

Zeta Solar and Battery Energy Storage System Project Final Environmental Impact Report

Prepared for:

February 2025

County of Merced
2222 M Street
Merced, CA 95340

Prepared by:

SCH:
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Abbreviations

AFY	acre-feet per year
AIA	Air Impact Assessment
APN	Assessor's Parcel Number
ATC	Authority to Construct
BUOW	Burrowing Owl
CARB	California Air Resources Board
CBOC	California Burrowing Owl Consortium
CDFW	California Department of Fish and Wildlife
CDMGSA	Central Delta-Mendota Groundwater Sustainability Agency
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
CGP	Construction General Permit
CNDDDB	California Natural Diversity Database
County	Merced County
CPUC	California Public Utilities Commission
CUP	Conditional Use Permit
DEIR	Draft Environmental Impact Report
DPM	Diesel Particulate Matter
EIR	Environmental Impact Report
FESA	Federal Endangered Species Act
FGC	California Fish and Game Commission
Final EIR	Final Environmental Impact Report
GAMAQI	Guidance for Assessing and Mitigating Air Quality Impacts
GSA	Groundwater Sustainability Agency



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GSP	Groundwater Sustainability Plan
HRA	Health Risk Assessment
ITP	Incidental Take Permit
MM	Mitigation Measure
NOP	Notice of Preparation
NPDES	National Pollutant Discharge Elimination System
OEHHA	Office of Environmental Health Hazard Assessment
PG&E	Pacific Gas & Electric
PMAs	Projects and Management Actions
Project	Zeta Solar and Battery Energy Storage System Project
PTO	Permit to Operate
PV	Photovoltaic
SBA	Small Business Administration
SGMA	Sustainable Groundwater Management Act of 2014
SJKF	San Joaquin Kit Fox
SJVAPCD	San Joaquin Valley Air Pollution Control District
SLWD	San Luis Water District
SWHA TAC	Swainson’s Hawk Technical Advisory Committee
SWHA	Swainson’s Hawk
SWPPP	Stormwater Pollution Prevention Plan
SWRCB	State Water Resources Control Board
TAC	Toxic Air Contaminant
USFWS	United States Fish and Wildlife Service
WSA	Water Supply Assessment



Chapter 1 Introduction

In accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15088, Merced County (County), as the Lead Agency, has evaluated the comments received on the Zeta Solar and Battery Energy Storage System Project (proposed project) Draft Environmental Impact Report (DEIR) (State Clearinghouse No. 2023070088). The DEIR was circulated for a 45-day public review between October 4, 2024, and November 18, 2024. Consistent with Section 15132 of the CEQA Guidelines, this Final Environmental Impact Report (FEIR) contains comments received on DEIR, responses to comments received on the DEIR, revisions to the DEIR, and a list of commenters on the DEIR.

1.1 Background and Purpose of the EIR

CEQA requires a lead agency that has prepared a DEIR to provide a copy of the DEIR to responsible and trustee agencies that have jurisdiction with respect to the proposed project, and to provide the general public with an opportunity to comment on the DEIR. The FEIR is the mechanism for responding to these comments. This FEIR has been prepared to respond to comments received on the DEIR, which are reproduced in this document; and to present corrections, revisions, and other clarifications and amplifications to the DEIR as a result of the County's ongoing planning efforts. The DEIR and FEIR will be used to support the County's decision regarding whether to approve the proposed project.

This FEIR can also be used by responsible and trustee agencies to ensure that they have met their requirements under CEQA before deciding whether to approve or permit proposed project elements over which they have jurisdiction. It may also be used by other state, regional, and local agencies that may have an interest in resources that could be affected by the proposed project or that have jurisdiction over portions of the proposed project. The following agencies may serve as responsible and trustee agencies:

- California Department of Fish and Wildlife (CDFW).
- Central Valley Regional Water Quality Control Board (CVRWQCB) and/or State Water Resources Control Board (SWRCB).
- San Joaquin Valley Air Pollution Control District (SJVAPCD).
- California Public Utilities Commission (CPUC).

1.1.1 CEQA Public Review Process

The following provides a summary of the environmental review process to date for the proposed project that has resulted in the preparation of this FEIR.



1.1.1.1 Notice of Preparation

The Notice of Preparation (NOP) for the DEIR was submitted for a 30-day public review period on July 14, 2023. The comment period for the NOP closed on August 14, 2023. Four written comments were submitted during the NOP comment period. A scoping meeting was held on March 12, 2024, to solicit input from interested agencies and the public. One additional comment letter was received after this scoping meeting. A copy of the NOP and all written comments received are in Appendix A of the DEIR.

1.1.1.2 Draft EIR

The DEIR was released for public and agency review on October 4, 2024, with a 45-day review period ending on November 18, 2024. The DEIR contains a description of the project, description of the environmental setting, identification of project impacts, and mitigation measures for impacts found to be significant, and an analysis of project alternatives. A Notice of Availability for the DEIR was provided to interested public agencies and the public and the DEIR was made available for review at County offices and on the County's website. The DEIR was submitted to the State Clearinghouse and was made available via CEQAnet on October 4, 2024.

1.1.1.3 Final EIR

The County received comment letters from local and state agencies and the public regarding the DEIR. This document responds to the written comments received, as required by CEQA. This document also contains minor edits to the DEIR, which are included in Section 3.0, Revisions to the Draft EIR. These edits and revisions have been incorporated as a result of response to comments or to make minor modifications or corrections. This document constitutes the FEIR in accordance with Section 15132 of the CEQA Guidelines.

1.1.2 Certification of the Final EIR/Project Consideration

The County will review and consider the FEIR. If the County finds that the FEIR is “adequate and complete,” the County may certify the FEIR. The rule of adequacy generally holds that the FEIR can be certified if it does the following: (1) shows a good faith effort at full disclosure of environmental information; and (2) provides sufficient analysis to allow decisions to be made regarding the project in contemplation of its environmental consequences.

Upon review and consideration of the FEIR, the County may act to adopt, revise, or reject the proposed project. A decision to approve the proposed project would be accompanied by written findings in accordance with CEQA Guidelines Sections 15091 and 15093. Public Resources Code Section 21081.6 also requires lead agencies to adopt a mitigation monitoring and reporting program to describe measures that have been adopted or have been made a condition of the project approval in order to mitigate or avoid significant impacts on the environment.



1.2 Intended Use of the EIR

The EIR is intended to evaluate the environmental impacts of the proposed project to the greatest extent possible. This EIR, in accordance with CEQA Guidelines Section 15126, should be used as the primary environmental document to evaluate all planning and permitting actions associated with the proposed project. Please refer to Section 2.0, Project Description, of the DEIR for a detailed discussion of the proposed project.

1.3 Organization and Scope of the Final EIR

This document is organized into the following sections:

- **Chapter 1.0 – Introduction**, provides an overview of the EIR process to date and the requirements of the FEIR.
- **Chapter 2.0 – Comments and Responses to the DEIR**, provides a list of the agencies, organizations, and individuals that commented on the DEIR. Copies of all the letters received regarding the DEIR and responses thereto are included in this section.
- **Chapter 3.0 – Revisions to the DEIR**, includes an addendum listing refinements and clarifications on the DEIR, which have been incorporated as a result of response to comments or to make minor modifications or corrections.
- **Section 4.0 – References**, provides the sources cited in the preparation of the FEIR.
- **Mitigation Monitoring Reporting Program**, provided under separate cover, includes measures that have been adopted or made a condition of the proposed project approval in order to mitigate, reduce, or avoid significant impacts on the environment.

Because of its length, the text of the DEIR is not included with these written responses; however, it is included by reference in this FEIR. None of the revisions or clarifications to the DEIR identified in this document constitute “significant new information” pursuant to CEQA Guidelines Section 15088.5. As a result, recirculation of the DEIR is not required.



Chapter 2 Comments and Responses

2.1 List of Commenters

A list of public agencies, organizations, and individuals that provided comments in the DEIR is presented in Table 2-1. Individual comments within each communication have been numbered so comments can be cross-referenced with responses. Following this list, the text of the communication is reprinted and followed by the corresponding response. Each comment is identified by a line bracket and an identifying number in the margin of the comment letter in the following section. Verbatim text of each individual comment is also provided before each response in a readable format to comply with Section 508 of the Rehabilitation Act of 1973.

Table 2-1. List of Commenters

Letter Number	Agency	Commenter Name	Date
1	Pacific Gas & Electric	Plan Review Team, Land Management	October 8, 2024
2	San Joaquin Valley Air Pollution Control District	Mark Montelongo	November 13, 2024
3	Defenders of Wildlife	Pamela Flick	November 13, 2024
4	San Luis Water District	Steven Sadler, P.E.	November 18, 2024
5	California Department of Fish and Wildlife	Julie A. Vance	November 19, 2024

2.2 Comments and Responses


CEQA Guidelines Section 15088 requires that lead agencies evaluate all comments on environmental issues received on the DEIR and prepare a written response. The written response must address the significant environmental issue(s) raised and must be detailed, especially when specific comments or suggestions (e.g., additional mitigation measures) are not accepted. In addition, there must be a good faith and reasoned analysis in the written response. However, lead agencies need only respond to significant environmental issues associated with the project and do not need to provide all the information requested by commenters, as long as a good faith effort at full disclosure is made in the EIR (CEQA Guidelines Section 15204).

CEQA Guidelines Section 15204 recommends that commenters provide detailed comments that focus on the sufficiency of the DEIR in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. CEQA Guidelines Section 15204 also notes that commenters should provide an explanation and evidence supporting their comments. Pursuant to CEQA Guidelines Section 15064, an effect shall not be considered significant in the absence of substantial evidence supporting such a conclusion.

Where revisions to the DEIR are appropriate to respond to comments, they are provided in the response and in Chapter 3.0, Revisions to the DEIR.



2.2.1 Letter 1: Pacific Gas & Electric



**Pacific Gas and
Electric Company**

Plan Review Team
Land Management

PGEPlanReview@pge.com

October 8, 2024

Tiffany Ho
County of Merced
222 M Street, 2nd Flr
Merced, CA 95340

Ref: Gas and Electric Transmission and Distribution

Dear Tiffany Ho,

Thank you for submitting the CUP22-015 plans for our review. PG&E will review the submitted plans in relationship to any existing Gas and Electric facilities within the project area. If the proposed project is adjacent/or within PG&E owned property and/or easements, we will be working with you to ensure compatible uses and activities near our facilities.

Attached you will find information and requirements as it relates to Gas facilities (Attachment 1) and Electric facilities (Attachment 2). Please review these in detail, as it is critical to ensure your safety and to protect PG&E's facilities and its existing rights.

Below is additional information for your review:

1. This plan review process does not replace the application process for PG&E gas or electric service your project may require. For these requests, please continue to work with PG&E Service Planning: <https://www.pge.com/en/account/service-requests/building-and-renovation.html>.
2. If the project being submitted is part of a larger project, please include the entire scope of your project, and not just a portion of it. PG&E's facilities are to be incorporated within any CEQA document. PG&E needs to verify that the CEQA document will identify any required future PG&E services.
3. An engineering deposit may be required to review plans for a project depending on the size, scope, and location of the project and as it relates to any rearrangement or new installation of PG&E facilities.

Any proposed uses within the PG&E fee strip and/or easement, may include a California Public Utility Commission (CPUC) Section 851 filing. This requires the CPUC to render approval for a conveyance of rights for specific uses on PG&E's fee strip or easement. PG&E will advise if the necessity to incorporate a CPUC Section 851 filing is required.

This letter does not constitute PG&E's consent to use any portion of its easement for any purpose not previously conveyed. PG&E will provide a project specific response as required.

Sincerely,

Plan Review Team
Land Management

PG&E Gas and Electric FacilitiesPage 1

Public

1-1





Attachment 1 – Gas Facilities

There could be gas transmission pipelines in this area which would be considered critical facilities for PG&E and a high priority subsurface installation under California law. Care must be taken to ensure safety and accessibility. So, please ensure that if PG&E approves work near gas transmission pipelines it is done in adherence with the below stipulations. Additionally, the following link provides additional information regarding legal requirements under California excavation laws: <https://www.usanorth811.org/images/pdfs/CA-LAW-2018.pdf>

1. **Standby Inspection:** A PG&E Gas Transmission Standby Inspector must be present during any demolition or construction activity that comes within 10 feet of the gas pipeline. This includes all grading, trenching, substructure depth verifications (potholes), asphalt or concrete demolition/removal, removal of trees, signs, light poles, etc. This inspection can be coordinated through the Underground Service Alert (USA) service at 811. A minimum notice of 48 hours is required. Ensure the USA markings and notifications are maintained throughout the duration of your work.
2. **Access:** At any time, PG&E may need to access, excavate, and perform work on the gas pipeline. Any construction equipment, materials, or spoils may need to be removed upon notice. Any temporary construction fencing installed within PG&E's easement would also need to be capable of being removed at any time upon notice. Any plans to cut temporary slopes exceeding a 1:4 grade within 10 feet of a gas transmission pipeline need to be approved by PG&E Pipeline Services in writing PRIOR to performing the work.
3. **Wheel Loads:** To prevent damage to the buried gas pipeline, there are weight limits that must be enforced whenever any equipment gets within 10 feet of traversing the pipe.

Ensure a list of the axle weights of all equipment being used is available for PG&E's Standby Inspector. To confirm the depth of cover, the pipeline may need to be potholed by hand in a few areas.

Due to the complex variability of tracked equipment, vibratory compaction equipment, and cranes, PG&E must evaluate those items on a case-by-case basis prior to use over the gas pipeline (provide a list of any proposed equipment of this type noting model numbers and specific attachments).

No equipment may be set up over the gas pipeline while operating. Ensure crane outriggers are at least 10 feet from the centerline of the gas pipeline. Transport trucks must not be parked over the gas pipeline while being loaded or unloaded.
4. **Grading:** PG&E requires a minimum of 36 inches of cover over gas pipelines (or existing grade if less) and a maximum of 7 feet of cover at all locations. The graded surface cannot exceed a cross slope of 1:4.
5. **Excavating:** Any digging within 2 feet of a gas pipeline must be dug by hand. Note that while the minimum clearance is only 24 inches, any excavation work within 24 inches of the edge of a pipeline must be done with hand tools. So to avoid having to dig a trench entirely with hand tools, the edge of the trench must be over 24 inches away. (Doing the math for a 24 inch





wide trench being dug along a 36 inch pipeline, the centerline of the trench would need to be at least 54 inches [$24/2 + 24 + 36/2 = 54$] away, or be entirely dug by hand.)

Water jetting to assist vacuum excavating must be limited to 1000 psig and directed at a 40° angle to the pipe. All pile driving must be kept a minimum of 3 feet away.

Any plans to expose and support a PG&E gas transmission pipeline across an open excavation need to be approved by PG&E Pipeline Services in writing PRIOR to performing the work.

6. Boring/Trenchless Installations: PG&E Pipeline Services must review and approve all plans to bore across or parallel to (within 10 feet) a gas transmission pipeline. There are stringent criteria to pothole the gas transmission facility at regular intervals for all parallel bore installations.

For bore paths that cross gas transmission pipelines perpendicularly, the pipeline must be potholed a minimum of 2 feet in the horizontal direction of the bore path and a minimum of 24 inches in the vertical direction from the bottom of the pipe with minimum clearances measured from the edge of the pipe in both directions. Standby personnel must watch the locator trace (and every ream pass) the path of the bore as it approaches the pipeline and visually monitor the pothole (with the exposed transmission pipe) as the bore traverses the pipeline to ensure adequate clearance with the pipeline. The pothole width must account for the inaccuracy of the locating equipment.

7. Substructures: All utility crossings of a gas pipeline should be made as close to perpendicular as feasible ($90^\circ \pm 15^\circ$). All utility lines crossing the gas pipeline must have a minimum of 24 inches of separation from the gas pipeline. Parallel utilities, pole bases, water line 'kicker blocks', storm drain inlets, water meters, valves, back pressure devices or other utility substructures are not allowed in the PG&E gas pipeline easement.

If previously retired PG&E facilities are in conflict with proposed substructures, PG&E must verify they are safe prior to removal. This includes verification testing of the contents of the facilities, as well as environmental testing of the coating and internal surfaces. Timelines for PG&E completion of this verification will vary depending on the type and location of facilities in conflict.

8. Structures: No structures are to be built within the PG&E gas pipeline easement. This includes buildings, retaining walls, fences, decks, patios, carports, septic tanks, storage sheds, tanks, loading ramps, or any structure that could limit PG&E's ability to access its facilities.

9. Fencing: Permanent fencing is not allowed within PG&E easements except for perpendicular crossings which must include a 16 foot wide gate for vehicular access. Gates will be secured with PG&E corporation locks.

10. Landscaping: Landscaping must be designed to allow PG&E to access the pipeline for maintenance and not interfere with pipeline coatings or other cathodic protection systems. No trees, shrubs, brush, vines, and other vegetation may be planted within the easement area. Only those plants, ground covers, grasses, flowers, and low-growing plants that grow unsupported to a maximum of four feet (4') in height at maturity may be planted within the easement area.



Comments and Responses



11. Cathodic Protection: PG&E pipelines are protected from corrosion with an “Impressed Current” cathodic protection system. Any proposed facilities, such as metal conduit, pipes, service lines, ground rods, anodes, wires, etc. that might affect the pipeline cathodic protection system must be reviewed and approved by PG&E Corrosion Engineering.

12. Pipeline Marker Signs: PG&E needs to maintain pipeline marker signs for gas transmission pipelines in order to ensure public awareness of the presence of the pipelines. With prior written approval from PG&E Pipeline Services, an existing PG&E pipeline marker sign that is in direct conflict with proposed developments may be temporarily relocated to accommodate construction work. The pipeline marker must be moved back once construction is complete.

13. PG&E is also the provider of distribution facilities throughout many of the areas within the state of California. Therefore, any plans that impact PG&E’s facilities must be reviewed and approved by PG&E to ensure that no impact occurs which may endanger the safe operation of its facilities.





Attachment 2 – Electric Facilities

It is PG&E's policy to permit certain uses on a case by case basis within its electric transmission fee strip(s) and/or easement(s) provided such uses and manner in which they are exercised, will not interfere with PG&E's rights or endanger its facilities. Some examples/restrictions are as follows:

1. **Buildings and Other Structures:** No buildings or other structures including the foot print and eave of any buildings, swimming pools, wells or similar structures will be permitted within fee strip(s) and/or easement(s) areas. PG&E's transmission easement shall be designated on subdivision/parcel maps as "RESTRICTED USE AREA – NO BUILDING."
2. **Grading:** Cuts, trenches or excavations may not be made within 25 feet of our towers. Developers must submit grading plans and site development plans (including geotechnical reports if applicable), signed and dated, for PG&E's review. PG&E engineers must review grade changes in the vicinity of our towers. No fills will be allowed which would impair ground-to-conductor clearances. Towers shall not be left on mounds without adequate road access to base of tower or structure.
3. **Fences:** Walls, fences, and other structures must be installed at locations that do not affect the safe operation of PG&E's facilities. Heavy equipment access to our facilities must be maintained at all times. Metal fences are to be grounded to PG&E specifications. No wall, fence or other like structure is to be installed within 10 feet of tower footings and unrestricted access must be maintained from a tower structure to the nearest street. Walls, fences and other structures proposed along or within the fee strip(s) and/or easement(s) will require PG&E review; submit plans to PG&E Centralized Review Team for review and comment.
4. **Landscaping:** Vegetation may be allowed; subject to review of plans. On overhead electric transmission fee strip(s) and/or easement(s), trees and shrubs are limited to those varieties that do not exceed 10 feet in height at maturity. PG&E must have access to its facilities at all times, including access by heavy equipment. No planting is to occur within the footprint of the tower legs. Greenbelts are encouraged.
5. **Reservoirs, Sumps, Drainage Basins, and Ponds:** Prohibited within PG&E's fee strip(s) and/or easement(s) for electric transmission lines.
6. **Automobile Parking:** Short term parking of movable passenger vehicles and light trucks (pickups, vans, etc.) is allowed. The lighting within these parking areas will need to be reviewed by PG&E; approval will be on a case by case basis. Heavy equipment access to PG&E facilities is to be maintained at all times. Parking is to clear PG&E structures by at least 10 feet. Protection of PG&E facilities from vehicular traffic is to be provided at developer's expense AND to PG&E specifications. Blocked-up vehicles are not allowed. Carports, canopies, or awnings are not allowed.
7. **Storage of Flammable, Explosive or Corrosive Materials:** There shall be no storage of fuel or combustibles and no fueling of vehicles within PG&E's easement. No trash bins or incinerators are allowed.





8. Streets and Roads: Access to facilities must be maintained at all times. Street lights may be allowed in the fee strip(s) and/or easement(s) but in all cases must be reviewed by PG&E for proper clearance. Roads and utilities should cross the transmission easement as nearly at right angles as possible. Road intersections will not be allowed within the transmission easement.

9. Pipelines: Pipelines may be allowed provided crossings are held to a minimum and to be as nearly perpendicular as possible. Pipelines within 25 feet of PG&E structures require review by PG&E. Sprinklers systems may be allowed; subject to review. Leach fields and septic tanks are not allowed. Construction plans must be submitted to PG&E for review and approval prior to the commencement of any construction.

10. Signs: Signs are not allowed except in rare cases subject to individual review by PG&E.

11. Recreation Areas: Playgrounds, parks, tennis courts, basketball courts, barbecue and light trucks (pickups, vans, etc.) may be allowed; subject to review of plans. Heavy equipment access to PG&E facilities is to be maintained at all times. Parking is to clear PG&E structures by at least 10 feet. Protection of PG&E facilities from vehicular traffic is to be provided at developer's expense AND to PG&E specifications.

12. Construction Activity: Since construction activity will take place near PG&E's overhead electric lines, please be advised it is the contractor's responsibility to be aware of, and observe the minimum clearances for both workers and equipment operating near high voltage electric lines set out in the High-Voltage Electrical Safety Orders of the California Division of Industrial Safety (<https://www.dir.ca.gov/Title8/sb5g2.html>), as well as any other safety regulations. Contractors shall comply with California Public Utilities Commission General Order 95 (http://www.cpuc.ca.gov/gos/GO95/go_95_startup_page.html) and all other safety rules. No construction may occur within 25 feet of PG&E's towers. All excavation activities may only commence after 811 protocols has been followed.

Contractor shall ensure the protection of PG&E's towers and poles from vehicular damage by (installing protective barriers) Plans for protection barriers must be approved by PG&E prior to construction.

13. PG&E is also the owner of distribution facilities throughout many of the areas within the state of California. Therefore, any plans that impact PG&E's facilities must be reviewed and approved by PG&E to ensure that no impact occurs that may endanger the safe and reliable operation of its facilities.



Comment 1-1

Attached you will find information and requirements as it relates to Gas facilities (Attachment 1) and Electric facilities (Attachment 2). Please review these in detail, as it is critical to ensure your safety and to protect PG&E's facilities and its existing rights.

Below is additional information for your review:

- 1. This plan review process does not replace the application process for PG&E gas or electric service your project may require. For these requests, please continue to work with PG&E Service Planning: [Building & Renovation](#).*
- 2. If the project being submitted is part of a larger project, please include the entire scope of your project, and not just a portion of it. PG&E's facilities are to be incorporated within any CEQA document. PG&E needs to verify that the CEQA document will identify any required future PG&E services.*
- 3. An engineering deposit may be required to review plans for a project depending on the size, scope, and location of the project and as it relates to any rearrangement or new installation of PG&E facilities.*


Any proposed uses within the PG&E fee strip and/or easement, may include a California Public Utility Commission (CPUC) Section 851 filing. This requires the CPUC to render approval for a conveyance of rights for specific uses on PG&E's fee strip or easement. PG&E will advise if the necessity to incorporate a CPUC Section 851 filing is required.

Response to Comment 1-1


The commenter summarizes PG&E's role in reviewing the project to any gas and electric facilities within the project area and provides additional information regarding the plan review process and coordination with CPUC. Thank you for the additional information. Longroad Development Company, LLC, the Applicant, will continue to coordinate with PG&E regarding interconnection design, as outlined in Section 2.7.7 of the DEIR. The comment does not address the analysis or the adequacy of the DEIR.



2.2.2 Letter 2: San Joaquin Valley Air Pollution Control District



San Joaquin Valley
AIR POLLUTION CONTROL DISTRICT



HEALTHY AIR LIVING™

November 13, 2024

Tiffany Ho
County of Merced
Community and Economic Development Department
2222 "M" Street
Merced, CA, 95340

**Project: Draft Environmental Impact Report for Conditional Use Permit 22-015 –
Zeta Solar and Battery Energy Storage System Project**

District CEQA Reference No: 20241150

Dear Ms. Ho:

The San Joaquin Valley Air Pollution Control District (District) has reviewed the Draft Environmental Impact Report (DEIR) from the County of Merced (County) for the Zeta Solar and Battery Energy Storage System Project. Per the DEIR, the project consists of the construction and operation of a photovoltaic (PV) solar power generation facility with a battery energy storage system (BESS) that would generate approximately 75 megawatts (MW) with an approximately 1,700 foot long generation tie-line on approximately 650 acres (Project). The Project is located on the east side of Pole Line Road, just south of the Mercy Springs Substation, in Merced County approximately 9 miles south of Los Banos, CA.

The District offers the following comments at this time 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://ww2.valleyair.org/media/q4nl3p0g/gamaqi.pdf>.

Samir Shelkh
Executive Director/Air Pollution Control Officer

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4800 Enterprise Way
Modesto, CA 95358-8718
Tel: (209) 557-8400 FAX: (209) 557-8475

Central Region (Main Office)
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Fresno, CA 93726-0244
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2) Health Risk Screening/Assessment

Although the DEIR discussed location of sensitive receptors in comparison to the project location and the use of lower emission construction equipment, the DEIR did not include a Health Risk Assessment (HRA) or a prioritization. The County should evaluate the risk associated with the Project for sensitive receptors (residences, businesses, hospitals, day-care facilities, health care facilities, etc.) in the area and mitigate any potentially significant risk to help limit exposure of sensitive receptors to emissions.

2-2

To determine potential health impacts on surrounding receptors (residences, businesses, hospitals, day-care facilities, health care facilities, etc.) a Prioritization and/or a HRA should be performed for the Project. These health risk determinations should quantify and characterize potential Toxic Air Contaminants (TACs) identified by the Office of Environmental Health Hazard Assessment/California Air Resources Board (OEHHA/CARB) that pose a present or potential hazard to human health.

Health risk analyses should include all potential air emissions from the project, which include emissions from construction of the project, including multi-year construction, as well as ongoing operational activities of the project. Note, two common sources of TACs can be attributed to diesel exhaust emitted from heavy-duty off-road earth moving equipment during construction, and from ongoing operation of heavy-duty on-road trucks.

Prioritization (Screening Health Risk Assessment):

A "Prioritization" is the recommended method for a conservative screening-level health risk assessment. The Prioritization should be performed using the California Air Pollution Control Officers Association's (CAPCOA) methodology. Please contact the District for assistance with performing a Prioritization analysis.

The District recommends that a more refined analysis, in the form of an HRA, be performed for any project resulting in a Prioritization score of 10 or greater. This is because the prioritization results are a conservative health risk representation, while the detailed HRA provides a more accurate health risk evaluation.

Health Risk Assessment:

Prior to performing an HRA, it is strongly recommended that land use agencies/ project proponents develop and submit for District review a health risk modeling protocol that outlines the sources and methodologies that will be used to perform the HRA.

A development project would be considered to have a potentially significant health risk if the HRA demonstrates that the health impacts would exceed the District's established risk thresholds, which can be found here:

<https://ww2.valleyair.org/permitting/ceqa/>.



2-2
(contd.)

A project with a significant health risk would trigger all feasible mitigation measures. The District strongly recommends that development projects that result in a significant health risk not be approved by the land use agency.

The District is available to review HRA protocols and analyses. For HRA submittals please provide the following information electronically to the District for review:

- HRA (AERMOD) modeling files
- HARP2 files
- Summary of emissions source locations, emissions rates, and emission factor calculations and methodologies.

For assistance, please contact the District's Technical Services Department by:

- E-Mailing inquiries to: hramodeler@valleyair.org
- Calling (559) 230-5900

3) **District Rules and Regulations**

2-3

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.

The list of rules below is neither exhaustive nor exclusive. Current District rules can be found online at: <https://ww2.valleyair.org/rules-and-planning/current-district-rules-and-regulations>. 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 (209) 557-6446.

3a) **District Rules 2010 and 2201 - Air Quality Permitting for Stationary Sources**

2-4

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



2-4
(contd.)

Operate (PTO) from the District. District Rule 2201 (New and Modified Stationary Source Review) requires that new and modified stationary sources of emissions mitigate their emissions using Best Available Control Technology (BACT).

This Project may be subject to District Rule 2010 (Permits Required) and Rule 2201 (New and Modified Stationary Source Review) and may require District permits. Prior to construction, the Project proponent should submit to the District an application for an ATC. For further information or assistance, the project proponent may contact the District's SBA Office at (209) 557-6446.

3b) District Rule 9510 - Indirect Source Review (ISR)

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

The purpose of District Rule 9510 is to reduce the growth in both NO_x and PM emissions associated with development and transportation projects from mobile and area sources; specifically, the emissions associated with the construction and subsequent operation of development projects. The ISR Rule requires developers to mitigate their NO_x 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: <https://ww2.valleyair.org/permitting/indirect-source-review-rule-overview>

The AIA application form can be found online at: <https://ww2.valleyair.org/permitting/indirect-source-review-rule-overview/forms-and-applications/>

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

2-5



3c) District Rule 4002 (National Emissions Standards for Hazardous Air Pollutants)

2-6

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: <https://ww2.valleyair.org/compliance/demolition-renovation/>

3d) District Rule 4601 (Architectural Coatings)

2-7

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: <https://ww2.valleyair.org/media/tkgjeusd/rule-4601.pdf>

3e) District Regulation VIII (Fugitive PM10 Prohibitions)

2-8

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://ww2.valleyair.org/media/fm3jrbsq/dcp-form.docx>



2-8
(contd.)



Information about District Regulation VIII can be found online at:
<https://ww2.valleyair.org/dustcontrol>

3f) Other District Rules and Regulations

2-9



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).

4) District Comment Letter

2-10



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

If you have any questions or require further information, please contact Matt Crow by e-mail at Matt.Crow@valleyair.org or by phone at (559) 230-5931.

Sincerely,

Tom Jordan
Director of Policy and Government Affairs

A handwritten signature in blue ink, appearing to read 'Mark Montelongo', is written over the typed name.

Mark Montelongo
Program Manager



Comment 2-1

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): [Guide for Assessing and Mitigating Air Quality Impacts](#)

Response to Comment 2-1

The comment notes that project criteria pollutant emissions are not expected to exceed the San Joaquin Valley Air Pollution Control District's (SJVAPCD) adopted thresholds of significance. The comment does not address the analysis or the adequacy of the DEIR.

Comment 2-2

Although the DEIR discussed location of sensitive receptors in comparison to the project location and the use of lower emission construction equipment, the DEIR did not include a Health Risk Assessment (HRA) or a prioritization. The County should evaluate the risk associated with the Project for sensitive receptors (residences, businesses, hospitals, day-care facilities, health care facilities, etc.) in the area and mitigate any potentially significant risk to help limit exposure of sensitive receptors to emissions.

To determine potential health impacts on surrounding receptors (residences, businesses, hospitals, day-care facilities, health care facilities, etc.) a Prioritization and/or a HRA should be performed for the Project. These health risk determinations should quantify and characterize potential Toxic Air Contaminants (TACs) identified by the Office of Environmental Health Hazard Assessment/California Air Resources Board (OEHHA/CARB) that pose a present or potential hazard to human health.

Health risk analyses should include all potential air emissions from the project, which include emissions from construction of the project, including multi-year construction, as well as ongoing operational activities of the project. Note, two common sources of TACs can be attributed to diesel exhaust emitted from heavy-duty off-road earth moving equipment during construction, and from ongoing operation of heavy-duty on-road trucks.

Prioritization (Screening Health Risk Assessment):

A "Prioritization" is the recommended method for a conservative screening-level health risk assessment. The Prioritization should be performed using the California Air Pollution Control Officers Association's (CAPCOA) methodology. Please contact the District for assistance with performing a Prioritization analysis.

The District recommends that a more refined analysis, in the form of an HRA, be performed for any project resulting in a Prioritization score of 10 or greater. This is because the prioritization results are a conservative health risk representation, while the detailed HRA provides a more accurate health risk evaluation.



Comments and Responses

Health Risk Assessment:

Prior to performing an HRA, it is strongly recommended that land use agencies/ project proponents develop and submit for District review a health risk modeling protocol that outlines the sources and methodologies that will be used to perform the HRA.

A development project would be considered to have a potentially significant health risk if the HRA demonstrates that the health impacts would exceed the District's established risk thresholds, which can be found here: [CEQA | Valley Air District](#).

A project with a significant health risk would trigger all feasible mitigation measures. The District strongly recommends that development projects that result in a significant health risk not be approved by the land use agency.

The District is available to review HRA protocols and analyses. For HRA submittals please provide the following information electronically to the District for review:

- *HRA (AERMOD) modeling files*
- *HARP2 files*
- *Summary of emissions source locations, emissions rates, and emission factor calculations and methodologies.*

For assistance, please contact the District's Technical Services Department by:

- *E-Mailing inquiries to: hramodeler@valleyair.org*
- *Calling (559) 230-5900*

Response to Comment 2-2

The comment requests that the EIR evaluate health risks to sensitive receptors associated with implementation of the Project.

The DEIR includes a qualitative discussion of potential health risks under Impact AQ-3. As concluded therein, risks associated with sensitive receptor exposure to criteria pollutants, asbestos, fugitive dust, Valley Fever spores, and diesel particulate matter were determined to be less-than-significant during construction and operations of the Project. A quantitative HRA was not prepared for this analysis because sensitive receptors are not located in the vicinity of the Project site. The following excerpt from the DEIR (page 4.3.31) explains why a quantitative HRA was not prepared:

“According to CARB, the concentration of DPM is a factor of distance from the source of emissions. DPM concentrations decrease dramatically within the first 500 feet of the source, with an 80 percent drop off in concentration at approximately 1,000 feet from the source (CARB 2005). There are no sensitive receptors located within 1,000 feet of the Project site as



Comments and Responses

the closest sensitive receptor is approximately 3,750 feet northwest of the Project site. At that distance, there would be no possibility of localized health risks from Project TACs, including DPM, and preparation of a quantitative health risk assessment was not warranted.”

Moreover, due to the use of cleaner construction equipment in accordance with the District’s Rule 9510, Project construction would result in reduced levels of exhaust, including diesel emissions.

For the reasons discussed above, preparation of a quantitative HRA or a prioritization are not necessary to adequately evaluate the potential for implementation of the Project to result in health risks to sensitive receptors. As shown in Tables 4.3-5 and 4.3-7 of the DEIR, the Project’s construction emissions would fall below SJVAPCD annual and daily localized thresholds. Therefore, the conclusion of the DEIR remains accurate.

Comment 2-3

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.

The list of rules below is neither exhaustive nor exclusive. Current District rules can be found online at: [Current District Rules and Regulations | Valley Air District](#). 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 (209) 557-6446.

Response to Comment 2-3

The comment summarizes the Air District’s role in issuing permits and provides a link to District rules and regulations. The comment does not address the analysis or the adequacy of the DEIR.

Comment 2-4

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

This Project may be subject to District Rule 2010 (Permits Required) and Rule 2201 (New and Modified Stationary Source Review) and may require District permits. Prior to construction, the



Comments and Responses

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 (209) 557-6446.

Response to Comment 2-4

The comment notes that the project may be subject to District Rules 2010 and 2201 – Air Quality Permitting for Stationary Sources. The County acknowledges the project may be subject to these rules. These rules were summarized in Section 4.3.1.3 of the DEIR. Section 2.5.2 of the DEIR also summarizes project approvals that would be required, including the SJVAPCD Authority to Construct and PTO. The comment does not address the analysis or the adequacy of the DEIR.

Comment 2-5

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

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

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: [Indirect Source Review Rule Overview | Valley Air District](#)

The AIA application form can be found online at: <https://ww2.valleyair.org/permitting/indirect-source-review-rule-overview/forms-and-applications/>

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

Response to Comment 2-5

The comment notes that the Project is subject to District Rule 9510 – Indirect Source Review. The County acknowledges the project may be subject to this rule. This rule was summarized in Section 4.3.1.3 of the DEIR. Section 2.5.2 of the DEIR also summarizes project approvals that would be required, including the



Comments and Responses

SJVAPCD Rule 9510, Indirect Source Review. The comment does not address the analysis or the adequacy of the DEIR.

Comment 2-6

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: <https://ww2.valleyair.org/compliance/demolition-renovation>

Response to Comment 2-6

The comment summarized District Rule 4002 – National Emissions Standards for Hazardous Air Pollutants. The County acknowledges the project may be subject to this rule. This rule was summarized in Section 4.3.1.3 of the DEIR. The comment does not address the analysis or the adequacy of the DEIR.

Comment 2-7

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: <https://ww2.valleyair.org/media/tkgjeusd/rule-4601.pdf>

Response to Comment 2-7

The comment summarized District Rule 4601 – Architectural Coatings. The County acknowledges the project may be subject to this rule. This rule was summarized in Section 4.3.1.3 of the DEIR. The comment does not address the analysis or the adequacy of the DEIR.

Comment 2-8

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



Comments and Responses

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://ww2.valleyair.org/media/fm3jrbsq/dcp-form.docx>

Information about District Regulation VIII can be found online at: <https://ww2.valleyair.org/dustcontrol/>

Response to Comment 2-8

The comment summarized District Regulation VIII – Fugitive PM10 Prohibitions. The County acknowledges the project may be subject to this rule. This rule was summarized in Section 4.3.1.3 of the DEIR. Section 2.5.2 of the DEIR also summarizes project approvals that would be required, including the SJVAPCD Regulation VIII, Dust Control Plan. The comment does not address the analysis or the adequacy of the DEIR.

Comment 2-9

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).

Response to Comment 2-9

The comment notes that the Project may be subject to other District rules and regulations, including Rule 4102 (Nuisance) and 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving, and Maintenance Operations). The County acknowledges the project may be subject to these rules. These rules were summarized in Section 4.3.1.3 of the DEIR. The comment does not address the analysis or the adequacy of the DEIR.

Comment 2-10

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

Response to Comment 2-10

The comment recommends that the comment letter be provided to the project proponent. The comment letter has been provided to the project proponent.



2.2.3 Letter 3: Defenders of Wildlife



California Program Office
P.O. Box 401, Folsom, California 95763
www.defenders.org

November 13, 2024

Tiffany Ho, Deputy Director
Merced County Community and Economic Development Department
2222 'M' Street
Merced, California 95340
Delivered via email: Tiffany.Ho@countyofmerced.com

RE: Comments on Zeta Solar and Battery Energy Storage System Project Draft
Environmental Impact Report (SCH 2023070088)

Dear Ms. Ho,

Defenders of Wildlife (Defenders) respectfully submits these comments on the draft environmental impact report (DEIR) for the Zeta Solar and Battery Energy Storage System Project (Project). Defenders is dedicated to protecting all wild animals and plants in their natural communities and has 2.1 million members and supporters in the United States, 316,000 of whom reside in California. We employ 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.

The proposed Project is a 75 megawatt (MW) solar photovoltaic (PV) development with battery storage and gen-tie located on approximately 650 acres in the unincorporated area of southwestern Merced County. The Project is approximately nine miles south of Los Banos and immediately east of Interstate 5 and the California Aqueduct. The proposed

National Headquarters | 1130 17th Street NW | Washington, DC 20036 | 202-682-9400



Comments and Responses

Project site is generally level fallow agricultural and has been out of production for ten years. This proposed Project includes:

- 75 MW solar PV generation facility
- 75 MW battery energy storage system
- Onsite project substation
- Operations and maintenance facility
- 1,700' gen-tie line

The area surrounding the proposed project site includes row crops, orchards, and seasonally managed fallow agricultural lands. The Vega Solar Project is located just to the north of the proposed Project site.

The proposed Project site and the surrounding area provide potential habitat for numerous special status species including golden eagle (*Aquila chrysaetos*), Swainson's hawk (*Buteo swainsoni*), northern harrier (*Circus hudsonius*), California horned lark (*Eremophila alpestris actia*), prairie falcon (*Falco mexicanus*), cackling (Aleutian Canada) goose (*Branta hutchinsii leucopareia*), tricolored blackbird (*Agelaius tricolor*), burrowing owl (*Athene cunicularia*), mountain plover (*Charadrius montanus*), northern harrier (*Circus hudsonius*), San Joaquin kit fox (*Vulpes macrotis mutica*), giant kangaroo rat (*Dipodomys ingens*), American badger (*Taxidea taxus*), Nelson's (San Joaquin) antelope squirrel (*Ammospermophilus nelsoni*), Crotch's bumble bee (*Bombus crotchii*), San Joaquin coachwhip (*Masticophis flagellum ruddocki*), blunt-nosed leopard lizard (*Gambelia sila*), and western spadefoot (*Spea hammondi*).^{1, 2} Burrowing owl, northern harrier, and Swainson's hawk were observed on the proposed Project site during the applicant's biological surveys.

Comments

General Comments

Permanent Conversion – Permanent Mitigation

3-1

Due to the unrelenting demand for renewable energy and the significant transmission investment required, utility-scale solar development such as the proposed Project can be reasonably expected to remain in energy production or another industrial use far beyond

¹ California Natural Diversity Database. Accessed 10/29/24. <https://wildlife.ca.gov/Data/CNDDDB/Maps-and-Data>

² California Department of Fish and Wildlife. August 2023. Zeta Solar and Battery Energy Storage System Project Notice of Preparation Comments <https://ceqanet.opr.ca.gov/2023070088/Attachment/7zTKT3>



Comments and Responses

3-1 (contd.)	↑ the Project's initial 40 years. These projects are a permanent conversion of land use and, as such, require impact analysis and mitigation that addresses the permanent nature of the impacts. Furthermore, the ownership and/or management of the proposed Project can be reasonably expected to change over time. The proposed mitigation measures, particularly those associated with project operations and management, become meaningless if their durability is not ensured.
3-2	<i>Incidental Take Permits</i> The Executive Summary and Section 2.5.2 need to include Incidental Take Permits from the California Department of Fish and Wildlife (CDFW).
3-3	<i>Wildlife Friendly Fencing</i> Consistent with CDFW's scoping comments, ³ the DEIR must include a mitigation measure requiring wildlife friendly fencing. We request the following new mitigation measure: <u>MM BIO - Wildlife Friendly Fencing</u> <u>All fencing installed on the perimeter of the solar project site will be designed to allow for the passage of San Joaquin Kit Fox, their prey, and other wildlife while impeding the passage of larger predators such as coyotes and similar species.</u> <u>Fencing shall be installed with a four (4) to six (6) inch gap from the bottom of the fencing material and shall be knuckled back to form a smooth edge. A buried apron fencing material shall extend up to two (2) feet underground from the fence around the entirety of the site. Perimeter fencing shall not be electrified. Alternate designs may also be constructed with documentation of coordination with the California Department of Fish and Wildlife (CDFW) and United States Fish and Wildlife Service (USFWS) and demonstration that comments provided by the Agencies have been considered and addressed.</u>
3-4	<i>Mitigation Measure BIO-2</i> MM BIO-2 needs to be revised to include more species for working environmental awareness and nighttime speed limits to protect wildlife. We request the following revisions: <ul style="list-style-type: none">Information on the potential special-status species and the habitats that may be found within or adjacent to the project site, including (but not limited to) American badger, burrowing owl, <u>Swainson's hawk, golden eagle, blunt-nosed leopard lizard, San Joaquin coachwhip</u>, Crotch's bumble bee, and SJKF.

³ California Department of Fish and Wildlife. August 2023. Zeta Solar and Battery Energy Storage System Project Notice of Preparation Comments <https://ceqanet.opr.ca.gov/2023070088/Attachment/7zTKT3> at pg. 15



Comments and Responses

3-4
(contd.)

- A speed limit of 20 miles per hour **and 10 miles per hour at night (sunset to sunrise)** will be enforced within all construction areas.

Species Specific Comments

Blunt-nosed Leopard Lizard

While suitable burrows are located on site, the site is overgrown with vegetation. The site has a better potential to host blunt-nosed leopard lizards with the reduction of weedy overgrowth resulting from the construction of the proposed Project. We request the DEIR incorporate CDFW's recommended mitigation measures.⁴ Specifically:

3-5

Pre-Construction Survey

MM BIO-3 must be revised to include that pre-construction surveys for blunt-nosed leopard lizard shall be conducted following CDFW's 2019 "Approved Survey Methodology for the Blunt-nosed Leopard Lizard" during the survey season immediately prior to construction.

Avoidance Buffer or Consultation with CDFW for Incidental Take Permit.

MM BIO-3 must also be revised to require either a 395 acre avoidance buffer or consultation with CDFW to discuss how to implement the Project and avoid take or acquire an incidental take permit prior to any ground disturbing activities, pursuant California Fish and Game Code section 2081 subdivision (b).

3-6

Burrowing Owl

A burrowing owl and suitable potential burrows have been observed at the proposed Project site. Burrowing owls have been listed as a candidate species under the California Endangered Species Act (CESA). As a candidate for listing, the species is temporarily afforded the same protections as a state-listed endangered or threatened species. **MM BIO-5** needs to be revised to reflect the burrowing owl's candidate status and the need for an incidental take permit from CDFW. Furthermore, the no-disturbance buffer in **MM BIO-5** does not comply with CDFW requirements for non-disturbance buffers.⁵ **MM BIO-5**

⁴ California Department of Fish and Wildlife. August 2023. Zeta Solar and Battery Energy Storage System Project Notice of Preparation Comments <https://ceqa.net.opr.ca.gov/2023070088/Attachment/7zTKT3> at pg. 9

⁵ CDFG, 2012. *Staff report on burrowing owl mitigation*. California Department of Fish and Game. March 7, 2012.



Comments and Responses

3-6
(contd.)

needs to be revised to be consistent with CDFW recommendations as follows:

Impacts to occupied burrows shall be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

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

*meters

Or, if the County would prefer to measure in feet:

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	656 feet	1,640 feet	1,640 feet
Nesting sites	Aug 16-Oct 15	656 feet	656 feet	1,640 feet
Nesting sites	Oct 16-Mar 31	164 feet	328 feet	1,640 feet

3-7

Crotch's Bumble Bee

The proposed Project site provides suitable habitat for nesting and foraging for this species. **MM BIO-3** needs to be revised to be consistent with CDFW's recommendations to avoid take as follows:

Crotch's Bumble Bee: If, at the commencement of project construction, Crotch's bumble bee is still considered a candidate species or has been listed as threatened or endangered under CESA, the project will implement the following measures to avoid, minimize, and offset project impacts to the species:

- A qualified biologist will conduct a preconstruction survey for Crotch's bumble bee and nests in project areas with suitable nesting habitat prior to initial ground-disturbing activities, such as staging, mowing, or vegetation clearing. There will be multiple surveys during the nesting season. The preconstruction surveys shall be no more than 10 days prior to commencement of ground-disturbing activities. The surveys ~~can~~ **shall** be phased with project build-out. The purpose of the surveys will be to identify active nest colonies inside of permanent and temporary impact areas.



Comments and Responses

3-7
(contd.)

- If active Crotch's bumble bee nests are observed within the project site or within a 50-foot buffer surrounding the site, an appropriate no-disturbance buffer (as determined by a qualified biologist) will be established around the nest to reduce the risk of disturbance or accidental take. The buffer will provide at least 50 feet of ~~clearance~~ **no-disturbance** around active nest entrances. (Note: inaccessible areas outside of the project site can be surveyed using binoculars from the project edge or from public roads.)
- If establishment of a no-disturbance buffer is feasible, construction activities will not occur within the buffer until a qualified biologist determines that the colony is no longer active (i.e., no Crotch's bumble bees are seen flying in or out of the nest for three consecutive days, indicating the colony has completed its nesting season and the next season's queens have dispersed from the colony). Once the nest has been determined to be inactive, construction activities within the no-disturbance buffer(s) will be allowed to resume.
- If avoidance of a no-disturbance buffer is not feasible, the lead biologist will consult with CDFW regarding potential encroachment into the no-disturbance buffer with other measures implemented. Work ~~would~~ **shall** not begin in the no-disturbance buffer without CDFW approval.
- If avoidance of the nest is not feasible, the lead biologist will consult with CDFW regarding the potential for project activities to result in take of the Crotch's bumble bee and will comply with all avoidance, minimization, and compensatory mitigation requirements set forth in any incidental take permit issued for the project by CDFW.

3-8

Golden Eagle

Golden eagles are a California fully protected species. Per Senate Bill 147, California's statute for fully protected species requires that take be avoided to the maximum extent possible. If take cannot be avoided to the maximum extent possible, then a project applicant must fully mitigate that take, ensure that all further measures necessary to satisfy the conservation standard of Section 2805(d) of the Fish and Game Code are in place, and provide for monitoring and adaptive management. Golden eagles have the potential to forage on the proposed Project site. We request **MM BIO-3** be revised as follows:

Golden Eagle

A qualified biologist will conduct pre-construction surveys to determine the presence of golden eagles at or within 0.5 miles of the proposed Project site. If



Comments and Responses

3-8
(contd.)

golden eagles are present, CDFW shall be consulted for implementation of take avoidance measures. If reasonable measures are not feasible, an incidental take will be required.

3-9

San Joaquin Kit Fox

San Joaquin kit foxes have been documented within the proposed Project site and they have a high potential to den or forage within the proposed Project site.⁶ We request **MM BIO-3** be revised to include the following:

- If the no-disturbance buffers outlined in the USFWS Protocol cannot be maintained, then CDFW shall be consulted to determine if the Project can avoid take. If take cannot be avoided, take authorization through the acquisition of an incidental take permit, pursuant to Fish and Game Code section 2081 subdivision (b), is necessary to comply with CESA.

3-10

Swainson's Foraging Habitat Mitigation

Swainson's hawks were observed foraging and courting on site during biological surveys for the proposed Project in 2023. In addition to the avoidance and minimization measures prescribed in MM BIO-4, we request a new mitigation measure be added for compensatory mitigation for the loss of foraging habitat, in consultation with CDFW and per their "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" to reduce impacts to foraging habitat to a less than significant level. The Swainson's foraging habitat mitigation must include measures to provide permanent durability.

New MM BIO – Swainson's Hawk Foraging Habitat

CDFW shall be consulted to determine the required compensatory mitigation for loss of foraging habitat. Habitat loss shall be mitigated within 10 miles of known nest sites.

- Habitat management lands shall provide permanent protection of the foraging and nesting habitat on the Project site with a perpetual conservation easement (CA Civil Code §815 et seq.) approved by CDFW and held by a CDFW-approved qualified conservation organization.
- A fully funded endowment to pay for the management, enforcement, and defense of the conservation easement must be provided to the easement holder.

⁶ California Department of Fish and Wildlife. August 2023. Zeta Solar and Battery Energy Storage System Project Notice of Preparation Comments <https://ceqanet.opr.ca.gov/2023070088/Attachment/7zTKT3> at pg.



Comments and Responses

3-11

Lake Effect

The California Aqueduct is located 300 feet from the Project and runs along the entire southwest side. The Los Banos Reservoir and the San Luis Reservoir are within 15 miles of the Project. Contrary to the DEIR's assertion, there is a higher likelihood for migratory birds to be attracted to the area due to the proposed Project's proximity to the aqueduct and the reservoirs. Studies indicate various species of birds may be attracted to the vast arrays of PV solar panels due to the "lake effect" caused by reflected polarized light.⁷ Birds mistake the panels for water and can be injured or killed due to collisions with Project facilities. We appreciate the vertical positioning protocol for the off hours as required by MM BIO-7. However, it does not mitigate the potential impact during operating hours when sunlight would be reflecting off the panels; thus, bird collisions and entrapment remain a significant adverse impact.

3-12

Cumulative Impact Analysis

In response to the retirement of agricultural lands, this portion of the San Joaquin Valley is experiencing significant solar development. Although we encourage the development of renewable energy projects on retired farmland in the San Joaquin Valley, it is causing significant and unavoidable adverse cumulative impacts on wildlife and their habitats. The DEIR dismisses the potential for significant impacts due to the mitigation measures proposed yet fails to consider the cumulative loss of habitat for the suite of special status species that rely on this landscape including San Joaquin kit fox, American badger, burrowing owl, golden eagle, Swainson's hawk, northern harrier, loggerhead shrike, and Crotch's bumble bee. The DEIR should be revised to include a comprehensive cumulative impacts analysis for the loss of habitat for these species.

Furthermore, the proposed mitigation measures do not ensure future habitat connectivity for wildlife. The DEIR notes a 0.25 mile wide area between the proposed Project and the existing Vega Solar Project. Importantly, this area is immediately adjacent to a 115 acre parcel owned by CDFW - Assessor's Parcel Number (APN) 090-008-028. Together, these two areas would provide valuable habitat connectivity for wildlife. However, the undeveloped northern portion of the proposed Project site parcel cannot be relied upon to provide habitat connectivity for wildlife until and unless there is permanent protection of this passage so it remains available and suitable for wildlife passage. We request the following new mitigation measure:

⁷ Upton, J. 2014. Solar farms threaten birds. Scientific American.
<https://www.scientificamerican.com/article/solar-farms-threaten-birds/>



Comments and Responses

3-12
(contd.)

MMBIO – Wildlife Connectivity

The 0.25 mile portion of Assessor Parcel Number (APN) 090-130-060, located between the northern boundary of the proposed project and the southern boundary of the Vega Solar Project, shall be permanently protected and managed to allow wildlife passage and connectivity. The connectivity corridor shall be permanently protected by a perpetual conservation easement (CA Civil Code §815 et seq.) or other instrument approved by CDFW and held by a CDFW-approved qualified conservation organization. A fully funded endowment to pay for the management, enforcement, and defense of the conservation easement must be provided to the easement holder.

3-13

Project Alternatives

We applaud the consideration of a distributed power alternative. Looking forward, we urge the County to pursue front of the meter distributed solar generation (e.g., utility scale rooftop and parking lot solar at commercial and industrial sites such as warehouses and processing facilities) that serves the local distribution system and will become an integral part of the energy supply serving local communities in the San Joaquin Valley.

Conclusion

Thank you for consideration of our comments. We look forward to reviewing the Final EIR. Please contact Pamela Flick at (916) 442-5746 or pflick@defenders.org or Kate Kelly at (530) 902-1615 or kate@kgconsulting.net with any questions.

Sincerely,

Pamela Flick
California Program Director

Kate Kelly
Consultant



Comment 3-1

Permanent Conversion – Permanent Mitigation

Due to the unrelenting demand for renewable energy and the significant transmission investment required, utility-scale solar development such as the proposed Project can be reasonably expected to remain in energy production or another industrial use far beyond the Project's initial 40 years. These projects are a permanent conversion of land use and, as such, require impact analysis and mitigation that addresses the permanent nature of the impacts. Furthermore, the ownership and/or management of the proposed Project can be reasonably expected to change over time. The proposed mitigation measures, particularly those associated with project operations and management, become meaningless if their durability is not ensured.

Response to Comment 3-1

The commenter states that renewable projects should be considered a permanent conversion of land use because they can remain in energy production beyond the Project's initial 40 years. The commenter asserts that mitigation measures are difficult to track and ensure implementation beyond 40 years.

CEQA requires consideration of the direct and reasonably foreseeable indirect impacts of a project, and California Code PRC 21159(a)(1) requires that mitigation measures be reasonably foreseeable, feasible, and enforceable by a public agency. Merced County will be responsible to ensure that the Mitigation Monitoring or Reporting Program, prepared for the Project per Section 15097 of the CEQA Guidelines, is implemented and enforced. The scope of the impact analysis and proposed mitigation measures in this document focus on project construction, operation, and decommissioning. Any future action beyond decommissioning is not reasonably foreseeable at this time and would be outside the scope of this analysis and proposed mitigation. Any action involving a change in ownership is not reasonably foreseeable. In addition, as described in Section 4.4 of the DEIR, the majority of the direct and permanent impacts resulting from this project would be experienced during construction rather than during operation; however, the mitigation measures apply to all phases of the project.

Comment 3-2

Incidental Take Permits

The Executive Summary and Section 2.5.2 need to include Incidental Take Permits from the California Department of Fish and Wildlife (CDFW).

Response to Comment 3-2

The commenter requests that the Executive Summary and Section 2.5.2 of the DEIR include reference to the potential for an Incidental Take Permit. This requested change has been made to pages ES-3 and 2-10 of the DEIR, as shown below and in Chapter 3.0.



Comments and Responses

Project Approvals

The Applicant submitted an application to Merced County for a Conditional Use Permit (CUP) (Application No. CUP22-015) to construct, operate, maintain, and decommission the Project. Additional permits and approvals may be required for the Project, including those listed below.

State

- California Public Utilities Commission authorization under General Order 131-D
- California State Water Resources Control Board, National Pollutant Discharge Elimination System (NPDES) Construction General Permit
- California Department of Fish and Wildlife, Incidental Take Permit

Comment 3-3

Wildlife Friendly Fencing

Consistent with CDFW's scoping comments, the DEIR must include a mitigation measure requiring wildlife friendly fencing. We request the following new mitigation measure:

MM BIO - Wildlife Friendly Fencing

All fencing installed on the perimeter of the solar project site will be designed to allow for the passage of San Joaquin Kit Fox, their prey, and other wildlife while impeding the passage of larger predators such as coyotes and similar species. Fencing shall be installed with a four (4) to six (6) inch gap from the bottom of the fencing material and shall be knuckled back to form a smooth edge. A buried apron fencing material shall extend up to two (2) feet underground from the fence around the entirety of the site. Perimeter fencing shall not be electrified. Alternate designs may also be constructed with documentation of coordination with the California Department of Fish and Wildlife (CDFW) and United States Fish and Wildlife Service (USFWS) and demonstration that comments provided by the Agencies have been considered and addressed.

Response to Comment 3-3

The commenter requests incorporation of wildlife-friendly fencing design. The project description (Section 2.7.13) has been amended to include the implementation of wildlife-friendly perimeter fencing; however, this change is not necessary to reduce significant impacts to wildlife because the project site is not currently serving as habitat for SJKF, is not considered an important movement corridor, and is subject to regular disturbance that reduces its suitability as habitat for this species. As stated in Section 4.4.2.6 of the DEIR, camera surveys for SJKF conducted in 2022 and 2023 showed no SJKF individuals or signs on the project site. In addition, the project site sits in a highly fragmented habitat area with active agricultural parcels and the California Aqueduct nearby. See also Response to CDFW Comment 5-1.



Comments and Responses

Comment 3-4

Mitigation Measure BIO-2

MM BIO-2 needs to be revised to include more species for working environmental awareness and nighttime speed limits to protect wildlife. We request the following revisions:

- *Information on the potential special-status species and the habitats that may be found within or adjacent to the project site, including (but not limited to) American badger, burrowing owl, Swainson's hawk, golden eagle, blunt-nosed leopard lizard, San Joaquin coachwhip, Crotch's bumble bee, and SJKF.*
- *A speed limit of 20 miles per hour and 10 miles per hour at night (sunset to sunrise) will be enforced within all construction areas.*

Response to Comment 3-4

The commenter requests revisions to MM BIO-2 to include additional species in the worker environmental awareness training, such as Swainson's hawk (SWHA), golden eagle, blunt-nosed leopard lizard, and San Joaquin coachwhip. The commenter also requests the addition of limitations for nighttime speed limits in MM BIO-2. MM BIO-2 has been updated on page 4.4.31 of the DEIR to include these recommendations (see below and Chapter 3.0); however, these changes are not necessary to reduce significant impacts to the named species.

As further described in Response to Comment 3-10, while the DEIR concluded the Project site provides moderately suitable foraging habitat for SWHA, the Project site represents 0.3 percent of the available suitable foraging habitat for SWHA in the region, which, if lost, would be a negligible impact to the species. Impacts on SWHA foraging habitat would be reduced to less-than-significant with implementation of MM BIO-2.

The Project site is not considered nesting habitat for golden eagle, nor is there nesting habitat near the site. The site represents marginal foraging habitat for this species. See also Response to Comment 3-8: in which the Applicant has committed to performing preconstruction surveys for all nesting birds, during which any incidental observations of nesting golden eagle will be responded to according to MM BIO-4.

See also Response to Comment 3-5, as described in the DEIR Section 4.4: the Project site is not currently supporting blunt-nosed leopard lizard. The Applicant has committed to performing preconstruction surveys for several types of wildlife with habitat requirements similar to blunt-nosed leopard lizard, and any incidental observations of this species will be responded to according to MM BIO-3.

For San Joaquin coachwhip, as summarized in Section 4.4.3.3 of the DEIR, there is potential for this species to use burrows onsite for cover or overwintering; however, no individuals or other signs of this species were observed during surveys. Furthermore, this species is sensitive to disturbance and does not persist in cultivated areas (Thomson et al. 2016). Given the historical agricultural use of the Project site



Comments and Responses

and surrounding areas, and the active sheep and goat grazing that occurs onsite, it is unlikely this species would occur on the Project site. MM BIO-2 has been revised as shown below.

MM BIO-2: General Measures for the Avoidance and Protection of Biological Resources.

During construction, operation and maintenance, and decommissioning of the facility, the operator or contractor will implement the following general avoidance and protective measures to protect special-status wildlife species:

- ...All personnel entering the project site will attend worker environmental awareness training provided by the lead biologist or their designee before beginning work on-site. The primary worker environmental awareness training will occur before construction activities begin and as-needed thereafter. The worker environmental awareness training will include the following topics:
- Information on the potential special-status species and the habitats that may be found within or adjacent to the project site, including (but not limited to) American badger, burrowing owl, Swainson's hawk, golden eagle, blunt-nosed leopard lizard, San Joaquin coachwhip, Crotch's bumble bee, and SJKF.
- ...A daytime speed limit of 20 miles per hour and nighttime (sunset to sunrise) speed limit of 10 miles per hour will be enforced within all construction areas...

Comment 3-5

Blunt-nosed Leopard Lizard

While suitable burrows are located on site, the site is overgrown with vegetation. The site has a better potential to host blunt-nosed leopard lizards with the reduction of weedy overgrowth resulting from the construction of the proposed Project. We request the DEIR incorporate CDFW's recommended mitigation measures. Specifically:

Pre-Construction Survey

MM BIO-3 must be revised to include that pre-construction surveys for blunt-nosed leopard lizard shall be conducted following CDFW's 2019 "Approved Survey Methodology for the Blunt-nosed Leopard Lizard" during the survey season immediately prior to construction.

Avoidance Buffer or Consultation with CDFW for Incidental Take Permit.

MM BIO-3 must also be revised to require either a 395-acre avoidance buffer or consultation with CDFW to discuss how to implement the Project and avoid take or acquire an incidental take permit prior to any ground disturbing activities, pursuant California Fish and Game Code section 2081 subdivision (b).



Comments and Responses

Response to Comment 3-5

The commenter requests additional mitigation requirements for blunt-nosed leopard lizard. As described in the DEIR Section 4.4, the Project site is not currently supporting blunt-nosed leopard lizard, and this species has a low potential to occur onsite. The most recent documented occurrences of this species within five miles of the Project site are more than 25 years old, and the Project site is at the edge of the known range for this species. The Applicant has committed to performing preconstruction surveys for several types of wildlife with habitat requirements similar to this species, and any incidental observations of blunt-nosed leopard lizard will be responded to according to MM BIO-3. Specifically, following detection, the qualified biologist will implement a no-disturbance buffer around the individual or burrow and contact CDFW and/or USFWS to determine appropriate next steps. MM BIO-2 was also amended per Response to Comment 3-4 to acknowledge this species be included during the worker environmental awareness training. No further mitigation is necessary. This impact has been adequately addressed in the DEIR.

Comment 3-6

Burrowing Owl

A burrowing owl and suitable potential burrows have been observed at the proposed Project site. Burrowing owls have been listed as a candidate species under the California Endangered Species Act (CESA). As a candidate for listing, the species is temporarily afforded the same protections as a state-listed endangered or threatened species. MM BIO-5 needs to be revised to reflect the burrowing owl's candidate status and the need for an incidental take permit from CDFW. Furthermore, the no-disturbance buffer in MM BIO- 5 does not comply with CDFW requirements for non-disturbance buffers. MM BIO-5 needs to be revised to be consistent with CDFW recommendations as follows:

Impacts to occupied burrows shall be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

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

**meters*



Comments and Responses

Or, if the County would prefer to measure in feet:

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	656 feet	1,640 feet	1,640 feet
Nesting sites	Aug 16-Oct 15	656 feet	656 feet	1,640 feet
Nesting sites	Oct 16-Mar 31	164 feet	328 feet	1,640 feet

Response to Comment 3-6

Section 4.4.3.3 of the DEIR (page 4.4.25) has been revised to acknowledge the candidate listing status of BUOW (see below and Chapter 3.0). MM BIO-3 has been updated, as shown below, to include a larger, year-round buffer for active burrows and receipt of an Incidental Take Permit from CDFW in the event take avoidance cannot be achieved. See also Response to Comment 5-3.

Burrowing Owl

On March 5, 2024, a petition was submitted to the California Fish and Game Commission to list burrowing owl as either endangered or threatened under CESA. CDFW determined BUOW to be a candidate for potential listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice Register (Notice Register) on October 25, 2024. Mitigation Measure BIO-5 includes consultation with CDFW if, at the commencement of project construction, burrowing owl is listed as candidate, threatened, or endangered under CESA.

Comment 3-7

Crotch's Bumble Bee

The proposed Project site provides suitable habitat for nesting and foraging for this species. MM BIO-3 needs to be revised to be consistent with CDFW's recommendations to avoid take as follows:

Crotch's Bumble Bee: If, at the commencement of project construction, Crotch's bumble bee is still considered a candidate species or has been listed as threatened or endangered under CESA, the project will implement the following measures to avoid, minimize, and offset project impacts to the species:

- A qualified biologist will conduct a preconstruction survey for Crotch's bumble bee and nests in project areas with suitable nesting habitat prior to initial ground-disturbing activities, such as staging, mowing, or vegetation clearing. There will be multiple surveys during the nesting season. The preconstruction surveys shall be no more than 10 days prior to commencement of ground-disturbing activities. The surveys ~~can~~ shall be phased with project build-out. The purpose of the surveys will be to identify active nest colonies inside of permanent and temporary impact areas.*



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- *If active Crotch's bumble bee nests are observed within the project site or within a 50-foot buffer surrounding the site, an appropriate no-disturbance buffer (as determined by a qualified biologist) will be established around the nest to reduce the risk of disturbance or accidental take. The buffer will provide at least 50 feet of ~~clearance~~ no-disturbance around active nest entrances. (Note: inaccessible areas outside of the project site can be surveyed using binoculars from the project edge or from public roads.)*
- *If establishment of a no-disturbance buffer is feasible, construction activities will not occur within the buffer until a qualified biologist determines that the colony is no longer active (i.e., no Crotch's bumble bees are seen flying in or out of the nest for three consecutive days, indicating the colony has completed its nesting season and the next season's queens have dispersed from the colony). Once the nest has been determined to be inactive, construction activities within the no- disturbance buffer(s) will be allowed to resume.*
- *If avoidance of a no-disturbance buffer is not feasible, the lead biologist will consult with CDFW regarding potential encroachment into the no-disturbance buffer with other measures implemented. Work ~~would~~ shall not begin in the no- disturbance buffer without CDFW approval.*
- *If avoidance of the nest is not feasible, the lead biologist will consult with CDFW regarding the potential for project activities to result in take of the Crotch's bumble bee and will comply with all avoidance, minimization, and compensatory mitigation requirements set forth in any incidental take permit issued for the project by CDFW.*

Response to Comment 3-7

The commenter recommends revisions to MM BIO-3 to be consistent with CDFW Comment 5-4. This comment recommends the Crotch's bumble bee surveys be conducted during the blooming period immediately prior to construction, following the full CDFW protocol. The Response to Comment 5-4 includes revisions to MM BIO-3 to incorporate CDFW's recommendations to conduct one round of preconstruction surveys during the blooming season and to consult for take avoidance as appropriate.

Comment 3-8

Golden Eagle

Golden eagles are a California fully protected species. Per Senate Bill 147, California's statute for fully protected species requires that take be avoided to the maximum extent possible. If take cannot be avoided to the maximum extent possible, then a project applicant must fully mitigate that take, ensure that all further measures necessary to satisfy the conservation standard of Section 2805(d) of the Fish and Game Code are in place, and provide for monitoring and adaptive management. Golden eagles have the potential to forage on the proposed Project site. We request MM BIO-3 be revised as follows:



Comments and Responses

Golden Eagle

A qualified biologist will conduct pre-construction surveys to determine the presence of golden eagles at or within 0.5 miles of the proposed Project site. If golden eagles are present, CDFW shall be consulted for implementation of take avoidance measures. If reasonable measures are not feasible, an incidental take will be required.

Response to Comment 3-8

The commenter requests golden eagle considerations be added to MM BIO-3. As described in the DEIR Section 4.4, the Project site is not considered nesting habitat for golden eagle, nor is there nesting habitat near the site. The site represents marginal foraging habitat for this species. The Applicant has committed to performing preconstruction surveys for all nesting birds, and any incidental observations of nesting golden eagle will be responded to according to MM BIO-4. As such, MM BIO-4 was updated to specify a no-disturbance buffer distance for golden eagle. Additionally, as summarized in Response to Comment 3-4, a clarification was made to MM BIO-2 to include golden eagle in the worker environmental awareness training.

Comment 3-9

San Joaquin Kit Fox

San Joaquin kit foxes have been documented within the proposed Project site and they have a high potential to den or forage within the proposed Project site. We request MM BIO-3 be revised to include the following:

- If the no-disturbance buffers outlined in the USFWS Protocol cannot be maintained, then CDFW shall be consulted to determine if the Project can avoid take. If take cannot be avoided, take authorization through the acquisition of an incidental take permit, pursuant to Fish and Game Code section 2081 subdivision (b), is necessary to comply with CESA.

Response to Comment 3-9

The commenter requests MM BIO-3 include revisions regarding SJKF. MM BIO-3 has been updated to reflect the need to consult with CDFW as well as USFWS in the event USFWS protocol no-disturbance buffers cannot be maintained. See also Response to Comment 5-1.

Comment 3-10

Swainson's Foraging Habitat Mitigation

Swainson's hawks were observed foraging and courting on site during biological surveys for the proposed Project in 2023. In addition to the avoidance and minimization measures prescribed in MM BIO-4, we request a new mitigation measure be added for compensatory mitigation for the loss of foraging habitat, in consultation with CDFW and per their "Staff Report Regarding Mitigation for



Comments and Responses

Impacts to Swainson's Hawks" to reduce impacts to foraging habitat to a less than significant level. The Swainson's foraging habitat mitigation must include measures to provide permanent durability.

New MM BIO – Swainson's Hawk Foraging Habitat

CDFW shall be consulted to determine the required compensatory mitigation for loss of foraging habitat. Habitat loss shall be mitigated within 10 miles of known nest sites.

- *Habitat management lands shall provide permanent protection of the foraging and nesting habitat on the Project site with a perpetual conservation easement (CA Civil Code §815 et seq.) approved by CDFW and held by a CDFW-approved qualified conservation organization.*
- *A fully funded endowment to pay for the management, enforcement, and defense of the conservation easement must be provided to the easement holder.*

Response to Comment 3-10

The commenter requests a new mitigation measure to be included regarding SWHA foraging habitat in addition to MM BIO-4. As described in the DEIR Section 4.4, the Project site provides moderately suitable foraging habitat for SWHA and the long-term reduction in the availability of foraging habitat on the Project site could be considered a potentially significant impact. As a result, as part of the biological analyses conducted in support of the DEIR for this project, biologists conducted a desktop review of suitable foraging habitat within 10 miles of the Project site. The study concluded that the Project site represents 0.3 percent of the available suitable foraging habitat for SWHA in the region, which, if lost, would be a negligible impact to the species. In addition, MM BIO-2 requires the site to be reseeded following construction with low-growing grasses and forbs. Since SWHA foraging habitat suitability is primarily driven by accessibility of prey from the air, maintaining the site with low-stature vegetation would continue to allow SWHA to forage onsite. No further mitigation is required as potential impacts to SWHA have been adequately addressed.

Comment 3-11

Lake Effect

The California Aqueduct is located 300 feet from the Project and runs along the entire southwest side. The Los Banos Reservoir and the San Luis Reservoir are within 15 miles of the Project. Contrary to the DEIR's assertion, there is a higher likelihood for migratory birds to be attracted to the area due to the proposed Project's proximity to the aqueduct and the reservoirs. Studies indicate various species of birds may be attracted to the vast arrays of PV solar panels due to the "lake effect" caused by reflected polarized light. Birds mistake the panels for water and can be injured or killed due to collisions with Project facilities. We appreciate the vertical positioning protocol for the off hours as required by MM BIO-7. However, it does not mitigate the potential impact during operating hours when sunlight would be reflecting off the panels; thus, bird collisions and entrapment remain a significant adverse impact.



Response to Comment 3-11

The commenter requests additional analysis to be considered related to “lake effect” conditions caused by reflected polarized light from PV solar panels. As noted in Section 4.4.3.3 of the DEIR, because the polarization of solar PV panels mimics that of water, large solar PV installations may attract birds that can become injured, stranded, or killed upon landing. This phenomenon is referred to as “lake effect” and is, at present, a hypothesis that remains unsupported by empirical research, though it has been the subject of numerous recent studies.

For example, a collection of 13 fatality monitoring studies at PV solar facilities in three bird conservation regions in California and Nevada have shown the highest percentage of fatalities across all studies were common species, including mourning dove, horned lark, house finch, and western meadowlark (Kosciuch et al., 2020). One federally endangered Yuma Ridgway’s rail was found on the Desert Sunlight Solar Project in 2013 (Kagan 2014); however, this project uses older PV technology with fixed-tilt panels without anti-reflective coating which may be more likely to mimic water. More modern solar PV facilities, such as those proposed for the Zeta Solar Project, use single-axis tracking technology which allows the panels to tilt towards the angle of the sun, and includes anti-reflective coatings that reduce reflected light, thus reducing panels’ appearance as water.

A recent study by the California Energy Commission (2024) concluded that the lake effect may hold for some species in some landscapes, but that it cannot be readily generalized to all aquatic birds in all landscape contexts. Therefore, it is unlikely that all aquatic birds would be attracted to the panels at all times (Kosciuch et al. 2021). In contrast, structures that have repeatedly been empirically demonstrated to result in elevated collision risk include tall buildings, communication towers, wind turbines, or concentrating solar thermal towers (Walston et al., 2016; Erickson et al., 2001). These types of structures would not be required for this project.

In addition, implementation of proposed mitigation would further reduce the likelihood of avian collision with project components. MM BIO-6 would reduce bird electrocutions and collisions by following Avian Power Line Interaction Committee guidance for transmission line and electrical component design. MM BIO-7 would reduce bird collisions with the photovoltaic array by requiring panels to be placed in a nearly vertical position at the end of each day. MM BIO-8 would reduce impacts on birds from nighttime lighting during operation because it would require lighting to be downward facing, motion or manually activated, or shielded to focus illumination in the immediate area.

As a result, impacts to migratory birds resulting from the potential to collide with project infrastructure, whether or not related to the phenomenon of lake effect, would be reduced to less-than-significant with mitigation. No further mitigation is required.



Comment 3-12

Cumulative Impact Analysis

In response to the retirement of agricultural lands, this portion of the San Joaquin Valley is experiencing significant solar development. Although we encourage the development of renewable energy projects on retired farmland in the San Joaquin Valley, it is causing significant and unavoidable adverse cumulative impacts on wildlife and their habitats. The DEIR dismisses the potential for significant impacts due to the mitigation measures proposed yet fails to consider the cumulative loss of habitat for the suite of special status species that rely on this landscape including San Joaquin kit fox, American badger, burrowing owl, golden eagle, Swainson's hawk, northern harrier, loggerhead shrike, and Crotch's bumble bee. The DEIR should be revised to include a comprehensive cumulative impacts analysis for the loss of habitat for these species.

Furthermore, the proposed mitigation measures do not ensure future habitat connectivity for wildlife. The DEIR notes a 0.25 mile wide area between the proposed Project and the existing Vega Solar Project. Importantly, this area is immediately adjacent to a 115 acre parcel owned by CDFW - Assessor's Parcel Number (APN) 090-008-028. Together, these two areas would provide valuable habitat connectivity for wildlife. However, the undeveloped northern portion of the proposed Project site parcel cannot be relied upon to provide habitat connectivity for wildlife until and unless there is permanent protection of this passage so it remains available and suitable for wildlife passage. We request the following new mitigation measure:

MM BIO – Wildlife Connectivity

The 0.25 mile portion of Assessor Parcel Number (APN) 090-130-060, located between the northern boundary of the proposed project and the southern boundary of the Vega Solar Project, shall be permanently protected and managed to allow wildlife passage and connectivity. The connectivity corridor shall be permanently protected by a perpetual conservation easement (CA Civil Code §815 et seq.) or other instrument approved by CDFW and held by a CDFW-approved qualified conservation organization. A fully funded endowment to pay for the management, enforcement, and defense of the conservation easement must be provided to the easement holder.

Response to Comment 3-12

Section 4.4.3.5 of the DEIR includes a comprehensive analysis of potential cumulative impacts to San Joaquin Valley species and wildlife movement corridors. It states that development of cumulative projects could result in direct impacts to special-status plant and wildlife species; construction, operational, and decommissioning disturbances; and/or special-status species' habitat conversion. However, the Project would have less-than-significant impacts with mitigation to special-status wildlife species, nesting and migratory birds, and wildlife corridors. As with the Project, cumulative projects would also be required to avoid and/or mitigate impacts to special-status species and habitats in accordance with County, CDFW, and USFWS requirements. Cumulative impacts would therefore be less-than-significant.



Comments and Responses

In addition, Section 4.4.3.5 of the DEIR states that, when considered in combination with other existing and reasonably foreseeable projects, the Project would have the potential to further reduce local wildlife movement. However, wildlife movement within the Project site is already limited due to historical agricultural practices and fragmented habitat in the surrounding area. The Project was sited to preserve a 0.25-mile corridor north of the Project site for wildlife movement. Although not necessary to mitigate potentially significant impacts, the project description (Section 2.7.13) has also been revised to include the installation of wildlife-friendly fencing to maintain wildlife movement across the Project site during operations. This would further reduce the project's less-than-significant impacts on wildlife movement. See also Response to Comment 5-1. No further mitigation is required.

Comment 3-13


We applaud the consideration of a distributed power alternative. Looking forward, we urge the County to pursue front of the meter distributed solar generation (e.g., utility scale rooftop and parking lot solar at commercial and industrial sites such as warehouses and processing facilities) that serves the local distribution system and will become an integral part of the energy supply serving local communities in the San Joaquin Valley.

Response to Comment 3-13

This comment is noted. The DEIR's analysis of alternatives is adequate and nothing further is required to ensure compliance with CEQA.



2.2.4 Letter 4: San Luis Water District

<p>Bill Diedrich <i>President</i></p> <p>Mitch Coit <i>Vice President</i></p> <p>Mike Wood <i>Tax Assessor/Collector</i></p>		<p>Tom Teixeira <i>Secretary/Treasurer</i></p> <p>Jon E. Maring <i>Director</i></p> <p>Lon Martin <i>General Manager</i></p>
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Transmitted via e-mail to Tiffany.Ho@countyofmerced.com

November 18, 2024

Ms. Tiffany Ho, Deputy Director of Planning
Merced County Community and Economic Development Department
2222 M Street
Merced, CA 95340

**Subject: Conditional Use Permit Application No. CUP22-015
Zeta Solar and Battery Energy Storage System Project
Comments on the Draft Environmental Impact Report**

Dear Ms. Ho:

The San Luis Water District ("District") is pleased to provide the following comments on the Zeta Solar and Battery Energy Storage System Project Draft Environmental Impact Report ("Project DEIR") for Conditional Use Permit ("CUP") Application No. CUP-22-015. For reference, the CUP application submitted by Longroad Development Company, LLC ("Applicant") seeks authorization to construct a facility that would generate up to approximately 75 megawatts (MW) of renewable energy and include an energy storage capacity of up to 8 hours of the 75 MW generation capacity, hereinafter "Project". The District's comments are as follows:

Groundwater Sustainability. The EIR states, "...project water demand would be potentially sourced from groundwater produced from the Delta-Mendota Subbasin, Merced Subbasin, or the North San Benito Subbasin...". The Delta-Mendota Subbasin has determined that its subbasin is in a condition of overdraft. Agencies such as the District have been mandated to reduce groundwater extractions from within the Delta-Mendota Subbasin. It is not acceptable to the District to allow the project to extract groundwater from within the Delta-Mendota Subbasin to the detriment of other groundwater users within the District or within the subbasin that will be required to curtail their groundwater extractions further to make the groundwater available for the Project. The District requests that a condition be added to the CUP to require that the Project obtain a letter from the Central-Delta Mendota Groundwater Sustainability Agency ("CDMGSA") stating that the proposed extraction is in compliance with all CDMGSA rules, regulations, policies, and practices.

Water Supply. The District has adopted policies restricting new municipal and industrial water services. The District's water service contract and associated shortage policies restrict the District's allocation of municipal and industrial water during drought periods. As a result, existing municipal and industrial water users do not receive a sufficient supply. Any new uses that are develop further reduce the already insufficient water supply received by this class of users. To facilitate energy projects that require little water and avoid impacts to the District's existing municipal and industrial water users, the District recently adopted Rule 24, Allocation Eligibility for Energy Generation and/or Energy Storage Project Parcel. The District requests a condition be added to the CUP to require that the landowner for the Project enter into a Water Management

Office: 1015 Sixth Street • Mail: P.O. Box 2135 Los Banos, CA 93635 • Telephone: (209) 826-4043 • Fax: (209) 826-0524



Comments and Responses

Ms. Tiffany Ho, Deputy Director of Planning
Conditional Use Permit Application No. CUP22-015 (Zeta Solar and Battery Energy Storage Project)
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4.2
(contd.) Agreement or the Project otherwise demonstrate compliance with the conditions provided in San Luis Water District Rule 24.

4.3 Kaljjan Pipeline (Lateral 1). The District has an easement for a pipeline from the Kaljjan Pumping Plant apparently located within the Project Site Boundary as shown by Figure 2-2 in the EIR. The District requests that conditions be added to the CUP to require: (1) the Project shall not encroach upon any easement held by the San Luis Water District; (2) in order to facilitate any pipeline repairs or replacement work, the Project shall not construct any facilities within 50 feet of any easement held by San Luis Water District; and (3) no crossing of the San Luis Water District easement is allowed unless the Project executes a Limited Crossing Consent, or other similar agreement, in a form approved by the San Luis Water District.

4.4 Non-Irrigation Covenant. The land contained within the Project Site Boundary is drainage-impacted. Drainage-impacted lands have shallow clay layer(s) that restrict the downward vertical movement of water that is percolating through the soil profile. As a result, water that is applied to the drainage-impacted lands picks up salts and other contaminants and must be removed from agricultural land downslope using tile drain systems and discharged into disposal or treatment systems. The treatment and disposal of drainage from drainage-impacted lands has been the subject of historic litigation. One measure used to mitigate the impacts of drainage-impacted land is to retire the land from irrigated uses. The land contained within the Project Site Boundary is subject to a recorded Non-Irrigation Covenant. The District requests that a condition be added to the CUP to prohibit irrigation of any type, including landscape irrigation, within the Project Site Boundary.

4.5 Vegetation and Rodent Management. Similar solar projects within the District have significantly impacted neighboring agricultural operations and increased wildfire risk due to unmanaged vegetation growth and substantially increased rodent populations on project sites. These conditions exist primarily where project facility owners and/or project landowners neglect their site, particularly the control of vegetation and rodents. The District requests that conditions be added to the CUP to require: (1) the Project develop and implement a Vegetation and Rodent Management Plan; (2) the Project actively manage rodents within the Project Site Boundary; and (3) the Project actively manage weeds and non-native vegetation within the Project Site Boundary.

The District respectfully requests that the County of Merced incorporate the conditions provided above into any Conditional Use Permit approved for the Project. If you have any questions or wish to discuss this matter further, please do not hesitate to contact me by phone at (209) 826-4043 (option 7) or by e-mail at sstadler@slwd.net.

Sincerely,

Steven P. Stadler

Steven Stadler, P.E.
District Engineer



Comment 4-1

Groundwater Sustainability. The EIR states, "...project water demand would be potentially sourced from groundwater produced from the Delta-Mendota Subbasin, Merced Subbasin, or the North San Benito Subbasin...". The Delta-Mendota Subbasin has determined that its subbasin is in a condition of overdraft. Agencies such as the District have been mandated to reduce groundwater extractions from within the Delta-Mendota Subbasin. It is not acceptable to the District to allow the project to extract groundwater from within the Delta-Mendota Subbasin to the detriment of other groundwater users within the District or within the subbasin that will be required to curtail their groundwater extractions further to make the groundwater available for the Project. The District requests that a condition be added to the CUP to require that the Project obtain a letter from the Central-Delta Mendota Groundwater Sustainability Agency ("CDMGSA") stating that the proposed extraction is in compliance with all CDMGSA rules, regulations, policies, and practices.

Response to Comment 4-1

The commenter notes that the Delta-Mendota Subbasin is in a state of overdraft and asserts that the District cannot allow the Project to extract water from the basin to the detriment of other groundwater users, who would ostensibly be required to further curtail their own extractions. As such, San Luis Water District (SLWD) requests a condition be added to the CUP requiring a letter from the CDMGSA confirming that the proposed project's extraction follows all rules, regulations, and policies.

The Project site overlies the Delta-Mendota Subbasin of the San Joaquin Valley Groundwater Basin, and that this subbasin is currently experiencing overdraft. As a result, the subbasin is considered a high-priority groundwater basin as defined by the Sustainable Groundwater Management Act of 2014 (SGMA).

As required by Senate Bill 610, and given the sensitivity of groundwater conditions within California, a Water Supply Assessment (WSA) was prepared for the project, as provided in Appendix N of the DEIR. The WSA examined the availability of water under normal, single dry, and multiple dry year conditions over a 20-year projection and accounted for the projected water demand of the Project and other existing and planned future uses of the identified water supply in the focal subbasin. The WSA also analyzed potential groundwater availability within the adjacent Merced Subbasin and North San Benito Subbasin.

The WSA concluded that, while the Delta-Mendota Subbasin is indeed experiencing overdraft conditions, it is recovering through the implementation of measures outlined per SGMA, including groundwater sustainability plans (GSP), which provide direction for sustainable groundwater management through projects and management actions (PMAs) to address overdraft.

Appendix A of the WSA provides additional considerations to understand groundwater budgets within the Delta-Mendota Subbasin in 5-year increments as well as cumulatively over the lifespan of the Project. This information provides additional context for how groundwater subbasins fluctuate over time between dry and wet years leading to overdraft, but also surplus, conditions.



Comments and Responses

The WSA analysis informed the analysis of water supply in the DEIR. CEQA requires a lead agency to determine whether a project would substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the Project may impede sustainable groundwater management of the basin, or conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan. These analyses can be found in Section 4.10.3.3 of the DEIR.

Section 4.10.3.3 of the DEIR concludes that during operations, which represents the cumulatively larger period of water demand for the Project, water needs would equate to a total of 2.77 AFY (0.06 AFY for potable and 2.71 AFY for non-potable water). Extractions of these volumes, even over the life of the Project, would not have a significant effect on the rate of groundwater recovery, or impede recovery of the subbasin or the achievement of sustainable conditions, even without the implementation of the subbasin's PMAs. Additionally, project-related water demand would not conflict with rules, regulations, policies, or practices outlined by the GSA in the GSP.

The County has adequately analyzed water supply impacts in compliance with CEQA and Senate Bill 610 and has concluded that project-related impacts to water supply are reduced to less-than-significant. Furthermore, although not currently proposed, if the Project were to construct a new groundwater well, the Project would comply with the applicable permitting requirements from the GSA and the County, which includes obtaining a concurrence letter from the GSA and compliance with GSA policies. Therefore, no such condition needs to be added to the CUP.

Comment 4-2

Water Supply. The District has adopted policies restricting new municipal and industrial water services. The District's water service contract and associated shortage policies restrict the District's allocation of municipal and industrial water during drought periods. As a result, existing municipal and industrial water users do not receive a sufficient supply. Any new uses that are develop further reduce the already insufficient water supply received by this class of users. To facilitate energy projects that require little water and avoid impacts to the District's existing municipal and industrial water users, the District recently adopted Rule 24, Allocation Eligibility for agreement or the Project otherwise demonstrate compliance with the conditions provided in San Luis Water District Rule 24. Energy Generation and/or Energy Storage Project Parcel. The District requests a condition be added to the CUP to require that the landowner for the Project enter into a Water Management Agreement or the Project otherwise demonstrate compliance with the conditions provided in San Luis Water District Rule 24.

Response to Comment 4-2

The commenter notes that SLWD has adopted policies restricting new municipal and industrial water services, particularly during drought periods. Such policies can limit existing municipal and industrial water users, further exacerbated by new users. Accordingly, SLWD requests a condition be added to the CUP to require the landowner to enter into a Water Management Agreement or the Project should demonstrate compliance with the conditions provided in this rule.



Comments and Responses

The Project intends to use groundwater as the primary source of water. However, the WSA also analyzes use of surface water for non-potable water supply. The WSA acknowledges that the Project is located within the service area of SLWD, and use of surface water would therefore require a Water Supply Agreement with SLWD, which would document SLWD's commitment to supply non-potable water to the project. As such, the addition of a CUP condition requiring such would be unnecessary.

Comment 4-3

Kaljia Pipeline (Lateral 1). The District has an easement for a pipeline from the Kaljia Pumping Plant apparently located within the Project Site Boundary as shown by Figure 2-2 in the EIR. The District requests that conditions be added to the CUP to require: (1) the Project shall not encroach upon any easement held by the San Luis Water District; (2) in order to facilitate any pipeline repairs or replacement work, the Project shall not construct any facilities within 50 feet of any easement held by San Luis Water District; and (3) no crossing of the San Luis Water District easement is allowed unless the Project executes a Limited Crossing Consent, or other similar agreement, in a form approved by the San Luis Water District.

Response to Comment 4-3

The commenter notes that SLWD maintains an easement for a pipeline from the Kaljia Pumping Plant located within the Project Site Boundary. SLWD requests that a condition be added to the CUP prohibiting project encroachment on any SLWD easement, construction within 50 feet of the easement, and unpermitted crossing of the easement. The Applicant is aware of the existing pipeline and does not intend to cross it. In addition, the Applicant will adhere to the existing easement boundaries, which are designed to be generous enough to ensure complete avoidance of the infrastructure contained within. As a result, an additional 50-foot buffer, or a CUP condition outlining SLWD's other requests, is not necessary.

Comment 4-4

Non-Irrigation Covenant. The land contained within the Project Site Boundary is drainage-impacted. Drainage-impacted lands have shallow clay layer(s) that restrict the downward vertical movement of water that is percolating through the soil profile. As a result, water that is applied to the drainage-impacted lands picks up salts and other contaminants and must be removed from agricultural land downslope using tile drain systems and discharged into disposal or treatment systems. The treatment and disposal of drainage from drainage-impacted lands has been the subject of historic litigation. One measure used to mitigate the impacts of drainage-impacted land is to retire the land from irrigated uses. The land contained within the Project Site Boundary is subject to a recorded Non-Irrigation Covenant. The District requests that a condition be added to the CUP to prohibit irrigation of any type, including landscape irrigation, within the Project Site Boundary.



Response to Comment 4-4

The commenter notes that the Project site is located within drainage-impacted lands with shallow clay layers that restrict downward vertical movement of water. As a result, the commenter asserts that water applied to the drainage-impacted lands can pick up salts and other contaminants and must be removed from agricultural land downslope using tile drain systems and discharged into disposal or treatment systems. As such, retiring the land from irrigated uses can mitigate this potential impact.

The commenter's characterization that the Project site contains predominantly clay layers is correct. As summarized in Section 4.7.2.1 of the DEIR, the Project site contains three soil map units designated by the U.S. Department of Agriculture's Natural Resources Conservation Service: Deldota clay (Map Unit Symbol 167), Paver clay loam (Map Unit Symbol 230), and Woo clay (Map Unit Symbol 280) (USDA-NRCS 2018). The Mercy Springs Substation site consists entirely of Deldota clay (Map Unit Symbol 167). The Project soil types range in drainage class from somewhat poorly drained to well-drained.

However, Section 4.10.3.3. of the DEIR notes that the project site experiences very low annual rainfall, and as a result, the soils are rarely saturated to the point that measurable surface runoff is generated such that drainage patterns are significantly changed. During precipitation events that exceed infiltration capacities of Project site soils, ponding would be expected, similar to existing conditions. In addition, most channels and drainages surrounding the project site are ephemeral due to the seasonal nature of rainfall, low annual precipitation, lack of irrigation demands due to the Non-Irrigation Covenant, and the relatively high permeability of the valley floor alluvial deposits. Furthermore, ground-disturbing activities would also require coverage under the State CGP and a project specific Stormwater Pollution Prevention Plan (SWPPP) to effectively control erosion, sedimentation, and the release of construction-related pollutants during construction and decommissioning activities. The Project site is also already subject to a recorded Non-Irrigation Covenant, as the commenter notes; therefore, no additional mitigation or CUP conditions are necessary.

Comment 4-5

Vegetation and Rodent Management. Similar solar projects within the District have significantly impacted neighboring agricultural operations and increased wildfire risk due to unmanaged vegetation growth and substantially increased rodent populations on project sites. These conditions exist primarily where project facility owners and/or project landowners neglect their site, particularly the control of vegetation and rodents. The District requests that conditions be added to the CUP to require: (1) the Project develop and implement a Vegetation and Rodent Management Plan; (2) the Project actively manage rodents within the Project Site Boundary; and (3) the Project actively manage weeds and non-native vegetation within the Project Site Boundary.



Response to Comment 4-5

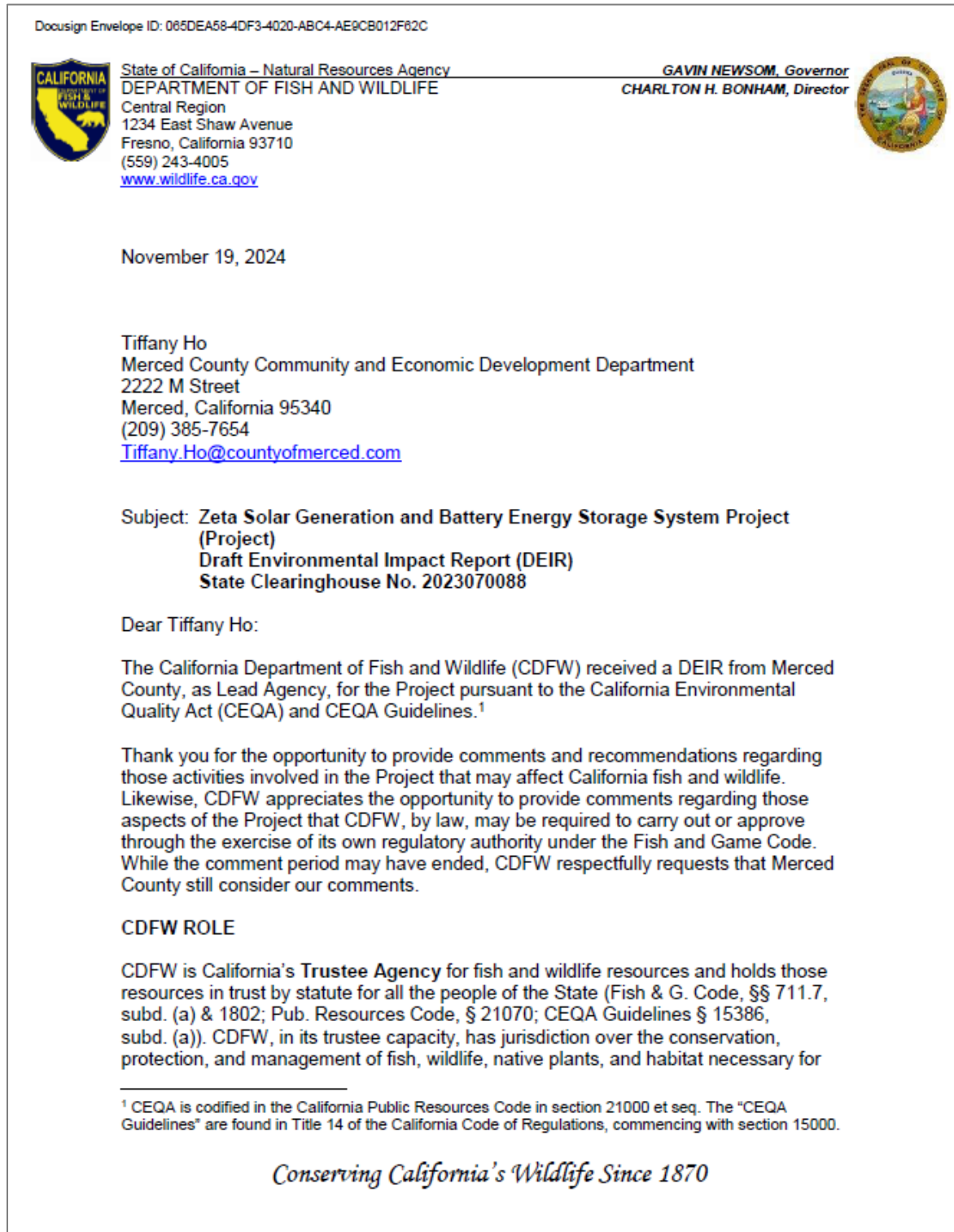
The commenter states that similar solar projects within the SLWD territory have significantly impacted neighboring agricultural operations through substantially increased rodent populations and increased wildfire risk due to unmanaged vegetation growth. The commenter requests that the County add a condition to the CUP requiring the Applicant to implement a vegetation and rodent management plan, actively manage rodents, and manage weeds and non-native vegetation within the project site.

As outlined in Section 4.4.3.3 of the DEIR, MM BIO-2 already requires preparation of a Vegetation and Soil Management Plan, which would include specifications related to the establishment and management of desirable vegetation onsite and the control of noxious weeds. In addition, as further described in Response to Comment 5-1 and Section 5.2.1 of Appendix F to the DEIR, the Applicant plans to install wildlife-friendly fencing and maintain low-stature vegetation onsite via selective seeding and mowing. This will maintain access for predators of rodents, which will help manage the rodent population.

Regarding wildfire concerns, the Applicant is required to prepare a Fire Protection Plan for construction, operation, and decommissioning of the Project prior to issuance of construction permits (see MM HAZ-1). Implementation of this requirement will ensure wildfire-related impacts are minimized. Therefore, no additional mitigation or CUP conditions are necessary.



2.2.5 Letter 5: California Department of Fish and Wildlife



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biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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

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

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

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

PROJECT DESCRIPTION SUMMARY

Proponent: Longroad Development Company, LLC

Objective: The Project proposes to construct and operate a photovoltaic solar power generation facility with a battery energy storage system (BESS) that would generate up to approximately 75 megawatts (MW) of renewable electrical energy and include an energy storage capacity of up to 8 hours of 75 MW. The 650-acre Project also includes



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the construction of a 1,700-foot-long generation-tie line to deliver power from the Project to Pacific Gas and Electric's existing Mercy Springs Substation.

Location: The Project is located on privately-owned land in southwestern Merced County, approximately 9 miles south of Los Banos. The Project would occupy all or portions of three parcels identified by Merced County as Assessor Parcel Numbers (APNs) 090-130-018, 090-130-044, and 090-130-060. The gen-tie line would extend north through APN 088-180-063 to the point of interconnection in APN 090-103-059. Poleline Road abuts the southwestern Project site boundary. The California Aqueduct and U.S. Interstate 5 (I-5) run parallel to the southwest Project boundary about 300 feet and 800 feet to the west of the Project site, respectively. First Lift Canal Road lies along the western boundary of the Project site, and the eastern boundary abuts an unnamed dirt/gravel road.

Timeframe: Construction would occur over 2 years.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Merced 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 final EIR.

Aerial imagery of the Project boundary and its surroundings show the area contains several natural and agricultural habitats including annual grassland, cultivated wheat, and fallow fields, which may have suitable habitat for special-status species. Based on a review of the Project description, California Natural Diversity Database (CNDDDB) records, the Biological Resources Assessment (BRA) included in the DEIR, and aerial imagery, 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 for these species to a less than significant level. CDFW has concerns about the ability of some of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for a number of special-status animal species. These species include, but are not limited to, the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened Swainson's hawk (*Buteo swainsoni*), and the State candidate western burrowing owl (*Athene cunicularia hypugaea*) and Crotch's bumble bee (*Bombus crotchii*).



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San Joaquin Kit Fox

Mitigation Measure BIO-3 mitigates for potential impacts to San Joaquin kit fox (SJKF) and includes measures for pre-construction surveys and avoidance. Mitigation Measure BIO-3 states that, "If active, non-natal/pupping dens are found within the project site by the qualified biologist, an on-site passive relocation program will be implemented with prior concurrence from USFWS. This program will consist of excluding SJKFs from occupied burrows by installation of one-way doors at burrow entrances, monitoring of the burrow for one week to confirm usage has been discontinued, and excavation and collapse of the burrow to prevent reoccupation. This would be implemented only during non-breeding season for SJKF (September 1 to February 1). After the qualified biologist determines that the SJKFs have stopped using active dens within the project site, the dens will be excavated by hand with a shovel to prevent foxes from re-using them during construction." CDFW would like to note that implementation of this portion of Mitigation Measure BIO-3, which allows for the eviction of occupied SJKF dens via installation of one-way doors, is likely to result in the unauthorized take of SJKF and violate CESA. As such, in the event an active SJKF den is documented during pre-construction or construction activities, CDFW strongly recommends the following:

5-1

Recommended Mitigation Measure 1: SJKF Avoidance Buffer

CDFW recommends implementing no-disturbance buffers, as described in the U.S. Fish and Wildlife Service (USFWS) "Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance" (2011) (USFWS Protocol) around potentially suitable or known SJKF den sites. If the no-disturbance buffers outlined in the USFWS Protocol cannot be maintained, then consultation with CDFW is warranted to determine if the Project can avoid take or if take authorization is necessary as described below.

Recommended Mitigation Measure 2: SJKF Take Authorization

If the no-disturbance buffers outlined in the USFWS Protocol for SJKF are not feasible, CDFW recommends that consultation with CDFW occur to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Recommended Mitigation Measure 3: SJKF Permeable Fencing

CDFW recommends that the Project site perimeter fencing be permeable for wildlife use, particularly for SJKF. As such, CDFW strongly recommends that the chain link fencing used to secure the perimeter of the Project be designed with 4–6-inch gaps



Comments and Responses

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to allow for the movement of wildlife, including SJKF, throughout the site once construction is complete.

Swainson's Hawk

The DEIR acknowledges the presence of suitable Swainson's hawk (SWHA) foraging habitat and the potential for the species to nest within ½-mile of the Project site, and a foraging pair was detected within the Project site during surveys in April 2023. In addition, there are trees and structures located within the vicinity of the Project site that may provide suitable nesting habitat.

Mitigation Measure BIO-4 is included to mitigate for impacts to SWHA and states: "Nesting bird surveys would only be required for construction and decommissioning activities, not during operation and maintenance activities. If construction work is scheduled to take place outside of the bird nesting season (September 16 through January 31), no action would be required to protect nesting birds. To avoid impacts on nesting birds within or near the project site during the bird nesting season (February 1 through August 31, or through September 15 for Swainson's hawk), the following measures will be implemented:

5-2

- A qualified wildlife biologist will conduct preconstruction surveys for nesting birds no more than 14 days prior to the beginning of ground disturbance (such as staging and vegetation clearing) related to construction and decommissioning activities. Surveys may be phased as construction is phased so that each work area is surveyed no more than 14 days prior to the start of construction in that area.
- If active nests are found during preconstruction surveys (or during construction by a construction crew), a suitable no-disturbance buffer will be established around the nests until it is determined that all young have fledged or until the recognized nesting season has ended (i.e., generally August 31 except Swainson's hawk which would be September 15). The size of any employed no-disturbance buffers will vary based on the species that is nesting (e.g., 200–300 feet for common raptors; 0.5 mile for Swainson's hawk; 50 feet for passerine species). For species that are not state or federally listed as threatened or endangered, encroachment into the no-disturbance buffer may occur at the discretion of a qualified biologist; however, for state and federally listed species, consultation with CDFW and/or USFWS will occur prior to encroachment into the no-disturbance buffers.
- If pre-construction surveys indicate that nests are inactive or potential habitat is unoccupied during the construction period, no further action is required. Shrubs, trees, and other vegetation within the construction site determined to be unoccupied by nesting birds or that are outside the no-disturbance buffer for active nests can be



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removed. Vegetation removal will be scheduled for outside of the nesting season, as feasible.”

CDFW concurs with the portion of the measure that discusses avoidance and the requirement to conduct preconstruction surveys for SWHA but recommends these surveys be conducted by a qualified biologist following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) within all areas of the Project site and ½-mile buffer containing suitable nesting habitat.

Burrowing Owl

The California Fish and Game Commission (FGC) approved burrowing owl (BUOW) as a candidate for potential listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice Register (Notice Register) on October 25, 2024. As such, BUOW is now considered a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

5-3

The Project site contains a number of suitable small-mammal burrows and there were multiple occurrences of BUOW during the 2021 and 2022 field surveys conducted in support of the DEIR. BUOW typically inhabit open grasslands containing small mammal burrows, a requisite habitat feature used for nesting and cover. BUOW may also attempt to use “man-made burrows” such as pipes or culverts.

The DEIR provides Mitigation Measure BIO-5 to mitigate for potential impacts to burrowing owl (BUOW) and states that, “A qualified biologist will conduct a preconstruction survey for burrowing owls within 330 feet of the project site in areas with suitable burrowing habitat to locate any occupied burrows (e.g., active breeding burrows or wintering burrows) no more than 14 days prior to the beginning of ground equipment staging or ground-disturbing activities. No burrowing owl surveys would be required during operation and maintenance activities. If, at the commencement of project construction, burrowing owl is present and listed as candidate, threatened, or endangered under CESA, then the lead biologist will consult with CDFW to determine if an incidental take permit is needed for the project, unless avoidance is feasible. To protect burrowing owls, the following conditions will be met prior to construction within each successive work area:

- Surveys will include the project site and areas within 330 feet of the project site. Inaccessible areas outside of the project site can be surveyed using binoculars or spotting scopes from the project edge or from public roads. The survey methodology will be consistent with the methods outlined in the CDFW (2012) Staff Report on Burrowing Owl Mitigation.



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- If inactive (unoccupied) burrowing owl burrows are detected any time of the year, the burrows may be excavated with a shovel to prevent burrowing owls from re-using them during construction. The burrows inactive status will be determined by the approved biologist through monitoring prior to burrow excavation.
- If active (occupied) burrowing owl burrows are detected, no ground-disturbing activities, such as vegetation clearance, grading, or other construction activities, will be permitted within a no-disturbance buffer around the burrow. The size of any employed no-disturbance buffers will be 330 feet from the active burrow if during the breeding season (February 1 to August 31) and 165 feet from the active burrow if during the nonbreeding (winter) season, unless otherwise authorized by a qualified biologist as described below.
- Depending on the level of disturbance, a smaller buffer may be established by a qualified biologist based on the visibility and sensitivity responses of each individual burrowing owl.
- If burrow avoidance is infeasible during the nonbreeding season or during the breeding season where resident owls have not yet begun egg laying or incubation, or where the juvenile burrowing owls are foraging independently and capable of independent survival, a qualified biologist will implement a passive relocation program in accordance with the CDFW (2012) Staff Report on Burrowing Owl Mitigation. Exclusion would involve installation of one-way doors at burrow entrances after the qualified biologist has determined that the burrow is not an active nest or that juvenile burrowing owls are not dependent on the burrow. After the authorized biologist has determined through monitoring that the burrows are unoccupied, the burrows may be excavated with a shovel to prevent burrowing owls from re-using them during construction."

As BUOW is now considered a candidate under CESA, CDFW recommends Mitigation Measure BIO-5 be adjusted to include the following:

Recommended Mitigation Measure 4: BUOW Preconstruction Surveys

Depending on the time between the initial survey efforts conducted in support of the Draft EIR and Project construction, CDFW recommends that additional surveys, following the "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012) be repeated the survey season immediately prior to construction.

Recommended Mitigation Measure 5: BUOW Avoidance Buffer

Should a BUOW or known BUOW den (active or inactive) be detected, either during preconstruction surveys or construction activities, CDFW recommends that no-



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disturbance buffers, as outlined in the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012), be implemented prior to and during any ground-disturbing activities. CDFW also recommends that these buffers be implemented for both wintering and breeding BUOW.

Recommended Mitigation Measure 6: BUOW Consultation

If a BUOW or known BUOW den (active or inactive) is detected, and the no-disturbance buffers outlined in the 2012 Staff Report on Burrowing Mitigation are 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 acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

5-4

Crotch's Bumble Bee

The Project site is within the known geographic range of Crotch's bumble bee (CBB) and the DEIR notes that the Project site contains a mix of native and non-native grasses as well as small mammal burrows, making it suitable for both foraging and nesting. Currently, measures to protect CBB are proposed as part of Mitigation Measure BIO-3 including preconstruction surveys, avoidance buffers, and consultation with CDFW regarding potential take of the species. CDFW concurs with portions of Mitigation Measure BIO-3 but recommends the CBB surveys be conducted during the blooming period immediately prior to construction, following the full protocol outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023) guidance document.

Mitigation Measure BIO-3 also states: "If establishment of a no-disturbance buffer is feasible, construction activities will not occur within the buffer until a qualified biologist determines that the colony is no longer active (i.e., no Crotch's bumble bees are seen flying in or out of the nest for three consecutive days, indicating the colony has completed its nesting season and the next season's queens have dispersed from the colony). Once the nest has been determined to be inactive, construction activities within the no-disturbance buffer(s) will be allowed to resume." CDFW does not concur that this portion of the measure would be sufficient to mitigate for potential impacts to CBB and recommends that the Project proponent consult with CDFW for any detection of CBB prior to or during Project implementation to discuss how to avoid take. Additionally, CDFW recommends the following:

Recommended Mitigation Measure 7: 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



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prior to any ground disturbing activities would be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).

Editorial Comments and/or Suggestions

Nesting birds: CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

CDFW further recommends that a qualified biologist conduct a pre-construction survey for active nests no more than 10 days prior to the start of ground or vegetation 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 Project site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

5-5

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 the birds have fledged and are no longer reliant upon the nest or on-site 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 Project site 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.

5-6

Federally Listed Species: CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including but not limited to SJKF. 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



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patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any Project activities.

ENVIRONMENTAL DATA

5-7

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>.

FILING FEES

5-8

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 Merced County in identifying and mitigating Project impacts on biological resources.

If you have any questions, please contact Ren Cotter, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 767-0956 or by electronic mail at Ren.Cotter@wildlife.ca.gov.

Sincerely,

DocuSigned by:

1 A03F05F109945A
Julie A. Vance
Regional Manager



Zeta Solar and Battery Energy Storage System Project
Final Environmental Impact Report—February 2025

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cc: State Clearinghouse
Governor's Office of Planning and Research
State.Clearinghouse@opr.ca.gov



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REFERENCES

- California Burrowing Owl Consortium. 1993. Burrowing owl survey protocol and mitigation guidelines. Pages 171-177 in Lincer, J. and K. Steenhof (editors). 1993. The burrowing owl, its biology and management. Raptor Research Report Number 9.
- California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. Sacramento, California, USA.
- California Department of Fish and Wildlife. 2023. Survey considerations for California endangered species act candidate bumble bee species. Sacramento, California, USA.
- Swainson's hawk technical advisory committee (SWHA TAC). 2000. Recommended timing and methodology for Swainson's hawk nesting surveys in the central valley of California. Swainson's Hawk Technical Advisory Committee.
- U. S. Fish and Wildlife Service. 2011. Standard Recommendations for the Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance. U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, Sacramento, California.



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

PROJECT: Zeta Solar Generation and BESS Project

SCH No.: 2023070088

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
SJKF	
Recommended Mitigation Measure 2: SJKF take authorization	
BUOW	
Recommended Mitigation Measure 4: BUOW preconstruction surveys	
Recommended Mitigation Measure 6: BUOW consultation	
CBB	
Recommended Mitigation Measure 7: CBB take authorization	
<i>During Construction</i>	
SJKF	
Recommended Mitigation Measure 1: SJKF avoidance buffer	
Recommended Mitigation Measure 3: SJKF permeable fencing	
BUOW	
Recommended Mitigation Measure 5: BUOW avoidance buffer	



Comment 5-1

San Joaquin Kit Fox

Mitigation Measure BIO-3 mitigates for potential impacts to San Joaquin kit fox (SJKF) and includes measures for pre-construction surveys and avoidance. Mitigation Measure BIO-3 states that, “If active, non-natal/pupping dens are found within the project site by the qualified biologist, an on-site passive relocation program will be implemented with prior concurrence from USFWS. This program will consist of excluding SJKFs from occupied burrows by installation of one-way doors at burrow entrances, monitoring of the burrow for one week to confirm usage has been discontinued, and excavation and collapse of the burrow to prevent reoccupation. This would be implemented only during non-breeding season for SJKF (September 1 to February 1). After the qualified biologist determines that the SJKFs have stopped using active dens within the project site, the dens will be excavated by hand with a shovel to prevent foxes from re-using them during construction.” CDFW would like to note that implementation of this portion of Mitigation Measure BIO-3, which allows for the eviction of occupied SJKF dens via installation of one-way doors, is likely to result in the unauthorized take of SJKF and violate CESA. As such, in the event an active SJKF den is documented during pre- construction or construction activities, CDFW strongly recommends the following:

Recommended Mitigation Measure 1: SJKF Avoidance Buffer

CDFW recommends implementing no-disturbance buffers, as described in the U.S. Fish and Wildlife Service (USFWS) “Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance” (2011) (USFWS Protocol) around potentially suitable or known SJKF den sites. If the no-disturbance buffers outlined in the USFWS Protocol cannot be maintained, then consultation with CDFW is warranted to determine if the Project can avoid take or if take authorization is necessary as described below.

Recommended Mitigation Measure 2: SJKF Take Authorization

If the no-disturbance buffers outlined in the USFWS Protocol for SJKF are not feasible, CDFW recommends that consultation with CDFW occur to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Recommended Mitigation Measure 3: SJKF Permeable Fencing

CDFW recommends that the Project site perimeter fencing be permeable for wildlife use, particularly for SJKF. As such, CDFW strongly recommends that the chain link fencing used to secure the perimeter of the Project be designed with 4–6-inch gaps to allow for the movement of wildlife, including SJKF, throughout the site once construction is complete.



Response to Comment 5-1

The commenter provides recommendations in the event an active SJKF den is documented during pre-construction or construction activities. In addition, the commenter asserts that, should an onsite, passive relocation program be needed as part of MM BIO-3, CDFW must be contacted regarding potential take under the California Endangered Species Act (CESA).

The avoidance buffers outlined in CDFW's Comment 3-1 (under recommended MM 1, as described in the USFWS "Standardized Recommendations for Protection of the SJKF Prior to or During Ground Disturbance" [2011] [USFWS Protocol]), will be implemented during construction. This commitment is captured in MM BIO-3. Merced County concurs with CDFW recommended Mitigation Measure 2, and MM BIO-3 has been updated, as shown below, to include consultation with CDFW as well as USFWS (see below and in Chapter 3.0).

MM BIO-3: Preconstruction Surveys and Protective Measures for Special-Status Species

A qualified biologist will conduct preconstruction surveys for special-status species prior to construction and decommissioning activities. No special-status species surveys would be required during operation and maintenance activities. Preconstruction surveys do not need to be conducted for all areas of suitable habitat at one time; they may be phased so that surveys occur prior to disturbance of any particular portion of the project site. The biologist will record observations of all special-status species and establish no-disturbance buffers as appropriate. Species-specific and general details are as follows:

- San Joaquin Kit Fox: A qualified biologist will conduct a preconstruction survey for SJKF to determine whether potential SJKF dens are present in or within 200 feet of the project site no fewer than 14 days and no more than 30 days prior to beginning of ground disturbance (such as staging, mowing, and vegetation clearing) related to construction and decommissioning activities, or any other project construction activity with the potential to impact SJKF. (Note: inaccessible areas outside of the project site can be surveyed using binoculars or spotting scopes from the project edge or from public roads). The surveys will be conducted in all areas of suitable habitat for SJKF. If potential dens are observed and avoidance of the dens is determined to be feasible, then a no-disturbance zone of 100 feet will be established around an active den. If the den is a natal/pupping den, USFWS and CDFW must be contacted to determine the appropriate no-disturbance zone (USFWS 2011).
- Exclusion zone establishment will follow the USFWS Standardized Recommendations for Protection of the Endangered SJKF Prior to or During Ground Disturbance (USFWS 2011) under "Exclusion Zones."
- If active, non-natal/pupping dens are found within the project site by the qualified biologist, an on-site passive relocation program will be implemented with prior concurrence from USFWS and CDFW. This program will consist of excluding SJKFs from



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occupied burrows by installation of one-way doors at burrow entrances, monitoring of the burrow for one week to confirm usage has been discontinued, and excavation and collapse of the burrow to prevent reoccupation. This would be implemented only during non-breeding season for SJKF (September 1 to February 1). After the qualified biologist determines that the SJKFs have stopped using active dens within the project site, the dens will be excavated by hand with a shovel to prevent foxes from re-using them during construction.

The commenter suggests under recommended Mitigation Measure 3 that the Project implement permeable perimeter fencing for SJKF. The Project site is not currently serving as habitat for SJKF, is not considered an important movement corridor, and is subject to regular disturbance that reduces its suitability as habitat for this species. As stated in Section 4.4.2.6 of the DEIR, camera surveys for SJKF conducted in 2022 and 2023 showed no SJKF individuals or signs on the Project site. In addition, the Project site sits in a highly fragmented habitat area with active agricultural parcels and the California Aqueduct nearby. As stated in Section 4.4.2.8 of the DEIR, the USFWS Recovery Plan for Upland Species of the San Joaquin Valley, California (USFWS 1998) identifies linkage areas that are important corridors for wildlife species. In Merced County, the nearest identified linkage area is Sandy Mush Road, which is located approximately 20 miles northeast of the Project site. Lastly, the site is regularly tilled as part of its weed control regime, reducing its long-term suitability as habitat for this species. While permeable fencing features are not necessary to mitigate project impacts to SJKF, the Applicant will install wildlife-friendly perimeter fencing. Specifications can be reviewed in updated Section 2.7.13 (page 2-18 of the DEIR) as shown below and in Chapter 3.0.

2.7.13 Project Site Security and Fencing

The Project site would be enclosed within an up to 8-foot-tall chain-link security fence, measured from finished grade and will include 4–6-inch gaps at the bottom to accommodate wildlife movement. Fence posts would be drilled and grouted or driven pneumatically depending on site-specific soil characteristics. Vehicle access gates would be installed as necessary, with the gates to remain locked when not in use. Additionally, the Project may include additional security measures including but not limited to barbed wire, controlled access points, security alarms, security camera systems, and security guard vehicle patrols to deter trespassing and/or unauthorized activities that could interfere with operation of the Project.

Controlled access gates would be maintained at the main entrance to the Project site. Access to the Project site would be provided to offsite emergency response teams that respond in the event of an after-hours emergency. Enclosure gates would be manually operated with a key provided in an identified key box location.



Comment 5-2

The DEIR acknowledges the presence of suitable Swainson's hawk (SWHA) foraging habitat and the potential for the species to nest within ½-mile of the Project site, and a foraging pair was detected within the Project site during surveys in April 2023. In addition, there are trees and structures located within the vicinity of the Project site that may provide suitable nesting habitat.

Mitigation Measure BIO-4 is included to mitigate for impacts to SWHA and states: "Nesting bird surveys would only be required for construction and decommissioning activities, not during operation and maintenance activities. If construction work is scheduled to take place outside of the bird nesting season (September 16 through January 31), no action would be required to protect nesting birds. To avoid impacts on nesting birds within or near the project site during the bird nesting season (February 1 through August 31, or through September 15 for Swainson's hawk), the following measures will be implemented:

- *A qualified wildlife biologist will conduct preconstruction surveys for nesting birds no more than 14 days prior to the beginning of ground disturbance (such as staging and vegetation clearing) related to construction and decommissioning activities. Surveys may be phased as construction is phased so that each work area is surveyed no more than 14 days prior to the start of construction in that area.*
- *If active nests are found during preconstruction surveys (or during construction by a construction crew), a suitable no-disturbance buffer will be established around the nests until it is determined that all young have fledged or until the recognized nesting season has ended (i.e., generally August 31 except Swainson's hawk which would be September 15). The size of any employed no-disturbance buffers will vary based on the species that is nesting (e.g., 200–300 feet for common raptors; 0.5 mile for Swainson's hawk; 50 feet for passerine species). For species that are not state or federally listed as threatened or endangered, encroachment into the no-disturbance buffer may occur at the discretion of a qualified biologist; however, for state and federally listed species, consultation with CDFW and/or USFWS will occur prior to encroachment into the no-disturbance buffers.*
- *If pre-construction surveys indicate that nests are inactive or potential habitat is unoccupied during the construction period, no further action is required. Shrubs, trees, and other vegetation within the construction site determined to be unoccupied by nesting birds or that are outside the no-disturbance buffer for active nests can be removed. Vegetation removal will be scheduled for outside of the nesting season, as feasible."*

CDFW concurs with the portion of the measure that discusses avoidance and the requirement to conduct preconstruction surveys for SWHA but recommends these surveys be conducted by a qualified biologist following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) within all areas of the Project site and ½-mile buffer containing suitable nesting habitat.



Response to Comment 5-2

As the commenter acknowledges, the DEIR is consistent with CDFW's recommended SWHA avoidance and preconstruction survey measures. MM BIO-4 requires preconstruction surveys within the Project site and 0.5 mile of the Project site during the nesting season and the implementation of a 0.5-mile buffer around active nests. However, CDFW requests that MM BIO-4 also include a statement about surveyor qualifications. As such, MM BIO-4 on page 4.4.36 of the DEIR has been revised (see below and in Chapter 3.0).

MM BIO-4: Nesting Bird Protection Measures

Nesting bird surveys would only be required for construction and decommissioning activities, not during operation and maintenance activities. If construction work is scheduled to take place outside of the bird nesting season (September 16 through January 31), no action would be required to protect nesting birds. To avoid impacts on nesting birds within or near the project site during the bird nesting season (February 1 through August 31, or through September 15 for Swainson's hawk), the following measures will be implemented:

- A qualified wildlife biologist will conduct preconstruction surveys for nesting birds no more than 14 days prior to the beginning of ground disturbance (such as staging and vegetation clearing) related to construction and decommissioning activities. Surveys may be phased as construction is phased so that each work area is surveyed no more than 14 days prior to the start of construction in that area. Surveys will be conducted by a qualified biologist following the survey techniques developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) within all areas of the Project site and 0.5-mile buffer containing suitable nesting habitat.
- If active nests are found during preconstruction surveys (or during construction by a construction crew), a suitable no-disturbance buffer will be established around the nests until it is determined that all young have fledged or until the recognized nesting season has ended (i.e., generally August 31 except Swainson's hawk which would be September 15). The size of any employed no-disturbance buffers will vary based on the species that is nesting (e.g., 200–300 feet for common raptors; 0.5 mile for Swainson's hawk; 50 feet for passerine species). For species that are not state or federally listed as threatened or endangered, encroachment into the no-disturbance buffer may occur at the discretion of a qualified biologist; however, for state and federally listed species, consultation with CDFW and/or USFWS will occur prior to encroachment into the no-disturbance buffers.
- If pre-construction surveys indicate that nests are inactive or potential habitat is unoccupied during the construction period, no further action is required. Shrubs, trees, and other vegetation within the construction site determined to be unoccupied by nesting birds or that are outside the no-disturbance buffer for active nests can be removed. Vegetation removal will be scheduled for outside of the nesting season, as feasible.



Comment 5-3

The California Fish and Game Commission (FGC) approved burrowing owl (BUOW) as a candidate for potential listing as a protected species under CESA on October 10, 2024 and published these findings in the California Regulatory Notice Register (Notice Register) on October 25, 2024. As such, BUOW is now considered a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

The Project site contains a number of suitable small-mammal burrows and there were multiple occurrences of BUOW during the 2021 and 2022 field surveys conducted in support of the DEIR. BUOW typically inhabit open grasslands containing small mammal burrows, a requisite habitat feature used for nesting and cover. BUOW may also attempt to use “man-made burrows” such as pipes or culverts.

The DEIR provides Mitigation Measure BIO-5 to mitigate for potential impacts to burrowing owl (BUOW) and states that, “A qualified biologist will conduct a preconstruction survey for burrowing owls within 330 feet of the project site in areas with suitable burrowing habitat to locate any occupied burrows (e.g., active breeding burrows or wintering burrows) no more than 14 days prior to the beginning of ground equipment staging or ground-disturbing activities. No burrowing owl surveys would be required during operation and maintenance activities. If, at the commencement of project construction, burrowing owl is present and listed as candidate, threatened, or endangered under CESA, then the lead biologist will consult with CDFW to determine if an incidental take permit is needed for the project, unless avoidance is feasible. To protect burrowing owls, the following conditions will be met prior to construction within each successive work area:

- Surveys will include the project site and areas within 330 feet of the project site. Inaccessible areas outside of the project site can be surveyed using binoculars or spotting scopes from the project edge or from public roads. The survey methodology will be consistent with the methods outlined in the CDFW (2012) Staff Report on Burrowing Owl Mitigation.*
- If inactive (unoccupied) burrowing owl burrows are detected any time of the year, the burrows may be excavated with a shovel to prevent burrowing owls from re-using them during construction. The burrows inactive status will be determined by the approved biologist through monitoring prior to burrow excavation.*
- If active (occupied) burrowing owl burrows are detected, no ground-disturbing activities, such as vegetation clearance, grading, or other construction activities, will be permitted within a no-disturbance buffer around the burrow. The size of any employed no-disturbance buffers will be 330 feet from the active burrow if during the breeding season (February 1 to August 31) and 165 feet from the active burrow if during the nonbreeding (winter) season, unless otherwise authorized by a qualified biologist as described below.*
- Depending on the level of disturbance, a smaller buffer may be established by a qualified biologist based on the visibility and sensitivity responses of each individual burrowing owl.*



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- *If burrow avoidance is infeasible during the nonbreeding season or during the breeding season where resident owls have not yet begun egg laying or incubation, or where the juvenile burrowing owls are foraging independently and capable of independent survival, a qualified biologist will implement a passive relocation program in accordance with the CDFW (2012) Staff Report on Burrowing Owl Mitigation. Exclusion would involve installation of one-way doors at burrow entrances after the qualified biologist has determined that the burrow is not an active nest or that juvenile burrowing owls are not dependent on the burrow. After the authorized biologist has determined through monitoring that the burrows are unoccupied, the burrows may be excavated with a shovel to prevent burrowing owls from re-using them during construction.”*

As BUOW is now considered a candidate under CESA, CDFW recommends Mitigation Measure BIO-5 be adjusted to include the following:

Recommended Mitigation Measure 4: BUOW Preconstruction Surveys

Depending on the time between the initial survey efforts conducted in support of the Draft EIR and Project construction, CDFW recommends that additional surveys, following the “Burrowing Owl Survey Protocol and Mitigation Guidelines” (CBOC 1993) and CDFW’s “Staff Report on Burrowing Owl Mitigation” (CDFG 2012) be repeated the survey season immediately prior to construction.

Recommended Mitigation Measure 5: BUOW Avoidance Buffer

Should a BUOW or known BUOW den (active or inactive) be detected, either during preconstruction surveys or construction activities, CDFW recommends that no-disturbance buffers, as outlined in the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012), be implemented prior to and during any ground-disturbing activities.

CDFW also recommends that these buffers be implemented for both wintering and breeding BUOW.

Recommended Mitigation Measure 6: BUOW Consultation

If a BUOW or known BUOW den (active or inactive) is detected, and the no-disturbance buffers outlined in the 2012 Staff Report on Burrowing Mitigation are 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 acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.



Response to Comment 5-3

As the commenter notes, BUOW is considered a candidate for listing under CESA and, as such, receives the same legal protection afforded to listed species (Fish & Game Code, §§ 2074.2 & 2085). This candidacy was announced on October 10, 2024 and published in the California Regulatory Notice Register (Notice Register) on October 25, 2024.

The comment includes further recommendations related to burrowing owl for MM BIO-5, including protocol surveys, avoidance buffers, and consultation (recommended Mitigation Measures 4, 5, and 6, respectively). The DEIR is consistent with these recommendations outlined by CDFW. MM BIO-5 requires preconstruction surveys for burrowing owls and the implementation of avoidance buffers should active burrows be discovered. However, CDFW requests that MM BIO-5 require a protocol survey (i.e., according to CDFG 2012 Staff Report and CBOC 1993 guidelines) to be undertaken the survey season prior to preconstruction surveys; the use and year-round application of the buffer distances in the CDFG 2012 Staff Report; and consultation with CDFW concerning take avoidance in the event these buffers cannot be maintained. Clarifying edits to MM BIO-5 consistent with CDFW's recommendations are provided below and in Chapter 3.0.

MM BIO-5: Burrowing Owl Protection Measures

A qualified biologist will conduct a preconstruction survey for burrowing owls within 500 meters ~~330 feet~~ of the project site in areas with suitable burrowing habitat to locate any occupied burrows (e.g., active breeding burrows or wintering burrows) no more than 14 days prior to the beginning of ground equipment staging or ground-disturbing activities. No burrowing owl surveys would be required during operation and maintenance activities. ~~If, at the commencement of project construction, burrowing owl is present and listed as candidate, threatened, or endangered under CESA, then the lead biologist will consult with CDFW to determine if an incidental take permit is needed for the project, unless avoidance is feasible.~~ To protect burrowing owls, the following conditions will be met prior to construction within each successive work area:

- Surveys will include the project site and areas within 500 meters ~~330 feet~~ of the project site. Inaccessible areas outside of the project site ~~can~~ would be surveyed using binoculars or spotting scopes from the project edge or from public roads. The survey methodology will be consistent with the methods outlined in the CDFW (2012) Staff Report on Burrowing Owl Mitigation.
- If inactive (unoccupied) burrowing owl burrows are detected any time of the year, the burrows may be excavated with a shovel to prevent burrowing owls from re-using them during construction. The burrow's inactive status will be determined by the approved biologist through monitoring prior to burrow excavation.
- If active (occupied) burrowing owl burrows are detected, no ground-disturbing activities, such as vegetation clearance, grading, or other construction activities, will be permitted within a no-disturbance buffer around the burrow. The size of any employed no-



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disturbance buffers will be 500 meters ~~330 feet~~ from the active burrow if ~~during the breeding season (February 1 to August 31) and 165 feet from the active burrow if during the nonbreeding (winter) season, year-round,~~ unless otherwise authorized by a qualified biologist as described below.

- Depending on the level of disturbance, a smaller buffer may be established by a qualified biologist based on the visibility and sensitivity responses of each individual burrowing owl.
- If active burrowing owl avoidance is infeasible, then the project shall consult with CDFW regarding potential for project activities to result in take of burrowing owl and shall comply with all avoidance, minimization, and compensatory mitigation requirements set forth in any Incidental Take Permit (ITP) issued for the project by CDFW authorizing take of the species. ~~during the nonbreeding season or during the breeding season where resident owls have not yet begun egg laying or incubation, or where the juvenile burrowing owls are foraging independently and capable of independent survival, a qualified biologist will implement a passive relocation program in accordance with the CDFW (2012) Staff Report on Burrowing Owl Mitigation. Exclusion would involve installation of one-way doors at burrow entrances after the qualified biologist has determined that the burrow is not an active nest or that juvenile burrowing owls are not dependent on the burrow. After the authorized biologist has determined through monitoring that the burrows are unoccupied, the burrows may be excavated with a shovel to prevent burrowing owls from re-using them during construction.~~

Comment 5-4

The Project site is within the known geographic range of Crotch's bumble bee (CBB) and the DEIR notes that the Project site contains a mix of native and non-native grasses as well as small mammal burrows, making it suitable for both foraging and nesting. Currently, measures to protect CBB are proposed as part of Mitigation Measure BIO-3 including preconstruction surveys, avoidance buffers, and consultation with CDFW regarding potential take of the species. CDFW concurs with portions of Mitigation Measure BIO-3 but recommends the CBB surveys be conducted during the blooming period immediately prior to construction, following the full protocol outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023) guidance document.

Mitigation Measure BIO-3 also states: "If establishment of a no-disturbance buffer is feasible, construction activities will not occur within the buffer until a qualified biologist determines that the colony is no longer active (i.e., no Crotch's bumble bees are seen flying in or out of the nest for three consecutive days, indicating the colony has completed its nesting season and the next season's queens have dispersed from the colony). Once the nest has been determined to be inactive, construction activities within the no-disturbance buffer(s) will be allowed to resume." CDFW does not concur that this portion of the measure would be sufficient to mitigate for potential impacts to CBB



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and recommends that the Project proponent consult with CDFW for any detection of CBB prior to or during Project implementation to discuss how to avoid take. Additionally, CDFW recommends the following:

Recommended Mitigation Measure 7: 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 would be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).

Response to Comment 5-4

The commenter states that CDFW concurs with portions of MM BIO-3 but recommends the Crotch's bumble bee surveys be conducted during the blooming period immediately prior to construction, following the full protocol outlined in the Survey Considerations for CESA Candidate Bumble Bee Species (CDFW 2023) guidance document. The site is regularly tilled as part of its weed control regime, and will be regularly mowed as part of the vegetation management and noxious weed control program for this project, reducing the long-term suitability of the Project site as habitat for this species; therefore, full protocol surveys are not warranted. However, the recommendation to conduct one round of preconstruction surveys during the blooming season has been added to MM BIO-3 (page 4.4.34 of the DEIR and page 39 of the Appendix F, Biological Resources Assessment) along with CDFW's recommendation of consultation for take avoidance as appropriate.

MM BIO-3: Preconstruction Surveys and Protective Measures for Special-Status Species

A qualified biologist will conduct preconstruction surveys for special-status species prior to construction and decommissioning activities. No special-status species surveys would be required during operation and maintenance activities. Preconstruction surveys do not need to be conducted for all areas of suitable habitat at one time; they may be phased so that surveys occur prior to disturbance of any particular portion of the project site. The biologist will record observations of all special-status species and establish no-disturbance buffers as appropriate. Species-specific and general details are as follow...

- Crotch's Bumble Bee: If, at the commencement of project construction, Crotch's bumble bee is still considered a CESA candidate species or has been listed as threatened or endangered under CESA, the project will implement the following measures to avoid, minimize, and offset project impacts to the species:

A qualified biologist will conduct one a preconstruction survey during the blooming period immediately prior to construction for Crotch's bumble bee and nests in project areas with suitable nesting habitat prior to initial ground-disturbing activities, such as staging, mowing, vegetation clearing. There will be multiple surveys during the nesting season.



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The surveys ~~can~~ shall be phased with project build-out. The purpose of the surveys will be to identify active nest colonies inside of permanent and temporary impact areas.

If active Crotch's bumble bee nests are observed within the project site or within a 50-foot buffer surrounding the site, an appropriate no-disturbance buffer (as determined by a qualified biologist) will be established around the nest to reduce the risk of disturbance or accidental take and CDFW will be notified. The buffer will provide at least 50 feet of ~~clearance~~ no-disturbance around active nest entrances. (Note: inaccessible areas outside of the project site can be surveyed using binoculars from the project edge or from public roads.)

If establishment of a no-disturbance buffer is feasible, construction activities will not occur within the buffer until a qualified biologist determines that the colony is no longer active (i.e., no Crotch's bumble bees are seen flying in or out of the nest for three consecutive days, indicating the colony has completed its nesting season and the next season's queens have dispersed from the colony). Once the nest has been determined to be inactive, construction activities within the no-disturbance buffer(s) will be allowed to resume.

If avoidance of a no-disturbance buffer is not feasible, the lead biologist will consult with CDFW regarding potential encroachment into the no-disturbance buffer with other measures implemented. Work ~~would~~ shall not begin in the no-disturbance buffer without CDFW approval.

If avoidance of the nest is not feasible, the lead biologist will consult with CDFW regarding the potential for project activities to result in take of the Crotch's bumble bee and will comply with all avoidance, minimization, and compensatory mitigation requirements set forth in any incidental take permit issued for the project by CDFW...

Comment 5-5

Nesting birds: CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

CDFW further recommends that a qualified biologist conduct a pre-construction survey for active nests no more than 10 days prior to the start of ground or vegetation 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 Project site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a



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behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW 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 the birds have fledged and are no longer reliant upon the nest or on-site 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 Project site 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.

Response to Comment 5-5

The commenter recommends preconstruction surveys for nesting birds and the DEIR is compliant with these suggestions. MM BIO-4 requires a qualified biologist to conduct preconstruction surveys if construction activities will take place in the nesting season. If active nests are identified that have the potential to be directly or indirectly impacted by construction activities, a no-disturbance buffer will be established. The measure was updated (page 4.4.36 of the DEIR) to include the buffer distances recommended by CDFW for non-listed birds, raptors, and special-status species and to require preconstruction survey to be conducted no more than 10 days prior to construction (see below and Chapter 3.0).

MM BIO-4: Nesting Bird Protection Measures

Nesting bird surveys would only be required for construction and decommissioning activities, not during operation and maintenance activities. If construction work is scheduled to take place outside of the bird nesting season (September 16 through January 31), no action would be required to protect nesting birds. To avoid impacts on nesting birds within or near the project site during the bird nesting season (February 1 through August 31, or through September 15 for Swainson's hawk), the following measures will be implemented:

- A qualified wildlife biologist will conduct preconstruction surveys for nesting birds no more than 10 14-days prior to the beginning of ground disturbance (such as staging and vegetation clearing) related to construction and decommissioning activities. Surveys may be phased as construction is phased so that each work area is surveyed no more than 10 14 days prior to the start of construction in that area.



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- If active nests are found during preconstruction surveys (or during construction by a construction crew), a suitable no-disturbance buffer will be established around the nests until it is determined that all young have fledged or until the recognized nesting season has ended (i.e., generally August 31 except Swainson’s hawk which would be September 15). The size of any employed no-disturbance buffers will vary based on the species that is nesting (e.g., ~~200–300 feet for common raptors~~ 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; 0.5 mile for Swainson’s hawk and golden eagle; 50 feet for passerine species). For species that are not state or federally listed as threatened or endangered, encroachment into the no-disturbance buffer may occur at the discretion of a qualified biologist; however, for state and federally listed species, consultation with CDFW and/or USFWS will occur prior to encroachment into the no-disturbance buffers.
- If pre-construction surveys indicate that nests are inactive or potential habitat is unoccupied during the construction period, no further action is required. Shrubs, trees, and other vegetation within the construction site determined to be unoccupied by nesting birds or that are outside the no-disturbance buffer for active nests can be removed. Vegetation removal will be scheduled for outside of the nesting season, as feasible.

Comment 5-6

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

Response to Comment 5-6

The commenter recommends consulting with USFWS regarding potential impact to federally listed species. Merced County concurs with the comment and the DEIR is consistent with this recommendation. MM BIO-3 states that, if special-status species are detected during preconstruction surveys, CDFW and USFWS will be notified, as appropriate, to determine next steps for take avoidance.

Comment 5-7

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



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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>.

Response to Comment 5-7

This comment is noted. Any special-status species and natural communities detected during Project surveys will be reported to the CNDDDB.

Comment 5-8

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

Response to Comment 5-8

This comment is noted. Required CDFW project fees will be paid as required.



Chapter 3 Revisions to the Draft EIR

This chapter includes text edits made to the Draft EIR since publication and public review. These modifications resulted from minor clarifications in response to public comments and County and Applicant-initiated changes.

Revisions herein do not result in new significant environmental impacts, do not constitute significant new information, and do not alter the conclusions of the environmental analysis. Changes are provided in revision marks (underline for new text and ~~strikeout~~ for deleted text).

3.1 Chapter 1.0 Introduction

The following clarification was made to page 1-1.

Longroad Development Company, LLC, also referred to as Zeta Solar, LLC (Applicant), has applied to the Merced County Department of Community and Economic Development (County) for a Conditional Use Permit (Application No. CUP22-015) to construct, operate, maintain, and decommission the Zeta Solar and Battery Energy Storage System Project (Project), a photovoltaic (PV) solar power generation facility with a battery energy storage system (BESS) and onsite Project substation.

3.2 Executive Summary

The following clarification was made to page ES-1.

Longroad Development Company, LLC, also referred to as Zeta Solar, LLC (Applicant), has applied to the Merced County Department of Community and Economic Development (County) for a Conditional Use Permit (Application No. CUP22-015) to construct, operate, maintain, and decommission the Zeta Solar and Battery Energy Storage System Project (Project), a photovoltaic (PV) solar power generation facility with a battery energy storage system (BESS) and onsite Project substation.

In response to a comment on the Draft EIR, the following text was made to page ES-3.

Project Approvals

The Applicant submitted an application to Merced County for a Conditional Use Permit (CUP) (Application No. CUP22-015) to construct, operate, maintain, and decommission the Project. Additional permits and approvals may be required for the Project, including those listed below.



Revisions to the Draft EIR

State

- California Public Utilities Commission authorization under General Order 131-D
- California State Water Resources Control Board, National Pollutant Discharge Elimination System (NPDES) Construction General Permit
- California Department of Fish and Wildlife, Incidental Take Permit

In response to comments on the Draft EIR and for clarification purposes, the following text has been revised in Table ES-1, starting on page ES-6.



Impacts	Mitigation Measures	Level of Significance
Section 4.4 – Biological Resources		
<p>Impact BIO-1 The proposed Project would not have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service.</p>	<p>MM BIO-2: General Measures for the Avoidance and Protection of Biological Resources.</p> <p>During construction, operation and maintenance, and decommissioning of the facility, the operator or contractor will implement the following general avoidance and protective measures to protect special-status wildlife species:</p> <ul style="list-style-type: none"> • Prior to the start of construction, a Vegetation and Soil Management Plan will be prepared for the project that includes an end of construction revegetation approach and operation phase vegetation and soil management practices. The plan will include details on 1) soil testing and soil amendments if deemed necessary by test results; 2) site preparation; 3) the seed mixture to be used on-site, including native and desirable non-native low-stature species, and application methods; 4) areas to be reseeded; 5) weed identification and control measures; 6) vegetation and soil maintenance procedures; 7) implementation timing; 8) vegetation and soil condition goals and monitoring protocols; 9) adaptive management guidelines and success criteria; and 10) a clear prohibition of the use of toxic rodenticides. During operation, steps will be taken to establish and maintain a ground cover of low-stature (e.g., less than 18 inches tall) native and desirable non-native grasses and other plants. The seed mix will be determined through consultation with a vegetation restoration professional with local knowledge and in consideration of soil test results. Phased seeding may be used if a phased construction approach is used (i.e., the entire site need not be seeded all at the same time). The revegetation of the site will be monitored annually following restoration activities that occur post-construction and post-decommissioning. The monitoring program is intended to help achieve a ground cover of native and desirable non-native low-stature species, where feasible. • The operator will limit the areas of disturbance to the extent feasible. Parking areas, new roads, staging, storage, excavation, and disposal site locations will be confined to the smallest areas possible. All project disturbance areas will be clearly demarcated with signs, stakes, and/or flagging prior to construction to avoid non-project areas and natural resources where possible. • Spoils will be stockpiled in disturbed areas that lack native vegetation. BMPs will be employed to prevent erosion in accordance with the project's approved Stormwater Pollution Prevention Plan (SWPPP). All detected erosion will be remedied within two days of discovery or as described in the SWPPP. • All personnel entering the project site will attend worker environmental awareness training provided by the lead biologist or their designee before beginning work on-site. The primary worker environmental awareness training will occur before construction activities begin and as-needed thereafter. The worker environmental awareness training will include the following topics: <ul style="list-style-type: none"> – Information on the potential special-status species and the habitats that may be found within or adjacent to the project site, including (but not limited to) American badger, burrowing owl, Swainson's hawk, golden eagle, blunt-nosed leopard lizard, San Joaquin coachwhip, Crotch's bumble bee, and SJKF. – Impact avoidance and reporting requirements of federal and state laws pertaining to potential special-status species. Workers will be instructed to notify the site supervisor and/or lead or qualified biologist right away if any of these species are present on-site. – Identification of measures implemented to conserve the special-status species and habitats within or adjacent to the project site will occur. – A fact sheet conveying this information shall be distributed to all personnel who may enter the project site. • Control on Noxious Weeds: Noxious weed control is important to the success of site stabilization and vegetation management overall and aids in the protection and conservation of native plant species, as well as improving wildlife habitat. To control noxious weed populations during routine operations, the Applicant shall complete the following: <ul style="list-style-type: none"> – Operational personnel will monitor the site for noxious weeds and be trained on identifying common, highly invasive species that are known to occur in the project area. – Weed control measures will be flexible and adaptive depending on the invasive plants and intensity of the weed infestation. Measures will include a combination of mechanical, manual, and chemical controls. – To avoid and minimize impacts, herbicides will be applied according to best management practices (e.g., favorable precipitation and wind conditions, when rain is not predicted for 24-48 hours, avoid native vegetation or other sensitive biological resources and active seasons where practicable), and as outlined in the Hazardous Materials Business Plan and Vegetation and Soil Management Plan. – Performance and success shall be based upon the maintained digital records, including photographs and written summaries, that document compliance and include details about water year and subsequent herbicide application timing. 	<p>Less-Than-Significant Impact with Mitigation Incorporated.</p>



Impacts	Mitigation Measures	Level of Significance
	<ul style="list-style-type: none"> • To prevent inadvertent entrapment of wildlife during construction, all excavated, steep-walled holes or trenches with a 2-foot or greater depth will 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, will be inspected by workers for trapped wildlife at the start and end of each workday. Before such holes or trenches are filled, they will be thoroughly inspected by workers for trapped animals. If trapped animals are observed, escape ramps or structures will be installed immediately to allow escape. If a common or non-listed special-status species is found trapped, all work in the vicinity of the animal will cease immediately. If the animal is not injured, then the lead biologist or other qualified biologist will directly supervise the provision of escape structures and/or trench modification to allow the trapped animal to escape safely. Work will not resume in the vicinity of the animal, and it will be allowed to leave the work area and project site on its own. If a listed animal or species of special concern is injured, then the lead biologist will immediately contact USFWS and/or CDFW to identify an individual with the appropriate permit or authorization to handle listed species and to determine who will bring the animal to a pre-identified wildlife rehabilitation or veterinary facility for care. • All construction pipes, culverts, or similar structures with a 4-inch or greater diameter that are stored at a construction site for one or more overnight periods will 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 will not be moved until the lead or another qualified biologist has been consulted. If the animal is a special-status species, then work will immediately halt in the vicinity, and the animal will be allowed to move from the structure and the work area of its own accord. The lead biologist or qualified biologist will direct work stoppages near the animal to allow it to freely move out of the pipe and away from the work area. Special-status species will not be handled or captured by anyone without the appropriate permit or authorization. If the animal is not a special-status species, work will halt until the animal has been captured and relocated by the lead biologist or another qualified biologist. • Drivers/operators of vehicles and equipment parked at worksites will inspect the ground beneath the vehicle or equipment for the presence of wildlife prior to moving the vehicle/equipment. If an animal is present, the lead biologist or another qualified biologist will be notified and the animal will be left to move on its own. • Project vehicles and equipment will use existing routes of travel. Cross-country vehicle and equipment use beyond the demarcated project disturbance areas will be prohibited. • A <u>daytime</u> speed limit of 20 miles per hour <u>and nighttime (sunset to sunrise) speed limit of 10 miles per hour</u> will be enforced within all construction areas. • A long-term trash abatement program will be established for construction, operation and maintenance, and decommissioning. The plan will be submitted to the County prior to construction. Personal trash and food items will be placed in a central, closed container and removed from worksites daily to reduce the attraction of wildlife, such as common ravens (<i>Corvus corax</i>), coyotes (<i>Canis latrans</i>), and feral dogs. • Workers will be prohibited from bringing pets and firearms to the project site and from feeding wildlife in the vicinity. • Intentional killing or collection of any wildlife species will be prohibited... <p>MM BIO-3: Preconstruction Surveys and Protective Measures for Special-Status Species.</p> <p>A qualified biologist will conduct pre-construction surveys for special-status species prior to construction and decommissioning activities. No special-status species surveys would be required during operation and maintenance activities. Preconstruction surveys do not need to be conducted for all areas of suitable habitat at one time; they may be phased so that surveys occur prior to disturbance of any particular portion of the project site. The biologist will record observations of all special-status species and establish no-disturbance buffers as appropriate. Species-specific and general details are as follows:</p> <ul style="list-style-type: none"> • Crotch’s Bumble Bee: If, at the commencement of project construction, Crotch’s bumble bee is still considered a CESA candidate species or has been listed as threatened or endangered under CESA, the project will implement the following measures to avoid, minimize, and offset project impacts to the species: <ul style="list-style-type: none"> – A qualified biologist will conduct <u>one a</u> preconstruction survey <u>during the blooming period immediately prior to construction</u> for Crotch’s bumble bee and nests in project areas with suitable nesting habitat prior to initial ground-disturbing activities, such as staging, mowing, vegetation clearing. There will be multiple surveys during the nesting season. The surveys <u>shall can</u> be phased with project build-out. The purpose of the surveys will be to identify active nest colonies inside of permanent and temporary impact areas. – If active Crotch’s bumble bee nests are observed within the project site or within a 50-foot buffer surrounding the site, an appropriate no-disturbance buffer (as determined by a qualified biologist) will be established around the nest to reduce the risk of disturbance or accidental take <u>and CDFW will be notified</u>. The buffer will provide at least 50 feet of <u>clearance no-disturbance</u> around active nest entrances. (Note: inaccessible areas outside of the project site can be surveyed using binoculars from the project edge or from public roads.) 	



Impacts	Mitigation Measures	Level of Significance
	<ul style="list-style-type: none"> – If establishment of a no-disturbance buffer is feasible, construction activities will not occur within the buffer until a qualified biologist determines that the colony is no longer active (i.e., no Crotch’s bumble bees are seen flying in or out of the nest for three consecutive days, indicating the colony has completed its nesting season and the next season’s queens have dispersed from the colony). Once the nest has been determined to be inactive, construction activities within the no-disturbance buffer(s) will be allowed to resume. – If avoidance of a no-disturbance buffer is not feasible, the lead biologist will consult with CDFW regarding potential encroachment into the no-disturbance buffer with other measures implemented. Work would <u>shall</u> not begin in the no-disturbance buffer without CDFW approval. – If avoidance of the nest is not feasible, the lead biologist will consult with the CDFW regarding the potential for project activities to result in take of the Crotch’s bumble bee and will comply with all avoidance, minimization, and compensatory mitigation requirements set forth in any incidental take permit issued for the project by CDFW. • San Joaquin Kit Fox: A qualified biologist will conduct a preconstruction survey for SJKF to determine whether potential SJKF dens are present in or within 200 feet of the project site no fewer than 14 days and no more than 30 days prior to beginning of ground disturbance (such as staging, mowing, and vegetation clearing) related to construction and decommissioning activities, or any other project <u>construction</u> activity with the potential to impact SJKF. (Note: inaccessible areas outside of the project site can be surveyed using binoculars or spotting scopes from the project edge or from public roads). The surveys will be conducted in all areas of suitable habitat for SJKF. If potential dens are observed and avoidance of the dens is determined to be feasible, then a no-disturbance zone of 100 feet will be established around an active den. If the den is natal/pupping den, <u>USFWS and CDFW</u> must be contacted to determine the appropriate no-disturbance zone (USFWS 2011). Exclusion zone establishment will follow the USFWS Standardized Recommendations for Protection of the Endangered SJKF Prior to or During Ground Disturbance (USFWS 2011) under “Exclusion Zones.” • If active, non-natal/pupping dens are found within the project site by the qualified biologist, an on-site passive relocation program will be implemented with prior concurrence from <u>USFWS and CDFW</u>. This program will consist of excluding SJKFs from occupied burrows by installation of one-way doors at burrow entrances, monitoring of the burrow for one week to confirm usage has been discontinued, and excavation and collapse of the burrow to prevent reoccupation. This would be implemented only during non-breeding season for SJKF (September 1 to February 1). After the qualified biologist determines that the SJKFs have stopped using active dens within the project site, the dens will be excavated by hand with a shovel to prevent foxes from re-using them during construction. • Other Special-Status Species: If other special-status species are detected during preconstruction surveys, the qualified biologist will implement appropriate no-disturbance buffers around the individual animal, burrow, den, or nest, as determined by the biologist and based on site-specific conditions. The buffer will provide at least 50 feet of clearance, or a distance recommended by the appropriate agency from the protected resource. The lead biologist will contact CDFW and/or USFWS to determine appropriate next steps, including identifying an individual with the appropriate permit or authorization to handle a listed species, if that becomes necessary. The applicant will comply with all avoidance, minimization, and compensatory mitigation requirements set forth in any incidental take permit issued for the project by CDFW authorizing take of the species. <p>MM BIO-4: Nesting Bird Protection Measures.</p> <p>Nesting bird surveys would only be required for construction and decommissioning activities, not during operation and maintenance activities. If construction work is scheduled to take place outside of the bird nesting season (September 16 through January 31), no action would be required to protect nesting birds. To avoid impacts on nesting birds within or near the project site during the bird nesting season (February 1 through August 31, or through September 15 for Swainson’s hawk), the following measures will be implemented:</p> <ul style="list-style-type: none"> • A qualified wildlife biologist will conduct preconstruction surveys for nesting birds no more than <u>10 44</u>-days prior to the beginning of ground disturbance (such as staging and vegetation clearing) related to construction and decommissioning activities. Surveys may be phased as construction is phased so that each work area is surveyed no more than <u>10 44</u> days prior to the start of construction in that area. <u>Surveys will be conducted by a qualified biologist following the survey techniques developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) within all areas of the Project site and 0.5-mile buffer containing suitable nesting habitat.</u> 	



Impacts	Mitigation Measures	Level of Significance
	<ul style="list-style-type: none"> If active nests are found during preconstruction surveys (or during construction by a construction crew), a suitable no-disturbance buffer will be established around the nests until it is determined that all young have fledged or until the recognized nesting season has ended (i.e., generally August 31 except Swainson's hawk which would be September 15). The size of any employed no-disturbance buffers will vary based on the species that is nesting (e.g., 200–300 feet for common raptors 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; 0.5 mile for Swainson's hawk and golden eagle; 50 feet for passerine species). For species that are not state or federally listed as threatened or endangered, encroachment into the no-disturbance buffer may occur at the discretion of a qualified biologist; however, for state and federally listed species, consultation with CDFW and/or USFWS will occur prior to encroachment into the no-disturbance buffers. If pre-construction surveys indicate that nests are inactive or potential habitat is unoccupied during the construction period, no further action is required. Shrubs, trees, and other vegetation within the construction site determined to be unoccupied by nesting birds or that are outside the no-disturbance buffer for active nests can be removed. Vegetation removal will be scheduled for outside of the nesting season, as feasible. <p>MM BIO-5: Burrowing Owl Protection Measures.</p> <ul style="list-style-type: none"> A qualified biologist will conduct a preconstruction survey for burrowing owls within 500 meters 330 feet of the project site in areas with suitable burrowing habitat to locate any occupied burrows (e.g., active breeding burrows or wintering burrows) no more than 14 days prior to the beginning of ground equipment staging or ground-disturbing activities. No burrowing owl surveys would be required during operation and maintenance activities. If, at the commencement of project construction, burrowing owl is present and listed as candidate, threatened, or endangered under CESA, then the lead biologist will consult with CDFW to determine if an incidental take permit is needed for the project, unless avoidance is feasible. To protect burrowing owls, the following conditions will be met prior to construction within each successive work area: Surveys will include the project site and areas within 500 meters 330 feet of the project site. Inaccessible areas outside of the project site can would be surveyed using binoculars or spotting scopes from the project edge or from public roads. The survey methodology will be consistent with the methods outlined in the CDFW (2012) Staff Report on Burrowing Owl Mitigation. If inactive (unoccupied) burrowing owl burrows are detected any time of the year, the burrows may be excavated with a shovel to prevent burrowing owls from re-using them during construction. The burrow's inactive status will be determined by the approved biologist through monitoring prior to burrow excavation. If active (occupied) burrowing owl burrows are detected, no ground-disturbing activities, such as vegetation clearance, grading, or other construction activities, will be permitted within a no-disturbance buffer around the burrow. The size of any employed no-disturbance buffers will be 500 meters 330 feet from the active burrow if during the breeding season (February 1 to August 31) and 165 feet from the active burrow if during the nonbreeding (winter) season, year-round, unless otherwise authorized by a qualified biologist as described below. Depending on the level of disturbance, a smaller buffer may be established by a qualified biologist based on the visibility and sensitivity responses of each individual burrowing owl. If active burrowing owl avoidance is infeasible, then the project shall consult with CDFW regarding potential for project activities to result in take of burrowing owl and shall comply with all avoidance, minimization, and compensatory mitigation requirements set forth in any Incidental Take Permit (ITP) issued for the project by CDFW authorizing take of the species. during the nonbreeding season or during the breeding season where resident owls have not yet begun egg laying or incubation, or where the juvenile burrowing owls are foraging independently and capable of independent survival, a qualified biologist will implement a passive relocation program in accordance with the CDFW (2012) Staff Report on Burrowing Owl Mitigation. Exclusion would involve installation of one-way doors at burrow entrances after the qualified biologist has determined that the burrow is not an active nest or that juvenile burrowing owls are not dependent on the burrow. After the authorized biologist has determined through monitoring that the burrows are unoccupied, the burrows may be excavated with a shovel to prevent burrowing owls from re-using them during construction 	
<p>Impact BIO-4 The Project would not interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors or impede the use of wildlife nursery sites.</p>	<p>MM BIO-2: General Measures for the Avoidance and Protection of Biological Resources</p> <p>MM BIO-4: Nesting Bird Protection Measures</p> <p>MM BIO-7: Reduce Potential for Bird Collisions with Photovoltaic Array</p> <p>MM BIO-8: Reduce Impacts on Nocturnal Wildlife from Lighting.</p>	<p>Less-Than-Significant Impact with Mitigation Incorporated.</p>



Impacts	Mitigation Measures	Level of Significance
Section 4.5 – Cultural Resources		
<p>Impact CUL-1 The Project would not cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5.</p>	<p>MM CUL-1: Retain a Qualified Archaeologist and Training. The Applicant/contractor shall retain a qualified archaeologist, defined as an archaeologist meeting the Secretary of the Interior’s Standards for professional archaeology, to carry out all Mitigation Measures related to archaeological and historical resources prior. All personnel entering the Project site shall attend a Cultural Resources Awareness Training provided by the qualified archaeologist before beginning work onsite. <u>The qualified archaeologist shall also administer the Cultural Resources Awareness Training prior to Pacific Gas & Electric Company (PG&E) mobilizing for construction activities.</u> The primary Cultural Resources Awareness Training shall occur before construction activities begin, and as-needed thereafter. The training shall include an overview of potential cultural resources that could be encountered during ground-disturbing activities. This will facilitate worker recognition, avoidance, and subsequent immediate notification of the qualified archaeologist for further evaluation and action, as appropriate. The training will also cover penalties for unauthorized artifact collecting or intentional disturbance of archaeological resources. If construction is phased, additional trainings shall be conducted for all new construction personnel. The training sessions shall focus on the recognition of the types of archaeological resources that could be encountered at the Project site and the procedures to be followed if they are found. Documentation shall be retained demonstrating that all construction personnel attended the training.</p>	<p>Less-Than-Significant Impact with Mitigation Incorporated.</p>
Section 4.7 – Geology and Soils		
<p>Impact GEO-6 The Project would not directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.</p>	<p>MM GEO-3: Paleontological Resources Awareness Training. The Project Paleontologist shall develop a paleontological resources Workers’ Environmental Awareness Program training that communicates requirements and procedures for the inadvertent discovery of paleontological resources during construction, as well as the penalties for unauthorized collection or disturbance of paleontological resources, to be delivered by the Project Paleontologist or their designee to the construction crews prior to the onset of initial ground disturbance, and as-needed thereafter. <u>The Project Paleontologist or their designee shall also administer the training prior to Pacific Gas & Electric Company (PG&E) mobilizing for construction activities.</u> Training materials in the form of handouts or a recording shall be provided by the Project Paleontologist for training additional staff. Documentation in the form of a sign-in sheet shall be collected to document the training and will be provided to Merced County for compliance purposes.</p> <p>MM GEO-5: Paleontological Monitoring. Project activities that exceed the depth of younger alluvium and extend into older alluvium, estimated to occur at depths of 5 feet or greater, should be monitored by a paleontologist meeting professional standards as a Field Paleontologist as defined by Murphey et al. (2019) working under the supervision of the Project Paleontologist. The duration and extent of monitoring should be determined by the Project Paleontologist based upon final Project plans. Following completion of the monitoring program, the Project Paleontologist should oversee drafting of a Paleontological Resources Mitigation Report that documents completion of the monitoring and other paleontological mitigation activities. This report will be delivered to the Lead Agency and, should fossils have been collected, the repository. <u>Should implementation of PG&E infrastructure exceed depths of 5 feet or greater, the Applicant shall provide a qualified paleontologist to monitor construction of such activities.</u></p>	<p>Less-Than-Significant Impact with Mitigation Incorporated.</p>



3.3 Chapter 2.0 Project Description

The following clarification was made to page 2-1.

Longroad Development Company, LLC, also referred to as Zeta Solar, LLC (Applicant), has applied to the Merced County Department of Community and Economic Development (County) for a Conditional Use Permit (Application No. CUP22-015) to construct, operate, maintain, and decommission the Zeta Solar and Battery Energy Storage System Project (Project), a photovoltaic (PV) solar power generation facility with a battery energy storage system (BESS) and onsite Project substation.

In response to a comment on the Draft EIR, the following text was made to page 2-10.

Project Approvals

The submitted an application to Merced County for a Conditional Use Permit (CUP) (Application No. CUP22-015) to construct, operate, maintain, and decommission the Project. Additional permits and approvals may be required for the Project, including those listed below.

State

- California Public Utilities Commission authorization under General Order 131-D
- California State Water Resources Control Board, National Pollutant Discharge Elimination System (NPDES) Construction General Permit
- California Department of Fish and Wildlife, Incidental Take Permit

The following clarification was made to page 2-16.

2.7.7 Interconnection

The Mercy Springs Substation is owned and operated by PG&E. PG&E would incorporate upgrades to Mercy Springs Substation to support interconnection of the gen-tie line adjacent to existing equipment. PG&E's improvements would occur within areas previously disturbed and occupied by existing electrical facilities. Activities would include installation of gen-tie line terminal equipment and fiber optic line terminal equipment and one circuit breaker at the Mercy Springs Substation, as well as an approximately 100-foot-long conductor between the Project's point of interconnection pole to the dead-end structure located inside Mercy Springs Substation. The conductor would be supported by one dead-end structure, which is a tubular-steel pole or light-duty steel pole that would be approximately 60-feet tall and located on concrete foundations approximately 5-feet in diameter and up to 19-feet deep up to approximately three, 65-foot wooden pole and up to approximately 1,000 feet of overhead gen-tie line from the Project's point of interconnection to the substation, subject to final engineering. Construction of the interconnection facilities would be completed by PG&E or a PG&E contractor.



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Construction would involve temporary ground disturbance around the new dead-end structure pole (an approximate 50-foot radius). Ground disturbance associated with construction of PG&E facilities would occur within previously disturbed areas and no new access roads would be required for PG&E components. Approval of the improvements would fall under the permitting jurisdiction of the California Public Utilities Commission (CPUC). Because the CEQA requires analysis of the environmental impacts of the full Project, the Project Description includes the interconnection upgrades, which are considered in the scope of this document and Project. PG&E implements standard measures and best management practices (BMPs) during construction and operation of projects in its service territory. Applicable measures would be implemented by PG&E during construction and operation of the PG&E improvements. These measures are attached in (Appendix P) and would likely include environmental awareness trainings and pre-activity surveys to determine presence of biological species. The PG&E BMPs would also outline the procedures should unanticipated cultural resources or human remains be encountered during project activities. Construction management measures related to vehicle idling, fugitive dust, hazardous waste management, and noise management would also be implemented.

In response to a comment on the Draft EIR, the following text was made to page 2-18.

2.7.13 Project Site Security and Fencing

The Project site would be enclosed within an up to 8-foot-tall chain-link security fence, measured from finished grade and will include 4–6-inch gaps at the bottom to accommodate wildlife movement. Fence posts would be drilled and grouted or driven pneumatically depending on site-specific soil characteristics. Vehicle access gates would be installed as necessary, with the gates to remain locked when not in use. Additionally, the Project may include additional security measures including but not limited to barbed wire, controlled access points, security alarms, security camera systems, and security guard vehicle patrols to deter trespassing and/or unauthorized activities that could interfere with operation of the Project.

Controlled access gates would be maintained at the main entrance to the Project site. Access to the Project site would be provided to offsite emergency response teams that respond in the event of an after-hours emergency. Enclosure gates would be manually operated with a key provided in an identified key box location.

The following clarification was made to page 2-24.

2.9.5 Panels and Trackers

PV panels would be manufactured offsite and shipped to the Project site ready for installation. The PV solar panels would likely be made from Cadmium telluride or crystalline silicon. A Cadmium telluride PV module is composed of Cadmium telluride solar cells, metal contacts between the cells, an encapsulation layer that encloses the cells, a front glass plate, and a back-side foil or a second glass plate on the back side. Often the module is framed with aluminum and contains a contact box. Cadmium Telluride is a semiconductor used in solar cells to convert solar energy into electricity. Alternately, PV panels may be composed of crystalline silicon, which are



typically more efficient, higher wattage, and do not contain cadmium telluride. A crystalline silicon solar panel is typically composed of glass, aluminum framing, a silicon wafer (the active photovoltaic component), adhesive sealant, and may have a plastic backing material. In a silicon solar cell, the silicon wafer absorbs light, which excites charged particles called electrons. When the electrons move, they create an electric current. In a crystalline silicon solar cell, the silicon absorber is attached to metal contacts which allows electric current to flow through the connected components and be collected as renewable electricity.

3.4 Section 4.1 Aesthetics

The following clarification was made to page 4.1.19.

Cumulative impacts could occur where Project facilities are viewed in combination with other past, present, and future developments in the same viewshed. Of the cumulative projects listed in Chapter 4.0, Environmental Impact Analysis, there are no planned or proposed projects that would be visible within the foreground, middleground, or background of the Project. The Vega Solar Project, which is completed and operational, is located in the middleground, and the Project's facilities and solar panels would cumulatively contribute to the view in the middleground. Although the addition of the Project to views that include the Vega Solar Project would increase the visual dominance of solar panels in views, the visual quality of the views would remain low or moderately low and the solar panels would be generally absorbed into the existing agricultural landscape. The Project and PG&E interconnection infrastructure would not produce lighting or glare effects that would be problematic in the viewshed when combined with other projects. Therefore, the Project and PG&E interconnection infrastructure would not result cumulatively considerable impact to visual resources, and impacts would be less than significant.

3.5 Section 4.2 Agriculture and Forestry Resources

The following clarification was made to page 4.2.23.

The geographic scope of the cumulative impact analysis for agricultural resources is the extent of the County. As identified above, the Project and PG&E interconnection infrastructure would have a less than significant impact on agricultural resources. The Project site does not currently support agricultural uses and its potential use for agricultural production is limited. Although portions of the Project site are designated Prime Farmland, the land does not qualify for that classification as it has not been irrigated for over 10 years. DOC further confirmed that it is anticipated that no Prime Farmland will remain on the Project site or be affected by construction...

Overall, projects that convert agricultural land to non-agricultural land would disrupt agricultural operations but would not preclude agricultural activities in the area. The Project would result in the conversion of non-productive agricultural land to non-agricultural uses; however, the Project site would remain zoned as agricultural and the Project is consistent with General Plan policies encouraging solar development and with the agricultural zoning district with approval of a CUP. Additionally, development of the Project would not disrupt nearby agricultural operations and



activities as the Project would not result in other changes in the existing environment that would result in the conversion of offsite Farmland to non-agricultural uses. As identified above under Impact AG-1, the Project's conversion of Farmland to non-agricultural uses would not result in a significant impact. Therefore, cumulative impacts would be less than significant and the Project and PG&E's interconnection infrastructure's contribution to cumulative impacts would not be cumulatively considerable.

3.6 Section 4.3 Air Quality

The following clarification was made to page 4.3.35.

SJVAPCD established its thresholds of significance based on the amount of pollutants that would be cumulatively considerable. As discussed under Impact AQ-2 and demonstrated in Table 4.3-6, operational criteria pollutant emissions associated with the Project would be below the applicable thresholds of significance. Therefore, implementation of the Project and PG&E interconnection infrastructure improvements would not result in a cumulatively considerable contribution to a cumulative violation of any air quality standards, contribute substantially to an existing or projected air quality violation, or conflict with and/or obstruct implementation of the SJVAPCD's air quality planning efforts. In conclusion, the Project's incremental contribution to regional air quality impacts would be less than cumulatively considerable.

3.7 Section 4.4 Biological Resources

In response to a comment on the Draft EIR, the following text was added to page 4.4.25.

Burrowing Owl

On March 5, 2024, a petition was submitted to the California Fish and Game Commission to list burrowing owl as either endangered or threatened under CESA. CDFW determined BUOW to be a candidate for potential listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice Register (Notice Register) on October 25, 2024. Mitigation Measure BIO-5 includes consultation with CDFW if, at the commencement of project construction, burrowing owl is listed as candidate, threatened, or endangered under CESA.

In response to a comment on the Draft EIR, the following text was made to page 4.4.31.

MM BIO-2: General Measures for the Avoidance and Protection of Biological Resources.

During construction, operation and maintenance, and decommissioning of the facility, the operator or contractor will implement the following general avoidance and protective measures to protect special-status wildlife species:

- ...All personnel entering the project site will attend worker environmental awareness training provided by the lead biologist or their designee before beginning work on-site. The primary worker environmental awareness training will occur before construction



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activities begin and as-needed thereafter. The worker environmental awareness training will include the following topics:

- Information on the potential special-status species and the habitats that may be found within or adjacent to the project site, including (but not limited to) American badger, burrowing owl, Swainson's hawk, golden eagle, blunt-nosed leopard lizard, San Joaquin coachwhip, Crotch's bumble bee, and SJKF.
- ...A daytime speed limit of 20 miles per hour and nighttime (sunset to sunrise) speed limit of 10 miles per hour will be enforced within all construction areas...

In response to a comment on the Draft EIR, the following text was made to page 4.4.34.

MM BIO-3: Preconstruction Surveys and Protective Measures for Special-Status Species

A qualified biologist will conduct preconstruction surveys for special-status species prior to construction and decommissioning activities. No special-status species surveys would be required during operation and maintenance activities. Preconstruction surveys do not need to be conducted for all areas of suitable habitat at one time; they may be phased so that surveys occur prior to disturbance of any particular portion of the project site. The biologist will record observations of all special-status species and establish no-disturbance buffers as appropriate. Species-specific and general details are as follows...

- Crotch's Bumble Bee: If, at the commencement of project construction, Crotch's bumble bee is still considered a CESA candidate species or has been listed as threatened or endangered under CESA, the project will implement the following measures to avoid, minimize, and offset project impacts to the species:

A qualified biologist will conduct one a preconstruction survey during the blooming period immediately prior to construction for Crotch's bumble bee and nests in project areas with suitable nesting habitat prior to initial ground-disturbing activities, such as staging, mowing, vegetation clearing. There will be multiple surveys during the nesting season. The surveys shall can be phased with project build-out. The purpose of the surveys will be to identify active nest colonies inside of permanent and temporary impact areas.

If active Crotch's bumble bee nests are observed within the project site or within a 50-foot buffer surrounding the site, an appropriate no-disturbance buffer (as determined by a qualified biologist) will be established around the nest to reduce the risk of disturbance or accidental take and CDFW will be notified. The buffer will provide at least 50 feet of clearance no-disturbance around active nest entrances. (Note: inaccessible areas outside of the project site can be surveyed using binoculars from the project edge or from public roads.)

If establishment of a no-disturbance buffer is feasible, construction activities will not occur within the buffer until a qualified biologist determines that the colony is no longer active (i.e., no Crotch's bumble bees are seen flying in or out of the nest for three consecutive



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days, indicating the colony has completed its nesting season and the next season's queens have dispersed from the colony). Once the nest has been determined to be inactive, construction activities within the no-disturbance buffer(s) will be allowed to resume.

If avoidance of a no-disturbance buffer is not feasible, the lead biologist will consult with CDFW regarding potential encroachment into the no-disturbance buffer with other measures implemented. Work ~~would~~ shall not begin in the no-disturbance buffer without CDFW approval.

If avoidance of the nest is not feasible, the lead biologist will consult with CDFW regarding the potential for project activities to result in take of the Crotch's bumble bee and will comply with all avoidance, minimization, and compensatory mitigation requirements set forth in any incidental take permit issued for the project by CDFW.

- San Joaquin Kit Fox: A qualified biologist will conduct a preconstruction survey for SJKF to determine whether potential SJKF dens are present in or within 200 feet of the project site no fewer than 14 days and no more than 30 days prior to beginning of ground disturbance (such as staging, mowing, and vegetation clearing) related to construction and decommissioning activities, or any other project construction activity with the potential to impact SJKF. (Note: inaccessible areas outside of the project site can be surveyed using binoculars or spotting scopes from the project edge or from public roads). The surveys will be conducted in all areas of suitable habitat for SJKF. If potential dens are observed and avoidance of the dens is determined to be feasible, then a no-disturbance zone of 100 feet will be established around an active den. If the den is natal/pupping den, USFWS and CDFW must be contacted to determine the appropriate no-disturbance zone (USFWS 2011).

Exclusion zone establishment will follow the USFWS Standardized Recommendations for Protection of the Endangered SJKF Prior to or During Ground Disturbance (USFWS 2011) under "Exclusion Zones."

If active, non-natal/pupping dens are found within the project site by the qualified biologist, an on-site passive relocation program will be implemented with prior concurrence from USFWS and CDFW. This program will consist of excluding SJKFs from occupied burrows by installation of one-way doors at burrow entrances, monitoring of the burrow for one week to confirm usage has been discontinued, and excavation and collapse of the burrow to prevent reoccupation. This would be implemented only during non-breeding season for SJKF (September 1 to February 1). After the qualified biologist determines that the SJKFs have stopped using active dens within the project site, the dens will be excavated by hand with a shovel to prevent foxes from re-using them during construction.

In response to a comment on the Draft EIR, the following text was made to page 4.4.36.



MM BIO-4: Nesting Bird Protection Measures

Nesting bird surveys would only be required for construction and decommissioning activities, not during operation and maintenance activities. If construction work is scheduled to take place outside of the bird nesting season (September 16 through January 31), no action would be required to protect nesting birds. To avoid impacts on nesting birds within or near the project site during the bird nesting season (February 1 through August 31, or through September 15 for Swainson's hawk), the following measures will be implemented:

- A qualified wildlife biologist will conduct preconstruction surveys for nesting birds no more than 10 44-days prior to the beginning of ground disturbance (such as staging and vegetation clearing) related to construction and decommissioning activities. Surveys may be phased as construction is phased so that each work area is surveyed no more than 10 44 days prior to the start of construction in that area. Surveys will be conducted by a qualified biologist following the survey techniques developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) within all areas of the Project site and 0.5-mile buffer containing suitable nesting habitat.
- If active nests are found during preconstruction surveys (or during construction by a construction crew), a suitable no-disturbance buffer will be established around the nests until it is determined that all young have fledged or until the recognized nesting season has ended (i.e., generally August 31 except Swainson's hawk which would be September 15). The size of any employed no-disturbance buffers will vary based on the species that is nesting (e.g., ~~200–300 feet for common raptors~~ 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; 0.5 mile for Swainson's hawk and golden eagle; 50 feet for passerine species). For species that are not state or federally listed as threatened or endangered, encroachment into the no-disturbance buffer may occur at the discretion of a qualified biologist; however, for state and federally listed species, consultation with CDFW and/or USFWS will occur prior to encroachment into the no-disturbance buffers.
- If pre-construction surveys indicate that nests are inactive or potential habitat is unoccupied during the construction period, no further action is required. Shrubs, trees, and other vegetation within the construction site determined to be unoccupied by nesting birds or that are outside the no-disturbance buffer for active nests can be removed. Vegetation removal will be scheduled for outside of the nesting season, as feasible.

In response to a comment on the Draft EIR, the following text was made to page 4.4.37.

MM BIO-5: Burrowing Owl Protection Measures

A qualified biologist will conduct a preconstruction survey for burrowing owls within 500 meters ~~330 feet~~ of the project site in areas with suitable burrowing habitat to locate any occupied burrows (e.g., active breeding burrows or wintering burrows) no more than 14 days prior to the beginning



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of ground equipment staging or ground-disturbing activities. No burrowing owl surveys would be required during operation and maintenance activities. ~~If, at the commencement of project construction, burrowing owl is present and listed as candidate, threatened, or endangered under CESA, then the lead biologist will consult with CDFW to determine if an incidental take permit is needed for the project, unless avoidance is feasible.~~ To protect burrowing owls, the following conditions will be met prior to construction within each successive work area:

- Surveys will include the project site and areas within 500 meters ~~330 feet~~ of the project site. Inaccessible areas outside of the project site ~~can~~ would be surveyed using binoculars or spotting scopes from the project edge or from public roads. The survey methodology will be consistent with the methods outlined in the CDFW (2012) Staff Report on Burrowing Owl Mitigation.
- If inactive (unoccupied) burrowing owl burrows are detected any time of the year, the burrows may be excavated with a shovel to prevent burrowing owls from re-using them during construction. The burrow's inactive status will be determined by the approved biologist through monitoring prior to burrow excavation.
- If active (occupied) burrowing owl burrows are detected, no ground-disturbing activities, such as vegetation clearance, grading, or other construction activities, will be permitted within a no-disturbance buffer around the burrow. The size of any employed no-disturbance buffers will be 500 meters ~~330 feet~~ from the active burrow ~~if during the breeding season (February 1 to August 31) and 165 feet from the active burrow if during the nonbreeding (winter) season, year-round,~~ unless otherwise authorized by a qualified biologist as described below.
- Depending on the level of disturbance, a smaller buffer may be established by a qualified biologist based on the visibility and sensitivity responses of each individual burrowing owl.
- If active burrowing owl avoidance is infeasible, then the project shall consult with CDFW regarding potential for project activities to result in take of burrowing owl and shall comply with all avoidance, minimization, and compensatory mitigation requirements set forth in any Incidental Take Permit (ITP) issued for the project by CDFW authorizing take of the species. ~~during the nonbreeding season or during the breeding season where resident owls have not yet begun egg laying or incubation, or where the juvenile burrowing owls are foraging independently and capable of independent survival, a qualified biologist will implement a passive relocation program in accordance with the CDFW (2012) Staff Report on Burrowing Owl Mitigation. Exclusion would involve installation of one-way doors at burrow entrances after the qualified biologist has determined that the burrow is not an active nest or that juvenile burrowing owls are not dependent on the burrow. After the authorized biologist has determined through monitoring that the burrows are unoccupied, the burrows may be excavated with a shovel to prevent burrowing owls from re-using them during construction.~~



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The following clarification was made to page 4.4.41

There is also a potential to affect migratory birds due to bird species mistaking the PV arrays as water features. This impact was discussed above; and with the implementation of Mitigation Measures BIO-2, BIO-4, and BIO-7, impacts would be reduced to a less-than-significant level.

Project lighting could disorient the navigational abilities of other nocturnal wildlife species, such as bats and owls, or species that disperse at night. The project would have low-level lighting at the main project gate, the project substation, the BESS area, and the operations and maintenance area. Lighting would be designed to provide the minimum illumination needed to achieve safety and security. Nighttime lighting will typically not be needed. The lights would be downward facing, motion or manually activated, and shielded to focus illumination in the immediate area. The project design would minimize the effects of lighting on wildlife. Additionally, Mitigation Measure BIO-8 would be implemented to provide project lighting that would have a less-than-significant impact on wildlife.

Level of Significance Before Mitigation

Potentially Significant Impact.

Mitigation Measures

MM BIO-2: General Measures for the Avoidance and Protection of Biological Resources

MM BIO-4: Nesting Bird Protection Measures

MM BIO-7: Reduce Potential for Bird Collisions with Photovoltaic Array

MM BIO-8: Reduce Impacts on Nocturnal Wildlife from Lighting

The following clarification was made to page 4.4.42

As described in Section 4.0, Environmental Impact Analysis, PG&E would construct the project's interconnection facilities. Activities would include the installation of the gen-tie line and fiber optic line terminal equipment and one circuit breaker at the Mercy Springs Substation. PG&E's improvements would occur within areas previously disturbed and occupied by existing electrical facilities within the substation.

Construction and operation of the project interconnection facilities would not impact any sensitive vegetation communities, riparian, wetland, or aquatic resources. As the improvements would occur in previously disturbed areas that currently are used for electrical transmission infrastructure, the improvements would not have impacts on any special-status species or hamper wildlife movement corridors through the project site and surrounding area. PG&E would also implement standard measures and best management practices (BMPs) (Appendix P) during construction and operation of projects in its service territory. Construction, operation and maintenance, and decommissioning of the PG&E interconnection infrastructure would result in a less-than-significant impact to biological resources...



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Development of cumulative projects could result in direct impacts to special-status plant and wildlife species; construction, operational, and decommissioning disturbances; and/or special-status habitat conversion. However, as described above, the project and PG&E Interconnection Infrastructure would have less-than-significant impacts with mitigation to special-status wildlife species, nesting and migratory birds, and wildlife corridors. Mitigation Measures BIO-1 through BIO-8 would implement measures such as preconstruction surveys, a lead biologist on-site during construction activities, and design features to reduce collision and electrocution. The project would have no impact to special-status plants, sensitive natural communities, state or federally protected wetlands and other waters, local policies or ordinances protecting biological resources, or the provisions of an adopted HCP or NCCP. As with the project, cumulative projects would also be required to avoid and/or mitigate impacts to special-status species and habitats in accordance with County, CDFW, and USFWS requirements. Thus, cumulative impacts would be less than significant.

3.8 Section 4.5 Cultural Resources

The following clarification was made to page 4.5.14

MM CUL-1: Retain a Qualified Archaeologist and Training: The Applicant/contractor shall retain a qualified archaeologist, defined as an archaeologist meeting the Secretary of the Interior's Standards for professional archaeology, to carry out all Mitigation Measures related to archaeological and historical resources prior. All personnel entering the Project site shall attend a Cultural Resources Awareness Training provided by the qualified archaeologist before beginning work onsite. The qualified archaeologist will also administer the Cultural Resources Awareness Training prior to Pacific Gas & Electric Company (PG&E) mobilizing for construction activities. The primary Cultural Resources Awareness Training shall occur before construction activities begin, and as-needed thereafter. The training shall include an overview of potential cultural resources that could be encountered during ground-disturbing activities. This will facilitate worker recognition, avoidance, and subsequent immediate notification of the qualified archaeologist for further evaluation and action, as appropriate. The training will also cover penalties for unauthorized artifact collecting or intentional disturbance of archaeological resources. If construction is phased, additional trainings shall be conducted for all new construction personnel. The training sessions shall focus on the recognition of the types of archaeological resources that could be encountered at the Project site and the procedures to be followed if they are found. Documentation shall be retained demonstrating that all construction personnel attended the training.

The following clarification was made to page 4.5.15.

As described in Chapter 2.0, Project Description, PG&E would construct the Project's interconnection facilities. Activities would include the installation of the gen-tie line terminal equipment and fiber optic line terminal equipment, and installation of one circuit breaker at the Mercy Springs Substation. PG&E's improvements would require minimal ground disturbance and would occur within areas previously disturbed and occupied by existing electrical facilities within



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the substation. The Central California Information Center record search indicated there are no known cultural resources within the PG&E substation (CHRIS 2021). PG&E's standard best management practices ~~and APMs~~ include preconstruction cultural resources inventory and data recovery, if necessary, and minimization or avoidance of impacts to any potentially significant cultural resources that might be discovered through standard protocols (Appendix P). Additionally, a qualified archaeologist for the Project will also administer the Cultural Resources Awareness Training prior to PG&E mobilizing for construction activities in accordance with MM CUL-1. Impacts would be less than significant.

The geographic scope of the cumulative impact analysis for cultural resources is the greater San Joaquin Valley area. This geographic scope of analysis is appropriate because the archaeological and historical resources within this area are expected to be similar to those that occur on the Project site because of their proximity, and because similar environments, landforms, and geology within this vicinity would likely yield artifacts of similar sensitivity and quantity.

No identified cultural resources would be impacted by the Project or PG&E Interconnection Infrastructure. However, the Project and other related projects could disturb unknown subsurface human remains or historic or archaeological resources through excavation and ground disturbance during construction. These impacts, in combination with other cumulative projects in the area, have the potential to contribute to a cumulatively significant cultural resources impact due to the potential loss of historical resources, archaeological resources, and human remains unique to the region. However, potential impacts on unknown cultural resources associated with the Project would be appropriately mitigated through implementation of inadvertent discovery procedures as detailed in Mitigation Measures CUL-1 through CUL-3. Therefore, with the implementation of mitigation measures, and given that related projects would be subject to similar mitigation requirements, the total impact of related projects on unknown cultural resources would be less-than-significant, and the contribution from the Project and PG&E Interconnection Infrastructure would not be cumulatively considerable.

3.9 Section 4.6 Energy

The following clarification was made to page 4.6.17.

Accordingly, the Project would provide a new source of renewable energy and would not result in the wasteful, inefficient, or unnecessary consumption of energy resources during Project construction, operations, or decommissioning. The Project and activities associated with the PG&E interconnection infrastructure would not contribute to cumulative energy consumption in California because operation of the Project would provide electric power with negligible operational energy consumption over the long term when compared to traditional fossil-fueled generation technologies. Thus, the Project would not have a cumulatively considerable impact on energy consumption, would not conflict with any renewable energy plans, and cumulative impacts would be less than significant.



3.10 Section 4.7 Geology and Soils

The following clarification was made to page 4.7.23.

Most planned excavation activities do not exceed 4 feet below ground surface. At these depths, it is unlikely the high-potential units in the subsurface would be encountered. However, the gen-tie line will entail augering to install poles for pole diameters of 18 inches to 24 inches, to depths of ~~15-19~~ feet below ground surface. As high-potential units are anticipated at depths of greater than 5 feet bgs across the Project site, and most ground disturbance is limited to 4 feet bgs, such activities are unlikely to reach high potential units. Augering for the gen-tie poles may encounter high potential older alluvium in the subsurface. If this were to occur, and fossils encountered, their damage or destruction would constitute a direct adverse impact to paleontological resources.

The following clarification was made to page 4.7.24.

MM GEO-3: Paleontological Resources Awareness Training. The Project Paleontologist shall develop a paleontological resources Workers' Environmental Awareness Program training that communicates requirements and procedures for the inadvertent discovery of paleontological resources during construction, as well as the penalties for unauthorized collection or disturbance of paleontological resources, to be delivered by the Project Paleontologist or their designee to the construction crews prior to the onset of initial ground disturbance, and as-needed thereafter. The Project Paleontologist or their designee will also administer the training prior to Pacific Gas & Electric Company (PG&E) mobilizing for construction activities. Training materials in the form of handouts or a recording shall be provided by the Project Paleontologist for training additional staff. Documentation in the form of a sign-in sheet shall be collected to document the training and will be provided to Merced County for compliance purposes.

MM GEO-5: Paleontological Monitoring. Project activities that exceed the depth of younger alluvium and extend into older alluvium, estimated to occur at depths of 5 feet or greater, should be monitored by a paleontologist meeting professional standards as a Field Paleontologist as defined by Murphey et al. (2019) working under the supervision of the Project Paleontologist. The duration and extent of monitoring should be determined by the Project Paleontologist based upon final Project plans. Following completion of the monitoring program, the Project Paleontologist should oversee drafting of a Paleontological Resources Mitigation Report that documents completion of the monitoring and other paleontological mitigation activities. This report will be delivered to the Lead Agency and, should fossils have been collected, the repository. Should implementation of PG&E infrastructure exceed depths of 5 feet or greater, the Applicant shall provide a qualified paleontologist to monitor construction of such activities.



The following clarification was made to page 4.7.25.

Section 4.7.3.4 PG&E Interconnection Infrastructure

Pacific Gas & Electric (PG&E) would incorporate upgrades to Mercy Springs Substation to support interconnection of the gen-tie line, including installation of a new circuit breaker and additional switches, which would occur within areas previously disturbed and occupied by existing electrical facilities. The construction of the PG&E infrastructure would require minimal ground disturbance and would not directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving rupture of a known earthquake fault, strong seismic ground shaking, ground failure and liquefaction, or landslides. The PG&E improvements also would not result in substantial soil erosion or be located on unstable geological units or expansive soils, and no septic systems would be required. Most planned grading and excavation activities associated with gen-tie construction do not exceed 4 feet below ground surface. At these depths, it is unlikely the subsurface high-potential units for paleontological resources would be encountered. However, the gen-tie line would entail augering to install poles ~~with diameters of 18 inches to 24 inches~~ to depths of ~~15~~ up to 19 feet below ground surface. As high-potential units are anticipated at depths of greater than 5 feet bgs across the Project site, augering for the gen-tie poles may encounter high potential older alluvium in the subsurface. If this were to occur, and fossils encountered, their damage or destruction would constitute a direct adverse impact to paleontological resources. PG&E would incorporate standard ~~measures~~ best management practices (Appendix P) during construction. Additionally, the Project Paleontologist, provided by the Applicant, will administer ~~for~~ paleontological resources sensitivity training for construction workers, identifying protocols for inadvertent discovery of a paleontological resource; and establishing monitoring protocol during gen-tie auguring in accordance with Mitigation Measure GEO-3 and Mitigation Measure GEO-5. Therefore, activities associated with the interconnection infrastructure would result in less-than-significant impacts relating to geology and soils.

The following clarification was made to page 4.7.26.

Similar to the Project, other projects in the area would be required to adhere to the same California and County Building Codes which would reduce the risk to people and property to less-than-significant levels. While future seismic events cannot be predicted, adherence to all federal, State, and local programs, requirements and policies pertaining to building safety and construction would limit the potential for injury or damage to a less-than-significant level. Therefore, the Project and PG&E Interconnection Infrastructure, combined with past, present, and other foreseeable development in the area, would not result in a cumulatively significant impact by exposing people or structures to risk related to geologic hazards, soils, and/or seismic conditions. Therefore, the Project and PG&E Interconnection Infrastructure would result in less-than-significant cumulative impacts related to geology and soils...



3.11 Section 4.8 Greenhouse Gas Emissions

The following clarification was made to page 4.8.21.

Overall, the project and activities associated with the PG&E interconnection infrastructure would not contribute to cumulative GHG emissions in California because operation of the Project would provide electric power with negligible operational GHG emissions over the long term when compared to traditional fossil fuel generation technologies. Therefore, the cumulative impact would be less than significant, and the Project would not have a cumulatively considerable impact on GHG emissions.

3.12 Section 4.9 Hazards and Hazardous Materials

The following clarification was made to page 4.9.8.

Photovoltaic Product Disposal and End-of-Life Regulation

Regulation of solar PV products' end-of-life disposal is based on the federal RCRA and on the HWCL. If solar panels are determined to be hazardous waste by the regulatory authority (Merced County), the requirements of RCRA and HWCL would regulate their handling, recycling, reuse, storage, treatment, and disposal. Decommissioned or defective solar panels are currently considered hazardous waste by regulators if they do not meet the USEPA's Toxicity Characteristic Leaching Procedure standards (this determination varies depending on the technology used). Cadmium telluride panels are expected to last up to 40 years, and proactive disposal procedures, including recycling can eliminate health and environmental risks on water streams and water contamination for municipalities. Crystalline silicon panels, which do not contain cadmium telluride and are therefore generally considered to be less toxic, would be recycled in accordance with state and federal regulations.

The following clarification was made to page 4.9.19.

Operation

The potential for exposure to hazardous materials during operation of the Project would include exposure to solar panel materials and potential fire and explosive risk of the batteries. The PV solar panels that would be installed on the Project site would be made from Cadmium telluride or crystalline silicon.

The following clarification was made to page 4.9.20.

Should cadmium telluride panels, rather than crystalline silicon panels, be used ~~D~~during operation of the project, staff would be trained on procedures to identify broken panels and proper handling guidelines, which would minimize the potential for Cadmium leaching from damaged panels.



The following clarification was made to page 4.9.26.

PG&E would comply with best management practices (Appendix P) and all applicable state and federal laws and regulations during construction and operation, including those regulations that relate to hazardous materials. Therefore, activities associated with the PG&E interconnection infrastructure would also result in a less-than-significant impact relating to hazards and hazardous materials.

The following clarification was made to page 4.9.27.

Additionally, the related cumulative projects are situated in a manner that a potentially hazardous event at one project site would be unlikely to affect another site, and each project would be required to comply with applicable laws and regulations addressing hazards and hazardous materials. Thus, the Project and PG&E interconnection infrastructure activities plus related cumulative projects would result in less-than-significant cumulative impacts to hazards and hazardous materials, and the Project would not have a cumulatively considerable impact on hazards and hazardous materials.

3.13 Section 4.10 Hydrology and Water Quality

The following clarification was made to page 4.10.25.

Cumulative impacts to hydrology and water quality could occur as a result of the project and activities associated with the PG&E interconnection infrastructure's incremental effect in combination with related impacts from other past, present, and probable future projects. Table 4.0-3: List of Projects Included in Cumulative Analysis, in Section 4.0, Environmental Impact Analysis, lists surrounding projects in the County. These cumulative projects are between 12.3 miles to 38 miles north and northeast of the Project site and would not affect the Project vicinity's water quality or drainage system.

3.14 Section 4.11 Land Use and Planning

The following clarification was made to page 4.11.29.

The Project also is consistent with the goals and policies of the 2030 General Plan, which was designed specifically to achieve and promote consistency with the planning documents of other neighboring cities and counties. Notably, the 2030 General Plan EIR concluded that impacts related to land use and planning as a result of future development under the General Plan would not be cumulatively considerable. Therefore, as the Project and PG&E interconnection infrastructure is consistent with the goals and policies of the General Plan, the Project would not contribute to or result in in a cumulatively significant impact to land use. Cumulative impacts would be less than significant.



3.15 Section 4.12 Noise

The following clarification was made to page 4.12.21.

Cumulative noise impacts could occur from multiple projects resulting in exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or exposure to groundborne vibration and groundborne noise. However, there are no planned projects within 0.25 miles of the Project or PG&E interconnection infrastructure (Table 4.0-3, List of Related Projects). Therefore, the cumulative noise and vibration impacts would be less than significant, and the contribution from the Project would not be cumulatively considerable.

3.16 Section 4.13 Public Services

The following clarification was made to page 4.13.9.

Any potential impacts that would affect public services have already been anticipated and planned for by the County, and the Project would not result in additional impacts beyond what is already analyzed and anticipated. Therefore, cumulative impacts associated with public services would be less than significant, and the contribution from the Project and PG&E interconnection infrastructure activities would not be cumulatively considerable.

3.17 Section 4.14 Transportation

The following clarification was made to page 4.14.11.

The improvements would not increase hazards due to a geometric design feature or result in inadequate emergency access. PG&E also would implement standard best management practices (Appendix P) during construction and operation. Therefore, these improvements would have a less-than-significant transportation impact.

The following clarification was made to page 4.11.12.

Traffic volumes associated with operational activities of the Project are negligible. Other future projects in the immediate vicinity of the Project and PG&E infrastructure improvements would generate little operational traffic that would also have a nominal effect on traffic on the surrounding roadway network. Therefore, cumulative impacts would be less than significant.



3.18 Section 4.15 Tribal Cultural Resources

The following clarification was made to page 4.15.5.

There are no known tribal cultural resources within the PG&E substation. PG&E's standard best management practices (Appendix P) and ~~APMs~~ include preconstruction cultural resources inventory and data recovery, if necessary, and minimization or avoidance of impacts to any potentially significant tribal cultural resources that might be discovered through standard protocols. Impacts would be less than significant.

The following clarification was made to page 4.15.6.

The project would not have a significant impact on tribal cultural resources with implementation of Mitigation Measures CUL-1 through CUL-3 addressing potential impacts to unknown TCRs. Other projects likely would be subject to similar mitigation requirements. Therefore, the total impact of related projects on TCRs would be less-than-significant, and the contribution from the Project and PG&E interconnection infrastructure updates would not be cumulatively considerable.

3.19 Section 4.16 Utilities and Service Systems

The following clarification was made to page 4.16.16.

The PG&E interconnection infrastructure for the Project would not result in the need for new or relocated utilities or service systems, would have little if any water demand and would not result in insufficient supplies, and would not result in substantial wastewater or solid waste generation in excess of available capacity. PG&E's best management practices (Appendix P) include compliance with all applicable state and federal laws and regulations during construction and operation, including those regulations that relate to solid waste disposal and recycling. Impacts would be less than significant, and no mitigation would be required.

The following clarification was made to page 4.16.17.

The Project and PG&E interconnection infrastructure activities would not require the construction or expansion of any off-site water or wastewater treatment facilities, would not increase or alter runoff patterns such that new or expanded stormwater drainage facilities would be required, and would not require the expansion of natural gas facilities. In addition, the Project would comply with all applicable statutes and regulations regarding solid waste and would not contribute to a cumulative impact for that topic.



3.20 Section 4.17 Wildfire

The following clarification was made to page 4.17.12.

...all projects would be required to adhere to County's zoning and land use designations and codes, State and local fire codes, and regulations associated with drainage and site stability. These regulations, policies, and codes would reduce the potential for exposing people or structures to risks from downslope or downstream flooding or landslides as a result of post-fire slope instability. Cumulative impacts associated with the Project and PG&E interconnection infrastructure activities would be less than significant.

3.21 Appendix F Biological Resources Assessment

In response to a comment on the Draft EIR, the following text was made to page 29 of Appendix F of the Draft EIR.

Burrowing Owl

On March 5, 2024, a petition was submitted to the California Fish and Game Commission to list burrowing owl as either endangered or threatened under CESA. CDFW determined BUOW to be a candidate for potential listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice Register (Notice Register) on October 25, 2024. Mitigation Measure BIO-5 includes consultation with CDFW if, at the commencement of project construction, burrowing owl is listed as candidate, threatened, or endangered under CESA.

In response to a comment on the Draft EIR, the following text was made to page 35 of Appendix F of the Draft EIR.

MM BIO-2: General Measures for the Avoidance and Protection of Biological Resources.

During construction, operation and maintenance, and decommissioning of the facility, the operator or contractor will implement the following general avoidance and protective measures to protect special-status wildlife species:

- ...All personnel entering the project site will attend worker environmental awareness training provided by the lead biologist or their designee before beginning work on-site. The primary worker environmental awareness training will occur before construction activities begin and as-needed thereafter. The worker environmental awareness training will include the following topics:
 - Information on the potential special-status species and the habitats that may be found within or adjacent to the project site, including (but not limited to) American badger, burrowing owl, Swainson's hawk, golden eagle, blunt-nosed leopard lizard, San Joaquin coachwhip, Crotch's bumble bee, and SJKF.



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- ...A daytime speed limit of 20 miles per hour and nighttime (sunset to sunrise) speed limit of 10 miles per hour will be enforced within all construction areas...

MM BIO-3: Preconstruction Surveys and Protective Measures for Special-Status Species

A qualified biologist will conduct preconstruction surveys for special-status species prior to construction and decommissioning activities. No special-status species surveys would be required during operation and maintenance activities. Preconstruction surveys do not need to be conducted for all areas of suitable habitat at one time; they may be phased so that surveys occur prior to disturbance of any particular portion of the project site. The biologist will record observations of all special-status species and establish no-disturbance buffers as appropriate. Species-specific and general details are as follows...

- ...Crotch's Bumble Bee: If, at the commencement of project construction, Crotch's bumble bee is still considered a CESA candidate species or has been listed as threatened or endangered under CESA, the project will implement the following measures to avoid, minimize, and offset project impacts to the species:

A qualified biologist will conduct one a preconstruction survey during the blooming period immediately prior to construction for Crotch's bumble bee and nests in project areas with suitable nesting habitat prior to initial ground-disturbing activities, such as staging, mowing, vegetation clearing. There will be multiple surveys during the nesting season. The surveys ~~shall~~ be phased with project build-out. The purpose of the surveys will be to identify active nest colonies inside of permanent and temporary impact areas.

If active Crotch's bumble bee nests are observed within the project site or within a 50-foot buffer surrounding the site, an appropriate no-disturbance buffer (as determined by a qualified biologist) will be established around the nest to reduce the risk of disturbance or accidental take and CDFW will be notified. The buffer will provide at least 50 feet of ~~clearance~~ no-disturbance around active nest entrances. (Note: inaccessible areas outside of the project site can be surveyed using binoculars from the project edge or from public roads.)

If establishment of a no-disturbance buffer is feasible, construction activities will not occur within the buffer until a qualified biologist determines that the colony is no longer active (i.e., no Crotch's bumble bees are seen flying in or out of the nest for three consecutive days, indicating the colony has completed its nesting season and the next season's queens have dispersed from the colony). Once the nest has been determined to be inactive, construction activities within the no-disturbance buffer(s) will be allowed to resume.

If avoidance of a no-disturbance buffer is not feasible, the lead biologist will consult with CDFW regarding potential encroachment into the no-disturbance buffer with other measures implemented. Work ~~would~~ shall not begin in the no-disturbance buffer without CDFW approval.



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If avoidance of the nest is not feasible, the lead biologist will consult with CDFW regarding the potential for project activities to result in take of the Crotch's bumble bee and will comply with all avoidance, minimization, and compensatory mitigation requirements set forth in any incidental take permit issued for the project by CDFW...

- San Joaquin Kit Fox: A qualified biologist will conduct a preconstruction survey for SJKF to determine whether potential SJKF dens are present in or within 200 feet of the project site no fewer than 14 days and no more than 30 days prior to beginning of ground disturbance (such as staging, mowing, and vegetation clearing) related to construction and decommissioning activities, or any other project construction activity with the potential to impact SJKF. (Note: inaccessible areas outside of the project site can be surveyed using binoculars or spotting scopes from the project edge or from public roads). The surveys will be conducted in all areas of suitable habitat for SJKF. If potential dens are observed and avoidance of the dens is determined to be feasible, then a no-disturbance zone of 100 feet will be established around an active den. If the den is natal/pupping den, USFWS and CDFW must be contacted to determine the appropriate no-disturbance zone (USFWS 2011).

Exclusion zone establishment will follow the USFWS Standardized Recommendations for Protection of the Endangered SJKF Prior to or During Ground Disturbance (USFWS 2011) under "Exclusion Zones."

If active, non-natal/pupping dens are found within the project site by the qualified biologist, an on-site passive relocation program will be implemented with prior concurrence from USFWS and CDFW. This program will consist of excluding SJKFs from occupied burrows by installation of one-way doors at burrow entrances, monitoring of the burrow for one week to confirm usage has been discontinued, and excavation and collapse of the burrow to prevent reoccupation. This would be implemented only during non-breeding season for SJKF (September 1 to February 1). After the qualified biologist determines that the SJKFs have stopped using active dens within the project site, the dens will be excavated by hand with a shovel to prevent foxes from re-using them during construction.

MM BIO-4: Nesting Bird Protection Measures

Nesting bird surveys would only be required for construction and decommissioning activities, not during operation and maintenance activities. If construction work is scheduled to take place outside of the bird nesting season (September 16 through January 31), no action would be required to protect nesting birds. To avoid impacts on nesting birds within or near the project site during the bird nesting season (February 1 through August 31, or through September 15 for Swainson's hawk), the following measures will be implemented:

- A qualified wildlife biologist will conduct preconstruction surveys for nesting birds no more than 10 44-days prior to the beginning of ground disturbance (such as staging and vegetation clearing) related to construction and decommissioning activities. Surveys may



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be phased as construction is phased so that each work area is surveyed no more than 10-14 days prior to the start of construction in that area. Surveys will be conducted by a qualified biologist following the survey techniques developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) within all areas of the Project site and 0.5-mile buffer containing suitable nesting habitat.

- If active nests are found during preconstruction surveys (or during construction by a construction crew), a suitable no-disturbance buffer will be established around the nests until it is determined that all young have fledged or until the recognized nesting season has ended (i.e., generally August 31 except Swainson's hawk which would be September 15). The size of any employed no-disturbance buffers will vary based on the species that is nesting (e.g., ~~200–300 feet for common raptors~~ 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; 0.5 mile for Swainson's hawk and golden eagle; 50 feet for passerine species). For species that are not state or federally listed as threatened or endangered, encroachment into the no-disturbance buffer may occur at the discretion of a qualified biologist; however, for state and federally listed species, consultation with CDFW and/or USFWS will occur prior to encroachment into the no-disturbance buffers.
- If pre-construction surveys indicate that nests are inactive or potential habitat is unoccupied during the construction period, no further action is required. Shrubs, trees, and other vegetation within the construction site determined to be unoccupied by nesting birds or that are outside the no-disturbance buffer for active nests can be removed. Vegetation removal will be scheduled for outside of the nesting season, as feasible.

MM BIO-5: Burrowing Owl Protection Measures

A qualified biologist will conduct a preconstruction survey for burrowing owls within 500 meters ~~330 feet~~ of the project site in areas with suitable burrowing habitat to locate any occupied burrows (e.g., active breeding burrows or wintering burrows) no more than 14 days prior to the beginning of ground equipment staging or ground-disturbing activities. No burrowing owl surveys would be required during operation and maintenance activities. ~~If, at the commencement of project construction, burrowing owl is present and listed as candidate, threatened, or endangered under CESA, then the lead biologist will consult with CDFW to determine if an incidental take permit is needed for the project, unless avoidance is feasible.~~ To protect burrowing owls, the following conditions will be met prior to construction within each successive work area:

- Surveys will include the project site and areas within 500 meters ~~330 feet~~ of the project site. Inaccessible areas outside of the project site ~~can~~ would be surveyed using binoculars or spotting scopes from the project edge or from public roads. The survey methodology will be consistent with the methods outlined in the CDFW (2012) Staff Report on Burrowing Owl Mitigation.



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- If inactive (unoccupied) burrowing owl burrows are detected any time of the year, the burrows may be excavated with a shovel to prevent burrowing owls from re-using them during construction. The burrow's inactive status will be determined by the approved biologist through monitoring prior to burrow excavation.
- If active (occupied) burrowing owl burrows are detected, no ground-disturbing activities, such as vegetation clearance, grading, or other construction activities, will be permitted within a no-disturbance buffer around the burrow. The size of any employed no-disturbance buffers will be 500 meters ~~330 feet~~ from the active burrow ~~if during the breeding season (February 1 to August 31) and 165 feet from the active burrow if during the nonbreeding (winter) season, year-round,~~ unless otherwise authorized by a qualified biologist as described below.
- Depending on the level of disturbance, a smaller buffer may be established by a qualified biologist based on the visibility and sensitivity responses of each individual burrowing owl.
- If active burrowing owl avoidance is infeasible, then the project shall consult with CDFW regarding potential for project activities to result in take of burrowing owl and shall comply with all avoidance, minimization, and compensatory mitigation requirements set forth in any ITP issued for the project by CDFW authorizing take of the species. ~~during the nonbreeding season or during the breeding season where resident owls have not yet begun egg laying or incubation, or where the juvenile burrowing owls are foraging independently and capable of independent survival, a qualified biologist will implement a passive relocation program in accordance with the CDFW (2012) Staff Report on Burrowing Owl Mitigation. Exclusion would involve installation of one-way doors at burrow entrances after the qualified biologist has determined that the burrow is not an active nest or that juvenile burrowing owls are not dependent on the burrow. After the authorized biologist has determined through monitoring that the burrows are unoccupied, the burrows may be excavated with a shovel to prevent burrowing owls from re-using them during construction.~~

3.22 Appendix J Paleontological Resources Assessment

The following clarification was made to page iv of Appendix J of the Draft EIR.

Project plans for ground disturbance involve access road construction and improvement, shallow surface grading across the entire Project site, utility line trenching to four feet below ground surface, the driving of piles for panel support, and ~~45-~~19-foot deep augering for power transmission poles.



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The following clarification was made to page 14 of Appendix J of the Draft EIR.

The Project plans to construct a 75 MW photovoltaic facility and battery storage system. This work will entail a variety of activities: updating and construction of access roads within the Project site, shallow grading of the entire Project site, digging of trenches to 4 feet bgs for collector lines, and pile driving. Following construction, operations and maintenance activities include maintaining access roads to the Project site and within the Project boundaries, and general maintenance within the Project site. The gen-tie line will entail augering for pole diameters of 18 inches to 24 inches, to depths of ~~15~~19-feet bgs.

Of these activities, those that require ground disturbance that will extend into geologic units with high paleontological potential are at risk of posing an adverse impact to paleontological resources. Ground disturbance is expected to consist of shallow grading across the entire Project site, 4-foot-deep trenching for collector lines, piles driven for the panels, and ~~15~~19-foot deep augering for the gen-tie poles. As high-potential units are anticipated at depths of greater than 5 feet bgs across the Project site, and most ground disturbance is limited to 4 feet bgs, such activities are unlikely to reach high potential units. Augering for the gen-tie poles may encounter high potential older alluvium in the subsurface. If this were to occur, and fossils encountered, their damage or destruction would constitute a direct adverse impact to paleontological resources. Following construction activities, operation and maintenance of the facility will not involve additional ground disturbance, so indirect or cumulative impacts are also unlikely.



Chapter 4 References

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APPENDIX P

PG&E Best Management Practices



PG&E Best Management Practices

Measure type	Specific BMP
Dust control	<ul style="list-style-type: none"> • Apply water as needed • Limit vehicle speed to 15 miles per hour • Cover loads • Clean track-out daily
Parking	<ul style="list-style-type: none"> • Park on pavement, existing roads, and previously disturbed areas to the extent practicable. • Avoid parking on dry vegetation. • Carry water or fire extinguisher and shovel during dry conditions.
Access	<ul style="list-style-type: none"> • Vehicles and equipment must use pavement, existing roads, and previously disturbed areas to the extent practicable. • Keep off-road travel, blading, and vegetation clearing to the minimum extent necessary for safe vehicle/equipment access.
Trash	Place all activity and food-related trash in a covered receptacle and remove from the activity area daily.
Refueling	<ul style="list-style-type: none"> • No vehicles or heavy equipment will be refueled within 100 feet of a wetland, stream, or other waterway, or within 250 feet of vernal pools, unless secondary containment is used. • Vehicles will carry adequately stocked spill kits and staff must be trained in their use. • The fueling operator must always stay with the fueling operation. • Do not top off tanks.
Bird nests	Bird nests with eggs and/or chicks will not be disturbed; contact a biologist or the Avian Protection Program Manager for further guidance.
Wildlife entrapment	Inspect pipes, culverts and other construction material and equipment for wildlife prior to moving them.
Waterway crossings	Vehicles and equipment may cross streams and wetlands only via existing roads and crossings. When possible, activities near streams, wetlands, or on saturated soils should be conducted during the dry season. If work is necessary during the rainy season, it should be conducted during dry spells between rain events. Vehicles and equipment must be checked and maintained daily to prevent leaks.
Vernal pools	If overland access or ground disturbing work is planned within 250 ft. of any water feature, contact a PG&E Biologist.
Wildlife sighting	No wildlife or plant species will be handled or removed from activity areas.
Invasive Species	Clean all vehicles, equipment, clothing, etc. of material potentially containing noxious weeds/seeds prior to entering and existing work locations. Cleaning can be accomplished by brushing, washing, or blowing with compressed air.
Waterways	Cleared or pruned vegetation, woody debris (including chips), and lose or exposed soil, must be disposed of in a manner to ensure that these materials do not enter surface water or a water feature.
Cultural Resource Inadvertent Discovery	<p>If any cultural resources are identified during PG&E activities, stop all work in the vicinity of the discovery and immediately notify the PG&E Cultural Resources Specialist. Archaeological and historic-period resources in the region may include:</p> <ul style="list-style-type: none"> • Archaeological materials: flaked stone tools (projectile point, biface, scraper, etc.) and debitage (flakes) made of chert, obsidian, etc., groundstone milling tools and fragments (mortar, pestle, handstone, millstone, etc.), faunal bones, fire- affected rock, dark middens, housepit depressions and human interments. • Historic-era resources: may include, but are not limited to, small cemeteries or burial plots, cut (square) nails, containers or miscellaneous hardware, glass fragments, cans with soldered seams or tops, ceramic or stoneware objects or fragments, milled or split lumber, earthworks, feature or structure remains and trash dumps.
Herbicide	Herbicides will be applied in a manner to avoid drift, will be stored and transported in a manner to prevent spilling, and will be applied to target species only. Applications must not be made in, immediately prior to, or immediately following rain.
EFS notification	<p>Immediately contact the local EFS and stop work if any of the following conditions occur:</p> <ul style="list-style-type: none"> • Discharge or spill of hazardous substance; • Visually cloudy/muddy water is observed leaving the work area; • Need for dewatering; • An underground storage tank is discovered; • Potential naturally occurring asbestos (fibrous or flaky rock that can be green, brown, reddish brown, grey and/ or black, may appear waxy or shiny and feel soapy) is identified during excavation; • A subsurface component related to site remediation activities (e.g., monitoring well, recovery well, injection well) is discovered; or • Unanticipated evidence of contamination is identified (e.g., staining, unusual odors).
Stormwater Runoff	<ul style="list-style-type: none"> ▪ Properly handle, store, and use materials to prevent soil contamination or discharge from site. ▪ Store liquid materials in watertight container with appropriate secondary containment or in a fully enclosed storage shed. ▪ Barricade or cover storm drains with impervious material during demolition activities that involve liquid pollutants or chemicals. ▪ Minimize dry pollutants exposure to precipitation. ▪ Install stabilized entrances and/or implement street sweeping to prevent track out to paved surfaces. ▪ Cover or barricade drains within reasonable proximity to the work area during concrete work. Provide appropriate washout containment and train personnel to wash equipment and tools into the containment BMP. Re-schedule concrete work if rain is forecast. Use vacuum to collect concrete cuttings or slurry and dispose of properly. ▪ Portable toilets must be placed at least 50 feet away from water features, have trays to contain spills and minor leaks, stabilizing features to prevent tipping, and serviced regularly. ▪ Provide waste receptacle (dumpster) adequate in size. Cover all waste containers at end of each day and prior to rain events. Do not allow rinse or wash water (concrete rinse, paint wash, etc.) to contact the ground and/or paved surfaces nor allow rinse or wash water to be directed or dumped into any drain inlet or surface water and properly dispose of all rinse and/or wash water. ▪ Maintain vehicles and equipment in good working condition. Perform fueling and maintenance activities only in areas fitted with appropriate BMPs. Maintain spill kits on-site in case of spill.
Stockpile management	<ul style="list-style-type: none"> ▪ Protect stockpiles from wind, rain, and non-storm water runoff. ▪ Prevent stockpile pollution (from weather, wind, access/tracking, etc...) by ensuring management materials (i.e. cover, tie down supplies, run-on barriers and runoff barriers) are always available. ▪ Protect stockpiles with an upslope and downslope barrier (i.e. biodegradable fiber rolls, gravel bags, etc.). ▪ Keep a minimum separation of 50 feet between stockpiles and concentrated flows of storm water, drainage courses, and storm drain inlets. If space is limited, additional diversion or protection will be implemented. ▪ Contain runoff from high-risk stockpiles (i.e. cold mix asphalt, concrete, contaminated soil, etc.). ▪ Locate high risk stockpiles on impervious surfaces and in areas without run-on and monitor for potential pollutant discharges. If not possible, provide a diversion or berm. If a pollutant discharge is probable, contact the Environmental Field Specialist (EFS). ▪ Bag and place high risk materials on pallets and store under cover if possible.
Erosion and Sediment Control	<ul style="list-style-type: none"> ▪ Schedule activities to minimize soil disturbance during rain. ▪ Preserve existing vegetation by limiting the work area and limiting disturbed soil areas to the extent practicable. ▪ Provide sediment control (i.e. biodegradable fiber rolls, gravel bags, etc.) downslope of any soil disturbances. ▪ Protect drainage inlets within 50 feet of any soil disturbances. ▪ Cover all excavations at the end of each workday. ▪ Ensure that exposed soils are protected from erosion if rain occurs or is forecast. ▪ Inspect BMPs daily and maintain, replace, or repair as necessary.
Restoration	<ul style="list-style-type: none"> ▪ Remove all temporary, non-biodegradable BMPs, and clear debris and construction materials. ▪ Stabilize all activity-related disturbed soils and return the area to pre-activity conditions or equivalent which may include pavement, concrete, gravel/rock, landscaping, soil cover, seeding, or agricultural conditions. ▪ Return activity area to pre-existing conditions to the maximum extent possible.