

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM: 3.41
(ID # 14020)

MEETING DATE:

Tuesday, December 08, 2020

FROM: TLMA-PLANNING:

SUBJECT: TRANSPORTATION AND LAND MANAGEMENT AGENCY/PLANNING: CONSIDER ADDENDUM FOR ENVIRONMENTAL IMPACT REPORT NO. 532 AND ADOPT RESOLUTION NO. 2020-235 for Palo Verde Mesa Solar Project (CUP03684, PUP00916, DA00086). Applicant: Renewable Resources Group – Representative: Power Engineers – Fourth Supervisorial District – Chuckwalla Zoning District – Palo Verde Area Plan – Agriculture (AG), Open Space: Rural (OS:RUR) – Location: northerly of Interstate-10, west of Neighbors Boulevard – Zoning: Controlled Development Areas – 10 Acre Minimum (W-2-10), Light Agriculture – 10 Acre Minimum (A-1-10) – The Addendum addresses the peremptory writ of mandate issued by the court regarding the lawsuit on the EIR for the project. The EIR was originally certified by the Riverside County Board of Supervisors on August 29, 2017. District 4. [Applicant Fees 100%]

RECOMMENDED MOTION: That the Board of Supervisors:

1. **CONSIDER** an **ADDENDUM** for **ENVIRONMENTAL IMPACT REPORT NO. 532** certified on August 29, 2017, based on the findings and conclusions provided below and in the Addendum, attached hereto;
2. **ADOPT RESOLUTION NO. 2020-235** certifying the analysis related to soil contamination and mitigation for burrowing owl included in the Addendum as part of Environmental Impact Report No. 532 and adopting the revised Mitigation Monitoring and Reporting Program; and
3. **DIRECT** the Office of County Counsel to file a return on the writ with the court, describing the actions taken to comply with the court's writ of mandate.

ACTION: Policy

Charissa Leach, Interim TLMA Director

12/3/2020

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Perez, seconded by Supervisor Washington and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: December 8, 2020
xc: Planning, Co.Co.

Kecia R. Harper
Clerk of the Board

By:
Deputy

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FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A
NET COUNTY COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A
SOURCE OF FUNDS: Applicant Fees (100%)			Budget Adjustment:	No
			For Fiscal Year:	N/A

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Continuance from November 3, 2020

This item was previously on the Board’s agenda on November 3rd and was continued due to comments received prior to the hearing. Responses to the environmental comments received have been prepared and confirmed by County staff and are included as Attachment G. Regarding comments about noticing, the required 72-hour public notice was provided for all relevant hearings. Additional special notice was not given for the Board’s prior action partially de-certifying the EIR because that action was ministerially required by the writ, and the commenter was provided with emails from counsel for the applicant and the County regarding both the original November 3rd and this December 8th continued hearing.

Summary

On August 29, 2017, Agenda Item 17.5, the Board of Supervisors (Board) adopted Resolution No. 2017-199 Certifying Environmental Impact Report No. 532 and approved Conditional Use Permit No. 3684, Public Use Permit No. 916, and Introduced Ordinance No. 664.59 approving Development Agreement No. 86. Ordinance No. 664.59 was subsequently adopted approving Development Agreement No. 86 on September 12, 2017, Agenda Item 3.24.

After the Final EIR for this Project was certified, two lawsuits challenging the EIR were filed in the Riverside Superior Court in the cases *Citizens for Responsible Solar v. County of Riverside*, Riverside Superior Court Case No. RIC 1718458, and *Golden State Environmental v. County of Riverside*, Riverside Superior Court Case No. RIC 1718565, which both challenged the Project under the California Environmental Quality Act (CEQA, Pub. Res. Code, § 21000 et seq.) and were subsequently consolidated for limited purposes. On July 11, 2019, the court issued a Ruling on Petition for Writ of Mandate, ruling that the County was to add further analysis of soil contamination and details on mitigation for potential impacts to burrowing owl to the EIR as well as decertify only the portions of the EIR related to analysis of soil contamination and mitigation for burrowing owl, a ruling which was later finalized in identical judgments and writs of mandate issued in the two cases.

The peremptory writs of mandate, which set forth the actions the County is required to undertake, are identical except for the names of the cases. A copy of the writ from one of the cases, and the Notice of Ruling referenced in the writ, is attached. Under the court’s order, the County was ordered to:

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- a. Prepare an Addendum to the EIR if, based on the further analysis necessary to comply with the ruling, the County finds that any of the conditions described in 14 CCR section 15162(a)(3) calling for preparation of a subsequent or supplemental EIR do not exist; or
- b. Prepare a Supplement to the EIR if, based on the further analysis necessary to comply with the ruling, the County finds that any of the conditions described in 14 CCR section 15162(a)(3) calling for preparation of a subsequent or supplemental EIR exist.
- c. Upon consideration of the Addendum or Supplement, the Board of Supervisors of the County of Riverside shall exercise its discretion to determine whether to:
 - i. Find that no modifications to any of the Board's project approvals are required based upon the further analysis described above;
 - ii. Modify some or all of the project approvals to incorporate changes to the Project or to its conditions of approval or mitigation measures based upon the further analysis described above; or
 - iii. Rescind some or all of the project approvals based upon the further analysis described above.

In compliance with the court orders, on September 15, 2020, Agenda Item 3.27, the Board of Supervisors took ministerial action to decertify those portions of the EIR as required by the court.

This item addresses the next steps as directed by the court for the Board to exercise its discretion to consider an Addendum that includes updated analysis and mitigation measures and conditions of approval that will be applied to the approved Conditional Use Permit. In further compliance with the court orders, the County evaluated whether any of the conditions described in 14 CCR section 15162(a)(3) existed, concluded that they did not, and prepared an Addendum to the EIR to include and address the items as directed by the court to be considered in a revised environmental analysis. The Addendum demonstrates that a Supplement to the EIR is not warranted, provides additional information regarding contaminated soil and burrowing owl mitigation, as ordered by the court, and revises certain identified mitigation measures, and associated conditions of approval, relating to soils and burrowing owls, all in compliance with the court's orders. A revised Mitigation Monitoring and Report Plan (MMRP), attached to the Addendum, was also prepared reflecting the revised mitigation measures.

The Addendum to EIR No. 532 and the revised MMRP attached thereto are being brought to the Board of Supervisors for consideration, which would allow the County to return to the court to demonstrate compliance with the writ of mandate and allow the applicant to proceed with the Project.

As noted, the additional analysis included in the Addendum resulted in changes to the mitigation measures, which requires modifications to the Board's previous approval of the CUP's mitigation measures.

Impact on Residents and Businesses

The impacts of this Project have been evaluated through the environmental review and public hearing process.

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SUPPLEMENTAL:

Additional Fiscal Information

All fees are paid by the applicant. There is no General Fund obligation.

ATTACHMENTS:

- A. Peremptory Writ of Mandate
- B. Notice of Ruling
- C. Addendum to EIR No. 532
- D. Resolution No. 2020-235
- E. Final EIR No. 532
- F. Draft EIR No. 532
- G. Response to Public Comments



Jason Farin, Principal Management Analyst 12/3/2020

2 **RESOLUTION NO. 2020-235**

3 **CERTIFYING DE-CERTIFIED PORTIONS OF ENVIRONMENTAL IMPACT REPORT**
4 **NO. 532 AS SUPPLEMENTED BY AN ADDENDUM, REVISING MITIGATION MEASURES,**
5 **AND DETERMINING THAT NO ADDITIONAL ACTIONS ARE REQUIRED**
6

7 **WHEREAS**, on August 29, 2017, Agenda Item 17.5, the Board of Supervisors (Board) adopted
8 Resolution No. 2017-168 Certifying Environmental Impact Report No. 532 (EIR) and approved
9 Conditional Use Permit No. 3684, Public Use Permit No. 916, and Introduced Ordinance No. 664.59, and
10 Ordinance No. 664.59 was subsequently adopted approving Development Agreement No. 86 on
11 September 12, 2017, all related to the Palo Verde Mesa Solar Project (Project); and

12 **WHEREAS**, two petitions challenging the EIR were subsequently filed in the Riverside Superior
13 Court in the cases *Citizens for Responsible Solar v. County of Riverside*, Riverside Superior Court Case
14 No. RIC 1718458, and *Golden State Environmental v. County of Riverside*, Riverside Superior Court Case
15 No. RIC 1718565, which both challenged the Project under the California Environmental Quality Act
16 (CEQA, Pub. Res. Code, § 21000 et seq.) and which were subsequently consolidated for limited purposes;
17 and

18 **WHEREAS**, on July 11, 2019, the Court issued a Ruling on Petition for Writ of Mandate, ruling
19 that the analysis of certain soil contamination impacts was insufficient, the conclusion that mitigation
20 measure HAZ-1 was sufficient to reduce soil disturbance contamination impacts to less than significant
21 was not supported by substantial evidence, that the mitigation for impacts to burrowing owl as to the
22 Project facility site (as opposed to the gen-tie corridor) was not supported by substantial evidence, and
23 further ruling that the court granted the petitions on these grounds and denied the petitions on all other
24 grounds; and

25 **WHEREAS**, on October 1, 2019 and December 23, 2019 respectively, the Court entered identical
26 judgments in the two cases, partially granting and partially denying the petitions, entering judgment in
27 favor of Petitioners solely as to the issues described in the writs referenced below, and entering judgment
28 in favor of the County and the Real Parties in Interest as to all other issues; and

FORM APPROVED COUNTY COUNSEL
BY:  MELISSA R. CUSHMAN
DATE: 12/1/2020

1 **WHEREAS**, on October 1, 2019 and December 23, 2019, respectively, identical peremptory writs
2 of mandate (Writs) were filed in both cases, directing the County to take the following actions:

3 1. Respondent County of Riverside (“Respondent”)
4 shall add to its Final Environmental Impact Report
5 (“EIR”) a further analysis of soil contamination that
6 (a) discloses whether and to what extent excavation
7 and pile driving would disturb residual toxins under
8 the Palo Verde Mesa Solar Project (the “Project”)
9 site and (b) revises Mitigation Measure HAZ-1 to
10 address all soil contamination to be disturbed or
11 removed, including soil contaminated by fuel from
12 underground storage tanks, all as needed to comply
13 with the Court's Notice of Ruling dated July 11,
14 2019 (“Notice of Ruling”).

15 2. Respondent shall add to its EIR, a further analysis
16 of the issue of mitigation on the solar facility site
17 for the burrowing owl sufficient to explain (a)
18 whether and how the mitigation lands are adequate
19 to compensate for the total loss of potential habitat
20 on the solar facility site and (b) whether and how
21 the mitigation lands would be maintained for the
22 burrowing owl in perpetuity, all as needed to
23 comply with the Notice of Ruling.

24 3. Respondent shall decertify only the portions of the
25 EIR referenced in Paragraphs 1 and 2, above, and
26 prepare a revised environmental analysis,
27 addressing only those two issues, as follows:
28

- 1 a. Prepare an Addendum to the EIR if, based on
2 the further analysis necessary to comply with
3 the ruling, Respondent finds that any of the
4 conditions described in 14 CCR section
5 15162(a)(3) calling for preparation of a
6 subsequent or supplemental EIR do not exist; or
7 b. Prepare a Supplement to the EIR if, based on the
8 further analysis necessary to comply with the
9 ruling, Respondent finds that any of the
10 conditions described in 14 CCR section
11 15162(a)(3) calling for preparation of a
12 subsequent or supplemental EIR exist. If a
13 Supplement is prepared, circulate it for public
14 comment if recirculation is required under 14
15 CCR section 15088.5(a)(1), (2), or (3) with
16 respect to the additional analysis required
17 above.

18 4. Upon consideration of the Addendum or
19 Supplement, the Board of Supervisors of the County
20 of Riverside shall exercise its discretion to
21 determine whether to:

- 22 a. Find that no modifications to any of the Board's
23 project approvals are required based upon the
24 further analysis described in Paragraphs 1 and 2;
25 b. Modify some or all of the project approvals to
26 incorporate changes to the Project or to its
27 conditions of approval or mitigation measures
28

1 based upon the further analysis described in

2 Paragraphs 1 and 2; or

3 c. Rescind some or all of the project approvals

4 based upon the further analysis described in

5 Paragraphs 1 and 2; and

6 **WHEREAS**, the Court did not direct the County to exercise its lawful discretion in any particular
7 way in complying with the Writs; and

8 **WHEREAS**, the Court stayed Project approvals and ordered that no construction of the Project
9 shall commence unless and until the County completes corrective action to address the deficiencies
10 referenced in the Writs and the County has complied with the Writs; and

11 **WHEREAS**, an appeal of the judgment was filed by petitioner Golden State Environmental
12 Justice Alliance (GSEJA) and GSEJA subsequently dismissed its appeal; and

13 **WHEREAS**, on September 15, 2020, the Board decertified the portions of EIR No. 532
14 referenced in the Writs; and

15 **WHEREAS**, all associated Project approvals remained stayed and the certification of the
16 remainder of EIR No. 532 remains in effect; and

17 **WHEREAS**, the County has prepared an Addendum entitled Palo Verde Mesa Solar Project –
18 Addendum to the Environmental Impact Report, dated September 16, 2020 (Addendum), which addresses
19 the issues identified in the Writs; and

20 **WHEREAS**, all applicable procedures of CEQA and Riverside County Rules to Implement
21 CEQA have been followed, and the Addendum is sufficiently detailed so that all of the potentially
22 significant effects of the Project on the environment and measures necessary to avoid or substantially
23 lessen them, as identified in the Writs, have been evaluated, and the Addendum fully addresses the
24 Court's order and the Writs in accordance with CEQA and the above referenced rules; and

25 **WHEREAS**, the matter was duly noticed and heard at a regular meeting of the Board on December
26 8, 2020; now, therefore,

27 **BE IT RESOLVED, FOUND, DETERMINED, AND ORDERED** by the Board of Supervisors
28 of the County of Riverside, in regular session assembled on December 8, 2020 that:

- 1 A. The recitals set forth above are adopted as findings of this Board.
- 2 B. The Board has reviewed and considered the ruling, the Writs, the previously decertified
3 portions of EIR No. 532 as supplemented by the Addendum and all testimony and
4 documentation presented or made available to the Board by staff, the public and affected
5 government agencies in connection with this matter.
- 6 C. This Board adopts the conclusions of the Addendum for the reasons stated in the
7 Addendum, based upon the evidence presented in EIR No. 532 as supplemented by the
8 Addendum and in the record. The previously decertified portions of EIR No. 532, as
9 supplemented by the Addendum, represent the County's independent judgment and
10 analysis.
- 11 D. The deficiencies referenced in the Writs have been adequately addressed by the additional
12 information contained in the Addendum, and the Addendum adds to EIR No. 532 the
13 information required by paragraphs 1 and 2 of the Writs. Among other things, the analysis
14 of the soil contamination impacts referenced in the Writs is made adequate by the
15 Addendum. Mitigation Measure HAZ-1, as modified by the Addendum, is sufficient to
16 reduce soil disturbance contamination impacts to a less than significant level and that
17 conclusion is supported by substantial evidence in the record. Mitigation Measure BIO-6,
18 as modified by the Addendum, is sufficient to reduce impacts to burrowing owl as to the
19 Project site to a less than significant level, and that conclusion is supported by substantial
20 evidence in the record. This Board therefore certifies that the previously decertified portions
21 of EIR No. 532 as supplemented by the Addendum have been completed in compliance with
22 CEQA and the above-referenced Riverside County Rules, and are adequate for the Project,
23 including Conditional Use Permit No. 3684, Public Use Permit No. 916, Ordinance No.
24 664.59, and Development Agreement No. 86.
- 25 E. Pursuant to paragraph 3 of the Writs, this Board has considered the appropriate form of the
26 additional analysis referenced in paragraphs 1 and 2 of the Writ. This Board adopts the
27 conclusions of the Addendum that an Addendum is appropriate based upon the evidence and
28 analysis presented in the Addendum. No conditions described in 14 CCR section 15162(a)(3)

1 calling for preparation of a subsequent or supplemental EIR exist. There is no new information
2 of substantial importance that was not known and could not have been known with the exercise
3 of reasonable diligence at the time EIR No. 532 was certified that shows significant effects not
4 discussed previously, more severe significant effects, or mitigation measures or alternatives
5 the project proponents have declined to adopt. Also, the modifications to Mitigation Measures
6 HAZ-1 and BIO-6 are incorporated into the Mitigation Monitoring and Reporting Program
7 (MMRP), compliance with which is required by the Conditional Use Permit, and therefore the
8 Project proponent must implement the modified Mitigation Measures in order to pursue the
9 Project. To the extent there is any conflict between the conditions of approval for Conditional
10 Use Permit No. 3684 and the MMRP, the MMRP shall control.

11 F. This Board adopts the modifications to Mitigation Measure HAZ-1, Mitigation Measure BIO-
12 6 and the MMRP proposed in the Addendum, which consist of the marked text set forth in
13 Table B-1 in Appendix B to the Addendum. A copy of Table B-1 is attached as Exhibit A for
14 reference, and the modifications reflected in the marked text are incorporated by reference into
15 this Resolution. This Resolution supplements Resolution No. 2017-168 in that all references
16 in Resolution No. 2017-168 to the EIR, the information in the EIR, the MMRP, Mitigation
17 Measures HAZ-1 and BIO-6, and the record shall be deemed to refer to such items as
18 supplemented by the Addendum and as modified by this Resolution. Accordingly, no other
19 edits are needed to the findings regarding impacts, mitigation measures, alternatives or
20 overriding circumstances set forth in Resolution No. 2017-168.

21 G. Pursuant to paragraph 4 of the Writs, this Board has considered the decertified portions of EIR
22 No. 532 as supplemented by the Addendum, and makes the following determinations
23 regarding whether modifications are required based upon the further analysis described in
24 paragraphs 1 and 2 of the Writs. The Board adopts the conclusions of the Addendum, based
25 upon the analysis and evidence referenced in the Addendum and the following facts and
26 analysis. Conditional Use Permit No. 3684 is modified to the limited extent necessary to
27 incorporate the modifications to Mitigation Measure HAZ-1, Mitigation Measure BIO-6 and
28 the MMRP adopted by this Resolution. Specifically, condition of approval "10.

1 PLANNING. 28 USE – MMRP,” which requires compliance with the MMRP, is deemed to
2 refer to the MMRP as revised by this Resolution.

3 H. The Project cannot be pursued absent compliance with Conditional Use Permit No. 3684.
4 Accordingly, Public Use Permit No. 916, Ordinance No. 664.59 and Development
5 Agreement No. 86 were adopted without conditions requiring compliance with mitigation
6 measures, and that decision was not invalidated by the Court and the modifications to the
7 Mitigation Measures and the MMRP do not affect those other approvals. This Resolution
8 supplements those other approvals in that all references in those other approvals to the EIR,
9 the information in the EIR, the MMRP, Mitigation Measures HAZ-1 and BIO-6, , and the
10 record upon which the decision is based shall be deemed to refer to such items as
11 supplemented by the Addendum and as modified by this Resolution. Accordingly, no other
12 edits are required or appropriate to the approvals of Public Use Permit No. 916, Ordinance
13 No. 664.59 or Development Agreement No. 86.

14 I. Rescission of the prior approvals is not required. The Addendum and modifications adopted
15 by this Resolution add information and impose stricter and more robust requirements that were
16 imposed originally, and do not negate the prior conclusions or requirements. Accordingly, the
17 changes can be and are implemented with modifications to the MMRP and Conditional Use
18 Permit No. 3684 that incorporate this additional information and these stricter requirements.

19 **BE IT FURTHER RESOLVED** by the Board of Supervisors that the custodian of the documents
20 upon which this decision is based are the Clerk of the Board of Supervisors and the County Planning
21 Department and that such documents are located at 4080 Lemon Street, Riverside, California.

22 ROLL CALL:

23 Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
24 Nays: None
Absent: None

25
26 The foregoing is certified to be a true copy of a
27 resolution duly adopted by said Board of Super-
28 visors on the date therein set forth.

KECIA R. HARPER, Clerk of said Board
By  Deputy

EXHIBIT "A"

**TABLE B-1
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR**

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Best Management Practices							
Hydrology and Water Quality	BMP-1: Drainage, Erosion, and Sedimentation Control Plan. As part of the County of Riverside's Conditional Use Permit (CUP) requirements, a Drainage, Erosion, and Sedimentation Control Plan would be developed for the Project. The project shall implement Site design and Source control BMPs according to County Standards. The plan would address the drainage, erosion, and sediment control requirements to support all activities associated with construction, operation, maintenance, and decommissioning of the Project. For example, any stockpiles created would be kept on site, with an upslope barrier in place to divert runoff. Stockpiles would be sprayed with water, covered with tarpaulins, and/or treated with appropriate dust suppressants, especially in preparation for high wind or storm conditions. Certified weed-free straw bale barriers would be installed to control sediment in runoff water; straw bale barriers would be installed only where sediment-laden water can pond, thus allowing the sediment to settle out. Topsoil from the site would be stripped, stockpiled, and stabilized before excavating earth for facility construction. Topsoil would be segregated and spread on freshly disturbed areas to reduce color contrast and aid rapid revegetation. The Drainage, Erosion, and Sedimentation Control Plans shall also include site design and source control BMPs that minimize the potential for erosion and off-site sedimentation.	The Riverside County Planning Department shall verify that the Drainage, Erosion, and Sedimentation Control Plan is in accordance with County Standards. The Riverside County Planning Department shall verify that measures detailed in the Drainage, Erosion, and Sedimentation Control Plan have been implemented.	Riverside County Planning Department	Prior to and during construction	Riverside County Planning Department		
Hydrology and Water Quality	BMP-2: Stormwater Pollution Prevention Plan. In compliance with requirements of the National Pollutant Discharge Elimination System (NPDES) permit, a Stormwater Pollution Prevention Plan (SWPPP) would be developed and prepared for the Project to ensure that protection of water quality and soil resources is consistent with County and State regulations. The plan would identify site surface water runoff patterns and include measures that prevent excessive and unnatural soil deposition and erosion throughout and downslope of the Project area and Project-related construction areas, and would also include measures for non-stormwater discharge and waste management. The SWPPP would cover all activities associated with the construction of the Project, including clearing, grading, and other ground disturbance such as stockpiling or excavation erosion control. The plan would prevent off-site migration of contaminated stormwater, changes in pre-Project storm hydrographs, or increased soil erosion.	The Riverside County Planning Department shall verify that the Stormwater Pollution Prevention Plan (SWPPP) is in accordance with County Standards. The Riverside County Planning Department shall verify that measures detailed in the SWPPP have been implemented.	Riverside County Planning Department	Prior to and during clearing, grading and construction	Riverside County Planning Department		
Air Quality	BMP-3: Fugitive Dust Abatement Plan. As required by the Mojave Desert Air Quality Management District Rule 403, a Fugitive Dust Abatement Plan would be prepared to address fugitive dust emissions during Project construction, operation, maintenance, and decommissioning. The plan would include measures to minimize fugitive dust emissions from wrecking, excavation, grading, clearing of land, and solid waste disposal operations, and would take every reasonable precaution to prevent visible particulate matter from being deposited upon public roadways as a direct result of operations. During construction, all unpaved roads, disturbed areas (e.g., areas of scraping, excavation, backfilling, grading, and compacting), and loose materials generated during Project construction activities would be watered as frequently as necessary to minimize fugitive dust generation. However, the amount of water will be minimized each time to prevent temporarily ponding water that may occur as a result of the fugitive dust plan. In water-deprived locations, water spraying would be limited to active disturbance areas only, and non-water-based dust control measures would be implemented in areas	The Mojave Desert Air Quality Management District shall verify that the Fugitive Dust Abatement Plan is in accordance with the Mojave Desert Air Quality Management District Rule 403. The Riverside County Planning Department shall verify that the Dust Abatement Plan is in accordance with County Standards.	Mojave Desert Air Quality Management District Riverside County Planning Department	Prior to and during construction, operation, maintenance, and decommissioning	Riverside County Planning Department		

**TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR**

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Best Management Practices (cont.)							
Air Quality (cont.)	<p>with intermittent use or use that is not heavy, such as stockpiles or access roads. The dust suppression measures would consider the sensitivity of wild life to the windborne dispersal of fugitive dust containing dust suppressants and the potential impact on future reclamation. The Fugitive Dust Abatement Plan shall be submitted to the Mojave Air Quality Management District prior to earth-moving activity for review.</p> <p>The Dust Abatement Plan includes three specific measures (BMP 3.1 through BMP 3.3) as listed below.</p> <p>BMP-3.1: The following signage shall be erected not later than the commencement of construction. A minimum 48 inch high by 96 inch wide sign containing the following shall be located within 50 feet of each Project site entrance, meeting the specified minimum text height, black text on white background, on one inch A/C laminated plywood board, with the lower edge between six and seven feet above grade, with the contact name of a responsible official for the site and a local or toll-free number that is accessible 24 hours per day:</p> <p>"[Site Name] {four inch text} [Project Name/Project Number] {four inch text} IF YOU SEE DUST COMING FROM {four inch text} THIS PROJECT CALL: {four inch text} [Contact Name], PHONE NUMBER XXX-XXXX {six inch text} If you do not receive a response, Please Call {three inch text} The MDAQMD at 1-800-635-4617 {three inch text}"</p> <p>BMP-3.2: For projects with exposed sand or fines deposits (and for projects that expose such soils through earthmoving), chemical stabilization, durable polymeric soil stabilizers, or covering with a stabilizing layer of gravel will be required to eliminate visible dust/sand from sand/fines deposits.</p> <p>BMP-3.3: All perimeter fencing shall be wind fencing or the equivalent, to a minimum of four feet of height or the top of all perimeter fencing. The owner/operator shall maintain the wind fencing as needed to keep it intact and remove windblown dropout. This wind fencing requirement may be superseded by local ordinance, rule or project-specific biological mitigation prohibiting wind fencing.</p>	The Riverside County Planning Department shall verify that measures detailed in the Dust Abatement Plan have been implemented.					
Hazards and Hazardous Materials	BMP-4: Fire Management and Protection Plan. As required by existing law (Title 8 California Code of Regulations [CCR] Section 3221), a Fire Management and Protection Plan would be developed in consultation with the Riverside County Fire Department to identify potential hazards and accident scenarios that would exist at the facility during construction, operation, maintenance, and decommissioning of the Project. The Plan would include the identification of the following: potential fire hazards and ignition sources; proper handling and storage of potential fire hazards; control of potential ignition sources; persons responsible for equipment and systems maintenance; location of portable fire extinguishers; automatic sprinkler fire suppression system; water-spray fire system; coordination with local fire department; and recordkeeping requirements.	The Riverside County Fire Department shall verify that the Fire Management and Protection Plan has identified: potential fire hazards and ignition sources; proper handling and storage of potential fire hazards; control of potential ignition sources; persons responsible for equipment and systems maintenance; location of portable fire extinguishers;	Riverside County Fire Department	Prior to and during construction, maintenance and decommissioning	Riverside County Fire Department		

TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Best Management Practices (cont.)							
Hazards and Hazardous Materials (cont.)		automatic sprinkler fire suppression system; water-spray fire system; coordination with local fire department; and record keeping requirements. The Riverside County Fire Department shall verify that measures detailed in the Fire Management and Protection Plan have been implemented.					
Hazards and Hazardous Materials	BMP-5: Emergency Action Plan. As required by Title 8 CCR Section 3220, the Project would develop a site-specific operations phase Emergency Action Plan. The operations Emergency Action Plan would address potential emergency situations requiring emergency response and/or planned evacuation. The plan would describe accident scenarios, evacuation routes, alarm systems, points of contact, assembly areas, responsibilities, and other actions to be taken in the event of an emergency. In particular, the plan would describe arrangements with local emergency response agencies.	The Riverside County Planning Department shall verify that the Emergency Action Plan is in accordance with County Standards. The Riverside County Planning Department shall verify that measures detailed in the Dust Abatement Plan have been implemented.	Riverside County Planning Department	Prior to and during construction, maintenance and decommissioning	Riverside County Planning Department		
Aesthetics and Biological Resources	BMP-6: Lighting Plan. A lighting plan would be prepared that documents how lighting will be designed and installed to minimize night-sky impacts during facility construction and operations. Lighting for facilities will not exceed the minimum number of lights and brightness required for safety and security and will not cause excessive reflected glare. Motion-sensitive lighting would be installed at the Project site access points and would be calibrated to avoid activation by small animals, and timers would be used to automatically turn off lighting after a set period of time. Security lighting would be directed downward and shielded to focus illumination on the Project site only, and to prevent light spillage onto adjacent habitat. Wherever feasible, consistent with safety and security, lighting will be kept off when not in use. The lighting plan will include a process for promptly addressing complaints about lighting.	The Riverside County Planning Department shall verify that the Lighting Plan is in accordance with County Standards. The Riverside County Planning Department shall verify that measures detailed in the Lighting Plan have been implemented.	Riverside County Planning Department	Prior to and during construction and operations	Riverside County Planning Department		
Biological Resources	BMP-7: Trash Abatement Plan. A Trash Abatement Plan shall be developed that focuses on containing trash and food in closed and secure sealable containers, with lids that latch, and removing them periodically to reduce their attractiveness to opportunistic species, such as common ravens, coyotes, and feral dogs, that could serve as predators of native wildlife and special-status animals. The Plan would also establish a regular litter pick-up procedure within and around the perimeter of the Project area, and removal of construction-related trash containers from the Project area when construction is complete.	The Riverside County Planning Department shall verify that the Trash Abatement Plan is in accordance with County standards. The Riverside County Planning Department shall verify that measures detailed in the Trash Abatement Plan have been implemented.	Riverside County Planning Department	Prior to and during construction and operations	Riverside County Planning Department		

**TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR**

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Best Management Practices (cont.)							
Hazards and Hazardous Materials	BMP-8: Cleanup and restoration. Upon completion of construction activities, all unused materials and equipment shall be removed from the Project area. All construction equipment and refuse including, but not limited to, wrapping material, cables, cords, wire, boxes, rope, broken equipment parts, twine, strapping, buckets, and metal or plastic containers shall be removed from the site and disposed of properly after completion of construction. Any unused or leftover hazardous products shall be properly disposed of off-site.	The Riverside County Planning Department shall verify that all unused materials and equipment are removed from the Project area.	Riverside County Planning Department	Upon completion of construction	Riverside County Planning Department		
Hazards and Hazardous Materials	BMP-9: Hazardous materials. As required by the Clean Air Act, Section 401 of the Clean Water Act, the Toxic Substance Control Act, and the Hazardous Materials Transportation Act, all vehicles and equipment must be in proper working condition to ensure that there is no potential for fugitive emissions or accidental release of motor oil, fuel, antifreeze, hydraulic fluid, grease, or other hazardous materials. Equipment must be checked for leaks prior to operation and repaired as necessary. Refueling of equipment must take place on existing paved roads, where possible, and not within or adjacent to drainages. Hazardous spills must be cleaned up immediately. Contaminated soil would be disposed of at an approved offsite landfill, and spills reported to the permitting agencies. Service/maintenance vehicles should carry appropriate equipment and materials to isolate and remediate leaks or spills, and an on-site spill containment kit for fueling, maintenance, and construction will be available. Cleaning of construction vehicles at commercial car washes should be considered rather than washing vehicles on the Project area so that dirt, grease, and detergents are treated effectively at existing facilities designed to handle those types of wastes. Broken PV Module Detection and Handling Plan. Before photovoltaic (PV) panels containing cadmium telluride (CdTe) may be used on the Project site, the Applicant shall prepare and receive County approval of a Broken PV Module Detection and Handling Plan. The plan shall describe the Applicant's plan for identifying, handling and disposing of PV modules that may break, chip, or crack at some point during the Project's life cycle to ensure the safe handling, storage, transport, and recycling and/or disposal of the modules and related electrical components in a manner that is compliant with applicable law and protective of human health and the environment. The plan shall be submitted to the County for review and approval prior to commencement of construction activities and prior to delivery of CdTe-containing PV panels to the Project site and shall be distributed to all construction crew members and temporary and permanent employees prior to construction and operation of the Project. All available data from the panel manufacturer(s) regarding materials used and safety procedures and/or concerns shall be appended to the plan to assist the County with identifying potential hazards and abatement measures.	The project developer and Riverside County will verify all vehicles and equipment are in proper working condition, equipment is checked for leaks prior to operation and repaired as necessary, and refueling of equipment takes place on existing paved roads, where possible, and not within or adjacent to drainages. The Riverside County Planning Department shall verify that the Broken PV Module Detection and Handling Plan is in accordance with County Standards. The Riverside County Planning Department shall verify that measures detailed in the Broken PV Module Detection and Handling Plan have been implemented.	Project Developer Riverside County Planning Department	Prior to and during construction	Project Developer Riverside County Planning Department		

**TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR**

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Best Management Practices (cont.)							
Biological Resources	BMP-10: Integrated Weed Management Plan. In compliance with the Federal Noxious Weed Act and the Plant Protection Act, a Project-specific integrated weed management plan for the control of noxious weeds and invasive plant species would be prepared. The plan would identify presence, location, and abundance of weed species in the Project area and surrounding area adjacent to the Project, as well as identify suppression and containment measures to prevent the spread of weed species and introduction of weed species. Prevention techniques would include: limiting disturbance areas during construction to the minimum required to perform work; limiting ingress and egress to defined routes; maintaining vehicle wash and inspection stations; and closely monitoring the types of materials brought on site to minimize the potential for weed introduction. During operations, noxious and invasive weed management will be incorporated as a part of mandatory site training for groundskeepers and maintenance personnel. Training will include weed identification and the impacts on agriculture, wildlife, and fire frequencies. Training will also cover the importance of preventing the spread of noxious weeds and of controlling the proliferation of existing weeds.	The Riverside County Planning Department shall verify Project-specific integrated weed management plan is in compliance with the Federal Noxious Weed Act and the Plant Protection Act. The Riverside County Planning Department shall verify that measures detailed in the Project-specific integrated weed management plan have been implemented.	Riverside County Planning Department	Prior to and during construction and operations	Riverside County Planning Department		
Aesthetics, Biological Resources, and Hydrology and Water Quality	BMP-11: Project structures, gen-tie line, and building surfaces. Project facilities would be sited to ensure that there is adequate space (i.e., setbacks of no less than 100 feet) between solar facilities and natural washes. These setbacks would preserve and maintain the natural washes' hydrological functions. The color and finish of Project structure, panels, and building surfaces that are visible to the public will be designed to ensure minimal visual intrusion, contrast, and glare. Grouped structures will be painted the same color to reduce visual complexity and color contrast. Materials, coatings, or paints having little or no reflectivity will be used wherever possible.	The Riverside County Planning Department shall verify there is adequate space (i.e., setbacks of no less than 100 feet) between solar facilities and natural washes. The Riverside County Planning Department shall verify the color and finish of Project structure, panels, and building surfaces that are visible to the public will be designed to ensure minimal visual intrusion, contrast, and glare.	Riverside County Planning Department	Prior to, during and after construction	Riverside County Planning Department		
Biological Resources	BMP-12: Gen-tie lines. Gen-tie line support structures and other facility structures shall be designed in compliance with current standards and practices to discourage their use by raptors for perching or nesting (e.g., by use of anti-perching devices). This design would also reduce the potential for increased predation of special-status species, such as the desert tortoise. Mechanisms to visually warn birds (permanent markers or bird flight diverters) shall be placed on gen-tie lines consistent with APLIC guidelines at regular intervals to prevent birds from colliding with the lines (APLIC 2006 and 2012; and USFWS 2010). To the extent practicable, the use of guywires shall be avoided because they pose a collision hazard for birds and bats. Necessary guywires shall be clearly marked with bird flight diverters to reduce the probability of collision. Shield wires shall be marked with devices that have been scientifically tested and found to significantly reduce the potential for bird collisions. Gen-tie lines shall utilize non-specular conductors and non-reflective coatings on insulators.	The Riverside County Planning Department shall verify that gen-tie line support structures and other facility structures are designed in compliance with current standards. The Riverside County Planning Department shall verify that construction of gen-tie line support structures have been constructed as approved.	Riverside County Planning Department	Prior to and during construction and operations	Riverside County Planning Department		

**TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR**

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Best Management Practices (cont.)							
Biological Resources	<p>BMP-13: Ground and surface disturbance. Construction boundaries would be clearly delineated to minimize areas of ground and surface disturbance. Ground-disturbing activities shall be minimized, especially during the rainy season. Construction-related activities (such as vehicle and foot traffic) would avoid areas with intact biological soil crusts. For cases in which impacts cannot be avoided, soil crusts would be salvaged and restored on the basis of recommendations by the County of Riverside and BLM once construction has been completed. Existing rocks, vegetation, and drainage patterns shall be preserved. No paint or permanent discoloring agents shall be applied to rocks or vegetation (to indicate surveyor construction activity limits or for any other purpose). All stakes and flagging shall be removed from the construction area and disposed of in an approved facility. Brush-beating, mowing, or use of protective surface matting rather than removing vegetation shall be employed. Clearing and disturbing of sensitive areas (e.g., steep slopes and natural drainages) and other areas shall be avoided outside the construction zone. Surface disturbance would be minimized by utilizing undulating surface disturbance edges; stripping, salvaging, and replacing topsoil; using contoured grading; controlling erosion; using dust suppression techniques, and restoring exposed soils to their original contour and vegetation.</p>	<p>The Riverside County Planning Department shall verify that soil crusts are salvaged and restored on the basis of recommendations by the County of Riverside and BLM.</p> <p>The Riverside County Planning Department shall verify that existing rocks, vegetation, and drainage patterns are preserved.</p>	Riverside County Planning Department	Upon completion of construction.	Riverside County Planning Department		
Air Quality, Biological Resources, and Traffic and Transportation	<p>BMP-14: Travel and traffic. Vehicular traffic on site shall be confined to existing or designated travel routes and designated work areas. Access to the construction site and staging areas shall be limited to authorized vehicles and only through the designated roads. The extent of habitat disturbance during construction shall be reduced by keeping vehicles on access roads and minimizing foot and vehicle traffic through undisturbed areas. Travel shall be limited to stabilized roads. Road maintenance activities shall avoid blading existing forbs and grasses in ditches and adjacent to roads. Abandoned roads and roads no longer needed shall be subsoiled to increase infiltration and reduce soil compaction, then recontoured and revegetated.</p> <p>Construction traffic shall avoid unpaved surfaces to the extent practical (to reduce the risk of compaction) and reduce speed to lessen fugitive dust emissions. On unpaved or unstabilized surfaces within the construction site, speed limits (e.g., 20 mph) shall be posted with visible signs and enforced to minimize airborne fugitive dust. Project vehicle speeds shall be limited in areas occupied by special-status animal species. Traffic shall stop to allow wildlife to cross roads. Shuttle vans or carpooling shall be used where feasible to reduce the amount of traffic on access roads. Workers shall be trained to comply with the speed limit, use good engineering practices, minimize the drop height of materials, and minimize the number and extent of disturbed areas. The Project developer shall enforce these requirements.</p>	<p>The Project developer and Riverside County shall ensure vehicular traffic on site is confined to existing or designated travel routes and designated work areas.</p> <p>The Project developer and Riverside County shall ensure speed limits are enforced and carpooling is used when feasible.</p>	Project Developer	During construction	Project Developer		

**TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR**

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Best Management Practices (cont.)							
Air Quality and Biological Resources	BMP-15: New access roads and parking lots. New access roads shall be designed and constructed to the appropriate road design standards, such as those described in BLM Manual 9113 or County standards, whichever is applicable. New access roads shall be designed to follow natural land contours in the Project area and avoid existing desert washes. The specifications and codes developed by the U.S. Department of Transportation (DOT) and County of Riverside Transportation Department are also to be taken into account. Primary access roads and parking lots shall be surfaced with aggregate that is hard enough that vehicles cannot crush it and thus cause dust or compacted soil conditions. Paving may also be used on access roads and parking lots. Alternatively, chemical dust suppressants or durable polymeric soil stabilizers would be used on these locations.	The Riverside County Planning Department shall verify that all new access roads and parking lots comply with County Standards.	Riverside County Planning Department	Prior to and during construction	Riverside County Planning Department		
Air Quality	BMP-16: Diesel engines. All diesel engines used in the facility would be fueled only with ultra-low sulfur diesel with a sulfur content of 15 parts per million (ppm) or less. The Project would require use of construction diesel engines with a rating of 50 horsepower (hp) or higher that meet, at a minimum, the Tier 3 California Emission Standards for Off-Road Compression Ignition Engines, as specified in the California Code of Regulations, Title 13, Section 2423(b)(1), unless such engines are not available. If a Tier 3 engine is not available for off-road equipment larger than 100 hp, a Tier 2 engine, or an engine equipped with retrofit controls to reduce exhaust emissions of nitrogen oxides (NO _x) and diesel particulate matter (DPM) to no more than Tier 2 levels, may be used; however document to the County shall be provided discussing attempts to utilize Tier 3 vehicles. Regulatory agencies may determine that use of such devices is not practical when: <ul style="list-style-type: none"> • There is no available retrofit control device verified by either the California Air Resources Board (CARB) or the U.S. Environmental Protection Agency (EPA) to control engines in question to Tier 2 equivalent emission levels and the retrofitted or Tier 1 engines use the highest level of available control technology. • The construction equipment is intended to be on site for five days or less. • It can be demonstrated there is a good faith effort to comply with the recommendation and that compliance is not practical. The idling time of diesel equipment would be limited to no more than 10 minutes, unless idling must be maintained for proper operation (e.g., drilling, hoisting, and trenching).	The Project developer and Riverside County shall verify all diesel engines used in the facility are fueled only with ultra-low sulfur diesel with a sulfur content of 15 parts per million (ppm) or less, and idling time of diesel equipment is limited to no more than 10 minutes.	Project Developer	During construction	Project Developer		
Air Quality	BMP-17: High wind conditions. In compliance with MDAQMD Rule 403 criteria, all soil-disturbing activities and travel on unpaved roads must be suspended during periods of high winds. A 25 mph wind speed has been determined on the basis of soil properties identified during site characterization. Monitoring of the wind speed would be required at the site during construction, operation, maintenance, and decommissioning.	The Project developer and Riverside County shall verify that all soil-disturbing activities and travel on unpaved roads are suspended during periods of high winds (25 mph or greater).	Project Developer	During construction, operation, maintenance, and decommissioning	Project Developer		

TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Best Management Practices (cont.)							
Noise	BMP-18: Noise. The Project would minimize construction- and operation-related noise levels within 0.25 miles to sensitive receptors to minimize impacts to nearby residents. To minimize noise sensitive receptors, as well as wildlife, all construction vehicles and equipment (fixed or mobile) shall be equipped with properly operating and maintained mufflers, consistent with the manufacturers' standard. The construction contractor shall place all stationary construction equipment so that emitted noise is directed away from the noise sensitive receptors nearest the Project area.	The Riverside County Planning Department shall verify that all construction vehicles and equipment (fixed or mobile) shall be equipped with properly operating and maintained mufflers, consistent with the manufacturers' standard.	Riverside County Planning Department	During construction and operations	Riverside County Planning Department		
Biological Resources	BMP-19: Plants and wildlife. In compliance with the California Department of Fish and Game Codes, while on the Project property, workers or visitors would be prohibited from: feeding wildlife; moving live, injured, or dead wildlife off roads, right-of-ways (ROWs), or the Project area; bringing domestic pets to the Project area; collecting native plants; and harassing wildlife. Areas where wildlife could hide or be trapped (e.g., open trenches, sheds, pits, uncovered basins, and laydown areas) would be covered. If the trenches or excavations cannot be covered, a ramp that will sufficiently allow wildlife to escape shall be placed into the trench or excavated area, or exclusion fencing (i.e., silt fencing) shall be installed around the trench or excavation to prevent entrapment of wildlife. Open trenches, or other excavations that could entrap wildlife, shall be inspected by the qualified biologists daily and immediately before backfilling. For example, an uncovered pipe that has been placed in a trench should be capped at the end of each workday to prevent animals from entering the pipe. If a special-status species is discovered inside a component, that component must not be moved, and the qualified biologist shall determine the appropriate course of action. As open trenches could impede the seasonal movements of large game animals and alter their distribution, they would be backfilled as quickly as possible. Open trenches could also entrap smaller animals; therefore, escape ramps would be installed along open trench segments at distances identified in the applicable land use plan or by the best available information and science. If traffic is being unreasonably delayed by wildlife in roads, personnel would contact the Project biologist, who will take any necessary action. Any vehicle-wildlife collisions would be immediately reported to the Project biologist. Observations of potential wildlife problems, including wildlife mortality, would be immediately reported to the County or other appropriate agency authorized officer.	The California Department of Fish and Game and Riverside County Designated Biologist shall verify that the Project is in compliance with California Department of Fish and Game Codes.	California Department of Fish and Game	During construction, operation, maintenance, and decommissioning	California Department of Fish and Game		
Public Services and Utilities	BMP-20: Waste Recycling Plan. Prior to issuance of a grading and building permit, a Waste Recycling Plan shall be submitted to the Riverside County Department of Waste Resources for approval. The plan shall identify materials (i.e., cardboard, concrete, asphalt, wood, etc.) that will be generated by construction and development; projected amounts of materials; measures/methods that will be taken to recycle, reuse, and/or reduce the amount of materials; the facilities and/or haulers; and the target recycling or reduction rate. During Project construction, the construction site shall have, at a minimum, two bins: one for waste disposal and the other for recycling of construction and demolition materials. An accurate record keeping system of recycling construction and demolition recyclable materials and solid waste disposal shall also be established.	The Riverside County Department of Waste Resources shall verify that the Waste Recycling Plan is in accordance with County Standards. The Riverside County Planning Department shall verify that measures detailed in the Waste Recycling Plan have been implemented.	Riverside County Department of Waste Resources	Prior to issuance of grading and building permits	Riverside County Department of Waste Resources		

TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Best Management Practices (cont.)							
Public Services and Utilities (cont.)	Site design and Source Control BMPs shall be implemented according to County Standards.						
Hazards and Hazardous Materials	<p>BMP-21: Soil Management Plan. A Soil Management Plan shall be prepared to address and reduce potential exposure of chemical pollutants to construction workers. Prior to initiating any ground disturbing activities on the project site, the project applicant shall prepare a Soil Management Plan that is submitted to and reviewed by the California Department of Toxic Substances Control (DTSC), the Colorado River Basin Regional Water Quality Control Board (RWQCB), County of Riverside Department of Environmental Health, or other applicable regulatory agency having jurisdiction to review or approve the Soil Management Plan. The Soil Management Plan shall be prepared by a Registered Environmental Assessor (REA) or other qualified expert and shall address the findings of the CBRE Limited Phase II Environmental Site Assessment Report dated May 7, 2020.</p> <p>At a minimum, the Soil Management Plan will provide guidance for the proper handling, onsite management, and disposal of impacted soil that might be encountered during construction activities. The plan would include practices that are consistent with the California Title 8, Occupational Safety and Health Administration (Cal-OSHA) regulations, as well as appropriate remediation standards that are consistent with the planned use and protective of the site workers. This includes providing the appropriate PPE to site workers and instruction on their use. When exposure to dust is unavoidable, NIOSH-approved respiratory protection with particulate filters rated as N95, N99, N100, P100, or HEPA will be provided to protect against residual contaminants. Appropriately trained professionals will be on site during preparation, excavation, and related earthwork activities to monitor soil conditions and any suspected contaminated soil they encounter. Although large scale excavation or stockpiles are not anticipated, the Soil Management Plan would provide guidelines for identifying impacted soil, assessing impacted soil, soil excavation, impacted soil storage, verification sampling, and impacted soil characterization and disposal.</p> <p>The plan shall outline how project construction crews would, if needed, identify, handle, and dispose of potentially contaminated soil. As grading, excavation and trenching are performed, the construction contractor will monitor and train construction workers to be able to identify exposed soils for staining or discoloration, wetness, saturation, or odors. If unidentified or suspected contaminated soil evidenced by stained soil, noxious odors, or other factors, is encountered during site preparation or construction activities on any portion of the project site, work shall stop in the excavation area of potential contamination. Although not anticipated, in the event that potentially contaminated soils are encountered within the footprint of construction, soils would be tested and stockpiled. All stockpiled soil, for any period of time, will be covered with a tarp until it is determined not to be contaminated and replaced in the cavity in which it was excavated or transported to an offsite designated disposal facility. Upon discovery of suspect soils, the contractor shall notify the</p>	<p>County of Riverside Department of Environmental Health shall verify that the Soil Management Plan is in accordance with County Standards.</p> <p>The County of Riverside Department of Environmental Health shall verify that measures detailed in the Soil Management Plan have been implemented.</p>	County of Riverside Department of Environmental Health	Prior to issuance of grading and building permits and during construction	County of Riverside Department of Environmental Health		

**TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR**

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Best Management Practices (cont.)							
<p>Hazards and Hazardous Materials (cont.)</p>	<p><u>DTSC, RWQCB, County of Riverside Department of Environmental Health, and/or other applicable regulatory agency, and shall retain an REA or qualified professional to collect soil samples and have them analyzed to confirm the type and extent of contamination that may be present. If contamination is confirmed or suspected contamination shall be conducted according to a site-specific health and safety plan, prepared by a California state licensed professional. The contractor shall follow all procedural and substantive direction given by DTSC, RWQCB, County of Riverside Department of Environmental Health, and/or other applicable regulatory agency and in accordance with the Soil Management Plan to ensure that suspect soils are isolated, protected from runoff, and disposed of in accordance with hazardous materials transport laws and the requirements of the receiving facility licensed to accept such hazardous materials, and ensure that workers are protected from potential exposure in accordance with CAL/OSHA's 8 CCR 337-340 workplace safety standards (e.g., employee training, availability of PPE, accident prevention programs, and hazardous substance exposure warnings).</u></p> <p><u>If the contamination is confirmed to exceed human health risk levels as compared to the regulatory limits of the DTSC cancer Environmental Screening Level for Commercial/Industrial Soil, the regional background concentration for arsenic, San Francisco Bay RWQCB's Direct Exposure Human Health Cancer Risk Levels for Construction Workers, or the U.S. EPA's Regional Screening Levels (RSL) for Industrial Soil then the contractor shall notify the lead agency and DTSC, RWQCB, County of Riverside Department of Environmental Health, and/or other applicable regulatory agency, and shall follow all procedural and substantive direction.</u></p> <p><u>Ground disturbing activities (other than those required for remediation) shall not recommence within the contaminated areas until remediation is complete and either a "no further action" letter is obtained from the appropriate regulatory agency or direction is otherwise given from the appropriate regulatory agency for a course of action that would allow construction to recommence within any such areas. The project applicant shall submit the "no further action" letter or equivalent notification to the County prior to resumption of any ground disturbing activity on the relevant portion of the project site.</u></p> <p><u>All requirements and procedures within the Soil Management Plan will comply with applicable laws and regulations including but not limited to Cal/OSHA's 8 CCR 337-340. In addition, the Soil Management Plan will also incorporate the Mojave Desert Air Quality Management District Rule 403 which includes a Fugitive Dust Abatement Plan and is included in the EIR as BMP-3. Together these applicable rules along with the SMP will ensure site works are protected from any legacy contaminants remaining in soils at the site.</u></p>						

**TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR**

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Agriculture and Forestry Resources							
Impact AG-1: The Project would convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to nonagricultural use.	<p>Mitigation Measure AG-1: Prior to issuance of a grading permit, the Applicant shall provide written evidence of completion of at least one of the following measures to mitigate the impact to agricultural resources caused by conversion of land subject to the grading permit to non-agricultural uses. Important Farmlands of Statewide Importance, and Unique Farmlands as shown on maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency that is in effect as of the date of approval of the Project.</p> <ol style="list-style-type: none"> 1. Acquire and record agricultural conservation easement(s) meeting the following criteria: <ol style="list-style-type: none"> a. Two acres placed under conservation easement for each net acre of Important Farmland converted to non-agricultural uses during the life of the Project. A plot plan shall be submitted substantiating the net acreage calculation, which shall be consistent with the definition of "Net Acreage" in County Policy B-29¹. b. Land subject to the conservation easement shall be located in Riverside County and must be of the same or higher State of California Department of Conservation farmland classification (Prime Farmland or Farmland of Statewide Importance) as the land that has been converted to non-agricultural uses. c. The conservation easement must be held by a third party having the capacity to hold such an easement and in an easement form acceptable to Riverside County. d. The Applicant must provide to the easement holder an endowment sufficient to generate funds for ongoing monitoring and enforcement of the easement. 2. Purchase of credits from an established agricultural land mitigation bank in an amount sufficient to achieve a level of protection at least equivalent to Section 1 of Mitigation Measure AG-1 above; 3. Contribution of agricultural land or equivalent funding to an organization that provides for the preservation of farmland in California in an amount sufficient to achieve a level of protection at least equivalent to Section 1 of Mitigation Measure AG-1 above; or 4. Participation in any agricultural land mitigation program adopted by Riverside County that provides equal or more effective mitigation than the measures listed above. 	<p>Provide evidence of completion of mitigation to agricultural resources</p> <p>Acquire and record agricultural conservation easements</p>	Riverside County Planning Department	Prior to issuance of a grading permit	Riverside County Planning Department		

¹ The County of Riverside's Board of Supervisor's Policy B-29 defines "Net Acreage" as all areas involved in the production of power including, but not limited to, the power block, solar collection equipment, areas contiguous to solar collection equipment, transformers, transmission lines and/or piping, transmission facilities (on and off-site), service roads regardless of surface type – including service roads between panels or collectors, structures, and fencing surrounding all such areas. Net acreage shall not include off-site access roads or areas specifically set aside either as environmentally sensitive or designated as open space, and shall not include the fencing of such set aside areas.

**TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR**

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Agriculture and Forestry Resources (cont.)							
Contribution Toward Cumulative Agriculture Impacts	Implement Mitigation Measure AG-1.	See AG-1.	See AG-1.	See AG-1.	See AG-1.		
Biological Resources							
Impact BIO-1: The Project could have a substantial adverse effect, either directly or through habitat modifications, on species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS.	Mitigation Measure BIO-1: The Lead Biologist shall monitor the work area bi-weekly during ground disturbing construction activities. The Lead Biologist shall conduct monitoring for any area subject to disturbance from construction activities that may impact biological resources. The Lead Biologist's duties include minimizing impacts to special-status species, native vegetation, wildlife habitat, and unique resources. Where appropriate, the inspector will flag the boundaries of biologically sensitive areas and monitor any construction activities in these areas to ensure that ground disturbance activities and impacts occur within designated limits. The Lead Biologist will also be responsible for ensuring the BMPs shall be employed to prevent loss of habitat caused by Project-related impacts (e.g., grading or clearing for new roads) within the general corridor. The resume of the proposed Lead Biologist will be provided to the County (as appropriate) for concurrence prior to onset of ground-disturbing activities. The Lead Biologist will have demonstrated expertise with the biological resources within the Project area.	The Riverside County Planning Department shall verify that the Lead Biologist has flagged the boundaries of biologically sensitive areas and has employed BMPs to prevent loss of habitat caused by Project-related impacts.	Riverside County Planning Department	Prior to grading and during construction	Riverside County Planning Department		
	Mitigation Measure BIO-2: Pre-construction surveys shall be conducted for State and federally listed Threatened and Endangered, Proposed, Petitioned, and Candidate plants in a 250-foot radius around all areas subject to ground-disturbing activity including, but not limited to, tower pad preparation and construction areas, solar facilities, pulling and tensioning sites, assembly yards, and areas subject to grading for new access roads. The surveys shall be conducted during the appropriate blooming period(s) by an authorized plant ecologist/biologist according to protocols established by the USFWS, CDFW, BLM, and California Native Plant Society (CNPS). Measures shall be taken to avoid and minimize impacts to special-status plant species that are found to be present during the preconstruction surveys. This includes avoiding unnecessary or unauthorized trespass by workers and equipment, staging and storage of equipment and materials, refueling activities, and littering or dumping debris in areas known to contain special-status plant species that are not within the designated construction footprint.	The Riverside County Planning Department shall verify that all pre-construction surveys have been conducted by a qualified biologist during appropriate blooming period.	Riverside County Planning Department	Prior to grading	Riverside County Planning Department		
	Mitigation Measure BIO-3: In areas identified as suitable habitat during the 2011 and 2012 surveys, biological monitors shall conduct pre-construction surveys for American badger no more than 30 days prior to initiation of construction activities. Surveys shall also consider the potential presence of dens within 100 feet of the Project boundary (including utility corridors and access roads) and shall be performed for each phase of construction. If dens are detected each den shall then be further classified as inactive, potentially active, or definitely active. Inactive dens that would be directly impacted by construction activities shall be excavated by hand and backfilled to prevent reuse by badgers. Potential dens that would be directly impacted by construction activities shall be monitored by the Biological Monitor for three	The Riverside County Planning Department shall verify that all pre-construction surveys for American badger were conducted no more than 30 days prior to initiation of construction activities. If active dens are present, the measures as provided in Chapter 4 of the EIR shall be implemented.	Riverside County Planning Department, designated biologist.	Prior to and during construction	Riverside County Planning Department and CDFW.		

TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Biological Resources (cont.)							
	<p>consecutive nights using a tracking medium such as diatomaceous medium or fire clay and/or infrared camera stations at the entrance. If no tracks are observed in the tracking medium or no photos of the target species are captured after three nights, the den shall be excavated and backfilled by hand. If tracks are observed, the badger dens shall be fitted with the one-way trap doors to encourage badgers to move off-site. After 48 hours post-installation, the den shall be excavated and collapsed, following the same protocol as with western burrowing owl burrows. These dens shall be collapsed prior to construction of the desert tortoise fence, to allow badgers the opportunity to move off-site without impediment. If an active natal den is detected on the site, the CDFW shall be contacted within 24 hours. The course of action would depend on the age of the pups, location of the den site, status of the perimeter site fence, and the pending construction activities proposed near the den. A 500-foot no disturbance buffer shall be maintained around all active dens. Alternatively, a designated biologist authorized by CDFW, shall trap and remove badgers from occupied dens and move them off-site into appropriate habitat.</p>						
	<p>Mitigation Measure BIO-4: In areas identified as suitable habitat during the 2011 and 2012 surveys, biological monitors shall conduct pre-construction surveys for kit fox no more than 30 days prior to initiation of construction activities. Surveys shall also consider the potential presence of dens within 100 feet of the Project boundary (including utility corridors and access roads) and shall be performed for each phase of construction. <u>The methodologies for pre-construction kit fox surveys shall be included in the BRMMP, as prescribed by Mitigation Measure BIO-10.</u> If dens are detected each den shall then be further classified as inactive, potentially active, or definitely active. Inactive dens that would be directly impacted by construction activities shall be excavated by hand and backfilled to prevent reuse by kit fox. Potential dens that would be directly impacted by construction activities shall be monitored by the Biological Monitor for three consecutive nights using a tracking medium such as diatomaceous medium or fire clay and/or infrared camera stations at the entrance. If no tracks are observed in the tracking medium or no photos of the target species are captured after three nights, the den shall be excavated and backfilled by hand. If tracks are observed, the kit fox dens shall be fitted with the one-way trap doors to encourage kit fox to move off-site. After 48 hours post-installation, the den shall be excavated and collapsed, following the same protocol as with inactive western burrowing owl burrows. These dens shall be collapsed prior to construction of the desert tortoise fence, to allow kit fox the opportunity to move off-site without impediment. If an active natal den is detected on the site, the CDFW shall be contacted within 24 hours. The course of action would depend on the age of the pups, location of the den site, status of the perimeter site fence, and the pending construction activities proposed near the den. A 500-foot no disturbance buffer shall be maintained around all active dens <u>until CDFW provides direction on how to proceed.</u> Habitat-based mitigation or other appropriate mitigation as discussed previously for desert tortoise and western burrowing owl shall provide mitigation for impacts to non-listed special-status species that inhabit overlapping suitable habitat. The following measures are required to reduce the likelihood of distemper transmission:</p>	<p>The Riverside County Planning Department shall verify that all pre-construction surveys were conducted. If the presence for the Desert kit fox is identified, the measures as provided in Chapter 4 of the EIR shall be implemented.</p>	<p>Riverside County Planning Department, designated biologist.</p>	<p>Prior to and during construction</p>	<p>Riverside County Planning Department and CDFW.</p>		

**TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR**

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Biological Resources (cont.)							
	<ul style="list-style-type: none"> No pets shall be allowed on the site prior to or during construction; Any kit fox hazing activities that include the use of animal repellents such as coyote urine must be cleared through the CDFW prior to use; and Any documented kit fox mortality shall be reported to the CDFW within 24 hours of identification. If a dead kit fox is observed, it shall be retained and protected from scavengers until the CDFW determines if the collection of necropsy samples is justified. 						
	<p>Mitigation Measure BIO-5: Desert Tortoise Protection.</p> <p>(1) Qualified Biologist: In the following measures, a "qualified biologist" is defined as a person with appropriate education, training, and experience to conduct tortoise surveys, monitor Project activities, provide worker education programs, and supervise or perform other implementing actions. The person must demonstrate an acceptable knowledge of tortoise biology, desert tortoise impact minimization techniques, habitat requirements, sign identification techniques, and survey procedures. Evidence of such knowledge may include work as a compliance monitor on a project in desert tortoise habitat, work on desert tortoise trend plot or transect surveys, conducting surveys for desert tortoise, or other research or field work on desert tortoise. Attendance at a training course endorsed by the agencies (e.g., Desert Tortoise Council tortoise training workshop) is a supporting qualification. All qualified biologists must be approved by the USFWS, CDFW, and the Riverside Environmental Programs Department (EPD) prior to starting any work on site. <u>The names and qualifications of proposed qualified biologists shall be provided to USFWS, CDFW, and EPD for approval at least 30 days prior to the biologists implementing desert tortoise protection measures described herein.</u></p> <p>A qualified biologist will be on-site during all construction. The qualified biologist shall conduct a pre-construction clearance survey of the Project area, watch for tortoises wandering into the construction areas, check under vehicles, and examine excavations and other potential pitfalls for entrapped animals. The qualified biologist will be responsible for overseeing compliance with desert tortoise protective measures and for coordination with the Field Contact Representative (FCR) (described below). The qualified biologist shall have the authority to halt all Project activities that are in violation of these measures or that may result in the take of a tortoise. The qualified biologist shall have a copy of the <u>conservation measures prescribed by USFWS for the gen-tie line through the section 7 consultation process</u> previously issued. <u>Informal consultation letter issued for the Blythe Solar Project (EAS EIR V.12B0299.1210497) for construction of the shared gen-tie line when work is being conducted on site.</u> The qualified biologist is not authorized to handle or relocate desert tortoises as part of this project without proper authorization from USFWS and CDFW.</p>	<p>1) The Riverside County Planning Department shall verify that a qualified biologist demonstrates an acceptable knowledge of tortoise biology, desert tortoise impact minimization techniques, habitat requirements, sign identification techniques, and survey procedures. The Riverside County Planning Department shall verify that a qualified biologist is on-site during all construction. The Riverside County Planning Department shall verify the qualified biologist is responsible for overseeing compliance with desert tortoise protective measures and for coordination with the Field Contact Representative (FCR). The Riverside County Planning Department shall verify the qualified biologist has a copy of this letter when work is being conducted on the site.</p>	<p>1) Riverside County Planning Department designated biologist.</p>	<p>1) Prior to grading and during construction.</p>	<p>1) Riverside County Planning Department and USFWS.</p>		

**TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR**

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Biological Resources (cont.)							
	<p>Mitigation Measure BIO-5 (Continued)</p> <p>(2) Preconstruction Clearance Survey: The qualified biologist shall conduct a preconstruction clearance survey of the Project area. Transects for clearance surveys will be spaced 15 feet apart. Clearance will be considered complete after two successive surveys have been conducted without finding any desert tortoises. Clearance surveys must be conducted during the active season for desert tortoises (April through May or September through October). The qualified biologist is not authorized to handle or relocate desert tortoises as a part of this Project without proper authorization from USFWS and CDFW. If a tortoise or tortoise burrow is located during clearance surveys, the USFWS and CDFW will be contacted for direction on how to proceed.</p>	2) The Riverside County Planning Department shall verify that a preconstruction clearance survey has been conducted by the qualified biologist during the active season for desert tortoises (April through May or September through October).	2) Riverside County Planning Department, designated biologist.	2) Prior to grading.	2) Riverside County Planning Department and USFWS.		
	<p>Mitigation Measure BIO-5 (Continued)</p> <p>(3) Field Contact Representative: The Project Applicant will designate a FCR who will be responsible for overseeing compliance with desert tortoise protective measures and for coordination with the USFWS and CDFW. The FCR will have the authority to halt all Project activities that are not in compliance with the conservation measures prescribed by USFWS for the gen-tie line through the section 7 consultation process measures in the previously issued informal consultation letter (EWS-ERIV-12B0299-1210497). The FCR will have a copy of these conservation measures this letter when work is being conducted on the site. The FCR may be an agent for the company, the site manager, any other Project employee, a biological monitor, or other contracted biologist. The Neither the FCR nor any other project proponent may bar or limit any communications between any Natural Resource Agency or The County of Riverside Environmental Programs Division and any project biologist, biological monitor or contracted biologist. Any incident occurring during the Project activities that is considered by the qualified biologist to be in non-compliance with these measures will be documented immediately by the qualified biologist. The FCR will ensure that appropriate corrective action is taken. Corrective actions will be documented by the qualified biologist. The following incidents will require immediate cessation of the Project activities causing the incident: (1) location of a desert tortoise within the exclusion fencing; (2) imminent threat of injury or death to a desert tortoise; (3) unauthorized handling of a desert tortoise, regardless of intent; (4) operation of construction equipment or vehicles outside a project area cleared of desert tortoise, except on designated roads; and (5) conducting any construction activity without a biological monitor where one is required.</p>	3) The Riverside County Planning Department shall verify that the FCR is responsible for overseeing compliance with desert tortoise protective measures and for coordination with the USFWS. The Riverside County Planning Department shall verify that the FCR will have a copy of this letter when work is being conducted on the site.	3) Riverside County Planning Department.	3) Prior to grading and construction.	3) Riverside County Planning Department and USFWS.		
	<p>Mitigation Measure BIO-5 (Continued)</p> <p>(4) Worker Training: Prior to the onset of construction activities, a desert tortoise education program will be presented by the FCR or qualified biologist to all personnel who will be present on work areas within the Project area. Following the onset of construction, any new employee will be required to formally complete the tortoise education program prior to working on-site. At a minimum, the tortoise education program will cover the following topics:</p>	4) The Riverside County Planning Department shall verify that all employees of the Applicants and their contractors who work on have participated in a tortoise education program.	4) The Riverside County Planning Department.	4) Prior to grading and construction.	4) Riverside County Planning Department.		

**TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR**

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Biological Resources (cont.)							
	<ul style="list-style-type: none"> A detailed description of the desert tortoise, including color photographs; The distribution and general behavior of the desert tortoise; Sensitivity of the species to human activities; The protection the desert tortoise receives the FESA and CESA Act, including prohibitions and penalties incurred for violation of the FESA and CESA Act; The protective measures being implemented to conserve the desert tortoise during construction activities; and Procedures and a point of contact if a desert tortoise is observed on-site. 						
	<p>Mitigation Measure BIO-5 (Continued)</p> <p>(5) Site Fencing: Desert tortoise exclusion fencing will be installed around the Project area <u>and will remain in place for the life of the Project</u>. The fence will adhere to USFWS design guidelines, available at http://www.fws.gov/venturaispecies_information/protocols_guidelines/docs/dtIDT_Exclusion-Fence_2005.pdf. The qualified biologist will conduct a clearance survey before the tortoise fence is enclosed to ensure no tortoises are on the Project area. If a tortoise is found, all construction activity will halt and the USFWS and CDFW contacted for direction on how to proceed. Once installed, exclusion fencing will be inspected at least monthly and following all rain events, and corrective action taken if needed to maintain the integrity of the tortoise barrier. Fencing around the Project area will include a desert tortoise exclusion gate. This gate will remain closed at all times, except when vehicles are entering or leaving the Project area. If it is deemed necessary to leave the gate open for extended periods of time (e.g., during high traffic periods), the gate may be left open as long as a qualified biologist is present to monitor for tortoise activity in the vicinity. Sites with potential hazards to desert tortoise (e.g., auger holes, steep-sided depressions) that are outside of the desert tortoise exclusion fencing will be fenced by installing exclusionary fencing, or not left unfilled overnight.</p>	5) The Riverside County Planning Department authorized biologist shall verify that work area boundaries are delineated with flagging or fencing to minimize surface disturbance associated with vehicle straying.	5) The Riverside County Planning Department authorized biologist.	5) During construction, decommissioning, and ground disturbing activities.	5) Riverside County Planning Department.		
	<p>Mitigation Measure BIO-5 (Continued)</p> <p>(6) Refuse Disposal: All trash and food items shall be promptly contained within closed, raven-proof containers. These will be regularly removed from the Project area to reduce the attractiveness of the area to common ravens and other desert predators. The FCR will be responsible for ensuring that trash is removed regularly from the site such that containers do not overflow, and that the trash containers are kept securely closed when not in use.</p>	6) The Riverside County Planning Department authorized biologist shall verify that that trash is removed regularly from the site such that containers do not overflow, and that the trash containers are kept securely closed when not in use.	6) The Riverside County Planning Department authorized biologist.	6) During construction, decommissioning, and ground disturbing activities.	6) Riverside County Planning Department.		

**TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR**

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Biological Resources (cont.)							
	<p>Mitigation Measure BIO-5 (Continued)</p> <p>(7) Tortoises under vehicles: The underneath of vehicles parked outside of desert tortoise exclusion fencing will be inspected immediately prior to the vehicle being moved. If a tortoise is found beneath a vehicle, the vehicle will not be moved until the desert tortoise leaves of its own accord. (8) Tortoises on roads: If a tortoise is observed on or near the road accessing the Project area, vehicular traffic will stop and the tortoise will be allowed to move off the road on its own.</p> <p>(8) Tortoise Observations: No handling of desert tortoise or burrow excavation is allowed as part of the proposed action, unless authorized by USFWS and CDFW. If a tortoise is observed on or near the road accessing the Project area, vehicular traffic will stop and the tortoise will be allowed to move off the road on its own. If a tortoise is observed outside of exclusion fencing, construction will stop and the tortoise shall be allowed to move out of the area on its own. If a tortoise or tortoise burrow is observed within the exclusion fencing, all construction will stop, and the USFWS and CDFW contacted for direction on how to proceed.</p> <p>The following activities are not authorized and will require immediate cessation of the construction activities causing the incident: (1) location of a desert tortoise within the exclusion fencing; (2) imminent threat of injury or death to a desert tortoise; (3) unauthorized handling of a desert tortoise, regardless of intent; (4) operation of construction equipment or vehicles outside a project area cleared of desert tortoise, except on designated roads; and (5) conducting any construction activity without a biological monitor where one is required.</p> <p>(9) Dead or Injured Specimens: Upon locating a dead or injured tortoise, the Applicant or agent is to immediately notify the Palm Springs Fish and Wildlife Office by telephone within three days of the finding. Written notification must be made within five days of the finding, both to the appropriate USFWS field office and to the USFWS' Division of Law Enforcement. The information provided must include the date and time of the finding or incident (if known), location of the carcass or injured animal, a photograph, cause of death, if known, and other pertinent information.</p>	<p>7, 8, and 9) The Riverside County Planning Department authorized biologist shall contact the BLM and USFWS and an appropriate course of action shall be determined to avoid or mitigate impacts.</p>	<p>7, 8, and 9) The Riverside County Planning Department authorized biologist.</p>	<p>7, 8, and 9) During construction, decommissioning, and ground disturbing activities.</p>	<p>7, 8, and 9) Riverside County Planning Department, BLM and USFWS.</p>		
	<p>Mitigation Measure BIO-6: Burrowing Owl Protection: A Draft Burrowing Owl Monitoring and Mitigation Plan (Plan) has been developed to describe monitoring, reporting, and management of the burrowing owl during the construction, O&M, and decommissioning of the proposed project, as required by CDFW California Department of Fish and Wildlife (CDFW) and the County of Riverside. It has been prepared following the 2012 CDFW Staff Report on Burrowing Owl Mitigation (CDFW, 2012), and describes a multi-tiered approach to prevent or reduce impacts during construction and operation of the project. Below is a general summary of the revised Plan requirements:</p> <ul style="list-style-type: none"> • Preconstruction Surveys. Pre-construction surveys will be conducted throughout the project area and laydown areas for burrowing owls, possible burrows, and sign of owls (e.g., pellets, feathers, white wash) no less than 14 days prior to site grading ground-disturbing activities. 	<p>The Riverside County Planning Department shall verify that pre-construction surveys were conducted throughout the Project area and laydown areas for burrowing owls, possible burrows, and sign of owls (e.g., pellets, feathers, white wash) 30 days prior to construction. If active burrows are present, the measures as provided in Chapter 4 of the EIR shall be implemented.</p>	<p>Riverside County Planning Department designated biologist.</p>	<p>Prior to and during construction</p>	<p>Riverside County Planning Department, BLM, and CDFW.</p>		

TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Biological Resources (cont.)	<ul style="list-style-type: none"> • Time Lapses. Time lapses between project phases/activities could trigger the need for subsequent take avoidance surveys, as stated in Appendix D of the CDFW 2012 survey guidelines. The approved Biologist will determine when subsequent surveys are needed <u>but shall be required for the project area if construction activities have ceased for at least 14 days or more.</u> • Avoidance and Set-Backs. Should any of the pre-construction surveys or <u>subsequent surveys</u> yield positive results for the presence of burrowing owl or active burrows within the project area, the approved Biologist will coordinate with the Construction Contractor to implement avoidance and set-back distances. Disturbance of owls or occupied burrows during the breeding season (February 1 through August 31) will not be permitted and to minimize disturbance, use of down-hole cameras to inspect burrows will be used only after one way doors and visual monitoring have taken place; • Excavation of Inactive Burrows. If suitable burrows are observed and documented during the preconstruction surveys within the project footprint and determined to be inactive, these burrows will be excavated and filled in under the supervision of the approved Biologist(s) prior to clearing and grading; • Passive Relocation. The Plan provides detailed methods and guidance for passive relocation of burrowing owls <u>outside of the breeding season</u> occurring within the project disturbance area <u>if avoidance of burrowing owls cannot occur</u>, and the Plan describes monitoring and management of the passive relocation, including a three-year monitoring program. <u>The passive relocation and exclusion methodology in the Plan involves the creation of artificial burrows within the proposed mitigation lands; a minimum 3-week period for the owls to become familiar with the new burrows, and the installation of one-way doors on burrows within the project site to exclude the burrowing owls from burrows in the project area and prompt the owls to relocate.</u> • Compensatory Mitigation. To compensate for impacts to burrowing owls in activity areas on the <u>northern part of the project site</u>, 146 acres of habitat have been identified adjacent to the project area. <u>The actual amount of off-site compensation mitigation will depend upon the results of the pre-construction surveys and any subsequent surveys and shall be provided at the following ratios based on the Burrowing Owl Consortium Recommendations (1993): 1. Replacement of occupied habitat with occupied habitat: 1.5 times 6.5 acres (i.e., 9.75 acres) per pair or single bird. 2. Replacement of occupied habitat with habitat contiguous to currently occupied habitat: 2 times 6.5 acres (i.e., 13.0 acres) acres per pair or single bird. 3. Replacement of occupied habitat with suitable unoccupied habitat: 3 times 6.5 acres (i.e., 19.5 acres) per pair or single bird.</u> Land used for compensation must be of equal value or better than the land impacted. • Dedication of Ownership. A letter agreeing to dedicate the <u>existing required</u> compensation lands must be approved by CDFW and the County prior to disturbance. Ownership of compensation lands will be transferred prior to any surface disturbance to one of the following: the County, or an entity acceptable to the County, or CDFW that can effectively manage listed species and their habitats. 						

**TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR**

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Biological Resources (cont.)							
	<ul style="list-style-type: none"> • <u>Long-Term Management.</u> The Plan shall describe monitoring and management of the passive relocation, including a three-year monitoring program. For compensatory mitigation lands, the project owner shall develop a long-term management plan to be implemented in perpetuity to ensure compliance with and effectiveness of identified management actions for the mitigation lands. A recommended outline with related vegetation management goals and monitoring success criteria can be found in Appendix E of the 2012 CDFW Staff Report. • <u>Security for Implementation of Mitigation.</u> Prior to issuance of the Notice to Proceed, the project owner shall provide financial assurances to CDFW and the County to guarantee that an adequate level of funding is available to implement the long-term management plan in perpetuity, as described in this condition. These funds shall be used solely for implementation of the measures as associated with the project. Financial assurance can be provided in the form of an irrevocable letter of credit, a pledged savings account or Security prior to initiating ground-disturbing project activities. Prior to submittal, the Security shall be approved to ensure funding is adequate. The Security amounts may change based on the estimated costs of enhancement and endowment. The final amount due shall be determined by a Property Analysis Record (PAR) or PAR-like analysis. 						
	<p>Mitigation Measure BIO-7: If Project construction activities cannot occur completely outside the bird breeding season, then pre-construction surveys for active nests shall be conducted by a qualified biologist within 1,200 days before the initiation of construction that would occur between February <u>January 1 and August</u> September 4-30. The qualified biologist will hold a current Memorandum of Understanding with the County of Riverside to conduct nesting bird surveys. If breeding birds with active nests are found, a biological monitor shall establish a species-specific buffer around the nests for construction activities, 250 feet or 1,200 feet for raptor nests. Extent of protection will be based on proposed management activities, human activities existing at the onset of nesting initiation, species, topography, vegetative cover, and other factors. When appropriate, a no-disturbance buffer around active nest sites will be required from nest-site selection to fledging. If for any reason a bird nest must be removed during the nesting season, written documentation providing concurrence from the USFWS and CDFW authorizing the nest relocation shall be obtained. All nest removals shall occur after the nest is demonstrated to be inactive by a qualified biologist and have been shown to not result in take as defined by the Migratory Bird Treaty Act (MBTA). A Bird and Bat Conservation Strategy (BBCS) will be developed for this Project and include additional protections for avian species. The BBCS would be based on specific recommendations from the USFWS and CDFW, and would provide:</p> <ul style="list-style-type: none"> • a statement of the Applicant's understanding of the importance of bird and bat safety and management's commitment to remain in compliance with relevant laws; 	<p>The Riverside County Planning Department shall verify that pre-construction surveys were conducted. If breeding birds with active nests are found, the measures as provided in Chapter 4 of the EIR shall be implemented.</p>	<p>Riverside County Planning Department, designated biologist.</p>	<p>Prior to and during construction.</p>	<p>Riverside County Planning Department and CDFW.</p>		

**TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR**

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Biological Resources (cont.)							
	<ul style="list-style-type: none"> documentation of conservation measures PMSP would implement through design and operations to avoid and reduce bird and bat fatalities at both solar generation facilities as well as the associated gen-tie line, including consideration of bird height and wingspan requirements and use of flight diverters, perch and nest discouraging material, etc.; consistent, practical and up-to-date direction to PMSP staff on how to avoid, reduce, and monitor bird and bat fatalities; establishment of accepted processes to monitor and mitigate bird and bat fatalities; establishment of accepted fatality thresholds that, if surpassed, would trigger adaptive changes to management and mitigation management; an adaptive management framework to be applied, if thresholds are surpassed; and A three year post-construction monitoring study. <p><u>The BBCS will be submitted to USFWS and CDFW for review at least 60 days prior to construction.</u> The BBCS would be considered a "living document" that articulates the Applicant's commitment to develop and implement a program to increase avian and bat safety and reduce risk. As progress is made through the program or challenges are encountered, the BBCS may be reviewed, modified, and updated. The initial goals of this BBCS are to:</p> <ul style="list-style-type: none"> provide a framework to facilitate compliance with federal law protecting avian species and a means to document compliance for regulators and the interested public; allow the Agent to manage risk to protected bird and bat species in an organized and cost-effective manner; establish a mechanism for communication between BMSP managers and natural resource regulators (primarily USFWS and CDFW); foster a sense of stewardship with BMSP owners, managers, and field engineers; and articulate and cultivate a culture of wildlife awareness (specifically birds and bats) and the importance of their protection. articulate and cultivate a culture of wildlife awareness (specifically birds and bats) and importance of their protection. 						
	<p>Mitigation Measure BIO-8: To mitigate for permanent habitat loss and direct impacts to Mojave fringe-toed lizards the Applicant shall provide compensatory mitigation at a 3:1 ratio, which may include compensation lands purchased in fee or in easement in whole or in part, for impacts to stabilized or partially stabilized desert dune habitat (i.e., dune, sand ramp, or fine-sandy wash habitat). Suitable Mojave fringe-toed lizard habitat is located throughout the gen-tie line corridor and potential habitat was detected on approximately three percent of the Project area (creosote bush scrub habitat). If compensation lands are acquired, the Applicant shall provide funding for the acquisition in fee title or in easement, initial habitat improvements and long-term maintenance and</p>	<p>The Riverside County Planning Department shall verify if compensation lands are acquired, the Applicant shall provide funding for the acquisition in fee title or in easement, initial habitat improvements and long-term maintenance and management of the compensation lands.</p>	<p>Riverside County Planning Department.</p>	<p>Prior to and during construction.</p>	<p>Riverside County Planning Department.</p>		

**TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR**

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Biological Resources (cont.)							
	<p>management of the compensation lands. <u>A letter agreeing to dedicate the existing compensation lands must be approved by BLM, USFWS, CDFW and the County prior to ground disturbance. used for compensation must be of equal value or better than the land impacted. Ownership of compensation lands will be transferred prior to any surface disturbance to one of the following: the County, or an entity acceptable to the agencies that can effectively manage listed species and their habitats.</u></p>						
	<p>Mitigation Measure BIO-10: A Biological Resources Mitigation Implementation and Monitoring Plan (BRMIMP) will be developed to summarize all of the various biological mitigation, monitoring, and compliance measures and include measures from the various biological plans and permits developed for PVMSP. The BRMIMP shall include the following:</p> <ol style="list-style-type: none"> 1. All biological resources mitigation, monitoring, and compliance measures outlined in this EIR; 2. All biological resource mitigation, monitoring and compliance measures required in federal agency terms and conditions, <u>such as conservation measures prescribed by USFWS for the gentie line through the section 7 consultation process those provided in the USFWS concurrence letter that the Project is "not likely to incidentally take or otherwise adversely affect federally listed species" (FWS ERN 1280290 12/6/07).</u> 3. All biological resource mitigation, monitoring and compliance measures outlined in the Burrowing Owl Mitigation and Monitoring Plan and the Bird and Bat Conservation Strategy (the full biological plans will be included in the attachments to the BRMIMP); 4. All locations on a map, at an approved scale, of sensitive biological resource areas subject to disturbance and areas requiring temporary protection and avoidance during construction and operation; 5. Duration for each type of monitoring and a description of monitoring methodologies and frequency; 6. Performance standards to be used to help decide if when proposed mitigation is or is not successful; and 7. A process for proposing plan modifications to appropriate agencies for review and approval. The BRMIMP document shall be provided at least 60 <u>90</u> days prior to start of any Project-related ground disturbing activities to the <u>USFWS, CDFW, and County</u> for review and approval. Implementation of BRMIMP measures will be reported in the monthly compliance reports by the Lead Biologist (i.e., survey results, construction activities that were monitored, species observed). 	<p>The Riverside County Planning Department shall verify that a BRMIMP is developed.</p>	<p>Riverside County Planning Department, designated biologist.</p>	<p>Prior to and during construction.</p>	<p>Riverside County Planning Department.</p>		

TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Biological Resources (cont.)							
<p>Impact BIO-3: The Project could have a substantial adverse effect on federal protected wetlands, as defined by Section 404 of the CWA, or State-protected jurisdictional areas not subject to regulation under Section 404 of the CWA through direct removal, filling, hydrological interruption, or other means.</p>	Implement Mitigation Measures HYD-1 through HYD-4.	See HYD-1 through HYD-4.	See HYD-1 through HYD-4.	See HYD-1 through HYD-4.	See HYD-1 through HYD-4.		
	<p>Mitigation Measure BIO-9: Impacts to areas under jurisdiction of the USACE, Regional Water Quality Control Board (RWQCB), and CDFW shall be avoided as necessary to reduce impacts to less than significant levels. <u>A formal jurisdictional delineation of regulated waters and wetlands shall be conducted on the Project site prior to construction to verify avoidance of such resources.</u> Where avoidance of jurisdictional areas is not necessary to reduce impacts to less than significant levels, including emergency repairs, and access/spur roads within the ephemeral channel, the applicant shall provide the necessary mitigation required as part of wetland permitting. This will include creation, restoration, and/or preservation of suitable jurisdictional habitat along with adequate buffers to protect the function and values of jurisdictional area mitigation. The location(s) of the mitigation will be determined in consultation with the Applicant and the responsible agency(s) as part of the permitting process.</p>	The Riverside County Planning Department shall verify that the applicant has provided the necessary mitigation required as part of wetland permitting. This will include creation, restoration, and/or preservation of suitable jurisdictional habitat along with adequate buffers to protect the function and values of jurisdictional area mitigation, where avoidance of jurisdictional areas is not feasible.	Riverside County Planning Department, designated biologist.	Prior to and during construction.	Riverside County Planning Department.		
<p>Impact BIO-5: The Project could conflict with local policies or ordinances protecting biological resources, such as tree preservation policy or ordinance.</p>	Implement Mitigation Measures BIO-1 through BIO-10.	See BIO-1 through BIO-10.	See BIO-1 through BIO-10.	See BIO-1 through BIO-10.	See BIO-1 through BIO-10.		
<p>Impact BIO-6: The Project could substantially reduce the habitat of fish and wildlife species; cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, or substantially reduce the number or restrict the range of an endangered, rare, or threatened species.</p>	Implement Mitigation Measures BIO-1 through BIO-10.	See BIO-1 through BIO-10.	See BIO-1 through BIO-10.	See BIO-1 through BIO-10.	See BIO-1 through BIO-10.		
<p>Contribution Toward Cumulative Biological Resources Impacts</p>	Implement Mitigation Measures BIO-1 through BIO-10 and HYD -1 through HYD -4	See BIO-1 through BIO-10.	See BIO-1 through BIO-10.	See BIO-1 through BIO-10.	See BIO-1 through BIO-10.		

TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Cultural Resources							
Impact CUL-1: The Project could cause a substantial adverse change in the significance of a historical or archaeological resource, as defined in CEQA Guidelines Section 15064.5.	Implement Mitigation Measures HYD-1 through HYD-4	See HYD-1 through HYD-4.	See HYD-1 through HYD-4.	See HYD-1 through HYD-4.	See HYD-1 through HYD-4.		
	Mitigation Measure CUL-1: Prior to any ground disturbances within the Project area, the Applicant shall, for a period of at least 60 days, make a good faith effort to enter into a contract with and retain monitors designated by Tribal representatives. These monitors shall be known as the Tribal Participants for this Project. The developer shall notify the appropriate Tribe of all new phases of development. The Tribal Participants shall be required on-site during all construction-related ground disturbing activities. The developer shall submit the signed contract between the appropriate Tribe and the developer. The Project Archaeologist shall include in the report any concerns or comments the Tribal Participant has regarding the Project and shall include as an appendix any written correspondence or reports prepared by the Tribal Participant.	The Riverside County Planning Department shall verify that the Applicant has retained a monitor designated by the designated by the Tribal representatives or other County-designated Tribe.	Riverside County Planning Department	Prior to issuance of the first grading permit.	Riverside County Planning Department.		
	Mitigation Measure CUL-2: The County advocates avoidance as the preferred choice, and development of a discovery plan (see CUL-3) shall occur prior to Project construction. If, during ground disturbance activities associated with construction, operation and maintenance, or decommissioning, potentially significant archaeological sites are discovered that were not identified and evaluated in the archaeological survey reports or EIR conducted prior to Project approval, the following procedures shall be followed. 1. All ground disturbance activities within 100 feet of the discovered archaeological resource shall be halted until a meeting is convened between the developer, the Project Archaeologist, the Tribal Participants, and the County to discuss the significance of the find. 2. At the meeting, the significance of the discoveries shall be discussed in consultation with the Tribal Participants and the Project Archaeologist. The County shall determine the appropriate mitigation (documentation, evaluation, recovery, avoidance, etc.) by implementing CEQA Guidelines Section 15126.4(b) regarding mitigation related to impacts on historical resources and CEQA Guidelines Section 15064.5(c) and 21083.2(g) regarding archaeological resources. Mitigation shall comply with Mitigation Measure CUL-3. 3. Further ground disturbance shall not resume within the area of the discovery until a meeting is convened with the aforementioned parties and a decision is made with the concurrence of the County as to the appropriate preservation or mitigation measures. The Applicant shall comply with the determinations of the County.	The Applicant shall notify the County within 24 hours if unknown historic or unique archaeological resources are encountered. The County shall verify that the Applicant has provided contingency funding sufficient to allow for implementation of avoidance measures or appropriate mitigation.	Riverside County Planning Department	During and post construction.	Riverside County Planning Department.		

TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Cultural Resources (cont.)							
	<p>Mitigation Measure CUL-3: Prior to obtaining the Project-related grading permit from the County, the Applicant shall have the Project Archaeologist prepare and submit for approval a Cultural Resources Management Plan (CRMP). The CRMP shall be submitted to the County for approval. The CRMP shall map all known significant or unevaluated cultural resources within the Project area, as described in this EIR. The CRMP shall detail how the one CRHR-eligible resource in the Project area (P-33-002846) and ten cultural resources (P-33-020942, P-33-020943, P-33-020944, P-33-020945, P-33-020946, P-33-020947, P-33-020948, P-33-020949, P-33-020950, P-33-020951) in the Project area that have not been evaluated for CRHR-eligibility are avoided by Project design, and how these 11 resources would be marked and protected as Environmentally Sensitive Areas during construction. The CRMP shall also map additional areas that are considered to be of high sensitivity for discovery of buried significant cultural resources, including burials, cremations, or sacred features. The CRMP shall include protocol for collection and disposition of recorded archaeological isolates prior to Project construction, through coordination between the Applicant, County, and Tribal Participants. The CRMP shall detail provisions for monitoring construction in these high-sensitivity areas. For all post-review discoveries, the CRMP shall detail the methods, consultation procedures, and timelines for implementing Mitigation Measures CUL-2 and CUL-5, including procedures for halting construction, making appropriate notifications to agencies, officials, and Native American tribes, and assessing CRHR-eligibility. The CRMP shall specify what actions shall be undertaken if, as a result of the process required by the CRMP, it is determined that the Project would significantly impact previously unknown cultural resources. The actions to be taken shall comply with CEQA Guidelines Section 15126.4(b).</p> <p>The CRMP shall be presented to all construction personnel, with Tribal Participants in attendance, in the form of a worker education program by the Project Archaeologist prior to commencement of groundbreaking. During subsequent safety meetings on the job site, the Project Archaeologist and/or their qualified representative shall inform all new construction personnel of the cultural resources issues associated with the Project.</p>	<p>The Riverside County Planning Department shall verify that the Applicant submitted a CRMP for approval.</p>	<p>Riverside County Planning Department</p>	<p>Prior to grading.</p>	<p>Riverside County Planning Department</p>		
	<p>Mitigation Measure CUL-4: Prior to the final inspection of the first building permit, the Applicant shall prompt the Project Archaeologist to submit one (1) wet-signed hard copy and one (1) CD of a Cultural Resources Monitoring Report (CRMR) that complies with the current County Planning Department's requirements for Phase IV Cultural Resource Monitoring Reports. The report shall include documentation of the required cultural/historical sensitivity training for the construction staff held during the pre-grade meeting, which shall include the County's attendance. The County shall review the report to determine adequate mitigation compliance. The accepted report shall be submitted to the County, California Historical Resources Information System Eastern Information Center, the Patton Memorial Museum, and Tribal Participants.</p>	<p>The Riverside County Planning Department shall verify that the Applicant has submitted one (1) wet-signed hard copy and one (1) CD of a Phase IV Cultural Resources Monitoring Report</p>	<p>Riverside County Planning Department</p>	<p>Prior to issuance of a building permit</p>	<p>Riverside County Planning Department</p>		

TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Cultural Resources (cont.)							
Impact CUL-2: Implementation of the proposed project could result in the disturbance of human remains.	Mitigation Measure CUL-5: If human remains are encountered during the course of construction, work in the immediate area shall be halted, a 100-foot diameter buffer established, and arrangements made to protect the remains in place until their disposition has been arranged according to this section. The treatment of human remains and associated and unassociated funerary objects discovered during any ground-disturbing activity shall comply with applicable State laws. This shall include immediate notification of the Riverside County coroner and, in the event of the coroner's determination that the human remains are Native American, notification of the California State Native American Heritage Commission (NAHC), who shall appoint a Most Likely Descendant (MLD) (California Public Resources Code [PRC] Section 5097.98). The Project Archaeologist, Applicant, County, and MLD shall make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of human remains and associated and unassociated funerary objects (CEQA Guidelines Section 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated and unassociated funerary objects. The PRC allows 48 hours to reach agreement on these matters. If the MLD and the other parties do not agree on the reburial method, PRC Section 5097.98(b) shall be followed: "the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American burials with appropriate dignity on the property in a location not subject to further subsurface disturbance." Should any dispute arise, the County will request that the NAHC act to mediate the dispute. The site of any reburial of Native American human remains or cultural artifacts shall remain confidential, shall not be disclosed, and shall not be governed by public disclosure requirements of the California Public Records Act (California Government Code Section 6250). No construction activities will be allowed within 100 feet of the discovery site of human remains until a Notice to Proceed is provided by the County.	During construction and operational repair period, discovery of human remains shall result in work stoppage and notification of responsible parties, and subsequent actions shall be identified in the Cultural Resources Management Plan (CRMP) required by CUL-3.	Riverside County Planning Department Coroner.	During construction and operation.	Riverside County Planning Department Coroner, NAHC (as applicable).		
Impact CUL-3: Implementation of the proposed project could result in the alteration or destruction of an historic or archaeological site.	Implement Mitigation Measures CUL-1 through CUL-4 and HYD-1 through HYD-4.	See CUL-1 through CUL-4 and HYD-1 through HYD-4.	See CUL-1 through CUL-4 and HYD-1 through HYD-4.	See CUL-1 through CUL-4 and HYD-1 through HYD-4.	See CUL-1 through CUL-4 and HYD-1 through HYD-4.		
Contribution Toward Cumulative Cultural Resources Impacts	Implement Mitigation Measures CUL-1 through CUL-4.	See CUL-1 through CUL-4.	See CUL-1 through CUL-4.	See CUL-1 through CUL-4.	See CUL-1 through CUL-4.		

TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Geology and Soils							
Impact GEO-1b: The Project could expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death, involving strong seismic ground shaking.	Mitigation Measure GEO-1: Prior to final design and construction, a site-specific subsurface geotechnical evaluation/report shall be prepared to evaluate the potential ground-shaking hazard, which would meet the requirements of the most recent version of the California Building Code. A state certified Project geologist shall ensure appropriate structural design and mitigation techniques achieve adequate protection according to industry standards and building code requirements.	The Riverside County Planning Department shall verify that the Applicant has conducted a subsurface geotechnical evaluation.	Riverside County Planning Department.	Prior to issuance of a grading or excavation permit.	Riverside County Planning Department.		
	Mitigation Measure GEO-2: Should future data suggest the presence of active faulting at the Project area, a fault evaluation may be performed. Mitigation of potential fault rupture hazard would typically include locating improvements away from the trace of an active fault, designing structures for an acceptable amount of movement, or implementing systems to maintain safety and that allow for displacement that could be repaired.	The Riverside County Planning Department shall verify that the Applicant has conducted a fault evaluation may be performed, should future data suggest the presence of active faulting at the Project area.	Riverside County Planning Department.	Prior to issuance of a grading or excavation permit.	Riverside County Planning Department.		
Impact GEO-1c: The Project could expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death, involving liquefaction.	Implementation of Mitigation Measures GEO-1, GEO-2.	See GEO-1 and GEO-2.	See GEO-1 and GEO-2.	See GEO-1 and GEO-2.	See GEO-1 and GEO-2.		
	Mitigation Measure GEO-3: Based on the nature, location and severity of adverse soil conditions, the geotechnical study shall recommend appropriate and feasible design features necessary to reduce the potential for liquefiable, expansive, corrosive, or collapsible soils, as necessary, to adversely affect Project facilities. Such measures might include removal of loose soil layers to be replaced with compacted fill or specialized foundation design, including the use of deep foundation systems, to support structures in accordance with industry standards and building code requirements.	The Riverside County Planning Department shall verify that the final geotechnical study for Project site include appropriate and feasible design features necessary to reduce the potential for liquefiable, expansive, corrosive, or collapsible soils measures for soil stability during the design stages of the Project.	Riverside County Planning Department.	Prior to issuance of a grading or excavation permit.	Riverside County Planning Department.		
Impact GEO-2: The Project would be susceptible to wind and water erosion which could result in substantial soil erosion or the loss of topsoil.	Implement Mitigation Measures HYD-1 through HYD-4.	See HYD-1 through HYD-4.	See HYD-1 through HYD-4.	See HYD-1 through HYD-4.	See HYD-1 through HYD-4.		
Impact GEO-3: The Project could be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the Project, and potentially result in on-or-off-site landslide, lateral spreading, subsidence, liquefaction, or collapse.	Implement Mitigation Measures GEO-1 through GEO-3.	See GEO 1 through GEO-3.	See GEO 1 through GEO-3.	See GEO 1 through GEO-3.	See GEO 1 through GEO-3.		

TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Geology and Soils (cont.)							
Impact GEO-4: The Project could be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life and property.	Implement Mitigation Measures GEO-1 through GEO-3.	See GEO 1 through GEO-3.	See GEO 1 through GEO-3.	See GEO 1 through GEO-3.	See GEO 1 through GEO-3.		
Impact GEO-5: The Project could have soils that are incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water or result in grading that affects or negates subsurface sewage disposal systems.	Mitigation Measure GEO-4: Removal of loose soil layers shall be replaced with compacted fill or specialized foundation design, including the use of deep foundation systems, to support structures. The septic system shall be placed in soils capable of adequately supporting the septic system as determined by the Project Geologist and in accordance with County requirements specified in the Department of Environmental Health Technical Guidance Manual.	The Applicants shall obtain a septic system permit from the Riverside County Department of Environmental Health Services.	The Riverside County Department of Environmental Health Services.	Prior to installation of the septic system on-site.	The Riverside County Department of Environmental Health Services.		
Hazards and Hazardous Materials							
Impact HAZ-1: The Project would create a significant hazard to the public or the environment through the routine transport, use or disposal of hazardous materials.	Mitigation Measure HAZ-1: Prior to issuance of a grading permit, the applicant shall comply with the recommendations of the Phase II soil investigation report, dated May 7, 2020 and prepared by CBRE, to prepare and implement a Soil Management Plan (SMP) as set forth in BMP-21. In accordance with standard practices of California Department of Toxic Substances Control (DTSC), the SMP shall include at a minimum the following elements: applicable site background, description of planned activities, chemicals of concern, soil management procedures, soil stockpile management, soil disposal procedures, dust and erosion control measures, documentation and reporting requirements, and worker health and safety procedures as regulated by Cal/OSHA's 8 CCR 337-340. Alternatively, the SMP may be prepared in accordance with equally protective practices of the Colorado River Basin Regional Water Quality Control Board (RWQCB), County of Riverside, Department of Environmental Health, or other applicable regulatory agency exercising jurisdiction to review or approve the Soil Management Plan, shall be prepared by a qualified environmental consultant to evaluate the potential presence of residual pesticides or herbicides from past agricultural land uses. The investigation shall be in accordance with the recommendations of the November 27, 2012 Kennedy-Jones Phase I report. Any soils found to contain residual contaminants in exceedance of regulatory action levels that are determined by the consultant to represent a potential hazard to construction workers or future workers and visitors shall be removed from the site in accordance with Riverside County Department of Environmental Health oversight.	The Riverside County Building and Safety Department shall verify that the Applicant has had a qualified environmental consultant prepare a Phase II soil investigation.	Riverside County Planning Department.	Prior to issuance of a grading or excavation permit.	Riverside County Planning Department.		

TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Hazards and Hazardous Materials (cont.)							
	<p>Mitigation Measure HAZ-2: Worker Environmental Awareness Program. The Worker Environmental Awareness Program (WEAP) shall include a personal protective equipment (PPE) program, an Emergency Action Plan (EAP), and an Injury and Illness Prevention Program (IIPP) to address health and safety issues associated with normal and unusual (emergency) conditions. Construction-related safety programs and procedures shall include a respiratory protection program, among other things. Construction would be undertaken sequentially in accordance with a Construction Plan that shall include the final design documents, work plan, health and safety plans, permits, project schedule, and operation and maintenance manuals. Construction Plan documents shall relate at least to the following:</p> <ol style="list-style-type: none"> 1. Environmental health and safety training (including, but not limited to, training on the hazards of Valley Fever, including the symptoms, proper work procedures, how to use PPE, and informing supervisor of suspected symptoms of work-related Valley Fever) 2. Site security measures 3. Site first aid training 4. Construction testing (non-destructive examination, hydro, etc.) requirements 5. Site fire protection and extinguisher maintenance, guidance, and documentation 6. Furnishing and servicing of sanitary facilities records 7. Trash collection and disposal schedule/records 8. Disposal of hazardous materials and waste guidance in accordance with local, state, and federal regulations 	The Riverside County Planning Department shall verify that measures detailed in the WEAP have been implemented.	Riverside County Planning Department	During construction, decommissioning, and ground disturbing activities.	Riverside County Planning Department		
Impact HAZ-3: The Project is located within an airport land use plan and could result in a safety hazards for people residing or working in the project area.	<p>Mitigation Measure HAZ-3: Prior to issuance of a grading or building permit, the Applicant shall submit all required plans and proposals to the Riverside County Airport Land Use Commission (RCALUC) and the Federal Aviation Administration (FAA) for Title 14 CFR Federal Aviation Regulations (FAR) Part 77 review. Commencement of construction shall not begin prior to final approval from RCALUC and FAA with any modifications required as part of the review incorporated into project design.</p>	The Riverside County Planning Department shall verify that the Applicant has submitted all required plans and proposals to the RCALUC and FAA for review.	Riverside County Planning Department	Prior to issuance of a grading or building permit.	Riverside County Planning Department		
Impact HAZ-5: The Project could expose people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.	Implement Mitigation Measure HAZ-2.	See HAZ-2.	See HAZ-2.	See HAZ-2.	See HAZ-2.		

TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Hazards and Hazardous Materials (cont.)							
Other Hazard Issues of Concern	Implement Mitigation Measure HAZ-2.	See HAZ-2.	See HAZ-2.	See HAZ-2.	See HAZ-2.		
Contribution Toward Cumulative Hazards and Hazardous Materials Impacts	Implement Mitigation Measures HAZ-1 through HAZ-3.	See HAZ-1 through HAZ-3.	See HAZ-1 through HAZ-3.	See HAZ-1 through HAZ-3.	See HAZ-1 through HAZ-3.		
Hydrology and Water Quality							
Impact HYD-1: The Project could violate water quality standard or waste discharge regulation.	Implement Mitigation Measure BIO-9.	See BIO-9.	See BIO-9.	See BIO-9.	See BIO-9.		
	Mitigation Measure HYD-1: Existing drainage crossings shall be utilized at streams, washes, and irrigation channels to the full extent necessary to reduce impacts to less than significant levels. New access roads not required for ongoing operation and maintenance shall be permanently closed after construction using the most effective and least environmentally damaging methods appropriate to that specific area, with concurrence of the land manager (e.g., stockpiling and replacing topsoil, rock replacement) in a manner that most closely matches undisturbed conditions of the area to emulate natural drainage patterns.						
Impact HYD-3: The Project could substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on or off-site.	Implement Mitigation Measures BIO-9 and HYD-1.	See BIO-9 and HYD-1.	See BIO-9 and HYD-1.	See BIO-9 and HYD-1.	See BIO-9 and HYD-1.		
	Mitigation Measure HYD-2: Roads would be built as near as possible to right angles to streams and washes. Culverts would be installed where necessary and sized in accordance with local county regulations. All construction and maintenance activities shall be conducted in a manner that would minimize disturbance to vegetation and drainage channels, including ephemeral stream banks. Culverts shall also be designed with minimum impacts to floodplains. Any encroachment into or modification of the floodplain shall only be permitted in accordance with the District's approval based on demonstrative evidence that no adverse effects would occur upstream or downstream of the site. In addition, road construction would include dust-control measures during construction especially in sensitive areas. All existing roads would be left in a condition equal to or better than their condition prior to the construction of the ge-tie line and other Project components.	The Riverside County Flood Control District shall verify that all construction and maintenance activities by the contractor have been conducted in a manner that would minimize disturbance to vegetation and drainage channels, including ephemeral stream banks.	Riverside County Flood Control District.	During construction and post construction.	Riverside County Flood Control District.		
	Mitigation Measure HYD-3: Stormwater drainage inside substations would be designed to minimize erosion and increase sediment control. Internal runoff would be released from the switching station by means of surface drainage structures designed to filter contaminants from water flow. Drainage from the property would be collected and controlled by surface improvements, as detailed in the Drainage, Erosion, and Sedimentation Control Plan (BMP-1).	The Riverside County Flood Control District shall verify that measures detailed in the SWPPP have been implemented and that stormwater drainage inside substations would be designed to minimize erosion and increase sediment control.	Riverside County Flood Control District.	Prior to and during construction.	Riverside County Flood Control District.		

TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Hydrology and Water Quality (cont.)							
	Mitigation Measure HYD-4: New impervious areas associated with temporary construction would be restored to existing conditions, including but not limited to revegetation, to the extent possible after completion of Project construction.	The Riverside County Flood Control District shall verify that new impervious areas associated with temporary construction have been restored to existing conditions.	Riverside County Flood Control District	During post construction.	Riverside County Flood Control District		
Impact HYD-5: The Project could create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff.	Implement Mitigation Measures HYD-3 and HYD-4.	See HYD-3 and HYD-4.	See HYD-3 and HYD-4.	See HYD-3 and HYD-4.	See HYD-3 and HYD-4.		
	Mitigation Measure HYD-5: All new buildings (e.g., substation) shall be flood-proofed by constructing the finished floor a minimum of 24 inches above the highest adjacent ground or 100 year water surface elevation, whichever is greater, based on a final Floodplain Delineation Study with supporting calculations in accordance with County requirements. The final Floodplain Delineation Study shall be approved by the County prior to issuance of a building permit. Slope protection may be required for buildings on fill. New buildings shall be located outside of the well-defined watercourses of the floodplains. Additionally, the solar panels shall have a minimum clearance of 24 inches above the highest adjacent ground when upright to ensure flows are not obstructed.	The Riverside County Flood Control District shall verify that all new buildings (e.g., substation) have been flood-proofed.	Riverside County Flood Control District	Prior to construction.	Riverside County Flood Control District		
Impact HYD-6: The Project could substantially degrade water quality.	Implement Mitigation Measures BIO-9 and HYD-1 through HYD-4.	See BIO-9 and HYD-1 through HYD-4.	See BIO-9 and HYD-1 through HYD-4.	See BIO-9 and HYD-1 through HYD-4.	See BIO-9 and HYD-1 through HYD-4.		
Impact HYD-7: The Project would place within a 100-year flood hazard area structures which would impede or redirect flood flows.	Implement Mitigation Measure HYD-5.	See HYD-5.	See HYD-5.	See HYD-5.	See HYD-5.		
	Mitigation Measure HYD-6: No flow obstructing fences (chain link, block wall, etc.) shall be constructed along the north and west property lines, since these types of fences obstruct flows causing damage to adjacent properties. Fencing used in these areas shall contain openings of 3 inches high by 6 inches wide for first 18" from the bottom, and openings of 4 inches high by 6 inches wide for the next 8 inches and so forth. This fencing or equivalent shall be provided to allow the free flow of storm or flood runoff. No setback is required with the use of this fencing. A detail of this fencing shall be provided to the County of Riverside.	The Riverside County Planning Department Flood Control District shall verify that proper fencing has been implemented as required by Hydrology-6 of the EIR/EA. The Riverside County Planning Department shall verify the Applicant has provided Riverside County with fencing detail.	Riverside County Flood Control District	Prior to construction.	Riverside County Flood Control District		
Contribution Toward Cumulative Hydrology and Water Quality Impacts	Implement Mitigation Measures BIO-9 and HYD-1 through HYD-6.	See BIO-9 and HYD-1 through HYD-6.	See BIO-9 and HYD-1 through HYD-6.	See BIO-9 and HYD-1 through HYD-6.	See BIO-9 and HYD-1 through HYD-6.		

TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Noise							
<p>Impact NOI-1: Construction of the Project could result in exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies.</p>	<p>Mitigation Measure NOI-1: Construction shall be prohibited in areas within 0.25 mile (1,320 feet) of residents, between the hours of 6:00 p.m. and 6:00 a.m. during the months of June through September and the hours of 6:00 p.m. and 7:00 a.m. during the months of October through May. The construction contractor shall locate equipment staging in areas that will create the greatest distance between construction-related noise sources and noise sensitive receivers nearest the project site during project construction. No music or electronically reinforced speech from construction workers shall be audible at noise-sensitive properties. During all project site construction, the construction contractors shall equip all construction equipment, fixed or mobile, with properly operating and maintained mufflers, consistent with manufacturers' standards. Where feasible, the construction contractor shall place all stationary construction equipment so that emitted noise is directed away from the noise sensitive receptors nearest the project site.</p>	<p>The Riverside County Planning Department shall verify that contractor construction activities do not occur within 0.25 mile (1,320 feet) of residents, from the hours of 6:00 p.m. and 6:00 a.m. during the months of June through September and hours of 6:00 p.m. and 7:00 a.m. during the months of October through May.</p>	<p>Riverside County Planning Department.</p>	<p>During construction, decommissioning, and ground disturbing activities.</p>	<p>Riverside County Planning Department.</p>		
	<p>Mitigation Measure NOI-2: Prior to and during construction, decommissioning, and ground disturbing activities, the applicant shall provide at least two weeks' advance notice of construction and decommissioning. Notices shall be mailed directly to land owners and residents within 2,400 feet of the Project boundary, and signs shall be a minimum size of 4 feet high by 6 feet wide and posted at the solar facility in areas accessible to the public. Notices shall announce when and where construction would occur, provide tips on reducing noise intrusion (e.g., closing windows facing the planned construction); and provide contact information for the local public liaison for any noise complaints.</p>	<p>The Riverside County Planning Department shall verify that the Applicant has provided at least two weeks' advance notice of construction and decommissioning.</p>	<p>Riverside County Planning Department.</p>	<p>Prior to and during construction, decommissioning, and ground disturbing activities.</p>	<p>Riverside County Planning Department.</p>		
	<p>Mitigation Measure NOI-3: The applicant would implement a Hearing Conservation Program and Personal Protective Equipment Program that would provide personal protective devices for specific jobs that would produce excessive noise levels. The Applicant shall comply with the Occupational Safety and Health Administration's (OSHA) regulations on occupational noise exposure.</p>	<p>The Riverside County Planning Department shall verify that the Applicant has implemented a Hearing Conservation Program and Personal Protective Equipment Program.</p>	<p>Riverside County Planning Department.</p>	<p>Prior to and during construction, decommissioning, and ground disturbing activities.</p>	<p>Riverside County Planning Department.</p>		
<p>Impact NOI-2: Construction of the Project could create a substantial temporary or periodic increase in ambient noise levels in the Project vicinity above levels existing without the Project.</p>	<p>Implement Mitigation Measure NOI-1 through NOI-3.</p>	<p>See NOI-1 through NOI-3.</p>	<p>See NOI-1 through NOI-3.</p>	<p>See NOI-1 through NOI-3.</p>	<p>See NOI-1 through NOI-3.</p>		
<p>Impact NOI-4: The Project would be located within an airport land use plan, which could result in the exposure of people working in the Project area to excessive noise levels.</p>	<p>Implement Mitigation Measure NOI-3.</p>	<p>See NOI-3.</p>	<p>See NOI-3.</p>	<p>See NOI-3.</p>	<p>See NOI-3.</p>		

TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Paleontological Resources							
<p>Impact PALEO-1: The Project could directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.</p>	<p>Mitigation Measure PALEO-1: Prior to issuing any grading or excavation permits for activities within any area of the Project area, and prior to any Project-related ground-disturbing activities of that area, the Applicant shall implement procedures to monitor, avoid, and/or recover unique paleontological resources discovered during ground-disturbing activities. These procedures, the Paleontological Resources Monitoring and Mitigation Plan (PRMMP), shall be developed by a qualified vertebrate paleontologist and submitted for approval by the County of Riverside for private lands, and the BLM for BLM-managed lands. The PRMMP shall specify how mitigation measures Paleontology-1, Paleontology-2, and Paleontology-3 shall be implemented. This PRMMP shall be consistent with the provisions of CEQA, as well as with regulations currently implemented by the County of Riverside, the BLM and the proposed guidelines of the SVP. The PRMMP shall include, but not be limited to:</p> <ol style="list-style-type: none"> 1. A requirement that, during excavations in areas underlain by geologic units identified as having a high paleontologic sensitivity under Society of Vertebrate Paleontology guidelines (or a PFYC rating of 3b or higher) and likely to contain paleontologic resources, a qualified vertebrate paleontologist, who is a Registered Professional Geologist, shall direct the paleontologic monitoring by a qualified paleontologic monitor. Areas of concern include all previously undisturbed paleontologic sensitive sediments of the fossiliferous Pleistocene Palo Verde Mesa Alluvium, alluvial deposits of the Palo Verde Mesa and alluvial deposits of the McCoy Wash area. 2. A requirement that paleontologic monitors be equipped to salvage fossils as unearthed to avoid construction delays and to remove samples of sediments likely to contain the remains of small fossil invertebrates and vertebrates. Monitors shall be empowered to temporarily halt or divert equipment to allow removal of abundant or large specimens. 3. Identification of the processes for preparation of recovered specimens to a point of identification. If the paleontologic monitor determines that the resource is unique, it shall be prepared for permanent preservation, including washing of sediments to recover small invertebrates and vertebrates. 4. A requirement that a report be prepared documenting all finds with permanent retrievable paleontologic storage for curation of specimens. The paleontologist should have a written repository agreement in hand prior to the initiation of mitigation activities. Mitigation of adverse impacts to unique paleontologic resources is not complete until such curation into an established museum repository has been fully completed and documented. 5. A requirement that a report be prepared documenting all finds with an appended itemized inventory of specimens. The report and inventory, when submitted to the County with respect to private lands, and to the BLM with respect to BLM-managed lands, along with confirmation of the curation of recovered unique paleontological specimens into an established, accredited museum repository, would signify completion of the PRMMP to mitigate impacts to paleontologic resources. 	<p>The Riverside County Planning Department shall verify that the Applicant has developed a Paleontological Resources Monitoring and Mitigation Plan (PRMMP) by a qualified vertebrate paleontologist for approval to be submitted for approval by the County of Riverside for private lands.</p>	<p>Riverside County Planning Department.</p>	<p>Prior to issuing any grading or excavation permits.</p>	<p>Riverside County Planning Department.</p>		

TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Paleontological Resources (cont.)							
	Mitigation Measure PALEO-2: Prior to issuance of the first grading permit, a worker training program shall be prepared and include information on the recognition of the types of paleontological resources that could be encountered within the Project area and referral of finds to the paleontologic monitor if they are found. This information shall be presented to Project construction personnel and Project operation and maintenance personnel by a qualified professional paleontologist.	The Riverside County Planning Department shall verify that the Applicant has developed a worker training program, which includes information on the recognition of the types of paleontological resources that could be encountered within the Project area and referral of finds to the paleontologic monitor if they are found.	Riverside County Planning Department	Prior to issuance of the first grading permit.	Riverside County Planning Department		
	Mitigation Measure PALEO-3: If construction or other Project personnel discover any potential fossils during construction, operation and maintenance, or decommissioning, the fossils shall be left undisturbed and the paleontologic monitor shall be notified immediately and shall then take appropriate actions to evaluate the find in accordance with the PRMMP.	During construction, operation and maintenance, or decommissioning discovery of fossils shall result in work stoppage and notification of responsible parties, and subsequent actions shall be identified in the find in accordance with the PRMMP.	Riverside County Planning Department	During construction, decommissioning, and ground disturbing activities.	Riverside County Planning Department		
Contribution Toward Cumulative Paleontological Impacts	Implement Mitigation Measures PALEO-1 through PALEO-3.	See PALEO-1 through PALEO-3.	See PALEO-1 through PALEO-3.	See PALEO-1 through PALEO-3.	See PALEO-1 through PALEO-3.		
Traffic and Transportation							
Impact TRA-1: The Project could conflict with an applicable plan, ordinance, or policy establishing measures of effectiveness of the performance of the circulation system.	Mitigation Measure TRA-1: A construction phase Traffic Management Plan would be prepared in consultation with Caltrans and Riverside County for the roadway network potentially affected by construction activities at the Project area and off-site gen-tie facilities. In order to achieve acceptable LOS, the Traffic Management Plan would include a plan to split the workforce and stagger arrival times during peak construction periods along with a traffic LOS and queue monitoring program, as determined necessary by the County's Transportation Department staff. The plan would be based upon the analysis set forth in this EIR. Carpooling shall also be required of contractor employees during the construction phase to help achieve acceptable LOS levels. In addition to the above-mentioned measures, other approaches could be considered to reduce peak hour traffic, such as requiring contractors to arrange employee busing and/or employee participation in park and ride.	The Riverside County Transportation Department and Caltrans shall verify that the Applicant has prepared a TMP.	Riverside County Planning Department and Caltrans.	Prior to construction.	Riverside County Transportation Department and Caltrans.		
	Mitigation Measure TRA-2: The contractor would conduct construction activities in accordance with Caltrans' applicable limitations on vehicle sizes and weights, Construction Excavation Permits obtained from Riverside County, Encroachment Permits from Caltrans, and permits and licenses from the California Highway Patrol and Caltrans for the transport of hazardous substances.	The Riverside County Transportation Department and Caltrans shall verify the contractor has conducted construction activities in accordance with Caltrans' applicable limitations on vehicle sizes and weights.	Riverside County Transportation Department.	During construction, decommissioning, and ground disturbing activities.	Riverside County Transportation Department and Caltrans.		

TABLE B-1 (CONTINUED)
MITIGATION MEASURES PROPOSED IN THIS FINAL EIR

Resource Area/ Environmental Impact	BMP/Mitigation Measures	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification Approval Party	Date Mitigation Measure Verified or Implemented	Completion Requirement
Traffic and Transportation (cont.)							
Impact TRA-2: The Project would not conflict with an applicable congestion management program.	Implement Mitigation Measures TRA-1 and TRA-2.	See TRA-1 and TRA-2.	See TRA-1 and TRA-2.	See TRA-1 and TRA-2.	See TRA-1 and TRA-2.		
Impact TRA-3: The Project could result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks; results in a change in air traffic levels or a change in location and result in substantial safety risks.	Implement Mitigation Measures HAZ-2 and HAZ-3.	See HAZ-2 and HAZ-3.	See HAZ-2 and HAZ-3.	See HAZ-2 and HAZ-3.	See HAZ-2 and HAZ-3.		
Impact TRA-4: The Project would substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment).	Implement Mitigation Measures TRA-1 and TRA-2.	See TRA-1 and TRA-2.	See TRA-1 and TRA-2.	See TRA-1 and TRA-2.	See TRA-1 and TRA-2.		
Contribution Toward Cumulative Traffic and Circulation Impacts	Implement Mitigation Measures TRA-1 and TRA-2.	See TRA-1 and TRA-2.	See TRA-1 and TRA-2.	See TRA-1 and TRA-2.	See TRA-1 and TRA-2.		
	Mitigation Measure TRA-3: Construction traffic coordination shall be required to address potential cumulative traffic issues associated with concurrent construction of several large projects with large workforces, approximately from 2015 through 2017. The Applicant shall coordinate construction traffic with applicable traffic management (e.g., Caltrans, Riverside County, and City of Blythe) as well as BLM representatives, as determined appropriate and necessary by the listed agencies. The Applicant shall also coordinate construction traffic with other proponents of renewable energy projects in the I-10 corridor. Cumulatively considerable projects shall be identified and the appropriate staggered arrival times or other approaches (such as busing, park and ride, or carpooling) will be prescribed to achieve an acceptable LOS	The Riverside County Planning Department, Caltrans, BLM, and City of Blythe shall verify that the Applicant has coordinated construction traffic.	Riverside County Planning Department.	During construction, decommissioning, and ground disturbing activities.	Riverside County Planning Department, Caltrans, BLM, and City of Blythe		

From: COB

Sent: Monday, December 7, 2020 4:07 PM

To: George Johnson (GAJohnson@RIVCO.ORG) <GAJohnson@RIVCO.ORG>; Perez, Juan <JCPEREZ@RIVCO.ORG>; Young, Alisa <AYoung@RIVCO.ORG>; District 4 Supervisor V. Manuel Perez (District4@RIVCO.ORG) <District4@RIVCO.ORG>; District2 <District2@Rivco.org>; District3 <District3@Rivco.org>; District5 <District5@Rivco.org>; Supervisor Jeffries - 1st District (district1@rivco.org) <district1@rivco.org>
Cc: Russell Brady (rbrady@RIVCO.ORG) <rbrady@RIVCO.ORG>; Medina, Esmeralda <ESmedina@RIVCO.ORG>; Leach, Charissa <cleach@rivco.org>
Subject: December 8 2020 Item No 3.41 Web Comment and Request to Speak on Palo Verde Mesa Solar Project (Christina Caro)

Good afternoon,

Below is a COB web comment and request to speak on December 8, 2020 Agenda Item No 3.41.

This will be filed with Agenda back-up.

With best regards,

Clerk of the Board of Supervisors
4080 Lemon Street, 1st Floor, Room 127
Riverside, CA 92501
(951) 955-1069 Fax (951) 955-1071
cob@rivco.org
website: <http://rivcocob.org/>
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From: cob@rivco.org <cob@rivco.org>

Sent: Sunday, December 6, 2020 11:15 AM

To: COB <COB@RIVCO.ORG>; ccaro@adamsbroadwell.com

Subject: Board comments web submission



First Name: Christina
Last Name: Caro
Address (Street, City and Zip): 601 Gateway Blvd., Suite 1000
Phone: 5104696604
Email: ccaro@adamsbroadwell.com
Agenda Date: 12/08/2020
Agenda Item # or Public Comment: Item No. 41: Palo Verde Mesa Solar Project
State your position below: Oppose
Comments: Request to speak on this item representing the prevailing petitioners in County of Riverside, et al., Riverside County Superior Court Case No. RIC1718458, the lawsuit challenging this Project which resulted in the Writ that is the subject of this Agenda Item. We will provide written comments via separate email to the Clerk.

Thank you for submitting your request to speak. The Clerk of the Board office has received your request and will be prepared to allow you to speak when your item is called. To attend the meeting, please call (669) 900-6833 and use Meeting ID #864-4411-6015. Password is 20201208. You will be muted until your item is pulled and your name is called. Please dial in at 9:00 am with the phone number you provided in the form so you can be identified during the meeting.

From: COB

Sent: Tuesday, December 8, 2020 9:18 AM

To: George Johnson (GAJohnson@RIVCO.ORG) <GAJohnson@RIVCO.ORG>; Perez, Juan <JCPEREZ@RIVCO.ORG>; Young, Alisa <AYoung@RIVCO.ORG>; District 4 Supervisor V. Manuel Perez (District4@RIVCO.ORG) <District4@RIVCO.ORG>; District2 <District2@Rivco.org>; District3 <District3@Rivco.org>; District5 <District5@Rivco.org>; Supervisor Jeffries - 1st District (district1@rivco.org) <district1@rivco.org>

Cc: Cushman, Melissa <MCushman@RIVCO.ORG>; Leach, Charissa <cleach@rivco.org>; Russell Brady (rbrady@RIVCO.ORG) <rbrady@RIVCO.ORG>

Subject: December 8 2020 Item No 3.41 Palo Verde Mesa Solar Project (Christina Caro- Adams Broadwell)

Good morning,

Forwarding an email, attachment and link received via COB for December 8, 2020 Agenda Item No 3.41.

Will be included with Agenda back-up.

With best regards,

Clerk of the Board of Supervisors
4080 Lemon Street, 1st Floor, Room 127
Riverside, CA 92501
(951) 955-1069 Fax (951) 955-1071
cob@rivco.org
website: <http://rivcocob.org/>
<https://www.facebook.com/RivCoCOB/>



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From: Christina Caro <ccaro@adamsbroadwell.com>

Sent: Tuesday, December 8, 2020 8:17 AM

To: COB <COB@RIVCO.ORG>; Leach, Charissa <cleach@rivco.org>; Brady, Russell <rbrady@RIVCO.ORG>

Cc: Alisha C. Pember <apember@adamsbroadwell.com>; Cushman, Melissa <MCushman@RIVCO.ORG>; Beaumont, Anne B. (Perkins Coie) <ABeaumont@perkinscoie.com>

Subject: Board Agenda Item No. 41: Palo Verde Mesa Solar Project

Attached please find the comments of Citizens for Responsible Solar regarding the Palo Verde Mesa Solar Project, in response to Agenda Item No, 41.

A Dropbox link to exhibits and attachments is provided here: <https://www.dropbox.com/sh/1lymbnnzhn2bw2p/AAAMaCDA1w7A-dUqVmxhT3Taa?dl=0>

Please confirm receipt. Please provide these comments to the Board of Supervisors and include these comments, exhibits and attachments in the record of proceedings for the Project.

Thank you.

Christina M. Caro
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KYLE C. JONES
RACHAEL E. KOSS
NIRIT LOTAN
WILLIAM C. MUMBY

MARC D. JOSEPH
Of Counsel

*Not admitted in California
Licensed in Colorado

December 8, 2020

Via Email and Webform Submission

Agenda Item No. 41

Chairman V. Manuel Perez
Members of the Board of Supervisors, County of Riverside
c/o Clerk of the Board
1st. Floor Board Chambers
4080 Lemon Street
Riverside, California 92501
Email: cob@rivco.org

Via Email and Overnight Mail

Charissa Leach, Assistant TLMA Director
Russell Brady, Project Planner
Riverside County Planning Department
4080 Lemon Street, 12th Floor
Riverside, CA 92501
Email: cleach@rivco.org; rbrady@rivco.org

Re: Agenda Item 41: (114020) Transportation & Land Management Agency/Planning: Consider Addendum for Environmental Impact Report No. 532 and Adopt Resolution No. 2020-235 for Palo Verde Mesa Solar Project (CUP03684, PUP00916, DA00086)

Dear Chairman Perez, Board Members, Ms. Leach, Mr. Brady:

These comments are submitted on behalf of Citizens for Responsible Solar ("Citizens") regarding Agenda Item Number 41, the Palo Verde Mesa Solar Project ("Project"). Citizens is the prevailing party in *Citizens for Responsible Solar, et al., vs. County of Riverside, et al., Riverside County Superior Court Case No. RIC1718458* ("Citizens Action"), one of two California Environmental Quality Act ("CEQA") lawsuits which challenged the County's 2017 Project approvals due to violations of CEQA.

3934-062acp

The lawsuits resulted in judgments which partially vacated the County's approval of the Project's original environmental impact report ("EIR"), EIR No. 532, due to the County's failure to adequately analyze and mitigate the Project's soil contamination and biological impacts under CEQA. The Writ issued by the Court requires the County to comply with CEQA before the Citizens Action can be dismissed. As explained herein and in our November 3, 2020 comment letter to the Board, the County's response to the Writ remains inadequate and should not be approved.

The County's actions in response to the Writ fail to comply with CEQA in three ways. First, the County failed to comply with CEQA's public participation requirements by failing to circulate the County's revisions to the EIR for public comment and by conducting hearings without legally required notice and public comment. Second, an Addendum is not authorized by CEQA in response to a partially decertified EIR. Under CEQA, if the original approval of an EIR is vacated in whole or in part, the County must follow the recirculation standards set forth in CEQA Guidelines section 15088.5 for revising and recirculating that EIR. The post-approval guidelines that apply to an Addendum (CEQA Section 21166 and CEQA Guidelines Section 15162) do not apply to decertified EIRs. In this case, the Addendum adds substantial new analysis and revised mitigation measures to the EIR which require notice to the public recirculation for public comment in a revised EIR under CEQA Guidelines 15088.5. Finally, the Addendum fails to comply with CEQA by failing to provide adequate analysis and mitigation for the Project's significant impacts to burrowing owl on the Project's 3,000-acre solar site.

The Responses to Comments included in the Board packet ("Responses") fail to accurately or meaningfully respond to Citizens' comments on these issues. Instead, the Responses "double down" on the County's CEQA violations by asking the Board to approve the Addendum and recertify the EIR with no further revisions and no public comment period. The County's decision to ignore CEQA's procedural mandates, and the Court's mandate that the EIR comply with CEQA, are violations of law and of Citizens' due process rights. If the Board were to re-approve the Project in reliance on the Addendum, it would perpetuate the County's ongoing CEQA violations and could expose the County to further litigation.

In order to comply with CEQA and the Writ, the County must revise and recirculate the EIR for a full 30-day public comment period with the County's new analysis and mitigation measures for the Project's soil contamination and burrowing owl impacts. We respectfully ask the Board to remand the Project to

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Page 3

County staff to require staff to revise and recirculate the EIR for public comment prior to conducting any further hearings on the Project.

These comments were prepared with the assistance of biological resources expert Scott Cashen, M.S.¹ We reserve the right to supplement these comments at later hearings on this Project.²

I. STATEMENT OF INTEREST

Citizens for Responsible Solar is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential health, safety, public service, and environmental impacts of the Project. The association includes Blythe resident George Ellis, Riverside County resident James Hennegan, and California Unions for Reliable Energy (“CURE”) and its members and families and other individuals that live and/or work in east Riverside County.

The individual members of Citizens for Responsible Solar live, work, recreate and raise their families in east Riverside County. They would be directly affected by the Project’s environmental and health and safety impacts. Individual members may also work on constructing the Project itself. They will be first in line to be exposed to any health and safety hazards that may be present on the Project site. They each have a personal interest in protecting the Project area from unnecessary adverse environmental and public health impacts.

The organizational members of Citizens for Responsible Solar also have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for the members that they represent. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for businesses to locate and people to live there. This, in turn, jeopardizes future development by causing construction moratoriums and otherwise reduces future employment opportunities for construction workers. The labor organization members of Citizens for Responsible Solar therefore have a direct interest in enforcing environmental laws to minimize the adverse impacts of projects that would otherwise degrade the environment.

¹ Mr. Cashen’s comments and curriculum vitae are attached hereto as Exhibit A (“Cashen Comments”)

² Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield (“Bakersfield”)* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.
3934-062acp

Finally, the organizational members of Citizens are concerned about projects that risk serious environmental harm without providing countervailing economic benefits. The CEQA process allows for a balanced consideration of a project's socioeconomic and environmental impacts. It is for the purpose of achieving this balance that Citizens offers these comments and continues to participate in the Project's permitting process.

II. THE BOARD'S PARTIAL DECERTIFICATION OF THE EIR VIOLATED CEQA AND CITIZENS' DUE PROCESS RIGHTS

On September 15, 2020, the Board took agendized action to decertify limited sections of the EIR in response to the Writ.³ As we previously explained, the County failed to provide Citizens with prior notice of the September 15, 2020 Board action,⁴ and subsequently failed to inform Citizens about the Board's September 15, 2020 action after it had taken place.⁵ As a result, Citizens was deprived of the opportunity to provide input to the Board prior to decertification on the extent of Project approvals that should be vacated in response to the Writ.⁶

Our review of the September 15 Staff Report and Minutes of the Board's actions demonstrates that the Board's partial decertification of the FEIR was inadequate to comply with the Writ. Moreover, new CEQA caselaw holds that, in instances like this one, where the invalidated sections of the EIR pertain to Project-wide impacts or the EIR involves a statement of overriding considerations, severance is inappropriate and decertification of the entire EIR is required. In order to comply with CEQA, the Board should set a further hearing to rescind the

³ See Citizens' 11/3/20 Comments, Exhibit L (9/15/20 Staff Report and minutes).

⁴ Citizens filed a Notice Request with the Clerk of the Board on February 7, 2020, triggering the County's duty to notify Citizens of all subsequent discretionary actions related to the Project under Public Resources Code Sections 21092.2, 21080.4, 21083.9, 21092, 21108 and 21152 and Government Code Section 65092.

⁵ *Id.* at p. 7 and Exhibit M.

⁶ Petitioners who obtain a writ of mandate have a due process right to participate in the agency's subsequent proceedings in response to the writ. *See e.g. Cole v Los Angeles Community College Dist.* (1977) 68 Cal. App.3d 785, 793.

William Dal Porto & Sons, Inc. v ALRB (1987) 191 Cal. App. 3d 1195, 1214 (at minimum on remand, agency should afford petitioner opportunity to present legal arguments and argue orally before agency in advance of board's decision); *Conti v Board of Civil Serv. Comm'rs* (1969) 1 Cal.3d 351, 362.

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EIR certification and other relevant Project approvals before filing a return to writ.

A. The Board Failed to Consider and Vacate All Necessary Project Approvals

The Writ directs the Board of Supervisors to determine whether to “modify some or all of the project approvals” in order to comply with CEQA in response to the Writ.⁷ The Board was not provided with the information necessary to make this determination. As a result, the Board’s September 15 decertification action did not vacate all Project approvals necessary to fully comply with the Writ.

The September 15 Staff Report asked the Board to “set aside and vacate certification of *portions* of Environmental Impact Report No. 532 analysis related to soil contamination and mitigation for burrowing owl” and to “set aside and vacate *only that portion* of Resolution No. 2017-199 certifying portions of Environmental Impact Report No. 532 related to soil contamination and mitigation for burrowing owl.”⁸ The Staff Report did not identify or attach the sections of the EIR or Resolution No. 2017-199 that the Board was asked to set aside, nor did the Staff Report describe or attach the Project’s other approvals. As a result, the Board lacked the information necessary to fully exercise its discretion to comply with the Writ. The Board nevertheless approved partial decertification of the unidentified “portions” of the EIR and Resolution on September 15, 2020. The Addendum followed.

In addition to EIR certification, the 2017 Project approvals included three other approvals which the Board failed to consider – Conditional Use Permit (“CUP”) No. 3684, Public Use Permit (“PUP”) No. 916, Ordinance No. 664.59 approving Development Agreement (“DA”) No. 86.⁹ Each of these approvals is implicated by the Writ and should have been vacated.

CUP No. 3684 authorized construction of the Project on “approximately 50 parcels totaling approximately 3,250 gross acres” and requires compliance with the EIR’s Mitigation Monitoring and Reporting Program (“MMRP”), among other

⁷ See 12/8/20 Staff Report, Attachment A, Writ, p. 4 (Court does not direct Board to exercise its discretion in any particular way and authorizes Board to modify or rescind some or all of the Project approvals in response to the Writ).

⁸ See Exhibit B, 9/15/20 Board Staff Report, p. 1.

⁹ See Exhibit B, 9/15/20 Board Staff Report, p. 3; see Draft Resolution No. 2020-235, p. 1. 3934-062acp

conditions.¹⁰ One of the legal deficiencies the County is required to rectify is the EIR's inadequate mitigation for impacts to burrowing owl from the loss of 3,000 acres of habitat at the Project site.¹¹ The Writ requires the County to address the "feasibility of mitigation" for this impact, and "the specifics of the measures to be required, if mitigation is found to be feasible."¹²

As discussed below and in our November 3, 2020 comments, the applicable standard for compensatory mitigation for burrowing owl is 1:1 replacement of lost habitat. Under that standard, the Applicant would be required to replace all 3,000 acres of solar site acreage with comparable off-site habitat. If it is subsequently determined that 1:1 habitat replacement is not feasible, the County and the Applicant may need to consider alternatives to the Project's size or design in order to enable burrowing owl impacts to be feasibly mitigated. The Board did not vacate the CUP. As a result, the Board left the existing Project's approval of the Project's 3,250-acre solar development plan in place. This constrains the County's ability to consider whether approval of a smaller Project would facilitate new or additional mitigation measures or alternatives which would further reduce the Project's significant impacts to burrowing owl, as required by CEQA.¹³

PUP No. 916 authorizes approximately 11.8 miles of transmission lines beyond the Project area that will connect the power generation to the Colorado River Substation which crosses certain County public right-of-ways.¹⁴ The Board did not vacate PUP No. 916 in response to the Writ, and Draft Resolution No. 2020-235, which the Board is being asked to approve at this hearing, does not propose any modifications to the PUP. Instead, the Draft Resolution asserts that PUP No. 916 was "adopted without conditions requiring compliance with mitigation measures, and that decision was not invalidated by the Court and the modifications to the Mitigation Measures and the MMRP do not affect those other approvals."¹⁵ This is incorrect.

¹⁰ See Exhibit C, CUP No. 3684, p. 1.

¹¹ See Ruling, pp. 25-26, Addendum, p. 16.

¹² See Writ, p. 4; Addendum, p. 2.

¹³ 14 CCR § 15088.5(a). The same problem under the legal standard incorrectly relied upon in the Addendum, PRC § 21166 and 14 CCR § 15162.

¹⁴ See Exhibit D, PUP No. 916.

¹⁵ See Draft Resolution No. 2020-235, Section H.

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PUP No. 916 Condition 10 expressly requires compliance with the MMRP and incorporates all Project mitigation measures as conditions of approval, as follows:

10. PLANNING. 14 USE - MMRP

The mitigation measures set forth in the Mitigation Monitoring and Reporting Program ("MMRP") that are not otherwise included in these Conditions of Approval are hereby incorporated into these Conditions of Approval and shall be enforced by the agency or agencies listed in the MMRP. These Conditions of Approval, including the MMRP, establish the timing of compliance with all conditions of approval and all mitigation measures applicable to this permit. The County shall enforce compliance with these Conditions of Approval as otherwise permitted by law pursuant to Condition No. 10. Planning.10 and as required by the procedures set forth in County Ordinance No. 348.¹⁶

Thus, PUP No. 916 was implicated by the Court's Ruling and compliance with Writ will require modifications to existing PUP conditions. The Board must vacate and modify PUP No. 916 to comply with CEQA and the Writ.

Finally, DA No. 86 has a term of 30 years and grants the Applicant vesting rights to develop the Project in accordance with the Development Plan that was approved in 2017.¹⁷ Approval of DA No. 86 was conditioned on the County's compliance with CEQA at the time the DA was approved. The DA pre-conditions state that "all of the procedures of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) have been met with respect to the Project and the Agreement."¹⁸ The Court's Ruling subsequently determined that the County failed to comply with CEQA with regard to the EIR's analysis of soil contamination and burrowing owl impacts. The Court's Ruling demonstrates that the County was in violation of this key DA requirement at the time the DA was executed. The DA was therefore implicated by the Writ because it was conditioned on CEQA compliance that has since been vacated.

¹⁶ See Exhibit D, PUP No. 916, p. 6, Condition 10.

¹⁷ See Exhibit E, DA No. 86, pp. 6, 9-10.

¹⁸ See Exhibit E, DA No. 86, p. 1.

The DA also conveys “Rights to Develop” the 3250-acre Project approved by the County under the Project’s original development plan.¹⁹ As with the CUP, leaving the DA approvals in place unduly limits the County’s ability to consider mitigation measures and alternatives in response to the Writ that would alter the Project’s acreage, in contravention of CEQA’s requirements.²⁰ The DA also specifies the amounts of acreage under the existing Project approvals to be designated as “Solar Power Plant Net Acreage,” including 664 acres for Unit I, 967 acres for Unit 2, and 393 acres for Unit 3, for a total Solar Power Plant Net Acreage of 2024 acres.²¹ This is almost two-thirds of the solar facility site. While the DA provides that the Net Acreage may be modified in response to subsequent approvals, it does state that it can be reduced, as could be necessary if the size of the Project acreage were reduced to feasibly mitigate burrowing owl impacts. The DA should be vacated and modified in response to the Writ.

B. Partial Decertification Does Not Comply With CEQA

On November 24, 2020, the Court of Appeal issued its decision on remand (“*Sierra Club II*”) from the California Supreme Court’s decision in *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502 (2018) (“*Sierra Club I*”). The Court held that, as a matter of law, CEQA does not allow partial decertification of an EIR as a remedy in a CEQA lawsuit because CEQA’s statutory language requires a public agency to certify “the completion of” the EIR, which cannot be accomplished by partial decertification.²²

In *Sierra Club I*, the Supreme Court held that the EIR for the Friant Ranch Project – a 942-acre master-planned, mixed-use development with 2,500 senior residential units, 250,000 square feet of commercial space, and open space on former agricultural land in north central Fresno County – was deficient as a matter of law in its informational discussion of air quality impacts and their related health effects.²³ The Supreme Court remanded the case to the trial court for further proceedings. The trial court issued a new judgment and writ of

¹⁹ *Id.* at p. 9.

²⁰ 14 CCR § 15088.5; 14 CCR § 15162.

²¹ *Id.*, p. 5.

²² *Sierra Club v. County of Fresno* (“*Sierra Club II*”) (Cal. Ct. App., Nov. 24, 2020, No. F079904) 2020 WL 6883165, at *1; citing Pub. Resources Code, §§ 21100(a), 21151(a); CEQA Guidelines, § 15090(a)(1); see *id.* at § 15090(a)(2), (3).

²³ *Sierra Club I*, 6 Cal.5th at 516.

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mandate which ordered the County to set aside all project approvals until the County had complied with CEQA.²⁴

In *Sierra Club II*, the project proponent challenged the new writ, arguing that CEQA Section 21168.9 required that the EIR only be partially decertified as to the specific defects the Supreme Court had identified and that project approvals should otherwise remain in place. Citing its previous decision in *LandValue 77, LLC v. Board of Trustees of California State University*,²⁵ the Court rejected this approach. As the Court explained, “we reject the statutory interpretation that allows for partial certification because an EIR is either completed in compliance with CEQA or it is not so completed.”²⁶ In addition, the Court concluded that severance findings under CEQA Section 21168.9(b) are not appropriate in circumstances where the EIR’s deficient analysis addresses a Project-wide operational impact, like air quality, and where the Project requires a statement of overriding considerations.²⁷ The Court reasoned that, “even if CEQA is interpreted to allow for partial certification, it is inappropriate in this case because the CEQA violations affect the adoption of the statement of overriding considerations and, thus, taint the certification of the EIR as a whole.”²⁸

Similarly here, the Court held that the EIR was deficient in its analysis and mitigation of soil contamination impacts and mitigation of burrowing owl impacts, and found the remainder of the EIR to be compliant with CEQA. The EIR’s failure to disclose the nature and extent of the Project’s soil contamination impacts led to a related failure to disclose the Project’s potential health impacts to workers and other sensitive receptors. Burrowing owl mitigation addresses the loss of habitat at the solar site caused by Project operations, which encompasses the entire 3,000-acre site. These factors are comparable to the factors which led the *Sierra Club II*

²⁴ *Sierra Club II*, 2020 WL 6883165 at *4 (writ required County to “vacate or set aside its approval of the Friant Ranch project and not approve the project before preparing a revised EIR that provides an adequate discussion of health and safety problems that will be caused by the rise in the various pollutants resulting from the Project’s development” and stated the trial court retained “jurisdiction over the [proceedings] by way of a return to this peremptory writ of mandate until the court has determined [County] has complied with the provisions of the [CEQA] and the opinion of the Court of Appeal as modified by the Opinion of the Supreme Court.”).

²⁵ *LandValue 77, LLC v. Board of Trustees of California State University* (“*LandValue 77*”) (2011) 193 Cal.App.4th 675, 682.

²⁶ *Sierra Club II*, 2020 WL 6883165, at *1.

²⁷ *Id.*

²⁸ *Id.*

Court to conclude that severance was inappropriate and partial decertification was not an authorized legal remedy.

County Counsel may contend that, because the Writ includes severance findings, *Sierra Club II* does not apply in this case. However, *Sierra Club II* had not been published at the time the Writ was issued, and was therefore not considered by the Court. The County's pending compliance with the Writ is dependent on its overall compliance with CEQA at the time the return to Writ is filed with the Court. Therefore, to comply with current CEQA caselaw, the Board should vacate its certification of the entire EIR and decline to recertify it until the EIR has been revised and recirculated in compliance with CEQA.

III. THE ADDENDUM FAILS TO COMPLY WITH CEQA

A. The County Cannot Rely on an Addendum to Correct the Errors in a Decertified EIR; Recirculation of the EIR Is Required

The Responses continue to contend that the Addendum is an appropriate response to the Writ because the Writ directs the County to prepare an Addendum instead of a recirculated EIR, and directs the County to apply CEQA's subsequent review legal standards in CEQA Section 21166 and CEQA Guidelines Section 151562, instead of CEQA Section 21092.1 and CEQA Guidelines Section 15088.5, as required by CEQA.²⁹ However, the Writ clearly explains that it "does not direct Respondent to exercise its lawful discretion in any particular way in complying with the Writ."³⁰ The Writ therefore does not mandate that the County prepare an addendum, as the County claims. The Responses miss the point of Citizens' comments on this issue. As a result, the Responses fail to correct the legal errors resulting from the County's improper reliance on an addendum.

As our November 3, 3030 comments explained, irrespective of the potential remedial measures outlined in the Writ, the fundamental requirement of the Writ – and all writs issued pursuant to CEQA Section 21168.9 – is that the County must comply with CEQA in all respects before the Court can discharge the Writ.³¹ The County cannot demonstrate compliance with CEQA through use of an addendum because addendums do not meet the basic legal standard for revisions

²⁹ See Responses, p. 3, Response to Comment 7.

³⁰ Writ, p. 4; PRC § 21168.9(c).

³¹ PRC § 21168.9(a)(3).

to a decertified EIR. The only lawful way for the County to comply with CEQA is to prepare a revised CEQA document pursuant to CEQA Guidelines Section 15088.5.

1. Legal Standards

The legal standards governing revised sections of a decertified EIR are set forth in CEQA Section 21092.1, and CEQA Guidelines Section 15088.5, which provide that “[w]hen significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 ... *but prior to certification*, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report.”³²

CEQA addendums are authorized only where minor revisions to a *previously certified* EIR are made in response to changes in circumstances, changes in the project, or new information that was not available at the time the original EIR was certified.³³ Unlike EIRs, addendums do not require a public comment period, and do not include responses to comments in the final CEQA document, because they are intended to be minor technical additions to an existing EIR.³⁴ Addendums therefore do not comply with CEQA’s public notice and comment requirements that apply to EIRs, and do not provide the public with the requisite opportunity to participate in the EIR process.³⁵

The Court of Appeal recently held in *Martis Camp* that the lead agency cannot use a CEQA addendum unless the project that is the subject of the addendum was previously analyzed in a certified CEQA document.³⁶ EIRs which are decertified due to the omission of a legally required EIR analysis in the first place lose their certification status and do not qualify for addendums. As the Court observed, “the question of whether further environmental review is required for a project arises only when the public agency makes a *further* discretionary

³² PRC § 21092.1; 14 CCR § 15088.5(a).

³³ PRC § 21166; 14 CCR § 15162; *Martis Camp Community Association v. County of Placer* (“*Martis Camp*”) (2020) 53 Cal.App.5th 569, 604.

³⁴ 14 CCR § 15164(a), (c) (addendum need not be circulated for public review but can be included in or attached to the final EIR).

³⁵ PRC 21091(a); 14 CCR §§ 15087, 15105, 15200, 15205.

³⁶ *Martis Camp*, 53 Cal.App.5th at 607.
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decision to carry out or approve that project.”³⁷ Recertification of a decertified EIR is not a further discretionary approval. It is second attempt at certification of the original EIR.

Where, as here, an EIR is found to be inadequate and the lead agency is required to set aside EIR certification in response to a writ of mandate issued pursuant to CEQA Section 21168.9, either in whole or in part, the decertification returns the EIR to its pre-approval, pre-certification stage.³⁸ The information used to supplement the decertified EIR is part of the EIR itself, and is therefore subject to the recirculation standards of CEQA Guidelines Section 15088.5.³⁹

In *Preservation Action Council*, the Court vacated a City of San Jose EIR approval and remanded to the agency for revisions to EIR’s analysis of reduced-size alternatives. The Court applied CEQA Guidelines Section 15088.5 to the EIR revisions, explaining that “the revised environmental document must be subjected to the same critical evaluation that occurs in the draft stage, so that the public is not denied an opportunity to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom.”⁴⁰

In *Protect Amador*, the Court vacated a water agency’s approval of an EIR for a water pipeline replacement project and directed the trial court to issue a writ under CEQA Section 21168.9 directing the agency to “take the action necessary to bring the water resources section of the EIR into compliance with CEQA.”⁴¹ The Court explained that the subsequent question of “whether the correction requires recirculation of the EIR, in whole or in part, is for the Agency to decide in the first

³⁷ *Id.* at 605-606.

³⁸ *Bakersfield*, 124 Cal.App.4th at 1221, citing CEQA Guidelines Sections Guidelines, §§ 15089 to 15092 and *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829 (“[T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA”); *Sierra Club II*, 2020 WL 6883165 at *4-*5 (decertification triggers the agency’s initial EIR certification duties under Pub Res Code §§ 21100(a), 21151(a), and CEQA Guidelines § 15090(a)(1)); CEQA Guidelines § 15090(a)(1).

³⁹ *Protect the Historic Amador Waterways v. Amador Water Agency* (“*Protect Amador*”) (2004) 116 Cal.App.4th 1099, 1112, as modified (Apr. 9, 2004); *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1358.

⁴⁰ *Id.*

⁴¹ *Protect Amador*, 116 Cal.App.4th at 1112.

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instance in light of the legal standards governing recirculation of an EIR prior to certification [under] CEQA, § 21092.1; Guidelines, § 15088.5.”⁴²

By contrast, there is no legal authority that allows an agency to prepare an addendum to correct errors in a decertified EIR or to consider CEQA’s supplemental review standards in making the determination as to how to correct those deficiencies. Neither the Addendum, the County in its trial court briefing, nor the Court in its Minute Order issuing the Writ, cite to any legal authority in support of Writ’s reliance on an addendum to correct the EIR’s deficiencies.⁴³ This is because the legal standard that applies to decertified portions of an EIR is governed by CEQA Guidelines section 15088.5, not the subsequent review standard set forth in Guidelines Section 15162. Even the Riverside County case on which the County relied for its objections in support of the Writ (*Cherry Valley Pass v. County of Riverside*) resulted in a supplemental EIR, and did not authorize or use an addendum.⁴⁴ Agencies routinely prepare supplemental EIRs in response to writs issued pursuant to CEQA Section 21168.9.⁴⁵ The County should do the same here.

2. The County’s Reliance on an Addendum is a Mistake of Law

The County’s reliance on an addendum and on CEQA’s subsequent review standards to appears to derive from old legal authority which governed revisions to a decertified EIR prior to the enactment of CEQA Guidelines Section 15088.5.

⁴² *Id.*; see also *Bakersfield*, 124 Cal.App.4th at 1222.

⁴³ See Exhibit F (Minute Order) and Exhibit G (County objections).

⁴⁴ See Riverside County, San Gorgonio Project description at <https://planning.rctlma.org/Home/Planning-Notices/EIR-No-534-San-Gorgonio> (last visited 12/7/20). The County prepared a supplemental draft EIR and circulated it for public comment in response to a 2019 writ from the Riverside Superior Court which found the EIR to be deficient on two grounds. See also https://planning.rctlma.org/Portals/14/Postings/San%20Gorgonio%20Crossing/NOA_SEIR.pdf (last visited 12/7/20).

⁴⁵ See e.g. Devil’s Gate Project Supplemental EIR, available at https://pw.lacounty.gov/wrd/Projects/DevilGate/Recirculated_Portions_of_the_Final_Environmental_Impact_Report.pdf (last visited 12/7/20); Great Basin Unified Air Pollution Control District Casa Diablo IV Supplemental EIR, available at https://www.gbuapcd.org/Docs/PermittingAndRules/CD4/20200820_GBUAPCD_DraftSEIR.pdf (last visited 12/7/20).
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As a leading CEQA treatise explains, the use of CEQA Guidelines Section 15162 standards to govern revisions to a decertified EIR was superseded in 1994 by CEQA Guidelines Section 15088.5:

Before 14 Cal Code Regs § 15088.5 was adopted in 1994, the test for preparation of a subsequent or supplemental EIR in Pub Res C §21166 and 14 Cal Code Regs §15162 was applied to new information that surfaced after completion of a draft EIR but before certification of the final EIR. See *Mira Monte Homeowners Ass'n v County of Ventura* (1985) 165 CA3d 357. The CEQA Guidelines now provide that the standards in Pub Res C §21166 apply only after an EIR has been certified for a project. 14 Cal Code Regs §15162(a).⁴⁶

If the County relies on outdated legal standards to reapprove the Project, it would be a mistake of law. The courts have repeatedly held that ignorance of the law is not an excuse for failing to comply with applicable law.⁴⁷ The County should avoid this problem by revising and recirculating the new sections of the EIR for public comment pursuant to CEQA Guidelines Section 15088.5.

B. The Addendum Fails to Adequately Mitigate Significant Impacts to Burrowing Owls at the Project Facility Site

Mr. Cashen reviewed the Responses and concludes that the Responses fail to address many of his November 3, 2020 comments on the Addendum. The Responses also fail to resolve the inadequacies of Mitigation Measure (“MM”) BIO-6 and the Addendum’s deficient discussion of burrowing owl mitigation. As a result, the County’s proposed burrowing owl mitigation still fails to comply with CEQA and the Writ.

⁴⁶ See Kostke, Practice Under the California Environmental Quality Act, § 16.15.

⁴⁷ See *McClain v. Kissler* (2019) 39 C.A.5th 399, 416 (relief was not justified by defendant attorney's mistaken understanding of trial judge's case management order; judge reasonably found that attorney was not credible and did not make factual mistake she claimed to have made and that her understanding was not reasonable); *A & S Air Conditioning v. John J. Moore Co.* (1960) 184 Cal. App.2d 617,620; *Willett v. Schmeister Mfg. Co.* (1926) 80 Cal. App. 337, 339 (ignorance of change in law inexcusable legal error); *Robbins v. Los Angeles Unified School Dist.* (1992) 3 Cal. App. 4th 313, 319 (ignorance of the law coupled with negligence in ascertaining it will sustain finding denying relief); *Miller v. Hermosa Beach* (1993) 13 Cal. App.4th 1118, 1136 (similar statement).
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MM BIO-6 originally stated: “[t]o compensate for impacts to burrowing owls in activity areas on the northern part of the Project, 146 acres of habitat have been identified adjacent to the Project area.” As noted in the Court’s Ruling: “[t]here is confusion in the EIR due to the lack of a sufficient explanation as to whether and how the 146-acre mitigation lands adjacent to the gen-tie corridor is to compensate for the loss of more than 3,000 acres of total land.”⁴⁸

The Addendum modified MM BIO-6 such that the amount of compensatory mitigation would now depend on the number of burrowing owls detected during pre-construction surveys. Specifically, MM BIO-6 now requires: (a) a ratio of 1.5 times 6.5 acres (i.e., 9.75 acres) per pair or single bird if the replacement habitat is occupied; (b) a ratio of 2 times 6.5 acres (i.e., 13.0 acres) per pair or single bird if the replacement habitat is contiguous to currently occupied habitat; or (c) a ratio of 3 times 6.5 acres (i.e., 19.5 acres) per pair or single bird if the replacement habitat is suitable unoccupied habitat.⁴⁹ However, the Addendum fails to provide any analysis that explains whether and how these mitigation ratios would compensate for the loss of more than 3,000 acres of burrowing owl habitat from the solar facility site, in violation of CEQA and the Writ.

The EIR also previously stated that the Project would comply with the California Department of Fish and Wildlife’s (“CDFW”) 2012 guidelines for compensatory mitigation.⁵⁰ The CDFW 2012 guidelines are the “officially approved” protocol for burrowing owl mitigation; compliance with the CDFW 2012 guidelines therefore satisfies CEQA’s mitigation requirements.⁵¹ However, as Mr. Cashen explains, the Addendum does not apply CDFW’s mitigation ratios. Instead, the Addendum on outdated compensatory mitigation ratios from the 1993 California Burrowing Owl Consortium (“CBOC”) Mitigation Guidelines, which CDFW has concluded are ineffective to mitigate for habitat loss.⁵²

Mr. Cashen explains that the CBOC guidelines are substantially different from the CDFW guidelines, were never intended to compensate for habitat loss under CEQA, were subsequently proven to be ineffective in mitigating significant impacts to burrowing owls, and were ultimately rejected by CDFW in 2008.

⁴⁸ Exhibit A, Cashen Comments, p. 1, citing FEIR, Appendix D (MMRP), p. D-17, and Ruling.

⁴⁹ Addendum, p. 19.

⁵⁰ Exhibit A, p. 2.

⁵¹ See *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal. App. 4th 899, 947 (compliance with CDFW “officially approved” burrowing owl protocol is adequate mitigation).

⁵² Exhibit A, p. 2.

CDFW's 2008 burrowing owl guidance found that the 6.5-acre mitigation acre was ineffective and concluded that "[t]he standard of 6.5 acres [baseline ratio] will no longer be used because it does not adequately compensate for habitat loss."⁵³ The Addendum relies on a mitigation ratio that has been scientifically proved to be ineffective at mitigating burrowing owl impacts.

Under the CDFW 2012 guidelines, the current standard for compensatory mitigation is *no less than 1:1* based on habitat area permanently impacted by the project.⁵⁴ Mr. Cashen concludes that the mitigation proposed in revised MM BIO-6 would not achieve this standard.⁵⁵ Mr. Cashen further explains that, if the County's prediction of three owls requiring mitigation is correct, the Project would provide no more than 58.5 acres of replacement habitat in exchange for permanent impacts to approximately 3,000 acres of habitat – a fraction of the necessary 3,000 acres of compensatory habitat required to offset the Project's burrowing owl impacts, and less than the 146 acres that the Court already deemed inadequate.⁵⁶

The County therefore failed to substantiate its discussion of burrowing owl mitigation at the solar facility site, and lacks substantial evidence to support its conclusion that the revised version of MM BIO-6 would mitigate impacts to burrowing owls to less than significant levels.

⁵³ Exhibit A, p. 3; California Department of Fish and Game. 2008. Guidance for Burrowing Owl Conservation. p. 4. [emphasis added].

⁵⁴ Exhibit A, p. 3.

⁵⁵ Exhibit A, pp. 2-3.

⁵⁶ Exhibit A, p. 3.

C. CONCLUSION

The County has invested almost a decade of public resources into this Project without complying with CEQA. The Board must not allow the Project to proceed until the County has prepared and circulated a legally adequate revised EIR for public comment which fully discloses and mitigates the Project's soil contamination and burrowing owl impacts, as mandated by the Court.

Citizens urges the Board to remand the Project to staff to revise and recirculate the EIR for public comment. The County must remedy all substantial defects in the EIR, and in the Project as a whole, before the County can demonstrate to the Court that it has fully complied with CEQA and the Writ. Thank you for your consideration of these comments.

Sincerely,



Christina M. Caro

CMC:
Attachments

cc. Melissa Cushman
Anne Beaumont

EXHIBIT A

December 7, 2020

Ms. Christina Caro
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

**Subject: Rebuttal to ESA's Responses to Comments on the Addendum to the
Environmental Impact Report Prepared for the Palo Verde Mesa Solar Project**

Dear Ms. Caro:

I submitted comments on the Addendum to Environmental Impact Report No. 532 ("EIR Addendum") and its compliance with the peremptory writ of mandate issued in *Citizens for Responsible Solar v. County of Riverside*, Case No. RIC1718458. The County's CEQA consultant, ESA, issued a memorandum that responds to comments received on the EIR Addendum. ESA did not provide specific responses to my comments, except for Comment 24. For all other comments, ESA's response directs me to "[s]ee Response 12," which is ESA's limited response to your legal comments on the burrowing owl issue. Many of my comments have been ignored in ESA's memorandum.

Burrowing owl mitigation guidelines can be confusing, especially to those that are unfamiliar with the history of the guidelines. As a result, my comments begin with a brief summary of the various burrowing owl mitigation guidelines in California. I then address issues pertaining to the writ, EIR Addendum, CEQA, and ESA's responses. In summary:

1. Mitigation Measure ("MM") BIO-6 in the original EIR stated: "[t]o compensate for impacts to burrowing owls in activity areas on the northern part of the Project, 146 acres of habitat have been identified adjacent to the Project area."¹ As noted in the Court's ruling: "[t]here is confusion in the EIR due to the lack of a sufficient explanation as to whether and how the 146-acre mitigation lands adjacent to the gen-tie corridor is to compensate for the loss of more than 3,000 acres of total land."²
2. The EIR Addendum modified MM BIO-6 such that the amount of compensatory mitigation will depend on the number of burrowing owls detected during pre-construction surveys. Specifically, MM BIO-6 now requires: (a) a ratio of 1.5 times 6.5 acres (i.e., 9.75 acres) per pair or single bird if the replacement habitat is occupied; (b) a ratio of 2 times 6.5 acres (i.e., 13.0 acres) per pair or single bird if the replacement habitat is contiguous to currently occupied habitat; or (c) a ratio of 3 times 6.5 acres (i.e., 19.5 acres) per pair or single bird if the replacement habitat is suitable unoccupied habitat. The EIR Addendum fails to provide analysis that explains whether and how these mitigation ratios would compensate for the loss of more than 3,000 acres of burrowing owl habitat from the solar facility site.

¹ FEIR, Appendix D (MMRP), p. D-17.

² See EIR Addendum, p. 16.

3. The EIR previously stated that the Project would comply with the California Department of Fish and Wildlife's ("CDFW") 2012 guidelines for compensatory mitigation. However, the EIR Addendum reverts to the compensatory mitigation ratios in the 1993 California Burrowing Owl Consortium ("CBOC") Mitigation Guidelines. The CBOC guidelines are substantially different from the CDFW guidelines, were never intended to compensate for habitat loss under CEQA, were subsequently proven to be ineffective in mitigating significant impacts to burrowing owls, and were ultimately rejected by CDFW in 2008.
4. As explained in CDFW's 2012 guidelines, the current standard for compensatory mitigation is *no less than* 1:1 based on habitat area permanently impacted by the project.³ The mitigation proposed in the EIR Addendum would not achieve this standard. In fact, if the County's prediction of three owls requiring mitigation is correct, the Project would provide no more than 58.5 acres of replacement habitat in exchange for permanent impacts to approximately 3,000 acres of habitat.
5. The County lacks substantial evidence to support its conclusion that the revised version of MM BIO-6 would mitigate impacts to burrowing owls to less than significant levels.

History of Burrowing Owl Mitigation Guidelines

1. The California Burrowing Owl Consortium ("CBOC"), an ad hoc group of burrowing owl biologists and advocates in the San Francisco Bay Area, prepared the first Burrowing Owl Survey Protocol and Mitigation Guidelines in 1993. At that time, the CBOC Mitigation Guidelines consisted of "untested procedures."⁴ The Guidelines recommended on-site mitigation at a ratio of 6.5 acres per pair or single bird (the same ratios used in revised MM BIO-6). For off-site mitigation, the CBOC Guidelines recommended 6.5 acres times a multiplier of 1.5, 2, or 3 (9.75 acres, 13 acres, or 19.5 acres per pair or single bird), depending on whether the replacement habitat was occupied or unoccupied by burrowing owls. The 6.5-acre baseline ratio was based on a study in Canadian oil fields where singular nest burrows were destroyed, but habitat around those burrows was not completely eliminated (i.e., a very different scenario than development of a solar energy facility).⁵ The mitigation ratios in the CBOC Guidelines were never intended to compensate for habitat loss under CEQA.⁶
2. The CDFW issued its first Staff Report on Burrowing Owl Mitigation in 1995. The 1995 Staff Report adopted the CBOC Survey Protocol and Mitigation Guidelines.
3. The CDFW issued its Guidance for Burrowing Owl Conservation in 2008. The purpose of this document was to: "provide guidance that supersedes and augments or clarifies the Department's Staff Report on Burrowing Owl Mitigation (1995) and the California Burrowing Owl Consortium's Survey Protocol and Mitigation Guidelines (1993,

³ California Department of Fish and Game. 2012 Mar 7. Staff Report on Burrowing Owl Mitigation. pp. 8 and 12. Available at: <<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline=true>>.

⁴ California Burrowing Owl Consortium. 1993. Burrowing Owl Survey Protocol and Mitigation Guidelines. p. i.

⁵ Personal communication with S. Menzel, CBOC, on 7 Dec 2020.

⁶ California Department of Fish and Game. 2008. Guidance for Burrowing Owl Conservation. p. 13.

1997).”^{7,8} The 2008 Guidance states: “[a]dditional immediate protection is needed for the Burrowing Owl,” in part because “lead agencies do not consistently require sufficient or effective habitat mitigation for immediate or cumulative impacts to burrowing owls.” In addition, it states: “[t]he standard of 6.5 acres [baseline ratio] will no longer be used because it does not adequately compensate for habitat loss.”⁹

4. The CDFW issued a revised version of its Staff Report on Burrowing Owl Mitigation in 2012. The 2012 Staff Report reiterates that the minimum habitat replacement recommendations issued by the CBOC in 1993 (and adopted by CDFW in 1995) are no longer accepted by the CDFW because they have proven ineffective in the conservation of burrowing owls. The 2012 Staff Report states that mitigation for permanent impacts to burrowing owl habitat “necessitates replacement with an equivalent or greater habitat area.”¹⁰ The 2012 Staff Report therefore recommends compensatory mitigation at a ratio of *no less than* 1:1 based on habitat area permanently impacted by the project.¹¹

Burrowing Owl Habitat at the Solar Facility Site

The EIR provides the following description of the burrowing owl (“BUOW”) and its habitat:

In California, it typically inhabits lowlands, including those in the Central Valley, northeastern plateau, southeastern deserts, and coastal areas. For shelters, the burrowing owl uses rodent burrows in sparse grassland, desert, and agricultural habitats, as well as open areas of pinyon-juniper or ponderosa pine habitats (CDFG 2008).¹²

The EIR does not deny that the 3,250-acre solar facility site provides habitat for burrowing owls. The EIR states: “[t]he solar array site contains habitat, particularly near washes, that would support BUOW burrows, and some burrows were observed in the field that had the potential to be BUOW burrows (POWER, 2013a).”¹³ As explained in my previous comment letter, suitable burrows (and prey) for burrowing owls occurred throughout the entire Project study area and were increasing in abundance in 2013 when surveys were last conducted for the Project.¹⁴

Compensation Ratio in the EIR

The EIR recognized that the mitigation guidelines in CDFW’s 2012 Staff Report were applicable to the Project and it suggested the Project would provide compensatory mitigation commensurate with what is recommended in CDFW’s 2012 Staff Report (i.e., habitat compensation at a 1:1 ratio). For example, the EIR stated:

⁷ *Id.* at p. 2.

⁸ In 1997 the CBOC published its burrowing owl survey protocol and mitigation guidelines in the *Journal of Raptor Research*.

⁹ California Department of Fish and Game. 2008. *Guidance for Burrowing Owl Conservation*. p. 4. [emphasis added].

¹⁰ California Department of Fish and Game. 2012 Mar 7. *Staff Report on Burrowing Owl Mitigation*. pp. 1 and 2. Available at: <<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline=true>>.

¹¹ *Id.* at pp. 8, 12.

¹² DEIR, Appendix D (Biological Survey Report). pp. 35 and 36.

¹³ DEIR, p. 3.4-39.

¹⁴ See FEIR, Appendix C (Western Burrowing Owl Survey Report), pp. 7 and 13. See also Cashen comments on EIR Addendum, pp. 7 and 9.

1. “If BUOW were detected during pre-construction surveys, the Project would conserve suitable BUOW habitat on private land as mitigation **as a requirement by CEQA and the CDFW Burrowing Owl Mitigation Requirements (CDFW, 2012).**”¹⁵
2. “The total acreage that would require mitigation is contingent upon pre-construction survey results and **subject to 2012 CDFW Guidelines.**”¹⁶
3. “The ultimate quantity of acreage provided for compensatory lands must be **approved by CDFW and County** to ensure adequate compensation for potential habitat loss.”¹⁷

All of these statements suggested the Project would be required to provide habitat compensation at a 1:1 ratio because CDFW had already informed the County of CDFW guidelines for: (a) mitigation that is roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA, and (b) replacement habitat that provides an equivalent or greater habitat area.¹⁸ However, MM BIO-6 simply stated: “[t]o compensate for impacts to burrowing owls in activity areas on the northern part of the Project, 146 acres of habitat have been identified adjacent to the Project area.”¹⁹ As noted in the Court’s ruling, this created confusion as to whether and how the 146-acre mitigation site would compensate for the loss of more than 3,000 acres of burrowing owl habitat on the solar facility site. Nevertheless, nowhere did the EIR state that the amount of compensatory mitigation would be based on the 1993 CBOC Guidelines (i.e., a baseline ratio of 6.5 acres of habitat compensation per pair or individual bird detected during pre-construction surveys).

Compensation Ratio in the EIR Addendum

The EIR Addendum revised the compensatory mitigation requirements in MM BIO-6 such that the amount of compensatory mitigation will depend on the number of burrowing owls detected during pre-construction surveys. Specifically, the revised version of MM BIO-6 requires implementation of the mitigation ratios recommended in the 1993 CBOC Mitigation Guidelines (i.e., baseline ratio of 6.5 acre per pair or individual owl impacted by the Project times the off-site multiplier of 1.5, 2, or 3). The County contends that application of this approach does not constitute new information. ESA’s memorandum argues: “[w]ith regard to the compensation ratio, as noted above, the 6.5-acre ratio was included in the Draft EIR and is not new information in the Addendum as Mr. Cashen tries to claim.”²⁰ However, ESA’s argument conflicts with evidence in the record. The EIR’s original version of MM BIO-6 stated:

To compensate for impacts to burrowing owls in activity areas on the northern part of the Project, 146 acres of habitat have been identified adjacent to the Project area. A letter

¹⁵ DEIR, p. 3.4-52. [emphasis added]. See also ESA. 2020 Nov 23. Palo Verde Mesa Solar Project (CUP03684, PUP00916, DA00086): Response to Comments Received on the Addendum to Environmental Impact Report No. 532 prepared pursuant to the California Environmental Quality Act. Memorandum from Janna Scott, ESA, to Russell Brady, County of Riverside. p. 6.

¹⁶ FEIR, Response to Comment A5-12. [emphasis added].

¹⁷ FEIR, Response to Comment O4-33. [emphasis added]. See also Response to Comment O3-106.

¹⁸ FEIR, Comment A5-12.

¹⁹ FEIR, Appendix D (MMRP), p. D-17.

²⁰ ESA. 2020 Nov 23. Palo Verde Mesa Solar Project (CUP03684, PUP00916, DA00086): Response to Comments Received on the Addendum to Environmental Impact Report No. 532 prepared pursuant to the California Environmental Quality Act. Memorandum from Janna Scott, ESA, to Russell Brady, County of Riverside. p. 6.

agreeing to dedicate the existing compensation lands must be approved by CDFW and the County prior to ground disturbance. Land used for compensation must be of equal value or better than the land impacted. Ownership of compensation lands will be transferred prior to any surface disturbance to one of the following: the County, or an entity acceptable to the County or CDFW that can effectively manage listed species and their habitats.²¹

The original version of MM BIO-6 said nothing about a 6.5-acre ratio. The only mention of the 6.5-acre ratio was in an attachment to the original Draft EIR, the Applicant's Draft Western Burrowing Owl Mitigation and Monitoring Plan ("Draft Plan"), which stated: "[t]he California Burrowing Owl Consortium guidelines recommend 6.5 acres of compensation land be preserved and managed in perpetuity for each individual burrowing owl or burrowing owl pair identified as potentially impacted at the Project site."²² However, the Draft Plan also states that the amount of compensation land shall be determined "per the 2012 CDFW mitigation guidelines."²³ Irrespective of the ambiguity in the Draft Plan, the EIR did not adopt the 6.5-acre ratio in MM BIO-6, nor did it make implementation of the Applicant's Draft Plan a required mitigation measure. The County's newly stated intent to adopt the 1993 CBOC mitigation ratios (i.e., the 6.5-acre baseline ratio and multipliers for off-site mitigation) is a substantial change from the original version of MM BIO-6. The addition of the 1993 mitigation ratios to MM BIO-6 also contradicts the County's claims elsewhere in the EIR that the burrowing owl mitigation would comply with the CDFW 2012 Staff Report. As a result, I maintain the conclusion that the County's revisions to MM BIO-6 constitute new information that was not included in the EIR, and which fails to comply with the mitigation recommendations in the CDFW 2012 Staff Report.

ESA's memorandum confounds the issue by arguing the Court did not find any inadequacies with compensation based on number of owls discovered during pre-construction surveys. The memorandum states:

The court limited its finding of inadequacy of the burrowing owl analysis to the EIR's failure to explain how the mitigation compensated for impact to the solar facility site (and not just the gen-tie corridor) and its failure to explain whether and how the mitigation lands will be maintained in perpetuity. The court did not find any inadequacies in the EIR's determinations that the amount of compensatory mitigation lands would depend upon the number of owls discovered during pre-construction surveys, and that not all areas of potentially suitable land would necessarily trigger a need for mitigation. Accordingly, these determinations are not relevant to the Addendum.²⁴

This is a spurious argument that circumvents the requirements of the writ and CEQA. The Court did not contemplate adequacy of compensatory mitigation that would depend on the number of owls discovered during pre-construction surveys because that approach was not reflected in MM BIO-6 or the EIR's analysis. That is new information added to the EIR addendum. Rather, the Writ attached to the ESA Memorandum clearly states that the County must evaluate the

²¹ FEIR, Appendix D (MMRP), p. D-17.

²² DEIR, Appendix D (Draft Burrowing Owl Monitoring and Mitigation Plan), p. 14.

²³ *Id.*

²⁴ ESA. 2020 Nov 23. Palo Verde Mesa Solar Project (CUP03684, PUP00916, DA00086): Response to Comments Received on the Addendum to Environmental Impact Report No. 532 prepared pursuant to the California Environmental Quality Act. Memorandum from Janna Scott, ESA, to Russell Brady, County of Riverside. p. 6.

“feasibility of mitigation” for this impact, and discuss “the specifics of the measures to be required, if mitigation is found to be feasible.”²⁵ This necessarily involves an analysis of the County’s proposed compensatory mitigation.

Mitigation Requirements to Satisfy CEQA

CDFW’s 2012 Staff Report on Burrowing Owl Mitigation identifies the mitigation that should be provided for permanent impacts to burrowing owl habitat:

the current scientific literature supports the conclusion that mitigation for permanent habitat loss *necessitates replacement with an equivalent or greater habitat area* for breeding, foraging, wintering, dispersal, presence of burrows, burrow surrogates, presence of fossorial mammal dens, well drained soils, and abundant and available prey within close proximity to the burrow.²⁶

Thus, mitigating significant impacts to burrowing owls requires habitat compensation based on the amount of habitat that is impacted by a project—*not the number of owls that are impacted, as the Addendum claims.*

The EIR Addendum revised MM BIO-6 to require habitat compensation based on the outdated 1993 CBOC Mitigation Guidelines, which recommend a ratio of 6.5 acres per pair or single bird impacted by a project (times a multiplier of 1.5, 2, or 3 for off-site mitigation). When the CBOC released its mitigation guidelines in 1993, it recognized those guidelines consisted of “untested procedures.”²⁷ Moreover, the mitigation ratios recommended in the CBOC Guidelines were never intended to compensate for habitat loss under CEQA, but rather to provide the minimal buffer area thought to be necessary around a burrow to avoid disturbance from construction activities.²⁸

The CBOC mitigation guidelines subsequently proved to be ineffective in offsetting the loss of habitat and slowing or reversing further decline of the species.²⁹ As a result, the CDFW released two documents to address this issue:

1. The 2008 Guidance for Burrowing Owl Conservation, which explicitly states: “[t]he **standard of 6.5 acres will no longer be used because it does not adequately compensate for habitat loss;**”³⁰ and,
2. the 2012 CDFW Staff Report on Burrowing Owl Mitigation.³¹ The mitigation guidelines in the 2012 Staff Report: (a) incorporate scientific information that had been obtained since 1993, and (b) “create burrowing owl mitigation recommendations that ensure

²⁵ See Writ, p. 4; Addendum, p. 2.

²⁶ AR 2970.

²⁷ California Burrowing Owl Consortium. 1993. Burrowing Owl Survey Protocol and Mitigation Guidelines. p. i.

²⁸ California Department of Fish and Game. 2008. Guidance for Burrowing Owl Conservation. p. 13.

²⁹ California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. pp. 1 and 2. *See also* AR10201 and 10217.

³⁰ California Department of Fish and Game. 2008. Guidance for Burrowing Owl Conservation. p. 13.

³¹ California Department of Fish and Game. 2012 Mar 12. CDFW News [web page]. Revised Burrowing Owl Report Now Available. Available at: <<https://cdfgnews.wordpress.com/2012/03/07/revised-burrowing-owl-report-now-available/>>.

impacts to burrowing owls are effectively addressed at the project, local and/or regional level.”³² As explained above, the 2012 Staff Report recommends compensatory mitigation at a ratio of no less than 1:1 based on the amount of habitat impacted by a project.

The original EIR was certified in 2017 and the Addendum was prepared in 2020 (i.e., 8 years after the 2012 CDFW mitigation guidelines and 12 years after the 2008 CDFW guidelines became effective). The 6.5-acre ratio included in revised MM BIO-6 was therefore deemed ineffective years before the Project was approved or the EIR Addendum prepared.

The writ requires the County to analyze “whether and how the mitigation lands are adequate to compensate for the total loss of potential habitat on the solar facility site.” The EIR Addendum fails to provide this additional analysis and lacks evidence to support its conclusion that the 6.5-acre ratio would mitigate impacts to less than significant levels. Specifically, the EIR Addendum provides no evidence to support its conclusion that implementation of the 1993 CBOC ratios for off-site mitigation would compensate for the loss of more than 3,000 acres of burrowing owl habitat from the solar facility site. To the contrary, scientific evidence collected since 1993 has shown that the CBOC ratios *do not* effectively mitigate the loss of burrowing owl habitat.³³

There is considerable difference between the mitigation recommended in the 2012 CDFW Staff Report and the mitigation recommended in the 1993 CBOC Mitigation Guidelines. ESA argues: “this is just a choice of methodology, and the methodology used here is appropriate.”³⁴ In reality, the County’s decision to use the 1993 CBOC methodology (which is no longer accepted by CDFW or the CBOC) has tremendous implications on conservation of burrowing owls and the significance of Project impacts under CEQA. Using the 1:1 ratio recommended by the CDFW 2012 Staff Report, the Applicant would be required to provide compensatory mitigation lands on an acre-for-acre basis. For a 3,000-acre solar site, the Applicant must therefore provide 3,000 acres of equivalent or better replacement habitat for burrowing owls. The County’s biologist predicted the need to provide mitigation for three burrowing owls. Application of the CBOC methodology to the County’s owl calculations would result in 29.25 to 58.5 acres of compensatory habitat, which is equivalent to less than two percent of the habitat that would be permanently impacted by the Project.

As explained previously, the CBOC methodology was experimental and subsequently proved to be ineffective. The County has not provided any evidence to support its conclusion that ineffective methodology is appropriate for the Project and would mitigate impacts to burrowing owls on the over 3,000-acre solar facility site to less than significant levels. Therefore, the County lacks substantial evidence to support the Addendum’s conclusion that MM BIO-6 would effectively mitigate impacts to habitat at the solar facility site.

³² *Id.*

³³ California Department of Fish and Game. 2008. Guidance for Burrowing Owl Conservation. *See also* California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation.

³⁴ ESA. 2020 Nov 23. Palo Verde Mesa Solar Project (CUP03684, PUP00916, DA00086): Response to Comments Received on the Addendum to Environmental Impact Report No. 532 prepared pursuant to the California Environmental Quality Act. Memorandum from Janna Scott, ESA, to Russell Brady, County of Riverside. p. 6.

ESA's memorandum confounds the issue of the two methodologies by claiming:

Like the EIR, the Addendum's mitigation approach includes reference to both the CDFW 2012 Staff Report and the 1993 California Burrowing Owl Consortium Guidelines. The CDFW 2012 Staff report takes into account the 1993 California Burrowing Owl Consortium Guidelines. Mitigation Measure BIO-6 and the Project's Western Burrowing Owl Mitigation and Monitoring Plan include multiple mitigation components from the CDFW 2012 Staff Report, including methodologies for artificial burrow installation and passive relocation and exclusion methodology, and guidelines for compensatory mitigation.³⁵

The statement that MM BIO-6 and the Project's Western Burrowing Owl Mitigation and Monitoring Plan include CDFW's guidelines for compensatory mitigation is patently false. MM BIO-6 incorporates the outdated and ineffective mitigation ratios in the 1993 CBOC Guidelines. The 1993 CBOC mitigation ratios are inconsistent with the CDFW 2012 Staff Report and implementation of those ratios would result in substantially less compensatory habitat than the 1:1 habitat replacement ratio set forth in the CDFW 2012 Staff Report.

The statement that the CDFW 2012 Staff Report takes into account the 1993 California Burrowing Owl Consortium Guidelines is correct: the 2012 Staff Report considers the efficacy of the CBOC Guidelines and issues new mitigation guidelines specifically because the CBOC Guidelines were proven to be ineffective.³⁶ CDFW's 2008 Guidance for Burrowing Owl Conservation, which predates the CDFW 2012 Staff Report, also explicitly states that the CBOC standard of 6.5 acres (with multiplier for off-site mitigation) should no longer be used because it does not adequately compensate for habitat loss.³⁷

Conclusion

The EIR Addendum substantially revised MM BIO-6 such that it limits the compensatory habitat requirement to 9.75 to 19.5 acres (i.e., 6.5 acres times the off-site multiplier) per pair or individual burrowing owl detected during pre-construction surveys. The EIR Addendum fails to provide evidence that this revision would compensate for the loss of burrowing owl habitat from the solar facility site. To the contrary, scientific evidence collected since 1993 indicates that provision of 9.75 to 19.5 acres per pair or individual burrowing owl detected during pre-construction surveys does not mitigate habitat loss to a less than significant level. As a result, the EIR Addendum fails to comply with CEQA and the terms of the writ.

Sincerely,



Scott Cashen, M.S.
Senior Biologist

³⁵ *Id.*

³⁶ California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. pp. 1 and 2.

³⁷ California Department of Fish and Game. 2008. Guidance for Burrowing Owl Conservation. pp. 4 and 13.

MINUTES OF THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



3.13
(MT 13672)

On motion of Supervisor Perez, seconded by Supervisor Jeffries and duly carried by unanimous vote, IT WAS ORDERED that the recommendation from Transportation Department regarding to CONSIDER ADDENDUM FOR ENVIRONMENTAL IMPACT REPORT NO. 532 AND ADOPT RESOLUTION NO. 2020-235 for Palo Verde Mesa Solar Project (CUP03684, PUP00916, DA00086). Applicant: Renewable Resources Group – Representative: Power Engineers – Fourth Supervisorial District – Chuckwalla Zoning District – Palo Verde Area Plan – Agriculture (AG), Open Space: Rural (OS:RUR) – Location: northerly of Interstate-10, west of Neighbors Boulevard – Zoning: Controlled Development Areas – 10 Acre Minimum (W-2-10), Light Agriculture – 10 Acre Minimum (A-1-10) – The Addendum addresses the peremptory writ of mandate issued by the court regarding the lawsuit on the EIR for the project. The EIR was originally certified by the Riverside County Board of Supervisors on August 29, 2017. District 4, is continued to Tuesday, December 8, 2020 at 9:30 a.m. or as soon as possible thereafter.


Roll Call:

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None

I hereby certify that the foregoing is a full true, and correct copy of an order made and entered on November 3, 2020 of Supervisors Minutes.

WITNESS my hand and the seal of the Board of Supervisors
Dated: November 3, 2020
Kecia R. Harper, Clerk of the Board of Supervisors, in
and for the County of Riverside, State of California.

(seal)

By:  Deputy

AGENDA NO.
13.3

xc: COB

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM: 3.13
(ID # 13672)

MEETING DATE:
Tuesday, November 03, 2020

FROM : TLMA-PLANNING:

SUBJECT: TRANSPORTATION & LAND MANAGEMENT AGENCY/PLANNING; CONSIDER ADDENDUM FOR ENVIRONMENTAL IMPACT REPORT NO. 532 AND ADOPT RESOLUTION NO. 2020-235 for Palo Verde Mesa Solar Project (CUP03684, PUP00916, DA00086). Applicant: Renewable Resources Group – Representative: Power Engineers – Fourth Supervisorial District – Chuckwalla Zoning District – Palo Verde Area Plan – Agriculture (AG), Open Space: Rural (OS:RUR) – Location: northerly of Interstate-10, west of Neighbors Boulevard – Zoning: Controlled Development Areas – 10 Acre Minimum (W-2-10), Light Agriculture – 10 Acre Minimum (A-1-10) – The Addendum addresses the peremptory writ of mandate issued by the court regarding the lawsuit on the EIR for the project. The EIR was originally certified by the Riverside County Board of Supervisors on August 29, 2017. District 4. [Applicant Fees 100%]

RECOMMENDED MOTION: That the Board of Supervisors:

1. **CONSIDER** an **ADDENDUM** for **ENVIRONMENTAL IMPACT REPORT NO. 532** certified on August 29, 2017, based on the findings and conclusions provided below and in the Addendum, attached hereto;
2. **ADOPT RESOLUTION NO. 2020-235** certifying the analysis related to soil contamination and mitigation for burrowing owl included in the Addendum as part of Environmental Impact Report No. 532 and adopting the revised Mitigation Monitoring and Reporting Program; and
3. **DIRECT** the Office of County Counsel to file a return on the writ with the court, describing the actions taken to comply with the court's writ of mandate.

ACTION:Policy

Charissa Leach, Assistant TLMA Director

10/27/2020

SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA

MINUTES OF THE BOARD OF SUPERVISORS

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A
NET COUNTY COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A
SOURCE OF FUNDS: Applicant Fees (100%)			Budget Adjustment:	No
			For Fiscal Year:	N/A

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

On August 29, 2017, Agenda Item 17.5, the Board of Supervisors (Board) adopted Resolution No. 2017-199 Certifying Environmental Impact Report No. 532 and approved Conditional Use Permit No. 3684, Public Use Permit No. 916, and Introduced Ordinance No. 664.59 approving Development Agreement No. 86. Ordinance No. 664.59 was subsequently adopted approving Development Agreement No. 86 on September 12, 2017.

After the Final EIR for this Project was certified, two lawsuits challenging the EIR were filed in the Riverside Superior Court in the cases *Citizens for Responsible Solar v. County of Riverside*, Riverside Superior Court Case No. RIC 1718458, and *Golden State Environmental v. County of Riverside*, Riverside Superior Court Case No. RIC 1718565, which both challenged the Project under the California Environmental Quality Act (CEQA, Pub. Res. Code, § 21000 et seq.) and were subsequently consolidated for limited purposes. On July 11, 2019, the court issued a Ruling on Petition for Writ of Mandate, ruling that the County was to add further analysis of soil contamination and details on mitigation for potential impacts to burrowing owl to the EIR as well as decertify only the portions of the EIR related to analysis of soil contamination and mitigation for burrowing owl, a ruling which was later finalized in identical judgments and writs of mandate issued in the two cases.

The peremptory writs of mandate, which set forth the actions the County is required to undertake, are identical except for the names of the cases. A copy of the writ from one of the cases, and the Notice of Ruling referenced in the writ, is attached. Under the court's order, the County was ordered to:

- a. Prepare an Addendum to the EIR if, based on the further analysis necessary to comply with the ruling, the County finds that any of the conditions described in 14 CCR section 15162(a)(3) calling for preparation of a subsequent or supplemental EIR do not exist; or
- b. Prepare a Supplement to the EIR if, based on the further analysis necessary to comply with the ruling, the County finds that any of the conditions described in 14 CCR section 15162(a)(3) calling for preparation of a subsequent or supplemental EIR exist.
- c. Upon consideration of the Addendum or Supplement, the Board of Supervisors of the County of Riverside shall exercise its discretion to determine whether to:
 - i. Find that no modifications to any of the Board's project approvals are required based upon the further analysis described above;

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

- ii. Modify some or all of the project approvals to incorporate changes to the Project or to its conditions of approval or mitigation measures based upon the further analysis described above; or
- iii. Rescind some or all of the project approvals based upon the further analysis described above.

In compliance with the court orders, on September 15, 2020, Agenda Item 3.27, the Board of Supervisors took action to decertify those portions of the EIR as required by the court.

This item addresses the next steps as directed by the court to consider an Addendum that includes updated analysis and mitigation measures and conditions of approval that will be applied to the approved Conditional Use Permit. In further compliance with the court orders, the County evaluated whether any of the conditions described in 14 CCR section 15162(a)(3) existed, concluded that they did not, and prepared an Addendum to the EIR to include and address the items as directed by the court to be considered in a revised environmental analysis. The Addendum demonstrates that a Supplement to the EIR is not warranted, provides additional information regarding contaminated soil and burrowing owl mitigation, as ordered by the court, and revises certain identified mitigation measures, and associated conditions of approval, relating to soils and burrowing owls, all in compliance with the court's orders. A revised Mitigation Monitoring and Report Plan (MMRP), attached to the Addendum, was also prepared reflecting the revised mitigation measures.

The Addendum to EIR No. 532 and the revised MMRP attached thereto are being brought to the Board of Supervisors for consideration, which would allow the County to return to the court to demonstrate compliance with the writ of mandate and allow the applicant to proceed with the Project.

As noted, the additional analysis included in the Addendum resulted in changes to the mitigation measures, which requires modifications to the Board's previous approval of the CUP's mitigation measures and associated conditions of approval.

Impact on Residents and Businesses

The impacts of this Project have been evaluated through the environmental review and public hearing process.

SUPPLEMENTAL:

Additional Fiscal Information

All fees are paid by the applicant. There is no General Fund obligation.

ATTACHMENTS:

- A. Peremptory Writ of Mandate
- B. Notice of Ruling
- C. Addendum to EIR No. 532
- D. Resolution No. 2020-235

SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA

- E. Final EIR No. 532
- F. Draft EIR No. 532



Jason Farin, Principal Management Analyst 10/27/2020

2 **RESOLUTION NO. 2020-235**

3 **CERTIFYING DE-CERTIFIED PORTIONS OF ENVIRONMENTAL IMPACT REPORT**
4 **NO. 532 AS SUPPLEMENTED BY AN ADDENDUM, REVISING MITIGATION MEASURES**
5 **AND CONDITIONS OF APPROVAL OF CONDITIONAL USE PERMIT NO. 3684, AND**
6 **DETERMINING THAT NO ADDITIONAL ACTIONS ARE REQUIRED**
7

8 **WHEREAS**, on August 29, 2017, Agenda Item 17.5, the Board of Supervisors (Board) adopted
9 Resolution No. 2017-168 Certifying Environmental Impact Report No. 532 (EIR) and approved Conditional
10 Use Permit No. 3684, Public Use Permit No. 916, and Introduced Ordinance No. 664.59, and Ordinance No.
11 664.59 was subsequently adopted approving Development Agreement No. 86 on September 12, 2017, all
12 related to the Palo Verde Mesa Solar Project (Project); and

13 **WHEREAS**, two petitions challenging the EIR were subsequently filed in the Riverside Superior
14 Court in the cases *Citizens for Responsible Solar v. County of Riverside*, Riverside Superior Court Case No.
15 RIC 1718458, and *Golden State Environmental v. County of Riverside*, Riverside Superior Court Case
16 No. RIC 1718565, which both challenged the Project under the California Environmental Quality Act
17 (CEQA, Pub. Res. Code, § 21000 et seq.) and which were subsequently consolidated for limited purposes;
18 and

19 **WHEREAS**, on July 11, 2019, the Court issued a Ruling on Petition for Writ of Mandate, ruling
20 that the analysis of certain soil contamination impacts was insufficient, the conclusion that mitigation
21 measure HAZ-1 was sufficient to reduce soil disturbance contamination impacts to less than significant was
22 not supported by substantial evidence, that the mitigation for impacts to burrowing owl as to the Project
23 facility site (as opposed to the gen-tie corridor) was not supported by substantial evidence, and further ruling
24 that the court granted the petitions on these grounds and denied the petitions on all other grounds; and

25 **WHEREAS**, on October 1, 2019 and December 23, 2019 respectively, the Court entered identical
26 judgments in the two cases, partially granting and partially denying the petitions, entering judgment in favor
27 of Petitioners solely as to the issues described in the writs referenced below, and entering judgment in favor
28 of the County and the Real Parties in Interest as to all other issues; and

FORM APPROVED COUNTY COUNSEL
BY:  MELISSA R. CUSHMAN
DATE: 10/20/2020

1 **WHEREAS**, on October 1, 2019 and December 23, 2019 respectively, identical peremptory writs of
2 mandate (Writs) were filed in both cases, directing the County to take the following actions:

- 3 1. Respondent County of Riverside (“Respondent”)
4 shall add to its Final Environmental Impact Report
5 (“EIR”) a further analysis of soil contamination that
6 (a) discloses whether and to what extent excavation
7 and pile driving would disturb residual toxins under
8 the Palo Verde Mesa Solar Project (the “Project”)
9 site and (b) revises Mitigation Measure HAZ-1 to
10 address all soil contamination to be disturbed or
11 removed, including soil contaminated by fuel from
12 underground storage tanks, all as needed to comply
13 with the Court's Notice of Ruling dated July 11,
14 2019 (“Notice of Ruling”).
- 15 2. Respondent shall add to its EIR, a further analysis
16 of the issue of mitigation on the solar facility site
17 for the burrowing owl sufficient to explain (a)
18 whether and how the mitigation lands are adequate
19 to compensate for the total loss of potential habitat
20 on the solar facility site and (b) whether and how
21 the mitigation lands would be maintained for the
22 burrowing owl in perpetuity, all as needed to
23 comply with the Notice of Ruling.
- 24 3. Respondent shall decertify only the portions of the
25 EIR referenced in Paragraphs 1 and 2, above, and
26 prepare a revised environmental analysis,
27 addressing only those two issues, as follows:
28

- 1 a. Prepare an Addendum to the EIR if, based on
2 the further analysis necessary to comply with
3 the ruling, Respondent finds that any of the
4 conditions described in 14 CCR section
5 15162(a)(3) calling for preparation of a
6 subsequent or supplemental EIR do not exist; or
7 b. Prepare a Supplement to the EIR if, based on the
8 further analysis necessary to comply with the
9 ruling, Respondent finds that any of the
10 conditions described in 14 CCR section
11 15162(a)(3) calling for preparation of a
12 subsequent or supplemental EIR exist. If a
13 Supplement is prepared, circulate it for public
14 comment if recirculation is required under 14
15 CCR section 15088.5(a)(1), (2), or (3) with
16 respect to the additional analysis required
17 above.

18 4. Upon consideration of the Addendum or
19 Supplement, the Board of Supervisors of the County
20 of Riverside shall exercise its discretion to
21 determine whether to:

- 22 a. Find that no modifications to any of the Board's
23 project approvals are required based upon the
24 further analysis described in Paragraphs 1 and 2;
25 b. Modify some or all of the project approvals to
26 incorporate changes to the Project or to its
27 conditions of approval or mitigation measures
28

1 based upon the further analysis described in

2 Paragraphs 1 and 2; or

3 c. Rescind some or all of the project approvals

4 based upon the further analysis described in

5 Paragraphs 1 and 2; and

6 **WHEREAS**, the Court did not direct the County to exercise its lawful discretion in any particular
7 way in complying with the Writs; and

8 **WHEREAS**, the Court stayed Project approvals and ordered that no construction of the Project
9 shall commence unless and until the County completes corrective action to address the deficiencies
10 referenced in the Writs and the County has complied with the Writs; and

11 **WHEREAS**, an appeal of the judgment was filed by petitioner Golden State Environmental
12 Justice Alliance (GSEJA) and GSEJA subsequently dismissed its appeal; and

13 **WHEREAS**, on September 15, 2020, the Board decertified the portions of EIR No. 532
14 referenced in the Writs; and

15 **WHEREAS**, all associated Project approvals remained stayed and the certification of the
16 remainder of EIR No. 532 remains in effect; and

17 **WHEREAS**, the County has prepared an Addendum entitled Palo Verde Mesa Solar Project –
18 Addendum to the Environmental Impact Report, dated September 16, 2020 (Addendum), which addresses
19 the issues identified in the Writs; and

20 **WHEREAS**, all applicable procedures of CEQA and Riverside County Rules to Implement
21 CEQA have been followed, and the Addendum is sufficiently detailed so that all of the potentially
22 significant effects of the Project on the environment and measures necessary to avoid or substantially
23 lessen them, as identified in the Writs, have been evaluated, and the Addendum fully addresses the
24 Court's order and the Writs in accordance with CEQA and the above referenced rules; and

25 **WHEREAS**, the matter was duly noticed and heard at a regular meeting of the Board on November
26 3, 2020; now, therefore,

27 **BE IT RESOLVED, FOUND, DETERMINED, AND ORDERED** by the Board of Supervisors
28 of the County of Riverside, in regular session assembled on November 3, 2020 that:

- 1 A. The recitals set forth above are adopted as findings of this Board.
- 2 B. The Board has reviewed and considered the ruling, the Writs, the previously decertified
3 portions of EIR No. 532 as supplemented by the Addendum and all testimony and
4 documentation presented or made available to the Board by staff, the public and affected
5 government agencies in connection with this matter.
- 6 C. This Board adopts the conclusions of the Addendum for the reasons stated in the
7 Addendum, based upon the evidence presented in EIR No. 532 as supplemented by the
8 Addendum and in the record. The previously decertified portions of EIR No. 532, as
9 supplemented by the Addendum, represent the County's independent judgment and
10 analysis.
- 11 D. The deficiencies referenced in the Writs have been adequately addressed by the additional
12 information contained in the Addendum, and the Addendum adds to EIR No. 532 the
13 information required by paragraphs 1 and 2 of the Writs. Among other things, the analysis
14 of the soil contamination impacts referenced in the Writs is made adequate by the
15 Addendum. Mitigation Measure HAZ-1, as modified by the Addendum, is sufficient to
16 reduce soil disturbance contamination impacts to a less than significant level and that
17 conclusion is supported by substantial evidence in the record. Mitigation Measure BIO-6,
18 as modified by the Addendum, is sufficient to reduce impacts to burrowing owl as to the
19 Project site to a less than significant level, and that conclusion is supported by substantial
20 evidence in the record. This Board therefore certifies that the previously decertified portions
21 of EIR No. 532 as supplemented by the Addendum have been completed in compliance with
22 CEQA and the above-referenced Riverside County Rules, and are adequate for the Project,
23 including Conditional Use Permit No. 3684, Public Use Permit No. 916, Ordinance No.
24 664.59, and Development Agreement No. 86.
- 25 E. Pursuant to paragraph 3 of the Writs, this Board has considered the appropriate form of the
26 additional analysis referenced in paragraphs 1 and 2 of the Writ. This Board adopts the
27 conclusions of the Addendum that an Addendum is appropriate based upon the evidence and
28 analysis presented in the Addendum. No conditions described in 14 CCR section 15162(a)(3)

1 calling for preparation of a subsequent of supplemental EIR exist. There is no new information
2 of substantial importance that was not known and could not have been known with the exercise
3 of reasonable diligence at the time EIR No. 532 was certified that shows significant effects not
4 discussed previously, more severe significant effects, or mitigation measures or alternatives
5 the project proponents have declined to adopt. Also, the modifications to Mitigation Measures
6 HAZ-1 and BIO-6 are incorporated into the Mitigation Monitoring and Reporting Program
7 (MMRP), compliance with which is required by the Conditional Use Permit, and therefore the
8 Project proponent must implement the modified Mitigation Measures in order to pursue the
9 Project.

10 F. This Board adopts the modifications to Mitigation Measure HAZ-1, Mitigation Measure
11 BIO-6 and the MMRP proposed in the Addendum, which consist of the marked text set forth
12 in Table B-1 in Appendix B to the Addendum. A copy of Table B-1 is attached as Exhibit A
13 for reference, and the modifications reflected in the marked text are incorporated by reference
14 into this Resolution. This Resolution supplements Resolution No. 2017-168 in that all
15 references in Resolution No. 2017-168 to the EIR, the information in the EIR, the MMRP,
16 Mitigation Measures HAZ-1 and BIO- 6, the conditions of approval of Conditional Use Permit
17 No. 3684, and the record shall be deemed to refer to such items as supplemented by the
18 Addendum and as modified by this Resolution. The corresponding Conditions of Approval
19 of Conditional Use Permit No. 3684 shall also be updated. Accordingly, no other edits are
20 needed to the findings regarding impacts, mitigation measures, alternatives or overriding
21 circumstances set forth in Resolution No. 2017-168.

22 G. Pursuant to paragraph 4 of the Writs, this Board has considered the decertified portions of EIR
23 No. 532 as supplemented by the Addendum, and makes the following determinations
24 regarding whether modifications are required based upon the further analysis described in
25 paragraphs 1 and 2 of the Writs. The Board adopts the conclusions of the Addendum, based
26 upon the analysis and evidence referenced in the Addendum and the following facts and
27 analysis. Conditional Use Permit No. 3684 is modified to the limited extent necessary to
28 incorporate the modifications to Mitigation Measure HAZ-1, Mitigation Measure BIO-6 and

1 the MMRP adopted by this Resolution. Specifically, condition of approval “10.
2 PLANNING. 28 USE – MMRP,” which requires compliance with the MMRP, is deemed to
3 refer to the MMRP as revised by this Resolution. Conditions of approval “60.E HEALTH. 1
4 ENV SITE ASSESSMENT PHASE II” and “60. EPD. 7 BIO-6 BURROWING OWL
5 PROTECTION”, which addressed the subject matters of revised Mitigation Measures HAZ-1
6 and BIO-6, are deleted in favor of the obligation to comply with the MMRP as revised by this
7 Resolution.

8 H. The Project cannot be pursued absent compliance with Conditional Use Permit No. 3684.
9 Accordingly, Public Use Permit No. 916, Ordinance No. 664.59 and Development
10 Agreement No. 86 were adopted without conditions requiring compliance with mitigation
11 measures, and that decision was not invalidated by the Court and the modifications to the
12 Mitigation Measures and the MMRP do not affect those other approvals. This Resolution
13 supplements those other approvals in that all references in those other approvals to the EIR,
14 the information in the EIR, the MMRP, Mitigation Measures HAZ-1 and BIO- 6, the
15 Conditions of Approval of Conditional Use Permit No. 3684, and the record upon which the
16 decision is based shall be deemed to refer to such items as supplemented by the Addendum
17 and as modified by this Resolution. Accordingly, no other edits are required or appropriate
18 to the approvals of Public Use Permit No. 916, Ordinance No. 664.59 or Development
19 Agreement No. 86.

20 I. Rescission of the prior approvals is not required. The Addendum and modifications adopted
21 by this Resolution add information and impose stricter and more robust requirements that were
22 imposed originally, and do not negate the prior conclusions or requirements. Accordingly, the
23 changes can be and are implemented with modifications to the MMRP and Conditional Use
24 Permit No. 3684 that incorporate this additional information and these stricter requirements.

25 **BE IT FURTHER RESOLVED** by the Board of Supervisors that the custodian of the documents
26 upon which this decision is based are the Clerk of the Board of Supervisors and the County Planning
27 Department and that such documents are located at 4080 Lemon Street, Riverside, California.
28



California Department of Fish and Game

Guidance for Burrowing Owl Conservation

14 April 2008

Habitat Conservation Branch, Wildlife Branch, Bay Delta Region
California Department of Fish and Game
Sacramento, California

BACKGROUND

Additional immediate protection is needed for the Burrowing Owl (*Athene cunicularia*), a vulnerable California Bird Species of Special Concern (Gervais et al. 2008) and federal Bird of Conservation Concern (U.S. Fish and Wildlife Service 2002), that was the subject of a listing petition to the State of California Fish and Game Commission in 2003. Most Burrowing Owl populations in California still face the same primary threats they did three decades ago (Gervais et al. 2008). Burrowing Owl population declines continue, primarily caused by habitat loss and control of California ground squirrels (*Spermophilus beecheyi*) and other host burrowers.

Concerted conservation actions are needed to maintain viable burrowing owl populations in California and to help prevent the need to list this species under the state or federal endangered species acts. A comprehensive strategy for its conservation in California is now in progress, which will provide more detailed guidance on measures to protect this species.

Existing legal protection under the California Environmental Quality Act (CEQA), one of the State's principal statutes to address significant environmental impacts, does not substantially contribute to burrowing owl conservation because lead agencies have broad discretion in identifying environmental impacts as significant and, even where they do, significant impacts need only be mitigated to the extent feasible. As a result, lead agencies do not consistently require sufficient or effective habitat mitigation for immediate or cumulative impacts to burrowing owls. Current conservation activities, except under a few approved regional conservation plans, are usually implemented piece-meal, typically at the level of the individual owl, to avoid take. In addition, prohibitions on take of burrowing owls are often circumvented, and due to buried or transitory evidence, are not easily enforced.

Suitable conservation areas that could benefit this species through acquisition and management have yet to be identified in most of the State. All these deficiencies remain obstacles to long-term owl conservation, can lead to local extirpation of resident owl populations, and could cumulatively preclude options for future conservation of this species.



California Department of Fish and Game

PURPOSE OF THIS DOCUMENT

- Provide updated recommendations from the California Department of Fish and Game (Department) to biologists, planners, land managers, and CEQA lead agencies.
- Provide guidance that supersedes and augments or clarifies the Department's Staff Report on Burrowing Owl Mitigation (1995; <http://www.dfg.ca.gov/wildlife/species/docs/burowlmit.pdf>) and the California Burrowing Owl Consortium's Survey Protocol and Mitigation Guidelines (1993, 1997; <http://www.dfg.ca.gov/wildlife/species/docs/boconsortium.pdf>).
- Provide a statewide vision for burrowing owl conservation goals and actions.
- Promote a consistent approach to burrowing owl conservation throughout the State, while allowing local flexibility.

CONSERVATION GOALS FOR THE BURROWING OWL IN CALIFORNIA

- 1) Maintain size and distribution of extant burrowing owl populations (allowing for natural population fluctuations).
- 2) Where possible, increase geographic distribution of burrowing owls into formerly occupied historic range where suitable habitat still exists, or where it can be created or enhanced.
- 3) Increase size of existing burrowing owl populations where possible and appropriate (for example, consider carrying capacity, predator-prey relationships, and conflicts with other species at risk).
- 4) Protect and restore self-sustaining ecosystems or natural communities which do or could potentially support burrowing owls at a landscape scale, and which will require minimal long-term management by humans.
- 5) Remove or ameliorate unnatural causes of burrowing owl population declines (e.g., nest burrow destruction, control of rodent hosts and prey).
- 6) Recover (augment; restore) populations of burrowing owls and their natural dynamics including movement and genetic exchange among populations, such that the species does not require listing and protection under the California Endangered Species Act (CESA) or federal Endangered Species Act (ESA).
- 7) Begin to engage stakeholders, including ranchers; farmers; military bases; local, state, and federal agencies; non-governmental organizations; and scientific research and education communities in burrowing owl protection and habitat management.

GUIDING PRINCIPLES FOR BURROWING OWL CONSERVATION



California Department of Fish and Game

- 1) Use the Precautionary Principle (Noss et al. 1997), by which the alternative of increased conservation is deliberately chosen in order to buffer against incomplete knowledge of burrowing owl ecology and uncertainty about the consequences to burrowing owls of potential impacts, including those that are cumulative.
- 2) Employ basic conservation biology tenets and population-level approaches when determining what constitutes appropriate avoidance, minimization, and "mitigation" for impacts. Include mitigation effectiveness monitoring and reporting, and modify measures based on results.
- 3) Avoid impacts to owls during the burrowing owl breeding season, generally February 1 through August 31.
- 4) Protect/conserv^e owls in wild, semi-natural, and interstitial urban and agricultural habitats (conserv^e is defined here pursuant to FGC 1802 and 2061).
- 5) Protect nest burrows AND *sufficient foraging habitat*. *
- 6) Burrows (or burrow surrogates) are a critical component of burrowing owl habitat throughout the year, as most owls in California are resident year-round and have high burrow and site fidelity.
- 7) Protect auxilliary "satellite" burrows because they contribute to burrowing owl survivorship and natural behavior of owls
- 8) Lands intended for burrowing owl conservation need to be of *sufficient size* to ensure ecological sustainability with minimum long-term maintenance needed by humans (e.g., rely on native grazers, compatible livestock grazing practices, burrow excavation by native animals, and, where feasible, controlled burns)
- 9) Lands intended for burrowing owl conservation should be chosen with regard to the problems caused by the urban-wildland interface, for example, burrow disturbance and destruction by unleashed dogs, human foot and vehicle traffic, predation by cats and dogs and urban-adapted wildlife, including raptors attracted to urban landscapes.
- 10) Habitat compensation, management, monitoring, and reporting should be provided pursuant to CEQA mitigation requirements (CEQA Guidelines; Section 15097).
- 11) Case-by-case impact analyses for CEQA and any other purpose should consider the full extent of owl habitat use (home range) on and off the project site, as well as demographic connectivity among local and regional populations.

* Quantitative prescriptions for the factors highlighted in *italics* will be analyzed during the Burrowing Owl conservation assessment and strategy effort that is in progress, to provide a range of values that are appropriate in different habitats and regions.



California Department of Fish and Game

- 12) Projects impacting owls and owl habitat should mitigate all project-specific and cumulative impacts to nesting, foraging, wintering, dispersal, and migration habitat (i.e., breeding and non-breeding season) under CEQA, to below a level of significance. The standard of 6.5 acres will no longer be used because it does not adequately compensate for habitat loss. Mitigation requirements will be based on the acreage of any suitable habitat disturbed or destroyed, with consideration of number of owls present and significance of the area for all burrowing owl life history stages.
- 13) Conduct any management actions in an adaptive management framework, in order to test alternative hypotheses and learn from monitoring and experimental management.
- 14) Avoid reliance on the use of artificial burrows, except to temporarily attract owls, or where burrow installation is necessary as an integral owl population management tool. Artificial burrow installation must be accompanied by a management plan for the site, and programs for burrow maintenance and effectiveness monitoring. Performance criteria should include site tenacity by owls, yearly successful reproduction by owls, documented fledging by juvenile owls, and colonization by owls from elsewhere.
- 15) Where owls and ground squirrels are not desired, do not disk, grade, mow, or leave debris piles or open pipes ("ecological traps") that could attract them, At the same time consider or adhere to local fire and other ordinances.
- 16) Take advantage of temporary opportunities to conserve burrowing owls while longer-term regional programs and conservation plans are developed.

TOOLS FOR BURROWING OWL CONSERVATION

Legal Protection

Pursuant to California Fish and Game Code (FGC) Section 1801, it is the policy of the state to encourage preservation, conservation, and maintenance of wildlife resources, including perpetuation of all species of wildlife for their intrinsic and ecological values. In addition, pursuant to FGC Section 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species.

Additional legal protection for burrowing owls exists pursuant to the California Fish and Game Code and United States Migratory Bird Treaty Act (MBTA), and additional protection can be provided by CEQA.

CEQA

CEQA requires public agencies in California to mitigate significant environmental impacts to the extent feasible. Project-specific CEQA mitigation is important for Burrowing Owl conservation because most populations exist on privately-owned parcels that, when proposed for development or other activities, may be subject to the environmental review requirements of CEQA.



California Department of Fish and Game

Regional Conservation Plans

Regional multiple species conservation plans offer long-term assurances for conservation of burrowing owls and other covered species at a landscape scale, in exchange for biologically appropriate levels of incidental take defined during plan development. California's Natural Community Conservation Planning (NCCP) Act (FGC §2800 et seq.), which governs such plans at the state level, was designed to conserve species, natural communities, ecosystems, and ecological processes across a jurisdiction or a collection of jurisdictions. Complementary federal Habitat Conservation Plans (HCPs) are governed by the Endangered Species Act (Section 10). Regional conservation plans (and certain other landscape-level conservation and management plans), may provide conservation for unlisted as well as listed species. Because the geographic scope of NCCPs/HCPs may span many hundreds of thousands of acres, they have the potential to play a significant role in conservation of burrowing owls, and grasslands and other habitats.

Take Avoidance

Avoidance of take of individual burrowing owls and their nests is currently mandated under FGC Sections 86, 3503, 3503.5 and 3513.

Because the current operating definition of a nest (as used by the Department and by the U.S. Fish and Wildlife Service under the Migratory Bird Treaty Act) is restricted to the period when eggs or chicks are present, burrows used by owls during the non-breeding season have no legal protection, although direct take of owls is prohibited. The common practice of evicting owls from burrows during the non-breeding season has the potential to depress reproduction, and to increase predation, thermoregulatory stress, energetic costs, and risks posed by having to find and compete for available burrows.

Burrows are an essential ecological requisite for burrowing owls throughout the year. Loss of nest burrows, satellite burrows, breeding concentrations, foraging habitat, dispersal and migration habitat, wintering habitat, habitat linkages and stepping stones, including habitat supporting host burrowers, and other essential habitat attributes, can individually or collectively have significant impacts on burrowing owls. The Department will work with project proponents and lead agencies to develop compensatory mitigation for impacts to burrowing owls.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) implements various treaties and conventions between the U.S. and Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory birds, including the burrowing owl. Under the MBTA, taking, killing, or possessing migratory birds is unlawful as is taking of any parts, nests, or eggs of such birds (16 USC 703). Taking is defined more narrowly under MBTA than under the ESA and includes only the death or injury of individuals of a migratory bird species or their eggs. Take under the MBTA does not include the concepts of harm and harassment as defined by the ESA.



California Department of Fish and Game

Fish and Game Commission Policies

There are already a number of Fish and Game Commission policies (see FGC 2008) that can be applied to burrowing owl conservation. These include policies on: Raptors, Cooperation, Endangered and Threatened Species, Land Use Planning, Management and Utilization of Fish and Wildlife on Federal Lands, Management and Utilization of Fish and Wildlife on Private Lands, and Research. See Attachment B for the content and intent of these policies.

Habitat Protection

Identify and acquire lands (presently occupied or having high potential *suitability*) for long-term owl habitat through conservation easements, purchase, and other mechanisms.

Permanently protect *sufficiently large acreage* of suitable vegetation communities (grassland, scrublands, desert, urban, and compatible agricultural uses) for burrowing owl nesting, foraging, wintering, dispersal, and migration (i.e., during breeding and non-breeding seasons).

Protect appropriate interstitial habitat that is occupied by owls in urban and agricultural landscapes (e.g., urban parks/open space, school campuses, airports, golf-courses, fallow fields and field margins, road shoulders, railroad right-of-ways, levees).

Ensure availability of temporary or permanent "stepping stones" of habitat (Hilty et al. 2006) to attract dispersing or displaced owls and host burrowers from habitats at high risk of destruction to permanently protected habitats.

Identify and secure mitigation and conservation banks for burrowing owls and associated species. In select cases, consider deferred mitigation via developer fees in order to leverage acquisition of conserved lands and to consolidate and enlarge conservation areas.

Habitat Management

Manage protected lands for natural ecological components and processes, including grazing herbivores, host burrowers (ground squirrels, badgers, foxes, coyotes, etc.), suitable prey, and natural levels of predation on owls. Facilitate natural processes to minimize the effort and cost of active management required.

Burrows excavated by host burrowers are essential for burrowing owl survival and reproduction, and some host species, for example, ground squirrels, provide owls early warning of predator presence. Therefore, conserve and restore self-sustaining populations of host burrowers by reducing, limiting, or prohibiting lethal rodent control measures, by maximizing opportunities for host burrower population connectivity and colonization, and by ensuring food availability for host burrowers.



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Where owls are not present, employ temporary enhancement techniques (artificial burrows, perches, burrowing owl decoys) to attract burrowing owls to lands permanently conserved on their behalf. Avoid reliance on the use of artificial burrows, except to temporarily attract owls until natural burrows are established. Consider carrying capacity, territoriality, attracting predators, alteration of reproductive behaviors, and other factors, during development of a feasibility assessment for the potential habitat enhancement project. If owls currently occupy a site, or occupy nearby lands, evaluation of the above factors is particularly important.

Host burrowers, for example, ground squirrels, can often be attracted to a site by reducing and maintaining vegetation height to a level that is generally low or sparse, providing limited ground disturbance and cover such as rock piles, and adequate forage plants.

Temporary artificial burrows may also be useful where needed to satisfy mitigation requirements for short-term project impacts (for example, levee maintenance).

In limited circumstances, artificial burrow installation may also be recommended where there is a lack of host burrowers and natural burrows, where ground squirrels are controlled to protect infrastructure or landscaping (levees, golf courses, sport fields), or to limit owl occupancy to constrained areas (for example, at airports where ground squirrels are not desired).

Artificial burrow installation must be accompanied by a management plan for the site, and programs for burrow maintenance and effectiveness monitoring. Performance criteria should include site tenacity by owls, yearly successful reproduction by owls, documented fledging by juvenile owls, and colonization by owls from elsewhere.

Maintain *appropriate vegetation height and density* (especially in immediate proximity of burrows) by mowing/grazing. (Appropriate vegetation structure varies across sites and vegetation types, but should generally be short (usually less than 10 inches) and/or sparse, except where perch sites are available and used by owls.)

Employ experimental prescribed fires (controlled, at a small scale) to manage *appropriate vegetation structure* (try to learn more about compatibility of prescribed fires and owl persistence).

While local ordinances may require fire prevention through vegetation management, activities like disking, mowing, and grading during the breeding season can result in take of burrowing owls and collapse of burrows, causing nest destruction. Timing, extent, and configuration of vegetation reduction or ground disturbance should be carefully considered during the breeding season in order to avoid take, while still accomplishing necessary vegetation management that benefits owls. Areas to be modified should first be surveyed for burrowing owl presence and heavy equipment operators should avoid occupied and satellite burrows.

Promote *adequate natural prey distribution and abundance*, especially proximate to occupied burrows, during the breeding season.



California Department of Fish and Game

Population-Level Information on Spatial Distribution and Abundance

Document and publicize burrowing owl distribution and abundance in order to have a better basis for conservation of owls through land use planning decisions and for minimization of cumulative impacts.

Contribute to and use the Department's California Natural Diversity Data Base (CNDDDB) (<http://www.dfg.ca.gov/bdb/html/cnddb.html>) and BIOS (<http://bios.dfg.ca.gov/whatis.asp>) systems for storing and accessing information on spatial distribution of burrowing owls.

Conduct and promote *periodic* statewide burrowing owl surveys to sample owl distribution across and between ecoregions and to provide time series data for evaluation of population trends. Stakeholders could assist with these surveys.

Conduct and promote regional and local inventories to document locations of burrowing owls, in order to prioritize owl habitat for acquisition or other protection measures, to predict which populations are most at risk, and to more accurately assess population size and reproductive status. Stakeholders could assist in these inventories.

Determine Burrowing Owl Presence

Breeding Season Surveys

Standardized surveys are necessary to determine presence (or presumed absence) of burrowing owls for the purposes of inventory, monitoring, avoidance of take, and determining appropriate mitigation. In California the breeding season begins as early as February 1 and continues through August 31.

The California Burrowing Owl Consortium (Consortium) survey protocol specifies a multi-phase approach, which is recommended in order to adequately evaluate burrowing owl use of an area and to inform the CEQA process. Phase 1 of the protocol begins with a habitat assessment that recognizes that burrows are the essential component of burrowing owl habitat and that burrowing owls may use man-made structures as burrows (see Page 1 of Consortium guidelines). If suitable habitat (appropriate vegetation and burrow(s) or burrow surrogate(s)) is present, then a Phase 2 intensive burrow survey is necessary even if owl sign is not present during the habitat assessment phase. Owl sign includes molted feathers, cast pellets, prey remains, egg shell fragments or excrement at or near burrow entrance or perch site. During the intensive burrow survey phase, burrow concentration areas should be mapped. Phase 3 of the protocol requires 4 survey visits whether or not owl sign is observed during Phase 2. The Department recommends that the Consortium survey protocol for breeding season surveys be adhered to (4 survey visits spread evenly (roughly every 3 weeks) during the peak of the breeding season, from April 15-July 15) until enough information is available to warrant their revision or until new detailed protocols are developed as part the Conservation Strategy. The habitat assessment, intensive burrow surveys and burrowing owl surveys should include the area within 150 meters of the project boundaries (approximately 500 feet).



California Department of Fish and Game

Non-Breeding Season Surveys (including Winter)

Surveys during the non-breeding season (September 1- January 31) are recommended by the Department but are not generally required because burrowing owls are much more difficult to detect during the non-breeding season, and the number or type of surveys that would be needed to detect presence then has not been studied or quantified. Owls detected during non-breeding season surveys may be year-round residents or their young from the previous nesting season, pre-breeding territorial adults, winter residents, dispersing juveniles, migrants, or new colonizers. Negative results during any non-breeding season surveys are not conclusive proof that owls do not use the site. Because of this complication, the Department recommends breeding season surveys as the first step, but project applicants should consult with the Department if burrowing owls have been documented on the project site during the non-breeding season.

Avoid Impacts (destruction, disturbance) to Individual Owls

Pre-Construction Surveys for Owl Presence

Pre-construction surveys (usually initiated during the non-breeding season) are necessary for assessing owl presence at a site within a short time period before site modification is scheduled to begin. Pre-construction surveys are supplemental to the existing breeding season survey protocol (4 survey visits spread evenly during the peak of the breeding season, from April 15-July 15), and should not be used in place of it without consulting with the Department in advance. The pre-construction surveys are intended to document if colonizing owls have recently moved onto the site, or if burrow locations of resident owls have changed, or if young of the year are still present and have not yet fledged or dispersed. Because any one or all of these events may have occurred on site since the breeding season (protocol) surveys were completed, it is important to also complete the pre-construction surveys in order to avoid direct take of owls or their nests and to design proper minimization and mitigation measures (e.g., document number and reproductive status of resident owls and location of satellite burrows, establish buffer zones and equipment/personnel travel routes and work/storage areas, unequivocally evict owls and ground squirrels from burrows).

Initial pre-construction surveys should be conducted outside of the owl breeding season (from February 1-August 31) but as close as possible to the date that ground-disturbing activities will begin, to avoid the problem of waiting until March or April when the project would be delayed if owls are detected. Generally, initial pre-construction surveys should be conducted no more than 30 days prior to ground-disturbing activities (for example, diking, clearing, grubbing, grading). The time lapse between surveys and site disturbance should be as short as possible and will be determined by DFG based on specific project conditions but generally should not exceed 7 days. Additional surveys are necessary when the initial disturbance is followed by periods of inactivity or the development is phased spatially and/or temporally over the project area.

The number of pre-construction surveys necessary to accurately detect current owl presence and owl locations will be driven by a number of interacting criteria such as: 1) the time period that has elapsed since the last breeding survey was completed; 2) height and density of vegetation that may obscure owl presence; 3) topographical conditions that may obscure owl presence; 4) time of year (e.g., in the



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winter owls are more cryptic and spend more time in their burrows); 5) time of day and weather conditions when surveys are conducted; 6) long-term history of owl use at the site; 7) size of the parcel and degree of coverage by walking or by intensive observations via spotting scope, and 8) tolerance of owls to human presence. Generally, at a minimum, 4 survey visits on at least 4 separate days will be necessary, especially given the cryptic nature of this species during the non-breeding season.

Biologists conducting pre-construction surveys should expend enough effort, based on the above criteria, to assure with a high degree of certainty that take of owls will not occur once site modification and grading activities begin. The full extent of pre-construction survey effort must be described and mapped in detail (e.g., dates, time periods, area(s) covered, and methods employed) in a biological report. Current vegetation and topographical conditions and their corresponding effect on visibility should also be described. The report should be submitted to the Department for review.

The Department's concurrence with the pre-construction survey results will depend on the level of detail that is provided in the Consultant's biological report that summarizes the methods, results, and level of survey effort. The Department has a responsibility to give input regarding measures that would result in avoiding take and minimizing unavoidable impacts to owls.

Buffer Zones Around Occupied Burrows (Year-Round)

Buffer zones to protect burrowing owls from direct disturbance should be implemented pursuant to the Consortium Guidelines and the Department's Staff Report (1995) until the comprehensive conservation strategy is completed. Generally, the buffers recommended in these reports for protecting burrowing owls from disturbance is 75 meters (250 feet) from occupied burrows during the breeding season and 50 meters (160 feet) from occupied burrows during the non-breeding season. Consultation with the Department may result in site-specific buffer specifications, on a case-by-case basis. For example, if the level and duration of disturbance will be brief and tolerance of human activity by individual owls at the site is high, then buffer zones may be smaller in size.

In addition, because burrowing owls in many study areas have been documented to forage primarily within 600 m of their nests, extensive use of harmful pesticides within 600 m of occupied burrows should be avoided (Gervais et al. 2003). Data suggest that herbicides may not be as much of a threat to burrowing owl reproductive success, and may even benefit them due to the resulting reduction of vegetation cover.

Translocation of Burrowing Owls (also known as Active Relocation)

Translocation is the deliberate movement by humans of individual plants and animals from one location to another. It includes, but is not limited to, species introductions and re-introductions, population supplementation, fish and game stocking and re-stocking, nuisance animal removal, rehabilitated wildlife relocation, mitigation, and habitat creation.

The Department does not generally support translocation of owls as a take-avoidance or management tool or as mitigation at this time, as it is still experimental and there is a lack of demonstrated success for burrowing owls (see Klute et al. 2003, "Reintroduction and Relocation" section). Success should be measured by long term population persistence and population growth at



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the release site, not by short-term site tenacity post-release, or breeding “success” for one year or intermittently thereafter.

However, for scientific purposes, the Department may consider translocation if it is a research project, or potentially as a tool in regional conservation plans, but only if the following steps are in place, with appropriate Department permits. Many of these considerations are described in the IUCN Position Statement on Translocation of Living Organisms at <http://www.iucn.org/themes/ssc/publications/policy/transe.htm> and the IUCN/SSC Guidelines for Re-Introductions at <http://www.iucn.org/themes/ssc/publications/policy/reinte.htm>.

- 1) Conduct a biological assessment that describes habitat suitability and carrying capacity for burrowing owls. A biological report must be produced that maps and describes the habitat on site, and ranks habitat suitability for a) nesting and foraging based on scientific studies of burrowing owl habitat requirements, and b) potential foraging range based on surrounding land uses.
- 2) Legally secure the release site with conservation easement or similar protective measures before translocation is attempted.
- 3) An approved management plan specific to burrowing owls and other sensitive resources must be prepared for the release site prior to translocation. Measures must be included in the plan that describe what steps will be taken should burrowing owls prove to be impacting other sensitive, threatened or endangered species, and what steps will be taken if the translocation fails. Management plans should be created and implemented in an adaptive framework..
- 4) Avoid significant impacts to any recipient population of burrowing owls, if present. Consider carrying capacity, territoriality, attracting predators, alteration of reproductive behaviors, and other factors, during development of a feasibility assessment for the potential translocation project.
- 5) In order to ensure the potential for naturally-occurring genetic processes, and permit local adaptation, owls may not be translocated across ecological boundaries or vast distances.
- 6) Significant impacts to sensitive, Threatened, and Endangered species must be avoided or minimized at the release site.
- 7) All necessary CEQA or NEPA procedures must be followed by the appropriate lead agency prior to initiating translocation, in consultation with the Department and US Fish and Wildlife Service. The project impacting owls and the translocation project itself are each subject to the requirements of disclosure of potentially significant environmental effects and any necessary mitigation.
- 8) There must be sufficient and secured funding (e.g., endowments) in place to cover scientific monitoring and reporting, adaptive management, habitat maintenance, and other measures to assure, to the best of our ability, long term persistence of burrowing owls at the release site, and to determine the success or failure of the attempted mitigation.



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- 9) Qualified biologists must be secured under contract or via some other means to conduct the necessary monitoring. Sufficient funding must exist for full biological reporting of results in standard scientific format. Reports must be submitted to the Department and US Fish and Wildlife Service.

Exclusion of Owls From Occupied Burrows (Passive Relocation and Eviction)

Exclusion of owls from burrows during the non-breeding season, usually by installation of one-way doors, has been used to avoid take and allow for development or other projects to proceed as approved under CEQA. It has been commonly used as a take avoidance measure, but the long-term demographic consequences of this technique have not been evaluated, and the fate of evicted owls has not been systematically studied. Because owls are dependent on burrows for survival and reproduction, excluding them from nesting, roosting, and satellite burrows on a project site may actually lead to direct or indirect take. For these reasons, in order to avoid or minimize take, owls must be provided, and must be documented to actually use, compensatory burrows (natural or artificial) in proximity (generally within 100 meters) to the exclusion site.

Exclusion from burrows, when necessary (as approved by the Department), must be conducted during the non-breeding season (generally September 1-January 31). It requires constant monitoring and exclusion of owls and squirrels, and removal of any surrogate burrows (including open pipes or debris piles that are potential owl refugia) at the project site. The impacted site should continue to be made inhospitable to burrowing owls and fossorial mammals (by allowing vegetation to grow tall, heavy disking, installation of one-way doors in burrow entrances, or immediate and continuous grading) until development is complete. Monitoring of the site must be conducted to determine if owls or host burrowers re-inhabit the site during any phase of project development.

Existing practices for excluding owls usually employ only portions of the methods described above, or employ the methods inadequately, and therefore have a higher likelihood of resulting in take. For example, "passive relocation" efforts typically provide alternative (i.e., artificial) nearby burrows for the owls that will be displaced, but do not confirm before burrow destruction that new burrows are being used. "Eviction" is exclusion from the burrow without providing alternate burrows that the displaced owls can find.

For the purposes of this guidance document, compensatory burrows and foraging habitat should be provided as near as possible to the impacted site, and confirmed occupation by owls of a natural or artificial burrow on adjacent or nearby land (generally within 100 meters, or as near as possible to the impacted site), must be documented, before owls are excluded or burrows are destroyed. The time required for an owl to find and adopt a substitute burrow on nearby land may vary between a few hours and many days. The Department will work with applicants to develop a site-specific plan for owl exclusion when exclusion is absolutely necessary, and will provide guidance on possible color-marking of owls and making the compensatory habitat attractive to owls (e.g., ensure multiple burrows are available, vegetation is short, perches are present, prey is abundant, and human disturbance is limited; and take actions to minimize predation on burrowing owls). The Department will also provide guidance regarding potential alternative mitigation measures if the "passive relocation" is not successful.



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In many cases, habitat adjacent to or near sites where owls are excluded will not provide for conservation of burrowing owls in perpetuity nor will it adequately mitigate for project impacts (due to zoning, surrounding land uses, fragmentation, or poor quality habitat). In such cases, acquisition of compensatory habitat may have to occur farther away from the project site, but must be approved by the Department.

However, under some circumstances, small adjacent or nearby parcels may serve as valuable "stepping stone" habitats (possibly temporary or "interim") to larger permanently preserved conservation areas. For stepping stone habitat areas, management and monitoring must be secured for the interim period. Such areas should be tied to an agreement that ensures additional conservation land acquisition elsewhere for permanent protection of owls, and should include an adequately funded Department-approved plan for management and monitoring in perpetuity. Mitigation habitat should be protected for the long-term by acquisition in fee title or conservation easement.

Compensatory Mitigation for Impacts

Where avoidance and minimization measures are infeasible, the design of mitigation measures for owls should consider the local, regional, and larger-scale environmental context in which the habitat loss or alteration is occurring. Mitigation required must be roughly proportional to level of impacts (including cumulative impacts) in accordance with the provisions of CEQA (Guidelines Sections 15126.4(a)(4)(B), 15064, 15065, and 15355). Mitigation measures must be specific, feasible actions that will actually improve environmental conditions, in order for them to be considered adequate mitigation.

The rate at which direct impacts on owls and their habitat have commonly been expected to be compensated for under CEQA (6.5 acres of land per single owl or pair, pursuant to the Department's 1995 Staff Report) is not based on the amount of habitat known to be required by owls, but rather on a minimal buffer area thought to be necessary around a burrow to avoid disturbance from construction activities. Therefore, this standard of 6.5 acres will no longer be used because it does not adequately compensate for habitat loss. Instead, projects impacting owls and owl habitat should mitigate all significant impacts to nesting, foraging, wintering, and dispersal habitat (i.e., during breeding and non-breeding seasons) and cumulative impacts under CEQA, to below a level of significance.

Mitigation requirements should be based on the number of acres of all suitable habitat disturbed or destroyed, with consideration of number of owls present, duration of occupancy, and significance of the area for all burrowing owl life history stages. Suitable habitat generally includes, but is not limited to, short or sparse vegetation (at least at some time of year), presence of burrows, burrow surrogates or presence of fossorial mammal dens, well-drained soils, and abundant and available prey,

Mitigation requirements will be based on site conditions assumed to be extant prior to any recent site modification. If suitable habitat is destroyed prior to adequate burrowing owl surveys, the Department may assume owls to have been present, and mitigation should be required by the lead agency in consultation with the Department. If burrowing owls have been documented to occupy burrows at the



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project site at any time during the previous three years, the site should be considered occupied by owls and mitigation should be required.

Projects that impact either breeding and/or non-breeding habitat affect owl home range size and spatial configuration, and could negatively affect burrowing owl population persistence, increase energetic costs, lower reproductive success, increase vulnerability to predation, and decrease the chance of procuring a mate.

Foraging habitat is essential to burrowing owl persistence. Mitigation for impacts to burrowing owl foraging habitat within home ranges should be required based on site-specific evaluation of existing land use patterns, prey availability, and other ecological factors. Useful as a rough guide to evaluating project impacts and appropriate mitigation for burrowing owls, adult male burrowing owl home ranges have been documented (calculated by minimum convex polygon) to comprise anywhere from 280 acres in intensively irrigated agroecosystems in Imperial Valley (Rosenberg and Haley 2004) to 450 acres in mixed agricultural lands at Lemoore Naval Air Station, CA (Gervais et al. 2003), to 600 acres in pasture in Saskatchewan, Canada (Haug and Oliphant 1990). But owl home ranges may be much larger, perhaps by an order of magnitude, in non-irrigated grasslands such as at Carrizo Plain, California (Rosenberg, pers. comm.), based on telemetry studies and distribution of nests. Because of the larger owl home ranges and more difficult access for telemetry studies in these ecosystems, home range size is not well understood (Rosenberg, pers. comm.) In general, burrowing owls in many study areas have been documented to forage primarily within 600 m of their nests (within approximately 300 acres, based on a circle with a 600 m radius) during the breeding season (Gervais et al., 2003, Haug and Oliphant 1990, Rosenberg and Haley 2004).

Any project impacting burrowing owls or owl habitat should provide compensation, based on the best available scientific information provided above, that is roughly proportional to the impacts of the project (CEQA Guidelines 15126.4(a)(4)(B)).

There are a number of ways to assess the amount of mitigation/compensation needed to offset impacts to burrowing owls and their habitat. As for other special status species, mitigation recommendations should be based on the function and value of habitat being impacted and conserved. For burrowing owls, essential habitat includes breeding, foraging, wintering, and dispersal habitat.

Impacts to burrowing owl habitat will be compensated through permanent conservation and management of habitat whose attributes are comparable to or better than those of the impact area. Mitigation should be based on a comparison of the attributes of the impacted and conserved lands and the level of effective enhancement on the conserved lands, including enhancement of reproductive capacity, enhancement or expansion of breeding areas and dispersal opportunities, and removal or control of population stressors.

For each project an assessment and comparison of attributes of the impacted area and the conservation area is necessary. Some of the attributes to consider include the following: quality of habitat being impacted or conserved; density of burrowing owls in impacted and conserved habitat; value of impacted or conserved habitat to the species range-wide.



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Spatial assessments should consider the following: acreage being lost; fragmentation/edge being created; distance to other suitable habitat; additional habitat degradation.

Temporal assessments should consider the following: the amount of time the habitat will be lost to the species and the effect of that loss on essential behaviors or life history requirements of the species.

Cumulative/indirect effect assessments should consider the following: the project's proportional share of reasonably foreseeable impacts on burrowing owls that are caused by that project, or in combination with other projects having impacts on burrowing owls.

Mitigation should be based on the assumption that the acquired lands do or will provide equal or superior habitat value compared to the impacted lands. This will likely require habitat enhancement and long-term habitat management. These activities will be crucial when compensatory habitat is not currently occupied by burrowing owls.

Where a lead agency under CEQA has agreed to mitigation recommended by the Department, habitat should not be altered or destroyed, and owls should not be excluded from burrows, until the mitigation lands have been legally secured, are managed for the benefit of burrowing owls according to Department-approved management, monitoring and reporting plans, and the endowment or other long-term funding mechanism is in place.

These guidelines will be revised as new information becomes available, and as the statewide conservation strategy for the burrowing owl is implemented. The conservation strategy will provide more detailed quantitative recommendations and research ideas than were possible to give here.



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Attachment A

Burrowing Owl Legal Protection in California

CALIFORNIA FISH AND GAME CODE SECTIONS 1801-1802 (2008)

1801. It is hereby declared to be the policy of the state to encourage the preservation, conservation, and maintenance of wildlife resources under the jurisdiction and influence of the state. This policy shall include the following objectives:

(a) To maintain sufficient populations of all species of wildlife and the habitat necessary to achieve the objectives stated in subdivisions (b), (c), and (d).

(b) To provide for the beneficial use and enjoyment of wildlife by all citizens of the state.

(c) To perpetuate all species of wildlife for their intrinsic and ecological values, as well as for their direct benefits to all persons.

(d) To provide for aesthetic, educational, and nonappropriative uses of the various wildlife species.

(e) To maintain diversified recreational uses of wildlife, including the sport of hunting, as proper uses of certain designated species of wildlife, subject to regulations consistent with the maintenance of healthy, viable wildlife resources, the public safety, and a quality outdoor experience.

(f) To provide for economic contributions to the citizens of the state, through the recognition that wildlife is a renewable resource of the land by which economic return can accrue to the citizens of the state, individually and collectively, through regulated management. Such management shall be consistent with the maintenance of healthy and thriving wildlife resources and the public ownership status of the wildlife resources.

(g) To alleviate economic losses or public health or safety problems caused by wildlife to the people of the state either individually or collectively. Such resolution shall be in a manner designed to bring the problem within tolerable limits consistent with economic and public health considerations and the objectives stated in subdivisions (a), (b) and (c).

(h) It is not intended that this policy shall provide any power to regulate natural resources or commercial or other activities connected therewith, except as specifically provided by the Legislature.

1802. The department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. The department, as trustee for fish and wildlife resources, shall consult with lead and responsible agencies and shall provide, as available, the requisite biological expertise to review and comment upon environmental documents and impacts arising from project activities, as those terms are used in the California Environmental Protection Act (Division 13 (commencing with Section 21000) of the Public Resources Code).



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CALIFORNIA FISH AND GAME CODE SECTIONS 2800-2835

NATURAL COMMUNITY CONSERVATION PLANNING ACT

(Repealed and Added by Statutes 2002, Amended by Statutes 2003)

2800. This chapter shall be known, and may be cited, as the **Natural Community Conservation Planning Act**.

2801. The Legislature finds and declares all of the following:

(a) The continuing population growth in California will result in increasing demands for dwindling natural resources and result in the continuing decline of the state's wildlife.

(b) There is a need for broad-based planning to provide for effective protection and conservation of the state's wildlife heritage while continuing to allow appropriate development and growth.

(c) Natural community conservation planning is an effective tool in protecting California's natural diversity while reducing conflicts between protection of the state's wildlife heritage and reasonable use of natural resources for economic development.

(d) Natural community conservation planning promotes coordination and cooperation among public agencies, landowners, and other private interests, provides a mechanism by which landowners and development proponents can effectively address cumulative impact concerns, promotes conservation of unfragmented habitat areas, promotes multispecies and multihabitat management and conservation, provides one option for identifying and ensuring appropriate mitigation that is roughly proportional to impacts on fish and wildlife, and promotes the conservation of broad-based natural communities and species diversity.

(e) Natural community conservation planning can provide for efficient use and protection of natural and economic resources while promoting greater sensitivity to important elements of the state's critical natural diversity.

(f) Natural community conservation planning is a voluntary and effective planning process that can facilitate early coordination to protect the interests of the state, the federal government, and local public agencies, landowners, and other private parties.

(g) Natural community conservation planning is a mechanism that can provide an early planning framework for proposed development projects within the planning area in order to avoid, minimize, and compensate for project impacts to wildlife.

(h) Natural community conservation planning is consistent with, and will support, the fish and wildlife management activities of the department in its role as the trustee for fish and wildlife within the state.

(i) The purpose of natural community conservation planning is to sustain and restore those species and their habitat identified by the department that are necessary to maintain the continued viability of those biological communities impacted by human changes to the landscape.

(j) Natural community conservation planning is a cooperative process that often involves local, state, and federal agencies and the public, including landowners within the plan area. The process should encourage the active participation and support of landowners and others in the conservation and stewardship of natural resources in the plan area during plan development using appropriate measures, including incentives.



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2802. The Legislature further finds and declares that it is the policy of the state to conserve, protect, restore, and enhance natural communities. It is the intent of the Legislature to acquire a fee or less than fee interest in lands consistent with approved natural community conservation plans and to provide assistance with the implementation of those plans.

OTHER CALIFORNIA FISH AND GAME CODE SECTIONS

86. "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

3503. It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto.

3503.5. It is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto.

3513. It is unlawful to take or possess any migratory nongame bird as designated in the Migratory Bird Treaty Act or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act.

CALIFORNIA CODE OF REGULATIONS

TITLE 14. NATURAL RESOURCES DIVISION

1. FISH AND GAME COMMISSION - DEPARTMENT OF FISH AND GAME SUBDIVISION

2. GAME AND FURBEARERS

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

251.1. Harassment of Animals.

Except as otherwise authorized in these regulations or in the Fish and Game Code, no person shall harass, herd or drive any game or nongame bird or mammal or furbearing mammal. For the purposes of this section, harass is defined as an intentional act which disrupts an animal's normal behavior patterns, which includes, but is not limited to, breeding, feeding or sheltering. This section does not apply to a landowner or tenant who drives or herds birds or mammals for the purpose of preventing damage to private or public property, including aquaculture and agriculture crops.



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Attachment B

Policies Adopted by the California Fish and Game Commission Pursuant to Section 703 of the Fish and Game Code

RAPTORS

It is the policy of the Fish and Game Commission to:

I. Recognize that raptors, including vultures, hawks, eagles, falcons, kites, ospreys and owls, are part of California's native fauna, are integral to their ecosystems, and have intrinsic, ecological, scientific, educational, economic and recreational values.

II. It is the intent of the Commission to insure that raptor populations and their habitats shall be identified, monitored, maintained, restored and enhanced through research, management and protection by the Department and to insure that the utilization of or impacts to any population of raptor species will not contribute to its depletion in the wild.

In instances where depredation by raptors occurs, reasonable measures shall be taken by the landowner to protect his/her property before permission may be obtained to take depredating animals as authorized by federal law. However, taking of endangered or threatened species and the indiscriminate take of raptors shall not be permitted.

The Commission recognizes falconry, as authorized in the Fish and Game Code, as a legitimate use of this wildlife resource. The Commission recognizes that captive raptor breeding programs may be an important management tool in the re-establishment of endangered or threatened species in the wild.

Species found to be endangered or threatened shall receive maximum protection and management effort to ensure their survival.

(Amended 12/3/93)

COOPERATION

It is the policy of the Fish and Game Commission to:

The Commission, its staff, and the Department shall cooperate with local, state and federal agencies and with all interested persons, groups or organizations in every way to further the aims and purposes of fish and game conservation, preservation, propagation, protection, management, and administration. To this end, agreements may be entered into with such agencies, groups or persons when authorized by law.



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ENDANGERED AND THREATENED SPECIES

It is the policy of the Fish and Game Commission to:

Protect and preserve all native species of fishes, amphibians, reptiles, birds, mammals, invertebrates and plants, and their habitats, threatened with extinction; or those experiencing a significant decline which, if not halted, would lead to a threatened or endangered designation. The Department will work with all interested persons, agencies and organizations to protect and preserve such sensitive resources and their habitats.

LAND USE PLANNING

It is the policy of the Fish and Game Commission that:

The preservation, protection and restoration of fish and wildlife resources within the State is of significant public interest and is inseparable from the need to acquire, preserve, protect and restore fish and wildlife habitat to the highest possible level, and to maintain in a state of high productivity those areas that can be most successfully used to sustain fish and wildlife and which will provide appropriate consumptive and nonconsumptive public use. To carry out these purposes, it is essential that a comprehensive program be implemented by the Department to assure that there will be close coordination with state, federal and local planning agencies, including county boards of supervisors and other decision-making entities in the formulation and implementation of any plans including, but not limited to, county general plans and any modifications to such plans, which may impact fish or wildlife.

I. Commensurate with this policy, the Commission recognizes that:

A. The land resources of the state provide an essential habitat component necessary for the annual renewability and well-being of the state's fish and wildlife resources;

B. The land resources are a limited resource subject to increasing demands;

C. Conservation, efficient planning and implementation of various land uses are necessary to meet the competing needs of urban communities, industry, agriculture, recreation, and fish and wildlife; and

D. There is a need for the Department to provide timely consultation with Federal, State and local governments and agencies on land use planning and projects with a view toward resolving conflicts with the Department management plans, programs and other responsibilities.

E. Locally developed regional landscape conservation planning is a forward-looking method which can provide early resolution of land use/wildlife resource protection conflicts and lead to the



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preservation of essential wildlife habitat while allowing for appropriate growth and economic development.

II. To provide maximum protection and enhancement of fish and wildlife, the Department shall:

A. Promote the development of regional conservation planning at the ecosystem level through active participation in the local development of regional Natural Community Conservation Planning (NCCP) and other forward-looking multiple habitat conservation planning efforts.

B. Review, coordinate and provide comments and recommendations on federal, state, local general plans, special plans and proposed projects as appropriate, including the conservation and land use elements adopted by local government pursuant to provisions of Section 65300 et seq., of the Government Code for the purpose of determining the consistency of such plans with Commission policies, and the goals and objectives of the Department's management plans, programs and other responsibilities for the state's fish and wildlife resources. An initial review of local general plans will be completed by January 1986;

C. Carry out subsequent reviews of general and special plans and proposed projects and provide appropriate comments and recommendations to the affected federal, state and local government or agency, as needed to assure such plans remain consistent with the Commission's policies and the Department's management plans, programs and other responsibilities;

D. Notify the Commission prior to adoption, if possible, but as soon as feasible, when a federal, state or local general or special plan, or a proposed project authorized by such a plan, is determined to be in conflict with Commission policy or the Department's management plans and programs, and would have a significant adverse impact on fish or wildlife resources. In the case of local agency plans or special projects where changes are made late in the review and comment period or at an adoption hearing, notification of the Commission will be within 30 days following the receipt by the Department of the text of the approved plan or project;

E. Provide to the Commission as soon as feasible, the Department's remedial action or actions for responding to such findings and determinations or the Department's reasons for finding that no remedial action is necessary. In the case of local agency plans or special projects, notification of the Commission will be within 30 days following the receipt by the Department of the text of the approved plan or project;

F. Participate in the local land use planning process and project review implemented in connection with the requirements of Section 21,000, et seq., of the Public Resources Code, for the purpose of conserving and protecting fish or wildlife habitat consistent with the Department's management plans, programs and other responsibilities;

G. Oppose the adoption of plans or portions of plans for land use or approval of proposed projects if, after following diligent efforts to resolve issues affecting fish and wildlife resources, the Department finds that such actions are not consistent with the Department's management plans, programs and other responsibilities and will result in significant losses to fish and wildlife resources.



California Department of Fish and Game

MANAGEMENT AND UTILIZATION OF FISH AND WILDLIFE ON FEDERAL LANDS

It is the policy of the Fish and Game Commission that:

The Department manage and protect all fish and wildlife and threatened or endangered native plants within the state's jurisdiction on lands administered by the federal government in accordance with the laws of this state and regulations adopted pursuant thereto. This policy will not extend to lands over which the state has ceded exclusive jurisdiction nor to the right of the federal government to manage habitat and control access in its proprietary capacity. Management and protection of migratory fish and wildlife will be coordinated between the Department and the federal government on all lands under federal jurisdiction, if appropriate. It is recognized that the federal government has the right under treaty to regulate migratory, endangered and threatened species, and marine mammals under the appropriate Federal Statutes.

MANAGEMENT AND UTILIZATION OF FISH AND WILDLIFE ON PRIVATE LANDS

It is the policy of the Fish and Game Commission that:

I. Program Assistance

The owners or tenants of privately owned lands shall be actively encouraged to propagate, conserve, and promote the wise use of fish and wildlife populations on their lands, consistent with other reasonable uses. The Department shall, whenever possible, provide interested persons with guidance and information on programs for developing and employing management techniques to effect such purposes and which will protect and enhance native wildlife or vegetation, even though access to such private lands is subject to the owner's or tenant's control.

The Department, before processing any application for a license for a new Private Lands Wildlife Habitat Enhancement and Management Area (herein referred to as a Private Wildlife Management Area), shall determine that:

(a) The applicant has sent a copy of the application, by certified mail, to each adjoining landowner; and

(b) The applicant has published a notice in a paper of general circulation in the area affected. Such notice shall include: the applicant's name; the name of the Private Wildlife Management Area; the total acreage and its location by county, section, township, and range; the species to be taken; and the proposed seasons. That notice shall also specify that comments regarding the application should be sent to the Department of Fish and Game, Wildlife Management Division, 1416 Ninth Street, Sacramento, California 95814, within 15 days of the notice publication date.



California Department of Fish and Game

RESEARCH

It is the policy of the Fish and Game Commission that:

I. Research, including the investigation of disease, shall be performed to provide scientific and management data necessary to promote the protection, propagation, conservation, management or administration of fish and wildlife resources of this state when such data is not available by other means.

II. Whenever possible and advantageous, the services of the University of California or other academic or research institutions, or federal, state or local agencies shall be used.

III. The Department shall review the following information, which must be clearly stated in any proposed research programs: (a) goals and objectives of proposed research, including benefits to be derived from such research; (b) pertinent background information, including a literature review which supports this research; (c) experimental design, including methods of data collection and analysis; (d) estimated cost of program; (e) its estimated duration; and (f) how results will be presented to the Department. The provisions of this paragraph shall not extend to emergency investigations of disease.

IV. The Department shall report regularly to the Commission on the status of major research programs in progress.

(Amended 6/16/94)

BURROWING OWL SURVEY PROTOCOL
AND MITIGATION GUIDELINES

Prepared by:

The California Burrowing Owl Consortium

April 1993

INTRODUCTION

The California Burrowing Owl Consortium developed the following Survey Protocol and Mitigation Guidelines to meet the need for uniform standards when surveying burrowing owl (*Speotyto cunicularia*) populations and evaluating impacts from development projects. The California Burrowing Owl Consortium is a group of biologists in the San Francisco Bay area who are interested in burrowing owl conservation. The following survey protocol and mitigation guidelines were prepared by the Consortium's Mitigation Committee. These procedures offer a decision-making process aimed at preserving burrowing owls in place with adequate habitat.

California's burrowing owl population is clearly in peril and if declines continue unchecked the species may qualify for listing. Because of the intense pressure for development of open, flat grasslands in California, resource managers frequently face conflicts between owls and development projects. Owls can be affected by disturbance and habitat loss, even though there may be no direct impacts to the birds themselves or their burrows. There is often inadequate information about the presence of owls on a project site until ground disturbance is imminent. When this occurs there is usually insufficient time to evaluate impacts to owls and their habitat. The absence of standardized field survey methods impairs adequate and consistent impact assessment during regulatory review processes, which in turn reduces the possibility of effective mitigation.

These guidelines are intended to provide a decision-making process that should be implemented wherever there is potential for an action or project to adversely affect burrowing owls or the resources that support them. The process begins with a four-step survey protocol to document the presence of burrowing owl habitat, and evaluate burrowing owl use of the project site and a surrounding buffer zone. When surveys confirm occupied habitat, the mitigation measures are followed to minimize impacts to burrowing owls, their burrows and foraging habitat on the site. These guidelines emphasize maintaining burrowing owls and their resources in place rather than minimizing impacts through displacement of owls to an alternate site.

Each project and situation is different and these procedures may not be applicable in some circumstances. Finally, these are not strict rules or requirements that must be applied in all situations. They are guidelines to consider when evaluating burrowing owls and their habitat, and they suggest options for burrowing owl conservation when land use decisions are made.

Section 1 describes the four phase Burrowing Owl Survey Protocol. Section 2 contains the Mitigation Guidelines. Section 3 contains a discussion of various laws and regulations that protect burrowing owls and a list of references cited in the text.

We have submitted these documents to the California Department of Fish and Game (CDFG) for review and comment. These are untested procedures and we ask for your comments on improving their usefulness.

SECTION 1 BURROWING OWL SURVEY PROTOCOL

PHASE I: HABITAT ASSESSMENT

The first step in the survey process is to assess the presence of burrowing owl habitat on the project site including a 150-meter (approx. 500 ft.) buffer zone around the project boundary (Thomsen 1971, Martin 1973).

Burrowing Owl Habitat Description

Burrowing owl habitat can be found in annual and perennial grasslands, deserts, and scrublands characterized by low-growing vegetation (Zarn 1974). Suitable owl habitat may also include trees and shrubs if the canopy covers less than 30 percent of the ground surface. Burrows are the essential component of burrowing owl habitat: both natural and artificial burrows provide protection, shelter, and nests for burrowing owls (Henny and Blus 1981). Burrowing owls typically use burrows made by fossorial mammals, such as ground squirrels or badgers, but also may use man-made structures, such as cement culverts; cement, asphalt, or wood debris piles; or openings beneath cement or asphalt pavement.

Occupied Burrowing Owl Habitat

Burrowing owls may use a site for breeding, wintering, foraging, and/or migration stopovers. Occupancy of suitable burrowing owl habitat can be verified at a site by an observation of at least one burrowing owl, or, alternatively, its molted feathers, cast pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance. Burrowing owls exhibit high site fidelity, reusing burrows year after year (Rich 1984, Feeney 1992). A site should be assumed occupied if at least one burrowing owl has been observed occupying a burrow there within the last three years (Rich 1984).

The Phase II burrow survey is required if burrowing owl habitat occurs on the site. If burrowing owl habitat is not present on the project site and buffer zone, the Phase II burrow survey is not necessary. A written report of the habitat assessment should be prepared (Phase IV), stating the reason(s) why the area is not burrowing owl habitat.

PHASE II: BURROW SURVEY

1. A survey for-burrows and owls should be conducted by walking through suitable habitat over the entire project site and in areas within 150 meters (approx 500 ft.) of the project impact zone. This 150-meter buffer zone is included to account for adjacent burrows and foraging habitat outside the project area and impacts from factors such as noise and vibration due to heavy equipment which could impact resources outside the project area.

2. Pedestrian survey transects should be spaced to allow 100 percent visual coverage of the ground surface. The distance between transect center lines should be no more than 30 meters (approx. 100 ft.), and should be reduced to account for differences in terrain, vegetation density, and ground surface visibility. To efficiently survey projects larger than 100 acres, it is recommended that two or more surveyors conduct concurrent surveys. Surveyors should maintain a minimum distance of 50 meters (approx. 160 ft.) from any owls or occupied burrows. It is important to minimize disturbance near occupied burrows during all seasons.
3. If burrows or burrowing owls are recorded on the site, a map should be prepared of the burrow concentration areas. A breeding season survey and census (Phase III) of burrowing owls is the next step required.
4. Prepare a report (Phase IV) of the burrow survey stating whether or not burrows are present.
5. A preconstruction survey may be required by project-specific mitigations no more than 30 days prior to ground disturbing activity.

PHASE III: BURROWING OWL SURVEYS, CENSUS AND MAPPING

If the project site contains burrows that could be used by burrowing owls, then survey efforts should be directed towards determining owl presence on the site. Surveys in the breeding season are required to describe if, when, and how the site is used by burrowing owls. If no owls are observed using the site during the breeding season, a winter survey is required.

Survey Methodology

A complete burrowing owl survey consists of four site visits. During the initial site visit examine burrows for owl sign and map the locations of occupied burrows. Subsequent observations should be conducted from as many fixed points as necessary to provide visual coverage of the site using spotting scopes or binoculars. It is important to minimize disturbance near occupied burrows during all seasons. Site visits must be repeated on four separate days. Conduct these visits from two hours before sunset to one hour after or from one hour before to two hours after sunrise. Surveys should be conducted during weather that is conducive to observing owls outside their burrows. Avoid surveys during heavy rain, high winds (> 20 mph), or dense fog.

Nesting Season Survey. The burrowing owl nesting season begins as early as February 1 and continues through August 31 (Thomsen 1971, Zam 1974). The timing of nesting activities may vary with latitude and climatic conditions. If possible, the nesting season survey should be conducted during the peak of the breeding season, between April 15 and July 15. Count and map all burrowing owl sightings, occupied burrows, and burrows with owl sign. Record numbers of pairs and juveniles, and behavior such as courtship and copulation. Map the approximate territory boundaries and foraging areas if known.

Survey for Winter Residents (non-breeding owls). Winter surveys should be conducted between December 1 and January 31, during the period when wintering owls are most likely to be present. Count and map all owl sightings, occupied burrows, and burrows with owl sign.

Surveys Outside the Winter and Nesting Seasons. Positive results, (i.e., owl sightings)- outside of the above survey periods would be adequate to determine presence of owls on site. However, results of these surveys may be inadequate for mitigation planning because the numbers of owls and their pattern of distribution may change during winter and nesting seasons. Negative results during surveys outside the above periods are not conclusive proof that owls do not use the site.

Preconstruction Survey. A preconstruction survey may be required by project-specific mitigations and should be conducted no more than 30 days prior to ground disturbing activity.

PHASE IV: RESOURCE SUMMARY, WRITTEN REPORT

A report should be prepared for CDFG that gives the results of each Phase of the survey protocol, as outlined below.

Phase I: Habitat Assessment

1. Date and time of visit(s) including weather and visibility conditions; methods of survey.
2. Site description including the following information: location, size, topography, vegetation communities, and animals observed during visit(s).
3. An assessment of habitat suitability for burrowing owls and explanation.
4. A map of the site.

Phase II: Burrow Survey

1. Date and time of visits including weather and visibility conditions; survey methods including transect spacing.
2. A more detailed site description should be made during this phase of the survey protocol including a partial plant list of primary vegetation, location of nearest freshwater (on or within one mile of site), animals observed during transects.
3. Results of survey transects including a map showing the location of concentrations of burrow(s) (natural or artificial) and owl(s), if present.

Phase III: Burrowing Owl Surveys, Census and Mapping

1. Date and time of visits including weather and visibility conditions; survey methods including transect spacing.
2. Report and map the location of all burrowing owls and owl sign. Burrows occupied by owl(s) should be mapped indicating the number of owls at each burrow. Tracks, feathers, pellets, or other items (prey remains, animal scat) at burrows should also be reported.
3. Behavior of owls during the surveys should be carefully recorded (from a distance) and reported. Describe and map areas used by owls during the surveys. Although not required, all behavior is valuable to document including feeding, resting, courtship, alarm, territorial, parental, or juvenile behavior.
4. Both winter and nesting season surveys should be summarized. If possible include information regarding productivity of pairs, seasonal pattern of use, and include a map of the colony showing territorial boundaries and home ranges.
5. The historical presence of burrowing owls on site should be documented, as well as the source of such information (local bird club, Audubon society, other biologists, etc.).

Burrowing: Owl Survey Protocol

April 1993

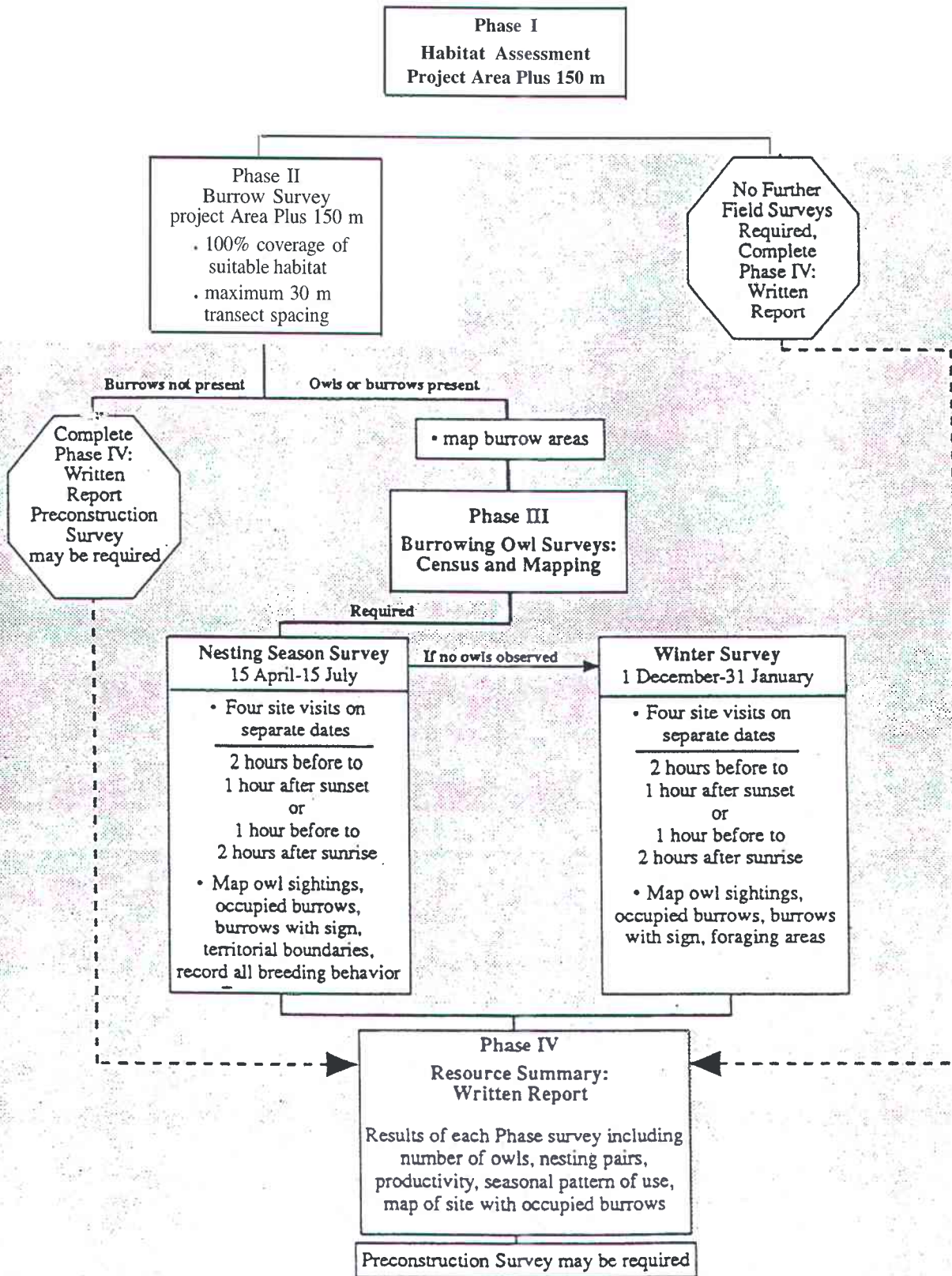


Figure 1.

SECTION 2 BURROWING OWL MITIGATION GUIDELINES

The objective of these mitigation guidelines is to minimize impacts to burrowing owls and the resources that support viable owl populations. These guidelines are intended to provide a decision-making process that should be implemented wherever there is potential for an action or project to adversely affect burrowing owls or their resources. The process begins with a four-step survey protocol (see *Burrowing Owl Survey Protocol*) to document the presence of burrowing owl habitat, and evaluate burrowing owl use of the project site and a surrounding buffer zone. When surveys confirm occupied habitat, the mitigation measures described below are followed to minimize impacts to burrowing owls, their burrows and foraging habitat on the site. These guidelines emphasize maintaining burrowing owls and their resources in place rather than minimizing impacts through displacement of owls to an alternate site.

Mitigation actions should be carried out prior to the burrowing owl breeding season, generally from February 1 through August 31 (Thomsen 1971, Zarn 1974). The timing of nesting activity may vary with latitude and climatic conditions. Project sites and buffer zones with suitable habitat should be resurveyed to ensure no burrowing owls have occupied them in the interim period between the initial surveys and ground disturbing activity. Repeat surveys should be conducted not more than 30 days prior to initial ground disturbing activity.

DEFINITION OF IMPACTS

1. Disturbance or harassment within 50 meters (approx. 160 ft.) of occupied burrows.
2. Destruction of burrows and burrow entrances. Burrows include structures such as culverts, concrete slabs and debris piles that provide shelter to burrowing owls.
3. Degradation of foraging habitat adjacent to occupied burrows.

GENERAL CONSIDERATIONS

1. Occupied burrows should not be disturbed during the nesting season, from February 1 through August 31, unless the Department of Fish and Game verifies that the birds have not begun egg-laying and incubation or that the juveniles from those burrows are foraging independently and capable of independent survival at an earlier date.
2. A minimum of 6.5 acres of foraging habitat, calculated on a 100-m (approx. 300 ft.) foraging radius around the natal burrow, should be maintained per pair (or unpaired resident single bird) contiguous with burrows occupied within the last three years (Rich 1984, Feeney 1992). Ideally, foraging habitat should be retained in a long-term conservation easement.

3. When destruction of occupied burrows is unavoidable, burrows should be enhanced (enlarged or cleared of debris) or created (by installing artificial burrows) in a ratio of 1:1 in adjacent suitable habitat that is contiguous with the foraging habitat of the affected owls.
4. If owls must be moved away from the disturbance area, passive relocation (see below) is preferable to trapping. A time period of at least one week is recommended to allow the owls to move and acclimate to alternate burrows.
5. The mitigation committee recommends monitoring the success of mitigation programs as required in Assembly Bill 3180. A monitoring plan should include mitigation success criteria and an annual report should be submitted to the California Department of Fish and Game.

AVOIDANCE

Avoid Occupied Burrows

No disturbance should occur within 50 m (approx. 160 ft.) of occupied burrows during the non-breeding Season of September 1 through January 31 or within 75 m (approx. 250 ft.) during the breeding Season of February 1 through August 31. Avoidance also requires that a minimum of 6.5 acres of foraging habitat be preserved contiguous with occupied burrow sites for each pair of breeding burrowing owls (with or without dependent young) or single unpaired resident bird (Figure 2).

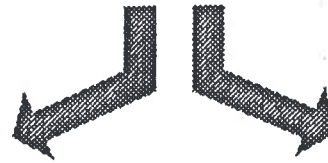
MITIGATION FOR UNAVOIDABLE IMPACTS

On-site Mitigation

On-site passive relocation should be implemented if the above avoidance requirements cannot be met. Passive relocation is defined as encouraging owls to move from occupied burrows to alternate natural or artificial burrows that are beyond 50 m from the impact zone and that are within or contiguous to a minimum of 6.5 acres of foraging habitat for each pair of relocated owls (Figure 3). Relocation of owls should only be implemented during the non-breeding season. On-site habitat should be preserved in a conservation easement and managed to promote burrowing owl use of the site.

Owls should be excluded from burrows in the immediate impact zone and within a 50 m (approx. 160 ft.) buffer zone by installing one-way doors in burrow entrances: One-way doors should be left in place 48 hours to insure owls have left the burrow before excavation. One alternate natural or artificial burrow should be provided for each burrow that will be excavated in the project impact zone. The project area should be monitored daily for one week to confirm owl use of alternate burrows before excavating burrows in the immediate impact zone. Whenever possible, burrows should be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible plastic pipe or burlap bags should be inserted into the tunnels

AVOIDANCE



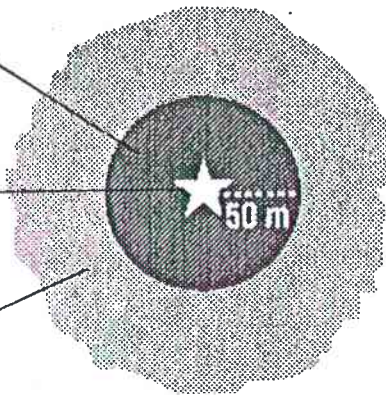
Non-breeding season
1 Sept. - 31 Jan.

Breeding season
1 Feb. - 31 Aug.

No impacts within
50 m of occupied
burrow

Occupied
burrow

Maintain
at least 6.5 acres
foraging habitat



No impacts within
75 m of occupied
burrow

Occupied
burrow

Maintain
at least 6.5 acres
foraging habitat

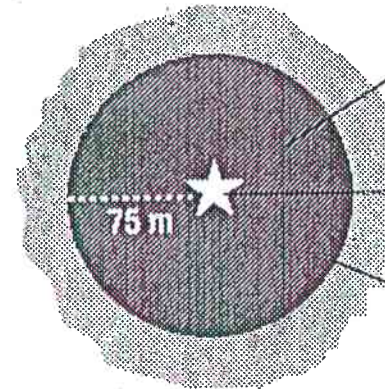


Figure 2. Burrowing owl mitigation guidelines.

ON-SITE MITIGATION IF AVOIDANCE NOT MET

(More than 6.5 acres suitable habitat available)

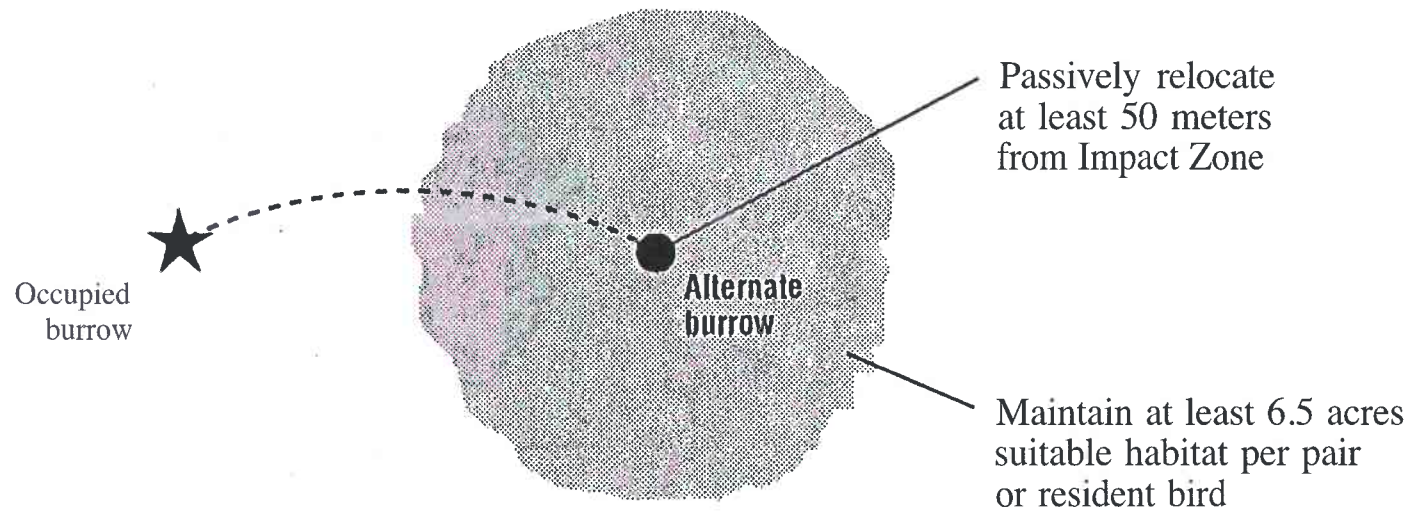


Figure 3. Burrowing owl mitigation guidelines.

during excavation to maintain an escape route for any animals inside the burrow.

Off-site Mitigation

If the project will reduce suitable habitat on-site below the threshold level of 6.5 acres per relocated pair or single bird, the habitat should be replaced off-site. Off-site habitat must be suitable burrowing owl habitat, as defined in the *Burrowing Owl Survey Protocol*, and the site approved by CDFG. Land should be purchased and/or placed in a conservation easement in perpetuity and managed to maintain suitable habitat. Off-site mitigation should use one of the following ratios:

1. Replacement of occupied habitat with occupied habitat: 1.5 times 6.5 (9.75) acres per pair or single bird.
2. Replacement of occupied habitat with habitat contiguous to currently occupied habitat: 2 times 6.5 (13.0) acres per pair or single bird.
3. Replacement of occupied habitat with suitable unoccupied habitat: 3 times 6.5 (19.5) acres per pair or single bird.

SECTION 3 LEGAL STATUS

The burrowing owl is a migratory bird species protected by international treaty under the Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703-711). The MBTA makes it unlawful to take, possess, buy, sell, purchase, or barter, any migratory bird listed in 50 C.F.R. Part 10, including feathers or other parts, nests, eggs, or products, except as allowed by implementing regulations (50 C.F.R. 21). Sections 3503, 3503.5, and 3800 of the California Department of Fish and Game Code prohibit the take, possession, or destruction of birds, their nests or eggs. Implementation of the take provisions requires that project-related disturbance at active nesting territories be reduced or eliminated during critical phases of the nesting cycle (March 1 - August 15, annually). Disturbance that causes nest abandonment and/or loss of reproductive effort (e.g., killing or abandonment of eggs or young) or the loss of habitat upon which the birds depend is considered "taking" and is potentially punishable by fines and/or imprisonment. Such taking would also violate federal law protecting migratory birds (e.g., MBTA).

The burrowing owl is a Species of Special Concern to California because of declines of suitable habitat and both localized and statewide population declines. Guidelines for the Implementation of the California Environmental Quality Act (CEQA) provide that a species be considered as endangered or "rare" regardless of appearance on a formal list for the purposes of the CEQA (Guidelines, Section 15380, subsections b and d). The CEQA requires a mandatory findings of significance if impacts to threatened or endangered species are likely to occur (Sections 21001(c), 21083. Guidelines 15380, 15064, 15065). Avoidance or mitigation must be presented to reduce impacts to less than significant levels.

CEQA AND SUBDIVISION MAP ACT

CEQA Guidelines Section 15065 directs that a mandatory finding of significance is required for projects that have the potential to substantially degrade or reduce the habitat of, or restrict the range of a threatened or endangered species. CEQA requires agencies to implement feasible mitigation measures or feasible alternatives identified in EIR's for projects which will otherwise cause significant adverse impacts (Sections 21002, 21081, 21083; Guidelines, sections 15002, subd. (a)(3), 15021, subd. (a)(2), 15091, subd. (a)).

To be legally adequate, mitigation measures must be capable of "avoiding the impact altogether by not taking a certain action or parts of an action"; "minimizing impacts by limiting the degree or magnitude of the action and its implementation"; "rectifying the impact by repairing, rehabilitating or restoring the impacted environment"; "or reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action." (Guidelines, Section 15.370).

Section 66474 (e) of the Subdivision Map Act states "a legislative body of a city or county shall deny approval of a tentative map or parcel map for which a tentative map was not required, if

it makes any of the following findings:... (e) that the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish and wildlife or their habitat". In recent court cases, the court upheld that Section 66474(e) provides for environmental impact review separate from and independent of the requirements of CEQA (Topanga Assn. for a Scenic Community v. County of Los Angeles, 263 Cal. Rptr. 214 (1989)). The finding in Section 66174 is in addition to the requirements for the preparation of an EIR or Negative Declaration.

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CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE NEWS



California Department of
Fish and Wildlife

CDFW News

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Revised Burrowing Owl Report Now Available

March 7, 2012

Media Contacts:

Tina Bartlett, DFG Wildlife Branch, (916) 358-2898

Harry Morse, DFG Communications, (916) 323-1478

The Department of Fish and Game (DFG) has released the 2012 Burrowing Owl Staff Report on Burrowing Owl Mitigation, a revision of a 1995 report on the species. The release of the revised report coincides with the beginning of burrowing owl breeding season, which begins as early as Feb. 1, 2012 in California.

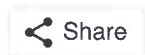
The report is located on the DFG website at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843>.

The Burrowing Owl Consortium, an ad hoc group of burrowing owl biologists and advocates in the San Francisco Bay Area, prepared the first Burrowing Owl Survey Protocol and Mitigation Guidelines in 1993. DFG's 1995 report followed, describing burrowing owl and burrow survey techniques and mitigation measures intended to offset the loss of habitat and slow or reverse further decline of this species. Notwithstanding these measures, burrowing owls have continued to decline in portions of their range.

DFG revised the report to address this concern. The report provides greater detail and clarity than was available in the 1995 version of the report and summarizes the best currently available

science for evaluating project sites for burrowing owl habitat, occupancy, conducting habitat assessments and conducting burrowing owl surveys. The report also summarizes best management practices developed over the last 16 years to improve the adequacy of project impacts assessments, to identify clear and effective avoidance and minimization measures and to create burrowing owl mitigation recommendations that ensure impacts to burrowing owls are effectively addressed at the project, local and/or regional level.

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EXHIBIT A

December 7, 2020

Ms. Christina Caro
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

**Subject: Rebuttal to ESA’s Responses to Comments on the Addendum to the
Environmental Impact Report Prepared for the Palo Verde Mesa Solar Project**

Dear Ms. Caro:

I submitted comments on the Addendum to Environmental Impact Report No. 532 (“EIR Addendum”) and its compliance with the peremptory writ of mandate issued in *Citizens for Responsible Solar v. County of Riverside*, Case No. RIC1718458. The County’s CEQA consultant, ESA, issued a memorandum that responds to comments received on the EIR Addendum. ESA did not provide specific responses to my comments, except for Comment 24. For all other comments, ESA’s response directs me to “[s]ee Response 12,” which is ESA’s limited response to your legal comments on the burrowing owl issue. Many of my comments have been ignored in ESA’s memorandum.

Burrowing owl mitigation guidelines can be confusing, especially to those that are unfamiliar with the history of the guidelines. As a result, my comments begin with a brief summary of the various burrowing owl mitigation guidelines in California. I then address issues pertaining to the writ, EIR Addendum, CEQA, and ESA’s responses. In summary:

1. Mitigation Measure (“MM”) BIO-6 in the original EIR stated: “[t]o compensate for impacts to burrowing owls in activity areas on the northern part of the Project, 146 acres of habitat have been identified adjacent to the Project area.”¹ As noted in the Court’s ruling: “[t]here is confusion in the EIR due to the lack of a sufficient explanation as to whether and how the 146-acre mitigation lands adjacent to the gen-tie corridor is to compensate for the loss of more than 3,000 acres of total land.”²
2. The EIR Addendum modified MM BIO-6 such that the amount of compensatory mitigation will depend on the number of burrowing owls detected during pre-construction surveys. Specifically, MM BIO-6 now requires: (a) a ratio of 1.5 times 6.5 acres (i.e., 9.75 acres) per pair or single bird if the replacement habitat is occupied; (b) a ratio of 2 times 6.5 acres (i.e., 13.0 acres) per pair or single bird if the replacement habitat is contiguous to currently occupied habitat; or (c) a ratio of 3 times 6.5 acres (i.e., 19.5 acres) per pair or single bird if the replacement habitat is suitable unoccupied habitat. The EIR Addendum fails to provide analysis that explains whether and how these mitigation ratios would compensate for the loss of more than 3,000 acres of burrowing owl habitat from the solar facility site.

¹ FEIR, Appendix D (MMRP), p. D-17.

² See EIR Addendum, p. 16.

3. The EIR previously stated that the Project would comply with the California Department of Fish and Wildlife’s (“CDFW”) 2012 guidelines for compensatory mitigation. However, the EIR Addendum reverts to the compensatory mitigation ratios in the 1993 California Burrowing Owl Consortium (“CBOC”) Mitigation Guidelines. The CBOC guidelines are substantially different from the CDFW guidelines, were never intended to compensate for habitat loss under CEQA, were subsequently proven to be ineffective in mitigating significant impacts to burrowing owls, and were ultimately rejected by CDFW in 2008.
4. As explained in CDFW’s 2012 guidelines, the current standard for compensatory mitigation is *no less than* 1:1 based on habitat area permanently impacted by the project.³ The mitigation proposed in the EIR Addendum would not achieve this standard. In fact, if the County’s prediction of three owls requiring mitigation is correct, the Project would provide no more than 58.5 acres of replacement habitat in exchange for permanent impacts to approximately 3,000 acres of habitat.
5. The County lacks substantial evidence to support its conclusion that the revised version of MM BIO-6 would mitigate impacts to burrowing owls to less than significant levels.

History of Burrowing Owl Mitigation Guidelines

1. The California Burrowing Owl Consortium (“CBOC”), an ad hoc group of burrowing owl biologists and advocates in the San Francisco Bay Area, prepared the first Burrowing Owl Survey Protocol and Mitigation Guidelines in 1993. At that time, the CBOC Mitigation Guidelines consisted of “untested procedures.”⁴ The Guidelines recommended on-site mitigation at a ratio of 6.5 acres per pair or single bird (the same ratios used in revised MM BIO-6). For off-site mitigation, the CBOC Guidelines recommended 6.5 acres times a multiplier of 1.5, 2, or 3 (9.75 acres, 13 acres, or 19.5 acres per pair or single bird), depending on whether the replacement habitat was occupied or unoccupied by burrowing owls. The 6.5-acre baseline ratio was based on a study in Canadian oil fields where singular nest burrows were destroyed, but habitat around those burrows was not completely eliminated (i.e., a very different scenario than development of a solar energy facility).⁵ The mitigation ratios in the CBOC Guidelines were never intended to compensate for habitat loss under CEQA.⁶
2. The CDFW issued its first Staff Report on Burrowing Owl Mitigation in 1995. The 1995 Staff Report adopted the CBOC Survey Protocol and Mitigation Guidelines.
3. The CDFW issued its Guidance for Burrowing Owl Conservation in 2008. The purpose of this document was to: “provide guidance that supersedes and augments or clarifies the Department’s Staff Report on Burrowing Owl Mitigation (1995) and the California Burrowing Owl Consortium’s Survey Protocol and Mitigation Guidelines (1993,

³ California Department of Fish and Game. 2012 Mar 7. Staff Report on Burrowing Owl Mitigation. pp. 8 and 12. Available at: <<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline=true>>.

⁴ California Burrowing Owl Consortium. 1993. Burrowing Owl Survey Protocol and Mitigation Guidelines. p. i.

⁵ Personal communication with S. Menzel, CBOC, on 7 Dec 2020.

⁶ California Department of Fish and Game. 2008. Guidance for Burrowing Owl Conservation. p. 13.

1997).”^{7,8} The 2008 Guidance states: “[a]dditional immediate protection is needed for the Burrowing Owl,” in part because “lead agencies do not consistently require sufficient or effective habitat mitigation for immediate or cumulative impacts to burrowing owls.” In addition, it states: “[t]he standard of 6.5 acres [baseline ratio] will no longer be used because it does not adequately compensate for habitat loss.”⁹

4. The CDFW issued a revised version of its Staff Report on Burrowing Owl Mitigation in 2012. The 2012 Staff Report reiterates that the minimum habitat replacement recommendations issued by the CBOC in 1993 (and adopted by CDFW in 1995) are no longer accepted by the CDFW because they have proven ineffective in the conservation of burrowing owls. The 2012 Staff Report states that mitigation for permanent impacts to burrowing owl habitat “necessitates replacement with an equivalent or greater habitat area.”¹⁰ The 2012 Staff Report therefore recommends compensatory mitigation at a ratio of *no less than* 1:1 based on habitat area permanently impacted by the project.¹¹

Burrowing Owl Habitat at the Solar Facility Site

The EIR provides the following description of the burrowing owl (“BUOW”) and its habitat:

In California, it typically inhabits lowlands, including those in the Central Valley, northeastern plateau, southeastern deserts, and coastal areas. For shelters, the burrowing owl uses rodent burrows in sparse grassland, desert, and agricultural habitats, as well as open areas of pinyon-juniper or ponderosa pine habitats (CDFG 2008).¹²

The EIR does not deny that the 3,250-acre solar facility site provides habitat for burrowing owls. The EIR states: “[t]he solar array site contains habitat, particularly near washes, that would support BUOW burrows, and some burrows were observed in the field that had the potential to be BUOW burrows (POWER, 2013a).”¹³ As explained in my previous comment letter, suitable burrows (and prey) for burrowing owls occurred throughout the entire Project study area and were increasing in abundance in 2013 when surveys were last conducted for the Project.¹⁴

Compensation Ratio in the EIR

The EIR recognized that the mitigation guidelines in CDFW’s 2012 Staff Report were applicable to the Project and it suggested the Project would provide compensatory mitigation commensurate with what is recommended in CDFW’s 2012 Staff Report (i.e., habitat compensation at a 1:1 ratio). For example, the EIR stated:

⁷ *Id.* at p. 2.

⁸ In 1997 the CBOC published its burrowing owl survey protocol and mitigation guidelines in the *Journal of Raptor Research*.

⁹ California Department of Fish and Game. 2008. *Guidance for Burrowing Owl Conservation*. p. 4. [emphasis added].

¹⁰ California Department of Fish and Game. 2012 Mar 7. *Staff Report on Burrowing Owl Mitigation*. pp. 1 and 2. Available at: <<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline=true>>.

¹¹ *Id.* at pp. 8, 12.

¹² DEIR, Appendix D (Biological Survey Report). pp. 35 and 36.

¹³ DEIR, p. 3.4-39.

¹⁴ See FEIR, Appendix C (Western Burrowing Owl Survey Report), pp. 7 and 13. See also Cashen comments on EIR Addendum, pp. 7 and 9.

1. “If BUOW were detected during pre-construction surveys, the Project would conserve suitable BUOW habitat on private land as mitigation **as a requirement by CEQA and the CDFW Burrowing Owl Mitigation Requirements (CDFW, 2012).**”¹⁵
2. “The total acreage that would require mitigation is contingent upon pre-construction survey results and **subject to 2012 CDFW Guidelines.**”¹⁶
3. “The ultimate quantity of acreage provided for compensatory lands must be **approved by CDFW and County** to ensure adequate compensation for potential habitat loss.”¹⁷

All of these statements suggested the Project would be required to provide habitat compensation at a 1:1 ratio because CDFW had already informed the County of CDFW guidelines for: (a) mitigation that is roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA, and (b) replacement habitat that provides an equivalent or greater habitat area.¹⁸ However, MM BIO-6 simply stated: “[t]o compensate for impacts to burrowing owls in activity areas on the northern part of the Project, 146 acres of habitat have been identified adjacent to the Project area.”¹⁹ As noted in the Court’s ruling, this created confusion as to whether and how the 146-acre mitigation site would compensate for the loss of more than 3,000 acres of burrowing owl habitat on the solar facility site. Nevertheless, nowhere did the EIR state that the amount of compensatory mitigation would be based on the 1993 CBOC Guidelines (i.e., a baseline ratio of 6.5 acres of habitat compensation per pair or individual bird detected during pre-construction surveys).

Compensation Ratio in the EIR Addendum

The EIR Addendum revised the compensatory mitigation requirements in MM BIO-6 such that the amount of compensatory mitigation will depend on the number of burrowing owls detected during pre-construction surveys. Specifically, the revised version of MM BIO-6 requires implementation of the mitigation ratios recommended in the 1993 CBOC Mitigation Guidelines (i.e., baseline ratio of 6.5 acre per pair or individual owl impacted by the Project times the off-site multiplier of 1.5, 2, or 3). The County contends that application of this approach does not constitute new information. ESA’s memorandum argues: “[w]ith regard to the compensation ratio, as noted above, the 6.5-acre ratio was included in the Draft EIR and is not new information in the Addendum as Mr. Cashen tries to claim.”²⁰ However, ESA’s argument conflicts with evidence in the record. The EIR’s original version of MM BIO-6 stated:

To compensate for impacts to burrowing owls in activity areas on the northern part of the Project, 146 acres of habitat have been identified adjacent to the Project area. A letter

¹⁵ DEIR, p. 3.4-52. [emphasis added]. *See also* ESA. 2020 Nov 23. Palo Verde Mesa Solar Project (CUP03684, PUP00916, DA00086): Response to Comments Received on the Addendum to Environmental Impact Report No. 532 prepared pursuant to the California Environmental Quality Act. Memorandum from Janna Scott, ESA, to Russell Brady, County of Riverside. p. 6.

¹⁶ FEIR, Response to Comment A5-12. [emphasis added].

¹⁷ FEIR, Response to Comment O4-33. [emphasis added]. *See also* Response to Comment O3-106.

¹⁸ FEIR, Comment A5-12.

¹⁹ FEIR, Appendix D (MMRP), p. D-17.

²⁰ ESA. 2020 Nov 23. Palo Verde Mesa Solar Project (CUP03684, PUP00916, DA00086): Response to Comments Received on the Addendum to Environmental Impact Report No. 532 prepared pursuant to the California Environmental Quality Act. Memorandum from Janna Scott, ESA, to Russell Brady, County of Riverside. p. 6.

agreeing to dedicate the existing compensation lands must be approved by CDFW and the County prior to ground disturbance. Land used for compensation must be of equal value or better than the land impacted. Ownership of compensation lands will be transferred prior to any surface disturbance to one of the following: the County, or an entity acceptable to the County or CDFW that can effectively manage listed species and their habitats.²¹

The original version of MM BIO-6 said nothing about a 6.5-acre ratio. The only mention of the 6.5-acre ratio was in an attachment to the original Draft EIR, the Applicant's Draft Western Burrowing Owl Mitigation and Monitoring Plan ("Draft Plan"), which stated: "[t]he California Burrowing Owl Consortium guidelines recommend 6.5 acres of compensation land be preserved and managed in perpetuity for each individual burrowing owl or burrowing owl pair identified as potentially impacted at the Project site."²² However, the Draft Plan also states that the amount of compensation land shall be determined "per the 2012 CDFW mitigation guidelines."²³ Irrespective of the ambiguity in the Draft Plan, the EIR did not adopt the 6.5-acre ratio in MM BIO-6, nor did it make implementation of the Applicant's Draft Plan a required mitigation measure. The County's newly stated intent to adopt the 1993 CBOC mitigation ratios (i.e., the 6.5-acre baseline ratio and multipliers for off-site mitigation) is a substantial change from the original version of MM BIO-6. The addition of the 1993 mitigation ratios to MM BIO-6 also contradicts the County's claims elsewhere in the EIR that the burrowing owl mitigation would comply with the CDFW 2012 Staff Report. As a result, I maintain the conclusion that the County's revisions to MM BIO-6 constitute new information that was not included in the EIR, and which fails to comply with the mitigation recommendations in the CDFW 2012 Staff Report.

ESA's memorandum confounds the issue by arguing the Court did not find any inadequacies with compensation based on number of owls discovered during pre-construction surveys. The memorandum states:

The court limited its finding of inadequacy of the burrowing owl analysis to the EIR's failure to explain how the mitigation compensated for impact to the solar facility site (and not just the gen-tie corridor) and its failure to explain whether and how the mitigation lands will be maintained in perpetuity. The court did not find any inadequacies in the EIR's determinations that the amount of compensatory mitigation lands would depend upon the number of owls discovered during pre-construction surveys, and that not all areas of potentially suitable land would necessarily trigger a need for mitigation. Accordingly, these determinations are not relevant to the Addendum.²⁴

This is a spurious argument that circumvents the requirements of the writ and CEQA. The Court did not contemplate adequacy of compensatory mitigation that would depend on the number of owls discovered during pre-construction surveys because that approach was not reflected in MM BIO-6 or the EIR's analysis. That is new information added to the EIR addendum. Rather, the Writ attached to the ESA Memorandum clearly states that the County must evaluate the

²¹ FEIR, Appendix D (MMRP), p. D-17.

²² DEIR, Appendix D (Draft Burrowing Owl Monitoring and Mitigation Plan), p. 14.

²³ *Id.*

²⁴ ESA. 2020 Nov 23. Palo Verde Mesa Solar Project (CUP03684, PUP00916, DA00086): Response to Comments Received on the Addendum to Environmental Impact Report No. 532 prepared pursuant to the California Environmental Quality Act. Memorandum from Janna Scott, ESA, to Russell Brady, County of Riverside. p. 6.

“feasibility of mitigation” for this impact, and discuss “the specifics of the measures to be required, if mitigation is found to be feasible.”²⁵ This necessarily involves an analysis of the County’s proposed compensatory mitigation.

Mitigation Requirements to Satisfy CEQA

CDFW’s 2012 Staff Report on Burrowing Owl Mitigation identifies the mitigation that should be provided for permanent impacts to burrowing owl habitat:

the current scientific literature supports the conclusion that mitigation for permanent habitat loss *necessitates replacement with an equivalent or greater habitat area* for breeding, foraging, wintering, dispersal, presence of burrows, burrow surrogates, presence of fossorial mammal dens, well drained soils, and abundant and available prey within close proximity to the burrow.²⁶

Thus, mitigating significant impacts to burrowing owls requires habitat compensation based on the amount of habitat that is impacted by a project—*not the number of owls that are impacted, as the Addendum claims.*

The EIR Addendum revised MM BIO-6 to require habitat compensation based on the outdated 1993 CBOC Mitigation Guidelines, which recommend a ratio of 6.5 acres per pair or single bird impacted by a project (times a multiplier of 1.5, 2, or 3 for off-site mitigation). When the CBOC released its mitigation guidelines in 1993, it recognized those guidelines consisted of “untested procedures.”²⁷ Moreover, the mitigation ratios recommended in the CBOC Guidelines were never intended to compensate for habitat loss under CEQA, but rather to provide the minimal buffer area thought to be necessary around a burrow to avoid disturbance from construction activities.²⁸

The CBOC mitigation guidelines subsequently proved to be ineffective in offsetting the loss of habitat and slowing or reversing further decline of the species.²⁹ As a result, the CDFW released two documents to address this issue:

1. The 2008 Guidance for Burrowing Owl Conservation, which explicitly states: “[t]he **standard of 6.5 acres will no longer be used because it does not adequately compensate for habitat loss;**”³⁰ and,
2. the 2012 CDFW Staff Report on Burrowing Owl Mitigation.³¹ The mitigation guidelines in the 2012 Staff Report: (a) incorporate scientific information that had been obtained since 1993, and (b) “create burrowing owl mitigation recommendations that ensure

²⁵ See Writ, p. 4; Addendum, p. 2.

²⁶ AR 2970.

²⁷ California Burrowing Owl Consortium. 1993. Burrowing Owl Survey Protocol and Mitigation Guidelines. p. i.

²⁸ California Department of Fish and Game. 2008. Guidance for Burrowing Owl Conservation. p. 13.

²⁹ California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. pp. 1 and 2. *See also* AR10201 and 10217.

³⁰ California Department of Fish and Game. 2008. Guidance for Burrowing Owl Conservation. p. 13.

³¹ California Department of Fish and Game. 2012 Mar 12. CDFW News [web page]. Revised Burrowing Owl Report Now Available. Available at: <<https://cdfgnews.wordpress.com/2012/03/07/revised-burrowing-owl-report-now-available/>>.

impacts to burrowing owls are effectively addressed at the project, local and/or regional level.”³² As explained above, the 2012 Staff Report recommends compensatory mitigation at a ratio of no less than 1:1 based on the amount of habitat impacted by a project.

The original EIR was certified in 2017 and the Addendum was prepared in 2020 (i.e., 8 years after the 2012 CDFW mitigation guidelines and 12 years after the 2008 CDFW guidelines became effective). The 6.5-acre ratio included in revised MM BIO-6 was therefore deemed ineffective years before the Project was approved or the EIR Addendum prepared.

The writ requires the County to analyze “whether and how the mitigation lands are adequate to compensate for the total loss of potential habitat on the solar facility site.” The EIR Addendum fails to provide this additional analysis and lacks evidence to support its conclusion that the 6.5-acre ratio would mitigate impacts to less than significant levels. Specifically, the EIR Addendum provides no evidence to support its conclusion that implementation of the 1993 CBOC ratios for off-site mitigation would compensate for the loss of more than 3,000 acres of burrowing owl habitat from the solar facility site. To the contrary, scientific evidence collected since 1993 has shown that the CBOC ratios *do not* effectively mitigate the loss of burrowing owl habitat.³³

There is considerable difference between the mitigation recommended in the 2012 CDFW Staff Report and the mitigation recommended in the 1993 CBOC Mitigation Guidelines. ESA argues: “this is just a choice of methodology, and the methodology used here is appropriate.”³⁴ In reality, the County’s decision to use the 1993 CBOC methodology (which is no longer accepted by CDFW or the CBOC) has tremendous implications on conservation of burrowing owls and the significance of Project impacts under CEQA. Using the 1:1 ratio recommended by the CDFW 2012 Staff Report, the Applicant would be required to provide compensatory mitigation lands on an acre-for-acre basis. For a 3,000-acre solar site, the Applicant must therefore provide 3,000 acres of equivalent or better replacement habitat for burrowing owls. The County’s biologist predicted the need to provide mitigation for three burrowing owls. Application of the CBOC methodology to the County’s owl calculations would result in 29.25 to 58.5 acres of compensatory habitat, which is equivalent to less than two percent of the habitat that would be permanently impacted by the Project.

As explained previously, the CBOC methodology was experimental and subsequently proved to be ineffective. The County has not provided any evidence to support its conclusion that ineffective methodology is appropriate for the Project and would mitigate impacts to burrowing owls on the over 3,000-acre solar facility site to less than significant levels. Therefore, the County lacks substantial evidence to support the Addendum’s conclusion that MM BIO-6 would effectively mitigate impacts to habitat at the solar facility site.

³² *Id.*

³³ California Department of Fish and Game. 2008. Guidance for Burrowing Owl Conservation. *See also* California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation.

³⁴ ESA. 2020 Nov 23. Palo Verde Mesa Solar Project (CUP03684, PUP00916, DA00086): Response to Comments Received on the Addendum to Environmental Impact Report No. 532 prepared pursuant to the California Environmental Quality Act. Memorandum from Janna Scott, ESA, to Russell Brady, County of Riverside. p. 6.

ESA's memorandum confounds the issue of the two methodologies by claiming:

Like the EIR, the Addendum's mitigation approach includes reference to both the CDFW 2012 Staff Report and the 1993 California Burrowing Owl Consortium Guidelines. The CDFW 2012 Staff report takes into account the 1993 California Burrowing Owl Consortium Guidelines. Mitigation Measure BIO-6 and the Project's Western Burrowing Owl Mitigation and Monitoring Plan include multiple mitigation components from the CDFW 2012 Staff Report, including methodologies for artificial burrow installation and passive relocation and exclusion methodology, and guidelines for compensatory mitigation.³⁵

The statement that MM BIO-6 and the Project's Western Burrowing Owl Mitigation and Monitoring Plan include CDFW's guidelines for compensatory mitigation is patently false. MM BIO-6 incorporates the outdated and ineffective mitigation ratios in the 1993 CBOC Guidelines. The 1993 CBOC mitigation ratios are inconsistent with the CDFW 2012 Staff Report and implementation of those ratios would result in substantially less compensatory habitat than the 1:1 habitat replacement ratio set forth in the CDFW 2012 Staff Report.

The statement that the CDFW 2012 Staff Report takes into account the 1993 California Burrowing Owl Consortium Guidelines is correct: the 2012 Staff Report considers the efficacy of the CBOC Guidelines and issues new mitigation guidelines specifically because the CBOC Guidelines were proven to be ineffective.³⁶ CDFW's 2008 Guidance for Burrowing Owl Conservation, which predates the CDFW 2012 Staff Report, also explicitly states that the CBOC standard of 6.5 acres (with multiplier for off-site mitigation) should no longer be used because it does not adequately compensate for habitat loss.³⁷

Conclusion

The EIR Addendum substantially revised MM BIO-6 such that it limits the compensatory habitat requirement to 9.75 to 19.5 acres (i.e., 6.5 acres times the off-site multiplier) per pair or individual burrowing owl detected during pre-construction surveys. The EIR Addendum fails to provide evidence that this revision would compensate for the loss of burrowing owl habitat from the solar facility site. To the contrary, scientific evidence collected since 1993 indicates that provision of 9.75 to 19.5 acres per pair or individual burrowing owl detected during pre-construction surveys does not mitigate habitat loss to a less than significant level. As a result, the EIR Addendum fails to comply with CEQA and the terms of the writ.

Sincerely,



Scott Cashen, M.S.
Senior Biologist

³⁵ *Id.*

³⁶ California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. pp. 1 and 2.

³⁷ California Department of Fish and Game. 2008. Guidance for Burrowing Owl Conservation. pp. 4 and 13.

EXHIBIT C

CONDITIONAL USE PERMIT Case #: CUP03684

Parcel: 821-020-007

10. GENERAL CONDITIONS

EVERY DEPARTMENT

10. EVERY. 1 USE - PROJECT DESCRIPTION RECOMMND

The use hereby permitted is for a 463.5 megawatt (MW) photovoltaic solar power plant on approximately 50 parcels totaling approximately 3,250 gross acres. The proposed project ("Project") would consist of a solar array field utilizing single-axis solar PV trackers and panels with a combined maximum height of eight and a half feet. Supporting facilities on-site would include two electrical substations, one operation and maintenance building, inverters, transformers, and associated switchgear on the 3,250 acre area. The project would include a new 230 kilovolt (kv) transmission (Gen-Tie) line that stretches approximately 14.5 miles in total, 11.8 miles of which would cover an additional 143.1 acres. This would connect the project's generation to the Southern California Edison Colorado River Substation located south of Interstate-10. Since most of the site has nearly level to gently sloping topography, no mass grading would be required, and the natural drainage patterns of the site would not be significantly altered. The Project site would be secured 24 hours per day by on-site private security personnel or remote services with motion-detection cameras. An equestrian-wire, wildlife-friendly and drainage-compatible security fence that meets the National Electrical Safety Code would be placed around the perimeter of the site. The proposed lighting for the site would be consistent with County building code. The solar array field would be located entirely within the County of Riverside's jurisdiction.

10. EVERY. 2 USE - HOLD HARMLESS RECOMMND

The applicant/permittee or any successor-in-interest shall defend, indemnify, and hold harmless the County of Riverside or its agents, officers, and employees (COUNTY) from the following:

(a) any claim, action, or proceeding against the COUNTY to attack, set aside, void, or annul an approval of the COUNTY, its advisory agencies, appeal boards, or legislative body concerning the CONDITIONAL USE PERMIT; and,

(b) any claim, action or proceeding against the COUNTY to attack, set aside, void or annul any other decision made by

CONDITIONAL USE PERMIT Case #: CUP03684

Parcel: 821-020-007

10. GENERAL CONDITIONS

10. EVERY. 2 USE - HOLD HARMLESS (cont.)

RECOMMND

the COUNTY concerning the PUBLIC USE PERMIT, including, but not limited to, decisions made in response to California Public Records Act requests.

The COUNTY shall promptly notify the applicant/permittee of any such claim, action, or proceeding and shall cooperate fully in the defense. If the COUNTY fails to promptly notify the applicant/permittee of any such claim, action, or proceeding or fails to cooperate fully in the defense, the applicant/permittee shall not, thereafter, be responsible to defend, indemnify or hold harmless the COUNTY.

The obligations imposed by this condition include, but are not limited to, the following: the applicant/permittee shall pay all legal services expenses the COUNTY incurs in connection with any such claim, action or proceeding, whether it incurs such expenses directly, whether it is ordered by a court to pay such expenses, or whether it incurs such expenses by providing legal services through its Office of County Counsel.

10. EVERY. 3 USE - DEFINITIONS

RECOMMND

The words identified in the following list that appear in all capitals in the attached conditions of Conditional Use Permit No. 3684 shall be henceforth defined as follows:

APPROVED EXHIBIT A = Conditional Use Permit No. 3684, Exhibit A, Sheets 1-3, dated 1/4/16.

APPROVED EXHIBIT B = Conditional Use Permit No. 3684, Exhibit B, Sheets 1-2, Overhead Line Exhibit, dated 1/4/16.

APPROVED EXHIBIT F = Conditional Use Permit No. 3684, Exhibit F, Fencing Exhibit, dated 1/4/16.

APPROVED EXHIBIT V = Conditional Use Permit No. 3684, Exhibit V, Vehicle Access Exhibit, dated 1/4/16.

10. EVERY. 4 USE - 90 DAYS TO PROTEST

RECOMMND

The project developer has 90 days from the date of approval of these conditions to protest, in accordance with the procedures set forth in Government Code Section 66020, the imposition of any and all fees, dedications, reservations

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CONDITIONAL USE PERMIT Case #: CUP03684

Parcel: 821-020-007

10. GENERAL CONDITIONS

10. EVERY. 4 USE - 90 DAYS TO PROTEST (cont.) RECOMMND

and/or other exactions imposed on this project as a result of this approval or conditional approval of this project.

10. EVERY. 5 USE - BOS B-29 POLICY (SOLAR) RECOMMND

In order to secure public health, safety, and welfare, this project shall be subject to the requirements of Board of Supervisors Policy Number B-29 (Solar Power Plant Policy). The applicant has proposed entering into a Development Agreement (DA No. 86) with the County. Board of Supervisors Policy No. B-29 states, "[N]o approval required by Ordinance Nos. 348 or 460 shall be given for a solar power plant unless the Board first approves a development agreement with the solar power plant owner and the development agreement is effective." County staff has reached an agreement with the applicant on the provisions of the development agreement that are consistent with Board of Supervisor Policy No. B-29. In the event it is determined that any provisions of DA No. 86 are inconsistent with Board of Supervisors Policy No. B-29, the provisions of DA No. 86 shall control.

BS GRADE DEPARTMENT

10.BS GRADE. 1 USE - GENERAL INTRODUCTION RECOMMND

Improvements such as grading, filling, over excavation and recompaction, and base or paving which require a grading permit are subject to the included Building and Safety Department Grading Division conditions of approval.

10.BS GRADE. 3 USE - OBEY ALL GDG REGS RECOMMND

All grading shall conform to the California Building Code, Ordinance 457, and all other relevant laws, rules, and regulations governing grading in Riverside County and prior to commencing any grading which includes 50 or more cubic yards, the applicant shall obtain a grading permit from the Building and Safety Department.

10.BS GRADE. 4 USE - DISTURBS NEED G/PMT RECOMMND

Ordinance 457 requires a grading permit prior to clearing, grubbing, or any top soil disturbances related to construction grading.

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CONDITIONAL USE PERMIT Case #: CUP03684

Parcel: 821-020-007

10. GENERAL CONDITIONS

10.BS GRADE. 6

USE - NPDES INSPECTIONS

RECOMMND

Construction activities including clearing, stockpiling, grading or excavation of land which disturbs less than 1 acre and requires a grading permit or construction Building permit shall provide for effective control of erosion, sediment and all other pollutants year-round. The permit holder shall be responsible for the installation and monitoring of effective erosion and sediment controls. Such controls will be evaluated by the Department of Building and Safety periodically and prior to permit Final to verify compliance with industry recognized erosion control measures.

Construction activities including but not limited to clearing, stockpiling, grading or excavation of land, which disturbs 1 acre or more or on-sites which are part of a larger common plan of development which disturbs less than 1 acre are required to obtain coverage under the construction general permit with the State Water Resources Control Board. You are required to provide proof of WDID# and keep a current copy of the storm water pollution prevention plan (SWPPP) on the construction site and shall be made available to the Department of Building and Safety upon request.

Year-round, Best Management Practices (BMP's) shall be maintained and be in place for all areas that have been graded or disturbed and for all material, equipment and/or operations that need protection. Stabilized Construction Entrances and project perimeter linear barriers are required year round. Removal BMP's (those BMP's which must be temporarily removed during construction activities) shall be in place at the end of each working day.

Monitoring for erosion and sediment control is required and shall be performed by the QSD or QSP as required by the Construction General Permit. Stormwater samples are required for all discharge locations and projects may not exceed limits set forth by the Construction General Permit Numeric Action Levels and/or Numeric Effluent Levels. A Rain Event Action Plan is required when there is a 50% or greater forecast of rain within the 48 hours, by the National Weather Service or whenever rain is imminent. The QSD or QSP must print and save records of the precipitation forecast for the project location area from (<http://www.srh.noaa.gov/forecast>) and must accompany monitoring reports and sampling test data. A Rain gauge is

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CONDITIONAL USE PERMIT Case #: CUP03684

Parcel: 821-020-007

10. GENERAL CONDITIONS

10.BS GRADE. 6 USE - NPDES INSPECTIONS (cont.) RECOMMND

As required on site. The Department of Building and Safety will conduct periodic NPDES inspections of the site throughout the recognized storm season to verify compliance with the Construction General Permit and Stormwater ordinances and regulations.

10.BS GRADE. 7 USE - EROSION CNTRL PROTECT RECOMMND

Graded but undeveloped land shall provide, in addition to erosion control planting, any drainage facility deemed necessary to control or prevent erosion. Additional erosion protection may be required during the rainy season from October 1, to May 31.

10.BS GRADE. 8 USE - DUST CONTROL RECOMMND

All necessary measures to control dust shall be implemented by the developer during grading. A PM10 plan may be required at the time a grading permit is issued.

10.BS GRADE. 14 USE - SLOPES IN FLOODWAY RECOMMND

Graded slopes which infringe into the 100 year storm flood way boundaries, shall be protected from erosion, or other flood hazards, by a method acceptable to the Building & Safety Department's Engineer - which may include Riverside County Flood Control & Water Conservation District's review and approval. However, no graded slope will be allowed which in the professional judgment of the Building & Safety Department Engineer blocks, concentrates or diverts drainage flows.

10.BS GRADE. 24 USE - FINISH GRADE RECOMMND

Finish grade shall be sloped to provide proper drainage away from all exterior foundation walls in accordance with the California Building Code and Ordinance 457.

BS PLNCK DEPARTMENT

10.BS PLNCK. 1 USE - BUILD & SAFETY PLNCK RECOMMND

Where any portion of the proposed project is within the jurisdiction of Riverside County, the applicant shall obtain building permits from the building & safety department for any building, structure or equipment prior

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CONDITIONAL USE PERMIT Case #: CUP03684

Parcel: 821-020-007

10. GENERAL CONDITIONS

10.BS PLNCK. 1 USE - BUILD & SAFETY PLNCK (cont.)

RECOMMND

to the construction or placement of equipment on the property:

All building plans and supporting documents shall comply with current adopted California Building Codes, Riverside County Ordinances, and California Title 25 regulations where applicable. All building department plan submittal and fee requirements shall apply.

10.BS PLNCK. 2 USE - BUILD & SAFETY PLNCK

RECOMMND

Where any portion of the proposed construction falls within the Riverside County jurisdiction, the applicant shall comply with the following:

PERMIT ISSUANCE:

Per section 105.1 (2010 California Building Code, CBC): Where any owner or authorized agent intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert, or replace any electrical, gas, mechanical, or plumbing system, the regulation of which is governed by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit. The applicant shall obtain the required building permit(s) from the building department prior to any construction or placement of any building, structure or equipment on the property.

The applicant shall obtain an approved final building inspection and certificate of occupancy from the building department prior to any use or occupancy of the building, or structure.

At no time shall the approval of the planning case exhibit allow for the construction or use of any building, structure, or equipment. In residential applications, each separate structure will require a separate building permit.

CODE/ORDINANCE REQUIREMENTS:

The applicant shall obtain the required building permit(s) from the building department prior to any construction on the property. All building plans and supporting documentation shall comply with current adopted California Building Codes, Riverside County Ordinances, and California Title 25 regulations in effect at the time of building plan submittal and fee payment to the Building Department. All Building Department plan submittal and fee requirements

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10. GENERAL CONDITIONS

10.BS PLNCK. 2 USE - BUILD & SAFETY PLNCK (cont.) RECOMMND

shall apply.

NOTE: The new updated 2013 California Building Codes will be in effect as of January 1st 2014, as mandated by the state of California. Any building plan and fee payment submitted to the building department on or after January 1st, 2014 will be subject to the new updated California Building Code(s).

E HEALTH DEPARTMENT

10.E HEALTH. 1 RETENTION BASINS - NO VECTORS RECOMMND

All proposed retention basins shall be constructed and maintained in a manner that prevents vector breeding and vector nuisances.

10.E HEALTH. 2 HAZMAT - CONSTRUCTION PHASE RECOMMND

HAZARDOUS MATERIALS USED DURING CONSTRUCTION:

Conditional Use Permit#3684 (Project) will not have any hazardous materials stored on-site during the construction phase other than the following materials:

- a) 20 cans of miscellaneous paint stored in its original tin-coated steel quart or gallon containers (no secondary containment proposed)
- b) 1,000 gallon double walled diesel tank (4' diameter, 11' length) located in the proposed laydown area near the proposed O&M building location. It will be in a lined pit with a berm for spillage.

Basic hazardous material spill kits will be stored in the temporary construction trailers located on the Project site during construction. The Project will coordinate with registered hazardous waste transporters if spills or release result in contaminated soils.

If any underground storage tanks are discovered during construction that require removal, the Project shall comply with the Underground Storage Tank Guidelines to Closure by Removal procedures published by the Hazardous Materials Management Division of Riverside County Department of Environmental Health.

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10. GENERAL CONDITIONS

10.E HEALTH. 2 HAZMAT - CONSTRUCTION PHASE (cont.)

RECOMMND

HAZARDOUS MATERIALS/SPILL RELEASE RESPONSE PROCEDURES DURING CONSTRUCTION:

The Project shall have an Emergency Action Team (EAT) onsite to lead hazardous material or spill release response procedures. The EAT shall be made up of 2 to 3 construction personnel which include the Construction Manager (Team Leader), a Field Engineer, and a construction worker.

The Emergency Action Team will initiate emergency communication and full evacuation procedures when conditions warrant for the following major emergencies (including, but not limited too);

1. Large or rapidly spreading fires.
2. Combustible gas line/tank ruptures.
3. Other immediate releases of flammable, corrosive, or noxious, oxidizer/highly visible gases, vapor, smoke and dust or toxic gases.
4. Spills, leaks or releases of flammable, corrosive or toxic materials of a large enough quantity to present a hazard to site occupants, adjacent properties and personnel or the community at large.
5. Explosions, Detonations, or Deflagrations.
6. Earthquakes.
7. Bomb Threats.
8. Security, violence, civil disobedience incident/situations.
9. Severe weather conditions (heat, cold, lightning).

For smaller spills or leaks, the EAT will shut-off valves or otherwise attempt to stop leaks at the source only if it is safe to do so. Small spills or leaks that can be safely controlled will be immediately contained by the members of the Emergency Action Team in accordance with instructions from the Team Leader.

One Universal Spill Kit and one oil-only spill kit will be located on site at the temporary construction trailer throughout the duration of the construction process. Each spill kit will contain all necessary items.

Hazardous spill mitigation materials and equipment, as well as, personal protective equipment (PPE), will be used as needed in an effort to prevent spills into waterways by protecting drainage inlets, gutters, etc. and for cleanup.

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10. GENERAL CONDITIONS

10.E HEALTH. 2 HAZMAT - CONSTRUCTION PHASE (cont.) (cont.) RECOMMND

Sand or other absorbent materials can also be useful for absorption and containment. Material Safety Data Sheets for the materials in use onsite will be located at the temporary construction trailer.

For any other Hazardous Materials related issue not aforementioned and/or addressed in this section, the Project shall contact the Department of Environmental Health (DEH), Hazardous Materials Management Branch at (760) 863-8976 to obtain further information and ensure compliance with all applicable standards, codes, and regulations.

10.E HEALTH. 3 CSA 122 - POTABLE WATER RECOMMND

Conditional Use Permit#3684 is proposing to obtain potable water from County Service Area 122. Please note that it is the responsibility of this facility to ensure that all requirements to obtain potable water service are met.

10.E HEALTH. 4 INDUSTRIAL HYGIENE - COMMENTS RECOMMND

Based on the information provided for Renewable Resources Group's adjoining project (CUP 3685) the following recommendations shall apply:

1. Facility-related noise, as projected to any portion of any surrounding property containing a "sensitive receiver, habitable dwelling, hospital, school, library, or nursing home", must not exceed the following worst-case noise levels 45 dB(A) - 10 minute noise equivalent level ("leq"), between the hours of 10:00 p.m. to 7:00 a.m. (nighttime standard) and 65 dB(A) - 10 minute leq, between 7:00 a.m. and 10:00 p.m. (daytime standard).

2. Whenever a construction site is within one-quarter (1/4) of a mile of an occupied residence or residences, no construction activities shall be undertaken between the hours of 6:00 pm. and 6:00 a.m. during the months of June through September and between the hours of 6:00 p.m. and 7:00 a.m. during the months of October through May. Exceptions to these standards shall be allowed only with the written consent of the building official.

3. Prior to and during construction, decommissioning, and ground disturbing activities, the applicant shall provide

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10. GENERAL CONDITIONS

10.E HEALTH. 4 INDUSTRIAL HYGIENE - COMMENTS (cont.) RECOMMND

at least two weeks advance notice of any of the above listed activities. Notices shall be mailed directly to land owners and residences within 2,400 feet of the proposed Project, and/or signs shall be posted at the solar facility in areas accessible to the public. Notices shall announce when and where construction would occur; provide tips on reducing noise intrusion (e.g., closing windows facing the planned construction); and provide contact information for the local liaison (e.g. Riverside County Code Enforcement, etc.) for any noise complaints.

4. The applicant would implement a Hearing Conservation Program and Personal Equipment Program than would provide personal protection devices for specific jobs that would produce noise exposures equal or exceed an 8-hour time-weighted average sound level (TWA) of 85 decibels measured on the A-scale (slow responds).

For further information, please contact the Industrial Hygiene Program at (951) 955-8980.

FIRE DEPARTMENT

10.FIRE. 1 USE* -#23-MIN REQ FIRE FLOW RECOMMND

Minimum required fire flow shall be 1500 GPM for a 2 hour duration at 20 PSI residual operating pressure, which must be available before any combustible material is placed on the job site.

10.FIRE. 2 USE-#20-SUPER FIRE HYDRANT RECOMMND

Super fire hydrant(s) (6"x4"x 2-2 1/2") shall be use as per CA Fire Code.

10.FIRE. 4 USE-#84-TANK PERMITS RECOMMND

Applicant or Developer shall be responsible for obtaining under/aboveground fuel, chemical and mixed liquid storage tank permits, from the Riverside County Fire Department and Environmental Health Departments. Plans must be submitted for approval prior to installation. Aboveground fuel/mixed liquid tanks(s) shall meet the following standard: Tank must be tested and labeled o UL2085 Protected Tank Standard or SwRI 93-01. The test must include the Projectile Penetration Test and the Heavy Vehicle Impact Test. A

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10. GENERAL CONDITIONS

10.FIRE. 4 USE-#84-TANK PERMITS (cont.) RECOMMND

sample copy of the tank's label from an independent test laboratory must be included with your plans.

10.FIRE. 7 USE-#88A-AUTO/MAN GATES RECOMMND

Gate(s) shall be automatic operated, minimum 20 feet in width, with a setback of 35 feet from public roadway. Gate access shall be equipped with a rapid entry system. Plans shall be submitted to the Fire Department for approval prior to installation. Automatic/manual gate pins shall be rated with shear pin force, not to exceed 30 foot pounds. Automatic gates shall be equipped with emergency backup power. Gates activated by the rapid entry system shall remain open until closed by the rapid entry system.

FLOOD RI DEPARTMENT

10.FLOOD RI. 1 USE FLOOD HAZARD REPORT RECOMMND

FLOOD HAZARD REPORT Dec, 2013

Conditional Use Permit No. 3684 (previously CUP3677) proposes to construct and operate a 500 MW photovoltaic solar power plant and associated infrastructure to provide site access and connection to the statewide electricity transmission grid. The 4,480-acre site is located in the Blythe area, east of the Blythe Municipal Airport, south and west of Neighbors Boulevard, and north of Interstate 10.

The site is located on a broad alluvial plain and has a tributary drainage area of approximately 190 square miles from the north and west. Stormwater flows conveyed by McCoy Wash and numerous other washes from the areas of the McCoy, Big Maria, and Little Maria Mountains impact the site. The site's topography shows that runoff flows in a broad braided and distributary nature typical of desert washes. Various areas of the site (in addition to the wash areas delineated on the plan) appear to receive frequent runoff and therefore shall be kept free of fill and buildings.

A floodplain delineation study, entitled "Palo Verde Mesa CUP 3684 Wash Features - Summary of Finding, dated July 19, 2013 shows preliminary floodplain limits. A final delineation of the floodplain along with supporting

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10. GENERAL CONDITIONS

10.FLOOD RI. 1

USE FLOOD HAZARD REPORT (cont.)

RECOMMND

calculations will be required. The extent of the South Wash shall be studied to also include that portion that enters the western project boundary. Any encroachment into or other modification of this floodplain shall only be permitted if the applicant is able to demonstrate to the District's satisfaction that such impacts will not cause adverse impacts to upstream or downstream properties. This will likely require the preparation and submittal of a comprehensive hydrologic/hydraulic analysis.

Since the proposal is to construct solar panels, no increased runoff and/or flow diversion is anticipated. The property's maintenance access and site grading shall be designed in a manner that perpetuates the existing natural drainage patterns with respect to tributary drainage areas, outlet points and outlet conditions. Though minor grading within the watercourse is allowed, disturbed areas shall be rebuilt to pre-developed grades and respect the natural drainage patterns.

All new buildings shall be flood-proofed by constructing the finished floor a minimum of 24 inches above the highest adjacent ground or 100 year water surface elevation, whichever is greater. Slope protection may be required due to erosive velocities for buildings on fill. Additionally, the solar panels shall have a minimum clearance of 24 inches above the highest adjacent ground when upright to ensure flows are not obstructed

No flow obstructing fences (chain link, block wall, etc.) shall be constructed along the north and west property lines, since these types of fences obstruct flows causing damage to adjacent properties. The plan reflects an equestrian fence with a 30 foot setback in these areas. As discussed and agreed upon with the applicant, fence design #1775-6 (refer to <http://www.staytuff.com/products/livestock/horse>) or equivalent, shall be used. The fence has 3"H by 6"W openings for first 18" from the bottom and 4"H by 6"W for the next 8 inches and so forth. This fencing or equivalent shall be provided to allow the free flow of storm runoff. No setback is required with the use of this fencing. A detail of the equestrian fence shall be provided accordingly.

Though the site is within the Colorado River Regional Water

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10. GENERAL CONDITIONS

10.FLOOD RI. 1 USE FLOOD HAZARD REPORT (cont.) (cont.) RECOMMND

Quality Control Board jurisdiction, it is outside the Whitewater River watershed limits of Riverside County National Pollutant Discharge Elimination System municipal separate storm sewer system permit (MS4 permit). Therefore, a Water Quality Management Plan for Urban Runoff (WQMP) is not required for the site. However, it is recommended the development incorporate site design Best Management Practices (BMPs) and source control BMPs, as applicable and feasible, into the project plans. Site design BMPs include minimizing urban runoff, minimizing impervious footprint, conserve natural areas, and minimize directly connected impervious areas. Source control BMPs include (but are not limited to) education, activity restrictions and proper maintenance (non-structural) as well as the protection of slopes (structural).

10.FLOOD RI. 2 USE WELL DEFINED WATERCOURSES RECOMMND

The topography of the area consists of well-defined ridges and natural watercourses which traverse the property. There is adequate area outside of the natural watercourses for building sites. The natural watercourses should be kept free of buildings and obstructions in order to maintain the natural drainage patterns of the area. Though minor grading is allowed, disturbed areas shall be rebuilt to pre-developed grades and respect natural drainage patterns.

10.FLOOD RI. 5 USE PERP DRAINAGE PATTERNS RECOMMND

The property's grading shall be designed in a manner that perpetuates the existing natural drainage patterns with respect to tributary drainage area, outlet points and outlet conditions; otherwise, a drainage easement shall be obtained from the affected property owners for the release of concentrated or diverted storm flows. A copy of the recorded drainage easement shall be submitted to the District for review.

10.FLOOD RI. 7 USE ELEVATE FINISH FLOOR RECOMMND

The finished floor of new structures shall be elevated 24 inches above the highest adjacent ground or above the 100 year water surface elevation, which ever is greater.

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10. GENERAL CONDITIONS

PLANNING DEPARTMENT

10.PLANNING. 1 GEN IF HUMAN REMAINS FOUND

RECOMMND

The developer/permit holder or any successor in interest shall comply with the following codes for the life of this project:

If human remains are encountered, State Health and Safety Code Section 7050.5 states that no further disturbance shall occur until the County Coroner has made the necessary findings as to origin. Further, pursuant to Public Resources Code Section 5097.98 (b), remains shall be left in place and free from disturbance until a final decision as to the treatment and their disposition has been made. If the Riverside County Coroner determines the remains to be Native American, the Native American Heritage Commission shall be contacted within the period specified by law. Subsequently, the Native American Heritage Commission shall identify the "Most Likely Descendant." The Most Likely Descendant shall then make recommendations and engage in consultation with the County and the property owner concerning the treatment of the remains as provided in Public Resources Code Section 5097.98. Human remains from other ethnic/cultural groups with recognized historical associations to the project area shall also be subject to consultation between appropriate representatives from that group and the County Planning /Director.

10.PLANNING. 2 GEN - INADVERTANT ARCHAEO FIND

RECOMMND

The developer/permit holder or any successor in interest shall comply with the following for the life of this project:

If during ground disturbance activities, cultural resources are discovered that were not assessed by the archaeological reports and/or environmental assessment conducted prior to project approval, the following procedures shall be followed. A cultural resources site is defined, for this condition, as being three or more artifacts in close association with each other, but may include fewer artifacts if the area of the find is determined to be of significance due to it sacred or cultural importance.

1.All ground disturbance activities within 100 feet of the

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10. GENERAL CONDITIONS

10.PLANNING. 2 GEN - INADVERTANT ARCHAEO FIND (cont.) RECOMMND

discovered cultural resource shall be halted until a meeting is convened between the developer, the project archaeologist, the Native American tribal representative (or other appropriate ethnic/cultural group representative), and the Planning Director to discuss the significance of the find.

2.At the meeting, the significance of the discoveries shall be discussed and fter consultation with the Native American tribal (or other appropriate ethnic/cultural group representative) and the archaeologist, a decision is made, with the concurrence of the Planning Director, as to the appropriate mitigation (documentation, recovery, avoidance, etc) for the cultural resource.

3.Further ground disturbance shall not resume within the area of the discovery until an agreement has been reached by all parties as to the appropriate preservation or mitigation measures.

10.PLANNING. 9 USE - PDP01432 RECOMMND

County Paleontological Report (PDP) No. 1432, submitted for this case (CUP03684), was prepared by JMA and is entitled: "Palo Verde Mesa Solar Project, Paleontological Resources Report, Riverside County, California", dated September 21, 2012.

PDP01432 concluded:

1.There is a high potential for significant paleontological resources on the portion of the site underlain by Pleistocene Alluvium.

2.Grading and excavation in conjunction with development will have high potential to adversely impact significant nonrenewable paleontologic resources that may be present within the boundaries of the project property, depending upon the lithology of the Pleistocene older alluvial sediments present.

PDP01432 recommended:

1.A qualified vertebrate paleontologist should prepare a Worker's Environmental Awareness Program (WEAP). The paleontological training program for workers shall address

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10. GENERAL CONDITIONS

10.PLANNING. 9 USE - PDP01432 (cont.)

RECOMMND

1. the potential to encounter paleontological resources in the field, the sensitivity and importance of these resources, and the legal obligations to preserve and protect such resources.

2.A qualified vertebrate paleontologist shall be retained to develop a Paleontologic Resource Mitigation Monitoring Plan (PRMMP) to mitigate impacts and to guide the recovery of any significant nonrenewable paleontologic resources.

3.The qualified vertebrate paleontologist should, who is a Registered Professional Geologist, should direct paleontologic monitoring, by a qualified paleontologic monitor, during excavations in areas underlain by geologic unit identified as having a high paleontologic sensitivity and likely to contain paleontologic resources.

4.Paleontologic monitors shall be equipped to salvage fossils as unearthed, to divert equipment to avoid construction delays, and to remove samples of sediments likely to contain the remains of small fossil invertebrates and vertebrates.

5.Preparation of recovered specimens to a point of identification and permanent preservation.

6.Identification and curation of specimens into an established, accredited museum repository with permanent retrievable paleontologic storage.

7.Preparation of a paleontological resources monitoring report by the qualified paleontologist.

PDP01432 satisfies the requirement for a Paleontological Resources Assessment for this project. PDP01432 is hereby accepted for CUP03684). A Paleontological Resources Impact Mitigation Program (PRIMP) shall be prepared and submitted prior to issuance of grading permits as described elsewhere in this conditions set.

Pursuant to the County's SABER (Safeguard Artifacts Being Excavated in Riverside County) Policy, paleontological fossils found in the County of Riverside should, by preference, be directed to the Western Science Center in the City of Hemet.

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10. GENERAL CONDITIONS

10.PLANNING. 10 REN ENG - UTILITY COORDINATION

RECOMMND

The developer/permit holder shall ensure all distribution lines, electrical substations and other interconnection facilities are constructed to the specifications of the utility purveyor and/or building codes. Interconnection shall conform to the procedures and standards established by the Public Utilities Commission or as applicable.

10.PLANNING. 11 REN ENG - FUTURE INTERFERENCE

RECOMMND

If the operation of this facility generates electronic interference with or otherwise impairs the operation of any communication facilities, the developer/permit holder shall take immediate action and consult with County Information Technology staff to develop and implement measures acceptable to the Department of Information Technology.

10.PLANNING. 12 REN ENG - REPLACE OR MODIFY

RECOMMND

The developer/permit holder shall give written notice to the Planning and Building Safety Directors prior to the replacement or modification of any portion of this site as shown on the APPROVED EXHIBITS except for routine maintenance.

10.PLANNING. 13 REN ENG - ON SITE DIST. LINES

RECOMMND

The developer/permit holder shall ensure all on site electrical distribution lines are undergrounded up to the point of step-up or utility interface in the case of an on-site substation.

10.PLANNING. 14 REN ENG - PRODUCTION MONITORIN

RECOMMND

The developer/permit holder shall monitor the plant's power production, including the power production for each array or power block and ensure systems are in place to continue monitoring throughout the life of the permit from the time the facility is connected to the grid and begins selling power. A report of the plant's power production shall be produced within fourth-five (45) days from the date the developer/permit holder receives the request from the County.

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10. GENERAL CONDITIONS

10.PLANNING. 15 REN ENG - NO FINAL NO CONNECT

RECOMMND

The developer/permit holder shall ensure that the Department of Building and safety has completed their final inspection prior to connection to the utility purveyor.

A temporary power permit may be pursued from the Department of Building and Safety prior to final inspection for construction and to allow equipment and system testing. The Director of Building and Safety or his designee, may allow the interconnection of individual arrays or power blocks if it is determine that adequate safe guards exist to ensure compliance with all conditions of approval.

10.PLANNING. 16 USE - SOLAR PROJECTS

RECOMMND

.The applicant shall maintain re-vegetated surfaces until a self-sustaining stand of vegetation is re-established and visually adapted to the undisturbed surrounding vegetation. No new disturbance shall be created during operations without prior approval from the County.

2.Interim restoration shall be undertaken during the operating life of the project as soon as possible after disturbances.

3.Painted facilities shall be kept in good repair and repainted when color fades or flakes.

4.The color treatment method used to reduce visual contrast between the backs or non-energy gathering side of the solar panels and the landscape setting shall be kept in good repair, and repaired/retreated when it no longer effectively reduces the visual contrast.

5.Where feasible, vehicle mounted lights should be used for night maintenance activities. Wherever feasible, consistent with safety and security, lighting should be kept off when not in use.

10.PLANNING. 17 USE - COMPLY WITH ORD./CODES

RECOMMND

The development of these premises shall comply with the standards of Ordinance No. 348 and all other applicable Riverside County ordinances and State and Federal codes.

The development of the premises shall conform substantially with that as shown on APPROVED EXHIBIT A, APPROVED EXHIBIT

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10. GENERAL CONDITIONS

10.PLANNING. 17 USE - COMPLY WITH ORD./CODES (cont.) RECOMMND

B, APPROVED EXHIBIT F, and APPROVED EXHIBIT V, unless otherwise amended by these conditions of approval.

10.PLANNING. 18 USE - FEES FOR REVIEW RECOMMND

Any subsequent submittals required by these conditions of approval, including but not limited to grading plan, building plan or mitigation monitoring review, shall be reviewed on an hourly basis (research fee), or other such review fee as may be in effect at the time of submittal, as required by Ordinance No. 671. Each submittal shall be accompanied with a letter clearly indicating which condition or conditions the submittal is intended to comply with.

10.PLANNING. 19 USE - LIGHTING HOODED/DIRECTED RECOMMND

Any outside lighting shall be hooded and directed so as not to shine directly upon adjoining property or public rights-of-way.

10.PLANNING. 20 USE - NO OUTDOOR ADVERTISING RECOMMND

No outdoor advertising display, sign or billboard (not including on-site advertising or directional signs) shall be constructed or maintained within the property subject to this approval.

10.PLANNING. 21 USE - EXTERIOR NOISE LEVELS RECOMMND

xterior noise levels produced by any use allowed under this permit, including, but not limited to, any outdoor public address system, shall not exceed 45 db(A), 10-minute LEQ, between the hours of 10:00 p.m. to 7:00 a.m., and 65 db(A), 10-minute LEQ, at all other times as measured at any residential, hospital, school, library, nursing home or other similar noise sensitive land use. In the event noise exceeds this standard, the permittee or the permittee's successor-in-interest shall take the necessary steps to remedy the situation, which may include discontinued operation of the facilities. he permit holder shall comply with the applicable standards of Ordinance No. 847.

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10. GENERAL CONDITIONS

10.PLANNING. 22 USE - NOISE MONITORING REPORTS RECOMMND

The permit holder may be required to submit periodic noise monitoring reports as determined by the Department of Building and Safety as part of a code enforcement action. Upon written notice from the Department of Building and Safety requiring such a report, the permittee or the permittee's successor-in-interest shall prepare and submit an approved report within thirty (30) calendar days to the Department of Building and Safety, unless more time is allowed through written agreement by the Department of Building and Safety. The noise monitoring report shall be approved by the Office of Industrial Hygiene of the Health Service Agency (the permittee or the permittee's successor-in-interest shall be required to place on deposit sufficient funds to cover the costs of this approval prior to commencing the required report).

10.PLANNING. 23 USE - PREVENT DUST & BLOWSAND RECOMMND

Graded but undeveloped land shall be maintained in a condition so as to prevent a dust and/or blowsand nuisance and shall be either planted with interim landscaping or provided with other wind and water erosion control measures as approved by the Building and Safety Department and the State air quality management authorities.

10.PLANNING. 24 USE - CAUSES FOR REVOCATION RECOMMND

In the event the use hereby permitted under this permit,
a) is found to be in violation of the terms and conditions of this permit,
b) is found to have been obtained by fraud or perjured testimony, or
c) is found to be detrimental to the public health, safety or general welfare, or is a public nuisance, this permit shall be subject to the revocation procedures.

10.PLANNING. 25 USE - CEASED OPERATIONS RECOMMND

In the event the use hereby permitted ceases operation for a period of one (1) year or more, this approval shall become null and void.

10.PLANNING. 26 USE - BUSINESS LICENSING RECOMMND

Every person conducting a business within the unincorporated area of Riverside County, as defined

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10. GENERAL CONDITIONS

10.PLANNING. 26 USE - BUSINESS LICENSING (cont.) RECOMMND

10.16.1 In Riverside County Ordinance No. 857, shall obtain a business license. For more information regarding business registration, contact the Business Registration and License Program Office of the Building and Safety Department at www.rctlma.org.buslic.

10.PLANNING. 27 USE - PHASING PLAN RECOMMND

Phasing Plan. Development of the Property may occur in phases. Each phase will be defined by the OWNER at the time the OWNER submits design plans to COUNTY for grading and building permits to allow Solar Power Plant construction. Presently, the OWNER anticipates that the first phase will include Unit 1 (up to 139.5 MW). The second phase will include Unit 2 (up to 220.5 MW). The third phase will include Unit 3 (up to 103.5 MW). The phases can be constructed in any order, and phases may be constructed simultaneously.

10.PLANNING. 28 USE - MMRP RECOMMND

The mitigation measures set forth in the Mitigation Monitoring and Reporting Program ("MMRP") that are not otherwise included in these Conditions of Approval are hereby incorporated into these Conditions of Approval and shall be enforced by the agency or agencies listed in the MMRP. These Conditions of Approval, including the MMRP, establish the timing of compliance with all conditions of approval and all mitigation measures applicable to this permit. The County shall enforce compliance with these Conditions of Approval as otherwise permitted by law pursuant to Condition No. 10.Planning.24 and as required by the procedures set forth in County Ordinance No. 348.

10.PLANNING. 29 USE - ALUC CONDITIONS RECOMMND

1.The following uses shall be prohibited:

(a)Any use which would direct a steady light or flashing light of red, white, green, or amber colors associated with airport operations toward an aircraft engaged in an initial straight climb following takeoff or toward an aircraft engaged in a straight final approach toward a landing at an airport, other than an FAA-approved navigational signal light or visual approach slope indicator.

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10. GENERAL CONDITIONS

10.PLANNING. 29 USE - ALUC CONDITIONS (cont.)

RECOMMND

(b)Any use which would cause sunlight to be reflected towards an aircraft engaged in an initial straight climb following takeoff or towards an aircraft engaged in a straight final approach towards a landing at an airport.

(c)Any use which would generate smoke or water vapor or which would attract large concentrations of birds, or which may otherwise affect safe air navigation within the area.

(d)Any use which would generate electrical interference that may be detrimental to the operation of aircraft and/or aircraft instrumentation.

2.Any outdoor lighting installed shall be hooded and shielded to prevent either the spillage of lumens or reflection into the sky.

3.If the panels are mounted on a framework, said framework shall have a flat or matte finish so as to minimize reflection of sunlight.

4.Prior to issuance of building permits for any structures or panels on those parcels located wholly or partially within Airport Compatibility Zone B1, the landowner shall convey an avigation easement to the County of Riverside as owner of Blythe Airport.

5.The notice as attached in the ALUC letter dated October 29, 2012 shall be provided to all potential purchasers, and shall be recorded as a deed notice for those parcels within the project located wholly or partially within Airport Compatibility Zones C and D.

6.All photovoltaic panels installed on the project shall have received an anti-reflective coating to minimize the potential for hazardous glare to occur to aircraft.

7.In the event that any incidence of glint, glare, or flash affecting the safety of air navigation occurs as a result of project operation, upon notification to the airport operator of an incidence, the airport operator shall notify the project operator in writing. Within 30 days of written notice, the project operator shall be required to promptly take all measures necessary to eliminate such glint, glare, or flash. An "incidence" includes any situation that results in an accident, incident, "near-miss," or specific

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10. GENERAL CONDITIONS

10.PLANNING. 29

USE - ALUC CONDITIONS (cont.) (cont.)

RECOMMND

safety complaint regarding an in-flight experience to the airport operator or to federal, state, or county authorities responsible for the safety of air navigation. The project operator shall work with the airport operator to prevent recurrence of the incidence. Suggested measures may include, but are not limited to, reprogramming the alignment of the panels or covering them at the time of day when incidences of glare occur to diminish or eliminate the source of the glint, glare, or flash. For each such incidence made known to the project operator, the necessary remediation shall only be considered to have been fulfilled when the airport operator states in writing that the situation has been remediated to the airport operator's satisfaction.

8. In the event that any incidence of electrical interference affecting the safety of air navigation occurs as a result of project operation, upon notification to the airport operator of an incidence, the airport operator shall notify the project operator in writing. Within 30 days of written notice, the project operator shall be required to promptly take all measures necessary to eliminate such interference. An "incidence" includes any situation that results in an accident, incident, "near-miss," report by airport personnel, or specific safety complaint to the airport operator or to federal, state, or county authorities responsible for the safety of air navigation. The project operator shall work with the airport operator to prevent recurrence of the incidence. For each such incidence made known to the project operator, the necessary remediation shall only be considered to have been fulfilled when the airport operator states in writing that the situation has been remediated to the airport operator's satisfaction.

9. The Federal Aviation Administration (FAA) has conducted aeronautical studies (Aeronautical Study Nos. 2012-AWP-5708-OE through 2012-AWP-5728-OE) and has determined that neither marking nor lighting of the proposed structures are necessary for aviation safety. However, if marking and/or lighting for aviation safety are accomplished on a voluntary basis, any such lighting shall be installed in accordance with FAA Advisory Circular 70/7460-1 K Change 2. Such lighting shall be maintained in accordance therewith for the life of the project.

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10. GENERAL CONDITIONS

10.PLANNING. 29 USE - ALUC CONDITIONS (cont.) (cont.) (cont.)RECOMMND

10. The maximum height of the proposed structure, including all mounted appurtenances and aviation safety lighting (if any), shall not exceed the heights as noted in each Determination of No Hazard to Air Navigation for each respective structure.

11. In accordance with the Determinations of No Hazard to Air Navigation issued for the subject structures, the determinations do include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated in each respective determination. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

12. The specific coordinates, height, top point elevation, power, and frequencies of the proposed facility shall not be amended without further review by the Airport Land Use Commission and the Federal Aviation Administration; provided, however, that reduction in structure height or elevation shall not require further review by the Airport Land Use Commission.

13. Within five (5) days after construction reaches its greatest height, the permittee shall complete Form 7460-2, Notice of Actual Construction or Alteration, and submit said form to the Federal Aviation Administration Southwest Regional Office Obstruction Evaluation Service at 2601 Meacham Boulevard, Fort Worth, TX 76137 or online at www.oaaaa.faa.gov. This requirement is also applicable in the event the project is abandoned.

10.PLANNING. 30 USE - CONST NOISE TIME MM

RECOMMND

Construction shall be prohibited in areas within 0.25 mile (1,320 feet) of residents, between the hours of 6:00 p.m. and 6:00 a.m. during the months of June through September and the hours of 6:00 p.m. and 7:00 a.m. during the months of October through May. The construction contractor shall locate equipment staging in areas that will create the greatest distance between construction-related noise sources and noise sensitive receivers nearest the project site during project construction. No music or electronically reinforced speech from construction workers shall be audible at noise-sensitive properties. During all

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10. GENERAL CONDITIONS

10.PLANNING. 30 USE - CONST NOISE TIME MM (cont.) RECOMMND

project site construction, the construction contractors shall equip all construction equipment, fixed or mobile, with properly operating and maintained mufflers, consistent with manufacturers' standards. Where feasible, the construction contractor shall place all stationary construction equipment so that emitted noise is directed away from the noise sensitive receptors nearest the project site.

This condition implements mitigation measure NOI-1 from the EIR.

10.PLANNING. 31 USE - CONST WORKER NOISE MM RECOMMND

The applicant would implement a Hearing Conservation Program and Personal Protective Equipment Program that would provide personal protective devices for specific jobs that would produce excessive noise levels. The Applicant shall comply with the Occupational Safety and Health Administration's (OSHA) regulations on occupational noise exposure.

This condition implements mitigation measure NOI-3 from the EIR.

10.PLANNING. 32 USE - WATER USAGE REPORTING RECOMMND

The Applicant will be required to monitor and annually report water usage during both Project construction and operation. Water usage monitoring shall be reported annually to the County and Palo Verde Irrigation District over the life of the Project to ensure utilization as reasonably required for beneficial use.

TRANS DEPARTMENT

10.TRANS. 1 USE - COUNTY WEB SITE RECOMMND

Additional information, standards, ordinances, policies, and design guidelines can be obtained from the Transportation Department Web site: <http://rctlma.org/trans/>. If you have questions, please call the Plan Check Section at (951) 955-6527.

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10. GENERAL CONDITIONS

10.TRANS. 9 USE - STD INTRO (ORD 461) RECOMMND

- With respect to the conditions of approval for the referenced tentative exhibit, the landowner shall provide all street improvements, street improvement plans and/or road dedications set forth herein in accordance with Riverside County Road Improvement Standards (Ordinance 461).

It is understood that the exhibit correctly shows acceptable centerline elevations, all existing easements, traveled ways, and drainage courses with appropriate Q's, and that their omission or unacceptability may require the exhibit to be resubmitted for further consideration. This ordinance and all conditions of approval are essential parts and a requirement occurring in ONE is as binding as though occurring in all. All questions regarding the true meaning of the conditions shall be referred to the Transportation Department.

10.TRANS. 11 USE-ENCROACHMNT/FRANCHISE AGRE RECOMMND

If for any reason the applicant or the project requires to use the public road right-of-way, it is the responsibility of the applicant or the developer to contact County Transportation Department for any encroachment permits.

Prior to the issuance of encroachment permit the applicant and/or developer shall contact County Counsel and also County Purchasing Department, to file the Franchise Agreement and get it approved by the Board of Supervisors. If for any reason Franchise Agreements do not get approved by the Board of Supervisors an encroachment permit cannot be issued. If Franchise Agreement is not approved by the Board of Supervisors, no construction or use can be commenced under this CUP.

10.TRANS. 12 USE - ENVIRONMENTAL CLEARANCES RECOMMND

It shall be the responsibility of the permit holder to comply with the applicable Federal, State and County environmental laws, and receive any necessary environmental clearance and/or permits required for construction of the Gen-Tie Line prior to commencing any work as authorized by the encroachment permit. If the permittee fails to comply with the required environmental laws, the encroachment permit shall be subject to the County's revocation procedures.

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10. GENERAL CONDITIONS

10.TRANS. 13 USE - ENCROACHMNT PERMIT/FINAL RECOMMND

It is the responsibility of the applicant and/or developer to contact Riverside County Transportation Department to obtain an encroachment permit, per Ordinance No. 499, to place the Gen-Tie lines and power poles within County road right-of-way, prior to installing and or disturbing any road right-of-way. The locations of power poles shall be determined during permitting stage.

A cash security deposit will be required by Transportation Department to ensure performance of the conditions of the permit and the replacement or restoration of the highway, including pavement surfaces, ground surfaces, and sub-surfaces within highway rights-of-way, and survey monuments or other improvements that may have been disturbed. Also, the above mentioned deposit will ensure any reports or documentations due by the applicant and/or developer to any department of Riverside County be performed and completed, and that the final reports be submitted to each individual department. The security deposit will not be released until the applicant or developer provides a letter of completion from each department stating that they are satisfied with the project, and that they recommend the project to be finalized.

10.TRANS. 14 USE - MAINTAIN EXISTING ACCESS RECOMMND

Existing dedicated County roads and General Plan roads shall not be blocked and/or used as private property.

10.TRANS. 15 USE - EIR MM TRA-2 RECOMMND

The contractor would conduct construction activities in accordance with Caltrans' applicable limitations on vehicle sizes and weights, Construction Excavation Permits obtained from Riverside County, Encroachment Permits from Caltrans, and permits and licenses from the California Highway Patrol and Caltrans for the transport of hazardous substances.

WASTE DEPARTMENT

10.WASTE. 1 USE - DECOMMISSIONING/CLOSURE RECOMMND

ØPrior to County Approval of the Decommissioning and Closure Plan: A Waste Recycling Plan (WRP) shall be submitted to the Riverside County Department of Waste Resources for approval. At a minimum, the WRP must

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10. GENERAL CONDITIONS

10.WASTE. 1 USE - DECOMMISSIONING/CLOSURE (cont.) RECOMMND

identify the materials (i.e., solar panels, plastic, cardboard, concrete, asphalt, wood, etc.) that will be generated by the decommissioning and closure of the facility, the projected amounts, the measures/methods that will be taken to recycle, reuse, and/or reduce the amount of materials, the facilities and/or haulers that will be utilized, and the targeted recycling or reduction rate. During the decommissioning and closure, the project site shall have, at a minimum, two (2) bins: one for waste disposal and the other for the recycling of Construction and Demolition (C&D) materials. Additional bins are encouraged to be used for further source separation of C&D recyclable materials. Accurate record keeping (receipts) for recycling of C&D recyclable materials and solid waste disposal must be kept. Arrangements can be made through the franchise hauler.

10.WASTE. 2 USE - HAZARDOUS MATERIALS RECOMMND

Hazardous materials are not accepted at Riverside County landfills. In compliance with federal, state, and local regulations and ordinances, any hazardous waste generated in association with the project shall be disposed of at a permitted Hazardous Waste disposal facility. Hazardous waste materials include, but are not limited to, paint, batteries, oil, asbestos, and solvents. For further information regarding the determination, transport, and disposal of hazardous waste, please contact the Riverside County Department of Environmental Health, Environmental Protection and Oversight Division.

20. PRIOR TO A CERTAIN DATE

PLANNING DEPARTMENT

20.PLANNING. 1 USE - LIFE OF THE PERMIT RECOMMND

The life of Conditional Use Permit No. 3684 shall terminate on July 25, 2047. This permit shall thereafter be null and void and of no effect whatsoever.

20.PLANNING. 2 USE - EXPIRATION DATE-CUP/PUP RECOMMND

This approval shall be used within eight (8) years of the approval date; otherwise, it shall become null and void and of no effect whatsoever. By use is meant completion of

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20. PRIOR TO A CERTAIN DATE

20.PLANNING. 2 USE - EXPIRATION DATE-CUP/PUP (cont.) RECOMMND

construction and the actual occupancy of existing buildings or land under the terms of the authorized use.

The Planning Director, at his/her, discretion, may grant additional years beyond the eight (8) years stated above. Should the years be granted and the completion of construction and the actual occupancy of existing buildings or land under the terms of the authorized use not occur, the approval shall become null and void and of no effect whatsoever.

TRANS DEPARTMENT

20.TRANS. 1 USE - IMPROVEMENTS RECOMMND

After approval of CUP03684 by Board of Supervisors and prior to start of the project, the developer shall do the following:

All of the existing roads within the vicinity of this project (CUP03684) are not structurally sound to carry the construction traffic of this project. It is the responsibility of this project to design structural section for primary and secondary accesses and improvements shall be completed and approved as Directed by the Transportation Department prior to start of any construction.

* Improvement Plans shall be submitted and above mentioned roads shall be on dedicated road rights-of-way. If dedication does not exist it shall be dedicated by this project to the County *

60. PRIOR TO GRADING PRMT ISSUANCE

BS GRADE DEPARTMENT

60.BS GRADE. 1 USE - NPDES/SWPPP RECOMMND

Prior to issuance of any grading or construction permits - whichever comes first - the applicant shall provide the Building and Safety Department evidence of compliance with the following: "Effective March 10, 2003 owner operators of grading or construction projects are required to comply with the N.P.D.E.S. (National Pollutant Discharge Elimination System) requirement to obtain a construction

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60. PRIOR TO GRADING PRMT ISSUANCE

60.BS GRADE. 1 USE - NPDES/SWPPP (cont.) RECOMMND

permit from the State Water Resource Control Board (SWRCB). The permit requirement applies to grading and construction sites of "ONE" acre or larger. The owner operator can comply by submitting a "Notice of Intent" (NOI), develop and implement a STORM WATER POLLUTION PREVENTION PLAN (SWPPP) and a monitoring program and reporting plan for the construction site. For additional information and to obtain a copy of the NPDES State Construction Permit contact the SWRCB at www.swrcb.ca.gov.

Additionally, at the time the county adopts, as part of any ordinance, regulations specific to the N.P.D.E.S., this project (or subdivision) shall comply with them.

60.BS GRADE. 2 USE - GRADING SECURITY RECOMMND

Grading in excess of 199 cubic yards will require a performance security to be posted with the Building and Safety Department.

60.BS GRADE. 3 USE - IMPORT / EXPORT RECOMMND

In instances where a grading plan involves import or export, prior to obtaining a grading permit, the applicant shall have obtained approval for the import/export location from the Building and Safety Department.

A separate stockpile permit is required for the import site. It shall be authorized in conjunction with an approved construction project and shall comply with the requirements of Ordinance 457.

If an Environmental Assessment, prior to issuing a grading permit, did not previously approve either location, a Grading Environmental Assessment shall be submitted to the Planning Director for review and comment and to the Building and Safety Department Director for approval.

Additionally, if the movement of import / export occurs using county roads, review and approval of the haul routes by the Transportation Department may be required.

60.BS GRADE. 4 USE - GEOTECH/SOILS RPTS RECOMMNI

Geotechnical soils reports, required in order to obtain a grading permit, shall be submitted to the Building and

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60. PRIOR TO GRADING PRMT ISSUANCE

60.BS GRADE. 4 USE - GEOTECH/SOILS RPTS (cont.) RECOMMND

Safety Department for review and approval prior to issuance of a grading permit. All grading shall be in conformance with the recommendations of the geotechnical/soils reports as approved by Riverside County.* *The geotechnical/soils, compaction and inspection reports will be reviewed in accordance with the RIVERSIDE COUNTY GEOTECHNICAL GUIDELINES FOR REVIEW OF GEOTECHNICAL AND GEOLOGIC REPORTS.

60.BS GRADE. 6 USE - DRAINAGE DESIGN Q100 RECOMMND

All drainage facilities shall be designed in accordance with the Riverside County Flood Control & Water District's or Coachella Valley Water District's conditions of approval regarding this application. If not specifically addressed in their conditions, drainage shall be designed to accommodate 100 year storm flows.

60.BS GRADE. 8 USE - NOTARIZED OFFSITE LTR RECOMMND

A notarized letter of permission from the affected property owners or easement holders shall be provided in instances where off site grading is proposed as part of the grading plan.

60.BS GRADE. 9 USE - SITE DESIGN BMPS RECOMMND

Prior to the issuance of a grading permit, the grading plan shall include the Site Design BMPS to be utilized to mitigate impacts to water quality. This includes but is not limited to minimizing urban runoff by maximizing permeable areas, incorporating landscape buffers and directing drainage flows to these areas. Minimizing directly connected impervious areas by directing roof runoff to vegetative swales or landscape buffer areas. Minimizing impervious footprint by using open jointed paving materials or permeable surfaces. Conserving natural areas; by preserving native trees and shrubs; planting additional native or drought tolerant trees and shrubs; and directing drainage to natural areas.

60.BS GRADE. 12 USE - PRE-CONSTRUCTION MTG RECOMMND

Upon receiving grading plan approval and prior to the issuance of a grading permit, the applicant is required to schedule a pre-construction meeting with the Building and Safety Department Environmental Compliance Division.

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60. PRIOR TO GRADING PRMT ISSUANCE

60.BS GRADE. 13 USE- BMP CONST NPDES PERMIT RECOMMND

Prior to the issuance of a grading permit, the owner / applicant shall obtain a BMP (Best Management Practices) Permit for the monitoring of the erosion and sediment control BMPs for the site. The Department of Building and Safety will conduct NPDES (National Pollutant Discharge Elimination System) inspections of the site based on Risk Level to verify compliance with the Construction General Permit, Stormwater ordinances and regulations until completion of the construction activities, permanent stabilization of the site and permit final.

60.BS GRADE. 14 USE - SWPPP REVIEW RECOMMND

Grading and construction sites of "ONE" acre or larger required to develop a STORM WATER POLLUTION PREVENTION PLAN (SWPPP) - the owner/applicant shall submit the SWPPP to the Building and Safety Department Environmental Compliance Division for review and approval prior to issuance of a grading permit.

E HEALTH DEPARTMENT

60.E HEALTH. 1 ENV SITE ASSESSMENT PHASE II RECOMMND

A Phase II Environmental Site Assessment shall be required to be completed for pesticides or other hazardous materials used on the property. The results must be reviewed by the Environmental Cleanup Program (ECP) to verify that the levels are below hazardous waste criteria. If there are questions regarding the number of samples or other requirements, contact ECP (951) 955-8980.

EPD DEPARTMENT

60.EPD. 1 BMP-7 TRASH ABATEMENT PLAN RECOMMND

A Trash Abatement Plan shall be developed that focuses on containing trash and food in closed and secure sealable containers, with lids that latch, and removing them periodically to reduce their attractiveness to opportunistic species, such as common ravens, coyotes, and feral dogs, that could serve as predators of native wildlife and special-status animals. The Plan would also establish a regular litter pick-up procedure within and around the perimeter of the Project area, and removal of construction-related trash containers from the Project area

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60. PRIOR TO GRADING PRMT ISSUANCE

60.EPD. 1 BMP-7 TRASH ABATEMENT PLAN (cont.) RECOMMND

when construction is complete.

60.EPD. 2 BMP-10 WEED MANAGEMENT PLAN RECOMMND

In compliance with the Federal Noxious Weed Act and the Plant Protection Act, a Project-specific integrated weed management plan for the control of noxious weeds and invasive plant species would be prepared. The plan would identify presence, location, and abundance of weed species in the Project area and surrounding area adjacent to the Project, as well as identify suppression and containment measures to prevent the spread of weed species and introduction of weed species. Prevention techniques would include: limiting disturbance areas during construction to the minimum required to perform work; limiting ingress and egress to defined routes; maintaining vehicle wash and inspection stations; and closely monitoring the types of materials brought on site to minimize the potential for weed introduction. During operations, noxious anWEEDd invasive weed management will be incorporated as a part of mandatory site training for groundskeepers and maintenance personnel. Training will include weed identification and the impacts on agriculture, wildlife, and fire frequencies. Training will also cover the importance of preventing the spread of noxious weeds and of controlling the proliferation of existing weeds.

60.EPD. 3 BIO-1 LEAD BIOLOGIST APPROVAL RECOMMND

The Lead Biologist shall monitor the work area bi-weekly during ground disturbing construction activities. The Lead Biologist shall conduct monitoring for any area subject to disturbance from construction activities that may impact biological resources. The Lead Biologist's duties include minimizing impacts to special-status species, native vegetation, wildlife habitat, and unique resources. Where appropriate, the inspector will flag the boundaries of biologically sensitive areas and monitor any construction activities in these areas to ensure that ground disturbance activities and impacts occur within designated limits. The Lead Biologist will also be responsible for ensuring the BMPs shall be employed to prevent loss of habitat caused by Project-related impacts (e.g., grading or clearing for new roads) within the gen-tie line corridor. The resume of the proposed Lead Biologist will be provided to the County (as appropriate) for concurrence prior to onset of

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60. PRIOR TO GRADING PRMT ISSUANCE

60.EPD. 3 BIO-1 LEAD BIOLOGIST APPROVAL (cont.) RECOMMND

ground-disturbing activities. The Lead Biologist will have demonstrated expertise with the biological resources within the Project area.

60.EPD. 4 BIO-3 PRECON BADGER SURVEYS RECOMMND

In areas identified as suitable habitat during the 2011 and 2012 surveys, biological monitors shall conduct pre-construction surveys for American badger no more than 30 days prior to initiation of construction activities. Surveys shall also consider the potential presence of dens within 100 feet of the Project boundary (including utility corridors and access roads) and shall be performed for each phase of construction. If dens are detected each den shall then be further classified as inactive, potentially active, or definitely active. Inactive dens that would be directly impacted by construction activities shall be excavated by hand and backfilled to prevent reuse by badgers. Potential dens that would be directly impacted by construction activities shall be monitored by the Biological Monitor for three consecutive nights using a tracking medium such as diatomaceous medium or fire clay and/or infrared camera stations at the entrance. If no tracks are observed in the tracking medium or no photos of the target species are captured after three nights, the den shall be excavated and backfilled by hand. If tracks are observed, the badger dens shall be fitted with the one-way trap doors to encourage badgers to move off-site. After 48 hours post-installation, the den shall be excavated and collapsed, following the same protocol as with western burrowing owl burrows. These dens shall be collapsed prior to construction of the desert tortoise fence, to allow badgers the opportunity to move off-site without impediment. If an active natal den is detected on the site, the CDFW shall be contacted within 24 hours. The course of action would depend on the age of the pups, location of the den site, status of the perimeter site fence, and the pending construction activities proposed near the den. A 500-foot no disturbance buffer shall be maintained around all active dens. Alternatively, a designated biologist authorized by CDFW, shall trap and remove badgers from occupied dens and move them off-site into appropriate habitat.

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60. PRIOR TO GRADING PRMT ISSUANCE

60.EPD. 5

BIO-4 PRECON KIT FOX SURVEYS

RECOMMND

In areas identified as suitable habitat during the 2011 and 2012 surveys, biological monitors shall conduct pre-construction surveys for kit fox no more than 30 days prior to initiation of construction activities. Surveys shall also consider the potential presence of dens within 100 feet of the Project boundary (including utility corridors and access roads) and shall be performed for each phase of construction. The methodologies for pre-construction kit fox surveys shall be included in the BRMIMP, as prescribed by Mitigation Measure BIO-10. If dens are detected each den shall then be further classified as inactive, potentially active, or definitely active. Inactive dens that would be directly impacted by construction activities shall be excavated by hand and backfilled to prevent reuse by kit fox. Potential dens that would be directly impacted by construction activities shall be monitored by the Biological Monitor for three consecutive nights using a tracking medium such as diatomaceous medium or fire clay and/or infrared camera stations at the entrance. If no tracks are observed in the tracking medium or no photos of the target species are captured after three nights, the den shall be excavated and backfilled by hand. If tracks are observed, the kit fox dens shall be fitted with the one-way trap doors to encourage kit fox to move off-site. After 48 hours post-installation, the den shall be excavated and collapsed, following the same protocol as with inactive western burrowing owl burrows. These dens shall be collapsed prior to construction of the desert tortoise fence, to allow kit fox the opportunity to move off-site without impediment. If an active natal den is detected on the site, the CDFW shall be contacted within 24 hours. The course of action would depend on the age of the pups, location of the den site, status of the perimeter site fence, and the pending construction activities proposed near the den. A 500-foot no disturbance buffer shall be maintained around all active dens until CDFW provides direction on how to proceed. Habitat-based mitigation or other appropriate mitigation as discussed previously for desert tortoise and western burrowing owl shall provide mitigation for impacts to non-listed special-status species that inhabit overlapping suitable habitat. The following measures are required to reduce the likelihood of distemper transmission:
"No pets shall be allowed on the site prior to or during construction;

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60. PRIOR TO GRADING PRMT ISSUANCE

60.EPD. 5 BIO-4 PRECON KIT FOX SURVEYS (cont.) RECOMMND

"Any kit fox hazing activities that include the use of animal repellents such as coyote urine must be cleared through the CDFW prior to use; and
Any documented kit fox mortality shall be reported to the CDFW within 24 hours of identification. If a dead kit fox is observed, it shall be retained and protected from scavengers until the CDFW determines if the collection of necropsy samples is justified.

60.EPD. 6 BIO-5 DESERT TORTOISE PROTECT RECOMMND

(1) Qualified Biologist: In the following measures, a "qualified biologist" is defined as a person with appropriate education, training, and experience to conduct tortoise surveys, monitor Project activities, provide worker education programs, and supervise or perform other implementing actions. The person must demonstrate an acceptable knowledge of tortoise biology, desert tortoise impact minimization techniques, habitat requirements, sign identification techniques, and survey procedures. Evidence of such knowledge may include work as a compliance monitor on a project in desert tortoise habitat, work on desert tortoise trend plot or transect surveys, conducting surveys for desert tortoise, or other research or field work on desert tortoise. Attendance at a training course endorsed by the agencies (e.g., Desert Tortoise Council tortoise training workshop) is a supporting qualification. All qualified biologists must be approved by the USFWS, CDFW, and the Riverside Environmental Programs Department (EPD) prior to starting any work on site. The names and qualifications of proposed qualified biologists shall be provided to USFWS, CDFW, and EPD for approval at least 30 days prior to the biologists implementing desert tortoise protection measures described herein.

A qualified biologist will be on-site during all construction. The qualified biologist shall conduct a pre-construction clearance survey of the Project area, watch for tortoises wandering into the construction areas, check under vehicles, and examine excavations and other potential pitfalls for entrapped animals. The qualified biologist will be responsible for overseeing compliance with desert tortoise protective measures and for coordination with the Field Contact Representative (FCR) (described below). The qualified biologist shall have the authority to halt all Project activities that are in violation of these measures or that may result in the take

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60. PRIOR TO GRADING PRMT ISSUANCE

60.EPD. 6

BIO-5 DESERT TORTOISE PROTECT (cont.)

RECOMMND

of a tortoise. The qualified biologist shall have a copy of the conservation measures prescribed by USFWS for the gen-tie line through the section 7 consultation process.

The qualified biologist is not authorized to handle or relocate desert tortoises as part of this project without proper authorization from USFWS and CDFW.

(2) Preconstruction Clearance Survey: The qualified biologist shall conduct a preconstruction clearance survey of the Project area. Transects for clearance surveys will be spaced 15 feet apart. Clearance will be considered complete after two successive surveys have been conducted without finding any desert tortoises. Clearance surveys must be conducted during the active season for desert tortoises (April through May or September through October). The qualified biologist is not authorized to handle or relocate desert tortoises a part of this Project without proper authorization from USFWS and CDFW. If a tortoise or tortoise burrow is located during clearance surveys, the USFWS and CDFW will be contacted for direction on how to proceed.

(3) Field Contact Representative: The Project Applicant will designate a FCR who will be responsible for overseeing compliance with desert tortoise protective measures and for coordination with the USFWS and CDFW. The FCR will have the authority to halt all Project activities that are not in compliance with the conservation measures prescribed by USFWS for the gen-tie line through the section 7 consultation process. The FCR will have a copy of these conservation measures when work is being conducted on the site. The FCR may be an agent for the company, the site manager, any other Project employee, a biological monitor, or other contracted biologist. Neither the FCR nor any other project proponent may bar or limit any communications between any Natural Resource Agency or The County of Riverside Environmental Programs Division and any project biologist, biological monitor or contracted biologist. Any incident occurring during the Project activities that is considered by the qualified biologist to be in non-compliance with these measures will be documented immediately by the qualified biologist. The FCR will ensure that appropriate corrective action is taken. Corrective actions will be documented by the qualified biologist. The following incidents will require immediate cessation of the Project activities causing the incident: (1) location of a desert tortoise within the exclusion fencing; (2) imminent threat of injury or death to a desert tortoise; (3)

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60. PRIOR TO GRADING PRMT ISSUANCE

60.EPD. 6 BIO-5 DESERT TORTOISE PROTECT (cont.) (cont.)RECOMMND

unauthorized handling of a desert tortoise, regardless of intent; (4) operation of construction equipment or vehicles outside a project area cleared of desert tortoise, except on designated roads; and (5) conducting any construction activity without a biological monitor where one is required.

(4) Worker Training: Prior to the onset of construction activities, a desert tortoise education program will be presented by the FCR or qualified biologist to all personnel who will be present on work areas within the Project area. Following the onset of construction, any new employee will be required to formally complete the tortoise education program prior to working on-site. At a minimum, the tortoise education program will cover the following topics:

"A detailed description of the desert tortoise, including color photographs;

"The distribution and general behavior of the desert tortoise;

"Sensitivity of the species to human activities;

"The protection the desert tortoise receives the FESA and CESA Act, including prohibitions and penalties incurred for violation of the FESA and CESA Act;

"The protective measures being implemented to conserve the desert tortoise during construction activities; and
Procedures and a point of contact if a desert tortoise is observed on-site.

(5) Site Fencing: Desert tortoise exclusion fencing will be installed around the Project area, and will remain in place for the life of the Project. The fence will adhere to USFWS design guidelines, available at:

http://www.fws.gov/venturaispecies_information/protocols_guidelines/docs/dt1DT_Exclusion-Fence_2005.pdf. The

qualified biologist will conduct a clearance survey before the tortoise fence is enclosed to ensure no tortoises are on the Project area. If a tortoise is found, all

construction activity will halt and the USFWS and CDFW contacted for direction on how to proceed. Once installed, exclusion fencing will be inspected at least monthly and following all rain events, and corrective action taken if needed to maintain the integrity of the tortoise barrier.

Fencing around the Project area will include a desert tortoise exclusion gate. This gate will remain closed at all times, except when vehicles are entering or leaving the Project area. If it is deemed necessary to leave the gate open for extended periods of time (e.g., during high

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60. PRIOR TO GRADING PRMT ISSUANCE

60.EPD. 6 BIO-5 DESERT TORTOISE PROTECT (cont.) (cont.) RECOMMND

traffic periods), the gate may be left open as long as a qualified biologist is present to monitor for tortoise activity in the vicinity. Sites with potential hazards to desert tortoise (e.g., auger holes, steep-sided depressions) that are outside of the desert tortoise exclusion fencing will be fenced by installing exclusionary fencing, or not left unfilled overnight.

(6) Refuse Disposal: All trash and food items shall be promptly contained within closed, raven-proof containers. These will be regularly removed from the Project area to reduce the attractiveness of the area to common ravens and other desert predators. The FCR will be responsible for ensuring that trash is removed regularly from the site such that containers do not overflow, and that the trash containers are kept securely closed when not in use.

(7) Tortoises under vehicles: The underneath of vehicles parked outside of desert tortoise exclusion fencing will be inspected immediately prior to the vehicle being moved. If a tortoise is found beneath a vehicle, the vehicle will not be moved until the desert tortoise leaves of its own accord.

(8) Tortoise Observations: No handling of desert tortoise or burrow excavation is allowed as part of the proposed action, unless authorized by USFWS and CDFW. If a tortoise is observed on or near the road accessing the Project area, vehicular traffic will stop and the tortoise will be allowed to move off the road on its own. If a tortoise is observed outside of exclusion fencing, construction will stop and the tortoise shall be allowed to move out of the area on its own. If a tortoise or tortoise burrow is observed within the exclusion fencing, all construction will stop, and the USFWS and CDFW contacted for direction on how to proceed.

The following activities are not authorized and will require immediate cessation of the construction activities causing the incident: (1) location of a desert tortoise within the exclusion fencing; (2) imminent threat of injury or death to a desert tortoise; (3) unauthorized handling of a desert tortoise, regardless of intent; (4) operation of construction equipment or vehicles outside a project area cleared of desert tortoise, except on designated roads; and (5) conducting any construction activity without a biological monitor where one is required.

(9) Dead or Injured Specimens: Upon locating a dead or injured tortoise, the Applicant or agent is to immediately notify the Palm Springs Fish and Wildlife Office by

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60.EPD. 6 BIO-5 DESERT TORTOISE PROTECT (cont.) (cont.)RECOMMND

telephone within three days of the finding. Written notification must be made within five days of the finding, both to the appropriate USFWS field office and to the USFWS' Division of Law Enforcement. The information provided must include the date and time of the finding or incident (if known), location of the carcass or injured animal, a photograph, cause of death, if known, and other pertinent information.

60.EPD. 7 BIO-6 BURROWING OWL PROTECTION RECOMMND

A Draft Burrowing Owl Monitoring and Mitigation Plan (Plan) has been developed to describe monitoring, reporting, and management of the burrowing owl during the construction, O&M, and decommissioning of the proposed Project, as required by CDFW and County of Riverside. It has been prepared following the 2012 CDFW Staff Report on Burrowing Owl Mitigation (CDFW, 2012), and describes a multi-tiered approach to prevent or reduce impacts during construction and operation of the Project. Below is a general summary of the Plan requirements:

"Pre-construction surveys will be conducted throughout the Project area and laydown areas for burrowing owls, possible burrows, and sign of owls (e.g., pellets, feathers, white wash) no less than 14 days prior to site grading;

"Time lapses between project phases/activities could trigger the need for subsequent take avoidance surveys, as stated in Appendix D of the CDFW 2012 survey guidelines. The approved Biologist will determine when subsequent surveys are needed.

"Should any of the pre-construction surveys yield positive results for the presence of burrowing owl or active burrows within the Project area, the approved Biologist will coordinate with the Construction Contractor to implement avoidance and set-back distances. Disturbance of owls or occupied burrows during the breeding season (February 1 through August 31) will not be permitted and to minimize disturbance, use of down-hole cameras to inspect burrows will be used only after one-way doors and visual monitoring have taken place;

"If suitable burrows are observed and documented during the preconstruction surveys within the Project footprint and determined to be inactive, these burrows will be excavated and filled in under the supervision of the approved Biologist(s) prior to clearing and grading;

"To compensate for impacts to burrowing owls in activity

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60.EPD. 7 BIO-6 BURROWING OWL PROTECTION (cont.) RECOMMND

areas on the northern part of the Project, 146 acres of habitat have been identified adjacent to the Project area. A letter agreeing to dedicate the existing compensation lands must be approved by CDFW and the County prior to ground disturbance. Land used for compensation must be of equal value or better than the land impacted. Ownership of compensation lands will be transferred prior to any surface disturbance to one of the following: the County, or an entity acceptable to the County or CDFW that can effectively manage listed species and their habitats. "The Plan provides detailed methods and guidance for passive relocation of burrowing owls occurring within the Project disturbance area; and "The Plan describes monitoring and management of the passive relocation, including a three-year monitoring program.

60.EPD. 8 BIO-7 BIRD AND BAT CONSERVATIO RECOMMND

If Project construction activities cannot occur completely outside the bird breeding season, then pre-construction surveys for active nests shall be conducted by a qualified biologist within 1,200 days before the initiation of construction that would occur between January 1 and September 30. The qualified biologist will hold a current Memorandum of Understanding with the County of Riverside to conduct nesting bird surveys. If breeding birds with active nests are found, a biological monitor shall establish a species-specific buffer around the nests for construction activities, 250 feet or 1,200 feet for raptor nests. Extent of protection will be based on proposed management activities, human activities existing at the onset of nesting initiation, species, topography, vegetative cover, and other factors. When appropriate, a no-disturbance buffer around active nest sites will be required from nest-site selection to fledging. If for any reason a bird nest must be removed during the nesting season, written documentation providing concurrence from the USFWS and CDFW authorizing the nest relocation shall be obtained. All nest removals shall occur after the nest is demonstrated to be inactive by a qualified biologist and have been shown to not result in take as defined by the Migratory Bird Treaty Act (MBTA). A Bird and Bat Conservation Strategy (BBCS) will be developed for this Project and include additional protections for avian species. The BBCS would be based on specific recommendations from the USFWS and CDFW, and would

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60. PRIOR TO GRADING PRMT ISSUANCE

60.EPD. 8

BIO-7 BIRD AND BAT CONSERVATIO (cont.)

RECOMMND

provide:

- "a statement of the Applicant's understanding of the importance of bird and bat safety and management's commitment to remain in compliance with relevant laws;
 - "documentation of conservation measures PVMSP would implement through design and operations to avoid and reduce bird and bat fatalities at both solar generation facilities as well as the associated gen-tie line, including consideration of bird height and wingspan requirements and use of flight diverters, perch and nest discouraging material, etc.;
 - "consistent, practical and up-to-date direction to PVMSP staff on how to avoid, reduce, and monitor bird and bat fatalities;
 - "establishment of accepted processes to monitor and mitigate bird and bat fatalities; establishment of accepted fatality thresholds that, if surpassed, would trigger adaptive changes to management and mitigation management;
 - "an adaptive management framework to be applied, if thresholds are surpassed; and
 - "A three year post-construction monitoring study.
- The BBCS will be submitted to USFWS and CDFW for review at least 60 days prior to construction. The BBCS would be considered a "living document" that articulates the Applicant's commitment to develop and implement a program to increase avian and bat safety and reduce risk. As progress is made through the program or challenges are encountered, the BBCS may be reviewed, modified, and updated. The initial goals of this BBCS are to:
- "provide a framework to facilitate compliance with federal law protecting avian species and a means to document compliance for regulators and the interested public;
 - "allow the Agent to manage risk to protected bird and bat species in an organized and cost-effective manner;
 - "establish a mechanism for communication between BMSP managers and natural resource regulators (primarily USFWS and CDFW);
 - "foster a sense of stewardship with BMSP owners, managers, and field engineers; and articulate and cultivate a culture of wildlife awareness (specifically birds and bats) and the importance of their protection.
 - "articulate and cultivate a culture of wildlife awareness (specifically birds and bats) and importance of their protection.

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60.EPD. 9

BIO-8 MOJAVE LIZARD MITIGATION

RECOMMND

To mitigate for permanent habitat loss and direct impacts to Mojave fringe-toed lizards the Applicant shall provide compensatory mitigation at a 3:1 ratio, which may include compensation lands purchased in fee or in easement in whole or in part, for impacts to stabilized or partially stabilized desert dune habitat (i.e., dune, sand ramp, or fine-sandy wash habitat). Suitable Mojave fringe-toed lizard habitat is located throughout the gentle line corridor and potential habitat was detected on approximately three percent of the Project area (creosote bush scrub habitat). If compensation lands are acquired, the Applicant shall provide funding for the acquisition in fee title or in easement, initial habitat improvements and long-term maintenance and management of the compensation lands. A letter agreeing to dedicate the existing compensation lands must be approved by BLM, USFWS, CDFW and the County prior to ground disturbance, used for compensation must be of equal value or better than the land impacted. Ownership of compensation lands will be transferred prior to any surface disturbance to one of the following: the County, or an entity acceptable to the agencies that can effectively manage listed species and their habitats.

60.EPD. 10

BIO-9 STREAMBED PERMITS AND JD

RECOMMND

Impacts to areas under jurisdiction of the USACE, Regional Water Quality Control Board (RWQCB), and CDFW shall be avoided as necessary to reduce impacts to less than significant levels. A formal jurisdictional delineation of regulated waters and wetlands shall be conducted on the Project site prior to construction to verify avoidance of such resources. Where avoidance of jurisdictional areas is not necessary to reduce impacts to less than significant levels, including emergency repairs, and access/spur roads within the ephemeral channel, the applicant shall provide the necessary mitigation required as part of wetland permitting. This will include creation, restoration, and/or preservation of suitable jurisdictional habitat along with adequate buffers to protect the function and values of jurisdictional area mitigation. The location(s) of the mitigation will be determined in consultation with the Applicant and the responsible agency(s) as part of the permitting process

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60. PRIOR TO GRADING PRMT ISSUANCE

60.EPD. 11

BIO-10 BRMIMP

RECOMMND

A Biological Resources Mitigation Implementation and Monitoring Plan (BRMIMP) will be developed to summarize all of the various biological mitigation, monitoring, and compliance measures and include measures from the various biological plans and permits developed for PVMSP. The BRMIMP shall include the following:

1. All biological resources mitigation, monitoring, and compliance measures outlined in this EIR; All biological resource mitigation, monitoring and compliance measures required in federal agency terms and conditions, such as conservation measures prescribed by USFWS for the gen-tie line through the section 7 consultation process;
2. All biological resource mitigation, monitoring and compliance measures outlined in the Burrowing Owl Mitigation and Monitoring Plan and the Bird and Bat Conservation Strategy (the full biological plans will be included in the attachments to the BRMIMP);
3. All locations on a map, at an approved scale, of sensitive biological resource areas subject to disturbance and areas requiring temporary protection and avoidance during construction and operation;
4. Duration for each type of monitoring and a description of monitoring methodologies and frequency;
5. Performance standards to be used to help decide if/when proposed mitigation is or is not successful; and
- 6.7. A process for proposing plan modifications to appropriate agencies for review and approval. The BRMIMP document shall be provided at least 90 days prior to start of any Project-related ground disturbing activities to the USFWS, CDFW, and County for review and approval. Implementation of BRMIMP measures will be reported in the monthly compliance reports by the Lead Biologist (i.e., survey results, construction activities that were monitored, species observed).

FLOOD RI DEPARTMENT

60.FLOOD RI. 2

USE SUBMIT PLANS

RECOMMND

A copy of the improvement plans, grading plans, BMP improvement plans and any other necessary documentation along with supporting hydrologic and hydraulic calculations shall be submitted to the District for review. The plans must receive District approval prior to the issuance of grading permits. All submittals shall be date stamped by the engineer and include a completed Flood Control Deposit

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60. PRIOR TO GRADING PRMT ISSUANCE

60.FLOOD RI. 2 USE SUBMIT PLANS (cont.)

RECOMMND

Based Fee Worksheet and the appropriate plan check fee deposit.

PLANNING DEPARTMENT

60.PLANNING. 1 GEN- CULTURAL RESOURCES PROFE

RECOMMND

As a result of information contained in archaeological study PD-A-4753, prepared in 2012 by Gini Austerman of Power Engineers, Inc., it was demonstrated that the project is sensitive for both prehistoric and historic cultural resources.

Prior to the issuance of grading permits, the developer/permit holder shall retain and enter into a monitoring and mitigation service contract with a qualified Archaeologist for services. This professional shall be known as the "Project Archaeologist." The Project Archaeologist shall be included in the pre-grade meetings to provide cultural/historical sensitivity training including the establishment of set guidelines for ground disturbance in sensitive areas with the grading contractors and special interest monitors. The Project Archaeologist shall manage and oversee monitoring for all initial ground disturbing activities and excavation of each portion of the project site requiring conventional mass grading, solar array areas where trenching will occur, and any new roadways. The Project Archaeologist shall have the authority to temporarily divert, redirect or halt the ground disturbance activities to allow identification, evaluation, and potential recovery of cultural resources in coordination with the special interest monitors.

The developer/permit holder shall submit a fully executed copy of the contract to the Riverside County Planning Department to ensure compliance with this condition of approval. Upon verification, the Planning Department shall clear this condition.

NOTE:

1)The Project Archaeologist is responsible for implementing mitigation using standard professional practices for cultural resources archaeology. The Project Archaeologist shall consult with the County, developer/permit holder and special interest group monitor throughout the process.

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60. PRIOR TO GRADING PRMT ISSUANCE

60.PLANNING. 1 GEN- CULTURAL RESOURCES PROFE (cont.) RECOMMND

2) This agreement shall not modify any approved condition of approval or mitigation measure.

60.PLANNING. 3 USE - PALEO PRIMP & MONITOR RECOMMND

County Paleontological Report (PDP) No. 1432, prepared by JMA for this case (CUP03684), entitled: "Palo Verde Mesa Solar Project, Paleontological Resources Report, Riverside County, California", and dated September 21, 2012 concluded the potential to impact significant paleontological resources is high. HENCE:

PRIOR TO ISSUANCE OF GRADING PERMITS:

1. The applicant shall retain a qualified paleontologist approved by the County of Riverside to create and implement a project-specific plan for monitoring site grading/earthmoving activities (project paleontologist).

2. The project paleontologist retained shall review the approved development plan and grading plan and shall conduct any pre-construction work necessary to render appropriate monitoring and mitigation requirements as appropriate. These requirements shall be documented by the project paleontologist in a Paleontological Resource Impact Mitigation Program (PRIMP - also synonomous with PRMMP "Paleontologic Resource Mitigation Monitoring Plan"). This PRIMP shall be submitted to the County Geologist for review and approval prior to issuance of a Grading Permit.

Information to be contained in the PRIMP, at a minimum and in addition to other industry standards and Society of Vertebrate Paleontology standards, are as follows:

1. Description of the proposed site and planned grading operations.

2. Description of the level of monitoring required for all earth-moving activities in the project area.

3. Identification and qualifications of the qualified paleontological monitor to be employed for grading operations monitoring.

4. Identification of personnel with authority and responsibility to temporarily halt or divert grading

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60. PRIOR TO GRADING PRMT ISSUANCE

60.PLANNING. 3 USE - PALEO PRIMP & MONITOR (cont.)

RECOMMND

equipment to allow for recovery of large specimens.

5.Direction for any fossil discoveries to be immediately reported to the property owner who in turn will immediately notify the County Geologist of the discovery.

6.Means and methods to be employed by the paleontological monitor to quickly salvage fossils as they are unearthed to avoid construction delays.

7.Sampling of sediments that are likely to contain the remains of small fossil invertebrates and vertebrates.

8.Procedures and protocol for collecting and processing of samples and specimens.

9.Fossil identification and curation procedures to be employed.

10.Identification of the permanent repository to receive any recovered fossil material. *Pursuant the County of Riverside "SABER Policy", paleontological fossils found in the County of Riverside should, by preference, be directed to the Western Science Center in the City of Hemet. A written agreement between the property owner/developer and the repository must be in place prior to site grading.

11.All pertinent exhibits, maps and references.

12.Procedures for reporting of findings.

13.Identification and acknowledgement of the developer for the content of the PRIMP as well as acceptance of financial responsibility for monitoring, reporting and curation fees.

The property owner and/or applicant on whose land the paleontological fossils are discovered shall provide appropriate funding for monitoring, reporting, delivery and curating the fossils at the institution where the fossils will be placed, and will provide confirmation to the County that such funding has been paid to the institution.

All reports shall be signed by the project paleontologist and all other professionals responsible for the report's content (eg. Professional Geologist), as appropriate. Two wet-signed original copies of the report(s) shall be submitted to the office of the County Geologist along with

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60. PRIOR TO GRADING PRMT ISSUANCE

60.PLANNING. 3 USE - PALEO PRIMP & MONITOR (cont.) (cont.) RECOMMND

A copy of this condition and the grading plan for appropriate case processing and tracking. These documents should not be submitted to the project Planner, the Plan Check staff, the Land Use Counter or any other County office. In addition, the applicant shall submit proof of hiring (i.e. copy of executed contract, retainer agreement, etc.) a project paleontologist for the in-grading implementation of the PRIMP.

60.PLANNING. 4 USE - GEO02340 UPDATE RECOMMND

County Geologic Report (GEO) No. 2340, submitted for this project (CUP03684) was prepared by Ninyo & Moore and is entitled: "Geologic Reconnaissance Evaluation, Palo Verde Mesa Solar Project, Blythe, California" dated July 30, 2012. In addition, Nyno & Moore prepared "Limited Geotechnical Evaluation, Palo Verde Mesa Solar Project, Blythe, California", dated July 2, 2013. This document is herein incorporated as a part of GEO02340.

Prior to issuance of a grading permit for this project, the following clarification and/or additional information shall be submitted to the County Geologist for review and approval:

This report, along with a Limited Geotechnical Evaluation (2012), was reviewed and approved under County Geologic Report (GEO) No. 2340 for the above referenced project. However, these reports were written to the 2010 CBC, and are therefore in need of an update to the 2013 CBC. The geotechnical/geologic consultant of record for this project shall, at a minimum, update GEO02340 with regards to the most recent building code, and current standard of care. Alternatively, a new study may be submitted.

This update or new study shall be submitted as a new GEO report attached specifically to CUP03684 Note: acquisition of a County geologic report (GEO) number and submittal of review fees is required (DBF estimate is \$2063 for the 3,250-acre proposed project). All reports (2 wet-signed original copies), Planning Geologic Report application (case sub-type GEO3) and deposit base fee payment should be submitted, in person by the applicant or his/her representative, at one of the County's two main offices (Riverside, Palm Desert). These items should be submitted at the Land Use counter. Reports and payment should not be

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60. PRIOR TO GRADING PRMT ISSUANCE

60.PLANNING. 4 USE - GEO02340 UPDATE (cont.) RECOMMND

sent or given to the Planner or County Geologist directly.

The new GEO shall be reviewed and approved by the County Geologist prior to issuance of a grading permit.

60.PLANNING. 5 USE - TEMPORARY FENCING RECOMMND

P-33-020942, P-33-020943, P-33-020945, P-33-020946, P-33-020947, P-33-020948, P-33-020949, P-33-020950, P-33-020951 shall be avoided and preserved by Project design. The Project Archaeologist, Project Supervisor and Tribal Monitor shall fence off these sites with sufficient buffer area to protect these resources from grading impacts, prior to any earthmoving activities in this area. The fencing shall be checked on a weekly basis throughout the grading process to ensure that the site is appropriately protected. The fencing shall be removed once all earthmoving is complete for this area.

60.PLANNING. 6 USE - P-33-0012846 RECOMMND

P-33-0012846 is eligible for listing in the NRHP and CRHR and is a historical resource under CEQA. The site shall be avoided and preserved by project design. The Project Archaeologist, Project Supervisor and Tribal Monitor shall fence off these sites with sufficient buffer area to protect these resources from grading impacts, prior to any earthmoving activities in this area. The fencing shall be checked on a weekly basis throughout the grading process to ensure that the site is appropriately protected. The fencing shall be removed once all earthmoving is complete for this area.

60.PLANNING. 7 USE - ARCHAEOLOGIST REQ. RECOMMND

PRIOR TO ISSUANCE OF GRADING PERMITS: the applicant/developer shall provide evidence to the County of Riverside Planning Department that a County certified archaeologist (Project Archaeologist) has been contracted to implement a grading monitoring and data recovery program to mitigate potential impacts to undiscovered buried archaeological resources associated with this project. The Monitoring Plan shall include, but shall not be limited to, the following guidelines:
(1) The applicant/developer shall contract with a Native

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60. PRIOR TO GRADING PRMT ISSUANCE

60. PLANNING. 7

USE - ARCHAEOLOGIST REQ. (cont.)

RECOMMND

American monitor from the appropriate tribal group to be involved with the grading monitoring program.

(2) The Project Archaeologist shall conduct Cultural Resource Sensitivity Training for all construction Personnel.

(3) The County certified archaeologist and Native American monitor shall attend the pre-grading meeting with the contractors to explain and coordinate the requirements of the monitoring program.

(4) The archaeologist shall monitor all areas identified for development including off-site improvements.

(5) An adequate number of monitors (archaeological and Native American) shall be present to ensure that all earth moving activities are observed and shall be on-site during all grading activities for areas to be monitored.

(6) During the original cutting of previously undisturbed deposits, the archaeological monitor(s) and Native American monitor(s) shall be onsite as determined by the Project Archaeologist. Inspections will vary based on the rate of excavation, the materials excavated, and the presence and abundance of artifacts and features. The frequency and location of inspections will be determined by the Project Archaeologist in consultation with the Native American monitor.

(7) Isolates and clearly non-significant deposits shall be minimally documented in the field and the monitored grading can proceed.

(8) In the event that previously unidentified potentially significant cultural resources are discovered, the archaeological monitor(s) shall have the authority to divert or temporarily halt ground disturbance operations in the area of discovery to allow evaluation of potentially significant cultural resources. The Project Archaeologist shall contact the County Archaeologist at the time of discovery. The Project Archaeologist, in consultation with the County Archaeologist, shall determine the significance of the discovered resources. The County Archaeologist must concur with the evaluation before construction activities will be allowed to resume in the affected area.

(9) Before construction activities are allowed to resume in the affected area, the artifacts shall be recovered and features recorded using professional archaeological methods. The Project Archaeologist shall determine the amount of material to be recovered for an adequate artifact sample for analysis.

(10) In the event that previously unidentified cultural

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60. PRIOR TO GRADING PRMT ISSUANCE

60.PLANNING. 7 USE - ARCHAEOLOGIST REQ. (cont.) (cont.) RECOMMND

resources are discovered, all cultural material collected during the grading monitoring program shall be processed and curated at a Riverside County facility that meets federal standards per 36 CFR Part 79, and therefore would be professionally curated and made available to other archaeologists/researchers for further study. The collections and associated records shall be transferred, including title, to an appropriate curation facility within Riverside County, to be accompanied by payment of the fees necessary for permanent curation. Evidence shall be in the form of a letter from the curation facility identifying that archaeological materials have been received and that all fees have been paid.

(11) Upon completion of the implementation phase, a final Phase IV Monitoring Report shall be submitted describing the plan compliance procedures and site conditions before and after construction. The final report shall include copies of all daily monitoring notes and Cultural Resource Sensitivity sign-in sheet(s).

60.PLANNING. 8 USE - NATIVE MONITOR RECOMMND

Prior to the issuance of grading permits, the developer/permit applicant shall enter into a contract and retain a Native American Monitor. The contract shall address the treatment and ultimate disposition of cultural resources which may include repatriation and/or curation in a Riverside County approved curation facility.

The Native American Monitor shall be on-site during all initial ground disturbing activities and excavation of each portion of the project site including clearing, grubbing, tree removals, grading, trenching, stockpiling of materials, rock crushing, structure demolition and etc. The Native American Monitor shall have the limited authority to temporarily divert, redirect or halt the ground disturbance activities to allow identification, evaluation, and potential recovery of cultural resources in coordination with the appropriate Cultural Resources Professional such as an Archaeologist, Historic Archaeologist, Architectural Historian and/or Historian.

The developer/permit applicant shall submit a fully executed copy of the contract to the County Archaeologist to ensure compliance with this condition of approval. Upon verification, the Archaeologist shall clear this condition.

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60.PLANNING. 8 USE - NATIVE MONITOR (cont.)

RECOMMND

NOTE:

- 1)The Cultural Resources Professional is responsible for implementing mitigation and standard professional practices for cultural resources. The Professional shall coordinate with the County, developer/permit applicant and Native American Monitors throughout the process.
- 2)Native American monitoring does not replace any required Cultural Resources monitoring, but rather serves as a supplement for coordination and advisory purposes for all groups' interests only.
- 3)The developer/permit applicant shall not be required to further pursue any agreement for special interest monitoring of this project if after 60 days from the initial attempt to secure an agreement the developer/permit applicant, through demonstrable good faith effort, has been unable to secure said agreement from the Native American Monitors. A good faith effort shall consist of no less than 3 written attempts from the developer/permit applicant to the tribe to secure the required special interest monitoring agreement and appropriate e-mail and telephone contact attempts. Documentation of the effort made to secure the agreement shall be submitted to the County Archaeologist for review and consideration.
- 4)Should repatriation be preferred, it shall not occur until after the Phase IV monitoring report has been submitted to the Riverside County Archaeologist. Should curation be preferred, the developer/permit applicant is responsible for all costs.

This agreement shall not modify any condition of approval or mitigation measure.

60.PLANNING. 10 USE - FEE STATUS

RECOMMND

Prior to the issuance of grading permits for Conditional Use Permit No. 3684, the Planning Department shall determine the status of the deposit based fees. If the fees are in a negative status, the permit holder shall pay the outstanding balance.

60.PLANNING. 11 USE - REQD APPLICATIONS (1)

RECOMMND

No grading permits shall be issued until Development Agreement No. 86 has been approved and adopted by the Board

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60.PLANNING. 11 USE - REQD APPLICATIONS (1) (cont.)

RECOMMND

~~of Supervisors~~ and has been made effective.

60.PLANNING. 12 USE - AG LAND MM

RECOMMND

Prior to issuance of a grading permit, the Applicant shall provide written evidence of completion of at least one of the following measures to mitigate the impact to agricultural resources caused by conversion of land subject to the grading permit to non-agricultural uses. Important Farmlands of Statewide Importance, and Unique Farmlands as shown on maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency that is in effect as of the date of approval of the Project.

1.Acquire and record agricultural conservation easement(s) meeting the following criteria:

a.Two acres placed under conservation easement for each net acre of Important Farmland converted to non-agricultural uses during the life of the Project. A plot plan shall be submitted substantiating the net acreage calculation, which shall be consistent with the definition of "Net Acreage" in County Policy B 29 (see note 1).

b.Land subject to the conservation easement shall be located in Riverside County and must be of the same or higher State of California Department of Conservation farmland classification (Prime Farmland or Farmland of Statewide Importance) as the land that has been converted to non-agricultural uses.

c.The conservation easement must be held by a third party having the capacity to hold such an easement and in an easement form acceptable to Riverside County.

d.The Applicant must provide to the easement holder an endowment sufficient to generate funds for ongoing monitoring and enforcement of the easement.

2.Purchase of credits from an established agricultural land mitigation bank in an amount sufficient to achieve a level of protection at least equivalent to Section 1 of Mitigation Measure AG-1 above;

3.Contribution of agricultural land or equivalent funding to an organization that provides for the preservation of

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60.PLANNING. 12 USE - AG LAND MM (cont.)

RECOMMND

farmland in California in an amount sufficient to achieve a level of protection at least equivalent to Section 1 of Mitigation Measure AG-1 above; or

4.Participation in any agricultural land mitigation program adopted by Riverside County that provides equal or more effective mitigation than the measures listed above.

1 - The County of Riverside's Board of Supervisor's Policy B-29 defines "Net Acreage" as all areas involved in the production of power including, but not limited to, the power block, solar collection equipment, areas contiguous to solar collection equipment, transformers, transmission lines and/or piping, transmission facilities (on and off-site), service roads regardless of surface type - including service roads between panels or collectors, structures, and fencing surrounding all such areas. Net acreage shall not include off-site access roads or areas specifically set aside either as environmentally sensitive or designated as open space, and shall not include the fencing of such set aside areas.

This condition implements mitigation measure AG-1 from the EIR.

60.PLANNING. 13 USE - CONST NOTICE MM

RECOMMND

Prior to and during construction, decommissioning, and ground disturbing activities, the applicant shall provide at least two weeks' advance notice of construction and decommissioning. Notices shall be mailed directly to land owners and residents within 2,400 feet of the Project boundary, and signs shall be a minimum size of 4 feet high by 6 feet wide and posted at the solar facility in areas accessible to the public. Notices shall announce when and where construction would occur; provide tips on reducing noise intrusion (e.g., closing windows facing the planned construction); and provide contact information for the local public liaison for any noise complaints.

This condition implements mitigation measure NOI-2 from the EIR.

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60. PRIOR TO GRADING PRMT ISSUANCE

TRANS DEPARTMENT

60.TRANS. 2 USE-SBMT/APPVD GRADG PLAN/TRANSP. RECOMMND

When you submit a grading plan to the Department of Building and Safety, a copy of the grading plan shall be submitted and approved by the Transportation Department prior to a grading permit issuance.

Submit required grading plan to the Transportation Department, Plan Check Section, 8th Floor, 4080 Lemon Street, Riverside, CA.

60.TRANS. 4 USE - IMPROVEMENTS RECOMMND

Improvement plans shall be submitted prior to issuance of a grading permit.

All of the existing roads within the vicinity of this project (CUP03684) are not structurally sound to carry the construction traffic of this project. It is the responsibility of this project to design structural section for primary and secondary accesses and improvements shall be completed and approved as directed by the Transportation Department prior to start of any construction.

* Above mentioned roads shall be on dedicated road rights-of-way. If dedication does not exist it shall be dedicated by this project to the County *

70. PRIOR TO GRADING FINAL INSPECT

PLANNING DEPARTMENT

70.PLANNING. 1 USE - PALEO MONITORING REPORT RECOMMND

"PRIOR TO GRADING FINAL:

The applicant shall submit to the County Geologist one wet-signed copy of the Paleontological Monitoring Report prepared for site grading operations at this site. The report shall be certified by the professionally-qualified Paleontologist responsible for the content of the report. This Paleontologist must be on the County's Paleontology Consultant List. The report shall contain a report of findings made during all site grading activities and an appended itemized list of fossil specimens recovered during grading (if any) and proof of accession of fossil materials

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70. PRIOR TO GRADING FINAL INSPECT

70.PLANNING. 1 USE - PALEO MONITORING REPORT (cont.) RECOMMND

into the pre-approved museum repository. In addition, all appropriate fossil location information shall be submitted to the Western Center, the San Bernardino County Museum and Los Angeles County Museum of Natural History, at a minimum, for incorporation into their Regional Locality Inventories."

70.PLANNING. 2 USE - PHASE IV REPORT RECOMMND

PRIOR TO GRADING PERMIT FINAL: The developer/holder shall prompt the Project Cultural Resources Professional to submit one (1) wet-signed paper copy and (1) CD of a Phase IV Cultural Resources Monitoring Report that complies with the Riverside County Planning Department's requirements for such reports for all ground disturbing activities associated with this grading permit. The report shall follow the County of Riverside Planning Department Cultural Resources (Archaeological) Investigations Standard Scopes of Work posted on the TLMA website. The report shall also include evidence of the required cultural/historical sensitivity training for the construction staff held during the required pre-grade meeting. The Cultural Resource Professional shall also provide evidence to the satisfaction of the County Archaeologist that all archaeological materials recovered during the Phase IV Mitigation Monitoring of the project, have been curated at a Riverside County Curation facility that meets federal standards per 36 CFR Part 79 and therefore would be professionally curated and made available to other archaeologists/researchers for further study. The collection and associated records shall be transferred, including title, and are to be accompanied by payment of the fees necessary for permanent curation. Evidence shall be in the form of a letter from the curation facility identifying that archaeological materials have been received and that all fees have been paid. The County Archaeologist shall review the report to determine adequate mitigation compliance was met. Upon determining the report and mitigation is adequate, the County Archaeologist shall clear this condition.

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80. PRIOR TO BLDG PRMT ISSUANCE

BS GRADE DEPARTMENT

80.BS GRADE. 1 USE - NO B/PMT W/O G/PMT

RECOMMND

Prior to the issuance of any building permit, the property owner shall obtain a grading permit and/or approval to construct from the Building and Safety Department.

80.BS GRADE. 2 USE - ROUGH GRADE APPROVAL

RECOMMND

Prior to the issuance of any building permit, the applicant shall obtain rough grade approval and/or approval to construct from the Building and Safety Department. The Building and Safety Department must approve the completed grading of your project before a building permit can be issued. Rough Grade approval can be accomplished by complying with the following:

1. Submitting a "Wet Signed" copy of the Soils Compaction Report containing substantiating data from the Soils Engineer (registered geologist or certified geologist, civil engineer or geotechnical engineer as appropriate) for his/her certification of the project.
2. Submitting a "Wet Signed" copy of the Rough Grade certification from a Registered Civil Engineer certifying that the grading was completed in conformance with the approved grading plan.
3. Requesting a Rough Grade Inspection and obtaining rough grade approval from a Riverside County inspector.
4. Rough Grade Only Permits: In addition to obtaining all required inspections and approval of all final reports, all sites permitted for rough grade only shall provide 100 percent vegetative coverage to stabilize the site prior to receiving a rough grade permit final.

Prior to release for building permit, the applicant shall have met all rough grade requirements to obtain Building and Safety Department clearance.

E HEALTH DEPARTMENT

80.E HEALTH. 1 USE - PERC TEST REQD

RECOMMND

A satisfactory detailed soils percolation test in accordance with the procedures outlined in the Riverside

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80. PRIOR TO BLDG PRMT ISSUANCE

80.E HEALTH. 1 USE - PERC TEST REQD (cont.) RECOMMND

County Department of Environmental Health Technical
Guidance Manual shall be required.

FIRE DEPARTMENT

80.FIRE. 1 USE-#17A-BLDG PLAN CHECK \$ RECOMMND

Building Plan check deposit base fee of \$1,056.00, shall be
paid in a check or money order to the Riverside County Fire
Department after plans have been approved by our office.

80.FIRE. 2 USE-#4-WATER PLANS RECOMMND

The applicant or developer shall separately submit two
copies of the water system plans to the Fire Department for
review and approval. Calculated velocities shall not exceed
10 feet per second. Plans shall conform to the fire hydrant
types, location and spacing, and the system shall meet the
fire flow requirements.

Plans shall be signed and approved by a registered civil
engineer and the local water company with the following
certification: "I certify that the design of the water
system is in accordance with the requirements prescribed by
the Riverside County Fire Department."

FLOOD RI DEPARTMENT

80.FLOOD RI. 2 USE SUBMIT PLANS RECOMMND

A copy of the improvement plans, grading plans, BMP
improvement plans and any other necessary documentation
along with supporting hydrologic and hydraulic
calculations shall be submitted to the District for
review. The plans must receive District approval prior to
the issuance of building permits. All submittals shall be
date stamped by the engineer and include a completed Flood
Control Deposit Based Fee Worksheet and the appropriate
plan check fee deposit.

PLANNING DEPARTMENT

80.PLANNING. 1 REN ENG - PURCHASE AGRMENT (1) RECOMMND

Prior to the issuance of building permits, the
developer/permit holder shall provide a copy of the Power

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80. PRIOR TO BLDG PRMT ISSUANCE

80.PLANNING. 1 REN ENG - PURCHASE AGRMENT (1) (cont.) RECOMMND

Purchase Agreement (PPA) with the utility purveyor to the Riverside County Planning Department for filing. One hard copy and one CD shall be provided. The Planning Department shall place the agreement on file for future reference and clear this condition.

80.PLANNING. 2 REN ENG - REMEDIATION BONDING RECOMMND

Prior to the issuance of building permits, the developer/permit holder shall bond or provide another appropriate and sufficient security in a form acceptable to the County in the County's sole discretion to cover the costs of all foreign material removal and site restoration including but not limited to removal of foundations, towers, transformers, inverters and cables. The amount shall be as specified and agreed upon in an an engineering estimate prepared by a California Registered Engineer and that has been reviewed and approved by the County.

The bond shall be held for life of the permit, but may be released sooner by the Board of Supervisors upon approval of a final demolition and site restoration inspection by the Department of Building and Safety. Thereafter, and with no interruption in the bonding security of the project, bonds shall be renewed in five (5) year increments to include the expiration date of the permit(s) granted, as referenced herein.

If the Planning Director determines, at any time during the term of the bond or other security, that the amount of the bond or other security has become insufficient, the permit holder shall increase the amount of the bond or other security within thirty (30) days after being notified that the amount is insufficient, but the required increase shall not exceed the increase in the U.S. Department of Labor Consumer Price Index for the Los Angeles-Long Beach Metropolitan Area.

80.PLANNING. 5 USE- LIGHTING PLANS SOLAR (1) RECOMMND

Prior to the issuance of a building permit, a solar power plant lighting plan shall prepared by the applicant, and approved by the Planning Department, that documents how lighting will be designed and installed to minimize night-sky impacts during facility construction and operations. Lighting for facilities should not exceed the

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80. PRIOR TO BLDG PRMT ISSUANCE

80.PLANNING. 5 USE- LIGHTING PLANS SOLAR (1) (cont.) RECOMMND

minimum number of lights and brightness required for safety and security, and should not cause excessive reflected glare. Low-pressure sodium light sources should be used to reduce light pollution. Full cut-off luminaires should be used to minimize up lighting. Lights should be directed downward or toward the area to be illuminated. Light fixtures should not spill light beyond the project boundary. Lights in highly illuminated areas that are not occupied on a continuous basis should have switches, timer switches, or motion detectors so that the lights operate only when the area is occupied.

Where feasible, vehicle mounted lights should be used for night maintenance activities. Wherever feasible, consistent with safety and security, lighting should be kept off when not in use. The lighting plan should include a process for promptly addressing and mitigating complaints about potential lighting impacts.

80.PLANNING. 6 USE - LIGHTING PLANS RECOMMND

All street lights and other outdoor lighting shall be shown on electrical plans submitted to the Department of Building and Safety for plan check approval and shall comply with the requirements of Riverside County Ordinance No. 655 and the Riverside County Comprehensive General Plan.

80.PLANNING. 7 USE - CONFORM TO ELEVATIONS RECOMMND

Elevations of all buildings and structures submitted for building plan check approval shall be in substantial conformance with the elevations shown on APPROVED EXHIBIT A and APPROVED EXHIBIT B.

80.PLANNING. 8 USE - CONFORM TO FLOOR PLANS RECOMMND

Floor plans shall be in substantial conformance with that shown on APPROVED EXHIBIT A.

80.PLANNING. 9 USE - REQD APPLICATIONS (2) RECOMMND

No building permits shall be issued until Development Agreement No. 86 has been approved and adopted by the Board of Supervisors and has been made effective.

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