



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 27, 2024

Jim Morrissey
Planner
County of San Bernardino
385 North Arrowhead Avenue, First Floor
San Bernardino, CA, 92415

SIENNA SOLAR AND STORAGE PROJECT (PROJECT)
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
SCH# 2022080518

Dear Mr. Morrissey:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Recirculated DEIR from the County of San Bernardino for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously submitted comments in response to the originally circulated DEIR for this Project and to the DEIR for the Stagecoach Solar Project (State Clearinghouse No. 2020100234), which contained information pertaining to the proposed Southern California Edison (SCE) Calcite Substation, a connected project for the purposes of CEQA review. CDFW was informed during the comment period for the recirculated DEIR that the SCE Calcite Substation would not have an additional DEIR or EIR released, and comments submitted on this recirculated DEIR for the Sienna Solar and Storage Project should reflect both projects. CDFW is providing comments in addition to the previously submitted comments for both Projects.

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.

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.

PROJECT DESCRIPTION SUMMARY

Proponent: 99 MT 8ME, LLC

Objective: The objective of the Project is to construct and operate a utility scale, solar photovoltaic (PV) electricity generation facility that would produce up to 525 megawatts (MW) of solar power and include up to 525 MW of energy storage capacity rate in a battery energy storage system (BESS) within an approximately 1,854-acre site. Primary Project activities include construction and operation of a PV solar facility, BESS, Project substation, operation and maintenance building(s), underground collection system, 230 kV on- and off-site generation-tie (gen-tie) line, and other associated facilities including access roads. The off-site gen-tie line would connect to the point of interconnection at the proposed SCE Calcite Substation.

Location: The Project is in the southwestern portion of the Mojave Desert and includes the Lucerne Dry Lake, in unincorporated San Bernardino County, and is predominately located east of State Route 247 (Barstow Road/SR 247), north of the unincorporated community of Lucerne Valley, with portions of the gen-tie alternative corridors that include possible connections along Haynes Road, Huff Road, and Northside Road to the east of Barstow Road.

Timeframe: 12 to 24 months of construction.

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 A, CDFW concludes that an Environmental Impact Report is appropriate for the Project.

I. Mitigation Measure or Alternative 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:

Section 3.5, Page 3.5-29, CS-BIO-2 and CS-BIO-3

Issue: In the recirculated DEIR, desert tortoise is stated as having a low potential to occur within the Calcite Substation area. However, in the original DEIR, desert tortoise was assessed as "present with suitable habitat throughout the Calcite Substation" (San Bernardino County, August 2023). Measures CS-BIO-2 and CS-BIO-3 are proposed to avoid impacts to desert tortoise, but these mitigation measures include requirements in which take of desert tortoise may occur without the issuance of a state CESA ITP.

Specific impact: No additional studies or analysis were completed between the release of the original DEIR and recirculated DEIR to clarify why potential presence of desert tortoise would be reduced to a low potential of occurrence on the Calcite Substation project site. The recirculated DEIR acknowledges that "suitable desert tortoise habitat is present throughout the site."

Desert tortoise is a CESA-listed species. Project activities have the potential to take desert tortoise. Handling and translocating desert tortoise without take authorization through a state issued ITP is take in the form of capture. Additionally, installation of desert tortoise exclusionary fencing then performance of a clearance survey (in which methodology assumes an ITP has been obtained) to determine if desert tortoise are located inside the fencing can result in take in the form of capture. Any desert tortoises

that may not be identified during pre-construction surveys could be entombed or crushed by equipment, resulting in take in the form of mortality.

Why impact would occur: The proposed mitigation measure as written suggests actions that may only be performed with authorization through an ITP, but the ITP is not a requirement within the mitigation measure. Therefore, should desert tortoise be found within the Project site, the proposed mitigation measures cannot be performed should they be contained in a final certified environmental document without an ITP.

Evidence impact would be significant: California Fish and Game Code Take (hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill) 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 CS-BIO-2, CS-BIO-3, and Recommendation (REC)-1:

To reduce impacts to less than significant: CDFW agrees with performing a preconstruction protocol survey to verify desert tortoise has not entered the area between the time the last protocol level survey was conducted and the start of construction. CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation through an incidental take permit, should desert tortoise be found during these surveys. Also, CDFW recommends modifying measure CS-BIO-2 and CS-BIO-3, as shown in Attachment A, with additions in bold and deletions in strikethrough, to ensure take does not occur should the Project Proponent not obtain an incidental take permit.

Additionally, CDFW recommends REC-1 be required by the County of San Bernardino in which the Project will require a raven management plan to minimize attraction of ravens to the Project area and the Project proponent contribute to a region-wide raven control plan to help address raven predation on the desert tortoise.

COMMENT 2:

Section 3.5, Page 3.5-34, and CS-BIO-6

Issue: The recirculated DEIR does not evaluate or mitigate for the loss of foraging habitat for special-status passerines and raptors in the Calcite Substation project area. Measure CS-BIO-6 only addresses impacts for the active nests found during the pre-construction surveys, not the loss of actual habitat.

Specific impact: The recirculated DEIR only considers nesting habitat when evaluating Project impacts to special-status avian species, and dismisses the importance of other habitat needs, such as foraging habitat, feeding areas, and lookout perches. The recirculated DEIR states that suitable habitat for loggerhead shrike, Le Conte's Thrasher, Bendire's thrasher, golden eagle, and prairie falcon would be removed as a result of the Calcite Substation project but does not recognize that the direct and indirect impacts associated with the removal of such habitat can be significant without appropriate mitigation measures, which measure CS-BIO-6 does not provide.

In the recirculated DEIR, prairie falcon is listed as having a moderate potential to occur within the Calcite Substation area. However, in the original DEIR, prairie falcon was assessed as "high potential for occurring within the Calcite Substation due to foraging" (San Bernardino County, August 2023). No additional studies or analysis was done between the release of the original DEIR and recirculated DEIR to clarify why potential presence of prairie falcon would be reduced.

Why impact would occur: The recirculated DEIR acknowledges that suitable habitat for various special-status avian species exist in the Calcite Substation project area, but does not provide avoidance, minimization, or mitigation measures for the loss of this

habitat. Measure CS-BIO-6 only avoids and minimizes construction impacts to active nests found during the pre-construction survey. CDFW does not consider CS-BIO-6 to be a mitigation measure, as it does not mitigate for the loss of suitable habitat for various species, as stated in the recirculated DEIR.

Evidence impact would be significant: Major threats to Le Conte's thrasher include the loss and degradation of habitat (Shuford et al., 2008). This species is also vulnerable to human disturbance, off-road vehicle activity, and vegetation removal for development. Threats to loggerhead shrike include habitat loss on wintering and breeding grounds (Shuford et al., 2008). Threats to Bendire's thrasher populations include the development in the West Mojave (including Lucerne Valley) and off-road vehicle disturbance during breeding season (Shuford et al., 2008). Golden eagles are a fully protected species in California, and threats to golden eagle include loss of foraging areas and loss of nesting habitat (CDFW, 2024). Adult golden eagles may also abandon their nests in early incubation if disturbed by humans (Thelander, 1974, cited by Zeiner et al., 1990). The Calcite Substation is within the yearlong range for prairie falcon (Zeiner et al., 1990).

The Project proponent is responsible for complying with Fish and Game Code (FGC) sections (§) 3503, 3503.5, and 3513, which state the following: FGC § 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs or any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto; FGC § 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 the Fish and Game Code or any regulation adopted pursuant thereto; FGC § 3513 states that it is unlawful to take or possess any migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 United States Code § 703 et seq.).

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

Mitigation Measure CS-BIO-6:

To reduce impacts to less than significant: CDFW recommends a qualified biologist survey the Project area not only for breeding and nesting birds, but also for other bird activity, such as foraging, and for behavior possibly caused by Project activities, such as agitation, stress, and/or nest abandonment. CDFW provides editorial suggestions for CS-BIO-6 in Attachment A, with additions in bold and deletions in strikethrough.

II. Editorial Comments and/or Suggestions

A petition to list burrowing owls under the California Endangered Species Act (CESA) has been submitted to the California Fish and Game Commission. Since a determination has not yet been made on the petition, CDFW recommends that avoidance, minimization, and mitigation measures for burrowing owls consider both the potential for CESA listing and the retention of its current Species of Special Concern status. If the burrowing owl is listed as a candidate species under CESA, Project activities will need to either avoid impacts to the species or the Project proponent may obtain an incidental take permit from CDFW, and the DEIR define mitigation that will bring the impact to a CESA-listed species to less than significant with mitigation incorporated.

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

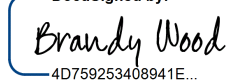
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental 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 Recirculated DEIR to assist County of San Bernardino in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Lily Mu, Senior Environmental Scientist (Specialist) at (909) 544-2521 or Lily.Mu@Wildlife.ca.gov.

Sincerely,

DocuSigned by:

4D759253408941E...

Brandy Wood
Environmental Program Manager

Attachments

Attachment A. Draft Mitigation, Monitoring, and Reporting Program

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

REFERENCES

California Department of Fish and Wildlife. 2024. Golden Eagles in California.
(<https://wildlife.ca.gov/Conservation/Birds/Golden-Eagles>)

County of San Bernardino. August 2023. Draft Environmental Impact Report. Sienna Solar and Storage Project.

Shuford, W. D., and Gardali, T., editors. 2008. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.

Thelander, C. G. 1974. Nesting territory utilization by golden eagles (*Aquila chrysaetos*) in California during 1974. Calif. Dept. Fish and Game, Sacramento. Wildl. Manage. Branch Admin. Rep. 74-7. 19pp.ican rough-legged hawk. Pages 269-284 in A. C. Bent. Life histories of North American birds of prey. Part 1. U.S. Natl. Mus. Bull. No. 167. 409pp.

Zeiner, D.C., W.F. Laudenslayer, Jr., K.E. Mayer, and M. White, eds. 1988-1990. California's Wildlife. Vol. I-III. Prairie Falcon. California Depart. of Fish and Game, Sacramento, California.

Jim Morrissey, Planner
County of San Bernardino
September 27, 2024
Page 6 of 10

Zeiner, D.C., W.F.Laudenslayer, Jr., K.E. Mayer, and M. White, eds. 1988-1990.
California's Wildlife. Vol. I-III. Golden Eagle. California Depart. of Fish and Game,
Sacramento, California.

**Attachment A
 Draft Mitigation, Monitoring, and Reporting Program and Draft Recommendations**

Draft Mitigation, Monitoring, and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project, additions are in bold font and deletions are in strikethrough.

Biological Resources (BIO)		
Mitigation Measure (MM) Description	Implementation Schedule	Responsible Party
<p>CS-BIO-2 Biological Monitoring</p> <p>Prior to the issuance of grading or building permits, SCE shall retain a Qualified Biologist, with experience and expertise in desert species, to oversee compliance with protection measures for all listed and other special-status species. If State or Federally listed species or other special status biological resources are identified on the Project area during protocol and/or preconstruction surveys, then the Qualified Biologist may need to be approved by USFWS and/or CDFW as an authorized biologist for handling listed species. The Qualified Biologist or other Qualified Biological Monitors shall be on the Project area during initial grading, ground disturbance and vegetation removal activities in natural scrub vegetation communities to monitor construction activity where that activity could directly or indirectly impact special status biological resources. The Qualified Biologist shall have the authority to halt all activities that are in violation of the special-status species protection measures. Work shall proceed only after potential hazards to special-status species are removed and the species is no longer at risk. The Qualified Biologist shall have in her/his possession a copy of all the compliance measures while work is being conducted on the Project area.</p>	<p>Prior and during the start of Project related activities</p>	<p>Project Proponent</p>
<p>CS-BIO-3 Desert Tortoise</p> <p>To avoid construction-level impacts to desert tortoise, not more than 45 days prior to ground-disturbing activities for the construction and/or decommissioning phase(s), qualified personnel shall perform a 100% coverage pre-construction clearance presence/absence protocol survey for desert tortoise in accordance with the U.S. Fish and Wildlife Service survey methodology. If desert tortoise are not documented during appropriate conditions and seasonally timed protocol desert tortoise surveys, no additional measures related to desert tortoise avoidance and minimization are recommended. If desert tortoise are documented inhabiting any portion of the Calcite Substation area during presence/absence surveys, the following avoidance, minimization, and mitigation measures shall be implemented:</p> <ul style="list-style-type: none"> • Project proponent shall obtain appropriate federal and state incidental take authorization prior to the start of Project activities. • Develop a plan for desert tortoise translocation and monitoring prior to construction. The plan shall provide the framework for implementing the following measures and other conditions of approval per the incidental take permit, or similar measures deemed sufficient and be approved during by agency review consultation (Note: 	<p>Prior and during the start of Project related activities</p>	<p>Project Proponent</p>

~~any desert tortoise translocation plan must be reviewed and approved by CDFW and USFWS):~~

- If a permanent tortoise-proof exclusion fence is practicable **or required by an obtained incidental take permit**, a fence shall be installed around all construction areas prior to the initiation of ground disturbing activities, in coordination with a Qualified Biologist. The fence shall be constructed **per U.S. Fish and Wildlife specifications (or as conditioned per the incidental take permit, if obtained)** of 0.5-inch mesh hardware cloth and extend 18-~~24~~ **24** inches above ground and **6-12** inches below ground. Where burial of the fence is not possible, the lower ~~12~~ **14** inches shall be folded outward against the ground and fastened to the ground so as to prevent desert tortoise entry. The fence shall be supported sufficiently to maintain its integrity, be checked **daily at least monthly** during construction and **until the end of the subsequent desert tortoise active season, then at least monthly during** operations, and maintained when necessary by the Project proponent to ensure its integrity. Provisions shall be made for closing off the fence at the point of vehicle entry. Raven perching deterrents should be installed as part of the fence construction.
- After fence installation, an authorized biologist shall conduct a **clearance pre-construction survey in accordance with the U.S. Fish and Wildlife Service survey methodology** for desert tortoise within the construction site. The authorized biologist shall have the appropriate education and experience to accomplish biological monitoring and mitigation tasks and is approved by the CDFW and the USFWS **through an incidental take permit**. Two surveys without finding any tortoises or new tortoise sign shall occur prior to declaring the site clear of tortoises.
- All burrows that could provide shelter for a desert tortoise shall be hand-excavated prior to ground-disturbing activities.
- An authorized biologist shall remain on-site until all vegetation is cleared and, at a minimum, conduct site and fence inspections **daily on a regular basis** throughout construction **and the subsequent desert tortoise active season**, in order to ensure Project compliance with mitigation measures. Should the biologist identify deteriorate fencing or fencing that needs to be improved in order to meet the intended purpose of the exclusionary fencing, SCE shall be responsible for fixing or maintaining the fence in accordance with the biologist's recommendations.
- A biologist shall remain on-call ~~site~~ **site** throughout fencing and grading activities **to monitor Project activities** in the event a desert tortoise wanders onto the Project area.
- Compensatory mitigation in the form of a conservation easement or purchase of mitigation bank credits to compensate for the loss of occupied desert tortoise habitat at a minimum ratio

<p>of 1:1, with habitat of equal or greater value. If the compensation habitat is higher quality than the impacted habitat, then SCE shall mitigate at a 0.5:1 ratio.</p>		
<p>CS-BIO-6 Pre-Construction Bird Survey Measures for Nesting Birds and Raptors:</p> <p>If construction is scheduled to commence during the non-breeding season (September 1 to January 31), no pre-construction surveys or additional measures with regard to nesting birds and other raptors are required. Nesting bird nesting season generally extends from February 1 through September 15 in southern California and specifically, March 15 through August 31 for migratory passerine birds. To avoid impacts to nesting birds (common and special-status) in the Project area and adjacent habitat, a qualified wildlife biologist shall conduct pre-construction surveys of all potential nesting habitats within and around the Project area prior to Project-related disturbance for project activities that are initiated during the breeding season (February 1 to August 31). The raptor survey shall focus on potential nest sites (e.g., cliffs, large trees, windrows, and shrubs) within a 0.5-mile buffer around the Project area. Surveys shall encompass all suitable areas, including trees, shrubs, bare ground, burrows, cavities, structures, cliffs, and large trees. Surveys shall focus on both direct and indirect evidence of nesting, including nesting locations and nesting behavior (i.e., copulation, carrying food or nesting materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury, or distraction displays, or other behaviors). Survey duration will take into consideration the size of the property; density and complexity of habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure that the data collected is complete and accurate. These surveys shall be conducted no fewer than 14 days prior to ground-disturbing activities without prior agency approval. Surveys need not be conducted for the entire Project area at one time. They may be conducted in phases so that surveys occur shortly before a portion of the site is disturbed. The surveying biologist must be qualified to determine the status and stage of nesting by migratory birds and all locally breeding raptor species without causing intrusive disturbance.</p> <p>If active nests are found, a suitable no-work buffer as determined by the Qualified Biologist (e.g., 200-300 feet for common raptors, 30-50 feet for passerines, 0.5 mile for golden eagle) shall be established around active nests, based upon the biologist's best professional judgement, the displayed behavior (looking for indicators of stress or agitation), the nesting species, its sensitivity to disturbance, nesting stage and expected types, intensity and duration of disturbance. and no work construction within the buffer shall be allowed until a Qualified Biologist has determined that the nest is no longer active (i.e., the nestlings have fledged and are no longer reliant on the nest). Encroachment into the buffer may occur at the discretion of a Qualified Biologist. However, For State-listed species, consultation with the CDFW shall occur prior to encroachment into the aforementioned buffers, which may include development of a Nesting Bird Plan.</p>	<p>Prior to the start of Project related activities</p>	<p>Project Proponent</p>

<p>REC-1 Raven Management.</p> <p>The Project Proponent shall prepare a Raven Management Plan to minimize the potential to attract common ravens to the site and submit it to CDFW for review and approval. In addition, the Project Proponent shall provide funds to the Renewable Energy Action Team (REAT) account established with the National Fish and Wildlife Foundation (NFWF) to contribute to a region-wide raven control plan to help address raven predation on the desert tortoise. This contribution shall be used to address raven predation on a regional basis and shall be calculated as a one-time payment of \$105 per acre (or most up to date cost) of project disturbance. Based on this calculation the Project Proponent shall provide a one-time payment to the REAT account established with NFWF's Raven Management Plan fund. A minimum of 30 days prior to the start of Project activities these funds shall be provided to NFWF using appropriate deposit document provided by CDFW and proof of paying this fee shall be provided to CDFW within 24 hours after the funds have been provided to NFWF.</p>	<p>Prior to the start of Project activities</p>	<p>Permittee</p>
--	---	------------------