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Mr. David Black
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STATE CLEARINGHOUSE

Subject: Draft Environmental Impact Report (DEIR)
Westside Canal Battery Energy Storage Project
State Clearinghouse No. 2020040122

Dear Mr. Black:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from the County of Imperial (Lead Agency) for Westside Canal Battery Energy Storage Project (Project) pursuant to California Environmental Quality Act (CEQA) and CEQA Guidelines¹.

Thank you for the opportunity to provide comments and recommendations regarding the activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

ROLE OF CDFW

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (Id., § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on Projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT LOCATION AND DESCRIPTION

CEQA Lead: County of Imperial

Applicant: Consolidated Edison Development Inc. (CED)

The Westside Canal Battery Energy Storage Project Site is located on about 163 acres of land in the unincorporated Mount Signal area of the Imperial County, around 8 miles southwest of the City of El Centro and 5 miles north of the U.S.-Mexico border. The Project Site comprises two parcels, Assessor Parcel Number APN 051-350-010 and APN 051-350-011. The Project will utilize portions of two additional parcels located north of the Westside Main Canal (APN 051-350-019 owned by Imperial Irrigation District (IID) and APN 051-350-018 owned by a private landowner) for Site access and as a temporary construction staging area. The Project will also access a small portion of APN 051-350-009 that is within the IID easement for connection to the existing IID Campo Verde-Imperial Valley 230 kilovolt (kV) radial gen-tie line during the construction of a substation on the Project Site. The Project Site is located on approximately 163 acres of land, 148 of which are owned by the Applicant, and the remaining land is owned by the Bureau of Land Management (BLM), IID, and a private landowner.

The Project Site is generally flat with elevation ranging from sea level in the far southwestern corner to 24 feet above mean sea level in the northeastern corner. The Project Site currently consists of vacant fallow agricultural land. There are two irrigation water pumping stations at the Project Site, one at the central northern area of the Project Site and one at the central southern area. These pumping stations were used to pump irrigation water from the westside main canal into a concrete lined ditch that runs north-south across the center of the southern portion of the Project Site. The pumping stations and concrete lined ditch appear to be abandoned. Man-made berms exist along the boundaries of the inactive agricultural areas, and small dunes and sandy hummocks occur west and south of the Project Site. The General Plan land use designation for the Project Site and parcels immediately to the north and east is agriculture. The parcels to the west and south are designated as recreation and open space.

The Applicant is proposing to construct, operate, and decommission a battery energy storage facility, a utility-scale complex with 2,000 megawatts (MW) capacity at full build-out. The Project components include lithium-ion and/or flow battery energy storage system facilities, a behind-the-meter solar energy facility, a new on-site 230 kilovolt (kV) loop-in switching station, a 34.5 kV to 230 kV Project substation, underground electrical cables, and permanent vehicular access to and from the Project Site over a proposed

clear-span bridge spanning IID's Westside Main Canal. The proposed loop-in switching station would connect the Project to the existing IID Campo Verde-Imperial Valley 230 kV radial gen-tie line, which connects to the Imperial Valley (IV) Substation and the California Independent System Operator, approximately one-third mile south of the Project Site. CED has submitted the necessary Interconnection Request Applications to the California Independent System Operator and IID. The Project would be constructed in multiple phases over a 10-year development period, with each phase ranging from approximately 25 MW to 400 MW. The expected end date of the Project life cycle would be 30 years from the construction of the final phase, or no more than 40 years after the effective date of the Conditional Use Permit. The Project would store energy generated from the electrical grid, and discharge that energy back into the grid as firm, reliable generation and/or grid services.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species (biological resources). CDFW offers these comments to assist the Lead Agency for adequately identifying and mitigating the Project's significant, or potentially significant, impacts on biological resources. CDFW recommends that the DEIR addresses the ensuing comments.

Assessment of Biological Resources

Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a Project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed following 2009 or current version of The Manual of California Vegetation. Adjoining habitat areas should also be included in this assessment where Site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions. CDFW's California Natural Diversity Database (CNDDDB) in Sacramento should be contacted to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the proposed Project. CDFW recommends that CNDDDB Field Survey Forms be completed and submitted to CNDDDB to document survey results. Please note that CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. The assessment should include a comprehensive, recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (SSC) and California Fully Protected Species (Fish and Game Code § 3511). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at

the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary.

CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought. CDFW recommends species-specific surveys for the desert tortoise. CDFW-approved desert tortoise pre-construction surveys cover 100 percent of the Project area and adjacent habitat using the methods described in the most recent United States Fish and Wildlife Service (USFWS) Desert Tortoise Field Manual. CDFW recommends survey for burrowing owl, a Species of Special Concern. Survey recommendations and guidelines are provided in the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012). Development of a desert kit fox and American badger mitigation and monitoring plan is recommended. Desert kit fox is a protected species, and American badger is a Species of Special Concern. CDFW also recommends a thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities.

Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources

The vegetation communities and land cover types that were mapped within the Project Site and the surrounding 100-foot radius included upland mustards (*Brassica* spp. and Other Mustards Semi-Natural Herbaceous Stands), fourwing saltbush scrub (*Atriplex canescens* Shrubland Alliance), creosote bush scrub (*Larrea tridentata* Shrubland Alliance), quailbush scrub (*Atriplex lentiformis* Shrubland Alliance), arrow weed thickets (*Pluchea sericea* Shrubland Alliance), tamarisk thickets (*Tamarix* spp. Semi-Natural Shrubland Stands), common reed marshes (*Phragmites australis* Herbaceous Alliance and Semi-Natural Stands), eucalyptus groves (*Eucalyptus* spp. Semi-Natural Woodland Stands), cattail marshes (*Typha* sp. Herbaceous Alliance), disturbed habitat, fallow agriculture, open water, and developed land. A total of 127 animal species were detected within the Project Site and surrounding areas within 500-foot radius during the 2018 and 2019 biological surveys. These species comprised 25 invertebrates, one amphibian, seven reptiles, 84 birds, and 10 mammals. Occurrence of various species as described in the DEIR is summarized below.

Flat-tailed Horned Lizard (*Phrynosoma mcallii*) is a CDFW species of special concern and BLM sensitive species. Flat-tailed horned lizard is found in the low deserts of southwestern Arizona, southeastern California, and adjacent portions of northwestern Sonora and northern Baja California, Mexico. In California, flat-tailed horned lizard is restricted to desert washes and desert flats in central Riverside, eastern San Diego, and Imperial counties. The majority of habitat for the species is in Imperial County. This

species is known to inhabit sand dunes, sheets, and hummocks, as well as gravelly washes. It is thought to be most abundant in creosote bush scrub. However, this species may be found in a variety of desert scrub. Many occurrences of flat-tailed horned lizard have been reported in the undeveloped desert areas immediately west and south of the Project Site, and horned lizard tracks were observed during 2018 surveys in the western portion of the Project Site, south of the westside main canal. This species occurs in the creosote bush scrub and saltbush scrub within and adjacent to the Project Site. Within the Project Site, these communities provide high-quality habitat for this species, with sandy hummocks having re-established in the old agricultural fields, a good diversity of native plant species, and harvester ants present, and flat-tailed horned lizard has a high potential to occur due to the adjacency of high-quality habitat.

Burrowing Owl (*Athene cunicularia*) is a CDFW species of special concern and BLM sensitive species. This species occurs as a year-round resident and winter visitor in the County. Habitat for the burrowing owl includes dry, open, short-grass areas with level to gentle topography and well-drained soils, as well as agricultural areas. These areas are also often associated with burrowing mammals. The burrowing owl is diurnal and perches during daylight at the entrance to its burrow or on low posts. Four burrowing owl observations were recorded within the Project Site during the 2018-2019 non-breeding season surveys. These observations indicate that at least two, but likely three, individuals, appear to use the Project Site and surrounding areas as a wintering site or for migration and dispersal, but is not currently using the Site as breeding habitat. The creosote bush scrub, saltbush scrub, upland mustards, fallow agriculture, and disturbed habitat within and adjacent to the Project Site provide suitable habitat for this species for breeding and wintering due to the open structure of the vegetation, presence of prey items, and abundance of potentially suitable burrows.

Loggerhead Shrike (*Lanius ludovicianus*) is a CDFW species of special concern. This species inhabits most of the continental U.S. and Mexico and is an uncommon year-round resident of southern California. It prefers washes with scattered trees or shrubs, or valley floors with scattered thickets of mesquite (*Prosopis* spp.) or saltbush (*Atriplex* spp.). Outside the desert this species inhabits grasslands, agricultural fields, open sage scrub, and chaparral. The loggerhead shrike requires open habitat with tall shrubs or trees to use as perches for hunting and fairly dense shrubs for nesting. It may also use fences or power lines for hunting perches. Loggerhead shrikes are highly territorial and usually lives in pairs in permanent territories. This species feeds on small reptiles, mammals, smaller birds, amphibians, and insects that they often impale on sticks or thorns before eating. This bird may also be associated with freshly plowed or mowed fields, as these activities create foraging opportunities for this species. Loggerhead shrike populations are declining, likely due to urbanization and loss of habitat and, to a lesser degree, pesticide use. Loggerhead shrike was observed in tamarisk thickets on the Project Site and in common reed marsh and creosote bush scrub immediately adjacent to the Project Site on multiple survey visits in 2018, and 2019. With the combination of dense patches of shrubs or trees and adjacent open areas, the Project Site and surrounding areas provide suitable breeding and foraging

habitat for this species. Therefore, this species is likely a resident and has a high potential to nest within the Project Site.

LeConte's Thrasher (*Toxostoma lecontei*) is a CDFW species of special concern. It is a permanent resident in the San Joaquin Valley, Mojave and Colorado Deserts of California, the Sonoran Desert in Arizona, as well as Utah, Nevada, and Baja California, Mexico. This sensitive bird requires undisturbed substrate for foraging under desert shrubs. Ideal habitat throughout this species' range consists of sparsely vegetated desert flats, dunes, sandy alluvial fans below desert mountains, alkaline dry lakes, or gently rolling hills. Dominant shrub species are saltbush (*Atriplex* spp.) not exceeding eight feet high and cholla (*Opuntia* spp.) ranging three to six feet high. Creosote (*Larrea* sp.) may also be present, but the thrasher does not typically utilize this shrub species for shelter or nesting. LeConte's thrasher was observed during the 2018 survey visits in arrow weed thickets and saltbush scrub on the Project Site.

American Badger (*Taxidea taxus*) is a CDFW species of special concern. American badgers are widespread, ranging from the Great Lakes to the Pacific Coast, and from the Canadian Prairie provinces to the Mexican Plateau. This species can be found in a variety of habitats, which include shrub steppes, agricultural fields, open woodland forests, and large grass and sagebrush meadows and valleys. Its breeding season occurs from mid- to late summer, after which egg implantation is delayed until December to February. Declines in American badger populations and distribution have resulted from habitat fragmentation from urbanization and development of roads. One American badger was observed immediately south of the Project Site in 2019. American badger tracks were observed in the southwestern corner and western edge of the Project Site, south of the Westside Main Canal, during the same visit. At least one burrow, just outside the southwestern corner of the Project Site was of appropriate size to support this species. The Project Site and surrounding areas south of the Westside Main Canal provide suitable habitat for this species.

Colorado Desert Fringe-toed Lizard (*Uma notata*) is a CDFW species of special concern and a BLM sensitive species. This species occurs from below sea level to 590 feet above sea level from the Salton Sea east into southwestern Arizona, and south into Baja California and Sonora, Mexico. Fringe-toed lizards usually seek refuge from enemies by burrowing in the sand 2 to 2.4 inches deep. They also use rodent burrows and the bases of shrubs for cover and thermoregulation. Lizards usually hibernate in sand 12 inches deep, but juveniles and subadults may be found closer to the surface. This species has been reported within two miles of the Project Site and has a suitable potential to occur within the Project Site south of the Westside Main Canal. The creosote bush scrub and saltbush scrub adjacent to and in the western and southwestern portions of the Project Site, south of the Westside Main Canal, provide suitable habitat for this species due to the presence of dunes and sandy hummocks.

Southwestern Willow Flycatcher (*Empidonax trailii extimus*) is a federally and state listed endangered species. This migratory bird breeds in southern California, southern Nevada, southern Utah, Arizona, New Mexico, western Texas, southwestern Colorado,

and extreme northwestern Mexico. The southwestern willow flycatcher's breeding season is from mid-May to mid-July. For breeding and nesting activities this species requires mature, multi-tiered riparian woodland habitat with a high percentage of canopy cover where surface water is present, or soil moisture is high enough to support suitable tree species. Nests are typically placed in trees where plant growth is most dense, where trees and shrubs have vegetation near ground level, and where there is a low-density native canopy. Although there are exceptions, generally flycatchers are found nesting in areas with willows, tamarisk, or both. Southwestern willow flycatchers are extremely sensitive to human activity in riparian areas. Threats to this species include loss of riparian habitat due to urbanization, flood control, water diversion, grazing, and invasion of non-native species. The arrow weed and tamarisk thickets within and adjacent to the Project Site are suitable as foraging habitat, so the Site has suitable potential to support foraging flycatchers during migration.

The DEIR should provide a thorough discussion of the direct, indirect, and cumulative impacts expected to adversely affect biological resources as a result of the Project. To ensure that Project impacts to biological resources are fully analyzed, the following information should also be included in the DEIR.

1. A discussion of potential impacts from lighting, noise, human activity, and wildlife-human interactions created by zoning of development Projects or other Project activities adjacent to natural areas, exotic and/or invasive species, and drainage. The latter subject should address Project-related changes on drainage patterns and water quality within, upstream, and downstream of the Project Site, including: volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project Site.
2. A discussion of potential indirect Project impacts on biological resources, including resources in areas adjacent to the Project footprint, such as nearby public lands (e.g. National Forests, State Parks, etc.), open space, adjacent natural habitats, riparian ecosystems, wildlife corridors, and any designated and/or proposed reserve or mitigation lands (e.g., preserved lands associated with a Natural Community Conservation Plan, or other conserved lands).
3. An evaluation of impacts to adjacent open space lands from both the construction of the Project and long-term operational and maintenance needs.
4. A cumulative effects analysis developed as described under CEQA Guidelines § 15130. Please include all potential direct and indirect Project related impacts to riparian areas, wetlands, vernal pools, alluvial fan habitats, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and other sensitive habitats, open lands, open space, and adjacent natural habitats in the cumulative effects analysis. General and specific plans, as well as past, present, and anticipated future Projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.

5. The Project has decades long life-span and potential loss in habitat expansion and population density changes with time needs be accounted for considering fully mitigated standards. For adequacy of mitigation analysis, there is a need to consider both spatial and temporal effects on habitat as well as cumulative impacts of the activities on habitat biodiversity under microclimate variability.

Mitigation Measures for Project Impacts to Biological Resources

The DEIR should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the Project. CDFW recommends consideration of the following comments.

Fully Protected Species

Several Fully Protected Species (Fish and Game Code § 3511) have the potential to occur within or adjacent to the Project area. Fully protected species may not be taken or possessed at any time. Project activities described in the DEIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends that the DEIR fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends more robust analysis of appropriate avoidance, minimization and mitigation measures to reduce any possible indirect impacts to fully protected species.

Sensitive Plant Communities

CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in the 2009 or current version of The Manual of California Vegetation. The DEIR should include measures to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts. Minimization measures may include transplanting perennial species, seed collection and dispersal from annual species, and other conservation strategies that will protect the viability of the local population. If minimization measures are implemented, monitoring of plant populations will be conducted annually for 5 years to assess the mitigation's effectiveness. The performance standard for mitigation will be no net reduction in the size or viability of the local population.

Mitigation

CDFW considers adverse Project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the DEIR should include

mitigation measures for adverse Project-related impacts to these resources. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, onsite habitat restoration and/or enhancement should be evaluated and discussed in detail. If onsite mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. The DEIR should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and indirect adverse impacts in order to meet mitigation objectives to offset Project-induced qualitative and quantitative losses of biological values. Specific issues that should be addressed include restrictions on access, land dedications, long-term monitoring and management, control of illegal dumping, water pollution, and human intrusion.

Moving out of Harm's Way

The proposed Project is anticipated to result in the clearing of natural habitats that support native species. To avoid direct mortality, CDFW recommends that the lead agency condition the DEIR to require that a CDFW-approved qualified biologist be retained to be onsite prior to and during all ground- and habitat-disturbing activities to move out of harm's way special status species or other wildlife of low or limited mobility that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety. Furthermore, it should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for the purposes of offsetting Project impacts associated with habitat loss.

California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the California Endangered Species Act (CESA). A CESA Incidental Take Permit (ITP) is issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats. CDFW recommends that a CESA ITP be obtained if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). If the Project, including the Project construction or any Project-related activity during the life of the Project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation through an ITP. Desert tortoise and Mohave ground squirrel are two CESA-listed threatened species that have potential to occur within the Project Area, presence needs to be determined by protocol surveys required by the Lead Agency. CDFW encourages early consultation, as significant modification to the proposed Project and avoidance, minimization, and mitigation measures may be necessary to obtain a CESA ITP. Please

note that the proposed avoidance, minimization, and mitigation measures must be sufficient for CDFW to conclude that the Project's impacts are fully mitigated and the measures, when taken in aggregate, must meet the full mitigation standard.

Desert Tortoise

CDFW recommends inclusion of mitigation measures to avoid potentially significant impacts to desert tortoise, a CESA-listed species as threatened and a candidate for endangered species. The measures need to include specificity on who will perform the survey, what type of survey will be performed, and what actions will be taken should desert tortoise presence be confirmed during the survey. The measures need to address avoidance, minimization, or mitigation measures should desert tortoise enter the Project Site during the life of the Project. Take (hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill) is prohibited unless authorized by state law (Fish and Game Code, §§ 2080 & 2085). Project activities have the potential to take desert tortoise. The measure as written does not ensure a qualified biologist, experienced in locating desert tortoise individuals in all life stages and their sign, will complete the survey following CDFW approved protocols. Additionally, should desert tortoise presence be confirmed, the measure needs to include avoidance, minimization and mitigation to avoid take. If the Project, including the Project construction or any Project-related activity during the life of the Project, may result in take of CESA-listed species, CDFW recommends that the Project proponent seeks appropriate authorization prior to Project implementation through an incidental take permit (ITP). CDFW recommends inclusion of a protocol level survey and a measure for a qualified biologist in the environmental document. A qualified biologist shall conduct a protocol level presence or absence survey no more than 14 days prior to initiating Project activities in accordance with the survey methodology described in U.S. Fish and Wildlife Service Desert Tortoise (Mojave Population) Field Manual. In addition, the survey shall utilize perpendicular survey routes and 100-percent visual coverage of the Project area and 50-foot buffer zone for desert tortoise and their sign. If the survey confirms absence, a qualified biological monitor shall remain on-site during all Project activities to confirm desert tortoise do not enter the Project Site. If the survey confirms presence, the Project Proponent shall obtain an ITP for desert tortoise prior to the start of Project activities. If the biological monitor during the life of the Project encounters a desert tortoise, work shall be suspended, and the Project Proponent shall obtain an ITP for the species prior to the restarting Project activities. All clearance surveys need to be conducted during the active season for desert tortoise.

Burrowing Owl

Burrowing owl is a CDFW Species of Special, and potential construction-related direct impacts to burrowing owl could result from destruction of burrowing owl dens, destruction of nests, eggs, and young; and entombment of adults. CDFW recommends inclusion of mitigation measures to avoid potentially significant impacts to burrowing owls, a Species of Special Concern. The measures need to include specificity on who will perform the burrowing owl survey, what type of survey will be performed, and what

actions will be taken should burrowing owl presence be confirmed during the survey. It is necessary to address avoidance, minimization, or mitigation measures. Project-related activities have potential to take burrowing owl individuals and their nests and may result in loss of burrowing owl habitat. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513. Take is defined in Fish and Game Code Section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill." Burrowing owls are dependent on burrows at all times of the year for survival and/or reproduction, evicting them from nesting, roosting, and satellite burrows may lead to indirect impacts or take. Loss of access to burrows will likely result in varying levels of increased stress on burrowing owls and could depress reproduction, increase predation, increase energetic costs, and introduce risks posed by having to find and compete for available burrows. Eviction of burrowing owls is a potentially significant impact under CEQA. CDFW recommends inclusion a measure for a qualified biologist in the environmental document. Burrowing owl surveys shall be conducted by a qualified biologist at least 14 days prior to any Project activities, at any time of year. Surveys shall be completed following the recommendations and guidelines provided within the Staff Report on Burrowing Owl Mitigation (CDFG, March 2012) or most recent version by a qualified biologist. If an active burrowing owl burrow is detected within any Project disturbance area, or within a 500-foot buffer of the disturbance area, a 300- foot radius buffer zone surrounding the burrow shall be flagged, and no impacts to soils or vegetation or noise levels above 65 dBA shall be permitted while the burrow remains active or occupied. Disturbance-free buffers may be modified based on site-specific conditions in consultation with CDFW. The qualified biologist shall monitor active burrows daily and will increase buffer sizes as needed if owls show signs of disturbance. If active burrowing owl burrows are located within any work area and impact cannot be avoided, a qualified biologist shall submit a burrowing owl exclusion plan to CDFW for review and approval. The burrowing owl exclusion plan shall include permanent compensatory mitigation consistent with the recommendations in the Staff Report on Burrowing Owl Mitigation such that the habitat acreage, number of burrows and burrowing owls impacted are replaced. Passive relocation shall take place outside the nesting season (1 February to 31 August).

LeConte's Thrasher

LeConte's thrasher is a CDFW Species of Special Concern. During the nesting season, January 15 through June 15, prior to the start of construction activities, a Qualified Biologist will conduct surveys within the Whitewater Floodplain Conservation Area, within 500 feet of the impact area, or to the property boundary if less than 500 feet. If nesting Le Conte's thrashers are found, an exclusion buffer will be established around the nest site in any location where work may occur within 500 feet of the active nest. The exclusion buffer will be staked and flagged. No construction will be permitted within the buffer during the breeding season of January 15 through June 15 or until the young have fledged.

Nesting Birds and Migratory Birds

It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 *et seq.*). In addition, sections 3503, 3503.5, and 3513 of the Fish and Game Code (FGC) also afford protective measures as follows: Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by FGC or any regulation made pursuant thereto; Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by FGC or any regulation adopted pursuant thereto; and Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA. CDFW recommends that the analysis includes the results of avian surveys, as well as specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. The measures should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. For pre-construction surveys, CDFW recommends that the surveys be required no more than three days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted sooner.

Special Status Plant Species

The Biological Resources Assessment needs to include explanation of methodology and results of the survey of special status plants. CDFW recommends California Natural Diversity Database be used as a starting point in gathering information about the potential presence of species within the general area of the Project Site, and surveys should not be restricted or limited to generated lists. It is unclear if a botanical field survey to identify all plants to the taxonomic level necessary to determine rarity and listing status was performed. Botanical field surveys should be conducted during times of year when plants are evident and identifiable (i.e. flowering or fruiting), which may warrant multiple surveys during the season to capture floristic diversity. Habitats, such as desert plant communities that have annual and short-lived perennial plants as major floristic components may require yearly surveys to accurately document baseline conditions for purposes of impact assessment. Sensitive plant species are listed under the CESA as threatened, or endangered, or proposed or candidates for listing; designated as rare under the Native Plant Protection Act; or plants that otherwise meet the definition of rare, threatened, or endangered species under CEQA. Plants constituting California Rare Plant Ranks 1A, 1B, 2A, and 2B generally meet the criteria of a CESA-listed species and should be considered as an endangered, rare or threatened species for the purposes of CEQA analysis. Take of any CESA-listed

species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Fish and Game Code Sections 1900–1913 includes provisions that prohibit the take of endangered and rare plants from the wild and a salvage requirement for landowners. To ensure that Project impacts to biological resources are fully analyzed, CDFW recommends a thorough floristic-based assessment of special status plants and natural communities. Note that CDFW generally considers biological field assessments for rare plants valid for a period of up to three years. Pre-construction botanical surveys shall be conducted at the appropriate time of year by a qualified biologist following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (CDFW, March 2018) or most recent version. Should special status plants or natural communities be present in the Project area, a qualified biologist shall develop species specific avoidance, minimization, and mitigation measures to ensure there is no net reduction in the size or viability of the local population. CDFW also recommends that the Lead Agency reviews the listing status of Western Joshua Tree (*Yucca brevifolia*) prior to finalizing the DEIR and implements appropriate measures. If the Project, including the Project construction or any Project-related activity during the life of the Project, may result in take of CESA-listed species, CDFW recommends that the Project proponent seeks appropriate authorization prior to Project implementation through an incidental take permit (ITP). Should any CESA-listed plant species be present at the Project Site, the Project Proponent shall obtain an incidental take permit for those species prior to the start of Project activities.

American Badger and Desert Kit Fox

American badger is a Species of Special Concern. Desert kit fox is a protected species and may not be taken at any time pursuant to Title 14 of the California Code of Regulations Section 460. Project activities may have the potential to take American badger and desert kit fox individuals, and development may result in loss of habitat and/or foraging habitat. CDFW recommends inclusion of pre-construction American Badger and Desert Kit Fox survey and suggests the following measure be included in the environmental document. No more than 30 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct a survey to determine if potential desert kit fox or American badger burrows are present in the Project Area. If potential burrows are located, they shall be monitored by the qualified biologist. If the burrow is determined to be active, the qualified biologist shall verify there are suitable burrows outside of the Project Area prior to undertaking passive relocation actions. If no suitable burrows are located, artificial burrows shall be created at least 14 days prior to passive relocation. The qualified biologist shall block the entrance of the active burrow with soil, sticks, and debris for 3-5 days to discourage the use of the burrow prior to Project activities. The entrance shall be blocked to an incrementally greater degree over the 3-5-day period. After the qualified biologist has determined there are no active burrows the burrows shall be hand-excavated to prevent re-use. No disturbance of active dens shall take place when juvenile desert kit fox and juvenile American badgers may be present and dependent on parental care. A qualified biologist shall determine appropriate buffers and maintain connectivity to adjacent habitat should natal burrows be present.

Wildlife in Pipes and Construction Materials

Biological Monitor(s) shall visually check all sections of pipe/construction materials for the presence of wildlife sheltering within them prior to the pipe sections being placed in the trench and attached together, or shall have the ends capped while stored on Site so as to prevent wildlife from entering. After attachment of the pipe sections to one another, whether in the trench or not, the exposed end(s) of the pipeline shall be capped at the end of each day during construction to prevent wildlife from entering and being trapped within the pipeline.

Escape Ramp in Trench

At the end of each work day, the Biological Monitor(s) shall place an escape ramp at each end of the open trench to allow any animals that may have become entrapped in the trench to climb out overnight. The ramp may be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than 30 degree.

Lake and Streambed Alteration Program

Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water. Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your Project that would eliminate or reduce harmful impacts to fish and wildlife resources. CDFW's issuance of an LSA Agreement is a "Project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if necessary, the DEIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources.

Environmental Data

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make

subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB).

Filing Fees

Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CDFW appreciates the opportunity to comment on the DEIR. Questions regarding this letter should be directed to Dr. Shankar Sharma, Senior Environmental Scientist Specialist and Renewable Energy Lead at Shankar.Sharma@wildlife.ca.gov or (909) 228-3692.

Sincerely,

DocuSigned by:
Alisa Ellsworth
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