



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



December 20, 2023
Sent via email

Cynthia Draper
Assistant Planner
Inyo County Planning Department
P.O. Drawer L
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Subject: Mitigated Negative Declaration
Renewable Energy Permit 2023-01/SBC
State Clearinghouse No. 2023110666

Dear Ms. Draper

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the Inyo County Planning Department for the Renewable Energy Permit 2023-01/SBC (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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

CDFW ROLE

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

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Larry Trowsdale

Objective: The applicant is applying for a Renewable Energy Permit to construct a 2.0 megawatt (MW) photovoltaic (PV) solar facility using approximately 4,625 single-axis tracker solar panels.

Location: The Project is located on two five-acre parcels (Assessor's Parcel Numbers 038-340-20 and 038-340-21) in Inyo County, north of the unincorporated town of Trona, California.

Timeframe: The MND does not provide a proposed timeframe for construction and/or operational life of the Project.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Inyo County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

Project Description and Related Impact Shortcoming

Comment #1: Request for more detailed Project Description

Issue: The MND provides very little information regarding the Project description.

Evidence impact would be significant: Compliance with CEQA is predicated on a complete and accurate description of the Project, including reasonably foreseeable future phases of the proposed Project. Without a complete and accurate Project description, the MND likely provides an incomplete assessment of Project-related environmental impacts and CDFW is unable to provide a meaningful analysis of potential Project impacts to biological resources.

CDFW Recommendations: CDFW recommends that a revised MND provide additional details, such as a list of Project components (in addition to the solar array, access/internal roads, fencing, lighting, etc.); timeframe for construction, operations and maintenance, and

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decommissioning; and how the Project construction will occur. It should also include a map with current imagery of the Project area.

Environmental Setting and Related Impact Shortcoming

Comment #2: Assessment of Biological Resources

Issue: CDFW is concerned that the MND does not adequately identify the Project's significant or potentially significant impacts to biological resources.

Specific Impact: The MND states that according to the Biological Evaluation (BE), the Project will not adversely impact sensitive or special status native species, and no CDFW designated special status species were found in the Project area. CDFW appreciates that qualified biologists conducted protocol surveys in 2023 for special status species with the potential to occur within the Project area. However, although results of surveys did not detect the presence of any special status species and the Project area has been heavily impacted by human disturbance, that doesn't entirely preclude the possibility that special status species could use the site. The BE notes that "beyond the corridor of impacted properties along Trona Wildrose Road is extensive open space that extends to nearby protected lands throughout the Searles Valley and surrounding mountain ranges. These protected lands represent good to excellent habitat for native species" (BE page 3).

CDFW Recommendations: Please note that CDFW generally considers surveys for wildlife to be valid for one year and would recommend that surveys be repeated if the Project is delayed beyond that timeframe. Please also note that the BE available on the Inyo County website is missing Attachment 1-Mohave Ground Squirrel Report for the SBC Solar Project and CDFW requests that this report is made publicly available prior to adopting the MND. Further recommendations for resource-specific mitigation measures are detailed in the sections below.

Mitigation Measure and Related Impact Shortcomings

Comment #3: Impacts to Nesting Birds

Issue: The MND states that the Project will not result in impacts to nesting birds.

Specific impact: While the BE indicates that no nesting birds were located during biological surveys conducted during peak breeding season, it doesn't rule out the possibility that conditions could change such that Project activities could result in the disturbance of nesting birds.

Evidence impact would be significant: It is the Applicant's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 et. seq.). In addition, sections 3503, 3503.5, and 3513 of the Fish and Game Code also afford protective measures as follows: Section

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3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto; Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto; and Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

Recommended Potentially Feasible Mitigation Measure:

CDFW recommends that a qualified biologist survey the Project area, not only for nesting birds, but also all bird activity to observe behavior that could be related to nest building, incubation, feeding of young and/or possible behavior that could indicate agitation and/or nest abandonment caused by Project activities. CDFW recommends the following mitigation measure to avoid take of nesting birds:

MM BIO-1 Avoidance of Nesting Birds Regardless of the time of year, a nesting bird survey shall be conducted by a qualified avian biologist no more than three days prior to vegetation clearing or ground disturbing activities and shall include any potential habitat (including shrubs, the ground or nearby structures).

Preconstruction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. Should nesting birds be found, an exclusionary buffer (depending upon the species) shall be established by the qualified biologist. The buffer shall be clearly marked in the field by construction personnel under guidance of the qualified biologist. A qualified biologist will continue to monitor active nests adjacent to active work areas to determine whether exclusionary buffers are sufficient to prevent stress or other negative behavioral changes to nesting birds. Exclusionary buffers may be adjusted at any time by a qualified biologist based on project activities and nesting bird behavior. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the no disturbance buffer shall be expanded. No construction activities shall be allowed within the exclusionary buffer until the qualified biologist determines that the young have fledged, or the nest is no longer active.

Comment #4: California Endangered Species Act

Issue: CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. A CESA incidental take permit (ITP) is issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats. CDFW recommends that a CESA ITP be obtained if the Project has the potential to result in “take” (California Fish and Game Code Section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) of CESA-listed species. Take of any

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CESA-listed species is prohibited except as authorized by state law (Fish and G. Code, §§ 2080 and 2085).

Specific impact: CESA-listed species that have potential to occur in the Project's vicinity include desert tortoise (*Gopherus agassizii*; threatened, candidate for endangered) and Mohave ground squirrel (*Xerospermophilus mohavensis*; threatened). Although no presence or sign of these species was detected during the surveys conducted, the BE notes that the Project area is within the known range of both, appropriate habitat occurs in the Project area, and observations have recently been recorded in the greater Searles Valley. In addition, the BE states that while the Project properties themselves do not present quality habitat for desert tortoise, it is possible that tortoises could travel onto the Project site from the surrounding landscape during routine travel and dispersal movements. To avoid unauthorized take of desert tortoise, CDFW recommends that the MND include the following mitigation measure:

Recommended potentially feasible mitigation measure:

Mitigation Measure BIO-2 Desert Tortoise Surveys Prior to ground disturbance or vegetation clearing within the Project site, a CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and a 500-foot buffer of suitable habitat, no more than 48 hours prior to Project activities and after any pause in Project activities lasting 30 days or more, in accordance with the most recent U.S. Fish and Wildlife (USFWS) desert tortoise survey methodology. The survey shall use perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Preconstruction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Results of the survey shall be submitted to CDFW prior to the start of Project activities. If surveys confirm presence or desert tortoise is observed during Operation and Maintenance and complete avoidance cannot be achieved, the Applicant shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization (i.e., a California Endangered Species Act incidental take permit under the Fish and Game Code section 2081) is obtained. If an ITP is obtained, the impact to desert tortoise shall be mitigated at a minimum of 1:1 ratio.

Comment #5: Lake and Streambed Alteration Program

Issue: The MND does not address and evaluate Project impacts to Fish and Game Code section 1600 resources in the form of dry desert washes within the Project area.

Specific impact: The BE briefly mentions that there are no USGS drainages present on site and no above-ground water resources (seeps, springs, ponds, or streams) present. It does appear that the eastern parcel is denuded, but it is difficult for CDFW to discern, based on the limited information provided, whether any of what appears from aerial imagery of the western parcel to be potential dry desert wash features would be impacted by the Project.

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Evidence impact would be significant: Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water. Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your Project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code § 21065). To facilitate issuance of an LSA Agreement, if necessary, the MND should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

CDFW Recommendation: Prior to Project activities and issuance of any grading permit, the Applicant should submit a notification under section 1602 of the Fish and Game Code. If it is determined that a notification is not required for the Project, the Applicant shall receive a refund of fees. If notification is required CDFW will determine if an executed Streambed Alteration Agreement is needed to authorize impacts to Fish and Game Code section 1602 resources associated with the Project.

ENVIRONMENTAL DATA

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

ENVIRONMENTAL DOCUMENT FILING FEES

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

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist Inyo County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Rose Banks, Senior Environmental Scientist (Specialist) at (760) 218-0022 or Rose.Banks@wildlife.ca.gov.

Sincerely,

DocuSigned by:


Alisa Ellsworth

Environmental Program Manager

cc: Office of Planning and Research, State Clearinghouse, Sacramento
State.Clearinghouse@opr.ca.gov

Attachment 1: Mitigation Monitoring and Reporting Program (MMRP) for CDFW-Proposed Mitigation Measures

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Attachment 1: Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)		
Mitigation Measure (MM) Description	Implementation Schedule	Responsible Party
<p><u>MM BIO-1 Avoidance of Nesting Birds:</u> Regardless of the time of year, a nesting bird survey shall be conducted by a qualified avian biologist no more than three days prior to vegetation clearing or ground disturbing activities and shall include any potential habitat (including shrubs, the ground or nearby structures). Preconstruction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. Should nesting birds be found, an exclusionary buffer (depending upon the species) shall be established by the qualified biologist. The buffer shall be clearly marked in the field by construction personnel under guidance of the qualified biologist. A qualified biologist will continue to monitor active nests adjacent to active work areas to determine whether exclusionary buffers are sufficient to prevent stress or other negative behavioral changes to nesting birds. Exclusionary buffers may be adjusted at any time by a qualified biologist based on project activities and nesting bird behavior. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the no disturbance buffer shall be expanded. No construction activities shall be allowed within the exclusionary buffer until the qualified biologist determines that the young have fledged, or the nest is no longer active.</p>	<p>Prior to commencing vegetation clearing or ground-disturbing activities</p>	<p>Project Proponent</p>
<p><u>Mitigation Measure BIO-2 Desert Tortoise Surveys</u> Prior to ground disturbance or vegetation clearing within the Project site, a CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and a 500-foot buffer of suitable habitat, no more than 48 hours prior to Project activities and after any pause in Project activities lasting 30 days or more, in accordance with the most recent U.S. Fish and Wildlife (USFWS) desert tortoise survey methodology. The survey shall use perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Preconstruction surveys cannot be combined with other surveys conducted for</p>	<p>Prior to commencing vegetation clearing or ground-disturbing activities</p>	<p>Project Proponent</p>

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<p>other species while using the same personnel. Results of the survey shall be submitted to CDFW prior to the start of Project activities. If surveys confirm presence or desert tortoise is observed during Operation and Maintenance and complete avoidance cannot be achieved, the Applicant shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization (i.e., a California Endangered Species Act incidental take permit under the Fish and Game Code section 2081) is obtained. If an ITP is obtained, the impact to desert tortoise shall be mitigated at a minimum of 1:1 ratio.</p>		
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