State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

June 4, 2024
Sent via email.

County of San Bernardino, Land Use Services Department
Jon Braginton, Planner
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San Bernardino, California 92415
Jon.Braginton@lus.sbcounty.gov

Subject: Notice of Preparation of a Draft Environmental Impact Report
Electric Vehicle Charging Station and Logistics Facility
State Clearinghouse No. 2024050651

Dear Jon Braginton:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from San Bernardino County (County) for the Electric Vehicle Charging Station and Logistics Facility Project (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

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.

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

The Project proposes to construct an electric vehicle (EV) charging station for light duty/passenger vehicle and medium to heavy duty trucks and concrete tilt-up logistics facility on 99.85 acres. The EV charging station would include an up-to 15,000 square foot commercial building to provide ancillary uses (e.g. food, convenience market, restaurant), a truck wash, maintenance facility, and truck scales. The logistics facility would offer 1,341,432 square feet of warehouse space in three buildings. The Project is also proposing site improvements, including landscaping, gathering/amenity areas for logistics facility employees, parking, required utility facilities and upgrades, drainage facilities, and a buffer (e.g., landscaping, wall) at the Project's southern boundary.

Additionally, the Project would improve the east side of Lenwood Road to its ultimate half-width along the Project site's frontage including the construction of sidewalk, curb and gutter. This half section would contain two northbound travel lanes and ½ of a 12-foot center lane. The Project would add 6 feet of paving to the west half of Lenwood Road to accommodate the balance of the center striped median lane and would repave the existing southbound travel lane. In addition, the Project may install traffic light-controlled T-intersections, pocket and deceleration lanes along Lenwood Road pending review by County of San Bernardino Department of Public Works.

Discretionary approvals include a Countywide Plan amendment and a zoning amendment to change the land use designation from Rural Residential to Limited Industrial. The County would also need to issue a conditional use permit to cover the project site for the construction and operation of an electric vehicle charging station and logistics facility.

The Project is located in unincorporated San Bernardino County, within the City of Barstow's sphere of influence. The Project is located on the east side of Lenwood Road, 1.15 miles southwest of State Route 58 and 6 miles west of Interstate 40.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

CDFW recommends that the forthcoming EIR address the following:

Assessment of Biological Resources

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 and that special emphasis should be placed on environmental resources that are rare or unique to the region. To enable CDFW staff to adequately review and comment on the Project, the EIR should include a complete assessment of the flora and fauna within and adjacent to the Project footprint, with particular emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats.

The CDFW recommends that the EIR specifically include:

1. An assessment of the various habitat types located within the Project footprint, and a map that identifies the location of each habitat type. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed following The Manual of California Vegetation, second edition (Sawyer et al. 2009). Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions. The sensitivity of vegetation communities is ranked based on the NatureServe Conservation Status Assessments: Methodology for Assigning Ranks (Faber-Langendoen et al. 2012). Vegetation communities with state (S) ranks of S1 (very rare to threatened) to S3 (vulnerable) are considered sensitive and are to be addressed in the environmental review processes of CEQA and its equivalents.

2. A general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are present or have the potential to be present within each habitat type onsite and within adjacent areas that could be affected by the Project. CDFW's California Natural Diversity Database (CNDDB) in Sacramento should be contacted at (916) 322-2493 or CNDDB@wildlife.ca.gov to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the proposed Project.

   Please note that CDFW's CNDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point

in gathering information about the *potential presence* of species within the general area of the Project site.

3. A complete, *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). 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.

4. A thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (see https://www.wildlife.ca.gov/Conservation/Plants).

   Special-status plant species include species listed as threatened, endangered, or candidate by CDFW and/or United Fish and Wildlife Service (USFWS) under the Federal Endangered Species Act and/or CESA; species designated as Sensitive by the Bureau of Land Management (BLM); species identified as Focus or Planning Species under the Desert Renewable Energy Conservation Plan (DRECP); species that have a California Rare Plant Rank (CRPR) of 1, 2, 3, or 4 (defined below under Native Plant Protection Act); and species otherwise protected in California or Nevada.

   Queries of publicly available datasets, such as the CNDDB, the CNPS Online Inventory of Rare and Endangered Plants, and the California Consortium of Herbaria, and a recent literature review should completed to develop a list of special-status plants with potential to occur in the Project site and surrounding habitat.

5. The EIR should incorporate analysis of wildlife movement to develop a baseline understanding of the areas where wildlife movement, including both seasonal migrations and post-natal dispersal, are most prevalent in order to identify species

use and to aid in identifying criteria used to determine appropriate measures to minimize and mitigate Project impacts to wildlife connectivity.

6. The EIR should address impacts due to fencing around the Project limits. Fencing can impact the ability of species to pass through barriers created by roads, associated infrastructure, and railroad lines. Placement of fencing in the Project boundaries can impact wildlife passage. The EIR should evaluate the Project impacts of fencing on wildlife crossing and passage to reduce injury and mortality and so that wildlife is able to safely pass the Project's structures.

7. Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region (CEQA Guidelines § 15125[c]).

8. The impacts of both lighting and noise from the continuous operation of the Project should be analyzed for impacts for both resident species and species that are attempting to move through the Project area for either part of seasonal migration or dispersal.

9. Cumulative impacts from lighting, noise, loss of habitat, fencing from this Project and nearby existing and proposed projects including the Barstow International Gateway Project should be analyzed for special status species, wildlife connectivity, and special status habitats.

10. An assessment of raven (*Corvus corax*) use in the Project area, specifically raven nesting and perching locations and existing human subsidies. As this Project will construct new infrastructure that could provide new perching locations and the creation of new subsidies from project elements, the County should address the Project's related direct/indirect and cumulative impacts due to raven subsidies, not limited to food subsidies but including nesting and perching subsidies that are known to promote raven population growth and allow ravens to occupy parts of the Mojave Desert that otherwise would not support them (Boarman et. al. 2006).

    Human subsidies include food and water from landfills and other sources of waste, reservoirs, sewage ponds, agricultural fields, feedlots, gutters, as well as perch, roost, and nest sites from transmission towers, distribution poles and lines, light posts, billboards, fences, freeway or railroad overpasses, abandoned vehicles, and buildings (Boarman 1993). Subsidies allow ravens to survive in the desert during summer and winter when prey and water resources are typically inactive or scarce.

    As this Project will construct new infrastructure, the impacts of raven subsides from the infrastructure for the extended time, should be considered as directly Project related.

11. Species specific surveys for special status species that the Project footprint has the potential to support, including burrowing owl, Mohave ground squirrel, Mojave fringe-toed lizard, Swainson's hawk, Crotch's bumble bee, and Agassiz's desert tortoise.

    Burrowing Owl (*Athene cunicularia*)

    The proposed Project has the potential to provide suitable foraging and/or nesting habitat for burrowing owl. 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."

    CDFW recommends that County follow the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (Department of Fish and Game, March 2012); available for download from CDFW's website: https://www.wildlife.ca.gov/conservation/survey-protocols. The Staff Report on Burrowing Owl Mitigation, specifies three steps for Project impact evaluations:

    a. A habitat assessment;
    b. Surveys; and
    c. An impact assessment

    As stated in the Staff Report on Burrowing Owl Mitigation, the three progressive steps are effective in evaluating whether a project will result in impacts to burrowing owls, and the information gained from the steps will inform any subsequent avoidance, minimization, and mitigation measures. Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with Fish and Game Code sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of a proposed CEQA project activity or non-CEQA project.

    Within the 2012 Staff Report, the minimum habitat replacement recommendation was purposely excluded as it was shown to serve as a default, replacing any site-specific analysis and discounting the wide variation in natal area, home range, foraging area, and other factors influencing burrowing owls and burrowing owl population persistence in a particular area. It hypothesized that mitigation for permanent impacts to nesting, occupied, and satellite burrows and burrowing owl habitat should be on, adjacent or proximate to the impact site where possible and where habitat is sufficient to support burrowing owls present. If mitigation occurs offsite, it should include (a) permanent conservation of similar vegetation communities (grassland, scrublands, desert, urban, and agriculture) to provide for

burrowing owl nesting, foraging, wintering, and dispersal (i.e., during breeding and non-breeding seasons) comparable to or better than that of the impact area, and (b) be sufficiently large acreage with the presence of fossorial mammals. Furthermore, the report noted that suitable mitigation lands should be based on a comparison of the habitat attributes of the impacted and conserved lands, including but not limited to: type and structure of habitat being impacted or conserved; density of burrowing owls in impacted and conserved habitat; and significance of impacted or conserved habitat to the species range-wide.

Mohave ground squirrel (*Xerospermophilus mohavensis*)

The proposed Project occurs within the range of Mohave ground squirrel (MGS), a state listed threatened species under the California Endangered Species Act (CESA). CDFW recommends that a qualified permitted biologist conduct protocol surveys for MGS following the methods described in the "Mohave Ground Squirrel Survey Guidelines" (CDFG 2023) during the appropriate survey season prior to Project implementation, including any vegetation- or ground-disturbing activities. Results of the MGS surveys are advised to be submitted to the CDFW. Please note MGS surveys are valid for one year and should be conducted within a year of the start of ground-disturbing activities.

If MGS are found within the Project area during surveys, CDFW recommends the County require species-specific mitigation to offset impacts be included in the EIR. Additionally, measures to avoid, minimize, and monitor MGS should be incorporated into the EIR. Additionally, if MGS are found within the Project area during surveys or construction activities, and complete avoidance is not possible CDFW recommends the County and/or Project proponent acquire a CESA Incidental Take Permit (ITP) prior to any vegetation- or ground-disturbing activities. Any take of MGS without take authorization would be a violation of Fish and Game Code section 2080.

Swainson's hawk (*Buteo swainsoni*)

The proposed Project occurs within the range of Swainson's hawk (SWHA), a state listed threatened species under the California Endangered Species Act (CESA). SWHA are known to travel up to 18 miles to forage (Estep 1989). Any SWHA in known nesting trees within that range may utilize the Project site for foraging. Therefore, CDFW recommends protocol surveys for SWHA be conducted by a qualified biologist with knowledge of SWHA natural history and behaviors, following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000). The protocol survey information should be included as part of the biological technical studies conducted in support of the EIR.

If SWHA are found to utilize the Project area during surveys, CDFW recommends the County require species-specific mitigation to offset impacts be included in the

EIR. Compensations for the loss of SWHA foraging habitat are described in the Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (California Department of Fish and Game 1994). The report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

- For projects within 1 mile of an active nest tree, a minimum of one acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of 0.75 acres of HM land for each acre of development is advised.
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of 0.5 acres of HM land for each acre of development is advised.

Additionally, if SWHA are found to utilize the Project area for nesting or foraging during surveys or construction activities, and complete avoidance is not possible CDFW recommends the County and/or Project proponent acquire a CESA Incidental Take Permit (ITP) prior to any vegetation- or ground-disturbing activities. Any take of Swainson's hawk without take authorization would be a violation of Fish and Game Code section 2080.

Mojave fringe-toed lizard (*Uma scoparia*)

The proposed Project occurs within the range of Mojave fringe-toed lizard, a California species of special concern. The Project is located on the western edge of the range of the species. CDFW recommends that the County analyze the impacts of the proposed project to the species. Typically, peripheral populations have the potential to maintain substantial genetic variation allowing the population to adapt to environmental conditions at the edge of the species' range. This increases the conservation value for this population and the impact analysis should consider the impacts to the genetic diversity of this species and the specific population being impacted.

The EIR should also address and provide specific details how the project will directly impact Mojave fringe-toed lizard by either moving individuals out of harm's way and/or translocation to adjacent or further suitable occupied habitat. CDFW recommends the County and/or project proponent reach out and consult on translocation methods and locations.

Agassiz's desert tortoise (*Gopherus agassizii*)

The proposed Project occurs within the range of Agassiz's desert tortoise; a state and federally listed threatened species. CDFW recommends that the County complete protocol level surveys over all areas (i.e., 100 percent coverage) proposed

to be directly or indirectly affected by the Project, using appropriately qualified biologists, following the USFWS Desert Tortoise Field Manual, accessible here: https://www.fws.gov/nevada/desert_tortoise/documents/field_manual/Desert-Tortoise-Field-Manual.pdf. To reduce the likelihood of nonconcurrence with proposed surveys, methodology, and qualifications of biologists, CDFW recommends working with the USFWS and CDFW concurrently to ensure a consistent and adequate approach to planning your work (USFWS, 2018).

CDFW recommends that biologists retained to complete desert tortoise protocol level surveys submit their qualifications to CDFW and the USFWS prior to initiation of surveys. Should the County desire CDFW to pre-approve the qualifications of biologists conducting protocol level desert tortoise surveys, CDFW requests information by provided on the Desert Tortoise Authorized Biologist Qualifications Form (Section 3.2) of the USFWS Desert Tortoise Field Manual for all biologists participating in survey efforts to the following email address: Christopher.Bill@wildlife.ca.gov.

If desert tortoise are found within the Project area during surveys or construction activities, and complete avoidance is not possible CDFW recommends the County and/or Project proponent acquire a State ITP prior to any vegetation- or ground-disturbing activities. Any take of desert tortoise without take authorization would be a violation of Fish and Game Code section 2080.

Crotch's Bumble Bee (Bombus crotchii)

Crotch's bumble bee (CBB) have the potential to occur within the Project site. CBB occurs primarily in California, including the Mediterranean region, Pacific Coast, Western Desert, Great Valley and adjacent to foothills through most of southwestern California (Williams et. al 2014). CBB are generalist foragers and have been reported visiting a wide variety of flower plants. The plant families most commonly associated with CBB observations or collections from California include Fabaceae, Apocynaceae, Asteraceae, Lamiaceae, Boraginaceae and Asclepiadaceae. Ground disturbance (e.g., trenching, excavating, grading, soil compaction, burrow loss, and earth-moving activities) and vegetation removal have the potential to destroy CBB burrows. Additionally, these activities create elevated levels of noise, human activity, dust, ground vibrations, and vegetation disturbance. Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows and it appears per Google aerial images that there is suitable habitat within and surrounding the Project site.

CBB primarily nest in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, under brush-piles, in old bird nests, and in dead trees or hollow logs (Williams et al., 2014; Hatfield et al., 2015). Overwintering sites utilized

by CBB mated queens include soft, disturbed soil (Goulson, 2010), or under leaf litter or other debris (Williams et al., 2014). Therefore, potential ground disturbance and/or vegetation removal associated with Project implementation may significantly impact local CBB populations.

CBB was once common throughout most of central and southern California; however, it now appears to be absent from most of it (Hatfield et al., 2014). Analyses by the Xerces Society et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years.

CDFW recommends a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of the DEIR to determine if the Project site or its immediate vicinity contain habitat suitable to support CBB. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment. If potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW, 2023b), as part of the biological technical studies conducted in support of the CEQA document. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take. If take cannot be avoided, take authorization is required prior to initiating ground-disturbing activities to comply with CESA. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b).

While surveys conducted using these flight seasons/active periods as a guide are considered the most effective and protective to the species, surveys may fail to detect the presence of CBB. Therefore, it is reasonable to assume presence and rely on habitat as an indicator of presence in lieu of, or in addition to, surveys. CBB moves nests sites each year; therefore, surveys should be conducted each year that Project activities will occur. Even if surveys from a particular annual survey failed to detect CBB, Project proponents should perform a full round of surveys each year that Project activities will occur for the life of the Project or assume presence and obtain an ITP. If CBB are found within the Project area during surveys or construction activities, and complete avoidance is not possible CDFW recommends the County and/or Project proponent acquire a State ITP prior to any vegetation- or ground-disturbing activities. Any take of CBB without take authorization would be a violation of Fish and Game Code section 2080.

Desert kit fox (*Vulpes macrotis*)

The proposed Project occurs within the range of desert kit fox, a protected species pursuant to Title 14 of the California Code of Regulations Section 460, which prohibits the take of the species at any time. CDFW recommends surveys, following CDFW-approved protocols, be conducted over all areas proposed to be directly or indirectly affected by the Project to determine presence/absence and numbers of desert kit fox, and that this information be included in the EIR.

If desert kit fox is found, or have the potential to occupy the Project site, CDFW recommends the County require species-specific mitigation to offset impacts and avoidance, minimization, and monitoring measures aimed at avoiding direct impacts to the desert kit fox be incorporated into the EIR. Avoidance and minimization measures should include pre-activity surveys following CDFW-approved survey methods, including procedures used to classify identified dens as inactive dens, active and potentially active dens, and active natal dens, and methods utilized to quantify and locate single or paired animals that would need to be avoided or passively relocated, and the burrows or burrow complexes that would need to be collapsed to prevent re-occupancy. The measures should also include detailed monitoring requirements and methods of exclusion/passive relocation to be conducted, and methods and timing of den excavation.

American Badger (Taxidea taxus)

The proposed Project occurs within the range of the American badger, a California species of special concern. CDFW recommends the County complete surveys for American badger over the Project area proposed to be directly or indirectly affected by the Project and that the results of such surveys be included in the EIR, along with avoidance, minimization, and mitigation measures, if appropriate.

If American badger are found, or have the potential to occupy the Project site, CDFW recommends the County require species specific mitigation to offset impacts and avoidance, minimization and monitoring measures aimed at avoiding direct impacts to American badger be incorporated into the EIR. Avoidance and minimization measures should include pre-activity surveys following CDFW-approved survey methods, including procedures used to classify identified dens as inactive dens, active and potentially active dens, and active natal dens, and methods utilized to quantify and locate single or paired animals that would need to be avoided or passively relocated, and the burrows or burrow complexes that would need to be collapsed to prevent re-occupancy. The measures should also include detailed monitoring requirements and methods of exclusion/passive relocation to be conducted, and methods and timing of den excavation.

Ring-tailed cat (*Bassariscus astutus*)

The proposed Project occurs within the range of the ring-tailed cat, a California species of special concern and fully protected species. CDFW recommends the County complete surveys for ring-tailed cat over the Project area proposed to be directly or indirectly affected by the Project and that the results of such survey be included in the EIR, along with measures to avoid all impacts to the species.

If ring-tailed cat are found, or has the potential to occupy the Project site, CDFW recommends the County require species-specific mitigation to avoid impacts to the ring-tailed cat be incorporated into the EIR. Avoidance measures should include pre-activity surveys following CDFW-approved survey methods, including procedures used to classify identified dens as inactive dens, active and potentially active dens, and active natal dens, and methods utilized to quantify and locate single or paired animals that would need to be avoided.

Western Joshua Tree (*Yucca brevifolia*).

Based on the Project location, there may be western Joshua trees on the Project site. In order for the Project to be completed as proposed, western Joshua trees would need to be removed. WJT is a candidate threatened species under CESA. Under CESA, species classified as a candidate species are afforded the same protection as CESA-listed species. Take of any CESA listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). The California state legislature has enacted the Western Joshua Tree Conservation Act (WJTCA) which aims to provide protection of WJT while removing some of the barriers faced by developers when working on or adjacent to sites where the species is present.

For unavoidable impacts, CDFW recommends consultation with CDFW and obtaining appropriate take authorization under CESA. Take authorization may be obtained through a traditional Incidental Take Permit or through a WJTCA permit. Please visit CDFW's California Endangered Species Act (CESA) Permits web page for more information. For more information on the WJTCA, please visit the CDFW Western Joshua Tree Conservation Efforts and Permitting website at https://wildlife.ca.gov/Conservation/Environmental-Review/WJT..

Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources

1. The EIR should provide a thorough discussion of the direct, indirect, and cumulative impacts expected to adversely affect biological resources as a result of the Project (including the plan's land use designations, policies and programs).

2. The EIR should include a discussion of potential impacts from lighting, noise, operations and maintenance activities, exotic and/or invasive species, and drainage. The latter subject should address Project-related changes on drainage patterns and water quality within, upstream, and downstream of the Project site, including: volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site.

3. A discussion of potential indirect Project impacts on biological resources should be included in the EIR, including resources in areas adjacent to the Project footprint, such as nearby public lands (e.g. Bureau of Land Management lands, State and County Parks, etc.), open space, adjacent natural habitats, riparian ecosystems, wildlife corridors, and any designated and/or proposed reserve or mitigation lands.

   Additionally, the EIR should discuss Project impacts to wildlife connectivity on both a regional and local scale for both rare and common species. Impacts to wildlife connectivity are expected to be from the physical location and size of the project, noise generated by both construction and operation of the Project, and lighting needed for Project operation.

4. A cumulative effects analysis developed as described under CEQA Guidelines section 15130. The EIR should analyze the cumulative effects of the plan's land use designations, policies and programs on the environment. Please include all potential direct and indirect Project related impacts to riparian areas, wetlands, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and other sensitive habitats, open lands, open space, and adjacent natural habitats in the cumulative effects analysis. General and specific plans, as well as past, present, and anticipated future projects (including the Barstow Internation Gateway Project), should be analyzed relative to their impacts on similar plant communities and wildlife habitats.

5. A discussion of potential direct, indirect and cumulative impacts due to the potential invasion of non-native plants that can aggressively colonize newly disturbed Project areas and adjacent habitats and can grow to dominate native plant communities if uncontrolled. The most numerous and widespread include Saharan mustard (*Brassica tournefortii*), redstem filaree (*Erodium cicutarium*), Russian thistle (*Salsola tragus*), common Mediterranean grass (*Schismus barbatus*), stinknet (*Oncosiphon piluliferum*) and London rocket (*Sisymbrium irio*).

Alternatives Analysis

CDFW recommends the DEIR describe and analyze a range of reasonable alternatives to the Project that are potentially feasible, would "feasibly attain most of the basic objectives of the Project," and would avoid or substantially lessen any of the Project's significant effects (CEQA Guidelines § 15126.6[a]). The alternatives analysis should also evaluate a "no project" alternative (CEQA Guidelines § 15126.6[e]).

Mitigation Measures for Project Impacts to Biological Resources

The EIR should identify mitigation measures and alternatives that are appropriate and adequate to avoid or minimize potential impacts, to the extent feasible. The County should assess all direct, indirect, and cumulative impacts that are expected to occur as a result of the implementation of the Project and its long-term operation and maintenance. When proposing measures to avoid, minimize, or mitigate impacts, CDFW recommends consideration of the following:

1. *Fully Protected Species*: Fully protected species may not be taken or possessed at any time. Project activities described in the EIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends that the EIR fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the Lead Agency include in the analysis how appropriate avoidance, minimization, and mitigation measures will reduce indirect impacts to fully protected species.

2. *Sensitive Plant Communities*: CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, and S-3 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDB and are included in *The Manual of California Vegetation* (Sawyer et al. 2009). The EIR should include measures to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts.

3. *California Species of Special Concern* (CSSC): CSSC status applies to animals generally not listed under the federal Endangered Species Act or the CESA, but which nonetheless are declining at a rate that could result in listing, or historically occurred in low numbers and known threats to their persistence currently exist. CSSCs should be considered during the environmental review process. CSSC that have the potential or have been documented to occur within or adjacent to the Project area, including, but not limited to: burrowing owl and Mojave fringed-toed lizard.

4. *Mojave Fringe-Toed Lizard.* The population of Mojave fringe-toed lizard is a peripheral western edge of the species range. Avoidance, minimization, and mitigation measures to preserve the genetic diversity of this population should be proposed to mitigate for the impacts to the current footprint of this population.

5. *Wildlife Connectivity.* Construction of the Project will directly impact the Mojave River/Barstow/Camp Cady Linkage identified in Penrod et al (2001). Also, the Project site has been identified by CDFW in its Areas of Conservation Emphasis (CDFW, 2024) mapping as a Conservation Planning Linkage. Spencer, et al (2010) also identified an essential habitat area that overlaps with the Project area. CDFW recommends that the Lead Agency include in the analysis how appropriate avoidance, minimization, and mitigation measures will reduce impacts to wildlife connectivity .

6. *Mitigation*: CDFW considers adverse Project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the EIR should include mitigation measures for adverse Project-related impacts to these resources. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, onsite habitat restoration and/or enhancement, and preservation should be evaluated and discussed in detail. Where habitat preservation is not available onsite, offsite land acquisition, management, and preservation should be evaluated and discussed in detail.

   The EIR should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and indirect adverse impacts in order to meet mitigation objectives to offset Project-induced qualitative and quantitative losses of biological values. Specific issues that should be addressed include restrictions on access, proposed land dedications, long-term monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.

   If sensitive species and/or their habitat may be impacted from the Project, CDFW recommends the inclusion of specific mitigation in the EIR. CEQA Guidelines section 15126.4, subdivision (a)(1)(8) states that formulation of feasible mitigation measures should not be deferred until some future date. The Court of Appeal in *San Joaquin Raptor Rescue Center* v. *County* of *Merced* (2007) 149 Cal.App.4th 645 struck down mitigation measures which required formulating management plans developed in consultation with State and Federal wildlife agencies after Project approval. Courts have also repeatedly not supported conclusions that impacts are mitigable when essential studies, and therefore impact assessments, are incomplete *(Sundstrom* v. *County* of *Mendocino* (1988) 202 Cal. App. 3d. 296; *Gentry* v. *City* of *Murrieta (1995)* 36 Cal. App. 4th 1359; *Endangered Habitat League, Inc.* v. *County* of *Orange* (2005) 131 Cal. App. 4th 777).

7. CDFW recommends that the EIR specify mitigation that is roughly proportional to the level of impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15126.4(a)(4)(B), 15064, 15065, and 16355). The mitigation should provide long-term conservation value for the suite of species and habitat being impacted by the Project. Furthermore, in order for mitigation measures to be effective, they need to be specific, enforceable, and feasible actions that will improve environmental conditions.

8. *Nesting Birds and Migratory Bird Treaty Act:* Please note that 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 makes it 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) 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 the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

   CDFW recommends that the EIR include the results of avian surveys, as well as specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. The EIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. If pre-construction surveys are proposed in the EIR, the CDFW recommends that they be required no more than three (3) days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted sooner.

9. *Moving out of Harm's Way:* To avoid direct mortality, CDFW recommends that the lead agency condition the EIR to require that a CDFW-approved qualified biologist be retained to be onsite prior to and during all ground- and habitat-disturbing activities to move out of harm's way special status species or other wildlife of low or limited mobility that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise by injured or killed, and individuals should be moved only as far a necessary to ensure their safety (i.e., CDFW does not recommend relocation to other areas). Furthermore, it should be noted that the temporary

relocation of onsite wildlife does not constitute effective mitigation for the purposes of offsetting Project impacts associated with habitat loss.

10. *Translocation of Species*: CDFW generally does not support the use of relocation, salvage, and/or transplantation as mitigation for impacts to rare, threatened, or endangered species as studies have shown that these efforts are experimental in nature and largely unsuccessful.

California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. CDFW recommends that a CESA ITP be obtained if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of State-listed CESA species, either through construction or over the life of the Project. It is the policy of CESA to conserve, protect, enhance, and restore State-listed CESA species and their habitats.

CDFW encourages early consultation, as significant modification to the proposed Project and avoidance, minimization, and mitigation measures may be necessary to obtain a CESA ITP. CDFW must comply with CEQA for issuance of a CESA ITP. CDFW therefore recommends that the EIR addresses all Project impacts to listed species and specify a mitigation monitoring and reporting program that will meet the requirements of CESA.

Based on review of CNDDB, and/or knowledge of the Project site/vicinity/general area, CDFW is aware that the following CESA-listed species have the potential to occur onsite/have previously been reported onsite: Desert tortoise (*Gopherus agassizii*), Swainson's Hawk (*Buteo swainsoni*), Crotch's bumble bee (*Bombus crotchii*), and Mojave ground squirrel (*Xerospermophilus mohavensis*).

Lake and Streambed Alteration Program

Based on review of material submitted with the NOP and review of aerial photography drainage features traverse the site. Based on the Project plans included in the NOP, it is likely that the Project applicant will need to notify CDFW per Fish and Game Code section 1602. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-

round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your Project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if necessary, the EIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To submit a Lake or Streambed Alteration notification package, please go to https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS.

ADDITIONAL COMMENTS AND RECOMMENDATIONS

To ameliorate the water demands of this Project, CDFW recommends incorporation of water-wise concepts in 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). 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: http://saveourwater.com/what-you-can-do/tips/landscaping/

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 (CNDDB). Information can be submitted online or via completion of the CNDDB field survey form at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The

types of information reported to CNDDB can be found at the following link: https://wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP of a EIR for the Electric Vehicle Charging Station and Logistics Facility Project (SCH No. 2024050651) and recommends that the County of San Bernardino address CDFW's comments and concerns in the forthcoming EIR. If you should have any questions pertaining to the comments provided in this letter, please contact Jason Bill, Senior Environmental Scientist, Specialist, at (909) 549-5878or at Christopher.Bill@wildlife.ca.gov.

Sincerely,

DocuSigned by:
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