



Santa Barbara County Reliability Project Construction Non-Compliance Report

Incident Date:	5/1/2018	Report No.:	NCR-02
Date Submitted:	5/10/18	Location:	Segment 3B near Construct 62
Level:	Level 2	Relevant Plan/ Measure:	MM BIO-1; MM BIO-10; Nesting Bird Management Plan
Current Land Use:	Disturbed existing access road; adjacent to native vegetation	Sensitive Resources:	Nesting red-tailed hawk; California red-legged frog

Description of Incidents:

On May 1, 2018, Southern California Edison (SCE) notified the California Public Utilities Commission (CPUC) that a Henkels and McCoy (H&M) civil grading crew bulldozer had graded approximately 180 feet within a red-tailed hawk nest buffer (ID 111) on an existing access road (Attachment 1). The incident occurred on Segment 3B on the access road to Construct 62. In addition to the red-tailed hawk nest buffer, the incident also encroached within a California red-legged frog environmentally sensitive area (ESA) (Attachment 2) for approximately 165 feet; neither native vegetation nor California red-legged frog habitat were impacted.

Upon observing the bulldozer within the 500-foot nest buffer, a biological monitor directed the bulldozer operator to stop work. The operator complied and immediately drove the bulldozer outside of the buffer. The biologist did not observe any adult red-tailed hawks in the area at the time of the incident, but later observed a nestling within the nest. In addition, the biologist confirmed that the ESA signage for California red-legged frog habitat were properly installed and displayed. Over the next two days, an avian biologist observed the nest and noted an adult and a downy chick on both days.

The red-tail hawk nest was originally documented on March 16, 2018. At that time, the nest buffer of 500 feet was implemented. The buffer appears on maps and as geographic information system (GIS) data that contractors can access using mobile phones or tablets.

While red-tailed hawks are not a special status species, the species is provided protection under the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code (Sections 3503 and 3503.5). Encroachment into nesting bird buffers increases the chance of nest failure, and nest failure caused by human disturbance would be in violation of the Migratory Bird Treaty Act and California Fish and Game Code. Nest buffer encroachment violates the Santa Barbara County Reliability Project (SBCRP) Nesting Bird Management Plan, a document reviewed by the United States Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW). The incident deviated from project requirements and mitigation measures, as discussed below, and had the potential to cause minor impacts on environmental resources; therefore, the CPUC has determined that the incident constitutes a Level 2 Non-Compliance.

Pertinent Plans/Permits/Mitigation Measures:

The CPUC approved a Permit to Construct for the SBCRP. As part of this action, the CPUC certified a Final Environmental Impact Report (Final EIR) for the project and adopted the Mitigation Monitoring Plan (MMP) presented in Chapter 10 of the Final EIR. A Mitigation, Monitoring, Compliance, and Reporting Program (MMCRP) was created based on the Final EIR's MMP and serves as a working guide for maintaining environmental compliance for the project. The mitigation measures (MMs) and applicant proposed measures (APMs) within the MMCRP are required to be followed by SCE, including the following:

MM BIO-1: Limits of Construction Activities: Project Boundaries and Sensitive Areas Clearly Marked. In all locations of the project, construction activities, vehicular traffic (including movement of all equipment), and storage of

construction materials will be restricted to approved access roads and established construction areas indicated by flagging, fencing, and/or signage. The applicant will ensure that exclusionary fencing is installed prior to the start of construction activities around laydown/work and staging areas, where necessary, to prevent inadvertent encroachment into the native habitat adjacent to areas of impact. Identified sensitive resources such as hydrologic features, special status plants and natural communities, and known wildlife habitat of special status species (e.g., nests, burrows, dens, middens) will be assigned a buffer as appropriate and clearly marked (e.g., with signs, flagging, ropes, and/or fencing) and avoided unless previously approved. A CPUC-approved qualified biologist will propose a buffer distance if sensitive resources are identified, and the applicant will consult with the CPUC and resource agency (ies) to determine whether the proposed buffer distance is appropriate. The CPUC-approved qualified biologist will perform or supervise flagging and fencing to ensure that these activities are conducted without harm to sensitive species or habitat.

MM BIO-10 Nesting Bird Management Plan. Prior to construction, the applicant will submit a project-specific Nesting Bird Management Plan in consultation with the USFWS, CDFW, and CPUC, which provides measures and an adaptive management program designed to avoid or reduce impacts on special-status and MBTA-protected bird species during nesting periods. The final Nesting Bird Management Plan shall be implemented, as specified, throughout construction and restoration. This plan will include the following information:

- Appropriate survey timing, extents, and methods; approved nest deterrent methods, including areas where vegetation will be cleared for the purpose of deterring nesting; inactive nest management; monitoring and reporting protocols during construction; protocol for determining whether a nest is active; protocol for documenting, reporting, and protecting active nests within construction and restoration areas. If pre-construction survey protocols exist for a certain species, the plan will outline the implementation of these protocols.
- Appropriate and effective buffer distances, including horizontal buffers from nests, horizontal buffers from territories if appropriate, and vertical buffers for helicopters. Buffers will not be based on generalized assumptions regarding all nesting birds, but will be site- and species/guild-specific and account for specific stage of nesting cycle and construction work type.
- During construction and restoration, a CPUC-approved avian biologist will implement the appropriate buffer distance in accordance with the Nesting Bird Management Plan.
- A process for reducing nesting bird buffer distances. Buffer reductions for special-status species and raptors must receive concurrence by appropriate wildlife agencies and the CPUC. Buffer reductions for common species will be determined by the CPUC-approved biologist, and the applicant will notify the CPUC prior to implementation.
- The minimum requirements to become a CPUC-approved avian biologist and biological monitor for nesting birds, including the minimum required education, experience in conducting biological surveys, and experience with specific birds in the project area.
- The CPUC-approved biological monitor will halt work if it is determined that active nesting would be disturbed by construction or restoration activities until further direction or approval to work is obtained from the CPUC and/or appropriate wildlife agencies.

This plan will be submitted to the wildlife agencies and the CPUC for review and comment, and the plan will be finalized and approved by the CPUC prior to the start of construction.

MM BIO-1 requires sensitive areas, including California red-legged frog habitat and bird nests, to be clearly marked and limits construction activities from occurring within the sensitive areas. By grading within the nesting bird buffer and California red-legged frog upland habitat area, SCE violated MM BIO-1.

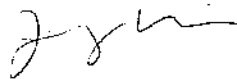
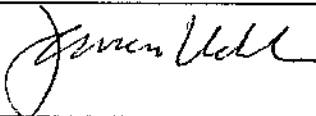
MM BIO-10 requires SCE to prepare a Nesting Bird Management Plan and to implement, monitor, and document buffers around active nesting birds. The red-tailed hawk nest event was initially documented on March 16, 2018, and the 500-foot buffer was implemented at that time. By grading within the active nesting bird buffer, SCE violated MM BIO-10.

Additionally, SCE violated the Nesting Bird Management Plan, which outlines active nest avoidance and documentation.

Proposed Resolution:

Prior to initiating work, the biological monitor and the crew walked the work area and discussed the buffer locations and biological resources found within the area. When the biologist observed the encroachment, the bulldozer operator was alerted, ceased operations, and immediately removed the equipment from the area. SCE took further action in response to the incident. The H&M Environmental Manager contacted the civil and construction managers and met with the individual who encroached within the buffer to reiterate the nest buffer compliance requirements. The incident was discussed at tailboard meetings the next day.

The CPUC agrees with SCE's response to the incident; however, biological resources were put at risk, which not only violated project requirements, but also had the potential to violate federal and state regulations. Therefore, the seriousness of the incident is documented in this Non-Compliance Report. All project personnel should be reminded of their responsibilities and the repercussions and potential fines for non-compliance issues.

Approvals	Date	Name (print)	Signature	Comments
CPUC Compliance Manager	5/10/18	Jenny Vick		
CPUC Compliance Monitor (if applicable)				
CPUC Project Manager (if applicable)	5/10/18	Jensen Uchiba		
SCE Environmental Compliance Manager (if applicable)				

Prepared by: Jenny Vick

Date: 5/10/18

Non-compliance Level	Example
<p>A Level 1 non-compliance incident is an action that deviates from project requirements or results in the partial implementation of the mitigation measures, but has not caused, nor has the potential to cause impacts on environmental resources.</p>	<ul style="list-style-type: none"> i. Failure to implement adequate dust control measures resulting in no impact on resources; ii. Improperly installed, repaired, or maintained erosion or sediment control devices (with no resultant harm to sensitive resources or release of sediment to waters); iii. Inadvertent minor incursion into exclusion area resulting in no harm to sensitive biological or cultural resources; iv. Work outside the approved work limits where the incident is within a previously disturbed area, such as a gravel lot
<p>A Level 2 non-compliance incident is an action that deviates from project requirements or mitigation measures and has caused, or has the potential to cause minor impacts on environmental resources.</p>	<ul style="list-style-type: none"> i. Work without appropriate permit(s) or approval; ii. Failure to properly maintain an erosion or sediment control structure, but the structure remains functional, and results in minor impacts on resources (e.g. water courses); iii. Working outside of approved hours; iv. Repeated documentation of Level 1 incidents
<p>A Level 3 non-compliance incident is an action that deviates from project requirements and has caused, or has the potential to cause major impacts on environmental resources. These actions are not in compliance with the APMs, mitigation measures, permit conditions, approval requirements (e.g. minor project changes, notice to proceed), and/or violates local, state, or federal law.</p>	<ul style="list-style-type: none"> i. Construction activities occurring in an exclusion zone with direct impacts to sensitive or endangered species, cultural resources, human remains, or an archaeological site; ii. Eminent danger or documented impact to a sensitive or T&E species; iii. Repeated deviations from required mitigation measures/requirements that have been documented as Level 2 (Minor Incidents); iv. Improper installation of erosion or sediment control structures resulting in substantial sedimentation or impacts to water quality or putting sensitive resources at risk

Attachment 1

Email from SCE to CPUC/E & E

From: Marcus Obregon <Marcus.Obregon@sce.com>

Sent: Tuesday, May 1, 2018 6:58 PM

To: Vick, Jenny <JVick@ene.com>

Cc: Barns, Caitlin <CBarns@ene.com>; Guzman, Fernando <FGuzman@ene.com>; vsemonsens@earthlink.net; Jack Horne <Jack.Horne@sce.com>; Kenneth Spear <Kenneth.Spear@sce.com>; Charles Lopez <Charles.Lopez@sce.com>; sbcrcp.sce@e2020.com

Subject: SBCRP: All Segments - Road Grading within Nesting Bird Buffer (Initial Notification, ID 111)

Afternoon folks.

Please see the below initial notification for road grading that occurred today within red-tailed hawk active nest buffer (Nest ID 111).

A civil grading crew graded approximately 180 feet within the buffer of nest 111 (red-tailed hawk) near Segment 3 Construct 62.

Prior to initiating work, the monitor and crew walked the work area and discussed the resources and the buffer locations. When the crew member began grading the roadway, they forgot to lift the blade at the bird buffer boundary. When the monitor identified the action, they immediately stopped the grading crew, the grading crew lifted the blade, and exited the buffer. There was no immediate indication that the nest attempt has failed. To ensure the monitor's determination is correct, an avian biologist will confirm the nest status and document the pair's behaviors tomorrow.

After being notified of the incident, the H&M Environmental Manager contacted the Civil and Construction Managers and reiterated the nest buffer compliance requirements. The construction manager will address the buffer compliance requirements with the crews during the morning tailboard briefings for the next week.

Finally, the action is being documented within FRED.

More information is to follow, but in the meantime, please let me know if there are any questions.

Thank you.

F Marcus Obregon

Project Manager, Environmental

Project Execution, Major Environmental Projects

Environmental Services

M. 626-320-0957 | Email: Marcus.Obregon@sce.com

2244 Walnut Grove Avenue, Rosemead, CA 91770



Attachment 2

Photograph from SCE Incident Report



Photo 1: Construct 62 access road. Signs indicate California red-legged frog ESA buffer.