Appendix O

NESTING BIRD MANAGEMENT PLAN

NESTING BIRD MANAGEMENT PLAN

Easley Renewable Energy Project

Prepared for

Intersect Power

IP Easley, LLC

a subsidiary of Intersect Power, LLC

Submitted by

Aspen environmental group

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LIST OF ACRONYMS

BBCS	Bird and Bat Conservation Strategy
BLM	Bureau of Land Management
CDFW	California Department of Fish and Wildlife
CPUC	California Public Utilities Commission
EA	Environmental Assessment
EIR	Environmental Impact Report
FGC	California Fish and Game Code
MBTA	Migratory Bird Treaty Act
MM	Mitigation Measure
MW	Megawatt
NBMP	Nesting Bird Management Plan
USFWS	United States Fish and Wildlife Service

1. INTRODUCTION

1.1. Project Summary

IP Easley, LLC (Applicant or Proponent), a subsidiary of Intersect Power, LLC, proposes to construct, operate and decommission the Easley Renewable Energy Project (Easley or Project), a utility-scale solar photovoltaic (PV) electrical generating and storage facility, and associated infrastructure to generate and deliver renewable electricity to the statewide electricity transmission grid. The approximately 3,700-acre Project site is located in Riverside County near Desert Center (see POD [Plan of Development] Appendix A, Figure 1).

The Project would generate and store up to 650 megawatts (MW) of renewable electricity via arrays of solar photovoltaic (PV) panels, battery energy storage system (BESS), and appurtenant facilities. A 6.7-mile 500 kilovolt (kV) generation-tie (gen-tie) line would mainly traverse the adjacent Oberon Renewable Energy Project that is owned by Intersect Power and connect into an approved substation that is under construction (see POD Appendix A. Figure 2). From the Oberon Substation, the power generated by the Easley Project would be transmitted to the SCE Red Bluff Substation via the Oberon 500 kV gen-tie line which is expected to be fully energized by the end of 2023. For a complete Project description and summary of the Project location, refer to the POD main text.

The Project includes both public and private lands (see POD Appendix A, Figure 2). Public lands within the Project application area are managed by the U.S. Bureau of Land Management (BLM) and are designated as Development Focus Area (DFA) by the Desert Renewable Energy Conservation Plan (DRECP) and associated Record of Decision (ROD), and thus, have been targeted for renewable energy development. Because the proposed Project is partially located on federal land under management of the BLM, the BLM is the lead agency under the National Environmental Policy Act (NEPA), 42 U.S.C. section 4321 et seq. Private lands within the Project solar application area are under the jurisdiction of Riverside County who will serve as the lead agency under the California Environmental Quality Act (CEQA).

Clean, renewable energy generation will have an overall benefit to plant and wildlife species on a local, regional, and global scale by replacing fossil fuel energy sources, reducing toxic emissions, and mitigating the effects of climate change on ecosystems. The solar and energy storage facility, gen-tie line, and associated components are collectively referred to as the Easley Renewable Energy Project (Project) throughout this report.

1.2. Purpose

The primary purpose of the Nesting Bird Management Plan (NBMP) is to provide a framework for management and monitoring of bird nesting activities during the construction phase of development. Implementation will ensure that impacts to avian species protected by the California Fish and Game Code (FGC) and the federal Migratory Bird Treaty Act (MBTA) are avoided and minimized during construction. The State of California regulations include FGC Sections 3503, 3503.5, and 3513 which protect all birds, birds of prey, and all nongame birds, as well as their eggs and nests. The MBTA makes it unlawful in most circumstances to take (hunt, pursue, take capture, or kill) migratory birds.

This NBMP was prepared in conjunction with the Bird and Bat Conservation Plan (BBCS) (see POD Appendix M) to conform to DRECP Conservation and Management Action (CMA) LUPA-BIO-17 (BBCS). Nesting birds are further protected with CMAs for monitoring, pre-construction/activity nesting bird surveys, and setbacks from active nests, as directed in the following CMAs:

- **LUPA-BIO-16,** Activity-Specific Bird and Bat CMAs,
- **DFA-BIO-IFS-1**, Individual Focus Species (IFS) (pre-construction/activity breeding season surveys for individual species – Bendire's thrasher, burrowing owl, golden eagle),

- **DFA-BIO-IFS-2**, Setbacks for individual species – Bendire's thrasher, burrowing owl, golden eagle),
- **LUPA-BIO-3**, Resource Setback Standards,
- **LUPA-BIO-RIPWET-3**, BLM Special Status Riparian Bird Species (pre-construction/activity nesting bird surveys), and
- **LUPA-BIO-IFS-12**, Burrowing Owl (setbacks and monitoring for burrows).

This NBMP may be revised to conform to requirements of: (1) relevant provisions of the Project's Final Environmental Impact Report or Environmental Assessment, (2) any USFWS Biological Opinion (BO) or CDFW Consistency Determination or Incidental Take Permit (ITP) issued for the Project, (3) any revisions to relevant MMs that may be adopted in the BLM Record of Decision and/or by Riverside County, or (4) any further direction from the resource agencies.

1.3. Biologist Designations

The Lead Avian Biologist(s) and Avian Biologist/Monitors will be responsible for implementation of this NBMP including monitoring and reporting. All biologists' qualifications will be subject to review and approval by Riverside County, BLM, California Department of Fish and Wildlife (CDFW), and the United States Fish and Wildlife Service (USFWS) (or its designated representative). The following specifies the roles and minimum qualifications for the Lead Avian and Avian Biologist/Monitors.

Lead Avian Biologist: Searches for and identifies active bird nests; makes recommendations for establishing appropriate nest buffers and any subsequent adjustments to those buffers; communicates buffer information to CDFW, who may also recommend indirect impact reductions, such as establishing no parking/stopping/loitering zones; involved in determining when a nest is no longer active based on personal observations or those of the biologist/biological monitor; maintains documentation. May establish Environmentally Sensitive Area (ESA) buffers for active nests and halt construction to protect nesting birds.

To be approved as a Lead Avian Biologist by the agencies, an individual is expected to have the following average qualifications:

- A bachelor's degree in biological sciences, zoology, botany, ecology, or a closely related field.
- Two or more years of focused experience performing nesting bird surveys or monitoring nests for a range of bird species in Southern California.
- Worked on 10 or more substantial multi-season bird projects, or the equivalent, performing surveys, habitat assessments, etc. in the field. Of these, at least 8 must be in the Southwest, preferably in California.

Avian Biologist/Monitor: Conducts pre-construction nest sweeps and identifies nest locations; establishes appropriate buffers around active nests following guidance provided by the Lead Avian Biologist; actively monitors nests and adjacent construction activities; conducts regular sweeps to search for and identify additional nests; communicates regularly with the Lead Avian Biologist about any nesting bird behaviors observed; enters nesting and bird monitoring data; creates new documentation; and updates existing documentation. The Avian Biologist/Monitor may halt construction at any time to protect nesting birds.

To be approved as an Avian Biologist/Monitor, an individual is expected to have the following qualifications:

- Worked on 3 or more substantial multi-season bird projects or the equivalent, performing surveys, habitat assessments, etc. in the field. Of these, at least 2 must be in the Southwest, preferably in California.

1.4. Definitions

Active Nest. An active nest for the purposes of this plan is a nest that contains an egg or a bird, or a nest being actively used (i.e., incubation, eggs, nestlings, fledglings) by any bird species. For raptors or special-status species actively building a nest, that nest is considered active.

Birds and their nests are protected in the state of California by both state and federal law. At the federal level, the MBTA states:

> *It shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof.*

At the state level, California FGC Section 3503 states:[1]

> *It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto.*

California FGC Section 3503.5 states:

> *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 this code or any regulation adopted pursuant thereto.*

While MBTA does not clearly define what an active (or inactive) nest is, the USFWS (USFWS, 2003) has clarified that the federal regulations do not pertain to the destruction of nests alone (without birds or eggs), provided that possession of the nests does not occur, and the activities do not otherwise result in take of migratory birds covered by the MBTA. CDFW has not provided clarification on the regulations pertaining to nesting birds. Therefore, for purposes of this Plan, non-raptor, non-special-status species nests without eggs or chicks are considered inactive. For raptors, a nest is considered active when raptors exhibit nest construction or nest decorating behavior. The Lead Avian Biologist will determine when a nest is active based upon field observations at each nest. For special-status species, a nest is considered active upon initiation of construction of the nest.

Because a moderate number of avian species never "build" nests, special attention will be provided to potential nests, known old nests, and the behavior of adults of any member of the orders Strigiformes (owls), Caprimulgiformes (nightjars), Cathartidae (new world vultures) or families in the order Falconiformes (diurnal birds of prey) including Falconidae (falcons), and Accipitridae (eagles, hawks, and kites), and some ground-nesting species (e.g., killdeer). The determination of an active nest will be made by the Lead Avian Biologist with a minimum observation time as described below.

Inactive Nest. For the purposes of this plan, non-raptor and non-special-status species nests that are under construction will be considered inactive until eggs are present within the nest. Special-status species nests will be considered active during the nest building phase.

Based on the Lead Avian Biologist's best judgement, a previously active nest becomes inactive when it no longer contains viable eggs and/or living young and is not being used by a bird as part of the reproductive cycle (eggs, young, fledging young still dependent upon nest). Egg unviability will be inferred if eggs are present or believed present, but the adult birds have stopped brooding the eggs or abandoned the nest,

[1] See footnote 2 for information regarding proposed amendments to the CFGC.

based upon repeated observations of inactivity at the nest location. In some cases, a nest can be abandoned by the bird constructing it and become inactive prior to egg laying. In such cases, determination that the nest is inactive is made on a case-by-case basis based on consistent observations and the determination of a Lead Avian Biologist.

Special-Status Species. Special-status species are defined as species listed under the Federal Endangered Species Act, under the California Endangered Species Act, species with other state-level protections, and species that are on lists maintained by BLM. A list of special-status species with potential to occur in the Project area is included in Table 1 of the BBCS (see POD Appendix M).

2. CONDITIONS FOR NESTING BIRDS

The entire Easley Renewable Energy Project site and surrounding area provides suitable nesting habitat for numerous resident and migratory bird species (see POD Appendix G [Ironwood, 2022], Figure 5: Vegetation Communities). Nesting bird breeding seasons are dependent upon species but is typically between January 1 through August 31 and is distributed among species as follows.

- Raptors and hummingbirds beginning January 1 through August 31.
- Other species, beginning February 1 continuing through August 15.

Special-status bird species known to or with high potential to nest on or near the Project site include Western burrowing owl (*Athene cunicularia hypugaea*), Le Conte's thrasher (*Toxostoma lecontei*), Loggerhead shrike (*Lanius ludovicianus*), California horned lark (*Eremophila alpestris actia*), and Black-tailed gnatcatchers (*Polioptila melanura*) (see POD Appendix G [Ironwood, 2022]).

Many adult birds would flee from equipment during Project construction; however, nestlings and eggs would be vulnerable. If initial fencing, site grading, or brush removal were to take place during nesting season, then it would likely destroy bird nests, including eggs or nestling birds. Impacts to birds can be avoided by scheduling initial clearing and grading outside the nesting season. Or, if initial clearing and grading are undertaken during nesting season, work will be limited only to areas where no nesting birds are present, as documented by pre-construction nest surveys (Section 3.1).

One special-status species, the burrowing owl, is unlikely to flee the site during construction, even outside the nesting season, due to its characteristic behavior of taking cover in burrows. The Wildlife Protection and Relocation Plan (see POD Appendix K) includes a framework for management approach, monitoring, and relocation of special-status species that may occur within the Project area, including burrowing owl. Refer to the Wildlife Protection and Relocation Plan for guidance on burrowing owl monitoring and management. Any direct handling of burrowing owl would require the Lead Avian Biologist or Avian Biologist/Monitor to be permitted for burrowing owl.

Some birds will likely nest in the Project disturbance area during construction, even after initial grading and clearing. Depending on the species, birds may nest on the ground close to equipment; on foundations, structures, or construction trailers; or on idle vehicles or construction equipment left overnight or during a long weekend. The species most likely to nest in the Project disturbance area during construction are common ravens, house finches, and mourning doves, all of which are protected by the MBTA and California FGC. Due to the high probability that birds may nest on site during construction, regular monitoring and nest site management, including monitoring and buffering of active nests, may be necessary throughout the breeding season.

3. NESTING SEASON MONITORING METHODOLOGY

The following section outlines monitoring methodology for the active avian nest season. As discussed above in Section 2, the nesting season begins January 1 for raptors and hummingbirds and February 1 for other species and continues through August. Active nests may occur at any time of year, and it is unlawful to kill or take a migratory bird, nest, or egg, except as permitted under regulations.

The Applicant will identify a qualified Lead Avian Biologist who will direct the nest detection surveys and nest monitoring described in this section. The Lead Avian Biologist may conduct the surveys and monitoring or may oversee Avian Biologist/Monitors in conducting all or part of the work. As presented in Section 1.4, the Lead Avian Biologist and Avian Biologist/Monitors will be approved by the agencies prior to their implementation of NBMP activities.

Surveys will consist of a pedestrian search by an Avian Biologist for both direct and indirect evidence of bird nesting. Direct evidence will include the visual search of an actual nest location. Indirect evidence will include observing birds for nesting behavior, such as copulation, carrying food or nesting materials, nest building, adult agitation or feigning injury, feeding chicks, removal of fecal sacks, and other characteristic behaviors that indicate the presence of an active nest. Surveys will be conducted in accordance with the guidance in Martin and Guepel (1993).

The size of the survey area physically surveyed will vary according to site specific conditions. The amount of acreage covered by surveyors will be determined based upon the nesting bird activity encountered and the opinion of the qualified personnel conducting the surveys. The density and complexity of habitat type will be considered during survey planning to determine the field methods, number of qualified personnel, and the time needed to locate nests. Surveys located in more dense habitats may require observations from multiple vantage points to locate all potential nests prior to construction. Surveys located in desert scrub habitats may be completed in less time due to lower vegetation density that would allow surveyors to spot nests and nesting activity.

3.1. Preconstruction Surveys & Daily Sweeps

Preconstruction surveys will consist of a pedestrian search by the Lead Avian Biologist or Avian Biologist/ Monitor for evidence of nesting birds in potential nesting habitat that would be impacted by Project construction. During construction in the nesting season, the Lead Avian Biologist or Avian Biologist/ Monitor will also conduct regular sweeps of the area to detect nesting activity. The survey methods will follow standard nest-locating techniques such as those described in Martin and Guepel (1993) and may vary based on site specific conditions, such as the complexity of habitat, the number of vantage points, birds observed in the area, and their territory size. Surveys may be systematic transects (e.g., 10 m intervals), meandering transects (e.g., where specific topography, substrates, or vegetation are targeted) or other methods which are determined by the Lead Avian Biologist based on site-specific characteristics. Evidence of nesting birds includes the visual search of an active nest location or observing nesting behaviors such as repeat visits to specific location, carrying food or nesting materials, nest building, feeding chicks, or distraction displays. If the presence of a potentially active nest is suspected but cannot be confirmed, additional surveys will be conducted.

Within nesting bird season, the Lead Avian Biologist or Avian Biologist/Monitor will survey for nesting birds prior to vegetation clearance or construction activity that may affect active nests. Any nesting surveys involving passerines should be conducted within 4 days of the initiation of any vegetation clearance or grading, whereas surveys involving raptors will be 7 days prior. An additional preconstruction survey will be conducted immediately prior to initial Project related, ground disturbing activities to confirm no new nests are found. The preconstruction surveys will cover all areas within the Project site and along linear features where work may occur. Surveys will include a 1,200-foot buffer for raptors and

a 300-foot buffer for other species surrounding each work area, if habitat occurs in the buffer. An example Avian Nest Reporting Form is included as Attachment 1. Surveys will be repeated regularly during nesting season in nesting habitat. If a work site remains inactive for a period of ten days or more, the surveys will be repeated.

The Lead Avian Biologist or Avian Biologist/Monitor shall conduct daily pre-construction "sweeps" of each work site, immediately prior to beginning construction or disturbance work, to identify any vulnerable wildlife that may have entered the site.

If survey requirements are inconsistent between this NBMP and other permit conditions, the most conservative approach will be selected, or the Lead Avian Biologist will request clarification from the BLM, Riverside County, CDFW, and or USFWS, as specified by final project mitigation.

3.2. Exclusion Buffers for Active, Occupied Nests

If active nests are found, an exclusion buffer will be established and marked in the field around each nest. Construction shall not occur within the designated nest exclusion buffer until the nest is no longer active (i.e., the young fledge from the nest, or the nest is abandoned). At all times, nest exclusion buffers must be effective in avoiding the potential for Project-related nest abandonment, failure of fledging, and disturbance of the nesting behavior. If Project activities cause or contribute to a bird being flushed from a nest, the buffer size must be increased, and the nest monitored to ensure the bird has returned and nesting has not failed.

The default buffer distance established around a particular nest will be species-specific, according to the buffer distances in Table 1. The default buffer distances have been used on multiple other infrastructure projects in the immediate area and were included in a NBMP for similar habitat and region. These buffers were developed in coordination with BLM, CDFW, USFWS, and CPUC (California Public Utilities Commission Nesting Bird Working Group, 2015). Default buffers consider species tolerances for disturbance, if known. Larger default buffers are used for raptors and for species that are not tolerant of disturbance. Smaller default buffers are generally used for smaller birds and species that have a high tolerance for disturbance, such as those that are commonly found nesting close to development. Several species that nest in lattice steel towers or build nests in or on equipment that is stored at construction sites are identified in Table 1 as common. These include red-tailed hawks, common ravens, western kingbirds, Cassin's kingbirds, and house finches.

In Table 1, some species fall into more than one category and may therefore have more than one species-specific buffer. For example, a blue-gray gnatcatcher nesting in a thicket or understory is less likely to be disturbed by Project activities than one nesting in a more exposed location in a shrub or small tree, even though both nests are the same distance from the construction activity. The category for each nest will be determined by the Lead Avian Biologist based upon location of the nest relative to surrounding activities, as well as the bird's observed tolerance to human activity. For specific construction activities, sound monitoring information may be used during analysis of potential impacts from construction-related activity.

Table 1. Default Buffers for Nests During Construction

Avian Group (nest type/location)	Species Potentially Nesting Within Easley Solar Project Site	Minimum Buffers for Ground Construction per Disturbance Level (feet)*
Waterfowl and rails	Canada goose, wood duck, mallard, cinnamon teal, ruddy duck, Virginia rail, sora, American coot, pied-billed grebe	150
Quail	California quail, Gambel's quail	150

Avian Group (nest type/location)	Species Potentially Nesting Within Easley Solar Project Site	Minimum Buffers for Ground Construction per Disturbance Level (feet)*
Herons	Great blue heron, great egret, snowy egret, cattle egret, black-crowned night-heron	250
Birds of prey (Category 1)	American kestrel, barn owl, western screech-owl	300
Birds of prey[2] (Category 2)	Cooper's hawk, red-tailed hawk, red-shouldered hawk, great horned owl	300
Birds of prey (Category 3)	Turkey vulture, red-tailed hawk, white-tailed kite, northern harrier, long-eared owl	500
Shorebirds	Killdeer	200
Pigeons	Band-tailed pigeon	150
Doves	Mourning dove, white-winged dove, common ground-dove	150
Roadrunners	Greater roadrunner	300
Nightjars	Lesser nighthawk, common poorwill	150
Swifts	White-throated swift	200
Hummingbirds	Anna's hummingbird, Costa's hummingbird	100
Woodpeckers	Acorn woodpecker, ladder-backed woodpecker, Nuttall's woodpecker, downy woodpecker, northern flicker	150
Passerines (bridge, culvert, and building nesters)	Black phoebe, Say's phoebe, Ash-throated flycatcher, northern rough-winged swallow, cliff swallow, barn swallow, house finch (3)	100
Passerines (ground nesters, open habitats)	Horned lark, rock wren, western meadowlark, orange-crowned warbler, lark sparrow, grasshopper sparrow	150
Passerines (understory and thicket nesters)	Bushtit, Bewick's wren, blue-gray gnatcatcher (2), black-throated gray warbler, yellow-breasted chat, spotted towhee, black-chinned sparrow, sage sparrow, song sparrow, black-headed grosbeak, blue grosbeak, lazuli bunting, American goldfinch	150
Passerines (shrub and tree nesters)	Pacific-slope flycatcher, Cassin's kingbird, western kingbird (2), loggerhead shrike (2)*, Hutton's vireo, western scrub-jay, American crow, common raven, verdin, bushtit, black-tailed gnatcatcher, blue-gray gnatcatcher (2), cactus wren (2)*, American robin, northern mockingbird, Le Conte's thrasher, phainopepla, yellow warbler, black-throated gray warbler, yellow-breasted chat, California towhee, black-throated sparrow, song sparrow, summer tanager, great-tailed grackle, hooded oriole, Bullock's oriole, house finch (3), Lawrence's goldfinch, lesser goldfinch	150 (300 for species marked with *)
Passerines (open scrub nesters)	Loggerhead shrike (2)*, verdin, cactus wren (2)*, black-tailed gnat-catcher, wren tit, northern mockingbird, California thrasher, Le Conte's thrasher, Phainopepla, orange-crowned warbler, southern rufous-crowned sparrow, California towhee, black-throated sparrow, Brewer's blackbird, lesser goldfinch	150 (300 for species marked with *)
Passerines (tower nesters)	Western kingbird (2), common raven, house finch (3)	150
Species not covered under MBTA	Domestic waterfowl, including domesticated mallards, feral (rock) pigeon, ring-necked pheasant, chukar, Eurasian collared dove, spotted dove, parrots, parakeets, European starling, house sparrow	NA

For species listed under two or more categories, the number of categories is indicated in parentheses, e.g., "Loggerhead shrike (2)."[2]
*Default buffers provided by USFWS.

[2] Lead Avian Biologist should contact the wildlife agencies for buffers of Prairie Falcon, Peregrine Falcon, or Golden Eagle if a nest if found.

3.3. Minimal Disturbance Activities

Minimal disturbance level activities generally produce little to no noise, use no machinery, create minimal fugitive dust, are short in duration, and cause minimal to no ground or vegetation disturbance. Some examples of low disturbance activities are vegetation clearing (hand tools) and bird deterrent installation. Some low disturbance level activities such as surveys, staking and flagging, and best management practice (BMP) installation and repairs generate very minimal levels of disturbance compared to other construction activities; however, would still be overseen by an Avian Biologist. Minimal disturbance activities do not require the typical buffers that other construction activities necessitate. Minimal disturbance level activities may include the following.

- Hand clearing of vegetation
- Installation of bird deterrent (see Section 3.6)
- BMP (straw waddle) installation or repair
- Environmental surveys
- Staking/Flagging installation or removal

3.4. Buffer Reduction Process

For Project activities of any disturbance level that are inconsistent with established buffer distances, the Lead Avian Biologist will evaluate the proposed activity on a case-by-case basis. A reduced buffer distance may be implemented if recommended by the Lead Avian Biologist. Buffer reductions for special-status species will not occur beyond the distances listed in Table 1 without notification to BLM, USFWS, or CDFW as appropriate at least 3 calendar business days prior to the proposed buffer reduction. Any threatened or endangered listed species would require agency approval prior to any buffer reduction. There will be a 3 calendar business days period where resource agencies may intercede or request clarification, otherwise the proposed buffer reduction would commence as planned.

For each proposed buffer reduction, an Avian Biologist will be consulted and will determine whether the species-specific buffers may be reduced for the specific activity and duration associated with the active nest. Site-specific conditions would include distance to construction, type of disturbance activity, anticipated duration of the disturbance, microhabitat at the location of the nest that may provide visual and acoustic barriers, behavior of the pair, and its reproductive stage. Buffer reductions will take place only after resource agencies notification and consideration of site-specific conditions.

Buffers may be reduced based on the nest cycle status. For some species, nesting is most susceptible to failure earlier in the nest cycle when fewer resources have been invested towards the nest, thus requiring a larger buffer early on.

If buffer distances are temporarily reduced for a specific activity, the buffers will be returned to the original distance after completion of the activity.

Once vegetation removal activities are complete and construction is underway, birds may become acclimated to regular construction activities and will nest near work activities. Buffers may be further reduced by the Lead Avian Biologist based on the level of habituation and acclimation, following required notification to Riverside County, BLM, CDFW, and USFWS. However, because of fluctuating conditions in an active construction site, these factors will be continually reassessed, and management adjusted by the Lead Avian Biologist, to avoid disturbance of active nests.

3.4.1. Common Species Buffer Reduction Process

For common species, buffers may be reduced through the following notification process.

1. The Construction Contractor will file a buffer reduction request to the Lead Avian Biologist, describing the proposed work activity within the buffer area, reason the activity must be completed while the nest remains active, and total period of proposed buffer reduction.
2. The Lead Avian Biologist will review the nest status and the need for the reductions with the contractor or construction manager. Opportunities for potential avoidance of the buffer reduction will be evaluated (e.g., by staging equipment in a different location or altering project construction sequencing). Wherever feasible, proposed work activities and locations will be adjusted to avoid or minimize incursion into the buffer area.
3. The Lead Avian Biologist will evaluate the request and determine whether a reduced buffer can be applied. The decision will be based on the documented nest information and site-specific conditions. Site-specific conditions include nesting species, behavior of the pair, reproductive stage, geographic location, distance to construction, type and extent of disturbance activity, anticipated duration and timing of the disturbance, microhabitat at the location of the nest that may provide visual and acoustic barriers, the species' natural history, species' known tolerances to human presence and activities, proposed buffer reduction distance, and start and end dates.
4. If determined to be acceptable by the Lead Avian Biologist, a buffer reduction notification will be submitted to Riverside County, BLM, CDFW, and USFWS. The following information will be included in the notification.
    - Complete description of activities proposed within the reduced buffer, including types of equipment, duration, and start date
    - Description of Project activity in the vicinity of the nest within the last 30 days
    - Identification of the current and reduced buffers
    - Map showing current and reduced buffers
    - Nest activity, location, topography or other features that may shield the nest from the work area, the pair's response to the biologist, and photos
    - Assessment made by the Avian Biologist
    - Description of monitoring if different from the monitoring protocol described within the Plan
    - Statement regarding returning to the established default buffer after work has been completed in the reduced buffer area.
5. The Lead Avian Biologist will modify the buffer distance, upload the notification information, and document the notification date and, if applicable, the concurrence date. The Avian Biologist/Monitor will modify the ESA markers to the new buffer distance.
6. As the work activity is initiated, the Avian Biologist/Monitor will monitor the nest long enough to determine how the nesting pair is responding to the disturbance activity. If necessary, the Avian Biologist/Monitor will adjust the buffer accordingly to minimize disturbance at the nest.
7. If the activities described in the notification do not begin within seven calendar days or if Project activities change to a higher level of disturbance, the nest will be reevaluated, and an updated buffer reduction notification will be submitted for the proposed activities.

Once the Project activity is complete, the buffer will revert to the original established buffer. The Avian Biologist/Monitor will adjust the ESA markers. Note that as described in Section 1.4 above, the tasks noted above could be implemented by the Avian Biologist/Monitor under the direction of the Lead Avian Biologist.

3.4.2. Special-Status Species Buffer Reductions

Buffers for special-status species may be reduced to smaller buffers through coordination with the appropriate resource agencies. This NBMP does not address buffers or buffer reductions for listed threatened or endangered species. Any threatened or endangered listed species would require agency approval prior to any buffer reduction.

If a buffer for a special-status species nest impedes Project activities, a reduced buffer may be implemented according to the following process:

1. The Construction Contractor will file a buffer reduction request to the Lead Avian Biologist, describing the proposed work activity within the default buffer area, reason the activity must be completed while the nest remains active, and total period of proposed buffer reduction.
2. The Lead Avian Biologist will review the nest status and the need for the reduction with the contractor or construction manager. Opportunities for potential avoidance of the buffer reduction will be evaluated (e.g., by staging equipment in a different location or altering project construction sequencing). Wherever feasible, proposed work activities and locations will be adjusted to avoid or minimize incursion into the buffer area.
3. The Lead Avian Biologist will evaluate the request and determine whether a reduced buffer can be applied. The decision will be based on the documented nest information and site-specific conditions. Site-specific conditions include nesting species, behavior of the pair, reproductive stage, geographic location, distance to construction, type and extent of disturbance activity, anticipated duration and timing of the disturbance, microhabitat at the location of the nest that may provide visual and acoustic barriers, the species' natural history, species' known tolerances to human presence and activities, proposed buffer reduction distance and start and end dates.
4. If determined to be acceptable, the Lead Avian Biologist will submit a buffer reduction notification to Riverside County, BLM, CDFW, and USFWS. The following information will be included in the notification.
    - Complete description of activities proposed within the reduced buffer, including types of equipment, duration, and start date
    - Description of Project activity in the vicinity of the nest within the last 30 days
    - Identification of the current and reduced buffers
    - Map showing current and reduced buffers
    - Nest activity, location, topography or other features that may shield the nest from the work area, the pair's response to the biologist, and photos
    - Assessment made by the Avian Biologist
    - Description of monitoring if different from the monitoring protocol described within the Plan
    - Statement regarding returning to the established default buffer after work has been completed in the reduced buffer area.
5. If no objections are received within 36 hours, the buffer reduction may be implemented at the discretion of the Lead Avian Biologist. The Avian Biologist/ Monitor will then modify the ESA markers to the new buffer distance. The Avian Biologist/Monitor will modify the buffer distance, upload the approval information, and document the request and approval dates. If objections are communicated, the Lead Avian Biologist will cooperate with the concerned agency(s) to resolve the issue.
6. As the work activity is initiated, the Avian Biologist/Monitor will monitor the nest long enough to determine how the nesting pair is responding to the disturbance activity. If necessary, the Avian Biologist/Monitor will adjust the buffer accordingly to minimize disturbance at the nest.

7. If the activities described in the request do not begin within seven calendar days or if Project activities change to a higher level of disturbance, the nest will be reevaluated, and an updated buffer reduction request shall be submitted for the proposed activities.

Once the Project activity is complete, the buffer will revert back to the original established buffer. The Avian Biologist/Monitor will adjust the ESA markers. Note that as described in Section 1.4 above, the tasks noted above could be implemented by the Avian Biologist/Monitor under the direction of the Lead Avian Biologist.

3.5. Active Nest Monitoring Standards

Active nests will be monitored to ensure that measures are being employed to minimize disturbance to nesting birds. Regular monitoring of active nests will also inform when and if a buffer can be reduced or removed, or if adaptive management measures, such as increasing the buffer, need to be employed. The frequency of nest monitoring will be determined by site-specific conditions but will occur at a minimum one to three times per week. For example, active nests near ongoing construction may require daily monitoring, while active nests that are not near active construction activities may be monitored in a 4-day monitoring interval.

The frequency of monitoring for each nest will be determined by the Lead Avian Biologist. The following standards will be adhered to for nest monitoring:

- Nests shall be monitored via binoculars from outside of their buffer zones, except as identified below, to ensure their viability while construction is ongoing.
- Nests will be mapped from a distance, as appropriate, because close encroachment may cause nest abandonment.
- Surveys will identify the species and, to the degree feasible, nesting stage (e.g., incubation of young, feeding of young, near fledging).
- Only the Lead Avian Biologist or Avian Biologist/Monitor may enter the established buffer zone of a nest. If it is necessary for other personnel to enter the buffer zone, it must be done so with the permission and under the supervision of the Lead Avian Biologist.
- Nearby nest predators will be identified before approaching the nest.
- The Lead Avian Biologist must keep updated records of all active nests, buffers, buffer reductions, and nest outcomes.

3.6. Nesting Bird Deterrent Methods

Implementing nesting bird deterrent methods may reduce the potential for nest building near construction activities, and will be implemented, as warranted. Bird deterrent methods may include removal of vegetation within the Project area prior to nesting season; creating a disturbance by removing or moving equipment within an active construction area; covering straw wattle and other potential nesting materials in active construction areas; using pipe covers, tarps, and visual deterrents; and managing trash to reduce food subsidies.

3.7. Nest Removals

If for any reason a bird nest must be removed during nesting season, the Applicant or its agent will first notify CDFW and USFWS. Nests would be removed only if they are inactive or if an active nest presents a hazard to people or other wildlife. If a hazardous situation involves a nest, the bird species, condition of the nest, and the hazard present will be documented. All wildlife agencies would be notified and a consultation will occur. Removal of an active nest requires a permit from USFWS, which would be acquired, as needed.

Depending upon the hazard, the agencies will provide guidance to a viable approach for resolution. The Lead Avian Biologist will ensure that no needless nest removal occurs in accordance with California FGC 3503. Partially constructed nests from special-status species or raptors are considered active. Nests of non-special-status species or raptors determined to be inactive (no eggs or young) can be dismantled onsite by the Avian Biologist/Monitor after notification to CDFW and USFWS. All nest removals will be documented, and the data will be included in Annual Reports submitted to Riverside County, BLM, CDFW, and USFWS.

4. ADAPTIVE MANAGEMENT

Adaptive management measures will be implemented as needed. Generally, adaptive management measures will be implemented if there is evidence of Project-related disturbance to nesting birds where initial protection methods (e.g., standard exclusion buffer distance) have been deemed ineffective. Triggers for adaptive management may include agitation behavior (displacement, avoidance, and defense), increased vigilance behavior at nest sites, changes in foraging and feeding behavior, or nest site abandonment. Adaptive management measures may include the following:

- Increased buffer width
- Additional worker education
- Modifying work intervals, or allowing specific work types that may be implemented on a case-by-case basis
- Cessation by the Lead Avian Biologist of construction activities that are deemed to be the source of disturbance to the nesting bird
- Installation of visual or sound barriers
- Specific measures related to Project facilities or subsidies

If a nest fails, or a dead or injured bird is found, the Lead Avian Biologist will collect data including condition, species, location, and weather data. The nearest Project component or work activity will be documented, and the potential cause of death or injury will be assessed. For any fatalities or injuries to special status species, the findings will be reported to Riverside County, BLM, CDFW and/or the USFWS, as appropriate, within 24 hours of positive identification or as otherwise required. Data of all nest failures and dead or injured birds will be presented in the Annual Reports submitted to Riverside County, BLM, CDFW, and the USFWS.

5. RECORD KEEPING AND REPORTING

A nest survey and monitoring log shall document all new and monitored nests and include the following information:

- Date
- Species of bird
- Nest status (e.g., nest building, incubating, fledglings present, or inactive)
- Unique identification number of each nest monitored and coordinates (easting and northing)
- Estimated date of nest establishment
- Estimated fledge date
- Description of nearby construction activities, including distance from nest and relative noise level
- Description of any nearby non-Project activities (e.g., publicly accessible roads or trails)
- Exclusion buffer size
- Description of additional measures taken to protect nests

Logs and corresponding maps showing the disturbance limits, Project features, and current nest buffer data shall be updated weekly and made available to survey crews, construction personnel, and resource agencies.

If a nest of a threatened or endangered species, a California species of special concern, or fully protected species is detected, Riverside County, BLM, CDFW, and/or the USFWS, as appropriate, will be notified within 24 hours.

The Applicant will provide an Annual Report during construction which details a summary of nesting activities on the Project site and survey buffers. The Applicant will provide the annual reports to Riverside County, BLM, CDFW, and the USFWS during the last quarter following each of season of construction that occurs during the nesting season.

6. REFERENCES

California Public Utilities Commission Technical Working Group. 2015. West of Devers Upgrade Project Nesting Bird Management Plan. August.

Ironwood Consulting, Inc. 2022. Biological Resources Technical Report: Easley Renewable Energy Project. Prepared for Aspen Environmental Group.

Martin, T.E., and G.R. Guepel. 1993. Nest-monitoring plots: Methods for locating nests and monitoring success. J. Field Ornithol., 64(4): 507 519.

United States Fish and Wildlife Service (USFWS). 2003. Migratory Bird Permit Memorandum, MBPM-2. April 15.

Attachment 1

EXAMPLE AVIAN NEST REPORTING FORM

Easley Solar Project Construction Phase – Solar Facility Avian Nest Reporting Form

Discoverer's Name _____

Phone Number _____ **Date of Nest Discovery** _____

Nest Location (circle one) Tree Shrub Structure Ground

Nest Coordinates _____

Other Location Information _____

Surrounding Habitat (circle all that apply)

Agricultural Desert Scrub Riparian
Grassland Disturbed/Developed Bare

Nest Condition (circle one) Active Inactive, Intact
Inactive, Partial Deterioration Inactive, Heavy Deterioration

Describe any Bird Signs around the Nest (feathers, scat, prey remains) _____

_____

Are Birds Present? (circle one) Yes No

Number of Birds Visible _____

Age of Bird(s) (circle all that apply) Adult Juvenile Nestling Eggs Unknown

Bird Species (if known) _____

Type of Bird (circle one if species is unknown)

Diurnal Raptor (hawk, falcon, eagle) Owl Crow/Raven
Passerine (songbird) Unknown

Risk to Birds/Construction (circle one)

No Risk Potential Risk – Not Imminent Potential Risk – Imminent

Additional Comments _____

_____

_____

Easley Solar Project Construction Phase – Gen-tie Line Avian Nest Reporting Form

Discoverer's Name _____

Phone Number _____ **Date of Nest Discovery** _____

Nest Location (circle one) Tree Shrub Structure Ground

Nest Coordinates or Closest Pole Location _____

Other Location Information _____

Surrounding Habitat (circle all that apply)

Agricultural Desert Scrub Riparian
Grassland Disturbed/Developed Bare

Nest Condition (circle one) Active Inactive, Intact
Inactive, Partial Deterioration Inactive, Heavy Deterioration

Describe any Bird Signs Around the Nest (feathers, scat, prey remains)

_____

_____

Are Birds Present? (circle one) Yes No

Number of Birds Visible _____

Age of Bird(s) (circle all that apply) Adult Juvenile Nestling Eggs Unknown

Bird Species (if known) _____

Type of Bird (circle one if species is unknown)

Diurnal Raptor (hawk, falcon, eagle) Owl Crow/Raven
Passerine (songbird) Unknown

Risk to Birds/Construction (circle one)

No Risk Potential Risk – Not Imminent Potential Risk – Imminent

Additional Comments _____

_____

_____