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GAVIN NEWSOM, Governor
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December 2, 2025
Sent via email

Alan Molina
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Subject: Notice of Preparation of a Draft Environmental Impact Report
Heber 1 Parasitic Solar Energy Project
State Clearinghouse No. 2025101397

Dear Mr. Molina:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) from the Imperial County Planning & Development Services (County) for the Heber 1 Parasitic Solar Energy Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

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

CDFW ROLE

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

[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.

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 a 20 megawatt (MW) solar energy facility and interconnecting cable line (gen-tie line) that would provide parasitic load to the existing Heber 1 Geothermal Plant. The solar energy facility would provide behind-the-meter power used to offset the auxiliary load of the existing Heber 1 Geothermal Plant. The solar energy facility would not connect to or generate power that will enter the transmission grid; rather, the solar energy facility would serve as an integrated part of the operation of the existing Heber 1 Geothermal Plant.

There are three route options proposed, of which only one will be chosen, for the medium voltage cable that would connect the new 20 MW solar energy facility to the existing Heber I Geothermal Plant.

The proposed Project would be located on one privately-owned parcel (Assessor Parcel Number [APN] 059-020-001) at 602 Dogwood Road in the southern portion of Imperial County, California. The Project site is approximately 1.4 miles south of the community of Heber. The proposed solar energy facility would encompass approximately 106 acres in the southern portion of APN 059-020-001. The northern portion of APN 059-020-001 has been previously approved for the development and operation of the Heber 2 Parasitic Solar and Dogwood Parasitic Solar projects. The proposed solar energy facility would be developed southwest of the existing Heber 1 Geothermal Plant located on APN 054-250-036 at 895 Pitzer Road in Heber, California.

COMMENTS AND RECOMMENDATIONS

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

CDFW recommends that the forthcoming Draft Environmental Impact Report (DEIR) address the following:

Assessment of Biological Resources

Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. To enable CDFW staff to adequately review and comment on the Project, the DEIR should include a complete assessment of the flora and fauna within and adjacent to the Project footprint, with particular emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats.

The CDFW recommends that the DEIR specifically include:

1. An assessment of the various habitat types located within the Project footprint, and a map that identifies the location of each habitat type. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed following *The Manual of California Vegetation*, second edition (Sawyer et al. 2009). Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.

2. A general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are present or have the potential to be present within each habitat type onsite and within adjacent areas that could be affected by the Project. CDFW's California Natural Diversity Database (CNDDB) should be queried to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Fish and Game Code section 1930 et seq., in the vicinity of the proposed Project. See https://wildlife.ca.gov/Data/CNDDB/Maps-and-Data.

   Please note that CDFW's CNDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area of the Project site.

3. A complete, *recent* inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (SSC) and California Fully Protected Species (Fish & G. Code, § 3511 & 4700). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, should inform the environmental baseline of the Project site. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers

biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.

A SSC is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria:

- is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role;
- is listed under the federal Endangered Species Act (ESA), but not CESA-listed as threatened, or endangered;
- meets the State definition of threatened or endangered but has not formally been listed;
- is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status;
- and/or has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for CESA threatened or endangered status.

Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research;
- Efforts to recover a fully protected, endangered, or threatened species;
- Live capture and relocation of a bird species for the protection of livestock;
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515); or
- Specified types of infrastructure projects eligible for an incidental take permit (see Fish & G. Code § 2081.15).

CDFW recommends species-specific surveys for sensitive species that the Project footprint has the potential to support, including but not limited to:

<u>Western Burrowing Owl (*Athene cunicularia hypugaea*)</u>

The Project site has the potential to provide suitable foraging and/or nesting habitat for western burrowing owl (burrowing owl). On October 10, 2024, the Fish and Game Commission determined that burrowing owl warrants protection as a candidate species under the CESA (Fish & G. Code, § 2050 et seq.). During the candidacy period, burrowing owl will be afforded the same protection as threatened and endangered species under CESA. If Project activities, including burrow exclusion

and closure, could result in take, appropriate CESA authorization (i.e., Incidental Take Permit under Fish and Game Code section 2081b) should be obtained prior to commencement of Project activities.

Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513. Take is defined in Fish and Game Code section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill."

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

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

CDFW recommends breeding and non-breeding surveys for the species be conducted on the Project site to establish the environmental baseline of resident and migratory individuals, and map all burrows with live individuals and/or sign.

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

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

communities (grassland, scrublands, desert, urban, and agriculture) to provide for burrowing owl nesting, foraging, wintering, and dispersal (i.e., during breeding and non-breeding seasons) comparable to or better than that of the impact area, and (b) be sufficiently large acreage with the presence of fossorial mammals. Furthermore, the report noted that suitable mitigation lands should be based on a comparison of the habitat attributes of the impacted and conserved lands, including but not limited to: type and structure of habitat being impacted or conserved; density of burrowing owls in impacted and conserved habitat; and significance of impacted or conserved habitat to the species range-wide. CDFW recommends consultation prior to obtaining mitigation lands for the species. In addition, the DEIR should propose mitigation for the permanent loss of burrowing owl habitat; see number 4 under the Mitigation Measures for Project Impacts to Biological Resources section in this letter (page 14).

Desert Kit Fox (*Vulpes macrotis arsipus*)

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

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

American Badger (*Taxidea taxus*)

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

If American badger are found, or have the potential to occupy the Project site, CDFW recommends the County require species specific mitigation to offset impacts and avoidance, minimization and monitoring measures aimed at avoiding direct

impacts to American badger be incorporated into the DEIR. Avoidance and minimization measures should include 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 animals that would need to be avoided or passively relocated, and the burrows or burrow complexes that would need to be collapsed to prevent re-occupancy. The measures should also include detailed monitoring requirements and methods of exclusion/passive relocation to be conducted, and methods and timing of den excavation.

Yuma Ridgway's Rail (*Rallus obsoletus yumanensis*)

The Project site has the potential to provide suitable foraging and/or nesting habitat for Yuma Ridgway's rail, a California fully protected species, due to the presence of canals in the Project area. Should the habitat assessment identify suitable wetland vegetation, the DEIR should include survey results for the species.

Water diversions can impact Yuma Ridgway's rails through dewatering of wetland habitats. Changes in flow rates can also increase the prevalence of invasive plant species which are a threat to Yuma Ridgway's rails.

Vegetation clearing may impact Yuma Ridgway's rails as they require a dense cover of emergent wetland vegetation for protection from predators. Removal of vegetation can also make communities vulnerable to colonization by invasive plant species.

Noise from road use, generators, and other equipment may disrupt Yuma Ridgway's rail mating calls which could impact their reproductive success (Patricelli and Blickley 2006, Halfwerk et al. 2011). Noise has been shown to reduce the density of nesting birds (Francis et al. 2009).

Artificial light may disorient migrating Yuma Ridgway's rails and disrupt their navigation (Rowan 1925, Longcore and Rich 2016).

The DEIR should address Project related impacts to Yuma Ridgway's rail. If Yuma Ridgway's rail are found within the Project area during surveys, the DEIR should specify complete avoidance.

California Black Rail (*Laterallus jamaicensis coturniculus*)

The Project site has the potential to provide suitable foraging and/or nesting habitat for California black rail, a California fully protected species due to the presence of canals in the Project area. Should the habitat assessment identify suitable wetland vegetation, the DEIR should include survey results for the species.

California black rail populations have been documented as declining in California in recent decades primarily as a result of habitat loss and degradation, particularly in southern California (Evens et al. 1991, Conway and Sulzman 2007). Outside of the San Francisco Bay estuary, where the majority of the population occurs, the sub-

species exists in smaller, disjunct sub-populations that may not be sustained without frequent immigration (Evens et al. 1991, Richmond et al. 2008). California black rail populations and their required habitat features are vulnerable to both human-caused and natural stressors.

Water diversions can impact California black rails through dewatering of wetland habitats that they rely on (Eddleman et al. 1994). California black rails are vulnerable to water level fluctuations, such as depth of the water and density of vegetation (Flores and Eddleman 1993). Diversions can lower the water level, while uncontained run-off can raise the water level, making habitat less suitable.

Grading, compacting, and filling aquatic habitat could cause direct habitat loss. Construction near a wetland or water feature supporting California black rail would impact the quality of the habitat if dust, debris, petroleum, or other contaminants are discharged off the construction site into the habitat.

Vegetation clearing may impact California black rails where they require a dense cover of upland vegetation for protection from predators (Eddleman et al. 1994, Evens and Thorne 2015).

Disturbance to nesting rails, such as humans or pets intruding in the marsh, have been reported to cause rails to abandon nests or to try to defend nests, exposing eggs (Flores and Eddleman 1993). Intrusion can alter habitat and cause mortality through crushing of rails that generally freeze in place and are hesitant to flush (Evens and Thorne 2015).

The DEIR should address Project related impacts to California black rail. If California black rail are found within the Project area during surveys, the DEIR should specify complete avoidance.

Crotch's Bumble Bee (*Bombus crotchii*)

The Project may impact suitable habitat for Crotch's bumble bee (*Bombus crotchii*), a CESA candidate species, and has the potential for take pursuant to California Fish and Game Code Section 2081(b). Crotch's bumble bee primarily nest in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, under-brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014; Hatfield, R., et al. 2018). Overwintering sites utilized by Crotch's bumble bee mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (CDFW 2017). Ground disturbance and vegetation removal associated with Project implementation during the breeding season could result in the incidental loss of breeding success or otherwise lead to nest abandonment in areas adjacent to the Project site. Indirect, permanent impacts include conversion of habitat through the introduction of invasive species. Without sufficient avoidance, minimization, or

mitigation measures, the Project activities may result in unmitigated temporal or permanent loss of colonies, and suitable nesting and foraging habitat.

The California Fish and Game Commission accepted a petition to list Crotch bumble bee as endangered under CESA, determining the listing "may be warranted" and advancing the species to the candidacy stage of the CESA listing process. Crotch bumble bee is granted full protection of a threatened species under CESA. Take of any endangered, threatened, candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9). In addition, Crotch's bumble bee has a State ranking of S1/S2. This means that the Crotch's bumble bee is considered critically imperiled or imperiled and is extremely rare (often 5 or fewer populations). Crotch's bumble bee is listed as an invertebrate of conservation priority under the California Terrestrial and Vernal Pool Invertebrates of Conservation Priority.

The EIR should include site specific surveys for Crotch's bumble bee in accordance with any Crotch's bumble bee survey considerations provided by CDFW (See Survey Considerations for California Endangered Species Act (CESA)). If take or adverse impacts to Crotch's bumble bee cannot be avoided either during Project activities or over the life of the Project, the County of Imperial should require the Project proponent to obtain appropriate take authorization from CDFW pursuant to Fish and Game Code section 2081 subdivision (b).

Bats

The Project site and adjacent parcels have the potential to provide suitable roosting (day, night, and maternal) and foraging habitat for several bat species (collectively, bats), including but not limited to:

- pallid bat (*Antrozous pallidus*) (SSC)
- Townsend's big-eared bat (*Corynorhinus townsendii*) (SSC)
- western mastiff bat (*Eumops perotis*) (SSC)
- western red bat (*Lasiurus blossevillii*) (SSC)
- western yellow bat (*Lasiurus xanthinus*) (SSC)
- hoary bat (*Lasiurus cinereus*) (SSC)
- California myotis (*Myotis californicus*)
- Arizona myotis (*Myotis occultus*) (SSC)
- Cave myotis (*Myotis velifer*) (SSC)
- Yuma myotis (*Myotis yumanensis*) (SSC)
- Pocketed free-tailed bat (*Myctinopops ferosaccus*) (SSC)

Project construction and activities may result in direct and indirect impacts to bats. Direct impacts include removal of structures or vegetation occupied by roosting bats, such as the vegetation and house that will be demolished as a part of the Project,

identified in Figure 3 of the NOP. This could result in injury or mortality to bats as well as loss of roosting habitat. Indirect impacts to bats and roosts could result from increased noise disturbances, human activity, dust, vegetation clearing, ground-disturbing activities (e.g., staging, mobilizing, pile driving, excavating, and grading), and vibrations caused by heavy equipment.

Bats are considered non-game mammals and are afforded protection by State law from take and/or harassment (Fish & G. Code, § 4150; Cal. Code of Regs, § 251.1). Several bat species are considered SSC.

The DEIR should include results of specific surveys for bats for the Project area proposed to be directly or indirectly affected by Project activities and the results of the surveys included in the DEIR, along with avoidance, minimization and mitigation measures, if appropriate. These surveys should occur during each season of the year to document seasonal use, and be supplemented with full spectrum acoustic monitoring throughout the year. CDFW recommends if active hibernacula or day roosts are identified in the work area or within 500 feet of the work area, they be avoided to the extent feasible. For maternity roosts, Project construction should only occur between October 1 and February 28, outside of the maternity roosting season when young bats are present but not are yet ready to fly out of the roost (generally March 1 to September 30). Maternity roosts shall not be evicted, excluded, removed, or otherwise disturbed.

Ringtail (*Bassariscus astutus*)

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

If ringtail are found, or has the potential to occupy the Project site, CDFW recommends the County of Imperial require species-specific mitigation to avoid impacts to ringtail be incorporated into the EIR. Avoidance measures should include pre-construction surveys in areas of the Project site that have structure and cover following CDFW-approved survey methods, including procedures used to survey suitable habitats such as vegetated areas, rock crevices, woodrat mittens, trees, abandoned structure, culverts, etc. to quantify and locate animals that would need to be avoided.

Birds

CDFW recommends the baseline conditions for bird species present within the Project site be included in the DEIR, including results of site-specific surveys. CDFW

recommends baseline conditions for bird species be established through avian point count surveys with the following methodology:

a. Perform two surveys to detect early migrants (end of March) and later migrants (middle to end of May).

b. Pick representative habitats and space the surveys to sample and view the most area possible.

c. For passerines, conduct the survey for 10 minutes at each point, and each point location should be 100-200 meters in radius.

d. For raptors, conduct the survey for 2-4 hours at each point, and each point location should be 800 meters in radius.

CDFW recommends the DEIR assess potential risk to bird species based on the proposed activities, including all potential risks identified in the DEIR and specify conservation measures that will be employed to avoid, minimize, and/or mitigate any potential adverse effects to these species. Specifically, to minimize the potential for avian electrocutions and collisions with above ground structures, lines, wires, fences, etc.

4. A thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (see https://www.wildlife.ca.gov/Conservation/Plants and Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities). Please note, the survey protocols state botanical field surveys should be conducted in the field at the times of year when plants will be both evident and identifiable which is usually during flowering or fruiting (CDFW, 2018). The botanical field survey visits should be spaced throughout the growing season to accurately determine what plants exist in the Project area (CDFW, 2018). This usually involves multiple visits to the Project area (e.g., in early, mid, and late-season) to capture the floristic diversity at a level necessary to determine if special status plants are present (CDFW, 2018).

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

6. A full accounting of all open space and mitigation/conservation lands within and adjacent to the Project.

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

The DEIR should provide a thorough discussion of the direct, indirect, and cumulative impacts expected to adversely affect biological resources as a result of the Project (including the plan's land use designations, policies and programs). To ensure that Project impacts to biological resources are fully analyzed, the following information should be included in the DEIR:

1. A discussion of potential impacts from lighting, noise, human activity (e.g., recreation), defensible space, and wildlife-human interactions created by zoning of development projects or other project activities adjacent to natural areas, exotic and/or invasive species, and drainage. The latter subject should address Project-related changes on drainage patterns and water quality within, upstream, and downstream of the Project site, including: volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site.

2. A discussion of potential indirect Project impacts on biological resources, including resources in areas adjacent to the Project footprint, such as nearby public lands (e.g., National Forests, State Parks, etc.), open space, adjacent natural habitats, riparian ecosystems, wildlife corridors, and any designated and/or proposed reserve or mitigation lands (e.g., flat-tailed horned lizard management/research areas, preserved lands associated with a Natural Community Conservation Plan, or other conserved lands).

   Please note that the Project area could support significant biological resources and contains habitat connections, providing for wildlife movement across the broader landscape, sustaining both transitory and permanent wildlife populations. CDFW encourages Project design that avoids and preserves onsite features that contribute to habitat connectivity. The DEIR should include a discussion of both direct and indirect impacts to wildlife movement and connectivity, including maintenance of wildlife corridor/movement areas to adjacent undisturbed habitats.

3. An evaluation of impacts to adjacent open space lands from both the construction of the Project and any long-term operational and maintenance needs.

4. A cumulative effects analysis developed as described under CEQA Guidelines section 15130. The DEIR should analyze the cumulative effects of the plan's land use designations, policies and programs on the environment. Please include all potential direct and indirect Project related impacts to riparian areas, wetlands, vernal pools, alluvial fan habitats, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and other sensitive habitats, open lands, open space, and adjacent natural habitats in the cumulative effects analysis. General and specific plans, as well as past, present, and anticipated future projects, including the development and operation of the Heber 2 Parasitic Solar and Dogwood Parasitic

Solar projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.

Alternatives Analysis

CDFW recommends the DEIR describe and analyze a range of reasonable alternatives to the Project that are potentially feasible, would "feasibly attain most of the basic objectives of the Project," and would avoid or substantially lessen any of the Project's significant effects (CEQA Guidelines § 15126.6[a]). The alternatives analysis should also evaluate a "no project" alternative (CEQA Guidelines § 15126.6[e]). The no project alternative should evaluate how the changing environment, such as climate change and drought, may affect the community if a new or revised general plan were not adopted.

Mitigation Measures for Project Impacts to Biological Resources

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

1. *Fully Protected Species*:

   Project activities described in the DEIR should generally be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends that the DEIR fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that County include in the analysis how appropriate avoidance measures will reduce indirect impacts to fully protected species. Any take of fully protected species without take authorization would be a violation of Fish and Game Code section 3511 or 4700.

2. *Sensitive Plant Communities*: CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDB and are included in *The Manual of California Vegetation* (Sawyer et al. 2009). The Project area could support desert plant communities that have annual and short-lived perennial plants as major floristic components. The DEIR should include measures to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts.

3. *California Species of Special Concern* (SSC): As previously stated, SSC status applies to animals generally not listed under the ESA or CESA, but which

nonetheless are declining at a rate that could result in listing, or historically occurred in low numbers and known threats to their persistence currently exist. SSCs should be considered during the environmental review process. SSCs have the potential or have been documented to occur within or adjacent to the Project area, including, but not limited to: loggerhead shrike (*Lanius ludovicianus*), horned lark (*Eremophila alpestris*), prairie falcons (*Falco mexicanus*), American badger (*Taxidea taxus*), western burrowing owl (*Athene cunicularia hypugaea*), long-billed curlew (*Numenius americanus*), redhead (*Aythya americana)*, American white pelican (*Pelecanus erythrorhynchos*), northern harrier (*Circus cyaneus*), vermillion flycatcher (*Pyrocephalus rubinus*), yellow warbler (*Setophaga aestiva*), yellow-breasted chat (*Icteria virens*), yellow-headed blackbird (*Xanthocephalus xanthocephalus*).

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

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

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

   CDFW recommends that the DEIR specify mitigation that is roughly proportional to the level of impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15126.4(a)(4)(B), 15064, 15065, and 16355). The mitigation should provide long-term conservation value for the suite of species and habitat being impacted by the

Project. Furthermore, in order for mitigation measures to be effective, they need to be specific, enforceable, and feasible actions that will improve environmental conditions.

The DEIR shall propose mitigation for the permanent loss of burrowing owl habitat. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors.

Permanent protection of mitigation land for sensitive species impacted by the Project should be through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, with development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for the species, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment. The ratio of acquisition to loss must in most cases exceed 1:1 for any species, particularly burrowing owl. The ratio should be higher for rarer species, particularly for those that occupy irreplaceable habitats.

5. *Habitat Revegetation/Restoration Plans*: Plans for restoration and revegetation should be prepared by persons with expertise in southern California ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. Each plan should include, at a minimum: (a) the location of restoration sites and assessment of appropriate reference sites; (b) the plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.

   CDFW recommends that local onsite propagules from the Project area and nearby vicinity be collected and used for restoration purposes. Onsite seed collection should be initiated in advance of Project impacts in order to accumulate sufficient propagule material for subsequent use in future years. Onsite vegetation mapping at the alliance and/or association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Specific restoration plans should be developed for various Project components as appropriate.

   Restoration objectives should include protecting special habitat elements or re-

creating them in areas affected by the Project; examples could include retention of woody material, logs, snags, rocks, and brush piles.

6. *Nesting Birds and Migratory Bird Treaty Act:* Please note that it is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

   CDFW recommends that the DEIR include the results of avian surveys, as well as specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing (e.g., conducting work outside the peak nesting season), monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. The DEIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. If pre-construction surveys are proposed in the DEIR, the CDFW recommends that they be required no more than three (3) days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted sooner. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site and surrounding area be avoided any time birds are nesting on-site. CDFW therefore recommends the completion of nesting bird surveys *regardless of the time of year* to ensure compliance with all applicable laws pertaining to nesting and migratory birds.

7. *Moving out of Harm's Way:* To avoid direct mortality to any non-listed terrestrial wildlife, CDFW recommends that the lead agency condition the DEIR to require that a CDFW-approved qualified biologist be retained to be onsite prior to and during all ground- and habitat-disturbing activities to inspect the Project area prior to any Project activities. Any individuals found shall not be harassed and shall be allowed to leave the Project area unharmed. If needed, a qualified biologist may guide, handle, or capture an individual non-listed, non-fully protected wildlife species to move it to a nearby safe location within nearby refugium, or it shall be allowed to leave the Project site of its own volition. Capture methods may include hand, dip net, lizard lasso, snake tongs and snake hook. If the wildlife species is discovered or is caught

in any pits, ditches, or other types of excavations, the qualified biologist shall release it into the most suitable habitat near the site of capture. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise by injured or killed, and individuals should be moved only as far a necessary to ensure their safety (i.e., CDFW does not recommend relocation to other areas). Only biologists with appropriate authorization by CDFW shall move CESA listed species. Furthermore, it should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for the purposes of offsetting Project impacts associated with habitat loss.

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

California Endangered Species Act

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

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

Based on review of CNDDB, and/or knowledge of the Project site/vicinity/general area, CDFW is aware that the following CESA-listed species have the potential to occur onsite/have previously been reported onsite: western burrowing owl (*Athene cunicularia hypugaea*).

Lake and Streambed Alteration Program

Based on review of material submitted with the NOP and review of aerial photography at least four drainage features traverse the site. 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.

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

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

ADDITIONAL COMMENTS AND RECOMMENDATIONS

CDFW recommends that avoidance, minimization, and mitigation measures for burrowing owls consider both its candidacy and the potential for CESA listing as a threatened or endangered species as well as the retention of its current Species of Special Concern status. If the burrowing owl is listed or remains a candidate species under CESA during Project implementation, CDFW recommends the County of Imperial specify avoidance of impacts to the species or require the Project proponent to obtain an incidental take permit from CDFW and define mitigation in the DEIR if take of the species may occur.

ENVIRONMENTAL DATA

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

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

FILING FEES

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

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP of a DEIR for the Heber 1 Parasitic Solar Energy Project (SCH No. 2025101397) and recommends that the Imperial County Planning & Development Services address the CDFW's comments and concerns in the forthcoming DEIR. If you should have any questions pertaining to the comments provided in this letter, please contact Austin Gutierrez, Environmental Scientist at (909) 544-2525 or at Austin.Gutierrez@Wildlife.ca.gov.

Sincerely,

DocuSigned by:
Brandy Wood
4D759253408941E...

Brandy Wood
Environmental Program Manager

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