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Governor’s Office of Planning & Research

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STATE CLEARINGHOUSE

Derek Newland
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 Imperial County
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Zone Change #23-0007 /Conditional Use Permit #23-0027 /Initial Study #23-0033 Cal 98 Holdings (PROJECT) MITIGATED NEGATIVE DECLARATION (MND) SCH# 2024031103

Dear Mr. Newland:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from Imperial County Planning Development 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: Cal 98 Holdings

Objective: The objective of the Project is to propose a Zone Change from A-2-U (General Agriculture within Urban Area) to M-1-U (Light Industrial within Urban Area) as well as Conditional Use Permit #23-0027 to construct and operate a trucking and warehousing operation that will consist of a warehouse totaling 120,245 square feet, 832 trailer parking spaces, 20 truck parking spaces, and 42 car parking spaces on an approximately 44.6-acre site. Access to the property will consist of onsite improvement on the west side of the

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.

property to create a north and south lane onto Dogwood Rd. and left turn only lane on to SR-98. Additionally, a left turn lane for passenger vehicles would be added on SR-98 on to Kemp Road which will also be paved on the eastern side of the project location. The proposed hours for the trucking and warehousing operation are 8 am to 9 pm with a proposed total of 100 trucks per day coming to and from the site and 20 onsite employees. The proposed route for the trucks is from the east port at the Gateway Specific Plan area, north along SR-7 to SR-98, and then west along SR-98 to Cole Road. The trucks will then travel along Cole Road where they will then turn south on to Dogwood Road until they reach project location where they will enter straight into the property at the proposed Dogwood Road expansion. The construction phases include Site Preparation, Grading, Building Construction, Paving and Architectural Coating.

Location: The Project is located south of the intersection of State Highway 98 (SR-98) and Dogwood Road, west of Calexico in Imperial County. The Project is located within Assessor's Parcel Number (APN) 058-180-001-000.

Timeframe: Project is proposed to begin construction in the first quarter of 2024 and end in the fourth quarter of 2024. The total construction duration will be approximately nine months.

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

I. Environmental Setting and Related Impact Shortcoming

COMMENT #1: Assessment of Biological Resources

IS/MND Document, Biological Resources Technical Report, Page #408, Section 2.1.1

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 general biological assessments conducted by Barrett's Biological Enterprises on December 13, 2022, and December 20, 2022. CDFW is concerned about the potential for special-status species to occur on or near the Project site. No focused or protocol-level surveys were performed for the detection of special-status species. In addition, CDFW is concerned that the timing of the general field assessments in December 2022 was not sufficient to detect all special-status species, and that the field assessments are not current. 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. The California Natural Diversity Database (CNDDB) and Biogeographic Information and Observation System (BIOS) indicate that occurrences of ESA-listed, CESA-listed, or other special-status species have been reported near the Project area including but not limited to burrowing owl (*Athene cunicularia*), ringtail (*Bassariscus astutus*), American badger (*Taxidea taxus*), round-tailed ground squirrel (*Xerospermophilus tereticaudus*), Merriam's kangaroo rat (*Dipodomys merriami*), pallid bat (*Antrozous pallidus*), western mastiff bat (*Eumops perotis californicus*), pocketed free-tailed bat (*Nyctinomops femorosaccus*), western yellow bat (*Lasiurus xanthinus*), golden eagle (*Aquila chrysaetos*), tricolored blackbird (*Agelaius tricolor*), Gila

woodpecker (*Melanerpes uropygialis*), loggerhead shrike (*Lanius ludovicianus*), long-eared owl (*Asio otus*), osprey (*Pandion haliaetus*), killdeer, (*Charadrius vociferus*), mountain plover (*Charadrius montanus*), horned lark (*Eremophila alpestris*), lesser nighthawk (*Chordeiles acutipennis*), cactus wren (*Campylorhynchus brunneicapillus*), yellow warbler (*Setophaga petechia*), prairie falcon (*Falco mexicanus*), ferruginous hawk (*Buteo regalis*), Colorado Desert fringe-toed lizard (*Uma notata*), flat-tailed horned lizard (*Phrynosoma mcallii*), glossy snake (*Arizona elegans*).

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.

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(s): 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 mitigation measures to reduce impacts to less than significant:

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 CDFW-recommended MM BIO-[A] through MM BIO-[G].

II. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #2: Burrowing Owl

IS/MND Document, Page 17 & Biological Resources Technical Report, Page 414-417, Section 4.1.2.1 and 5.1.1

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 Biological Resources Technical Report (pg. 414) states that “There is potential that there would be direct and/or indirect impacts to this species if construction occurs during the active nesting period of February to end of August. Ground disturbance from heavy equipment, which may potentially impact the BUOW, if present, would be considered significant and could require mitigation. Impacts to this species would be considered significant, if present.” CDFW notes that impacts to burrowing owls could also occur outside of the peak nesting season because burrowing owls may start breeding earlier (in January) and because young owls may still be dependent on the adults until later in the fall. In addition, because some burrowing owls are resident in burrows year-round, impacts to this species could also occur outside of the peak nesting season. The Biological Resources Technical Report identifies suitable habitat in canals and drainage ditches on-site and adjacent to the Project site. Additionally, CNDDDB/BIOS report occurrences of burrowing owl less than 1 mile from the Project site.

CDFW notes that in California, preferred habitat for burrowing owl is generally typified by short, sparse vegetation with few shrubs (Haug et al. 1993), and that burrowing owls may occur in ruderal grassy fields, vacant lots, and pastures if the vegetation structure is suitable and there are useable burrows and foraging habitat in proximity (Gervais et al. 2003). In addition, burrowing owls frequently move into disturbed areas prior to and during construction 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(s): CDFW appreciates the inclusion of MM BIO-1 through 5 on p. 17 of the MND for nesting birds and burrowing owls; however, the measures are insufficient in scope and timing to reduce impacts to a level less than significant. CDFW recommends replacing MM BIO-1-5 with a separate measure for burrowing owl in a revised MND with 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 Imperial County include the following Mitigation Measure in a revised MND:

MM BIO-[B]: Focused and Pre-Construction Surveys for Burrowing Owl

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) prior to vegetation removal or ground-disturbing activities. 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

IS/MND Document, Page 17 & Biological Resources Technical Report, Pages 414-417, Section 4.1.2.2 and 5.1.2

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

Specific Impact: On page 414 of the MND it states "Bird nesting could occur within the project. Ground nesting species, such as lesser nighthawk, and killdeer could use the area." Based on a review of the California Natural Diversity Database (CNDDDB) and Biogeographic Information and Observation System (BIOS), the Project has the potential to impact avian species that nest and forage in the region including, but not limited to: golden eagle (*Aquila chrysaetos*), tricolored blackbird (*Agelaius tricolor*), Gila

woodpecker (*Melanerpes uropygialis*), loggerhead shrike (*Lanius ludovicianus*), long-eared owl (*Asio otus*), osprey (*Pandion haliaetus*), killdeer, (*Charadrius vociferus*), mountain plover (*Charadrius montanus*), horned lark (*Eremophila alpestris*), lesser nighthawk (*Chordeiles acutipennis*), cactus wren (*Campylorhynchus brunneicapillus*), yellow warbler (*Setophaga petechia*), prairie falcon (*Falco mexicanus*), ferruginous hawk (*Buteo regalis*).

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 nesting 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: 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 inclusion of MM BIO-1 through 5 on p. 17 of the MND for nesting birds and burrowing owls; however, the measure is insufficient in scope and timing to reduce impacts to a level less than significant. CDFW recommends adding the following measure for nesting birds in a revised MND to ensure that impacts to nesting birds are reduced to less than significant:

MM BIO-[C]: 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. 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

IS/MND Document, Biological Resources Technical Report, Page #408, Section 2.1.2 & Page 414, Section 4.1.2

Issue: The MND does not include mitigation measures to avoid or reduce impacts to streams and their associated resources to a level less than significant.

Specific Impact: The Biological Resources Technical Report identifies canals and drainage ditches that may support wildlife, such as burrowing owls, on-site and adjacent to the Project site. In addition, CDFW review of aerial imagery confirms the location of ephemeral streams and desert wash habitat within the southern boundary of the Project site, which are tributary to the New River. Potential direct and indirect impacts to the streams 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 Imperial County include the following additional mitigation measure in a revised MND:

MM BIO-[D]: 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, Page #530, Table 5.3-1

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: On page 530 of the MND, the applicant states the expected vibration levels of construction equipment but includes no analysis of the impacts of construction noise on biological resources. Based on the nature of the proposed construction activities (i.e., Site Preparation, Grading, Building Construction, Paving and Architectural Coating), 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 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 Imperial County include the following additional mitigation measure in a revised MND:

MM BIO-[E]: Construction Noise

During all Project construction, Imperial County 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. Imperial County 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 #5: Artificial Nighttime Lighting

No information is available in the IS/MND Document

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

Specific Impact: Construction is proposed from 8 am to 9 pm; however, the MND does not provide any details regarding the use of artificial nighttime lighting or the impacts to biological resources resulting from the use of artificial nighttime lighting during construction and operation of the Project, 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 including bird song (Miller 2006), determining when to begin foraging (Stone et al. 2009), behavioral thermoregulation (Beiswenger 1977), and migration (Longcore & Rich 2004). Phototaxis, a phenomenon that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore & Rich 2004).

Recommended Potentially Feasible Mitigation Measure: Because of the potential for artificial nighttime lighting to negatively impact wildlife, CDFW recommends a revised MND include a light 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-[F]: Artificial Nighttime Lighting

During Project construction and operations over the lifetime of the Project, Imperial County shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. Imperial County shall ensure that all lighting for the Project is fully shielded, cast downward and away from surrounding open-space areas, reduced in intensity to the greatest extent, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). Imperial County 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 #6: Worker Education

IS/MND Document, Page #17, BIO 6

Issue: CDFW is concerned that mitigation measure BIO-6 in the MND does not provide sufficient details on training for construction foremen, workers, and onsite employees regarding biological resources to ensure that impacts are mitigated to a level less than significant.

Specific Impact: Education of construction workers, whether they are employees or contractors, is necessary to avoid and minimize impacts to the wildlife species and habitats that may be present on the Project site and in the surrounding area.

Evidence impact would be significant: Project activities, including construction and routine work for the life of the Project, have potential to affect local wildlife and habitats. Construction staff on-site need to be aware of the wildlife and habitats on the Project site and in the surrounding area. Understanding the interaction between human activity and surrounding biological resources can assist in reducing the number of negative impacts that have potential to occur throughout the Project's duration.

Recommended Potentially Feasible Mitigation Measure: CDFW recommends replacing BIO-6 with the following measure in a revised MND to ensure that impacts are reduced to a level less than significant:

MM BIO-[G]: Worker Education Program

Permittee shall conduct an education program for all persons employed or otherwise working on the Project prior to performing any work on-site. The education program shall consist of a presentation from a Designated Biologist that includes a discussion of the biology of the habitats and species identified in this letter and present at this site. The Designated Biologist shall also include as part of the education program information about the distribution and habitat needs of any protected species that may be present, legal protections for those species, penalties for violations, and Project-specific protective measures included in this Agreement. Interpretation shall be provided for non-English-speaking workers, and the same instruction shall be provided for any new workers prior to their performing work on-site. The Permittee shall prepare and distribute wallet-sized cards or a fact sheet that contains this information for workers to carry on-site. Upon completion of the education program, employees shall sign a form stating they attended the education program and understand all protection measures. These forms shall be filed at the worksite offices and be available to CDFW upon request. The education program shall be repeated annually for part of the Project extending more than one (1) year. Copies of the education program materials shall be maintained at the Project site for workers to reference as needed.

Permittee shall include an invasive species education program for all persons working on the Project prior to the performing any work on-site. The education program shall consist of a presentation from a Designated Biologist that includes a discussion of the invasive species currently present within the Project site as well as those that may pose a threat to or have the potential to invade the Project site. The discussion shall include a physical description of each species and information regarding their habitat preferences, local and statewide distribution, modes of dispersal, and impacts. The education program shall also include a discussion of Best Management Practices (BMPs) to be implemented at the Project site to avoid the introduction and spread of invasive species into and out of the Project site.

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 Imperial County 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 to biological resources. CDFW also concludes that the MND lacks sufficient information for a meaningful review of impacts to biological resources, including a complete assessment of biological resources. The CEQA Guidelines indicate that recirculation is required when a new significant effect is identified and additional mitigation measures are necessary (§ 15073.5). CDFW recommends that a revised MND, including a complete assessment of biological resources, be recirculated for public comment. CDFW also recommends that revised and additional mitigation measures and analysis as described in this letter be added to a revised MND.

Questions regarding this letter or further coordination should be directed to Julia Charpek, Environmental Scientist, at 909.354.0937 or Julia.Charpek@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kim Freeburn
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

ec:

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Attachment A: Mitigation Monitoring and Reporting Program (MMRP) for Biological Resources

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</p>
<p>MM BIO-[B]: Focused and Pre-Construction Surveys for Burrowing Owl 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) prior to vegetation removal or ground-disturbing activities. 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</p>	<p>Focused surveys: Prior to the start of Project-related activities</p> <p>Preconstruction surveys: No less than 14 days prior to start of Project-related activities and within 24 hours prior to ground disturbance</p>	<p>Imperial County</p>

<p>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>MM BIO-[C]: 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. 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 3 days prior to vegetation clearing or ground-disturbing activities</p>	<p>Imperial County</p>
<p>MM BIO-[D]: 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.</p>	<p>Prior to Project construction activities</p>	<p>Imperial County</p>
<p>MM BIO-[E]: Construction Noise During all Project construction, Imperial County 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. Imperial County shall ensure the use of noise suppression devices such as mufflers or enclosures for generators. Sounds generated from any means</p>	<p>During Project activities</p>	<p>Imperial County</p>

<p>must be below the 55-60 dB range within 50-feet from the source.</p>		
<p>MM BIO-[F]: Artificial Nighttime Lighting During Project construction and operations over the lifetime of the Project, Imperial County shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. Imperial County shall ensure that all lighting for the Project is fully shielded, cast downward and away from surrounding open-space areas, reduced in intensity to the greatest extent, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). Imperial County 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</p>
<p>MM BIO-[G]: Worker Education Program Permittee shall conduct an education program for all persons employed or otherwise working on the Project prior to performing any work on-site. The education program shall consist of a presentation from a Designated Biologist that includes a discussion of the biology of the habitats and species identified in this Letter and present at this site. The Designated Biologist shall also include as part of the education program information about the distribution and habitat needs of any protected species that may be present, legal protections for those species, penalties for violations, and Project-specific protective measures included in this Agreement. Interpretation shall be provided for non-English-speaking workers, and the same instruction shall be provided for any new workers prior to their performing work on-site. The Permittee shall prepare and distribute wallet-sized cards or a fact sheet that contains this information for workers to carry on-site. Upon completion of the education program, employees shall sign a form stating they attended the education program and understand all protection measures. These forms shall be filed at the worksite offices and be available to CDFW upon request. The education program shall be repeated annually for part of the Project extending more than one (1) year. Copies of the education program materials shall be maintained at the Project site for workers to reference as needed. Permittee shall include an invasive species education program for all persons working on the Project prior to the performing any work on-site. The education program shall consist of a presentation from a Designated Biologist that includes a discussion of the invasive species currently present within the Project site as well as those that may pose a threat to or have the potential to invade the Project site. The discussion shall include a physical description of each species and information regarding their habitat preferences, local and statewide distribution, modes of dispersal, and impacts. The education program shall also include a discussion of Best Management Practices (BMPs) to be implemented at the Project site to avoid the introduction and spread of invasive species into and out of the Project site.</p>	<p>Prior to Project construction activities</p>	<p>Imperial County</p>