

# KEY ENERGY STORAGE PROJECT

Final Environmental Impact Report

EIR No. 8189

CUP No. 3734

State Clearinghouse No. 2022070414

Prepared for  
Fresno County Department of  
Public Works and Planning

June 2024





# KEY ENERGY STORAGE PROJECT

Final Environmental Impact Report

EIR No. 8189

CUP No. 3734

State Clearinghouse No. 2022070414

Prepared for  
Fresno County Department of  
Public Works and Planning

June 2024

787 The Alameda  
Suite 250  
San Jose, CA 95126  
408.660.4000  
[esassoc.com](http://esassoc.com)



Atlanta	Palm Beach County	San Diego
Bend	Pasadena	San Francisco
Irvine	Pensacola	San Jose
Los Angeles	Petaluma	Sarasota
Mobile	Portland	Seattle
Oakland	Rancho Cucamonga	Tampa
Orlando	Sacramento	Thousand Oaks

202200028

Cover photo: Key Energy Storage, LLC, 2021

**OUR COMMITMENT TO SUSTAINABILITY** | ESA helps a variety of public and private sector clients plan and prepare for climate change and emerging regulations that limit GHG emissions. ESA is a registered assessor with the California Climate Action Registry, a Climate Leader, and founding reporter for the Climate Registry. ESA is also a corporate member of the U.S. Green Building Council and the Business Council on Climate Change (BC3). Internally, ESA has adopted a Sustainability Vision and Policy Statement and a plan to reduce waste and energy within our operations. This document was produced using recycled paper.

# CONTENTS

## Key Energy Storage Project Final Environmental Impact Report

	<u>Page</u>
<b>1. Introduction.....</b>	<b>1-1</b>
1.1 Purpose of this Document.....	1-1
1.2 Project Overview.....	1-2
1.3 Organization of the Final EIR.....	1-2
<b>2. Responses to Comments.....</b>	<b>2-1</b>
2.1 Public Review of the Draft EIR.....	2-1
2.2 Availability of the Final EIR.....	2-1
2.3 Approach to Comment Responses.....	2-2
2.4 Responses to Comments on the Draft EIR.....	2-2
2.4.1 Letter A: California Department of Conservation, Geologic Energy Management Division.....	2-6
2.4.2 Letter B: California Department of Transportation.....	2-9
2.4.3 Letter C: San Joaquin Valley Air Pollution Control District.....	2-17
2.4.4 Letter D: Westlands Water District.....	2-43
2.4.5 Letter E: California Department of Fish and Wildlife.....	2-47
2.4.6 Letter F: Adams Broadwell Joseph & Cardozo.....	2-147
2.4.7 Letter G: Defenders of Wildlife.....	2-191
2.4.8 Letter H: Pacific Gas and Electric Company.....	2-199
<b>3. Revisions to the Draft EIR.....</b>	<b>3-1</b>
3.1 Introduction.....	3-1
3.2 Text Changes to the Draft EIR.....	3-1
3.2.1 Executive Summary.....	3-1
3.2.2 Chapter 2, Project Description.....	3-2
3.2.3 Section 3.3, Agriculture and Forest Resources.....	3-2
3.2.4 Section 3.4, Air Quality.....	3-3
3.2.5 Section 3.5, Biological Resources.....	3-4
3.2.6 Section 3.19, Utilities and Service Systems.....	3-6
3.2.7 Appendix I, Land Use and Planning.....	3-7

### Appendices

- A. Public Notices
- B. Recipients of the Final EIR

### Figure

Figure 1 Conservation Value of the Project Site.....	2-193
--	-------

### Tables

Table 2-1 Commenters on the Key Energy Storage Project Draft EIR.....	2-2
---	-----

This page intentionally left blank

# CHAPTER 1

---

## Introduction

### 1.1 Purpose

This Final Environmental Impact Report (EIR) (EIR No. 8189) is an informational document that examines and discloses the potential environmental impacts of the Key Energy Storage Project (Project). The Project would not generate electricity. Instead, it would receive electricity from the proposed point of interconnection (POI) with the regional electric transmission system at the existing Pacific Gas and Electric Company (PG&E) Gates Substation, store the power, and then provide it back to the grid in times of energy demand. Key Energy Storage, LLC (Applicant) proposes the Project on approximately 260 acres of private property in western Fresno County within the approximately 318-acre area that consists of Assessor's Parcel Numbers (APNs) 085-040-58, 085-040-36, and 085-040-37 (Project site).

The County of Fresno (County) will rely on this EIR, along with other information in the formal record, in deciding whether to approve, approve with modifications, or deny land use applications for the Project that require discretionary approval, including Unclassified Conditional Use Permit (CUP) No. 3734 and the cancellation of Williamson Act Contract No. 2068 as it applies to the Project's northern parcel (APN 085-040 058). The County is the lead agency for reviewing the environmental impacts of the Project pursuant to the California Environmental Quality Act (CEQA) and has directed the preparation of this Final EIR. The County will use this Final EIR, in conjunction with other information developed in the County's formal record, when considering whether to certify the Final EIR and whether to approve the Applicant's applications to the County for necessary land use approvals. Other agencies with trustee responsibilities or permitting authority over the Project also may rely on this document in deciding whether to approve permits or issue other approvals for the Project.

This Final EIR consists of the Draft Environmental Impact Report (Draft EIR) published September 20, 2023, together with the responses to comments provided in Chapter 2 and revisions to the Draft EIR that are identified in Chapter 3. The Draft EIR detailed the Project; evaluated and described the potential environmental impacts associated with Project construction, operation and maintenance, and decommissioning; identified those impacts that could be significant; and presented mitigation measures that, if adopted, would avoid or minimize these impacts. The Draft EIR also evaluated alternatives to the Project, including a Noncontracted Lands Alternative, Reduced Project Alternative, and No Project Alternative. The Draft EIR and a digital copy of this Final EIR are contained on the USB provided with printed copies of this Final EIR and are available for viewing at the County Department of Public Works and Planning.

## 1.2 Project Overview

The Applicant proposes to construct, operate, maintain, and decommission the Project on an approximately 260-acre site located 4 miles southwest of the City of Huron, approximately 1,700 feet northeast of Interstate 5 (I-5), immediately south of West Jayne Avenue, between I-5 and South Lassen Avenue (State Route 269), and adjacent to existing Gates Substation, which is owned and operated by PG&E.

The Project would consist of batteries using lithium-ion and/or iron-flow storage technology. On-site support facilities would include a collector substation; power conversion systems, including bi-directional inverters, transformers, and associated connection lines; heating, ventilation, and air conditioning units; fencing; access roads; a supervisory control and data acquisition (SCADA) system; and security lighting. Diesel generators may be needed temporarily during construction, for substation purposes, or to power water pumps for an existing on-site well.

To interconnect the Project, the Applicant and PG&E would construct, operate, and maintain a new 2,500-foot-long (up to 0.5-mile) 500-kilovolt transmission line between the Project site and the Gates Substation. This line would be installed on new lattice steel towers, each up to 200 feet tall, which would be spaced at approximately 500-foot intervals. PG&E's interconnection infrastructure work also would include other modifications within the existing boundaries of the Gates Substation as well as at PG&E's existing Midway Substation, which is located in Buttonwillow, an unincorporated community in Kern County, California.

## 1.3 Organization of the Final EIR

Consistent with CEQA Guidelines §15132, this Final EIR consists of the following elements:

- a) The Draft EIR;
- b) Comments received on the Draft EIR;
- c) A list of persons, organizations, and public agencies that commented on the Draft EIR;
- d) The County's responses to significant environmental points raised in the review and consultation process; and
- e) Other information added by the County.



# CHAPTER 2

---

## Responses to Comments

### 2.1 Public Review of the Draft EIR

The County advised interested parties that a Draft EIR for the Project was available for review by filing a Notice of Completion of the Draft EIR with the State Clearinghouse on September 20, 2023, by publishing notice of the availability of the Draft EIR (NOA) in The Business Journal on September 21, 2023, by posting the Draft EIR on the County’s website (<http://www.co.fresno.ca.us/EIR>), and by mailing notification of the document’s availability to the Project’s distribution list. The NOA briefly described the Project, identified locations where the Draft EIR and referenced documents would be available for review, and solicited comments on the Draft EIR during the comment period. The comment period began on September 21, 2023, was extended at the request of an interested party, and concluded on November 21, 2023. Late-received comments were accepted through March 8, 2024. All interested parties were invited to submit written comments regarding the adequacy and accuracy of the analysis and determinations made in the Draft EIR. Responses to comments received are provided in this Chapter. Public notices about the Draft EIR and a copy of the list used in distributing it are included in **Appendix A**.

### 2.2 Availability of the Final EIR

A copy of the Final EIR is being provided to all who commented on the Draft EIR. Notice of the availability of the Final EIR and details about how to access it also are being provided to all others identified on the County’s distribution list for this Project. Recipients of the Final EIR are identified in **Appendix B**.

An electronic copy of the Final EIR is available on the County’s website: <http://www.co.fresno.ca.us/EIR>. Printed and electronic copies of the Final EIR, as well as electronic copies of reference materials, are available for review during normal working hours at the Fresno County Public Works and Planning Department, 2220 Tulare Street, Fresno.

A printed copy of the Final EIR that includes an electronic copy of the Final EIR and copies of all reference materials relied upon in its drafting will be provided to the libraries listed below with a request that the materials remain available for public review for at least 60 days:

- Fresno County Main Library, Reference Department, 2420 Mariposa Street, Fresno; and
- Huron Public Library, 36050 0 St, Huron.

Electronic copies of the Final EIR and all documents referenced in the Final EIR also are available upon request by contacting Jeremy Shaw at (559) 600-4207 or by email at [jshaw@FresnoCountyCA.gov](mailto:jshaw@FresnoCountyCA.gov).

## 2.3 Approach to Comment Responses

The County received eleven (11) letters from eight (8) entities regarding the Draft EIR. Copies of the letters are provided in Section 2.4, *Responses to Comments on the Draft EIR*.

**TABLE 2-1  
COMMENTERS ON THE KEY ENERGY STORAGE PROJECT DRAFT EIR**

Letter	Name	Agency or Interested Party	Date
A	Victor Medrano	California Department of Conservation, Geologic Energy Management Division	September 27, 2023
B	David Padilla, Branch Chief, Transportation Planning - North	California Department of Transportation	November 21, 2023
C	Mark Montelongo, Program Manager; Patia Siong, Supervising Air Quality Specialist	San Joaquin Valley Air Pollution Control District	October 4, 2023 November 6, 2023
D	Russ Freeman, P.E., Deputy General Manager - Resources	Westlands Water District	November 6, 2023
E	Bob Stafford for Julie A. Vance, Regional Manager	California Department of Fish and Wildlife	November 27, 2023
F	Alex Stukan	Adams Broadwell Joseph & Cardozo on behalf of California Unions for Reliable Energy ("CURE")	October 30, 2023 November 6, 2023 March 8, 2024
G	Sophia Markowska, Senior California Representative	Defenders of Wildlife	November 6, 2023
H	Danielle Wilson, Contract Senior Land Planner	Pacific Gas and Electric Company (PG&E)	November 6, 2023

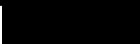
SOURCE: Compiled by ESA, March 2024.

Under CEQA, the lead agency "shall evaluate comments on environmental issues" received from people who have reviewed a draft EIR and prepare written responses that "describe the disposition of each significant environmental issue that is raised by commenters" (Public Resources Code §21091(d); CEQA Guidelines §15088(c)). The responses to comments in this chapter are intended to provide clarification and refinement of information presented in the Draft EIR.

## 2.4 Responses to Comments on the Draft EIR

Following are the eleven (11) comment letters regarding the Draft EIR followed by the responses to those comments.

**Comment Letter A**



**Attachments:** Jeremy Shaw\_1012539\_20220727\_055856\_CSWR Report - Signed.pdf

---

**From:** Medrano, Victor@DOC <[Victor.Medrano@conservation.ca.gov](mailto:Victor.Medrano@conservation.ca.gov)>

**Sent:** Wednesday, September 27, 2023 11:39 AM

**To:** Maria Hensel <[MHensel@esassoc.com](mailto:MHensel@esassoc.com)>

**Cc:** [jshaw@fresnocountyca.gov](mailto:jshaw@fresnocountyca.gov)

**Subject:** RE: Notice of Availability Draft EIR for Key Energy Storage Project SCH 2022070414

Good morning Ms. Hensel,

Comments regarding this project were sent on July 27, 2022. At this time, we have no further comment since there has not been a change to the Assessor Parcel Numbers (APNs).

Please see attached document of our previous comments.

A-1  
↑  
A-2

**Victor D. Medrano**

Best regards,



California  
**Department of Conservation**  
Geologic Energy Management Division

Gavin Newsom, Governor  
David Shabazian, Director  
715 P Street, MS 1803  
Sacramento, CA. 95814  
T: (916) 445-5986

07/27/2022

Jeremy Shaw  
2220 Tulare Street, Sixth Floor, Fresno, CA 93721, USA  
jshaw@FresnoCountyCA.gov

Construction Site Well Review (CSWR) ID: 1012539

Assessor Parcel Number(s): 08504058S, 08504036S, 08504037S

Property Owner(s): Key Energy Storage, LLC

Project Location Address: 4 miles SW City of Huron, 0.4 mile E of I-5 immediately south of W. Jayne Avenue, Huron, California 93234

Project Title: Key Energy Storage Project, Unclassified Conditional Use Permit Application No. 3734 & EIR No. 8189

Public Resources Code (PRC) § 3208.1 establishes well reabandonment responsibility when a previously plugged and abandoned well will be impacted by planned property development or construction activities. Local permitting agencies, property owners, and/or developers should be aware of, and fully understand, that significant and potentially dangerous issues may be associated with development near oil, gas, and geothermal wells.

The California Geologic Energy Management Division (CalGEM) has received and reviewed the above referenced project dated 7/27/2022. To assist local permitting agencies, property owners, and developers in making wise land use decisions regarding potential development near oil, gas, or geothermal wells, the Division provides the following well evaluation.

The project is located in Fresno County, within the boundaries of the following fields:

N/A

Our records indicate there are no known oil or gas wells located within the project boundary as identified in the application.

**Comment Letter A**

- Number of wells Not Abandoned to Current Division Requirements as Prescribed by Law and Projected to Be Built Over or Have Future Access Impeded by this project: 0
- Number of wells Not Abandoned to Current Division Requirements as Prescribed by Law and Not Projected to Be Built Over or Have Future Access Impeded by this project: 0
- Number of wells Abandoned to Current Division Requirements as Prescribed by Law and Projected to Be Built Over or Have Future Access Impeded by this project: 0
- Number of wells Abandoned to Current Division Requirements as Prescribed by Law and Not Projected to Be Built Over or Have Future Access Impeded by this project: 0

As indicated in PRC § 3106, the Division has statutory authority over the drilling, operation, maintenance, and abandonment of oil, gas, and geothermal wells, and attendant facilities, to prevent, as far as possible, damage to life, health, property, and natural resources; damage to underground oil, gas, and geothermal deposits; and damage to underground and surface waters suitable for irrigation or domestic purposes. In addition to the Division's authority to order work on wells pursuant to PRC §§ 3208.1 and 3224, it has authority to issue civil and criminal penalties under PRC §§ 3236, 3236.5, and 3359 for violations within the Division's jurisdictional authority. The Division does not regulate grading, excavations, or other land use issues.

If during development activities, any wells are encountered that were not part of this review, the property owner is expected to immediately notify the Division's construction site well review engineer in the Inland district office, and file for Division review an amended site plan with well casing diagrams. The District office will send a follow-up well evaluation letter to the property owner and local permitting agency.

Should you have any questions, please contact me at (661) 326-6016 or via email at [Victor.Medrano@conservation.ca.gov](mailto:Victor.Medrano@conservation.ca.gov).

Sincerely,

Jeff Kimber for  
William Long  
*Jeff Kimber*  
Acting District Deputy

cc: Jeremy Shaw - Submitter

### 2.4.1 Letter A: California Department of Conservation, Geologic Energy Management Division

- A-1 The Geologic Energy Management Division's July 27, 2022, comments were received during the scoping period that followed the County's issuance of a Notice of Preparation of a Draft EIR for the Project. The July 27, 2022, letter was included in Draft EIR Appendix A, *Scoping Report*, and its content was considered in the preparation of the Draft EIR.
- A-2 Receipt of this duplicate copy of the Division's July 27, 2022, letter is acknowledged.

California Department of Transportation

DISTRICT 6 OFFICE
1352 WEST OLIVE AVENUE | P.O. BOX 12616 | FRESNO, CA 93778-2616
(559) 908-7064 | FAX (559) 488-4195 | TTY 711
www.dot.ca.gov



November 21, 2023

FRE-5-4.456
DEIR – Draft EIR
Key Energy Storage Project DEIR (EIR 8189)
SCH # 2022070414
https://ld-igr-gts.dot.ca.gov/district/6/report/25490

SENT VIA EMAIL

Jeremy Shaw, Planner
Development Services and Capital Projects Division
County of Fresno – Department of Public Works and Planning
2220 Tulare St., 6th Floor
Fresno, CA 93721

Dear Mx. Shaw:

Thank you for the opportunity to review the Draft Environmental Report (DEIR) for the Key Energy Storage Project, which proposes to construct an energy storage system and appurtenant transmission infrastructure on an approximately 208-acre portion of three parcels (318-acres). The project includes a 500-kilovolt overhead generation tie line, which would extend north to the adjacent Pacific Gas and Electric Gates Substation. The facility, once constructed would be operated remotely with periodic augmentation of batteries and weekly on-site maintenance requiring one or two workers in a light utility truck. The project is located on the southeast corner of Lake Avenue and Jayne Avenue, approximately 1.5 miles east of the interstate 5 (I-5) and Jayne Avenue interchange, and 1.6 miles west of State Route (SR) 269 and Jayne Avenue intersection.

B-1
B-2
B-3

The project was previously reviewed as part of the Notice of Preparation (NOP) for a DEIR and Unclassified Conditional Use Permit (CUP) No. 3734 and Environmental Impact Report (EIR) No. 8189 applications. A Trip Generation and Distribution document for the project was also reviewed. Our office has submitted comment letters dated February 17, 2022, and August 24, 2022.

B-4

“Provide a safe and reliable transportation network that serves all people and respects the environment”

Jeremy Shaw, Key Energy Storage Project DEIR (EIR 8189)  
November 21, 2023  
Page 2

Caltrans provides the following comments consistent with the State's smart mobility goals that support a vibrant economy and sustainable communities:

1. The traffic count data submitted in Figure 2-2 of the Transportation Impact Analysis (TIA) do not appear to be reasonable compared to existing conditions. Examples include:
  - The left turn traffic volume from westbound Jayne Avenue to I-5 northbound on-ramp shows "0".
  - The left turn traffic volume from westbound Jayne Avenue to I-5 southbound on-ramp shows "5".
  - The I-5 southbound off-ramp shows a total volume of "10".

These volumes are not consistent with Caltrans' existing database. The Caltrans 2019 data shows the Average Daily Traffic (ADT) for the four on and off-ramps ranges from 1,400 to 1,700. It recommended that the traffic count data be reviewed for accuracy and intersection re-analyzed.

2. The trip distribution map on Figure 3-1 shows 35% on both northbound and southbound I-5. However, Figure 3-2 and 3-3 shows "0" left turn volume from westbound Jayne Avenue to I-5 northbound on-ramp. It is recommended that the data be reviewed for accuracy and the intersections re-analyzed.
3. The DEIR notes the implementation Mitigation Measure 3.10-2: Construction Traffic Management Plan, which includes the preparation and submittal of a traffic management plan to County of Fresno and Caltrans for approval. It is requested that Caltrans be provided an opportunity to review and comment on the traffic management plan when available.
4. As mentioned in previous comment letters, a transportation permit is required for Oversized and Overweight (OSOW) vehicles that utilize the State Routes. These permits are issued through the Office of Commercial Vehicle Operations and can be contacted at **(916) 322-1297**.

If you have any other questions, please call or email Christopher Xiong at (559) 908-7064 or [Christopher.Xiong@dot.ca.gov](mailto:Christopher.Xiong@dot.ca.gov).

Sincerely,



DAVID PADILLA, Branch Chief  
Transportation Planning – North

B-5  
B-6  
B-7  
B-8



## 2.4.2 Letter B: California Department of Transportation

- B-1 This summary of Project details does not raise any "significant environmental issues" as contemplated by CEQA Guidelines Section 15088(c), such as any recommendations or objections at variance with information or conclusions documented in the Draft EIR, and is consistent with the information provided in Draft EIR Chapter 2, *Project Description*.
- B-2 This summary of Project details is correct that the Project would be operated and monitored, 7 days a week, through the proposed a supervisory control and data acquisition (SCADA) system and that routine on-site maintenance would include augmentation of batteries, among other things. However, as explained in Draft EIR Section 2.5.7, *Energy Storage System Operation and Maintenance* (page 2-21), "up to seven on-site staff members" would be onsite during operation and maintenance of the Project. Further, "Unscheduled (i.e., emergency) maintenance activities may be required from time to time. Such maintenance could require several workers in light utility trucks to visit the facility site as needed" (Id.).
- B-3 This summary of Project details is consistent with the information provided in Draft EIR Chapter 2, *Project Description*.
- B-4 Copies of the Department's February 17 and August 24, 2022, letters were included in Draft EIR Appendix A, *Scoping Report*. Their content was considered in the preparation of the Draft EIR. A Trip Generation – Distribution Memorandum dated October 28, 2022, and a Transportation Impact Analysis dated February 15, 2023, were prepared for the Project and included in Draft EIR Appendix K, *Transportation*.
- B-5 The Transportation Impact Analysis included in Draft EIR Appendix K, *Transportation*, is consistent with the analysis provided in Draft EIR Section 3.18, *Transportation*. Acknowledging that Caltrans' existing database may include other numbers, the traffic study conducted for the Project includes site-specific counts at the I-5/Jayne Avenue intersection. Traffic counts were collected on Thursday, January 19<sup>th</sup>, which would be a normal period for the collection of such data. The other intersections to the east for which traffic counts were taken reflect the same traffic numbers; this consistency suggests that the counts were correct and that the counts at the I-5/Jayne Avenue intersection do not reflect an anomaly. Based on this review of the traffic count data, the intersections (i.e., the left turn from westbound Jane Avenue to the I-5 north onramp at the intersection of Jayne Avenue, Butte Avenue, and the I-5 northbound on- and off-ramps, on the east side of I-5) have not been re-analyzed.
- B-6 See Response B-5 regarding why the I-5/Jayne Avenue intersection has not been reanalyzed. Further, there are limited sources of traffic to the east of the intersection that could contribute to traffic using the northbound onramp and two substantial interchanges to the north and south of that interchange that would likely receive traffic from areas to the east utilizing northbound I-5. This comment does not provide substantial evidence that the impacts of the Project would be more significant than described in the Draft EIR. Because site-specific traffic counts were collected, the Draft EIR contains substantial

evidence of the accuracy of the traffic data. Therefore, the County declines to reanalyze the northbound and southbound intersections.

B-7 As drafted, Mitigation Measure 3.10-2: Construction Traffic Management Plan says, “At least 30 days prior to the issuance of construction or building permits... the Project owner and/or its construction contractor shall prepare and submit a traffic management plan to the Fresno County Public Works Department and Caltrans District 6, as appropriate, for approval.” For this reason, no change to the measure is needed to respond to the request that Caltrans be provided an opportunity to review and comment on the traffic management plan.

B-8 Consistent with this comment, Section 2.6, *Permits and Approvals*, acknowledges that a transportation permit may be required to be obtained from Caltrans. It says: “In addition, some construction deliveries to the Project site could be oversized or overweight. Vehicles providing deliveries would be subject to size, weight, and load restrictions pursuant to California Vehicle Code Division 15, including permits for oversize or overweight loads as required by Vehicle Code Section 35780 and California Code of Regulations Title 21 Section 1411.1 et seq.” No change has been made in response to this comment.



November 6, 2023

Jeremy Shaw  
County of Fresno  
Department of Public Works and Planning  
2220 Tulare Street, Suite B Annex  
Fresno, CA 93721

**Project: Draft Environmental Impact Report – Key Energy Storage Project**

**District CEQA Reference No: 20230845**

Dear Mr. Shaw:

The San Joaquin Valley Air Pollution Control District (District) has reviewed the Draft Environmental Impact Report (DEIR) from the County of Fresno (County) for the Key Energy Storage Project. Per the DEIR, the project consists of the construction, operation, maintenance and eventual decommissioning of a battery energy storage system on approximately 260 acres (Project). The Project is located approximately four miles southwest of the City of Huron, 1,700 feet northeast of Interstate-5 (I-5), immediately south of Jayne Avenue, between I-5 and South Lassen Avenue.

C-1

The District offers the following comments at this time regarding the Project:

**1) Project Related Emissions**

Based on information provided in the DEIR, Project specific annual criteria pollutant emissions from construction and operation are not expected to exceed any of the significance thresholds as identified in the District’s Guidance for Assessing and Mitigating Air Quality Impacts (GAMAQI): <https://www.valleyair.org/transportation/GAMAQI.pdf>.

C-2

**2) District Rules and Regulations**

The District issues permits for many types of air pollution sources, and regulates some activities that do not require permits. A project subject to District rules and regulations would reduce its impacts on air quality through compliance with the District’s regulatory framework. In general, a regulation is a collection of individual rules, each of which deals with a specific topic. As an example, Regulation II

C-3

**Samir Sheikh**  
Executive Director/Air Pollution Control Officer

**Northern Region**  
4800 Enterprise Way  
Modesto, CA 95356-8718  
Tel: (209) 557-6400 FAX: (209) 557-6475

**Central Region (Main Office)**  
1990 E. Gettysburg Avenue  
Fresno, CA 93726-0244  
Tel: (559) 230-6000 FAX: (559) 230-6061

**Southern Region**  
34946 Flyover Court  
Bakersfield, CA 93308-9725  
Tel: (661) 392-5500 FAX: (661) 392-5585

[www.valleyair.org](http://www.valleyair.org)    [www.healthyairliving.com](http://www.healthyairliving.com)

Printed on recycled paper.

(Permits) includes District Rule 2010 (Permits Required), Rule 2201 (New and Modified Stationary Source Review), Rule 2520 (Federally Mandated Operating Permits), and several other rules pertaining to District permitting requirements and processes.

The list of rules below is neither exhaustive nor exclusive. Current District rules can be found online at: [www.valleyair.org/rules/1ruleslist.htm](http://www.valleyair.org/rules/1ruleslist.htm). To identify other District rules or regulations that apply to future projects, or to obtain information about District permit requirements, the project proponents are strongly encouraged to contact the District’s Small Business Assistance (SBA) Office at (559) 230-5888.

**2a) District Rules 2010 and 2201 - Air Quality Permitting for Stationary Sources**

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

This Project may be subject to District Rule 2010 (Permits Required) and Rule 2201 (New and Modified Stationary Source Review) and may require District permits. Prior to construction, the Project proponent should submit to the District an application for an ATC. For further information or assistance, the project proponent may contact the District’s SBA Office at (559) 230-5888.

**2b) District Rule 9510 - Indirect Source Review (ISR)**

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

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



C-3  
cont.

Per Section 5.0 of the ISR Rule, an Air Impact Assessment (AIA) application is required to be submitted no later than applying for project-level approval from a public agency. As of the date of this letter, the District has not received an AIA application for this Project. Please inform the project proponent to immediately submit an AIA application to the District to comply with District Rule 9510 so that proper mitigation and clean air design under ISR can be incorporated into the Project's design. One AIA application should be submitted for the entire Project.

Information about how to comply with District Rule 9510 can be found online at: <http://www.valleyair.org/ISR/ISRHome.htm>.

The AIA application form can be found online at: <http://www.valleyair.org/ISR/ISRFormsAndApplications.htm>.

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

**2c) District Rule 9410 (Employer Based Trip Reduction)**

The Project may be subject to District Rule 9410 (Employer Based Trip Reduction) if the project would result in employment of 100 or more "eligible" employees. District Rule 9410 requires employers with 100 or more "eligible" employees at a worksite to establish an Employer Trip Reduction Implementation Plan (eTRIP) that encourages employees to reduce single-occupancy vehicle trips, thus reducing pollutant emissions associated with work commutes. Under an eTRIP plan, employers have the flexibility to select the options that work best for their worksites and their employees.

Information about District Rule 9410 can be found online at: [www.valleyair.org/tripreduction.htm](http://www.valleyair.org/tripreduction.htm).

For additional information, you can contact the District by phone at 559-230-6000 or by e-mail at [etrip@valleyair.org](mailto:etrip@valleyair.org)

**2d) District Rule 4002 (National Emissions Standards for Hazardous Air Pollutants)**

In the event an existing building will be renovated, partially demolished or removed, the Project may be subject to District Rule 4002. This rule requires a thorough inspection for asbestos to be conducted before any regulated facility is demolished or renovated. Information on how to comply with District Rule 4002 can be found online at: <http://www.valleyair.org/busind/comply/asbestosbultn.htm>.



C-3  
cont.

**2e) District Rule 4601 (Architectural Coatings)**

The Project may be subject to District Rule 4601 since it may utilize architectural coatings. Architectural coatings are paints, varnishes, sealers, or stains that are applied to structures, portable buildings, pavements or curbs. The purpose of this rule is to limit VOC emissions from architectural coatings. In addition, this rule specifies architectural coatings storage, cleanup and labeling requirements. Additional information on how to comply with District Rule 4601 requirements can be found online at:  
<http://www.valleyair.org/rules/currnrules/r4601.pdf>

**2f) District Regulation VIII (Fugitive PM10 Prohibitions)**

The project proponent may be required to submit a Construction Notification Form or submit and receive approval of a Dust Control Plan prior to commencing any earthmoving activities as described in Regulation VIII, specifically Rule 8021 – *Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities*.

Should the project result in at least 1-acre in size, the project proponent shall provide written notification to the District at least 48 hours prior to the project proponents intent to commence any earthmoving activities pursuant to District Rule 8021 (Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities). Also, should the project result in the disturbance of 5-acres or more, or will include moving, depositing, or relocating more than 2,500 cubic yards per day of bulk materials, the project proponent shall submit to the District a Dust Control Plan pursuant to District Rule 8021 (Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities). For additional information regarding the written notification or Dust Control Plan requirements, please contact District Compliance staff at (559) 230-5950.

The application for both the Construction Notification and Dust Control Plan can be found online at:

<https://www.valleyair.org/busind/comply/PM10/forms/DCP-Form.docx>

Information about District Regulation VIII can be found online at:

[http://www.valleyair.org/busind/comply/pm10/compliance\\_pm10.htm](http://www.valleyair.org/busind/comply/pm10/compliance_pm10.htm)

**2g) Other District Rules and Regulations**

The Project may also be subject to the following District rules: Rule 4102 (Nuisance) and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations).



C-3  
cont.

**3) District Comment Letter**

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

I C-4

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

↓ C-5

Sincerely,

Brian Clements  
Director of Permit Services



Mark Montelongo  
Program Manager



**From:** Patia Siong <Patia.Siong@valleyair.org>  
**Sent:** Wednesday, October 4, 2023 4:37 PM  
**To:** Maria Hensel  
**Cc:** Matt Crow; Janna Scott; Jeremy Shaw (jshaw@fresnocountyca.gov)  
**Subject:** RE: Notice of Availability Draft EIR for Key Energy Storage Project SCH 2022070414

Thank you Maria!

---

**From:** Maria Hensel <MHensel@esassoc.com>  
**Sent:** Wednesday, October 4, 2023 2:16 PM  
**To:** Patia Siong <Patia.Siong@valleyair.org>  
**Cc:** Matt Crow <Matt.Crow@valleyair.org>; Janna Scott <JScott@esassoc.com>; Jeremy Shaw (jshaw@fresnocountyca.gov) <jshaw@fresnocountyca.gov>  
**Subject:** [SPAM] RE: Notice of Availability Draft EIR for Key Energy Storage Project SCH 2022070414

Hello Patia,  
The environmental documents including the DEIR and its appendices can be accessed through Fresno County's environmental project website. See link below.

[EIR 8189 Key Energy Storage Project - County of Fresno \(fresnocountyca.gov\)](https://www.fresnocountyca.gov)

Let us know if you have issues accessing the files.  
Thank you,

**Maria Hensel**  
Senior Environmental Planner

**ESA | Environmental Science Associates**

*We've Moved!* Please update your records: 775 Baywood Drive, Suite 100, Petaluma, CA 94954.

---

**From:** Patia Siong <Patia.Siong@valleyair.org>  
**Sent:** Wednesday, October 4, 2023 1:50 PM  
**To:** Maria Hensel <MHensel@esassoc.com>  
**Cc:** Matt Crow <Matt.Crow@valleyair.org>  
**Subject:** RE: Notice of Availability Draft EIR for Key Energy Storage Project SCH 2022070414

Hi Maria,

Is there any way we can retrieve an electronic version of this DEIR? Also, can the health risk related analysis be provided to us electronically to us as well?

If you have any questions, please feel free to contact either me or Matt at 559-230-5931 (cc'd here).

Thank you,  
Patia Siong  
Supervising Air Quality Specialist  
559-230-5930



C-5  
cont.



### 2.4.3 Letter C: San Joaquin Valley Air Pollution Control District

- C-1 This summary of Project details does not raise any "significant environmental issues" as contemplated by CEQA Guidelines Section 15088(c), such as any recommendations or objections at variance with information or conclusions documented in the Draft EIR, and is consistent with the information provided in Draft EIR Chapter 2, *Project Description*.
- C-2 This summary of Project-related criteria pollutant emissions is consistent with respect to Impact 3.4-1 and Impact 3.4-2 on pages 3.4-18 through 3.4-23 of the Draft EIR, which conclude that the Project would cause less-than-significant impacts because the Project's criteria pollutant emissions would not conflict with San Joaquin Valley Air Pollution Control District (SJVAPCD)'s air quality plans, would not result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard, and would not violate any air quality standard or contribute substantially to an existing or projected air quality violation using the SJVAPCD's significance thresholds identified in its Guidance for Assessing and Mitigating Air Quality Impacts (GAMAQI).
- C-3 Consistent with this comment, Draft EIR Section 2.6, *Permits and Approvals* (p. 2-29), discloses that SJVAPCD approval could be required in connection with Indirect Source Review for stationary and/or mobile sources and/or for a Dust Control Plan pursuant to District Regulation VIII.

Current district regulations and rules were reviewed and evaluated as part of the Draft EIR's analysis of the Project's potential impacts to air quality. See Draft EIR Section 3.4.1.3, *Regulatory Setting* (pages 3.4-11 and following), which summarizes Rule 2201 (New and Modified Stationary Source Review Rule), Rule 4101 (Visibility), Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations), Regulation VIII and Rule 8021 (Fugitive PM<sub>10</sub> Prohibitions), and Rule 9510 (Indirect Source Review). Each of these rules would apply to the Project.

Draft EIR Section 3.4.1.3 does not discuss Rule 2010, *Permits Required*, which would also apply to the Project. The County has added a summary of SJVAPCD Rule 2010 to Draft EIR Section 3.4.1.3, under the *Applicable Rules* heading (p. 3.4-11). The revision, also shown in Section 3.2.4, is as follows:

#### Rule 2010 (Permits Required)

Rule 2010 requires any person constructing, altering, replacing, or operating any source that emits emissions, such as the Project's proposed generators, to obtain an Authority to Construct and then a Permit to Operate. Before initiation of any such activities associated with the source can begin, authorization referred to as an Authority to Construct must be provided by the Air Pollution Control Officer (APCO). Before any new or modified source initiated under an Authority to

Construct can begin operation, a written Permit to Operate is required to be obtained from the APCO.

It does not appear that SJVAPCD Rule 9410 (Employer Based Trip Reduction) governs the Project because the Project would result in fewer than 100 “eligible employees,” which is defined as employees that are not: emergency health and safety employees; employment agency personnel, farm workers; field personnel; field construction workers; home garage employees; on-call employees; part-time employees; seasonal employees; volunteers; or employees that do not report to work during the peak period. As explained in Draft EIR Section 2.5.6.2 (page 2-18), the Project’s peak daily workforce during construction would be up to approximately 150 workers. Operation and maintenance would require up to seven on-site staff members to be on-site (Draft EIR Section 2.5.7, page 2-21). The Project’s decommissioning and site restoration workforce would be similar to or less than what was needed for construction (Draft EIR Section 2.5.8, page 2-21).

It also does not appear that SJVAPCD Rule 4002 (National Emissions Standards for Hazardous Air Pollutants) governs the Project because the Project would not emit substances that, pursuant to Section 112 of the federal Clean Air Act, have been designated as hazardous air pollutants; or emit substances for which a Federal Register notice has been published that included consideration of the serious health effects, including cancer, from ambient air exposure to the substance.

- C-4 A copy of the SJVAPCD’s letter has been included in the Final EIR and in the formal record of proceedings for the Project. As a result, it is available to the Project proponent.
- C-5 As indicated in Ms. Hensel’s October 4, 2023, reply (on the County’s behalf), an electronic copy of the Draft EIR, including its appendices, were accessible on the County’s website. The SJVAPCD acknowledged receipt of the direct link to the Project materials in that location on October 4, 2023. As explained in Draft EIR Section 1.4.2 (page 1-3), an electronic copy of the Draft EIR and the reference materials that were relied upon in its drafting also were made available on USB for check-out at two area libraries: the Fresno County Main Library’s Reference Department (2420 Mariposa Street, Fresno) and the Kings County Library Kettleman City Branch (104 Becky Pease Street, Kettleman City). See Response F-42 for a discussion on why a health risk assessment is not required for the Project.



Westlands Water District

November 6, 2023

Mr. Jeremy Shaw, Planner  
Development Services & Capital Projects Division  
Fresno County Public Works and Planning  
2220 Tulare Street, Sixth Floor  
Fresno, CA 93721

SUBJECT: Comments Regarding Environmental Impact Report (EIR) 8189 for Key Energy Storage Project

Dear Mr. Shaw,

Westlands Water District (District) reviewed EIR No. 8189 the proposal to construct an energy storage system and transmission infrastructure on Assessor Parcel Numbers (APN) 085-040-36S, 085-040-37S, and 085-040-58S. The District offers the following comments.

The project lies within the District boundary and the land is eligible to receive an allocation of water from the District’s agricultural water service contract. The description indicates that the project will be temporary in nature, will be decommissioned after the useful life and the land will be returned to a condition that is suitable for agricultural use, as reflected in the Reclamation Plan that contains financial assurances that the decommissioning will be completed. Based on these factors, the project parcels may be eligible to maintain Eligible Cropland status and related water supply benefits from the District, provided the additional requirements of the District’s Article 2, and the Appendix A thereto, are met.

D-1

Additionally, the Applicant may be eligible to apply for and receive Municipal and Industrial (M&I) water services, and the land will continue to have access to the District’s distribution system. If the Applicant is eligible to become a new M&I water user, the Applicant’s operations will be bound by the Regulations, Terms and Conditions established by the District for M&I use. Copies of these are provided for your information.

D-2

Finally, based on the Site Location Map provided, the project Key 1 site is located near the District’s Lateral PV9, and the project Key 2 site is located near the District’s Lateral 27R. The District’s Lateral PV9 has a delivery turnout located in the northwest corner of APN 085-040-58S and Lateral 27R has a delivery turnout located in each of the southwest corner of APN 085-040-37S and the southeast corner of APN 085-040-36S. Prior to construction, please contact Underground Service Alert (811).

D-3

286 W. Cromwell Ave, P.O. Box 5199, Fresno, CA 93755  
Phone: 559-224-1523 | pubaffairs@wwd.ca.gov | wwd.ca.gov

Thank you for the opportunity to comment on this project. If you have any additional questions, please contact Kori Peterson at 559-241-6231.

Sincerely,

A handwritten signature in black ink that reads "Russ Freeman". The signature is written in a cursive style with a large, prominent "R" and "F".

Russ Freeman, P.E.  
Deputy General Manager - Resources

Adopted: 1/14/02  
Revised:09/19/2023

**ARTICLE 19. REGULATIONS REGARDING THE APPLICATION FOR  
AND USE OF MUNICIPAL AND INDUSTRIAL WATER WITHIN  
WESTLANDS WATER DISTRICT**

**19.1 PURPOSE**

Westlands Water District has a long-term contractual entitlement to receive from the United States an annual supply of 1,150,000 acre-feet (AF) of Central Valley Project (CVP) water. The contracts between Westlands Water District and the United States allow the District to make CVP water available for municipal, industrial and domestic uses. The District may also acquire additional water supplies for these purposes. This Article establishes the rules and procedures for making application for and the use of municipal and industrial (M&I) water.

**19.2 GLOSSARY OF TERMS AND DEFINITIONS**

Unless specified below, the terms and definitions contained in Article 2 of these Regulations shall apply.

- A. "Ag Related M&I Use" – the use of water exclusively for purposes of commerce, trade or industry associated with the production of agricultural crops or livestock, or their related by-products, including human uses, other than housing, that are incidental to the Ag Related M&I Use.
- B. "Historic Use" – the greatest annual quantity of CVP water delivered for M&I Use to an M&I Water User at a point of delivery during the five-year period immediately preceding June 30, 2001.
- C. "M&I Use" – the use of water for drinking, cooking, bathing, showering, dish washing, and maintaining oral hygiene or purposes of commerce, trade or industry.
- D. "M&I Water Application" - an agreement in a form approved by the General Manager or his designee between the District and an M&I Water User, which describes the point of delivery for such water and the estimated quantity of water that will be made available by the District for M&I Use.



D-4

- E. “M&I Water User” - individual or entity who has executed and submitted to the District an M&I Water Application or to whom the District makes water available for M&I Use.

**19.3 M&I WATER AVAILABILITY**

- A. The General Manager shall set aside from the District’s CVP water supply or other sources deemed appropriate water for M&I Use.
- B. The General Manager or designee shall assist any M&I Water User in identifying a source of water that can be made available to the District for M&I Use; provided, that this provision shall not impose on the District or its employees an obligation to incur any expense or other obligation on behalf of such M&I Water User.

**19.4 APPLICATION FOR WATER**

- A. Except for M&I Use initiated before July 1, 2001, to receive water for M&I Use, a proposed M&I Water User must file at the District’s Fresno office an M&I Water Application. Upon approval by the District, the M&I Water Application shall constitute a valid agreement for M&I Use until the M&I Water User notifies the District in writing that such M&I Use will be terminated. Every M&I Water Application shall identify the point of delivery and the intended use of the M&I Water.
- B. An M&I Water Application for use in excess of 5 acre-feet, or 5 acre-feet per 160 acres when such application is for a solar development covering such acreage, per year shall identify a source of water that will, at the applicant’s expense, be made available to the District for the proposed M&I Use. Solar development resulting from land participating in the “Continued Benefits to Modified Agricultural Land” are not eligible to submit a M&I Water Application.
- C. Notwithstanding Section 19.4 B. of this Article, a M&I Water User may annually transfer into the M&I Water User’s account a quantity of water, from any source available to the M&I Water User, sufficient to satisfy any Ag Related M&I Use for the water year; provided, the M&I Water User shall acknowledge in writing that the



D-4  
cont.

District has no obligation to make available to the M&I Water User, in any year, a quantity of water in excess of the quantity transferred into the M&I Water User's account.

- D. A supplemental M&I Water Application shall be filed by any M&I Water User before the quantity of water for M&I Use made available to such M&I Water User is increased (i) above Historic Use, for M&I Water Users receiving M&I water before July 1, 2001, or (ii) above the quantity stated in the initial M&I Water Application, for M&I Use initiated after June 30, 2001.

**19.5 USE OF WATER**

- A. The unauthorized use or taking of water for M&I Use, or the waste or unreasonable use of water, are prohibited. Water made available for M&I Use may only be used at the point of delivery and for the purpose(s) identified in the M&I Water Application. Except as provided in Section 19.5 B. of this Article, the transfer of M&I water is prohibited.
- B. M&I water identified pursuant to Section 19.4 B. of this Article or water transferred by the M&I Water User pursuant to Section 19.4 C. of this Article may be transferred within the District's boundaries. Nothing contained in this Article shall prevent an M&I Water User from changing the place of use of its M&I water within the District's boundaries.
- C. All M&I Water Users shall implement conservation measures adopted by the Water Policy Committee of the Board of Directors or its successor.
- D. All M&I Water Users shall cooperate in the District's efforts to comply with the terms of the Compliance Agreement between the California Department of Health Services and Westlands Water District, dated June 1, 2001.
- E. Every point of delivery for M&I Water shall be equipped with a backflow prevention device of a design approved by the General Manager.
- F. The General Manager is authorized, after written notice to the M&I Water User, to discontinue water service to any M&I Water User who violates this Article or the Terms and Conditions for Municipal and Industrial Water Service.



D-4.  
cont.

- G. In the event the District's water supply is insufficient to meet all demands for water, including demands for irrigation, the General Manager is authorized to reduce the quantity of water made available for M&I Use or to impose such temporary conservation actions or other measures, as he deems necessary to protect the public health and safety.

**19.6 COMPLIANCE WITH TERMS AND CONDITIONS**

Each M&I Water User shall comply with the Terms and Conditions for Municipal and Industrial Water Service, as amended by the Board from time to time. Failure to comply with the Terms and Conditions for Municipal and Industrial Water Service may be grounds for termination of M&I Water Use service, and no water shall be furnished to an M&I Water User who fails to make required payments pursuant to the Terms and Conditions for Municipal and Industrial Water Service, as amended by the Board, from time to time.

**19.7 MISCELLANEOUS**

- A. The General Manager may do all things necessary to implement and effectuate these Regulations.
- B. An appeal from any decision made pursuant to these Regulations shall be made to the Finance and Administration Committee of the Board of Directors. Such appeal shall be in writing and shall be filed with the District Secretary within 15 working days after notice of the decision. The decision of the Finance and Administration Committee may be appealed to the Board of Directors. Such appeal shall be in writing and shall be filed with the District Secretary within 15 working days after notice of the decision. The decision of the Board shall be final.
- C. The General Manager shall provide notice of any changes or revision to these Regulations to all District landowners and M&I Water Users.



D-4  
cont.



Adopted: 07/20/87  
Revised:09/19/2023

**ARTICLE 2. REGULATIONS FOR THE ALLOCATION AND USE  
OF AGRICULTURAL WATER WITHIN WESTLANDS WATER DISTRICT**

**2.1 PURPOSE**

Westlands Water District has long-term contractual and legal entitlements with the United States for a firm supply of 1,191,185 acre-feet (AF) of Central Valley Project (CVP) water during each water year. In some years, the District may acquire additional water pursuant to its entitlements, or other water. On April 2, 2002, the District and landowner representatives executed the "Agreement for Distribution of Water, Allocation of Cost, and Settlement of Claims", thereby resolving issues and controversies relating to and providing for the allocation of CVP water to lands within the District. These Regulations establish the rules and procedures for allocation and use of agricultural water.

**2.2 GLOSSARY OF TERMS AND DEFINITIONS**

- A. Acreage Based Cap – the per acre amount of water determined by dividing the Cap for the rescheduling period by the District’s irrigable acres, net of District owned lands, as of March 1 that may be rescheduled into the subsequent Water Year.
- B. Acquired Lands – lands acquired by the District, or lands for which the permanent right to its per acre entitlement has been acquired by the District, and lands acquired by the United States pursuant to an agreement with the District dated August 11, 1998.
- C. Agricultural Water - water used for irrigation and other agricultural purposes directly related to the growing of crops.
- D. Agricultural Water Allocation Application and Purchase Agreement (referred to as Allocation Application) - an agreement between the District and a water user which describes the land held by the water user, the amount of water requested by the water user, and which obligates the water user to accept and pay for all water supplied by the District.
- E. Allocated; Allocation - amount of water ratably distributed to eligible District lands.



D-5

- F. Annexed Lands - lands which became a part of Westlands Water District after July 1, 1965 (the annexed area), as shown on Westlands Water District Dwg. No. 582, dated December 21, 1976, revised November 12, 1986, entitled "Areas of Service Priority."
- G. Cap Loss – amount of water remaining at year end in excess of the Cap imposed by the Bureau of Reclamation or the District on water that may be rescheduled at the end of the water year and which shall be lost.
- H. Contract Water - any water obtained under the contractual and legal entitlements including additional and interim supplies.
- I. Cropland - irrigable acreage as determined by U.S. Farm Service Agency (FSA or District measurements).
- J. Cushion - water set aside for system losses and other uses each water year, in the amount of 1 percent of contract water or 6,000 acre-feet, whichever is greater.
- K. Eligible Cropland – land that is eligible for allocation or delivery of water under Reclamation law and any applicable District Regulation.
- L. Entitlements - water provided pursuant to the contractual and legal obligations between Westlands Water District and the United States for water supply and distribution.
- M. Furnish - to deliver or provide. For purposes of these Regulations, water has been furnished, delivered, or provided to a water user at the time the water in question physically exits District-owned facilities, property, or infrastructure.
- N. Merged Lands - lands which formed a part of the original Westplains Water Storage District on June 28, 1965 (the original Westplains area), as shown on Westlands Water District Dwg. No. 582, dated December 21, 1976, revised November 12, 1986, entitled "Areas of Water Service Priority."
- O. M&I Use - the use of water for drinking, cooking, bathing, showering, dish washing, and maintaining oral hygiene or purposes of commerce, trade or industry. "M&I" is short for "Municipal and Industrial."
- P. Other Water - water other than contract water.
- Q. Overuse - use in excess of available supply.



D-5  
cont.

- R. Per Acre Entitlement - ratable share of contract water determined by 1,191,185 AF divided by the number of Pre-Merger Lands and Merged Lands cropland acres, excluding acquired lands, for which Allocation Applications are timely received.
- S. Pre-Merger Lands - lands which formed a part of Westlands Water District on June 28, 1965 (the original Westlands area), as shown on Westlands Water District Dwg. No. 582, dated December 21, 1976, revised November 1, 1986, entitled "Areas of Water Service Priority."
- T. Rescheduled; Rescheduled Water – water carried over for use in the next water year.
- U. Rescheduling Loss – loss of water that may occur at the end of the Rescheduling Period due to the Bureau of Reclamation’s annual rescheduling guidelines.
- V. Rescheduling Period – the period of use for Rescheduled Water.
- W. System Gain - an increase in water available for allocation due to the difference in relative accuracy between state operated and maintained headworks meters and District operated and maintained water delivery meters.
- X. System Loss - either a direct loss or a reduction in water available for allocation because of the difference in relative accuracy between state operated and maintained headworks meters and District operated and maintained delivery meters.
- Y. Transfer - assignment of water from one water user or landowner to another.
- Z. Unused Water - available supply at the end of the water year.
- AA. Water User - landowner or lessee of land who has submitted and executed an Allocation Application.
- BB. Water Year - each 12-month period that begins on March 1 and ends on the last day of February following.

**2.3 CONTRACTUAL ENTITLEMENTS**

- A. The entitlement of agricultural water for Pre-Merger Lands and Merged Lands is 1,191,185 AF less water set aside therefrom for M&I use, system losses, and other uses.
- B. No contract water shall be allocated to Annexed Lands until the allocation of contract water for eligible cropland, excluding acquired lands, in the Pre-Merger Lands and Merged Lands areas is 2.6 AF per acre.



D-5  
cont.

- C. Any contract water in addition to the quantities described above will be allocated ratably on a per acre basis, excluding acquired lands, to satisfy timely applications first to eligible cropland in Pre-Merger Lands and Merged Lands areas, then to eligible cropland in the Annexed Lands area, and finally on a first-come, first-served basis to all District cropland.
- D. Prior to, and in conjunction with, the calculation of the per acre entitlement in any water year, the General Manager shall set aside from the available water supply the amount of water for M&I use in accordance with Article 19 of the District's Rules and Regulations, system losses, and other uses approved by the Board of Directors. The General Manager may later allocate this water according to these Regulations if it is no longer necessary for such purposes.
- E. If there is a reduction in the rate at which water can be delivered to the District because of operational or other limitations, each water user's share of the delivery rate will be equitably adjusted as determined by the General Manager.

**2.4 OTHER ALLOCATION RULES AND PROCEDURES**

- A. Other water obtained by the District shall be made available to all eligible cropland in the District, excluding acquired lands, and shall be allocated on a per acre basis, unless otherwise directed by the Board of Directors.
- B. Allocations of other water obtained shall be increased or decreased as more or less water becomes available for distribution within the District.
- C.
  - 1. System loss will be deducted first from the water set aside for such purposes, and second, from water users in direct proportion to the water used by each water user.
  - 2. System gain shall be allocated to water users in direct proportion to the water used by each water user, excluding such use on acquired lands.
- D. Other water made available to the District specifically for direct transfer to a water user shall be allocated to the water user for whom it was intended. This water may be used or transferred within or outside of the District at the discretion of the water user, subject to applicable state and federal laws and District approval, or any conditions of use placed on the water when it was first transferred into the District.



D-5  
cont.

- E. No water will be allocated to any person or for any land in violation of the District's "Article 1. Regulations for the Groundwater Allocation Program and Use of Groundwater Within the Westside Subbasin" at the time the water is allocated.
- F. Notwithstanding any other provisions of the Regulations, water made available for specified purposes shall be distributed and used in accordance with such specified purposes.
- G. All per acre allocations of water will be made on the basis of cropland acres as determined prior to the time of the allocation. Any changes to cropland acres will be used for future allocations only, and will not be used to adjust prior allocations.
- H. A landowner who owns land designated as Eligible Cropland, that intends to modify or modified after January 1, 2020 that land to a non-irrigable use, may request pursuant to Appendix A of Article 2 that the land maintain its designation as Eligible Cropland upon modification. The request will be processed, and decisions will be made pursuant to Appendix A of Article 2.

**2.5 APPLICATION FOR WATER**

- A. To receive an allocation of contract water for agricultural purposes in any water year, a water user must timely apply therefore by filing an Allocation Application at a designated District office annually on or before January 15. Applications received after January 15 shall not receive an allocation unless accepted by the General Manager. Applications received after January 15 that are accepted by the General Manager shall only be entitled to receive a proportionate share of contract water made available to the District after the date of such late application's acceptance.
- B. The General Manager may require supplemental application(s) for additional contract water or other water made available to the District.
- C. If more than one Allocation Application for the same parcel of land is received and there is a dispute between the applicants regarding who should receive the water, priority will be given to the landowner, if one of the applicants owns the land in question. If no applicant owns the land, priority will be given to the water user who can provide satisfactory evidence of the right to occupy the land and receive the water. A lease or written consent from the landowner is considered satisfactory



D-5  
cont.

evidence. If the dispute arises after the application period and the water has been allocated, remedy is limited to unused water.

- D. No water will be allocated to any land for which water charges, assessments, land-based charges, or any other money owed to the District have been delinquent for 30 days or more at the time the water is allocated or to any land for which advance payment is required until such advance payment is received, or in lieu thereof security, in a form acceptable to the General Manager, for such payment has been provided.

**2.6 USE AND TRANSFER OF WATER**

- A. No water may be transferred out of the District without District approval or as authorized by the General Manager according to “Transfer of Water Out of the District” policy approved on August 20, 2019.
- B. All water may be used on any eligible cropland within the District.
- C. A water user may transfer his water to another water user in any area of the District. Such transfer shall be in writing on a form provided by the General Manager.
- D. The District will not transfer water from a water user to another resulting from a change in ownership or lease of land. However, if land is transferred by a change in ownership or lease with the result that the water user no longer owns or leases any District land, the unused water shall be transferred to the water user to whom the ownership or leasehold of such land has passed unless a transfer of water is requested pursuant to these Regulations.
- E. The General Manager may restrict or prohibit the use or transfer of water allocated to any cropland if a dispute exists among landowners regarding the allocation or use of such water.
- F. Water service shall be discontinued when a water user has exhausted his available water supply.
- G. Each water user shall take reasonable steps to reuse or control tail water. The failure to do so shall constitute a waste of water.



D-5  
cont.

- H. The General Manager is authorized, after oral or written notice to the water user, to lock the delivery facilities of, or discontinue water service to, any water user who violates these Regulations or Terms and Conditions for Agricultural Water Service.
- I. The unauthorized using, taking, or wasting of water is prohibited and may subject the water user to civil or criminal prosecution.

**2.7 WATER USER TRANSFERS FROM SOURCES OUTSIDE THE DISTRICT**

- A. Any water user may apply to the District to transfer into the District water from sources outside the District.
- B. The General Manager, or his designee, shall cooperate to a reasonable extent with any water user in connection with that water user's efforts to obtain water from sources outside of the District. In so reasonably cooperating, the General Manager, or his designee, shall not devote so much time or energy as to significantly distract from his or her duties and responsibilities to the District. Furthermore, such reasonable cooperation shall not be construed so as to affect the nature of the General Manager's, or his designee's, relationship with and duties to the District; nor shall such reasonable cooperation be construed as to create a fiduciary or other obligation owed by the General Manager, or his designee, to any person or entity other than the District.
- C. Subject to applicable state and federal laws and the requirements of these regulations, the General Manager or his designee may approve a water user's application to transfer water from sources outside of the District into the District for the benefit of that water user and shall execute any agreements or other documents required to accomplish the transfer.
- D. A water user's application to transfer water from sources outside of the District may be denied if the approval of that application would impair the District's ability to obtain sufficient other water, reduce the quantity of other water obtained by the District or delay or otherwise negatively affect the delivery to the District of other water obtained by the District.



D-5  
cont.

- E. Priority to access of excess capacity of any facility required to deliver other water obtained by the District and water acquired by a water user from sources outside the District shall first be used to deliver other water obtained by the District.
- F. Access to excess capacity of any facility required to deliver water by water users from sources outside the District shall be apportioned among water users seeking access to excess capacity on a per acre basis.
- G. The District's administrative costs for review, approval, and other activities related to a water user's application for approval of a transfer into the District water from sources outside the District shall be borne by the water user. The General Manager, or his designee, may require a deposit of the estimated costs for such activities prior to review of an application.

**2.8 PAYMENT FOR WATER OR AGREEMENTS**

No water shall be made available for delivery, transfer, or any other use by a water user who fails to make required payments to the District, regardless of the source of the water user's obligation for payment. Rules for payment are set forth in the Terms and Conditions for Agricultural Water Service and other agreements, if any, between the water user and the District.

**2.9 YEAR-END PROCEDURES**

- A. After final water use and supply accounting is completed for the water year, the District will determine the amounts of unused water or overuse for each water user.
- B. Unused water may be rescheduled if such a program is available. See 2.10 RESCHEDULED WATER regarding the procedures for rescheduling water.
- C. A water user with unused water that cannot be rescheduled shall pay all water costs that the District incurs, applicable San Luis & Delta Mendota Water Authority operations and maintenance rates and applicable District rates.
- D. A water user with overuse will have his allocation of contract water in the following year reduced by the amount of his overuse, first from the cropland farmed by the water user in which the overuse occurred and then from any cropland farmed by the water user. If this water user is not a water user in the following year, the amount of



D-5  
cont.



overuse will be attributed to the cropland that had been farmed by the water user. Further, any allocation of contract water to that cropland will be reduced by the amount of overuse attributable to such cropland.

**2.10 RESCHEDULED WATER**

A. Subject to the program’s availability, the District or a water user may reschedule water, regardless of source, from one water year to the next. The period of use for Rescheduled Water (Rescheduling Period) shall be the following, unless otherwise restricted by the Bureau of Reclamation:

- 1. If San Luis Reservoir fills, March 1 to date determined by Reclamation (usually about April 15); or
- 2. If San Luis Reservoir does not fill, to the end of the current water year.

The use of all contract water supplied by the Bureau of Reclamation, including use of the then current year’s allocation, shall be counted toward the use of Rescheduled Water.

- B. Unless the District is notified before the end of the water year, all water remaining in a water user’s account at the end of the water year will be rescheduled on its behalf by the District.
- C. So long as there is no projected impact to the future year water supply or other water supplies that are available to the District, a water user may reschedule more water than it projects it will use during the Rescheduling Period, but said water user shall bear all associated risks. To provide an equitable manner for the District to apportion water users’ use of Rescheduled Water, there is a 0.5 acre-feet per irrigable acre Acreage Based Cap for Rescheduled Water, excluding District-owned lands. Unless limited pursuant to D. herein, a water user may reschedule water in excess of the Acreage Based Cap, but remaining Rescheduled Water in excess of the Acreage Based Cap shall be the first water lost pursuant to F. herein.
- D. The Bureau of Reclamation or the District may limit the amount of water that may be rescheduled at the end of the water year. “Cap Loss” is the term for water remaining at year end in excess of the limit imposed by Reclamation or the District which shall

2-9



D-5.  
cont.

be lost. In addition, loss of water may occur at the end of the Rescheduling Period, called "Rescheduling Loss", due to Reclamation's annual rescheduling guidelines.

- E. Both Cap Loss and Rescheduling Loss, in that order, will be applied to a water user's account at the end of the Rescheduling Period, so that the water user has the greatest opportunity to deliver all its water supply. However, if the Rescheduling Period is extended to the end of the current water year, Cap Loss will be applied to water user accounts at the beginning of the Rescheduling Period, after adjusting such accounts for internal transfers of Rescheduled Water received and approved by the District on or before March 10. Any loss by water users will be applied based upon acre-feet per acre, from highest to lowest.
- F. Losses will be apportioned to and in the following order and manner:
  - 1. Any remaining Rescheduled Water in excess of the Acreage Based Cap.
  - 2. Water rescheduled by the District.
  - 3. Remaining Rescheduled Water.
  - 4. Delivered Rescheduled Water in excess of the Acreage Based Cap.
  - 5. Delivered Rescheduled Water within the Acreage Based Cap.
- G. For losses, water users shall pay all water costs that the District incurs, the San Luis & Delta-Mendota Water Authority O&M rate and any applicable District rates.

**2.11 MISCELLANEOUS**

- A. The General Manager is authorized and directed to do any and all things necessary to implement and effectuate these Regulations.
- B. An appeal from any decision made pursuant to these Regulations shall be made to the Finance and Administration Committee of the Board of Directors. Such appeal shall be in writing and shall be filed with the District Secretary within 15 working days after notice of the decision. The decision of the Finance and Administration Committee may be appealed to the Board of Directors. Such appeal shall be in writing and shall be filed with the District Secretary within 15 working days after notice of the Finance and Administration Committee's decision. The decision of the Board shall be final.



D-5  
cont.

# Comment Letter D

C. The General Manager shall provide notice of any changes or revision to these Regulations to all District landowners and water users.



D-5.  
cont.

APPENDIX A

CONTINUED BENEFITS TO MODIFIED AGRICULTURAL LAND

- A. Upon a request from a landowner with Eligible Cropland, that intends to modify or modified after January 1, 2020 that agricultural land to a non-irrigable use, the District shall designate the modified agricultural land as Eligible Cropland, notwithstanding its temporary, albeit long-term, modification, if the Board finds the following criteria are met:
1. A conditional use permit or other land use entitlement is obtained from the county or other local land use agency (“lead agency”) for the modification of the agricultural land as described in the conditional use permit or land use entitlement (“Project”).
  2. The lease or easement on the land defines and limits the terms of use, consistent with Project purposes as approved and conditioned by the lead agency.
  3. The lead agency for the Project has complied with the California Environmental Quality Act (“CEQA”) and the environmental analysis is adequate for the District’s use as a responsible agency for the limited purpose of verifying the Project satisfies the criteria identified herein thereby ensuring the conversion, though long-term, is temporary.
  4. The Project analyzed and approved by the lead agency includes or the lead agency has adopted measures to ensure that the Project, though long-term, is not permanent because either: the existing agricultural character of the land will be retained during the operational life of the Project; or, upon cessation of Project uses, the land will be suitable for agricultural uses. At a minimum, such measures shall include:
    - a. Plan(s) to remove Project fixtures and equipment (not including any transmission, distribution, or gen-tie electrical power lines) such that the land will be suitable for agricultural uses upon cessation of Project uses (“Decommissioning Plan(s)”).
    - b. Financial Assurances provided to the satisfaction of the lead agency (i) through a performance bond or other financial securities to ensure



D-5.  
cont.

timely completion of the activities in the Decommissioning Plan(s) by the Project owner, Project operator, and/or the landowner(s), and (ii) with reserved authority of the lead agency or the landowner(s) that will result in completion of said activities if necessary, upon cessation of Project uses or within a time period thereafter as may be established by the lead agency.

Upon verification by the Board that the Project satisfies the criteria identified herein, District designation of the modified agricultural land as Eligible Cropland, and the attendant District benefits to that land resulting from the designation as “Eligible Cropland”, shall continue for the operational life of the Project, subject to the measures described in Paragraph A.4 of this Section A, and for so long as all the criteria established in Paragraph A of this Appendix continue to be satisfied.

- B. After the Board designates the modified agricultural land as “Eligible Cropland”, ownership of the modified agricultural land may change (holder of fee title) and the modified land will retain the attendant District benefits to that land resulting from the designation as “Eligible Cropland”, provided all the criteria established in Paragraph A of this Appendix continue to be satisfied.
- C. The Board of Directors may decide to de-designate as “Eligible Cropland” the modified agricultural land upon a failure to comply with the requirements of this subsection or the requirements imposed by the forms referenced in Paragraph A.2 of Section A. An appeal from any decision made pursuant to Paragraph A of this Appendix shall be made to the Board of Directors. Such appeal shall be in writing and shall be filed with the District Secretary within 15 working days after notice of the decision. Before recommending to the Board of Directors that it de-designate as “Eligible Cropland” the modified agricultural land, District staff shall provide a landowner notice and at least 30 days to cure an alleged failure to comply with the requirements referenced above.



D-5  
cont.

**FOR LANDOWNER OR THE DULY AUTHORIZED LEGAL REPRESENTATIVE OF THE LANDOWNER(S)**

I, the undersigned, own the land identified below or am the duly authorized legal representative of one who owns that land. I am authorized to complete and file this form with the District.

As the landowner or the duly authorized legal representative of the landowner, I am requesting that, pursuant to Article 2 of the District's Rules and Regulations and upon modification, the District designate as Eligible Cropland the following land:

Owner(s) Name(s):
APN(s):
Number of Acres:

--

*Use attachment to provide additional information, if necessary.*

As the landowner or duly authorized legal representative of the landowner(s) of the land referenced immediately above, I will notify Westlands Water District within 5 business days if fee title to that land or any portion thereof is transferred.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

\_\_\_\_\_  
Signature of Landowner or the duly authorized  
legal representative of the Landowner

\_\_\_\_\_  
Date

D-5  
cont.

**WESTLANDS WATER DISTRICT**

OFFICE--3130 N. FRESNO STREET/MAILING--P. O. BOX 6056, FRESNO, CA 93703  
TELEPHONE: WATER DEPT. (559) 241-6250/OTHER (559) 224-1523/FAX (559) 241-6276

**TERMS AND CONDITIONS FOR MUNICIPAL AND INDUSTRIAL WATER SERVICE**

1. The furnishing of water to and its use by the water user shall be subject to all regulations of the Board of Directors of the District as the same may exist now or hereafter be amended or adopted. In the event of a conflict between the terms and conditions set forth herein and the regulations, the latter shall be controlling.

2. All water delivered shall be pursuant to a request by the water user for the delivery of a stated amount to a specific location. The request shall be made within the time and in the manner prescribed by the General Manager.

3. Water will be furnished by the District subject to the terms and conditions under which the water is made available to the District and if, in the exclusive judgment of the District, the water and facilities for its delivery are available; provided, that the District will use its best efforts, to the extent that it has water and capacity available and taking into account the requirements of other water users to receive water from its facilities, to provide such water in the manner and at the times requested. The District may temporarily discontinue water service or reduce the amount of water to be furnished for the purpose of such investigation, inspection, maintenance, repair, or replacement as may be reasonably necessary of any of the District 's facilities. Insofar as feasible, the District will give the water user notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which event no notice need be given. No liability shall accrue against the District or any of its officers, directors, or employees for damage, direct or indirect, because of the failure to provide water as a result of system malfunctions, interruptions in service necessary to properly operate and maintain the water distribution system, or other causes which are beyond the District's reasonable control.

4. By taking delivery of water from the District, the water user assumes responsibility for, and agrees to hold the District harmless from, all damage or claims for damage, which may arise from his furnishing or use of the water after it leaves the District facilities.

5. The water furnished by the District is not potable (suitable for drinking, cooking, bathing, or other domestic use) and the District does not warrant the quality or potability of water so furnished. By taking delivery of water from the District, the water user assumes responsibility for, and agrees to hold the District harmless from, damage or claims for damage arising out the non-potability of water furnished by the District. Untreated water must never be used for any type of human consumptive needs. A water user defined and operating as a Public Water Supply (PWS) shall be responsible for any water treatment, including but not limited to filtration and chlorination achieved through central treatment or point-of-entry (POE) treatment devices approved by the California Department of Health Services (DHS), in order to provide water safe for human consumption as required by Federal, State or local law or regulation.

According to DHS, the use of POE treatment systems by individual customers of a constructed conveyance system may not provide a continuous safe, potable supply of water due to inadequate operation and maintenance of these systems by the owners, unless they are a regulated PWS. Individual use of POE devices ("Water Treatment Exclusion") may only be used if they are approved by DHS and are regularly maintained by a State-licensed operator or service provider.

Facilities in place prior to July 2001, may continue to use bottled water for drinking and cooking ("Alternative Water Exclusion"). After July 2001, the District cannot furnish new municipal and industrial water service if bottled water use is the basis for the potable water supply unless approved by DHS. Bottled water may only be obtained from a State-licensed provider.

DHS mandates the District conduct periodic surveys of water use as required by the Safe Drinking Water Act and to collect records for Alternative Water and Treatment Exclusions. Records for exclusions include invoices or statements of bottled water delivery from a licensed provider or maintenance and service records for a POE system from a licensed operator. Water users who fail to complete a survey or provide records showing an approved exclusion requested by the District shall have water service discontinued if no response is received after a reasonable attempt has been made to obtain the information.

6. All water will be measured by the District with meters installed by it and such measurements shall be final and conclusive.

7. Charges for water, hereinafter referred to as "water charges", shall be established by the Board of Directors. The water charges shall include District operation and maintenance costs and any other costs determined by the Board to be payable as part of the water charges. Water charges shall be adjusted retroactively to the extent required and authorized by federal or state law or regulations or District regulations. The General Manager may adjust the water charges as necessary and legally authorized to account for increases or decreases in the estimates used to establish the water charges.

8. As a condition of the District continuing to furnish water, the water user shall make payment for the amount billed after the District's billing and by the 25th of the month in which the bill is mailed; provided, that the due date will be not less than 15 calendar days after the billing date. Charges not paid by the due date shall be delinquent; provided, that payments postmarked on or before the due date shall be deemed to have been received by that date. The payment of water charges or related penalties or interest shall be made at the District's Fresno office. When any deadline established herein falls on a Saturday, Sunday, or holiday, it shall be extended to the next working day.

9. All claims for overcharges or errors must be made in writing and filed with the District at its Fresno Office within 10 working days after the date the bill is received by the water user. In the event the water user files a timely written protest, the District's Finance & Administration Committee shall consider the protest at its next regular meeting and notify the water user in writing of its decision. The Committee's decision shall be final, unless a written appeal to the Board of Directors is filed with the Secretary of the District within 15 working days after notice of the decision. In the event of an appeal, the decision of the Board shall be final. The filing of a protest or an appeal does not nullify the payment requirement or the District's right to discontinue water service as provided in these terms and conditions. However, in the event the protest or appeal is sustained, the District will refund the amount of the overcharge and penalty, if any.

10. On the first day following the due date, a penalty of 10 percent of the water charges which became delinquent on the preceding day shall be added to the water charges and penalties and interest, if any, due and owing to the District, the total of which are hereinafter referred to as "unpaid charges." Prior unpaid charges shall accrue interest at a monthly rate of 1½ percent. The interest shall not, however, accrue after the unpaid charges have been added to, and become a part of, the annual assessment levied on the land by the District. All payments and credits shall be applied to the earliest unpaid charges.

11. At the time of filing the District's assessment book with the District Tax Collector, unpaid charges may be added to and become a part of the assessment levied by the District on the land which received the water or for which other water charges were incurred. The District shall notify the landowner of the expected amount prior to its addition to the annual assessment. The amount so added shall be a lien on the land and impart notice thereof to all persons. If the assessment becomes delinquent, penalties and interest will be added as provided by law.

12. To supplement the procedure described in paragraph 11, the District may elect to file and record a Certificate of Unpaid Water Charges as provided in California Water Code Section 36729. This



D-6  
cont.



Certificate creates a lien in the amount of unpaid charges on any land owned by the delinquent water user, or acquired by the water user before the lien's expiration, within the recording County.

13. Except as provided in paragraph 15, municipal and industrial water service shall not be provided to any parcel of land for which the unpaid charges for such service are a lien on the land or for which the assessment is delinquent.

14. Except as provided in paragraph 15, municipal and industrial water service shall not be provided to any person who owes the District unpaid charges notwithstanding the fact that the unpaid charges have been added to the assessment(s) on the parcel(s) for which they were incurred.

15. Where the District furnishes residential water service to persons other than the water user to whom the service is billed, the District shall make a reasonable, good faith effort to inform the actual users of the services when the account is delinquent. This shall be done by a notice that service will be terminated in 10 days. The notice shall inform the actual users that they have the right to become customers of the District without being required to pay the amount due on the delinquent account.

The District is not required to make service available to the actual users unless each actual user agrees to the terms and conditions of service. However, if one or more actual users are willing and able to assume responsibility for the entire account to the satisfaction of the District, or if there is a physical means legally available to the District of selectively terminating service to those actual users who have not met the requirements of the District's terms and conditions, the District shall make service available to the actual users who have met those requirements. In making service available to an actual user, the District may require that a deposit be paid to the District prior to establishing an account and furnishing service. If a deposit is required, it shall be based solely upon the creditworthiness of the actual user as determined by the District.

The District will give notice of the delinquency and impending termination of residential water service, at least 10 days prior to the proposed termination, by means of a notice mailed postage prepaid or by personal delivery to the water user to whom the service is billed not earlier than 19 days from the date of mailing the District's bill for services, and the 10-day period shall not commence until 5 days after the mailing of the notice. When the day established for the discontinuance of water service falls on a Saturday, Sunday, or District holiday, such water service shall be discontinued on the next working day.

The District will make a reasonable, good faith effort to contact an adult person residing at the premises of the water user by telephone or in person at least 48 hours prior to any termination of residential water service.

The District will comply with all other applicable provisions of California Government Code Sections 60370-60375.5 regarding termination of residential water service.

16. Except as provided in paragraph 15, in the event water service hereunder is discontinued as a result of nonpayment of water charges, all unpaid charges for such service which are due the District from the person in default must be paid before water service can be restored.

17. If a water user's delinquent charges are unpaid for 30 days or more, or if a water user's delinquent charges are added to the annual assessments on any lands within the District, or the procedure in paragraph 12 is implemented, the General Manager shall require, as a condition of resumption of water service, that advance payment of all water charges be made for the 12-month period immediately following resumption of service, according to a schedule to be determined by the General Manager. A written guarantee in a form satisfactory to the General Manager from a recognized financial lending institution may be substituted in lieu of advance payment.



D-6  
cont.

18. The General Manager, after consultation with and approval by the Finance & Administration Committee, may also require advance payment and/or payment by cashier's check or such other actions as he may deem necessary when a water user's account is determined, based on the payment history or other actions of the water user, to create a financial risk or hardship for the District or its landowners. Circumstances which constitute the basis for such a determination include but are not limited to the following: (1) instances of a water user's checks being returned unpaid or (2) instances where a water user whose account is delinquent has, in violation of District regulations, taken water from a District delivery.

19. By applying for or taking delivery of municipal and industrial water from the District, the water user agrees to these terms and conditions of service.

20. The District may modify or terminate these terms and conditions; provided, that such modifications or terminations are prospective only and notice thereof is given prior to the effective date by mail to the water user.



D-6  
cont.

## 2.4.4 Letter D: Westlands Water District

- D-1 This summary of project details is consistent with information provided in the Draft EIR. In the Utilities and Service Systems analysis, Section 3.19.1.2, *Environmental Setting* (page 3.19-1), describes the site's location within the District's service area. Section 4 of the water supply assessment included in Draft EIR Appendix L (pages 14-19) describes the water supply sources that are available to the Project site that could be used to meet the Project's water demands as including the District, which is the local contractor of imported Central Valley Project (CVP) water and the primary Groundwater Sustainability Agency (GSA) for the Westside Subbasin. Regarding the decommissioning and site reclamation activities proposed as part of the Project, see Section 2.5.8 (page 2-21 and following) and the draft reclamation plan included in Appendix B-1. The potential eligibility of Project site parcels to maintain Eligible Cropland status pursuant to the District's Article 2 is acknowledged.
- D-2 The Applicant's potential eligibility to receive municipal and industrial (M&I) water services and continued access to the District's distribution system is acknowledged. Receipt of the District's Regulations, Terms and Conditions governing M&I use also is acknowledged.
- D-3 Details regarding the locations of the District's Lateral PV9 and Lateral 27R relative to the Project site parcels is appreciated. The request that the Applicant contact Underground Service Alert (811) is consistent with duties imposed by Government Code Section 4216-4216.24 governing the protection of underground infrastructure. These Government Code provisions create obligations that are enforceable independent of the County's CEQA process for the Project. Violations are subject to a civil penalty and other liability (Government Code Sections 4216.6, 4216.7). In compliance with the Government Code, the applicant is expected to contact the Underground Service Alert prior to ground disturbing activities.
- D-4 The County acknowledges receipt of this copy of Article 2 (including Appendix A thereto) of the District's regulations for the allocation and use of agricultural water within the District.
- D-5 The County acknowledges receipt of this copy of Article 19 of the District's regulations regarding the application for and use of municipal and industrial water within the District.
- D-6 The County acknowledges receipt of this copy of the District's terms and conditions for municipal and industrial water service.

# Comment Letter E

DocuSign Envelope ID: 22C85631-7148-4879-9838-D6A3AFCCC7C8



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
(559) 243-4005  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

*GAVIN NEWSOM, Governor*  
*CHARLTON H. BONHAM, Director*



November 27, 2023

Jeremy Shaw, Planner  
Fresno County, Department of Public Works  
2220 Tulare Street, Sixth Floor  
Fresno, California 93721  
(559) 600-4207  
[jshaw@fresnocountyca.gov](mailto:jshaw@fresnocountyca.gov)

**Subject: Draft Environmental Impact Report (EIR) No. 8189, CUP No. 3734, Key Energy Storage, LLC Project (Project)  
SCH No.: 2022070414**

Dear Jeremy Shaw:

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, the California Department of Fish and Wildlife (CDFW) appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code. While the comment period may have ended, CDFW appreciates it if you would still consider our comments.

After reviewing the provided CEQA document, CDFW concurs with the biological resources related analysis and measures proposed in the Draft EIR and recommends that all such measures in the Draft EIR be carried forward into the Final EIR. CDFW has determined that most of the biological resource mitigation measures as currently documented in the Draft EIR are sufficient for mitigation of potential project related impacts to listed species. Please note that take of any species listed under the California Endangered Species Act (CESA) would be unauthorized if an Incidental Take Permit (ITP) pursuant to Fish and Game Code section 2081 subdivision (b) was not acquired in advance of such actions. It is recommended to consult with CDFW before any ground disturbing activities commence and to obtain an ITP if take of CESA listed species cannot be avoided.

Mitigation Measure 3.5-3 (Protection of Nesting Birds) states that the nesting bird season is February 1 to August 31. CDFW recognizes the nesting bird season as February 1 to September 15. This measure also includes information stating that surveys shall be conducted no more than 14 days prior to each phase of construction

E-1  
E-2  
E-3

*Conserving California's Wildlife Since 1870*

# Comment Letter E

DocuSign Envelope ID: 22C85631-7148-4879-9838-D6A3AFCCC7C8

Jeremy Shaw  
Fresno County  
November 27, 2023  
Page 2

activities. CDFW recommends that pre-construction surveys for active nests are conducted no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected.

↑  
E-3  
cont.

This mitigation measure also states that if active nests are found, a suitable buffer would be 300-feet for common raptors, and 0.25-mile for Swainson's hawk. CDFW recommends a 500-foot no-disturbance buffer around active nests of non-listed (common) raptors and 0.5-mile around active Swainson's hawk nests (SWHA TAC 2000).

↑  
E-4  
↑  
E-5

In conclusion, CDFW recommends updating Mitigation Measure 3.5-3, Protection of nesting Birds, to include the following:

1. That nesting bird season runs to September 15 of any given year.
2. That pre-construction surveys for nesting birds occur no more than 10 days prior to each phase of construction.
3. The no-disturbance buffer for common raptors is 500 feet.
4. The no disturbance buffer around Swainson's hawk nests is 0.5 miles.

↑  
E-6

CDFW appreciates the opportunity to comment on the Project to assist the County of Fresno in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Kelley Nelson, Environmental Scientist, at the address provided on this letterhead, or by electronic mail at [Kelley.Nelson@wildlife.ca.gov](mailto:Kelley.Nelson@wildlife.ca.gov).

↑  
E-7

Sincerely,

DocuSigned by:  
*Bob Stafford*  
5343A684FF02469...

Bob Stafford for Julie A. Vance  
Regional Manager

ec: State Clearinghouse  
Governor's Office of Planning and Research  
[State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

DocuSign Envelope ID: 22C85631-7148-4879-9838-D6A3AFCCC7C8

Jeremy Shaw  
Fresno County  
November 27, 2023  
Page 3

**REFERENCES**

Swainson's Hawk Technical Advisory Committee. 2000. Recommended Timing and methodology for Swainson's hawk nesting surveys in California's Central Valley. Swainson's Hawk Technical Advisory Committee.

]

E-8

## 2.4.5 Letter E: California Department of Fish and Wildlife

- E-1 The County acknowledges CDFW’s concurrence with the biological resources-related analysis of impacts and mitigation measures documented in the Draft EIR.

In response to comments E-3 through E-5, the Draft EIR’s mitigation measures for potential significant impacts to biological resources have been revised as shown in Section 3.2.5 in Chapter 3, *Revisions to the Draft EIR*. A draft Mitigation Monitoring and Reporting Program containing the full suite of proposed-final mitigation measures for County decision-makers’ consideration will be included in a staff report to be made available for review in advance of a hearing on the Project.

- E-2 Consistent with this comment, Draft EIR Section 3.5.1.3 states, “Before a project may result in lawful take of a species listed under the [California Endangered Species Act] CESA, a take permit must be issued under Section 2081(b)” (page 3.5-7). The Draft EIR’s summary of the CESA proceeds to explain that “otherwise prohibited acts may be authorized through a permit or memorandum of understanding if: (a) the take is incidental to an otherwise lawful activity, (b) the individual or public agency minimizes and fully mitigates impacts of the authorized take, (c) the permit is consistent with any regulations adopted pursuant to any recovery plan for the species, and (d) the project operator ensures that adequate funding is available to implement the measures that CDFW requires” (pages 3.5-7, 3.5-8). The County acknowledges CDFW’s recommendation that the Applicant consult with CDFW to obtain an incidental take permit (ITP) if take of a species listed under the CESA cannot be avoided; however, the Project would not result in take of listed species and an ITP would not be required for the Project. The commenter’s recommendation does not affect the adequacy or accuracy of the Draft EIR. Accordingly, no change has been made in response to this comment.
- E-3 The County will modify Mitigation Measure 3.5-3 consistent with CDFW’s recommendations to consider September 15 end of bird-nesting season, and to conduct surveys no more than 10 days prior to disturbance. As shown in Section 3.2.5, text in the first paragraph of Mitigation Measure 3.5-3 has been modified as follows:

“If construction is scheduled to commence outside of nesting season (September ~~1~~ 16 to January 31), no preconstruction surveys or additional measures are required for nesting birds, including raptors. During the nesting bird breeding season (February 1 to ~~August 31~~ September 15), to avoid impacts on nesting birds in the Project site and immediate vicinity, a qualified biologist shall conduct preconstruction surveys of all potential nesting habitat within the Project site where vegetation removal or ground disturbance is planned. The survey shall be performed within the site and shall also include potential nest sites within a 0.5-mile buffer around the site in areas where access to neighboring properties is available or visible using a spotting scope. Surveys shall be conducted no more than ~~14~~ 10 days prior to each phase of construction activities. If construction is halted for ~~14~~ 10 days or more, the area shall be resurveyed prior to resuming work.”

- E-4 The County will modify Mitigation Measure 3.5-3 consistent with CDFW’s request for a 500-foot buffer around active raptor nests. As shown in Section 3.2.5, text in the second paragraph of Measure 3.5-3 has been modified as follows:

If active nests are found, a suitable buffer around active nests (e.g., ~~300~~ 500 feet for common raptors; 0.25-mile for Swainson’s hawk; 100 feet for passerines) shall be established...”

- E-5 The County will modify Mitigation Measure 3.5-3 consistent with CDFW’s request to use 0.5-mile buffer around active Swainson’s hawk nests consistent with the Recommended Timing and Methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley (TAC 2000). As shown in Section 3.2.5, text in the second paragraph of Measure 3.5-3 has been modified as follows:

If active nests are found, a suitable buffer around active nests (e.g., 300 feet for common raptors; ~~0.25~~ 0.5-mile for Swainson’s hawk; 100 feet for passerines) shall be established...”

- E-6 See Response E-3, which addresses CDFW’s comment regarding nesting bird season; Response E-4, which addresses CDFW’s comment regarding the timing of pre-construction surveys; and Response E-5, which addresses CDFW’s comment regarding no-disturbance buffers. As detailed in Responses E-3 through E-5, Mitigation Measure 3.5-3 was revised consistent with the recommendations provided by the commenter.

- E-7 The County acknowledges that CDFW’s website provides information about survey and monitoring protocols for sensitive species. Chapter 2 of the Biological Resources Assessment provided in Draft EIR Appendix E describes the methodology employed in the analysis of potential site-specific, Project-specific impacts. As indicated by the citation on page 10 of the Biological Resources Assessment to CDFW’s Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities, CDFW protocols were followed in the analysis. This comment about the availability of additional protocol information does not identify any inconsistency with or objection to the information or conclusions documented in the Draft EIR.

- E-8 The County acknowledges this citation to the Swainson’s Hawk Technical Advisory Committee’s Recommended Timing and Methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley, which the commenter provided as support for Comment E-5. The County has reviewed the document and has included a copy in the record of proceedings<sup>1</sup> to ensure that it also is available for review by decision-makers.

---

<sup>1</sup> Swainson’s Hawk Technical Advisory Committee, 2000. Recommended Timing and methodology for Swainson’s hawk nesting surveys in California’s Central Valley. May 31, 2000. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990>. Accessed November 28, 2023.



ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION  
**ATTORNEYS AT LAW**  
601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7097

SACRAMENTO OFFICE  
520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721  
TEL: (916) 444-6201  
FAX: (916) 444-6209

TEL: (650) 589-1660  
FAX: (650) 589-5062  
amarshall@adamsbroadwell.com

ARIANA ABEDIFARID  
KEVIN T. CARMICHAEL  
CHRISTINA M. CARO  
THOMAS A. ENSLOW/  
KEULIAN D. FEDERMAN  
RICHARD M. FRANK  
ANDREW J. GRAP  
TANYA A. GULESSERIAN  
DARION N. JOHNSTON  
RACHAEL E. KOSS  
ADAN P. MARSHALL  
TARA C. RENGIFO

*Of Counsel*  
MARC D. JOSEPH  
DANIEL L. CARDOZO

October 30, 2023

**Via U.S. Mail and Email**

Steven E. White, Director  
Dept of Public Works and Planning  
2220 Tulare Street, 6th Floor  
Fresno, CA 93721  
**Email:** [stwhite@fresnocountyca.gov](mailto:stwhite@fresnocountyca.gov)

Bernice E. Seidel  
Clerk of the Board of Supervisors  
2281 Tulare St, Room 301  
Fresno, CA 93721  
**Email:** [ClerkBOS@fresnocountyca.gov](mailto:ClerkBOS@fresnocountyca.gov)

**Via Email Only**

Jeremy Shaw, Planner  
**Email:** [ishaw@fresnocountyca.gov](mailto:ishaw@fresnocountyca.gov)

**Via Online Portal**

<https://fresnocountyca.nextrequest.com/>

**Re: Request to Extend the Public Review and Comment Period for  
the Draft Environmental Impact Report for the Key Energy Storage  
Project (CUP# 3734;SCH 2022070414)**

Dear Mr. White, Ms. Seidel, and Mr. Shaw:

On behalf of California Unions for Reliable Energy (“CURE”), we respectfully request that Fresno County (“the County”) extend the public review and comment period for the Draft Environmental Impact Report (“DEIR”) prepared for the Key Energy Storage Project (CUP# 3734; SCH 2022070414) (“Project”). The current public comment period ends on November 6, 2023.<sup>1</sup> Extension of the comment period is necessary under the California Environmental Quality Act (“CEQA”)<sup>2</sup> because the County failed to provide access to DEIR reference documents during the entire public comment period.

F-1

---

<sup>1</sup> **Exhibit A:** County of Fresno, Notice of Availability (“NOA”) re Draft Environmental Impact Report For Key Energy Storage Project, State Clearinghouse No. 2022070414. (Filed September 20, 2023).  
<sup>2</sup> Public Resources Code §21000 et seq.; California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000 et seq.



October 30, 2023

Page 2

**A. Failure to Provide Access to Reference Documents**

CEQA requires that “all documents referenced” – and the CEQA Guidelines require that “all documents incorporated by reference” – in a draft environmental impact report shall be “readily accessible to the public during the lead agency’s normal working hours” during the entire public comment period.<sup>3</sup> Although access to some of the DEIR’s reference documents is provided via URLs in the DEIR, access to many reference documents was not made available. Further, numerous URLs in the DEIR are nonfunctional. A small number of the many reference documents with nonfunctional URLs include the following:

- DOF (California Department of Finance), 2022a. E-5 Population and Housing Estimates for Cities, Counties and the State—January 1, 2021–2022. Available: <https://dof.ca.gov/forecasting/demographics/estimates/e-5-population-and-housingestimates-for-cities-counties-and-the-state-2020-2022/> Accessed March 22, 2023.
- Fresno County, 2017. County of Fresno Solar Facility Guidelines. Revised by Board of Supervisors on December 12, 2017. Available: <https://www.co.fresno.ca.us/departments/public-works-planning/divisions-of-public-worksand-planning/development-services-division/planning-and-land-use/photovoltaic-facilitiesp-1621>. Accessed March 22, 2023.
- Fresno County, 2018. Onsite Wastewater Treatment System Guidance Manual. Department of Public Works and Planning. Fresno, CA. January 2018. Available: <https://www.co.fresno.ca.us/home/showdocument?id=26349>. Accessed March 22, 2023
- Fresno County, 2019. Fresno County Local Area Management Program (LAMP). Available: <https://www.co.fresno.ca.us/home/showpublisheddocument/39300/637086255221370000>. Accessed March 22, 2023.
- CPUC (California Public Utilities Commission), 2022. LS Power Grid California, LLC Gates 500kV Dynamic Reactive Support Project Final Initial Study Mitigated Negative Declaration. July 2022. Available: [https://ia.cpuc.ca.gov/environment/info/esat/gates/pdfs/Gates\\_500kV\\_Final\\_IS\\_MND\\_July\\_2022.pdf](https://ia.cpuc.ca.gov/environment/info/esat/gates/pdfs/Gates_500kV_Final_IS_MND_July_2022.pdf). Accessed March 22, 2023.
- Fresno County, 2000. Fresno County General Plan. Open Space and Conservation Element. Approved October 2000. Available: [http://www2.co.fresno.ca.us/4510/4360/General\\_Plan/GP\\_Final\\_policy\\_doc/Open\\_Space\\_Element\\_rj.pdf](http://www2.co.fresno.ca.us/4510/4360/General_Plan/GP_Final_policy_doc/Open_Space_Element_rj.pdf).

F-1  
cont.

---

<sup>3</sup> Pub. Resources Code § 21092(b)(1); 14 C.C.R. § 15072(g)(4); see *Uthmaniar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.



October 30, 2023

Page 3

On October 3, 2023, CURE submitted a letter to the County (“DEIR References Request”), pursuant to CEQA section 21092(b)(1) and CEQA Guidelines section 15087(c)(5), requesting “immediate access to any and all documents referenced, incorporated by reference, and relied upon” in the DEIR.<sup>4</sup> The County failed to provide reference documents in response to CURE’s request. CURE emailed the County regarding the request on October 26, 2023, to which the County responded that the request had been mistakenly closed.<sup>5</sup> As of the date of this letter, the County has not provided CURE with the reference documents, which are necessary for adequate review of the DEIR.

Without access to these critical DEIR reference documents during the public comment period, CURE and other members of the public are precluded from having the meaningful opportunity to comment on the DEIR as required by CEQA. The courts have held that the failure to provide even a few pages of a CEQA documents for a portion of the CEQA review period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional public comment.<sup>6</sup> It is also well settled that an EIR may not rely on hidden studies or documents that are not provided to the public.<sup>7</sup> By failing to make all documents referenced in the DEIR “readily available” during the current comment period, the County is violating the clear procedural mandates of CEQA, to the detriment of CURE and other members of the public who wish to meaningfully review and comment on the DEIR.

Accordingly, we request that the County extend the public review and comment period on the DEIR for at least 45 days from the date on which the County releases all reference documents for public.

Sincerely,



Aidan P. Marshall

Attachments  
APM:acp

---

<sup>4</sup> **Exhibit B:** Letter from Adams, Broadwell, Joseph & Cardozo (“ABJC”) to County re Request for Immediate Access to Documents Referenced in DEIR for the Key Energy Storage Project (CUP# 3734; SCH 2022070414) (October 3, 2023).

<sup>5</sup> Email Correspondence between Alexandra E. Stukan (ABJC) and Ahla Yang (County) (October 26, 2023).

<sup>6</sup> *Ulthamar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

<sup>7</sup> *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 (“Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”).

**EXHIBIT A**



E26231000256

# County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING  
STEVEN E. WHITE, DIRECTOR

## NOTICE OF AVAILABILITY

DRAFT ENVIRONMENTAL IMPACT REPORT FOR KEY ENERGY STORAGE PROJECT  
STATE CLEARINGHOUSE NO. 2022070414; FRESNO COUNTY EIR 8189

**FILED**  
SEP 20 2023  
TIME 1:21 pm  
FRESNO COUNTY CLERK  
DEPUTY

**LEAD AGENCY:** Fresno County

**PROJECT TITLE:** Draft Environmental Impact Report (EIR) for the Key Energy Storage Project

**PROJECT LOCATION:** The Project site is in western Fresno County, approximately 0.4 mile east of Interstate 5 (I-5), immediately south of West Jayne Avenue, and between I-5 and South Lassen Avenue (State Route 269) and adjacent to PG&E's existing Gates Substation. Nearby communities include Huron (4 miles to the northeast), Avenal (7.5 miles to the south), and Coalinga (11.5 miles to the west). The 260-acre site is within the approximately 318 acres consisting of Fresno County Assessor Parcel Numbers: 085-040-58, 085-040-36, and 085-040-37.

**PROJECT DESCRIPTION:** Key Energy Storage, LLC has applied to the Fresno County Department of Public Works and Planning for a Conditional Use Permit No. 3734 to construct, operate, maintain, and decommission an energy storage facility. Project build-out would be phased. At full build-out, the Project would have capacity to store up to 3 gigawatts of energy during times of excess generation and dispatch it into the existing electrical grid later when needed. The Project would receive energy (charge) from the point of interconnection (POI) with the regional electric transmission system at PG&E's existing Gates Substation, store energy, and then deliver energy (discharge) back to the POI. The Project would consist of batteries using lithium-ion or lithium-ion and iron-flow storage technology. To interconnect the Project, Key Energy Storage, LLC and PG&E would construct, operate, and maintain a new 2,500-foot-long (up to 0.5-mile) 500-kilovolt transmission line, mostly on substation property, between the Gates Substation and the Project site. This line would be installed on new lattice steel towers, each up to 200 feet tall, which would be spaced at approximately 500-foot intervals. To accommodate the Project, PG&E also would modify existing infrastructure on the Gates Substation site and at the Midway Substation located approximately 63 miles southeast of the Project site in Buttonwillow, an unincorporated community in Kern County, California.

**SIGNIFICANT ENVIRONMENTAL EFFECTS:** The County of Fresno has prepared a Draft EIR analyzing the Project's potential environmental effects. The Project would have a less-than-significant impact (with or without mitigation measures) regarding: Aesthetics; Agriculture and Forestry Resources; Air Quality; Biological Resources; Cultural and Tribal Cultural Resources; Energy; Geology, Soils, and Paleontological Resources; Greenhouse Gas Emissions; Hazards and Hazardous Materials; Hydrology and Water Quality; Noise and Acoustics; Transportation; Utilities and Service Systems; and Wildfire. No impact would result to Land Use and Planning, Mineral Resources, Population and Housing, Public Services, or Recreation.

DEVELOPMENT SERVICES AND CAPITAL PROJECTS DIVISION  
2220 Tulare Street, Sixth Floor / Fresno, California 93721 / Phone (559) 600-4497 / 600-4022 / 600-4540 / FAX 600-4200  
The County of Fresno is an Equal Employment Opportunity Employer

F-2

E202310000256

**PUBLIC REVIEW:** A 45-day comment period for the Draft EIR begins Thursday, September 21, 2023 and ends at 5:00 p.m. Monday, November 6, 2023. Written comments should reference EIR 8189, Key Energy Storage Project. Include your name, address, and phone number or email address so we may contact you for clarification, if necessary. Send written comments to:

Fresno County Department of Public Works and Planning  
Development Services and Capital Projects Division  
ATTN: Jeremy Shaw, Planner  
2220 Tulare Street, Suite B Annex (below street level)  
SW Corner of Tulare and 'M' Street  
Fresno, CA 93721  
Email: [jshaw@FresnoCountyCA.gov](mailto:jshaw@FresnoCountyCA.gov)

**AVAILABILITY OF THE DRAFT EIR:** Copies of the Draft EIR are available for review at the following locations:

- Fresno County Public Works and Planning Department, 2220 Tulare Street, Fresno.
- Fresno County Main Library, Reference Department, 2420 Mariposa Street, Fresno.
- Huron Public Library, 36050 O St, Huron, CA 93234.



F-2  
cont.

**EXHIBIT B**

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660  
FAX: (650) 589-5062

astukan@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201  
FAX: (916) 444-6209

ARIANA ABEDIFARD  
KEVIN T. CARMICHAEL  
CHRISTINA M. CARO  
THOMAS A. ENSLOW  
KELILAH D. FEDERMAN  
RICHARD M. FRANCO  
ANDREW J. GRAF  
TANYA A. GULESSERIAN  
DARION N. JOHNSTON  
RACHAEL E. KOSS  
AIDAN P. MARSHALL  
TARA C. RENGIFO

Of Counsel  
MARC D. JOSEPH  
DANIEL L. CARDOZO

October 3, 2023

**Via U.S. Mail and Email**

Steven E. White, Director  
Dept of Public Works and Planning  
2220 Tulare Street, 6th Floor  
Fresno, CA 93721  
Email: [stwhite@fresnocountyca.gov](mailto:stwhite@fresnocountyca.gov)

Bernice E. Seidel  
Clerk of the Board of Supervisors  
2281 Tulare St, Room 301  
Fresno, CA 93721  
Email: [ClerkBOS@fresnocountyca.gov](mailto:ClerkBOS@fresnocountyca.gov)

**Via Email Only**

Jeremy Shaw, Planner  
Email: [jshaw@fresnocountyca.gov](mailto:jshaw@fresnocountyca.gov)

**Via Online Portal**

<https://fresnocountyca.nextrequest.com/>

**Re: Request for Immediate Access to Documents Referenced in the Draft Environmental Impact Report – Key Energy Storage Project (CUP# 3734; SCH 2022070414)**

Dear Mr. White, Ms. Seidel, and Mr. Shaw:

We are writing on behalf of California Unions for Reliable Energy (“CURE”) to request ***immediate access*** to any and all documents referenced, incorporated by reference, and relied upon in the Draft Environmental Impact Report (“DEIR”) prepared for the Key Energy Storage Project (CUP# 3734; SCH 2022070414) proposed by Key Energy Storage, LLC. *This request excludes a copy of the DEIR and its appendices. This request also excludes any documents that are currently available on the County of Fresno’s website, as of today’s date.*<sup>1</sup>

The Project proposes the construction, operation, maintenance, and decommissioning of an energy storage facility that would store at least 3 gigawatts of energy. The Project site is located south of W. Jayne Avenue between I-5 and

<sup>1</sup> Accessed <https://www.fresnocountyca.gov/Departments/Public-Works-and-Planning/divisions-of-public-works-and-planning/development-services-division/planning-and-land-use> on October 2, 2023.



October 3, 2023  
Page 2

South Lassen Avenue (State Route 269) in Fresno County (APN#s 085-040-58, 085-040-36, 085-040-37).

Our request for *immediate access* to all documents referenced in the DEIR is made pursuant to the California Environmental Quality Act (“CEQA”), which requires that all documents referenced, incorporated by reference, and relied upon in an environmental review document be made available to the public for the entire comment period.<sup>2</sup>

We request access to the above records in their original form, as maintained by the agency.<sup>3</sup> Pursuant to Government Code Section 7922.570, if the requested documents are in electronic format, please upload them to a file hosting program such as Dropbox, NextRequest or a similar program. Alternatively, if the electronic documents are 10 MB or less (or can be easily broken into sections of 10 MB or less), they may be emailed as attachments.

We will pay for any direct costs of duplication associated with filling this request up to \$200. However, please contact me with a cost estimate before copying/scanning the materials.

Please use the following contact information for all correspondence:

**U.S. Mail**  
Alex Stukan  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080-7037

**Email**  
[astukan@adamsbroadwell.com](mailto:astukan@adamsbroadwell.com)

<sup>2</sup> See Public Resources Code § 21092(b)(1) (stating that “all documents referenced in the draft environmental impact report” shall be made “available for review”); 14 Cal. Code Reg. § 15087(c)(5) (stating that all documents incorporated by reference in the EIR . . . shall be readily accessible to the public”); see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442, as modified (Apr. 18, 2007) (EIR must transparently incorporate and describe the reference materials relied on in its analysis); *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 (“[W]hatever is required to be considered in an EIR must be in that formal report. . .”), internal citations omitted.

<sup>3</sup> Gov. Code § 7922.570; *Sierra Club v. Super. Ct.* (2013) 57 Cal. 4th 157, 161-62.



F-3  
cont.

October 3, 2023  
Page 3

If you have any questions, please call me at (650) 589-1660 or email me at the address above. Thank you for your assistance with this matter.

Sincerely,



Alex Stukan  
Paralegal

AES:lj1

6241-003j



F-3  
cont.

ADAMS BROADWELL JOSEPH & CARDOZO

ARIANA ABEDIFARD  
KEVIN T. CARMICHAEL  
CHRISTINA M. CARO  
THOMAS A. ENSLOW  
KELLAH D. FEDERMAN  
RICHARD M. FRANCO  
ANDREW J. GRAF  
TANYA A. GULESSERIAN  
DARION N. JOHNSTON  
RACHAEL E. KOSS  
ADAN P. MARSHALL  
TARA C. RENGIFO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

SACRAMENTO OFFICE  
520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721  
TEL: (916) 444-6201  
FAX: (916) 444-6209

TEL: (650) 589-1660  
FAX: (650) 589-5062  
amarshall@adamsbroadwell.com

November 6, 2023

*Of Counsel/*  
MARC D. JOSEPH  
DANIEL L. CARDOZO

**VIA EMAIL AND OVERNIGHT MAIL**

Fresno County Department of Public Works and Planning  
Development Services and Capital Projects Division

ATTN: Jeremy Shaw, Planner  
2220 Tulare Street, Suite B Annex  
SW Corner of Tulare and 'M' Street  
Fresno, CA 93721

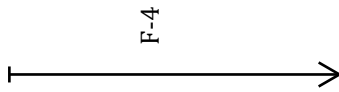
Email: [jshaw@FresnoCountyCA.gov](mailto:jshaw@FresnoCountyCA.gov)

**Re: Preliminary Comments on the Draft Environmental Impact Report for the Key Energy Storage Project (CUP# 3734; SCH 2022070414)**

Dear Mr. Shaw:

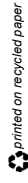
We write on behalf of California Unions for Reliable Energy (“CURE”) to provide preliminary comments on the Draft Environmental Impact Report (“DEIR”) prepared by the County of Fresno (“County”) for the Key Energy Storage Project (CUP# 3734; SCH 2022070414) (“Project”), proposed by Key Energy Storage, LLC (“Applicant”).

The Project proposes the construction, operation, maintenance, and decommissioning of an energy storage facility that would store at least 3 gigawatts of energy. The Project site is located south of W. Jayne Avenue between I-5 and South Lassen Avenue (State Route 269) in Fresno County (APN#s 085-040-58, 085-040-36, 085-040-37). The site proposed for the Project is designated as Agricultural and is classified by the Fresno County Zoning Ordinance as AE-40 (Exclusive Agricultural, 40-acre minimum parcel size).<sup>1</sup> The entire Project site is designated Prime Farmland. The northernmost Project parcel (APN 085- 040-58) is subject to a Williamson Act contract. Seven parcels in the zone of influence for the Project are actively used for agricultural purposes and five parcels are located on Williamson Act–contracted land.<sup>2</sup> The Project seeks an Unclassified Conditional Use Permit



<sup>1</sup> DEIR, pg. 3.3-14.

<sup>2</sup> DEIR, pg. 3.3-17.



November 6, 2023  
Page 2

("CUP") to construct, operate, maintain, and decommission the Project. The Project may also require a Williamson Act cancellation, lot line adjustment, lot merger, subdivision map and/or tentative parcel map, structure height variance, and an encroachment permit.

↑  
F-4  
cont.

Based on our preliminary review of the DEIR and supporting documentation, we conclude that the DEIR fails to comply with the requirements of the California Environmental Quality Act ("CEQA")<sup>3</sup>. We reviewed the DEIR and its technical appendices with the assistance of air quality expert Dr. James Clark.<sup>4</sup>

F-5

CURE's opportunity to meaningfully review the Project was constrained because the County failed to make major components of the DEIR's analysis available throughout the entire comment period, as is required by CEQA. CURE reserves the right to supplement these comments at later proceedings and hearings related to the Project.<sup>5</sup>

F-6

As explained in these comments, the DEIR lacks substantial evidence to support its conclusions with regard to the Projects' impacts relating to agriculture and air quality. The County may not approve the Project until the County revises and recirculates the Project's DEIR to adequately analyze the Project's significant direct and cumulative impacts, and incorporates all feasible mitigation measures to avoid or minimize these impacts to the greatest extent feasible.

F-7

**I. STATEMENT OF INTEREST**

CURE is a coalition of labor organizations whose members encourage sustainable development of California's energy and natural resources. CURE's members help solve the State's energy problems by building, maintaining, and operating conventional and renewable energy power plants and transmission facilities. Since its founding in 1997, CURE has been committed to building a strong economy and a healthier environment. CURE has helped cut smog-forming pollutants in half, reduced toxic emissions, increased the use of recycled water for cooling systems, and pushed for groundbreaking pollution control equipment as the

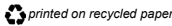
F-8  
↓

<sup>3</sup> Pub. Resources Code §§ 21000 et seq.; 14 Cal. Code Regs ("CEQA Guidelines") §§ 15000 et seq. ("CEQA Guidelines").

<sup>4</sup> Dr. Clark's technical comments and curricula vitae are attached hereto as **Exhibit A**.

<sup>5</sup> Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield ("Bakersfield")* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

6241-006acp



November 6, 2023  
Page 3

standard for all new power plants, all while helping to ensure that new power plants and transmission facilities are built with highly trained, professional workers who live and raise families in nearby communities.

Individual members of CURE and its member organizations live, work, recreate, and raise their families in Fresno County. Accordingly, they will be directly affected by the Project’s environmental and health and safety impacts. Individual members may also work on the Project itself. They will be the first in line to be exposed to any health and safety hazards that exist onsite.

CURE has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for the members that they represent. Environmental degradation destroys cultural and wildlife areas, consumes limited fresh surface and ground water resources, causes water pollution, and imposes other stresses on the environmental carrying capacity of the state. This in turn jeopardizes future development by causing construction moratoriums and otherwise reducing future employment opportunities for CURE’s members. CURE therefore has a direct interest in enforcing environmental laws to minimize the adverse impacts of projects that would otherwise degrade the environment.

Finally, CURE members are concerned about projects that risk serious environmental harm without providing countervailing economic benefits. For these reasons, CURE’s mission includes improving California’s economy and the environment by ensuring that new conventional and renewable power plants and their related transmission facilities use the best practices to protect our clean air, land and water and to minimize their environmental impacts and footprint.

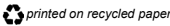
**II. LEGAL BACKGROUND**

CEQA requires public agencies to analyze the potential environmental impacts of their proposed actions in an EIR.<sup>6</sup> “The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.”<sup>7</sup>

<sup>6</sup> PRC § 21100.

<sup>7</sup> *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal (“Laurel Heights I”)* (1988) 47 Cal.3d 376, 390 (internal quotations omitted).

6241-006acp



F-8  
cont.



F-9

November 6, 2023  
Page 4

CEQA has two primary purposes. First, CEQA is designed to inform decisionmakers and the public about the potential significant environmental effects of a project.<sup>8</sup> “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’”<sup>9</sup> The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”<sup>10</sup> As the CEQA Guidelines explain, “[t]he EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected.”<sup>11</sup>

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring consideration of environmentally superior alternatives and adoption of all feasible mitigation measures.<sup>12</sup> The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.”<sup>13</sup> If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment” to the greatest extent feasible and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”<sup>14</sup>

While courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported



F-9  
cont.

<sup>8</sup> Pub. Resources Code § 21061; CEQA Guidelines §§ 15002(a)(1); 15003(b)-(e); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 517 (“[T]he basic purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.”).

<sup>9</sup> *Citizens of Goleta Valley*, 52 Cal.3d at pg. 564 (quoting *Laurel Heights I*, 47 Cal.3d at 392).

<sup>10</sup> *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810; *see also Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”) (purpose of EIR is to inform the public and officials of environmental consequences of their decisions *before* they are made).

<sup>11</sup> CEQA Guidelines § 15003(b).

<sup>12</sup> CEQA Guidelines § 15002(a)(2), (3); *see also Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at pg. 564.

<sup>13</sup> CEQA Guidelines § 15002(a)(2).

<sup>14</sup> PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090(a), 15091(a), 15092(b)(2)(A), (B); *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

November 6, 2023  
Page 5

study is entitled to no judicial deference.”<sup>15</sup> As the courts have explained, a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.”<sup>16</sup> “The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail ‘to enable who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’”<sup>17</sup>

↑  
F-9  
cont.

**III. THE COUNTY FAILED TO PROVIDE TIMELY ACCESS TO DOCUMENTS REFERENCED IN THE DEIR**

The County failed to make available all documents referenced in the DEIR during the entire public comment period. CEQA requires that “all documents referenced” – and the CEQA Guidelines require that “all documents incorporated by reference” – in a draft environmental impact report shall be “readily accessible to the public during the lead agency’s normal working hours” during the entire public comment period.<sup>18</sup> The DEIR provides access to some reference documents via URLs in the DEIR, but does not provide electronic access to many reference documents. Further, numerous URLs in the DEIR are nonfunctional.

↓  
F-10  
↓

On October 3, 2023, CURE submitted a letter to the County (“DEIR References Request”), pursuant to CEQA section 21092(b)(1) and CEQA Guidelines section 15087(c)(5), requesting “immediate access to any and all documents referenced, incorporated by reference, and relied upon” in the DEIR.<sup>19</sup> On October 26, 2023, having not yet gained access to the documents referenced in the DEIR,

<sup>15</sup> *Berkeley Jets*, 91 Cal.App.4th at pg. 1355 (emphasis added) (quoting *Laurel Heights I*, 47 Cal.3d at 391, 409, fn. 12).

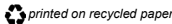
<sup>16</sup> *Berkeley Jets*, 91 Cal.App.4th at pg. 1355; see also *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722 (error is prejudicial if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process); *Galante Vineyards*, 60 Cal.App.4th at pg. 1117 (decision to approve a project is a nullity if based upon an EIR that does not provide decision-makers and the public with information about the project as required by CEQA); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946 (prejudicial abuse of discretion results where agency fails to comply with information disclosure provisions of CEQA).

<sup>17</sup> *Sierra Club*, 6 Cal.5th at pg. 516 (quoting *Laurel Heights I*, 47 Cal.3d at 405).

<sup>18</sup> Pub. Resources Code § 21092(b)(1); 14 C.C.R. § 15072(g)(4); see *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

<sup>19</sup> Letter from Adams, Broadwell, Joseph & Cardozo (“ABJC”) to County re Request for Immediate Access to Documents Referenced in DEIR for the Key Energy Storage Project (CUP# 3734; SCH 2022070414) (October 3, 2023).

6241-006acp



November 6, 2023  
Page 6

CURE emailed the County regarding the request, to which the County responded that the request had been mistakenly closed.<sup>20</sup> On October 30, 2023, having not yet gained access to the documents referenced in the DEIR, CURE submitted a second letter requesting access to the missing documents.<sup>21</sup> The letter also requested an extension of the comment period to allow for adequate review of the DEIR, as required by CEQA.

The County only provided access to the reference documents on November 2, 2023, less than three business days before the close of the public comment period on November 6. The County also did not make a determination to extend the comment period. By failing to make all documents referenced in the DEIR “readily available” during the current comment period, the County violates the clear procedural mandates of CEQA, to the detriment of CURE and other members of the public who wish to meaningfully review and comment on the DEIR. Courts have held that the failure to provide even a few pages of a CEQA documents for a portion of the CEQA review period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional public comment.<sup>22</sup> It is also well settled that an EIR may not rely on hidden studies or documents that are not provided to the public.<sup>23</sup> The DEIR therefore must be recirculated for public review.

**IV. THE DEIR FAILS TO DISCLOSE, ANALYZE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS**

An EIR must fully disclose all potentially significant impacts of a Project and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency’s significance determination with regard to each impact must be supported by accurate scientific and factual data.<sup>24</sup> An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.<sup>25</sup>



F-10  
cont.

F-11

<sup>20</sup> Email Correspondence between Alexandra E. Stukan (ABJC) and Ahla Yang (County) (October 26, 2023).

<sup>21</sup> **Exhibit B:** Letter from ABJC to County re: Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for the Key Energy Storage Project (CUP# 3734; SCH 2022070414) (October 30, 2023).

<sup>22</sup> *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

<sup>23</sup> *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 (“Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”).

<sup>24</sup> CEQA Guidelines § 15064(b).

<sup>25</sup> *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.



November 6, 2023  
Page 7

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.<sup>26</sup> Challenges to an agency’s failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project’s environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency’s factual conclusions.<sup>27</sup> In reviewing challenges to an agency’s approval of an EIR based on a lack of substantial evidence, the court will “determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements.”<sup>28</sup>

Additionally, CEQA requires agencies to commit to all feasible mitigation measures to reduce significant environmental impacts.<sup>29</sup> In particular, the lead agency may not make required CEQA findings, including finding that a project impact is significant and unavoidable, unless the administrative record demonstrates that it has adopted all feasible mitigation to reduce significant environmental impacts to the greatest extent feasible.<sup>30</sup>

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not “uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.”<sup>31</sup>

**A. The DEIR’s Evaluation of Agricultural Resource Impacts Violates CEQA, the Williamson Act, and County Zoning Law**

The Legislature has repeatedly held that conversion of agricultural land is a significant concern and that the preservation of agricultural land is a significant goal of the State.<sup>32</sup> The Legislature has further stated that CEQA shall play an



F-11  
cont.

F-12

<sup>26</sup> *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.  
<sup>27</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.  
<sup>28</sup> *Id., Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.  
<sup>29</sup> CEQA Guidelines § 15002(a)(2).  
<sup>30</sup> PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090, 15091; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.  
<sup>31</sup> *Berkeley Jets*, 91 Cal.App.4th at 1355.  
<sup>32</sup> Gov. Code, § 51220 (Williamson Act findings that agricultural preservation is valuable and necessary); Civ. Code, § 815 (legislative declaration that preservation of agricultural lands “is among the most important environmental assets of California”); Pub. Resources Code, § 10200, et seq.

November 6, 2023  
Page 8

important role in the preservation of agricultural lands.<sup>33</sup> Despite this legislative admonition, the DEIR’s evaluation of the Project’s direct, indirect and cumulative impacts on agricultural resources fails to comply with the requirements of CEQA.

↑  
F-12  
cont.

**1. The DEIR’s Conclusion that Agricultural Resource Impacts Will Be Less than Significant is Not Supported by Substantial Evidence**

The DEIR erroneously determines that the Project’s conversion of Prime Farmland and indirect impacts on agricultural resources would be individually and cumulatively less than significant. The DEIR reasons that the Project’s impacts would be temporary, as the Project will be decommissioned at the end of the Project’s lifespan. The DEIR’s determination is not supported by substantial evidence.

↑  
F-13

The assumption that the Project is temporary in nature and will be decommissioned and returned to agricultural use is speculative and not supported by any evidence in the record. The DEIR fails to identify mitigation measures or conditions of approval requiring the Project be decommissioned and returned to agricultural use. Nor does the DEIR contain any other evidence of the likelihood of the Project parcel returning to agricultural use after decommissioning. Accordingly, the assumption that this farmland will only be temporarily converted is speculative and without foundation. The County has previously acknowledged the speculative nature of decommissioning in an EIR for a different project, which analyzed Unclassified CUPs<sup>34</sup> to construct, operate, maintain, and decommission the Fifth Standard Solar Project Complex:

↑  
F-14

The construction and operation of the proposed facility would result in permanent conversion of approximately 1,600 acres of Prime Farmland to a non-agricultural use. The Applicant has committed to return the land to farmland after the solar facilities are decommissioned through implementation of a Reclamation Plan. However, the conversion of Prime Farmland to nonagricultural use would be considered significant. The term of the lease may be extended with the landowner’s consent and the approval of

↑  
F-15  
↓

(California Farmland Conservancy Program Act, promoting the establishment of agricultural easements as a means to preserve agricultural land).

<sup>33</sup> This language was used as the finding behind amendments to Pub. Resources Code sections 21060.1, 21061.2 and 21095 in 1993 (Stats. 1993, ch. 812, §1, subd. (d)).

<sup>34</sup> CUPs Application Nos. 3562, 3563, and 3564.

November 6, 2023  
Page 9

additional land use permits from the County, thus potentially extending the period the land is out of agricultural use, subject to further environmental review.<sup>35</sup>

↑  
F-15  
cont.

Because the EIR lacks substantial evidence to support its finding that the temporary nature of the Project will reduce the Project’s cumulative agricultural resource impacts below a level of significance, the EIR must be revised and recirculated with a proper agricultural impacts analysis, consistent with the requirements of CEQA.

↑  
F-16

**2. The DEIR Fails to Adequately Evaluate Indirect Effects on Agricultural Resources**

The DEIR’s finding that impacts from the Project’s indirect changes to farmland would be less than significant lacks the support of substantial evidence.<sup>36</sup> The DEIR explains that “the proposed use could attract other solar development, which would enable storage of the energy collected by solar facilities... As an indirect effect, the conversion of agricultural parcels in the zone of influence and in the surrounding landscape could result.”<sup>37</sup> Courts have held that indirect effects of conversion of agricultural resources include the pressure created to encourage additional conversions, as development pressure raises the speculative value of the land and increases the economic costs of farming due to land use incompatibilities.<sup>38</sup> But the DEIR reasons that because “the central force of attraction for the development of renewable energy projects in the region is arguably the PG&E Gates Substation,” the Project would not directly cause or result in conversion of surrounding farmland to non-agricultural use.<sup>39</sup> The DEIR thus adopts a “drop in the bucket” approach to argue that the Project’s own pressure on neighboring agricultural resources is insignificant in light of the PG&E Gates Substation’s “force of attraction.”

↑  
F-17

This “drop in a bucket” approach has been rejected by the courts, and fails to comply with CEQA’s requirement that a project mitigate impacts that are “cumulatively considerable.”<sup>40</sup> In *Kings County Farm Bureau v. City of Hanford*<sup>41</sup>

↑  
F-18  
↓

<sup>35</sup> County of Fresno, EIR No. 7257, pg. 4.2-9.  
<sup>36</sup> DEIR, pg. 3.3-17.  
<sup>37</sup> *Id.*  
<sup>38</sup> *Masonite Corp. v. County of Mendocino* (2013) 218 Cal.App.4th.  
<sup>39</sup> *Id.*  
<sup>40</sup> PRC § 21083(b)(2); 14 CCR § 15130.  
<sup>41</sup> (1990) 221 Cal. App. 3d 692.

November 6, 2023  
Page 10

the city prepared an EIR for a 26.4-megawatt coal-fired cogeneration plant. Notwithstanding the fact that the EIR found that the project region was out of attainment for PM10 and ozone, the city failed to incorporate mitigations for the project’s cumulative air quality impacts from project emissions because it concluded that the Project would contribute “less than one percent of area emissions for all criteria pollutants.”<sup>42</sup> The city reasoned that, because the project’s air emissions were small in ratio to existing air quality problems, that this necessarily rendered the project’s “incremental contribution” minimal under CEQA. The court rejected this approach, finding it “contrary to the intent of CEQA.”<sup>43</sup>

↑  
F-18  
cont.

Here, the presence of other projects with strong indirect impacts on surrounding farmland does not eliminate the instant Project’s impacts – especially because the DEIR explicitly acknowledges that the Project would encourage local solar development by enabling storage of the energy collected by solar facilities.<sup>44</sup> The DEIR must be revised and recirculated to fully analyze and mitigate this significant impact.

↑  
F-19

**3. The DEIR Fails to Evaluate Cumulative Agricultural Resource Impacts in the Manner Required by Law**

The DEIR’s analysis of the Project’s cumulative agricultural resources impacts violates CEQA because it fails to conduct the cumulative analysis in the manner required by law. The Project will convert approximately 318 acres of Prime Farmland by developing 260 acres of the Project site, and effectively precluding agricultural use on the remaining acres.<sup>45</sup> The DEIR acknowledges that the Project is part of a pattern of solar and renewable energy development in Fresno County, and that as a result, Fresno County is the third fastest of all California counties to lose farmland, and the seventeenth fastest in the nation.<sup>46</sup> The DEIR further states that “[c]ollectively, the incremental impacts of the Project when combined with the incremental impacts of the past, present, and reasonably foreseeable future projects would result in a significant cumulative impact related to the conversion of Farmland to non-agricultural use.”<sup>47</sup> But the DEIR reasons that the Project’s impacts would not be cumulatively considerable because the Project site would be

↑  
F-20  
↓

<sup>42</sup> *Id.* at 719.  
<sup>43</sup> *Id.* at 721.  
<sup>44</sup> *Id.*  
<sup>45</sup> DEIR, pg. 3.3-12.  
<sup>46</sup> DEIR, pg. 3.3-18.  
<sup>47</sup> DEIR, pg. 3.3-18, 19.

November 6, 2023  
Page 11

returned to a condition suitable for continued agricultural use with substantially the same soil conditions as currently exist. The DEIR does not identify any mitigation for this impact, such as a legally enforceable requirement that Project site be decommissioned and the land returned to its current state following decommissioning. Without such mitigation, the DEIR lacks substantial evidence supporting the conclusion that the Project’s impacts to agricultural land will not be cumulatively considerable.

↑  
F-20  
cont.

Moreover, the DEIR relies on flawed reasoning. Even if the Project is decommissioned, the Project’s construction and operation would still encourage conversion of surrounding farmland to non-agricultural use.<sup>48</sup> The County identified this issue in EIR No. 7257, prepared for the nearby Fifth Standard Solar Project Complex:

Given the increased importance of renewable energy in California, other landowners may determine that the conversion of some of their land holdings to non-agricultural use is economically feasible; thus, indirect conversion of offsite farmland could potentially occur. This is a potentially significant impact. **MM AG-1 would require the implementation of a reclamation plan to return of the project site to potential agricultural use, but it would not address the precedent of a large Prime Farmland conversion to non-agricultural use.** There are no Mitigation Measures that would reduce this impact. The impact would remain significant and unavoidable.<sup>49</sup>

↑  
F-21

The DEIR must be revised and recirculated to disclose, analyze and mitigate this significant impact.

**4. The Proposed Project Would Conflict With a Williamson Act Contract.**

The DEIR provides that conflict with a Williamson Act contract would constitute a significant impact under CEQA.<sup>50</sup> The Project’s northern parcel (APN 085-040 058) is subject to Williamson Act Contract No. 2068, but would be

↓  
F-22

<sup>48</sup> DEIR, pg. 3.3-17.; *Masonite Corp. v. County of Mendocino* (2013) 218 Cal.App.4th.  
<sup>49</sup> County of Fresno, EIR No. 7257, pg. 4.2-14. [emphasis added].  
<sup>50</sup> DEIR, pg. 3.3-11.

November 6, 2023  
Page 12

petitioned for cancellation by the landowners as part of the Project.<sup>51</sup> Cancellation of a Williamson Act contract constitutes a conflict with a Williamson Act.

↑  
F-22  
cont.

The DEIR argues that even if cancellation were not proposed, the Project would be compatible with the existing Williamson Act contract.<sup>52</sup> This argument fails because the Project is not consistent with the Williamson Act’s principles of compatibility. According to Gov. Code Section 51238.1, a lead agency may approve uses on contracted lands if they are consistent with the following principles of compatibility:

- (1) The use will not significantly compromise the long-term productive agricultural capability of the subject contracted parcel or parcels or on other contracted lands in agricultural preserves.
- (2) The use will not significantly displace or impair current or reasonably foreseeable agricultural operations on the subject contracted parcel or parcels or on other contracted lands in agricultural preserves.
- (3) The use will not result in the significant removal of adjacent contracted land from agricultural or open-space use. In evaluating compatibility, a lead agency considers the impacts of the proposed use on noncontracted lands in the agricultural preserve or preserves.

↑  
F-23

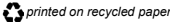
The DEIR reasons that the Project would be compatible with the first two principles because the Project would be decommissioned after 40 years.<sup>53</sup> But as explained herein, the assumption that the Project is temporary in nature and will be decommissioned and returned to agricultural use is speculative and not supported by any evidence in the record. While the Project is operational, agricultural operations on the Project site would be displaced.

The DEIR reasons that the Project would be compatible with the third principle due to the Project’s compliance with the County’s solar facility guidelines.<sup>54</sup> The DEIR’s analysis of this compatibility principle lacks consideration of the Project’s indirect effects on nearby farmland. As discussed herein, the Project’s construction and operation would still encourage conversion of

↑  
F-24  
↓

---

<sup>51</sup> DEIR, pg. 3.3-14.  
<sup>52</sup> *Id.*  
<sup>53</sup> DEIR, pg. 3.3-15.  
<sup>54</sup> *Id.*



November 6, 2023  
Page 13

surrounding farmland to non-agricultural use.<sup>55</sup> The DEIR explains that “the proposed use could attract other solar development, which would enable storage of the energy collected by solar facilities... As an indirect effect, the conversion of agricultural parcels in the zone of influence and in the surrounding landscape could result.”<sup>56</sup> This effect has been demonstrated across Fresno County, as the DEIR acknowledges that Fresno County is the third fastest of all California counties to lose farmland, and the seventeenth fastest in the nation.<sup>57</sup>



F-24  
cont.

The County thus lacks substantial evidence to find the Project compatible with the existing Williamson Act contract. This significant impact must be disclosed and mitigated in a revised and recirculated DEIR.

**5. The Proposed Project Would Conflict With Existing Zoning for Agricultural Use.**

The DEIR provides that “[c]onflict with existing zoning for agricultural use” would constitute a significant impact under CEQA.<sup>58</sup> The site proposed for the Project is designated as Agricultural and is classified by the Fresno County Zoning Ordinance as AE-40 (Exclusive Agricultural, 40-acre minimum parcel size).<sup>59</sup> The “AE” District is intended to be an exclusive agricultural district and for uses integral to an agricultural operation. The DEIR states that while the zoning designation does not specifically allow for energy storage facilities, the Project’s proposed uses may be permitted in any zone district, subject to consideration and approval by Fresno County of an unclassified CUP. The DEIR concludes that with approval of the CUP, there would be no conflict with agricultural zoning.



F-25

The DEIR’s reasoning is incorrect, as a proposed development must be consistent with the General Plan in order for a CUP to be granted.<sup>60</sup> Granting of a CUP for this Project would be inconsistent with General Plan Policy LU-A.3, which provides: “[t]he County may allow by discretionary permit in areas designated Agriculture, special agricultural uses and agriculturally related activities, including value added processing facilities, and certain non-agricultural uses listed in Table



F-26

<sup>55</sup> DEIR, pg. 3.3-17.; *Masonite Corp. v. County of Mendocino* (2013) 218 Cal.App.4th.

<sup>56</sup> *Id.*

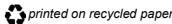
<sup>57</sup> DEIR, pg. 3.3-18.

<sup>58</sup> DEIR, pg. 3.3-11.

<sup>59</sup> DEIR, pg. 3.3-14.

<sup>60</sup> Fresno County Zoning Code Section 873(F)(4) (“The Commission, in approving or recommending approval of a Conditional Use Permit, shall find as follows: ... That the proposed development is consistent with the General Plan.”).

6241-006acp



November 6, 2023  
Page 14

LU-3.” As acknowledged by the DEIR, energy storage facilities are not within the scope of uses listed in Table LU-3, which lists Agricultural Uses, Special Agricultural Uses, Agriculturally-Related & Value-Added Agricultural Uses, and Agricultural Commercial Center Uses & Other Non-Agricultural Uses.<sup>61</sup> Further, uses listed in Table LU-3 are also subject to several criteria.<sup>62</sup> For instance, “[t]he use shall provide a needed service to the surrounding agricultural area which cannot be provided more efficiently within urban areas or which requires location in a non-urban area because of unusual site requirements or operational characteristics.”<sup>63</sup> Energy storage facilities do not meet this criterion. The Project’s proposed energy storage uses are thus inconsistent with the General Plan.

F-26  
cont.

This inconsistency constitutes a significant impact under CEQA, and means that the County lacks substantial evidence to make the requisite findings to approve the Project’s proposed Unclassified CUP. The DEIR must be revised and recirculated after full disclosure and mitigation of this significant impact.

**6. The DEIR Fails to Impose Any Mitigation for the Project’s Significant Impacts on Agricultural Resources**

The Project would have significant impacts on agricultural resources, but the DEIR fails to identify any mitigation to address these impacts. The County’s approach ignores comments from the California Department of Conservation (“DOC”) on the Project’s Notice of Preparation calling for mitigation that “[t]he significant agricultural impacts.<sup>64</sup> The DOC comments explain that “[t]he conversion of agricultural land represents a permanent reduction and significant impact to California’s agricultural land resources.”<sup>65</sup> CEQA requires public agencies

F-27

<sup>61</sup> Fresno County General Plan, pg. 2-13, Table LU-3.

<sup>62</sup> Policy LU-A.3 a. The use shall provide a needed service to the surrounding agricultural area which cannot be provided more efficiently within urban areas or which requires location in a non-urban area because of unusual site requirements or operational characteristics; b. The use should not be sited on productive agricultural lands if less productive land is available in the vicinity; c. The operational or physical characteristics of the use shall not have a detrimental impact on water resources or the use or management of surrounding properties within at least one-quarter (0.25) mile radius; d. A probable workforce should be located nearby or be readily available.

<sup>63</sup> *Id.*

<sup>64</sup> Letter from CA Dept. of Conservation to County of Fresno re: Notice Of Preparation Of An Environmental Impact Report For The Key Energy Storage Project, SCH# 2022070414 (July 29, 2022), available at <https://files.ceqanet.opr.ca.gov/280337-1/attachment/VtQ0Lk3wcnzAnfMfipBdvmFw8JMd86w00IaMkLCBvIbX7T0kOwMREmms6XKPCmXvGAZBtSqAGInAFv30>.

<sup>65</sup> *Id.* at 2.



November 6, 2023  
Page 15

to avoid or reduce environmental damage when “feasible” by requiring the implementation of all feasible mitigation measures.<sup>66</sup> If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”<sup>67</sup>

The DOC comments recommend that the County consider agricultural conservation easements, among other measures, as potential mitigation.<sup>68</sup> This mitigation can either include the outright purchase of easements or the donation of mitigation fees to a local, regional, or statewide organization or agency whose purpose includes the acquisition and stewardship of agricultural easements.<sup>69</sup> The DEIR must be revised to identify mitigation to eliminate or substantially lessen all significant effects on the environment where feasible.



F-27  
cont.

**B. The DEIR Fails to Identify All Feasible Mitigation to Reduce Valley Fever Impacts to a Less Than Significant Level**

Project construction and decommissioning would result in soil disturbance that could expose construction workers or nearby receptors to *coccidioides immitis* spores (also known as Valley Fever). The DEIR fails to identify mitigation for this potentially significant impact, claiming that compliance with the requirements of AB 203 and San Joaquin Valley Air Pollution Control District (“SJVAPCD”) Rule 802 would ensure that Valley Fever–related impacts on construction workers would be less than significant.<sup>70</sup> AB 203 requires the Applicant to provide effective awareness training on Valley Fever to all employees annually and before an employee begins work that could reasonably be anticipated to cause substantial dust disturbance.<sup>71</sup> SJVAPCD Rule 802 would require the Project to reduce visible dust emissions to less than 20 percent opacity.



F-28

F-29

<sup>66</sup> 14 C.C.R. § 15002(a)(2) and (3); see also, *Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

<sup>67</sup> PRC § 21081; 14 C.C.R. § 15092(b)(2)(A)-(B).

<sup>68</sup> See Cal. Code Regs., tit. 14, § 15370 [mitigation includes “compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements.”]

<sup>69</sup> DOC Comments, pg. 2.

<sup>70</sup> DEIR, pg. 3.4-25.

<sup>71</sup> DEIR, pg. 3.4-25.

November 6, 2023  
Page 16

Dr. Clark explains that the measures required by these programs are not sufficient to reduce worker exposure to Valley Fever to a less-than-significant level.<sup>72</sup> CEQA requires public agencies to avoid or reduce significant environmental effects by requiring the implementation of all feasible mitigation measures.<sup>73</sup> Dr. Clark’s comments provide specific, feasible measures to reduce the Project’s Valley Fever impacts. For example, although the DEIR states that the Applicant proposes to provide personal protective respiratory equipment to workers, Dr. Clark identifies the necessary performance standards for the respirators in order to ensure their effectiveness.<sup>74</sup> Dr. Clark’s comments also identify further measures regarding dust exposure control, prevention of transport of cocci outside endemic areas, and medical surveillance for employees.<sup>75</sup>



F-30

Accordingly, the DEIR must be revised to expand and clarify the Project’s Valley Fever measures. The revised measures should include performance standards and be identified as mitigation measures, as CEQA requires mitigation measures to be “fully enforceable through permit conditions, agreements, or other legally binding instruments.”<sup>76</sup>



F-31

**V. CONCLUSION**

For the reasons discussed above, the DEIR for the Project is inadequate under CEQA. It must be revised to provide legally adequate analysis of, and mitigation for, all of the Project’s potentially significant impacts. These revisions will necessarily require that the DEIR be recirculated for additional public review. Until the DEIR has been revised and recirculated, as described herein, the County may not lawfully approve the Project.



F-32

<sup>72</sup> Clark Comments, pg. 5.

<sup>73</sup> 14 C.C.R. § 15002(a)(2) and (3); see also, *Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

<sup>74</sup> Clark Comments, pg. 10; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical, supra*, 29 Cal.App.4th at pg. 1604, fn. 5. (If identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further approvals must be made contingent upon meeting these performance criteria).

<sup>75</sup> Clark Comments, pg. 10-11.

<sup>76</sup> CEQA Guidelines, § 15126.4, subd. (a)(2).

November 6, 2023  
Page 17

Thank you for your consideration of these comments. Please include them in the record of proceedings for the Project.

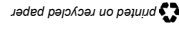
Sincerely,



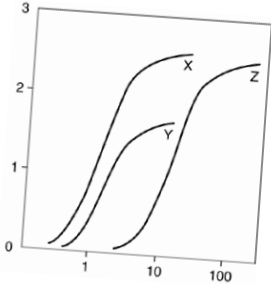
Aidan P. Marshall

Attachments  
APM:acp

6241-006acp



**EXHIBIT A**



November 6, 2023

Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080

**Attn: Mr. Aidan P. Marshall**

**Clark & Associates**  
Environmental Consulting, Inc.

**OFFICE**  
12405 Venice Blvd  
Suite 331  
Los Angeles, CA 90066

**PHONE**  
310-907-6165

**FAX**  
310-398-7626

**EMAIL**  
jclark.assoc@gmail.com

**Subject: Comment Letter on Draft Environmental Impact Report (DEIR) For Key Energy Storage Project EIR No. 8189m CUP No 3734, State Clearinghouse No. 2022070414 Fresno, California**

---

Dear Mr. Marshall:

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the above referenced project.

Clark’s review of the materials in no way constitutes a validation of the conclusions or materials contained within the DEIR. If we do not comment on a specific item, this does not constitute acceptance of the item.

**Project Description:**

Key Energy Storage, LLC (the Applicant) filed an application with the Fresno County Department of Public Works and Planning for an unclassified conditional use permit (CUP) (CUP No. 3734) to construct, operate, maintain, and decommission the Key Energy Storage Project (Project) on approximately 260 acres of private property in western Fresno County.

The Project would be receiving energy (charging) from the point of interconnection (POI) with the regional electric transmission system at the existing Pacific Gas and Electric Company (PG&E) Gates Substation, storing energy, and then later delivering energy (discharging) back to the POI. The Project would consist of batteries using lithium-ion and/or iron-flow storage technology. On-site support facilities would include a collector substation;



F-33

power conversion systems, including bi-directional inverters, transformers, and associated connection lines; heating, ventilation, and air conditioning units; fencing; access roads; a supervisory control and data acquisition (SCADA) system; and security lighting. Diesel generators may be needed temporarily during construction. The Project would be capable of storing approximately 3 gigawatts of energy when completed.

Key Energy Storage, LLC and PG&E would construct, operate, and maintain a new 2,500-foot-long (up to 0.5-mile) 500-kilovolt transmission line between the Project site and the Gates Substation. This line would be installed on new lattice steel towers, each up to 200feet tall, which would be spaced at approximately 500-foot intervals. PG&E's interconnection infrastructure work also would include other modifications within the existing boundaries of the Gates Substation as well as at PG&E's existing Midway Substation, which is located in Buttonwillow, an unincorporated community in Kern County, California.

The Project site is located 4 miles southwest of the city of Huron, approximately 1,700 feet northeast of Interstate 5 (I-5), immediately south of West Jayne Avenue, between I-5 and South Lassen Avenue (State Route 269), and adjacent to PG&E's existing Gates Substation.





Figure 1: Project Site Location

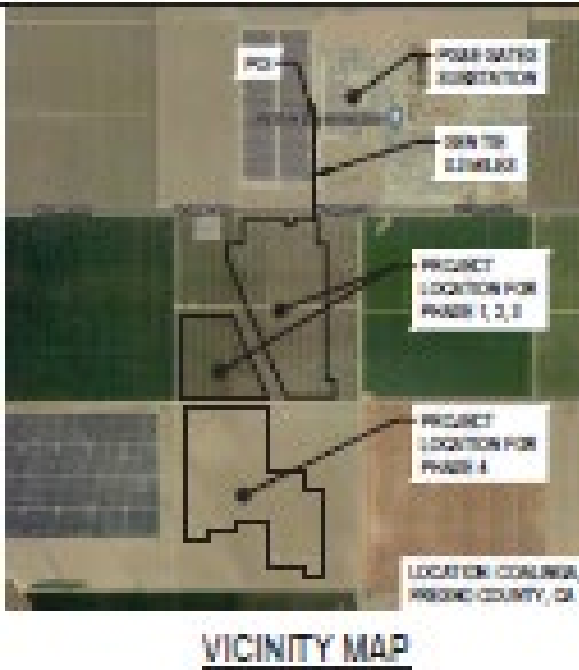


Figure 2: Project Site Plan

The DEIR concludes that there are no significant air impacts from the project on air quality in the area and that the construction and decommissioning of the project would not expose sensitive populations to the risk of developing Valley Fever. The conclusion that there are no air quality impacts is in conflict with the facts provided within the DEIR.

Specific Comments:

**1. The DEIR’s Description of The Construction Phase Is In Conflict With The Description From The Air Quality Analysis of The Project**

According to the DEIR’s description of the Project, “The requested conditional use permit (CUP) would have a 40-year term, during which the Project would be constructed in phases, operated and maintained, and then decommissioned. Project development would occur in four phases, with later phases scheduled for implementation based on the region’s increasing demand for energy storage.

F-33 cont.

F-34

F-35



Phase 1 construction would begin in 2024 and Phase 2 would begin in 2025. Phases 3 and 4 would be constructed between 1 and 3 years after the previous phase, based on the region's increasing demand for energy storage. Each construction phase would last between 14 and 24 months per phase depending on the battery option chosen with total construction duration of approximately 6 years for either battery option. Specifically, construction of the Lithium Ion Battery option is anticipated to take a total of approximately 76 months and construction of the Lithium Ion Battery with Iron Flow Battery option is anticipated to take a total of 68 months. The O&M periods for Phase 1 and Phase 2 are projected to begin in 2025 and 2026, respectively. It is assumed that all phases would be in operation by 2032. Decommissioning and site restoration for each phase would occur over a 12-month period. Phases 1, 2, and 3 would be constructed on APN 085-040-58; Phase 4 would be constructed on APNs 085-040-37 and 085-040-36."<sup>1</sup>

In Appendix D of the DEIR (Air Quality Analysis) in the Impact Analysis A-Q-2 the description of the construction options is very different. "Construction of the Project would require between 14 and 24 months per phase depending on the battery option chosen with total construction duration of approximately 6 years for either battery option. Specifically, construction of the Lithium Ion Battery option is anticipated to take a total of approximately 76 weeks and construction of the Lithium Ion Battery with Iron Flow Battery option is anticipated to take a total of 104 weeks." The difference in the total emissions based on the assumption of weeks versus months of construction is significant. The County must correct this flaw and determine the actual duration of the construction phase(s) so that an accurate measure of the air quality impacts can be performed. This assessment must be presented in a revised DEIR.

**2. The DEIR Minimizes The Impacts from Exposure to *Coccidioides Immitis* (Valley Fever Cocci) From Particulate Matter Released From Site During Construction Activities of The Project.**

The DEIR fails to adequately address the known presence/issue of *Coccidioides Immitis* (Valley Fever Cocci) in the High Desert Portion of Southern California. Dust exposure is one of the primary

<sup>1</sup> ESA. 2023. Draft Environmental Impact Report (DEIR) For Key Energy Storage Project EIR No. 8189m CUP No 3734, State Clearinghouse No. 2022070414 Fresno, California pgs 2-6 to 2-11

F-36  
F-37

F-35  
cont.

risk factors for contracting Valley Fever (via *Coccidioides immitis (cocci)* exposure). When soil containing the *cocci* spores are disturbed by construction activities, the fungal spores become airborne, exposing construction workers and other nearby sensitive receptors.

The fungus lives in the top 2 to 12 inches of soil. When soil containing this fungus is disturbed by activities such as digging, vehicles, construction activities, dust storms, or during earthquakes, the fungal spores become airborne. The location of the Project site is in the area known to the County of Fresno to have the highest rates of Valley Fever.



Figure 3: Elevated Areas of Valley Fever In Fresno County

According to the California Department of Public Health (CDPH) the number of reported Valley fever cases has greatly increased in recent years. In fact, Valley fever cases tripled from 2014–2018, and from 2018–2022, between 7,000 and 9,000 cases were reported each year.<sup>2</sup> The

<sup>2</sup> CDPH. 2023. Valley Fever. <https://www.cdph.ca.gov/Programs/CID/DCDC/pages/Coccidioidomycosis.aspx>



F-37  
cont.

most at-risk populations are construction and agricultural workers.<sup>3</sup> Here, construction workers are the very population that would be most directly exposed by the Project. A referenced journal article on occupational exposures notes that “[l]abor groups where occupation involves close contact with the soil are at greater risk, especially if the work involves dusty digging operations.”<sup>4</sup>

F-37  
cont.

### Fine Particulate Matter Size Comparison



Figure 4: Fine Particle Matter Size Comparison

Very small particles require different mitigation measures than the much larger PM<sub>10</sub>. The settling velocity of a particle (the amount of time a particle takes to fall to the ground) is proportional to the diameter of the spherical particle squared. The larger the particle diameter, the faster the particle will settle. The smaller the particle diameter, the longer it will stay suspended in air. As was noted in my initial comments *Coccidioides Immitis* spores are very small. The spores are typically 0.002–0.005 millimeters (“mm”) or 2 microns to 5 microns in diameter.

In a 2004 paper regarding the fate of viruses and bacteria, including spores, in the air, Utrup and Frey<sup>5</sup> noted that smaller particles like spores require significantly longer to settle out of air. For particles 10 um in diameter the settling time is measured in minutes. For particles less than 10 um

F-38

<sup>3</sup> Lawrence L. Schmelzer and R. Tabershaw, Exposure Factors in Occupational Coccidioidomycosis, *American Journal of Public Health and the Nation’s Health*, v. 58, no. 1, 1968, pp. 107–113, Table 3; available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1228046/?page=1>.

<sup>4</sup> *Ibid.*, p. 110.

<sup>5</sup> Utrup, L. and A. Frey. 2004. Fate of Bioterrorism-Relevant Viruses and Bacteria, Including Spores, Aerosolized into an Indoor Air Environment. *Experimental Biology and Medicine* 229(4):345-50

in diameter, the settling time is measured in hours. This would allow the spores to travel significantly longer distances impacting receptors at greater distances.

Particle size (µm)	Time required to settle 8 ft
100	8 secs
10	13 mins
1	19 hrs
0.1	79 days
0.01	Infinite

Characteristics of Aerosols and Particle Settling Time in Still Air

Figure 5: Particle Settling Times

Clearly, based on the particle size and setting rate, Valley Fever spores present in soils are capable of travel many miles following the disturbance of impacted soils. The County must correct their speculative answer with an accurate assessment of the threat posed to residents and other sensitive receptors in the area.

The County’s response that dust from the construction of the project is not anticipated to exacerbate or significantly add to the existing exposure of people to Valley Fever is misplaced at best. As noted above the rates of Valley Fever are rising across California and the in particular the rates of Valley Fever are increasing in Fresno County in particular. The number of cases of Valley Fever in Fresno County has increased from 161 in 2014 to 625 in 2019 (an increase of 388 percent), as reported by the California Department of Public Health (CDPH).<sup>6</sup> In 2022, 320 cases were recorded in Fresno County,<sup>7</sup> approximately twice as many as the amounts reported in 2015. In the first 3

<sup>6</sup> CDPH. 2019. Epidemiologic Summary of Valley Fever (Coccidioidomycosis) In California, 2019. Surveillance and Statistics Section, Infection Diseases Branch, Division of Communicable Disease Control, Center For Infectious Diseases, California Department of Public Health. <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CocciEpiSummary2019.pdf>

<sup>7</sup> CDPH. 2023. Coccidioidomycosis In California, Provisional Monthly Report, January – September 2023 (as of September 30, 2023). Surveillance and Statistics Section, Infection Diseases Branch, Division of Communicable Disease Control, Center For Infectious Diseases, California Department of Public Health. <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CocciinCAProvisionalMonthlyReport.pdf>

↑  
F-38  
cont.  
  
F-39  
↓

quarters of 2023, Fresno County reported 289 cases, representing a nearly 80% increase over the baseline year of 2014 in only three quarters of the year. Since Valley Fever cases are directly related to the disturbance of soils in the area, the County must directly address the impacts that the project's construction phase will have on the community.

↑  
F-39  
cont.

Valley fever is the initial form of coccidioidomycosis infection. The acute form of Valley Fever can develop into a more serious disease, including chronic and disseminated coccidioidomycosis. The initial, or acute, form of coccidioidomycosis is often mild, with few or no symptoms. Signs and symptoms occur one to three weeks after exposure. They tend to be similar to flu symptoms. Symptoms can range from minor to severe, including:

- Fever
- Cough
- Tiredness
- Shortness of breath
- Headache
- Chills
- Night sweats
- Joint aches and muscle soreness
- Red, spotty rash, mainly on lower legs but sometimes on the chest, arms and back

F-40

If the initial coccidioidomycosis infection doesn't completely resolve, it may progress to a chronic form of pneumonia. This complication is most common in people with weakened immune systems. Signs and symptoms of chronic coccidioidomycosis include:

- Low-grade fever
- Weight loss
- Cough
- Chest pain
- Blood-tinged sputum (matter discharged during coughing)
- Nodules in the lungs

The most serious form of the disease, disseminated coccidioidomycosis, is uncommon. It occurs when the infection spreads (disseminates) beyond the lungs to other parts of the body. Most often these parts include the skin, bones, liver, brain, heart, and the membranes that protect the brain

↓

and spinal cord (meninges). Signs and symptoms of disseminated disease depend on the body parts affected and may include:

- Nodules, ulcers and skin lesions that are more serious than the rash that sometimes occurs with initial infection
- Painful lesions in the skull, spine or other bones
- Painful, swollen joints, especially in the knees or ankles
- Meningitis — an infection of the membranes and fluid surrounding the brain and spinal cord



F-40  
cont.

Given the wide range of public health impacts from coccidioidomycosis infection/exposure it is clear that

The County’s responses are not protective of the community and they should require specific mitigation measures to prevent the spread of Valley Fever in the community. The County should require the following measures to ensure the safety of the community (listed below).

1. Control dust exposure:
  - Apply chemical stabilizers at least 24-hours prior to high wind event;
  - Apply water to all disturbed areas a minimum of three times per day. Watering frequency should be increased to a minimum of four times per day if there is any evidence of visible wind-driven fugitive dust;
  - Provide National Institute for Occupational Safety and Health (NIOSH)-approved respirators for workers with a prior history of Valley Fever.
  - Half-face respirators equipped with a minimum N-95 protection factor for use during worker collocation with surface disturbance activities. Half-face respirators equipped with N-100 or P-100 filters should be used during digging activities. Employees should wear respirators when working near earth-moving machinery.
  - Prohibit eating and smoking at the worksite, and provide separate, clean eating areas with hand-washing facilities.
  - Avoid outdoor construction operations during unusually windy conditions or in dust storms.
  - Consider limiting outdoor construction during the fall to essential jobs only, as the risk of cocci infection is higher during this season.



F-41

2. Prevent transport of cocci outside endemic areas:
  - Thoroughly clean equipment, vehicles, and other items before they are moved off-site to other work locations.
  - Prevent spillage or loss of bulk material from holes or other openings in the cargo compartment's floor, sides, and/or tailgate;
  - Load all haul trucks such that the freeboard is not less than six inches when material is transported on any paved public access road and apply water to the top of the load sufficient to limit VDE to 20 percent opacity; or cover haul trucks with a tarp or other suitable cover.
  - Provide workers with coveralls daily, lockers (or other systems for keeping work and street clothing and shoes separate), daily changing and showering facilities.
  - Clothing should be changed after work every day, preferably at the work site.
  - Train workers to recognize that cocci may be transported offsite on contaminated equipment, clothing, and shoes; alternatively, consider installing boot-washing.
  - Post warnings onsite and consider limiting access to visitors, especially those without adequate training and respiratory protection.
3. Improve medical surveillance for employees:
  - Employees should have prompt access to medical care, including suspected work-related illnesses and injuries.
  - Work with a medical professional to develop a protocol to medically evaluate employees who have symptoms of Valley Fever.
  - Consider preferentially contracting with 1-2 clinics in the area and communicate with the health care providers in those clinics to ensure that providers are aware that Valley Fever has been reported in the area. This will increase the likelihood that ill workers will receive prompt, proper and consistent medical care.
  - Respirator clearance should include medical evaluation for all new employees, annual re-evaluation for changes in medical status, and annual training, and fit-testing.



F-41  
cont.

- Skin testing is not recommended for evaluation of Valley Fever.<sup>8</sup>
- If an employee is diagnosed with Valley Fever, a physician must determine if the employee should be taken off work, when they may return to work, and what type of work activities they may perform.

The failure to identify real mitigation measures based on actual experience during construction of solar and wind projects in endemic areas is a significant flaw in the DEIR. The County must include concrete measures like the ones listed above in a revised DEIR of the Project.

↑  
F-41  
cont.

**3. The County’s Air Quality Analysis Fails To Include A Quantitative Health Risk Analysis Of The Impacts Of Toxic Air Contaminants From The Construction Phase And The Operational Phase Of The Project For The Nearest Sensitive Receptor(s)**

The Air Quality Analysis does not present a quantitative health risk analysis (HRA) for the operational phase or the construction phase of the Project, even though the Project will release chemicals known to the State of California to cause cancer. Diesel exhaust, in particular DPM, is classified by the State of California as a toxic air contaminant (TAC). The determination of a significance threshold is based on a *quantitative risk analysis* that requires the County to perform a multistep, quantitative health risk analysis for TACs.<sup>9</sup> The DEIR’s claim that since the nearest receptors are over 3,000 feet away the onsite activity would be negligible is inadequate for the purposes of determining the impacts from the Project on the community.

↑  
F-42

TACs, including DPM<sup>10</sup>, contribute to a host of respiratory impacts and may lead to the development of various cancers. Failing to quantify those impacts places the community at risk for unwanted adverse health impacts. *Even brief exposures to the TACs could lead to the development of adverse health impacts over the life of an individual.*

↑  
F-43  
↓

---

<sup>8</sup> Short-term skin tests that produce results within 48 hours are now available. See Kerry Klein, NPR for Central California, New Valley Fever Skin Test Shows Promise, But Obstacles Remain, November 21, 2016; available at <http://kvpr.org/post/new-valley-fever-skin-test-shows-promise-obstacles-remain>.

<sup>9</sup> City of Los Angeles. 2019. Air Quality and Health Effects Guidance. Pg 9, pg 36.

<sup>10</sup> Because DPM is a TAC, it is a different air pollutant than criteria particulate matter (PM) emissions such as PM10, PM2.5, and fugitive dust. DPM exposure causes acute health effects that are different from the effects of exposure to PM alone.



Diesel exhaust contains nearly 40 toxic substances, including TACs, and may pose a serious public health risk for residents in the vicinity of the facility. TACs are airborne substances that are capable of causing short-term (acute) and/or long-term (chronic or carcinogenic, i.e., cancer causing) adverse human health effects (i.e., injury or illness). TACs include both organic and inorganic chemical substances. The current California list of TACs includes approximately 200 compounds, including particulate emissions from diesel-fueled engines.

Diesel exhaust has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.<sup>11,12,13</sup> Fine DPM is deposited deep in the lungs in the smallest airways and can result in increased respiratory symptoms and disease; decreased lung function, particularly in children and individuals with asthma; alterations in lung tissue and respiratory tract defense mechanisms; and premature death.<sup>14</sup> Exposure to DPM increases the risk of lung cancer. It also causes non-cancer effects including chronic bronchitis, inflammation of lung tissue, thickening of the alveolar walls, immunological allergic reactions, and airway constriction.<sup>15</sup> DPM is a TAC that is recognized by state and federal agencies as causing severe health risk because it contains toxic materials, unlike PM<sub>2.5</sub> and PM<sub>10</sub>.<sup>16</sup>

The inherent toxicity of TACs requires the County to first quantify the concentration released into the environment at each of the sensitive receptor locations (including the closest residence) through air dispersion modeling, calculate the dose of each TAC at that location, and quantify the



F-43  
cont.

F-44

---

<sup>11</sup> California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998; see also California Air Resources Board, Overview: Diesel Exhaust & Health, <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health#:~:text=Diesel%20Particulate%20Matter%20and%20Health&text=In%201998%2C%20CARB%20identified%20DPM.and%20other%20adverse%20health%20effects>.

<sup>12</sup> U.S. EPA, Health Assessment Document for Diesel Engine Exhaust, Report EPA/600/8-90/057F, May 2002.

<sup>13</sup> Environmental Defense Fund, Cleaner Diesel Handbook, Bring Cleaner Fuel and Diesel Retrofits into Your Neighborhood, April 2005; [http://www.edf.org/documents/4941\\_cleanerdieselhandbook.pdf](http://www.edf.org/documents/4941_cleanerdieselhandbook.pdf), accessed July 5, 2020.

<sup>14</sup> California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998.

<sup>15</sup> Findings of the Scientific Review Panel on The Report on Diesel Exhaust as adopted at the Panel’s April 22, 1998 Meeting.

<sup>16</sup> Health & Safety Code § 39655(a) (defining “toxic air contaminant” as air pollutants “which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health. A substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412 (b)) is a toxic air contaminant.”)

cancer risk and hazard index for each of the chemicals of concern. Following that analysis, then the County can make a determination of the relative significance of the emissions.

These receptors would be exposed to TACs released during Project construction and operation, including DPM. No effort is made in the DEIR to quantify the potential health impacts from DPM generated by construction activities or operational activities from the Project on these sensitive receptors. The County therefore lacks supporting evidence for its conclusion that the Project would not result in significant health impacts. The County’s failure to perform such an analysis is clearly a major flaw in the DEIR and may be placing the occupants of the adjacent structures at risk from the construction and operation of the Project.

There is notable precedent requiring a quantitative analysis of TACs from diesel exhaust in CEQA documents. Moreover, the absence of this analysis renders the DEIR’s health risk analysis incomplete. In a 2017 Notice of Preparation of a CEQA Document for the Los Robles Apartments Project, SCAQMD<sup>17</sup> noted that:

In the event that the proposed project generates or attracts vehicular trips, especially heavy-duty diesel-fueled vehicles, it is recommended that the lead agency perform a mobile source health risk assessment. Guidance for performing a mobile source health risk assessment (“Health Risk Assessment Guidance for Analyzing Cancer Risk from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis”) can be found at: <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysishandbook/mobile-source-toxics-analysis>. An analysis of all toxic air contaminant impacts due to the use of equipment potentially generating such air pollutants should also be included.

This is a common and feasible analysis that is routinely performed for development projects like the Key Energy Storage Project. This omission (lack of HRA) is a continuing flaw that must be addressed by the County. The results should then be presented in a revised EIR prior to approving, or issuing any permits for, the Project.

↑  
F-44  
cont.  
  
F-45  
↓

---

<sup>17</sup> SCAQMD. 2017. Comment Letter To David Sanchez, Senior Planner City of Pasadena from Jillian Wong, Planning and Rules Manager, SCAQMD.

---

**Conclusion**

The facts identified and referenced in this comment letter leads me to reasonably conclude that the Project could result in significant impacts if allowed to proceed. A revised environmental impact report should be prepared to address these substantial concerns.

F-46

Sincerely,

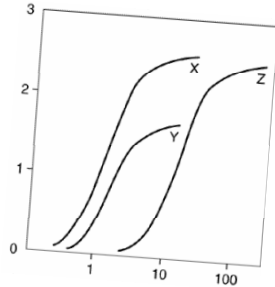


Exhibit A:

Curriculum Vitae

---

---



**Clark & Associates**  
Environmental Consulting, Inc

**OFFICE**

12405 Venice Blvd.  
Suite 331  
Los Angeles, CA 90066

**PHONE**

310-907-6165

**FAX**

310-398-7626

**EMAIL**

jclark.assoc@gmail.com

***James J. J. Clark, Ph.D.***

*Principal Toxicologist*

**Toxicology/Exposure Assessment Modeling**

**Risk Assessment/Analysis/Dispersion Modeling**

**Education:**

Ph.D., Environmental Health Science, University of California, 1995

M.S., Environmental Health Science, University of California, 1993

B.S., Biophysical and Biochemical Sciences, University of Houston, 1987

**Professional Experience:**

Dr. Clark is a well recognized toxicologist, air modeler, and health scientist. He has 20 years of experience in researching the effects of environmental contaminants on human health including environmental fate and transport modeling (SCREEN3, AEROMOD, ISCST3, Johnson-Ettinger Vapor Intrusion Modeling); exposure assessment modeling (partitioning of contaminants in the environment as well as PBPK modeling); conducting and managing human health risk assessments for regulatory compliance and risk-based clean-up levels; and toxicological and medical literature research.

Significant projects performed by Dr. Clark include the following:

**LITIGATION SUPPORT**

**Case: James Harold Caygle, et al, v. Drummond Company, Inc. Circuit Court for the Tenth Judicial Circuit, Jefferson County, Alabama. Civil Action. CV-2009**

**Client: Environmental Litgation Group, Birmingham, Alabama**

Dr. Clark performed an air quality assessment of emissions from a coke factory located in Tarrant, Alabama. The assessment reviewed include a comprehensive review of air quality standards, measured concentrations of pollutants from factory, an inspection of the facility and detailed assessment of the impacts on the community. The results of the assessment and literature have been provided in a declaration to the court.

F-47

**Case Result: Settlement in favor of plaintiff.**

**Case: Rose Roper V. Nissan North America, et al. Superior Court of the State Of California for the County Of Los Angeles – Central Civil West. Civil Action. NC041739**

**Client: Rose, Klein, Marias, LLP, Long Beach, California**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to multiple chemicals, including benzene, who later developed a respiratory distress. A review of the individual's medical and occupational history was performed to prepare an exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to respiratory irritants. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: O'Neil V. Sherwin Williams, et al. United States District Court Central District of California**

**Client: Rose, Klein, Marias, LLP, Long Beach, California**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to petroleum distillates who later developed a bladder cancer. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Summary judgment for defendants.**

**Case: Moore V., Shell Oil Company, et al. Superior Court of the State Of California for the County Of Los Angeles**

**Client: Rose, Klein, Marias, LLP, Long Beach, California**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to chemicals while benzene who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

F-47  
cont.

**Case Result: Settlement in favor of plaintiff.**

**Case: Raymond Saltonstall V. Fuller O'Brien, KILZ, and Zinsser, et al. United States District Court Central District of California**

**Client: Rose, Klein, Marias, LLP, Long Beach, California**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to benzene who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Richard Boyer and Elizabeth Boyer, husband and wife, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-7G.**

**Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.**

Dr. Clark performed a toxicological assessment of a family exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

F-47  
cont.

**Case: JoAnne R. Cook, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-9R**

**Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.**

Dr. Clark performed a toxicological assessment of an individual exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Patrick Allen And Susan Allen, husband and wife, and Andrew Allen, a minor, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-W**

**Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.**

Dr. Clark performed a toxicological assessment of a family exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Michael Fahey, Susan Fahey V. Atlantic Richfield Company, et al. United States District Court Central District of California Civil Action Number CV-06 7109 JCL.**



F-47  
cont.



**Client: Rose, Klein, Marias, LLP, Long Beach, California**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to refined petroleum hydrocarbons who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Constance Acevedo, et al., V. California Spray-Chemical Company, et al., Superior Court of the State Of California, County Of Santa Cruz. Case No. CV 146344**

Dr. Clark performed a comprehensive exposure assessment of community members exposed to toxic metals from a former lead arsenate manufacturing facility. The former manufacturing site had undergone a DTSC mandated removal action/remediation for the presence of the toxic metals at the site. Opinions were presented regarding the elevated levels of arsenic and lead (in attic dust and soils) found throughout the community and the potential for harm to the plaintiffs in question.

**Case Result: Settlement in favor of defendant.**

**Case: Michael Nawrocki V. The Coastal Corporation, Kurk Fuel Company, Pautler Oil Service, State of New York Supreme Court, County of Erie, Index Number I2001-11247**

**Client: Richard G. Berger Attorney At Law, Buffalo, New York**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to refined petroleum hydrocarbons who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the



F-47  
cont.

known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Judgement in favor of defendant.**

**SELECTED AIR MODELING RESEARCH/PROJECTS**

**Client – Confidential**

Dr. Clark performed a comprehensive evaluation of criteria pollutants, air toxins, and particulate matter emissions from a carbon black production facility to determine the impacts on the surrounding communities. The results of the dispersion model will be used to estimate acute and chronic exposure concentrations to multiple contaminants and will be incorporated into a comprehensive risk evaluation.

**Client – Confidential**

Dr. Clark performed a comprehensive evaluation of air toxins and particulate matter emissions from a railroad tie manufacturing facility to determine the impacts on the surrounding communities. The results of the dispersion model have been used to estimate acute and chronic exposure concentrations to multiple contaminants and have been incorporated into a comprehensive risk evaluation.

**Client – Los Angeles Alliance for a New Economy (LAANE), Los Angeles, California**

Dr. Clark is advising the LAANE on air quality issues related to current flight operations at the Los Angeles International Airport (LAX) operated by the Los Angeles World Airport (LAWA) Authority. He is working with the LAANE and LAX staff to develop a comprehensive strategy for meeting local community concerns over emissions from flight operations and to engage federal agencies on the issue of local impacts of community airports.



F-47  
cont.



**Client – City of Santa Monica, Santa Monica, California**

Dr. Clark is advising the City of Santa Monica on air quality issues related to current flight operations at the facility. He is working with the City staff to develop a comprehensive strategy for meeting local community concerns over emissions from flight operations and to engage federal agencies on the issue of local impacts of community airports.

**Client: Omnitrans, San Bernardino, California**

Dr. Clark managed a public health survey of three communities near transit fueling facilities in San Bernardino and Montclair California in compliance with California Senate Bill 1927. The survey included an epidemiological survey of the effected communities, emission surveys of local businesses, dispersion modeling to determine potential emission concentrations within the communities, and a comprehensive risk assessment of each community. The results of the study were presented to the Governor as mandated by Senate Bill 1927.

**Client: Confidential, San Francisco, California**

Summarized cancer types associated with exposure to metals and smoking. Researched the specific types of cancers associated with exposure to metals and smoking. Provided causation analysis of the association between cancer types and exposure for use by non-public health professionals.

**Client: Confidential, Minneapolis, Minnesota**

Prepared human health risk assessment of workers exposed to VOCs from neighboring petroleum storage/transport facility. Reviewed the systems in place for distribution of petroleum hydrocarbons to identify chemicals of concern (COCs), prepared comprehensive toxicological summaries of COCs, and quantified potential risks from carcinogens and non-carcinogens to receptors at or adjacent to site. This evaluation was used in the support of litigation.

**Client – United Kingdom Environmental Agency**

Dr. Clark is part of team that performed comprehensive evaluation of soil vapor intrusion of VOCs from former landfill adjacent residences for the United Kingdom’s Environment

F-47  
cont.

Agency. The evaluation included collection of liquid and soil vapor samples at site, modeling of vapor migration using the Johnson Ettinger Vapor Intrusion model, and calculation of site-specific health based vapor thresholds for chlorinated solvents, aromatic hydrocarbons, and semi-volatile organic compounds. The evaluation also included a detailed evaluation of the use, chemical characteristics, fate and transport, and toxicology of chemicals of concern (COC). The results of the evaluation have been used as a briefing tool for public health professionals.

**EMERGING/PERSISTENT CONTAMINANT RESEARCH/PROJECTS**

**Client: Ameren Services, St. Louis, Missouri**

Managed the preparation of a comprehensive human health risk assessment of workers and residents at or near an NPL site in Missouri. The former operations at the Property included the servicing and repair of electrical transformers, which resulted in soils and groundwater beneath the Property and adjacent land becoming impacted with PCB and chlorinated solvent compounds. The results were submitted to U.S. EPA for evaluation and will be used in the final ROD.

**Client: City of Santa Clarita, Santa Clarita, California**

Dr. Clark is managing the oversight of the characterization, remediation and development activities of a former 1,000 acre munitions manufacturing facility for the City of Santa Clarita. The site is impacted with a number of contaminants including perchlorate, unexploded ordinance, and volatile organic compounds (VOCs). The site is currently under a number of regulatory consent orders, including an Imminent and Substantial Endangerment Order. Dr. Clark is assisting the impacted municipality with the development of remediation strategies, interaction with the responsible parties and stakeholders, as well as interfacing with the regulatory agency responsible for oversight of the site cleanup.

**Client: Confidential, Los Angeles, California**

Prepared comprehensive evaluation of perchlorate in environment. Dr. Clark evaluated the production, use, chemical characteristics, fate and transport, toxicology, and remediation of perchlorate. Perchlorates form the basis of solid rocket fuels and have recently been detected in water supplies in the United States. The results of this research

F-47  
cont.

were presented to the USEPA, National GroundWater, and ultimately published in a recent book entitled *Perchlorate in the Environment*.

**Client – Confidential, Los Angeles, California**

Dr. Clark is performing a comprehensive review of the potential for pharmaceuticals and their by-products to impact groundwater and surface water supplies. This evaluation will include a review if available data on the history of pharmaceutical production in the United States; the chemical characteristics of various pharmaceuticals; environmental fate and transport; uptake by xenobiotics; the potential effects of pharmaceuticals on water treatment systems; and the potential threat to public health. The results of the evaluation may be used as a briefing tool for non-public health professionals.

**PUBLIC HEALTH/TOXICOLOGY**

**Client: Brayton Purcell, Novato, California**

Dr. Clark performed a toxicological assessment of residents exposed to methyl-tertiary butyl ether (MTBE) from leaking underground storage tanks (LUSTs) adjacent to the subject property. The symptomology of residents and guests of the subject property were evaluated against the known outcomes in published literature to exposure to MTBE. The study found that residents had been exposed to MTBE in their drinking water; that concentrations of MTBE detected at the site were above regulatory guidelines; and, that the symptoms and outcomes expressed by residents and guests were consistent with symptoms and outcomes documented in published literature.

**Client: Confidential, San Francisco, California**

Identified and analyzed fifty years of epidemiological literature on workplace exposures to heavy metals. This research resulted in a summary of the types of cancer and non-cancer diseases associated with occupational exposure to chromium as well as the mortality and morbidity rates.

**Client: Confidential, San Francisco, California**

Summarized major public health research in United States. Identified major public health research efforts within United States over last twenty years. Results were used as a briefing tool for non-public health professionals.



F-47  
cont.

**Client: Confidential, San Francisco, California**

Quantified the potential multi-pathway dose received by humans from a pesticide applied indoors. Part of team that developed exposure model and evaluated exposure concentrations in a comprehensive report on the plausible range of doses received by a specific person. This evaluation was used in the support of litigation.

**Client: Covanta Energy, Westwood, California**

Evaluated health risk from metals in biosolids applied as soil amendment on agricultural lands. The biosolids were created at a forest waste cogeneration facility using 96% whole tree wood chips and 4 percent green waste. Mass loading calculations were used to estimate Cr(VI) concentrations in agricultural soils based on a maximum loading rate of 40 tons of biomass per acre of agricultural soil. The results of the study were used by the Regulatory agency to determine that the application of biosolids did not constitute a health risk to workers applying the biosolids or to residences near the agricultural lands.

**Client – United Kingdom Environmental Agency**

Oversaw a comprehensive toxicological evaluation of methyl-*tertiary* butyl ether (MtBE) for the United Kingdom's Environment Agency. The evaluation included available data on the production, use, chemical characteristics, fate and transport, toxicology, and remediation of MtBE. The results of the evaluation have been used as a briefing tool for public health professionals.

**Client – Confidential, Los Angeles, California**

Prepared comprehensive evaluation of *tertiary* butyl alcohol (TBA) in municipal drinking water system. TBA is the primary breakdown product of MtBE, and is suspected to be the primary cause of MtBE toxicity. This evaluation will include available information on the production, use, chemical characteristics, fate and transport in the environment, absorption, distribution, routes of detoxification, metabolites, carcinogenic potential, and remediation of TBA. The results of the evaluation were used as a briefing tool for non-public health professionals.

**Client – Confidential, Los Angeles, California**

Prepared comprehensive evaluation of methyl *tertiary* butyl ether (MTBE) in municipal drinking water system. MTBE is a chemical added to gasoline to increase the octane

F-47  
cont.

rating and to meet Federally mandated emission criteria. The evaluation included available data on the production, use, chemical characteristics, fate and transport, toxicology, and remediation of MTBE. The results of the evaluation have been used as a briefing tool for non-public health professionals.

**Client – Ministry of Environment, Lands & Parks, British Columbia**

Dr. Clark assisted in the development of water quality guidelines for methyl tertiary-butyl ether (MTBE) to protect water uses in British Columbia (BC). The water uses to be considered includes freshwater and marine life, wildlife, industrial, and agricultural (e.g., irrigation and livestock watering) water uses. Guidelines from other jurisdictions for the protection of drinking water, recreation and aesthetics were to be identified.

**Client: Confidential, Los Angeles, California**

Prepared physiologically based pharmacokinetic (PBPK) assessment of lead risk of receptors at middle school built over former industrial facility. This evaluation is being used to determine cleanup goals and will be basis for regulatory closure of site.

**Client: Kaiser Venture Incorporated, Fontana, California**

Prepared PBPK assessment of lead risk of receptors at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

**RISK ASSESSMENTS/REMEDIAL INVESTIGATIONS**

**Client: Confidential, Atlanta, Georgia**

Researched potential exposure and health risks to community members potentially exposed to creosote, polycyclic aromatic hydrocarbons, pentachlorophenol, and dioxin compounds used at a former wood treatment facility. Prepared a comprehensive toxicological summary of the chemicals of concern, including the chemical characteristics, absorption, distribution, and carcinogenic potential. Prepared risk characterization of the carcinogenic and non-carcinogenic chemicals based on the exposure assessment to quantify the potential risk to members of the surrounding community. This evaluation was used to help settle class-action tort.



F-47  
cont.

**Client: Confidential, Escondido, California**

Prepared comprehensive Preliminary Endangerment Assessment (PEA) of dense non-aqueous liquid phase hydrocarbon (chlorinated solvents) contamination at a former printed circuit board manufacturing facility. This evaluation was used for litigation support and may be used as the basis for reaching closure of the site with the lead regulatory agency.

**Client: Confidential, San Francisco, California**

Summarized epidemiological evidence for connective tissue and autoimmune diseases for product liability litigation. Identified epidemiological research efforts on the health effects of medical prostheses. This research was used in a meta-analysis of the health effects and as a briefing tool for non-public health professionals.

**Client: Confidential, Bogotá, Columbia**

Prepared comprehensive evaluation of the potential health risks associated with the redevelopment of a 13.7 hectares plastic manufacturing facility in Bogotá, Colombia. The risk assessment was used as the basis for the remedial goals and closure of the site.

**Client: Confidential, Los Angeles, California**

Prepared comprehensive human health risk assessment of students, staff, and residents potentially exposed to heavy metals (principally cadmium) and VOCs from soil and soil vapor at 12-acre former crude oilfield and municipal landfill. The site is currently used as a middle school housing approximately 3,000 children. The evaluation determined that the site was safe for the current and future uses and was used as the basis for regulatory closure of site.

**Client: Confidential, Los Angeles, California**

Managed remedial investigation (RI) of heavy metals and volatile organic chemicals (VOCs) for a 15-acre former manufacturing facility. The RI investigation of the site included over 800 different sampling locations and the collection of soil, soil gas, and groundwater samples. The site is currently used as a year round school housing approximately 3,000 children. The Remedial Investigation was performed in a manner

F-47  
cont.



that did not interrupt school activities and met the time restrictions placed on the project by the overseeing regulatory agency. The RI Report identified the off-site source of metals that impacted groundwater beneath the site and the sources of VOCs in soil gas and groundwater. The RI included a numerical model of vapor intrusion into the buildings at the site from the vadose zone to determine exposure concentrations and an air dispersion model of VOCs from the proposed soil vapor treatment system. The Feasibility Study for the Site is currently being drafted and may be used as the basis for granting closure of the site by DTSC.

**Client: Confidential, Los Angeles, California**

Prepared comprehensive human health risk assessment of students, staff, and residents potentially exposed to heavy metals (principally lead), VOCs, SVOCs, and PCBs from soil, soil vapor, and groundwater at 15-acre former manufacturing facility. The site is currently used as a year round school housing approximately 3,000 children. The evaluation determined that the site was safe for the current and future uses and will be basis for regulatory closure of site.

**Client: Confidential, Los Angeles, California**

Prepared comprehensive evaluation of VOC vapor intrusion into classrooms of middle school that was former 15-acre industrial facility. Using the Johnson-Ettinger Vapor Intrusion model, the evaluation determined acceptable soil gas concentrations at the site that did not pose health threat to students, staff, and residents. This evaluation is being used to determine cleanup goals and will be basis for regulatory closure of site.

Client –Dominguez Energy, Carson, California

Prepared comprehensive evaluation of the potential health risks associated with the redevelopment of 6-acre portion of a 500-acre oil and natural gas production facility in Carson, California. The risk assessment was used as the basis for closure of the site.

**Kaiser Ventures Incorporated, Fontana, California**

Prepared health risk assessment of semi-volatile organic chemicals and metals for a fifty-year old wastewater treatment facility used at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.



F-47  
cont.

ANR Freight - Los Angeles, California

Prepared a comprehensive Preliminary Endangerment Assessment (PEA) of petroleum hydrocarbon and metal contamination of a former freight depot. This evaluation was as the basis for reaching closure of the site with lead regulatory agency.

**Kaiser Ventures Incorporated, Fontana, California**

Prepared comprehensive health risk assessment of semi-volatile organic chemicals and metals for 23-acre parcel of a 1,100-acre former steel mill. The health risk assessment was used to determine clean up goals and as the basis for granting closure of the site by lead regulatory agency. Air dispersion modeling using ISCST3 was performed to determine downwind exposure point concentrations at sensitive receptors within a 1 kilometer radius of the site. The results of the health risk assessment were presented at a public meeting sponsored by the Department of Toxic Substances Control (DTSC) in the community potentially affected by the site.

**Unocal Corporation - Los Angeles, California**

Prepared comprehensive assessment of petroleum hydrocarbons and metals for a former petroleum service station located next to sensitive population center (elementary school). The assessment used a probabilistic approach to estimate risks to the community and was used as the basis for granting closure of the site by lead regulatory agency.

**Client: Confidential, Los Angeles, California**

Managed oversight of remedial investigation most contaminated heavy metal site in California. Lead concentrations in soil excess of 68,000,000 parts per billion (ppb) have been measured at the site. This State Superfund Site was a former hard chrome plating operation that operated for approximately 40-years.

**Client: Confidential, San Francisco, California**

Coordinator of regional monitoring program to determine background concentrations of metals in air. Acted as liaison with SCAQMD and CARB to perform co-location sampling and comparison of accepted regulatory method with ASTM methodology.



F-47  
cont.

**Client: Confidential, San Francisco, California**

Analyzed historical air monitoring data for South Coast Air Basin in Southern California and potential health risks related to ambient concentrations of carcinogenic metals and volatile organic compounds. Identified and reviewed the available literature and calculated risks from toxins in South Coast Air Basin.

**IT Corporation, North Carolina**

Prepared comprehensive evaluation of potential exposure of workers to air-borne VOCs at hazardous waste storage facility under SUPERFUND cleanup decree. Assessment used in developing health based clean-up levels.

**Professional Associations**

American Public Health Association (APHA)  
Association for Environmental Health and Sciences (AEHS)  
American Chemical Society (ACS)  
California Redevelopment Association (CRA)  
International Society of Environmental Forensics (ISEF)  
Society of Environmental Toxicology and Chemistry (SETAC)

**Publications and Presentations:**

**Books and Book Chapters**

- Sullivan, P., **J.J. J. Clark**, F.J. Agardy, and P.E. Rosenfeld. (2007). *Synthetic Toxins In The Food, Water and Air of American Cities*. Elsevier, Inc. Burlington, MA.
- Sullivan, P. and **J.J. J. Clark**. 2006. *Choosing Safer Foods, A Guide To Minimizing Synthetic Chemicals In Your Diet*. Elsevier, Inc. Burlington, MA.
- Sullivan, P., Agardy, F.J., and **J.J.J. Clark**. 2005. *The Environmental Science of Drinking Water*. Elsevier, Inc. Burlington, MA.
- Sullivan, P.J., Agardy, F.J., **Clark, J.J.J.** 2002. *America's Threatened Drinking Water: Hazards and Solutions*. Trafford Publishing, Victoria B.C.
- Clark, J.J.J.** 2001. "TBA: Chemical Properties, Production & Use, Fate and Transport, Toxicology, Detection in Groundwater, and Regulatory Standards" in *Oxygenates in the Environment*. Art Diaz, Ed.. Oxford University Press: New York.
- Clark, J.J.J.** 2000. "Toxicology of Perchlorate" in *Perchlorate in the Environment*. Edward Urbansky, Ed. Kluwer/Plenum: New York.
- Clark, J.J.J.** 1995. Probabilistic Forecasting of Volatile Organic Compound Concentrations At The Soil Surface From Contaminated Groundwater. UMI.

F-47  
cont.

Baker, J.; **Clark, J.J.J.**; Stanford, J.T. 1994. Ex Situ Remediation of Diesel Contaminated Railroad Sand by Soil Washing. Principles and Practices for Diesel Contaminated Soils, Volume III. P.T. Kostecki, E.J. Calabrese, and C.P.L. Barkan, eds. Amherst Scientific Publishers, Amherst, MA. pp 89-96.

**Journal and Proceeding Articles**

Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) A Statistical Analysis Of Attic Dust And Blood Lipid Concentrations Of Tetrachloro-p-Dibenzodioxin (TCDD) Toxicity Equivalency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. *Organohalogen Compounds*, Volume 70 (2008) page 002254.

Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) Methods For Collect Samples For Assessing Dioxins And Other Environmental Contaminants In Attic Dust: A Review. *Organohalogen Compounds*, Volume 70 (2008) page 000527

Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** (2007). "Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." *Environmental Research*. 105:194-199.

Rosenfeld, P.E., **Clark, J. J.**, Hensley, A.R., and Suffet, I.H. 2007. "The Use Of An Odor Wheel Classification For The Evaluation of Human Health Risk Criteria For Compost Facilities" *Water Science & Technology*. 55(5): 345-357.

Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** 2006. "Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." The 26th International Symposium on Halogenated Persistent Organic Pollutants – DIOXIN2006, August 21 – 25, 2006. Radisson SAS Scandinavia Hotel in Oslo Norway.

Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2005. "The Value Of An Odor Quality Classification Scheme For Compost Facility Evaluations" The U.S. Composting Council's 13<sup>th</sup> Annual Conference January 23 - 26, 2005, Crowne Plaza Riverwalk, San Antonio, TX.

Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2004. "The Value Of An Odor Quality Classification Scheme For Urban Odor" WEFTEC 2004. 77th Annual Technical Exhibition & Conference October 2 - 6, 2004, Ernest N. Morial Convention Center, New Orleans, Louisiana.

**Clark, J.J.J.** 2003. "Manufacturing, Use, Regulation, and Occurrence of a Known Endocrine Disrupting Chemical (EDC), 2,4-Dichlorophenoxyacetic Acid (2,4-D) in California Drinking Water Supplies." National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Minneapolis, MN. March 20, 2003.



F-47  
cont.

Rosenfeld, P. and **J.J.J. Clark**. 2003. "Understanding Historical Use, Chemical Properties, Toxicity, and Regulatory Guidance" National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Phoenix, AZ. February 21, 2003.

**Clark, J.J.J.**, Brown A. 1999. Perchlorate Contamination: Fate in the Environment and Treatment Options. In Situ and On-Site Bioremediation, Fifth International Symposium. San Diego, CA, April, 1999.

**Clark, J.J.J.** 1998. Health Effects of Perchlorate and the New Reference Dose (RfD). Proceedings From the Groundwater Resource Association Seventh Annual Meeting, Walnut Creek, CA, October 23, 1998.

Browne, T., **Clark, J.J.J.** 1998. Treatment Options For Perchlorate In Drinking Water. Proceedings From the Groundwater Resource Association Seventh Annual Meeting, Walnut Creek, CA, October 23, 1998.

**Clark, J.J.J.**, Brown, A., Rodriguez, R. 1998. The Public Health Implications of MtBE and Perchlorate in Water: Risk Management Decisions for Water Purveyors. Proceedings of the National Ground Water Association, Anaheim, CA, June 3-4, 1998.

**Clark J.J.J.**, Brown, A., Ulrey, A. 1997. Impacts of Perchlorate On Drinking Water In The Western United States. U.S. EPA Symposium on Biological and Chemical Reduction of Chlorate and Perchlorate, Cincinnati, OH, December 5, 1997.

**Clark, J.J.J.**; Corbett, G.E.; Kerger, B.D.; Finley, B.L.; Paustenbach, D.J. 1996. Dermal Uptake of Hexavalent Chromium In Human Volunteers: Measures of Systemic Uptake From Immersion in Water At 22 PPM. *Toxicologist*. 30(1):14.

Dodge, D.G.; **Clark, J.J.J.**; Kerger, B.D.; Richter, R.O.; Finley, B.L.; Paustenbach, D.J. 1996. Assessment of Airborne Hexavalent Chromium In The Home Following Use of Contaminated Tapwater. *Toxicologist*. 30(1):117-118.

Paulo, M.T.; Gong, H., Jr.; **Clark, J.J.J.** (1992). Effects of Pretreatment with Ipratropium Bromide in COPD Patients Exposed to Ozone. *American Review of Respiratory Disease*. 145(4):A96.

Harber, P.H.; Gong, H., Jr.; Lachenbruch, A.; **Clark, J.**; Hsu, P. (1992). Respiratory Pattern Effect of Acute Sulfur Dioxide Exposure in Asthmatics. *American Review of Respiratory Disease*. 145(4):A88.

McManus, M.S.; Gong, H., Jr.; Clements, P.; **Clark, J.J.J.** (1991). Respiratory Response of Patients With Interstitial Lung Disease To Inhaled Ozone. *American Review of Respiratory Disease*. 143(4):A91.

Gong, H., Jr.; Simmons, M.S.; McManus, M.S.; Tashkin, D.P.; Clark, V.A.; Detels, R.; **Clark, J.J.** (1990). Relationship Between Responses to Chronic Oxidant and Acute

F-47  
cont.

## Comment Letter F

Ozone Exposures in Residents of Los Angeles County. American Review of Respiratory Disease. 141(4):A70.

Tierney, D.F. and **J.J.J. Clark**. (1990). Lung Polyamine Content Can Be Increased By Spermidine Infusions Into Hyperoxic Rats. American Review of Respiratory Disease. 139(4):A41.



F-47  
cont.

**EXHIBIT B**

ADAMS BROADWELL JOSEPH & CARDOZO

ARIANA ABEDIFARD  
KEVIN T. CARMICHAEL  
CHRISTINA M. CARO  
THOMAS A. ENSLOW  
KELLAH D. FEDERMAN  
RICHARD M. FRANCO  
ANDREW J. GRAF  
TANYA A. GULESSERIAN  
DARION N. JOHNSTON  
RACHAEL E. KOSS  
ADAN P. MARSHALL  
TARA C. RENGIFO

A PROFESSIONAL CORPORATION  
**ATTORNEYS AT LAW**  
601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

SACRAMENTO OFFICE  
520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721  
TEL: (916) 444-6201  
FAX: (916) 444-6209

TEL: (650) 589-1660  
FAX: (650) 589-5062  
amarshall@adamsbroadwell.com

October 30, 2023

**Via U.S. Mail and Email**

Steven E. White, Director  
Dept of Public Works and Planning  
2220 Tulare Street, 6th Floor  
Fresno, CA 93721  
**Email:** [stwhite@fresnocountyca.gov](mailto:stwhite@fresnocountyca.gov)

Bernice E. Seidel  
Clerk of the Board of Supervisors  
2281 Tulare St, Room 301  
Fresno, CA 93721  
**Email:** [ClerkBOS@fresnocountyca.gov](mailto:ClerkBOS@fresnocountyca.gov)

**Via Email Only**

Jeremy Shaw, Planner  
**Email:** [jshaw@fresnocountyca.gov](mailto:jshaw@fresnocountyca.gov)

**Via Online Portal**

<https://fresnocountyca.nextrequest.com/>

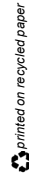
**Re: Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for the Key Energy Storage Project (CUP# 3734; SCH 2022070414)**

Dear Mr. White, Ms. Seidel, and Mr. Shaw:

On behalf of California Unions for Reliable Energy (“CURE”), we respectfully request that Fresno County (“the County”) extend the public review and comment period for the Draft Environmental Impact Report (“DEIR”) prepared for the Key Energy Storage Project (CUP# 3734; SCH 2022070414) (“Project”). The current public comment period ends on November 6, 2023.<sup>1</sup> Extension of the comment period is necessary under the California Environmental Quality Act (“CEQA”)<sup>2</sup> because the County failed to provide access to DEIR reference documents during the entire public comment period.

<sup>1</sup> **Exhibit A:** County of Fresno, Notice of Availability (“NOA”) re Draft Environmental Impact Report For Key Energy Storage Project, State Clearinghouse No. 2022070414. (Filed September 20, 2023).  
<sup>2</sup> Public Resources Code §21000 et seq.; California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000 et seq.

6241-005acp



printed on recycled paper



October 30, 2023  
Page 2

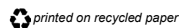
**A. Failure to Provide Access to Reference Documents**

CEQA requires that “all documents referenced” – and the CEQA Guidelines require that “all documents incorporated by reference” – in a draft environmental impact report shall be “readily accessible to the public during the lead agency’s normal working hours” during the entire public comment period.<sup>3</sup> Although access to some of the DEIR’s reference documents is provided via URLs in the DEIR, access to many reference documents was not made available. Further, numerous URLs in the DEIR are nonfunctional. A small number of the many reference documents with nonfunctional URLs include the following:

- DOF (California Department of Finance), 2022a. E-5 Population and Housing Estimates for Cities, Counties and the State—January 1, 2021–2022. Available: <https://dof.ca.gov/forecasting/demographics/estimates/e-5-population-and-housingestimates-for-cities-counties-and-the-state-2020-2022/> Accessed March 22, 2023.
- Fresno County, 2017. County of Fresno Solar Facility Guidelines. Revised by Board of Supervisors on December 12, 2017. Available: <https://www.co.fresno.ca.us/departments/public-works-planning/divisions-of-public-worksand-planning/development-services-division/planning-and-land-use/photovoltaic-facilitiesp-1621>. Accessed March 22, 2023.
- Fresno County, 2018. Onsite Wastewater Treatment System Guidance Manual. Department of Public Works and Planning, Fresno, CA. January 2018. Available: <https://www.co.fresno.ca.us/home/showdocument?id=26349>. Accessed March 22, 2023
- Fresno County, 2019. Fresno County Local Area Management Program (LAMP). Available: <https://www.co.fresno.ca.us/home/showpublisheddocument/39300/637086255221370000>. Accessed March 22, 2023.
- CPUC (California Public Utilities Commission), 2022. LS Power Grid California, LLC Gates 500kV Dynamic Reactive Support Project Final Initial Study Mitigated Negative Declaration. July 2022. Available: [https://ia.cpuc.ca.gov/environment/info/esa/gates/pdfs/Gates\\_500kV\\_Final\\_IS\\_MND\\_July\\_2022.pdf](https://ia.cpuc.ca.gov/environment/info/esa/gates/pdfs/Gates_500kV_Final_IS_MND_July_2022.pdf). Accessed March 22, 2023.
- Fresno County, 2000. Fresno County General Plan. Open Space and Conservation Element. Approved October 2000. Available: [http://www2.co.fresno.ca.us/4510/4360/General\\_Plan/GP\\_Final\\_policy\\_doc/Open\\_Space\\_Element\\_rj.pdf](http://www2.co.fresno.ca.us/4510/4360/General_Plan/GP_Final_policy_doc/Open_Space_Element_rj.pdf).

<sup>3</sup> Pub. Resources Code § 21092(b)(1); 14 C.C.R. § 15072(g)(4); see *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

6241-005acp



F-48  
cont.

October 30, 2023

Page 3

On October 3, 2023, CURE submitted a letter to the County (“DEIR References Request”), pursuant to CEQA section 21092(b)(1) and CEQA Guidelines section 15087(c)(5), requesting “immediate access to any and all documents referenced, incorporated by reference, and relied upon” in the DEIR.<sup>4</sup> The County failed to provide reference documents in response to CURE’s request. CURE emailed the County regarding the request on October 26, 2023, to which the County responded that the request had been mistakenly closed.<sup>5</sup> As of the date of this letter, the County has not provided CURE with the reference documents, which are necessary for adequate review of the DEIR.

Without access to these critical DEIR reference documents during the public comment period, CURE and other members of the public are precluded from having the meaningful opportunity to comment on the DEIR as required by CEQA. The courts have held that the failure to provide even a few pages of a CEQA documents for a portion of the CEQA review period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional public comment.<sup>6</sup> It is also well settled that an EIR may not rely on hidden studies or documents that are not provided to the public.<sup>7</sup> By failing to make all documents referenced in the DEIR “readily available” during the current comment period, the County is violating the clear procedural mandates of CEQA, to the detriment of CURE and other members of the public who wish to meaningfully review and comment on the DEIR.

Accordingly, we request that the County extend the public review and comment period on the DEIR for at least 45 days from the date on which the County releases all reference documents for public.

Sincerely,



Aidan P. Marshall

Attachments

APM:acp

<sup>4</sup> **Exhibit B:** Letter from Adams, Broadwell, Joseph & Cardozo (“ABJC”) to County re Request for Immediate Access to Documents Referenced in DEIR for the Key Energy Storage Project (CUP# 3734; SCH 2022070414) (October 3, 2023).

<sup>5</sup> Email Correspondence between Alexandra E. Stukan (ABJC) and Ahla Yang (County) (October 26, 2023).

<sup>6</sup> *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

<sup>7</sup> *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 (“Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”).



F-48  
cont.

**EXHIBIT A**



E26231000256

# County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING  
STEVEN E. WHITE, DIRECTOR

## NOTICE OF AVAILABILITY

DRAFT ENVIRONMENTAL IMPACT REPORT FOR KEY ENERGY STORAGE PROJECT  
STATE CLEARINGHOUSE NO. 2022070414; FRESNO COUNTY EIR 8189

**FILED**  
SEP 20 2023  
TIME 1:21 pm  
FRESNO COUNTY CLERK  
DEPUTY

**LEAD AGENCY:** Fresno County

**PROJECT TITLE:** Draft Environmental Impact Report (EIR) for the Key Energy Storage Project

**PROJECT LOCATION:** The Project site is in western Fresno County, approximately 0.4 mile east of Interstate 5 (I-5), immediately south of West Jayne Avenue, and between I-5 and South Lassen Avenue (State Route 269) and adjacent to PG&E's existing Gates Substation. Nearby communities include Huron (4 miles to the northeast), Avenal (7.5 miles to the south), and Coalinga (11.5 miles to the west). The 260-acre site is within the approximately 318 acres consisting of Fresno County Assessor Parcel Numbers: 085-040-58, 085-040-36, and 085-040-37.

**PROJECT DESCRIPTION:** Key Energy Storage, LLC has applied to the Fresno County Department of Public Works and Planning for a Conditional Use Permit No. 3734 to construct, operate, maintain, and decommission an energy storage facility. Project build-out would be phased. At full build-out, the Project would have capacity to store up to 3 gigawatts of energy during times of excess generation and dispatch it into the existing electrical grid later when needed. The Project would receive energy (charge) from the point of interconnection (POI) with the regional electric transmission system at PG&E's existing Gates Substation, store energy, and then deliver energy (discharge) back to the POI. The Project would consist of batteries using lithium-ion or lithium-ion and iron-flow storage technology. To interconnect the Project, Key Energy Storage, LLC and PG&E would construct, operate, and maintain a new 2,500-foot-long (up to 0.5-mile) 500-kilovolt transmission line, mostly on substation property, between the Gates Substation and the Project site. This line would be installed on new lattice steel towers, each up to 200 feet tall, which would be spaced at approximately 500-foot intervals. To accommodate the Project, PG&E also would modify existing infrastructure on the Gates Substation site and at the Midway Substation located approximately 63 miles southeast of the Project site in Buttonwillow, an unincorporated community in Kern County, California.

**SIGNIFICANT ENVIRONMENTAL EFFECTS:** The County of Fresno has prepared a Draft EIR analyzing the Project's potential environmental effects. The Project would have a less-than-significant impact (with or without mitigation measures) regarding: Aesthetics; Agriculture and Forestry Resources; Air Quality; Biological Resources; Cultural and Tribal Cultural Resources; Energy; Geology, Soils, and Paleontological Resources; Greenhouse Gas Emissions; Hazards and Hazardous Materials; Hydrology and Water Quality; Noise and Acoustics; Transportation; Utilities and Service Systems; and Wildfire. No impact would result to Land Use and Planning, Mineral Resources, Population and Housing, Public Services, or Recreation.

DEVELOPMENT SERVICES AND CAPITAL PROJECTS DIVISION  
2220 Tulare Street, Sixth Floor / Fresno, California 93721 / Phone (559) 600-4497 / 600-4022 / 600-4540 / FAX 600-4200  
The County of Fresno is an Equal Employment Opportunity Employer

E202310000256

**PUBLIC REVIEW:** A 45-day comment period for the Draft EIR begins Thursday, September 21, 2023 and ends at 5:00 p.m. Monday, November 6, 2023. Written comments should reference EIR 8189, Key Energy Storage Project. Include your name, address, and phone number or email address so we may contact you for clarification, if necessary. Send written comments to:

Fresno County Department of Public Works and Planning  
Development Services and Capital Projects Division  
ATTN: Jeremy Shaw, Planner  
2220 Tulare Street, Suite B Annex (below street level)  
SW Corner of Tulare and 'M' Street  
Fresno, CA 93721  
Email: [jshaw@FresnoCountyCA.gov](mailto:jshaw@FresnoCountyCA.gov)

**AVAILABILITY OF THE DRAFT EIR:** Copies of the Draft EIR are available for review at the following locations:

- Fresno County Public Works and Planning Department, 2220 Tulare Street, Fresno.
- Fresno County Main Library, Reference Department, 2420 Mariposa Street, Fresno.
- Huron Public Library, 36050 O St, Huron, CA 93234.

**EXHIBIT B**

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660  
FAX: (650) 589-5062

astukan@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201  
FAX: (916) 444-6209

ARIANA ABEDIFARD  
KEVIN T. CARMICHAEL  
CHRISTINA M. CARO  
THOMAS A. ENSLOW  
KELILAH D. FEDERMAN  
RICHARD M. FRANCO  
ANDREW J. GRAF  
TANYA A. GULESSERIAN  
DARION N. JOHNSTON  
RACHAEL E. KOSS  
AIDAN P. MARSHALL  
TARA C. RENGIFO

Of Counsel  
MARC D. JOSEPH  
DANIEL L. CARDOZO

October 3, 2023

**Via U.S. Mail and Email**

Steven E. White, Director  
Dept of Public Works and Planning  
2220 Tulare Street, 6th Floor  
Fresno, CA 93721  
Email: [stwhite@fresnocountyca.gov](mailto:stwhite@fresnocountyca.gov)

Bernice E. Seidel  
Clerk of the Board of Supervisors  
2281 Tulare St, Room 301  
Fresno, CA 93721  
Email: [ClerkBOS@fresnocountyca.gov](mailto:ClerkBOS@fresnocountyca.gov)

**Via Email Only**

Jeremy Shaw, Planner  
Email: [jshaw@fresnocountyca.gov](mailto:jshaw@fresnocountyca.gov)

**Via Online Portal**

<https://fresnocountyca.nextrequest.com/>

**Re: Request for Immediate Access to Documents Referenced in the  
Draft Environmental Impact Report – Key Energy Storage  
Project (CUP# 3734; SCH 2022070414)**

Dear Mr. White, Ms. Seidel, and Mr. Shaw:

We are writing on behalf of California Unions for Reliable Energy (“CURE”) to request ***immediate access*** to any and all documents referenced, incorporated by reference, and relied upon in the Draft Environmental Impact Report (“DEIR”) prepared for the Key Energy Storage Project (CUP# 3734; SCH 2022070414) proposed by Key Energy Storage, LLC. ***This request excludes a copy of the DEIR and its appendices. This request also excludes any documents that are currently available on the County of Fresno’s website, as of today’s date.***<sup>1</sup>

The Project proposes the construction, operation, maintenance, and decommissioning of an energy storage facility that would store at least 3 gigawatts of energy. The Project site is located south of W. Jayne Avenue between I-5 and

<sup>1</sup> Accessed <https://www.fresnocountyca.gov/Departments/Public-Works-and-Planning/divisions-of-public-works-and-planning/development-services-division/planning-and-land-use> on October 2, 2023.

October 3, 2023  
Page 2

South Lassen Avenue (State Route 269) in Fresno County (APN#s 085-040-58, 085-040-36, 085-040-37).

Our request for *immediate access* to all documents referenced in the DEIR is made pursuant to the California Environmental Quality Act (“CEQA”), which requires that all documents referenced, incorporated by reference, and relied upon in an environmental review document be made available to the public for the entire comment period.<sup>2</sup>

We request access to the above records in their original form, as maintained by the agency.<sup>3</sup> Pursuant to Government Code Section 7922.570, if the requested documents are in electronic format, please upload them to a file hosting program such as Dropbox, NextRequest or a similar program. Alternatively, if the electronic documents are 10 MB or less (or can be easily broken into sections of 10 MB or less), they may be emailed as attachments.

We will pay for any direct costs of duplication associated with filling this request up to \$200. However, please contact me with a cost estimate before copying/scanning the materials.

Please use the following contact information for all correspondence:

**U.S. Mail**

Alex Stukan  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080-7037

**Email**

[astukan@adamsbroadwell.com](mailto:astukan@adamsbroadwell.com)

---

<sup>2</sup> See Public Resources Code § 21092(b)(1) (stating that “all documents referenced in the draft environmental impact report” shall be made “available for review”); 14 Cal. Code Reg. § 15087(c)(5) (stating that all documents incorporated by reference in the EIR . . . shall be readily accessible to the public”); see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442, as modified (Apr. 18, 2007) (EIR must transparently incorporate and describe the reference materials relied on in its analysis); *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 (“[W]hatever is required to be considered in an EIR must be in that formal report. . .”), internal citations omitted.

<sup>3</sup> Gov. Code § 7922.570; *Sierra Club v. Super. Ct.* (2013) 57 Cal. 4th 157, 161-62.



October 3, 2023  
Page 3

If you have any questions, please call me at (650) 589-1660 or email me at the address above. Thank you for your assistance with this matter.

Sincerely,



Alex Stukan  
Paralegal

AES:lj1

6241-003j

ADAMS BROADWELL JOSEPH & CARDOZO

ARIANA ABEDIFARD  
KEVIN T. CARMICHAEL  
CHRISTINA M. CARO  
THOMAS A. ENSLOW  
KELLAH D. FEDERMAN  
RICHARD M. FRANCO  
ANDREW J. GRAF  
TANYA A. GULESSERIAN  
DARION N. JOHNSTON  
RACHAEL E. KOSS  
ADAN P. MARSHALL  
TARA C. RENGIFO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721  
TEL: (916) 444-6201  
FAX: (916) 444-6209

TEL: (650) 589-1660  
FAX: (650) 589-5062

amarshall@adamsbroadwell.com

March 8, 2024

*Of Counsel/*  
MARC D. JOSEPH  
DANIEL L. CARDOZO

**VIA EMAIL AND OVERNIGHT MAIL**

Fresno County Department of Public Works and Planning  
Development Services and Capital Projects Division

ATTN: Jeremy Shaw, Planner

2220 Tulare Street, Suite B Annex  
SW Corner of Tulare and 'M' Street  
Fresno, CA 93721

Email: [jshaw@FresnoCountyCA.gov](mailto:jshaw@FresnoCountyCA.gov)

**Re: Supplemental Comments on the Draft Environmental Impact  
Report for the Key Energy Storage Project (CUP# 3734; SCH  
2022070414)**

Dear Mr. Shaw:

We write on behalf of California Unions for Reliable Energy (“CURE”) to provide comments on the Draft Environmental Impact Report (“DEIR”) prepared by the County of Fresno (“County”) for the Key Energy Storage Project (CUP# 3734; SCH 2022070414) (“Project”), proposed by Key Energy Storage, LLC (“Applicant”). These comments supplement CURE’s preliminary comments on the DEIR, submitted on November 6, 2023.

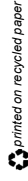
F-49

These comments demonstrate that the DEIR fails to comply with the requirements of the California Environmental Quality Act (“CEQA”)¹. We reviewed the DEIR and its technical appendices with the assistance of experts Gregory House, Certified Professional Agronomist, and Henry House, Professional Agricultural Economist.² Their comments must be addressed and responded to separately.

F-50

¹ Pub. Resources Code §§ 21000 et seq.; 14 Cal. Code Regs (“CEQA Guidelines”) §§ 15000 et seq. (“CEQA Guidelines”).

² Mr. Gregory and Henry House’s technical comments and curricula vitae are attached hereto as **Exhibit A**.



March 8, 2024  
Page 2

The DEIR lacks substantial evidence to support its conclusions with regard to the Projects’ impacts relating to agriculture and disturbance of contaminated soil. The County may not approve the Project until the County revises and recirculates the Project’s DEIR to adequately analyze the Project’s significant direct and cumulative impacts, and incorporates all feasible mitigation measures to avoid or minimize these impacts to the greatest extent feasible.



F-51

**I. STATEMENT OF INTEREST**

CURE is a coalition of labor organizations whose members encourage sustainable development of California’s energy and natural resources. CURE’s members help solve the State’s energy problems by building, maintaining, and operating conventional and renewable energy power plants and transmission facilities. Since its founding in 1997, CURE has been committed to building a strong economy and a healthier environment. CURE has helped cut smog-forming pollutants in half, reduced toxic emissions, increased the use of recycled water for cooling systems, and pushed for groundbreaking pollution control equipment as the standard for all new power plants, all while helping to ensure that new power plants and transmission facilities are built with highly trained, professional workers who live and raise families in nearby communities.

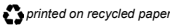


F-52

Individual members of CURE and its member organizations live, work, recreate, and raise their families in Fresno County. Accordingly, they will be directly affected by the Project’s environmental and health and safety impacts. Individual members may also work on the Project itself. They will be the first in line to be exposed to any health and safety hazards that exist onsite.

CURE has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for the members that they represent. Environmental degradation destroys cultural and wildlife areas, consumes limited fresh surface and ground water resources, causes water pollution, and imposes other stresses on the environmental carrying capacity of the state. This in turn jeopardizes future development by causing construction moratoriums and otherwise reducing future employment opportunities for CURE’s members. CURE therefore has a direct interest in enforcing environmental laws to minimize the adverse impacts of projects that would otherwise degrade the environment.

6241-007acp



March 8, 2024  
Page 3

Finally, CURE members are concerned about projects that risk serious environmental harm without providing countervailing economic benefits. For these reasons, CURE’s mission includes improving California’s economy and the environment by ensuring that new conventional and renewable power plants and their related transmission facilities use the best practices to protect our clean air, land and water and to minimize their environmental impacts and footprint.

↑  
F-52  
cont.

**II. THE DEIR FAILS TO DISCLOSE, ANALYZE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS**

An EIR must fully disclose all potentially significant impacts of a Project and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency’s significance determination with regard to each impact must be supported by accurate scientific and factual data.<sup>3</sup> An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.<sup>4</sup>

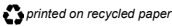
Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.<sup>5</sup> Challenges to an agency’s failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project’s environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency’s factual conclusions.<sup>6</sup> In reviewing challenges to an agency’s approval of an EIR based on a lack of substantial evidence, the court will “determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements.”<sup>7</sup>

↓  
F-53

Additionally, CEQA requires agencies to commit to all feasible mitigation measures to reduce significant environmental impacts.<sup>8</sup> In particular, the lead agency may not make required CEQA findings, including finding that a project impact is significant and unavoidable, unless the administrative record

<sup>3</sup> CEQA Guidelines § 15064(b).  
<sup>4</sup> *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.  
<sup>5</sup> *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.  
<sup>6</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.  
<sup>7</sup> *Id., Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.  
<sup>8</sup> CEQA Guidelines § 15002(a)(2).

6241-007acp



March 8, 2024  
Page 4

demonstrates that it has adopted all feasible mitigation to reduce significant environmental impacts to the greatest extent feasible.<sup>9</sup>

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not “uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.”<sup>10</sup>

**A. The County Improperly Defers Analysis and Mitigation of Soil Contamination**

The DEIR acknowledges that contaminated soil on the Project site may be disturbed during construction or operations, but impermissibly defers analysis and mitigation of this significant impact. As summarized in the DEIR, a Phase I Environmental Site Assessment (“ESA”) identified the existence of an on-site natural gas pipeline and petroleum and natural gas easements, and an on-site diesel AST with stained soil associated with the on-site water supply well.<sup>11</sup> The DEIR acknowledges that an accidental release (e.g., breaking the natural gas pipeline during construction activities) or exacerbation of an existing release of hazardous materials (e.g., spreading contaminated soil from the diesel AST located on the western boundary of Assessor’s Parcel Number 085-040-58 into drainages that lead to waterways) could create a significant hazard to the public or the environment.<sup>12</sup> Finally, the Project site has a history of agricultural use that may have included the use of pesticides, residual levels of which could remain in soil at the Project site.<sup>13</sup>

Despite identifying sources of soil contamination that would pose a significant risk to human health, the County defers analysis of the soil contamination until after Project approval.<sup>14</sup> Specifically, Mitigation Measure (“MM”) 3.10-1 defers the soil sampling necessary to characterize the nature, geographic extent, and magnitude of the contamination until after Project approval:



<sup>9</sup> PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090, 15091; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

<sup>10</sup> *Berkeley Jets*, 91 Cal.App.4th at 1355.

<sup>11</sup> DEIR, pg. 3.10-16.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> DEIR, pg. 3.10-19

F-55  
cont.



Prior to issuance of grading permits, soil shall be tested for total petroleum hydrocarbons near the on-site agricultural wells and pumps, fuel ASTs, turbine oil ASTs, diesel powered agricultural engines, and engine oil ASTs under the supervision of a professional geologist or professional engineer. In addition, soil shall be tested at four locations in a grid pattern and analyzed for pesticides and metals. The County shall review the results of the soil sampling to determine if any additional investigation or remedial activities are deemed necessary.<sup>15</sup>

F-56



Due to the deferred analysis of soil contamination on the Project site, MM 3.10-1 also defers formulation of mitigation to reduce this significant impact to a less than significant level. MM 3.10-1 calls for preparation of a soil management plan and remediation plan that would be approved by the County. MM 3.10-1 includes language discussing potential features of the soil management and remediation plan:

If concentrations of contaminants are identified in areas of the Project site and are confirmed to pose a potential risk to human health and/or the environment by a qualified environmental specialist, contaminated materials shall be remediated either prior to or concurrent with construction.

Remediation shall generally include a management plan which establishes design and implementation of remediation. Cleanup may include excavation, disposal, bioremediation, and/or any other treatment of conditions subject to regulatory action. All necessary reports, regulations and permits shall be followed to achieve cleanup of the site. The contaminated materials shall be remediated under the supervision of an environmental consultant licensed to oversee such remediation and under the direction of the lead oversight agency. The remediation program shall also be approved by the County. All proper waste handling and disposal procedures shall be followed. Upon completion of the remediation, the environmental consultant shall prepare a report summarizing the project, the remediation approach implemented, and the analytical results after completion of the remediation, including all waste disposal or treatment manifests.<sup>16</sup>

F-57



The County's approach fails to meet CEQA's standards. CEQA requires that the lead agency disclose the severity of a project's soil contamination impacts and

<sup>15</sup> DEIR, pg. 3.10-19.  
<sup>16</sup> *Id.*

March 8, 2024  
Page 6

the probability of their occurrence *before* a project can be approved.<sup>17</sup> The DEIR fails to quantify the extent of impacts from the Project’s disturbance of known soil contamination, and proposes instead proposes to flesh out the required soil analysis and mitigation measures at a later date, without providing supporting evidence demonstrating the scope of soil management that will be necessary to avoid potential exposure to soil contaminants during construction and operation of the Project. As such, neither the County nor the public can determine that they will be effective. The DEIR therefore fails as an informational document under CEQA. These analyses must be included in a revised DEIR that is circulated for public review in order to accurately inform the public about the nature and extent of the Project’s contamination impacts.

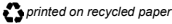
↑  
F-57  
cont.

Further, CEQA requires that the County propose mitigation measures to reduce the Project’s impacts below a level of significance.<sup>18</sup> It is generally improper to defer the formulation of mitigation measures.<sup>19</sup> An exception to this general rule applies when the agency has committed itself to specific performance criteria for evaluating the efficacy of the measures to be implemented in the future, and the future mitigation measures are formulated and operational before the project activity that they regulate begins.<sup>20</sup> As the courts have explained, deferral of mitigation may be permitted only where the lead agency: (1) undertakes a complete analysis of the significance of the environmental impact; (2) proposes potential mitigation measures early in the planning process; and (3) articulates specific performance criteria that would ensure that adequate mitigation measures were eventually implemented.<sup>21</sup> CEQA also requires that all proposed mitigation measures be supported by substantial evidence to demonstrate that they will be effective and enforceable.<sup>22</sup> In *Preserve Wild Santee v. City of Santee*, the city impermissibly deferred mitigation where the EIR did not state why specifying performance standards for mitigation measures “was impractical or infeasible at

F-58  
↓

<sup>17</sup> 14 CCR §§ 15143, 15162.2(a); *Cal. Build. Indust. Ass’n v. BAAQMD* (2015) 62 Cal.4th 369, 388-90 (“*CBIA v. BAAQMD*”) (disturbance of toxic soil contamination at project site is potentially significant impact requiring CEQA review and mitigation); *Madera Oversight Coalition*, 199 Cal.App.4th at 82; *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (“*Berkeley Jets*”) (2001) 91 Cal.App.4th 1344, 1370-71; CEQA Guidelines, Appendix G.  
<sup>18</sup> Cal. Public Resources Code §§ 21002, 21100.  
<sup>19</sup> 14 CCR § 15126.4(a)(1)(B); *POET v. CARB*, 218 Cal.App.4th at 735.  
<sup>20</sup> *POET*, 218 Cal.App.4th at 738.  
<sup>21</sup> *Comtys. for a Better Env’t v. City of Richmond* (2010) 184 Cal.App.4th 70, 95; *Cal. Native Plant Socy’ v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 621.  
<sup>22</sup> *Sierra Club v. County of San Diego* (2014) 231 CA 4th 1152, 1168.

6241-007acp



March 8, 2024  
Page 7

the time the EIR was certified.”<sup>23</sup> The court determined that although the city would ultimately review and approve the mitigation standards, this does not cure the informational defects in the EIR.<sup>24</sup> Further, the court in *Endangered Habitats League, Inc. v. County of Orange*, held that mitigation that does no more than require a report to be prepared and followed, or allow approval by a county department without setting any standards is inadequate.<sup>25</sup> Here, the County fails to undertake a complete analysis of the environmental impact by deferring necessary soil sampling, fails to articulate specific mitigation measures early in the process, and fails to articulate specific performance criteria. The County’s approach is similar to that rejected in *Endangered Habitats League* because it merely requires a report to be prepared and followed, subject to approval by a county department, without setting standards.

↑  
F-58  
cont.

The DEIR’s improper deferral of analysis and mitigation of significant soil contamination impacts must be corrected in a revised and recirculated DEIR.

F-59

**B. The DEIR’s Evaluation of Agricultural Resource Impacts Violates CEQA, the Williamson Act, and County Zoning Law**

CURE’s preliminary comments on the DEIR explain that the DEIR’s evaluation of the Project’s direct, indirect and cumulative impacts on agricultural resources fails to comply with the requirements of CEQA. Gregory and Henry House’s comments further illustrate the Project’s impacts on agricultural resources.

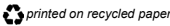
F-60

**1. The County’s Assumption that the Project Would be Decommission After 40 years Is Not Supported By Substantial Evidence**

The DEIR erroneously determines that the Project’s conversion of Prime Farmland and indirect impacts on agricultural resources would be individually and cumulatively less than significant. The DEIR reasons that the Project’s impacts would be temporary, as the Project will be decommissioned at the end of the Project’s lifespan. The House comments explain that this assumption is not supported by substantial evidence. Historical data on prime farmland conversion in Fresno County shows that there is scant evidence that farmland converted to a non-

F-61  
F-62  
F-63  
↓

<sup>23</sup> *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281.  
<sup>24</sup> *Id.*  
<sup>25</sup> *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794.





March 8, 2024  
Page 8

agricultural use is ever restored to agricultural use.<sup>26</sup> Rather, the evidence available shows that solar development in Fresno County is a significant component of the urban increases in the County. Further, Department of Conservation data shows that Urban and Built-Up Land in Fresno County has not seen a decrease between 1984 and 2020.<sup>27</sup> The House comments further explain that because power needs in California will continue to increase in the coming decades, an economic incentive would appear to exist for the project to operate at the site far into the future. Substantial evidence thus demonstrates that the Project constitutes a permanent conversion of Prime Farmland.<sup>28</sup>



F-63  
cont.

CURE’s preliminary comments also explained that the proposed Project would conflict with a Williamson Act Contract. According to Gov. Code Section 51238.1, a lead agency may approve uses on contracted lands if they are consistent with the following principles of compatibility:

- (1) The use will not significantly compromise the long-term productive agricultural capability of the subject contracted parcel or parcels or on other contracted lands in agricultural preserves.
- (2) The use will not significantly displace or impair current or reasonably foreseeable agricultural operations on the subject contracted parcel or parcels or on other contracted lands in agricultural preserves.



F-64

The DEIR reasons that the Project would be compatible with these principles because the Project would be decommissioned after 40 years.<sup>29</sup> But the House comments demonstrate that the assumption that the Project is temporary in nature and will be decommissioned and returned to agricultural use is speculative and not supported by any evidence in the record. The Project thus conflicts with a Williamson Act Contract, requiring mitigation in a revised and recirculated DEIR.

---

<sup>26</sup> House Comments, pg. 2.  
<sup>27</sup> House Comments, pg. 3.  
<sup>28</sup> *Id.*  
<sup>29</sup> DEIR, pg. 3.3-15.

**2. The DEIR's Conclusion that Agricultural Resource Impacts Will Be Less than Significant is Not Supported by Substantial Evidence**

The DEIR claims that construction and operation and maintenance of the proposed energy storage use would not adversely affect any of the environmental characteristics of the site that qualify it for mapping as Prime Farmland on the basis of its Storie Index Rating.<sup>30</sup>

The DEIR first claims that the Project would not affect the soil chemistry of

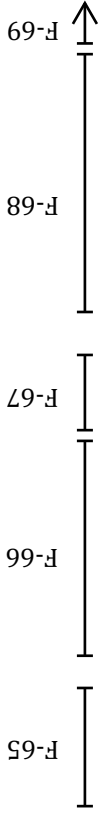
the Project site, and thus not result in a significant impact. The House comments explain that the County's reasoning is not supported by substantial evidence and that the proposed development would have potentially significant impacts on the soil chemistry of the Prime Farmland making up the Project site.<sup>31</sup> The House

comments discuss well-established scientific authority showing that soil chemistry is altered and can be permanently degraded when it is covered by impervious surfaces, such as those proposed by the Project.<sup>32</sup> Moreover, battery leakage of chemicals including lithium cobalt dioxide would profoundly degrade soil chemistry.<sup>33</sup>

The DEIR next argues that any changes to soil chemistry would be reversed

via a reclamation plan. The effectiveness of the proposed plan to reduce impacts to a less than significant level is not supported by substantial evidence. The House

comments explain that without an agronomic baseline report, a detailed work plan and timeline, and a financial bond to cover the required restoration, the DEIR fails to adequately assure the County that the restoration will be successful in restoring the land to its pre-Project condition.<sup>34</sup> An agronomic baseline report is a necessary element of an effective reclamation plan, because in order to restore the Project site to its current agricultural condition, there needs to be a means of establishing that baseline agronomic condition.<sup>35</sup> The House comments also identify the aspects



<sup>30</sup> DEIR, pg. 3.3-12.  
<sup>31</sup> House Comments, pg. 4.  
<sup>32</sup> *Id.*  
<sup>33</sup> *Id.*  
<sup>34</sup> House Comments, pg. 5.  
<sup>35</sup> *Id.*  
6241-007acp

March 8, 2024  
Page 10

of a detailed work plan necessary for the reclamation plan to comply with CEQA.<sup>36</sup> Without a work plan, the County fails to evaluate the extent of reclamation activities. The House comments also explain that the County fails to provide an estimate of the costs of reclamation.<sup>37</sup> Without an assessment of the costs of restoring the land to its pre-Project state, and without a requirement that a bond be posted for the costs of the restoration work, the effectiveness of the County’s mitigation is not supported by substantial evidence.<sup>38</sup>

↑  
F-69  
cont.

In sum, the County lacks substantial evidence to find that impacts to the Project site’s Prime Agricultural land would be less than significant. Instead, the House comments demonstrate that impacts would be significant.

↑  
F-70

**3. Mitigation is Necessary to Address Impacts to Agricultural Resources**

As explained herein and in CURE’s preliminary comments, the Project would result in significant impacts to agricultural resources by converting agricultural land to a nonagricultural use and impacting the environmental characteristics of the site that qualify it for mapping as Prime Farmland. CEQA provides that if the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”<sup>39</sup> In erroneously finding that agricultural impacts would be less than significant, the County fails to identify necessary mitigation.

↑  
F-71

The House comments explain that the Project’s impacts must be mitigated through effective measures such as conservation easements, as recommended by the Department of Conservation.<sup>40</sup> Mitigation through agricultural easements can take at least two forms: the outright purchase of easements or the donation of mitigation fees to a local, regional, or statewide organization or agency whose purpose includes the acquisition and stewardship of agricultural easements.<sup>41</sup> In addition to CEQA’s

↑  
F-72  
↓

<sup>36</sup> *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281 (an EIR was inadequate because it did not state why specifying performance standards for mitigation measures “was impractical or infeasible at the time the EIR was certified.”)

<sup>37</sup> House Comments, pg. 7.

<sup>38</sup> *Id.*

<sup>39</sup> PRC § 21081; 14 C.C.R. § 15092(b)(2)(A)-(B).

<sup>40</sup> *Id.* at 5.

<sup>41</sup> *Id.*

March 8, 2024  
Page 11

requirement to mitigate agricultural impacts, the Fresno County General Plan includes policies recommending conservation easements to protect agricultural land. Policy LU-A.16 provides: “[t]he County should consider the use of agricultural land preservation programs that improve the competitive capabilities of farms and ranches, thereby ensuring long-term conservation of viable agricultural operations.” The DEIR must be revised to identify feasible mitigation such as conservation easements.

↑  
F-72  
cont.

**4. The DEIR Fails to Evaluate Cumulative Agricultural Resource Impacts in the Manner Required by Law**

CURE’s preliminary comments explained that the DEIR’s analysis of the Project’s cumulative agricultural resources impacts fails to meet CEQA’s standards. In short, despite acknowledging that the Project is part of an extensive pattern of conversion of agricultural land to renewable energy development in Fresno County, the County erroneously assumes that the Project is not cumulatively considerable because the Project site may eventually be returned to agricultural use. The House comments discuss the elements of an adequate cumulative impacts discussion.<sup>42</sup> First, the discussion should assume that the conversion of the Project site to non-agricultural use would be permanent, in light of any substantial evidence to the contrary. Second, the analysis cannot simply conclude that impacts would be insignificant because the 300+ acres of development proposed by the Project is a small percentage of the total Prime Farmland acreage of Fresno.<sup>43</sup> Third, the analysis must evaluate the Project’s relation to future anticipated energy installations similar to and near the Project site.

↑  
F-73

**III. CONCLUSION**

For the reasons discussed above and in CURE’s preliminary comments, the DEIR for the Project is inadequate under CEQA. It must be revised to provide legally adequate analysis of, and mitigation for, all of the Project’s potentially significant impacts. These revisions will necessarily require that the DEIR be recirculated for additional public review. Until the DEIR has been revised and recirculated, as described herein, the County may not lawfully approve the Project.

↑  
F-74

<sup>42</sup> House Comments, pg. 7.

<sup>43</sup> *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692 (The “drop in a bucket” approach has been rejected by the courts, and fails to comply with CEQA’s requirement that a project mitigate impacts that are “cumulatively considerable”).

March 8, 2024  
Page 12

Thank you for your consideration of these comments. Please include them in the record of proceedings for the Project.

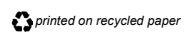
Sincerely,



Aidan P. Marshall

Attachment  
APM:acp

6241-007acp



**EXHIBIT A**



Providing expertise in agricultural science, management, & appraisal since 1977.

1105 Kennedy Place Suite 1 Davis, California 95616 telephone +1 530 753-3361

To: Aidan P. Marshall, Adams Broadwell Joseph & Cardozo, Attorneys at Law
From: Gregory & Henry House
Re: Expert review of the Agricultural Aspects of the NextEra Key Energy Storage Project DEIR in Fresno County

Dear Aidan:

At your request, we have briefly examined the NextEra Key Energy Storage Project in Fresno County (hereinafter, the the project), examining the foregoing project's draft EIR documentation as it has been provided to us (hereinafter, the DEIR) to identify agricultural issues in our capacity as agriculture experts. Our preliminary findings follow.

F-75

Preliminary findings

There are four findings:—

—1. A presumption of the project as only a temporary use and conversion of the agricultural resources is unsupported and false. In fact, once land is converted for development, it is highly unlikely to be restored for use as agriculture ever again.

F-76

—2. The DEIR fails to find a significant impact to the agricultural resources of the project's site in repudiation of its own LESA-analysis finding, using sham arguments to establish a less-than-significant impact to the conversion of prime farmland to nonagricultural uses in defiance of CEQA requirements.

F-77

—3. The soil-restoration plan is vague and shows little or no understanding of the project's actual impact on agricultural productivity. An agronomic-baseline report should be required along with a schedule of detailed machinery and agronomic activities to be performed to restore the land to its preproject condition for agriculture.

F-78

—4. The DEIR fails to recognize the cumulative impact of increasing energy infrastructure projects in the project site's neighborhood. The DEIR fails to consider whether the installation of the project will cause additional energy infrastructure to be constructed adjacent to or in the immediate neighborhood of the project, and whether it will contribute future urban development on Prime Farmland in Fresno County.

F-79

Presumption of "temporary" use status is unsupported and false. Because the project's requested conditional use permit (CUP) would have a 40-year term, The DEIR assumes that it will be decommissioned, that the entire installation will be removed, and that the land will be restored to its former condition suitable for farming after the 40-year period. In essence it is pitched as a temporary land use. There is no justification for this assumption, no evidence provided that any similar project anywhere at any time has been removed and the underlying land restored to its former agricultural condition and use.

F-80

Memorandum · Confidential Attorney-Client Work Product · November 21, 2023

On the contrary, the DEIR describes the 208 acres of roads and concrete buildings to be constructed on the project site as the “permanent footprint”. Although use of the word “permanent” here may be casual, it does reflect the common sense of development-planning principles: once developed, the conversion is permanent.

F-80  
cont.

HISTORICAL DATA ON PRIME FARMLAND CONVERSION IN FRESNO COUNTY. Table 1 sets out California Department of Conservation (DOC) historical data on the loss of *Prime Farmland* in Fresno County from 1984 through 2020 (the most recent data), and the contemporaneous increase of *Urban and Built-Up Land* during this same thirty-six year period. As the table shows, the change in Fresno County’s acres of land mapped by DOC as *Prime Farmland* is a negative number in every year-to-year comparison in the thirty-six-year span of the DOC’s data, the negative sign indicating loss of *Prime Farmland*.

TABLE 1 History of Prime Farmland conversion (acres lost) and increase of urban/developed acres in Fresno County from 1984 through 2020.

Period	Prime Farmland, change in acres	Urban and Built-Up Land, change in acres
1984-86	-508	+1,345
1986-88	-557	+1,699
1988-90	-1,524	+4,218
1990-92	-3,326	+3,240
1992-94	-918	+1,474
1994-96	-2,388	+3,146
1996-98	-4,662	+4,037
1998-00	-3,438	+3,693
2000-02	-2,116	+2,601
2002-04	-9,352	+3,364
2004-06	-9,499	+4,467
2006-08	-19,911	+2,201
2008-10	-7,764	+3,186
2010-12	-1,485	+1,973
2012-14	-5,822	+1,299
2014-16	-2,381	+4,885
2016-18	-3,514	+3,958
2018-20	-8,502	+419
totals	-87,667	+51,207

F-81

From 1984 to 2020, 87,667 acres of *Prime Farmland* in Fresno County were converted to nonagricultural uses while 51,207 acres of land in Fresno County were added to the *Urban and Built-Up Land* use category of the Farmland Mapping and Monitoring Program of DOC.

Importantly, the DOC includes the development of energy infrastructure within its category of new *Urban and Built-up Land*. There is no category for *Urban and Built-up Land* converted back to agriculture. In its *2016-2018 California Farmland Conversion Report*\* reports that in California: “Solar facility development accounted for 17,192 acres of urban development between 2016 and

F-82

\* This 2016-2018 report is the most recent update on farmland conversion in the State of California.



Memorandum · Confidential Attorney-Client Work Product · November 21, 2023

2018. Solar facility construction was a significant component of the urban increases in Imperial (91 percent), Kern (73 percent), Los Angeles (67 percent), and Fresno (63 percent) counties.”

This same report goes on to state that “additions of solar facilities have made a large contribution to the urbanization of the State for the last three map update cycles (2012 through 2018), and in Table 7, page 18 enumerates the conversion of 353 acres of farmland in Fresno County to its Urban category during 2012 to 2014, then 2,820 acres in 2014 to 2016, and then 2,500 acres during 2016 to 2018, all for solar and energy installations, a total of 5,673 acres over the six year period.”

Of particular pertinence in our table 1 is that in no year between 1984 and 2020 did the acres of *Urban and Built-Up Land* decrease in Fresno County: no urban land was returned to agricultural use. This is strong evidence that in forty years the project site will not be restored and returned to agriculture.

Clearly, the project’s DEIR fails to consider the increasing unlikelihood that this land will ever be converted back to agricultural use. It does not examine the strong demographic and economic forces that may influence the continued use as energy storage or some other urban use after the initial 40-year period is up.

For instance, the DEIR is silent as to the possibility that market demand for power from the project might continue or even increase, and that the aging plant might be refurbished in order to meet this demand. Given the high investment in infrastructure by the local power company to connect to the subject project, however, and given the likelihood that power needs in California will continue to increase in the coming decades, an economic incentive would appear to exist for the project to operate at the site far into the future. The storage equipment may be repaired, replaced, or upgraded over time, allowing indefinite use of the parcel for this purpose.

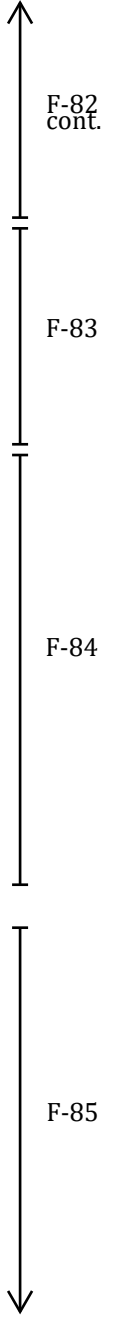
EXAMPLE OF CONTINUING USE FOR ENERGY-INFRASTRUCTURE SITES. We have an example right in our Davis neighborhood of a “temporary” solar farm constructed in 1986 on farmland that still exists 37 years later; it has been renovated several times. The City of Davis and Clean Energy Assess/CleanPath Ventures currently co-own this 86-acre solar farm just north of the city limits. Originally a research facility for PG&E, it was reactivated in 2003 to generate power for the city. The facility can currently generate seven megawatts of capacity with an annual output of 1,300 MWh. There are plans to expand to twenty megawatts and beyond as aging equipment is replaced.

**LESA findings are ignored in the DEIR.** This land is classed Prime Farmland by USDA and DOC: there is no higher of better farm land.

LESA FINDING FOR THE PROJECT. The California Department of Conservation (DOC) has created a Land Evaluation and Site Assessment (LESA) model to make determinations of the potential significance of a project’s conversion of agricultural lands as part of the CEQA review process, and is the standard method used for rating the relative value of agricultural land resources. It measures a set of agricultural elements such as soil, water, and certain geographic or site circumstances. Each element is scored based on the DOC’s rating system, and then the individual element scores are summed for one final LESA score for the project. This final score is evaluated based on thresholds of significance.

Appendix C of the Key Energy Storage Project states the results of applying the DOC’s LESA model to the project on page C-20 as follows:

As shown in Table 12, the weighted LE sub-score for the Project site is 36.53, while the weighted SA sub-score for the Project site is 42.88. The final LESA Model score for the Project site is 79.41. As previously shown in Table 1, a final LESA score of 60 to 79 points is considered significant unless



Memorandum · Confidential Attorney-Client Work Product · November 21, 2023

either the LE or SA subscore is less than 20. However, both the LE and SA scores exceed a 20-point threshold. Therefore, the Project would have a potentially significant impact on agricultural resources based on the LESA.

DEIR IGNORES ITS OWN LESA SIGNIFICANT IMPACT FINDING. In a complete repudiation of its own significance finding stated on page C-20, the DEIR recklessly concludes a Less-than-Significant Impact for Impact 3.3-1: (The Project would convert Prime Farmland to non-agricultural use), and thus no mitigation is required. This is completely unfounded. This is a major error in the DEIR and must be corrected. The DEIR should truthfully adhere to its own LESA findings, and recognize that the project will create a Significant Impact to the agricultural resources of the project site: Impact 3.3-1: (The Project would convert Prime Farmland to non-agricultural use).



F-85  
cont.

FAILED ARGUMENTS REGARDING THE STORIE INDEX. Instead of following its own LESA findings, the DEIR, beginning on page 3.3-12, launches on a long argument concerning the Storie Index-analysis portion of the LESA model, and attempts to wave away the LESA finding of Significant Impact by reviewing the definitions and factors within the Storie Index. This argument fails and is nothing but a bald attempt to manipulate the soil science inherent in the Storie Index analysis of soils. The DEIR’s argument is twofold: first that there is no change to the soil chemistry of the project site, “during construction, operation, and maintenance”, and therefore there is no impact; and second that conceded change to soil physical condition through soil compaction “would be corrected during Project decommissioning and site restoration.”



F-86

The “no change to soil chemistry” argument has no evidence, is entirely made-up, and is completely unfounded. It is a well-established fact that soils are biologically active and that a major portion of soil volume is composed of microscopic organisms; the biological activity of soil is fundamental to the soil chemistry. The project will cover approximately 208 acres of the site with pads, buildings and roads—these will cover and seal the soil off from air and water, the elements of life. Well-established scientific study over the decades has confirmed the biological decline, and therefore the chemical alteration, of soils under pads, buildings and roads. Scientific studies on the reclamation of sealed soils—that is, soils covered with impervious surfaces such as concrete or asphalt—indicate that previously sealed soils can take years to reclaim and may suffer permanent changes. This excerpt, for instance, from a 2015 study in Poland by Piotrowska-Długosz and Charzyński<sup>†</sup> describes the magnitude of the problem:

Covering soils with impervious materials has a significant impact on their properties and is essentially an irreversible process. In contrast to natural, open soils, sealed soils undergo a significant alteration of their physicochemical properties, and in turn, negatively influence microbial biomass and enzymatic activity.

Moreover, the possibility of battery leakage and subsequent soil contamination is also waved away. The chief chemical component of lithium batteries is acid containing lithium cobalt dioxide, a highly toxic substance that if leaked into the soil would profoundly affect and change its soil chemistry.



F-87

The second argument that soil compaction will be corrected in the restoration process is also seriously flawed by relying on a plan that does not exist, and undefined “requisite compliance with applicable laws and standards for the protection of the environment and any conditions of approval imposed by the County as Lead Agency”. Our criticism of the Restoration Plan such as it is presented in given in section 1.3.



F-88

<sup>†</sup> Piotrowska-Długosz, A.; Charzyński, P. *The impact of the soil sealing degree on microbial biomass, enzymatic activity, and physicochemical properties in the Ekranic Technosols of Toruń (Poland)*—in *Journal of Soils and Sediments*, 2015.

Memorandum · Confidential Attorney–Client Work Product · November 21, 2023

MITIGATION IS REQUIRED. The California Department of Conservation (DOC) submitted a comment letter dated July 29, 2022 (Appendix A-92 to A-94) to Fresno County regarding the DEIR. In it the DOC identifies that this project converts agricultural land to non-agricultural use:

The conversion of agricultural land represents a permanent reduction and significant impact to California’s agricultural land resources. CEQA requires that all feasible and reasonable mitigation be reviewed and applied to projects. Under CEQA, a lead agency should not approve a project if there are feasible alternatives or feasible mitigation measures available that would lessen the significant effects of the project.

Consistent with CEQA Guidelines, the DOC goes on to recommend the use of agricultural conservation easements, among other measures, as potential mitigation.‡ Mitigation through agricultural easements can take at least two forms: the outright purchase of easements or the donation of mitigation fees to a local, regional, or statewide organization or agency whose purpose includes the acquisition and stewardship of agricultural easements. The conversion of agricultural land should be deemed an impact of at least regional significance. Hence, the search for replacement lands should not be limited strictly to lands within the project’s surrounding area.

The DEIR has not done this, but instead has erroneously determined that the project will have less than significant impact. Again, this contradicts and refutes its own findings in the LESA Analysis, Appendix C of the DEIR.

F-89

**Restoration plan is grossly inadequate as presented.** The entire Restoration Plan for the agricultural component is stated in the following paragraph found on page Appendix B-8:

Prior to completion of decommissioning, the Project site would be restored to its current agricultural condition. All roads and other areas compacted during original construction or by equipment used for decommissioning would be tilled in a manner adequate to restore the sub- grade material to the proper density and depth consistent with adjacent properties. Low areas would be filled with clean, compatible sub-grade material. After proper sub-grade depth is established, locally sourced (from the City of Fresno or other location within 50 miles of the Project site) topsoil would be placed to a depth and density consistent with adjacent properties. Locally sourced compost would be applied to the topsoil, and the entire site would be tilled to further loosen the soil and blend in the compost. An appropriate seed mixture would be broadcast or drilled across the site and weed-free mulch would be applied to stabilize the soil and retain moisture for seedling germination and establishment.

This brief description gives no agronomic indicators of the current status of the soil on the project site.

F-90

AGRONOMIC BASELINE REPORT NEEDED. In order to restore the Project site to its current agricultural condition, there needs must be a means of establishing that baseline agronomic condition. There is no mention of such a baseline condition agronomic report of which conditions—that is, which factors influencing the land’s productivity—should be measured, evaluated, and documented for future reference. A start would be to assess the chemical and physical properties of each soil unit (there are three identified in the DEIR) on the project site, using the chemical and physical categories listed in the “Soil Properties and Qualities” pages of the United States Department of Agriculture’s Soil Web Survey: see figure 1 for details on what scientific features these pages describe for the actual soil on the project site.

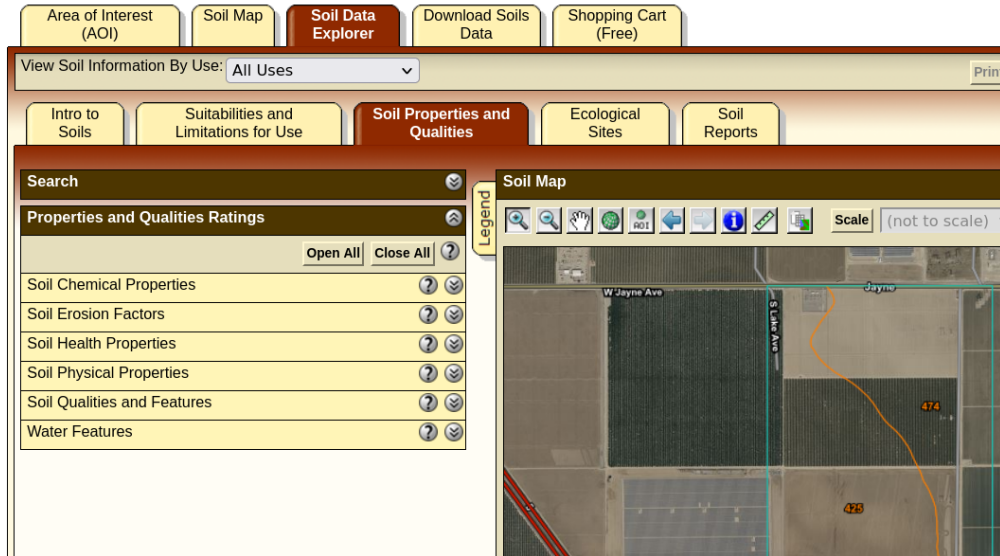
F-91

‡ See Cal. Code Regs., tit. 14, § 15370: mitigation includes “compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements.”

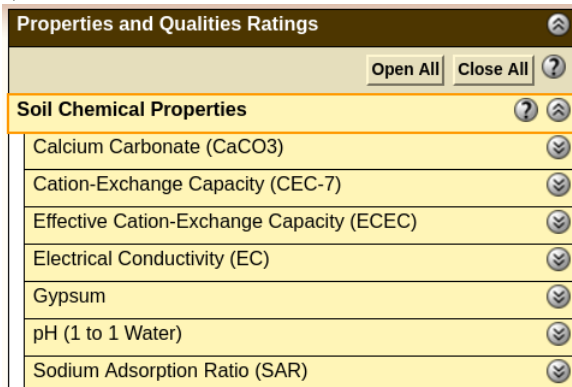
Memorandum · Confidential Attorney-Client Work Product · November 21, 2023

FIGURE 1 “Soil Properties and Qualities” pages of the United States Department of Agriculture’s Soil Web Survey: (a) overview, (b) detail of chemical properties, (c) detail of physical properties.

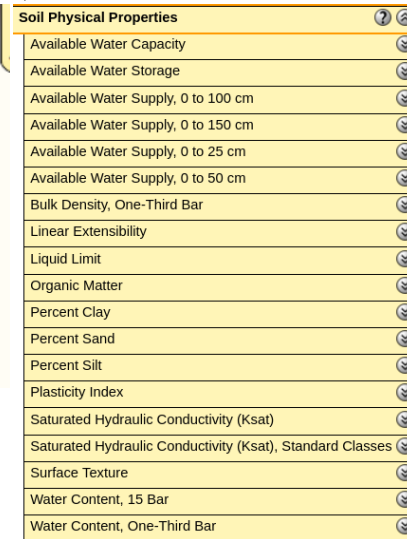
a)



b)



c)



F-92

DETAILS OF AGRONOMIC RESTORATION REQUIRED WITH TIMELINE. In order to restore the land to its former condition as documented in an agronomic baseline report, a much more detailed

↓ F-93

Memorandum · Confidential Attorney-Client Work Product · November 21, 2023

schedule of agricultural operations will be required than what is provided in the paragraph from page Appendix C-8 quoted above. At a minimum, 1) a land re-leveling survey should be provided with topsoil yardage needs, 2) a schedule of planned machinery operations such as removal of rubble and buried pipes and cables, grading, ripping, and other operations to re-establish soil tilth, 3) a schedule of soil amendments provided, and 4) a schedule of re-vegetation and re-establishment of soil micro-biology. Each schedule should clearly state the operations to be undertaken, and the time required for their completion.

↑  
F-93  
cont.

NO FINANCIAL ESTIMATES FOR RESTORATION ARE PROVIDED IN THE DEIR. The DEIR gives no estimate of the cost of restoring the land to its former condition. This is an extremely short-sighted and unacceptable level of environmental review, and leaves the entire restoration up to a next generation of owners and operators who may not be able to afford to restore the land to its pre-project condition (especially if that pre-project condition is fully evaluated and documented as noted in section 1.3.1 above.

F-94

Moreover, the DEIR should require that a bond be posted for the required restoration work.

SUMMARY OF RESTORATION PLAN PROBLEMS. Without a baseline report, a detailed work plan and timeline, and a financial bond to cover the required restoration, the DEIR fails to adequately assure the County that the restoration will be successful in restoring the land to its pre-project condition, the pre-condition and reason given for a Less than Significant impact finding.

F-95

**Failure to consider likely cumulative impacts.** The DEIR fails to recognize the cumulative impact of increasing energy infrastructure projects in the project site neighborhood, and it fails to consider whether the installation of the project will cause additional energy infrastructure to be constructed adjacent to or in the immediate neighborhood of the project. Will it will contribute future urban development on Prime Farmland in Fresno County?

F-96

Table 1 clearly demonstrates for Fresno County a growth trend in Urban and Built-Up Land while Prime Farmland is steadily decreasing. A serious study of cumulative impacts must first recognize that this project will convert Prime Farmland to non-agricultural use. Having established this Significant Impact, the DEIR cannot dismiss this individual project, at some 300 acres, as insignificant by simply showing its small ratio to the entire Prime Farmland acreage of Fresno County. It is strongly suggestive that in the year 2000, the DOC decided to document the changes in land use of western Fresno County, because it had observed a substantial uptick in farmland conversion to non agricultural uses, and the NRCS soil survey for that area had just been completed.<sup>§</sup>

Moreover, the very intent of a cumulative impact review is to examine current trends in farmland conversion, and project likely changes in the future. Thus it does not address the cumulative question to stop at the mere addition of the project’s 300+ acres; the likelihood of future additional energy installations, including more solar fields and more battery storage similar to the project must be considered, and are not sufficiently considered in the DEIR.

**Conclusion.** This concludes our preliminary review of the Agriculture element of the NextEra Key Energy Storage Project DEIR in Fresno County. A description of our qualifications as consultants is included in an appendix to this memorandum. Please do not hesitate to reach out with your questions to us.

F-97

Sincerely,

<sup>§</sup> Prior to 2000, DOC did not map land use in a large portion of Fresno County, including the project site.

Memorandum · Confidential Attorney-Client Work Product · November 21, 2023

Gregory A. House  
Certified Professional Agronomist (CPAg)  
Accredited Farm Manager (AFM)  
Accredited Rural Appraiser (ARA)

Henry House  
Professional Agricultural Economist  
Licensed Appraiser

### Exhibit: Qualifications of House Agricultural Consultants

**Gregory A. House.** Agricultural Consultant · Agronomist · Professional Farm Manager · Rural Appraiser · Farmer.

*Experience:—*

- Agricultural consultant, 1983–present—House Agricultural Consultants, providing agricultural-science, economics, management, and appraisal services.
- Farmer, 1987–present.—Growing organic apples, peaches, cherries, apricots, field and seed crops.
- Corporation secretary and consulting agronomist, 1977–1983—Hannesson, Riddle & Associates, Inc.

*Professional affiliations:—*

- American Society of Farm Managers & Rural Appraisers
- American Society of Agronomy
- Crop Science Society of America
- Soil Science Society of America
- California Certified Organic Farmers
- California Farm Bureau.

*Accreditations:—*

- Accredited Farm Manager (AFM), American Society of Farm Managers & Rural Appraisers, certificate no. 501
- Certified Professional Agronomist (CPAg), American Registry of Certified Professionals in Agronomy, Crops. & Soils, Ltd., certificate no. 2319
- Certified Crop Advisor (CCA), American Registry of Certified Professionals in Agronomy, Crops. & Soils, Ltd.
- Accredited Rural Appraiser (ARA), American Society of Farm Managers & Rural Appraisers, certificate no. 749
- Certified General Appraiser in the State of California, license no. AG 001999.

N.B.—These credentials have continuing-education requirements with which I am in compliance.

*Education:—*

- B.S., Crop Ecology, University of California, Davis, 1975, with Honors
- Numerous courses from the University of California Extension in agricultural economics, crop management, real estate, & hazardous waste management



F-97  
cont.

Memorandum · Confidential Attorney-Client Work Product · November 21, 2023

– Cornell University Certificate Program, Implementing Good Agricultural Practices: A Key to Produce Safety

– Courses of the American Society of Farm Managers and Rural Appraisers: Principles of Rural Appraisal · Advanced Rural Appraisal · Eminent Domain · Report Writing School · Economics of Farm Management · Principles of Farm Management · Standards and Ethics · Permanent Plantings Seminar · Standards and Ethics for Farm Managers · ASFMRA Code of Ethics ·

National Uniform Standards of Professional Appraisal Practice Courses of the Appraisal Institute: Basic Valuation Procedures Real Estate Statistics and Valuation Modeling Advanced Income Capitalization Valuation of Conservation Easements Certificate Program Condemnation Appraising: Principles and Applications Appraising the Appraisal How Tenants Create or Destroy Value: Leasehold Valuation and Its Impact on Value

*Expert-witness court testimony:—*

– Superior Court Qualified Expert Witness in the following California counties: Alameda, Colusa, Kern, Fresno, Madera, Merced, Monterey, Orange, Riverside, San Joaquin, San Luis Obispo, Santa Barbara, Santa Cruz, Solano, Sonoma, Sutter, Ventura, Yolo

– United States Tax Court qualified expert witness

– United States Bankruptcy Court qualified expert witness.

A comprehensive listing of depositions and trial appearances is available upon request.

*Awards:—*

– CCOF Presidential Award, California Certified Organic Farmers, February, 2001

– Meritorious Service in Communications, American Society of Farm Managers and Rural Appraisers, November 2004

– H.E. Buck Stalcup Excellence in Education Award, American Society of Farm Managers and Rural Appraisers, October, 2011.

*Appointments & activities:—*

– Adjunct Lecturer, University of California, Davis, Department of Agricultural & Resource Economics, current; Courses ARE 140 Farm Management; ARE 145 Appraisal of Farms and Rural Resources, current.

– Instructor, “Principles of Farm Management”, an Internet course of the American Society of Farm Managers and Rural Appraisers, 1996–2007.

– President, California Chapter American Society of Farm Managers & Rural Appraisers 1994–1995; Secretary–Treasurer, 1984–1990.

– Board of Directors, Yolo Land Trust, 1993–2001.

– Board of Directors, American Red Cross, Yolo County Chapter 1987–1989.

– Member, Yolo County Right to Farm Grievance Committee 1992–1995.

– Vice Chairman, Management Education Committee, American Society of Farm Managers and Rural Appraisers, 1998–2000 (committee member since 1986).

– Yolo County LAFCo Agricultural Forum LESA subcommittee, 1999.

– California Certified Organic Farmers: Treasurer of the Board of Directors, 1998–2003; Executive Director, 1999–2000; Member of the Finance Committee, 1998–current.

– CCOF Foundation Going Organic Program, Management Team member, 2006–2012.

– USDA Organic Grant Panel member, Washington, DC, 2002.

– City of Davis Open Space and Habitat Commission, 2006–2016, Chairman, 2007–2009.

– Member, Fruit Orchard Technical Advisory Group, Filoli Gardens, Woodside, California.

– Member, Organic and Sustainable Agriculture Program Steering Committee, University of California Cooperative Extension, Yolo and Solano Counties, California, 2008–2013.



F-97  
cont.

Memorandum · Confidential Attorney-Client Work Product · November 21, 2023

*Speaking engagements:—*

- Guest lecturer, University of Florida at Gainesville–Vegetable Crops Department. Seminar on transition to organic agriculture, November 1994.
- Featured program speaker, 1995 annual *Eco-Farm Conference*. Lecture on economics of organic-apple production, Asilomar, California, 1995.
- Guest speaker, multiple events of Community Alliance with Family Farmers. Presentations on farm management and agricultural economics, 1996 and 1997.
- Instructor, American Society of Farm Managers & Rural Appraisers. Course “M-12”, *Standards and Ethics for Professional Farm Managers*, March 1997.
- Guest speaker, American Horticultural Society. Lecture entitled *Challenges of Organic Stone Fruit Production*, Sacramento, California, July 2001.
- Organizer and presenter, *Going Organic Kickoff Meetings*. A program of California Certified Organic Farmers, November 2005 and December 2006.
- Master of ceremonies, annual meeting of California Certified Organic Farmers. Sacramento, California, February 2006.
- Featured program speaker, 2012 annual *Eco-Farm Conference*. Lecture entitled *Imitating Natural Systems: Towards an Indigenous Agro-forestry*, Asilomar, California, 2012.
- Seminar presentation, American Society of Farm Managers & Rural Appraisers. *Rapid Fire Seminar: What Makes for Comparable Sales in Condemnation Appraisal*—Reno, Nevada, October 2013.
- Featured program speaker, 2014 annual *Eco-Farm Conference*. Lecture entitled *Food Safety Regulatory Compliance in Fruit Orchards*, Asilomar, California, 2014.

*Publications:—*

- *Principles of Farm Management*, course “M-10”, a forty-hour professional-credit online educational offering of the American Society of Farm Managers & Rural Appraisers.
- *Conservation Issues in Agriculture*, a unit of course “M-25”, a fifteen-hour professional-credit online educational offering of the American Society of Farm Managers & Rural Appraisers.
- *A Primer on Organic Agriculture*, an article in *2006 Trends in Agricultural Land and Lease Values*, a publication of the California Chapter of the American Society of Farm Managers & Rural Appraisers.
- *Case Study: Using Indigenous Agroforestry Management Techniques to Support Sustainability in Production Agriculture*, a paper-poster presented at *Harlan II, An International Symposium on Biodiversity in Agriculture: Domestication, Evolution and Sustainability*, September 14–18, 2008, University of California–Davis.

**Henry House.** Agricultural Consultant · Licensed Appraiser · Consulting Agricultural Economist · Farmer.

*Topics of professional expertise:—*

- Appraisal: valuation of agricultural and rural land, valuation of livestock, valuation of fresh-water aquaculture facilities (fish farms). Experienced appraiser—California appraiser’s license number AG-3010876 (Certified General Appraiser).
- Farm management: good farming practices in orchards, such as almonds and walnuts, row crops.
- Livestock management: carrying capacity of land, range management, standard of care for grazing animals, fencing.
- Management evaluation of commercial equestrian facilities.
- Management of rural-residential property.
- Agricultural economics and lost profits.



F-97  
cont.



Memorandum · Confidential Attorney–Client Work Product · November 21, 2023

- Expert services to litigation regarding agricultural economics, farm management, and the foregoing.
- Statistical analysis, geographic-information-system (GIS) analysis, and software engineering (analytics).

*Experience:—*

Agricultural consultant, appraiser, consulting agricultural economist.— House Agricultural Consultants, providing agricultural science, economics, management, and appraisal services. 2000–present.

Farmer.— Coco Ranch, a family farm growing organic apples, peaches, cherries, and field crops and raising sheep, poultry, and goats. 2000–present.

*Education:—*

– B.S., “Natural History”, University of California, Davis, 1999, with Honors. Coursework in agronomy, botany, ecology, entomology, geology, hydrology, nematology, plant pathology, soil biology, sustainable agriculture, statistics, and wildlife biology.

– Numerous courses of the American Society of Farm Managers and Rural Appraisers regarding farm management, agricultural consulting.

– Numerous courses of the Appraisal Institute regarding real-estate appraisal

– Courses from Savory Institute regarding livestock management.

*Partial list of management-consulting assignments:—*

– Numerous consulting assignments for Leland Stanford Junior University on the management of its agricultural lands, which feature cattle, horses, and vegetable crops. Topics addressed have included livestock standard of care, carrying capacity of lands, safety of animals, safety of structures, and management of drainage and water quality.

– Consulting farm management for John and Marie Cronin Trust B, a landowner near Rio Vista, California. Lands were utilized for cattle grazing.

– Numerous appraisal assignments of farmland and rangeland properties utilized for crops and livestock (cattle, sheep, and aquaculture).

– A list of additional management-consulting clients served available on request.

*Selected recent legal matters in which Mr. Henry House has been retained as expert:—*

April 2023.—*Jack Wright v. Dhillon et al.*. Client: Randeep Dhillon; attorney: Reshma Kamath; court: Kern Court Superior (case no. BCV-21-100320). *I testified on production costs for almonds, customary farming practices for almonds, and the value of hay in a dispute over possession rights to an almond orchard and a hay-storage building. My testimony served as a rebuttal of the plaintiff’s alleged damages.*

March 2023.—*Shaina Gallagher et al. v. Bishop’s Pumpkin Farm, Inc., et al.* Client: Sandra Bishop (codefendant); attorney: Monika Troike—Jones & Dyer; court: Yuba County Superior (case no. CVPO 17-00253). *I assisted the client to achieve a settlement by opining on the defendants’ standard of care operating a petting zoo at a seasonal rural amusement park (pumpkin patch) near Wheatland, California. My oral report to counsel included analyzing the terms client’s ground lease with the operating corporation to assist in a defense for the landowner based on the pumpkin farm’s business structure.*

January 2023.—*Guadalupe Lopez Granados v. James Ferreira, Brooke Shelton, and James Ferreira Horse Training* Client: James Ferreira et al.; attorney: Nicholas Burke—Resnick & Louis, P.C.; court: San Joaquin County Superior (case no. STK-CV-UAT-2021-0010053). *Following a property inspection, my oral report to counsel assisted the client to settle a matter of cattle that escaped from a fenced enclosure and subsequently struck by a vehicle on a public road.*



F-97  
cont.

Memorandum · Confidential Attorney–Client Work Product · November 21, 2023

November 2022–February 2023.—*Petition for instructions in re survivor’s trust—probate code § 17200— In re the matter of Conrad and Berniece Silva Revocable Trust dated February 26, 1993.* Client: Connie Sanguinetti, co-trustee of Conrad and Berniece Silva Revocable Trust; attorney: Jason Harrel—Calone & Harrel Law Group, LLP; court: San Joaquin County Superior Court (case no. STK-PR-2022-1011). *I provided a written appraisal report to the client opining on the value of assets being divided, including an analysis of economics of the subject properties and rebutting the adverse party’s value opinions.*

August 2022.—*Gill et al. v. Superior Well Drillers et al.* Client: Superior Well Drillers; attorney: Matthew Pascale—Lewis Brisbois Bisgaard & Smith LLP; court: Kern County Superior Court (case no. BCV-16-102317 SDS); *I provided oral report to client for August 17, 2022 mediation, assisting the defendant to achieve a settlement by reviewing and rebutting the plaintiff’s demand for damages claimed for a defective well installed by the defendant that failed to provide irrigation water to the plaintiffs’ crops, raisin grapes and almonds in Kern County.*

July–August 2022.—*Michael Lux et al. v. Wadham Energy Limited Partnership et al.* Client: Wadham Energy Limited Partnership (defendant); attorney: Joann Rangel and Joseph Salazar—Lewis Brisbois Bisgaard & Smith LLP; court: Colusa County Superior Court (case no. CV24457); deposition: July 19 and August 2, 2022 in Sacramento, California for Colusa Superior Court via videoconference. *I testified in deposition on the economics of an almond orchard that the plaintiffs alleged had been damaged by trespass by dust from the defendant’s property and correct methodology to compute damages for lost profits alleged for said orchard. My testimony included scientific analysis utilizing aerial imagery and agronomy, economic analysis of the plaintiffs’ assertions of lost profits from almond crops, and rebuttal of the plaintiffs’ financial expert’s methodology and opinions.*

*Appointments & activities:—*

- Member, Solano County Farm Bureau.
- Member, American Society of Farm Managers and Rural Appraisers.
- Board of Directors, Davis Media Access, Davis, California, 2014–2017.
- Board of Directors, Davis Farmers Market Association, 2001–2003.
- Assistant instructor, “Principles of Farm Management”, course M-10, an Internet course of the American Society of Farm Managers & Rural Appraisers, 1999–2003.
- Course proctor, “M-25: Enhanced Client Services”, an Internet course of the American Society of Farm Managers & Rural Appraisers, 1999–2003.

*Publications & speaking engagements:—*

- Lecturer/instructor, “Farm Management”, course ARE 140, and “Rural Appraisal”, course ARE 145, University of California–Davis, 2015 to present.
- *Principles of Farm Management*, Course M-10, a 40-hour professional credit Internet educational offering of the American Society of Farm Managers & Rural Appraisers
- Educational speaker at the annual meeting of the California Chapter of the American Society of Farm Managers and Rural Appraisers, November 19, 2021, Coalinga, California. Topic: valuation of conservation easements.



F-97  
cont.

## 2.4.6 Letter F: Adams Broadwell Joseph & Cardozo

F-1 Contrary to the statement made in this comment, copies of all the documents referenced in the Draft EIR were readily accessible to interested parties at multiple locations during the entire public comment period. Copies of the materials cited in the Draft EIR were included in the County’s Project files and were included on the USBs that were provided with the printed copies of the Draft EIR that were made available for review at the Fresno County Main Library and at the Huron Public Library. The URLs provided in the references sections of the document were provided as a courtesy, in addition to and not instead of other available access to the cited materials. The County’s lack of written response to the commenter’s October request for access to documents is unfortunate but does not change the fact that all documents were readily available at the two area libraries and could have been accessed upon request at the County Planning Department.

Under CEQA Guidelines section 15087(c)(5), as amended in 2018, public review notices need only specify where documents “incorporated by reference” in the draft EIR will be made available for public review. This amendment was adopted to clarify that documents that are cited in an EIR under CEQA Guidelines section 15148, but not incorporated by reference, need not be made available for public review along with the draft EIR.<sup>2</sup>

Nonetheless, during the public review period, the County made a good faith effort to provide all of the documents references in the Draft EIR to the commenter on November 2, 2023. Although the County disagrees with the suggestion that CEQA required extension of the comment period, the County extended the initial 45-day comment period to 60 days. The extended period concluded on November 21, 2023. And then as a courtesy to this commenter, accepted comments received as late as March 8, 2024.

F-2 The County acknowledges receipt of this copy of the County’s Notice of Availability of the Draft EIR for agency and public review. The notice is not itself a comment on the adequacy or accuracy of the Draft EIR.

F-3 See Response F-1 regarding the timeliness of access to the reference materials cited in the Draft EIR.

F-4 The comment overstates the Project’s anticipated energy storage capacity. Rather than “at least 3 gigawatts” of storage as asserted in the comment, one of the Project proponent’s objectives is to site “approximately 3 gigawatts of energy storage” in the proposed location (Draft EIR Section ES.3, page ES-2). See also Draft EIR Section 1.2 (page 1-1) and Section 2.1 (page 2-1), each of which says: “At full build-out, the Project is expected to have capacity to store up to 3 gigawatts of energy....” The summary of Project details

<sup>2</sup> California Natural Resources Agency, 2018. Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA Guidelines, pp 28–29. November 2018.  
[https://resources.ca.gov/CNRALegacyFiles/ceqa/docs/2018\\_CEQA\\_Final\\_Statement\\_of%20Reasons\\_111218.pdf](https://resources.ca.gov/CNRALegacyFiles/ceqa/docs/2018_CEQA_Final_Statement_of%20Reasons_111218.pdf).  
 Accessed June 19, 2024.

provided in this comment otherwise is consistent with information provided in Draft EIR Chapter 2, *Project Description* (page 2-1 et seq.).

- F-5 For the reasons explained in greater detail below (see Responses F-7, F-12, F-13, and F-14), the County disagrees with the commenter’s preliminary determination about CEQA compliance. Responses to input provided by Dr. Clark are provided below in Responses F-6 through F-48.
- F-6 The County made Project documents, including all components of the Draft EIR, available for review consistent with the requirements of CEQA. See, for example, documents posted in the County’s website for the project (<https://www.fresnocountyca.gov/Departments/Public-Works-and-Planning/divisions-of-public-works-and-planning/development-services-division/planning-and-land-use/environmental-impact-reports/eir-8189-key-energy-storage-project>) and Response F-1. Consistent with CEQA and the overview of the CEQA process presented during the scoping meeting for this Project (Draft EIR Appendix A, *Scoping Report*), the commenter’s upcoming public involvement opportunities include participation in public hearings in advance of a decision on the Project. Without more information about the perceived constraints or the components, the County is unable to provide a more detailed response to this comment.
- F-7 The County disagrees with the opinion expressed in this comment regarding substantial evidence in support of conclusions reached in the Draft EIR regarding agriculture and air quality.

Contrary to the assertion made in this comment, CEQA does not require recirculation of the Draft EIR. CEQA requires recirculation of an EIR when the lead agency adds “significant new information” to the EIR regarding changes to the project description or the environmental setting after public notice is given of the availability of a draft EIR for public review but before EIR certification. Recirculation is not required unless the EIR is changed in a way that would deprive the public of the opportunity to comment on significant new information, including a new significant impact for which no feasible mitigation is available to fully mitigate the impact (thus resulting in a significant and unavoidable impact), a substantial increase in the severity of a disclosed environmental impact, or development of a new feasible alternative or mitigation measures that would clearly lessen environmental impacts but that the project proponent declines to adopt (CEQA Guidelines §15088.5[a]). Recirculation is not required when the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR (CEQA Guidelines §15088.5[b]). Here, no changes are proposed in the Project that would require major revisions of the EIR and the minor editorial, clarifying, and similar revisions to the Draft EIR set forth in Chapter 3 of this Final EIR do not trigger recirculation.

For a summary of the Project’s potential significant impacts, and the mitigation measures identified to avoid or reduce them, see Draft EIR Table ES-2, *Summary of Impacts and Mitigation Measures* (page ES-9 et seq.).

- F-8 The County acknowledges the commenter’s statement of interest in the Project.
- F-9 The County acknowledges this summary of CEQA. The summary of the statute and regulations do not constitute comments on the adequacy or accuracy of the Draft EIR.
- F-10 See Response F-1, which explains that the County made available all documents referenced in the Draft EIR during the entire public comment period.

Consistent with the Thursday, November 16, 2023, notice of extension of the comment period provided in Appendix A5 of this Final EIR and explained in Section 2.1, the extended comment period closed November 21 and late-received comments were accepted through November 27, 2023.

- F-11 The County acknowledges this summary of CEQA. The summary of the statute and regulations do not constitute comments on the adequacy or accuracy of the Draft EIR.
- F-12 Draft EIR Section 3.2.1 (page 3.2-4 et seq.) provides information about the regulatory and environmental setting of the Project relating to agricultural resources. Section 3.2.2 (page 3.2-10 et seq.) documents the County’s analysis of the Project’s potential direct and indirect effects; Section 3.2.4 (page 3.2-20 et seq.) documents the analysis of cumulative effects. The County disagrees with the opinion expressed about the Draft EIR’s failure to comply with CEQA.
- F-13 The comment correctly summarizes the conclusions reached in Draft EIR Section 3.3, *Agriculture and Forestry Resources* (page 3.3-1 et seq.), that the Project’s conversion of prime farmland and indirect impacts on agricultural resources would be individually and cumulatively less than significant. See Draft EIR Section 3.3.3 (page 3.3-12 et seq.) and Section 3.3.4 (page 3.3-18 et seq.), respectively. The comment also is correct that the Draft EIR considers Project impacts on agriculture resources to be limited to the term of the Project, i.e., lasting until completion of the activities described in the draft reclamation and site restoration plan included in Draft EIR Appendix B1, since the completion of these activities would return the Project site to a condition suitable for agricultural use. As discussed in Responses F-14 and F-15, the analysis of agricultural impacts in the Draft EIR includes substantial evidence to support the conclusion that impacts to agricultural resources would be less than significant, including a Land Evaluation and Site Assessment (LESA), which is used for rating the relative value of agricultural land resources. The County disagrees with the suggestion that either the conclusions or the reasoning is “erroneous” and so has not revised the Draft EIR in response to this comment.
- F-14 The EIR’s assumption that the Project’s impacts to agriculture resources would be temporary in nature since the Project would be decommissioned and the site returned to

agricultural use is supported by evidence in the record. Although neither CEQA nor the CEQA Guidelines defines “temporary” in terms of a distinction from “permanent,” the Court of Appeals recently considered the issue in the context of a street closure for display of public art. *Committee to Relocate Marilyn v. City of Palm Springs* (2023) 88 Cal.App.5th 607. The court distinguished “vacation” (i.e., a termination of the right to use a street for public use to the exclusion of a future reversion to public use) from a “temporary” street closure (i.e., where the public regains its right to use the street when the closure expires.”

Following the same reasoning, the proposed energy storage use is temporary in that the ability to use the Project site for agricultural uses comparable to existing (baseline) agricultural uses will resume when the requested unclassified conditional use permit (CUP) expires; the opportunity to resume agricultural use of the Project site would not be lost the way it could be if subject to a residential or commercial development with an indefinite permit term. For this Project, the CUP would expire after a set term anticipated to be 30 years (Draft EIR Appendix B1, p. 2).

The Applicant submitted a draft reclamation plan as part of the CUP application package. The County included the draft reclamation plan in the Draft EIR as Appendix B1. If the Project is approved, the draft reclamation plan will be updated and finalized in accordance with final, approved design plans and submitted with the Project’s grading and building permit applications – a final reclamation plan would be in place before ground disturbance occurs (Draft EIR Appendix B1, p. 2). The proposed reclamation is intended “to return the site to its previous agricultural condition” (Draft EIR Appendix B1, p. 2). As explained in more detail in Draft EIR Appendix B1 (p. 3):

“Prior to completion of decommissioning, the Project site would be restored to its current agricultural condition. All roads and other areas compacted during original construction or by equipment used for decommissioning would be tilled in a manner adequate to restore the subgrade material to the proper density and depth consistent with adjacent properties. Low areas would be filled with clean, compatible sub-grade material. After proper sub-grade depth is established, locally sourced (from the City of Fresno or other location within 50 miles of the Project site) topsoil would be placed to a depth and density consistent with adjacent properties. Locally sourced compost would be applied to the topsoil, and the entire site would be tilled to further loosen the soil and blend in the compost. An appropriate seed mixture would be broadcast or drilled across the site and weed-free mulch would be applied to stabilize the soil and retain moisture for seedling germination and establishment.”

Further, “Agricultural land, water, and utility pipes on site prior to energy storage facility construction may remain throughout the facility's use.... [and] may once again be used to provide irrigation on the property after the site has been decommissioned. Once the facility is completely removed, the property owner will be able to commence farming on this property if they so choose” (Draft EIR Appendix B1, pp. 3, 4). The County requires,

and the Applicant would provide, money in an amount equal to the estimated cost of implementing all activities associated with returning the Project site to its original state (Draft EIR Appendix B1, p. 3).

The County’s expectation (reflected in the Draft EIR) that renewable energy uses such as the Project would be temporary is underscored both in the County’s Supplemental Information for Solar Electrical Generation Facilities (which requires applicants to “[p]rovide a Reclamation Plan detailing the lease life, timeline for removal of the improvements and specific measures to return the site to the agricultural capability prior to installation of solar improvements”)<sup>3</sup> and the County’s Guidelines for Preparing a Solar Electrical Generation Facility Reclamation Plan (which requires such plans to “specify termination date” and a “[t]imeline for completion of reclamation after solar facility lease has termed”).<sup>4</sup>

While the Project would effectively preclude agricultural use on the entire 318-acre site, it would not adversely affect any of the environmental characteristics of the site that qualify it for mapping as Prime Farmland. After decommissioning, the texture of surface soils would be returned to a condition suitable for agricultural use. The EIR’s conclusion that the Project’s impact on loss of farmland would be temporary is consistent with input provided by the Department of Conservation, which defines the “conversion” of agricultural land as “a permanent reduction in the State’s agricultural land resources.”<sup>5</sup> Unlike the development of homes, businesses, and community facilities that permanently convert prime agricultural land, structures associated with the development of this Project would be removed and the site returned to a condition suitable for agricultural use within the timeframe specified in the permit. As stated in Section 2.5.1 in Section 2.5, *Description of the Project*, of the Draft EIR, the conditional use permit (CUP) issued by the County for the Project would have a 40-year term.

The comment correctly anticipates that, if the Project is approved, then the County would monitor and enforce implementation of the Project in compliance with the project description set forth in Draft EIR Chapter 2 (page 2-1 et seq.) as a condition of permit approval. However, identification of conditions of approval are functions of the California Planning and Zoning Law (Government Code § 65000 et seq.) and are outside the scope of CEQA, which is limited to the identification and analysis of impacts of the project and alternatives. The Applicant’s commitment to decommission the Project and reclaim the site is an element of the Project as proposed: it is not a mitigation measure (as defined in CEQA Guidelines § 15370) required to minimize a significant environmental effect of the Project. Public Resources Code §§21061, 21100(b)(3); CEQA Guidelines

<sup>3</sup> County of Fresno, 2017. Supplemental Information for Solar Electrical Generation Facilities. Rev. December 12, 2017.

<sup>4</sup> County of Fresno, 2024a. Guidelines for Preparing a Solar Electrical Generation Facility Reclamation Plan. <https://www.fresnocountyca.gov/Departments/Public-Works-and-Planning/divisions-of-public-works-and-planning/development-services-division/planning-and-land-use/photovoltaic-facilities/photovoltaic-facilities-p-3106>. Accessed June 18, 2024.

<sup>5</sup> California Department of Conservation, 2023b. California Environmental Quality Act (Land Protection). [https://www.conservation.ca.gov/dlrp/Pages/CA-Environmental-Quality-Act-\(CEQA\)-.aspx](https://www.conservation.ca.gov/dlrp/Pages/CA-Environmental-Quality-Act-(CEQA)-.aspx). Accessed January 8, 2024.

§§15121(a), 15126.4(a). For these reasons, and contrary to the suggestion in this comment, substantial evidence supports the EIR's assumption that Project impacts to agricultural resources would be temporary.

- F-15 The County's conclusion that the description of a different project proposed on a different site contained insufficient specificity to reach a conclusion of less than significant impact on the conversion of prime farmland is not relevant to the County's evaluation of details provided about this Project in this EIR. Of note, unlike the Draft EIR for this Project, the Draft EIR for the Fifth Standard Solar Project Complex included no draft reclamation plan and, as a result, considerably less detail about the activities that would comprise project decommissioning and site restoration. The additional information contained in the Project's draft reclamation plan and in the Draft EIR adequately support the EIR's impact conclusion of less-than-significant impact on farmland.

Further, the two projects are different in ways that fundamentally affect conclusions of the site assessment aspect of the LESA evaluation for the Project. Section II of the environmental checklist set forth in CEQA Guidelines Appendix G says, "In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California [Department] of Conservation as an optional model to use in assessing impacts on agriculture and farmland." The County exercised its discretion to review and rely on LESA modeling to reach a conclusion of less-than-significant impact for this project. The site assessment aspect of the LESA model includes four factors (ratings) that are intended to measure social, economic, and geographic attributes that contribute to the overall value of agricultural land. They include project size rating, water resource availability rating, surrounding agricultural land rating, and surrounding protected resource land rating. Among other things, these ratings recognize the roles that farm size, the availability of adequate water supplies, and the amount of surrounding lands with long term use restrictions that are compatible with or supportive of agricultural land (such as Williamson Act contracted lands) play in the viability of an agricultural operation.

Each project and project site are evaluated on their own merits, not by comparison to other projects. Nonetheless, a comparison may be illustrative here to provide additional information about why the County reached different conclusions for the two projects: This project would affect 318 acres, the southern half of which is fallow; the Fifth Standard project would be more than five times larger - 1,600 acres. A water supply assessment was prepared for this Project; no water supply assessment was included in the Fifth Standard Draft EIR. Another relevant difference between the two project sites is that this Project site is not completely surrounded by Williamson Act contracted lands, while the Fifth Standard project site was. Consistent with CEQA, the County exercises its discretion under CEQA to evaluate the impacts of each project based on project-specific and site-specific facts. That different facts may lead to different conclusions does not support a suggestion that the analysis in this EIR is speculative or insufficiently supported.



- F-16 As explained in Responses F-13, F-14, and F-15, the EIR provides substantial evidence to support its findings that Project impacts (direct, indirect, and cumulative) on agricultural resources would be less than significant. In light of the limited circumstances under which CEQA requires recirculation (see Response F-7) and the absence of significant new information following agency and public review of the Draft EIR, no substantial revisions have been made to the Draft EIR (see Final EIR Chapter 3) and the County declines the request to recirculate the draft.
- F-17 The Draft EIR’s determination that the Project’s indirect impacts on farmland would be less than significant is supported by substantial evidence. The study area for the analysis of impacts on agriculture resources consists of “farmland within Fresno County (including Prime Farmland, Unique Farmland, and Farmland of Statewide Importance, as shown on maps prepared pursuant to the FMMP) (Draft EIR Section 3.3.1.1, page 3.3-1). The environmental and regulatory setting for the analysis is summarized in Draft EIR Section 3.3.1.2 (page 3.3-1 et seq.) based on FMMP mapping, a Project-specific and site-specific LESA (Draft EIR Appendix C), Fresno County assessor’s data, and state and local laws such as Government Code Section 51201 (which defines prime farmland), the Fresno County General Plan’s Agriculture and Land Use Element. The potential indirect impacts of development pressure on farming within the County due to land use incompatibilities resulting from renewable energy projects also are addressed by consistency with the County’s Solar Facility Guidelines (see Draft EIR Appendix I) and limitations on pesticide use (see Draft EIR Appendix B2). Significance criteria relied upon in the analysis, consistent with the environmental checklist found in CEQA Guidelines Appendix G, are presented in Draft EIR Section 3.3.2 (page 3.3-11).

The comment correctly acknowledges the Draft EIR’s disclosure (in Draft EIR Section 3.3.3.3) that the Project would result in an indirect impact on the conversion of farmland to non-agricultural use. The comment also correctly acknowledges the explanation that the development of energy storage projects such as this Project “follows in the footsteps of the development of renewable energy generation projects in the region, rather than leading it” and that “the central force of attraction for the development of renewable energy projects in the region is arguably the PG&E Gates Substation, and not the Project itself.”

The commenter’s reliance on the decision in *Masonite Corp. v. County of Mendocino* (2013) 218 Cal.App.4th 230 is misplaced. That decade-old decision held that agricultural conservation easements were a legally feasible mitigation measure that could reduce the project’s significant unavoidable impact on loss of farmland.<sup>6</sup> This EIR, however, concludes that the Project would result in a less-than-significant, temporary impact due to farmland conversion. Therefore, the holding in *Masonite Corp.* decision regarding the

<sup>6</sup> As an aside, the court in a more recent decision reached the opposite conclusion: that agricultural conservation easements do not provide effective mitigation for a significant conversion of agricultural land. See, *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal. App. 5th 814.

appropriateness of a particular mitigation measure to address a significant impact does not apply here.

The unsupported opinion in this comment expressing disagreement with the EIR's conclusion does not indicate that the EIR is wrong. As explained in Public Resources Code Section 21082.2(c), “Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” Here, the comment provides no evidence to support its presumption that mitigation is warranted.

As noted in the comment, the Draft EIR acknowledges that “the proposed use could attract other solar development, which would enable storage of the energy collected by solar facilities. As an indirect effect, the conversion of agricultural parcels in the zone of influence and in the surrounding landscape could result.” However, it would be speculative to determine the extent that the proposed battery energy storage facility could indirectly result in the conversion of farmland to solar facilities. Speculative analysis is not required under CEQA. CEQA Guidelines Section 15187 states: “The agency... is not required to, nor should it, engage in speculation or conjecture.” This disclosure is consistent with the discussion in the *Masonite Corp.* decision (218 Cal. App. 4<sup>th</sup> 230, 236) that “indirect effects include the pressure created to encourage additional conversions.” This consistency does not, however, compel a conclusion that the Project’s impact would be a significant one.

Further, the commenter does not provide any substantial evidence that the PG&E Gates Substation is not the central force of attraction for development of renewable energy projects in the region. The purpose of battery energy storage projects is to provide a method to store energy during low-demand periods and supply unused energy during high-demand periods. By their nature, it is necessary to site battery storage projects in proximity to existing substations, where they can connect to the existing energy distribution system. Close proximity to an existing substation is a primary factor considered when siting renewable projects, because proximity to an existing substation minimizes the complexity of interconnection (both logistical and safety) and reduces the required length of the gen-tie lines. As such, the PG&E Gates Substation, and not the proposed battery energy storage system, could attract other renewable projects because they would also need to be located close to a substation so they can connect to the existing energy distribution system.

The Draft EIR does not adopt a “drop in the bucket” approach to support a conclusion that the Project’s own pressure on neighboring agricultural resources is insignificant in light of other considerations. To the contrary, the County and its environmental consultant evaluated the context of the Project’s indirect impact (including relevant considerations evaluated in the LESA) and evidence in the record (including the

Reclamation Plan included in Draft EIR Appendix B1) that Project decommissioning and site restoration would return the site to a condition suitable for agricultural use upon the conclusion of the permit period.

- F-18 The Project would have no cumulative CEQA impact to other types of farmland mapped by the California Department of Conservation - because the Project would cause no impact on unique farmland or farmland of statewide importance, it could not cause or contribute to any significant cumulative effect on either of these two types of land.

In the context of Impact 3.3-4, the Draft EIR (p. 3.3-18 et seq.) concludes that the Project would not cause a cumulatively considerable contribution to a significant cumulative effect due to conversion of Prime Farmland to non-agricultural use. The analysis explains (pp. 3.3-18, 3.3-19) that the Project's contribution to cumulative effects on Prime Farmland would be temporary (limited to the construction and operations and maintenance phases of the Project) because Project decommissioning and site restoration would return the site to a condition suitable for continued agricultural use and because Project development would not significantly adversely impact any of the environmental characteristics of the site that qualify it for mapping as Prime Farmland on the basis of its Storie Index Rating. The commenter's disagreement with this rationale and conclusion does not render the EIR inadequate. The commenter's opinions about the *Kings County Farm Bureau v. City of Hanford* decision and whether the CEQA lead agency for the project at issue in that case also do not raise significant environmental issues about this project or this EIR.

- F-19 The County agrees with the suggestion that the presence of other projects that would cause or contribute to cumulative effects on surrounding farmland does not eliminate the Project's contribution. However, for the reasons described in the analysis of cumulative effects (Draft EIR Section 3.3.4, page 3.3-18 et seq.) and in Response F-18, the Project's incremental, less-than-significant contribution to any significant cumulative impact to agricultural resources would not be cumulatively considerable. Because the comment does not identify significant new information, CEQA does not require the County to recirculate the Draft EIR. See Response F-7, which summarizes the limited circumstances under which CEQA requires recirculation.

- F-20 The comment correctly summarizes disclosures provided in Draft EIR Section 3.3.4 (page 3.3-18 et seq.) about the extent of the Project's incremental temporary contribution to the loss of farmland (i.e., 318 acres), the impacts of past conversions are ongoing (and reflected in baseline conditions), and that other present and reasonably foreseeable future projects may result in impacts related to farmland conversion. However, the comment incorrectly concludes that the analysis violates CEQA.

CEQA requires an EIR to discuss a cumulative impact if the project's incremental effect combined with the effects of other projects is "cumulatively considerable" (CEQA Guidelines Section 15130(a)). Lead agencies are to make this determination based on an assessment of the project's incremental effects "viewed in connection with the effects of

past projects, the effects of other current projects, and the effects of probable future projects” including whether a project’s potential effects that are “individually limited” may nonetheless be cumulatively considerable (CEQA Guidelines §15065(a)(3)). The Draft EIR does so. See, for example, the analysis in Draft EIR Section 3.3.4 of Impact 3.3-4 (Draft EIR pages 3.3-18 and 3.3-19), which describes the relevant geographic and temporal context for the cumulative analysis; identifies the Three Rocks and Fifth Standard projects as other past, present, or reasonably foreseeable future projects that could cause the same kinds of impacts as the Project; and concludes that the Project would not cause a cumulatively considerable contribution to a significant cumulative effect due to conversion of farmland to non-agricultural use.

For the reasons stated in Response F-18, the commenter’s disagreement with the EIR’s conclusions that the Project’s impacts would be temporary and less than significant does not dictate a different conclusion. As analyzed in the EIR and summarized above, the Project’s impact on farmland conversion would not be cumulatively considerable (and so would be less than significant). Since CEQA requires mitigation only for significant environmental impacts (Public Resources Code §§21100(b)(3), 21150; CEQA Guidelines §15126.4(a)), the EIR correctly does not identify mitigation for this impact. Regarding the Draft EIR’s inclusion of legally enforceable requirements that the site be decommissioned, see Response F-14.

- F-21 See Response F-15 regarding the County's reasons for reaching different conclusions regarding impacts of the Project and impacts of the Fifth Standard project, including but not limited to the size of each project and specific aspects of neighboring parcels. See Response F-7 regarding the limited circumstances under which CEQA requires recirculation. CEQA does not require the County to recirculate the Draft EIR based on this comment because it does not provide significant new information. Regarding the potential for the Project to cause indirect conversion of farmland, see Response F-17.
- F-22 The comment correctly notes that the Project would conflict with Williamson Act contract number 2068 if it is in place at the time the Project is approved. The comment also correctly reports the Draft EIR’s determination that, if contract number 2068 does not govern the Project parcel, then there would be no conflict with contract number 2068. As described in Draft EIR Section 3.3.1.3 (page 3.3-7), cancellation of a contract would be consistent with the purposes of the Williamson Act if the findings specified in Government Code Section 51282(b) are made.

There is no evidence in the record that contract cancellation would result in an adverse impact on the “environment,” which is defined in Public Resources Code Section 21063.5 as “the physical conditions that exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic significance.” Economic and social changes resulting from a project are not impacts on the physical environment (CEQA Guidelines §15064[e]). The comment provides no data or other information suggesting that cancellation of a contract, without more, would result in any change to existing physical conditions that

would be different than the changes that would result from impacts to farmland. Therefore, the comment identifies no new significant impact and/or more severe an impact than disclosed in the Draft EIR.

- F-23 As stated in Draft EIR Section 3.3.1.3 (page 3.3-6), and consistent with this comment, a lead agency may approve uses on contracted lands if they are consistent with the stated principles of compatibility. The Draft EIR analyzes the Project’s compatibility with these principles in the context of Impact 3.3-2 (page 3.3-14 et seq.), which details the reasons that the project would not conflict with a Williamson Act contract. The comment’s statement that agricultural uses would be displaced during the term of the Project also is correct; however, the characterization of temporary displacement as a significant impact in the context of this Project is mistaken.

For the reasons explained Response F-17 and F-18, the EIR’s identification of Project impacts on farmland as “temporary” and its conclusion that impacts on loss of farmland would be less than significant are supported by substantial evidence in the record. The County acknowledges that the opinions expressed in this comment are at variance with these aspects of the Draft EIR and has made a good faith effort to provide further explanation of the reasons for the assumptions and conclusions reflected in the EIR, including why no changes have been made in response to the comments. However, since the opinions expressed by the commenter are not supported by facts, reasonable assumptions predicated upon facts, expert opinion supported by facts, the comments provide insufficient basis for the County to reach conclusions that differ from those presented and supported in the Draft EIR. In evaluating input received on a Draft EIR, the lead agency is entitled to weigh the evidence relating to the accuracy and sufficiency of the information in the EIR and to decide whether to accept it. Here, even though the commenter may disagree with the underlying data, analysis, or conclusions, the County is entitled to rely on the environmental analysis and conclusions reached by the experts who prepared the EIR. *Laurel Heights Improvement Association v Regents of University of California* (1988) 47 C3d 376, 408.

- F-24 See Responses F-17 and F-18 regarding the Draft EIR’s analysis of the Project’s indirect effects on nearby farmland, and its conclusions that less-than-significant impacts would result at the Project level and cumulatively. See also Response F-23, which refers the commenter to the Draft EIR’s analysis of Project compatibility with the principles of compatibility. Specifically regarding the third principle of compatibility, see Draft EIR pages 3.3-15 and 3.3-16, which provide evidence and analysis supporting the EIR’s conclusion that the Project would not result in the significant removal of adjacent contracted land from agricultural or open-space use. See Draft EIR pages 3.3-14 through 3.316, which provide evidence and analysis supporting the EIR’s conclusion that the Project would not conflict with a Williamson Act contract.
- F-25 This comment correctly summarizes information provided at the cited locations in the Draft EIR. See Draft EIR Section 3.12.2.2 (page 3.12-7 et seq.).

F-26 The Draft EIR analyzes Project consistency with the General Plan in Section 3.12 (page 3.12-1) and provides additional detail in Appendix I1, *Consistency with Fresno County General Plan*. General Plan Policy LU-A.3 states: “The County may allow by discretionary permit in areas designated Agriculture, special agricultural uses and agriculturally-related activities, including value added processing facilities, and certain non-agricultural uses listed in Table LU-3.” The County’s Agriculture and Land Use Element is clear that the list provided in Table LU-3 is not an exclusive list and instead is “a list of typical uses” and is “illustrative of the range of uses allowed in areas designated Agriculture.”<sup>7</sup> The non-exclusive list of examples of other allowable uses provided in Table LU-3 includes administration offices, machinery storage and maintenance, wireless communication facilities, and electrical substations.

In Draft EIR Appendix I1, Table I1-2 provides a side-by-side consistency analysis that identifies Fresno County General Plan Agriculture and Land Use Element policies and whether the Project is consistent with them. The Project consistency analysis in the Draft EIR mistakenly concluded that Policy LU-A.3 is “not applicable” to the Project. In revisiting the analysis in response to this comment, the County has corrected Draft EIR Appendix I1 Table I1-2 as follows (see also Section 3.2.7):

**Consistent.** The General Plan’s illustrative list of uses typical of nonagricultural uses allowable with a permit in an area designated Agriculture is sufficiently similar to uses proposed by the Project (such as administration offices, equipment storage and maintenance, and electrical and wireless communication infrastructure). Further:

(a) the proposed energy storage use would provide a needed service to the surrounding agricultural area (e.g., increase local energy storage capacity at the Gates Substation to address the limitations of the electric grid and make it more resilient to disturbances and peaks in energy demand) that cannot be provided more efficiently within urban areas and that requires location in the proposed non-urban area (see DEIR section 2.4, Project Purpose and Objectives, p. 2-6).

(b) No less productive land is available in the vicinity (see DEIR section 4.2.1.1, Alternative Sites, p. 4-4 et seq.).

(c) The operational or physical characteristics of the use would not have a detrimental impact on water resources or the use (see DEIR section 3.11, Hydrology and Water Quality, p. 3.11-1 et seq.) or management of surrounding properties within at least one-quarter (1/4) mile radius. (see DEIR Figure 2 2, Project Site, which shows energy and agriculture uses within 0.25-mile of the

<sup>7</sup> Fresno County, 2000. Fresno County General Plan Policy Document. October 3, 2000. <https://www.fresnocountyca.gov/files/sharedassets/county/v1/vision-files/files/18117-2000-general-plan-policy-document.pdf>. Accessed January 8, 2024. In the Agriculture and Land Use Element, see page 2-7 (definitions of “agriculture” and “irrigated agriculture”), page 2-11 (Policy LU-A.2), and page 2-13 (Table LU-3).

Project site; see also DEIR Section 3.3, which concludes that the Project would not cause a significant unavoidable impact on agriculture resources).

(d) A probable workforce would be located nearby or be readily available. See DEIR Section 2.5.6.2, Construction Workforce and Schedule, which explains that Project construction is anticipated to employ a maximum of 150 on-site personnel. Once operational, the Project would require limited personnel to visit the Project site. The Project site would be remotely operated and monitored 7 days a week through the proposed supervisory control and data acquisition system. Routine maintenance and one annual maintenance inspection are expected to occur as described in Section 2.5.7, Energy Storage System Operation and Maintenance,

Based on consistency with each of these criteria, the County finds the Project to be consistent with Policy LU-A.3. ~~Not applicable. The policies pertain to County policy actions that are not related to the Project or review of its associated permit applications.~~

State law requires every county and city to adopt “a comprehensive, long-term general plan for the physical development of the county or city” (Government Code §65300). It also requires a county’s land use decisions to be consistent with the policies expressed in the general plan (*Corona–Norco Unified School District v. City of Corona* (1993) 17 Cal.App.4th 985, 994). A project “is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment” (*Corona–Norco*, 17 Cal.App.4th 985, 994). To be “consistent,” the project must be “compatible with the objectives, policies, general land uses, and programs specified” in the applicable plan; it need not be strictly compliant in every respect. See, *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal. App. 4th 807, 817. In this context, the County has determined that the Project is consistent with the General Plan, including General Plan Policy LU-A.3, because it would be compatible with the objectives, policies, general land uses, and programs specified in the General Plan. Because the comment does not identify significant new information, CEQA does not require recirculation of the Draft EIR on this basis. See Response F-7, which summarizes the limited circumstances under which CEQA requires recirculation.

- F-27 Because the Project would not have significant impacts on agricultural resources, the Draft EIR was correct not to include mitigation measures to address impacts to agriculture. The County received and considered scoping input provided by the California Department of Conservation as part of the scoping process for the EIR. See Draft EIR page 3.3-1 (“The County received scoping input from the California Department of Conservation, Division of Land Resource Protection, and the Fresno County Development Services and Capital Projects Division, Policy Planning Unit, regarding the Project’s potential impacts on agricultural resources. The specific input received related to potential impacts and mitigation measures regarding the Project site’s designation as

Prime Farmland and enrollment in the Williamson Act program. Copies of the letters are provided in Draft EIR Exhibit E of Appendix A, *Scoping Report*.”).

The comment characterizes the Department’s scoping input in a way that is consistent with the County’s own understanding, i.e., that a permanent reduction in farmland would represent a conversion of agricultural land and could (depending on other factors) result in a significant impact on California’s agricultural land resources. However, those are not the facts of this Project. As explained in Responses F-17 and F-18 and in Draft EIR Section 3.3 (page 3.3-1 et seq.), the Project’s temporary impact on farmland would not be permanent and would not rise to a level of significance requiring mitigation. Because the Project would not result in a potential significant impact, the Draft EIR is correct not to identify agricultural conservation easements or other measures, as potential mitigation.

F-28 The County does not agree that the Project’s Valley Fever-related impact would be potentially significant; therefore, mitigation is not required. See Responses F-39 through F-41.

F-29 To clarify, it is rule SJVAPCD Rule 8021 that would be required to reduce visible dust emissions to less than 20 percent opacity (see the fourth paragraph and first sentence of the fifth paragraph the Draft EIR Impact 3.4-4 discussion on page 3.4-25). The last sentence of the Draft EIR Impact 3.4-4 discussion incorrectly refers to Rule 802 instead of Rule 8021. To correct this error, and as shown in Section 3.2.4, the County has made the following edit to the last sentence of the Draft EIR Impact 3.4-4 discussion (p. 3.4-25):

Compliance with the requirements of AB 203 and SJVAPCD Rule 8021 would ensure that Valley Fever–related impacts on construction workers would be less than significant.

F-30 See Responses F-39 through F-41.

F-31 See Responses F-39 through F-41.

F-32 The County disagrees with the opinions expressed about the Draft EIR’s adequacy for purposes of CEQA. See Response F-7, which summarizes the limited circumstances under which CEQA requires recirculation. Because this comment does not provide significant new information and because major revisions to the Draft EIR are not required, CEQA does not require recirculation.

F-33 This summary of Project details is consistent with information provided in Draft EIR Chapter 2 (page 2-1 et seq.).

F-34 It is acknowledged that the Draft EIR concludes that there would be no significant air impacts from the Project. However, contrary to the statement made in this comment that the Draft EIR concludes that the Project would not expose sensitive populations to the risk of developing Valley Fever, the Draft EIR discloses that there would be a risk, albeit



- low, that fugitive dust generated by the Project could cause adverse effects on human beings (page 3.4-25). Further, the comment suggests that the Draft EIR concludes that there would be no air quality impacts; this is false. In fact, the Draft EIR identifies nine unique air quality impacts that would be associated with the Project, which would be less than significant or less than significant with mitigation incorporated (see Impacts 3.4-1 through 3.4-9; page 3.4-18, et seq.).
- F-35 The Project construction schedule described in the second sentence of the Impact AQ-2 discussion in Draft EIR Appendix D, *Air Quality, Greenhouse Gas Emissions, and Fuel Use*, is incorrect. As stated in both the Draft EIR and Appendix D paragraphs quoted in the comment, the actual total construction duration of either battery option would take approximately 6 years to complete. Consistent with that schedule, construction emission estimates associated with the Lithium Ion Battery Option were modeled based on assumptions over a period from January 2024 through November 2029, and construction emission estimates of the Lithium Ion and Iron Flow Battery Option were modeled over an assumed period from January 2024 through June 2029 (see Appendix A, *Assumptions and Calculations*, of Appendix D). Therefore, an accurate measure of the air quality impacts was provided, and a revised air quality assessment is not necessary.
- F-36 Impacts related to Valley Fever are analyzed in Section 4.3, *Air Quality*, of the Draft EIR (p. 4.3-1 et seq.). Any presence of Valley Fever cocci in the “high desert portion of Southern California” is irrelevant to the potential impacts of the Project. The term “high desert” generally describes the area centered around Victorville in San Bernardino County, California. The region extends as far west as Lancaster and as far northwest as Palmdale (both in Los Angeles County), and north to Barstow. By contrast, the Project site is located within Fresno County with minor incidental work also needed within an existing substation footprint in Kern County. See Draft EIR Section ES.1 (page ES-1), Section 1.2 (pages 1-1 and 1-2), and Chapter 2 (page 2-1 et seq.).
- F-37 The County acknowledges this summary of issues associated with *Coccidioides immitis*. The summary is consistent with that presented in the Valley Fever discussion in Draft EIR Section 3.4.1.2, most notably that farm workers, construction workers, others who engage in soil-disturbing activities, and anyone spending time outdoors in western Fresno County are at risk for contracting Valley Fever; Valley Fever is considered “highly endemic” in Fresno County; and that the western part of the County is considered an area of elevated Valley Fever activity (see Draft EIR, page 3.4-3 et seq.).
- F-38 The County agrees that based on size and settling rate, spores present in soils that can cause Valley Fever can travel many miles following the disturbance of impacted soils. This is consistent with the discussion presented in the Draft EIR, which includes the following statement: “High winds can carry dust containing the spores for long distances” (see second to last sentence on page 3.4-3 of the Draft EIR). The Draft EIR does not include speculative or inaccurate information regarding the ability of *Coccidioides immitis* spores to travel for long distances and the County does not agree that the discussion must be corrected in this regard.

F-39 In response to this comment, the County has reviewed the most recently available California Department of Public Health (CDPH) data for Valley Fever cases in California and Fresno County for 2021 through 2023, which was not previously available during the preparation of the Draft EIR. The data indicate there was a 6 percent increase in cases in California and a 25 percent increase in cases in Fresno County during that period. Although this new information does not change the less-than-significant determination of Impact 3.3-4, revisions have been made to the Draft EIR air quality environmental setting to incorporate the updated CDPH data.

The first sentence of the second paragraph of the *Valley Fever* discussion in Draft EIR Section 3.4.1.2 has been revised as shown in Section 3.2.4 and as follows to incorporate updated information from CDPH:

The California Department of Public Health (CDPH) received ~~7,252 and 8,030~~ 7,277, 6,747, and 7,696 new Valley Fever case reports in ~~2020 and 2021, 2022,~~ and 2023, respectively, as of November 30 of each year (CDPH ~~2022-2023~~).

The second and third sentences of the fourth paragraph of the *Valley Fever* discussion in Draft EIR Section 3.4.1.2 has been revised/replaced as shown in Section 3.2.4 as follows to incorporate accurate information for Fresno County updated from recent CDPH data:

The number of cases of Valley Fever in Fresno County has ~~varied-increased~~ increased in the past several years. ~~Between 2011 and 2014, the total number of cases decreased from 22,634 to 8,232; however, in 2019, the number of total cases spiked to 20,003, from 15,611 cases reported in 2018. Between 2021 and 2023, the total number of cases in Fresno County increased from 353 cases to 443 cases (CDPH 2023).~~

As shown in Section 3.2.4, the following reference has been added to Draft EIR Section 3.4.5:

CDPH (California Department of Public Health), 2023. Coccidioidomycosis in California Provisional Monthly Report, January – November 2023 (as of November 30, 2023), available online at: <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CocciinCAProvisionalMonthlyReport.pdf>

As concluded in Impact 3.3-4, because ground disturbance in Fresno County is ongoing and the Project would implement fugitive dust control measures consistent with SJVAPCD Rule 8021, and because independently enforceable protections of worker safety and health are in place, the risk is low that fugitive dust generated by the Project would cause substantial adverse effects on human beings.

F-40 This summary of Valley Fever symptoms is consistent with information provided in Draft EIR Section 3.4.1.2.

F-41 The comment includes lists of recommended measures to prevent the spread of Valley Fever. As described in the Valley Fever discussion in Draft EIR Section 3.4.1.3 (page 3.4-8, et seq.), Section 6709 to the Labor Code would require the Applicant to implement similar measures to provide effective awareness training about Valley Fever to all employees annually and before an employee begins work that is reasonably anticipated to cause substantial dust disturbance. The training must cover the specific topics described in Draft EIR Section 3.4.1.3 (pages 3.4-8 and 3.4-9), including but not limited to: personal and environmental exposure prevention methods; the importance of early detection, diagnosis, and treatment to help prevent the disease from progressing; recognizing common signs and symptoms of Valley Fever; and the importance of reporting symptoms to the employer and seeking medical attention from a physician and surgeon for appropriate diagnosis and treatment. In addition, as described in the discussion of Regulation VIII and Rule 8021 (Fugitive PM10 Prohibitions) in Draft EIR Section 3.4.1.3 (page 3.4-12, et seq.), the Applicant would be required to implement specific effective and enforceable fugitive dust controls described in Tables 3.4-4 and 3.4-5, including but not limited to, preparation and implementation of a SJVAPCD-approved Dust Control Plan.

Compliance with the requirements of Section 6709 to the Labor Code and SJVAPCD Rule 8021 would ensure that Valley Fever-related effects on construction workers described in Draft EIR Impact 3.4-4 (page 3.4-24, et seq.) would be less than significant. Therefore, additional mitigation measures are not required to reduce a significant impact. The County acknowledges the commenter's concerns regarding Valley Fever, but disagrees with the opinions expressed about the Draft EIR's adequacy for purposes of CEQA. The commenter does not provide substantial evidence that measures described above that would be implemented during Project construction and decommissioning are not sufficient for reducing the risk of Valley Fever. See Response F-7, which summarizes the limited circumstances under which CEQA requires recirculation. Because the comment does not provide substantial new information, CEQA does not require recirculation on this basis.

F-42 For this Project, a screening radius of 1,000 feet from the Project site to sensitive receptors was used to determine if a health risk assessment (HRA) would be required to evaluate Project-related diesel particulate matter emissions (see Impact 3.4-3, page 3.4-23 et seq. in the Draft EIR). Use of this screening radius is justified and supported by evidence because the 1,000-foot radius is consistent with findings in the California Air Resources Board's *Land Use Compatibility Handbook*,<sup>8</sup> California Health & Safety Code Section 42301.6, *Notice for Possible Source Near School*,<sup>9</sup> and studies such as that of Zhu et al<sup>10</sup> that found concentrations of particulate matter tends to be reduced substantially at a distance of 1,000 feet or greater downwind from sources such as

<sup>8</sup> California Air Resources Board, 2005. Air Quality and Land Use Handbook: A Community Health Perspective. April 2005.

<sup>9</sup> FindLaw, 2023. FindLaw.com - California Code, Health and Safety Code - HSC § 42301.6 - last updated January 01, 2023, available at: <https://codes.findlaw.com/ca/health-and-safety-code/hsc-sect-42301-6/>

<sup>10</sup> Zhu, Y. Hinds, W.C., Kim S, and Sioutas, C. 2002. Concentration and size distribution of ultrafine particles near a major highway. Journal of Air and Waste Management Association. 2002 Sep; 52 (9): 1032-42.

- freeways or large distribution centers.<sup>11</sup> Therefore, the County has determined that use of this screening radius to qualitatively assess health risks that would be associated with the Project is appropriate, and preparation of a quantitative HRA is not warranted in this case since the nearest sensitive receptors are at a distance of more than 3,000 feet upwind of the Project site (see page 3.4-6 of the Draft EIR).
- F-43 For the reasons described in Response F-42, the County disagrees with the notion that failing to quantify Project-related health impacts places the community at risk for unwanted adverse health impacts. The County otherwise acknowledges the summary of the toxic nature and potential health risks that can be associated with diesel particulate matter.
- F-44 The County disagrees with the comment that the EIR lacks supporting evidence for the conclusion that the Project would not result in significant health impacts. See Response F-42 for additional information.
- F-45 The comment appears to describe a request to conduct an HRA from the South Coast Air Quality Management District relative to a Notice of Preparation of an EIR for the Los Robles Apartment Project as a precedent requiring a quantitative analysis of toxic air contaminants. However, the Los Robles Apartment Project has vastly different circumstances compared to the Key Energy Storage Project. For example, as described in the Draft EIR prepared for that project, the Los Robles Apartments Project site is located within a developed area of Downtown Pasadena that is surrounded, in part, by single- and multi-family residential land uses, some of which appear to be located within 100 feet of that project site.<sup>12</sup> This is not a similar circumstance to that of the Key Energy Storage Project, which would be located roughly 3,300 feet from the nearest residence. Therefore, the County does not find the Los Robles Apartment Project in Downtown Pasadena to be persuasive precedent setting for the need to prepare of quantitative analysis for health impacts due to toxic air contaminants. See Response F-42 for a discussion of why a health risk assessment is not required for the Project.
- F-46 For the reasons described in Responses F-35 through F-45, the County disagrees that the Project could result in significant air quality impacts and does not agree that a revised EIR should be prepared to address the commenter's concerns.
- F-47 The County acknowledges receipt of Dr. Clark's resume, which details work in other states (such as Alabama, West Virginia, and New York) and other parts of the State (such as Long Beach, Los Angeles, and Santa Cruz) and which does not contain input on the adequacy or accuracy of the Draft EIR for this Project.

---

<sup>11</sup> Bay Area Air Quality Management District, 2022. 2022 CEQA Guidelines Appendix A: Thresholds of Significance Justification.

<sup>12</sup> Meridian Consultants, Chapter 3.0, Project Description, of the Draft Environmental Impact Report for the Los Robles Apartments Project, September 2017. Pages 3.0-5 and 3.0-6. Available at: <https://www.cityofpasadena.net/planning/wp-content/uploads/sites/30/3.0-Project-Description.pdf?v=1700990124524>.

- F-48 See Response F-1 regarding the timeliness of access to the reference materials cited in the Draft EIR.
- F-49 Responses to comments dated November 6, 2023, are found in Response F-4 through Response F-48.
- F-50 The County disagrees with the stated opinion about the Draft EIR's compliance with CEQA. Responses to comments provided by House Agricultural Consultants are provided in Responses F-74 through F-98.
- F-51 The County disagrees with the opinion about the sufficiency of the evidence supporting conclusions reached in the Draft EIR regarding agriculture and disturbance of contaminated soil. The County also disagrees with the unsupported assertion that CEQA requires the Draft EIR to be recirculated with a revised analysis of direct and cumulative impacts and mitigation measures to mitigate related impacts. See Response F-7, which summarizes the limited circumstances under which CEQA requires recirculation.
- F-52 The County acknowledges the commenter's statement of interest in the Project.
- F-53 The County acknowledges this summary of CEQA. The summary of the statute, regulations, and case law interpreting CEQA do not constitute comments on the adequacy or accuracy of the Draft EIR.
- F-54 In the context of Impact 3.10-2 (Draft EIR, p. 3.10-16 et seq.), the Draft EIR concludes that the Project could create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the energy storage system and release of hazardous materials into the environment and that this this impact would be less than significant with mitigation incorporated.

Information provide in this comment is consistent with the disclosure on Draft EIR page 3.10-16 that a "Phase I assessment identified the existence of an on-site natural gas pipeline and petroleum and natural gas easements, and an on-site diesel AST with stained soil associated with the on-site water supply well. The accidental release (e.g., breaking the natural gas pipeline during construction activities) or exacerbation of an existing release of hazardous materials (e.g., spreading contaminated soil from the diesel AST located on the western boundary of Assessor's Parcel Number 085-040-58 into drainages that lead to waterways) could create a significant hazard to the public or the environment. Finally, the Project site has a history of agricultural use that may have included the use of pesticides, residual levels of which could remain in soil at the Project site."

**Natural Gas Pipeline:** A site-specific, project-specific Phase I environmental site assessment is provided in Draft EIR Appendix H. The Phase I assessment shows in Figure 2 (Draft EIR Appendix H, p. 7) the location of a reportedly active PG&E natural gas pipeline and onsite petroleum and natural gas easements as traversing the property from northwest to southeast. Draft EIR Section 3.10.1.2 (p. 3.10-2) explains that the "Project design has accounted for the location of the natural gas pipeline and easement."

This is consistent with the preliminary site plans shown in Figures 2-3a and 3b, and in Figures 2-4a and 4b (Draft EIR, p. 2-7 through p. 2-10), which include a 100-foot setback from each side of the pipeline. Because the natural gas pipeline would not be disturbed during construction activities, the Draft EIR concludes in the context of Impact 3.10-2 that the impact resulting from an accidental release (such as could result if the natural gas pipeline were to be ruptured during construction activities) would be less than significant (Draft EIR, p. 3.10-18).

CEQA Guidelines section 15126.4(a)(3) says, “Mitigation measures are not required for effects which are not found to be significant.” The Draft EIR appropriately did not identify mitigation measures relating to Impact 3.10-2’s analysis of the PG&E natural gas pipeline and onsite petroleum and natural gas easements, and so this comment’s suggestion that improper deferral has occurred is incorrect.

**Diesel Aboveground Storage Tank:** The Phase I assessment shows in Figure 2 (Draft EIR Appendix H, p. 7) and the Draft EIR shows in Figure 3.10-1 (p. 3.10-3) a diesel above ground storage tank (AST), water supply well and existing irrigation equipment marked with the letter “C.” The Draft EIR explains that “soil around the diesel AST... is stained with diesel fuel” (p. 3.10-18). Because the area of contaminated soil may be disturbed during construction or operations, the analysis discloses that a potential significant impact would result (Draft EIR, p. 3.10-18) and so recommends that the soil management plan described in Mitigation Measure 3.10-1 (Draft EIR, p. 3.10-19 et seq.) be implemented to ensure that the contaminated soils associated with the AST are properly removed and disposed of in accordance with all applicable federal, state, and local regulations. With implementation of this mitigation measure, this impact would be less than significant.

CEQA Guidelines section 15126.4(a)(1)(B) establishes both the general rule that “Formulation of mitigation measures shall not be deferred until some future time” and the exception, which is that the “specific details of a mitigation measure... may be developed after project approval when it is impractical or infeasible to include those details during the project’s environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure.” Further, “Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards.” It is impractical to require the details of a soil management plan to be developed in advance of project approval because there is insufficient certainty about the specific area that would be disturbed (and so the boundaries for testing) and because the Applicant would not have a contractor in place to develop the plan until after Project approval. The specifics of Mitigation Measure 3.10-1 satisfy the prerequisites in CEQA Guidelines section 15126.4(a)(1)(B) for later formulation of mitigation details. First, the County commits itself to the mitigation (“The

County shall review the results of the soil sampling to determine if any additional investigation or remedial activities are deemed necessary. No work shall resume in that area until the County has provided written authorization that the area does not warrant any additional action.”). Second, under the heading “Significance after Mitigation” (Draft EIR, p. 3.10-20), the Draft EIR states: “Implementing Mitigation Measure 3.10-1 would ensure that contaminated soil is properly removed and disposed of in accordance with all applicable federal, state, and local regulations.” This demonstrates that use of the word “proper” in Mitigation Measure 3.10-1 meant “in accordance with all applicable federal, state, and local regulations.” Consistent with CEQA Guidelines section 15126.4(a)(1)(B), the County can rely on requisite compliance with a regulatory permit or other similar process as performance standards to mitigate the impact. Applicable federal, state, and local laws are summarized in Draft EIR Section 3.10.1.3, *Regulatory Setting* (p. 3.10-5 et seq.). As explained on Draft EIR page 3.10-20, compliance with applicable laws would “prevent adverse water quality effects from management of a contaminated material and adverse effects on construction workers, the public, and the environment.” Finally, Mitigation Measure 3.10-1 identifies the types of potential actions that can feasibly achieve that performance standard (e.g., describe the hazardous materials that may be encountered, provide onsite training, and follow the protocols for testing the soil to evaluate the proper handling, removing, transporting, and disposing of all excavated materials in a safe, appropriate, and lawful manner). The County reasonably can expect, based on facts presented in Draft EIR Section 3.10, Draft EIR Appendix H, reasonable assumptions based upon facts (e.g., the requirements and limits set by federal state, and local laws regarding the handling, treatment, storage, and disposal of hazardous wastes are set where needed to protect human health and the environment), and the expert opinion of the EIR preparers as supported by facts in the record, to reduce the potential significant impact due to removal and disposal of contaminated soils associated with the AST. For these reasons, the comment is incorrect in suggesting that the County has improperly deferred the development of details for Mitigation Measure 3.10-1.

**Pesticides:** Draft EIR Figure 3.10-1 (p. 3.10-3) shows the location of fertilizer and tote tanks, marked with the letter “A,” along Jayne Avenue. As explained in Section 3.10.1.2 (Draft EIR, p. 3.10-4), “Staining was observed in the vicinity of the tote tanks. However, because it appears that the tote tanks are associated with SoilBasics, a plant food/fertilizer, minor releases to the soil are not expected to impact the subject property and are considered a de minimis condition.” The Draft EIR reports that the Project site has been used for agricultural purposes and could have residual levels of pesticides soil and/or groundwater. All Product Use Reports since current ownership as of April 1, 2021, are on file with the County (Draft EIR Appendix H *Property Owner Interview Questionnaire*, p. 7). However, because some uncertainty about past pesticide use at the Project site remains, the Draft EIR concludes that there is a potential for residual pesticide levels to pose a risk to construction workers or the environment and that this possibility constitutes a potential significant impact for purposes of CEQA. To reduce the potential adverse impact of the known contaminated soil, and to mitigate currently unknown contaminated soil that may be discovered during construction activities, the Draft EIR recommends Mitigation Measure 3.10-1. For the reasons explained above

under the heading “Diesel Aboveground Storage Tank,” the County has not improperly deferred the development of details for Mitigation Measure 3.10-1.

- F-55 The comment is correct that some of the specific details of Mitigation Measure 3.10-1 would not be developed until after Project approval. See Response F-54, which explains why this is permissible under CEQA.
- F-56 See Response F-54, which explains that the County has not improperly deferred the development of details for Mitigation Measure 3.10-1.
- F-57 See Response F-54, which explains that the County has not improperly deferred the development of details for Mitigation Measure 3.10-1. CEQA does not require the extent of impacts to be quantified, and so not doing so in the Draft EIR is not contrary to CEQA. Contrary to the suggestion in this comment, the areas where construction and operation could occur in proximity to potentially contaminated soils is clear in the Draft EIR. See Draft EIR Section 3.10.1, *Environmental Setting* (p. 3.10-1 et seq.) and Draft EIR Appendix H.

Contrary to the suggestion in this comment, the Draft EIR is adequate as an informational document. CEQA’s primary purpose for an EIR is “to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.” *Martis Camp Community Association v. County of Placer* (2020) 53 Cal. App. 5<sup>th</sup> 569, 603. An EIR’s analysis and discussion of a significant environmental impact fulfills this informational purpose when it includes “sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises” *Sierra Club v. County of Fresno* (2018) 6 Cal.5<sup>th</sup> 502 (the “Friant Ranch” decision). A conclusory discussion of a significant impact can make an EIR “inadequate as an informational document” as a matter of law. *Friant Ranch*, 6 Cal.5<sup>th</sup> at 514. According to CEQA Guidelines section 15003(i), “CEQA does not require technical perfection in an EIR, but rather adequacy, completeness, and a good-faith effort at full disclosure.” For the reasons explained in Response F-54, the Draft EIR, including the analysis of potential impacts related to hazardous materials, meets CEQA’s standard of adequacy as an informational document.

See Response F-7, which summarizes the limited circumstances under which CEQA requires recirculation. Because the Draft EIR’s discussion and analysis of potential impacts relating to hazardous materials is sufficient to inform the public about the nature and extent of the Project’s potential impacts, CEQA does not require it to be revised and recirculated.

- F-58 See Response F-54 regarding CEQA Guidelines section 15126.4(a), CEQA’s mitigation obligation, and the circumstances when it is permissible for the specific details of a mitigation measure to be developed after project approval. The suggestion in the comment that the County’s approach to Mitigation Measure 3.10-1 “merely requires a



- report to be prepared and followed... without setting standards” ignores the performance standards established in applicable federal, state, and local regulations for the handling, treatment, storage, and disposal of hazardous wastes are set where needed to protect human health and the environment.
- F-59 See Response F-7, which summarizes the limited circumstances under which CEQA requires recirculation. Because the Draft EIR’s discussion and analysis of potential impacts relating to hazardous materials is sufficient to inform the public about the nature and extent of the Project’s potential impacts, neither comments F-53 through F-59 nor the responses to them provide substantial new information that would require recirculation.
- F-60 See Response F-12 through Response F-20 for responses to the commenter’s preliminary comments on the Draft EIR’s analysis of impacts on agricultural resources. Responses to comments provided by House Agricultural Consultants are provided in Responses F-74 through F-98. For the reasons stated in this suite of responses, the County disagrees with the commenter’s opinion about the Draft EIR’s compliance with CEQA.
- F-61 The County acknowledges, and disagrees with, the stated opinion about the Draft EIR’s conclusions that the Project would result in a less than significant impact on agricultural resources.
- F-62 See Response F-14 regarding the temporary nature of the proposed energy storage use. Responses to comments provided by House Agricultural Consultants are provided beginning with Response F-75.
- F-63 CEQA Guidelines section 15151 says, “Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts.” The County has considered the information provided by House Agricultural Consultants but disagrees with the conclusion they reach. The House comments suggest that this Project would not restore the underlying farmland to agricultural use because “scant data” supports that other projects have done so, and so that the County has incorrectly characterized this Applicant’s proposed change in land use of the Project site as “temporary.” The County disagrees. Past actions by different applicants on other sites do not dictate what actions this Applicant would take on this Project site with the limited term-CUP, a reclamation plan, and financial assurances in place. Further, the commenter’s speculation about economic incentives driving extended use of the site for the proposed energy storage use ignores myriad other factors that could affect land use and planning decisions in 30 years’ time, including potential increased demand for agricultural production. Disagreement with the County’s conclusions does not make the EIR inadequate.
- F-64 See Responses F-22, F-23, and F-24 for responses to earlier-submitted comments about Williamson Act compatibility. Responses to comments provided by House Agricultural Consultants, including regarding the temporary nature of the proposed use, are provided beginning with Response F-75. Based on evidence provided in the indicated responses, the County disagrees with the commenter’s conclusion of any conflict that requires

mitigation or a revised and recirculated EIR and so has made no change in response to this comment. In light of the evidence provided in Section 3.2 (Draft EIR, p. 3.2-1 et seq.), these responses to comments (including Responses F-22, F-23, and F-24), and elsewhere in the record, the commenter's disagreement with the County's conclusions does not make the EIR inadequate.

- F-65 This comment accurately reflects information presented in the last paragraph on Draft EIR page 3.3-12 within the discussion of Impact 3.3-1, which concludes that Project would cause a less-than-significant impact due to conversion of Prime Farmland to non-agricultural use.
- F-66 Responses to comments provided by House Agricultural Consultants, including regarding soil chemistry and the conditions under which permanent degradation can occur, are provided beginning with Response F-75.
- F-67 Responses to comments provided by House Agricultural Consultants regarding Project impacts due to battery leakage and related hazards are provided in Response F-87.
- F-68 Responses to earlier-submitted comments about the effectiveness of the proposed reclamation plan in returning on-site soils to a condition suitable for agricultural use are provided in Responses F-14 and F-18. Responses to comments provided by House Agricultural Consultants are provided beginning with Response F-75.

Neither the County nor CEQA requires a reclamation plan to include an agronomic baseline report. The County requires renewable energy project applicants to provide “a Reclamation Plan detailing the lease life, timeline for removal of the improvements and specific measures to return the site to the agricultural capability prior to installation of solar improvements.”<sup>13</sup> Additional details about what the County requires in a reclamation plan are provided in the County's Guidelines for Preparing a Solar Electrical Generation Facility Reclamation Plan.<sup>14</sup> Among other things, required components of an adequate reclamation plan include the descriptions of the present and proposed use of the site and how it will be reclaimed to its previous agricultural condition, specifically including details about any grading necessary to return the site to original grade, the type of crops to be planted, and irrigation system details.<sup>15</sup> An engineering cost estimate of reclaiming the site to its previous agricultural condition and financial assurances equal to the cost of reclaiming the land to its previous agricultural condition also are required.<sup>16</sup> As explained in Response F-14, the reclamation plan provided for this Project satisfies

---

<sup>13</sup> County of Fresno, 2017. Supplemental Information for Solar Electrical Generation Facilities. Rev. December 12, 2017.

<sup>14</sup> County of Fresno, 2024a. Guidelines for Preparing a Solar Electrical Generation Facility Reclamation Plan. <https://www.fresnocountyca.gov/Departments/Public-Works-and-Planning/divisions-of-public-works-and-planning/development-services-division/planning-and-land-use/photovoltaic-facilities/photovoltaic-facilities-p-3106>. Accessed June 18, 2024.

<sup>15</sup> County of Fresno, 2024a.

<sup>16</sup> County of Fresno, 2024a.

the County’s requirements. The comment provides no evidence suggesting that the County’s reclamation plan requirements are insufficient.

The comment also provides no basis for asserting that an agronomic baseline report is a “necessary” element of an effective reclamation plan. Regional and local baseline conditions are described in Draft EIR Section 3.3.1.2, *Environmental Setting* (Draft EIR, p. 3.3-1 et seq.). This section identifies the Project site as Prime Farmland pursuant to the Farmland Mapping and Monitoring Program (Draft EIR, p. 3.3-2). On-site soils consist of Westhaven loam, Kimberlina sandy loam, and Wasco sandy loam (Draft EIR, p. 3.3-2; Draft EIR Appendix C Figure 3). Recent on-site land uses on the northernmost Project parcel (APN 085-040-58) have included irrigated agricultural production (orchard crops such as citrus and almonds); recent on-site land uses on the southern half of the project site have included non-irrigated winter wheat (APN 085-040-37), and fallowed land (APN 085-040-36) (Draft EIR, p. 3.3-2). Site-specific details also are provided in the site-specific Land Evaluation and Site Assessment (LESA) provided in Draft EIR Appendix C. The Project site descriptions presented in Draft EIR Section 3.3 and Appendix C provide sufficient evidence of pre-Project conditions on an APN-specific basis to monitor the effectiveness of post-Project reclamation.

Prime Farmland is the Department of Conservation mapping category that “has the best combination of physical and chemical features able to sustain long term agricultural production. It has the soil quality, growing season, and moisture supply needed to produce sustained high yields” (Draft EIR, p. 3.3-5). The defining characteristics of prime farmland are clear. As described by the U.S. Department of Agriculture’s NRCS, “In general, prime farmland has an adequate and dependable supply of moisture from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, an acceptable salt and sodium content, and few or no rocks. The water supply is dependable and of adequate quality. Prime farmland is permeable to water and air. It is not excessively erodible or saturated with water for long periods, and it either is not frequently flooded during the growing season or is protected from flooding. Slope ranges mainly from 0 to 6 percent.”<sup>17</sup> The soil, water, and site preparation needs of irrigated citrus and almond crops, as well as of non-irrigated winter wheat, are well-known in western Fresno County. For example, citrus requires well-drained soil.<sup>18</sup> The “roots of most fruit and nut trees extend out well past the drip line or canopy edge and well down into the soil to about 6-7 feet.”<sup>19</sup> Winter wheat, like other types of wheat,

- <sup>17</sup> Natural Resources Conservation Service (NRCS), 2024. Soil Data Access (SDA) Prime and other Important Farmlands. [https://efotg.sc.gov.usda.gov/references/public/LA/Prime\\_and\\_other\\_Important\\_Farmland.html#:~:text=In%20general%2C%20prime%20farmland%20has,dependable%20and%20of%20adequate%20quality](https://efotg.sc.gov.usda.gov/references/public/LA/Prime_and_other_Important_Farmland.html#:~:text=In%20general%2C%20prime%20farmland%20has,dependable%20and%20of%20adequate%20quality). Accessed June 18, 2024.
- <sup>18</sup> Central Valley Builders, 2024. Growing Citrus. <https://www.central-valley.com/growing-citrus#:~:text=Citrus%20require%20well%20drained%20soil,be%20protected%20from%20freezing%20temperatu> res. Accessed June 18, 2024.
- <sup>19</sup> Regents of the University of California, 2024. University of California, Agriculture and Natural Resources Master Gardeners of Fresno County. <https://ucanr.edu/sites/mgfresno/?story=281>. Accessed June 18, 2024.

grows best in a well-drained loamy soil.<sup>20</sup> Because the Draft EIR provides sufficient evidence of baseline conditions, a separate agronomic baseline report is not a necessary element of the reclamation plan. Consistent with CEQA Guidelines section 15204(a), which establishes that “CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors,” the County declines to require the agronomic baseline report suggested in this comment.

- F-69 See Response F-14 regarding the County-required contents of a reclamation plan for a renewable energy project, including preparation of a cost estimate. The activities proposed in the draft reclamation plan provided in Draft EIR Appendix B1 sufficiently describe the work that would be involved in implementation of the reclamation plan to inform the analysis of potential impacts. The comment provides no evidence to support a conclusion that the impact analysis is inadequate or inaccurate, and insufficient detail about any perceived analytical shortcoming to allow the County to consider and respond to the concern.

CEQA does not include requirements for a reclamation plan (Public Resources Code section 21000 et seq.; CEQA Guidelines section 15000 et seq.). Further, the commenter’s reliance on the Court’s decision in *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260 is misplaced. The holding cited in the comment (i.e., that the EIR at issue in that case improperly deferred mitigation of impacts) is not relevant to the reclamation plan for this Project because the reclamation plan is not a CEQA mitigation measure. See Response F-68, which explains that the reclamation plan is a component of the project application package and a requirement of project approval, not a CEQA mitigation measure. Therefore, the CEQA requirements for mitigation measures do not apply, including the CEQA requirement that performance standards be specified for mitigating a significant impact when it is impractical or infeasible to specify the specific details of mitigation during the EIR review process.

Responses to comments provided by House Agricultural Consultants, including regarding the contents of a reclamation plan, are provided beginning with Response F-75.

- F-70 For the reasons explained in Responses F-65 through and including F70 and contrary to this general comment, the EIR’s conclusion that the Project would cause a less-than-significant impact on prime agricultural land is supported by substantial evidence in the record. Responses to comments provided by House Agricultural Consultants, including regarding the Project’s impacts on agricultural land, are provided beginning with Response F-75.
- F-71 Responses to prior comments about farmland version are provided in Responses F-13, F14, F-15, F-17, F-18, F-20, and F-27. Because substantial evidence supports the Draft

---

<sup>20</sup> NASA, 2024. Global Precipitation Measurement Mission. [https://gpm.nasa.gov/education/sites/default/files/lesson\\_plan\\_files/water-for-wheaties/AG\\_MS\\_GrowingWheat.pdf](https://gpm.nasa.gov/education/sites/default/files/lesson_plan_files/water-for-wheaties/AG_MS_GrowingWheat.pdf). Accessed June 18, 2024.

EIR’s determination that impacts on agricultural lands would be less than significant, CEQA does not require or authorize the imposition of mitigation in the current context.

- F-72 This comment’s reference to “CEQA’s requirement to mitigate agricultural impacts” is overbroad and therefore mistaken: CEQA requires mitigation of agricultural impacts only when such impacts are potentially significant. CEQA Guidelines section 15162.4(a) limits a lead agency’s authority to impose mitigation measures to those measures “which could minimize significant adverse impacts in the EIR.” CEQA provides no authority to impose mitigation measures that would be less than significant. Because the EIR concludes in the context of Impact 3.3-1 (Draft EIR, p. 3.3-12 et seq.) that the Project would cause a less-than-significant impact due to a conversion of Prime Farmland to non-agricultural use and reaches the same conclusion in the context of Impact 3.3-2 (Draft EIR, p. 3.3-14 et seq.) regarding the Project’s compatibility with an existing Williamson Act contract, the County disagrees that CEQA requires mitigation measures for these impacts. Responses to comments provided by House Agricultural Consultants, including regarding mitigation for agricultural land impacts, are provided beginning with Response F-75.

This comment summarizes County of Fresno General Plan Policy LU-A.16, which says in full: “The County should consider the use of agricultural land preservation programs that improve the competitive capabilities of farms and ranches, thereby ensuring long-term conservation of viable agricultural operations. Examples of programs to be considered should include: land trusts; conservation easements; dedication incentives; new and continued Williamson Act contracts; Farmland Security Act contracts; the California Farmland Conservancy Program Fund; agricultural education programs; zoning regulations; agricultural mitigation fee program; urban growth boundaries; transfer of development rights; purchase of development rights; and agricultural buffer policies.”<sup>21</sup> However, because CEQA does not require mitigation for impacts determined to be less than significant, there is no obligation under CEQA to revise the Draft EIR to identify one or more conservation easements as a mitigation measure to address the impacts of this Project on agricultural land.

Nonetheless, consistent with General Plan Policy LU-A.16, the County did consider the use of agricultural land preservation programs in preparing the Draft EIR. See Draft EIR Appendix I1, *Consistency with Fresno County General Plan* (Table I1-2, *Fresno County General Plan Agriculture and Land Use Element Policies*, Draft EIR p. I1-5).that analysis concluded that Policy LU-A.16 was not applicable because the “Project does not conflict with the County’s ability to establish agricultural preservation programs. Owners of property enrolled in the Williamson Act program are free to unenroll subject to the process requirements summarized in Section 3.3, *Agriculture and Forestry Resources*.”

<sup>21</sup> County of Fresno, 2000. Fresno County General Plan Policy Document. October 3, 2000. <https://www.fresnocountyca.gov/files/sharedassets/county/v/1/vision-files/files/18117-2000-general-plan-policy-document.pdf>. Accessed June 18, 2024.

Fresno County adopted Resolution No. 24-053 certifying the Final Program EIR for the General Plan Review and Zoning Ordinance Update on February 20, 2024.<sup>22</sup> The updated General Plan includes Policy LU-A.23. Policy LU-A.23 is similar to the prior General Plan Policy LU-A.16 in that both contemplate conservation easements as potential mitigation for significant impacts to agriculture. Policy LU-A.23 says this: “For discretionary land use projects that are not directly related to or supportive of agricultural uses and which propose the permanent conversion of twenty acres or more of Prime Farmland, Unique Farmland or Farmland of Statewide Importance (as designated by the Farmland Mapping and Monitoring Program) to nonagricultural uses, the County shall consider and adopt feasible measures including, but not limited to: ...Acquisition of conservation easements at a 1:1 ratio for lands lost to nonagricultural uses...” However, because CEQA does not require mitigation for impacts determined to be less than significant, there is no obligation under CEQA to revise the Draft EIR to identify one or more conservation easements as a mitigation measure to address the impacts of this Project on agricultural land.

- F-73 Responses to prior comments about the CEQA adequacy of the Draft EIR’s analysis of cumulative effects on agricultural resources are provided in Responses F-18, F-19, and F-20. Substantial evidence supports a conclusion that the Project site would be returned to agricultural use via implementation of the reclamation plan (see Response F-14 regarding the reclamation plan and the County’s reclamation requirements). Therefore, the suggested presumption of permanence does not apply. See Response F-17, which explains that the Draft EIR does not adopt a “drop in the bucket” approach in concluding that the Project’s cumulative impact would not be significant.

Section 3.1.3, *Cumulative Effects Approach* (Draft EIR, p. 3.1-3 et seq.), identifies closely related past, present, and reasonably foreseeable probable future projects that would cause impacts that could combine with impacts of the Project to cause or contribute to potential significant cumulative effects. Table 3.3-1, *Cumulative Projects List* (Draft EIR, p. 3.1-5 et seq.) identifies numerous other energy projects and citations to the sources of information relied upon, including documentation developed by the County of Fresno and input provided by the Pacific Gas and Electric Company (PG&E), California Public Utilities Commission (CPUC), California Department of Transportation (Caltrans), and the City of Coalinga. This comment does not identify any future anticipated energy installations similar to and near the Project site that should have been considered and CEQA does not require the County to speculate (Public Resources Code section 21080[e][2]).

- F-74 For the reasons described in Responses F-1 through F-73, the County disagrees with the commenter’s opinion about the adequacy of the Draft EIR, including its impacts analysis and mitigation recommendations. In light of the limited circumstances under which

<sup>22</sup> County of Fresno, 2024b. Resolution No. 24-053. February 20, 2024. <https://www.fresnocountyca.gov/files/sharedassets/county/v/2/public-works-and-planning/development-services/planning-and-land-use/general-plan-review-comments/resolution-no-24-053-with-mmrp.pdf>. Accessed June 18, 2024.

- CEQA requires recirculation (see Response F-7) and the absence of significant new information following agency and public review of the Draft EIR, no substantial revisions have been made to the Draft EIR (see Final EIR Chapter 3). Accordingly, the County declines the request to recirculate the draft.
- F-75 Because this statement is not focused on the sufficiency of the Draft EIR’s identification and analysis of significant impacts, identification of mitigation measures, or other significant environmental issues, the County is not providing a more detailed response (CEQA Guidelines sections 15088[c], 15132[d], 15204[a]).
- F-76 Evidentiary support for the Draft EIR’s conclusion that the Project would result in temporary impacts on agricultural land and would not result in permanent conversion is provided in Responses F-18, F-18, and F-20. This comment provides no facts or other evidence to support the stated opinion, and the County does not agree, that the Project site “is highly unlikely to be restored for use as agriculture ever again.” Case law interpreting CEQA is clear that a lead agency may reject criticism from an expert on a given issue as long as its reasons for doing so are supported by substantial evidence. *Laurel Heights Improvement Association v Regents of University of California* (1988) 47 Cal.3d 376; *North Coast Rivers Alliance v Marin Municipal Water District* (2013) 216 CA4th 614, 642. The County chooses to do so here.
- F-77 CEQA Guidelines section 15384(a) defines *substantial evidence* as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency.” Further, “[s]ubstantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts” CEQA Guidelines section 15384[b]). When a lead agency is faced with conflicting evidence on an issue, CEQA permits it to give more weight to some of the evidence and to favor the opinions of some experts over others. See, *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1397; see also, *Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 413.

For this Project, the Land Evaluation and Site Assessment (LESA) provided in Draft EIR Appendix C was prepared by experts at Rincon Consultants, Inc., on behalf of the Applicant. The County’s environmental consultant, Environmental Science Associates, independently reviewed the LESA on the County’s behalf and found it to be “suitable for reliance in combination with other sources of data informing the analysis of potential environmental impacts of the project.”<sup>23</sup> This also is explained in Draft EIR Section 3.3 (p. 3.3-1). Draft EIR Section 3.3.3.2, *Methodology* (pp. 3.3-11, 3.3-12) explains that the “Project’s potential impacts on Prime Farmland, Unique Farmland, or Farmland of

<sup>23</sup> Environmental Science Associates, 2022. Memorandum from Jill Feyk-Miney (ESA), to Jeremy Shaw and David Randall (Fresno County) regarding EIR 8189 Key Battery Storage Project: Land Evaluation and Site Assessment (LESA). September 23, 2022.

Statewide Importance were evaluated based on the LESA model.” This is true: the analysis of Impact 3.3-1 expressly relies on the LESA in paragraphs one, three, and four. However, the description of the methodology provided in Section 3.3.3.2 inadvertently omitted from the explanation that the analysis also relied on other sources of substantial evidence: specifically, facts, reasonable assumptions predicated upon facts, and the expert opinion of the County’s own environmental consultant supported by facts as presented in the analysis of Impact 3.3-1.

The LESA indicates the Project would have a potentially significant impact on agricultural resources based on a final LESA Model score of 79.41, where a score between 60 and 79 points is considered significant unless either the land evaluation (LE) or the site assessment (SA) sub-score is less than 20 points (here, both the LE and the SA scores exceeded a 20-point threshold), and where a score between 80 and 100 points is considered significant (Draft EIR Appendix C Table 1, p. 7). Data and evidence provided in the LESA combined with expert opinion based on facts about hazards and hazardous materials (Draft EIR, pp. 3.3-13, 3.10-1 et seq.), pest management (Draft EIR, p. 3.3-13, Appendix B2), reclamation of the site following Project decommissioning (Draft EIR, p. 3.3-13, Appendix B1), and water supply (Draft EIR, pp. 3.3-13, 3.19-1 et seq.) support a conclusion of less than significant. Where there is conflicting evidence and conflicting opinions, the County is entitled to choose to believe one side more than the other. *San Francisco Ecology Center v. City & County of San Francisco* (1975) 48 Cal. App. 3d 584, 594.

Because the County did rely on the LESA and properly considered conflicting evidence, the County disagrees with the suggestion in this comment that the Draft EIR “repudiates” the LESA, that the evidence presented is a “sham,” and that the Draft EIR “defies” the requirements of CEQA.

- F-78 See Response F-68 regarding why an agronomic report is not required. This comment does not challenge the accuracy or completeness of the EIR. The fact that additional details might be helpful does not mean that they are required. CEQA Guidelines section 15204(a); *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1396. On the contrary, the County’s requirement that a reclamation plan be included in the proposed Project and the EIR’s description and analysis of its potential impacts indicates that the EIR was prepared with an eye toward completeness and a good faith effort at full disclosure. This approach is consistent with CEQA Guidelines section 15151.
- F-79 The Draft EIR analyzes potential cumulative impacts on a resource-by-resource basis throughout Chapter 3, *Environmental Analysis*. Consistent with CEQA, the analysis identifies the geographic scope of consideration, the temporal scope of consideration, the incremental impact that the Project would contribute, and other projects’ incremental impacts that could combine with those of the Project to cause or contribute to a significant cumulative effect. As explained in Draft EIR Section 3.1.3, *Cumulative Effects Approach* (draft EIR, p. 3.1-3 et seq.), the Draft EIR relies on a blend of two



approaches to identify those projects: the “list-of-projects” approach and the “summary of projections” approach (CEQA Guidelines section 15130[b]).

The regional location of the Project site is shown in Figure 2-1 (Draft EIR, p. 2-3); the immediate vicinity of the Project site is shown in Figure 2-2 (Draft EIR, p. 2-4). A list of past projects, other current projects, and probable future projects (CEQA Guidelines section 15065[a][3]) that would cause impacts that could combine with those of the Project is provided in Draft EIR Table 3.1-1, *Cumulative Projects List* (Draft EIR, p. 3.1-5 et seq.). Figure 3.1-1 shows the locations of cumulative projects within 15 miles of the Project site (Draft EIR, p. 3.1-8). For example, projects 6, 7, 8, and 9 shown on Figure 3.1-1 and summarized in Table 3.1-1 are all energy-related projects. PG&E’s existing 10 MW West Gates Solar Facility is located on approximately 90 acres adjacent to the western boundary of PG&E’s existing Gates Substation site.<sup>24</sup> PG&E’s existing 20 MW Huron Solar Station is located adjacent to APN 085-040-37, the Project site’s southwestern-most parcel.<sup>25</sup> Both PG&E projects are shown on Draft EIR figures (see, e.g., Figure 3.2-1, Draft EIR p. 3.2-3). Although neither project is summarized in the draft EIR, both facilities are currently operating, and their ongoing impacts are reflected in baseline conditions summarized in the environmental setting section of each resource section in Draft EIR Chapter 3.

This comment speculates that Project approval would induce the development of additional energy infrastructure adjacent to or near the Project site but provides no evidence of any probable future projects that were not considered in the analysis and no evidence that this Project would be the cause of any such future development, should it be proposed in the future. No probable future projects are identified in the area on the County’s active list of solar projects.<sup>26</sup> Without some level of detail about the type of project (e.g., solar, energy storage, transmission reliability upgrade), site location (e.g., relative to Interstate-5, which may function as a barrier to the interconnection of new above- or below ground power lines from the west, and relative to PG&E’s existing transmission lines, which may function as a barrier to the development of new projects adjacent to or near the Project site to the east and south), and other details (e.g., workforce, the dimensions of any structures, equipment mix and schedule, extent of ground disturbance), the County does not have enough information to meaningfully evaluate associated impacts as part of the cumulative effects analysis for this Project. CEQA does not require the County to guess at who may propose what, where, at some future unspecified time. See CEQA Guidelines section 15145 (“If, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for

<sup>24</sup> Sustainable Group, Inc., 2017. Pacific Gas and Electric (PG&E) West Gates Solar Site. February 20, 2017. [https://sustainable-group.com/assets/pge-west-gates-solar-site\\_project\\_20170220\\_v2.pdf](https://sustainable-group.com/assets/pge-west-gates-solar-site_project_20170220_v2.pdf). Accessed June 19, 2024.

<sup>25</sup> Global Energy Monitor, 2024. Huron Solar Station. June 1, 2024. [https://www.gem.wiki/Huron\\_Solar\\_Station](https://www.gem.wiki/Huron_Solar_Station). Accessed June 19, 2024. See also, Database Earth, 2024. Solar Power. <https://database.earth/energy/power-plants/solar-power>. Accessed June 19, 2024.

<sup>26</sup> County of Fresno, 2024c. Photovoltaic Solar & Energy Storage Projects Submitted to Fresno County. Updated June 12, 2024. <https://www.fresnocountyca.gov/files/sharedassets/county/v5/public-works-and-planning/development-services/planning-and-land-use/photovoltaic-solar-facilities/pv-solar-projects-in-process-24-06-12.pdf>. Accessed June 19, 2024.

evaluation, the agency should note its conclusion and terminate discussion of the impact.”).

The speculation in the comment also ignores the more likely scenario that it would be the Gates Substation itself, and not this Project, that would induce future energy infrastructure development, since the availability of an interconnection point rather than the presence of energy storage capacity seems the more likely driver of future energy proposals. See, for example, the cluster of existing, developing, and proposed energy infrastructure projects centered on access to the Tranquillity Switching Station located approximately 35 miles southeast of the Project site (Draft EIR Table 3.1-1, pp. 3.1-6, 3.1-7), including RE Tranquillity 1-8 and the Adams East, Luna Valley, Scarlet, Sonrisa, and Heartland energy projects. By contrast, the County is unaware of any example where energy storage reasonably could be considered the inducement of later energy infrastructure development.

Regarding the Project’s potential to result in urban development, see Draft EIR Section 3.15.3.3 (p. 3.15-6 et seq.), which considers whether the Project would induce substantial unplanned population growth in an area, either directly (e.g., by proposing new homes and businesses) or indirectly (e.g., through extension of roads or other infrastructure) and determines that no impact would result. As the Draft EIR explains (p. 3.15-7), “the Project would not generate energy, but it would contribute to the energy supply by storing electricity during times of excess generation and dispatching it to the grid when needed. The development of power infrastructure is a response to increased market demand, and the availability of electrical capacity by itself does not ensure or encourage growth within a particular area. Other factors such as economic conditions, land availability, population trends, availability of water supply or sewer services, and local planning policies have a more direct effect on growth.”

- F-80 See Response F-76 for evidentiary support for the Draft EIR’s determination that the project would be a temporary use for purposes of the analysis of impacts on agricultural land.

The comment questions the Draft EIR’s use of the word “permanent.” The comment correctly notes that the Draft EIR uses the word “permanent” and allows that use of the word may have been “casual.” The Draft EIR uses the word permanent in different contexts to mean different things. For example, the word *permanent* is used to describe the Project’s 208-acre footprint within 260-acre site (Draft EIR, pp. 2-11, 2-12, 3.2-21, 4.10) and to describe staffing levels if the Project were to become operational (Draft EIR, p. 3.16-6). In these instances, the word *permanent* was intended to mean for the duration of the Project. The Draft EIR uses the word *permanent* with a second meaning in CEQA’s definition of mitigation measures (p. 3.1-3), in the description of conservation easements (Draft EIR, p. 3.3-7), and in significance criterion a) in the noise impacts analysis (Draft EIR, p. 3.14-12). In those instances, the word permanent was intended to mean in perpetuity. The Draft EIR uses the word *permanent* in a third way in Section 3.7, Energy (p. 3.7-10), which says that the Project “would not result in the permanent

- increased use of nonrenewable energy resources.” In this instance, the word *permanent* meant irreversible. Context is important.
- F-81 The County acknowledges receipt of this historical data on prime farmland conversion within the County. However, because the comment is not specific to the Project or this Draft EIR and does not suggest an inadequacy or inaccuracy in the analysis, it does not raise a “significant environmental issue” and so no more detailed response is provided.
- F-82 Whether prior energy projects have been decommissioned and the affected sites restored does not provide substantial evidence about this Project. Energy projects that would have contributed to the 2012-2014 data cited would not have completed a 30-year CUP term until 2042 at the earliest, the 2014-2016 projects would not have completed a 30-year CUP term until 2044 at the earliest, and the 2016-2018 projects would not have completed a 30-year CUP term until 2046 at the earliest. Accordingly, none of these projects would have been decommissioned or the affected sites reclaimed. It is far too soon to cry foul based on this data.
- F-83 While the Department of Conservation may include energy infrastructure in its definition of *urban and built-up land*, it also includes “Land occupied by structures with a building density of at least 1 unit to 1.5 acres, or approximately 6 structures to a 10-acre parcel. This land is used for residential, industrial, commercial, construction, institutional, public administration, railroad and other transportation yards, cemeteries, airports, golf courses, sanitary landfills, sewage treatment, water control structures, and other developed purposes.”<sup>27</sup> As stated in Comment 82, the Department of Conservation reported in 2018 that “solar facilities have made a large contribution to the urbanization of the State for the last three map update cycles,” i.e., 2012 through 2018.<sup>28</sup> To clarify, the Project proposes energy storage and has no solar or other energy component. See Draft EIR page ES-1 (“The facility would not generate electricity”). Nonetheless, neither the Department of Conservation’s report nor this comment provides any evidence of the allocation of uses within urban and built-up land between 1984 and 2012. Without some information about whether renewable energy uses were even a component of the category at that time, the asserted fact that no urban land was returned to agricultural use during this time period has no bearing on the Draft EIR for this Project. Further, as noted above, the first year for which solar facilities were expressly included in the Department of Conservation’s reported data was 2012: a 30-year CUP for any of those projects would not expire until 2042. Accordingly, it is not surprising that none of those projects have been returned to agricultural use. For these reasons, the County disagrees with the commenter’s conclusion about the persuasiveness of the historical data on prime farmland conversion within the County.

<sup>27</sup> Department of Conservation, 2024. Important Farmland Categories.

<https://www.conservation.ca.gov/dlrp/fmmp/Pages/Important-Farmland-Categories.aspx>. Accessed June 19, 2024.

<sup>28</sup> Department of Conservation, 2018. 2016-2018 California Farmland Conversion Report: documenting Changes in Agricultural Land Use Since 1984. [https://www.conservation.ca.gov/dlrp/fmmp/Documents/fmmp/pubs/2016-2018/FCR/FCR\\_1618\\_Report.pdf](https://www.conservation.ca.gov/dlrp/fmmp/Documents/fmmp/pubs/2016-2018/FCR/FCR_1618_Report.pdf). Accessed June 19, 2024.

See Response F-76 for evidentiary support for the Draft EIR’s determination that the project would be a temporary use for purposes of the analysis of impacts on agricultural land. The comment provides no evidence of the countervailing demographic or economic forces alluded to in this comment that could inhibit or prevent the Project site’s return to agricultural use. Regarding the Draft EIR’s conclusion that the Project would have no impact relating to population inducement, see Response F-79. There is no evidence of projections or forecasts of economic conditions in 2064 in the record of proceedings for this Project, and CEQA does not require the County to speculate. In any event, whether population growth or economic conditions could affect land use and planning decisions in 2064 is not a CEQA impact of this Project. Therefore, contrary to the suggestion in this comment, the County is under no CEQA obligation to examine demographic or economic forces that may influence land use decisions once the CUP period expires.

- F-84 This comment paints an image of a future wherein energy needs are the driving factor in land use decision-making. Here’s another: agriculture is multi-billion dollar business in Fresno County,<sup>29</sup> produces many crops that are not grown commercially anywhere else in the nation, and is a major economic engine: agriculture currently supports 20 percent of all jobs in the Fresno area and “[e]very \$1 generated on the farm produces another \$3.50 in the local and regional economy.”<sup>30</sup> It is at least as plausible that the pressure to return the Project site to active agricultural use will be as or more powerful that prioritization of the site for energy storage. Regardless, CEQA does not require the County to speculate about future conditions or how they may affect future decision-making (CEQA Guidelines section 15145). Substantial evidence supports the Draft EIR’s conclusion that the Project site would be returned to agricultural use. CEQA requires no more.

The example of the solar farm in Davis, California, does not inform consideration of this EIR because it alleges no inadequacy, inaccuracy, or other significant environmental issue about this EIR. Further, there is no evidence in the record that the Davis project is subject to a reclamation plan or that there are financial assurances in place to ensure that site reclamation occurs.

- F-85 Contrary to the statement in this comment, the Draft EIR does not ignore the LESA findings. See Response F-77, which explains how the LESA (including its points score determination) were considered and relied upon in the Draft EIR. The comment correctly suggests (consistent with information provided in the Draft EIR) that prime farmland has the best combination of physical and chemical features able to sustain long term agricultural production (Draft EIR, p. 3.3-5). The comment also correctly summarizes (consistent with information provided in the Draft EIR) considerations evaluated in a LESA (Draft EIR, p. 3.3-11). The County disagrees with the alleged error identified in this comment and has made no change to the Draft EIR in response to this comment,

<sup>29</sup> County of Fresno, 2022. 2022 Crop Report. <https://www.fresnocountyca.gov/files/sharedassets/county/v/1/agricultural-commissioner/ag-crop-reports/2022-ag-crop-report-optimized.pdf>. Accessed June 19, 2024.

<sup>30</sup> County of Fresno, 2024d. Annual Crop & Livestock Report. <https://www.fresnocountyca.gov/Departments/Agricultural-Commissioner/Annual-Crop-Livestock-Report>. Accessed June 19, 2024.

choosing instead to rely on the analysis provided in the Draft EIR, other substantial evidence noted in Response F-77, CEQA Guidelines section 15151's acknowledgement that "[d]isagreement among experts does not make an EIR inadequate," and case law's reminder that the County is entitled to rely on the environmental analysis and conclusions reached by the experts who prepared the EIR even if a commenter disagrees with the underlying data, analysis, or conclusions. See, *Laurel Heights Improvement Association v Regents of University of California* (1988) 47 C3d 376, 408.

- F-86 See Response F-77 regarding the LESA findings. Regarding soil compaction, see Response 88. In the context of Impact 3.3-1 (Draft EIR, p. 3.3-12 et seq.), the Draft EIR says (p. 3.3-13), "The chemical and physical soil properties of the soil would remain substantially the same under Project conditions." The analysis that follows this statement focuses on how the Project would affect baseline conditions on the Project site, including as a result of implementation of the proposed reclamation plan. For consistency with the analysis provided and to improve clarity, the County has revised the quoted sentence as set forth below and in Section 3.2.3 of this Final EIR:

The chemical and physical soil properties of the soil would remain substantially the same under pre-Project and post Project (post-reclamation) conditions.

The County agrees that soils are biologically active but disagrees with the suggestion in the comment that the Project would cause irreversible harm to soil chemistry. As explained by Ohio State University Extension, "Biological activity in your soil helps to add organic matter, cycle nutrients, and create biodiversity. A biologically active soil supports natural soil food webs and the interactions that support a resilient and healthy soil."<sup>31</sup> The draft reclamation plan estimates that it would take a year to return the site to its previous agricultural condition (Draft EIR Appendix B1, p. 2). Proposed activities include the following: "All roads and other areas compacted during original construction or by equipment used for decommissioning would be tilled in a manner adequate to restore the subgrade material to the proper density and depth consistent with adjacent properties. Low areas would be filled with clean, compatible sub-grade material. After proper sub-grade depth is established, locally sourced (from the City of Fresno or other location within 50 miles of the Project site) topsoil would be placed to a depth and density consistent with adjacent properties. Locally sourced compost would be applied to the topsoil, and the entire site would be tilled to further loosen the soil and blend in the compost. An appropriate seed mixture would be broadcast or drilled across the site and weed-free mulch would be applied to stabilize the soil and retain moisture for seedling germination and establishment." The comment acknowledges that reclamation of sealed soils is documented in scientific studies but provides no citations to facts or other evidence of irreversible harm.

<sup>31</sup> The Ohio State University, 2024. Biological Activity. <https://soilhealth.osu.edu/soil-health-management/biological-activity#:~:text=Overview,a%20resilient%20and%20healthy%20soil..> Accessed June 19 2024.

- The County has reviewed the 2015 study cited in this comment.<sup>32</sup> As the comment indicates, the study concludes that artificial sealing of soils in urban areas can affect soils by reducing their carbon and nitrogen content as well as microbial biomass and its activity compared with open (non-sealed) soils.<sup>33</sup> However, the cited study did not evaluate the impacts of site restoration such as would occur via the reclamation plan if this Project were approved. Other published materials fill that gap. See, for example, the article published in 2021 by Anita Maienza, et al., which defines soil sealing as “any physical separation of soil from the atmosphere and above-ground biosphere by impermeable layers” and which reports results from Italy that “demonstrate that de-sealed urban soils rapidly restore their biological quality and fertility.”<sup>34</sup> The results of this second study provide an additional source of substantial evidence for the Draft EIR’s conclusion that biological restoration of agricultural soils after de-sealing can be successful.
- F-87 See the Draft EIR’s analysis of Impact 3.10-2 (Draft EIR, p. 3.10-16 et seq.), which concludes that the Project would cause a less than significant impact with mitigation incorporated as a result of its potential to create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the energy storage system and release of hazardous materials into the environment. Specifically with respect to battery energy storage system components, the Draft EIR concludes that the Project would have a less-than-significant impact in this regard (Draft EIR, p. 3.10-17). This is in part because the “battery modules would be sealed such that in the unlikely event of a fluid leak, fluids would be contained” (Draft EIR, p. 3.10-17). This comment does not provide any evidence to suggest that the Draft EIR, including its analysis of Impact 3.10-2, is inadequate or inaccurate.
- F-88 The comment is incorrect about the existence of the reclamation plan: a draft reclamation plan is provided in Draft EIR Appendix B1. Regarding the effectiveness of the proposed reclamation plan in returning on-site soils to a condition suitable for agricultural use, see Responses F-14 and F-18. The comment also is incorrect that applicable laws and standards are undefined. See, e.g., Draft EIR Section 3.10.1.3, *Regulatory Setting* (Draft EIR, p. 3.10-5 et seq.). The County is entitled to rely on a reclamation plan prepared and finalized for County approval consistent with known County requirements.
- F-89 The Department of Conservation’s July 29, 2022, letter was received during the scoping period that followed the County’s issuance of a Notice of Preparation of a Draft EIR for the Project and included in Draft EIR Appendix A, *Scoping Report*. The contents of the letter were considered in the preparation of the Draft EIR. See, e.g., Draft EIR page 3.3-1, which states: “The County received scoping input from the California Department of Conservation, Division of Land Resource Protection... regarding the Project’s potential

<sup>32</sup> Piotrowska-Długosz and Charzyński, 2015. The impact of the soil sealing degree on microbial biomass, enzymatic activity, and physicochemical properties in the Ekranic Technosols of Toruń (Poland). *J Soils Sediments* (2015) 15:47–59. Published online August 23, 2014. Accessed June 19, 2024.

<sup>33</sup> Piotrowska-Długosz and Charzyński, 2015.

<sup>34</sup> Maienza et al., 2021. Biological Restoration of Urban Soils after De-Sealing Interventions. *Agriculture* 2021, 11(3), 190; <https://doi.org/10.3390/agriculture11030190>. Accessed June 19, 2024.

- impacts on agricultural resources. The specific input received related to potential impacts and mitigation measures regarding the Project site’s designation as Prime Farmland and enrollment in the Williamson Act program.” As explained in Responses F-14 and F-18, the County disagrees that the Project’s temporary impact related to the conversion of Prime Farmland to non-agricultural use is significant. See also, Responses F-13, F-15, F-17, F-20, and F-27 regarding farmland. Because substantial evidence supports the Draft EIR’s determination that impacts on agricultural lands would be less than significant, CEQA does not require or authorize the imposition of mitigation in the current context (CEQA Guidelines section 15126.4[a]). Regarding the LESA, see Response F-85.
- F-90 The text of the reclamation plan is provided in Draft EIR Appendix B1. See Responses F-68 and F-78 regarding why an agronomic report is not required.
- F-91 See Response F-68 regarding why an agronomic report is not required. Further, as explained in Response F-78, the fact that additional details might be helpful does not mean that they are required (see, CEQA Guidelines section 15204[a]; see also, *Association of Irrigated Residents v. County of Madera* [2003] 107 Cal.App.4th 1383, 1396]. To the contrary, the County’s requirement that a reclamation plan be included in the proposed Project and the EIR’s description and analysis of its potential impacts indicates that the EIR was prepared with an eye toward completeness and a good faith effort at full disclosure as CEQA Guidelines section 15151 requires.
- F-92 See Response F-91, which responds to the requested additional soil properties and qualities detail illustrated in this comment.
- F-93 See Response F-68 regarding why an agronomic report is not required. This comment provides no facts and no reasonable assumption predicated upon fact or expert opinion supported by fact, that call into question the adequacy or accuracy of the Draft EIR, including the reclamation plan as a component of the project description. While a more detailed schedule of agricultural operations might be helpful, CEQA does not require the County to provide one (see, CEQA Guidelines section 15204[a]; see also, *Association of Irrigated Residents v. County of Madera* [2003] 107 Cal.App.4th 1383, 1396].
- F-94 CEQA does not require an EIR to include financial estimates for restoration. However, see Response F-68, which confirms that an engineering cost estimate of reclaiming the site to its previous agricultural condition and financial assurances equal to the cost of reclaiming the land to its previous agricultural condition would be required if the Project is approved.<sup>35</sup> In terms of the form of financial assurances, the County does not accept a bond, but instead requires cash deposit to guarantee that, if reclamation is not completed by the property owner of site, then the County could complete the reclamation.
- F-95 See Responses F-68 and F-78 regarding why an agronomic baseline report is not required. See Response F-92 and Response F-93 regarding the request for additional details. See Response F-94 about the County’s financial assurance requirement. Contrary

---

<sup>35</sup> County of Fresno, 2024a.

- to the suggestion in this comment, substantial evidence supports a conclusion that the Project site would be returned to agricultural use via implementation of the reclamation plan (see Response F-14 regarding the reclamation plan and the County’s reclamation requirements) and the Draft EIR’s conclusion that the Project would have a less than significant impact on agricultural resources.
- F-96 See Response F-79 regarding the suggestion that the Project would induce the future development of additional energy infrastructure adjacent to or near the Project site. See Responses F-81 through F-83, which respond to input received regarding Table 1 and the historical prime farmland conversion data is presents. See Response F-95 and Response F-14 regarding the temporary nature of the Project’s impact on prime farmland. See also, Response F-17, which explains that the Draft EIR does not adopt a “drop in the bucket” approach in concluding that the Project’s cumulative impact would not be significant.
- F-97 The County acknowledges receipt of the description of qualifications. However, because the qualifications do not raise any “significant environmental issues” (Public Resources Code section 21091[d][2][B]; CEQA Guidelines sections 15088[c], 15132[d], 15204[a]), CEQA does not require the County to provide a more detailed response.





**California Program Office**

P.O. Box 401, Folsom, California 95763 | 916-313-5800

[www.defenders.org](http://www.defenders.org)

November 6, 2023

Jeremy Shaw, Planner  
Fresno County  
2220 Tulare Street, 6<sup>th</sup> Floor  
Fresno, CA 93721

Delivered via email to: [jshaw@fresnocountyca.gov](mailto:jshaw@fresnocountyca.gov)

RE: Draft Environmental Impact Report – Key Energy Storage Project  
(SCH 2022070414)

Dear Mr. Shaw:

Thank you for the opportunity to provide comments in response to the Draft Environmental Impact Report (DEIR) for the proposed Key Energy Storage Project (Project). Defenders of Wildlife (Defenders) is dedicated to protecting all wild animals and plants in their natural communities and has nearly 2.1 million members and supporters in the United States, with more than 316,000 residing in California.

Defenders strongly support the development of renewable energy production. A low-carbon energy future is critical for California’s economy, communities and environment. Achieving this future—and how we achieve it—is critical for protecting California’s internationally treasured wildlife, landscapes and diverse habitats. We believe transitioning to a renewable energy future need not exacerbate the ongoing extinction crisis by thoughtfully planning projects while protecting habitat critical to species.

**Project Description**

The proposed 260-acre energy storage facility would store up to 3 gigawatts of energy during times of excess generation, which would later be dispatched into the electrical grid when needed. It would include a 2,500-foot-long 500-kilovolt transmission line that would connect to the Gates Substation. The proposed Project is on private land within western Fresno County. It is located approximately 11.5 miles east of Coalinga, 4 miles southwest of Huron, 1,700 feet northeast of Interstate 5 and is adjacent to the Gates Substation. The proposed Project site has the potential to provide habitat for or support numerous special-status wildlife species, including but not limited to San Joaquin kit fox and Swainson’s hawk.<sup>1</sup>

G-1

<sup>1</sup> California Natural Diversity Database. Accessed 10/10/2023. <https://wildlife.ca.gov/Data/CNDDDB/Maps-and-Data>.

**Comments**

We offer the following comments on the DEIR for the proposed Project:

**1. Project Objectives**

One of the stated objectives of the proposed Project is to site an energy storage project adjacent to the existing Gates Substation to minimize gen-tie length. A “Smart from the Start” approach to the siting and development of renewable energy projects dictates that projects should be located near existing or planned transmission facilities to reduce the need for additional lines.<sup>2</sup> This minimizes the amount of development occurring and, therefore, minimizes potential Project impacts on special-status species and their habitat. Defenders appreciates the prioritization of minimizing the gen-tie length to reduce the amount of infrastructure needed and reduce land-use conflicts. We encourage the continued development of projects with objectives that prioritize least conflict siting.

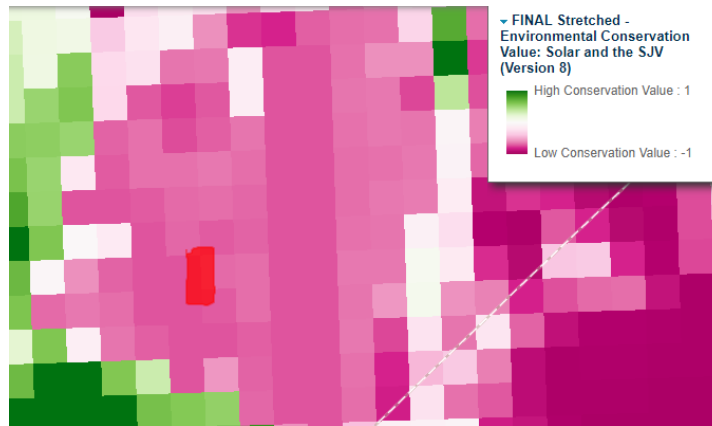
G-2

**2. Least Conflict**

The Project site is located on land designated with a low conservation value as demonstrated by Figure 1 below. This designation was made through the San Joaquin Valley Least Conflict Solar Project, which was a state agency collaborative project with multiple stakeholders. The red represents the approximate outline of the Project area.

G-3

Figure 1: Approximate Vicinity of the Project with the Environmental Conservation Value<sup>3</sup>



<sup>2</sup> Defenders of Wildlife. *Smart From the Start: Responsible Renewable Energy Development in the Southern San Joaquin Valley*. 2012. Washington, D.C.

<sup>3</sup> See <https://databasin.org/datasets/5678d8175d694e5ea89183730af3d1a4/>

**Comment Letter G**

G-3 cont.

Leaders from the agricultural, conservation, solar PV development communities, tribes and key state and federal agencies identified this area as a "low conflict" and "low value" area based on the present biological resources as depicted by the gradient within the map.

Defenders supports the development and operation of renewable energy projects on sites identified as least conflict lands, as development projects should avoid areas with high conservation values for natural resources, such as the presence of special-status species, high biodiversity or connectivity corridors. Defenders encourages the project proponents to site development projects on land identified as least conflict and avoid lands with a high conservation value.

**3. Deficient Mitigation Measures**

Although the proposed Project is located on land with a lower conservation value, special-status species and habitats may still occur. Therefore, mitigation measures must be required that will avoid or minimize the impact to special-status species. We request Fresno County incorporate the following revisions to reduce Project impacts:

**a. Revise MM 3.5-1**

Mitigation Measure (MM) 3.5-1 states that San Joaquin kit fox (SJKF) preconstruction surveys do not need to be conducted for the entire project area at one time, but rather allow for areas of suitable habitat to be surveyed in phases prior to that portion of the site being disturbed. US Fish and Wildlife Service (USFWS) recommendations for SJKF surveys state the written results of the preconstruction/preactivity surveys should be submitted to USFWS prior to the start of ground disturbance and/or construction activities. The recommendations do not allow the results to be provided after the start of ground disturbance based on phases. Additionally, completing these surveys as construction work occurs at specific portions in phases will create challenges to ensure that adequate exclusion zones are applied around SJKF dens that may be observed near a portion of the site where construction has already occurred.

It is appropriate to conduct surveys as needed during phases, only if complete preconstruction surveys were conducted before the start of ground-breaking activities. Defenders requests the entirety of the Project site be initially surveyed for SJKF during the preconstruction surveys, and then specific areas surveyed once again as the different phases are developed.

Furthermore, MM 3.5-1 states that SJKF den buffers shall be established but fails to require a minimum distance. Defenders requests exclusion zones are established around SJKF dens that adhere to the following distances as outlined in USFWS recommendations:

G-5

Den Type	Buffer Distance
Potential den	50 feet
Atypical den	50 feet
Known den	100 feet
Natal/pupping den (occupied and unoccupied)	USFWS must be contacted

G-5  
cont.

“Preconstruction surveys shall be conducted by a qualified biologist for the presence of San Joaquin kit fox dens within 14 days before the start of construction activities. The surveys shall be conducted for the entirety of the Project site prior to any ground-level disturbance and surveyed again as the different phases of the Project commence. in areas of suitable habitat for San Joaquin kit fox. Surveys need not be conducted for all areas of suitable habitat at one time; they may be phased so that surveys occur within 14 days before that portion of the site is disturbed. If no potential San Joaquin kit fox dens are present, no further mitigation is required. If the qualified biologist observes potential dens and determines, in consultation with the Project owner and the County, that avoidance is feasible (as defined in CEQA Guidelines Section 15364 consistent with the USFWS [1999] Standardized Recommendations for Protection of the San Joaquin Kit Fox), buffer distances shall be established that adhere to the minimum distance for exclusion zones outlined in US Fish and Wildlife Service Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance, before each phase of construction activities.”

G-6

**b. Revise MM 3.5-2**

USFWS recommends that night-time construction be minimized to the extent possible.<sup>4</sup> SJKF are most active at night and, therefore, more vulnerable to construction and traffic-related incidents. The speed limit for the Project must follow the recommendations outlined by the USFWS to mitigate the potential impact of construction activity and significantly decrease the potential mortality of the SJKF population.

G-7

“A day-time speed limit of ~~20~~ 15 miles per hour shall be enforced within all construction areas. To the extent possible, night-time construction related activity should be minimized, but if work must be conducted at night, then a night-time speed limit of 10 miles per hour shall be enforced.”

<sup>4</sup> U.S. Fish and Wildlife Service. 2011. *Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior To or During Ground Disturbance*. Sacramento, CA.

c. **Revise MM 3.5-3**

Similar to the preconstruction surveys for SJKF, the DEIR states that preconstruction surveys for nesting birds shall be conducted for all potential nesting habitat within the Project site and may be performed in phases so that surveys occur before a portion of the site is disturbed. Defenders requests the entirety of the Project site be initially surveyed for nesting birds during the preconstruction surveys, and then specific areas surveyed once again as they are developed.

G-8

Furthermore, MM 3.5-3 establishes a 0.25 mile buffer around an active Swainson’s hawk nest. This is inconsistent with the recommendation outlined in the California Department of Fish and Wildlife’s (CDFW) scoping comments on the Project, which states that a minimum 0.5 mile no-disturbance buffer should be delineated around active nests.<sup>5</sup> Defenders requests compliance with CDFW’s no-disturbance buffer recommendation of 0.5 mile around an active Swainson’s hawk nest.

G-9

“If construction is scheduled to commence outside of nesting season (September 1 to January 31), no preconstruction surveys or additional measures are required for nesting birds, including raptors. During the nesting bird breeding season (February 1 to August 31), to avoid impacts on nesting birds in the Project site and immediate vicinity, a qualified biologist shall conduct preconstruction surveys of ~~the entirety of all potential nesting habitat within~~ the Project site prior to any ground-level disturbance and surveyed again as the different phases of the Project commence, where vegetation removal or ground disturbance is planned. The survey shall be performed within the site and shall also include potential nest sites within a 0.5-mile buffer around the site in areas where access to neighboring properties is available or visible using a spotting scope. Surveys shall be conducted no more than 14 days prior to each phase of construction activities. If construction is halted for 14 days or more, the area shall be re-surveyed prior to resuming work. ~~Surveys need not be conducted for the entire Project site at one time; they may be phased so that surveys occur shortly before a portion of the Project site is disturbed.~~ The surveying biologist must be qualified to determine the status and stage of nesting by migratory birds and all locally breeding raptor species without causing intrusive disturbance. If active nests are found, a suitable buffer around active nests (e.g., 300 feet for common raptors; ~~0.25~~ 0.5 mile for Swainson’s hawk; 100 feet for passerines) shall be established and no construction within the buffer shall be allowed until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). Encroachment into the buffer may occur at the discretion of the qualified biologist in coordination with CDFW.”

G-10

<sup>5</sup> California Department of Fish and Wildlife. 2022. *Notice of Preparation (NOP) – Environmental Impact Report (EIR) No. 8189, CUP No. 3734, Key Energy Storage, LLC Project (Project) SCH No.: 2022070414.*

**d. Additional Mitigation Measure**

The DEIR states that the Project site would be fenced with chain-link fencing and would include space underneath to allow for transit access by SJKF but fails to include a specific mitigation measure that requires SJKF-friendly fencing. Defenders requests the Final EIR include a mitigation measure for SJKF-friendly fencing that adheres to recommendations outlined in *Permeable Fence and Wall Designs that Facilitate Passage by Endangered San Joaquin Kit Foxes*.<sup>6</sup> The MM should read as follows:

G-11

**“To enable San Joaquin kit fox movement through the Project site, the security fence shall be a wildlife-friendly design that shall be raised 4-6 inches above the ground, leaving a gap between the fence mesh and the ground. The bottom of the fence fabric shall be knuckled to protect the wildlife that passes under the fence and a buried apron of fencing material shall extend up to 3 feet from the fence. The Perimeter fencing shall not be electrified.”**

Thank you once again for the opportunity to provide comments on the DEIR for the Key Energy Storage Project. We look forward to reviewing the Final EIR for the Project and request to be notified when it is available. Please feel free to contact me with any questions.

Respectfully submitted,



Sophia Markowska  
Senior California Representative  
408-603-4694  
[Smarkowska@defenders.org](mailto:Smarkowska@defenders.org)

---

<sup>6</sup> Cypher, B. L., & Van Horn Job, C. L. 2009. *Permeable Fence and Wall Designs that Facilitate Passage by Endangered San Joaquin Kit Foxes*. Stanislaus, CA.

## 2.4.7 Letter G: Defenders of Wildlife

- G-1 This summary of project details is consistent with information provided in Draft EIR Chapter 2, *Project Description*, and in Section 3.5, *Biological Resources*. Section 3.5 of the Draft EIR, discloses that San Joaquin kit fox and Swainson’s hawk have a potential to occur on the project site.
- G-2 This comment correctly summarizes the first of five Project objectives listed in Draft EIR Section 2.4 (page 2-6). County representatives participated in the Central Valley Renewable Energy Project, which produced the “Smart From the Start” report identified in this comment,<sup>36</sup> and the County acknowledges the commenter’s expression of favor for “least conflict siting” consistent with the “Smart From the Start” report.
- G-3 The County verified the location of the Project site within the dataset accessible via the link provided in this comment.<sup>37</sup> See **Figure 1**, *Conservation Value of the Project Site*. The County acknowledges the commenter’s support for projects like this one, which are proposed on sites identified as “least conflict” lands.
- G-4 The County declines this request that additional surveys for San Joaquin kit fox be added to Mitigation Measure 3.5-1, *Protection of San Joaquin Kit Fox*. Draft EIR Section 3.5.3.3 (page 3.5-12) acknowledges that “the San Joaquin kit fox could occur on the Project site sporadically,” e.g., in transit; however, the “disked and actively cultivated agricultural lands on-site are not preferred denning habitat and only provide limited foraging habitat for San Joaquin kit fox.” The County disagrees with the suggestion that surveying in phases would present challenges to ensuring the adequacy of exclusion zones around kit fox dens if observed near a portion of the site where construction has already occurred because, due to existing Project site conditions, kit fox dens are unlikely to be found onsite, and a take permit for this species is not anticipated for the Project. Further, consistent with Mitigation Measure 3.5-1, USFWS would be alerted if survey were positive: “If the qualified biologist determines that a potential non-natal den may be active, an on-site passive relocation program shall be implemented prior to ground disturbance within the established buffer with prior approval from USFWS.” Thus, the survey requirements stated in Mitigation Measure 3.5.-1 are consistent with the USFWS *Standardized Recommendations* (1999) and would provide sufficient mitigation for purposes of CEQA.
- G-5 Mitigation Measure 3.5-1 has been revised as shown in Section 3.2.5 and as follows to clarify that buffer distances shall be established consistent with the buffer distances provided in USFWS *Standardized Recommendations* (1999).

<sup>36</sup> Defenders of Wildlife, 2012. Smart From the Start: Responsible Renewable Energy Development in the Southern San Joaquin Valley. <https://www.defenders.org/sites/default/files/publications/smart-from-the-start-responsible-renewable-energy-development-southern-san-joaquin-valley.pdf>. Accessed December 8, 2023.

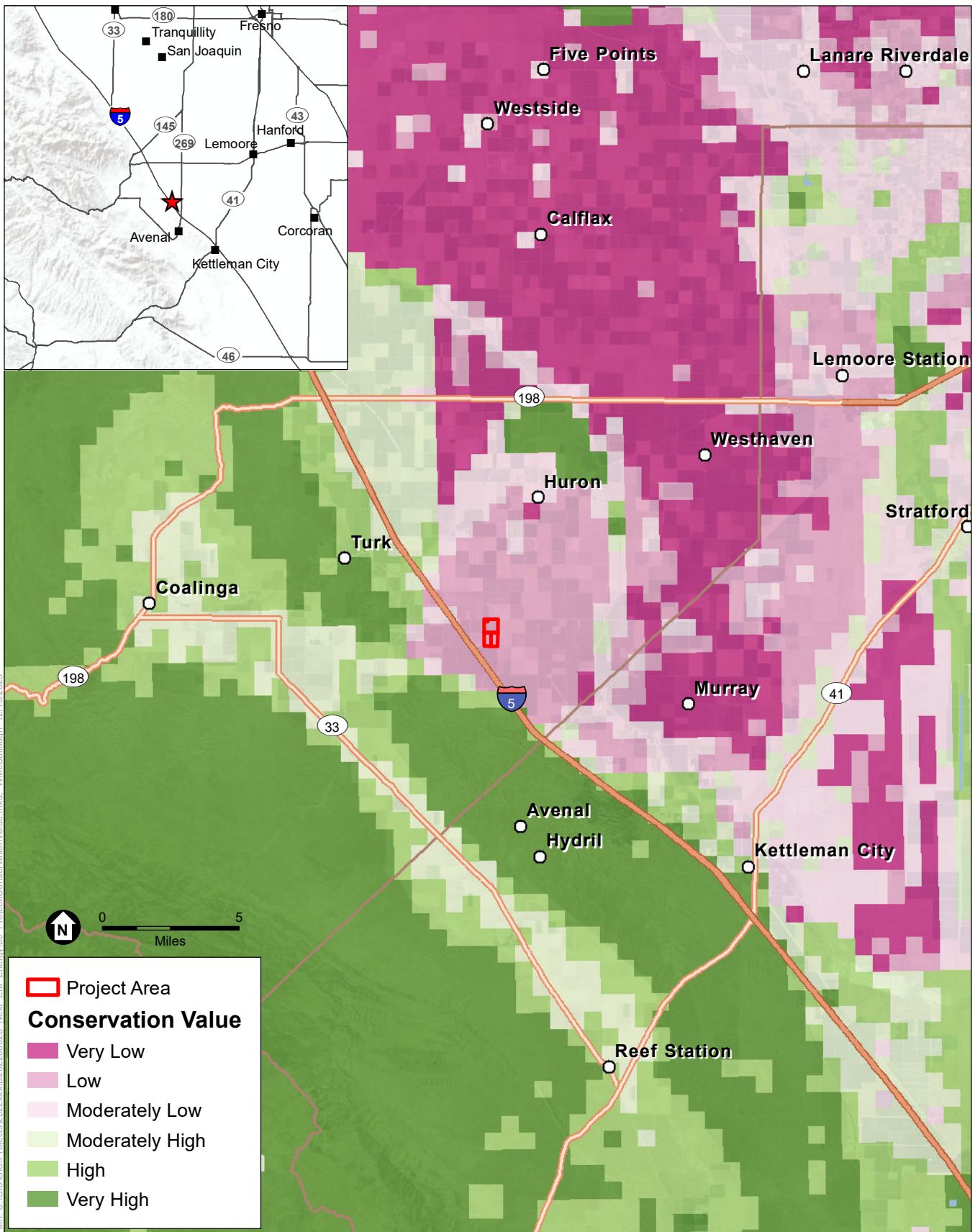
<sup>37</sup> Data Basin, 2016. FINAL - Environmental Conservation Value: Solar and the SJV (Version 8). October 12, 2015; last modified March 10, 2016. <https://databasin.org/datasets/5678d8175d694e5ea89183730af3d1a4/>. Accessed December 8, 2023.

**Mitigation Measure 3.5-1: Protection of San Joaquin Kit Fox.**

Preconstruction surveys shall be conducted by a qualified biologist for the presence of San Joaquin kit fox dens within 14 days before the start of construction activities. The surveys shall be conducted in areas of suitable habitat for San Joaquin kit fox. Surveys need not be conducted for all areas of suitable habitat at one time; they may be phased so that surveys occur within 14 days before that portion of the site is disturbed. If no potential San Joaquin kit fox dens are present, no further mitigation is required. If the qualified biologist observes potential dens and determines, in consultation with the Project owner and the County, that avoidance is feasible (as defined in CEQA Guidelines Section 15364 ~~consistent with the USFWS [1999] *Standardized Recommendations for Protection of the San Joaquin Kit Fox*~~), buffer distances shall be established before each phase of construction activities consistent with the buffer recommendations in the USFWS [1999] *Standardized Recommendations for Protection of the San Joaquin Kit Fox*.

- G-6 See Response G-4, which addresses the request for additional kit fox surveys, and Response G-5, which addresses buffers.





SOURCE: ESA, 2023; Conservation Biology Institute, 2023

NextEra- Key Energy Storage Project

**Figure 1**  
Conservation Value of the Project Site

- G-7 The daytime speed limit of 20 mph provided in Mitigation Measure 3.5-2 is consistent with the USFWS *Standardized Recommendations* (1999), therefore, the recommendation to revise the speed limit to 15 mph is not required. This mitigation measure will be amended to add the following statement regarding night-time construction as suggested by the commenter. See Section 3.2.4, which shows the following revision:

A daytime speed limit of 20 miles per hour shall be enforced within all construction areas. Night-time construction shall be minimized to the extent possible. If work is conducted at night, a night-time speed limit of 10 mph shall be enforced for protection of wildlife.

- G-8 As drafted, Mitigation Measure 3.5-3 states that nesting bird surveys may be phased to occur shortly before a portion of the Project site is disturbed. This approach is adequately protective of nesting birds. Additional nesting bird surveys occurring several weeks or months prior to construction would not be informative regarding actively nesting birds, because preconstruction surveys conducted within 14 days prior to construction would identify any nesting birds present on the Project site. For these reasons, no change has been made in response to this comment.
- G-9 As detailed in Response E-5, the buffer around Swainson hawk's nests was revised in Mitigation Measure 3.5-3, consistent with the recommendation in this comment.
- G-10 As detailed in Response E-5, the Swainson's hawk nest buffer distance was revised in Mitigation Measure 3.5-3, consistent with the recommendation in this comment. See Response G-8 regarding why no change has been made to the nest survey protocol in Mitigation Measure 3.5-3.
- G-11 The comment correctly states that the Draft EIR does not include a mitigation measure that dictates fence clearance specifications. In the context of the analysis of Impact 3.5-2, Draft EIR Section 3.5.3.3 (page 3.5-17), the Draft EIR concludes that the Project would have a less than significant impact related to biological resources significance criterion d) because it would not interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. The Draft EIR based this conclusion in part on a statement that the Project "would not interfere substantially with movement by kit foxes" because, "[after] construction, the perimeter would be surrounded by chain-link fence with space underneath to allow passage by kit foxes and other small mammals." This sentence was included in error. See Draft EIR Section 2.5.9.5, *Wildlife-Friendly Design Features*, which does not specify a fencing design that would maintain a 4-inch to 6-inch clearance between the bottom of the site's perimeter fencing and the ground to allow passage by kit foxes. Nonetheless, a conclusion of less-than-significant impact is warranted here.

Not every interference with the potential movement of native wildlife species constitutes a significant impact under CEQA. To result in a potential significant impact, the interference must be "substantial." An interference is not substantial if the obstruction is

temporary or if there are other available routes. This Project would not interfere substantially with the movement of kit foxes because there are other available routes. As explained in Draft EIR Section 3.5.1.2 (p. 3.5-5), no San Joaquin kit foxes, suitable dens, or sign were observed during field surveys. The intensive agricultural activities, minimal sign of prey species, and presence of coyotes on-site substantially reduce the Project site's habitat value, and kit foxes are not expected to use the site for breeding. There is a low potential for San Joaquin kit fox to use the site for foraging and dispersal; however, lack of cover may discourage kit foxes from crossing the site. Further, although the lack of a California Natural Diversity Database (CNDDDB) listing of a particular species is not proof of absence; however, no occurrences of kit fox have been reported within 5 miles of the Project site since 1981 (Draft EIR, p. 3.5-5). Because the Project site does not contain preferred denning habitat for the San Joaquin kit fox and provides limited foraging habitat, and because kit fox could bypass the site, the Draft EIR correctly concluded in the context of Impact 3.5-2 that the Project would cause a less than significant impact related to the movement of kit foxes.

In response to this comment and in light of this response, the first paragraph of the analysis in Impact 3.5-2 (Draft EIR, p. 3.5-17) has been revised as shown in Section 3.2.4 and as set forth below:

To result in a potential significant impact, interference with the movement of native wildlife must be “substantial.” An interference is not substantial if the obstruction is temporary or if there are other available routes. This Project would not interfere substantially with the movement of kit foxes primarily because there is little evidence of active use of the site and because there are other available routes. The Project site is not located in an identified terrestrial movement corridor for San Joaquin kit fox (USFWS 1998) or other wildlife species; the site is located in an agricultural area near major roads, which discourage wildlife movement. No San Joaquin kit foxes, suitable dens, or sign were observed during field surveys. The intensive agricultural activities, minimal sign of prey species, and presence of coyotes on-site substantially reduce the Project site's habitat value, and kit foxes are not expected to use the site for breeding. There is a low potential for San Joaquin kit fox to use the site for foraging and dispersal; however, lack of cover may discourage kit foxes from crossing the site. ~~However, small terrestrial species may occasionally disperse through the site. After construction, the perimeter would be surrounded by chain link fence with space underneath to allow passage by kit foxes and other small mammals.~~ Thus, the Project would not interfere substantially with movement by kit foxes.

The County has reviewed the suggested recommendations<sup>38</sup> and finds the language to be consistent with examples of wildlife-friendly design features identified in County EIRs

<sup>38</sup> Cypher, Brian L., and Van Horn Job, Christine L., 2009. Permeable Fence and Wall Designs that Facilitate Passage by Endangered San Joaquin Kit Foxes. March 2009. <https://fliphtml5.com/kgpm/iuum/basic>. Accessed December 8, 2023. See also, Cypher et al, 2021. Photovoltaic solar farms in California: can we have renewable electricity and our species, too? California Fish and Wildlife Journal, Volume 107, Issue 3:231-248; 2021. Summer 2021. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=195581>. Accessed June 10, 2024.

for other renewable energy projects. However, impact conclusions reached for other projects proposed on other sites does not suggest that the County's Project-specific, site-specific conclusion in the Draft EIR is inadequate or inaccurate.



Danielle Wilson 2730 Gateway Oaks Drive
Contract Senior Land Planner Second Floor, Suite 220
Environmental Planning & Permitting Sacramento, CA 95833
8189 Key Energy Storage Project Cell: (916) 320-5459
Page 1 of 2 E-mail: d1wz@pge.com

November 6, 2023

Jeremy Shaw
Fresno County Department of Public Works and Planning
Development Services and Capital Projects Division
2220 Tulare Street, Sixth Floore
Fresno, CA 93721

RE: EIR 8189 Key Energy Storage Project Unclassified Conditional Use Permit
Application No. 3734 – Response To Request For Comments

Dear Mr. Shaw:

On behalf of Pacific Gas and Electric Company (PG&E), please find the following response to
comments for The Key Energy Storage 8189 Key Energy Storage Project (Project) Unclassified
Conditional Use Permit Application No. 3734, Draft Environmental Impact Report (DEIR).

The Key Storage Project will interconnect with PG&E’s Gates Substation in Fresno County;
PG&E’s interconnection work includes the construction, operation, and maintenance of a new
500-kilovolt (kV) transmission line, approximately 120 feet of which is located outside of
PG&E’s substation, supported by new lattice steel towers. Modifications at PG&E’s existing
Midway Substation located in Kern County will also be required. As such, PG&E respectfully
requests the following revisions to the Key Storage DEIR.

H-1

PG&E Comment I
ES. 4 Permits and Approvals

Regarding California Public Utilities Commission (CPUC) jurisdiction, please revise the
following statement to read:

~~Authorizations pursuant to Compliance with General Order 131-D for PG&E’s expansion of the
Tranquillity Switching Station modification of Gates Substation and construction of the gen-tie
line. The CPUC has preemptive discretionary jurisdiction over the design, construction, and
operation of PG&E’s utility facilities.~~

H-2

PG&E Comment II

2.5.10.1 Substation Modifications (p.69): PG&E now has additional details about the required
wall. After “below-grade elevation,” please add a new sentence with further details: “It will be
supported by concrete piers approximately 2 feet in diameter, installed every 6-12 feet and up to
20 feet below existing grade.”

H-3

PG&E Comment III
3.5 Biological Resources

H-4

Internal

**Mitigation measures BIO 3.5-1 and 3.5-3**

Please include language that clarifies that the pre-construction surveys will include PG&E work areas and any requirements will be implemented by the project applicant in coordination with PG&E.

H-4  
cont.

**PG&E Comment IV**

**3.8 Geology, Soils, and Paleontological Resources**

**Mitigation Measure 3.8-1**

As stated in the DEIR analyses, PG&E is not subject to any mitigation measures in the DEIR. Furthermore, PG&E does not believe the following measures identified for PG&E would be necessary to reduce impacts to less than significant in any event.

Mitigation Measure 3.8-1 requires paleontological monitoring for all ground disturbance below 10 feet, except limited-diameter drilling. However, the discussion prior to the mitigation measure suggests that monitoring would only be needed if a significant resource is discovered, on an as-needed basis. We suggest that mitigation measure 3.8-1 be revised to indicate that it only applies in that circumstance. The discussion indicates that the potential to encounter significant paleontological resources is low in the first 10 feet bgs and undetermined below 10 feet bgs. Given the lack of known discoveries of paleontological resources within the immediate area despite numerous ground disturbing projects in and around Gates Substation, we suggest following the approach taken for LS Power’s Gates 500 kV Dynamic Reactive Support Project, interconnecting to PG&E’s 500 kV yard immediately north of this project; there, the CPUC found less than significant impacts with measures requiring worker awareness training and inadvertent discovery protocols.

H-5

We would be happy to discuss these comments further if that would be helpful. Please do not hesitate to contact me at (916) 320-5459 if you have any questions or concerns.

Sincerely,



Danielle Wilson  
Contract Senior Land Planner

Cc:  
Jo Lynn Lambert, PG&E Legal Counsel  
Wendy Nettles, PG&E Supervisor, Environmental Management

## 2.4.8 Letter H: Pacific Gas and Electric Company

- H-1 This summary of project details regarding the PG&E infrastructure improvements that would be needed to interconnect the Project is consistent with the information provided in Draft EIR Section 2.5.10 (pages 2-26 through 2-29).
- H-2 Draft EIR Section ES.4 (p. ES-5) and Section 2.6 (p. 2-29) both say that permits and approvals that could be required for the Project include the following from the California Public Utilities Commission (CPUC): “authorizations pursuant to General Order 131-D for PG&E’s expansion of Gates Substation in Fresno County and/or the Midway Substation in Kern County the and construction of the gen-tie line.” In response to this comment, the bullet point containing that statement has been clarified in both places as follows:
- ~~CPUC—authorizations pursuant to~~ Compliance with General Order 131-D for PG&E’s expansion of Gates Substation in Fresno County and/or the Midway Substation in Kern County ~~the~~ and for construction of the gen-tie line.

Draft EIR Section 2.5.10.1 (pages 2-26 an 2-27) describes the proposed Gates Substation modifications as including the following: “To accommodate the Project, PG&E would enlarge the Gates Substation 500 kV yard within the Gates Substation property boundaries by approximately 2.6 acres.” Accordingly, the suggestion to replace the word “expansion” with “modification” has not been accepted.

As drafted, the Draft EIR is clear that the CPUC would have “sole and exclusive jurisdiction over PG&E’s construction, operation, and maintenance of the PG&E infrastructure and improvements needed to connect the Project to the grid because it regulates activities undertaken by PG&E and the other investor-owned public utilities in the state. PG&E’s work (as regulated by CPUC) would not be subject to the County’s or Kern County’s [discretionary land use permitting process].” See, e.g., Section 3.2.1.3 (page 3.2-9), Section 3.12.1.3 (page 3.12-2), Section 3.14.1.3 (page 3.14-9), Section 3.15.1.2 (page 3.15-3), and Section 3.16.1.3 (page 3.16-3). Accordingly, the suggestion to include the new last sentence proposed in this comment has not been accepted.

- H-3 The description of the proposed Gates Substation modifications provided in Draft EIR Section 2.5.10.1 (page 2-28) has been refined as shown in Section 3.2.2 and as follows:

The new wall would be 12 feet above grade, so the overall height measured from the inside of the substation would be approximately 17.5 feet, owing to the 500 kV yard’s below-grade elevation. It would be supported by concrete piers approximately 2 feet in diameter, installed every 6-12 feet and up to 20 feet below existing grade. The new wall would tie into the existing security walls located on the north and south sides of the 500 kV yard within the Gates Substation.

The Draft EIR anticipated that proposed modifications at the Gates Substation would include grading to a depth of approximately 5.5 feet below grade and that the proposed

transmission line work in this area would include foundations installed approximately 15 feet below grade (Draft EIR page 2-28). For the reasons discussed below, the 5-foot difference between 15 feet below ground surface and the 20 feet below ground surface proposed by PG&E in its refinement of project details does not trigger CEQA's requirements for recirculation.

The 5-foot difference between 15 feet below ground surface and the 20 feet below ground surface proposed by PG&E in its refinement of project details would not result in major revisions of the EIR because the difference would result in neither new significant environmental impacts nor a substantial increase in the severity of previously identified significant impacts. The refinement would result in no change to the Draft EIR's analysis of impacts or conclusions relating to resources within 15 feet below ground surface.

The Draft EIR acknowledges the possibility that buried archaeological resources may be encountered during ground-disturbing activities (Draft EIR, page 3.6-16). The implementation of the PG&E Cultural Resource Protection Measures set forth in Draft EIR Section 3.6.3.2 (pages 3.6-13 and 3.6-14), which would be implemented in the event of an unanticipated discovery of archeological resources or human remains, would ensure that the proposed depth of the concrete piers would not result in new significant environmental impacts or a substantial increase in the severity of significant impacts related to cultural resources identified in the Draft EIR. The Draft EIR also discloses that "construction of the Project could encounter paleontological resources in Pleistocene-age sediments areas where excavations result in disturbance at depths at or below 10 feet" (Draft EIR, page 3.8-19). The Draft EIR acknowledges that "PG&E is not an applicant subject to the mitigation measures" identified in the Draft EIR; however, "the Applicant would be responsible for compliance with any necessary mitigation. PG&E would comply with the CPUC's General Order 131-D and would coordinate with the Applicant in complying with any required mitigation, which in the instance of a significant impact to paleontological resources would consist of Mitigation Measure 3.8-1" (Draft EIR, p. 3.8-20). Compliance with General Order 131-D and Mitigation Measure 3.8-1, which requires paleontological monitoring of all excavation at depths at or greater than 10 feet below ground surface (bgs) in previously undisturbed sediments, would ensure that the proposed depth of the concrete piers would not result in new significant environmental impacts or a substantial increase in the severity of significant impacts related to paleontological resources identified in the Draft EIR. Finally, the change in depth of the concrete piers from 15 to 20 feet would not result in new significant environmental impacts or a substantial increase in the severity of significant impacts related to groundwater resources, because groundwater is located more than 40 feet below ground surface and would not be anticipated to be encountered during the Gates Substation improvements.

- H-4 In the context of its discussion of the potential impacts that could be caused by the proposed PG&E infrastructure improvements, the Draft EIR (page 3.5-19) explains that "PG&E would coordinate with the Applicant on implementation of any mitigation measures that would apply to PG&E's construction, to minimize risks to migratory birds



of collision with lines or towers.” In response to this Comment H-4, the County is refining the text on Draft EIR page 3.5-19 to clarify that the Applicant would be responsible for compliance with any necessary mitigation, that PG&E would comply with the CPUC’s General Order 131-D and would coordinate with the Applicant in complying with any required mitigation, which in the instance of a significant impact to San Joaquin kit fox would consist of Mitigation Measure 3.5-1 and in the instance a significant impact to nesting birds would consist of Mitigation Measure 3.5-3. More specifically, as shown in Section 3.2.4, the text of Draft EIR page 3.5-19 has been supplemented to insert the following new paragraph between the existing two paragraphs under the heading *PG&E Infrastructure*:

Construction activities associated with the PG&E infrastructure could result in a potential significant impact to San Joaquin kit fox and/or nesting birds. However, because PG&E is not an applicant subject to the mitigation measures identified in this Draft EIR, the Applicant would be responsible for compliance with any necessary mitigation. PG&E would comply with the CPUC’s General Order 131-D and would coordinate with the Applicant in complying with any required mitigation, which in the instance of a significant impact to San Joaquin kit fox would consist of Mitigation Measure 3.5-1 and in the instance a significant impact to nesting birds would consist of Mitigation Measure 3.5-3.

- H-5 The paragraph on Draft EIR page 3.8-19 immediately preceding the full text of Mitigation Measure 3.8-1 makes clear that the measure would be required for the protection of paleontological resources, *if present*, during construction. It also makes clear that the “inadvertent discovery” approach described in the comment also applies here: “Mitigation Measure 3.8-1 would require that all earthwork halt *in the event of a fossil discovery* and that a qualified paleontologist assess the discovery...” Because the Draft EIR is consistent with the request made in the comment, no revision has been made in response to the comment.

This page intentionally left blank

# CHAPTER 3

## Revisions to the Draft EIR

---

### 3.1 Introduction

The following changes have been made to the previously published text of the Draft EIR. Changes to the Draft EIR include minor corrections made to improve writing clarity, grammar, and consistency; clarifications, additions, or deletions resulting from specific responses to comments; and changes to update information in the Draft EIR – the changes do not constitute “significant new information” requiring recirculation (see Public Resources Code §21092.1; CEQA Guidelines §15088.5). Text revisions are organized by the chapter and page number (provided on the left-hand side of the page, below) that appear in the Draft EIR. An explanation of the change, including identification of where it would be made, is provided. The specific additions and deletions use the following conventions:

- Text deleted from the Draft EIR is shown in ~~strike-out text~~.
- Text added to the Draft EIR is shown in underline text.

### 3.2 Text Changes to the Draft EIR

#### 3.2.1 Executive Summary

Page ES-5      The third bullet point in Section ES.4, *Permits and Approvals*, has been clarified as follows:

- ~~CPUC—authorizations pursuant to~~ Compliance with General Order 131-D for PG&E’s expansion of Gates Substation in Fresno County and/or the Midway Substation in Kern County ~~the~~ and for construction of the gen-tie line.

Page ES-12      In Table ES-2, Mitigation Measure 3.5-3 has been revised as follows:

If construction is scheduled to commence outside of nesting season (September 1 to January 31), no preconstruction surveys or additional measures are required for nesting birds, including raptors. During the nesting bird breeding season (February 1 to ~~August 31~~ September 15), to avoid impacts on nesting birds in the Project site and immediate vicinity, a qualified biologist shall conduct preconstruction surveys of all potential nesting habitat within the Project site

where vegetation removal or ground disturbance is planned. The survey shall be performed within the site and shall also include potential nest sites within a 0.5-mile buffer around the site in areas where access to neighboring properties is available or visible using a spotting scope. Surveys shall be conducted no more than ~~14~~ 10 days prior to each phase of construction activities. If construction is halted for ~~14~~ 10 days or more, the area shall be resurveyed prior to resuming work.”

Surveys need not be conducted for the entire Project site at one time; they may be phased so that surveys occur shortly before a portion of the Project site is disturbed. The surveying biologist must be qualified to determine the status and stage of nesting by migratory birds and all locally breeding raptor species without causing intrusive disturbance. If active nests are found, a suitable buffer around active nests (e.g., ~~300~~ 500 feet for common raptors; ~~0.25~~ 0.5 mile for Swainson’s hawk; 100 feet for passerines) shall be established and no construction within the buffer shall be allowed until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). Encroachment into the buffer may occur at the discretion of the qualified biologist in coordination with CDFW.

### 3.2.2 Chapter 2, Project Description

Page 2-28 The description of the proposed Gates Substation modifications provided in Draft EIR Section 2.5.10.1 (page 2-28) has been refined as follows:

The new wall would be 12 feet above grade, so the overall height measured from the inside of the substation would be approximately 17.5 feet, owing to the 500 kV yard’s below-grade elevation. It would be supported by concrete piers approximately 2 feet in diameter, installed every 6-12 feet and up to 20 feet below existing grade. The new wall would tie into the existing security walls located on the north and south sides of the 500 kV yard within the Gates Substation.

Page 2-29 The third bullet point in Section 2.6, *Permits and Approvals*, has been clarified as follows:

- ~~CPUC—authorizations pursuant to~~ Compliance with General Order 131-D for PG&E’s expansion of Gates Substation in Fresno County and/or the Midway Substation in Kern County ~~the~~ and for construction of the gen-tie line.

### 3.2.3 Section 3.3, Agriculture and Forest Resources

Page 3.3-13 Lines three and four have been revised as follows:

The chemical and physical soil properties of the soil would remain substantially the same under pre-Project and post Project (post-reclamation) conditions.

### 3.2.4 Section 3.4, Air Quality

Page 3.4-3 The second paragraph under the heading “Valley Fever” has been revised as follows:

The California Department of Public Health (CDPH) received ~~7,252 and 8,030~~ 7,277, 6,747, and 7,696 new Valley Fever case reports in ~~2020 and 2021, 2022,~~ and 2023, respectively, as of November 30 of each year (CDPH 2022-2023).

Page 3.4-4 The first full paragraph on this page has been revised as follows:

On average, approximately 200 Valley Fever–associated deaths (deaths in which Valley Fever was listed as a primary or contributing cause on a death certificate) occurred in the United States each year between 1999 and 2019 (CDC 2022a). The number of cases of Valley Fever in Fresno County has ~~increased varied~~ in the past several years. Between 2021 and 2023, the total number of cases in Fresno County increased from 353 cases to 443 cases (CDPH 2023). ~~Between 2011 and 2014, the total number of cases decreased from 22,634 to 8,232; however, in 2019, the number of total cases spiked to 20,003, from 15,611 cases reported in 2018.~~ Those most at risk of developing severe symptoms include Hispanics, African Americans, Filipinos, pregnant women, adults of older age groups, and people with weakened immune systems (CDC 2022b).

Page 3.4-11 Draft EIR Section 3.4.1.3, *Regulatory Setting*, has been revised to include the following:

#### Rule 2010 (Permits Required)

Rule 2010 requires any person constructing, altering, replacing, or operating any source that emits emissions, such as the Project’s proposed generators, to obtain an Authority to Construct and then a Permit to Operate. Before initiation of any such activities associated with the source can begin, authorization referred to as an Authority to Construct must be provided by the Air Pollution Control Officer (APCO). Before any new or modified source initiated under an Authority to Construct can begin operation, a written Permit to Operate is required to be obtained from the APCO.

Page 3.4-25 The last sentence analysis presented in Impact 3.4-4 has been revised to include the following:

Compliance with the requirements of AB 203 and SJVAPCD Rule 8021 would ensure that Valley Fever–related impacts on construction workers would be less than significant.

Page 3.4-30 The list of references has been revised to include the following:

CDPH (California Department of Public Health), 2023. Coccidioidomycosis in California Provisional Monthly Report, January – November 2023 (as of November 30, 2023), available online at: <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CocciinCAProvisionalMonthlyReport.pdf>

### 3.2.5 Section 3.5, Biological Resources

Page 3.5-14 The first paragraph of Mitigation Measure 3.5-1 has been revised as follows:

Preconstruction surveys shall be conducted by a qualified biologist for the presence of San Joaquin kit fox dens within 14 days before the start of construction activities. The surveys shall be conducted in areas of suitable habitat for San Joaquin kit fox. Surveys need not be conducted for all areas of suitable habitat at one time; they may be phased so that surveys occur within 14 days before that portion of the site is disturbed. If no potential San Joaquin kit fox dens are present, no further mitigation is required. If the qualified biologist observes potential dens and determines, in consultation with the Project owner and the County, that avoidance is feasible (as defined in CEQA Guidelines Section 15364 ~~consistent with the USFWS [1999] *Standardized Recommendations for Protection of the San Joaquin Kit Fox*~~), buffer distances shall be established before each phase of construction activities consistent with the USFWS [1999] *Standardized Recommendations for Protection of the San Joaquin Kit Fox*.

Page 3.5-15 In Mitigation Measure 3.5-2, the third bullet point from the bottom of the page has been revised as follows:

- A daytime speed limit of 20 miles per hour shall be enforced within all construction areas. Night-time construction shall be minimized to the extent possible. If work is conducted at night, a night-time speed limit of 10 mph shall be enforced for protection of wildlife.

Page 3.5-16 Mitigation Measure 3.5-3 has been revised as follows:

If construction is scheduled to commence outside of nesting season (September 16 to January 31), no preconstruction surveys or additional measures are required for nesting birds, including raptors. During the nesting bird breeding season (February 1 to ~~August 31~~ September 15), to avoid impacts on nesting birds in the Project site and immediate vicinity, a qualified biologist shall conduct preconstruction surveys of all potential nesting habitat within the Project site where vegetation removal or ground disturbance is planned. The survey shall be performed within the site and shall also include potential nest sites within a 0.5-

mile buffer around the site in areas where access to neighboring properties is available or visible using a spotting scope. Surveys shall be conducted no more than ~~14~~ 10 days prior to each phase of construction activities. If construction is halted for ~~14~~ 10 days or more, the area shall be resurveyed prior to resuming work.

Surveys need not be conducted for the entire Project site at one time; they may be phased so that surveys occur shortly before a portion of the Project site is disturbed. The surveying biologist must be qualified to determine the status and stage of nesting by migratory birds and all locally breeding raptor species without causing intrusive disturbance. If active nests are found, a suitable buffer around active nests (e.g., ~~300~~ 500 feet for common raptors; ~~0.25~~ 0.5 mile for Swainson's hawk; 100 feet for passerines) shall be established and no construction within the buffer shall be allowed until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). Encroachment into the buffer may occur at the discretion of the qualified biologist in coordination with CDFW.

Page 3.5-17 The first paragraph of the analysis in Impact 3.5-2 has been revised as follows:

To result in a potential significant impact, interference with the movement of native wildlife must be "substantial." An interference is not substantial if the obstruction is temporary or if there are other available routes. This Project would not interfere substantially with the movement of kit foxes primarily because there is little evidence of active use of the site and because there are other available routes. The Project site is not located in an identified terrestrial movement corridor for San Joaquin kit fox (USFWS 1998) or other wildlife species; the site is located in an agricultural area near major roads, which discourage wildlife movement. No San Joaquin kit foxes, suitable dens, or sign were observed during field surveys. The intensive agricultural activities, minimal sign of prey species, and presence of coyotes on-site substantially reduce the Project site's habitat value, and kit foxes are not expected to use the site for breeding. There is a low potential for San Joaquin kit fox to use the site for foraging and dispersal; however, lack of cover may discourage kit foxes from crossing the site. However, small terrestrial species may occasionally disperse through the site. After construction, the perimeter would be surrounded by chain link fence with space underneath to allow passage by kit foxes and other small mammals. Thus, the Project would not interfere substantially with movement by kit foxes.

Page 3.5-19 The summary of impacts and mitigation measures specific to implementation of the proposed PG&E infrastructure has been supplemented to add the following:

Construction activities associated with the PG&E infrastructure could result in a potential significant impact to San Joaquin kit fox and/or nesting birds. However, because PG&E is not an applicant subject to the mitigation measures identified in this Draft EIR, the Applicant would be responsible for compliance with any

necessary mitigation. PG&E would comply with the CPUC's General Order 131-D and would coordinate with the Applicant in complying with any required mitigation, which in the instance of a significant impact to San Joaquin kit fox would consist of Mitigation Measure 3.5-1 and in the instance a significant impact to nesting birds would consist of Mitigation Measure 3.5-3.

### 3.2.6 Section 3.19, Utilities and Service Systems

Page 3.29-13 The text under Impact 3.19-2 has been revised as follows:

Because the northern parcel is in irrigated agriculture under existing conditions, and because this irrigation would cease with the Project, the Project would reduce total water demand across the site. Thus, implementation of the Project would result in an incremental decrease in total water demand. The water supply assessment concluded that the construction and operational water demands of the Project can be met under average water year, single-dry water year, and multiple dry water year scenarios over the next 20 years through various sources. In addition, water demand during operation would be minimal (1,036 gallons per year, which is equivalent to 5.2 days of one person's water demand) and would be substantially less than the existing water demand for irrigation. While WWD only currently projects water supply availability through 2045 as part of its Urban Water Management Plan, water for decommissioning would be obtained from an available source prior to decommissioning and is anticipated to either be delivered to the site by truck or obtained from an on-site well. Therefore, a less-than significant impact on water supply would result ~~over the next 20 years.~~

~~However, the requested conditional use permit would have a term of 40 years (see Section 2.5.1, Project Phasing). For the purposes of this analysis, operation and maintenance phase water demand during the second 20-year period would be the same during the first, i.e., 0.003 acre-feet per year, and decommissioning water requirements are assumed to be similar to those required during construction (approximately 300 acre-feet). The WSA prepared for the Project (Appendix L) does not address the availability of the water supply for the latter portion of the operation and maintenance phase or at the time the Project would be decommissioned. Therefore, Mitigation Measure 3.19-2: Determine Future Water Supply Availability would be required.~~

~~Mitigation Measure 3.19-1: Determine Future Water Supply Availability~~  
~~Eighteen (18) years after the issuance of the conditional use permit, the Project owner shall identify and provide an analysis to the County that the water supply source(s) proposed for use during the remaining operation, maintenance, and decommissioning activities are sufficient and will not impede sustainable groundwater management of the basin. If sufficient water supplies are not available to serve the Project and~~



reasonably foreseeable future development during normal, dry, and multiple dry years, then Project decommissioning would be initiated.

**Significance after Mitigation:** ~~Less than Significant. Implementation of this mitigation measure would ensure that future water supply needed for operation, maintenance and decommissioning would be available by requiring identification of water supply prior to decommissioning activities.~~

**Mitigation:** None required

### 3.2.7 Appendix I, Land Use and Planning

Page Appendix I-5 Table I1-2 as follows has been revised as follows:

<p><b>Policy LU-A.3:</b> The County may allow by discretionary permit in areas designated Agriculture, special agricultural uses and agriculturally-related activities, including value added processing facilities, and certain non-agricultural uses listed in Table LU-3. Approval of these and similar uses in areas designated Agriculture shall be subject to the following applicable criteria:</p> <ol style="list-style-type: none"> <li>The use shall provide a needed service to the surrounding agricultural area which cannot be provided more efficiently within urban areas or which requires location in a non-urban area because of unusual site requirements or operational characteristics;</li> <li>The use should not be sited on productive agricultural lands if less productive land is available in the vicinity;</li> <li>The operational or physical characteristics of the use shall not have a detrimental impact on water resources or the use or management of surrounding properties within at least one-quarter (1/4) mile radius;</li> <li>A probable workforce should be located nearby or be readily available</li> </ol>	<p><b>Consistent.</b> The General Plan's illustrative list of uses typical of nonagricultural uses allowable with a permit in an area designated Agriculture is sufficiently similar to uses proposed by the Project (such as administration offices, equipment storage and maintenance, and electrical and wireless communication infrastructure). Further:</p> <p>(a) the proposed energy storage use would provide a needed service to the surrounding agricultural area (e.g., increase local energy storage capacity at the Gates Substation to address the limitations of the electric grid and make it more resilient to disturbances and peaks in energy demand) that cannot be provided more efficiently within urban areas and that requires location in the proposed non-urban area (see DEIR section 2.4, <i>Project Purpose and Objectives</i>, p. 2-6).</p> <p>(b) No less productive land is available in the vicinity (see DEIR section 4.2.1.1, <i>Alternative Sites</i>, p. 4-4 et seq.).</p> <p>(c) The operational or physical characteristics of the use would not have a detrimental impact on water resources or the use (see DEIR section 3.11, <i>Hydrology and Water Quality</i>, p. 3.11-1 et seq.) or management of surrounding properties within at least one-quarter (1/4) mile radius. (see DEIR Figure 2-2, <i>Project Site</i>, which shows energy and agriculture uses within 0.25-mile of the Project site; see also DEIR Section 3.3, which concludes that the Project would not cause a significant unavoidable impact on agriculture resources).</p> <p>(d) A probable workforce would be located nearby or be readily available. See DEIR Section 2.5.6.2, <i>Construction Workforce and Schedule</i>, which explains that Project construction is anticipated to employ a maximum of 150 on-site personnel. Once operational, the Project would require</p>
---	---

---

	<p><u>limited personnel to visit the Project site. The Project site would be remotely operated and monitored 7 days a week through the proposed supervisory control and data acquisition system. Routine maintenance and one annual maintenance inspection are expected to occur as described in Section 2.5.7, <i>Energy Storage System Operation and Maintenance</i>. Based on consistency with each of these criteria, the County finds the Project to be consistent with Policy LU-A.3.</u></p> <p><del><b>Not applicable.</b> The policies pertain to County policy actions that are not related to the Project or review of its associated permit applications.</del></p>
--	---

---

# Appendix A

## **Public Notices**



# EIR 8189 Key Energy Storage Project

## Summary

**SCH Number**

2022070414

**Lead Agency**

Fresno County

**Document Title**

EIR 8189 Key Energy Storage Project

**Document Type**

EIR - Draft EIR

**Received**

9/20/2023

**Present Land Use**

AE-40/Agriculture

**Document Description**

The project proposes to construct, operate, maintain, and decommission an energy storage facility on up to 260 acres of private land in western Fresno County. Project build-out would occur in four phases.

---

## Contact Information

**Name**

Jeremy Shaw

**Agency Name**

Fresno County

**Job Title**

Planner

**Contact Types**

Lead/Public Agency

**Address**

2220 Tulare St. 6th Floor  
Fresno, CA 93721

**Phone**

(559) 600-4207

**Email**

jshaw@fresnocountyca.gov

---

## Location

**Cities**

Unincorporated area

**Counties**

Fresno

**Regions**

Countywide

**Cross Streets**

W. Jane Avenue between Interstate 5 and S. Lassen Avenue

**Total Acres**

318

**Jobs**

150

**Parcel #**

085-040-58S, 085-040-36S, 085-040-37S

**State Highways**

Interstate 5, State Route 269

**Railways**

None

**Airports**

None

**Schools**

None

**Waterways**

None

**Township**

21S

**Range**

17E

**Section**

4

**Base**

MDBM

---

# Notice of Completion

**State Review Period Start**

9/21/2023

**State Review Period End**

11/6/2023

**State Reviewing Agencies**

California Air Resources Board (ARB), California Department of Conservation (DOC), California Department of Fish and Wildlife, Central Region 4 (CDFW), California Department of Forestry and Fire Protection (CAL FIRE), California Department of Parks and Recreation, California Department of Transportation, District 6 (DOT), California Department of Water Resources (DWR), California Energy Commission, California Governor's Office of Emergency Services (OES), California Highway Patrol (CHP), California Native American Heritage Commission (NAHC), California Natural Resources Agency, California Public Utilities Commission (CPUC), California Regional Water Quality Control Board, Central Valley Fresno Region 5 (RWQCB), Central Valley Flood Protection Board, Department of Toxic Substances Control, Office of Historic Preservation

**Development Types**

Power:Other Power Type (Energy Storage)(Megawatts 3000)

**Local Actions**

Use Permit

**Project Issues**

Aesthetics, Agriculture and Forestry Resources, Air Quality, Biological Resources, Cultural Resources, Cumulative Effects, Drainage/Absorption, Energy, Flood Plain/Flooding, Geology/Soils, Greenhouse Gas Emissions, Growth Inducement, Hazards & Hazardous Materials, Hydrology/Water Quality, Land Use/Planning, Mandatory Findings of Significance, Mineral Resources, Noise, Population/Housing, Public Services, Recreation, Schools/Universities, Septic System, Sewer Capacity, Solid Waste, Transportation, Tribal Cultural Resources, Utilities/Service Systems, Vegetation, Wetland/Riparian, Wildfire

**Local Review Period Start**

9/21/2023

**Local Review Period End**

11/6/2023

---

## Attachments

**Draft Environmental Document [Draft IS, NOI\_NOA\_Public notices, OPR Summary Form, Appx,]**

EIR 8189 CEQA Summary Form

PDF

625 K

Key\_Energy\_Storage\_Project\_DEIR\_Appendix\_Sep\_2023

PDF

68216 K

Key\_Energy\_Storage\_Project\_DEIR\_Sep\_2023 - Print

PDF

12566 K

NOA Filed

PDF

792 K

**Notice of Completion [NOC] Transmittal form**

NOC

PDF

1109 K

**Disclaimer:** The Governor's Office of Planning and Research (OPR) accepts no responsibility for the content or accessibility of these documents. To obtain an attachment in a different format, please contact the lead agency at the contact information listed above. You may also contact the OPR via email at

[state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov) or via phone at [\(916\) 445-0613](tel:(916)445-0613). For more information, please visit [OPR's Accessibility Site](#).



# THE BUSINESS JOURNAL

FRESNO | KINGS | MADERA | TULARE

P.O. Box 126  
Fresno, CA 93707  
Telephone (559) 490-3400

(Space Below for use of County Clerk only)

## IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA

### NOTICE OF SECOND PUBLIC SCOPING MEETING FOR THE KEY ENERGY STORAGE PROJECT

Second Public Scoping Meeting:  
September 21, 2022 at 10:00 am

### DECLARATION OF PUBLICATION (2015.5 C.C.P.)

#### MISC. NOTICE

#### STATE OF CALIFORNIA

#### COUNTY OF FRESNO

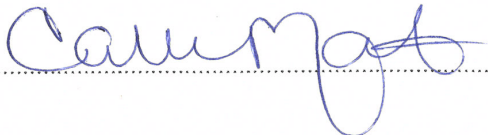
I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of **THE BUSINESS JOURNAL** published in the city of Fresno, County of Fresno, State of California, Monday, Wednesday, Friday, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Fresno, State of California, under the date of March 4, 1911, in Action No.14315; that the notice of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

SEPTEMBER 16, 2022

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Fresno, California,

SEPTEMBER 16, 2022

ON .....



NOTICE OF SECOND PUBLIC SCOPING MEETING FOR THE KEY ENERGY STORAGE PROJECT  
TO: Responsible and Trustee Agencies, other interested agencies, and members of the public  
FROM: County of Fresno, Department of Public Works and Planning Development Services and Capital Projects Division  
2220 Tulare Street, Sixth Floor  
Fresno, CA 93721  
SUBJECT: Notice of Second Public Scoping Meeting for the Key Energy Storage Project  
Notice Date: September 16, 2022  
Action: The County of Fresno will be the Lead Agency pursuant to the California Environmental Quality Act (CEQA) and will be responsible for preparing an Environmental Impact Report (EIR) pursuant to CEQA and the CEQA Guidelines for the Key Energy Storage Project. To inform the identification and analysis of potential impacts, alternatives, and mitigation measures in the EIR, the County will be holding a second public scoping meeting.  
Project Title: Key Energy Storage Project, Unclassified Conditional Use Permit Application No. 3734 & EIR No. 8189  
Project Applicant: Key Energy Storage, LLC  
Second Public Scoping Meeting: CEQA encourages public input throughout the planning process. Consistent with CEQA and CEQA Guidelines Section 15083, oral and written comments may be presented at one or more scoping meetings where the County will solicit input on the scope and content of the EIR, including environmental impacts of concern and mitigation measures or alternatives that should be considered. The County held one scoping meeting on Tuesday, August 9, 2022, and will hold a second scoping meeting for 30 minutes or until all who wish to speak have had an opportunity to do so. Meeting details for the second public scoping meeting are as follows:  
Date: Wednesday, September 21, 2022  
Time: 10:00 a.m.

If joining from a computer: <https://bit.ly/KeyEnergyStorageScopingMeeting>;  
Webinar ID: 816 6750 2078  
If joining by phone: (888) 788-0099  
Written Comments:  
Written scoping comments in will be accepted through 5 p.m. Friday, September 30, 2022. Please send written scoping input to:  
Attn: Jeremy Shaw  
Fresno County Department of Public Works and Planning  
Development Services and Capital Projects Division  
2220 Tulare Street, Sixth Floor  
Fresno, CA 93721  
Phone: (559) 600-4207 Fax: (559) 600-4200  
Email: [jshaw@FresnoCountyCA.gov](mailto:jshaw@FresnoCountyCA.gov)  
Please reference EIR 8189, Key Energy Storage Project. Include your name, address, and phone number and/or email address so that we may contact you for clarification, if necessary.  
Project Location and Summary:  
The Applicant proposes to construct, operate, maintain, and decommission an energy storage facility on approximately 318-acres of private land comprised of APNs 085-040-58S, 085-040-36S, and 085-040-37S in western Fresno County. The site is located 4 miles southwest of the City of Huron, 0.4 mile east of Interstate 5 (I-5), immediately south of W. Jayne Avenue, between I-5 and South Lassen Avenue (State Route 269), and adjacent to PG&E's existing Gates Substation.  
The project could store 3 gigawatts of energy or more in modular enclosures. The project would consist of a lithium ion, iron-flow, or other similar storage technology. On-site project support facilities would include a collector substation, inverters with connection lines, heating ventilating and air conditioning units, transformers, fencing, access roads, a supervisory control and data acquisition system, and security lighting. Diesel generators may be needed for substation purposes or to power water pumps for the existing well on parcel 085-040-58S. The project also includes an approximately 0.3-mile

long, 500-kilovolt (kV) overhead generation tie line that would extend north to the Gates Substation. This line would be installed on new steel or concrete poles, each up to 150 feet tall and spaced at approximately 500-foot intervals. Project buildout would occur in four phases.

Public notices, a project description, maps, and figures are available for review at the following locations:

§ Fresno County Public Works and Planning Department, 2220 Tulare Street, Suite A Street Level, Fresno, CA 93721

§ Fresno County website: [www.co.fresno.ca.us/EIR](http://www.co.fresno.ca.us/EIR)  
09/16/2022



Services

Resources

Departments

I Want To...

How can we help you?

SEARCH

Home / Departments / Public Works and Planning / Divisions of Public Works and Planning / Development Services / Planning and Land Use / Environmental Impact Reports / EIR 8189 Key Energy Storage Project

- Administration
- Maps and GIS Information
- Apply for a Building Permit via Citizens Portal
- Code Enforcement
- Construction Bidding Opportunities
- Divisions of Public Works and Planning
  - Admin Division
  - Capital Projects Division
  - Computer Data Systems (CDS)
  - Community Development Division
  - Construction Management Division
  - Design Division
  - Development Services
    - Building & Safety
    - Code Enforcement
    - Development Engineering (Grading/Drainage/Flood Information)
    - Planning and Land Use
    - Planning Forms
    - Zoning Ordinance
  - Resources and Parks Division
  - Road Maintenance and Operations Division
  - Water and Natural Resources Division
  - Flood Protection and Planning
  - General Plan
  - Household Hazardous Waste
  - Landfill Operations
  - Parks
  - Planning and Land Use
  - Forms
  - Customer Satisfaction Survey for Public Works
  - Recycling and Solid Waste Disposal
  - Request For Proposals
  - Surveyor's Office
  - Traffic Control

## EIR 8189 Key Energy Storage Project

Unclassified Conditional Use Permit Application No. 3734

(PDF, 16.23KB)

### Environmental Documents



- [Notice of Preparation \(NOP\)](#) (PDF, 2MB)
- [Notice of Second Preparation \(NOP\)](#) (PDF, 2MB)
- [Draft Environmental Impact Report](#) (PDF, 12MB)
- [Draft Environmental Impact Report Appendix](#) (PDF, 6.7MB)
- [Notice of Availability](#) (PDF, 2MB)
- [Notice of Completion](#) (PDF, 3MB)

### Public Scoping Meeting

Date: Wednesday, September 21, 2022  
 Time: 10:00 a.m.  
 If joining from a computer: <https://bit.ly/KeyEnergyStorageScopingMeeting>  
 Webinar ID: 816 6750 2078  
 If joining by phone: (888) 788-0099

The CEQA process encourages comments and questions from the public throughout the planning process. Consistent with the California Public Resources Code and Section 15083(c)(1), (2)(A) to (D) of the CEQA Guidelines, a Public Scoping Meeting will be held to solicit public and agency comments on the Scope and content of the Draft EIR. Oral and/or written comments also may be presented at the Public Scoping Meeting. The Public Scoping Meeting will be held online on:

Comments in response to this NOP will be accepted through 5 p.m. Tuesday, August 24, 2022 and may be submitted by mail or email to the addresses below:

Please send your written comments to:

Attn: Jeremy Shaw.  
 Fresno County Department of Public Works and Planning  
 Development Services and Capital Projects Division  
 2220 Tulare Street, Sixth Floor  
 Fresno, CA 93721  
 Phone: (559) 600-4204 Fax: (559) 600-4200  
 Email: [jshaw@FresnoCountyCA.gov](mailto:jshaw@FresnoCountyCA.gov)



E252310000256

# County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING  
STEVEN E. WHITE, DIRECTOR

## NOTICE OF AVAILABILITY

DRAFT ENVIRONMENTAL IMPACT REPORT FOR KEY ENERGY STORAGE PROJECT  
STATE CLEARINGHOUSE NO. 2022070414; FRESNO COUNTY EIR 8/189

**FILED**  
SEP 20 2023  
TIME 1:21 pm  
FRESNO COUNTY CLERK  
DEPUTY

**LEAD AGENCY:** Fresno County

**PROJECT TITLE:** Draft Environmental Impact Report (EIR) for the Key Energy Storage Project

**PROJECT LOCATION:** The Project site is in western Fresno County, approximately 0.4 mile east of Interstate 5 (I-5), immediately south of West Jayne Avenue, and between I-5 and South Lassen Avenue (State Route 269) and adjacent to PG&E's existing Gates Substation. Nearby communities include Huron (4 miles to the northeast), Avenal (7.5 miles to the south), and Coalinga (11.5 miles to the west). The 260-acres site is within the approximately 318 acres consisting of Fresno County Assessor Parcel Numbers: 085-040-58, 085-040-36, and 085-040-37.

**PROJECT DESCRIPTION:** Key Energy Storage, LLC has applied to the Fresno County Department of Public Works and Planning for a Conditional Use Permit No. 3734 to construct, operate, maintain, and decommission an energy storage facility. Project build-out would be phased. At full build-out, the Project would have capacity to store up to 3 gigawatts of energy during times of excess generation and dispatch it into the existing electrical grid later when needed. The Project would receive energy (charge) from the point of interconnection (POI) with the regional electric transmission system at PG&E's existing Gates Substation, store energy, and then deliver energy (discharge) back to the POI. The Project would consist of batteries using lithium-ion or lithium-ion and iron-flow storage technology. To interconnect the Project, Key Energy Storage, LLC and PG&E would construct, operate, and maintain a new 2,500-foot-long (up to 0.5-mile) 500-kilovolt transmission line, mostly on substation property, between the Gates Substation and the Project site. This line would be installed on new lattice steel towers, each up to 200 feet tall, which would be spaced at approximately 500-foot intervals. To accommodate the Project, PG&E also would modify existing infrastructure on the Gates Substation site and at the Midway Substation located approximately 63 miles southeast of the Project site in Buttonwillow, an unincorporated community in Kern County, California.

**SIGNIFICANT ENVIRONMENTAL EFFECTS:** The County of Fresno has prepared a Draft EIR analyzing the Project's potential environmental effects. The Project would have a less-than-significant impact (with or without mitigation measures) regarding: Aesthetics; Agriculture and Forestry Resources; Air Quality; Biological Resources; Cultural and Tribal Cultural Resources; Energy; Geology, Soils, and Paleontological Resources; Greenhouse Gas Emissions; Hazards and Hazardous Materials; Hydrology and Water Quality; Noise and Acoustics; Transportation; Utilities and Service Systems; and Wildfire. No impact would result to Land Use and Planning, Mineral Resources, Population and Housing, Public Services, or Recreation.

E202310000256

**PUBLIC REVIEW:** A 45-day comment period for the Draft EIR begins Thursday, September 21, 2023 and ends at 5:00 p.m. Monday, November 6, 2023. Written comments should reference EIR 8189, Key Energy Storage Project. Include your name, address, and phone number or email address so we may contact you for clarification, if necessary. Send written comments to:

Fresno County Department of Public Works and Planning  
Development Services and Capital Projects Division  
ATTN: Jeremy Shaw, Planner  
2220 Tulare Street, Suite B Annex (below street level)  
SW Corner of Tulare and 'M' Street  
Fresno, CA 93721  
Email: [jshaw@FresnoCountyCA.gov](mailto:jshaw@FresnoCountyCA.gov)

**AVAILABILITY OF THE DRAFT EIR:** Copies of the Draft EIR are available for review at the following locations:

- Fresno County Public Works and Planning Department, 2220 Tulare Street, Fresno.
- Fresno County Main Library, Reference Department, 2420 Mariposa Street, Fresno.
- Huron Public Library, 36050 O St, Huron, CA 93234.

**Key Battery Storage Project-specific Distribution List**  
**CUP No. 3734; EIR No. 8189**

<b>Delivery Method</b>	<b>Agencies, Tribes, Other Stakeholders</b>	<b>Contact</b>	<b>Address</b>	<b>City, State, ZIP</b>
<b>Project-specific recipients</b>				
Email-only	Fresno County	Jeremy Shaw	2220 Tulare St. 6th Floor	Fresno, CA 93721
Email-only	Fresno County	David Randall	2220 Tulare St. 6th Floor	Fresno, CA 93721
Email-only	Environmental Science Associates	Janna Scott	787 The Alameda, Suite 250	San Jose, CA 95126
Email-only	Environmental Science Associates	Olivia Silverstein	550 Kearny St, Suite 800	San Francisco, CA 94108
Email-only	NextEra	Patti Murphy		
Email-only	NextEra	Kaitlyn Toebe		
Email-only	NextEra	Virginia Thompson		
<b>Possible responsible agencies, trustee agencies, or potentially affected Federal agencies</b>				
Certified	California Department of Conservation, Division of Land Resource Protection	Dennis O'Bryant	801 "K" Street - M/S 13-71	Sacramento, CA 95814-3514
Certified	California Department of Conservation, Geologic Energy Management Division	Chris Jones, Acting District Deputy	801 "K" Street - M/S 18-05	Sacramento, CA 95814-3514
Certified	California Department of Fish & Wildlife, Region 8	Craig Bailey	1234 E. Shaw Avenue	Fresno, CA 93710
Certified	California Department of Forestry and Fire Protection, Fresno-Kings Unit		210 S. Academy Ave.	Sanger, CA 93657-9306
Certified	California Department of Transportation, District 6	Dave Padilla, Branch Chief, Transportation Planning – North	P.O. Box 12616	Fresno, CA 93778-2616
Certified	California Energy Commission	Terry O'Brien	1516 Ninth Street, MS-29	Sacramento, CA 95814-5512
Certified	California Environmental Protection Agency, Department of Toxic Substance Control	Dave Kereazis	1515 Tollhouse Road	Clovis, CA 93612
Certified	California Highway Patrol	Eric Walker, Captain	1380 E. Fortune Ave	Fresno, CA 93725
Certified	California Native American Heritage Commission	Katy Sanchez	1550 Harbor Boulevard, Suite 100	West Sacramento, CA 95691
Certified	California Public Utilities Commission	Mary Jo Borak	505 Van Ness Avenue	San Francisco, CA 94102
Certified	California Regional Water Quality Control Board, Region 5	Lewis Lummen	1685 E. Street	Fresno, CA 93706-2020
Certified	San Joaquin Valley Air Pollution Control District	Arnaud Marjollet, Director of Permit Services	1990 E. Gettysburg Avenue	Fresno, CA 93726
Certified	Southern San Joaquin Valley Archaeological Info Center	Celeste Thompson	9001 Stockdale Ave.	Bakersfield, CA 93311-1099
Certified	State Office of Historic Preservation, Department of Parks & Recreation	Lucinda Woodward	1725 23rd Street, Ste. 100	Sacramento CA 95816
Certified	United States Department of the Interior, Fish & Wildlife Services - Endangered Species Div.	Matthew J. Nelson, Wildlife Biologist/ Patricia Cole Division Superv	2800 Cottage Way	Sacramento, CA 95825-1888
Certified	State Water Resources Control Board, Division of Drinking Water	Jose Robledo/Cinthia Reyes	265 W. Bullard, Suite 101	Fresno, CA 93704
<b>Native American Tribes</b>				
US Mail	Dumna Wo Wah	Chris Acree	262 N. Glenn Avenue	Fresno, CA 93701
US Mail	Dumna Wo Wah Government	Robert Ledger, Tribal Chairman	2191 W. Pico	Fresno, CA 93705
US Mail	Picayune Rancharia of the Chukchansi Indians	Heather Airey - Cultural Resources Director	PO Box 2226	Oakhurst, CA 93644
US Mail	Santa Rosa Rancharia Tachi Yokut Tribe	Ruben Barrios, Tribal Chairman, c/o Cultural Department	PO Box 8	Lemoore, CA 93245
US Mail	Table Mountain Rancharia	Robert Pennell, Tribal Cultural Resources Director	P.O. BOX 410	Friant, CA 93626
<b>Other agencies</b>				
US Mail	Central Valley Flood Protection Board	Leslie Gallagher	3310 El Camino, Room LL40	Sacramento, CA 95821
US Mail	City of Kerman, Community Development Department	Jesus R. Orozco	850 S. Madera Avenue	Kerman, CA 93630-1741
US Mail	City of Mendota, Planning and Community Development	Cristian Gonzalez	643 Quince Street	Mendota, CA 93640
US Mail	City of Huron	John Kunkel, Interim City Manager	36311 S. Lassen Ave/P.O. Box 339	Huron, CA 93234
US Mail	City of San Joaquin	Lupe Estrada	21900 W Colorado Avenue	San Joaquin, CA 93660
US Mail	Consolidated Mosquito Abatement District	Steve Mulligan	P.O. Box 784	Parlier, CA 93648
US Mail	Fresno Council of Governments	Tory Boren	2035 Tulare St Ste 201	Fresno CA 93721
US Mail	Fresno Metropolitan Flood Control District	Frank Fowler	5469 E. Olive Avenue	Fresno, CA 93727
US Mail	Golden Plains Unified School District	Martin Macias, Superintendent	22000 Nevada Street	San Joaquin, CA 93660
US Mail	James Irrigation District	Manny Amorelli, Manager/ Donna Hanneman, Exc Assistant	P.O. Box 757	San Joaquin, CA 93660
US Mail	Kings Basin Water Authority		4886 E. Jensen Avenue	FRESNO, CA 93725
US Mail	Kings River Conservation District		4886 E. Jensen Avenue	Fresno, CA 93725
US Mail	Mendota Unified School District	Paul Peschel, General Manager	115 McCabe Ave.	Mendota, CA 93640
US Mail	NAVFACSW INTERGOVERNMENTAL BRANCH	Dr. Paul Lopez, Superintendent	1220 Pacific Highway	SAN DIEGO, CA 92132
US Mail	State of California Reclamation Board		P.O. Box 942836	Sacramento, CA 94236
US Mail	Tranquillity Irrigation District	Liz Reeves	Box 487	Tranquillity, CA 93668
US Mail	Tranquillity Resource Conservation District	Danny Wade	PO Box 487	Tranquillity, CA 93668-0487
US Mail	United State Department of Agriculture, Natural Resources Conservation Service	David Durnham	4625 W. Jennifer, Suite 125	Fresno, CA 93722
US Mail	United States Army Corp of Engineers, Sacramento District	Kathy Norton	1325 J Street, Room 1350	Sacramento CA 95814-2922
US Mail	United States Environmental Protection Agency Region 9	Dawn Richmond	75 Hawthorne Street (WTR-9)	San Francisco, CA 94105
US Mail	Westlands Water District	Russ Freeman/ Jose Gutierrez	P.O. Box 6056	Fresno, CA 93703-6056

US Mail	Westlands Water District (Westside Subbasin GSA)	Kiti Buelna Campbell	PO Box 6056	Fresno, CA 93703
US Mail	Westside Resources Conservation District		P.O. Box 6079	Tranquility, California 93624-0038

**Other stakeholders and special interests**

US Mail	Adams Broadwell Joseph & Cardozo	Maya Smith	601 Gateway Blvd, Suite 1000	South San Francisco, CA 94080-7037
US Mail	Laborers Intl Union of N. America, Local Union 294		1939 Harrison St Suite 150	Oakland, CA 94612
US Mail	Lozeau Drury, LLP	R. Drury, M. Lozeau, T. Rettinghouse, S. Osborne, H. Hughes, K. T	1939 Harrison St Suite 150	Oakland, CA 94612
US Mail	Downey Brand LLP	C/O Nicole Bigley	621 Capitol Mall, 18th Floor	Sacramento, CA 95814
US Mail	Ann Dresick Family Trust		PO BOX 1260	Huron, CA 93234
US Mail	Rebecca Avellar Turst		466 W FALLBROOK #107	Fresno, CA 93711
US Mail	Key Energy Storage, LLC		700 Universe Blvd.	June Beach, FL 33408
US Mail	John Dresick		PO BOX 1260	Huron, CA 93234
US Mail	Rebecca Kaser		466 W FALLBROOK #107	Fresno, CA 93711

EIR 8189 17 SurPOs by 1 mile	APN:s 085-040-58S, 36S, 37S	7/11/2022		19
SAJE FARMING CO II LP		P O BOX 1260	HURON CA 93234	Surrounding
NICHOLS THOMAS E JR		P O BOX 420	FARWELL TX 79325	Surrounding
WOLF CHRISTOPHER R TRUSTEE	DELAWARE ANNE A TRUSTEE ETAL	7041 N VAN NESS	FRESNO CA 93711	Surrounding
COELHO JOE JR TRUSTEE	JAC I LLC ETALC/O J COELHO	1615 E WOOD	LATON CA 93242	Surrounding
SAJE FARMING CO LP		P O BOX 1260	HURON CA 93234	Surrounding
WOLF CHRISTOPHER R TRUSTEE (LAND)	DELAWARE ANNE A TRUSTEE (LAND)	7041 N VAN NESS	FRESNO CA 93711	Surrounding
ANDREWS NANCY R		772 OCEAN AVE	CAYUCOS CA 93430	Surrounding
NAGRA SUKHBIR S & PARAMJEET K		202 SAGE SPARROW CIR	VACAVILLE CA 95687	Surrounding
DRESICK MICHELLE L TRUSTEE		P O BOX 1260	HURON CA 93234	Surrounding
KASER REBECCA L TRS		466 W FALLBROOK #107	FRESNO CA 93711	Surrounding
DRESICK JOHN E TRUSTEE		P O BOX 1260	HURON CA 93234	Surrounding
BOYCE LAND CO INC	C/O A BOYCE	2133 GARDEN VIEW LN	WEDDINGTON NC 28104	Surrounding
WOLF CHRISTOPHER R TRUSTEE	DELAWARE ANNE A TRUSTEE	7041 N VAN NESS	FRESNO CA 93711	Surrounding
CALIFLAND CORPORATION	C/O SUN GRAPE MKTG	P O BOX 870	VISALIA CA 93279	Surrounding
CHEVRON USA INC	C/O PROPERTY TAX DEPT	P O BOX 1392	BAKERSFIELD CA 93302	Surrounding
GONELLA NEIL		11454 HARVEY PETTIT RD	LE GRAND CA 95333	Surrounding
WOLF MICHAEL T TRUSTEE		7031 N VAN NESS	FRESNO CA 93711	Surrounding
Ann Dresick Family Trust		PO BOX 1260	Huron, CA 93234	O
Rebecca Avellar Turst		466 W FALLBROOK #107	Fresno, CA 93711	O
John Dresick		PO BOX 1260	Huron, CA 93234	R
Rebecca Kaser		466 W FALLBROOK #107	Fresno, CA 93711	R



**Subject:** FW: Key Energy Storage Project/RE: CEQA Comment Period Extension Request

**Importance:** High

---

**From:** Shaw, Jeremy

**Sent:** Thursday, November 16, 2023 3:30 PM

**To:** Aidan P. Marshall <[amarshall@adamsbroadwell.com](mailto:amarshall@adamsbroadwell.com)>

**Cc:** Potthast, Joseph <[jpotthast@fresnocountyca.gov](mailto:jpotthast@fresnocountyca.gov)>; Avalos, Michelle <[mavalos@fresnocountyca.gov](mailto:mavalos@fresnocountyca.gov)>

**Subject:** RE: Key Energy Storage Project/RE: CEQA Comment Period Extension Request

**Importance:** High

Good afternoon Mr. Marshall,

The County has reviewed your request for the time extension to review the Draft EIR for the Key Energy Storage Project. We disagree that the County failed to provide access to the reference materials during the public review period, as the Draft EIR along with appendices and references were available in hard copy at two public library locations addressed in the Notice of Availability, and here in the Development Services Office, as per CEQA requirements. Nonetheless, we will extend the public review period for 15 calendar days effective November 7, 2023, ending at 5:00 p.m. Pacific Standard Time on November 21, 2023.

Sincerely,



**Jeremy Shaw | Planner**

**Department of Public Works and Planning |  
Development Services and Capital Projects Division**

2220 Tulare St. 6th Floor Fresno, CA 93721

Main Office: (559) 600-4230 Direct: (559) 600-4207

Email: [jshaw@fresnocountyca.gov](mailto:jshaw@fresnocountyca.gov)

[Your input matters! Customer Service Survey](#)

---

**From:** Aidan P. Marshall <[amarshall@adamsbroadwell.com](mailto:amarshall@adamsbroadwell.com)>

**Sent:** Thursday, November 02, 2023 2:51 PM

**To:** Shaw, Jeremy <[jshaw@fresnocountyca.gov](mailto:jshaw@fresnocountyca.gov)>

**Cc:** Potthast, Joseph <[jpotthast@fresnocountyca.gov](mailto:jpotthast@fresnocountyca.gov)>; Avalos, Michelle <[mavalos@fresnocountyca.gov](mailto:mavalos@fresnocountyca.gov)>

**Subject:** RE: Key Energy Storage Project/RE: CEQA Comment Period Extension Request

Hi Jeremy,

Has the County finished reviewing our request to extend the public review period? The public comment period closes in two business days on November 6<sup>th</sup>, and the County is only providing access to the DEIR reference documents today. Per my prior correspondence, CEQA requires DEIR reference documents to be made available for public review throughout the public review period. We respectfully request the County approve our extension request as soon as possible. Please let me know if you have any questions.

Best,

Aidan

Aidan P. Marshall  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080  
(650) 589-1660  
[amarshall@adamsbroadwell.com](mailto:amarshall@adamsbroadwell.com)

---

**From:** Shaw, Jeremy <[jshaw@fresnocountyca.gov](mailto:jshaw@fresnocountyca.gov)>  
**Sent:** Tuesday, October 31, 2023 4:46 PM  
**To:** Aidan P. Marshall <[amarshall@adamsbroadwell.com](mailto:amarshall@adamsbroadwell.com)>  
**Cc:** Potthast, Joseph <[jpotthast@fresnocountyca.gov](mailto:jpotthast@fresnocountyca.gov)>; Avalos, Michelle <[mavalos@fresnocountyca.gov](mailto:mavalos@fresnocountyca.gov)>  
**Subject:** Key Energy Storage Project/RE: CEQA Comment Period Extension Request  
**Importance:** High

 [Key References](#)

Good afternoon Aidan,

We will review your request for an extension of time on the public review period. In the meantime, please utilize the above link to access the requested reference materials.

Thank you.

Sincerely,



**Jeremy Shaw | Planner**  
**Department of Public Works and Planning |**  
**Development Services and Capital Projects Division**  
2220 Tulare St. 6th Floor Fresno, CA 93721  
Main Office: (559) 600-4230 Direct: (559) 600-4207  
Email: [jshaw@fresnocountyca.gov](mailto:jshaw@fresnocountyca.gov)  
[Your input matters! Customer Service Survey](#)

---

**From:** Aidan P. Marshall <[amarshall@adamsbroadwell.com](mailto:amarshall@adamsbroadwell.com)>  
**Sent:** Tuesday, October 31, 2023 11:36 AM  
**To:** Shaw, Jeremy <[jshaw@fresnocountyca.gov](mailto:jshaw@fresnocountyca.gov)>  
**Subject:** CEQA Comment Period Extension Request

Hi Jeremy,

Thank you for taking my call. Below is correspondence between our paralegal and the County regarding our two records requests. It appears that our request for access to documents referenced in the DEIR, made pursuant to CEQA, was mistakenly closed.

To summarize the issue (described more thoroughly in the attached letter), the EIR relies on numerous reference documents that have not been made available during the public comment period. CEQA requires that "all documents referenced" – and the CEQA Guidelines require that "all documents incorporated by reference" – in a draft

environmental impact report shall be “readily accessible to the public during the lead agency’s normal working hours” during the entire public comment period. [Pub. Resources Code § 21092(b)(1); 14 C.C.R. § 15072(g)(4); see *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.]. Since the reference documents were not made available during the public comment period, we request the County extend the public review and comment period on the DEIR for at least 45 days from the date on which the County releases all reference documents for public.

Since the public comment period concludes on September 6<sup>th</sup> (four business days from now), we request the County approve our extension request as soon as possible.

Please let me know if you have any questions.

Best,  
Aidan

Aidan P. Marshall  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080  
(650) 589-1660  
[amarshall@adamsbroadwell.com](mailto:amarshall@adamsbroadwell.com)

---

**From:** Yang, Ahla <[ahlayang@fresnocountyca.gov](mailto:ahlayang@fresnocountyca.gov)>  
**Sent:** Thursday, October 26, 2023 1:08 PM  
**To:** Alexandra E. Stukan <[astukan@adamsbroadwell.com](mailto:astukan@adamsbroadwell.com)>  
**Subject:** RE: Confirming PRA received by the County of Fresno -

Hi Alexandra,

I will follow up with PWP staff on 23-891 as well. I see that the task was closed, as it was erroneously identified as a “duplicate” of 23-854. I apologize for the inconvenience. This was the sort of confusion I was trying to avoid previously. I have reopened it, and will notify PWP staff.

To answer your second question, Requesters do have the ability to make a comments and ask questions directly to the PRA request task. If you make a comment or ask a question in the NextRequest system, the comment will be posted to the actual PRA request, tracked within the system, and the staff assigned to the request will be notified.



**Ahla Yang** | Senior Administrative Analyst  
County Administrative Office  
2281 Tulare St., Suite 304, Fresno, CA 93721  
Main Office: (559) 600-1710 Direct: (559) 600-1227  
*Providing excellent public services to our diverse community*



---

**From:** Alexandra E. Stukan <[astukan@adamsbroadwell.com](mailto:astukan@adamsbroadwell.com)>  
**Sent:** Thursday, October 26, 2023 12:18 PM  
**To:** Yang, Ahla <[ahlayang@fresnocountyca.gov](mailto:ahlayang@fresnocountyca.gov)>  
**Subject:** RE: Confirming PRA received by the County of Fresno -

Hi Ahla,

Sounds good, thank you! We also have an open request #23-891, would you mind checking on that one also? If there's another person in Public Works and Planning I should contact instead for updates in the future, please let me know.

Thanks!  
Alex

---

**From:** Yang, Ahla <[ahlayang@fresnocountyca.gov](mailto:ahlayang@fresnocountyca.gov)>  
**Sent:** Thursday, October 26, 2023 12:06 PM  
**To:** Alexandra E. Stukan <[astukan@adamsbroadwell.com](mailto:astukan@adamsbroadwell.com)>  
**Subject:** RE: Confirming PRA received by the County of Fresno -

Good afternoon Alexandra,

Of the records I can find for you, I see request number 23-854 open, in "Overdue" status, pertaining to 624-004j.

I do not have an ETA for you, as the Department of Public Works and Planning is assigned to this task. I will follow up with them.

Please confirm if there are any different requests you are awaiting for.



**Ahla Yang | Senior Administrative Analyst**

**County Administrative Office**

2281 Tulare St., Suite 304, Fresno, CA 93721

Main Office: (559) 600-1710 Direct: (559) 600-1227

*Providing excellent public services to our diverse community*



---

**From:** Alexandra E. Stukan <[astukan@adamsbroadwell.com](mailto:astukan@adamsbroadwell.com)>  
**Sent:** Thursday, October 26, 2023 12:01 PM  
**To:** Yang, Ahla <[ahlayang@fresnocountyca.gov](mailto:ahlayang@fresnocountyca.gov)>  
**Subject:** RE: Confirming PRA received by the County of Fresno -

Good afternoon, Ahla,

I hope you're doing well! Would you happen to have an estimated timeframe for a response to our requests?

Thanks!  
Alex

---

**From:** Yang, Ahla <[ahlayang@fresnocountyca.gov](mailto:ahlayang@fresnocountyca.gov)>  
**Sent:** Thursday, October 12, 2023 3:33 PM  
**To:** Alexandra E. Stukan <[astukan@adamsbroadwell.com](mailto:astukan@adamsbroadwell.com)>  
**Subject:** RE: Confirming PRA received by the County of Fresno -

Thank you Alex! Much appreciated. And please do not hesitate to contact me if you ever have any questions or require assistance.



**Ahla Yang** | Senior Administrative Analyst

**County Administrative Office**

2281 Tulare St., Suite 304, Fresno, CA 93721

Main Office: (559) 600-1710 Direct: (559) 600-1227

*Providing excellent public services to our diverse community*



---

**From:** Alexandra E. Stukan <[astukan@adamsbroadwell.com](mailto:astukan@adamsbroadwell.com)>

**Sent:** Thursday, October 12, 2023 2:10 PM

**To:** Yang, Ahla <[ahlayang@fresnocountyca.gov](mailto:ahlayang@fresnocountyca.gov)>

**Subject:** RE: Confirming PRA received by the County of Fresno -

Hi Ahla,

Not a problem, I'll make a note to include you on all future requests. I don't think the possibility of your replacement would be an issue – if you're not the one responding to me, I'll probably figure it out.

Thank you so much for your help with this!

Alex

---

**From:** Yang, Ahla <[ahlayang@fresnocountyca.gov](mailto:ahlayang@fresnocountyca.gov)>

**Sent:** Thursday, October 12, 2023 1:25 PM

**To:** Alexandra E. Stukan <[astukan@adamsbroadwell.com](mailto:astukan@adamsbroadwell.com)>

**Subject:** RE: Confirming PRA received by the County of Fresno -

Alex,

That is a great suggestion and would be extremely helpful. The only future issue I can think of, is in the event that I am replaced as the PRA Coordinator for the County, however we can cross that bridge when we get there, and I can update you should that happen.

Yes, if you can include me as a CC in any PRA requests sent to the County, it would allow me to keep tabs on which of your requests are current vs duplicates.

Thank you.



**Ahla Yang** | Senior Administrative Analyst

**County Administrative Office**

2281 Tulare St., Suite 304, Fresno, CA 93721

Main Office: (559) 600-1710 Direct: (559) 600-1227

*Providing excellent public services to our diverse community*



---

**From:** Alexandra E. Stukan <[astukan@adamsbroadwell.com](mailto:astukan@adamsbroadwell.com)>  
**Sent:** Thursday, October 12, 2023 1:18 PM  
**To:** Yang, Ahla <[ahlayang@fresnocountyca.gov](mailto:ahlayang@fresnocountyca.gov)>  
**Subject:** RE: Confirming PRA received by the County of Fresno -

Hi Ahla,

Thank you so much, I really appreciate you reaching out about this. You're correct, only one of the documents was submitted to the online portal when both should have been. That's entirely my mistake, thank you for pointing it out. Sometimes I submit so many requests in a day, they all start to look the same.

Would you like me to include you on future emails when we send notice about records requests? I'd be more than happy to do so if you think it would reduce any future confusion.

I really appreciate your help with this.

Sincerely,  
Alex

Alex Stukan  
Paralegal  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080  
Phone (650) 589-1660  
Fax (650) 589-5062  
[astukan@adamsbroadwell.com](mailto:astukan@adamsbroadwell.com)

---

**From:** Yang, Ahla <[ahlayang@fresnocountyca.gov](mailto:ahlayang@fresnocountyca.gov)>  
**Sent:** Thursday, October 12, 2023 1:12 PM  
**To:** Alexandra E. Stukan <[astukan@adamsbroadwell.com](mailto:astukan@adamsbroadwell.com)>  
**Subject:** RE: Confirming PRA received by the County of Fresno -

Alex,

After I had sent you the below email, I did find Request #23-854 in our NextRequest system, for the document numbered 6241-004j, so I did not create a new request for that item.

For the document with the number 6241-003j, I could not locate an existing record, so a new NextRequest number #23-891, was assigned. You should have received an email notification for that request.

As an FYI to you, when these items are sent by US mail, email, or in any other manner to departments, including when sent in duplicate to multiple departments (such as to PWP, Clerk, to the Board, etc.), all the requests make their way back to me, so that I can verify that they are entered into NextRequest.

As you imagine, things can get a little mixed up at first, so thank you for circling back to confirm the number of requests.

I'll continue to reach out in the future should there be any clarification needed.



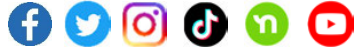
**Ahla Yang** | Senior Administrative Analyst

County Administrative Office

2281 Tulare St., Suite 304, Fresno, CA 93721

Main Office: (559) 600-1710 Direct: (559) 600-1227

*Providing excellent public services to our diverse community*



---

**From:** Alexandra E. Stukan <[astukan@adamsbroadwell.com](mailto:astukan@adamsbroadwell.com)>  
**Sent:** Thursday, October 12, 2023 12:18 PM  
**To:** Yang, Ahla <[ahlayang@fresnocountyca.gov](mailto:ahlayang@fresnocountyca.gov)>  
**Subject:** RE: Confirming PRA received by the County of Fresno -

**CAUTION!!! - EXTERNAL EMAIL - THINK BEFORE YOU CLICK**

Hi Ahla,

It seems like there was an issue with the first email sent, hence why our Legal Admin tried to recall it and then sent the second one. These are the same request, just sent twice due to a mistake.

I did submit the request through the online portal – our request number is 23-854. I received an acknowledgment message stating that we would receive a response in 10 days. Please do not open another online request for this project.

Please let me know if you have any questions.

Sincerely,  
Alex

Alex Stukan  
Paralegal  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080  
Phone (650) 589-1660  
Fax (650) 589-5062  
[astukan@adamsbroadwell.com](mailto:astukan@adamsbroadwell.com)

---

**From:** Yang, Ahla <[ahlayang@fresnocountyca.gov](mailto:ahlayang@fresnocountyca.gov)>  
**Sent:** Thursday, October 12, 2023 9:52 AM  
**To:** Alexandra E. Stukan <[astukan@adamsbroadwell.com](mailto:astukan@adamsbroadwell.com)>  
**Subject:** Confirming PRA received by the County of Fresno -

Alex,

The Fresno County Clerk to the Board, forwarded me what I believe to be two (2) public records requests from your office, dated October 3, 2023.

There were several emails, including some recall notices, and some duplicate requests.

I also notice that these two requests state "Via Online Portal", however I am unable to locate these requests in the County's NextRequest system. As such, I will be entering them into the system. I apologize if there is any duplication, as I try to organize these request.

Please confirm if there were any additional requests that I have not captured here in your latest request. I have the above 2 requests, that I will be entering into our Next Request PRA system.



**Ahla Yang | Senior Administrative Analyst**

**County Administrative Office**

2281 Tulare St., Suite 304, Fresno, CA 93721

Main Office: (559) 600-1710 Direct: (559) 600-1227

*Providing excellent public services to our diverse community*





# Appendix B

## **Recipients of the Final EIR**



Key Battery Storage Project-specific Distribution List  
CUP No. 3734; EIR No. 8189

Delivery Method	Agencies, Tribes, Other Stakeholders	Contact	Address	City, State, ZIP	Email	Email NOP notification	Scoping Input Rec'd	Comments on DEIR
<b>Project-specific recipients</b>								
Email-only	Fresno County	Jeremy Shaw	2220 Tulare St. 6th Floor	Fresno, CA 93721	<a href="mailto:jshaw@fresnocounty.ca.gov">jshaw@fresnocounty.ca.gov</a>	7/25/2022		
Email-only	Fresno County	David Randall	2220 Tulare St. 6th Floor	Fresno, CA 93721	<a href="mailto:drandall@fresnocounty.ca.gov">drandall@fresnocounty.ca.gov</a>	7/25/2022		
Email-only	Environmental Science Associates	Janna Scott	787 The Alameda, Suite 250	San Jose, CA 95126	<a href="mailto:jscott@esassoc.com">jscott@esassoc.com</a>	7/25/2022		
Email-only	Environmental Science Associates	Olivia Silverstein	550 Kearny St, Suite 800	San Francisco, CA 94108	<a href="mailto:Osilverstein@esassoc.com">Osilverstein@esassoc.com</a>	7/25/2022		
Email-only	NextEra	Patti Murphy			<a href="mailto:patti.murphy@nexteraenergy.com">patti.murphy@nexteraenergy.com</a>	7/25/2022		
Email-only	NextEra	Kaitlyn Toebe			<a href="mailto:kaitlyn.toebe@nexteraenergy.com">kaitlyn.toebe@nexteraenergy.com</a>	7/25/2022		
Email-only	NextEra	Virginia Thompson			<a href="mailto:virginia.thompson@nexteraenergy.com">virginia.thompson@nexteraenergy.com</a>	7/25/2022		
<b>Possible responsible agencies, trustee agencies, or potentially affected Federal agencies</b>								
Certified	California Department of Conservation, Division of Land Resource Protection	Dennis O'Bryant	801 "K" Street - M/S 13-71	Sacramento, CA 95814-3514	<a href="mailto:dbrp@conservation.ca.gov">dbrp@conservation.ca.gov</a>	7/25/2022	7/29/2022	
Certified	California Department of Conservation, Geologic Energy Management Division	Chris Jones, Acting District Deputy	715 P Street, MS 1803	Sacramento, CA 95814	<a href="mailto:Victor.Medrano@conservation.ca.gov">Victor.Medrano@conservation.ca.gov</a>	7/25/2022	7/27/2022	9/27/2023
Certified	California Department of Fish & Wildlife, Central Region (Region 8)	Julie A. Vance, Regional Manager	1234 E. Shaw Avenue	Fresno, CA 93710	<a href="mailto:craig.bailey@wildlife.ca.gov">craig.bailey@wildlife.ca.gov</a> , <a href="mailto:Kelley.Nelson@wildlife.ca.gov">Kelley.Nelson@wildlife.ca.gov</a> , <a href="mailto:R4CEQA@wildlife.ca.gov">R4CEQA@wildlife.ca.gov</a>	7/25/2022	9/2/2022	11/27/2023
Certified	California Department of Forestry and Fire Protection, Fresno-Kings Unit		210 S. Academy Ave.	Sanger, CA 93657-9306	<a href="mailto:FKU.Prevention-Planning@fire.ca.gov">FKU.Prevention-Planning@fire.ca.gov</a>	7/25/2022		
Certified	California Department of Transportation, District 6	Dave Padilla, Branch Chief, Transportation Planning – North	1352 West Olive Avenue (P.O. Box 12)	Fresno, CA 93778-2616	<a href="mailto:dave.padilla@dot.ca.gov">dave.padilla@dot.ca.gov</a> , <a href="mailto:edgar.hernandez@dot.ca.gov">edgar.hernandez@dot.ca.gov</a> , <a href="mailto:Christopher.Xiong@dot.ca.gov">Christopher.Xiong@dot.ca.gov</a>	7/25/2022	8/24/2022	11/21/2023
Certified	California Energy Commission	Terry O'Brien	1516 Ninth Street, MS-29	Sacramento, CA 95814-5512				
Certified	California Environmental Protection Agency, Department of Toxic Substance Control	Dave Kerezais	1515 Tollhouse Road	Clovis, CA 93612	<a href="mailto:dave.kerezais@dtsc.ca.gov">dave.kerezais@dtsc.ca.gov</a>	7/25/2022		
Certified	California Highway Patrol	Eric Walker, Captain	1380 E. Fortune Ave	Fresno, CA 93725				
Certified	California Native American Heritage Commission	Katy Sanchez	1550 Harbor Boulevard, Suite 100	West Sacramento, CA 95691	<a href="mailto:Cameron.Vela@nahc.ca.gov">Cameron.Vela@nahc.ca.gov</a>		7/22/2022	
Certified	California Public Utilities Commission	Mary Jo Borak	505 Van Ness Avenue	San Francisco, CA 94102	<a href="mailto:bor@cpuc.ca.gov">bor@cpuc.ca.gov</a> , <a href="mailto:Roxanne.Henriquez@cpuc.ca.gov">Roxanne.Henriquez@cpuc.ca.gov</a>	7/25/2022		
Certified	California Regional Water Quality Control Board, Region 5	Lewis Lummen	1685 E. Street	Fresno, CA 93706-2020	<a href="mailto:centralvalleyfresno@waterboards.ca.gov">centralvalleyfresno@waterboards.ca.gov</a> , <a href="mailto:Lewis.Lummen@waterboards.ca.gov">Lewis.Lummen@waterboards.ca.gov</a>	7/25/2022		
Certified	San Joaquin Valley Air Pollution Control District	Brian Clements, Director of Permit Services	1990 E. Gettysburg Avenue	Fresno, CA 93726	<a href="mailto:ceqa@valleyair.org">ceqa@valleyair.org</a> , <a href="mailto:keanu.morin@valleyair.org">keanu.morin@valleyair.org</a> , <a href="mailto:Matt.Crow@valleyair.org">Matt.Crow@valleyair.org</a>	7/25/2022	8/24/2022	11/6/2023
Certified	Southern San Joaquin Valley Archaeological Info Center	Celeste Thompson	9001 Stockdale Ave.	Bakersfield, CA 93311-1099	<a href="mailto:ssivic@csub.edu">ssivic@csub.edu</a>	7/25/2022		
Certified	State Office of Historic Preservation, Department of Parks & Recreation	Lucinda Woodward	1725 23rd Street, Ste. 100	Sacramento CA 95816	<a href="mailto:lwoodward@parks.ca.gov">lwoodward@parks.ca.gov</a> , <a href="mailto:Shannon.Pries@parks.ca.gov">Shannon.Pries@parks.ca.gov</a>	7/25/2022		
Certified	United States Department of the Interior, Fish & Wildlife Services - Endangered Species Div.	Matthew J. Nelson, Wildlife Biologist/ Patricia Cole Division Superv	2800 Cottage Way	Sacramento, CA 95825-1888	<a href="mailto:matthew_nelson@fws.gov">matthew_nelson@fws.gov</a> , <a href="mailto:patricia_cole@fws.gov">patricia_cole@fws.gov</a>	7/25/2022		
Certified	State Water Resources Control Board, Division of Drinking Water	Jose Robledo/Cinthia Reyes	265 W. Bullard, Suite 101	Fresno, CA 93704	<a href="mailto:Jose.Robledo@Waterboards.ca.gov">Jose.Robledo@Waterboards.ca.gov</a> , <a href="mailto:Cinthia.Reyes@Waterboards.ca.gov">Cinthia.Reyes@Waterboards.ca.gov</a>	7/25/2022		
<b>Native American Tribes</b>								
US Mail	Dumna Wo Wah	Chris Acree	262 N. Glenn Avenue	Fresno, CA 93701	<a href="mailto:cacree@hotmail.com">cacree@hotmail.com</a>	7/25/2022		
US Mail	Dumna Wo Wah Government	Robert Ledger, Tribal Chairman	2191 W. Pico	Fresno, CA 93705	<a href="mailto:ledgerrobert@ymail.com">ledgerrobert@ymail.com</a>	7/25/2022		
US Mail	Picayune Rancheria of the Chukchansi Indians	Heather Airey - Cultural Resources Director	PO Box 2226	Oakhurst, CA 93644	<a href="mailto:hairey@chukchansi-nsn.gov">hairey@chukchansi-nsn.gov</a>	7/25/2022		
US Mail	Santa Rosa Rancheria Tachi Yokut Tribe	Ruben Barrios, Tribal Chairman, c/o Cultural Department	PO Box 8	Lemoore, CA 93245	<a href="mailto:SMcCarthy@tachi-yokut-nsn.gov">SMcCarthy@tachi-yokut-nsn.gov</a> , <a href="mailto:spowers@tachi-yokut-nsn.gov">spowers@tachi-yokut-nsn.gov</a>	7/25/2022		
US Mail	Table Mountain Rancheria	Robert Pennell, Tribal Cultural Resources Director	P.O. BOX 410	Friant, CA 93626	<a href="mailto:rpennell@tmr.org">rpennell@tmr.org</a>	7/25/2022		
<b>Other agencies</b>								
US Mail	Central Valley Flood Protection Board	Leslie Gallagher	3310 El Camino, Room LL40	Sacramento, CA 95821				
US Mail	City of Kerman, Community Development Department	Jesus R. Orozco	850 S. Madera Avenue	Kerman, CA 93630-1741	<a href="mailto:mcampos@cityofkerman.org">mcampos@cityofkerman.org</a>			
US Mail	City of Mendota, Planning and Community Development	Cristian Gonzalez	643 Quince Street	Mendota, CA 93640	<a href="mailto:cristian@cityofmendota.com">cristian@cityofmendota.com</a>	7/25/2022		
US Mail	City of Huron	John Kunkel, Interim City Manager	36311 S. Lassen Ave/P.O. Box 339	Huron, CA 93234	<a href="mailto:john@cityofhuron.com">john@cityofhuron.com</a>	7/25/2022		
US Mail	City of San Joaquin	Lupe Estrada	21900 W Colorado Avenue	San Joaquin, CA 93660		7/25/2022		
US Mail	Consolidated Mosquito Abatement District	Steve Mulligan	P.O. Box 784	Parlier, CA 93648	<a href="mailto:smulligan@mosquitobuzz.net">smulligan@mosquitobuzz.net</a> , <a href="mailto:jholeman@mosquitobuzz.net">jholeman@mosquitobuzz.net</a>	7/25/2022		
US Mail	Fresno Council of Governments	Tory Boren	2035 Tulare St Ste 201	Fresno CA 93721				
US Mail	Fresno Metropolitan Flood Control District	Frank Fowler	5469 E. Olive Avenue	Fresno, CA 93727	<a href="mailto:developmentreview@fresnofloodcontrol.org">developmentreview@fresnofloodcontrol.org</a>	7/25/2022		
US Mail	Golden Plains Unified School District	Martin Macias, Superintendent	22000 Nevada Street	San Joaquin, CA 93660	<a href="mailto:mmacias@gpsud.org">mmacias@gpsud.org</a>	7/25/2022		
US Mail	James Irrigation District	Manny Amorelli, Manager/ Donna Hanneman, Exc Assistant	P.O. Box 757	San Joaquin, CA 93660	<a href="mailto:manmorelli@jamesid.org">manmorelli@jamesid.org</a> , <a href="mailto:dhanneman@jamesid.org">dhanneman@jamesid.org</a>	7/25/2022		

US Mail	Kings Basin Water Authority		4886 E. Jensen Avenue	FRESNO, CA 93725			
US Mail	Kings River Conservation District	Paul Peschel, General Manager	4886 E. Jensen Avenue	Fresno, CA 93725	<a href="mailto:comments@krcd.org">comments@krcd.org</a>	7/25/2022	
US Mail	Mendota Unified School District	Dr. Paul Lopez, Superintendent	115 McCabe Ave.	Mendota, CA 93640	<a href="mailto:plopez@mendotaschools.org">plopez@mendotaschools.org</a>	7/25/2022	
US Mail	NAVFACSW INTERGOVERNMENTAL BRANCH		1220 Pacific Highway	SAN DIEGO, CA 92132			
US Mail	State of California Reclamation Board		P.O. Box 942836	Sacramento, CA 94236		7/25/2022	
US Mail	Tranquillity Irrigation District	Liz Reeves	Box 487	Tranquillity, CA 93668	<a href="mailto:liz@trqid.com">liz@trqid.com</a>	7/25/2022	
US Mail	Tranquillity Resource Conservation District	Danny Wade	PO Box 487	Tranquillity, CA 93668-0487	<a href="mailto:easyrider@netplc.net">easyrider@netplc.net</a>	7/25/2022	
US Mail	United State Department of Agriculture, Natural Resources Conservation Service	David Durham	4625 W. Jennifer, Suite 125	Fresno, CA 93722			
US Mail	United States Army Corp of Engineers, Sacramento District	Kathy Norton	1325 J Street, Room 1350	Sacramento CA 95814-2922	<a href="mailto:kathy.norton@usace.army.mil">kathy.norton@usace.army.mil</a> <a href="mailto:SPKRegulatoryMailbox@usace.army.mil">SPKRegulatoryMailbox@usace.army.mil</a>	7/25/2022	
US Mail	United States Environmental Protection Agency Region 9	Dawn Richmond	75 Hawthorne Street (WTR-9)	San Francisco, CA 94105	<a href="mailto:richmond.dawn@epa.gov">richmond.dawn@epa.gov</a>	7/25/2022	
US Mail	Westlands Water District	Russ Freeman, P.E., Deputy General Manager - Resources	286 W. Cromwell Ave (P.O. Box 5199)	Fresno, CA 93703-6056	<a href="mailto:rffreeman@wwd.ca.gov">rffreeman@wwd.ca.gov</a> , <a href="mailto:lgutierrez@wwd.ca.gov">lgutierrez@wwd.ca.gov</a> , <a href="mailto:pubaffairs@wwd.ca.gov">pubaffairs@wwd.ca.gov</a>	7/25/2022	11/6/2023
US Mail	Westlands Water District (Westside Subbasin GSA)	Kiti Buelna Campbell	PO Box 6056	Fresno, CA 93703	<a href="mailto:kcampbell@wwd.ca.gov">kcampbell@wwd.ca.gov</a>	7/25/2022	
US Mail	Westside Resources Conservation District		P.O. Box 6079	Tranquility, California 93624-0038			
<b>Other stakeholders and special interests</b>							
US Mail	Adams Broadwell Joseph & Cardozo	Aidan P. Marshall, Alex Stukan (Paralegal), Maya Smith	601 Gateway Blvd, Suite 1000	South San Francisco, CA 94080-7037	<a href="mailto:astukan@adamsbroadwell.com">astukan@adamsbroadwell.com</a>		11/6/2023, 10/30/2023 and 10/3/2023
US Mail	Laborers Intl Union of N. America, Local Union 294		1939 Harrison St Suite 150	Oakland, CA 94612			
US Mail	Lozeau Drury, LLP	R. Drury, M. Lozeau, T. Rettinghouse, S. Osborne, H. Hughes, K.	1939 Harrison St Suite 150	Oakland, CA 94612	<a href="mailto:admin@lozeaudrury.com">admin@lozeaudrury.com</a>	7/25/2022	
US Mail	Downey Brand LLP	C/O Nicole Bigley	621 Capitol Mall, 18th Floor	Sacramento, CA 95814	<a href="mailto:KingsRiverNotices@downeybrand.com">KingsRiverNotices@downeybrand.com</a>	7/25/2022	
US Mail	Ann Dresick Family Trust		PO BOX 1260	Huron, CA 93234			
US Mail	Rebecca Avellar Turst		466 W FALLBROOK #107	Fresno, CA 93711			
US Mail	Key Energy Storage, LLC		700 Universe Blvd.	June Beach, FI 33408			
US Mail	John Dresick		PO BOX 1260	Huron, CA 93234			
US Mail	Rebecca Kaser		466 W FALLBROOK #107	Fresno, CA 93711			
US Mail	Defenders of Wildlife, California Program Office	Sophia Markowska, Senior California Representative	P.O. Box 401	Folsom, CA 95763	<a href="mailto:Smarkowska@defenders.org">Smarkowska@defenders.org</a>		11/6/2023
US Mail	Pacific Gas and Electric Company	Danielle Wilson, Contract Senior Land Planner	2730 Gateway Oaks Drive, Second Flo	Sacramento, CA 95833	<a href="mailto:d1wz@pge.com">d1wz@pge.com</a>		11/6/2023