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*Comment Received From: Intersect Power*  
*Submitted On: 4/16/2025*  
*Docket Number: 23-OPT-02*

## **Applicant Comments on Staff Assessment**

*Additional submitted attachment is included below.*

**April 16, 2025**

Lisa Worrall, Senior Environmental Planner  
California Energy Commission  
715 P Street  
Sacramento, California 95814  
Via: Docket No. 23-OPT-02

**Subject: Intersect Power Comments on the Darden Clean Energy Project Staff Assessment  
SCH # 2024091023, Docket Number 23-OPT-02**

Intersect Power, LLC (Intersect Power) received a Notice of Availability from the California Energy Commission for a Draft Environmental Impact Report (included within Staff Assessment) for the Darden Clean Energy Project on February 18, 2025.

Intersect Power has reviewed the Staff Assessment, which includes the Draft Environmental Impact Report, and has compiled detailed comments into the attached table. The table is organized by sections of the Staff Assessment and includes reference to the relevant section number for each comment. The comments are submitted on behalf of the applicant, IP Darden I, LLC and Affiliates (Applicant), wholly owned subsidiaries of Intersect Power, LLC.

Please reach out to the contact listed below for any questions as the California Energy Commission reviews. Our team is available to discuss any of the comments in further detail and to provide additional information or clarification as needed. We appreciate the opportunity to provide input on the Staff Assessment and your consideration of the comments contained herein.

**Becky Moores**

*Environmental & Permitting*  
IP Darden I, LLC  
c/o Intersect Power, LLC

**Table 1 Intersect Power Comments of the Darden Clean Energy Project Staff Assessment**

Comment
<p><b>3 Project Description</b></p> <p>PG&amp;E has revised their scope and location of the proposed downstream upgrades for transposition pole structures. The original scope is described in the SA in Table 3.3 Downstream Network Upgrades on page 3.27.</p> <p>Initially, PG&amp;E Engineering had identified the Transmission-Line scope that was previously assigned to the Manning substation TPP upgrade, as required prior to the Harlan Switching Station coming online, since Harlan's target In-Service Date is earlier than Manning's. This scope included installing new lattice steel tower structures and their concrete foundations at approximately 8 miles and 16 miles south of Harlan (two total structures) in the existing PG&amp;E 500 kV ROW, to transpose the conductors.</p> <p>Transposition structures are used to alleviate unbalances on long lengths of transmission lines between substations, and further design reviews by the PG&amp;E system protection and construction planning teams identified separate locations that require upgrades. PG&amp;E proposes a revision to the scope and locations described above in order to ensure the safety of their construction practices out in the field and ensure the reliability of the 500kV system.</p> <p>Provided below from PG&amp;E is the updated transposition structure replacement location and scope on the Los Banos - Midway #2 500kV Transmission Line. This information should be updated in Table 3-3 in the staff assessment:</p> <p>PG&amp;E proposes to conduct the following upgrades within the existing right-of-way of the Los Banos-Midway #2 500kV Transmission Line:</p> <ul style="list-style-type: none"> <li>▪ Replace an existing lattice steel tower located at coordinate 36.056685, -120.048335 with a new three-pole dead-end Tubular Steel Pole transposition structure</li> <li>▪ Remove existing lattice steel transposition structures located at coordinates 35.913868, -119.882015 and 35.913724, -119.882252</li> <li>▪ Replace an existing lattice steel structure located at coordinate 35.914624 , -119.882877 with a new three-pole dead-end Tubular Steel Pole transposition structure</li> <li>▪ Replace an existing lattice steel structure located at the coordinates 35.909105, -119.877694 with a new three- pole dead-end Tubular Steel Pole transposition structure</li> </ul>
<p><b>4.1 Facility Design</b></p> <p><b>Comment on Condition of Certification GEN-3</b></p> <p>The project owner should be directly involved with negotiating fees with the DCBO even if the CEC selects a third party for the role. This condition would benefit from more clarification on how the fees schedule would be set up. Update the section of the condition as suggested in the text below:</p> <p>“If the CEC delegates the DCBO function to a third party or local agency, the project owner, at the CEC's direction, shall make payments directly to the DCBO based upon a fee schedule negotiated between the CEC, <b>the project owner</b>, and the DCBO.”</p>

## Comment

### Comment on Condition of Certification GEN-4

Delegates identified by the RE should not be required to be a registered engineer in the state of California. For this and all Conditions of Certification that refer to the Resident Engineer, it is requested that the language be updated to add in reference to a qualified Construction Manager, and/or update language to state "resident engineer or delegate" throughout all COCs. It is not industry standard to have a CA registered person in these roles and such a requirement is overly burdensome on the project budget. Construction Managers/Project Managers with experience in constructing renewable energy projects can successfully fulfill the role in alignment with the intent of this condition.

### Comment on Condition of Certification GEN-5

This level of oversight on-site during construction is not necessary and not industry standard and will place a significant financial burden on the project. All engineers listed in GEN-5 will be engaged in the project and will stamp design drawings as required by applicable LORS but may not be on-site during construction. It is requested that references to being present or on-site are removed.

### Comment on Condition of Certification GEN-7

Update this condition so that only significant discrepancies will require approval from the DCBO. Minor discrepancies such as typos or minor in-field adjustments would not significantly change design or construction and should not need approval

### Comment on Condition of Certification CIVIL-2

Update language to include the Construction Manager and/or to state "The Resident Engineer or delegate" (refer to comment on GEN-4).

### Comment on Condition of Certification MECH-2

Add clarification to this condition so that it only applies to permanent systems.

### Comment on Condition of Certification ELEC-1

This condition appears to be applicable to a traditional synchronous generating facility and not a PV / BESS facility. These voltage levels don't exist within a PV facility. This condition should be updated to only be applicable to 34.5kV and above installations.

## 4.2 Facility Reliability

No comments.

## 4.3 Transmission System Engineering

### Comment on Condition of Certification TSE-1

This is duplicative of what is required in GEN-2, we suggest removing it to prevent conflicting requirements or confusion.

### Comment on Conditions of Certification TSE-2

Much of this condition is duplicative of GEN-5. To prevent conflicting requirements, unnecessary duplicative reporting, and confusion, it's recommended this condition be updated to only include details above and beyond what is listed in GEN-5, or, deleting this condition and combining the requirements into GEN-5.

## Comment

### Comment on Condition of Certification TSE-3

This is duplicative of what is required in GEN-7 and the verification requirements would put the construction schedule at risk due to 15-day approval timelines. To prevent conflicting requirements, unnecessary duplicative reporting, and confusion, it's recommended this condition be removed.

### Comment on Condition of Certification TSE-6

The submittals listed in this condition are managed by CAISO and outside the authority of the CEC. COC COM-6 requires monthly compliance reports to provide *"a listing of any filings submitted to, and permits issued by, other governmental agencies during the month"*. For these reasons, COC TSE-6 should be removed in its entirety.

## 4.4 Worker Safety and Fire Protection

### Comment on Condition of Certification WS-2

Maintenance on the gen-tie line will be rare and may not require helicopter work. COC WS-2 measure (5) should be updated to state the following:

"5. Should helicopter maintenance be determined to be necessary, an Operations Helicopter Code of Safe Practices plan will be prepared for helicopter use for maintenance or repairs, that incorporates all provisions of tit. 8 §§ 1901-1909 and specially includes an added limitation of operations to be conducted only during day light hours, a landing zone dust control plan, a traffic control plan for areas where the loads would be deposited and near any public road or highway, includes requirements for a Designated Biologist(s) to monitor and avoid avian impacts, and complies with FAA Regulations 14 CFR Part 91 (General Operating and Flight Rules) and Part 133 (Rotorcraft External-Load Operations)."

### Comment on Condition of Certification WS-4

This condition would add a fourth-party to the project by requiring a Safety Monitor independent of the DCBO, which is already a third party. This level of oversight is not necessary during construction due to the requirements in other conditions for the owner to have a Construction Safety Supervisor and to report safety related incidents to the CPM. This also places a financial burden on the project to pay for this duplicative position. This condition should be removed in its entirety.

### Comment on Condition of Certification WS-6

Solar modules cannot be locked out and tagged out due to the nature of the design and that the equipment is energized at all times during the day when converting solar energy. The language in this measure should be updated to the following:

"The project owner shall provide a procedure or augment existing procedure(s) for both solar facility construction and operations that details the following:

- a. Workers are trained to move away from a fire, even in an incipient stage, and call the control room to call 911 immediately.
- b. Workers use a standard form checklist when working on electrical components of an inverter or collector box to ensure that all components are locked out and tagged out until the job task is completed. **Workers will use proper PPE and safety procedures when handling solar modules during the day to mitigate the risk of energized modules."**

**Comment****Comment on Condition of Certification WS-7**

Remove the requirements under item (e.) and (f.) The California Fire Code does not require fire hydrants for BESS facilities and allows for a water supply that includes water tanks (CFC 507.2). Additionally, a public water system is not installed in the vicinity of the project that could support the installation of fire hydrants, making the requirement infeasible.

The language in item (l.) combines requirements for the O&M buildings and the BESS, which should be treated separately. Update the language under item (l.) to state "Consult with the FCFPD in preparing the fire protection system specifications and drawings for 1) the BESS Operations and Maintenance structures, and 2) for the BESS facility to ensure an adequate water supply for the fire suppression systems."

**Comment on Condition of Certification WS-10**

Remove the last sentence "The training program shall be submitted to the CPM for review and approval." AED training programs are standardized and will be incorporated into the safety plans required under WS-1 and WS-2.

**Comment on Condition of Certification WS-11**

Update language to state: "a. Whenever visible dust is present, site workers will be made aware and dust masks (NIOSH N-95 or better) will be provided for optional use."

**Comment on Condition of Certification WS-12**

Condition WS-12 must be removed in its entirety. Information is provided below on why the condition is not permissible under existing LORS and how the Staff Assessment analysis and conclusions do not adequately support the need for the condition. IP Darden, LLC supports the brave first responders in Fresno County, and supports paying the project's fair share for fire protection services. This payment will be accomplished through the large property tax payments that will be made to the County and the Fire Protection District under existing law. IP Darden, LLC will be the second largest property tax payor in Fresno County once the Darden project is built, and the predicted payments to the Fire Protection District are more than sufficient to cover fire protection services and equipment needed to protect life and property.

The Mitigation Fee Act regulates how public agencies may collect, maintain, and spend development impact fees. The fees would need to be based on the results of a comprehensive nexus study that evaluates appropriate fee levels for fire protection and emergency response needed to support new development. New development cannot be required to pay for existing deficiencies, and the amount of any impact fee must bear a reasonable relationship to the actual cost of providing the public services demanded by the new development on which the fee is imposed. Effective January 1, 2023, the Mitigation Fee Act requires local agencies to prepare a nexus study before adopting a development impact fee. (Govt. Code § 66016.5.)

Fire districts lack legal authority to directly impose and collect mitigation fees. (Cal. Govt. Code §§ 66000, et seq. ("Mitigation Fee Act"); see also 73 Ops. Cal. Atty. Gen. 229 (August 21, 1990, 1990 WL 484792). Fresno County has an adopted ordinance to regulate the establishment of public facilities impact fees and schedule of fees. (Fresno County Code, Chapter 17.90.) The County Board of Supervisors has not, however, adopted a fire facilities mitigation fee pursuant to the ordinance and the Mitigation Fee Act.

The fees proposed by FCFPD are not supported by a nexus study and there has been no demonstration that the amount of the fees meet the essential nexus and rough proportionality requirements of the Mitigation Fee Act. Further, under CEQA, public services impacts such

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as fire protection are not CEQA environmental impact issues, unless the expansion of public services required by a particular project itself has environmental impacts. (City of Hayward v. Board of Trustees of the California State University (2015) 242 Cal.App.4th 833.)

The Draft EIR found that the cumulative effect of hazards such as the lithium-ion BESS, would be limited to the solar facility components and BESS and immediately adjacent areas and no cumulative projects were identified at or immediately adjacent to the solar facility components or BESS, therefore there are no projects from the cumulative list with the potential to combine cumulatively with the solar facility components or BESS relative to hazards. The Draft EIR also concluded that the cumulative effect of wildfire would be limited because the solar facility components and BESS are not in or near a State Responsibility Area (SRA) or lands classified as a very high Fire Hazard Severity Zones (FHSZ), and not on land classified by the CPUC as having a fire threat. Additionally, no cumulative projects were identified at or immediately adjacent to the project. Therefore, there are no projects from the cumulative list with the potential to combine cumulatively with the solar facility components, and the combined impact would be a less than cumulatively considerable.

Further, staff's assessment with respect to Worker Safety-12 is based partially on the assumption that that the solar project is 100 percent tax exempt, correlating to zero dollars of revenue to fire protection services when in fact the project will be subject to property tax. The solar tax exclusion sunsets on January 1, 2027, and tax experts advising IP Darden, LLC indicate that the Darden Project will pay tens of millions of dollars per year in property taxes, some of which will be allocated to the Fire District in accordance with established allocations for the distribution of taxes to county organizations. It is currently estimated that \$220M in property tax payments will be made over the first 10 years. Other pending projects will also be subject to property taxes, including on future project improvements. Thus, FCFPD is expected to receive funds from the proposed solar projects to improve its resources. Any additional fees charged on top of those tax payments would overly burden the Project (and other projects) with payments that are not proportional to Project impacts and not in accordance with the law.

Finally, the cumulative impacts section describes a cost allocation methodology that has been developed by the FCFPD based on several factors including project size, megawatts generated, additional energy projects built, and hazards posed. The methodology has not been presented publicly in the DEIR or Staff Assessment for appropriate analysis through the CEQA process. There is no supporting information on the methodology, how it was prepared, what information it was based on, and no details in the project Record of Proceeding of the discussions between CEC consultant staff and the FCFPD. Therefore, it is not supported and must be removed from the COCs for the project.

Again, IP Darden, LLC supports first responders in Fresno County, and our property tax payments will fund the fire protection resources necessary to ensure protection of life and property in Fresno County.

**5.1 Air Quality****Comment on Condition of Certification AQ-SC3**

Update language in the first section of the condition to state:

"The AQCM shall submit documentation to the CPM in each Monthly Compliance Report that demonstrates compliance with the AQCM mitigation measures for the purposes of minimizing fugitive dust emission creation from construction activities and preventing all fugitive dust plumes that would not comply with the performance standards identified in AQ-SC4 from leaving the project site. Any deviation from the AQCM mitigation measures shall require prior CPM notification and approval **and shall require demonstration that such deviation**



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**will not result in a new or increased significant environmental impact.** Report monthly on the following fugitive dust mitigation measures that shall be included in the AQCMP required by AQ-SC2:"

**Comment on Condition of Certification AQ-SC5**

Update language in the first section of the condition to state:

"The AQCMM shall submit to the CPM, in the Monthly Compliance Report, a construction mitigation report that demonstrates compliance with the AQCMP mitigation measures for purposes of controlling diesel construction-related emissions. Any deviation from the AQCMP mitigation measures shall require prior and CPM notification and approval **and shall require demonstration that such deviation will not result in a new or increased significant environmental impact.** The following off-road diesel construction equipment mitigation measures shall be included in the Air Quality Construction Mitigation Plan (AQCMP) required by AQ-SC2:"

**Comment on Condition of Certification AQ-SC6**

Given the SJVAPCD is the agency with authority for the VERA, CEC does not have the authority to review and approve. COC AQ-SC-6 should be updated as suggested below:

"The VERA shall be submitted and approved by the ~~CEC CPM and~~ SJVAPCD prior to beginning construction activities."

**Comment on Condition of Certification AQ-11**

On page 5.1-51 of the Staff Assessment, Condition of Certification AQ-11 states: "Emissions from this IC engine shall not exceed any of the following limits: 0.014 g-NOx/bhp-hr, 0.054 g-SOx/bhp-hr, 0.064 g-PM10/bhp-hr, 0.97 g-CO/bhp-hr, or 0.021 g-VOC/bhp-hr."

The maximum emissions rates for the emergency backup liquid propane gas (LPG) generators specified in AQ-11 are substantially lower for nitrogen oxides (NOx), volatile organic compounds (VOC), and carbon monoxide (CO) than the emergency generators proposed by the Applicant and used in the Applicant's air quality analysis, as provided in Appendix A and Appendix B of Supplemental Data Request Response Set 1 (TN260649). Based on the San Joaquin Valley Air Pollution Control District Supplemental Application Form for Emergency/Low-Use IC Engines and the LPG Specifications provided in Appendix B (TN260649), emissions rates should instead reflect <1.00 g/bhp-hr for NOx, <0.70 g/bhp-hr for VOC, and <2.00 g/bhp-hr for CO. Provided the CEQA analysis was conducted for these emissions rates based on a specific model of generator provided on the application to the SJVAPCD and in the opt-in application materials, the conditions of certification should refer to those emissions rates. In order to meet the emissions rates specified in AQ-11, a change in equipment would be required and may not be feasible for the Applicant to incorporate. Further, the emissions rates used in the Applicant's air quality analysis did not result in significant impacts after mitigation.

**Comment on Condition of Certification AQ-15**

This defines a term and is not a condition. Suggest deleting and adding the language to AQ-14.

**Comment****5.2 Biological Resources****Comment on pg. 5.2-2**

As noted in the response to Data Request DR BIO-1 in Data Response Set #4, the gen-tie line does not span Cantua Creek. At its closest point, Cantua Creek is within approximately 200 feet south of and parallel to the gen-tie corridor. No impacts to or work within the jurisdictional limits of Cantua Creek will occur.

**Comment on pg. 5.2-3 to 5.2-4**

The characterization of agricultural crops in the solar field, BESS, and substation is misleading. As identified in Data Response Set #6, Response to Data Request REV 1 DR BIO-1, all areas within the PV Development footprint and utility switchyard include non-active agriculture, almond orchard, or eucalyptus grove. While page 5.12-15 of Section 5-12 Biological Resources identified tomatoes and garlic, those are located on the parcels crossed by the gen-tie line, in addition to corn fields, onion fields, almond orchards, and pistachio orchards.

**Comment on pg. 5.2-4**

The most recent version of Table 2 with anticipated impact acreages according to land cover is provided in CEC Supplemental Data Request Response Set 1, dated December 13, 2024, in the response to Data Request SUP DR BIO-1, not in Data Response Set #4. Recommend revising this detail.

**Comment on Agricultural Ditches**

On page 5.2-5, agricultural ditches are described as subject to the Porter-Cologne Water Quality Control Act, which conflicts with their description as not jurisdictional on page 5.2-154. As indicated in Appendix Q – Volume 1 *Biological Resources Assessment* of the Opt-in Application, the agricultural ditches are considered jurisdictional waters of the State under the Porter-Cologne Water Quality Control Act, but are not subject to the *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State* (the Procedures; State Water Quality Control Board 2021) pursuant to Section IV.D.2.c of the Procedures, as they meet the definition of ditches excluded from the Procedures.

Page 5.2-5 states: “There would be no discharges to waters of the state and discharges to agricultural ditches subject to the Porter Cologne Water Quality Control Act are not proposed as part of the project.” To allow for potential project design changes that may require temporary impacts to the agricultural ditches during construction, please update the text on Page 5.2-5 to state: “Discharges to agricultural ditches classified as waters of the state may occur as a result of temporary construction activities. Temporarily impacted areas would be restored to pre-project conditions following construction.” Please also update the analysis on page 5.2-154 to indicate the above and change the determination from No Impact to Less Than Significant With No Mitigation. Temporary impacts to the agricultural ditches would not be subject to permitting requirements specified in the Procedures. With incorporation of post-construction restoration, temporary impacts to agricultural ditches classified as waters of the state would be less than significant without mitigation.

**Comment****Comment on pg. 5.2-7**

Of the PG&E substations, aquatic features only intersect the Cantua Substation study area. No other substations study areas have aquatic features. The ponded feature in the vicinity of the Gates Substation is outside the substation study area. Refer to Section 3.2 and Table 4 of Data Response Set 6 - Appendix D REV 1 DR TSD-1 BRA Vol 1, dated August 20, 2024. Also to language in the paragraph following this one, which states: "A drainage ditch with ponded water was observed in the southeast corner of the property containing the Gates substation, although it lies outside the Gates Substation study area." Recommend revising to reflect this.

**Comment on Green Hydrogen Removal pg. 5.2-10; figure 5.2-2**

The green hydrogen component of the project was removed and only Option 1 was chosen. Therefore, Option 2, and Alternative Green Hydrogen components should not be reflected in the figure.

**Comment on pg. 5.2-1A, 5.2-22, 5.2-51**

As identified in Appendix B Special Status Species Evaluation Tables of Data Response Set 6 - Appendix D REV 1 DR TSD-1 BRA Vol 1, dated August 20, 2024, this text should be revised to indicate low potential along **Scenario 1** and Scenario 3 Fiber Line study areas, not Scenario 2 Fiber Line study area.

Also please clarify that the CNDDDB records mentioned here are not from 2024, since including that year in parentheses could cause confusion (2024 is the year the CNDDDB search was conducted). As mentioned above, recommend revising which fiber line study area is intended when discussing proximity to alkali grassland and saltbush scrub. Scenario 2 Fiber Line study area is entirely on the east side of I-5 and not within or adjacent to such habitats in a meaningful way. Scenario 3 Fiber Line study area does transit west of I-5, but the alkali grassland and saltbush scrub habitats are not within that study area. Rather, those vegetation communities are closer to Scenario 1 Fiber Line study area.

**Comment on Salt Creek pg. 5.2-1A, 5.2-22, 5.2-51**

As identified in Table 4 and Figure 4e of Data Response Set 6 - Appendix D REV 1 DR TSD-1 BRA Vol 1 and Vol 2, dated August 20, 2024, Salt Creek does not intersect Scenario 1 Fiber Line study area. It only intersects the Scenario 2 Fiber Line and Scenario 3 Fiber Line study areas. Please correct this to identify low potential in **only Scenario 1 and Scenario 3** Fiber Line study areas.

**Comment on Blunt Nose Leopard Lizard pg. 5.2-1B, 5.2-32, 5.2-59, 5.2-232 to 234**

As noted in the response to Data Request DR BIO-9, BIO-10, and BIO-11 in Data Response Set #4, there is no suitable habitat for blunt-nosed leopard lizard since all lands within the project limits, including the PG&E utility switchyard, are regularly maintained agricultural fields, including orchards (such as in the switchyard). The undeveloped lands west of the Project include grasslands within the Ciervo Hills representing marginally suitable habitat due to high topographic relief, dense vegetation, no areas of bare ground, and no shrubs or other vegetation for shade or cover. The notes included in the 1993 CNDDDB record (Occurrence 8) indicate the BNLL were all observed in grassland habitat outside of areas included in the jurisdictional project limits. Most of the observations included in the record are in the Panoche Hills over 30 miles north of the PG&E utility switchyard, and most are from the 1980s or earlier. The only observations noted in this record from the early 1990s (1991-1993) are along Panoche Road more than 30 miles north of the PG&E utility switchyard.

**Comment**

In addition, as noted in the response to Data Request REV 1 DR BIO-2 in Data Response Set #6: "As detailed in Data Response to DR BIO-9, DR BIO-10, DR BIO-11 in Response Set 4, no suitable habitat for blunt-nosed leopard lizard is present within the Project site and linear facilities. The iNaturalist records of blunt-nosed leopard lizard within 3 to 5 miles of the utility switchyard include photograph-documentation with the observations that show a different type of habitat than is present west of the Project site. Specifically, the photographs for the iNaturalist records show the blunt-nosed leopard lizards observed in areas with little to no vegetation or open vegetation, consistent with where they would be expected to occur. This type of habitat is not present west of the Project site. Although dispersal distance for blunt-nosed leopard lizard is not known, the species is expected to have low dispersal abilities which are generally expected to be under one kilometer (Species Status Assessment for the Blunt-nosed leopard lizard Version 1.0, US Fish and Wildlife Service, July 2020). The closest iNaturalist occurrence to the Project site is over four kilometers from the Project site which would significantly exceed the species expected dispersal abilities."

**Comment on CA Tiger Salamander Description on pg. 5.2-1B, 5.2-31, 5.2-58**

Please revise the CA tiger salamander description to match the entry in Table 5.2-1B such that it is clear there is no suitable habitat for the species on or adjacent to the solar facility and other jurisdictional components or PG&E utility switchyard.

**Comment on California Horned Lark Description on pg. 5.2-70**

The first sentence of second paragraph states: "*This species is known to occur, and California horned lark were observed during surveys of the solar facility (RCI 2023w).*" Correct this to indicate low potential in the Scenario 2 and Scenario 3 Fiber Line study areas, which is what is noted in Table 5.2-1B on page 5.2-39 and in the PG&E downstream upgrades BRA (see Appendix C of that BRA, on page C-18).

**Comment on Nest Buffers pages 5.2-107 to 110**

As part of the discussion of applicant-proposed measures, DEIR states that buffer distances would range from **250 to 500 feet** around active nests depending upon the species. This is incorrect. Mitigation Measure BIO-8 (Nest Buffers) of the Opt-In application proposed: "Buffers shall be determined by the Qualified Biologist and be established based on the species and nest location, to allow for known species' behavior and environmental factors (e.g., line of sight to nest) when establishing avoidance buffers. **Standard buffers are typically 200-500 feet for common raptors and 30-50 feet for most common passerines.**" Recommend revising to indicate that buffers around common passerines was proposed at 30-50 feet, not a minimum of 250 feet.

**Comment on Mountain Plover on pg. 5.2-108**

On the last paragraph of the page the Mountain plover is mentioned in a list of species as possible nesters on the project site during construction since they are somewhat disturbance tolerant. We request the text clarify that mountain plover does not have potential to nest on the project site since it is a winter migrant. Any mountain plover use of the project site during construction would be during the winter months and would include foraging only.

**Comment****Comment on pg. 5.2-112**

The name of COC BIO-11 on this page uses "Strategy" instead of "Security." Please change to "Security" to be consistent with the name of BIO-10 provided elsewhere throughout the DEIR

**Comment on Burrowing Owl – Nesting Impact Analysis pg. 5.2-114**

In the last paragraph of the Burrowing Owl – Nesting impact analysis the sentence "*With implementation of staff's proposed COCs BIO-1 to BIO-7 and BIO-9, BIO-11, to BIO-13...*" should change the mention of BIO-11 (which is for Swainson's Hawk Security) to BIO-12 (for BUOW Impact Avoidance, Minimization, and Take Measures).

**Comment on the second paragraph on pg. 5.2-144**

In Data Response Set 4, the work by Diehl, Roberson, and Kosciuch was noted as ongoing and the analysis did not draw conclusions solely on that work. The information provided in Data Response Set 4 included review of additional research studies and literature to draw its conclusion. Recommend updating the language in this paragraph to clarify that, of the literature cited in Data Response Set 4, staff reviewed the study published under Diehl at al 2021 and not necessarily all studies cited.

In addition, Data Response Set 4 notes: "Fatality monitoring has shown that there are avian injuries and fatalities associated with solar energy facilities, but the cause of the morbidity and mortality has been inconclusive (collision, predation, etc.), and there has been no report or evidence of large-scale avian fatality events at any PV solar project, and if avian carcasses are discovered, it is typically a single individual detection."

**Comment on Operational Noise Analysis pg. 5.2-148**

Analysis as currently written suggests that operational noise impacts would likely be less than significant. As a result, mitigation shouldn't be required to reduce impacts to less than significant. Please remove noise impact mitigation based on the analysis.

**Comment Tricolored blackbird Nesting Season on pg. 5.2-191**

Tricolored blackbird nesting season is defined in this measure as February 1 through September 15. However, this species typically nests from mid-March through July/August, and often times on the earlier side of that range in the San Joaquin Valley (many tricolored blackbirds move north to Sacramento Valley after their first nesting attempt in San Joaquin Valley). Recommend revising the tricolored blackbird nesting season in this COC.

**Comment on Condition of Certification BIO-7**

To maintain the project construction schedule, pile driving will be required throughout the project site throughout the year. Condition BIO-7 should be update to the following suggested text:

"24. Minimize Noise Impacts. Loud construction activities (e.g., pile driving or other high-impact noise sources exceeding 60 dB(A) at active nest sites) shall be avoided during nesting season from February 1 to August 31 to the extent possible. The Designated Biologist(s) or Biological Monitor(s) shall monitor active nests within the range of construction-related noise in accordance with BIO-8. ~~If noise levels exceed 60 dB(A) at an active nest, additional mitigation measures (e.g., noise barriers, modified work hours) shall be implemented to minimize disturbance, per BIO-8.~~ The BRMIMP (BIO-6) shall outline adaptive management actions, including halting construction if the

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Designated Biologist determines it is causing disturbance. Triggers for adaptive management include evidence of project-related disturbance to nesting birds, such as agitation behavior (displacement, avoidance, or defense), increased vigilance at nest sites, altered foraging or feeding behavior, or nest abandonment.”

**Comment on Condition of Certification BIO-8**

Conducting two nesting bird pre-construction surveys provides no benefit, is not standard across all industries, and is therefore not necessary. Condition BIO-8 (2.) should be updated as follows:

~~“2. Survey Schedules. At least two pre-construction surveys shall be conducted, separated by a minimum 10-day interval. Pre-construction surveys shall be conducted no more than 14 days prior to initiation of construction activity. One survey needs to be conducted within the 3-day period preceding initiation of site mobilization, vegetation removal, ground disturbance, or construction activity. Surveys may be conducted in phases aligned with the phased construction approach, ensuring each area is surveyed, as required, prior to site mobilization or construction activities. Surveys shall be repeated throughout construction to ensure that birds are not nesting on equipment or have moved into an area after the initial vegetation clearance or ground disturbance has been completed. The NBMP shall include a survey schedule and a map of the project site that identifies each area to be surveyed for each phase. Any updates to the survey schedule and maps shall be provided to the CPM.”~~

**Comment on Condition of Certification BIO-9****Swainson’s Hawk Compensatory Mitigation Land Requirements**

We appreciate the Staff Assessment’s (SA) thorough analysis of potential impacts to Swainson’s hawk foraging habitat that could occur as a result of Project implementation. As acknowledged in the SA, multiple studies have documented Swainson’s hawk foraging behavior within solar arrays, thus confirming that solar project development may be implemented in a way that is compatible with continued project site use by the species. (See, e.g., SA at p. 5.2-97). We agree with CEC staff’s conclusion that implementation of the Project’s Swainson’s Hawk Conservation Strategy and the Vegetation Management Plan would guide successful revegetation of the project site to facilitate effective weed control, increase Swainson’s hawk nesting habitat, and improve foraging habitat for the Swainson’s hawk over baseline conditions. (*Id.* at 5.2-98.) With successful implementation, we also agree that implementing these plans as required by COC BIO-9 would ensure that project impacts to the species are reduced to less than significant and fully mitigated. (*Id.*)

However, as described in the Staff Assessment, CEC staff have recommended inclusion of a compensatory mitigation lands “backstop” if the success criteria established in the Project’s Swainson’s Hawk Conservation Strategy and the Vegetation Management Plan are not met after five years. We disagree with CEC staff’s conclusion that compensatory mitigation would be necessary, and we have instead proposed revisions to COC BIO-9 that would require implementation of a robust adaptive management program to ensure all Swainson’s Hawk Conservation Strategy and the Vegetation Management Plan success criteria are met on the Project site. We have also included a new requirement in COC BIO-9 for the project’s Swainson’s hawk independent research program to provide a publicly available final report addressing the efficacy of the project’s conservation strategy and vegetation management plan and providing management recommendations for maintenance of Swainson’s hawk habitat on Central Valley solar project sites. This research program, when combined with adaptive management to ensure successful implementation of the Project’s Swainson’s Hawk Conservation Strategy and

**Comment**

the Vegetation Management Plan, will ensure project impacts are fully mitigated such that compensatory mitigation for impacts to Swainson's hawk foraging habitat is not required.

We strongly believe our proposed revisions to COC BIO-9 adequately address CEC staff's concerns about meeting CESA's "fully mitigate" standard. We also believe the compensatory mitigation proposed in COC BIO-9 vastly exceeds what would be required to meet the "fully mitigate" standard. Page 5.2-96 of the Biological Resources section in the DEIR states: "Due to the long-term temporary loss of foraging habitat during the construction phase of the project (construction would occur over 36 months) and prior to site restoration, and the estimated loss of up to 48% of the site during operation, staff determined that the overall consideration of the entire project footprint as a loss of foraging habitat would be appropriate to determine mitigation." However, the foraging analysis completed by one of the leading experts on Swainson's hawk ecology concludes there would be no significant impact to foraging habitat (see page 5.2-94 in the Biological Resources section). Additionally, CEC staff has assessed and incorporated the applicant's SWHA conservation strategy and revegetation plan into the approved approach for mitigating impacts to the species and concluded compensatory mitigation would only be required if attempts to revegetate the site and enhance suitable foraging habitat failed. Provided the majority of the project site is currently fallowed barren land, if revegetation efforts were to fail, the project site would present foraging habitat equivalent to existing conditions and only permanent impacts due to project infrastructure should be mitigated for, which accounts for approximately 4,818 acres of the overall project site. Therefore, if our proposed revisions to COC BIO-9 are not accepted, we ask that information in the DEIR analysis and COCs BIO-9 and BIO-11 be updated to account for contingent compensatory mitigation calculated using only the permanent impact acreage of 4,818 acres  $\times$  0.25:1 = 1,205 acres.

As the conversion of Central Valley agricultural land continues as a result of reduced water availability and other factors, we are hopeful the CEC will encourage solar development on retired agricultural lands as part of a larger strategy to shift renewable energy development to these disturbed lands. To that end, pragmatic approaches to impact mitigation that recognize the habitat value of solar development for species like Swainson's hawk are needed. We believe the proposed COC BIO-9 revisions we have prepared strike the right balance in that they ensure adequate mitigation of impacts while incentivizing project development on disturbed and retired agricultural lands.

Suggested changes to BIO-9 are provided in tracked changes as an attachment

**Comment on Condition of Certification BIO-12****Burrowing Owl Impact Avoidance, Minimization, and Take Mitigation Measures**

- Item 1: Please revise the definition of a "potential burrowing owl burrow" on page 5.2-207 to include the presence of additional burrowing owl-preferred habitat elements (e.g., topography, vegetation height, and proximity to foraging resources/prey) in the vicinity of "any subterranean hole three inches or larger" since the presence of such holes alone is not likely to be suitable for burrowing owl occupation.
- Item 6a: Please remove the requirement for avoidance of potential burrowing owl burrows since, by definition (on page 5.2-207), no evidence is present to conclude the burrow is being used currently or has been used in the past by burrowing owl. Loss of unoccupied habitat, if it is demonstrated to not directly or indirectly lead to reproductive suppression, would not be considered take pursuant to CESA and therefore does not require avoidance, minimization, or mitigation.
- Items 6b and 6c: Please update the buffer distance for occupied burrows from 1,600 feet to 200 meters (656 feet) consistent with the CDFW *Staff Report on Burrowing Owl Mitigation* (CDFG 2012). A 1,600-foot buffer would cause significant constructability

**Comment**

constraints and would not be necessary to avoid and minimize potential impacts to occupied burrows. A 200-meter buffer is consistent with industry standards and would be more than sufficient to avoid and minimize potential impacts to occupied burrows. In many cases for lower disturbance activities, a reduced buffer, smaller than 200-meters would be sufficient as detailed in the Burrowing Owl Conservation Strategy for Large-scale Solar Photovoltaic and Battery Energy Storage Projects in California (Large-Scale Solar [LSA] Association 2024) and the project's Burrowing Owl Management Plan (Rincon Consultants, Inc. 2024).

- Item 7 and 8: Please revise language to conduct only two consecutive 24-hour periods of monitoring to confirm the burrowing owl is not currently present prior to burrowing owl blockage. Additional periods of monitoring greater than 48 hours prior to blockage would not provide current data on the burrow's occupancy.

**Comment on Condition of Certification BIO-13****Burrowing Owl Compensatory Mitigation Land Requirements**

As recognized in the SA, implementing the Project's Swainson's Hawk Conservation Strategy and the Vegetation Management Plan will have an added benefit of improving burrowing owl habitat on the Project site. While the SA acknowledges that implementing these Plans will "largely mitigate" impacts to burrowing owl, CEC staff nonetheless determined that the perpetual protection and management of 200 acres of burrowing owl habitat would be necessary to meet CESA's "fully mitigate" standard. We disagree with this conclusion for a number of reasons. As an initial matter, the Project site's existing habitat value for burrowing owls is very low because the site is regularly disked and tilled and a majority of the site is currently barren. As acknowledged in the SA, there is only one potential burrowing owl burrow located in the interior of the project site. The remaining potential burrowing owl burrows are located on the perimeter of the site where successful burrow establishment is possible and where access to off-site foraging habitat is available. Even if revegetation efforts failed at the site, the project site's value for burrowing owl would increase due to the discontinuation of discing.

We do not believe compensatory mitigation for impacts to burrowing owl are necessary given the site's low habitat value for the species and the Project's commitment to successful implementation of Swainson's Hawk Conservation Strategy and the Vegetation Management Plan. As revised, implementation of COC BIO-9 will ensure improved habitat conditions for burrowing owl on the Project site relative to existing conditions. However, we also understand CEC staff may be concerned regarding the lack of scientific evidence demonstrating burrowing use of solar projects. In light of this, we have proposed revisions to MM BIO-13 that would make the amount of compensatory mitigation required for burrowing owl contingent on the level of burrowing owl presence on the Project site after an initial five-year monitoring period. At the end of that period, if burrowing owl presence on the site has been maintained or increased relative to that identified in Project site surveys conducted in 2022-2025, as determined by a Qualified Biologist, the project would be required to provide for the permanent protection of 100 acres of offsite burrowing owl habitat. If burrowing owl presence on the site has not been maintained or increased after the initial five year monitoring period, the project would be required to provide for the permanent protection of 200 acres of offsite burrowing owl habitat. To ensure implementation of these requirements, prior to the commencement of construction, the Project would be required to post a security sufficient to protect 200 acres of burrowing owl habitat. With these revisions, CESA's "fully mitigate" standard would be met and exceeded by COC BIO-13.

Suggested changes to BIO-13 are provided in tracked changes as an attachment



**Comment****Comment on Crotch's Bumble Bee and Condition of Certification****BIO-16 Crotch's Bumble Bee Avoidance and Minimization Measures**

As stated on pages 5.2-114 and 115 the “majority of the project site does not provide suitable habitat and foraging resources”.

Therefore, the Applicant suggests clarifying that focused (protocol level) surveys for Crotch's bumble bee would only be required in areas where the habitat assessment has identified suitable foraging, nesting, and/or overwintering habitat.

Additionally, given the large size of the project site, species presence should not be assumed for the entire project site solely based on positive detections in limited areas of the site. Foraging bees would move out of harm's way, therefore, the Applicant suggests clarifying that buffers would only be required where active nests are present.

Finally, the Applicant recommends adding a statement to note that Crotch's bumble bee is currently still under review for CESA listing as a candidate species to clarify that implementation of avoidance and minimization measures would only be required if the species remains a candidate or is advanced to listing.

To address these items, the following revisions are suggested for Condition BIO-16:

**“BIO-16 Crotch's Bumble Bee Avoidance and Minimization Measures.**

**If Crotch's bumble bee is still considered a CESA candidate species or has been listed as threatened or endangered under CESA at the time construction of specific Project components and/or phases commence, the following avoidance and minimization measures shall be implemented:**

To avoid impacts to Crotch's bumble bee, the Designated Biologist(s) and/or Biological Monitor(s) shall conduct a habitat assessment to determine if the project site and the immediate surrounding vicinity (up to 50 feet, **as accessible**) contains habitat suitable to support foraging, nesting, and/or overwintering resources for Crotch's bumble bee. Potential nesting and overwintering sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment. All floral resources shall be documented as well to identify potential for foraging at the site.

If potentially suitable habitat is identified, the Designated Biologist shall conduct focused (protocol level) surveys for Crotch's bumble bee **within** and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023) (or more recent published guidelines).

If **an active** Crotch's bumble bee nest is detected during construction or operation: All small mammal burrows, thatched/bunch grasses, and suitable floristic resources **within a 50-foot radius of the nest** shall be avoided by a minimum radius of 50 feet to avoid take and potentially significant impacts.

An avoidance buffer of 50 feet shall be established around any observed **active** nests during both construction and operation.

If ground-disturbing activities will occur during the overwintering period (October through February), the project owner shall consult with the CPM to discuss how to implement project activities and avoid take.”

## Comment

### Comment on Recommended Mitigation Measure BIO-19 Western Red Bat Tree Removal Measures

On page 5.2-238, Mitigation Measure BIO-19 currently requires additional measures for tree removal if suitable western red bat roosting habitat is present. Specific tree removal methods to minimize impacts to roosting western red bat should only be required if bats or their sign are documented in the trees proposed for removal. In addition, the two-phased tree removal would cause a significant construction schedule constraint and is not necessary to avoid and minimize impacts to western red bat. A modified tree removal procedure is recommended to minimize construction delays while maintaining appropriate avoidance and minimize strategies for western red bat. To address these items, the Applicant requests the following revisions to Mitigation Measure BIO-19:

#### “MM BIO-19 Western Red Bat Tree Removal Measures.

To avoid and minimize impacts to western red bat (*Lasiurus blossevillii*) during tree removal, the following measures shall be implemented:

1. A qualified bat biologist shall conduct pre-construction surveys for roosting bats within 200 feet of the project area at least 15 days prior to tree removal. The biologist shall assess trees for **occupancy of western rat bat potential roosting habitat, including presence of individuals or their sign foliage roosts and crevices**. If no **signs of occupancy are detected**, suitable roosting habitat is identified, tree removal may proceed without further measures for bats. If **habitat is bats or their sign are** present, additional measures shall be required, as detailed below.
2. If Western red bat are present to minimize disruption, tree removal should be scheduled outside of the bat maternity season (March 1 – August 31) and peak torpor period (December – February) whenever possible. If tree removal must occur during the maternity season, a qualified bat biologist shall confirm the absence of active maternity roosts before proceeding. If tree removal must occur in winter, a hibernation survey shall be conducted to assess bat occupancy and determine appropriate mitigation measures.
3. If ~~potential roosting habitat is~~ **bats or their sign are** present, tree removal shall occur in two phases to encourage bat relocation. **in a controlled manner. To ensure the optimum warning for any roosting bats that may still be present, the trees or structures shall be nudged lightly two to three times, with a pause of approximately 30 seconds between each nudge to allow bats to become active. Trees or structures may then be pushed to the ground slowly under the supervision of a qualified bat biologist. Trees shall not be sawed up or mulched immediately. A period of at least 48 hours shall elapse prior to such operations to allow bats to escape. Felled trees shall remain in place until they are inspected by the qualified bat biologist.**
4. ~~During the first phase, lower tree limbs shall be trimmed in the evening after 5:00 PM to encourage bats to abandon the roost. The trees shall be left standing overnight to allow remaining bats to vacate.~~
5. ~~During the second phase, full tree removal shall take place the following morning to prevent bats from returning. Tree cutters shall inspect trees immediately before felling to ensure no bats remain.~~
6. ~~If bats are detected, passive exclusion techniques shall be used, such as installing one way bat cones or netting over roost openings at least three days before removal, allowing bats to exit but not return. Trees with confirmed roosts shall be removed incrementally, beginning with non roost trees nearby to encourage natural dispersal.~~
- 4.7. To prevent winter roosting, leaf litter removal shall be conducted before the cold months to discourage bats from using it as a hibernation site. If trees must be removed between December and February, a qualified bat biologist will assess occupancy and

**Comment**

recommend exclusion measures if needed. A qualified bat biologist shall monitor tree removal activities and document any observed bat presence. A post-removal survey report shall be submitted to the appropriate regulatory agencies, detailing survey findings, mitigation measures, and any observed bat activity."

**Comments on Condition of Certification BIO-17**

The CEC does not have the authority to require the project to obtain a SPUT permit from the USFWS. There is no Federal nexus for the Applicant to apply for a SPUT permit, as the applicant is not a utility nor is it occupying federal land with project facilities. This measure must be struck.

**5.3 Climate Change and Greenhouse Gas Emissions**

No Comments

**5.4 Cultural and Tribal Resources**

No Comments

**5.5 Efficiency and Energy Resources**

No Comments

**5.6 Geology, Paleontology, and Minerals****Comment on Condition of Certification PAL-2**

The plan drawing size requirements outlined in this measure require a scale that is inappropriate for a project of this size (9,000+ acres). Most engineering plan sets for the project are currently designed at 1" = 150', which covers 1 quadrant of a geographical Section (1 square mile) and display more than adequate detail for engineering design, environmental constraints, and construction planning. This scale is sufficient to satisfy the needs of COC PAL-2.

The text of PAL-2 should be updated to remove the text as indicated below:

"The plan drawings must show the location, depth, and extent of all ground disturbances. ~~and be at a scale between 1 inch = 40 feet (1:480) and 1 inch = 100 feet (1:1,200).~~"

**Comment on Condition of Certification PAL-5**

COC PAL-4 and PAL-5 should be combined, as they have duplicative requirements. The requirement to have the CPM review and approve the resume of the WEAP trainer must be removed, as that requirement is unnecessary and overly burdensome since appropriate WEAP training can be successfully provided by persons with varying backgrounds.

## Comment

### Comment on Condition of Certification PAL-6

This COC is duplicative of the requirements in PAL-3 and it is suggested that this COC be deleted with any appropriate details incorporated into PAL-3.

The condition should be updated to require a summary of the daily monitoring reports be included in the MCR, with daily monitoring logs included only if significant observations are documented.

## 5.7 Hazards, Hazardous Materials/Waste, and Wildfire

### Comment on Condition of Certification HAZ-2

The verification requirements for HAZ-2 must be updated to the text suggested below:

"At least 30 days prior to **planned maintenance that requires** changing the quantity of or using a new hazardous material onsite, the project owner shall notify and seek approval from the CPM. **For any required unplanned maintenance that results in changes to the quantity or use of hazardous materials onsite, the project owner shall notify the CPM within 5 business days.** The project owner shall provide to the CPM, in the Annual Compliance Report, the HMBP's list of hazardous materials and quantities contained at the facility."

### Comment on Condition of Certification HAZ-5

The analysis in section 5.7.2.2 does not logically conclude that the NERC site security measures in condition HAZ-5 are necessary or appropriate for the CEQA item analyzed. The item analyzed was: *"Would the project create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials or hazardous waste?"* The conclusion in the operations section states: *"As indicated under the construction phase discussion above, the application indicates a security plan would be prepared. Staff concurs that security elements are needed to ensure the protection of California's electrical infrastructure from vandalism or domestic/foreign attacks. Therefore, staff proposes COC HAZ-5 which would require the project owner to create an operations security plan to ensure a minimum level of security for the project."*

An impact is not clearly defined related to hazardous waste and the mitigation measure is therefore not warranted.

It is requested that condition HAZ-5 be removed in its entirety. If the condition is not deleted, the analysis in section 5.7 should be updated and the condition should be changed to relate only to how hazardous materials would be secured during operations.

Additionally, the NERC Security Guideline provides "suggestions and recommendations that can enhance an organization's resiliency" and is not an official regulation that can be enforced on the project. Due to the various components of the project (solar PV, battery storage, substations, transmission) the recommendations do not apply equally across the project and should not be enforced for the project as a whole. The guidelines do not indicate that 8-foot-tall fencing with slats is recommended, and this fencing height and use of slats is not industry standard, is not necessary for the security of most project areas, and is infeasible due to the large financial burden it would place on the project.

**Comment****Comment on Condition of Certification HAZ-6**

Professionals with various qualifications are capable of preparing a valid and comprehensive Soils Management Plan and the following requirement should be struck from HAZ-6 "The SMP shall be prepared/approved by a California Registered Civil Engineer or a California Registered Geologist with sufficient experience in hazardous waste management."

Measure (8) in HAZ-6 should be updated. Measure (8) requires a Health and Safety Plan be prepared by a Certified Industrial Hygienist. These requirements are not necessary as they are not commensurate to the potential impact determined in the Staff Assessment analysis. The measure should be updated to the following suggested text:

"Should hazardous soils be identified on site that pose a threat of toxicant exposure to construction workers, a site-specific Health and Safety Plan (HSP) shall be prepared and implemented for all ground disturbing work occurring near the area of identified contaminated soils. The HSP shall establish measures for protecting onsite workers by including engineering controls, personal protective equipment, monitoring, and security to prevent unauthorized entry and to reduce construction related hazards. The HSP shall be updated as needed if site conditions change significantly, such as discovery of additional hazards. Copies of the approved HSP shall be kept at the project site."

**Comment on Condition of Certification HAZ-8**

The requirements in HAZ-8 are duplicative of those in HAZ-6 (8) and are unnecessary. HAZ-8 should be removed in its entirety.

Additionally, there are other qualified professionals outside of a "professional engineer or professional geologist" that can accomplish these tasks, and that specific requirement is too restrictive.

**5.8 Land Use, Agriculture, and Forestry**

No comments

**5.9 Noise and Vibration****Comment on Condition of Certification NOISE-1**

COC COM-11 already requires these notification conditions making NOISE-1 duplicative and unnecessary. COC NOISE-1 should be removed in its entirety and the Staff Assessment should refer to COM-11.

**Comment on Condition of Certification NOISE-4**

The analysis in the Staff Assessment section 5.9 Noise and Vibration page 5.9-9 concludes operation of the project would have a less than significant impact, and the analysis on page 5.9-10 concludes that the project operational noise at nearby receptors "*would be below both the ambient noise level and the County Noise Ordinance's threshold.*" This analysis clearly supports that project operations would not result in generation of a substantial increase in ambient noise levels in the vicinity of the project, and would therefore have a less than significant impact not requiring any mitigation or conditions. For these reasons, COC NOISE-4 should be deleted in its entirety.

## Comment

### Comment on Condition of Certification NOISE-6

Gen-tie installation across I-5 will be approved by CalTrans and may require helicopter work at night and/or during the weekend. The condition should be updated as related to helicopter use to the text suggested below:

"Helicopter operation shall be restricted to only the times delineated below: Mondays through Fridays: 6:00 A.M. to 7:00 P.M. Helicopter operation required for installation of the gen-tie across I-5 may occur outside these times if approved by CalTrans."

### Comment on Condition of Certification NOISE-7

COC NOISE-7 should be removed. Notification to nearby residences is already covered under COM-11. COC NOISE-6 restricts heavy equipment use to certain hours within 1,000 feet of residences, which will also limit the noise disturbance to residences due to pile driving. The recommended BMPs in NOISE-7 are not feasible for this project as they would cause extreme delays to the project schedule, could create safety hazards for workers conducting the pile driving, and are not mechanically reasonable for installing pile foundations in hard soil conditions. For these reasons COC NOISE-7 should be removed in its entirety.

## 5.10 Public Health

### Comment on Condition of Certification PH-1

COC WS-11 already requires that *"The project owner shall develop and implement a worker Valley Fever (VF) Prevention and Response Plan that includes an enhanced Dust Control Plan"*. COC PH-1 is redundant and unnecessary. PH-1 should be removed in its entirety and the Staff Assessment should be updated to instead reference COC WS-11.

Additionally, mud and track out will be managed on-site as per other COCs. Washing all vehicles and equipment upon entry/exit is not a practical nor realistic control.

## 5.11 Socioeconomics

No comments

## 5.12 Solid Waste Management

### Comment on Condition of Certification WASTE-1

The applicant disagrees with the conclusions made in the Staff Assessment. *Section 5.12 Solid Waste Management* states:

- *"Assuming all the construction related solid waste could not be recycled, the estimated amount of solid waste generated during project construction would represent 0.2 percent of the available capacity of the three listed landfills."*
- *"Assuming all the operational solid waste could not be recycled, the estimated amount of solid waste generated during project operations would represent 0.001 percent of the available capacity of the three listed landfills."*

Quantities less than 1 percent of available space at landfills is clearly a less than significant impact and the Staff Assessment should be updated to state project impacts related to waste would be less than significant. As such, mitigation measures would not be necessary and COC WASTE-1 would not be required. For these reasons, COC WASTE-1 should be removed in its entirety. At a minimum, WASTE-1 should remove the requirement to submit an Operations Waste Management Plan.

**Comment****5.13 Transmission Line Safety and Nuisance****Comment on Condition of Certification TLSN-1**

Several of the regulations listed in this condition do not apply to the project's gen-tie and only apply to overhead electrical supply and communication lines which are within the jurisdiction of the CPUC. Update COC TLSN-1 to remove reference of LORS that do not apply to the project's transmission line.

**Comment on Condition of Certification TLSN-2**

GO-95 is not applicable to the project's gen-tie line. The GO-95 rules apply to overhead electrical supply and communication lines which are within the jurisdiction of the CPUC. Update COC TLSN-2 to remove reference to GO-95.

**Comment on Condition of Certification TLSN-5**

This condition does not apply to the jurisdictional components of the project. Because the project is not within the jurisdiction of the CPUC, those regulations do not apply. Any recommended measures for PG&E must be included in the Mitigation Measures section, not within the Conditions of Certification. For these reasons, COC TLSN-5 should be deleted in its entirety.

**5.14 Transportation****Comment on Condition of Certification TRANS-1**

Analysis of the Project's compliance with CEQA and CEC opt-in application requirements in the Staff Assessment concludes that the transportation impacts would either be Less Than Significant Impact or No Impact for the duration of the construction and operation of the Project and therefore mitigation is not required. The project owner must comply with LORS and Conditions of Certification are not necessary to enforce such LORS. CEC has stated they do not have authority to authorize road use permits and should therefore not be overseeing items that will be managed by other agencies. COC COM-6 requires monthly compliance reports to provide "*a listing of any filings submitted to, and permits issued by, other governmental agencies during the month*". For these reasons, COC TRANS-1 is not necessary or appropriate and should be removed in its entirety.

**Comment on Condition of Certification TRANS-2**

Analysis of the Project's compliance with CEQA and CEC opt-in application requirements in the Staff Assessment concludes that the transportation impacts would either be Less Than Significant Impact or No Impact for the duration of the construction and operation of the Project and therefore mitigation is not required. The project owner must comply with LORS and Conditions of Certification are not necessary to enforce such LORS. CEC has stated they do not have authority to authorize road use permits and should therefore not be overseeing items that will be managed by other agencies. COC COM-6 requires monthly compliance reports to provide "*a listing of any filings submitted to, and permits issued by, other governmental agencies during the month*". For these reasons, COC TRANS-2 is not necessary or appropriate and should be removed in its entirety.

**Comment****Comment on Condition of Certification TRANS-3**

Analysis of the Project's compliance with CEQA and CEC opt-in application requirements in the Staff Assessment concludes that the transportation impacts would either be Less Than Significant Impact or No Impact for the duration of the construction and operation of the Project and therefore mitigation is not required. The project owner must comply with LORS and Conditions of Certification are not necessary to enforce such LORS. CEC has stated they do not have authority to authorize road use permits and should therefore not be overseeing items that will be managed by other agencies. COC COM-6 requires monthly compliance reports to provide "*a listing of any filings submitted to, and permits issued by, other governmental agencies during the month*". Traffic within the project boundary on private access roads will have no impact to public traffic and transportation. For these reasons, COC TRANS-3 is not necessary or appropriate and should be removed in its entirety.

**5.15 Visual Resources****Comment on Condition of Certification VIS-1**

CEC serves as the in-lieu permitting authority for any permit, certificate, or similar document required by any state, local, or regional agency, or federal agency (PRC § 25545.1). As such, county review is not required and could cause significant schedule delays. Therefore, the requirement for submittals to the county must be removed from COC VIS-1 verification steps. The submission requirement for "ninety (90) days prior to executing a contract to purchase" may not be feasible could impact project design and construction. Update the requirement to submit " thirty (30) days prior to executing a contract to purchase".

**Comment on Condition of Certification VIS-2**

CEC serves as the in-lieu permitting authority for any permit, certificate, or similar document required by any state, local, or regional agency, or federal agency (PRC § 25545.1). As such, county review is not required and could cause significant schedule delays. Therefore, the requirement for submittals to the county must be removed from COC VIS-2 verification steps. The submission requirement for "ninety (90) days prior to executing a contract to purchase" may not be feasible could impact project design and construction. Update the requirement to submit " thirty (30) days prior to executing a contract to purchase".

**Comment on Condition of Certification VIS-3**

CEC serves as the in-lieu permitting authority for any permit, certificate, or similar document required by any state, local, or regional agency, or federal agency (PRC § 25545.1). As such, county review is not required and could cause significant schedule delays. Therefore, the requirement for submittals to the county must be removed from COC VIS-3 verification steps. This DEIR does not indicate this COC is necessary for reducing potential impacts to less than significant and is not mentioned in the analysis. Additionally, this condition is not necessary because it's duplicative of VIS-1. Therefore, this condition should be deleted in its entirety.



**Comment****5.16 Water Resources****Comment on Condition of Certification WATER-3**

Due to CEC's in-lieu authority granted by AB 205, county review for this condition is not necessary. Update the verification text to the following:

*"No later than thirty (30) days prior to start of construction, the project owner shall submit a plan to install underground wiring to PV panels in compliance with Ordinance 15.48.080 (A)(2)(a) to the CPM for review and approval. ~~and to Fresno County for review.~~"*

**Comment on Condition of Certification WATER-5**

CEC serves as the in-lieu permitting authority for any permit, certificate, or similar document required by any state, local, or regional agency, or federal agency (PRC § 25545.1), and has the authority to approve installation of groundwater wells. Condition WATER-4 does not allow for flexibility in water sourcing for operations. Condition WATER-5 should be updated to the text suggested below.

"Water supply for operational use shall be groundwater beneath the project property by benefit of the purchase option agreement with the WWD. Should installation of a new groundwater well be necessary, the project owner shall submit materials to the CPM for review and approval. The groundwater production well(s) shall be installed and constructed per applicable California Water Code section, as well as DWR standards presented in bulletins 74-81 and 74-90, as well as applicable FCPWPD well installation requirements."

**Comment on Condition of Certification WATER-6**

As described in the application materials, purchase of the Westlands Water District lands for the project will provide water rights to IP Darden, and that water will be used for construction and operations. The water rights include 3,703 acre feet per year (AFY) during construction and 57 AFY for operations. Condition WATER-6 should be updated to the text below so the applicant is not limited to water use that is less than their legal water rights.

"Water Use and Reporting. Water supply for project construction and operation shall be groundwater beneath the project property by benefit of the purchase option agreement with the WWD. The project owner shall provide the CPM with a copy of the WWD purchase option agreement after conclusion. The project owner shall record monthly water use for the project construction and operation. If water use during construction may exceed 1,200 AF and operational water use may exceed 40 AFY, the project owner shall notify the CPM and provide information on why additional water supply is required."

**6 Environmental Justice**

No Comments

**7 Public Benefits**

No Comments

**8 Alternatives**

No Comments

## Comment

### 9 Compliance Conditions and Compliance Monitoring Plan

#### Comment on Condition of Certification COM-1

This condition is unacceptable as written and not in compliance with LORS such as NERC security standards. The condition must be updated as suggested below.

“Site Access. The project owner shall provide escorted access to authorized CEC staff. CEC staff may include the CPM, responsible CEC staff, and delegate agencies or consultants that have been formally authorized and approved to access the project site. Access shall be provided to the facility site, related facilities, project-related staff, and the records maintained on site for the purpose of conducting audits, surveys, inspections, or general or closure-related site visits. Site access during construction for the CPM or DCBO may be unescorted if approved by the project owner. CEC staff shall provide 72-hour notice to the project owner prior to site access. The project owner shall accommodate unannounced site access requests when possible. Site access shall be accommodated for CEC staff and representatives during or in response to emergency situations.”

#### Comment on Condition of Certification COM-2

Update condition COM-2 to state:

"The project owner shall maintain electronic copies of all project files and submittals accessible on site, or at an alternative site approved by the CPM, for the operational life and closure of the project. ~~The files shall also contain at least one hard copy of:~~ **Hard copies will be maintained on-site for safety plans, training documentation, and a list of all current COCs, as well as any documentation required by applicable LORs.**

- ~~1. the facility's Opt In Application;~~
- ~~2. all amendment petitions and CEC orders;~~
- ~~3. all site related environmental impact and survey documentation;~~
- ~~4. all appraisals, assessments, and studies for the project;~~
- ~~5. all finalized original and amended structural plans and "as built" drawings for the entire project;~~
- ~~6. all citations, warnings, violations, or corrective actions applicable to the project, and~~
- ~~7. the most current versions of any plans, manuals, and training documentation required by the COCs or applicable LORS."~~

#### Comment on Condition of Certification COM-8

Design drawings and facility details must be kept confidential due to considerations of proprietary information, intellectual property, and physical, cyber, and national security. Condition COM-8 must be updated to state:

"Any information that the project owner designates as confidential shall be submitted to the Energy Commission's Executive Director with an application for confidentiality, pursuant to Title 20, California Code of Regulations, section 2505(a). Any information deemed confidential pursuant to the regulations will remain undisclosed, as provided in Title 20, California Code of Regulations, section 2501 et seq. **A single application for confidentiality may be submitted for multiple detailed project design drawing submittals that are required by other COCs.**"

## Comment

### Comment on Condition of Certification COM-11

This timeline is unreasonable, and the condition should be updated to read:

"The project owner shall respond to all recorded complaints within **72 hours or within three business days** ~~24 hours or the next business day.~~"

### Comment on Condition of Certification COM-12

The site will have an Emergency Operations Plan as required by FERC, an Emergency Action Plan for both construction and operations, and an Emergency Response Plan for both construction and operations.

Having multiple emergency plans may result in confusion and harm during actual emergency situations. Due to condition COM-12 being duplicative of the requirements in WS-1 and WS-2 it is recommended this condition be deleted in its entirety.

### Comment on Condition of Certification COM-13

California ISO Tariff 2.3.3.9.5 requires generating asset owners to report any forced outages to the CAISO. Given CAISO is the appropriate authority with jurisdiction for these notices, it is not necessary to provide notice to the CEC as it falls outside of the commission's authority to monitor compliance for air quality, water quality, and public health and safety. Similarly, onsite injuries, physical incidents, or cyber security incidents do not correlate to air quality, water quality, and public health and safety concerns and should be removed. The first portion of Condition COM-13 should be updated to the text below. The notification requirements portion can remain unchanged.

"The project owner shall notify the CPM within one hour after it is safe and feasible, of any incident at the facility that results in any of the following:

- ~~1. An event of any kind that causes a "Forced Outage" as defined in the CAISO tariff;~~
1. The activation of onsite emergency fire suppression equipment to combat a fire;
2. Any chemical, gas or hazardous materials release that could result in potential health impacts to the surrounding population; or create an offsite odor issue; and
3. Notification to, or response by, any off-site emergency response federal, state or local agency regarding a fire or hazardous materials release, ~~onsite injury, or any physical or cyber security incident.~~"

### Comment on Condition of Certification COM-14

The authority granted to the commission under Public Resources Code section 25532 focuses on monitoring a facility's operations primarily for compliance with air quality, water quality, and public health and safety. The requirements in condition COM-14 do not directly relate to these purposes and therefore this condition is unwarranted and unnecessary. Project operation will be coordinated with the transmission provider and CAISO. This condition should be updated to state the following:

"If the facility ceases operation temporarily (excluding planned and unplanned maintenance for longer than one week [or other CPM approved date], but less than three months [or other CPM-approved date]), the project owner shall notify the CPM. Notice of planned non-operation longer than three months shall be given at least two weeks prior to the scheduled date. Notice of unplanned non-operation that has been determined to last longer than three months shall be provided no later than one week after non-operation begins. The notice

**Comment**

shall include information on non-operation, activities necessary to restore the facility to operation, the anticipated timeline to return to operation, and a discussion on any potential non-compliance with COC's due to the non-operation.

If, after one year from the date of the project owner's notice, the facility does not resume operation or does not provide a plan to resume operation, the Executive Director may assign suspended status to the facility and recommend commencement of permanent closure activities. Within 90 days of the Executive Director's determination, the project owner shall do one of the following:

1. If the facility has a closure plan, the project owner shall update it and submit it for CEC review and approval; or
2. If the facility does not have a closure plan, the project owner shall develop one consistent with the requirements in this Compliance Plan and submit it for CEC review and approval."

**10 Mandatory Opt-In Requirements****Comment on Proposed Finding of Fact #9**

The solar tax exclusion sunsets on January 1, 2027, prior to the commercial operation date for the Darden project. Tax experts advising IP Darden, LLC indicate that the Darden Project will pay tens of millions of dollars per year in property taxes, some of which will be allocated to the Fire District in accordance with established allocations for the distribution of taxes to county organizations. It is estimated that \$220M in property tax payments will be made over the first 10 years. Other pending projects will also be subject to property taxes, including on future project improvements. For these reasons, item 9 in the Proposed Findings needs to be struck and updated based on the information above.

# **Attachment 1**

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Suggested Changes to Conditions of Certification BIO-9 and BIO-13

**BIO-9 Swainson's Hawk Conservation Strategy and Foraging Habitat Revegetation and Management Plan.** To mitigate for the loss of Swainson's hawk foraging habitat, the project owner shall revegetate and manage on-site vegetation throughout the life of the project in lieu of purchasing offsite compensation lands. The project owner shall submit a Swainson's Hawk Conservation Strategy and Foraging Habitat Revegetation and Management Plan to the CPM for review and approval prior to ground disturbance, including pre-construction site mobilization. Revegetation shall be initiated during construction and continue through operation. The plan shall detail the revegetation and long-term management actions necessary to establish and maintain suitable foraging habitat. The two plans included in Items 1 and 2, shall form the Swainson's Hawk Conservation Strategy and Foraging Habitat Revegetation and Management Plan.

1. Swainson's Hawk Conservation Strategy. The project shall prepare and implement a Swainson's Hawk Conservation Strategy for the project. The draft Swainson's Hawk Conservation Strategy submitted by the Applicant (RCI 2023hh) shall be submitted for review and revisions and approval from the CPM, in consultation with CDFW. The final plan shall be at least as stringent as the draft Swainson's Hawk Conservation Strategy and approved by the CPM.
2. Foraging Habitat Revegetation and Management Plan. The Project owner shall prepare and implement a Foraging Habitat Revegetation and Management Plan. The draft Vegetation and Management Plan submitted by the Applicant as Appendix D to the Swainson's Hawk Conservation Strategy (RCI 2023hh) shall be submitted for review and revisions and approval from the CPM, in consultation with CDFW. The final plan shall be at least as stringent as the draft Vegetation Management Plan (Appendix D of the draft Swainson's Hawk Conservation Strategy) and approved by the CPM.
3. Success Criteria. The success criteria for the Swainson's Hawk Conservation Strategy and the Foraging Habitat Revegetation and Management Plan shall be established to ensure the effective restoration and maintenance of suitable habitat. The success criteria shall be included in the Swainson's Hawk Conservation Strategy and the Foraging Habitat Revegetation and Management Plan and shall be at least as stringent as those included by the Applicant in the draft Vegetation Management Plan and draft Conservation Strategy (See Item 1 and 2) above. These include the success criteria for the following: nesting tree survivorship, vegetative cover, invasive species control, and Swainson's hawk habitat use or similar success criteria as approved by the CPM.
4. Reporting. The project owner shall provide annual monitoring reports to the CPM to demonstrate progress toward successful habitat establishment. The reports shall be prepared in coordination with the Designated Biologist. Specific contents and format of the annual report will be reviewed and approved by the CPM. Reporting shall begin upon initiation of pre-construction site mobilization for the previous calendar year and submitted to the CPM. The annual monitoring report shall cover a calendar year.
- ~~5. Security Release: If the success criteria are met, after 5 years of post construction monitoring, the project owner shall submit a request (in letter or email format) to the CPM for the release of the Security deposit required by **BIO-11**. The documentation that the success criteria have been met shall be included in the annual monitoring report for Year 5, after the start of operation. The CPM shall release the Security upon confirmation that the success criteria have been met based on review of the annual report. The release of the Security shall not be approved until the requirements of **BIO-11**, Item 1 have also been satisfied.~~
- ~~6. Compensation Lands. If after 5 years of monitoring from start of operation, or alternative date approved by the CPM based on Section 7, below, the success criteria have not been met and the revegetation and management efforts are determined by the CPM, in consultation with CDFW, to be unsuccessful in achieving functional foraging habitat for Swainson's hawk, then the project owner shall acquire and protect off site compensation lands. The compensation lands shall be for~~

~~2,336 acres as specified in **BIO-11**. The acquisition of compensation lands shall follow the requirements outlined in BIO-13, subsection 1.3. If compensation lands are purchased, the project owner shall follow the requirements outlined in **BIO-11**, Subsection 2.7. for release of the Security~~

- ~~5. Remedial Actions. If the success criteria are not met after 5 years of post-construction monitoring, the project owner shall engage a qualified biologist to develop proposed adaptive management actions that will be taken to ensure the success criteria are met. The proposed adaptive management actions shall be reviewed by the CPM, in consultation with CDFW, and approved as appropriate. Following approval, the adaptive management actions shall be implemented by the project owner until the success criteria are met.~~
- ~~6. Independent Research Program Final Report. The Project's Vegetation Management Plan includes an independent research program to confirm the efficacy of the proposed conservation strategy and vegetation management plan, inform adaptive management procedures, and establish standard procedures for habitat management on renewable energy projects in the Central Valley. To ensure the Project contributes to scientific knowledge regarding management of Swainson's hawk habitat on Central Valley renewable energy project sites, the independent research program shall produce a publicly available final report analyzing the efficacy of the project's conservation strategy and vegetation management plan and providing management recommendations for maintenance of Swainson's hawk habitat on Central Valley renewable energy project sites.~~
- ~~7. The project owner may request an extension of time to meet the success criteria if environmental factors, such as drought conditions, unforeseen ecological challenges, or other relevant constraints, impede the successful establishment of functional foraging habitat. The extension request shall be submitted to the CPM and must include supporting data demonstrating the need for additional time to meet the success criteria. The request shall be reviewed by the CPM, in consultation with CDFW, and approved as appropriate.~~

**Verification:** No fewer than 60 days prior to the start of pre-construction site mobilization the project owner shall submit to the CPM, for review and approval, a draft Swainson's Hawk Conservation Strategy and a draft Foraging Habitat Revegetation and Management Plan to be included the Swainson's Hawk Conservation Strategy and Foraging Habitat Revegetation and Management Plan (Plan). The Plan shall be finalized prior to the start of ground disturbance. The project owner shall submit the annual monitoring reports to the CPM for review within 30 days after the end of each reporting period.

**BIO-13 Burrowing Owl Habitat Compensation.** To mitigate for impacts to burrowing owl, the project owner shall cease all discing of the Project site and implement the Swainson's Hawk Conservation Strategy and Foraging Habitat Revegetation and Management Plan required pursuant to COC BIO-9. These requirements shall be implemented in lieu of providing Habitat Management lands or purchasing burrowing owl credits in an approved mitigation or conservation bank and are expected to enhance burrowing owl habitat and provide significantly improved burrowing owl nesting conditions on the Project site. Burrowing owl use of the Project site shall be monitored for the first five years following the completion of Project construction. If, at the end of the five-year monitoring period, burrowing owl presence on the Project site has been maintained or increased relative to that identified in Project site surveys conducted in 2022-2025 as determined by a Qualified Biologist, the project would be required to provide for the permanent protection of 100 acres of offsite burrowing owl habitat. If burrowing owl presence on the site has not been maintained or increased after the initial five-year monitoring period, the project would be required to provide for the permanent protection of 200 acres of offsite burrowing owl habitat. The Applicant shall be required to provide for offsite burrowing owl habitat acquisition and management as follows:

1. Habitat Management Land Acquisition for Burrowing Owl. To meet this requirement, the project owner shall either purchase a minimum of 100 or 200 acres of burrowing owl or other mitigation or conservation bank credits approved in advance by the CPM pursuant to the Burrowing Owl Credits (subsection 1.2, below) or shall provide for both the permanent protection and management of 100 or 200 acres of Habitat Management (HM) lands pursuant to the Habitat Management Lands Acquisition and Protection (subsection 1.3, below) and the calculation and deposit of the management funds pursuant to the Endowment Fund Condition of Approval (subsection 1.4, below). Purchase of burrowing owl credits or permanent protection and funding for perpetual management of HM lands must be complete before starting pre-construction site mobilization within six months following the end of the five-year monitoring period described above, or within 24 months of the pre-construction site mobilization the end of the monitoring period if Security is provided pursuant to the Security (Section 2, below) for all uncompleted obligations.
  - 1.1. Cost Estimates. For the purposes of determining the Security amount, the estimated cost is sufficient for the CPM or its contractors to complete acquisition, protection, and perpetual management of the HM lands as follows:
    - 1.1.1. Land acquisition costs for HM lands identified in Habitat Management Lands Acquisition and Protection (subsection 1.3, below), estimated at \$2318.00/acre for 200 acres: \$463,600.00. Land acquisition costs are estimated using local fair market current value per acre for lands with habitat values meeting mitigation requirements.
    - 1.1.2. All other costs necessary to review and acquire the land in fee title and record a conservation easement as described in Conservation Easement (subsection 1.3.2, below): \$268,600.00.
    - 1.1.3. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Start-up Activities (subsection 1.3.6, below), estimated at \$74,890.00.
    - 1.1.4. Interim management period funding as described in Interim Management (Initial and Capital) (subsection 1.3.7, below), estimated at \$196,512.00.
    - 1.1.5. Long-term management funding as described in Endowment Fund (subsection 1.4, below), estimated at \$683,515.00.
    - 1.1.6. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions,



expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Reimburse CDFW (Section 1.5, below), estimated at \$12,000.00.

- 1.1.7. All costs associated with the CPM engaging an outside contractor to complete the mitigation tasks, including but not limited to acquisition, protection, and perpetual funding and management of the HM lands and restoration of temporarily disturbed habitat. These costs include but are not limited to the cost of issuing a request for proposals, transaction costs, contract administration costs, and costs associated with monitoring the contractor's work \$42,000.00.
- 1.2. Burrowing Owl Credits. If the project owner elects to purchase credits to complete burrowing owl compensatory mitigation obligations, then the project owner shall purchase 100 or 200 acres of burrowing owl credits from a mitigation or conservation bank approved in advance by the CPM within six months following the end of the five-year monitoring period described above~~prior to initiating pre-construction site mobilization~~, or no later than 24 months from the start of ~~the end of the monitoring period pre-construction site mobilization~~, if Security is provided pursuant to the Security Condition of Approval below. Prior to purchase of credits, the project owner shall obtain CPM approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the Project. The project owner shall submit to the CPM a copy of the Bill of Sale(s) and Payment Receipt ~~prior to initiating pre-construction site mobilization or within 24 months from the start of pre-construction site mobilization if Security is provided~~confirming the purchase of credits.
- 1.3. Habitat Management Lands Acquisition and Protection. If the project owner elects to provide for the acquisition, permanent protection, and perpetual management of HM lands to complete compensatory mitigation obligations, then the project owner shall:
  - 1.3.1. Fee Title. Transfer fee title of the HM lands to CDFW pursuant to terms approved in writing by CDFW. Alternatively, the CPM, in consultation with CDFW, may authorize a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended;
  - 1.3.2. Conservation Easement. If CDFW does not hold fee title to the HM lands, CDFW shall act as grantee for a conservation easement over the HM lands or shall, in the CPM's discretion, in consultation with CDFW, approve a non-profit entity, public agency, or Native American tribe to act as grantee for a conservation easement over the HM lands provided that the entity, agency, or tribe meets the requirements of Civil Code section 815.3. If CDFW elects not to be named as the grantee for the conservation easement, CDFW shall be expressly named in the conservation easement as a third-party beneficiary. The Project owner shall obtain CDFW written approval of any conservation easement before its execution or recordation. No conservation easement shall be approved by the CPM, in consultation with CDFW, unless it complies with Civil Code sections 815-816, as amended, and Government Code sections 65965-65968, as amended and includes provisions expressly addressing Government Code sections 65966(j) and 65967(e). Because the "doctrine of merger" could invalidate the conservation interest, under no circumstances can the fee title owner of the HM lands serve as grantee for the conservation easement.
  - 1.3.3. HM Lands Approval. Obtain CPM written approval of the HM lands before acquisition and/or transfer of the land by submitting, at least three months before acquisition and/or transfer of the HM lands, documentation identifying the land to be purchased

or property interest conveyed to an approved entity as mitigation for the project's impacts on burrowing owl;

- 1.3.4. HM Lands Documentation. Provide a recent preliminary title report, Phase I Environmental Site Assessment, and other necessary documents (please contact CPM for document list). All documents conveying the HM lands and all conditions of title are subject to the approval of the CPM and if applicable, the Wildlife Conservation Board and the Department of General Services;
- 1.3.5. Land Manager. Designate both an interim and long-term land manager approved by the CPM. The interim and long-term land managers may, but need not, be the same. The interim and/or long-term land managers may be the landowner or another party. The land manager shall prepare a draft management plan for CPM review and written approval as part of the HM lands acquisition process. The project owner shall notify the CPM of any subsequent changes in the land manager within 30 days of the change. If CDFW will hold fee title to the mitigation land, CDFW will also act as both the interim and long-term land manager unless otherwise specified. The grantee for the conservation easement cannot serve as the interim or long-term manager without the express written authorization of the CPM in consultation with CDFW;
- 1.3.6. Start-up Activities. Provide for the implementation of start-up activities, including the initial site protection and enhancement of HM lands, once the HM lands have been approved by the CPM. Start-up activities include, at a minimum: (1) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (2) developing and transferring Geographic Information Systems (GIS) data if applicable; (3) establishing initial fencing; (4) conducting litter removal; (5) conducting initial habitat restoration or enhancement, if applicable; and (6) installing signage;
- 1.3.7. Interim Management (Initial and Capital). Provide for the interim management of the HM lands. The Permittee shall ensure that the interim land manager implements the interim management of the HM lands as described in the final management plan and conservation easement approved by the CPM. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, and vegetation and invasive species management.

The project owner shall either (1) provide Security to the CPM for the minimum of three years of interim management that the land owner, Permittee, or land manager agrees to manage and pay for at their own expense, (2) establish an escrow account with written instructions approved in advance in writing by the CPM to pay the land manager annually in advance, or (3) establish a short-term enhancement account with the CPM or a the CPM approved entity for payment to the land manager.

- 1.4. Endowment Fund. If the project owner elects to provide for the acquisition, permanent protection, and perpetual management of HM lands to complete compensatory mitigation obligations, then the project owner shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in condition, the conservation easement, and the final management plan approved by the CPM. After obtaining CPM approval of the HM lands, Permittee shall provide long-term management funding for the perpetual management of the HM lands by establishing a long-term

management fund (Endowment). The Endowment is a sum of money, held in a CPM-approved fund that is permanently restricted to paying the costs of long-term management and stewardship of the mitigation property for which the funds were set aside, which costs include the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with this condition of certification, the conservation easement, and the management plan required by Land Manager (Section 1.3.5). Endowment as used in this condition of certification shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this Condition of Certification, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

After the interim management period, the project owner shall ensure that the designated long-term land manager implements the management and monitoring of the HM lands according to the final management plan. The long-term land manager shall be obligated to manage and monitor the HM lands in perpetuity to preserve their conservation values in accordance with this condition of certification, the conservation easement, and the final management plan. Such activities shall be funded through the Endowment.

- 1.4.1. Identify an Endowment Manager. The Endowment shall be held by the Endowment Manager, which shall be either the CDFW or another entity qualified pursuant to Government Code sections 65965-65968, as amended.

The project owner shall submit to the CPM a written proposal that includes: (i) the name of the proposed Endowment Manager; (ii) whether the proposed Endowment Manager is a governmental entity, special district, nonprofit organization, community foundation, or congressionally chartered foundation; (iii) whether the proposed Endowment Manager holds the property or an interest in the property for conservation purposes as required by Government Code section 65968(b)(1) or, in the alternative, the basis for finding that the project qualifies for an exception pursuant to Government Code section 65968(b)(2); and (iv) a copy of the proposed Endowment Manager's certification pursuant to Government Code section 65968(e).

Within thirty days of the CPM's receipt of the project owner's written proposal, the CPM shall inform the project owner in writing if it determines the proposal does not satisfy the requirements of Fish and Game Code section 2081(b)(3) and, if so, shall provide Permittee with a written explanation of the reasons for its determination. If the CPM does not provide Permittee with a written determination within the thirty-day period, the proposal shall be deemed consistent with Section 2081(b)(3).

- 1.4.2. Calculate the Endowment Funds Deposit. After obtaining the CPM's written approval of the HM lands, long-term management plan, and Endowment Manager, the project owner shall prepare an endowment assessment (equivalent to a Property Analysis Record (PAR)) to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). Note that the endowment for the easement holder should not be included in this calculation. The project owner shall submit the CPM for review and approval the results of the endowment assessment before transferring funds to the Endowment Manager.

- 1.4.2.1. Capitalization Rate and Fees. The project owner shall obtain the capitalization rate from the selected Endowment Manager for use in calculating the endowment assessment and adjust for any additional administrative, periodic, or annual fees.

1.4.2.2. Endowment Buffers/Assumptions. The project owner shall include in the endowment assessment assumptions the following buffers for endowment establishment and use that will substantially ensure long-term viability and security of the Endowment:

1.4.2.2.1. 10 Percent Contingency. A 10 percent contingency shall be added to each endowment calculation to hedge against underestimation of the fund, unanticipated expenditures, inflation, or catastrophic events.

1.4.2.2.2. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.

1.4.2.2.3. Non-annualized Expenses. For all large capital expenses to occur periodically but not annually such as fence replacement or well replacement, payments shall be withheld from the annual disbursement until the year of anticipated need or upon request to Endowment Manager and the CPM.

1.4.3. Transfer Long-term Endowment Funds. The project owner shall transfer the long-term endowment funds to the Endowment Manager upon CPM approval of the Endowment Deposit Amount identified above.

1.4.4. Management of the Endowment. The approved Endowment Manager may pool the Endowment with other endowments for the operation, management, and protection of HM lands for local populations of the burrowing owl but shall maintain separate accounting for each Endowment. The Endowment Manager shall, at all times, hold and manage the Endowment in compliance with this condition of certification, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

Notwithstanding Probate Code sections 18501-18510, the Endowment Manager shall not make any disbursement from the Endowment that will result in expenditure of any portion of the principal of the endowment without the prior written approval of CPM in its sole discretion. Permittee shall ensure that this requirement is included in any agreement of any kind governing the holding, investment, management, and/or disbursement of the Endowment funds.

Notwithstanding Probate Code sections 18501-18510, if the CPM, in consultation with CDFW, determines in its sole discretion that an expenditure needs to be made from the Endowment to preserve the conservation values of the HM lands, the Endowment Manager shall process that expenditure in accordance with directions from the CPM. The Endowment Manager shall not be liable for any shortfall in the Endowment resulting from CPM's decision to make such an expenditure.

1.5. Reimburse CDFW. The project owner shall reimburse CDFW for all reasonable costs incurred by CDFW related to transfer of HM lands to CDFW, including, but not limited to transaction fees, account set-up fees, administrative fees, title and documentation review and related title transactions, costs incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW.

2. Security: ~~The project owner may proceed with Burrowing Owl Exclusion Activities only after the project owner has ensured funding (Security) to complete any activity required by Habitat~~

~~Management Land Acquisition (subsection 2.7) that has not been completed before Covered Activities begin. The project owner shall provide Security. If required, the Security described in these measures shall be provided~~ as follows:

- 2.1. Security Amount. The Security shall be in the amount of \$1,741,117.00 or in the amount identified in Cost Estimates (Section 1.1, above) specific to the obligation that has not been completed. This amount is determined by the CPM based on the cost estimates sufficient for the CDFW or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring.
- 2.2. Security Form. The Security shall be in the form of an irrevocable letter of credit (template to be provided by the CPM upon request), or another form of Security approved in advance in writing by the CPM, in consultation with CDFW.
- ~~2.3. Security Timeline. The Security shall be provided to CPM before starting preconstruction site mobilization.~~
- 2.4. Security Holder. The Security shall be held by the CPM or in a manner approved in advance in writing by the CPM
- 2.5. Security Transmittal. The project owner shall transmit security to the CPM by way of an approved instrument such as an escrow agreement, irrevocable letter of credit, or other.
- 2.6. Security Drawing. The Security shall allow the CPM to draw on the principal sum the CPM, in its sole discretion, determines that the project owner has failed to comply with the conditions of certification for burrowing owl (i.e. **BIO-12** and **BIO-13**)
- 2.7. Security Release. The Security (or any portion of the Security then remaining) shall be released to the project owner after the CPM has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by one of the following either:

Credit Purchase

- Copy of Bill of Sale(s) and Payment Receipt(s) or Credit Transfer Agreement for the purchase of burrowing owl credits.

Habitat Management Land Acquisition

- Written documentation of the acquisition of the HM lands;
- Copies of all executed and recorded conservation easements; and
- ~~Written confirmation from the approved Endowment Manager of its receipt of the full Endowment.~~

Documentation Success Criteria Have been Met

- Written documentation from a Qualified Biologist confirming burrowing owl presence on the Project site has been maintained or increased following the end of the five-year monitoring period, relative to that identified in Project site surveys conducted in 2022-2025,

3. Even if Security is provided, the project owner must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements no later than 24 months following the end of the five-year monitoring period described above~~from the start of pre-construction site mobilization.~~

The project owner shall provide Security in the amount of \$1,741,117.00 in the form of an irrevocable letter of credit or another form of Security approved to the CPM ~~prior to the start of construction~~within 30 days following the end of the five-year monitoring period described above.

**Verification:** The project owner shall implement the Swainson's Hawk Conservation Strategy and Foraging Habitat Revegetation and Management Plan and monitor for five years. If success criteria are not met, the project owner shall provide Security in the amount of in the form of an irrevocable letter of credit or another form of Security approved to the CPM ~~prior to the start of pre-construction site mobilization~~, or the project owner may alternatively submit to the CPM a copy of the Bill of Sale(s) and Payment Receipt ~~prior to initiating pre-construction site mobilization or within 24 months from issuance of the pre-construction site mobilization if Security is provided.~~