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 DEPARTMENT OF FISH AND WILDLIFE  
 Inland Deserts Region  
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GAVIN NEWSOM, Governor  
 CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

December 15 2023

December 15, 2023  
 Sent via email

## STATE CLEARINGHOUSE

Jon Braginton, Planner  
 San Bernardino County Land Use Services Department  
 385 N. Arrowhead Avenue, First Floor  
 San Bernardino, CA 92415  
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Subject: Draft Environmental Impact Report  
 Desert Breeze Solar (Project)  
 State Clearinghouse No. 2022090646

Dear Mr. Braginton:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from San Bernardino County (Lead Agency) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, 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.

### CDFW ROLE

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 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 DESCRIPTION SUMMARY

**Applicant:** Desert Breeze Solar, LLC

**Objective:** Desert Breeze Solar, LLC proposes to develop the Desert Breeze Solar Project (Project), a utility-scale, solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 130 megawatts (MW) of solar power and include up to 2 gigawatt hours (GWh) of energy storage capacity rate in a battery energy storage system (BESS). The Project would be developed within an approximately 923-acre Project Site

<sup>1</sup> 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.

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comprised of an 813-acre solar array area and a 110-acred Shared Facilities Area (SFA). The Project has the following objectives:

- Locate photovoltaic (PV) solar power-generating facilities and energy storage systems near existing utility infrastructure, thereby achieving economies of scale to maximize shared operation and maintenance facilities with existing solar operations;
- Establish solar PV power-generating facilities and energy storage of sufficient size and configuration to produce and deliver reliable electricity in an economically feasible and commercially financeable manner that can be marketed to different power, utility and other offtake companies;
- Use proven and established solar PV and energy storage technology that is efficient and requires low maintenance;
- Assist California in meeting or exceeding its Renewable Portfolio Standard under Senate Bill 100;
- Promote the County's Renewable Energy and Conservation Element policies by siting a solar PV power-generating facility and energy storage in an area suited for utility oriented renewable energy generation projects;
- Develop a solar PV power generation and energy storage facility in San Bernardino County, which would support the economy by investing in the local community, creating local construction jobs, and increasing tax and fee revenue to the County.

**Location:** The proposed Project site is in unincorporated Hinkley, CA, approximately seven miles north of the intersection of Harper Lake Road and Mojave-Barstow Highway 58. The Project site consists of area within two parcels: County Assessor's Parcel Number (APN) 0490-223-33 which is currently vacant and recently approved under a Parcel Merger; and APN 0490-101-56, which contains existing shared infrastructure and support facilities for the adjacent solar facilities. The solar array area of the Project site is bordered on the south by the existing and approved solar facilities; Harper Lake Road to the east; Hoffman Road to the west; and Maltice Drive to the north.

**Timeframe:** Project construction is anticipated to be completed over a period of approximately 18 months, followed by an operational life of approximately 30 years. At the end of the Project's operational term, the Applicant may determine that the Project should be decommissioned and deconstructed, or it may seek an extension of its Conditional Use Permits.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Lead Agency in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

### Project Description and Related Impact Shortcoming

#### Comment #1: Clarification of Project Footprint

##### DEIR Section 3, Page 3-1

**Issue:** The DEIR states that of the 813-acre solar array area, 638 acres would include solar arrays. The application that CDFW has received from the Applicant for a CESA incidental take permit describes the Project footprint area as covering approximately 677 acres.

**Evidence impact would be significant:** CEQA is predicated on a complete and accurate description of the proposed Project. Without a complete and accurate Project description, the DEIR likely provides an incomplete assessment of Project-related impacts to biological resources.

**CDFW Recommendations:** The Final EIR should provide clarity regarding the Project development footprint to reflect the most up-to-date Project design and to be consistent with the permit applications that the Applicant has submitted to date.

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## **Mitigation Measures and Related Impact Shortcoming**

### **Comment #2 Designation of a Lead Biologist**

#### **DEIR Section 4.3 Page 59**

**Issue:** An EIR must identify potentially feasible mitigation measures that avoid or reduce each significant impact to the extent feasible. Effective mitigation measures should be able to answer the following questions: who, what, where, when, why and how.

**Specific impact:** The DEIR includes a number of mitigation measures to reduce impacts to biological resources but lacks a measure to clarify who is responsible to ensure oversight of those measures and to provide communication with CDFW.

**Recommended Potentially Feasible Mitigation Measure:** CDFW appreciates the inclusion of Mitigation Measures BIO-1 through BIO-18, and recommends that the Final EIR add the following measure to specify that the Applicant will assign a Lead Biologist to implement all biological construction monitoring duties as described in the other measures:

**Mitigation Measure BIO-xx Biological Monitoring:** The Applicant shall assign a Lead Biologist as the primary point of contact for the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) regarding biological resources mitigation and compliance. For desert tortoise protection measures (Mitigation Measure BIO-3), the Lead Biologist will serve as the Field Contact Representative or Designated Representative. The Applicant shall provide the resume of the proposed Lead Biologist CDFW and USFWS for concurrence prior to onset of ground-disturbing activities. The Lead Biologist shall have demonstrated expertise with the biological resources within the Project area.

### **Comment #3 Nesting Birds**

#### **DEIR Section 4.3, Pages 23, 62 BIO-11**

**Issue:** CDFW is concerned that the DEIR does not sufficiently ensure that impacts to nesting birds are mitigated to a level less than significant.

**Specific impact:** Project implementation could result in the loss of nesting and/or foraging habitat for passerine and raptor species from the removal of desert scrub vegetation onsite. The DEIR (4.3 page 23) indicates that “the many scrubs located within the Survey Area provide nesting habitat for a limited number of bird species. For example, three active nests...were observed during biological resources surveys conducted for the Project”. The biggest threat to birds includes habitat loss and the conversion of natural vegetation into commercial, residential and industrial land uses.

**Evidence impact would be significant:** It is the Applicant’s responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game 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 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 Fish and Game Code 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 Fish and Game Code 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.

**Recommended Potentially Feasible Mitigation Measures:** The final EIR should include specific avoidance and minimization measures to ensure that impacts to nesting birds do not

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occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise, sound walls, and buffers. The final EIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. CDFW supports the inclusion of Mitigation Measure BIO-11, with minor edits (in ~~strike through~~ and **bold**) in the final EIR to avoid impacts to nesting birds:

Mitigation Measure BIO-11 – Project construction activities shall avoid being conducted during the nesting bird season (February 1 through August 31), if feasible. ~~If infeasible to avoid construction during the nesting season,~~ **Regardless of the time of year,** prior to construction activities, including vegetation removal, a preconstruction nesting bird survey shall be conducted by a qualified biologist no more than ~~7~~ **three** days prior to any construction activities including vegetation removal **and shall include any potential habitat (including trees, shrubs, the ground, or nearby structures)**. Should nesting birds be found, an exclusionary buffer (depending upon the species) shall be established by the qualified biologist. The buffer shall be clearly marked in the field by construction personnel under guidance of the qualified biologist. A qualified biologist will continue to monitor active nests adjacent to active work areas to determine whether exclusionary buffers are sufficient to prevent stress or other negative behavioral changes to nesting birds. Exclusionary buffers may be adjusted at any time by a qualified biologist based on project activities and nesting bird behavior. **If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the no disturbance buffer shall be expanded.** No construction activities shall be allowed within the exclusionary buffer until the qualified biologist determines that the young have fledged or the nest is no longer active. **A nesting bird survey report shall be provided to CDFW. If an active nest is encountered during construction, construction shall stop immediately until a qualified biologist can determine the status of the nest and when work can proceed without risking violation to state or federal laws.**

CDFW also appreciates that the DEIR states that the Applicant will voluntarily develop and implement a Bird and Bat Conservation Plan (BBCP) to reduce impacts to birds and bats during Project operations (page 4.3-58). Please note, however, that while the DEIR states that “in the event of an injury or death of a listed species, CDFW and/or USFWS shall be contacted to consult on appropriate next steps”, any take of a listed species absent an ITP would be unauthorized. CDFW further recommends that a Mitigation Measure is included specifically to require a BBCP:

**Mitigation Measure BIO-xx Bird and Bat Conservation Plan. The Applicant shall prepare and implement a BBCP to avoid or minimize take of migratory birds that may nest on the site or may be vulnerable to collision with Project components. The BBCP shall identify potential hazards to birds during construction and operations and maintenance phases of the Project and specify measures to recognize, minimize, or avoid those hazards. The BBCP shall articulate the Applicant’s commitment to reduce risk to birds and bats. Over the course of construction and operations and maintenance, progress and challenges that are encountered may necessitate review or revision of the BBCP, on mutual agreement among the Applicant and the resource agencies. The initial goals of the BBCS are as follows:**

- **Assess potential risk to birds and bats based on the proposed activities**
- **Specify the adaptive management process that will be used to address potential adverse effects on avian and bat species**
- **Describe baseline conditions for bird species present within the Project site, including results of site-specific surveys**
- **Specify conservation measures that will be employed to avoid, minimize, and/or mitigate potential adverse effects to birds and bats**
- **Describe the incidental bird and bat monitoring and reporting that will take place during construction, if not described in the Nesting Bird Management Plan.**
- **Provide details for following systematic post-construction bird and bat monitoring and reporting.**

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#### **Comment #4 Burrowing Owl**

##### **DEIR Section 4.3, Page 55 and 62**

**Issue:** CDFW is concerned that the DEIR does not sufficiently identify Project impacts to burrowing owl (*Athene cunicularia*) or ensure that impacts are mitigated to a level less than significant.

**Specific impact:** The DEIR states that four live burrowing owls and 29 suitable burrowing owl burrows were observed during surveys conducted for the Project, and suitable foraging and nesting habitat occurs throughout the site. However, burrowing owl-focused surveys were not conducted. Absent such focused surveys CDFW is unable to determine the potential significance of Project impacts. The DEIR includes Mitigation Measure BIO-12 for burrowing owl; however, given the lack of information that would have been provided with burrowing owl-focused surveys, CDFW is concerned that the timing and scope of the measure is insufficient to ensure that impacts to burrowing owls are reduced to a level that is less than significant.

**Evidence impact would be significant:** Burrowing owl is a California Species of Special Concern. 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. Fish and Game Code 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703. et. seq.).

**Recommended Potentially Feasible Mitigation Measure:** In areas where burrowing owl may be present, CDFW recommends that the Lead Agency follow the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (2012 Staff Report). The 2012 staff report specifies three steps for project impact evaluations: a habitat assessment; surveys; and an impact assessment. As stated in the *Staff Report*, the three progressive steps are effective in evaluating whether a project will result in impacts to burrowing owl, and the information gained from the steps will inform any subsequent avoidance, minimization, and mitigation measures. Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with Fish and Game Code sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of the proposed Project activity. The biological surveys that were conducted for the Project is not sufficient to provide a complete analysis of potential impacts to burrowing owl.

Burrowing owl are susceptible to impacts year-round as their breeding season generally extends from February 1 to August 31 and their overwintering period generally from September 1 to January 31. In areas where burrowing owl may be present, ground disturbing activities should be avoided to the extent practicable. Solar development may be considered a high level of disturbance and an appropriate buffer should be determined to avoid take of the species. If burrowing owl are found within the Project area during pre-construction surveys or construction activities, and it is not possible to avoid active burrows, passive relocation and mitigation should be implemented.

Given that burrowing owl habitat and presence has been confirmed on the site, CDFW recommends that Mitigation Measure BIO-12 incorporate the following:

**Focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report*. If burrowing owls are detected during the focused surveys, the qualified biologist and Applicant shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Plan shall describe proposed avoidance, minimization, mitigation, and monitoring actions. The Plan shall include the number and locations of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat burrow cannot**

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**be avoided, the Plan shall also describe relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated, as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Applicant shall implement the Plan following CDFW review and approval.**

**Preconstruction burrowing owl surveys shall be conducted by a qualified biologist no less than 14 days prior to the start of Project-related activities. If construction is delayed or suspended for more than 30 days after the survey, the area shall be resurveyed. A secondary survey must be conducted within 24 hours prior to ground-disturbance, in accordance with the *Staff Report*. Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report*.**

**Comment #5 Desert Kit Fox (*Vulpes macrotis*) and American Badger (*Taxidea taxus*)**

**DEIR Section 4.3 page 56 and 63**

**Issue:** The Project occurs within the range of desert kit fox and American badger, Species of Special Concern and protected species pursuant to Title 14 of the California Code of Regulations section 460, which prohibits the take of the species at any time.

**Specific impact:** Project construction and related activities may result in the injury or mortality of the two species.

**Why impact may occur:** The DEIR states that during surveys conducted for the Project, one live desert kit fox, one desert kit fox carcass, and 29 desert kit fox burrows were observed, along with five burrows displaying American badger sign. Suitable habitat for both species occurs throughout the Project site.

**Evidence impact would be significant:** Desert kit fox is protected as a fur-bearing mammal under Title 14 of the California Code of Regulations section 460, and American badger is a CDFW Species of Special Concern. CEQA provides protection not only for CESA-listed species, but for any species including but not limited to Species of Special Concern which can be shown to meet the criteria for State listing.

**Recommended potentially feasible mitigation measure:** CDFW supports the inclusion of Mitigation Measure BIO-13 to minimize impacts to desert kit fox and American Badger with the following minor edits in ~~strike through~~ and **bold** recommended to ensure impacts are reduced to a level less than significant:

**The Applicant shall prepare and implement a plan for desert kit fox and American badger. The plan shall be reviewed, and guidance provided by CDFW prior to the start of ground-disturbing activities.** Pre-construction burrow clearance surveys shall be conducted by a qualified biologist to ensure that impacts to American badger and desert kit fox are avoided. The preconstruction survey shall be conducted 14-30 days and 24 hours prior to any vegetation removal or ground-disturbing activities consistent with pedestrian pre-construction survey protocols for the listed species. **Surveys shall also consider the potential presence of dens within 100 feet of the Project boundary.** As part of the survey, burrows observed shall be determined to be either inactive, **potentially active**, or active through the use of wildlife cameras, scope, and tracking substrate or similar. **Active dens shall be avoided between January 15 and July 1 (or when pups are independent) and a 500-foot (no vegetation removal) buffer will be established around the den.** Depending on the location of the den, a 500-foot buffer of intact vegetation may need to be maintained all the way up to the fence line to allow cover for desert kit fox and/or American badger to get on and off the site before animals can be passively relocated. CDFW may agree to a reduction in the buffer distance in limited circumstances where site access is inhibited, and a buffer reduction would not adversely affect desert kit fox and/or American badger. Inactive burrows may be

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collapsed by hand or through the use of non-powered tools **and backfilled to prevent reuse** either by or in the presence of a qualified biologist. ~~If active burrows are identified, a non-disturbance buffer shall be implemented around the burrow as selected by a qualified biologist. Active burrows shall be avoided until they are confirmed inactive by a qualified biologist.~~

**During the non-breeding/pupping season potentially active dens within the construction footprint shall be monitored by a Biological Monitor for 3 consecutive nights using a tracking medium such as diatomaceous medium or fire clay and/or infrared camera stations at the entrance. If no tracks are observed in the tracking medium or no photos of the target species are captured after 3 nights, the den shall be excavated and backfilled by hand. If tracks are observed, dens shall be fitted with one-way trap doors to encourage animals to move off site. After 48 hours post-installation, the den shall be excavated by hand and collapsed. Dens shall be collapsed prior to construction of the perimeter fence, to allow animals the opportunity to move off site without impediment. If an active natal den is detected on the site, CDFW shall be contacted within 24 hours. The course of action would depend on the age of the pups, location of the den site, status of the perimeter fence, and the pending construction activities proposed near the den. A 500-foot no disturbance buffer shall be maintained around all active dens. Additionally, the following measures are required to minimize the likelihood of distemper transmission:**

- **Disinfection procedures for equipment and personnel will be followed during any activities related to kit fox on site. Any documented kit fox mortality shall be reported to CDFW within 24 hours of identification. If a dead kit fox is observed, it shall be retained and protected from scavengers until CDFW determines if the collection of necropsy samples is justified.**

#### **Comment #6: California Endangered Species Act**

**Issue:** CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to 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 G. Code, §§ 2080 and 2085).

**Specific impact:** CESA-listed species that the Project will impact include desert tortoise (*Gopherus agassizii*; threatened, candidate for endangered) and Mohave ground squirrel (*Xerospermophilus mohavensis*; threatened).

**CDFW recommendation:** CDFW acknowledges and appreciates that the Applicant has been coordinating with CDFW to obtain an ITP to cover these two species. CDFW deemed the ITP application complete on August 23, 2023. Please note that final compensatory mitigation will be determined through the ITP process and will likely be higher than the proposed minimum of 1:1 in Mitigation Measures BIO-5 and BIO-9.

As with the general Project description, CDFW recommends that the Final EIR reconcile any discrepancies in the description of Project impacts to the species, as acreages described in the CESA ITP application are more refined than those in the DEIR.

Mohave ground squirrel: Because no protocol surveys were conducted for Mohave ground squirrel and the Applicant has already assumed presence and submitted their application for an ITP, with no indication that they intend to conduct protocol surveys, CDFW recommends that the Final EIR revise the language in Mitigation Measure Bio-9 (page 4.3-51 and 4.3-61) accordingly (i.e., remove references to conducting protocol surveys to determine absence/presence).

Desert tortoise: CDFW appreciates the inclusion of Mitigation Measure BIO-3, and while the ITP will include additional more fully developed measures, CDFW recommends

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incorporating the following language in the DEIR to clarify the intention to avoid unauthorized take: **No desert tortoise may be handled or relocated without authorization from U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW). Applicant shall obtain incidental take authorization from both agencies to address any potential take of desert tortoise, including authorization to handle or translocate desert tortoise. Desert tortoises would be handled or translocated according to a Desert Tortoise Relocation Plan, pending approval by both agencies.**

**The Applicant shall employ an approved Authorized Biologist(s) who is qualified to handle desert tortoises and an approved Biological Monitor(s). Additionally, the Applicant shall designate a Lead Biologist as the Designated Representative for purposes of the desert tortoise protection measures identified in the ITP.**

### **Comment #7 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. To obtain a Lake or Streambed Alteration notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

CDFW acknowledges and appreciates that the Applicant has been coordinating with CDFW to obtain a 1600 Agreement for impacts to the identified 1602 resources on the Project site. The Applicant submitted a notification to CDFW on July 25, 2023, with a revised notification submitted on October 31, 2023 which CDFW subsequently deemed complete on November 7, 2023. Compensatory mitigation requirements will be determined through the LSA process and may be more than the proposed minimum of 1:1 in Mitigation Measure BIO-18.

### **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). The CNDDDB field survey form can be found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB\\_FieldSurveyForm.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf). The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/plants\\_and\\_animals.asp](http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp).



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## FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. 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.)

## CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist San Bernardino County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Rose Banks, Senior Environmental Scientist (Specialist) at (760) 218-0022 or [Rose.Banks@wildlife.ca.gov](mailto:Rose.Banks@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
84FBB8273E4C480...

Alisa Ellsworth  
Environmental Program Manager

Attachments: Mitigation Monitoring and Reporting Program (MMRP) for CDFW-Proposed Mitigation Measures

ec: Office of Planning and Research  
State Clearinghouse, Sacramento  
[State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

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## Attachment 1: Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)		
Mitigation Measure (MM) Description	Implementation Schedule	Responsible Party
<p><b>Mitigation Measure BIO-xx Biological Monitoring:</b> The Applicant shall assign a Lead Biologist as the primary point of contact for the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) regarding biological resources mitigation and compliance. For desert tortoise protection measures (Mitigation Measure BIO-3), the Lead Biologist will serve as the Field Contact Representative or Designated Representative. The Applicant shall provide the resume of the proposed Lead Biologist CDFW and USFWS for concurrence prior to onset of ground-disturbing activities. The Lead Biologist shall have demonstrated expertise with the biological resources within the Project area.</p>	<p>Prior to commencing vegetation clearing or ground-disturbing activities</p>	<p>Project Proponent</p>
<p><b>MM-BIO-3a (to be incorporated with BIO-3):</b> No desert tortoise may be handled or relocated without authorization from U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW). Applicant shall obtain incidental take authorization from both agencies to address any potential take of desert tortoise, including authorization to handle or translocate desert tortoise. Desert tortoises would be handled or translocated according to a Desert Tortoise Relocation Plan, pending approval by both agencies.</p> <p>The Applicant shall employ an approved Authorized Biologist(s) who is qualified to handle desert tortoises and an approved Biological Monitor(s). Additionally, the Applicant shall designate a Lead Biologist as the Designated Representative for purposes of the desert tortoise protection measures identified in the ITP.</p>	<p>Prior to commencing vegetation clearing or ground-disturbing activities</p>	<p>Project Proponent</p>
<p><b>Mitigation Measure BIO-11:</b> Project construction activities shall avoid being conducted during the nesting bird season (February 1 through August 31), if feasible. Regardless of the time of year, prior to construction activities, including vegetation removal, a preconstruction nesting bird survey shall be conducted by a qualified biologist no more than three days prior to any construction activities including vegetation removal and shall include any potential habitat (including trees, shrubs, the ground, or nearby structures). Should nesting birds be found, an exclusionary buffer (depending upon the species) shall be established by the qualified biologist. The buffer shall be clearly marked in the field by construction personnel under guidance of the qualified biologist. A qualified biologist will continue to monitor active nests adjacent to active work areas to determine whether exclusionary buffers are sufficient to prevent stress or other negative behavioral changes to nesting birds. Exclusionary buffers may be adjusted at any time by a qualified biologist based on project activities and nesting bird behavior. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the no disturbance buffer shall be expanded. No construction activities shall be allowed within the exclusionary</p>	<p>No more than three days prior to vegetation clearing or ground-disturbing activities</p>	<p>Project Proponent</p>

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<p>buffer until the qualified biologist determines that the young have fledged or the nest is no longer active. A nesting bird survey report shall be provided to CDFW. If an active nest is encountered during construction, construction shall stop immediately until a qualified biologist can determine the status of the nest and when work can proceed without risking violation to state or federal laws</p>		
<p><b>Mitigation Measure BIO-xx:</b> Bird and Bat Conservation Plan. The Applicant shall prepare and implement a BBCP to avoid or minimize take of migratory birds that may nest on the site or may be vulnerable to collision with Project components. The BBCP shall identify potential hazards to birds during construction and operations and maintenance phases of the Project and specify measures to recognize, minimize, or avoid those hazards. The BBCP shall articulate the Applicant's commitment to reduce risk to birds and bats. Over the course of construction and operations and maintenance, progress and challenges that are encountered may necessitate review or revision of the BBCP, on mutual agreement among the Applicant and the resource agencies. The initial goals of the BBCS are as follows:</p> <ul style="list-style-type: none"> <li>• Assess potential risk to birds and bats based on the proposed activities</li> <li>• Specify the adaptive management process that will be used to address potential adverse effects on avian and bat species</li> <li>• Describe baseline conditions for bird species present within the Project site, including results of site-specific surveys</li> <li>• Specify conservation measures that will be employed to avoid, minimize, and/or mitigate potential adverse effects to birds and bats</li> <li>• Describe the incidental bird and bat monitoring and reporting that will take place during construction, if not described in the Nesting Bird Management Plan.</li> <li>• Provide details for following systematic post-construction bird and bat monitoring and reporting.</li> </ul>	<p>Prior to commencing vegetation clearing or ground-disturbing activities</p>	<p>Project Proponent</p>
<p><b>Mitigation Measure BIO-12:</b> Focused burrowing owl surveys shall be conducted by a qualified biologist according to the <i>Staff Report</i>. If burrowing owls are detected during the focused surveys, the qualified biologist and Applicant shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Plan shall describe proposed avoidance, minimization, mitigation, and monitoring actions. The Plan shall include the number and locations of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat burrow cannot be avoided, the Plan shall also describe relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated, as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The</p>	<p>Prior to commencing vegetation clearing or ground-disturbing activities</p>	<p>Project Proponent</p>

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<p>Applicant shall implement the Plan following CDFW review and approval.</p> <p>Preconstruction burrowing owl surveys shall be conducted by a qualified biologist no less than 14 days prior to the start of Project-related activities. If construction is delayed or suspended for more than 30 days after the survey, the area shall be resurveyed. A secondary survey must be conducted within 24 hours prior to ground-disturbance, in accordance with the <i>Staff Report</i>. Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the <i>Staff Report</i>.</p>		
<p><b>Mitigation Measure BIO-13:</b> The Applicant shall prepare and implement a plan for desert kit fox and American badger. The plan shall be reviewed, and guidance provided by CDFW prior to the start of ground-disturbing activities. Pre-construction burrow clearance surveys shall be conducted by a qualified biologist to ensure that impacts to American badger and desert kit fox are avoided. The preconstruction survey shall be conducted 14-30 days and 24 hours prior to any vegetation removal or ground-disturbing activities consistent with pedestrian pre-construction survey protocols for the listed species. Surveys shall also consider the potential presence of dens within 100 feet of the Project boundary. As part of the survey, burrows observed shall be determined to be either inactive, potentially active, or active through the use of wildlife cameras, scope, and tracking substrate or similar. Active dens shall be avoided between January 15 and July 1 (or when pups are independent) and a 500-foot (no vegetation removal) buffer will be established around the den. Depending on the location of the den, a 500-foot buffer of intact vegetation may need to be maintained all the way up to the fence line to allow cover for desert kit fox and/or American badger to get on and off the site before animals can be passively relocated. CDFW may agree to a reduction in the buffer distance in limited circumstances where site access is inhibited, and a buffer reduction would not adversely affect desert kit fox and/or American badger. Inactive burrows may be collapsed by hand or through the use of non-powered tools and backfilled to prevent reuse either by or in the presence of a qualified biologist.</p> <p>During the non-breeding/pupping season potentially active dens within the construction footprint shall be monitored by a Biological Monitor for 3 consecutive nights using a tracking medium such as diatomaceous medium or fire clay and/or infrared camera stations at the entrance. If no tracks are observed in the tracking medium or no photos of the target species are captured after 3 nights, the den shall be excavated and backfilled by hand. If tracks are observed, dens shall be fitted with one-way trap doors to encourage animals to move off site. After 48 hours post-installation, the den shall be excavated by hand and collapsed. Dens shall be collapsed prior to construction of the perimeter fence, to allow animals the opportunity to move off site without impediment. If an active natal den is detected on the site, CDFW shall be contacted within 24 hours. The course of action would depend on the age of the pups, location of the den site, status of the perimeter fence, and the pending construction activities proposed near the den. A 500-foot no disturbance buffer shall be maintained around all active dens. Additionally,</p>	<p>Prior to commencing vegetation clearing or ground-disturbing activities</p>	<p>Project Proponent</p>

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<p>the following measures are required to minimize the likelihood of distemper transmission:</p> <ul style="list-style-type: none"><li>• Disinfection procedures for equipment and personnel will be followed during any activities related to kit fox on site. Any documented kit fox mortality shall be reported to CDFW within 24 hours of identification. If a dead kit fox is observed, it shall be retained and protected from scavengers until CDFW determines if the collection of necropsy samples is justified.</li></ul>		
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