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Sent via email

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Sunrise Road Solar (Renewable Properties) - PROJ-2023-00169 (Project)
INITIAL STUDY/MITIGATED NEGATIVE DECLARATION (IS/MND)
SCH# 2024110048

Dear Ms. O'Strander:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from San Bernardino County for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

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

CDFW ROLE

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

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

PROJECT DESCRIPTION SUMMARY

The Project proposes to develop and operate a 14-megwatt capacity photovoltaic solar facility and would occupy approximately 59 acres across two 40-acre parcels. The Project would include solar modules, a battery energy storage system, underground electrical conductors, balance of system equipment, access roads, and fencing. Solar modules would be fully enclosed in metal and glass frames. The frames would be mounted on steel posts made from galvanized or corrosion-resistant metal driven or screwed into the ground between 10 and 15 feet. All equipment skids and pads would be elevated at a minimum of 12 inches above the 100-year flood elevation. The overall height of the solar array would be no more than 15 feet tall. The Project would be interconnected to an electrical distribution system owned by Southern California Edison (SCE) located adjacent to the

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

southern Project Site boundary. The Project would be enclosed in a six-foot-tall chain link fence with one foot of barbed wire on top for a total fence height of 7-feet.

Proponent: RPCA Solar 13, LLC

Objective: The objective of the Project is to construct and operate a 14-megwatt capacity photovoltaic solar facility and would occupy approximately 59 acres across two 40-acre parcels.

Location: The Project is located north of 20 Mule Team Road, west of Old Highway 58 and is bordered by undeveloped land to the north, east, and south in the city of Boron, California, San Bernardino County, 35.001120 latitude,-117.630105 longitude on Assessor's Parcel Numbers (APN) 0498-111-04 and 0498-111-05.

Timeframe: Project construction is anticipated to be completed over a period of approximately nine months, beginning as early as September 2025 and ending as early as May 2026.

COMMENTS AND RECOMMENDATIONS

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

COMMENT #1: Special-Status Species

Section: MND Section IV, Pages 39-40

Issue: CDFW is concerned about the Project's potential impacts to special-status species including desert tortoise (*Gopherus agassizii*), Desert kit fox (*Vulpes macrotis*), Burrowing owl (*Athene cunicularia*), Mohave ground squirrel (*Xerospermophilus mohavensis*), and nesting birds given the Project site contains suitable habitat for these species.

Specific impact: Potential take of special-status species and loss of habitat.

Why impact would occur: Project implementation could result in direct mortality and/or injury to special-status species through staging of construction equipment, vehicles, and foot traffic and in the loss of nesting and/or foraging habitat from grading, ground disturbance, and vegetation clearing.

Evidence impact would be significant: The species above include federal Endangered Species Act (ESA) and California Endangered Species Act (CESA)-listed species.

Recommended Potentially Feasible Mitigation Measure(s) To reduce impacts to less than significant: CDFW supports the inclusion of BIO MM-1 and MM BIO-2 with minor revisions in the final MND, as per below to avoid impacts to special-status species (edits are in ~~strikethrough~~ and additions are in **bold**):

(MM BIO-1) Biological Resources Mitigation Measure 1

Prior to the issuance of grading or building permits, and prior to decommissioning, the Project Proponent shall retain a Qualified Biologist, **as approved in writing by CDFW**, who has experience and expertise in desert species to oversee compliance with protection measures for all listed and other special-status species that may be affected by the construction, operation, and decommissioning of the Project **including but not limited to desert tortoise, desert kit fox, burrowing owl, and Mohave ground squirrel.** The contact information for the Qualified Biologist shall be provided in writing to **CDFW** ~~the San Bernardino County Land Use Services Department~~. ~~If State or Federally listed species or other special-status biological resources are identified in the Project Site during protocol and/or preconstruction surveys, then the Qualified Biologist may need to be approved by USFWS and/or CDFW as an authorized biologist for handling listed species.~~ The Qualified Biologist or other Qualified Biological Monitors shall be on the Project Site during initial grading, ground disturbance and vegetation removal activities to monitor construction activity that could directly or indirectly impact special-status biological resources. The

Qualified Biologist shall have the authority to halt all activities that are in violation of the special-status species protection measures. Work shall proceed only after potential hazards to special-status species are removed and the species is no longer at risk. The Qualified Biologist shall have in her/his possession a copy of all the compliance measures while work is being conducted on the Project Site. A report of biological monitoring activities and Project compliance shall be prepared at the end of the construction period and submitted to the County **and CDFW** for documentation.

(MM BIO-2) Biological Resources Mitigation Measure 2

Prior to any activity on-site and for the duration of construction activities, all personnel at the Project Site (including laydown areas and/or transmission routes) shall attend a Worker Education Awareness Program (WEAP) developed and presented by the Qualified Biologist. New personnel shall receive WEAP training on the first day of work and prior to commencing work on the site. Any employee responsible for the operation and maintenance (O&M) of the Project facilities shall also attend WEAP training.

A discussion of the biology and general behavior of any sensitive species which may be in the area, **including but not limited to desert tortoise, desert kit fox, burrowing owl, and Mohave ground squirrel,** how they may be encountered within the work area, and procedures to follow when they are encountered shall be included in the training. Special-status species, including legal protection, penalties for violations, and Project-specific protective measures shall also be discussed. Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers prior to on-site Project activity. Copies of the training shall be maintained at the worksite with the construction supervisor, and a handout containing this information shall be distributed for workers to carry on-site. Upon completion of the program, employees shall sign an attendance log stating they attended the program and understand all protective measures. A sticker shall be placed on hard hats indicating that the worker has completed the WEAP training. Construction workers shall not be permitted to operate equipment within the construction areas unless they have attended the WEAP training and are wearing hard hats with the required sticker. A copy of the training transcript and/or training video, as well as a list of the names of all personnel who attended the WEAP training and copies of the signed acknowledgement forms, shall be submitted to the San Bernardino County Planning and Community Development Department upon the County's request.

COMMENT #2: Desert Tortoise (*Gopherus agassizii)*

Section: MND section IV, Pages 41-42

Issue: The Project site lies within range of and contains suitable habitat for Desert Tortoise, a CESA-threatened species (candidate endangered species).

Specific impact: Project activities may result in degradation and permanent loss of desert tortoise habitat and may also result in direct mortality and/or injury to desert tortoise onsite.

Why impact would occur: Staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in direct mortality and/or injury to desert tortoise. Project construction and operation may result in collision with or crushing by vehicles or heavy equipment; entrapment within open trenches and pipes; entrapment or entanglement within materials and equipment staged and moved; crushing or burial of individuals or eggs in burrows; destruction of burrows and refugia; and increased predation.

Evidence impact would be significant: Desert tortoise was recently uplisted from a threatened to endangered species under CESA. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Consequently, if a Project, including Project construction or any Project-related activity during the life of the Project results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization *prior* to Project implementation. This may include an incidental take permit (ITP) or a consistency determination (Fish and Game Code, §§ 2080.1 & 2081).

Further, desert tortoise is continuously impacted by ongoing loss, degradation, and fragmentation of habitat. Desert tortoise populations have declined significantly in recent decades as a result of human activities in their native habitat including land development, off-road vehicle use, overgrazing, agricultural development, military activities, predation, and the spread of invasive plant species (USFWS 2011). The desert tortoise population in the western Mojave Desert has declined by 90% since the 1980s. Desert tortoises can take up to 20 years to reach sexual maturity, which limits their ability to recover from even small losses in population numbers (USFWS 2011).

Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant: CDFW appreciates that a focused desert tortoise survey was conducted on October 12, 2023, following the US Fish and Wildlife Service's protocols and the inclusion of MM BIO-4 and MM BIO-5 in the IS/MND. Given that the Project site supports suitable desert tortoise habitat, CDFW strongly encourages the Project proponent to apply for an ITP if full avoidance is not feasible. As such, CDFW offers the following revisions to MM BIO-4 and MM BIO-5 to avoid impacts to desert tortoise (edits are in ~~strikethrough~~ and additions are in **bold**):

(MM BIO-4) Biological Resources Mitigation Measure 4

A pre-construction desert tortoise presence/absence survey shall be conducted by a **CDFW-approved** Qualified Biologist **within the Project area and 500-foot buffer of suitable habitat,** no more than ~~30 days in advance of Project development~~ **48-hours prior to Project activities and after any pause in Project activities lasting 30 days or more** in accordance with USFWS ~~survey protocols~~ **2009 desert tortoise survey methodology. The survey shall have 100-percent visual coverage for desert tortoise and their sign. Preconstruction surveys cannot be combined with other surveys conducted for other species while using the same personnel.** A discussion of survey results, including negative findings, shall be provided to the County upon completion of the survey. **Results of the survey shall be submitted to CDFW prior to start of Project activities.** ~~If desert tortoise are not documented during the survey, no additional measures related to desert tortoise avoidance and minimization are recommended.~~ **If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area.** If desert tortoise are documented inhabiting the Project Site during presence/absence surveys **individuals will be allowed to leave on their own and** MM BIO-5 shall be implemented.

(MM BIO-5) Biological Resources Mitigation Measure 5

~~Implementation of any measures that would result in the "take" of desert tortoise cannot be undertaken without formal authorization from CDFW and USFWS.~~ If pre-construction desert tortoise surveys (MM BIO-4) ~~document that the species is inhabiting the Project Site~~ **confirm presence**, the Project Proponent shall develop **and submit to CDFW for review and approval** a **desert tortoise-specific avoidance** plan **detailing the protective avoidance measures to be implemented to ensure complete avoidance of take of desert tortoises. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization (i.e., California Endangered Species Act (CESA) incidental take permit under the Fish and Game Code section 2081) is obtained. In addition, in consultation with USFW and CDFW the project proponent shall install exclusionary fencing following the specifications found in Chapter 8 Desert Tortoise Exclusion Fence of the Desert Tortoise (Mojave Population) Field Manual (USFWS).** ~~for desert tortoise translocation and monitoring prior to Project construction in accordance with USFWS guidelines. The plan shall provide the framework for implementing, but not limited to, the following measures, or similar measures deemed sufficient and approved during agency consultation (Note: any desert tortoise translocation plan must be reviewed and approved by CDFW and USFWS):~~

- ~~If a tortoise-proof exclusion fence is practicable, a fence shall be installed around all non-linear construction areas prior to the initiation of ground disturbing activities, in coordination with a Qualified Biologist. The fence shall be constructed of 0.5-inch mesh hardware cloth and extend 18 inches above ground and 12 inches below ground. Where burial of the fence is not possible,~~

~~the lower 12 inches shall be folded outward against the ground and fastened to the ground to prevent desert tortoise entry. The fence shall be supported sufficiently to maintain its integrity, be checked at least monthly during construction and operations, and maintained when necessary by the Project proponent to ensure its integrity. Provisions shall be made for closing off the fence at the point of vehicle entry. Common raven (Corvus corax) perching deterrents shall be installed as part of the fence construction.~~

- ~~After fence installation, a Qualified Biologist shall conduct a clearance survey in accordance with USFWS protocols for desert tortoise within the fenced construction site. A Qualified Biologist shall have the appropriate education and experience to accomplish biological monitoring and mitigation tasks and be approved by the CDFW and the USFWS. Two surveys, with transects spaced at 5 meters, without finding any tortoises or new tortoise sign shall occur prior to declaring the site clear of tortoises.~~
- ~~All burrows that could provide shelter for a desert tortoise shall be hand-excavated prior to ground-disturbing activities.~~
- ~~A Qualified Biologist shall remain on-site until all vegetation is cleared and, at a minimum, conduct site and fence inspections on a regular basis throughout construction in order to facilitate Project compliance with mitigation measures.~~
- ~~A Qualified Biologist shall remain on-call throughout fencing and grading activities in the event a desert tortoise enters the Project Site.~~
- ~~Compensatory habitat mitigation shall be secured in the form of a conservation easement or purchase of mitigation bank credits to compensate for the loss of occupied desert tortoise habitat at a minimum ratio of 1:1, with habitat of equal or greater value.~~

COMMENT #3: Desert kit fox (*Vulpes macrotis*)

Section: MND Section IV, Page 42

Issue: The Project occurs within the range of desert kit fox (*Vulpes macrotis*), a protected species pursuant to Title 14 of the California Code of Regulations Section 460.

Specific impact: Project activities may result in degradation and permanent loss of desert kit fox habitat and may also result in direct mortality and/or injury to desert kit fox onsite.

Why impact would occur: The staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in direct mortality and/or injury.

Evidence impact would be significant: The desert kit fox is a species of special concern (SSC) and is protected from take by CDFW Code 14 CCR section 460. CEQA provides protection not only for CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. Desert kit fox is a SSC that meets the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380).

Recommended potentially feasible mitigation measure(s) to reduce impacts to less than significant: CDFW recommends the inclusion of the following revisions to MM BIO-6 and the addition of MM BIO-7 to avoid impacts to desert kit fox **(**edits are in ~~strikethrough~~ and additions are in **bold**):

(MM BIO-6) Biological Resources Mitigation Measure 6

Pre-construction surveys shall be conducted by a Qualified Biologist for the presence of desert kit fox **as per MM BIO-7**, American badger, and burrowing owl **as per MM BIO-9** prior to commencement of construction activities. ~~This survey shall be conducted no more than 30 days prior to ground disturbing activities. Surveys shall conform to CDFW guidelines for burrowing owl and to industry standards for desert kit fox and American badger. A report of all pre-construction survey efforts shall be submitted to the County within 30 days of completion of the survey effort to document compliance. The report shall include the dates, times, weather conditions, and personnel involved in the survey(s) and monitoring. The report shall also include, if applicable, observations of the species or~~

~~potential dens/burrows, the UTM coordinates and habitat descriptions, and a description of any passive relocation, if applicable. Biological monitoring and WEAP training as described in MM BIO-2, respectively, shall include these species. If desert kit fox, American badger, and/or burrowing owl observations are not documented during the survey(s) or biological monitoring activities, no additional measures related the avoidance and minimization of the absent species are recommended.~~

(MM BIO-7) Biological Resources Mitigation Measure 7

No more than forty-five (45) days and no less than thirty (30) days prior to the beginning of surface disturbance, the Designated Biologist shall conduct a pre-Project survey 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 individuals, dens, and sign. Permittee shall provide the results of the survey to CDFW prior to start of Project activities.

If potential dens are located, they shall be monitored by the Designated Biologist. Trail cameras may be used to assist with observation but shall not be the sole basis upon which the status is determined. Permittee 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 Permittee shall submit a monitoring and relocation plan for CDFW's review and approval. No disturbance or relocation of active dens may take place when juveniles may be present and dependent on parental care.

Burrows that have been confirmed inactive within the Project site, that are not being excavated and filled, will be blocked with rocks and sticks to discourage use during Project activities and removed when construction is complete. The Designated Biologist shall periodically check that the inactive burrows remain blocked and are not reoccupied.

~~Two potential mitigation scenarios are applicable to mitigate potential impacts to the desert kit fox:~~

~~1) If potential desert kit fox dens are observed and avoidance is feasible, a non-disturbance buffer shall be established, demarcated using brightly colored flagging, and fenced-off prior to construction activity start and to be confirmed by the Qualified Biologist. The buffer may only be reduced at the discretion of a Qualified Biologist and the removal of the buffer shall only occur if a Qualified Biologist determines the potential den is inactive. Typical buffer distances for desert kit fox are:~~

- ~~Desert kit fox potential den: 50 ft~~
- ~~Desert kit fox active den: 100 ft~~
- ~~Desert kit fox natal den: 500 ft~~

~~2) If avoidance of the potential desert kit fox dens is not feasible, the following measures are recommended to minimize potential adverse effects to the desert kit fox:~~

- ~~If a Qualified Biologist determines that potential dens are inactive, the biologist shall excavate these dens by hand with a shovel and collapse them to prevent desert kit foxes from re-using them during construction.~~

- ~~If a Qualified Biologist determines that potential dens may be active, an on-site passive relocation program shall be implemented. This program shall only be implemented during the non-breeding season (September 1 through February 1) and consist of passive eviction of desert kit foxes from occupied burrows by installation of one-way doors at burrow entrances, monitoring of the burrow for seven days to confirm usage has been discontinued, and excavation and collapse of the burrow to prevent reoccupation. After a Qualified Biologist determines that desert kit foxes have stopped using active dens within the Project Site, the dens shall be hand-excavated with a shovel and collapsed to prevent re-use during construction. Only non-natal dens shall be passively excluded, disturbance to natal~~

~~dens shall be avoided until they are no longer active. If a natal den cannot be avoided by the Project, consultation with the CDFW shall be necessary.~~

COMMENT #4: Burrowing Owl (*Athene cunicularia*)

Section: MND Section IV, Pages 44-45

Issue: The Project site contains suitable habitat for burrowing owl, a CESA-listed candidate species.

Specific impact: Project activities may result in degradation and permanent loss of burrowing owl habitat and may also result in direct mortality and/or injury to burrowing owl onsite.

Why impact would occur: Burrowing owls are well-adapted to open, relatively flat expanses and vacant lots and prefer habitats with generally short sparse vegetation with few shrubs such as those occurring onsite. While the Biological Resource Assessment states that "Burrowing owl or sign thereof was not observed on site during the numerous focused biological surveys conducted by Rincon between fall 2023 and spring 2024" and goes on to state that "If present during this time frame, the species would have been detected" it is important to note that per the 2012 BUOW Staff Report, "Burrowing owls are more detectable during the breeding season with detection probabilities being highest during the nestling stage" with the peak of the breeding season being between April 15th and July 15th. CDFW would like to note that absent a focused survey for the species following a CDFW-approved guideline, or similar approach, burrowing owls and burrows may go undetected, and ground disturbance, site preparation, and grading could destroy habitat and result in take of burrowing owl.

Evidence impact would be significant: Habitat loss is a threat to burrowing owls (CDFG, 2012). Burrowing owls are dependent on burrows at all times of the year for survival and/or reproduction, evicting them from nesting, roosting, satellite burrows may lead to 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). Burrowing owls are also dependent on adjacent habitat, and forage within 600 meters of nest burrows (Rosenberg and Haley, 2004). As a candidate species, Western Burrowing Owl is granted full protection of a threatened species under CESA. Take is defined in Fish and Game Code section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill." CESA allows CDFW to authorize project proponents to take state-listed threatened, endangered, or candidate species if certain conditions are met. Take must be incidental to an otherwise lawful activity. The issuance of a permit cannot jeopardize the continued existence of the species, and the impacts must be minimized and fully mitigated.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW appreciates the inclusion of MM BIO-12 in the IS/MND and offers the following revisions to avoid impacts to BUOW (edits are in ~~strikethrough~~ and additions are in **bold**):

(MM BIO-9-9.4) Biological Resources Mitigation Measures 9-9.4

(MM-BIO-9) If complete avoidance cannot be achieved an Incidental Take Permit (ITP) for Burrowing owl shall be obtained prior to initiation of ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Compensatory mitigation for direct impacts to 59 acres shall be fulfilled through conservation of suitable Burrowing owl habitat.

~~(~~MM-BIO-9.1) At least 45 days prior to construction the Qualified Biologist shall conduct a survey of the project site to determine if burrowing owls are present. If present the Project proponent shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval at least 30 days prior to initiation of ground disturbing activities. The Burrowing Owl Plan shall include 1) impact assessment that details the number and location of occupied burrow sites, and acres of burrowing owl habitat; 2) if avoidance of impacts is proposed, details on

avoidance actions and monitoring such as proposed buffers, visual barriers and other actions; 3) site monitoring to be conducted prior to, during, and after any exclusion of burrowing owls from their burrows sufficient to ensure take is avoided, daily monitoring with cameras and direct observation for one week to confirm young of the year have fledged if the exclusion will occur immediately after the end of the breeding season, and process to document any excluded burrowing owls use of artificial or natural burrows on an adjoining mitigation site (if able to confirm by band resight), 4) details of mitigation for impacts to occupied burrows and habitat. The proposed implementation of burrow exclusion and closure should only be considered as a last resort. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Project proponent shall implement the Burrowing Owl Plan following CDFW review and approval.

~~Two potential mitigation scenarios are applicable to mitigate potential impacts to the burrowing owl:~~

(MM-BIO-9.2)~~1)~~ If burrowing owl are detected on-site, a non-disturbance buffer following the 2012 Staff Report shall be established **around all burrowing owl burrows such as roosting and satellite burrows within the Project area with an appropriate buffer surrounding the project area determined by a Qualified Biologist. The buffer** shall be established, restricting all ground-disturbing activities, such as vegetation clearance or grading, from occurring within the buffer. The buffer should be demarcated using brightly colored flagging and the buffer may only be reduced at the discretion of a Qualified Biologist. **The Qualified Biologist shall delineate burrows with different materials than those used to delineate the Project area. Project proponent shall remove and properly dispose of all materials used for delineation immediately upon completion of the Project.**

~~Removal of the buffer shall only occur if a Qualified Biologist determines burrowing owl are not present in the Project Site and any potential burrows are inactive. Typical avoidance buffer distances for burrowing owl range from 100 meters (330 ft) to 250 meters (825 ft) depending on Project activity, line of sight, and local topography during the breeding season (February 1 to August 31). During the non-breeding (winter) season (September 1 to January 31), typical avoidance buffers range from 50 meters (165 ft) to 100 meters (330 ft) from the burrow. Depending on the level of disturbance, a smaller buffer may be established as determined by the Qualified Biologist based on the factors listed above and potential use of sound and visual barriers such as hay bales.~~

~~2) If burrowing owl burrow avoidance is infeasible during the non-breeding season or during the breeding season (February 1 through August 31), where resident owls have not yet begun egg laying or incubation, or where the juveniles are foraging independently and capable of independent survival, a Qualified Biologist shall implement a passive relocation program consistent with Appendix E1 (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 CDFW Staff Report on Burrowing Owl Mitigation (CDFW 2012).~~

(MM-BIO-9.3) To ensure that the Project avoids impacts to burrowing owl, a qualified biologist shall complete a take avoidance survey no less than 14 days prior to initiating ground disturbance activities using the recommended methods described in the 2012 Staff Report. Burrowing owls may re-colonize a site after only a few days. Time lapses or a break in construction activities of 3 days will trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance.

(MM-BIO-9.4) During take avoidance surveys the Project proponent shall have a Designated Biologist(s), pre-approved by CDFW, inspect all burrows that exhibit typical characteristics of owl activity prior to any site-preparation activities. Evidence of owl activity may include presence of owls themselves, burrows, and owl sign at burrow entrances such as pellets, whitewash or other "ornamentation,"

feathers, prey remains, etc. If it is evident that the burrows are actively being used, the Project proponent shall follow the guidelines in the CDFW approved Burrowing Owl Plan. If no Plan has been approved the Project proponent shall not commence activities until owls have been confirmed absent and the burrows are no longer in use by adult or juvenile owls or until a Burrowing Owl Plan has been submitted and approved.

~~A habitat mitigation plan shall be developed in coordination with the County and CDFW for loss of active burrowing owl burrow sites if implementation of a passive relocation plan is necessary and/or burrowing owl are documented to nest on-site or within 500 feet of the Project Site. This would be based upon the portion of the Project that overlaps with the owl(s) primary foraging area around the burrow site (approximately 500 foot buffer) to be replaced a minimum 1:1 ratio.~~

COMMENT #5: Nesting Birds

Section: MND Section IV, Page 45

Issue: The Project may have impacts on nesting birds, including CESA-listed birds, SSC, and common birds that are subject to Fish and Game Code Sections 3503, 3503.5, and 3513, and the Migratory Bird Treaty Act of 1918.

Specific impact: Project activities may result in degradation and permanent loss of nesting bird habitat and may also result in direct mortality and/or injury to nesting birds onsite.

Why impact would occur: Direct take may result from vehicle and equipment strike and from predators attracted to the construction site. Indirect take may result from displacement, reduction of habitat and habitat quality associated with road infrastructure, and from impacted foraging and nesting habitat. Additionally, please note that construction during the breeding season of nesting birds could potentially result in the incidental loss of breeding success or otherwise lead to nest abandonment. Noise from road use, generators, and heavy equipment may disrupt nesting bird mating calls or songs, which could impact reproductive success.

Evidence impact would be significant: Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto.

Recommended potentially feasible mitigation measure(s): Within the IS/MND, MM-BIO-10 limits nesting bird surveys to only occur within nesting bird season. CDFW would like to note that regardless the time of year, a pre-construction clearance survey should be conducted to avoid potential impacts to nesting birds, as described above. CDFW therefore offers the following revisions to MM-BIO-10 to avoid impacts to nesting birds (edits are in ~~strikethrough~~ and additions are in **bold**):

(MM BIO-10) Biological Resources Mitigation Measure 10

Regardless of the time of year, ~~If construction is scheduled to commence during the non-breeding season (September 1 to January 31), no pre-construction surveys or additional measures with regard to nesting birds and other raptors are required. To avoid impacts to nesting birds in the Project Site~~, a Qualified Biologist shall conduct pre-construction surveys of all potential nesting habitat within the Project Site ~~hat are initiated during the breeding season (February 1 to August 31).~~ The raptor survey shall focus on potential nest sites (i.e., utility poles and trees) within a 250-foot buffer around the Project Site. These surveys shall be conducted no more than 14 days prior to ground-disturbing activities without prior agency approval. The Qualified Biologist must be able to determine the status

and stage of nesting migratory birds and all locally breeding raptor species without causing intrusive disturbance.

If active nests are found **within the Project area or within 500 feet of the Project area**, **the nest shall be flagged and mapped on the construction plans and** a suitable buffer as determined by the Qualified Biologist ~~(e.g., 200-300 feet for common raptors; 30-50 feet for passerines, 0.5 mile for golden eagle)~~ **based on the species' sensitivity to disturbance** shall be established around active nests, and no construction within the buffer shall be allowed until a Qualified Biologist has determined that the nest is no longer active (i.e., the nestlings have fledged and are no longer reliant on the nest). Buffers may be reduced at the discretion of a Qualified Biologist based on Project activity, line of sight, tolerance of individuals, and stage of the nest. **The nest area shall be demarcated in the field with flagging and stakes or construction fencing. On-site construction monitoring shall be conducted when construction occurs in close proximately to an active nest buffer. The buffer shall remain in place until determined by the qualified biologist that the nestlings have fledged, and the nest is no longer active. If an active nest is encountered during the Project construction, construction shall stop immediately until a qualified biologist can determine (1) the status of the nest, and (2) when work can proceed without risking violation to state or federal laws.**

COMMENT #6: Western Joshua Tree (*Yucca brevifolia*)

Section: MND section IV, Pages 45-46

Issue: The Project contains 150 Western Joshua Tree (WJT) onsite, a candidate species pursuant CESA.

Specific impact: Loss of 150 WJT onsite and loss of WJT habitat.

Why impact would occur: Incidental take of WJT individuals in the form of mortality ("kill") may occur as a result of removing mature and emergent individuals; relocating individuals; eliminating and modifying habitat; removing seedbank and crushing an/or burying living seeds in the soil, rendering living seeds inviable and/or causing them to be killed.

Evidence impact would be significant: The Project as described will result in direct take of WJT and parts thereof and would result in the loss of the habitats on which they depend on. WJT is a candidate threatened species under CESA. Under CESA, species classified as a candidate species are afforded the same protection as CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Take is defined in Fish and Game Code section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill". Grading, ground disturbance, vegetation clearing, staging of construction equipment, vehicles, and foot traffic may result in the permanent loss of WJT on Project site and may result in the disruption to the WJT seedbank.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW appreciates the inclusion of MM BIO-11 in the IS/MND. CDFW would like to include the option of obtaining an ITP either through the Western Joshua Tree Conservation act (WJTCA) or through CESA. Further, an additional WJT census survey may be needed for the ITP application. As such, CDFW offers the following revisions to MM-BIO-11 (edits are in ~~strikethrough~~ and additions are in **bold**):

(MM BIO-11) Biological Resources Mitigation Measure 11

The Project shall obtain an Incidental Take Permit (ITP) for impacts to western Joshua tree (*Yucca brevifolia*) through compliance with the Western Joshua Tree Conservation Act (Fish and Game Code §§ 1927-1927.12) and adhere to the Western Joshua Tree Relocation Guidelines and Protocols if determined necessary by CDFW, or through the California Endangered Species Act (Fish and Game Code, §§ 2080- 2085).

~~CDFW requires mitigation fees based on the number of individual WJT taken and their defined classes. CDFW details mitigation as described in their interactive Mitigation Map Fee Area (CDFW 2024), which designates areas that fall within a reduce fee area or~~

~~standard fee area. Because the Project is located within the reduced mitigation fee map area, it is subject to the following mitigation fees per tree:~~

- ~~Size Class A (Trees less than 1 meter in height) - $150.00 per tree~~
- ~~Size Class B (Trees one 1 meter or greater but less than 5 meters in height) - $200.00 per tree~~
- ~~Size Class C (Trees 5 meters or greater in height) - $1,000.00 per tree~~

~~Based on the WJTs surveyed and the mitigation fees per tree above, the Project Proponent shall pay a mitigation fee of $60,350 for the removal of 150 WJT. A breakdown of costs per tree is provided in Table 6: Western Joshua Tree Removal Mitigation Fees.~~

~~**Table 6: Western Joshua Tree Removal Mitigation Fees**~~

~~**Size Class**~~	~~**Number of WJT**~~	~~**Mitigation Fee**~~	~~**Removals**~~	~~**Cost**~~
~~A~~	~~33~~	~~$150~~	~~33~~	~~$4,950~~
~~B~~	~~77~~	~~$200~~	~~77~~	~~$15,400~~
~~C~~	~~40~~	~~$1,000~~	~~40~~	~~$40,000~~
~~**Total**~~	~~**150**~~	~~**--**~~	~~**150**~~	~~**$60,350**~~

COMMENT #7: Mohave ground squirrel (*Xerospermophilus mohavensis*)

Section: MND section IV, Pages 37-38

Issue: The Project Site contains suitable habitat for and lies within the yearlong range for Mohave ground squirrel (MGS), a CESA-listed species.

Specific Impact: Project activities may result in degradation and permanent loss of MGS habitat and may also result in direct mortality and/or injury to MGS onsite.

Why impact would occur: Staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in direct mortality and/or injury to MGS. Grading, ground disturbance, and vegetation clearing may result in the permanent loss of MGS habitat.

Evidence impact would be significant: Consistent with CEQA Guidelines, Section 15380, the status of the MGS as a threatened species under the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) qualifies it as an endangered, rare, or threatened species under CEQA.

Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant: As stated in the MND, the Project site contains suitable habitat for MGS and also lies within known yearlong range for the species. As such, CDFW appreciates that protocol-level surveys were conducted for MGS, however, surveys did not include an extra day of trapping as per protocol, to compensate for trapping days cut short due to high temperatures. Additionally, since negative survey results are only valid until the start of the next survey season (March of the subsequent year), the current survey results will be invalid upon the commencement of Project activities, which are expected to begin at the earliest, September of 2025. CDFW therefore strongly recommends the inclusion of MM BIO-12 as per below, to avoid impacts to MGS.

(MM BIO-12) Biological Resources Mitigation Measure 12

Prior to the initiation of ground disturbing activities, focused pre-construction clearance surveys throughout the Project site for Mohave ground squirrel will be conducted by a qualified biologist familiar with the species' behavior and life history. Focused Mohave ground squirrel surveys shall follow the California Department of Fish and Game Mohave Ground Squirrel Survey Guidelines (CDFW 2023). Visual surveys will be conducted prior to ground disturbing activities commencing between March 15 and April 15, visual surveys shall be conducted on the Project site during daylight hours but a qualified biologist who can readily identify Mohave ground squirrel (*Xerospermophilus mohavensis*) and White-tailed antelope squirrel (*Ammospermophilus leucurus*). If the results of the survey confirm

absence, then the Qualified Biologist shall ensure Mohave ground squirrels do not enter the Project site. If the survey or monitoring throughout the duration of the Project confirms presence, the Project proponent shall obtain a CESA Incidental Take Permit (ITP) for Mohave ground squirrel. The ITP will specify avoidance, minimization, and mitigation conditions for temporary and/or permanent impacts to Mohave ground squirrel.

COMMENT #8: Lake and Streambed Alteration Agreement

Section: MND section IV, Page 34

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. Development facilitated by the Project could impact stream resources subject to notification pursuant to Fish and Game Code section 1602.

Specific impact: Project activities, including grading, solar panel installation, vehicle and equipment staging, and site access could divert or obstruct stream flows, substantially alter the bed, bank, or channel of a stream, use or deposit materials subject to notification pursuant to Fish and Game Code section 1602. Absent notification, the Project could result in impacts to stream resources that should otherwise be avoided, minimized, or addressed in an agreement with CDFW.

Why impact would occur: Project implementation will result in physical changes to the landscape (e.g., grading) and could physically alter lake or streambed resources.

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

CDFW considers the fill and permanent conversion of natural ephemeral streams to impervious surfaces a significant impact to stream resources. The conversion of a natural ephemeral stream systems to impervious managed systems results in direct, permanent impacts to the physical form and function of natural stream systems and the habitats they support, increases water flow velocity, increases erosive processes downstream, removes habitat and wildlife corridors, and prohibits groundwater infiltration. Indirect effects associated with streambed conversion include increased habitat fragmentation, increased developmental encroachment on natural stream systems, and increased maintenance activities.

Recommended Potentially Feasible Mitigation Measure 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.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/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 IS/MND to assist the County of San Bernardino in identifying and mitigating Project impacts on biological resources.

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

Sincerely,

DocuSigned by:
Brandy Wood
4D759253408941E...

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ATTACHMENTS

Attachment A: MMRP for CDFW-Proposed Mitigation Measures

REFERENCES

California Department of Fish and Game (CDFG). 2010. Mohave Ground Squirrel Survey Guidelines. Available for download at: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83975&inline

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