

Final Environmental Impact Report

SCH# 2021100003

Volume 4

Chapter 7 – Response to Comments

CHALAN SOLAR AND STORAGE PROJECT

by Chalan CA Solar and Storage, LLC (PP21402)

Conditional Use Permit No. 12, Map No. 3

Conditional Use Permit No. 13, Map No. 3

Williamson Act Land Use Contract Cancellation 23-07



Kern County
Planning and Natural Resources Department
Bakersfield, California

September 2023

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**PLANNING AND NATURAL
RESOURCES DEPARTMENT**

Planning
Community Development
Administrative Operations

September 14, 2023

FILE: CUP #12 and CUP #13, Map 3;
Williamson Act Cancellation 23-07
S.D. #4, Couch

Addressee List (See Distribution List)

Re: Response to Comments for Draft Environmental Impact Report – Chalan Solar and Storage Project by Chalan CA Solar and Storage, LLC (PP21402) (SCH#2021100003)

Dear Interested Party:

Enclosed is a document entitled Volume 4 – 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 September 28, 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) 862-8793 or via email at majesj@kerncounty.com.

Sincerely,

A handwritten signature in blue ink that reads "Terrance Smalls". The signature is fluid and cursive, with a long horizontal line extending to the right.

Terrance Smalls, Supervising Planner
Advanced Planning Division

COMMENTING AGENCIES AND INTERESTED PERSONS: California Department of Fish & Wildlife; San Joaquin Valley Air Pollution Control District; Defenders of Wildlife; County of Kern Public Works Department, Floodplain Management Section; County of Kern Public Works Department Development Review Division; State Clearinghouse Office of Planning and Research; State Department of Conservation Geologic Energy Management Division; California Department of Transportation.

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TABLE OF CONTENTS

	<u>Page</u>
Chapter 7 Response to Comments	7-1
7.1 Introduction	7-1
7.1.1 Purpose	7-1
7.1.2 Environmental Review Process	7-1
7.2 Revisions to the Draft EIR	7-1
7.3 Response to Comments	7-25
7.3.1 State Agencies	7-26
Comment Letter 1: California Office of Planning and Research, State Clearinghouse (June 28, 2023).....	7-26
<i>Response to Comment Letter 1: California Office of Planning and Research, State Clearinghouse (June 28, 2023)</i>	7-27
Comment Letter 2: California Department of Conservation, Geologic Energy Management Division (June 27, 2023)	7-28
<i>Response to Comment Letter 2: California Department of Conservation, Geologic Energy Management Division (June 27, 2023)</i>	7-30
Comment Letter 3: California Department of Fish and Wildlife (July 28, 2023)	7-31
<i>Response to Comment Letter 3: California Department of Fish and Wildlife (July 28, 2023)</i> ...	7-53
Comment Letter 4: California Department of Transportation (June 30, 2023).....	7-63
<i>Response to Comment Letter 4: California Department of Transportation (June 30, 2023)</i>	7-64
7.3.2 Local Agencies	7-65
Comment Letter 5: San Joaquin Valley Air Pollution Control District (July 31, 2023)	7-65
<i>Response to Comment Letter 5: San Joaquin Valley Air Pollution Control District (July 31, 2023)</i>	7-70
Comment Letter 6: County of Kern Public Works Department, Floodplain Management Section (June 19, 2023)	7-73
<i>Response to Comment Letter 6: County of Kern Public Works Department, Floodplain Management Section (June 19, 2023)</i>	7-74
7.3.3 Interested Parties	7-75
Comment Letter 7: Defenders of Wildlife (July 31, 2023).....	7-75
<i>Response to Comment Letter 7: Defenders of Wildlife (July 31, 2023)</i>	7-85
7.3.4 Comments Received After July 31, 2023 Close of Public Comment Period	7-90
Comment Letter 8: Kern County Public Works Department, Development Review Division (August 30, 2023)	7-90
<i>Response to Comment Letter 8: Kern County Public Works Department, Development Review Division (August 30, 2023)</i>	7-91

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7.1 Introduction

7.1.1 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 Chalan Solar and Storage 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.

7.1.2 Environmental Review Process

A Notice of Preparation (NOP)/Initial Study (IS) (SCH No. 2021100003) was circulated for a 30-day public review period beginning on September 30, 2021 and ending November 1, 2021. Twelve individual written comment letters were received and used in the preparation of the Draft EIR.

The Draft EIR for the proposed project was circulated for a 45-day public review period beginning on June 15, 2023 and ending July 31, 2023. A total of eight comment letters were received on the Draft EIR.

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

7.2 Revisions to the Draft EIR

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

Global Changes: The following “global changes” are intended to apply to the Draft EIR in all instances where such text shown below appears within the document. The text revisions are not repeated herein for each occurrence within the Draft EIR in order to streamline this document.

- Williamson Act Land Use Contract Cancellation ~~21-06~~ 23-07
- Mitigation Measure MM 4.1-7 is referenced throughout the EIR; however, this was a typographical error as there is no Mitigation Measure 4.1-7. Therefore, any references to “Mitigation Measure MM 4.1-7” are to be deleted and replaced globally with “Mitigation Measure MM 4.1-6” throughout the EIR, as well as all references to “Mitigation Measures MM 4.1-5 through MM 4.1-7” are to be deleted and replaced globally with “Mitigation Measures MM 4.1-4 through MM 4.1-6.”

Chapter 1, Executive Summary, 1.5.2, Surrounding Land Uses and Project Site Conditions, Page 1-7

There are no active mines or petroleum extraction facilities located within or immediately adjacent to the project site. The nearest active mine, Lost Hills Oil Mine is approximately 15 miles to the southeast. The project site is within the Kern County Mineral Overlay Parcel (043-210-45). However, there are no historic records of drilling on the project site. The project site is not designated as a mineral recovery area by the Kern County General Plan, nor is it identified as a Mineral Resource Zone (MRZ) by the DOC’s State Mining and Geology Board and is not located in any known oil, gas, or geothermal fields per the Geologic Energy Management Division. Furthermore, portions of the project site would be left undeveloped to serve as “drill islands” if and when mineral resources require extraction. Any future drilling would require local and state approval by Kern County and the DOC’s Geologic Energy Management Division as well as filling would require approval by the Bureau of Land Management (BLM), and any approval would need to be consistent with the current use of the site.

Chapter 1, Executive Summary, Table 1-6, Summary of Impacts, Mitigation Measures, and Levels of Significance, Page 1-49 through 1-62

To provide clarity, only mitigation measures with revisions have been included in the following table.

TABLE 1-6: SUMMARY OF IMPACTS, MITIGATION MEASURES, AND LEVELS OF SIGNIFICANCE

Impact	Level of Significance before Mitigation	Mitigation Measures	Level of Significance after Mitigation
4.4 Biological Resources			
Impact 4.4-1: 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	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	Less than significant

TABLE 1-6: SUMMARY OF IMPACTS, MITIGATION MEASURES, AND LEVELS OF SIGNIFICANCE

Impact	Level of Significance before Mitigation	Mitigation Measures	Level of Significance after Mitigation
		<p>fact sheet conveying this information should be prepared for distribution for the attending the training and anyone else who may enter the project site.</p> <ul style="list-style-type: none"> 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. <p>MM 4.4-3: During construction, operations and maintenance, and decommissioning, the project operator shall implement the following general avoidance and protective measures:</p> <ul style="list-style-type: none"> 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. 	

TABLE 1-6: SUMMARY OF IMPACTS, MITIGATION MEASURES, AND LEVELS OF SIGNIFICANCE

Impact	Level of Significance before Mitigation	Mitigation Measures	Level of Significance after Mitigation
		<p>Construction-related activities outside of the impact zone shall be avoided.</p> <p>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.</p> <p>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.</p> <p>d. 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 The Lead Biologist or approved biological monitor shall immediately contact the U.S. Fish and Wildlife Service and/or</p>	

TABLE 1-6: SUMMARY OF IMPACTS, MITIGATION MEASURES, AND LEVELS OF SIGNIFICANCE

Impact	Level of Significance before Mitigation	Mitigation Measures	Level of Significance after Mitigation
		<p>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.</p>	
		<p>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.</p>	
		<p>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.</p>	

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Impact	Level of Significance before Mitigation	Mitigation Measures	Level of Significance after Mitigation
		<ul style="list-style-type: none"> <li data-bbox="890 313 1598 402">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. <li data-bbox="890 410 1598 589">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. <li data-bbox="890 597 1598 776">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. <li data-bbox="890 784 1598 841">j. Workers shall be prohibited from bringing pets and firearms to the project area and from feeding wildlife. <li data-bbox="890 849 1598 906">k. Intentional killing or collection of any plant or wildlife species shall be prohibited. <li data-bbox="890 914 1598 1287">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 4-6 inches above the ground leaving a gap between the fence mesh and the ground. In the latter case t <u>The bottom of the fence fabric shall be knuckled (wrapped back to form a smooth edge) to protect wildlife that passes under the fence. A buried apron of fencing material shall extend up to 3 feet out from the fence line.</u> Perimeter fencing shall not be electrified. <li data-bbox="890 1295 1598 1421">m. 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, 	

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		<p>bunch grasses, thatch, brush piles, old bird nests, or dead trees. A minimum of two surveys shall be completed between the hours of 0800 and 1600 when temperatures are between 65°F and 90°F and will not be conducted during inclement weather conditions (e.g., foggy, raining, drizzling, or sustained winds greater than 8 mph). Surveyors will photograph potential Crotch Bumble Bees (CBB) from various angles to ensure recordation of key identifying characteristics. 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). <u>If CBB are found during surveys, consultation with CDFW will occur to discuss appropriate avoidance measures or if avoidance is not possible, to obtain an ITP.</u></p> <p>MM 4.4-4: 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.</p> <p>Preconstruction surveys for special-status species shall be conducted within the project boundaries by the Lead Biologist or approved biological monitor no less than 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 14 days and no more than 30 days prior to of the portion of the project site being</p>	

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		<p>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.</p> <p>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 surveys shall be conducted in the project site for American badger and San Joaquin kit fox. <u>The pre-construction den survey shall be conducted in accordance with the <i>Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance</i> (USFWS 2011).</u> 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 14 days and no more than 30 days prior to that portion of the project site disturbed. <u>The pre-construction den survey shall be conducted in all areas of potentially suitable habitat within the Project area and a 500-foot buffer of Project areas.</u> If potential dens are observed and avoidance is feasible, the following buffer distances shall be established prior to construction activities:</p> <ol style="list-style-type: none"> a. San Joaquin kit fox or American badger potential den: 50 feet. b. San Joaquin kit fox or American badger active den: 100 feet. c. San Joaquin kit fox or American badger natal den: 500 feet. <p>If avoidance of the potential dens is not possible, the following measures are required to avoid potential adverse effects to the American badger:</p> <ol style="list-style-type: none"> a. If the qualified biologist determines that potential dens are inactive, the biologist shall excavate these dens by hand with a 	

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Impact	Level of Significance before Mitigation	Mitigation Measures	Level of Significance after Mitigation
		<p>shovel to prevent American badgers or desert kit foxes from re-using them during construction.</p> <p>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 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 have stopped using the dens within the project boundary, the dens shall be hand-excavated with a shovel to prevent re-use during construction.</p> <p>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 Community Development Department and relevant resource agencies, as applicable, on a monthly basis along with copies of all survey reports.</p> <p>MM 4.4-5: A qualified wildlife biologist (i.e., a wildlife biologist with previous burrowing owl survey experience) 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</p>	

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Impact	Level of Significance before Mitigation	Mitigation Measures	Level of Significance after Mitigation
		<p>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. Surveys may be conducted concurrently with desert tortoise preconstruction surveys. 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 Community Development Department.</p> <p>If burrowing owls are detected onsite, no ground-disturbing activities shall be permitted within no-disturbance buffers, as outlined in the “Staff Report on Burrowing Owl Mitigation” (CDFG 2012). Specifically, occupied burrows shall be avoided with a buffer of no fewer than 200 to 500-100 meters (330650 to 1,640 feet) from an active burrow during the breeding season (i.e., February 1 to August 31), April 1 to October 15 or 50 to 500 meters (165 to 1,640 feet) from October 16 to March 31, unless otherwise authorized by CDFW. During the non-breeding (winter) season (i.e., September 1 to January 31), grounddisturbing 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.</p> <p>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 E1 (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 CDFW Staff Report on Burrowing Owl Mitigation.</p> <p>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</p>	

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Impact	Level of Significance before Mitigation	Mitigation Measures	Level of Significance after Mitigation
		<p>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:</p> <ul style="list-style-type: none"> 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 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. <p>MM 4.4-6: 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</p>	

TABLE 1-6: SUMMARY OF IMPACTS, MITIGATION MEASURES, AND LEVELS OF SIGNIFICANCE

Impact	Level of Significance before Mitigation	Mitigation Measures	Level of Significance after Mitigation
		<p>potential nesting habitat within the project site for construction activities that are initiated during the breeding season (i.e., February 1 to August 31 <u>September 15</u>). 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 0.5-mile buffer around the project site and follow the 2000 Swainson’s hawk protocol surveys (Swainson’s Hawk Technical Advisory Committee, 2000). Surveys shall be conducted no more than one week <u>14 days</u> 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 buffer (e.g., 200–300 <u>500</u> feet for common raptors; 0.5 miles for Swainson’s hawk; 30–50 <u>250</u> feet for passerine species) shall be established around active nests and no construction within the buffer allowed 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). <u>If an active SWHA nest is detected and a 0.5-mile no-disturbance buffer is not feasible, consultation with CDFW shall occur to discuss how to implement the Project and avoid take. If take cannot be avoided, consultation to receive an ITP for SWHA shall be performed.</u> For non-listed 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.</p> <p>MM 4.4-10: Protocol level surveys for the BNLL shall be conducted by a qualified biologist at the project site <u>in accordance with the “Approved Survey Methodology for the Blunt-nosed Leopard Lizard” (CDFW 2019) from April 15 to July 31 during the adult optimal survey period and from August 15 to September 30 during the hatchling optimal survey period, in suitable habitat</u></p>	

TABLE 1-6: SUMMARY OF IMPACTS, MITIGATION MEASURES, AND LEVELS OF SIGNIFICANCE

Impact	Level of Significance before Mitigation	Mitigation Measures	Level of Significance after Mitigation
		<p>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.</p> <p>If BNLL are found within the survey areas, 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: consultation with CDFW will be performed to discuss appropriate avoidance measures (such as no-work buffers, discussed below) or if avoidance is not possible, to obtain an ITP given the passage of Senate Bill No. 147.</p> <p>a. Establishment of No-Work Buffers. <u>The project biologist will consult with CDFW for the appropriate measurement of a no-work buffer around occupied burrows and egg clutch sites identified during surveys.</u> The project biologist will establish, monitor, and maintain <u>50-foot</u> no-work buffers <u>in accordance with CDFW recommendations</u> around burrows and egg clutch sites identified during surveys. The 50-foot no-work buffers</p>	

TABLE 1-6: SUMMARY OF IMPACTS, MITIGATION MEASURES, AND LEVELS OF SIGNIFICANCE

Impact	Level of Significance before Mitigation	Mitigation Measures	Level of Significance after Mitigation
		<p>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.</p> <p>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.</p> <p>i. 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.</p> <p>ii. 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. <u>consultation with CDFW would be performed to ensure that WEF installation in areas where BNLL or signs of BNLL have been observed does not take the species.</u></p>	

Chapter 3, Project Description, 3.3 Project Objectives, Page 3-4

3.3 Applicant Submitted Project Objectives

State *CEQA Guidelines* Section 15124(b) requires that a project description include a clearly written statement of objectives, of a project that address the purpose. The following specific objectives of the project are provided below. The statement of objectives should include the underlying purpose of the project and may discuss the project benefits. The following are the applicant submitted project objectives for the proposed project.

Chapter 3 Project Description, 3.4 Environmental Setting, Page 3-8

There are no active mines or petroleum extraction facilities located within or immediately adjacent to the project site. The nearest active mine, Lost Hills Oil Mine is approximately 15 miles to the southeast. The project site is within the Kern County Mineral Overlay Parcel (043-210-45). However, there are no historic records of drilling on the project site. The project site is not designated as a mineral recovery area by the Kern County General Plan, nor is it identified as a Mineral Resource Zone (MRZ) by the DOC's State Mining and Geology Board and is not located in any known oil, gas, or geothermal fields per the Geologic Energy Management Division. Furthermore, portions of the project site would be left undeveloped to serve as "drill islands" if and when mineral resources require extraction. Any future drilling would require local and state approval by Kern County and the DOC's Geologic Energy Management Division as well as filling would require approval by the Bureau of Land Management (BLM), and any approval would need to be consistent with the current use of the site.

Section 4.4, Biological Resources, Operations and Maintenance, Page 4.4-35

Direct and indirect impacts to migratory birds would be less than significant with the implementation of Mitigation Measures MM 4.1-~~54~~ (Kern County Dark Sky Ordinance), MM 4.1-~~65~~ (minimize glare and spectral highlighting), MM 4.1-~~76~~ (use of non-reflective materials), and MM 4.4-11 (utilization of APLIC guidelines).

Section 4.4, Biological Resources, Mitigation Measure MM 4.4-2, Page 4.4-36

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 the 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.~~

Section 4.4, Biological Resources, Mitigation Measure MM 4.4-3, Pages 4.4-37 through 4.4-39

MM 4.4-3: 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, 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 4-6~~ 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. A buried apron of fencing material shall extend up to 3 feet out from the fence line. Perimeter fencing shall not be electrified.
- m. 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 Crotch Bumble Bees (CBB) from various angles to ensure recordation of key identifying characteristics. 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). If CBB are found during surveys, consultation with CDFW will occur to discuss appropriate avoidance measures or if avoidance is not possible, to obtain an ITP.

Section 4.4, Biological Resources, Mitigation Measure MM 4.4-4, Pages 4.4-39 and 4.4-40

MM 4.4-4: 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 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 14 days and no more than 30 days prior to 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 14 days and no more than 30 days prior to beginning of ground and/or vegetation disturbing activities. The surveys shall be conducted in the project site for American badger and San Joaquin kit fox. The preconstruction den survey shall be conducted in accordance with the *Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance* (USFWS 2011). 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 14 days and no more than 30 days prior to that portion of the project site disturbed. The preconstruction den survey shall be conducted in all areas of potentially suitable habitat within the Project area and a 500-foot buffer of Project areas. If potential dens are observed and avoidance is feasible, the following buffer distances shall be established prior to construction activities:

- a. San Joaquin kit fox or American badger potential den: 50 feet.
- b. San Joaquin kit fox or American badger active den: 100 feet.
- c. 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:

- 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 desert kit foxes from re-using them during construction.
- b. If the qualified biologist determines that potential dens may be active, an on-site passive relocation program shall be implemented. This program shall consist of excluding American badgers 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 have stopped using the dens within the project boundary, the dens shall be hand-excavated with a shovel to prevent re-use during construction.

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 Community Development Department and relevant resource agencies, as applicable, on a monthly basis along with copies of all survey reports.

Section 4.4, Biological Resources, Mitigation Measure MM 4.4-5, Pages 4.4-40 and 4.4-41

MM 4.4-5: A qualified wildlife biologist (i.e., a wildlife biologist with previous burrowing owl survey experience) 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. Surveys may be conducted concurrently with desert tortoise preconstruction surveys. 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 Community Development Department.

If burrowing owls are detected onsite, no ground-disturbing activities shall be permitted within no-disturbance buffers, as outlined in the “Staff Report on Burrowing Owl Mitigation” (CDFG 2012). Specifically, occupied burrows shall be avoided with a buffer of ~~no fewer than~~ 200 to 500-100 meters (330-650 to 1,640 feet) from ~~an active burrow during the breeding season (i.e., February 1 to August 31),~~ April 1 to October 15 or 50 to 500 meters (165 to 1,640 feet) from October 16 to March 31, unless otherwise authorized by CDFW. ~~During the non-breeding (winter) season (i.e., September 1 to January 31), grounddisturbing 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.

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 E1 (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 CDFW Staff Report on Burrowing Owl Mitigation.

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 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.

Section 4.4, Biological Resources, Mitigation Measure MM 4.4-6, Page 4.4-41

MM 4.4-6: 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~~ September 15). 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 0.5-mile buffer around the project site and follow the 2000 Swainson's hawk protocol surveys (Swainson's Hawk Technical Advisory Committee, 2000). Surveys shall be conducted no more than one week ~~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 buffer (e.g., ~~200–300~~ 500 feet for common raptors; 0.5 miles for Swainson’s hawk; ~~30–50~~ 250 feet for passerine species) shall be established around active nests and no construction within the buffer allowed 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). If an active SWHA nest is detected and a 0.5-mile no-disturbance buffer is not feasible, consultation with CDFW shall occur to discuss how to implement the Project and avoid take. If take cannot be avoided, consultation to receive an ITP for SWHA shall be performed. For non-listed 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.

Section 4.4, Biological Resources, Mitigation Measure MM 4.4-10, Pages 4.4-42 and 4.4-43

MM 4.4-10: Protocol level surveys for the BNLL shall be conducted by a qualified biologist at the project site in accordance with the “Approved Survey Methodology for the Blunt-nosed Leopard Lizard” (CDFW 2019) from April 15 to July 31 during the adult optimal survey period and from August 15 to September 30 during the hatchling optimal survey period, 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 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: consultation with CDFW will be performed to discuss appropriate avoidance measures (such as no-work buffers, discussed below) or if avoidance is not possible, to obtain an ITP given the passage of Senate Bill No. 147.~~

- a. Establishment of No-Work Buffers. The project biologist will consult with CDFW for the appropriate measurement of a no-work buffer around occupied burrows and egg clutch sites identified during surveys. The project biologist will establish, monitor, and

maintain ~~50-foot~~ no-work buffers in accordance with CDFW recommendations 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.
 - i. 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.
 - ii. 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 lizard observations within the Work Area.~~ consultation with CDFW would be performed to ensure that WEF installation in areas where BNLL or signs of BNLL have been observed does not take the species.

Section 4.7, Geology and Soils, Page 4.7-18

Depending on the magnitude, distance to the source, and duration of shaking, damage to the PV modules, O&M Building(s), or other ancillary facilities and injury to workers or visitors could result.

Section 4.11, Land Use and Planning, Page 4.11-3

~~The project site is not designated as a mineral recovery area by the Kern County General Plan, nor is it identified as a Mineral Resource Zone (MRZ) by the DOC's State Mining and Geology Board.~~ Neither the project site nor adjacent areas include land classified as a MRZ (USGS, 2022). The project site has been identified as being within a Mineral Overlay Parcel (043-210-45) by Kern County. However, there are no historic records of drilling on the project site. The project site is not designated as a mineral recovery area by the Kern County General Plan, nor is it identified as a Mineral Resource Zone (MRZ) by the DOC's State Mining and Geology Board and is not located in any known oil, gas, or geothermal fields per the Geologic Energy Management Division. Furthermore, portions of the project site would be left undeveloped to serve as "drill islands" if and when mineral resources require extraction. Any future drilling would require local and state approval by Kern County and the DOC's Geologic Energy Management Division as

~~well as filling would require~~ approval by the Bureau of Land Management (BLM), and any approval would need to be consistent with the current use of the site.

Section 4.12, Mineral Resources, Page 4.12-6

The project site is within Kern County Mineral Overlay Parcel (043-210-45). However, there are no historic records of drilling on the project site. Furthermore, portions of the project site would be left undeveloped to serve as “drill areas” if and when mineral resources require extraction. The mineral estate is owned by the U.S. government and managed by BLM. There are no active mineral leases with BLM in the region. Any future drilling would require local and state approval by Kern County and the DOC’s Geologic Energy Management Division as well as ~~filling would require~~ approval by the BLM and any approval would need to be consistent with the current use of the site.

7.3 Response to Comments

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

State Agencies

Letter 1 – California Office of Planning and Research, State Clearinghouse (June 28, 2023)

Letter 2 – California Department of Conservation, Geologic Energy Management Division (June 27, 2023)

Letter 3 – California Department of Fish and Wildlife (July 28, 2023)

Letter 4 - California Department of Transportation (June 30, 2023)

Local Agencies

Letter 5 – San Joaquin Valley Air Pollution Control District (July 31, 2023)

Letter 6 – County of Kern Public Works Department, Floodplain Management Section (June 19, 2023)

Interested Parties

Letter 7 – Defenders of Wildlife (July 31, 2023)

Comments Received After July 31, 2023 Close of Public Comment Period

Letter 8 – Kern County Public Works Department, Development Review Division (August 30, 2023)

7.3.1 State Agencies

Comment Letter 1: California Office of Planning and Research, State Clearinghouse (June 28, 2023)

Janice Mayes

From: OPR State Clearinghouse <State.Clearinghouse@opr.ca.gov>
Sent: Wednesday, June 28, 2023 12:15 PM
To: Medrano, Victor@DOC; Janice Mayes
Cc: Cookey-Gam, David@DOC; Garcia, Cristian@DOC; CalGEMCentralEnvironmental@DOC;
OPR State Clearinghouse; OLRA@DOC; Perez, Jan@DOC
Subject: RE: CalGEM comments on Construction Site Well Review (CSWR) - Chalan Solar and Storage Project, SCH # 2021100003

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

Thank you for your submittal, the SCH is in receipt of your comments.

Mikayla Vaba
State Clearinghouse
(916) 445-0613
mikayla.vaba@opr.ca.gov

1-A

**Response to Comment Letter 1: California Office of Planning and Research,
State Clearinghouse (June 28, 2023)**

- 1-A:** This comment acknowledges receipt of the California Department of Conservation Geologic Energy Management Division comments on the Chalon Solar and Storage Project Draft EIR. No specific comments were provided in this comment.

Comment Letter 2: California Department of Conservation, Geologic Energy Management Division (June 27, 2023)

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California
Department of Conservation
Geologic Energy Management Division

Gavin Newsom, Governor
David Shabazian, Director
715 P Street, MS 1803
Sacramento, CA. 95814
T: (916) 445-5986

06/27/2023

Janice Mayes
2700 M Street, Suite 100, Bakersfield, CA 93301, USA
mayesj@kerncounty.com

Construction Site Well Review (CSWR) ID: 1012818

Assessor Parcel Number(s): 04321028

Property Owner(s): Chalan CA Solar and Storage, LLC

Project Location Address: Approx. 4mi east of Baker Rd and Highway 33 approx. 2mi west of King Rd, and approx. 7 miles west of I-5, Lost Hills, California 93249

Project Title: Chalan Solar and Storage Project, SCH # 2021100003

Public Resources Code (PRC) § 3208.1 establishes well reabandonment responsibility when a previously plugged and abandoned well will be impacted by planned property development or construction activities. Local permitting agencies, property owners, and/or developers should be aware of, and fully understand, that significant and potentially dangerous issues may be associated with development near oil, gas, and geothermal wells.

The California Geologic Energy Management Division (CalGEM) has received and reviewed the above referenced project dated 6/27/2023. To assist local permitting agencies, property owners, and developers in making wise land use decisions regarding potential development near oil, gas, or geothermal wells, the Division provides the following well evaluation.

The project is located in Kern County, within the boundaries of the following fields:

N/A

Our records indicate there are no known oil or gas wells located within the project boundary as identified in the application.

2-A

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- Number of wells Not Abandoned to Current Division Requirements as Prescribed by Law and Projected to Be Built Over or Have Future Access Impeded by this project: 0
- Number of wells Not Abandoned to Current Division Requirements as Prescribed by Law and Not Projected to Be Built Over or Have Future Access Impeded by this project: 0
- Number of wells Abandoned to Current Division Requirements as Prescribed by Law and Projected to Be Built Over or Have Future Access Impeded by this project: 0
- Number of wells Abandoned to Current Division Requirements as Prescribed by Law and Not Projected to Be Built Over or Have Future Access Impeded by this project: 0

2-B

As indicated in PRC § 3106, the Division has statutory authority over the drilling, operation, maintenance, and abandonment of oil, gas, and geothermal wells, and attendant facilities, to prevent, as far as possible, damage to life, health, property, and natural resources; damage to underground oil, gas, and geothermal deposits; and damage to underground and surface waters suitable for irrigation or domestic purposes. In addition to the Division's authority to order work on wells pursuant to PRC §§ 3208.1 and 3224, it has authority to issue civil and criminal penalties under PRC §§ 3236, 3236.5, and 3359 for violations within the Division's jurisdictional authority. The Division does not regulate grading, excavations, or other land use issues.

If during development activities, any wells are encountered that were not part of this review, the property owner is expected to immediately notify the Division's construction site well review engineer in the Inland district office, and file for Division review an amended site plan with well casing diagrams. The District office will send a follow-up well evaluation letter to the property owner and local permitting agency.

2-C

Should you have any questions, please contact me at (661) 201-8607 or via email at Victor.Medrano@conservation.ca.gov.

Sincerely, *David Cooley-gam*
David Cooley-Gam for
Chris Jones
Acting District Deputy

cc: Janice Mayes - Submitter

**Response to Comment Letter 2: California Department of Conservation,
Geologic Energy Management Division (June 27, 2023)**

- 2-A:** This comment provides information regarding the project site's well evaluation.
- 2-B:** The commentor states that based on the current records there are no existing wells or abandoned wells on the project site.
- 2-C:** Commentor notes that, if during development activities, any wells are encountered that were not part of this review, the property owner is expected to immediately notify the Division's construction site well review engineer in the Inland district office, and file an amended site plan with well casing diagrams for Division review.

The County understands that if development activities encounter any wells, the Geologic Energy Management Division would be notified. No revisions to the Draft EIR are necessary in response to these comments.

Comment Letter 3: California Department of Fish and Wildlife (July 28, 2023)

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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



July 28, 2023

Janice Mayes, Planner
Kern County Planning and Natural Resources Department
2700 "M" Street, Suite 100
Bakersfield, California 93301
mayesj@kerncounty.com

**Subject: Chalan Solar and Storage Project, by Chalan CA Solar and Storage LLC
(Project)
Draft Environmental Impact Report (DEIR)
State Clearinghouse No. 2021100003**

Dear Janice Mayes:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from the Kern County Planning and Natural Resources Department (Kern County), as Lead Agency, for the Chalan Solar and Storage Project, by Chalan CA Solar and Storage, LLC (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under 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 (F&GC, §§ 711.7, subd. (a) & 1802; Public Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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

Conserving California's Wildlife Since 1870

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Janice Mayes
Kern County Planning and Natural Resources Department
July 28, 2023
Page 2

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Public Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish and Game Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish and Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

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

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

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 pursuant to CESA and/or the federal Endangered Species Act (ESA) to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for a listing as E, R, or T under CESA and/or ESA as specified in the CEQA Guidelines (California Code of Regs tit. 14, Chapter 3, § 15380), it should 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.

PROJECT DESCRIPTION SUMMARY

Proponent: Chalan CA Solar and Storage LLC

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Janice Mayes
Kern County Planning and Natural Resources Department
July 28, 2023
Page 3

Objective: The proposed Project would construct and operate a photovoltaic (PV) solar facility and associated infrastructure necessary to generate up to 65 megawatts (MW) of renewable electric energy with the ability to store up to 25 MW in battery energy storage systems (BESS), on approximately 618 acres of privately owned land. The proposed Project would include service roads, a power collection system, inverter stations, transformer systems, transmission lines, electrical switchyards, a Project substation, and an energy (battery) storage system. The Project would also be supported by a 230-kilovolt (kV) gen-tie overhead and/or underground electrical transmission line originating from the Project substation and terminating at the PG&E Arco Substation.

Location: The Project is located within Section 3 of Township 25 South, Range 19 East, Mount Diablo Base and Meridian (MDB&M), in the northwest portion of unincorporated Kern County along the northern border of Kern County and the southern border of Kings County in the Central San Joaquin Valley. The Project is approximately four miles east of Baker Road and Highway 33, approximately two miles west of King Road, and approximately seven miles west of Interstate 5 (I-5). The nearest public roadway is King Road and 25th Avenue, located approximately two miles to the east of the Project site.

Timeframe: Unspecified

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 annual grassland, disced agricultural lands, and developed access roads that may have suitable habitat for special status species. Based on a review of the Project description, a review of California Natural Diversity Database (CNDDDB) records, and the surrounding habitat, several special status species could potentially be impacted by Project activities.

Currently, the DEIR acknowledges that the Project area is within the geographic range of several special-status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special status animal species, including the State and federally endangered giant kangaroo rat (*Dipodomys ingens*); the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*); the State threatened San Joaquin antelope squirrel (*Ammospermophilus nelsoni*) and Swainson's hawk (*Buteo swainsoni*); the State and federally endangered and State fully protected

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Janice Mayes
Kern County Planning and Natural Resources Department
July 28, 2023
Page 4

blunt-nosed leopard lizard (*Gambelia sila*); the State candidate-listed as endangered Crotch bumble bee (*Bombus crotchii*); and the State species of special concern short-nosed kangaroo rat (*Dipodomys nitratoides brevinasus*), burrowing owl (*Athene cunicularia*), and San Joaquin coachwhip (*Masticophis flagellum ruddocki*).

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

Giant Kangaroo Rat and Short-nosed Kangaroo Rat

As mentioned previously in CDFW's November 5, 2021, Notice of Preparation (NOP) comment letter to this Project, there is a high likelihood that giant kangaroo rat (GKR) and short-nosed kangaroo rat (SNKR) are present within the Project Area, and the DEIR noted that focused surveys did not occur. The DEIR states that focused surveys did not occur as the potential for these species is low and the closest CNDDDB occurrences to the Project site are approximately three miles away. The DEIR also described the habitat as poor quality due to discing and a lack of food. CDFW does not concur that the habitat is poor quality. As described in the DEIR, there are portions of the project site, including a small hillside in the northwestern portion of the Project site and along access roads and transmission lines, that may provide habitat for the species. Additionally, the disced habitat located within the Project site is likely to improve in quality over the life of the Project, increasing the likelihood that GKR and SNKR would be able to occupy the majority of the site.

Please note that the CNDDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified biologist/botanist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special status species are present at or near the Project area. CDFW is aware of recent GKR occurrences directly adjacent to the Project site and while these occurrences have yet to be documented within CNDDDB, they are accurate and have been verified, further justifying the need to perform focused surveys for these species.

As there is a reasonable likelihood of GKR and SNKR occurrences within the Project site and this likelihood may continue to increase over the life of the Project, and the



3-A

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Janice Mayes
Kern County Planning and Natural Resources Department
July 28, 2023
Page 5

DEIR did not conduct focused surveys or provide mitigation measures specific to the species, CDFW reiterates the recommendation of consultation with CDFW to discuss GKR and SNKR. CDFW also recommends the following:

Recommended Mitigation Measure 1: GKR and SNKR surveys

CDFW recommends a qualified biologist conduct focused trapping surveys for GKR and SNKR prior to any ground disturbing activities. Prior to conducting these surveys, CDFW recommends that a trapping plan for determining presence of GKR and SNKR be submitted to and approved by CDFW.

Recommended Mitigation Measure 2: GKR and SNKR Avoidance Buffer

If trapping is not feasible, CDFW recommends implementing a 50-foot minimum no-disturbance buffer around all small mammal burrow entrances. Although these recommended buffer distances may be sufficient to avoid direct mortality or burrow destruction, encircling a burrow with development activities may 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.

Recommended Mitigation Measure 3: GKR Take Authorization

As GKR have recently been documented within the Project vicinity, there is suitable habitat located within the Project site, and there is a high likelihood that GKR are utilizing the Project site, CDFW recommends acquiring an ITP prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

San Joaquin Kit Fox

The DEIR notes that there is suitable habitat for San Joaquin kit fox (SJKF) within portions of the Project site, including a small hillside in the northwestern portion of the Project site and along access roads and transmission lines. Additionally, there is a historical record of SJKF approximately two miles from the Project site and SJKF may be attracted to Project areas due to the type and level of ground disturbing activities and the loose, friable soils resulting from intensive ground disturbance. It is also anticipated that the suitability of the habitat within the Project site will increase for SJKF over the life of the Project once the current regime of discing is discontinued.

Mitigation Measure 4.4-3(l) states that, "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,



3-A (con.)

3-B

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Janice Mayes
Kern County Planning and Natural Resources Department
July 28, 2023
Page 6

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." CDFW agrees with the recommendation for wildlife friendly fencing to be installed and recommends the fencing be installed as specified below:

Recommended Mitigation Measure 4: Perimeter Fences

CDFW recommends all perimeter fencing be raised four to six inches above ground level and knuckled under to allow SJKF movement through Project site and minimize impacts to SJKF habitat connectivity. In addition, CDFW does not recommend the use of portals in the fence as a wildlife friendly design and recommends that the perimeter fence design achieve a minimum of 80% permeability by raising the fence 4- to 6-inches above the ground.

Mitigation Measure 4.4-4 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. 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 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:

- a. San Joaquin kit fox or American badger potential den: 50 feet.
- b. San Joaquin kit fox or American badger active den: 100 feet.
- c. San Joaquin kit fox or American badger natal den: 500 feet."

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. 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 or will utilize the site over the life of the Project. As such, CDFW also recommends the following:



3-B (con.)

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Janice Mayes
Kern County Planning and Natural Resources Department
July 28, 2023
Page 7

Recommended Mitigation Measure 5: SJKF Take Authorization

As there is a high likelihood that SJKF occupy the Project site and/or will be attracted to the site during construction, CDFW recommends acquiring an ITP prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

3-B (con.)

San Joaquin [Nelson's] Antelope Squirrel

The DEIR notes that one potential San Joaquin [Nelson's] antelope squirrel (SJAS) individual was incidentally observed within the Project site along the main access road during July 2021 surveys. Additionally, multiple historical occurrences of SJAS have been documented within five miles of the Project site (CDFW 2023a). Mitigation Measure 4.4-7 states that, "Preconstruction surveys for Nelson's antelope squirrel 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. If potential Nelson's antelope squirrel burrows or signs are observed, consultation with CDFW would occur to discuss how to avoid take or how to acquire state ITP, pursuant to Fish and Game Code section 2081, prior to ground disturbing activities." CDFW agrees with the measure for preconstruction surveys prior to any ground disturbance activities; however, as a potential SJAS was observed during 2021 surveys and there is a high likelihood that SJAS would utilize the Project site over the life of the Project, CDFW recommends the following:

3-C

Recommended Mitigation Measure 6: SJAS Take Authorization

As there is a high likelihood that SJAS occupy the Project site, CDFW recommends acquiring an ITP prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

Swainson's Hawk

The DEIR noted that focused raptor surveys were conducted within the Project site and a five-mile buffer surrounding the Project site in 2021. The surveys documented multiple Swainson's hawk (SWHA) individuals during these surveys. Mitigation Measure 4.4-6 states that, "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 0.5-mile buffer around the Project site and follow the 2000 Swainson's hawk protocol surveys (Swainson's Hawk Technical Advisory Committee, 2000)." CDFW agrees with this measure that surveys should be conducted for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) during the nesting season.

3-D



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Janice Mayes
Kern County Planning and Natural Resources Department
July 28, 2023
Page 8

Mitigation Measure 4.4-6 also provides details on active SWHA nest avoidance and states that, "For non-listed 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." If an active SWHA nest is documented within 0.5 mile of the Project site and a minimum no disturbance buffer of 0.5 mile cannot be maintained around active nests until the breeding season has ended, CDFW recommends the following:

Recommended Mitigation Measure 7: SWHA Take Authorization

In the event an active SWHA nest is detected, and a 0.5-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, as the Project site contains suitable habitat for SWHA foraging, which will be permanently impacted as a result of the project, CDFW recommends the following:

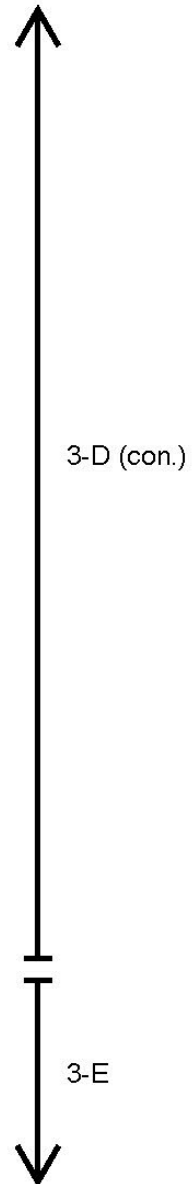
Recommended Mitigation Measure 8: Loss of SWHA Foraging Habitat

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.

Blunt-nosed Leopard Lizard

The DEIR notes that the Project site only contained approximately 3.2 acres of suitable blunt-nosed leopard lizard (BNLL) habitat located on the small hillside in the northwestern portion of the Project site and along access roads and transmission lines within the Project boundary. Protocol BNLL surveys were conducted within these areas



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Janice Mayes
Kern County Planning and Natural Resources Department
July 28, 2023
Page 9

in 2021 and 2022. Mitigation Measure 4.4-10 details the requirement for preconstruction surveys and states, "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." CDFW does not recognize this survey methodology as sufficient for the detection of BNLL. As there are many historical occurrences of BNLL located within the Project vicinity, including an occurrence from 1996 that directly overlaps with the Project site (CDFW 2023a), and surveys were last conducted during fall of 2022, CDFW recommends the following prior to construction:

Recommended Mitigation Measure 9: BNLL Survey Prior to Construction

CDFW strongly recommends that a qualified biologist conduct focused protocol surveys in accordance with the "Approved Survey Methodology for the Blunt-nosed Leopard Lizard" (CDFW 2019) the survey season immediately prior to construction. 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 15th to July 31st) and the hatchling optimal survey period between August 15th and September 30th (CDFW 2019). To satisfy the protocol, surveys would need to be conducted during this time. CDFW also recommends that these surveys occur within the entirety of the 618-acre Project boundary, and not just the 3.2 acres of potentially suitable habitat identified during 2021 and 2022 surveys.

Mitigation Measure 4.4-10 also states that, "Project actions in areas where BNLL are located shall be restricted to the species active period (April to early November) to ensure that no aestivating BNLL in burrows are impacted while in their burrows. In conjunction with CDFW or other involved agencies, sensitive areas shall be established and protected with appropriate signage." CDFW does recognize that restricting work within occupied BNLL habitat to the species active period would be sufficient to prevent take. To avoid take, construction and operations activities would have to avoid all observed lizards and potential occupied burrows by a distance of no less than the distance that BNLL are known or expected to travel within their home range, based on telemetry, mark-recapture, or other data, and regardless of the time of year. For complete avoidance within BNLL occupied habitat, CDFW recommends the following:

Recommended Mitigation Measure 10: BNLL Avoidance Buffer

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



3-E (con.)

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Janice Mayes
Kern County Planning and Natural Resources Department
July 28, 2023
Page 10

lizard was observed on the surface, and the unknown location of the lizard underground when construction commences.”

Given the size of the buffer recommendation outlined above relative to the overall size of the proposed Project, the lack of protocol surveys over the entirety of the project site, and the numerous historical records of BNLL, CDFW strongly recommends the project seek take coverage for impacts to BNLL under CESA and recommends the following measure be included in the FEIR:

Recommended Mitigation Measure 11: BNLL Take Authorization

With the passage of Senate Bill No. 147, the incidental take of BNLL may be authorized for certain categories of projects, including industrial solar photovoltaic projects. As such, CDFW strongly recommends that an ITP is acquired prior to any ground disturbing activities pursuant to Fish and Game Code section 2081 subdivision (b).

Mitigation Measure 4.4-10 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 mentioned above, CDFW recommends that a BNLL detection, known burrows, or egg clutch sites have a minimum 395-acre buffer or that the project should obtain an ITP pursuant to Fish and Game Code section 2081 (b).

Finally, Mitigation Measure 4.4-10 concludes by stating 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, any BNLL detection, known burrows, or egg clutch that is not completely avoided by a distance of no less than the distance that BNLL are known or expected to travel within their home range, which should be conservatively estimated with a 395-acre buffer, may result in take. 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



3-E (con.)

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Janice Mayes
Kern County Planning and Natural Resources Department
July 28, 2023
Page 11

BNLL sign have been observed would result in take. As such, CDFW reiterates the recommendation above for consultation with CDFW if WEF is anticipated to be installed in areas where BNLL or signs of BNLL have been observed.

Crotch Bumble Bee

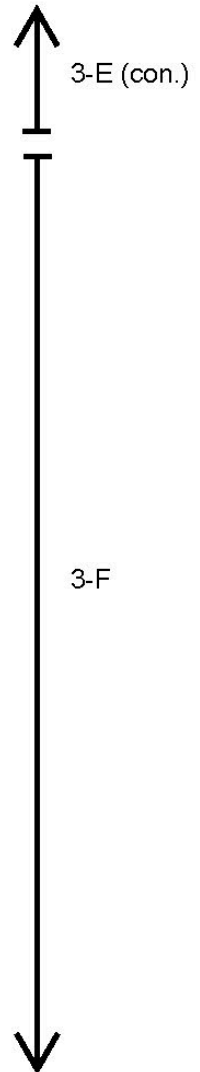
The DEIR notes that Crotch bumble bee (CBB) have a low potential and Mitigation Measure 4.4-3 was provided to mitigate potential impacts. Mitigation Measure 4.4-3 (m) states that, "Areas within the Project site containing one or more of the following habitat requisites shall be surveyed by a qualified 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 Crotch Bumble Bees (CBB) from various angles to ensure recordation of key identifying characteristics. 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)." CDFW agrees with the need to conduct surveys for CBB within areas of suitable habitat and recommends the following:

Recommended Mitigation Measure 12: CBB Surveys

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

Recommended Mitigation Measure 13: CBB Avoidance Buffer

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



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Janice Mayes
Kern County Planning and Natural Resources Department
July 28, 2023
Page 12

Recommended Mitigation Measure 14: CBB Take Authorization

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

3-F (con.)

Burrowing Owl

The DEIR notes that burrowing owl (BUOW) could potentially utilize the habitat within the Project site and Mitigation Measure 4.4-5 requires a qualified biologist to conduct pre-construction surveys following the survey guidelines in the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012) and also provides buffer guidelines, which state, "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 recognize 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 2000, Lehman et al. 1999). Mitigation Measure 4.4-5 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 the following measures:

3-G

Recommended Mitigation Measure 15: BUOW Avoidance Buffer

Should a BUOW be detected, CDFW recommends that no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), 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

DocuSign Envelope ID: 724C353B-F2E7-465E-8D36-3D01D5F3E04F

Janice Mayes
 Kern County Planning and Natural Resources Department
 July 28, 2023
 Page 13

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)

Recommended Mitigation Measure 16: BUOW Passive Relocation and Mitigation

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), excluding birds from burrows is not a take avoidance, minimization, or mitigation method and is instead considered a potentially significant impact under CEQA. However, if it is necessary for Project implementation, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, by a qualified biologist, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of one (1) burrow collapsed to one (1) artificial burrow constructed (1:1) to mitigate for evicting BUOW and the loss of burrows. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance at a rate that is sufficient to detect BUOW if they return.

San Joaquin Coachwhip

The DEIR did not include San Joaquin Coachwhip (Coachwhip) within the biological resources discussion. Coachwhip are known to occur within annual grassland, saltbush scrub, and mixed oak chaparral woodland habitats throughout the San Joaquin Valley and South Coast Ranges (Stebbins and McGinnis 2012). While the closest recorded CNDDDB occurrence of Coachwhip is located approximately nine miles southeast of the Project site, CDFW is aware of recent Coachwhip occurrences directly adjacent to the Project site, and suitable habitat is located within the Project footprint.

Mitigation Measure 4.4-4 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 species-status species and shall follow U.S. Fish and Wildlife Service and/or California Department of Fish and Wildlife preconstruction survey



3-G (con.)

3-H

DocuSign Envelope ID: 724C353B-F2E7-465E-8D36-3D01D5F3E04F

Janice Mayes
Kern County Planning and Natural Resources Department
July 28, 2023
Page 14

guidelines where appropriate." CDFW recommends that Coachwhip be included as one of the species that is surveyed for prior to construction.

Mitigation Measure 4.4-4 continues by listing specific buffer distances for SJKF and American Badger (AMBA). There is no mention of buffer distances for other special-status species and their burrows that may be found during construction of the Project, such as Coachwhip. As such, CDFW recommends the following:

Recommended Mitigation Measure 17: Special-status Species Avoidance Buffer

CDFW recommends that a 50-foot no-disturbance buffer is implemented around the entrances of burrows that can provide refuge for special-status species, including San Joaquin coachwhip.

Special-status plants

The DEIR notes that during the general biological survey conducted in March 2021, rare plant surveys were conducted in accordance with the CDFW Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Population and Sensitive Natural Communities (CDFW 2018). However, this does not appear to be a valid statement as only one visit was made to survey for rare plants. It should be noted that this protocol generally necessitates multiple site visits within a survey season. While no mitigation measures for rare plants are explicitly stated within the DEIR, Mitigation Measure 4.4-4 states that, "Preconstruction surveys for special-status species shall be conducted within the Project boundaries by the Lead Biologist or approved biological monitor no less than 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." This measure seems to necessitate surveys for rare plants prior to construction; however, the timing aspect may not be appropriate. As the general surveys only documented one site visit to survey for rare plants, and the timing for surveys outlined in Mitigation Measure 4.4-4 may not be appropriate to detect special-status plants species, CDFW recommends the following:

Recommended Mitigation Measure 18: Special-status Plant Focused Surveys

CDFW recommends that the Project area be surveyed for special-status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities" (CDFW 2018), which includes multiple site visits over the survey season to maximize the detection of rare plants. This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period.



3-H (con.)

3-I

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Janice Mayes
Kern County Planning and Natural Resources Department
July 28, 2023
Page 15

Recommended Mitigation Measure 19: Special-status Plant Avoidance

CDFW recommends special-status plant species be avoided whenever possible by 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 special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

Recommended Mitigation Measure 20: Special-status Plant Take Authorization

If a State-listed or State rare plant is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, acquisition of an ITP or a Native Plant Protection Act Incidental Take Permit issued by CDFW Pursuant to Fish and Game Code section 2081 subdivision (b) and/or section 1900 et seq is necessary to comply with CESA and the Native Plant Protection Act.

Nesting Birds

Mitigation Measure 4.4-6 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." Mitigation Measure 4.4-6 continues by stating, "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 non-listed 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." CDFW does not recognize the buffer distances as appropriate for protection of the species and therefore does not concur with the mitigation measure as proposed and recommends the following:



3-I (con.)

3-J

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Janice Mayes
Kern County Planning and Natural Resources Department
July 28, 2023
Page 16

Recommended Mitigation Measure 21: Nesting Bird Surveys Prior to Construction

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

Recommended Mitigation Measure 22: Nesting Bird Monitoring and/or Avoidance Buffer

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

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 giant kangaroo rat, San Joaquin kit fox, blunt-nosed leopard lizard, 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.



3-J (con.)

3-K

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Janice Mayes
Kern County Planning and Natural Resources Department
July 28, 2023
Page 17

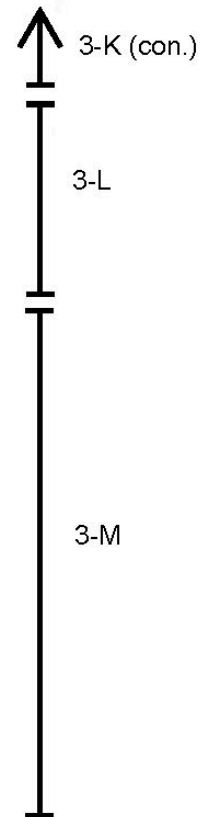
Consultation with the USFWS in order to comply with FESA is advised well in advance of any Project activities.

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 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.

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 and the DEIR be recirculated with this updated analysis for the following species: giant kangaroo rat, San Joaquin kit fox, San Joaquin antelope squirrel, Swainson's hawk, blunt-nosed leopard lizard, Crotch bumble bee, short-nosed kangaroo rat, San Joaquin coachwhip, burrowing owl, California jewelflower, Lost Hills crownscale, San Joaquin woollythreads, and nesting birds. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database, which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be 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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Janice Mayes
Kern County Planning and Natural Resources Department
July 28, 2023
Page 18

FILING FEES

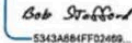
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist Kern County Planning and Natural Resources 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.

Sincerely,

DocuSigned by:

5343A884FFD2469...

for Julie A. Vance
Regional Manager

ec: Patricia Cole, United States Fish and Wildlife Service (USFWS)
Patricia_cole@fws.gov

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Janice Mayes
Kern County Planning and Natural Resources Department
July 28, 2023
Page 19

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Janice Mayes
Kern County Planning and Natural Resources Department
July 28, 2023
Page 20

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Attachment 1

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

**PROJECT: Chalan Solar
SCH No.: 2021100003**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
GKR and SNKR	
Recommended Mitigation Measure 1: GKR and SNKR Trapping Surveys	
Recommended Mitigation Measure 3: GKR Take Authorization	
SJKF	
Recommended Mitigation Measure 5: SJKF Take Authorization	
SJAS	
Recommended Mitigation Measure 6: SJAS Take Authorization	
SWHA	
Recommended Mitigation Measure 7: SWHA Take Authorization	
Recommended Mitigation Measure 8: Loss of SWHA Foraging Habitat	
BNLL	
Recommended Mitigation Measure 9: BNLL Survey Prior to Construction	
Recommended Mitigation Measure 11: BNLL Take Authorization	
CBB	
Recommended Mitigation Measure 12: CBB Surveys	
Recommended Mitigation Measure 14: CBB Take Authorization	
BUOW	
Recommended Mitigation Measure 16: BUOW Passive Relocation and Mitigation	
Special-status Plants	
Recommended Mitigation Measure 18: Special-status Plant Focused Surveys	
Recommended Mitigation Measure 20: Special-status Plant Take Authorization	
Nesting Birds	
Recommended Mitigation Measure 21: Nesting Bird Surveys Prior to Construction	

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RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>During Construction</i>	
GKR and SNKR	
Recommended Mitigation Measure 2: GKR and SNKR Avoidance Buffer	
SJKF	
Recommended Mitigation Measure 4: SJKF Perimeter Fences	
BNLL	
Recommended Mitigation Measure 10: BNLL Avoidance Buffer	
CBB	
Recommended Mitigation Measure 13: CBB Avoidance Buffer	
BUOW	
Recommended Mitigation Measure 15: BUOW Avoidance Buffer	
Coachwhip	
Recommended Mitigation Measure 17: Special-status Species Avoidance Buffer	
Special-status Plants	
Recommended Mitigation Measure 19: Special-status Plant Avoidance	
Nesting Birds	
Recommended Mitigation Measure 22: Nesting Bird Monitoring and/or Avoidance Buffer	

Response to Comment Letter 3: California Department of Fish and Wildlife (July 28, 2023)

3-A: This comment pertains to giant kangaroo rat (GKR) and short-nosed kangaroo rat (SNKR). The comment identifies that GKR and SNKR have the potential to occur within the project area and are documented to occur as close as approximately three miles away. CDFW does not agree that the habitat is poor quality given the small hillside in the northwest portion of the project site that may provide habitat for the species.

The County acknowledges this comment and understands that any take without prior authorization is a violation of the California Endangered Species Act (CESA). The County acknowledges the need for early consultation for take of listed species; however, no CDFW or USFWS consultation is anticipated since mitigation measures will ensure the avoidance of take and no take of listed species is expected prior to or during construction. If state and/or federally-listed species are detected during pre-construction surveys, then consultation with CDFW and/or USFWS will commence.

Site development of the proposed project would be limited to the currently disturbed areas of the project site. The small hillside in the northwest portion of the project site that may provide habitat for GKR and SNKR would not be impacted by project activities. A pre-construction survey will be performed for special-status species prior to initiating ground disturbing activities, per Mitigation Measure MM 4.4-4. Once the project site is verified to have no special-status species present, a wildlife exclusion fence (WEF) will be installed around the perimeter of the development area to ensure wildlife are not impacted by construction activities, per Mitigation Measure MM 4.4-10(b). The Lead Biologist, a qualified biologist who meets CDFW and USFWS requirements for the special-status species with potential to occur at the project site, will be present during construction of perimeter fencing and grading activities throughout the construction phase to ensure take does not occur, per Mitigation Measure MM 4.4-1. If a special-status species is observed, including GKR and SNKR, consultation with CDFW will occur to discuss appropriate avoidance measures or if avoidance is not possible, to obtain an Incidental Take Permit (ITP). The comment has been noted for the record and revisions to the Draft EIR are not necessary.

3-B: This comment pertains to San Joaquin kit fox (SJKF). The comment states CDFW agrees with wildlife friendly fencing to be installed and recommends specific perimeter fencing requirements, such as raising the fence four to six inches above ground level and not using portals in the fence. In response to this comment, the Draft EIR has been revised as follows:

Section 4.4, Biological Resources, Mitigation Measure 4.4-3(I), Page 4.4-37

1. To enable kit foxes and other wildlife (e.g., American badger, Giant Kangaroo Rats, and Short Nosed Kangaroo Rats) 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~~ 4-6 inches above the ground leaving a gap between the fence mesh and the ground. ~~In the latter case t~~The bottom of the fence fabric shall be knuckled (wrapped back to form a smooth edge) to protect wildlife that passes under the fence. A buried

apron of fencing material shall extend up to 3 feet out from the fence line. Perimeter fencing shall not be electrified.

CDFW also agrees that preconstruction presence/absence surveys be conducted following the USFWS' "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance". In response to this comment, the Draft EIR has been revised as follows:

Section 4.4, Biological Resources, Mitigation Measure MM 4.4-4, Page 4.4-39

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 surveys shall be conducted in the project site for American badger and San Joaquin kit fox. The pre-construction den survey shall be conducted in accordance with the *Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance* (USFWS 2011). 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 14 days and no more than 30 days prior to that portion of the project site disturbed. The pre-construction den survey shall be conducted in all areas of potentially suitable habitat within the Project area and a 500-foot buffer of Project areas. If potential dens are observed and avoidance is feasible, the following buffer distances shall be established prior to construction activities:

- a. San Joaquin kit fox or American badger potential den: 50 feet.
- b. San Joaquin kit fox or American badger active den: 100 feet.
- c. San Joaquin kit fox or American badger natal den: 500 feet

CDFW recommends acquiring an ITP prior to ground-disturbing activities for the SJKF. The County acknowledges this comment and understands that any take without prior authorization is a violation of the CESA. The implementation of Mitigation Measures M 4.4-1, MM 4.4-3, and MM 4.4-4 will ensure take does not occur. If SJKF is observed onsite, consultation with CDFW and USFWS will occur to discuss appropriate avoidance measures or if avoidance is not possible, to obtain an ITP.

- 3-C:** This comment pertains to San Joaquin [Nelson's] antelope squirrel (SJAS). CDFW agrees with Mitigation Measure MM 4.4-7 for pre-construction surveys prior to any ground-disturbing activities. However, CDFW also recommends acquiring an ITP prior to ground-disturbing activities.

The County acknowledges this comment and understands that any take without prior authorization is a violation of the CESA. Although a potential SJAS individual may have been observed incidentally in July 2021, no SJAS has been observed during focused surveys in 2022 or 2023. A pre-construction survey will be performed for SJAS prior to initiating ground disturbing activities, per Mitigation Measure MM 4.4-7. Once the Project site is verified to have no special-status species present, a WEF will be installed around the perimeter of the development area to ensure wildlife are not impacted by construction activities, per Mitigation Measure MM 4.4-10(b). The Lead Biologist will be present during construction of perimeter fencing and grading activities throughout the construction phase to ensure take does not occur, per Mitigation Measure MM 4.4-1. If potential

SJAS burrows or signs are observed, consultation with CDFW would occur to discuss how to avoid take or how to acquire an ITP prior to ground-disturbing activities. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 3-D:** This comment pertains to Swainson’s hawk (SWHA). CDFW agrees with Mitigation Measure MM 4.4-6 to conduct surveys for nesting SWHA following the SWHA Technical Advisory Committee methodology (2000). CDFW also recommends consultation with CDFW to discuss how to avoid take if a SWHA nest is detected within the 0.5-mile buffer and a 0.5-mile no-disturbance buffer around the active nest is not feasible. In response to this comment, the Draft EIR has been revised as follows:

Section 4.4, Biological Resources, Mitigation Measure MM 4.4-6, Page 4.4-41

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 0.5-mile buffer around the project site and follow the 2000 Swainson’s hawk protocol surveys (Swainson’s Hawk Technical Advisory Committee, 2000). 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 buffer (e.g., 200–300 feet for common raptors; 0.5 miles for Swainson’s hawk; 30–50 feet for passerine species) shall be established around active nests and no construction within the buffer allowed 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). If an active SWHA nest is detected and a 0.5-mile no-disturbance buffer is not feasible, consultation with CDFW shall occur to discuss how to implement the Project and avoid take. If take cannot be avoided, consultation to receive an ITP for SWHA shall be performed. For non-listed 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.

This comment also identifies that the project site contains suitable habitat for SWHA foraging. 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).

Although SWHA occur in the area, the project site has low potential for SWHA nesting due to the lack of trees, and it is unlikely that SWHA would nest at the project site. SWHA have been observed at the project site during discing activities when agricultural practices temporarily increase their food source due to disturbance. The small hillside in the northwest portion of the project site would not be impacted by project activities, which would allow SWHA to continue foraging during

operations. Site development would be limited to the currently disturbed areas of the project site. Loss of this disturbed habitat is expected to have a minimal effect, if any, on this species' habitat availability in the immediate area and this reduction in habitat would not be considered a significant impact. Only one nest has been previously documented within 10 miles of the site; this nest is approximately 3 miles from the project site and was not observed during project raptor nest surveys performed in 2021. There is extensive suitable foraging habitat in the form of grassland/rangeland within a 10-mile radius around the project site to support this potential one active nest.

- 3-E:** This comment pertains to blunt-nosed leopard lizard (BNLL). CDFW does not recognize the survey methodology outlined in Mitigation Measure MM 4.4-10 and recommends that focused protocol surveys be performed in accordance with the "Approved Survey Methodology for the Blunt-nosed Leopard Lizard" (CDFW 2019) including surveys during the adult optimal survey period (April 15-July 31) and the hatchling optimal survey period (August 15-September 30). CDFW also recommends that the entire 618-acre project boundary be surveyed.

Protocol surveys following the "Approved Survey Methodology for the Blunt-nosed Leopard Lizard" (CDFW 2019) have been performed in 2021, 2022, and are currently ongoing for 2023 within potentially suitable habitat. The 2023 BNLL Survey Report will be introduced into the administrative record prior to initiating ground-disturbing activities. No BNLL individuals have been observed during any surveys conducted to date. It is anticipated that current agricultural practices will continue until commencement of construction activities, thereby reducing the likelihood that BNLL move into the project site between the time protocol surveys are completed (September 2023) and construction implementation (anticipated in January 2024). In addition, the implementation of Mitigation Measures MM 4.4-1 through MM 4.4-4 and Mitigation Measure MM 4.4-10 would ensure there is no take of this species. In response to this comment, the Draft EIR has been revised as follows:

Section 4.4, Biological Resources, Mitigation Measure MM 4.4-10, Page 4.4-42

MM 4.4-10: Protocol level surveys for the BNLL shall be conducted by a qualified biologist at the project site in accordance with the "Approved Survey Methodology for the Blunt-nosed Leopard Lizard" (CDFW 2019) from April 15 to July 31 during the adult optimal survey period and from August 15 to September 30 during the hatchling optimal survey period, 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.

This comment also states that CDFW does not recognize that restricting work to 50-foot no-work buffers within occupied BNLL habitat during the species active period would be sufficient to prevent take. Instead, CDFW recommends a 395-acre buffer around all observed lizards, known or potentially occupied burrows, or egg clutch sites. The comment also recommends that the project seek take coverage for impacts to BNLL under CESA given the passage of Senate Bill No. 147.

No BNLL individuals have been identified at the project site during protocol surveys performed in 2021 or 2022 or during ongoing protocol surveys in 2023. The implementation of Mitigation

Measures MM 4.4-1 through MM 4.4-4 and Mitigation Measure MM 4.4-10 would ensure there is no take of this species. In response to this comment, the Draft EIR has been revised as follows:

Section 4.4, Biological Resources, Mitigation Measure MM 4.4-10, Page 4.4-42

~~If BNLL are found within the survey areas, 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 June 2023 County of Kern Section 4.4. Biological Resources Draft Environmental Impact Report Chalan Solar and Storage Project 4.4-43 areas where blunt-nosed leopard lizards or signs of blunt-nosed leopard lizards have been observed: consultation with CDFW will be performed to discuss appropriate avoidance measures (such as no-work buffers, discussed below) or if avoidance is not possible, to obtain an ITP given the passage of Senate Bill No. 147.~~

- a. Establishment of No-Work Buffers. The project biologist will consult with CDFW for the appropriate measurement of a no-work buffer around occupied burrows and egg clutch sites identified during surveys. The project biologist will establish, monitor, and maintain 50-foot-no-work buffers in accordance with CDFW recommendations 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.

Finally, this comment addresses the WEF that will be installed per Mitigation Measure MM 4.4-10. CDFW recommends that consultation with CDFW occur if WEF is to be installed in areas where BNLL or signs of BNLL have been observed. In response to this comment, the Draft EIR has been revised as follows:

Section 4.4, Biological Resources, Mitigation Measure MM 4.4-10(b), Page 4.4-43

- 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.

- i. 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.
- ii. 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.~~ consultation with CDFW would be performed to ensure that WEF installation in areas where BNLL or signs of BNLL have been observed does not take the species.

3-F: This comment pertains to Crotch bumble bee (CBB). CDFW agrees with the need to conduct surveys for CBB within areas of suitable habitat and recommends following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023). If surveys cannot be completed, CDFW recommends avoiding small mammal burrows and thatched/bunch grasses by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will begin during the overwintering period (October through February), consultation with CDFW is recommended to discuss how to avoid take. CDFW recommends obtaining an ITP if CBB is identified during surveys.

The County acknowledges this comment and understands that any take without prior authorization is a violation of the CESA. Due to active agricultural practices, including discing, the project site has limited burrows and vegetation present within the site development area that provides low quality habitat for the CBB. It is anticipated that current agricultural practices will continue until commencement of construction activities, thereby reducing the likelihood that CBB move into the project site prior to construction implementation (anticipated in January 2024). Implementation of Mitigation Measures MM 4.4-1 through MM 4.4-4 would ensure no take of this species. In response to this comment, the Draft EIR has been revised as follows:

Section 4.4, Biological Resources, Mitigation Measure MM 4.4-3(m), Page 4.4-38

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 Crotch Bumble Bees (CBB) from various angles to ensure recordation of key identifying characteristics. 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). If CBB are found during surveys, consultation with CDFW will occur to discuss appropriate avoidance measures or if avoidance is not possible, to obtain an ITP.

The Project Proponent plans to reseed the project site with native, pollinator-friendly plants after construction activities are complete. These plants would provide habitat for CBB during operations.

- 3-G:** This comment pertains to burrowing owl (BUOW). CDFW does not recognize the buffers discussed in Mitigation Measure 4.4-5 to prevent the take of BUOW within occupied habitat. Likewise, CDFW does not recognize the methodology of passively relocating BUOW from active burrows during the breeding season as appropriate. In response to this comment, the Draft EIR has been revised as follows:

Section 4.4, Biological Resources, Mitigation Measure MM 4.4-5, Page 4.4-40

If burrowing owls are detected onsite, no ground-disturbing activities shall be permitted within no-disturbance buffers, as outlined in the “Staff Report on Burrowing Owl Mitigation” (CDFG 2012). Specifically, occupied burrows shall be avoided with a buffer of no fewer than 200 to 500-100 meters (330-650 to 1,640 feet) from an active burrow during the breeding season (i.e., February 1 to August 31); April 1 to October 15 or 50 to 500 meters (165 to 1,640 feet) from October 16 to March 31, unless otherwise authorized by CDFW. During the non-breeding (winter) season (i.e., September 1 to January 31), grounddisturbing 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.

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 E1 (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 CDFW Staff Report on Burrowing Owl Mitigation

- 3-H:** This comment addresses San Joaquin coachwhip. CDFW notes that the Draft EIR did not include the San Joaquin coachwhip within the biological resources discussion. CDFW recommends that San Joaquin coachwhip is included as a special-status species that is surveyed for prior to construction. In addition, CDFW recommends that a 50-foot no-disturbance buffer is implemented around the entrances of burrows that can provide refuge for special-status species, including San Joaquin coachwhip.

Mitigation Measure MM 4.4-4 will be implemented to ensure special-status species with potential to occur, including the San Joaquin coachwhip, will be surveyed for during the pre-construction survey. If San Joaquin coachwhip is observed during the pre-construction survey, discussions with CDFW will occur to identify appropriate avoidance measures. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 3-I:** This comment addresses special-status plants. CDFW recommends that more than one visit be performed to survey for rare plants following the “Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities” (CDFW 2018). CDFW also

recommends avoiding special-status plant species, if found, by a buffer of 50 feet from the outer edge of the population and recommends acquisition of a CDFW ITP or a Native Plant Protection Act Incidental Take Permit if a special-status plant species is identified during botanical surveys to comply with CESA and the Native Plant Protection Act.

As noted in the Draft EIR Appendix D.1, *Biological Resources Evaluation Report*, during the general biological survey conducted in March 2021, biologists surveyed for three potential rare plants that are known to occur in the project area: Lost Hills crownscale (*Atriplex coronata* var. *vallicola*), California jewelflower (*Caulanthus californicus*), and San Joaquin woollythreads (*Monolopia congdonii*). Lost Hills crownscale blooms from April to September; therefore, biologists conducted an additional rare plant survey during the May 2021 BNLL survey to survey for this species during its blooming period. It was not found. California jewelflower blooms from February to April and would have been observed during the general biological survey conducted in March 2021 and was not found. San Joaquin woollythreads blooms from February to May and similarly would have been observed during the general biological survey conducted in March 2021, but was not found.

Extensive biological field surveys have been performed at the project site since 2021, including a general biological survey, protocol BNLL surveys in 2021, 2022, and 2023 with 18 surveys conducted each year, BUOW breeding season surveys, and a special-status small mammal habitat assessment. During these surveys, biologists observed all natural resources present and would have identified a rare plant had it been present. The project site is heavily disturbed and does not support any special-status plants. Moreover, site development of the proposed project would be limited to the currently disturbed areas of the project site. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 3-J:** This comment addresses nesting birds. CDFW does not recognize the buffer distances listed in Mitigation Measure MM 4.4-6 as appropriate for protection of the species and recommends specific changes to this measure.

The project is currently scheduled to begin construction outside of the nesting season. During construction within the nesting season, implementation of Mitigation Measure MM 4.4-6 will ensure that no take of active nests occurs. In response to this comment, the Draft EIR has been revised as follows:

Section 4.4, Biological Resources, Mitigation Measure 4.4-6, Page 4.4-41

If construction is scheduled to commence during the non-nesting season (i.e., September 16 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~~September 15). 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 0.5-mile buffer around the project site and follow the 2000 Swainson's hawk protocol surveys (Swainson's Hawk Technical Advisory Committee, 2000). Surveys shall be conducted no more than ~~14 days~~one week 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 buffer (e.g., ~~200–300~~500 feet for common raptors; 0.5 miles for Swainson’s hawk; ~~30–50~~250 feet for passerine species) shall be established around active nests and no construction within the buffer allowed 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). If an active SWHA nest is detected and a 0.05-mile no-disturbance buffer is not feasible, consultation with CDFW shall occur to discuss how to implement the Project and avoid take. If take cannot be avoided consultation to receive an ITP for SWHA shall be performed. For non-listed 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.

- 3-K:** This comment states that CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to GKR, SJKF, BNLL, California jewelflower, and San Joaquin woollythreads. Take under the federal Endangered Species Act (ESA) is more broadly defined than CESA; take under ESA 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. The comment states that consultation with the USFWS, in order to comply with ESA, is advised well in advance of any ground-disturbing activities.

The County acknowledges the need for early consultation for take of listed species; however, no USFWS consultation is anticipated since mitigation measures will ensure the avoidance of take and no take of federally listed species is expected prior to or during construction. If federally listed species are detected during pre-construction surveys, then consultation with USFWS will commence. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 3-L:** 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.

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

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

All of the technical analyses prepared for the project were used to support the development of the alternatives presented in Chapter 6 of the DEIR as required by CEQA. Therefore, no changes or modifications have been made to the Draft EIR in response to this comment.

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

The cumulative study area was defined through a description of existing conditions and cumulative projects. Existing conditions capture the effects of past and existing projects and are described in Section 4.4.2, *Environmental Setting*. Current and future projects are described in Table 3-3, *Cumulative Projects List*, Table 4.4-4, *Cumulative Projects List*, Figure 3-8, *Cumulative Projects Map – Kern County*, and Figure 3-8, *Cumulative Projects Map – Kings County*. The DEIR considered the potential cumulative effects of the project along with other current and reasonably foreseeable projects and found impacts to biological resources to be cumulatively considerable, significant and unavoidable, as discussed in Section 4.4.4, *Cumulative Impacts*.

Section 4.4.4 presents a detailed analysis of these cumulative impacts and describes the means by which the mitigation measures would reduce the severity of impacts to the extent feasible. As noted in the project impact analysis, the project site does not provide habitat for rare plants. Therefore, a cumulative impact analysis for rare plants is not appropriate as per CEQA Guidelines, Section 15130, Discussion of Cumulative Impacts, “An EIR should not discuss impacts which do not result in part from the project evaluated in the EIR.” The cumulative impact analysis includes a discussion of the special-status wildlife species that currently utilize the project site and surrounding vicinity and loss of foraging and nesting habitat. As specified in the CEQA Guidelines, Section 15130, Discussion of Cumulative Impacts, “The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone.” Therefore, the DEIR presents an adequate cumulative impact discussion for biological resources.

No changes or modifications have been made to the Draft EIR in response to this comment.

Comment Letter 4: California Department of Transportation (June 30, 2023)

From: Lau, Scott@DOT <Scott.Lau@dot.ca.gov>
Sent: Friday, June 30, 2023 8:46 AM
To: Janice Mayes
Cc: Mendibles, Lorena@DOT; Deel, David@DOT
Subject: Caltrans response to Chalan Solar - NOP DEIR CUP 12, MAP 3; CUP 13, MAP 3

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

Good morning Janice Mayes,

I have reviewed the NOP DEIR for Chalan Solar and have no comments.

Respectfully,



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

4-A

**Response to Comment Letter 4: California Department of Transportation
(June 30, 2023)**

4-A: Commentor states that they have no comments. No changes or modifications have been made to the Draft EIR in response to this comment.

7.3.2 Local Agencies

Comment Letter 5: San Joaquin Valley Air Pollution Control District (July 31, 2023)



July 31, 2023

Janice Mayes
Kern County Planning and Natural Resources Department
2700 "M" Street, Suite 100
Bakersfield, CA 93301

Project: Draft Environmental Impact Report for the Chalan Solar and Storage Project

District CEQA Reference No: 20230570

Dear Ms. Mayes:

The San Joaquin Valley Air Pollution Control District (District) has reviewed the Draft Environmental Impact Report (DEIR) from Kern County (County) for the Chalan Solar and Storage project. Per the DEIR, the project consists of a 65 megawatt (MW) solar facility which includes a 25 MW battery storage system and telecommunications tower on approximately 617 acres (Project). The Project is located approximately 16 miles south of Kettleman City between Devil's Den Road and Twisselman Road, in Kern County.

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>.

1a) Construction Emissions

Based on the DEIR, unmitigated NOx emissions are expected to result in an increase of 9.27 tons. To ensure NOx emissions do not exceed the District's significance threshold of 10 tons, the District recommends incorporating, as a condition of project approval, a requirement that Tier 4 equipment be used during the Project's construction activities.



5-A

Samir Sheikh
Executive Director/Air Pollution Control Officer

<p>Northern Region 4800 Enterprise Way Modesto, CA 95356-8718 Tel: (209) 557-6400 FAX: (209) 557-8475</p>	<p>Central Region (Main Office) 1990 E. Gettysburg Avenue Fresno, CA 93726-0244 Tel: (558) 230-6000 FAX: (558) 230-8061</p>	<p>Southern Region 34948 Flyover Court Bakersfield, CA 93308-9725 Tel: (661) 392-5500 FAX: (661) 392-5585</p>
<p>www.valleyair.org www.healthyairliving.com</p>		<p><small>Printed on recycled paper</small> </p>

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.

5-B

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

2a) District Rules 2010 and 2201 - Air Quality Permitting for Stationary Sources

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

5-C

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

2b) 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 development.

5-D

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

San Joaquin Valley Air Pollution Control District
District Reference No: 20230570
July 31, 2023

Page 3 of 5

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.

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

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

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

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

2c) District Rule 4002 (National Emissions Standards for Hazardous Air Pollutants)

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

2d) District Rule 4601 (Architectural Coatings)

The Project may be subject to District Rule 4601 since it may utilize architectural coatings. Architectural coatings are paints, varnishes, sealers, or stains that are applied to structures, portable buildings, pavements or curbs. The purpose of this rule is to limit VOC emissions from architectural coatings. In addition, this rule specifies architectural coatings storage, cleanup and labeling requirements. Additional information on how to comply with District Rule 4601 requirements can be found online at: <http://www.valleyair.org/rules/currentrules/r4601.pdf>



5-D (con.)



5-E



5-F



2e) District Regulation VIII (Fugitive PM10 Prohibitions)

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

Should the project result in at least 1-acre in size, the project proponent shall provide written notification to the District at least 48 hours prior to the project proponents intent to commence any earthmoving activities pursuant to District Rule 8021 (Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities). Also, should the project result in the disturbance of 5-acres or more, or will include moving, depositing, or relocating more than 2,500 cubic yards per day of bulk materials, the project proponent shall submit to the District a Dust Control Plan pursuant to District Rule 8021 (Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities). For additional information regarding the written notification or Dust Control Plan requirements, please contact District Compliance staff at (559) 230-5950.

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

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

Information about District Regulation VIII can be found online at:

http://www.valleyair.org/busind/comply/pm10/compliance_pm10.htm

5-G

2f) 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).

5-H

3) District Comment Letter

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

5-I

San Joaquin Valley Air Pollution Control District
District Reference No: 20230570
July 31, 2023

Page 5 of 5

If you have any questions or require further information, please contact Cherie Reed by e-mail at Cherie.Reed@vallevair.org or by phone at (559) 230-5940.

Sincerely,

Brian Clements
Director of Permit Services



For: Mark Montelongo
Program Manager

Response to Comment Letter 5: San Joaquin Valley Air Pollution Control District (July 31, 2023)

5-A: This comment includes a brief overview of the proposed project and acknowledges that the project is not expected to exceed any of the significance thresholds as identified in the San Joaquin Valley Air Pollution Control District's (SJVAPCD's) District's Guidance for Assessing and Mitigating Air Quality Impacts.

The comment accurately summarizes the proposed project and acknowledges that the project is not expected to exceed any of the SJVAPCD's significance thresholds. This comment does not address the adequacy of the Draft EIR but is noted for the record. Additionally, the commenter states that unmitigated annual NOx emissions are expected to result in an increase of 9.27 tons and requests that Tier 4 equipment be used during project construction to ensure that NOx emissions do not exceed the SJVAPCD's significance threshold of 10 tons.

To clarify the emissions shown in Table 4.3-4, *Unmitigated Construction Emissions*, page 4.3-37 of the Draft EIR, these emissions do not account for a project design feature that will be implemented. This design feature is the use of Tier 4 engines for all off-road diesel construction equipment greater than 50 horsepower (hp). The Tier 4 engines would meet the USEPA Tier 4 off-road emission standards or equivalent. The Tier 4 construction equipment was included in the modeling of the project as a project design feature to comply with SJVAPCD Rule 9510, as discussed on pages 21, 22, 25, and the CalEEMod run for Chalan Solar and Storage Project – ISR Rule NOx and PM Mitigation in Appendix C-1, *Air Quality and Greenhouse Gas Technical Report*, of the Draft EIR. The Tier 4 construction equipment along with the implementation of Mitigation Measures MM 4.3-1 through MM 4.3-6 were accounted within the emissions shown in Table 4.3-8, *Mitigated Construction Emissions*, page 4.3-37 of the Draft EIR. As shown in Table 4.3-8, the annual NOx emissions would be reduced to 3.79 tons and would be clearly less than the SJVAPCD significance threshold for annual NOx emissions.

Because the use of Tier 4 construction equipment is a project design feature, it has already been incorporated into the project as shown by the project modeling and does not need to be added as a mitigation measure. However, the County will ensure the use of Tier 4 construction equipment as a condition of approval.

This 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.

5-B: This comment states that the SJVAPCD has rules and regulations pertaining to air quality impacts. The comment also identifies where to find current SJVAPCD rules. Contact information at the SJVAPCD is also provided.

This comment does not raise a substantive issue on the content of the Draft EIR analysis and does not directly apply to the CEQA process. Therefore, the comment has been noted for the record and no changes to the document have been made or are required.

5-C: This comment defines Stationary Source emissions as including any building, structure, facility, or installation which emits or may emit any affected pollutant directly or as a fugitive emission and lists two SJVAPCD rules that may be applicable to the project. The first is District Rule 2010 (Permits Required), which requires operators of emission source to obtain an Authority to Construct (ATC) and Permit to Operate (PTO) from SJVAPCD. The second is District Rule 2201 (New and Modified Stationary Source Review) requires that new and modified stationary sources of emissions mitigate their emissions using Best Available Control Technology (BACT). The comment states that the Project Proponent should submit an application for an ATC/PTO to the District prior to construction, if stationary sources are necessary for the project.

The Project Proponent has been made aware of the requirement and an ISA application is being prepared and will be submitted to the SJVAPCD for review and approval as soon as completed.

5-D: This comment states that the project is subject to District Rule 9510 (Indirect Source Review) because it will receive a project-level discretionary approval from a public agency and will equal or exceed 9,000 square feet of development and, therefore, an Air Impact Assessment (AIA) application is required. The comment notes that an AIA application has not yet been submitted. The DEIR recognizes compliance with SJVAPCD regulations and includes MM 4.3-3 which would ensure that prior to the issuance of building and grading permits, the project proponent shall provide the Kern County Planning and Natural Resources Department with proof that an Indirect Source Review application has been approved by the SJVAPCD. Mitigation Measure MM 4.3-3 is listed in Section 4.3, Air Quality on page 4.3-41. The Project Proponent has been made aware of the requirement and an ISA application is being prepared and will be submitted to the SJVAPCD for review and approval as soon as completed.

5-E: This comment states that in the event an existing building will be renovated, partially demolished or removed, the project may be subject to District Rule 4002 (National Emission Standards for Hazardous Air Pollutants), which requires a thorough inspection for asbestos before demolition or renovation. The DEIR describes the project site in Chapter 3, *Project Description*, as “undeveloped, dry farming, grazing”. Currently, the project site is vacant and contains no development. There would be no demolition or removal of large debris. Since there are no demolition activities associated with the construction of the Project, Rule 4002 is not applicable. This comment does not raise a substantive issue on the content of the Draft EIR analysis and does not directly apply to the CEQA process. Therefore, no changes to the document have been made or are required.

5-F This comment states that the project may be subject to District Rule 4601 (Architectural Coatings) since it may utilize architectural coatings and must comply with requirements of the rule. Rule 4601 limits the VOC content of all types of paints and coatings sold in the San Joaquin Valley and is recognized in Section 4.3, *Air Quality*, on page 4.3-25 of the DEIR. Since this rule applies at the point of sale of any coatings, project compliance is ensured. This comment does not raise a substantive issue on the content of the Draft EIR analysis and therefore no changes to the document have been made or are required.

5-G: This comment states that a Construction Notification Form and Dust Control Plan are required prior to commencing any earthmoving activities as described in Regulation VIII, specifically Rule 8021 – Construction, Demolition, Excavation, Extraction, and Other Earthmoving activities. The comment notes that for projects at least one acre in size, written notification to the District is required at least 48 hours prior to the project proponents intent to commence any earth moving

activities pursuant to District Rule 8021; and for projects resulting in the disturbance of 5 acres or more, a Dust Control Plan must be submitted pursuant to Rule 8021. The DEIR recognizes compliance with SJVAPCD regulations and includes MM 4.3-2 which would ensure the implementation of a Dust Control Plan prepared in accordance with Rule VIII. Mitigation Measure MM 4.3-2 is listed in Section 4.3, *Air Quality*, on page 4.3-41 of the EIR. With the implementation of MM 4.3-2 potential impacts from fugitive PM10 emissions would be less than significant. This comment does not raise a substantive issue on the content of the Draft EIR analysis and therefore no changes to the document have been made or are required.

- 5-H:** This comment states that the project may be subject to the following District rules: Rule 4102 (Nuisance) and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations).

Rule 4102 pertains to air quality contaminants and their effect on the public and is recognized in Chapter 4.3, *Air Quality* on page 4.3-24 of the DEIR. The project is located in a rural area with the closest sensitive receptor being 1.7 miles east of the project borders. The potential impacts to sensitive receptors from air pollutant concentrations from project construction and operation are discussed in Section 4.3, *Air Quality*, on pages 4.3-43 through 4.3-48 of the DEIR. The DEIR recognizes the potential effects to the public and would implement Mitigation Measures MM 4.3-7 through MM 4.3-10. These measures, as well as other available and feasible air quality control measures would be implemented to reduce emissions associated with construction and operation. With the inclusion of these measures, impacts to sensitive receptors would be less than significant. Therefore, the project would not discharge quantities of air contaminants which could cause injury, detriment, nuisance, or annoyance to the public. This does not otherwise raise a substantive issue on the content of the Draft EIR and no changes to the document have been made or required.

Rule 4641 restricts the manufacturing and use of cutback asphalt, slow cure asphalt and emulsified asphalt and emulsified asphalt for paving and maintenance operations and is recognized in Section 4.3, *Air Quality*, on page 4.3-25 of the DEIR. The DEIR outlines the project components in Chapter 3, *Project Description*, and details on page 4.18-10 that an existing access road from King Road to the north boundary of the project site would be used to access the proposed project, the internal array access roads would not be paved or graveled, and any increase in impervious surfaces would result from construction of equipment foundations. The project would not include cut back, slow cure, or emulsified asphalt for paving and maintenance operations. Therefore, the project would not be subject to SJVAPCD Rule 4641 and no changes to the document have been made or are required in this regard.

- 5-I:** The SJVAPCD recommends that their comment letter be provided to the project proponent. The project proponent has been provided the comment letter. This comment does not raise a substantive issue on the content of the Draft EIR analysis and does not directly apply to the CEQA process. Therefore, no changes to the document have been made or are required.

Comment Letter 6: County of Kern Public Works Department, Floodplain Management Section (June 19, 2023)

Office Memorandum
KERN COUNTY

To: Planning and Natural Resources Department
Janice Mayes

Date: June 19, 2023

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

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

Subject: Draft Environmental Impact Report
Chalan Solar and Storage 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.

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

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

6-A

Response to Comment Letter 6: County of Kern Public Works Department, Floodplain Management Section (June 19, 2023)

6-A: The Commenter recommends adding a Condition of Approval that states that the applicant will provide a plan for the disposal of drainage waters originating onsite and from adjacent road rights-of-way (if required), subject to approval of the Public Works Department, per the Kern County Development Standards.

The County notes that per Mitigation Measures MM 4.10-1 and MM 4.10-2 presented in Section 4.10, *Hydrology and Water Quality*, of the DEIR, this recommendation has been addressed, however, the County will also include this request as a Condition of Approval in the resolution, as is the County standard. Therefore, no changes to the document have been made or are required.

7.3.3 Interested Parties

Comment Letter 7: Defenders of Wildlife (July 31, 2023)



California Program Office
P.O. Box 401, Folsom, California 95763 | 916-313-5800
www.defenders.org

July 31, 2023

Janice Mayes, Planner III
Kern County Planning and Natural Resources Department
2700 M Street, Suite 100
Bakersfield, California 93301
Delivered via email to: mayesj@kerncounty.com

RE: Draft Environmental Impact Report – Chalan Solar and Storage Project by Chalan CA Solar Storage, LLC (SCH 2021100003)

Dear Ms. Mayes,

Thank you for the opportunity to provide comments in response to the Draft Environmental Impact Report (DEIR) for the proposed Chalan Solar and Storage Project (Project). These comments are submitted on behalf of Defenders of Wildlife (Defenders) and our 2.1 million members and supporters in the United States, 316,000 of which reside in California. Defenders is dedicated to protecting all wild animals and plants in their natural communities. To that end, Defenders employs science, public education and participation, media, legislative advocacy, litigation and proactive on-the-ground solutions to prevent the extinction of species, associated loss of biological diversity and habitat alteration and destruction.

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

Project Description:

The proposed Project is a 618-acre photovoltaic solar facility and associated infrastructure that would generate up to 65 MW and provide 25 MW of battery energy storage. A 230-kilovolt gen-tie overhead and/or underground electrical transmission line(s) would originate from the project site substation to the PG&E Acro Substation. The proposed Project is on private land within the

San Joaquin Valley in unincorporated Kern County. It is located along the northern border of Kern County and the southern border of Kings County and is approximately 4 miles east of Highway 33 and 7 miles west of Interstate 5.

Comments

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

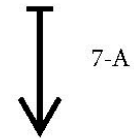
Table 1: Special-Status Species’ Habitat Within the Project Site

Common Name	Scientific Name	Status
Blunt-nosed leopard lizard	<i>Gambelia sila</i>	Federal and State Endangered
Burrowing owl	<i>Athene cunicularia</i>	State Species of Special Concern
Crotch’s bumble bee	<i>Bombus crotchii</i>	Candidate Species for State Endangered
Giant kangaroo rat	<i>Dipodomys ingens</i>	Federal and State Endangered
Loggerhead shrike	<i>Lanius ludovicianus</i>	State Species of Special Concern
Nelson’s antelope squirrel	<i>Ammospermophilus nelsoni</i>	State Threatened
San Joaquin kit fox	<i>Vulpes macrotis mutica</i>	Federal Endangered and State Threatened
Swainson’s hawk	<i>Buteo swainsoni</i>	State Threatened
Western spadefoot	<i>Spea hammondi</i>	State Species of Special Concern

The project site may also provide habitat connectivity for the San Joaquin kit fox (SJKF).² The SJKF is an umbrella species that is experiencing a significant decline in population throughout its range. The proposed Project will likely promote further decreases in the satellite SJKF population located in the area by impacting and fragmenting habitat currently available for use. Furthermore, several other species may use the site for connectivity and linkage to the Kern National Wildlife Refuge, which is located 17.5 miles east of the proposed Project.

1. Narrow Project Objective

One of the stated objectives of the proposed Project is to minimize environmental effects by locating generating facilities in a rural portion of northwestern Kern County, which



¹ California Natural Diversity Database. Accessed 6/28/2023. <https://wildlife.ca.gov/Data/CNDDB/Maps-and-Data>

² Cypher, Brian L., Phillips, Scott E., and Kelly, Patrick R. 2007. *Habitat Suitability and Potential Corridors for San Joaquin Kit Fox in the San Luis Unit Fresno, Kings and Merced Counties, California.*

receives intense solar radiation. This objective is overly narrow and limits the consideration of reasonable project alternatives within the DEIR. Project objectives should help the lead agency and public identify and evaluate a range of alternatives and should not limit a project to a specific area or site. § 15126.6 states, “An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the projects but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.”³ Limiting the Project to only rural portions of northwestern Kern County appears to have significantly limited the scope of reasonable alternatives within the DEIR. Too narrowly defined project objectives that limit project development to a specific area (e.g. northwestern Kern County) prevent identifying and considering reasonable project alternatives to avoid or minimize adverse project impacts.

Furthermore, several CEQA cases have found project objectives to be too narrow and therefore limit the reasonable alternatives proposed within the EIR. In *We Advocate through Environmental Review v. County of Siskiyou*⁴, the Court found that the overly narrow approach to project objectives limited the alternative analysis. The Court cited *Citizens of Goleta Valley v. Board of Supervisors*, which states, “One of [an EIR’s] major functions...is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official.”⁵

The objective ignores the potential for the project to be built on least-conflict lands that are not considered rural or in the northwestern portion of the county but may still benefit from intense solar radiation. Furthermore, it is inaccurate to state that locating generating facilities in rural areas will minimize environmental effects. In fact, intact habitat for sensitive species is frequently found on rural lands and may often be categorized high-conflict for solar development, as any development on that area would result in significant impacts on the surrounding species and habitat. Defenders requests removing the limitation of “locating generating facilities in a rural portion of northwestern Kern County” from the project objectives.

2. Incomplete Alternatives Analysis

Despite the significant and unavoidable impact that the project may have on special-status species, the alternative analysis fails to adequately consider feasible alternatives that would reduce or avoid impacts. This is partly due to the overly narrow project



7-A (con.)

7-B

³ Cal. Code Regs. tit. 14 § 15126.6

⁴ *We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683.

⁵ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565.

objective issue previously mentioned, as the objectives help define the range of alternatives analyzed within an EIR. The narrow objective precludes the assessment of many viable alternatives on degraded private land for the construction and operation of a solar energy facility. This has resulted in a deeply flawed and inadequate analysis of project alternatives. Defenders recommends a new alternatives analysis be undertaken that includes a different project location that does not provide important habitat for so many special-status species.

↑
7-B (con.)

3. Transmission Lines

The DEIR states that the project would be supported by a 500' long 230-kV gen-tie overhead and/or underground electrical transmission line(s). Burrowing owl, giant kangaroo rat, Nelson's antelope squirrel and San Joaquin kit fox have the potential to occur on the project site and are all burrow-dwelling species. An underground transmission line is highly likely to destroy any burrows within the right-of-way and pose a significant and unavoidable impact to multiple sensitive species. Defenders recommends utilizing overhead transmission lines and avoiding underground transmission lines.

↑
7-C

4. Protocol-Level Surveys

a. Blunt-Nosed Leopard Lizard

California Department of Fish and Wildlife (CDFW) blunt-nosed leopard lizard (BNLL) survey methodology states that surveys must be completed no more than one year prior to the initiation of ground disturbance and construction. The most recent BNLL protocol-level surveys were performed between April 15 and September 30, 2022. Further, these previously conducted surveys are woefully inadequate, and new surveys must be completed regardless of the one-year timeline. The DEIR states that BNLL surveys were conducted only in non-discarded areas or the project site. This survey area of just over 3.2 acres of the 618-acre site is comprised of approximately 2 acres on one small hillside, a small area of approximately 1-2 feet on each side of the main access road and the ground under the three existing transmission line towers in the southeastern portion of the site. This survey area represents only 0.5% of the total survey site and is insufficient. The entirety of the proposed Project site must be surveyed for BNLL, given the suitable habitat and probability of occurrence in the area. Defenders requests new BNLL-specific protocol-level surveys be conducted that cover the entirety of the proposed Project site and that adhere to CDFW survey methods.

↑
7-D

b. Crotch’s Bumble Bee

Crotch’s bumble bee (CBB) is a candidate species for listing under the California Endangered Species Act and as such must be accorded protection as if they were listed. The proposed Project is located within CBB current range and the species is likely to occur on-site.⁶ Despite the probability of occurrence, protocol-level surveys for the species were not conducted for the preparation of the DEIR. Defenders requests CBB surveys be conducted in accordance with CDFW methods as outlined in *Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species*.⁷

7-E

c. Giant Kangaroo Rat

The DEIR acknowledges that the giant kangaroo rat (GKR) had been documented 3.5 miles from the site. Additionally, the EIR for the nearby Azalea Solar Project found a high potential for the occurrence of the species due to suitable foraging and burrowing habitat. Despite the likelihood of GKR occurring near or on the project site, no species-specific surveys were conducted. Defenders requests a CDFW-approved trapping plan for determining the presence of GKR.⁸

7-F

d. San Joaquin Kit Fox

The DEIR acknowledges that SJKF have been documented within 2 miles of the proposed Project site. However, no SJKF species-specific protocol-level surveys were conducted, and the entirety of the site was not assessed. The DEIR states the May 2021 special-status small mammal habitat assessment included assessing for SJKF among other special-species small mammals and their habitats. However, the multi-species habitat assessment was limited to the 3.2-acre non-disc'd area – just 0.5% - of the Project site. Additionally, SJKF dens were searched and mapped during burrowing owl (BUOW) surveys.

7-G

The DEIR continues to state that SJKF species-specific protocol-level surveys will be conducted for pre-construction surveys no less than 14 days and no more than 30 days prior to any ground disturbance and/or construction activities. This is not an adequate survey protocol for SJKF. Protocol-level species-specific surveys must be completed before the development of the EIR to enable informed decision-making and the identification and consideration of appropriate mitigation and

⁶ California Department of Fish and Wildlife. 2023. *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species*.

⁷ Ibid.

⁸ California Department of Fish and Wildlife. 2021. *Chalan Solar and Storage Project, by Chalan CA Solar and Storage LLC (Project) Notice of Preparation (NOP) State Clearinghouse No. 2021100003*.

avoidance measures that will be required. Defenders requests protocol-level surveys for the species be performed that, at a minimum, conform to the current survey standards established in the US Fish and Wildlife Service (USFWS) *Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior To or During Ground Disturbance*.⁹ Additionally, the EIR must analyze the impacts of the Project on the entirety of the site and not limit the survey to non-discarded areas. If any SJKF are observed during the protocol-level surveys, the proposed Project must obtain an Incidental Take Permit (ITP) from CDFW for activities that may result in take.



7-G (con.)

e. Swainson’s hawk

The DEIR states that full Swainson’s hawk (SWHA) survey protocol was not required since only one documented nest was located three miles from the Project site in 2017. Instead, three general raptor nest surveys were conducted from April to July 2021. CDFW considers any impacts to habitat or birds within a five-mile radius of a nest that has been active within the past five years to be considered significant and have the potential for take to occur. This documented nest was located within that 5-mile radius and the 2021 raptor surveys were within the five-year timeframe. Thus, the project may have significant impacts with the potential for take and species-specific protocol-level surveys for SWHA must be conducted. Defenders recommends consultation with CDFW for the appropriate survey methods and mitigation measures for SWHA.



7-H

5. Incidental Take Permit for Nelson’s Antelope Squirrel

Focused Nelson’s antelope squirrel surveys were conducted on the proposed project site from May to September 2022. Although the species was not found during that survey, a possible Nelson’s antelope squirrel was observed during the burrowing owl breeding season survey. Additionally, the DEIR acknowledges that suitable Nelson’s antelope squirrel habitat is present within the project area, and potential burrows were found within the buffer of the existing substation. Given the potential for the species to occur on and around the proposed Project site, Defenders recommends consulting with CDFW to obtain an ITP.



7-I

6. Revise MM 4.4-3 I.

Coyotes are a known predator and act as a significant threat to SJKF. The proposed project site fencing should be permeable to SJKF while being impermeable to passage by larger



7-J

⁹ U.S. Fish and Wildlife Service. 2011. *Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior To or During Ground Disturbance*. Sacramento, California.

predators, such as coyotes. Fence openings measuring 6 inches or less are considered impassable to coyotes.¹⁰ Therefore, Defenders recommends limiting the fence openings to no larger than 6 inches. The openings should encompass the entirety of the fence and not be limited to specific portals to allow SJKF permeability throughout the entirety of the site. Furthermore, providing a buried apron extending up to 3 feet from the fence will prevent coyotes from digging under fences and gaining access.¹¹

"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 ~~7-4-6~~ 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. A buried apron fencing material shall extend up to 3 feet from the fence. Perimeter fencing shall not be electrified."

7. Revise MM 4.4-3 d.

The USFWS *Standardized Recommendation for Protection of the Endangered San Joaquin Kit Fox Prior To or During Ground Disturbance*¹² states that the USFWS and CDFW shall be contacted for any trapped or injured SJKF and not simply for injured SJKF. Defenders requests revising the mitigation measure to adhere to the correct recommendation, as follows.

"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

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

¹¹ Ibid.

¹² U.S. Fish and Wildlife Service. 2011. *Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior To or During Ground Disturbance*. Sacramento, California.



7-J (con.)

7-K

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~~ 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."

7-K (con.)

8. **Revise Mitigation Measure 4.4-10 a.**

The DEIR requires the establishment of 50-foot no-work buffers around BNLL burrows and egg clutch sites identified during surveys. Male BNLL has a home range of up to 52 acres, and females may have a home range that exceeds 98 acres.¹³ On the nearby Azalea Solar Project, CDFW required site-specific buffers be established by the project biologist.¹⁴ Defenders recommends consultation with CDFW on the appropriate no-work buffer surrounding BNLL burrows and egg clutch sites.

"Establishment of No-Work Buffers. The project biologist will consult with CDFW for the appropriate measurement of a no-work buffer around burrows and egg clutch sites identified during surveys. The project biologist will establish, monitor, and maintain the 50-foot no-work buffers in accordance with CDFW recommendations 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."

7-L

9. **Cumulative Impacts**

The ever-increasing large-scale renewable energy footprint within the Central Valley is significantly impacting biological resources in the region. This proposed Project is not an exception and would significantly contribute to the cumulative loss of the region's important and declining biological resources, including but not limited to BNLL, BUOW, SJKF and SWHA. The cumulative impact of renewable projects on special-status species

7-M

¹³ California Department of Fish and Wildlife. 2021. *Azalea Solar Project by SF Azalea, LLC (Project) Draft Environmental Impact Report (DEIR) State Clearinghouse No. 2021090602*

¹⁴ Ibid.

within the region is already evident with the loss of connectivity and habitat. As the number of projects increases, so does the loss, degradation and fragmentation of crucial habitat for a suite of highly imperiled San Joaquin Valley-associated species. This proposed Project, the surrounding solar projects, and other regional development such as housing and fossil fuel extraction significantly contribute to the already considerable adverse cumulative impacts on biological resources.

The DEIR's cumulative analysis on biological resources fails to examine all past, present and probable future projects that would produce related impacts. For example, the proposed Pelican's Jaw Hybrid Solar Project is also located within the northern portion of Kern County in the Central Valley, yet it was not examined as a potential future project within the cumulative impacts analysis. Aside from analyzing an incomplete list of projects that may produce cumulative impacts, the analysis itself is lacking. The analysis fails to detail the potential impacts on biological resources and provide specific data on the loss of habitat. Furthermore, the analysis fails to include the cumulative impacts to wildlife connectivity.

Defenders requests the cumulative analysis be revised to includes all past, present and reasonably foreseeable future projects, including but not limited to projects already proposed but not yet permitted in Kern County. Additionally, Defenders recommends an in-depth analysis that includes the cumulative impacts on special-status species, habitat and connectivity. We request the analysis include a detailed map of existing and planned solar energy, housing, and energy development with the remaining habitat and connectivity for BNLL and SJKF. We recommend coordination with CDFW regarding the methods of analyzing the cumulative impacts.

10. Compensatory Mitigation

The project would result in the permanent conversion of 618 acres of habitat for several special-status or threatened species, including BUOW, SJKF and SWHA. While the DEIR discusses compensatory mitigation for BUOW, it fails to do so for SJKF and SWHA. Defenders recommends consultation with CDFW and USFWS and compliance with mitigation requirements for the loss of SJKF and SWHA habitat, including the purchase of compensatory habitat management lands. These lands should contain suitable habitat for the species and be managed in perpetuity by a qualified conservation organization as defined by CA Civil Code Section 815.3. Alternatively, credits could be purchased in a CDFW-approved mitigation bank.



7-M (con.)

7-N

For SWHA, if the species or potential nests are discovered on or near the proposed Project site, Defenders recommends the mitigation lands adhere to the recommended ratio of, at a minimum, 2:1¹⁵ for habitat impacted within a five-mile radius of nest activity within the previous five years.

↑
7-N (con.)

11. Future CEQA Analysis – Drill Islands

The DEIR states that portions of the site will be left undeveloped to serve as drill islands for future mineral, presumably oil or gas, extraction. Again, the proposed site location is in important habitat for several special-status species, and drilling in this area will result in surface level disturbance and create significant and unavoidable impacts to a number of species and habitat. Therefore, if any future drilling is to occur, permitting and environmental review would be required. Defenders recommends including within the FEIR the acknowledgement that surface access for any exploration or extraction from these drill pads will require state and local agency permitting and CEQA review.

↑
7-O

12. Incorrect Contact Information

We noticed the email address for providing comments is incorrectly listed on the CEQAnet Webpage for the DEIR for this project - the email address is listed as mavesi@kernconty.com, with the word county being misspelled. Defenders recommends updating the website to list the correct address of mavesi@kerncounty.com.

↑
7-P

Conclusion

Thank you once again for the opportunity to provide comments on the DEIR for the proposed Chalan Solar and Storage Project 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.

Respectfully submitted,



Sophia Markowska
Defenders of Wildlife
Senior California Representative

¹⁵ California Energy Commission and Department of Fish and Game. 2010. *Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Projects in the Antelope Valley for Los Angeles and Kern Counties, California.*

Response to Comment Letter 7: Defenders of Wildlife (July 31, 2023)

7-A: Commentor states that the project objective to locate the project in a rural area is too narrow.

Please see response to CDFW Comment 3-L, above.

7-B: Commentor states that the project alternative analysis fails to adequately consider feasible alternatives that would reduce or avoid impacts. Commentor is recommending a new alternative analysis that includes a different project location that does not provide important habitat.

Please see response to CDFW Comment 3-L. In addition, the availability of alternative sites is constrained by the renewable energy market itself. While other sites of similar size may exist, they may not be within close proximity to existing transmission infrastructure. And, if alternative sites do exist in close proximity to existing infrastructure, they are likely to have similar project and cumulatively significant impacts after mitigation based on the known general conditions of the San Joaquin Valley and the magnitude of the project. In addition, there are no suitable alternative sites within the control of the project proponent that would reduce project impacts.

7-C: This comment pertains to the 500-foot long 230kV gen tie line and its potential impacts to burrow-dwelling species such as BUOW, GKR, SJAS, and SJKF. Defenders recommends utilizing overhead transmission lines to avoid impacts to these species.

The County has determined that the Project Proponent is no longer considering an underground transmission line for the 500-foot long 230kV gen tie line and would only install an above-ground transmission line. Mitigation Measures MM 4.4-1 through MM 4.4-10 in Section 4.4, *Biological Resources*, of the Draft EIR, will ensure that a Lead Biologist be on-site during grading and construction activities, that all construction employees receive Environmental Awareness Training, general avoidance measures be adhered to and pre-construction surveys be conducted prior to ground disturbance. Additionally, Mitigation Measure MM 4.4-11, in Section 4.4, *Biological Resources*, in the Draft EIR will be implemented to ensure the above-ground transmission line is in compliance with Avian Power Line Interaction Committee (APLIC) standards to minimize electrocution and collision impacts to avian species. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

7-D: Commentor states that BNLL surveys were conducted only in non-disc'd areas of the project site. Given the suitable habitat and probability of occurrence in the area, Commentor requests new BNLL-specific protocol level surveys be conducted that cover the entirety of the proposed project site.

Please see response to CDFW Comment 3-E.

7-E: Commentor notes that the Crotch's Bumble Bee (CBB) is likely to occur on-site. Commentor request CBB surveys be conducted according to CDFW methods as outlined in *Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species*.

Please see response to CDFW Comment 3-F.

7-F: Commentor notes that although the Giant Kangaroo Rat has appeared near or on the project site, no species-specific surveys were conducted. Commentor requests a CDFW-approved trapping plan for determining the presence of the Giant Kangaroo Rat on-site.

Please see response to CDFW Comment 3-A.

7-G: Commentor notes that San Joaquin Kit Fox have been documented within 2 miles of the proposed project site, however no species-specific protocol-level surveys were conducted, nor was the entirety of the site assessed. The comment also includes that a pre-construction survey no less than 14 days and no more than 30 days prior to any ground disturbance activities is not an adequate protocol level survey for this species and requests that a protocol-level survey be performed for the species.

Please see response to CDFW Comment 3-B.

7-H: The commentor states that CDFW considers any impact to habitat or birds within a five-mile radius of a nest that has been active within the past five years to be considered significant and have the potential for take to occur. A protocol-level survey for the species should be conducted and mitigation put into place.

Please see response to CDFW Comment 3-D.

7-I: The commentor states that Nelson's Antelope Squirrel were observed during the burrowing owl breeding season survey and the DEIR acknowledges that suitable habitat is present within the project area. Commentor recommends consulting with CDFW to obtain an Incidental Take Permit (ITP) for the Antelope Squirrel.

Please see response to CDFW Comment 3-C.

7-J: The commentor notes that Coyotes are a known predator to San Joaquin Kit Fox (SJKF). The proposed fencing should be permeable to SJKF while being impermeable to passage by larger predators.

Please see response to CDFW Comment 3-B.

7-K: This comment recommends that Mitigation Measure MM 4.4-3(d) be revised to reflect that the Lead Biologist of the project immediately contact the US Fish and Wildlife Service or CA Fish and Wildlife for any trapped or injured San Joaquin Kit Fox, not just injured, and has proposed new language for Mitigation Measure MM 4.4-3(d). In response to this comment, the Draft EIR has been revised as follows:

Section 4.4, Biological Resources, Mitigation Measure 4.4-3(d), Page 4.4-41

MM 4.4-3 d. 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.

- 7-L:** The commentor recommends consultation with CDFW on the appropriate no-work buffer surrounding BNLL burrows and egg clutch sites, due to the home range of 52 to 98 acres for the BNLL.

Please see response to CDFW Comment Letter 3-E, which recommends changes to Mitigation Measure MM 4.4-10.

- 7-M:** The commenter states that the DEIR fails to examine all past, present and probable future projects, including the proposed Pelican's Jaw Hybrid Solar Project. The commenter states that the analysis fails to detail impacts on biological resources, loss of habitat, and wildlife connectivity.

The cumulative study area was defined through a description of existing conditions and cumulative projects. Existing conditions capture the effects of past and existing projects and are described in Section 4.4.2, *Environmental Setting*. Current and future projects are described in Table 3-3, *Cumulative Projects List*, Table 4.4-4, *Cumulative Projects List*, Figure 3-8, *Cumulative Projects Map – Kern County*, and Figure 3-8, *Cumulative Projects Map – Kings County*. Per CEQA Guidelines Section 15125, baselines for both existing conditions and projected future conditions are determined at the time of the release of the project's Notice of Preparation (NOP). The Project's NOP was released September 2021. Applications for the Pelican's Jaw Hybrid Solar Project were received in September 2020 and therefore, was unknown at the time of the NOP for the Chalan Solar and Storage Project and, therefore, not included in the baseline.

The DEIR considered the potential cumulative effects of the project along with other current and reasonably foreseeable projects known at the time of establishing baseline conditions and found impacts to biological resources to be cumulatively considerable, and significant and unavoidable, as discussed in Section 4.4.4, *Cumulative Impacts*.

Section 4.4.4 presents detailed analyses of these cumulative impacts and describes the means by which the mitigation measures would reduce the severity of impacts to the extent feasible. The cumulative impact analysis includes a discussion of the special-status wildlife species that currently utilize the project site and surrounding vicinity and loss of foraging and nesting habitat, migratory birds, and transient use (or habitat continuity) of the Project site. As specified in the CEQA Guidelines, Section 15130, Discussion of Cumulative Impacts, "The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone." Therefore, the DEIR presents an adequate cumulative impact discussion for biological resources.

No changes or modifications have been made to the Draft EIR in response to this comment.

- 7-N:** This comment includes recommendation to consult with CDFW and USFWS and comply with mitigation requirements for loss of SJKF and SWHA habitat, including the purchase of compensatory habitat mitigation lands or credits from a CDFW-approved mitigation bank.

The County acknowledges the need for early consultation for take of listed species; however, no CDFW or USFWS consultation is anticipated since mitigation measures will ensure the avoidance of take and no take of listed species is expected prior to or during construction. If state and/or federally listed species are detected during pre-construction surveys, then consultation with CDFW and/or USFWS will commence.

Please see response to CDFW Comment 3-D as a response to this comment regarding mitigation for loss of SWHA foraging habitat. Please also see response to CDFW Comment 3-B as a response to this comment regarding wildlife friendly fencing that will allow SJKF and other wildlife to continue to move freely through the site during operations.

In addition, site development would be limited to the currently disturbed areas of the project site. The small hillside in the northwest portion of the Project site would not be impacted by Project activities, which may provide foraging habitat for SWHA and habitat for SJKF. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

- 7-O:** The commenter expressed concern regarding the need for future CEQA analysis should any undeveloped portions of the project be proposed for mineral extraction. They recommend including within the FEIR the acknowledgement that surface access for any exploration or extraction from any mineral extraction will require state and local agency permitting and CEQA review.

In response to this comment, the Draft EIR has been revised as follows:

Chapter 1, Executive Summary, Page 1-7

There are no active mines or petroleum extraction facilities located within or immediately adjacent to the project site. The nearest active mine, Lost Hills Oil Mine is approximately 15 miles to the southeast. The project site is within the Kern County Mineral Overlay Parcel (043-210-45). However, there are no historic records of drilling on the project site. The project site is not designated as a mineral recovery area by the Kern County General Plan, nor is it identified as a Mineral Resource Zone (MRZ) by the DOC's State Mining and Geology Board and is not located in any known oil, gas, or geothermal fields per the Geologic Energy Management Division. Furthermore, portions of the project site would be left undeveloped to serve as "drill islands" if and when mineral resources require extraction. Any future drilling would require local and state approval by Kern County and the DOC's Geologic Energy Management Division as well as ~~filling would require~~ approval by the Bureau of Land Management (BLM), and any approval would need to be consistent with the current use of the site.

Chapter 3, Project Description, Page 3-8

There are no active mines or petroleum extraction facilities located within or immediately adjacent to the project site. The nearest active mine, Lost Hills Oil Mine is approximately 15 miles to the southeast. The project site is within the Kern County Mineral Overlay Parcel (043-210-45). However, there are no historic records of drilling on the project site. The project site is not designated as a mineral recovery area by the Kern County General Plan, nor is it identified as a Mineral Resource Zone (MRZ) by the DOC's State Mining and Geology Board and is not located in any known oil, gas, or geothermal fields per the Geologic Energy Management Division. Furthermore, portions of the project site would be left undeveloped to serve as "drill islands" if and when mineral resources require

extraction. Any future drilling would require local and state approval by Kern County and the DOC's Geologic Energy Management Division as well as drilling would require approval by the Bureau of Land Management (BLM), and any approval would need to be consistent with the current use of the site.

Section 4.11, Land Use and Planning, Page 4.11-3

~~The project site is not designated as a mineral recovery area by the Kern County General Plan, nor is it identified as a Mineral Resource Zone (MRZ) by the DOC's State Mining and Geology Board.~~ Neither the project site nor adjacent areas include land classified as a MRZ (USGS, 2022). The project site has been identified as being within a Mineral Overlay Parcel (043-210-45) by Kern County. However, there are no historic records of drilling on the project site. The project site is not designated as a mineral recovery area by the Kern County General Plan, nor is it identified as a Mineral Resource Zone (MRZ) by the DOC's State Mining and Geology Board and is not located in any known oil, gas, or geothermal fields per the Geologic Energy Management Division. Furthermore, portions of the project site would be left undeveloped to serve as “drill islands” if and when mineral resources require extraction. Any future drilling would require local and state approval by Kern County and the DOC's Geologic Energy Management Division as well as drilling would require approval by the Bureau of Land Management (BLM), and any approval would need to be consistent with the current use of the site.

Section 4.12, Mineral Resources, Page 4.12-6

The project site is within Kern County Mineral Overlay Parcel (043-210-45). However, there are no historic records of drilling on the project site. Furthermore, portions of the project site would be left undeveloped to serve as “drill areas” if and when mineral resources require extraction. The mineral estate is owned by the U.S. government and managed by BLM. There are no active mineral leases with BLM in the region. Any future drilling would require local and state approval by Kern County and the DOC's Geologic Energy Management Division as well as drilling would require approval by the BLM and any approval would need to be consistent with the current use of the site.

- 7-P:** The commenter pointed out a typographical error in the email address provided on CEQAnet Webpage for the DEIR for this project. In response to this comment, CEQAnet has been revised to the following: mayesj@kerncounty.com

7.3.4 Comments Received After July 31, 2023 Close of Public Comment Period

Comment Letter 8: Kern County Public Works Department, Development Review Division (August 30, 2023)



Office Memorandum

To: Lorelei Oviatt, Director
 Planning and Natural Resources Department
 Attn: Janice Mayes, Planner III
 August 30, 2023

From: Cesar Ayon, Engineering Manager *CA*
 Public Works Department/Development Review Division

Subject: 7-5.3 Conditional Use Permit #12, Map #3
 7-5.3 Conditional Use Permit #13, Map #3
 7-2.1 Cancellation #23-07, Map #3
 (Approximately 2.0 miles west King Road and the Kern/Kings county boundary,
 in the northwest portion of Unincorporated Kern County)(APN: 043-210-28)

This Department has reviewed the subject project and recommends the following:

1. Applicant shall provide documentation and show legal access to site.
2. All easements shall be kept open, clear, and free from buildings and structures of any kind pursuant to Chapters 18.50 and 18.55 of the Kern County Land Division Ordinance. All obstructions, including utility poles and lines, trees, pole signs, fences, or similar obstructions, shall be removed from the ultimate road rights-of-way. Compliance with this requirement is the responsibility of the applicant and may result in significant financial expenditures.

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

8-A



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

**Response to Comment Letter 8: Kern County Public Works Department,
Development Review Division (August 30, 2023)**

8-A: The commenter has reviewed the subject project and recommends the following:

1. Applicant shall provide documentation and show legal access to site.
2. All easements shall be kept open, clear, and free from buildings and structures of any kind pursuant to Chapters 18.50 and 18.55 of the Kern County Land Division Ordinance. All obstructions, including utility poles and lines, trees, pole signs, fences, or similar obstructions, shall be removed from the ultimate road rights-of-way. Compliance with this requirement is the responsibility of the applicant and may result in significant financial expenditures.

The Lead Agency is proposing to add Conditions of Approval requiring the project proponent/operator comply with the two recommendations of the Kern County Public Works Department, Development Review Division. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record and revisions to the Draft EIR are not necessary.

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