



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

November 20, 2020

**Nov 23 2020**

## STATE CLEARINGHOUSE

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Kern County Planning and Natural Resources Department  
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### **Subject: Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the Aratina Solar Farm (Project), SCH No.: 2020089020**

Dear Ronelle Candia:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from the Kern County Planning and Natural Resources Department (hereafter, KCPNRD) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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.

While the comment period may have ended, CDFW would appreciate if you will still consider our comments.

### **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.

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<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.

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(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 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.), related take authorization as provided by the Fish and Game Code will be required.

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (i.e., CEQA), focusing specifically on Project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

**Nesting Birds:** CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). CDFW encourages Project implementation occur during the bird non-nesting season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant(s) is/are responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes.

**Fully Protected Species:** CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited, and CDFW cannot authorize their take in association with a general project except under the provisions of a Natural Communities Conservation Plan (NCCP), 2081.7 or a Memorandum of Understanding for scientific purposes.

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**Rare Species:** Species of plants and animals need not be listed as Endangered, Rare or Threatened (E, R or T) pursuant to CESA and/or the Federal Endangered Species Act (ESA) to be considered E, R or T under CEQA. If a species can be shown to meet the criteria for a listing as E, R or T under CESA and/or ESA as specified in the CEQA Guidelines (California Code of Regulations [CCR], Title 14, Chapter 3, Section 15380), it should be fully considered in the environmental analysis for the Project.

**Lake and Streambed Alteration:** CDFW has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource, pursuant to Fish and Game Code sections 1600 *et seq.* Section 1602 subdivision (a) of the Fish and Game Code requires an entity to notify CDFW before engaging in activities that would substantially change the bed, channel, or bank of a stream or substantially divert or obstruct the natural flow of a stream.

**Water Pollution:** Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. The Regional Water Quality Control Board and United States Army Corps of Engineers also has jurisdiction regarding discharge and pollution to Waters of the State.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** 64NB 8ME LLC

**Project Description:** The Project consists of the construction and operation of a photovoltaic solar facility and associated infrastructure capable of generating up to 600 megawatts (MW) of renewable electrical energy and up to 600 MW of energy storage. The Project is divided into five (5) sites (Sites 1 through 5) and is comprised of 27 privately owned parcels, resulting in a combined acreage of 2,672.53 acres. The Project will be supported by a 230 kilovolt (kV) gen-tie overhead and/or underground electrical transmission line(s) originating from one or more on-site substations and terminating at the Southern California Edison's Holgate Substation to the north. Alternatively, the Project may interconnect at the Southern California Edison's Kramer Substation to the east, via an up to 230 kV transmission line located within an Edwards Air Force Base utility corridor. The Project's permanent facilities will include service roads, a power collection system, communication cables, overhead and underground transmission lines, electrical switchyards, Project substations, inverter stations, energy (battery) storage system(s), and operation and maintenance facilities.

**Location:** The Project is located on the western edge of the Mojave Desert within unincorporated Kern County, straddling State Route 58 between Gephart Road on the west and the San Bernardino County line on the east, in the Boron and Leuhman Ridge 7.5 minute United States Geological Survey (USGS) quadrangles. Sites 1, 2 and 3 are

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located within the Leuhman Ridge USGS quadrangle and Sites 4 and 5 are located within the Boron USGS quadrangle. The Project is located within Sections 5 and 6, Township 10N, Range 7W; Sections 1 and 2, Township 10N, Range 8W; and Sections 33 and 34, Township 11N, Range 8W, San Bernardino Base and Meridian. The Project is in the vicinity of the unincorporated communities of Boron and Desert Lake. The Burlington-Santa Fe Railroad crosses the Project site, traversing generally north/south through Site 3, then paralleling State Route 58 east-west. Edwards Air Force Base borders the Project site to the west and south. Access to the Project site is from Gephart Road, Borax Road, Boron Avenue and/or 20 Mule Team Road.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist KCPNRD in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

**Desert Tortoise:** Desert tortoise (*Gopherus agassizii*; DETO) are most common in desert scrub, desert wash, and Joshua tree habitats. Due to the location and habitat present at the Project sites, DETO have the potential to occur on the Project sites and/or be impacted by Project activities.

To evaluate potential impacts to DETO, CDFW recommends that a qualified biologist conduct surveys during the appropriate survey period following the protocol contained in "Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*)" (USFWS 2019) to determine the potential for DETO to use the Project sites and surrounding area. Survey results are advised to be submitted to both CDFW and the United States Fish and Wildlife Service's (USFWS). Please note DETO surveys are valid for one year and should be conducted within a year of the start of ground-disturbing activities.

If DETO are found within the Project site(s) during pre-construction surveys or construction activities, consultation with CDFW is advised to discuss how to implement the Project and avoid take; or if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to any ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b). Alternatively, the applicant can assume presence and acquire an ITP prior to initiating Project implementation.

**Mohave Ground Squirrel:** Mohave ground squirrel (*Spermophilus mohavensis*; MGS) is known to occur on the Project. To determine the extent and density of MGS on the Project, CDFW recommends that a qualified biologist, utilizing CDFW's Mohave Ground Squirrel Survey Guidelines (California Department of Fish and Game, 2003), conduct protocol-level surveys over the entire Project, including the gen-tie line(s) and interconnection corridors. Because of the large size of the Project, CDFW recommends

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the Project propose a surveying methodology that includes the additional use of remote camera stations. We recommend submittal of the proposed survey methodology to CDFW for review and approval prior to implementation to avoid expenditure of funds on an inadequate survey effort. We also recommend the results of these surveys be submitted to CDFW for evaluation. Once protocol surveys are completed and submitted to CDFW for review, consultation with CDFW is advised to discuss how to implement the Project and avoid take; or if avoidance is not feasible, to acquire an ITP prior to any ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

CDFW also advises KCPNRD that Project Site 4 and 5 are located within the North of Edwards MGS core population while Project Site 1, 2 and 3 are located within a corridor movement area for MGS which provides habitat and genetic connectivity between the North of Edwards MGS core population and the Edwards Air Force Base MGS core population. The development of the Project has the potential to impede connectivity between these two (2) MGS core populations by restricting the movement of MGS into and out of these populations. Impeding or severing connectivity between these core populations will result in decreased genetic exchange and habitat connectivity between and within these core populations, which may further reduce the robustness of the existing MGS populations in the core and surrounding populations. Robust genetic populations are especially important in the event recolonization is necessary from an extirpation event, such as a severe and/or sustained drought. The continued movement of MGS between core populations is critical to provide habitat and genetic connectivity, prevent the reduction of genetic flow, and to prevent localized extinctions of MGS and to allow for the recolonization of restored habitat where MGS were previously extirpated.

CDFW suggests KCPNRD address in the DEIR how the Project will conserve the habitat and MGS movement corridors in the Project area and prevent the Project from significantly impacting MGS and degrading the core habitat and movement corridors.

**Western Joshua Tree:** CDFW advises the Project that on September 22, 2020, the Fish and Game Commission listed western Joshua tree (*Yucca brevifolia*; WJT) as a candidate species under CESA, pursuant to Fish and Game Code Section 2068. To evaluate Project impacts to WJT, CDFW recommends that a qualified biologist conduct the surveys and implement the minimization and mitigation measures as described in the Emergency Regulatory Language found in Title 14 of the California Code of Regulations, commencing with section 749.10.

**Special Status Plant Species:** CDFW recommends that all areas with potentially suitable habitat be surveyed for special-status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities" (CDFW 2018) prior to initiating any activities that could result in disturbance to the habitat. This protocol, which is intended

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to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

CDFW also advises the Project to avoid special-status plant species by a 50-foot no-disturbance buffer around the outer edge of plant population(s) or specific habitat type(s) that support special-status plant species observed in the Project site. CDFW recommends the 50-foot no-disturbance buffer include indirect impacts such as excessive dust, excessive runoff, or other disturbances that may not result from direct ground-disturbance but could also impact habitat quality. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species, or in the case of plant species listed pursuant to CESA or the Native Plant Protection Act, to determine if take can be avoided.

As stated above, if a plant species listed pursuant to CESA or the Native Plant Protection Act is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities may be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b) or through the approval of an NCCP pursuant to Fish and Game Code section 2800 *et seq.*

**Federally Listed Species:** CDFW also recommends consulting with the USFWS on potential impacts to federally listed species. Take under ESA is more broadly defined than CESA; take under ESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with ESA is advised well in advance of Project implementation.

## **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: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. 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: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>

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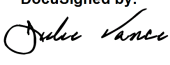
## **FILING FEES**

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 NOP to assist the KCPNRD in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Lori Bono, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (559) 243-4014, extension 350, or by electronic email at [Lori.Bono@wildlife.ca.gov](mailto:Lori.Bono@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...

Julie A. Vance  
Regional Manager

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### **Literature Cited**

California Department of Fish and Game 2003. Mohave Ground Squirrel Survey Guidelines (January 2003; minor process and contact changes in July 2010). <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83975&inline>

CDFW 2018. California Natural Resource Agency, CDFW. "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities". <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

USFWS 2019. USFWS Desert Tortoise Recovery Office. "Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*)". <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=174633&inline>