

Responses to Comments from Public Agencies (Comment Sets A1 through A3)

Responses to Comment Set A1

U.S. Bureau of Land Management

- A1-1 Final SEIR Section A.5 and Table A-1 have been modified to identify BLM as a federal agency with permitting authority.
- A1-2 Section A.5.3 has been revised to acknowledge that an Environmental Impact Statement (EIS) being prepared by the U.S. Army Corps of Engineers. The EIS will address the PG&E Upgrades and all aspects of the Revised Project.
- A1-3 As described in response to comment A1-2, an explanation about the EIS has been added to Section A.5.3, which adequately explains the NEPA document and its purpose.
- A1-4 The commenter states that Table B-12 is the same as Table C.6-5 and suggests replacing Table C.6-5 with a cross reference to the AMMs in Table B-12. The County acknowledges that the biological resources AMMs in Table C.6-5 are the same as those listed in Table B-12 and intentionally restated the AMMs related to biological resources in Table C.6-5 for ease of reference and the convenience of the reader.

The commenter also notes that the Draft SEIR contains conflicting language as to whether PG&E is committed to implementing the AMMs or whether they are just “recommended” measures that PG&E should implement. To avoid any confusion, the introductory language to Table C.6-5 in Section C.6.3.5 of the Final SEIR has been revised as follows to reflect PG&E’s commitment to implement the AMMs:

However, for the purposes of the analysis, Table C.6-5 presents ~~recommended~~ avoidance and minimization measures ~~to be implemented by that~~ PG&E is committed to implementing prior to, and during, construction activities associated with the PG&E Upgrades and interconnection work.

The comment also notes a typographical error with reference to PG&E’s SJVHCP. PG&E will not be utilizing the SJVHCP for the PG&E Upgrade activities. The reference to the SJVHCP was an inadvertent error and has been revised accordingly in Section B.11.3 Avoidance and Minimization Measures for PG&E Telecommunication Activities.

The comment also request clarification on which AMMs the USFWS, CDFW, and CPUC are requiring PG&E to implement. As noted in the Draft SEIR (p. C.6-97), PG&E still must secure permits from the resource agencies to undertake their work. Therefore, the specific requirements of these agencies are currently unknown and may or may not be reflected in the AMMs. In any case, the AMMs present the minimum protection afforded to each resource; permits may ultimately establish more extensive requirements.

The commenter referred to a typographical error related to AMMs. The reference to AMM BIO-1, BIO-2 and BIO-3 were inadvertent errors on page B-31 of the Project Description (Section B.11.3 Avoidance and Minimization Measures for PG&E Telecommunications Activities). The Draft SEIR identifies PG&E specific AMMs with a different

alpha-numeric naming scheme. All the AMMs, BR-PGE-1 through AMM BR-PGE-18, replace previous references to AMM BIO-1, BIO-2 and BIO-3.

The text of the Final SEIR has been modified as follows to reflect these changes:

PG&E proposes to use avoidance and minimization measures during performance of construction activities associated with the Revised Project ~~equivalent to those for covered species in the San Joaquin Valley Habitat Conservation Plan (SJVHCP)~~. Specifically, measures to avoid and minimize impacts to sensitive species and their habitat include AMMs ~~BIO-1, BIO-2, and BIO-3~~ BR-PGE-1 through AMM BR-PGE-18.

Finally, the comment requests that language be inserted noting BLM's enforcement authority. In response to this comment, the last sentence in Section C.6.3.5.2 Impact Analysis of PG&E Upgrades under the discussion of PG&E Avoidance and Minimization Measures has been revised as follows:

These measures would be adopted and enforced by the CPUC as part of the CPUC's review and oversight of the PG&E Upgrades. Where work activities are located on BLM lands, BLM would have enforcement authority related to implementation of AMMs associated with the PG&E Upgrades.

A1-5

The BLM requested minor changes to AMM CR-1 through AMM CR-5, which address Federal and State laws that protect cultural and paleontological resources. BLM is concerned about appropriate notification in the event of an inadvertent discovery. In response to these comments, the Draft SEIR has been revised as follows:

AMM CR-1 **Pre-construction worker cultural resources training.** Prior to construction, PG&E will design and implement a Worker Cultural Resources Training Program for all project personnel who may encounter and/or alter historical resources or unique archaeological properties. Construction supervisors, workers, and other field personnel will be required to attend the training program prior to their involvement in field operations. The program will be conducted in conjunction with other environmental awareness training and education for the project. The cultural resources training session will be led by a qualified instructor meeting the Secretary of Interior's Professional Qualification Standards as listed beginning on page 44716 of Volume 48 of the Federal Register and as may be updated by the National Park Service.

This Program will minimally include:

- A review of the environmental setting (prehistory, ethnography, history) associated with the project;
- A review of Native American cultural concerns and recommendations during project implementation;
- A review of applicable federal, state, and local laws and ordinances governing cultural resources and historic preservation, including notification of the appropriate public agencies;

- A review of what constitutes prehistoric or historical archaeological deposits and what the workers should look out for;
- A discussion of site avoidance requirements and procedures to be followed in the event unanticipated cultural resources are discovered during construction, including notification of the appropriate public agencies where applicable;
- A discussion of procedures to follow in the event human remains are discovered during construction, including notification of the appropriate public agencies where applicable;
- A discussion of disciplinary and other actions that could be taken against persons violating historic preservation laws and PG&E policies; and
- A statement by the construction company or applicable employer agreeing to abide by the program conditions, PG&E policies, and applicable laws and regulations.

A1-6 In response to this comment, AMM CR-2 has been modified in the Final SEIR as shown below:

AMM CR-2 **Cultural resource avoidance.** There are no known archaeological or historical resources within the direct impact areas defined for the PG&E Upgrades. In keeping with the intent of the NHPA and CEQA, PG&E’s preferred approach for archaeological resources and historical resources is avoidance of impacts to significant (or unevaluated) resources. Where avoidance is not feasible, potential impacts to significant cultural resources must be treated in a way that is acceptable to PG&E, the State Historic Preservation Officer (SHPO), and if applicable, the local Native American community and the BLM. Treatment might include data recovery excavations, public interpretation/education, or other measures. If there is an unanticipated discovery of a buried archaeological deposit or human remains, PG&E will implement AMM CR-4, and 5.

A1-7 In response to this comment, AMM CR-4 has been modified in the Final SEIR as shown below:

AMM CR-4 **Unanticipated discoveries of cultural resources.** In the event that previously unidentified archaeological, cultural, or historical sites, artifacts, or features are uncovered during implementation of the project, work will be suspended within 100 feet (30 meters) of the find and redirected to another location. PG&E’s cultural resources specialist or designated representative will be contacted immediately to examine the discovery and determine if additional work is needed. If the unanticipated discovery is on public lands, work must be suspended immediately and a BLM cultural resources specialist, or designated representative, must be contacted to examine the discovery and determine the appropriate course of action. If the discovery can be avoided or protected and no further impacts will occur,

the resource will be documented on California Department of Parks and Recreation 523 forms and no further effort will be required.

A1-8 In response to this comment, AMM CR-5 has been modified in the Final SEIR as shown below:

AMM CR-5 **Unanticipated discovery of human remains.** If human remains or suspected human remains are discovered during construction, work within 100 feet of the find will stop immediately and the construction foreman shall contact the PG&E cultural resources specialist, who will then call the San Benito or Fresno County Coroner, as appropriate. There shall be no further excavation or disturbance of the site, or any nearby area reasonably suspected to overlie adjacent remains, until coroner has determined that the remains are not subject to provisions of Section 27491 of the Government Code. If the coroner determines the remains to be Native American, he/she shall contact the NAHC within 24 hours. The NAHC will appoint a Most Likely Descendent for recommendations on the treatment and disposition of the remains (Health and Safety Code Sect. 7050.5, Public Resources Code Sect. 5097.24). If the unanticipated discovery is on the public lands, a BLM cultural resources specialist, or designated representative, must also be contacted to report the discovery and determine the appropriate course of action.

A1-9 The commenter requests that a copy of the Traffic Control Plan and the Storm Water Pollution Prevention Plan for the project are provided to the BLM Hollister Field Office. The Applicant will provide a copy of these plans to the Hollister Field Office as requested, when they are available.

A1-10 BLM suggests modifications to Section C.2, Aesthetics, to acknowledge Wilderness Study Areas and BLM Handbook guidance on assessment of visual impacts. These changes have been made to Section C.2.

A1-11 Please see General Response GR-2 explaining that PG&E's microwave facility on Panoche Mountain will be installed on an existing tower. The description of the impacts to Wilderness Study Areas has been revised in Section C.2.3.5 of the Final SEIR in response to this comment.

A1-12 The commenter asks whether BLM data was considered as part of the literature search for the PG&E Upgrades. The assessment of biological resources for the PG&E route began with a review of all available documents and species and habitat data provided by the Applicant, U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Wildlife (CDFW), and other agencies. Biological resource data sources included, but were not limited to, the following:

- A search of the CDFW California Natural Diversity Database (CNDDDB) was conducted to determine special-status plants, wildlife, and vegetation communities that have been documented within the vicinity of the route,
- Aerial photographs, Geographic Information Systems (GIS) data, United States Geological Survey (USGS) topographic maps,

- Previously prepared reports and regional planning documents (general plan policies, Habitat Conservation Plans [HCPs], Environmental Impact Reports [EIRs], and published scientific literature)
- The Applicant’s technical reports and data (including vegetation mapping and special-status species locations and survey data; detailed in Section C.6 of the SEIR).

BLM was not consulted regarding species lists at the time of preparation of the Draft SEIR, though a notification that work would be performed within the PG&E right-of-way (ROW), including BLM lands, was sent to landowners by PG&E prior to survey work. However, species lists from the Clear Creek Management Area Draft Resource Management Plan (BLM, 2009) were included in the literature review. Furthermore, biological assessment surveys were conducted for the work areas associated with PG&E Upgrades along existing PG&E ROW (including BLM land). Areas planned for ground disturbance plus a 500-foot buffer were surveyed. The Energy Renewal Partners, LLC survey was conducted based on planned work areas provided by PG&E as of September 15, 2014. However, modifications were made regarding the locations of certain work areas after this date. HTH conducted site visits on 7 and 10 November 2014, during which the majority of the work areas were visited, including the additional areas. These surveys as well as the literature review are considered to be sufficient to assess the biological resources, impacts and mitigation measures for species with the potential to occur within the PG&E ROW.

A1-13 The reference to the Clear Creek Management Area was included as a reference used in the County’s data search of the nine quadrangles surrounding the project site and PG&E route. Species occurrences, and associated habitats, within the Clear Creek Management Area were reviewed for comparisons to the project site and for justifications for species occurrences within similar habitats.

A1-14 Recommended changes proposed by the commenter are appropriate and the SEIR will be revised, with the following two exceptions:

The reviewer recommended changing *Leptosiphon ambiguous* (currently “high” potential to occur) and *Malacothamnus aboriginum* (currently “moderate” potential to occur) to “no” potential to occur. However, based on our review of nearby records of both of these species on the Consortium of California Herbaria and surveys of the site, we do not recommend revising the potential for occurrence listing in Table C.6-1 for these two species.

A1-15 The text is included in section C.6.1.2.5 in order to inform the reader of the specific criteria used to determine the potential for species to occur with the project site. To ensure clarity, the criteria will be presented only once, under the primary section heading “Special-Status Species.”

A1-16 A reference to the Record of Decision and Management Plan has been added to Section C.6.2, which describes applicable regulations, plans, and standards for biological resources.

A1-17 The commenter requests a minor change to last bullet point of APM Bio-19, which will be reflected as follows in the Final SEIR:

APM BIO-19 Off-site Conservation Measures for San Joaquin kit fox

- Off-site lands will be managed by a third party ~~such as the BLM or California Rangeland Trust~~ selected in consultation with CDFW and USFWS.

A1-18 The commenter requests that a copy of the Weed Management Plan for the project be provided to the BLM Hollister Field Office. The Applicant will provide a copy of these plans to the Hollister Field Office as requested, when they are available. In addition, in response to this comment, Mitigation Measure BR-G.2 has been revised to include the following new bullet point and additional “milestone” language:

- Prior to herbicide application on public lands, operators will obtain a pesticide use permit from the BLM.

Milestones: The Applicant shall submit a written report to the County and BLM on an annual basis for review.

A1-19 The commenter requests clarification as to which of the PG&E AMMs are requirements of USFWS, CDFW, and the CPUC. Please see Response A1-4. The comment requests that Draft SEIR be revised to mandate that the County require PG&E to implement applicable biological resources AMMs. However, the County has no regulatory authority over PG&E and is legally precluded from imposing requirements on PG&E projects; therefore, the requested changes have not been made. Nonetheless and although the PG&E facilities upgrades are exempt from local land use and zoning regulations and permitting, General Order 131D, Section III.C requires that the utility communicate with, and obtain the input of, local authorities regarding land-use matters and obtain any nondiscretionary local permits. PG&E has coordinated with County and is committed to implementing the AMM’s presented in the Draft SEIR with modifications (Refer to modifications in Responses A1-4 and A1-5 through A1-8). The CPUC has enforcement authority over PG&E activities.

A1-20 The errors noted by the commenter in Section C.6.3.5.2 have been corrected in the Final SEIR as follows:

Impact BR-6 “...the CPUC can and should adopt AMM_BR-PGE-10 through BR-PGE-13...”

Impact BR-16 “...should adopt AMM BR-PGE-1 through BR-PGE-9 and BR-PGE-11...”

Impact BR-19 “...the County recommends that PG&E implement and that the CPUC can and should adopt AMM_BR-PGE-1 through BR-PGE-9...”

A1-21 The BLM is correct that the Corps EIS will address PG&E Upgrades and incorporate relevant federal permitting requirements (such as NHPA, FLPMA, and Section 106 Consultation).

A1-22 The commenter requested a copy of the Archaeological Monitoring and Inadvertent Discovery Plan (described in AMM CR-3) and clarification regarding framework for evaluation and treatment of unanticipated discoveries of human remains in AMM CR-5. A copy of the plan will be provided to the BLM Hollister Field Office as requested.

AMM CR-3 is related to cultural construction monitoring includes a reference to an Archaeological Monitoring and Inadvertent Discovery Plan. Additionally, AMM CR-4 and AMM CR-5 relate to unanticipated discovery of human remains. AMM CR-3 through AMM CR-5 are included in Table B.12 of the Project Description in the Draft SEIR.

A1-23 In response to this comment, the Final SEIR has been modified in Section C.15.1.2, in Sections C.6.2, and in Sections C.15.2 to explain that the EIS being prepared by the U.S. Army Corps of Engineers will also address impacts to jurisdictional waters.

Responses to Comment Set A2 California Department of Fish and Wildlife

A2-1 The introduction to this comment letter summarizes the issues that are addressed in the following specific responses to comments.

A2-2 The comment pertains to the temporary construction ponds and requests clarification regarding two vs three ponds, and recommends that enclosed tanks are used. The construction ponds referred to in this comment are described in Section B.4-6 in the Draft SEIR. Two ponds are depicted on Figure B-4. The reference to three construction water ponds was an inadvertent typo, and p. B-7 of the Draft SEIR has been revised as follows:

In order to accommodate water usage during construction, the Applicant proposes to construct ~~three~~ two temporary construction water ponds with a combined capacity of approximately 4.4 million gallons, along with three temporary 20,000-gallon water tanks near existing or new wells.

Maps of the construction water ponds have been provided in Figure B-4 (available at http://cosb.us/wp-content/uploads/fig_b-4.pdf).

The commenter suggests that the construction ponds be replaced with enclosed tanks to prevent wildlife fatalities that result from these temporary features. The project's team of biologists has concluded that enclosed tanks are not necessary to prevent wildlife fatalities. Temporary exclusionary fencing would be installed around the ponds for safety and to restrict access by special status species. The temporary ponds would be removed at the end of construction. The project biologists concluded that the exclusionary fencing would prevent wildlife mortality and determined that it would be sufficient mitigation to reduce potential impacts to less than significant levels.

MM BR-22.1 (partially included below) requires barrier fencing that is at least 6 feet tall, made of fine material (at the bottom), and buried at least 2 feet to keep out small animals (including California tiger salamander), regular monitoring and reporting to the wildlife agencies. A requirement to implement remedial measures should special status species be observed trying to breach the barrier fence or if they become entangled or killed has been added to MM BR-22.1 to address the comment. This was determined to be effective at reducing wildlife exposure. Note that only relevant portions of the measure are included below.

MM BR-22.1 Fence temporary pond to exclude wildlife. The perimeter of the temporary ponds shall be surrounded by a barrier fence designed to keep wildlife species out. The fence shall be tall enough (6 feet) to keep out large mammals and fine enough at the bottom, and buried at least 2 feet, to keep out amphibians, reptiles, birds, and small and medium sized mammals. This mitigation measure will be effective because the barrier methods employed will reduce wildlife exposure. The monitoring shall at a minimum include the following:

- A designated biologist shall regularly survey the ponds at least once per month starting with the first month of construction operation of the ponds. If special status species are observed dead, entangled or attempting to breach the exclusion fence, the designated biologist will take immediate steps to remedy these problems in coordination with CDFW and USFWS. The designated biologist shall report ~~any~~ the death of any special status species within 24 hours of discovering the carcass to the CDFW and USFWS; non-special status birds or other wildlife deaths shall be reported within two days of discovering the carcass ~~to the CDFW and USFWS.~~

Prepare reports for the County, CDFW, and USFWS. No less than 30 days prior to operation of the ponds, the project owner shall provide to the County engineered drawings of the ponds. The designated biologist shall submit annual monitoring reports to the County, CDFW, and USFWS describing the dates, durations, and results of monitoring conducted at the ponds. The annual reports shall fully describe any wildlife deaths, entanglements, or observed attempts by wildlife to breach the exclusion fence and shall describe actions taken to remedy these problems. The report shall be submitted to the County, CDFW, and USFWS no later than January 30th of every year for construction of the project.

A2-3 The comment states that the project actually increases rather than decreases the overall disturbance area and encourages the County to reduce the amount of temporary disturbance areas and permanent laydown areas and to restore all laydown yards after construction.

Temporary work areas (e.g. disturbance areas) were necessary for the Approved Project and were depicted in Figure B-4a of the 2010 Final EIR. While these areas were not specifically quantified into the 2010 Final EIR, the County has estimated that the extent of the approved temporary work areas would be comparable to those for the Revised Project. However, even assuming that the temporary work disturbance areas have increased, the Revised Project's team of biologists has concluded that any potential impacts on biological resources resulting from this additional temporary disturbance area would be reduced to a less than significant level. In addition, as required by mitigation measure BR-G.3 and like the Approved Project, the applicant is required to prepare a Habitat Restoration and Revegetation Plan that will restore these temporary construction areas to pre-construction conditions or better.

The commenter asserts that these laydown areas may be used in the future for energy production and requests that the County impose a condition on the Revised Project to forever limit any future expansion. However, utilization of the laydown areas for future energy production is not part of the Revised Project. If future energy production were proposed in these permanent laydown areas, the Applicant would be required to amend the permit and undertake the requisite CEQA review of such a proposal including implementation of appropriate mitigation measures. Accordingly, a condition that forever limits any future expansion is unnecessary.

The comment also references the relatively small temporary disturbance areas that were incorporated into another similarly sized solar project in Carrizo Plains and recommends that the Revised Project be redesigned to significantly reduce the amount of temporary disturbance area. However, every project is different and the refined site specific engineering for the Revised Project reveals a need for this amount of disturbed area. Moreover, reducing the size of the temporary disturbance is not necessary to mitigate the Revised Project's impact on biological resources to a less than significant level.

The commenter states that the work areas and laydown yards are within California tiger Salamander (CTS) habitat. A map providing the CTS habitat areas in relation to the Revised Project boundaries was unintentionally excluded from the materials provided for public review along with the Draft SEIR. The CTS Avoidance and Minimization Plan was intended to include a figure showing the CTS habitat areas. This map (Figure 3 in the March 2015 CTS Avoidance and Minimization Plan) is included with distribution of the Final SEIR and is available as Appendix 4B-5 (Historic and Known CTS Breeding Ponds). The two permanent laydown areas (shown in Figure B-4 and described within Table B-2) are outside of ponds with records of CTS. Figure B-4 in the Final SEIR has been updated to depict the difference between the temporary work areas and the permanent laydown areas. All work areas would be outside of the precise pond locations; however, the Applicant acknowledges that these work areas will overlap with the CTS upland habitat buffer around these CTS pond locations. Therefore, as described in the Final EIR and Draft SEIR, several mitigation measures have been put into place to reduce impacts from the temporary and permanent work areas and laydown yards on the California tiger salamander to less than significant. Impact BR-9 in Section C.6.3.3 discusses impacts to California tiger salamander and includes mitigation (Mitigation Measures BR-G.1 through BR-G.6, AQ-1.1, and BR-9.1, which requires pre-construction surveys and the creation of new breeding habitat, which would be developed in coordination with the USFWS and CDFW). The Applicant would also implement the measures outlined in the March 2015 California Tiger Salamander Pre-construction Avoidance and Minimization Plan. As with the Approved Project, implementation of these mitigation measures would reduce impacts to California tiger salamanders to less than significant levels. Mitigation Measure BR-G.5 sets forth the framework for creation of permanent conservation easements including specific mitigation ratios for impacted CTS habitat.

A2-4

The CDFW recommends that the 100- year FLO-2D Analysis (ERP, 2013) be added to the Final SEIR appendices. The commenter raises concerns about the diminished habitat functions if a 100-year flood were to inundate the Valley Floor Conservation Lands (VFCL), and suggests that the value of the VFCL is no longer sufficient for habitat compensation.

In response to the commenter's request, the 100 year FLO-2D Analysis (ERP, 2013) has been added to the SEIR appendices as Appendix 4C-2 (100-year Flood Analysis). In addition, the WH Pacific Memorandum dated October 28, 2014 "Panoche Valley Solar Farm, Stream Crossing Alternate Study & Hydraulic Report" has been added as Appendix 4C-3 (Stream Crossing Alternative Study). These studies were prepared to support the engineering design of the project, specifically for compliance with San Benito County storm-water requirements. The memo states, "While it is true that any disturbance is likely to cause downstream changes, both the site locations and crossing types were selected to cause the least amount of overall disturbance associated with installation and operation. The "Stream Crossing Alternate Study & Hydraulic Report" includes information

about the potential changes to the drainages and demonstrates that the crossings have been designed in such a way as to minimize impacts to the channel itself. By limiting the crossing impacts we preserve the functionality of the stream and allow flows to be conveyed to the downstream alluvial fans. As demonstrated in the model and analysis of hydrologic conditions at the crossings, only changes to the immediate bridge locations are anticipated.” Based on the engineering design and analysis completed by the Professional Engineers of WH Pacific, impacts downstream of the two bridge crossings within VFCL will be minimal and would not eliminate the suitability of the VFCL as habitat compensation. This analysis does not constitute significant new information and no changes to the Draft SEIR are warranted.

A2-5

The commenter states that the CDFW has not determined if the conservation lands proposed in the Draft SEIR are suitable for compensation for Incidental Take. While the County recognizes that CDFW has not yet made a determination on the adequacy of the mitigation lands to compensate for the loss of species habitat under CESA, it is important to note that the Court of Appeal in *Save Panoche Valley vs. San Benito County* (2013) 217 Cal.App.4th 503, concluded that there was evidence in the 2010 administrative record that substantiated that the high habitat value of the mitigation lands and that the adopted mitigation measures specific to certain species of special concern, including habitat corridors, buffer zones, and onsite conservation would reduce impact to the species under CEQA to less than significant levels. Moreover, the Revised Project footprint has been reduced from the Approved Project from 4,885 acres to 2,506 acres and additional data collected by Applicant continues to support use of the conservation lands to mitigate for anticipated impacts to listed species such as BNLL, SJKF, GKR, and Golden Eagle. Please see Responses A2-18, A2-19, B1-7, B1-9, and B3-41.

Furthermore, the commenter suggests that transfer of fee title to CDFW, or a CDFW-approved entity, may be precluded by existing easements and by language of BR-G-5. In response, Mitigation Measure BR-G-5 has been updated to allow the placement of a Conservation Easement on those lands in favor of CDFW or a CDFW-approved conservation holder for the management of the land pursuant to the approved HMMP, or by the transfer in fee to a CDFW approved conservation holder with a deed restriction or other appropriate agreement for the management of the land pursuant to the approved HMMP.

MM BR-G-5

Purchase credits from a CDFW-approved mitigation bank, create a permanent conservation easement(s), in favor of CDFW or a CDFW-approved conservation holder for the management of the land pursuant to the approved HMMP, or transfer land in fee to a CDFW approved conservation holder with a deed restriction for the management of the land pursuant to the approved HMMP. ~~Create permanent conservation easement(s) as compensation for impacts to biological resources.~~ To compensate for permanent impacts to plants and wildlife on the project site, habitat shall be preserved through the use of permanent conservation easements, purchase of credits from a CDFW-approved mitigation bank, or transfer land in fee to a CDFW approved conservation holder with a deed restriction or other appropriate agreement for the management of the land pursuant to the approved HMMP. ~~or an appropriate mitiga-~~

~~tion bank.~~ This may include preservation areas within portions of the project site that are not impacted by the construction (or that are only temporarily disturbed and then restored) and operation of the project and/or mitigation lands outside the project boundary. Specific species and habitats that require compensatory habitat preservation conservation easements are defined below.

~~The Applicant shall provide funds for a “qualified land trust” (defined below) to acquire appropriate conservation easement(s), or shall donate appropriate conservation easement(s) to a qualified land trust or to an appropriate mitigation bank. The Applicant could also purchase a conservation easement, rather than fee title, from a landowner. A qualified land trust is defined as one that:~~

- ~~■ Has substantial experience managing conservation easements that are created to meet mitigation requirements for impacts to special-status species~~
- ~~■ Has substantial experience managing conservation easements on rangeland~~
- ~~■ Has adopted the Land Trust Alliance’s *Standards and Practices*~~
- ~~■ Has a stewardship endowment fund to pay for its perpetual stewardship obligations.~~

~~The County shall determine whether a proposed conservation easement holder meets these requirements.~~

~~The Applicant shall also be responsible for donating to the land trust fees to the CDFW-approved conservation lands holder sufficient to cover: (1) Administrative costs incurred by the land trust in the creation of permanent conservation easement(s), or the transfer of land in fee with a deed restriction the conservation easement (appraisal, documenting baseline conditions, etc.) and (2) provide funds in the form of a non-wasting endowment to cover the cost of monitoring and enforcing the terms of the device conservation easement in perpetuity, and (3) provide funds in the form of a non-wasting endowment to cover the management of the lands pursuant to the approved HMMP. The amount of these administrative and stewardship fees and endowments shall be determined by the completion of a Property Analysis Record approved by the CDFW-approved conservation holder and land trust in consultation with the County.~~

~~Conservation easement(s) or restricted lands shall also be subject to the following conditions:~~

- ~~■ The locations of acceptable conservation easement(s) or restricted lands shall be approved by the County, developed with approval of CDFW, and USFWS.~~

- The primary purpose of the conservation easement(s) or restricted lands shall be conservation of impacted species and vegetative communities, ~~but the conservation easement(s) shall also allow livestock grazing when and where it is compatible with or deemed beneficial for the habitat needs of impacted species.~~

Conservation easement(s), deed restriction, or other appropriate agreement) shall:

- Be perpetual.
- ~~Be held in perpetuity by a qualified land trust (defined above)~~
- Be subject to a legally binding agreement that shall: (1) Be recorded with the County Recorder(s) along with a recorded “notice of conservation easement”; (2) Include “conservation easement,” “deed restriction” or other appropriate name for the agreement” in the title of the recorded agreement(s); (3) Name CDFW or another organization to which the conservation easement(s) or restricted land will be conveyed if the original holder is dissolved.
- Be subject to the management requirements outlined in Mitigation Measure BR-G.6 (Develop and implement a Wetland Mitigation and Monitoring Plan and ~~for~~ Habitat Management Plan for mitigation lands). Habitat preserved as mitigation for impacts to biological resources must be of equal or greater habitat value, based on the parameters defined in Tables C.6-6 and C.6-7 at the end of this section [...]

Further, the existing easements on the conservation lands are in reference to subsurface mineral rights. A memorandum was prepared by the Applicant’s consultant, Kleinfelder, on March 20, 2015. The analysis concludes that based on a Mineral Potential Report prepared for the project, as well as BLM and CDFW guidelines, it is unlikely that aggregate mining would occur at the Site and that it is furthermore unlikely that exploitation of minerals on adjoining properties would compromise the value of the conservation lands. This memo is included as SEIR Appendix 4B-9. See also Response A2-7 (below) regarding mineral rights.

A2-6 The commenter states that the Draft SEIR implies that all of the mitigation lands would be conserved, but that the required mitigation ratios identified in Mitigation Measure BR-G5 amount to less conserved acreage than the proposed mitigation lands (Silver Creek, Valadeao, and VFCL). The commenter also recommends that specific mitigation land required in Mitigation Measure BR-G5 be identified.

The locations of these conservation areas are provided in Figure 3.¹ The County acknowledges that the amount of conservation land that the applicant has proposed to offset biological resources impacts of the Revised Project is significantly greater than what is required by the mitigation ratios, which is a significant benefit of the Revised Project. The applicant has entered into a Development Agreement with the County that

¹ This figure is on-line at <http://cosb.us/wp-content/uploads/Fig3-ConservationLands.pdf>.

commits the applicant to conserving the proposed mitigation lands. Moreover and as noted in Response A2-5, the value of these mitigation lands as appropriate compensation for the loss of habitat for the impacted species was comprehensively addressed in the 2010 Final EIR and upheld by the Court of Appeal in *Save Panoche Valley v. County of San Benito* (2013) (2013) 217 Cal.App.4th 503. Because the Revised Project would result in even less permanent disturbance area than the Approved Project and the on-site valley floor conservation has increased, the proposed mitigation lands are considered adequate to compensate for the Revised Project's direct and indirect impacts on biological resources under CEQA.

A2-7 The commenter expresses concern regarding the current federal government mineral rights encumbrances on the proposed mitigation lands. The commenter states that those rights could be exercised in ways that compromise the habitat values of the mitigation lands and recommends that the Applicant identify how mineral rights encumbrances will be resolved. A memorandum prepared in response to this comment was prepared by the Applicant's consultant, Kleinfelder on March 20, 2015 to address concerns raised by commenter with regard to mineral rights. The analysis concludes that based on a Mineral Potential Report prepared for the project, as well as BLM and CDFW guidelines, it is unlikely that aggregate mining would occur at the Site and that it is furthermore unlikely that exploitation of minerals on adjoining properties would compromise the value of the conservation lands. This memo is included as Appendix 4B-10.

A2-8 The commenter recommends that potential Project impacts to CTS incorporate a greater range of upland habitat use, based on the research performed by Searcy and Shaffer (2011). The commentator further requests that the Applicant evaluate potential impacts to CTS and based on the following assumptions: 95% of a CTS population's reproductive value is within 1,867 meters of the breeding pool, 90% is within 1,501 meters and 50% is within 562 meters.

As detailed in a technical memorandum from Michael Bumgardner dated March 30, 2015, which is included as Appendix 4B-6 (Supplemental CTS Incidental Take Analysis) using the Searcy and Shaffer model, maximum CTS migration distances were calculated as approximately 678 m from breeding ponds within the Panoche Valley.

Personal communications between Bumgardner and Searcy confirm that this distance is consistent with the Searcy and Shaffer model and its assumptions in regard to the ecophysiological maximum migration distance for CTS in the Panoche Valley when using local, historic rainfall data to determine the mean number of potential migration nights per month during the last 10 years. However, due to uncertainties in regards to the efficacy of the Searcy and Shaffer model as it relates to CTS in the Panoche Valley (mostly due to the lack of empirical data to validate the model), a conservative approach to CTS avoidance and minimization has been taken, which involves conducting burrow excavations within the project footprint where ground-disturbing activities are proposed (i.e. grading, mass excavation and trenching) to salvage and relocate individuals within an additional 300 m beyond the 700 m threshold predicted by the model (i.e., two contiguous 150 m concentric rings). If no CTS are found within the additional 300 m, no additional burrow excavations will be conducted. However, if CTS are found within one or more of the 150 m rings, additional burrow excavation will occur until there have been two contiguous 150 m rings with no documented CTS occurrences up

to 1,900 m from an identified CTS breeding pond (i.e., the distance roughly correlated to the 1,866 m found by Searcy and Shaffer to correspond to the 95% population threshold at the Jepsom Prairie Preserve in Solano County, California). The March 2015 CTS Avoidance and Minimization Plan is consistent with this approach and will be finalized following review by CDFW and USFWS.

A2-9

The commenter states that the Project's upland impacts have increased relative to the Draft EIR, and includes up to 392 acres of grading, 104 acres of permanent laydown yard, and 740 acres of work areas. To quantify the impacts, the commenter recommends that the impact analysis be revised to incorporate CTS upland distances described in the 2011 study by Searcy and Shaffer. The commenter recommends that the Applicant reduce or eliminate grading, laydown and work areas within the uplands occupied by CTS (i.e., grading/laydown yards/temporary work areas). Furthermore, the commenter requests updated maps depicting the project overlaid with upland distances based on Searcy and Shaffer.

As indicated in response A2-8, the March 2015 CTS Avoidance and Minimization Plan has been updated based on the application of the Searcy and Shaffer model to the Panoche Valley and the total potential impact area has been revised as 1,524.2 acres as discussed in the technical memorandum from Michael Bumgardner dated March 30, 2015, which is included as Appendix 4B-6 (Supplemental CTS Incidental Take Analysis), revised analysis and maps are not merited. The map that was inadvertently omitted from the draft SEIR has been included and depicts the Project overlaid with the upland distances described in the March 2015 Avoidance and Minimization Plan.

The Draft SEIR acknowledges that the Project will have the potential to result in injury and mortality of individual California tiger salamanders (including larvae), substantial habitat losses and modifications, and changes in the composition and distribution of small mammal species, on whose burrows California tiger salamanders rely for cover and periods of dormancy. Accordingly, recommended and adopted Mitigation Measures BR-G.1 through BR-G.6 would ensure that (1) All construction personnel participate in the Worker Environmental Education Program; (2) Best Management Practices (BMPs) for biological resources are implemented; (3) A Habitat Restoration and Revegetation Plan is developed and implemented; (4) Biological construction monitoring is implemented; (5) Conservation easements are created for permanent habitat protection as appropriate; and (6) A Habitat Mitigation and Monitoring Plan and/or Habitat Management Plan is developed and implemented for mitigation lands. In addition, previously recommended and adopted Mitigation Measure AQ-1.1 would reduce impacts from fugitive dust. In addition, previously recommended and adopted Mitigation Measure BR-9.1 requires pre-construction surveys for California tiger salamander, the implementation of avoidance measures, and the creation of new breeding habitat, which would be developed in coordination with the USFWS and CDFW. The Applicant would also implement the measures outlined in the California Tiger Salamander Pre-construction Avoidance and Minimization Plan (Final SEIR Appendix 4B-6, Bumgardner, 2015). Therefore, the Draft SEIR concludes that impacts would be less than significant with implementation of mitigation and no additional revisions are warranted.

A2-10

The Commenter states that impacts to CTS have increased since the 2010 EIR based on increases in disturbed area and improved information on CTS ecology. However, the

impacts to CTS would remain largely the same under the Revised Project as identified in the 2010 Final EIR, and would be reduced in extent as a result of the reduction in total project footprint from 4,885 acres to 2,506 acres. As noted in the 2081 Incidental Take Permit, the Project may adversely affect (both directly and indirectly) up to approximately 94 individual CTS and approximately 2,371 acres of suitable estivation habitat. All undisturbed areas would be managed as on-site conservation areas to maintain and enhance habitat conditions for listed species such as CTS.

As described in the SEIR, the Revised Project would permanently conserve habitat for special-status species, including CTS. In order to meet the requirements of MM BR 9.1, the Applicant will create new CTS breeding ponds within these mitigation lands to offset any potential impacts to known or potential breeding habitat located on the Revised Project site.

To mitigate for potential impacts to CTS, the Project includes permanent conservation of four occupied or potentially occupied CTS breeding ponds, the protection of the associated upland habitats and the creation of 1 to 3 new breeding ponds that could increase the local population on Conservation Lands. The number of breeding ponds that will be created will be determined based on the net loss of CTS habitat and individuals during construction.

The California Tiger Salamander Mitigation Pond Proposal (2012) prepared by the Applicant provides an analysis of three potential locations for mitigation ponds based on the habitat requirements of the species, an in depth water budget analysis, and the location/proximity of other known breeding ponds and suitable upland habitat. One of these potential mitigation ponds is located on the Valadeao Ranch Conservation Area approximately 720 meters northwest of Pond 12 (a known breeding pond outside the northwest border of the site). By creating a new potential CTS breeding pond in close proximity to the existing breeding pond at Pond 12, the Project will create a breeding pond complex which may support increased genetic diversity and will provide multiple breeding pond options (Trenham et al., 2001; Trenham and Shaffer, 2005). Additional potential breeding ponds were identified with the Valadeao Ranch Conservation Area (approximately 630 meters south-southwest of Pond 12), and within the Silver Creek Ranch Conservation Area (within an incised drainage south of Panoche Creek).

Based on the reduction of upland impacts to CTS, CTS surveys conducted to date, and the mitigation strategy described in the SEIR and ITP application (including the value of the potential mitigation pond locations), impacts to CTS would remain less than significant without increasing the mitigation requirements for the species. Through consultation with the USFWS and CDFW, it will be determined which of the potential mitigation pond locations would best conserve CTS populations within the greater project area.

A2-11

The intent of the SEIR description of these two known CTS breeding ponds is to not imply that the conservation value is any different than other known breeding ponds in the Project area. However, the last known records of the species in these two ponds are from 1992, and CTS were not observed in these two ponds during protocol CTS larval surveys conducted by the Applicant in 2010.

Recognizing that the recent surveys are not a conclusive determination regarding the presence of the species in these ponds, the language in the SEIR will be revised to

remove the reference to these two ponds as “historically” supporting CTS. This revision does not affect the analysis in the SEIR.

A2-12

The commenter requests clarification of description of proposed stream alterations, including maps and descriptions in changes to stream flows. Specifically, the commenter notes an additional 7.86 acres of impact to streams proposed for the Revised Project, while the 2010 EIR did not propose any impact to streams.

The Project was designed and refined during the 2010 San Benito County environmental review and approval process, which led to an overall reduction in the permanent disturbance area, in order to minimize environmental effects. Further design and engineering also resulted in impacts to 32 watercourses that cross various portions of the Project site. The following updated description of the Revised Project’s drainage impacts has been added to the Final SEIR (Section C.6.3.3, Impact BR-20):

Based on survey information provided by the Applicant since the 2010 Final EIR, approximately ~~7.86~~ 7.93 acres of ephemeral drainage channels would be subject to impacts by the Revised Project. Survey data indicates that approximately 0.12 acres of USACE jurisdictional habitat would be subject to impacts associated with crossings of the perimeter road and civil work needed to control stormwater and erosion, and ~~7.82~~ 7.93 acres of ephemeral drainages that constitute waters of the ~~state~~ State subject to CDFW jurisdiction would be subject to impacts throughout the remaining areas of the Revised Project site.

The commenter also compares acreage impacts included with Lake and Streambed Alteration Agreement (LSAA) Application packages, specifically an increase in impacts from 0.3 acre from the May 2014 LSAA application to the most recent December 2014 LSAA application submittal.

Upon further and more detailed engineering review, it became evident the specific site conditions and the type of solar infrastructure needed for the Project would result in additional impacts to State waters. Impacts associated with State waters have increased from 0.3 to 7.93 acres. A revised LSAA was submitted to the CDFW in March 2015 with a description of the updated impacts. The updated description is included in the Final SEIR as indicated above.

The Commenter requests that the SEIR clarify several aspects of the project’s proposed impacts to drainage features, and hydrology on site including where the diversions and redirections would reduce or increase flows downstream of the grading in the tributary channels of Las Aguilas and Panoche Creeks, and how that would affect the habitat functions of the area immediately downstream which is proposed to be mitigation land.

Extent of Grading Impacts and PV Array Installation. The Applicant has included a more detailed discussion of stream impacts and clarified descriptions of the proposed stream alterations. Copies of Tables 1 and 2 from the LSAA Application package have been included below. These tables quantify the extent of impacts from grading (including road grading) and PV array installation.

Drainage Impact Project Number	Total Impacts from Grading (ft²)	Total Impacts from PV Array Installation and Trenching (ft²)	Temporary Impacts (ft²)	Total Permanent Impact to Drainage (ft²)*	Impact Project Type**
1	2,376	34	-	2,410	SSB
2	0	24	-	24	SSB
3	598	0	125	598	LWC/TRENCH
4	1,826	2,326	—	4,152	Vented Ford
5	1,310	1,367	—	2,677	DC
6 & 7	21,796	2,031	—	23,827	DC/LWC
8	2,208	—	—	2,208	DC
9	16,937	1,801	—	18,737	DC/LWC
10	15,233	1,158	—	16,391	DC
11 & 12	41,410	—	—	41,410	DC/LWC/CUL
13	29,628	—	—	29,628	(2) LWC
14	42,777	2,057	—	44,834	(2) LWC/CUL
15	2,579	—	—	2,579	DC
16	7,152	2,588	—	9,740	CUL
17, 18, 30	14,800	5,732	—	20,532	CUL/DC/LWC/TRENCH
19	19,155	2,086	—	21,242	(2) LWC
20	5,035	925	—	5,960	LWC
21 & 31	9,469	6,989	—	16,458	LWC/TRENCH
22	16,708	7,611	—	24,319	DIVERSION CUL
23	925	—	—	925	LWC
23A	0	—	36	0	FENCE
24	684	—	—	684	DC
24A	0	—	68	0	FENCE
25	506	—	—	506	LWC
26	1,282	—	295	1,282	LWC/TRENCH
27	5,409	—	—	5,409	Grading Only
28	29,275	—	—	29,275	Grading Only
29	18,485	—	—	18,485	Grading Only
32	0	965***	—	965	CTS Mitigation Pond
Totals	307,563	37,694	524	345,257	

* Includes impacts from roadway, grading, trenching, sediment and erosion control best management practices, fence installation, and etc. to waters.

** LWC – Low Water Crossing, DC – Diversion Channel, SSB – Single Span Bridge, CUL – Culvert, CTS – California Tiger Salamander

*** Impacts from CTS pond creation

Table 2. Cut and Fill Volumes for Federal and State Waters (Permanent Impacts)

Crossing #	Estimated Adjusted Volume**		Drainage Impact Project Type***
	Cut (yd ³)	Fill (yd ³)	
1	7	60	SSB
2	10	10	SSB
3	594	310	LWC/TRENCH
4	24	90	Vented Ford
5	13	9	DC
6 & 7	43	1,256	DC/LWC
8	62	4	DC
9	40	818	DC/LWC
10	339	234	DC
11 & 12	191	2,949	DC/LWC/CUL
13	178	1,240	(2) LWC
14	103	4,865	(2) LWC/CUL
15	55	0	DC
16	21	247	CUL
17, 18, 30	61	546	CUL/DC/LWC/TRENCH
19	204	1,008	(2) LWC
20	85	101	LWC
21 & 31	74	76	LWC/TRENCH
22	13	611	DIVERSION CUL
23	39	0	LWC
23A****	36	0	FENCE
24	14	1	DC
24A****	68	0	FENCE
25	9	1	LWC
26	15	52	LWC/TRENCH
27	3	533	Grading Only
28	4	851	Grading Only
29	0	738	Grading Only
Totals*	2,305	16,610	
Total Impacts	18,915 cubic yards		

*Totals do not include cut and fill associated with trenching-only impacts and the CTS Pond creation.

**Cut factor of 1.0 and Fill factor of 1.2 used to calculate Adjusted Volume.

*** LWC – Low Water Crossing, Bridge – Single Span Bridge, CUL – Culvert, DC-Diversion Channel

****Temporary impacts not included in total permanent impacts

Hydrology Flows Across Site. Water resource issues related to alteration of the site’s original topography and drainage were assessed in the 2010 Final EIR and Draft SEIR Impacts WR-2, WR-3, WR-4, and WR-5. The Applicant has designed appropriate storm-water controls to dissipate the energy of flows across the site to control erosion and minimize off-site discharge. Impacts associated with altering the drainage patterns of the site were addressed in the Draft SEIR, *Impact WR-2: Substantially alter the existing drainage pattern of the site in a manner that results in flooding on-or offsite.* Because the majority of the Project site occupies relatively flat terrain, it is not anticipated that the grading activities for the Project would result in substantial changes to surface drainage pat-

terns, creating flooding on- or off-site. Compliance with existing regulations, including implementation of a Storm Water Pollution Prevention Plan (SWPPP), and implementation of BMPs described in APMs WR-1 through WR-3 would ensure that potential impacts remain less than significant. The following text has been added to the Final SEIR, Project Description, Section B.5.2 Erosion Control and Section C.15.3.3, Impact WR-2 to further clarify the hydrology flows across the site in response to this comment.

In general, along the eastern perimeter road, the majority of surface flows from offsite upland areas will be intercepted by a channel (brow ditch) located on the upland side of the road. The flows are then conveyed to either a low water crossing, culvert, and/or discharged at the end of the channel. At the downstream end of the culvert or end of the channel, the surface grade will be transitioned and flatted from a channel shape to a level spread, so the flows are converted from concentrated flows to sheet flows. Similarly, the low water crossings will act as the spreader, and the proceeding surface grades will continue to spread and level out, promoting the transition to sheet flows. Rip rap or other energy dissipation BMPs will be used in the channel and surface grade transitions as needed to ensure the flows are converted from concentrated flows to sheet flows consistent with pre-development hydrologic conditions. In areas where no channel is adjacent to the perimeter road, upland offsite flows will sheet flow across the road in the same manner as pre-development.

Once in the main interior of the site, the stormwater runoff will sheet flow to its respective main water course; either to Las Aguilas Creek, the unnamed north-south tributary into Las Aguilas Creek, one of four detention ponds, or Panoche Creek. The stormwater detention ponds are located within the western half of the project footprint. These ponds are designed to intercept the sheet flows from respective sub-basin watershed and to attenuate the additional flows from the Project's added impervious surfaces. Attenuation from the ponds will be achieved by volume storage and discharge via a riser structure and outlet pipe. Full drawdown and discharge from each detention pond is to occur within 24 hours. The outlet pipe discharge will have outlet protection rip rap aprons that are designed in accordance with state and local standards. The rip rap aprons are designed to dissipate the energy and spread the flows.

Downstream discharge of flows from the western half of the Project Footprint will enter into its respective culvert or bridge along Little Panoche Road. Discharge from the eastern half of the Project Footprint will sheet flow into the Las Aguilas Creek. Flows from both sides of the site will ultimately be conveyed to the confluence of Las Aguilas Creek and Panoche Creek. The culverts and bridges along Little Panoche Road as well as the confluence of the two major creeks will be designed so that post-development runoff flow rates do not exceed pre-development runoff flow rates.

Detention Basins/Diversions & Downstream Affects. As a point of clarification no identified waters of the State or U.S. are being diverted by the four detention basins. The detention basins are being installed to control offsite and onsite erosion and sedimentation. In response to this comment, the following text has been added to the Project Description, Section B.5.2 Erosion Control, in the Final SEIR and Section C.15.3.3, Impact WR-2.

Four detention basins will be constructed as a stormwater control measures pursuant to County requirements and the National Pollutant Discharge Elimination System, Construction General Permit. These basins are designed to hold sheet flow from stormwater for up to 24 hours to help decrease scour/erosion within the Project Footprint.

All basins were designed using HEC-HMS (Version 4.0) hydrologic modeling software developed by the U.S. Army Corps of Engineers, which modeled the overall watershed and proposed detention ponds. Storm frequencies analyzed in this report are the 2-, 10-, 25- and 100-yr 24-hour storm events. Three proposed detention ponds have been located on the west side of the site to meet peak rate attenuations. These three basins do not directly impact CDFW jurisdictional areas, as the detention basins do not divert flows. Another detention basin (the fourth detention basin) is proposed for the Las Aguilas Switching Station, which will be separately owned and operated by PG&E.

In accordance to San Benito County Flood Damage Prevention Ordinance Section 23.31.042(E):

- All detention ponds will have outlet facilities providing terminal drainage capable of emptying a full basin within 24 hours;
- Minimum one foot of freeboard is provided from the top of the pond to the 100-year ponding elevation;
- Maximum 5:1 side slopes, hence no fencing will be required;
- All detention ponds will exceed minimum required detention volume for the 100-year post-development runoff minus the 10-year pre-development runoff from impervious area.

As stated above, the Draft SEIR concluded that surface drainage patterns would not be altered substantially. Furthermore, measures to protect jurisdictional drainage resources and downstream habitat have been identified. Impact BR-6 in Section C.6.3.3 of the Draft SEIR addresses the potential for the project to change the hydric regime and affect habitat functions and Impact BR-20 addresses the project impacts to drainages and wetland features. With implementation of mitigation measures and clarification regarding the hydrologic flows across the project site these impacts were determined to be less than significant.

A2-13

The commenter requests that the County require the Revised Project to avoid filling or grading streams in a similar manner as other solar projects (in the Carrizo Plains).

In response to concerns about the size of the Proposed Action and potential environmental impacts, PVS worked in collaboration with the County to reduce the project size by almost 75 percent from 1,000 MW on 10,000 acres, to 247 MW on approximately 2,506 acres. The engineering for the Revised Project was completed in light of site-specific conditions and best available data for the Revised Project location by Professional Engineers qualified to determine the appropriate civil design that would allow for construction of the Revised Project and minimize impacts to the extent feasible. While it may have been possible to design other projects in the Carrizo Plains, the Revised Project

has been redesigned to the extent possible to minimize impacts on waters of the State while still achieving the project objectives.

A2-14

The Department questions the justification for the proposed bridges at Panoche Creek and Las Aguilas Creek and refers to personal communication with the Fire Department.

The Applicant has provided letters from the Hollister Fire Department that states stream crossings are necessary to reduce response times to the Project. The Fire Department letter dated October 25, 2010 states, “the access roads needed for ingress/egress emergency calls, must not be compromised or reduce in any way. All roads identified on the map on the 2010 EIR must be installed and maintained with an all-weather surface. This includes the stream crossings, which are needed to reduce response times to all emergency calls.”

Additionally, in the letter dated July 14, 2014 the Fire Department stated, “...my team and I have determined that adequate, all-weather access will require a bridge that is of sufficient size to support the weight and size of our fire trucks be installed across the wash area from Yturiarte Road north into the Project area.” This wash area referenced in the letter is Panoche Creek (Crossing #2). A third letter dated October 2, 2104, was also provided by the Fire Department in response to CDFW’s request to redesign the road concluding that the project proponent is required to construct the fire access road and bridge crossings. The Applicant has designed the perimeter road and bridges to satisfy the request of the Fire Department. Letters from the Fire Department were made public with the Draft SEIR materials (available at <http://cosb.us/wp-content/uploads/Fire-Dept-Letters.pdf>).

When compared to the other bridge design alternatives, the single span design would minimize environmental impacts to jurisdictional Waters of the U.S. Furthermore, when looking for potential crossing locations it is ideal to look for areas where the channel is narrow and straight. A narrow straight stream helps reduce the impacts both upstream and downstream caused by the crossing. For the Revised Project, two areas (Crossing #1 and #2) were picked that best fit the narrow and straight criteria. While it is true that any disturbance is likely to cause downstream changes, both the site locations and crossing types were selected to cause the least amount of overall disturbance associated with installation and operation. Development on the main project site will maintain existing hydrologic patterns with respect to runoff supporting seasonal wetlands, vernal pools and ephemeral drainages. As demonstrated in our model and analysis of hydrologic conditions at the crossings, only changes to the immediate bridge locations are anticipated. Refer to Comment A2-4 and Appendices 4C-2 (100-year Flood Analysis) and 4C-3 (Stream Crossing Alternative Analysis). Changes associated with the crossings should be very minor and consist of slight scour near the crossing due to the change in material (from sand to rock and concrete) and how it will be placed and compacted. The current design was selected as the best alternative to limit impacts to streams, habitat and overall functionality of the streams.

A2-15

Several reviewers stated that EIR mitigation measures improperly defer mitigation by requiring completion of future surveys and plans. See General Response GR-1 on deferred mitigation.

As described in the SEIR, any activities that involve modification of the bed, bank, or channel of CDFW jurisdictional waters would require permits and approvals from State and federal agencies. Federal crossings would be permitted through obtaining a USACE Section 404(b)(1) permit and 401 Certification by the RWQCB. The federal crossings, as well as the crossings of washes, creeks, and drainages that are potentially waters of the state and regulated by CDFW, would be permitted through the submittal of an LSAA Notification and ultimately an LSAA that would include requirements for protection of biological resources.

The Draft SEIR included clarifying language related to the requirement that the Applicant prepare a Habitat Restoration and Revegetation Plan (HRRP) (see MM BR-G.6(3)), and Wetland Mitigation and Monitoring Plan (WMMP) and a Habitat Management Plan (HMP) (see Mitigation Measure BR-G.6(6)). The changes to these measures were indicated with underlining in the Draft SEIR.

A2-16

Streambed setbacks (i.e., buffers between the Project and washes and streams) would not be possible to maintain in all areas of the Project, due to the nature of many types of Project features associated with streams and washes on the site (e.g., road crossings and slope stabilization), and because some streams occur in close proximity to the proposed solar arrays. However, solar arrays proximal to streambeds are not expected to cause the same degree of impacts to nearby stream and wash habitats as other development types. New hardscape associated with the arrays would be very minimal, and, in the vast majority of areas under the new arrays, normal groundwater recharge would still occur. Herbaceous vegetation under the arrays would slow down sheet flow to the streams and washes after storm events, preventing erosion much as the existing grasslands do currently.

As stated by the Commenter, only those project features that impact state and federal jurisdictional waters will be permitted through approval of a USACE 404 permit and/or LSAA from CDFW. Site specific grading plans for the entire Project would be reviewed by USACE and CDFW through approval of the 404 and LSAA, and protective buffers for those specific project features would be consistent with these permitting requirements.

In order to provide protective measures for those other locations, not subject to the jurisdiction of the USACE or CDFW, Project activities and Project work limits shall comply with setbacks in accordance with revised Mitigation Measure-BR-G.2 below.

BR-G.2 Implement Best Management Practices.

- ~~There shall be no ground disturbance within 100 feet of washes and streams.~~ Only project features that impact state and federal jurisdictional waters, as measured from the top-of-bank on both sides of these features, will be permitted through approval of a USACE 404 permit and/or Lake and Streambed Alteration Agreement (LSAA) from CDFW. ~~except as described and allowed by the USACE 404 permit and approved LSAA, and except any work directly associated with and required to complete those actions described and allowed by the USACE 404 permit and approved LSAA.~~ Project access roads shall be designed to reach all portions of the project without direct effect on washes, except as described and

allowed by the USACE 404 permit and approved LSAA and/or where this provision conflicts with the San Benito County Fire Code. No bridges shall be installed over washes unless required by the San Benito County Fire Code or the agency responsible for providing fire protection services to the Project and/or as allowed by the USACE 404 permit and approved LSAA. Driving across washes shall be prohibited except for emergency ingress and egress required by the agency responsible for providing fire protection services to the Project and/or as allowed by the USACE 404 permit and approved LSAA.

A2-17 The intent of the revisions to Mitigation Measure BR-G.2 was to clarify that only Project features that impact state and federal jurisdictional waters will be permitted through approval of a USACE 404 permit and/or LSAA from CDFW. Site specific grading plans for the entire Project would be reviewed by USACE and CDFW through approval of the 404 and SAA, and protective buffers for those specific project features would be consistent with these permitting requirements.

A2-18 An attempt to consider the effects of climate change on local populations of special-status species within the Panoche Valley would require speculation, and as the commenter notes, maintaining intact habitat supporting species such as BNLL is a recovery goal that would assist in allowing the species to adapt to the uncertainties under future climate conditions. This goal was a primary focus of the Revised Project design and the conservation strategy for the species outlined in the SEIR.

As described in the SEIR, since 2010 the Project design and construction methodology have been refined resulting in an overall reduction in permanently disturbed areas and an increase in the mitigation lands that will be placed under conservation easement. The Revised Project avoids the identified, occupied blunt-nosed leopard lizard habitat in the ephemeral reaches of Panoche Creek in the southern portion of the original project footprint, and preserves this habitat via conservation easement within the larger Valley Floor Conservation Area (2,514 acres). See Figure C.6-2 of the SEIR for an overview of special-status species observations (including blunt-nosed leopard lizard) on the Revised Project site and the mitigation lands.

Since 2010, several adult and hatchling blunt-nosed leopard lizard surveys were conducted within the Project footprint and portions of the Valley Floor Conservation Lands (Energy Renewal Partners, 2013, 2014). Survey methodology was based on the following: *Approved Survey Methodology for the Blunt-nosed Leopard Lizard* (CDFG, 2004); a PVS letter "Updated Blunt-nosed Leopard Lizard (BNLL) Survey Methodology" dated May 2, 2013 to California Department of Fish and Wildlife (CDFW); a PVS letter "Supplemental Blunt-nosed Leopard Lizard Study Plan Survey Methodology" dated April 2, 2014 to CDFW; conversations with Mr. Dave Hacker of CDFW and Mr. Patrick Golden of Energy Renewal Partners on June 26, 2013; and email correspondence between CDFW and Duke Energy Renewables on June 27, 2013.

There were 105 blunt-nosed leopard lizard observations during the 2009/2010 surveys seasons, all of which were located within the proposed Valley Floor Conservation Lands and not within the Revised Project footprint (LOA, 2009, 2010). A total of 40 observations of blunt-nosed leopard lizard were recorded during the 2013 survey season for an

overall total of 145 blunt-nosed leopard lizard observations during the two studies. Of those observations, all are within the Valley Floor Conservation Lands. Previously, a single individual observed within the Approved Project footprint was found just north of boundary of the Valley Conservation Lands encompassing Las Aguilas Creek. This location and associated buffer area has since been incorporated into the Valley Conservation Lands Boundary (See Figure B-1, Project Location).

A 2014 focused blunt-nosed leopard lizard survey was conducted in accordance with the methodology presented in a letter to the California Department of Wildlife (CDFW) on April 29, 2014. The survey was completed within the central portion of the Project site between portions of the Valley Floor Conservation Lands where multiple blunt-nosed leopard lizards were observed along Panoche Creek during multi-year surveys conducted for the project and within an approximately 1500-foot buffer around the location of a single blunt-nosed leopard lizard observation in 2013 immediately north of Las Aguilas Creek (See Energy Renewal Partners 2014, Survey Area 1, Figure 1). The total acreage covered during the 2014 focused blunt-nosed leopard lizard survey was approximately 600 acres. As described in the Energy Renewal Partners report (2014), no blunt-nosed leopard lizards were found within Survey Area 1 of the Revised Project footprint or the adjacent Valley Conservation Lands during the 2014 focused survey. However, there were a total of seven observations of blunt-nosed leopard lizards within reference areas, including 2 in the Valley Conservation Lands and 5 in the Silver Creek Ranch Conservation Lands to the east of the Project site, during the focused surveys. These reference observations were made subsequent to the daily surveys to verify the activity and detectability of blunt-nosed leopard lizards in the vicinity.

Through the conservation strategy described in the SEIR, the Applicant has committed to acquiring 24,176 acres of mitigation land. As described, these mitigation lands are comprised of approximately 10,782 acres of high value habitat within the Panoche Valley that have slopes less than 11 percent contiguous with the valley floor, and are occupied by blunt-nosed leopard lizard (as well as San Joaquin kit fox and giant kangaroo rat), and are considered likely to contain the same genetically distinct populations of these species that occur on the Revised Project site. Preserving these large areas of intact occupied BNLL habitat in perpetuity within the Panoche Valley and surrounding area meets the recovery goals of the species and provide future options for conservation in light of the uncertainty associated with climate change predictions.

A2-19

The commenter states that the BNLL avoidance buffer of 52.4 is not sufficient to ensure avoidance of take. The Draft SEIR analyzes impacts to BNLL in Section C.6.3.3, Impact BR-10 and as stated in the BNLL Avoidance Plan, available scientific literature concerning home range estimates and associated avoidance buffer recommendations was reviewed and applied. Research by Tollestrup, Warrick et al., and Germano estimated home ranges for the BNLL to be less than 2.4 acres to up to 52.4 acres.

This issue raised in the comment about the need for a 395 acre buffer to adequately protect BNLL was addressed and rejected by the Court of Appeal in *Save Panoche Valley*, *supra*, 217 Cal.App.4th at p. 524, which concluded that the recommended 22-acre BNLL buffer would be protective of the species and was supported by substantial evidence in the record. Nonetheless and to afford the BNLL even greater protection, the Revised Project includes even larger buffer areas (52.4 acres) and protocol level surveys have

been completed to document individual BNLL. Accordingly, there is substantial evidence that negative impacts will be sufficiently eliminated with implementation of the mitigation measures proposed in the Draft SEIR. Additional details of mitigation measures that will be implemented to protect BNLL are contained in the Applicant's BNLL Avoidance Plan.

In addition, the Project has undergone extensive surveys for BNLL to ensure that BNLL are located within areas that are included in the conservation lands and not within the Project Footprint. All observations of BNLL have been buffered by 52.4 acres to conservatively assume that every BNLL observed onsite over the last 6 years, was a unique individual. A complete list of surveys that identified BNLL is provided below:

Survey Name	Survey Description	Dates	Lands Surveyed	Special Status Animal Species Detected
Blunt-nosed Leopard Lizard (BNLL) Abridged Protocol Survey (2009)*	Protocol-level BNLL surveys on 2,560+ acres: 3.5 full-coverage Adult BNLL on Section 15; 8 full-coverage Adult BNLL on Section 10; 5 full-coverage juvenile BNLL surveys on Sections 10 and 15; BNLL surveys on part of Section 9	Summer 2009 (April 15–July 31 and August 15–September 15)	Project Footprint and VFCL	BNLL, San Joaquin coachwhip, GOEA, BUOW, loggerhead shrike, SJAS, GKR, SJKF, AMBA
Rare Plant I (Late Summer/Early Fall)	Protocol-level rare plant surveys on all or portions of Sections 3-5, 7-11, 13-17 of Township 15 South, Range 10 East and Sections 18 and 19 of Township 15 South, Range 11 East; 6,200 acres of the original 10,000-acre Project site	August 17-19, 24-26; September 14-18, 21-25; and September 30–October 2, 2009	Project site and VFCL	BNLL, GKR, SJKF, AMBA
Distance Sampling	Distance sampling (Surveying for burrows and special status species along transects)	Feb 18–March 18, 2010	Project site, VFCL, and VRCL	BNLL, coast horned lizard, mountain plover, GOEA, BUOW, loggerhead shrike, SJAS, GKR, SJKF, AMBA
Occupancy Sampling	Occupancy sampling (Surveying for special status species within 5-acre plots over 5 survey periods (50 meter radius plots for GKR))	May 10–July 27 2010	Project site and VFCL	BNLL, coast horned lizard, San Joaquin coachwhip, GOEA, GKR, SJKF, AMBA

Survey Name	Survey Description	Dates	Lands Surveyed	Special Status Animal Species Detected
Reconnaissance surveys on the Silver Creek Ranch	Reconnaissance surveys (walking surveys for special status species, suitable habitat for these species, and spotlight surveys for SJKF)	August 30–September 3, 2010	SCRCL	BNLL, loggerhead shrike, Mastiff bat, GKR, SJKF, San Joaquin antelope squirrel (SJAS), AMBA
Blunt-nosed Leopard Lizard Protocol Survey (2010)	Protocol-level BNLL surveys on 640 acres: Full adult and juvenile BNLL surveys on Section 16.	Summer 2010 (April 15–July 31 and August 15–September 15)	Project Footprint and VFCL	BNLL, San Joaquin coachwhip, GOEA, loggerhead shrike, GKR, SJKF, AMBA
Giant Kangaroo Rat focused surveys	GKR focused surveys (100 50-meter radius plots) on the Silver Creek Ranch in source population polygons identified in Figure 41 of the Recovery Plan (USFWS, 1998).	Summer 2012 (September 10–21, 2012)	SCRCL	GKR, SJKF, SJAS, BNLL, GOEA, AMBA
Blunt-nosed Leopard Lizard Focused Survey (2012)	Focused BNLL surveys on the 10,889-acre Silver Creek Ranch, following time of day and weather protocols, targeting drainages	Summer 2012 (September 10–17, 2012)	SCRCL	BNLL, GKR, SJAS, SJKF, AMBA, GOEA, BUOW, western pond turtle
Blunt-nosed Leopard Lizard Protocol Survey (2013)	Protocol-level BNLL surveys on the entire Project Footprint and portions of the Valley Floor CL	Spring and Summer 2013	Project Footprint, portions of VFCL	BNLL, GOEA, BUOW, GKR
Abbreviated Blunt-nosed Leopard Lizard Protocol Survey (2014)	Protocol-level BNLL surveys on portions of Project Footprint and the Valley Floor CL	Spring and Summer 2014	Portions of Project Footprint and VFCL	BNLL

Here, the Draft SEIR has addressed the concerns raised by the CDFW, as the Draft SEIR included results of a full protocol survey and further requires a 52-acre buffer zone for each individual blunt-nosed leopard lizard found by the surveyors.

The commenter also requested that preconstruction surveys be conducted immediately before construction (rather than in a 30 day window), and requests that these surveys are conducted during the active adult BNLL survey period.

The Applicant has conducted protocol-level surveys with guidance from the CDFW for BNLL as described under Impact BR-10 in Section C.6.3.3. Mitigation measures include preconstruction surveys for BNLL within 30 days, which the team of biologist has concluded is a sufficient survey window to avoid potential impacts to BNLL that could potentially wander into the construction area. Moreover, the preconstruction survey requirement is just one of the numerous mitigation measures that are designed to com-

pletely avoid any impact on BNLL. Collectively, these measures ensure that impacts would be mitigated to a less than significant level.

Moreover, while the County acknowledges the commenter's request for a different or additional preconstruction survey, it is important to note that an agency is not required to conduct all the recommended tests (such as preconstruction surveys immediately prior to construction) or exhaust all research methodologies to evaluate impacts. (See, e.g. *Save Panoche Valley v. County of San Benito* ("Save Panoche Valley") (2013) 217 Cal.App.4th 503, 524 citing *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1396 ["Simply because an additional test may be helpful does not mean an agency must complete the test to comply with the requirements of CEQA"]. In addition, the lead agency may exercise its discretion and decline to undertake additional tests. (*Id.*)

A2-20

The commenter states that the CDFW only accepts BNLL surveys if they are less than one year old. If another season begins, the commenter states that surveys will have to be performed again.

The commenter points out that the CDFW survey methodology for BNLL includes a guideline that BNLL surveys are accepted for one year from the date of completion; however, the methodology also allows for variations in survey intensity: "The Department is willing to cooperate with surveyors who have circumstances or needs not addressed by this protocol and who may wish to propose alternative methods to comply with State law prohibiting take of BNLL." The Applicant has performed multiple years of protocol level surveys including a BNLL Full Protocol Survey of the Project Footprint and Valley Floor Conservation Lands (October 2013). The surveys have shown no BNLL observations within 850 feet of the Revised Project footprint. Moreover, in coordination with CDFW, the Applicant performed a focused blunt-nosed leopard lizard survey in 2014 accordance with the methodology presented in the Supplemental Blunt-nosed Leopard Lizard Study Plan Survey Methodology letter sent to the California Department of Wildlife (CDFW) on April 29, 2014. The locations surveyed included portions of the Revised Project closest to any recorded BNLL observations and locations specifically identified by CDFW as being of concern as possible dispersal areas from previously recorded observations. The focused surveys were conducted in Spring and Summer 2014 as documented in the April 29, 2014 letter to CDFW. The surveys followed the CDFG (2004) protocol in the area that they were conducted. Generally, the surveys were completed within the central portion of the Project site between portions of the Valley Floor Conservation Lands where multiple individuals were observed along Panoche Creek during multi-year surveys conducted for the project and within an approximately 1500-foot buffer around a single individual sighting that was recorded in 2013 immediately north of Las Aguilas Creek (See Energy Renewal Partners 2014, Survey Area 1, Figure 1 provided with the Draft SEIR materials available on the County's website, at <http://cosb.us/wp-content/uploads/BNLL-Summary-2014-8-11-14-with-Figures.pdf>).

The Applicant will also conduct focused surveys as proposed in the Supplemental Blunt-nosed Leopard Lizard Study Plan Survey Methodology Letter during Spring and Summer of 2015 for a portion of the eastern project footprint (also called the Phase 2 construction area survey). The planned Phase 2 construction area survey will cover approximately 175 acres within the eastern portion of the Project Footprint (see Figure 1 of the

Survey Methodology Letter). Finally, the Applicant will conduct focused surveys prior to construction on the Project Footprint within a reasonable distance of observations recorded since 2009 to assess potential dispersal areas from these known locations.

A2-21 Mitigation Measure BR-10.1 provides that a protective buffer will be established any time a blunt-nosed leopard lizard is identified on the project site. This buffer is established by the Designated Biologist based on the location of the species in relation to on-site activities in coordination with the USFWS and CDFW. As defined in Mitigation Measure MM BR-10.1, if the species is present, an exclusion zone shall be marked by stakes and flagging 52.4 acres around the location in which the blunt-nosed leopard lizard was observed to protect the blunt-nosed leopard lizard from construction activities. To further protect the blunt-nosed leopard lizard, temporary exclusion fencing may be installed. The Designated Biologist shall immediately notify the USFWS and CDFW via telephone or electronic mail when a blunt-nosed leopard lizard is encountered. Subject to the approval of USFWS and CDFW, the Designated Biologist shall identify the appropriate ongoing avoidance measures that will result in avoiding “take” of the observed blunt-nosed leopard lizard.

All protective buffers established under Mitigation Measure BR 10.1 would apply to any blunt-nosed leopard lizard observed on the project site. The reference to “historic” locations in APM Bio-13 is a reference to BNLL locations identified in previous protocol surveys of the project site, and is not intended characterize the nature or relative value of these locations. This term has been removed to avoid confusion, as shown here:

- Project is avoiding impacts by staying out of the floodplain and by buffering any ~~historic~~ BNLL sighting with a 52.4-acre area.

Responses to Comment Set A3 Monterey Bay Unified APCD

A3-1 The comment confirms that increasing watering for fugitive dust control to 3 times daily would be sufficient to reduce fugitive dust for a 50 acre/day construction area. The comment also recommends that additional watering or surface treatment should be implemented, as necessary to reduce overall PM10 emissions and potential non-compliance with visible emissions based on site conditions.

The Draft SEIR includes mitigation for visible emissions as well as fugitive dust. Mitigation Measure AQ-1.1 includes specific requirements for reducing fugitive dust and includes language to allow for application of water at least three times daily (not limited to three times per day) and/or application of surface treatment (such as non-toxic chemical stabilizers) depending on the site conditions (type of operation/activity, soil, and wind exposure). Mitigation Measure AQ-1.2 includes the requirement for a dust compliant monitor to be present onsite during construction activities to monitor and reduce visible emissions among other tasks. The analysis in the SEIR concluded that the implementation of Mitigation Measure AQ-1.2 would reduce impacts to a less than significant level. Therefore, the commenter’s request is sufficiently addressed in the SEIR.

A3-2 The commenter states that the PG&E Upgrades portion of the project may be subject to the San Joaquin Valley Air Pollution Control District (SJVAPCD) Indirect Source Review, Rule 9510.

Draft SEIR Section C.4.2, Applicable Regulations, Plans, and Standards, includes Rule 9510 – Indirect Source Review (ISR) in the discussion of applicable standards and regulations. This rule applies to new development that would generate traffic increases and applies to future development along the Golden State Boulevard corridor, as stated in the Draft SEIR discussion. As such, this rule is not applicable to the PG&E Upgrades because the upgrades do not generate an increase in traffic from existing conditions; the upgrades will occur on existing transmission lines subject to periodic maintenance related traffic and the maintenance of the upgrades will remain essentially unchanged. Furthermore, the PG&E Upgrades will not be within the Golden State Boulevard corridor. Therefore, no further analysis is necessary with regard to this rule.

A3-3

The commenter states that if any work areas subject to ground disturbance are located in Geographic Ultramafic Rock Unit, or is discovered to have naturally occurring asbestos, serpentine, or ultramafic rock, the requirements of the State Asbestos Air Toxic Control Measure (ATCM) must be followed. This issue was addressed in the 2010 Final EIR in Section C.4.1, which states:

Naturally-occurring asbestos is a concern in San Benito County (APCD, 2010a), and it may be found in serpentinite rock that is located in the region. Disruption, breaking, or crushing of serpentinite rock can lead to airborne emissions of dusts that contain the mineral asbestos. To address the potential health hazards of this airborne substance, the CARB (CCR Title 17, Section 93105) maintains recommendations and requirements to minimize emissions of naturally occurring asbestos from construction and grading. According to CARB, sources of potentially hazardous asbestos emissions include: unpaved roads or drive- ways surfaced with ultramafic rock, construction activities in ultramafic rock deposits, or rock quarrying activities where ultramafic rock is present. CARB does not recommend protective measures where construction occurs in alluvial soils that may have developed downslope of asbestos-containing formations. Although known to occur in hills north and northeast of the project area, naturally occurring asbestos is not expected on the valley floor of the project site due to the lack of rock deposits in the area where ground disturbance would occur.

Because the physical characteristics of the site have not changed since 2010 and the proposed project changes would not alter this conclusion, no further analysis or additional information was included in the Draft SEIR to address the issue.

A3-4

The commenter states that the NO_x daily emission rate as calculated in the CalEEMod output is more than three times the Air District's NO_x threshold for operational emissions and recommends additional mitigation measures relating to the use of Tier 3 and Tier 4 equipment during the ozone season (May to October). As the comment notes, the Air District's NO_x threshold applies to "operational" emissions, not temporary construction emissions. The Air District has not established a significance threshold for emissions of NO_x and other ozone precursors during construction. As the Air's District's CEQA Guidelines (2008) explains, these emissions are "accommodated in the emission inventories of State and federally required air plans and would not have a significant impact on the attainment and maintenance of ozone AAQS." Therefore, no mitigation measures, such as the use of Tier 3 and Tier 4 equipment are required. Nonetheless, the project would implement APM-AQ-2 , which requires the use of at least Tier 2 rated diesel engines and cleaner diesel engines (e.g., Tier 3 and 4) where feasible.

The following addition (underlined) was made to APM-AQ-2 in the Final SEIR in response to the comment received to address alternatively fueled construction equipment where feasible. Note that only the relevant portion of the APM was included below.

APM AQ-2

The Applicant shall implement the following BMPs to further reduce construction vehicle emissions (NO_x, VOC, and Diesel Particulate Matter) during project construction:

- Maintain all construction equipment in proper tune according to manufacturer's specifications;
- Use diesel construction equipment, including portable equipment, rated more than 50 horsepower meeting the California Air Resources Board's (CARB's) Tier 2 standards for certified engines or cleaner off-road heavy-duty diesel engines (e.g., Tier 3 and Tier 4, where feasible), and comply with the State In-Use Off-Road Diesel Vehicle Regulation (California Code of Regulations [CCR] Title-13, Article 4.8, Chapter-9, Section 2449);
- Prohibit on and off-road diesel equipment idling for more than 5 minutes, or within time necessary to comply with Title 13, CCR Section 2485 (c) (1) regarding idling of commercial vehicles. Signs shall be posted in the designated queuing areas and or job sites to remind drivers and operators of all idling limits;
- Staging and queuing areas shall not be located within 1,000 feet of sensitive receptors;
- Electrify off-road construction equipment when feasible; and
- Provide incentives for workers to use project-sponsored shuttle bus service or carpooling, where feasible.
- Use alternatively fueled construction equipment on-site where feasible, such as compressed natural gas (CNG), liquefied natural gas (LNG), propane, biodiesel, or electric.

For purposes of this mitigation measure, "sensitive receptors" shall be defined as occupied residences, senior living centers, parks and recreation areas, medical facilities and schools.