



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



August 8, 2023
 Sent via e-mail

Wendy Rangel
 Facilities Manager
 Imperial County Office of Education
 1398 Sperber Road
 El Centro, CA 92243

**IMPERIAL VALLEY CENTER FOR EXCEPTIONAL CHILDREN (PROJECT)
 MITIGATED NEGATIVE DECLARATION (MND)
 SCH#: 2023070136**

Dear Ms. Rangel:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the Imperial County Office of Education (ICOE) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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: Imperial County Office of Education

Objective: The Project is proposing to develop the Center for Exceptional Children on a 6.95-acre portion of Assessor’s Parcel Number (APN) 054-510-001. The project would include a 43,433-square foot (sf) primary building housing the reception, clerical areas, staff restrooms, offices, visitor restrooms, and multipurpose therapy room with a warming kitchen and 13 classrooms. Building 2 would include modular buildings consisting of 4 classrooms totaling 4,580-sf. Future Building 3 would include 4 classrooms with an area of

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

4,580-sf. The proposed project would include the construction of Parking Lot A that would provide 67 parking spaces and accessed from Betty Jo McNeece Loop. Additionally, Parking Lot B would be constructed to provide 25 parking spaces and accessed from Sperber Road at least 100 feet south of Betty Jo McNeece Loop.

Location: The Project site is located on the west side of Sperber Road, approximately 375 feet south of the southeast corner of the intersection of West McCabe Road and Sperber Road in the city of El Centro, Imperial County, California. The project encompasses APN 054-510-001. The site is currently under agricultural production with row crops. Land surrounding the site includes commercial use with vacant patches to the east, agricultural land to the north, south and west, and a drainage canal to the west.

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 ICOE 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 offers the following comments and recommendations to assist the ICOE in adequately identifying and mitigating the Project's significant, or potentially significant, impacts to biological resources.

I. Project Description and Related Impact Shortcoming

COMMENT #1: Timing of Construction and Construction Activities

Initial Study/Mitigated Negative Declaration (IS/MND) document, Section 1, Page #1

Issue: The MND does not analyze impacts to biological resources associated with the timing of Project construction.

Specific impact: The IS/MND (p. 1) does not indicate a timeline for Project activities and mentions plans for the construction of "future" Building 3. If the Project site is left graded and inactive in the interim period between construction phases, environmental conditions may change. Grading and leaving a site inactive may result in the area becoming occupied by wildlife that utilize disturbed areas (e.g., ground squirrels and burrowing owls).

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

CDFW Recommendations: 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. 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 Project activities and after pauses in construction to assess the presence of biological resources and to avoid or reduce impacts to less than significant.

COMMENT #2 Landscaping

IS/MND, Page #34

Issue: The MND lacks a description of the type of landscaping that will be installed and maintained over the life of the Project.

Specific impact: The IS/MND states (pp. 34) that the Project site will include landscaped areas. However, no further details are provided.

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

CDFW recommendations: To ameliorate the water demands of this Project, CDFW recommends incorporation of water-wise concepts in any Project landscape design plans. In particular, CDFW recommends xeriscaping with locally native California species and installing water-efficient and targeted irrigation systems (such as drip irrigation). Native plants support butterflies, birds, reptiles, amphibians, small mammals, bees, and other pollinators that evolved with those plants, more information on native plants suitable for the Project location and nearby nurseries is available at CALSCAPE: <https://calscape.org/>. Local water agencies/districts and resource conservation districts in your area may be able to provide information on plant nurseries that carry locally native species, and some facilities display drought-tolerant locally native species demonstration gardens. Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California's Save our Water website: <https://saveourwater.com/>.

II. Environmental Setting and Related Impact Shortcoming

COMMENT #3: Assessment of Biological Resources

IS/MND document, Section 3.4 Pages #12-15, Appendix B and C

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

Specific impact: The MND bases its analysis of impacts to biological resources on a general biological survey by RECON Environmental Inc. conducted on September 24, 2020 (Appendix B of the MND). A habitat assessment for western burrowing owl was conducted concurrently with the general biological survey. The biological resources assessment is outdated and was not conducted at the appropriate time(s) of year to detect all special-status species on-site. CDFW is concerned about the potential for special-status species to occur on or near the Project site. The Project is surrounded by agricultural land with a drainage canal to the west, and there is potential for special-status species to be impacted either directly or indirectly by Project activities.

The biological survey (Appendix C, Attachment 1) states the following special-status species were observed on-site: burrowing owl (*Athene cunicularia*), loggerhead shrike (*Lanius ludovicianus*), yellow warbler (*Setophaga petechial*), northern harrier (*Circus hudsonius*), song sparrow (*Melospiza melodia*), and American peregrine falcon (*Falco peregrinus anatum*). However, no mitigation measures are included in the MND to address impacts to these species aside from burrowing owl. In addition, Appendix B (Attachment 3 and 4) acknowledges the potential for flat-tailed horned lizard (*Phrynosoma mcalli*), northern leopard frog (*Lithobates pipiens*), western yellow bat (*Lasiurus xanthinus*), pocketed free-tailed bat (*Nyctinomops femorosaccus*), Abrams' spurge (*Euphorbia abramsiana*), and California satintail (*Imperata brevifolia*) to occur in the Project area. The California Natural Diversity Database (CNDDDB) and Biogeographic Information and Observation System (BIOS) indicate that occurrences

of big free-tailed bat (*Nyctinomops macrotis*) have been reported in less than two miles of the Project area.

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 to 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 adequately 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:

Mitigation Measure 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 BIO-2, and CDFW-recommended MM-BIO [A] through [D] (see Attachment 1).

III. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #4: Nesting Birds

IS/MND document, Section 3.4 Pages #12-15, Appendix B and C, MM BIO-1

Issue: CDFW is concerned that Mitigation Measure BIO-1 is not sufficient to ensure that potential impacts to nesting birds are mitigated to a level less than significant.

Specific impact: The IS/MND (p. 12-13) indicates that raptor species have the potential to nest in the trees adjacent to the Project site and that any impacts to raptor nests would be considered significant and would require mitigation. Additionally, several raptor and passerine species were observed within the survey area (Appendix B, Attachment 2; Appendix C, Attachment 1). CDFW is concerned about impacts to nesting birds from ground-disturbing activities, vegetation removal, construction noise, and artificial light. Project implementation could result in disturbance to nesting birds, nest abandonment or failure, and the loss of nesting habitat.

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 the 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. Although the MND includes Mitigation Measure BIO-1 for raptors, CDFW considers the measure to be insufficient in scope and timing to reduce impacts nesting birds to a level less than significant. CDFW recommends Mitigation Measure BIO-1 be revised as follows, with additions in **bold** and removals in ~~strikethrough~~:

MM BIO-1: Avoidance of Nesting Birds

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. Established buffers 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. To avoid potential impacts to nesting raptors, project construction shall occur between September 1 and January 31,

~~outside of the breeding season of local raptor species. If construction must occur during the raptor breeding season (February 1 to August 30), a pre-construction clearance survey shall be conducted by a qualified biologist to ensure that there are no active nests within 300 feet of construction activities. If an active raptor nest is discovered within this buffer, construction activities shall be restricted until a biologist has determined that the young are independent of the nest site.~~

COMMENT #5: Burrowing Owl Surveys

IS/MND document, Section 3.4 Pages #12-15, Appendix B and C, MM BIO-2

Issue: CDFW is concerned that Mitigation Measure BIO-2 is not sufficient to ensure that potential impacts to burrowing owls (*Athene cunicularia*) are mitigated to a level less than significant.

Specific impact: The focused burrowing owl survey (Appendix B) conducted by RECON Inc. on September 24, 2020, concluded that burrowing owls have a high potential to forage within the Project site and one adult burrowing owl, one active burrow, and three additional burrows of appropriate size and shape for burrowing owl use were detected on the Project site. The owl was detected again on the Project site during the third and fourth follow-up focused surveys. The IS/MND document further states (p. 13) that due to the observance of a burrowing owl onsite, “any impacts to an active burrowing owl burrow and/or raptor nest would be considered significant and would require mitigation.” In addition to the three potentially suitable burrows onsite, a few small mammal burrows and several additional concrete culverts were observed on the Project site (Appendix C) that would be suitable for burrowing owl use. The banks of drainage canals along the west of the Project site may also provide suitable habitat for burrowing owl.²

Burrowing owls have a high potential to move into disturbed sites prior to and during construction activities. Impacts to burrowing owl from the Project could include take of burrowing owls, their nests or eggs, or destroying nesting or foraging habitat and impacting burrowing owl populations through changes in vegetation via the destruction, conversion, or degradation of burrowing owl habitat.

Evidence impact would be significant: Burrowing owl is a California Species of Special Concern. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5, and 3513. Fish and Game Code 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 focused burrowing owl surveys of the Project area. Although the MND includes MM BIO-2, CDFW considers the measure to be insufficient in scope and timing to reduce impacts to burrowing owls to a level less than significant. CDFW recommends that prior to commencing Project activities for all phases of Project construction, current focused surveys for burrowing owl be conducted by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). CDFW also recommends preconstruction surveys for burrowing owl prior to Project activities. CDFW recommends Mitigation Measure BIO-2 be revised as follows, with additions in **bold** and removals in ~~strikethrough~~:

MM BIO-2: Burrowing Owl Surveys

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

² 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.

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. . As required per the California Department of Fish and Wildlife (CDFW) protocol guidelines, pre-construction take-avoidance surveys shall be conducted prior to any project-related ground disturbance. One survey shall be conducted no less than 14 days before the start of ground disturbing activities, and a second survey shall be conducted within 24 hours of the start of ground disturbing activities. These surveys shall include all areas where suitable habitat is present within the survey area⁹ with special focus on the area where the western burrowing owl was observed during 2020 focused surveys. Should burrowing owl be determined to still be occupying the survey area, the following measures shall be implemented:

Avoidance of Occupied Burrows: No disturbance shall occur within 50 meters (approximately 160 feet) of occupied burrows during the non-breeding season of September 1 through January 31 or within 75 meters (approximately 250 feet) during the breeding season of February 1 through August 31. Avoidance also requires that a minimum of 6.5 acres of foraging habitat be preserved contiguous with occupied burrow sites for each pair of breeding burrowing owls (with or without dependent young) or single unpaired resident bird.

Mitigation for Unavoidable Impacts: On-site passive relocation shall be implemented, if the above avoidance requirements cannot be met. Passive relocation is defined as encouraging owls to move from occupied burrows to alternate natural or artificial burrows that are beyond 50 meters from the impact zone and that are within or contiguous to a minimum of 6.5 acres of foraging habitat for each pair of relocated owls. Relocation of owls shall only be implemented during

~~the non-breeding season. On-site habitat shall be preserved in a conservation easement and managed to promote burrowing owl use of the site. Owls shall be excluded from burrows in the immediate impact zone and within a 50-meter (approximately 160 feet) buffer zone by installing one-way doors in burrow entrances; one-way doors should be left in place for 48 hours to ensure that owls have left the burrow before excavation. One alternate natural or artificial burrow shall be provided for each burrow that will be excavated in the project impact zone. The project area shall be monitored daily for one week to confirm owl use of alternate burrows before excavating burrows in the immediate impact zone. Whenever possible, burrows should be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible plastic pipe or burlap bags should be inserted into the tunnels during excavation to maintain an escape route for any animals inside the burrow. Additionally, formal consultation with CDFW in coordination with the ICOE would be required to develop an appropriate mitigation plan for the project.~~

COMMENT #6: Artificial Nighttime Lighting

IS/MND document, Section 3.1, Page #2

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 a level less than significant.

Specific impact: The Project includes exterior lighting in the form of wall-mounted and pole-mounted fixtures. The IS/MND (p. 2) acknowledges that the introduction of lighting would produce light and glare to the Project site and surrounding area in addition to nighttime lighting. The MND lacks a substantive analysis of the impacts of artificial lighting on biological resources. 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 should be included in a revised MND.

Evidence impact would be significant: Light intensity, light color, and duration of 'light-on' periods have the potential to significantly and adversely affect fish and wildlife (Syposz et al. 2021). 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 an analysis of impacts to biological resources and specific avoidance and minimization measures to ensure that impacts to wildlife are reduced to less than significant.

MM BIO-[B]: Artificial Nighttime Light

During Project construction and operation, the ICOE 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 ICOE 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 ICOE 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.

COMMENT #7: Construction Noise

IS/MND document, Section 3.13, Pages #39-41

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

Specific impact: The MND (p. 41) states construction activities would constitute noise impacts with levels reaching up to 88 dBA but includes no analysis of the impacts of construction noise on biological resources. These levels 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 Blickley 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 an analysis of impacts to biological resources and specific avoidance and minimization measures to ensure that impacts to wildlife are reduced to less than significant.

MM BIO-[C]: Construction Noise

During all Project construction, the ICOE 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 ICOE shall ensure use of noise suppression devices such as mufflers or enclosure for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.

COMMENT #8: CDFW Lake and Streambed Alteration (LSA) Program

IS/MND document, Sections 3.4 and 3.10, Pages #13 and 30

Issue: The MND acknowledges that a drainage canal is located west of the Project but does not include mitigation measures to avoid or reduce impacts to a level less than significant.

Specific impact: The MND (p. 30) indicates that a drainage canal exists in the vicinity of the project site. CDFW review of aerial imagery shows that two drainage canals are located west of the Project site (Dahlia Lateral and Date Drain). Potential direct and indirect impacts to the drainage 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:

MM BIO-[D]: 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.

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 ICOE 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 include a recent and complete assessment of biological resources, an analysis of impacts to biological resources from timing of construction, construction noise, and artificial nighttime lighting, as well as revised mitigation measures for nesting birds and burrowing owl, and additional mitigation measures for construction noise, artificial nighttime lighting, and CDFW's Lake and Streambed Alteration Program to avoid or reduce impacts to biological resources to less than significant.

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.

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

Office of Planning and Research, State Clearinghouse, Sacramento
State.clearinghouse@opr.ca.gov

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Biological Resources (BIO)		
Mitigation Measure (MM) Description	Implementation Schedule	Responsible Parties
<p>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.</p>	<p>Prior to Project construction activities</p>	<p>Imperial County Office of Education</p>
<p>MM BIO-1: Avoidance of Nesting Birds 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. Established buffers 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>Imperial County Office of Education</p>
<p>MM BIO-2: Burrowing Owl Surveys 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,</p>	<p>Focused surveys: Prior to the start of Project-related activities.</p>	<p>Imperial County Office of Education</p>

<p>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.</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>Pre-construction surveys: No less than 14 days prior to start of Project-related activities and within 24 hours prior to ground disturbance.</p>	
<p>MM BIO-[B]: Artificial Nighttime Light During Project construction and operation, the ICOE 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 ICOE 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 ICOE 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>Imperial County Office of Education</p>
<p>MM BIO-[C]: Construction Noise During all Project construction, the ICOE 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</p>	<p>During Project activities.</p>	<p>Imperial County Office of Education</p>

<p>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 ICOE shall ensure use of noise suppression devices such as mufflers or enclosure for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.</p>		
<p>MM BIO-[D]: 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.</p>	<p>Prior to Project activities and issuance of any grading permit.</p>	<p>Imperial County Office of Education</p>