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DEPARTMENT OF FISH AND WILDLIFE
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January 31, 2024

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

Governor's Office of Planning & Research

Feb 02 2024

STATE CLEARINGHOUSE

Subject: Mojave Micro Mill (Project)
Draft Environmental Impact Report (DEIR)
SCH No. 2022100646

Dear Mark Tolentino:

The California Department of Fish and Wildlife (CDFW) received a DEIR from the Kern County Planning and Natural Resources Department (Kern County Planning) for the above-referenced Project pursuant to 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. While the comment period has ended, CDFW respectfully requests that Kern County Planning 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. (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

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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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 authorization as provided by the Fish and Game Code may 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 (Pacific Steel Group)

Objective: The Project proposes 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. The Project would include an approximate 489,200 square-foot steel mill facility with an additional 61,721 square feet of accessory buildings and structures, for a total of 550,921 square feet. The proposed Project site, which includes an approximately 63-acre accessory solar array, is located on 174 total acres of privately owned land. Outdoor storage for scrap materials and staging is also proposed as part of the Project. In total, the mill would be made up of 13 attached and detached buildings and 7 ancillary structures.

Location: The Project site is located on approximately 174 acres, comprised of two (2) privately owned parcels, in the southern unincorporated area of Kern County, California. The Project site is approximately five miles northeast from the unincorporated community of Rosamond and approximately eight miles southeast from the unincorporated community of Mojave in unincorporated Kern County, California.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist Kern County Planning 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 prepared for this Project.

There are special status species potentially present within the Project site that were not appropriately evaluated in the DEIR for this Project. CDFW recommends that these resources be evaluated and addressed prior to any approvals that would allow ground disturbing activities or land use changes. Specifically, CDFW is concerned with potential impacts to special-status species including, but not limited to, the State and federally threatened desert tortoise (*Gopherus agassizii*), the State candidate endangered Crotch's bumblebee (*Bombus crotchii*) and the State threatened Swainson's hawk (*Buteo swainsoni*) and Mohave ground squirrel (*Xerospermophilus mohavensis*).

In order to adequately assess any potential impacts to biological resources, focused biological surveys should be conducted by a qualified wildlife biologist during the appropriate survey period(s) in order to determine whether any special-status species or resources may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify species presence and develop the necessary avoidance measures to fully avoid potential Project-related impacts. Properly conducted biological surveys are also necessary to identify Project-related impacts to biological resources and assist with determining the need for species and resource specific minimization and compensatory mitigation measures. Additionally, adequate biological surveys are necessary to assist with determining the need for the Project to obtain an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b), for Project related take of CESA-listed species.

I. Environmental Setting and Related Impact

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 the United States Fish and Wildlife Service (USFWS)?

COMMENT 1: Crotch's Bumblebee and Swainson's Hawk

The DEIR does not include an appropriate evaluation for Crotch's bumblebee (CBB) or Swainson's Hawk (SWHA). For SWHA, CDFW's Notice of Preparation (NOP) comment letter for the Project, which was sent on November 28, 2022, recommended protocol-level surveys for both species. . As it appears the biological

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surveys conducted in support of the DEIR did not incorporate CDFW's survey recommendations, CDFW reiterates the recommendation to conduct the surveys outlined in CDFW's NOP comment letter, and, if necessary, including the avoidance, mitigation, and minimization measures recommended in the letter.

For CBB, CDFW would like to update the recommendations provided in CDFW's NOP comment letter by recommending that surveys done for CBB follow the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023) survey protocol.

Comment 2: Desert Tortoise

The DEIR states on page 4.4-11 that absence for desert tortoise (DT) was determined after 18 field visits, as "No sign or burrows were observed during 18 field visits, which includes the Mohave ground squirrel trapping effort." In the Biological Field Survey section of the DEIR on page 4.4-2, no mention was made that focused surveys were performed for DT. Without appropriate species-specific surveys, CDFW cannot concur with the absence determination for DT. As such, CDFW recommends that surveys following the protocol contained in "Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*)" (USFWS 2019) be conducted during the appropriate survey period immediately prior to construction to determine the potential for DT to use the Project site and surrounding area prior to any Project activities.

If there is potential for DT to occur within the Project site, CDFW recommends the Project obtain an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any vegetation- or ground-disturbing activities. Any take of DT without take authorization would be a violation of Fish and Game Code section 2080.

Comment 3: Desert Tortoise and Mohave Ground Squirrel

Mitigation measure 4.4-5 proposes the construction of temporary exclusion fencing to prohibit DT, Mohave ground squirrel (MGS), and other special-status wildlife from entering the Project site, stating, "Prior to issuance of grading or building permits, the project site shall be fenced with a temporary exclusion fence to prevent any special-status species that may be using habitat adjacent to the site from entering during construction phase." The measure does not state that biological surveys will be conducted prior to the installation of the exclusion fencing. As species may be present within the perimeter of the exclusion fencing prior to its completion, CDFW recommends conducting protocol level surveys for DT as stated in Comment 2, prior to the installation of exclusion fencing. Any DT encircled by installed exclusion fencing, as well as any relocation of captured DT would constitute take, necessitating an ITP prior to implementation. Additionally, CDFW recommends pre-

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construction surveys for DT and MGS be completed prior to any vegetation or ground disturbing activity.

If there is potential for DT or MGS to occur within the Project site, CDFW recommends the Project obtain an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any vegetation or ground-disturbing activities. Any take of DT or MGS without take authorization would be a violation of Fish and Game Code section 2080.

Comment 4: Desert Tortoise and Mohave Ground Squirrel

Mitigation Measure 4.4-5 (a) states, "If any special-status species are found on the site during project construction, operation shall cease in the vicinity of the animal and the animal shall be passively restricted to the area encompassing its observed position on the construction site and its point of entry shall be determined, if possible. The Lead Biologist shall install a temporary exclusion fence around this area." The measure as written can be interpreted as the Lead Biologist will construct exclusion fencing around special-status species, which would be considered take and would be a direct violation of CESA. If there is potential for DT or MGS to occur, CDFW reiterates the recommendation for the Project to obtain an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any vegetation- or ground-disturbing activities. Any take of MGS or desert tortoise without take authorization would be a violation of Fish and Game Code section 2080.

II. Editorial Comments and/or Suggestions

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, DT. 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.

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 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:

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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>.


FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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 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).

CDFW appreciates the opportunity to comment on the Project to assist Kern County Planning in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, or by electronic mail at Jaime.Marquez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

ec: State Clearinghouse
Governor's Office of Planning and Research
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REFERENCES

California Department of Fish and Wildlife. 2023. Survey considerations for California Endangered Species Act candidate bumble bee species. California Department of Fish and Wildlife, Sacramento, California, USA.

U.S. Fish and Wildlife Service. 2019. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*).