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481 Fourth St., 2nd Floor
Hollister, CA 95023

Baker Botts LLP
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San Francisco, CA 94111

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FIRST AMENDED DEVELOPMENT AGREEMENT BY AND BETWEEN
THE COUNTY OF SAN BENITO AND
PANOCH VALLEY SOLAR, LLC

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**FIRST AMENDED DEVELOPMENT AGREEMENT BY AND BETWEEN THE COUNTY OF
SAN BENITO AND PANOCHÉ VALLEY SOLAR, LLC (PANOCHÉ VALLEY SOLAR
FARM PROJECT)**

THIS FIRST AMENDED DEVELOPMENT AGREEMENT (“**Agreement**”) is made and entered into on _____, 2017 by and between the County of San Benito, a political subdivision of the State of California (“**County**”) and PANOCHÉ VALLEY SOLAR, LLC (“**Owner**”). County and Owner are sometimes herein referred to individually as a “**party**” and collectively as “**parties**.”

RECITALS

This Agreement is predicated on the following facts, which are incorporated into and made a part of this Agreement.

A. Capitalized Terms.

This Agreement uses certain terms with initial capital letters that are defined in Section 1 below. County and Owner intend to refer to those definitions when the capitalized terms are used in this Agreement.

B. Nature and Purpose of Development Agreements.

The Legislature enacted Government Code section 65864 *et seq.* (“**Development Agreement Statute**”) in response to the lack of certainty in the approval of development projects, which can result in a waste of resources, escalate the cost of development, and discourage investment in and commitment to planning that would maximize the efficient utilization of resources. The Development Agreement Statute is designed to strengthen the public planning process, to encourage private participation in comprehensive, long-range planning, and to reduce the economic costs of development. It authorizes a county to enter into a binding agreement with any person(s) having a legal or equitable interest in real property located in the county regarding the development of that property.

C. County’s Development Agreement Procedures.

Pursuant to the Development Agreement Statute, County adopted San Benito County Code Chapter 19.11, which sets forth procedures and requirements for the consideration of development agreements (“**County Development Agreement Procedures**”). This chapter enables County and a developer seeking County approval of a project to enter into a development agreement that vests certain rights and that requires a developer to provide certain public benefits beyond those that could otherwise be imposed as conditions of development.

D. Owner’s Interest in the Property.

The land and development governed by this Agreement consists of an up-to 247 MW (Megawatt), or such smaller project as Owner chooses to develop on the property, solar power electric generation facility located on a footprint of up to approximately 1,888 acres (including underground electrical conduits) (“**Facility**”) of an approximate total 2,506-

acre project site ("**Property**"). In addition, up to approximately 26,118 acres located outside the boundaries of the Property ("**Potential Mitigation Lands**") are also subject to the provisions of this Agreement. The Property and is described in Exhibit "A" and depicted in the map at Exhibit "B". Exhibit "C" and Exhibit "D" are hereby reserved. Owner has a legal interest in the Property and the Potential Mitigation Lands. The Property has been designated by the San Benito County Board of Supervisors ("**Board**") to be Agriculture Rangeland, which is a designation that provides for a solar power electric generation facility as a conditional use per San Benito County Code sections 25.07.005 and 25.29.106.

E. Development of the Property.

The County has prepared the Environmental Impact Report (State Clearinghouse No. 2010031008) related to the Project ("**Project EIR**" or "**EIR**"). Subsequently, the County has prepared the Supplemental Environmental Impact Report (State Clearinghouse No. 2010031008) related to the Project ("**Project SEIR**" or "**SEIR**"), which relates to the development of the Property with a solar farm as described more fully therein. Specifically, this Agreement relates to the development of an up-to 247-MW project, referred to as the "Revised Project" in the Project SEIR, which would be located on approximately 1,888 acres within a fenced portion of the Property, and would involve the development of the following components:

- Installation of approximately one million PV panels
- PV module steel structural supports
- Electrical inverters and transformers
- Electrical substation with switching station
- Buried electrical collection conduit
- Operation and maintenance (O&M) building
- Septic system and leach field
- On-site access roads
- Security fencing
- Transmission support towers and lines to interconnect with a PG&E transmission line
- Potential upgrades to PG&E's transmission system

Collectively, such development shall be known as the "**Project.**" Development of the Project would result in open space and undeveloped habitat area on the remaining portion of the Property. In addition, in connection with the Project, provisions for mitigation lands for three key species, the Blunt Nose Leopard Lizard ("**BNLL**"), San Joaquin Kit Fox ("**SJKF**"), and Giant Kangaroo Rat ("**GKR**") have been made.

F. Initial Project Approvals.

County has taken or intends to take various planning, land use entitlement and environmental review actions relating to the Project ("**Initial Approvals**") including, without limitation, the following:

1. Environmental Impact Report (Resolution No. 2010-18). On October 12, 2010, pursuant to the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*), the CEQA Guidelines (14 Cal. Regs. § 15000 *et seq.*), and County's local

Implementing Procedures for CEQA (collectively, "**CEQA**"), the Board took the following actions: (a) certified the Project EIR ("**EIR Certification**"); (b) adopted written findings relating to significant environmental impacts; (c) adopted a Statement of Overriding Considerations; and (d) adopted a mitigation monitoring and reporting plan.

2. Williamson Act cancellation (Resolution No. 2010-19). On October 12, 2010, after a duly noticed public hearing, the Board approved Owner's application to cancel the Williamson Act contracts affected by Project development.

3. County Conditional Use Permit. On October 20, 2010, the San Benito County Planning Commission ("**Planning Commission**"), after a duly noticed public hearing, approved and adopted Conditional Use Permit No. 1023-09. Thereafter, the matter was appealed to Board, which reviewed the Planning Commission record, received public comment at a duly noticed public hearing and upheld the actions of the Planning Commission approving Conditional Use Permit No. 1023-09 on November 10, 2010.

4. Development Agreement (Ordinance No. 862). On November 10, 2010, following review and recommendation by the Planning Commission and after a duly noticed public hearing, the Board made the following findings with respect to the Agreement:

- (a) It was processed in accordance with the Development Agreement Statute.
- (b) It is consistent with the San Benito County General Plan, the EIR, any area plans and other applicable Rules, Regulations and Official Policies.
- (c) It is compatible with the uses authorized in, and the regulations prescribed for, the applicable zoning of the Property.
- (d) It will not adversely affect the orderly development of the surrounding community.
- (e) It is fair, just, and reasonable.
- (f) It is consistent with and best serves the public health, safety and general welfare of the County's citizens and good land use practice because, among other things, it provides for public benefits beyond those benefits that would be forthcoming through conditions of development project approvals as set forth herein.
- (g) It should be encouraged in order to meet important economic, social, environmental and planning goals of the County.
- (h) It is consistent with the County's Development Agreement Procedures reflected in San Benito County Code, title 19, chapter 19.11, including, without limitation, procedures relating to the Agreement's duration. In summary, the Agreement provides for additional employment sites and opportunities within County, increases dedication of Open Space, conserves lands within County, and provides additional public benefit compensation in lieu of a dedication of land or construction of County infrastructure as specified in the County Development Agreement Procedures.

On this basis, on November 10, 2010, the Board adopted Ordinance No. 862, approving and enacting the original Development Agreement ("**County DA Ordinance**").

The original Development Agreement became effective on December 10, 2010 (“**Effective Date**”).

5. County Conditional Use Permit (Resolution No. 2015-42). The Planning Commission, after a duly noticed public hearing, approved and adopted Conditional Use Permit No. 1023-09-A. Thereafter, the matter was appealed to the Board, which reviewed the Planning Commission record, received public comment at a duly noticed public hearing and upheld the actions of the Planning Commission approving Conditional Use Permit No. 1023-09-A on May 19, 2015.

6. Supplemental Environmental Impact Report (Resolution No. 2015-41). On May 19, 2015, pursuant to CEQA, the Board took the following actions: (a) certified the Project SEIR; (b) adopted written findings related to significant environmental impacts; (c) adopted a Statement of Overriding Considerations; and (d) adopted a mitigation monitoring and reporting plan (“**MMRP**”).

G. Intent of Parties.

County and Owner have, in good faith, negotiated the terms and conditions of this Agreement, and have determined that use of a development agreement is appropriate for development of the Project in accordance with the Project Approvals. County desires to enter into this Agreement because it will eliminate uncertainty in planning and provide for the orderly development of the Property; it will ensure the maximum efficient utilization of resources within the County; it will provide for public benefits beyond those that otherwise could be imposed as conditions of approval; and it will otherwise achieve the goals and purposes of the Development Agreement Statute and the County’s Development Agreement Procedures. In exchange for these benefits to County, together with the other public benefits derived from development of the Project, Owner desires to enter into this Agreement to receive the assurance that it may proceed with development of the Project in accordance with the Project Approvals, as set forth more fully below.

Additionally, this First Amendment Development Agreement is intended to resolve the parties’ dispute over the County’s receipt of sales and use tax revenue as provided by the original Development Agreement.

H. First Amendment to this Agreement.

This Agreement was first amended to, among other things, change the name of the Owner from Solargen Energy, Inc. to Panoche Valley Solar, LLC, which is the assignee of Solargen Energy, Inc.

I. Project Approvals as of Date of Execution.

The parties acknowledge that, as of the date of execution by each party of this First Amended Development Agreement, Owner has obtained and maintains all Project Approvals.

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants contained herein, Owner and County agree as follows:

AGREEMENT

Section 1. Definition of Terms.

The following defined terms are used in this Agreement:

- 1.1 **“Agreement”** means this First Amended Development Agreement between County and Owner. This Agreement also is sometimes referred to herein as “DA.”
- 1.2 **“Board”** means the San Benito County Board of Supervisors.
- 1.3 **“Building Permit”** refers to a document authorizing the holder to construct a building, as provided for in the San Benito County Code.
- 1.4 **“CEQA”** has the meaning set forth in Recital F(1).
- 1.5 **“Certificate of Occupancy”** means a final certificate of occupancy issued by County’s Building Official or, if County’s Building Code does not provide for the issuance of a certificate of occupancy for a particular structure, the functional equivalent thereto.
- 1.6 **“Conditional Use Permit”** has the meaning set forth in Recitals F(3) and F(5).
- 1.7 **“County”** means the County of San Benito, a political subdivision of the State of California.
- 1.8 **“County Development Agreement Procedures”** has the meaning set forth in Recital C.
- 1.9 **“County DA Ordinance”** has the meaning set forth in Recital F(4).
- 1.10 **“Days”** means calendar days. If the last day to perform an act under this Agreement is a Saturday, Sunday or legal holiday in the State of California, said act may be performed on the next succeeding calendar day that is not a Saturday, Sunday or legal holiday in the State of California and in which the County offices are open to the public for business.
- 1.11 **“Decommission Fund”** is a fund to be established in the County Treasury to meet the obligations set forth in Section 3.6.
- 1.12 **“Development Agreement Statute”** has the meaning set forth in Recital B.
- 1.13 **“Development Impact Fee”** means any requirement of County in connection with a Project Approval for the dedication of land, the construction of public

improvements, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment; facilities, services and infrastructure; or other public interests.

- 1.14 **“Dispute”** has the meaning set forth in Section 9.1.
- 1.15 **“EIR”** or **“Project EIR”** means the Panoche Valley Solar Farm Project EIR certified by the Board on October 12, 2010 by Resolution No. 2010-118, as set forth in Recital E. **“SEIR”** or **“Project SEIR”** means the Panoche Valley Solar Farm Project Supplemental EIR as set forth in Recitals E and F(6).
- 1.16 **“EIR Certification”** has the meaning set forth in Recital F(1).
- 1.17 **“Effective Date”** has the meaning set forth in Recital F(4).
- 1.18 **“Enforced Delay”** has the meaning set forth in Section 7.2(d).
- 1.19 **“Existing Rules”** means the Rules, Regulations and Official Policies in effect on the Effective Date.
- 1.20 **“Facility”** has the meaning set forth in Recital D.
- 1.21 **“Initial Approvals”** has the meaning set forth in Recital F.
- 1.22 **“JAMS”** has the meaning set forth in Section 9.1.
- 1.23 **“Legal Challenge”** has the meaning set forth in Section 11.15.
- 1.25 **“Local Contractor”** or **“Local Construction Worker”** means those contractors or construction workers having their primary place of business or permanent residence in San Benito County.
- 1.26 **“MMRP”** has the meaning set forth in Recital F(6).
- 1.27 **“New Rules”** has the meaning set forth in Section 3.3.
- 1.29 **“Notice of Default”** has the meaning set forth in Section 7.2(a).
- 1.30 **“Owner”** means PANOCHE VALLEY SOLAR, LLC and all of its successors and assigns.
- 1.31 **“Periodic Review”** has the meaning set forth in Section 7.1.
- 1.32 **“PILOT”** has the meaning set forth in Section 2.8.2.
- 1.33 **“Planning Commission”** means the San Benito County Planning Commission.
- 1.34 **“Planning Director”** means the head of the Planning and Building Departments and the Chief Planning Officer of San Benito County.

- 1.35 **“Potential Mitigation Lands”** has the meaning set forth in Recital D.
- 1.36 **“Project”** has the meaning set forth in Recital E.
- 1.37 **“Project Approvals”** means the Initial Approvals and Subsequent Approvals, collectively.
- 1.38 **“Project Infrastructure”** has the meaning set forth in Section 2.2.
- 1.39 **“Project Land Use Plan”** denotes the location of Project components
- 1.40 **“Project Revenues”** mean any and all revenues generated in connection with the Project, whether by property taxes, sales taxes, special taxes, special assessments or otherwise.
- 1.41 **“Property”** has the meaning set forth in Recital D.
- 1.42 **“Recorder”** means the San Benito County Recorder, which is responsible, in part, for recording legal documents that determine ownership of real property and other agreements related to real property.
- 1.43 **“Regulatory Processing Fees”** means fees and charges adopted by County for the purpose of defraying County’s actual costs incurred or to be incurred in the processing and administration of any form of regulatory permit, license, land use entitlement, financing district or mechanism, permit or approval, or imposed by County to defray the costs of periodically updating its plans, policies, and procedures, including, without limitation, the fees and charges referred to in Government Code section 66014.
- 1.44 **“Reimbursement Agreement”** means that agreement entered into between the parties with the effective date of February 23, 2010, which governs the reimbursement and payment of costs and expenses associated with the Project.
- 1.45 **“Rules, Regulations and Official Policies”** means the County rules, regulations, ordinances, laws, EIRs, zoning and official policies governing development, including, without limitation, density and intensity of use; permitted uses; the maximum height and size of proposed buildings; the provisions for the reservation or dedication of land for public purposes or payment of fees in lieu thereof; the construction, installation and extension of public improvements; growth management; environmental review; and other criteria relating to development or use of real property and applicable to the Property.
- 1.46 **“Subsequent Approvals”** means any and all land use, environmental, building and development approvals, entitlements and permits required subsequent to the Effective Date in connection with development of the Project on the Property, including, without limitation, tentative and final subdivision maps, parcel maps and lot line adjustments; conditional use permits; design review approvals; building permits; grading permits;

certificates of occupancy; approvals of financing districts or other financing mechanisms; and any amendments thereto.

1.47 “Subsequent Landowner” is a party who has acquired all or a portion of the Property from Owner. **“Subsequent Landowner”** shall not include a holder of a duly noticed security interest in Property or Project. Any Subsequent Landowner shall enter into an agreement with the County formally accepting assignment of this Development Agreement, including full performance of all obligations set forth herein, as set forth in Section 10 below.

1.48 “Term” has the meaning set forth in Section 6.1.

Section 2. Owner’s Obligations.

2.1 Development of the Project.

Development of the Project shall be consistent with: (a) this Agreement; (b) the San Benito County General Plan as it existed on the Effective Date; (c) the San Benito County Code as it existed on the Effective Date; (d) the Initial Approvals, including, without limitation, the SEIR and all conditions of approval (see Exhibit H and I); (e) the Subsequent Approvals, as and when they are issued, approved, or adopted, including all conditions of approval; and (f) all other applicable Existing Rules. Notwithstanding the foregoing, in the event of a conflict between any provision of this Agreement and any Project Conditional Use Permit, this Agreement shall control.

By May 31, 2018, Owner shall: (a) reconstruct one (1) contiguous mile of Little Panoche Road at the location and to the specifications as may be directed by the County Resource Management Agency (not to exceed the specifications for a traffic index of 7); and (b) will pulverize the existing asphalt surface to a depth of two to four inches (based on the depth of the existing road surface) and compact such surface to provide the base for a two-inch overlay on Little Panoche Road from its intersection with Panoche Road to the Fresno County line (excluding the section reconstructed per provision (a) above). A consultant mutually agreeable to the parties will monitor this work and prepare a report of the work upon its completion. Not later than six (6) months after completion of construction of the Project, Owner will patch any potholes on Little Panoche Road from its intersection with Panoche Road to the Fresno County line, in accordance with the California Department of Transportation’s “Guidelines for Identifying and Repairing Localized Areas of Distress in AC Pavements Prior to Capital Preventive Maintenance or Rehabilitation Repairs,” attached as Exhibit K, but will not be required to perform any other work on Little Panoche Road. At decommissioning, County will evaluate the condition of Little Panoche Road to determine whether any work is needed to comply with Mitigation Measure TR-1.2 of the SEIR. County’s discretion shall be based on the reasonable recommendations by a neutral engineer, retained by County, the costs for which shall be reimbursed by Owner. Performance and completion of the work set forth in this paragraph implements and satisfies in toto the requirements of the first three bullet points and the last bullet point of Mitigation Measure TR-1.2 of the SEIR.

Nothing in this provision is in derogation of CEQA mitigation measures and other conditions of approval of the Project with respect to the portion of Little Panoche Road in the County of Fresno.

2.2 County's Reliance on Owner's Provision of, or Contribution Towards, Project Infrastructure.

The parties acknowledge and agree that County's approval of the Project is, in part, in reliance upon and in consideration of Owner's payment of additional public benefit compensation and its contribution towards infrastructure, facilities, improvements, and services and amenities (including construction, operation (including personnel) and maintenance thereof) necessary to serve the Project, as described more fully in the SEIR and other Project Approvals (collectively, "**Project Infrastructure**") in accordance with Owner's obligations set forth herein.

2.3 Provision of Open Space and Public Benefit.

(a) Owner shall conserve the "Potential Mitigation Lands", defined in Recital D, which shall maintain the environmental quality and suitability of natural drainages, species habitat, including forage and range areas, and shall do so in the manner described more fully in the SEIR and Subsequent Approvals. The open space shall be located generally in accordance with the SEIR and any applicable Subsequent Approvals.

(b) County and Owner acknowledge and agree that the amount of required open space acreage under this Section 2.3 represents more than a 9:1 mitigation ratio for land which will be within the Project footprint, an amount that greatly exceeds the mitigation required by the FEIR.

2.4 Design of Project Infrastructure.

Development of the Property, including, without limitation, the Project Infrastructure, shall be subject to final design review by County in accordance with the SEIR, Conditions of Approval, MMRP, and the San Benito County Code, as applicable. The Project Approvals, and all required improvement plans prepared in connection with the Project Approvals and in accordance with the SEIR, shall govern the design and scope of all Project Infrastructure to be constructed on or benefiting the Property.

2.5 Provision of Permanent Employment; and Best Efforts to Employ Local Workers.

Owner understands and mutually supports the County's goal to increase available employment opportunities for permanent San Benito County residents. Owner shall use its best efforts to include in its construction and support services contracts a requirement that each contractor hiring employees for the Project include provisions that will require that they acknowledge the County's goal and give preference to hiring permanent San Benito County residents while still providing the contractor with the ability to hire as employees the job applicants with the most experience and best qualifications. To meet this goal Owner desires and will require its Engineering, Procurement, Construction Contractor (hereinafter

EPC contractor) to use its best efforts to negotiate with the IBEW Local 234 and IBEW Local 332 (the “Unions”) an agreement that includes the following local hire language:

1. Local hiring requirements that have the capacity to provide significant community benefits including possibly facilitating the financing and construction of the Panoche Valley Solar Farm Project (“Project”), creating significant construction job opportunities for residents of San Benito County and generate local tax revenue and other income to the County’s residents.
2. A Policy to promote the betterment of the electrical industry in the San Benito County by creating opportunities for residents to participate in the jobs of the future in renewable energy and green technologies through targeted local hiring and training requirements applicable on the Project, is deemed by the Unions and the Owner, contractors or subcontractors to be needed and appropriate.
3. The goal of 100% local residents (living within the zip codes of San Benito County) working on the Project, subject to the skills and expertise needed to construct the Project in a manner that can achieve the ultimate financing of the Project by independent financial institutions.
4. The goal of generating significant local construction and related jobs from the Project, that includes (1) the creation of preferred hire zip code requirements; (2) the development of applicable job training programs; (3) the modification, if needed and as appropriate, of the dispatch procedures applicable to this Project; and (4) to provide for this Project these job classifications and applicable ratios to support the Project: Journey-Level Electrician, Apprentice, and Solar Material Handler.
5. The following approach for purposes of staffing the construction of the Project:
 - Journey-Level Electrician and Apprentices. First priority shall be given to residents of San Benito County who are current members of the Unions. In the event there are not sufficient number of Journey-Level Electricians and Apprentices in the Unions living in San Benito County, the second priority shall be given to residents of adjoining counties.
 - Solar Material Handler. Solar Material Handlers shall be hired primarily from a qualified pool of residents living in San Benito County, subject to the appropriate training by the Unions and the contractors and subcontractors, in conjunction with community partners such as Gavilan College and related institutions.
6. The “scope of services” for a Solar Material Handler shall be the following:

Installs racks and modules, and the handling of all of the material involved with the panels, trackers, modules, supports, and the mounds of cardboard that are generated during the installation.

7. For the use of Union labor on entire Project, the ratio of Solar Material Handlers to Journey-Level Electricians and Apprentices shall be not less than 1:1.
8. Any labor contracts reached by the EPC contractor or any subcontractors shall be enforceable under the terms of the labor contracts, and not under this Agreement.
9. If there is any conflict between provisions of the labor contracts applicable to the Project and the provisions of this Agreement, the terms of the labor contracts will govern.

Owner also agrees to sponsor, in an effort to increase awareness of available job opportunities related to the Project and meets its obligations hereunder, two (2) job fairs in San Benito County to be conducted by the County through the One Stop Career Center to inform and educate local citizens about employment opportunities and training available through the Project. Owner shall use its best efforts to require in the aforesaid contracts a provision requiring the contractors to collaborate with the County in the job fairs to accomplish the County's goal of increasing employment opportunities for permanent residents of San Benito County.

2.6 Habitat Conservation.

Owner shall provide offsite mitigation for habitat conservation in the manner set forth in the Project SEIR's Mitigation Measures. County agrees that provision of this offsite mitigation shall be in lieu of payment otherwise due by Owner under the County's Habitat Conservation Mitigation Fee (Chapter 19.19 of Title 19 of the San Benito Code).

2.7 Mitigation and Reporting Expenses.

The cost for all staff time required to fulfill the County's responsibilities under the MMRP, and to monitor Property Owner's compliance with the MMRP shall be reimbursed by Owner within 30 days of the issuance of a written invoice. Staff performing all monitoring, or other work, required by the FEIR shall be approved by the County Planning Director. Monitoring may be performed by a qualified County employee, by a County-retained consultant, and/or a County-approved consultant as may be determined in the sole discretion of the County Planning Director after consultation with Owner.

2.8 Additional Public Benefit Compensation.

In lieu of a dedication of land and/or construction of County infrastructure such as fire stations, libraries, police facilities and other similar infrastructure contemplated in San Benito County Ordinance Section 19.11.003(B)(5) as additional public benefits, Owner shall provide the following additional public benefit compensation to the County. This Agreement recognizes that the Project ultimately developed may be less than 247 MW, but will be at least 123 MW. The parties agree that the additional public benefit compensation provided in this Section 2.8 reflects the level of public benefit compensation commensurate with the development of the Project to 247 MW, despite the project potentially being built at less than a full 247 MW on-site.

2.8.1 Owner shall exert in good faith its best efforts to have all sales and use tax occur in the County, and also use its best efforts to direct its contractors and subcontractors to have sales and use tax occur in the unincorporated area of the County. Owner and its general contractor shall establish a business location or locations and sales tax permits, and take other reasonable steps, in an effort to maximize receipt of sales and use tax revenues for County. Notwithstanding the specific requirements of this Section 2.8.1, Owner may exercise its good-faith judgement to structure its contracts and purchasing arrangements to effectuate the intent of this section, and any deviation from the requirements of this section as a result thereof shall not constitute a breach of this Agreement, provided such deviations do not materially reduce the amount of local sales and use tax revenue that County would otherwise receive. Owner shall provide written notice and an opportunity to comment to the County Counsel and shall consider any comments of the County Counsel in good faith before deviating from the requirements of this section as provided in the previous sentence.

Owner shall include in its master contract and any other contract for construction, entered into after the effective date of this First Amended Development Agreement, language ensuring that County will receive the benefit of any sales or use tax generated by the Project to the fullest extent legally permitted.

Jobsite shall be stated in the master contract and all subcontracts entered into after the effective date of this First Amended Development Agreement as Panoche Valley, San Benito County, California.

Owner shall direct its general contractor to establish a place of business within the unincorporated area of the County and to obtain a sales tax construction sub-permit for the project site. Owner, which may enter into joint venture, or other relationship with contractor, supplier, or designer, will establish a place of business and sales tax permit within the unincorporated area of San Benito County and shall take first possession there of any goods on which sales or use taxes are applicable that are not transferred to it under the master contract with its general contractor.

After the effective date of this First Amended Development Agreement, all requests for bids, procurement contracts, bid documents, and any other agreement whereby California sales or use tax may be incurred shall state that sales or resale occurs in Panoche Valley, San Benito County, California. The principal negotiations for resales of such goods are to be carried on in San Benito County.

Alternately, any entity which may sell goods on which sales taxes are applicable may establish its own place of business within unincorporated San Benito County where delivery is ultimately made to Owner. The principal negotiations for all such sales to Owner are to be carried on in San Benito County.

Owner shall self-assess use tax on all items purchased for the Project from out of state suppliers that are subject to use tax.

2.8.1.1. Owner guarantees that it and its vendors, contractors, and subcontractors shall collectively remit a minimum of four million two hundred fifty thousand dollars (\$4,250,000) of sales and use tax to the California Department of Tax and

Fee Administration (“DTFA”) attributable to the following components of the State-wide sales and use tax rate imposed with respect to construction of the Project: 1% county operations fund, 0.25% county transportation fund, 1.0625% 2011 local revenue fund, 0.5% 1991 local revenue fund, and 0.5% local public safety fund (the “**Guaranteed Tax Amount**”). Owner shall remit, or cause to be remitted, the Guaranteed Tax Amount to the DTFA on or before June 30, 2018.

The Guaranteed Tax Amount shall only include amounts that Owner and its vendors, contractors, and subcontractors properly source or otherwise attribute to County on applicable California sales and use tax returns filed with the DTFA. The parties recognize that for various reasons County may not receive taxes reported and remitted in this manner. The Guaranteed Tax Amount shall not include taxes that the County fails to receive because the DTFA reallocates the taxes to another jurisdiction (e.g., due to a petition for reallocation by another local jurisdiction or a sourcing correction made on audit). The Guaranteed Tax Amount shall include those taxes that the County fails to receive for any other reason outside of Owner’s (including its contractors’, subcontractors’, and vendors’) control, including by way of example: administrative charges by the DTFA, offset by the State of California for County debts, changes in state law or policy, changes in tax rates or state funding from sales tax revenue, and appropriation of local tax revenue by the State of California.

If County does not receive the full Guaranteed Tax Amount by September 30, 2018, Owner shall make a payment-in-lieu-of tax to County in an amount equal to the difference between the Guaranteed Tax Amount and total sales and use tax revenue County has received through September 30, 2018 with respect to construction of the Project (the “**Tax Shortfall Payment**”). The Tax Shortfall Payment shall be deposited in the County’s general fund to be used as the County may determine. Owner shall make the Tax Shortfall Payment within 30 days of receipt for demand thereof, subject to the limitations and dispute resolution provisions set forth in the remainder of this section.

If during the four quarters subsequent to September 30, 2018, DTFA reallocates any part of the Guaranteed Tax Amount to another jurisdiction, the Tax Shortfall Payment shall be recalculated taking into account the tax reallocation. If the recalculation increases the amount of the Tax Shortfall Payment, Owner shall make a subsequent payment-in-lieu-of tax to County in an amount equal to such increase (the “**Subsequent Tax Shortfall Payment**”). The Subsequent Tax Shortfall Payment shall be deposited in the County’s general fund to be used as the County may determine. Owner shall make the Subsequent Tax Shortfall Payment within 30 days of receipt for demand thereof, subject to the limitations and dispute resolution provisions set forth in this section.

If after September 30, 2018, County believes, on the basis of its review of official records received from DTFA, that it has not received the full Guaranteed Tax Amount and is therefore entitled to a Tax Shortfall Payment, County shall provide all such records (which it is lawfully able to produce) to Owner and meet and confer with Owner about its concerns for at least 30 days before sending a demand to Owner or taking any public action with respect to those concerns. In the course of these discussions, Owner shall bear the burden of establishing that the amounts in issue were remitted to the DTFA and that County was designated as the applicable local jurisdiction, by providing (i) its sales tax returns, (ii) third-party sales tax returns, and, to the extent third-party tax returns

are unavailable, (iii) a schedule of such contractors, subcontractors, and vendors listing the tax amounts purported to have been remitted and allocated to County. County shall be responsible for obtaining taxpayer-specific records from the DTFA to enable it to verify receipt of amounts listed on the schedule provided by Owner.

In addition, County, as a party to tax reallocation petition proceedings, shall bear the burden of establishing that amounts it failed to receive were the result of a reallocation of taxes by the DTFA to another local jurisdiction due to a petition for reallocation by another local jurisdiction or a sourcing correction made on audit.

If County demands a Tax Shortfall Payment from Owner, and Owner disagrees with the amount of or the necessity for a Tax Shortfall Payment, County and Owner shall jointly select and retain a neutral nationally known accounting firm (such as Deloitte & Touche, Ernst & Young, etc.) (“Outside Auditor”), to determine whether a Tax Shortfall Payment is required under the standards of this First Amended Development Agreement, and if so, the amount thereof. The parties shall be bound by the decision of the Outside Auditor. If the Outside Auditor determines that Owner is required to make an increased Tax Shortfall Payment, Owner shall make such payment within 30 days of receiving the Outside Auditor’s report. The parties shall each directly pay one half of all costs and fees invoiced by the Outside Auditor, but Owner shall reimburse County for its one-half share of such costs and fees.

Owner shall reimburse County for the reasonable expenses County incurs in obtaining a quarterly report by HdL Companies as to the amount of sales tax received each quarter, until September 30, 2018 within 30 days of an invoice for those costs, documenting the amount to be reimbursed.

2.8.1.2. Owner shall also pay County two million five hundred thousand dollars (\$2,500,000) to compensate County for any sales and use tax revenue that may be foregone as a result of Owner constructing a Project of less than 247 MW. Owner shall pay this amount to the County Auditor no later than five (5) business days after this First Amended Development Agreement is recorded. This amount shall be separate and not included in the Guaranteed Tax Amount specified above.

2.8.2 During Project construction in property tax years 2017 and 2018 and for a term of twenty (20) years thereafter (commencing with the 2019 property tax year), Owner shall remit an annual payment-in-lieu-of tax (“**PILOT**”) to the County Auditor. The PILOT amount for each year of construction and the twenty-year term is provided in the schedule attached to this Agreement as Exhibit J. The PILOT amounts reflect the parties’ estimate of the amount of ad valorem tax revenue that would have been imposed on fixtures and equipment incorporated into a 247 MW Project but for the exclusion for solar energy systems provided in California Revenue and Taxation Code Section 73, and the parties acknowledge and agree that such PILOT amounts shall be in full satisfaction of all PILOT obligations due for the Project, as initially constructed and/or revised in the future, up to and including 247 MW. The amount of each annual PILOT shall be reduced by the amount of ad valorem property tax, if any, assessed by the County for such tax year on Project fixtures and equipment (excluding land and Project fixtures and equipment that did not qualify for the exclusion for solar energy systems under California Revenue and Taxation Code Section 73 as in effect on the date of the execution of this First Amended

Development Agreement). In each year of the term, Owner shall remit the PILOT by August 31. Payments received after August 31 shall be charged a late payment penalty equal to ten percent (10%) of the amount due and owing and shall accrue interest at the rate of ten percent (10%) per annum or at the legal rate of interest, whichever is less. The obligations of this Section 2.8.2 shall survive termination of the Agreement and shall continue in full force and effect.

During the term of this Agreement, (i) Owner and any Subsequent Landowner shall remain subject to property tax laws with respect to the Project, including obligations to pay property taxes imposed on the Project under applicable law and to file property tax statements, and (ii) County shall retain all of its statutory rights to administer property taxes with respect to the Project. This Agreement shall not be construed as a present or future exemption or abatement of property taxes on the Project.

2.8.3 Additionally, Owner agrees to pay an amount determined by the County, which amount shall not exceed fifty thousand dollars (\$50,000) to be used at County's discretion for solar energy demonstration and improvements to a County-owned facility or facilities or for other uses as determined by the County ("Additional Community Benefit Payment"). The Additional Community Benefit Payment shall be due and payable within 30 days of the effective date of this First Amended Development Agreement, if not already paid.

2.8.4 Property Owner will develop a program after completion of phase 1 of the project, which shall include, but not be limited to, designating a liaison to facilitate and coordinate college/university level students or faculty to visit the Project site for educational and/or research purposes. Property Owner shall allow students and researchers reasonable access to project site to perform research on the Project site, subject to appropriate indemnification from the visiting entity/individual/groups, and subject to such reasonable rules and restrictions as Property Owner may establish to ensure visitor safety and protection from interference with Project Operations. Any disputes about implementation of this provision shall be subject to the dispute resolution procedures established by this Agreement. The intent of this section is to ensure that college and universities will be allowed reasonable access to the Project site for educational and research purposes. Owner will also make Project reasonably available for elementary, middle and high school educational field trips subject to above-listed qualifications. Property Owner shall not be responsible for funding such programs.

Section 3. Owner's Vested Rights.

3.1 Vested Right to Develop the Project.

Owner shall have the right to develop the Property with the Project in accordance with this Agreement and other Project Approvals. The parties acknowledge and agree that Subsequent Approvals will be required to fully implement the Project. County shall process and consider any application for a Subsequent Approval related to the Project in accordance with the Existing Rules. The permitted uses of the Property; the density and intensity of such uses; the maximum height and size of proposed buildings; the provisions for the reservation or dedication of land for public purposes or payment of fees in lieu

thereof; the construction, installation and extension of public improvements; and the development standards and design guidelines shall be as set forth in the Project Approvals.

3.2 Development Impact Fees and Regulatory Processing Fees.

(a) Owner shall pay all Development Impact Fees, as identified below ("**Development Impact Fees**") and in the amount in effect on the Effective Date, and shall also pay any indexed increases of those identified fees; provided, however, that Owner shall not be required to pay any Development Impact Fees newly established after the Effective Date.

(b) County agrees that Owner's payment of all Development Impact Fees due in accordance with this Section 3.2 shall be due and payable at issuance of the Certificates of Occupancy rather than at issuance of the Building Permit. The parties further agree that the amount of said fees owed shall be calculated as of the date of issuance of any Building Permit.

The County has identified the following Development Impact Fees as the fees applicable to the Project and that shall be paid in accordance with this Section 3.2:

Fire Equipment: \$0.25 / SF of all Covered Space
Public Works Equipment: \$0.38 / SF of all Covered Space (Non-Residential)

(c) Owner shall pay all Regulatory Processing Fees and any fees or required Project permits approved by the Planning Commission and/or the Board that are made part of the Project's conditions of approval in accordance with Section 5 of the Reimbursement Agreement between the parties, the terms of which are incorporated herein by this reference and in accordance with Section 3.3 below.

3.3 Application of Subsequently Enacted Rules, Regulations and Official Policies.

County may adopt new or modified Rules, Regulations and Official Policies after the Effective Date ("**New Rules**"); provided, however, such New Rules shall be applicable to the Project or the Property only to the extent that such application will not modify, prevent or impede development of the Project on the Property or conflict with any of the vested rights granted to Owner under this Agreement. Any New Rules shall be deemed to conflict with Owner's vested rights if they seek to limit or reduce the density or intensity of development of the Project; or to limit the timing of the development of the Project, either with specific reference to the Property or as part of a general enactment that applies to the Property. Notwithstanding the foregoing, County shall not be precluded from applying any New Rules to the Project or Property under the following circumstances, where the New Rules are: (i) specifically mandated by changes in state or federal laws or regulations adopted after the Effective Date as provided in Government Code section 65869.5; (ii) specifically mandated by a court of competent jurisdiction; (iii) changes to the Uniform Building Code or similar uniform construction codes, or to County's local construction standards for public improvements so long as such code or standard has been adopted by County and is in effect on a County-wide basis; (iv) required as a result of facts, events or circumstances presently unknown or unforeseeable that would otherwise have an immediate adverse risk

on the health or safety of the surrounding community; or (v) new or increased Regulatory Processing Fees so long as such fees are applied to all development projects on a County-wide basis.

3.4 Modification or Suspension by State or Federal Law.

In the event that state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, such provision(s) of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Notwithstanding the foregoing, the remainder of this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

3.5 CEQA.

Owner acknowledges that implementation of the Project will require County's consideration and approval of applications for Subsequent Approvals and that County will complete environmental review in connection with those Subsequent Approvals as required by CEQA and other applicable federal, state and local laws and regulations. County's environmental review of the Subsequent Approvals pursuant to CEQA shall utilize the Project SEIR to the fullest extent permitted by law; provided, however, nothing in this Agreement shall be deemed to limit the legal authority of County to conduct any environmental review required under CEQA or other applicable laws and regulations.

3.6 Decommissioning Agreement.

County wishes to protect itself and its citizens in the event Owner, or its successors or assigns, cannot complete the expected twenty (20) year Project life span, cease on-going business operations, or abandon the Project and/or the Property for whatever reason. Owner agrees to establish, and make payments into, a Decommission Fund. Payments will be based on the number of megawatts installed and the dates those megawatts are installed. For each phase, payments to the Decommission Fund shall commence five years after that phase's completion, except if a later scheduled phase of the project has not been completed within two years from the completion of the phase which immediately precedes it. In this case, payment to the Decommission Fund shall be immediately commenced and shall be due the next August 31st.

It is the intent of this Section 3.6 that the Decommission Fund along with the residual value of installed improvements will provide sufficient financial assurances for County to decommission the Project and fully restore the Property. If Owner, its successors or assigns, do not properly decommission the Project or restore the Property to its original condition within a reasonable time following the cessation of business operations or the abandonment of the Project or Property for whatever reason, then the County may use the Decommission Fund to perform the decommission and/or restoration. If the Decommission Fund is not adequate to fully decommission the Project or restore the Property, the Owner, its successors, or assigns shall be liable for any amount expended by the County over the Decommission Fund balance. The term "reasonable time" as used herein shall mean no more than six (6) months after the County notifies the Owner, its successors, or assigns in

writing that decommission of the Project and/or restoration of the Property is required. The funds shall be held in a sequestered account and shall be used by the County only for the decommissioning of the Project or the restoration of the Property. To the extent that the Owner, its successors, or assigns decommission the Project and/or restore the Property to the County's satisfaction, which shall not be unreasonably withheld, the sequestered funds, or any unused portion thereof, shall be returned to the current Owner or its designee. The Decommission Fund recommendations have been based on a study conducted by Pacific Gas and Electric for California Public Utilities Commission, as set forth in the Supplemental Testimony presented July 15, 2009, pursuant to the July 1, 2009 AC and ALJ Ruling, in reference to Application 09-02-019, identified as Exhibit No. PG&E-3, relevant portions of which are attached as Exhibit F.

Each payment to the Decommission Fund is due and payable on August 31st of the applicable year to the County Auditor. Payment received after August 31st will be charged a late payment penalty equal to ten percent (10%) of the amount due and owing and will accrue interest at the rate of 1.5 percent (1.5%) per month or at the legal rate of interest, whichever is less.

In conformity with the PG&E study set forth above, a sum of \$26,500 per MW installed shall be paid (adjusted in accordance with the Consumer Price Index ('CPI") as set forth below) into the Decommission Fund, which amount shall be fully adjusted for inflation. Every five years, Owner will provide an updated cost estimate of decommissioning costs, which estimate shall be prepared by a firm approved by the Planning Director. The reasonable and actual costs of the cost estimate may be reimbursed to Owner from the Decommission Fund. Upon receipt of the cost estimate showing the need for increased contribution, including but not limited to the need to increase the Decommission Fund due to inflation greater than 2% per year, the Owner shall immediately increase annual contributions by 1/5 of the deficit amount so that the Decommission Fund is fully funded according to cost estimate received within five years. If Owner disagrees with the cost estimate, Owner may obtain its own cost estimate, and the parties shall submit the issue of the amount needed for the Decommission Fund for resolution in accordance with the provisions of Section 9 of this Agreement. However, in no event may the Decommission Fund be adjusted to less than \$26,500 per MW, adjusted for inflation at 2% per year.

The Decommission Fund shall be held in the County Treasury, in an account dedicated only for the purposes set forth in this Agreement. All interest earned by deposits within the Decommission Fund shall accrue to the Decommission Fund and be used only for the purposes set forth in this Agreement.

Should the Project be repowered or continue to exist on the property after termination of this Agreement, the Decommission Fund shall continue to be held in the County Treasury for the purposes set forth in this Agreement until the Property is fully restored to its natural and existing condition, and the remediation has been approved in writing by the County.

The obligations under this Section 3.6, including but not limited to 5 year annual reviews for adequacy of the Decommission Fund, shall survive the termination of this Agreement, and shall cease only upon full decommissioning of the project and restoration of the Property to its original condition, which restoration shall be approved by the County.

3.7 Timing of Development.

The parties acknowledge that Owner cannot at this time predict when, or at what rate the Project will be developed. Such decisions depend upon numerous factors that may not be within Owner's control, such as market demand, interest rates, absorption, transmission capacity, completion and other similar factors. Owner and County agree that Owner shall have the right to develop the Project in such order, at such rate, and at such times as Owner deems appropriate within its exercise of subjective business judgment, subject only to any timing or phasing requirements set forth in the SEIR, this Agreement, and Subsequent Approvals.

3.7.1 Phasing of Mitigation with Project.

Mitigation may be phased with Project construction as set forth in the SEIR with the ratios set forth as required in the SEIR. To the extent that this Section 3.7.1 does not conflict with any portion of the SEIR, mitigation lands may be established by conservation easement in the same percentage of the Project under development in each phase of the Project. For example, if development of 247 MW proceeds in five phases of 20 MW, 50MW, 50MW, 50MW, and 77 MW, the total number of acres of mitigation lands may be established at 8.1 percent for the first phase, and 20.2% for phases two through four, and 31.3% for phase 5.

If the size of the Project is reduced, the timing to provide the required percentage of mitigation land shall be adjusted to reflect the amount of MW developed during each phase of the Project. However the Project modifications may only occur after all necessary approvals are obtained and compliance with CEQA occurs, if additional CEQA compliance is triggered by the modifications sought. County may require greater amounts of mitigation lands for any individual phase (up to the total established in the SEIR) upon a finding that the additional lands are needed to mitigate the effects of the Project. In no event shall the phasing plan described by this Section 3.7.1 result in less mitigation lands being established for each phase as required by the SEIR and as necessary to mitigate specific impacts of the development as determined by on-going pre-construction surveys and on-going mitigation monitoring.

3.8 Regulation by Other Public Agencies.

It is acknowledged by the parties that other public agencies not within County's control may possess authority to regulate aspects of the development of the Property, and this Agreement does not limit such authority of other public agencies.

Section 4. Cooperation.

4.1 Owner's Application for Subsequent Approvals.

Owner shall be obligated to obtain any and all required Subsequent Approvals to develop the Project. Owner shall apply for such approvals in a timely manner. Owner's obligations under this Section 4.1 apply to those approvals that are under County's jurisdiction and also to those approvals that may be required by other governmental or quasi-governmental agencies having jurisdiction over the implementation of any aspect of

the Project (including, without limitation, the Department of Transportation; agencies having jurisdiction over boundary changes or district formation, flood control, sewer service, water service or fire protection; and agencies having jurisdiction over air quality, biological resources, solid wastes and hazardous wastes and materials).

4.2 County's Processing of Subsequent Approvals.

County shall cooperate and diligently work to promptly process and consider all applications for Subsequent Approvals, provided they are in a proper form and include payment of any applicable fees and provided that Owner is in compliance with this Agreement. In the event that County and Owner mutually determine that additional personnel or outside consultants need to be retained to assist County to expeditiously process any Subsequent Approval, the cost of any such personnel or consultants shall be paid by Owner but shall be under the direction of County. County shall retain its discretion in its consideration of any and all Subsequent Approvals but shall exercise that discretion in a manner consistent with the SEIR and this Agreement.

County agrees that reduction of the Project to less than 247 MWs shall not require a revised conditional use permit, or any revisions to, or amendments of, any other County Subsequent Approval, or County reviews (including any California Environmental Quality Act reviews).

Section 5. Effective Date of Development Agreement.

The effective date of the original Development Agreement is the Effective Date specified in Section 1.17. This First Amended Development Agreement shall be in effect upon the effective date of the ordinance approving this First Amended Development Agreement.

Section 6. Term of This Agreement.

6.1 Duration of Agreement.

The term of this Agreement shall commence on the Effective Date and shall continue for a period of twenty (20) years ("**Term**") unless extended or sooner terminated as provided herein in accordance with County's Development Agreement Procedures. Following the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except as otherwise provided in this Agreement. Termination shall not affect any right or obligation arising from the Project Approvals.

6.2 Extension by Agreement.

The Term may be extended at any time before its termination date by the mutual agreement of the parties in writing and in accordance with County's Development Agreement Procedures.

Section 7. Periodic Compliance Review; Default.

7.1 Periodic Compliance Review.

County shall review Owner's good faith compliance with the terms of this Agreement on an annual basis ("**Periodic Review**"). This Periodic Review shall be conducted in accordance with the Development Agreement Statute and the County's Development Agreement Procedures, and shall address all items set forth therein as well as specifically demonstrate Owner's compliance with its obligations under Section 2.5 and 2.8.1 above, this Agreement as a whole, any conditions of approval, and the MMRP. Owner shall reimburse County for the actual costs of preparing for and conducting the Periodic Review within thirty (30) days of written demand from County.

In the event County elects to terminate this Agreement pursuant to the provisions of Section 7.2(b) below, Owner, in accordance with Section 9 below, may challenge such termination. If arbitration proceedings are initiated pursuant to Section 9, the arbitrator shall exercise his or her review based on substantial evidence as to the existence of cause for termination.

7.2 Default.

(a) **Notice of Default.** Failure or unreasonable delay by County or Owner to perform any material provision herein shall constitute a default under this Agreement. In the event of a default, the party alleging such default shall give the defaulting party not less than thirty (30) days' written notice of default ("**Notice of Default**"), unless the parties extend such time by mutual written consent or except in cases where Owner's default presents a threat of imminent harm to the public; provided, however, failure or delay in giving a Notice of Default shall not waive a party's right to give future notice of the same or any other default. The Notice of Default shall specify the nature of the alleged default and the manner and period of time in which said default may be satisfactorily cured. The time of the Notice of Default shall be measured from the date actually delivered in accordance with Section 11.11 below.

(b) **Cure Period; Right to Terminate or Initiate Arbitration Proceedings.** The defaulting party shall provide evidence establishing it was never, in fact, in default or shall cure the default within thirty (30) days; provided, however, that if the nature of the alleged default is such that it cannot be reasonably cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period. During any period of curing, the party charged shall not be considered in default for purposes of terminating this Agreement or instituting arbitration proceedings. If the default is cured, then no default shall exist or be deemed to have existed and the noticing party shall take no further action. After proper notice and the expiration of such 30-day cure period without cure the Dispute Resolution procedures set forth in Section 9 below shall apply to determine whether a breach has occurred sufficient to warrant termination of this Agreement.

(c) **Remedies Generally.** The parties agree that remedies to enforce the terms of this Agreement shall be limited to actions for mandamus, specific performance, injunctive relief, declaratory relief, or other equitable relief, and that neither party shall be liable for

monetary damages. Either party may seek equitable relief prior to resorting to the Dispute Resolution procedures set forth in Section 9 below to preserve the status quo pending the completion of the Dispute Resolution process. Notwithstanding the foregoing, County reserves the right to seek payment from Owner in any arbitration proceedings initiated in conformity with Section 9.2 below for any fees, charges, costs or other monies, including, but not limited to the payment of the Additional Public Benefit Compensation owed under this Agreement, and to obtain recovery thereof. It is the intent of the parties to this Agreement that any disputes arising out of this Agreement be resolved in conformity with the terms and condition of Section 9 below. Therefore, to that end, the parties agree to waive the application of San Benito County Code section 19.11.011 (B) to any dispute arising over the modification or termination of this Agreement for non-compliance with its terms and conditions. The ordinance approving this Agreement shall reflect the parties' intentions contained in this Section and shall waive the applicability of San Benito County Code Section 19.11.011(B) to this Agreement.

The parties agree that if a default by Owner of its obligations under this Agreement is found to exist by an arbitrator pursuant to the provisions of Section 9.2 below the County may begin proceedings to revoke the Project's Conditional Use Permit due to Owner's failure to comply with the conditions of approval if Owner does not remedy the default within thirty (30) days of the issuance of the written decision by the arbitrator, or within the number of days that the arbitrator may determine reasonable to cure the default.

(d) **Enforced Delay; Extension of Time of Performance.** No party shall be deemed in default of its obligations under this Agreement where a delay or default is due to an act of God, natural disaster, accident, breakage or failure of equipment, enactment of conflicting federal or state laws or regulations, third-party litigation, strikes, lockouts or other labor disturbances or disputes of any character, interruption of services by suppliers thereof, unavailability of materials or labor, rationing or restrictions on the use of utilities or public transportation whether due to energy shortages or other causes, war, civil disturbance, riot, or by any other severe and unforeseeable occurrence that is beyond the control of that party (collectively, "**Enforced Delay**"); provided, however, the parties agree a delay that results solely from unforeseen economic circumstances shall not constitute an Enforced Delay for purposes of this Section 7.2(d). Performance by a party of its obligations under this agreement shall be excused during, and extended for a period of time equal to, the period (on a day-for-day basis) for which the cause of such Enforced Delay is in effect.

Section 8. Termination.

8.1 Termination Upon Completion of Project or Expiration of Term.

This Agreement shall terminate upon the expiration of the Term (plus any extensions mutually agreed upon in accordance with Section 6.2 above). Upon termination of this Agreement, the County Recorder may cause a notice of such termination in a form satisfactory to County Counsel to be duly recorded in the official records of San Benito County.

8.2 Termination by Mutual Consent.

This Agreement may be terminated by mutual consent of the parties in the manner provided in the County Development Agreement Procedures under section 19.11.011 (A).

Section 9. Dispute Resolution.

9.1 Informal Resolution of Disputes; Mediation.

If a dispute arises related to the interpretation or enforcement of, or compliance with, the provisions of this Agreement (“*Dispute*”), County and Owner shall first attempt to resolve it through informal discussions. In the event a Dispute cannot be resolved in this manner within twenty one (21) days, County and Owner shall endeavor to settle the Dispute by mediation. The Dispute shall be submitted to the San Jose, California office of Judicial Arbitration and Mediation Services, Inc. (“*JAMS*”) for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS for final binding arbitration pursuant to Section 9.2 below. Either County or Owner may commence mediation by providing to JAMS and the other party a written request for mediation setting forth the subject of the Dispute and the relief requested. County and Owner shall cooperate with JAMS and with one another in selecting a mediator from JAMS’ panel of neutrals and in scheduling the mediation proceedings. If the parties cannot agree on the appointment of the mediator or the date of the mediation within thirty (30) days after the written request for mediation has been received, then JAMS shall appoint the mediator at its discretion and/or set a mediation date. County and Owner agree to participate in any such mediation in good faith, and shall share equally in its costs. All offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by either of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process.

9.2 Arbitration.

(a) Either County or Owner may initiate arbitration with respect to a Dispute by filing a written demand for arbitration at any time following completion of the informal dispute resolution and mediation processes described above; provided however, that mediation may continue after the commencement of arbitration, if County and Owner so desire. Unless otherwise agreed to by County and Owner, the mediator shall be disqualified from serving as the arbitrator in the case. The provisions of this Section 9.2 may be enforced by any court of competent jurisdiction, and the prevailing party shall be entitled to an award of all costs, fees, and expenses, including attorneys’ fees, to be paid by the non-prevailing party. Any Dispute arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, not resolved by the mediation process set forth above, shall be determined by arbitration to be held in San Benito County before one arbitrator. Neither party may request an arbitration hearing in conformity with this Section 9.2 until after the completion of informal dispute resolution and mediation processes under

Section 9.1 are complete; provided, however, that mediation may continue after the commencement of arbitration if County and Owner so mutually desire. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures, which rules shall govern the commencement of arbitration and the selection of the arbitrator among other things. Judgment on the arbitration award may be entered in the San Benito County Superior Court or any court having jurisdiction. This Section 9.2 shall not preclude County or Owner from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The costs and fees of arbitration (including those fees and expenses set forth in JAMS' fee schedule in effect at the time of commencement of the arbitration) shall be borne equally by County and Owner, and each side shall be responsible for its own attorney(s) and expert(s) witness fees.

(b) The dispute resolution process described under Sections 9.1 and 9.2(a) above shall be undertaken in good faith. A mediator or arbitrator other than JAMS may be mutually agreed upon by County and Owner in writing. By agreeing to this dispute resolution process, neither County nor Owner hereby loses or waives its right to assert the operation of any applicable statute of limitations as an affirmative defense. Any arbitration award shall be final and binding upon County and Owner and each shall accept such decision and award as binding and conclusive and shall abide thereby and neither party may commence civil litigation as a means of resolving a Dispute except for an action to obtain equitable relief.

9.3 Attorneys' Fees and Dispute Resolution Costs.

Subject to Sections 9.1 and 9.2 above, in which each side shall be responsible for paying its own attorney's fees and costs for mediation or arbitration proceedings, in any further action or proceeding brought by any party to enforce or interpret a provision of this Agreement, or to seek injunctive relief or declaratory relief against any other party to this Agreement, the prevailing party is entitled to recover reasonable attorneys' fees and any other costs incurred in the action or proceeding in addition to any other relief to which it is entitled.

Section 10. Assignment and Assumption of Obligations.

10.1 Assignment of Rights, Interests and Obligations.

Owner may sell, assign, or transfer in whole or in part the Property to any Subsequent Landowner at any time during the Term of this Agreement without County's consent so long as the Subsequent Landowner executes an Assignment and Assumption Agreement in accordance with Section 10.2 below. Upon any public notification of the sale, transfer, or assignment of the Property, Owner shall provide concurrent notice to the County.

10.2 Assumption of Rights, Interests and Obligations in Writing Only.

Express written assumption by a Subsequent Landowner of the obligations, responsibilities and duties of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred, in accordance with the provisions of this Section 10.2, shall relieve Owner of such obligations so expressly assumed. The Subsequent Landowner

shall execute an Assignment and Assumption Agreement in a recordable form, in which it assumes all obligations, responsibilities and duties of Owner with respect to this Development Agreement as it relates to the Subsequent Landowner's acquisition of all or a portion of the Property. The parties agree that if the Subsequent Landowner executes an agreement in substantially the same form as attached Exhibit G, this shall be sufficient to satisfy the obligations in this Section 10. This Assignment and Assumption Agreement shall take effect upon Subsequent Landowner's acquisition of all or a portion of the Property. In the event the Subsequent Landowner executes an Assignment and Assumption Agreement that is not in substantially the same form as Exhibit G, then any such agreement shall be in a recordable form and shall be approved as to form by County Counsel prior to any such agreement taking effect.

The County Recorder shall duly record any such Assignment and Assumption Agreement in the official records of San Benito County within ten (10) days of receipt. Upon recordation of said assumption agreement, Owner shall automatically be released from those obligations assumed by the Subsequent Landowner.

Section 11. General Provisions.

11.1 Independent Contractors.

Each party is an independent contractor and shall be solely responsible for the employment, acts, omissions, control and directing of its employees. All persons employed or utilized by Owner in connection with this Agreement and the Project shall not be considered employees of County in any respect. Except as expressly set forth herein, nothing contained in this Agreement shall authorize or empower any party to assume or create any obligation whatsoever, express or implied, on behalf of any other party or to bind any other party or to make any representation, warranty or commitment on behalf of any other party.

11.2 Invalidity of Agreement and Severability of Provisions.

If this Agreement in its entirety is determined by a court or arbitrator to be invalid or unenforceable under State law, this Agreement shall automatically terminate as of the date of final entry of judgment or the arbitrator's written decision, including any appeals. In this event, the parties agree to negotiate in good faith and to enter into a new Development Agreement which would most closely match the expressed intent of this Agreement without the portion(s) of this Agreement that was determined by the court or arbitrator to cause the Agreement to be invalid or unenforceable. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, the remaining provisions shall continue in full force and effect.

To the extent that any provision of this Development Agreement differs or conflicts with Chapter 19.11 of the San Benito County Code, this Development Agreement which shall be adopted by ordinance shall control, and shall not be invalidated by any such conflict.

11.3 Further Documents.

Each party shall execute and deliver to the other party all other instruments and documents as may be reasonably necessary to carry out the purpose of this Agreement in order to provide or secure to the other party the rights and privileges granted by this Agreement.

11.4 Time of Essence.

Time is of the essence in the performance of each and every covenant and obligation to be performed by the parties hereunder.

11.5 Modifications.

This Agreement may be modified from time to time by mutual consent of the parties, in accordance with the County Development Procedures contained in San Benito County Code Section 19.11.011 (A). In the event the parties modify this Agreement, the County Recorder shall cause notice of such action to be duly recorded in the official records of San Benito County within ten (10) days of such action.

11.6 Subsequent Approvals Do Not Require Amendment.

County's approval of any Subsequent Approval shall not require an amendment to this Agreement except in the event and to the extent Owner expressly seeks and County approves such amendment in connection with Subsequent Approval(s). Upon County's approval of any Subsequent Approval, it shall become part of the Project Approvals governing development of the Project covered by this Agreement.

11.7 Project is a Private Undertaking.

The parties agree that: (a) any development by Owner of the Property shall be a private development; (b) County has no interest in or responsibilities for or duty to third parties concerning any improvements constructed in connection with the Property; (c) the contractual relationship between County and Owner is such that Owner is an independent contractor and not an agent of County; and (d) nothing in this Agreement is intended or shall be construed to create or reflect any form of partnership or joint venture between the parties.

11.8 No Discrimination Permitted.

Owner shall not discriminate in any way against any person on the basis of race, color, national origin, sex, marital status, sexual orientation, age, creed, religion, or condition of physical disability in connection with or related to the performance of this Agreement.

11.9 Covenants Running with the Land.

Subject to Section 10 above, all of the provisions contained in this Agreement are binding upon and benefit the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or any portion of the Property,

whether by operation of law or in any manner whatsoever, during their ownership of the Property, or any portion thereof. All of the provisions of this Agreement constitute covenants running with land pursuant to California law, including, without limitation, Civil Code section 1468.

11.10 Recordation of Agreement.

Within ten (10) days of the Effective Date, the County Recorder shall cause this Agreement to be duly recorded in the official records of San Benito County.

11.11 Notices.

Any notice required under this Agreement shall be in writing and personally delivered, or sent by certified mail (return receipt requested and postage prepaid), overnight delivery, or facsimile to the following:

County: San Benito County Resource Management Agency
Attn: Director
2301 Technology Parkway
Hollister, CA 95023
Telephone: (831) 637-5313
Fax: (831) 637-5334

Copy to: County Counsel's Office
Attn: County Counsel
481 4th Street, 2nd Floor
Hollister, CA 95023
Telephone: (831) 636-4040
Fax: (831) 636-4044

Copy to: County Administrative Office
Attn: County Administrative Officer
481 Fourth St.,
Hollister, CA 95023
(831) 636-4000, ext. 10

Owner: PANOCHE VALLEY SOLAR, LLC
Attn: James J. Dixon
c/o ConEdison Development
100 Summit Lake Drive, Suite 210
Valhalla, NY 10595

Copy to: BAKER BOTTS LLP
Attn: Chris Carr
101 California Street, Suite 3600
San Francisco, CA 94111
Telephone: (415) 291-6208
Fax: (415) 373-2720

Notices to Subsequent Landowners shall be given by County as required above only for those Subsequent Landowners who have given County written notice of their addresses for the purpose of receiving such notices. Any party may change its mailing address/facsimile at any time by giving written notice of such change to the other party in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on the earlier of the date personal delivery is effected or on the delivery date or attempted delivery date shown on the return receipt, air bill or facsimile.

11.12 Prevailing Wage.

Owner shall be solely responsible for determining whether construction of any or all of the improvements required in connection with the Project trigger the obligation to pay prevailing wages under California or federal law. In the event and to the extent that payment of prevailing wages is required, Owner shall comply with those requirements. Owner shall defend, indemnify and hold harmless County, its agents, employees, officers and officials from any claims, injury, liability, loss, costs or damages sought by a third party for a failure to pay prevailing wages in connection with the Project. The indemnification obligation set forth in this Section 11.12 shall survive the termination of this Agreement.

11.13 Applicable Law.

This Agreement shall be construed and enforced in accordance with the laws of the State of California.

11.14 Venue.

Any action brought relating to this Agreement shall be held exclusively in a state court in the County of San Benito.

11.15 Cooperation in the Event of Legal Challenge; Indemnification.

Owner shall defend, indemnify, and hold harmless the County, its agents, employees, officers, and officials from any claims, injury, liability, loss, costs or damages sought by a third party against the County challenging the validity of this Agreement, any provision hereof, or any Project Approval, or relating to any personal injury, death, or property damage, arising from Owner's operations or those of its employees, officers, agents, contractors or subcontractors, which relate to the Project (collectively referred to as "**Legal Challenge**"). It is understood that Owner's duty to indemnify and hold harmless includes the duty to defend as set forth in California Civil Code Section 2778. The provisions of Section 4 of the Reimbursement Agreement between the parties, which are incorporated herein by this reference, shall govern the defense of any Legal Challenge as defined herein. Acceptance by County of insurance certificates and endorsements required under this Agreement does not relieve Owner from liability hereunder. The provisions of this Section 11.15 shall survive the termination of this Agreement.

11.16 No Waiver.

No waiver by any party of any provision of this Agreement shall be considered a waiver of any other provision or any subsequent breach of the same or any other provision, including the time for performance of any such provision. The exercise by a party of any right or remedy provided in this Agreement or provided by law shall not prevent the exercise by that party of any other remedy provided in this Agreement or under the law.

11.17 Construction.

This Agreement has been reviewed and revised by legal counsel for both County and Owner, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. The provisions of this Agreement and the attached exhibits shall be construed as a whole according to their common meaning and not strictly for or against any party, and in a manner that shall achieve the purposes of this Agreement. Wherever required by the context, the masculine gender shall include the feminine or neuter genders, or vice versa.

11.18 Entire Agreement.

This Agreement and all exhibits hereto constitute the entire agreement between the parties and supersede all prior discussions, negotiations, and agreements whether oral or written. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by both parties.

11.19 Estoppel Certificate.

Any party from time to time may deliver written notice to the other party requesting written confirmation that, to the knowledge of the certifying party: (a) this Agreement is in full force and effect and constitutes a binding obligation of the parties; (b) this Agreement has not been amended either orally or in writing, or if it has been amended, specifying the nature of the amendment(s); and (c) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature of the default. A party receiving a request shall execute and return the certificate within thirty (30) days after receipt thereof. The Planning Director shall have the right to execute any certificate requested by Owner. At the request of Owner, the certificate provided by County establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and Owner shall have the right to record the certificate for the affected portion of the Property at its cost.

11.20 No Third-Party Beneficiaries.

The terms and provisions of this Development Agreement shall be binding upon and inure to the benefit of the parties, and their respective successors and assigns, and is made solely and specifically for their benefit. No other person or entity shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

11.21 Counterparts.

This Agreement and any and all amendments thereto may be executed in counterparts, and all counterparts together shall be construed as one document.

11.22 Authority to Execute.

Each party hereto expressly warrants and represents that it has the authority to execute this Agreement on behalf of its entity and warrants and represents that it has the authority to bind its entity to the performance of its obligations hereunder.

11.23 Captions.

The caption headings provided herein are for convenience only and shall not affect the construction of this Agreement.

11.24 Listing and Incorporation of Exhibits.

The exhibits to this Agreement, each of which is hereby incorporated herein by reference, are as follows:

Exhibit A: Legal Description of Property

Exhibit B: Map of Property

Exhibit C: Reserved

Exhibit D: Reserved

Exhibit E: Reserved

Exhibit F: PG&E Decommissioning Planned Costs

Exhibit G: Form of Assignment and Assumption Agreement

Exhibit H: Conditions of Approval

Exhibit I: Mitigation Measures (MMRP)

Exhibit J: Schedule of PILOT Payments

Exhibit K: California Department of Transportation Guidelines for Identifying and Repairing Localized Areas of Distress in AC Pavements Prior to Capital Preventive Maintenance or Rehabilitation Repairs

COUNTY OF SAN BENITO

John Guertin,
Director of Resource Management Agency
Date:

APPROVED AS TO FORM:
San Benito County Counsel's Office

Barbara Thompson
Acting Assistant County Counsel
Date:

PANOCHE VALLEY SOLAR, LLC

By:

Its: President and Chief Executive Officer
Date:

Exhibit A

Legal Description of Property

EXHIBIT A

ALL OF THAT certain Parcel 1 as is found shown on Parcel Map No. 1238-16, recorded October 20, 2016, in Book 11 of Parcel Maps, page 48, San Benito County Records.

(A portion of APNs 027-026-004, 027-026-005, 027-260-008, 027-260-011, 027-260-012, 270-270-001, 027-270-002, 027-270-004, 027-270-007, 027-270-008, 027-270-009, 027-270-012, 027-280-004, 027-290-001, and 027-290-004.

Exhibit B

Map of Property

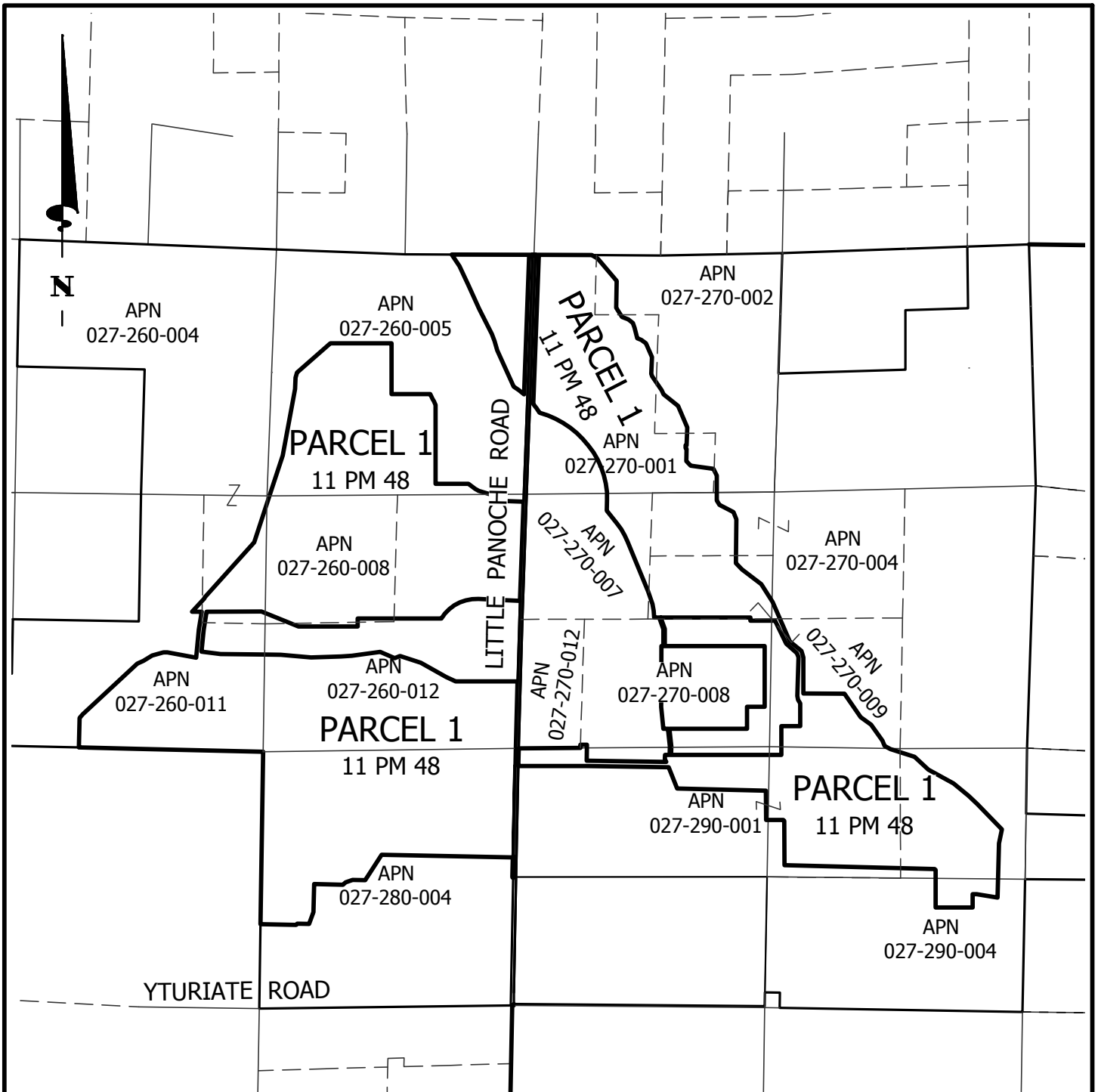


EXHIBIT B

PARCEL 1

11 PM 48

NOVEMBER 2017

SCALE 1" = 3000'

SAN BENITO ENGINEERING & SURVEYING, INC.

502 MONTEREY STREET

HOLLISTER, CA 95023

831-637-2763

Exhibit C

RESERVED

Exhibit D

RESERVED

Exhibit E

RESERVED

Exhibit F

PG&E Decommissioning Planned Costs

Application: 09-02-019
(U 39 E)
Exhibit No.: (PG&E-3)
Date: July 15, 2009
Witnesses: Garrett P. Jeung
 Brian M. McDonald
 Joseph F. O'Flanagan

**PACIFIC GAS AND ELECTRIC COMPANY
PG&E'S PHOTOVOLTAIC PROGRAM**

**SUPPLEMENTAL TESTIMONY
PURSUANT TO JULY 1, 2009 AC AND ALJ RULING**

PUBLIC VERSION



1 Once an agreement has been reached, an initial contingent payment will be
2 made. PG&E will then file an interconnection application and proceed with site
3 due diligence activities, including verification that no protected plant or animal
4 species would be threatened or otherwise significantly impacted by the project.
5 Once all contingencies are met, including approval of the PV Program
6 Application by the CPUC, and positive findings from the interconnection
7 application studies and other due diligence activities, PG&E will make a final
8 payment for the parcel.

9 Given the extensive due diligence PG&E has and will conduct on all project
10 lands, PG&E does not anticipate any installation, operation, or viability issues for
11 these plants. California has ample land for the types of projects proposed. The
12 utility-owned portion of the PV Program is anticipated to utilize approximately
13 2,500 acres for the full 250 MW build-out, which is less than 0.01 percent^[9] of
14 all existing California farm land, even if it were assumed that all land used for the
15 utility-owned projects would be converted from agricultural uses. Given this
16 abundance of land, PG&E anticipates it will have enough possible sites to select
17 project sites carefully to minimize any installation, operation, or viability issues
18 with these plants.

19 **G. Disposal Costs of Photovoltaic Utility-Owned Generation** 20 **Program**

21 PG&E did not include any costs in the PV Program for decommissioning the
22 250 MW of the PV UOG Program since it is not certain that it will in fact remove
23 the facilities after the 25-year estimated life of the facilities. It may be more
24 economical at the end of the life of the facilities to replace the PV panels and
25 continue to generate at the PV site. However, if PG&E were to decommission
26 the sites, it estimates that it would cost \$26,500 per MW, or \$6.6 million for the
27 250 MW program (2009 dollars). Activities included in the cost estimate are
28 crew mobilization, panel removal and recycling, balance of plant removal, and
29 piling removal. It is assumed that the cost of transporting material off site will be
30 offset by scrap value of the material. If it becomes more certain that the sites

[9] 25.4 million acres of farmland as quoted in 2008 State Agriculture Overview
for California, by the National Agricultural Statistics Service:
http://www.nass.usda.gov/Statistics_by_State/Ag_Overview/AgOverview_CA.pdf

- 1 are going to be decommissioned at the end of the life of the facilities, PG&E will
- 2 include the expected decommissioning costs in a future General Rate Case.

Exhibit G

Form of Assignment and Assumption Agreement

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
San Benito County
Attn: San Benito County Clerk
440 Fifth St., Room 206
County Courthouse
Hollister, CA
95023

RECORDING FEE EXEMPT
PURSUANT TO GOVERNMENT CODE
SECTION 27383

(Space Above Line For Recorder's Use)

FORM OF:

**OWNER AND SUBSEQUENT LANDOWNER
ASSIGNMENT AND ASSUMPTION AGREEMENT**

This ASSIGNMENT AND ASSUMPTION AGREEMENT ("**Agreement**") is made and entered into on this day of _____, 20__, by and between [OWNER] ("**Owner**") and _____ ("**Subsequent Landowner**").

RECITALS

A. Owner entered into a First Amended Development Agreement with the County of San Benito on _____, 2017 ("**FADA**"), which was recorded on _____, _____, as Document No. _____ in Book _____, Page _____ of the Official Records of San Benito County, California pursuant to which Owner agreed to develop certain property more particularly described in said FADA as the "**Property**" in exchange for certain vested rights and subject to certain covenants, terms and conditions set forth in the FADA.

B. Owner and Subsequent Landowner have agreed to assign Owner's interest in all or a portion of the Property by a deed or other written instrument, which will be recorded on _____, _____, as Document No. _____ in Book _____, Page _____ of the Official Records of San Benito County, California concurrently with the recordation of this instrument ("**Assigned Property**").

C. Subsequent Landowner desires to assume all of Owner's rights, duties and obligations under the FADA with respect to the Assigned Property and to relieve Owner of all of said assigned rights, duties and obligations with respect to the Assigned Property.

NOW, THEREFORE, Owner and Subsequent Landowner hereby agree as follows:

1. Owner hereby assigns, effective as of Owner's conveyance of the Assigned Property to Subsequent Landowner, all of the vested rights, title and interest of Owner under the FADA with respect to the Assigned Property. Owner retains all of the vested rights, title and interests under the FADA with respect to all other lands within the Property owned thereby.

2. Subsequent Landowner hereby contractually assumes all of the rights, duties and obligations of Owner under the FADA with respect to the Assigned Property, and agrees to observe and fully perform all of said duties and obligations and to be subject to all covenants, terms and conditions thereof with respect to the Assigned Property, it being the express intention of both Owner and Subsequent Landowner that, upon execution of this Agreement, Subsequent Landowner shall become substituted for Owner as "Owner" under the FADA with respect to the Assigned Property.

3. All of the covenants, terms, and conditions of the FADA and set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

4. Any notice required under the FADA shall be made in accordance with Section 11.12 of the FADA, except notice to Subsequent Landowner with respect to the Assigned Property shall be made to:

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

OWNER:

SUBSEQUENT LANDOWNER:

Exhibit H

Conditions of Approval

CONDITIONS OF APPROVAL

Standard Conditions:

- 1. Indemnification.** Applicant shall defend, indemnify, and hold harmless San Benito County, its agents, officers, and/or employees (hereinafter "County") from any and all suits, fees, claims, demands, causes of action, proceedings (hereinafter collectively referred to as "Legal Action"), costs, losses, damages, liabilities and expenses (including, but not limited to, an award of attorneys' fees, expert witness fees, and court costs) incurred by County arising (directly or indirectly) or resulting from the review, processing, consideration, or approval of Applicant's Project or action taken by County thereon, including Legal Actions based on the negligence of County. Applicant will reimburse County for any damages, costs, or fees awarded pursuant to any settlement, default judgment, or other judgment taken against the County, whether the result of Applicant's decision not to defend legal action or otherwise. County will consult with Applicant on whether to defend, settle, appeal, or take other action regarding any legal action. However, County retains its discretion to direct counsel regarding whether to defend, settle, appeal, or take other action regarding any Legal Action. Condition of Approval No. 1 shall survive any setting aside of the approval by any Court.
- 2. Conformity to Plan:** The development and use of the site shall conform substantially to the proposed site plan and Conditions of Approval as approved by the Planning Commission. Any increase, change, or modification in the nature or intensity of the land use on the site shall be subject to further Planning Commission review and approval. [Planning]
- 3. Compliance Documentation:** The Applicant shall submit a summary response in writing to these Conditions of Approval documenting compliance with each condition, including dates of compliance and referencing documents or other evidence of compliance. [Planning]
- 4. Encroachment Permit:** Pursuant to Section 14-3 of the San Benito County Code, prior to commencement of any improvements associated with this project, the Applicant shall obtain a Public Works Encroachment Permit for any work being performed within the County right of way.
- 5. Fire:** The project shall meet the standards set forth in the latest adopted editions of the 2013 California Fire Code, San Benito County Ordinances 822 and 823, Public Resources Codes 4290 and 4291 and all other related codes as they apply to a project of this type and size.
- 6. Lighting Plan:** Prior to operation and as part of the building permit submittal, the Applicant shall submit for the County's review and approval an exterior/security and safety lighting mitigation plan consistent with the requirements of Mitigation Measure MM AE-1.1 to reduce lighting impacts. All exterior lighting for new development shall be unobtrusive, harmonious with the local area, and constructed or located so that only the intended area is illuminated and to minimize stray light trespassing across property boundaries in accordance with County Code Chapter 19.31. All fixtures shall comply with County Code Chapter 19.31 (along with the requirements of Zone III regulations set within Chapter 19.31.009 of the County Code). The exterior lighting plan shall indicate the location, type, and wattage of all proposed lighting fixtures and include catalog sheets for each fixture. [Planning]

7. **Yearly Permit Compliance Review:** Each year, Planning Staff and other County staff (as necessary) shall conduct yearly site visits, or more frequent as necessary, to ensure that all Conditions of Approval are being met and all approved plans and programs are being enforced. Site visits are subject to a fee per Ordinance 833.
8. **Sign Ordinance:** Prior to operation, any signs used shall be required to meet the County's Sign Ordinance.
9. **Mitigation Monitoring:** All mitigation monitoring shall be funded by the applicant. All mitigation monitoring shall be performed by either County Staff or other qualified personnel who is solely responsible to the County of San Benito. The cost for all staff time required to fulfill the County's responsibilities under the Mitigation Monitoring and Reporting Program ("MMRP"), and to monitor Applicant's compliance with the MMRP and Applicant Proposed Measures ("APMs") shall be reimbursed by Applicant within 30 days of the issuance of a written invoice. Staff performing all monitoring, or other work, required by the FEIR shall be approved by the County Planning Director.
10. **Mitigation Measures:** All Mitigation Measures are hereby established as Conditions of Approval, found in Exhibit "B" to the Board of Supervisors' Resolution Certifying the Final SEIR, and Adopting Findings, a MMRP, and Statement of Overriding Considerations, and are incorporated hereby by this reference. All APM's contained in the FSEIR are also hereby established as Conditions of Approval, and are found in Exhibit "C" to the Board of Supervisors' Resolution Certifying the Final SEIR, and Adopting Findings, a MMRP, and Statement of Overriding Considerations, and incorporated hereby by this reference. Any mitigation measure or APM inadvertently deleted from Exhibits "B" or "C" but discussed in the FSEIR are also established as conditions of approval.
11. **Development Agreement.** This approval shall be considered a "Subsequent Approval" as contemplated by the 2010 Development Agreement. The 2010 Development Agreement and full compliance in all material respects with the terms thereof, in addition the requirements established by this conditional use permit, shall be an express condition of approval of this conditional use permit.
12. **Successors in Interest.** The Conditions of Approval are binding on all successors in interest of Applicant, whether succession is by agreement, operation of law, or other means, including but not limited to all future owners utilizing this use permit.
13. **Revocation of Use Permit.** The use permit may be modified or revoked in its entirety if Applicant fails to comply with all Conditions of Approval.
14. **Reimbursement Agreement.** Applicant agrees that this project (Use Permit 1023-09-A) is subject to the 2010 Reimbursement Agreement and is included in the "project" defined therein, and further that Project Applicant shall reimburse the County for all costs incurred in processing and defending approval of this Project. Condition of Approval No. 14 shall survive any setting aside of Project Approval by any Court.
15. **Agreement with all conditions of approval:** Prior to or upon approval by the Board of Supervisors, Applicant shall sign the statement below certifying that Applicant is in agreement with all Conditions of Approval.

I certify that I understand and agree to comply with all Conditions of Approval imposed by the Planning Commission, or Board of Supervisors as applicable, on this Permit.

Applicant Signature

JP

JOHN PIMENTEL

Date:

5/13/2015

Exhibit I

Mitigation Measures (MMRP)

I. Mitigation Monitoring and Reporting Plan

This section presents the Revised Project mitigation measures, monitoring and reporting actions, and agency and applicant responsibilities. Applicant Proposed Measures (APMs) are presented in Table B-9 (Section B.10). Mitigation measures are listed only under the discipline where they were initially proposed.

The measures presented in this Mitigation Monitoring and Reporting Plan are shown in their final form. Changes to mitigation measures that have occurred since the 2010 Final EIR are shown in the Section C of the Draft SEIR for each discipline, and changes to mitigation measures between the Draft SEIR and the Final SEIR are shown in Section C of this SEIR.

~~Measures that were adopted in 2010 and have not changed are presented here for completeness, but these measures are not available for comment.~~

Table I-1. Mitigation Monitoring and Reporting Plan ¹

MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
Mitigation Measures Modified After 2010 Final EIR					
Monitoring Process					
EM-2	Provide documentation for monitoring.	<ul style="list-style-type: none"> Confirm qualifications of monitor Prepare monitoring report annually for each calendar year in which construction occurs, and annually thereafter until monitor/County determine annual reports are no longer needed Verify completion of remedial measures. 	<ul style="list-style-type: none"> Throughout construction Annually post-construction until the monitor and the County determine that all measures have been successfully established 	<ul style="list-style-type: none"> County verifies qualifications of monitor. County confirms receiving annual report of mitigation monitoring. County confirms remedial measures are implemented, if required. 	<ul style="list-style-type: none"> Retain a qualified individual to verify that all adopted measures have been successfully implemented. Prepare monitoring reports on an annual basis Agree to complete any necessary remedial measures identified in the reports.
Air Quality					
AQ-1.1	Reduce fugitive dust.	<ul style="list-style-type: none"> Implement all components of mitigation measure. 	<ul style="list-style-type: none"> During construction, operation, and decommissioning. 	N/A	<ul style="list-style-type: none"> Implement measures to reduce fugitive dust and ensure all measures are shown on grading and building plans.
AQ-1.2	Designate a dust complaint monitor.	<ul style="list-style-type: none"> Designate a fugitive dust monitor to ensure fugitive dust emission mitigation is observed and impacts from fugitive dust do not exceed standards. Post publicly visible sign with contact information to report dust complaints. 	<ul style="list-style-type: none"> Prior to any grading, earthwork, or demolition and during construction 	<ul style="list-style-type: none"> Monterey Bay Unified APCD will confirm receiving contact information of monitoring personnel. 	<ul style="list-style-type: none"> Designate fugitive dust monitor. Provide name of monitor to Monterey Bay Unified APCD Compliance Division. Provide and post a sign with contact information.

¹ The full text of all modified mitigation measures is presented in each part of Section C (Sections C.1 through C.15). Measures that have not changed since the 2010 Final EIR are identified below under the heading “Mitigation Measures Unchanged since 2010 Final EIR” and the full text of those measures is presented in Appendix 3.

Table I-1. Mitigation Monitoring and Reporting Plan ¹

MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
Biological Resources					
BR-G.2	Implement Best Management Practices (BMPs).	<ul style="list-style-type: none"> Implement BMPs. Provide annual documentation of BMPs. 	<ul style="list-style-type: none"> During all ground disturbance and construction-related activities. 	<ul style="list-style-type: none"> County will review annual written report. County will verify qualifications of the environmental monitor. 	<ul style="list-style-type: none"> Implement BMPs. Submit written report annually documenting compliance with BMPs. Retain an environmental monitor to ensure compliance with BMPs.
BR-G.3	Develop and implement a Habitat Restoration and Revegetation Plan (HRRP).	<ul style="list-style-type: none"> Prepare HRRP. Restore disturbed areas to pre-construction conditions or better via implementation of a HRRP. The HRRP shall include a Soil Restoration Plan, Plant Restoration and Revegetation Plan, Monitoring Plan, and Final Closure Plan. 	<ul style="list-style-type: none"> Prior to issuance of the building permit, prepare HRRP. Prior to the final project inspection, review plan compliance. At least one year prior to planned closure and decommissioning, submit and review Final Closure Plan 	<ul style="list-style-type: none"> County will verify qualifications of the biologist and agricultural soil expert. County will review and approve HRRP. County will review plan compliance. County will review Final Closure Plan. 	<ul style="list-style-type: none"> Retain a qualified biologist, knowledgeable in the area of annual grassland habitat restoration and a qualified agricultural soil expert to prepare a HRRP and monitor the initial implementation and attainment of established success criteria. Retain a qualified biologist, knowledgeable in the area of annual grassland habitat restoration and a qualified agricultural soil expert to prepare and implement the Final Closure Plan. Prepare and implement HRRP and Final Closure Plan.

Table I-1. Mitigation Monitoring and Reporting Plan ¹

MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
BR-G.5	Purchase credits from a CDFW-approved mitigation bank, create a permanent conservation easement(s), in favor of CDFW or a CDFW-approved conservation holder for the management of the land pursuant to the approved HMMP, or transfer land in fee to a CDFW approved conservation holder with a deed restriction for the management of the land pursuant to the approved HMMP.	<ul style="list-style-type: none"> • Preserve habitat according to requirements found in the mitigation measure. • Monitor and maintain mitigation land per the requirements set forth in the Wetland Mitigation Monitoring Plan and the Habitat Mitigation and Monitoring Plan (HMMP). • Prepare annual report. 	<ul style="list-style-type: none"> • Prior to the disturbance of vegetation, the Applicant shall obtain County approval of the location of mitigation lands, the holder of conservation easements or other appropriate agreement as described in the mitigation measure, and the restrictions contained in the conservation easement(s) created for the permanent protection of these lands. 	<ul style="list-style-type: none"> • County will review and determine whether proposed conservation easement holder meets requirements specified in the mitigation measure. • County will verify and approve attainment of habitat mitigation requirements prior to construction of each project phase. 	<ul style="list-style-type: none"> • Provide funds for a “qualified land trust” or other appropriate fee holder as described in the mitigation measure to acquire appropriate conservation easement(s) or donate appropriate conservation easement(s) to a qualified land trust or to an appropriate mitigation bank. • Submit annual report to the County.
BR-G.6	Develop and implement Wetland Mitigation and Monitoring Plan and Habitat Management Plan for mitigation lands.	<ul style="list-style-type: none"> • Prepare and implement WMMP and HMP per the requirements set forth in the mitigation measure. 	<ul style="list-style-type: none"> • Prior to start of construction, submit WMMP and HMP. • Prior to final County inspection, initial and estimated final impact acreages must be presented to the County and acquisition of off-site lands must be verified. 	<ul style="list-style-type: none"> • County will review and approve WMMP and HMP. • County will verify acquisition of off-site lands. 	<ul style="list-style-type: none"> • Retain a qualified biologist to prepare and implement WMMP and HMP.
BR-1.1	Prepare and implement a Weed Control Plan (WCP).	<ul style="list-style-type: none"> • Prepare WCP with 6 elements outlined in the mitigation measure. • Retain an environmental monitor to ensure compliance with measures set forth in WCP. 	<ul style="list-style-type: none"> • Prior to the issuance of a building permit or ground disturbance, prepare and approve WCP. • WCP will be implemented prior to and during construction 	<ul style="list-style-type: none"> • County will verify qualifications of biologist or restoration ecologist responsible for preparing WCP. • County will review and approve WCP. 	<ul style="list-style-type: none"> • Prepare and implement a WCP. • Retain an environmental monitor to ensure the compliance with construction measures. • Prepare and submit to the County reports and logs, as required by the WCP.

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MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
BR-3.1	Conduct pre-construction surveys for State and Federally Threatened, Endangered, Proposed, Petitioned, and Candidate plants and implement avoidance measures.	<ul style="list-style-type: none"> • Retain a qualified plant ecologist/ • Conduct pre-construction surveys for special-status plants. • Document special-status plants found. • Establish buffers based on survey results. 	<ul style="list-style-type: none"> • Prior to new ground disturbance throughout construction, conduct pre-construction surveys. 	<ul style="list-style-type: none"> • County will verify the qualifications of plant ecologist or biologist. • County, USFWS, and CDFG approval will be required to reduce buffer zone for special-status species. 	<ul style="list-style-type: none"> • Retain a qualified plant ecologist/. • Conduct pre-construction surveys and prepare report on special-status species to submit to the County. • Document yearly survey events and update WEEP with information from data collected.
BR-6.1	Conduct pre-construction surveys for nesting and breeding birds and implementation of avoidance measures.	<ul style="list-style-type: none"> • Conduct pre-construction surveys for nesting birds during breeding season. • Establish a 300-foot buffer around active nests, 500-foot buffer around active raptor nests, or 0.5-mile buffer around active golden eagle nests. • Report California condor sightings to USFWS 	<ul style="list-style-type: none"> • Prior to any on-site disturbance during breeding season, conduct pre-construction surveys for nesting birds. • During the recognized breeding season for most birds biological monitors will routinely inspect for active nests. 	<ul style="list-style-type: none"> • County will verify the qualifications of the biologist. 	<ul style="list-style-type: none"> • Retain a qualified biologist. • Conduct pre-construction surveys and for birds. • Set up appropriate buffer zones for active nests. • Obtain written documentation providing concurrence from the USFWS and CDFG authorizing the nest relocation and prepare a written report documenting the relocation efforts.
BR-9.1	Conduct pre-construction surveys for California tiger salamander and implement avoidance measures.	<ul style="list-style-type: none"> • Conduct pre-construction California tiger salamander surveys. • Restrict grading and subsurface disturbing activities to daylight hours. • Inspect pipes and similar structures. • Avoid disturbance to all ponds and in-stream pools. • Scope burrows proximal to known breeding pools. 	<ul style="list-style-type: none"> • Prior to project construction, complete surveys and provide documentation demonstrating completion. 	<ul style="list-style-type: none"> • County will verify qualifications of the biologist. • County will verify completion of pre-construction surveys. 	<ul style="list-style-type: none"> • Retain a qualified biologist to perform pre-construction surveys for California tiger salamanders. • Implement avoidance measures in the mitigation measure.

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MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
BR-10.1	Conduct pre-construction surveys for blunt-nosed leopard lizard and implement avoidance measures.	<ul style="list-style-type: none"> • Conduct pre-construction surveys within 30 days prior to construction for blunt-nosed leopard lizard, establish buffers and exclusion areas for all observed blunt-nosed leopard lizards. • Record the geographic coordinates of each blunt-nosed leopard lizard individual detected. • Implement protective procedures if a blunt-nosed leopard lizard is detected on the project site. • Establish movement corridors to allow movement of isolated blunt-nosed leopard lizards to and from areas of greater population density. • Avoid use of plastic monofilament netting. 	<ul style="list-style-type: none"> • Prior to all construction activities that will result in permanent or temporary ground disturbance within 30 days of construction. • Prior to issuance of grading permits, mitigation for impacts must be completed. 	<ul style="list-style-type: none"> • County will verify qualifications of the biologist. • County will verify completion of pre-construction surveys. 	<ul style="list-style-type: none"> • Retain a qualified biologist to perform pre-construction surveys for blunt-nosed leopard lizards. • Implement avoidance measures found in the mitigation measure. • Implement monitoring as prescribed in the HMMP. • Inform the USFWS and CDFG immediately upon discovery of dead or injured blunt-nosed leopard lizard.
BR-13.1	Focused pre-construction burrowing owl surveys and implementation of avoidance measures.	<ul style="list-style-type: none"> • Conduct pre-construction surveys. • Create appropriate buffer zone around observed burrows. • Passively relocate birds, if necessary, and place one-way doors on evicted burrows. 	<ul style="list-style-type: none"> • No more than 30 days and no less than 14 days prior to the commencement of initial ground disturbing activities, conduct pre-construction surveys. 	<ul style="list-style-type: none"> • County will verify qualifications of the biologist. • County will verify completion of pre-construction surveys. 	<ul style="list-style-type: none"> • Retain a qualified biologist(s) with experience surveying for burrowing owls to conduct pre-construction surveys in conformance with CDFG protocols. • Implement avoidance measures and ensure buffer delineations are kept in good working order.

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MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
BR-14.2	Prepare and Implement an Avian Conservation Strategy and Eagle Conservation Plan	<ul style="list-style-type: none"> • Prepare and implement an Avian Conservation Strategy and Eagle Conservation Plan that includes a bird mortality study, polarized light and insectivorous bird study, thresholds, and implementation measures. 	<ul style="list-style-type: none"> • Prior to issuance of construction permit, submit an Avian Conservation Strategy and Eagle Conservation Plan. 	<ul style="list-style-type: none"> • County will verify qualifications of the biologist. • County will consult with CDFG and USFWS on the proposed program to determine thresholds prior to approval. • County will verify submittal of two studies to scientific-journals. • County will verify submittal of quarterly and annual reporting and consultation with USFWS and CDFG to determine if subsequent years of reporting are necessary. 	<ul style="list-style-type: none"> • Retain a qualified biologist to prepare an Avian Conservation Strategy and Eagle Conservation Plan in consultation with CDFG and USFWS and monitor impacts to birds during construction and one year after completion of construction. • Install additional bird flight diverters, alter project components that have been identified as key mortality features, or implement other appropriate actions approved by the County and regulatory agencies based on the findings of the Avian Conservation Strategy and Eagle Conservation Plan. • Prepare papers that describe the design and monitoring results of the two studies to be submitted to peer-reviewed scientific journals. • Submit annual reports to the County during construction and one year post-construction (additional reporting if mitigation actions continue to be required).
BR-15.1	Survey pre-construction maternity colony or hibernaculum for sensitive bats.	<ul style="list-style-type: none"> • Conduct pre-construction and post-construction surveys as defined in the mitigation measure. • Conduct surveys preferably during the maternity season as defined in the mitigation measure. • Avoid active maternity roosts or hibernacula if feasible. • Survey for alternative maternity roosts if avoidance is not feasible. 	<ul style="list-style-type: none"> • Prior to the commencement of construction activities and preferably within the maternity season, conduct pre-construction surveys. 	<ul style="list-style-type: none"> • County will verify qualifications of the biologist. • County will verify completion of pre-construction surveys and surveys for maternity roosts. 	<ul style="list-style-type: none"> • Retain a biologist, holding a CDFG collection permit and a Memorandum of Understanding with CDFG allowing the biologist to handle bats, to conduct pre-construction surveys and surveys during maternity season for sensitive bats. • Routinely inspect known maternity roosts or hibernacula.

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MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
BR-15.2	Provide substitute roosting habitat.	<ul style="list-style-type: none"> Provide substitute roosting habitat for the maternity colony as defined in the mitigation measure and the HMP. 	<ul style="list-style-type: none"> Conduct pre-construction and post-construction surveys as defined in the mitigation measure. Submit HMP for County approval prior to commencement of construction activities. 	<ul style="list-style-type: none"> County will approve HMP prior to commencement of construction activities. 	<ul style="list-style-type: none"> Protect and/or provide suitable roosting opportunities as defined in the mitigation measure and the HMP.
BR-15.3	Exclude bats prior to eviction from roosts.	<ul style="list-style-type: none"> Safely evict bats from non-breeding bat hibernacula. Demolition of maternity roost sites must commence before maternity colonies form (i.e., prior to 1 March) or after young are flying (i.e., after 31 August). 	<ul style="list-style-type: none"> A minimum of one week prior to intended eviction date, implement methods to evict bats. 	<ul style="list-style-type: none"> County will verify qualifications of the biologist. County will ensure evictions are done according to mitigation measure standards. 	<ul style="list-style-type: none"> Retain a biologist, holding a CDFG collection permit and a Memorandum of Understanding with CDFG allowing the biologist to handle bats, to direct eviction of roosting areas.
BR-15.4	Implement management recommendations at known roosts.	<ul style="list-style-type: none"> Implement protective measures for identified maternity roosts as defined in the mitigation measure and the Habitat Management Plan. 	<ul style="list-style-type: none"> Submit HMP to County for approval prior to commencement of construction activities. 	<ul style="list-style-type: none"> County will review and approve HMP. 	<ul style="list-style-type: none"> Retain a qualified biologist to prepare and implement HMP.
BR-16.1	Conduct focused pre-construction giant kangaroo rat burrow/precinct surveys and implement avoidance measures.	<ul style="list-style-type: none"> Conduct pre-construction surveys. Flag and establish buffer around active giant kangaroo rat burrows/. Map all active burrows/precincts and incorporate them into a GIS based figure for use by on-site monitors and construction crews. Live-trap and relocate giant kangaroo rats present in impact areas as described in an approved Giant Kangaroo Rat Relocation Plan 	<ul style="list-style-type: none"> No more than 30 days prior to commencement of ground-disturbing activities, conduct pre-construction surveys. Prior to final County inspection, review submitted documentation of burrows/precincts abandoned or destroyed. 	<ul style="list-style-type: none"> County will verify qualifications of the biologist. County will verify completion of pre-construction surveys. 	<ul style="list-style-type: none"> Retain a qualified biologist to perform pre-construction surveys for giant kangaroo rat. Create GIS figure of all active burrows/and give to Document all giant kangaroo rat burrows/precincts abandoned or destroyed and provide a written report to the County of San Benito. Periodically field check the mapped burrows/precincts to buffer delineation and flagging are all in good working order.

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MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
BR-16.3	Preserve, manage, and maintain giant kangaroo rat habitat corridors across the project footprint.	<ul style="list-style-type: none"> • Construction monitoring shall occur for the duration of construction, and if the biologist determines that the corridors are not functional, adaptive management measures shall be implemented in consultation with USFWS and CDFG. 	<ul style="list-style-type: none"> • Conservation easement on habitat corridors shall be recorded prior to commencement of construction. 	<ul style="list-style-type: none"> • County will ensure construction monitoring. 	<ul style="list-style-type: none"> • Preserve, manage, and maintain the ongoing functionality of the proposed giant kangaroo rat corridors on the project site. • No driving on the side of any panel block adjacent to a designated habitat corridor. • No new construction of buildings, ornamental tree plantings, or other features not already identified in the EIR that would reduce available habitat and may provide perching opportunities for predatory birds permitted within or directly adjacent to the habitat corridors.
BR-17.1	Conduct pre-construction San Joaquin antelope squirrel surveys and implement avoidance measures.	<ul style="list-style-type: none"> • Conduct pre-construction surveys. • Flag and establish buffer around active San Joaquin antelope squirrel burrows. • Implement sequential steps to evict San Joaquin antelope squirrels if avoidance is infeasible. 	<ul style="list-style-type: none"> • No more than 30 days prior to commencement of ground-disturbing activities, conduct pre-construction surveys. • Prior to final County inspection, review submitted documentation of burrows/precincts abandoned or destroyed. 	<ul style="list-style-type: none"> • County will verify qualifications of the biologist. • County will verify completion of pre-construction surveys. • County will review document listing all abandoned or destroyed burrows. 	<ul style="list-style-type: none"> • Retain a qualified biologist to perform pre-construction surveys for San Joaquin antelope squirrels. • Document all San Joaquin antelope squirrel burrows abandoned or destroyed and, provide a written report to the County of San Benito, CDFG and USFWS • Periodically survey for potential burrows requiring the avoidance measures.

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MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
BR-19.1	Conduct focused pre-construction San Joaquin kit fox surveys and implementation of avoidance measures.	<ul style="list-style-type: none"> • Conduct pre-construction surveys. • Flag and establish appropriate buffer around active San Joaquin kit fox surveys. • Stop work within a 200-foot radius of an occupied natal den and contact USFWS if active dens are found within 1,000 feet of project activities; work may resume after pups have left the den. • Implement sequential steps to evict San Joaquin kit fox if avoidance is infeasible. Natal dens shall not be disturbed at any time 	<ul style="list-style-type: none"> • Prior to commencement of construction activities, conduct pre-construction surveys. • Prior to the final County inspection, review compliance with measures and documentation of mitigation. • Prior to the final County inspection or occupancy, submit report to the County. 	<ul style="list-style-type: none"> • County will verify qualifications of the biologist. • County will verify completion of pre-construction surveys. • County will review location and design of the artificial dens prior to installation. • County will review document listing all abandoned or destroyed dens. 	<ul style="list-style-type: none"> • Retain a qualified biologist to perform pre-construction surveys for San Joaquin kit fox. • Routinely inspect protected dens and ensure that delineation methods are in good working order. • Replace all excavated kit fox dens with artificial dens on a 2:1 basis • Prepare and submit a written report documenting all kit fox dens abandoned, destroyed or avoided/protected for County review and approval.
BR-22.1	Fence temporary pond to exclude wildlife.	<ul style="list-style-type: none"> • Fence the perimeter of the temporary ponds. • Report any bird or other wildlife deaths as defined in the mitigation measure to the CDFW and USFWS 	<ul style="list-style-type: none"> • Monthly monitoring starting with the first month of construction. • No less than 30 days prior to operation of the ponds, provide as-built drawings of the ponds. • No later than January 30, submit annual report for the life of the project. 	<ul style="list-style-type: none"> • County will review as-built drawings of the ponds. • County will review annual monitoring reports. 	<ul style="list-style-type: none"> • Retain a designated biologist to regularly survey the ponds at least once per month starting with the first month of construction of the ponds. • Submit annual monitoring reports to the County, CDFG, and USFWS describing the dates, durations, and results of site visits conducted at the ponds.

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MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
Cultural and Paleontological Resources					
CR-2.1	Conduct cultural resource monitoring during construction.	<ul style="list-style-type: none"> Conduct cultural resources monitoring. 	<ul style="list-style-type: none"> During construction, conduct monitoring. 	<ul style="list-style-type: none"> County will verify qualifications of the archaeologist. County will ensure compliance with and effectiveness of the cultural resources monitoring program. 	<ul style="list-style-type: none"> Fully fund all monitoring and documentation activities. Retain a professional archaeologist to monitor subsurface construction disturbance. Retain a Native American monitor at locations sensitive for Native American remains. Document any unanticipated discovery on a Department of Parks and Recreation Primary Record and Archaeological Site Record (DPR 523)
Geology, Mineral Resources, and Soils					
GE-4.1	Implement Geotechnical Report recommendations.	<ul style="list-style-type: none"> Perform all earthwork operations according to the project specifications set forth in the Geotechnical Report. 	<ul style="list-style-type: none"> During construction. 	<ul style="list-style-type: none"> County will verify all earth operations are performed according to specifications found in the Geotechnical Report. 	<ul style="list-style-type: none"> Perform all earthwork operations according to the project specifications set forth in the Geotechnical Report.
Hazards and Hazardous Materials					
HZ-7.1	Prohibit standing water.	<ul style="list-style-type: none"> Ensure that open containers be inverted and construction ditches not be allowed to accumulate water. Construction and maintenance operations shall not generate standing water, except for water storage and stormwater management ponds. Consult appropriate agencies and obtain permits before filling naturally occurring depressions, drainages, and pools at the site appropriate permits. 	<ul style="list-style-type: none"> During construction and operation. 	<ul style="list-style-type: none"> County will verify that construction and operation activities do not result in standing water. County will verify that the appropriate agencies were consulted prior to draining and filling natural depressions. 	<ul style="list-style-type: none"> Ensure construction and operation workers do not allow water to accumulate. Consult the appropriate resource agency (San Benito County, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, California Department of Fish and Game) and obtaining a permit prior to draining and fill a natural depression.

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MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
HZ-7.2	Protect workers and public from Valley Fever	<ul style="list-style-type: none"> • Prepare detailed Valley Fever informational brochure • Provide breathing protection gear upon request 	<ul style="list-style-type: none"> • Submit Valley Fever informational brochure to Department of Public Health 30 days prior to commencement of construction activities 	<ul style="list-style-type: none"> • DPH will approve Valley Fever brochure 	<ul style="list-style-type: none"> • Prepare Valley Fever brochure and provide to all workers entering construction site • Provide breathing protection gear upon request
Noise					
NS-1.3	Provide advance notice of construction.	<ul style="list-style-type: none"> • Provide advance notice of construction between 2 and 4 weeks prior to commencement of construction. • Address any complaints received related to noise and prepare a report indicating how noise complaints are handled. • County's Environmental Monitor shall verify implementation of agreed upon strategy. 	<ul style="list-style-type: none"> • Within 2 to 4 weeks prior to construction or decommissioning activities, provide notice of activities. • Within 48 hours, provide the County with a report that documents the complaints and the strategy for resolution of any noise complaints. 	<ul style="list-style-type: none"> • County will verify implementation of noise-reduction strategy through an environmental monitor. • County will review report documenting complaints. 	<ul style="list-style-type: none"> • Provide advance notice of construction and decommissioning. • Address any complaints received related to noise and prepare a report indicating how noise complaints are handled.
NS-4.1	Locate PV inverters and transformers away from the project's property line.	<ul style="list-style-type: none"> • Place inverters/transformers the appropriate distance from the project property line and each other to ensure compliance with the County's daytime hourly noise level standard. • Enclose inverters/transformers or implement other noise attenuation measures as necessary to meet County daytime hourly noise level standards • Should hourly noise level standards be exceeded, stop operations of offending inverters and transformers until adequate noise attenuation measures are installed to meet these standards. 	<ul style="list-style-type: none"> • During construction and operation. • Throughout duration of the noise-making activity, ensure measures installed remain in good working order. 	<ul style="list-style-type: none"> • County will verify implementation of noise-reduction strategy through an environmental monitor. 	<ul style="list-style-type: none"> • Place inverters/transformers the appropriate distance from the project property line and each other. • Enclose inverters/transformers or implement other noise attenuation measures as necessary • Stop operations of offending inverters and transformers until adequate noise attenuation measures are installed to meet these standards

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MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
Public Services, Utilities, and Service Systems					
PS-1.1	Develop and implement service agreement with firefighting entities	<ul style="list-style-type: none"> Establish an agreement with a qualified firefighting entity and the Applicant. Provide qualified entity an agreed upon fee based on actual costs to fund additional personnel. Provide fire protection training to its permanent employees. 	<ul style="list-style-type: none"> Prior to issuance of building permits, submit fully executed agreement between qualified firefighting entity and the Applicant. Yearly, provide funding to qualified entity. 	<ul style="list-style-type: none"> County will verify funds provided to qualified entity. County will verify fire protection training is provided to permanent project employees. 	<ul style="list-style-type: none"> Establish an agreement with a qualified firefighting entity and the Applicant. Provide a qualified firefighting entity an agreed upon amount based on actual costs to fund additional personnel. Provide fire protection training to its permanent employees.
Transportation and Circulation					
TR-1.2	Rehabilitate, protect and monitor roadway pavement, bridges and culverts.	<ul style="list-style-type: none"> Implement repairs along roads specified in the mitigation measure prior to construction and decommissioning. Monitor road conditions every three months during construction and implement local and State requirements relating to oversized loads and all elements specified in the mitigation measure. 	<ul style="list-style-type: none"> Prior to the start of construction (and every three months thereafter) and during decommissioning, repair and improve roadway pavements. During construction, the project contractor will monitor road conditions every three months. Submit pavement condition report to County within 30 days of each monitoring and repair cycle. 	<ul style="list-style-type: none"> County will verify road conditions are repaired prior to start of construction (and every three months thereafter) and during decommissioning. County will verify monitoring of roadways. 	<ul style="list-style-type: none"> Implement repairs along roads specified in the mitigation measure during construction and decommissioning. Monitor road conditions during construction and implement local and State requirements relating to oversized loads and all elements specified in the mitigation measure.
TR-1.4	Ensure Traffic Safety	<ul style="list-style-type: none"> Develop Traffic Safety Plan. Implement one or more traffic safety measures. 	<ul style="list-style-type: none"> Develop Traffic Safety Plan prior to commencement of construction activities. 	<ul style="list-style-type: none"> County Building and Planning Department and Sheriff's Office to coordinate development of the Traffic Safety Plan. 	<ul style="list-style-type: none"> Develop Traffic Safety Plan in coordination with the County Building and Planning Department and the Sheriff's Office. Implement one or more traffic safety measures.

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MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
Water Resources					
WR-1.1	Groundwater Monitoring and Reporting Plan.	<ul style="list-style-type: none"> • Prepare and submit a Groundwater Monitoring and Reporting Plan. • Prepare and submit monthly summary reports during construction, annual reports for 3 years following completion of construction. • Evaluate the effectiveness of the Groundwater Monitoring and Reporting Plan and revise, extend, or eliminate plan accordingly. 	<ul style="list-style-type: none"> • 60 days prior to commencing project-related pumping activities, approve submitted Groundwater Monitoring and Reporting Plan. • Submit summary reports monthly during construction and annually for the three years following construction. • After construction, evaluate the Groundwater Monitoring and Reporting Plan. 	<ul style="list-style-type: none"> • County will review and approve the Groundwater Monitoring and Reporting Plan. • County will review monthly and annual summary reports. • County will coordinate with the Applicant to review the effectiveness of the Groundwater Monitoring and Reporting Plan. 	<ul style="list-style-type: none"> • Prepare and submit a Groundwater Monitoring and Reporting Plan. • Prepare and submit monthly and annual summary reports. • Evaluate the effectiveness of the Groundwater Monitoring and Reporting Plan and revise, extend, or eliminate plan accordingly.

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MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
WR-1.2	Aquifer Testing and Well Interference Analysis.	<ul style="list-style-type: none"> • Prepare and submit an Aquifer Testing and Well Interference Analysis Plan. • Video surveys shall be performed on all existing wells lacking available well construction records (well depth and screen intervals). • Aquifer test shall be performed at a pumping rate that will “stress” the aquifer and result in measurable drawdown at the nearest observation well after two to four hours. • Results of the aquifer test and well interference analysis shall be submitted to San Benito County for review and approval of the proposed well for project water supply 15 days prior to the onset of sustained pumping for the project. • Amend the Groundwater Monitoring and Reporting Plan if a new or existing well south of Well #19 is approved project use. 	<ul style="list-style-type: none"> • 14 days prior to commencing the aquifer testing and prior to pumping or making operational any existing wells or construction of any new wells south of Well #19, approve submitted an Aquifer Testing and Well Interference Analysis Plan. • 72-hour minimum test duration for the aquifer drawdown test. 	<ul style="list-style-type: none"> • County will review and approve an Aquifer Testing and Well Interference Analysis Plan. • County will review aquifer test results to determine approval of use of a new well. 	<ul style="list-style-type: none"> • Prepare and submit an Aquifer Testing and Well Interference Analysis Plan. • Conduct video surveys. • Perform aquifer stress tests. • Submit aquifer test results to the County 15 days prior to the onset of sustained pumping for the project. • Amend the Groundwater Monitoring and Reporting Plan if a new or existing well south of Well #19 is approved project use.

Table I-1. Mitigation Monitoring and Reporting Plan ¹

MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
Mitigation Measures Unchanged Since 2010 Final EIR					
Monitoring Process					
EM-1	Provide funding for environmental monitoring.	<ul style="list-style-type: none"> Verify provision of funding from the Applicant to County Confirm that the mitigation monitoring program is in compliance with County Conditions of Approval. 	<ul style="list-style-type: none"> Prior to issuance of building or grading permits. Monitoring will occur throughout construction, operation, and decommissioning. 	<ul style="list-style-type: none"> County shall approve environmental mitigation measures and any other conditions of approval. 	<ul style="list-style-type: none"> Provide funding to County of San Benito support monitoring for all measures requiring environmental mitigation. Provide funding for work necessitated by mitigation measures that requires use of individuals with special expertise (e.g., botanist, wildlife biologist). Develop mitigation monitoring plan
Aesthetics					
AE-1.1	Reduce night lighting impacts.	<ul style="list-style-type: none"> Design and install temporary construction and decommissioning lights according to standards stated in measure. Design and implement a lighting mitigation plan Review the lighting plan Address lighting infractions. 	<ul style="list-style-type: none"> 60 days prior to installation of lighting the Applicant will contact the County to discuss documentation defined in the lighting mitigation plan. 30 days prior to installation of lighting, the Applicant will submit the lighting mitigation plan to the County for review and approval. Prior to commercial operation, the Applicant shall notify the County when the operational lighting installation is ready for inspection. 	<ul style="list-style-type: none"> County coordinates with the Applicant to develop lighting mitigation plan. County reviews lighting mitigation plan. County inspects operational lighting installation. County ensures complaints are addressed sufficiently. 	<ul style="list-style-type: none"> Implement modifications specified by the County within 30 days and notify the County that they have been completed and are ready for inspection. Resolve lighting complaints within 48 hours and inform the County of complaint resolution within 48 hours. Submit a formal complaint resolution report to the County within 30 days thereafter.

Table I-1. Mitigation Monitoring and Reporting Plan ¹

MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
AE-3.1	Treat surfaces of project structures and buildings.	<ul style="list-style-type: none"> • Develop Surface Treatment Plan • Treat buildings and project structures visible to the public to reduce visual contrast with surrounding landscape. • Prepare and submit status report regarding surface treatment maintenance. 	<ul style="list-style-type: none"> • 60 days prior to physical construction, submit Surface Treatment Plan for review • Prior to the start of commercial operation, notify the County of completion of surface treatment. 	<ul style="list-style-type: none"> • County reviews and approves Surface Treatment Plan. 	<ul style="list-style-type: none"> • Develop and submit Surface Treatment Plan to the County • Notify the County after treatment is completed; provide the County with color photographs from KVP used for project analysis. • Provide the County with a status report regarding surface treatment maintenance in the Annual Compliance Report.
Agriculture					
AG-2.1	Create agricultural conservation easement/s.	<ul style="list-style-type: none"> • Create conservation easement(s) or provide adequate funds to create easement(s) to a qualified land trust. • Present documentation of conservation easement(s) creation or funding for conservation easement(s) with the County Department of Planning and Building and the County Recorder. • Prepare annual monitoring reports for the conservation easement(s) 	<ul style="list-style-type: none"> • Prior to issuance of building permits, create conservation easement(s). • Within 6 months of the start of construction, create additional conservation easement(s) to offset loss Williamson Act Lands (if required). 	<ul style="list-style-type: none"> • County verifies qualifications of land trust. • County determines fees for conservation easement creation and oversight with qualified land trust. • County reviews annual monitoring reports of the conservation easement(s) prepared by the land trust. 	<ul style="list-style-type: none"> • Fund the creation of either a conservation easement(s). • Create additional conservation easements for Williamson Act Lands proposed for cancellation if such lands are not encumbered by conservation easements created for biological resources mitigation. • Present the County with record of conservation easement(s) creation or proof of funds provided for conservation easement(s) creation.

Climate Change/Greenhouse Gas

There were no mitigation measures for Climate Change/Greenhouse Gas in the 2010 Final EIR.

Table I-1. Mitigation Monitoring and Reporting Plan ¹

MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
Biological Resources					
BR-G.1	Implement a Worker Environmental Education Program (WEEP).	<ul style="list-style-type: none"> Develop and implement WEEP with all elements defined in the mitigation measure. 	<ul style="list-style-type: none"> Prior to the issuance of a building permit or site mobilization, prepare WEEP. Prior to any construction activities on-site (including surveying) and throughout construction, implement WEEP. 	<ul style="list-style-type: none"> County will verify qualifications of the biologist preparing WEEP and the environmental monitor implementing WEEP. County will review and approve WEEP. 	<ul style="list-style-type: none"> Retain qualified biologist(s) to prepare WEEP. Prepare and implement WEEP. Retain qualified environmental monitor to implement and enforce WEEP and maintain log of all personnel who have completed WEEP training.
BR-G.4	Implement biological monitoring of construction activities.	<ul style="list-style-type: none"> Monitor all ground-disturbing construction activities immediately adjacent to, or within, habitat that supports populations of the listed or special-status species. Contact the USFWS, CDFG, and County and provide a written report if dead or injured special-status species are encountered. Environmental monitor will assist on-site biological monitor(s). 	<ul style="list-style-type: none"> Prior to the commencement of ground disturbance or site mobilization activities, retain a First day of work through the duration of construction activities, monitor activities. Contact agencies and the County by end of day if dead/injured special-species are found; provide written report within 5 days of sighting. 	<ul style="list-style-type: none"> County will verify qualifications of biologist and environmental monitor. County will review reports submitted by biological monitor. 	<ul style="list-style-type: none"> Retain qualified biologist(s) with demonstrated expertise with listed and/or special-status plants, terrestrial mammals, and reptiles to monitor all construction activities on a daily basis. Report any dead or injured special-status species.
BR-1.2	Develop and implement a Grazing Plan for the project site.	<ul style="list-style-type: none"> Prepare the Grazing Plan with 6 elements outlined in the mitigation measure. 	<ul style="list-style-type: none"> Prior to the issuance of a construction permit, prepare and approve Grazing Plan. Grazing Plan will be implemented during construction and operation. 	<ul style="list-style-type: none"> County will verify qualifications of biologist or restoration ecologist responsible for preparing the Grazing Plan. County will review and approve the Grazing Plan. 	<ul style="list-style-type: none"> Prepare and implement the Grazing Plan. Prepare and submit alterations to the Grazing Plan to the County.

Table I-1. Mitigation Monitoring and Reporting Plan ¹

MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
BR-7a.1	Impacts to all potential breeding habitat for western spadefoot toad shall be avoided to the extent feasible.	<ul style="list-style-type: none"> Conduct pre-construction surveys for western spadefoot toad if work must be conducted during the wet season. Implementation of avoidance measures and ensure buffer delineations are kept in good working order 	<ul style="list-style-type: none"> Prior to the commencement of construction activities implement avoidance and minimization measures. 	<ul style="list-style-type: none"> County will verify the qualifications of the biologist. Review the report provided by the Applicant's biologist. 	<ul style="list-style-type: none"> Retain a qualified biologist. Conduct pre-construction surveys for western spadefoot toad. Identify candidate locations for species relocation prior construction Prepare a written report documenting the survey results, when necessary, and compliance with avoidance measures for County review and approval. Copies of this report shall also be provided to the CDFG.
BR-7a.2	Conduct pre-construction surveys for San Joaquin coachwhip and coast horned lizard and implement avoidance measures.	<ul style="list-style-type: none"> Conduct pre-construction surveys for San Joaquin coachwhip and coast horned lizards. Re-locate San Joaquin coachwhip and coast horned lizards when identified. 	<ul style="list-style-type: none"> Prior to the disturbance of habitat, conduct pre-construction surveys for San Joaquin coachwhip and coast horned lizards. 	<ul style="list-style-type: none"> County will verify the qualifications of the biologist. Review the report provided by the Applicant's biologist. 	<ul style="list-style-type: none"> Retain a qualified biologist. Conduct pre-construction surveys for San Joaquin coachwhip and coast horned lizards. Identify candidate locations for species relocation prior construction Prepare a written report documenting the relocation efforts and mortality and submit to the County on a monthly basis.
BR-7b.1	Conduct pre-construction surveys for non-breeding birds designated as California Species of Special Concern.	<ul style="list-style-type: none"> Conduct pre-construction surveys for birds designated as California Species of Special Concern (CSSC) in areas proposed for ground disturbance. 	<ul style="list-style-type: none"> Prior to ground-disturbing activities. 	<ul style="list-style-type: none"> County will verify the qualifications of the biologist. 	<ul style="list-style-type: none"> Retain a qualified biologist. Conduct pre-construction surveys for birds designated as CSSC. Consult with the CDFG to determine timing of surveys.

Table I-1. Mitigation Monitoring and Reporting Plan ¹

MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
BR-7c.1	Conduct pre-construction surveys for short-nosed kangaroo rat, San Joaquin pocket mouse, and Tulare grasshopper mouse and implementation of avoidance measures.	<ul style="list-style-type: none"> Conduct pre-construction surveys for short-nosed kangaroo rat, San Joaquin pocket mouse, and Tulare grasshopper mouse. Flag occupied areas and relocate when identified. 	<ul style="list-style-type: none"> 30 days prior to commencement of ground disturbing activities, conduct pre-construction surveys. 	<ul style="list-style-type: none"> County will verify the qualifications of the biologist. Review the report provided by the Applicant's biologist. 	<ul style="list-style-type: none"> Retain a qualified biologist. Identify candidate locations for species relocation prior construction. Relocate individuals found within an area of proposed disturbance to a pre-approved area outside the project area. Prepare a written report documenting the relocation efforts and mortality and submit to the County on a monthly basis.
BR-8.2	Avoid disturbance to ephemeral pools occupied by vernal pool fairy shrimp to the maximum extent practicable, and mitigate for any unavoidable impacts.	<ul style="list-style-type: none"> Avoid disturbing vernal pool fairy shrimp habitat. Compensate for the loss of vernal pool fairy shrimp habitat. 	<ul style="list-style-type: none"> During construction. 	<ul style="list-style-type: none"> County will verify ephemeral pool avoidance and appropriate compensation, when required. 	<ul style="list-style-type: none"> Avoid filling or disturbing such pools to the maximum extent practicable. Compensate unavoidable loss of ephemeral pools through the preservation and management of 2 acres of occupied vernal pool fairy shrimp habitat (2:1 preservation ratio) and the creation, management, and preservation of 1 acre of vernal pool habitat (1:1 creation ratio) at a location approved and pursuant to authorization received from the USFWS or through the purchase of credits at a USFWS-approved mitigation bank.
BR-8.3	Avoid seasonal depressions and known waterbodies.	<ul style="list-style-type: none"> Avoid seasonal depressions known to support listed fairy shrimp. Place buffers around seasonal depressions. Delineate buffers on construction plans. Environmental monitor will periodically check to ensure that the on-site delineation method is working and observed. 	<ul style="list-style-type: none"> Prior to commencement of construction activities, place on-site delineations of buffers. 	<ul style="list-style-type: none"> County will verify avoidance of seasonal depressions and application of appropriate buffers. 	<ul style="list-style-type: none"> Avoid seasonal depressions known to support listed fairy shrimp.

Table I-1. Mitigation Monitoring and Reporting Plan ¹

MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
BR-12.2	Avoid and report California condors.	<ul style="list-style-type: none"> Stop work within 500 feet of a California condor found in the project area. Report all California condor sightings to the USFWS and CDFG. 	<ul style="list-style-type: none"> Report sightings of California condor within 24 hours. 	<ul style="list-style-type: none"> County will verify that work stops upon sighting of a California condor. 	<ul style="list-style-type: none"> Ensure work stops upon sighting of a California condor. Report all California condor sightings to the USFWS and CDFG; if injured condors are observed, receive instruction from the agencies.
BR-14.1	Implement Avian Power Line Interaction Committee guidelines (APLIC).	<ul style="list-style-type: none"> Construct all transmission facilities, towers, poles and lines in accordance with APLIC guidelines. Include details of design components on all construction plans. Prepare separate document with all measures to be implemented to ensure compliance with APLIC policies and guidelines. 	<ul style="list-style-type: none"> Submit designs and documentation of compliance with the construction permit application. Prior to final inspection, review submitted designs and documents. 	<ul style="list-style-type: none"> County will review and approve submitted designs and documents. 	<ul style="list-style-type: none"> Ensure all transmission facilities, towers, poles and lines are constructed in accordance with APLIC guidelines. Include design components reflecting APLIC guidelines in all construction plans and prepare document listing measures implemented to ensure compliance with APLIC guidelines. Monitor for new versions of the APLIC guidelines and update designs or implement new measures as needed during project construction
BR-16.2	Minimize impacts of foundation support installations.	<ul style="list-style-type: none"> Evaluate and implement feasible foundation installation systems to minimize noise and vibration that would affect ground-dwelling wildlife. 	<ul style="list-style-type: none"> 	<ul style="list-style-type: none"> County will verify installation of noise and vibration minimizing foundations. 	<ul style="list-style-type: none"> Evaluate and implement feasible foundation installation systems to minimize noise and vibration that would affect ground-dwelling wildlife.
BR-18.1	Conduct focused pre-construction surveys for American badger surveys and implementation of avoidance measures.	<ul style="list-style-type: none"> Conduct pre-construction surveys. Flag and establish appropriate buffer around active American badger dens. Evict unavoidable badger dens by slowly excavating the burrow before or after the rearing season (15 February through 1 July). 	<ul style="list-style-type: none"> No more than 30 days prior to commencement of ground-disturbing activities, conduct pre-construction surveys. Prior to the final County inspection or occupancy, submit report to the County and CDFG. 	<ul style="list-style-type: none"> County will verify qualifications of the biologist. County will verify completion of pre-construction surveys. County will review document listing all badger-related activities. 	<ul style="list-style-type: none"> Retain a qualified biologist to perform pre-construction surveys for American badgers. Routinely inspect protected dens and ensure that delineation methods are in good working order. Prepare and submit a written report documenting all badger-related activities (e.g. den flagging, monitoring, badger removal, etc.) to the County of San Benito and the CDFG.

Table I-1. Mitigation Monitoring and Reporting Plan ¹

MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
BR-23-1	Create conservation easement on all project areas retired from the development footprint.	<ul style="list-style-type: none"> Documentation of recorded conservation easement shall be submitted to the San Benito County Department of Planning and Building. 	<ul style="list-style-type: none"> Conservation easement on approved project footprint shall be recorded prior to commencement of construction. Retired portions of the site shall be put under restricted use for biological resources upon the retirement of portions of the project site. 	<ul style="list-style-type: none"> County will verify receipt of recorded conservation easement. 	<ul style="list-style-type: none"> Provide funds for a qualified land trust to acquire appropriate conservation easement(s) for retired portions of the proposed project site, or donate appropriate conservation easement(s) to a qualified land trust or to an appropriate mitigation bank.
Cultural and Paleontological Resources					
CR-2.2	Treat previously unidentified archaeological resources discovered during construction.	<ul style="list-style-type: none"> Upon discovery of archaeological remains, cease all work activities within 100 feet of the discovery and notify the County. Inspection of remains by a Registered Professional Archaeologist is required to evaluate significance. Develop and implement a data recovery plan if the site meets California Register of Historic Resources significance criteria. 	<ul style="list-style-type: none"> Immediately cease work and notify the County within 24 hours upon discovery of archaeological remains. Prior to implementation, review data recovery plan. 	<ul style="list-style-type: none"> County will verify qualifications of the archaeologist. County will review and approve data recovery plan. 	<ul style="list-style-type: none"> Fully fund all work related to the identification and treatment previously unidentified archaeological resources discovered during construction. Upon discovery of archaeological remains, cease all work activities Develop and implement a data recovery plan if the site meets California Register of Historic Resources significance criteria.
CR-2.3	Inadvertent discovery of human remains.	<ul style="list-style-type: none"> Upon discovery, contact County coroner immediately and cease all work within 300 feet of the discovery immediately. If remains are identified as Native American, the coroner will notify the NAHC within 24 hours of discovery. NAHC will then identify the Most Likely Descendent, who will determine the manner in which the remains are treated 	<ul style="list-style-type: none"> Immediately cease work and contact the County coroner upon discovery of human remains. Within 24 hours, notify the NAHC of discovery of Native American remains. 	<ul style="list-style-type: none"> County will provide a coroner upon discovery of human remains. 	<ul style="list-style-type: none"> Cease work and implement buffer zone around human remains. Contact County coroner.

Table I-1. Mitigation Monitoring and Reporting Plan ¹

MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
CR-2.4	Implement workers environmental awareness program.	<ul style="list-style-type: none"> • Implement a workers environmental awareness program to train all construction personnel to recognize possible buried cultural remains and resources. • No construction worker may work in the field without first participating in the training program. 	<ul style="list-style-type: none"> • Prior to working, all construction workers must participate in workers environmental awareness program. 	<ul style="list-style-type: none"> • County will review and approve workers environmental awareness program. • County will review list of construction personnel. 	<ul style="list-style-type: none"> • Prepare and implement a workers environmental awareness program. • Provide to the County a list of construction personnel who have completed the cultural resources identification training prior to start of construction, and this list shall be updated as required when new personnel start work.
PA-1.1	Implement site-specific paleontological recovery.	<ul style="list-style-type: none"> • Prepare a Paleontologic Monitoring and Recovery Plan following the guidelines of the Society for Vertebrate Paleontology (1995). • Identify and implement procedures to recover and preserve unknown and accidentally discovered significant fossils within the paleontologically sensitive areas on site. • Prepare report on paleontological discoveries. • Implement mitigation pursuant to a Paleontologic Monitoring and Recovery Plan prepared prior to construction by a qualified Principal Paleontologist, 	<ul style="list-style-type: none"> • Prior to construction, review submitted Paleontologic Monitoring and Recovery Plan. • Upon discovery of paleontological materials, implement procedures outlined in the Paleontologic Monitoring and Recovery Plan and prepare and submit report. 	<ul style="list-style-type: none"> • County will verify qualifications of the Principal Paleontologist. • County will review and approve a Paleontologic Monitoring and Recovery Plan. • County will review report on paleontological discoveries. 	<ul style="list-style-type: none"> • Retain a qualified Principal Paleontologist to prepare Paleontologic Monitoring and Recovery Plan. • Identify and implement procedures to recover and preserve unknown and accidentally discovered significant fossils. • Prepare report on paleontological discoveries and submit to the County and the curation facility.

Table I-1. Mitigation Monitoring and Reporting Plan ¹

MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
PA-1.2	Monitor grading and excavation for unknown and accidentally discovered paleontological resources.	<ul style="list-style-type: none"> • Monitor grading, trenching, and other earth disturbance that may affect the Pleistocene Older Alluvium, mapped in a small segment within the western portion of the project area. • Implement measures in Paleontologic Monitoring and Recovery Plan upon discovery of resources. • Prepare report on paleontological discoveries. 	<ul style="list-style-type: none"> • Upon discovery of paleontological materials, implement procedures outlined in the Paleontologic Monitoring and Recovery Plan and prepare and submit report. 	<ul style="list-style-type: none"> • County will verify qualifications of the paleontological monitor. • County will review report on paleontological discoveries. 	<ul style="list-style-type: none"> • Retain a qualified paleontological monitor under the supervision of a Registered Professional Geologist. • Monitor earth in a small segment within the western portion of the project area. • Identify and implement procedures to recover and preserve unknown and accidentally discovered significant fossils. • Prepare report on paleontological discoveries and submit to the County and the curation facility
Hazards and Hazardous Materials					
HZ-5.1	Cease work during Red Flag Warning.	<ul style="list-style-type: none"> • Cease all grading, welding, soldering, and smoking on the project. • Ensure vehicles remain on designated access roads or laydowns areas cleared of vegetation. 	<ul style="list-style-type: none"> • During a Red Flag Warning issued for the zone encompassing the proposed project site, cease work. 	<ul style="list-style-type: none"> • County will verify a work-stop is implemented on 	<ul style="list-style-type: none"> • Cease all grading, welding, soldering, and smoking on the project. • Ensure vehicles remain on designated access roads or laydowns areas cleared of vegetation.

Table I-1. Mitigation Monitoring and Reporting Plan ¹

MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
Land Use and Recreation					
LU-1.1	Establish construction liaison.	<ul style="list-style-type: none"> • Provide a toll-free general phone number and the name and contact information for a local public liaison to all property owners within a one-mile radius of the project's boundaries. • Ensure public liaison addresses questions or concerns related to the project. • Provide summary documentation of all comments and concerns communicated to the liaison monthly for the duration of construction and for one year following the completion of construction 	<ul style="list-style-type: none"> • 30 days prior to the start of any construction-related activities and for up to one year following construction, local public liaison will be available to the public. • Within 72 hours, during construction, liaison will respond to all construction-related questions and concerns. • Quarterly during construction and one year following the completion of construction, submit compliance documentation. 	<ul style="list-style-type: none"> • County will verify the provision of a public liaison. • County will review the quarter compliance reports. 	<ul style="list-style-type: none"> • Provide a toll-free general phone number and the name and contact information for a local public liaison. • Ensure public liaison addresses questions or concerns related to the project. • Prepare and submit to the County quarterly summary documentation of all comments and concerns communicated.
LU-1.2	Provide advance notice of construction.	<ul style="list-style-type: none"> • Provide 30 days' notice to all residents within 5 miles of the project boundary, the Principal of Panoche Elementary School, and the BLM Hollister Field Office. • If complaints are received, provide the County with a report that documents the complaints and the strategy for resolution of any noise complaints 	<ul style="list-style-type: none"> • Prior to and during construction, give at least 30 days advance notice of the start of any construction-related activities. • Within 72 hours of receiving a complaint, provide the County with a report that documents the complaints and the strategy for resolution of any noise complaints 	<ul style="list-style-type: none"> • County will verify distribution of notice. • County will review report documenting complaints. 	<ul style="list-style-type: none"> • Provide 30 days notice to all residents within 5 miles of the project boundary, the Principal of Panoche Elementary School, and the BLM Hollister Field Office. • Provide the County with a report that documents the complaints and the strategy for resolution of any noise complaints

Table I-1. Mitigation Monitoring and Reporting Plan ¹

MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
LU-1.3	Provide quarterly construction updates.	<ul style="list-style-type: none"> • Provide all property owners within a one-mile radius of the project site's boundaries with updates and changes to all of the information provided in the pre-construction notification. • Ensure public liaison responds to all questions and complaints. 	<ul style="list-style-type: none"> • During construction, provide quarterly updates on project. • Within 72 hours of receiving a complaint during construction and within 1 week post-construction, respond to all questions and complaints. 	<ul style="list-style-type: none"> • County will verify distribution of quarterly updates. 	<ul style="list-style-type: none"> • Provide all property owners within a one-mile radius of the project site's boundaries with updates and changes to all of the information provided in the pre-construction notification. • Ensure public liaison responds to all questions and complaints.
Noise					
NS-1.1	Shield construction staging areas.	<ul style="list-style-type: none"> • Install adequate temporary noise barriers around the construction staging areas to reduce noise levels associated with deliveries and construction equipment staging. • Monitor noise levels during construction at the project's property line closest to the construction staging areas. • Should hourly noise level standards be exceeded as a result of work occurring at a staging area, stop all noise-related work at that staging area until adequate noise attenuation measures are installed to meet these standards. 	<ul style="list-style-type: none"> • Prior to the use of noisy equipment during construction, install noise barriers. • Throughout duration of the noise-making activity, ensure any measures installed remain in good working order. 	<ul style="list-style-type: none"> • County will verify that noise barriers are in place and that noise level standards are not exceeded. 	<ul style="list-style-type: none"> • Install adequate temporary noise barriers. • Monitor noise levels during construction. • Stop all noise-related work at that staging area until adequate noise attenuation measures are installed to meet noise level standards.
NS-1.2	Implement noise-reducing features and practices for construction noise.	<ul style="list-style-type: none"> • Employ and clearly state in the contractors' specifications the noise-suppression techniques listed in the mitigation measure. 	<ul style="list-style-type: none"> • Prior to construction and decommissioning work commencing, employ noise-suppression techniques to minimize the impact of temporary noise. 	<ul style="list-style-type: none"> • County will verify that noise-suppression techniques are implemented. 	<ul style="list-style-type: none"> • Employ and clearly state in the contractors' specifications the noise-suppression techniques.
NS-1.4	Limit pile driving activities.	<ul style="list-style-type: none"> • Implement limitations on pile driving activities to reduce noise levels. 	<ul style="list-style-type: none"> • During pile driving activities. 	<ul style="list-style-type: none"> • County will verify appropriate limitations are implemented during pile driving activities. 	<ul style="list-style-type: none"> • Implement limitations on pile driving activities to reduce noise levels.

Table I-1. Mitigation Monitoring and Reporting Plan ¹

MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
NS-2.1	Limit decommissioning activities to daytime.	<ul style="list-style-type: none"> Construction-related activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. such that these activities are exempted from Section 25.37.035(E)(2) of the San Benito County Code. 	<ul style="list-style-type: none"> During decommissioning, limit hours of construction-related activities to between 7:00 am and 7:00 pm. 	<ul style="list-style-type: none"> County will verify construction-related activities occur during the appropriate hours. 	<ul style="list-style-type: none"> Ensure construction-related activities occur only during the hours of 7:00 a.m. to 7:00 p.m.
NS-5.1	Limit panel washing activities.	<ul style="list-style-type: none"> Limit panel washing to the appropriate time and day. Should hourly noise level standards be exceeded, stop work in the area. Panel washing can resume during an exempted time period. 	<ul style="list-style-type: none"> Monday through Saturday 7:00 a.m. to 7:00 p.m. excluding federal holidays, panel washing activities are allowable when occurring within 1,900 feet of the project's property line. Any time during daylight hours, panel washing activities are allowable on panels farther than 1,900 feet of the property line. 	<ul style="list-style-type: none"> County will monitor noise levels at the project's property line if noise complaints are received during panel washing activities occurring outside of the exempted times. 	<ul style="list-style-type: none"> Limit panel washing to the appropriate time and day. Should hourly noise level standards be exceeded, stop work in the area. Panel washing can resume during an exempted time period.

Population and Housing

There were no mitigation measures for Population and Housing in the 2010 Final EIR.

Transportation and Circulation

TR-1.1	Prepare and implement Traffic Control Plan (TCP).	<ul style="list-style-type: none"> Prepare and implement a TCP including the components listed in the mitigation measure, including a Vehicle Safety Plan. 	<ul style="list-style-type: none"> Prior to the start of construction and decommissioning, submit a TCP. 	<ul style="list-style-type: none"> County will review and approve TCP. County will verify the implementation of measures listed in the TCP. 	<ul style="list-style-type: none"> Submit a TCP to the County for its review and approval and to Caltrans. Implement measures listed in the TCP.
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Table I-1. Mitigation Monitoring and Reporting Plan ¹

MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
TR-1.3	Repair roadway damage.	<ul style="list-style-type: none"> Repair all roads prior to the start of construction. Document status of roads prior to commencement of construction or decommissioning. Restore all public roads, easements, rights-of-way and infrastructure to roadway conditions that existed prior to commencement of construction or decommissioning in a timely manner. Prepare a letter indicating status of roads and receive approval from appropriate agencies. 	<ul style="list-style-type: none"> At least 30 days prior to construction or decommissioning, photograph or video record all construction routes. Within 60 days of completion of construction or decommissioning, identify sections of public right-of-way to be repaired Following completion of any public right-of-way repairs, have agencies sign letter indicating approval of repairs. 	<ul style="list-style-type: none"> San Benito County, Caltrans, and Fresno County will consult with the Applicant to determine standards of repair prior to and post construction and decommissioning. San Benito County, Caltrans, and Fresno County will sign letter indicating approval of repairs. 	<ul style="list-style-type: none"> Restore all public roads to preexisting conditions as determined in consultation with San Benito County, Caltrans, and Fresno County. Pre-construction and decommissioning, provide photographs or video records of all public construction routes to San Benito County, Caltrans, and Fresno County. Post-construction, meet with San Benito County, Caltrans, and Fresno County to identify public roadways that need repair. Establish a schedule to complete the repairs and to receive approval for the action(s). Upon completion of repairs, prepare and submit letter to agencies to indicate approval of repairs.
Water Resources					
WR-6.1	Accidental spill control and environmental training.	<ul style="list-style-type: none"> Prepare and implement the Stormwater Pollution Prevention Plan (SWPPP). Establish an environmental training program for field personnel to communicate appropriate work practices, including SWPPP measures. Implement a monitoring program to ensure plans are followed. 	<ul style="list-style-type: none"> Prior to construction, review submitted SWPPP and environmental training program. During all construction, operation, and maintenance activities, monitor for compliance with plans. 	<ul style="list-style-type: none"> County will review and approve SWPPP and the environmental training program. The County's environmental monitor will ensure all plans are followed. 	<ul style="list-style-type: none"> Prepare and implement the Stormwater Pollution Prevention Plan (SWPPP). Establish an environmental training program. Implement a monitoring program to ensure plans are followed.
WR-6.2	Store fuels and hazardous materials away from sensitive water resources.	<ul style="list-style-type: none"> Prohibit fuel storage with 200 feet of groundwater supply wells or 4000 feet of community or municipal wells. 	<ul style="list-style-type: none"> During construction, operation, and decommissioning. 	<ul style="list-style-type: none"> County will verify that fuel is stored at the appropriate distance from wells. 	<ul style="list-style-type: none"> Prohibit fuel storage with 200 feet of groundwater supply wells or 4000 feet of community or municipal wells.

Table I-1. Mitigation Monitoring and Reporting Plan ¹

MM #	Mitigation Measure Title	Monitoring / Reporting Action	Timing & Method of Verification	Agency or County Responsibilities	Applicant Responsibilities
WR-6.3	Maintain vehicles and equipment.	<ul style="list-style-type: none"> • Maintain all vehicles to ensure they are free of leaks. • Maintain a vehicle and equipment maintenance log. 	<ul style="list-style-type: none"> • During construction, operation, and decommissioning, maintain vehicles. • Monthly, during construction, submit vehicle and equipment maintenance log. 	<ul style="list-style-type: none"> • County will monitor vehicles and equipment to ensure no leakage occurs. • County will review monthly log. 	<ul style="list-style-type: none"> • Maintain all vehicles to ensure they are free of any and all leaks. • Maintain a vehicle and equipment maintenance log to the County.

Exhibit J

Schedule of PILOT Payments

PILOT Schedule

	Date	Year	PILOT
Construction	August 31,	2017	\$ 100,472.03
Construction	August 31,	2018	\$ 200,944.06
1	August 31,	2019	\$ 217,717.50
2	August 31,	2020	\$ 418,017.60
3	August 31,	2021	\$ 400,600.20
4	August 31,	2022	\$ 383,182.80
5	August 31,	2023	\$ 365,765.40
6	August 31,	2024	\$ 348,348.00
7	August 31,	2025	\$ 330,930.60
8	August 31,	2026	\$ 313,513.20
9	August 31,	2027	\$ 296,095.80
10	August 31,	2028	\$ 278,678.40
11	August 31,	2029	\$ 261,261.00
12	August 31,	2030	\$ 243,843.60
13	August 31,	2031	\$ 226,426.20
14	August 31,	2032	\$ 209,008.80
15	August 31,	2033	\$ 191,591.40
16	August 31,	2034	\$ 174,174.00
17	August 31,	2035	\$ 156,756.60
18	August 31,	2036	\$ 139,339.20
19	August 31,	2037	\$ 121,921.80
20	August 31,	2038	\$ 104,504.40

Exhibit K

California Department of Transportation
Guidelines for Identifying and Repairing Localized Areas of Distress in
AC Pavements Prior to Capital Preventive Maintenance or Rehabilitation Repairs

**GUIDELINES FOR IDENTIFYING AND REPAIRING
LOCALIZED AREAS OF DISTRESS IN AC PAVEMENTS
PRIOR TO CAPITAL PREVENTIVE MAINTENANCE OR REHABILITATION REPAIRS**

I. Background Information

A. AC Pavement Distress Terminology and Definitions

1) AC Pavement Cracks

a) Alligator Cracks

Alligator cracking is characterized by interconnected or interlaced cracks in the wheel path, forming a series of small polygons, (generally less than 1 foot on each side). The cracking resembles the appearance of alligator skin, thus the term alligator cracking. Alligator cracking is a load-related distress and occurs when the wheel loads exceed the design of the roadbed.



b) Longitudinal Cracks

[Shrinkage Cracks, Reflection Cracks, Joint Cracks, Edge Cracks and Slippage Cracks]

Longitudinal cracks are non-load-associated cracks. Longitudinal cracks are single cracks approximately parallel to the centerline. These cracks are primarily due to the contraction and shrinkage of the surface course, reflection from underlying pavement joints, poorly constructed paving joints, or roadbed settlement.



c) Transverse Cracks

Transverse cracks are non-load-associated cracks. Transverse cracks appear approximately at right angles to the centerline. These cracks are primarily due to the contraction and shrinkage of the surface course or reflection from underlying pavement joints.



2) AC Surface Distortions

a) Rutting

Rutting is a longitudinal surface depression in the wheel path caused by the consolidation in the asphalt surface layer or lateral movement in one or more of the layers of roadbed material under heavy loads.

b) Shoving

Shoving is localized displacement or bulging of pavement material in the direction of loading pressure. Shoving is often associated with bleeding or over rich asphalt mix.

c) Settlement

Settlement is a noticeable or abrupt vertical distortion from the original pavement profile or cross-slope. Settlement is often associated with fill areas. This condition may also have associated cracking, Settlement Cracking.



3) Asphalt Disintegration

a) Pot Holes

Potholes are isolated, bowl-shaped holes in the pavement of various sizes. Generally, potholes are a result of the loss of alligatored pavement and, if so, they can be irregular in shape due to the adjacent alligatored pavement. They frequently appear when maintenance is not promptly applied once the distress that is causing them appears.



b) Raveling

Raveling is caused by the action of traffic on a weak surface. Raveling of a weak surface course is generally due to insufficient binder in the mix. Raveling is different than weathering, which is caused by climatic conditions that result in a drying out of the pavement surface. "Coarse Ravel" is the wearing away of the pavement surface, resulting in an extremely roughened surface texture. This rough surface texture is due to the dislodging of coarse aggregate and loss of the asphalt binder. "Fine Ravel" is the wearing away of the pavement surface asphalt and fines, resulting in a moderately roughened surface texture. This roughened surface texture is due to the wearing away of fine aggregate and asphalt binder. Coarse Ravel is characterized by an extremely rough and pitted surface. Fine Ravel is characterized by a moderately rough surface.

B. Patching Repairs

1) Types of AC Distress that Require Patching Repair

- Potholes
- Alligator cracking
- Pavement depressions (settlement)
- Wheel track rutting
- Pavement slippage cracks
- Corrugations

2) Types of Patching Repairs

In general, the repairs required to fix the distressed AC area(s), as listed in B.1, consists of removing the existing asphalt concrete surfacing and underlying base, subbase and native material, as necessary. Then, replacing the removed layers with either full-depth asphalt concrete or a combination of asphalt concrete and aggregate base.

There are two types of patches used to repair asphalt pavements:

- Partial Depth (patching less than 4 inches thick and contained within the asphalt surface); and,
- Full Depth or Deep Patching ("dig outs" at least four inches thick and, as necessary, removal of additional material beneath the asphalt surfacing).

Dig outs require more time and effort and are more expensive than surface patching. However, it is important to remember that if a patch is to solve the problem, it must be done properly with the proper techniques and materials.

II. Field Identification Procedures and Analysis of Localized Areas of Distress

A. Determining the Location(s) Needing Repair and the Extent of the Repair

A field review of the project site needs to be conducted to locate the specific areas of severe distress. These locations can be identified by loose or spalling pavement and/or rutting greater than 0.05 ft (15 mm). If the failed areas that require to be dug-out are close together, then the adjacent areas to "good" pavement should also be considered for removal and replacement; to combine the failed areas into a larger area to be replaced for constructibility reasons.

B. Analyzing the Distressed Location and Determining the Depth of the Repair

The depth of the repair required depends on several factors:

- **The severity of the failure.**
For example - Usually, the more severe the pavement surface failure is, the deeper the removal of materials.
- **The type and depth of the existing base.**
For example - If a portion of a thin bound base is removed, the remainder will provide little support. Therefore, the entire treated base should be removed.
- **The compaction of the underlying material.**
For example - One indication of weak subsoil is commingling, which is the migration of the base rock down and the fines of the soil up. If the probe penetrates more than about 0.20 feet into the subsoil, then increase the depth of the dig out an additional 0.25 feet.

(dig and probe to investigate) If the evidence indicates that there is a base failure, then both the AC pavement and base should be removed until firm or compacted material is reached. Probing the base with a conical-shaped pointed metal rod (soil probe) should be done. The probe should not penetrate more than about 0.10 ft.. In cases where an existing "dig out" area has lost its integrity, it may be necessary to design the replacement as new construction, i.e., based upon the appropriate R-value. Examination of the base and subbase as the material is removed is necessary to determine the required depth of removal.

C. Assessing the Cause(s) for the Distress and Recommending a Repair Technique

The cause of the distress at each distressed area must be determined before a correct remedy can be applied. In general, the cause of the distress will determine the extent of the repair procedure. After removing the pavement surface, the appearance of the base should not show any deformation or evidence of fine materials loss. If the pavement surface is broken and water has entered the subgrade, a larger failure most likely has resulted. Typical causes for the various types of AC distress are as follows:

1. Potholes

Potholes typically are the result of localized asphalt disintegration under traffic. A pothole is usually caused by weakness in the pavement resulting from too little asphalt, too thin an asphalt surface, too many fines, too few fines, or poor drainage. Potholes frequently appear when it is difficult, because of inclement weather, to make permanent repairs. Temporary repairs usually involve cleaning out the hole and filling it with a premixed asphalt patching material.

Recommended Repair: Permanent repair is made by constructing a partial depth or deep patch that completely removes the affected area and replaces it with new AC and base materials, as necessary.

2. Alligator Cracking

Alligator cracking is probably caused by a saturated base or subgrade. Therefore, correction should include removal of the wet material and installation of needed drainage. When water is a factor in the cracking, drainage should first be corrected.

Recommended Repair: Permanent repair is made by constructing a deep patch that completely removes the affected area and replaces it with new

AC and base materials, as necessary. Hot mix asphalt placed full-depth provides a strong patch and can be done expeditiously. If hot mix asphalt is unavailable or is not needed to quickly complete the repair or not needed for constructibility purposes, new aggregate base material compacted in layers and capped with AC pavement may be used.

3. Pavement Depressions (Settlement)

Settlement in localized areas of limited size is sometimes accompanied by cracking. When water collects in these depressions, they become not only a source of pavement deterioration but also a hazard to motorists.

Depressions are caused by traffic loads heavier than that for which the pavement was designed, by poor construction methods, or by consolidation deep within the subgrade. Edge cracks and depressions can also be caused by the lack of lateral or shoulder support for the asphalt pavement.

Shoulder edge cracking typically occurs when the natural or imported shoulder backing material is eroded away from the edge of pavement. Traffic, water, wind, or settlement of the underlying material may cause this erosion. Edge cracking usually happens as a drop-off condition develops and is characterized by crescent-shaped cracks or fairly continuous cracks parallel to, and usually within 1" to 2" of, the outer edge of pavement.

Asphalt without proper lateral support will eventually break away, resulting in higher maintenance costs and loss of the facility. Shoulder edge loss occurs when the lateral support is not sufficient to protect the edge of pavement and repeated wheel loads chip the unbacked asphalt away.

Recommended Repair: When water is a factor in causing the depression, drainage should first be corrected. The depressions should then be removed, repaired by constructing a deep patch that completely removes the affected area and replaces it with new AC and base materials, as necessary, and then compacted to restore the area to the same grade as the surrounding pavement. Hot mix asphalt placed full-depth provides a strong patch and can be done expeditiously. If hot mix asphalt is unavailable or is not needed to quickly complete the repair or not needed for constructibility purposes, new aggregate base material compacted in layers and capped with AC pavement may be used.

4. Wheel Track Rutting

Instability within the AC pavement without a base failure will cause wheel path rutting and adjacent ridges to be shoved up. Such things as too little compaction of the pavement, too many fines or round or smooth textured coarse aggregates in the mix, too much asphalt in the mix can cause a lack of stability and this distress in the asphalt surface. The surface probably will not show any pumping of fines from the base layer, but the excess asphalt tends to migrate to the surface of the pavement with high temperatures. Alligator cracking may be present but the cracks will be hairline in width.

Rutting can also be caused by problems in the lower layers of the structural section. Rutting can also be caused by traffic loads heavier than that for which the pavement was

designed, by poor construction methods, by swelling of the underlying courses, or by consolidation deep within the subgrade.

Recommended Repair: If the cause of the rutting is determined to be located in the AC surfacing,

If the cause of the rutting is below the AC surfacing, complete removal of the affected area and replacement of it with new material.

5. Pavement Slippage

Slippage cracks are usually crescent shaped cracks resulting from horizontal forces induced by traffic. They are caused by a lack of bond between the surface layer and the course beneath. The lack of bonding may have occurred because of the presence of dust, dirt, oil, or even to the absence of a tack coat.

Recommended Repair: The cracked areas should be removed and patched. The proper way to repair a slippage crack is to remove the surface layer from around the crack to the point where there is good bond between the layers. Then patch the area with hot mix asphalt.

6. Corrugations

Transverse undulations appear at regular intervals due to the unstable surface course caused by stop-and-go traffic. Corrugations are often associated with shoving and/or delamination. Note the size of the area.

Recommended Repair: If the AC surfacing is more than 2” thick, shallow corrugations can be removed by milling. The milled area then needs to be given a seal coat or a new AC surface.

In rural areas or if the AC surfacing is thicker than 2” and if the corrugated pavement has an aggregate base, the surface can be scarified (rubblelized), mixed with the existing, in-place aggregate base, and then recompact before placing an AC surfacing.

III. Detailed Patching Procedures for Repairing a Distressed Location

A. Partial Depth Repairs (Surface Patches)

If the distress is judged to be only within the pavement surface, the base should remain in place and its integrity preserved. The area to be removed should extend at least a foot into the “good” pavement surrounding the distressed area and should be outlined on the pavement with paint. The existing AC pavement shall then be cold planed at the locations identified. Cold planing machines shall be equipped with a cutter head not less than 2.5 ft (750 mm) in width and shall be operated so as not to produce fumes or smoke. The outside lines of the planed area shall be neat and uniform. Planing asphalt concrete pavement operations shall be performed without damage to the surfacing that remains in place (see Standard Special Provision Number 15-660 or 15-670).

B. Full Depth Repairs (“Dig Outs”)

The material in the area needs to be repaired and removed to a depth as deep as necessary to reach firm support (by definition typically a minimum of 4 inches). This may mean removing some of the subgrade. The excavation should also extend at least a foot into the “good” pavement surrounding the area to be patched. The area to be removed should be

outlined on the pavement with paint. A pavement saw shall be used to make neat rectangular cuts. The outlined area of the asphalt surfacing to be removed shall be saw cut to a depth of not less than 0.15 ft (45 mm) before removal.

The surface and base materials shall then be removed, as necessary, and shall be removed without damage to the materials that are to remain in place. The hole should be square edged. No loose material should remain. If the existing AC pavement surface is on an aggregate base, care must be taken to prevent the aggregate material from collapsing from under the edge of the remaining pavement. If the edge support is damaged, the pavement surrounding the patch may cause future failures.

After removing the AC surfacing and [chose one of the following scenarios]- -

- the underlying base is cement treated base in “good” condition [no visible cracking], the base should remain in place and its integrity preserved (no additional compaction is required).
- the underlying base is an unbound aggregate in “good” condition [no signs of deformation or evidence of migration of the fine materials or when probing with a soil’s probe - - a 3/8-inch metal conical-shaped pointed rod - - the rod should not penetrate firm material by more than 0.10 foot], the base should remain in place and its integrity preserved.
- the base material(s) is in need of removal [there are signs of deformation or evidence of migration of the fine materials or when probing with a soil’s probe - - a 3/8-inch metal conical-shaped pointed rod - - the rod penetrates the base material by more than 0.20 feet], the base material(s) is to be removed down to firm compacted material. A depth of 0.25 feet should then be removed and the remaining material investigated again to see if it is firm/compacted through the use of the soil’s probe. Continue to probe and examine the base, subbase and native material in 0.25 feet depth intervals until firm/compacted material is reached. Once the depth of removal has been determined, the material remaining in place shall be graded to a plane, moisture added, and compacted. Any locations where the base material is low, as a result of over excavation, shall be filled at the time of paving with asphalt concrete.

Next, the bottom and sides of the cut sections shall be primed using either liquid or emulsified asphalt. If the “dig out” is more than six inches deep, the backfill should be placed in layers (aggregate base and AC) and each layer compacted thoroughly [As an alternative, primarily because of constructibility reasons, the “dig out” can be backfilled with a dense graded hot asphalt plant mix.]. A vibratory plate compactor is excellent for small patches. A roller may be more practical for large areas. The repair is complete when the AC surface layer is placed and compacted flush with the surrounding pavement surface. Traffic must not be allowed on a patch repaired with only granular base material.

IV. “Dig Outs” on Capital Preventive Maintenance (CapM) and Rehabilitation Projects

A. Capital Preventive Maintenance (CapM) Projects

Dig outs, patching, and crack sealing of existing pavement prior to placement of CapM AC overlays should not exceed 20% of the project’s cost. The Region/District pavement managers have been instructed to accomplish any of these types of repairs using Maintenance resources, including State forces, to adhere to this limit.

B. Rehabilitation Projects

As instructed for CapM projects, the Region/District pavement managers have been told to continue use “dig outs”, patching, and crack sealing repairs to the existing pavement using Maintenance resources until the pavement rehabilitation project is awarded. This guidance has been given in an attempt to limit the amount of these types of repairs required during the rehabilitation project.

Generally, the existing AC surfacing at severely failed localized areas (loose or spalled pavement) is removed and replaced with new AC prior to placing an AC overlay. If there is a base failure (generically indicated by rutting ≥ 13 mm), the base, as well as the AC may need to be removed and replaced with either a full-depth AC structural section or a structural section consisting of a combination of AC and base material prior to placing an AC overlay.

When the distress is more regional than localized, a thicker asphalt concrete overlay may be more cost effective than the expense of dig-out repairs. If, particularly in rural areas, the AC surfacing is thicker than 2” and AC pavement has an aggregate base, the surface can be scarified (rubblized), mixed with the existing, in-place aggregate base, and then recompact before placing an AC surfacing.