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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



December 28, 2020

Governor's Office of Planning & Research

**Dec 29 2020**

## **STATE CLEARINGHOUSE**

Mr. Joseph W. Lawlor Jr, AICP  
Contra Costa County  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
[joseph.lawlor@dcd.cccounty.us](mailto:joseph.lawlor@dcd.cccounty.us)

Subject: Renewable Properties, LLC Byron Solar Project, County Files #LP20-2028 and #LP20-2029, Mitigated Negative Declaration, SCH No. 2020110282, Contra Costa County

Dear Mr. Lawlor:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from Contra Costa County (County) for the Renewable Properties, LLC Byron Solar Project, County Files #LP20-2028 and #LP20-2029 (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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, we appreciate 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 a Trustee Agency with responsibility under CEQA §15386 for commenting on projects that could impact fish, plant or wildlife resources. CDFW is also considered a Responsible Agency if a project requires discretionary approval, such permits issued under the California Endangered Species Act (CESA) and the Native Plant Protection Act, Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

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<sup>1</sup> 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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## **REGULATORY REQUIREMENTS**

### *California Endangered Species Act*

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA, either during construction or over the life of the project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with Fish and Game Code section 2080.

### *Lake and Streambed Alteration*

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** RPCA Solar 2, LLC and RPCA Solar 3, LLC

**Location:** The Project is located on two parcels in Byron, Contra Costa County: the Western Site, a 6.5-acre parcel located at 5525 Hope Way, and the Eastern Site, a 35-acre parcel located northeast of the Byron Highway and Rankin Road Intersection. The sites are identified by Assessor’s Parcel Numbers (APN) 002-210-019 and 002-210-025, respectively.

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**Objective:** The Project consists of approval of land use permits for two adjacent commercial solar facilities. One solar facility will be located within a 6.5-acre project area of a 10-acre parcel (APN 002-210-019). The second facility will be located within a 35-acre project area of a 126.48-acre parcel (APN 002-210-025). The Project will interconnect to Pacific Gas and Electric Company's (PG&E's) pre-existing electrical distribution system located on each site.

## **COMMENTS AND RECOMMENDATIONS**

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

### **Mitigation for Impacts to Wildlife and Habitat**

Project baseline at both sites is fallow pasture and undeveloped annual grasslands. The construction of solar facilities will result in significant impacts to baseline conditions, including: the installation of panels, shading from panels, increased disturbance due to construction and maintenance of the panels, changes in water usage and presence at the site (panel washing), and limitations to wildlife movement due to fencing. These impacts are considered permanent, as the project site will not return to its baseline condition after the Project has commenced. The MND identifies the potential for multiple special-status species to occur within or adjacent to the Project site, including, but not limited to: California tiger salamander, Swainson's hawk, burrowing owl, and San Joaquin kit fox. CDFW offers the following comments and recommendations to assist the County in providing quantifiable and enforceable mitigation measures and conditions for Project approval.

#### *Swainson's hawk*

The MND determined that there is the potential for Swainson's hawk to be present within and adjacent to the Project area. CDFW recommends that prior to the initiation of construction activities, the Project proponent should conduct surveys for Swainson's hawk in accordance with the Swainson's Hawk Technical Advisory Committee's (TAC) *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (2000), available on CDFW's webpage at <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>. Survey methods should be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys should be conducted: 1) within a minimum 0.25-mile radius of the Project area or a larger area if necessary to identify

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potentially impacted active nests, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys should occur annually for the duration of the Project. The qualified biologist should have a minimum of two years of experience implementing the TAC survey methodology. If an active nest is identified, a 0.25-mile buffer should be maintained around the nest until the young fledge. If take of Swainson's hawk cannot be avoided, the Project proponent should be required to obtain a CESA ITP as a condition of Project approval.

If Swainson's hawk activity (foraging, not just nests) is identified on or near the Project site, the Project proponent should mitigate for the permanent loss of foraging habitat at a minimum of a 1:1 mitigation ratio (mitigation: loss). Mitigation lands should be protected in perpetuity under a conservation easement and be managed in perpetuity through an endowment with an appointed land manager. The easement should be held by a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended. As the state's trustee for fish and wildlife resources, CDFW should be named as a third-party beneficiary under the conservation easement.

#### *Western Burrowing Owl*

Western burrowing owl is designated as a California Bird Species of Special Concern. The MND determined that there is potential for burrowing owls to be present within and adjacent to the Project areas. CDFW recommends that surveys be conducted following the methodology described in Appendix D: Breeding and Non-breeding Season Surveys of the CDFW Staff Report on Burrowing Owl Mitigation (Staff Report), which is available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843>.

Burrowing owl surveys should be conducted by a qualified CDFW-approved biologist. In accordance with the Staff Report, a minimum of four survey visits should be conducted within 500 feet of the Project area during the owl breeding season which is typically between February 1 and August 31. A minimum of three survey visits, at least three weeks apart, should be conducted during the peak nesting period, which is between April 15 and July 15, with at least one visit after June 15. Pre-construction surveys should be conducted no-less-than 14 days prior to the start of construction activities with a final survey conducted within 24 hours prior to ground disturbance.

Please be advised that CDFW does not consider exclusion of burrowing owls or "passive relocation" as a "take" avoidance, minimization or mitigation method, and considers exclusion as a significant impact. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of evicted or excluded owls is unknown. All possible avoidance and minimization

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measures should be considered before temporary or permanent exclusion and closure of burrows is implemented in order to avoid “take”.

CDFW recommends that the County incorporate and implement measures to avoid or minimize the loss of burrowing owl nesting and/or foraging habitat. To offset permanent loss of foraging habitat, CDFW recommends that the Project proponent should be required to purchase and protect in perpetuity compensatory mitigation lands at a minimum of a 1:1 mitigation ratio (mitigation: loss) as a condition of Project approval. If active burrows or winter roosts are found on-site and take cannot be avoided, the mitigation ratio should be increased to a minimum of 3:1 (mitigation: loss). The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of evicted or excluded owls is unknown. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented in order to avoid “take”.

#### *San Joaquin Kit Fox*

The MND determined there is the potential for San Joaquin kit fox to be present on or adjacent to the Project areas. *Mitigation Measure Biology 7* prescribes pre-construction surveys in accordance with the U.S. Fish and Wildlife Service-approved protocols for San Joaquin kit fox. If San Joaquin kit fox, suitable burrows, or dens are detected in surveys, CDFW recommends that the County, as the Lead Agency, require the Project proponent to apply for an ITP for San Joaquin kit fox as a condition of Project approval.

#### *California Tiger Salamander*

The Project sites are located within dispersal distance of known and potential California tiger salamander breeding ponds. California tiger salamander is both federally listed and state listed as threatened. *Mitigation Measure Biology 8* requires the and excavation of small mammal burrows that will be impacted by ground disturbing activities and the installation of exclusion fencing along the boundary of the entire Project site if Project activities cannot be completed within the dry season. Please be advised that excavating burrows and installing fencing around the Project site could be a form of “take” if California tiger salamander are present. Any action that could cause take of California tiger salamander (such as trapping within an exclusion fence) must be authorized under appropriate federal and state permits.

Due to the potential presence of this listed species and the potential for Project-related take, including relocation out of harm’s way, CDFW advises that the Project proponent obtain a CESA Permit (pursuant to Fish and Game Code Section 2080 et seq.) in advance of Project implementation. Issuance of a CESA Permit is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and fully describe a mitigation, monitoring and reporting program. If the

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proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>. CDFW recommends that the County, as the Lead Agency, require the Project proponent to apply for an ITP for California tiger salamander as a condition of Project approval.

### **Habitat Loss**

The portions of the Project footprint that will impact any unimproved lands (i.e., not currently hardscaped), while not ideal, does provide some habitat value for the special-status species identified above regardless of current land use practices. For example, unimproved areas are known to be used as wildlife corridors on the landscape. The permanent impacts and reduction in value of these habitats can be considered a significant impact. To reduce these impacts to a level of less-than-significant, the Project proponent should be required to purchase and protect in perpetuity compensatory mitigation lands at a minimum of a 2:1 mitigation ratio (mitigation: loss) as a condition of Project approval for loss of unimproved habitat/lands. These mitigation lands should be protected in perpetuity under a conservation easement and be managed in perpetuity through an endowment with an appointed land manager. The easement should be held by a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended. As the state's trustee for fish and wildlife resources, CDFW should be named as a third-party beneficiary under the conservation easement.

### **ENVIRONMENTAL DATA**

CEQA requires that information developed in draft environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]. 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, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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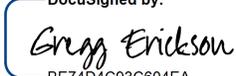
## CONCLUSION

CDFW appreciates the opportunity to comment on the IS/MND to assist the County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Jennifer Rippert, Environmental Scientist, at (707) 428-2069 or [Jennifer.Rippert@wildlife.ca.gov](mailto:Jennifer.Rippert@wildlife.ca.gov); or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579 or [Melissa.Farinha@wildlife.ca.gov](mailto:Melissa.Farinha@wildlife.ca.gov).

Sincerely,

DocuSigned by:



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Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse