

Summary for Electronic Document Submittal Attachment 1

Please identify the project's significant or potentially significant effects and briefly describe any proposed mitigation measures that would reduce or avoid that effect.

Biological Resources

APM BIO-1, **APM BIO-2**, and **APM BIO-3** proposed by the applicant to avoid and reduce impacts to nesting birds lack the specificity necessary to ensure project impacts would be reduced to less than significant levels. No concise protocol is proposed for preconstruction nest surveys, and proposed “no-work” buffers around active nests discovered prior to or during construction are not defined in accordance with established best practices to protect avian resources. Additionally, **APM BIO-3** does not ensure accountability, because it stipulates a technical report of the bird surveys “may be submitted” to the city, rather than requiring it.

To ensure impacts to nesting birds are avoided and minimized to less than significant, Energy Commission staff is proposing **MM BIO-1**, which would replace nesting mitigation in **APMs BIO-1**, provide details about buffers absent in **APM BIO-2**, and ensure the accountability in reporting that is absent in **APM BIO-3**. With adherence to **MM BIO-1** and **APM PD-1**, project impacts to nesting birds covered by the MBTA and other federal and state laws would be less than significant. The applicant did not include any APMs to address potential impacts to the Western burrowing owl. **MM BIO-2** would require pre-construction surveys of suitable habitat areas (as determined by a qualified biologist) for Western burrowing owl before any ground disturbance activities regardless of the time of year, within 300 feet of proposed construction activities on the project site and the transmission line extension, or as directed by the City of Santa Clara. Where pre-construction surveys identify occupied burrows during the February 1 through August 31 breeding season, a no-disturbance buffer around the burrow would be required. Where pre-construction surveys identify occupied burrows outside the breeding season, the applicant may propose an eviction and exclusion plan for passive relocation of the birds, subject to preparation and approval of a Burrowing Owl Exclusion Plan (BOEP).

Cultural Resources

Staff evaluated **APM PD-1** and **APM CUL-1** through **APM CUL-3** in the context of the potential impacts and concludes that **APM CUL-1** and **APM CUL-3** are insufficient to reduce impacts to buried, as-yet-undiscovered historical resources to a less than significant level. **APM CUL-1** proposes that the applicant retain a qualified archaeologist and Native American monitor to respond to inadvertent cultural resource discoveries should any occur during construction. In short, **APM CUL-1** would place the responsibility of cultural resources management on construction workers instead of cultural resources professionals and Native Americans. Also, **APM CUL-1** does not include qualification standards for Native American monitors. Staff proposes modifications to **APM CUL-1** that would ensure the prompt identification and

management of cultural and tribal cultural resource discoveries by requiring a professional archaeologist and qualified Native American monitor observe ground-disturbing activities associated with the proposed project. In addition, staff adds qualification criteria for Native American monitors. **MM CUL-1** would supersede **APM CUL-1**.

APM CUL-3 does not ensure accountability because it stipulates that a technical report of the archaeological/Native American resource finds, recommendations, data recovery efforts, and other pertinent information "may be submitted" to the city, rather than requiring it. Staff proposes that submittal of the technical report to the city be compulsory. **MM CUL-3** would supersede **APM CUL-3**.

Staff concludes that implementation of **MM CUL-1** and **MM CUL-3** would reduce the impacts to buried historical resources to a less than significant level.