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Governor's Office of Planning & Research

May 14, 2021

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STATE CLEARINGHOUSE

Mr. Jay Olivas
Riverside County Planning Department
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Riverside, CA 92501
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Subject: Initial Study - Mitigated Negative Declaration
Mountain View Wind Repower Project
(CEQ210007–MVPP)
State Clearinghouse No. 2021040421

Dear Mr. Olivas:

The California Department of Fish and Wildlife (CDFW) received an Initial Study (IS) with proposed Mitigated Negative Declaration (MND) from the County of Riverside (Lead Agency) for Mountain View Wind Repower Project (Project) pursuant the 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

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.

need to exercise regulatory authority as provided by the Fish and Game Code. As 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

The Mountain View Wind Repower Project site is located near Whitewater and Bonnie Bell communities in Riverside County, California, at South of Garnet Street, approximately 3 miles west of Indian Canyon Drive, and at north of the City of Palm Springs, in the northwestern portion of the Coachella Valley. A portion of the underground electrical collection system and Mount Wind substation improvements are situated within the City of Palm Springs. State Route 111 and the City of Palm Springs are located south of the site, and Interstate 10 is situated at north of the site. The Project site occurs within Section 13 of Township 3 South, Range 3 East, and Sections 17 and 18 of Township 3 South, Range 4 East, of the Desert Hot Springs and Whitewater U.S. Geological Survey (USGS) Quadrangles. The approximate geographic center of the Project site is positioned at 33°54'28.04"N (latitude) and 116°35'32.03"W (longitude). The Project site includes 42 parcels and a portion of two additional parcels. The Project covers 139.1 acres on a 1,255.19-acre site, and of the 1,255.19 acres, 1,202.86 acres occur on private land and 52.34 acres are situated within Bureau of Land Management (BLM) jurisdiction.

The site is located within the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) area, and about 383.39 acres in the western portion of the Project site overlap the Whitewater Floodplain Conservation Area (WFCA). The site is positioned in the northwestern portion of the Coachella Valley within unincorporated Riverside County and the City of Palm Springs. The Coachella Valley extends approximately 45 miles southeast of the San Bernardino Mountains and constitutes the westernmost portion of the Colorado Desert. The Coachella Valley connects with the greater Los Angeles region to the west via the San Gorgonio Pass. Facilities on private lands would be within the jurisdiction of the County of Riverside and the City of Palm Springs, and the facilities on public lands would be within the jurisdiction of BLM. The land uses within the vicinity of the Project site can broadly be described as mixed wind energy resources, industrial and commercial properties, and rural residences. The Union Pacific Railroad ROW runs east-west, south of the Project site, and Coachella Valley Water District percolation ponds are placed south of the ROW. I-10 runs northwest-southeast, north of the Project site, and additional wind energy development, SR-62, and vacant desert land are situated at north of I-10. Existing wind energy development is also present southeast of the Project site. Some commercial and industrial land uses are present east of the Project site, adjacent to North Indian Canyon Drive. The land between the noncontiguous portions of the site consists of wind energy development, rural residential, and undeveloped land.

PROJECT DESCRIPTION

CEQA Lead: County of Riverside

Applicant: Mountain View Power Partners LLC (MVPP)

The proposed Project would repower the existing wind energy facilities with modern, higher capacity Wind Turbine Generators (WTGs), and is anticipated to be operational by December 2022. The Project activities will comprise removal of 93 existing Mitsubishi 600-kilowatt (kW) WTGs and the subsequent installation of 16 Vestas 3.6 and 4.3 MW WTGs with a maximum height of 492 feet. Seven existing Mitsubishi 600 kW WTGs would remain as part of the proposed Project. The Project would be capable of producing approximately 229.90 gigawatt hours (GWh) of power per year for operational years 1 through 10 and 215.90 GWh of power annually beyond operational year 10, assuming decommissioning of the seven Mitsubishi 600 kW WTGs.

The applicant requested a setback reduction for two WTGs in the northeast portion of the Project site to reduce scenic setback from 1,320 feet to 1,000 feet. The Project also proposed to modify a 281.81-acre portion of an existing 600-acre parcel from Rural Residential (R-R) to Wind Energy (W-E). A wind access setback Variance proposed to reduce the five (5) times rotor diameter wind access setback for seven (7) existing WTGs and four (4) new WTGs. Five (5) times the rotor diameter for the existing and new WTGs would be 225 meters (738.19 feet) and 585 meters (1,919.29 feet), respectively.

Two Environmental Impact Reports were previously certified by the Riverside County in 2000 and 2001 for portions of existing MVPP I & II Projects on privately owned land. Existing electrical infrastructure runs east of the Project site and delivers the electrical power generated by the existing MVPP I & II wind energy facility the Southern California Edison (SCE) Mount Wind Substation, located in the City of Palm Springs. Separately, BLM issued two right-of-way (ROW) grants for WTGs on federal lands managed by BLM: ROW Grant CACA-42139 authorized six WTGs, which were brought into operation in 2001. A second ROW Grant CACA-40557 authorized 11 WTGs, which were brought into operation in 2003.

Commercial WECS Permit No. 200003 proposes removal of 93 existing Mitsubishi 600-kilowatt (kW) WTGs and the subsequent installation of 16 Vestas 3.6 and 4.3 MW WTGs with a maximum height of 492 feet. Seven (7) existing Mitsubishi 600 kW WTGs would remain as part of the proposed Project. The proposed Project would be capable of producing approximately 229.90 gigawatt hours (GWh) of power per year for operational years 1 through 10. Beyond operational year 10, assuming decommissioning of the seven Mitsubishi 600 kW WTGs, the proposed Project would produce approximately 215.90 GWh of power annually for the remainder of its operational life. The proposed Project would repower the existing wind energy facilities

with modern, higher capacity WTGs. The Project is planned to be operational by December 2022.

Change of Zone No. 2000032 proposes to modify a 281.81-acre portion of an existing 600-acre parcel (APN 522-070-027) from Rural Residential (R-R) to Wind Energy (W-E). Variance Case No. 210001 proposes to reduce the five (5) times rotor diameter wind access setback for seven (7) existing WTGs and four (4) new WTGs. Five (5) times the rotor diameter for the existing and new WTGs would be 225 meters (738.19 feet) and 585 meters (1,919.29 feet), respectively. The applicant proposes reducing the five (5) times rotor diameter wind access setback for the 11 existing and new WTGs to a minimum of 110 meters (360.89 feet).

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 the comments and recommendations to assist the Lead Agency for adequately identifying and mitigating the Project's significant, or potentially significant, impacts on biological resources. The comments and recommendations are also offered to enable CDFW to adequately review and comment on the proposed Project with respect to impacts on biological resources. CDFW recommends that the MND 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. CDFW recommends that it be used as a starting point in gathering information about the potential presence of species within the general area of the Project site.

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. Note that 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 special-status wildlife species that were observed in the Project site during the 2017, 2018, and 2020 field surveys included red diamond rattlesnake (*Crotalus ruber*), California glossy snake (*Arizona elegans occidentalis*), burrowing owl (*Athene cunicularia*), loggerhead shrike (*Lanius ludovicianus*), Swainson's hawk (*Buteo swainsoni*), LeConte's thrasher (*Toxostoma lecontei*), golden eagle (*Aquila chrysaetos*), Palm Springs ground squirrel, Palm Springs pocket mouse, pallid San Diego pocket mouse (*Chaetodipus fallax pallidus*), Townsend's big-eared bat (*Corynorhinus townsendii*), and pocketed free-tailed bat (*Nyctinomops femorosaccus*). Of these species, burrowing owl, LeConte's thrasher, Palm Springs ground squirrel, and Palm Springs pocket mouse are covered under the CVMSHCP. In addition to these special-status species, nesting birds are also likely to occur within the Project site. Three bald eagles were observed during the fixed-point avian surveys over recharge ponds. Desert tortoise, LeConte's thrasher, and Palm Springs pocket mouse were also indicated to have the potential to occur within the Project site. Also, listed species that have a potential to be impacted by the proposed Project include desert tortoise (*Gopherus agassizii*), Swainson's hawk (*Buteo swainsoni*), and bald eagle (*Haliaeetus leucocephalus*). The Project would impact habitat for Palm Springs pocket mouse,

triple-ribbed milkvetch (*Astragalus tricarinatus*), desert tortoise (*Gopherus agassizii*), Palm Springs ground squirrel, and Le Conte's thrasher (*Toxostoma lecontei*).

According to the IS, the Project would result in impacts to 4.48 acres of habitat for triple-ribbed milkvetch, 20.22 acres of habitat for desert tortoise, 2.01 acres of habitat for Palm Springs ground squirrel, 20.17 acres habitat for Palm Springs pocket mouse, 20.22 acres habitat for Le Conte's thrasher, 20.22 acres habitat of fluvial and aeolian sand transport, and 20.22 acres habitat of biological corridors within the WFCA. The proposed Project would result in a total of 27.69 acres of permanent and temporary impacts within the WFCA including previously authorized disturbance prior to implementation of the CVMSHCP. The Project would also result in impacts to fluvial and aeolian sand transport and biological corridors. The IS informs about 7.24 acres (6,274 linear feet) of non-wetland streambed subject to Fish and Game Code Section 1602.

The IS proposes that the impacts are to be offset with donation of 248.12-acre land, of which 247.48 acres would be conserved, within the WFCA. Revegetation or restoration of temporary impacts is not proposed after Project completion. Typically, the applicant would be required to pay a per acre mitigation fee to Coachella Valley Association of Governments; however, The IS proposes that the Set-aside Parcel donation would offset impacts in lieu of payment of CVMSHCP mitigation fees. The proposed Project would also impact 111.41 acres (40.37 acres of permanent and 98.72 acres of temporary) outside of the CVMSHCP WFCA. Revegetation or restoration of temporary impacts is not proposed after Project completion outside of the WFCA. The Project would be required to adhere to CVMSHCP Land Use Adjacency Guidelines regardless of these areas being outside of the WFCA.

Two CVMSHCP-covered plant species, Coachella Valley milk-vetch (a federally endangered and California Rare Plant species) and triple-ribbed milkvetch (a federally endangered and California Rare Plant species), known to occur within the immediate vicinity of the Project site. Therefore, the proposed Project could result in impacts to federally listed plant species potentially present in off-site areas during construction activities due to generation of fugitive dust, the release of chemical pollutants, and the adverse effect of invasive plant species. The Project site contains 291.73 acres of triple-ribbed milkvetch, of which a total of 4.48 acres would be directly impacted by Project implementation.

The IS indicated occurrence of Class 4 burrows for desert tortoise, a federally and state threatened and CVMSHCP Covered Species within the Project site. The Project site contains 383.39 acres of habitat for desert tortoise, of which a total of 20.22 acres would be directly impacted by Project implementation. There is a plausible concern about the type of structure (lattice or monopole) proposed for the new met tower located just inside of the WFCA. This concern pertains to the tower's potential to facilitate increased perching and nesting opportunities for ravens that could then potentially prey on existing and/or future desert tortoise in the WFCA.

Swainson's hawk, a state-listed threatened species and not covered under the CVMSHCP, was observed within the Project site, and potentially may nest or fly within the Project site. Bald eagle, a state-listed endangered species and not covered under the CVMSHCP, was observed foraging over the recharge ponds. This species could occur within and around the Project vicinity. During operation, The Project has high potential to directly impact golden eagles, a CDFW Fully Protected Species that is not covered by the CVMSHCP. This species has a high potential to fly through the Project site. Also, the IS informs 3.7% increase in total rotor-swept area relative to the existing wind farm. CDFW recommends comprehensive avian monitoring during the operation of the proposed Project.

The IS 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 MND.

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 the potential loss in desert tortoise and other 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 and microclimate variability for sustaining desert tortoise and other species.

Mitigation Measures for Project Impacts to Biological Resources

The MND 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. When proposing measures to avoid, minimize, or mitigate impacts, 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 MND 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 MND 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 that the Lead Agency include in the analysis 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 MND 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 MND 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 MND 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 MND 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 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 owls, a CDFW Species of Special Concern and a CVMSHCP Covered Species, were observed during the 2020 field surveys. One occupied burrow within the WFCA and one unoccupied burrow outside of the WFCA were observed. 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 and a CVMSHCP Covered Species. The Project site contains 383.39 acres of habitat for LeConte’s thrasher, of which a total of 20.22 acres of direct impact due to Project implementation. Consistency with CVMSHCP requires a pre-construction survey for LeConte’s thrasher. 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. CDFW recommends inclusion of the following mitigation measure.

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 MND 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 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.

Coachella Valley Multiple Species Habitat Conservation Plan

The proposed Project occurs within the CVMSHCP area and is subject to the provisions and policies of the CVMSHCP. In order to be considered a covered activity, the Project should demonstrate that proposed actions are consistent with the CVMSHCP and the associated Implementing Agreement. In 2008, CDFW issued Natural Community Conservation Plan Approval and Take Authorization for the CVMSHCP per Section 2800, *et seq.*, of the California Fish and Game Code. The CVMSHCP establishes a multiple species conservation program to minimize and mitigate habitat loss and provides for the incidental take of covered species in association with activities covered under the permit. Compliance with approved habitat plans, such as the CVMSHCP, is discussed in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed Project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the CVMSHCP as a result of this Project is necessary to address CEQA requirements. Because the proposed Project is located within a Conservation Area, it is subject to the Joint Project

Review process through the Coachella Valley Conservation Commission. To obtain take through the CVMSHCP, the Project needs to demonstrate consistency with the Conservation Objectives, and address Avoidance, Minimization, and Mitigation Measures, and Land Use Adjacency Guidelines as identified in CVMSHCP. If any part of the Project that is not processed through the CVMSHCP for covered species, then the Project may be subject to the Federal Endangered Species Act (FESA) and/or CESA for threatened, endangered, and/or candidate species. Regardless of whether take is obtained through the CVMSHCP or through a CESA ITP, the MND needs to address how the proposed Project will affect the conservation objectives of the CVMSHCP. All surveys required by the CVMSHCP to determine consistency should be conducted and detailed results are to be included in the final assessment.

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 MND 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 MND to assist the Lead Agency in identifying and mitigating Project impacts on biological resources. 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:
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