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**I. Conditional Use  
Permit  
(CUP#19-0015)**

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE PLANNING COMMISSION OF THE COUNTY OF IMPERIAL, CALIFORNIA, RECOMMENDING APPROVAL FOR “CONDITIONAL USE PERMIT CUP #19-0015” FOR WESTSIDE CANAL BATTERY ENERGY PROJECT**

**WHEREAS**, CED Westside Canal Battery Storage, LLC has submitted an application for Conditional Use Permit #19-0015 for the construction, operation, maintenance and decommissioning of battery storage energy facility(s) (CUP #19-0015) is referred to in this Resolution as the Project);

**WHEREAS**, an Environmental Impact Report and CEQA Findings have been prepared in accordance with the requirements of the California Environmental Quality Act, the State Guidelines, and the County’s “Rules and Regulations to Implement CEQA,” as Amended;

**WHEREAS**, the Planning Commission of the County of Imperial has been delegated with the responsibility of approvals, certifications and making recommendations to the Imperial County Board of Supervisors for approvals of conditional use permits;

**WHEREAS**, public notice of said application has been given, and the Planning Commission has heard, received and considered all oral and written protests, objections and evidence presented by interested parties at a public hearing held with respect to this item on October 27, 2021; and

**WHEREAS**, the Draft EIR was received by the State Clearinghouse on April 7, 2021 and circulated for a period of 50 days ending on May 27, 2021. (SCH #2020040122).

**NOW, THEREFORE**, the Planning Commission of the County of Imperial **DOES HEREBY RESOLVE** as follows:

**SECTION 1.** The Planning Commission has considered the proposed Conditional Use Permit #19-0015 prior to recommending approval and the County’s consideration of the Project has been noticed in compliance with law.

**SECTION 2.** That the Project complies with the requirements of the Imperial County Code and is in accordance with State Planning and Zoning law therefore, the following findings are made pursuant to Imperial County Code § 90203.09 as follows:

**A. The proposed use is consistent with goals and policies of the adopted County General Plan. (Imperial County Code § 90203.09.A)**

The General Plan goals and objectives serve as guidelines and policy statements. The County Board of Supervisors has the authority to interpret the meaning of its General Plan and determine whether the proposed project is consistent

1. The General Plan designates the subject site as "Industrial." Sections 90516.02 of the County Land Use Ordinance identify the permitted and conditional uses within the M-2, zoning designations. Uses identified as conditionally permitted require a Conditional Use Permit (CUP), which is subject to the discretionary approval of the County Board of Supervisors (Board) per a recommendation by the County Planning Commission.
2. The Planning Commission finds that the evidence in the record demonstrates that the Project does not conflict with any existing agricultural operations and will not result in the premature elimination of agricultural operations. The proposed General Plan Amendment from Agriculture to Industrial and the proposed zoning change from A-2 General Agriculture to M-2 Medium Industrial is also consistent with the General Plan Land Use Element goals and objectives, including objectives to "[d]iversify employment and economic opportunities in the County while preserving agricultural activity" (Goal 2) and to "[p]reserve agriculture and natural resources while promoting diverse economic growth through sound land use planning" (Goal 3, Objective 3.2). Further, the Project applicant will be required to submit to Imperial County a site-specific decommissioning and reclamation plan capable of restoring the site.
3. Pursuant to SB 2X, California utilities have been mandated to obtain 33% of their energy from renewable sources (wind, solar, geothermal, biofuels, etc.) by 2020. The County General Plan actively promotes both alternative energy and opportunities for economic growth. For example, Goal I of the Geothermal/Alternative Energy and Transmission Element ("Alternative Energy Element") provides that the County "supports and encourages the full, orderly, and efficient development of geothermal/alternative energy resources while at the same time preserving and enhancing where possible agricultural, biological, human, and recreational resources
4. The proposed use is also consistent with the County's goal of becoming a major source of renewable energy for California, and fulfill its mission to help

California meet its statutory and regulatory goal of increasing renewable power generation, including greenhouse gas reduction goals of Assembly Bill (AB) 832 (California Global Warming Solutions Act of 2006). Imperial County is a major source of renewable energy for the State of California. One of the purposes of the Imperial Valley Renewable Energy Development Program is to “maximize development of all renewable energy resources.” An objective of the Project is “to assist the State of California in achieving and exceeding the Renewable Portfolio Standard”.

5. As summarized in the Goals and Objectives of the Renewable Energy and Transmission Element of the Imperial County General Plan (Goal 1), “.The County of Imperial supports and encourages the full, orderly, and efficient development of renewable energy resources while at the same time preserving and enhancing where possible agricultural, biological, human, and recreational resources Therefore, the proposed project will be compatible with the objectives, policies, general land uses and programs specified in the applicable plan.” *Id.* (internal quotations and citations omitted).
  
6. Battery storage and energy projects provide economic growth to the region and economic benefit to the County and Goal 2 of the Land Use Element states that the County should “[d]iversify employment and economic opportunities in the County while preserving agricultural activity”. Goal 3, Objective 3.2 of the Land Use Element recognizes the need to “[p]reserve agricultural and natural resources while promoting diverse economic growth through sound land use planning.

**B. The proposed use is consistent with the purpose of the zone or sub-zone within which the use will be used. (Imperial County Code § 90203.09.B)**

The purpose of the project is for the construction of a battery energy project. Pursuant to Title 9, Division 5, Chapter 16, “Battery Storage and Major facilities relating to the generation and transmission of electrical energy” are uses that are permitted in the M-2 Medium Industrial zones subject to approval of a CUP from the County. The proposed Project site is zoned M-2. The purpose of these zones is to designate areas that are suitable for industrial uses, as well as areas that support other compatible uses consistent with the identified permitting requirements. Therefore, the proposed use is consistent with the purpose of the zone or sub-zone within which the use will be located.

- C. The proposed use is listed as a use within the zone or sub-zone or is found to be similar to a listed conditional use according to the procedures of Section 90203.00. (Imperial County Code § 90203.09.C)**

The proposed solar facility is listed as a use subject to a Conditional Use Permit in Land Use Ordinance, Sections 90516.02. Battery Storage and Major Facilities relating to the generation and transmission of electrical energy

- D. The proposed use meets the minimum requirements of this Title applicable to the use and complies with all applicable laws, ordinances and regulations of the County of Imperial and the State of California. (Imperial County Code § 90203.09.D)**

The Project complies with the minimum requirements of this Title by, among other things, obtaining a CUP, complying with the California Environmental Quality Act, and participating in the public review and hearing process. Development standards have been established for the Project pursuant to these processes, and will be enforced via imposition and enforcement of the Mitigation Monitoring and Reporting Program recommended for approval by separate Resolution, as well as the Conditions of Approval imposed on this CUP. The Conditions of Approval will further insure that the project complies with all applicable regulations of the County of Imperial and the State of California. Therefore, the proposed project will meet the minimum requirements of the Land Use Ordinance, Section 90203.00.

- E. The proposed use will not be detrimental to the health, safety, and welfare of the public or to the property and residents in the vicinity. (Imperial County Code § 90203.09.E)**

The battery energy facility is located in a largely undeveloped and unincorporated portion of the southwest portion of Imperial County. The propose Westside Canal Battery Energy project consists of previously farmed lands. Noise associated with solar panel operation would also meet the County's noise ordinance requirements at the Project's property lines. The Environmental Impact Report prepared for the Project analyzed the Project's potential effects on the health, safety, and welfare of the public and property and found that, with mitigation, the Project has less than significant effects in all resources areas.

Finally, the Project applicant has agreed to conditions of approval that support and promote the protection of the health, safety, and welfare of the County's citizens

and property, and ensures that the County will not be negatively impacted environmentally or fiscally.

**F. The proposed use does not violate any other law or ordinance. (Imperial County Code § 90203.09.F)**

The proposed project will be subject to the Conditional Use Permit and current Federal, State and Local regulations. State Planning and Zoning Law (Cal. Govt. Code §§ 65000-66035) establishes minimum statewide standards for the regulation of local land use through planning and zoning. The County regulates local land use via Title 9 of the Imperial County Code. As found above, the proposed project is conditioned to be consistent with Imperial County, Title 9, Land Use Ordinance and CEQA mitigation measures and therefore complies with both State and local laws and ordinance. Pursuant to CEQA, the County has prepared an EIR for the Project, which EIR analyzes the Project's compliance and consistency with other federal, state, and local laws and ordinances regulating the environment. .

**G. The proposed use is not granting a special privilege. (Imperial County Code § 90203.09.G)**

The Battery energy facility is a permitted use subject to approval of a Conditional Use Permit under Land Use Ordinance, Section 92102.00 *et. seq.* The proposed use is and will not granting a special privilege because the County has granted similar CUPs to properties in the area for PV solar energy facility.

**SECTION 3.** Approval of the Project should be conditioned upon the terms and conditions set forth in the Agreement for Conditional Use Permit No. 19-0015, attached hereto and incorporated herein by this reference.

**NOW, THEREFORE,** based on the above findings, the Imperial County Planning Commission **DOES HEREBY RECOMMEND APPROVAL OF** Conditional Use Permit #19-0015 to the Board of Supervisors, subject to the attached Conditions of Approval.

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**Rudy Schaffner, Chairperson**  
Imperial County Planning Commission

I hereby certify that the preceding resolution was taken by the Planning Commission at a meeting conducted on October 27, 2021 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**ATTEST:**

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**Jim Minnick, Director of Planning & Development Services**  
Secretary to the Planning Commission

When Recorded Return To:

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Imperial County  
Planning & Development Services  
801 Main Street  
El Centro, California 92243

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**“DRAFT” AGREEMENT FOR  
CONDITIONAL USE PERMIT # 19-0015  
WESTSIDE CANAL BATTERY STORAGE PROJECT  
APN: 051-350-010, 051-350-011, 051-350-009, 051-350-019, 051-350-018  
PLANNING COMMISSION (October 13, 2021)**

This Agreement is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between Consolidated Edison Development Inc. (CED), hereinafter referred to as the Permittee (“Permittee”), and the COUNTY OF IMPERIAL, a political subdivision of the State of California, (hereinafter referred to as “COUNTY”) related to the Westside Canal Battery Storage Project.

**RECITALS**

**WHEREAS**, Permittee is the lessee or successor-in-interest of certain land in Imperial County to develop, design, construct, own, operate, and maintain, and eventually decommission the CED Westside Canal Battery Storage Project, a utility-scale energy storage complex with the capacity of up to 2,000 Megawatts (MW) at full build-out. The proposed Project would store energy generated from the electrical grid, and optimally discharge that energy back into the grid as a firm, dispatchable resource.

**WHEREAS**, the land use entitlement for this Project includes a Water Supply Assessment (WSA), a General Plan Amendment (GPA#19-0003), a Zone Change (ZC#19-0004), a Conditional Use Permits (CUP #19-0015) for the development of the Westside Canal Battery Storage project.

**WHEREAS**, Permittee has applied to the County of Imperial for a Conditional Use Permit #19-0015. The project is generally located on approximately 163 acres of land in the unincorporated Mount Signal area of the County, approximately eight miles southwest of the City of El Centro and approximately 5 miles north of the U.S.-Mexico border. Assessor Parcel Numbers: 051-350-010, 051-350-011, 051-350-009, 051-350-019, 051-350-018.

**WHEREAS**, The Permittee for the Westside Canal Battery Storage Project shall fully comply with all of the terms and conditions of the Project as specified hereinafter within this Conditional Use Permit.



## **GENERAL CONDITIONS:**

The "GENERAL CONDITIONS" are shown by the letter "G". These conditions are conditions that are either routinely and commonly included in all Conditional Use Permits as "standardized conditions" and/or are conditions that the Imperial County Planning Commission has established as a requirement on all CUP's for consistent application and enforcement. The Permittee is hereby advised that the General Conditions are as applicable as the SITE SPECIFIC conditions. The General Conditions are in addition to the MMRP and any and all other requirements for the project.

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### **G-1 GENERAL LAW and other Requirements:**

The Permittee shall comply with all local, state and/or federal laws, rules, regulations, ordinances, and/or standards (LORS) as they may pertain to the Project, whether specified herein or not. The Project shall be constructed and operated as described in the General Plan Amendment, Zone Change, Conditional Use Permit, and Development Agreement, the Environmental Impact Report (FEIR & DEIR) and Mitigation and Monitoring Reporting Program (MMRP). A violation of any such LORS or conditions, applications, the Development Agreement, the FEIR or the MMRP shall be a violation of this CUP. A violation of this CUP shall be considered a violation of the Development Agreement as well.

### **G-2 PERMITS/LICENSES:**

The Permittee shall obtain any and all local, state and/or federal permits, licenses, and/or other approvals for the construction and/or operation of the Project. This shall include, but not be limited to, local requirements by the Imperial County EHS/Health Department, Imperial County Planning and Development Services Department, Imperial County Air Pollution Control District (ICAPCD), Imperial Irrigation District (IID), Imperial County Public Works Department, Imperial County Sheriff/Coroner's office, Imperial County Fire Protection/Office of Emergency Services, among others. Permittee shall likewise comply with all such permit requirements. Additionally, Permittee shall submit a copy of such additional permits and/or licenses to the Imperial County Planning and Development Services Department within thirty (30) days of receipt, including amendments or alternatives thereto, when requested.

### **G-3 RECORDATION:**

This permit shall be recorded by County at the Imperial County Recorder's Office within ten (10) years within Development Agreement effective date, as set out in G-4. Upon termination of any CUP, Permittee shall record a release of such CUP within thirty (30) days of its termination. Permittee shall bear all recording costs.

Failure to reimburse County for such costs may be considered a violation of this CUP.

Recording is an action of notice and does not convey any rights to Permittee.

**G-4 DURATION OF DEVELOPMENT AGREEMENT:**

CUP19-0015 is part of an overall Development Agreement covering battery storage.

Pursuant to the terms of the Development Agreement, the CUP(s) may have up to a total permitted term of forty (40) years. The Development Agreement shall provide up to ten (10) years for the Conditional Use Permit to commence operations or commence construction. Upon commencement, the CUP shall have the remainder of any time left under the 10-year Development Agreement, plus an additional thirty (30) year term.

The Effective Date of this Development Agreement shall be the effective date of Ordinance No. \_\_\_\_\_. Unless sooner terminated under these conditions, any CUP in which construction has not commenced before or upon the tenth (10<sup>th</sup>) anniversary of the Effective Date shall terminate and be of no further force and effect. The Permittee covenants that any CUP not so commenced terminates on that tenth anniversary date. Such termination is consensual and shall not be subject to notice or a public hearing; such termination cannot be appealed to the Imperial County Planning Commission.

Notwithstanding, once commenced, the term of any CUP shall not exceed the combined total of forty (40) years from the Effective Date. On such date, CUP19-0015 shall terminate and be of no further force and effect. Such termination is consensual and shall not be subject to notice, public hearing or appeal to the Imperial County Planning Commission or Board of Supervisors.

As used here, "commence construction" or "Commencement of Construction" means the earlier of the date on which Developer obtains a grading permit or building permit, as may be applicable, in reliance on a CUP. Developer agrees that there shall be no vested right and no legal remedy available to Developer if such CUP terminates for failure to Commend Construction.

As used here, "commence construction" means the earlier of the date on which Permittee obtains a grading permit or building permit, as may be applicable, in reliance on a CUP.

Notwithstanding, the term of this Agreement may terminate sooner as provided herein or in the Development Agreement.

**G-5 INDEMNIFICATION:**

In addition to any other indemnifications provided for the Project, and as a condition of this permit, Permittee shall defend, indemnify, hold harmless, and release the County of Imperial ("County"), its agents, officers, attorneys, and employees (including consultants) from any claim, action, or proceeding brought against any of them, the purpose of which is to attack, set aside, void, or annul the approval this application or adoption of environmental document which accompanies it. This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney fees, or expert witness fees that may be asserted by any person or entity, including the applicant, arising out of or in connection with the approval of this application, whether or not there is concurrent negligence on the part of the County, its agents, officers, attorneys, or employees (including consultants).

If any claim, action, or proceeding is brought against the County, its agents, officers, attorneys, or employees (including consultants), to attack, set aside, void or annul the approval of the application or adoption of the environmental document which accompanies it, then the following procedures shall apply:

1. The Planning Director shall promptly notify the County Board of Supervisors of any claim, action or proceeding brought by an applicant challenging the County's action. The County, its agents, attorneys and employees (including consultants) shall fully cooperate in the defense of that action.
2. The County shall have the final determination on how to best defend the case and will consult with applicant regularly regarding status and the plan for defense. The County will also consult and discuss with applicant the counsel to be used by County to defend it, either with in-house counsel, or by retaining outside counsel provided that the County shall have the final decision on the counsel retained to defend it. Applicant shall be fully responsible for all costs incurred. Applicant shall be entitled to provide his or her own counsel to defend the case, and said independent counsel shall work with County Counsel to provide a joint defense.

#### **G-6 INSURANCE:**

For the term of the CUP and any period thereafter for decommissioning and reclamation, the Permittee and/or Permittee's prime contractor assigned site control during construction, shall secure and maintain liability in tort and property damage, commercial liability and all risk builders' insurance at a minimum of **\$2,000,000 each, combined single limit property damage and personal injury**, to protect persons or property from injury or damage caused in any way by construction and/or operation of permitted facilities. Such insurance shall be endorsed to name the County, its officers, agents, and employees as additional insureds and shall be in a form and from a company acceptable to County. The Permittee shall require that proper Workers' Compensation insurance cover all laborers working on such facilities as required by the State of California. The Permittee and/or Permittee's prime contractor assigned site control during

construction, shall also secure liability insurance and such other insurance as may be required by the State and/or Federal Law. Evidence of such insurance shall be provided to the County prior to commencement of any activities authorized by this permit, e.g. an endorsed Certificate of Insurance is to be provided to the Imperial County Planning and Development Services Department by the insurance carrier and said insurance and certificate shall be kept current for the life of the permitted Project. Certificate(s) of Insurance shall be sent directly to the Imperial County Planning and Development Services Department by the insurance carrier and shall be endorsed to name the Department as a recipient of both renewal and cancellation notices.

#### **G-7 INSPECTION AND RIGHT OF ENTRY:**

The County reserves the right to enter the premises to make appropriate inspection(s) and to determine if the condition(s) of this permit are complied with. The owner or operator shall allow an authorized County representative access into the site upon the presentation of credentials and other documents as may be required by law to:

- (a) Enter at reasonable times upon the owner's or operator's premises where a permitted facility or activity is located or conducted, or where records must be kept under the conditions of the permit.
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit.
- (c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit.
- (d) Sample or monitor, at reasonable times, for the purpose of assuring permit compliance or, otherwise authorized by law, any substances or parameters at any location.

#### **G-8 SEVERABILITY:**

Should any condition(s) of this permit be determined by a Court or other agency with proper jurisdiction to be invalid for any reason, such determination shall not invalidate the remaining provision(s) of this permit.

#### **G-9 PROVISION TO RUN WITH THE LAND/PROJECT:**

The provisions of this Permit are to run with the land/project and shall bind the current and future owner(s), successor(s)-in-interest, assignee(s) and/or transferee(s) of said Project pursuant to the recordation required by Condition G-3. The permitted use identified herein is limited for use upon the permitted properties described herein and may not be transferred to any other parcel(s) without prior approval.

The Permittee shall pay any and all amounts determined by the County to defray any and all cost(s) for the review of reports, field investigations, monitoring, and other activities directly related to the enforcement/monitoring for compliance of this Conditional Use Permit, County Ordinance, MMRP or any other applicable law. All County Departments, directly involved in the monitoring/enforcement of this permit may bill Permittee under this provision; however, said billing shall only be through and with the approval of the Imperial County Planning and Development Services Department. All County staff time will be billed on a time and materials basis. Failure by Permittee to provide any payment required of Permittee to the County in the CUP shall cause Permittee to be in non-compliance of the CUP. Upon Permittee being in such noncompliance, County may, at its sole discretion, cease processing, defending any lawsuit or paying for costs associated with the Project.

- A. Assignment: Permittee shall not without prior notification to the Imperial County Planning and Development Services Department assign, sell or transfer, or grant control of Project or any right or privilege therein granted by this permit. The Permittee shall provide a minimum of forty-five (45) days written notice prior to any proposed transfer becoming effective. An approved assignment agreement shall be in place for new Project owner to build and maintain as agreed to by the conditions set forth in this CUP. The County Assessor's Office shall be notified of any ownership change.
- B. Thereafter, within fifteen calendar (15) days after any such assignment, (1) Permittee shall notify the County, in writing, of such assignment and shall provide County with the following:
  - a. An executed copy of the assignment evidencing that the assignee expressly assumes all the assigned duties and obligations of Permittee under the CUP and Development Agreement, other County-issued entitlements and the MMRP applicable to the CUP area; and
  - b. Developer's requested form of release of such duties and obligations related to that CUP area;
  - c. Assignee must provide County with the assignee's security equal in value to the security required of Developer by the Project entitlements including any and all required increases to secure performance of its obligations with respect to the portion of the Project assigned, including but not limited to that for the decommissioning and reclamation plan; and
  - d. Permittee and/or assignee shall provide any and all additional information necessary to determine the sufficiency of such replacement security. As used here "security" may mean one or more security instruments.
- C. Within forty-five (45) calendar days of delivery of such information, the County Planning and Development Services Department shall determine

the sufficiency of the replacement security in its reasonable discretion, which can include letters of credit, performance bonds, or other forms of security consistent with those previously accepted by the County for this or other solar projects. The County shall have the discretion to require security having a greater value (i.e. a larger face amount) than the security being replaced related to that CUP area when such security is subject to increase pursuant to the provisions of the CUP. Notwithstanding the failure of any assignee to execute the assignment or provide the required security, the burdens of the CUP and the Development Agreement shall be binding upon such assignee, but their benefits shall not inure to such assignee until and unless such assignment is executed and such security is provided and the County has delivered a written release to Developer confirming the sufficiency of the replacement security.

- D. Notwithstanding any sale, transfer, or assignment, Developer shall continue to be obligated under this Agreement until the County executes a release of such security. The County's unreasonable failure to approve the assignment or execute such release may be a default under Section 19 of this Agreement.
- E. County shall be reimbursed by Developer for any costs of review of the replacement security interest(s).

#### **G-10 REPORTS/INFORMATION:**

If requested by the Imperial County Planning Director, Permittee at its sole expense shall provide any such documentation/report as necessary to ascertain compliance with the Conditional Use Permit. The format, content and supporting documentation shall be as required by the Imperial County Planning Director.

#### **G-11 DEFINITIONS:**

In the event of a dispute the meaning(s) or the intent of any word(s), phrase(s) and/or conditions or sections herein shall be determined by the Imperial County Planning Commission. Their determination shall be final unless an appeal is made to the Imperial County Board of Supervisors within the required time.

#### **G-12 MINOR AMENDMENTS:**

The Planning & Development Services Director may approve minor changes or modification(s) to the design, construction, and/or operation of the Project provided ~~said changes are necessary for the Project to meet other laws,~~

regulations, codes, or conditions of the CUP, EIR and MMRP, and provided such changes will not result in any additional environmental impacts.

**G-13 SPECIFICITY:**

The issuance of this permit provides a temporary use right on the project property within the requirements set out here and does not authorize the Permittee to construct or operate the Project in violation of any LORS or beyond the duration, term or specified boundaries of the Project as shown the application/project description/permit, nor shall this permit allow any accessory or ancillary use not specified herein. This permit does not provide any prescriptive right or use to the Permittee for future addition and/or modifications to the Project.

**G-14 NON-COMPLIANCE (ENFORCEMENT & TERMINATION):**

Should the Permittee violate any condition herein, the County shall give written notice of such violation and actions required of Permittee to correct such violation. If Permittee does not act to correct the identified violation within forty-five (45) days after written notice, County may revoke the CUP. If Permittee pursues correction of such violation with reasonable diligence, the County may extend the cure period. Upon such revocation, County may, at its sole discretion, cease processing, defending any lawsuit or paying for costs associated with the Project. County may include in such notice of violation and subsequent process default and/or termination of the Development Agreement along with violation or revocation of the CUP, and the procedures set out here shall govern.

**G-15 GENERAL WELFARE:**

All construction and operations of the solar energy and energy storage facility shall be conducted with consistency with all laws, conditions, adopted County policies, plans, mitigation measures and the permit application so that the Project will be in harmony with the area and not conflict with the public health, safety, comfort, convenience, and general welfare of those residing in the area.

**G-16 PERMITS OF OTHER AGENCIES INCORPORATED:**

Permits granted by other governmental agencies in connection with the Project are incorporated herein by reference. The County reserves the right to apply conditions of those permits, as the County deems appropriate and subject to its having jurisdiction; provided, however, that enforcement of a permit granted by another governmental agency shall require written concurrence by the respective agency. Permittee shall provide to the County, upon request, copies and amendments of all such permits.

**G-17 HEALTH HAZARD:**

If the County Health Officer reasonably determines that a significant health or

safety hazard exists to the public, the County Health Officer may require appropriate measures and the Permittee shall implement such measures to mitigate the health hazard. If the hazard to the public is determined to be imminent, such measures may be imposed immediately and may include temporary suspension of permitted activities. The measures imposed by the County Health Officer shall not prohibit the Permittee from requesting a special Imperial County Planning Commission meeting, provided the Permittee bears all related costs.

#### **G-18 APPROVALS AND CONDITIONS SUBSEQUENT TO GRANTING PERMIT:**

Permittee's acceptance of this permit shall be deemed to constitute agreement with the terms and conditions contained herein. Where a requirement is imposed in this permit that Permittee conduct a monitoring program, and where the County has reserved the right to impose or modify conditions with which the Permittee must comply based on data obtained there from, or where the Permittee is required to obtain additional conditional use permits for County approval for subsequent activities, and disagreement arises, the Permittee, operator and/or agent, the Imperial County Planning and Development Services Director or other affected party, as determined by the Imperial County Planning and Development Services Director, may request a hearing before the Imperial County Planning Commission. Upon receipt of a request, the Imperial County Planning Commission shall conduct a hearing and make a written determination. The Imperial County Planning Commission may request support and advice from a technical advisory committee. Failure of the Imperial County Planning Commission to act shall constitute endorsement of staff's determination with respect to implementation.

(TOTAL "G" CONDITIONS are 18)

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#### **SITE SPECIFIC CONDITIONS:**

##### **S-1 AUTHORIZED SCOPE OF ACTIVITIES:**

Consolidated Edison Development Inc. shall be the master developer for this Project and shall be responsible as for all improvements, septic, approved potable water system(s), pipelines, roads and other improvements discussed in the Conditional Use Permit Applications, FEIR, and MMRP. If Permittee sells all or part of this Project, an approved agreement shall be in place for new Project owner to build and maintain as agreed to by the conditions set forth in this CUP. The Imperial County Planning and Development Services Director shall approve of such agreement between Permittee and a new master Developer for this Project. The County Assessor's Office shall be notified of any ownership change.



CUP #19-0015. Consolidated Edison Development (CED) Westside Canal Battery Storage, LLC (Applicant) is proposing to develop, design, construct, own, operate, and decommission the Westside Canal Battery Storage Project, a utility-scale energy storage complex with the capacity of up to 2,000 Megawatts (MW) at full build out. The Project Site is located in the unincorporated Mount Signal area of Imperial County, approximately eight miles southwest of the City of El Centro and approximately five miles north of the U.S.-Mexico border. The Project Site encompasses approximately 163 acres of land, 148 of which are owned by the Applicant, and the remaining land is owned by the BLM, Imperial Irrigation District (IID), and a private landowner. The application for the Project proposes a General Plan Amendment to change the land use designation of the Project Site from Agriculture to Industry, and Zone Change to change the zoning from Heavy Agriculture (A-3) to Medium Industrial (M-2) zoning. A Conditional Use Permit would be required and specifically limited to energy production/use.

The Project would store energy generated from the electrical grid, and optimally discharge that energy back into the grid upon demand. The Project would be constructed in multiple phases over a 10-year period with each phase ranging from approximately 25 MW to 400 MW. For the purposes of the EIR analysis, Project construction was assumed to occur over three to five phases. Given the approximately 10-year development of the Project, the expected end date of the Project life cycle would be 30 years from the construction of the final phase, or no more than 40 years after the effective date of the Conditional Use Permit.

The Project would be comprised of Li-ion and/or flow battery energy storage system facilities, a behind-the-meter solar energy component, a new on-site 230-kilowatt (kW) loop-in switching station, a 34.5 kV to 230 kV Project substation, underground electrical cables, and permanent vehicular access to and from the Project Site over a proposed clear-span bridge spanning IID's Westside Main Canal.

The proposed loop-in switching station would connect the Project to the existing IID Campo Verde-Imperial Valley 230 kV radial gen-tie line, which connects to the Imperial Valley (IV) Substation and the California Independent System Operator (CAISO), approximately one-third mile south of the Project Site. The Applicant has submitted the necessary Interconnection Request Applications to the CAISO and IID.

**Site Access-** Permanent vehicular access to and from the Project Site would occur over a proposed clear-span bridge spanning IID's Westside Main Canal.

## **S-2 AESTHETICS:**

The Permittee shall design and maintain all buildings and equipment enclosures to have exterior surfaces with neutral, non-reflective colors. The construction and maintenance of County-approved landscaping along the access into the Operation/Maintenance Facility shall be in

compliance with the Land Use Ordinance, Division 3, Chapters 1 and 2, Sections 90302.00 through 90302.19.

1. The Permittee shall design and install lighting at construction storage yards and staging areas, such that light bulbs and reflectors are not visible from public viewing areas; lighting does not create reflected glare; and illumination of the Project facilities, vicinity, and nighttime sky is minimized.
2. Lighting shall be designed so exterior light fixtures are hooded, with lights directed downward or toward the area to be illuminated and so that backscatter to the nighttime sky is minimized. The design of the lighting shall be such that the luminescence or light source is shielded to minimize light trespass outside the Project boundary.
3. All lighting shall be of minimum necessary brightness consistent with worker safety and OSHA-Requirements.
4. High illumination areas not occupied on a continuous basis shall have switches or motion detectors to light the area only when occupied.

### **S-3 AGRICULTURE**

#### **AG-1: Payment of Agricultural and Other Benefit Fees**

One of the following options included below is to be implemented prior to the issuance of a grading permit or building permit for the Project:

#### **Mitigation for Non-Prime Farmland**

**Option 1:** Provide Agricultural Conservation Easement(s). The Permittee shall procure Agricultural Conservation Easements on a "1 on 1" basis on land of equal size, of equal quality farmland, outside the path of development. The conservation easement shall meet Department of Conservation regulations and shall be recorded prior to issuance of any grading or building permits; or

**Option 2:** Pay Agricultural In-Lieu Mitigation Fee. The Permittee shall pay an "Agricultural In-Lieu Mitigation Fee" in the amount of 20 percent of the fair market value per acre for the total acres of the proposed site based on five comparable sales of land used for agricultural purposes as of the effective date of the permit, including program costs on a cost recovery/time and material basis. The Agricultural In-Lieu Mitigation Fee, will be placed in a trust account administered by the Imperial County Agricultural Commissioner's office and will be used for such purposes as the acquisition, stewardship, preservation, and enhancement of agricultural lands within Imperial County; or,

**Option 3: Public Benefit Agreement.** The Permittee and County shall voluntarily enter into an enforceable Public Benefit Agreement or Development Agreement that includes an Agricultural Benefit Fee payment that is 1) consistent with Board Resolution 2012-005; 2) the Agricultural Benefit Fee must be held by the County in a restricted account to be used by the County only for such purposes as the stewardship, preservation and enhancement of agricultural lands within Imperial County and to implement the goals and objectives of the Agricultural Benefit program, as specified in the Development Agreement, including addressing the mitigation of agricultural job loss on the local economy.

**S-4 AIR QUALITY:**

1. The Permittee shall comply at all times with the Imperial County Air Pollution Control District's (ICAPCD) Regulation VIII, Fugitive Dust Control. The primary pollutant controlled by this regulation is PM<sub>10</sub>, "fugitive dust." All identified PM<sub>10</sub> sources associated with the construction and operation of the facility, such as open areas, roads, stock piles, material transport and grading activities, shall be controlled such that surface areas are stabilized and visible dust emissions are below 20%. Any control measure not listed within the appropriate sections of Regulation VIII, such as but not limited to watering, graveling, chemical stabilizers and wind barriers shall not be utilized without prior approval from the ICAPCD.
  2. In order to assure that NO<sub>x</sub> emissions released during construction remain below the significance threshold, the Air District requests that prior to the start of construction, the applicant will be required to submit a Construction Equipment List (in Excel format) to APCD detailing the equipment type, make, model, year, horsepower, actual hours of daily operation, date equipment arrived on site, and date removed from site, for the purpose of performing NO<sub>x</sub> evaluations. If the emissions are found to exceed CEQA thresholds of significance, the project would then be subject to Policy 5, which provides two options: proposing an off-site mitigation project and supporting documentation that the reductions are met, or; pay an in-lieu mitigation fee.<sup>1</sup>
    - Prior to commencing construction, each CUP owner shall submit to the ICAPCD for approval a Dust Control Plan identifying all sources of PM<sub>10</sub> emissions and associated mitigation measures during the construction and operational phases of the project. Permittee shall submit a "Construction Notification Form" to the ICAPCD ten (10) days prior to the commencement of any earthmoving activity as needed by Regulation VIII rules. The Dust Control Plan
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submitted to ICAPCD shall meet all applicable requirements for control of fugitive dust emissions, including the following measures designed to achieve the no greater than 20% opacity performance standard for dust control. In addition, the applicant shall submit an Operational Dust Control Plan and obtain Air District approval prior to issuance of a Certification of Occupancy. <sup>2</sup>

3. The Permittee shall comply with all applicable standard mitigation measures for construction combustion equipment for the reduction of excess NOx emissions as identified in the air quality analysis and as contained in the Imperial County CEQA Air Quality Handbook and associated regulations.
    - Utilize all Tier 3 or Tier 4 construction equipment.
    - Prohibit idling of equipment not in use; for equipment in use reduce idling time to a maximum of 5 minutes.
    - Where feasible replace fossil fuel burning equipment with electrically driven equivalents provided they are not powered via a portable generator
    - Register all portable engines 50 horse power or greater with the ICAPCD.
  1. The Project Applicant shall prepare a Dust Control Plan for control of fugitive dust during construction as required by ICAPCD Regulation VIII. The Dust Control Plan shall also include dust control measures to be implemented during the operation and maintenance phase of the Project. The Dust Control Plan shall address construction and earthmoving activities, track-out, open areas and unpaved roads.
  2. The Dust Control Plan shall also include information on the dust suppressants to be applied and the specific surface treatment(s) and/or control measures to be utilized to control track-out where unpaved and/or access points join paved public access roads. The Dust Control Plan shall be submitted for ICAPCD review prior to any earthmoving activities.
  3. Timing/Implementation: Submittal of Dust Control Plan to ICAPCD for review prior to any earthmoving activities; Implementation of Dust Control Plan during construction and operation/maintenance phases as specified in the Dust Control Plan.
  4. Enforcement/Monitoring: ICPDSD and ICAPCD. As noted in the Methodology discussion, all construction activity CalEEMod modeling was done incorporating on-site watering three times daily during the grading activities. Accordingly, the following mitigation measures shall be employed:
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**AIR-1** All construction sites, regardless of size, must comply with the requirements contained within Regulation VIII. *Standard Mitigation Measures for Fugitive Dust (PM10) Control*

- a) All disturbed areas, including Bulk Material storage which is not being actively utilized, shall be effectively stabilized and visible emissions shall be limited to no greater than 20 percent opacity for dust emissions by using water, chemical stabilizers, dust suppressants, tarps, or other suitable material such as vegetative ground cover.
- b) All on-site and off-site unpaved roads would be effectively stabilized, and visible emissions shall be limited to no greater than 20 percent opacity for dust emissions by paving, chemical stabilizers, dust suppressants and/or watering.
- c) All unpaved traffic areas 1 acre or more with 75 or more average vehicle trips per day would be effectively stabilized and visible emission shall be limited to no greater than 20 percent opacity for dust emissions by paving, chemical stabilizers, dust suppressants and/or watering.
- d) The transport of Bulk Materials shall be completely covered unless 6 inches of freeboard space from the top of the container is maintained with no spillage and loss of Bulk Material. In addition, the cargo compartment of all Haul Trucks is to be cleaned and/or washed at delivery site after removal of Bulk Material.
- e) All Track-Out or Carry-Out would be cleaned at the end of each workday or immediately when mud or dirt extends a cumulative distance of 50 linear feet or more onto a paved road within an urban area.
- f) Movement of Bulk Material handling or transfer shall be stabilized prior to handling or at points of transfer with application of sufficient amounts of water, chemical stabilizers or by sheltering or enclosing the operation and transfer line.
- g) The construction of any new unpaved road is prohibited within any area with a population of 500 or more unless the road meets the definition of a temporary unpaved road. Any temporary unpaved road shall be effectively stabilized, and visible emissions shall be limited to no greater than 20 opacity for dust emission by paving, chemical stabilizers, dust suppressants and/or watering

**AIR-2: Construction Equipment Control Measures**

*Standard Mitigation Measures for Equipment Exhaust Emissions Control*

- a) Use of equipment with alternative fueled or catalyst-equipped diesel engine, including for all off-road and portable diesel-powered equipment.
- b) Minimize idling time either by shutting equipment off when not in use or limit the idling time to a maximum of 5 minutes.
- c) Limit, to the extent feasible, the hours of operation of heavy-duty equipment and/or the number of equipment in use.
- d) Replace fossil fueled equipment with electrically driven equivalents (provided they are not run via a portable generator set).

Required Mitigation Measures for Construction Equipment Mobilization

- The 1.2-mile portion of the access road from the IV Substation to the project site shall be covered with construction mats.
- No more than eight pieces of construction equipment shall be delivered to the project site in one day.
- A speed limit of 15 mph on the access road shall be enforced.

Required Mitigation Measures for Construction Activities

- The 1.2-mile portion of the southern access road from the IV Substation to the project site shall be covered with construction mats.
- A material delivery speed limit of 15 mph on the access road shall be enforced.
- For material deliveries from the south, one of the following dust suppressant measures would be required for the 4.4-mile service road:
  - A water truck shall apply water every 3 hours, or as deliveries occur; or
  - A chemical dust suppressant shall be applied.
- For the 0.3-mile portion of the northern access route that is unpaved (south of Wixom Road to the worker parking area) one of the following dust suppressant measures would be required:
  - A water truck shall apply water every 3 hours, or as worker access occurs;
  - A chemical dust suppressant shall be applied.
  - Water truck shall apply water to all active onsite grading areas every 3 hours.

*Enhanced Mitigation Measures for Construction Equipment* To help provide a greater degree of reduction of PM emissions from construction combustion equipment, ICAPCD recommends the following measures:

- a. Curtail construction during periods of high ambient pollutant concentrations; this may include ceasing of construction activity during the peak hour of vehicular traffic on adjacent roadways.
- b. Implement activity management (e.g., rescheduling activities to reduce short-term impacts).

**AIR-3: Operational Dust Control Plan**

- a) To help reduce fugitive dust emission from on-site unpaved roads and accumulation of small dunes during operations, an Operational Dust Control Plan (ODCP) would be prepared. The ODCP would include strategies for how dust emissions would be controlled and maintained during Project operations. The ODCP would be submitted to the ICAPCD for approval prior to the issuance of a Certificate of Occupancy.

**S-5 BIOLOGICAL**

**BR-1 Compensation for Permanent and Temporary Impacts to Vegetative**

## **Communities**

- To compensate for permanent and temporary impacts to on-site vegetative communities, within the Project Site, habitat (which may include preservation areas within portions of the Project Site not impacted by construction or mitigation lands outside of the main Project Site) that contains the same quality of vegetative communities impacted by the Project and that is not already public land shall be preserved and managed in perpetuity at the following ratios – temporary impacts to native vegetation communities shall be mitigated at a 1:1 mitigation ratio (one acre preserved/restored for each acre impacted) and permanent impacts shall be mitigated at a ratio of 2:1. Impacts to CDFW listed sensitive or riparian communities shall be mitigated at a ratio of 3:1. Land acquired/dedicated for impacts to native vegetation communities must be with lands occupied by habitat of a similar type and quality.
- Prior to the disturbance of vegetation, the Applicant shall obtain County approval of preserved and/or mitigation lands as well as documentation of a recorded conservation easement. The compensation for the loss of habitats may be achieved either by a) on-site habitat creation or enhancement habitats with similar species composition to those present prior to construction, b) offsite creation or enhancement of, or c) participation in an established mitigation bank program.
- Prior to the removal of native vegetation, if on- or off-site mitigation is required, a Habitat Restoration Plan (HRP) shall be prepared that will guide all restoration and monitoring activities (refer to MM BR-2 for details on the plan requirements).

### **BR-2: Develop a Habitat Restoration Plan**

- The Applicant shall restore temporarily disturbed areas to pre-construction conditions or better prior to the issuance of a grading permit and removal of any vegetation and/or wetland habitat. To this end, the Applicant shall retain a County qualified biologist, knowledgeable in the area(s) of annual grassland and wetland habitat restoration, to prepare a Habitat Restoration Plan (HRP).
- The Applicant shall submit the HRP to the County for approval (in consultation with CDFW and USFWS). The biologist will also be responsible for monitoring the implementation of the plan as well as the progress on achieving the established success criteria.
- The HRP shall expressly identify the process by which all disturbed areas shall be restored to pre-construction conditions or better.
- The plan will address restoration and revegetation related to disturbance from construction. It will also address restoration and revegetation required after decommissioning of the Project should this be required. The decommissioning plan shall include, at a minimum, the following items:
- Figures depicting areas proposed for temporary disturbance/mitigation lands – The HRP shall include detailed figures indicating the locations and vegetation types of areas proposed for temporary disturbance. These

figures shall be updated, as necessary, to reflect current Site conditions should they change.

- Proposed species for restoration/revegetation – The species palette proposed for restoration/revegetation shall include a combination of native annual and perennial species known to currently occur on the Project site and in adjacent habitats.
- Seed source and collection guidelines – Seeds shall first be collected from the stock of native plants occurring on the proposed Project site, during the appropriate collection period (late spring through the summer, depending on the species) and prior to disturbance from construction activities. Additional seed may be collected from stock within a 25-mile radius will be collected to maintain local genetic integrity. If seed collection from these areas is not possible then a seed source must be obtained from a local seed supplier familiar with native species. Seed will be limited to the species and quantity specified in the seed mix palette prepared for the Project. All seed will originate from the Project region, within +/- 1000 feet elevation of the Project site. The seed supplier chosen will provide a list of three references with the bid proposal. The references will include year, contact names, and telephone numbers. Seeds will be tested for percent purity, percent germination, number of pure live seeds per pound, and weed seed content. Seed testing will be the responsibility of the seed supplier.
- Planting methodology – A description of the preferred methods proposed for container plant installation or seeding shall be provided (e.g., hydro-seeding, drill seeding, broadcast seeding, etc.). Additionally, a discussion on timing of seeding, type of irrigation system proposed, potential need of irrigation, type and duration of irrigation, and erosion controls proposed for revegetation activities shall be included.
- Invasive, non-native vegetation Control – A comprehensive discussion on weed control for the Project site will be developed and included in the HRP. This will serve to prevent the type conversion of natural habitats to those dominated by invasive species known to occur in the area.
- Monitoring program – Areas subject to restoration/revegetation shall be monitored to assess conditions and to make recommendations for successful habitat establishment. Monitoring will be performed by a County qualified biologist(s), knowledgeable in the area of annual grassland habitat restoration. Monitoring should include, at a minimum, the following:
  - Qualitative Monitoring – Qualitative monitoring surveys will be performed monthly in all restored/revegetated areas for the first year following planting in any phase of the Project.
  - Qualitative monitoring will be on a quarterly schedule thereafter, until final completion approval of each restoration/revegetation area.
  - Qualitative surveys will assess native plant species performance, including growth and survival, germination success, reproduction, plant fitness and health as well as pest or invasive plant problems.



A County qualified wildlife biologist will assist in monitoring surveys and will actively search for mammal and other wildlife use.

- Monitoring at this stage will indicate need for remediation or maintenance work well in advance of final success/failure determination. The monitoring reports will describe site progress and conditions and list all observations pertinent to eventual success, and make recommendations as appropriate regarding remedial work, maintenance, etc.
- Quantitative Monitoring – Quantitative monitoring will occur annually for years one to five or until the success, criteria are met. Within each revegetation area, as shown figures referenced above, the biologist will collect data in a series of 1 or 2 quadrats to estimate cover and density of each plant species within the revegetated areas. Data will be used to measure native species growth performance, to estimate native and nonnative species coverage, seed mix germination, native species recruitment and reproduction, and species diversity.
- Additionally, within wetland habitat restoration areas, the biologist shall conduct sampling events to document the presence of hydric soil characteristics/indicators (if present).
- Based on these results, the biologist will make recommendations for maintenance or remedial work on the site and for adjustments to the approved seed mix.
  - Success criteria – Criteria for successful restoration/revegetation of disturbed areas shall be provided.
  - Reporting – Reporting will include progress reports summarizing site status and recommended remedial measures that will be submitted by the biologist to the County quarterly, with the exception of the site visits immediately preceding the development of each annual status report (see below). Each progress report will list estimated species coverage and diversity, species health and overall vigor, the establishment of volunteer native species, topographical/soils conditions, problem weed species, the use of the site by wildlife species, significant drought stress, and any recommended remedial measures deemed necessary to ensure compliance with specified performance criteria.
  - One annual site status report that summarizes site conditions will be forwarded by the biologist to the County, the USFWS and the CDFW at the end of each year following implementation of this plan until the established success criteria have been met. Each annual report will list species coverage and diversity measured during yearly quantitative surveys, compliance/non-compliance with required performance standards, species health and overall vigor, the establishment of volunteer native species, hydrological and topographical conditions, the use of the site by wildlife species, and the presence of invasive weed species. In the event of substantial noncompliance with the required performance criteria, the reports will include remedial measures deemed necessary to ensure future compliance with

specified perform a criteria. Each annual report will include, at the minimum:

- The name, title, and company of all persons involved in restoration monitoring and report Preparation.
- Maps or aerials showing restoration areas, transect locations, and photo documentation locations.
- An explanation of the methods used to perform the work, including the number of acres treated for removal of non-native plants
- An assessment of the treatment success.
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**BR-3: Implement a Worker Environmental Education Program**

- Prior to any Project activities on the Site (i.e., surveying, mobilization, fencing, grading, or construction), a Worker Environmental Education Program (WEEP) shall be prepared and implemented by a qualified biologist(s). The WEEP shall be submitted to the County for review and approval prior to issuance of construction permits and implemented throughout the duration of the construction activities.
- The WEEP shall be put into action prior to the beginning of any Site related activities, including but not limited to those activities listed above, and implemented throughout the duration of Project construction. The WEEP, shall include, at a minimum, the following items:
  - Training materials and briefings shall include, but not be limited to a discussion of the Federal and State Endangered Species Acts, BGEPA, and the MBTA; the consequences of non-compliance with these acts; identification and values of plant and wildlife species and significant natural plant community habitats; hazardous substance spill prevention and containment measures; a contact person and phone number in the event of the discovery of dead or injured wildlife; and a review of mitigation requirements.
  - A discussion of measures to be implemented for avoidance of the sensitive resources discussed above and the identification of an on-site contact in the event of the discovery of sensitive species on the Site.
  - Protocols to be followed when roadkill is encountered in the work area or along access roads to minimize potential for additional mortality of scavengers, including listed species such as the California condor and the identification of an on-site representative to whom the roadkill will be reported. Roadkill shall be reported to the appropriate local animal control agency within 24 hours.
  - Maps showing the known locations of special status wildlife, populations of rare plants and sensitive vegetative communities, seasonal depressions and known waterbodies, wetland habitat, exclusion areas, and other construction limitations (e.g., limited operating periods, etc.). These features shall be included on the Project's plans and specifications drawings.

- Literature and photographs or illustrations of potentially occurring special status plant and/or wildlife species will be provided to all Project contractors and heavy equipment operators.
- The Applicant shall provide to the County evidence that all on-site construction and security personnel have completed the WEEP prior to the start of Site mobilization. A special hardhat sticker or wallet size card shall be issued to all personnel completing the training, which shall be carried with the trained personnel at all times while on the Project Site. All new personnel shall receive this training and may work in the field for no more than five days without participating in the WEEP. A log of all personnel who have completed the WEEP training shall be kept on Site.
- A weather protected bulletin board or binder shall be centrally placed or kept on-site (e.g., in the break room, construction foreman's vehicle, construction trailer, etc.) for the duration of the construction. This board or binder will provide key provisions of regulations or Project conditions as they relate to biological resources or as they apply to grading activities. This information shall be easily accessible for personnel in all active work areas.
- Develop a standalone version of the WEEP, that covers all previously discussed items above, and that can be used as a reference for maintenance personnel during Project operations.

**BR-4: Implementation of Best Management Practices**

- BMPs will be implemented as standard operating procedures during all ground disturbance, construction, and operation related activities to avoid or minimize project impacts on biological resources. These BMPs will include but are not limited to the following:
  - (a) Compliance with BMPs will be documented and provided to the County in a written report on an annual basis. The report shall include a summary of the construction activities completed, a review of the sensitive plants and wildlife encountered, a list of compliance actions and any remedial actions taken to correct the actions, and the status of ongoing mitigation efforts.
  - (b) Prior to ground disturbance of any kind the Project work areas shall be clearly delineated by stakes, flags, or other clearly identifiable system.
  - (c) Vehicles and equipment shall be parked on pavement, existing roads, and previously disturbed areas to the extent practicable.
  - (d) Speed limit signs, imposing a speed limit of 15 miles per hour, will be installed throughout the Project Site prior to initiation of Site disturbance and/or construction. To minimize disturbance of areas outside of the construction zone, all Project-related vehicle traffic shall be restricted to established roads, construction areas, and other designated areas. These areas will be included in preconstruction surveys and to the extent possible, should be established in locations

disturbed by previous activities to prevent further impacts. Off-road traffic outside of designated Project areas will be prohibited.

- (e) No vehicles or equipment shall be refueled within 100 feet of an ephemeral drainage or wetland unless a berm and lined refueling area is constructed. Spill kits shall be maintained on-site in sufficient quantity to accommodate at least three complete vehicle tank failures of 50 gallons each. Any vehicles driven and/or operated within or adjacent to drainages or wetlands shall be checked and maintained daily to prevent leaks of materials.
- (f) All general trash, food-related trash items (e.g., wrappers, cans, bottles, food scraps, cigarettes, etc.) and other human-generated debris will be stored in animal proof containers and/or removed from the Site each day. No deliberate feeding of wildlife will be allowed.
- (g) All pipes and culverts with a diameter of greater than 4 inches shall be capped or taped closed. Prior to capping or taping the pipe/culvert shall be inspected for the presence of wildlife. If encountered the wildlife shall be allowed to escape unimpeded.
- (h) No firearms will be allowed on the Project Site, unless otherwise approved for security personnel.
- (i) To prevent harassment or mortality of listed, special-status species and common wildlife, or destruction of their habitats no domesticated animals of any kind shall be permitted in any Project area.
- (j) Use of chemicals, fuels, lubricants, or biocides will comply with all local, state, and federal regulations. All uses of such compounds shall observe label and other restrictions mandated by the U.S. EPA, California Department of Food and Agriculture, and other state and federal legislation, as well as additional Project-related restrictions deemed necessary by the USFWS and CDFW. Use of rodenticides is restricted.
- (k) Any contractor or employee that inadvertently kills or injures a special status animal, or finds one either dead, injured, or entrapped, will immediately report the incident to the on-site representative identified in the WEEP. The representative will contact the USFWS, CDFW, and County by telephone by the end of the day, or at the beginning of the next working day if the agency office is closed. In addition, formal notification shall be provided in writing within three working days of the incident or finding. Notification will include the date, time, location, and circumstances of the incident. Any threatened or endangered species found dead or injured will be turned over immediately to CDFW for care, analysis, or disposition.
- (l) During the Site disturbance and/or construction phase, grading and construction activities before dawn and after dusk, is prohibited.
- (m) Avoidance and minimization of vegetation removal within active construction areas, including the flagging of sensitive vegetative communities or plants.
- (n) Avoidance and minimization of construction activities resulting in impacts to wetlands, streambeds, and banks of any ephemeral drainage unless permitted to do so.

- (o) All excavation, steep-walled holes, or trenches in excess of 6 inches in depth will be covered at the close of each working day by plywood or similar materials or provided with one or more escape ramps constructed of earth dirt fill or wooden planks. Trenches will also be inspected for entrapped wildlife each morning prior to onset of construction activities and immediately prior to covering with plywood at the end of each working day. Before such holes or trenches are filled, they will be thoroughly inspected for entrapped wildlife. Any wildlife discovered will be allowed to escape before construction activities are allowed to resume or removed from the trench or hole by a qualified biologist holding the appropriate permits (if required).
- (p) New light sources will be minimized, and lighting will be designed (e.g., using down- cast lights) to limit the lighted area to the minimum necessary.

#### **BR-5: Wildlife Pre-Construction Surveys and Biological Monitoring**

- Prior to ground disturbance or vegetation clearing within the Project Site, a qualified biologist shall conduct surveys for wildlife (no more than 72 hours prior to Site disturbing activities) where suitable habitat is present and directly impacted by construction activities. Wildlife found within the Project Site or in areas potentially affected by the Project will be relocated to the nearest suitable habitat that will not be affected by the Project prior to the start of construction. Special-status species found within a Project impact area shall be relocated by an authorized biologist to suitable habitat outside the impact area.

#### **BR-6: Implement Biological Construction Monitoring**

- Prior to the commencement of ground disturbance or Site mobilization activities, the Applicant shall retain a qualified biologist(s), for the duration of Project construction, with demonstrated expertise with listed and/or special-status plants, terrestrial mammals, and reptiles to monitor(s), on a daily basis, all construction activities. The qualified biologist(s) shall be present at all times during ground disturbing activities immediately adjacent to, or within, habitat that supports populations of the listed or special status species identified within the Project boundaries. Any listed or special-status plants shall be flagged for avoidance. Any special-status terrestrial species found within a Project impact area shall be relocated by the by the authorized biologist and relocated to suitable habitat outside the impact area. If the installation of exclusion fencing is deemed necessary by the authorized biologist, the authorized biologist shall direct the installation of the fence. Clearance surveys for special-status species shall be conducted by the authorized biologist prior to the initiation of construction each day.
- If the biological monitor observes a dead or injured listed or special-status wildlife species on the construction Site during construction, a written report shall be sent to the County, CDFW and/or USFWS within five

calendar days. The report will include the date, time of the finding or incident (if known), and location of the carcass and circumstances of its death (if known). The biological monitor shall, immediately upon finding the remains, coordinate with the on-site construction supervisor, to discuss the events that caused the mortality (if known) and implement measures to prevent future incidents. Details of these measures shall be included with the report. Species remains shall be collected and frozen as soon as possible, and CDFW and/or USFWS shall be contacted regarding ultimate disposal of the remains.

**BR-7: Conduct Pre-Construction Surveys for Nesting and Breeding Birds and Implementation of Avoidance Measures**

- Prior to any Site disturbance (i.e., mobilization, staging, grading or construction), the Applicant shall retain a qualified biologist(s) to conduct pre-construction surveys for nesting birds within the recognized breeding season (generally February 15 – September 15 but may start earlier for some raptor species) in all areas within 500 feet of Project components (staging areas, substation sites, battery facility structures including, solar arrays, and access road locations). The initial survey event must be completed no more than three days prior to vegetation removal or ground disturbing activities. The required survey dates may be modified based on local conditions, as determined by the qualified biologist(s), with the approval of the County, in consultation with the USFWS and/or CDFW. Measures intended to exclude nesting birds shall not be implemented without prior approval by the County in consultation with USFWS and/or CDFW and shall not exceed County noise standards.
- If breeding birds with active nests are found prior to or during construction, a biological monitor shall establish a 300-foot buffer around the nest for ground-based construction activities and no activities will be allowed within the buffer(s) until the young have fledged from the nest or the nest fails.
- The prescribed buffers may be adjusted to reflect existing conditions including ambient noise, topography, and disturbance with the approval of the County, CDFW and USFWS as appropriate. The biological monitor(s) shall conduct regular monitoring of the nest to determine success/failure and to help ensure that Project activities are not conducted within the buffer(s) until the nesting cycle is complete or the nest fails. The biological monitor(s) shall be responsible for documenting the results of the surveys and ongoing monitoring and will provide a copy of the monitoring reports for impact areas to the respective agencies.
- If for any reason a bird nest must be removed during the nesting season, the Applicant shall provide written documentation providing concurrence from the USFWS and CDFW authorizing the nest relocation. Additionally, the Applicant shall provide a written report documenting the relocation efforts. The report shall include what actions were taken to avoid moving the nest, the location of the nest, what species is being relocated, the number and condition of the eggs taken from the nest, the location of

where the eggs are incubated, the survival rate, the location of the nests where the chicks are relocated, and whether the birds were accepted by the adopted parent.

- Surveys shall be conducted to include all structural components, related structures, as well as all construction equipment. If birds are found to be nesting in facility structures, buffers as described above shall be implemented. If birds are found to be nesting in construction equipment, that equipment shall not be used until the young have fledged the nest or, if no young are present, until after the breeding season has passed.
- If trees are to be removed as part of Project-related construction activities, they will be done so outside of the nesting season to avoid additional impacts to nesting raptors. If removal during the nesting season cannot be avoided, the biological monitor must confirm that the nest is vacant prior to its removal. If nests are found within these structures and contain eggs or young, the biological monitor shall allow no activities within a 300-foot buffer for nesting birds and/or a 500-foot buffer for raptors until the young have fledged the nest.

#### **BR-8: Implement Avian Power Line Interaction Committee guidelines**

- The Applicant will be required to construct all transmission facilities, towers, poles, and lines in accordance with and comply with all policies set forth in the Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 2006 and Reducing Avian Collisions with Power Lines: The State of the Art in 2012 (APLIC), to minimize avian electrocutions as a result of the construction of the Project. Details of design components shall be indicated on all construction plans and measures to comply with Avian Power Line Interaction Committee (APLIC) policies and guidelines shall be detailed in a separate attachment, all of which will be submitted with the construction permit application. The Applicant shall be required to monitor for new versions of the APLIC guidelines and update designs or implement new measures as needed during Project construction, provided these actions do not require the purchase of previously ordered transmission line structures. A review of compliance with submitted materials will be conducted prior to the final County inspection.

#### **BR-9: Conduct Pre-Construction Surveys for State and Federally Threatened, Endangered, Proposed, Petitioned, and Candidate Plants and Implementation of Avoidance Measures**

- Prior to initial ground disturbance and for undisturbed areas in subsequent construction years, the Applicant shall conduct pre- construction surveys for State and federally listed Threatened and Endangered, Proposed, Petitioned, and Candidate plants in all areas subject to ground-disturbing activity, including, but not limited to, battery facility structures including, access roads, poles/towers, solar array footing preparation, construction areas, and assembly yards. The surveys shall be conducted during the

appropriate blooming period(s) by a qualified plant ecologist/biologist according to protocols established by the USFWS, CDFW, and CNPS. All listed plant species found shall be marked and avoided. Any populations of special-status plants found during surveys will be fully described, mapped, and a CNPS Field Survey Form or written equivalent shall be prepared.

- These surveys must be accomplished during a year in which rainfall totals are at least 80 percent of average and in which the temporal distribution of rainfall is not highly abnormal (e.g., with most rainfall occurring very early or late in the season) to be reasonably certain of the presence/absence of rare plant species, unless surveys of reference populations document that precipitation conditions would not have adversely affected the ability to detect the species. This condition may be waived with the approval of the County after consultation with the CDFW and USFWS. If a listed plant species cannot be avoided, consultation with USFWS and CDFW will occur.
- Prior to Site grading or vegetation removal, any populations of listed plant species identified during the surveys within the Project limits and beyond, shall be protected and a buffer zone placed around each population. The buffer zone shall be established around these areas and shall be of sufficient size to eliminate potential disturbance to the plants from human activity and any other potential sources of disturbance including human trampling, erosion, and dust. The size of the buffer depends upon the proposed use of the immediately adjacent lands and includes consideration of the plant's ecological requirements (e.g., sunlight, moisture, shade tolerance, physical and chemical characteristics of soils) that are identified by a qualified plant ecologist and/or botanist. The buffer for herbaceous and shrub species shall be, at minimum, 50 feet from the perimeter of the population or the individual. A smaller buffer may be established, provided there are adequate measures in place to avoid the take of the species, with the approval of the USFWS, CDFW, and County.
- Where impacts to listed plants are determined to be unavoidable, the USFWS and/or CDFW shall be consulted for authorization. Should any CESA-listed plant species be detected, an incidental take permit would need to be obtained. Additional mitigation measures to protect or restore listed plant species or their habitat, including but not limited to a salvage plan including seed collection and replanting, may be required by the USFWS or CDFW before impacts are authorized, whichever is appropriate.

**BR-10: Compensate for Impacts to State and Federally Threatened, Endangered, Proposed, Petitioned, and Candidate Plants**

- To compensate for permanent impacts to State and Federally Threatened, Endangered, Proposed, Petitioned and Candidate plants, habitat (which may include preservation areas within the undisturbed areas of the Project footprint, mitigation lands outside of the main Project Site or a combination of both) that is not already public land shall be



preserved and managed in perpetuity at a 1:1 mitigation ratio (one acre preserved for each acre impacted). Prior to the disturbance of habitat for or take of listed plant species the Applicant will be required to obtain County approval of preserved and/or mitigation lands as well as provide documentation of a recorded conservation easement(s). Compensation for temporary impacts shall include land acquisition and/or preservation at a 0.5:1 ratio. The preserved habitat for a significantly impacted plant species shall be of equal or greater habitat quality to the impacted areas in terms of soil features, extent of disturbance, vegetation structure, and will contain verified extant populations, of the same size or greater, of the State or Federally listed plants that are impacted.

- Habitat shall be preserved through the use of permanent open space easements. Mitigation lands cannot be located on land that is currently held publicly. Mitigation lands may include (depending on the habitat requirements of particular species):
  - Areas outside the Project boundary, but within the general Project region
  - Preservation areas within portions of the Project Site that are at least 100 feet from Project components and are either (1) not permanently impacted by construction and operation of the Project, or (2) temporarily disturbed and then restored according to the requirements in Mitigation Measure BR-2; and
  - Degraded areas (e.g., areas that have been actively dry-farmed) that are restored to high quality habitat through the implementation of a County approved restoration plan.
  - Criteria for appropriate mitigation land are species specific; the following factors must be considered in assessing the quality of potential mitigation habitat: (1) Current land use; (2) Location (e.g., habitat corridor, part of a large block of existing habitat, adjacency to source populations, proximity to Project facilities or other potential sources of disturbance); (3) Vegetation composition and structure;
  - Slope; (5) Soil composition and drainage; and (6) Level of occupancy or use by relevant species.
- The Applicant shall either provide open space easements or provide funds for the acquisition of such easements to a "qualified easement holder" (defined below). The CDFW is a qualified easement holder. To qualify as a "qualified easement holder" a private land trust must have the following:
  - Substantial experience managing open space easements that are created to meet mitigation requirements for impacts to sensitive species
  - Adopted the Land Trust Alliance's Standards and Practices
  - A stewardship endowment fund to pay for its perpetual stewardship obligations
  - The County shall determine whether a proposed easement holder meets these requirements.
  - The Applicant shall also be responsible for donating to the conservation easement holder fees sufficient to cover:
    - (1) Administrative costs incurred in the creation of the conservation easement (appraisal, documenting baseline conditions, etc.) and

Funds in the form of a non-wasting endowment to cover the cost of monitoring and enforcing the terms of the conservation easement in perpetuity. The amount of these administrative and stewardship fees shall be determined by the conservation easement holder in consultation with the County. Open space easement(s) shall also be subject to the following conditions:

- The locations of acceptable easement(s) shall be developed with approval of CDFW and USFWS.
- The primary purpose of the easement(s) shall be conservation of impacted species and habitats, but the conservation easement(s) shall also allow livestock grazing when and where it is deemed beneficial for the habitat needs of impacted species. Open space easement(s) shall:
  - Be held in perpetuity by a qualified easement holder (defined above).
  - Be subject to a legally binding agreement that shall:
    - (1) Be recorded with the County Recorder(s); and
    - (2) Name CDFW or another organization to which the easement(s) will be conveyed if the original holder is dissolved.
  - Be subject to the management requirements outlined in Mitigation However, if lands acquired or protected for the compensation of permanent impacts to wildlife and/or vegetative communities (discussed above) contain similar sized populations of the impacted listed plant species, no further mitigation would be required.

#### **BR-11: Conduct Pre-Construction Surveys for Special-Status Plants and Implement Avoidance Measures**

- Prior to initial ground disturbance and for undisturbed areas in subsequent construction years, the Applicant shall conduct pre-construction surveys for special-status plant species in all areas subject to ground-disturbing activity, including, but not limited to, battery facility structures including, access roads, poles/towers, construction areas, and assembly yards. The surveys shall be conducted during the appropriate blooming period(s) by a qualified plant ecologist/biologist according to protocols established by the USFWS, CDFW, and CNPS. All listed plant species found shall be marked and avoided. Any populations of special-status plants found during surveys will be fully described, mapped, and a CNPS Field Survey Form or written equivalent shall be prepared. These surveys must be accomplished during a year in which rainfall totals are at least 80 percent of average and in which the temporal distribution of rainfall is not highly abnormal (e.g., with most of the rainfall occurring very early or late in the season) to be reasonably certain of the presence/absence of rare plant species, unless surveys of reference populations document that precipitation conditions would not have adversely affected the detectability of the species.

- Prior to Site grading, any populations of special-status plant species identified during the surveys shall be protected by a buffer zone. The buffer zone shall be established around these areas and shall be of sufficient size to eliminate potential disturbance to the plants from human activity and any other potential sources of disturbance including human trampling, erosion, and dust. The size of the buffer depends upon the proposed use of the immediately adjacent lands and includes consideration of the plant's ecological requirements (e.g., sunlight, moisture, shade tolerance, physical and chemical characteristics of soils) that are identified by a qualified plant ecologist and/or botanist. The buffer for herbaceous and shrub species shall be, at minimum, 50 feet from the perimeter of the population or the individual. A smaller buffer may be established, provided there are adequate measures in place to avoid the take of the species, with the approval of the USFWS, CDFW, and County. Highly visible flagging shall be placed along the buffer area and remain in good working order during the duration of any construction activities in the area. If Project related impacts result in the loss of more than 10 percent of the on-site population of any Special-Status plant species, compensatory mitigation will be required as described below.

#### **BR-12: Compensate for Impacts to Special-Status Plant Species**

- If Project related impacts result in the loss of more than 10 percent of the on-site population of any Special-Status plant species, compensatory mitigation will be required. Prior to the disturbance of habitat for or take of Special Status plants/populations the Applicant must receive County approval of preserved and/or mitigation lands as well as present documentation of a recorded conservation easement(s). Compensation will be required for all impacts that exceed the 10 percent threshold (e.g., impacts to 15 percent of a population will only require compensation for 5 percent or the amount of impacts that exceed the 10 percent threshold). To compensate for permanent impacts to special-status plant species, habitat (which may include preservation of areas within the undisturbed areas of the Project footprint, mitigation lands outside of the main Project Site or a combination of both) that is not already public land shall be preserved and managed in perpetuity at a 1:1 mitigation ratio (one acre preserved for each acre impacted). Compensation for temporary impacts shall include land acquisition and/or preservation at a 0.5:1 ratio. The preserved habitat for a significantly impacted plant species shall be of equal or greater habitat quality to the impacted areas in terms of soil features, extent of disturbance, vegetation structure, and will contain verified extant populations, of the same size or greater, of the special-status plants that are impacted. Impacts could include direct impacts resulting from loss of habitat or indirect impacts if a significant population or portion thereof is unable to be avoided. Habitat shall be preserved by using permanent open space easements. Mitigation lands cannot be located on land that is currently publicly held.

- Mitigation lands may include (depending on the habitat requirements of particular species) the following:
  - Areas outside the Project boundary, but within the County Preservation areas within portions of the Project Site that are at least 100 feet from Project facilities and are either (1) not permanently impacted by construction and operation of the Project, or (2) are temporarily disturbed and then restored according to the requirements in Mitigation Measure Criteria for appropriate mitigation land are species-specific; however, the following factors must be considered in assessing the quality of potential mitigation habitat: (1) Current land use; (2) Location (e.g., habitat corridor, part of a large block of existing habitat, adjacency to source populations, proximity to Project facilities or other potential sources of disturbance); (3) Vegetation composition and structure; (4) Slope; (5) Soil composition and drainage; and (6) Level of occupancy or use by relevant species.
  - The Applicant shall either provide open space easements or provide funds for the acquisition of open space easements to a "qualified easement holder" (defined below). CDFW is a qualified easement holder. To qualify as a "qualified easement holder" a private land trust must have the following:
    - Substantial experience managing open space easements that are created to meet mitigation requirements for impacts to special status species
    - Adopted the Land Trust Alliance's Standards and Practices
    - A stewardship endowment fund to pay for its perpetual stewardship obligations
  
- The County shall determine whether a proposed easement holder meets these requirements.
  
- The County shall determine whether a proposed easement holder meets these requirements.
  
- The Applicant shall also be responsible for donating to the easement holder fees sufficient to cover: (1) Administrative costs incurred in the creation of the easement (appraisal, documenting baseline conditions, etc.) and (2) Funds in the form of a non-wasting endowment to cover the cost of monitoring and enforcing the terms of the easement in perpetuity. The amount of these administrative and stewardship fees shall be determined by the easement holder in consultation with the County.
  
- Open space easement(s) shall also be subject to the following conditions:
  - The locations of acceptable easement(s) shall be developed with approval of CDFW and USFWS
  - The primary purpose of the easement(s) shall be conservation of impacted species and habitats, but the easement(s) shall

also allow livestock grazing when and where it is deemed beneficial for the habitat needs of impacted species

- Open space easement(s) shall:
  - Be held in perpetuity by a qualified easement holder (defined above) Be subject to a legally binding agreement that shall: (1) Be recorded with the County Recorder(s); and (2) Name CDFW or another organization to which the easement(s) will be conveyed if the original holder is dissolved.
  - Be subject to the management requirements outlined in Mitigation Measure BR-2.
- If lands acquired or protected for the compensation of permanent impacts to wildlife and/or vegetative communities contain similar sized populations of the impacted special-status plant species, of equal or greater habitat value, these mitigation lands may be used to achieve the required compensation ratios for special status plant species.

**BR-13: Complete Focused Pre-Construction Surveys for American Badger and Desert Kit Fox Surveys and Implementation of Avoidance Measures**

- No more than 30 days prior to the commencement of construction activities, the Applicant shall retain a qualified biologist to conduct pre-construction surveys for American badger and desert kit fox within suitable habitat on the Project Site. If present, occupied dens shall be flagged and ground-disturbing activities avoided within 50 feet of the occupied den. Maternity dens shall be avoided during pup rearing season (15 February through 1 July) and a minimum 200-foot buffer established. The extent of buffers shall be flagged in the field utilizing a method highly visible by construction crews. Buffers may be modified with the concurrence of the CDFW. Maternity dens shall be flagged for avoidance, identified on construction maps, and a biological monitor shall be present during construction to monitor for adequate protection of all identified dens and to help ensure that all flagging is kept in good working order.
- If avoidance of a non-maternity den (impacts to maternity dens is not allowed) is not feasible, badgers or foxes shall be relocated by slowly excavating the burrow (either by hand or mechanized equipment under the direct supervision of the biologist, removing no more than 4 inches at a time) before or after the rearing = season (15 February through 1 July). Any passive relocation of badgers or foxes shall occur only after consultation with the CDFW and the biological monitor.
- Prior to the final County inspection or occupancy, whichever comes first, a written report documenting all badger related activities (e.g., den flagging, monitoring, badger removal, etc.) shall be provided to the County. A copy of the report will also be provided to the CDFW.

#### **BR-14: Pre-Construction Surveys and Avoidance/Relocation Measures for Flat-tailed Horned Lizard**

- Focused pre-construction surveys shall be conducted for flat-tailed horned lizard. During construction, areas of active surface disturbance shall be surveyed periodically, at least hourly, when surface temperatures exceed 29°C (85°F) for the presence of flat-tailed horned lizard. Flat-tailed horned lizards would be removed from harm's way during construction activities by the on-site biological monitor(s). To the extent feasible, methods to find flat-tailed horned lizards would be designed to achieve a maximal capture rate and would include, but not be limited to using strip transects, tracking, and raking around shrubs. During construction, the minimum survey effort would be 30 minutes per 0.40 hectare (one acre). Persons that handle flat-tailed horned lizards would first obtain all necessary permits and authorization from the CDFW. A Horned Lizard Observation Data Sheet and a Project Reporting Form, per Appendix 8 of the Range wide Management Strategy, would also need to be completed. During construction, quarterly reports describing flat-tailed horned lizards removal activity would be submitted to the USFWS, CDFW, and the County.
- The removal of flat-tailed horned lizard out of harm's way would include relocation to nearby suitable habitat in low-impact areas of the Yuba Management Area, which is located to the west and south of the Project Site. Relocated flat-tailed horned lizards would be placed in the shade of a large shrub in undisturbed habitat. If surface temperatures in the sun are less than 24°C (75°F) or exceed 38°C (100°F), a qualified biologist, if authorized, would hold the flat-tailed horned lizard for later release. Initially, captured flat-tailed horned lizards would be held in a cloth bag, cooler, or other appropriate clean, dry container from which the lizard cannot escape. Lizards would be held at temperatures between 75°F and 90°F and would not be exposed to direct sunlight. Release would occur as soon as possible after capture and during daylight hours. The qualified biologist would be allowed some judgment and discretion when relocating lizards to maximize survival of flat-tailed horned lizards found in the Project area.
  - To the maximum extent practicable, grading in flat-tailed horned lizard habitat would be conducted during the active season, which is defined as March 1 through September 30, or when ground temperatures are between 24°C (75°F) and 38°C (100°F). If grading cannot be conducted during this time, any flat-tailed horned lizards found would be removed to low-impact areas (see above) where suitable burrowing habitat exists, (e.g., sandy substrates and shrub cover).

#### **BR-15: Compensation for Impact to Flat-Tailed Horned Lizard**

- Pursuant to Title 43 CFR and the Federal Land Policy and Management Act of 1976, federal land management agencies may permit actions that

result in flat-tailed horned lizard habitat loss on their lands; however, for losses both within and outside the Management Areas, compensation is charged if residual effects would occur after all reasonable on-site mitigation has been applied. The goal of compensation is to prevent the net loss of flat-tailed horned lizard habitat and make the net effect of a project neutral or positive to flat-tailed horned lizards by maintaining a habitat base for flat-tailed horned lizards. To achieve this goal, compensation will be based on the acreage of flat-tailed horned lizard habitat lost after all reasonable on-site mitigation has been applied at a 1:1 ratio for habitat lost outside a flat-tailed horned lizard Management Area. For this Project, compensation will be required for a loss of approximately 54 acres of flat-tailed horned lizard habitat.

#### **BR-16: Develop a Habitat Mitigation and Monitoring Plan**

- To help ensure the success of on-site preserved land and acquired mitigation lands, required for compensation of permanent impacts to vegetative communities and listed or special-status plants and wildlife, the Applicant shall retain a qualified biologist to prepare a Habitat Monitoring and Mitigation Plan (HMMP). The HMMP will be submitted to the County for approval, prior to the issuance of a construction permit. Prior to the final County inspection final impact acreages must be presented to the County and acquisition of off-site lands must be verified.
- The HMMP will include, at a minimum, the following information:
  - Summary of anticipated habitat impacts and the proposed mitigation.
  - Detailed description of the location and boundaries of undisturbed Project areas proposed for preservation, off-site mitigation lands and a description of existing site-wide conditions. The HMMP shall include detailed analysis showing that the mitigation lands meet the performance criteria outlined in MM BR-2 (Develop a Habitat Restoration Plan) and MM BR-15 (Compensate for Impacts to Flat-Tailed Horned Lizard).
  - Discussion of measures to be undertaken to enhance (e.g., through focused management) the on-site preserved habitat and off-site mitigation lands for listed and special-status species.
  - Description of management and maintenance measures (e.g., vegetation management, fencing maintenance, etc.).
  - Discussion of habitat and species monitoring measures for on-site preservation areas and offsite mitigation lands, including specific, objectives, performance criteria, monitoring methods, data analysis, reporting requirements, monitoring schedule, etc.
  - Development of a monitoring strategy for the monitoring of indirect impacts to vegetation and wildlife from alteration to the solar and hydric regimes as a result of Project facilities.

- Development of a monitoring strategy, which shall serve to document the persistence of flat-tailed horned lizard populations within the Project Site and on mitigation lands. This monitoring will be conducted for a minimum of 5 years after the completion of construction activities. The strategy should include, at the minimum, the following:
  - Documentation of pre-Project population levels for the species noted above, based on results of focused pre-construction surveys and previously supplied Applicant data.
  - On-going monitoring of species populations upon completion of construction activities, while the Project is in operation, for a minimum of three years.
  - Monitoring of reference populations for this species in areas that contain undisturbed habitat, such as the Yuba Management Area.
  - An analysis of the comparison of percent changes in population levels at the Project and reference sites to be used in the determination of additional compensatory mitigation.
  - The applicant shall prepare a contingency plan for mitigation elements that do not meet performance or final success criteria within 5 years. This plan will include specific triggers for remediation if performance criteria are not being met and a description of the process by which remediation of problems with the mitigation site (e.g., presence of noxious weeds) will occur.

#### **BR-17: Burrowing Owl Protection Measures**

- The following measures shall be implemented during Project construction, operation, and decommissioning with respect to burrowing owls:
  - A qualified biologist(s) shall be on-site during all construction activities in suitable burrowing owl habitat. A qualified biologist (i.e., a biologist with previous burrowing owl survey experience) shall conduct pre-construction clearance surveys of the permanent and temporary impact areas to locate active breeding or wintering burrowing owl burrows no more than 14 days prior to construction. The survey methodology shall be consistent with the methods outlined in the CDFG Staff Report (CDFG 2012). Copies of the survey results shall be submitted to CDFW and the County.
  - If no burrowing owls are detected, no further mitigation is necessary. If burrowing owls are detected, no ground-disturbing activities, such as road construction or facility construction, shall be permitted except in accordance with the staff report or by written authorization of CDFW staff. Burrowing owls shall not be excluded from burrows unless or until a Burrowing Owl Exclusion Plan is developed by the lead biologist and approved by the applicable local CDFW office and submitted to the



County. The plan shall adhere to the requirements set forth in the Burrowing Owl Mitigation Staff Report (CDFW 2012).

- In accordance with the Burrowing Owl Exclusion Plan, a qualified biologist shall excavate burrows using hand tools. Sections of flexible plastic pipe or burlap bag shall be inserted into the tunnels during excavation to maintain an escape route for any animals inside the burrow. One-way doors shall be installed at the entrance to the active burrow and other potentially active burrows within 160 feet of the active burrow. Forty-eight hours after the installation of the one way doors, the doors can be removed, and ground-disturbing activities can proceed. Alternatively, burrows can be filled to prevent reoccupation.
- During construction activities, monthly and final compliance reports shall be provided to CDFW, the County, and other applicable resource agencies documenting the effectiveness of mitigation measures and the level of burrowing owl take associated with the Project.

#### **BR-18: Compensation for Impacts to Burrowing Owl**

- Should burrowing owls be found on-site, compensatory mitigation for lost breeding or wintering habitat shall be implemented on-site or off-site in accordance with Burrowing Owl Mitigation Staff Report guidance and in consultation with CDFW.
- At a minimum, the following recommendations shall be implemented:
  - Temporarily disturbed habitat shall be restored, if feasible, to pre-Project conditions, including decompaction soil and revegetating.
  - Permanent impacts to nesting, occupied and satellite burrows, and burrowing owl habitat shall be mitigated such that the habitat acreage, number of burrows, and burrowing owl impacted are replaced at a 1:1 ratio based on a site-specific analysis that shall include the following:
    - Permanent conservation of similar vegetation communities to provide for burrowing owl nesting, foraging, wintering, and dispersal (i.e., during breeding and nonbreeding seasons) comparable to or better than that of the impact area, and with sufficiently large acreage, and presence of fossorial mammals.
    - Permanently protect mitigation lands through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission. If the Project is located within the service area of a CDFW-approved burrowing owl conservation bank, the applicant may purchase available burrowing owl conservation bank.

- If the acquired lands or mitigation credits for other wildlife species or vegetation communities can be managed to support burrowing owl, the proposed mitigation lands could be aggregated so that the purchase of mitigation lands for one species could cover all or a portion of the mitigation requirements for the remaining species. Mitigation lands shall not already be public land.
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## **S-6 GEOLOGICAL**

### **Inadvertent Discovery**

- In the event that unanticipated paleontological resources or unique geologic resources are encountered during ground-disturbing activities, work must cease within 50 feet of the discovery and a paleontologist shall be hired to assess the scientific significance of the find. The consulting paleontologist shall have knowledge of local paleontology and the minimum levels of experience and expertise as defined by the Society of Vertebrate Paleontology's Standard Procedures (2010) for the Assessment and Mitigation of Adverse Impacts to Paleontological Resources.
- If any paleontological resources or unique geologic features are found within the Project Site, the consulting paleontologist shall prepare a paleontological Treatment and Monitoring Plan to include the methods that will be used to protect paleontological resources that may exist within the Site, as well as procedures for monitoring, fossil preparation and identification, curation of specimens into an accredited repository, and preparation of a report at the conclusion of the monitoring program.

## **S-7 HYDROLOGY**

### **Prepare Stormwater Pollution Prevent Plan and Implement Best Management Practices**

- Prior to issuance of any grading permit, the Applicant or its contractor shall prepare a Project-specific SWPPP and be responsible for securing coverage under SWRCB's NPDES stormwater permit for general construction activity (Order 2009-0009-DWQ). The SWPPP shall detail the treatment measures and BMPs to control pollutants that shall be implemented and complied with during both the construction and decommissioning of the Project. Example BMPs may include but are not limited to the following practices:
  - Designation of restricted-entry zones
  - Sediment tracking control measures (e.g., crushed stone or riffle metal plate at construction entrance)
  - Truck wash down areas
  - Diversion of runoff away from disturbed areas

- Protective measures for sensitive areas, outlet protection
- Provision mulching for soil stabilization during construction, and provision for revegetation upon completion of construction within a given area
- Treatment measures to trap sediment once it has been mobilized, such as straw bale barriers, straw mulching, fiber rolls and wattles, silt fencing.

#### **HYD-2: Final Project Drainage Plan**

- Prior to issuance of any grading permit, the applicant shall submit a Final Project Drainage Plan. The Drainage Plan shall adhere to the County's Engineering Guidelines Manual, IID "Draft" Hydrology Manual, or other recognized source with approval by the County Engineer to control and manage the discharge of storm-water to the proposed retention basins. Retention basins shall be integrated into the Drainage Plan to the maximum extent practical. The Drainage Plan shall provide both short- and long-term drainage solutions to ensure the proper sequencing of drainage facilities and management of runoff generated from the Project's impervious surfaces, as necessary.

#### **S-8 CULTURAL**

##### **Workers Environmental Awareness Program (WEAP)**

- A qualified archaeologist shall be retained to prepare a cultural resource focused Workers Environmental Awareness Program (WEAP) training that shall be given to all ground disturbing construction personnel to minimize harm to undiscovered archaeological resources or potential tribal resources that may be discovered during construction. All Site workers shall be required to complete WEAP Training with a focus on cultural resources, including education on the consequences of unauthorized collection of artifacts and that reviews discovery protocol. WEAP training shall also explain the protocol for notification, and requirements to retain a qualified archaeologist to evaluate any unexpected finds, as well as protocols regarding notification of tribal representatives.

##### **CULT-2: Continued Consultation with the San Pasqual Band of Mission Indians**

- If no other responses to Imperial County's invitation to consult on the Project are received, prior to construction, the County shall continue consultation with the San Pasqual Band of Mission Indians (San Pasqual). If the County, as the lead agency, determines through continued

consultation that there is substantial evidence the Project may adversely impact a yet unidentified Tribal Cultural Resource that meets criteria established in Public Resources Code Section 5024.1, the County shall determine if measures are needed to minimize potential impacts to TCRs including:

- Requirements for Native American Monitoring of Project Ground Disturbing Activities
- Development of an Unexpected Discovery Plan for Archaeological Resources
- Development of a Treatment Plan for Artifacts Considered to be Tribal Cultural Resources.
- If the County, through continued consultation efforts, determines there is not substantial evidence to support the existence of potential TCRs at the Project site, no additional measures shall be required.

#### **S-9 HEALTH, SAFETY AND HAZARDOUS MATERIAL/FIRE AND FUELS MANAGEMENT**

- All trash and debris within the Project site shall be disposed of off-site, in accordance with current, local, state, and federal disposal regulations. Compliance with this measure shall be verified by the Planning and Development Services Department.
- If it is determined that hazardous wastes are, or will be generated by the proposed operations, the wastes must be managed in accordance with the California Hazardous Waste Control Law (California Health and Safety Code, Div 20, Chapter 6.5) and the Hazardous Waste Control Regulations (California Code of Regulations, Title 22, Division 4.5).
- If it is determined that hazardous wastes will be generated, the Permittee should also obtain a United States Environmental Protection Agency, Identification Number by contacting (800) 618-6942. Certain hazardous waste treatment processes or hazardous material, handling, storage or uses may require authorization from the local Certified Unified Program Agency (CUPA). Information about the requirement for authorization can be obtained by contacting the local CUPA.
- Firearms shall be prohibited in all Project areas except for those used by licensed security personnel.
- Prior to the demolition of any building, structure, or transit pipe, the Applicant shall hire a California Certified Lead Inspector/Assessor and Certified asbestos Consultant to evaluate these features for the presence of lead based paint (LBP) and/or asbestos containing materials (ACM). Confirmed LBP and/or ACM shall be handled by a licensed LBP contractor and/or Licensed Asbestos Contractor.

- All contaminants shall be remediated in compliance with California environmental regulations and policies. LBP and/or ACM shall be disposed of according to appropriate regulations.

**S-10 PUBLIC SERVICES:**

- During the development phase of the project, the Permittee shall provide a roster of employees to include their position and place of residence. Permittee shall also attempt to coordinate a ride-share program with Caltrans and other regional employers to facilitate the employment of Imperial County residents in jobs related to this project.
- Unless prohibited by local, state or federal law or regulation, Permittee shall make good faith efforts to hire qualified residents of the Imperial County with the objective that a majority of the total work force is comprised of the Imperial County residents.
- Permittee shall enter into a Development Agreement with the County of Imperial to provide for a monetary benefit payable to the County to maximize the benefits of the Project to the Imperial County prior to the issuance of the first Building/Grading permit.
- All construction supervisors and supervisors shall be provided with communication devices, cell phones or walkie-talkies, in the event of an emergency on-site.

**S-11 COMMENCEMENT OF WORK:**

- Permittee shall commence construction of the permitted activities or provide substantial evidence of substantial progress within twenty-four (24) months of the effective date of this permit, i.e. approval date. Permittee may request an extension which shall be granted if the Permittee can show necessity.
- If a Development Agreement is approved, permitting will extend for a period of ten (10) years for the commencement of work.

**S-12 CONSTRUCTION STANDARDS**

- The battery storage facility structures shall be built in accordance with the California Building Code requirements applicable to "Seismic Category D". All structures and facilities shall be designed in accordance with the publication entitled "Recommended Lateral Force Requirements and Commentary by the Structural Engineers Association of California".
- The structural components of the permitted facilities shall be reviewed by the Building Official/Planning and Development Services Director. Applicable building permits shall be procured from the County for facilities prior to commencement of construction of such facilities.

**S-13 EMERGENCY RESPONSE/ACTION PLAN:**

- The Permittee shall prepare an Emergency Response/Action Plan that has been approved by the Imperial County Fire/OES Department, and the Local Enforcement Agency. Any hazardous materials storage areas shall be designed with curbs or other containment measures, e.g. double-walled storage tanks, to contain spills and leaks and if on-site hazardous materials exceed 55 gallons, a "Hazardous Material Management Plan" shall be prepared and approved by the County LEA and CUPA.
- The Emergency Response/Action Plan shall cover all possible emergencies, e.g. major fluid spills, earthquakes, fires, floods or other emergencies. At all times, there shall be at least one employee either on the facility premises or on-call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility of coordinating all emergency response measures. This Emergency Coordinator shall be thoroughly familiar with all aspects of the solar facility's Emergency Response/Action Plan, all operations and activities at the facility, location of all records within the facility and the facilities layout. This person shall have the authority to commit the resources needed to carry out the contingency plan. Adequate personnel and equipment shall be available to respond to emergencies and to insure compliance with the conditions of the permit.

- The Emergency Response/Action Plan shall be prepared in consultation with, but not be limited to, the Imperial County Fire Protection/Office of Emergency Services, County Environmental Health Services/Health Department, County Sheriff/Coroner's office, County Public Works Department, Planning and Development Services Department, and other appropriate state and county agencies. The plan shall include a notification list of response agencies which shall be notified immediately upon the discovery of a reportable unauthorized discharge and the list shall include: Imperial Fire Protection/Office of Emergency Services, Planning and Development Services Department, County Environmental Health Services/Health Department, County Department of Public Works (DPW), California Highway Patrol, as applicable.
- All employees shall be trained by classroom and hands-on training on safety procedures, maintenance programs and emergency response protocols to ensure safety and reliability in the event of an unforeseen emergency situation.
- The Permittee shall provide adequate safety devices against the hazard of fire and explosion for activities that involve the use and storage of flammable, explosive or highly corrosive or reactive materials as well as provide adequate fire-fighting and fire suppression equipment and using devices standard within the industry in compliance with all applicable state and local laws as verified by the Fire Chief, Office of Emergency Services.
- The Permittee shall implement all State and County-approved worker safety and fire protection plans and programs.
- Any gates on-site shall have a "knock" lock and be rapidly accessible by the Imperial Fire Protection/Office of Emergency Services.
- Appropriate first aid provisions for facility operations shall be made for emergency response during Project construction, operation, and maintenance activities with appropriate first aid training for Project employees.
- During construction, a member of each working crew shall be trained in basic first aid and supplied with necessary medical equipment to respond to emergencies as provided for in the Emergency Response/Action Plan required above.
- Permittee shall identify a responsible agent for emergency purposes, whose name, title, e-mail address and telephone number, which shall be provided to the County Department of Public Works, County Fire Protection/OES Department, County Environmental Health Services/Health Department, County Sheriff/Coroner's office, Imperial Irrigation District (IID), and County Planning and Development Services Department.

#### **S-14 LAND USE IMPROVEMENTS**

1. The Permittee shall prepare an appropriate parking plan for review and approval by the County Planning and Development Services and County Public Works Department for all proposed Operation & Maintenance buildings.
2. The Permittee shall surface with a minimum of three (3) inches of asphaltic concrete paving or material of higher quality all access drives, parking areas, and vehicular maneuvering areas to any constructed operation and maintenance buildings.

#### **S-15 NOISE STANDARDS:**

1. During the construction period, heavy truck traffic to/from the solar facilities shall be limited to the hours between 7:00 AM and 7:00 PM Monday through Friday, and 9:00 AM to 5:00 PM on Saturdays.
2. During construction, in accordance with Imperial County Noise Element of the General Plan, the noise level shall not exceed 70 dBA<sub>Leq</sub> at the property boundary when averaged over an 8-hour period.
3. Noise associated with project operation would attenuate to less than 50 dB(A) <sub>Leq</sub> within the Project site boundary. On-site generated noise would attenuate to 44 dB(A) <sub>Leq</sub> at the nearest single-family residence immediately (west of the intersection of Drew Road and SR 98).

#### **S-16 ODOR CONTROL**

1. The Permittee shall control all odor-causing, harmful, noxious emissions to ensure that quantities or air contaminants released as a result of the permitted facilities do not exceed County, State or Federal standards, nor constitute a public nuisance, per the Land Use Ordinance, Division 13, Enforcement, Chapter 2, Abatement of Nuisances, Sections 91302.00 through 91301.02.

#### **S-17 PLAN APPROVALS:**

Permittee shall submit to the County Planning and Development Services Department, architectural, landscaping and lighting plans prior to construction of those facilities, to include painting of structures, planting of trees and/or vegetation, and shall receive all approvals prior to commencing construction of the applicable permitted facilities. Approval shall not be unreasonably withheld so long as the plans are consistent with applicable Land Use Ordinance requirements.



**S-18 PROJECT DESIGN:**

1. All facility access and parking areas shall be constructed to the standards of the Land Use Ordinance.
2. All permitted activities shall provide for the minimum feasible surface land disturbance for compatibility with the existing uses wherever possible.
3. All equipment and electrical interconnection facilities used at the project site shall be maintained in a manner that prevents breaking, cracking, and leaking, e.g. operator staffing and training, including appropriate quality assurance procedures, with the operation of back-up or auxiliary facilities when necessary.
4. A Storm-water Pollution Prevention Plan (SWPPP) shall be prepared for construction of the project in accordance with the requirements of the County of Imperial and the RWQCB (Hydrology and Water Quality).
5. All on-site basins shall be designed and constructed under the supervision of a California-licensed Civil Engineer meeting sound engineering standards, with all applicable regulations and all requirements of the County Environmental Health Services/Health Department and Public Works Departments are complied with.
6. Obtain encroachment permits for any construction or operation on IID existing right of way or easements.

**S-19 REPORTING AND MONITORING:**

1. The Permittee shall furnish to the County, within a reasonable time, any relevant reports/information which the County requires for monitoring purposes to determine whether cause exists for revoking this permit, or to determine compliance with this permit. The Permittee shall submit all required reports to the Planning Director, County Planning and Development Services Department, 801 Main Street, El Centro, CA 92243.
2. Permittee and Imperial County Development Services Department Director shall agree upon a third-party environmental consultant for overseeing all the required mitigation, conditional use permit conditions and public benefit agreement requirements during the construction of project.
3. Permittee shall pay for this third-party environmental consultant monitoring and compliance through a memorandum of understanding (MOU) between the County of Imperial, the Permittee and the third party consultant. This environmental consultant shall oversee and manage the

entire team of specialists needed for the environmental compliance of project, i.e. biologist, cultural experts, burrowing owls monitoring, etc.

4. The Planning and Development Services Department, in consultation with the third-party Environmental Consultant and the County Executive Office, will require that all mitigation measures be satisfied, all mitigation monitoring and Reporting Program requirements have been satisfied, all Conditions of Approval in the Conditional Use Permit are in full compliance and all conditions of the Development Agreement have been satisfied before the Final Certificate of Occupancy Certificate is issued.
5. During the operation of the project, an Annual Compliance Report shall be submitted to the Planning & Development Services Department, documenting the implementation of the conditions and general measures as well as any resource-specific measures.
6. The Permittee shall reimburse the Imperial County Planning & Development Services Department for monitoring and investigations related to the construction and operation of the Project. Permittee shall compensate the County pursuant to the Imperial County Planning & Development Services Department Fee Schedule for any costs incurred.
7. Permittee shall pay for all costs as required to comply with the Conditions of Approval, and shall implement all required mitigation measures as indicated in the Final Environmental Impact Report (FEIR) and Mitigation Monitoring, Reporting Program (MMRP). If mitigation measures for FEIR and MM&RP are more stringent than the conditions in this permit, the FEIR & MM&RP mitigations will be required.

#### **S-20 SPILLS AND RUNOFF:**

The Permittee shall design and construct the permitted facilities to prevent spills from endangering adjacent properties and to prevent runoff from any source being channeled or directed in an unnatural way so as to cause erosion, siltation, or other detriments pursuant to the construction Storm Water Pollution Prevention Plan approved by the Regional Water Quality Control Board.

#### **S-21 FACILITIES CLOSURE AND SITE RESTORATION:**

1. Permittee shall implement the site restoration plan as outlined within the plan when the operation of the permitted facilities herein authorized has ceased, all facilities shall be dismantled, and the lands involved restored to their pre-construction condition and available for agricultural production uses as agreed to by the County Planning and Development Services

Director. Prior to issuance of a building or grading permit, a Bond, or other acceptable surety, in the amount of the estimated site restoration financial calculations/bond, for the developed project area as specified in the [or grading plan(s) area], or other forms of security acceptable to County Counsel's office, shall be filed with the County that guarantees restoration of the land. Upon completion of such site restoration, and demonstration that the land has been restored per the reclamation plan, the Bond or other surety shall be released by the County.

2. The above financial calculations/bond shall be reviewed every five (5) years in December and adjusted on January 1<sup>st</sup> to add a CPI (Los Angeles) increase by the Planning and Development Services Director. This readjustment can be made in the County's sole discretion if approved by both the County and the Permittee.

### **Reclamation/Decommissioning Plan and Security**

- Prior to the issuance of a grading permit or building permit (whichever is issued first) for the proposed Project, the Permittee shall submit to Imperial County a Reclamation and Decommissioning Plan. The plan shall document the procedures by which each CUP area will be returned to an approved condition. The Permittee shall also provide financial assurance/bonding in an amount equal to a cost estimate prepared by a California-licensed general contractor or civil engineer for implementation of the Reclamation Plan in the event Permittee fails to perform the Reclamation Plan.
- Timing/Implementation: Prior to the issuance of a grading permit and/or building permit (whichever is issued first).
- Enforcement/Monitoring: Imperial County Planning and Development Services Department and Imperial County Agricultural Commissioner's Office.

### **S-22 PUBLIC WORKS**

1. Any activity and/or work within Imperial County right-of-way shall be completed under a permit issued by this Department (encroachment permit) as per Chapter 12.12 – Excavations on or Near a Public Road of the Imperial County Ordinance.
  - (a) Any activity and/or work may include, but not be limited to, the installation of temporary stabilized construction entrances, primary access driveways, secondary emergency access driveways, site fence installation, underground/overhead electrical crossings, road improvements, temporary traffic control, etc.
  - (b) The applicant for encroachment permits within Imperial County right-of-way, grading plans and/or improvement plans is responsible for researching, protecting and preserving survey monuments per the Professional Land Surveyor's Act (8771 (b)).

This shall include a copy of the referenced survey map and tie card(s) (if applicable) for all monuments that may be impacted.

2. The Permittee will be required to repair any damages caused to County roads by construction traffic during construction and maintain them in safe conditions.
3. All off-site improvements within Imperial County right-of-way shall be financially secured by either a road improvement bond or letter of credit prior to issuance of a grading permit, building permit, and encroachment permit.
4. Prior to the issuance of grading and building permits, the Permittee shall complete the installation of temporary stabilized construction entrances and secondary emergency access driveways.
5. Prior to issuance of final certificate of occupancy, the Permittee shall be responsible for repairing any damage caused to County roads and bridges during construction as determined by the Imperial County Road Commissioner.
6. The Permittee shall furnish a Drainage and Grading Plan/Study to provide for property grading and drainage control, which shall also include prevention of sedimentation of damage to off-site properties. The Study/Plan shall be submitted to the Department of Public Works for review and approval. The Developer shall implement the approved plan. Employment of the appropriate Best Management Practices (BMP's) shall be included. (Per Imperial County Code of Ordinances, Chapter 12.10.020 B).
7. All permanent structures shall be located outside of the ultimate County Right-of-Way.
8. Off-site improvements shall be constructed in compliance with the material specifications, horizontal/vertical alignments and notes of engineered approved project plans and shall conform to County of Imperial Department of Public Works Engineering Design Guidelines Manual.
9. On-site roads shall be constructed of compacted native soils.
10. Primary access and secondary emergency access driveways shall be constructed of asphalt concrete pavement and class II base with a 10-foot section of asphalt concrete pavement adjacent to the County Road existing edge of pavement respectively.

11. No Right-of-way required at this moment. During future phases of the project, right-of-way compliance with the Circulation Element of the General Plan will be addressed.
12. The Permittee shall prepare and submit a haul route study for the proposed construction haul route to evaluate any impacts to County roads. Said study shall be submitted to this Department for review and approval. The haul route study shall include pictures and/or other documents to verify the existing conditions of the impacted County roads before construction begins. The haul route study shall also include recommended mitigation improvements to impacted County roads along with any fair share costs for such improvements.
13. The Permittee shall enter into a Roadway Maintenance Agreement with the County of Imperial prior to issuance of a Certificate of Occupancy. The Permittee shall provide financial security to maintain roads on the approved haul route study during construction.

**INFORMATIVE:**

All solid and hazardous waste shall be disposed of in approved solid waste disposal sites in accordance with existing County, State and Federal regulations (per Imperial County Code of Ordinances, Chapter 8.72)

All on-site traffic areas shall be compacted native soils to provide access for emergency vehicles.

The project may require a National Pollutant Discharge Elimination System (NDPES) permit and Notice of Intent (NOI) from the Regional Water Quality Control Board (RWQCB) prior to County approval of onsite grading plan (40 CFR 122.28).

A Transportation Permit may be required from road agency(s) having jurisdiction over the haul route(s) for any hauls of heavy equipment and/or large vehicles which impose greater than legal loads on riding surfaces, including bridges. (Per Imperial County Code of Ordinances, Chapter 10.12 – Overweight Vehicles and Loads)

**S-23 WASTE DISPOSAL**

1. The Permittee shall insure that all project waste, liquid, gas or solid, which are generated on-site shall be disposed of in compliance with appropriate local, state, and federal regulations, in effect or as subsequently duly-enacted. All solid waste debris and/or any hazardous wastes located on the Project site must be satisfactorily removed to a permitted facility prior to the commencement of grading earthen material at the site.
2. Littering shall not be allowed. Project personnel shall not deposit or leave any food or waste in the Project area, and no biodegradable or non-biodegradable debris shall remain in the right-of-way or on the Project site following completion of construction.

**S-24 DEPARTMENT OF TOXIC SUBSTANCES CONTROL:**

1. If there are any recognized environmental conditions in the project area, then proper investigation, sampling and remedial actions overseen by the appropriate regulatory agencies should be conducted prior to the new development or any construction.
2. If during construction/demolition of the project, soil and/or groundwater contamination is suspected, construction/demolition in the area would cease and appropriate health and safety procedures should be implemented. If it is determined that contaminated soil and/or groundwater exist, the IS should identify how any required investigation and/or remediation will be conducted, and the appropriate government agency to provide regulatory oversight.
3. If soil contamination is suspected or observed in the project area, then excavated soil should be sampled prior to export/disposal. If the soil is contaminated, it should be disposed of properly in accordance with all applicable and relevant laws and regulations. In addition, if the project proposes to import soil to backfill the excavated areas, proper evaluation and/or sampling should be conducted to make sure that the imported soil is free of contamination.

**S-25 COLORADO RIVER INDIAN TRIBES:**

1. The Tribe requests that all prehistoric cultural resources, including both known and yet-to-be discovered sites, be avoided if feasible. If avoidance is infeasible, then the Tribe requests that the resources be left in-situ or reburied in a nearby area, after consultation.
2. In the event any human remains or objects subject to provision of the Native American Graves Protection and Repatriation Act, or cultural resources such as sites, trails, and artifacts are identified during ground disturbance, please contact CRIT Tribal Historic Preservation Office (THPO) within 48 hours.

**S-26 IMPERIAL IRRIGATION DISTRICT:**

1. For temporary construction electrical service and permanent electrical service to the on-site substation and the battery storage facility, the applicant should contact the IID Customer Project Development Office and speak with the area's project manager. All associated fees, rights of way and environmental documentation is the responsibility of the applicant. <sup>3</sup>
  2. A circuit study may be required prior to IID committing to serve the project.
  3. A comprehensive IID hydraulic drain system analysis will be required to determine impacts and mitigation if the project discharges into IID's drain system. IID's hydraulic drainage system analysis includes an associated drain impact fee.
  4. To obtain water for the construction phase of the projects, the applicant should be advised to contact IID South End Division.
  5. The IID Water Department will require that the applicant secure with the district the necessary Water Supply Agreements for industrial use.
  6. IID's canal or drain banks may not be used to access the project sites. Any abandonment of easements or facilities shall be approved by IID based on system (Irrigation, Drainage, Power, etc.) needs.
  7. Any construction or operation on IID property or within its existing and proposed right of way or easements including but not limited to: surface improvements such as proposed new streets, driveways, parking lots, landscape; and all water, sewer, storm water, or any other above ground or underground utilities; requires a lease, an encroachment permit, or encroachment agreement.
  8. IID claims a prescriptive right of way to the toe of slope of all existing canals and drains. Where space is limited and depending upon the specifics of adjacent modifications, the IID may claim additional secondary easements/prescriptive rights of ways to ensure operation and maintenance of IID's facilities can be maintained and are not impacted.
  9. Approved grading, drainage and fencing plans should be submitted to the IID Water Engineering Section prior to final project design as well as the project's Storm Water Pollution Prevention Plan.
-

## **S-27 FIRE DEPARTMENT**

- Standards and requirements for energy storage system include, but are not limited to, the following:
  - NFPA:
    - 1 Fire Code
    - 68 Standard on Explosion Protection by Deflagration Venting
    - 69 Standard on Explosion Prevention Systems.
    - 70 National Electrical Code
    - 855 Standard for the installation of Energy Storage System
    - 111 Stored Electrical Energy Emergency and Standby Power System
    - 1072: Standard for Hazardous Materials/Weapons of Mass Destruction Emergency Response Personnel Professional Qualifications.
    - 1710 Standard for Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments.

### **OSHA:**

- 29 CFR 1910.134(g)(4)
- 29 C.F.R. 1910.1000. Limits for Air Contaminants. Regulation, Occupational Safety and Health Administration

### **CFC:**

- Chapter 1 section
- Chapter 12 section 1206 Electrical Energy Storage System
- Chapter 9 Fire Protection and Life Safety System

### **UL:**

- UL 9540 Standard for Energy Storage Systems and Equipment.
- UL 9540A Test Method for Evaluating Thermal Runaway Fire Propagation in Battery Energy Storage Systems

### **NFPA:**

- 1710 Chapter 5 section 5.2.3.1.2.1 states: In first –due response zones with tactical hazards, high hazard occupancies, or dense urban areas, as identified by the AHJ, these fire companies shall be staffed with a minimum of six on duty members. OSHA 29 CFR 1910.134(g)(4) states: Procedures for interior structural firefighting. In addition to the



requirements set forth under paragraphs (g)(3), in interior structural fires, the employer shall ensure that:

- 1910.134(g)(4)(i): At least two employees enter the IDLH atmosphere and always remain in visual or voice contact with one another.
- 1910.134(g)(4)(ii): At least two employees are located outside the IDHL atmosphere; and 1910.134(g)(4)(iii): All employees engage in interior structural firefighting use SCBAs.

1. Additional requirements to follow but not limited to:

- An approved water supply capable of supplying the required fire flow determined by appendix B of the 2019 California Fire Code shall be installed and maintained. Private fire service mains and appurtenance shall be installed in accordance with NFPA 24.
- An approved automatic fire suppression system shall be installed on all required structures as per the 2019 California Fire Code. All fire suppression systems will be installed and maintained to the current adapted fire code and regulations.
- An approved automatic fire detection system shall be installed on all required structures as per the 2019 California Fire Code. All fire detection systems will be installed and maintained to the current adapted fire code and regulations.
- Fire department access roads and gates will be in accordance with the current adopted fire code and the facility will maintain a Knox Box for access on site.
- Compliance with all required sections of the fire code.
- Applicant shall provide product containment areas(s) for both product and water run-off in case of fire applications and retained for removal.
- A Hazardous Waste Material Plan shall be submitted to Certified Unified Program Agency (CUPA) for their review and approval.
- All hazardous material and wastes shall be handled, store, and disposed as per the approved Hazardous Waste Materials Plan. All spills shall be documented and reported to Imperial County Fire Department and CUPA as required by the Hazardous Waste Material Plan.
- Westside Battery Storage reviews for plans and inspections will be done by a third-party consultant determined by the Fire Department at the applicant's expense as per California Fire Code Chapter 1 [A] 104.7.2 Technical Assistance.

- Prior to the issuance of the first grading permit for the Project, Developer shall purchase, or contribute its proportionate share associated with the cost of the purchase, of a Type 1 fire engine, which shall meet all National Fire Protection Association (“NFPA”) standards for structural firefighting. Final cost, conditions, and equipment to be installed on the Type 1 fire engine shall be reasonably determined by County Fire/OES, but the total cost shall not exceed five hundred thousand dollars (\$500,000). The terms and reimbursement schedule for this Type 1 fire engine are more fully described in the Development Agreement dated.
- Project will provide a private fire line with fire hydrants every 300 feet or to the discretion of the Fire Department and will maintain fire flows that will be analyzed by the Fire Department for final gallons per minute and duration. Developer shall pay County Fire/OES one hundred dollars (\$100) per megawatt of storage capacity at point of interconnection as a one-time payment to provide additional training to Fire/OES personnel during the life of the Project. The nature and frequency of such training shall be at the discretion of County Fire/OES, but shall be intended for assisting with responses to utility-grade energy storage project fires and emergencies. This payment shall be made before issuance of the first building permit for the Project, or for each phase of the Project, whichever is applicable.
- Developer shall pay County Fire/OES one hundred fifty dollars (\$150) per megawatt of storage capacity at point of interconnection as a one-time payment to provide additional equipment for Fire/OES personnel during the life of the Project. The type and amount of equipment required shall be at the discretion of County Fire/OES, but shall be intended for assisting with responses to utility-grade energy storage project fires and emergencies. This payment shall be made before issuance of the first building permit for the Project, or for each phase of the Project, whichever is applicable.
- Signage that identifies the contents of an ESS is required on all ESS installations to alert first responders to the potential hazards associated with the installation.
- Lithium-ion battery ESSs must incorporate adequate explosion prevention protection as required in NFPA 855 or International Fire Code Chapter 12, where applicable, in coordination with the emergency operations plan.
- Permittee shall contract with an environmental consultant and pay for a Compliance Construction Manager for overseeing all the required mitigation and conditional use permit conditions during the construction of project. This Compliance Construction Manager shall oversee and manage the entire team of specialists needed for the environmental compliance of project, i.e. biologist, cultural experts, burrowing owls monitoring, etc.

- CED Westside Canal Battery Storage, LLC shall be the master developer and shall be responsible as for all improvements, septic, water plant, roads and other improvements, Conditional Use Permit Application and Conditions, MND, and MM&RP.
- If CED Westside Canal Battery Storage, LLC sells all or part of this project, an approved agreement shall be in place for new owner to build and maintain as agreed to by the previous conditions. The Planning and Development Services Director shall approve of any agreement between permittee and a new master developer.

### **S-28 FIRE TRAINING**

1. Applicant/Permittee will offer to County Fire the opportunity to participate in annual or as necessary/required update training on the handling of Hazardous Materials at such times as it is offered to staff. This offer extends to first responders as determined by County Fire.
2. Applicant/ Permittee will provide appropriate training for the handling of the various materials, chemicals and/or hazardous materials that may be used at the plant. This training would include first responder training to an incident. This training will be made available to County Fire Department personnel and such other personnel as deemed necessary by County Fire, including but not limited to first responders, mutual aid responders etc.

### **S-29 SALES TAXES BENEFIT**

To the extent permitted by applicable local, state and Federal law, Developer will require that all qualifying contractors and subcontractors exercise their option to obtain a California Department of Tax and Fee Administration ("CDTFA") sub-permit for the job site, allocate all eligible sales, and use tax payments to County and the Local Transit Authority ("LTA"). Prior to commencement of any construction activity on-site, Developer shall require that the contractor or subcontractor provide County with a copy of their CDTFA account number and sub-permit. Developer shall either cause its construction contractor to treat the Project in accordance with California Sales and Use Tax Regulation 1521(b)(2)(B); California Sales and Use Tax Regulation 1521(c)(13)(B), and California Sales and Use Tax Regulation 1826(b) for sales and use tax purposes. Or, form a "Buying Company" as defined in the California Sales and Use Tax Regulation 1699(h). Developer may adopt an alternate methodology to accomplish this goal if such methodology is approved by the County's Executive Officer prior to issuance of any building permit. No later than forty-five (45) days after the due date for filing sales and use tax returns for each calendar quarter, occurring after the commencement of any construction activity on-site through and including the first anniversary of commercial operating date ("COD"), Developer shall report, or cause its general contractor to report to County, the

total amount of sales and use taxes related to the Project that are allocated to the County, and reported on Developer's, general contractor's and subcontractors' applicable California sales and use tax returns. The obligations of Developer under this Section III A are hereinafter referred to as the "Developer Sales and Use Tax Responsibilities."

**Guarantee Amounts.** Prior to the issuance of any building permit for the Project, Developer shall provide County with a guarantee of the minimum sales and use taxes that will be received by County and LTA under existing applicable sales and use tax laws. The guarantee amount shall be based on the total storage capacity of the Project in megawatts, which is projected to be up to 2,000 megawatts. Should Developer choose to develop the Project in phases and receives the required approvals from County to do so, then Developer shall provide a separate guarantee amount for each phase of the project based on the total storage capacity in megawatts for the applicable phase.

Developer warrants that the sales/use tax guarantee amounts to be provided to County as mandated in this Section shall be true and accurate estimates of the projected sales and use taxes that will be generated for this Project. Developer shall provide County with evidence of the projected sales/use taxes for the Project, including but not limited to sales tax receipts, and executed or anticipated engineering contracts, procurement contracts, and construction contracts. If the Parties are unable to agree upon a guarantee amount, then the dispute shall be referred to an independent accountant mutually acceptable to both Parties. The costs for such nonbinding mediation shall be borne by Developer. Developer warrants that the sales/use tax guarantee amounts to be provided to County as mandated in this Section will incorporate any and all sales/use tax exemptions that Developer and/or its contractors and subcontractors intend to utilize, and that such exemptions will be disclosed to County fully and in good faith prior to the issuance of any building permit for this Project. Developer understands and acknowledges that the sales/use tax guarantee amounts to be provided to County as mandated by this Section are a part of the consideration to be received by County in return for entering into this Agreement, and further understands and acknowledges that County would not enter into this Agreement but for said guarantee from Developer. In the event that County and / or LTA receives less than the amount of sales / use taxes guaranteed pursuant to this paragraph, then Developer shall pay, as and when provided below, to County or LTA as applicable, the amount of the applicable shortfall.

**Adjustments to Guarantee Amounts.** The amount of sales and use tax anticipated to be generated is based on the projected construction of up to two thousand megawatt (2000 MW) battery storage system at full build out of the project. Construction of any additional output capacity beyond the 2000 MW output or storage capacity now projected will require the sales / use tax guarantee amounts to be adjusted based on the actual output from solar generation facilities of the Project as evidenced by any power purchase agreement subsequently entered into by Developer related to this Project.

To the extent of any reduction in the size of the Project as the result of any final ruling, stipulated judgment, or settlement, the sales / use tax guarantee amounts mandated shall be reduced pro rata based on the size of such reduction.

Should Developer become aware of a change in circumstances that would materially affect the sales/use tax guarantee amount, then Developer shall, within forty-five (45) days of learning of such change in circumstances, inform the County in writing of the change in circumstances. If the County determines that such change in circumstances warrants an adjustment to the sales/use tax guarantee amount, then County shall negotiate in good faith with Developer in revising the sales/use tax guarantee amount. If the Parties are unable to agree upon a revised guarantee amount, then the dispute shall be referred to an independent accountant mutually acceptable to both Parties. The costs for such nonbinding mediation shall be borne by Developer. Failure of the Developer to inform the County of the change in circumstances shall constitute a waiver of Developer's ability to seek any adjustment to the sales/use tax guarantee based on such change in circumstances.

The complete sales / use tax guarantee amount due to County and LTA for each phase of the Project must be received within one (1) year after COD for each phase of the Project, or such later date as any applicable sales / use tax is due or is transmitted from the CDTFA, unless it is delayed due to causes beyond Developer's control or for which Developer is not responsible. If, within one (1) year after issuance of the final certificate of occupancy, or such later date as any applicable sales / use tax is due or is transmitted from the CDTFA, the sales / use taxes received by the County are less than the sales / use tax guarantee amounts mandated under paragraph B, then Developer shall pay the difference to the County.

Payments to County and LTA as a result of a shortfall shall be due within forty-five (45) calendar days of Developer's receipt of written notice of shortfall from the County. Failure to make such payment within the forty-five (45) day timeframe shall be considered a default pursuant to section VI paragraph Q. of this Agreement, and may lead to termination of this Agreement. Developer hereby agrees to pay interest at the rate of six percent (6%) per annum of the payment due for any payment received by County beyond the forty-five (45) day due date. The obligation to pay interest shall survive the termination of this Agreement. The obligation to pay interest shall be stayed for up to thirty (30) calendar days when such amounts are disputed in good faith, so long as Developer submits the payments "under written protest" with a complete explanation of the reasons for the protest. Upon resolution of the protested payment, such late charges may be assessed if it is determined by County that the dispute was not made in good faith. Repeated protests of the same point rejected in a prior protest shall be considered a protest in bad faith. Any such payments later found not to be due by Developer shall be refunded by County

promptly, and in all events within thirty (30) calendar days after the determination of the amounts owing is made.

In the event that Developer repowers or replaces the equipment onsite, to the extent permitted under then applicable law, each site shall be designated as the "point of sale" so as to create an additional local tax-funding source for the County of Imperial.

**S-30** The Project commits to design and construct a bridge spanning the Westside Main Canal, which will be owned and maintained by the Project, with access granted to the County for public safety purposes.

**S-31** The Project commits to pay to the County bridge removal funds in the amount of \$150,000 as per the November 13, 2019 Feasibility Report and Cost Estimate for the Lyons and Hyde Bridges. In addition to this \$150,000 amount, there will be an additional \$50,000 commitment to the County in removal funds intended to cover currently unknown removal costs that may not have been discovered or disclosed in the inspection related to the above-referenced Feasibility Report.

**S-32 ACCEPTANCE:**

Acceptance of this permit shall be deemed to constitute agreement by Permittee with all terms and conditions herein contained.

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1           **NOW THEREFORE**, County hereby issues the Conditional Use Permit #19-0015,  
2 and Permittee hereby accepts such permit upon the terms and conditions set forth herein.

3           **IN WITNESS THEREOF**, the parties hereto have executed this Agreement the day  
4 and year first written.

5  
6 **PERMITTEE - CED Westside Canal Battery Storage, LLC**

7  
8  
9  
10 \_\_\_\_\_  
11 Mark Noyes, President and CEO  
12 ConEdison Development

\_\_\_\_\_ Date

13 **COUNTY OF IMPERIAL, a political subdivision of the STATE OF CALIFORNIA**

14  
15  
16 \_\_\_\_\_  
17 James Minnick, Director  
18 Planning & Development Services  
19 Department

\_\_\_\_\_ Date

1 **PERMITTEE NOTARIZATION**

2 A notary public or other officer completing this certificate verifies only the identity of the individual who signed the  
3 document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

4 Dated \_\_\_\_\_

5 STATE OF CALIFORNIA

6 COUNTY OF \_\_\_\_\_ } S.S.

7 On \_\_\_\_\_ before me,  
8 \_\_\_\_\_ a Notary Public in and for  
9 said \_\_\_\_\_ County and \_\_\_\_\_ State, personally appeared  
10 \_\_\_\_\_, who proved to me on the  
11 basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the  
12 within instrument and acknowledged to me that he/she/they executed the same in  
13 his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the  
14 instrument the person(s), or the entity upon behalf of which the person(s) acted, executed  
15 the instrument.

13 I certify under PENALTY OF PERJURY under the laws of the State of California that the  
14 foregoing paragraph is true and correct.

15 WITNESS my hand and official seal

16 Signature \_\_\_\_\_

17 ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could  
18 prevent fraudulent attachment of this certificate to unauthorized document.

19 Title or Type of Document \_\_\_\_\_

20 Number of Pages \_\_\_\_\_ Date of Document \_\_\_\_\_

21 Signer(s) Other Than Named Above \_\_\_\_\_

22 Dated \_\_\_\_\_

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**COUNTY NOTARIZATION**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF IMPERIAL } S.S.

On \_\_\_\_\_ before me,  
\_\_\_\_\_ a Notary Public in and for  
said \_\_\_\_\_ County and \_\_\_\_\_ State, personally appeared  
\_\_\_\_\_, who proved to me on the  
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the  
within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the  
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed  
the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature \_\_\_\_\_

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could  
Prevent fraudulent attachment of this certificate to unauthorized document.

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Title or Type of Document \_\_\_\_\_  
Number of Pages \_\_\_\_\_ Date of Document \_\_\_\_\_  
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