



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



Governor's Office of Planning & Research

December 30, 2021
 Sent via email

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STATE CLEARINGHOUSE

Anthony DeLuca
 San Bernardino County
 Land Use Services Department
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 San Bernardino, CA 92415
Anthony.DeLuca@lus.sbcounty.gov

Subject: Notice of Availability of a Draft Environmental Impact Report
 Lockhart Solar PV II Project
 State Clearinghouse No. 2021070070

Dear Mr. DeLuca:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (DEIR) from San Bernardino County (Lead Agency) for the Lockhart Solar PV II Project (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 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

CEQA Lead: San Bernardino County

Applicant: Lockhart Solar PV II, LLC

Location: The proposed Project is located in unincorporated Hinkley, CA in San Bernardino County, approximately seven miles north of the intersection of Harper Lake Road and Mojave-Barstow Highway 58, east of Hoffman Road and west of Harper Lake Road. The

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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Project site comprises Assessor Parcel Numbers (APNs) 0490-101-54, 0490-101-56, and 0490-223-33. The Project is largely sited on land previously approved by the California Energy Commission (CEC) for development of Solar Energy Generating System (SEGS) X, a solar thermal power facility which was never fully constructed.

Description: The proposed Project will develop a utility scale, solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 150 megawatts (MW) of solar power and include up to four gigawatt hours (GWh) of energy storage capacity rate in a battery energy storage system (BESS) within an approximately 755-acre site. The Project would share existing operations and maintenance (O&M) facilities with the Lockhart Solar I Facility (i.e., O&M building, warehouse and employee building), water and septic systems, switchyard and electrical transmission infrastructure, and a new collector substation (approved and to be constructed) within the approximately 110-acre "Shared Facilities Area" to connect the Project to the existing transmission line which runs to the Southern California Edison (SCE)-owned Kramer Junction substation.

Background: Construction of the SEGS X solar thermal facility was initiated on the Project site during the 1990s. SEGS X was fully permitted and certified as an 80 MW solar thermal facility located on approximately 600 acres including land for associated facilities to be shared with the two adjacent solar thermal plants (SEGS VIII and IX). As part of initial SEGS X construction (in the early 1990s), the entire perimeter of the SEGS X site was enclosed with a 6-foot-tall chain link fence equipped with a desert tortoise exclusionary barrier. Per the SEGS VIII, IX, and X CEC certification, permanent impacts to loss of the then-existing high-quality habitats were mitigated through purchase of 1,680 acres of conservation land for both Mohave ground squirrel (*Xerospermophilus mohavensis*) and desert tortoise (*Gopherus agassizii*) pursuant to CDFW requirements and approvals. In 1991, SEGS X construction was halted due to lack of financing. Prior to work stoppage, several concrete foundations of the power block as well as concrete foundations for solar racking had been installed in portions of the Project site. The Project proposes to use these already disturbed parcels to construct a solar PV and BESS facility.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Lead Agency 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.

California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the California Endangered Species Act (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 CESA-listed species is prohibited except as authorized by state law (Fish and G. Code, §§ 2080 and 2085). If the Project, including the 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 prior to Project implementation through an ITP.

CDFW received an ITP application on November 16, 2021, to incidentally take Mohave ground squirrel, a species designated as threatened pursuant to CESA (Fish & G. Code, §2050 et. Seq.), which was deemed complete on December 15, 2021. Take authorization is not being sought for the Federally Threatened and State Threatened, Proposed Endangered desert tortoise or any listed plant species, as further explained below.

The DEIR states that mitigation requirements implemented for the previously approved, but not fully constructed, SEGS X Facility include the acquisition and transfer of 1,680

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acres of mitigation lands to CDFW (formerly California Department of Fish and Game (CDFG)) for the purpose of enhancement, and management of suitable desert tortoise and Mohave ground squirrel habitat in perpetuity and to compensate for habitat that would be eliminated or subject to long-term disturbance as a result of construction of SEGS IX and X and any ancillary facilities. The DEIR suggests that any potential impacts on desert tortoise and Mojave ground squirrel has been previously mitigated through the prior conveyance for the SEGS X project that was never fully developed and no additional mitigation for loss of habitat is required.

In an email dated December 1, 2021, the Applicant provided CDFW supporting documentation regarding the aforementioned mitigation lands, including 1) a letter from the CEC (dated March 23, 1993) noting that 1,680 acres and a \$150,000 endowment satisfies SEGS IX/X mitigation requirement out of a total of 3,192.34 acres that was transferred to CDFW for mitigation purposes; 2) A Grant Deed Instrument recorded on December 7, 1990 conveying 3,192.34 acres of real property to CDFG for conservation purposes; 3) Conservation Easement Locations map showing all five parcels that were conveyed to CDFG.

Based on these documents alone, CDFW is unable to determine whether this previously implemented mitigation adequately addresses the Project impacts as currently proposed, and requests that the Applicant provide the *Habitat Mitigation and Acquisition Agreement and the Habitat Mitigation Plan* by and between the developer of SEGS X and CDFW (formerly CDFG), as well as any other supporting documentation, as conditions and requirements have likely changed since 1990.

Birds

It is the Project proponent'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 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by FGC 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 FGC 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.

The DEIR does not address the potential lake effect caused as a result of the solar array. To develop effective best management practices and adaptive management measures to reduce avian mortality at utility-scale solar energy facilities, CDFW recommends including a discussion of these potential effects to migratory birds and describe measures to avoid, reduce, and mitigate those effects. To help reduce potential adverse effects to avian species and implement an adaptive management approach to reduce avian fatalities, CDFW recommends the development of a Bird and Bat Conservation Strategy (BBCS). The BBCS should include at least two to three years of systematic post-construction mortality monitoring, including searcher efficiency and carcass persistence trials, and adaptive management measures as necessary to address avian impacts. CDFW recommends that the BBCS is submitted to CDFW for review prior to start of ground-disturbing activities.

Burrowing owl, desert kit fox, American badger

Burrowing owl and American badger are CDFW Species of Special Concern, and Desert kit fox is a protected species and may not be taken at any time pursuant to Title 14 of the California Code of Regulations Section 460. Mitigation Measure BIO-3 states that pre-construction burrow clearance surveys shall be conducted to ensure that burrowing owls,

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desert kit fox, or American badger remain absent from the Project site and impacts to these animals do not occur. CDFW recommends that burrowing owl, desert kit fox, and American badger mitigation and monitoring plans are prepared and submitted to CDFW for review 60 days prior to the start of ground disturbing activities.

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. The completed form can be mailed electronically to CNDDDB at the following email address: 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.

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 DEIR to assist San Bernardino 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:
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