



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



June 21, 2022

Nick Tompkins
Dana Reserve, LLC
684 Higuera Street, Suite B
San Luis Obispo, California 93401
nick@nktcommercial.com

**Subject: Incidental Take Permit Application for the Dana Reserve Project
(Project) (No. 2081-2022-036-04)**

Dear Nick Tompkins:

As of May 24, 2022, the California Department of Fish and Wildlife (CDFW) had received your Incidental Take Permit Application and an application fee. CDFW has reviewed your request for authorization, pursuant to Fish and Game Code section 2081, subdivision (b), to incidentally take¹ Pismo clarkia (*Clarkia speciosa* ssp. *immaculata*), a species designated as Rare pursuant to the Native Plant Protection Act (NPPA) (Fish & G. Code, § 1900 *et seq.*) (See Cal. Code Regs., tit. 14, § 670.2, subd. (c)(16)(A).) **CDFW has determined that the above-referenced application is incomplete.**

The application for an Incidental Take Permit (ITP) must be in accordance with the California Code of Regulations, title 14, sections 783.2 and 783.3. CDFW determined the application was incomplete for the following reasons:

1. **Cal. Code Regs., tit. 14, § 783.2, subd. (a)(1):** This section is complete.
2. **Cal. Code Regs., tit. 14, § 783.2, subd. (a)(2):** This section is complete.
3. **Cal. Code Regs., tit. 14, § 783.2, subd. (a)(3):** This section is incomplete. This section requires a complete description of the Project or activity for which the ITP is being sought. As written, the Project description provides only a general understanding of the Project components. It does not provide enough detail about the activities to be covered under the ITP. Please provide a thorough, comprehensive, and detailed description of all aspects of the Project that may

¹ Pursuant to Fish and Game Code section 86, "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." See also *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 (for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), "take" ... means to catch, capture or kill").

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result in take of Pismo clarkia. This information is required for CDFW to fully analyze the impacts of the Project.

Specifically, please provide a requested permit duration and anticipated timing of when the Project would be implemented. In addition, each of the items in Section 2.1 and Appendix A of the application should be described in detail, including the methods, timing, materials, quantities, dimensions, the activities each piece of construction equipment will perform, and any other activity to be covered by the ITP. If installation of erosion control materials, soil stabilization, restoration, and any long-term operations and maintenance activities will be included as activities covered by this ITP, all components of those activities should be described in sufficient detail in this section as stated above. Information regarding the location and extent of all Project activities proposed to be covered by the ITP should be included and thoroughly described.

This information is required for CDFW to determine to what extent the Project could result in the taking of species to be covered by the ITP and to inform our own analyses of the disturbance at the Project area and of the impacts to the species for which authorization of take is being sought.

- 4. Cal. Code Regs., tit. 14, § 783.2, subd. (a)(4):** This section is incomplete. This section requires a description of the locations where each Project or activity will occur or be conducted. The Project location is not sufficient in detail for CDFW to make calculations of the area that will be disturbed because the application currently lacks coordinates for the extents of the Project area. This section requires the additional Project Description information requested in Item 3 above, such that CDFW staff can locate each of the Project components.

Please provide a map book, a set of detailed design figures, GIS shapefile, or kmz/kml file that includes each of the proposed components to be constructed for this Project. Staging areas, access points, and all associated infrastructure identified in your revised Project Description should be identified on the maps or figures at a level such that the footprint size of each construction feature is labeled and can be identified.

- 5. Cal. Code Regs., tit. 14, § 783.2, subd. (a)(5):** This section is incomplete. This section requires an analysis of whether and to what extent the Project activities could result in the taking of the species to be covered by the permit. This section is incomplete pending the additional Project Description information requested in Item 3 above. An adequate quantification and evaluation of take relies on a detailed description of the activities to be implemented for this Project. This section should be revised as needed to address the potential for take and the impacts of take in accordance with the revised Project Description. In addition to a complete Project Description requested above, please provide a description of how each Project activity to be covered by this ITP may result in

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take of Pismo clarkia. In addition to direct mortality of individuals, the application should include other potential forms of take associated with Project implementation.

Additionally, since Pismo clarkia is known to undergo large fluctuations in population numbers, spatial distribution, and extent within a geographic area annually, please provide comprehensive botanical survey reports for each year they have been conducted at the Project site, including the 2022 survey results. Please also provide electronic spatial data (GIS shapefile or equivalent) of the mapped maximum extent, including areas where the seedbank exists, of the documented patches that comprise this population and mapped areas of suitable soils and microhabitat features where this plant may occur in any given year. Please provide a map of the project design from Appendix A of the application with the maximum extent of the documented patches and areas of suitable soils/microhabitat features overlaid on it.

6. **Cal. Code Regs., tit. 14, § 783.2, subd. (a)(6):** This section is incomplete. This section requires a species-specific analysis of the impact of the Project when contrasted with the local and range-wide populations and rate of take. For example, please include a discussion of whether the Project will impact a significant portion of the local population or create a barrier leading to isolated populations. Elements of the analysis should be similar to those required in Section 783.2(a)(7). This section is incomplete pending the additional Project description information requested in Item 3 and extent of take analysis requested in Item 5 above. An adequate quantification and evaluation of permanent, temporary, direct, and indirect impacts relies on a detailed description of the activities to be implemented for this Project.

Please provide an analysis of the impacts of this Project to Pismo clarkia, including, but not limited to, how Pismo clarkia will be impacted by the following: road construction; grading, cut, fill, and contouring; change in hydrology/drainage patterns; increased runoff; construction of bicycle, pedestrian, and equestrian trails; construction of stormwater basins; subsurface improvements; landscaping; fuel reduction or fire prevention; erosion potential; fencing; fugitive dust; herbicide use; and introduction of invasive species; as well as impacts to germination, pollination, and seed dispersal. This section should also be revised as needed to address the impacts of take in accordance with the revised Project Description and extent of take analysis, including a thorough explanation of how the impacts of the Project were analyzed and calculated.

7. **Cal. Code Regs., tit. 14, § 783.2, subd. (a)(7):** This section is incomplete. This analysis is intended to determine whether the continued existence of the species for which take coverage is being requested will be in jeopardy as a result of the Project and issuance of the ITP. This analysis should include

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consideration of the species' capability to survive and reproduce and should contrast the impact of Project on the species-wide population or locally critical populations for the species. It should also consider any adverse impacts of the taking on those abilities in light of known population trends, known threats to the species; and reasonably foreseeable impacts on the species from other related projects and activities, with literature citations and footnotes, with any generally unavailable references provided as attachments.

Currently, this section draws conclusions that the Project would not result in jeopardy for Pismo clarkia, an extremely rare, endemic plant species known to occur in very few, highly restricted locations in southern San Luis Obispo County, without providing an analysis to support those conclusions. Elements of the analysis should be similar to those required in Section 783.2(a)(6). CDFW also needs a complete Project description, analysis of extent of take, and impact description to complete its own analysis.

8. **Cal. Code Regs., tit. 14, § 783.2, subd. (a)(8):** This section is incomplete. This section requires proposed measures to minimize and fully mitigate the impacts of the proposed taking. CDFW cannot determine if the proposed measures and compensatory mitigation plan is adequate until we have a complete Project description, analysis of extent of take, impact description, and jeopardy analysis for which incidental take coverage is being sought. Please also provide proposed avoidance and minimization measures that will be implemented throughout the Project and describe how those measures will reduce impacts and take from each activity to be covered by the ITP. Please also describe how the proposed compensatory habitat mitigation will fully mitigate the impacts resulting from Project activities, including how a genetic analysis conducted of this population with other populations in the region will fully mitigate the impacts resulting from Project activities.

Please be aware that compensatory mitigation proposals must be ecologically defensible and typically require a conservation easement and an endowment to fund their perpetual conservation and management. Please note that this section may also need to be revised as needed to address the revised Project Description and impacts discussed in Items 3 through 6 above as warranted.

9. **Cal. Code Regs., tit. 14, § 783.2, subd. (a)(9):** This section is incomplete. This section requires a proposed plan to monitor and report compliance with the minimization measures, in addition to any proposed mitigation measures, and the effectiveness of the measures. A plan was provided for the proposed mitigation measures, but since there were no proposed avoidance and minimization measures provided, there was no plan proposed to monitor compliance with those measures. Please provide a proposed compliance monitoring and reporting plan for the avoidance and minimization measures.

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10. **Cal. Code Regs., tit. 14, § 783.2, subd. (a)(10):** This section is incomplete. This section requires a description of the funding source and level of funding available for implementation of the minimization and mitigation measures. The application currently does not contain information necessary to assure CDFW that money has been allocated to implement required mitigation measures, enhancement of habitat, and establishment of an endowment. Although the application states the Dana Reserve, LLC will fully fund implementation of all avoidance, minimization, monitoring and mitigation requirements, there was no budget included to demonstrate that cost estimates for the above items have been considered. Please be aware that endowments for ITPs must meet the requirements listed in Government Code Sections 65965 – 65968. CDFW is available to discuss these specific requirements and any other ITP requirements.
11. **Cal. Code Regs., tit. 14, § 783.2, subd. (a)(11):** This section is complete.
12. **Cal. Code Regs., tit. 14, § 783.3, subds. (a) & (b):** These sections are complete. Once the California Environmental Quality Act (CEQA) Environmental Impact Report (EIR) is certified by San Luis Obispo County, please provide the final EIR, the Findings, Notice of Determination, and a copy of proof of payment for the environmental filing fee.

CDFW's issuance of an ITP is a discretionary action under CEQA, and therefore preparation of a CEQA document is necessary prior to ITP issuance (See Cal. Code Regs., tit. 14, § 783.3.). CDFW can accept an ITP application as complete if CEQA is the only outstanding issue, and if the type of CEQA document being prepared has been identified; however, the ITP cannot be fully drafted or issued until the CEQA process has been completed through the filing of a Notice of Determination. It is important that the take proposed to be authorized by CDFW's ITP be described in detail in the CEQA document prepared for the Project. In addition, CDFW may have recommendations during the CEQA process that could result in modifications to the Project description; if so, any changes that alter the extent or impact of take should be taken into account for subsequent application submittal.

In addition to the items mentioned above, the fee submitted with the application, \$36,314.50, was more than that required for a Project whose cost is greater than \$500,000 and with multiple options for mitigation by \$1,729.25. The 5% Agent Handling Fee is not required when the fee is paid by a check. However, due to the needed involvement of CDFW management, executive, and general counsel for this ITP and the review of your compensatory mitigation proposal, a complexity fee of \$4,035.00 is required to reach the maximum total fee of \$40,349.50. Please reference the fee schedule online for further information:


<https://wildlife.ca.gov/Conservation/CESA/Permitting/Incidental-Take-Permits>. Please

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be advised that CDFW will not resume review or processing of your application until the remaining complexity fee amount is remitted in full.

CDFW looks forward to working with you on developing a complete application and towards ITP finalization. If you have any questions regarding these comments, or would like to arrange for additional consultation, please contact Sarah Bahm, Senior Environmental Scientist (Specialist), at the address provided on the letterhead, by electronic mail at Sarah.Bahm@wildlife.ca.gov, or by telephone at 559-580-3195.

Sincerely,

DocuSigned by:

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