

# **Final Environmental Impact Report**

**SCH# 2022110558**

## **Volume 5**

### **Chapter 7 – Response to Comments**

#### **PELICANS JAW HYBRID SOLAR PROJECT**

**by Pelicans Jaw Solar, LLC (PP21124)**

Conditional Use Permit No. 3, Map No. 5

General Plan Amendment No. 2, Map No. 5



Kern County  
Planning and Natural Resources Department  
Bakersfield, California

October 2023

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**PLANNING AND NATURAL  
RESOURCES DEPARTMENT**

Planning  
Community Development  
Administrative Operations

October 26, 2023

**FILE:** CUP #3, Map #5; and others;  
S.D.: #4 - Couch

Addressee List (See Distribution List)

**Re: Response to Comments for Draft Environmental Impact Report – Pelicans Jaw Hybrid Solar Project by Pelicans Jaw Solar, LLC (PP21124) (SCH#2022110558)**

Dear Interested Party:

Enclosed is a document entitled *Volume 5 – Chapter 7 – Response to Comments*, for the above referenced project. Section 15088 of the California Environmental Quality Act Guidelines requires the Lead Agency to evaluate comments on environmental issues received from persons who reviewed the Draft Environmental Impact Report (EIR) and prepare a written response addressing each comment. This document is Chapter 7 of the Final EIR.

A public hearing has been scheduled with the Kern County Planning Commission to consider this request on **November 9, 2023** at 7:00 p.m., or soon thereafter, at the Chambers of the Board of Supervisors, First Floor, Kern County Administrative Center, 1115 Truxtun Avenue, Bakersfield, California.

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

Sincerely,

A handwritten signature in blue ink, which appears to read "Terrance Smalls", is written over a horizontal line.

Terrance Smalls, Supervising Planner  
Advanced Planning Division

COMMENTING AGENCIES AND INTERESTED PERSONS: California Department of Fish & Wildlife; San Joaquin Valley Air Pollution Control District; Kern County Fire Department; Kern County Public Works Department, Floodplain Management; Defenders of Wildlife; California Native Plant Society, Center for Biological Diversity

**Pelicans Jaw Hybrid Solar Project  
FEIR RTC Distribution List:**

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Sophia Markowska  
Defenders of Wildlife  
Senior California Representative  
Smarkowska@defenders.org

Kern County Fire Department, Fire  
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Bakersfield, CA 93301

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Department  
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Caltrans  
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CA Department of Transportation  
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Kern County Superintendent of  
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Brendan Wilce  
California Native Plant Society  
Conservation Program  
Coordinator  
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**Notice of Completion & Environmental Document Transmittal**

Mail to: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044 (916) 445-0613  
 For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

<b>SCH #</b>
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**Project Title:** \_\_\_\_\_

Lead Agency: \_\_\_\_\_ Contact Person: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ Phone: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_

**Project Location:** County: \_\_\_\_\_ City/Nearest Community: \_\_\_\_\_

Cross Streets: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Longitude/Latitude (degrees, minutes and seconds): \_\_\_\_\_° \_\_\_\_\_' \_\_\_\_\_" N / \_\_\_\_\_° \_\_\_\_\_' \_\_\_\_\_" W Total Acres: \_\_\_\_\_

Assessor's Parcel No.: \_\_\_\_\_ Section: \_\_\_\_\_ Twp.: \_\_\_\_\_ Range: \_\_\_\_\_ Base: \_\_\_\_\_

Within 2 Miles: State Hwy #: \_\_\_\_\_ Waterways: \_\_\_\_\_

Airports: \_\_\_\_\_ Railways: \_\_\_\_\_ Schools: \_\_\_\_\_

**Document Type:**

CEQA: <input type="checkbox"/> NOP	<input type="checkbox"/> Draft EIR	NEPA: <input type="checkbox"/> NOI	Other: <input type="checkbox"/> Joint Document
<input type="checkbox"/> Early Cons	<input type="checkbox"/> Supplement/Subsequent EIR	<input type="checkbox"/> EA	<input type="checkbox"/> Final Document
<input type="checkbox"/> Neg Dec	(Prior SCH No.) _____	<input type="checkbox"/> Draft EIS	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Mit Neg Dec	Other: _____	<input type="checkbox"/> FONSI	_____

**Local Action Type:**

<input type="checkbox"/> General Plan Update	<input type="checkbox"/> Specific Plan	<input type="checkbox"/> Rezone	<input type="checkbox"/> Annexation
<input type="checkbox"/> General Plan Amendment	<input type="checkbox"/> Master Plan	<input type="checkbox"/> Prezone	<input type="checkbox"/> Redevelopment
<input type="checkbox"/> General Plan Element	<input type="checkbox"/> Planned Unit Development	<input type="checkbox"/> Use Permit	<input type="checkbox"/> Coastal Permit
<input type="checkbox"/> Community Plan	<input type="checkbox"/> Site Plan	<input type="checkbox"/> Land Division (Subdivision, etc.)	<input type="checkbox"/> Other: _____

**Development Type:**

<input type="checkbox"/> Residential: Units _____ Acres _____	<input type="checkbox"/> Transportation: Type _____
<input type="checkbox"/> Office: Sq.ft. _____ Acres _____ Employees _____	<input type="checkbox"/> Mining: Mineral _____
<input type="checkbox"/> Commercial: Sq.ft. _____ Acres _____ Employees _____	<input type="checkbox"/> Power: Type _____ MW _____
<input type="checkbox"/> Industrial: Sq.ft. _____ Acres _____ Employees _____	<input type="checkbox"/> Waste Treatment: Type _____ MGD _____
<input type="checkbox"/> Educational: _____	<input type="checkbox"/> Hazardous Waste: Type _____
<input type="checkbox"/> Recreational: _____	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Water Facilities: Type _____ MGD _____	

**Project Issues Discussed in Document:**

<input type="checkbox"/> Aesthetic/Visual	<input type="checkbox"/> Fiscal	<input type="checkbox"/> Recreation/Parks	<input type="checkbox"/> Vegetation
<input type="checkbox"/> Agricultural Land	<input type="checkbox"/> Flood Plain/Flooding	<input type="checkbox"/> Schools/Universities	<input type="checkbox"/> Water Quality
<input type="checkbox"/> Air Quality	<input type="checkbox"/> Forest Land/Fire Hazard	<input type="checkbox"/> Septic Systems	<input type="checkbox"/> Water Supply/Groundwater
<input type="checkbox"/> Archeological/Historical	<input type="checkbox"/> Geologic/Seismic	<input type="checkbox"/> Sewer Capacity	<input type="checkbox"/> Wetland/Riparian
<input type="checkbox"/> Biological Resources	<input type="checkbox"/> Minerals	<input type="checkbox"/> Soil Erosion/Compaction/Grading	<input type="checkbox"/> Growth Inducement
<input type="checkbox"/> Coastal Zone	<input type="checkbox"/> Noise	<input type="checkbox"/> Solid Waste	<input type="checkbox"/> Land Use
<input type="checkbox"/> Drainage/Absorption	<input type="checkbox"/> Population/Housing Balance	<input type="checkbox"/> Toxic/Hazardous	<input type="checkbox"/> Cumulative Effects
<input type="checkbox"/> Economic/Jobs	<input type="checkbox"/> Public Services/Facilities	<input type="checkbox"/> Traffic/Circulation	<input type="checkbox"/> Other: _____

**Present Land Use/Zoning/General Plan Designation:**

**Project Description:** (please use a separate page if necessary)

## Reviewing Agencies Checklist

Lead Agencies may recommend State Clearinghouse distribution by marking agencies below with an "X".  
If you have already sent your document to the agency please denote that with an "S".

<input type="checkbox"/> Air Resources Board	<input type="checkbox"/> Office of Historic Preservation
<input type="checkbox"/> Boating & Waterways, Department of	<input type="checkbox"/> Office of Public School Construction
<input type="checkbox"/> California Emergency Management Agency	<input type="checkbox"/> Parks & Recreation, Department of
<input type="checkbox"/> California Highway Patrol	<input type="checkbox"/> Pesticide Regulation, Department of
<input type="checkbox"/> Caltrans District # _____	<input type="checkbox"/> Public Utilities Commission
<input type="checkbox"/> Caltrans Division of Aeronautics	<input type="checkbox"/> Regional WQCB # _____
<input type="checkbox"/> Caltrans Planning	<input type="checkbox"/> Resources Agency
<input type="checkbox"/> Central Valley Flood Protection Board	<input type="checkbox"/> Resources Recycling and Recovery, Department of
<input type="checkbox"/> Coachella Valley Mtns. Conservancy	<input type="checkbox"/> S.F. Bay Conservation & Development Comm.
<input type="checkbox"/> Coastal Commission	<input type="checkbox"/> San Gabriel & Lower L.A. Rivers & Mtns. Conservancy
<input type="checkbox"/> Colorado River Board	<input type="checkbox"/> San Joaquin River Conservancy
<input type="checkbox"/> Conservation, Department of	<input type="checkbox"/> Santa Monica Mtns. Conservancy
<input type="checkbox"/> Corrections, Department of	<input type="checkbox"/> State Lands Commission
<input type="checkbox"/> Delta Protection Commission	<input type="checkbox"/> SWRCB: Clean Water Grants
<input type="checkbox"/> Education, Department of	<input type="checkbox"/> SWRCB: Water Quality
<input type="checkbox"/> Energy Commission	<input type="checkbox"/> SWRCB: Water Rights
<input type="checkbox"/> Fish & Game Region # _____	<input type="checkbox"/> Tahoe Regional Planning Agency
<input type="checkbox"/> Food & Agriculture, Department of	<input type="checkbox"/> Toxic Substances Control, Department of
<input type="checkbox"/> Forestry and Fire Protection, Department of	<input type="checkbox"/> Water Resources, Department of
<input type="checkbox"/> General Services, Department of	
<input type="checkbox"/> Health Services, Department of	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Housing & Community Development	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Native American Heritage Commission	

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### Local Public Review Period (to be filled in by lead agency)

Starting Date \_\_\_\_\_ Ending Date \_\_\_\_\_

---

### Lead Agency (Complete if applicable):

Consulting Firm: _____	Applicant: _____
Address: _____	Address: _____
City/State/Zip: _____	City/State/Zip: _____
Contact: _____	Phone: _____
Phone: _____	

---

Signature of Lead Agency Representative: \_\_\_\_\_ /s/ \_\_\_\_\_ Date: \_\_\_\_\_

Authority cited: Section 21083, Public Resources Code. Reference: Section 21161, Public Resources Code.

# **Final Environmental Impact Report**

**SCH# 2022110558**

## **Volume 5**

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Conditional Use Permit No. 3, Map No. 5  
General Plan Amendment No. 2, Map No.5



Kern County  
Planning and Natural Resources Department  
Bakersfield, California

Technical Assistance by:  
Kimley-Horn

October 2023

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## Chapter 7

# Response to Comments

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## 7.1 Introduction

### Purpose

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

### Environmental Review Process

A Notice of Preparation (NOP)/Initial Study (IS) (SCH No. 2022110558) was circulated for a 30-day public review period beginning on November 23, 2022, and ending on December 23, 2023. Thirteen (13) individual written comment letters were received on the NOP during this review period and one additional comment was received after the completion of the public review period. No additional comments were received at the December 14, 2022, public scoping meeting, as no members of the public were in attendance. All public comments received relevant to CEQA-related issues were considered by the County in preparing the Draft EIR.

The Draft EIR for the proposed project was circulated for a 45-day public review period beginning on August 18, 2023, through October 2, 2023. A total of eight (8) comment letters were received on the Draft EIR during this period.

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

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## 7.2 Revisions to the Draft EIR

The revisions that follow were made to the text of the Draft EIR. Amended text is identified by page number. Additions to the Draft EIR text are shown with underlined text, and text removed from the Draft EIR is shown with ~~striethrough~~. Revisions to a Draft EIR are required if clarifications or responses to comments cannot be made without alterations to the document. The revisions, as outlined below, fall within the scope of the original project analysis included in the Draft EIR and do not result in an increase to any identified impacts or produce any new impacts. No new significant environmental impact would result from the changes or from a new mitigation measure proposed to be implemented. Therefore, no significant revisions have been made which would require recirculation of the Draft EIR pursuant to *CEQA Guidelines* Section 15088.5 (Recirculation of an EIR Prior to Certification).

## Section 1.0, Executive Summary; Table 1-7, Page 1-37 – 1-59:

Table 1-7: Summary of Project Impacts, Mitigation Measures, and Levels of Significance

Impact	Level of Significance before Mitigation	Mitigation Measure(s)	Level of Significance After Mitigation
<b>4.4 Biological Resources</b>			
<b>Impact 4.4-1:</b> The project would have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or a special-status species in local or regional plans, policies, or regulations or by California Department of Fish and Wildlife or U.S. Fish and Wildlife Service.	Potentially significant	<p>Implementation Mitigation Measures MM 4.1-4 through MM 4.1-6, see Chapter 4.1, <i>Aesthetics</i>, would be required.</p> <p><b>MM 4.4-1:</b> Prior to the issuance of grading or building permits, and prior to decommissioning, the project operator shall retain a Lead Biologist(s) who meets the qualifications of an Authorized Biologist as defined by U.S. Fish and Wildlife Service to oversee compliance with protection measures for all listed and other special-status species that may be affected by the construction, operation, and decommissioning of the project. The contact information for the Lead Biologist(s) shall be provided in writing to the Planning and Natural Resources Department.</p> <p>The following measures pertain to the Lead Biologist(s):</p> <ol style="list-style-type: none"> <li>The Lead Biologist(s), or their designee, shall be on the project site during all construction activities which include, but are not limited to, installation of perimeter fencing, clearing of vegetation, grading activities, site buildout, and decommissioning.</li> <li>The Lead Biologist(s) or their designee shall have the right to halt all activities that are in violation of the special-status species protection measures, as well as any regulatory permits from the U.S. Fish and Wildlife Service and/or the California Department of Fish and Wildlife, if applicable. Work shall proceed only after hazards to special-status species are removed and the species is no longer at risk.</li> </ol> <p><b>MM 4.4-2:</b> Prior to the issuance of grading or building permits, or decommissioning of the site, the Lead Biologist shall develop a Worker Environmental Awareness Training Program containing life history and identification information of special-status wildlife and plant species known to or with high potential to occur on site. The Worker</p>	Less than significant

Impact	Level of Significance before Mitigation	Mitigation Measure(s)	Level of Significance After Mitigation
		<p>Environmental Awareness Training Program shall review responsibilities for all on-site personnel including trash control, checking under and around vehicles and heavy equipment before starting, scanning for wildlife resources, contacting the Lead Biologist in the unanticipated instance of encountering special status wildlife species, and prohibition of pets and firearms. All on-site personnel shall be required to attend a worker environmental training. A sticker shall be placed on hard hats, indicating that the worker has completed the Worker Environmental Awareness Training. Copies of all prepared materials including, but not limited to, PowerPoint presentations, videos, information handouts and signed acknowledgement from each worker who has attended the required training shall be provided to the Planning and Natural Resources Department</p> <p><b>MM 4.4-3:</b> During construction and decommissioning of the project site, the project proponent and/or contractor(s) shall implement the following general avoidance and protective measures:</p> <ol style="list-style-type: none"> <li>Immediately prior to conducting vegetation clearing or similar activities, the Lead Biologist or their designee shall perform a pre-construction visual survey of the area to ensure that no special-status species are present. Daily reports of these inspections shall be retained by the Lead Biologist and provided to the Kern County Planning and Natural Resources Department, U.S. Fish and Wildlife Service, or California Department Fish and Wildlife upon request.</li> <li>Within the vicinity of any construction activities, sensitive biological resources (i.e., special-status species, jurisdictional drainages, nesting birds, etc.) shall be delineated with stakes and/or flagging.</li> <li>Access roads that are planned for use during construction activities shall not extend beyond the planned impact area, which area includes all previously disturbed lands and any location within the project fence line not delineated for avoidance of sensitive biological</li> </ol>	

Impact	Level of Significance before Mitigation	Mitigation Measure(s)	Level of Significance After Mitigation
		resources. Where new access routes are required, the route will be clearly marked prior to construction.	
		d. The project proponent/operator shall minimize the areas of disturbance. Parking areas, new roads, staging, storage, excavation, and disposal site locations shall be confined to the smallest areas possible. These areas shall be demarcated and disturbance activities, vehicles, and equipment shall be confined to these areas.	
		e. Any spoils shall be stockpiled in disturbed areas that lack native vegetation to the maximum extent practicable. Spoils that have been stockpiled and inactive for more than 24 hours shall be inspected by a qualified biologist for signs of special-status wildlife before moving or disturbing.	
		f. To prevent inadvertent entrapment of San Joaquin kit foxes, American badgers, or other animals during construction, all excavated steep-walled holes or trenches more than two (2) feet deep shall be covered with plywood or similar materials at the close of each working day. If holes or trenches cannot be covered, one or more escape ramps constructed of earthen fill or wooden planks, no less than 12 inches wide and secured at the top, shall be placed a minimum of every 100 feet within the open trench. Covered and non-covered holes or trenches shall be thoroughly inspected for trapped animals by a qualified biologist at the beginning and end of each working day. Immediately before such holes or trenches are filled, they shall again be thoroughly inspected by trained Staff approved by the Lead Biologist.. If a listed species is trapped, escape ramps or structures shall be installed immediately to allow for their escape and the Lead Biologist shall immediately confer with the U.S. Fish and Wildlife Service and/or California Department of Fish and Wildlife.	
		g. All construction pipes, culverts, or similar structures with a diameter of four (4) inches or greater that are stored at the site for more than 24 hours and without endcaps shall be thoroughly inspected by a	

Impact	Level of Significance before Mitigation	Mitigation Measure(s)	Level of Significance After Mitigation
		<p>qualified biologist prior to being moved or capped. If a listed wildlife species is discovered inside a pipe, that section of pipe shall not be moved until a qualified biologist has been consulted and the animal has either moved from the structure on its own accord or until the animal has been captured and relocated in conformance with appropriate wildlife agency guidelines.</p> <p>h. No vehicle or equipment parked on the project site shall be moved prior to inspecting the ground beneath the vehicle or equipment for the presence of listed wildlife species. If present, the animal shall be left to move on its own.</p> <p>i. A speed limit of 15 miles per hour shall be enforced within the limits of the project site. <u>To the extent possible, night-time construction-related activity shall be minimized, but if work must be conducted at night</u> <del>If night work occurs on the project site,</del> the speed limit will be 10 miles per hour.</p> <p>j. Fueling of equipment shall take place within existing roads or disturbed areas. No refueling within or adjacent to drainages (within 150 feet) shall be permitted. Contractor equipment shall be checked for leaks prior to operation and repaired as necessary.</p> <p>k. Trash and food items shall be contained in closed containers to reduce the attractiveness to opportunistic predators such as common ravens, coyotes, and feral dogs.</p> <p>l. Workers shall be prohibited from bringing pets and firearms to the project site and from feeding wildlife.</p> <p>m. Intentional killing or collection of any listed plant or wildlife species shall be prohibited.</p> <p>n. Herbicides that may be used as vegetation control measures in project areas shall be restricted. All uses of such herbicidal compounds shall observe label and other restrictions mandated by the U.S Protection Agency, California Department of Food and</p>	

Impact	Level of Significance before Mitigation	Mitigation Measure(s)	Level of Significance After Mitigation
		<p>Agriculture, and state/federal legislation as well as additional project related restrictions deemed necessary by the U.S. Fish and Wildlife Service or California Department of Fish and Wildlife. No rodenticides shall be used on the project site.</p> <p><b>MM 4.4-4:</b> Prior to initiating ground-disturbing activities during the construction and decommissioning phases of the Project in areas mapped as occupied by Kern mallow, after seeds have set (usually by May 31) remove and stockpile the uppermost 3-6 inches of topsoil. The stockpiled material shall be spread in the affected area, the closest comparable area, or the closest suitable habitat outside the footprint of roads, buildings, and structures prior to the next blooming season. During the operational phase of the Project, vegetation and/or fuel management activities shall be undertaken subsequent to when seeds of Kern mallow have set (usually by May 31) within Kern mallow occupied habitat. The project proponent shall mitigate for an estimated 6.06 acres of Kern mallow habitat. Compensation land shall be performed at a ratio of 1:1 acre on-site or at a nearby location with comparable habitat value. Individual Kern mallow plants and/or seeds will be salvaged from the project site and translocated to the compensatory mitigation lands if authorized by appropriate wildlife agency. Final total compensation land acres will be based on final site plan design and confirmation through the required pre-construction biological surveys. Mitigation land may be nested with other compensatory lands provided it meets the necessary biological requirements and as determined by appropriate wildlife agency. Prior to issuance of any building or grading permit, the project proponent shall (i) complete acquisition of such compensatory mitigation lands or equivalent mitigation credits applicable to the portion of the project covered by said grading or building permit; or (ii) provide a bond, letter of credit or other form of financial assurance acceptable to the County in an equivalent amount and acquire such lands or credits within eighteen (18) months of issuance of said building or grading permit.</p> <p><b>MM 4.4-5:</b> Prior to the issuance of any grading or building permits, the project proponent shall mitigate for an estimated 535 acres of Lost Hills</p>	

Impact	Level of Significance before Mitigation	Mitigation Measure(s)	Level of Significance After Mitigation
		<p>crownscale habitat, on compensatory mitigation lands identified in consultation with USFWS and CDFW. Compensation land shall be performed at a ratio of 1:1 acre for direct impacts. Any Lost Hills crownscale that is indirectly impacted (such as through shading or mowing at 6 to 8 inches) shall be mitigated by preserving compensation land at a ratio of 0.5:1. Directly impacted individual Lost Hills crownscale seeds and/or seed-bearing topsoil will be salvaged from the project site and translocated to the compensatory mitigation lands if a viable population of Lost Hills crownscale does not already occur within the compensatory mitigation lands and if authorized by the appropriate wildlife agency. Final total compensation land acres will be based on final site plan design and confirmation through the required pre-construction biological surveys. Mitigation land may be nested with other compensatory lands provided it meets the necessary biological requirements and as determined by appropriate wildlife agency.</p> <p><del>MM 4.4-6: No more than thirty (30) days</del> Prior to the start of ground disturbance activities <del>or issuance of any grading or building permits, or</del> decommissioning of the main project site, a qualified biologist knowledgeable on the identification of rare plant species shall conduct a pre-construction plant survey of areas of proposed disturbance within the main project site and a 100-foot buffer (where legally accessible) <u>timed during the appropriate blooming period of the survey season immediately prior to construction</u> to determine if any special-status plant species are present. If special-status plants are identified on-site, their locations shall be mapped and the Project proponent shall confer with CDFW or USFWS as required by applicable law to facilitate salvage or seed collection.</p> <p>a. <u>Species-specific restoration plans should be developed for all special status plants with the potential to be impacted, including performance criteria for determining the success of the restoration plan.</u></p>	

Impact	Level of Significance before Mitigation	Mitigation Measure(s)	Level of Significance After Mitigation
		<ul style="list-style-type: none"> <li>b. <u>Areas identified as potential recipient sites must be surveyed following CDFW protocols to ensure that compensatory mitigation efforts would not cause harmful impacts to existing botanical resources. Low-conflict areas that have been degraded by previous land uses should be prioritized for restoration, leaving intact natural habitat undisturbed by restoration efforts.</u></li> <li>c. <u>While on-site mitigation is preferred, if contiguous acreage to achieve mitigation needs is not present on the project site, restoration activities may be implemented offsite.</u></li> <li>d. <u>Maintenance and monitoring of compensatory mitigation sites should occur each year for the first five years of the mitigation term, or until the performance standards have been met. Thereafter, yearly monitoring of the site should demonstrate a self-sustaining area of occupation and population numbers with no management actions for years 6-8.</u></li> <li>e. <u>If monitoring shows stable populations after three years with no maintenance, the populations should be monitored every two years in perpetuity.</u></li> <li>f. <u>If the populations are not demonstrating stability after the initial three years of maintenance and monitoring period, after three years without maintenance, or if subsequent monitoring shows loss or decline of populations, then adaptive management shall be undertaken until the performance standards are achieved.</u></li> </ul> <p><b>MM 4.4-7:</b> Within one calendar year of the or start of ground disturbance activities, a qualified biologist shall conduct protocol level surveys for the Blunt-Nosed Leopard (BNLL) to verify previous survey results that no BNLL are located on the project site. The required surveys shall be provided to the Kern County Planning and Natural Resources Department, the U.S Fish and Wildlife Service and the California Department of Fish and Wildlife. If no sign of the species is identified,</p>	



Impact	Level of Significance before Mitigation	Mitigation Measure(s)	Level of Significance After Mitigation
		<p>no further action is required. If the species is identified on-site, the project proponent shall confer with the appropriate wildlife agency and, if take cannot be avoided, obtain an Incidental Take Permit pursuant to both Section 10(a)(1) of the federal Endangered Species Act and SB 147.</p> <p><b>MM 4.4-8:</b> Protocol level surveys for the BNLL shall be conducted in accordance with the “Approved Survey Methodology for the Blunt-nosed Leopard Lizard” (CDFW, 2019) by a qualified biologist at the project site no more than one year prior to initiation of ground and/or vegetation disturbance, in suitable habitat that will be disturbed by construction, to determine the potential for occupancy by BNLL. Surveys may be conducted in areas of disturbance and needed buffers as work progresses or in stages as needed during the construction phase. If surveys indicate that BNLL and appropriate burrow habitat are absent, the construction area(s) can be fenced using materials and installing temporary wildlife exclusion fencing in compliance with agency specifications to prevent potential occupancy of BNLL in active construction work areas. If BNLL are found within the survey areas, measures to protect the species shall include appropriate signage, monitoring by approved qualified biologists and consultation with the USFWS and the CDFW to develop a BNLL avoidance plan. If burrows are found to be occupied, measures for avoidance and minimization of impact to BNLL shall be written in compliance with recommendations provided during agency consultations and shall contain project specific details. Project actions in areas where BNLL are located shall be restricted to the species active period (April to early November) to ensure that no aestivating BNLL in burrows are impacted while in their burrows. In conjunction with CDFW or other involved agencies, sensitive areas shall be established and protected with appropriate signage.</p> <p><b>MM 4.4-9:</b> If any San Joaquin Coachwhip are present within the work area, they will be allowed to leave on their own. If they do not leave, the qualified biologist may capture and relocate them to nearby suitable habitat at an appropriate distance to ensure the animal will be safe.</p>	

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		<p><b>MM 4.4-10:</b> No more than (30) days prior to the issuance of any grading or building permits, decommission of the site or the start of ground disturbance activities or decommissioning, a qualified biologist knowledgeable in the identification of all special-status wildlife species shall conduct a pre-construction survey of areas proposed for disturbance within the project site and 500-foot buffer (where legally accessible) to determine if any special-status species are present. If, as a result of this pre-construction survey it is determined that Burrowing Owl, American Badger or San Joaquin Kit Fox are present, the following measures shall be implemented:</p> <p>a. If signs of Burrowing Owl or American Badger are identified on-site, the project proponent shall establish appropriate buffers limiting all construction activities. Buffers for burrows shall be as follows:</p> <p>Burrowing Owls:</p> <table border="1"> <tr> <th rowspan="2">Location</th> <th rowspan="2">Time of Year</th> <th colspan="3">Level of Disturbance</th> </tr> <tr> <th>Low</th> <th>Med</th> <th>High</th> </tr> <tr> <td>Nesting Sites</td> <td>4/1-8/15</td> <td>200m</td> <td>500m</td> <td>500m</td> </tr> <tr> <td>Nesting Sites</td> <td>8/16-10/15</td> <td>200m</td> <td>200m</td> <td>500m</td> </tr> <tr> <td>Nesting Sites</td> <td>10/16-3/31</td> <td>50m</td> <td>100m</td> <td>500m</td> </tr> </table> <p>American Badger:</p> <ul style="list-style-type: none"> <li>• Potential or Atypical den – 50 feet</li> <li>• Known den – 100 feet</li> <li>• Natal or pupping den – 500 feet, unless otherwise specified by CDFW.</li> </ul> <p>If required buffers are infeasible, then the project proponent shall prepare a Burrowing Owl and American Badger Exclusion Plan. Any burrow and/or den exclusion would be conducted by a qualified biologist with burrowing owl burrows replaced at a 1:1 ratio. No burrowing owl burrow exclusion is permitted during breeding season (February 1 - August 31 <u>or while breeding behavior is exhibited</u>), <u>unless approved by CDFW</u>. <del>unless a qualified biologist verifies</del></p>	Location	Time of Year	Level of Disturbance			Low	Med	High	Nesting Sites	4/1-8/15	200m	500m	500m	Nesting Sites	8/16-10/15	200m	200m	500m	Nesting Sites	10/16-3/31	50m	100m	500m	
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		<p><del>through noninvasive methods that (1) the birds have not begun egg laying and incubation, (2) a previously active nest has failed and re-nesting is highly unlikely, or (3) all juveniles from the occupied burrow are foraging independently and capable of independent survival. A qualified biologist will monitor the burrow for a minimum of three days prior to proposed burrow excavation to document the lack of usage of the burrow for active nesting.</del></p> <p>b. If signs of San Joaquin Kit Fox are identified on-site, the project proponent shall establish appropriate buffers limiting all construction activities. Buffers include (50 Feet) for a potential or atypical den, (100) feet for a known den and (500) feet for a natal or pupping den, unless otherwise specified by the California Department of Fish and Wildlife (CDFW). If required buffers are not possible to protect the species, then the project proponent shall confer with CDFW on the need for take authorization through the acquisition of an incidental take permit, pursuant to Fish and Game Code section 2081 subdivision (d).</p> <p>c. If signs of Swainson's hawk nest, beyond those mapped during the pre-construction SWHA surveys, are identified on-site or within 0.5 miles from the project site, the project proponent will confer with California Department of Fish and Wildlife (CDFW) and prepare a Swainson's hawk nesting construction plan. The purpose of this plan would be to identify what level of monitoring would be required, what types of construction activities can occur and what locations within the project site and what avoidance setbacks need to be established, if any, to minimize impacts to an active Swainson's hawk nest</p> <p><b>MM 4.4-11:</b> The project proponent shall mitigate for the loss of Swainson's hawk nesting and foraging habitat <del>at a ratio of 0.5:1 based on the total approved area of the project site.</del> Mitigation land may be nested with other compensatory lands provided it meets the necessary biological requirements and as determined by appropriate wildlife agency.</p>	

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		<p>a. <u>Compensation for the loss of SWHA foraging habitat shall be provided at a 1:1 ratio.</u></p> <p><b>MM 4.4-12:</b> Within 30 days prior to the start of ground disturbance activities of all or any portion of the main project site, a pre-construction survey shall be conducted by a qualified biologist knowledgeable in the identification of all special-status plant and wildlife species identified by the project's CEQA review to have potential to occur, including Le Conte's thrasher, golden eagle, San Joaquin antelope squirrel, Crotch's bumble bee, <u>coast horned lizard</u>, Kern mallow, and the Tulare grasshopper mouse on the main project site. Surveys need not be conducted for all areas at one time; they may be phased so that surveys occur within 30 days of the portion of the project site that will be disturbed. The location and nature of all special status species observations resulting from the preconstruction survey shall be documented and any suitable dens and/or burrows that could support fossorial special-status wildlife species will be examined for potential occupancy and documented. Documentation of completed studies shall be retained and made available to applicable wildlife agency and or Kern County staff on request. Should individuals or active nesting/burrowing sites of the species be present on-site, the project proponent shall confer with the appropriate wildlife agency and commence work only once a plan has been established, approved by the applicable agency, and made available to Kern County staff upon request.</p> <p>a. <u>A minimum 50-foot no-disturbance buffer shall be employed around SJAS burrows. If a minimum 50-foot no-disturbance buffer cannot be maintained, then consultation with CDFW is warranted to determine if the Project can avoid take or if take authorization is necessary as described below.</u></p> <p>b. <u>If a minimum 50-foot no-disturbance buffer for SJAS is not feasible, consultation with CDFW shall occur to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to</u></p>	

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		<p><u>Fish and Game Code Section 2081 subdivision (b) is necessary to comply with CESA.</u></p> <p>c. <u>If Tulare grasshopper mouse, coast horned lizard, San Joaquin coachwhip, or western spadefoot are observed during surveys, a 50-foot no-disturbance buffer shall be installed around burrows where these species are present.</u></p> <p><b>MM 4.4-12a: SJAS Avoidance Buffer</b>  <u>A minimum 50-foot no-disturbance buffer shall be employed around SJAS burrows that could be occupied by SJAS. If a minimum 50-foot no-disturbance buffer cannot be maintained, then consultation with CDFW is warranted to determine if the Project proponent can avoid take or if take authorization is necessary as described below.</u></p> <p><b>MM 4.4-12b: SJAS Take Authorization</b>  <u>If a minimum 50-foot no-disturbance buffer for SJAS is not feasible, consultation with CDFW shall occur to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.</u></p> <p><b>MM 4.4-13:</b> In the unanticipated event that giant kangaroo rat or Tipton kangaroo rat are discovered on site, the following procedures shall be implemented:</p> <p>Giant kangaroo rat or Tipton kangaroo rat precincts shall be flagged and a 50-foot-wide buffer around the precincts shall be avoided by construction equipment and ground-disturbing activities, if feasible. <u>If a minimum 50-foot no-disturbance buffer is not feasible, consultation with CDFW shall occur to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with California Endangered Species Act (CESA).</u></p> <p><u>If project personnel are required to drive or operate a vehicle or piece of equipment in the vicinity of a Giant kangaroo rat or Tipton kangaroo rat</u></p>	

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		<p><del>precinct, they shall avoid driving directly over precinct openings, seed caches, or haystacks, if practicable. If the activity requires that the vehicle travel directly over a precinct (more than simple daily pedestrian activities such as walking in and out of an area to inspect the condition of equipment) for more than 1 hour, then the following procedures shall be implemented:</del></p> <ul style="list-style-type: none"> <li><del>• A plywood sheet or stronger material board, measuring at least 4 by 8 feet and 1 inch thick, shall be placed over the entire precinct at the start of the activity.</del></li> <li><del>• Any haystacks, seed caches, or other forage stockpiled by the giant kangaroo rat, or the Tipton kangaroo rat on the surface shall be left undisturbed to the maximum extent practicable. If avoidance is not possible, the seed caches and haystacks shall be completely covered by a plywood sheet.</del></li> <li><del>• More than one plywood sheet may be required to cover an area when multiple precincts occur in the vicinity of the activity.</del></li> <li><del>• Vehicles and equipment shall be allowed to travel over a precinct only when all tires are driving over the plywood surface.</del></li> <li><del>• At the end of the work activity or at the end of each workday, whichever is of a shorter duration, all plywood sheets or stronger boards shall be removed from the precinct(s), and any haystacks, seed caches, or other forage stockpiles that have been covered.</del></li> <li><del>• During daily pedestrian operation and maintenance activities, such as walking within an array to inspect the condition of equipment or performing panel washing, project personnel may walk on and work around precincts; however, entrances or holes in the precinct shall not be stepped on and shall be avoided to prevent damage to or plugging of these entrances, to the extent practicable. If damage to or plugging of the entrances occur, or is likely to occur, and work is</del></li> </ul>	

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		<p>scheduled to continue, personnel shall use plywood sheeting or stronger material boards to protect the precinct as described above.</p> <p>The project applicant shall submit a giant kangaroo rat salvage plan to CDFW and USFWS before initiating ground disturbing activities in any areas occupied by giant kangaroo rat, or Tipton kangaroo rat precincts. Salvage activities shall not proceed until the giant kangaroo rat, and Tipton kangaroo rat salvage plan has been approved in writing by CDFW's Regional Representative and by USFWS, and federal and state permits are obtained. Once the salvage plan is approved, it may be used for all giant kangaroo rat, and Tipton kangaroo rat salvage activities for the duration of permitted activities. Any proposed changes to the giant kangaroo rat, and Tipton kangaroo rat salvage plan shall be submitted in writing to CDFW and USFWS, and approved by these agencies in writing before any proposed salvage plan modifications are implemented.</p> <p><b>MM 4.4-14:</b> As part of the preconstruction surveys conducted under MM 4.4-8, no less than 14 days and no more than 30 days prior to the start of project ground-disturbing activities, a pre-construction survey with a 500-foot buffer to the extent property access is authorized should be conducted by a qualified biologist knowledgeable in the identification of burrowing owl, American badger, and San Joaquin kit fox. If dens and/or burrows that could support any of these species are discovered during the pre-construction surveys, the avoidance buffers outlined below should be observed. No work would occur within these buffers unless the biologist approves and monitors the activity.</p> <p><u>Burrowing Owl (active burrows):</u></p> <table> <tr> <th rowspan="2">Location</th> <th rowspan="2">Time of Year</th> <th colspan="3">Level of Disturbance</th> </tr> <tr> <th>Low</th> <th>Med</th> <th>High</th> </tr> <tr> <td>Nesting Sites</td> <td>4/1-8/15</td> <td>200m</td> <td>500m</td> <td>500m</td> </tr> <tr> <td>Nesting Sites</td> <td>8/16-10/15</td> <td>200m</td> <td>200m</td> <td>500m</td> </tr> <tr> <td>Nesting Sites</td> <td>10/16-3/31</td> <td>50m</td> <td>100m</td> <td>500m</td> </tr> </table>	Location	Time of Year	Level of Disturbance			Low	Med	High	Nesting Sites	4/1-8/15	200m	500m	500m	Nesting Sites	8/16-10/15	200m	200m	500m	Nesting Sites	10/16-3/31	50m	100m	500m	
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		<p>These burrowing owl active burrow buffers are drawn from CDFW's 2012 burrowing owl staff report, which specifically provides that activities may occur within them if resource managers allow on the basis of existing vegetation, human development, and land uses in the area.</p> <p><u>American Badger/San Joaquin Kit Fox:</u></p> <ul style="list-style-type: none"> <li>• Potential or Atypical den – 50 feet</li> <li>• Known den – 100 feet</li> <li>• Natal or pupping den – 500 feet, unless otherwise specified by CDFW.</li> </ul> <p><u>San Joaquin Kit Fox</u></p> <p>In determining whether SJKF activity could occur within these buffers, the biological monitor would take into account the following:</p> <ul style="list-style-type: none"> <li>• Noise level and duration. The noise level and duration of activities would be considered. Loud (e.g., greater than 80 decibels) and sustained (e.g., longer than one hour) activities would be disallowed within the buffer setbacks. Activities with shorter durations and/or lower noise levels may be considered with continual observation of the den by the monitor and work stoppage if the biologist detects evidence of disturbance.</li> <li>• Level of disturbance typically experienced in the location of the den prior to construction. Some areas of the Project (e.g., existing roads or agricultural areas) have been historically subject to human disturbance and dens near these areas are assumed to be accustomed to those previous levels of disturbance. If construction noise and duration are similar to disturbances that would have occurred in the area prior to construction (e.g., vehicular traffic on an existing road), those activities could continue with ongoing monitoring of the den by a biological monitor.</li> </ul>	



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		<ul style="list-style-type: none"> <li>• If construction activities have begun within 100 feet of a potential or atypical den that was determined during preconstruction activities to be inactive when construction began and the den becomes active during construction (i.e., becomes a “known” den), those activities would be allowed to continue at the same intensity as occurred when the den became active. A biological monitor would maintain continual watch on the den while construction activities are conducted within the buffer described above.</li> <li>• In no case would construction activities, regardless of noise and duration, occur closer than 50 feet from a known or potential/atypical den or 500 feet from a natal/pupping den unless approved by California Department of Fish and Wildlife or United States Fish and Wildlife Service. Evidence that the construction activities were causing negative changes in behavior patterns would cause the biologist to disallow those activities inside the buffer.</li> <li>• If take of San Joaquin Kit Fox cannot be avoided, the project proponent shall confer with California Department of Fish and Wildlife on the need for take authorization through the acquisition of an incidental take permit, pursuant to Fish and Game Code section 2081 subdivision (b).</li> </ul>	
		<p><u>Burrowing Owl and American Badger</u></p>	
		<p>If BUOW or AMBA are found within these recommended buffers and avoidance is not possible, burrow and/or den exclusion would be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow and/or den is confirmed empty through non-invasive methods, such as surveillance. Replacement of occupied burrows with artificial dens and/or burrows shall occur at a ratio of one burrow collapsed to one artificial den and/or burrow constructed (1:1) to mitigate for evicting burrowing and the loss of dens and/or burrows. Species may attempt to colonize or re-colonize an area that will be impacted; thus, ongoing</p>	

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		<p>surveillance shall occur at excluded burrows and/or dens at a rate that is sufficient to detect species if they return.</p> <p>Burrowing owls should not be excluded from burrows during the breeding season unless a qualified biologist has determined that a pair of owls is no longer actively nesting (e.g., the young have been taken by predators, or perished for some other reason), or where the juveniles are foraging independently and capable of independent survival, during the breeding season (February 1 through August 31). During the non-breeding season burrowing owls shall not be excluded from burrows unless or until a Burrowing Owl Exclusion Plan is developed by a qualified biologist consistent with the recommendations of CDFW's 2012 Staff Report on Burrowing Owl Mitigation and submitted to the Kern County Planning and Natural Resources Department.</p> <p>The plan shall include, at a minimum:</p> <ul style="list-style-type: none"> <li>• Confirm by site surveillance that the burrow(s) is empty of burrowing owls and other species preceding burrow scoping;</li> <li>• Type of scope to be used and appropriate timing of scoping to avoid impacts;</li> <li>• Occupancy factors to look for and what shall guide determination of vacancy and excavation timing (one-way doors should be left in place 48 hours to ensure burrowing owls have left the burrow before excavation, visited twice daily and monitored for evidence that owls are inside and can't escape i.e., look for sign immediately inside the door).</li> <li>• How the burrow(s) shall be excavated. Excavation using hand tools with refilling to prevent reoccupation is preferable whenever possible (may include using piping to stabilize the burrow to prevent collapsing until the entire burrow has been excavated and it can be determined that no owls reside inside the burrow);</li> </ul>	

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		<ul style="list-style-type: none"> <li>Removal of other potential owl burrow surrogates or refugia onsite;</li> <li>Photographing the excavation and closure of the burrow to demonstrate success and sufficiency.</li> </ul> <p><b>MM 4.4-15:</b> All fencing installed on the perimeter of the main project site will be designed to allow for passage of San Joaquin Kit Fox (SJKF) their prey and other wildlife, while impeding the passage of larger predators such as coyotes and similar species. <del>Perimeter fencing shall consist of wire fencing, with openings from three (3) to seven (7) inches square and will be installed inverted, with the larger openings at the bottom to allow SJKF to pass through.</del> Chain link fencing <del>may also be used if it is</del> shall be installed with a four (4) <del>to six (6)</del> inch gap from the bottom of the fencing material and shall be knuckled back to form a smooth edge. <u>Perimeter fencing shall not be electrified.</u> Alternate designs may also be constructed with documentation of coordination with California Department of Fish and Wildlife (CDFW) and United States Fish and Wildlife Service (USFWS) and demonstration that comments provided by the Agencies have been considered and addressed.</p> <p><b>MM 4.4-16:</b> Prior to the issuance of any grading or building permits, the project proponent shall mitigate for the loss of San Joaquin Kit Fox (SJKF) foraging habitat at a ratio of 0.5:1 based on loss or degradation of suitable habitat. Mitigation land may be nested with other compensatory lands provided it meets the necessary biological requirements and as determined by appropriate wildlife agency.</p> <p><b>MM 4.4-17:</b> During the blooming period immediately prior to commencement of project ground disturbing activities, areas within the project site containing one or more of the following habitat requisites shall be surveyed for Crotch's bumble bee by a qualified biologist: flowering vegetation, potential preferred nectar plants, small mammal burrows, bunch grasses, thatch, brush piles, old bird nests, or dead trees. A minimum of two surveys shall be completed between the hours of 0800 and 1600 when temperatures are between 65°F and 90°F, and will not be</p>	

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		<p>conducted during inclement weather conditions (e.g., foggy, raining, drizzling, or sustained winds greater than 8 mph). Surveyors will photograph potential Crotch's bumble bees from various angles to ensure recordation of key identifying characteristics. Should a Crotch's bumble bee be observed, ground disturbing work shall not proceed until consultation with CDFW related to avoidance or take of Crotch's bumble bee on-site is completed. <del>If Crotch's bumble bee is determined to be present, compensatory lands used as mitigation for Crotch's bumble bee will include long term conservation at a ratio of not less than 0.5 acre per acre of potentially suitable habitat impacted by the project. If CBB is identified during surveys or at any time during Project construction, the project proponent will confer with CDFW to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground disturbing activities is warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).</del></p> <p><b>MM 4.4-18:</b> The project proponent/operator shall install power lines in conformance with Avian Power Line Interaction Committee (APLIC) standards for electrocution-reducing techniques as outlined in Practices for Avian Protection on Power Lines: The State of the Art in 2006 (APLIC 2006), and for collision-reducing techniques as outlined in Reducing Avian Collisions with Power Lines: The State of the Art in 2012 (APLIC 2012), or any superseding document issued by APLIC.</p> <p><b>MM 4.4-19: Nesting Bird Surveys Prior to Construction</b>  <u>Wherever possible, clearing and grubbing of vegetation will be completed in the non-breeding season preceding construction. If ground-disturbing activities occur during the nesting bird season (February 1 – September 15), a qualified biologist shall conduct pre-activity surveys for active nests no more than thirty days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. Surveys shall cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct</u></p>	

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		<p><u>impacts (i.e., nest destruction), noise, vibration, odors, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, a qualified biologist shall conduct a survey to establish a behavioral baseline of all identified nests and confirm site conditions have not changed.</u></p> <p><u><b>MM 4.4-20:</b> Nesting Bird Monitoring and/or Avoidance Buffer</u>  <u>Once construction begins, a qualified biologist shall continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, the work causing that change will cease and CDFW may be consulted if necessary for additional avoidance and minimization measures if work must proceed and behavior does not return to the identified baseline condition. If continuous monitoring of identified nests by a qualified biologist is not feasible, a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors shall be implemented. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no-disturbance buffers is possible when there is a compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. A qualified biologist shall advise and support any variance from these buffers.</u></p>	
<b>Impact 4.4-2:</b> The project could have a substantial adverse effect on any riparian habitat or other sensitive natural community, or jurisdictional waters, identified in local or regional plans, policies, or regulations or by CDFW or USFWS.	Potentially significant	<p>Implementation of Mitigation Measures MM 4.10-1 (See Section 4.10, <i>Hydrology and Water Quality</i>) would be required.</p> <p><b>MM 4.4-2119:</b> Mapped CDFW-designated sensitive communities should be avoided to the maximum extent possible. Any CDFW-designated sensitive communities that are directly and permanently impacted shall be mitigated at a ratio of 1:1 acre on-site or at a nearby location with comparable habitat value. Any mapped CDFW-designated sensitive communities that are indirectly impacted (such as through shading or mowing at 6 to 8 inches) would be mitigated by preserving</p>	Less than significant

Impact	Level of Significance before Mitigation	Mitigation Measure(s)	Level of Significance After Mitigation
		compensation land at a ratio of 0.5:1 ratio on-site or at nearby location with comparable habitat value.	
<b>Impact 4.4-3:</b> The project would have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.	Potentially significant	<p data-bbox="869 373 1640 633"><b>MM 4.4-229:</b> Prior to issuance of any grading or building permit, the project proponent/operator shall submit a final Delineation report to Kern County. A copy of this report shall also be provided to the Central Valley Regional Water Quality Control Board and the California Department of Fish and Wildlife. The report shall include delineation of all potential state and federal jurisdictional features at the project site. Potential jurisdictional features within the project boundary identified in the jurisdictional delineation report may be shown in plan form.</p> <p data-bbox="869 662 1640 889">Any determination on the basis of the final project design relative to the final delineation report that the project will impact state or federal jurisdictional aquatic resources shall require the project proponent to obtain all necessary permits/authorizations from the appropriate regulating agencies (Regional Water Quality Control Board, and the California Department of Fish and Wildlife to impacting state or federal jurisdictional features.</p> <p data-bbox="869 919 1640 1114">Any material/spoils generated from project activities containing hazardous materials will be located away from state and federal jurisdictional waters and special-status habitat and protected from storm water run-off using temporary perimeter sediment barriers such as berms, silt fences, fiber rolls, covers, sand/gravel bags, and straw bale barriers, as appropriate.</p> <p data-bbox="869 1143 1640 1268">Equipment containing hazardous liquid materials will be stored on impervious surfaces or plastic ground covers to prevent any spills or leakage from contaminating the ground and at least 50 feet outside the delineated boundary of jurisdictional water features.</p> <p data-bbox="869 1297 1640 1390"><b>MM 4.4-231:</b> Prior to ground disturbance activities that would impact aquatic features, the project proponent/operator shall be subject to provisions as identified below:</p>	Less than significant

Impact	Level of Significance before Mitigation	Mitigation Measure(s)	Level of Significance After Mitigation
		<ul style="list-style-type: none"> <li>a. The project proponent/operator shall file a complete Report of Waste Discharge or proof of exemption with the Regional Water Quality Control Board (RWQCB) to obtain Waste Discharge Requirements or an exemption to the WDR, and shall also confer with the California Department of Fish and Wildlife (CDFW) on the need for a Lake and Streambed Alteration Agreement. Copies of reports shall be submitted to the County.</li> <li>b. Based on conferral with RWQCB and CDFW, if permits are required for the project site, appropriate permits shall be obtained prior to disturbance of jurisdictional resources.</li> <li>c. Compensatory mitigation for impacts to unvegetated streambeds/washes shall be identified prior to disturbance of the features and implemented at a minimum 1:1 ratio, as approved by the RWQCB or CDFW either through onsite or offsite mitigation, or purchasing credits from an approved mitigation bank.</li> <li>d. The project proponent/operator shall comply with the compensatory mitigation required and proof of compliance, along with copies of permits obtained from RWQCB and/or CDFW, shall be provided to the County.</li> <li>e. A Habitat Mitigation and Monitoring Plan (HMMP) shall be prepared that outlines the compensatory mitigation in coordination with the RWQCB and CDFW. <ul style="list-style-type: none"> <li>1. If onsite mitigation is proposed, the HMMP shall identify those portions of the site, such as relocated drainage routes, that contain suitable characteristics (e.g., hydrology) for restoration. Determination of mitigation adequacy shall be based on comparison of the restored habitat with similar, undisturbed habitat in the site vicinity (such as upstream or downstream of the site).</li> </ul> </li> </ul>	

Impact	Level of Significance before Mitigation	Mitigation Measure(s)	Level of Significance After Mitigation
		<ol style="list-style-type: none"> <li>2. The HMMP shall include remedial measures in the event that performance criteria are not met.</li> <li>3. If mitigation is implemented offsite, mitigation lands shall be comprised of similar or higher quality and preferably located in Kern County. Offsite land shall be preserved through a deed restriction or conservation easement and the HMMP shall identify an approach for funding assurance for the long-term management of the conserved land. Alternatively, the applicant may purchase credits from an approved mitigation bank.</li> <li>4. Copies of any coordination, permits, etc., with RWQCB and CDFW shall be provided to the County.</li> </ol>	
<b>Impact 4.4-4:</b> The project would interfere substantially with the movement of any resident or migratory fish or wildlife species or with established resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.	Potentially significant	Implement Mitigation Measure MM 4.4-1 through MM 4.4-23 <del>4</del>	Less than significant
<b>Impact 4.4-5:</b> The project would conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.	The NOP addressed this issue, concluded that the project would not conflict with local policies or ordinances protecting biological resources, and therefore, no further analysis is warranted. No further discussion will be provided in the EIR.	No mitigation would be required.	Less than significant
<b>Impact 4.4-6:</b> The project would conflict with the provisions of an adopted Habitat Conservation	The NOP addressed this issue, concluded that the project would not	No mitigation would be required.	Less than significant



Impact	Level of Significance before Mitigation	Mitigation Measure(s)	Level of Significance After Mitigation
Plan, Natural Community Conservation Plan or other approved local, regional, or state habitat conservation plan.	conflict with the provisions of an adopted Habitat Conservation Plan, or other approved local, regional, or state habitat conservation plan, and therefore, no further analysis is warranted. No further discussion will be provided in the EIR.		
<b>Impact 4.4:</b> Cumulative Impacts	Potentially significant	Implementation of Mitigation Measures MM 4.4-1 through MM 4.4-234, MM 4.1-4 through MM 4.1-6, (See Chapter 4.1, <i>Aesthetics</i> ), and MM 4.10-1, (see Chapter 4.10, <i>Hydrology and Water Quality</i> ), would be required. required (See Section 4.1, <i>Aesthetics</i> , Section 4.10, <i>Hydrology and Water Quality</i> for full mitigation text).	Significant and unavoidable

### Section 1.0, Executive Summary; Table 1-7, Pages 1-85 – 1-86:

**Table 1-7: Summary of Project Impacts, Mitigation Measures, and Levels of Significance**

Impact	Level of Significance before Mitigation	Mitigation Measure(s)	Level of Significance After Mitigation
<b>4.4 Public Services</b>			
<b>Impact 4.14-1:</b> The project would result in the need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for fire	Potentially significant	<b>MM 4.14-1:</b> Prior to the issuance of grading or building permits the project proponent/operator shall develop and implement a fire safety plan for use during construction, operation and decommissioning.  The project proponent/operator shall submit the plan, along with maps of the project site and access roads, to the Kern County Fire Department for review and approval. A copy of the approved Fire Safety Plan shall be submitted to the Kern County Planning and Natural Resources Department. The Fire Safety Plan shall contain notification procedures	Less than significant

Impact	Level of Significance before Mitigation	Mitigation Measure(s)	Level of Significance After Mitigation
protection services or police protection services.		<p>and emergency fire precautions including, but not limited to, the following:</p> <ul style="list-style-type: none"> <li>a. All internal combustion engines, both stationary and mobile, shall be equipped with spark arresters. Spark arresters shall be in good working order.</li> <li>b. Light trucks and cars with factory-installed (type) mufflers shall be used only on roads where the roadway is cleared of vegetation. These vehicle types will maintain their factory-installed (type) muffler in good condition.</li> <li>c. Fire rules shall be posted on the project bulletin board at the contractor's field office and areas visible to employees.</li> <li>d. Equipment parking areas and small stationary engine sites shall be cleared of all extraneous flammable materials.</li> <li>e. Personnel shall be trained in the practices of the fire safety plan relevant to their duties. Construction and maintenance personnel shall be trained and equipped to extinguish small fires to prevent them from growing into more serious threats.</li> <li>f. The project proponent/operator shall make an effort to restrict the use of chainsaws, chippers, vegetation masticators, grinders, drill rigs, tractors, torches, and explosives to periods outside of the official fire season. When the above tools are used, water tanks equipped with hoses, fire rakes, and axes shall be easily accessible to personnel.</li> <li>g. Building plans shall be included for the energy storage system to verify adherence to County and California Building Code standards.</li> </ul> <p><b>MM 4.14-2:</b> The following Cumulative Impact Charge (CIC) shall be implemented as payment on approved Conditional Use Permit acreage.</p> <ul style="list-style-type: none"> <li>a. Submittal of Building Permit <del>and Phasing</del> <ul style="list-style-type: none"> <li>1. Any building permit submitted shall be accompanied by a map and legal description of the entire approved Conditional Use Permit area.</li> </ul> </li> </ul>	

Impact	Level of Significance before Mitigation	Mitigation Measure(s)	Level of Significance After Mitigation
		<ol style="list-style-type: none"> <li>2. The map for either the total project or a phase shall calculate the Cumulative Impact Charge (CIC) net acreage as follows: <ol style="list-style-type: none"> <li>A. Total gross acreage of the approved Conditional Use Permit</li> <li>B. Total acres for Operations and Maintenance building permanent accessory improvements</li> <li>C. Total acres for Energy Storage structure and permanent accessory improvements, if full reassessed property taxes are paid</li> <li>D. Total acres of recorded easements and drilling <del>islands</del> <u>areas set aside for mineral rights</u></li> </ol> </li> <li>3. Formula: Net Acreage = 2.A minus the sum of [2.B + 2.C + 2.D].</li> <li>4. Temporary storage areas or non-permanent commercial coaches or cargo containers for construction or operations are not eligible for inclusion under 2.B or 2.C, above.</li> <li>5. All areas of buildings, accessory improvements and easement used in the calculations shall be shown on the submitted Phase Map.</li> </ol> <p>b. Calculation and Payment of Cumulative Impact Charge (CIC)</p> <ol style="list-style-type: none"> <li>1. A payment of \$690 per net acre shall be paid upon issuance of the first building permit. If it is not paid within 30 days after the issuance of the first building permit for the phase regardless of the total number of building permits or type of building permit issued, all such permits shall be suspended until the fee is paid in full.</li> <li>2. Payments shall be made to the Planning and Natural Resources Department for transfer directly to the County Administrative Office Fiscal Division (CAO) and labeled Cumulative Impact Charge (CIC) with the project name.</li> </ol>	

Impact	Level of Significance before Mitigation	Mitigation Measure(s)	Level of Significance After Mitigation
		3. Any acres denoted for an operation and maintenance building or energy storage that are not built cannot be used for solar panels unless payment is provided for the Cumulative Impact Charge (CIC).	

## Section 1.0, Executive Summary, Page 1-2

This Draft Environmental Impact Report (EIR) has been prepared by Kern County as the Lead Agency under CEQA. The Draft EIR provides information about the environmental setting and impacts of the project and alternatives. It informs the public about the project and its impacts and provides information to meet the needs of local, State, and federal permitting agencies that are required to consider the project. The EIR will be used by Kern County to determine whether to approve the requested CUP (CUP No. 3, Map No. 5) and GPA (GPA No. 2, Map No. 5). While Kern County does not have jurisdiction over utility construction performed by PG&E, the County properly included all of PG&E's interconnection upgrades in its previous and current California Environmental Quality Act (CEQA) reviews because the upgrades are a direct, physical result of the solar project approval.

## Section 3.0, Project Description, Page 3-35

The underlined sentence below would be added to the second paragraph under the 3.9.2 Operational Water Use heading.

On-site wells constructed within the main project site for the purposes of providing construction water may be used for construction and operations. Temporary construction wells, if any, would be decommissioned upon the completion of construction unless required for the O&M facility, and capped per applicable regulations. During operations of the main project site, water required for annual panel washing may be drawn from the on-site construction wells. Permanent, above-ground water storage tanks may be used for O&M tasks and facilities. In accordance with Kern County Fire Department Standard No. 503-507, one 10,000-gallon water tank with a 4-inch National Standard Male (NSM) connection will be provided for fire department use for the main project site. In addition, a water tank may be provided for fire department use a minimum of 300 feet upwind from the nearest BESS enclosure. The location of the water tanks will be accessible to emergency vehicles. The capacity and location of the water tanks will be approved by the Kern County Fire Department.

## Chapter 3.1, Air Quality, Page 3-37

Solar equipment typically has a lifespan of over 35 years. The proposed project expects to sell the renewable energy produced by the project under the terms of a long-term Power Purchase Agreement with a utility or other power off taker. Upon completion of the Power Purchase Agreement term, the project operator may, at its discretion, choose to enter into a subsequent Power Purchase Agreement or decommission and remove the system and its components. If it is decided to decommission the project, the system and its components would be removed, and the solar field site could then be converted to other uses in accordance with applicable land use regulations in effect at that time. Removal of the PG&E's improvements is not required upon decommissioning; they may be used for other purposes or removed depending on future needs. All decommissioning and restoration activities would adhere to the requirements of the appropriate governing authorities and would be in accordance with all applicable federal, state and County regulations. This would include removal and salvaged (where possible) of on-site materials and the materials would be shipped off-site to be recycled or disposed of at an appropriately licensed disposal facility. After removals, the applicant would work collaboratively with the County to restore the solar field site to meet the County's next use (i.e., restore the solar field site to preconstruction conditions or to a condition that best meets future planned land uses).

**Chapter 4.4, Biological Resources, Page 4.4-52 – 4.4-53**

**MM 4.4-3:** During construction and decommissioning of the project site, the project proponent and/or contractor(s) shall implement the following general avoidance and protective measures:

- a. Immediately prior to conducting vegetation clearing or similar activities, the Lead Biologist or their designee shall perform a pre-construction visual survey of the area to ensure that no special-status species are present. Daily reports of these inspections shall be retained by the Lead Biologist and provided to the Kern County Planning and Natural Resources Department, U.S. Fish and Wildlife Service, or California Department Fish and Wildlife upon request.
- b. Within the vicinity of any construction activities, sensitive biological resources (i.e., special-status species, jurisdictional drainages, nesting birds, etc.) shall be delineated with stakes and/or flagging.
- c. Access roads that are planned for use during construction activities shall not extend beyond the planned impact area, which area includes all previously disturbed lands and any location within the project fence line not delineated for avoidance of sensitive biological resources. Where new access routes are required, the route will be clearly marked prior to construction.
- d. The project proponent/operator shall minimize the areas of disturbance. Parking areas, new roads, staging, storage, excavation, and disposal site locations shall be confined to the smallest areas possible. These areas shall be demarcated and disturbance activities, vehicles, and equipment shall be confined to these areas.
- e. Any spoils shall be stockpiled in disturbed areas that lack native vegetation to the maximum extent practicable. Spoils that have been stockpiled and inactive for more than 24 hours shall be inspected by a qualified biologist for signs of special-status wildlife before moving or disturbing.
- f. To prevent inadvertent entrapment of San Joaquin kit foxes, American badgers, or other animals during construction, all excavated steep-walled holes or trenches more than two (2) feet deep shall be covered with plywood or similar materials at the close of each working day. If holes or trenches cannot be covered, one or more escape ramps constructed of earthen fill or wooden planks, no less than 12 inches wide and secured at the top, shall be placed a minimum of every 100 feet within the open trench. Covered and non-covered holes or trenches shall be thoroughly inspected for trapped animals by a qualified biologist at the beginning and end of each working day. Immediately before such holes or trenches are filled, they shall again be thoroughly inspected by trained Staff approved by the Lead Biologist. If a listed species is trapped, escape ramps or structures shall be installed immediately to allow for their escape and the Lead Biologist shall immediately confer with the U.S. Fish and Wildlife Service and/or California Department of Fish and Wildlife.
- g. All construction pipes, culverts, or similar structures with a diameter of four (4) inches or greater that are stored at the site for more than 24 hours and without endcaps shall be thoroughly inspected by a qualified biologist prior to being moved or capped.

If a listed wildlife species is discovered inside a pipe, that section of pipe shall not be moved until a qualified biologist has been consulted and the animal has either moved from the structure on its own accord or until the animal has been captured and relocated in conformance with appropriate wildlife agency guidelines.

- h. No vehicle or equipment parked on the project site shall be moved prior to inspecting the ground beneath the vehicle or equipment for the presence of listed wildlife species. If present, the animal shall be left to move on its own.
- i. A speed limit of 15 miles per hour shall be enforced within the limits of the project site. To the extent possible, night-time construction-related activity shall be minimized, but if work must be conducted at night ~~If night work occurs on the project site,~~ the speed limit will be 10 miles per hour.
- j. Fueling of equipment shall take place within existing roads or disturbed areas. No refueling within or adjacent to drainages (within 150 feet) shall be permitted. Contractor equipment shall be checked for leaks prior to operation and repaired as necessary.
- k. Trash and food items shall be contained in closed containers to reduce the attractiveness to opportunistic predators such as common ravens, coyotes, and feral dogs.
- l. Workers shall be prohibited from bringing pets and firearms to the project site and from feeding wildlife.
- m. Intentional killing or collection of any listed plant or wildlife species shall be prohibited.
- n. Herbicides that may be used as vegetation control measures in project areas shall be restricted. All uses of such herbicidal compounds shall observe label and other restrictions mandated by the U.S Protection Agency, California Department of Food and Agriculture, and state/federal legislation as well as additional project related restrictions deemed necessary by the U.S. Fish and Wildlife Service or California Department of Fish and Wildlife. No rodenticides shall be used on the project site.

#### Chapter 4.4, Biological Resources, Page 4.4-54

**MM 4.4-6:** ~~No more than thirty (30) days Prior to the start of ground disturbance activities or issuance of any grading or building permits, or decommissioning of the main project site,~~ a qualified biologist knowledgeable on the identification of rare plant species shall conduct a pre-construction plant survey of areas of proposed disturbance within the main project site and a 100-foot buffer (where legally accessible) timed during the appropriate blooming period of the survey season immediately prior to construction to determine if any special-status plant species are present. If special-status plants are identified on-site, their locations shall be mapped and the Project proponent shall confer with CDFW or USFWS as required by applicable law to facilitate salvage or seed collection.

- a. Species-specific restoration plans should be developed for all special status plants with the potential to be impacted, including performance criteria for determining the success of the restoration plan.
- b. Areas identified as potential recipient sites must be surveyed following CDFW protocols to ensure that compensatory mitigation efforts would not cause harmful impacts to existing botanical resources. Low-conflict areas that have been degraded by previous land uses should be prioritized for restoration, leaving intact natural habitat undisturbed by restoration efforts.
- c. While on-site mitigation is preferred, if contiguous acreage to achieve mitigation needs is not present on the project site, restoration activities may be implemented offsite.
- d. Maintenance and monitoring of compensatory mitigation sites should occur each year for the first five years of the mitigation term, or until the performance standards have been met. Thereafter, yearly monitoring of the site should demonstrate a self-sustaining area of occupation and population numbers with no management actions for years 6-8.
- e. If monitoring shows stable populations after three years with no maintenance, the populations should be monitored every two years in perpetuity.
- f. If the populations are not demonstrating stability after the initial three years of maintenance and monitoring period, after three years without maintenance, or if subsequent monitoring shows loss or decline of populations, then adaptive management shall be undertaken until the performance standards are achieved.

#### **Chapter 4.4, Biological Resources, Page 4.4-55**

**MM 4.4-10:** No more than (30) days prior to the issuance of any grading or building permits, decommission of the site or the start of ground disturbance activities or decommissioning, a qualified biologist knowledgeable in the identification of all special-status wildlife species shall conduct a pre-construction survey of areas proposed for disturbance within the project site and 500-foot buffer (where legally accessible) to determine if any special-status species are present. If, as a result of this pre-construction survey it is determined that Burrowing Owl, American Badger or San Joaquin Kit Fox are present, the following measures shall be implemented:

- a. If signs of Burrowing Owl or American Badger are identified on-site, the project proponent shall establish appropriate buffers limiting all construction activities. Buffers for burrows shall be as follows:

##### **Burrowing Owls:**

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting Sites	4/1-8/15	200m	500m	500m
Nesting Sites	8/16-10/15	200m	200m	500m
Nesting Sites	10/16-3/31	50m	100m	500m



American Badger:

- Potential or Atypical den – 50 feet
- Known den – 100 feet
- Natal or pupping den – 500 feet, unless otherwise specified by CDFW.

If required buffers are infeasible, then the project proponent shall prepare a Burrowing Owl and American Badger Exclusion Plan. Any burrow and/or den exclusion would be conducted by a qualified biologist with burrowing owl burrows replaced at a 1:1 ratio. No burrowing owl burrow exclusion is permitted during breeding season (February 1 - August 31 or while breeding behavior is exhibited), unless approved by CDFW. unless a qualified biologist verifies through noninvasive methods that (1) the birds have not begun egg laying and incubation, (2) a previously active nest has failed and re-nesting is highly unlikely, or (3) all juveniles from the occupied burrow are foraging independently and capable of independent survival. A qualified biologist will monitor the burrow for a minimum of three days prior to proposed burrow excavation to document the lack of usage of the burrow for active nesting.

- b. If signs of San Joaquin Kit Fox are identified on-site, the project proponent shall establish appropriate buffers limiting all construction activities. Buffers include (50 Feet) for a potential or atypical den, (100) feet for a known den and (500) feet for a natal or pupping den, unless otherwise specified by the California Department of Fish and Wildlife (CDFW). If required buffers are not possible to protect the species, then the project proponent shall confer with CDFW on the need for take authorization through the acquisition of an incidental take permit, pursuant to Fish and Game Code section 2081 subdivision (d).
- c. If signs of Swainson's hawk nest, beyond those mapped during the pre-construction SWHA surveys, are identified on-site or within 0.5 miles from the project site, the project proponent will confer with California Department of Fish and Wildlife (CDFW) and prepare a Swainson's hawk nesting construction plan. The purpose of this plan would be to identify what level of monitoring would be required, what types of construction activities can occur and what locations within the project site and what avoidance setbacks need to be established, if any, to minimize impacts to an active Swainson's hawk nest.

#### Chapter 4.4, Biological Resources, Page 4.4-56

**MM 4.4-11:** The project proponent shall mitigate for the loss of Swainson's hawk nesting and foraging habitat ~~at a ratio of 0.5:1 based on the total approved area of the project site.~~ Mitigation land may be nested with other compensatory lands provided it meets the necessary biological requirements and as determined by appropriate wildlife agency.

- a. Compensation for the loss of SWHA foraging habitat shall be provided at a 1:1 ratio.

#### Chapter 4.4, Biological Resources, Page 4.4-56

**MM 4.4-12:** Within 30 days prior to the start of ground disturbance activities of all or any portion of the main project site, a pre-construction survey shall be conducted by a qualified biologist knowledgeable in the identification of all special-status plant and wildlife species identified

by the project's CEQA review to have potential to occur, including Le Conte's thrasher, golden eagle, San Joaquin antelope squirrel, Crotch's bumble bee, coast horned lizard, Kern mallow, and the Tulare grasshopper mouse on the main project site. Surveys need not be conducted for all areas at one time; they may be phased so that surveys occur within 30 days of the portion of the project site that will be disturbed. The location and nature of all special status species observations resulting from the preconstruction survey shall be documented and any suitable dens and/or burrows that could support fossorial special-status wildlife species will be examined for potential occupancy and documented. Documentation of completed studies shall be retained and made available to applicable wildlife agency and or Kern County staff on request. Should individuals or active nesting/burrowing sites of the species be present on-site, the project proponent shall confer with the appropriate wildlife agency and commence work only once a plan has been established, approved by the applicable agency, and made available to Kern County staff upon request.

If Tulare grasshopper mouse, coast horned lizard, San Joaquin coachwhip, or western spadefoot are observed during surveys, a 50-foot no-disturbance buffer shall be installed around burrows where these species are present.

#### **Chapter 4.4, Biological Resources, Page 4.4-56**

##### **MM 4.4-12a: SJAS Avoidance Buffer**

A minimum 50-foot no-disturbance buffer shall be employed around SJAS burrows that could be occupied by SJAS. If a minimum 50-foot no-disturbance buffer cannot be maintained, then consultation with CDFW is warranted to determine if the Project proponent can avoid take or if take authorization is necessary as described below.

##### **MM 4.4-12b: SJAS Take Authorization**

If a minimum 50-foot no-disturbance buffer for SJAS is not feasible, consultation with CDFW shall occur to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

#### **Chapter 4.4, Biological Resources, Page 4.4-57**

**MM 4.4-13:** In the unanticipated event that giant kangaroo rat or Tipton kangaroo rat are discovered on site, the following procedures shall be implemented:

Giant kangaroo rat or Tipton kangaroo rat precincts shall be flagged and a 50-foot-wide buffer around the precincts shall be avoided by construction equipment and ground-disturbing activities, if feasible. If a minimum 50-foot no-disturbance buffer is not feasible, consultation with CDFW shall occur to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with California Endangered Species Act (CESA).

~~If project personnel are required to drive or operate a vehicle or piece of equipment in the vicinity of a Giant kangaroo rat or Tipton kangaroo rat precinct, they shall avoid driving directly over precinct openings, seed caches, or haystacks, if practicable. If the activity requires that the vehicle travel directly over a precinct (more than simple daily pedestrian~~

~~activities such as walking in and out of an area to inspect the condition of equipment) for more than 1 hour, then the following procedures shall be implemented:~~

- ~~• A plywood sheet or stronger material board, measuring at least 4 by 8 feet and 1 inch thick, shall be placed over the entire precinct at the start of the activity.~~
- ~~• Any haystacks, seed caches, or other forage stockpiled by the giant kangaroo rat, or the Tipton kangaroo rat on the surface shall be left undisturbed to the maximum extent practicable. If avoidance is not possible, the seed caches and haystacks shall be completely covered by a plywood sheet.~~
- ~~• More than one plywood sheet may be required to cover an area when multiple precincts occur in the vicinity of the activity.~~
- ~~• Vehicles and equipment shall be allowed to travel over a precinct only when all tires are driving over the plywood surface.~~
- ~~• At the end of the work activity or at the end of each workday, whichever is of a shorter duration, all plywood sheets or stronger boards shall be removed from the precinct(s), and any haystacks, seed caches, or other forage stockpiles that have been covered.~~
- ~~• During daily pedestrian operation and maintenance activities, such as walking within an array to inspect the condition of equipment or performing panel washing, project personnel may walk on and work around precincts; however, entrances or holes in the precinct shall not be stepped on and shall be avoided to prevent damage to or plugging of these entrances, to the extent practicable. If damage to or plugging of the entrances occur, or is likely to occur, and work is scheduled to continue, personnel shall use plywood sheeting or stronger material boards to protect the precinct as described above.~~

#### **Chapter 4.4, Biological Resources, Page 4.4-60**

**MM 4.4-15:** All fencing installed on the perimeter of the main project site will be designed to allow for passage of San Joaquin Kit Fox (SJKF) their prey and other wildlife, while impeding the passage of larger predators such as coyotes and similar species. ~~Perimeter fencing shall consist of wire fencing, with openings from three (3) to seven (7) inches square and will be installed inverted, with the larger openings at the bottom to allow SJKF to pass through. Chain link fencing may also be used if it is shall be installed with a four (4) to six (6) inch gap from the bottom of the fencing material and shall be knuckled back to form a smooth edge. Perimeter fencing shall not be electrified.~~ Alternate designs may also be constructed with documentation of coordination with California Department of Fish and Wildlife (CDFW) and United States Fish and Wildlife Service (USFWS) and demonstration that comments provided by the Agencies have been considered and addressed.

#### **Chapter 4.4, Biological Resources, Page 4.4-60**

**MM 4.4-17:** During the blooming period immediately prior to commencement of project ground disturbing activities, areas within the main project site containing one or more of the following habitat requisites shall be surveyed for Crotch's bumble bee by a qualified biologist: flowering vegetation, potential preferred nectar plants, small mammal burrows,

bunch grasses, thatch, brush piles, old bird nests, or dead trees. A minimum of two surveys shall be completed between the hours of 0800 and 1600 when temperatures are between 65°F and 90°F, and will not be conducted during inclement weather conditions (e.g., foggy, raining, drizzling, or sustained winds greater than 8 mph). Surveyors will photograph potential Crotch's bumble bees from various angles to ensure recordation of key identifying characteristics. Should a Crotch's bumble bee be observed, ground disturbing work shall not proceed until consultation with CDFW related to avoidance or take of Crotch's bumble bee on-site is completed. ~~If Crotch's bumble bee is determined to be present, compensatory lands used as mitigation for Crotch's bumble bee will include long-term conservation at a ratio of not less than 0.5 acre per acre of potentially suitable habitat impacted by the project.~~ If CBB is identified during surveys or at any time during Project construction, the project proponent will confer with CDFW to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground disturbing activities is warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).

#### **Chapter 4.4, Biological Resources, Page 4.4-61**

##### **MM 4.4-19: Nesting Bird Surveys Prior to Construction**

Wherever possible, clearing and grubbing of vegetation will be completed in the non-breeding season preceding construction. If ground-disturbing activities occur during the nesting bird season (February 1 – September 15), a qualified biologist shall conduct pre-activity surveys for active nests no more than thirty days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. Surveys shall cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, odors, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, a qualified biologist shall conduct a survey to establish a behavioral baseline of all identified nests and confirm site conditions have not changed.

##### **MM 4.4-20: Nesting Bird Monitoring and/or Avoidance Buffer**

Once construction begins, a qualified biologist shall continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, the work causing that change will cease and CDFW may be consulted if necessary for additional avoidance and minimization measures if work must proceed and behavior does not return to the identified baseline condition. If continuous monitoring of identified nests by a qualified biologist is not feasible, a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors shall be implemented. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no-disturbance buffers is possible when there is a compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. A qualified biologist shall advise and support any variance from these buffers.

**Chapter 4.4, Biological Resources, Page 4.4-62**

**MM 4.4-~~214~~9:** Mapped CDFW-designated sensitive communities should be avoided to the maximum extent possible. Any CDFW-designated sensitive communities that are directly and permanently impacted shall be mitigated at a ratio of 1:1 acre on-site or at a nearby location with comparable habitat value. Any mapped CDFW- designated sensitive communities that are indirectly impacted (such as through shading or mowing at 6 to 8 inches) would be mitigated by preserving compensation land at a ratio of 0.5:1 ratio on-site or at nearby location with comparable habitat value.

**Chapter 4.4, Biological Resources, Page 4.4-65**

**MM 4.4-220:** Prior to issuance of any grading or building permit, the project proponent/operator shall submit a final Delineation report to Kern County. A copy of this report shall also be provided to the Central Valley Regional Water Quality Control Board and the California Department of Fish and Wildlife. The report shall include delineation of all potential state and federal jurisdictional features at the project site. Potential jurisdictional features within the project boundary identified in the jurisdictional delineation report may be shown in plan form.

Any determination on the basis of the final project design relative to the final delineation report that the project will impact state or federal jurisdictional aquatic resources shall require the project proponent to obtain all necessary permits/authorizations from the appropriate regulating agencies (Regional Water Quality Control Board, and the California Department of Fish and Wildlife to impacting state or federal jurisdictional features.

Any material/spoils generated from project activities containing hazardous materials will be located away from state and federal jurisdictional waters and special-status habitat and protected from storm water run-off using temporary perimeter sediment barriers such as berms, silt fences, fiber rolls, covers, sand/gravel bags, and straw bale barriers, as appropriate.

Equipment containing hazardous liquid materials will be stored on impervious surfaces or plastic ground covers to prevent any spills or leakage from contaminating the ground and at least 50 feet outside the delineated boundary of jurisdictional water features.

**MM 4.4-~~231~~4:** Prior to ground disturbance activities that would impact aquatic features, the project proponent/operator shall be subject to provisions as identified below:

- a. The project proponent/operator shall file a complete Report of Waste Discharge or proof of exemption with the Regional Water Quality Control Board (RWQCB) to obtain Waste Discharge Requirements or an exemption to the WDR, and shall also confer with the California Department of Fish and Wildlife (CDFW) on the need for a Lake and Streambed Alteration Agreement. Copies of reports shall be submitted to the County.
- b. Based on conferral with RWQCB and CDFW, if permits are required for the project site, appropriate permits shall be obtained prior to disturbance of jurisdictional resources.

- c. Compensatory mitigation for impacts to unvegetated streambeds/washes shall be identified prior to disturbance of the features and implemented at a minimum 1:1 ratio, as approved by the RWQCB or CDFW either through onsite or offsite mitigation, or purchasing credits from an approved mitigation bank.
- d. The project proponent/operator shall comply with the compensatory mitigation required and proof of compliance, along with copies of permits obtained from RWQCB and/or CDFW, shall be provided to the County.
- e. A Habitat Mitigation and Monitoring Plan (HMMP) shall be prepared that outlines the compensatory mitigation in coordination with the RWQCB and CDFW.
  - 1. If onsite mitigation is proposed, the HMMP shall identify those portions of the site, such as relocated drainage routes, that contain suitable characteristics (e.g., hydrology) for restoration. Determination of mitigation adequacy shall be based on comparison of the restored habitat with similar, undisturbed habitat in the site vicinity (such as upstream or downstream of the site).
  - 2. The HMMP shall include remedial measures in the event that performance criteria are not met.
  - 3. If mitigation is implemented offsite, mitigation lands shall be comprised of similar or higher quality and preferably located in Kern County. Offsite land shall be preserved through a deed restriction or conservation easement and the HMMP shall identify an approach for funding assurance for the long-term management of the conserved land. Alternatively, the applicant may purchase credits from an approved mitigation bank.
  - 4. Copies of any coordination, permits, etc., with RWQCB and CDFW shall be provided to the County.

#### **Chapter 4.4, Biological Resources, Page 4.4-69**

##### ***Level of Significance after Mitigation***

With the implementation of Mitigation Measures MM 4.4-1 through MM 4.4-23~~4~~, MM 4.1-4 through MM 4.1-6, See Chapter 4.1, *Aesthetics*, and MM 4.10-1, see Chapter 4.10, *Hydrology and Water Quality*, at the solar field, cumulative impacts would remain significant and unavoidable to special status species found to utilize the project site.

#### **Chapter 4.14, Public Services, Pages 4.14-16**

**MM 4.14-2:** The following Cumulative Impact Charge (CIC) shall be implemented as payment on approved Conditional Use Permit acreage.

- a. Submittal of Building Permit ~~and Phasing~~
  - 1. Any building permit submitted shall be accompanied by a map and legal description of the entire approved Conditional Use Permit area.
  - 2. The map for either the total project or a phase shall calculate the Cumulative Impact Charge (CIC) net acreage as follows:

- A. Total gross acreage of the approved Conditional Use Permit
  - B. Total acres for Operations and Maintenance building permanent accessory improvements
  - C. Total acres for Energy Storage structure and permanent accessory improvements, if full reassessed property taxes are paid
  - D. Total acres of recorded easements and drilling ~~islands~~ areas set aside for mineral rights
3. Formula: Net Acreage = 2.A minus the sum of [2.B + 2.C + 2.D].
  4. Temporary storage areas or non-permanent commercial coaches or cargo containers for construction or operations are not eligible for inclusion under 2.B or 2.C, above.
  5. All areas of buildings, accessory improvements and easement used in the calculations shall be shown on the submitted Phase Map.
- b. Calculation and Payment of Cumulative Impact Charge (CIC)
1. A payment of \$690 per net acre shall be paid upon issuance of the first building permit. If it is not paid within 30 days after the issuance of the first building permit for the phase regardless of the total number of building permits or type of building permit issued, all such permits shall be suspended until the fee is paid in full.
  2. Payments shall be made to the Planning and Natural Resources Department for transfer directly to the County Administrative Office Fiscal Division (CAO) and labeled Cumulative Impact Charge (CIC) with the project name.
  3. Any acres denoted for an operation and maintenance building or energy storage that are not built cannot be used for solar panels unless payment is provided for the Cumulative Impact Charge (CIC).

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## 7.3 Responses to Comments

A list of agencies and interested parties who have commented on the Draft EIR is provided below. No individuals commented on the Draft EIR. A copy of each numbered comment letter and a lettered response to each comment are provided following this list.

### Federal Agencies

No comment letters from federal agencies were received.

### State Agencies

Comment Letter 1: California Department of Fish and Wildlife (CDFW) (October 2, 2023)

Comment Letter 2: California Department of Transportation (Caltrans) (September 25, 2023)

### Local Agencies

Comment Letter 3: San Joaquin Valley Air Pollution Control District (SJVAPCD) (September 26, 2023)

Comment Letter 4: Kern County Fire Department (KCFD) (September 12, 2023)

Comment Letter 5: Kern County Public Works Department – (August 23, 2023)

Comment Letter 6: Kern County Superintendent of Schools (September 14, 2023)

Comment Letter 7: Southern California Gas (SoCalGas) – September 8, 2023

### Interested Parties

Comment Letter 8: California Native Plant Society, Center for Biological Diversity, Defenders of Wildlife (October 2, 2023)

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## State Agencies

### Comment Letter 1: California Department of Fish and Wildlife (CDFW)

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

GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



October 2, 2023

Terrance Smalls  
Kern County Planning and Natural Resources Department  
2700 M Street, Suite 100  
Bakersfield, California 93301  
(661) 862-8607  
[smallst@kerncounty.com](mailto:smallst@kerncounty.com)

Subject: **Pelican's Jaw Hybrid Solar Project by Pelican's Jaw Solar, LLC**  
**Draft Environmental Impact Report (DEIR)**  
**State Clearinghouse No. 2022110558**

Dear Terrance Smalls:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from Kern County Planning and Natural Resources Department (Kern County), as Lead Agency, for the Pelican's Jaw Hybrid Solar Project by Pelican's Jaw Solar, LLC 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, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under 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

<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.

*Conserving California's Wildlife Since 1870*

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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.), related authorization as provided by the Fish and Game Code will be required.

**Fully Protected Species:** CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species was previously prohibited and CDFW was not able authorize their incidental take. Senate Bill No. 147, which became effective on July 1, 2023, amended Fish and Game Code sections 3511, 4700, 5050, and 5515 to authorize CDFW to issue a permit under CESA that authorizes the take of a fully protected species resulting from impacts attributable to the implementation of specified projects, which includes industrial solar photovoltaic projects, if certain conditions are satisfied.

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

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

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

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## PROJECT DESCRIPTION SUMMARY

**Proponent:** Pelican's Jaw Solar, LLC

**Objective:** The Project proposes to construct and operate a photovoltaic (PV) solar facility and associated infrastructure which would generate up to 500 megawatts (MW) of renewable electrical energy with a battery energy storage system (BESS) capable of storing approximately 4,000 megawatt-hours (MWh) of storage capacity. The Project Permanent Facilities would include service roads, a power collection system, inverter stations, transformer systems, transmission lines, electrical switchyards, project substations, and operation and maintenance facility. The Project Permanent Facilities would also include a Pacific Gas and Electric (PG&E) switching station that would interconnect with the existing PG&E 230 kilovolt (kV) overhead transmission lines that traverse the Project site. In addition, approximately 13.3 miles of optical ground wire (OPGW) line would be installed to provide communication between the proposed PG&E switching station and the existing PG&E Arco Substation, which is located approximately 8.5 miles west of the project site. The OPGW line would be collocated with an existing PG&E overhead transmission line.

**Location:** The Project site is located on 3,371 acres of private property in unincorporated Kern County, California. The project site is located within United States Geological Survey 7.5-minute West Camp, Lone Tree Well, and Lost Hills NW quadrangle maps, within Sections 4, 5, 6, 7, 8, 9, 15, 16, 17, 21, 22, 23, and 27 of Township 25 South, Range 21 East, San Bernardino Base and Meridian (SBB&M). The main project site is located in the Valley Region of Kern County, generally bordered by Twisselman Road to the south, Lost Hills Road to the east, Kern and Kings County line to the north, and I-5 to the west. The main project site is approximately 12 miles southeast of Kettleman City, approximately 8 miles north of the community of Lost Hills, and 4 miles west of Kern National Wildlife Refuge.

**Timeframe:** Construction would begin in the third quarter of 2024 and would take approximately 12 months to complete.

## COMMENTS AND RECOMMENDATIONS

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

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### Optical Ground Wire Line

The DEIR included an evaluation for the construction of the optical ground wire (OPGW) line, located within PG&E right of way and included as part of the Project, and included a desktop environmental analysis as an appendix to the DEIR. The DEIR noted that the OPGW line footprint could result in the same potential impacts to biological resources as identified within the Project Permanent Facilities, which includes structures such as the solar PV modules, BESS, on-site substation, and Project switching station. The analysis also noted that sensitive natural communities and stream resources could be present within the OPGW line footprint. The DEIR concluded that potential impacts to biological resources would be less than significant with the implementation of PG&E's Best Management Practices (BMPs).

CDFW would like to note that the biological resource habitat assessments and surveys for the Project, conducted from 2021 to 2023, solely focused on the Project Permanent Facilities and did not include the OPGW line. The Project Permanent Facilities includes service roads, a power collection system, inverter stations, transformer systems, transmission lines, electrical switchyards, project substations, and operation and maintenance facility. The Project Permanent Facilities also includes a Pacific Gas and Electric (PG&E) switching station that would interconnect with the existing PG&E 230 kilovolt (kV) overhead transmission lines that traverse the Project site. As the OPGW line is considered part of the overall Project, it is dependent on construction of the Project Permanent Facilities, and is considered to be a connected action (i.e. the OPGW is not considered a separate and complete project). CDFW recommends that the habitat assessment and survey recommendations provided in CDFW's December 27, 2022, Notice of Preparation (NOP) comment letter to this Project be also implemented for the OPGW line and that the Final EIR include an analysis of the Project's impacts to biological resources associated with this aspect of the Project. Conducting these biological habitat assessments and surveys will assist Kern County and PG&E with determining species presence, Project-related impacts, appropriate mitigation measures, relevant permitting requirements, and selecting an OPGW line alternative. Alternatively, the Project can assume presence for the species identified within the OPGW line, and the Project proponent can obtain an Incidental Take Permit (ITP) pursuant to Fish and Game Code section 2081 subdivision (b).

Based on the information provided in the DEIR, CDFW has concerns about the way this dependent action, the OPGW line, has been planned for and analyzed as part of the Project's DEIR. Further, CDFW does not concur that PG&E's BMPs are adequate to reduce impacts to less than significant and avoid unauthorized take for several special-status animal species including the State and federally endangered giant kangaroo rat (*Dipodomys ingens*); the State threatened San Joaquin antelope squirrel (*Ammospermophilus nelsoni*); the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*); the State threatened Swainson's hawk (*Buteo*

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*swainsoni*); the State fully protected and endangered and federally endangered blunt-nosed leopard lizard (*Gambelia sila*); the State candidate for listing Crotch's bumble bee (*Bombus crotchii*); the State species of special concern American badger (*Taxidea taxus*), Tulare grasshopper mouse (*Onychomys torridus tularensis*), burrowing owl (*Athene cunicularia*), Le Conte's thrasher (*Toxostoma lecontei*), loggerhead shrike (*Lanius ludovicianus*), northern harrier (*Circus hudsonius*), coast horned lizard (*Phrynosoma blainvillii*), and San Joaquin coachwhip (*Masticophis flagellum ruddocki*); and the State watch list species California horned lark (*Eremophila alpestris actia*). CDFW also has concerns with the ability of PG&E's BMPs to reduce impacts to less than significant and avoid unauthorized take for several special-status plant species. Finally, CDFW is concerned with potential impacts to migratory and non-migratory nesting birds, sensitive natural communities, and stream resources within the OPGW line. CDFW recommends that the mitigation measures outlined in the DEIR, with the comments and recommendations provided below, be incorporated for the OPGW line, in addition to the habitat assessment and survey recommendations provided above.

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#### **Project (Including Project Permanent Facilities and OPGW)**

Aerial imagery of the Project boundary and its surroundings show the area contains several natural habitats including annual grassland, irrigation ditches (some or all of which may be modified streams), the Kern River Channel, agricultural lands, and fallow fields, which may have suitable habitat for special-status species. Based on a review of the Project description, a review of California Natural Diversity Database (CNDDB) records, and the surrounding habitat, several special-status species could potentially be impacted by Project activities.

Currently, the DEIR acknowledges that the Project area is within the geographic range of several special-status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special-status animal species, including the State and federally endangered giant kangaroo rat; the State threatened San Joaquin antelope squirrel; the State threatened and federally endangered San Joaquin kit fox; the State and federally endangered Tipton kangaroo rat (*Dipodomys nitratoide nitratoide*); the State threatened Swainson's hawk; the State fully protected and endangered and federally endangered blunt-nosed leopard lizard; the State candidate for listing Crotch's bumble bee; and the State species of special concern Tulare grasshopper mouse, burrowing owl, coast horned lizard, San Joaquin coachwhip, and western spadefoot (*Spea hammondi*).

CDFW also has concerns about the ability of the some of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special-status plant species including the State and Federally Endangered and

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California Rare Plant Rank (CRPR) 1B.1 California jewelflower (*Caulanthus californicus*); the CRPR 1B.2 and federally endangered Kern mallow (*Eremalche parryi* ssp. *Kernensis*) and San Joaquin woollythreads (*Monolopia congdonii*); the CRPR 1B.1 alkali sink goldfields (*Lasthenia chrysantha*), Coulter's goldfields (*Lasthenia glabrata* ssp. *Coulteri*), Horn's milk-vetch (*Astragalus hornii* var. *hornii*), Kings gold (*Tropidocarpum californicum*) and lesser saltscale (*Atriplex minuscula*); and the CRPR 1B.2 lost hills crownscale (*Atriplex coronata* var. *vallicola*), Munz's tidy-tips (*Layia munzii*), and recurved larkspur (*Delphinium recurvatum*). Finally, CDFW is concerned with potential impacts to migratory and non-migratory nesting birds.

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### **Giant Kangaroo Rat (GKR)**

Mitigation Measure MM 4.4-13 states that, "Giant kangaroo rat or Tipton kangaroo rat precincts shall be flagged and a 50-foot-wide buffer around the precincts shall be avoided by construction equipment and ground disturbing activities, if feasible." CDFW strongly recommends that all giant kangaroo rat (GKR) burrows be avoided by at least 50 feet; if this buffer cannot be maintained, then the Project must obtain an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) to comply with CESA.

Mitigation Measure MM 4.4-13 continues by stating that, "If project personnel are required to drive or operate a vehicle or piece of equipment in the vicinity of a Giant kangaroo rat or Tipton kangaroo rat precinct, they shall avoid driving directly over precinct openings, seed caches, or haystacks, if practicable. If the activity requires that the vehicle travel directly over a precinct (more than simple daily pedestrian activities such as walking in and out of an area to inspect the condition of equipment) for more than 1 hour, then the following procedures shall be implemented:

- A plywood sheet or stronger material board, measuring at least 4 by 8 feet and 1 inch thick, shall be placed over the entire precinct at the start of the activity.
- Any haystacks, seed caches, or other forage stockpiled by the giant kangaroo rat, or the Tipton kangaroo rat on the surface shall be left undisturbed to the maximum extent practicable. If avoidance is not possible, the seed caches and haystacks shall be completely covered by a plywood sheet.
- More than one plywood sheet may be required to cover an area when multiple precincts occur in the vicinity of the activity.
- Vehicles and equipment shall be allowed to travel over a precinct only when all tires are driving over the plywood surface.

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- At the end of the work activity or at the end of each workday, whichever is of a shorter duration, all plywood sheets or stronger boards shall be removed from the precinct(s), and any haystacks, seed caches, or other forage stockpiles that have been covered.
- During daily pedestrian operation and maintenance activities, such as walking within an array to inspect the condition of equipment or performing panel washing, project personnel may walk on and work around precincts; however, entrances or holes in the precinct shall not be stepped on and shall be avoided to prevent damage to or plugging of these entrances, to the extent practicable. If damage to or plugging of the entrances occur, or is likely to occur, and work is scheduled to continue, personnel shall use plywood sheeting or stronger material boards to protect the precinct as described above."

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CDFW does not concur with this portion of the measure, as implementation is likely to result in unauthorized take. While these are minimization measures that could be incorporated into an ITP, they are not avoidance measures. As such, CDFW reiterates the recommendation that all GKR burrows be avoided by at least a 50 foot no-disturbance buffer and if this buffer cannot be maintained, then the Project obtain an ITP, pursuant to Fish and Game Code section 2081 subdivision (b).

#### **San Joaquin Antelope Squirrel**

Mitigation Measure MM 4.4-12 states that, "Within 30 days prior to the start of ground disturbance activities of all or any portion of the main project site, a pre-construction survey shall be conducted by a qualified biologist knowledgeable in the identification of all special-status plant and wildlife species identified by the project's CEQA review to have potential to occur, including Le Conte's thrasher, golden eagle, San Joaquin antelope squirrel, Crotch's bumble bee, Kern mallow, and the Tulare grasshopper mouse on the main project site. Surveys need not be conducted for all areas at one time; they may be phased so that surveys occur within 30 days of the portion of the project site that will be disturbed. The location and nature of all special-status species observations resulting from the preconstruction survey shall be documented and any suitable dens and/or burrows that could support fossorial special-status wildlife species will be examined for potential occupancy and documented. Documentation of completed studies shall be retained and made available to applicable wildlife agency and or Kern County staff on request. Should individuals or active nesting/burrowing sites of the species be present on-site, the project proponent shall confer with the appropriate wildlife agency and commence work only once a plan has been established, approved by the applicable agency, and made available to Kern County staff upon request." While surveys conducted in support of the DEIR did not document San Joaquin antelope squirrel (SJAS) within the Project site, CDFW would like to note that there is a high

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likelihood that the species could utilize the site over the life of the Project and recommends the Project proponent consult with CDFW to obtain an ITP pursuant to Fish and Game Code section 2081 subdivision (b). In the event the Project proponent does not obtain an ITP, and SJAS are documented during implementation of Mitigation Measure MM 4.4-12, or at any time during construction and operation of the Project, CDFW recommends the following:

**Recommended Mitigation Measure 1: SJAS Avoidance Buffer**

CDFW recommends a minimum 50 foot no-disturbance buffer be employed around all burrows that could be used by SJAS. If a minimum 50 foot no-disturbance buffer cannot be maintained, then consultation with CDFW is warranted to determine if the Project can avoid take or if take authorization is necessary as described below.

**Recommended Mitigation Measure 2: SJAS Take Authorization**

If a minimum 50 foot no-disturbance buffer for SJAS is not feasible, CDFW recommends that consultation with CDFW occur to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

**San Joaquin Kit Fox**

Mitigation Measure 4.4-10 states that, "If signs of San Joaquin Kit Fox are identified on site, the project proponent shall establish appropriate buffers limiting all construction activities. Buffers include (50 Feet) for a potential or atypical den, (100) feet for a known den and (500) feet for a natal or pupping den, unless otherwise specified by the California Department of Fish and Wildlife (CDFW). If required buffers are not possible to protect the species, then the project proponent shall confer with CDFW on the need for take authorization through the acquisition of an incidental take permit, pursuant to Fish and Game Code section 2081 subdivision (d)." While CDFW concurs with this measure for San Joaquin kit fox (SJKF), it is strongly recommended that the Project proponent consult with CDFW to obtain an ITP pursuant to Fish and Game Code section 2081 subdivision (b), due to the high likelihood that SJKF will utilize the Project site, both during construction and during the operations and maintenance period.

Mitigation Measure 4.4-14 states that, "In determining whether SJKF activity could occur within these buffers, the biological monitor would take into account the following:

- Noise level and duration. The noise level and duration of activities would be considered. Loud (e.g., greater than 80 decibels) and sustained (e.g., longer than one hour) activities would be disallowed within the buffer setbacks. Activities with shorter durations and/or lower noise levels may be

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considered with continual observation of the den by the monitor and work stoppage if the biologist detects evidence of disturbance.

- Level of disturbance typically experienced in the location of the den prior to construction. Some areas of the Project (e.g., existing roads or agricultural areas) have been historically subject to human disturbance and dens near these areas are assumed to be accustomed to those previous levels of disturbance. If construction noise and duration are similar to disturbances that would have occurred in the area prior to construction (e.g., vehicular traffic on an existing road), those activities could continue with ongoing monitoring of the den by a biological monitor.
- If construction activities have begun within 100 feet of a potential or atypical den that was determined during preconstruction activities to be inactive when construction began and the den becomes active during construction (i.e., becomes a “known” den), those activities would be allowed to continue at the same intensity as occurred when the den became active. A biological monitor would maintain continual watch on the den while construction activities are conducted within the buffer described above.
- In no case would construction activities, regardless of noise and duration, occur closer than 50 feet from a known or potential/atypical den or 500 feet from a natal/pupping den unless approved by California Department of Fish and Wildlife or United States Fish and Wildlife Service. Evidence that the construction activities were causing negative changes in behavior patterns would cause the biologist to disallow those activities inside the buffer.
- If take of San Joaquin Kit Fox cannot be avoided, the project proponent shall confer with California Department of Fish and Wildlife on the need for take authorization through the acquisition of an incidental take permit, pursuant to Fish and Game Code section 2081 subdivision (b).”

CDFW does not concur with this measure, as allowing certain construction-related activities within the buffers outlined in the “Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance” (2011) (USFWS Protocol) has a strong likelihood to result in take. As such, CDFW reiterates the recommendation that the Project proponent consult with CDFW to obtain an ITP pursuant to Fish and Game Code section 2081 subdivision (b) due to the high likelihood that SJKF will utilize the Project site, both during construction and during the operations and maintenance period.

Mitigation Measure 4.4-15 states that, “All fencing installed on the perimeter of the solar project site will be designed to allow for passage of San Joaquin Kit Fox (SJKF), their

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prey and other wildlife, while impeding the passage of larger predators such as coyotes and similar species. Perimeter fencing shall consist of wire fencing, with openings from three (3) to seven (7) inches square and will be installed inverted, with the larger openings at the bottom to allow SJKF to pass through. Chain link fencing may also be used if it is installed with a four (4) to six (6) inch gap from the bottom of the fencing material and shall be knuckled back to form a smooth edge. Alternate designs may also be constructed with documentation of coordination with California Department of Fish and Wildlife (CDFW) and United States Fish and Wildlife." CDFW concurs with this measure but recommends that the style of fencing selected is the type that is raised four to six inches above ground level and knuckled back to form a smooth edge and permeability for wildlife.

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### **Tipton Kangaroo Rat**

Mitigation Measure MM 4.4-13 states that, "Giant kangaroo rat or Tipton kangaroo rat precincts shall be flagged and a 50-foot-wide buffer around the precincts shall be avoided by construction equipment and ground disturbing activities, if feasible." CDFW strongly recommends that all Tipton kangaroo rat (TKR) burrows be avoided by a 50 foot no-disturbance buffer and if this buffer cannot be maintained, then the Project obtain take authorization, pursuant to Fish and Game Code section 2081 subdivision (b).

Mitigation Measure MM 4.4-13 continues by stating that, "If project personnel are required to drive or operate a vehicle or piece of equipment in the vicinity of a Giant kangaroo rat or Tipton kangaroo rat precinct, they shall avoid driving directly over precinct openings, seed caches, or haystacks, if practicable. If the activity requires that the vehicle travel directly over a precinct (more than simple daily pedestrian activities such as walking in and out of an area to inspect the condition of equipment) for more than 1 hour, then the following procedures shall be implemented:

- A plywood sheet or stronger material board, measuring at least 4 by 8 feet and 1 inch thick, shall be placed over the entire precinct at the start of the activity.
- Any haystacks, seed caches, or other forage stockpiled by the giant kangaroo rat, or the Tipton kangaroo rat on the surface shall be left undisturbed to the maximum extent practicable. If avoidance is not possible, the seed caches and haystacks shall be completely covered by a plywood sheet.
- More than one plywood sheet may be required to cover an area when multiple precincts occur in the vicinity of the activity.

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- Vehicles and equipment shall be allowed to travel over a precinct only when all tires are driving over the plywood surface.
- At the end of the work activity or at the end of each workday, whichever is of a shorter duration, all plywood sheets or stronger boards shall be removed from the precinct(s), and any haystacks, seed caches, or other forage stockpiles that have been covered.
- During daily pedestrian operation and maintenance activities, such as walking within an array to inspect the condition of equipment or performing panel washing, project personnel may walk on and work around precincts; however, entrances or holes in the precinct shall not be stepped on and shall be avoided to prevent damage to or plugging of these entrances, to the extent practicable. If damage to or plugging of the entrances occur, or is likely to occur, and work is scheduled to continue, personnel shall use plywood sheeting or stronger material boards to protect the precinct as described above."

CDFW does not concur with this portion of the measure, as implementation is likely to result in take. While these are minimization measures that could be incorporated into an ITP, they are not avoidance measures. As such, CDFW reiterates the recommendation that all TKR burrows be avoided by a 50 foot no-disturbance buffer and if this buffer cannot be maintained, then the Project obtain an ITP, pursuant to Fish and Game Code section 2081 subdivision (b).

#### Swainson's Hawk

Mitigation Measure 4.4-10 states that, "If signs of Swainson's hawk nest, beyond those mapped during the pre-construction SWHA surveys, are identified on-site or within 0.5 miles from the project site, the project proponent will confer with California Department of Fish and Wildlife (CDFW) and prepare a Swainson's hawk nesting construction plan. The purpose of this plan would be to identify what level of monitoring would be required, what types of construction activities can occur and what locations within the project site and what avoidance setbacks need to be established, if any, to minimize impacts to an active Swainson's hawk nest." As mentioned previously in CDFW's December 27, 2022, Notice of Preparation (NOP) comment letter to this Project, it is recommended that in the event an active Swainson's hawk (SWHA) nest is detected, and a ½-mile no-disturbance buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the project and avoid take, and if take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary. As multiple active SWHA nests were documented within 0.5 mile of the Project during the biological studies conducted in

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support of the DEIR, CDFW strongly recommends the Project proponent consult with CDFW to obtain an ITP pursuant to Fish and Game Code section 2081 subdivision (b).

Mitigation Measure 4.4-11 states that, "The project proponent shall mitigate for the loss of Swainson's hawk nesting and foraging habitat at a ratio of 0.5:1 based on the total approved area of the project site. Mitigation land may be nested with other compensatory lands provided it meets the necessary biological requirements and as determined by appropriate wildlife agency." CDFW does not concur that this mitigation ratio is sufficient to mitigate for the loss of nesting and foraging habitat and recommends the following:

**Recommended Mitigation Measure 3: SWHA Foraging Habitat Mitigation**

CDFW recommends compensation for the loss of SWHA foraging habitat as described in CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" (CDFG 1994) to reduce impacts to foraging habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

- For projects within 1 mile of an active nest tree, a minimum of 1 acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of  $\frac{3}{4}$  acre of HM land for each acre of development is advised.
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of  $\frac{1}{2}$  acre of HM land for each acre of development is advised.

**Blunt-nosed Leopard Lizard**

Mitigation Measure 4.4-7 states that, "Within one calendar year of the or start of ground disturbance activities, a qualified biologist shall conduct protocol level surveys for the Blunt-Nosed Leopard (BNLL) to verify previous survey results that no BNLL are located on the project site. The required surveys shall be provided to the Kern County Planning and Natural Resources Department, the U.S Fish and Wildlife Service and the California Department of Fish and Wildlife. If no sign of the species is identified, no further action is required. If the species is identified on-site, the project proponent shall confer with the appropriate wildlife agency and, if take cannot be avoided, obtain an Incidental Take Permit pursuant to both Section 10(a)(1) of the federal Endangered Species Act and SB 147." While CDFW concurs with this measure for blunt-nosed leopard lizard (BNLL), it is strongly recommended that the Project proponent engage in early consultation with CDFW regarding the potential to obtain an ITP for BNLL pursuant to Fish and Game

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Code section 2081 subdivision (b), due to the high likelihood that BNLL will utilize the Project site over the life of the Project.

Mitigation Measure 4.4-8 states that, "Project actions in areas where BNLL are located shall be restricted to the species active period (April to early November) to ensure that no aestivating BNLL in burrows are impacted while in their burrows. In conjunction with CDFW or other involved agencies, sensitive areas shall be established and protected with appropriate signage." CDFW does recognize that restricting work within occupied BNLL habitat to the species active period would be sufficient to prevent take, as they utilize burrows year round. To avoid take, construction and operations activities would have to avoid all observed lizards and potential occupied burrows by a distance of no less than the distance that BNLL are known or expected to travel within their home range, based on telemetry, mark-recapture, or other data, and regardless of the time of year. For complete avoidance within BNLL occupied habitat, CDFW recommends the following:

#### **Recommended Mitigation Measure 4: BNLL Avoidance Buffer**

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

Given the size of the buffer recommendation outlined above relative to the overall size of the proposed Project, the numerous historical records of BNLL, and the likelihood that BNLL may utilize the Project site over the life of the Project, CDFW strongly reiterates the recommendation that the Project proponent consult with CDFW on the potential to obtain an ITP pursuant to Fish and Game Code section 2081 subdivision (b) for BNLL.

#### **Crotch's Bumble Bee**

Mitigation Measure 4.4-17 states that, "During the blooming period immediately prior to commencement of project ground disturbing activities, areas within the project site containing one or more of the following habitat requisites shall be surveyed for Crotch's bumble bee by a qualified biologist: flowering vegetation, potential preferred nectar plants, small mammal burrows, bunch grasses, thatch, brush piles, old bird nests, or dead trees. A minimum of two surveys shall be completed between the hours of 0800 and 1600 when temperatures are between 65°F and 90°F, and will not be conducted

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during inclement weather conditions (e.g., foggy, raining, drizzling, or sustained winds greater than 8 mph). Surveyors will photograph potential Crotch's bumble bees from various angles to ensure recordation of key identifying characteristics. Should a Crotch's bumble bee be observed, ground disturbing work shall not proceed until consultation with CDFW related to avoidance or take of Crotch's bumble bee on-site is completed. If Crotch's bumble bee is determined to be present, compensatory lands used as mitigation for Crotch's bumble bee will include longterm [sic] conservation at a ratio of not less than 0.5 acre per acre of potentially suitable habitat impacted by the project." While CDFW concurs with conducting surveys for Crotch's bumble bee (CBB) the survey season immediately prior to construction, to ensure the Project site is surveyed sufficiently to determine presence or absence and adequately mitigate for the species, CDFW recommends the following:

#### **Recommended Mitigation Measure 5: CBB Surveys**

CDFW recommends that a qualified biologist conduct focused surveys for CBB and their requisite habitat features during the blooming period immediately prior to Project construction, following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023).

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

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

#### **Recommended Mitigation Measure 7: CBB Take Authorization**

If CBB is identified during surveys or at any time during Project construction, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground disturbing activities is warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).

#### **Burrowing Owl (BUOW)**

Mitigation Measure 4.4-10 states that, "If required buffers are infeasible, then the project proponent shall prepare a Burrowing Owl and American Badger Exclusion Plan. Any burrow and/or den exclusion would be conducted by a qualified biologist with burrowing

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owl burrows replaced at a 1:1 ratio. No burrowing owl burrow exclusion is permitted during breeding season (February 1 - August 31) unless a qualified biologist verifies through noninvasive methods that (1) the birds have not begun egg laying and incubation, (2) a previously active nest has failed and re-nesting is highly unlikely, or (3) all juveniles from the occupied burrow are foraging independently and capable of independent survival." CDFW concurs with this portion of Mitigation Measure 4.4-10 but recommends that burrow exclusion occur during the non-breeding season only, before breeding behavior is exhibited.

#### **Other State Species of Special Concern**

Mitigation Measures MM 4.4-2, MM 4.4-3, MM 4.4-9, and MM 4.4-12 are provided to mitigate for impacts to Tulare grasshopper mouse, San Joaquin coachwhip, and western spadefoot. While CDFW concurs with the measures for these species, CDFW does not concur with the DEIR determination of absence for coast horned lizard. Coast horned lizards are known to occur in a wide variety of habitat types with fine soils, shrub cover, and burrows. As these habitat features are present within portions of the Project site, CDFW recommends the following for coast horned lizard:

#### **Recommended Mitigation Measure 8: Other State Species of Special Concern Surveys**

CDFW recommends that a qualified biologist conduct focused surveys for coast horned lizard and their requisite habitat features prior to Project implementation to evaluate potential impacts resulting from ground- and vegetation disturbance.

Additionally, no measures were included to implement avoidance buffers for Tulare grasshopper mouse, coast horned lizard, San Joaquin coachwhip, and western spadefoot when documented during surveys. As such, CDFW recommends the following:

#### **Recommended Mitigation Measure 9: Other State Species of Special Concern Avoidance Buffer**

Avoidance of Tulare grasshopper mouse, coast horned lizard, San Joaquin coachwhip, and western spadefoot whenever possible is encouraged via delineating and observing a 50 foot no-disturbance buffer around burrows where these species may be present. In addition, for western spadefoot, a 50 foot no-disturbance buffer around ephemeral pools (wet or dry, regardless of size) is recommended.

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### Special-Status Plant Species

Mitigation Measure MM 4.4-6 states that, "No more than thirty (30) days prior to the start of ground disturbance activities or issuance of any grading or building permits, decommissioning of the project site, a qualified biologist knowledgeable on the identification of rare plant species shall conduct a preconstruction plant survey of areas of proposed disturbance within the project site and 100-foot buffer (where legally accessible) to determine if any special-status plant species are present. If special-status plants are identified on-site, their locations shall be mapped and the project proponent shall confer with CDFW or USFWS as required by applicable law to facilitate salvage or seed collection." While CDFW concurs with this measure, it is recommended that preconstruction plant species surveys be timed during the appropriate blooming period the survey season immediately prior to construction to adequately identify the presence of the special-status species documented during the 2022 botanical surveys conducted in support of the DEIR.

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### Nesting Birds

The DEIR notes that nesting birds have the potential to occur within the Project site; however, it does not appear that any mitigation measures were proposed to protect nesting birds during the breeding season (February 1 – September 15). As such, CDFW recommends the following:

#### **Recommended Mitigation Measure 10: Nesting Bird Surveys Prior to Construction**

If ground-disturbing activities occur during the nesting bird season (February 1 – September 15), CDFW recommends that a qualified biologist conduct pre-activity surveys for active nests no more than one week prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, odors, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests.

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#### **Recommended Mitigation Measure 11: Nesting Bird Monitoring and/or Avoidance Buffer**

Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends the work causing that change cease and that

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

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#### Editorial Comments and/or Suggestions

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

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**Lake and Streambed Alteration:** Based on the information provided in the DEIR, the Project area, including the OPGW line, contains multiple streams, including the Kern River Channel. Project activities may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral, intermittent, or episodic, as well as those that are perennial.

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CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement; therefore, if the DEIR approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSA Agreement issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593 or [R4LSA@wildlife.ca.gov](mailto:R4LSA@wildlife.ca.gov).

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**Project Alternatives Analysis:** CDFW recommends that the information and results obtained from the biological technical surveys, studies, and analyses conducted in support of the Project's DEIR be used to develop and modify the Project's alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. When efforts to avoid and minimize have been exhausted, CDFW advises that remaining impacts to sensitive biological resources be mitigated to reduce impacts to a less than significant level, if feasible.

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**Cumulative Impacts:** Currently, the DEIR has a very broad analysis of cumulative impacts to biological resources and does not adequately evaluate impacts to specific resources. As such, the conclusions reached in the cumulative impacts analysis are not supported by substantial evidence and the analysis lacks sufficient rigor and transparency to adequately develop reasonable and feasible measures to reduce harm. To address this lack of evidence, CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the Project, even if those impacts are relatively small (i.e., less than significant). CDFW recommends cumulative impacts be analyzed for the following species using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the Project. An appropriate resource study area should be identified and mapped for each resource being analyzed and utilized for this analysis. CDFW recommends a scientifically sound cumulative impacts analysis be conducted for the following species: GKR, SJAS, SJKF, TKR, golden eagle (*Aquila chrysaetos*), SWHA, BNLL, CBB, American badger, BUOW, Tulare grasshopper mouse, Le Conte's thrasher, loggerhead shrike, northern harrier, San Joaquin coachwhip, western spadefoot, California horned lark, California jewelflower, San Joaquin woollythreads, alkali sink goldfields, Coulter's goldfields, Horn's milk-vetch, Kern mallow, Kings gold, lesser saltscale, lost hills crownscale, Munz's tidy-tips, and recurved larkspur. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

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## 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 CNDDDB. The CNDDDB field survey form can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be

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

#### **FILING FEES**

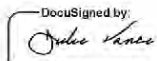
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order 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).

#### **CONCLUSION**

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

If you have any questions, please contact Jeremy Pohlman, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (805) 503-2375 or by electronic mail at [Jeremy.Pohlman@wildlife.ca.gov](mailto:Jeremy.Pohlman@wildlife.ca.gov).

Sincerely,

DocuSigned by:  


FA83F05FE08945A...  
Julie A. Vance  
Regional Manager

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## REFERENCES

- California Department of Fish and Game. 1994. Staff report regarding mitigation for impacts to Swainson's hawks (*Buteo Swainsoni*) in the Central Valley of California. California Department of Fish and Wildlife, Sacramento, California, USA.
- California Department of Fish and Wildlife. 2023. Survey considerations for California Endangered Species Act candidate bumble bee species. California Department of Fish and Wildlife, Sacramento, California, USA.
- U.S. Fish and Wildlife Service. 2011. Standard recommendations for the protection of the San Joaquin kit fox prior to or during ground disturbance. U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, Sacramento, CA, USA.

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**Attachment 1**

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

**PROJECT: Pelican's Jaw Hybrid Solar Project**

**SCH No.: 2022110558**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
SJAS	
Recommended Mitigation Measure 2: SJAS take authorization	
SWHA	
Recommended Mitigation Measure 3: SWHA foraging habitat mitigation	
CBB	
Recommended Mitigation Measure 5: CBB surveys	
Recommended Mitigation Measure 7: CBB take authorization	
Other State Species of Special Concern	
Recommended Mitigation Measure 8: Other state species of special concern surveys	
Nesting Birds	
Recommended Mitigation Measure 10: Nesting bird surveys prior to construction	
<i>During Construction</i>	
SJAS	
Recommended Mitigation Measure 1: SJAS avoidance buffer	
BNLL	
Recommended Mitigation Measure 4: BNLL avoidance buffer	
CBB	
Recommended Mitigation Measure 6: CBB avoidance buffer	
Other State Species of Special Concern	
Recommended Mitigation Measure 9: Other state species of special concern avoidance buffer	
Nesting Birds	
Recommended Mitigation Measure 11: Nesting bird monitoring and/or avoidance buffer	

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**Response to Comment Letter 1: California Department of Fish and Wildlife (CDFW)**

**A – C:** Comments A through C are introductory materials related to the Pelicans Jaw Hybrid Solar Project (Project) Draft Environmental Impact Report (DEIR) that do not require any responses.

**D:** This comment states that biological field surveys were focused on the main project site and did not include the OPGW. CDFW recommends that the habitat assessment and field survey recommendations provided in its NOP comment be implemented for the OPGW line and expresses concerns about the way the OPGW is analyzed in the Draft EIR. The appropriate degree of specificity and analysis of a given issue warranted in a CEQA document depends on the nature of the project and the rule of reason. CEQA does not require a lead agency to conduct every recommended test and perform all recommended research to evaluate the impacts of a proposed project. The fact that additional studies might provide more detailed site-specific information does not mean that they are required.

The EIR estimates that 99.7 percent of the project's ground disturbing activities, and all of its permanent ground disturbance, will occur at the approximately 3,371-acre main project site that had a long history of disturbance including decades of irrigated agricultural followed by the most recent 12 years of use for livestock grazing. Because of the scale of new permanent improvements proposed at the approximately 3,371-acre main project site, the applicant commissioned extensive biological resource field surveys over its full extent, including focused and/or protocol surveys for blunt nosed leopard lizard, San Joaquin kit fox, giant kangaroo rat, Tipton kangaroo rat, San Joaquin (Nelson's) antelope squirrel, vernal pool fairy shrimp, aquatic species, Swainson's hawk, tricolored blackbird, golden eagle, American badger, and burrowing owl. As a result, the surveys performed for the main project site go above and beyond what CEQA requires.

By contrast, the OPGW line will be installed on an existing PG&E transmission line located entirely within an already-developed PG&E transmission corridor originally granted by easement to PG&E in 1947, such that only approximately 10.26 acres of temporary ground disturbance is expected across its entire 13.3-mile extent. Furthermore, installation activities are expected to be almost entirely limited to temporary drive-and-crush activities (i.e., no grading) of no more than three weeks duration at any given location. The precise locations of these temporary disturbance sites have not yet been identified by PG&E's engineering team. Nonetheless, because the OPGW line would be installed on existing infrastructure and almost all disturbance would be temporary, the location of ground-disturbing pull/reel sites and temporary helicopter landing is flexible and can be selected to largely avoid habitat occupied by sensitive species, in the unanticipated event that evidence of potentially occupied habitat is found as a result of pre-construction surveys. PG&E has not had the need for federal or California incidental take authorization to operate the transmission corridor and the limited work required to string the OPGW would not be expected to, either.

Therefore, unlike the approximately 3,371-acre main project site, conducting biological field surveys over the entire length of the 13-mile OPGW line was not warranted, given the length of the OPGW line (13.3 miles), the fact that installing the OPGW line will result in only minor ground-disturbing impacts in isolated locations within the existing transmission corridor, and the fact that these minor impacts will be limited to discrete, to-be-determined areas along the OPGW alignment. Instead, a thorough literature review and desktop environmental analysis was performed for the OPGW line. With respect to biological impacts, this review included review of CDFW records (including the California Natural Diversity Database (CNDDB)), USFWS National Wetland



Inventory data, and federal designated critical habitat from the USFWS within a 0.25-mile radius of the OPGW line to determine the potential for special-status wildlife and plant species to occur in the area. This report informs the Draft EIR's analysis of the OPGW line's impacts. As explained in the Draft EIR, although biological conditions in the vicinity of the OPGW are generally similar to the main project site, given the existing infrastructure in the OPGW alignment and the minimal ground disturbance required to string the OPGW line, OPGW impacts are expected to be minimal in relation to duration and area.

CDFW also separately comments that it does not agree that the PG&E measures (Appendix O to the DEIR) are adequate to reduce OPGW impacts to less than significant and avoid unauthorized take for certain special-status species. CDFW thus recommends that the Draft EIR's mitigation measures, modified in accordance with CDFW's suggestions, be adopted for the OPGW line.

As explained in the Draft EIR, because PG&E is an investor-owned electric utility, the PG&E improvements including the OPGW are regulated by the California Public Utilities Commission (CPUC). Where the CPUC has jurisdiction over a public utility facility, local governments such as cities and counties are generally preempted from regulating such projects pursuant to the California constitution and the California Public Utilities Code. For additional clarity, the Draft EIR has been revised as follows:

**Section 1.1, Introduction, Page 1-2:**

This Draft Environmental Impact Report (EIR) has been prepared by Kern County as the Lead Agency under CEQA. The Draft EIR provides information about the environmental setting and impacts of the project and alternatives. It informs the public about the project and its impacts and provides information to meet the needs of local, State, and federal permitting agencies that are required to consider the project. The EIR will be used by Kern County to determine whether to approve the requested CUP (CUP No. 3, Map No. 5) and GPA (GPA No. 2, Map No. 5). While Kern County does not have jurisdiction over utility construction performed by PG&E, the County properly included all of PG&E's interconnection upgrades in its previous and current California Environmental Quality Act (CEQA) reviews because the upgrades are a direct, physical result of the solar project approval.

Because the County lacks jurisdiction to impose mitigation measures for the OPGW line, the EIR focuses instead on PG&E best management practices. As explained in the Draft EIR, these measures include compliance with all applicable laws, which include the California Endangered Species Act's (CESA), prohibition of take of listed and candidate species, and Section 1600 of the Fish and Game Code which requires CDFW notification and approval for certain impacts to jurisdictional waters. Thus, for example, PG&E could not take listed species when constructing or operating the OPGW without first obtaining incidental take coverage from CDFW. Similarly, PG&E would not be permitted to substantially adversely impact biological resources dependent on jurisdictional water features without first notifying and, if necessary, obtaining approval from, CDFW. In either scenario, CDFW's approval process would further ensure any such impacts would be appropriately avoided, minimized, and mitigated. Particularly in light of the minimal ground-disturbing activities required to install the OPGW line in an existing transmission corridor, these requirements would ensure OPGW biological impacts remain less than significant.

Nevertheless, the EIR is being updated to expressly include additional specific PG&E measures in Appendix O to the DEIR, that have been used on similar linear infrastructure projects in the past. These measures, which are also substantively similar to the mitigation measures required for the solar facility, are as follows:

**Appendix O to the DEIR, PG&E Best Management Practices, Page 16**

**Special-status amphibians and reptiles.** If suitable habitat for listed amphibians and reptiles is present, and protocol-level surveys have not been conducted, a qualified biologist will conduct preconstruction surveys prior to activities involving excavation. If necessary, barrier fencing will be constructed around the worksite to prevent reentry by the covered amphibians and reptiles. A qualified biologist will stake and flag an appropriate exclusion zone around the potentially occupied habitat. No monofilament plastic will be used for erosion control in the vicinity of listed amphibians and reptiles. Barrier fencing will be removed upon completion of work. Crews will also inspect trenches left open for more than 24 hours for trapped amphibians and reptiles. A qualified biologist will be contacted before trapped amphibians or reptiles (excluding blunt nosed leopard lizard and limestone salamander-which will not be handled) are moved to nearby suitable habitat.

**Avoid giant kangaroo rat, Tipton kangaroo rat and San Joaquin antelope squirrel.** Prior to ground-disturbing activities outside of existing maintenance roads, a qualified biologist shall survey areas designated for ground disturbance. If occupied or potentially occupied giant kangaroo rat, Tipton kangaroo rat, or San Joaquin antelope squirrel burrows in the areas cannot be avoided, a qualified biologist shall stake and flag a 50-foot work-exclusion zone. If work must proceed in the exclusion zone, CDFW must be consulted to assess potential take avoidance or the need for an incidental take permit.

**Avoid San Joaquin kit fox and American badger dens if possible.** If San Joaquin kit fox or American badger dens are present in or near areas designated for ground disturbance, their disturbance and destruction will be avoided where possible. However, if dens are located within the proposed work area and cannot be avoided during construction, qualified biologists will determine if the dens are occupied. If unoccupied, the qualified biologist will remove these dens by hand excavating them in accordance with USFWS procedures for kit fox (USFWS, 1999), which can also be applied to badger dens. Exclusion zones for kit fox will be implemented following USFWS procedures (USFWS, 1999) or the latest USFWS procedures. The radius of these zones will follow current standards or will be determined on a case-by-case basis in coordination with USFWS and CDFW. If badger dens are present, occupied badger dens shall be flagged and ground-disturbing activities avoided within 50 feet of the occupied den. Maternity dens shall be avoided during pup-rearing season (15 February through 1 July) and a minimum 200-foot buffer established.

**Exclusion zones for blunt-nosed leopard lizard.** If activities take place within the range of the species, a qualified biologist will identify if potential blunt-nosed leopard lizard burrows are present and if work can avoid burrows by 50 feet. If project activities will take place within 50 feet of existing burrow entrances and in the judgement of the monitoring biologist, the combination of soil hardness and activity impact is not expected to collapse those burrows, then those project activities may take place under the supervision of the monitoring biologist. If ground-disturbing work cannot avoid potential BNLL burrows by

at least 50 feet and in the judgment of the monitoring biologist could collapse burrows, then protocol surveys would be required to determine the presence of BNLL.

**Limit impacts to the extent feasible.** All ground-disturbing activities within the range of any listed species shall be conducted in a manner that reduces, as much as possible, the potential for take of individuals of a listed species. Impacts to habitat shall also be minimized to the maximum possible extent. The area of disturbance shall be confined to the smallest practical area, considering topography, placement of facilities, location of burrows, nesting sites or dens, public health and safety, and other limiting factors. As needed, work area boundaries shall be delineated with flagging or other marking to minimize surface disturbance associated with vehicle straying. Special habitat features, such as burrows identified by the qualified biologist, shall be avoided to the extent possible. To the extent possible, previously disturbed areas within the project sites shall be used for the stockpiling of excavated materials, storage of equipment, parking of vehicles, and any other surface-disturbing activity. The qualified biologist, in consultation with the PG&E, shall ensure compliance with these measures. Off-road traffic outside of designated access roads and designated ground-disturbance areas will be prohibited. Areas designated for ground disturbance, such as laydown areas and landing pads, will be clearly delineated. Project activities are restricted to these areas to minimize inadvertent degradation or loss of adjacent habitat.

**Report dead or injured listed species.** Personnel will be required to report any accidental death or injury of a listed species or the finding of any dead or injured listed species to a qualified Biologist. Notification of CDFW and/or USFWS of any accidental death or injury of a listed species shall be done in accordance with standard reporting procedures.

**Exclusion zones for special-status plants.** If a covered plant species is present following preconstruction surveys in areas outside existing maintenance roads designated for ground disturbance, a qualified biologist will stake and flag exclusion zones of 100 feet around plant occupied habitat (both the standing individuals and the seed bank individuals) of the covered species prior to performing the activities. If an exclusion zone cannot extend the specified distance from the habitat, the biologist will stake and flag a restricted activity zone of the maximum practicable distance from the exclusion zone around the habitat. This exclusion zone distance is a guideline that may be modified by a qualified biologist, based on site-specific conditions (including habituation by the species to background disturbance levels).

**Conduct preconstruction surveys for active Swainson's hawk nests and implement avoidance measures if necessary.** If ground-disturbing activities outside of existing maintenance roads are anticipated to occur during the nesting season for Swainson's hawks (generally March through July), PG&E will retain a qualified wildlife biologist to conduct preconstruction surveys within 0.50 miles of such activities that occur within or near suitable breeding habitat for nesting Swainson's hawks. The biologist will also consult with CDFW and species experts to determine if there are any known active Swainson's hawk nests or traditional territories within 0.50 miles of the work areas. If no active Swainson's hawk nests are detected, a report documenting survey methods and findings will be submitted to CDFW, and no further mitigation is required. If an active Swainson's hawk nest occurs within 0.50 miles of a planned work area, a 0.50- mile restricted activity buffer

will be established around the nest. Biologists will monitor the nest and coordinate with local CDFW representatives to designate nest-specific areas of avoidance and restricted activities based upon the location of the nest relative to project activities and the type and duration of construction activities planned during the nesting season.

**Conduct preconstruction surveys and avoidance of active western burrowing owl burrows.** PG&E will retain a qualified biologist to conduct preconstruction surveys for active burrows in areas designated for ground disturbance outside of existing maintenance roads no more than 30 and no less than 14 days prior to the start of construction in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG, 2012). If western burrowing owls are present at the site of ground disturbing activities outside of existing maintenance roads, a qualified biologist will work with staff to determine whether an exclusion zone can be established in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG, 2012). If it cannot, an experienced burrowing owl biologist will develop a site-specific plan (i.e., a plan that considers the type and extent of the proposed activity, the duration and timing of the activity, the sensitivity and habituation of the owls, and the dissimilarity of the proposed activity with background activities) to minimize the potential to affect the reproductive success of the owls. If a biologist experienced with burrowing owl determines the relocation of owls is necessary, a passive relocation effort may be conducted as described below, in coordination with CDFW as appropriate. During the nonbreeding season (generally 1 September–31 January), a qualified biologist may passively relocate burrowing owls found within construction areas. Prior to passively relocating burrowing owls, a Burrowing Owl Exclusion Plan shall be prepared by a qualified biologist in accordance with Appendix E of the Staff Report on Burrowing Owl Mitigation (CDFW, 2012). The Burrowing Owl Exclusion Plan shall be submitted to the CDFW for review as required. The biologist shall accomplish such relocations using one-way burrow doors installed and left in place for at least two nights; owls exiting their burrows will not be able to re-enter. Then, immediately before the start of construction activities, the biologists shall remove all doors and excavate the burrows to ensure that no animals are present in the burrow. The excavated burrows shall then be backfilled. To prevent evicted owls from occupying other burrows in the impact area, the biologist shall, before eviction occurs, (1) install oneway doors and backfill all potentially suitable burrows within the impact area, and (2) install oneway doors in all suitable burrows located within approximately 50 feet of the active burrow, then remove them once the displaced owls have settled elsewhere. When temporary or permanent burrow-exclusion methods are implemented, the following steps shall be taken: Prior to excavation, a qualified biologist shall verify that evicted owls have access to multiple, unoccupied, alternative burrows, located nearby (within 250 feet) and outside of the projected disturbance zone. If no suitable alternative natural burrows are available for the owls, then, for each owl that is evicted, at least two artificial burrows shall be installed in suitable nearby habitat areas. Installation of any required artificial burrows preferably shall occur at least two to three weeks before the relevant evictions occur, to give the owls time to become familiar with the new burrow locations before being evicted. The artificial burrow design and installation shall be described in the Burrowing Owl Exclusion Plan per Appendix E of the Staff Report on Burrowing Owl Mitigation (CDFW, 2012). Passive relocation of burrowing owls shall be limited in areas adjacent to Project activities that have a sustained or low-level

disturbance regime; this approach shall allow burrowing owls that are tolerant of Project activities to occupy quality, suitable nesting and refuge burrows. The use of passive relocation techniques in a given area shall be determined by a qualified biologist who may consult with CDFW and shall depend on existing and future conditions (e.g., time of year, vegetation/topographic screening, and disturbance regimes).

**Avoid Impacts to Crotch's Bumble Bee.** During the blooming period immediately prior to commencement of ground-disturbing activities, areas proposed for ground disturbance that contain one or more of the following habitat requisites shall be surveyed for Crotch's bumble bee by a qualified biologist: flowering vegetation, potential preferred nectar plants, small mammal burrows, bunch grasses, thatch, brush piles, old bird nests, or dead trees. A minimum of two surveys shall be completed between the hours of 0800 and 1600 when temperatures are between 65°F and 90°F, and will not be conducted during inclement weather conditions (e.g., foggy, raining, drizzling, or sustained winds greater than 8 mph). Surveyors will photograph potential Crotch's bumble bees from various angles to ensure recordation of key identifying characteristics. Should a Crotch's bumble bee be observed, ground disturbing work shall not proceed until consultation with CDFW related to avoidance or take of Crotch's bumble bee is completed. If Crotch's bumble bee is identified during surveys or at any time during ground-disturbing activities, consultation with CDFW is warranted to determine if take can be avoided. If take cannot be avoided, take authorization prior to any ground disturbing activities is warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).

**Wetland and Other Waters Avoidance and Minimization.** Impacts to wetlands and other waters shall be avoided to the extent feasible. The PG&E improvements shall be designed, constructed and operated to avoid and minimize impacts to wetlands and other waters to the extent feasible. Staging and laydown activities shall not occur within wetlands during construction. To avoid unnecessary egress into waterways and wetlands, all wetlands and waters in the Project impact area shall be clearly marked with highly visible flagging, rope, or similar materials in the field. Access allowed within these features for the purposes of construction in and near such features (e.g., road crossings) shall be clearly delimited, and be staked in the field, to prevent construction personnel from causing impacts to areas outside of work limits. Where necessary, silt fencing or other measures may be used to protect adjacent wetlands and waterways from sediment transport or other indirect impacts that could result from adjacent construction. Wetlands and other waters within construction areas that are to be avoided shall be fenced or flagged for avoidance prior to construction, and a biological monitor shall be present to ensure compliance with off-limits areas. Additionally, the following measures are proposed to further minimize project impacts on wetland and other waters during construction activities:

- Grading and construction activities outside of existing access roads should be done during dry conditions. However, if grading and construction must be conducted during wet conditions, then the site-specific best management practices (BMPs) for erosion will be implemented.
- All work within waters that have only low or intermittent flow shall be performed when the channel is dry or at its lowest flow. Work within channels with perennial flow shall

be performed during times when there is no flow to the extent practical.

- Activities outside of existing access roads near wetland and waters that have the potential to degrade water quality will be conducted during the dry season. If work activities are necessary during the rainy season, they shall be conducted during dry spells between rain events.
- All drainage patterns and grades will be returned to preconstruction conditions.
- Unanticipated temporary impacts to wetlands and other waters shall be mitigated through onsite restoration, if impacts are restored within a single year, with most restoration expected to occur at the onset of the rainy season to enhance germination success (i.e., areas impacted in a given year must be restored prior to 1 March of the following year to be considered temporary and require no additional mitigation). Areas of construction access-related temporary impacts that cannot be restored prior to 1 March the following year and would remain exposed during the dry season shall be restored the following fall. Compensatory mitigation for temporarily impacted areas that are not restored within a year shall be provided at a ratio acceptable to the agency(ies) with jurisdiction over that wetland or water feature.

**Nesting Birds.** Bird nests with eggs and/or chicks will not be disturbed. If bird nests are encountered in work areas, personnel will contact a biologist or the PG&E Avian Protection Program Manager for further guidance.

While this modification adds clarity to the EIR by expressly describing standard PG&E practices, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5 because it incorporates measures that reduce project impacts.

In addition, the Draft EIR is being revised to clarify that unlike the solar field the OPGW line would not require decommissioning and the impacts associated therewith:

### **Section 3.10, Decommissioning, Page 3-37**

Solar equipment typically has a lifespan of over 35 years. The proposed project expects to sell the renewable energy produced by the project under the terms of a long-term Power Purchase Agreement with a utility or other power off taker. Upon completion of the Power Purchase Agreement term, the project operator may, at its discretion, choose to enter into a subsequent Power Purchase Agreement or decommission and remove the system and its components. If it is decided to decommission the project, the system and its components would be removed, and the solar field site could then be converted to other uses in accordance with applicable land use regulations in effect at that time. Removal of the PG&E's improvements is not required upon decommissioning; they may be used for other purposes or removed depending on future needs. All decommissioning and restoration activities would adhere to the requirements of the appropriate governing authorities and would be in accordance with all applicable federal, state and County regulations. This would include removal and salvaged (where possible) of on-site materials and the materials would be shipped off-site to be recycled or disposed of at an appropriately licensed disposal facility. After removals, the applicant would work collaboratively with the County to restore the solar field site to meet the County's next use (i.e., restore the solar field site to preconstruction conditions or to a condition that best meets future planned land uses).

Finally, operation and maintenance of the OPGW line, switchyard, and substation would be performed pursuant to PG&E's 30-year, 2008 San Joaquin Valley Operation and Maintenance HCP and CDFW's related Master Streambed Alteration Agreement and ITP.

- E:** This comment briefly states concerns about proposed Mitigation Measures (MM) not being sufficient to reduce impacts to a less than significant level and avoid unauthorized take for several special-status species. Each of these concerns is further explained in comments F through O. Responses to comments F through O and additional comments are provided below.
- F:** This comment pertains to giant kangaroo rat (*Dipodomys ingens*; GKR). The comment relates to concerns with MM 4.4-13 being insufficient to prevent unauthorized take. CDFW recommends that all GKR burrows be avoided by at least a 50-foot no disturbance buffer and that if this buffer cannot be maintained, then the Project obtain an ITP, pursuant to Fish and Game Code Section 2081 subdivision (b). CDFW also states that it does not concur with provisions in MM 4.4-13 related to work done in the vicinity of GKR precincts. Biological surveys and small mammal trapping for GKR occurred from February 17 to February 24, 2023 (seven nights) and from October 4 to October 9, 2023 (five nights) at the main project site. The small mammal trapping produced negative results for GKR and this species is not expected to occur within the Project. In response to this comment, the DEIR has been revised as follows:

**Section 1.10, Summary of Environmental Impacts and Mitigation Measures, Table 1-7, Mitigation Measure 4.4-13, Page 1-48 and Page 4.4-57**

- MM 4.4-13:** In the unanticipated event that giant kangaroo rat or Tipton kangaroo rat are discovered on site, the following procedures shall be implemented:  
Giant kangaroo rat or Tipton kangaroo rat precincts shall be flagged and a 50-foot-wide buffer around the precincts shall be avoided by construction equipment and ground-disturbing activities, ~~if feasible. If a minimum 50-foot no-disturbance buffer is not feasible, consultation with CDFW shall occur to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA~~  
~~If project personnel are required to drive or operate a vehicle or piece of equipment in the vicinity of a Giant kangaroo rat or Tipton kangaroo rat precinct, they shall avoid driving directly over precinct openings, seed caches, or haystacks, if practicable. If the activity requires that the vehicle travel directly over a precinct (more than simple daily pedestrian activities such as walking in and out of an area to inspect the condition of equipment) for more than 1 hour, then the following procedures shall be implemented:~~
- ~~• A plywood sheet or stronger material board, measuring at least 4 by 8 feet and 1 inch thick, shall be placed over the entire precinct at the start of the activity.~~
  - ~~• Any haystacks, seed caches, or other forage stockpiled by the giant kangaroo rat, or the Tipton kangaroo rat on the surface shall be left undisturbed to the maximum extent practicable. If avoidance is not possible, the seed caches and haystacks shall be completely covered by a plywood sheet.~~

- ~~• More than one plywood sheet may be required to cover an area when multiple precincts occur in the vicinity of the activity.~~
- ~~• Vehicles and equipment shall be allowed to travel over a precinct only when all tires are driving over the plywood surface.~~
- ~~• At the end of the work activity or at the end of each workday, whichever is of a shorter duration, all plywood sheets or stronger boards shall be removed from the precinct(s), and any haystacks, seed caches, or other forage stockpiles that have been covered.~~
- ~~• During daily pedestrian operation and maintenance activities, such as walking within an array to inspect the condition of equipment or performing panel washing, project personnel may walk on and work around precincts; however, entrances or holes in the precinct shall not be stepped on and shall be avoided to prevent damage to or plugging of these entrances, to the extent practicable. If damage to or plugging of the entrances occur, or is likely to occur, and work is scheduled to continue, personnel shall use plywood sheeting or stronger material boards to protect the precinct as described above.~~

**G:** This comment pertains to San Joaquin antelope squirrel (*Ammospermophilus nelsoni*; SJAS). The comment relates to MM 4.4-12 and suggests that two additional mitigation measures be implemented in the event that SJAS are documented during implementation of MM 4.4-12 or at any time during construction and operation of the Project. In response to this comment, the DEIR will be revised to include the following measures:

**Section 1.10, Summary of Environmental Impacts and Mitigation Measures, Table 1-7, Mitigation Measures**

**MM 4.4-12a: SJAS Avoidance Buffer**

A minimum 50-foot no-disturbance buffer shall be employed around SJAS burrows. If a minimum 50-foot no-disturbance buffer cannot be maintained, then consultation with CDFW is warranted to determine if the Project proponent can avoid take or if take authorization is necessary as described below.

**MM 4.4-12b: SJAS Take Authorization**

If a minimum 50-foot no-disturbance buffer for SJAS is not feasible, consultation with CDFW shall occur to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

**H:** This comment pertains to San Joaquin kit fox (*Vulpes macrotis mutica*; SJKF) and MM 4.4-10 and MM 4.4-14. The comment concurs with MM 4.4-10, and expresses concern that the measures outlined in MM 4.4-14 might not avoid take. CDFW thus requests that the project proponent consult with CDFW to obtain an ITP. The Project proponent is seeking an ITP permit for SJKF.



With respect to MM 4.4-15, CDFW recommends that the style of fencing selected is the type that is raised four inches above ground level and knuckled back to form a smooth edge and permeability for wildlife. In response to this comment, the DEIR will be revised as follows:

**Section 1.10, Summary of Environmental Impacts and Mitigation Measures, Table 1-7, and Section 4.4, Biological Resources, Mitigation Measure 4.4-15, Page 1-53 and Page 4.4-60**

**MM 4.4-15:** All fencing installed on the perimeter of the main project site will be designed to allow for passage of San Joaquin Kit Fox (SJKF) their prey and other wildlife, while impeding the passage of larger predators such as coyotes and similar species. ~~Perimeter fencing shall consist of wire fencing, with openings from three (3) to seven (7) inches square and will be installed inverted, with the larger openings at the bottom to allow SJKF to pass through.~~ Chain link fencing ~~may also be used if it is~~ shall be installed with a four (4) ~~to six (6)~~ inch gap from the bottom of the fencing material and shall be knuckled back to form a smooth edge. Perimeter fencing shall not be electrified. Alternate designs may also be constructed with documentation of coordination with California Department of Fish and Wildlife (CDFW) and United States Fish and Wildlife Service (USFWS) and demonstration that comments provided by the Agencies have been considered and addressed.

**I:** This comment pertains to Tipton kangaroo rat (*Dipodomys nitratoide nitratoide*; TKR). CDFW recommends modifying MM 4.4-13 to clarify that all TKR burrows be avoided by at least a 50-foot no disturbance buffer and that if this buffer cannot be maintained, then the Project proponent obtain an ITP, pursuant to Fish and Game Code Section 2081 subdivision (b). CDFW also states that it does not concur with provisions in MM 4.4-13 related to work done in the vicinity of Tipton Kangaroo Rat precincts. Biological surveys and small mammal trapping for TKR occurred from February 17 to February 24, 2023 (seven nights) and from October 4 to October 9, 2023 (five nights) at the main project site. The small mammal trapping produced negative results for TKR and this species is not expected to occur within the Project. The project is thus not expected to result in take of TKR. In the unlikely event that TKR or its sign is observed, the Project proponent will consult with CDFW to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA. In response to this comment, the DEIR has been revised as described above under comment F.

**J:** This comment pertains to Swainson's hawk (*Buteo swainsoni*; SWHA) and MM 4.4-10. CDFW reiterated its recommendation that if a SWHA nest is detected and a ½-mile no-disturbance buffer is not feasible, consultation with CDFW is warranted. The Project proponent is seeking an ITP for SWHA. CDFW also does not concur with MM 4.4-11 and the ratio of 0.5:1 for mitigation lands. In response, the Project proponent will mitigate for approximately 2,975 acres of SWHA foraging habitat at a 1:1 ratio. In response to this comment, the DEIR has been revised as follows:

**Section 1.10, Summary of Environmental Impacts and Mitigation Measures, Table 1-7, Mitigation Measure 4.4-11, Page 1-47 and Page 4.4-56**

**MM 4.4-11:** The project proponent shall mitigate for the loss of Swainson's hawk nesting and foraging habitat ~~at a ratio of 0.5:1 based on the total approved~~

~~area of the project site.~~ Mitigation land may be nested with other compensatory lands provided it meets the necessary biological requirements and as determined by appropriate wildlife agency.

- a. Compensation for the loss of SWHA foraging habitat shall be provided at a 1:1 ratio

**K:** This comment pertains to Blunt-nosed leopard lizard (*Gambelia sila*; BNLL). CDFW recommends the Project proponent seek an ITP for BNLL. Despite negative results from focused surveys conducted in 2021 and full protocol surveys completed in 2023, the Project proponent plans to seek an ITP for BNLL. CDFW alternatively recommends a BNLL avoidance buffer mitigation measure in lieu of an ITP. Given that the Project proponent is seeking an ITP for BNLL, this measure is not necessary. No changes or modifications have been made to the DEIR in response to this comment.

**L:** This comment pertains to Crotch's bumble bee (*Bombus crotchii*; CBB). CDFW recommends that focused surveys be completed following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023). CDFW alternatively recommends that, if surveys cannot be completed, all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50-feet, and that ground-disturbing activities that will occur during the overwintering period (October through February) include consultation with CDFW to avoid take. The main project site has been extensively surveyed in 2021, 2022, and 2023. 17 full survey passes of the main project site consisting of approximately 3,100 survey days at transect widths spaced at 10 meters occurred during the 2023 BNLL surveys. While protocol level surveys were not conducted for CBB, all surveyors who conducted the 2023 BNLL surveys took part in an extensive training on how to identify CBB along with other sensitive species that may occur including burrowing owl (*Athene cunicularia*; BUOW), SJKF, American badger (*Taxidea taxus*; AMBA), SJAS, GKR, TKR, and SWHA. At least three of the 2023 BNLL surveyors had previously conducted CBB surveys and identified the species at other project sites. No CBB have been identified on the main project site to date, and floral resources are largely scarce, restricted mostly to grasslands south of the main project site.

CBB are not expected to occur on site as potential habitat is of low quality. Crotch's bumble bee habitat consists of grasslands and chaparral shrublands and this species requires a hotter and drier environment than other bumble bee species. In contrast, the Project site features an array of habitat types/vegetation communities, including grasslands. However, the grasslands on site are heavily grazed, making them low quality and unsuitable to support CBB. In addition, the Project proponent will provide compensatory mitigation land for Project-impacted acreage at a 1:1 ratio; these lands are anticipated to provide equal or better habitat for Crotch's bumble bee. Finally, the Project proponent plans to conduct surveys following MM 4.4-17, as revised below:

**Section 1.10, Summary of Environmental Impacts and Mitigation Measures, Table 1-7, Mitigation Measure 4.4-17, Page 1-54 and Page 4.4-60**

**MM 4.4-17:** During the blooming period immediately prior to commencement of project ground disturbing activities, areas within the main project site containing one or more of the following habitat requisites shall be surveyed for Crotch's bumble bee by a qualified biologist: flowering vegetation, potential preferred nectar plants, small mammal burrows, bunch grasses, thatch, brush piles, old bird nests, or dead trees. A

minimum of two surveys shall be completed between the hours of 0800 and 1600 when temperatures are between 65°F and 90°F, and will not be conducted during inclement weather conditions (e.g., foggy, raining, drizzling, or sustained winds greater than 8 mph). Surveyors will photograph potential Crotch's bumble bees from various angles to ensure recordation of key identifying characteristics. Should a Crotch's bumble bee be observed, ground disturbing work shall not proceed until consultation with CDFW related to avoidance or take of Crotch's bumble bee on-site is completed. ~~If Crotch's bumble bee is determined to be present, compensatory lands used as mitigation for Crotch's bumble bee will include long term conservation at a ratio of not less than 0.5 acre per acre of potentially suitable habitat impacted by the project. If CBB is identified during surveys or at any time during Project construction, the project proponent will confer with CDFW to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground disturbing activities is warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).~~

**M:** This comment pertains to BUOW and MM 4.4-10. CDFW recommends that no BUOW exclusion be permitted during the non-breeding season. Accordingly, the DEIR has been revised as follows:

**Section 1.10, Summary of Environmental Impacts and Mitigation Measures, Table 1-7, Mitigation Measure 4.4-10, Page 1-46 and Page 4.4-55 - 56**

If required buffers are infeasible, then the project proponent shall prepare a Burrowing Owl and American Badger Exclusion Plan. Any burrow and/or den exclusion would be conducted by a qualified biologist with burrowing owl burrows replaced at a 1:1 ratio. No burrowing owl burrow exclusion is permitted during breeding season (February 1 - August 31 or while breeding behavior is exhibited), ~~unless approved by CDFW. unless a qualified biologist verifies through noninvasive methods that (1) the birds have not begun egg laying and incubation, (2) a previously active nest has failed and re-nesting is highly unlikely, or (3) all juveniles from the occupied burrow are foraging independently and capable of independent survival. A qualified biologist will monitor the burrow for a minimum of three days prior to proposed burrow excavation to document the lack of usage of the burrow for active nesting.~~

This comment also addresses other state species of special concern and MM 4.4-2, MM 4.4-3, MM 4.4-9, and MM 4.4-12. CDFW recommends focused surveys for coast horned lizard (*Phrynosoma blainvillii*). The main project site has been extensively surveyed in 2021, 2022, and 2023. 17 full survey passes of the main project site consisting of approximately 3,100 survey days at transect widths spaced at 10 meters occurred during the 2023 BNLL surveys. Coast horned lizard was a target of these surveys and there were no detections. Therefore, additional focused surveys are not warranted.

CDFW also recommends implementation of avoidance buffers for Tulare grasshopper mouse (*Onychomys torridus tularensis*), coast horned lizard, San Joaquin coachwhip (*Coluber flagellum ruddocki*), and western spadefoot (*Spea hammondi*) when documented during surveys. The Project proponent is seeking a 10(a)1(A) permit from the U.S. Fish and Wildlife Service for western

spadefoot. Western spadefoot has not been observed during focused surveys for aquatic species, and development plans are avoiding wetlands except for up to 1.3 acres of impact (discussed in response to comment Q). Tulare grasshopper mouse and San Joaquin coachwhip have not been documented despite extensive biological surveys described above, including but not limited to 17 full survey passes of the main project site consisting of approximately 3,100 survey days at transect widths spaced at 10 meters occurred during 2023. Each of these species are unlikely to occur at the Project site. However, in response to these concerns and those voiced by the California Native Plant Society, Center for Biological Diversity, and Defenders of Wildlife comment letter, the DEIR has been revised as follows:

**Section 1.10, Summary of Environmental Impacts and Mitigation Measures, Table 1-7, Mitigation Measure 4.4-12, Page 1-47 and 4.4-56**

**MM 4.4-12:** Within 30 days prior to the start of ground disturbance activities of all or any portion of the main project site, a pre-construction survey shall be conducted by a qualified biologist knowledgeable in the identification of all special-status plant and wildlife species identified by the project's CEQA review to have potential to occur, including Le Conte's thrasher, golden eagle, San Joaquin antelope squirrel, Crotch's bumble bee, coast horned lizard, Kern mallow, and the Tulare grasshopper mouse on the main project site. Surveys need not be conducted for all areas at one time; they may be phased so that surveys occur within 30 days of the portion of the project site that will be disturbed. The location and nature of all special status species observations resulting from the preconstruction survey shall be documented and any suitable dens and/or burrows that could support fossorial special-status wildlife species will be examined for potential occupancy and documented. Documentation of completed studies shall be retained and made available to applicable wildlife agency and or Kern County staff on request. Should individuals or active nesting/burrowing sites of the species be present on-site, the project proponent shall confer with the appropriate wildlife agency and commence work only once a plan has been established, approved by the applicable agency, and made available to Kern County staff upon request.

- a. A minimum 50-foot no-disturbance buffer shall be employed around SJAS burrows. If a minimum 50-foot no-disturbance buffer cannot be maintained, then consultation with CDFW is warranted to determine if the Project can avoid take or if take authorization is necessary as described below.
- b. If a minimum 50-foot no-disturbance buffer for SJAS is not feasible, consultation with CDFW shall occur to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code Section 2081 subdivision (b) is necessary to comply with CESA.
- c. If Tulare grasshopper mouse, coast horned lizard, San Joaquin coachwhip, or western spadefoot are observed during surveys, a 50-

foot no-disturbance buffer shall be installed around burrows where these species are present.

- N:** This comment pertains to special-status plant species and MM 4.4-6. CDFW recommends that preconstruction plant species surveys be timed during the appropriate blooming period the survey season immediately prior to construction to adequately identify the presence of the special-status species documented during the 2022 botanical surveys conducted in support of the DEIR. Accordingly, the DEIR has been revised as follows in response to this comment and comments I and N in the California Native Plant Society, Center for Biological Diversity, and Defenders of Wildlife comment letter:

**Section 1.10, Summary of Environmental Impacts and Mitigation Measures, Table 1-7, Mitigation Measure 4.4-6, Page 1-43 and Page 4.4-54**

- MM 4.4-6:** ~~No more than thirty (30) days~~ Prior to the start of ground disturbance activities ~~or issuance of any grading or building permits, or~~ decommissioning of the main project site, a qualified biologist knowledgeable on the identification of rare plant species shall conduct a pre-construction plant survey of areas of proposed disturbance within the main project site and a 100-foot buffer (where legally accessible) timed during the appropriate blooming period of the survey season immediately prior to construction to determine if any special-status plant species are present. If special-status plants are identified on-site, their locations shall be mapped and the Project proponent shall confer with CDFW or USFWS as required by applicable law to facilitate salvage or seed collection.
- a. Species-specific restoration plans should be developed for all special status plants with the potential to be impacted, including performance criteria for determining the success of the restoration plan.
  - b. Areas identified as potential recipient sites must be surveyed following CDFW protocols to ensure that compensatory mitigation efforts would not cause harmful impacts to existing botanical resources. Low-conflict areas that have been degraded by previous land uses should be prioritized for restoration, leaving intact natural habitat undisturbed by restoration efforts.
  - c. While on-site mitigation is preferred, if contiguous acreage to achieve mitigation needs is not present on the project site, restoration activities may be implemented offsite.
  - d. Maintenance and monitoring of compensatory mitigation sites should occur each year for the first five years of the mitigation term, or until the performance standards have been met. Thereafter, yearly monitoring of the site should demonstrate a self-sustaining area of occupation and population numbers with no management actions for years 6-8.
  - e. If monitoring shows stable populations after three years with no maintenance, the populations should be monitored every two years in perpetuity.
  - f. If the populations are not demonstrating stability after the initial three years of maintenance and monitoring period, after three years without

maintenance, or if subsequent monitoring shows loss or decline of populations, then adaptive management shall be undertaken until the performance standards are achieved.

- O:** This comment pertains to nesting birds and recommended MMs for nesting bird preconstruction surveys and monitoring. Accordingly, the DEIR has been revised to include the following:

**Section 1.10, Summary of Environmental Impacts and Mitigation Measures, Table 1-7, Mitigation Measures**

**MM 4.4-19: Nesting Bird Surveys Prior to Construction**

Wherever possible, clearing and grubbing of vegetation will be completed in the non-breeding season preceding construction. If ground-disturbing activities occur during the nesting bird season (February 1 – September 15), a qualified biologist shall conduct pre-activity surveys for active nests no more than thirty days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. Surveys shall cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, odors, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, a qualified biologist shall conduct a survey to establish a behavioral baseline of all identified nests and confirm site conditions have not changed.

**MM 4.4-20: Nesting Bird Monitoring and/or Avoidance Buffer**

Once construction begins, a qualified biologist shall continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, the work causing that change will cease and CDFW may be consulted if necessary for additional avoidance and minimization measures if work must proceed and behavior does not return to the identified baseline condition. If continuous monitoring of identified nests by a qualified biologist is not feasible, a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors shall be implemented. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no-disturbance buffers is possible when there is a compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. A qualified biologist shall advise and support any variance from these buffers.

- P:** This comment includes editorial comments and suggestions pertaining to federally listed species. CDFW recommends consulting with USFWS regarding potential impacts to federally listed species. The Project proponent is currently seeking an ITP pursuant to Section 10(a)(1)(B) of the federal Endangered Species Act for the incidental take of the following four wildlife species and

one federal endangered plant species: western spadefoot (*Spea hammondi*; WESP), BNLL, BUOW, SJKF, and Kern mallow (*Eremalche parryi* ssp. *kernensis*). This comment has been noted. No changes or modifications have been made to the DEIR in response to this comment.

- Q:** This comment includes editorial comments and suggestions pertaining to Fish and Game Code section 1600 and Lake and Streambed Alteration Agreements. The Project was explicitly designed to avoid impacts to the approximately 59.75 acres (88,934 LF) of man-made drainage ditches with defined bed and bank and 1.93 acres of riparian habitat potentially regulated by CDFW. The Project is anticipated to impact up to 1.3 acres in conjunction with improvements to road crossings non-wetland waters, within abandoned drainage ditches, potentially regulated by the RWQCB and/or CDFW pursuant to Section 1600 of the California Fish and Game Code.

As described on page 4.4-63 of the DEIR, access road construction is anticipated to include removing the top foot of native soils, installing a geotextile fabric, and compacting new aggregate fill. Approximately 15 access road crossings are anticipated that will consist of approximately 2,000 square feet of ground disturbance per access road crossing. Retention basin construction will consist of grading and rip-rap installation at the entrance of the trenches. The anticipated impact to the trenches is estimated at less than 1 acre. Up to two retention basins are anticipated to be installed. The Project is anticipated to require impacts to up to four acres of non-wetland waters, pending final site engineering/design. All other aquatic features will be avoided and buffered by a minimum of 10 feet. The project proponent would obtain a Streambed Alteration Agreement from CDFW before impacting any jurisdictional features if required under Section 1600. No changes or modifications have been made to the DEIR in response to this comment

- R:** This comment pertains to project alternatives analysis. CDFW recommends that the information and results obtained from the biological technical surveys, studies, and analyses conducted in support of the Project's DEIR be used to develop and modify the Project's alternatives to avoid and minimize impacts to the biological resources to the maximum extent possible.

Per Section 6.1 of the DEIR, "the range of feasible alternatives is selected and discussed in a manner that fosters meaningful public participation and informed decision making. Among the factors that may be taken into account when addressing the feasibility of alternatives (as described in CEQA Guidelines Section 15126.6(f)(1)) are environmental impacts, site suitability, economic viability, social and political acceptability, technological capacity, availability of infrastructure, General Plan consistency, specific plan consistency, regulatory limitations, jurisdictional boundaries, and whether the Project Proponent could reasonably acquire, control, or otherwise have access to an alternative site. If an alternative has effects that cannot be reasonably identified, if its implementation is remote or speculative, and if it would not achieve the basic project objectives, it need not be considered in the EIR."

Chapter 6 of the DEIR used the technical analyses presented in the DEIR to determine those issue areas with the potential for the proposed project to have significant adverse effects including Aesthetics (project and cumulative), Air Quality (cumulative – temporary construction only), Biological Resources (cumulative only), Minerals (cumulative only), and Wildfire (cumulative only). These analyses were used to address the range of alternatives analyzed in the DEIR. Hence, the recommended approach has been incorporated into the DEIR. The other issue areas analyzed in the DEIR were deemed to have impacts that are less than significant with or without mitigation.

All of the technical analyses prepared for the project were used to support the development of the alternatives presented in Chapter 6 of the DEIR as required by CEQA.

The project proponent conducted an extensive search to identify, evaluate, and select a location for the proposed project that meets the objectives described in section 1.5.2, page 1-6 of the DEIR. The project objectives include but are not limited to constructing, operating, maintaining, and eventually decommissioning, a large-scale (500 MW) PV and energy storage facility that maximizes the production and delivery of reliable electricity in an economically feasible, financeable manner. In addition, the Project proponent sought to identify a site that is proximate to existing transmission infrastructure to minimize transmission costs and environmental impacts. Furthermore, develop a project that will help the State of California in achieving or exceeding its Renewable Portfolio Standard (RPS), Senate Bill 350, Senate Bill 100, the California Global Warming Solutions Act (Assembly Bill 32), as well as the 2045 net zero greenhouse gas emissions goal of the California Climate Crisis Act (AB 1279), and the goal of the Clean Energy, Jobs, and Affordability Act of 2022 (SB 1020) to achieve 90 percent carbon free electricity retail sales by 2035.

The project proponent's search for a feasible site initially relied on several key factors, including parcels of sufficient size not already secured by other developers that landowners might be willing to grant rights to develop the project, parcels of sufficient size located near major substations and the electrical grid to avoid construction of a long transmission line between the project and the grid, and lands not restricted by Williamson Act contracts.

These criteria and meeting the Project objectives narrowed down the search to three potential locations along the Gates-Midway transmission line in the San Joaquin Valley, including:

- An approximately 4,980-acre location in northern Kings County.
- An approximately 4,039-acre location that straddles the boundary between Kings and Kern County.
- The selected main project site consisting of 3,371 acres located in Kern County.

The three sites were then screened in greater detail based on: proximity to a feasible interconnection to existing high-voltage segments of the electrical grid; sufficient acreage to generate 500 MW of solar power; feasibility of obtaining realty rights; topography; and environmental constraints, particularly biological resources, cultural resources, flood hazards, and known sources of hazardous waste or materials.

The site selection process resulted in the identification of the current main project site, which consists of approximately 3,371 acres located in northern Kern County as the location best suited to feasibility meet the Project goals and objectives, including the need to have a minimum generating capacity of 500 MW required for CAISO interconnection. Further reduction of the project site would not allow the achievement of the required 500 MW generating capacity.

The proposed Project is sited on land that is of generally poor quality, has poor species diversity and low conservation values due to its historic use for irrigated agriculture through the 1990s and livestock grazing over the last 10 years, and has been documented in a 2022 survey to have been overgrazed down to bare dirt. Any potential habitat has been degraded due to its history of livestock grazing and agriculture, resulting in lands of low conservation value which are considered highly compatible for solar development in the San Joaquin Valley (**Figure 1: Land Compatibility for Solar Development**). The proposed Project has been designed to avoid impacts to the maximum



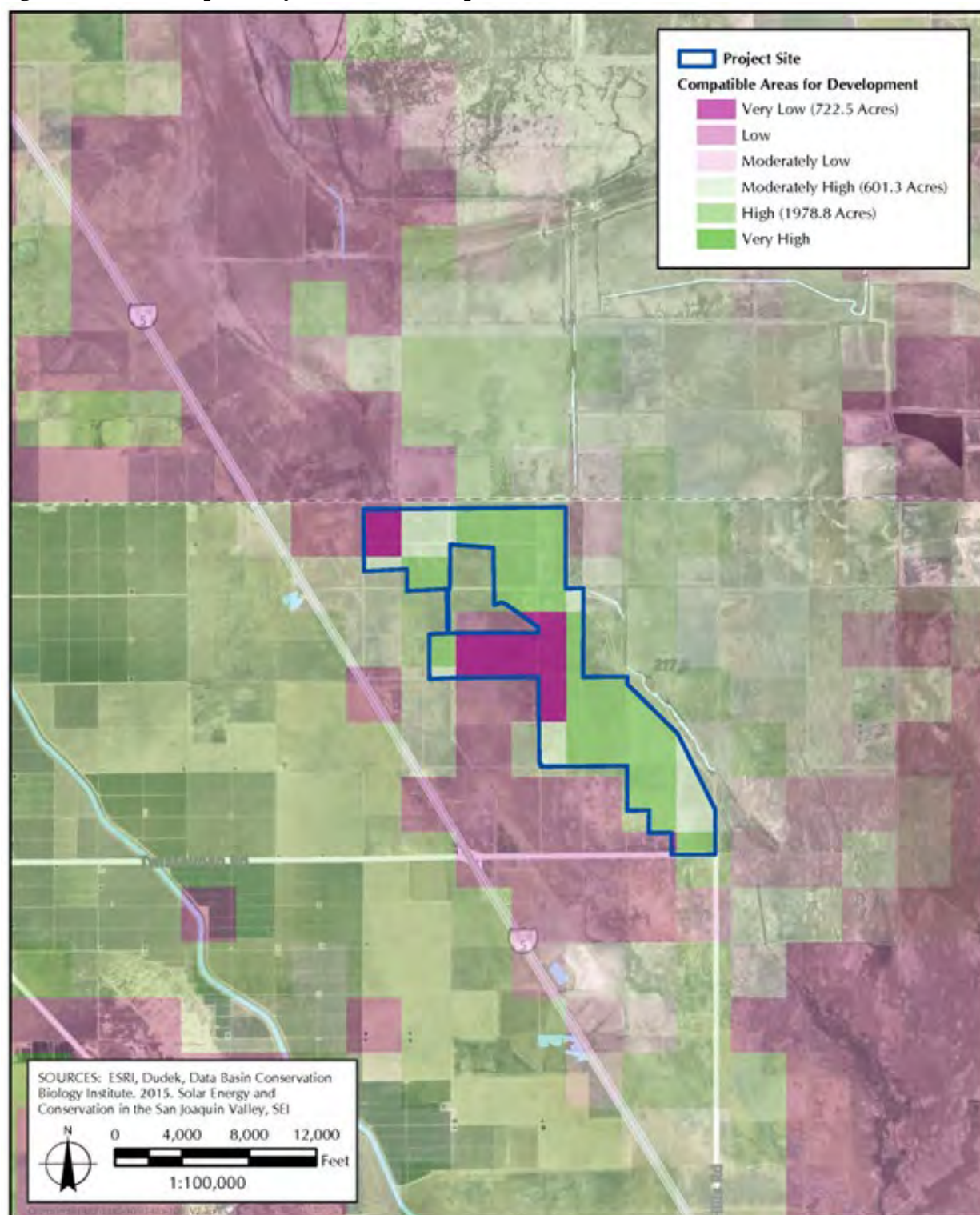
extent practicable for the special-status species of wildlife that are known to occur within the proposed Project area, and the applicant has proposed to provide compensatory mitigation where avoidance is not sufficient to reduce impacts to below the level of significance. The *Green Light Study*,<sup>1</sup> evaluated lands, in California where the concerns related to the costs associated with siting decisions including the length of permitting timelines, the amount of compensatory mitigation, and even the installed cost of solar, concluding that lands of high biodiversity value may translate into longer permitting times and greater compensatory mitigation requirements. The Project site was not included in that analysis and is not classified as land of high biodiversity value. Additionally, impacts from the Project will be avoided, minimized, or will provide compensatory mitigation where avoidance is not sufficient to reduce impacts to below the level of significance. The applicant's proposed mitigation strategy is consistent with those of other solar projects developed in Kern County such as the Valley Solar Project, Blackwell Solar Park Project, and Lost Hills Solar Project.

In addition, the Project proponent has incorporated the results of biological surveys into the Project's design to minimize impacts. The Project proponent has minimized impacts to aquatic features, incorporated buffers to avoid sensitive resources, and reduced the development footprint of the main project site to approximately 2,975 acres.

The proposed impact areas of the main project site have been subject to cattle and sheep grazing. No crop cultivation has occurred within the last 10 years on the main project site. The Project design includes on-site mitigation of approximately 285 acres of undeveloped lands and an additional 2,975 acres of offsite compensatory mitigation lands. For several special-status species such as BNLL, the CDFW concurs that the Project will likely create habitat to support a species that is currently extirpated from Project lands, creating a net benefit for the conservation of special-status species. No changes or modifications have been made to the DEIR in response to this comment.

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<sup>1</sup> Dashiell, S.; Buckley, M; Mulvaney, D. *Green Light Study: Economic and Conservation Benefits of Low-Impact Solar Siting in California*, 2019.

**Figure 1: Land Compatibility for Solar Development<sup>2</sup>**

<sup>2</sup> Data Basin Conservation Biology Institute. 2015. Solar Energy and Conservation in the San Joaquin Valley. <https://databasin.org/maps/01f2bfcdccb04b65873edba6dad1b789/active/> (accessed January 11, 2023).

- S:** The commenter states that the DEIR has a very broad analysis of cumulative impacts to biological resources and does not adequately evaluate impacts to specific resources. The commenter states an appropriate resources study area should be identified and mapped for each resource being analyzed and utilized for this analysis. They recommend that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project. They also recommend that a cumulative impacts analysis be conducted for listed species and species of special concern.

The cumulative study area was defined through a description of existing conditions and cumulative projects. The cumulative impact analysis recognizes the inherent benefit of siting this project at a location immediately adjacent to an existing PG&E transmission corridor. Existing conditions capture the effects of past and existing projects and are described in Section 4.4.2, *Environmental Setting*. Current and future projects are described in Figure 3-9, *Cumulative Projects List*, Table 1-4, *Summary of Significant and Unavoidable Project-Level and Cumulative Impacts of the Solar Facility*, and Table 3-7, *Cumulative Projects List*. The DEIR considered the potential cumulative effects of the Project along with other current and reasonably foreseeable projects and found impacts to biological resources to be cumulatively considerable, significant and unavoidable, as discussed in Section 3.1.2, *Cumulative Projects*.

Section 3.1.2 presents a detailed analysis of these cumulative impacts and describes the means by which the mitigation measures would reduce the severity of impacts to the extent feasible. As noted in the Project impact analysis, the Project site does not provide habitat for most of the species listed in this comment. Therefore, a cumulative impact analysis for these species is not appropriate as per CEQA Guidelines, Section 15130, Discussion of Cumulative Impacts, “An EIR should not discuss impacts which do not result in part from the project evaluated in the EIR.” The cumulative impact analysis includes a discussion of the special-status wildlife species that currently utilize the Project site and surrounding vicinity and loss of foraging and nesting habitat. As specified in the CEQA Guidelines, Section 15130, Discussion of Cumulative Impacts, “The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone.” Therefore, the DEIR presents an adequate cumulative impact discussion for biological resources. No changes or modifications have been made to the DEIR in response to this comment.

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**Comment Letter 2: California Department of Transportation (Caltrans)****Terrance Smalls**

**From:** Lau, Scott@DOT <Scott.Lau@dot.ca.gov>  
**Sent:** Monday, September 25, 2023 11:34 AM  
**To:** Terrance Smalls  
**Cc:** Mendibles, Lorena@DOT  
**Subject:** Caltrans response to Pelican Jaws

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

Hi Terrance,

I have reviewed the DEIR for Pelican Jaws Solar Development and have no comments.

Respectfully,



**Scott Lau**

Associate Transportation Planner  
California Department of Transportation  
1352 West Olive Avenue  
Fresno, CA 93778  
Cell: (559) 981-7341

A

**Response to Comment Letter 2: California Department of Transportation (Caltrans)**

- A:** The comment states that Caltrans does not have any comments on the Draft EIR. This comment does not raise a substantive issue on the content of the Draft EIR analysis and does not directly apply to the CEQA process. Therefore, the comment has been noted for the record and no changes to the document have been made or are required.



## Local Agencies

### Comment Letter 3: San Joaquin Valley Air Pollution Control District (SJVAPCD)



September 26, 2023

Terrance Smalls  
County of Kern  
Planning Division  
2700 "M" Street, Suite 100  
Bakersfield, CA, 93301

**Project: Draft Environmental Impact Report for the Pelicans Jaw Hybrid Solar Project**

**District CEQA Reference No: 20230751**

Dear Mr. Smalls:

The San Joaquin Valley Air Pollution Control District (District) has reviewed the Draft Environmental Impact Report (DEIR) from the County of Kern (County) for the Pelicans Jaw Hybrid Solar project. Per the DEIR, the project consists of a photovoltaic solar facility to generate up to 500 megawatts (MW) on 3,371 acres (Project). The Project is located in Kern County, CA.

A

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

#### 1) District Rules and Regulations

The District issues permits for many types of air pollution sources, and regulates some activities that do not require permits. A project subject to District rules and regulations would reduce its impacts on air quality through compliance with the District's regulatory framework. In general, a regulation is a collection of individual rules, each of which deals with a specific topic. As an example, Regulation II (Permits) includes District Rule 2010 (Permits Required), Rule 2201 (New and Modified Stationary Source Review), Rule 2520 (Federally Mandated Operating Permits), and several other rules pertaining to District permitting requirements and processes.

B

The list of rules below is neither exhaustive nor exclusive. Current District rules can be found online at: [www.valleyair.org/rules/1ruleslist.htm](http://www.valleyair.org/rules/1ruleslist.htm). To identify other District rules or regulations that apply to future projects, or to obtain information about District permit requirements, the project proponents are strongly encouraged to contact the District's Small Business Assistance (SBA) Office at (661) 392-5665.

Samir Sheikh  
Executive Director/Air Pollution Control Officer

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

**Central Region (Main Office)**  
1990 E. Gettysburg Avenue  
Fresno, CA 93726-0244  
Tel: (559) 230-6000 FAX: (559) 230-6061

**Southern Region**  
34946 Flyover Court  
Bakersfield, CA 93308-9725  
Tel: (661) 392-5500 FAX: (661) 392-5585

[www.valleyair.org](http://www.valleyair.org)

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### 1a) District Rules 2010 and 2201 - Air Quality Permitting for Stationary Sources

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

This Project may be subject to District Rule 2010 (Permits Required) and Rule 2201 (New and Modified Stationary Source Review) and may require District permits. Prior to construction, the Project proponent should submit to the District an application for an ATC. For further information or assistance, the project proponent may contact the District's SBA Office at (661) 392-5665.

C

### 1b) District Rule 9510 - Indirect Source Review (ISR)

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

The purpose of District Rule 9510 is to reduce the growth in both NO<sub>x</sub> and PM emissions associated with development and transportation projects from mobile and area sources; specifically, the emissions associated with the construction and subsequent operation of development projects. The ISR Rule requires developers to mitigate their NO<sub>x</sub> and PM emissions by incorporating clean air design elements into their projects. Should the proposed development project clean air design elements be insufficient to meet the required emission reductions, developers must pay a fee that ultimately funds incentive projects to achieve off-site emissions reductions.

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

Information about how to comply with District Rule 9510 can be found online at: <http://www.valleyair.org/ISR/ISRHome.htm>.

D



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

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

**1c) District Rule 4002 (National Emissions Standards for Hazardous Air Pollutants)**

In the event an existing building will be renovated, partially demolished or removed, the Project may be subject to District Rule 4002. This rule requires a thorough inspection for asbestos to be conducted before any regulated facility is demolished or renovated. Information on how to comply with District Rule 4002 can be found online at:

<http://www.valleyair.org/busind/comply/asbestosbulthn.htm>.

**1d) District Rule 4601 (Architectural Coatings)**

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

<http://www.valleyair.org/rules/currnrules/r4601.pdf>

**1e) District Regulation VIII (Fugitive PM<sub>10</sub> Prohibitions)**

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

Should the project result in at least 1-acre in size, the project proponent shall provide written notification to the District at least 48 hours prior to the project proponents intent to commence any earthmoving activities pursuant to District Rule 8021 (Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities). Also, should the project result in the disturbance of 5-acres or more, or will include moving, depositing, or relocating more than 2,500 cubic yards per day of bulk materials, the project proponent shall submit to the District a Dust Control Plan pursuant to District Rule 8021 (Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities). For

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San Joaquin Valley Air Pollution Control District  
District Reference No: 20230751  
September 26, 2023

Page 4 of 4

additional information regarding the written notification or Dust Control Plan requirements, please contact District Compliance staff at (559) 230-5950.

The application for both the Construction Notification and Dust Control Plan can be found online at:

<https://www.valleyair.org/busind/comply/PM10/forms/DCP-Form.docx>

Information about District Regulation VIII can be found online at:

[http://www.valleyair.org/busind/comply/pm10/compliance\\_pm10.htm](http://www.valleyair.org/busind/comply/pm10/compliance_pm10.htm)

#### 1f) Other District Rules and Regulations

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

#### 2) District Comment Letter

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

If you have any questions or require further information, please contact Eric McLaughlin by e-mail at [eric.mclaughlin@valleyair.org](mailto:eric.mclaughlin@valleyair.org) or by phone at (559) 230-5808.

Sincerely,

Brian Clements  
Director of Permit Services



Mark Montelongo  
Program Manager

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H

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**Response to Comment Letter 3: San Joaquin Valley Air Pollution Control District (SJVAPCD)**

- A:** This comment includes a brief overview of the proposed project.
- B:** This comment states that the SJVAPCD has rules and regulations pertaining to air quality impacts. The comment also identifies where to find current SJVAPCD rules. Contact information at the SJVAPCD is also provided. This comment does not raise a substantive issue on the content of the Draft EIR analysis and does not directly apply to the CEQA process. Therefore, the comment has been noted for the record and no changes to the document have been made or are required.
- C:** This comment defines Stationary Source emissions as including any building, structure, facility, or installation which emits or may emit any affected pollutant directly or as a fugitive emission and lists two SJVAPCD rules that may be applicable to the project. The first is District Rule 2010 (Permits Required), which requires operators of emission sources to obtain an Authority to Construct (ATC) and Permit to Operate (PTO) from SJVAPCD. The second is District Rule 2201 (New and Modified Stationary Source Review) requires that new and modified stationary sources of emissions mitigate their emissions using Best Available Control Technology (BACT). The comment states that the Project Proponent should submit an application for an ATC/PTO to the District prior to construction, if stationary sources are necessary for the project. The Project Proponent has been made aware of the requirement and will comply with District Rules 2201 and 2010 if applicable.
- D:** This comment states that the project is subject to District Rule 9510 (Indirect Source Review) because it will receive a project-level discretionary approval from a public agency and will equal or exceed 9,000 square feet of development and, therefore, an Air Impact Assessment (AIA) application is required. The comment notes that an AIA application has not yet been submitted. The DEIR recognizes compliance with SJVAPCD regulations including Rule 9510. The DEIR notes that “The project would comply with SJVAPCD Rule 9510, Indirect Source Review, which requires large development projects to reduce exhaust emissions from construction equipment by 20 percent for NOX and 45 percent for PM10 compared to the statewide average,” and estimates the project’s emissions after ISR compliance. (See pages 4.3-29 to 4.3-30, 4.3-37 to 4.3-41). The DEIR also includes MM 4.3-3 which would ensure that prior to the issuance of building and grading permits, the project proponent shall provide the Kern County Planning and Natural Resources Department with proof that an Indirect Source Review application has been approved by the SJVAPCD. Mitigation Measure MM 4.3-3 is listed in Section 4.3, Air Quality on page 4.3-33. The Project Proponent has been made aware of the requirement and an AIA application is being prepared and will be submitted to the SJVAPCD for review and approval as soon as completed.
- E:** This comment states that in the event an existing building will be renovated, partially demolished or removed, the project may be subject to District Rule 4002 (National Emission Standards for Hazardous Air Pollutants), which requires a thorough inspection for asbestos before demolition or renovation. The DEIR describes the project site in Chapter 3, Project Description, as “largely undeveloped”. Currently, the project site is vacant and contains no development. There would be no demolition or removal of large debris. Since there are no demolition activities associated with the construction of the Project, Rule 4002 is not applicable. This comment does not raise a substantive issue on the content of the Draft EIR analysis and does not directly apply to the CEQA process. Therefore, no changes to the document have been made or are required.

- F:** This comment states that the project may be subject to District Rule 4601 (Architectural Coatings) since it may utilize architectural coatings and must comply with requirements of the rule. Rule 4601 limits the VOC content of all types of paints and coatings sold in the San Joaquin Valley. Since this rule applies at the point of sale of any coatings, project compliance is ensured. This comment does not raise a substantive issue on the content of the Draft EIR analysis and therefore no changes to the document have been made or are required.
- G:** This comment states that a Construction Notification Form and Dust Control Plan are required prior to commencing any earthmoving activities as described in Regulation VIII, specifically Rule 8021 – Construction, Demolition, Excavation, Extraction, and Other Earthmoving activities. The comment notes that for projects at least one acre in size, written notification to the District is required at least 48 hours prior to the project proponents intent to commence any earth moving activities pursuant to District Rule 8021; and for projects resulting in the disturbance of 5 acres or more, a Dust Control Plan must be submitted pursuant to Rule 8021. The DEIR recognizes compliance with SJVAPCD regulations and includes MM 4.3-2 which would ensure the implementation of a Dust Control Plan prepared in accordance with Rule VIII. Mitigation Measure MM 4.3-2 is listed in Section 4.3, Air Quality, on page 4.3-33 of the EIR. With the implementation of MM 4.3-2 potential impacts from fugitive PM10 emissions would be less than significant. This comment does not raise a substantive issue on the content of the Draft EIR analysis and therefore no changes to the document have been made or are required.
- H:** This comment states that the project may be subject to the following District rules: Rule 4102 (Nuisance) and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations). Rule 4102 pertains to air quality contaminants and their effect on the public. The project is located in a rural area with the closest sensitive receptor being approximately 3.8 miles west of the main project site and 1.2 miles from the Optical Groundwire (OPGW) Alignment. The potential impacts to sensitive receptors from air pollutant concentrations from project construction and operation are discussed in Section 4.3, Air Quality, on pages 4.3-38 through 4.3-54 of the DEIR. The DEIR recognizes the potential effects to the public and would implement Mitigation Measures MM 4.3- 1 through MM 4.3-9. These measures, as well as other available and feasible air quality control measures would be implemented to reduce emissions associated with construction and operation. With the inclusion of these measures, impacts to sensitive receptors would be less than significant. Therefore, the project would not discharge quantities of air contaminants which could cause injury, detriment, nuisance, or annoyance to the public. This does not otherwise raise a substantive issue on the content of the Draft EIR and no changes to the document have been made or required. Rule 4641 restricts the manufacturing and use of cutback asphalt, slow cure asphalt and emulsified asphalt and emulsified asphalt for paving and maintenance operations. The project would not include cut back, slow cure, or emulsified asphalt for paving and maintenance operations. Therefore, the project would not be subject to SJVAPCD Rule 4641 and no changes to the document have been made or are required in this regard.
- I:** The SJVAPCD recommends that their comment letter be provided to the project proponent. The project proponent has been provided the comment letter. This comment does not raise a substantive issue on the content of the Draft EIR analysis and does not directly apply to the CEQA process. Therefore, no changes to the document have been made or are required.

**Comment Letter 4: Kern County Fire Department (KCFD)**

**Office of the Fire Marshal  
Kern County Fire Department  
Fire Prevention Unit**

2820 M St. • Bakersfield, CA 93301 • [www.kerncountyfire.org](http://www.kerncountyfire.org)  
Telephone 661-391-3310 • FAX 661-636-0466/67 • TTY Relay 800-735-2929



September 12, 2023

Kern County Planning and Natural Resources Department  
2800 M St., Bakersfield, CA 93301  
Attn.: Terrance Smalls, Supervising Planner

**Re: Kern County Fire Department Comments Regarding Planning Department Project**

To Whom It May Concern,

The Kern County Fire Department (KCFD), as the local fire authority, has received a request for comments regarding [Draft Environmental Impact Report-Pelicans Jaw Hybrid Solar Project, by Pelicans Jaw Solar](#). Upon initial review, it has been determined that all ground mounted solar array projects over 1MW will require Fire Department plan review prior to construction and meet requirements set forth in KCFD Solar Panel Standard. Solar array projects over 20MW will require special fee calculation from KCFD prior to permit issuance.

All Battery Energy Storage Systems must be applied for directly with KCFD for separate permitting and pre-construction approval. All proposed batteries must be UL9540A 2019 4<sup>th</sup> Edition tested for large scale burns to determine adequate design and mitigation measures. Additionally, the 24,000 gallon fire water tank and fire alarm annunciator panel (Incident Command Post) must be located a minimum of 300' upwind from the nearest battery enclosure. Site emergency response access for the storage yards is preferred to be placed upwind of battery enclosures based on the prevailing winds in the area of construction.

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

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

Respectfully,  
Regina Arriaga  
Fire Plans Examiner  
Kern County Fire Department

Proudly Serving the Cities of Arvin, Bakersfield, Delano, Maricopa, McFarland, Ridgecrest, Shafter, Taft, Tehachapi, Wasco, and all Unincorporated Areas of Kern County

## Response to Comment Letter 4: Kern County Fire Department

- A:** The commenter describes the Kern County Fire Department's (KCFD) local regulatory authority to enforce state and local codes related to fire protection and health and safety. The commenter states that the project will be required to meet standards set forth by the KCFD and to submit plans and obtain a permit from the KCFD for installation of a battery energy storage system. Additionally, the commenter indicates that the project would be subject to payment of applicable fees prior to permit issuance. This comment does not raise a substantive issue on the content of the Draft EIR. The comments provided have been noted for the record, and no revisions to the Draft EIR are necessary.
- B:** The County acknowledges the comments provided; such requirements as stated will be made Conditions of Approval for the project. The Draft EIR contemplates that the project would include one or more water storage tanks for KCFD use. For the sake of clarity, the Draft EIR has been revised to reflect KCFD's request that the project include two water tanks for its use:

### Section 3.9.2, Operational Water Usage, Page 3-35

On-site wells constructed within the main project site for the purposes of providing construction water may be used for construction and operations. Temporary construction wells, if any, would be decommissioned upon the completion of construction unless required for the O&M facility, and capped per applicable regulations. During operations of the main project site, water required for annual panel washing may be drawn from the on-site construction wells. Permanent, above-ground water storage tanks may be used for O&M tasks and facilities. In accordance with Kern County Fire Department Standard No. 503-507, one 10,000-gallon water tank with a 4-inch National Standard Male (NSM) connection will be provided for fire department use for the main project site. In addition, a water tank may be provided for fire department use a minimum of 300 feet upwind from the nearest BESS enclosure. The location of the water tanks will be accessible to emergency vehicles. The capacity and location of the water tanks will be approved by the Kern County Fire Department.

Because this modification adds specificity to the Draft EIR's identification of the potential for more than one water tank, it does not reflect a new or substantially increased significant impact or otherwise trigger recirculation under CEQA Guidelines Section 15088.5.

- C:** The commenter states that the KCFD will provide more detailed review comments at the time of KCFD plan review and building permit issuance. This comment does not raise a substantive issue on the content of the Draft EIR. The comments provided have been noted for the record, revisions to the Draft EIR are not necessary.

**Comment Letter 5: Kern County Public Works Department**

# Office Memorandum

KERN COUNTY

To: Planning and Natural Resources  
Department  
Terrance Smalls

Date: August 23, 2023

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

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

**Subject: Draft Environmental Impact Report  
Pelicans Jaw Hybrid Solar Project**

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

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

The subject property is subject to flooding.

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Therefore, this section recommends the following be included as conditions of approval for this project:

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

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

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**Response to Comment Letter 5: Kern County Public Works Department**

- A:** The commenter notes that the project site is subject to flooding and that stormwater runoff from the site would increase due to the increase in impervious surfaces generated by the project. The Draft EIR acknowledges that project implementation would increase the amount of impervious surfaces on-site, which may result in a potential increase in stormwater runoff. However, the majority of the project site would remain pervious and would therefore continue to absorb precipitation. Such characteristics were evaluated in the Draft EIR pursuant to CEQA, as applicable; refer to Section 4.10, *Hydrology and Water Quality*, of the Draft EIR. The comments provided have been noted for the record, and no revisions to the Draft EIR are required.
- B:** The commenter requests that the project proponent submit a plan for the disposal of drainage waters originating on-site and from adjacent road rights-of-way, as well as incorporate flood hazard requirements into the project design per County standards, and that such actions be made Conditions of Approval for the project.

As analyzed in the Draft EIR, the site engineering and design plans for the project would conform to requirements of the Kern County Code of Building Regulations, the Kern County Development Standards, and the Floodplain Management Ordinance. Furthermore, site drainage plans would be required to comply with Division Four of the Kern County Development Standards, which provide guidelines including site development standards and mitigation, flood control requirements, erosion control, and on-site drainage flow requirements. Project conformance with such existing regulations pertaining to erosion and site drainage would neither alter the course of a stream or river nor result in substantial erosion on-site or off-site. As described in Section 4.10 of the Draft EIR, implementation of mitigation measures MM 4.10-1 which would require preparation and implementation of a stormwater pollution prevention plan, and MM 4.10-2, which would require preparation and implementation of a final hydrologic study and drainage plan, would reduce project impacts in this regard to less than significant and would be incorporated as Conditions of Approval for the project. The comments provided have been noted for the record, and revisions to the Draft EIR are not necessary.



**Comment Letter 6: Kern County Superintendent of Schools**

September 14, 2023

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

**Our File No.:** CO23-0086

**RE: DEVELOPER FEES FOR:** Draft EIR Pelicans Jaw Hybrid Solar Project, Map No. 5-4-9, 15-17, 21-23 & 27  
(Generally bordered by Twissleman Rd to the South, Lost Hills Rd to the east and the Kern/Kings County line to the North.)

Dear Mr. Smalls,

This office represents the Lost Hills Union Elementary and Wasco Union High School Districts with regard to the imposition of school facility fees, and appreciates the opportunity to respond on behalf of the districts regarding the proposed project. This letter is limited to addressing the possible effects which the project might have on school facilities created by students attributable to the project. It is not intended to address other possible environmental concerns which might be identified by the district(s) after reviewing it.

A

It is our determination that the above-mentioned project regarding the Pelicans Jaw Hybrid Solar Project to include a Conditional Use Permit to allow for the construction and operation of an approximate 500MW solar facility and a General Plan Amendment to Circulation Element of the Kern County General Plan to eliminate future road reservations along section and midsection line to allow for efficient placement of solar panels will not have significant effects on either of these district's facilities and mitigation of this project's impacts on public school facilities will be limited to the collection of statutory fees authorized under Education Code Section 17620 and Government Code Sections 65995 et seq. (all as amended with an operative date of November 4, 1998) at the time that building permits are issued.

B

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

Sincerely,

Andrea Watson, Specialist  
School District Facility Services

Cc: Districts

**RECEIVED**

SEP 18 2023

Kern County Planning &  
Natural Resources Dept.

**Response Comment Letter 6: Kern County Superintendent of Schools**

- A:** The commenter expresses appreciation for the opportunity to respond on behalf of the district regarding the proposed project. This comment clarifies that the letter's contents are intended to address possible effects which the project may have on school facilities, and not to comment on any other environmental concerns.
- B:** The commenter provides a brief overview of the entitlements being requested by the project and concludes that no significant effect on the district's facilities would occur with project implementation, given the appropriate fees and regulations are complied with. As discussed in Section 4.14, *Public Services*, of the Draft EIR, an average of 400 daily construction workers and a peak workforce of 800 workers could be required for development of the proposed project. It is expected most of these workers would live in the region and would commute to the project site from where their children are already enrolled in school. Even if workers came from out of the area, they would likely return to their out-of-town residences once the facilities were built and would not take their children out of their current schooling situation. Therefore, temporary increases in population are not expected to adversely affect local school populations. Additionally, operation of the project would require up to five full time employees to perform maintenance activities. Employees would likely commute to the project from their existing permanent residences, however, even if the maintenance employees were hired from out of the area and had to relocate to eastern Kern County, the resulting addition of potential families to this area would not result in a substantial increase in the number of users at local schools. Therefore, impacts would be less than significant. All fees applicable to implementation of the project will be collected when the project proponent/operator applies for required building permits. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

**Comment Letter 7: Southern California Gas (SoCalGas)**

Transmission Technical  
Services Department

9400 Oakdale Ave  
Chatsworth, CA 91311  
SC9314

*September 8, 2023*

Terrance Smalls  
Kern County Planning and Natural Resources Department  
smallst@kerncounty.com

**Subject: PELICANS JAW  
HYBRID SOLAR PROJECT BY PELICAN'S JAW SOLAR, LLC (PP21124)**

**DCF: 1965-23NC**

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

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

[NorthwestDistributionUtilityRequest@semprautilities.com](mailto:NorthwestDistributionUtilityRequest@semprautilities.com)

A

Best Regards,  
Nerses Papazyan  
SoCalGas Transmission Technical Services  
[SoCalGasTransmissionUtilityRequest@semprautilities.com](mailto:SoCalGasTransmissionUtilityRequest@semprautilities.com)

**Response Comment Letter 7: Southern California Gas (SoCalGas)**

- A:** The comment states that the Transmission Department of SoCalGas does not operate and facilities with the Project site. The comment states that the Distribution Department of SoCalGas may have facilities and recommends contacting SoCalGas to avoid potential conflicts with the project. This comment does not raise a substantive issue on the content of the Draft EIR analysis and does not directly apply to the CEQA process. Therefore, the comment has been noted for the record and no changes to the document have been made or are required.

## Interested Parties

### Comment Letter 8: California Native Plant Society, Center for Biological Diversity, Defenders of Wildlife



October 2, 2023

Terrance Smalls, Supervising Planner  
Kern County Planning and Natural Resources Department  
2700 M Street, Suite 100  
Bakersfield, CA 93301  
Delivered via email to: [smallst@kerncounty.com](mailto:smallst@kerncounty.com)

RE: Draft Environmental Impact Report – Pelicans Jaw Hybrid Solar Project  
(SCH 2022110558)

Dear Mr. Smalls,

Thank you for the opportunity to provide comments in response to the Draft Environmental Impact Report (DEIR) for the proposed Pelicans Jaw Hybrid Solar Project (Project). These comments are submitted on behalf of California Native Plant Society (CNPS), Center for Biological Diversity (Center) and Defenders of Wildlife (Defenders).

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

B

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

**The Center** has 1.7 million members and supporters worldwide, including in Kern County. The Center’s mission is Saving Life On Earth because we believe that the welfare of human beings is deeply linked to nature — to the existence in our world of a vast diversity of wild animals and plants. Because diversity has intrinsic value, and because its loss impoverishes society, so we work to secure a future for all species, great and small, hovering on the brink of extinction. We do so through science, law and creative media, with a focus on protecting the lands, waters and climate that species need to survive. We want those who come after us to inherit a world where the wild is still alive.

B

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

**Project Description:**

The proposed 3,371-acre photovoltaic solar facility would generate 500 MW of renewable energy and up to 500 MW of energy storage. It would include an approximately 13.3 mile-long 230-kilovolt gen-tie electrical transmission line connecting at the PG&E Arco Substation. The proposed Project is on private land within the San Joaquin Valley in unincorporated Kern County. It is located adjacent to the southern border of Kings County, approximately two miles east of Interstate 5 and four miles west of the Kern National Wildlife Refuge.

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**Comments:**

The proposed Project site contains sensitive, high-value biological resources and provides important habitat to numerous special-status species, including but not limited to the following:<sup>1</sup>

Table 1: Special-Status Species’ Habitat Within the Project Site

Common Name	Scientific Name	Status
American badger	<i>Taxidea taxus</i>	State Species of Special Concern
Blunt-nosed leopard lizard	<i>Gambelia sila</i>	Federal and State Endangered CDFW Fully Protected Species
Burrowing owl	<i>Athene cunicularia</i>	State Species of Special Concern
Coulter’s goldfields	<i>Lasthenia glabrata ssp. Coulteri</i>	California Rare Plant Rank 1B.1
Kern mallow	<i>Eremalche parryi ssp. Kernensis</i>	Federal Endangered
Loggerhead shrike	<i>Lanius ludovicianus</i>	State Species of Special Concern
Nelson’s antelope squirrel	<i>Ammospermophilus nelsoni</i>	State Threatened

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<sup>1</sup> California Natural Diversity Database (CNDDB). Accessed 9/11/2023.



San Joaquin kit fox	<i>Vulpes macrotis mutica</i>	Federal Endangered and State Threatened
San Joaquin woollythread	<i>Monolopia congdonii</i>	Federal Endangered
Swainson's hawk	<i>Buteo swainsoni</i>	State Threatened

D

It is also likely the site may provide habitat connectivity for the San Joaquin kit fox (SJKF) to the Kern National Wildlife Refuge, given the close proximity.<sup>2</sup> The SJKF is an umbrella species that is experiencing a significant decline in population throughout its range. The proposed Project will likely promote further decreases in the satellite SJKF population located in the area by impacting and fragmenting the habitat currently being utilized.

E

We have concerns with the Project as proposed, given the number of special-status species located on and near the project site. We urge Kern County to consider and incorporate the following comments to reduce the impact of the Project on special-status species:

### 1. Protocol-Level Surveys

#### a. Concurrent Surveys

The DEIR states that surveys for several special-status species performed throughout the past three years were conducted concurrently. In 2021, the SJKF surveys with den resource data were collected concurrently with blunt-nosed leopard lizard (BNLL) adult and hatching season sample surveys. Furthermore, the DEIR states that American badger (AMBA) and burrowing owl (BUOW) were conducted concurrently with BNLL surveys in 2021. The 2022 AMBA, BUOW and SJKF surveys were also performed concurrently for the species with the same personnel. During the 2023 SJKF surveys, which were conducted on an 80-acre parcel, surveyors opportunistically surveyed for other species, including BUOW. The DEIR continues to state that transect surveys for Crotch's bumble bee (CBB) were conducted concurrently with terrestrial species surveys for all three survey years.

F

Species-specific protocol-level surveys should not be conducted concurrently as it increases the likelihood of producing inadequate survey analysis. We request conducting individual species-specific surveys that adhere to recommendations from the appropriate wildlife agency. Surveys should only be conducted by qualified biologists with expertise on the specific species.

#### b. BNLL Surveys

MM 4.4-7 and MM 4.4-8 state that protocol-level surveys that adhere to California Department of Fish and Wildlife (CDFW) survey methodologies will be conducted within one year prior to the initiation of ground-disturbing activities. While we are

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<sup>2</sup> See <https://databasin.org/maps/new/#datasets=db0d750efaf54842b7069f8cd41264ad>

pleased that new protocol-level surveys will be conducted that adhere to CDFW methods, the measure allows for the surveys to be conducted piecemeal as work progresses or in stages, as needed, during the construction phase. BNLL is a California Fully Protected Species which means the CDFW may issue a permit for take provided take is avoided to the maximum extent possible through the development of a Natural Community Conservation Plan. Completing these surveys as construction work occurs in phases is insufficient as it will be difficult to ensure take is being avoided to the fullest extent possible and that adequate buffers that are reflective of BNLL home ranges are applied. Male BNLL has a home range of up to 52 acres, and females may have a home range that may exceed 98 acres. On the nearby Azalea Solar Project, CDFW recommended a minimum of a 395-acre buffer around any BNLL detections based on the known maximum home range sizes observed for the species.<sup>3</sup> Conducting the surveys as work progresses will make it difficult, if not impossible, to adhere to appropriate buffers if BNLL is found in a survey section and construction has already occurred within the 395-acre buffer from the observation.

Furthermore, performing surveys during construction, which would be conducted after the finalization of the EIR, limits informed decision making and undermines understanding of potential impacts of this project and consideration of meaningful avoidance, minimization or mitigation measures based on the survey results. It is appropriate to conduct surveys as needed during the construction phase only if complete protocol-level surveys that adhere to CDFW methods were also conducted before the start of ground-breaking activities when the public is able to engage on the Project. We request protocol-level surveys be conducted and the DEIR be revised and recirculated with the BNLL survey results and associated mitigation measures, including the establishment of buffers, to allow for public review before the Project is finalized.

**c. Crotch's Bumble Bee**

CBB is a candidate species for listing under the California Endangered Species Act and, as such, must be accorded protection as if they were listed. Although the species is considered to have a low potential to occur on the Project site, as stated within the DEIR, the surveys should follow the protocol established by CDFW to ensure accurate survey results. We request CBB surveys be conducted in accordance with CDFW methods as outlined in *Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species*.<sup>4</sup>

<sup>3</sup> California Department of Fish and Wildlife. 2021. *Azalea Solar Project by SF Azalea, LLC (Project) Draft Environmental Impact Report (DEIR) State Clearinghouse No. 2021090602*.

<sup>4</sup> California Department of Fish and Wildlife. 2023. *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species*.



**d. Special Status Plant Surveys**

The botanical surveys for this project failed to meet many of the guidelines set forth in CDFW *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities*.<sup>5</sup> The Biological Resources Report states CDFW explicitly reminded the consultants that the use of reference populations is required for special status plant surveys during the April 28, 2021, meeting with CDFW and the U.S. Fish and Wildlife Service (USFWS); however, the surveys only included reference populations for Kern mallow (*Eremalche parryi* ssp. *kernensis*) and San Joaquin woollythreads (*Monolopia congdonii*). Reference sites should have been used for all special status species with the potential to occur. This is especially important to verify the presence of species with known historical occurrences on the project site, such as alkali sink goldfields (*Lasthenia chrysantha*) and Coulter's goldfields (*Lasthenia glabrata* ssp. *coulteri*), which are both annual species that may not germinate in years of low rainfall and would have required the use of a reference site to determine whether there was sufficient rainfall to be detectable in the year of the survey. The CDFW protocols state that:

"The timing and number of visits necessary to determine if special status plants are present is determined by geographic location, the natural communities present, and the weather patterns of the year(s) in which botanical field surveys are conducted."

"Adverse conditions from yearly weather patterns may prevent botanical field surveyors from determining the presence of, or accurately identifying, some special status plants in the project area. Disease, drought, predation, fire, herbivory, or other disturbance may also preclude the presence or identification of special status plants in any given year. Discuss all adverse conditions in the botanical survey report."

"The failure to locate a known special status plant occurrence during one field season does not constitute evidence that the plant occurrence no longer exists at a location, particularly if adverse conditions are present. For example, botanical field surveys over a number of years may be necessary if the special status plant is an annual or shortlived plant having a persistent, long-lived seed bank and populations of the plant are known to not germinate every year. Visiting the project area in more than one year increases the likelihood of detecting special status plants, particularly if conditions change. To further substantiate negative findings for a known occurrence, a visit to a nearby

<sup>5</sup> California Department of Fish and Wildlife. 2018. *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities*.

reference site may help ensure that the timing of botanical field surveys was appropriate.”<sup>6</sup>

Given the low rainfall in the winter of 2021-2022 and the lack of reference sites for most species, there is a probability that many species may not have been detectable during this year, and subsequent surveys in 2023 should have been conducted following the above-average precipitation. Additionally, the site conditions and the implications these conditions may have had on survey results were not discussed in the botanical survey report as directed in CDFW Protocols. The DEIR should have also included analysis for California Rare Plant Rank 3 and 4 taxa, “Plants that may warrant consideration on the basis of declining trends, recent taxonomic information, or other factors. This includes plants tracked by the CNDDDB as CRPR 3 or 4.” The project site may have populations of *Phacelia ciliata* var. *opaca*, CRPR 3.2, as *Phacelia ciliata* was identified during surveys but not identified to variety.

## 2. Incidental Take Permits

The DEIR states that if any BNLL are found to occur on-site during the protocol-level surveys that will be completed within one calendar year of the start of ground-disturbing activities, the proponent will seek an incidental take permit (ITP); however, the DEIR fails to mention obtaining an ITP for SJKF and Swainson’s hawk (SWHA) in a timely manner.

SJKF and/or SJKF sign, including potential dens, were observed during the 2021, 2022 and 2023 surveys and are known to occur on the Project site. MM 4.4-10 (b) and MM 4.4-14 both state the proponent shall confer with CDFW for the need of an ITP for SJKF if it is deemed that take cannot be avoided as a part of the preconstruction surveys that occur no less than 14 days and no more than 30 days prior to the start of ground-disturbing activities. Waiting until 14-30 days prior to the start of construction to begin conversations with CDFW on the need for an ITP is inadvisable, given the timeline to obtain a permit may cause delays in project deadlines. As the species is already known to occur, it would be advantageous to begin conversations with CDFW now to obtain an ITP.

During the 2022 SWHA surveys, two potential nests and eight SWHA individuals were observed within the survey area. Despite the species occurring on the Project site, the requirements to obtain an ITP for SWHA is absent altogether from the mitigation measures. The DEIR mentions that if SWHA nests are observed during the preconstruction surveys within 0.5 miles from the Project site, the proponent will need to confer with CDFW to prepare a SWHA nesting construction plan. However, the purpose of this plan is to identify the level of monitoring required, the types of construction activities and the establishment of avoidance setbacks. There is no mention of obtaining an ITP as a potential element of the plan. And, once again deferring engagement with CDFW for an ITP until just before construction is likely to result in project delays.

<sup>6</sup> Ibid.

Since both SJKF and SWHA are known to occur on the Project site, there is a high likelihood of impact to the species, and it is reasonable to assume incidental take may occur. We recommend consultation with CDFW for acquiring an ITP under California Fish and Game Code Section 2081(b) for SJKF and SWHA before the preconstruction surveys.

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### 3. Abandoned SWHA Nest

CDFW considers a SWHA nest active if it was used at least once within the last five years.<sup>7</sup> The 2022 SWHA-focused surveys observed two SWHA nests on the Project site and the surrounding area. One SWHA was observed sitting on the nest identified as Nest #2 during the May 5, 2022, survey. Despite the fact that one SWHA was observed foraging near Nest #2 and one was observed sitting on the nest, the nest itself was determined to be no longer active. The DEIR states this categorization is due to the May 25 and June 3, 2022, surveys in which no SWHA were observed near the nest and the nest appeared slightly askew and empty. However, given that SWHA may return to the same nest site year after year, it is premature and inconsistent with CDFW's protocol to categorize Nest #2 as inactive within the same year that a SWHA was observed within the nest. This nest must be considered active and CDFW consulted for the appropriate avoidance measures, including establishing a no-work buffer.

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### 4. Transmission Lines

The DEIR states the Project would be supported by a 13.3-mile-long 230-kV gen-tie line overhead and/or underground electrical transmission lines that would originate on-site. Additionally, telecommunication lines would be installed that would be located on the same structures used to support the gen-tie line and/or buried in the maintenance road. SJKF and BUOW are den-dwelling special-status species that are known to occur on the proposed site. An underground transmission line and a buried telecommunication line are highly likely to destroy any dens within the right-of-way and pose a significant and unavoidable impact on the special status species. We recommend a mitigation measure to require overhead transmission and communication lines.

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### 5. Deficient Mitigation Measures Require Revisions

#### a. Revise MM 4.4-3 j.

USFWS recommends that night-time construction be minimized to the extent possible.<sup>8</sup> SJKF are most active at night and, therefore, more vulnerable to construction and traffic-related incidents. To reduce the impact and significantly

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<sup>7</sup> California Energy Commission and Department of Fish and Game. 2010. *Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley for Los Angeles and Kern Counties. California.*

<sup>8</sup> U.S. Fish and Wildlife Service. 2011. *Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior To or During Ground Disturbance.* Sacramento, CA.

decrease potential mortality of SJKF population, night-time construction should only occur when necessary.

“A speed limit of 15 miles per hour shall be enforced within the limits of the project site. To the extent possible, night-time construction-related activity shall be minimized, but if work must be conducted at night ~~if night work occurs on the project site~~, the speed limit will be 10 miles per hour.”

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**b. Revise MM 4.4-6**

Mitigation measure 4.4-6 requires that preconstruction rare plant surveys occur no more than 30 days before the start of ground disturbance activities; however, there is no language in this mitigation measure that would require special status plant species be identifiable during these surveys. Appropriately timed surveys to ensure identification of special status species is especially important as the amount of land that would need to be mitigated for impacts to the Kern mallow (*Eremalche parryi* ssp. *kernensis*) and Lost Hills crownscale (*Atriplex coronata* var. *vallicola*) is based on the results of the preconstruction surveys. Given that the Kern mallow is identifiable in March through May and the Lost Hills crownscale is not identifiable until August, it would be implausible to conduct surveys that would account for both species within the 30-day window required by this measure.

This mitigation measure should be amended to require that two comprehensive preconstruction surveys following CDFW protocols occur prior to ground disturbance, one in March or April and another in August, as determined by reference sites, allowing for a delay in ground disturbance beyond 30 days from the time of the most recent survey as guided by CDFW consultation until special status species have set viable seed. Any *Atriplex* sp. that is not identifiable during either survey should be assumed to be *Atriplex coronata* var. *vallicola*.

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~~“No more than thirty (30) days prior to the start of ground disturbance activities or issuance of any grading or building permits, decommissioning of the project site, a~~  
A qualified biologist knowledgeable on the identification of rare plant species shall conduct a pre-construction plant survey of areas of proposed disturbance within the project site and 100-foot buffer (where legally accessible) to determine if any special-status plant species are present. The comprehensive preconstruction surveys must adhere to CDFW protocols and occur in August of the year prior to ground disturbance and subsequent preconstruction surveys shall be conducted within 30 days of ground disturbance, with an allowance for an extension as guided by consultation with CDFW if more time is needed for special status plant species to set viable seed. Any *Atriplex* sp. that is not identifiable during either survey should be assumed to be *Atriplex coronata* var. *vallicola*. If special-status plants are identified on-site, their locations shall be mapped and the project proponent shall

confer with CDFW or USFWS as required by applicable law to facilitate salvage or seed collection.”

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**c. Revise MM 4.4-10 a.**

Kern County has been advised that CDFW does not recognize the method of passively relocating BUOW from active burrows during the breeding season as appropriate and recommends burrow exclusion occurs during non-breeding season only.<sup>9</sup> We recommend adhering to the CDFW recommendation prohibiting burrow exclusion during the breeding season.

“If required buffers are infeasible, then the project proponent shall prepare a Burrowing Owl and American Badger Exclusion Plan. Any burrow and/or den exclusion would be conducted by a qualified biologist with burrowing owl burrows replaced at a 1:1 ratio. No burrowing owl burrow exclusion is permitted during the breeding season (February 1 - August 31) ~~unless a qualified biologist verifies through noninvasive methods that (1) the birds have not begun egg laying and incubation, (2) a previously active nest has failed and re-nesting is highly unlikely, or (3) all juveniles from the occupied burrow are foraging independently and capable of independent survival.~~”

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**d. Revise MM 4.4-15**

Coyotes are a known predator of and a significant threat to SJKF. The proposed Project site fencing must be permeable to SJKF while being impermeable to passage by larger predators, including coyotes. Fence openings measuring six inches or less are considered impassable to coyotes.<sup>10</sup> Furthermore, limiting fence opening to specific portals, as opposed to an opening that encompasses the entirety of the site, limits the ability for continuous SJKF permeability. Therefore, we request the entire perimeter fence be raised to six inches above ground level to allow free passage of SJKF throughout the entirety of the site. Providing a buried apron extending up to 3 feet underground from the fence will reduce predation from coyotes further by preventing them from digging under fences and gaining site access.<sup>11</sup> Furthermore, the fence must not be electrified as it is not permeable and does not facilitate movement throughout the Project site.

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“All fencing installed on the perimeter of the solar project site will be designed to allow for passage of San Joaquin Kit Fox (SJKF) their prey and other wildlife, while impeding the passage of larger predators such as coyotes and similar species.”

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<sup>9</sup> California Department of Fish and Wildlife. 2022. *Azalea Solar Project by SF Azalea, LLC (Project) Draft Environmental Impact Report (DEIR) State Clearinghouse No. 2021090602.*

<sup>10</sup> Cypher, B. L., & Van Horn Job, C. L. 2009. *Permeable Fence and Wall Designs that Facilitate Passage by Endangered San Joaquin Kit Foxes.* Stanislaus, CA.

<sup>11</sup> Ibid.

~~Perimeter fencing shall consist of wire fencing, with openings from three (3) to seven (7) inches square and will be installed inverted, with the larger openings at the bottom to allow SJKF to pass through.~~ Chain link fencing ~~may also be used if it is shall be~~ installed with a four (4) to six (6) inch gap from the bottom of the fencing material and shall be knuckled back to form a smooth edge. A buried apron fencing material shall extend up to two (2) feet underground from the fence around the entirety of the site. Perimeter fencing shall not be electrified. Alternate designs may also be constructed with documentation of coordination with California Department of Fish and Wildlife (CDFW) and United States Fish and Wildlife Service (USFWS) and demonstration that comments provided by the Agencies have been considered and addressed.”

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## 6. Alternatives Analysis

### a. Alternative Site

CEQA requires a description of a reasonable range of alternatives to a proposed project that could feasibly attain most of the basic project objectives and would avoid or lessen any of the proposed project’s significant impacts. § 15126.6 states, “An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives”.<sup>12</sup> Furthermore, § 21002 prohibits agencies from approving projects if feasible alternatives would substantially lessen the significant impacts.<sup>13</sup>

Alternative sites exist that meet the proposed Project’s objectives and would reduce significant impacts, yet the DEIR failed to examine any alternative location. The DEIR states that an alternative site is undetermined at this time but that it would likely be located in the northwestern portion of Kern County, and that the alternative site would likely have similar project impacts after mitigation is applied. It is premature and presumptive to state that an alternative site would have similar impacts when no site has been identified or examined. We recommend an alternative site location on previously disturbed lands be thoroughly analyzed within the revised and recirculated EIR.

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### b. No Project or No Ground-Mounted Utility- Solar Development Alternative

The environmentally superior alternative would provide much-needed clean energy without causing the biological resources impacts of large-scale ground-disturbing activities. Taking advantage of the countless acres of existing rooftops including warehouse, distribution centers and parking lots to expand solar energy production needs to be prioritized for renewable energy development. While the logistics of

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<sup>12</sup> Cal. Code Regs. Tit. 14 § 15126.6.

<sup>13</sup> CA Pub Res Code § 21002.

covering and connecting our existing rooftop infrastructure is more complicated and may be less desirable to large developers, it would be much less controversial and impactful to the environment than developing large tracts of relatively intact land. The reduced acreage alternative could significantly reduce impacts to botanical resources if the populations of Kern mallow were avoided; however, this alternative would still require mitigation for a large number of acres for the Lost Hills crownscale. Given the uncertainty that mitigation would be successful in the long term, we would strongly suggest that development of this habitat be avoided by selecting the No Project or No Ground-Mounted Utility-Solar Development Alternative.

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## 7. Cumulative Impacts

The ever-increasing large-scale renewable energy footprint within the Central Valley is significantly impacting biological and natural resources in the region that has already been largely converted to agriculture. This proposed Project is not an exception and would significantly contribute to the cumulative loss of the region's important and declining biological resources, including but not limited to BUOW, SJKE and SWHA habitat. The cumulative impact of renewable projects on special-status species within the region is already evident with the loss of connectivity and habitat. As the number of projects increases, so does the loss, degradation and fragmentation of crucial habitat for a suite of highly imperiled San Joaquin Valley-associated species. This proposed Project, the surrounding solar projects, and other regional developments such as housing, commercial development, and fossil fuel extraction significantly contribute to the already considerable adverse cumulative impacts on biological resources.

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The DEIR's cumulative analysis on biological resources fails to adequately analyze project impacts on individual species and habitat loss. Furthermore, the analysis fails to include the cumulative impacts to wildlife connectivity, specifically wildlife movement to/from the Kern National Wildlife Refuge. We request the cumulative impact analysis include impacts on the special-status species level, including habitat and connectivity. We request the analysis include a detailed map of existing and planned solar energy, housing, commercial, and energy development with the remaining habitat and connectivity for SJKE. We recommend coordination with CDFW regarding the methods of analyzing the cumulative impacts.

## 8. Compensatory Mitigation

### a. Special Status Plants

Mitigation measures 4.4-4 and 4.4-5 determine the amount of land that would need to be mitigated based on the results of the preconstruction surveys outlined in MM 4.4-6. Given the variability of populations from year to year, the fact that it is not plausible to survey for both Kern mallow and Lost Hills crownscale at the same time of year and that there is no language requiring that special status plants be identifiable during preconstruction surveys, mitigation measures 4.4-4 and 4.4-5

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should be amended to use the acreage from the March, April, and August 2022 surveys as a minimum acreage for mitigation needs, and providing for additional acreage as required based on preconstruction surveys.

The creation of new populations, be it from seed or transplants, is a very complicated and labor-intensive process that requires years of monitoring and maintenance to establish. While mitigation measures BIO-2 in the Biological Resources Report (BRR) outlines criteria to determine if mitigation is successful the mitigation measures 4.4-4 through 4.4-6 in the DEIR regarding mitigation and preconstruction surveys for special-status plant species do not include any monitoring or maintenance requirements nor do they include any criteria for determining if mitigation can be deemed successful. The criteria suggested in BIO-2 of the BRR suggest that mitigation would be successful if the area occupied by special status plant species on compensatory mitigation lands is equal to the area required by mitigation for at least one year during the five-year term of mitigation. In this situation, mitigation could be successful the first year after seeding or transplanting but not return and subsequent years of the mitigation term and still be deemed successful. Mitigation measures 4.4-4 and 4.4-5 should be amended to require that mitigation efforts do not adversely impact existing habitat and that monitoring shows persistence of populations over time by including the following guidelines:

- Species-specific restoration plans should be developed for all special status plants with the potential to be impacted, including detailed criteria for determining the success of compensatory mitigation.
- Areas identified as potential recipient sites must be surveyed following CDFW protocols to ensure that compensatory mitigation efforts would not cause harmful impacts to existing botanical resources. Low-conflict areas that have been degraded by previous land uses should be prioritized for restoration, leaving intact natural habitat undisturbed by restoration efforts.
- While on-site mitigation is preferred, if contiguous acreage to achieve mitigation needs is not present on the project site restoration activities may be implemented offsite.
- Maintenance and monitoring of compensatory mitigation sites should occur each year for the first five years of the mitigation term. Thereafter, yearly monitoring of the site should demonstrate a self-sustaining area of occupation and population numbers with no management actions for years 6-8.
- If monitoring shows stable populations after three years with no maintenance the populations should be monitored every two years in perpetuity.
- If the populations are not demonstrating stability after the initial five-year maintenance and monitoring period, after three years without maintenance,

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or if subsequent monitoring shows loss or decline of populations, as determined by the required compensatory mitigation ratio, then yearly maintenance and monitoring shall be resumed for a renewed five year period, again requiring that yearly monitoring show self-sustaining populations for three years post-maintenance before returning to a two-year monitoring cycle.

The USFWS requested “mitigation to the maximum extent practical,” in this light, we would recommend MM 4.4-4 and 4.4-5 be amended to include mitigation rates of 2:1 for directly impacted habitat and 1:1 for indirectly impacted habitat for both Kern mallow and Lost Hills crownscale. These mitigation measures should also include a description of methods for salvage or transplantation as well as an overview of the monitoring and maintenance that would be needed to allow the public and experts to provide input to increase the chance of successful mitigation efforts.

**b. Special-Status Wildlife**

The proposed Project would result in the permanent conversion of 3,371 acres that provides habitat for several special-status species, including BUOW, SJKF and SWHA. Despite the Project resulting in the permanent conversion of BUOW habitat, only artificial replacement burrows are mitigated at a 1:1 ratio, and compensatory habitat management (HM) lands are not provided. Given that BUOW was observed on camera and seven potential active burrows were documented on the Project site, it is evident that occupied habitat will be impacted. We recommend consultation with CDFW to establish the appropriate ratio for BUOW HM lands.

While compensatory mitigation is included for SJKF, the current 0.5:1 ratio is inadequate to compensate for the loss of SJKF habitat. The proposed Project will contribute to further decreases in the SJKF population located in the area by impacting, reducing and fragmenting the habitat currently available. The DEIR acknowledges habitat loss as the primary threat to the species and states the Project could result in habitat disturbance and loss of foraging habitat. Despite this acknowledgment, the insufficient ratio of 0.5:1 was included within the DEIR. We recommend consultation with CDFW and USFWS for mitigation requirements and ratios for the loss of SJKF habitat by purchasing compensatory and permanently protected HM lands. SJKF is a den-dwelling species and their survival is dependent on adequate access to dens. We recommend consultation with CDFW for the construction of artificial dens for SJKF on the acquired HM lands.

Similarly, SWHA was mitigated at a 0.5:1 ratio for nesting and foraging habitat. This extremely low ratio is also inadequate to compensate for and mitigate the loss of foraging and nesting habitat due to Project impacts. SWHA and associated known nests were observed on or near the proposed Project site; therefore, we recommend

mitigation land be provided at a ratio of at least 2:1<sup>14</sup> for habitat impacted within a five-mile radius of nests that have been active within the previous five years. Furthermore, we urge consultation with CDFW for the establishment of SWHA mitigation land ratios.

The HM lands for BUOW, SJKF and SWHA must contain suitable habitat for the species and be managed in perpetuity by a qualified conservation organization as defined by CA Civil Code Section 815.3. Alternatively, credits could be purchased in a CDFW-approved mitigation bank.

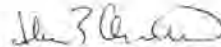
### Conclusion

Thank you once again for the opportunity to provide comments on the DEIR for the proposed Pelicans Jaw Hybrid Solar Project and for considering our comments. We look forward to reviewing the Final EIR and request to be notified when it is available. Please feel free to contact us with any questions.

Respectfully submitted,



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<sup>14</sup> California Energy Commission and Department of Fish and Game. 2010. *Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Projects in the Antelope Valley for Los Angeles and Kern Counties, California*.

## Response to Letter 8: California Native Plant Society, Center for Biological Diversity, Defenders of Wildlife

- A:** Comment states that comments are submitted on behalf of California Native Plant Society (CNPS), Center for Biological Diversity (Center), and Defenders of Wildlife (Defenders). No changes or modifications have been made to the DEIR in response to this comment.
- B:** Comment states that the organizations strongly support the development of renewable energy production and believe that transitioning to a renewable energy future need not exacerbate the ongoing extinction crisis by thoughtfully planning projects while protecting habitat critical to species. Comment also provides a background of each organization signing onto the letter. No changes or modifications have been made to the DEIR in response to this comment.
- C:** Comment states the Project description. No changes or modifications have been made to the DEIR in response to this comment.
- D:** Comment includes a table of the special-status species habitat within the Project site. No changes or modifications have been made to the DEIR in response to this comment.
- E:** Comment states that it is likely that the site may provide habitat connectivity for the San Joaquin kit fox (*Vulpes macrotis mutica*; SJKF) to the Kern National Wildlife Refuge, given the close proximity, and states that the proposed Project will likely promote further decreases in the satellite SJKF population located in the area by impacting and fragmenting the habitat currently being utilized. Comment also states that the organizations have concerns with the Project as proposed.

As evident in the site plan, the Project has been designed to avoid impacts to the Kern River Channel that serves as the primary north-south wildlife movement corridor. In addition, the main project site, with the exception of the approximately 40 acres that comprise the PG&E switching station (Dry Lake Switching Station), substation, and battery energy storage system (BESS), are being fenced with fencing that is raised 4 inches above the ground surface to allow permeability by San Joaquin kit fox, allowing them to continue to move unimpeded through nearly 99 percent of the main project site, thus there is no anticipated interruption in the ability of San Joaquin kit fox to move through the main project site to make connections with the Kern National Wildlife Refuge. The abandoned drainage ditches that create a network of east-west and north-south movement corridors throughout the main project site are being maintained thus further maintaining and facilitating safe movement for San Joaquin kit fox through the main project site.

Regarding the potential for the Project to promote further decreases in the satellite SJKF population located in the area, 3-year post-construction studies on kit fox demography and ecology at three San Joaquin Desert solar facilities (Topaz Solar Farm, California Valley Solar Ranch, and Panoche Valley Solar Farm) showed that SJKF on all three solar sites had no statistically significant difference in probability of survival, reproductive success, litter sizes, number of dens used per individual, prey selection, and body mass compared to SJKF on nearby undeveloped land. In fact, SJKF living on the solar sites had slightly higher rates of survival than those offsite, most likely due to the exclusion of SJKF predators such as coyote (*Canis latrans*) and golden eagle (*Aquila chrysaetos*) provided by the permeable security fencing and solar panels. Additional specific comments are addressed below.

- F:** Commentor is requesting that additional individual species-specific surveys that adhere to recommendations from the appropriate wildlife agency are conducted. Protocol-level surveys were conducted for sensitive species in accordance with a Biological Survey Work Plan that was reviewed by CDFW and USFWS. Any changes or deviations to the Biological Survey Work Plan was submitted as an addendum to CDFW and USFWS. The Biological Survey Work Plan is included as Appendix A within the Biological Resources Report (Appendix F of the DEIR). The main project site has been extensively surveyed in 2021, 2022, and 2023. 17 full survey passes of the main project site consisting of approximately 3,100 survey days at transect widths spaced at 10 meters occurred during the 2023 BNLL surveys. CEQA does not require additional surveys. No changes or modifications have been made to the DEIR in response to this comment.
- G:** Commentor states that completing BNLL surveys as construction work occurs in phases is insufficient as it will be difficult to ensure take is being avoided to the fullest extent possible and that adequate buffers that are reflective of BNLL home ranges are applied. Commentor also requests that protocol-level surveys be conducted and the DEIR be revised and recirculated with the BNLL survey results and associated mitigation measures, including the establishment of buffers, to allow for public review before the Project is finalized.

Please see response to CDFW Comment K. Protocol-level surveys were conducted in 2023 with negative results, further validating the analysis in the Draft EIR. The Project's Biological Resources Report has been updated to discuss the protocol-level BNLL surveys conducted in 2023. Recirculation is inappropriate, as this information adds clarity to and support for the conclusions in the Draft EIR, but does not indicate a new or substantially more adverse significant impact that would warrant recirculation of the draft EIR for public review.

- H:** Commentor requests that CBB surveys be conducted in accordance with CDFW methods as outlined in *Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species*. Please see response to CDFW Comment L.
- I:** Commentor states that reference sites should have been used for all special-status plant species with the potential to occur and that subsequent surveys in 2023 should have been conducted following the above-average precipitation. Commentor also states that the site conditions and implications these conditions may have had on survey results were not discussed in the botanical survey report as directed in CDFW protocols, and that the DEIR should have also included analysis for California Rare Plant Rank 3 and 4 taxa, "Plants that may warrant consideration on the basis of declining trends, recent taxonomic information, or other factors. This includes plant tracked by the CNDDDB as CRPR 3 or 4."

Please see response to CDFW Comment N. CEQA does not require a lead agency to conduct every recommended test and perform all recommended research to evaluate the impacts of a proposed project. The fact that additional studies might be helpful does not mean that they are required. Here, reference population checks were conducted for selected target species to determine appropriate timing of focused rare plant survey in 2022. On February 8, 2022, a reference location for Kern mallow Kern mallow (*Eremalche parryi* ssp. *kernensis*) in Kern County was visited. Over 100 plants were identified. All plants were vegetative and easily identifiable as *Eremalche* sp., but could not be identified to subspecies at the early phenological stage they were identified in. A reference location for San Joaquin woollythread (*Monolopia congdonii*) in Kern County was visited on February 8, 2022. Several plants were identified; all were vegetative. The second reference check

was conducted on February 18, 2022. At that point, a large number of both Kern mallow and San Joaquin woollythread were in bloom. On August 11, 2022, a reference location for Lost Hills crownscale (*Atriplex coronata* var. *vallicola*) and lesser saltscall (*Atriplex miniscula*) was visited in Kern County, located approximately 21 miles southeast of the Project site. Plants were vegetative and easily identifiable as *Atriplex coronata* var. *vallicola* and *Atriplex miniscula*.

Additionally, surveys will be conducted in the year prior to each phase of construction during the blooming periods for species with potential to occur, using reference populations, and will include an explanation of how site conditions may have influenced the survey results. The floral compendium prepared in conjunction with preconstruction surveys will report on observations of any CRPR 3 or 4 species.

- J:** Commentor states that the DEIR fails to mention obtaining an ITP for SJKF and SWHA in a timely manner and recommends consultation with CDFW for acquiring an ITP under California Fish and Game Code Section 2081(b) for SJKF and SWHA before the preconstruction surveys.

The Applicant met with the U.S. Fish and Wildlife Service on July 26, 2023 to discuss their intent to submit an application for an ITP pursuant to Section 10(a)(1)(B) of the federal Endangered Species act. The Section 10(a)(1)(B) ITP Application was submitted in August 2023. Similarly, the Applicant met with the California Department of Fish and Wildlife Service to discuss their intent to submit an application for an ITP under California Fish and Game Code Section 2081(b). Application is anticipated to be submitted in fall of 2023. No changes or modifications have been made to the DEIR in response to this comment.

- K:** Commentor states that SWHA Nest #2, which was determined to be inactive, must be considered active and CDFW consulted for the appropriate avoidance measures, including establishing a no-work buffer. Please see response to CDFW Comment J, above.

The Applicant is seeking Section 2081 take coverage for SWHA. For mitigation analysis purposes, the Applicant is considering SWHA Nest #2 to be active, even though it failed due to natural causes. The Applicant is pursuing mitigation lands at a 1:1 ratio for approximately 2,975 acres consistent with the Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (CDFG 1994).

- L:** Commentor states that an underground transmission line and a buried telecommunication line are highly likely to destroy any dens within the right-of-way and pose a significant and unavoidable impact on the special status species. Commentor recommends a mitigation measure to require overhead transmission and communication lines.

The OPGW will connect into an existing operational PG&E transmission corridor and is expected to be strung overhead on existing poles in the 13.3 mile-long transmission corridor. The original easement for the transmission corridor was granted to PG&E in 1947. Adding the OPGW line to existing transmission poles does not pose a threat to San Joaquin kit fox or burrowing owls. The OPGW line is proposed to be undergrounded where it terminates at the proposed PG&E switching station (Dry Lake Switching Station) and at the existing PG&E Arco Substation. Up to 3.44 acres of ground disturbance (approximately 0.1% of the main project site footprint of 2,975 acres) is anticipated for the two underground work areas where the OPGW line interconnects with the proposed PG&E switching station (Dry Lake Switching Station) and existing PG&E Arco Substation.

Burrows being used by burrowing owl have been mapped and will be reassessed during preconstruction surveys for any area requiring ground-disturbing activities in conjunction with construction of the OPGW (which has a limited underground area where it connects into the PG&E switching station (Dry Lake Switching Station)). Specified mitigation measures have been provided in the Draft EIR and will be similarly addressed in section 10(a)(1)(B) and Section 2081 ITPs to avoid all occupied burrows where feasible and to close-out and provide artificial nests in undeveloped areas of the project site. Similarly, surveys for San Joaquin kit fox demonstrated that there are no natal dens in the main project site. As with burrowing owl, those San Joaquin kit fox dens that are determined to be present in the area of ground-disturbing activities as a result of preconstruction surveys will be properly excavated and closed and artificial burrows will be established in undeveloped areas of the main project site. The habitat modelling demonstrates that the Project area has sufficient habitat to retain a similar number of San Joaquin kit fox as have been observed as a result of on-site survey.

The Applicant has applied for an ITP pursuant to Section 10(a)(1)(B) of the federal Endangered Species act and is applying for an ITP under California Fish and Game Code Section 2081(b). Application is anticipated to be submitted in fall of 2023. Additionally, Mitigation Measures MM 4.4-10 and 4.4-14 will be implemented to ensure protection of special-status species. No changes or modifications have been made to the DEIR in response to this comment.

- M:** This comment recommends that Mitigation Measure MM 4.4-3j be revised to state that night-time construction should only occur when necessary in order to reduce the impact and significantly decrease potential mortality of SJKF population. In response to this comment, the Draft EIR has been revised as follows:

**Section 1.10, Summary of Environmental Impacts and Mitigation Measures, Table 1-7, and Section 4.4, Biological Resources, Mitigation Measure 4.4-3i, Page 1-41 and Page 4.4-53**

A speed limit of 15 miles per hour shall be enforced within the limits of the project site. To the extent possible, night-time construction-related activity shall be minimized, but if work must be conducted at night ~~If night work occurs on the project site,~~ the speed limit will be 10 miles per hour.

- N:** This comment recommends that Mitigation Measure MM 4.4-6 be revised to require that two comprehensive preconstruction surveys following CDFW protocols occur prior to ground disturbance, one in March or April and another in August, as determined by reference sites, allowing for a delay in ground disturbance beyond 30 days from the time of the most recent survey as guided by CDFW consultation until special status species have set viable seed. Additionally, the comment states that any *Atriplex* sp. that is not identifiable during either survey should be assumed to be *Atriplex coronata* var. *vallicola*. Please see response to CDFW Comment N.
- O:** This comment recommends that Mitigation Measure MM 4.4-10a be revised to adhere to the CDFW recommendation prohibiting burrow exclusion during the breeding season. Please see response to CDFW Comment M.
- P:** This comment recommends that Mitigation Measure 4.4-15 be revised in order to allow SJKF passage but prohibit coyote passage. Please see response to CDFW Comment H.

**Q:** Comment states that the DEIR failed to examine any alternative location and recommends that an alternative site location on previously disturbed lands be thoroughly analyzed within the revised and recirculated EIR. Please see response to CDFW Comment R.

**R:** Comment recommends that development of Lost Hills crownscale habitat be avoided by selecting the No Project or No Ground-Mounted Utility-Solar Development Alternative.

No Project and No Ground-Mounted Utility-Solar Development Alternatives were explored during development of the DEIR and are discussed in Chapter 6 of the DEIR. The No Project Alternative does not meet any of the Project objectives and the No Ground-Mounted Utility-Solar Development Alternative does not meet all of the Project objectives. Please see response to CDFW Comment R.

**S:** Comment states that the proposed Project would significantly contribute to the cumulative loss of the region's important and declining resources, including but not limited to BUOW, SJKF, and SWHA habitat and that the DEIR's cumulative analysis on biological resources fails to adequately analyze project impacts on individual species and habitat loss. The commentor requests the cumulative impact analysis include impacts on the special-status species level, including habitat and connectivity. The commentor also requests the analysis include a detailed map of existing and planned solar energy, housing, commercial, and energy development with the remaining habitat and connectivity for SJKF. Please see response to CDFW Comment S.

**T:** This comment recommends that Mitigation Measures 4.4-4 and 4.4-5 be amended to use the acreage from the March, April, and August 2022 surveys as a minimum acreage for mitigation needs, and providing for additional acreage as required based on preconstruction surveys; require that mitigation efforts do not adversely impact existing habitat and that monitoring shows persistence of populations over time by including specific listed guidelines; and include mitigation rates of 2:1 for directly impacted habitat and 1:1 for indirectly impacted habitat for both Kern mallow and Lost Hills crownscale. The comment also recommends that these mitigation measures should include a description of methods for salvage or transplantation as well as an overview of the monitoring and maintenance that would be needed to allow the public and experts to provide input to increase the chance of successful mitigation efforts.

The 6.06 acres of Kern mallow habitat mentioned in MM 4.4-4 and 535 acres of Lost Hills crownscale habitat mentioned in MM 4.4-5 were derived from the results of the March, April, and August 2022 rare plant surveys. Mitigation ratios listed in the above-referenced mitigation measures were based on the best available empirical data for consideration of impacts that have occurred in conjunction with other solar fields developed in Kern County. Although "take" authorization is not required for species listed as rare, threatened or endangered under the federal or California Endangered Species Act, conservation provision for Kern mallow, the only listed plant species, have been included in the Habitat Conservation Plan prepared to support the Section 10(a)(1)(B) ITP. Additionally, please see response to CDFW Comment N. For the reasons explained here and in the Draft EIR, these measures are sufficient to ensure impacts are less than significant; additional revisions to the Draft EIR in response to this comment are not warranted.

**U:** This comment states that compensatory habitat management (HM) lands are not provided for BUOW and that the current ratio of 0.5:1 for SJKF and SWHA are inadequate. Commentor recommends consultation with CDFW to establish the appropriate ratio for BUOW and SWHA HM lands and consultation with CDFW and USFWS for mitigation requirements and ratios for the loss of SJKF habitat by purchasing compensatory and permanently protected HM lands.

Commentor also recommends consultation with CDFW for the construction of artificial dens for SJKF on the acquired HM lands.

Comment also states that the HM lands for BUOW, SJKF and SWHA must contain suitable habitat for the species and be managed in perpetuity by a qualified conservation organization, or credits could be purchased in a CDFW-approved mitigation bank.

In addition to the extensive avoidance and minimization measures and mitigation measures being applied to the project site, the Project proponent has committed to additional offsite compensatory mitigation lands for long-term conservation at a 1:1 ratio for each acre of impact to suitable habitat (approximately 2,975 acres). Compensatory lands will be secured within the Kern River watershed where the main project site is located. The compensatory lands would have occupied habitat for SJKF. In addition, it is anticipated that the compensatory lands would in whole or in part, be located within the historic and/or current range for the other Covered Wildlife Species (including BUOW and SWHA) and have habitat of equal or greater quality when compared with the existing conditions of the Project site. Additionally, please see response to CDFW Comment J, pertaining to SWHA habitat mitigation lands. No other changes or modifications have been made to the DEIR in response to this comment.