

To:
[ ] Office of Planning and Research
For U.S. Mail:
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Sacramento, CA 95812-3044

Street Address:
1400 Tenth Street
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From:
California Department of Fish and Wildlife (CDFW)
Inland Deserts Region
3602 Inland Empire Blvd., Suite C-220
Ontario, CA 91764
Contact: Magdalena Rodriguez
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FEB 03 2020

DFG
Office of the General Counsel

Lead Agency
Riverside County
4080 Lemon Street, 12th Floor
Riverside, CA 92502-1409
Contact:
Phone: 951-

SUBJECT: Filing of Notice of Determination pursuant to Public Resources Code § 21108

State Clearinghouse Number: 2018021021

Project Title: Athos Project (California Endangered Species Act Incidental Take Permit No. 2081-2019-043-06 (ITP))

Project Location: The Athos Project (Project) is located on approximately 3,224 acres across 7 groups of non-contiguous parcels in Riverside County, north of I-10 and approximately 4 miles east and northeast of the town of Desert Center, California. The project consists of 19 parcels on private land for the solar facility, and 16 parcels located on BLM-administered and private land for the gen-tie lines. The Project site is on three 7.5-Minute U.S. Geological Survey topographic quadrangles (Table 1 and 2): East of Victory Pass, Corn Springs, and Sidewinder Well.

Project Description: The Athos Project will be a 500-megawatt solar photovoltaic power facility.

This is to advise that CDFW, acting as [ ] the lead agency / [ ] a responsible agency] approved the above-described project on 1/30/2020 and made the following determinations regarding the above described project:

- 1. The project [ ] will / [ ] will not] have a significant effect on the environment (This determination is limited to effects within CDFW's permitting jurisdiction as a responsible agency).
2. [ ] An environmental impact report / [ ] A negative declaration] was prepared by the lead agency for the original project.
3. Additional mitigation measures [ ] were / [ ] were not] made a condition of CDFW's approval of the project.
4. A mitigation reporting or monitoring plan [ ] was / [ ] was not] adopted by CDFW for this project.
5. A Statement of Overriding Considerations [ ] was / [ ] was not] adopted by CDFW for this project.
6. Findings [ ] were / [ ] were not] made by CDFW pursuant to Public Resources Code § 21081(a). CDFW did, however, adopt findings to document its compliance with CEQA.
7. Compliance with the environmental filing fee requirement at Fish and Game Code § 711.4 (check one):
[ ] Payment is submitted with this notice.
[ ] A copy of a receipt showing prior payment was submitted to CDFW.
[ ] Responsible Agency statement: The Environmental Impact Report prepared by the lead agency for the Project is available to the general public at the office location listed above for the lead agency. CDFW's administrative record of proceedings related to the incidental take permit is available to the public for review at CDFW's regional office.

Signature Leslie MacNair
Leslie MacNair, Regional Manager

Date: 1/30/2020
Governor's Office of Planning & Research

FEB 28 2020
STATE CLEARINGHOUSE

Date Received for filing at OPR: \_\_\_\_\_

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
CALIFORNIA ENDANGERED SPECIES ACT  
INCIDENTAL TAKE PERMIT  
NO. 2081-2019-043-06**

**IP Athos, LLC  
Athos Project**

**CEQA FINDINGS**

**INTRODUCTION:**

The California Department of Fish and Wildlife (CDFW) has prepared these findings to document its compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 *et seq.*). CDFW is a responsible agency under CEQA with respect to the Athos Project (Project) because of its permitting authority under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*). (See generally Pub. Resources Code, §§ 21002.1, subd. (d), 21069; CEQA Guidelines, § 15381; see also Cal. Code Regs., tit. 14, § 783.3, subd. (a).)<sup>1</sup> CDFW makes these findings under CEQA as part of its discretionary decision to authorize IP Athos, LLC (Permittee) to incidentally take Agassiz's Desert Tortoise (*Gopherus agassizii*) during implementation of the Project. (See generally Fish & G. Code, § 2081, subd. (b); Cal. Code Regs., tit. 14, § 783.4.) The Agassiz's Desert Tortoise is designated as threatened species under CESA. (Cal. Code Regs., tit. 14, § 670.5, subd. (b)(4)(A).

CDFW is a responsible agency under CEQA with respect to the Project because of prior environmental review and approval of the Project by the lead agency Riverside County. (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367.) Riverside County analyzed the environmental impacts associated with implementation of the Project in an Environmental Impact Report (SCH No. 2018021021) and approved the Project on June 18, 2019. In so doing, Riverside County imposed various mitigation measures for impacts to the Covered Species as conditions of Project approval and concluded that Project-related impacts to the Covered Species could be substantially lessened with implementation of mitigation and avoidance measures, such that the impacts would be less than significant.

As approved by Riverside County, the Project involves the construction of a 500-megawatt (MW) photo voltaic facility located on 3,224 acres of land within 7 groups of non-contiguous parcels (Figure 1). The power would be conveyed to the power grid via an overhead 220 kilovolt (kV) generation tie transmission line (gen-tie) interconnecting to the Southern California Edison (SCE) Red bluff Substation. The Project site is within the range of the Covered Species and may support individuals of the species. Development of the Project site will result in the permanent loss of 282.5 acres of habitat for the Covered

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<sup>1</sup> The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

Species and take of the Covered Species as defined by Fish and Game Code is expected. (Fish & G. Code, § 86.) These impacts fall within CDFW's permitting jurisdiction under CESA. (*Id.*, §§ 2080, 2081, subd. (b).)

As a responsible agency, CDFW's CEQA obligations are more limited than those of the lead agency, in that CDFW is responsible for considering only the effects of those activities involved in the Project which it is required by law to carry out or approve. Thus, while CDFW must consider the environmental effects of the Project as set forth in the Riverside County's prior analysis, CDFW has responsibility to mitigate or avoid only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. (Pub. Resources Code, § 21002.1, subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).) Accordingly, because CDFW's exercise of discretion is limited to issuance of an Incidental Take Permit (ITP) for the Project, CDFW is responsible for considering only the environmental effects that fall within its permitting authority under CESA. (See generally *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 935-941.) Indeed, with respect to all other effects associated with implementation of the Project, CDFW is bound by the legal presumption that the Mitigated Negative Declaration fully complies with CEQA. (Pub. Resources Code, § 21167.3; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169, 1178-1181; see also CEQA Guidelines, § 15096, subd. (e); Pub. Resources Code, § 21167.2; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1130.)

#### **FINDINGS:**

CDFW has considered the Environmental Impact Report adopted by Riverside County as the lead agency for the Project.

CDFW finds that the mitigation measures imposed as conditions of the Project approval by Riverside County, along with the mitigation measures and Conditions of Approval set forth in CDFW's ITP for the Project, will ensure that all Project-related impacts on the Covered Species are mitigated to below a level of significance under CEQA.

CDFW finds that issuance of the ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the conditions of Project approval adopted by the lead agency, as well as adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of the ITP, will avoid or reduce such potential effects to below a level of significance.

The following measures and others set forth in CDFW's ITP for the Project will avoid to the extent feasible and mitigate to below a level of significance all Project-related impacts on the Covered Species:

- A. No more than 30 calendar days prior to start of Covered Activities, Designated Biologist(s) shall conduct pre-construction clearance surveys for the Covered Species, using the methods described in the most recent United States Fish and Wildlife Service (USFWS) Desert Tortoise Field Manual.
- B. Authorized Biologists (AB) and Biological Monitors (BM) who are knowledgeable and experienced in the biology and natural history of the Covered Species will monitor construction and/or surface-disturbing activities to minimize habitat disturbance and take of individual Covered Species. The AB and BM will have the authority to stop construction and/or surface-disturbing activities and/or order any reasonable measure to avoid take of the Covered Species.
- C. The Permittee will purchase 565 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank or acquire and permanently preserve 565 acres of Covered Species' habitat and provide for the maintenance and management of the habitat in perpetuity.
- D. Compliance monitoring will be reported quarterly and annual reports will be sent to CDFW by January 31 of each year.
- E. Non-compliance will be reported to CDFW within 24 hours during the construction phase.
- F. Covered Species found on the Project site shall be relocated by the Authorized Biologist to a protected off-site location.
- G. Permittee will prepare and submit a final mitigation report within 45 days following completion of the Project to notify CDFW of the success and effectiveness of required mitigation measures.

CDFW finds that the Mitigation Monitoring and Reporting Program in Attachment 1 of CDFW's ITP for the Project will ensure compliance with mitigation measures by requiring the Permittee to monitor and report progress in implementing those measures for review by CDFW staff.

*The Mitigation Monitoring and Reporting Program is adopted.*

*The Project is approved.*

DATE: 11/30/2020

By: Leslie MacNair

Leslie MacNair, Regional Manager  
INLAND DESERTS REGION  
DEPARTMENT OF FISH AND WILDLIFE