommends that if active or potential nests are detected within 0.5-mile of the proposed project area consultation with CDFW is required.

The proposed project analyzed the potential for golden eagles to occur on site and determined that while the potential was moderate, no suitable nesting habitat for the species was present. Therefore, no significant impacts to these species are expected to occur. The County notes that golden eagles are fully protected species and that the Project would be required to consult with CDFW and USFWS should golden eagle individuals be identified near enough to the project site to be impacted. However, based on current conditions, with implementation of Mitigation Measures 4.4-1, 4.4-8, and 4.4-9, potential impacts to golden eagles would be reduced to less than significant. The comment has been noted for the record and revisions to the draft EIR are not necessary.

- 1-B2:** This comment recommends that the proposed project consult with USFWS on potential impacts to desert tortoise, desert kit fox, golden eagle, and other species. CDFW also notes that take under the Federal Endangered Species Act (Federal ESA) is defined differently than under CESA.

The County acknowledges that if take of a species listed under the Federal ESA is unavoidable, the Project would be required to consult with and obtain incidental take coverage from USFWS. Preconstruction surveys required by Mitigation Measures 4.4-4, 4.4-6, 4.4-7, and 4.4-8 will be implemented to identify any federally-listed species that could be adversely affected by the Project. The results of the surveys will determine whether consultation with USFWS is warranted. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 1-C2:** This comment encourages the proposed project to construct its facilities during the non-nesting bird season and notes that the proposed project is responsible for ensuring compliance with the Migratory Bird Treaty Act and relevant Fish and Game Code requirements.

Implementation of Mitigation Measure 4.4-8 would identify nesting bird individuals present on the proposed project site and would ensure that no take of such species occur. The County acknowledges that the proposed project is subject to applicable state and federal regulations related to nesting birds, including the Migratory Bird Treaty Act. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 1-D2:** This comment recommends that pre-activity surveys for nesting birds occur no more than 10 days prior to the start of ground disturbance. The comment also recommends that the pre-activity surveys cover sufficient area to detect all nests that could potentially be impacted by construction. The comment finally recommends that a behavioral baseline survey of detected nests be conducted prior to construction, and any identified nests monitored throughout construction to document behavioral changes resulting from the proposed project. The comment notes that CDFW should be consulted if such behavioral changes are observed.

The project will implement Mitigation Measure MM 4.4-8 utilizing a qualified wildlife biologist to ensure no take, either direct or indirect, of nesting birds and raptors will occur. Biological monitors will also survey prior to and during initial ground disturbance and during the duration of construction. With the implementation of Mitigation Measure MM 4.4-8, no take of nesting birds is expected occur. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 1-E2:** This comment recommends that if continuous monitoring of nests by a qualified biologist is not feasible, a minimum no-disturbance buffer around active nests of 250 feet for non-listed species and 500 feet for non-listed raptors be established. The comment recommends that buffers remain in place until either the breeding season has ended or the qualified biologist has determined that the birds have fledged and are no longer reliant on parent care for survival. The comment notes that variance from these buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. The comment recommends that the qualified biologist advise and support any variance in buffers and notify CDFW in advance of implementing a variance.

Please see Response to Comment 1-D2. The implementation of Mitigation Measure 4.4-8 requires that appropriate buffers for non-listed species be determined by the qualified biologist onsite and established until the qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 1-F2:** The comment notes that CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, Section 21003, subd. (e)). Accordingly, the comment requests that any special-status species and natural communities detected during project surveys should be reported to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/SubmittingData>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 1-G2:** The comment notes that CDFW has determined that the project will impact fish and/or wildlife; therefore, an assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, Section 753.5; Fish & G. Code, Section 711.4; Pub. Resources Code, Section 21089.) The comment has been noted for the record and revisions to the Draft EIR are not necessary.


- 1-H2:** The comment notes that CDFW appreciates the opportunity to comment on the project to assist the Kern County Planning Department in identifying and mitigating the project's impacts on biological resources. The County appreciates the CDFW's comprehensive review of the project and appreciates their recommendations to the County in thoroughly assessing the potential direct and indirect impacts on biological resources and mitigating these impacts to avoid take of protected species.

**Comment Letter No. 2: County of Kern Public Works Department,
Administration and Engineering Division**

**COUNTY OF KERN
PUBLIC WORKS DEPARTMENT
*Office Memorandum***

To: Lorelei Oviatt, Director
Planning and Natural Resources Department
Attn: Randall P. Cates, Planner III

February 23, 2021

From: Joshua Champlin, Development Engineer 
Administration and Engineering Division

Subject: 7-8.5c Specific Plan Amendment #1, Map 231-18
7-5.2 Zone Change Case #3, Map 231-18
7-5.3 Conditional Use Permit #1, Map 231-18
7-8.5c Specific Plan Amendment #2, Map 231-18
7-8.5c Specific Plan Amendment #25, Map 232
7-8.5c Specific Plan Amendment #27, Map 232
7-5.2 Zone Change Case #40, Map 232
7-5.2 Zone Change Case #41, Map 232
7-5.3 Conditional Use Permit #33, Map 232
7-5.3 Conditional Use Permit #34, Map 232
7-5.3 Conditional Use Permit #35, Map 232
7-5.3 Conditional Use Permit #36, Map 232
7-8.5c Specific Plan Amendment #26, Map 232
7-8.5c Specific Plan Amendment #28, Map 232
(Approximately 5.5 miles west of the unincorporated community of
Rosamond.)

This Department has reviewed the subject project all previous comment letters regarding this project stand. However we recommend the following:

1. All obstructions, including utility poles and lines, trees, pole signs, or similar obstructions, shall be removed from the ultimate road right of way in accordance with Section 18.55.030 of Kern County Land Division Ordinance. Compliance with this requirement is the responsibility of the applicant and may result in significant financial expenditure.

Thank you for the opportunity to comment on this project. If you have any questions or comments, please contact Paul Candelaria of this Department.

2-A

**Response to Comment Letter 2: County of Kern Public Works Department,
Administration and Engineering Division (February 23, 2021)**

2-A: The commenter states that all easements shall be kept open, clear, and free from buildings and structures including utility poles and lines, trees, pole signs, fences, etc. As described in Section 4.11, *Land Use and Planning*, of the Draft EIR, the proposed project would be in compliance with all applicable Chapters of the Kern County Land Division Ordinance, and thus, would ensure that all easements are kept open, clear, and free from any obstructions. Additionally, the Lead Agency is proposing to add a Condition of Approval which reads as follows:

Prior to final occupancy approval, the following conditions shall be verified by the building inspector and shall be continuously maintained while this permit is active:

- (a) All easements shall be kept open, clear, and free from buildings and structures of any kind pursuant to Chapters 18.50 and 18.55 of the Kern County Land Division Ordinance. All obstructions, including utility poles and lines, trees, pole signs, or similar obstructions, shall be removed from the ultimate road rights of way in accordance with Section 18.55.030 of the Land Division Ordinance. Compliance with this requirement is the responsibility of the applicant and may result in significant financial expenditures.

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

Office Memorandum

KERN COUNTY

To: Planning and Natural Resources
Department
Randall Cates

Date: January 22, 2021

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

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

**Subject: Draft Environmental Impact Report
AVEP Solar Project**

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

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

The subject property is subject to flooding.

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

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

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

3-A

Response to Comment Letter 3: County of Kern Public Works Department, Floodplain Management Section (January 22, 2021)

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

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

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

The Draft EIR identifies that the proposed project will result in an increase in impervious surfaces, which in turn, would result in an increase in stormwater runoff. Specifically, new impervious surfaces would be associated with the project's energy storage systems and the operations and maintenance building. The vast majority of the project site would remain pervious and absorb most precipitation. Further, as described in Section 4.10, *Hydrology and Water Quality*, pages 4.10-11 and 4.10-12 of the Draft EIR, the site engineering and design plans for the proposed project must comply with the requirements of the Kern County Code of Building Regulations, as well as with Kern County Development Standards and the Floodplain Management Ordinance.

Furthermore, pages 4.10-11 and 4.10-12 of the Draft EIR, indicate that all site drainage plans would be required to comply with Division Four of the Kern County Development Standards, which establish guidelines including, but not limited to, site development standards and mitigation, flood control requirements, erosion control, and on-site drainage flow requirements. Therefore, with adherence to all existing regulations regarding erosion and site drainage, the proposed project would neither alter the course of a stream or river nor result in substantial erosion onsite or offsite. Implementation of Mitigation Measures MM 4.10-1 and a stormwater pollution prevention plan (SWPPP), as described in the Draft EIR and required to be implemented for the proposed project, would reduce impacts to a less-than-significant level. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

Comment Letter No. 4: Kern County Superintendent of Schools



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

January 14, 2021

Kern County Planning Department
Attn: Randall Cates, Planner III
2700 M Street, Suite 100
Bakersfield, CA 93301

Our File No.: CO21-0005

RE: DEVELOPER FEES FOR: EIR 03-18; AVEP Solar Project; Map No. 231-18, 232-9, 10, 12, 13, 14, 15, 23
(Generally bounded by Avenue of the Stars to the north, 100th Street West to the east, Rosamond Blvd to the south and 130th Street to the west.)

Dear Mr Cates,

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

4-A

It is our determination that the above mentioned project proposing (a) three Specific Plan Amendments to the Willow Springs Specific Plan, (b) three Zone Classification Changes, (c) three Conditional Use Permits to allow for the construction and operation of a 125 megawatt solar photovoltaic electrical generating facility, (d) two Conditional Use Permits to allow for the construction and operation of a communication tower, (e) two requests for nonsummary vacation of public access easements on the project site (f) three Specific Plan Amendments to the Circulation Element of Willow Springs Specific Plan to remove section and mid-section line road reservations will have no significant effects on either of the district's facilities and mitigation of this project's impacts on public school facilities will be limited to the collection of statutory fees authorized under Education Code Section 17620 and Government Code Sections 65995 et seq. at the time that building permits are issued. Currently, these fees are set at \$0.66 per square foot, an amount subject to COLA adjustment every two years.

4-B

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

Sincerely,

Mary C. Barlow
County Superintendent of Schools

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JAN 20 2021

Kern County Planning &
Natural Resources Dept

Andrea Watson, Specialist
School District Facility Services

ALW
cc: District(s)

Response to Comment Letter 4: Kern County Superintendent of Schools (January 14, 2021)

- 4-A** The commenter expresses appreciation for the opportunity to respond on behalf of the district regarding the proposed project. This comment clarifies that the letter's contents are intended to address possible effects which the project may have on school facilities, and not to comment on any other environmental concerns.
- 4-B:** The commenter provides a brief overview of the entitlements being requested by the project and concludes that no significant effect on the district's facilities would occur with project implementation, given the appropriate fees and regulations are complied with. As discussed in Section 4.14, *Public Services*, of the Draft EIR, an average of 688 daily construction workers and a peak workforce of 946 workers could be required for development of the proposed project. It is expected most of these workers would live in the region and would commute to the project site from where their children are already enrolled in school. Even if workers came from out of the area, they would likely return to their out-of-town residences once the facilities were built and would not take their children out of their current schooling situation. Therefore, temporary increases in population are not expected to adversely affect local school populations. Additionally, operation of the project would require approximately 10 part-time and/or full time employees to operate the O&M building. Employees would likely commute to the project from their existing permanent residences, however, even if the maintenance employees were hired from out of the area and had to relocate to eastern Kern County, the resulting addition of potential families to this area would not result in a substantial increase in the number of users at local schools. Therefore, impacts would be less than significant. All fees applicable to implementation of the project will be collected when the project proponent/operator applies for required building permits. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

Comment Letter No. 5: Kern County Fire Department

Office of the Fire Marshal Kern County Fire Department

Fire Prevention

2820 M St. • Bakersfield, CA 93301 • www.kerncountyfire.org

Telephone 661-391-3310 • FAX 661-636-0466/67 • TTY Relay 800-735-2929



February 17, 2021

Kern County Planning and Natural Resources Department
2800 M St., Bakersfield, CA 93301
Attn.: Randall Cates

Re: Kern County Fire Department Comments Regarding Planning Department Project

To Whom It May Concern,

The Kern County Fire Department (KCFD), as the local fire authority, has received a request for comments regarding AVEP Solar Project. Upon initial review, it has been determined that all ground mounted solar array projects over 1MW will require Fire Department plan review prior to construction and meet requirements set forth in KCFD Solar Panel Standard #503-507. All Stationary Energy Storage Systems must be applied for directly with KCFD for separate permitting and pre-construction approval. Additionally, all Battery Energy Storage installations must comply with UL9540A requirements.

A more detailed review and project comments will be conducted when the building permit is pulled and plans are submitted to KCFD.

Please feel free to call our Fire Prevention Office at 661-391-3310 with any questions.

Sincerely,
Michael Nicholas
Assistant Fire Marshal
Kern County Fire Department

5-A

Response to Comment Letter 5: Kern County Fire Department (February 17, 2021)

- 5-A:** The commenter describes the Kern County Fire Department's local regulatory authority to enforce state and local codes related to fire protection and health and safety. The commenter states that the solar installation shall meet requirements set forth by the KCFD and shall be required to submit plans and obtain a permit from KCFD for installation of a Stationary Energy Storage System. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.



Eastern Kern

Air Pollution Control District

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

February 24, 2021

Randall Cates, Planner III
Kern County Planning and Natural Resources Department
2700 "M" Street Suite 100
Bakersfield, CA 93301

SUBJECT: Comments for Draft Environmental Impact Report for the AVEP Solar Project by
Chaparral Solar, LLC and Rabbitbrush Solar, LLC Located Approximately 5 ½ miles
West of Rosamond

Dear Mr. Cates:

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

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

Additionally, any backup generators with piston engines rated greater than 50-bhp will require a
Permit to Operate from the District.

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

Sincerely,

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

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

GES:SJ:tf

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Kern County Planning &
Natural Resources Dept.

Response to Comment Letter 6: Eastern Kern Air Pollution Control District (EKAPCD) (February 24, 2021)

- 6-A:** The commenter confirms Eastern Kern Air Pollution Control District's (EKAPCD's) receipt of the Draft EIR. In addition, the commenter notes that solar facilities 10 acres and larger are required to submit a Fugitive Dust Emission Control Plan and apply for an Authority to Construct prior to commencing construction of the facility. Furthermore, stationary equipment that emits air pollutants may require a permit from the EKAPCD prior to installation and operation. As discussed in Section 4.3, *Air Quality*, of the Draft EIR, construction and operation of the proposed project would be conducted in compliance with applicable rules and regulations set forth by the EKAPCD, including all necessary permits. Additionally, fugitive dust would be reduced through implementation of Mitigation Measures MM 4.3-2 and MM 4.3-3, which would be implemented in conformance with the applicable EKAPCD plans and regulations and Kern County General Plan Policies 20 and 21. Specifically, Mitigation Measure MM 4.3-2 requires that prior to the issuance of grading or building permits, the project proponent shall provide a comprehensive Fugitive Dust Control Plan for review by the Kern County Planning and Natural Resources Department to reduce fugitive dust emissions resulting from wind erosion at the site. As noted, the proposed project would be required to comply with applicable EKAPCD plans and regulations and, as such, the project proponent would coordinate with the EKAPCD as necessary. This comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 6-B:** The commenter states that any backup generators with piston engines rated greater than 50-bhp will require a Permit to Operate from the EKAPCD. As stated above in Response to Comment 6-A, the project would comply with applicable EKAPCD plans including any necessary permits, as discussed in Section 4.3, *Air Quality*, of the Draft EIR. Therefore, the project would comply with this request. This comment has been noted for the record and revisions to the Draft EIR are not necessary.

Comment Letter No. 7: Defenders of Wildlife



California Program Office

980 Ninth Street, Suite 1730 | Sacramento, California 95814 | 916.313.5800

www.defenders.org

February 23, 2021

Kern County Planning and Natural Resources Department

Attn: Randall Cates

2700 "M" Street, Suite 100,

Bakersfield, CA 93301

Via email to: catesr@kerncounty.com

Re: Comments on Draft Environmental Impact Report for proposed AVEP Solar Project

Dear Mr. Cates:

Thank you for the opportunity to submit comments on the Draft Environmental Impact Report (DEIR) for the proposed AVEP Solar Project (Project) in the Antelope Valley of Kern County. Comments included in this letter are submitted by Defenders of Wildlife (Defenders) on behalf of its 1.8 million members and supporters in the U.S., including 279,000 in California.

7-A

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

7-B

Project Description: The Project involves installation of two photovoltaic (PV) solar facilities and associated infrastructure near the town of Rosamond, California that would generate a combined total of 250 megawatts (MW) of renewable electrical energy, and store 2,000 megawatt-hours (MWh) of electrical energy in onsite batteries. The proposed 774-acre Chaparral Solar Facility and the 632-acre Rabbitbrush Solar Facility, totaling 1,406 acres of private land development, would be located in a portion of Antelope Valley in Kern County supporting 22 acres of previous development, as well as scattered, widely spaced western Joshua trees and five native vegetation communities:

7-C

• Alkaline Mixed Scrub	172 acres
• California Annual and Perennial Grassland	360 acres
• Creosote Bush Scrub	575 acres
• Rabbitbrush Scrub	98 acres
• White Bursage Scrub	179 acres
• Total native vegetation communities	1,384 acres

Defenders Comments:

1. DEIR Cumulative Impact Analysis: The DEIR describes the many renewable energy generation projects developed within Antelope Valley in recent years that have contributed to an ongoing cumulative loss and

7-D

Comment Letter No. 7: Defenders of Wildlife

fragmentation of wildlife habitat. However, this analysis lacks an adequate discussion of how the cumulative loss and fragmentation of wildland habitat has specifically impacted regional special status species (e.g., alkali mariposa lily, western Joshua tree, burrowing owl and Swainson's hawk).

7-D
cont.

Once such an analysis is completed, effective mitigation measures could be identified and applied to this Project and subsequent projects within Antelope Valley in a consistent manner. Without a long-range plan for conservation of habitats for special status species in the Antelope Valley, Kern County will eventually reach a point where so little native wildlife habitat remains that no further projects could be permitted that result in the loss of wildland habitat supporting these species.

7-E

We recommend that Kern County prioritize preparation of a regional conservation plan for the county's entire California Desert region to ensure that sufficient wildlands are conserved to sustain viable populations of known special status species. Such planning could involve the relatively rapid development of a Regional Conservation Investment Strategy or a more comprehensive Natural Communities Conservation Plan. Both planning options would include appropriate public involvement and serve the long-term planning needs of the County. In addition, the California Department of Fish and Wildlife (CDFW) can provide a wealth of advice and recommendations in oversight and approval of this planning.

7-F

2. Special Status Species: Eight special status species were found to occur within the Project area: burrowing owl, Swainson's hawk, mountain plover, northern harrier, loggerhead shrike, LeConte's thrasher, American badger and desert kit fox. The long-eared owl, pallid bat and Townsend's big-eared bat were also determined to have a high potential to occur within the affected area.

7-G

The DEIR appears to adequately require measures that would avoid, minimize and compensate for direct adverse impacts to most of these species, including compensatory mitigation if the threatened Agassiz's desert tortoise is found on site prior to construction. Compensatory mitigation is also proposed for the loss of alkali mariposa lily and burrowing owl habitat.

However, Defenders notes that mitigation measures currently prescribed in the DEIR do not fully mitigate adverse impacts to the threatened Swainson's hawk because approximately 1,384 acres of natural community foraging habitat within five miles of nests that have been active within the past five years would be lost without compensatory mitigation, which is contrary to provisions of the California Endangered Species Act (CESA), which we address in detail below.

7-H

3. Swainson's Hawk: Swainson's hawk has been listed as threatened under the CESA since 1983. CDFW (2016)¹ reported the primary threat to Swainson's hawk populations in California is loss of habitat - especially loss of suitable foraging habitat.

7-I

Further, loss of historical sage steppe/grassland foraging habitat may have been responsible for general Swainson's hawk population declines within the Great Basin and Mojave Desert.

CDFW (2016) has also previously stated:

"The Swainson's Hawk was historically a species adapted to open grasslands and prairies, but it has become increasingly dependent on agriculture as native plant communities have been converted to agricultural lands."

7-J

¹ California Department of Fish and Game. 2016. Memorandum. Five Year Status Review for Swainson's hawk (*Buteo swainsoni*). Sacramento, California. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=133622&inline>.

In the Antelope Valley, CDFW reports this isolated population of Swainson's hawk nests in Joshua trees, ornamental trees and isolated trees along roadsides or on private property. In its 2016 five-year status review report on the species, CDFW reported:

"Loss or alteration of foraging habitat or nest site disturbance which results in: (1) nest abandonment; (2) loss of young; (3) reduced health and vigor of eggs and/or nestlings (resulting in reduced survival rates), may ultimately result in the take of nestling or fledgling Swainson's Hawks incidental to otherwise lawful activities."

"The taking of Swainson's Hawks in this manner can be a violation of CESA. This interpretation of take has been judicially affirmed by the 1992 landmark appellate court decision, Department of Fish and Game v. Anderson-Cottonwood Irrigation District (8 Cal. App. 4th, 1568), which emphasized that the intent and purpose of CESA applies to all activities that take or kill endangered or threatened species, even when the taking is incidental to otherwise legal activities."

7-K

"California Environmental Quality Act (CEQA, Pub. Resources Code, § 21000 et seq.). CEQA requires adoption of mandatory findings of significance if a project's impacts to threatened or endangered species are likely to occur (§21001 (c), §21083, Guidelines §15380, §15064, and §15065). Impacts must be avoided or mitigated to less than significant levels unless the CEQA Lead Agency makes and supports findings of Overriding Consideration. Mitigation for impacts to Swainson's Hawk foraging habitat varies among CEQA lead agencies, but essentially does not occur at a rate greater than 1:1 habitat lost to habitat protected."

Swainson's hawks in Antelope Valley have also been extensively discussed by the California Energy Commission (CEC) and California Department of Fish and Game (2010) publication entitled: *"Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California."*²

CDFW and CEC in that publication reported:

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

7-L

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

[The Antelope Valley habitats] *"support approximately 10 breeding [Swainson's hawk] pairs. This area comprises the southernmost edge of the known breeding range for this species in California. The small number of breeding Swainson's hawks in the Antelope Valley and the potential isolation from other Swainson's hawk populations makes the Antelope Valley population particularly susceptible to extirpation."*

"Due to the geographical isolation of the Antelope Valley Swainson's hawk population from other breeding populations, together with the species' high site fidelity, it is reasonable to infer that rapid re-colonization of the Antelope Valley would be unlikely if nesting pairs were lost. Given these facts, the California Department of Fish and Game (Department) would

² California Energy Commission and California Department of Fish and Game. 2010. Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California. Sacramento, California. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83991&inline>.

Comment Letter No. 7: Defenders of Wildlife

consider impacts to breeding pairs to be potentially significant because they may cause the population to become less than self-sustaining.”

“Potentially significant impacts may result from activities that cause nest abandonment, loss of nest trees, loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), or direct mortality.”

“Due to the Swainson’s hawk’s known preference for areas of low vegetation that support abundant prey, such as grasslands or alfalfa fields (Bechard 1982, Babcock 1995), the Department considers conversion of foraging areas to renewable energy power plant facility sites to be habitat loss. For example, solar panel arrays are expected to eliminate most or all foraging potential. Significant habitat loss may result from individual projects and cumulatively, from multiple projects. Each project which contributes to a significant cumulative effect must offset its contribution to that effect in order to determine that the cumulative impacts have been avoided.”

“Impacts to suitable habitat or individual birds within a five-mile radius of an active nest will be considered significant and to have the potential to “take” Swainson’s hawks as that term is defined in §86 of the Fish and Game Code.”

Regarding mitigation of impacts to Swainson’s hawks from renewable energy projects, CDFW and CEC (2010) recommended:

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

Both CEC and CDFW (2010) have also stated:

The Department considers a nest active if it was used one or more times within the last 5 years.”

*“HM Land Selection Criteria. Identify the region within which lands would be acquired, and the type/quality of habitat to be acquired. **Foraging habitat should be moderate to good with a capacity to improve in quality and value to Swainson’s hawks, and must be within the Antelope Valley Swainson’s hawk breeding range** (emphasis added). Foraging habitat with suitable nest trees is preferred.”*

Defenders is very concerned over the characterization of the 1,384 acres of nesting and foraging habitat in the DEIR that would be lost due to the proposed Project in Antelope Valley, all of which occurs within five-miles of Swainson’s hawk nests that are known to have been active within the past five years.

Repeated dismissal of impacts to Swainson’s hawk through the repeated use of the word “*Although*” occurs in Chapter 4.4 of the DEIS, with no supporting evidence:

- *“Although Swainson’s hawks occur in the area, the project site has a low potential to provide nesting habitat for this species.”*
- *“Although the species has had a decreasing presence in this area, Swainson’s hawks continue to nest around agricultural areas in the Antelope Valley, with the majority of nests found adjacent to agricultural fields.”*
- *“Although the project site may contain some suitable nesting habitat for Swainson’s hawk in a few larger Joshua trees within the site, it is unlikely that this species would nest at the project site given the absence of agricultural fields in the immediate vicinity of the project site.”*

Comment Letter No. 7: Defenders of Wildlife

- *“Although site development would result in the permanent loss of creosote bush scrub with smaller amounts of annual and perennial grassland, white bursage scrub, and alkaline mixed scrub, this loss is expected to have a minimal effect, if any, on this species’ habitat availability in the immediate area and this reduction in habitat would not be considered a significant impact.”*

7-O
cont.

Kern County has a long history of dismissing as insignificant the ongoing cumulative loss of natural habitat for Swainson’s hawks in the Antelope Valley due to renewable energy projects. This runs contrary to the expert opinion of CDFW and other Swainson’s hawk experts (e.g., Dr. Peter Bloom) who report that prior to irrigated agriculture in the Antelope Valley and Mojave Desert in general, the Swainson’s hawks nested in riparian trees and Joshua trees, foraged in natural habitats and consumed a variety of prey.

7-P

Defenders recommends Kern County end its practice of dismissing the ongoing cumulative loss of natural habitat for Swainson’s hawks in the Antelope Valley and require that all nesting and foraging habitat lost within a five-mile radius of large-scale solar energy projects be compensated at a minimum ratio of 2 acres acquired, protected and managed for the species for each acre lost (2:1). Compensation habitat should also be located within the Antelope Valley and known to be within five miles of an active Swainson’s hawk nest.

This recommendation is fully consistent with the CDFW and CEC (2010) report on Swainson’s hawk impact mitigation in the Antelope Valley. Given the ongoing cumulative loss of Swainson’s hawk nesting and foraging habitat as a result of Kern County’s authorization of solar and wind energy generation projects in the Antelope Valley, we urge the County to more appropriately increase the compensation ratio for loss of natural habitat to 3:1.

7-Q

Based on the information provided in CDFW’s (2016) five-year status report on Swainson’s hawks in California, and the CDFW and CEC (2010) report on renewable energy development and recommended mitigation measures for impacts to Swainson’s hawks in the Antelope Valley, Defenders concludes that the DEIR inadequately describes and proposes insufficient mitigation for the loss of 1,384 acres of natural foraging and nesting habitat for the species. We urge the County to resolve the issues raised in this letter by adopting our recommendations in full.

Please contact us if you would like to discuss our comments. We hope that Kern County includes these recommendations in the Final Environmental Impact Report prepared for this Project.

Sincerely,



Jeff Aardahl
Senior California Representative
jaardahl@defenders.org



Tom Egan
California Desert Representative
tegan@defenders.org

Response to Comment Letter 7: Defenders of Wildlife (February 23, 2021)

- 7-A:** This is an introductory comment thanking Kern County for the opportunity to comment on the Draft EIR. The County acknowledges receipt of the Defenders of Wildlife (DOW) comment letter and detailed responses to each comment are provided below.
- 7-B:** The comment states that DOW is a non-profit organization and provides a brief explanation of the organization's objectives. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record.
- 7-C:** The comment provides a summary of the proposed project. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record.
- 7-D:** The comment notes that many renewable energy generation projects have been developed within the Antelope Valley in recent years and asserts that this has contributed to an ongoing cumulative loss and fragmentation of wildlife habitat. The comment asserts that the Draft EIR lacks an adequate discussion of how the cumulative loss and fragmentation of wildland habitat has specifically impacted regional special status species such as the alkali mariposa lily, western Joshua tree, burrowing owl and Swainson's hawk.

The County disagrees that the Draft EIR lacks an adequate discussion of the cumulative impacts of the proposed project on special status species as required pursuant to CEQA. The Draft EIR identifies planned, existing and permitted renewable energy projects (including solar, wind and transmission projects), among other projects, in the region where the proposed project is located, see, e.g., Chapter 3.0, Project Description, Section 3.10 and Table 3-4, of the Draft EIR and the cumulative impacts of the proposed project based on the relevant geographic area is analyzed in the technical analyses for each individual environmental topic area in Chapter 4. With regard to cumulative impacts to special status species, the Draft EIR identifies the regional and local setting of the proposed project, including both plant and animal special status species, in Section 4.4.2, and analyzes the cumulative impact of the proposed project in Section 4.4.4. Based on that cumulative impact analysis, the Draft EIR concludes that the proposed project's cumulative impact to transient species including burrowing owls, Swainson's hawk, loggerhead shrike, LeConte's thrasher, northern harrier, mountain plover, other raptors, migratory birds, American badger and desert kit fox would be significant and unavoidable, and requires the implementation of Mitigation Measures MM 4.1-5 through MM 4.1-7, MM 4.4-1 through MM 4.4-12, MM 4.9-2 and MM 4.10-2 in an effort to mitigate those impacts.

Contrary to the comment's assertion, CEQA does not require a separate regional study or analysis of the effects of existing projects on specific environmental resources in order to analyze the cumulative impacts of an individual project on those resources. Rather CEQA requires a discussion of the individual project's *incremental effects* in light of identified planned, existing and permitted projects in the relevant geographic area. As explained in the CEQA Guidelines, "[t]he discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone." 14 C.C.R. 15130(b). The discussion "should be guided by the standards of practicality and reasonableness" and may be based on a "list of past, present, and probable future projects producing related or cumulative impacts". *Id.* at 15130(b)(1). The Draft EIR's analysis of cumulative impacts is consistent with this standard. This comment is noted for the record and revisions to the Draft EIR are not necessary.

- 7-E:** The comment asserts that once the regional study of the cumulative loss and fragmentation of wildlife habitat referenced above is completed, effective mitigation measures could be identified and applied to the proposed project and subsequent projects within the Antelope Valley. The comment states that without a long-range regional plan for the conservation of habitats for special

status species in the Antelope Valley, the County will reach a point so little wildlife habitat remains such that future projects cannot be permitted.

See Response to Comment 7-D for discussion of the comment's assertion regarding the need for a separate regional study of the effects of renewable energy projects on the cumulative loss and fragmentation of wildlife habitat. While the County appreciates the comment's concern for a regional study and long-range planning for future projects in the Antelope Valley, the individual EIR for the proposed project is not the appropriate or required setting under CEQA for conducting a regional study or developing a long-range plan for conservation of specific habitats in the County and including public and agency involvement in any such process. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 7-F:** The comment recommends that the County prioritize preparation of a regional conservation plan for the County's entire California Desert region to ensure that sufficient wildlands are conserved to sustain viable populations of special status species and suggests the development of a "Regional Conservation Investment Strategy" or "Natural Communities Conservation Plan" as regional planning and mitigation options, including public and federal and state wildlife agency involvement in developing a regional plan.

In response, it is the Lead Agency's determination that a regional plan extends far beyond the scope of a particular project and is not the most appropriate approach for addressing site specific biological impacts associated with the proposed AVEP Solar Project. See Responses to Comments 7-D and 7-E for discussion of the Draft EIR's cumulative impact analysis in connection with special status species and the inappropriate nature of preparing a regional study or planning document in the context of an individual project EIR. Further, development of a regional plan would require regional coordination among other Counties, individual agencies, and property owners. This coordination would require a long lead time for planning and organization to develop a regional conservation plan and is infeasible for this particular project. However, this comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 7-G:** The commenter notes that eight special status species were found to occur within the proposed project area including burrowing owl, Swainson's hawk, mountain plover, northern harrier, loggerhead shrike, LeConte's thrasher, American badger and desert kit fox. The long-eared owl, pallid bat and Townsend's big-eared bat were also determined to have a high potential to occur within the affected area. The commenter states that the Draft EIR appears to adequately require measures that would avoid, minimize and compensate for direct adverse impacts to most of these species, including compensatory mitigation if the threatened Agassiz's desert tortoise is found on site prior to construction. Compensatory mitigation is also proposed for the loss of alkali mariposa lily and burrowing owl habitat. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 7-H:** The commenter asserts that mitigation measures currently prescribed in the Draft EIR do not fully mitigate adverse impacts to the threatened Swainson's hawk because approximately 1,384 acres of natural community foraging habitat within 5 miles of nests that have been active within the past five years would be lost without compensatory mitigation, which the commenter asserts is contrary to provisions of the California Endangered Species Act (CESA).

As noted in Response to Comment 1-M above, while the County acknowledges that approximately 1,384 acres will not be available for Swainson's hawk foraging, this acreage, represents only approximately 3 percent of the 47,000 acres available foraging habitat with similar characteristics (desert shrub/scrub) within 5 miles of the project in Kern County alone; an additional approximately 6,800 acres of agricultural lands is available for Swainson's hawk foraging within 5 miles of the project in Kern County, which is known to be the Swainson's hawk preferred foraging habitat. This total available acreage assumes the approved solar projects within the 5-mile buffer of the project is constructed – additional habitat is also available to the south in Los Angeles County. Moreover, the loss of potential foraging habitat in itself – as opposed to the direct take of

a listed species – is not prohibited by CESA. See *Envtl. Council of Sacramento v. City of Sacramento*, 142 Cal. App. 4th 1018, 1040 (2006) (“We reject any insinuation that the definition of “take” under [CESA] encompasses the taking of habitat alone or the impacts of the taking. As section 86 of the Fish and Game Code makes clear, proscribed taking involves mortality.”). As a result, compensatory mitigation for foraging habitat is neither necessary nor required. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 7-I:** The commenter notes that Swainson’s hawk is listed as threatened under the CESA since 1983. The CDFW report titled “*California Department of Fish and Game. 2016. Memorandum. Five Year Status Review for Swainson’s hawk (Buteo swainsoni). Sacramento, California*” (“CDFW (2016)”) reported the primary threat to Swainson’s hawk populations in California is loss of habitat – especially loss of suitable foraging habitat, and that the loss of historical sage steppe/grassland foraging habitat may have been responsible for general Swainson’s hawk population declines within the Great Basin and Mojave Desert. The commenter notes that CDFW (2016) attributed population declines with SHWA to habitat loss. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 7-J:** The commenter notes that CDFW (2016) has also previously stated: “The Swainson’s Hawk was historically a species adapted to open grasslands and prairies, but it has become increasingly dependent on agriculture as native plant communities have been converted to agricultural lands.” The commenter references CDFW (2016) to describe foraging habitats of SWHA. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 7-K:** This comment addresses findings in the CDFW (2016) report surrounding the implications of the loss or alteration of foraging habitat or nest site disturbance that may ultimately result in the take of nestlings or fledgling Swainson’s hawks incidental to otherwise lawful activities. The CDFW (2016) report was cited regarding CEQA requiring “*adoption of mandatory findings of significance if a project’s impacts to threatened or endangered species are likely to occur (Section 21001 (c), Section 21083, Guidelines Section 15380, Section 15064, and Section 15065)*”. As discussed in Response to Comment 7-H above, the proposed project represents a small percentage of available foraging habitat, does not contain the SWHA preferred/current foraging ground cover type, and the closest nest tree is approximately 2 miles away. Therefore, it is not *likely to occur* that the construction or operation of the proposed project will result in the take of nestlings or fledgling Swainson’s hawks. Also, implementation of Mitigation Measure MM 4.4-8 will further reduce the potential for impacts to nestlings or fledgling Swainson’s hawks. As noted in Response to Comment 7-D below, based on the cumulative impact analysis, the Draft EIR concludes that the proposed project’s *cumulative* impact to transient species including Swainson’s hawk would be significant and unavoidable, and requires the implementation of Mitigation Measures MM 4.1-5 through MM 4.1-7, MM 4.4-1 through MM 4.4-12, MM 4.9-2 and MM 4.10-2 in an effort to mitigate those impacts.

The comment cites the CDFW (2016) report stating that “*impacts must be avoided or mitigated to less than significant levels unless the CEQA Lead Agency makes and supports findings of Overriding Consideration. Mitigation for impacts to Swainson’s Hawk foraging habitat varies among CEQA lead agencies, but essentially does not occur at a rate greater than 1:1 habitat lost to habitat protected.*” This comment summarizes the CDFW (2010) publication; the County will comply with CEQA requirements surrounding significance determinations and findings of overriding considerations. With regard to the mitigation portion of this comment, see Response to Comment 7-H above. The County notes the comment for the record and no revisions to the Draft EIR are necessary.

The commenter notes that Swainson’s hawks in Antelope Valley have also been extensively discussed by the California Energy Commission (CEC) and California Department of Fish and

Game (2010) publication entitled: “*Swainson’s Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California*” (“CDFW (2010)”). This comment has been noted for the record and no revisions to the Draft EIR are necessary.

- 7-L:** The commenter references the CDFW (2010) publication, including references that SWHA have historically nested in Joshua trees and foraged in grasslands and native desert scrub communities, and that currently they nest in Joshua tree woodlands, ornamental roadside trees, and windrow or perimeter trees in active and historical agricultural areas; however, there are none of these types of current nesting trees on the project site. The CDFW (2010) publication also states that SWHA “foraging habitat includes dry land and irrigated pasture, alfalfa, fallow fields, low-growing row or field crops, new orchards, and cereal grain crops”, and that SWHA “may also forage in grasslands, Joshua tree woodlands, and other desert scrub habitats that support a suitable prey base.” Regarding the potential for loss of foraging habitat, there are no Joshua tree woodlands onsite; desert scrub and grassland foraging habitat onsite is not the current preferred foraging habitat, and as discussed in Section 2.3.1 of the project’s Biological Resources Technical Report, portions of the project site, particularly in the eastern portion of the Chaparral facility, have been degraded by evidence of heavy grazing resulting in sparse vegetative cover and potentially limiting prey populations in these areas. Implementation of Mitigation Measure MM 4.4-8 will reduce the potential for impacts to nesting SWHA. Accordingly, this comment has been noted for the record and no revisions to the Draft EIR are necessary.

The commenter also cites the CDFW (2010) publication that includes a statement to *potential impacts* of loss of foraging habitat and disruption of breeding activities due to increased dust, noise and human presence (emphasis added). Implementation of Mitigation Measure MM 4.4-8 will reduce the potential for impacts to nesting SWHA. Accordingly, this comment has been noted for the record and no revisions to the Draft EIR are necessary.

The commenter cites sections of the CDFW (2010) publication’s small number of breeding SWHA pairs in the Antelope Valley (to be approximately 10 pairs) comprising the southernmost edge of the known breeding range, and the *potential* isolation from other SWHA populations; making the Antelope Valley population particularly susceptible to extirpation. The CDFW (2010) publication then concludes that it is “*reasonable to infer that rapid re-colonization of the Antelope Valley would be unlikely if nesting pairs were lost. Given these facts, the California Department of Fish and Game (Department) would consider impacts to breeding pairs to be potentially significant because they may cause the population to become less than self-sustaining.*” The commenter then cites a passage from the CDFW (2010) publication that states that “*Potentially significant impacts may result from activities that cause nest abandonment, loss of nest trees, loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), or direct mortality.*” As discussed in Section 4.4 of the Draft EIR, the closest active nest is approximately 2 miles to the south, so nest abandonment is unlikely due to project activities. Additionally, no nest trees have been identified on the project site, and implementation of Mitigation Measure MM 4.4-8, Nesting Birds and Raptors, is in place to ensure any new nests are identified, reducing this potential impact to less than significant. Regarding loss of foraging habitat, as discussed in this Response to Comment 7-L, the foraging habitat onsite is not the current or preferred habitat as discussed in the CDFW (2010) publication. Also, as stated in Section 2.3.1 of the project’s Biological Resources Technical Report, areas on the project site, particularly in the eastern portion of the Chaparral facility, have been degraded by evidence of heavy grazing.

The commenter cites several of the CDFW (2010) publication statements including “*Due to the Swainson’s hawk’s known preference for areas of low vegetation that support abundant prey, such as grasslands or alfalfa fields (Bechard 1982, Babcock 1995), the Department considers conversion of foraging areas to renewable energy power plant facility sites to be habitat loss*”

(emphasis added). As noted in this Response to Comment 7-L above, there are currently none of these preferred foraging ground cover/habitat types on site.

The commenter cites the CDFW (2010) publication stating “*Significant habitat loss may result from individual projects and cumulatively, from multiple projects. Each project which contributes to a significant cumulative effect must offset its contribution to that effect in order to determine that the cumulative impacts have been avoided.*” As noted in Response to Comment 7-D above, based on the cumulative impact analysis, the Draft EIR concludes that the proposed project’s cumulative impact to transient species including Swainson’s hawk would be significant and unavoidable, and requires the implementation of Mitigation Measures MM 4.1-5 through MM 4.1-7, MM 4.4-1 through MM 4.4-12, MM 4.9-2 and MM 4.10-2 in an effort to mitigate those impacts. Finally, as discussed in Response to Comment 7-D above, CEQA does not require a separate regional study or analysis of the effects of existing projects on specific environmental resources in order to analyze the cumulative impacts of an individual project on those resources. Rather CEQA requires a discussion of the individual project’s *incremental effects* in light of identified planned, existing and permitted projects in the relevant geographic area.

The commenter also quotes the CDFW (2010) publication stating that “*Impacts to suitable habitat or individual birds within a five-mile radius of an active nest will be considered significant and to have the potential to “take” Swainson’s hawks as that term is defined in Section 86 of the Fish and Game Code.*” As discussed above, the project site does not contain suitable preferred (current) habitat as discussed in CDFW (2010), there are no Joshua tree woodlands, and the nearest agricultural development is located approximately 1.3-miles to the northeast. Impacts to individual birds is unlikely, as the closet nest is approximately two miles away. During the nesting season, Mitigation Measure MM 4.4-8 will be utilized to avoid take of SWHA. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

7-M: The commenter continues to cite the CDFW (2010) publication’s recommendations, including that “*Mitigation plans should focus on providing habitat management (HM) lands. Lands which are currently in urban use or lands that have no existing or potential value for foraging Swainson’s hawks will not require mitigation nor would they be suitable for mitigation. The plans should call for mitigating loss of Swainson’s hawk foraging habitat by providing HM lands within the Antelope Valley Swainson’s hawk breeding range at a minimum 2:1 ratio for such habitat impacted within a five-mile radius of active Swainson’s hawk nest(s).*” As discussed in Response to Comment 1-M and 7-L above, the project site does not contain *current* or *preferred* SWHA habitat, but rather contains marginal foraging habitat; the nearest known nest tree is approximately 2 miles away. As noted in Response to Comment 1-M and 7-H above, while the County acknowledges that approximately 1,384 acres will not be available for Swainson’s hawk foraging, this acreage represents only approximately 3 percent of the 47,000 acres available foraging habitat with similar characteristics (desert shrub/scrub) in Kern County alone; an additional approximately 6,800 acres of agricultural development is available in the area within Kern County, which is known to be the Swainson’s hawk preferred foraging habitat. As noted in Response to Comment 7-H above, the loss of potential foraging habitat in itself – as opposed to the direct take of a listed species – is not prohibited by CESA. As a result, compensatory mitigation for foraging habitat is neither necessary nor required. However, as discussed in Response to Comment 1-L above, the project applicant has entered into a voluntary agreement with both National Audubon and Kern Audubon Society to support SWHA conservation efforts, and the project will be implementing the mitigation requirements under the Fish and Game Commission’s emergency take regulation which will result in the off-site preservation of Joshua trees and related habitat. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

7-N: The commenter notes that CDFW considers a nest active if it was used one or more times within the last 5 years, then cites the CDFW (2010) publication’s recommendation regarding habitat management (HM) land selection criteria, stating that “*foraging habitat should be moderate to good with a capacity to improve in quality and value to Swainson’s hawks, and must be within the*

Antelope Valley Swainson's hawk breeding range. Foraging habitat with suitable nest trees is preferred." As noted in Response to Comment 7-H above, the loss of potential foraging habitat in itself – as opposed to the direct take of a listed species – is not prohibited by CESA. As a result, compensatory mitigation for foraging habitat is neither necessary nor required. However, as discussed in Response to Comment 1-L above, the project applicant has entered into a voluntary agreement with both National Audubon and Kern Audubon Society to support SWHA conservation efforts, and the project will be implementing the mitigation requirements under the Fish and Game Commission's emergency take regulation for Joshua tree which will result in the off-site preservation of Joshua trees. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 7-O:** The commenter stated their concern over the characterization of the 1,384 acres of nesting and foraging habitat in the DEIR that would be lost due to the proposed Project in Antelope Valley, all of which occurs within five-miles of Swainson's hawk nests that are known to have been active within the past five years. The commenter then asserts that "repeated dismissal of impacts to Swainson's hawk through the repeated use of the word "Although" occurs in Chapter 4.4 of the DEIS, with no supporting evidence." The use of "although" in the Draft EIR is not intended to dismiss impacts, but is used to discuss the project impacts, site characteristics, and habitat as discussed in the context of Swainson's hawk ecology described in CDFW (2010) and CDFW (2016), and in applicable sections of the Draft EIR. As such, responses to each of the commenter's example excerpts from the Draft EIR are addressed in Response to Comment 1-M and 7-H above. However, the following changes will be made to the Draft EIR to more closely align the conclusions with the background information presented in the Draft EIR:

Swainson's Hawk. As described in Section 4.4-3, Special Status Species, the project site contains desert scrub communities, which are considered marginal foraging quality for Swainson's hawk and nesting habitat is limited to a few larger Joshua trees. Neither facility contains, or is adjacent to, agricultural areas which are the preferred foraging habitat for the species, therefore although ~~Although~~ Swainson's hawks occur in the area, the project site has a low potential to provide nesting habitat for this species. Although the species has had a decreasing presence in this area ~~Also as described in Section 4.4-3, Special Status Species, Swainson's hawks continue to have been demonstrated to nest around agricultural areas in the Antelope Valley, with the majority of nests found adjacent to agricultural fields. Swainson's hawks show nest site fidelity and typically forage in suitable habitat adjacent to their nest sites. Although the~~ The project site may contain some suitable nesting habitat for Swainson's hawk in a few larger Joshua trees within the site; however, it is unlikely that this species would nest at the project site given the absence of agricultural fields in the immediate vicinity of the project site.

As described in Section 4.4-3, Special Status Species, in the Antelope Valley region of Southern California, nests are typically placed in Joshua trees, roadside trees, and windrow or perimeter trees along agricultural areas (CEC and CDFG, 2010), and foraging habitat within the Antelope Valley includes pastures, alfalfa fields, fallow fields, row crops, new orchards, and grain crops. Although site development would result in the permanent loss of creosote bush scrub with smaller amounts of annual and perennial grassland, white bursage scrub, and alkaline mixed scrub, this loss is expected to have a minimal effect, if any, on this species' habitat availability in the immediate area and this reduction in habitat would not be considered a significant impact. For example, in the analysis shown in Table 1 below, the National Land Cover Database data was used to quantify the percentage of landcover types within a buffer around the project area. The project area was buffered by 5 miles and the buffer was clipped to Kern County to exclude area in Los Angeles County. Operating or permitted solar energy projects were considered in the analysis and the entire area within these projects is considered 'solar development' and not a natural landcover type. Of the approximately 70,554 acres within the 5-mile buffer, approximately 66 percent are scrub (46,937 acres), 10 percent are landcover types associated with preferred

Swainson's hawk foraging habitat (herbaceous, hay/pasture, cultivated crops; 6,843 acres), and 15 percent is solar development (10,618 acres).

TABLE 1. LAND COVER TYPES WITHIN 5-MILE BUFFER OF THE PROJECT IN KERN COUNTY

<u>Land Cover Class</u>	<u>Area (Sq Km)</u>	<u>Area (Acres)</u>	<u>Percent</u>
<u>Shrub/Scrub</u>	<u>189.95</u>	<u>46936.73</u>	<u>66.53%</u>
<u>Developed, Open Space</u>	<u>19.44</u>	<u>4802.9</u>	<u>6.81%</u>
<u>Herbaceous</u>	<u>17.23</u>	<u>4258.06</u>	<u>6.04%</u>
<u>Hay/Pasture</u>	<u>6.62</u>	<u>1635.32</u>	<u>2.32%</u>
<u>Cultivated Crops</u>	<u>3.84</u>	<u>949.71</u>	<u>1.35%</u>
<u>Barren Land</u>	<u>2.69</u>	<u>665.87</u>	<u>0.94%</u>
<u>Developed, Low Intensity</u>	<u>2.24</u>	<u>554.23</u>	<u>0.79%</u>
<u>Developed, Medium Intensity</u>	<u>0.39</u>	<u>95.63</u>	<u>0.14%</u>
<u>Evergreen Forest</u>	<u>0.12</u>	<u>30.68</u>	<u>0.04%</u>
<u>Developed, High Intensity</u>	<u>0.02</u>	<u>5.73</u>	<u>0.01%</u>
<u>Open Water</u>	<u>0</u>	<u>0.67</u>	<u>0.00%</u>
<u>Emergent Herbaceous Wetlands</u>	<u>0</u>	<u>0.22</u>	<u>0.00%</u>
<u>Solar development</u>	<u>42.97</u>	<u>10618.06</u>	<u>15.05%</u>
<u>Total</u>	<u>285.52</u>	<u>70553.81</u>	<u>100.00%</u>

The County notes that Appendix G of the State CEQA guidelines state that a biological resource impact is considered significant (before considering offsetting mitigation measures) if the lead agency determines that project implementation would result in “substantial adverse effects, either directly or through habitat modifications, on any species identified as being a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFG or USFWS”; and in CEQA Section 15065 (Mandatory Findings of Significance), a biological resource impact is considered significant if the project has the potential to “substantially reduce the number or restrict the range of an endangered, rare or threatened species.” As discussed in Response to Comment 7-H above, the Draft EIR concludes that the relatively minor loss of historic foraging habitat does not represent a significant impact on an individual basis. This comment has been noted for the record and the above referenced clarifications to the Draft EIR have been made.

- 7-P:** The commenter asserts that “Kern County has a long history of dismissing as insignificant the ongoing cumulative loss of natural habitat for Swainson’s hawks in the Antelope Valley due to renewable energy projects,” stating its opinion that this runs contrary to the expert opinions of CDFW and other Swainson’s hawk experts who report that prior to irrigated agriculture in the Antelope Valley and Mojave Desert in general, the Swainson’s hawks nested in riparian trees and Joshua trees, foraged in natural habitats and consumed a variety of prey. The County disagrees with this comment, both with respect to the Draft EIR for the proposed project and more generally with regard to the CEQA analysis of other renewable energy projects in the County. As discussed in Response to Comments 1-I to 1-N and 7-I to 7-O, the Draft EIR analyzes the proposed project’s potential individual and cumulative impacts to Swainson’s hawk nesting and foraging habitat and, in fact, concludes that the project, when combined with other reasonably foreseeable projects including other renewable energy projects, would result in significant and unavoidable cumulative

impacts to transient wildlife species including Swainson's hawk despite the County requiring the implementation of Mitigation Measures MM 4.1-5 through 4.1-7, MM 4.4-1 through MM 4.4-12, MM 4.9-2 and MM 4.10-2. Accordingly, this comment has been noted for the record and no revisions to the Draft EIR are necessary.

7-Q: As a continuation of the Comment 7-P, the commenter states that the County should “end its practice of dismissing the ongoing cumulative loss of natural habitat for Swainson's hawks in the Antelope Valley” and require that “all nesting and foraging habitat lost within a five-mile radius of large-scale solar energy projects” be compensated at a 2:1 ratio, which the comment then asserts should be increased to 3:1 based on the perceived cumulative loss of nesting and foraging habitat in the Antelope Valley. The commenter suggests that the Draft EIR inadequately describes and proposes insufficient mitigation for the loss of Swainson's hawk foraging and nesting habitat and urges the County to resolve the issues raised in its comments by adopting its recommendations in full. As explained in Response to Comment 7-P, the County disagrees that the County has dismissed the cumulative impacts associated with Swainson's hawk foraging and nesting habitat in the Antelope Valley and, in fact, has concluded in the Draft EIR that the proposed project's cumulative impacts to Swainson's hawk are significant and unavoidable and imposed mitigation accordingly. See also Response to Comments 1-I to 1-N and 7-I to 7-O with regard to the adequacy of the Draft EIR's analysis of impacts to Swainson's hawk and associated mitigation measures. This comment has been noted for the record and no revisions to the Draft EIR are necessary.

Comment Letter No. 8: Kern Audubon Society



Kern Audubon Society
Attn: Franklin Bedard
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February 24, 2021

submitted electronically

Randall Cates, Planner III
Kern County Planning and Natural Resources Department
2700 "M" Street, Suite 100
Bakersfield, CA 93301

**Subject: Draft Environmental Impact Report
 AVEP Solar Project (Project) by Chaparral Solar, LLC and Rabbitbrush Solar, LLC
 State Clearing House: SCH 2019090215**

Dear Mr. Cates:

The Kern Audubon Society (KAS), an interested party, responded to a notice of availability of a Draft Environmental Impact Report (DEIR) from the Kern County Planning and Natural Resources Department (County) for the above referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

KAS has identified Swainson's hawk as a priority for conservation in California and with its partner The National Audubon Society (NAS) has been urging actions to conserve the Swainson's hawk by providing comments on solar projects in the Antelope valley and Kern County since 2012.

To promote the mutually beneficial establishment of the AVEP Project while providing support and funding for the study and conservation of the Antelope Valley region Swainson's hawk population through new research, KAS and NAS have entered into an agreement with the Project that provides for research and a conservation fund of Swainson's hawk in the Antelope Valley. This collaboration is voluntary.

8-A

Comment Letter No. 8: Kern Audubon Society

The collaboration will have multiple benefits including:

- Providing an update on the current status and distribution of nesting Swainson's hawks in the Antelope Valley and current foraging, nesting, and breeding behaviors and timing to inform siting of utility scale solar projects.
- Informing a conservation strategy for Swainson's hawk in the Antelope Valley.
- Establishing a Swainson's hawk conservation fund to implement conservation actions recommended by the research study.

KAS supports this agreement and will continue to support an Antelope Valley where clean energy projects can be developed in a responsible way and where Swainson's hawk and other wildlife can survive and thrive.

KAS appreciates the opportunity to submit comments on the DEIR in support of the AVEP Solar Project (SCH: 2019090215).

Sincerely,

Franklin Bedard
Conservation Chair
Kern Audubon Society

↑
8-A
cont.

Response to Comment Letter 8: Kern Audubon Society (February 24, 2021)

- 8-A:** The commenter acknowledges the Kern Audubon Society's (KAS) receipt of the Notice of Availability of the Draft EIR. The commenter identifies Swainson's hawk as a priority for conservation in California. The commenter describes the voluntary collaboration between the KAS, the National Audubon Society, and the project proponent that provides for research and a conservation fund of Swainson's hawk in the Antelope Valley. The comment letter lists the benefits of the agreement between KAS, National Audubon Society, and the project proponent. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.



February 25, 2021

Kern County Planning and Natural Resources Department
Attn: Randall Cates, Planner III
Kern County Planning
2700 "M" Street, Suite 100
Bakersfield, CA 93301
Filed Electronically: catesr@kerncounty.com

Re: DEIR Comments on the AVEP Solar Project, Antelope Valley, Kern County

Dear Mr. Cates:

On behalf of National Audubon Society (Audubon) and our 2 million members and supporters in the U.S., over 300,000 of those in California, we thank you for the opportunity to submit comments on the Draft Environmental Impact Report (DEIR) by Kern County (Lead Agency) for the AVEP Solar Project (the Project) in the Antelope Valley of Kern County.

Audubon supports clean energy that is sited and operated properly to avoid, minimize and mitigate effectively for the impacts on birds, other wildlife and the places they need now and in the future. Working closely with industry, government agencies, partners and our Network, Audubon will work to support, expedite and expand the development of clean energy policies, planning and projects to achieve 100% clean energy.

PROJECT LOCATION: The project site is located approximately 5.5 miles west of the unincorporated community of Rosamond. The project site is in general bound by Avenue of the Stars to the north, 100th Street West and a transmission line easement utilized by the Los Angeles Department of Water and Power to the east, Rosamond Boulevard to the south, and 130th Street West to the west. The project site is located within portions of Section 18 of Township 9 North, Range 13 West, San Bernardino Base and Meridian (SBBM), and within portions of Sections 9, 10, 12, 13, 14 15, and 23 of Township 9 North, Range 14 West, SBBM, County of Kern, State of California.

PROJECT DESCRIPTION: The AVEP Solar Project (project), proposed by Chaparral Solar, LLC and Rabbitbrush Solar, LLC (project proponents/operators), would develop two photovoltaic (PV) solar facilities and associated infrastructure necessary to generate a combined total of approximately 250 megawatts (MW) of renewable electrical energy including an associated

9-A

9-B

combined total of approximately 2,000 megawatt-hours (MWh) of energy storage systems on approximately 1,406 acres of privately owned land. The project consists of two sites: the 774-acre Chaparral Solar Facility and the 632-acre Rabbitbrush Solar Facility. Collectively, these sites are referred to as the project site. The proposed project would be built collectively at either the same time or alternatively as two approximately 125 MW facilities on the approximately 774-acre Chaparral site and 632-acre Rabbitbrush site, as commercial contracts are entered into for each. Depending upon market conditions, the Chaparral and Rabbitbrush facilities may also each include an energy storage system (ESS) with the capacity to store approximately 1,000 MWh of energy on each facility (for a combined project total of approximately 2,000 MWh). As proposed, each ESS would be located on five acres of land within the facility.

9-B
cont.

National Audubon Society has recognized Antelope Valley as a Globally Important Bird Area¹. The Important Bird Areas Program, administered by the National Audubon Society in the United States, is part of an international effort by BirdLife International² to designate and support efforts at high conservation value sites that provide significant breeding, wintering, or migratory habitats for specific species or concentrations of birds. Sites are designated based on specific and standardized criteria and supporting data. Antelope Valley was labeled as “globally important” due to three criteria the area meets: 1) the presence of 18 sensitive species of birds; 2) high concentrations of shorebirds in migration (over 10,000 shorebirds possible on a 1 day count at seasonal lakes and water treatment plants); and 3) over 5,000 waterfowl possible on a 1 day count. Additionally, from the IBA report:

“the remnant Joshua Tree Woodland in this area supports one of the farthest-west populations of Le Conte's Thrasher in the state. The grassland bird community is most impressive in winter, when large numbers of raptors concentrate in the area. Winter brings Mountain Plover, whose flocks are among the last in southern California. After wet winters, nesting grassland species like Northern Harrier linger well into spring, and occasionally even breed. Swainson's Hawk maintains its southernmost breeding outpost in the state here. As this IBA lies in the path of a major spring migrant route for songbirds, windbreaks can host hundreds of vireos, thrushes and warblers during April and May. Fields that receive effluent from local water treatment facilities can support hundreds of White-faced Ibis and shorebirds, and these fields support a group of around 200 Long-billed Curlews in fall and winter.”

9-C

Sensitive species of birds in the Antelope Valley include White-faced Ibis, Redhead, Northern Harrier, Ferruginous Hawk, Swainson's Hawk, (State Threatened), Prairie Falcon, Western Snowy Plover, Mountain Plover, Long-billed Curlew, Burrowing Owl, Short-eared Owl, Long-eared Owl, Loggerhead Shrike, Le Conte's Thrasher, Yellow Warbler, Yellow-breasted Chat, Tricolored Blackbird (State Threatened), and Yellow-headed Blackbird.

1. Swainson's hawk

9-D

¹ <https://www.audubon.org/important-bird-areas>

² <http://www.birdlife.org>

Comment Letter No. 9: National Audubon Society

We thank the Lead Agency for the thorough data and analysis provided by project biologists on the Antelope Valley population of Swainson's hawk.

Audubon has identified Swainson's Hawk as a priority species for conservation in California and together with its partner Defenders has been urging actions to conserve the Swainson's Hawk in providing comments on solar projects in the Antelope Valley and Kern County since 2012.

To promote the mutually beneficial establishment of the AVEP SOLAR Project, a renewable energy solar and battery storage system in Kern County, while providing support and funding for conservation of the Antelope Valley region Swainson's Hawk population, Audubon and Kern Audubon Society has entered into an agreement with Rabbitbrush Solar, LLC and Chaparral Solar, LLC (AVEP Parties) that provides a contribution to a conservation fund for Swainson's Hawk in the Antelope Valley. This collaboration is voluntary.

The collaboration will have multiple benefits including:

- Informing a conservation strategy for Swainson's Hawk in the Antelope Valley.
- Contributing to a Swainson's Hawk Conservation Fund to implement conservation actions recommended by the conservation strategy.

We appreciate the collaboration and contribution made by the AVEP Parties and will continue to support an Antelope Valley where clean energy can be developed in a responsible way and where Swainson's Hawks and other wildlife can survive and thrive.

Sincerely,



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

9-D
cont.

Response to Comment Letter 9: National Audubon Society (February 25, 2021)

- 9-A:** The comment indicates that the comment letter is on behalf of the National Audubon Society and provides a brief description of the organization. The County acknowledges receipt of the comment letter by this organization.
- 9-B:** The comment summarizes the location and provides a high-level description of the proposed AVEP Solar Project. The comment provides a very brief summary of the project and its location which are described in more detail in the Chapter 3, *Project Description*, of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 9-C:** The comment explains that the Antelope Valley is recognized by the National Audubon Society as a Globally Important Bird Area and provides a description of that program and the rationale for the Antelope Valley's recognition which includes the presence of several sensitive birds, high concentrations of shorebirds in migration, and numerous waterfowl. The comment lists several sensitive species of birds in the area and provides an excerpt from the Important Bird Areas report relevant to the area.

The County acknowledges the National Audubon Society's recognition of the area. Section 4.4, *Biological Resources*, of the Draft EIR, describes the project site and surrounding area and the presence of sensitive bird species. The comment has been noted for the record and revisions to the Draft are not necessary. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 9-D:** The comment thanks the County for its data and analysis of Swainson's hawk and describes a voluntary collaboration between Audubon, and the project applicant, Rabbitbrush Solar, LLC and Chaparral Solar, LLC, to conduct further research on the Swainson's hawk and to contribute to a conservation fund. The County acknowledges the appreciation. The data and analysis referenced by the commenter can be found in the Section 4.4, *Biological Resources*, and Appendix E, *Biological Reports*, of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

Comment Letter No. 10: Antelope Valley-East Kern Water Agency

Randall Cates

From: Ben Melendez <bmelendez@avek.org>
Sent: Friday, February 26, 2021 4:22 PM
To: Randall Cates
Subject: Comments on Draft Environmental Impact Report for AVEP Solar Project

CAUTION: This email originated from outside of the organization. Do not click links, open attachments, or provide information unless you recognize the sender and know the content is safe.

Hi Randall,

Thank you for the opportunity to comment on this project. We have a few comments for the DEIR,

In the report it is mentioned that during the construction, operational, and decommissioning phases of the proposed project, water for site preparation and dust suppression will be supplied from one or more of the following options:

1. Potential and/or existing well(s) on each individual facility site and/or well(s) shared by one or more of the three facilities.
2. Existing well(s) on the Willow Springs Solar Project site. If water is supplied from the Willow Springs Project site it will be piped via pipeline(s) or trucked.
3. A potential well drilled on the Willow Springs Solar Project site, APN 359-031-57.
4. Trucked Antelope Valley-East Kern Water Agency (AVEK) water collected at one of the nearby locations owned by AVEK.

Since AVEK is listed as a possible source of water, I wanted to clarify that we are a Wholesaler and unfortunately we don't provide the kind of service you are counting on us in the case you decide to truck water. I would refer you to Rosamond CSD for this type of service.

In addition to this comment, we want to reiterate the owner of this project the need to contact AVEK as soon as possible to discuss any easement agreement that might be needed near your Tumbleweed Site for crossing any or all of our parcels APNs 359-183-11, 359-031-38, 359-031-35, 359-031-29, 359-031-30, 359-031-37, 359-031-36, 359-031-22 where a 36" CML&C underground pipe runs along Gaskell Rd between 120th Street West and 100th Street West, and to discuss the need of a corrosion assessment to prevent any future damage to our pipe.

Any questions or concerns can be directed to me via email bmelendez@avek.org or by letter to the address 6500 W Ave N, Palmdale CA 93551.

Thank you for your attention to this matter,

Benjamin Melendez | Engineering Technician
Antelope Valley-East Kern Water Agency
AVEK.ORG

10-A

10-B

10-C

Response to Comment Letter 10: Antelope Valley-East Kern Water Agency (February 26, 2021)

- 10-A:** This is an introductory comment thanking Kern County for the opportunity to comment on the Draft EIR. The County acknowledges receipt of the Antelope Valley-East Kern Water Agency (AVEK) comment letter and detailed responses to each comment are provided below
- 10-B:** The commenter clarifies that AVEK is a water wholesaler and does not provide water services for the project. In response to this comment, descriptions of project water supply options in the Draft EIR have been revised as follows:

Section 3, Project Description, Pages 3-38 and 3-40;

1. Potential and/or existing well(s) on each individual facility site and/or well(s) which may be shared by the two facilities.
2. Existing well(s) on the Willow Springs Solar Project site. If water is supplied from the Willow Springs Project site, it will be piped via temporary construction pipeline(s) or trucked.
3. Trucked ~~Antelope Valley-East Kern Water Agency (AVEK)~~Mojave Public Utility District water collected at one of the nearby locations owned by ~~AVEK~~Mojave Public Utility District.

Section 4.10, Hydrology and Water Quality, Pages 4.10-18, and 4.10-22:

The Chaparral and Rabbitbrush Solar Facilities are primarily located on undeveloped lands (with the exception of two residences and residential accessory structures) that currently do not have a water demand. Construction of the project is anticipated to use approximately 300 AF of water from each of the two project sites for a total of 600 AF over the construction period of approximately 12 months, and the project's operational water requirements is expected to be approximately 20 AFY. Water supply needed for both construction and operation is expected to be either from new and/or existing wells on each individual project site, existing wells on the Willow Springs Solar project site, or from water trucked from the ~~AVEK~~Mojave Public Utility District. According to the Water Supply Assessment prepared for the project, groundwater rights were allocated by the Antelope Valley Watermaster and the resources are sufficient to meet the project demands. However, the Basin is in a designated state of overdraft. Per Mitigation Measure MM 4.10-1, the project proponent would be required to comply with any restrictions that might result from the Watermaster's oversight of the basin and compliance with the Basin Adjudication Judgement.

Section 4.11, Land Use and Planning, Table 4.11-3, Pages 4.11.84-85

TABLE 4.11-3: CONSISTENCY ANALYSIS WITH WILLOW SPRINGS SPECIFIC PLAN FOR LAND USE

Goals and Policies	Consistency Determination	Project Consistency
		Water Agency (AVEK <u>Mojave Public Utility District</u>) water collected at one of the nearby locations owned by AVEK <u>Mojave Public Utility District</u> .

Section 4.17, Utilities and Service Systems, Pages 4.17-14, 4.17-16, and 4.17-19

The majority of water use for the project would occur during the initial 12 to 24-month construction phase. Construction activities for the proposed project are anticipated to require approximately 600 acre-feet of water. The water supply for the project during construction would be supplied from one or more of the following options: 1) potential and/or existing well(s) on each individual facility site and/or well(s) which may be shared by the two facilities; 2) existing well(s) on the Willow Springs Solar project site. If water is supplied from the Willow Springs project site, it will be piped via temporary construction pipeline(s) or trucked; and 3) Trucked ~~Antelope Valley East Kern Water Agency (AVEK)~~ Mojave Public Utility District water collected at one of the nearby locations owned by ~~AVEK-Mojave Public Utility District~~. As discussed in the WSA (see Appendix L), the total water available through offsite water rights acquired is expected to be 4,123 acre-feet in 2020, well above the construction water requirements for construction of the project. Therefore, construction of the project would not require or result in the relocation or construction of new or expanded water facilities, the construction or relocation of which could cause significant environmental effects. Impacts would be less than significant.

- 10-C:** The commenter is expressing concerned for the protection of their underground 36-inch CML&C Transmission Pipeline as it crosses the Tumbleweed Facility on Gaskell Road. They request to be contacted by the project proponent in order to discuss an easement agreement to cross any of their eight parcels on the north side of Gaskell Road and to discuss a corrosion assessment for the pipe. As noted in Chapter 3, *Project Description*, of the Draft EIR, the Tumbleweed facility has been removed from the AVEP project and the corresponding discretionary land use applications for that facility have been withdrawn. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

Comment Letter No. 11: Los Angeles Department of Water and Power (LADWP)



CUSTOMERS FIRST

Eric Garcetti, Mayor

Board of Commissioners
Cynthia McClain-Hill, President

Susana Reyes, Vice President

Jill Banks Barad

Mia Lehrer

Nicole Neeman Brady

Susan A. Rodriguez, Secretary

Martin L. Adams, General Manager and Chief Engineer

March 5, 2021

Mr. Randall Cates
Kern County Planning and Natural Resources Department
2700 "M" Street, Suite 100
Bakersfield, CA 93301

Dear Mr. Cates:

Subject: AVEP Solar Project by Chaparral Solar, LLC and Rabbitbrush Solar, LLC by First Solar (PP18141)

The Los Angeles Department of Water and Power (LADWP) has reviewed the Kern County Planning Commission's Notice of Public Hearing requesting comments for a transmission line crossing proposed by AVEP Solar Project by Chaparral Solar, LLC and Rabbitbrush Solar, LLC by First Solar (AVEP) for their two photovoltaic power generating facilities collection lines. For reference, file number: SPA #1, Map #231-18; ZCC #3, Map #231-18; CUP #1, Map #231-18; SPA #2, Map #231-18; SPA #25, Map #232; SPA #27, Map #232; ZCC #40, Map #232; ZCC #41, Map #232; CUP #33, Map #232; CUP #34, Map #232; CUP #35, Map #232; CUP #36, Map #232; SPA #26, Map #232; SPA #28, Map #232.

11-A

LADWP has determined additional information is required and is asking the Kern County Planning and Natural Resources Department to address the following comments and conditions:

Comments

1. AVEP referenced herein shall pertain to its employees, agents, consultants, contractors, officers, patrons, invitees, or any other of AVEP affiliated entities.
2. The information provided to date is inadequate for properly reviewing the proposed project. LADWP therefore reserves the right to comment until more detailed information is provided regarding the proposed transmission line crossing. The more detailed information shall include dimensioned plans and profile views of all existing and proposed improvements, clearances of all improvements from the LADWP towers, grading and utility plans illustrating impacts to the LADWP Transmission Line Right of Way (TLRW), and property lines. The plans shall also include APNs, state plane coordinates, or use the Public Land Survey System to locate the improvements impacting LADWP's TLRW.

11-B

11-C

Comment Letter No. 11: Los Angeles Department of Water and Power (LADWP)

Mr. Randall Cates

Page 2

March 5, 2021

3. Standard Terms and Conditions of Real Estate Group's license form, including latest Risk Management liability and insurance clauses shall apply due to the crossing request on LADWP fee owned property. Please email LADWP's Real Estate Services at RE.Office@ladwp.com for any future real property requests.

11-D

4. Submit a System Impact Study for LADWP's review. If you have any questions regarding this study, please contact Mr. Faranak Sarbaz at (213)367-1265.

11-E

Conditions

1. AVEP shall acknowledge that the LADWP TLRW is an integral component of the transmission line system which provides electric power to the City of Los Angeles and other local communities. Their use is under the jurisdiction of the North American Electric Reliability Corporation (NERC), an organization of the Federal Energy Regulatory Commission (FERC). Safety and protection of critical facilities are primary factors used to evaluate secondary land use proposals. The rights of way serve as platforms for access, construction, maintenance, facility expansion, and emergency operations. Therefore, the proposed use may from time to time be subject to temporary disruption caused by such operations.

11-F

2. No structures, improvements, or construction activities of any kind whatsoever will be allowed within the LADWP TLRW without written approval of LADWP.

11-G

3. No objects, decorations, modifications and or equipment shall be placed on the LADWP transmission towers without prior approval of the LADWP.

11-H

4. AVEP shall be responsible for the maintenance of the project area and shall keep the area in a neat and clean condition within the LADWP TLRW.

5. An area of at least 100 feet around the base of each transmission tower must remain open and unobstructed for necessary maintenance.

11-I

6. No equipment shall be allowed to set up directly under the LADWP transmission lines.

7. All ground elevations are to remain unchanged from existing conditions after construction associated with AVEP's proposed improvements is completed. Cut and fill slopes inside the LADWP TLRW steeper than two horizontal to one vertical require retaining structures or geotechnical report approval.

Comment Letter No. 11: Los Angeles Department of Water and Power (LADWP)

Mr. Randall Cates

Page 3

March 5, 2021

8. Note: Grading activity resulting in a vertical clearance between the ground and the transmission line conductor elevation less than 35-feet or as noted in the California Public Utilities Commission (CPUC) General Order No. 95 within the LADWP TLRW is unacceptable.
9. No equipment over 14-feet high shall be used near the LADWP transmission lines without written permission of the LADWP. Equipment higher than 14-feet will require submittal of a Conductor Survey to the LADWP Overhead Transmission Engineering Group to ensure clearances meet the California Public
10. CPUC General Order No. 95. Conductor Clearances will be subject to review and approval by the LADWP Overhead Transmission Engineering Group. See the LADWP Conductor Survey Instructions enclosed.
11. California Code of Regulations, Title 8, Section 2700 defines "qualified electrical workers" as "a qualified person who by reason of a minimum of two years of training and experience with high-voltage circuits and equipment and who has demonstrated by performance familiarity with the work to be performed and the hazards involved." At all times during installation and/or maintenance of any improvement authorized within the LADWP TLRW, AVEP shall have at least one qualified electrical worker on site to observe and ensure the said work complies with California Occupational Safety and Health Administration (Cal-OSHA) safety protocols.
12. A permanent, unobstructed 20-foot wide roadway, accessible at all times by the LADWP maintenance personnel, shall be provided and maintained. The roadway must remain open and unobstructed, excluded from any watering, and kept as dry as possible at all times. See Access Road Design Criteria enclosed.
13. Utility agencies within the proposed excavations sites shall be notified of impending work. AVEP shall be responsible for coordinating the relocation of utilities, if any, within the project boundaries. Before commencing any excavations, contact Underground Service Alert (a.k.a. Dig Alert).
14. Additional conditions may be required following review of final detailed site plans, grading/draining plans, etc.
15. Condition Nos 1-7, 9, 11A, 12-16, 17C-23A, 25, 29, 31A of the Standard Conditions for Construction shall apply. See enclosed.

11-I
cont.

Comment Letter No. 11: Los Angeles Department of Water and Power (LADWP)

Mr. Randall Cates
Page 4
March 5, 2021

This reply shall in no way be construed as an approval of this project.

11-J

If you have any questions or comments regarding this transmittal, please contact Ms. Nadia Parker, of my staff, at (213) 367-1745 or email at nadia.parker@ladwp.com or myself at (213) 367-0285 or email at Charles.holloway@ladwp.com.

Sincerely,

Nadia Parker Digitally signed by Nadia Parker
Date: 2021.03.05 17:00:52 -08'00'

Charles C. Holloway
Manager of Environmental Planning and Assessment

NP:gn
Enclosures
Conductor Survey Instructions
Access Road Design Criteria
Standard Conditions for Construction
c/enc: Mr. Faranak Sarbaz
Ms. Nadia Parker

**CONDUCTOR SURVEY
DEPARTMENT OF WATER AND POWER
OVERHEAD TRANSMISSION ENGINEERING**

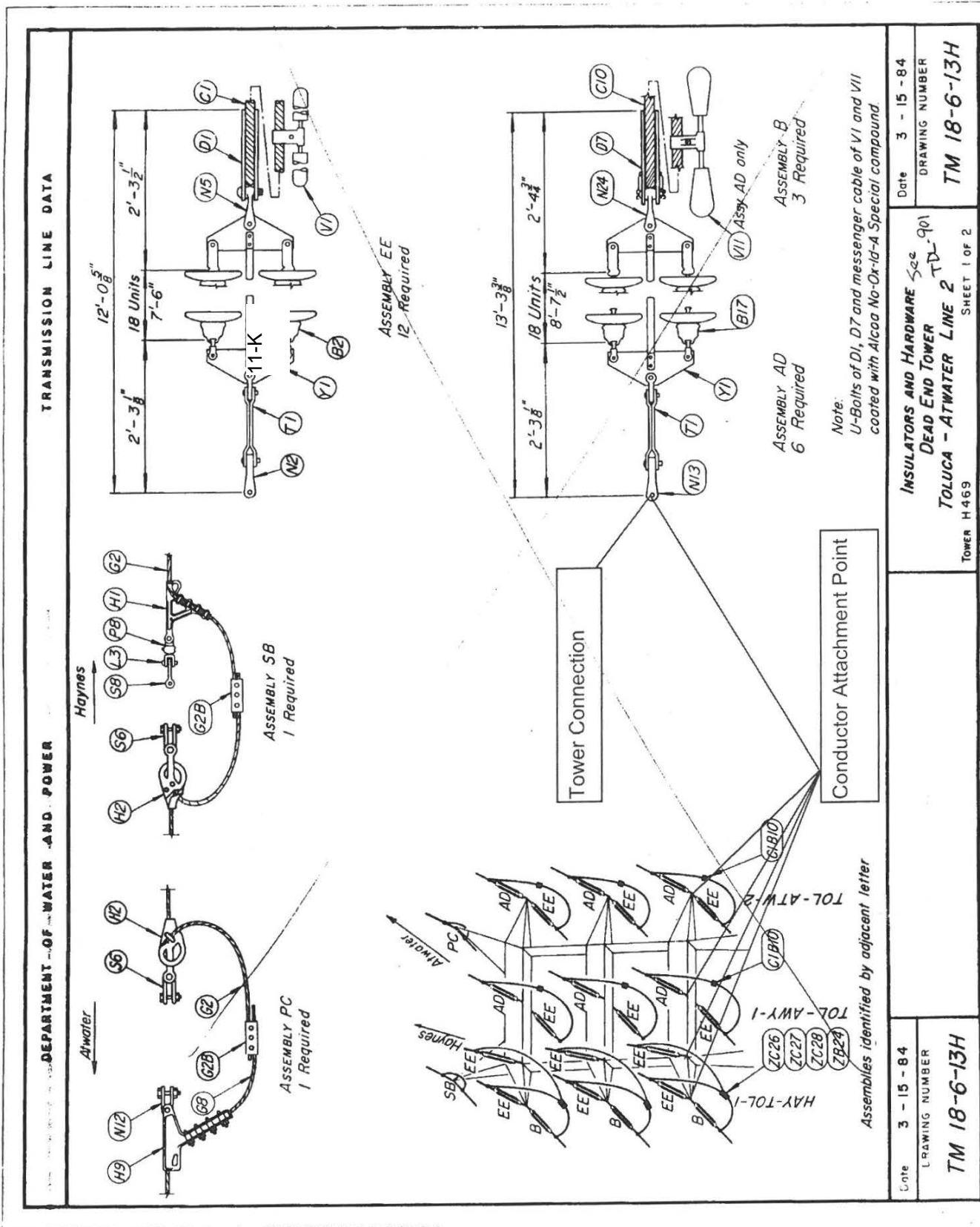
Please perform a survey of each Department transmission line affected by the project. For each span (the section of wire between two (2) towers) provide the following information:

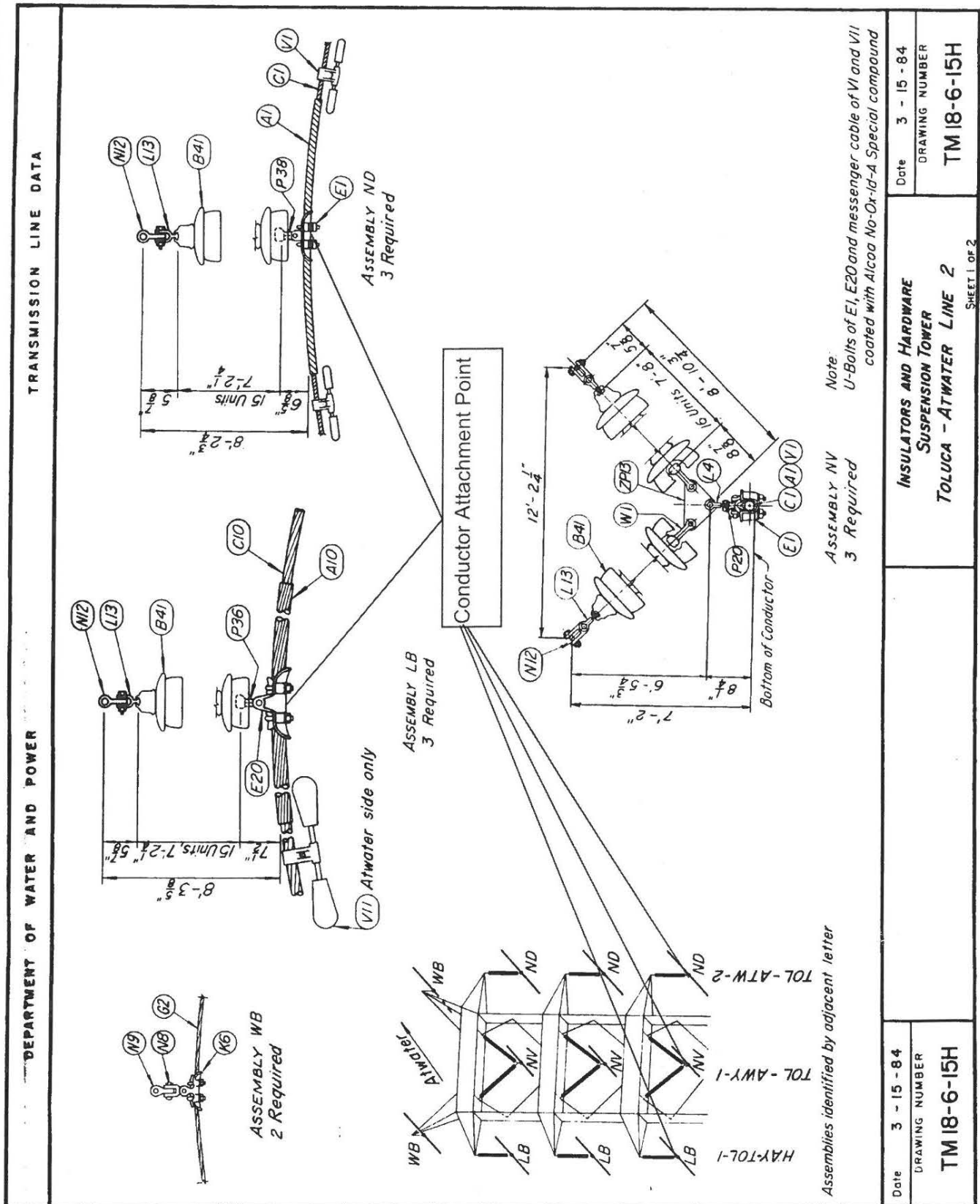
1. The tower numbers of the Department transmission lines related to the span. The tower number is located near ground level on at least one (1) leg of each tower.
2. Survey the top-of-concrete of each footing of each tower related to this survey. For example, a survey involving one (1) span would involve two (2) towers, each with four (4) footings, for a total of eight (8) top-of-concrete shots.
3. Survey at least eight (8) points along the span – the two (2) points where the insulator attaches to the tower, the two (2) points where the wire attaches to the insulator, and four (4) additional points along the wire (preferred spacing of 200 – 300 feet). See attached Conductor Attachments Points for additional information. Include additional points where special features of the proposed improvements cross the transmission line (such as high points, street lights, signs, etc.). For each point provide the following information:
 - a. The northing and easting coordinates and elevations of conductor and ground points
 - b. The elevation of the wire
 - c. The existing ground coordinates and elevation
 - d. The proposed ground elevation
 - e. Date and Time
 - f. Temperature
 - g. Sunlight (sunny, partly cloudy, or cloudy)
 - h. Approximate wind speed

Important: All eight (8) wire shots on each individual span shall be completed within one (1) hour after the first wire shot is made. Failure to comply with this requirement will render data useless.

* See attached Data Sheet for sample of submittal document.

11-K





LOS ANGELES DEPARTMENT OF WATER AND POWER
TRANSMISSION LINE CONDUCTOR CLEARANCE SURVEY
DATA SHEET

TRANSMISSION LINE RAW:

 DESCRIPTION (TWR#, FOOTING, COND ATTACHMENT POINT, CONDUCTOR, GROUND, ETC.) |[illegible]

11-K
cont.

ACCESS ROAD DESIGN CRITERIA

1. When grading activity affects the Transmission Line access roads, the developer shall replace the affected access roads using the following access road design criteria. Typical Road Sections are illustrated in Attachment.
2. The access road right-of-way width shall be 50 feet minimum.
3. The access road drivable width shall be 20 feet minimum, and increased on curves by a distance equal to 400 divided by the radius of curve. Additional width on either side of the road shall be provided for berms and ditches, as detailed in the attached Typical Road Sections.
4. The minimum centerline radius of curves shall be 50 feet.
5. The vertical alignment grades shall be limited to 10 percent or paved at a maximum of 15 percent.
6. Roads entirely located on fills or with cross sections showing more than 30 percent fill along the drivable width of the road require paving.
7. Intersections or driveways shall have a minimum sight distance of 300 feet in either direction along the public street.
8. The developer shall provide a commercial driveway at locations where the replaced access roads terminate at, or cross public roads.
9. The developer shall provide lockable gates on LADWP property or easement at locations where access roads terminate or cross public roads.

11-K
cont.

A long vertical double-headed arrow, consisting of two parallel vertical lines with arrowheads at both the top and bottom ends.

3. WHERE SOLID ROCK IS ENCOUNTERED THE 4" CROWN AND, OR SIDE DITCHES MAY BE ELIMINATED WHERE DIRECTED BY THE ENGINEER.

STANDARD CONDITIONS FOR CONSTRUCTION

1. Energized transmission lines can produce electrical effects including, but not limited to, induced voltages and currents in persons and objects. Licensee hereby acknowledges a duty to conduct activities in such manner that will not expose persons to injury or property to damage from such effects.
2. The Los Angeles Department of Water and Power (LADWP) personnel shall have access to the right of way at all times.
3. Unauthorized parking of vehicles or equipment shall not be allowed on the right of way at any time.
4. Unauthorized storage of equipment or material shall not be allowed on the right of way at any time.
5. Fueling of vehicles or equipment shall not be allowed on the right of way at any time.
6. Patrol roads and/or the ground surfaces of the right of way shall be restored by the Licensee to original conditions, or better.
7. All trash, debris, waste, and excess earth shall be removed from the right of way upon completion of the project, or the LADWP may do so at the sole risk and expense of the Licensee.
- ~~8. All cut and fill slopes within the right of way shall contain adequate berms, benches, and interceptor terraces. Revegetation measures shall also be provided for dust and erosion control protection of the right of way.~~
9. All paving, driveways, bridges, crossings, and substructures located within the right of way shall be designed to withstand the American Association of State Highway and Transportation Officials' vehicular loading H20-44 or HL-93. The design shall also comply with applicable design standards.
- ~~10. The location of underground pipelines and conduits shall be marked at all points where they cross the boundaries of the right of way and at all locations where they change direction within the right of way. The markings shall be visible and identifiable metal post markers for underground pipelines. Utility markers flush with surface may be used on pavement.~~
- 11A. General Grounding Condition

All aboveground metal structures including, but not limited to, pipes, drainage devices, fences, and bridge structures located within or adjoining the right of way shall be properly grounded, and shall be insulated from any fencing or other conductive materials located outside of the right of way. For safety of personnel and equipment, all equipment and structures shall be grounded in accordance with State of California Code of Regulations, Title 8, Section 2941, and National Electric Code, Article 250.

11-K
cont.

Comment Letter No. 11: Los Angeles Department of Water and Power (LADWP)

11B. ~~Grounding Condition for Cellular Facilities on Towers~~

~~All aboveground metal structures including, but not limited to, pipes, drainage devices, fences, and bridge structures located within or adjoining the right of way shall be properly grounded, and shall be insulated from any fencing or other conductive materials located outside of the right of way. For safety of personnel and equipment, all equipment and structures shall be grounded in accordance with American National Standards Institute of Electrical and Electronics Engineers Standard 487 latest edition, IEEE Guide for Safety in AC Substation Grounding.~~

12. Licensee shall neither hold the LADWP liable for nor seek indemnity from the LADWP for any damage to the Licensee's project due to future construction or reconstruction by the LADWP within the right of way.
13. Fires and burning of materials is not allowed on the right of way.
14. Licensee shall control dust by dust-abatement procedures approved by the LADWP, such as the application of a dust palliative or water.
15. The right of way contains high-voltage electrical conductors; therefore, the Licensee shall utilize only such equipment, material, and construction techniques that are permitted under applicable safety ordinances and statutes, including the following: State of California Code of Regulations, Title 8, Industrial Relations, Chapter 4, Division of Industrial Safety, Subchapter 5, Electrical Safety Orders; and California Public Utilities Commission, General Order No. 95, Rules for Overhead Electric Line Construction.
16. Licensee is hereby notified that grounding wires may be buried in the right of way; therefore, the Licensee shall notify the LADWP's Transmission Construction and Maintenance Business Group at (818) 771-5014, or (818) 771-5076, at least 48 hours prior to the start of any construction activities in the right of way.

17A. ~~Vehicle Parking~~

~~An area within 50 feet around the base of each tower must remain open and unobstructed for maintenance and emergencies, including periodic washing of insulators by high-pressure water spray. Clearances of 100 feet may be required under circumstances where access is limited.~~

17B. ~~Trucking Operations and Storage Operations~~

~~An area within 50 feet around the base of each tower must remain open and unobstructed for maintenance and emergencies, including periodic washing of insulators by high-pressure water spray. Clearances of 100 feet may be required under circumstances where access is limited.~~

17C. ~~Permanent Structures~~

~~An area within 100 feet on all sides of each tower shall remain open and unobstructed for maintenance and emergencies, including periodic washing of insulators by high-pressure water spray.~~

18. Detailed plans for any grading, paving, and construction work within the right of way

11-K
cont.

Comment Letter No. 11: Los Angeles Department of Water and Power (LADWP)

shall be submitted for approval to the Real Estate Services, 221 N. Figueroa St., Suite 1600, Los Angeles, California 90012, no later than 45 days prior to the start of any grading, paving, or construction work. Notwithstanding any other notices given by Licensee required herein, Licensee shall notify the LADWP's Transmission Construction and Maintenance Business Group at (818) 771-5014, or (818) 771-5076, no earlier than 14 days and no later than two days prior to the start of any grading, paving, or construction work.

19. "As Constructed" drawings showing all plans and profiles of the Licensee's project shall be furnished to the Real Estate Services, 221 N. Figueroa St., Suite 1600, Los Angeles, California 90012, within five days after completion of Licensee's project.
20. In the event that construction within the right of way is determined upon inspection by the LADWP to be unsafe or hazardous to the LADWP facilities, the LADWP may assign a line patrol mechanic at the Licensee's expense.
21. If the LADWP determines at any time during construction that the Licensee's efforts are hazardous or detrimental to the LADWP facilities, the LADWP shall have the right to immediately terminate said construction.
- 22A. All concentrated surface water which is draining away from the permitted activity shall be directed to an approved storm drain system where accessible, or otherwise restored to sheet flow before being released within or from the right of way.
- 22B. Drainage from the paved portions of the right of way shall not enter the unpaved area under the towers. Drainage diversions such as curbs shall be used on three sides of each tower. The open side of each tower shall be the lowest elevation side to allow storm water which falls under the tower to drain. The area under the towers shall be manually graded to sheet flow out from under the towers.
- 22C. Ponding or flooding conditions within the right of way shall not be allowed, especially around the transmission towers. All drainage shall flow off of the right of way.
- 22D. Licensee shall comply with all Los Angeles County Municipal Storm Water Permit and Standard Urban Storm Water Mitigation Plan requirements.
- 23A. Fills, including backfills, shall be in horizontal, uniform layers not to exceed six inches in thickness before compaction, then compacted to 90 percent relative compaction in accordance with the American Society for Testing and Materials D1557.
- ~~23B. The top two inches to six inches of the concrete footings of the towers shall remain exposed and not covered over by any fill from grading operations.~~
- ~~23C. Licensee shall provide the LADWP with one copy each of the compaction report and a Certificate of Compacted Fill, for clean fill compaction within the LADWP's right of way in accordance with the American Society for Testing and Materials D1557, approved by a geotechnical engineer licensed in the State of California.~~
- ~~24. A surety bond in the amount to be determined by the LADWP shall be supplied by the Licensee to assure restoration of the LADWP's right of way and facilities, and compliance with all conditions herein.~~
25. The Licensee shall obtain and pay for all permits and licenses required for performance of the work and shall comply with all laws, ordinances, rules, orders, or regulations

11-K
cont.

Comment Letter No. 11: Los Angeles Department of Water and Power (LADWP)

including, but not limited to, those of any agencies, departments, districts, or commissions of the State, County, or City having jurisdiction thereover.

26. ~~The term "construction", as used herein, refers only to that construction incidental to the maintenance or repair of the existing (requested facility) and shall not be construed to mean permission to construct any additional (requested facility).~~
27. ~~Signs shall not exceed four feet wide by eight feet long, shall not exceed a height of 12 feet, shall be constructed of noncombustible materials, and shall be installed manually at, and parallel with, the right-of-way boundary.~~
28. ~~Remote-controlled gates, or lock boxes containing the device or key for opening the remote-controlled gates, shall be capable of being interlocked with an LADWP padlock to allow access to the right of way by the LADWP. Licensee shall contact LADWP's Transmission Construction and Maintenance Business Group at (818) 771-5014, or (818) 771-5076, to coordinate the installation of an LADWP padlock.~~
29. Licensee's cathodic protection system, if any, shall have a design that does not cause corrosion to LADWP facilities. A detailed design of the Licensee's cathodic protection system shall be submitted for approval to the Real Estate Services, 221 N. Figueroa St., Suite 1600, Los Angeles, California 90012, no later than 45 days prior to the start of construction or installation of the cathodic protection system.
- 30A. ~~Licensee shall install K-rails at a distance of ten feet from each side of the tower base for protection of towers. A distance of five feet from the tower base may be acceptable in locations where the patrol roads would be obstructed.~~
- 30B. ~~Licensee shall install removable pipe bollards, spaced four feet apart, and at a distance of ten feet from each side of the tower base for protection of towers. A distance of five feet from the tower base may be acceptable in locations where the patrol roads would be obstructed.~~
- 31A Licensee shall provide and maintain a minimum 20-foot wide transition ramp for the patrol roads from the pavement to the ground surface. The ramp shall not exceed a slope of ten percent.
- 31B. ~~Licensee shall provide and maintain a minimum 20-foot wide driveway and gate at all locations where the (road/street) crosses the LADWP's patrol roads. The designed gates must be capable of being interlocked with an LADWP padlock to allow access to the right of way by the LADWP.~~
32. ~~Licensee shall post a sign on the entrance gate to the right of way, or in a visible location inside the entrance gate, identifying the contact person's name and telephone number for the prompt moving of (vehicles/trucks/trailers/containers) at times of LADWP maintenance or emergency activities, or any other event that (vehicles/trucks/trailers/containers) must be moved. In emergency conditions, the LADWP reserves all rights at any time to move or tow (vehicles/trucks/trailers/containers) out of specific areas for any transmission operation or maintenance purposes.~~

11-K
cont.

Response to Comment Letter 11: Los Angeles Department of Water and Power (LADWP) (March 5, 2021)

- 11-A:** This is an introductory comment from Los Angeles Department of Water and Power (LADWP) acknowledging LADWP's review of the Kern County Planning Commission's Notice of Public Hearing requesting comments for a transmission line crossing proposed by the project. The commenter requests additional information be provided by Kern County Planning and Natural Resources Department. The County acknowledges receipt of the LADWP comment letter and detailed responses to each subsequent comment are provided below.
- 11-B:** The commenter clarifies that the AVEP references within the LADWP comment letter shall pertain to its employees, agents, consultants, contractors, officers, patrons, invitees, or any other of AVEP affiliated entities. The comment has been noted for the record and revisions to the Draft EIR are not necessary.
- 11-C:** The commenter asserts that the information provided to date is inadequate for properly reviewing the proposed project, and states that LADWP reserves the right to comment until more detailed information is provided regarding the proposed transmission line crossing, including detailed grading and utility plans, profile views, tower clearances, and APNs or other similar means by which to locate the improvements involving impacts to the LADWP Transmission Line Right of Way (TLRW).

The County acknowledges that this requested information would be required for any AVEP-related improvements involving the LADWP TLRW. However, the County notes that the LADWP TLRW in question is either located on private property owned in fee by LADWP or within the boundary of the Kern County, California Rosamond Boulevard public road right of way, and as required by property ownership and/or easement encroachment legal requirements, in the event that any physical entrance into, including any proposed physical improvements (above- or below ground) of any portion of this LADWP fee owned property or TLRW easements is determined to be necessary, AVEP will comply with all applicable laws and LADWP requirements. Regarding the request for APNs to locate improvements impacting the LADWP TLRW, please refer to the Draft EIR Chapter 1, *Executive Summary*, and Chapter 2, *Project Description* for a listing of APNs that the project is seeking a CEQA determination for and various land use entitlements actions from the County. As an additional response to this comment 11-C, the Draft EIR has been revised as follows to clarify and acknowledge the standing legal requirements to obtain all necessary permits and approvals required for the AVEP project to enter into or encroach in any way onto the privately-owned LADWP TLRW:

Chapter 1, Section 1.2.1, Executive Summary, Page 1-6;

- Eastern Kern Air Pollution Control District (EKAPCD)
 - Authority to Construct
 - Fugitive Dust Control Plan
 - Permit to Operate
 - Any other permits as required
- Los Angeles Department of Water and Power (LADWP) – all LADWP-required permits and approvals for entry or encroachment into LADWP property or easements

Other applicable permits or approvals from responsible agencies may be required for the project.

Chapter 2, Introduction, Section 2.6.3, Page 2-12:**2.6.3 Regional Local Agencies**

- Eastern Kern County Air Pollution Control District (EKAPCD)
- Kern Council of Governments (KCOG)
- Los Angeles Department of Water and Power (LADWP)

Chapter 3, Project Description, Section 3.8, Page 3-42:**Eastern Kern Air Pollution Control District (EKAPCD)**

- Fugitive Dust Control Plan
- Any other permits as required

Los Angeles Department of Water and Power (LADWP)

- All necessary permits and approvals for entry or encroachment into LADWP property or easements

Other additional permits or approvals from responsible agencies may be required for the proposed project.

- 11-D:** The commenter states that the LADWP Standard Terms and Conditions of Real Estate Group's license form, including latest Risk Management liability and insurance clauses shall apply due to the crossing request on LADWP fee owned property. The County acknowledges LADWP has specific permits and approvals required should the AVEP project involve encroachment onto the LADWP fee owned property or TLRW easements, or otherwise impact the LADWP TLRW. Please see Response to Comment 11-C above for the County's response to this comment.
- 11-E:** The commenter requests that System Impact Study be submitted for LADWP's review. The County acknowledges LADWP has specific permits and approvals required should the AVEP project involve encroachment onto the LADWP fee owned property or TLRW easements, or otherwise impact the LADWP TLRW. Please see Response to Comment 11-C above for the County's response to this comment.
- 11-F:** The commenter asserts that AVEP shall acknowledge that the LADWP TLRW is an integral component of the transmission line system which provides electric power to the City of Los Angeles and other local communities. The comment states that use of LADWP's facilities is under the jurisdiction of the North American Electric Reliability Corporation (NERC), an organization of the Federal Energy Regulatory Commission (FERC), and that safety and protection of critical facilities are primary factors used to evaluate secondary land use proposals. The comment further states that the LADWP rights of way serve as platforms for access, construction, maintenance, facility expansion, and emergency operations, and that the proposed use may from time to time be subject to temporary disruption caused by such operations. The County acknowledges this comment and notes that should the AVEP project involve encroachment onto or crossing the LADWP fee owned property or TLRW easements, AVEP will comply with all applicable laws and LADWP requirements and conditions as set forth in any permits or approvals obtained from LADWP. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 11-G:** The commenter states that no structures, improvements, or construction activities of any kind whatsoever should be allowed within the LADWP TLRW without written approval of LADWP. The County acknowledges LADWP has specific permits and approvals required should the AVEP project involve encroachment onto the LADWP fee owned property or TLRW easements, or otherwise impact the LADWP TLRW. Please see Response to Comment 11-C above for the County's response to this comment.
- 11-H:** The commenter states that no objects, decorations, modifications and or equipment shall be placed on the LADWP transmission towers without prior approval of the LADWP. The County acknowledges LADWP has specific permits and approvals required should the AVEP project involve encroachment onto the LADWP fee owned property or easements, or otherwise impact the LADWP TLRW. Please see Response to Comment 11-C above for the County's response to this comment.
- 11-I:** The commenter provides an additional listing of conditions that would apply in the event that the AVEP project involves encroachment onto the LADWP fee owned property or otherwise involves impacts to the LADWP TLRW. The County acknowledges LADWP has specific permits and approvals required should the AVEP project involve encroachment onto the LADWP fee owned property or easements, or otherwise involve impacts to the LADWP TLRW. Please see Response to Comment 11-C above for the County's response to this comment. In addition, **Figure 3-14** in the Draft EIR has been revised to visually clarify that the project has been designed to meet the stated setback conditions listed in the commenters Conditions #5 and #9:
- Notations to the Chaparral figure have been added to clarify the (100-foot minimum) setbacks of project structures from the LADWP TLRW, and shows that no structures over 14 feet in height will be located within or near these setbacks.
- 11-J:** The commenter notes that the LADWP reply shall in no way be construed as an approval of this project. The County acknowledges this comment and no revision to the Draft EIR is necessary.
- 11-K:** The commenter provides several attachments, including a *Conductor Survey – Department of Water and Power Overhead Transmission Engineering, Access Road Design Criteria, and Standard Conditions for Construction*. The County acknowledges LADWP has specific permits and approvals required should the AVEP project involve encroachment onto the LADWP fee owned property or easements, or otherwise involve impacts to the LADWP TLRW. Please see Response to Comment 11-C above for the County's response to this comment.

Comment Letter No. 12: Southern California Gas (SoCalGas)



Transmission Technical
Services Department

9400 Oakdale Ave
Chatsworth, CA 91311
SC9314

March 8, 2021

Randall P. Cates
Kern County Planning & Natural Resources Dept
CatesR@kerncounty.com

Subject: **SPA 1, ZCC 3, CUP 1,
SPA 2, Map 231-18;
SPA 25, SPA 27, ZCC 40,
ZCC 41, CUP 33,
CUP 34, CUP 35, CUP 36,
SPA 26, SPA 28,
Nonsummary vacation**

DCF: **0441-21NC**

The Transmission Department of SoCalGas does not operate any facilities within your proposed improvement. However, the Distribution Department of SoCalGas may maintain and operate facilities within your project scope.

To assure no conflict with the Distribution's pipeline system, please e-mail them at:

NorthwestDistributionUtilityRequest@semprautilities.com

Best Regards,

SoCalGas Transmission Technical Services
SoCalGasTransmissionUtilityRequest@semprautilities.com

12-A

Response to Comment Letter 12: Southern California Gas (SoCalGas) (March 8, 2021)

- 12-A:** The commenter states that the Transmission Department of SoCalGas does not operate any facilities within the project site area. However, the commenter states that the Distribution Department of SoCalGas may maintain and operate facilities within the project area. The commenter requests that, to assure no conflict with the Distribution's pipeline system, that the Distribution Department be emailed for coordination. The Lead Agency contacted the Distribution Department via email to inquire about potential conflicts with the Distribution Department's pipeline system, and is awaiting a response.

Comment Letter No. 13: San Manuel Band of Mission Indians 1

Randall Cates

From: Ryan Nordness <Ryan.Nordness@sanmanuel-nsn.gov>
Sent: Wednesday, March 3, 2021 4:04 PM
To: Randall Cates
Subject: RE: Notice of Public Hearing for AVEP Solar Project by Chaparral Solar, LLC and Rabbitbrush Solar, LLC by First Solar, Kern County, California
Attachments: Mitigation Measures for Monitoring.docx

CAUTION: This email originated from outside of the organization. Do not click links, open attachments, or provide information unless you recognize the sender and know the content is safe.

Hello Randall,

Thank you for sending over the public hearing notice and the ability to review the DEIR for the AVEP Solar Project on March 1st, 2020. After reviewing the cultural resources documentation San Manuel Band of Mission Indian's cultural department concurs with the following recommendation:

APM Cultural-1: *An archaeologist should be present to monitor ground-disturbing activities that occur within 100 feet of AVEP-RA-31. If the grave or additional cultural resources are discovered, the archaeologist should have the authority to stop work and inspect the discovery. Work should only resume with approval from the archaeologist.*

13-A

However we would like to include our preferred language to be added to CRMP and other documents. I have attached the language to this email. Thank you once again for reaching out to SMBMI's cultural department, please reach out to me at your earliest convenience if you have any questions or concerns.

Ryan Nordness

CULTURAL RESOURCE ANALYST

Email: Ryan.Nordness@sanmanuel-nsn.gov

O: (909) 864-8933 x50-2022

Internal: 50-2022

M: 909-838-4053

26569 Community Center Dr Highland California 92346

SAN MANUEL
BAND OF MISSION INDIANS

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CUL-1

Archaeological Monitoring

Due to the heightened cultural sensitivity of the proposed project area, an archaeological monitor with at least 3 years of regional experience in archaeology shall be present for all ground-disturbing activities that occur within the proposed project area (which includes, but is not limited to, tree/shrub removal and planting, clearing/grubbing, grading, excavation, trenching, compaction, fence/gate removal and installation, drainage and irrigation removal and installation, hardscape installation [benches, signage, boulders, walls, seat walls, fountains, etc.], and archaeological work). A sufficient number of archaeological monitors shall be present each work day to ensure that simultaneously occurring ground disturbing activities receive thorough levels of monitoring coverage. A Monitoring and Treatment Plan that is reflective of the project mitigation ("Cultural Resources" and "Tribal Cultural Resources") shall be completed by the archaeologist and submitted to the Lead Agency for dissemination to the San Manuel Band of Mission Indians Cultural Resources Department (SMBMI). Once all parties review and approve the plan, it shall be adopted by the Lead Agency – the plan must be adopted prior to permitting for the project. Any and all findings will be subject to the protocol detailed within the Monitoring and Treatment Plan.

TCR-1

Tribal Monitoring

Due to the heightened cultural sensitivity of the proposed project area, Tribal monitors representing the San Manuel Band of Mission Indians shall be present for all ground-disturbing activities that occur within the proposed project area (which includes, but is not limited to, tree/shrub removal and planting, clearing/grubbing, grading, excavation, trenching, compaction, fence/gate removal and installation, drainage and irrigation removal and installation, hardscape installation [benches, signage, boulders, walls, seat walls, fountains, etc.], and archaeological work). A sufficient number of Tribal monitors shall be present each work day to ensure that simultaneously occurring ground disturbing activities receive thorough levels of monitoring coverage. A Monitoring and Treatment Plan that is reflective of the project mitigation ("Cultural Resources" and "Tribal Cultural Resources") shall be completed by the archaeologist, as detailed within CUL-1, and submitted to the Lead Agency for dissemination to the San Manuel Band of Mission Indians Cultural Resources Department (SMBMI). Once all parties review and agree to the plan, it shall be adopted by the Lead Agency – the plan must be adopted prior to permitting for the project. Any and all findings will be subject to the protocol detailed within the Monitoring and Treatment Plan.

TCR-1

Treatment of Cultural Resources

If a pre-contact cultural resource is discovered during archaeological presence/absence testing, the discovery shall be properly recorded and then reburied *in situ*. A research design shall be developed by

13-A
(con.)

the archaeologist that shall include a plan to evaluate the resource for significance under CEQA criteria. Representatives from the San Manuel Band of Mission Indians Cultural Resources Department (SMBMI), the archaeologist/applicant, and the Lead Agency shall confer regarding the research design, as well as any testing efforts needed to delineate the resource boundary. Following the completion of evaluation efforts, all parties shall confer regarding the archaeological significance of the resource, its potential as a Tribal Cultural Resource (TCR), avoidance (or other appropriate treatment) of the discovered resource, and the potential need for construction monitoring during project implementation. Should any significant resource and/or TCR not be a candidate for avoidance or preservation in place, and the removal of the resource(s) is necessary to mitigate impacts, the research design shall include a comprehensive discussion of sampling strategies, resource processing, analysis, and reporting protocols/obligations. Removal of any cultural resource(s) shall be conducted with the presence of a Tribal monitor representing the Tribe, unless otherwise decided by SMBMI. All plans for analysis shall be reviewed and approved by the applicant and SMBMI prior to implementation, and all removed material shall be temporarily curated on-site. It is the preference of SMBMI that removed cultural material be reburied as close to the original find location as possible. However, should reburial within/near the original find location during project implementation not be feasible, then a reburial location for future reburial shall be decided upon by SMBMI, the landowner, and the Lead Agency, and all finds shall be reburied within this location. Additionally, in this case, reburial shall not occur until all ground-disturbing activities associated with the project have been completed, all monitoring has ceased, all cataloguing and basic recordation of cultural resources have been completed, and a final monitoring report has been issued to Lead Agency, CHRIS, and SMBMI. All reburials are subject to a reburial agreement that shall be developed between the landowner and SMBMI outlining the determined reburial process/location, and shall include measures and provisions to protect the reburial area from any future impacts (vis a vis project plans, conservation/preservation easements, etc.).

Should it occur that avoidance, preservation in place, and on-site reburial are not an option for treatment, the landowner shall relinquish all ownership and rights to this material and confer with SMBMI to identify an American Association of Museums (AAM)-accredited facility within the County that can accession the materials into their permanent collections and provide for the proper care of these objects in accordance with the 1993 CA Curation Guidelines. A curation agreement with an appropriate qualified repository shall be developed between the landowner and museum that legally and physically transfers the collections and associated records to the facility. This agreement shall stipulate the payment of fees necessary for permanent curation of the collections and associated records and the obligation of the Project developer/applicant to pay for those fees.

All draft records/reports containing the significance and treatment findings and data recovery results shall be prepared by the archaeologist and submitted to the Lead Agency and SMBMI for their review and comment. After approval from all parties, the final reports and site/isolate records are to be submitted to the local CHRIS Information Center, the Lead Agency, and SMBMI.

TCR-2

Inadvertent Discoveries of Human Remains/Funerary Objects

13-A
(con.)

Comment Letter No. 13: San Manuel Band of Mission Indians 1

In the event that any human remains are discovered within the project area, ground disturbing activities shall be suspended 100 feet around the resource(s) and an Environmentally Sensitive Area (ESA) physical demarcation/barrier constructed. The on-site lead/foreman shall then immediately who shall notify SMBMI, the applicant/developer, and the Lead Agency. The Lead Agency and the applicant/developer shall then immediately contact the County Coroner regarding the discovery. If the Coroner recognizes the human remains to be those of a Native American, or has reason to believe that they are those of a Native American, the Coroner shall ensure that notification is provided to the NAHC within twenty-four (24) hours of the determination, as required by California Health and Safety Code § 7050.5 (c). The NAHC-identified Most Likely Descendant (MLD), shall be allowed, under California Public Resources Code § 5097.98 (a), to (1) inspect the site of the discovery and (2) make determinations as to how the human remains and funerary objects shall be treated and disposed of with appropriate dignity. The MLD, Lead Agency, and landowner agree to discuss in good faith what constitutes "appropriate dignity" as that term is used in the applicable statutes. The MLD shall complete its inspection and make recommendations within forty-eight (48) hours of the site visit, as required by California Public Resources Code § 5097.98.

Reburial of human remains and/or funerary objects (those artifacts associated with any human remains or funerary rites) shall be accomplished in compliance with the California Public Resources Code § 5097.98 (a) and (b). The MLD in consultation with the landowner, shall make the final discretionary determination regarding the appropriate disposition and treatment of human remains and funerary objects. All parties are aware that the MLD may wish to rebury the human remains and associated funerary objects on or near the site of their discovery, in an area that shall not be subject to future subsurface disturbances. The applicant/developer/landowner should accommodate on-site reburial in a location mutually agreed upon by the Parties.

It is understood by all Parties that unless otherwise required by law, the site of any reburial of Native American human remains or cultural artifacts shall not be disclosed and shall not be governed by public disclosure requirements of the California Public Records Act. The Coroner, parties, and Lead Agencies, will be asked to withhold public disclosure information related to such reburial, pursuant to the specific exemption set forth in California Government Code § 6254 (r).

13-A
(con.)

Response to Comment Letter 13: San Manuel Band of Mission Indians 1 (March 3, 2021)

- 13-A:** This comment letter is superseded by a follow-up letter received from the San Manuel Band of Mission Indians on March 23, 2021. See Response to Comment 14-A, below. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

Comment Letter No. 14: San Manuel Band of Mission Indians 2

Randall Cates

From: Ryan Nordness <Ryan.Nordness@sanmanuel-nsn.gov>
Sent: Monday, March 22, 2021 9:55 AM
To: Randall Cates
Cc: Terrance Smalls
Subject: RE: AVEP Solar Project by Chaparral Solar, LLC and Rabbitbrush Solar, LLC

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Hello Randall,

Thank you for the chance to review the mitigation measures. SMBMI concurs with the proposed mitigation measures. Please keep our department apprised to the approval of this project.

14-A

Ryan Nordness

CULTURAL RESOURCE ANALYST

Email: Ryan.Nordness@sanmanuel-nsn.gov

O: (909) 864-8933 x50-2022

Internal: 50-2022

M: 909-838-4053

26569 Community Center Dr Highland California 92346

SAN MANUEL
BAND OF MISSION INDIANS

From: Randall Cates <CatesR@kerncounty.com>
Sent: Thursday, March 11, 2021 9:48 AM
To: Ryan Nordness <Ryan.Nordness@sanmanuel-nsn.gov>
Cc: Terrance Smalls <smallst@kerncounty.com>
Subject: AVEP Solar Project by Chaparral Solar, LLC and Rabbitbrush Solar, LLC

Ryan,

Per our telephone conversation this morning:

Please review the proposed Cultural Resources Mitigation Measures, MM 4.5-1 through MM 4.5-5 (93rd through 99th pages in the PDF of the following PDF web link), and apprise me as to whether the San Manuel Band of Mission Indians has any questions or concerns with them:

https://psbweb.co.kern.ca.us/UtilityPages/Planning/EIRS/avep_solar/DEIR/AVEP%20Solar%20Project%20DEIR%20Vol%201%20Chapters%201-11.pdf

(For reference, I have attached a PDF containing an email from Jessica Mauck indicating she concurs with the Cultural Resources Mitigation Measures at the time (which has embedded in the PDF the Mitigation Measures she is referencing); that Cultural Resources Mitigation Measure language is nearly identical to the Cultural Resources Mitigation Measure language referenced in the above web link).

Comment Letter No. 14: San Manuel Band of Mission Indians 2

Thank you.

Randall Cates
Kern County Planning and
Natural Resources Department
2700 M Street, Suite 100, Bakersfield, CA 93301
(661)862-8612
CatesR@kerncounty.com

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Response to Comment Letter 14: San Manuel Band of Mission Indians 2 (March 23, 2021)

- 14-A:** As stated above, this comment letter supersedes the one received on March 3, 2021. The commenter states concurrence with Mitigation Measures MM 4.5-1 through MM 4.5-5 as identified in the Draft EIR and also requests that the San Manuel Band of Mission Indians be apprised to the approval of the project. The Lead Agency will furnish the San Manuel Band of Mission Indians with a copy of any approvals which may result from public hearings in conjunction with the proposed project. The comment has been noted for the record and revisions to the Draft EIR are not necessary.