State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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November 28, 2022

Mark Tolentino
Kern County Planning and Natural Resources Department
2700 "M" Street, Suite 100
Bakersfield, California 93301

Subject: Mojave Micro Mill by PSGM3 Holdings Corp
Notice of Preparation (NOP)
State Clearinghouse No. 2022100646

Dear Mark Tolentino:

The California Department of Fish and Wildlife (CDFW) received a NOP for an Environmental Impact Report (EIR) from the Kern County Planning and Natural Resources Department, as Lead Agency, for the 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, CDFW appreciates 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 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.

[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.

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 authorization as provided by the Fish and Game Code will be required.

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, their 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).

PROJECT DESCRIPTION SUMMARY

Proponent: PSGM3 Holdings Corp

Objective: The project applicant is proposing to construct and operate a micro mill facility and associated infrastructure necessary to produce rebar from scrap metal (e.g., shredded automobiles, appliances, structural and sheet metal, and other pre-processed steel bundles) through various recycling processes. Development would include an approximate 475,800 square-foot steel mill facility with an additional 51,221 square feet of accessory buildings and structures, for a total of 527,021 square feet, as well as an approximate 63-acre accessory solar array on 174 total acres of privately owned land. Outdoor storage for scrap materials and staging is proposed as part of the project

Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Kern County Planning and Natural Resources Department 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 CEQA document.

The Project area is within the geographic range of several special-status animal species including the State and Federally threatened desert tortoise (*Gopherus agassizii),* State threatened Swainson's hawk (*Buteo swainsoni*) and Mohave ground squirrel

(*Xerospermophilus mohavensis*), the State candidate endangered Crotch Bumblebee (*Bombus crotchii),* State candidate threatened western Joshua tree (*Yucca brevifolia*), special status plants such as the alkali Mariposa lily (*Calocortus striatus*) and recurved larkspur (*Delphinium recurvatum*), and the State species of special concern burrowing owl (*Athene cunicularia*), American badger (*Taxidea taxus*), Townsend's big-eared bat (*Corynorhinus townsendii*), short-eared owl (*Asio flammeus*), Le Conte's thrasher (*Taxostoma lecontei*), and loggerhead shrike (*Lanius ludovicianus*).

Swainson's Hawk (SWHA)

The habitat types present at and surrounding the Project site all provide suitable foraging habitat for SWHA, increasing the likelihood of SWHA occurrence within the vicinity. In addition, any trees in the Project vicinity have the potential to provide suitable nesting habitat. SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat limits their local distribution and abundance (CDFW 2016). If a potential nest site occurs in the Project vicinity, approval of the Project may lead to subsequent ground-disturbing activities that involve noise, groundwork, construction of structures, and movement of workers that could affect nests and has the potential to result in nest abandonment and/or loss of foraging habitat, significantly impacting local nesting SWHA. In addition, conversion of undeveloped land can directly influence distribution and abundance of SWHA, due to the reduction in foraging habitat.

To evaluate potential Projectrelated impacts, CDFW recommends that a qualified biologist conduct a habitat assessment as part of the scoping for biological studies conducted in support of the CEQA document, to determine if the Project site or the immediate vicinity contain suitable habitat for SWHA. If suitable foraging or nesting habitat is present, CDFW recommends that a qualified biologist conduct surveys for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) during CEQA analysis. The survey protocol includes early season surveys to assist the project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities. If ground-disturbing Project activities are to take place during breeding season (February 1 through September 15), CDFW recommends that additional pre-activity surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project implementation. CDFW recommends a minimum no-disturbance buffer of ½ mile be delineated around active nests until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

CDFW recommends compensation for the loss of SWHA foraging habitat as described in CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's

Hawks" (CDFG 1994) to reduce impacts to foraging habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

- For projects within 1 mile of an active nest tree, a minimum of 1 acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of ¾ acre of HM land for each acre of development is advised.
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of ½ acre of HM land for each acre of development is advised.

SWHA detection warrants consultation with CDFW to discuss how to avoid take or, if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to ground disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

Mohave Ground Squirrel

The Project site is within the range of MGS and based on aerial imagery, the Project site appears to contain suitable habitat for MGS. Without appropriate avoidance and minimization measure for MGS, potential significant impacts associated with the Project's construction include burrow collapse, inadvertent entrapment, reduced reproductive success, and mortality of individuals. Major threats to MGS are drought, habitat destruction, habitat fragmentation, and habitat degradation (Gustafson, 1993). MGS is restricted to a small geographic range and the greatest habitat loss has occurred near desert towns including California City (Gustafson, 1993). Natural cycling is anticipated in MGS populations therefore the true indicators of the status of the species are the quantity, pattern of distribution, and quality of habitat (Gustafson, 1993). Project activities may result in the loss of potential MGS habitat through conversion, may increase habitat fragmentation, and expand urbanization into the area.

CDFW recommends that a qualified biologist, with appropriate permits, conduct protocol surveys for MGS following the methods described in the "Mohave Ground Squirrel Survey Guidelines" (CDFG, 2003) during the appropriate survey season as part of the biological studies in support of the CEQA document. Survey methods include trapping by a qualified biologist up to three times per trapping season. Results of the MGS surveys are advised to be submitted to CDFW. Please note MGS surveys are valid for one year and may need to be conducted within a year of the start of ground-disturbing activities if there is suitable habitat but protocol surveys conducted for CEQA analysis conclude there is no MGS present on site.

If MGS are found within the Project area during preconstruction surveys or construction activities, consultation with CDFW is recommended to discuss how to implement the Project and avoid take; or if avoidance is not feasible, to acquire a State ITP pursuant to Fish and Game Code section 2081 subdivision (b) prior to any ground-disturbing activities. Any take of MGS without take authorization would be a violation of Fish and Game Code section 2080.

Desert Tortoise

Desert tortoise have been documented to occur approximately 5 miles north of the project site and as such CDFW recommends the project site be evaluated for potential impacts to the species (CDFW 2022). CDFW advises surveys for desert tortoise be conducted by a qualified wildlife biologist who understands the pre-project survey protocol as outlined in "Preparing for any action that may occur within the range of the desert tortoise (*Gopherus agassizii*)" (USFWS, 2010) and has previous experience surveying for desert tortoise. Survey results are advised to be submitted to both CDFW and the USFWS. Please note desert tortoise surveys are valid for one year and should be conducted within a year of the start of Project implementation. If conducting surveys is not feasible, the applicant can assume presence and acquire an ITP pursuant Fish and Game Code section 2081 subdivision (b) prior to initiating any vegetation- or ground-disturbing activities. If desert tortoise are found within the Project area during 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 a State ITP prior to any vegetation- or ground-disturbing activities. Any take of desert tortoise without take authorization would be a violation of Fish and Game Code section 2080.

Western Joshua Tree (WJT)

According to the Project document and aerial photography WJT are confirmed to occur on the Project site. CDFW recommends a no-disturbance buffer for individual western Joshua trees of 290 feet. A 290-foot buffer is warranted to not only avoid impacts to individual trees, but potential impacts to the seed bank as well. Vander Wall et. al. 2006 documented 290 feet as maximum distance of seeds dispersed carried by rodents. If 290-foot buffers cannot be maintained, then consultation with CDFW is warranted to determine if the Project can avoid take or if take authorization is necessary. If take cannot be avoided, including any disturbance within the 290 foot buffer area around each WJT, take authorization would need to occur through issuance of an ITP pursuant to Fish and Game section 2081 subdivision (b).

Crotch Bumblebee (CBB)

CNDDB records indicate that the Project site is within the habitat range of CBB. Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. CBB primarily nest in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, under brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014; Hatfield et al. 2015). Overwintering sites utilized by CBB mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Therefore, potential ground disturbance and vegetation removal associated with Project implementation may significantly impact local CBB populations. If suitable CBB habitat exists in areas of planned Project-related ground disturbance, equipment staging, or materials laydown, potential CBB nesting sites in these areas would have to be avoided in order to reduce to less-than-significant the Project-related impacts to the species.

CBB detection warrants consultation with CDFW to discuss how to avoid take or, if avoidance is not feasible, to acquire an ITP prior to ground disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

Burrowing Owl (BUOW)

BUOW have been documented to occur near the Project site (CDFW 2022). BUOW inhabit open grassland or adjacent canal banks, ROWs, vacant lots, etc. containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Based on aerial photography, potential habitat occurs both within and bordering the Project sites. BUOW rely on burrow habitat year-round for their survival and reproduction. Habitat loss and degradation are considered the greatest threats to BUOW in California's Central Valley (Gervais et al. 2008).

CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys as part of the biological technical studies conducted in support of the CEQA document following the California Burrowing Owl Consortium's Burrowing Owl Survey Protocol and Mitigation Guidelines (CBOC 1993) and CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012). Specifically, if suitable habitat is present at an individual Project site, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable.

If BUOW are detected, CDFW recommends no-disturbance buffers, as outlined in the Staff Report on Burrowing Owl Mitigation (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report

recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance, at a rate that is sufficient to detect BUOW if they return.

Other Special-Status Plant Species

Other plants listed pursuant to federal Endangered Species Act, CESA, and the Native Plant Protection Act, as well as other special status plants such as California Rare Plant Rank (CRPR) may also occur in the Project area. Special-status plant species are threatened with habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, and introduction of non-native plant species (CNPS 2020), all of which may be unintended impacts of the Project. Therefore, impacts of the Project have the potential to significantly impact populations of the species mentioned above if present in the project area.

CDFW recommends that a qualified botanist conduct a habitat assessment of individual Project sites well in advance of Project implementation, to determine if the Project area or its vicinity contains suitable habitat for special-status plant species. If suitable habitat is present, CDFW recommends that individual Project sites 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). This protocol, which is intended 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.

If special-status plants are detected, CDFW recommends special-status plant species be avoided whenever possible by delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. 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.

If a State-listed plant species is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take of that species. If take cannot be avoided, take authorization would need to occur through issuance of an ITP by CDFW to comply with CESA and/or Fish and Game Code section 1900 and California Code of Regulations, title 14, section 786.9, subdivision (b).

State Species of Special Concern

American badger, Townsend's big-eared bat, short-eared owl, Le Conte's thrasher, and loggerhead shrike have the potential to occur in the Project area. These species have been documented to occur in the vicinity of the Project site, which supports requisite habitat elements (CDFW 2022).

CDFW recommends that a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of the CEQA document, to determine if project areas or their immediate vicinity contain potential habitat for the species mentioned above. If potential habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for applicable species and their requisite habitat features to evaluate potential impacts resulting from ground and vegetation disturbance.

II. Editorial Comments and/or Suggestions

Desert Kit Fox: Desert kit fox (*Vulpes macrotis arsipus*) is protected under the California Code of Regulations, Chapter 5, Section 460, which prohibits "take" of the species for any reason. If any active or potential dens are found on the Project site, consultation with the Department would be warranted for guidance on take avoidance measures for the desert kit fox. CDFW also recommends that no den excavation occur during the pupping season. Kit fox are known to use multiple dens during this time and vacant dens may be needed when kit fox relocate their pups. In addition, CDFW

recommends all perimeter fencing be raised five to seven inches above ground level and knuckled under to allow desert kit fox movement into and out of the Project site.

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, desert tortoise. Take under the federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA 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 FESA is advised well in advance of any ground-disturbing activities.

Nesting birds: CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is 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 as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife

biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

CDFW appreciates the opportunity to comment on the NOP to assist the Kern County Planning and Natural Resources Department in identifying and mitigating Project impacts on biological resources. If you have any questions, please contact Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3200, or by electronic mail at Jaime.Marquez@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Julie Vance
FA83F09FE08945A...

Julie Vance
Regional Manager

REFERENCES

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