

DOCKETED

Docket Number:	24-OPT-03
Project Title:	Soda Mountain Solar
TN #:	269449
Document Title:	COC Revision Requests - Part 1
Description:	This document provides requested clean-up revisions to the proposed Conditions of Certification (COCs).
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Submitter Role:	Applicant Representative
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Soda Mountain Solar LLC (Applicant) has reviewed the Updated Staff Assessment and is requesting a few clean-up revisions to the proposed Conditions of Certification (COCs). All of these requested revisions to the COCs are in the nature of technical corrections to fix typos, inconsistencies, errors, apparent mistakes, etc. The Applicant does not expect CEC staff should have any substantive disagreement with any of these requested revisions. (However, most of these requested revisions were raised in the Applicant's February 27, 2026, comment letter on the Staff Assessment but were not implemented by CEC staff for reasons that are unclear to the Applicant.) If these clean-up revisions are not accepted, they can create significant risks to the project's financing, construction timeline, and compliance costs. For that reason, if CEC staff disagrees with any of these requested revisions, the Applicant team would appreciate the opportunity to discuss the matter further with CEC staff in the coming days to better understand the reasons for staff's rejection and to provide further explanation for these requests.

The requested text revisions to the COCs are shown in the supplemental Word attachment. To help you understand the reasons for these requested clean-up revisions, below are detailed explanations that you may want to refer to as you review the requested text revisions:

COC BIO-12

- Item 6:
 - The first revision recognizes that compensatory mitigation requirements for desert tortoise, burrowing owl, and state jurisdictional waters can be satisfied by acquiring compensation lands *or* purchasing mitigation or conservation bank credits. This is consistent with COCs BIO-16, BIO-21, and BIO-23.
 - The second revision corrects a grammatical typo by inserting a missing word ("for").
 - The third revision corrects the terminology ("state jurisdictional waters") for consistency with COC BIO-26.
- Verification:
 - The first revision recognizes that Security is required only if the acquisition, protection, and transfer of compensation lands has not occurred prior to the start of site mobilization. If the project owner acquires the compensation lands prior to the start of site mobilization, then Security should not be required. This is consistent with Item 7.f of this COC.
 - The second revision is necessary because the identified plans, reports, and other documents may not necessarily be available before site mobilization if a Security is provided. Other provisions in this COC already ensure that the CPM will review and approve these documents (see Items 4, 5, 7.a, 7.d, 9). If a Security is provided, it is not typical practice to require approval of these mitigation details before site mobilization. If these documents are required to be approved *before site mobilization*, then the project owner could essentially be required to identify compensation lands by that time; this undermines the purpose of allowing the project owner to provide Security and start construction without having completed

all details needed for acquisition of the compensation lands. If this revision is not accepted, this provision could result in substantial delay to the start of construction (by requiring the project owner to identify compensation lands before starting construction), which threatens the viability of the project.

COC BIO-15

- Item 18.d: These revisions allow for the amount of payment to be calculated based on the actual acreage of the project's final long-term or permanent disturbance (as approved by the CPM, in consultation with the USFWS, BLM, and CDFW). These revisions are requested because the project's actual final long-term or permanent disturbance is not currently known with certainty and may be different from the amount reported in the Updated Staff Assessment (which is based on the current level of project design). For this reason, the COC should not identify a specific acreage and payment amount. These requested revisions will ensure the mitigation is based on, and proportionate to, the project's actual impacts. Furthermore, it is unclear how CEC staff calculated 1,543.46 acres; this amount is not explained elsewhere in the Updated Staff Assessment.

COC BIO-16

- Introductory Text: These revisions allow for the compensatory mitigation acreage requirement to be calculated based on the actual acreage of the project's final direct permanent and temporary loss of desert tortoise habitat (as approved by the CPM, in consultation with the USFWS, BLM, and CDFW). The ratios provided are consistent with those on page 5.2-110 of the Updated Staff Assessment. These requested revisions are necessary to resolve an internal inconsistency in the COC, in that (1) the COC identifies 4,468 acres of compensatory mitigation required, but (2) the COC states that "[t]he amount of mitigation required shall be calculated based on the project's final direct permanent and temporary loss of desert tortoise habitat." These revisions are requested because the project's actual final direct permanent and temporary loss of desert tortoise habitat is not currently known with certainty and may be different from the amount reported in the Updated Staff Assessment (which is based on the current level of project design). For this reason, the COC should not identify a specific acreage of compensatory mitigation required. These requested revisions will ensure the mitigation is based on, and proportionate to, the project's actual impacts.
- Item 1: This revision clarifies that the cost estimate is based on the impacts associated with the project's current design, in recognition that the actual mitigation requirement will be re-calculated based on the project's final impacts. (See companion revisions to the Introductory Text and Item 11 of this COC.)
- Item 1.b: This revision corrects a grammatical typo by inserting a missing word ("that").
- Item 2:

- The first revision deletes the specific acreage of compensatory mitigation required. (See explanation for companion revisions to the Introductory Text of this COC.)
- The second revision identifies the species for which mitigation is required (desert tortoise).
- Item 5: These revisions correct terminology (“condition of certification,” not “license” or “Certification”)
- Item 7: These revisions correct the indentation and numbering of subparagraphs 7.b.i, 7.b.ii, 7.b.iii (not paragraphs 7.c, 7.d, 7.e).
- Item 8: This revision is necessary because the long-term endowment funds should be transferred contemporaneously with closing the transaction for acquisition of HM lands. There is no reason why the project owner should be required to transfer the long-term endowment funds *prior to* closing the transaction for acquisition of HM lands; typical practice is to transfer endowment funds to the endowment manager concurrently with closing the transaction for acquisition of conservation lands and conservation easements. If this requested revision is rejected, then the project owner could be required to transfer the long-term endowment funds prior to closing the transaction for acquisition of HM lands, which creates a possibility that the project owner could irrevocably transfer funds to an entity for a transaction that does not ultimately close; this creates substantial unnecessary financial risk for the project owner.
- Item 11.a: This revision is necessary to ensure that the Security amount is based on the actual estimated cost to complete the project’s compensatory mitigation requirement, which is to be calculated based on the actual acreage of the project’s final direct permanent and temporary loss of desert tortoise habitat. (See companion revisions to the Introductory Text and Item 1 of this COC.)
- Item 11.g.i: These revisions fix typos by identifying the correct species for which mitigation is required (desert tortoise, not Crotch’s bumble bee or western burrowing owl) and deleting an extraneous word (“OR”).
- Verification:
 - The first revision corrects a grammatical typo by inserting missing words (“has occurred”).
 - The second revision is necessary because the draft and final long-term management plans may not necessarily be available before construction if a Security is provided. Other provisions in this COC already ensure that the CPM will review and approve the long-term management plan (see Items 3.e, 4, 5, 7). If a Security is provided, it is not typical practice to require approval of these mitigation details before project construction. If the long-term management plan is required to be approved *before construction*, then the project owner could essentially be required to identify HM lands by that time; this undermines the purpose of allowing the project owner to provide Security and start construction without having completed all details needed for acquisition of the HM lands. If this revision is not accepted, this provision could result in substantial delay to the

start of construction (by requiring the project owner to identify HM lands before starting construction), which threatens the viability of the project.

COC BIO-21

- **Introductory Text:** These revisions allow for the compensatory mitigation acreage requirement to be calculated based on the actual acreage of the project’s final direct permanent and temporary loss of burrowing owl habitat (as approved by the CPM, in consultation with the USFWS, BLM, and CDFW). The ratios provided are consistent with those on page 5.2-132 of the Updated Staff Assessment. These requested revisions are necessary to resolve an internal inconsistency in the COC, in that (1) the COC identifies 4,100.2 acres of compensatory mitigation required, but (2) the COC states that “[t]he amount of mitigation required shall be calculated based on the project’s final direct permanent and temporary loss of burrowing owl habitat.” These revisions are requested because the project’s actual final direct permanent and temporary loss of burrowing owl habitat is not currently known with certainty and may be different from the amount reported in the Updated Staff Assessment (which is based on the current level of project design). For this reason, the COC should not identify a specific acreage of compensatory mitigation required. These requested revisions will ensure the mitigation is based on, and proportionate to, the project’s actual impacts.
- **Item 1:** This revision clarifies that the cost estimate is based on the impacts associated with the project’s current design, in recognition that the actual mitigation requirement will be re-calculated based on the project’s final impacts. (See companion revisions to the Introductory Text and Item 11 of this COC.)
- **Item 1.a:** This revision corrects a mathematical typo ($4,000 \times 4,100.2 = 16,400,800.00$).
- **Item 1.b:** This revision corrects a grammatical typo by inserting a missing word (“that”).
- **Items 1.d, 1.e, 1.f, 1.g:** These revisions correct apparent mistakes in the cost estimate calculations. The table below provides a side-by-side comparison of the cost estimate calculations for compensatory mitigation requirements for desert tortoise (COC BIO-16), burrowing owl (COC BIO-21), and state waters (COC BIO-26). Based on this table and the Applicant’s review of recent incidental take permits issued by CDFW Region 6 for similar projects, the Staff Assessment appears to contain errors in the cost estimates for burrowing owl compensatory mitigation: Rows D through G should all be shifted up one, and Row G should be \$75,000.

Cost Estimate Item	COC BIO-16 (Desert Tortoise)	COC BIO-21 (Burrowing Owl)	COC BIO-26 (State Waters)
a. Land acquisition costs for Habitat Mitigation lands	\$4,000/acre	\$4,000/acre	\$4,000/acre

Cost Estimate Item	COC BIO-16 (Desert Tortoise)	COC BIO-21 (Burrowing Owl)	COC BIO-26 (State Waters)
b. All other costs necessary to review and acquire the land in fee title and record a conservation easement	\$17,440	\$17,440	\$17,440
c. Start-up costs for Habitat Mitigation lands	\$2,000/acre	\$2,000/ac	\$2,000/acre
d. Interim management period funding	\$600/acre	\$2,000/acre [should be \$600/acre]	\$600/acre
e. Long-term management funding	\$3,100/acre	\$600/acre [should be \$3,100/acre]	\$3,100/acre
f. Related transaction fees	\$6,000	\$3,100/acre [should be \$6,000]	\$6,000
g. All costs associated with the CPM engaging an outside contractor to complete the mitigation tasks	\$75,000	\$6,000 [should be \$75,000]	\$75,000

- Item 2: This revision deletes the specific acreage of compensatory mitigation required. (See explanation for companion revisions to the Introductory Text of this COC.)
- Item 5: These revisions correct terminology (“condition of certification,” not “license” or “Certification”).
- Item 7: These revisions correct the indentation and numbering of subparagraphs 7.b.i, 7.b.ii, 7.b.iii (not paragraphs 7.c, 7.d, 7.e).
- Item 8: This revision is necessary because the long-term endowment funds should be transferred contemporaneously with closing the transaction for acquisition of HM lands. There is no reason why the project owner should be required to transfer the long-term endowment funds *prior to* closing the transaction for acquisition of HM lands; typical practice is to transfer endowment funds to the endowment manager concurrently with closing the transaction for acquisition of conservation lands and conservation easements. If this requested revision is rejected, then the project owner could be required to transfer the long-term endowment funds prior to closing the transaction for acquisition of HM lands, which creates a possibility that the project owner could irrevocably transfer funds to an entity for a transaction that does not ultimately close; this creates substantial unnecessary financial risk for the project owner.
- Item 9: This revision fixes a typo by identifying the correct species for which mitigation is required (burrowing owl, not desert tortoise).
- Item 11.a:

- The first revision corrects the amount of the cost estimate of the Security, consistent with the revisions to Item 1 of this COC.
- The second revision is necessary to ensure that the Security amount is based on the actual estimated cost to complete the project's compensatory mitigation requirement, which is to be calculated based on the actual acreage of the project's final direct permanent and temporary loss of burrowing owl habitat. (See companion revisions to the Introductory Text and Item 1 of this COC.)
- Item 11.g.i: These revisions fix typos by identifying the correct species for which mitigation is required (western burrowing owl, not Crotch's bumble bee) and deleting an extraneous word ("OR").
- Verification:
 - The first revision corrects a grammatical typo by inserting missing words ("has occurred").
 - The second revision is necessary because the draft and final long-term management plans may not necessarily be available before construction if a Security is provided. Other provisions in this COC already ensure that the CPM will review and approve the long-term management plan (see Items 3.e, 4, 5, 7). If a Security is provided, it is not typical practice to require approval of these mitigation details before project construction. If the long-term management plan is required to be approved *before construction*, then the project owner could essentially be required to identify HM lands by that time; this undermines the purpose of allowing the project owner to provide Security and start construction without having completed all details needed for acquisition of the HM lands. If this revision is not accepted, this provision could result in substantial delay to the start of construction (by requiring the project owner to identify HM lands before starting construction), which threatens the viability of the project.

COC BIO-26

- Introductory Text: These revisions allow for the compensatory mitigation acreage requirement to be calculated based on the actual acreage of the project's final direct permanent and temporary loss of state jurisdictional waters (as approved by the CPM, in consultation with the USFWS, BLM, and CDFW). The ratios provided are consistent with those on page 5.2-164 of the Updated Staff Assessment. These requested revisions are necessary to resolve an internal inconsistency in the COC, in that (1) the COC identifies 1,368.24 acres of compensatory mitigation required, but (2) the COC states that "[t]he amount of mitigation required shall be calculated based on the project's final direct permanent and temporary loss of state and CDFW jurisdictional waters." These revisions are requested because the project's actual final direct permanent and temporary loss of state jurisdictional waters is not currently known with certainty and may be different from the amount reported in the Updated Staff Assessment (which is based on the current level of project design). For this reason, the COC should not identify a specific acreage of

compensatory mitigation required. These requested revisions will ensure the mitigation is based on, and proportionate to, the project's actual impacts. These revisions also delete CDFW from the term "state and CDFW jurisdictional waters" because the reference to CDFW is extraneous and may be confusing.

- Item 1: This revision clarifies that the cost estimate is based on the impacts associated with the project's current design, in recognition that the actual mitigation requirement will be re-calculated based on the project's final impacts. (See companion revisions to the Introductory Text and Item 11 of this COC.)
- Item 1.b: This revision corrects a grammatical typo by inserting a missing word ("that").
- Item 2: This revision deletes the specific acreage of compensatory mitigation required. (See explanation for companion revisions to the Introductory Text of this COC.)
- Item 3.c: This revision fixes a typo by identifying the correct impact that is mitigated (state jurisdictional waters, not burrowing owl).
- Item 5: These revisions correct terminology ("condition of certification," not "license" or "Certification").
- Item 7: These revisions correct the indentation and numbering of subparagraphs 7.b.i, 7.b.ii, 7.b.iii (not paragraphs 7.c, 7.d, 7.e).
- Item 8: This revision is necessary because the long-term endowment funds should be transferred contemporaneously with closing the transaction for acquisition of HM lands. There is no reason why the project owner should be required to transfer the long-term endowment funds *prior to* closing the transaction for acquisition of HM lands; typical practice is to transfer endowment funds to the endowment manager concurrently with closing the transaction for acquisition of conservation lands and conservation easements. If this requested revision is rejected, then the project owner could be required to transfer the long-term endowment funds prior to closing the transaction for acquisition of HM lands, which creates a possibility that the project owner could irrevocably transfer funds to an entity for a transaction that does not ultimately close; this creates substantial unnecessary financial risk for the project owner.
- Item 9: This revision fixes a typo by identifying the correct resource for which mitigation is required (state jurisdictional waters, not desert tortoise).
- Item 11.a: This revision is necessary to ensure that the Security amount is based on the actual estimated cost to complete the project's compensatory mitigation requirement, which is to be calculated based on the actual acreage of the project's final direct permanent and temporary loss of state jurisdictional waters. (See companion revisions to the Introductory Text and Item 1 of this COC.)
- Item 11.g.i: These revisions fix typos by identifying the correct resource for which mitigation is required (state jurisdictional waters, not Crotch's bumble bee or western burrowing owl) and deleting an extraneous word ("OR").
- Verification: This revision is necessary because the draft and final long-term management plans may not necessarily be available before construction if a Security is provided. Other provisions in this COC already ensure that the CPM will review and approve the long-term management plan (see Items 3.e, 4, 5, 7). If a Security is provided, it is not typical

practice to require approval of mitigation details before project construction. If the long-term management plan is required to be approved *before construction*, then the project owner could essentially be required to identify HM lands by that time; this undermines the purpose of allowing the project owner to provide Security and start construction without having acquired the HM lands. If this revision is not accepted, this provision could result in substantial delay to the start of construction (by requiring the project owner to identify HM lands before starting construction), which threatens the viability of the project.

COC WORKER SAFETY-10

- Paragraph c: This revision corrects a cross-reference to paragraph (d).
- Paragraph e: This revision adds a paragraph to specify that funding to SBCFPD during project operations is required only if the project is subject to a property tax exclusion. The existing language of this COC does not address this point: Paragraph (d) requires funding until the solar property tax exclusion sunsets, but does *not* expressly address whether funding can be required *after* the solar property tax exclusion sunsets. Without this revision, it is possible that an arbiter interpreting this COC could require the project owner to provide funding to the SBCFPD during project operations even if the project is no longer subject to any property tax exclusion, resulting in the project owner paying more than its fair share in mitigation. Consistent with CEC staff's response to comment 1-22 on page 2-16 of the Updated Staff Assessment, this revision refers to any property tax exclusion, not just the active solar energy system property tax exclusion under California Revenue and Taxation Code section 73.
- Verification: This revision adds a parenthetical clause to specify that funding to SBCFPD during project operations is required only for as long as the project is subject to a property tax exclusion, if at all. This is consistent with the revision to add paragraph (e) to this COC.

COC WATER-5

- The first revision provides the full citation for the San Bernardino County Desert Groundwater Management Ordinance (San Bernardino County Code §§ 33.06551–33.06557). Section 33.06551 sets forth the purposes of the ordinance and does not contain any substantive requirements.
- The second revision specifies that no permit from SBCEHS is required. Without this revision, this COC's requirement to comply with the San Bernardino County Desert Groundwater Management Ordinance could be interpreted as requiring the project owner to obtain a permit from SBCEHS under that ordinance. Such an interpretation would be inconsistent with Public Resources Code section 25545.1(b)(1), which provides that the CEC's certification is in lieu of any permit required by a local agency.

COC WATER-7

- The first revision specifies that no permit from SBCEHS is required. Without this revision, this COC's requirement to comply with the San Bernardino County Desert Groundwater Management Ordinance could be interpreted as requiring the project owner to obtain a permit from SBCEHS under that ordinance. Such an interpretation would be inconsistent with Public Resources Code section 25545.1(b)(1), which provides that the CEC's certification is in lieu of any permit required by a local agency.
- The second revision specifies that the project owner is required to file an annual Notice of Extraction and Diversion of Water only during project construction. This revision is consistent with the second-to-last sentence of the COC, which requires filing this notice only during project construction. Filing this notice during project operations should not be required because this COC limits groundwater production during project operations to 7.5 AFY, which is below the threshold for filing this notice.

Thank you for your consideration of these requests.