



State of California – Natural Resources Agency
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July 25, 2024

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North Star 1 Solar and Battery Storage Project (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2024060951

Dear Mr. Minnick:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from Imperial County Planning & Development Services Department (ICPDS) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously submitted comments in response to the originally circulated Initial Study.

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.

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.

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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: Apex Energy Solutions, LLC

Objective: The objective of the Project is to construct and operate a 50-megawatt (MW) solar photovoltaic (PV) facility, a 75-MW battery energy storage system (BESS), an on-site substation, and an off-site transmission line to connect to the Imperial Irrigation District's (IID) existing 161 kilovolt (kV) "N" Line, which is east of the project site. Primary Project activities include construction and operation of a 50-MW PV energy generation facility and a 75-MW BESS facility on approximately 286-acres of land. General Plan Amendment #23-0001, Zone Change #23-0005 & #23-0006 are proposed to meet the Project objective.

Location: The Project is located approximately 7 miles north of the unincorporated community of Niland and approximately 8.2 miles east of the community of Bombay Beach, between the East Highline Canal and Coachella Canal. The Project site consists of Assessor's Parcel Numbers 003-110-005 and 030-110-007. The Project coordinates are Latitude 33.3338380 and Longitude -115.5700580.

Timeframe: Construction is estimated to be 12 months in duration.

COMMENTS AND RECOMMENDATIONS

CDFW notes there is a lack of appropriate biological resource surveys and supporting documentation provided in the MND, therefore it is unclear how some of the proposed mitigation measures or proposed project revisions will be able to reduce the Project's potentially substantial adverse effect on biological resources to less than significant with mitigation incorporated. Without the environmental baseline adequately evaluated, many of the mitigation measures proposed require surveys to be able to identify and quantify biological resources that will be impacted by the project at a later date. CDFW notes that baseline surveys should have already been conducted and included in the environmental document, and appropriate mitigation for on-site resources should have been included in the MND, as deferment does not allow the development of effective mitigation measures.

CDFW offers the comments and recommendations below to assist ICPDS in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and

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indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

I. Environmental Setting and Related Impact Shortcoming

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT 1:

Section: Evaluation of Environmental Impacts: Biological Resources, **Page:** 40

Issue: CDFW is concerned that the MND has not accurately described or fully established the biological resources present onsite, limiting the CEQA Lead Agency's and CDFW's ability to analyze the project's potential impacts, avoidance, and/or mitigation measures on candidate, sensitive, or special status species. The MND relies on field reconnaissance surveys of the Project area were conducted on October 25 and 26, 2022 and just focused on documenting the potential habitat to support special status species. BIO-1 conditions a pre-construction rare plant survey to be performed prior to the start of construction, particularly focusing on areas that may support special status species.

Specific impact: The Biological Resources Technical Report (ECORP Consulting, Inc., 2023) included a reconnaissance survey to identify potential habitat for special status plants which was only performed once, over a two-day period, during drought conditions. As noted in BIO-1, none of the three special status plant species with moderate to high potential to occur within the Project site per the MND have a fall blooming period. The reconnaissance survey was performed during an inappropriate time of year for all three species and did not follow the *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW, March 2018). Without protocol surveys, potential Project impacts to candidate, sensitive, or special status species may be mischaracterized, resulting in avoidable, unminimized, or unmitigated impacts not analyzed by the MND.

Why impact would occur: The MND and accompanying Biological Resources Technical Report for the Project does not have sufficient information whether there's suitable habitat and potential impacts to Orocopia sage, Harwood's milk-vetch, and Munz's cholla. The reconnaissance biological resource survey conducted in October 2022 is too general in nature to accurately characterize the biological baseline conditions on which the MND must base its analysis concerning potentially significant impacts. The reconnaissance biological resource survey included approximately 12 hours of survey effort (24 hours expended by two surveyors) to

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identify potential habitat for special status plants, communities, and habitats within a 286-acre survey area. The MND relies on a reconnaissance habitat assessment rather than focused botanical surveys conducted during the appropriate season. The Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (CDFW, March 2018) state botanical field surveys need to be conducted when plants will be both evident and identifiable, with the timing and number of visits considered to determine presence of special status species and floristic diversity. Multiple surveys during the season may be warranted to capture floristic diversity (CDFW, 2018). Habitats, such as desert plant communities that have annual and short-lived perennial plants as major floristic components, may require yearly surveys to accurately document baseline conditions for purposes of impact assessment (CDFW, 2018). Focused surveys limited to certain habitats and species “are not considered floristic in nature and are not adequate to identify all plants in a project area to the level necessary to determine if they are special status plants” (CDFW, March 2018).

Also, BIO-1 defers mitigation by requiring a mitigation plan or additional avoidance and minimization measures to be developed and implemented at a later date should the need be identified through focused preconstruction surveys. All mitigation and avoidance and minimization measures incorporated to bring impacts to species to less than significant should be contained within the MND. The timing of mitigation strategies described, such as seed collection, could be hindered by the timing associated with project development and deadlines, drafting of the plan or measures, and/or insufficient number of surveys. Additionally, mitigation strategies developed at a later date may not be effective to reduce impacts to less than significant, as the requirements are not contained within the MND to ensure compliance. As such, without an appropriate baseline and impact analyses provided in the MND, CDFW is concerned any plans developed per BIO-1 may not appropriately mitigate the impact to present species as determined by the MND.

Evidence impact would be significant: Given the presence of potentially suitable habitat, Project impacts to the species identified above are possible and the MND should incorporate avoidance, minimization, and mitigation measures for each species based on an assumption of presence or based on focused surveys, following professionally accepted methods (protocol level surveys), and incorporated in the MND. Sensitive plant species are listed under the CESA as threatened, or endangered, or proposed candidates for listing; designated as rare under the Native Plant Protection Act; or plants that otherwise meet the definition of rare, threatened, or endangered species under CEQA. Plants constituting California Rare Plant Ranks 1A, 1B, 2A, and 2B generally meet the criteria of a CESA-listed species and should be considered as an endangered, rare or threatened species for the purposes of CEQA analysis. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Fish and Game Code Sections 1900–1913 includes provisions that prohibit the take of

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endangered and rare plants from the wild and a salvage requirement for landowners.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact Shortcoming)

Mitigation Measure: BIO-1

To reduce impacts to less than significant: CDFW recommends botanical field surveys following the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (CDFW, March 2018) be conducted by qualified personnel annually prior to the start of construction. One botanical field survey may be insufficient to detect plants that are not evident and identifiable every year, therefore CDFW recommends multiple surveys. Appropriate surveys will identify the species present to allow development of effective mitigation measures. CDFW provides editorial suggestions to BIO-1, provided below, that are recommended to be incorporated into the mitigation measure.

BIO-1 Rare Plant Surveys: Prior to initiating ground disturbance, **three** rare plant **botanical field** surveys shall be conducted that are **floristic in nature (i.e., identifying all plant species to the taxonomic level necessary to determine rarity), and inclusive of areas proposed for disturbance and indirectly impacted by the Project.** ~~conducted within suitable habitat within the Survey Area during the appropriate blooming period for the Orcocopia sage (approximately March through April), Harwood's milk-vetch (approximately January through May), and Munz's cholla (approximately May).~~ The surveys shall be conducted by a **qualified** botanist or qualified biologist in accordance with the USFWS Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed, and Candidate Plants (USFWS 1996); the CDFW Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018); and the CNPS Botanical Survey Guidelines (CNPS 2001). If any special-status species are observed during the ~~rare plant botanical field~~ **botanical field** surveys, ~~the location of the individual plant or population will be recorded with a submeter GPS device for mapping purposes~~ **the Project shall be designed to reduce impacts to these species through the establishment of buffers, to the extent feasible. Buffer distances will be determined by the qualified botanist or biologist, typically 50 feet or greater from an identified special-status plant species, unless the qualified botanist or biologist determines a reduced buffer would suffice to avoid impacts to the species. All special-status plant species identified on site shall be mapped with a submeter GPS device and depicted on a site-specific aerial photograph and topographic map and included on any construction, grading, fuel modification, or other pertinent plans.** ~~Consultation with CDFW may be required to develop a mitigation plan or additional avoidance and minimization measures. If project-related impacts to rare plants within the project site are unavoidable.~~ **If avoidance of special-status plant species is**

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not feasible, a Special-Status Plant Relocation Plan shall be developed and implemented. The Special-Status Plant Relocation Plan shall address mitigation for special-status plants, including topsoil salvage to preserve seed bank and management of salvaged topsoil; seed collection, storage, possible nursery propagation, and planting; salvage and planting of bulbs as feasible; location of on-site receptor sites; land protection instruments for receptor areas; and funding mechanisms. The Special-Status Plant Relocation Plan shall include methods, monitoring, reporting, success criteria, adaptive management, and contingencies for achieving success. Mitigation measures that may be implemented if the species is observed include establishing a no disturbance buffer around locations of individuals or a population, salvage or seed collection, and additional monitoring requirements. The Project proponent shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank or land acquisition and conservation at a minimum 2:1 (replacement to impact) ratio for occupied habitat should success criteria not be met, or presence of the species is assumed based on suitable habitat acreage within the Project area. Note that a higher ratio may be warranted if the proposed mitigation lands are located far away from the Project site.

COMMENT 2:

Section: Evaluation of Environmental Impacts: Biological Resources, **Page:** 48

Issue: The Project occurs within the range of the desert kit fox (*Vulpes macrotis*), 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, as well as the American badger (*Taxidea taxus*), a Species of Special Concern (SSC). CDFW recommends surveys, following appropriate methodology, be conducted over all areas proposed to be directly or indirectly affected by the Project to determine presence/absence.

Specific impact: The staging of construction equipment, vehicles, and any foot traffic may result in the collapse of occupied burrows and result in the direct mortality and/or injury to desert kit fox and American badger. Project construction and activities may result in the injury or mortality of desert kit fox and American badger.

Why impact would occur: The impact analysis identified desert kit fox as a special-status species with high potential to occur on the Project site and the American badger as a special-status species with a moderate potential to occur on the Project site. However, CDFW is concerned that an impact analysis of said species was not properly established as there have been no surveys conducted for presence, absence, or sign of presence of desert kit fox and American badger.

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Evidence impact would be significant: The desert kit fox is protected from take (See Cal. Code Regs., tit. 14, § 460). American badger is an SSC and protected from take without appropriate licensure (See Cal. Code Regs., tit. 14, § 461). CEQA provides protection for not only CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. American badger is SSC that meets the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). American badger is SSC that meets the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380).

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact Shortcoming)

Mitigation Measure: BIO-26

To reduce impacts to less than significant:

CDFW recommends that surveys following appropriate methodology be conducted over all areas proposed to be directly or indirectly affected by the Project to determine the presence or absence of this species and the number of desert kit fox and American badger that are present, as well as document sign of presence. This survey may be combined with a burrowing owl breeding survey should each burrow be evaluated for each species and documented.

If desert kit fox or American badger are found or have the potential to occupy the Project site due to the presence of sign, CDFW recommends the lead agency require species-specific avoidance, minimization, and monitoring measures aimed at avoiding direct impacts to desert kit fox and American badger. Avoidance and minimization measures should include pre-activity surveys following appropriate 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. The measures should also include detailed monitoring requirements and methods of exclusion/passive relocation to be conducted, and methods and timing of den excavation. CDFW recommends the following Mitigation Measure be added to the MND:

Mitigation Measure BIO-26. Desert Kit Fox and American Badger: Prior to the beginning of surface disturbance, the Project Biologist shall conduct a pre-Project 10-meter transect survey (or reduced based on topography and vegetation), to attain 100% visual coverage within the Project area and a minimum 200-meter buffer to determine the presence or absence of desert kit fox and/or American badger individuals, dens, and sign. If potential dens are located, they shall be monitored by the Project Biologist. Trail cameras may be used to assist with observation but shall not be the sole basis upon which the status is determined. The Project proponent shall provide the results of the survey to CDFW prior to start of Project activities. Project proponent shall

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provide a determination if active dens can be avoided and buffered from Project activities to prevent take and disturbance with the survey results. Should active dens be present within the Project area that cannot be avoided with an adequate buffer, the Project proponent shall reschedule Project activities or submit a monitoring and passive relocation plan for CDFW's review and approval. No disturbance or passive relocation of active dens may take place during the breeding season or when juveniles are dependent on parental care.

COMMENT 3:

Section: Evaluation of Environmental Impacts: Biological Resources, **Page:** 55

Issue: The Project may impact burrowing owl, a California Species of Special Concern (SSC). Breeding surveys and non-breeding surveys were not performed for burrowing owl, therefore, the MND has not established an environmental baseline for this species. BIO-4 conditions a pre-construction survey to be performed to determine species presence of burrowing owl following the *Staff Report on Burrowing Owl Mitigation* (CDFG, March 2012). CDFW considers the BIO-4 to be an avoidance measure rather than a mitigation measure.

Specific impact: Mitigation measure BIO-4 does not address the high potential for species presence (ECORP Consulting, Inc., 2023). Additionally, the MND did not analyze the Project's impact on the species nor did it identify mitigation requirements for the loss of nesting burrows, satellite burrows, foraging habitat, dispersal and migration habitat, wintering habitat, and habitat linkages, including habitat supporting prey and host burrowers and other essential habitat attributes.

Why impact would occur: The MND lacks sufficient information to determine whether the site is occupied by the species and whether there would be a significant impact. determines environmental baseline and impacts for the species based on one reconnaissance survey that lacks the temporal consideration of species occupancy and their use of the surrounding landscape for survival. Mitigation measure BIO-4 only requires buffering individuals, then either excluding the species from the burrow or waiting for the species to leave the burrow after breeding season. Burrowing owls are dependent on burrows at all times of the year for survival and/or reproduction, evicting them from nesting, roosting, and satellite burrows may lead to direct and indirect impacts or take. Loss of access to burrows will likely result in varying levels of increased stress on burrowing owls and could depress reproduction, increase predation, increase energetic costs, and introduce risks posed by having to find and compete for available burrows (CDFG, 2012). CDFW considers habitat to be occupied when at least one burrowing owl, or its sign at or near a burrow entrance, is observed within the last three years (CDFG, 2012).

Evidence impact would be significant: Take, possession or destruction of individual burrowing owls, their nests and eggs is prohibited under Fish and Game

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Code sections 3503, 3503.5 and 3513. Eviction of burrowing owls is a potentially significant impact under CEQA, and mitigation must be roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15126.4(a)(4)(B), 15064, 15065, and 16355). As stated in the *Staff Report on Burrowing Owl Mitigation* (CDFG, 2012), “the current scientific literature supports the conclusion that mitigation for permanent habitat loss necessitates replacement with an equivalent or greater habitat area for breeding, foraging, wintering, dispersal, presence of burrows, burrow surrogates, presence of fossorial mammal dens, well drained soils, and abundant and available prey within close proximity to the burrow”.

Additionally, the California Fish and Game Commission has received a formal petition to change the status of burrowing owls to threatened or endangered which could potentially make take of this species under purview of CESA should the species become a candidate species later this year.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

Mitigation Measure BIO-4:

To reduce impacts to less than significant:

CDFW recommends surveys be performed per the guidance of the *Staff Report on Burrowing Owl Mitigation* (CDFG, 2012), assess the impact within the MND, and update the proposed mitigation measure to include avoidance, minimization, and mitigation for burrowing owls identified on-site, and these same measures be applied to any individuals found during take avoidance surveys as conditions by the proposed mitigation measure. CDFW recommends the guidance of mitigating impacts to burrowing owls in the *Staff Report on Burrowing Owl Mitigation* (CDFG, 2012) be followed, including (a) permanent impacts to nesting, occupied and satellite burrows and/or burrowing owl habitat such that the habitat acreage, number of burrows and burrowing owls impacted are replaced with 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) sufficiently large acreage, and presence of fossorial mammals.

Due to the potential for the species to become a candidate under CESA, the impact analysis and appropriate mitigation measures within the MND are needed to support the issuance of any incidental take permit should the project proponent need to seek take authorization as provided by the Fish and Game Code.

BIO-4. Burrowing Owl Avoidance, and Minimization, and Mitigation: ~~Take avoidance (pre-construction)~~ **Four breeding season** surveys for burrowing owl shall be completed prior to project construction **by a qualified avian biologist.**

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Surveys shall be conducted as detailed within Appendix D of the Staff Report on Burrowing Owl Mitigation (California Department of Fish and Game [CDFG] 2012). **This survey shall include 100 percent coverage of the Project site. A report summarizing the breeding season surveys including all requirement for survey reports shall be submitted to CDFW for review and approval. If burrowing owl or sign thereof is not detected, no further action is necessary. construction may proceed.**

If burrowing owl, active burrowing owl burrows, or sign thereof are found, the qualified avian biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be reviewed and approved by CDFW prior to commencing Project activities. The plan shall propose mitigation for permanent impacts to nesting, loss of foraging habitat, occupied and satellite burrows and/or burrowing owl habitat such that the habitat acreage, number of burrows and burrowing owls impacted are replaced with permanent conservation of similar vegetation communities to provide for burrowing owl nesting, foraging, wintering, and dispersal comparable to or better than that of the impact area. The mitigation land shall be sufficiently large acreage with presence of fossorial mammals. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter, and dispersal opportunity, and remove or control of population stressors. Permanent protection of mitigation land shall be through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission. The project proponent shall develop and implement a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment. If deemed appropriate by CDFW, conservation species credits may also be purchased at a CDFW-approved conservation bank.

To ensure that the Project avoids impacts to burrowing owl, a qualified avian biologist shall complete a take avoidance survey no less than 14 days prior to initiating ground disturbing activities using the recommended methods described in the Staff Report on Burrowing Owl Mitigation (CDFG, 2012). Burrowing owls may recolonize a site after only a few days. Time lapses between Project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance. ~~is identified during the non-breeding season (September 1 through January 31), then a 50-meter buffer will be established by the biological monitor. Construction within the buffer will be avoided until a qualified biologist determines that burrowing owl is no longer present or until a CDFW-approved exclusion plan has been implemented. The buffer distance may be reduced if noise attenuation buffers such as hay bales are placed between the occupied burrow and construction activities.~~

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~~• If burrowing owl is identified during the breeding season (February 1 through August 31), then an appropriate buffer will be established by the biological monitor in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012). Construction within the buffer will be avoided until a qualified biologist determines that burrowing owl is no longer present or until young have fledged. The buffer distance may be reduced in consultation with CDFW if noise attenuation buffers such as hay bales are placed between the occupied burrow and construction activities.~~

II. Mitigation Measure or Alternative and Related Impact Shortcoming

Would the Project interfere substantially with movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede use of native wildlife nursery sites?

COMMENT 4:

Section: Evaluation of Environmental Impacts: Biological Resources, **Page:** 50

Issue: Bat roosting habitat has been identified on the Project site. CDFW has concern with the impact that the Project will have on a potential native wildlife nursery site and/or critical resource for bat species. Additionally, two SSC, Pallid bat (*Antrozous pallidus*) and Townsend's big-eared bat (*Corynorhinus townsendii*) may be present.

Specific impact: Removal of existing roosting structures, construction disturbance including noise, light and vibration, and loss of foraging habitat may impede continued use of the existing maternity colony roosting site in the abandoned building and outhouse structure in the northwest corner of the Project site.

Why impact would occur: The reconnaissance survey indicated signs of bat use and a possible maternity roost location, but the time of survey (October 2022) is outside of bat maternity season. The MND does not include focused bat surveys during appropriate seasons, and thus does not include an adequate baseline evaluation from which to determine impacts or mitigation measures. BIO-8 defers mitigation by requiring a Bat Management Plan or additional avoidance and minimization measures to be developed and implemented at a later date, should the need be identified through focused initial site clearing surveys. All mitigation and avoidance and minimization measures required to bring impacts to species to less than significant should be contained within the MND.

Evidence impact would be significant: Bat species are protected by the California Fish and Game Code § 4150 (§ 4150 prohibits the take of naturally occurring nongame mammals, including bats). Bat maternity roosting habitats are protected as native wildlife nursery sites, and impediment of a site may be

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considered significant under CEQA. Pallid bats are very sensitive to disturbance of roosting sites, which are essential for metabolic economy, juvenile growth, and night roosts (Zeiner, 1990). Pallid bats can roost in flats, which make them susceptible to solar development (P. Brown, personal communication, September 23, 2023). Roosting sites for Townsend's big-eared bat are the most important limiting resource for the species, and sites have high fidelity if left undisturbed. Townsend's big-eared bats are extremely sensitive to disturbance of roosting sites and a single visit may result in abandonment of the roost (Zeiner, 2000). Abandonment of Townsend's big-eared bats roosts by females due to brief human disturbance has also been documented, causing mortality to their young through starvation (P. Brown, personal communication, September 23, 2023). Loss of night roosts may increase energy expenditure and may result in mortality if energy loss is not compensated for by increased prey intake. If lactating females have increased energy expenditure, it may result in limited energy allocation towards dependent young and increase juvenile mortality (Chaverri and Kuntz, 2011).

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

Mitigation Measure: BIO-8

To reduce impacts to less than significant: CDFW requests the lead agency engage in consultation on this topic with CDFW regional staff due to the high potential for significant impacts to a roosting site. CDFW recommends the use of long-term acoustic monitoring within the Project area during different times of year to determine the annual cycle of bat activity and species composition. Also, CDFW highly recommends ICPDS require a qualified bat biologist conduct appropriate surveys and prepare a Bat Management Plan that will adequately avoid impacts to the specific bat species utilizing the roost. CDFW also proposes the following edits to BIO-8.

BIO-8. Focused Bat Surveys and Preparation of a Bat Management Plan: All suitable roosting and foraging habitat for local or migratory bat species known to the Project area, including special status species, found within the Project site and adjacent land shall be surveyed throughout no more less than one year, prior to initial site clearing activities. The surveys focused surveys for special status bat species shall be completed by a qualified bat biologist whose resume shall be reviewed and approved by CDFW. Surveys shall include determination of to determine the approximate size of the colony(s), and species present. At the discretion of the qualified bat biologist, and the features being used within the abandoned building and adjacent outhouse structure in the northwest corner of the project site may be examined using appropriate methods to avoid roost and/or young abandonment due to disturbance. The Focused surveys shall include a combination of nighttime emergence counts and acoustic techniques (full spectrum bat acoustic detectors) appropriate for the roosting

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habitat and time of year, **visual and aural surveys (observation during foraging period), and inspection for suitable habitat and bat sign (e.g. guano).** At a minimum, ~~focused~~ **Surveys shall be conducted during the spring, summer, fall, and winter to determine how the habitat is being used by bats throughout the year, including foraging patterns and habitat, and the presence overwintering bats,** with at least two surveys conducted during the maternity season to determine a pre- and post-volant count of colonies present.

If roosting bats, **of any status,** are found during the surveys, **the bats and roosts shall be avoided to the maximum extent practicable with consideration of the most disturbing Project activities and their effect (e.g. pile driving).** A Bat Management Plan prepared **by the qualified bat biologist** identifying situation-specific and species-specific avoidance and minimization measures to reduce impacts to roosting **and foraging** bats shall be prepared **for CDFW's review, approval, and implementation** prior to the commencement of initial site clearing activities. The Bat Management Plan shall include, as appropriate to the findings of the ~~focused~~ surveys and roosting habitat affected, **a construction schedule to avoid roosting season,** spatial and temporal avoidance measures, no-disturbance buffers, passive exclusion of bats outside of the maternity season (if necessary), and identification of species-specific replacement or alternative habitat to mitigate for permanent maternity roosting habitat loss. **If roosts cannot be avoided or it is determined that construction activities will cause roost abandonment, a mitigation plan addressing exclusion and passive relocation procedures and impact compensation will be developed. The mitigation plan will be developed in consultation with CDFW and the qualified bat biologist. Roost and foraging habitat shall be replaced in-kind prior to any exclusion. Any exclusion and passive relocation efforts shall avoid periods of sensitive activity (e.g. hibernation or maternity season) and may require several seasons for bats to discover alternative roosting sites.**

COMMENT 5:

Section: Evaluation of Environmental Impacts: Biological Resources, **Page 51**

Issue: CDFW appreciates the inclusion of BIO-2's mention of migratory bird powerline collision risk and the project's intent to minimize collisions by following the 2012 Avian Power Line Interaction Committee's Reducing Avian Collisions with Power Lines guidelines. However, CDFW considers the Mitigation Measure to be lacking information on specifics for how these protections will take place.

Specific impact: The protection options given are to bury the electrical components where feasible or protect lines. Burying electrical components is only feasible/applicable if lines contain voltage less than 345kV, and dependent on variables such as type of cable, land use patters, soil conditions, regulatory acceptance, outage risks and reliability requirements, termination facility

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requirements, length and operating limits, and other environmental concerns. The variables listed make burying lines rarely feasible (APLIC, 2012). The mitigation measure also does not list specific details on how the electrical components will be protected.

Why impact would occur: Collisions of birds and powerlines are more likely to occur in migratory waterfowl and raptors, which are a large portion of the Pacific Flyway known to migrate through the Salton Sea area in which the Project is located, and raptors.

Evidence impact would be significant: Migratory waterfowl, such as Gaviformes, Pelecaniformes, Ciconiiformes, Anseriformes, and Podicipediformes, are all common families found along the Pacific Flyway, and birds associated with powerline collisions (Bevanger, 1998). Falconiformes and Strigiformes are also more susceptible to powerline collision. All bird families listed above are protected by the USFWS Migratory Bird Treaty Act, while Falconiformes and Strigiformes are protected by California Fish and Game Code section 3503 and 3503.5.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

Mitigation Measure BIO-2:

To reduce impacts to less than significant:

~~BIO-2. General Impact Avoidance and Minimization Measures.~~ **Minimization of Impacts to Migratory Birds, Bats, and Raptors:** To reduce indirect impacts on migratory birds, bats, and raptors, the project shall comply with APLIC 2012 Guidelines for overhead utilities, as appropriate, to minimize avian collisions with transmission facilities (APLIC 2012). All electrical components on the project site shall either be underground or **the transmission lines and poles will follow design plans recommended by APLIC (i.e., installing covers over the insulator and conductor on the center phase, installing phase covers over all three insulators and conductors for three phase transmission lines, lowering and/or replacing the crossarm with a longer cross arm on pole-top pin constructions), or utilizing link marking devices (e.g., aerial marker spheres, spirals, or suspended devices).** ~~protected so that there will be no exposure to wildlife and therefore no potential for electrocution.~~

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?

COMMENT 6:

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Section: Evaluation of Environmental Impacts: Biological Resources, **Page:** 57

Issue: The Draft Aquatic Resource Delineation Report (Hernandez Environmental Services, 2023) is based on literature review and a field survey conducted over the course of one day for the entire 285.75-acre Project site. The document identifies 66.27 acres of ephemeral streams in the study area. CDFW disagrees with this assessment and believes additional areas subject to Fish and Game Code section 1602 may be present in the immediate project vicinity. Additionally, BIO-10 Aquatic Resources Agency Permitting uses regulatory permits from various agencies, including CDFW, as a mitigation measure to reduce potential impacts to riparian areas. Specific mitigation measures are deferred to the permitting process.

Specific Impact: Project activities, including grading, solar panel installation, battery energy storage system, on-site substation, off-site gen-tie line, vehicle and equipment staging, and site access could divert or obstruct stream flows, substantially alter the bed, bank, or channel of a stream, and/or deposit or dispose of material into streams in the Project area. For any such activities, the Project Applicant should provide written notification per Fish and Game Code section 1602. Absent notification, the Project could result in impacts to stream resources that should otherwise be avoided, minimized, or mitigated in the CEQA document and addressed in a streambed alteration agreement with CDFW. The MND states impacts may occur to resources subject to Fish and Game Code section 1602. Deferring the development of mitigation measures does not reduce impacts to a less than significant determination.

Why impact would occur: Project implementation will result in physical changes to the landscape (e.g., grading) and will physically alter streambed resources. The MND relies on the Draft Aquatic Resources Delineation Report (Hernandez Environmental Services, 2023), which does not identify the full extent of ephemeral stream resources within the Project evidenced in aerial imaging. The Jurisdictional Delineation report relies on identification of Ordinary High Water Mark (OHWM) which is relevant for federal permitting purposes, but does not define the extent of areas subject to notification under Fish and Game code section 1602. A stream is more properly defined by the topographic elevations of land which confine flows to a particular course when the waters have risen to their highest extent. CDFW views streams as whole systems and looks for the banks that define the entire system, not just the OHWM where the low flow channel is observed. In arid environments streams can be very wide and shallow yet will still be generally confined to a course by subtle topography. As such, the MND does not sufficiently evaluate or address the specific potentially significant impacts to aquatic features. Without identification of such impacts, adequate mitigation measures cannot be developed. The MND does not provide clear performance standards for what any future mitigation will achieve.

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Evidence impact would be significant: Under the CEQA Guidelines § 15126.4, mitigation measures should be implemented to address significant impacts that have been identified through environmental analysis. Formulation of mitigation measures should not be deferred to a future time, unless the Lead Agency has provided a legitimate reason to not include the mitigation measures at the time of the Project's environmental review, which the Lead Agency has not provided in the MND. While compliance with regulatory permits may be identified as mitigation, the measures must reduce significant impacts based on substantial evidence, which the MND does not include.

California places great value on streams and the resources they provide. CDFW has authority over activities in rivers, streams and lakes that may substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake (Fish & G. Code §1602). For any such activities, the Project applicant should provide written notification of Lake and Streambed Alteration to CDFW and obtain a Lake and Streambed Alteration Agreement pursuant to Fish and Game Code section 1602.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

Mitigation Measure: BIO-10

To reduce impacts to less than significant: CDFW recommends the Draft Aquatic Resources Delineation Report (Hernandez Environmental Services, 2023) be re-evaluated per CDFW's comments to accurately reflect the acreage of impact the Project will have on areas subject to Fish and Game Code section 1602. Should the Project be unable to avoid impacts to stream resources, the Project applicant will need to notify CDFW per Fish and Game Code section 1602. Fish and Game Code section 1602 requires any 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. CDFW provides editorial comments to BIO-10 below.

BIO-10 Aquatic Resources Regulatory Permitting: ~~If p~~ **Project-related impacts that will occur to the riparian areas or areas subject to Fish and Game Code section 1602 shall be mitigated at a minimum of 2:1 ratio (two acres of mitigation for**

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every impact to one acre of resource). The Project proponent shall obtain all necessary regulatory permits for resources ~~that may also fall under the jurisdiction of the USACE, CDFW, and/or RWQCB, a regulatory permit with these agencies is needed~~ prior to the impact occurring. Refer to the Aquatic Resource Delineation Report or the North Star 3 Project (Appendix D of this Initial Study) for preliminary determination of regulatory limits ~~that~~ **of** areas that may be regulated by USACE, CDFW, or RWQCB. Permitting includes preparation and submittal of a Pre-Construction Notification under Section 404 of the federal CWA, an Application for Water Quality Certification under Section 401 of the federal CWA and a notification of Lake or Streambed Alteration under Section 1600 of the California Fish and Game Code. A completed CEQA document, and Notice of Determination, will be necessary to submit along with the applications. Other items such as finalized project plans, quantities of fill material, supporting technical studies, etc., are also submitted along with the applications. As a part of this process, the project must also identify and approve mitigation through the respective agencies.

Mitigation ~~can~~ **shall** include: ~~onsite or offsite options or~~ **land acquisition that is conserved and managed in perpetuity for the resource;** ~~could include,~~ payment of an in-lieu fee to a conservation organization; **and/or.** ~~Types of mitigation can include~~ restoration, creation, rehabilitation, enhancement, or other types of habitat improvement. ~~Typically,~~ **final** ~~acreage of mitigation is negotiated~~ **shall be approved by** with the regulatory agencies during the permitting process.

Multiple Biological Resource Environmental Issue Areas

COMMENT 7:

Section: Evaluation of Environmental Impacts: Biological Resources, **Page:** 56

Issue: The Project site contains CDFW-classified Sensitive Natural Communities, which had on-site observations of two CDFW-ranked SSC (loggerhead shrike (*Lanius ludovicianus*) and long-eared owl (*Asio otus*)) during the reconnaissance survey.

Specific impact: The MND does not specify which habitat types will be directly impacted by the Project components or what the direct impacts will be. Without any identifiable impacts, necessary mitigation to reduce impacts to a less than significant level cannot be evaluated. While CDFW agrees a minimum mitigation ratio of 3:1 in BIO-9 Compensatory Mitigation is appropriate, the MND is unclear in what specifically will be mitigated. BIO-9 Compensatory Mitigation also does not specify how or what avoidance measures will be included in plans to avoid impacts to Sensitive Natural communities, and the SSC that rely upon these habitats.

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Why impact would occur: The MND lists iodine bush scrub (*Allenrolfea occidentalis* shrubland alliance), blue palo verde – ironwood woodland (*Parkinsonia florida* – *Olneya tesota* woodland alliance), and bush seepweed scrub (*Suaeda [moquinii] nigra* shrubland alliance), as Sensitive Natural Communities, but does not provide specific impacts to these communities.

Two CDFW-ranked SSC, loggerhead shrike (*Lanius ludovicianus*) and long-eared owl (*Asio otus*), were discovered within/near the Project site in creosote bush scrub and blue palo verde – ironwood woodland, respectively. The MND states that the desert scrub and woodland habitats could act as potential corridors and nursery sites for migrating wildlife. However, because specific impacts to the Sensitive Natural Communities are unknown, impacts to potential wildlife corridors and nursery sites are also undetermined.

Evidence impact would be significant: Iodine bush scrub, blue palo verde – ironwood woodland, and bush seepweed scrub, are all listed on the CDFW Vegetation Classification and Mapping Program's (VegCAMP) Sensitive Natural Communities Only by Life Form list (CDFW, 2023). Loggerhead shrike and long-eared owl are both listed as SSC by CDFW. The CEQA Guidelines § 15380 stipulates that species which meet the sensitivity criteria outlined therein should be included in CEQA impacts analysis. Loggerhead shrike and long-eared owl meet CEQA's definition of rare, threatened, or endangered species, therefore requiring further study to determine impacts.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact Shortcoming)

Mitigation Measure BIO-9:

To reduce impacts to less than significant:

BIO-9. Compensatory Mitigation: To the greatest extent possible, plans shall avoid impacts to blue palo verde/ironwood woodland, bush seepweed scrub, and iodine bush scrub. If blue palo verde/ironwood woodland, bush seepweed scrub, and iodine bush scrub cannot be avoided, the project applicant **shall will** provide compensatory mitigation for direct impacts consisting of habitat **acquisition**, establishment, or enhancement through an **resource** agency-approved in-lieu fee program, **and/or resource agency approved mitigation or** conservation bank at a minimum of a 3:1 ratio. **Habitat acquisition sites shall be biologically equal or superior to existing conditions and must be conserved and managed in perpetuity.**

COMMENT 8:

Section: Evaluation of Environmental Impacts, **Pages:** 51-54

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Issue: CDFW is concerned with the length and number of topics provided in BIO-2 General Impact Avoidance and Minimization Measures, as well as their ability to reduce impacts to biological resources to less than significant.

Specific impact: The Mitigation Measure written for BIO-2 is not focused and too general. Each of the measures included in BIO-2 should be separated into its own Mitigation Measure and compiled into a Mitigation Monitoring Reporting Plan (MMRP) for enforceability and compliance of on-site personnel during Project activities.

Why impact would occur: Mitigation Measures given should be focused on a singular issue per measure, as opposed to listing several general measures. The purpose of mitigation and minimization measures is to reduce the impact of a project to less than significant for each separate issue or biological resource that is anticipated to be impacted.

Evidence impact would be significant: A blanket measure covering many topics is less effective in being properly tracked in an MMRP, as each measure is required to be checked individually for compliance and may have a different party responsible for its compliance, depending on the subject of the measure.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

To reduce impacts to less than significant:

Mitigation Measure: BIO-11 - BIO-25

CDFW provides the following renumbering of mitigation measures as well as editorial comments explained in Section IV. Editorial Comments and/or Suggestions below.

Mitigation Measure BIO-11. Project Biologist: The Project proponent shall designate a Project Biologist who shall be responsible for overseeing compliance with protective measures for biological resources during vegetation clearing and work activities within and adjacent to areas of native habitat. The Project Biologist shall be familiar with the local habitats, plants, and wildlife, **and have experience performing all necessary surveys and monitoring for biological resources present on site.** The Project Biologist shall also maintain communications with the Contractor to ensure that issues relating to biological resources are appropriately and lawfully managed and shall monitor construction. The Project Biologist shall monitor **all ground disturbing activities** within construction areas, **including activities** during nesting bird season (generally February 1 to September 15), **such as** vegetation removal, the implementation of Best Management Practices (BMPs),

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and installation of security fencing to protect native species. The Project Biologist shall ensure that all wildlife and regulatory agency permit requirements, conservation measures, and general avoidance and minimization measures are properly implemented and followed.

Mitigation Measure BIO-12. Project Site Delineation: The boundaries of all areas to be newly disturbed (including solar facility areas, staging areas, access roads, and sites for temporary placement of construction materials and spoils) shall be delineated with stakes and flagging prior to disturbance. All disturbances, vehicles, and equipment shall be confined to the flagged areas. Stockpiling of material shall only be allowed within established work areas.

Mitigation Measure BIO-13. Wildlife Entrapment Avoidance: No potential wildlife entrapments (e.g., trenches, bores) shall be left uncovered overnight. Any uncovered pitfalls will be excavated to 3:1 slopes at the ends to provide wildlife escape ramps. Alternatively, man-made ramps may be installed. Covered pitfalls will be covered completely to prevent access by small mammals or reptiles.

To avoid wildlife entrapment (including birds), all pipes or other construction materials or supplies shall be covered or capped in storage or laydown areas, and at the end of each **construction** workday ~~in construction, quarrying and processing/handling areas~~. No pipes or tubing of sizes or inside diameters ranging from 1 to 10 inches shall be left open either temporarily or permanently.

Mitigation Measure BIO-14. Rodenticide: No anticoagulant rodenticides, such as Warfarin and related compounds (indandiones and hydroxycoumarins), shall be used within the project site, ~~on off-site project facilities and activities~~, or in support of any other project activities.

Mitigation Measure BIO-15. Trash Abatement: All trash and food-related waste shall be placed in self-closing containers and removed regularly from the site to prevent overflow. Workers shall not feed wildlife.

Mitigation Measure BIO-16. Project Site Speed Limit: To minimize the likelihood for vehicle strikes on wildlife, speed limits shall not exceed 15 miles per hour when driving on access roads. All vehicles required for O&M must remain on designated access/maintenance roads.

Mitigation Measure BIO-17. Artificial Lighting: Avoid nighttime construction lighting or if nighttime construction cannot be avoided, use shielded directional lighting pointed downward and towards the interior of the project sites, thereby avoiding illumination of adjacent natural areas and the night sky.

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Mitigation Measure BIO-18. Equipment Mufflers: All construction equipment used for the projects shall be equipped with properly operating and maintained mufflers.

Mitigation Measure BIO-19. Hazardous Substances: Hazardous materials and equipment stored overnight, including small amounts of fuel to refuel hand-held equipment, shall be stored within secondary containment when within 50 feet of open water **or resources subject to Fish and Game Code section 1602** to the fullest extent practicable. Secondary containment shall consist of a ring of sandbags around each piece of stored equipment/structure. A plastic tarp/visqueen lining with no seams shall be placed under the equipment and over the edges of the sandbags, or a plastic hazardous materials secondary containment unit shall be utilized by the Contractor. The Contractor will be required to conduct vehicle refueling in upland areas where fuel cannot enter waters of the U.S. **or areas subject to Fish and Game Code section 1602**, and in areas that do not have potential to support federally threatened or endangered species. Any fuel containers, repair materials, including creosote-treated wood, and/or stockpiled material that is left on site overnight, shall be secured in secondary containment within the work area and staging/assembly area and covered with plastic at the end of each workday. In the event that no activity is to occur in the work area for the weekend and/or a period of time greater than 48 hours, the Contractor shall ensure that all portable fuel containers are removed from the project site. All equipment shall be maintained in accordance with the manufacturer's recommendations and requirements. Equipment and containers shall be inspected daily for leaks. Should a leak occur, contaminated soils and surfaces will be cleaned up and disposed of following the guidelines identified in the Stormwater Pollution Prevention Plan or equivalent, Materials Safety Data Sheets, and any specifications required by other permits issued for the project. The Contractor shall utilize off-site maintenance and repair shops as much as possible for maintenance and repair of equipment. If maintenance of equipment must occur onsite, fuel/oil pans, absorbent pads, or appropriate containment will be used to capture spills/leaks within all areas. ~~Where feasible, m~~**Maintenance** of equipment shall occur in upland areas where fuel cannot enter waters of the U.S. **or areas subject to Fish and Game Code section 1602**, and in areas that do not have potential to support federally threatened or endangered species.

Mitigation Measure BIO-20. Firearms and Pets: Project personnel and any other individuals associated with the Project are prohibited from bringing any firearms or dogs on the Project Area during, except those in the possession of authorized security personnel or local, state, or federal law enforcement officials, dogs that may be used to aid in official and approved monitoring procedures/protocols, or service dogs under Title II and Title III of the **American with Disabilities Act**. ~~Firearms,~~ Open fires, and pets shall be prohibited at all work locations and access roads. Smoking shall be prohibited along the Project alignment.

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Mitigation Measure BIO-21. Best Management Practices: Appropriate BMPs shall be used by the Contractor to control erosion and sedimentation and to capture debris and contaminants from construction to prevent their deposition in waterways. Erosion and sediment control devices used for the proposed project, including fiber rolls and bonded fiber matrix, shall be made from biodegradable materials such as jute, with no plastic mesh, to avoid creating a wildlife entanglement hazard.

Mitigation Measure BIO-22. Cross-country Vehicle Use: Cross-country vehicle and equipment use outside of approved designated work areas and access roads shall be prohibited to prevent unnecessary ground and vegetation disturbance.

Mitigation Measure BIO-23. Injured or Dead Wildlife: Any injured or dead wildlife encountered during project-related activities shall be reported to the Project Biologist, biological monitor, CDFW, or a CDFW-approved veterinary facility as soon as possible to report the observation and determine the best course of action. For special-status species, the Project Biologist shall notify **by phone or email** the County, USFWS, and/or CDFW, as appropriate, within 24 hours of the discovery.

Mitigation Measure BIO-24. Checking Beneath Vehicles: The ground beneath all parked equipment and vehicles shall be inspected for wildlife before moving.

Mitigation Measure BIO-25. Fugitive Dust Abatement: Water applied to dirt roads and construction areas for dust abatement shall be used the minimal amount needed to meet safety and air quality standards to prevent the formation of puddles, which could attract wildlife. Pooled rainwater or floodwater ~~within retention basins~~ shall be removed to avoid attracting wildlife to the active work areas.

COMMENT 9:

Section: Evaluation of Environmental Impacts, **Page:** 51

Issue: CDFW appreciated the inclusion of a mitigation measure for avoidance and minimization of invasive species in BIO-2 General Impact Avoidance and Minimization Measures.

Specific Impact: CDFW is concerned with the effectiveness of the measure at avoiding and minimizing introduction of invasive plant species to Project Site.

Why Impact Would Occur: The measure included the use of chemical removal but gave no conditions or guidelines to follow in the event that herbicides will be used on the Project site. The potential to transport seeds onto the site are also included, but the measures to limit that potential are lacking.

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Evidence Impact Would Be Significant: Use of chemical removal is regulated by the California Department of Pesticide Regulation and requires guidelines be met. Without the guidelines of properly preventing the transport of invasive seed onto the Project site, the potential for seed transport increases.

Recommended Potentially Feasible Mitigation Measure(s) Regarding Mitigation Measure or Alternative and Related Impact Shortcoming:

Mitigation Measure: BIO-26

To reduce impacts to less than significant: CDFW recommends the following edits to the mitigation measure for avoidance and minimization of invasive species.

BIO-26. Invasive Plants: The Contractor shall actively manage the spread of **invasive and nonnative plants** ~~noxious weeds~~ by implementing weed control activities, including, but not limited to, cleaning equipment and inspecting equipment prior to transport to the sites and cleaning of tires and **underside of** equipment prior to leaving the site, **vacuuming and cleaning the interior of vehicles and heavy equipment that have been used off-site before bringing them to the Project site, clean by pressure washing, washing in hot water, freezing, or bleaching personal gear and clothing, including footwear, that have been worn offsite before bringing them to the Project site, and not transporting soil or other fill material from off-site locations to the Project area unless they are certified weed free.** The introduction of exotic, nonnative, weed, and/or invasive plant species will be avoided and controlled wherever possible, and may be achieved through physical or chemical removal and prevention, limiting the size of any vegetation and/or ground disturbance to the absolute minimum, and limiting ingress and egress to defined routes. Preventing exotic plants from entering the site via vehicular sources will include measures such as cleaning vehicles coming into and going from the site. **Any use of herbicide for chemical removal of invasive and nonnative plants shall only use herbicides containing a harmless dye and registered with the California Department of Pesticide Regulation (DPR). All herbicides shall be applied in accordance with regulations set by the DPR. All herbicides shall be used according to label instructions. Labeled instructions of the herbicide used shall be made available to CDFW upon request. No herbicide application when winds are greater than five (5) miles per hour.**

III. Editorial Comments and/or Suggestions

In the Environmental Checklist Form on page 9, number 10 identifies, "Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement)." CDFW is not listed as a public agency whose approval is required despite the presence of resources subject to Fish and Game Code section 1602. CDFW suggests the department is added to the list.

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The mitigation measure proposed in BIO-2 (now recommended by CDFW to be BIO-11) does not specify the Project Biologist is required to be on-site during all ground disturbing activities, which is when most impact will occur to biological resources. CDFW recommends the lead agency require a Project Biologist on-site during all ground disturbance. Additionally, CDFW recommends the lead agency ensures the Project biologist is qualified and has experience conducting the species-specific surveys required for this Project, and monitoring of species present on site.

The mitigation measure proposed in BIO-2 (now recommended by CDFW to be BIO-13) regarding wildlife entrapment appears to refer to project activities and areas that are more correlated with a quarry project (quarrying and processing/handling areas). CDFW recommends the lead agency remove this language and update as it is likely erroneously provided in the measure.

The mitigation measure proposed in BIO-2 (now recommended by CDFW to be BIO-14) mentions use of rodenticides. The measure mentions off-site project facilities and activities. As the MND does not include off-site project facilities or activities, CDFW recommends this measure be edited for clarity.

The mitigation measures in BIO-2 that reference Waters of the US (now recommended by CDFW to be BIO-19) should also mention areas subject to Fish and Game Code section 1602. As written in the MND, only federal regulation is being considered. Such activities would warrant notification to CDFW.

CDFW provides suggested language to mitigation measures in BIO-2 that reference firearms and pets (now recommended by CDFW to be BIO-20).

CDFW provides suggested language to mitigation measures in BIO-2 that reference injured and dead wildlife (now recommended by CDFW to be BIO-23).

The mitigation measure proposed in BIO-2 (now recommended by CDFW to be BIO-25) for fugitive dust abatement mentions retention ponds. CDFW recommends retention ponds be eliminated from any site plans to remove potential risk to biological resources.

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>.

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ENVIRONMENTAL DOCUMENT FILING FEES

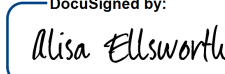
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental 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 ICPDS in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Lily Mu, Senior Environmental Scientist (Specialist) at (909) 544-2521 or Lily.Mu@Wildlife.ca.gov.

Sincerely,

DocuSigned by:

84FBB8273E4C480...
Alisa Ellsworth
Environmental Program Manager

Attachment A. Draft Mitigation Monitoring and Reporting Program and Draft Recommendations

ec: Office of Planning and Research, State Clearinghouse, Sacramento

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Attachment A

North Star 1 Solar and Battery Storage Project
 MITIGATED NEGATIVE DECLARATION
 SCH# 2024060951

Draft Mitigation Monitoring and Reporting Program (MMRP) and Draft Recommendations

CDFW provides the following language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)		
Biological (BIO) Mitigation Measure	Implementation Schedule	Responsible Party
<p>BIO-1. Rare Plant Surveys: Prior to initiating ground disturbance, three botanical field surveys shall be conducted that are floristic in nature (i.e., identifying all plant species to the taxonomic level necessary to determine rarity), and inclusive of areas proposed for disturbance and indirectly impacted by the Project. The surveys shall be conducted by a qualified botanist or qualified biologist in accordance with the USFWS Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed, and Candidate Plants (USFWS 1996); the CDFW Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018); and the CNPS Botanical Survey Guidelines (CNPS 2001). If any special-status species are observed during botanical field surveys the Project shall be designed to reduce impacts to these species through the establishment of buffers, to the extent feasible. Buffer distances will be determined by the qualified botanist or biologist, typically 50 feet or greater from an identified special-status plant species, unless the qualified botanist or biologist determines a reduced buffer would suffice to avoid impacts to the species. All special-status plant species identified on site shall be mapped with a submeter GPS device and depicted on a site-specific aerial photograph and topographic map and included on any construction, grading, fuel modification, or other pertinent plans. If avoidance of special-status plant species is not feasible, a Special-Status Plant Relocation Plan shall be developed and implemented. The Special-Status Plant Relocation Plan</p>	<p>Prior to any ground- or vegetation-disturbing activities</p>	<p>Project Biologist and Project proponent</p>

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<p>shall address mitigation for special-status plants, including topsoil salvage to preserve seed bank and management of salvaged topsoil; seed collection, storage, possible nursery propagation, and planting; salvage and planting of bulbs as feasible; location of on-site receptor sites; land protection instruments for receptor areas; and funding mechanisms. The Special-Status Plant Relocation Plan shall include methods, monitoring, reporting, success criteria, adaptive management, and contingencies for achieving success. The Project proponent shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank or land acquisition and conservation at a minimum 2:1 (replacement to impact) ratio for occupied habitat should success criteria not be met, or presence of the species is assumed based on suitable habitat acreage within the Project area. Note that a higher ratio may be warranted if the proposed mitigation lands are located far away from the Project site or are not occupied by or available to special-status species.</p>		
<p>BIO-2. Minimization of Impacts to Migratory Birds, Bats, and Raptors: To reduce indirect impacts on migratory birds, bats, and raptors, the project shall comply with APLIC 2012 Guidelines for overhead utilities, as appropriate, to minimize avian collisions with transmission facilities (APLIC 2012). All electrical components on the project site shall either be underground or the transmission lines and poles will follow design plans recommended by APLIC (i.e., installing covers over the insulator and conductor on the center phase, installing phase covers over all three insulators and conductors for three phase transmission lines, lowering and/or replacing the crossarm with a longer cross arm on pole-top pin constructions), or utilizing link marking devices (e.g., aerial marker spheres, spirals, or suspended devices).</p>	<p>During entire Project</p>	<p>Project proponent</p>

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<p>BIO-4. Burrowing Owl Avoidance, Minimization, and Mitigation: Four breeding season surveys for burrowing owl shall be completed prior to project construction by a qualified avian biologist. Surveys shall be conducted as detailed within Appendix D of the Staff Report on Burrowing Owl Mitigation (California Department of Fish and Game [CDFG] 2012). This survey shall include 100 percent coverage of the Project site. A report summarizing the breeding season surveys including all requirement for survey reports shall be submitted to CDFW for review and approval. If burrowing owl or sign thereof is not detected, no further action is necessary.</p> <p>If burrowing owl, active burrowing owl burrows, or sign thereof are found, the qualified avian biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be reviewed and approved by CDFW prior to commencing Project activities. The plan shall propose mitigation for permanent impacts to nesting, loss of foraging habitat, occupied and satellite burrows and/or burrowing owl habitat such that the habitat acreage, number of burrows and burrowing owls impacted are replaced with permanent conservation of similar vegetation communities to provide for burrowing owl nesting, foraging, wintering, and dispersal comparable to or better than that of the impact area. The mitigation land shall be sufficiently large acreage with presence of fossorial mammals. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter, and dispersal opportunity, and remove or control of population stressors. Permanent protection of mitigation land shall be through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission. The Project proponent shall develop and implement a mitigation land management plan to address long-term ecological sustainability and</p>	<p>Prior to any ground- or vegetation-disturbing activities</p>	<p>Project Biologist and Project proponent</p>
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<p>maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment. If deemed appropriate by CDFW, conservation species credits may also be purchased at a CDFW-approved conservation bank.</p> <p>To ensure that the Project avoids impacts to burrowing owl, a qualified avian biologist shall complete a take avoidance survey no less than 14 days prior to initiating ground disturbing activities using the recommended methods described in the Staff Report on Burrowing Owl Mitigation (CDFG, 2012). Burrowing owls may recolonize a site after only a few days. Time lapses between Project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance.</p>		
<p>BIO-8. Focused Bat Surveys and Preparation of a Bat Management Plan: All suitable roosting and foraging habitat for local or migratory bat species known to the Project area, including special status species, found within the Project site and adjacent land shall be surveyed throughout one year, prior to initial site clearing activities. The surveys shall be completed by a qualified bat biologist whose resume shall be reviewed and approved by CDFW. Surveys shall include determination of the approximate size of the colony(s) and species present. At the discretion of the qualified bat biologist, the features being used within the abandoned building and adjacent outhouse structure in the northwest corner of the project site may be examined using appropriate methods to avoid roost and/or young abandonment due to disturbance. The surveys shall include a combination of nighttime emergence counts and acoustic techniques (full spectrum bat acoustic detectors) appropriate for the roosting habitat and time of year, visual and aural surveys (observation during</p>	<p>Prior to any ground- or vegetation-disturbing activities</p>	<p>Project proponent</p>

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<p>foraging period), and inspection for suitable habitat and bat sign (e.g. guano). Surveys shall be conducted during the spring, summer, fall, and winter to determine how the habitat is being used by bats throughout the year, including foraging patterns and habitat, and the presence overwintering bats, with at least two surveys conducted during the maternity season to determine a pre- and post-volant count of colonies present.</p> <p>If roosting bats, of any status, are found during the surveys, the bats and roosts shall be avoided to the maximum extent practicable with consideration of the most disturbing Project activities and their effect (e.g. pile driving). A Bat Management Plan prepared by the qualified bat biologist identifying situation-specific and species-specific avoidance and minimization measures to reduce impacts to roosting and foraging bats shall be prepared for CDFW's review, approval, and implementation prior to the commencement of initial site clearing activities. The Bat Management Plan shall include, as appropriate to the findings of the surveys and roosting habitat affected, a construction schedule to avoid roosting season, spatial and temporal avoidance measures, no-disturbance buffers, passive exclusion of bats outside of the maternity season (if necessary), and identification of species-specific replacement or alternative habitat to mitigate for permanent maternity roosting habitat loss. If roosts cannot be avoided or it is determined that construction activities will cause roost abandonment, a mitigation plan addressing exclusion and passive relocation procedures and impact compensation will be developed. The mitigation plan will be developed in consultation with CDFW and the qualified bat biologist. Roost and foraging habitat shall be replaced in-kind prior to any exclusion. Any exclusion and passive relocation efforts shall avoid periods of sensitive activity (e.g. hibernation or maternity season) and may require several seasons for bats to discover alternative roosting sites.</p>		
<p>BIO-9. Avoidance of Sensitive Natural Communities: To the greatest extent possible, plans shall avoid impacts to</p>		

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<p>blue palo verde/ironwood woodland, bush seepweed scrub, and iodine bush scrub. If blue palo verde/ironwood woodland, bush seepweed scrub, and iodine bush scrub cannot be avoided, the project applicant shall provide compensatory mitigation for direct impacts consisting of habitat acquisition, establishment, or enhancement through a resource agency-approved in-leiu fee program, and/or resource agency approved mitigation conservation bank at a minimum of a 3:1 ratio. Habitat acquisition sites shall be biologically equal or superior to existing conditions and must be conserved and managed in perpetuity.</p>		
<p>BIO-10. Aquatic Resources Regulatory Permitting: Project-related impacts that will occur to the riparian areas or areas subject to Fish and Game Code section 1602 shall be mitigated at a minimum of 2:1 ratio (two acres of mitigation for every impact to one acre of resource). The Project proponent shall obtain all necessary regulatory permits for resources under the jurisdiction of the USACE, CDFW, and/or RWQCB prior to the impact occurring. Refer to the Aquatic Resource Delineation Report or the North Star 3 Project (Appendix D of this Initial Study) for preliminary determination of regulatory limits of areas that may be regulated by USACE, CDFW, or RWQCB. Permitting includes preparation and submittal of a Pre-Construction Notification under Section 404 of the federal CWA, an Application for Water Quality Certification under Section 401 of the federal CWA and a notification of Lake or Streambed Alteration under Section 1600 of the California Fish and Game Code. A completed CEQA document, and Notice of Determination, will be necessary to submit along with the applications. Other items such as finalized project plans, quantities of fill material, supporting technical studies, etc., are also submitted along with the applications. As a part of this process, the project must</p>		

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<p>also identify and approve mitigation through the respective agencies.</p> <p>Mitigation shall include: offsite land acquisition that is conserved and managed in perpetuity for the resource; payment of an in-lieu fee to a conservation organization; and/or restoration, creation, rehabilitation, enhancement, or other types of habitat improvement. The type of mitigation and final acreage of mitigation shall be approved by the regulatory agencies during the permitting process.</p>		
<p>BIO-11. Project Biologist: The Project proponent shall designate a Project Biologist who shall be responsible for overseeing compliance with protective measures for biological resources during vegetation clearing and work activities within and adjacent to areas of native habitat. The Project Biologist shall be familiar with the local habitats, plants, and wildlife, and have experience performing all necessary surveys and monitoring for biological resources present on site. The Project Biologist shall also maintain communications with the Contractor to ensure that issues relating to biological resources are appropriately and lawfully managed and shall monitor construction. The Project Biologist shall monitor all ground disturbing activities within construction areas, including activities during nesting bird season (generally February 1 to September 15), vegetation removal, the implementation of Best Management Practices (BMPs), and installation of security fencing to protect native species. The Project Biologist shall ensure that all wildlife and regulatory agency permit requirements, conservation measures, and general avoidance and minimization measures are properly implemented and followed.</p>	<p>Prior to any ground- or vegetation-disturbing activities</p>	<p>Project proponent</p>
<p>BIO-12. Project Site Delineation: The boundaries of all areas to be newly disturbed (including solar facility areas, staging areas, access roads, and sites for temporary placement of construction materials and spoils) shall be delineated</p>	<p>Prior to any ground- or vegetation-disturbing activities</p>	<p>Project Biologist and Project proponent</p>

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<p>with stakes and flagging prior to disturbance. All disturbances, vehicles, and equipment shall be confined to the flagged areas. Stockpiling of material shall only be allowed within established work areas.</p>		
<p>BIO-13. Wildlife Entrapment Avoidance: No potential wildlife entrapments (e.g., trenches, bores) shall be left uncovered overnight. Any uncovered pitfalls will be excavated to 3:1 slopes at the ends to provide wildlife escape ramps. Alternatively, man-made ramps may be installed. Covered pitfalls will be covered completely to prevent access by small mammals or reptiles. To avoid wildlife entrapment (including birds), all pipes or other construction materials or supplies shall be covered or capped in storage or laydown areas, and at the end of each construction workday No pipes or tubing of sizes or inside diameters ranging from 1 to 10 inches shall be left open either temporarily or permanently.</p>	<p>During entire Project</p>	<p>Project Biologist and Project proponent</p>
<p>BIO-14. Rodenticide: No anticoagulant rodenticides, such as Warfarin and related compounds (indandiones and hydroxycoumarins), shall be used within the Project site or in support of any other Project activities</p>	<p>During entire Project</p>	<p>Project Biologist and Project proponent</p>
<p>BIO-15. Trash Abatement: All trash and food-related waste shall be placed in self-closing containers and removed regularly from the site to prevent overflow. Workers shall not feed wildlife.</p>	<p>During entire Project</p>	<p>Project Biologist and Project proponent</p>
<p>BIO-16. Project Site Speed Limit: To minimize the likelihood for vehicle strikes on wildlife, speed limits shall not exceed 15 miles per hour when driving on access roads. All vehicles required for O&M must remain on designated access/maintenance roads.</p>	<p>During entire Project</p>	<p>Project Biologist and Project proponent</p>
<p>BIO-17. Artificial Lighting: Avoid nighttime construction lighting or if nighttime construction cannot be avoided, use shielded directional lighting pointed downward and towards the interior of the project sites, thereby</p>	<p>During entire Project</p>	<p>Project proponent</p>

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<p>avoiding illumination of adjacent natural areas and the night sky.</p>		
<p>BIO-18. Equipment Mufflers: All construction equipment used for the projects shall be equipped with properly operating and maintained mufflers.</p>	<p>During entire Project</p>	<p>Project proponent</p>
<p>BIO-19. Hazardous Substances: Hazardous materials and equipment stored overnight, including small amounts of fuel to refuel hand-held equipment, shall be stored within secondary containment when within 50 feet of open water or resources subject to Fish and Game Code section 1602 to the fullest extent practicable. Secondary containment shall consist of a ring of sandbags around each piece of stored equipment/structure. A plastic tarp/visqueen lining with no seams shall be placed under the equipment and over the edges of the sandbags, or a plastic hazardous materials secondary containment unit shall be utilized by the Contractor. The Contractor will be required to conduct vehicle refueling in upland areas where fuel cannot enter waters of the U.S. or areas subject to Fish and Game Code section 1602, and in areas that do not have potential to support federally threatened or endangered species. Any fuel containers, repair materials, including creosote-treated wood, and/or stockpiled material that is left on site overnight, shall be secured in secondary containment within the work area and staging/assembly area and covered with plastic at the end of each workday. In the event that no activity is to occur in the work area for the weekend and/or a period of time greater than 48 hours, the Contractor shall ensure that all portable fuel containers are removed from the project site. All equipment shall be maintained in accordance with the manufacturer's recommendations and requirements. Equipment and containers shall be inspected daily for leaks. Should a leak occur, contaminated soils and surfaces will be cleaned up and disposed of following the guidelines identified in the Stormwater Pollution</p>	<p>During entire Project</p>	<p>Project proponent</p>

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<p>Prevention Plan or equivalent, Materials Safety Data Sheets, and any specifications required by other permits issued for the project. The Contractor shall utilize off-site maintenance and repair shops as much as possible for maintenance and repair of equipment. If maintenance of equipment must occur onsite, fuel/oil pans, absorbent pads, or appropriate containment will be used to capture spills/leaks within all areas. Maintenance of equipment shall occur in upland areas where fuel cannot enter waters of the U.S. or areas subject to Fish and Game Code section 1602, and in areas that do not have potential to support federally threatened or endangered species.</p>		
<p>BIO-20. Firearms and Pets: Project personnel and any other individuals associated with the Project are prohibited from bringing any firearms or dogs on the Project Area during, except those in the possession of authorized security personnel or local, state, or federal law enforcement officials, dogs that may be used to aid in official and approved monitoring procedures/protocols, or service dogs under Title II and Title III of the American with Disabilities Act. Open fires and pets shall be prohibited at all work locations and access roads. Smoking shall be prohibited along the Project alignment.</p>	<p>During entire Project</p>	<p>Project proponent</p>
<p>BIO-21. Best Management Practices: Appropriate BMPs shall be used by the Contractor to control erosion and sedimentation and to capture debris and contaminants from construction to prevent their deposition in waterways. Erosion and sediment control devices used for the proposed project, including fiber rolls and bonded fiber matrix, shall be made from biodegradable materials such as jute, with no plastic mesh, to avoid creating a wildlife entanglement hazard.</p>	<p>During entire Project</p>	<p>Project proponent</p>
<p>BIO-22. Cross-Country Vehicle Use: Cross-country vehicle and equipment use outside of approved designated work areas and access roads shall be</p>	<p>During entire Project</p>	<p>Project proponent</p>

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<p>prohibited to prevent unnecessary ground and vegetation disturbance.</p>		
<p>BIO-23. Injured or Dead Wildlife: Any injured or dead wildlife encountered during Project-related activities shall be reported to the Project Biologist, biological monitor, CDFW, or a CDFW-approved veterinary facility as soon as possible to report the observation and determine the best course of action. For special-status species, the Project Biologist shall notify by email or phone the County, USFWS, and/or CDFW, as appropriate, within 24 hours of the discovery.</p>	<p>During entire Project</p>	<p>Project Biologist and Project proponent</p>
<p>BIO-24. Checking Beneath Vehicles: The ground beneath all parked equipment and vehicles shall be inspected for wildlife before moving.</p>	<p>During entire Project</p>	<p>Project proponent</p>
<p>BIO-25. Fugitive Dust Abatement: Water applied to dirt roads and construction areas for dust abatement shall be used the minimal amount needed to meet safety and air quality standards to prevent the formation of puddles, which could attract wildlife. Pooled rainwater or floodwater within retention basins shall be removed to avoid attracting wildlife to the active work areas.</p>	<p>During entire Project</p>	<p>Project proponent</p>
<p>BIO-26. Invasive Plants: The Contractor shall actively manage the spread of invasive and nonnative plants by implementing weed control activities, including, but not limited to, cleaning equipment and inspecting equipment prior to transport to the sites and cleaning of tires and underside of equipment prior to leaving the site, vacuuming and cleaning the interior of vehicles and heavy equipment that have been used off-site before bringing them to the Project site, clean by pressure washing, washing in hot water, freezing, or bleaching personal gear and clothing, including footwear, that have been worn offsite before bringing them to the Project site, and not transporting soil or other fill material from off-site locations to the Project area unless they are certified weed free. The introduction of</p>	<p>During entire Project</p>	<p>Project proponent</p>

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<p>exotic, nonnative, weed, and/or invasive plant species will be avoided and controlled wherever possible, and may be achieved through physical or chemical removal and prevention, limiting the size of any vegetation and/or ground disturbance to the absolute minimum, and limiting ingress and egress to defined routes. Preventing exotic plants from entering the site via vehicular sources will include measures such as cleaning vehicles coming into and going from the site. Any use of herbicide for chemical removal of invasive and nonnative plants shall only use herbicides containing a harmless dye and registered with the California Department of Pesticide Regulation (DPR). All herbicides shall be applied in accordance with regulations set by the DPR. All herbicides shall be used according to label instructions. Labeled instructions of the herbicide used shall be made available to CDFW upon request. No herbicide application when winds are greater than five (5) miles per hour.</p>		
<p>BIO-27. Desert Kit Fox and American Badger: Prior to the beginning of surface disturbance, the Project Biologist shall conduct a pre-Project 10-meter transect survey (or reduced based on topography and vegetation), to attain 100% visual coverage within the Project area and a minimum 200-meter buffer to determine the presence or absence of desert kit fox and/or American badger individuals, dens, and sign. If potential dens are located, they shall be monitored by the Project Biologist. Trail cameras may be used to assist with observation but shall not be the sole basis upon which the status is determined. The Project proponent shall provide the results of the survey to CDFW prior to start of Project activities. Project proponent shall provide a determination if active dens can be avoided and buffered from Project activities to prevent take and disturbance with the survey results. Should active dens be present within the Project area that cannot be avoided with an adequate</p>	<p>Prior to any ground- or vegetation-disturbing activities</p>	<p>Project Biologist and Project proponent</p>

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<p>buffer, the Project proponent shall reschedule Project activities or submit a monitoring and passive relocation plan for CDFW's review and approval. No disturbance or passive relocation of active dens may take place during the breeding season or when juveniles are dependent on parental care.</p>		
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