



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Inland Deserts Region  
3602 Inland Empire Boulevard, Suite C-220  
Ontario, CA 91764  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



April 24, 2020  
*Sent via email*

Governor's Office of Planning & Research

**APR 24 2020**

## STATE CLEARINGHOUSE

Jim Morrissey  
Planner  
County of San Bernardino  
Land Use Services Dept.  
385 N. Arrowhead Ave.  
San Bernardino, CA 92415

Panamint Valley Limestone - Conditional Use Permit (Project)  
Mitigated Negative Declaration (MND)  
SCH# 2019119083

Dear Mr. Morrissey:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the County of San Bernardino for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines<sup>1</sup>. CDFW previously submitted comments in response to the originally circulated MND

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

<sup>1</sup> 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.

need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for 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:** Panamint Valley Limestone, Inc.

**Objective:** The objective of the Project is to construct an industrial lime production plant on a 61.65-acre site that formerly served as an ash disposal landfill. Primary Project activities include the construction of on-site facilities (lime plant, office building, pellet plant, limestone powder plant, solar power generation array, loading bins, vertical kiln, conveyors, a water storage tank, paved internal roadways, a storm water basin, and other ancillary facilities) and laying a natural gas pipeline, a water distribution pipeline, and an electrical distribution line.

**Location:** Trona, San Bernardino County; approximately 0.87 miles west of the intersection of Trona Road and Athol Street; 35.769542°, -117.387171°

**Timeframe:** Unknown

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the County of San Bernardino 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. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends in Attachment 1, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

### **I. Mitigation Measure and Related Impact Shortcoming**

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

**COMMENT 1:** BIO-5, Desert Tortoise

#### **Section IV, Page 33**

**Issue:** CDFW appreciates the inclusion of BIO-5 to avoid, minimize, and mitigate potentially significant impacts to desert tortoise, a threatened species. CDFW would like to note that should presence be confirmed in the Project area, some of the actions within the measure would be considered forms of take (hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill) (Fish and Game Code, § 86).

**Specific impact:** Project activities and proposed mitigation measure have the potential to take desert tortoise, a CESA-listed species.

**Why impact would occur:** BIO-5 proposes the qualified biologist conducting the pre-construction survey will determine if any of the following actions are warranted for desert tortoise mitigation: (1) if a biological monitor should be present at the site during all clearing and grubbing activities above grade; (2) if desert tortoise fencing needs to be installed around the perimeter of the construction work zone; or (3) if no further action is required. CDFW would like to note that, installing exclusionary fencing in desert tortoise habitat may result in take if desert tortoise are present and in such circumstance CDFW's recommend a CESA Incidental Take Permit (ITP) be obtained. Additionally, if desert tortoise individuals are found within the Project site, handling or translocation would also be take and CDFW recommends an ITP is obtained..

**Evidence impact would be significant:** Take is prohibited unless authorized by state law (Fish and Game Code, §§ 2080 & 2085).

#### **Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)**

##### **Mitigation Measure:**

**To minimize significant impacts:** If a Project, including Project construction or any Project-related activity during the life of the Project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization through obtaining an ITP. CDFW recommends BIO-5 be modified to the following measure:

**MM BIO-5:** A qualified biologist shall conduct a protocol level survey to determine presence or absence of desert tortoise in the Project area in accordance with procedures described in Chapter 6 of the US Fish and Wildlife Service Desert Tortoise (Mojave Population) Field Manual. In addition, the survey shall utilize perpendicular survey routes and 100-percent visual coverage of the Project area

and 50-foot buffer zone for desert tortoise and their sign. Should desert tortoise presence be confirmed during the survey, the Project Proponent shall obtain an ITP prior to the start of Project activities. If desert tortoise and their sign are not identified during the protocol level survey, the Project Proponent shall contact for CDFW for additional guidance.

## **II. Editorial Comments and/or Suggestions**

To provide clarity to BIO-9, Sections 3503, 3503.5 and 3513 pursuant to Fish and Game Code prohibits the take of all birds and their nests or eggs, including raptors and other migratory non-game birds (as listed under the United States Migratory Bird Treaty Act). As such, CDFW recommends the first sentence of BIO-9 state, "The State of California prohibits the "take" of *nesting birds and their nests*." With this modification, it will clarify take of nesting bird individuals is also prohibited.

## **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 found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB\\_FieldSurveyForm.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf). The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/plants\\_and\\_animals.asp](http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp).

## **FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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 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 the County of San Bernardino in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ashley Rosales, Environmental Scientist at 760-219-9452 or [Ashley.Rosales@Wildlife.ca.gov](mailto:Ashley.Rosales@Wildlife.ca.gov).

Jim Morrissey, Planner  
County of San Bernardino  
Panamint Valley Limestone - Conditional Use Permit, SCH #2019119083  
April 24, 2020  
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Sincerely,

A handwritten signature in blue ink that reads "Scott Wilson". The signature is written in a cursive style with a small dot above the 'i' in "Wilson".

Scott Wilson  
Environmental Program Manager

Attachment 1: Draft Mitigation Monitoring and Reporting Program for CDFW-proposed  
Mitigation Measures.

ec: Office of Planning and Research, State Clearinghouse, Sacramento

HCPB CEQA Coordinator  
Habitat Conservation Planning Branch

**ATTACHMENT 1**

**MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)**

**PURPOSE OF THE MMRP**

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

**TABLE OF MITIGATION MEASURES**

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party for implementing the mitigation measure. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

<b>Mitigation Measure</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>
<p><b>MM BIO-5:</b> A qualified biologist shall conduct a protocol level survey to determine presence or absence of desert tortoise in the Project area in accordance with procedures described in Chapter 6 of the US Fish and Wildlife Service Desert Tortoise (Mojave Population) Field Manual. In addition, the survey shall utilize perpendicular survey routes and 100-percent visual coverage of the Project area and 50-foot buffer zone for desert tortoise and their sign. Should desert tortoise presence be confirmed during the survey, the Project Proponent shall obtain an ITP prior to the start of Project activities. If desert tortoise and their sign are not identified during the protocol level survey, the Project Proponent shall contact for CDFW for additional guidance.</p>	<p>Before commencing ground- or vegetation-disturbing activities/ Entire Project</p>	<p>Project Proponent</p>