



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



August 19, 2024

Jeremy Shaw
Fresno County
Department of Public Works and Planning
2220 Tulare Street, Sixth Floor
Fresno, California 93721
jshaw@FresnoCountyCA.gov
(559) 600-4207

Subject: **Sonrisa Solar Project (Project)**
Draft Environmental Impact Report (DEIR)
State Clearinghouse No. 2020110008

Dear Jeremy Shaw:

The California Department of Fish and Wildlife (CDFW) received a DEIR from Fresno County as Lead Agency, for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

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

¹ 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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projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs, and nests include 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for the Project.

As a responsible agency, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

PROJECT DESCRIPTION SUMMARY

Proponent: EDP Renewables CA Solar Park VI, LLC

Objectives: The Project proposes to construct, operate, and decommission a photovoltaic (PV) solar electricity generating facility on approximately 2,000 acres of land that would produce up to 200 megawatts (MW) of alternating current (AC) energy. The proposed Project would also include an energy storage system with 184 MWac battery storage capacity and a gen-tie line to the point of interconnection with the existing Pacific Gas and Electric (PG&E) Tranquillity Switching Station. Other necessary infrastructure would include a Project substation, permanent operation and maintenance building supported by a septic system and leach field, Supervisory Control and Data

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Acquisition System, meteorological data system, groundwater well, telecommunications infrastructure, access roads, parking, security fencing, lighting, and signage.

Location: The Project site is located almost entirely within the lands owned by Westlands Water District (WWD). The Project site is generally bounded by State Route 33 (SR 33, also known as South Derrick Avenue) to the west, West Manning Avenue to the south, South Merced Avenue to the east, and West Adams Avenue to the north. West South Avenue bisects the site from east to west. The nearest communities to the Project site include the unincorporated community of Tranquillity, approximately 7 miles to the east; the City of Mendota, approximately 8 miles to the north; and the City of San Joaquin, approximately 9 miles to the east.

Timeframe: Undetermined, but construction of the Project would occur in multiple phases and require approximately 12-14 months to complete.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Fresno County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, indirect, and cumulative impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document.

The Project site consists primarily of non-irrigated and regularly disked agricultural fields or fallowed lands surrounded by similarly disturbed lands utilized for agriculture or solar energy facilities. CDFW would like to note that the Project is sited within an area of relatively poor-quality habitat for fish and wildlife (biological) resources, significantly reducing the potential for individual Project and cumulative impacts to special-status species. As such, CDFW has taken into consideration the siting efforts and overall lower quality of habitat for biological resources during the preparation of this comment letter.

Currently, the DEIR acknowledges that the Project area is within the geographic range of several special-status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for a number of special-status animal species. These species include, but are not limited to, the federally endangered and State threatened San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened Swainson's hawk (*Buteo swainsoni*), and the State species of special concern burrowing owl (*Athene cunicularia*).

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San Joaquin Kit Fox (SJKF)

Mitigation Measure 4.5-1 mitigates for potential impacts to SJKF and includes measures for pre-construction surveys and avoidance. Additionally, Mitigation Measure 4.5-1 states that, "If avoidance of the potential dens or burrows is not feasible, the following measures shall be implemented to avoid potential adverse effects to the San Joaquin kit fox and/or burrowing owl:

- If the qualified biologist determines that potential dens or burrows are inactive, the biologist shall excavate these dens by hand with a shovel to prevent foxes or owls from using them during construction.
- If the qualified biologist determines that a potential non-natal kit fox den may be active, an on-site passive relocation program shall be implemented with prior approval from the USFWS. This program shall consist of excluding San Joaquin kit foxes from occupied burrows by installation of one-way doors at burrow entrances, monitoring of the burrow for 72 hours to confirm usage has been discontinued, and excavation and collapse of the burrow to prevent reoccupation. After the qualified biologist determines that the San Joaquin kit foxes have stopped using active dens within the Project boundary, the dens shall be hand excavated, as stated above for inactive dens. A similar exclusion methodology shall be used for burrowing owl exclusion, as described in the CDFW (2012) staff report on burrowing owl."

CDFW would like to note that implementation of this portion of Mitigation Measure 4.5-1, which allows for the eviction of occupied SJKF dens via installation of one-way doors, would directly result in the unauthorized take of SJKF and would be a direct violation of CESA. As such, in the event an active SJKF den is documented during pre-construction or construction activities, CDFW strongly recommends avoidance of these dens following the USFWS' "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" document (USFWS 2011). If SJKF are detected within the Project Site and avoidance is not feasible, consultation with CDFW is warranted to discuss how to avoid take or, if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) pursuant to Fish and Game Code section 2081, subdivision (b), prior to initiating or resuming (whichever applies) ground disturbing activities.

Swainson's hawk (SWHA)

Mitigation Measure 4.5-3 states that, "If an active Swainson's hawk nest is discovered during the nesting season (March 1 through September 15) within 0.5 mile of active construction, a qualified biologist should complete an assessment of the potential for current construction activities to impact the nest. The assessment would consider the

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type of construction activities (e.g., noise levels and duration), the location of construction relative to the nest and pre-existing disturbance levels (e.g., construction activities in historically agricultural land versus activities in non-agricultural land), the visibility of construction activities from the nest location (e.g., topography or vegetation that could block line-of-sight to the nest), the number of construction personnel required to perform activities within the setback, and other existing disturbances in the area that are not related to construction activities of this project. Based on this assessment, the biologist will determine if construction activities can proceed and the level of nest monitoring required. When conducting the assessment, the biologist will consider the following levels of construction activity, with higher levels of activity requiring greater caution in determining setbacks:

- Light construction activity such as fence installation and limited vehicle access. Noise levels generated by these construction activities would likely be similar to existing ambient noise levels in closer proximity to the occupied nests.
- Moderate and/or isolated construction activity such as grading and construction of substation, substation-access road, inverter skids, and manual installation of solar panels. Noise levels generated by these construction activities would likely be similar to existing ambient noise levels beyond a moderate distance from the occupied nests.
- Heavy construction activity across a large area of the Project and/or using louder equipment such as pile drivers, concrete saws, or jackhammers. Noise levels for this type of activity will depend on location of the activities relative to the nest and allowing these activities within the 0.5-mile setback would require coordination with CDFW.

In the event the assessment determines that construction activities could occur closer than 0.5 miles to an active nest, in no event would construction activities occur within 500 feet of an active nest without approval from CDFW. Full-time monitoring to evaluate the effects of construction activities on nesting Swainson's hawks would be required where activity occurs closer than 0.5 miles. The qualified biologist shall have the authority to stop work if it is determined that project construction is disturbing nesting activities. These buffers may need to increase depending on the sensitivity of the nesting Swainson's hawk to disturbances and at the discretion of the qualified biologist. No avoidance would be needed if construction occurs near a known Swainson's hawk nest outside of the Swainson's hawk nesting season. In the event take cannot be avoided, the proponent shall confer with CDFW on the need for an incidental take permit and will comply with any specific-specific minimization and avoidance measures identified in the issued incidental take permit prior to the removal of active nest trees."

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CDFW concurs with the implementation of a no-disturbance buffer for active nests, but recommends that in the event an active SWHA nest is detected, and a 0.5-mile no-disturbance buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If it is determined during this consultation that take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

CDFW would also like to note that the DEIR did not include a measure to compensate for the loss of SWHA foraging habitat. As such, CDFW recommends the following:

Recommended Mitigation Measure 1: SWHA Foraging Habitat Mitigation

CDFW recommends compensation for the loss of SWHA foraging habitat as described in CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" (CDFG 1994) to reduce impacts to foraging habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

- For projects within 1 mile of an active nest tree, a minimum of 1 acre of habitat management (HM) land for each acre of development is advised.

For projects within 5 miles of an active nest but greater than 1 mile, a minimum of $\frac{3}{4}$ acre of HM land for each acre of development is advised.

- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of $\frac{1}{2}$ acre of HM land for each acre of development is advised.

Burrowing owl (BUOW)

Mitigation Measure 4.5-1 mitigates for potential impacts to BUOW and includes measures for preconstruction surveys and avoidance. Additionally, Mitigation Measure 4.5-1 states that, "If avoidance of the potential dens or burrows is not feasible, the following measures shall be implemented to avoid potential adverse effects to the San Joaquin kit fox and/or burrowing owl:

- If the qualified biologist determines that potential dens or burrows are inactive, the biologist shall excavate these dens by hand with a shovel to prevent foxes or owls from using them during construction.
- If the qualified biologist determines that a potential non-natal kit fox den may be active, an on-site passive relocation program shall be implemented with prior

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approval from the USFWS. This program shall consist of excluding San Joaquin kit foxes from occupied burrows by installation of one-way doors at burrow entrances, monitoring of the burrow for 72 hours to confirm usage has been discontinued, and excavation and collapse of the burrow to prevent reoccupation. After the qualified biologist determines that the San Joaquin kit foxes have stopped using active dens within the Project boundary, the dens shall be hand excavated, as stated above for inactive dens. A similar exclusion methodology shall be used for burrowing owl exclusion, as described in the CDFW (2012) staff report on burrowing owl.”

CDFW concurs with this measure but recommends in the event an active BUOW den is documented on the Project site and avoidance following the no-disturbance buffer recommendations outlined in the “Staff Report on Burrowing Owl Mitigation” (CDFG 2012) guidance document is not feasible, consultation with CDFW is recommended for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation.

Editorial Comments and/or Suggestions

Nesting Birds

CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct a pre-construction survey for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing the change.

If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-

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listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is a compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Federally Listed Species: CDFW also recommends consulting with the USFWS on potential impacts to Federally listed species, including, but not limited to, San Joaquin kit fox (*Vulpes macrotis mutica*). Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

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. €). 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 found at the following link: <https://nrm.dfg.ca.gov/fieldSurvey/default.aspx>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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 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).

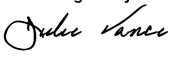
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CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist Fresno County in identifying and mitigating Project impacts on biological resources.

If you have any questions, please contact Ren Cotter, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 767-0956 or by electronic mail at Ren.Cotter@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

ec: State Clearinghouse
Office of Planning and Research
State.clearinghouse@opr.ca.gov

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REFERENCES

- California Department of Fish and Game. 1994. Staff report regarding mitigation for impacts to Swainson's hawks (*Buteo Swainsoni*) in the Central Valley of California. Sacramento, California, USA.
- California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. California Department of Fish and Game, Sacramento, California, USA.
- U. S. Fish and Wildlife Service. 2011. Standard Recommendations for the Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance. U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, Sacramento, California.

Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

PROJECT: SONRISA SOLAR PARK

| RECOMMENDED MITIGATION MEASURE | STATUS/DATE/INITIALS |
|---|-----------------------------|
| <i>Before Disturbing Soil or Vegetation</i> | |
| Swainson's Hawk | |
| Recommended Mitigation Measure 1: SWHA Foraging Habitat Mitigation | |