

## Responses to Comments

Comments on the Draft SEIR were received from 10 agencies and entities, and oral comments were made at the County of San Benito’s public hearing on January 27, 2015. In accordance with CEQA Guidelines Section 15132(d), this Final SEIR presents the County’s response to significant environmental points raised in the Draft SEIR review and consultation process. A list of parties that submitted comments on the Draft SEIR is presented in Table RTC-1.

**Table RTC-1. Comments on Draft Supplemental EIR**

Letter ID	Commenter
<b>Public Agencies</b>	
A1	Bureau of Land Management – Hollister Field Office
A2	California Department of Fish and Wildlife
A3	Monterey Bay Unified Air Pollution Control District
<b>Groups and Organizations</b>	
B1	Joint Conservation Organizations
B2	Mercey Hot Springs
B3	San Benito Residents for Responsible Development
B3 Attachment A	San Benito Residents Attachment: Cashen (Biological Resources)
B3 Attachment B	San Benito Residents Attachment: Pless (Air Quality, Public Health)
B3 Attachment C	San Benito Residents Attachment: Myers (Water Resources)
B4	Sierra Club + Santa Clara Valley Audubon Society
<b>Public Hearing on January 27, 2015</b>	
C1-1 to C1-9 C1-14 to C1-18	Larry Ronneberg
C1-10	Chief Sonne Reyna
C1-11, C1-12	Kate Woods
C1-13	Christina Chavez-Wyatt
<b>Private Individuals</b>	
D1	Will McGuire
D2	Kim Williams
<b>Pacific Gas &amp; Electric Company</b>	
E1	Pacific Gas & Electric Company

The remainder of Volume 2 of this Final SEIR is organized as follows:

- **General Responses** – General Responses to questions and comments raised by multiple commenting parties are presented by subject area. General Responses address the following topics:

- GR-1 Alleged Deferred Mitigation
- GR-2 Panoche Mountain Microwave tower
- GR-3 Traffic Safety
- GR-4 Valley Fever
- GR-5 Golden Eagle and Avian Conservation Strategy

■ **Comments from Public Agencies**

- Responses to Comments from Public Agencies

■ **Comments from Groups, Organizations, and Companies**

- Responses to Comments from Groups, Organizations, and Companies

■ **Comments Received at Public Hearing** – Transcript of comments received at a public hearing held on the Draft SEIR

- Responses to Comments from Public Hearing

■ **Comments from Private Citizens**

- Responses to Comments from Private Citizens

■ **Comments from Pacific Gas & Electric Company (PG&E)**

- Responses to Comments from PG&E

## General Responses

This section presents detailed responses to comments that were made by many commenters. General Responses address the following topics:

- GR-1 Alleged Deferred Mitigation
- GR-2 Panoche Mountain Microwave tower
- GR-3 Traffic Safety
- GR-4 Valley Fever
- GR-5 Golden Eagle and Avian Conservation Strategy

### General Response GR-1. Alleged Deferred Mitigation

Several reviewers stated that Draft SEIR mitigation measures improperly defer mitigation by requiring completion of future surveys and plans. This issue about allegedly improper and unlawful deferral of mitigation was raised several times in comments on the 2010 Final EIR. The issue was also specifically raised in the litigation challenging the County’s certification of the 2010 Final EIR. Both the trial court and the Court of Appeal in *Save Panoche Valley v. County of San Benito (Save Panoche)* (2013) 217 Cal.App.4th 503, 525-526 upheld the adequacy of the mitigation measures that some of the same commenters on the Draft SEIR continue to allege are inadequate.

The Court of Appeal in *Save Panoche* held that while many of the mitigation measures require future surveys by qualified biologists, these measures did not improperly defer mitigation because “... the measures provide for specific actions to be taken upon discovery of a certain species, such as including a set buffer zone. The measures do not call for a mitigation that is simply adopting the recommendations of the survey providers, which would be an improper deferred mitigation. ... The surveys were simply meant to facilitate the completion of these mitigation goals” and were not “... designed to allow the applicant to avoid having to mitigate impacts.” The Court of Appeal emphasized that “[t]he mitigation measures did not simply proscribe for applicant to comply with whatever recommendations are made by surveyors after completion of a protocol survey” and “[i]n most respects, these preconstruction surveys and mitigation measures were contemplated with the express goal of maintaining certain miles-tones.” Therefore, the Court of Appeal found that the County did not improperly defer mitigation measures.

For the same reasons, the Draft SEIR's mitigation measures are legally adequate. The SEIR reflects a good faith effort to investigate and disclose environmental impacts of the project (see CEQA Guidelines § 15003 (i) & 15144) and used all available resources to determine where additional surveys would be required in the future. The Draft SEIR also identified mitigation measures that require the preparation of a more precise mitigation plan after certification of the SEIR, which is acceptable under CEQA provided that practical considerations make it difficult to develop the plan at this stage of the planning process and the agency "commits itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of approval" (*Sacramento Old City Association v. City Council* (1991) (229 Cal.App.3d 1011, 1028-1029)). See also CEQA Guidelines (14 Cal. Code Regs 15126.4 (a) (1) (B)), which provides that mitigation measures may specify performance standards that would mitigate the significant effect of the project and that may be accomplished in more than one specific way.

In this case, part of the practical difficulty in identifying the precise mitigation requirements for this project stems from the role of other regulating agencies in approving the project, including the United States Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW). These agencies would be required to issue "incidental take" permits based on the project's potential impact on listed species. In the context of biological resources mitigation, the Court in *Defend the Bay v. City of Irvine* (2004) (119 Cal.App.4th 1261, 1275-1276) determined that the Lead Agency may defer defining the specifics of mitigation measures if the agency commits to the mitigation, the SEIR specifies performance standards, and the agency "lists the alternatives to be considered, analyzed, and possibly incorporated in the mitigation plan." In *Defend the Bay*, the Court upheld as adequate a mitigation measure that required the applicant to (1) consult with the USFWS and CDFW; (2) conduct surveys during the breeding season to determine if the birds are in fact present; (3) obtain a determination regarding the long-term value of the habitat area; (4) obtain permits from the USFWS and CDFW; and (5) coordinate avoidance measures as required by USFWS and CDFW.

Additional case law supporting the SEIR mitigation approach is in *California Native Plant Society v. City Rancho Cordova* (March 24, 2009; 172 Cal. App. 4th 603). In the *Rancho Cordova* case, the California Native Plant Society claimed that mitigation for significant impacts to wetlands and vernal pool fairy shrimp habitat was inadequate because the requirement for creation and protection of replacement habitat did not identify a specific location for the replacement habitat. The Court rejected that argument, concluding that "the agency does not have to commit to any particular mitigation measure in the SEIR, as long as it commits to mitigating the significant impacts of the project." The Court ruled that the City could defer the development of the specific manner in which off-site mitigation was provided.

**Pre-Construction Biological Surveys.** The Draft SEIR requires that pre-construction surveys be completed for many species of wildlife and for rare plants, including the following: giant kangaroo rat, San Joaquin antelope squirrel, special-status bat species, blunt-nosed leopard lizard, San Joaquin kit fox, American badger, and California tiger salamander, and specific listed or candidate plant species. The completion of these surveys after project approval does not defer the determination of impact severity. The Draft SEIR analysis of impacts based on the surveys and existing literature that document occurrences of special-status species on the site. The requirement for pre-construction surveys is intended to identify and document the precise location of species at a time closer to actual construction for purposes of avoiding or minimizing species during construction and operation of the project.

Some commenters describe the mitigation measures that require pre-construction biological surveys as "deferred." Pre-construction surveys for sensitive species are commonly required in areas where high-quality habitat exists to ensure impacts are minimized to the extent possible, not to define the severity of an impact. Each respective pre-construction survey requirement describes the specific steps to be

taken in the event that special-status species are identified, such as pre-determined avoidance buffers or relocation. This is consistent with the approach upheld by the Superior Court and Court of Appeal in *Save Panoche Valley*, and does not constitute improper deferral.

**Avoidance, Mitigation, and Management Plans.** Similarly, the Draft SEIR requires that the Applicant prepare and submit a variety of plans to the County and/or other agencies following approval but prior to achieving specified construction milestones. For example, Mitigation Measure BR-G.6 in the Draft SEIR requires that the Applicant prepare and submit a Wetland Mitigation and Monitoring Plan and Habitat Management Plan for mitigation lands. The mitigation measure clearly sets forth the information that must be contained in each plan, the performance criteria that must be met, the milestones for implementation, and monitoring requirements to ensure that each plan is fully implemented. Commenters mentioned several other plans to be finalized following approval of the Revised Project, including a Groundwater Monitoring and Reporting Plan, Fugitive Dust Control Plan, and Avian Conservation Strategy and Eagle Conservation Plan, each of which similarly contains appropriate performance and implementation standards. Moreover, the discussion of each of these plans in the Draft SEIR facilitates public review consistent with CEQA's requirements (see CEQA Guidelines section 15200, 15204), and implementation of each plan will be fully enforceable pursuant to the Mitigation Monitoring and Reporting Plan. The Draft SEIR properly formulates measures that will satisfy specific performance criteria and ensure that all relevant impacts are reduced to less than significant levels. (See *Sacramento Old City Association v. City Council* (1991) (229 Cal.App.3d 1011, 1029); CEQA Guidelines 15126.4(a)(1)(B)).

## General Response GR-2. PG&E Microwave Tower on Panoche Mountain

As described in Draft SEIR Section B.11.2, PG&E's communications reliability standards require two redundant communication paths. Therefore, in addition to the optical groundwire (OPGW) installation on the existing 230 kV transmission line structures, PG&E proposes to establish a secondary system. PG&E's preferred secondary system would be a microwave communication system with four microwave sites, which would to achieve the same system protection as the OPGW. The only change to the microwave facilities since publication of the Draft SEIR is the elimination of the new tower on Panoche Mountain.

**Draft SEIR.** The Draft SEIR in Section B.11.2 described the Panoche requirement as follows:

... Panoche Mountain where either a new tower will be constructed next to an existing tower owned by California Highway Patrol or co-located on an existed tower owned by American Tower Corporation (ATC). ... The tower to be constructed at Panoche Mountain (if needed) could be up to 300 feet in height.

**Final SEIR.** The details of the microwave system have changed since publication of the Draft SEIR. PG&E still requires microwave facilities at four sites, but based on PG&E's consultation with the Panoche Mountain tower owner, PG&E has confirmed that the microwave dish will be installed on the existing tower. No new tower will need to be constructed. Section B.11.2 of the Project Description has been modified in the Final SEIR as follows:

... Panoche Mountain where ~~either a new tower will be constructed next to an existing tower owned by California Highway Patrol or a new dish will be~~ co-located on an existing tower owned by American Tower Corporation (ATC). ~~... The tower to be constructed at Panoche Mountain (if needed) could be up to 300 feet in height.~~

The current status of the four microwave facilities is as follows:

- Two new towers would be constructed to support the microwave facilities:
  - A tower (up to 100 feet tall) at PG&E’s existing Helm Substation
  - A tower (up to 100 feet tall) at the PVSP switchyard
- Two existing towers would be used to support PG&E’s microwave facilities:
  - Call Mountain (on an existing tower owned by CAL FIRE)
  - Panoche Mountain (on an existing tower owned by American Tower Corporation)

**Impact Analysis.** The impact analysis in each of the discipline analyses in Section C has been revised to be consistent with this revised description. The use of the existing tower on Panoche Mountain results in the elimination of new ground disturbance, the elimination of a new visual impact, and the elimination of the potential for avian collisions.

### General Response GR-3. Traffic Safety

After publication of the Draft SEIR, the County held meetings with the San Benito County Sheriff’s office, and with Commanders of the California Highway Patrol’s Los Banos and Gilroy/Hollister Offices. In addition, the County reviewed all comments on the Draft SEIR related to traffic safety concerns. As a result, Mitigation Measure TR-1.4 (Ensure traffic safety), which provided a series of safety options in the Draft SEIR, has been revised to strengthen safety through a series of Applicant requirements. The revised mitigation measure is as follows:

**MM TR-1.4 Ensure Traffic Safety.** The Applicant shall ensure traffic safety through a two pronged approach: first, the development of a mandatory Traffic Safety Plan (TSP) including the components defined below, and second, a flexible response program throughout construction implemented by the Applicant in coordination with County, the California Highway Patrol (CHP), and the San Benito County Sheriff. These two sets of actions will ensure: (a) the ability of emergency service providers to access the Panoche Valley region during project construction, and (b) the safety of the public and project traffic using regional roads during peak construction traffic conditions.

The TSP shall include all the following requirements:

- The Applicant shall consult with the CHP and develop Project Speed Limits that apply to delivery trucks, and install signage along Little Panoche Road for information of project drivers.
- The Applicant shall establish a contact list of heavy tow responders to facilitate fast response to accidents and minimize road closure time.
- As part of orientation, the Applicant shall require each construction worker and driver to attend a project-specific Safe Driving Program developed by the Applicant, prior to starting work on the project. The program shall specifically define work hours, existing speed limits and project speed limits, road conditions presenting safety concerns, communication protocols, and approach to allowing emergency vehicles to access the project area.
- The Applicant shall provide a written copy of “PVSP Safe Travel Rules” to all project drivers entering the Panoche Valley more than once, and each driver shall acknowledge that he/she has attended the Safe Driving Program, and has read and understood the rules and project speed limits. Written records of attendance shall be maintained by the Applicant at the project site.

- The Applicant shall implement a reimbursement agreement with the County Sheriff allowing stationing of additional emergency personnel at the project site during construction. The number, location, and timing of additional personnel shall be determined by the Sheriff, considering changing levels of construction activity and local resident needs.
- The Applicant shall provide funding for additional CHP units to patrol Panoche Road, Little Panoche Road, and Highway 25 during project construction duration. The precise number, location, and timing of additional patrols shall be determined by the Commanders of CHP's Los Banos and Hollister/Gilroy Area Offices.
- The Applicant shall implement an escort and caravan program along Little Panoche Road for delivery trucks during the 12-month period with greatest delivery traffic. The program shall be submitted to the County and CHP for review and approval at least 30 days before the start of construction. The program shall include maps with definition of gathering areas, a process for allowing private vehicles priority passage where safe, and a detailed description of the proposed escort process.
- The Applicant shall implement staggered work hours for construction employees when the total number of workers onsite exceeds 100 people. The construction workforce traffic shall start and finish each workday in at least 2 separate groups with start times separated by at least 30 minutes.
- The Applicant shall prohibit project construction delivery truck traffic from using Little Panoche Road, Panoche Road, and Highway 25 during normal commuting timeframes. Truck travel will commence a half hour after the morning commute and cease a half hour before the evening commute commences.
- No truck deliveries may be made to the project site on weekends except if scheduled 7 days in advance with the County. Occasional Saturday deliveries may be permitted without 7-days advance notice to the County in the event of an unforeseeable event. Notice will be made to the County as soon as practicable for these unscheduled weekend deliveries.
- The Applicant and contractors shall endeavor to ensure that traffic delays related to project construction shall not exceed 30 minutes. If road closures and traffic delays more than 30 minutes are anticipated, the Applicant shall ensure that signs are posted at work sites and public locations at least one week in advance warning workers and the public to anticipate delays. This information shall also be available on a Project website and on signs visible from SR 25 and on Little Panoche Road at the intersection of I-5.
- The Applicant shall coordinate with the County to properly sign and control traffic at each end of the one-way segment of Panoche Road to reduce the risk of collision in this segment.
- The Applicant shall encourage worker carpooling by providing each worker a map of public parking and waiting areas along the major commuting routes for informal carpooling. These defined parking and waiting areas shall not block or delay other traffic or obstruct parking established for other purposes.
- The Applicant shall provide quarterly documentation to the County, in compliance with its APM AQ-2, summarizing incentives provided by the Applicant for workers to carpool. Such documentation shall be provided within 30 days of the end of each calendar quarter.

**Monthly Traffic Safety Meetings.** In order to be resolve additional traffic safety issues that may arise during construction, the Applicant shall host a monthly meeting with County staff, CHP, and County Sheriff staff, to discuss the following issues that may arise, and any others that occur, and to define potential additional requirements that the County determines are necessary to impose on the Applicant.

- **Traffic Incidents.** The Applicant shall inform the County about each reported traffic incident involving project vehicles within 24 hours of its occurrence or as soon as possible, and include a recommendation for how each accident could have been avoided within 5-7 days once all facts surrounding the event have been gathered. This information shall be used to develop Adaptive Strategies to improve safety during the construction process. The Applicant shall recommend strategies for consideration by the County, the CHP, and the Sheriff.
- **Additional Carpooling.** If either traffic conditions or traffic incidents show impacts of concern to the County, CHP, or Sheriff's Office, the Applicant shall endeavor to increase the level of worker carpooling to reduce vehicles on the public roads. The Applicant shall develop and offer incentives to encourage carpooling (e.g., onsite meals).
- **Assess Traffic Delays.** Each known traffic delay of more than 30 minutes shall be reported to the County and the CHP, and all events shall be discussed in the next monthly meeting. Solutions to unforeseen repeated delays shall be developed and the County may require implementation of these solutions based on evaluation of data provided during construction.

#### **General Response GR-4. Valley Fever**

Several comments on the Draft SEIR indicated a concern about the potential for construction of the project to release Valley Fever spores from the soils in the Panoche Valley. Construction of the Revised Project would occur in an area favorable to the growth of the "Valley Fever" vector, which is the fungus *Coccidioides immitis*. This fungus grows in soils in areas of low rainfall, high summer temperatures, and moderate winter temperatures. Project construction would disturb the soil and cause the fungal spores to become airborne, potentially putting construction personnel and wildlife at risk of contracting Valley Fever. Although most Valley Fever cases are very mild, and more than half of infected people either have no symptoms or experience flu-like symptoms and never seek medical attention, in extreme cases the disease can be fatal.

While the presence of Valley Fever spores in the Panoche Valley has not changed since 2010, there has been an increase in Valley Fever cases in recent years. Construction of two similar solar projects, the California Valley Solar Ranch (250 MW) and Topaz Solar Farm (550 MW) in the Carrizo Plain of San Luis Obispo, resulted in 28 workers being infected with Valley Fever (LA Times, 2013). The California Department of Industrial Relations (Cal OSHA) identified 21 violations of State law regarding worker protection violations for the construction of these two solar projects.

Due to the rise in Valley Fever cases in the western United States over the past few years, the Centers for Disease Control call this disease "A Silent Epidemic" (CDC, 2014). Valley Fever cases in endemic areas have been rising: cases have increased from 2,265 in 1998 to 22,401 in 2011. Since 1990, more than 3,000 people have died (PBS, 2013) and almost half of them have been in California (LA Times, 2013).

The 2010 Final EIR identified the potential for exposure of construction workers and the public to the airborne fungal spores that cause Valley Fever as a potential impact of the Approved Project and concluded that implementation of dust control mitigation would minimize the likelihood of becoming ill

from the airborne fungal spores. The 2010 Final EIR explained that grading and other soil disturbing activities could mobilize the fungus that causes Valley Fever. Like the Approved Project, the Revised Project would result in a similar impact.

Since 2010 and as described in Draft SEIR Section C.9.1.1, illness from Valley Fever in other areas of California has been increasing and has occurred at solar project construction sites in San Luis Obispo County. Proper engineering and administrative controls and contractor implementation of worker protection measures can reduce the likelihood that construction workers will contract Valley Fever.

The spread of Valley Fever spores during construction can be reduced by properly implementing the dust control requirements set forth in previously adopted Mitigation Measures AQ-1.1 (Develop and implement a fugitive dust plan) and AQ-1.2 (Designate a dust complaint monitor) as described in SEIR Section C.4 (Air Quality). Also, the Applicant and construction contractor must comply with the strict regulatory requirements of the California Department of Industrial Relations, which are described in Section C.9.2. In addition, Mitigation Measure HZ-7.2 (Protect workers and the public from Valley Fever) has been developed to add other specific protective measures. In response to comments, this measure has been modified to incorporate additional protective measures as suggested.

**MM HZ-7.2 Protect Workers and Public from Valley Fever.** The Applicant shall implement the following measures to reduce the likelihood that construction workers and the public are infected with Valley Fever:

- The Applicant shall prepare a detailed informational brochure explaining Valley Fever, its cause, and its symptoms, and the populations most at risk for the disease. The brochure shall incorporate information provided the California Department of Public Health (DPH) (<http://www.cdph.ca.gov/healthinfo/discond/Pages/Coccidioidomycosis.aspx>) and shall be reviewed by a DPH for adequacy at least 30 days before the start of construction. The brochure will identify methods for controlling the spread of the illness, such as changing clothing daily, using respiratory protection, applying water to soil, and cleaning equipment and materials. The approved brochure shall be provided to all residents of the Panoche Valley and all families of students at the Panoche Valley School.
- The Applicant shall make breathing protection gear available to all workers, at their request and at no cost to workers.
- As part of the Safe Worker Environmental Awareness Program, the Applicant shall educate workers to recognize the symptoms of Valley Fever, and to promptly report suspected symptoms of work-related Valley Fever to a supervisor.
- Signs will be posted onsite alerting visitors to the threat of this illness.

There are additional potential mitigation requirements that were suggested in comments on the Draft SEIR. These recommended measures were taken from a series of measures developed by solar developers in the Carrizo Plain. These measures generally include education of workers, access to medical professionals, and controlling exposure of workers. Mitigation Measure HZ-7.2 along with existing regulations described above incorporates these items.

## **General Response GR-5. Golden Eagle and Avian Conservation Strategy**

Several reviewers commented on the topic of Golden Eagles and related topics such as the draft Eagle Conservation Plan (ECP) and the draft Avian Conservation Strategy (ACS). Each topic raised in comment



letters is addressed in this general, comprehensive response. The response below has been further organized under subheadings to address surveys, nesting habitat and impacts, foraging habitat and impacts, other impacts, and mitigation approach.

### **Adequacy of Surveys**

As described in the 2010 Final EIR, Golden Eagle aerial surveys were conducted in the non-breeding season by Bloom Biological in early August 2010. Fifteen Golden Eagle nests were observed within the 10-mile radius of the Project site. Four of the nests showed evidence of having young fledged in 2010. No Golden Eagle nests occurred within 2 miles of the project boundary (survey results presented in Appendix 4 of the 2010 Final EIR, *Preliminary Write-up of Golden Eagle Non-Breeding Season Surveys and Raptor Survey*). LOA reported Golden Eagles foraging on the site, and there were on average 4-5 Golden Eagles detected during the 10 Christmas bird counts from 1999 to 2009 in the Panoche Valley (National Audubon Society, 2010).

As described in the Draft SEIR, Section C.6.3.3, Impact BR-12, in coordination with the USFWS Ventura office, Energy Renewal Partners conducted a Phase II site-specific Golden Eagle study documenting Golden Eagle occurrence, frequency, and behavior during the migratory and wintering phase (September 2013 through January 2014) within the Revised Project site and associated conservation lands (Energy Renewal Partners, April 2014). Results of this survey effort are documented in the *Panoche Valley Solar Point Count Survey Study Report*, posted with the Draft SEIR materials available here: [http://cosb.us/wp-content/uploads/GOEA-Study-Report-4\\_2\\_14-final.pdf](http://cosb.us/wp-content/uploads/GOEA-Study-Report-4_2_14-final.pdf). In addition, aerial surveys conducted in January and March 2014 were completed to determine the number and locations of occupied nests and the approximate centers of occupied nesting territories of Golden Eagle (GOEA) within a 10-mile radius centered on the Revised Project footprint (Bloom, May 2014). The results of this survey are documented in the *Panoche Valley Solar Facility 2014 Final Golden Eagle Nesting Survey Report*, posted with the Draft SEIR materials available here: <http://cosb.us/wp-content/uploads/Panoche-Solar-Final-GOEA-Nesting-Report.pdf>. The 2013/2014 point count surveys resulted in 15 Golden Eagle observations within the project site or within the adjacent Valley Conservation Area. Of these observations, approximately 47% were seen during a single survey event (September 17-19, 2013), where 7 Golden Eagles were observed feeding on a carcass of a dead animal within the Revised Project boundaries. With exception of the Golden Eagles observed feeding on a carcass within the Revised Project site, the study (Energy Renewal Partners, 2014) concluded that there was a greater use by Golden Eagle in the hills in the Valadeao Ranch Conservation Area than within the Revised Project or Valley Floor Conservation Area, both of which were included in the survey area. While carcasses would not be readily available as a food source with implementation of the project, resulting in reduced foraging opportunity on the Revised Project Site, the conservation strategy for the project will result in the permanent protection of 24,176 acres of mitigation land within and surrounding the Panoche Valley, including the majority of lands within a one-mile radius around the project site. The vast majority of the lands permanently preserved as a result of the project provide high-quality foraging habitat for Golden Eagles, which will never be developed. These conservation lands are of equal or greater habitat quality and will support an equal or greater population of Golden Eagles, their prey species, and other available food sources such as carcasses, after the restoration/preservation activities compared to the habitat found within the Project Footprint.

While various commenters recommend more “rigorous” study and data collection, CEQA does not require a lead agency to conduct all possible tests or exhaust all research methodologies to evaluate impacts. Cal. Pub. Res. Code § 21002.1(a); 14 Cal. Code Regs. §15126. The analysis contained in the 2010 Final EIR and now the Draft SEIR was based on several surveys that provide a sound understanding of the use of the Revised Project by Golden Eagles and solid basis for assessing impacts on this species.

## **Analysis of Nesting Habitat Impacts**

The Golden Eagle aerial nest surveys conducted by Bloom Biological within 10 miles of the Revised Project in January and April 2014, resulted in the documentation of 46 Golden Eagle nests and an estimated 30 Golden Eagle territories, with nine of them active. None were located within 3 miles of the Revised Project site; however, four nests comprising four breeding territories were located within 4 miles of the Revised Project boundary. Two of these four nests were active in 2014, though neither nest was ever found to contain eggs or nestlings. The next closest active Golden Eagle nest to the Project in 2014 was located 5.79 miles north-northwest of the Revised Project boundary (Bloom, 2014).

There are no trees or cliffs suitable for Golden Eagle nesting on the Revised Project site, but there are suitable nesting sites within 2 miles. Available data suggest that adult eagles most often forage within 0.6–1.9 miles of their nest site while provisioning chicks (Marzluff et al. 1997, Hunt 2002, Watson et al. 2014

On the Project Footprint, there are a limited number of potential nest trees, no suitable cliffs, and limited structures present. Furthermore, the relatively flat terrain of the Project Footprint provides poor conditions for orographic lift. Nesting survey data to date has shown that no nesting has taken place within 2 miles of the Project Footprint; in 2014 nests were no closer than 3 miles from the Revised Project site. Thus, there should be no direct disturbance of eagles on nests as a result of pre-construction, construction, or operation and maintenance activities.

## **Analysis of Foraging Habitat Impacts**

The severity of the impact to foraging habitat to Golden Eagle is addressed in the Draft SEIR and additional studies are not required. The survey data and published literature relied upon in the SEIR and described above demonstrate that an adequate biological baseline was established for purposes of the analysis in the DSEIR.

As described in the SEIR, the Revised Project site and surrounding area, including the proposed conservation lands contain suitable foraging habitat for golden eagles. The DSEIR discloses potential direct and indirect effects to Golden eagles, California condors, and other special-status raptors. Up to 1,888 acres of potential habitat would be permanently lost due to project impacts and an additional 618 acres would be temporarily subject to impacts. In addition, as described above, the results of survey data suggest that Golden Eagle utilize the surrounding conservation lands with more topographic diversity with a greater frequency than the Project Site, which is consistent with documented use of thermal air currents by foraging Golden Eagles.

Surveys have indicated low foraging activity within the Project Footprint as compared to the surrounding landscape and travel through the Panoche Valley to habitats surrounding the valley. This is likely due to a number of factors that include lower prey availability, fewer perches to hunt from, poorer flight conditions for foraging, and greater levels of human disturbance within the valley. The distribution of Golden Eagle nesting areas and the extent of foraging home ranges is driven by the availability of suitable nesting substrates, proximity of an accessible prey base, topographic characteristics that facilitate efficient movement and foraging, and avoidance of excessive human development and disturbance. Golden eagles typically occupy topographically complex landscapes where combinations of thermal and wind-driven orographic lift allow these large, soaring birds to efficiently move about the landscape between nesting and foraging areas and to forage either on the wing or from elevated perches. Contour hunting is a particularly important foraging technique, whereby eagles exploit energy-saving lift provided by wind currents deflected upward along hill slopes and ridgelines, such as those that occur surrounding the valley floor, to efficiently move around the slopes to capture burrow-dwelling prey such as

ground squirrels, rodents, and rabbits. Perch hunting also is a common tactic in open habitats, which is facilitated by the availability of elevated perches (e.g., large trees, cliffs, outcrops, or power poles) on slopes where wind currents or thermals allow for energy-efficient prey attacks and returns to an elevated perch, another favored eating location, or a nest site.

Impact BR-12 in Section C.6 of the Draft SEIR properly evaluated the potential impact to Golden Eagles due to foraging habitat loss. There is no evidence presented by the commenters that indicates the Revised Project site represents a “core foraging area” for Golden Eagles. Furthermore, the impact to Golden Eagles has not changed since the 2010 Final EIR for the Approved Project. Nevertheless, the Applicant conducted additional studies, as indicated in Section C.6.3.3, Impact BR-12, and as summarized above.

Based on previous studies (described above under Surveys), it is apparent that Golden Eagles forage in and around the Panoche Valley throughout the year. The overall activity levels within the Project Footprint appear low for the reasons stated above with a majority of the activity taking place on adjacent conservation lands which has elevations ranging from approximately 1,400 feet to 2,100 feet amsl.

## **Analysis of Concentrated Light, Electrocutation, and Collision Impacts**

### ***Concentrated Light***

The Project Description, Section B.4.1 states that panel faces would be non-reflective and black or blue in color, and designed to absorb light, rather than reflect it outward. Therefore, there would be no impact to birds associated with concentrated reflective light from the panels. The commenter is confusing solar concentrating technology with photovoltaic technology.

### ***Electrocutation***

The Draft SEIR identifies site-specific threats, such as potential impacts to State and/or federally protected birds from electrocution and collisions; this also includes impacts to Golden eagles. Section C.6.3.5.2 of the SEIR states, electrocution can occur when horizontal separation is less than the wrist-to-wrist (flesh-to-flesh) distance of a bird’s wingspan or where vertical separation is less than a bird’s length from head-to-foot. Electrocutation can also occur when birds perched side-by-side span the distance between these elements (APLIC, 2006). Raptors that use the towers or wooden poles for nesting could be electrocuted while landing. Furthermore, nests may be built in areas that are susceptible to electrical charges that could result in fire as well as an electrical outage.

A limited amount of overhead power lines will be proposed for the Project and any Project-related electric distribution (including towers) and substation structures will be constructed in compliance with Avian Power Line Interaction Committee (APLIC) guidelines (2006) in accordance with previously approved Mitigation Measure BR-14.1 Implement Avian Power Line Interaction Committee guidelines (APLIC).

Nonetheless, the SEIR does not require the implementation of “standard” APLIC guidelines, but rather MM BR-14.1, as presented in the 2010 Final EIR, requires the implementation of APLIC guidelines, which currently suggest larger spacing in areas where larger birds are present. In addition, the PG&E Upgrades discussed in the draft SEIR include only the replacement of an existing static wire with optical ground wire (OPGW) on the existing 230 kV transmission towers. OPGW is used for telecommunications; therefore, the Upgrades would not pose an increased risk of electrocution to the large raptors that may fly over the site, such as Golden Eagles.

### ***Collisions***

The 2010 Final EIR analyzed the potential for avian collisions due to the presence of solar arrays. This is not a new impact of the Revised Project. However, because the size of the solar arrays has decreased with the Revised Project, the collision potential will be incrementally less. Proposed minor changes to previously adopted Mitigation Measure BR 14.2 serve to align the requirements with current standard solar project monitoring objectives under development by the Large Solar Association and USFWS that include: (1) Estimating the overall annual avian mortality rate associated with the facility; (2) Determining the species impacted at the facility; and (3) Determining whether there is spatial differentiation within the solar field. Revised Mitigation Measure BIO-14.2 requires implementation of an Avian Conservation Strategy and the implementation of corrective actions approved by the County, CDFW, and the USFWS based on the findings of the monitoring required under MM BR-14.2.

Mitigation Measure BR-14.2 is intended to provide a non-inclusive list of potential corrective or remediation measures based on the findings of the ACS. In addition to this list, a more comprehensive list of proposed avoidance, minimization and mortality reduction measures are provided in the draft ACS (See Section 5.0 beginning on p. 33). Ultimately, this plan will be finalized with input from the resource agencies. Specific adaptive management strategies/BMPs will be determined through discussions with the County, CDFW, USFWS and the Applicant. The Applicant will work with the agencies to determine the most appropriate measures needed to protect avian species.

### **Polarized Light and Lake Effect**

Regarding the potential “lake effect” of solar facilities, and risk that the project will attract birds that will be killed as a result of collision with solar panels; evidence indicating that PV solar panels attract birds is lacking and no standard for analysis of this issue has been established.

One commenter points to a study published by the National Fish and Wildlife Forensics Laboratory in 2014, asserting that “At PV facilities, birds appear to mistake the broad reflective surfaces of the solar arrays for water, trees, and other attractive habitat.” (Comment B3-A8, citing Kagan et al., 2014). This report, which was considered and cited in the preparation of the draft Avian Conservation Strategy made available for review with the Draft SEIR, does not present clear, widespread evidence for this phenomenon, and provides that mortalities at solar PV facilities have included both land bird and water bird species (Kagan et al., 2014). Evidence that birds collide with PV panels more often than non-reflective stationary infrastructure is also lacking, as is evidence that collisions with PV panels at solar facilities are a significant source of mortality. Data collection efforts and avian risk studies are currently ongoing at several photovoltaic solar facilities. The County has considered the available evidence, including the information cited by commenters, and has concluded that the Revised Project, with incorporation of Mitigation Measure BR-14.2, would not result in a significant impact relating to polarized light pollution.

However, as described in Response B1-9 and Mitigation Measure BR-14.2, the Applicant will prepare an Avian Conservation Plan requiring monitoring of the death and injury of birds from collisions with facility features such as feeder/distribution lines and solar panels. The plan will also describe the implementation of appropriate actions approved by the County, CDFW, and USFWS based on the findings of the monitoring effort. The study designs shall be approved by the County of San Benito in consultation with the CDFW and USFWS.

The Applicant addressed potential impacts of polarized light pollution and the potential effects on habitat selection, egg laying foraging, navigation and orientation, predation, and population dynamics of numerous species (Horvath et al., 2009) in Impact BR-14. Solar panel arrays planned within the Project

Footprint could reflect light and become polarization signals to which different species are attracted. This could have a negative effect if avian predators that are attracted by and feed on these insect, benefit from the abundance of prey attracted to these artificial surfaces, or become prey themselves. For instance, nest predators such as Common Raven that would gather near aquatic insect congregations that are attracted by the polarized light reflected by solar panels could represent an enhanced predatory risk for the eggs and chicks of other avian species that nest in the immediate vicinity of the Project such as California Horned Larks (Keller, 2010).

The SDEIR includes information in Mitigation Measure BR-14.2 that states, the study of polarized light impacts on insectivorous birds shall include at a minimum: detailed specifications regarding data requirements, including protocols for collection and identification of insect eggs found on solar panels and a rationale for a data collection schedule. During construction and for one year following the beginning of the solar farm operation the biologist shall submit annual reports to the County describing the dates, durations, and results of monitoring and data collection. The annual reports shall provide a detailed description of any project-related bird or wildlife deaths or injuries detected during the monitoring study or at any other time and data collected for the study of polarized light impacts on insectivorous birds. The report shall analyze any project-related bird fatalities or injuries detected, and provide recommendations (in consultation with the County) for future monitoring and any adaptive management actions needed. Thresholds will be determined by the County in consultation with CDFW and/or USFWS. If the County determines that either (1) bird mortality caused by solar facilities is substantial and is having potentially adverse impacts on special-status bird populations, or that (2) the attraction of polarized light from solar panels is causing reproductive failure of aquatic insect populations at high enough levels to adversely affect insectivorous special-status birds, the Applicant shall be required to implement additional mitigation measures as described Mitigation Measure BR-14.2.

### **Analysis of Cumulative Impacts**

With regard to the analysis of cumulative impacts, the Draft SEIR addresses cumulative impacts to biological resources in Section C.6.3.6. The geographic extent for the analysis of cumulative impacts related to biological resources has not changed since the preparation of the 2010 Final EIR. However, the cumulative impacts scenario, as demonstrated in the table and map in Section D of the Draft SEIR, includes additional projects (including solar) approved within the larger Ciervo-Panoche region, areas of western Fresno County, regions of western Kern County in the San Joaquin Valley, Monterey County, eastern San Luis Obispo County, and northern Santa Barbara County. Cumulative effects from the development of the Revised Project are essentially the same as those identified in the 2010 Final EIR. Project design and construction methodology has been further refined since 2010 resulting in an overall reduction in permanently disturbed areas and an increase in the mitigation lands.

The Revised Project proposes to offset impacts to eagles, and eagle foraging habitat through conservation in perpetuity of the conservation lands, in accordance with Mitigation Measure BR-23.1. Through implementation of mitigation and avoidance measures, cumulative impacts would be less than significant.

### **Adequacy of Mitigation Strategy**

While a commenter may disagree with the Draft SEIR's conclusion regarding the efficacy of the mitigation measure to reduce impacts on Golden Eagles, this disagreement does not mean that the Draft SEIR's analysis is inadequate. These conclusions are based on the expert opinion of a qualified biologist with experience analyzing and mitigating impacts on Golden Eagles. The Draft SEIR's mitigation strategy includes but is not limited to siting considerations, panel design, best management practices, incorpora-

tion of safety features into appurtenant facilities (e.g., transmission lines), compensatory mitigation, and adaptive management measures (See Mitigation Measures BR-G.1 through BR-G.6, BR-6.1, and BR-14.2).

One component of the mitigation strategy is the creation of vast and permanent conservation easement(s) to ensure the protection of compensatory habitat for impacts to foraging habitat for Golden Eagles. Conservation easement(s) shall provide habitat preservation, in perpetuity at a ratio of 2:1 for all impacted acreage. Preserved habitat shall be of equal or greater quality after any restoration activity (as defined in [2010 Final EIR] Table C.6-6) compared to the impacted habitat. The proposed conservation strategy for the Revised Project will greatly exceed a 2:1 ratio; approximately 24,176 acres of mitigation land will be permanently preserved within and surrounding the Panoche Valley, including the majority of lands within a one-mile radius around the project site. The vast majority of the lands permanently preserved as a result of the project provide high-quality foraging habitat for Golden Eagles. The Golden Eagle Nest Report includes observations of Golden Eagles in and around the conservation lands and Exhibit 1 of the report identifies locations of active and inactive Golden Eagles nests that are more proximate to the conservation lands than the project footprint for use by Golden Eagles for foraging. This data supports the statement that the conservation lands provide at least equal habitat quality as the Revised Project site. Moreover, the Court of Appeal in *Save Panoche Valley vs. San Benito County* (2013) 217 Cal.App.4th 503 concluded that there was sufficient evidence and analysis to support the high-quality habitat value of the conservation lands for many of the special status species.

CEQA does not require mitigation to result in a “net benefit” to biological resources in order to reduce impacts to a level of insignificance. (See *Save Panoche Valley vs. San Benito County* (2013) 217 Cal.App.4th 503, 529 [“The goal of mitigation measures is not to produce a net benefit, but to reduce the impact to insignificant levels.”]) As noted above, the analysis performed to support the Draft SEIR concluded that implementation of the specific avoidance and mitigation measures described in the SEIR and summarized above are sufficient under CEQA because they were determined to reduce impacts to the Golden Eagle to less than significant levels.

### **Adequacy of the Draft Eagle Conservation Plan and Avian Conservation Strategy**

In compliance with Mitigation Measure BR-14.2, the Applicant has prepared and submitted for CDFW and USFWS review a draft Eagle Conservation Plan (ECP) and a draft Avian Conservation Strategy (ACS) that contain proposed management and monitoring measures for the species. These plans have been provided for information purposes only and will be further revised, and ultimately are subject to approval from the USFWS, CDFW, and the County prior to construction. Several commenters refer to the contents of the draft Avian Conservation Strategy and the draft Eagle Conservation Plans and suggest changes. Modifications to the plans will not be addressed in these Responses to Comments because they are draft documents subject to the review and approval of the wildlife agencies and the County. Suggested changes made by commenters on the ACS and ECP are noted and will be considered by the County prior to approval of the final ACS and ECP following review and comment by USFWS and CDFW. Please refer to General Response GR-1 regarding deferral of mitigation and reliance on future plans.

These plans have been prepared in general accordance with the USFWS Land-based Wind Energy Guidelines (USFWS, 2012), Eagle Conservation Plan Guidance Module 1 – Land-based Wind Energy Version 2 Guidance (USFWS, 2013) and shall follow the Avian Protection Plan guidelines outlined by USFWS and APLIC (2006).

The Applicant has prepared the ECP to ensure that feasible avoidance and minimization measures are implemented into Project design and operation, that the project remains in compliance with Bald and

Golden Eagle Protection Act and that mitigation for impacts that cannot be avoided or minimized are addressed through an appropriate program of compensatory mitigation. The ECP has been prepared to establish measures to ensure that these effects are “compatible with the preservation of the Bald Eagle and the Golden Eagle” as set forth in the Guidance (USFWS, 2013).

The SEIR incorporates additional data from avian monitoring studies at several solar sites that have become available since 2010. Impact BR-7b and Impact BR-14 provide an analysis of this additional data related to avian use during the construction and operation of solar facilities, as described above under Surveys. Furthermore, the requirements for the Avian Conservation Strategy are fully defined in Mitigation Measure BR-14.2 (as modified in the SEIR), including specific performance criteria required under CEQA, and the Plan is subject to approval from the USFWS and CDFW. The plans will require monitoring of the death and injury of birds from collisions with facility features such as feeder/distribution lines and solar panels, and the implementation of appropriate actions approved by the County, CDFW, and USFWS to further avoid or reduce impacts based on the findings of the monitoring effort, should such measure be necessary. Draft copies of the Eagle Conservation Plan and the Avian Conservation Strategy were provided as part of the public review of the SEIR on the County’s website as “Applicant Documents Supporting Amended Conditional Use Permit and Supplemental EIR.”

### **The Proposed Adaptive Management Approach**

With regard to suggested changes to the Applicant’s draft ACS, the commenter’s suggested changes on the ACS are noted and will be considered by the County prior to approval of the final ACS following review and comment by USFWS and CDFW. Please refer to General Response 1 regarding deferral of mitigation and reliance on future plans.

The analysis supporting the SEIR concludes that an initial two years of data collection with the possibility of additional monitoring is adequate to understand avian mortality. In other words, the proposed monitoring will occur over an initial two-year period after which the USFWS, CDFW and the County will consult to determine whether the monitoring design should be adjusted or terminated. Reporting requirements will be finalized in the ACS in consultation with the wildlife agencies and the County.

### **Proposed Mortality Monitoring**

With regard to suggested changes to the Applicant’s draft ACS, the commenter’s suggested changes on the ACS are noted and will be considered by the County prior to approval of the final ACS following review and comment by USFWS and CDFW. Please refer to General Response 1 regarding deferral of mitigation and reliance on future plans.