



DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
(559) 243-4005  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

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



Governor's Office of Planning & Research

May 21, 2021

**May 21 2021**

## STATE CLEARINGHOUSE

Chuck Kinney  
Kings County Community Development Agency  
1400 W. Lacey Blvd  
Hanford, California 93230

**Subject: Grape Solar Project (Project)**  
**Mitigated Negative Declaration (MND)**  
**SCH No.: 2021030459**

Dear Mr. Kinney:

The California Department of Fish and Wildlife (CDFW) received an MND from the Kings County Community Development Agency for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup> The MND tiers off the Westlands Solar Park (WSP) Master Plan Program Environmental Impact Report (PEIR), SCH No. 2013031043, as provided under CEQA Guidelines Section 15168.

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 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

---

<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.

Chuck Kinney  
Kings County Community Development Agency  
May 21, 2021  
Page 2

purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on 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 may be required.

**Fully Protected Species:** CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. CDFW prohibits and cannot authorize take of any fully protected species.

**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, sections 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).

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Westlands Grape LLC

**Objective:** The Grape Solar Project by Westlands Grape LLC (Project Proponent), located within the WSP Master Plan, is a proposed photovoltaic solar facility and energy storage system capable of producing up to a 250-megawatt (MW) solar generating station along with a 230 kV substation to be constructed over a 14-month period that will occupy 1,759 acres. The proposed project also includes a 230 kV transmission line (Gen-Tie Line) to convey the power generated by the Project to the Point of Interconnection (POI) with the PG&E system at the Gates Substation. The Gen-Tie Line will follow the 25th Avenue alignment south for 1.0 mile to Nevada Avenue where it will turn west and extend an additional 6.2 miles to the Fresno County line. The Fresno County portion of the Gen-Tie Line is the subject of a separate CUP application filed with Fresno County.

Chuck Kinney  
Kings County Community Development Agency  
May 21, 2021  
Page 3

**Location:** The 1,759-acre Grape Solar Project site is located on the north side of Nevada Avenue, approximately one-half mile west of SR-41. The southern site boundary fronts onto Nevada Avenue for a distance of two miles, and the 25th Avenue alignment bisects the site from north to south. Assessor's Parcel Numbers: 026-320-010, -011, -021, -022, 023, -024, - 025, -026, -027, -028; and 026-330-032, -033, -034, -035, -036, -037, -055 and -057.

Gen-Tie Line – The CUP application includes a 230-kV Gen-Tie Line extending from the Grape Solar Project site westward along Nevada Avenue for a distance of 6.2 miles to the Fresno County Line.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations to assist the city of Kings County Community Development Agency 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 CEQA document prepared for this Project.

There are special-status species that have been documented in the Project vicinity and may be present at individual Project sites in the Project area. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes.

CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the State threatened Swainson's Hawk (*Buteo swainsonii*) and Tricolored Blackbird (*Agelaius tricolor*), and the State species of special concern burrowing owl (*Athene cunicularia*). In order to adequately assess any potential impact to biological resources, focused biological surveys should be conducted by a qualified wildlife biologist during the appropriate survey period(s) in order to determine whether any special-status species may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys, and to identify any Project-related impacts under CESA and other species of concern.

### **I. Environmental Setting and Related Impact**

**Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service (USFWS)?**

Chuck Kinney  
Kings County Community Development Agency  
May 21, 2021  
Page 4

### **COMMENT 1: Swainson's Hawk (SWHA)**

The MND states that SWHA foraging habitat is available throughout the Project area and potential breeding habitat occurs the offsite tailwater pond which is nearly adjacent to the northwestern corner of the site. As stated in the MND, the potential breeding habitat is within the typical 0.5-mile construction-free buffer required around an active nest. The MND also reports that Swainson's hawks were observed flying over the Grape Solar site during the 2018 and 2019 spring site visits for other adjacent solar projects and SWHA are known to occur over and near the Project site. The MND reports the nearest observed active nest during nest surveys in 2018 and 2019 is located 3 miles from the Project site. A total of 37 nesting Swainson's hawk nests were observed within 10 miles of the Project site. Mitigation Measures, as proposed in the MND, may not reduce impacts to less than significant or prevent unauthorized take. CDFW recommends the following edits to the MND.

#### **Mitigation Measure Bio-4: Swainson's Hawk Protection**

Mitigation Measure Bio-4 indicates that a suitable buffer would be established around nests, however, no specific distance is provided. CDFW recommends a minimum no disturbance buffer of 0.5-mile be delineated around active nests until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. In the event an active SWHA nest is detected during surveys and the 0.5-mile no-disturbance buffer around the nest cannot feasibly be implemented, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

#### **Recommended Mitigation Measure 1: SWHA Foraging Habitat**

The MND states that the Project will not significantly impact SWHA foraging habitat based on biological assessment of the PEIR. This assessment included an evaluation of the number of active SWHA nests within a 10 mile radius of the WSP Master Plan area, the amount of available of foraging habitat within the WSP Master Plan area, the amount of cumulative impacts resulting from the WSP Master Plan and other planned projects in 2017, and concluded that remaining SWHA foraging habitat "would be more than sufficient to support all of the 37 known Swainson's hawk nests within this radius, with surplus capacity to support additional nesting pairs." This assessment considered a reduction of surplus habitat to less than 70 percent relative to pre-project conditions a cumulatively significant impact. The assessment calculated that there was currently a surplus of 130,718 acres of suitable foraging habitat within the study area, which is 74.9 percent of the pre-project total for the WSP Master Plan area.

Chuck Kinney  
Kings County Community Development Agency  
May 21, 2021  
Page 5

As stated in the MND and PEIR, this assessment was conducted in 2017. Other than confirming the number active SWHA nests in 2018 and 2019 and surveys limited to the Project site, no new information is provided about potential other changes to baseline conditions, such as new planned projects that may affect the amount of cumulative impacts or changes in land use that may affect the amount of available foraging habitat. Without this information, CDFW cannot conclude if impacts to SWHA foraging habitat are significant or not.

Absent this additional information, CDFW recommends compensation for the loss of SWHA foraging habitat to reduce impacts to SWHA foraging habitat to less than significant based on CDFW's Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (CDFG, 1994), which recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites and the amount of habitat compensation is dependent on nest proximity. In addition to fee title acquisition or conservation easement recorded on property with suitable grassland habitat features, mitigation may occur by the purchase of conservation or suitable agricultural easements. Suitable agricultural easements would include areas limited to production of crops such as alfalfa, dry land and irrigated pasture, and cereal grain crops. Vineyards, orchards, cotton fields, and other dense vegetation do not provide adequate foraging habitat.

#### **Recommended Mitigation Measure 2: SWHA Nest Trees**

CDFW recommends that the removal of known raptor nest trees, even outside of the nesting season, be replaced with an appropriate native tree species planting at a ratio of 3:1 at or near the Project site or in another area that will be protected in perpetuity to reduce impacts resulting from the loss of nesting habitat.

#### **COMMENT 2: Tricolored Blackbird (TRBL)**

The MND states that potential nesting and foraging habitat for this species is present within the Project site. The MND reports that cattails occur in the canal adjacent to 25th Avenue and within offsite canals to the east and west of the site, as well as the canal located 2 miles to the north along Laurel Avenue and the Project site has typically been cultivated for winter wheat in the wet season and left fallow during the dry season. As stated in the MND, the extend of suitable habitat on the Project site depends on the crop type, which may vary from season to season.

No species-specific mitigation measures were provided for this TRBL. Without appropriate avoidance and minimization measures for TRBL, potential significant impacts or unauthorized take associated with Project activities may occur, including direct mortality, nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Chuck Kinney  
Kings County Community Development Agency  
May 21, 2021  
Page 6

To evaluate potential Project-related impacts to TRBL, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the MND.

**Recommended Mitigation Measure 3: TRBL Surveys**

CDFW recommends that Project activities be timed to avoid the normal bird breeding season (February 1 through September 15). However, if Project activities must take place during that time, CDFW recommends that a qualified biologist conduct habitat assessment surveys prior to Project activities to determine if suitable habitat is present in the Project area. If suitable habitat is present, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting TRBL no more than 10 days prior to the start of implementation to evaluate presence/absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts.

**Recommended Mitigation Measure 4: TRBL Avoidance**

If an active TRBL nesting colony is found during preconstruction surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer in accordance with CDFW's "Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agriculture Fields in 2015" (CDFW 2015). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time and for this reason, the colony should be reassessed to determine the extent of the breeding colony within 10 days of Project initiation.

**Recommended Mitigation Measure 5: TRBL Take Authorization**

In the event that a TRBL nesting colony is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground-disturbing activities.

**COMMENT 3: Burrowing Owl (BUOW)**

The MND states that burrowing owls were not observed onsite during the 2020 site visit, but site visits for adjacent solar projects in April and May of 2018 and April of 2019 identified burrowing owls in the canal south of Laurel Avenue located 2 miles north of the site as well as in a north-south canal located approximately 1.5 miles north of the northwestern corner of the site. The MND reports suitable breeding habitat and foraging habitat exist with the Project area. Mitigation Measures, as

Chuck Kinney  
 Kings County Community Development Agency  
 May 21, 2021  
 Page 7

proposed in the MND, may not be sufficient to avoid unauthorized take or nest failure. CDFW recommends the following edits to the MND.

**Mitigation Measure BIO-3: Burrowing Owl Protection**

Mitigation measure 3.3.7c states that BUOW and their burrows will be protected using a 150ft-250ft construction-free buffer. CDFW typically recommends no-disturbance buffers, as outlined in the “Staff Report on Burrowing Owl Mitigation” (CDFG 2012) and provided in the table below, be implemented prior to and during any ground-disturbing activities, unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival. If BUOW burrows are detected within these buffer distances and they cannot be feasibly implemented, CDFW recommends the Project Proponent consult us to determine how to implement the Project and avoid take and nest destruction.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

\* meters (m)

**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. (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 can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. 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**

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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 for the underlying project approval to

Chuck Kinney  
Kings County Community Development Agency  
May 21, 2021  
Page 8

be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist the Kern County Planning and Natural Resources Department in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Carrie Swanberg, Environmental Scientist, at the address provided on this letterhead, or by electronic mail at [Carrie.Swanberg@Wildlife.ca.gov](mailto:Carrie.Swanberg@Wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...  
Julie A. Vance  
Regional Manager

Attachment

Chuck Kinney  
Kings County Community Development Agency  
May 21, 2021  
Page 9

## LITERATURE CITED

- Beedy, E. C., W. J. Hamilton III, R. J. Meese, D. A. Airola, and P. Pyle. 2017. Tricolored Blackbird (*Agelaius tricolor*), version 3.0. in *The birds of North America*. P. G.
- California Burrowing Owl Consortium. 1993. Burrowing owl survey protocol and mitigation guidelines. April 1993.
- CDFG. 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game.
- CDFW. 2015. Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015. March 19, 2015.
- CDFW. 2016. Five Year Status Review for Swainson's Hawk (*Buteo swainsoni*). California Department of Fish and Wildlife. April 11, 2016.
- CDFW. 2021. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed April 20, 2021
- Gervais, J.A., D.D. Rosenberg, and L.A. Comrack. Burrowing Owl (*Athene cunicularia*) in Shuford, W.D. and T. Gardali, editors. 2008. *California Bird Species of Special*
- Kelsey, R. 2008. Results of the tricolored blackbird 2008 census. Report submitted to U.S. Fish and Wildlife Service, Portland, OR, USA.
- Meese, R. J., E.C. Beedy, and W.J. Hamilton, III. 2014. Tricolored blackbird (*Agelaius tricolor*), *The Birds of North America* (P. G. Rodewald, Ed.). Ithaca: Cornell Lab of Ornithology; Retrieved from the Birds of North America: <https://birdsna-org.bnaproxy.birds.cornell.edu/Species-Account/bna/species/tribla>. Accessed April 20, 2021.
- Monson, G. 1960. The nesting season. Southwest Regional Report, Audubon Field Notes 14:469.
- Orians, G.H. 1961. The ecology of blackbird (*Agelaius*) social systems. *Ecol. Monogr.* 31:285-312.
- Rodewald (Ed.). Cornell Lab of Ornithology, Ithaca, New York, USA. <https://doi.org/10.2173/bna.tribla.03>
- Weintraub, K., T.L. George, and S.J. Dinsmore. 2016. Nest survival of tricolored blackbirds in California's Central Valley. *The Condor* 118(4): 850–861.

**Attachment 1**

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

**PROJECT: Westlands Grape Solar  
SCH No.: 2021030459**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: SWHA Foraging Habitat	
Mitigation Measure 2: SWHA Nest Trees	
Mitigation Measure 3: TRBL Surveys	
Mitigation Measure 5: TRBL Take Authorization	
<i>During Construction</i>	
Mitigation Measure 4: TRBL Avoidance	