Appendix 1

Scoping Report including Notice of Preparation

Date: October 30, 2014

To: Interested Parties, Responsible Agencies and Trustee Agencies

Subject: **Notice of Preparation of a Draft Supplemental Environmental Impact Report**

Lead Agency: County of San Benito
Phone: (831) 637-5313 Fax: (831) 637-5334
Contact: Michael Krausie, Associate Planner
Email: MKrausie@cosb.us

Project Title: Revised Panoche Valley Solar Project

Project Applicant: Panoche Valley Solar LLC, Eric Cherniss

Notice is hereby given that the County of San Benito ("County") will be the Lead Agency and will prepare a Draft Supplemental Environmental Impact Report (SEIR) under the California Environmental Quality Act (CEQA) for the Panoche Valley Solar Farm Project ("Project"). This SEIR would supplement the environmental analysis contained in the previously certified 2010 Final EIR for the Project. We need to know the views of your agency as to the scope and contents of the environmental information which is germane to your agency's statutory responsibilities in connection with the Project. Your agency will need to use the SEIR prepared by the County when considering your permit or other approval for the Project.

The project description, location, and the potential environmental effects are contained in Attachment A.

Comments on this Notice are invited. Due to the time limits mandated by State law, your response must be sent at the earliest possible date, but not later than 30 days after receipt of this notice.

Please send your response to Michael Krausie at the address shown above. We will need the name for a contact person in your agency. The County has also provided the following hotline and website to request or obtain further information on the Project.

Hotline for phone messages and faxes:	Project email address for comments or questions:
(831) 665-5518	**panochesolar@aspeneg.com**

Date: October 30, 2014

Signature: Michael Krausie
Title: Michael Krausie, Associate Planner

ATTACHMENT A

Project Location: The Project site is located along Little Panoche Road in the Panoche Valley, in southeastern San Benito County. The Project site consists of 2,506 acres currently used for livestock grazing and open space, and is located 2 miles southwest of the Fresno County Line and the Panoche Hills, and 15 miles west of Interstate 5. The Project would be located within Township 15S, Range 10E, Sections 3-5, 8-11, 13-17, and 20-25 and Township 15S, Range 11E, Sections 18, 20, 29, and 30 of the United States Geologic Survey's Cerro Colorado, Llanada, Mercy Hot Springs, and Panoche 7.5-minute topographic quadrangle maps**.** The Project would connect to California's electrical system via a PG&E 230 kV transmission line. The Project location is illustrated on Figures 1A and 1B.

The primary telecommunication upgrades that are required to serve the Project consist of new optical ground wire (OPGW) that would be installed on transmission towers within PG&E's existing Panoche-Moss Landing 230 kV transmission line right-of-way ("ROW") between the Project substation and PG&E's existing Panoche Substation, 17 miles east of the Panoche Valley in Fresno County. Secondary telecommunication upgrades would be installed on one existing off-site tower located at Call Mountain in San Benito County, one new tower at Panoche Mountain in Fresno County, one new tower at the Project site, and one new tower at PG&E's Helm substation in Fresno County. These locations of the primary and secondary telecommunications upgrades are depicted on Figures 2A and 2B.

2010 Original Project Approvals: In 2010, the Board of Supervisors ("Board") certified a Final EIR for the Panoche Valley Solar Farm Project ("Original Project"). The Original Project that was analyzed in the Final EIR entailed the construction and operation of a 420 megawatt (MW) solar energy generation facility consisting of approximately 1.8 million pole-mounted, silicon-based solar photovoltaic (PV) panels and associated electrical equipment, an electrical substation, and an operations and maintenance building within a fenced in area of approximately 4,885 acres. The Original Project proposed to deliver electricity to the regional transmission system by interconnecting to the PG&E Moss-Panoche/Coburn-Panoche 230 kilovolt (kV) transmission line via a substation located within the Project site.

The Board approved a reduced density alternative described in the Final EIR, known as Alternative A Revised ("Approved Project"). The Approved Project entails the construction of a 399 MW solar energy generation facility within a fenced in area of approximately 3,202 acres.

Summary of Proposed Project Changes: Since the Board approved the Approved Project in 2010, the Project has been further engineered and refined resulting in additional changes; the current project is subsequently referred to as the Revised Project. There are two types of project changes that are part of the Revised Project and will be evaluated in the Supplemental Environmental Impact Report (SEIR): changes to the solar project and changes to Pacific Gas and Electric Company (PG&E) transmission facilities.

1. **Solar Project Changes.**

The applicant is proposing the following changes to the Original Project:

- **Project Footprint**. The Project Footprint has been reduced in size based on further engineering and design refinements, updated biological surveys, and discussions with state and federal resource agencies. The Revised Project now consists of 247 MW (as opposed to the 420 MW Project analyzed in the Final EIR and the 399 Alternative A Revised) within a fenced in Project footprint of approximately 2,506 acres (as opposed to the 4,885 acre footprint of the Original Project and 3,202 acre footprint of the Approved Project).

- **Revised Roadway Network/Circulation**. In response to Fire Department requirements for emergency access, the previously proposed internal roadway network within the Project footprint has been revised to replace a network of interior access road with a perimeter road around the boundary of the Revised Project site.
- **Security Fencing**. Based on communications with resource agencies and biological data, the perimeter fence design has been revised to include a smaller three and a half to five inch (3.5" to 5") gap at the bottom of the fence as opposed to the originally designed twenty-four inch gap.
- **Construction Phasing**. The Project would no longer be constructed in five phases, spanning a 5-year period. Instead, the Project will be constructed in a single phase that would last 16 to 18 months. Accordingly, the construction personnel and related traffic calculations have been updated to account for a single construction phase.
- **Water Use**. Based on further engineering and design refinements, changes to schedule and construction methodologies, the amount of water that would be used during the temporary, 16 to 18 month, construction phase would increase. However, due to the reduced building footprint and reduction in solar arrays, the amount of water that would be used for panel washing once the Project becomes operational has decreased.
- **Water Storage**. The proposed water storage plan during construction has been modified. The previously proposed lined evaporation pond has been eliminated. The Revised Project would include construction of three temporary construction water ponds. Temporary piping would be used to transport water from the ponds to drop tanks at designated locations around the Project site. 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.
- **Mitigation Measures**. The Applicant is proposing changes to several mitigation measures relating to Air Quality, Biological Resources, and Cultural Resources impacts that were adopted by the County in 2010 based on the results of additional biological surveys and best management practices recommended by scientists working in the region, as well as lessons learned from other solar development that has occurred throughout the State since the Project was approved.

2. PG&E Upgrades. Since 2010, the applicants have been working with PG&E to define the scope and location of upgrades to PG&E's telecommunication system that are needed to connect the Project to PG&E's 230 kV transmission line. The proposed telecommunication upgrades are as follows:

- A primary telecommunications system consisting of approximately 17 miles of new OPGW would be installed on 75 existing transmission structures between the Project substation and the PG&E existing Panoche Substation in Fresno County.
- One segment of OPGW (4,650 ft) (All-Dielectric Self-Supporting [ADSS] fiber optic cable) would be permanently installed on 9 new wood poles in an existing ROW on agricultural land where the 230 kV line crosses two existing 500 kV lines.
- A secondary telecommunications system consisting of a microwave repeater system that would be installed on up to three new microwave towers and one existing tower.

Changes to the 2010 Final EIR to Address the Project Changes: The SEIR will supplement the environmental analysis contained in the 2010 Final EIR to address the impacts of the Revised Project. In accordance with CEQA, the SEIR will focus on and disclose any "new significant environmental effects" from the Project changes that were not previously addressed in the 2010 Final

EIR and environmental impacts that are substantially more severe than the impacts that were previously addressed in the 2010 Final EIR.

The County anticipates that the SEIR will analyze whether and to what extent the Project Changes will result in new or more severe impacts relating to the following environmental resource areas:

1. Aesthetics
2. Agricultural Resources
3. Air Quality and Greenhouse Gases
4. Biological Resources
5. Cultural Resources
6. Traffic and Circulation
7. Water Resources
8. Cumulative Impacts

Other sections of the 2010 Final EIR areas may be modified based on SEIR team's analysis and refinements to the Revised Project that may occur subsequent to the publication of this NOP.

Figure 1A: Solar Project Overview

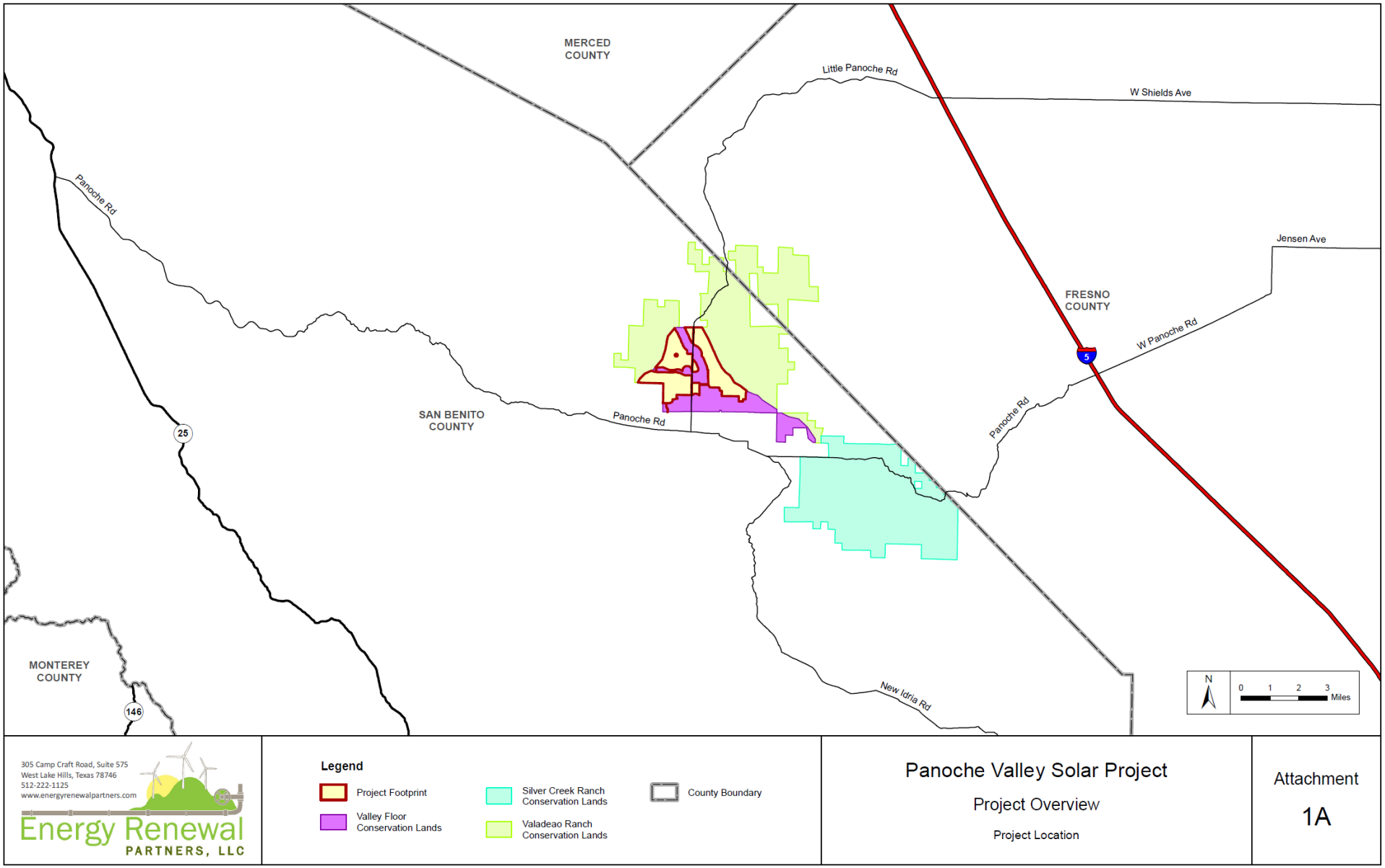


Figure 1B: Solar Project Location and Components

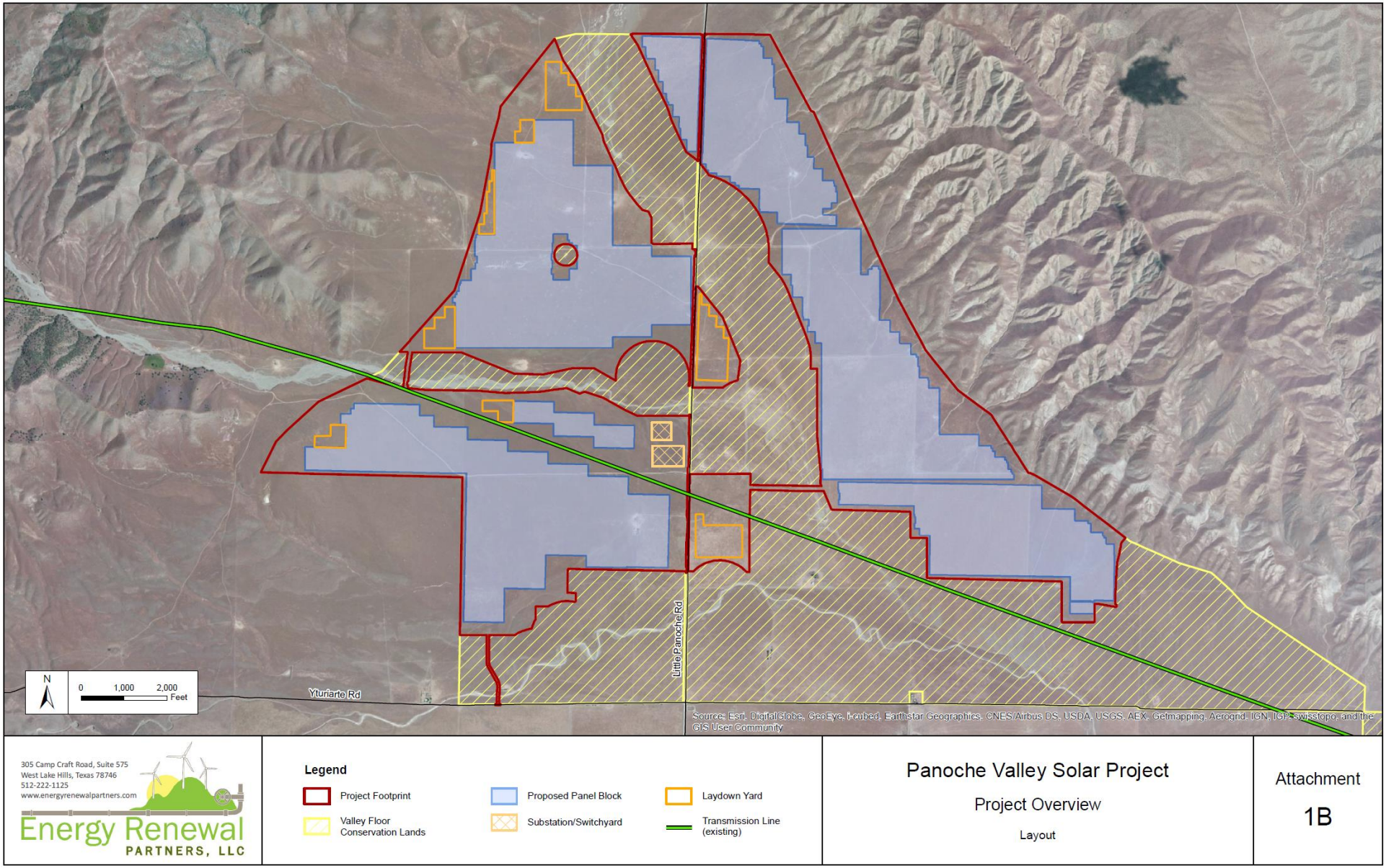


Figure 2A: PG&E Upgrades: Overview of Optical Groundwire

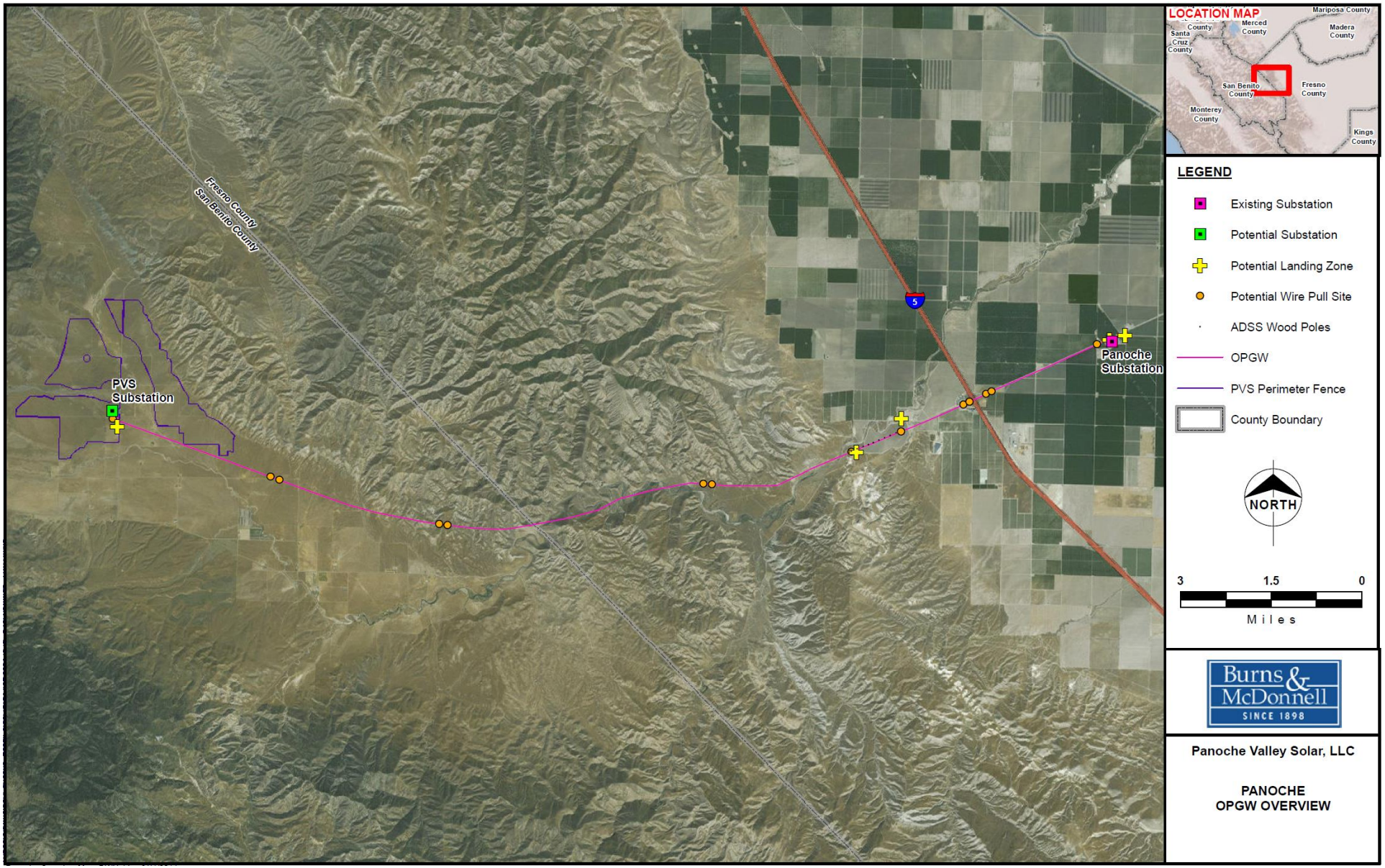
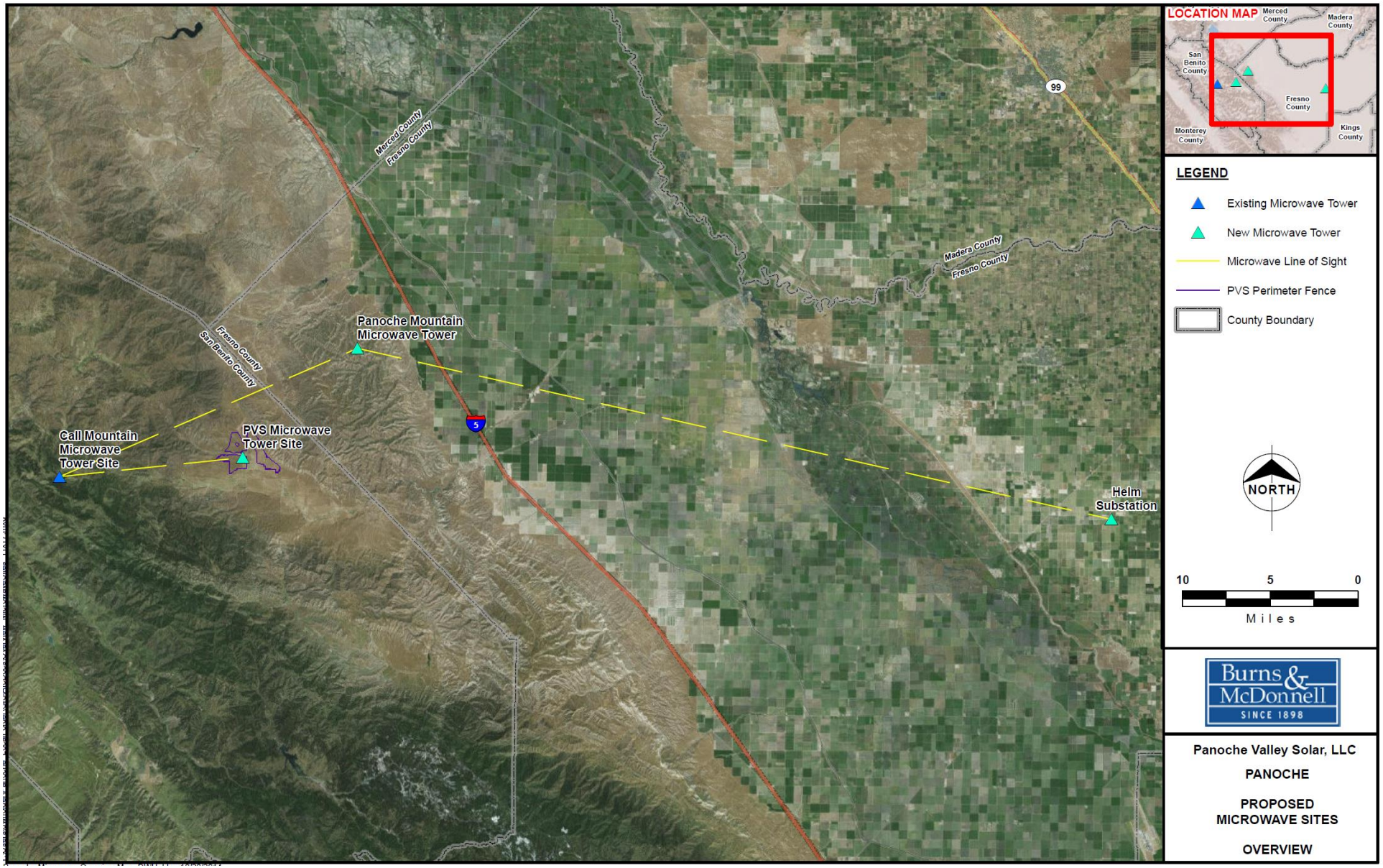


Figure 2B: PG&E Upgrades: Proposed Microwave Sites



November 23, 2014

Michael Krausie
San Benito County
3224 Southside Road
Hollister, CA 95023

Scott Morgan
OPR State Clearinghouse
PO Box 3044
Sacramento, CA 95814

Delivered via email to: panochesolar@aspeneg.com
Scott.Morgan@opr.ca.gov

RE: **Panoche Valley Solar Farm SEIR NOP Compliance with CEQA – (SCH 2010031008)**

Dear Mr. Krausie and Mr. Morgan:

Thank you for the opportunity to provide scoping comments for the Draft Supplemental Environmental Impact Report (SEIR) being prepared for the Panoche Valley Solar Farm (Project). While reviewing the notice of preparation (NOP) for the SEIR we have observed that the NOP does not comply with the requirements of Section 15082(a)(1) of CEQA Guidelines [14 CCR § 15082(a)(1)]. Specifically, that Section requires:

> *The notice of preparation shall provide the responsible and trustee agencies and the Office of Planning and Research with sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response. At a minimum, the information shall include:*
>
> *(A) Description of the project,*
>
> and
>
> *(C) Probable environmental effects of the project.*

The description of the project provided in NOP circulated on October 30, 2014 includes the following:

Mitigation Measures. *The Applicant is proposing changes to several mitigation measures relating to Air Quality, Biological Resources, and Cultural Resources impacts that were adopted by the County in 2010 based on the results of additional*

Defenders of Wildlife
California Program Office
1303 J Street, Suite 270
Sacramento, CA 95814
Telephone 916-313-5800
www.defenders.org/california

biological surveys and best management practices recommended by scientists working in the region, as well as lessons learned from other solar development that has occurred throughout the State since the Project was approved.

This description fails to identify which of the Air Quality, Biological Resources, and Cultural Resources mitigation measures are proposed to be changed. Nor does it disclose what changes are proposed. Without identification of the mitigation measures or what changes are proposed, there is not sufficient information to enable a meaningful response. Nor does the description discuss probable environmental effects of changing mitigation measures.

Based upon the Project proponent's applications to the California Department of Fish and Wildlife for Incidental Take and Streambed Alteration Permits, it is our understanding that a new emergency access bridge across Panoche Creek is proposed which was not included in the original project approvals. The NOP does not include the proposed bridge and simply describes revisions to project access as follows:

> ***Revised Roadway Network/Circulation****. In response to Fire Department requirements for emergency access, the previously proposed internal roadway network within the Project footprint has been revised to replace a network of interior access road with a perimeter road around the boundary of the Revised Project site.*

This description fails to disclose the bridge or other potential streambed crossings or their probable environmental impacts. Again, this does not provide sufficient information on the actual project to enable a meaningful response.

For these reasons we respectfully request the NOP be revised to comply with CEQA and recirculated. If you have any questions, please feel free to contact me at (530) 902-1615 or via email at kate@kgconsulting.net

Respectfully submitted,

Kate Kelly
Energy and Land Use Consultant
Defenders of Wildlife

Cc:
Steve Henry, USFWS
Rodger Root, USFWS
Kevin Hunting, CDFW
Julie Vance, CDFW

November 30th, 2014

Michael Krausie, Associate Planner
County of San Benito
Via email to: MKrausie@cosb.us

Re: Revised Panoche Valley Solar Project, Comments on Notice of Preparation for Draft Supplemental Environmental Impact Report (**SCH 2010031008)**

Dear Mr. Krausie,

The following are scoping comments on behalf of the Santa Clara Valley Audubon Society (SCVAS) and the Sierra Club (SC) regarding the Notice of Preparation (NOP) for the Draft Supplemental Environmental Impact Report (SEIR) for the Revised Panoche Valley Solar Project (Revised Project).

The mission of SCVAS is to preserve, protect, and educate our community about native birds and their ecosystems in Santa Clara County and surrounding regions. SCVAS members often use the Panoche Valley area for bird watching and recreation.

The Sierra Club is a national nonprofit organization of approximately 2.5 million members and supporters (approximately 250,000 of whom live in California) dedicated to exploring, enjoying, and protecting the wild places of the earth. The Sierra Club's concerns encompass protecting our lands, wildlife, air and water while at the same time rapidly increasing our use of renewable energy to combat fossil fuels and climate change. Sierra Club members have long advocated for the rare species who call the Panoche Valley home. Many SC members regularly visit the Panoche Valley to bird watch and enjoy nature.

SCVAS and SC commented on the originally proposed Panoche Valley Solar Project (the "Original Project") and associated environmental documents. We opposed the Original Project, and litigated the 2010 approval of the Original Project and the Original EIR. We continue to believe that the project should be rejected based on impacts to the rare and endangered species of the area and regional ecological values.

The NOP Provides Information that is Too Vague for Meaningful Public Comment

Other than the overall reduction in project size, the change in construction phasing, and the maps provided, the NOP provides little detail as to the proposed project changes. The NOP thus offers the public an incomplete ability to effectively respond to new or more severe environmental impacts.

As an example, the NOP mentions a revised roadway network but does not provide a map or description of the newly proposed roadways nor the need for any new or expanded bridges or crossings of local waterways. Previously, federal and state resource agencies have raised concerns about the use of particular roadways and possible construction of creek crossings, due to species impacts (see attached documents). Without a map or better description of the Revised Project's proposed changes, we cannot raise issues of particular concern at specific locations. Therefore, we are only able to make a general scoping comment regarding changes to roadway configuration and waterways on and off site.

Revised Project description should provide explicit maps of paved and unpaved roadways, bridges and stream crossings so that the full scope of the project can be evaluated onsite and beyond, and the expected impacts to listed species and habitat can be thoroughly and accurately analyzed. This is especially true for the Blunt-nosed leopard lizard, listed as a "fully protected" species. We request that the SEIR identify alternatives to the proposed roadway pattern that would prevent the take of blunt nosed leopard lizard, as well as reduce any potential impacts to other protected species.

Courts note the fundamental nature of an accurate, detailed project description in allowing valuable public input into the CEQA process. "A curtailed, enigmatic or unstable project description draws a red herring across the path of public input." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 198. An NOP is the first opportunity the public has in addressing impacts and mitigation measures proposed in an EIR of any type. In this case, the NOP subverts the public process by providing a project description that is overly vague and incomplete.

Revised Project Description

The SEIR must describe the Project design: The SEIR must describe the precise configuration of the array power-blocks, road network, bridges and creek crossings, so that the sufficiency of mitigation measures proposed in the SEIR can be adequately assessed.

The SEIR must fully describe the proposed mitigation lands: The SEIR must provide detailed description of proposed mitigation lands topography and disclose any existing easement agreement conditions that may be incompatible with habitat preservation for the endangered species of Panoche Valley (for example, hunting, off road recreation, farm/ranch related construction, pest management etc.). The SEIR must disclose soil toxicity of mitigation lands and proposed habitat restoration or enhancement areas on mitigation lands or creekside areas.

Grading
While the original Project EIR covered grading on the Project site, subsequent correspondence from the Department of Fish and Wildlife (CADFW, June 26, 2014, see attached), leads to the belief that impacts of grading by the Revised Project may be more substantial than those evaluated in the Original EIR. We expect that the SEIR will provide detailed information as to the total extent of grading, potential impacts to vernal pools and waterways, San Joaquin antelope squirrel, American badger, Western burrowing owl, Blunt nosed leopard lizard, Giant kangaroo rat, California tiger salamander, San Joaquin kit fox and other protected species. Please describe any changes to mitigation measures resulting from changes to the Revised Project or from greater project detail than was previously available.

Biological Buffers
The SEIR must provide evidence that mitigation is feasible and capable of being implemented and that implementation of buffers is feasible. The Original Project included the following avoidance buffers during construction activities that would be integrated into the Project's design:

- A 100-foot buffer around washes and streams as measures for the top-of bank on both sides of these features.
- A 100-foot buffer around seasonal depressions and known water bodies
- A 22-acre buffer around each point location for the Blunt-nosed leopard lizard
- A 250-foot buffer around nesting Western burrowing owls during the nesting season
- A 150-foot buffer around each occupied Western burrowing owl burrow during the non-breeding season
- A 50-foot buffer around each active Giant kangaroo rat burrow/precinct
- A 50-foot buffer around each active San Joaquin antelope squirrel burrow
- A 200-foot buffer around maternity American badger dens during the pup-rearing season
- A 100-foot buffer around each San Joaquin kit fox den
- A 200-foot buffer around each unoccupied San Joaquin kit fox natal den;
- A 1000-foot buffer around each occupied San Joaquin kit fox occupied natal den.

Please provide information and analysis for the ability of the Revised Project to maintain the numerous buffers contained as mitigation measures in the original EIR. If any buffers are to be changed, please provide explanation for the change and locations where the change would apply. Furthermore, the buffer list above does not include buffer areas that must be established if additional special-status plant and animal species are observed during preconstruction surveys.

Based on the number of buffer zones that are required, it is questionable whether the Revised Project can feasibly be developed or establish a realistic Project design. The SEIR must further evaluate the ability of the Revised Project to maintain adequate buffers given the increased intensity of development proposed during the construction time period. The SEIR must describe how buffers will be prioritized if they cannot all be implemented.

Finally, letters from the CADFW (July 10, 2010; June 26, 2014, see attached) warn hat the proposed buffers are insufficient to avoid take of blunt nosed leopard lizard. Please provide adequate buffers. Please provide pre-construction survey methodology and buffers for California tiger salamander.

Impacts to Panoche Elementary School students

Given the shortened nature of the proposed construction period in the Revised Project, the SEIR must provide an analysis of a shorter, more intense period of construction on sensitive receptors at the Panoche elementary school (traffic, air quality, noise, hazards). Please do not use average over lifetime as a measure of harm to the children's health. Please assess impacts during the duration of construction, including impacts to the ability to concentrate and impact to learning during the 18-months of construction.

Climate Change

Information regarding climate change impacts on wildlife and habitats has advances significantly in the years since preparation of the initial EIR for this project. We point out, for example, that the National Audubon Society has recently produced a lengthy study on climate impacts on species range and habitat function, finding that climate change could put 314 bird species at risk nationally, primarily from loss of habitat. See http://climate.audubon.org/sites/default/files/Audubon-Birds-Climate-Report-v1.2.pdf.
The latest report by the Intergovernmental Panel on Climate Change (IPCC) dated 2014, also contains updated information on climate change impacts to wildlife and habitats, for example noting that species are moving their ranges at up to three times the speed previously thought, see http://www.ipcc.ch/report/ar5/wg2/.

We expect that the SEIR will note recent research on climate change impacts to birds and wildlife as it relates to both project impacts and management techniques for proposed mitigation lands.

Transmission Upgrades

The NOP contains a more detailed description in proposed changes to transmission facilities than did the Original Project EIR (NOP, page 3). Therefore, the SEIR should contain a more detailed analysis of proposed construction or operational impacts associated with these upgrades. In particular, protocol-level surveys for ALL protected species should be performed in areas potentially impacted by construction of these transmission upgrades prior to release of the SEIR, in order that the public may evaluate this more detailed information in relation to the analysis contained in the original EIR. Alternatively, presence of protected species can be assumed, and appropriate construction buffers, avoidance and mitigation measures provided.

If the proposed PG&E upgrades will cross any of the proposed mitigation lands, then the SEIR should disclose and evaluate the impact of these upgrades on the mitigation lands and species in the mitigation lands.

Cumulative Impacts

The original EIR analyzed cumulative impacts to biological resources from proposed development in the Panoche Valley vicinity and from Solar Projects with Similar

Biological Resources. The analysis of solar projects with similar biological resources was limited to projects in core recovery areas for the San Joaquin kit fox. Since the original EIR, the two solar projects identified as moving forward in core recovery areas (Topaz, CVSR) have been constructed in the Carrizo core recovery area. The third core recovery area, Kern, has been increasingly degraded by oil and gas development. Due to the degradation of the Carrizo and Kern core recovery areas, satellite recovery areas and other suitable habitat for San Joaquin Kit Fox and associated grassland species have become more important. A number of solar projects have been proposed, and in some cases, have been permitted or constructed in these areas. The SEIR must include in the analysis not only the impacts of oil and gas development in the Kern Core Recovery Area and on areas already considered conserved in the Recovery Plan, but also the impacts of solar projects and other development in satellite recovery areas and other suitable habitat. In addition, the cumulative impacts analysis should consider development that could impact migratory birds and other avian species.

Hydrology and Water Resources

Given the shorter construction period for the Revised Project, the SEIR must provide an analysis of a shorter, more intense period of water use on the site as compared to the original EIR. Impacts on groundwater availability for wildlife should be considered. The SEIR must identify all groundwater users (i.e., existing and planned) and rights to water (e.g., irrigation) from the groundwater basin, so that the sufficiency of the aquifer to meet the Project's short and long term water demand can be assessed.

A revised Water Supply Assessment should be included in order to comply with California Water Code Sections 10910-10915. Climate change affects on groundwater recharge should be addressed in the water budget. If recharge decreases over the operational life of the project, then there could be significant impacts on the groundwater resource and existing groundwater users.

The Original Project EIR did not provide hydrologic, hydraulic and geomorphic studies to address flood frequency, stream hydraulics and scour, and stream morphology. Unfortunately, the original Wetland Delineation Report included limited flood frequency analysis on Panoche Creek 12.5 miles downstream of the project site, but was inadequate at estimating flood flows at the project site.

A watershed assessment of the Panoche / Silver Creek watershed (MFG, 1998)[1] has identified that 1) the creeks have experienced dynamic geomorphic change within the last several decades, and 2) sediment loading to downstream areas has been an issue. If not carefully planned, the Revised Project could exacerbate known issues in the watershed downstream of the project site. Thus, more detailed information through hydrologic, hydraulic and geomorphic analyses is needed to inform project layout and ensure floodwaters are not impeded or redirected by project features and do not impact downstream resources.

---

[1] MFG, Inc. 1998. Panoche / Silver Creek Watershed Assessment Final Report. Prepared for Panoche / Silver Creek Watershed Coordinated Resource Management and Planning Group and the City of Mendota, California.

Project Necessity
SCVAS and SC request that the SEIR reevaluate project necessity given the solar and other renewable energy projects that have been constructed or permitted since the drafting of the Project's original EIR. In other words, is this solar facility needed given current and future plans for renewables across the State, and progress in meeting the State's renewable portfolio standard targets?

Lake Effect
Please review the article in *Scientific American*, dated August 27, 2014 and entitled "Solar Farms Threaten Birds." See http://www.scientificamerican.com/article/solar-farms-threaten-birds/. That article notes,

> "Much of the problem appears to lie in the "lake effect," in which birds and their insect prey can mistake a reflective solar facility for a water body, or spot water ponds at the site, then hone in on it."

The article goes on to cite a federal report from the National Fish and Wildlife Service Forensic Laboratory[2] in stating, "The diversity of birds dying at these solar facilities, and the differences among sites, suggest that there is no simple 'fix' to reduce avian mortality,"

We assert that new scientific information not available at the time of the original EIR for the Project requires reconsideration of impacts from this lake effect on regional and migratory bird species. Additional mitigation measures should be considered to address this impact.

California Tiger Salamander
The California tiger salamander was listed statewide in 2010, after much of the preparatory work for the original EIR was complete. In addition, critical habitat designations for this species are currently being prepared by the US Fish and Wildlife service. The SEIR must determine whether these changes in species status or habitat designations have affected the analysis contained in the original document. In addition, please provide adequate preconstruction surveys and buffers for this species.

Feasibility of Mitigation Measures
Given the passage of time and the new information currently available on such topics as solar farm impacts on wildlife, we request that the SEIR re-evaluate the impacts to State and Federal endangered species in the original EIR in order to analyze whether any feasible mitigation measures are currently available to reduce or eliminate those impacts that might not have been available at the time of the initial EIR for the Project. Such an analysis should go beyond those impacts and mitigation measures resulting from changes proposed in the Revised Project to those areas of impact that remain problematic as indicated by resources agencies (CADFW, USFWS).

---

[2] Avian Mortality at Solar Energy Facilities in Southern California: A Preliminary Analysis, Rebecca A. Kagan, Tabitha C. Viner, Pepper W. Trail, and Edgard O. Espinoza National Fish and Wildlife Forensics Laboratory (April 7, 2014).

In addition, the NOP states that some of the mitigation measures will be changed. Any changed mitigation measures must be evaluated against the rest of the measures and the Applicant Proposed Measures as well as and 2010 conditions of approval for consistency

The Proposed CEQA Document Should be a Subsequent rather than a Supplemental EIR

The use of Supplemental and Subsequent EIRs is addressed in California's Public Resource Code, Section 21166 and CEQA Guidelines, Section 15162. The CEQA Guidelines state where each document is appropriate, noting that a supplement is called for where, "any of the conditions described in Section 15162 would require the preparation of a subsequent EIR," however, "only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation." Given the significance of the changes involved in the Revised Project and our expectation that the Revised Project would impose unavoidable, significant impacts to Blunt nosed leopard lizard, Giant kangaroo rat, California tiger salamander and San Joaquin kit fox we assert that these cannot be considered "minor" and thus a Subsequent EIR, as compared to Supplemental EIR, should be conducted for the project.

The NOP lists eight major areas for potential revision to impacts and/or mitigation measures in the SEIR. NOP, page 4. The list, including air quality, water resources, and biology, is so expansive as to justify a fully new EIR be prepared, rather than merely providing supplemental information.

The major proposed change in construction phasing for the Revised Project also adds to the argument that a more thorough document is necessary to fully evaluate the impacts to the species and habitat in question. The up to 18-month timeline proposed would lead to more intense impacts than the proposed Project first covered in the original EIR. Construction related impacts such as on air quality from machinery and grading will inevitably become more severe over this shortened time period. Under a more intense construction schedule, local species may not be able to avoid construction related impacts to the extent that they might have been under a project phased over a longer period of time. In addition, this shorter time period for construction and the reduced project scale call into question many of the proposed Mitigation Measures and Applicant Proposed Measures, all of which should be re-evaluated for effectiveness in avoiding harm to endangered species and the potential of reducing impacts to below significant levels.

As our comments on climate change and the impacts of the "lake effect" of solar farms on migratory birds noted below, we are seeing rapid development in the sciences regarding both climate change impacts to wildlife generally and impacts on avian species from solar farms in particular. Much of the best information in these areas has developed since the original EIR for this project and thus constitutes "new information," warranting a closer look at many of the impacts and mitigation measures analyzed in the original EIR, not just to the proposed changes of the Revised Project. Cumulative impacts should also be re-assessed based on up-to-date information on habitat land remaining in other "core" areas for the recovery of the San Joaquin kit fox and associated grassland species.

The NOP itself appears to recognize the rapid evolution in impact analysis related to solar farms, stating that proposed mitigation measures have changed based on,

> "*…additional biological surveys and best management practices recommended by scientists working in the region, as well as lessons learned from other solar development that has occurred throughout the State since the Project was approved.*"

Given this evolving analysis, the major changes proposed in the Revised Project, and the scope of issues to be updated in the SEIR, we assert that the proper document for this stage of project evaluation under CEQA is a Subsequent EIR, rather than Supplemental EIR. We ask that this change be made and a new, revised NOP be circulated in accordance with State law.

Agency Correspondence

Since the original EIR was approved, the Project applicant has continued to pursue permits with the California Department of Fish and Wildlife and the US Fish and Wildlife Service. We ask for any correspondence that provides information pertaining to the need for the additional project components and the SEIR, and any correspondence related to biological resources, buffers, easements and other mitigations for impacts on endangered species should be included in the SEIR. Further, we request that the SEIR analyze any potential additional avoidance and mitigation measures contained in that correspondence for whether adoption would be feasible and further reduce potential impacts. Such transparency would help us provide informed comments on the SEIR when published.

– – –

We thank you for the opportunity to provide scoping comment for the Revised Project SEIR. SCVAS and SC maintain our position that this is the wrong project for the Panoche Valley, and we intend to continue to vigorously participate in the environmental review and permitting processes for the Revised Project.

Sincerely,

Sarah Friedman,
Senior Campaign Representative
Sierra Club Beyond Coal Campaign

Shani Kleinhaus, Ph.D.
Environmental Advocate
Santa Clara Valley Audubon Society

December 1, 2014

Michael Krausie
San Benito County
3224 Southside Road
Hollister, CA 95023
MKrausie@cosb.us
panochesolar@aspeneg.com

RE: Scoping on Draft Supplemental Environmental Impact Report (SEIR) for the Panoche Valley Solar Farm Project ("Project")
SCH 2010031008

Dear Mr. Krausie,

On behalf of the Center for Biological Diversity and Defenders of Wildlife (Conservation Organizations), we submit these comments on the Notice of Preparation on Draft Supplemental Environmental Impact Report (SEIR) for the Panoche Valley Solar Farm Project ("Project"). The Project has been revised to be a 247 MW with a fenced Project footprint of approximately 2,506 acres. Despite the reduction in footprint and megawatts, the proposed project remains of significant concern as described below.

The Conservation Organizations participated in the previous environmental review for the previously proposed Panoche Valley Solar Farm Project. The Project continues to be proposed in an area of critical core habitat for many rare, threatened and endangered species, including the San Joaquin kit fox, giant kangaroo rat, blunt-nosed leopard lizard, California tiger salamander, vernal pool fairy shrimp, mountain plover, golden eagles and many others. Core areas are the last strongholds for plants and animals teetering on the brink of extinction, and are the only places from which recovery of the species can occur. We continue to have grave concerns about any project being proposed in this location. Therefore, we urge the County to carefully evaluate the new project proposal and the impacts that will still result from this proposal on the last vestiges of habitat for some of California's most iconic and imperiled plants and animals.

Defenders of Wildlife
California Program Office
1303 J Street, Suite 270
Sacramento, CA 95814
Telephone 916-313-5800
www.defenders.org/california

Center for Biological Diversity
8033 Sunset Blvd., #447
Los Angeles, CA 90046
Telephone 323-654-5943
www.biologicaldiversity.org

The previous EIR failed to provide adequate information on these species (e.g. Center for Biological Diversity's letter dated 8-31-2010, Defenders of Wildlife's letter dated 8-31-2010). Indeed on November 23, 2014, Defenders of Wildlife submitted a letter documenting all the ways the Notice of Preparation for the SEIR was not in compliance with CEQA. Additionally, the Santa Clara Valley Audubon Society and the Sierra Club submitted comprehensive scoping comments on the SEIR, and we incorporate those comments herein.

At least four years have passed since the previous EIR was certified by the County. In the intervening years, many changes have occurred for the potentially impacted species and new knowledge has been gained related to species and solar projects. Updated special status species studies are required to identify:

- the adequacy of surveys and their compliance with wildlife agency survey protocols
- density of species that use or reside on the proposed site
- wildlife connectivity and movement not limited to the Panoche Valley, but in a regional context, especially in light of ongoing climate impacts and the need for species to adapt to climate change.

We encourage full transparency in the environmental review, and as per the NOP, we request that not only the "results of additional biological surveys" be included as appendices to the SEIR but also the field data report.

Regarding "lessons learned from other solar development that has occurred throughout the State," one unforeseen impact to migratory birds and listed avian species from industrial-scale solar development are injury and mortality from the so-called "lake effect," where avian species "see" the solar panels as water bodies and try to land on them, resulting in mortality, injury or stranding. This impact was not addressed in the original EIR and must be addressed in the SEIR because it is a "new" impact that affects avian species.

It appears that the proposed "wire pull areas" are located in the proposed mitigation lands. The SEIR must fully disclose the impacts and mitigation to these proposed mitigation lands, which are supposed to off-set impacts from the proposed project.

In addition as California reaches its Renewable Portfolio Standard the state of renewable energy in general in California has changed. For example, in just two years, between 2010 and 2012, manufacturers were able to cut the average price of a solar module in half. In terms of the price of the energy, recent trends are finding in some instances, that home solar installations are generating electricity at lower prices than the grid's retail prices can deliver[1].

[1] http://lasustainability.org/ab-2188-new-state-bill-clears-permitting-roadblocks-for-solar-energy/

Additionally, new areas for renewable energy development are being established including the Westlands Solar Park. Therefore, the SEIR needs to include alternatives for distributed generation, small-scale locally-produced solar installation, and alternatives such as Westlands Solar Park. These alternative approaches would vastly reduce the impact to the rare and endangered species, greatly reduce the mitigation costs associated with development in critically endangered species habitat and eliminate the need for upgrades to the transmission facilities.

Thank you for the opportunity to submit these comments. Please include each of our groups on the interested public list for this project. If you have any questions, please contact Kim Delfino at (916) 313-5800 x1 or via email at kdelfino@defenders.org or Ileene Anderson at 323-654-5943 or via email at ianderson@biologicaldiversity.org

Ileene Anderson
Biologist
Center for Biological Diversity

Kim Delfino
California Director
Defenders of Wildlife

cc:
Steve Henry, USFWS, steven_s_henry@fws.gov
Rodger Root, USFWS, roger_root@fws.gov
Kevin Hunting, CDFW, Kevin.Hunting@wildlife.ca.gov
Julie Vance, CDFW, Julie.Vance@wildlife.ca.gov

The Nature Conservancy
Protecting nature. Preserving life.™

201 Mission Street, 4th Floor
San Francisco, California 94105

Tel (415) 777-0487
Fax (415) 777-0244

nature.org

December 1, 2014

Michael Krausie
Associate Planner
County of San Benito

Via Email: MKrausie@cosb.us, panochesolar@aspeneg.com

Dear Mr. Krausie:

On behalf of the California Chapter of The Nature Conservancy, thank you for the opportunity to comment on the Notice of Preparation (NOP) of a Draft Supplemental Environmental Impact Report (SEIR) for the Panoche Valley Solar Farm Project (project) proposed by Panoche Valley Solar LLC in San Benito County. As a science-based organization and one that is deeply engaged in the statewide discussion of renewable energy facility siting and natural resource conservation, The Nature Conservancy carefully reviewed the NOP for the SEIR with particular emphasis on its consideration of biological resources.

Introduction

The Nature Conservancy ("Conservancy") is a global, non-profit organization dedicated to the conservation of biodiversity. We seek to achieve our mission through science-based planning and implementation of conservation strategies that provide for the needs of people and nature. The Conservancy has been actively involved in planning for renewable energy within the Western San Joaquin Valley of California. Most recently, the Conservancy has produced the report, *Western San Joaquin Valley Least Conflict Solar Energy Assessment*[1]. The results of this assessment, including a web map, are publicly available on the Conservancy's Science for Conservation website (link).

The Conservancy strongly supports the development of renewable sources of energy to mitigate the increasing threat of climate change. However, if not located, built, and operated responsibly, energy projects can negatively impact biodiversity, harm wildlife and their important habitats, and diminish water resources. The Conservancy supports siting renewable energy facilities in locations where ecological impacts can be minimized, contained, and mitigated. The Conservancy recognizes that even though the NOP of the SEIR indicates that the project size has been reduced from 420 megawatts (and 4,885 acres) to 247 megawatts (and 2,506 acres) the project will have substantial, significant and unmitigable impacts to local populations of federally listed giant kangaroo rat, blunt-nosed leopard lizard, and San Joaquin kit fox populations in the Panoche Valley.

The Panoche Valley is significant as rich habitat for a suite of sensitive San Joaquin Valley species. These species have been in decline throughout their ranges due largely to increased fragmentation and loss of

[1] Butterfield, H.S., D. Cameron, E. Brand, M. Webb, E. Forsburg, M. Kramer, E. O'Donoghue, and L. Crane. 2013. Western San Joaquin Valley least conflict solar assessment. Unpublished report. The Nature Conservancy, San Francisco, California. 27 pages. http://scienceforconservation.org/downloads/WSJV_Solar_Assessment

habitat, including from recent solar energy development. The Panoche Valley is designated by the United States Fish and Wildlife Service (USFWS) as one of the three core population areas, in addition to Carrizo Plain and the natural areas of Western Kern County, essential to recovery of these San Joaquin Valley species. The results of The Conservancy's 2013 *Western San Joaquin Valley Least-Conflict Solar Energy Assessment* have identified the Panoche Valley as high conservation value. Impacts from the Panoche Valley Solar Farm Project will have cumulative impacts far beyond the Panoche Valley that could prevent recovery of these species and will threaten large conservation investments that have been made to support recovery of these species over the last 30+ years.

Biological Resources

According to the NOP of the SEIR, Panoche Valley Solar LLC plans to construct a 247 megawatt solar photovoltaic power plant on 2,506 acres on the floor of Panoche Valley. The openness and flatness of the Panoche Valley are qualities that are indispensable for the survival of a suite of San Joaquin Valley species. Among those species dependent on valley floor habitat are federally endangered San Joaquin kit fox, giant kangaroo rat and blunt-nosed leopard lizard; state threatened San Joaquin antelope squirrel; candidate for federal threatened listing mountain plover; and state species of concern Western burrowing owl.

The Nature Conservancy recommends that San Benito County include the results of all field surveys, in the SEIR and use them as a biological baseline in the SEIR when analyzing project-specific and cumulative impacts, including impacts to population connectivity and movement, for species with the potential to be impacted through implementation of the project including, but not limited to: San Joaquin kit fox, giant kangaroo rat, and blunt-nosed leopard lizard.

New Biological Resources Data

In addition to the data collected by the project applicant's contractors (e.g., field surveys), the SEIR should include recent species-specific biological resource data, in the biological baseline when analyzing project-specific and cumulative impacts. Specifically, the SEIR should incorporate biological resource monitoring and current research data from: giant kangaroo rats at the Carrizo Plain (research leads: Laura Prugh, University of Alaska-Fairbanks, and Justin Brashares, UC-Berkeley) and Panoche Valley (research lead: Tim Bean, Humboldt State University), San Joaquin kit fox at the Carrizo Plain (research lead: Bob Stafford, California Department of Fish and Wildlife), and blunt-nosed leopard lizards across its full species range (research leads: Barry Sinervo and Joseph Stewart, UC-Santa Cruz, and Mike Westphal, Bureau of Land Management).

The most recent monitoring and research data for all of these species suggests that the current drought has pushed populations to their lowest levels in the past 30+ years. Recent climate change extinction modeling for blunt-nosed leopard lizards[2] suggests that areas like the Panoche Valley will likely serve even more important recovery roles, as areas previously suitable become unsuitable during extended drought. Given the current stress these species are experiencing, further reducing habitat and fragmenting core recovery areas could be a tipping point that could prevent species recovery. For these reasons, the impact analysis should:

[2] Research leads: Barry Sinervo and Joseph Stewart, UC-Santa Cruz, and Mike Westphal, Bureau of Land Management

- Assess the viability of populations of giant kangaroo rats, San Joaquin kit fox, and blunt-nosed leopard lizards, considering population size, range, existing and proposed land uses (cumulative effects), drought-induced effects, and the project's direct and indirect habitat impacts.
- Evaluate the cumulative impacts to long-term genetic viability and recovery of species whose populations may be cut off from other core populations as a result of the project.
- Assess the ability to achieve recovery actions[3] for the blunt-nosed leopard lizard in the Panoche Valley, given the results of recent climate change modeling for the species.

Cumulative Impacts

In the intervening years since the EIR was certified by San Benito County, conditions have changed, and a number of solar photovoltaic power plants have been proposed, approved, or developed within the region. The SEIR prepared for the project must comprehensively address and quantify cumulative impacts to special-status species, including from other projects along the western edge of the San Joaquin Valley, such as the Wright Solar Project, Quinto Solar Project, California Valley Solar Ranch, Topaz Solar Farm, and the California Flats Solar Project.

Biological Mitigation Measures

With over 720 staff scientists and a long history of conservation science leadership, the Conservancy applies its analysis of project mitigation scenarios the same systematic and analytical approach we have used to plan and assess our conservation strategies, recommendations, and actions. Bringing to bear our expertise, visits to the site, a thorough review of Panoche Valley Solar LLC's biological studies, and additional modeling of kit fox habitat, it is clear to the Conservancy that no project with a footprint in the Panoche Valley can be sufficiently mitigated and result in no net loss to endangered species populations.

The NOP does not provide sufficient detail on the proposed changes to the biological mitigation measures for meaningful public comment. The SEIR should clearly articulate the proposed changes to the biological mitigation measures and should demonstrate how the mitigation measures address the direct, indirect, and cumulative impacts of the project.

Alternatives

The California renewable energy market has matured considerably since the EIR was certified by San Benito County. Therefore, the SEIR should evaluate at least two new alternatives:

- A distributed generation alternative: In the four years since the EIR was certified, distributed generation has made considerable advancements in deployment: over 1,000MW of capacity has been added through the California Solar Initiative[4] and contracts representing 739MW of capacity have been executed through the Renewable Auction Mechanism (a simplified market-based procurement mechanism for renewable distributed generation (DG) projects greater than 3 MW and up to 20 MW)[5].
- A utility-scale alternative on lands of low biodiversity conservation value: In 2013, the Conservancy's *Western San Joaquin Valley Least-Conflict Solar Energy Assessment* identified 435,601

[3] Recovery Plan for Upland Species of the San Joaquin Valley, California, USFWS 1998.
[4] http://www.californiasolarstatistics.ca.gov/
[5] http://www.cpuc.ca.gov/PUC/energy/Renewables/hot/Renewable+Auction+Mechanism.htm

acres of Low Biodiversity Conservation Value / Salt-affected lands where solar could be sited where neither biodiversity nor agricultural values are unnecessarily impacted.

Conclusion

In closing, the Conservancy remains supportive of the development of renewable energy in places that meet renewable energy development needs and also ensure that regional conservation values are retained and enhanced. In order to meet these two goals, it is necessary to avoid siting facilities in places of critical ecological importance. Regrettably, the Panoche Valley Solar Project is proposed for an area that is rich habitat for a suite of sensitive species, many of which are listed as threatened or endangered, and the mitigation strategy does not compensate for the impacts to the species. We remain very concerned with the impact that this project will have on the suite of species – including the impact that it may have range-wide for bellweather species such as the kit fox. Therefore, we urge San Benito County to take actions that will contribute to the recovery of the suite of sensitive San Joaquin Valley species represented in the species-rich Panoche Valley, rather than lead to the further decline of the species. We urge the County to carefully consider the impacts to the irreplaceable biological resources, to thoroughly analyze the considerations raised in this letter, and to clearly articulate the findings in the SEIR.

Thank you again for the opportunity to provide comments on the NOP of the SEIR.

Sincerely,

Laura Crane
Director, California Renewable Energy Initiative
The Nature Conservancy
lcrane@tnc.org
(415) 418-6513

CC:
Dave Hacker, CDFW (via email)
Julie Vance, CDFW (via email)
Kevin Hunting, CDFW (via email)
Steve Henry, USFWS (via email)
Roger Root, USFWS (via email)
Douglass Cooper, USFWS (via email)
Katerina Galacatos, ACOE (via email)

DEPARTMENT OF TRANSPORTATION
50 HIGUERA STREET
SAN LUIS OBISPO, CA 93401-5415
PHONE (805) 549-3101
FAX (805) 549-3329
TTY 711
http://www.dot.ca.gov/dist05/

Serious drought
Help save water!

November 18, 2014

SBt-25-39.53
SCH# 2010031008

Michael Krausie
San Benito County Planning
2301 Technology Parkway
Hollister, CA 95023

Dear Mr. Krausie:

COMMENTS TO PANOCHE VALLEY SOLAR FARM PROJECT NOTICE OF PREPARATION

The California Department of Transportation (Caltrans), District 5, Development Review, has reviewed the above referenced project and offers the following comments in response to your summary of impacts.

1. Caltrans supports local planning efforts that are consistent with State planning priorities intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety. We accomplish this by working with local jurisdictions to achieve a shared vision of how the transportation system should and can accommodate interregional and local travel.

2. To ensure the traffic study in the Draft EIR includes the information needed to analyze the impacts (both cumulative and project-specific) of this effort, it is recommended that the analysis be prepared in accordance with the Department's *"Guide for the Preparation of Traffic Impact Studies."* An alternative methodology that produces technically comparable results can also be used.

3. Because we are responsible for the safety, operations, and maintenance of the State transportation system, our Level of Service (LOS) standards should be used to determine the significance of the project's impact. We endeavor to maintain a target LOS at the transition between LOS C and LOS D on all State transportation facilities.

4. Our future comments to this, and any subsequent EIR for the project, will stress the importance of using the Association of Monterey Bay Area Governments Model for traffic analysis, and to include all impacted transportation agencies early and often in the discussions.

RECEIVED
NOV 24 2014
SAN BENITO COUNTY
PLANNING & BUILDING
BY_____

5. The traffic study should include information on existing traffic volumes within the study area, including the State transportation system, and should be based on recent traffic volumes less than two years old. Counts older than two years cannot be used as a baseline. Feel free to contact us for assistance in acquiring the most recent data available.

6. The methodologies used to calculate the LOS should be consistent with the methods in the current version of the Highway Capacity Manual. All LOS calculations should also be included in the Draft EIR as an appendix made available for review.

7. At any time during the environmental review and approval process, Caltrans retains the statutory right to request a formal scoping meeting to resolve any issues of concern. Such formal scoping meeting requests are allowed per the provisions of the California Public Resources Code Section 21083.9 [a] [1].

8. Lastly, since there could potentially be impacts to the transportation system in Fresno County, we will be coordinating this review with our Caltrans District 6 counterparts.

If you have any questions, or need further clarification on items discussed above, please don't hesitate to call me at (805) 542-4751.

Sincerely,

JOHN J. OLEJNIK
Associate Transportation Planner
District 5 Development Review Coordinator
john.olejnik@dot.ca.gov

cc: Dave Padilla (D6 IGR)