



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



May 9, 2023

Diana Robinson, Planning Division Manager  
Imperial County Planning & Development Services Department  
801 Main Street  
El Centro, CA 92243

TRUE NORTH ORGANICS RENEWABLE ENERGY FACILITY (PROJECT)  
MITIGATED NEGATIVE DECLARATION (MND)  
SCH# 2023040047

Dear Ms. Robinson:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the Imperial County Planning & Development Services Department for the Project pursuant 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.

## 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.

## PROJECT DESCRIPTION SUMMARY

**Proponent:** True North Renewable Energy, LLC

**Objective:** The objective of the Project is to construct a high solids anaerobic digestion facility with incidental advanced composting for the management and processing of

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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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residential, commercial, and industrial organic waste and green material. Primary Project activities include removal of vegetation, site grading and earthwork, trenching, and construction of the facility.

**Location:** Approximately 3 miles north of the City of Imperial, Imperial County, north of Harris Road, west of Old State Highway 111, and east of Rose Drain, at Latitude 32.885360° and Longitude -115.514450.

**Timeframe:** The Project is estimated to take approximately 18 to 24 months.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Imperial County Planning & Development Services 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 document.

### 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 IV, Page 30-31

**Issue:** The project specific Draft MND lessens the stringency of the mitigation measure required for burrowing owls (*Athene cunicularia*) by replacing the Mesquite Lake Specific Plan Mitigation Measure (MM) 4.5.4 with MM BIO-2 and BIO-3 to accommodate construction schedule over avoiding significant impacts to the species. CDFW has concerns that the Draft MND lacks analysis of the magnitude or nature of incremental change to the environmental baseline in regard to burrowing owl, and the significance of the impacts to the species.

**Specific impact:** The Project and Project-related activities have potential to take burrowing owl individuals and their nests and may result in loss of burrowing owl habitat. MM 4.5.4 originally required multiple surveys and following the approved guidelines for species surveys to determine species presence and develop avoidance and minimization measures, and now the Draft MND MM BIO-2 would only require one survey within 30 days of construction.

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**Why impact would occur:** Only one reconnaissance survey was performed for the Project site November 1, 2022 to inform the MND analysis. November is the non-breeding season for burrowing owls. Burrowing owls are more detectable during the breeding season with detection probabilities being highest during the nestling stage (Conway et al. 2008). Non-breeding season (1 September to 31 January) surveys may provide information on burrowing owl occupancy, but do not substitute for breeding season surveys because results are typically inconclusive (CDFG, 2012). Burrowing owls are more difficult to detect during the non-breeding season and their seasonal residency status is difficult to ascertain (CDFG, 2012). Additionally, the purpose of the biological reconnaissance survey was described in Appendix B of the Draft MND as on foot between 10:00am and 2:30pm with temperatures ranging from 71 to 85 degrees Fahrenheit, wind speeds between 3 and 7 miles per hour, with 75% cloud cover, and no precipitation. Therefore, the reconnaissance survey lacked appropriate methodology to determine the presence or absence of burrowing owl per the survey guidelines or recommendations of the [Staff Report on Burrowing Owl Mitigation \(CDFG, 2012\)](#) (Staff Report). As described in the Staff Report, surveys for the species should occur between morning civil twilight and 10:00 AM and two hours before sunset until evening civil twilight to provide the highest detection probabilities. Also, surveys should occur when cloud cover is less than 75%. Therefore, an appropriate baseline inventory of burrowing owls following the survey recommendations of the Staff Report have not been obtained. The potential direct and indirect impacts to potentially present burrowing owls, such as potential loss of nesting burrows, satellite burrows, foraging habitat, dispersal and migration habitat, wintering habitat, and habitat linkages, including habitat supporting prey and host burrowers and other essential habitat attributes have not been quantified or analyzed.

The take avoidance survey as condition by MM BIO-2 is inadequate to identify individuals and their seasonal use or foraging of the site that may be impacted by Project activities. Additionally, MM BIO-3 is intended to avoid or substantially lessen significant environmental impacts by relying on a 250-foot buffer should the pre-construction survey or subsequent nesting bird surveys confirm presence. Therefore, CDFW has concerns MM BIO-2 is a future survey and BIO-3 defers formulation of effective mitigation measures to a later date.

Overall, the Draft MND lacks description of baseline presence of the species, which then leads to lack a clear performance standard to guide the outcome of the mitigation measures providing in the environmental document.

**Evidence impact would be significant:** The Draft MND lacks informed consideration of significant and adverse changes to the environmental baseline. Without an accurate environmental baseline of present burrowing owl and the delay in development of specific avoidance, minimization, and mitigation measures, it is unclear if the mitigation measures proposed to be implemented by the Project Proponent will avoid, minimize, or mitigate the impacts to a level below significant

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adverse effect. Burrowing owls are dependent on burrows at all times of the year for survival and/or reproduction, evicting them from nesting, roosting, and satellite burrows may lead to indirect impacts or take (CDFG, 2012). Loss of access to burrows will likely result in varying levels of increased stress on burrowing owls and could depress reproduction, increase predation, increase energetic costs, and introduce risks posed by having to find and compete for available burrows (CDFG, 2012). Burrowing owls are also dependent on adjacent habitat, and forage within 600 meters of nest burrows (Rosenberg and Haley, 2004). Take of individual burrowing owls and their nests is defined by FGC section 86, and prohibited by sections 3503, 3503.5 and 3513.

**To minimize significant impacts:** CDFW recommends a breeding season survey following the guidance and recommendations within the Staff Report be performed to determine the environmental baseline in areas directly and indirectly impacted by the Project, and the results be included in the adopted MND along with appropriate avoidance and minimization measures based on the results of the survey. CDFW believes BIO-2 should be implemented prior to the project as a take avoidance survey, but not in lieu of a breeding season survey to determine presence. A take avoidance survey purpose is to “detect changes in burrowing owl presence such as colonizing owls that have recently moved onto the site, migrating owls, resident burrowing owls changing burrow use, or young of the year that are still present and have not dispersed” (CDFG, 2012). CDFW proposes modifications to BIO-2 for consideration in Appendix A.

## II. Editorial Comments and/or Suggestions

Yuma Ridgway's rail (*Rallus longirostris yumanensis*) is a fully protected species per Fish and Game Code section 3511, in addition to being State-threatened as identified on Page 38 of the Draft MND.

### 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>.

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## 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 MND to assist Imperial County Planning & Development Services Department in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ashley Rosales, Senior Environmental Scientist, at [Ashley.Rosales@Wildlife.ca.gov](mailto:Ashley.Rosales@Wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
84FBB8273E4C480...  
Alisa Ellsworth  
Environmental Program Manager

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

## REFERENCES

California Department of Fish and Game (CDFG). 2012. Staff Report on Burrowing Owl Mitigation.

Conway, C. J., V. Garcia, M. D., and K. Hughes. 2008. Factors affecting detection of burrowing owl nests during standardized surveys. *Journal of Wildlife Management* 72: 688-696.

Rosenberg, D. K., and K. L. Haley. 2004. The ecology of burrowing owls in the agroecosystem of the Imperial Valley, California. *Studies in Avian Biology* 27:120-135.