



State of California – Natural Resources Agency

GAVIN NEWSOM, Governor



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CHARLTON H. BONHAM, Director

July 25, 2024

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North Star 3 Solar and Battery Storage Project (PROJECT)
 MITIGATED NEGATIVE DECLARATION (MND)
 SCH# 2024060955

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

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.),

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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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 100-Megawatt (MW) solar photovoltaic (PV) energy generation facility, a 200-MW Battery Energy Storage System (BESS), and an on-site transmission line connection to the existing Imperial Irrigation District's 161-Kilovolt "L" Line which traverses the Project site. Primary Project activities include construction and operation of a 100-MW PV energy generation facility and a 200-MW BESS facility.

Location: The Project is located approximately 9 miles southeast of the town of Salton City in Imperial County, Assessor's Parcel Numbers 017-350-031, 017-350-030, and 017-350-027, Latitude 33.181000, Longitude -115.880750. The nearest cross streets are Salton Sea Road and Highway 86.

Timeframe: Construction is expected to be 12 to 18 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 indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

I. Project Description 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: IV. Biological Resources **Page:** 57

Issue: The MND identified the Project's substantial adverse effect on candidate, sensitive, or special status species as less than significant with mitigation incorporated. The MND includes a mitigation measure for sensitive species on Bureau of Land Management (BLM)-managed Land despite the project occurring on private land.

Specific impact: The Project Description describes regional site access from State Route 82, local vehicular site access from Salton Sea Road, as well as the proposed

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point of connection to the electrical grid on-site. However, BIO-10 (hereto referred to as BIO-9, as the document lacks a BIO-9 between BIO-8 and BIO-10) states that impacts to habitat within land managed by the BLM could take place during construction activities if workers from the Project do not stay on BLM roads. The Phase I ESA report, Air Quality and Greenhouse Gas Emission Assessment, Energy Consumption Assessment, Noise Impact Assessment, and Visual Resources Impact Assessment, all state that the Project site access is through Highway 86 with no mention of Salton Sea Road. CDFW is concerned with the lack of consistency between these documents regarding site access.

The Project description should clarify which road will be used for site access in order to determine if significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources could occur. The document states that the Project location is within the Desert Renewable Energy Conservation Plan (DRECP) area, a plan only applicable to projects occurring on BLM-managed land. According to shapefiles provided by the BLM, the Project site is located between parcels of BLM-managed land as well as land designated to the DRECP. Clarification is needed regarding the statement that impacts may occur on BLM land when the project site nor its access roads appear to occur on BLM land.

Why impact would occur: The documents provided lack information about which access road, either the Salton Sea Road through BLM-managed land, or the state Highway 86 for Project site entrance, would be used. The Phase I ESA Report states that the Project site entrance will be off of Highway 86 with a posted security gate. If the Salton Sea Road through BLM-managed land is used, impacts to special status species on BLM-managed land could occur.

Evidence impact would be significant: The MND has not analyzed impacts to BLM-managed land, nor has it explained if the project will use any roads within BLM-managed land. Several portions of the document have established that the access to the worksite is through Highway 86. BIO-2 (hereby separated into separate Mitigation Measures BIO-10 through BIO-24) states that any areas within the Project site will be delineated. As the entirety of the Project (including vehicle access and staging areas) can be contained within the boundaries of the Project site outside of BLM-managed land, CDFW is uncertain whether the mitigation measure regarding impacts on BLM-managed land or access to BLM-managed land via Salton Sea Road is necessary and requests clarification.

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

Mitigation Measure: BIO-9

To reduce impacts to less than significant: CDFW recommends BIO-9 be changed to the following measure to avoid impacts to sensitive species on BLM-managed land, which were not evaluated by the MND.

BIO-9. Minimization of Impacts to Sensitive Species on BLM Land: ~~All vehicles shall stay on designated roads within BLM land to minimize impacts to habitat. Coordination with a qualified biologist shall occur prior to the staging of equipment and placement of temporary or permanent structures within BLM land. Additionally, a biologist shall demarcate temporary and permanent workspaces in the field prior to the commencement of construction-related activities. Construction plans shall incorporate measures to minimize and avoid impacts to habitats within this area. Tires shall be~~

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~~cleaned prior to entering BLM lands to control introduction of invasive plant species.~~

Site Access: All Project access shall occur through the entrance designated from Highway 86 to avoid impacts to sensitive species occurring on BLM-managed land adjacent to the Project area.

II. 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 2:

Section: IV. Biological Resources **Page** 48

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 that were conducted on October 25 and 26, 2022 and just focused on documenting the potential habitat to support special-status plant 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 for the Project 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, only one of the five special status plant species with high potential to occur within the Project site per the MND has a fall blooming period. The reconnaissance survey was performed during an inappropriate time of year for the other four 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 Technical Resources Report for the Project does not have sufficient information as to whether there's suitable habitat and potential impacts to Orcutt's woody-aster, Harwood's milkvetch, gravel milkvetch, Abrams' spurge, and Torrey's boxthorn. A reconnaissance survey is too general in nature to accurately characterize the biological baseline conditions on which the MND must base its analysis concerning potentially significant impacts. Botanical surveys were not performed, rather a habitat assessment. 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

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“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 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~~

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~~blooming period for the Orcutt's woody aster (March through April), Harwood's milkvetch (January through May), gravel milkvetch (February through June), Abrams' spurge (August through November), and Torrey's boxthorn (approximately March through June). 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** 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 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 3:

Section: IV. Biological Resources **Page:** 97

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

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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.

Evidence impact would be significant: The desert kit fox is protected from take (See Cal. Code Regs., tit. 14, § 460). American badger is a 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).

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

**To reduce impacts to less than significant:
Mitigation Measure: BIO-25**

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.

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.

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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 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 4:

Section: IV. Biological Resources **Page:** 55

Issue: Flat-tailed horned lizard is a CDFW ranked SSC found adjacent to the Project site (California Natural Diversity Database (CNDDDB), 2009). Colorado Desert fringe-toed lizard is a CDFW ranked SCC with a high probability of being found on site. Appropriate surveys to determine each species presence within the Project site were not performed. The MND states the Project has high potential to impact each species. Additionally, mitigation for each species is not proposed, and avoidance and minimization measures are proposed to be developed at a later date.

Specific Impact: Impact to flat-tailed horned lizard, Colorado Desert fringe-toed lizard, and habitat disturbance resulting from Project activities may occur through: installation and maintenance of utility structures, such as transmission lines and cable lines; habitat disturbance from installation of towers, construction, and use of access routes to utility sites; road constructed to maintain or build utilities may cause a proliferation of new access roads into previously undisturbed areas, resulting in off-site habitat disturbance; and indirect but potentially large impact are avian predators (Common ravens, loggerhead shrikes, etc.) utilizing transmission lines and towers to more effectively prey upon flat-tailed horned lizards (Flat-tailed Horned Lizard Rangelwide Management Strategy, 2003). Habitat for the Colorado Desert fringe-toed lizard is impacted by fragmentation due to development, conversion to agriculture, and degraded by off-road vehicle use (Zeiner, 2000).

Evidence impact would be significant: The Flat-tailed horned lizard is a designated sensitive species by BLM and SSC by CDFW. In 1994, BLM, CDFW, United States Bureau of Reclamation, Arizona Department of Game and Fish, and USFWS developed the foundation that would be the Memorandum of Understanding for the conservation agreement and management plan for the flat-tailed horned lizard, which has a declining population due to habitat fragmentation from agricultural development, urbanization, utilities, energy and mineral extraction, and other forms of land development. The Project site is directly across Highway 86 from the Ocotillo Wells State Vehicular Recreational Area Research Area (Ocotillo Wells RA) which has confirmed presence of the species since 2008. In addition, CNDDDB confirmed Flat-tailed horned sightings adjacent to the Project site on the same side of Highway 86. Presence of the species in the immediate vicinity suggests the Project has potential to impact flat-tailed horned lizards. The Colorado Desert fringe-toed lizard is designated as a SSC by CDFW. 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. Colorado Desert fringe-toed lizard is SSC that meets the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380).

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

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To reduce impacts to less than significant:

CDFW is concerned with mitigation measure BIO-6 covering several different special-status species, as each species listed in the measure has different survey, mitigation, minimization, and avoidance methods. It is recommended that BIO-6 focuses solely on the flat-tailed horned lizard and Colorado Desert fringe-toed lizard.

Additionally, CDFW is concerned no mitigation is proposed for each species, despite the Project's location adjacent to the flat-tailed horned lizard Ocotillo Wells RA and the West Mesa Management Area which is an area where impacts are mitigated at a 3:1 to 6:1 ratio (for every one acre of impact, 3-6 acres of mitigation is required). As mitigation for the flat-tailed horned lizard is difficult to obtain, CDFW recommends the lead agency determine if full avoidance may be necessary prior to Project activities if species presence is determined and cannot be adequately mitigated.

Mitigation Measure: BIO-6

To reduce impacts to less than significant:

BIO-6. Flat-Tailed Horned Lizard and Colorado Desert Fringe-toed Lizard: Prior to Project activities, surveys for presence/absence of flat-tailed horned lizard (FTHL) and Colorado Desert Fringe-toed Lizard (CDFTL) shall be conducted using parallel, linear routes that are evenly spaced in areas of suitable habitat and be performed by a qualified Project Biologist.

For FTHLs, each transect shall be 10 meters apart. On each transect, FTHLs, sign of FTHLs (i.e., scat or tracks), and harvester ant mounds shall be surveyed. If FTHL or sign is located while surveying, the biologist shall pause, scan the immediate area, follow the tracks (if present), and scan the immediate vicinity of the tracks, scat, and/or ant mound observed. Three surveys shall be conducted, spaced two weeks apart during April through September. Surveys will be conducted when surface temperatures in the sun exceed 85°F. Scat surveys shall not be conducted for at least 12 days after heavy rainstorms, or strong winds of an intensity sufficient to move a considerable amount of sand across roads.

For CDFTL, each transect shall be spaced 5 meters apart. One surveyor shall focus on habitat/substrate 30-40 meters in front, while one surveyor focuses on the area 2-10 meters in front. Surveys shall be conducted only when winds are 10mph or less and it is not raining. Up to six surveys shall be conducted over the same area on separate days by a qualified biologist between April and September when ground temperature in sun exceeds 85°F.

Project proponent shall provide the results of the surveys for both species to CDFW prior to start of Project activities.

If FTHL or CDFTL are present, the following minimization and mitigation measures shall apply:

- **During Project activities, the Project Biologist shall check areas of active disturbance at least hourly. Prior to construction, a qualified Project Biologist shall clear the area of FTHL or CDFTL. During construction, a Project Biologist shall be present in each area of active surface disturbance throughout the workday from initial clearing to Project completion. FTHL and CDFTL will be moved out of harm's way during all construction activities and will be conducted by two or more biological**

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monitors when construction activities are being conducted in suitable habitat. To the extent feasible, methods to find FTHL and CDFTL will be designed to achieve a maximal capture rate and will include, but not be limited to using strip transects, tracking, and raking around shrubs. During construction, the minimum survey effort will be 30 minutes per acre.

- **Occupied habitat shall be mitigated at a 1:1 ratio (1 acres of mitigation for every acre of impact) through off-site acquisition of FTHL and CDFTL habitat of equal or greater quality that is conserved and managed in perpetuity. Proposed mitigation lands shall be approved by CDFW.**

~~A pre-construction survey shall be conducted for special-status wildlife species within all areas of potential permanent and temporary disturbance. The pre-construction survey shall take place no more than 14 days prior to the start of ground-disturbing activities. The pre-construction surveys shall take place regardless of breeding season timing and shall focus on identifying the presence of special-status wildlife species present within the Survey Area or that were identified as having a high/moderate potential to occur on the site. These species include, but are not limited to, flat-tailed horned lizard, Colorado Desert fringe-toed lizard, burrowing owl, desert kit fox, and American badger. Should any special-status species be identified during the pre-construction survey, consultation to develop suitable avoidance and minimization measures with the appropriate agency (USFWS, CDFW) may need to be undertaken.~~

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 5:

Section: IV. Biological Resources **Page:** 55-56

Issue: The MND does not include, but should include a jurisdictional delineation of all ephemeral stream features potentially subject to notification for Lake and Streambed Agreement pursuant Fish and Game Code section 1602. The *Aquatic Resource Delineation Report for the North Star 3 Project* (Appendix D) may include this information but is missing from the MND. Additionally, BIO-9 defers mitigation to be determined by the regulatory agencies and states mitigation may occur on-site.

Specific impact: The MND states there is a total of 23.32 acres of areas subject to Fish and Game Code section 1602 within the Project’s study area that have potential to be impacted. CDFW cannot accurately determine if the acreage provided in the MND for impact analysis is accurate as no supporting document or figures were provided. Additionally, the MND does not identify the mitigation that will reduce impacts to less than significant for the purposes of CEQA.

Why impact would occur: CDFW was unable to analyze the jurisdictional delineation and provide comment as the pertinent attachment was missing from the MND. Additionally, there were no figures to depict the location of the resources. The jurisdictional delineation and proposed site plan should be used to identify what impacts would occur and develop a mitigation measure that defines the appropriate mitigation. As currently written, the mitigation measure BIO-8 is a conditional measure and states, “if project related impacts occur... a regulatory permit... is needed prior to the impact occurring”. Deferring mitigation to a regulatory permit does not reduce impacts to resources to less than significant for the purposes of CEQA. Additionally, it is also

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unclear how on-site mitigation could occur and to what extent it will reduce impacts to less than significant.

Evidence impact would be significant: Project activities may cause substantial diversion or obstruction of natural flow of streams, substantially change the bed, bank, and channels of streams, and/or deposit or disposal 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. Project activities subject to notification are not described in the MND, and there is potential that resource presence is not appropriately quantified in the MND. So CDFW is unable to adequately review the Project pertaining to the department's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.).

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 recommends the MND include a jurisdictional delineation to identify stream resources 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 similar to those referenced above. CDFW provides editorial comments to BIO-8 below.

BIO-8. Aquatic Resources Regulatory Permitting: ~~If a~~ **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** ~~that may also fall under the jurisdiction of the USACE, CDFW, and/or RWQCB, a regulatory permit with those 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

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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, the type of mitigation and final~~ acreage of mitigation is negotiated **shall be approved by** with the regulatory agencies during the permitting process.

COMMENT 6:

Section: IV. Biological Resources **Page:** 55

Issue: When evaluating impacts to Mojave-Sonoran Desert Dunes, the MND states, “The amount of this vegetation community that may be permanently removed is minor (0.18 acre in total). The project proponent would avoid impacts to Mojave-Sonoran Desert [dunes] occurring within the project site. Therefore, no impact would occur.” CDFW finds this evaluation of impact to be unclear.

Specific impact: The MND states there is a potential for permanent removal of 0.18 acres of a state rarity rank S3 natural community, then states the impact will be avoided in the following sentence. The MND should be clear if the Project will have an impact on the sparsely vegetated sensitive natural community defined by herbs and subshrubs with intermittent seasonal annuals and scattered perennials, found in active dunes, partially stabilized dunes, stabilized dunes, and sand fields (CNPS, 2024).

Why impact would occur: The MND does not propose any clear avoidance measures nor mitigation to bring the impact to less than significant should the potential impact occur.

Evidence impact would be significant: Natural communities ranked S1 through S3 are considered sensitive communities to be addressed in the environmental review processes of CEQA.

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

Mitigation Measure: BIO-28

To reduce impacts to less than significant: CDFW recommends the Project be sited to avoid all 0.18 acres of Mojave-Sonoran Desert dunes. Additionally, CDFW recommends there be an appropriate buffer for avoidance between the Project boundary and the transition of habitat due to the temporal variability in landscape shapes and patterns and shifting natures of the community. This will also avoid frequent need of operation and maintenance activities to rectify built up sand on the proposed security fencing. Also to make the intent of avoidance clearer, CDFW proposes inclusion of the following mitigation measure in the MND.

BIO-27. Avoidance of Mojave-Sonoran Desert Dunes: To avoid permanent impacts to the Mojave-Sonoran Desert Dunes, a sensitive natural community, the Project proponent shall fully avoid dunes found within and adjacent to the Project site. If necessary, the Project site boundary shall be adjusted to comply with full avoidance with an appropriate buffer. If impacts to dune habitat is not feasible, the Project proponent shall mitigate for the permanent impacts at a minimum 2:1 (2 acres of mitigation for every 1 acre of impact). Mitigation shall include: offsite land acquisition that is conserved and managed in perpetuity for the natural community; payment of an in-lieu fee to a conservation organization; and/or

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restoration, creation, rehabilitation, enhancement, or other types of habitat improvement.

III. 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 7:

Section: IV. Biological Resources **Page:** 50

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 patterns, soil conditions, regulatory acceptance, outage risks and reliability requirements, termination facility 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, which are a large portion of the Pacific Flyway known to migrate through the 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 Fish and Game Code sections 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. 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**

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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.~~

Multiple Biological Resource Environmental Issue Areas

COMMENT 8:

Section: IV. Biological Resources **Page:** 50-53

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 by 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-10 - BIO-24

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-10. 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), and installation of security

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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-11. 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-12. 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-13. 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-14. 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-15. 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-16. 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.

Mitigation Measure BIO-17. Equipment Mufflers: All construction equipment used for the projects shall be equipped with properly operating and maintained mufflers.

Mitigation Measure BIO-18. 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

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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-19. 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.

Mitigation Measure BIO-20. 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-21. 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-22. 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 **via email or phone** the County, USFWS, and/or CDFW, as appropriate, within 24 hours of the discovery.

Mitigation Measure BIO-23. Checking Beneath Vehicles: The ground beneath all parked equipment and vehicles shall be inspected for wildlife before moving.

Mitigation Measure BIO-24. Fugitive Dust Abatement: Water applied to dirt roads and construction areas for dust abatement shall be used the minimal amount needed to

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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: IV. Biological Resources **Page:** 50

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 is also included, but the measures to limit that potential are lacking.

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-25

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

BIO-25. 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**

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request. No herbicide application when winds are greater than five (5) miles per hour.

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 10:

Section: IV. Biological Resources **Page:** 54

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 or the potential burrow identified during the biological reconnaissance survey. 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.

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, as the environmental baseline for the species is based on one reconnaissance survey that lacks the temporal consideration of species occupancy and their use of the surrounding landscape for survival. The mitigation measure 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 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".

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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**. 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

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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.~~

~~• 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.~~

IV. 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 as the MND states there is potential impact to these resources.

The MND identified the Project would have no impact on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the CDFW or U.S. Fish and Wildlife Service and identifies ephemeral streams as state or federally protected wetlands. CDFW notes that impacts to ephemeral streams would be most appropriately evaluated as riparian habitat rather than wetlands.

Mitigation Measure BIO-9 is missing in the list of other mitigation measures, CDFW’s comment letter has recommended edits to the MND that will add BIO-9 in addition to others.

On page 57, CDFW recommends section “f” should be edited to state, “The project site is located ~~in~~ **on land adjacent to** BLM Renewable Energy Development Focus Areas **and**

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Areas of Critical Environmental Concern.” As the Project site is privately owned and not leased BLM-managed land, a DRECP designation does not apply.

The mitigation measure proposed in BIO-2(now recommended by CDFW to be BIO-10) 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-12) 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 as it is likely erroneously provided in the measure.

The mitigation measure proposed in BIO-2 (now recommended by CDFW to be BIO-13) 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-18) 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-19).

CDFW provides suggested language to mitigation measures in BIO-2 that reference injured and dead wildlife (now recommended by CDFW to be BIO-22).

The mitigation measure proposed in BIO-2 (now recommended by CDFW to be BIO-24) for fugitive dust abatement mentions retention ponds. CDFW recommends retention ponds be eliminated from any site plans to remove potential risk to biological resources and minimize impacts to resources subject to Fish and Game Code section 1602.

On page 16, site access is described to have 30-foot wide roads. CDFW recommends reconsideration of the widths of the road to minimum need (single width road with turn outs) as wide roads are unnecessary for the operation and maintenance period which is majority of the life of the project.

CDFW is concerned that a confidential Cultural Resources report (Appendix E1) may have been inadvertently provided for public review. CDFW recommends the lead agency replace the MND documents provided to Office of Planning and Research, State Clearinghouse.

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

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during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

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

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist ICPDS in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Austin Gutierrez, Environmental Scientist, at (909) 544-2525 or Austin.Gutierrez@Wildlife.ca.gov.

Sincerely,

DocuSigned by:

84FB88273E4C480
Alisa Ellsworth

Environmental Program Manager

Attachments

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

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

REFERENCES

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Attachment A

North Star 3 Solar and Battery Storage Project
 MITIGATED NEGATIVE DECLARATION
 SCH# 2024060955

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</p>	<p>Prior to any ground- or vegetation-disturbing activities</p>	<p>Project Biologist and Project proponent</p>

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<p>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. 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-6. Flat-Tailed Horned Lizard and Colorado Desert Fringe-toed Lizard: Prior to Project activities, surveys for presence/absence of flat-tailed horned lizard (FTHL) and Colorado Desert Fringe-toed Lizard (CDFTL) shall be conducted using parallel, linear routes that are evenly spaced in areas of suitable habitat and be performed by a qualified Project Biologist.</p> <p>For FTHLs, each transect shall be 10 meters apart. On each transect, FTHLs, sign of FTHLs (i.e., scat or tracks), and harvester ant mounds shall be surveyed. If FTHL or sign is located while surveying, the biologist shall pause, scan the immediate area, follow the tracks (if present), and scan the immediate vicinity of the tracks, scat, and/or ant mound observed. Three surveys shall be conducted, spaced two weeks apart during April through September. Surveys will be conducted when surface temperatures in the sun exceed 85°F. Scat surveys shall not be conducted for at least 12 days after heavy rainstorms, or strong winds of an intensity sufficient</p>	<p>Prior to any ground- or vegetation-disturbing activities</p>	<p>Project Biologist and Project proponent</p>

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<p>to move a considerable amount of sand across roads.</p> <p>For CDFTL, each transect shall be spaced 5 meters apart. One surveyor shall focus on habitat/substrate 30-40 meters in front, while one surveyor focuses on the area 2-10 meters in front. Surveys shall be conducted only when winds are 10mph or less and it is not raining. Up to six surveys shall be conducted over the same area on separate days by a qualified biologist between April and September when ground temperature in sun exceeds 85°F.</p> <p>Project proponent shall provide the results of the surveys for both species to CDFW prior to start of Project activities.</p> <p>If FTHL or CDFTL are present, the following minimization and mitigation measures shall apply:</p> <ul style="list-style-type: none">• During Project activities, the Project Biologist shall check areas of active disturbance at least hourly. Prior to construction, a qualified Project Biology shall clear the area of FTHL or CDFTL. During construction, a Project Biologist shall be present in each area of active surface disturbance throughout the workday from initial clearing to Project completion. FTHL and CDFTL will be moved out of harm's way during all construction activities and will be conducted by two or more biological monitors when construction activities are being conducted in suitable habitat. To the extent feasible, methods to find FTHL and CDFTL will be designed to achieve a maximal capture rate and will include, but not be limited to using strip transects, tracking, and raking around shrubs. During construction, the minimum survey effort will be 30 minutes per acre.• Occupied habitat shall be mitigated at a 1:1 ratio (1 acre of mitigation for every acre of impact) through off-site acquisition of FTHL and CDFTL		
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<p>habitat of equal or greater quality that is conserved and managed in perpetuity. Proposed mitigation lands shall be approved by CDFW.</p>		
<p>BIO-8. 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 also identify and approve mitigation through the respective agencies.</p>	<p>Prior to any ground- or vegetation-disturbing activities</p>	<p>Project proponent</p>
<p>BIO-9. Site Access: All Project access shall occur through the entrance designated from Highway 86 to avoid impacts to sensitive species occurring on BLM-managed land adjacent to the Project area.</p>	<p>During entire Project</p>	<p>Project proponent</p>
<p>BIO-10. Project Biologist: The Project proponent shall designate a Project Biologist who shall be responsible for overseeing compliance with protective</p>	<p>Prior to any ground- or vegetation-disturbing activities</p>	<p>Project proponent</p>

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<p>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>BIO-11. 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.</p>	<p>Prior to any ground- or vegetation-disturbing activities</p>	<p>Project Biologist and Project proponent</p>
<p>BIO-12. 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</p>	<p>During entire Project</p>	<p>Project Biologist and Project proponent</p>

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<p>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>BIO-13. 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-14. 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-15. 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-16. 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.</p>	<p>During entire Project</p>	<p>Project proponent</p>
<p>BIO-17. 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-18. 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</p>	<p>During entire Project</p>	<p>Project proponent</p>

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<p>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. 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>		
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<p>BIO-19. 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-20. 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-21. 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.</p>	<p>During entire Project</p>	<p>Project proponent</p>
<p>BIO-22. 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 via 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>

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<p>BIO-23. 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-24. 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 shall be removed to avoid attracting wildlife to the active work areas.</p>	<p>During entire Project</p>	<p>Project proponent</p>
<p>BIO-25. 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 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</p>	<p>During entire Project</p>	<p>Project proponent</p>

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<p>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-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 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.</p>	<p>Prior to any ground- or vegetation-disturbing activities</p>	<p>Project Biologist and Project proponent</p>
<p>BIO-27. Avoidance of Mojave-Sonoran Desert Dunes: To avoid permanent impacts to the Mojave-Sonoran Desert Dunes, a sensitive natural community, the Project proponent shall fully avoid dunes found within and adjacent to the Project site. If necessary, the Project site boundary shall be adjusted to comply</p>	<p>During entire Project</p>	<p>Project proponent</p>

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<p>with full avoidance with an appropriate buffer. If impacts to dune habitat is not feasible, the Project proponent shall mitigate for the permanent impacts at a minimum 2:1 (2 acres of mitigation for every 1 acre of impact). Mitigation shall include: offsite land acquisition that is conserved and managed in perpetuity for the natural community; payment of an in-lieu fee to a conservation organization; and/or restoration, creation, rehabilitation, enhancement, or other types of habitat improvement.</p>		
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