



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**Nov 02 2021**

## STATE CLEARINGHOUSE

November 1, 2021

Jonathan Jensen  
Kern County Planning and Natural Resources Department  
2700 "M" Street, Suite 100  
Bakersfield, California 93301  
(661) 862-8638

Subject: **Sandrini Solar Project by EDPR CA Solar Park, LLC (Project)**  
**DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)**  
**State Clearinghouse No. 2021040761**

Dear Jonathan Jensen:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from Kern County, as Lead Agency, for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup> The Project proponent is EDPR CA Solar Park LLC.

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

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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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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.

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:** EDPR CA Solar Park LLC

**Objective:** The project includes a request for land use entitlements necessary to facilitate the construction and operation of a solar photovoltaic power generating facility and associated facilities that would produce up to 300 megawatt (MW) alternating current (AC) utility-scale solar power with an up to 100 MW of energy storage capacity in the San Joaquin Valley portion of unincorporated Kern County. The proposed project consists of five separate sites, located on 33 parcels of privately-owned land, totaling approximately 3,469.87 acres. However; it is anticipated that approximately 2,472.89 acres would be utilized (developed) for the construction of the solar panels and permanent facilities and the remaining 996.98 acres would be restricted to use for conservation of habitat (on-site conservation land) and could not be developed. The project would be supported by both a 70 kV and a 230 kV overhead and/or underground electrical transmission line(s) originating from two on-site project collector substations and terminating at the PG&E Wheeler Ridge Substation.

**Location:** The project site is located within Township 32S, Range 26E, Section 25; Township 32S, Range 27E, Section 30; Township 32S, Range 27E, Section 29; Township 32S, Range 27E, Section 28; Township 32S, Range 27E, Section 32; Township 32S, Range 27E, Section 33; Township 32S, Range 27E, Section 34; and Township 32S, Range 28E, Section 31; and Township 32S, Range 27E, Section 34, Mount Diablo Base and Meridian. The project site is located approximately 1.5 miles

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from the unincorporated community of Kern Lake and approximately 7 miles from the unincorporated community of Mettler.

**Timeframe:** Unspecified

## **COMMENTS AND RECOMMENDATIONS**

In addition to information provided in the DEIR, CDFW met with the Project proponent via Microsoft Teams on October 15, 2021, to discuss the proposed Project. CDFW offers the 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 based on both the DEIR and that meeting.

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/or avoid unauthorized take of species listed pursuant to the California Endangered Species Act (CESA). Specifically, we have concerns about the State and federally endangered and State fully protected blunt-nosed leopard lizard (*Gambelia sila*), the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened Swainson's hawk (*Buteo swainsoni*), and special-status small mammals such as the State threatened San Joaquin antelope squirrel (*Ammospermophilus nelsoni*), the State and federally endangered Tipton kangaroo rat (*Dipodomys nitratooides nitratooides*), and giant kangaroo rat (*Dipodomys ingens*). CDFW also advises that the DEIR appears to have inappropriately cited Fish and Game Code Section 1913(c) as part of its mitigation measures.

### **San Joaquin Kit Fox (*Vulpes macrotis mutica*; SJKF)**

The DEIR (Page 4.4- 30) states that there are CNDDDB recorded occurrences (EONDX 67741 and EONDX 67742) that overlap the Project site, observed between 1972 and 1975, potential SJKF dens that were observed during the 2020 reconnaissance surveys, and potential SJKF dens observed during the 2021 focused burrow surveys in Valley Sink Scrub habitat. The DEIR acknowledges that SJKF can potentially den on the Project site as well as forage and traverse through the agricultural and urban areas in and around the Project area. Page 4.4-53 of the DEIR also acknowledges SJKF may be attracted to areas on the Project site "due to the type and level of ground-disturbing activities and the loose, friable soils resulting from intensive ground disturbance and may use areas of the site, including agricultural and rural areas, as foraging and dispersal corridors."

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CDFW does not consider Mitigation Measure 4.4-6, as currently written, to be adequate to reduce impacts to less than significant and/or avoid unauthorized take. As part of this measure, the DEIR states, "If dens/burrows that could support any of these species are discovered during the pre-activity surveys conducted under MM 4.4-15, the avoidance buffers outlined below should be established. No work would occur within these buffers unless the biologist approves and monitors the activity." CDFW generally agrees with the no-disturbance buffers provided for SJKF dens. However, no parameters or criteria are provided that will be considered by the biologist when making a determination if a buffer can be reduced. Based on the current information, CDFW recommends that this measure be edited to remove the option for the Project biologist to reduce buffers and instead require consultation with CDFW if these buffers are not feasible, so that CDFW can determine if the Project can avoid take. If take cannot be avoided, then take authorization through the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) would be necessary to comply with CESA. CDFW also advises that Fish and Game Code section 86 defines take as hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. Although these buffer distances listed in the DEIR may be sufficient to avoid direct mortality or den destruction, encircling a den with development activities may inhibit the ability of SJKF to freely disperse to and from its den and has the potential to be considered "capture" and/or ultimately result in take in the form of mortality. Therefore, CDFW recommends that in addition to the buffer distances listed in Mitigation Measure 4.4-6, that no den be surrounded by more than 180 degrees by development activities. In addition, CDFW recommends all perimeter fencing be raised five to seven inches above ground level and knuckled under to allow SJKF movement into and out of the Project site.

#### **Swainson's Hawk (*Buteo swainsoni*; SWHA)**

The DEIR (Page 4.4-25) states one SWHA nest was identified within the proposed conservation area adjacent to the Project site and two more SWHA nests were identified within 0.5 miles of the Project site. Based on this information, CDFW does not consider Mitigation Measure 4.4-12 adequate to reduce impacts to less than significant or avoid unauthorized take.

As part of Mitigation Measure 4.4-12, the DEIR states, "Construction activities should not occur within 500 feet of an active nest but depending upon conditions at the site this distance may be reduced." Based upon the information provided, CDFW does not consider 500 feet to be adequate to avoid take of SWHA or impacts to the nest site. In addition, no parameters or criteria are specified that will be used by the biologist to consider when the buffer can be reduced or when activities can occur. Therefore, CDFW recommends the Project apply for an ITP.

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If the Project chooses not to apply for an ITP, CDFW recommends that Mitigation Measure 4.4-12 be edited to increase the no-disturbance buffer to 0.5-mile and that the buffer remain in place until a qualified biologist has determined that SWHA have fledged and are no longer reliant upon the nest or parental care for survival. If this buffer is not feasible, then 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 ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Furthermore, the DEIR states that protocol surveys were conducted for SWHA, but also seems to indicate that SWHA surveys were solely conducted between April 2<sup>nd</sup> and May 29<sup>th</sup>. This period largely falls in Period IV in the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. During this period nests are very difficult to initially detect, and surveys are not recommended to be initiated during this time period. CDFW recommends the DEIR clarify when surveys were conducted and advises that surveys conducted solely in Period IV are not likely to detect all SWHA nests.

### **Special Status Small Mammal Species and Blunt-nosed Leopard Lizard**

The DEIR and the meeting on October 15, 2021, reported that the most suitable habitat for these species occurs within the proposed conservation area and the gen-tie route where individual powerline poles can be sited to avoid particularly sensitive habitat features. The Project proposes full avoidance for small mammal species listed pursuant to CESA and blunt-nosed leopard lizard. Mitigation Measures 4.4-5 and 4.4-5 state that all small mammal burrows will be avoided by 50 feet. However, Mitigation Measure 4.4-4 allows "overland travel not requiring ground disturbance may be permitted within the 50-foot buffer under the direct supervision of a qualified biologist." The DEIR also acknowledges that species-focused protocol surveys were not conducted for any of these species.

While CDFW is conceptually open to this approach, we cannot concur that these mitigation measures are adequate as currently written. Overland travel has the potential to collapse burrows, killing or entombing (capture) individuals inside the burrow, whether ground disturbance is associated with the overland travel or not. In addition, burrow avoidance prevents burrow collapse and associated take, but burrow avoidance alone may not prevent unauthorized take of individuals that move into the Project area. Finally, burrow avoidance may not be adequate if a burrow(s) are encircled by development activities as discussed above for SJKF.

Therefore, CDFW recommends the following recommendations for both Mitigation Measures 4.4-4 and 4.4-5. CDFW recommends that the 50-foot buffer exclude all activity, including overland travel. CDFW recommends that a qualified biologist familiar

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with the biology and natural history for these species is on the Project site (including the gen-tie area) for all construction and ground disturbing activities and that the qualified biologist have the authority to stop work if these species are detected in or immediately adjacent to the Project site. CDFW also recommends that construction and ground-disturbing activities are prohibited from encircling small mammal burrows by more than 180 degrees in addition to the 50-foot no-disturbance buffer. Tollestrup (1983) reported a maximum movement distance for BNLL of 1,509 feet. CDFW recommends that if any of these species are detected in or adjacent to the Project site (including the gen-tie area) that all work within 1,500 feet of the species observation stop and CDFW is notified immediately to determine if take can be avoided and appropriate next steps.

### **Special Status Plants**

Mitigation Measure 4.4-1 states “If special-status plant species are found during floristic surveys or have been previously identified, then Ecologically Sensitive Area (ESA) fencing should be established at a 50-foot radius around these individuals to ensure that they are not destroyed during project construction activities. Pursuant to section 1913(c) of the California Fish and Game Code, if project activities cannot avoid direct impacts to special-status plants, CDFW shall be notified and provided the opportunity to salvage any of these plants that would be affected. The CDFW may enter into agreement with the project proponent to retain a qualified entity for the relocation of sensitive plants to an approved location. Any salvage would be undertaken in accordance with a salvage plan to be developed in consultation with CDFW. The plan would include methods for transplanting and watering (if appropriate), success criteria for salvaged plants, monitoring the health and survivorship of salvaged plants during at least 5 years following salvage, and contingency measures if plant survivorship requirements are not satisfied.”


Fish and Game Code Section 1913(c) is not applicable to this Project. CDFW recommends that this reference is removed from the mitigation measure and replaced with a requirement to consult with CDFW if special status plant species are detected in the Project area to determine if the Project can avoid take of species listed pursuant to CESA or the Native Plant Protection Act. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code sections 2081 subdivision (b) and 1908 is necessary to comply with CESA and the Native Plant Protection Act.

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

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If you have any questions, please contact Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3200 or by electronic mail at [Jaime.Marquez@wildlife.ca.gov](mailto:Jaime.Marquez@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...

Julie A. Vance  
Regional Manager

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## **REFERENCES**

Swainson's Hawk Technical Advisory Committee (SWHA TAC), 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in the Central Valley of California. Swainson's Hawk Technical Advisory Committee. May 31, 2000.

Tollestrup, K. 1983. The social behavior of two species of closely related leopard lizards, *Gambeliasilus* and *Gambelia wislizenii*. *Z. Tierpsychol.* 62:307-320.