



State of California – Natural Resources Agency
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



November 5, 2021
Sent via email

Governor's Office of Planning & Research

Nov 05 2021

STATE CLEARINGHOUSE

Ms. Cathreen Richards
Planning Director
County of Inyo
168 N. Edwards St.
Independence, CA 93526

Subject: Initial Study and Mitigated Negative Declaration
Conditional Use Permit (CUP) 2021-06 Tree Farm
State Clearing House No. 2021100189

Dear Ms. Richards:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (ISMND) from County of Inyo (County) for the Conditional Use Permit 2021-06 Tree Farm Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA,

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.

Ms. Cathreen Richards, Planning Director
County of Inyo
November 5, 2021
Page 2 of 19

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 site is in the City of Sandy Valley, Inyo County, California; Latitude 35.82194 N and Longitude -115.68438 W. The Project site is located on Ekenberg Road between Long Road and West Nickel Avenue. The Project proposes outdoor cannabis cultivation on 8.5 acres of Assessor's Parcel Number (APN) 048-350-25-00, which totals 40 acres. The Project proposes the construction of a 12,500 square-foot (ft²) processing building, a 780 ft² nursery, nine 2,160 ft² hoop houses, and three 108,900 ft² cultivation fields.

COMMENTS AND RECOMMENDATIONS

The ISMND recognizes the potential for several special-status species to occur within the Project site, including state-threatened, proposed endangered desert tortoise (*Gopherus agassizii*) and species of special concern (SSC) burrowing owl (*Athene cunicularia*) and American badger (*Taxidea taxus*). As such, focused desert tortoise surveys and a burrowing owl habitat assessment were conducted. However, CDFW is concerned that surveys for desert tortoise were conducted at a time of year and in weather conditions when desert tortoise are not generally evident. Thus, CDFW is unsure whether impacts to desert tortoise have been adequately identified, disclosed, or mitigated.

The habitat assessment for burrowing owl deemed burrowing owls absent from the Project site and in adjacent areas, as such the ISMND does not identify impacts to burrowing owl and no mitigation measures were included, even though habitat for burrowing owl is present. Due to sign (i.e., digs) of American badger on the Project site identified by the ISMND, CDFW is concerned with the lack of mitigation measures to fully avoid and otherwise protect American badger, if it were present at the time of construction.

The ISMND recognizes the potential for several imperiled and rare plant species to occur within Project area particularly within saltbush scrub (~19 acres). However, CDFW is concerned that surveys may have been inadequate to form a complete inventory of rare plants species within the Project area. CDFW understands that development is meant to occur in Project areas that have been bladed and in existing greenhouses, avoiding the saltbush scrub community; however, CDFW is concerned that the County has not adequately identify fish and wildlife (biological) resources that may be impacted on the Project site.

CDFW offers the comments and recommendations presented below and in Attachment 1 (Mitigation Monitoring and Reporting Program) to assist the County in adequately mitigating the Project's potentially significant impacts on biological resources and requests that the County adopt the below mitigation measures (also see Attachment 1) prior to finalizing the ISMND.

Burrowing Owl (*Athene cunicularia*)

CDFW appreciates that a habitat assessment was conducted for burrowing owl. Although, the habitat assessment yielded no burrowing owl sign and the ISMND concludes absence of burrowing owl at the time of the survey, CDFW recognizes the presence of suitable burrowing owl habitat, including badger digs and sparse saltbush scrub and thus the potential for burrowing owl at the start of construction. Therefore, CDFW recommends pre-construction burrowing owl surveys and requests the County adopt the following mitigation measure (MM):

MM BIO-1: Burrowing Owl Pre-construction Clearance Survey

No less than 14 days prior to the initiation of any Project activities, a qualified biologist shall conduct pre-construction surveys in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012). If no burrowing owl(s) are observed on site during the pre-construction survey, a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW 72 hours in advance of ground disturbing activities. If burrowing owl(s) are observed on site during the pre-construction survey, areas occupied by burrowing owls shall be avoided. If burrowing owls cannot be avoided by the Project, then: 1) the qualified biologist shall contact California Department of Fish and Wildlife (CDFW) and conduct an impact assessment in accordance with Staff Report on Burrowing Owl Mitigation prior to commencing Project activities to determine appropriate mitigation, including the acquisition and conservation of occupied replacement habitat at no less than a 2:1 ratio; 2) the qualified biologist shall prepare and

submit a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) to the CDFW for review/approval prior to the commencement of disturbance activities onsite; and 3) when a qualified biologist determines that burrowing owls are no longer occupying the Project site and passive relocation is complete, construction activities may begin. A final letter report shall be prepared by the qualified biologist documenting the results of the passive relocation. The letter shall be submitted to CDFW.

Nesting Birds

Page 11 of the ISMND states, “If it is necessary to commence project construction, including any ground disturbance or vegetation removal, between March 15 and September 15, a qualified biologist shall survey all shrubs and structures within the project site for nesting birds, prior to project activities (including construction and/or site preparation)”. CDFW appreciates that the ISMND recognizes the need for pre-construction bird surveys during the bird nesting season. However, CDFW is unclear whether the County is adopting pre-construction bird surveys as a mitigation measure. Furthermore, please note that although many species typically nest between March 1 and September 15, nesting may commence before and/or after this timeframe. For example, raptors may nest as early as January and non-migratory passerine birds, which may nest as early as February. 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. As such, CDFW recommends that to avoid impacts to nesting birds, pre-construction surveys be conducted by a qualified biologist **no more than three (3) days prior to the initiation of project activities**, *at the appropriate time of day/night, during appropriate weather conditions*. Thus, CDFW recommends that the County adopt the below mitigation measure:

MM BIO-2: Pre-construction Nesting Bird Surveys

If construction occurs during the non-nesting season (typically September 16 through December 31), a pre-construction sweep shall be performed to verify absence of nesting birds. If construction activities are scheduled to occur during the nesting season (typically January 1 through September 15), mitigation as described below shall be implemented to avoid potential impacts to birds and their nests.

If construction (including site preparation, staging, or other ground-disturbing activities) or vegetation removal is proposed during the breeding/nesting season for birds (generally, raptor nesting season is

January 1 through September 15; and passerine bird nesting season is February 1 through September 1), a qualified biologist shall conduct pre-construction surveys for birds on the Project site, including a 300-foot survey buffer, no more than 3 days prior to the start of ground-disturbing activities in all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures, at the appropriate time of day/night, during appropriate weather conditions. Pre-construction surveys should focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior (e.g., copulation, carrying of food or nest materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury or distraction displays, or other behaviors). If construction is delayed or suspended for more than 3 days after the survey, the area shall be resurveyed to re-confirm the presence/absence of any active nests.

If an active nest is located during pre-construction surveys, the United States Fish and Wildlife Service (USFWS) and/or the California Department of Fish and Wildlife (CDFW) (as appropriate per agency regulations) shall be notified regarding the status of the nest. Furthermore, construction activities shall be restricted as necessary to avoid disturbance of the nest until nesting activities have concluded, or the qualified biologist deems disturbance potential to be minimal. Restrictions may include, but are not limited to, establishing exclusion zones (no ingress of personnel or equipment at a minimum radius of 300 feet around an active raptor nest and 100-foot radius around an active non-raptor passerine bird nest) or altering the construction schedule.

A qualified biologist shall delineate the buffer using nest buffer signs, environmentally sensitive area fencing, pin flags, and or flagging tape. The buffer zone shall be maintained around the active nest site(s) until the young have fledged and are foraging independently.

American Badger (*Taxidea taxus*)

Even though no primary American badger dens or individuals were identified during the March 9, 2021 biological surveys, the ISMND identifies the potential for American badger, including 18 diagnostic badger digs, two onsite and sixteen west of the southwestern portions of the project site. Because American badger is a highly mobile species and likely uses the Project site and surrounding area for foraging there is potential for the presence of American badger at the start of the Project and poisoning from rodenticide, if used. To address potential direct and indirect impacts to American badger, CDFW recommends the inclusion of the following mitigation measure prior to the County adopting the ISMND:

MM BIO-3: American Badger

A qualified biologist shall visually survey the Project area prior to construction to identify any feature/habitats suitable to support American badger (i.e., burrows, dens). Where an identifiable feature is present, the qualified biologist shall mark the potentially occupied feature for avoidance. If avoidance is infeasible, the qualified biologist shall determine whether the burrow or den is inactive or active. If the burrow or den is inactive, the qualified biologist shall excavate the burrow or den by hand and backfill to prevent reuse by badger.

If American badger is present, applicant shall notify CDFW and applicant should develop an American badger-specific avoidance and relocation plan detailing the protective avoidance and relocation measures to be implemented prior to the commencement of Project activities for CDFW review. The use of rodenticides and herbicides shall be restricted to avoid primary and secondary poisoning of badger.

Desert Tortoise (*Gopherus agassizii*)

CDFW is concerned that surveys for desert tortoise were conducted in March, outside of the active period (April to May or September to October) and in suboptimal temperatures (55°F and 58°F), when the preferred daytime body temperature of desert tortoises is 69°F to 101°F (McGinnis and Voigt 1971). Furthermore, the Biological Resources Report states that because the Project site is smaller than 500 acres, it may be surveyed year-round. Please note, that CDFW only accepts surveys conducted during the active period, regardless of project acreage. The Biological Resources Report concludes that based on the absence of tortoise sign on-site and in adjacent areas, tortoises are absent from the property and thus no impacts are anticipated, and no mitigation measures are recommended. Furthermore, the ISMND states new development would only occur in areas already bladed and in existing greenhouses, so the need to perform additional surveys is not warranted if the saltbush scrub community is not developed. CDFW is concerned that the ISMND lacks a mitigation measure for pre-construction desert tortoise surveys, because CDFW is aware of the presence of desert tortoise in the vicinity of the Project and desert tortoises can travel long distances of up to 3.1 km within 16 days (Medica et al. 1982) outside their usual activity areas or home ranges. In addition, the Project site contains suitable habitat for desert tortoise, including mesquite (*Prosopis glandulosa var. torreyana*) and saltbush scrub. To address potential direct/indirect impacts to desert tortoise, CDFW recommends the inclusion of the following mitigation measure prior to the County adopting the ISMND, regardless of saltbush scrub and mesquite being avoided by construction:

MM BIO-4: Desert Tortoise Pre-Construction Survey

A CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and 50-foot buffer no more than 48 hours prior to Project activities during desert tortoise active season (April to May or September to October), in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Results of the survey shall be submitted to CDFW. If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, the Project proponent shall 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 to desert tortoise. If complete avoidance cannot be achieved, CDFW recommends Project proponent not undertake Project activities and Project activities be postponed until appropriate authorization (i.e., CESA ITP under Fish and Game Code section 2081) is obtained.

Pesticides, Including Fungicides, Herbicides, Insecticides, and Rodenticides

The ISMND states that no synthetic materials, pesticides, or fertilizers will be used in the cultivation of cannabis and only organic products such as neem oil and essential oils of peppermint, thyme and rosemary, pyganic, and Dr. Bronners Soap will be used to treat pest infestations. If the applicant decides that the use of synthetic pesticides, fungicides, herbicides, and insecticides is necessary, please note that wildlife, including beneficial arthropods, birds, mammals, amphibians, reptiles, and fish, can be poisoned by pesticides after exposure to a toxic dose through ingestion, inhalation, or dermal contact (Fleischli et al. 2004, Pimentel 2005, Berny 2007). They can also experience secondary poisoning through feeding on animals that have been directly exposed to the pesticides. Even if used indoors, pesticides such as rodenticides may result in secondary poisoning through ingestion of sickened animals that leave the premises or ingestion of lethally poisoned animals that are disposed of outside. Even nonlethal doses of pesticides can negatively affect wildlife; pesticides can compromise immune systems, cause hormone imbalances, affect reproduction, and alter growth rates of many wildlife species (Pimentel 2005, Li and Kawada 2006, Relyea and Diecks 2008, Baldwin et al. 2009).

Considering all the above, CDFW recommends minimizing the use of synthetic pesticides and using them as directed by the manufacturer, including proper storage and disposal. Toxic pesticides should not be used where they may pass into waters of

the state, including ephemeral streams, in violation of Fish and Game Code section 5650(6).

The use of rodenticides should be restricted to avoid primary and secondary poisoning of species with the potential to occur on-site, such as American badger and Merlin (*Falco columbarius*; S3S4). Snap traps should not be used outdoors as they pose a hazard to nontarget wildlife. Sticky or glue traps should be avoided altogether as these pose a hazard to nontarget wildlife and result in a prolonged/inhumane death. In addition, the California Department of Pesticide Regulation (CDPR) stipulates that pesticides must certain criteria to be legal for use on cannabis. For details, visit: <https://www.cdpr.ca.gov/docs/cannabis/questions.htm> and <https://www.cdpr.ca.gov/docs/county/cacltrs/penfltrs/penf2015/2015atch/attach1502.pdf>

Imperiled and Rare Plants

CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S1, S2, S3, and S4 should be considered sensitive and declining at the local and regional level. The Biological Resources Report recognizes the potential for several plants species that are highly imperiled (S1 to S3) and rare, threatened, or endangered in California (1B to 2B) to occur on the Project site: Gilman's cymopterus (*Cymopterus gilmanii*) (S2) (2B.3), Goodding's phacelia (*Phacelia pulchella* var. *gooddingii*) (S2) (2B.2), Preuss' milk-vetch (*Astragalus preussii* var. *preussii*) (S1) (2B.1), forked buckwheat (*Eriogonum bifurcatum*) (S3) (1B.2), Ripley's aliciella (*Aliciella ripleyi*) (S2) (2B.3), Amargosa beardtongue (*Penstemon fruticiformis* var. *amargosae*) (S2) (1B.3), Utah beardtongue (*Penstemon utahensis*) (S2) (2B.3), and three-awned grama (*Bouteloua trifida*) (S3) (2B.3).

The ISMND identifies the Project area as having either suitable or unsuitable habitat for the above-mentioned rare plant species, though the ISMND does not provide information on how habitat suitability was determined. Furthermore, botanical field surveys were conducted in March, at times of year when the aforementioned plants are not flowering or fruiting (typically April to September) and thus not generally evident and identifiable. Thus, CDFW is concerned that the analysis completed may have been inadequate to form a complete inventory of rare plants within the Project area and to identify the level of impacts on those species identified as potentially present and whether the Project's impacts have been adequately identified, disclosed, and mitigated, in the case that saltbush scrub cannot be avoided.

CDFW recommends that prior to adopting the ISMND, the County complete focused surveys following accepted protocol/methods and updates the ISMND to reflect the survey results and any changes in mitigation to address Project impacts. CDFW recommends the below measure be added to the ISMND to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts. If

species are documented on-site during surveys and avoidance is infeasible, to adequately offset impacts, CDFW recommends the County considers purchasing credits from a mitigation bank or acquiring and conserving in perpetuity lands with the target resources.

MM BIO-5: Rare Plant Survey

Prior to Project implementation, and during the appropriate season, the County shall conduct botanical field survey following protocols set forth in the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW-approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status.

If any rare plants or sensitive vegetation communities are identified, the County shall either avoid the occurrence, with an appropriate buffer, or mitigate the loss of the occurrence through the purchase of mitigation credits from a CDFW-approved bank or land acquisition and conservation at a minimum 3:1 (replacement-to-impact) ratio. Note that a higher ratio may be warranted if the proposed mitigation lands are located far away from the Project site (i.e., within a separate watershed) or is not occupied by or available to special status species.

If the Project has the potential to impact a State-listed species, the County should apply for a California Endangered Species Act Incidental Take Permit with the California Department of Fish and Wildlife.

Mesquite (*Prosopis glandulosa* var. *torreyana*)

CDFW considers mesquite a California Sensitive Plant Community (2021). The Biological Resources Report identifies individual mesquite trees, groves, and hummocks that comprise mesquite bosques/thickets. According to the Biological

Resources Report, there are five mesquite thickets on-site, one thicket is 300 feet across and dense in many places, while one mesquite grove contains up to 20 trees. Along, with the Biological Resources Report, CDFW would like to emphasize the importance of the mesquite thickets and bosques and recommends that the Project completely avoids impacts to mesquite.

Lake and Streambed Alteration (LSA)

Based on review of aerial photography from the California State Water Resources Control Board, at least two ephemeral drainage features traverse the site on the northern, eastern, and southeast portions. Depending on how the Project is designed and constructed, it is likely that the Project applicant will need to notify CDFW per Fish and Game Code section 1602. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

CDFW recommends MM BIO-6 (see below), considering the following:

The California Department of Cannabis Control (DCC) requires cannabis cultivators to demonstrate compliance with Fish and Game Code section 1602 prior to issuing a cultivation license (Business and Professions Code, § 26060.1). To qualify for an Annual License from DCC, cultivators must have an LSA Agreement or written verification from CDFW that one is not needed. Cannabis cultivators may apply online for an LSA Agreement through the Environmental Permit Information Management System (EPIMS; <https://epims.wildlife.ca.gov>). Cannabis cultivators may learn more about cannabis cultivation permitting at <https://wildlife.ca.gov/Conservation/Cannabis/Permitting>.

MM BIO-6: LSA Program

Prior to construction and issuance of any grading permit, the Project applicant should obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project applicant should obtain a CDFW-executed Lake and Streambed

Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). Information can be submitted online or via completion of the CNDDDB field survey form at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

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

CONCLUSION

CDFW recommends that the County adopt the recommended mitigation measures (Attachment 1) offered by CDFW prior to finalizing the ISMND to reduce Project impacts.

CDFW appreciates the opportunity to comment on the ISMND for Conditional Use Permit 2021-06 Tree Farm Project and hopes our comments assist the County of Inyo in identifying and mitigating Project impacts on biological resources. If you should have any questions pertaining to the comments provided in this letter, please contact Cindy Castaneda, Senior Environmental Scientist (Specialist), at (909) 544-1177 or at Cindy.Castaneda@wildlife.ca.gov.

ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

Ms. Cathreen Richards, Planning Director
County of Inyo
November 5, 2021
Page 12 of 19

Sincerely,

DocuSigned by:
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Environmental Program Manager

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REFERENCES

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Ms. Cathreen Richards, Planning Director
County of Inyo
November 5, 2021
Page 13 of 19

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ATTACHMENT 1

MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

Mitigation Measure	Implementation Schedule	Responsible Party
<p>BIO-1: Burrowing Owl Pre-construction Clearance Survey</p> <p>No less than 14 days prior to the initiation of any Project activities, a qualified biologist shall conduct pre-construction surveys in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012). If no burrowing owl(s) are observed on site during the pre-construction survey, a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW 72 hours in advance of ground disturbing activities. If burrowing owl(s) are observed on site during the pre-construction survey, areas occupied by burrowing owls shall be avoided. If burrowing owls cannot be avoided by the Project, then: 1) the qualified biologist shall contact California Department of Fish and Wildlife (CDFW) and conduct an impact assessment in accordance with Staff Report on Burrowing Owl Mitigation prior to commencing Project activities to</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

<p>determine appropriate mitigation, including the acquisition and conservation of occupied replacement habitat at no less than a 2:1 ratio; 2) the qualified biologist shall prepare and submit a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) to the CDFW for review/approval prior to the commencement of disturbance activities onsite; and 3) when a qualified biologist determines that burrowing owls are no longer occupying the Project site and passive relocation is complete, construction activities may begin. A final letter report shall be prepared by the qualified biologist documenting the results of the passive relocation. The letter shall be submitted to CDFW.</p>		
<p>BIO-2: Pre-construction Nesting Bird Surveys</p> <p>If construction occurs during the non-nesting season (typically September 16 through December 31), a pre-construction sweep shall be performed to verify absence of nesting birds. If construction activities are scheduled to occur during the nesting season (typically January 1 through September 15), mitigation as described below shall be implemented to avoid potential impacts to birds and their nests.</p> <p>If construction (including site preparation, staging, or other ground-disturbing activities) or vegetation removal is proposed during the breeding/nesting season for birds (generally, raptor nesting season is January 1 through September 15; and passerine bird nesting season is February 1 through September 1), a qualified biologist shall conduct pre-construction surveys for birds on the Project site, including a 300-foot survey buffer, no more than 3 days prior to the start of ground-disturbing activities in all suitable areas including trees, shrubs, bare ground, burrows,</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

<p>cavities, and structures, at the appropriate time of day/night, during appropriate weather conditions. Pre-construction surveys should focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior (e.g., copulation, carrying of food or nest materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury or distraction displays, or other behaviors). If construction is delayed or suspended for more than 3 days after the survey, the area shall be resurveyed to re-confirm the presence/absence of any active nests.</p> <p>If an active nest is located during pre-construction surveys, the United States Fish and Wildlife Service (USFWS) and/or the California Department of Fish and Wildlife (CDFW) (as appropriate per agency regulations) shall be notified regarding the status of the nest. Furthermore, construction activities shall be restricted as necessary to avoid disturbance of the nest until nesting activities have concluded, or the qualified biologist deems disturbance potential to be minimal. Restrictions may include, but are not limited to, establishing exclusion zones (no ingress of personnel or equipment at a minimum radius of 300 feet around an active raptor nest and 100-foot radius around an active non-raptor passerine bird nest) or altering the construction schedule.</p> <p>A qualified biologist shall delineate the buffer using nest buffer signs, environmentally sensitive area fencing, pin flags, and or flagging tape. The buffer zone shall be maintained around the active nest site(s) until the young have fledged and are foraging independently.</p>		
<p>BIO-3: American Badger</p> <p>A qualified biologist shall visually survey the Project area prior to construction to identify any feature/habitats suitable to support American badger</p>	<p>Prior to commencing ground- or vegetation-</p>	<p>Project Proponent</p>

<p>(i.e., burrows, dens). Where an identifiable feature is present, the qualified biologist shall mark the potentially occupied feature for avoidance. If avoidance is infeasible, the qualified biologist shall determine whether the burrow or den is inactive or active. If the burrow or den is inactive, the qualified biologist shall excavate the burrow or den by hand and backfill to prevent reuse by badger.</p> <p>If American badger is present, applicant shall notify CDFW and applicant should develop an American badger-specific avoidance and relocation plan detailing the protective avoidance and relocation measures to be implemented prior to the commencement of Project activities for CDFW review. The use of rodenticides and herbicides shall be restricted to avoid primary and secondary poisoning of badger.</p>	<p>disturbing activities</p>	
<p>BIO-4: Desert Tortoise Pre-Construction Survey</p> <p>A CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and 50-foot buffer no more than 48 hours prior to Project activities during desert tortoise active season (April to May or September to October), in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Results of the survey shall be submitted to CDFW. If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, the Project proponent shall 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 to desert tortoise. If complete avoidance cannot be achieved, CDFW recommends Project proponent not undertake Project</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

<p>activities and Project activities be postponed until appropriate authorization (i.e., CESA ITP under Fish and Game Code section 2081) is obtained.</p>		
<p>BIO-5: Rare Plant Survey</p> <p>Prior to Project implementation, and during the appropriate season, the County shall conduct botanical field survey following protocols set forth in the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW-approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status.</p> <p>If any rare plants or sensitive vegetation communities are identified, the County shall either avoid the occurrence, with an appropriate buffer, or mitigate the loss of the occurrence through the purchase of mitigation credits from a CDFW-approved bank or land acquisition and conservation at a minimum 3:1 (replacement-to-impact) ratio. Note that a higher ratio may be warranted if the proposed mitigation lands are located far away from the Project site (i.e., within a</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

<p>separate watershed) or is not occupied by or available to special status species.</p> <p>If the Project has the potential to impact a State-listed species, the County should apply for a California Endangered Species Act Incidental Take Permit with the California Department of Fish and Wildlife.</p>		
<p>BIO-6: LSA Program</p> <p>Prior to construction and issuance of any grading permit, the Project applicant should obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project applicant should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>