

# **Final Environmental Impact Report**

SCH# 2021090602

## **Volume 3**

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

#### **AZALEA SOLAR PROJECT**

**by SF Azalea, LLC (PP21401)**

Conditional Use Permit No. 10, Map No. 3

Conditional Use Permit No. 14, Map No. 3

Williamson Act Land Use Contract Cancellation 20-06



Kern County  
Planning and Natural Resources Department  
Bakersfield, California

January 2023

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**PLANNING AND NATURAL  
RESOURCES DEPARTMENT**

Planning  
Community Development  
Administrative Operations

January 13, 2023

FILE: CUP #10, Map #3; and others;  
S.D.: #4 - Couch

Addressee List (See Distribution List)

**Re: Response to Comments for Draft Environmental Impact Report – Azalea Solar Project by Idemitsu Renewables, LLC (PP21401) (SCH#2021090602)**

Dear Interested Party:

Enclosed is a document entitled *Volume 3 – 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 **January 26, 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,

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; Kern County Public Works Department, County Surveyor; Defenders of Wildlife

Azalea Solar RTC Mailing List

Kern County Public Works Department/  
/Floodplain Management

Kern County Public Works Department/  
County Surveyor

Defenders of Wildlife  
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Folsom, CA 95763

San Joaquin Valley Air Pollution Control  
District  
34946 Flyover Court  
Bakersfield, CA 93308

Kern County Fire Dept  
Michael Nicholas,  
Assistant Fire Marshal

California Department of Fish and  
Wildlife  
1234 E Shaw Ave  
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Kern County  
Planning and Natural Resources Department  
Bakersfield, California

Technical Assistance by:  
Kimley-Horn

January 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 Azalea 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. 2021090602) was circulated for a 30-day public review period beginning on September 30, 2021 and ending on November 1, 2021. Five (5) 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 October 21, 2021 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 September 2, 2022 through October 17, 2022. A total of six (6) 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, and 3 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 ~~striketrough~~. 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).

**Chapter 1, Executive Summary; Table 1-7, Page 1-37 – 1-94:**

**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>4.3 Air Quality</b>			
<b>Impact 4.3-1:</b> The project would conflict with or obstruct implementation of the applicable air quality plan	Potentially significant	<b>MM 4.3-3:</b> Prior to the issuance of building and grading permits, the project proponent shall provide the Kern County Planning and Community Development Department with proof than an Indirect Source Review application has been approved by the San Joaquin Valley Air Pollution Control District. The project proponent shall <del>enter into a developer agreement with SJVAPCD and</del> conduct an air impact assessment as require by SJVAPCD Rule 9510. Offsite emission reduction fees shall be calculated, as dictated by Rule 9510, to reduce construction-related NOX emissions by 20% and PM10 emissions by 45%.	Less than significant
<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 of Mitigation Measures MM 4.1-4 through MM 4.1-6 would be required (see Sections 4.1, <i>Aesthetics</i>, for full mitigation measure text).</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 or approved Biological Monitor 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. The Lead Biologist or approved Biological Monitor shall be on the project site during construction of perimeter fencing and grading activities throughout the construction phase, and as-needed during decommissioning. The Lead Biologist or approved Biological Monitor shall have the right to halt all activities that are in violation of the special-status species protection measures. Work shall proceed only after hazards to special-status species are removed and the species is no longer at risk. The Lead Biologist or approved Biological Monitor shall have in their possession a copy of all the compliance</p>	Less than significant

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measures and appropriate Plans while work is being conducted on the project site.

**MM 4.4-2:** Prior to the issuance of grading or building permits and for the duration of construction and decommissioning activities, within one week of employment all new construction workers at the project site, laydown area and/or transmission routes shall attend an Environmental Awareness Training and Education Program, developed and presented by the Lead Biologist that is an expert on biology and required protections for the various special-status species found on-site. Any employee responsible for the operations and maintenance or decommissioning of the project facilities shall also attend the Environmental Awareness Training and Education Program.

The program shall follow the recommendations from USFWS (<https://www.fws.gov/media/standardized-recommendations-protection-endangered-san-joaquin-kit-fox-prior-or-during-ground>) and include information on the life history and habitat needs of the BNLL, SJKF, giant kangaroo rat, raptors, American badger, as well as other wildlife and plant species that may be encountered during construction activities. The program shall also discuss the legal protection status of each species, a report of the occurrence of the SJKF in the project area, the definition of “take” under the federal Endangered Species Act and California Endangered Species Act, measures the project operator is implementing to protect the species, reporting requirements, specific measures that each worker shall employ to avoid take of wildlife species, and penalties for violation of the federal Endangered Species Act or California Endangered Species Act. A fact sheet conveying this information should be prepared for distribution for those attending the training and anyone else who may enter the project site.

- a. An acknowledgement form signed by each worker indicating that Environmental Awareness Training and Education Program has been completed would be kept on record;
  - b. A sticker shall be placed on hard hats indicating that the worker has completed the Environmental Awareness Training and Education Program. Construction workers shall not be permitted to operate equipment within the construction areas unless they have attended the Environmental Awareness Training and Education Program and are wearing hard hats with the required sticker;
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- c. A copy of the training transcript and/or training video, as well as a list of the names of all personnel who attended the Environmental Awareness Training and Education Program and copies of the signed acknowledgement forms shall be submitted to the Kern County Planning and Community Development Department;
  - d. The construction crews and contractor(s) shall be responsible for unauthorized impacts from construction activities to sensitive biological resources that are outside the areas defined as subject to impacts by project permits; and
  - e. An Operation and Maintenance-phase version of the WEAP will be maintained within the onsite O&M facility for review as may be necessary during the life of the project

**MM4.4-3:** A weed control plan shall be prepared to address the control of invasive weeds and plants. The weed control plan shall be in place prior to construction activities and shall be completed to the satisfaction of the County Planning Department. The plan shall include a risk assessment of the invasive weed and plant species currently known within the project site, procedures to control their spread on-site and to adjacent off-site areas, and procedures to minimize the introductions of new weed and plant species. The Weed Control Plan shall include preventive measures that would minimize the potential establishment of invasive weed and plant species during project implementation. To minimize the spread and establishment, tires and surfaces of all trucks and construction equipment shall be cleaned with water or high-pressure air prior to commencing work in off-site areas, and/or the use of rocks/grates at the entries to the project site shall be installed to physically dislodge seeds. Certified weed-free mulch shall be used when stabilizing areas of disturbed soils and on-site soils shall be used to the maximum extent practicable for fill. This measure also shall apply during decommissioning activities.

**MM 4.4-4:** During construction, operations and maintenance, and decommissioning the project operator shall implement the following general avoidance and protective measures:

- a. All proposed impact areas, including solar fields, staging areas, access routes, and disposal or temporary placement of spoils, shall be delineated with stakes and/or flagging prior to construction to avoid
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- natural resources where possible. Construction-related activities outside of the impact zone shall be avoided.
- b. The project operator shall limit the areas of disturbance to the extent feasible. Parking areas, new roads, staging, storage, excavation, and disposal site locations shall be confined to the smallest areas possible. These areas shall be flagged and disturbance activities, vehicles, and equipment shall be confined to these flagged areas.
  - c. Spoils shall be stockpiled in disturbed areas that lack native vegetation. Best management practices shall be employed to prevent erosion in accordance with the project's approved stormwater pollution prevention plan (SWPPP). All detected erosion shall be remedied within 2 days of discovery or as described in the SWPPP.
  - d. To prevent inadvertent entrapment of San Joaquin kit foxes, American badgers, giant kangaroo rat, or other wildlife during construction, all excavated, steep-walled holes or trenches more than 2 feet deep shall be covered with plywood or similar materials at the close of each working day, or provided with one or more escape ramps constructed of earth fill or wooden planks. All holes and trenches, whether covered or not, shall be inspected for trapped wildlife at the start and end of each workday. Before such holes or trenches are filled, they shall be thoroughly inspected by the Lead Biologist or approved biological monitor for trapped wildlife. If trapped animals are observed, escape ramps or structures shall be installed immediately to allow escape. If a listed species is found trapped, all work in the vicinity of the animal shall cease immediately. If the animal is apparently uninjured, then the Lead Biologist shall directly supervise the provision of escape structures and/or trench modification to allow the trapped animal to escape safely. Work shall not resume in the vicinity of the animal, and it shall be allowed to leave the work area and project site on its own. ~~If the listed animal is injured, then~~ ~~the~~ ~~Lead Biologist or approved biological monitor shall immediately contact the U.S. Fish and Wildlife Service and/or California Department of Fish and Wildlife~~ for any trapped or injured SJKF to identify an individual with the appropriate permit or authorization to handle listed species, and if the species is injured, to decipher who shall bring the animal to a pre-identified wildlife rehabilitation or veterinary facility for care.
  - e. Burrowing owls, mammals, and nesting birds may use construction pipes, culverts, or similar structures for refuge or nesting. All towers
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shall be of the monopole variety and all hollow vertical structures, such as solar mount poles, or fencing poles, shall be capped immediately after installation to prevent bird entrapment. Therefore, all construction pipes, culverts, or similar structures with a diameter of 4 inches or more that are stored at a construction site for one or more overnight periods shall be thoroughly inspected for special-status wildlife or nesting birds before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If an animal is discovered inside a pipe, that section of pipe shall not be moved until the Lead Biologist has been consulted and the animal has either moved from the structure on its own accord (for listed species) or until the animal has been captured and relocated (for non-listed species) by the Lead Biologist. If the animal is a listed species, then work shall immediately halt in the vicinity, and the animal shall be allowed to move from the structure and the work area of its own accord. The Lead Biologist will direct work stoppages near the animal to allow it to freely move out of the pipe and away from the work area. Listed species shall not be handled or captured by anyone without the appropriate permit or authorization.

- f. 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 wildlife. If present, the animal shall be left to move on its own.
  - g. Vehicular traffic to and from the project site shall use existing routes of travel. Cross country vehicle and equipment use outside designated work areas shall be prohibited.
  - h. A day-time speed limit of 15 miles per hour shall be enforced within the limits of the proposed project. To the extent possible, night-time construction related activity shall be minimized, but if work must be conducted at night, then a night-time speed limit of 10 miles per hour shall be enforced. Off-road traffic outside of designated project areas should be prohibited.
  - i. A long-term trash abatement program shall be established for construction, operations and maintenance, and decommissioning. Trash and food items shall be contained in closed containers and removed daily to reduce the attractiveness to opportunistic predators such as common ravens, coyotes, and feral dogs.
  - j. Workers shall be prohibited from bringing pets and firearms to the project area and from feeding wildlife.
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- k. Intentional killing or collection of any plant or wildlife species shall be prohibited.
  - l. To enable kit foxes and other wildlife (e.g., American badger) to pass through the project site after construction, the security fence, and any permanent interior fencing shall be a wildlife friendly design that meets the goals of allowing wildlife to move freely through the project site during operation, leaving 4- to 7-inch openings or portals in the fence or the fence shall be raised 7 inches above the ground leaving a gap between the fence mesh and the ground. In the latter case the bottom of the fence fabric shall be knuckled (wrapped back to form a smooth edge) to protect wildlife that passes under the fence. Perimeter fencing shall not be electrified.

**MM 4.4-5:** During construction and decommissioning, the Lead Biologist or approved biological monitor shall monitor all initial ground-disturbance activities and remain on-call throughout construction/decommissioning in the event a special-status species wanders into the project site.

Preconstruction surveys for special-status species shall be conducted within the project boundaries by the Lead Biologist or approved biological monitor no less than within 14 days and no more than 30 days prior to beginning of the start of any vegetation clearing or grading activities. Methodology for preconstruction surveys shall be appropriate for each potentially occurring species-status species and shall follow U.S. Fish and Wildlife Service and/or California Department of Fish and Wildlife preconstruction survey guidelines where appropriate. Surveys need not be conducted for all areas of suitable habitat at one time; they may be phased so that surveys occur no less than within 14 days and no more than 30 days prior to of the portion of the project site being disturbed. The Lead Biologist may use a variety of approaches (including but not limited to monitoring, track plates, and direct observation) and evidence (including burrow characteristics and presence of sign such as scat and tracks) to determine burrow activity. If any evidence of occupation of the project site special-status species is observed, a buffer shall be established by a qualified biologist that results in sufficient avoidance, as described below.

Preconstruction surveys shall be conducted by a qualified biologist for the presence of American badger or San Joaquin kit fox dens no less than within 14 days and no more than 30 days prior to beginning of ground

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and/or vegetation disturbing activities commencement of construction activities. The surveys shall be conducted in the project site for American badger and San Joaquin kit fox. Surveys need not be conducted for all areas of suitable habitat at one time; they may be phased so that surveys occur no less than within 14 days and no more than 30 days prior to that portion of the project site disturbed. If potential dens are observed and avoidance is feasible, the following buffer distances shall be established prior to construction activities:

San Joaquin kit fox or American badger potential den: 50 feet.

San Joaquin kit fox or American badger active den: 100 feet.

San Joaquin kit fox or American badger natal den: 500 feet.

If avoidance of the potential dens is not possible, the following measures are required to avoid potential adverse effects to the American badger and San Joaquin kit fox:

If the qualified biologist determines that potential dens are inactive, the biologist shall excavate these dens by hand with a shovel to prevent American badgers or San Joaquin kit foxes from re-using them during construction.

If the qualified biologist determines that potential dens may be active, an onsite passive relocation program shall be implemented. This program shall consist of excluding American badgers or San Joaquin kit foxes from occupied burrows by installation of one-way doors at burrow entrances, monitoring of the burrow with tracking medium or an infra-red beam camera for 7 days to confirm usage has been discontinued, and excavation and collapse of the burrow to prevent reoccupation. After the qualified biologist determines that American badgers or San Joaquin kit foxes have stopped using the dens within the project boundary, the dens shall be hand-excavated with a shovel to prevent re-use during construction.

If giant kangaroo rat precincts are detected during the preconstruction survey or a pre-activity survey the precincts shall be flagged and a 50-foot-wide buffer around precincts shall be avoided by construction equipment and ground-disturbing activities, if feasible.

If project personnel are required to drive or operate a vehicle or piece of equipment in the vicinity of a 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 the precinct or that foot traffic occurs directly over a precinct (more than simple daily

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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. 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.
- b. Any haystacks, seed caches, or other forage stockpiled by the giant 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.
- c. More than one plywood sheet may be required to cover an area when multiple precincts occur in the vicinity of the activity.
- d. Vehicles and equipment shall be allowed to travel over a precinct only when all tires are driving over the plywood surface.
- e. 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.
- f. 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 occurs, 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.

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 precincts. Salvage activities shall not proceed until the giant 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 giant kangaroo rat salvage plan is approved, it may be used for all giant kangaroo rat salvage activities for the duration of permitted activities. Any proposed changes to the giant 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.

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During fencing and grading activities daily monitoring reports shall be prepared by the monitoring biologists. The Lead Biologist shall prepare a summary monitoring report documenting the effectiveness and practicality of the protection measures that are in place and making recommendations for modifying the measures to enhance species protection, as needed. The report shall also provide information on the overall activities conducted related to biological resources, including the Environmental Awareness Training and Education Program, clearance/pre-activity surveys, monitoring activities, and any observed special-status species, including injuries and fatalities. These monitoring reports shall be submitted to the Kern County Planning and Natural Resources Department and relevant resource agencies, as applicable, on a monthly basis along with copies of all survey reports.

**MM 4.4-6:** Within 14 days prior to the commencement of any ground-disturbing activities, the project operator shall conduct preconstruction surveys for special-status and protected plant species within the project area, including but not limited to crownscale, Lost Hills crownscale and San Joaquin Bluecurls, San Joaquin woollythreads and California jewelflower. After the preconstruction survey determines the exact location of these species, if present, on the project site and the number of individuals or populations present, the project proponent/operator shall submit written documentation to the Kern County Planning and Natural Resources Department confirming implementation of the measures described below.

- a. Protocol-level Special Status Plan Survey(s). Summer/fall surveys shall be conducted prior to construction. Surveys shall focus on San Joaquin bluecurls, crownscale and Lost Hills crownscale, but should be floristic in nature (all species identified). Summer/fall surveys should focus on the entire access road area, especially disturbed areas and roadside drainages.

Focused spring surveys shall be conducted for both San Joaquin woollythreads and California jewelflower. Surveys shall focus on the entire access road area especially south of the existing asphalt road. Precipitation shall be monitored prior to Spring surveys to ensure an above average rain year occurs.

If surveys document the absence of these species, no further action is warranted for special-status plants. If special-status plants are detected, the number of specimens affected by the proposed project

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should be assessed to determine if potential impacts exceed the thresholds of significance under CEQA. If California jewelflower is identified on the project site, consultation with USFWS and CDFW to determine the potential need for an incidental take authorization would be required.

~~The project proponent/operator shall work with a qualified biologist to determine presence of crownscale, Lost Hills crownscale and San Joaquin Bluecurls, San Joaquin woollythreads and California jewelflower and identify all known locations of special status plant species to establish "avoidance areas". All special status plants found within the project site shall be avoided by a buffer of 25 feet. Sturdy, highly visible, orange plastic construction fencing (or equivalent material verified by the authorized biologist) shall be installed around all locations of detected special status plants to protect from impacts during the construction phase, until they can be relocated. The fence shall be securely staked and installed in a durable manner that would be reasonably expected to withstand wind and weather events and last at least through the construction period. Fencing shall be removed upon completion of the project construction.~~

- b. **Avoidance and Mitigation Management.** Both San Joaquin woollythreads and California jewelflower are federally endangered; the California jewelflower is also State endangered. If federally or State listed species are found, these species must be fully avoided or compensatory mitigation at a minimum 1:1 mitigation ratio (at least one plant preserved for each plant affected, and also at least one occupied acre preserved for each occupied acre affected) shall be preserved and managed in perpetuity, and FESA and/or CESA permits acquired depending on the listing status.

If any plants listed as CRPR special-status species are found at the Proposed Action site, the plants will be flagged, mapped and a setback of a minimum of 50 feet from Project Footprint will be implemented where feasible. If setbacks are not feasible, a monitor shall be present to ensure populations are avoided. To compensate for significant impacts on plants with a CRPR of 1A, 1B, 2, 3, or 4 that cannot be avoided, offsite habitat occupied by the affected species shall be preserved and managed in perpetuity at a minimum 1:1 mitigation ratio (at least one plant preserved for each plant affected, and also at least one occupied acre preserved for each occupied acre affected), up to the significance threshold as follows:

1. for CRPR-ranked 1A species, mitigation must be provided at 1:1 equivalent
2. for a CRPR -ranked 1B and 2 species where 10% or more of the known population within 5 miles of the work area is impacted, mitigation must be provided at 1:1 equivalent.
3. for a CRPR -ranked CRPR of 3 or 4 species where 30% or more of the known population within 5 miles of the work area is impacted, mitigation must be provided at 1:1 equivalent.

Areas proposed for preservation and serving as compensatory mitigation for special-status plant impacts must contain verified extant populations of the CRP-ranked plants that would be impacted by the work areas. Mitigation areas shall be managed in perpetuity to encourage persistence and even expansion of the preserved target species.

~~Any crownscare, Lost Hills crownscare, San Joaquin Bluecurls, San Joaquin woollythreads or and California jewelflower Clokey's cryptantha, Rosamond eriastrum, sagebrush loeflingia, Latimer's woodland gilia, salt spring checkerbloom, short joint beavertail, and recurved larkspur onsite individuals or populations that cannot feasibly be avoided in final project design shall have seed collected prior to construction for sowing into suitable onsite habitat or in nearby suitable offsite habitat covered with a conservation easement. A seed harvesting and storage plan including a planting plan shall be prepared and approved by the County, prior to ground disturbance of these areas.~~

- e. ~~Temporary ground disturbance associated with the gen tie lines or collector lines shall be recontoured to natural grade (if the grade was modified during the temporary disturbance activity), and revegetated with an application of a native seed mix prior to or during seasonal rains to promote passive restoration of the area to pre-project conditions. However, if invasive plant species were present, these species would not be restored. An area subjected to temporary ground disturbance means any area that is disturbed but will not be subjected to further disturbance as part of the project. This does not include areas already designated as urban/developed. Prior to seeding temporary ground disturbance areas, the qualified biologist will review the seeding palette to ensure that no seeding of invasive plant species, as identified in the most recent version of the California Invasive Plant Inventory for the region, will occur.~~

**MM 4.4-7:** A qualified wildlife biologist shall conduct preconstruction surveys of the permanent and temporary impact areas to locate active breeding or wintering burrowing owl burrows no fewer than 14 days prior to ground-disturbing activities (i.e., vegetation clearance, grading, tilling). The survey methodology shall be consistent with the methods outlined in the 2012 California Department of Fish and Wildlife (CDFW) Staff Report on Burrowing Owl Mitigation and shall consist of walking parallel transects 7 to 20 meters apart, adjusting for vegetation height and density as needed, and noting any potential burrows with fresh burrowing owl sign or presence of burrowing owls. As each burrow is investigated, surveying biologists shall also look for signs of American badger and San Joaquin kit fox. Copies of the survey results shall be submitted to CDFW and the Kern County Planning and Natural Resources Department.

If burrowing owls are detected onsite, the avoidance buffers outlined below should be established. These buffers be implemented prior to and during any ground-disturbing activities. Specifically, CDFW’s Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist, approved by CDFW, verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival. Visible markers shall be places near the identified burrow(s) to ensure that machinery does not collapse the burrow(s). no ground-disturbing activities shall be permitted within a buffer of no fewer than 100 meters (330 feet) from an active burrow during the breeding season (i.e., February 1 to August 31), unless otherwise authorized by CDFW. During the non-breeding (winter) season (i.e., September 1 to January 31), ground-disturbing work can proceed as long as the work occurs no closer than 50 meters (165 feet) from the burrow. Depending on the level of disturbance, a smaller buffer may be established in consultation with CDFW.

<u>Location</u>	<u>Time of Year</u>	<u>Level of Disturbance</u>		
		<u>Low</u>	<u>Med</u>	<u>High</u>
<u>Nesting sites</u>	<u>April 1-Aug 15</u>	<u>200 m*</u>	<u>500 m</u>	<u>500 m</u>
<u>Nesting sites</u>	<u>Aug 16-Oct 15</u>	<u>200 m</u>	<u>200 m</u>	<u>500 m</u>
<u>Nesting sites</u>	<u>Oct 16-Mar 31</u>	<u>50 m</u>	<u>100 m</u>	<u>500 m</u>
<u>*meters (m)</u>				

If burrow avoidance is infeasible during the non-breeding season ~~or during the breeding season (February 1 through August 31) where resident owls have not yet begun egg laying or incubation, or where the juveniles are foraging independently and capable of independent survival~~, a qualified biologist shall implement a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 CDFW Staff Report on Burrowing Owl Mitigation. If a qualified CDFW approved 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), CDFW can be consulted about the use of passive relocation.

~~If passive relocation is required, a qualified biologist shall prepare a Burrowing Owl Exclusion and Mitigation Plan and a Mitigation Land Management Plan in, accordance with the 2012 CDFW Staff Report on Burrowing Owl Mitigation, for review by CDFW prior to passive relocation activities. The Mitigation Land Management Plan shall include a requirement for the permanent conservation of offsite Burrowing Owl Passive Relocation Compensatory Mitigation. At a minimum, the following recommendations shall be implemented:~~

- ~~a. Temporarily disturbed habitat shall be restored, if feasible, to pre-project conditions including decompacting soil and revegetating.~~
- ~~b. Permanent impacts to nesting, occupied and satellite burrows and/or burrowing owl habitat shall be mitigated such that the habitat acreage, number of burrows and burrowing owl impacted are replaced based on a site specific analysis and shall include permanent conservation of similar vegetation communities (grassland, scrublands, desert, urban, and agriculture) to provide for burrowing owl nesting, foraging, wintering, and dispersal (i.e., during breeding and non-breeding seasons) comparable to or better than that of the impact area, and with sufficiently large acreage, and presence of fossorial mammals.~~
- ~~c. Permanently protect mitigation land through a conservation easement, deed restriction, or similar mechanism deeded to a nonprofit conservation organization or public agency with a conservation mission. If the project is located within the service area of a CDFW approved burrowing owl conservation bank, the project~~



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~~operator may purchase available burrowing owl conservation bank credits. Land identified to mitigate for passive relocation of burrowing owl may be combined with other offsite mitigation requirements of the proposed project if the compensatory habitat is deemed suitable to support the species.~~

~~**MM 4.4-8:** A preconstruction survey for BNLL and antelope squirrel in compliance with agency recommendations in accordance with USFWS and/or CDFW protocols shall be conducted and used to determine if there are suitable burrows for these species on the project site. The survey shall identify burrows suitable for BNLL and antelope squirrel. An agency-approved disturbance buffer shall be placed around all identified small burrows with potential to support BNLL and antelope squirrel. Avoidance of burrows and associated buffer areas shall be implemented. If BNLL and antelope squirrel is identified during the focused surveys, USFWS and CDFW shall be consulted to obtain the necessary permit authorizations before proceeding. If burrow avoidance is not possible within the project site, a Management Plan for the appropriate species will be prepared in consultation with the agencies.~~

**MM 4.4-9:** 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 from April to July 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 fencing in compliance with agency specifications to prevent potential future occupancy of BNLL.

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 ~~other specific protection measures developed in compliance with agency guidelines~~. If burrows are found to be occupied, measures for avoidance and minimization of impact to

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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. ~~During the active season when blunt nosed leopard lizards are moving above ground (April to early November), the following measures will be implemented in areas where blunt nosed leopard lizards or signs of blunt nosed leopard lizards have been observed:~~

a. ~~Establishment of No Work Buffers. The project biologist will establish, monitor, and maintain 50-foot no-work buffers around burrows and egg clutch sites identified during surveys. The 50-foot no-work buffers will be established around burrows in a manner that allows for a connection between the burrow site and the suitable natural habitat adjacent to the Construction Footprint so that blunt nosed leopard lizards and/or hatchlings may leave the area after eggs have hatched. Construction activities will not occur within the 50-foot no-work buffers until such time as the eggs have hatched and blunt nosed leopard lizards have left the area.~~

b. ~~Fencing of Work Areas. Prior to installing wildlife exclusion fence (WEF), the project biologist will confirm that no blunt nosed leopard lizard are present within a Work Area by conducting focused blunt nosed leopard lizard observational surveys for 12 days over the course of a 30 to 60-day period. At least one survey session will occur over 4 consecutive days. These observational surveys may be paired with scent detection dog surveys for blunt nosed leopard lizard scat.~~

~~Within 3 days of completing these surveys with negative results, WEF will be installed in a configuration that accounts for burrow locations and enables blunt nosed leopard lizards to leave the Work Area. The following day, the project biologist will conduct an observational survey. If no blunt nosed leopard lizards are observed, the project biologist will install additional WEF to further enclose the Work Area. This Work Area will be monitored daily while the WEF is in place.~~

~~If blunt nosed leopard lizards are observed prior to installing the last of the WEF, the project biologist will continue observational surveys until the lizard is observed leaving the Work Area or until 30 days elapse with no blunt nosed leopard lizards observations within the Work Area.~~

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~~A qualified biological monitor shall be present to ensure activities are compliant with protection measures. Ground disturbance shall be prohibited in sensitive areas, and biological monitors shall conduct regular inspections.~~

**MM 4.4-10:** If construction is scheduled to commence during the non-nesting season (i.e., September 1 to January 31), no preconstruction surveys or additional measures are required. To avoid impacts to nesting birds in the project area, a qualified wildlife biologist shall conduct preconstruction surveys of all potential nesting habitat within the project site for construction activities that are initiated during the breeding season (i.e., February 1 to August 31). The raptor survey shall focus on potential nest sites (e.g., cliffs, large trees, windrows) within a 0.5-mile buffer around the project site. Swainson's hawk nest survey shall focus on potential nest sites (e.g., cliffs, large trees, windrows) within a 5-mile buffer around the project site and follow the 2010 Swainson's hawk protocol surveys (CEC and CDFW 2010SWHA TAC 2000). Surveys shall be conducted no more than 104 days prior to construction activities and encompass the project site plus the potential nest buffers as listed below, where access has been granted. Surveys need not be conducted for the entire project site at one time; they may be phased so that surveys occur shortly before a portion of the project site is disturbed. The surveying biologist must be qualified to determine the status and stage of nesting by migratory birds and all locally breeding raptor species without causing intrusive disturbance. If active nests are found, a suitable no-disturbance buffer (e.g., 500 200-300 feet for common raptors; 0.5 mile for Swainson's hawk; 250 feet for non-raptor species 30-50 feet for ~~passerine species~~) shall be established around active nests until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). For non-listed species, encroachment into the avoidance buffer may occur at the discretion of a qualified biologist provided the biologist has monitored the nest prior to construction to establish a behavioral baseline and continues to monitor the nest during construction to ensure the nest is not negatively affected. Buffer distances can also be adjusted if there is a compelling biological reason such as when a construction area would be concealed from a nest site by topography of vegetation as determined by a qualified biologist and CDFW has been notified in advance of the variance; ~~however, f~~For State-listed species, consultation with CDFW shall occur prior to encroachment into the aforementioned buffers. In

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addition to preconstruction SWHA surveys, focused SWHA surveys following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) shall be completed prior to the start of construction. Compensation for loss of Swainson's hawk foraging habitat will be based on the results of the protocol SWHA survey (SWHA TAC 2000) as described in CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" (CDFG 1994). If an active Swainson's hawk nest is detected and a ½-mile no disturbance buffer is not feasible, CDFW will be consulted to discuss how to implement the project and avoid take.

**MM 4.4-11:** 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 suggested 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.

**MM 4.4-12:** Exclusionary fencing, staking or other marking shall be installed prior to grading activities and remain in place for the duration of construction to ensure limiting disturbance to only that which is necessary.

**MM 4.4-13:** Areas within the project site containing one or more of the following habitat requisites shall be surveyed by a qualified biologist between March 1 and June 30: 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 CBBs from various angles to ensure recordation of key identifying characteristics. During the survey effort, if potential CBB are observed using any animal burrow entrances, bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, or hollowed logs, the resource area will be

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monitored by the qualified biologist for a minimum of 15 minutes to determine if a potential nest could be present.

The survey results shall be submitted to the County within 30-days of completion of the surveys. All detection information collected during survey efforts will be submitted to the California Natural Diversity Data Base at <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. Surveys will be valid for the duration of the current season lasting until the beginning of the next season (i.e., through March 1 the following year).

Consultation with CDFW will occur if CBB are detected. If a CBB nest is observed, a 50-foot buffer around the nest area will be delineated and the nest will be protected through the remaining active season (presumed to be October 31) or as otherwise approved by CDFW.

**MM 4.4-143:** Movement Corridors shall be established and managed for the benefit of sensitive species movement in compliance with agency recommendations. A qualified biologist shall be involved with the design or provide approval of the plan to ensure areas to ensure wildlife movement exist within and around the project site. The use of movement corridors shall be a part of the operations plan and be ensured for the duration and perpetuity of the project.

**4.14 Public Services**

<p><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 protection services or police protection services.</p>	<p>Potentially significant</p>	<p><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.</p> <p>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 and emergency fire precautions including, but not limited to, the following:</p>	<p>Less than significant</p>
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- a. All internal combustion engines, both stationary and mobile, shall be equipped with spark arresters. Spark arresters shall be in good working order.
  - 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.
  - c. Fire rules shall be posted on the project bulletin board at the contractor's field office and areas visible to employees.
  - d. Equipment parking areas and small stationary engine sites shall be cleared of all extraneous flammable materials.
  - 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.
  - 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.

**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
  - i. Any building permit submitted shall be accompanied by a map and legal description showing a defined phase for which permits are being requested. All phases shall be numbered sequentially for identification.
  - ii. 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 (Phase)
    - b) Total acres for Operations and Maintenance building and permanent accessory improvements

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- c) Total acres for Energy Storage structure and permanent accessory improvements.
  - d) Total acres of recorded easements
  - iii. Formula: Net Acreage = (ii)a minus the sum of [(ii)b + ii(c) + ii(d)].
  - iv. Temporary storage areas or non-permanent commercial coaches or cargo containers for construction or operations are not eligible for inclusion under ii(b) or ii(c), above.
  - v. All areas of buildings, accessory improvements and easements used in the calculations shall be shown on the submitted Map.
  - vi. Any property included in the approved Conditional Use Permit that is not included in a phase must be included in the last phase of the project or a formal modification at a noticed public hearing processed to remove it from the Conditional Use Permit approval.
- b. Calculation and Payment of Cumulative Impact Charge (CIC)
- i. A payment of \$620 per net acre for the map shown with the building permit submittal 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.
  - ii. 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 and phase number.
  - iii. 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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- c. In addition to the one-time Cumulative Impact Charge (CIC) required above, the following annual payments shall be made for the energy storage system area:
- i. A Cumulative Impact Charge (CIC) fee of \$620 per acre shall be made for the energy storage acreage and paid as an annual payment to the Planning and Natural Resources department for transfer to the County Administrative Office Fiscal Division (CAO) and labeled Cumulative Impact Charge (CIC) for energy storage with the project name; and
  - ii. An annual payment of \$65,000 shall be made to the Planning and Natural Resources Department for transfer to the County Administrative Office Fiscal Division (CAO) and labeled for fire safety mitigation with the project name.
  - iii. Upon issuance of the energy storage building permit, both amounts of the first annual payment for the energy storage system area shall be paid to the Planning and Natural Resources Department to be held in trust until a determination is made by the Tax Assessor regarding the solar tax exclusion applicability to the project's energy storage system area and/or payment of full assessed property taxes. If payments are not paid within 30 days after the issuance of the energy storage building permit, all such permits shall be suspended until the fees are paid in full.

After the applicability of the solar tax exclusion for the energy storage system area is determined by the Tax Assessor, payments made for the energy storage area above will be either:

- Transferred to the County Administrative Office Fiscal Division (CAO), in the event it is determined that the energy storage system area is subject to the solar tax exclusion or any portion of the system; or
- Refunded to the project proponent via standard county procedures, in the event it is determined that either all of some portion of the energy storage system area is not subject to the solar tax exclusion.



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After the first year payment and any determination of assessed taxes on the energy storage system has occurred, the amount of payment annually will be the adjusted amount for both c(i) and c(ii), or no payment, if applicable.

- d. An advance payment option for a lump sum of all energy storage Cumulative Impact Charge (CIC) payment years, or a reduction in each year's payment for 5 or more years, may be requested by submittal of a written request to the Planning and Natural Resources Department with details of the offer no later than 60 days before the yearly payment is due. A 10% discount in the lump sum amount will be applied if the advance payment option is accepted by the County Administrative Office Fiscal Division (CAO) by written response.

**MM 4.14-3:** Written verification of ownership of the project shall be submitted to the Kern County Planning and Natural Resources Department by April 15 of each calendar year. If the project is sold to a city, county, or utility company with assessed taxes that total less than \$3,000 per megawatt per year, then that entity shall pay the taxes plus the amount necessary to equal the equivalent of \$3,000 per megawatt. The amount shall be paid for all years of operation. The fee shall be paid to the Kern County Auditor/Controller by April 30 of each calendar year.

**MM 4.14-4:** The project proponent/operator shall work with the County to determine how the use of sales and use taxes from construction of the project can be maximized. This process shall include, but is not necessarily limited to, the project proponent/operator obtaining a street address within the unincorporated portion of Kern County for acquisition, purchasing and billing purposes, and registering this address with the State Board of Equalization. As an alternative to the aforementioned process, the project proponent/operator may make arrangements with Kern County for a guaranteed single payment that is equivalent to the amount of sales and use taxes that would have otherwise been received (less any sales and use taxes actually paid); with the amount of the single payment to be determined via a formula approved by Kern County. The project proponent/operator shall allow the County to use this sales tax information publicly for reporting purposes.

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**MM 4.14-5:** Prior to the issuance of any building permits on the property, the project operator shall submit a letter detailing the hiring efforts prior to commencement of construction, which encourages all contractors of the project site to hire at least 50 percent of their workers from local Kern County communities. The project operator shall provide the contractors a list of training programs that provide skilled workers and shall require the contractor to advertise locally for available jobs, notifying the training programs of job availability, all in conjunction with normal hiring practices of the contractor.

**Chapter 4.3, Air Quality, Page 4.3-35:**

**MM 4.3-3:** Prior to the issuance of building and grading permits, the project proponent shall provide the Kern County Planning and Community Development Department with proof that an Indirect Source Review application has been approved by the San Joaquin Valley Air Pollution Control District. The project proponent shall ~~enter into a developer agreement with SJVAPCD and~~ conduct an air impact assessment as required by SJVAPCD Rule 9510. Offsite emission reduction fees shall be calculated, as dictated by Rule 9510, to reduce construction-related NO<sub>x</sub> emissions by 20% and PM<sub>10</sub> emissions by 45%.

**Chapter 4.3, Air Quality, Page 4.3-23:**

**“San Joaquin Valley Air Pollution Control District Rule 4102 Nuisance**

The purpose of Rule 4102 is to protect the health and safety of the public from air contaminants or other materials. Rule 4102 restricts the discharge of such quantities of air contaminants or other materials which cause injury, detriment, nuisance, or annoyance to any considerable number of persons.”

**Chapter 4.4, Biological Resources, Page 4.4-9**

The following row would be added to the end of the table after the Western Spadefoot toad row.

**Table 4.4-2: Special-Status Species of Concern with Potential to Occur on the Project Site**

<u>Scientific Name</u>	<u>Common Name</u>	<u>Listing Status (Federal, State, CRPR)</u>	<u>Habitat Requirements</u>	<u>Potential to Occur and Explanation</u>
<b><u>Invertebrates</u></b>				
<u><i>Bombus crotchii</i></u>	<u>Crotch Bumble Bee (CBB)</u>	<u>CE</u>	<u>The CBB is found in multiple habitats including: flowering vegetation, potential preferred nectar plants, small mammal burrows, bunch grasses, thatch, brush piles, old bird nests, or dead trees</u>	<u>Low Potential. The nearest CBB record, which occurred prior to 1979, is 23 miles from the project site.</u>

**Chapter 4.4, Biological Resources, Page 4.4-41**

**MM 4.4-2:** Prior to the issuance of grading or building permits and for the duration of construction and decommissioning activities, within one week of employment all new construction workers at the project site, laydown area and/or transmission routes shall attend an Environmental Awareness Training and Education Program, developed and presented by the Lead Biologist that is an expert on biology and required protections for the various special-status species found on-site. Any employee responsible for the operations and maintenance or decommissioning of the project facilities shall also attend the Environmental Awareness Training and Education Program.

The program shall follow the recommendations from USFWS (<https://www.fws.gov/media/standardized-recommendations-protection-endangered-san-joaquin-kit-fox-prior-or-during-ground>) and include information on the life history and habitat needs of the BNLL, SJKF, giant kangaroo rat, raptors, American badger, as well as other wildlife and plant species that may be encountered during construction activities. The

program shall also discuss the legal protection status of each species, a report of the occurrence of the SJKF in the project area, the definition of “take” under the federal Endangered Species Act and California Endangered Species Act, measures the project operator is implementing to protect the species, reporting requirements, specific measures that each worker shall employ to avoid take of wildlife species, and penalties for violation of the federal Endangered Species Act or California Endangered Species Act. A fact sheet conveying this information should be prepared for distribution for those attending the training and anyone else who may enter the project site.

- a. An acknowledgement form signed by each worker indicating that Environmental Awareness Training and Education Program has been completed would be kept on record;
- b. A sticker shall be placed on hard hats indicating that the worker has completed the Environmental Awareness Training and Education Program. Construction workers shall not be permitted to operate equipment within the construction areas unless they have attended the Environmental Awareness Training and Education Program and are wearing hard hats with the required sticker;
- c. A copy of the training transcript and/or training video, as well as a list of the names of all personnel who attended the Environmental Awareness Training and Education Program and copies of the signed acknowledgement forms shall be submitted to the Kern County Planning and Community Development Department;
- d. The construction crews and contractor(s) shall be responsible for unauthorized impacts from construction activities to sensitive biological resources that are outside the areas defined as subject to impacts by project permits; and
- e. An Operation and Maintenance-phase version of the WEAP will be maintained within the onsite O&M facility for review as may be necessary during the life of the project

#### **Chapter 4.4, Biological Resources, Page 4.4-43**

**MM 4.4-4:** During construction, operations and maintenance, and decommissioning the project operator shall implement the following general avoidance and protective measures:

- a. All proposed impact areas, including solar fields, staging areas, access routes, and disposal or temporary placement of spoils, shall be delineated with stakes and/or flagging prior to construction to avoid natural resources where possible. Construction-related activities outside of the impact zone shall be avoided.
- b. The project operator shall limit the areas of disturbance to the extent feasible. Parking areas, new roads, staging, storage, excavation, and disposal site locations shall be confined to the smallest areas possible. These areas shall be flagged and disturbance activities, vehicles, and equipment shall be confined to these flagged areas.
- c. Spoils shall be stockpiled in disturbed areas that lack native vegetation. Best management practices shall be employed to prevent erosion in accordance with the project’s approved stormwater pollution prevention plan (SWPPP). All detected erosion shall be remedied within 2 days of discovery or as described in the SWPPP.

- d. To prevent inadvertent entrapment of San Joaquin kit foxes, American badgers, giant kangaroo rat or other wildlife during construction, all excavated, steep-walled holes or trenches more than 2 feet deep shall be covered with plywood or similar materials at the close of each working day, or provided with one or more escape ramps constructed of earth fill or wooden planks. All holes and trenches, whether covered or not, shall be inspected for trapped wildlife at the start and end of each workday. Before such holes or trenches are filled, they shall be thoroughly inspected by the Lead Biologist or approved biological monitor for trapped wildlife. If trapped animals are observed, escape ramps or structures shall be installed immediately to allow escape. If a listed species is found trapped, all work in the vicinity of the animal shall cease immediately. If the animal is apparently uninjured, then the Lead Biologist shall directly supervise the provision of escape structures and/or trench modification to allow the trapped animal to escape safely. Work shall not resume in the vicinity of the animal, and it shall be allowed to leave the work area and project site on its own. ~~If the listed animal is injured, then~~ The Lead Biologist or approved biological monitor shall immediately contact the U.S. Fish and Wildlife Service and/or California Department of Fish and Wildlife for any trapped or injured SJKF to identify an individual with the appropriate permit or authorization to handle listed species, and if the species is injured, to decipher who shall bring the animal to a pre-identified wildlife rehabilitation or veterinary facility for care.
- e. Burrowing owls, mammals, and nesting birds may use construction pipes, culverts, or similar structures for refuge or nesting. All towers shall be of the monopole variety and all hollow vertical structures, such as solar mount poles, or fencing poles, shall be capped immediately after installation to prevent bird entrapment. Therefore, all construction pipes, culverts, or similar structures with a diameter of 4 inches or more that are stored at a construction site for one or more overnight periods shall be thoroughly inspected for special-status wildlife or nesting birds before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If an animal is discovered inside a pipe, that section of pipe shall not be moved until the Lead Biologist has been consulted and the animal has either moved from the structure on its own accord (for listed species) or until the animal has been captured and relocated (for non-listed species) by the Lead Biologist. If the animal is a listed species, then work shall immediately halt in the vicinity, and the animal shall be allowed to move from the structure and the work area of its own accord. The Lead Biologist will direct work stoppages near the animal to allow it to freely move out of the pipe and away from the work area. Listed species shall not be handled or captured by anyone without the appropriate permit or authorization.
- f. 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 wildlife. If present, the animal shall be left to move on its own.
- g. Vehicular traffic to and from the project site shall use existing routes of travel. Cross country vehicle and equipment use outside designated work areas shall be prohibited.
- h. A day-time speed limit of 15 miles per hour shall be enforced within the limits of the proposed project. To the extent possible, night-time construction related activity shall be minimized, but if work must be conducted at night, then a night-time speed limit of

10-mph shall be enforced. Off-road traffic outside of designated project areas should be prohibited.

- i. A long-term trash abatement program shall be established for construction, operations and maintenance, and decommissioning. Trash and food items shall be contained in closed containers and removed daily to reduce the attractiveness to opportunistic predators such as common ravens, coyotes, and feral dogs.
- j. Workers shall be prohibited from bringing pets and firearms to the project area and from feeding wildlife.
- k. Intentional killing or collection of any plant or wildlife species shall be prohibited.
- l. To enable kit foxes and other wildlife (e.g., American badger) to pass through the project site after construction, the security fence, and any permanent interior fencing shall be a wildlife friendly design that meets the goals of allowing wildlife to move freely through the project site during operation, leaving 4- to 7-inch openings or portals in the fence or the fence shall be raised 7 inches above the ground leaving a gap between the fence mesh and the ground. In the latter case the bottom of the fence fabric shall be knuckled (wrapped back to form a smooth edge) to protect wildlife that passes under the fence. Perimeter fencing shall not be electrified.

#### **Chapter 4.4, Biological Resources, Page 4.4-44**

**MM 4.4-5** During construction and decommissioning, the Lead Biologist or approved biological monitor shall monitor all initial ground-disturbance activities and remain on-call throughout construction/decommissioning in the event a special-status species wanders into the project site.

Preconstruction surveys for special-status species shall be conducted within the project boundaries by the Lead Biologist or approved biological monitor no less than within 14 days and no more than 30 days prior to beginning of the start of any vegetation clearing or grading activities. Methodology for preconstruction surveys shall be appropriate for each potentially occurring species-status species and shall follow U.S. Fish and Wildlife Service and/or California Department of Fish and Wildlife preconstruction survey guidelines where appropriate. Surveys need not be conducted for all areas of suitable habitat at one time; they may be phased so that surveys occur no less than within 14 days and no more than 30 days prior to of the portion of the project site being disturbed. The Lead Biologist may use a variety of approaches (including but not limited to monitoring, track plates, and direct observation) and evidence (including burrow characteristics and presence of sign such as scat and tracks) to determine burrow activity. If any evidence of occupation of the project site special-status species is observed, a buffer shall be established by a qualified biologist that results in sufficient avoidance, as described below.

Preconstruction surveys shall be conducted by a qualified biologist for the presence of American badger or San Joaquin kit fox dens no less than within 14 days and no more than 30 days prior to beginning of ground and/or vegetation disturbing activities commencement of construction activities. The surveys shall be conducted in the project site for American badger and San Joaquin kit fox. Surveys need not be conducted for all areas of suitable habitat at one time; they may be phased so that surveys occur no less than within 14 days

and no more than 30 days prior to that portion of the project site disturbed. If potential dens are observed and avoidance is feasible, the following buffer distances shall be established prior to construction activities:

San Joaquin kit fox or American badger potential den: 50 feet.

San Joaquin kit fox or American badger active den: 100 feet.

San Joaquin kit fox or American badger natal den: 500 feet.

If avoidance of the potential dens is not possible, the following measures are required to avoid potential adverse effects to the American badger and San Joaquin kit fox:

If the qualified biologist determines that potential dens are inactive, the biologist shall excavate these dens by hand with a shovel to prevent American badgers or San Joaquin kit foxes from re-using them during construction.

If the qualified biologist determines that potential dens may be active, an onsite passive relocation program shall be implemented. This program shall consist of excluding American badgers or San Joaquin kit foxes from occupied burrows by installation of one-way doors at burrow entrances, monitoring of the burrow with tracking medium or an infrared beam camera for 7 days to confirm usage has been discontinued, and excavation and collapse of the burrow to prevent reoccupation. After the qualified biologist determines that American badgers or San Joaquin kit foxes have stopped using the dens within the project boundary, the dens shall be hand-excavated with a shovel to prevent re-use during construction.

If giant kangaroo rat precincts are detected during the preconstruction survey or a pre-activity survey the precincts shall be flagged and a 50-foot-wide buffer around precincts shall be avoided by construction equipment and ground-disturbing activities, if feasible.

If project personnel are required to drive or operate a vehicle or piece of equipment in the vicinity of a 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 the precinct or that foot traffic occurs 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. 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.
- b. Any haystacks, seed caches, or other forage stockpiled by the giant 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.
- c. More than one plywood sheet may be required to cover an area when multiple precincts occur in the vicinity of the activity.

- d. Vehicles and equipment shall be allowed to travel over a precinct only when all tires are driving over the plywood surface.
- e. 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.
- f. 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 occurs, 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.

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 precincts. Salvage activities shall not proceed until the giant 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 giant kangaroo rat salvage plan is approved, it may be used for all giant kangaroo rat salvage activities for the duration of permitted activities. Any proposed changes to the giant 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.

During fencing and grading activities daily monitoring reports shall be prepared by the monitoring biologists. The Lead Biologist shall prepare a summary monitoring report documenting the effectiveness and practicality of the protection measures that are in place and making recommendations for modifying the measures to enhance species protection, as needed. The report shall also provide information on the overall activities conducted related to biological resources, including the Environmental Awareness Training and Education Program, clearance/pre-activity surveys, monitoring activities, and any observed special-status species, including injuries and fatalities. These monitoring reports shall be submitted to the Kern County Planning and Natural Resources Department and relevant resource agencies, as applicable, on a monthly basis along with copies of all survey reports.

#### **Chapter 4.4, Biological Resources, Page 4.4-45**

- MM 4.4-6:** Within 14 days prior to the commencement of any ground-disturbing activities, the project operator shall conduct preconstruction surveys for special-status and protected plant species within the project area, including but not limited to crownscale, Lost Hills crownscale and San Joaquin Bluecurls, San Joaquin woollythreads and California jewelflower. After the preconstruction survey determines the exact location of these species, if present, on the project site and the number of individuals or populations present, the project proponent/operator shall submit written documentation to the Kern County



Planning and Natural Resources Department confirming implementation of the measures described below.

- a. **Protocol-level Special-Status Plan Survey(s).** Summer/ fall surveys shall be conducted prior to construction. Surveys shall focus on San Joaquin bluecurls, crownscale and Lost Hills crownscale, but should be floristic in nature (all species identified). Summer/ fall surveys should focus on the entire access road area, especially disturbed areas and roadside drainages.

Focused spring surveys shall be conducted for both San Joaquin woollythreads and California jewelflower. Surveys shall focus on the entire access road area especially south of the existing asphalt road. Precipitation shall be monitored prior to Spring surveys to ensure an above average rain year occurs.

If surveys document the absence of these species, no further action is warranted for special-status plants. If special-status plants are detected, the number of specimens affected by the proposed project should be assessed to determine if potential impacts exceed the thresholds of significance under CEQA. If California jewelflower is identified on the project site, consultation with USFWS and CDFW to determine the potential need for an incidental take authorization would be required. The project proponent/operator shall work with a qualified biologist to determine presence of crownscale, Lost Hills crownscale and San Joaquin Bluecurls, San Joaquin woollythreads and California jewelflower and identify all known locations of special-status plant species to establish "avoidance areas". All special status plants found within the project site shall be avoided by a buffer of 25 feet. Sturdy, highly visible, orange plastic construction fencing (or equivalent material verified by the authorized biologist) shall be installed around all locations of detected special status plants to protect from impacts during the construction phase, until they can be relocated. The fence shall be securely staked and installed in a durable manner that would be reasonably expected to withstand wind and weather events and last at least through the construction period. Fencing shall be removed upon completion of the project construction.

- b. **Avoidance and Mitigation Management.** Both San Joaquin woollythreads and California jewelflower are federally endangered; the California jewelflower is also State endangered. If federally or State listed species are found, these species must be fully avoided or compensatory mitigation at a minimum 1:1 mitigation ratio (at least one plant preserved for each plant affected, and also at least one occupied acre preserved for each occupied acre affected) shall be preserved and managed in perpetuity, and FESA and/or CESA permits acquired depending on the listing status. If any plants listed as CRPR special-status species are found at the Proposed Action site, the plants will be flagged, mapped and a setback of a minimum of 50 feet from Project Footprint will be implemented where feasible. If setbacks are not feasible, a monitor shall be present to ensure populations are avoided. To compensate for significant impacts on plants with a CRPR of 1A, 1B, 2, 3, or 4 that cannot be avoided, offsite habitat occupied by the affected species shall be preserved and managed in perpetuity at a minimum 1:1 mitigation ratio (at least one plant preserved for each plant affected, and also at least one occupied acre preserved for each occupied acre affected), up to the significance threshold as follows:

1. For CRPR-ranked 1A species, mitigation must be provided at 1:1 equivalent
2. For a CRPR -ranked 1B and 2 species where 10% or more of the known population within 5 miles of the work area is impacted, mitigation must be provided at 1:1 equivalent.
3. For a CRPR -ranked CRPR of 3 or 4 species where 30% or more of the known population within 5 miles of the work area is impacted, mitigation must be provided at 1:1 equivalent.

Areas proposed for preservation and serving as compensatory mitigation for special-status plant impacts must contain verified extant populations of the CRP-ranked plants that would be impacted by the work areas. Mitigation areas shall be managed in perpetuity to encourage persistence and even expansion of the preserved target species. Any crownscale, Lost Hills crownscale, San Joaquin Bluecurls, San Joaquin woollythreads or California jewelflower onsite individuals or populations that cannot feasibly be avoided in final project design shall have seed collected prior to construction for sowing into suitable onsite habitat or in nearby suitable offsite habitat covered with a conservation easement. A seed harvesting and storage plan including a planting plan shall be prepared and approved by the County, prior to ground disturbance of these areas.

- c. Temporary ground disturbance associated with the gen-tie lines or collector lines shall be recontoured to natural grade (if the grade was modified during the temporary disturbance activity), and revegetated with an application of a native seed mix prior to or during seasonal rains to promote passive restoration of the area to pre-project conditions. However, if invasive plant species were present, these species would not be restored. An area subjected to temporary ground disturbance means any area that is disturbed but will not be subjected to further disturbance as part of the project. This does not include areas already designated as urban/developed. Prior to seeding temporary ground disturbance areas, the qualified biologist will review the seeding palette to ensure that no seeding of invasive plant species, as identified in the most recent version of the California Invasive Plant Inventory for the region, will occur.

#### **Chapter 4.4, Biological Resources, Page 4.4-46**

**MM 4.4-7:** A qualified wildlife biologist shall conduct preconstruction surveys of the permanent and temporary impact areas to locate active breeding or wintering burrowing owl burrows no fewer than 14 days prior to ground-disturbing activities (i.e., vegetation clearance, grading, tilling). The survey methodology shall be consistent with the methods outlined in the 2012 California Department of Fish and Wildlife (CDFW) Staff Report on Burrowing Owl Mitigation and shall consist of walking parallel transects 7 to 20 meters apart, adjusting for vegetation height and density as needed, and noting any potential burrows with fresh burrowing owl sign or presence of burrowing owls. As each burrow is investigated, surveying biologists shall also look for signs of American badger and San Joaquin kit fox. Copies of the survey results shall be submitted to CDFW and the Kern County Planning and Natural Resources Department.

If burrowing owls are detected onsite, the avoidance buffers outlined below should be established. These buffers be implemented prior to and during any ground-disturbing

activities. Specifically, CDFW’s Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist, approved by CDFW, verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival. Visible markers shall be places near the identified burrow(s) to ensure that machinery does not collapse the burrow(s). no ground disturbing activities shall be permitted within a buffer of no fewer than 100 meters (330 feet) from an active burrow during the breeding season (i.e., February 1 to August 31), unless otherwise authorized by CDFW. During the non-breeding (winter) season (i.e., September 1 to January 31), ground disturbing work can proceed as long as the work occurs no closer than 50 meters (165 feet) from the burrow. Depending on the level of disturbance, a smaller buffer may be established in consultation with CDFW.

<u>Location</u>	<u>Time of Year</u>	<u>Level of Disturbance</u>		
		<u>Low</u>	<u>Med</u>	<u>High</u>
<u>Nesting sites</u>	<u>April 1-Aug 15</u>	<u>200 m*</u>	<u>500 m</u>	<u>500 m</u>
<u>Nesting sites</u>	<u>Aug 16-Oct 15</u>	<u>200 m</u>	<u>200 m</u>	<u>500 m</u>
<u>Nesting sites</u>	<u>Oct 16-Mar 31</u>	<u>50 m</u>	<u>100 m</u>	<u>500 m</u>
<u>*meters (m)</u>				

If burrow avoidance is infeasible during the non-breeding season or during the breeding season (February 1 through August 31) where resident owls have not yet begun egg laying or incubation, or where the juveniles are foraging independently and capable of independent survival, a qualified biologist shall implement a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 CDFW Staff Report on Burrowing Owl Mitigation. If a qualified CDFW approved 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), CDFW can be consulted about the use of passive relocation.

If passive relocation is required, a qualified biologist shall prepare a Burrowing Owl Exclusion and Mitigation Plan and a Mitigation Land Management Plan in, accordance with the 2012 CDFW Staff Report on Burrowing Owl Mitigation, for review by CDFW prior to passive relocation activities. The Mitigation Land Management Plan shall include a requirement for the permanent conservation of offsite Burrowing Owl Passive Relocation Compensatory Mitigation. At a minimum, the following recommendations shall be implemented:

- a. Temporarily disturbed habitat shall be restored, if feasible, to pre project conditions including decompacting soil and revegetating.
- b. Permanent impacts to nesting, occupied and satellite burrows and/or burrowing owl habitat shall be mitigated such that the habitat acreage, number of burrows and burrowing owl impacted are replaced based on a site specific analysis and shall include permanent conservation of similar vegetation communities (grassland, scrublands, desert, urban, and agriculture) to provide for burrowing owl nesting, foraging, wintering, and dispersal (i.e., during breeding and non-breeding seasons) comparable

~~to or better than that of the impact area, and with sufficiently large acreage, and presence of fossorial mammals.~~

- ~~e. Permanently protect mitigation land through a conservation easement, deed restriction, or similar mechanism deeded to a nonprofit conservation organization or public agency with a conservation mission. If the project is located within the service area of a CDFW approved burrowing owl conservation bank, the project operator may purchase available burrowing owl conservation bank credits. Land identified to mitigate for passive relocation of burrowing owl may be combined with other offsite mitigation requirements of the proposed project if the compensatory habitat is deemed suitable to support the species.~~

#### **Chapter 4.4, Biological Resources, Page 4.4-47**

~~**MM 4.4-8:** A preconstruction survey for BNLL and antelope squirrel in compliance with agency recommendations in accordance with USFWS and/or CDFW protocols shall be conducted and used to determine if there are suitable burrows for these species on the project site. The survey shall identify burrows suitable for BNLL or antelope squirrels. An agency approved disturbance buffer shall be placed around all identified small burrows with potential to support BNLL or antelope squirrels. Avoidance of burrows and associated buffer areas shall be implemented. If BNLL or antelope squirrels are identified during the focused surveys, USFWS and CDFW shall be consulted to obtain the necessary permit authorizations before proceeding. If burrow avoidance is not possible within the project site, a Management Plan for the appropriate species will be prepared in consultation with the agencies.~~

#### **Chapter 4.4, Biological Resources, Page 4.4-48**

**MM 4.4-9:** 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 from April to July 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 fencing in compliance with agency specifications to prevent potential future occupancy of BNLL.

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 ~~other specific protection measures developed in compliance with agency guidelines~~. 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. ~~During the active season when blunt-nosed leopard lizards are moving above-~~

~~ground (April to early November), the following measures will be implemented in areas where blunt nosed leopard lizards or signs of blunt nosed leopard lizards have been observed:~~

- ~~e. Establishment of No Work Buffers. The project biologist will establish, monitor, and maintain 50-foot no-work buffers around burrows and egg clutch sites identified during surveys. The 50-foot no-work buffers will be established around burrows in a manner that allows for a connection between the burrow site and the suitable natural habitat adjacent to the Construction Footprint so that blunt nosed leopard lizards and/or hatchlings may leave the area after eggs have hatched. Construction activities will not occur within the 50-foot no-work buffers until such time as the eggs have hatched and blunt nosed leopard lizards have left the area.~~
- ~~d. Fencing of Work Areas. Prior to installing wildlife exclusion fence (WEF), the project biologist will confirm that no blunt nosed leopard lizard are present within a Work Area by conducting focused blunt nosed leopard lizard observational surveys for 12 days over the course of a 30 to 60-day period. At least one survey session will occur over 4 consecutive days. These observational surveys may be paired with scent detection dog surveys for blunt nosed leopard lizard scat.~~
  - ~~iii. Within 3 days of completing these surveys with negative results, WEF will be installed in a configuration that accounts for burrow locations and enables blunt nosed leopard lizards to leave the Work Area. The following day, the project biologist will conduct an observational survey. If no blunt nosed leopard lizards are observed, the project biologist will install additional WEF to further enclose the Work Area. This Work Area will be monitored daily while the WEF is in place.~~
  - ~~iv. If blunt nosed leopard lizards are observed prior to installing the last of the WEF, the project biologist will continue observational surveys until the lizard is observed leaving the Work Area or until 30 days elapse with no blunt nosed leopard lizards observations within the Work Area.~~

~~A qualified biological monitor shall be present to ensure activities are compliant with protection measures. Ground disturbance shall be prohibited in sensitive areas, and biological monitors shall conduct regular inspections.~~

#### **Chapter 4.4, Biological Resources, Page 4.4-49**

**MM 4.4-10:** If construction is scheduled to commence during the non-nesting season (i.e., September 1 to January 31), no preconstruction surveys or additional measures are required. To avoid impacts to nesting birds in the project area, a qualified wildlife biologist shall conduct preconstruction surveys of all potential nesting habitat within the project site for construction activities that are initiated during the breeding season (i.e., February 1 to August 31). The raptor survey shall focus on potential nest sites (e.g., cliffs, large trees, windrows) within a 0.5-mile buffer around the project site. Swainson's hawk nest survey shall focus on potential nest sites (e.g., cliffs, large trees, windrows) within a 5-mile buffer around the project site and follow the 2010 Swainson's hawk protocol surveys (~~CEC and CDFW 2010 SWHA TAC 2000~~). Surveys shall be conducted no more than 104 days prior to construction activities and encompass the project site plus the potential nest buffers as listed below, where access has been granted. Surveys need not be conducted for the entire project site at one time; they may be phased so that surveys occur shortly before a portion

of the project site is disturbed. The surveying biologist must be qualified to determine the status and stage of nesting by migratory birds and all locally breeding raptor species without causing intrusive disturbance. If active nests are found, a suitable no-disturbance buffer (e.g., 500 200–300 feet for common raptors; 0.5 mile for Swainson’s hawk; 250 feet for non-raptor species 30–50 feet for passerine species) shall be established around active nests until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). For non-listed species, encroachment into the avoidance buffer may occur at the discretion of a qualified biologist provided the biologist has monitored the nest prior to construction to establish a behavioral baseline and continues to monitor the nest during construction to ensure the nest is not negatively affected. Buffer distances can also be adjusted if there is a compelling biological reason such as when a construction area would be concealed from a nest site by topography of vegetation as determined by a qualified biologist and CDFW has been notified in advance of the variance. ~~;~~ ~~however,~~ ~~f~~ For State-listed species, consultation with CDFW shall occur prior to encroachment into the aforementioned buffers. In addition to preconstruction SWHA surveys, focused SWHA surveys following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) shall be completed prior to the start of construction. Compensation for loss of Swainson’s hawk foraging habitat will be based on the results of the protocol SWHA survey (SWHA TAC 2000) as described in CDFW’s “Staff Report Regarding Mitigation for Impacts to Swainson's Hawks” (CDFG 1994). If an active Swainson’s hawk nest is detected and a ½-mile no disturbance buffer is not feasible, CDFW will be consulted to discuss how to implement the project and avoid take.

#### **Chapter 4.4, Biological Resources, Page 4.4-49**

**MM 4.4-13:** Areas within the project site containing one or more of the following habitat requisites shall be surveyed by a qualified biologist between March 1 and June 30: 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 CBBs from various angles to ensure recordation of key identifying characteristics.

During the survey effort, if potential CBB are observed using any animal burrow entrances, bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, or hollowed logs, the resource area will be monitored by the qualified biologist for a minimum of 15 minutes to determine if a potential nest could be present.

The survey results shall be submitted to the County within 30-days of completion of the surveys. All detection information collected during survey efforts will be submitted to the California Natural Diversity Data Base at: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. Surveys will be valid for the duration of the current season lasting until the beginning of the next season (i.e., through March 1 the following year).

Consultation with CDFW will occur if CBB are detected. If a CBB nest is observed, a 50-foot buffer around the nest area will be delineated and the nest will be protected through the remaining active season (presumed to be October 31) or as otherwise approved by CDFW.

#### **Chapter 4.4, Biological Resources, Page 4.4-49**

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

With implementation of Mitigation Measures MM 4.4-1 through MM 4.4-132, and MM 4.1-4 through MM 4.1-6 from Chapter 4.1, *Aesthetics*, impacts would be less than significant.

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

**MM 4.4-143:** Movement Corridors shall be established and managed for the benefit of sensitive species movement in compliance with agency recommendations. A qualified biologist shall be involved with the design or provide approval of the plan to ensure areas to ensure wildlife movement exist within and around the project site. The use of movement corridors shall be a part of the operations plan and be ensured for the duration and perpetuity of the project.

#### **Chapter 4.10, Hydrology and Water Quality, Page 4.10-8**

The text at the end of the first paragraph shall be revised as follows:

If applicable, construction would also require a request for water quality certification (or waiver thereof) from the ~~Lahontan~~ Central Valley RWQCB. Project activities would adhere to state and federal water quality standards and would be in compliance with Sections 401 and 404 of the CWA.

#### **Chapter 4.14, Public Services, Pages 4.14-16 through 4.14-17**

- MM 4.14-2:** The following Cumulative Impact Charge (CIC) shall be implemented as payment on approved Conditional Use Permit acreage.
- b. Submittal of Building Permit and Phasing
    - vii. Any building permit submitted shall be accompanied by a map and legal description showing a defined phase for which permits are being requested. All phases shall be numbered sequentially for identification.
    - viii. The map for either the total project or a phase shall calculate the Cumulative Impact Charge (CIC) net acreage as follows:
      - e) Total gross acreage (Phase)
      - f) Total acres for Operations and Maintenance building and permanent accessory improvements
      - g) Total acres for Energy Storage structure and permanent accessory improvements.
      - h) Total acres of recorded easements
    - ix. Formula: Net Acreage = (ii)a minus the sum of [(ii)b + ii(c) + ii(d)].
    - x. Temporary storage areas or non-permanent commercial coaches or cargo containers for construction or operations are not eligible for inclusion under ii(b) or ii(c), above.
    - xi. All areas of buildings, accessory improvements and easements used in the calculations shall be shown on the submitted Map.

- xii. Any property included in the approved Conditional Use Permit that is not included in a phase must be included in the last phase of the project or a formal modification at a noticed public hearing processed to remove it from the Conditional Use Permit approval.
- e. Calculation and Payment of Cumulative Impact Charge (CIC)
- iv. A payment of \$620 per net acre for the map shown with the building permit submittal 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.
- v. 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 and phase number.
- vi. 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).
- f. In addition to the one-time Cumulative Impact Charge (CIC) required above, the following annual payments shall be made for the energy storage system area:
- iv. A Cumulative Impact Charge (CIC) fee of \$620 per acre shall be made for the energy storage acreage and paid as an annual payment to the Planning and Natural Resources department for transfer to the County Administrative Office Fiscal Division (CAO) and labeled Cumulative Impact Charge (CIC) for energy storage with the project name; and
- v. An annual payment of \$65,000 shall be made to the Planning and Natural Resources Department for transfer to the County Administrative Office Fiscal Division (CAO) and labeled for fire safety mitigation with the project name.
- vi. Upon issuance of the energy storage building permit, both amounts of the first annual payment for the energy storage system area shall be paid to the Planning and Natural Resources Department to be held in trust until a determination is made by the Tax Assessor regarding the solar tax exclusion applicability to the project's energy storage system area and/or payment of full assessed property taxes. If payments are not paid within 30 days after the issuance of the energy storage building permit, all such permits shall be suspended until the fees are paid in full.
- After the applicability of the solar tax exclusion for the energy storage system area is determined by the Tax Assessor, payments made for the energy storage area above will be either:
- Transferred to the County Administrative Office Fiscal Division (CAO), in the event it is determined that the energy storage system area is subject to the solar tax exclusion or any portion of the system; or
  - Refunded to the project proponent via standard county procedures, in the event it is determined that either all of some portion of the energy storage system area is not subject to the solar tax exclusion.
- After the first year payment and any determination of assessed taxes on the energy storage system has occurred, the amount of payment annually will be the adjusted amount for both c(i) and c(ii), or no payment, if applicable.
- g. An advance payment option for a lump sum of all energy storage Cumulative Impact Charge (CIC) payment years, or a reduction in each year's payment for 5 or more years, may be requested by submittal of a written request to the Planning and Natural Resources



Department with details of the offer no later than 60 days before the yearly payment is due. A 10% discount in the lump sum amount will be applied if the advance payment option is accepted by the County Administrative Office Fiscal Division (CAO) by written response.

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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

Letter 1: California Department of Fish and Wildlife (CDFW) (October 17, 2022)

### Local Agencies

Letter 2: San Joaquin Valley Air Pollution Control District (SJVAPCD) (October 17, 2022)

Letter 3: Kern County Fire Department (KCFD) (September 7, 2022)

Letter 4: Kern County Public Works Department – Floodplain Management (September 8, 2022)

Letter 5: Kern County Public Works Department – County Surveyor (October 14, 2022)

### Interested Parties

Letter 6: Defenders of Wildlife (Defenders) (October 17, 2022)

# State Agencies

## Comment Letter 1: California Department of Fish and Wildlife (CDFW) (October 17, 2022)



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 17, 2022

Terrance Smalls  
 Kern County Planning and Natural Resources  
 2700 M Street  
 Suite 100  
 Bakersfield, California 93301  
 (661) 862-8607

**Subject: Azalea Solar Project by SF Azalea, LLC (Project)  
 DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)  
 State Clearinghouse No. 2021090602**

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 (Kern County), as Lead Agency, for the Azalea Solar Project by SF Azalea, LCC (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

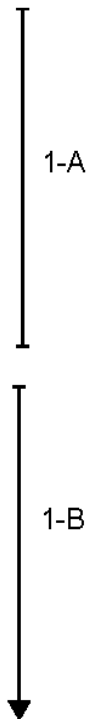
Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required 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. 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 species of birds, mammals, amphibians, reptiles, and fish designated by statute as “fully protected” pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited and CDFW cannot authorize their incidental take except as specifically provided for in Fish and Game Code; none of those specific exceptions are applicable to this project.

**Nesting Birds:** CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs, and nests include 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:** SF Azalea, LLC

**Objective:**

The Project proposes to develop a photovoltaic solar facility and associated infrastructure necessary to generate up to 60 megawatt-alternating current (MW-AC) of renewable energy, on approximately 640 acres of privately-owned land. The project site consists of 1 site located on 2 parcels. The project would be supported by a 230-kilovolt (kV) gen-tie overhead and/or underground electrical transmission line(s) originating from one or more on-site substations and terminating at the nearby PG&E Arco Substation. The project’s permanent facilities would include, but are not limited to, service roads, a power collection system, inverter stations, transformer systems, transmission lines, electrical switchyards, project substations, energy (battery) storage system, and operations and maintenance facilities.

**Location:** The proposed project is located approximately 2.5 miles northeast of Twisselman Road and Kings Road, approximately 16 miles south of Kettleman City, approximately 14 miles northwest of the community of Lost Hills, approximately 6 miles west of the Interstate 5, and approximately 4 miles east of the State Route 33. The proposed Project is generally located in the northwest portion of the Southern San Joaquin Valley.

**Timeframe:** Beginning of 2023 for Arco substation, approximately 12 months beginning in 2024 for the remainder of the project.

**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.

Aerial imagery of the Project boundary and its surroundings show the area contains undeveloped land that 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, 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

1-C

1-D

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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 threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*); the State and federally endangered giant kangaroo rat (*Dipodomys ingens*); the State threatened Swainson’s hawk (*Buteo swainsoni*); the State and federally endangered and State fully protected blunt-nosed leopard lizard (*Gambelia sila*); the State candidate-listed as endangered Crotch bumble bee (*Bombus crotchii*); the State species of special concern short-nosed kangaroo rat (*Dipodomys nitratoides brevinasus*); the State species of special concern burrowing owl (*Athene cunicularia*); the State species of special concern San Joaquin coachwhip (*Coluber flagellum ruddocki*); and the State species of special concern western spadefoot (*Spea hammondi*).

1-D

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 California rare plant rank (CRPR) 1B.1 California jewelflower (*Caulanthus californicus*); the federally endangered and CRPR 1B.2 San Joaquin woollythreads (*Monolopia congdonii*) and the CRPR 1.2 Lost Hills crownscale (*Atriplex coronata var. vallicola*); Finally, CDFW is concerned with potential impacts to migratory and non-migratory nesting birds.

1-E

**RECOMMENDED MITIGATION MEASURE 1: Blunt-nosed Leopard Lizard (BNLL)**

As mentioned previously in CDFW’s December 6, 2021, Notice of Preparation (NOP) comment letter to this Project, there is a high likelihood that BNLL are present within the Project Area, and no take incidental or otherwise can be authorized by CDFW, as BNLL are a State Fully Protected species. CDFW is concerned that the Project, even with the implementation of the mitigation measures outlined in the DEIR, would likely result in “take” if the species is present within or adjacent to the Project footprint and reiterates the recommendation of early consultation with CDFW to discuss BNLL. Please see below for comments to BNLL specific measures, Mitigation Measures 4.4-8 and 4.4-9.

1-F

Mitigation Measure 4.4-8 states that, “If BNLL or antelope squirrels are identified during the focused surveys, USFWS and CDFW shall be consulted to obtain the necessary permit authorizations before proceeding. If burrow avoidance is not possible within the project site, a Management Plan for the appropriate species will be prepared in consultation with the agencies.” No take incidental or otherwise can be authorized by CDFW, as BNLL are a State Fully Protected species. CDFW reiterates the recommendation of early consultation with CDFW to discuss BNLL and full avoidance.

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Mitigation Measure 4.4-9 states that, "Protocol level surveys for the BNLL shall be conducted by a qualified biologist at the project site from April to July, 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 fencing in compliance with agency specifications to prevent potential future occupancy of BNLL." CDFW does not recognize this survey methodology as sufficient for the detection of BNLL and recommends that surveys are conducted in accordance with the "Approved Survey Methodology for the Blunt-nosed Leopard Lizard" (CDFW 2019) and that these surveys are completed no more than one year prior to initiation of ground and/or vegetation disturbance. It should be noted that the approved methodology for projects with construction activities that remove suitable habitat requires surveys during the adult optimal survey period (April 15<sup>th</sup> to July 31<sup>st</sup>) and the hatchling optimal survey period between August 15<sup>th</sup> and September 30<sup>th</sup> (CDFW 2019). To satisfy the protocol, surveys would need to be conducted during this time.

1-F

Mitigation Measure 4.4-9 also states, "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 not agree that restricting work within occupied BNLL habitat to the species active period would be sufficient to prevent "take". To avoid "take," construction and operations activities would have to avoid all observed lizards 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. As mentioned previously, no take, incidental or otherwise, can be authorized by CDFW, as BNLL are a State Fully Protected species. CDFW reiterates the recommendation of early consultation with CDFW to discuss BNLL.

1-G

Mitigation Measure 4.4-9 continues with the proposal to establish and maintain "50-foot no work buffers around burrows and egg clutch sites identified during surveys. The 50 foot no-work buffers will be established around burrows in a manner that allows for a connection between the burrow site and the suitable natural habitat adjacent to the Construction Footprint so that blunt-nosed leopard lizards and/or hatchlings may leave the area after eggs have hatched. Construction activities will not occur within the 50-foot no-work buffers until such time as the eggs have hatched and blunt-nosed leopard lizards have left the area." The measure mentions these buffers would be installed during the active period when BNLL are moving above ground. CDFW does not recognize the 50-foot no work buffer distance as appropriate for protection of the species and to avoid take. As CDFW mentioned



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previously in the project's NOP comment letter, it is recommended that any BNLL detection, known 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 this recommended buffer relative to the overall size of the proposed Project, CDFW reiterates the recommendation of early consultation with CDFW to discuss BNLL.

1-G

Finally, Mitigation Measure 4.4-9 states that wildlife exclusion fence (WEF) will be installed "during the active season in areas where BNLL or signs of BNLL have been observed" and "the project biologist will confirm that no blunt-nosed leopard lizard are present within a Work Area by conducting focused blunt-nosed leopard lizard observational surveys for 12 days over the course of a 30 to 60-day period. At least one survey session will occur over 4 consecutive days. These observational surveys may be paired with scent detection dog surveys for blunt-nosed leopard lizard scat." As mentioned above, CDFW cannot authorize "take" of BNLL and complete avoidance of all observed lizards, known burrows, or egg clutch sites by a distance of no less than the distance that BNLL are known or expected to travel within their home range is required. BNLL are often difficult to detect as activity patterns can vary considerably daily and seasonally (Tollestrup 1976) and there is the potential that the installation and implementation of WEF within areas where BNLL and BNLL sign have been observed would result in "take". As such, CDFW reiterates the recommendation of early consultation with CDFW to discuss BNLL. We are unaware of successful trials using scent dogs to detect BNLL or their scat, though scent dogs have been used successfully with other species such as San Joaquin kit fox (SJKF).

1-H

**RECOMMENDED MITIGATION MEASURE 2: Burrowing Owl (BUOW)**

Mitigation Measure 4.4-7 states that, "If burrowing owls are detected onsite, no ground-disturbing activities shall be permitted within a buffer of no fewer than 100 meters (330 feet) from an active burrow during the breeding season (i.e., February 1 to August 31), unless otherwise authorized by CDFW. During the non-breeding (winter) season (i.e., September 1 to January 31), ground-disturbing work can proceed as long as the work occurs no closer than 50 meters (165 feet) from the burrow. Depending on the level of disturbance, a smaller buffer may be established in consultation with CDFW." CDFW does not agree that these buffer distances would be sufficient to prevent the take of burrowing owls within occupied habitat. Human-related disturbances were documented to cause degradation and abandonment of active burrows at distances up to 500 meters (Scobie and Faminow

1-I

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2000, Lehman et al. 1999). As such, CDFW reiterates the recommendation outlined in CDFW’s NOP comment letter that no-disturbance buffers follow the buffer distances outlined in the “Staff Report on Burrowing Owl Mitigation” (CDFG 2012), and that these buffers be implemented prior to and during any ground-disturbing activities. Specifically, CDFW’s Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist, approved by CDFW, verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

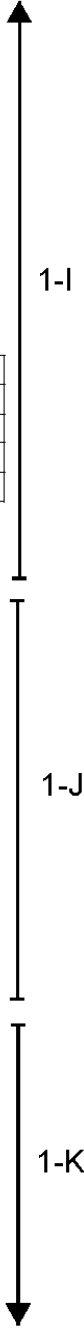
Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

\* meters (m)

Mitigation Measure 4.4-7 also states that, “If burrow avoidance is infeasible during the non-breeding season or during the breeding season (February 1 through August 31) where resident owls have not yet begun egg laying or incubation, or where the juveniles are foraging independently and capable of independent survival, a qualified biologist shall implement a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 CDFW Staff Report on Burrowing Owl Mitigation.” CDFW does not recognize the method of passively relocating BUOW from active burrows during the breeding season as appropriate and recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance.

**RECOMMENDED MITIGATION MEASURE 3: Giant Kangaroo Rat (GKR) and Short-nosed Kangaroo Rat (SNKR)**

The DEIR states that, “suitable foraging and denning habitat is present within the Project area” for GKR and several occurrences of SNKR were documented within five miles of the project area (CDFW 2022). Additionally, an unidentified kangaroo rat was documented with remote cameras during reconnaissance level biological surveys, yet no mitigation measures were included within the DEIR to determine presence of GKR and SNKR and avoid project-related impacts.



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CDFW recommends that a trapping plan for determining presence of GKR and SNKR be submitted to and approved by CDFW prior to subsequent trapping efforts. CDFW recommends these surveys be conducted by a qualified biologist who holds a CDFW Memorandum of Understanding for GKR and SNKR, and any appropriate USFWS permit(s). CDFW further recommends that these surveys be conducted between April 1 and October 31, when kangaroo rats are most active and before nighttime temperatures become prohibitively cold in late fall and winter. These trapping surveys should be conducted well in advance of ground- and/or vegetation-disturbing activities in order to determine if impacts to GKR and SNKR could occur. Once completed, all survey results would be sent to CDFW.

1-K

In addition to trapping surveys, CDFW advises maintenance of a 50-foot minimum no-disturbance buffer around all small mammal burrow entrances where feasible. Although these recommended buffer distances may be sufficient to avoid direct mortality from crushing or burrow destruction, encircling a burrow with development activities would inhibit the ability of GKR and SNKR to freely disperse to and from burrows and has the potential to be considered “capture” and/or ultimately result in take in the form of mortality. Therefore, CDFW recommends that in addition to the buffer distances, that no burrow is surrounded more than 180 degrees by development activities.

Finally, If GKR are found within the Project area during trapping as described above, preconstruction surveys, or construction activities, consultation with CDFW is advised to occur immediately to discuss how to implement the Project and avoid take; or if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to any ground-disturbing activities, pursuant Fish and Game Code section 2081 subdivision (b).

1-L

**RECOMMENDED MITIGATION MEASURE 4: San Joaquin Kit Fox (SJKF)**

Mitigation Measure 4.4-5 states that, “preconstruction surveys shall be conducted by a qualified biologist for the presence of American badger or San Joaquin kit fox dens within 14 days prior to commencement of construction activities”. As it is likely that SJKF are utilizing the project site, CDFW agrees that preconstruction presence/absence surveys be conducted and recommends the surveys follow the USFWS’ “Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance” (2011). Specifically, CDFW advises conducting these surveys in all areas of potentially suitable habitat within Project areas and a 500-foot buffer of Project areas no less than 14-days and no more than 30-days prior to beginning of ground and/or vegetation disturbing activities. While these surveys will identify if there are SJKF dens on site, a lack of den detection does not mean that SJKF are not foraging and otherwise utilizing the site. As such, CDFW also recommends assuming presence of SJKF and acquiring an ITP prior to

1-M

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ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

Mitigation Measure 4.4-5 also states that, “If avoidance of the potential dens is not possible, the following measures are required to avoid potential adverse effects to the American badger and San Joaquin kit fox:

a. If the qualified biologist determines that potential dens are inactive, the biologist shall excavate these dens by hand with a shovel to prevent American badgers or San Joaquin kit foxes from re-using them during construction.

b. If the qualified biologist determines that potential dens may be active, an onsite passive relocation program shall be implemented. This program shall consist of excluding American badgers or San Joaquin kit foxes from occupied burrows by installation of one-way doors at burrow entrances, monitoring of the burrow for 7 days to confirm usage has been discontinued, and excavation and collapse of the burrow to prevent reoccupation. After the qualified biologist determines that American badgers or San Joaquin kit foxes have stopped using the dens within the project boundary, the dens shall be hand-excavated with a shovel to prevent re-use during construction.”

The passive relocation of active dens would result in “take” of SJKF. As there is a high likelihood that SJKF occupy the Project site and measures are proposed to exclude SJKF from active and/or occupied burrows, CDFW recommends acquiring an ITP prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

1-M

**RECOMMENDED MITIGATION MEASURE 5: Swainson’s Hawk (SWHA)**

Mitigation Measure 4.4-10 states that, “Swainson’s hawk nest survey shall focus on potential nest sites (e.g., cliffs, large trees, windrows) within a 5-mile buffer around the project site and follow the 2010 Swainson’s hawk protocol surveys. Surveys shall be conducted no more than 14 days prior to construction activities”. As mentioned in CDFW’s NOP commented letter, SWHA have the potential to nest near the Project site, and forage within the Project site. SWHA have been documented to occur approximately 2 miles from the Project site (CDFW 2022). As such, CDFW recommends focused SWHA surveys to document known nesting sites and evaluate potential Project-related impacts prior to conducting pre-construction surveys. Surveys would need to be conducted for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) prior to Project implementation (during CEQA analysis). SWHA detection during protocol-level surveys warrants consultation with CDFW to discuss how to implement Project activities and avoid take.

1-N

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CDFW also recommends that in the event an active 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. If take cannot be avoided, take authorization through the issuance of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA. Finally, 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 ¾ 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 ½ acre of HM land for each acre of development is advised.

1-O

**RECOMMENDED MITIGATION MEASURE 6: Crotch Bumble Bee (CBB)**

On June 28, 2019, the Fish and Game Commission published findings of its decision to advance CBB to candidacy as endangered. The Commission's candidacy determination was challenged in the Sacramento County Superior Court on November 13, 2020, and candidacy and the take prohibition were stayed for litigation through May 2022. On May 31, 2022, the Third Appellate Court District in California upheld the listing, and the state Supreme Court subsequently declined to review the case on September 21, 2022. Candidacy was reinstated on September 30th, 2022, when the California Supreme Court of appeal issued remittitur in the litigation. With Candidacy of CBB reinstated, pursuant to Fish and Game Code section 2074.6, CDFW has initiated a status review report to inform the Commission's decision on whether listing of CBB, pursuant to CESA, is warranted. During the candidacy period, consistent with CEQA Guidelines section 15380, the status of the CBB as an endangered candidate species under CESA (Fish & G. Code, § 2050 et seq.) qualifies it as an endangered, rare, or threatened species under CEQA. It is unlawful to import into California, export out of California, or take, possess, purchase, or sell within California, CBB and any part or product thereof, or attempt any of those acts, except as authorized pursuant to CESA. Under Fish and Game Code section 86, take means to hunt, pursue, catch, capture, or kill, or to attempt to hunt pursue, catch, capture, or kill. Consequently, take of CBB during the status review period is prohibited unless authorization pursuant to CESA is obtained.

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The Project site is within the range of CBB and the DEIR did not analyze and address potential Project related impacts to this species. Without appropriate avoidance and minimization measures for CBB, potentially significant impacts associated with ground- and vegetation-disturbing activities associated with construction of the Project include loss of foraging plants, changes in foraging behavior, burrow collapse, nest abandonment, reduced nest success, reduced health and vigor of eggs, young and/or queens, in addition to direct mortality in violation of Fish and Game Code. CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features to evaluate potential suitable foraging and overwintering habitat and potential impacts resulting from ground- and vegetation-disturbance associated with the proposed Project. If surveys cannot be completed, CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take. If take cannot be avoided, take authorization prior to any ground disturbing activities may be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).

1-Q

**RECOMMENDED MITIGATION MEASURE 7: Other State Species of Special Concern**

Mitigation Measure 4.4-5 states that, "Preconstruction surveys for special-status species shall be conducted within the project boundaries by the Lead Biologist or approved biological monitor within 14 days of the start of any vegetation clearing or grading activities. Methodology for preconstruction surveys shall be appropriate for each potentially occurring special-status species and shall follow U.S. Fish and Wildlife Service and/or California Department of Fish and Wildlife preconstruction survey guidelines where appropriate." This measure continues by listing specific buffer distances for SJKF and American Badger (AMBA). There is no mention of buffer distances for other species of special concern and their burrows that may be found during Project construction such as San Joaquin coachwhip and western spadefoot. San Joaquin coachwhip was documented within the Project footprint during 2022 surveys and suitable grassland habitat elements for western spadefoot were also documented (CDFW 2022). CDFW recommends that a qualified biologist conduct focused surveys for other species of special concern and that a 50-foot no-disturbance buffer is implemented around the entrances of burrows that can provide refuge for San Joaquin coachwhip, western spadefoot, and other special-status small mammals.

1-R

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### RECOMMENDED MITIGATION MEASURE 8: Special-status Plants

Mitigation Measure 4.4-6 states that, “Within 14 days prior to the commencement of any ground-disturbing activities, the project operator shall conduct preconstruction surveys for special-status and protected plant species within the project area, including but not limited to crownscale, Lost Hills crownscale and San Joaquin Bluecurls, San Joaquin woollythreads and California jewelflower.” The DEIR states that surveys were done in September 2020 and March 2021 and that the access road, “was added to the BSA prior to March 2021”. As the access road was only surveyed for spring blooming plants and the entirety of the site was surveyed during a drought year, CDFW recommends the Project site be resurveyed by a qualified botanist with experience identifying crownscale, Lost Hills crownscale, San Joaquin Bluecurls, San Joaquin woollythreads, and California jewelflower prior to construction. CDFW recommends following the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (March 20, 2018). This protocol, which is intended to maximize detectability, includes the identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

Mitigation Measure 4.4-6 also states that, “The project proponent/operator shall work with a qualified biologist to determine the presence of crownscale, Lost Hills crownscale and San Joaquin Bluecurls, San Joaquin woollythreads and California jewelflower and identify all known locations of special-status plant species to establish “avoidance areas”. All special-status plants found within the project site shall be avoided by a buffer of 25 feet. Sturdy, highly visible, orange plastic construction fencing (or equivalent material verified by the authorized biologist) shall be installed around all locations of detected special-status plants to protect from impacts during the construction phase, until they can be relocated. The fence shall be securely staked and installed in a durable manner that would be reasonably expected to withstand wind and weather events and last at least through the construction period. Fencing shall be removed upon completion of the project construction.” CDFW does not recognize the buffer distances as appropriate for protection of the species and recommends delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by the special status plant species.

Finally, Mitigation Measure 4.4-6 states that, “Any crownscale, Lost Hills crownscale, San Joaquin Bluecurls, San Joaquin woollythreads or California jewelflower onsite individuals or populations that cannot feasibly be avoided in final project design shall have seed collected prior to construction for sowing into suitable onsite habitat or in nearby suitable offsite habitat covered with a conservation easement. A seed

1-S

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harvesting and storage plan including a planting plan shall be prepared and approved by the County, prior to ground disturbance of these areas." As California jewelflower is State and federally endangered, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization is warranted. Take authorization would occur through acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b).

1-S

**RECOMMENDED MITIGATION MEASURE 9: Nesting Birds**

Mitigation Measure 4.4-10 states that, "If construction is scheduled to commence during the non-nesting season (i.e., September 1 to January 31), no preconstruction surveys or additional measures are required. To avoid impacts to nesting birds in the project area, a qualified wildlife biologist shall conduct preconstruction surveys of all potential nesting habitat within the project site for construction activities that are initiated during the breeding season (i.e., February 1 to August 31). The raptor survey shall focus on potential nest sites (e.g., cliffs, large trees, windrows) within a 0.5-mile buffer around the project site. Swainson's hawk nest survey shall focus on potential nest sites (e.g., cliffs, large trees, windrows) within a 5-mile buffer around the project site and follow the 2010 Swainson's hawk protocol surveys (CEC and CDFW 2010). Surveys shall be conducted no more than 14 days prior to construction activities. Surveys need not be conducted for the entire project site at one time; they may be phased so that surveys occur shortly before a portion of the project site is disturbed. The surveying biologist must be qualified to determine the status and stage of nesting by migratory birds and all locally breeding raptor species without causing intrusive disturbance. If active nests are found, a suitable no disturbance buffer (e.g., 200–300 feet for common raptors; 0.5 mile for Swainson's hawk; 30–50 feet for passerine species) shall be established around active nests until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). For nonlisted species, encroachment into the avoidance buffer may occur at the discretion of a qualified biologist; however, for State-listed species, consultation with CDFW shall occur prior to encroachment into the aforementioned buffers." Except for SWHA, CDFW does not recognize the buffer distances as appropriate for protection of the species and recommends the measures below to mitigate for impacts to nesting birds.

1-T

If ground-disturbing activities occur during the nesting bird season, CDFW recommends that a qualified biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, odors, and movement of workers or equipment could also affect nests.

1-U



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Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends the work causing that change cease and CDFW consulted for additional avoidance and minimization measures.

1-U

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 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.

1-V

**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 the blunt-nosed leopard lizard, giant kangaroo rat, San Joaquin kit fox, California jewelflower, 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.

1-W

**Lake and Streambed Alteration:** Based on the drainages map provided in the DEIR, the Project site appears to contain multiple drainages. Project activities may be subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial. CDFW recommends coordination with CDFW staff prior to ground-breaking activities on-site or submit a Lake or Streambed Alteration Notification to determine if the activities proposed within the streams are

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

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1-X

**Project Alternatives Analysis:** CDFW recommends that the information and results obtained from the biological technical surveys, studies, and analysis conducted in support of the project's CEQA document in addition to these and other agency and public comments 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, remaining impacts to sensitive biological resources should be mitigated to reduce impacts to a less than significant level, if feasible.

1-Y

**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. 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 as part of this DEIR: BNLL, BUOW, GKR, SNKR, SWHA, CBB, San Joaquin coachwhip, western spadefoot, California jewelflower, Lost Hills crowscale, San Joaquin woollythreads, and nesting birds such as prairie falcon (*Falco mexicanus*) and loggerhead shrike (*Lanius ludovicianus*). CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

1-Z

**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

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

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1-AA

**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).

1-BB

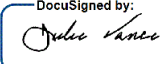
**CONCLUSION**

CDFW appreciates the opportunity to comment on the DEIR to assist Kern County Planning and Natural Resources 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) 588-5674 or by electronic mail at [Jeremy.pohlman@wildlife.ca.gov](mailto:Jeremy.pohlman@wildlife.ca.gov).

1-CC

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...  
Julie A. Vance  
Regional Manager

**Response to Letter 1: California Department of Fish and Wildlife (CDFW) (October 17, 2022)**

- 1-A:** This is an introductory comment and 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.
- 1-B:** The CDFW notes their role as a Trustee Agency for fish and wildlife resources and Responsible Agency under CEQA. This comment and 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.
- 1-C:** This comment summarizes the proposed project and outlines the project proponent, characteristics, and location. This comment and 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.
- 1-D:** The CDFW notes in this comment the potential for suitable habitat for special status wildlife species within the project area and introduces their concern regarding the proposed mitigation for the San Joaquin kit fox (SJKF), giant kangaroo rat (GKR), Swainson's hawk, blunt-nosed leopard lizard (BNLL), Crotch bumble bee (CBB), short nosed kangaroo rat (SNKR), burrowing owl, San Joaquin coachwhip, and western spadefoot. The CDFW's comment expresses concern for the mitigation proposed to have the ability to reduce impacts to less than significant and specifically to avoid unauthorized take. The Draft EIR discusses the potential for the above listed species to occur on-site, with the exception of the Crotch bumble bee, in **Table 4.4-2: *Special-Status Species of Concern with Potential to Occur on the Project Site*** on page 4.4-11 through 4.4-15 in Chapter 4.4, *Biological Resources*. The DEIR identifies the San Joaquin Coachwhip, short-nosed kangaroo rat, and western spadefoot as having a low to no potential to occur on the project site. Additionally, the DEIR discusses on pages 4.4-35 through 4.4-38 potential impacts to the above listed species, with the exception of the low or no potential species and the Crotch bumble bee and recommends mitigation measures MM 4.4-1 through MM 4.4-5 and MM 4.4-7 through MM 4.4-12. Responses F through R below address the requested modification of mitigation for potential impacts to the above listed species.
- 1-E:** The CDFW notes in this comment the potential for suitable habitat for special status plant species within the project area and introduces their concern regarding the proposed mitigation for the California jewelflower, San Joaquin woollythreads, and Lost Hills crownscale. The CDFW's comment expresses concern for the mitigation proposed to have the ability to reduce impacts to less than significant and specifically to avoid unauthorized take. The Draft EIR discusses the potential for the above listed species to occur on-site in Table 4.4-2: *Special-Status Species of Concern with Potential to Occur on the Project Site* on page 4.4-9 and 4.4-10 in Chapter 4.4, *Biological Resources*. The DEIR identifies the Lost Hills crownscale as having a low potential to occur on the project site. Additionally, the DEIR discusses on pages 4.4-34 and 4.4-35 potential impacts to the San Joaquin Woollythreads and the California jewelflower and recommends mitigation measures MM 4.4-1 through MM 4.4-6 and MM 4.4-12. Response S below addresses the requested modification of mitigation for potential impacts to the above listed species. Additionally, the CDFW is concerned with potential impacts to migratory and non-migratory birds. Responses T, U, and V below address the requested modification of mitigation for potential impacts to nesting birds.

- 1-F:** The commenter reiterated their recommendation of early consultation with CDFW to discuss BNLL and full avoidance, and recommendation to conduct full protocol-level surveys for BNLL, a State Fully Protected species. Mitigation Measure 4.4-8 will be removed in response of this comment and Mitigation Measure 4.4-9 revised to require that protocol-level surveys for the BNLL shall be conducted in accordance with the “Approved Survey Methodology for the Blunt-nosed Leopard Lizard” (CDFW 2019) and that these surveys are to be completed no more than one year prior to initiation of ground and/or vegetation disturbance.
  
- 1-G:** The commenter describes that to avoid take, construction and operations activities would have to avoid all observed lizards 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. Since no take, incidental or otherwise, can be authorized by CDFW, as BNLL are a State Fully Protected species, the commenter reiterates the recommendation of early consultation with CDFW to discuss BNLL. Mitigation Measure MM 4.4-9 will be revised in response to this comment to remove references to no work buffers and require consultation with the USFWS and CDFW to develop a BNLL avoidance plan, if BNLL are detected during protocol-level surveys (CDFW 2019).
  
- 1-H:** The commenter describes that there is the potential for installation and implementation of Wildlife Exclusion Fencing (WEF) within areas where BNLL and BNLL sign have been observed to result in take. As such, the commenter reiterates the recommendation of early consultation with CDFW to discuss BNLL. The commenter also states that they are unaware of successful trials using scent dogs to detect BNLL or their scat. Mitigation Measure MM 4.4-9 will be revised in response to this comment to remove references to the installation of WEF to avoid impacts to BNLL, remove references to the use of scent dogs to detect BNLL or their scat, and require consultation with the USFWS and CDFW to develop a BNLL avoidance plan, if BNLL are detected during protocol-level surveys (CDFW 2019).
  
- 1-I:** The commenter requests that the no-disturbance buffers in Mitigation Measure 4.4-7 be reduced to conform to the recommendations in the “Staff Report on Burrowing Owl Mitigation” (CDFG 2012), and that:

“these buffers be implemented prior to and during any ground-disturbing activities. Specifically, CDFW’s Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist, approved by CDFW, verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival”.

These buffer distances are:

<u>Location</u>	<u>Time of Year</u>	<u>Level of Disturbance</u>		
		<u>Low</u>	<u>Med</u>	<u>High</u>
<u>Nesting sites</u>	<u>April 1-Aug 15</u>	<u>200 m*</u>	<u>500 m</u>	<u>500 m</u>
<u>Nesting sites</u>	<u>Aug 16-Oct 15</u>	<u>200 m</u>	<u>200 m</u>	<u>500 m</u>
<u>Nesting sites</u>	<u>Oct 16-Mar 31</u>	<u>50 m</u>	<u>100 m</u>	<u>500 m</u>
<u>*meters (m)</u>				

The second paragraph of Mitigation Measure MM 4.4-7 will be revised in response to this comment to reflect these buffers, including the insertion of the referenced table into the measure.

- 1-J:** The commenter recommends editing Mitigation Measure MM 4.7-7 to clarify that passive relocation will not be attempted throughout the breeding season (defined in the Staff Report as February 1-August 31).

Mitigation Measure MM 4.7-7 is written with the intent of avoiding disturbance of breeding burrowing owls and enabling passive relocation prior to breeding or once breeding has ended. The third paragraph of Mitigation Measure MM 4.4-7 will be revised in response to this comment to state “If burrow avoidance is infeasible during the non-breeding season a qualified biologist shall implement a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 CDFW Staff Report on Burrowing Owl Mitigation. If a qualified CDFW approved 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), CDFW can be consulted about the use of passive relocation.”

- 1-K:** The commenter comments that the DEIR has no mitigation measures for GKR and SNKR although it states that “suitable foraging and denning habitat is present within the Project area” for GKR, and that SNKR were documented within five miles of the Project. The commenter recommended trapping for GKR and SNKR during the timeframe of April 1 and October 31. After publication of the DEIR, H. T. Harvey & Associates conducted a trapping survey for GKR and SNKR from October 10 – 24, 2022 to determine species of kangaroo rats present on the Project site. Three individual GKR and three individual SNKR were captured on the Project site.

Where SNKR are present within construction areas, impacts could include injury or mortality if individuals are hit by moving vehicles; if occupied burrows are crushed by construction equipment (e.g., graders, scrapers, bulldozers, and trucks); or if individuals are entombed in burrows by soil compaction.

Construction could have indirect effects on individual SNKR throughout the proposed facility. Spilled or leaked chemicals could poison these species or contaminate their habitat. Also, individuals could be lost to predation by animals, which might be attracted to the proposed facility by improperly discarded trash. Finally, the improper use chemicals, including pesticides and rodenticides, could result in poisoning and/or mortality of these species.

There is a potential for impacts to upland habitat supporting SNKR during construction. The loss and/or temporary disturbance of these occupied habitat would not result in significant impacts to SNKR through loss of habitat, because of the abundance of similar habitat for the species in the vicinity.

In summary, construction of the proposed facility has the potential to adversely affect short-nosed kangaroo rats. The potential loss of individuals during the construction period could temporarily reduce the number of these species, but the viability of regional populations of these species would not be substantially reduced because too few individuals are likely to be effected. Furthermore, habitat conditions for these species within the arrays during operations would represent an

improvement over the existing cultivated conditions and the species is expected to colonize portions of the arrays, as observed to occur with other kangaroo rat species (Cypher et al. 2021<sup>1</sup>).

Mitigation Measures MM 4.4-1 (Biological Monitoring), MM 4.4-2 (Construction Worker Environmental Awareness Training and Education Program), MM 4.4-4 (Avoidance and Protection of Biological Resources), and MM 4.4-5 (Preconstruction Clearance Surveys) would be implemented for GKR. The project proponent is consulting with CDW to obtain an ITP. Furthermore, in response to the reviewer's comments mitigation measure MM 4.4-5 would be revised to include the following language for GKR.

“If giant kangaroo rat precincts are detected during the preconstruction survey or a pre-activity survey the precincts shall be flagged and a 50-foot-wide buffer around precincts shall be avoided by construction equipment and ground-disturbing activities, if feasible.

If project personnel are required to drive or operate a vehicle or piece of equipment in the vicinity of a 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 the precinct or that foot traffic occurs 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) 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.
- b) Any haystacks, seed caches, or other forage stockpiled by the giant 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.
- c) More than one plywood sheet may be required to cover an area when multiple precincts occur in the vicinity of the activity.
- d) Vehicles and equipment shall be allowed to travel over a precinct only when all tires are driving over the plywood surface.
- e) 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.
- f) 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 occurs, 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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<sup>1</sup> Cypher, B. L., Boroski, B. B., Burton, R. K., Meade, D. E., Phillips, S. E., Leitner, P., Kelly, E. C., Westall, T. L., & Dart, J. 2021. "Photovoltaic solar farms in California: Can we have renewable electricity and our species too?" *California Fish and Wildlife Journal*, 107(3), 231-48.

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 precincts. Salvage activities shall not proceed until the giant 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 giant kangaroo rat salvage plan is approved, it may be used for all giant kangaroo rat salvage activities for the duration of permitted activities. Any proposed changes to the giant 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."

**1-L:** The commenter reiterates that consultation with CDFW is advised to occur immediately to discuss how to implement the Project and avoid take; or if avoidance is not feasible, to acquire an ITP prior to any ground-disturbing activities. The project proponent is currently in consultation with CDFW to obtain an ITP.

**1-M:** The commenter recommends that SJKF surveys be conducted in all areas of potentially suitable habitat within Project areas and a 500-foot buffer of Project areas no less than 14-days and no more than 30-days prior to beginning of ground and/or vegetation disturbing activities. In response to this comment, Mitigation Measure 4.4-5 will be revised to state that preconstruction surveys shall be conducted by a qualified biologist for the presence of American badger or San Joaquin kit fox dens no less than 14-days and no more than 30-days prior to beginning of ground and/or vegetation disturbing activities.

The commenter also recommends assuming presence of SJKF, describes that passive relocation of active dens would result in take of SJKF, and recommends acquiring an ITP prior to ground-disturbing activities. Surveys for SJKF dens were conducted in 2022 by H. T. Harvey & Associates' biologist; potential dens were identified and SJKF sign (scat and tracks) was documented. The project proponent is consulting with CDFW to obtain an ITP.

**1-N:** The commenter recommends focused SWHA surveys following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) to document known nesting sites and evaluate potential Project-related impacts. In response to this comment Mitigation Measure MM 4.4-10 will be revised to state the following: In addition to preconstruction SWHA surveys, focused SWHA surveys following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) shall be completed prior to the start of construction.

**1-O:** The commenter recommends that in the event an active 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. The commenter also 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. In response to these comments, Mitigation Measure MM 4.4-10 will be revised to state that Compensation for loss of Swainson's hawk foraging habitat will be based on the results of the protocol SWHA survey (SWHA TAC 2000) as described in CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" (CDFG 1994). If an active Swainson's hawk nest is detected and a ½-mile no disturbance buffer is not feasible, CDFW will be consulted to discuss how to implement the project and avoid take.



- 1-P:** The commenter describes that CDFW has initiated a status review report to inform the Commission's decision on whether listing of CBB, pursuant to CESA, is warranted. During the candidacy period, consistent with CEQA Guidelines section 15380, the status of the CBB as an endangered candidate species under CESA (Fish & G. Code, § 2050 et seq.) qualifies it as an endangered, rare, or threatened species under CEQA. Consequently, take of CBB during the status review period is prohibited unless authorization pursuant to CESA is obtained. In response to these comments, CBB will be incorporated into Table 4.4-2 and under the heading of Special-Status Species within Section 4.4 Biological Resources. Refer to the response to bracketed comment #Q for additional information.
- 1-Q:** The commenter described that the project site is within the range of CBB and the DEIR did not analyze and address potential Project related impacts to this species. Without appropriate avoidance and minimization measures for CBB, potentially significant impacts associated with ground- and vegetation-disturbing activities associated with construction of the Project. The commenter recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features to evaluate potential suitable foraging and overwintering habitat and potential impacts resulting from ground- and vegetation-disturbance associated with the proposed Project. Furthermore, any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take. If take cannot be avoided, take authorization through issuance of an ITP prior to any ground disturbing activities may be warranted.

The nearest Crotch bumble bee (CBB; *Bombus crotchii*) record, which occurred prior to 1979, is 23 miles from the Azalea Solar project site. Richardson (2022)<sup>2</sup> developed a robust model of CBB presence based on 1,062 records of CBB occurrence extracted from the Bumble Bees of North America Database. Based upon Richardson's (2022) modeling, CBB has a low probability of occurring at the project site. Because Richardson's (2022) model has limited predictive power when suitability is low and suitable conditions in the form of grasslands that contain requisite habitat elements, such as small mammal burrows and forage plants, occur at the project site, the following mitigation measure is incorporated into the final EIR.

**MM 4.4-13:** Areas within the project site containing one or more of the following habitat requisites shall be surveyed by a qualified biologist between March 1 and June 30: 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 CBBs from various angles to ensure recordation of key identifying characteristics.

During the survey effort, if potential CBB are observed using any animal burrow entrances, bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, or hollowed logs, the resource area will be monitored by the qualified biologist for a minimum of 15 minutes to determine if a potential nest could be present.

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<sup>2</sup> Richardson L. 2022. *Bombus crotchii* Species Distribution Modeling Methods. The Xerces Society. Portland, OR.

The survey results shall be submitted to the County within 30-days of completion of the surveys. All detection information collected during survey efforts will be submitted to the California Natural Diversity Data Base at <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. Surveys will be valid for the duration of the current season lasting until the beginning of the next season (i.e., through March 1 the following year).

Consultation with CDFW will occur if CBB are detected. If a CBB nest is observed, a 50-foot buffer around the nest area will be delineated and the nest will be protected through the remaining active season (presumed to be October 31) or as otherwise approved by CDFW.

**1-R:** The commenter recommends that a qualified biologist conduct focused surveys for other species of special concern and that a 50-foot no-disturbance buffer is implemented around the entrances of burrows that can provide refuge for San Joaquin coachwhip, western spadefoot, and other special-status small mammals. As described in the DEIR, suitable habitat for western spadefoot is absent from the project site. Establishing 50-foot no-disturbance buffers around the entrances of burrows that can provide refuge for San Joaquin coachwhip and SNKR is not warranted as impacts to these species will be less than significant. No changes or modifications have been made to the Draft EIR in response to this comment.

**1-S:** The commenter states that in the absence of protocol-level surveys being performed, additional surveys may be necessary. The commenter recommends following the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (March 20, 2018).

The commenter states that CDFW does not recognize the 25 foot buffer distances specified in Mitigation Measure MM 4.4-6 as appropriate for protection of crownscale, Lost Hills crownscale and San Joaquin Bluecurls, San Joaquin woollythreads and California jewelflower. The commenter recommends delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by the special status plant species.

The commenter states that while Mitigation Measure 4.4-6 states that "...California jewelflower onsite individuals or populations that cannot feasibly be avoided in final project design shall have seed collected prior to construction for sowing into suitable onsite habitat or in nearby suitable offsite habitat covered with a conservation easement," because California jewelflower is State and federally endangered, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization is warranted. Take authorization would occur through acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b).

In response to the reviewer's comments Mitigation Measure MM 4.4-6 will revised to incorporate the following measures:

- a. **Protocol-level Special-Status Plant Survey(s).** Summer/ fall surveys shall be conducted prior to construction. Surveys shall focus on San Joaquin bluecurls, crownscale and Lost Hills crownscale, but should be floristic in nature (all species identified). Summer/ fall surveys should focus on the entire access road area, especially disturbed areas and roadside drainages.

Focused spring surveys shall be conducted for both San Joaquin woollythreads and California jewelflower. Surveys shall focus on the entire access road area especially south of the existing asphalt road. Precipitation shall be monitored prior to Spring surveys to ensure an above average rain year occurs.

If surveys document the absence of these species, no further action is warranted for special-status plants. If special-status plants are detected, the number of specimens affected by the proposed project should be assessed to determine if potential impacts exceed the thresholds of significance under CEQA. If California jewelflower is identified on the project site, consultation with USFWS and CDFW to determine the potential need for an incidental take authorization would be required.

- b. **Avoidance and Mitigation Management.** Both San Joaquin woollythreads and California jewelflower are federally endangered; the California jewelflower is also State endangered. If federally or State listed species are found, these species must be fully avoided or compensatory mitigation at a minimum 1:1 mitigation ratio (at least one plant preserved for each plant affected, and also at least one occupied acre preserved for each occupied acre affected) shall be preserved and managed in perpetuity, and FESA and/or CESA permits acquired depending on the listing status.

If any plants listed as CRPR special-status species are found at the Proposed Action site, the plants will be flagged, mapped and a setback of a minimum of 50 feet from Project Footprint will be implemented where feasible. If setbacks are not feasible, a monitor shall be present to ensure populations are avoided. To compensate for significant impacts on plants with a CRPR of 1A, 1B, 2, 3, or 4 that cannot be avoided, offsite habitat occupied by the affected species shall be preserved and managed in perpetuity at a minimum 1:1 mitigation ratio (at least one plant preserved for each plant affected, and also at least one occupied acre preserved for each occupied acre affected), up to the significance threshold as follows:

1. For CRPR-ranked 1A species, mitigation must be provided at 1:1 equivalent
2. For a CRPR -ranked 1B and 2 species where 10% or more of the known population within 5 miles of the work area is impacted, mitigation must be provided at 1:1 equivalent.
3. For a CRPR -ranked CRPR of 3 or 4 species where 30% or more of the known population within 5 miles of the work area is impacted, mitigation must be provided at 1:1 equivalent.

Areas proposed for preservation and serving as compensatory mitigation for special-status plant impacts must contain verified extant populations of the CRP-ranked plants that would be impacted by the work areas. Mitigation areas shall be managed in perpetuity to encourage persistence and even expansion of the preserved target species.

- 1-T:** The commenter states that except for SWHA, CDFW does not recognize the buffer distances as appropriate for protection of the species and recommends the measures described under bracketed comments #U and #V to mitigate for impacts to nesting birds.

In response to the reviewer's comments, including comments # T, #U and #V, Mitigation Measure 4.4-10 will be revised to read as follows:

**MM 4.4-10:** If construction is scheduled to commence during the non-nesting season (i.e., September 1 to January 31), no preconstruction surveys or additional measures are required. To avoid impacts to nesting birds in the project area, a qualified wildlife biologist shall conduct preconstruction surveys of all potential nesting habitat within the project site for construction activities that are initiated during the breeding season (i.e., February 1 to August 31). The raptor survey shall focus on potential nest sites (e.g., cliffs, large trees, windrows) within a 0.5-mile buffer around the project site. Swainson's hawk nest survey shall focus on potential nest sites (e.g., cliffs, large trees, windrows) within a 5-mile buffer around the project site and follow the 2010 Swainson's hawk protocol surveys (~~CEC and CDFW 2010 SWHA TAC 2000~~). Surveys shall be conducted no more than 104 days prior to construction activities and encompass the project site plus the potential nest buffers as listed below, where access has been granted. Surveys need not be conducted for the entire project site at one time; they may be phased so that surveys occur shortly before a portion of the project site is disturbed. The surveying biologist must be qualified to determine the status and stage of nesting by migratory birds and all locally breeding raptor species without causing intrusive disturbance. If active nests are found, a suitable no-disturbance buffer (e.g., 500 ~~200-300~~ feet for common raptors; 0.5 mile for Swainson's hawk; 250 feet for non-raptor species ~~30-50 feet for passerine species~~) shall be established around active nests until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). For non-listed species, encroachment into the avoidance buffer may occur at the discretion of a qualified biologist provided the biologist has monitored the nest prior to construction to establish a behavioral baseline and continues to monitor the nest during construction to ensure the nest is not negatively affected. Buffer distances can also be adjusted if there is a compelling biological reason such as when a construction area would be concealed from a nest site by topography of vegetation as determined by a qualified biologist and CDFW has been notified in advance of the variance. ; however, f For State-listed species, consultation with CDFW shall occur prior to encroachment into the aforementioned buffers. In addition to preconstruction SWHA surveys, focused SWHA surveys following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) shall be completed prior to the start of construction. Compensation for loss of Swainson's hawk foraging habitat will be based on the results of the protocol SWHA survey (SWHA TAC 2000) as described in CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" (CDFG 1994). If an active Swainson's hawk nest is detected and a 1/2-mile no disturbance buffer is not feasible, CDFW will be consulted to discuss how to implement the project and avoid take.

**1-U:** The commenter recommends that a qualified biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground disturbance and that surveys cover a sufficient area around the work site to identify nests and determine their status. The commenter further

describes that a behavioral baseline be established for nests and that nest monitoring occur to ensure the nests are not negatively affected. Revisions to Mitigation Measure 4.4-10 will be made to address these comments and are described above in response to bracketed comment #T.

- 1-V:** The commenter recommends that, 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. They further recommend that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance. Revisions to Mitigation Measure 4.4-10 will be made to address these comments and are described above in response to bracketed comment #T.
- 1-W:** The commenter recommends consulting with USFWS regarding potential impacts to federally listed species. The project proponent is consulting with the USFWs regarding potential impacts to federally listed species and take coverage. No changes or modifications have been made to the Draft EIR in response to this comment.
- 1-X:** The commenter states that “based on the drainages map provided in the DEIR, the Project site appears to contain multiple drainages. Project activities may be subject to CDFW’s regulatory authority pursuant Fish and Game Code section 1600 et seq.”

The Project site does not include any jurisdictional waters as analyzed in the Biological Resources Technical Report. Potential jurisdictional water features were along previously identified Access Road Option 2 which has been removed as part of the project footprint. No changes or modifications have been made to the Draft EIR in response to this comment.

- 1-Y:** The commenter recommends that the information and results obtained from the biological technical surveys, studies, and analysis conducted in support of the project’s CEQA document in addition to these and other agency and public comments 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, remaining impacts to sensitive biological resources should be mitigated to reduce impacts to a less than significant level, if feasible. The recommended approach has been incorporated into the DEIR and further applied in response to comments received on the DEIR as reflected in the revisions contained in the Final EIR. Section 6, Alternatives, of the Draft EIR evaluates Alternative 1: No Project Alternative, Alternative 3: Reduced Acreage Alternative, and Alternative 4: No Ground Mounted Utility Solar Development Alternative – Distributed Commercial and Industrial Rooftop Solar Only. Each of these alternatives would reduce potential impacts on biological resources. No changes or modifications have been made to the Draft EIR in response to this comment.
- 1-Z:** 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. 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 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. Table 1-4: *Summary of Significant and Unavoidable*

*Project-Level and Cumulative Impacts of the Solar Facility*, presents those impacts at the project level and cumulatively. Sections 4.1, 4.4, and 4.18 of DEIR present detailed analyses of these impacts and describe the means by which the mitigation measures listed in Table 1-4 would reduce the severity of impacts to the extent feasible. No changes or modifications have been made to the Draft EIR in response to this comment.

- 1-AA:** The commenter notes CEQA's requirement to submit information regarding any special-status species or natural communities detected during project surveys to the CNDDDB. The project applicant would be responsible for the submittal of information to the CNDDDB. This comment does not raise an issue relative to CEQA nor question the adequacy of the Draft EIR. No changes or modification have been made to the DEIR in response to this comment.
- 1-BB:** This comment notes the requirement to pay filing fees. The project applicant would be responsible for the payment of fees upon filing the Notice of Determination (NOD). This comment does not raise an issue relative to CEQA nor question the adequacy of the Draft EIR. No changes or modification have been made to the DEIR in response to this comment.
- 1-CC:** The commenter appreciates the opportunity to comment on the DEIR and assist in identifying appropriate mitigation for biological resources. This comment does not raise an issue relative to CEQA nor question the adequacy of the Draft EIR. No changes or modification have been made to the DEIR in response to this comment.

## Local Agencies

### Comment Letter 2: San Joaquin Valley Air Pollution Control District (SJVAPCD) (October 17, 2022)



October 17, 2022

Terrance Smalls  
County of Kern  
Planning and Natural Resources Department  
2700 "M" Street, Suite 100  
Bakersfield, CA 93301

**Project: Draft Environmental Impact Report for Azalea Solar Project**

**District CEQA Reference No: 20221232**

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 above mentioned project. Per the DEIR, the project consists of development of a photovoltaic solar facility and associated infrastructure necessary to generate up to 60 megawatt-alternating current of renewable energy, with 55 megawatts of energy storage on approximately 640 acres (Project). The Project is located approximately 2.5 miles northwest of Twisselman Road and Kings Road in Lost Hills, CA.

2-A

The District offers the following comments regarding the Project:

**1) Project Related Emissions**

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

2-B

**1a) Construction Emissions**

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

2-C

**1b) District Rule 9510 and Developer Agreement**

The DEIR includes a Mitigation Measure (MM) 4.3-3 requiring the project proponent to comply with District Rule 9510 Indirect Source Review. The MM 4.3-3 also states *“The project proponent shall enter into a developer agreement with SJVAPCD and conduct an air impact assessment as required by SJVAPCD Rule 9510.”* As such per MM 4.3-3, the project proponent is required to: (1) enter into a developer agreement and (2) to conduct an air impact assessment for Rule 9510. The District would like to clarify that a developer agreement is not required under Rule 9510.

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

Whereas a *“developer agreement”* which is referred to as a Voluntary Emission Reduction Agreement (VERA), a VERA is typically implemented as a mitigation measure for development projects that are determined to exceed the District’s CEQA significance thresholds. VERA is a mitigation measure by which the project proponent provides pound-for-pound mitigation of emissions increases through a process that develops, funds, and implements emission reduction projects, with the District serving a role of administrator of the emissions reduction projects and verifier of the successful mitigation effort.

2-D

**2) 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.

2-E

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



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District permit requirements, the project proponents are strongly encouraged to contact the District's Small Business Assistance (SBA) Office at (559) 230-5888 (661) 392-5665.

2-E

**2a) District Rule 9510 - Indirect Source Review (ISR)**

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

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. One AIA application should be submitted for the entire Project. It is preferable for the applicant to submit an AIA application as early as possible in the County's approval process so that proper mitigation and clean air design under ISR can be incorporated into the County's analysis.

2-F

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

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

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

**2b) District Regulation VIII (Fugitive PM10 Prohibitions)**

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

2-G

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,

San Joaquin Valley Air Pollution Control District  
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Demolition, Excavation, Extraction, and Other Earthmoving Activities). For additional information regarding the written notification or Dust Control Plan requirements, please contact District Compliance staff at (559) 230-5950.

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

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

Information about District Regulation VIII can be found online at:

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

2-G

**2c) 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-H

**3) District Comment Letter**

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

2-I

If you have any questions or require further information, please contact Harout Sagherian by e-mail at [Harout.Sagheiran@valleyair.org](mailto:Harout.Sagheiran@valleyair.org) or by phone at (559) 230-5860.

Sincerely,

Brian Clements  
Director of Permit Services



For: Mark Montelongo  
Program Manager

**Response to Letter 2: San Joaquin Valley Air Pollution Control District (SJVAPCD) (October 17, 2022)**

- 2-A:** This comment summarizes the proposed project and outlines characteristics and location. 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.
- 2-B:** The comment notes the DEIR conclusion that the project would not exceed any significant thresholds identified in the District’s Guidance for Assessing and Mitigating Air Quality Impacts (GAMAQI). 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.
- 2-C:** This comment recommends the project utilize the cleanest available off-road construction equipment, including the latest tier equipment. In Chapter 4.3, *Air Quality* on page 4.3-32 mitigation measure MM 4.3-1 lists out requirements for equipment during construction. This mitigation measure identifies;

“Off-road equipment engines over 25 horsepower shall be equipped with EPA Tier 3 or higher engines, unless Tier 3 construction equipment is not locally available.”

Additionally, MM 4.3-1 requires the use of electric construction equipment instead of diesel or gasoline where feasible. For diesel equipment the mitigation measure would require diesel particulate filters. The Draft EIR recognizes the potential impacts from construction-related diesel exhaust, with the inclusion of MM 4.3-1, would be less than significant. Therefore, no changes to the document have been made or are required.

- 2-D:** The County thanks the SJVAPCD for this comment and notes the clarification of requirements under Rule 9510. Mitigation measure MM 4.3-3 is included in Chapter 4.3, *Air Quality* on page 4.3-35 of the DEIR. The SJVAPCD requests the removal of the language in MM 4.3-3 requiring the project proponent to enter into a developer agreement. The project proponent would still coordinate with the SJVAPCD to conduct an air impact assessment as required by Rule 9510. Mitigation measure MM 4.3-3 is revised as follows:

**MM 4.3-3** Prior to the issuance of building and grading permits, the project proponent shall provide the Kern County Planning and Community Development Department with proof that an Indirect Source Review application has been approved by the San Joaquin Valley Air Pollution Control District. The project proponent shall ~~enter into a developer agreement with SJVAPCD and~~ conduct an air impact assessment as required by SJVAPCD Rule 9510. Offsite emission reduction fees shall be calculated, as dictated by Rule 9510, to reduce construction-related NO<sub>x</sub> emissions by 20% and PM<sub>10</sub> emissions by 45%.

- 2-E:** This comment identifies the SJVAPCD has rules and regulations pertaining to air quality impacts. The comment also identifies where to find current SJVAPCD rules. 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.

- 2-F:** This comment states that the project is subject to District Rule 9510 because it will receive a project level discretionary approval from a public agency and will equal or exceed 9,000 feet of space. The commenter states that SJVAPCD has yet to receive an Air Impact Assessment (AIA) application for the project. In response to this comment, the project proponent has been made aware of the requirement and an ISR application and an air impact assessment are being prepared and will be submitted to the SJVAPCD for review and approval as soon as they are completed.
- 2-G:** This comment addresses SJVAPCD regulation VIII (Fugitive PM 10 Prohibitions). The comment notes for projects resulting in the disturbance of 5-acres or more, the project proponent shall submit to the SJVAPCD a Dust Control Plan pursuant to District 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 Regulation VIII and would include all SJVAPCD recommended measures. Mitigation measure MM 4.3-2 is listed in Chapter 4.3, *Air Quality* on page 4.4-32 through 4.4-34. With the implementation of MM 4.3-2 potential impacts from fugitive PM 10 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.
- 2-H:** This comment lists two additional SJVAPCD rules that may be applicable to the project site. The first is Rule 4102 Nuisance and the second is 4641 Cutback, Slow Cure, and Emulsified Asphalt, Paving and maintenance Operation. The first Rule 4102 pertains to air quality contaminants and their effect on the public. Rule 4102 will be added to Chapter 4.3, *Air Quality* on page 4.3-23 as follows:

**“San Joaquin Valley Air Pollution Control District Rule 4102 Nuisance**

The purpose of Rule 4102 is to protect the health and safety of the public from air contaminants or other materials. Rule 4102 restricts the discharge of such quantities of air contaminants or other materials which cause injury, detriment, nuisance, or annoyance to any considerable number of persons.”

The project is located in a rural area with the closest sensitive receptor being 0.67 miles east of the project borders. The potential impacts to sensitive receptors from air pollutant concentrations from project construction and operation are discussed in Chapter 4.3, *Air Quality* on pages 4.3-36 through 4.3-47 of the DEIR. The DEIR recognizes the potential effects to the public and would implement MM 4.3-1, MM 4.3-2 and MM 4.3-6 through MM 4.3-8 which would minimize emissions including NO<sub>x</sub>, CO, ROG, and PM from construction equipment and ground disturbance. 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.

The second Rule the SJVAPCD identified as potentially applicable is Rule 4641. 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 DEIR outlines the project components in Chapter 3, *Project Description* and details on pages 3-22 and 3-23 that the construction of the roadway extension from King Road to the project site and the internal access

roads would be gravel and not include any paving. Additionally, the project would not include cut back, slow cure, emulsified asphalt, and/or 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.

- 2-I:** The SJVAPCD recommends 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 3: Kern County Fire Department (KCFD) (September 7, 2022)**

**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 7, 2022

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 Azalea Solar Project by SF Azalea, LLC (PP21401); CUP No. 10, Map No. 3; CUP No. 14, Map No. 3; and Williamson Act Land Use Cancellation No. 20-06. 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.

3-A

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

3-B

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

Respectfully,  
Regina Arriaga/Jim Killam  
Fire Plans Examiner  
Kern County Fire Department

3-C

**4 ATTACHMENTS**

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

**Response to Letter 3: Kern County Fire Department (KCFD) (September 7, 2022)**

- 3-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.

The County acknowledges the comments provided; such requirements as stated will be made Conditions of Approval for the project. This comment does not otherwise 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.

- 3-B:** 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.

- 3-C:** The commenter has provided four separate attachments for the project proponent to review. These attachments included “Fire Detection for ESS Outdoor Installations”, “Kern County Fire Department Energy Storage System Review Guide Sheet”, “Kern County Fire Department Fire Prevention Solar Panels Ground Mounted (Commercial) Fire Protection Requirements”, and the “The Kern County Fire Department “Energy Storage System Review Guide Sheet.” These attachments have been provided to the applicant for their review and to complete and submit to the Kern County Fire Department as needed.

**Comment Letter 4: Kern County Public Works Department – Floodplain Management  
(September 8, 2022)**

# Office Memorandum

KERN COUNTY

To: Planning and Natural Resources  
Department  
Terrance Smalls

Date: September 8, 2022

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  
Azalea Solar Project**

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

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

The subject property is subject to flooding.

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

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

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



4-A



## **Response to Letter 4: Kern County Public Works Department – Floodplain Management (September 8, 2022)**

**4-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 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.

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.

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 the Kern County Grading Ordinance, which provide guidelines including site development standards and mitigation, flood control requirements, erosion control, and on-site drainage flow requirements. The drainage plan would also have to be approved by the Kern County Public Works Department. 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, *Hydrology and Water Quality* 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. The comments provided have been noted for the record, and revisions to the Draft EIR are not necessary.

**Comment Letter 5: Kern County Public Works Department – County Surveyor (October 14, 2022)**

**SAMUEL D. LUX, P.E., DIRECTOR**  
ADMINISTRATION  
BUILDING & CODE  
ENGINEERING  
OPERATIONS



**2700 "M" STREET, Suite 400**  
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October 14, 2022

To: Lorelei Oviatt, Director  
Planning and Natural Resources Department  
Terrance Smalls, Supervising Planner

From: Brian Blacklock, County Surveyor  
By: Bruce Gray, Engineer

Phone: 28879

Subject: Draft Environmental Impact Report for Azalea Solar Project by Azalea LLC (SCH # 2021090602)

I have reviewed the above noted project DEIR and recommend the following conditions be placed on the Conditional Use Permits:

- 1. Prior to issuance of a building or grading permit: All survey monuments shall be tied out by a Licensed Land Surveyor. A corner record for each monument or record of survey shall be submitted to the County Surveyor for review and processing, per Section 8771 of the Professional Land Surveyor's (PLS) Act.
- 2. Prior to Final Inspection: All survey monuments that were destroyed during construction shall be re-set or have a suitable witness corner set. A post construction corner record for each monument re-set or a record of survey shall be submitted to the County Surveyor for processing, per Section 8771 of the Professional Land Surveyor's Act.
- 3. Upon completion of project: All survey monuments shall be accessible by a Licensed Land Surveyor or their representatives, with prior notice, per Section 8774 of the PLS Act and Civil Code 846.5 (a).

5-A

5-B

5-C

Thank you for the opportunity to review and comment on this project. Should you have any questions please contact me.

**Response to Letter 5: Kern County Public Works Department – County Surveyor (October 14, 2022)**

- 5-A:** This comment notes that per Section 8771 of the Professional Land Surveyor’s (PLS) Act, prior to issuance of a building or grading permit all survey monuments shall be tied out by a Licensed Land Surveyor and a corner record or record of survey shall be submitted to the County Surveyor. The County acknowledges the comments provided; such requirements as stated will be made Conditions of Approval for 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, no changes to the document have been made or are required.
- 5-B:** This comment notes that per Section 8771 of the PLS Act, prior to final inspection any survey monuments that were destroyed during construction shall be re-set or have a suitable witness corner set and a post construction corner record or a record of survey shall be submitted to the County Surveyor. The County acknowledges the comments provided; such requirements as stated will be made Conditions of Approval for 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, no changes to the document have been made or are required.
- 5-C:** This comment notes that per Section 8774 of the PLS Act and Civil Code 846.5 (a), all survey monuments shall be accessible by a Licensed Land Surveyor or their representatives with prior notice. The County acknowledges the comments provided; such requirements as stated will be made Conditions of Approval for 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, no changes to the document have been made or are required.

# Interested Parties

## Comment Letter 6: Defenders of Wildlife (Defenders) (October 17, 2022)



**California Program Office**  
P.O. Box 401 Folsom, California 95763 | 916-313-5800  
[www.defenders.org](http://www.defenders.org)

October 17, 2022

Terrance Smalls, Supervising Planner  
2700 "M" Street, Suite 100  
Bakersfield, CA 93301  
Delivered via email to: [smallst@kerncounty.com](mailto:smallst@kerncounty.com)

RE: Draft Environmental Impact Report – Azalea Solar Project  
(SCH 2021090602)

Dear Mr. Smalls,

Thank you for the opportunity to comment on the Draft Environmental Impact Report (EIR) for the proposed Azalea Solar Project (Project). These comments are submitted on behalf of Defenders of Wildlife (Defenders) and our nearly 2.2 million members and supporters in the United States, 323,000 of which reside in California.

6-A

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.

Defenders strongly supports responsible energy development that will help meet California’s emission reduction goals. A low carbon energy future is critical for California – for our economy, our communities, and the environment. Achieving this future—and *how* we achieve it—is critical for protecting California’s internationally treasured wildlife, landscapes, productive farmlands, and diverse habitats.

6-B

As we transition toward a clean energy future, it is imperative for our future and the future of our wild places and wildlife that we strike a balance between addressing the near-term impact of solar development with the long-term impacts of climate change on our biological diversity, fish and wildlife habitat, and natural landscapes. To ensure that the proper balance is achieved, we need smart planning for renewable power that avoids and minimizes adverse impacts on wildlife and lands with known high-resource values. We believe energy projects must be sited



in a manner that avoids or minimizes impacts to wildlife and wild habitat, and where necessary, unavoidable impacts should be offset through mitigation.

6-B

The Project is located on 640 privately-owned acres in unincorporated northwestern Kern County within the Valley Region. It is 1.5 miles south of the Kern County/Kings County line, 16 miles south of Kettleman City, 14 miles northwest of the community of Lost Hills, 6 miles west of Interstate 5 and 4 miles east of State Route 33. The Project is a photovoltaic solar facility that would generate up to 60 MW, store up to 55 MW using a battery energy storage system, and include construction of a 70kV gen-tie line to connect the Project Substation to the existing PG&E Acro Substation.

6-C

The site consists of two vacant and undeveloped parcels of land covered in sparse to moderately dense non-native vegetation currently used for cattle grazing. One of the parcels is currently subject to Williamson Act Land Use Contract and is located within a Kern County Agricultural Preserve. Habitats within the project site included agricultural field, non-native annual grassland habitat and patches of ruderal habitat along fenced boundaries. The Project site may provide habitat to numerous special status wildlife and plant species including but not limited to the following:

Common Name	Scientific Name	Status
American Badger	<i>Taxidea taxus</i>	State Species of Special Concern
Blunt-nosed leopard lizard	<i>Gambelia sila</i>	Federally and State Endangered
Burrowing owl	<i>Athene cunicularia</i>	Species of Special Concern
California Jewelflower	<i>Caulanthus californicus</i>	Federally and State Endangered
Giant kangaroo rat	<i>Dipodomys ingens</i>	Federally and State Endangered
San Joaquin Kit Fox	<i>Vulpes macrotis mutica</i>	Federally Endangered and State Threatened
San Joaquin/Nelson's antelope squirrel	<i>Ammospermophilus nelsoni</i>	State Threatened
San Joaquin woollythreads	<i>Monolopia congdonii</i>	Federally Endangered
Swainson's hawk	<i>Buteo swainsoni</i>	State Threatened

6-D

Aside from providing habitat, the Project site also functions as a linkage recovery area for the San Joaquin Kit Fox (SJKF) and the species has the potential to occur on-site. The SJKF is listed as endangered under the federal Endangered Species Act and threatened under the California Endangered Species Act and is protected by federal and state statutes.

6-E

We offer the following comments on the Draft EIR for the Project:

**1. Special Status Species Survey Methodology**

The biological resources surveys were conducted in Summer 2020 and Spring 2021, which is well outside the recommended survey timeline for several special-status species that have the potential to occur on or near the project site. We recommend conducting updated protocol level surveys that align with the recommended timeline established by USFWS and/or CDFW.

6-F

**a. Blunt-nose leopard lizard (*Gambelia silus*)**

CDFW recommended<sup>1</sup> conducting surveys for the blunt-nose leopard lizard no more than one year prior to initiation of ground and/or vegetation disturbance for this project. The originally surveys that were conducted in summer 2020 and spring 2021 fall outside this timeline. Defenders recommends following the survey timeline for the blunt-nose leopard lizard as previously recommended.

**b. Swainson’s Hawk (*Buteo swainsoni*)**

The Recommended Timing and Methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley<sup>2</sup> recommends surveys should be completed for at least the two survey periods prior to the project’s initiation:

- Period I: January – March 20
- Period II: March 20 – April 5
- Period III: April 5 – April 20
- Period IV: April 21 – June 10
- Period V: June 10 – July 30

6-G

It is recommended specifically that the surveys be completed in Periods II, III, and V and should not be conducted in Period IV. If the updated surveys determine the Project may impact Swainson’s hawk foraging habitat, consultation with the CDFW for the appropriate mitigation ratio for habitat management land is necessary.

<sup>1</sup> See <https://files.ceqanet.opr.ca.gov/273236-1/attachment/BI2a-2yjcObm7ipA-tqmsq46a7MHyOYVwVRA1r1LgOit5PsW2M-9nPLJ-bqKtKJAa5FPloG1ec5AqRn0>

<sup>2</sup> Swainson’s Hawk Technical Advisory Committee. 2000. Recommended Timing and Methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley.

**c. San Joaquin Kit Fox (*Vulpes macrotis mutica*)**

The USFWS states<sup>3</sup> the applicant would not be required to conduct additional surveys for SJKF for 2.5 years (30 months) from the date of completion of protocol surveys. If by the end of the 2.5 years, a grading permit has not been issued for any project requiring a permit, or project construction (ground disturbing activities) has not been initiated, or other specific projects at issue has not been initiated, then all understanding and agreements regarding the survey results shall be terminated. Although this recommendation is specific to SJKF within the northern range, it can be applied for the entire range of the SJKF. If ground disturbing activities does not occur before the 2.5-year deadline, we recommend conducting updated surveys for the SJKF.

6-H

**2. Revise Mitigation Measure BIO 4.4-2**

We recommend this mitigation measure be revised to read:

“Prior to the issuance of grading or building permits and for the duration of construction and decommissioning activities, within one week of employment all new construction workers at the project site, laydown area and/or transmission routes shall attend an Environmental Awareness Training and Education Program, developed and presented by the Lead Biologist that is an expert on biology and required protections for the various special-status species found on-site. Any employee responsible for the operations and maintenance or decommissioning of the project facilities shall also attend the Environmental Awareness Training and Education Program. The program shall include information on the life history and habitat needs of the BNLL, SJKF, giant kangaroo rat, raptors, American badger, as well as other wildlife and plant species that may be encountered during construction activities. The program shall also discuss the legal protection status of each species, a report of the occurrence of the SJKF in the project area, the definition of “take” under the federal Endangered Species Act and California Endangered Species Act, measures the project operator is implementing to protect the species, reporting requirements, specific measures that each worker shall employ to avoid take of wildlife species, and penalties for violation of the federal Endangered Species Act or California Endangered Species Act. A fact sheet conveying this information should be prepared for distribution for those attending the training and anyone else who may enter the project site.” (Emphasis Added)

6-I

The Environmental Awareness Training and Education Program should follow the recommendations from USFWS.<sup>4</sup>

<sup>3</sup> U.S. Fish and Wildlife Service. 1991. U.S. Fish and Wildlife Service San Joaquin Kit Fox Survey Protocol for the Northern Range.

<sup>4</sup> <https://www.fws.gov/media/standardized-recommendations-protection-endangered-san-joaquin-kit-fox-prior-or-during-ground>

**3. Revise Mitigation Measure BIO 4.4-4 d.**

We recommend this mitigation measure be revised to read:

“To prevent inadvertent entrapment of San Joaquin kit foxes, American badgers, or other wildlife during construction, all excavated, steep-walled holes or trenches more than 2 feet deep shall be covered with plywood or similar materials at the close of each working day, or provided with one or more escape ramps constructed of earth fill or wooden planks. All holes and trenches, whether covered or not, shall be inspected for trapped wildlife at the start and end of each workday. Before such holes or trenches are filled, they shall be thoroughly inspected by the Lead Biologist or approved biological monitor for trapped wildlife. If trapped animals are observed, escape ramps or structures shall be installed immediately to allow escape. If a listed species is found trapped, all work in the vicinity of the animal shall cease immediately. If the animal is apparently uninjured, then the Lead Biologist shall directly supervise the provision of escape structures and/or trench modification to allow the trapped animal to escape safely. Work shall not resume in the vicinity of the animal, and it shall be allowed to leave the work area and project site on its own. ~~If the listed animal is injured, then t~~The Lead Biologist or approved biological monitor shall immediately contact the U.S. Fish and Wildlife Service and/or California Department of Fish and Wildlife **for any trapped or injured SJKF** to identify an individual with the appropriate permit or authorization to handle listed species, **and if the species is injured, to decipher** who shall bring the animal to a pre-identified wildlife rehabilitation or veterinary facility for care.” (Emphasis Added)

6-J

The USFWS Standardized Recommendation for Protection of the Endangered San Joaquin Kit Fox Prior To or During Ground Disturbance<sup>5</sup> states that the USFWS and CDFW shall be contacted for any trapped or injured SJKF.

**4. Revise Mitigation Measure BIO 4.4-4 h.**

We recommend this mitigation measure be revised to read:

“A **day-time** speed limit of 15 miles per hour shall be enforced within the limits of the proposed project. **To the extent possible, night-time construction related activity shall be minimized, but if work must be conducted at night, then a night-time speed limit of 10-mph shall be enforced. Off-road traffic outside of designated project areas should be prohibited**” (Emphasis Added.)

6-K

The speed limit should be reduced to 10-mph for night-time activity. The U.S. Fish and

<sup>5</sup> Ibid.



Wildlife Service (USFWS) Sacramento Office established standardized recommendations for the protection of the SJKF prior to or during ground disturbance. The recommendations state that night-time construction should be minimized to the extent possible; however if night-time activity does occur, then the speed limit should be reduced to 10-mph.<sup>6</sup> San Joaquin kit foxes are most active at night and therefore more vulnerable to traffic related incidents at night. The speed limit for the Project should follow the recommendations outlined by the USFWS to mitigate the potential impact of night-time construction activity and significantly decrease the potential mortality of the SJKF population.

6-K

**5. Revise Mitigation Measure BIO 4.4-4 i.**

We recommend this mitigation measure be revised to read:

“To enable kit foxes and other wildlife (e.g., American badger) to pass through the project site after construction, the security fence, and any permanent interior fencing shall be a wildlife friendly design that meets the goals of allowing wildlife to move freely through the project site during operation, leaving 4- to 7-inch openings or portals in the fence or the fence shall be raised 7 inches above the ground leaving a gap between the fence mesh and the ground. In the latter case the bottom of the fence fabric shall be knuckled (wrapped back to form a smooth edge) to protect wildlife that passes under the fence. **Perimeter fencing shall not be electrified.**” (Emphasis Added.)

6-L

Electric fencing is not permeable and does not facilitate SJKF and other wildlife movement through the Project site.

**6. Revise Mitigation Measure BIO 4.4-5**

We recommend this mitigation measure be revised to read:

“During construction and decommissioning, the Lead Biologist or approved biological monitor shall monitor all initial ground-disturbance activities and remain on-call throughout construction/decommissioning in the event a special-status species wanders into the project site. Preconstruction surveys for special-status species shall be conducted within the project boundaries by the Lead Biologist or approved biological monitor within 14 days of the start of any vegetation clearing or grading activities. Methodology for preconstruction surveys shall be appropriate for each potentially occurring species-status species and shall follow U.S. Fish and Wildlife Service and/or California Department of Fish and Wildlife preconstruction survey guidelines where appropriate. Surveys need not be conducted for all areas of suitable habitat at one time; they may be phased so that surveys occur within 14 days of the portion of the project

6-M

<sup>6</sup> Ibid.

site being disturbed. The Lead Biologist may use a variety of approaches (including but not limited to monitoring, track plates, and direct observation) and evidence (including burrows characteristics and presence of sign such as scat and tracks) to determine burrow activity. If any evidence of occupation of the project site special-status species is observed, a buffer shall be established by a qualified biologist that results in sufficient avoidance, as described below. Preconstruction surveys shall be conducted by a qualified biologist for the presence of American badger or San Joaquin kit fox dens within 14 days prior to commencement of construction activities. The surveys shall be conducted in the project site for American badger and San Joaquin kit fox. Surveys need not be conducted for all areas of suitable habitat at one time; they may be phased so that surveys occur within 14 days prior to that portion of the project site disturbed. If potential dens are observed and avoidance is feasible, the following buffer distances shall be established prior to construction activities:

6-M

San Joaquin kit fox or American badger potential den: 50 feet.  
 San Joaquin kit fox or American badger active den: 100 feet.  
 San Joaquin kit fox or American badger natal den **(occupied and unoccupied): 500 feet**  
**USFWS must be contacted.** (Emphasis Added)

6-N

The USFWS Standardized Recommendation for Protection of the Endangered San Joaquin Kit Fox Prior To or During Ground Disturbance<sup>7</sup> states that the Service must be contacted for natal/pupping dens, both occupied and unoccupied, for the minimum distance of an exclusion zone.

**7. Revise Mitigation Measure BIO 4.4-5 b.**

We recommend this mitigation measure be revised to read:

“If the qualified biologist determines that potential dens may be active, an onsite passive relocation program shall be implemented. This program shall consist of excluding American badgers or San Joaquin kit foxes from occupied burrows by installation of one-way doors at burrow entrances, monitoring of the burrow **with tracking medium or an infra-red beam camera** for 7 days to confirm usage has been discontinued, and excavation and collapse of the burrow to prevent reoccupation. After the qualified biologist determines that American badgers or San Joaquin kit foxes have stopped using the dens within the project boundary, the dens shall be hand-excavated with a shovel to prevent re-use during construction. **The USFWS shall be contacted for any natal/pupping kit fox den destruction for the take authorization/permit.**” (Emphasis Added)

6-O

<sup>7</sup> See <https://www.fws.gov/media/standardized-recommendations-protection-endangered-san-joaquin-kit-fox-prior-or-during-ground>

The USFWS Standardized Recommendation for Protection of the Endangered San Joaquin Kit Fox Prior To or During Ground Disturbance<sup>8</sup> states that burrow monitoring should be done with tracking medium or an infra-red beam camera and that the Service must be contacted for natal/pupping den destruction for the take authorization/permit.

6-O

**8. Revise Mitigation Measure BIO 4.4-7**

We recommend this mitigation measure be revised to read:

“If burrowing owls are detected onsite, no ground-disturbing activities shall be permitted within a buffer of no fewer than 100 meters (330 feet) from an active burrow during the breeding season (i.e., February 1 to August 31), unless otherwise authorized by CDFW. During the non-breeding (winter) season (i.e., September 1 to January 31), ground-disturbing work can proceed as long as the work occurs no closer than 50 meters (165 feet) from the burrow. **Visible markers shall be places near the identified burrow to ensure that machinery does not collapse burrows.** Depending on the level of disturbance, a smaller buffer may be established in consultation with CDFW.”

6-P

The State of California’s Staff Report on Burrowing Owl Mitigation<sup>9</sup> encourages placing visible markers near burrows to avoid collapsing burrows.

**9. Revise Mitigation Measure BIO 4.4-8**

We recommend this mitigation measure be revised to read:

“MM 4.4-8: A preconstruction survey for BNLL and antelope squirrel in compliance with agency recommendations in accordance with USFWS and/or CDFW protocols shall be conducted and used to determine if there are suitable burrows for these species on the project site. The survey shall identify burrows suitable for BNLL and antelope squirrel. An agency-approved disturbance buffer shall be placed around all identified small burrows with potential to support BNLL and antelope squirrel. Avoidance of burrows and associated buffer areas shall be implemented. If ~~BNLL and~~ antelope squirrel is identified during the focused surveys, USFWS and CDFW shall be consulted to obtain the necessary permit authorizations before proceeding. **The results of the BNLL focus survey should be submitted to CDFW.** If burrow avoidance is not possible within the project site, a Management Plan for the appropriate species will be prepared in consultation with the agencies.” (Emphasis Added.)

6-Q

<sup>8</sup> See <https://www.fws.gov/media/standardized-recommendations-protection-endangered-san-joaquin-kit-fox-prior-or-during-ground>

<sup>9</sup> California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation.

According to the Approved Survey Methodology for the Blunt-nosed Leopard Lizard<sup>10</sup> from CDFW, all survey results should be submitted to the agency even if no BNLL are identified.

↑  
6-Q

**10. Revise Mitigation Measure BIO 4.4-9**

We recommend this mitigation measure be revised to read:

“MM 4.4-9: Protocol level surveys for the BNLL shall be conducted at the project site from April to July, 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 fencing in compliance with agency specifications to prevent potential future occupancy of BNLL. If BNLL are found within the survey areas or if burrows are found to be occupied, CDFW must be contacted for consultation on implementing ground-disturbing activities and avoiding take. Take must be avoided since BNLL is a State Fully Protected species and no incidental or otherwise can be authorized by CDFW. ~~measures to protect the species shall include appropriate signage, monitoring by approved qualified biologists and other specific protection measures developed in compliance with agency guidelines. 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. During the active season when blunt-nosed leopard lizards are moving above-ground (April to early November), the following measures will be implemented in areas where blunt-nosed leopard lizards or signs of blunt-nosed leopard lizards have been observed:” (Emphasis Added)

6-R

**11. Revise Mitigation Measure BIO 4.4-9 a.**

We recommend this mitigation measure be revised to read:

“Establishment of No-Work Buffers. The project biologist will establish, monitor, and maintain ~~50-foot~~ 395-acre no-work buffers around any BNLL detections burrows and egg clutch sites identified during surveys. The ~~395-acre~~ 50-foot no-work buffers will be established around BNLL detections burrows in a manner that allows for a connection

6-S

<sup>10</sup> See <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=174900&inline>

between the burrow site and the suitable natural habitat adjacent to the Construction Footprint so that blunt-nosed leopard lizards and/or hatchlings may leave the area after eggs have hatched. Construction activities will not occur within the ~~50-foot~~ 394-acre no-work buffers until such time as the eggs have hatched and blunt-nosed leopard lizards have left the area.” (Emphasis Added)

BNLL home ranges far exceed the 50-foot buffer previously required within the Project’s mitigation measures. Defenders recommends aligning the minimum buffer size with CDFW recommendations.<sup>11</sup>

Thank you once again for the opportunity to provide comments on the Project’s Draft EIR and for considering our comments. We look forward to reviewing the Final EIR and request to be notified when it is available. If you have any questions, please contact me at 408-603-4694 or via email at [smarkowska@defenders.org](mailto:smarkowska@defenders.org)

Respectfully submitted,



Sophia Markowska  
Senior California Representative

↑  
6-S

<sup>11</sup> California Department of Fish and Wildlife. 2021. Comments on the Azalea Solar Project by SF Azalea (Project) Notice of Preparation (NOP) State Clearinghouse No. 2021090602

**Response to Letter 6: Defenders of Wildlife (Defenders) (October 17, 2022)**

- 6-A:** The Defenders of Wildlife (Defenders) thank the County for the opportunity to comment on the DEIR. This is an introductory comment and 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.
- 6-B:** This is an introductory comment and 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.
- 6-C:** This comment summarizes the project components and location. 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.
- 6-D:** This comment summarizes the existing uses and habitat on-site. The Defenders then call out the following species as potentially having habitat on the project site; American Badger, blunt-nosed leopard lizard, burrowing owl, California jewelflower, giant kangaroo rat, San Joaquin kit fox, San Joaquin/Nelson’s antelope squirrel, San Joaquin woollythreads, and Swainson’s hawk. 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.
- 6-E:** This comment identifies the project site as a linkage recovery area for the San Joaquin kit fox. The Defenders identify the San Joaquin kit fox as having the potential to occur on-site and identify the species as endangered under the Federal Endangered Species Act and threatened under the California Endangered Species Act. The DEIR also makes this determination in Chapter 4.4, *Biological Resources* within **Table 4.4-2: Special-Status Species of Concern with Potential to Occur on the Project Site** on page 4.4-13. 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.
- 6-F:** The commenter states that “CDFW recommended conducting surveys for the blunt-nose leopard lizard no more than one year prior to initiation of ground and/or vegetation disturbance for this project. The originally surveys that were conducted in summer 2020 and spring 2021 fall outside this timeline. The commenter recommends following the survey timeline for the blunt-nose leopard lizard as previously recommended.”

As described in response to Letter 1: California Department of Fish and Wildlife (CDFW) (October 17, 2022) bracketed #F, Mitigation Measure 4.4-9 will be revised to require that protocol-level surveys for the BNLL shall be conducted in accordance with the “Approved Survey Methodology for the Blunt-nosed Leopard Lizard” (CDFW 2019) and that these surveys are to be completed no more than one year prior to initiation of ground and/or vegetation disturbance.

- 6-G:** The commenter describes that if the updated surveys determine the Project may impact Swainson’s hawk foraging habitat, consultation with the CDFW for the appropriate mitigation ratio for habitat management land is necessary. As described in response to Letter 1: California Department of Fish and Wildlife (CDFW) (October 17, 2022) bracketed # O, Mitigation Measure 4.4-10 will be revised to state that compensation for loss of Swainson’s hawk foraging habitat will be based on the results

of the protocol SWHA survey (SWHA TAC 2000) as described in CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" (CDFG 1994). If an active Swainson's hawk nest is detected and a ½-mile no disturbance buffer is not feasible, CDFW will be consulted to discuss how to implement the project and avoid take.

**6-H:** The commenter recommends that if a grading permit and initiation of ground-disturbing and vegetation removal does not occur within the 2.5 years (30 months) from completion of protocol surveys that surveys for SJKF should be re-initiated to provide updated results of SJKF use of the Project site. Surveys for SJKF dens were conducted in 2022 by H. T. Harvey & Associates' biologist; potential dens were identified and SJKF sign (scat and tracks) was documented. As described in response to Letter 1: California Department of Fish and Wildlife (CDFW) (October 17, 2022) bracketed # M, Mitigation Measure 4.4-5 will be revised to state that preconstruction surveys shall be conducted by a qualified biologist for the presence of American badger or San Joaquin kit fox dens no less than 14-days and no more than 30-days prior to beginning of ground and/or vegetation disturbing activities.

**6-I:** The commenter recommends revisions to Mitigation Measure 4.4-2 such that the training should follow the recommendations from USFWS ( <https://www.fws.gov/media/standardized-recommendations-protection-endangered-san-joaquin-kit-fox-prior-or-during-ground>) and incorporate suggested edits. In response to the reviewer's comments, Mitigation Measure 4.4-2 will be revised to read as follows (revisions in underline):

“Prior to the issuance of grading or building permits and for the duration of construction and decommissioning activities, within one week of employment all new construction workers at the project site, laydown area and/or transmission routes shall attend an Environmental Awareness Training and Education Program, developed and presented by the Lead Biologist that is an expert on biology and required protections for the various special-status species found on-site. Any employee responsible for the operations and maintenance or decommissioning of the project facilities shall also attend the Environmental Awareness Training and Education Program. The program shall follow the recommendations from USFWS ( <https://www.fws.gov/media/standardized-recommendations-protection-endangered-san-joaquin-kit-fox-prior-or-during-ground> ) and include information on the life history and habitat needs of the BNLL, SJKF, giant kangaroo rat, raptors, American badger, as well as other wildlife and plant species that may be encountered during construction activities. The program shall also discuss the legal protection status of each species, a report of the occurrence of the SJKF in the project area, the definition of “take” under the federal Endangered Species Act and California Endangered Species Act, measures the project operator is implementing to protect the species, reporting requirements, specific measures that each worker shall employ to avoid take of wildlife species, and penalties for violation of the federal Endangered Species Act or California Endangered Species Act. A fact sheet conveying this information should be prepared for distribution for those attending the training and anyone else who may enter the project site.”

**6-J:** The commenter recommends revisions to Mitigation Measure 4.4-4 d. In response to the reviewer's comments, Mitigation Measure 4.4-4 d. will be revised to read as follows (revision in underline):

To prevent inadvertent entrapment of San Joaquin kit foxes, American badgers, or other wildlife during construction, all excavated, steep-walled holes or trenches more than 2 feet deep shall be covered with plywood or similar materials at the close of each working day, or provided with one

or more escape ramps constructed of earth fill or wooden planks. All holes and trenches, whether covered or not, shall be inspected for trapped wildlife at the start and end of each workday. Before such holes or trenches are filled, they shall be thoroughly inspected by the Lead Biologist or approved biological monitor for trapped wildlife. If trapped animals are observed, escape ramps or structures shall be installed immediately to allow escape. If a listed species is found trapped, all work in the vicinity of the animal shall cease immediately. If the animal is apparently uninjured, then the Lead Biologist shall directly supervise the provision of escape structures and/or trench modification to allow the trapped animal to escape safely. Work shall not resume in the vicinity of the animal, and it shall be allowed to leave the work area and project site on its own. ~~If the listed animal is injured, then~~ The Lead Biologist or approved biological monitor shall immediately contact the U.S. Fish and Wildlife Service and/or California Department of Fish and Wildlife for any trapped or injured SJKF to identify an individual with the appropriate permit or authorization to handle listed species, and if the species is injured, to decipher who shall bring the animal to a pre-identified wildlife rehabilitation or veterinary facility for care.

- 6-K:** The commenter recommends revisions to Mitigation Measure 4.4-4 h. In response to the reviewer's comments, Mitigation Measure 4.4-4 h. will be revised to read as follows (revisions in underline):

A day-time speed limit of 15 miles per hour shall be enforced within the limits of the proposed project. To the extent possible, night-time construction related activity shall be minimized, but if work must be conducted at night, then a night-time speed limit of 10-mph shall be enforced. Off-road traffic outside of designated project areas should be prohibited.

The speed limit should be reduced to 10-mph for night-time activity. The U.S. Fish and Wildlife Service (USFWS) Sacramento Office established standardized recommendations for the protection of the SJKF prior to or during ground disturbance. The recommendations state that night-time construction should be minimized to the extent possible; however if night-time activity does occur, then the speed limit should be reduced to 10-mph. San Joaquin kit foxes are most active at night and therefore more vulnerable to traffic related incidents at night. The speed limit for the Project should follow the recommendations outlined by the USFWS to mitigate the potential impact of night-time construction activity and significantly decrease the potential mortality of the SJKF population.

- 6-L:** The commenter recommends revisions to Mitigation Measure 4.4-4 l. In response to the reviewer's comments, Mitigation Measure 4.4-4 l. will be revised to read as follows (revisions in underline):

To enable kit foxes and other wildlife (e.g., American badger) to pass through the project site after construction, the security fence, and any permanent interior fencing shall be a wildlife friendly design that meets the goals of allowing wildlife to move freely through the project site during operation, leaving 4- to 7-inch openings or portals in the fence or the fence shall be raised 7 inches above the ground leaving a gap between the fence mesh and the ground. In the latter case the bottom of the fence fabric shall be knuckled (wrapped back to form a smooth edge) to protect wildlife that passes under the fence. Perimeter fencing shall not be electrified.

- 6-M:** The commenter recommends no revisions to Mitigation Measure 4.4-5 as bracketed by comment #M; consequently, no changes or modifications have been made to the Draft EIR in response to this comment. However, note response to Letter 1: California Department of Fish and Wildlife (CDFW) (October 17, 2022) bracketed # M Mitigation Measure 4.4-5 that will result in a revision that states that preconstruction surveys shall be conducted by a qualified biologist for the presence



of American badger or San Joaquin kit fox dens no less than 14-days and no more than 30-days prior to beginning of ground and/or vegetation disturbing activities.

**6-N:** The commenter recommends that the natal den buffer size for San Joaquin kit fox or American badger, whether occupied or not, not be specified; instead the USFWS must be contacted. The 500-foot buffer identified in Mitigation Measure 4.4-5 is sufficient to avoid impacts to natal dens occupied by San Joaquin kit fox or American badger and need not to be unspecified and deferred to a future time. Furthermore, the project proponent is in consultation with the USFWS regarding take avoidance of San Joaquin kit fox, providing the USFWS opportunities to redefine buffer requirements if deemed necessary. No changes or modifications have been made to the Draft EIR in response to this comment.

**6-O:** The commenter recommends revisions to Mitigation Measure 4.4-5 b. The project proponent is in consultation with the USFWS and CDFW regarding take avoidance of San Joaquin kit fox. In response to the reviewer's comments, Mitigation Measure 4.4-5 b. will be revised to read as follows (revisions in underline):

If the qualified biologist determines that potential dens may be active, an onsite passive relocation program shall be implemented. This program shall consist of excluding American badgers or San Joaquin kit foxes from occupied burrows by installation of one-way doors at burrow entrances, monitoring of the burrow with tracking medium or an infra-red beam camera for 7 days to confirm usage has been discontinued. After the qualified biologist determines that American badgers or San Joaquin kit foxes have stopped using the den within the project boundary, the den shall be temporarily blocked or excavated to prevent re-use during construction.

**6-P:** The commenter recommends revisions to Mitigation Measure 4.4-7. In response to the reviewer's comments, Mitigation Measure 4.4-7 will be revised by inserting the following sentence into the mitigation measure in the second paragraph before the last sentence "Visible markers shall be placed near the identified burrow(s) to ensure that machinery does not collapse the burrow(s)."

**6-Q:** The commenter recommends edits to Mitigation Measure 4.4-8. Mitigation Measure 4.4-8 will be removed in response to Letter 1: California Department of Fish and Wildlife (CDFW) (October 17, 2022) bracketed # F of this comment and Mitigation Measure 4.4-9 revised to require that protocol-level surveys for the BNLL shall be conducted in accordance with the "Approved Survey Methodology for the Blunt-nosed Leopard Lizard" (CDFW 2019) and that these surveys are to be completed no more than one year prior to initiation of ground and/or vegetation disturbance and submitted to the CDFW. No changes or modifications have been made to the Draft EIR in response to this comment.

**6-R:** The commenter recommends edits to Mitigation Measure 4.4-9. Mitigation Measure 4.4-9 will be revised in response to Letter 1: California Department of Fish and Wildlife (CDFW) (October 17, 2022) bracketed # G. Mitigation Measure 4.4-9 will be revised to remove references to no work buffers and require consultation with the USFWS and CDFW to develop a BNLL avoidance plan, if BNLL are detected during protocol-level surveys (CDFW 2019). No changes or modifications have been made to the Draft EIR in response to this comment.

**6-S:** The commenter recommends edits to the no work buffer area outlined in Mitigation Measure 4.4-9. Mitigation Measure 4.4-9 will be revised in response to Letter 1: California Department of Fish and Wildlife (CDFW) (October 17, 2022) bracketed # G. Mitigation Measure 4.4-9 will be revised

to remove references to no work buffers and require consultation with the USFWS and CDFW to develop a BNLL avoidance plan, if BNLL are detected during protocol-level surveys (CDFW 2019). No changes or modifications have been made to the Draft EIR in response to this comment.