



State of California – Natural Resources Agency  
 DEPARTMENT OF FISH AND WILDLIFE  
 Inland Deserts Region  
 3602 Inland Empire Blvd, Suite C-220  
 Ontario, CA 91764  
 www.wildlife.ca.gov

GAVIN NEWSOM, Governor  
 CHARLTON H. BONHAM, Director



December 19, 2023  
 Sent via e-mail

Andrea Montañó  
 Associate Planner  
 City of El Centro  
 1275 W Main Street, Planning Division  
 El Centro, CA 92243

**CR&R WASTE TRANSFER STATION (PROJECT)  
 MITIGATED NEGATIVE DECLARATION (MND)  
 SCH#: 2023110582**

Dear Andrea Montañó:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of El Centro (City), for the Project pursuant 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**

**Proponent:** CR&R

**Objective:** The Project proposes to construct a solid waste transfer station on 8.85 acres of vacant property. A 66,575 square foot transfer station building and on-site improvements consisting of parking areas, stormwater detention basins, CNG vehicle fuel dispensers, and vehicle scales would be constructed on a 7-acre portion of the Project site. The remaining 1.95 acres that front Ross Avenue would remain vacant. Additional Project elements would include partial roadway-width construction along the eastern Project boundary connecting the site to Ross Avenue, and an extension of public water,

<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.

sewer, and stormwater drain infrastructure within the public right-of-way to existing facilities on Ross Avenue.

The Project site is designated as General Commercial per the General Plan Land Use Element. Waste transfer stations are not consistent with the General Commercial land use and the applicant is requesting a General Plan Amendment (GPA 22-03) to change the General Plan land use designation for the site from General Commercial to Light Industrial.

**Location:** The Project would be located east of the southeast corner of Dogwood Avenue and Ross Avenue in the city of El Centro, county of Imperial, state of California (32.779844, -115.532172). The Project site would consist of nine parcels with Accessor's Parcel Numbers: 054-061-042, 054-061-032, -033, -034, -035, -036, -037, -038, and -039. The Project site consists of vacant land and is surrounded by vacant land to the north and south, agricultural fields to the east, and a storage yard to the west. Additionally, an irrigation canal runs along the northern edge of the property along Ross Avenue named Central Drain Three H, and an unnamed canal runs along the eastern boundary of the Project site adjacent to an agricultural field.

**Timeframe:** None provided.

## **COMMENTS AND RECOMMENDATIONS**

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. The MND has not adequately identified and disclosed the Project's impacts (i.e., direct, indirect, and cumulative) to biological resources and whether those impacts are less than significant.

CDFW's comments and recommendations on the MND are explained in greater detail below and summarized here. CDFW recommends that additional information and analyses be added to a revised MND, along with avoidance, minimization, and mitigation measures that reduce impacts to less than significant.

### Project Description

CEQA is predicated on a complete and accurate description of the proposed Project. Without a complete and accurate project description, the MND likely provides an incomplete assessment of Project-related impacts to biological resources. CDFW has identified gaps in information related to the project description.

The MND (p. 2) identifies major construction activities to create the waste transfer station, including, but not limited to: constructing a 66,575 square foot transfer station building; site improvements to facilitate parking areas, stormwater detention basins, CNG vehicle fuel dispensers, and vehicle scales; partial roadway-width construction; and an extension of public water, sewer, and stormwater drain infrastructure. However, no further details or construction plans were provided for the activities listed. Activities involving trenching to create stormwater basins and water, sewer, or stormwater infrastructure could pose a hazard to wildlife that could become entrapped or drown. Waste transfer stations could attract wildlife or may result in the leakage of pollutants that would pose a hazard to wildlife both directly and indirectly. Further, construction noise related to site improvements has the potential to create noise levels that would adversely affect wildlife in both short-term and long-term intervals. A revised MND should include qualitative and quantitative descriptions of each construction activity that is proposed for the Project so that an accurate assessment of Project-related impacts to biological resources can be conducted.

Additionally, the MND does not identify a timeframe for Project activities. A revised MND should include a timeline for Project activities and an analysis of impacts to biological resources resulting from an extended timeline for Project activities and/or pauses in

construction, if applicable. The revised MND should acknowledge that wildlife may move into disturbed or graded sites when construction is paused. The revised MND should also acknowledge that preconstruction surveys for biological resources will need to be repeated prior to Project activities and after pauses in construction to assess the presence of biological resources and to avoid or reduce impacts to less than significant.

### Existing Environmental Setting

Compliance with CEQA is predicated on a complete and accurate description of the environmental setting that may be affected by the proposed Project. CDFW is concerned that there has been no biological assessment conducted for the Project area, and the existing environmental setting has not been adequately analyzed in the MND. CDFW is concerned that without a complete and accurate description of the existing environmental setting, the MND may provide an incomplete analysis of Project-related environmental impacts.

The MND (p. 14) states “the project site consists of vacant land primarily located within an urbanized area and devoid of any known vegetation, bodies of water or wildlife corridors that could sustain wildlife or lead to the establishment thereof.” Based on CDFW’s review of aerial imagery, the Project site (particularly parcel 054-061-042 and the edges of the remaining parcels) and the areas immediately to the south and east of the Project site contain vegetation that has the potential to support nesting birds and provide cover for foraging wildlife. Additionally, two irrigation canals run along the northern and eastern boundaries of the Project site. Drainage canals and ditches may provide suitable habitat for sensitive biological resources, including burrowing owl<sup>2</sup> and lowland leopard frog<sup>3</sup>.

CDFW is concerned that no biological field assessment was conducted for the MND. The Project area has the potential to support wildlife, including special-status species. A complete and accurate assessment of the environmental setting and Project-related impacts to biological resources is needed to both identify appropriate avoidance, minimization, and mitigation measures and demonstrate that these measures avoid or reduce Project impacts to less than significant. With the current information, CDFW is unable to provide a meaningful review of Project impacts without an understanding of the baseline environmental conditions.

### Mitigation Measures

CDFW is concerned that the mitigation measure proposed in the MND is not adequate to avoid or reduce impacts to biological resources to less than significant. To support the City in ensuring that Project impacts to biological resources are reduced to a level that is less than significant, CDFW recommends adding mitigation measures for assessment of biological resources, nesting birds, CDFW’s Lake and Streambed Alteration Program, construction noise, and artificial nighttime light, and revising the mitigation measure for burrowing owl (*Athene cunicularia*).

## **I. Environmental Setting and Related Impact Shortcoming**

### **COMMENT #1: Assessment of Biological Resources**

#### **MND document, Section IV, Page #14**

**Issue:** The MND does not identify the Project’s significant, or potentially significant, impacts to biological resources.

**Specific impact:** The MND lacks any general field assessment of biological resources located within the Project footprint and surrounding areas, and no focused or protocol-level surveys were performed for the detection of special-status species. CDFW is concerned about the potential for special-status species to occur on or near the Project

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<sup>2</sup> Coulombe, H.N. 1971. Behavior and population ecology of the burrowing owl, *Speotyto cunicularia*, in the Imperial Valley of California. The Condor 136(1): 143-148.

<sup>3</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=190356&inline>

site. The Project area encompasses open and disturbed areas, agricultural fields, and irrigation ditches, and there is high potential for special-status species to be impacted directly, indirectly, and cumulatively by Project activities. The California Natural Diversity Database (CNDDDB) and Biogeographic Information and Observation System (BIOS) indicate that occurrences of special-status species have been reported in the Project area, including, but not limited to: Abrams' spurge (*Euphorbia abramsiana*), big free-tailed bat (*Nyctinomops macrotis*), burrowing owl (*Athene cunicularia*), northern leopard frog (*Lithobates pipiens*), western yellow bat (*Lasiurus xanthinus*), and Yuma hispid cotton rat (*Sigmodon hispidus eremicus*).

Recent surveys during the appropriate times of the year are needed to identify potential impacts to biological resources; inform appropriate avoidance, minimization, and mitigation measures; and determine whether impacts to biological resources have been mitigated to a level that is less than significant. CDFW generally considers field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years.

**Evidence impact would be significant:** Compliance with CEQA is predicated on a complete and accurate description of the environmental setting that may be affected by the proposed Project. CDFW is concerned that the assessment of the existing environmental setting with respect to biological resources has not been analyzed in the MND. CDFW is concerned that without a complete and accurate description of the existing environmental setting, the MND likely provides an incomplete or inaccurate analysis of Project-related environmental impacts and whether those impacts have been mitigated to a level that is less than significant. Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts, that special emphasis should be placed on environmental resources that are rare or unique to the region, and that significant environmental impacts of the proposed Project are adequately investigated and discussed.

**Recommended Potentially Feasible Mitigation Measure:**

To establish the existing environmental setting with respect to biological resources, CDFW recommends that a revised MND include the results of recent biological surveys as described in the following mitigation measure, as well as any necessary mitigation measures:

**MM BIO-[A]: Assessment of Biological Resources**

**Prior to Project construction activities, a complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.**

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) for revised MM BIO-1, and CDFW-recommended MM-BIO [A] through [E] (see Attachment 1).

## II. Mitigation Measure or Alternative and Related Impact Shortcoming

### COMMENT #2: Burrowing Owl

#### MND document, Section IV, Page #14, BIO-1

**Issue:** CDFW is concerned that the MND 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 MND (p. 14) states “the project site is located adjacent to an active agricultural field that may invite native sensitive species such as Burrowing Owl.” Suitable burrowing owl habitat has been confirmed on-site including open and disturbed areas, agricultural fields, and irrigation ditches that would likely support the species at any time during construction. Additionally, CNDDDB and BIOS report occurrences of burrowing owl within 0.48 miles of the Project site.

Burrowing owls have a high potential to move into disturbed sites prior to and during construction activities. Burrowing owls frequently move into disturbed areas since they are adapted to highly modified habitats (Chipman et al. 2008; Coulombe 1971). Impacts to burrowing owl from the Project could include take of burrowing owls, their nests, or eggs or destroying nesting, foraging, or over-wintering habitat, thus impacting burrowing owl populations. Impacts can result from grading, earthmoving, burrow blockage, heavy equipment compaction and crushing of burrows, general Project disturbance that has the potential to harass owls at occupied burrows, and other activities.

**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. Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.” Fish and Game Code sections 3503, 3503.5, and 3513 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. Fish and Game Code section 3503.5 makes it 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. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by 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:

CDFW appreciates the inclusion of MM BIO-1; however, the measure is insufficient in scope and timing to reduce impacts to a level less than significant. CDFW recommends a revised MND include specific avoidance and minimization measures to ensure that impacts to burrowing owls do not occur. CDFW recommends that prior to commencing Project activities for all phases of Project construction, focused surveys for burrowing owl be conducted for the entirety of the Project site by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). CDFW recommends the City include a revised Mitigation Measure BIO-1 in a revised MND as follows, with additions in **bold** and removals in ~~strikethrough~~:

### **MM BIO-1: Focused and Pre-Construction Surveys for Burrowing Owl**

~~If construction activities begin during nesting season, from February to August, a burrowing owl site survey must be performed 3-5 days prior to the start of construction.~~ **Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, monitoring, relocation, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location 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 or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation 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. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the “Mitigation Impacts” section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.**

**Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities.**

### **COMMENT #3: Nesting Birds**

#### **MND document, Section IV, Page #14**

**Issue:** CDFW is concerned that the MND does not identify Project impacts to nesting birds or ensure that impacts are mitigated to a level less than significant.

**Specific impact:** The MND (p. 14) indicates that “there is the potential for sensitive species to appear.” CDFW’s review of aerial imagery shows that the Project site and surrounding areas contain vegetation that has the potential to support nesting birds. CDFW is concerned about the impacts to nesting birds including loss of nesting/foraging habitat and potential take from ground-disturbing activities and construction. Conducting work outside the peak breeding season is an important avoidance and minimization measure. CDFW also recommends the completion of nesting bird surveys *regardless* of the time of year to ensure that impacts to nesting

birds are avoided. The timing of the nesting season varies greatly depending on several factors, such as bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). In response to warming, birds have been reported to breed earlier, thereby reducing temperatures that nests are exposed to during breeding and tracking shifts in availability of resources (Socolar et al., 2017). CDFW staff have observed that climate change conditions may result in nesting bird season occurring earlier and later in the year than historical nesting season dates. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site and surrounding area be avoided any time birds are nesting on-site. CDFW therefore recommends the completion of nesting bird surveys *regardless of the time of year* to ensure compliance with all applicable laws pertaining to nesting and migratory birds.

**Evidence impact would be significant:** It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: Fish and Game Code 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. Fish and Game Code section 3503.5 makes it 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. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by 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:**

CDFW recommends a revised MND include specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but are not limited to, Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site be avoided **any time birds are nesting on-site**. Preconstruction nesting bird surveys shall be performed within 3 days prior to Project activities to determine the presence and location of nesting birds. CDFW recommends the City add the following mitigation measure for nesting birds to a revised MND:

**MM BIO-[B]: Pre-Construction Nesting Bird Survey**

**Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Construction activities may not occur inside the established buffers, which shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.**

#### **COMMENT #4: CDFW Lake and Streambed Alteration (LSA) Program**

**Issue:** The MND does not acknowledge that two irrigation canals are located along the northern and eastern boundaries of the Project site and does not include mitigation measures to avoid or reduce impacts to a level less than significant.

**Specific impact:** CDFW review of aerial imagery confirms the location of an irrigation canal running along the northern boundary of the property along Ross Avenue named Central Drain Three H, and an unnamed canal running along the eastern boundary of the Project site. Canals and ditches, regardless of whether they are concrete lined, may provide suitable habitat for biological resources. Potential direct and indirect impacts to the canals and associated fish and wildlife resources, such as burrowing owl, resulting from Project construction are subject to notification under Fish and Game Code section 1602.

**Evidence impact would be significant:** 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. 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 the 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). 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 submit a Lake or Streambed Alteration notification, visit: <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

#### **Recommended Potentially Feasible Mitigation Measure:**

Because of the potential for impacts to resources subject to Fish and Game Code section 1602, CDFW recommends the City include the following additional mitigation measure in a revised MND:

#### **MM BIO-[C]: CDFW's Lake and Stream Alteration (LSA) Program**

**Prior to Project-activities and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor shall obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.**

#### **COMMENT #5: Construction Noise**

##### **IS/MND document, Section XIII, Page #23**

**Issue:** The MND does not include an assessment of impacts to biological resources resulting from construction noise or mitigation measures to avoid or reduce impacts to a level less than significant.

**Specific impact:** The MND (p. 23) states the Project would result in a temporary noise increase and ground-borne vibration levels in the area from construction activities, and “noise levels during the construction may temporarily exceed noise levels as established in the Noise Element of the General Plan,” but includes no noise impact assessment or an analysis of the impacts of construction noise on biological resources. Based on the nature of the proposed construction activities (i.e., trenching, excavating, road widening, compaction, construction of a building), noise levels would be expected to exceed exposure levels that may adversely affect wildlife species at 55 to 60 dBA.

**Evidence impact would be significant:** Construction may result in substantial noise through road use, equipment, and other Project-related activities. This may adversely affect wildlife species in several ways as wildlife responses to noise can occur at exposure levels of only 55 to 60 dB (Barber et al. 2009). Anthropogenic noise can disrupt the communication of many wildlife species including frogs, birds, and bats (Sun and Narins 2005, Patricelli and Bickley 2006, Gillam and McCracken 2007, Slabbekoorn and Ripmeester 2008). Noise can also affect predator-prey relationships as many nocturnal animals such as bats and owls primarily use auditory cues (i.e., hearing) to hunt. Additionally, many prey species increase their vigilance behavior when exposed to noise because they need to rely more on visual detection of predators when auditory cues may be masked by noise (Rabin et al. 2006, Quinn et al. 2017). Noise has also been shown to reduce the density of nesting birds (Francis et al. 2009) and cause increased stress that results in decreased immune responses (Kight and Swaddle 2011).

**Recommended Potentially Feasible Mitigation Measure:**

Because of the potential for construction noise to negatively impact wildlife, CDFW recommends a revised MND include a noise impact assessment and an analysis of impacts to biological resources accompanied by specific avoidance and minimization measures to ensure that impacts to wildlife are avoided or reduced to less than significant. CDFW recommends adding the following mitigation measure to a revised MND:

**MM BIO-[D]: Construction Noise Impacts to Biological Resources**

**During all Project construction, the City shall restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning) and restrict use of generators except for temporary use in emergencies. Power to sites can be provided by solar PV (photovoltaic) systems, cogeneration systems (natural gas generator), small micro-hydroelectric systems, or small wind turbine systems. The City shall ensure the use of noise suppression devices such as mufflers or enclosures for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.**

**COMMENT #6: Artificial Nighttime Light**

**IS/MND document, Section I, Page #11**

**Issue:** The MND does not analyze impacts to biological resources from artificial nighttime light and includes no mitigation measures to avoid or reduce impacts to biological resources to a level less than significant.

**Specific impact:** The MND (p. 11) states that lighting will be located on the rear of the flag-shaped parcel but provides no further lighting description or details. Additionally, impacts to biological resources resulting from the use of artificial nighttime lighting during construction and operation of the Project are not analyzed, and no mitigation measures are proposed. Designs for lighting to be used during operation of the Project should be included in a revised MND, along with details of artificial nighttime lighting to be used during construction. The direct and indirect impacts of artificial nighttime lighting on biological resources including migratory birds that fly at night, bats, and

other nocturnal and crepuscular wildlife should be analyzed, and appropriate avoidance and minimization measures to reduce impacts to less than significant should be included in a revised MND.

**Evidence impact would be significant:** Artificial nighttime lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; the detection of resources and natural enemies; and navigation (Gatson et al. 2013). Many species use photoperiod cues for communication (e.g., bird song; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavior thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004).

**Recommended Potentially Feasible Mitigation Measure:**

Because of the potential for artificial nighttime light to negatively impact wildlife, CDFW recommends a revised MND include details of the use of artificial nighttime lighting proposed for construction and operation of the Project and an analysis of impacts to biological resources, as well as specific avoidance and minimization measures to ensure that impacts to wildlife are reduced to less than significant. CDFW recommends the City include the following mitigation measure in a revised MND:

**MM BIO-[E]: Artificial Nighttime Light**

**During Project construction and operation, the City shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. The City shall ensure that lighting for Project activities is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). The City shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.**

**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 filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

**ENVIRONMENTAL DOCUMENT FILING FEES**

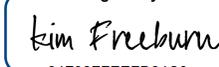
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing 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 MND to assist the City of El Centro in identifying and mitigating Project impacts on biological resources. CDFW concludes that the MND does not adequately identify or mitigate the Project's significant, or potentially significant impacts on biological resources. The CEQA Guidelines indicate that recirculation is required when insufficient information in the MND precludes a meaningful review (§ 15088.5) or when a new significant effect is identified, and additional mitigation measures are necessary (§ 15073.5). CDFW recommends that a revised MND, including a complete Project description and a description of the existing environmental setting, be recirculated for public comment. CDFW also recommends that the revised MND include an analysis of impacts to biological resources from construction noise and artificial nighttime lighting, as well as mitigation measures described in this letter for assessment of biological resources, burrowing owl, nesting birds, CDFW's Lake and Streambed Alteration Program, construction noise, and artificial nighttime light.

CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts. Questions regarding this letter or further coordination should be directed to Alyssa Hockaday, Senior Environmental Scientist (Specialist) at (760) 920-8252 or [Alyssa.Hockaday@wildlife.ca.gov](mailto:Alyssa.Hockaday@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Kim Freeburn  
Environmental Program Manager

#### **Attachment 1: MMRP for CDFW-Proposed Mitigation Measures**

ec: Heather Brashear, Senior Environmental Scientist (Supervisor), CDFW  
[Heather.Brashear@wildlife.ca.gov](mailto:Heather.Brashear@wildlife.ca.gov)

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: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)**

<b>Biological Resources (BIO)</b>		
<b>Mitigation Measure (MM) Description</b>	<b>Implementation Schedule</b>	<b>Responsible Parties</b>
<p><b>MM BIO-[A]: Assessment of Biological Resources</b>            Prior to Project construction activities, a complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.</p>	<p>Prior to Project construction activities.</p>	<p>City of El Centro</p>
<p><b>MM BIO-1: Focused and Pre-Construction Surveys for Burrowing Owl</b>            Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version). If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, monitoring, relocation, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location 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 or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation 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</p>	<p><b>Focused surveys:</b> Prior to the start of Project-related activities.   <b>Pre-construction surveys:</b> No less than 14 days prior to start of Project-related activities and within 24 hours prior to ground disturbance.</p>	<p>City of El Centro</p>

<p>mitigation method and has the possibility to result in take. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the “Mitigation Impacts” section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.</p> <p>Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the <i>Staff Report on Burrowing Owl Mitigation</i>. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities.</p>		
<p><b>MM BIO-[B]: Pre-Construction Nesting Bird Survey</b>        Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Construction activities may not occur inside the established buffers, which shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>	<p>No more than three (3) days prior to vegetation clearing or ground-disturbing activities.</p>	<p>City of El Centro</p>
<p><b>MM BIO-[C]: CDFW’s Lake and Stream Alteration Program</b>        Prior to Project-activities and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor shall obtain a CDFW-executed Lake and Streambed Alteration Agreement,</p>	<p>Prior to Project-activities and issuance of any grading permit.</p>	<p>City of El Centro</p>

<p>authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p>		
<p><b>MM BIO-[D]: Construction Noise Impacts to Biological Resources</b>        During all Project construction, the City shall restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning) and restrict use of generators except for temporary use in emergencies. Power to sites can be provided by solar PV (photovoltaic) systems, cogeneration systems (natural gas generator), small micro-hydroelectric systems, or small wind turbine systems. The City shall ensure the use of noise suppression devices such as mufflers or enclosures for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.</p>	<p>During Project activities.</p>	<p>City of El Centro</p>
<p><b>MM BIO-[E]: Artificial Nighttime Light</b>        During Project construction and operation, the City shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. The City shall ensure that lighting for Project activities is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at <a href="http://darksky.org/">http://darksky.org/</a>). The City shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.</p>	<p>During Project construction activities and operation.</p>	<p>City of El Centro</p>