

# LOCKHART SOLAR PV II PROJECT

## FINAL ENVIRONMENTAL IMPACT REPORT

SCH# 2021070070

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*Lead Agency:*



San Bernardino County Land Use Services Department  
15900 Smoke Tree  
Hesperia, CA 92345-0187  
Contact: Magda Gonzalez, MPA

*Prepared by:*

**Kimley»Horn**

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(714) 939-1030

APRIL 2022





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## **1.0 INTRODUCTION TO THE ENVIRONMENTAL ANALYSIS**

### **1.1 Purpose of the Final Environmental Impact Report**

The County of San Bernardino (County), as the Lead Agency under the California Environmental Quality Act (CEQA), has prepared this Final Environmental Impact Report (Final EIR) for the Lockhart Solar PV II Project (Project). This document, in conjunction with the Draft Environmental Impact Report (Draft EIR), comprise the Final EIR.

As described in CEQA Guidelines Sections 15088, 15089, 15090 and 15132, the Lead Agency must evaluate comments received on the Draft EIR and prepare written responses and consider the information contained in a Final EIR before approving a project. Pursuant to CEQA Guidelines Section 15132, a Final EIR consists of: (a) the Draft EIR or a revision of the Draft; (b) comments and recommendations received on the Draft EIR either verbatim or in summary; (c) a list of persons, organizations, and public agencies commenting on the Draft EIR; (d) the responses of the Lead Agency to significant environmental points raised in the review and consultation process; and (e) any other information added by the Lead Agency.

### **1.2 Project Summary**

Lockhart Solar PV II, LLC (Applicant) proposes a zoning amendment to change the current zoning designation to Resource Conservation (RC) from Rural Living (RL), a Lot Line Adjustment (LLA) to consolidate parcels within the Project Site from three parcels to two parcels, as well as four (4) Conditional Use Permits (CUPs) to develop the Project, a utility scale, solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 150 megawatts (MW) of solar power and include up to 4 gigawatt hours (GWh) of energy storage capacity rate in a battery energy storage system (BESS) within an approximately 722 acre Project Site. The Project is located in unincorporated Hinkley, CA, approximately 7 miles north of the intersection of Harper Lake Road and Mojave-Barstow Highway 58, and is within the County. The Project is largely sited on land previously approved by the California Energy Commission (CEC) for development of Solar Energy Generating System (SEGS) X, a solar thermal power facility which was never fully constructed. The Project is bordered on the south by the approved Lockhart Solar I Facility and the existing SEGS VIII and IX Solar Thermal Plants. The Project would share existing operations and maintenance (O&M) facilities with the Lockhart Solar I Facility (i.e., O&M building, warehouse and employee building), water and septic systems, switchyard and electrical transmission infrastructure, and a new collector substation (approved and to be constructed) within the approximately 110-acre "Shared Facilities Area" to connect the Project to the existing transmission line which runs to the Southern California Edison (SCE)-owned Kramer Junction substation.

### **1.3 Overview of the CEQA Public Review Process for the Draft EIR**

In compliance with the CEQA Guidelines, the County, as the Lead Agency for the Project, has provided opportunities for the public to participate in the environmental review process. As described below, throughout the environmental review process, an effort was made to inform, contact and solicit input



from the public and various State, regional, and local government agencies and other interested parties on the Project.

### **Notice of Preparation**

In accordance with CEQA Guidelines Section 15082, a Notice of Preparation (NOP) was distributed to initiate the County's CEQA review process for the Project, identify and seek public input for the Project's potential environmental effects, and identify a date for the Project's public scoping meeting. The NOP was distributed on July 14, 2021 and identified a public review period for the NOP through August 17, 2021 in compliance with the State's mandatory 30-day public review period.

### **Scoping Meeting**

A virtual scoping meeting was held to discuss the Project on July 28, 2021, from 5:00 p.m. to 7:00 p.m. via Zoom. A presentation was provided, including an overview of the Project and the CEQA process. Following the presentation, participants were encouraged to provide oral or written comments to aid the County in refining the scope of issues to be addressed in the Draft EIR.

One individual from the public attended the scoping meeting. In addition, a total of four (4) written comment letters were received in response to the NOP and scoping meeting: The Native American Heritage Commission, Mojave Desert Air Quality Management District, the California Department of Fish and Wildlife, and the Southern California Association of Governments. The NOP and the comment letters received in response to the NOP and scoping meeting are provided in Appendix A of the Draft EIR.

### **Draft EIR**

In accordance with the provision of CEQA Guidelines Sections 15085(a) and 15087(a), the County, serving as the Lead Agency: (1) prepared and transmitted a Notice of Completion (NOC) to the State Clearinghouse; (2) published a Notice of Availability (NOA) of a Draft EIR which indicated that the Draft EIR was available for public review at the County's Planning Division Counter; (3) provided copies of the NOA and Draft EIR to the High Desert Government Center, San Bernardino Government Center, and San Bernardino County Library; (4) posted the NOA and the Draft EIR on the County's Planning Division website: <http://cms.sbcounty.gov/lus/Planning/Environmental/Desert.aspx>; (5) sent a NOA to all property owners within 1,300 feet of the Project Site boundary; (6) sent a NOA to the last known name and address of all organizations and individuals who previously requested such notice in writing or attended public meetings about the Project; (7) posted a copy of the NOA with the San Bernardino Sun; and (8) filed the NOA with the County Clerk. The public review period commenced on November 16, 2021 and ended on December 31, 2021 for a total of 46 days.

During the Draft EIR public review period, the County received three (3) comment letters on the Draft EIR from the San Manuel Band of Mission Indians, Lahontan Regional Water Quality Control Board, and the Natural Resources Agency. All written comments received during the public review period are presented, and responses are provided in Chapter 2, Comment Letters and Responses to Comments, of this Final EIR.

## 1.4 Organization of the Final EIR

The Final EIR is organized as follows:

- **Section 1.0, Introduction to the Environmental Analysis.** Describes the process and purpose of the Final EIR, provides a summary of the Project, summarizes the Final EIR public review process, and presents the contents of the Final EIR.
- **Section 2.0, Comment Letters and Responses to Comments.** Presents all comments received by the County during the 46-day public review period of the Draft EIR (November 16, 2021 to December 31, 2021). Also provides responses to all comments received that are related to the contents of the Draft EIR.
- **Section 3.0, Corrections and Additions to the Draft EIR.** Includes revisions to the Draft EIR that represent minor changes to the Project Description or changes or additions in response to comments received on the Draft EIR, and additional edits to provide clarification to the Draft EIR text. Changes to the Draft EIR are shown with ~~striketrough~~ text for deletions and double underline text for additions. The changes do not add significant new information that would affect the analysis or conclusions presented in the Draft EIR.
- **Section 4.0, References.** Includes a list of references cited in the Final EIR.
- **Appendices.** Contains appendices as referenced throughout the Final EIR.

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## 2.0 COMMENT LETTERS AND RESPONSES TO COMMENTS

CEQA Guidelines Section 15088(a) states that: “The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The Lead Agency shall respond to comments that were received during the noticed comment period and any extensions and may respond to late comments.” In accordance with these requirements, this chapter of the Final EIR provides responses to each of the comments on the Draft EIR received during the public comment period. **Table 2-1: Summary of Comments on the Lockhart Solar PV II Project Draft EIR**, provides a list of the comment letters received and the corresponding issues that were raised in response to the Draft EIR.

The individual letters received during the public comment period, and as listed in Table 2-1, are each assigned a number in chronological order, as indicated in Table 2-1. Each comment that requires a response is also assigned a number. For example, the first comment letter received was from the San Manuel Band of Mission Indians; therefore, this is Letter 1. The first comment in the letter is therefore labeled Comment 1-1 and the responses to each comment are correspondingly numbered, (i.e., Response to Comment 1-1). A copy of each comment letter is provided in Appendix A, Original Comment Letters, of this Final EIR. As required by the CEQA Guidelines Section 15088(c), the focus of the responses to comments is on “the disposition of significant environmental issues raised.” Therefore, detailed responses are not provided for comments that do not relate to environmental issues.

**Table 2-1: Summary of Comments on the Lockhart Solar PV II Project Draft EIR**

Letter No.	Name	Date Received	Environmental Category		
			Biological Resources	Cultural Resources	Hydrology and Water Quality
1	Ryan Nordness Cultural Resources Analyst San Manuel Band of Mission Indians 26569 Community Center Drive Highland, CA 92346	12/01/2021		X	
2	Tiffany Steinert Engineering Geologist Lahontan Regional Water Quality Control Board 2501 Lake Tahoe Boulevard South Lake Tahoe, CA 96150	12/09/2021			X
3	Alisa Ellsworth Environmental Program Manager State of California – Natural Resources Agency Department of Fish and Wildlife Inland Deserts Region 3602 Inland Empire Boulevard, Suite C-220 Ontario, CA 91764	12/30/2021	X		

## Letter 1

Ryan Nordness

Cultural Resources Analyst

San Manuel Band of Mission Indians

26569 Community Center Drive

Highland, CA 92346

Received on December 1, 2021; Correspondence through December 13, 2021

### Comment 1-1

*[This comment is an email from Ryan Nordness received on December 1, 2021.]*

As this project moves forward, do you have any more information on how much of this project is previously disturbed, preferably a percentage. Additionally, what techniques are you aware of that the developer will use to remove the previously installed structures?

### Response to Comment 1-1

This comment requests additional information on the Project related to disturbance area and techniques for removal of the previously installed structures. A detailed response was provided by the Applicant below in Comment 1-2.

### Comment 1-2

*[This comment is an email from Anthony DeLuca on December 10, 2021 in response to Ryan Nordness' email in Comment 1-1 above.]*

Hi Ryan, please see below responses from the applicant regarding your questions previously presented in your last email.

Let me know if you have any further questions, I will gladly pass them along. Also let me know if you need additional information about the project.

### **RESPONSES from Applicant for the Lockhart II Solar PV II Project**

#### **Question #1: How much of this Project is previously disturbed, preferably a percentage.**

The Project Site is approximately 755 acres and is made up of the following areas:

1. 110-acre Shared Facilities Area
  - 100% has been previously heavily disturbed during construction/operation of the SEGS VIII and IX facilities that have been operational since the early 1990's.
2. 612-acre site previously approved by California Energy Commission for construction of the SEGS X facility (area within the existing property fence line)
  - Approximately 87% has been previously disturbed
  - Disturbance was associated with past intensive agricultural use (alfalfa cultivation) from the 1940s to the 1980s, as well as grading and partial construction of the SEGS X facility in the early 1990s.

3. 33-acre strip of land outside the western and northern boundary of the existing property fence line (for extension of the existing open channel for collection/routing of offsite stormwater flow onto the site)
  - Area is previously undisturbed
  - Developer is currently working on Project design to avoid extension of this channel outside the property fence line in order to limit new disturbance associated with the Project

**Question #2: What techniques are you aware of that the Developer will use to remove the previously installed structures.**

General techniques for removal of existing SEGS X facilities would include the following:

Structures:

- conduct a visual survey of the structures to ensure that environmental hazards that may exist (if any) have been addressed prior to demolition
- demolition of structures will be conducted from the top working downward
- concrete slabs/foundations and pedestals will be broken in place by excavators equipped with hydraulic hammers/breakers
- any ferrous/non-ferrous metals and inert materials will be transported to an appropriate off-site recycling facility
- concrete debris will be sized into manageable pieces, and transported to an off-site recycling facility
- any voids will be backfilled with clean soil and compacted to match existing contours

Utility poles:

- A small area immediately surrounding the utility pole will be excavated to allow the pole to be removed from the ground
- Poles will be sized into manageable sizes and shipped off site for disposal as treated wood waste

**Response to Comment 1-2**

This comment includes the County and Applicant's responses to the commenter's original question related to disturbance area and techniques for removal of the previously installed structures. As noted in Section 3.0, *Corrections and Additions to the Draft EIR*, of this Final EIR, the Applicant is removing the area initially identified (in the Draft EIR) for extension of the existing open channel located outside the Project fence line along the western and northern boundary of the CUP 1 area. As a result, Project design would avoid extension of the existing channel outside the property fence line, and new disturbance outside the fence line would not occur. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

**Comment 1-3**

*[This comment is an email from Ryan Nordness on December 13, 2021 in response to Anthony DeLuca's email in Comment 1-2 above.]*

Thank you so much for that information Anthony. Our concerns for any buried resources has decreased significantly. I am attaching our preferred mitigation measures for this project.



### Response to Comment 1-3

This comment acknowledges the information provided by the County and Applicant, and as presented in Comment 1-2 above. This comment also refers to the commenter's preferred mitigation measures for the Project, as shown in Comment 1-4 below.

### Comment 1-4

*[This comment is an attachment provided by Ryan Nordness. The attachment is replicated entirely as Comment 1-4.]*

#### Treatment of Cultural Resources

If a pre-contact cultural resource is discovered during project implementation, ground-disturbing activities shall be suspended 60 feet around the resource(s), and an Environmentally Sensitive Area (ESA) physical demarcation/barrier constructed.

The lead agency shall develop a research design 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 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 resource's archaeological significance, its potential as a Tribal Cultural Resource (TCR), and avoidance (or other appropriate treatment) of the discovered resource.

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 cataloging and basic recordation of cultural resources have been completed, and a final monitoring report has been issued to the 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 appropriately 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 Project developer/applicant's obligation 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.

### **Inadvertent Discovery Guideline**

1. In the event that cultural resources are discovered during project activities, all work in the immediate vicinity of the find (within a 60-foot buffer) shall cease, and a qualified archaeologist meeting Secretary of Interior standards shall be hired to assess the find. Work on the other portions of the project outside of the buffered area may continue during this assessment period. Additionally, the San Manuel Band of Mission Indians Cultural Resources Department (SMBMI) shall be contacted, as detailed within TCR-1, regarding any pre-contact and/or post-contact finds and be provided information after the archaeologist makes his/her initial assessment of the nature of the find, so as to provide Tribal input with regards to significance and treatment.
2. If significant pre-contact and/or post-contact cultural resources, as defined by CEQA (as amended, 2015), are discovered, and avoidance cannot be ensured, the archaeologist shall develop a Monitoring and Treatment Plan, the drafts of which shall be provided to SMBMI for review and comment, as detailed within TCR-1. The archaeologist shall monitor the remainder of the project and implement the plan accordingly.
3. If human remains or funerary objects are encountered during any activities associated with the project, work in the immediate vicinity (within a 100-foot buffer of the find) shall cease, and the County Coroner shall be contacted pursuant to State Health and Safety Code §7050.5 and that code enforced for the duration of the project.

### **Inadvertent Discoveries of Human Remains/Funerary Objects**

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).

#### **CUL MMs**

1. In the event that cultural resources are discovered during project activities, all work in the immediate vicinity of the find (within a 60-foot buffer) shall cease, and a qualified archaeologist meeting Secretary of Interior standards shall be hired to assess the find. Work on the other portions of the project outside of the buffered area may continue during this assessment period. Additionally, the San Manuel Band of Mission Indians Cultural Resources Department (SMBMI) shall be contacted, as detailed within TCR-1, regarding any pre-contact and/or post-contact finds and be provided information after the archaeologist makes his/her initial assessment of the nature of the find, so as to provide Tribal input with regards to significance and treatment.
1. If significant pre-contact and/or post-contact cultural resources, as defined by CEQA (as amended, 2015), are discovered, and avoidance cannot be ensured, the archaeologist shall develop a Monitoring and Treatment Plan, the drafts of which shall be provided to SMBMI for review and comment, as detailed within TCR-1. The archaeologist shall monitor the remainder of the project and implement the plan accordingly.
1. If human remains or funerary objects are encountered during any activities associated with the project, work in the immediate vicinity (within a 100-foot buffer of the find) shall cease, and the

County Coroner shall be contacted pursuant to State Health and Safety Code §7050.5 and that code enforced for the duration of the project.

#### **TCR MMs**

1. The San Manuel Band of Mission Indians Cultural Resources Department (SMBMI) shall be contacted, as detailed in CR-1, of any pre-contact and/or post-contact cultural resources discovered during project implementation, and be provided information regarding the nature of the find so as to provide Tribal input with regards to significance and treatment. Should the discovery be deemed significant, as defined by CEQA (as amended, 2015), a cultural resources Monitoring and Treatment Plan shall be created by the archaeologist, in coordination with SMBMI, and, all subsequent finds shall be subject to this Plan. This Plan shall allow for a monitor to represent SMBMI for the remainder of the project, should SMBMI elect to place a monitor on-site.
1. Any and all archaeological/cultural documents created as a part of the project (isolate records, site records, survey reports, testing reports, etc.) shall be supplied to the applicant and Lead Agency for dissemination to SMBMI. The Lead Agency and/or applicant shall, in good faith, consult with SMBMI throughout the life of the project.

#### **Response to Comment 1-4**

This comment provides the commenter's list of preferred mitigation measures for the Project. These mitigation measures were provided by the commenter during the Assembly Bill (AB) 52 consultation for the Project and are incorporated into the Project as Mitigation Measures TCR-1 and TCR-2 (see pages 4.12-7 and 4.12-8 of Section 4.12, *Tribal Cultural Resources*, of the Draft EIR). As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.



## Letter 2

Tiffany Steinert  
Engineering Geologist  
Lahontan Regional Water Quality Control Board  
2501 Lake Tahoe Boulevard  
South Lake Tahoe, CA 96150  
Received on December 9, 2021

### Comment 2-1

Lahontan Regional Water Quality Control Board (Water Board) staff received an Environmental Impact Report (EIR) for the above-referenced Project (Project) on November 15, 2021. The EIR was prepared by the County of San Bernardino (County) and submitted in compliance with provisions of the California Environmental Quality Act (CEQA). Water Board staff, acting as a responsible agency, is providing these comments to specify the scope and content of the environmental information germane to our statutory responsibilities pursuant to CEQA Guidelines, California Code of Regulations (CCR), title 14, section 15096. We thank the County for providing Water Board staff the opportunity to review and comment on the EIR. Based on our review, we recommend the following: (1) natural drainage channels and flow paths should be maintained through the Project site to ensure no net loss of function and value of waters of the state; (2) hydrology and water quality mitigations that are being incorporated into the Project to avoid or minimize significant affects must be specifically identified in the environmental document; (3) identify post-construction storm water management as a significant Project component and provide mitigation as appropriate; and (4) identify and list the beneficial uses of all water resources within the Project area. Our comments are outlined below.

### Water Board's Authority

All groundwater and surface waters are considered waters of the State. All waters of the State are protected under California law. State law assigns responsibility for protection of water quality in the Lahontan Region to the Lahontan Water Board. Some waters of the State are also waters of the United States. The Federal Clean Water Act (CWA) provides additional protection for those waters of the State that are also waters of the United States.

The Water Quality Control Plan for the Lahontan Region (Basin Plan) contains policies that the Water Board uses with other laws and regulations to protect the quality of waters of the State within the Lahontan Region. The Basin Plan sets forth water quality standards for surface water and groundwater of the Region, which include designated beneficial uses as well as narrative and numerical objectives which must be maintained or attained to protect those uses. The Basin Plan can be accessed via the Water Board's web site at:

[http://www.waterboards.ca.gov/lahontan/water\\_issues/programs/basin\\_plan/references.shtml](http://www.waterboards.ca.gov/lahontan/water_issues/programs/basin_plan/references.shtml) [sic].



## Response to Comment 2-1

The comment acknowledges receipt of the Draft EIR for the Project and provides an introduction to the remainder of the letter. Detailed responses to the commenter's recommendations are provided in Responses to Comment 2-2 through 2-6 below. The comment also summarizes the roles and responsibilities of the Lahontan Water Board and includes information on the Basin Plan. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

## Comment 2-2

### SPECIFIC COMMENTS

We recommend the following be considered in the environmental review.

1. In general, the installation of Photovoltaic (PV) grid systems for these types of projects has the potential to hydrologically modify natural drainage systems. Of particular concern is the collection of onsite storm water runoff and the concentrated discharge of that storm water to natural drainage channels. Design alternatives that are compatible with low impact development (LID) should be considered. LID components include: maintaining natural drainage paths and landscape features to slow and filter runoff and maximize groundwater recharge; managing runoff as close to the source as possible; and maintaining vegetated areas for storm water management and onsite infiltration. We recommend natural drainage channels and flow paths be maintained through the Project site to avoid no net loss of function and value of waters of the state as a result of Project implementation.

## Response to Comment 2-2

The comment recommends natural drainage channels and flow paths be maintained to avoid no net loss of function and value of waters of the state as a result of Project implementation. Page 4.9-3 of Section 4.9, *Hydrology and Water Quality*, of the Draft EIR describes the existing site drainage on the Project Site. As stated therein, stormwater runoff enters the Project Site from the southern and western boundaries and exits the Project Site along the northern and eastern boundaries. There is an existing earthen berm outside the western boundary of the Project Site, constructed as part of the SEGS VIII and IX facilities, that protects a major portion of the Project Site by diverting the off-site flow to the northwest corner. The existing berm does not currently extend along the full length of the western boundary of the Project Site. Flow from the berm confluences with off-site flow coming from the north and begins to pond just outside the northeast corner of the Project Site within the dry lake bed of Harper Lake. The flow from the south crosses the southern portion of the Project Site and concentrates at the eastern boundary of the Project Site within Harper Lake. There is some evidence of channelization, but most flow is expected to be via shallow overland flow.

As stated in Section 3.0, *Corrections and Additions to the Draft EIR*, of this Final EIR, the Project no longer proposes to extend the existing open channel, and the existing drainage patterns are proposed to be maintained. The off-site flow that is currently collected in and conveyed through the existing open channel

along the Project's western and northern boundary would continue to be directed into the existing watershed and would eventually flow to Harper Dry Lake. Furthermore, the slight increase in runoff due to the installation of the Project facilities, such as steel piles, inverter foundations, and the BESS, would be managed by retention basins. Therefore, the Project would not alter the natural drainage channels or flow paths such that there would be a loss of function and value of waters of the State.

### **Comment 2-3**

2. The EIR should list the specific hydrology and water quality mitigations that are being incorporated into the Project to avoid or minimize significant affects such as those included in a Storm Water Pollution Prevention Plan (SWPPP) or a Water Quality Management Plan. Details regarding how these mitigations will protect water quality should be included in the EIR.

### **Response to Comment 2-3**

The comment recommends listing specific hydrology and water quality mitigations that would be incorporated into the Project. As described throughout Section 4.9, *Hydrology and Water Quality*, of the Draft EIR, the Project would not result in any significant impacts to hydrology and water quality. As stated on pages 4.9-11 through 4.9-12 under Impact 4.9-1, the Project would be required to minimize potential water quality impacts during construction through compliance with National Pollutant Discharge Elimination System (NPDES) permit requirements and with County Code Title 3, Division 5, Chapter 1, Pollutant Discharge Elimination System Regulations. The Applicant would prepare and implement a site-specific SWPPP that meets the requirements of the NPDES General Permit and specifies best management practices (BMPs) to be used during construction. With implementation of these BMPs, the Project would reduce or eliminate the discharge of pollutants in stormwater runoff from the construction site to the maximum extent practicable. With compliance with the NPDES permit requirements and implementation of BMPs, Project construction would not violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality and potential impacts would be less than significant. Therefore, no mitigation measures are required. See Response to Comment 2-4 for a list of example BMPs to be implemented based on SWPPP and NPDES requirements to reduce the potential for erosion and to treat post-construction stormwater runoff.

### **Comment 2-4**

3. The EIR should identify post-construction storm water management as a significant Project component, and a variety of best management practices (BMPs) that effectively treat post-construction storm water runoff, particularly maintaining native vegetation, should be evaluated as part of the Project. Based on our experience with other solar developments in the Mojave Desert, native vegetation is the most efficient and cost-effective post-construction BMP to treat storm water runoff. Because revegetating disturbed soils in the desert is particularly challenging due to low rainfall, extreme climatic conditions, and relatively slow growth rates, we strongly encourage Project proponents to maintain and mow existing vegetation rather than clear and grub the entire site during construction. For those projects where native vegetation is maintained, we have observed that the



need to implement temporary BMPs is greatly minimized and the costs associated with implementation and maintenance of post-construction BMPs is significantly reduced.

### Response to Comment 2-4

The comment requests that the EIR identify post-construction stormwater management as a significant Project component. As described in the Draft EIR, the Project Site has been subject to near complete surface disturbance over time associated with past agricultural use, grading and partial construction of the SEGS X facility, and construction of the Shared Facilities Area for the existing SEGS VIII and IX Solar Thermal Power Plants. The Project Site contains native vegetation that has recolonized the site over the decades, with portions composed of disturbed habitat, bare ground, and development associated with the existing SEGS VIII and IX facilities and the abandoned SEGS X construction; the Shared Facilities Area is completely denude of vegetation due to regular vegetation management and weed control as part of SEGS VIII and IX facilities operations. Installation of Project facilities would require existing vegetation to be cleared; therefore, it is not feasible to maintain native vegetation on-site. As stated on page 4.9-12, the Applicant would be required to prepare and implement a site-specific SWPPP that meets the requirements of the NPDES General Permit and specifies BMPs to be used during construction. The Applicant anticipates implementing BMPs to reduce the potential for erosion and to treat post-construction stormwater runoff. Examples of such BMPs include:

- Scheduling tactics related to rainfall to allow for implementation of soil stabilization and sediment treatment controls on disturbed areas prior to the onset of rain;
- Installing a silt fence to trap sediment from disturbed areas and to promote sedimentation behind the fence;
- Installing fiber rolls to cover the soil surface and reduce erosion from rainfall, hold soil in place, and absorb and hold moisture near the soil surface;
- Installing a stabilized entrance/exit consisting of shaker plates and gravel, and ensuring all construction traffic utilizes this entrance/exit; and
- Locating a tire wash to remove sediment from being transported onto public roadways.

### Comment 2-5

4. The Project is located within the Mojave Hydrologic Unit (Hydrologic Unit No. 628.00) and overlies the Upper Mojave groundwater basin (Basin No. 6-42). The beneficial uses of these waters are listed either by watershed (for surface waters) and by groundwater basin (for groundwater) in Chapter 2 of the Basin Plan. The proposed Project should identify and list the beneficial uses of all water resources within the Project area.

### Response to Comment 2-5

The comment states that the Project is located within the Mojave Hydrologic Unit and overlies the Upper Mohave groundwater basin. As stated on page 4.9-2 of Section 4.9, *Hydrology and Water Quality*, of the Draft EIR, the Project Site lies within the Schweitzer Well-Harper Lake Hydrologic Unit (HU) (HUC12

180902071110) and is within the Centro (Middle Basin) subarea of the Mojave Basin, which draws its water supply entirely from the Harper Valley Groundwater Basin, a subbasin of the Mojave Groundwater Basin. The Harper Valley Groundwater Basin is Basin No. 6-47.

The comment requests that the Project identify and list the beneficial uses of all water resources within the Project area. Table 2-2 in Chapter 2 of the Basin Plan lists the beneficial uses developed by the State Board staff that would be applicable to Basin No. 6-47: MUN (Municipal and Domestic Supply), AGR (Agricultural Supply), IND (Industrial Service Supply), and FRSH (Freshwater Replenishment). As stated on page 4.9-12 of the Draft EIR, non-potable water would be required for panel washing, equipment washing, and other site maintenance. Non-potable water during Project operation would be supplied by pumping groundwater from the four existing groundwater wells located within the Shared Facilities Area and on the adjacent SEGS IX facility site. The Project minimizes impervious surfaces because it does not require paved surfaces across the Project Site. In addition, groundwater pumping has decreased with the decommissioning of SEGS VIII and will further decrease with the decommissioning of SEGS IX. Therefore, no net increase in groundwater pumping would occur. Lastly, as stated above under Response to Comment 2-3 and on page 4.9-12 of the Draft EIR, the Project would not violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality. Therefore, the Project would not result in significant impacts to the groundwater.

### **Comment 2-6**

#### **PERMITTING REQUIREMENTS FOR INDIVIDUAL PROJECTS**

A number of activities associated with the proposed Project may have the potential to impact waters of the State and, therefore, may require permits issued by either the State Water Resources Control Board (State Water Board) or Lahontan Water Board. The required permits may include the following.

1. Land disturbance of more than 1 acre may require a CWA, section 402(p) storm water permit, including a *National Pollutant Discharge Elimination System (NPDES) General Construction Storm Water Permit*, Water Quality Order (WQO) 2009-0009-DWQ, obtained from the State Water Board, or individual storm water permit obtained from the Lahontan Water Board.
2. Streambed alteration and/or discharge of fill material to a surface water may require a CWA, section 401 water quality certification for impacts to federal waters (waters of the U.S.), or dredge and fill waste discharge requirements for impacts to non-federal waters, both issued by the Lahontan Water Board.



### Response to Comment 2-6

The comment lists two permits that may be required by either the State Water Resources Control Board or the Lahontan Water Board. As detailed on page 4.9-15, no rivers or streams exist on the Project Site, and the Project would not alter any rivers or streams. In addition, there are no other waters of the State or of the United States present on site; therefore, neither the Waste Discharge Requirements under the Porter Cologne Act nor CWA section 401 permits are required for the Project.

As the Project Site would be greater than one acre, the Project would be required to obtain coverage under the NPDES General Construction Storm Water Permit. As detailed on page 4.9-12, "Construction controls to minimize potential water quality impacts would be implemented through compliance with NPDES permit requirements and with County Code Title 3, Division 5, Chapter 1, Pollutant Discharge Elimination System Regulations. In accordance with the requirements of the NPDES permit, the Applicant would prepare and implement a site-specific SWPPP that meets the requirements of the NPDES General Permit and specifies BMPs (e.g., erosion control, sediment control, non-stormwater management, and materials management) to be used during construction." Therefore, the Project would be compliant with the NPDES General Construction Storm Water Permit. See also Response to Comment 2-4 regarding the removal of the extension of the berm as part of the Final EIR.

### Comment 2-7

Thank you for the opportunity to comment on the EIR. If you have any questions regarding this letter, please contact me at (760) 241-7305, [tiffany.steinert@waterboards.ca.gov](mailto:tiffany.steinert@waterboards.ca.gov) or Jan Zimmerman, Senior Engineering Geologist, at (760) 241-7404, [jan.zimmerman@waterboards.ca.gov](mailto:jan.zimmerman@waterboards.ca.gov). Please send all future correspondence regarding this Project to the Water Board's email address at [Lahontan@waterboards.ca.gov](mailto:Lahontan@waterboards.ca.gov) and be sure to include the State Clearinghouse No. and Project name in the subject line.

### Response to Comment 2-7

This comment provides a conclusion to the comment letter and contact information for further information, as necessary. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

## Letter 3

Alisa Ellsworth  
Environmental Program Manager  
State of California – Natural Resources Agency  
Department of Fish and Wildlife  
Inland Deserts Region  
3602 Inland Empire Boulevard, Suite C-220  
Ontario, CA 91764  
Received on December 30, 2021

### Comment 3-1

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (DEIR) from San Bernardino County (Lead Agency) for the Lockhart Solar PV II Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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, we appreciate 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 the 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.

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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

Footnote 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.



### Response to Comment 3-1

This comment acknowledges receipt of the Notice of Availability of the Draft EIR and summarizes the roles and responsibilities of the CDFW. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

### Comment 3-2

#### PROJECT DESCRIPTION SUMMARY

CEQA Lead: San Bernardino County

Applicant: Lockhart Solar PV II, LLC

Location: The proposed Project is located in unincorporated Hinkley, CA in San Bernardino County, approximately seven miles north of the intersection of Harper Lake Road and Mojave-Barstow Highway 58, east of Hoffman Road and west of Harper Lake Road. The Project site comprises Assessor Parcel Numbers (APNs) 0490-101-54, 0490-101-56, and 0490-223-33. The Project is largely sited on land previously approved by the California Energy Commission (CEC) for development of Solar Energy Generating System (SEGS) X, a solar thermal power facility which was never fully constructed.

Description: The proposed Project will develop a utility scale, solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 150 megawatts (MW) of solar power and include up to four gigawatt hours (GWh) of energy storage capacity rate in a battery energy storage system (BESS) within an approximately 755-acre site. The Project would share existing operations and maintenance (O&M) facilities with the Lockhart Solar I Facility (i.e., O&M building, warehouse and employee building), water and septic systems, switchyard and electrical transmission infrastructure, and a new collector substation (approved and to be constructed) within the approximately 110-acre “Shared Facilities Area” to connect the Project to the existing transmission line which runs to the Southern California Edison (SCE)-owned Kramer Junction substation.

Background: Construction of the SEGS X solar thermal facility was initiated on the Project site during the 1990s. SEGS X was fully permitted and certified as an 80 MW solar thermal facility located on approximately 600 acres including land for associated facilities to be shared with the two adjacent solar thermal plants (SEGS VIII and IX). As part of initial SEGS X construction (in the early 1990s), the entire perimeter of the SEGS X site was enclosed with a 6-foot-tall chain link fence equipped with a desert tortoise exclusionary barrier. Per the SEGS VIII, IX, and X CEC certification, permanent impacts to loss of the then-existing high-quality habitats were mitigated through purchase of 1,680 acres of conservation land for both Mohave ground squirrel (*Xerotherophilus mohavensis*) and desert tortoise (*Gopherus agassizii*) pursuant to CDFW requirements and approvals. In 1991, SEGS X construction was halted due to lack of financing. Prior to work stoppage, several concrete foundations of the power block as well as concrete foundations for solar racking had been installed in portions of the Project site. The Project proposes to use these already disturbed parcels to construct a solar PV and BESS facility.

### Response to Comment 3-2

This comment provides a summary of the Project's location, description, and background as presented in Section 3.0, *Project Description*, of the Draft EIR. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

### Comment 3-3

#### COMMENTS AND RECOMMENDATIONS

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

#### California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the California Endangered Species Act (CESA). A CESA Incidental Take Permit (ITP) is issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats. CDFW recommends that a CESA ITP be obtained if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and G. Code, §§ 2080 and 2085). If the Project, including the Project construction or any Project-related activity during the life of the Project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation through an ITP.

CDFW received an ITP application on November 16, 2021, to incidentally take Mohave ground squirrel, a species designated as threatened pursuant to CESA (Fish & G. Code, §2050 et. Seq.), which was deemed complete on December 15, 2021. Take authorization is not being sought for the Federally Threatened and State Threatened, Proposed Endangered desert tortoise or any listed plant species, as further explained below. The DEIR states that mitigation requirements implemented for the previously approved, but not fully constructed, SEGS X Facility include the acquisition and transfer of 1,680 acres of mitigation lands to CDFW (formerly California Department of Fish and Game (CDFG)) for the purpose of enhancement, and management of suitable desert tortoise and Mohave ground squirrel habitat in perpetuity and to compensate for habitat that would be eliminated or subject to long-term disturbance as a result of construction of SEGS IX and X and any ancillary facilities. The DEIR suggests that any potential impacts on desert tortoise and Mojave ground squirrel has been previously mitigated through the prior conveyance for the SEGS X project that was never fully developed and no additional mitigation for loss of habitat is required.

In an email dated December 1, 2021, the Applicant provided CDFW supporting documentation regarding the aforementioned mitigation lands, including 1) a letter from the CEC (dated March 23, 1993) noting



that 1,680 acres and a \$150,000 endowment satisfies SEGS IX/X mitigation requirement out of a total of 3,192.34 acres that was transferred to CDFW for mitigation purposes; 2) A Grant Deed Instrument recorded on December 7, 1990 conveying 3,192.34 acres of real property to CDFG for conservation purposes; 3) Conservation Easement Locations map showing all five parcels that were conveyed to CDFG.

Based on these documents alone, CDFW is unable to determine whether this previously implemented mitigation adequately addresses the Project impacts as currently proposed, and requests that the Applicant provide the *Habitat Mitigation and Acquisition Agreement and the Habitat Mitigation Plan* by and between the developer of SEGS X and CDFW (formerly CDFG), as well as any other supporting documentation, as conditions and requirements have likely changed since 1990.

### Response to Comment 3-3

This comment summarizes conclusions made in the Draft EIR that any potential impacts on desert tortoise and Mojave ground squirrel habitat were previously mitigated through the prior conveyance of habitat mitigation for the SEGS X project that was never fully developed, and that no additional mitigation for loss of habitat is required (see page 4.3-41 of Section 4.3, *Biological Resources*, of the Draft EIR). The commenter requests a copy of the *Habitat Mitigation and Acquisition Agreement and the Habitat Mitigation plan* by and between the developer of SEGS X and CDFW, as well as any other supporting documentation. As further noted on page 4.3-41 of the Draft EIR, “Obtaining an Incidental Take Permit [ITP] from the CDFW may be warranted to maintain compliance with the state law [CESA]”. As noted in the comment, the Applicant submitted an ITP application on November 16, 2021 for incidental “take” of Mojave ground squirrel and is currently in consultation with the CDFW. At the time of preparation of this Final EIR, the Applicant and CDFW are actively engaged in provision of these requested materials. The Applicant has conducted additional research on CDFW’s behalf and confirmed that the subject mitigation lands are located within the West Mojave Desert Ecological Reserve. Grant Deed Instrument 90-483688 recorded on December 7, 1990 identifies the 3,192.34 acres conveyed to CDFW. More information can be viewed at CDFW Lands Viewer for the Inland Deserts Region (Region 6). The County concludes that the preservation of these lands in perpetuity is adequate mitigation under CEQA for impacts to Mojave ground squirrel.

Further, page 4.3-41 of the Draft EIR states that the Project may require grading for extension of the existing channel located outside the Project fence line along the western and northern boundary of the Project Site for the collection and routing of offsite run-on. If feasible, this channel may be constructed within the fence line to limit new disturbance associated with Project construction.” As noted in Section 3.0, *Corrections and Additions to the Draft EIR*, of this Final EIR, since the publication of the Draft EIR, the Applicant has determined that construction of this channel is not needed. Removal of this approximately 33-acre previously undisturbed area from the Project Site further reduces potential impacts to the Mojave ground squirrel.

As noted in the Draft EIR, if construction and operation of the Project were to result in “take” of individual Mojave ground squirrels, due to the moderate to low suitability of the habitat and implementation of Mitigation Measure BIO-5, take of a small number of individuals is not expected to have a substantial

adverse effect on the species. Nonetheless, off-site mitigation lands have already been previously conveyed to the CDFW to compensate for impacts to the Mojave ground squirrel, and the Project would be required to comply with the requirements of the ITP issued by CDFW, impacts would be less than significant as noted in the Draft EIR.

### **Comment 3-4**

#### **Birds**

It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 et. seq.). In addition, sections 3503, 3503.5, and 3513 of the Fish and Game Code also afford protective measures as follows: Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by FGC or any regulation made pursuant thereto; Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by FGC or any regulation adopted pursuant thereto; and Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

The DEIR does not address the potential lake effect caused as a result of the solar array. To develop effective best management practices and adaptive management measures to reduce avian mortality at utility-scale solar energy facilities, CDFW recommends including a discussion of these potential effects to migratory birds and describe measures to avoid, reduce, and mitigate those effects. To help reduce potential adverse effects to avian species and implement an adaptive management approach to reduce avian fatalities, CDFW recommends the development of a Bird and Bat Conservation Strategy (BBCS). The BBCS should include at least two to three years of systematic post-construction mortality monitoring, including searcher efficiency and carcass persistence trials, and adaptive management measures as necessary to address avian impacts. CDFW recommends that the BBCS is submitted to CDFW for review prior to start of ground-disturbing activities.

### **Response to Comment 3-4**

The comment provides a summary of the Migratory Bird Treaty Act (MBTA), which is addressed on page 4.3-32 of Section 4.3, *Biological Resources*, of the Draft EIR. The Project would be subject to the MBTA, and as referenced in Mitigation Measure BIO-2 (see page 4.3-42 of the Draft EIR), a nesting bird survey shall be conducted by a qualified biologist prior to construction to avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and the California Fish and Game Code (CFGF).

The comment states that the Draft EIR does not address the potential lake effect caused as a result of the solar array. The lake effect hypothesis states that PV solar panels are perceived as water by aquatic habitat



birds creating a potential risk of collision with the panels.<sup>1</sup> Thus, the commenter requests that the potential lake effect and risk to aquatic habitat birds should be evaluated. Summarized data from 10 PV solar facilities over 13 study years found variability in the proportion of aquatic habitat bird fatalities among facilities.<sup>2</sup> The studies found that facilities closer to the Salton Sea, a known aquatic habitat bird stop-over site, had a higher proportion of aquatic habitat bird fatalities whereas facilities located in areas largely devoid of water had no aquatic habitat bird fatalities.<sup>3</sup> The data suggested that potential collision risk was higher near the Salton Sea, but that none of the studies attempted to identify the cause of the collisions making broader inference limited. In a study designed to examine aquatic habitat bird occurrences at PV solar, Surveys conducted for live birds and carcasses at five PV solar facilities and paired reference areas found that aquatic habitat bird carcasses were found only at the PV solar facilities in the desert/scrub habitat, thus supporting that aquatic habitat birds were attracted to the PV facilities. Further, they found that the number of fatalities detected was low compared to the abundance of live birds observed at a small regional lake suggesting that at the facilities studied, the magnitude of attraction was low.

The Project is located in an area of desert habitat, and there is no large waterbody within 50 kilometers. Thus, the landscape setting at the Project is more similar to PV facilities located away from the Salton Sea than those located closer to the Salton Sea. Kosciuch et al. (2020) reported that PV facilities away from a large water body had very few aquatic habitat bird carcasses detected during the study.<sup>4</sup> Although there is support that aquatic habitat birds are attracted to PV solar facilities, given the landscape setting at the Project, it is unlikely that aquatic habitat birds would be exposed in large numbers, and no significant direct or indirect impact on aquatic habitat birds is anticipated.

Patterns of bird mortality at 10 PV solar facilities provide inference into the potential effects of the Project on migratory birds. The studies reported patterns that provide broader inference to other regions including: three of the top four species detected were ground-dwelling birds that have populations in the millions, and that there was no evidence of a comparatively large-scale fatality event of nocturnal migrating passerines. Thus, based on the landscape setting of the Project, it is expected that fatalities, should they occur, would be similar to the patterns found at other PV facilities and include common ground-dwelling birds, and that this Project would not create a significant impact to water birds due to the hypothetical lake effect. Thus, no significant direct or indirect impact on migratory birds is anticipated.

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<sup>1</sup> Kosciuch K, Riser-Espinoza D, Moqtaderi C, Erickson W., Aquatic Habitat Bird Occurrences at Photovoltaic Solar Energy Development in Southern California, USA. *Diversity*. 13(11):524, 2021. Available at <https://doi.org/10.3390/d13110524>. Accessed January 28, 2022.

<sup>2</sup> Kosciuch K, Riser-Espinoza D, Gerringer M, Erickson W., A summary of bird mortality at photovoltaic utility scale solar facilities in the Southwestern U.S. *PLoS ONE* 15(4): e0232034, 2020. Available at <https://doi.org/10.1371/journal.pone.0232034>. Accessed January 28, 2022.

<sup>3</sup> Shuford WD, Warnock N, Molina KC, Mulrooney B, Black AE., 2019, Avifauna of the Salton Sea: abundance, distribution, and annual phenology. Final report for EPA Contract R826552-01-0; 2000. Available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=7312>. Accessed January 28, 2022.

<sup>4</sup> Kosciuch K, Riser-Espinoza D, Gerringer M, Erickson W., A summary of bird mortality at photovoltaic utility scale solar facilities in the Southwestern U.S. *PLoS ONE* 15(4).

The commenter also recommends the development of a Bird and Bat Conservation Strategy (BBCS), which would include at least two to three years of systematic post-construction mortality monitoring and adaptive management measures as necessary to address avian impacts.

Although not required under CEQA, the Applicant will voluntarily develop and implement a Bird and Bat Conservation Plan (BBCP). The BBCP will outline policies and procedures to minimize unanticipated impacts to birds and bats during operations. Site personnel will be provided a set of standardized instructions to follow in response to any bird or bat incidents on-site. The BBCP shall include procedures on how to document any bird or bat species discovered dead or injured on the Project Site. In the event of an injury or death of a listed species, CDFW and/or USFWS shall be contacted to consult on appropriate next steps. The BBCP shall be implemented for the life of the Project. The Applicant will submit the BBCP to the County for review.

### **Comment 3-5**

#### **Burrowing owl, desert kit fox, American badger**

Burrowing owl and American badger are CDFW Species of Special Concern, and Desert kit fox is a protected species and may not be taken at any time pursuant to Title 14 of the California Code of Regulations Section 460. Mitigation Measure BIO-3 states that pre-construction burrow clearance surveys shall be conducted to ensure that burrowing owls, desert kit fox, or American badger remain absent from the Project site and impacts to these animals do not occur. CDFW recommends that burrowing owl, desert kit fox, and American badger mitigation and monitoring plans are prepared and submitted to CDFW for review 60 days prior to the start of ground disturbing activities.

### **Response to Comment 3-5**

This comment recommends that the burrowing owl, desert kit fox, and American badger mitigation and monitoring plans be prepared and submitted to CDFW for review 60 days prior to the start of ground disturbing activities. As noted in Mitigation Measure BIO-3 (see page 4.3-43 of the Draft EIR), if an occupied burrow is found within the Project Site during the pre-construction clearance survey, the exclusion and mitigation plan shall be prepared and submitted to the County, which may consult with CDFW for review, prior to initiating Project construction activities. The Applicant will submit a mitigation and monitoring plan that covers burrowing owl, desert kit fox, and American badger to the County for review prior to the start of ground disturbing activities.

### **Comment 3-6**

#### **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:



[http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB\\_FieldSurveyForm.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf). The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/plants\\_and\\_animals.asp](http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp).

### **Response to Comment 3-6**

The comment requests that any special status species and natural communities detected during Project surveys be reported to the California Natural Diversity Database (CNDDDB) at the link provided. It is noted that the field survey forms can now be submitted digitally and online via the CNDDDB Online Field Survey Form (<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>). These forms will be completed and submitted upon completion of the entitlement process with the County.

### **Comment 3-7**

#### **FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and 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, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

### **Response to Comment 3-7**

The comment states that the payment of the filing fees is required in order for the underlying Project approval to be operative, vested, and final. This comment is noted, and the fees will be paid upon Project approval and along with the Notice of Determination. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

### **Comment 3-8**

#### **CONCLUSION**

CDFW appreciates the opportunity to comment on the DEIR to assist San Bernardino County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Rose Banks, Senior Environmental Scientist (Specialist) at (760) 218-0022 or [Rose.Banks@wildlife.ca.gov](mailto:Rose.Banks@wildlife.ca.gov).

### **Response to Comment 3-8**

This comment provides a conclusion to the comment letter and contact information for further information, as necessary. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

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### 3.0 CORRECTIONS AND ADDITIONS TO THE DRAFT EIR

In accordance with the CEQA Guidelines Section 15132 (a), this Chapter of the Final EIR provides changes to the Draft EIR that have been made to clarify, correct, or supplement the information provided in that document. These changes and additions are due to recognition of inadvertent errors or omissions, and to respond to comments received on the Draft EIR during the public review period. The changes described in this Chapter do not add significant new information to the Draft EIR that would require recirculation of the Draft EIR. More specifically, CEQA requires recirculation of a Draft EIR only when “significant new information” is added to a Draft EIR after public notice of the availability of the Draft EIR has occurred (refer to California Public Resources Code [PRC] Section 21092.1 and CEQA Guidelines Section 15088.5), but before the EIR is certified. Section 15088.5 of the CEQA Guidelines specifically states:

*New information added to an EIR is not ‘significant’ unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project’s proponents have declined to implement. ‘Significant new information’ requiring recirculation includes, for example, a disclosure showing that:*

- *A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.*
- *A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted to reduce the impact to a level of insignificance.*
- *A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project’s proponents decline to adopt it.*
- *The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.*

CEQA Guidelines Section 15088.5 also provides that “[re]circulation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR... A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record.”

As demonstrated in this Final EIR, the changes presented in this Chapter do not constitute new significant information warranting recirculation of the Draft EIR as set forth in CEQA Guidelines Section 15088.5. Rather, the Draft EIR is comprehensive and has been prepared in accordance with CEQA.

Changes to the Draft EIR are indicated below under the respective EIR section heading, page number, and paragraph. Paragraph reference is to the first full paragraph on the page. Deletions are shown with ~~strikethrough~~ and additions are shown with double underline.

Since publication of the Draft EIR (November 2021), the Applicant is proposing the following changes to the Project:

1. Removal of the approximately 33-acre area initially identified for extension of the existing open channel located outside the Project fence line along the western and northern boundary of Conditional Use Permit 1 (CUP 1) area. The extension of the channel, as analyzed in the Draft EIR, is no longer proposed. The Draft EIR analyzed inclusion of this area and construction of the open channel and found that impacts to drainage and flooding would result in less than significant impacts. The Project would no longer disturb this previously undisturbed area and the total area within CUP 1 would be reduced compared to the area analyzed under the Draft EIR, and this removal would not result in any new or more severe environmental impacts than were identified in the Draft EIR.
2. Approval of a Lot Line Adjustment (LLA) to consolidate parcels within the Project Site from three parcels to two parcels. An LLA is administrative in nature and does not change the design or the development footprint previously identified and analyzed for the Project. Approval of a LLA would not result in any new or more severe environmental impacts than were identified in the Draft EIR.
3. Concrete solar racking piers installed as part of the partially constructed SEGS X facility, were described in the Draft EIR as to remain in place. Based on advancement of Project design during preparation of this Final EIR, the concrete piers would largely remain in place; however, minimal removal would be required for installation of Project facilities. The quantitative modeling (e.g., air quality, energy, greenhouse gas emissions, and noise) in the Draft EIR included removal of some concrete piers as part of Project construction. As the analysis in the Draft EIR already contemplated removal of some concrete piers as part of Project construction, this revision would not result in any new or more severe environmental impacts than were identified in the Draft EIR.

The three changes listed above would not result in any new or an increase in significance of potential environmental impacts from what was included in the Draft EIR; therefore, no changes to the environmental findings as determined in the Draft EIR are required.

## **Executive Summary**

The revisions, clarifications, or corrections for the Draft EIR sections described below also apply to the executive summary of the Draft EIR.



## Section 3.0, Project Description

The revisions listed below for the Project Description apply to all sections and associated appendices of the Draft EIR.

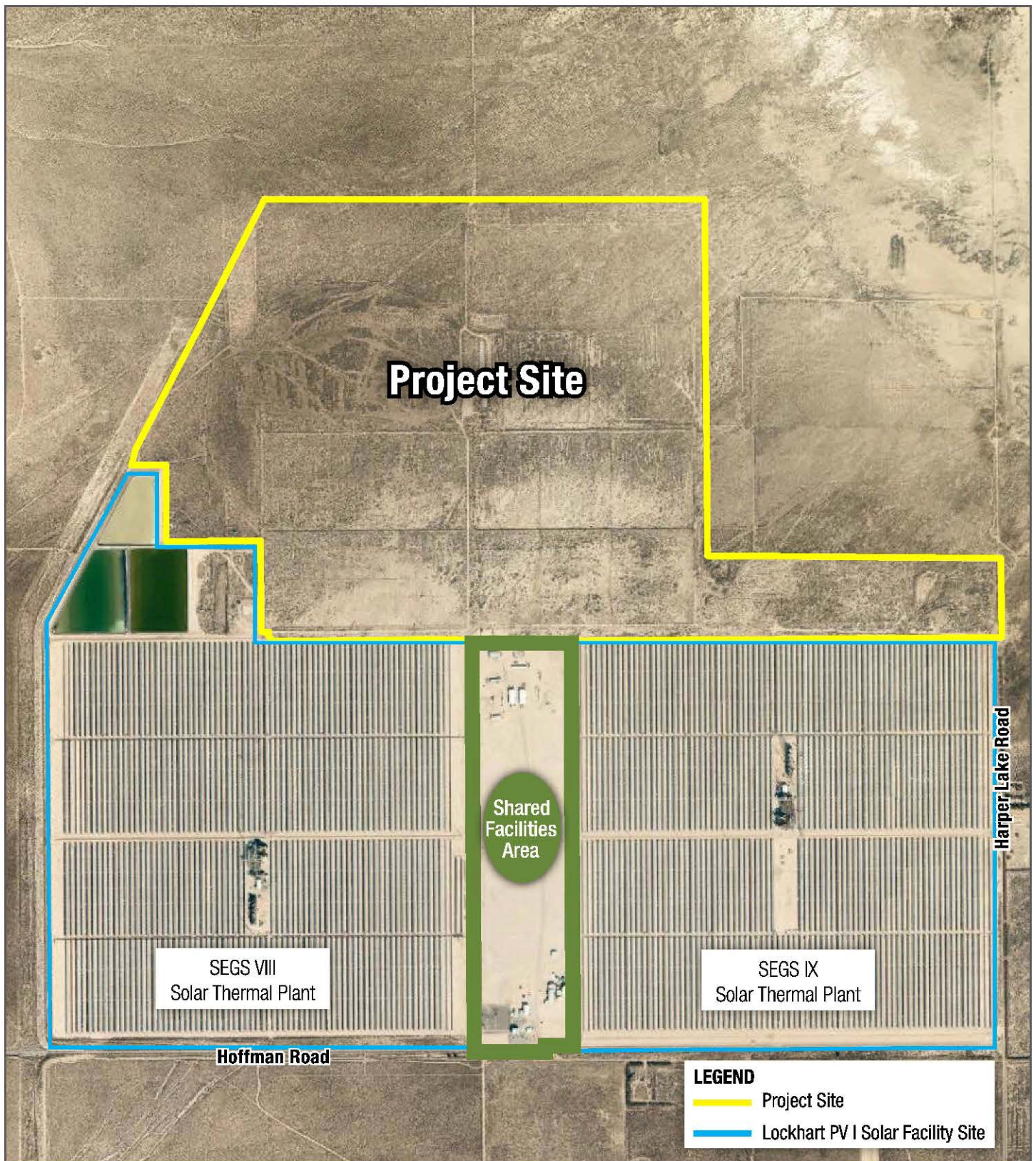
1. Page 3-1, the first sentence of the first paragraph is revised as follows:

Lockhart Solar PV II, LLC (Applicant) proposes a zoning amendment to change the current zoning designation to Resource Conservation (RC) from Rural Living (RL), a Lot Line Adjustment (LLA) to consolidate parcels within the Project Site from three parcels to two parcels, as well as four (4) Conditional Use Permits (CUPs) to develop the Lockhart Solar PV II Project (Project), a utility scale, solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 150 megawatts (MW) of solar power and include up to 4 gigawatt hours (GWh) of energy storage capacity rate in a battery energy storage system (BESS) within an approximately ~~755~~ 722-acre Project Site.

2. Page 3-1, the second sentence of the first paragraph under Section 3.1, Project Location and Settings, is revised as follows:

The Project Site consists of area within three parcels, each of which contain vacant, previously disturbed land, miscellaneous concrete foundations, various electrical lines and poles, as well as existing facilities within the Shared Facilities Area (County Assessor's Parcel Numbers: 0490-101-56, 0490-101-54, and 0490-223-33). Upon approval of the LLA, the Project Site would consist of two parcels (County Assessor's Parcel Numbers: 0490-101-56 and 0490-101-54).

3. Page 3-5, Figure 3-3 is revised below.
4. Page 3-7, Figure 3-4 is revised below.



SOURCE: Google Earth Pro

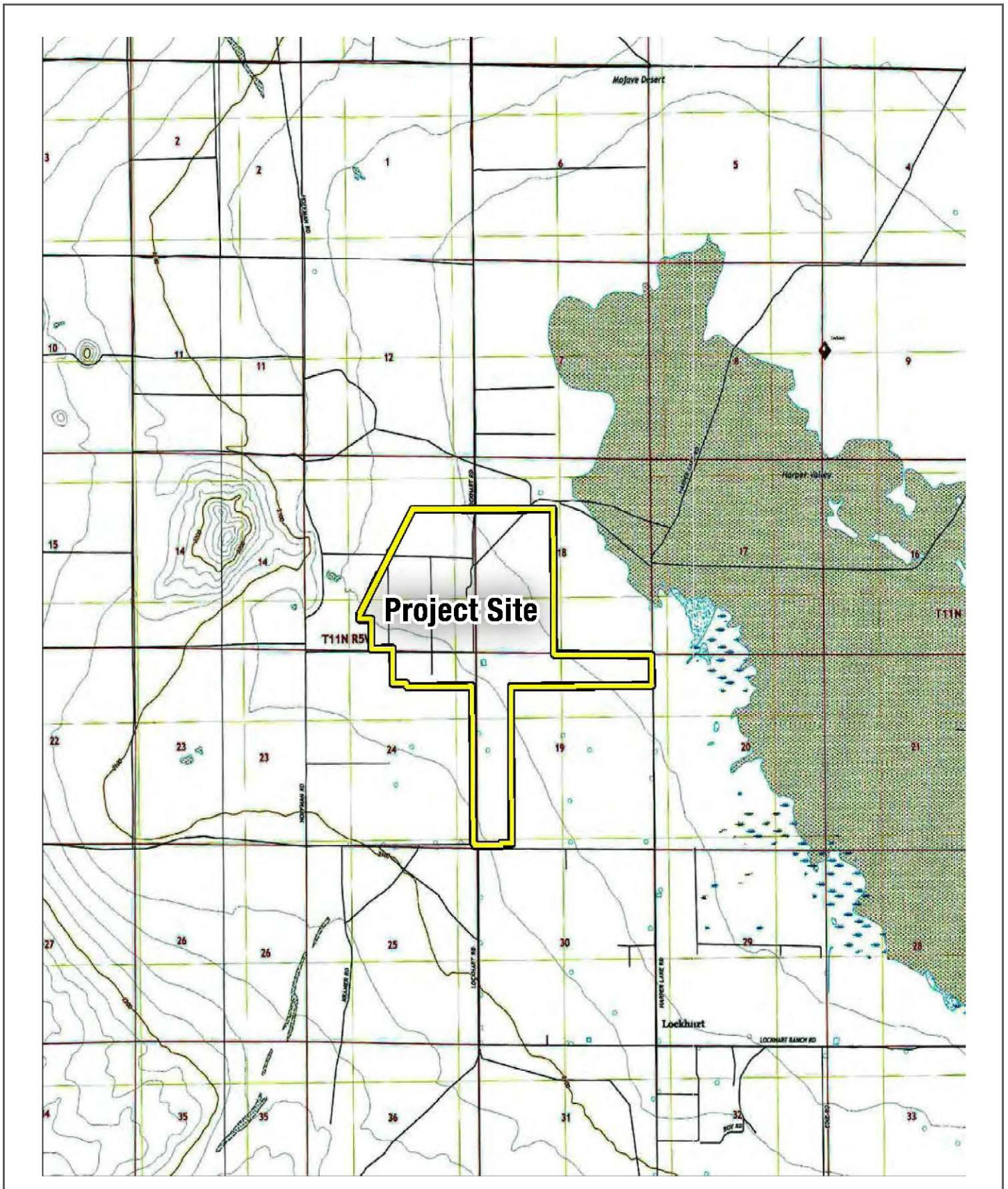


## FINAL EIR REVISED FIGURE 3-3: Aerial Map

LOCKHART SOLAR PV II PROJECT

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SOURCE: USGS 7.5-Minute Topographic Quadrangle Maps: Lockhart, CA (2018) & The Buttes CA (2018)



## FINAL EIR REVISED FIGURE 3-4: Topographic Map

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5. Page 3-9, the second bullet under Section 3.5, Project Objectives, is revised as follows:
- Establish solar PV power-generating facilities and energy storage of sufficient size and configuration to produce and deliver reliable electricity in an economically feasible and commercially financeable manner that can be marketed to different power utility companies.
6. Page 3-10, the last sentence of the first paragraph under Section 3.6, Proposed Project, is revised as follows:

Previously constructed concrete solar racking piers in the southwest portion of the site will largely remain in place as newer steel foundation piles can be driven around the old piers further reducing soil disturbance and offsite hauling and landfilling of debris.

7. Page 3-10, Table 3-2 is revised as follows:

**Table 3-2: CUP Approximate Acreages**

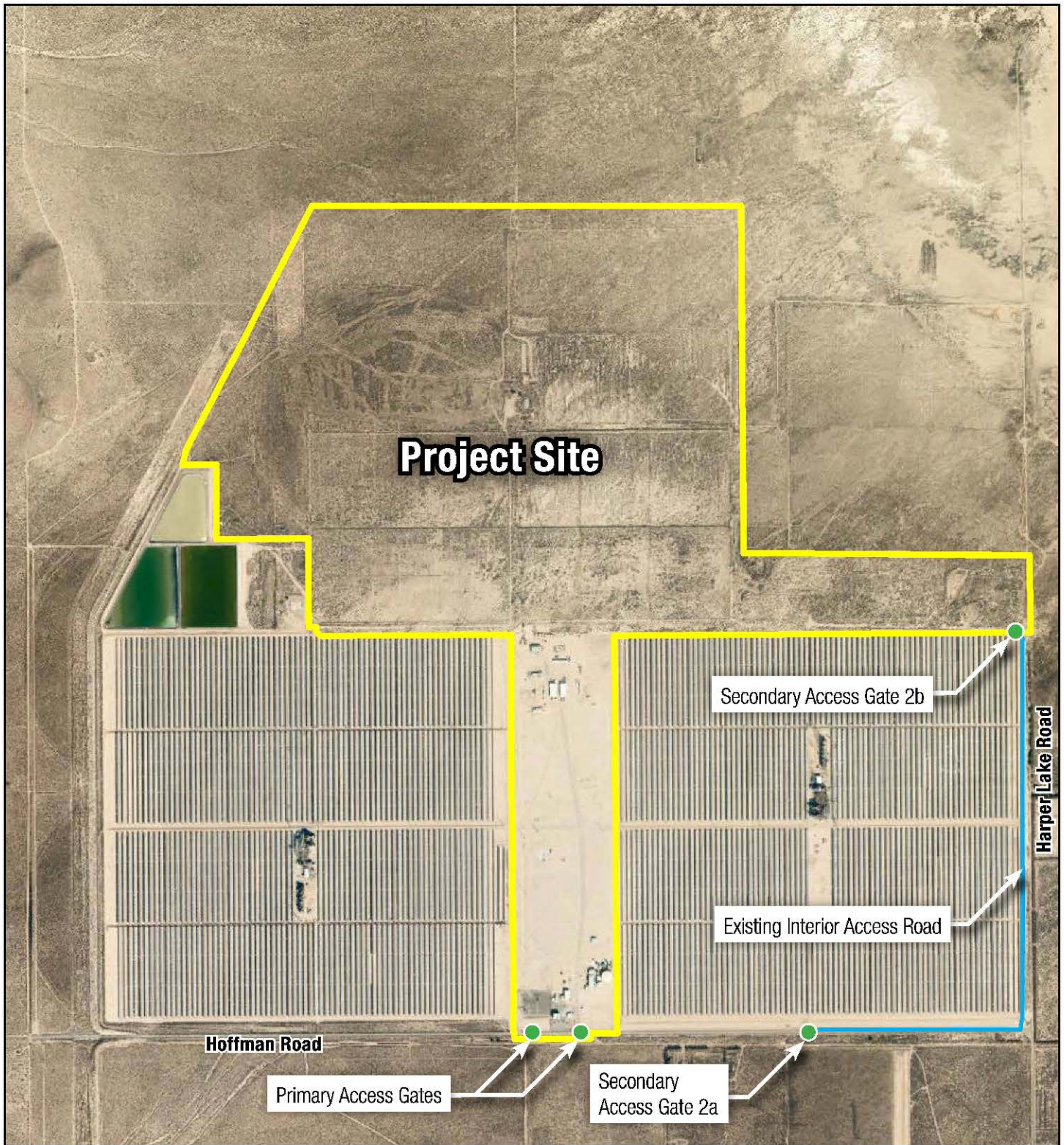
CUP Area	<u>Approximate</u> Acreage
CUP 1	<del>565</del> <u>532</u>
CUP 2	80
CUP 3	27
CUP 4	83

8. Page 3-11, the second bullet for CUP 1 is revised as follows:
- CUP 1: Solar PV Generating Facilities and Solar Modules:** CUP 1 covers an approximately ~~565~~ 532-acre area and includes installation of solar facilities capable of generating approximately 129 MW of renewable electrical energy. The energy is generated via PV modules made of thin film or polycrystalline silicon material covered by glass, mounted on a single-axis tracking system and connected to inverters and to the BESS. Depending on the type of modules used, panels would measure between approximately 4 and 7 feet in length, and the total height of the panel system measured from the ground surface would be approximately 7 to 12 feet. Spacing between each solar panel row would be between 10 to 24 feet. Single-axis systems would employ a motor mechanism that would allow the arrays to track the path of the sun throughout the day. In the morning, the panels would face the east. Throughout the day, the panels would slowly move to the upright position at noon and on to the west at sundown. The panels would reset to the east in the evening or early morning to receive sunlight at sunrise. ~~CUP 1 also includes the area required for extension of the existing open channel located outside the Project fence line along the western and northern boundary of the CUP 1 area for collection and routing of offsite run-on, if needed for Project design.~~
9. Page 3-13, Figure 3-5 is revised below.
10. Page 3-16, Figure 3-6 is revised below.



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SOURCE: Google Earth Pro



## FINAL EIR REVISED FIGURE 3-6: Site Access

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11. Page 3-19, the last paragraph is revised as follows:

Stormwater runoff currently enters the Project Site from the southern and western boundaries and exits the Project Site along the northern and eastern boundaries. The existing earthen berm diverts the off-site flow to the northwest corner, which confluences with flow from the berm and ponds just outside the northeast corner of the Project Site within the dry lake bed of Harper Lake. ~~The Project includes extension of the existing berm into an open channel located along the western and northern boundary of the Project Site for the collection and routing of offsite runoff. The open channel would redirect flows originating off-site to drain to the existing watershed which flows toward Harper Dry Lake. The open channel would be designed to capture and divert the off-site flows from the existing channel and continue on the path around the Project Site boundary.~~ The Project would also develop retention basins to manage the slight increase in runoff due to the installation of the Project facilities, such as steel piles, inverter foundations, and the BESS. The proposed improvements would maintain the existing drainage patterns on the Project Site. The retention basins would be sized to capture the difference in the pre- versus post-developed conditions on the Project Site.

12. Page 3-20, Table 3-3 is revised as follows:

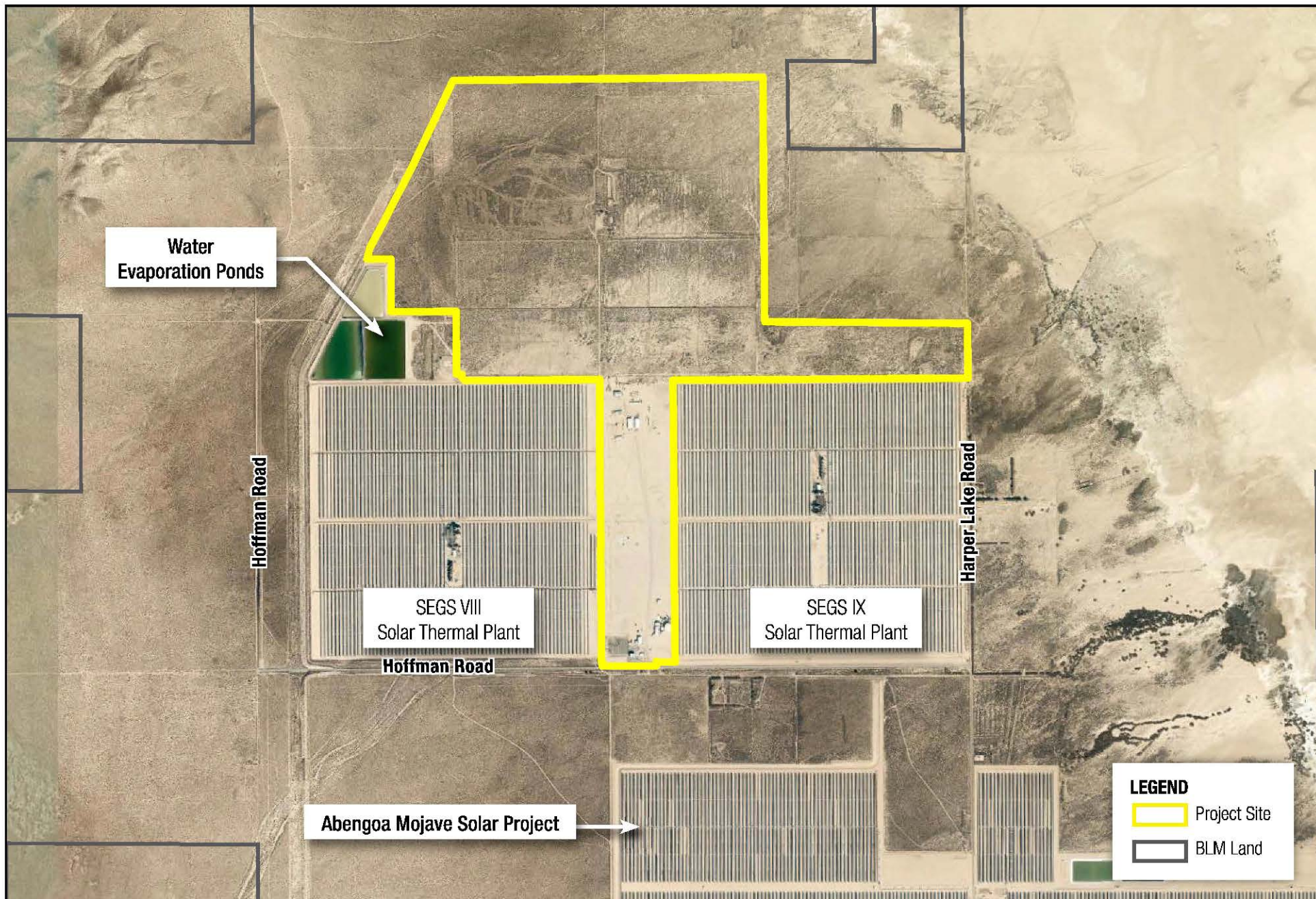
**Table 3-3: Matrix of Potential Approvals Required**

Permit/Action Required	Approving Agency	Lead/Trustee/Responsible Agency Designation
Environmental Impact Report Certification	County	Lead Agency
Conditional Use Permits	County	Lead Agency
<u>Zone Change</u>	<u>County</u>	<u>Lead Agency</u>
<u>Lot Line Adjustment</u>	<u>County</u>	<u>Lead Agency</u>
Variance for Height of new on-site collection line poles	County	Lead Agency
Air Quality Construction Management Plan	Mojave Desert Air Quality Management District (MDAQMD)	Responsible Agency
Waste Discharge Permit, if required	Lahontan Regional Water Quality Control Board (RWQCB)	Responsible Agency
General Construction Stormwater Permit	Lahontan RWQCB	Responsible Agency
Grading, Building, and Encroachment Permit(s)	County	Lead Agency
Incidental Take Permit, if required	California Department of Fish & Wildlife (CDFW)	Responsible Agency

## Section 4.1, Aesthetics

1. Page 4.1-3, Figure 4.1-1 is revised as follows:





SOURCE: Google Maps, 2021



## FINAL EIR REVISED FIGURE 4.1-1: Surrounding Land Uses

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## Section 4.3, Biological Resources

1. Page 4.3-4, Figure 4.3-2a is revised below.
2. Page 4.3-6, Figure 4.3-2c is revised below.
3. Page 4.3-8, Figure 4.3-3 is revised below.
4. Page 4.3-43, the third sentence of the second paragraph of Mitigation Measure BIO-1 is revised as follows:

Existing vegetation within the Project Site would be removed, but mitigation for the loss of CNPS List 1 or 2 any special-status plant species that are detected during preconstruction surveys within the Project Site shall be considered during the process of purchasing mitigation lands for Project impacts.

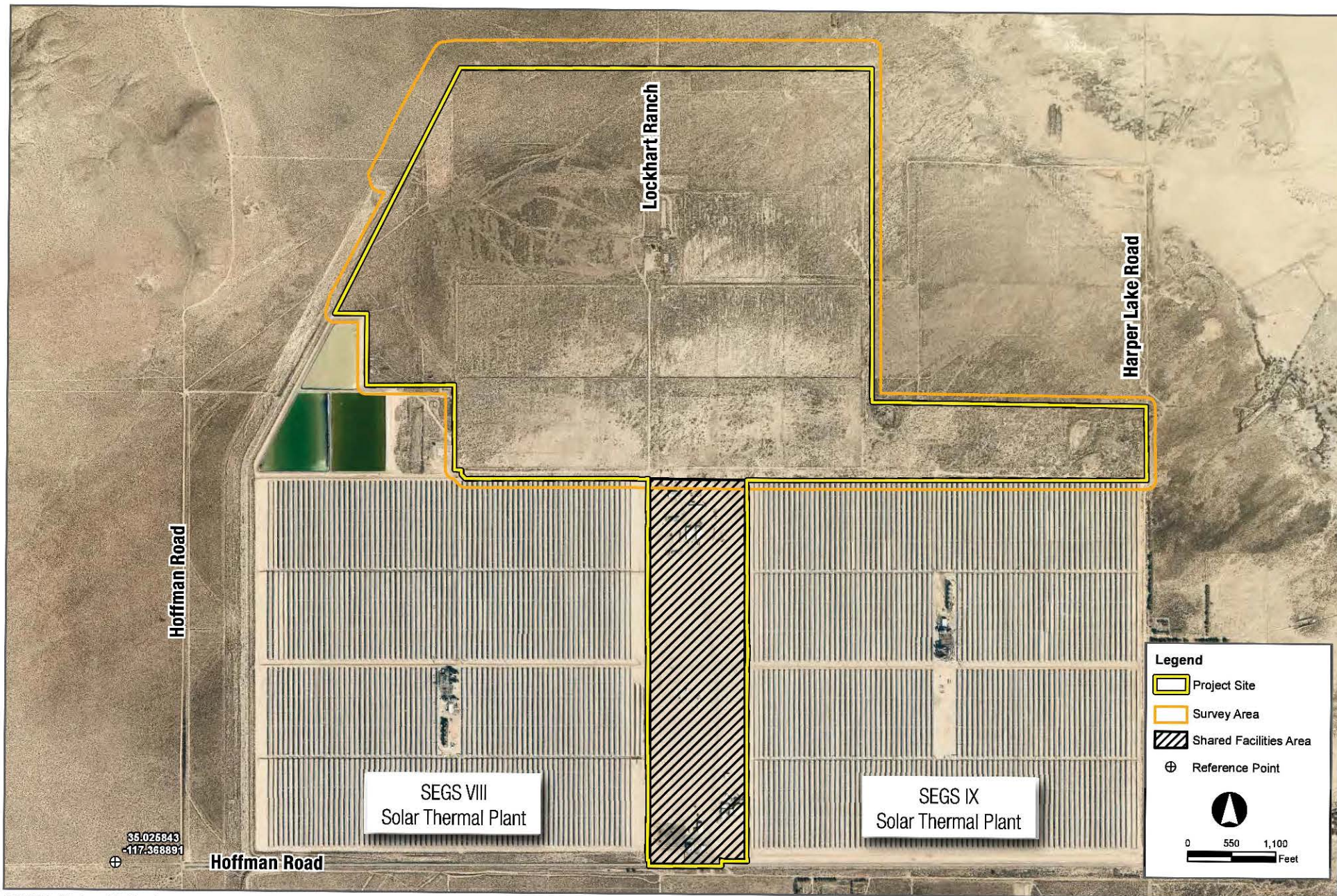
5. Page 4.3-43, Mitigation Measure BIO-3 is revised as follows:

**BIO-3** Pre-construction burrow clearance surveys shall be conducted by a qualified biologist to ensure that burrowing owls, desert kit fox, or American badger remain absent from the Project Site and impacts to these animals do not occur. Two (2) pre-construction clearance surveys should be conducted: the first to be conducted 14-30 days prior and the second to be conducted no more than 24 hours prior to any vegetation removal or ground disturbing activities. Once surveys are completed, the qualified biologist shall prepare a final report documenting surveys and findings. If no occupied burrows are detected, Project construction activities may begin. If an occupied burrow is found within the Project Site during pre-construction clearance surveys, a burrowing owl, desert kit fox, or American badger exclusion and mitigation plan shall be prepared and submitted to the County, which may consult with CDFW for review, prior to initiating Project construction activities.

6. Page 4.3-45, the third bullet of Mitigation Measure BIO-9 is revised as follows:
  - Construction personnel trained by a qualified biologist or tThe qualified biologist shall inspect for special-status species and other wildlife under vehicles and equipment every time the vehicles or equipment are moved. If an animal is present, site workers shall wait for the individual to move to a safe location. If a listed species is discovered under equipment or vehicles and does not move on its own, the project shall contact CDFW and/or USFWS to determine the appropriate action.

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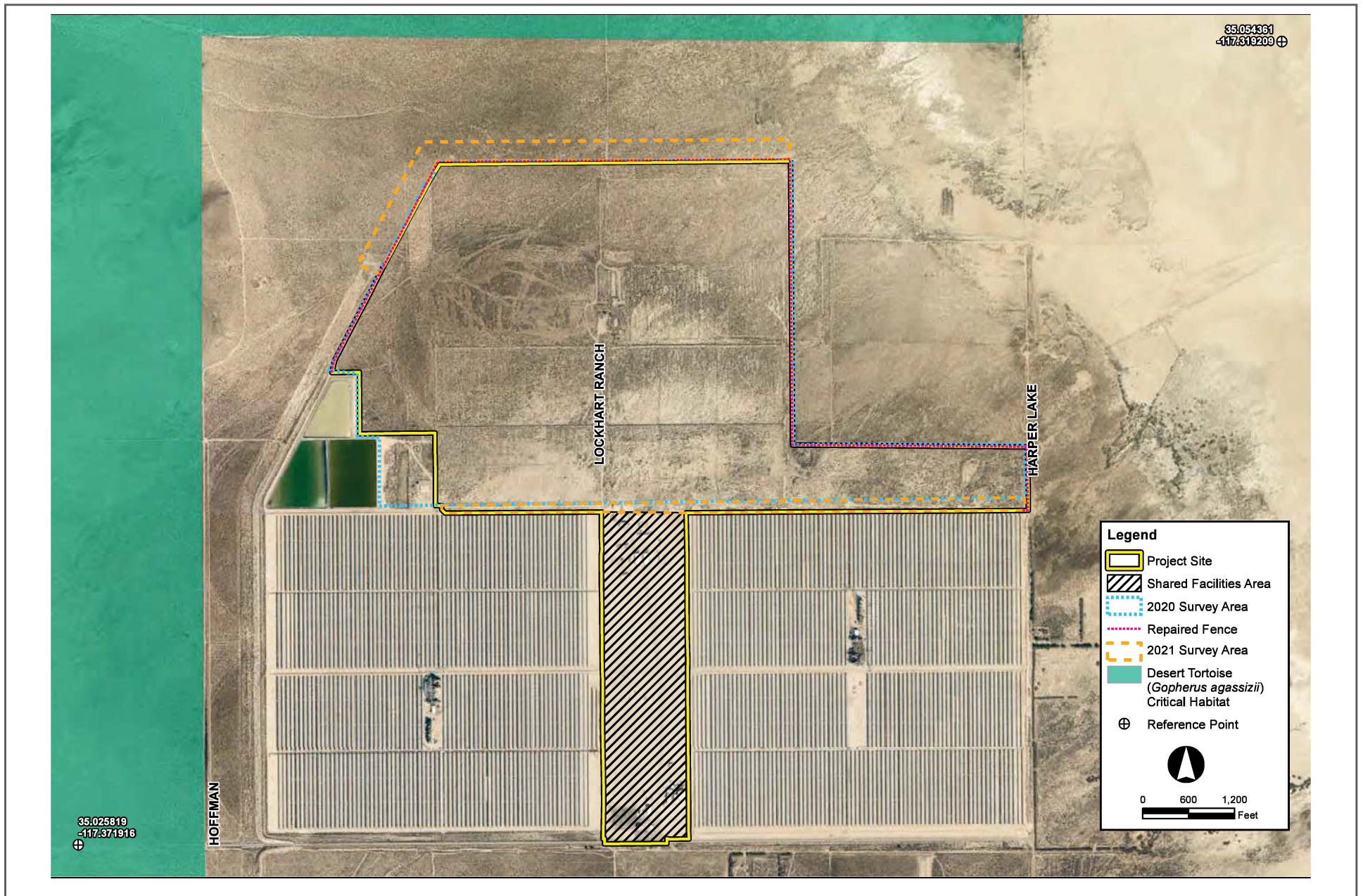
SOURCE: Michael Baker International, 2021

**FINAL EIR REVISED FIGURE 4.3-2a: Biological Reconnaissance Survey and Jurisdictional Delineation Area**

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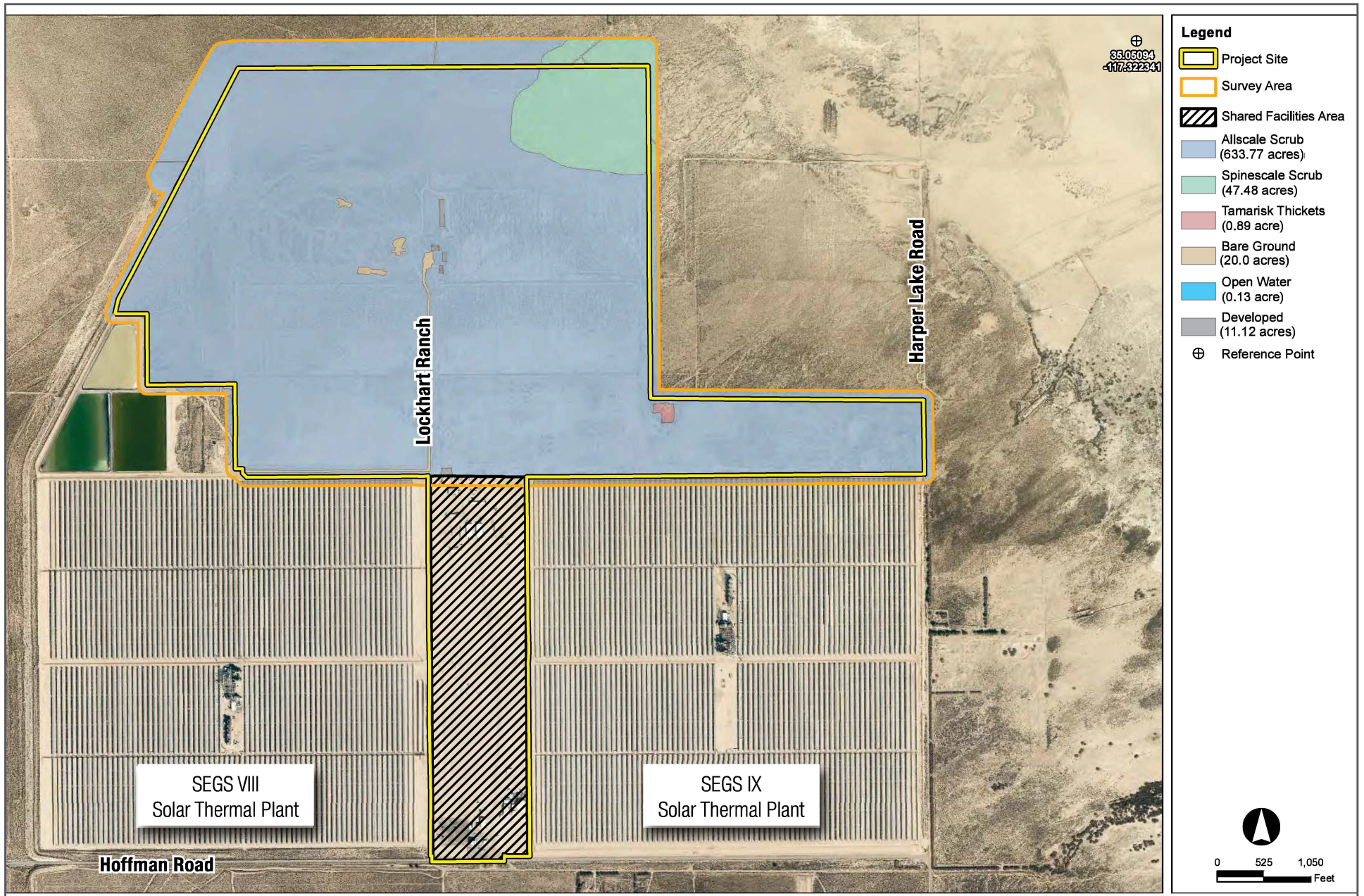
SOURCE: Michael Baker International, 2021

## FINAL EIR REVISED FIGURE 4.3-2c: Desert Tortoise Survey Area

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SOURCE: Michael Baker International, 2021

## FINAL EIR REVISED FIGURE 4.3-3: Vegetation Communities

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## Section 4.5, Energy

1. Page 4.5-13, the sixth sentence of the second paragraph is revised as follows:

Additionally, the Project would implement **Mitigation Measure AQ-2 AQ-1**, which would require that off-road diesel-fueled construction vehicles and equipment greater than 50 hp meet Tier 4 emissions standards during demolition, grading, and facility construction.

2. Page 4.5-13, the second sentence of the last paragraph is revised as follows:

Additionally, the Project would utilize USEPA and CARB engine emissions standards and implement **Mitigation Measure AQ-2 AQ-1**, both of which would reduce fuel consumption and prevent the unnecessary waste of fuels.

## Section 4.6, Geology and Soils

1. Page 4.6-12, the second paragraph is revised as follows:

Following completion of construction activities, the Project Site would be an operational utility scale solar photovoltaic (PV) electricity generation and energy storage facility. The overall potential for soil erosion would be reduced from existing conditions as there would be reduced exposed soils on the Project Site. As the Project does not include any paved areas or access roads, the added impervious areas are limited to Project facilities (such as the solar arrays, posts under the arrays, inverters, and battery storage units). As further detailed in Section 4.9, *Hydrology and Water Quality*, stormwater runoff currently enters the Project Site from the southern and western boundaries and exits the Project Site along the northern and eastern boundaries. The existing berm located along the western boundary of the SEGS VIII facility site diverts off-site flow to the northwest corner. ~~the existing berm and open channel that currently runs along the western boundary of the SEGS VIII facility site would be extended for collection and routing of offsite run-on as part of the Project to protect the Project from off-site flows and to minimize erosion.~~ On-site flows are anticipated to sheet flow across the Project Site with only minor increases in imperviousness and therefore are not expected to result in substantial erosion. Therefore, Project operation would not result in substantial soil erosion or the loss of topsoil, and impacts would be less than significant.

## Section 4.9, Hydrology and Water Quality

1. Page 4.9-12, the second paragraph is revised as follows:

Construction controls...~~Additional compliance with the San Bernardino County Stormwater Program Technical Guidance Document requires the preparation and implementation of a Water Quality Management Plan (WQMP) to manage stormwater runoff during construction activity and include site design and source control BMPs to help ensure stormwater runoff and impervious areas are minimized and natural areas are conserved. With implementation of the WQMP,~~

compliance with the NPDES permit requirements, and implementation of BMPs, Project construction would not violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality.

2. Page 4.9-15, the last paragraph is revised as follows:

As previously stated under Subsection 4.9.2, *Environmental Setting*, stormwater runoff currently enters the Project Site from the southern and western boundaries and exits the Project Site along the northern and eastern boundaries. The existing earthen berm diverts the off-site flow to the northwest corner, which confluences with flow from the berm and ponds just outside the northeast corner of the Project Site within the dry lake bed of Harper Lake. ~~The Project includes extension of the existing berm into an open channel located along the western and northern boundary of the Project Site for the collection and routing of offsite runoff. The open channel would redirect flows originating off site to drain to the existing watershed which flows toward Harper Dry Lake. The open channel would be designed to capture and divert the off-site flows from the existing channel and continue on the path around the Project Site boundary. The open channel would also be designed to minimize the potential for erosion and siltation to occur when flows are conveyed through the channel. The off-site flow from the southwest would eventually collect in Harper Lake, east of the Project Site.~~ The Project would develop retention basins to manage the slight increase in runoff due to grading and the installation of the Project facilities, such as steel piles, inverter foundations, and the BESS. The proposed improvements would maintain the existing drainage patterns on the Project Site. Project construction and operation would not substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial on- or off-site. Impacts would be less than significant.

3. Page 4.9-16, the second paragraph is revised as follows:

~~The Project includes extension of the existing earthen berm along the western boundary of the Project Site into an open channel along the Project's western and northern boundaries to collect and route offsite runoff. The Project would develop retention basins to manage the slight increase in runoff due to the installation of the Project facilities, such as steel piles, inverter foundations, and the BESS. The proposed improvements would maintain the existing drainage patterns on the Project Site. Because offsite flows collected in and conveyed through the open channel would be directed into the existing watershed and would eventually flow to Harper Dry Lake, as occurs under existing conditions, the proposed open channel, which would redirect flows, would not be expected to result in flooding on or off-site. As detailed in the *Hydrology Report*, the Project is expected to maintain existing overall drainage patterns with only an increase in imperviousness of 0.5 percent; the slight increase in runoff would be sufficiently managed utilizing retention basins such that there would not be an increase in surface run-off which would result in flooding.~~ The Project retention basins would satisfy the following conditions: ...



4. Page 4.9-18, the third paragraph is revised as follows:

The Project falls...As stated under Impact 4.9-1, the Project would implement a SWPPP during construction that specifies BMPs to manage runoff flows and prevent pollution. ~~Many of these BMPs are required as part of the applicable WQMPs.~~ Project operation is not anticipated to produce any pollutants that would result in a violation of water quality standards or waste discharge requirements, and all discharges would be compliant with the applicable local, State, and federal regulations and standards. Therefore, the Project would not conflict with or obstruct implementation of a water quality control plan.

## Section 5.0, Other CEQA Considerations

1. Page 5-1, the two paragraphs under Section 5.2, Growth Inducing Impacts, is revised as follows:

Section 15126.2(~~de~~) of the CEQA Guidelines requires that an EIR discuss a project's potential to foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment...

The San Bernardino County Countywide Plan/Policy Plan recognizes that certain forms of growth are beneficial, both economically and socially. Section 15126.2(~~de~~) of the CEQA Guidelines provides the following guidance on growth-inducing impacts: ...

2. Page 5-2, the first sentence under Section 5.3, Significant and Unavoidable Impacts, is revised as follows:

Section 15126.2(~~bc~~) of the CEQA Guidelines requires that an EIR discuss any significant impacts associated with a project.

3. Page 5-2, the first sentence under Section 5.4, Significant and Irreversible Environmental Changes, is revised as follows:

Section 15126.2(~~ed~~) of the CEQA Guidelines defines an irreversible impact as an impact that uses nonrenewable resources during the initial and continued phases of the Project.

## Section 6.0, Alternatives

1. Page 6-2, the second bullet under Section 6.2, Project Objectives, is revised as follows:

- Establish solar PV power-generating facilities and energy storage of sufficient size and configuration to produce and deliver reliable electricity in an economically feasible and commercially financeable manner that can be marketed to different power ~~utility~~ companies.

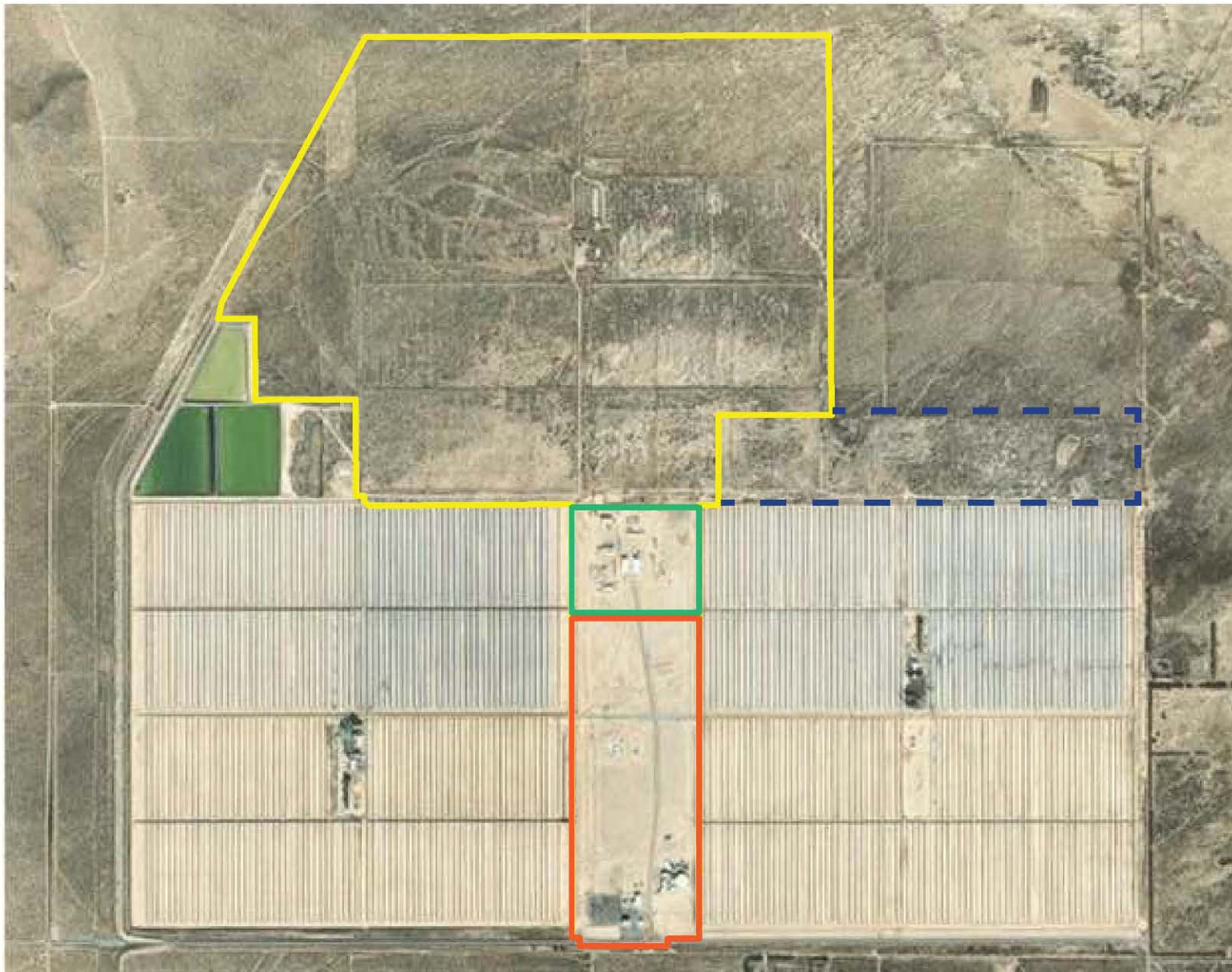
2. Page 6-6, the first sentence is revised as follows:

...an approximately ~~755~~ 722-acre Project Site would not occur.

3. Page 6-6, the first paragraph under Section 6.4.2, Alternative 2: Reduced Acreage Alternative, is revised as follows:

Under the Reduced Acreage Alternative, the Project Site would be reduced to only include CUP Areas 1, 3, and 4. This alternative would reduce the Project's footprint from ~~755~~ 722 acres to 675 acres and would restrict construction of Project facilities to CUP Areas 1, 3, and 4 (see **Figure 6-1: Reduced Acreage Alternative**).

4. Page 6-7, Figure 6-1 is revised as follows:



**LEGEND**

- CUP 1
- CUP 3
- CUP 4
- Existing fence to remain

SOURCE: Kimley-Horn, 2021



**FINAL EIR REVISED FIGURE 6-1: Reduced Acreage Alternative**

LOCKHART SOLAR PV II PROJECT





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5. Page 6-9, the last sentence of the first paragraph is revised as follows:

Alternative 3, includes use of approximately 1,386 acres on...Due to development constraints associated with topography and natural drainages of the Alternative site, it was assumed that a larger area than the ~~755~~ 722-acre Project Site would be required (approximately 1,386 acres) to achieve development of a similar utility-scale renewable energy facility as proposed under the Project.

6. Page 6-13, the last paragraph is revised as follows:

Wind energy facilities generally consist of rows...an equivalent 150 MW of electricity generation, depending on the technology selected, it would likely require use of a much larger land area than ~~755~~ 722-acres.

7. Page 6-14, the last sentence of the first paragraph is revised as follows:

While some of the mountain ridges in the County's desert areas are highly suitable for wind energy facilities, the Project Site is not within an area with reliable or easily attainable wind resources; therefore, in order to attain comparable energy production, a much larger land area and large number of turbines would be required, making wind energy at the ~~755~~ 722-acre Project Site infeasible.

## Section 7.0, Effects Found Not to Be Significant

1. Page 7-4, the first line of the second paragraph is revised as follows:

The Applicant is requesting a Lot Line Adjustment (LLA) to consolidate parcels within the Project Site from three parcels to two parcels. The Applicant is also requesting four CUPs be approved to allow for construction and operation of the Project as an allowable use within the RC Zone.

2. Page 7-4, the first line of the third paragraph is revised as follows:

Therefore, with approval of the zone change from RL to RC, whether approved as part of the upcoming Zoning ordinance and map update or as a site-specific request applicable only to the Project Site, the LLA to consolidate parcels from three parcels to two parcels, and issuance of the requested CUPs, the Project is not anticipated to have the potential to conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the Project adopted for the purpose of avoiding or mitigating an environmental effect.

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## 4.0 REFERENCES

- Kosciuch K, Riser-Espinoza D, Gerringer M, Erickson W., A summary of bird mortality at photovoltaic utility scale solar facilities in the Southwestern U.S. PLoS ONE 15(4): e0232034, 2020. Available at <https://doi.org/10.1371/journal.pone.0232034>. Accessed January 28, 2022.
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- Shuford WD, Warnock N, Molina KC, Mulrooney B, Black AE., 2019, Avifauna of the Salton Sea: abundance, distribution, and annual phenology. Final report for EPA Contract R826552-01-0; 2000. Available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=7312>. Accessed January 28, 2022.

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## **Appendix A**

Original Comment Letters



**From:** Ryan Nordness <[Ryan.Nordness@sanmanuel-nsn.gov](mailto:Ryan.Nordness@sanmanuel-nsn.gov)>

**Sent:** Wednesday, December 01, 2021 5:05 PM

**To:** DeLuca, Anthony <[Anthony.DeLuca@lus.sbcounty.gov](mailto:Anthony.DeLuca@lus.sbcounty.gov)>

**Subject:** RE: AB52 Notice for LOCKHART SOLAR 600 acre site set to demo foundation and construct solar facility/BESS, San Bernardino County, CA

**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.**

Hey Anthony,

1-1

As this project moves forward, do you have any more information on how much of this project is previously disturbed, preferably a percentage. Additionally, what techniques are you aware of that the developer will use to remove the previously installed structures?

---

**From:** DeLuca, Anthony <[Anthony.DeLuca@lus.sbcounty.gov](mailto:Anthony.DeLuca@lus.sbcounty.gov)>

**Sent:** Friday, December 10, 2021 1:54 PM

**To:** Ryan Nordness <[Ryan.Nordness@sanmanuel-nsn.gov](mailto:Ryan.Nordness@sanmanuel-nsn.gov)>

**Subject:** RE: AB52 Notice for LOCKHART SOLAR 600 acre site set to demo foundation and construct solar facility/BESS, San Bernardino County, CA

Hi Ryan, please see below responses from the applicant regarding your questions previously presented in your last email.

Let me know if you have any further questions, I will gladly pass them along. Also let me know if you need additional information about the project.

Thanks a lot

Have a good weekend, talk soon

Tony

**Anthony DeLuca**

Senior Planner

**Land Use Services Department**

Phone: (909) 387-3067

Work Cell: (909) 601-4662

Fax: (909) 387-3223

385 N. Arrowhead Ave. 1<sup>st</sup> Flr

San Bernardino, CA 92415-0187



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## **RESPONSES from Applicant for the Lockhart II Solar PV II Project**

**Question #1: How much of this Project is previously disturbed, preferably a percentage.**

The Project Site is approximately 755 acres and is made up of the following areas:

1. 110-acre Shared Facilities Area
  - 100% has been previously heavily disturbed during construction/operation of the SEGS VIII and IX facilities that have been operational since the early 1990's.
2. 612-acre site previously approved by California Energy Commission for construction of the SEGS X facility (area within the existing property fence line)
  - Approximately 87% has been previously disturbed
  - Disturbance was associated with past intensive agricultural use (alfalfa cultivation) from the 1940s to the 1980s, as well as grading and partial construction of the SEGS X facility in the early 1990s.
3. 33-acre strip of land outside the western and northern boundary of the existing property fence line (for extension of the existing open channel for collection/routing of offsite stormwater flow onto the site)
  - Area is previously undisturbed

- Developer is currently working on Project design to avoid extension of this channel outside the property fence line in order to limit new disturbance associated with the Project

**Question #2: What techniques are you aware of that the Developer will use to remove the previously installed structures.**

General techniques for removal of existing SEGS X facilities would include the following:

Structures:

- conduct a visual survey of the structures to ensure that environmental hazards that may exist (if any) have been addressed prior to demolition
- demolition of structures will be conducted from the top working downward
- concrete slabs/foundations and pedestals will be broken in place by excavators equipped with hydraulic hammers/breakers
- any ferrous/non-ferrous metals and inert materials will be transported to an appropriate off-site recycling facility
- concrete debris will be sized into manageable pieces, and transported to an off-site recycling facility
- any voids will be backfilled with clean soil and compacted to match existing contours

Utility poles:

- A small area immediately surrounding the utility pole will be excavated to allow the pole to be removed from the ground
- Poles will be sized into manageable sizes and shipped off site for disposal as treated wood waste



**From:** Ryan Nordness <[Ryan.Nordness@sanmanuel-nsn.gov](mailto:Ryan.Nordness@sanmanuel-nsn.gov)>

**Sent:** Monday, December 13, 2021 11:07 AM

**To:** DeLuca, Anthony <[Anthony.DeLuca@lus.sbcounty.gov](mailto:Anthony.DeLuca@lus.sbcounty.gov)>

**Subject:** RE: AB52 Notice for LOCKHART SOLAR 600 acre site set to demo foundation and construct solar facility/BESS, San Bernardino County, CA

**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.**

1-3

Thank you so much for that information Anthony. Our concerns for any buried resources has decreased significantly. I am attaching our preferred mitigation measures for this project.

## Treatment of Cultural Resources

If a pre-contact cultural resource is discovered during project implementation, ground-disturbing activities shall be suspended 60 feet around the resource(s), and an Environmentally Sensitive Area (ESA) physical demarcation/barrier constructed. The lead agency shall develop a research design 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 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 resource's archaeological significance, its potential as a Tribal Cultural Resource (TCR), and avoidance (or other appropriate treatment) of the discovered resource.

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 cataloging and basic recordation of cultural resources have been completed, and a final monitoring report has been issued to the 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 appropriately 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 Project developer/applicant's obligation 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.

#### **Inadvertent Discovery Guideline**

1. In the event that cultural resources are discovered during project activities, all work in the immediate vicinity of the find (within a 60-foot buffer) shall cease, and a qualified archaeologist meeting Secretary of Interior standards shall be hired to assess the find. Work on the other portions of the project outside of the buffered area may continue during this assessment period. Additionally, the San Manuel Band of Mission Indians Cultural Resources Department (SMBMI) shall be contacted, as detailed within TCR-1, regarding any pre-contact and/or post-contact finds and be provided information after the archaeologist makes his/her initial assessment of the nature of the find, so as to provide Tribal input with regards to significance and treatment.
1. If significant pre-contact and/or post-contact cultural resources, as defined by CEQA (as amended, 2015), are discovered, and avoidance cannot be ensured, the archaeologist shall develop a Monitoring and Treatment Plan, the drafts of which shall be provided to SMBMI for review and comment, as detailed within TCR-1. The archaeologist shall monitor the remainder of the project and implement the plan accordingly.
1. If human remains or funerary objects are encountered during any activities associated with the project, work in the immediate vicinity (within a 100-foot buffer of the find) shall cease, and the County Coroner shall be contacted pursuant to State Health and Safety Code §7050.5 and that code enforced for the duration of the project.

#### **Inadvertent Discoveries of Human Remains/Funerary Objects**

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).

#### **CUL MMs**

1. In the event that cultural resources are discovered during project activities, all work in the immediate vicinity of the find (within a 60-foot buffer) shall cease, and a qualified archaeologist meeting Secretary of Interior standards shall be hired to assess the find. Work on the other portions of the project outside of the buffered area may continue during this assessment period. Additionally, the San Manuel Band of Mission Indians Cultural Resources Department (SMBMI) shall be contacted, as detailed within TCR-1, regarding any pre-contact and/or post-contact finds and be provided information after the archaeologist makes his/her initial assessment of the nature of the find, so as to provide Tribal input with regards to significance and treatment.
1. If significant pre-contact and/or post-contact cultural resources, as defined by CEQA (as amended, 2015), are discovered, and avoidance cannot be ensured, the archaeologist shall develop a Monitoring and Treatment Plan, the drafts of which shall be provided to SMBMI for review and comment, as detailed within TCR-1. The archaeologist shall monitor the remainder of the project and implement the plan accordingly.
1. If human remains or funerary objects are encountered during any activities associated with the project, work in the immediate vicinity (within a 100-foot buffer of the find) shall cease, and the County Coroner shall be contacted pursuant to State Health and Safety Code §7050.5 and that code enforced for the duration of the project.

#### **TCR MMs**

1. The San Manuel Band of Mission Indians Cultural Resources Department (SMBMI) shall be contacted, as detailed in CR-1, of any pre-contact and/or post-contact cultural resources discovered during project implementation, and be provided information regarding the nature of the find so as to provide Tribal input with regards to significance and treatment. Should the discovery be deemed significant, as defined by CEQA (as amended, 2015), a cultural resources Monitoring and Treatment Plan shall be created by the archaeologist, in coordination with SMBMI, and, all subsequent finds shall be subject to this Plan. This Plan shall allow for a monitor to represent SMBMI for the remainder of the project, should SMBMI elect to place a monitor on-site.
1. Any and all archaeological/cultural documents created as a part of the project (isolate records, site records, survey reports, testing reports, etc.) shall be supplied to the applicant and Lead Agency for dissemination to SMBMI. The Lead Agency and/or applicant shall, in good faith, consult with SMBMI throughout the life of the project.



GAVIN NEWSOM  
GOVERNORJARED BLUMENFELD  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## Lahontan Regional Water Quality Control Board

December 9, 2021

File: Environmental Doc Review  
San Bernardino County

Anthony DeLuca, Senior Planner  
San Bernardino County Land Use Department  
385 N. Arrowhead Ave., 1<sup>st</sup> Floor  
San Bernardino, CA 92415  
[Anthony.DeLuca@lus.sbcounty.gov](mailto:Anthony.DeLuca@lus.sbcounty.gov)

### Comments on the Environmental Impact Report for Lockhart Solar PV II Project, San Bernardino County, SCH # 2021070070

Lahontan Regional Water Quality Control Board (Water Board) staff received an Environmental Impact Report (EIR) for the above-referenced Project (Project) on November 15, 2021. The EIR was prepared by the County of San Bernardino (County) and submitted in compliance with provisions of the California Environmental Quality Act (CEQA). Water Board staff, acting as a responsible agency, is providing these comments to specify the scope and content of the environmental information germane to our statutory responsibilities pursuant to CEQA Guidelines, California Code of Regulations (CCR), title 14, section 15096. We thank the County for providing Water Board staff the opportunity to review and comment on the EIR. Based on our review, we recommend the following: (1) natural drainage channels and flow paths should be maintained through the Project site to ensure no net loss of function and value of waters of the state; (2) hydrology and water quality mitigations that are being incorporated into the Project to avoid or minimize significant affects must be specifically identified in the environmental document; (3) identify post-construction storm water management as a significant Project component and provide mitigation as appropriate; and (4) identify and list the beneficial uses of all water resources within the Project area. Our comments are outlined below.

#### WATER BOARD'S AUTHORITY

All groundwater and surface waters are considered waters of the State. All waters of the State are protected under California law. State law assigns responsibility for protection of water quality in the Lahontan Region to the Lahontan Water Board. Some waters of the State are also waters of the United States. The Federal Clean Water Act (CWA) provides additional protection for those waters of the State that are also waters of the United States.

The *Water Quality Control Plan for the Lahontan Region* (Basin Plan) contains policies that the Water Board uses with other laws and regulations to protect the quality of

PETER C. PUMPHREY, CHAIR | MICHAEL R. PLAZIAK, PG, EXECUTIVE OFFICER



cont'd  
2-1

waters of the State within the Lahontan Region. The Basin Plan sets forth water quality standards for surface water and groundwater of the Region, which include designated beneficial uses as well as narrative and numerical objectives which must be maintained or attained to protect those uses. The Basin Plan can be accessed via the Water Board's web site at [http://www.waterboards.ca.gov/lahontan/water\\_issues/programs/basin\\_plan/references.shtml](http://www.waterboards.ca.gov/lahontan/water_issues/programs/basin_plan/references.shtml).

## SPECIFIC COMMENTS

We recommend the following be considered in the environmental review.

2-2

1. In general, the installation of Photovoltaic (PV) grid systems for these types of projects has the potential to hydrologically modify natural drainage systems. Of particular concern is the collection of onsite storm water runoff and the concentrated discharge of that storm water to natural drainage channels. Design alternatives that are compatible with low impact development (LID) should be considered. LID components include: maintaining natural drainage paths and landscape features to slow and filter runoff and maximize groundwater recharge; managing runoff as close to the source as possible; and maintaining vegetated areas for storm water management and onsite infiltration. We recommend natural drainage channels and flow paths be maintained through the Project site to avoid no net loss of function and value of waters of the state as a result of Project implementation.

2-3

2. The EIR should list the specific hydrology and water quality mitigations that are being incorporated into the Project to avoid or minimize significant affects such as those included in a Storm Water Pollution Prevention Plan (SWPPP) or a Water Quality Management Plan. Details regarding how these mitigations will protect water quality should be included in the EIR.

2-4

3. The EIR should identify post-construction storm water management as a significant Project component, and a variety of best management practices (BMPs) that effectively treat post-construction storm water runoff, particularly maintaining native vegetation, should be evaluated as part of the Project. Based on our experience with other solar developments in the Mojave Desert, native vegetation is the most efficient and cost-effective post-construction BMP to treat storm water runoff. Because revegetating disturbed soils in the desert is particularly challenging due to low rainfall, extreme climatic conditions, and relatively slow growth rates, we strongly encourage Project proponents to maintain and mow existing vegetation rather than clear and grub the entire site during construction. For those projects where native vegetation is maintained, we have observed that the need to implement temporary BMPs is greatly minimized and the costs associated with implementation and maintenance of post-construction BMPs is significantly reduced.

2-5

4. The Project is located within the Mojave Hydrologic Unit (Hydrologic Unit No. 628.00) and overlies the Upper Mojave groundwater basin (Basin No. 6-42). The beneficial uses of these waters are listed either by watershed (for surface waters) and by groundwater basin (for groundwater) in Chapter 2 of the Basin Plan. The proposed Project should identify and list the beneficial uses of all water resources within the Project area.

#### PERMITTING REQUIREMENTS FOR INDIVIDUAL PROJECTS

A number of activities associated with the proposed Project may have the potential to impact waters of the State and, therefore, may require permits issued by either the State Water Resources Control Board (State Water Board) or Lahontan Water Board. The required permits may include the following.

2-6

1. Land disturbance of more than 1 acre may require a CWA, section 402(p) storm water permit, including a *National Pollutant Discharge Elimination System (NPDES) General Construction Storm Water Permit*, Water Quality Order (WQO) 2009-0009-DWQ, obtained from the State Water Board, or individual storm water permit obtained from the Lahontan Water Board.
2. Streambed alteration and/or discharge of fill material to a surface water may require a CWA, section 401 water quality certification for impacts to federal waters (waters of the U.S.), or dredge and fill waste discharge requirements for impacts to non-federal waters, both issued by the Lahontan Water Board.

2-7

Thank you for the opportunity to comment on the EIR. If you have any questions regarding this letter, please contact me at (760) 241-7305, [tiffany.steinert@waterboards.ca.gov](mailto:tiffany.steinert@waterboards.ca.gov) or Jan Zimmerman, Senior Engineering Geologist, at (760) 241-7404, [jan.zimmerman@waterboards.ca.gov](mailto:jan.zimmerman@waterboards.ca.gov). Please send all future correspondence regarding this Project to the Water Board's email address at [Lahontan@waterboards.ca.gov](mailto:Lahontan@waterboards.ca.gov) and be sure to include the State Clearinghouse No. and Project name in the subject line.



Tiffany Steinert  
Engineering Geologist

cc: California Department of Fish and Wildlife ([R6LSA@wildlife.ca.gov](mailto:R6LSA@wildlife.ca.gov))





State of California – Natural Resources Agency  
 DEPARTMENT OF FISH AND WILDLIFE  
 Inland Deserts Region  
 3602 Inland Empire Boulevard, Suite C-220  
 Ontario, CA 91764  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

GAVIN NEWSOM, Governor  
 CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

December 30, 2021

Dec 30 2021

Sent via email

## STATE CLEARINGHOUSE

Anthony DeLuca  
 San Bernardino County  
 Land Use Services Department  
 385 N. Arrowhead Ave., First Floor  
 San Bernardino, CA 92415  
[Anthony.DeLuca@lus.sbcounty.gov](mailto:Anthony.DeLuca@lus.sbcounty.gov)

Subject: Notice of Availability of a Draft Environmental Impact Report  
 Lockhart Solar PV II Project  
 State Clearinghouse No. 2021070070

Dear Mr. DeLuca:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (DEIR) from San Bernardino County (Lead Agency) for the Lockhart Solar PV II Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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, we appreciate 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 the 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.

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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

### PROJECT DESCRIPTION SUMMARY

CEQA Lead: San Bernardino County

Applicant: Lockhart Solar PV II, LLC

Location: The proposed Project is located in unincorporated Hinkley, CA in San Bernardino County, approximately seven miles north of the intersection of Harper Lake Road and Mojave-Barstow Highway 58, east of Hoffman Road and west of Harper Lake Road. The

<sup>1</sup> 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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 San Bernardino County  
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Project site comprises Assessor Parcel Numbers (APNs) 0490-101-54, 0490-101-56, and 0490-223-33. The Project is largely sited on land previously approved by the California Energy Commission (CEC) for development of Solar Energy Generating System (SEGS) X, a solar thermal power facility which was never fully constructed.

Description: The proposed Project will develop a utility scale, solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 150 megawatts (MW) of solar power and include up to four gigawatt hours (GWh) of energy storage capacity rate in a battery energy storage system (BESS) within an approximately 755-acre site. The Project would share existing operations and maintenance (O&M) facilities with the Lockhart Solar I Facility (i.e., O&M building, warehouse and employee building), water and septic systems, switchyard and electrical transmission infrastructure, and a new collector substation (approved and to be constructed) within the approximately 110-acre "Shared Facilities Area" to connect the Project to the existing transmission line which runs to the Southern California Edison (SCE)-owned Kramer Junction substation.

Background: Construction of the SEGS X solar thermal facility was initiated on the Project site during the 1990s. SEGS X was fully permitted and certified as an 80 MW solar thermal facility located on approximately 600 acres including land for associated facilities to be shared with the two adjacent solar thermal plants (SEGS VIII and IX). As part of initial SEGS X construction (in the early 1990s), the entire perimeter of the SEGS X site was enclosed with a 6-foot-tall chain link fence equipped with a desert tortoise exclusionary barrier. Per the SEGS VIII, IX, and X CEC certification, permanent impacts to loss of the then-existing high-quality habitats were mitigated through purchase of 1,680 acres of conservation land for both Mohave ground squirrel (*Xerospermophilus mohavensis*) and desert tortoise (*Gopherus agassizii*) pursuant to CDFW requirements and approvals. In 1991, SEGS X construction was halted due to lack of financing. Prior to work stoppage, several concrete foundations of the power block as well as concrete foundations for solar racking had been installed in portions of the Project site. The Project proposes to use these already disturbed parcels to construct a solar PV and BESS facility.

## COMMENTS AND RECOMMENDATIONS

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

### California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the California Endangered Species Act (CESA). A CESA Incidental Take Permit (ITP) is issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats. CDFW recommends that a CESA ITP be obtained if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and G. Code, §§ 2080 and 2085). If the Project, including the Project construction or any Project-related activity during the life of the Project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation through an ITP.

CDFW received an ITP application on November 16, 2021, to incidentally take Mohave ground squirrel, a species designated as threatened pursuant to CESA (Fish & G. Code, §2050 et. Seq.), which was deemed complete on December 15, 2021. Take authorization is not being sought for the Federally Threatened and State Threatened, Proposed Endangered desert tortoise or any listed plant species, as further explained below.

The DEIR states that mitigation requirements implemented for the previously approved, but not fully constructed, SEGS X Facility include the acquisition and transfer of 1,680

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acres of mitigation lands to CDFW (formerly California Department of Fish and Game (CDFG)) for the purpose of enhancement, and management of suitable desert tortoise and Mohave ground squirrel habitat in perpetuity and to compensate for habitat that would be eliminated or subject to long-term disturbance as a result of construction of SEGS IX and X and any ancillary facilities. The DEIR suggests that any potential impacts on desert tortoise and Mojave ground squirrel has been previously mitigated through the prior conveyance for the SEGS X project that was never fully developed and no additional mitigation for loss of habitat is required.

In an email dated December 1, 2021, the Applicant provided CDFW supporting documentation regarding the aforementioned mitigation lands, including 1) a letter from the CEC (dated March 23, 1993) noting that 1,680 acres and a \$150,000 endowment satisfies SEGS IX/X mitigation requirement out of a total of 3,192.34 acres that was transferred to CDFW for mitigation purposes; 2) A Grant Deed Instrument recorded on December 7, 1990 conveying 3,192.34 acres of real property to CDFG for conservation purposes; 3) Conservation Easement Locations map showing all five parcels that were conveyed to CDFG.

Based on these documents alone, CDFW is unable to determine whether this previously implemented mitigation adequately addresses the Project impacts as currently proposed, and requests that the Applicant provide the *Habitat Mitigation and Acquisition Agreement and the Habitat Mitigation Plan* by and between the developer of SEGS X and CDFW (formerly CDFG), as well as any other supporting documentation, as conditions and requirements have likely changed since 1990.

### **Birds**

3-4

It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 et. seq.). In addition, sections 3503, 3503.5, and 3513 of the Fish and Game Code also afford protective measures as follows: Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by FGC or any regulation made pursuant thereto; Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by FGC or any regulation adopted pursuant thereto; and Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

The DEIR does not address the potential lake effect caused as a result of the solar array. To develop effective best management practices and adaptive management measures to reduce avian mortality at utility-scale solar energy facilities, CDFW recommends including a discussion of these potential effects to migratory birds and describe measures to avoid, reduce, and mitigate those effects. To help reduce potential adverse effects to avian species and implement an adaptive management approach to reduce avian fatalities, CDFW recommends the development of a Bird and Bat Conservation Strategy (BBCS). The BBCS should include at least two to three years of systematic post-construction mortality monitoring, including searcher efficiency and carcass persistence trials, and adaptive management measures as necessary to address avian impacts. CDFW recommends that the BBCS is submitted to CDFW for review prior to start of ground-disturbing activities.

### **Burrowing owl, desert kit fox, American badger**

3-5

Burrowing owl and American badger are CDFW Species of Special Concern, and Desert kit fox is a protected species and may not be taken at any time pursuant to Title 14 of the California Code of Regulations Section 460. Mitigation Measure BIO-3 states that pre-construction burrow clearance surveys shall be conducted to ensure that burrowing owls,

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desert kit fox, or American badger remain absent from the Project site and impacts to these animals do not occur. CDFW recommends that burrowing owl, desert kit fox, and American badger mitigation and monitoring plans are prepared and submitted to CDFW for review 60 days prior to the start of ground disturbing activities.

#### ENVIRONMENTAL DATA

3-6

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: [http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB\\_FieldSurveyForm.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf). The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/plants\\_and\\_animals.asp](http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp).

#### FILING FEES

3-7

The Project, as proposed, would have an impact on fish and/or wildlife, and 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, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

#### CONCLUSION

3-8

CDFW appreciates the opportunity to comment on the DEIR to assist San Bernardino County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Rose Banks, Senior Environmental Scientist (Specialist) at (760) 218-0022 or [Rose.Banks@wildlife.ca.gov](mailto:Rose.Banks@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
 84FBB8273E4C480...

Alisa Ellsworth  
 Environmental Program Manager

ec: State Clearinghouse  
[State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

Rose Banks  
 Senior Environmental Scientist (Specialist)  
 California Department of Fish and Wildlife  
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