



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
(707) 428-2002  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

February 13, 2020

**FEB 13 2020**

## STATE CLEARINGHOUSE

East County Board of Zoning Adjustments  
Attention: Mr. Andrew Young, Project Planner  
244 W. Winton Avenue, Room 111  
Hayward, CA 94544  
[andrew.young@acgov.org](mailto:andrew.young@acgov.org)

Subject: Sand Hill Wind Repowering Project, Final Subsequent Environmental Impact Report, SCH #2010082063, Alameda County

Dear Board Members:

The California Department of Fish and Wildlife (CDFW) received a Notice of Public Hearing and Final Subsequent Environmental Impact Report (SEIR) for the Sand Hill Wind Repowering Project, PLN2017-00201 (Project) from the Alameda County Planning Department (County), as the Lead Agency, pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.; hereafter CEQA; Cal. Code Regs., § 15000 et seq.; hereafter CEQA Guidelines). The Project is tiered under the Altamont Pass Wind Resource Area (APWRA) Repowering Program Environmental Impact Report (PEIR; SCH #2010082063) certified by the East County Board of Zoning Adjustments on November 12, 2014. The Project is an application for a Conditional Use Permit (CUP) to repower (i.e., replace) an estimated 671 existing or previously existing wind energy turbine sites with up to 40 new turbines. The Project is proposed on 15 nearly contiguous parcels extending over approximately 2,600 acres within the northeasterly quadrant of the Alameda County portion of the Altamont Pass Wind Resource Area (APWRA).

CDFW provided comments on the draft SEIR for the Project in a letter dated October 3, 2019, as well as comments on the Notice of Preparation for the SEIR in a letter dated February 12, 2019. CDFW also provided comments, dated October 25, 2018, on the Notice of Public Hearing and Staff Report from the County for the CUP application. CDFW is also a member of the Alameda County Wind Repowering/Avian Protection Technical Advisory Committee (TAC) and has participated in several meetings hosted by the County to discuss the proposed Project.

CDFW is providing comments and recommendations on the Final SEIR regarding those activities involved in the Project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish and Game Code, § 1802), and/or which are required to be approved by CDFW (CEQA Guidelines, §§ 15086, 15096 and 15204). We respectfully ask that these comments be considered at the public hearing scheduled to be held on February 13, 2020.

### CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact

fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Permit, a Lake and Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

CDFW received a CESA Incidental Take Permit (ITP) application from the Project proponent, S Power, on August 1, 2019 (revised November 1, 2019) for take authorization of California tiger salamander, Swainson's hawk, tricolored blackbird and San Joaquin kit fox. CDFW also received an LSA Notification from the Project proponent; the Notification was deemed incomplete on May 10, 2019.

CDFW may not execute the final ITP or LSA Agreement until it has complied with CEQA as a Responsible Agency.

## **IMPACTS AND MITIGATION MEASURES**

As indicated in our comment letter dated October 3, 2019, based on our records, a Swainson's hawk nest has been documented less than 1,000 feet from the Project area boundary (California Natural Diversity Database 2019). A Swainson's hawk nest has also recently been documented approximately 450 feet south of Christensen Road in a *Eucalyptus* spp. grove which would be approximately 1,000 feet from the northwestern Project area boundary. Historically, Swainson's hawk nested north of Christensen Road within the CDFW-approved Mountain House Conservation Bank which supports both Swainson's hawk and burrowing owl habitat. CDFW staff also observed Swainson's hawks flying over the Project area in July 2019.

In our comment letter on the draft SEIR, we recommended conducting pre-construction surveys for Swainson's hawk by a qualified raptor biologist with survey experience and conducted in a manner that maximizes the potential to observe the adult Swainson's hawks and the nest/chicks via visual and audible cues. We recommended that surveys be conducted within all potential nest trees within a five-mile radius of the Project based on an appropriate survey methodology developed for renewable energy projects (*Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California* (California Energy Commission (CEC) and CDFW, June 2, 2010).

The response to comments (Appendix E1) states that the County considers a 5-mile survey area unnecessary in that this requirement "would not inform any measures to avoid affecting nesting birds, particularly in light of the extensive avian monitoring data obtained for the Altamont Pass Wind resource Area (APWRA) over the past decade". The updated PEIR Mitigation Measure BIO-8a includes a survey radius of one mile for raptors. However, more extensive surveys are necessary to determine the number of Swainson's hawk pairs that could be established in the area and adversely affected by the Project either from loss of foraging habitat or collisions from operating turbines.

Swainson's hawk, like many raptors, forage over long distances which can vary depending on the quantity and quality of foraging habitat and prey availability. The CDFW *Staff Report*

*regarding Mitigation for Impacts to Swainson's hawk (Buteo swainsoni) in the Central Valley of California* (available at <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>) states that the standard flight distance between active and successful nest sites and suitable foraging habitat is a 10-mile radius, as documented in telemetry studies (Estep 1989, Babcock 1993). As stated in the CEC and CDFW guidance document: "[I]mpacts to suitable habitat or individual birds within a five-mile radius of an active nest will be considered significant and to have the potential to "take" Swainson's hawks as that term is defined in §86 of the Fish and Game Code". Please be advised that the term "active" refers to a nest site that has been used at least once during the past five years. The survey protocol also provides the following guidance: "A qualified raptor biologist with Swainson's hawk survey experience, approved by CDFW and the appropriate lead agency, should conduct surveys in a manner that maximizes the potential to observe the adult Swainson's hawks and the nest/chicks via visual and audible cues within a five-mile radius of the project. All potential nest trees within the five-mile radius shall be surveyed for presence of nests". For the number and timing of surveys to detect active nests, CDFW recommends following the guidance in the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*, also available on our website at the link above.

As explained in our comment letter on the draft SEIR, CDFW considers the overall risk of take to Swainson's hawk as high considering both the recent and historical nesting activity and recent observations of nesting adults near the Project area. Based on our records, only two Swainson's hawk pairs have recently nested in Alameda County, one of which is the pair that nested just to the west of the northern portion of the Project area. While Swainson's hawk likely use annual grassland throughout the Project area for foraging, the highest quality foraging grounds are located in agricultural fields to the east of the northern portion of the Project area. Several turbines, most notably turbines #29 to 31, are within the direct flightpath of foraging birds accessing these foraging grounds to the east. Furthermore, all turbine layouts presented in the SEIR show the largest turbines (3.6 or 3.8 Mega Watt) in this area.

CDFW is therefore concerned that turbines in close proximity to a known Swainson's hawk nesting territory and other suitable habitat greatly increases the potential of mortality due to turbine collisions and may prevent future expansion of the Swainson's hawk population in Alameda County.

Of great concern is the high and unsustainable mortality rate of golden eagles as evidenced by the last several years of fatality monitoring data at repowered projects in the APWRA. At the Sand Hill Project, four golden eagle nests have been documented within or near the Project area, with two of these nests located in the northern portion of the Project area. Golden eagles are designated as Fully Protected under Fish and Game Code section 3511 which states that a fully protected bird cannot be taken at any time. The golden eagle fatality rate has been discussed at several meetings with the County, Project proponent, and state and federal agencies. For the entire 450 MW repowering program in the APWRA, the SEIR estimates the golden eagle take to be between 22 and 27 golden eagles per year; however, approximately 55-65 golden eagles per year are estimated being killed in the area, and the SEIR now states that the repowering program will likely exceed the 450 MW capacity. Furthermore, based on recent

correspondence with the U.S. Fish and Wildlife Service (USFWS), even with the reduced 109.5 MW alternative, the Sand Hill Project is expected to result in 24 eagle fatalities per year.

CDFW will continue to work with the Project proponent during the ITP permitting process on feasible and effective minimization and mitigation measures for all ITP covered species. We will also continue to coordinate with the USFWS and as members of the TAC to further develop measures to reduce impacts to golden eagles and other species. However, we would like to state that more stringent measures than those included in the SEIR for the Sand Hill Project need to be developed in order to significantly reduce impacts to golden eagle. We do not believe that all feasible alternatives, including the Smaller Turbine – Pre-Micro-Sited Layout alternative, have been presented in the SEIR. For example, CDFW received a design layout proposal from the Project proponent on December 13, 2019; however, this proposal was not included in the Final SEIR. This proposal included removal of six turbines from the Project footprint as well as curtailment and additional measures to minimize impacts to golden eagle and Swainson's hawk.

While the measures outlined in the December 13, 2019 Project design layout provide some benefits to Swainson's hawk and golden eagle, additional restrictions are needed. We strongly recommend turbine removal within 0.5 miles of known golden eagle and Swainson's hawk nests and turbine curtailment during daylight hours within at least one mile of active nests during the eagle and hawk nesting seasons. The two micro-siting analyses prepared by raptor experts targeted mostly the four focal species described in the PEIR, namely, golden eagle, red-tailed hawk, burrowing owl and American kestrel. During a recent call with the Project proponent, CDFW requested an evaluation of the applicability of one of the micro-siting analyses to Swainson's hawk. Therefore, based on results of these micro-siting analyses, other turbines designated as either high-risk or moderate-risk should be further considered for removal or curtailment during the eagle and hawk nesting seasons.

## **CONCLUSION**

CDFW appreciates the opportunity to coordinate with the County on this Project. CDFW's principal concerns are:

- The lack of an adequate survey area and methodology to detect presence of Swainson's hawks nest sites prior to construction and operation of the turbines. CDFW recommends a 5-mile survey area and adherence to survey protocols specifically developed for Swainson's hawk;
- Unsustainable take of golden eagles in the APWRA and expected increased take of golden eagles resulting from operation of the Sand Hill Project, especially given the high eagle use of this area and close proximity of several eagle nests to the Project area.

In addition, we would like to further discuss measures to avoid or reduce impacts to other avian species not mentioned above as well as bats which also show high fatality in the APWRA. For these reasons, CDFW respectfully requests that the County postpone certification of the SEIR until these critical issues can be addressed properly.

Mr. Andrew Young  
East County Board of Zoning Adjustments  
February 13, 2020  
Page 5

Questions regarding this letter or further coordination should be directed to Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541 or [Brenda.Blinn@wildlife.ca.gov](mailto:Brenda.Blinn@wildlife.ca.gov); or Mr. Craig Weightman, Environmental Program Manager, at (707) 944-5577 or [Craig.Weightman@wildlife.ca.gov](mailto:Craig.Weightman@wildlife.ca.gov).

Sincerely,



Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse  
Sandra Rivera, Alameda County Planning Department – [sandra.rivera@acgov.org](mailto:sandra.rivera@acgov.org)  
Heather Beeler, U.S. Fish and Wildlife Service – [Heather.Beeler@fws.gov](mailto:Heather.Beeler@fws.gov)  
Craig Weightman, CDFW Bay Delta Region  
Brenda Blinn, CDFW Bay Delta Region  
Marcia Grefsrud, CDFW Bay Delta Region  
Lt. Clint Garrett, CDFW Law Enforcement Division