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**Subject: Comments on the Notice of Preparation of a Draft Environmental Impact Report for High Valley and Rangeland Solar Projects, SCH# 2021070089, City of Lancaster, Los Angeles County**

Dear Ms. Swain:

The California Department of Fish and Wildlife (CDFW) has reviewed the Rangeland Solar Project (Project) Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) proposed by the County of Los Angeles (County) and the City of Lancaster (City) with the City serving as the Lead Agency. Supporting documentation for the Project includes *Rangeland Solar Project, City of Lancaster, California – Biological Technical Report* (ICF 2020). 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's 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, subdivision (a) & 1802; Pub. Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (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 projects and related activities that have the potential to adversely affect State 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, including 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.), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G. Code, §1900 et seq.), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

**Project Description and Summary**

**Objective:** The Project involves the construction of a ground-mounted utility-scale solar energy facility and optional battery energy storage system. The Project would have a generating capacity of up to 80 megawatts (MW) in which north-south rows of photovoltaic (PV) panels would be mounted on either fixed-tilt or single-axis tracking systems with steel support structures. Generation tie (gen-tie) lines would be installed underground to connect the Project to either the Big Sky or Big Sky North Substation. For the execution of the Project, three conditional use permits (CUPs) for the City of Lancaster (Rangeland sites) have been generated in addition to the unincorporated area of Los Angeles County (High Valley sites), totaling a 720-acre site.

- Rangeland Site 1: Development is proposed for 32 acres on the 79-acre site. The remainder of the site is occupied by the Antelope Valley Resource Conservation District Native Plant Nursery. Solar panels generating a total of 5 MW will be developed on this site.
- Rangeland Site 2: Development is proposed for 85 acres of the 98-acre site. Solar panels generating a total of 12 MW will be developed on this site.
- Rangeland Site 3: Development is proposed for 34 acres of the 38-acre site. Solar panels generating a total of 5 MW will be developed on this site.
- High Valley Site 1: Development is proposed for 260 acres of the 314-acre site. Solar panels generating a total of 38 MW will be developed on this site.
- High Valley Site 2: Development is proposed for 49 of the 78-acre site. Solar panels generating a total of 7 MW will be developed on this site.
- High Valley Site 3: Development is proposed for 49 of the 63-acre site. Solar panels generating a total of 7 MW will be developed on this site.
- High Valley Site 4: Development is proposed for the entire 10-acre site. Solar panels generating a total of 1 MW will be developed on this site.
- High Valley Site 5: Development is proposed for the entire 40-acre site. Solar panels generating a total of 5 MW will be developed on this site.

Project-related activities include vegetation removal, grading, installation of solar panels, installation of supporting infrastructure, staging areas, and access areas. The solar facilities would occupy approximately 559 acres of the eight sites, totaling roughly 641 acres.

The power generated by the Project would connect to either the Big Sky Substation or the Big Sky North Substation through one of two proposed Generation-Tie (gen-tie) Line Alignment Options. Both options would use public rights-of-way as well as a few privately owned parcels. Under both options, the proposed Project would connect to existing Southern California Edison transmission system through underground 34-kilovolt (kV) gen-tie lines. The estimated width of the disturbance area for the underground gen-tie corridor would be 10 to 50 feet.

- Gen-Tie Alignment Option #1 – referred to as the Big Sky North Gen-Tie – would extend from 82nd Street West to 110th Street West along West Avenue I, then head north along 110th Street West and east along private easements. This option would also include a gen-tie line that would run north from the intersection of 90th Street West and West Avenue I, then turn west at West Avenue H, north at 93rd Avenue West, and west at Avenue G-12 along a private easement. The gen-tie lines would connect to Big Sky North Substation northeast at the intersection of 100th Street West and Avenue G-8.

- Gen-Tie Alignment Option #2 – referred to as the Big Sky Original Gen-Tie – would consist of several segments. The first segment would start at the intersection of 110th Street West and West Avenue I, extend south for 1 mile, head east at West Avenue J for one mile, south at 100th Street West for 0.25 mile, and terminate at the Big Sky Substation. The second segment would follow the same corridor as the Big Sky North Gen-Tie along West Avenue I, extending 2.75 miles from 82nd Street West to 110th Street West. The third segment would extend south for 1 mile from the intersection of 90th Street West and West Avenue I, turn west along West Avenue J for one mile, south at 100th Street West for 0.25 mile, and terminate at the Big Sky Substation. Two smaller segments would connect to the portion of the gen-tie along 90th Street West. One segment would begin at the intersection of 87th Street West and extend west for 0.25 mile. The other segment would start at the intersection of Lancaster Boulevard and West Avenue I-12, extend south for 0.25 mile, and then continuing west along West Avenue J for 0.35 mile.

**Location:** The Project is located in the Antelope Valley in the western portion of the City of Lancaster in Los Angeles County, near the community of Del Sur. The Project site is generally bounded by West Avenue J on the south, West Avenue H on the north, 105th Street West on the west, and 80th Street West on the east. The High Valley site would be located within unincorporated Los Angeles County and consist of five Conditional Use Permits (CUP) on 505 acres. The Rangeland sites would be located within the City of Lancaster and consist of three CUPs on 215 acres.

The Los Angeles County Accessor's Parcel Numbers (APN) associated with the Project are:

| **APNs:** | **Location:** |
|---|---|
| 3267-005-902 | Rangeland Site 1 – southwest of the intersection of 100th Street West and West Avenue I |
| 3203-001-041, 3203-001-009, 3203-002-010, 3203-002-009 | Rangeland Site 2 – southeast corner 87th Street West and West Avenue I |
| 3203-001-031 | Rangeland Site 3 – southwest of the intersection of West Avenue I and 80th Street West |
| 3265-018, 3265-001, 3265-002, 3265-019-030 | High Valley Site 1 – west of 110th Street West and north Avenue I. |
| 3265-022-044, 3265-022-045, 3265-022-010, 3265-022-011, 3265-022-3265-022-3265-022-3265-022-3265-022-3265-022-3265-022-3265-022-3265-022-013, 3265-022-015, 3265-022-012, 3265-022-014, 3267-055-021, 3267-055-022 | High Valley Site 2 – east pf 105th Street West and both sides of Avenue I |
| 3219-021-008, 3219-021-009, 3219-021-010, 3219-021-011 | High Valley Site 3 – northwest corner of 90th Street West and Avenue I |
| 3203-001-036, 3203-001-038 | High Valley Site 4 – 85th Street West and south of Avenue I |
| 3203-002-007, 3203-002-008, 3203-002-006, 3203-002-005 | High Valley Site 5 – northwest corner of Avenue I-12 and 85th Street West, south of Site 4 |

**Comments and Recommendations**

The City submitted Project-related documents for an informal consultation with CDFW on June 14, 2021 [CEQA Guidelines, § 15063(g)]. CDFW provided comments for this informal consultation to the City on July 8, 2021 (Attachment 1). Biological and hydrological surveys of the Rangeland portion of the Project site, presented in the Biological Technical Report (BTR) were performed in October 2019, April 2020, May 2020, June 2020, July 2020, and September 2020. After reviewing the NOP and BTR, CDFW offers the comments and recommendations below to assist the City in adequately identifying the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW recommends the City consider our comments and recommendations when preparing an environmental document that may provide adequate and complete disclosure of the Project's potential impacts on biological resources [Pub. Resources Code, § 21061; CEQA Guidelines, §§ 15003(i), 15151].

**Specific Comments**

1) Impacts to Streams. As part of the BTR, a jurisdictional delineation was performed, and multiple hydrological features were identified throughout the Project site. Based on the materials provided, it is unclear what hydrological conditions were used to evaluate potential flows and sediment transport of these hydrological features in varying future storm events. The Project may release sediment or alter the watershed. This may result in impacts to streams on site and downstream along with associated biological resources beyond the Project development footprint.

    a. For purposes of the DEIR, the jurisdictional delineation should include analysis of all sites as shown in Exhibit 1 of the NOP. With potentially omitted portions of streambeds, the assessment of Project-related impacts may not be complete. As a result, subsequent mitigating actions may not be fully enacted to offset significant impacts to streambeds and riparian resources on site and downstream of the Project site.

    b. As a Responsible Agency under CEQA, CDFW has authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (including vegetation associated with the stream or lake) of a river or stream, or use material from a streambed. For any such activities, the project applicant (or "entity") must provide written notification to CDFW pursuant to Fish and Game Code Section 1600 *et seq*.

    c. CDFW's issuance of a Lake and Streambed Alteration (LSA) Agreement for a project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the environmental document of the local jurisdiction (Lead Agency) for the project. To minimize additional requirements by CDFW pursuant to section 1600 *et seq.* and/or under CEQA, the DEIR should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSA Agreement. Please visit CDFW's Lake and Streambed Alteration Program webpage for information about LSA Notification (CDFW 2021a).

d. In the event the project area may support aquatic, riparian, and wetland habitats; a preliminary delineation of the streams and their associated riparian habitats should be included in the DEIR. The delineation should be conducted pursuant to the U.S. Fish and Wildlife Service (USFWS) wetland definition adopted by CDFW (Cowardin et al. 1970). Be advised that some wetland and riparian habitats subject to CDFW's authority may extend beyond the jurisdictional limits of the U.S. Army Corps of Engineers' Section 404 permit and Regional Water Quality Control Board Section 401 Certification.

e. In project areas which may support ephemeral or episodic streams, herbaceous vegetation, woody vegetation, and woodlands also serve to protect the integrity of these resources and help maintain natural sedimentation processes; therefore, CDFW recommends effective setbacks be established to maintain appropriately sized vegetated buffer areas adjoining ephemeral drainages.

f. Project-related changes in upstream and downstream drainage patterns, runoff, and sedimentation should be included and evaluated in the DEIR.

g. As part of the LSA Notification process, CDFW requests a hydrological evaluation of the 100, 50, 25, 10, 5, and 2-year frequency storm event for existing and proposed conditions. CDFW recommends the DEIR evaluate the results and address avoidance, minimization, and/or mitigation measures that may be necessary to reduce potential significant impacts.

2) Impacts to Swainson's Hawk. According to the BTR, a single adult Swainson's hawk (*Buteo swainsoni*), a CESA-listed species, was observed foraging just outside of the Project site during field surveys in April 2020. In May 2020, a carcass of a juvenile Swainson's hawk was found on the ground under the power lines west of Rangeland Site 1, which would be used for both Gen-Tie Alignment Options. The BTR acknowledges that there is suitable foraging habitat for Swainson's hawk throughout the study area and along the gen-tie routes. It also includes the observation that "nesting habitat is available in roadside trees along the proposed interconnection and gen-tie lines." CDFW has concerns that the Project would impact foraging habitat for Swainson's hawk.

a. The City should require compensatory mitigation in the DEIR of replacement lands at a ratio of no less than 1:1 for impacted Swainson's hawk foraging habitat.

b. CDFW released guidance for this species entitled *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* (2010). CDFW recommends conducting focused surveys for Swainson's hawk following the 2010 guidance and disclosing the results. If take of Swainson's hawk would occur from Project construction or operation, CESA authorization [(i.e., incidental take permit (ITP)] would be required for the Project. CDFW may consider the City's CEQA documentation for its CESA-related actions if it adequately analyzes/discloses impacts and mitigation to CESA-listed species. Additional documentation may be required as part of an ITP application for the Project in order for CDFW to adequately develop an accurate take analysis and identify measures that would fully mitigate for take of CESA-listed species.

c. Permanent impacts to foraging habitat for Swainson's hawk should be offset by setting aside replacement habitat to be protected in perpetuity under a conservation easement. Areas proposed as mitigation should have a recorded conservation easement and be dedicated to an entity which has been approved to hold/manage lands pursuant to Assembly Bill (AB) 1094 (2012), which amended Government Code sections 65965-65968. An appropriate endowment should be included to provide for the long-term management of mitigation lands.

d. Should the purchase of mitigation credits be used as mitigation for the Project, CDFW recommends purchasing restoration or creation credits and not enhancement or preservation. The City should further clarify the mitigation option to be chosen and identify the type of mitigation credits purchased in relation to this Project. Mitigation bank credits should be purchased, approved, or otherwise fully executed prior to implementing Project-related ground-disturbing activities and prior to the City's issuance of grading permits.

e. In order to reduce impacts to Swainson's hawk foraging habitat, the City should consider providing alternative project designs that reduce the acreage of impacts to foraging habitat for avian species including Swainson's hawk. A project with reduced impacts to Swainson's hawk would likely be environmentally superior to the proposed Project (CEQA Guidelines § 15126.6).

3) Impacts to California legless lizard. As indicated in the BTR, California legless lizard (*Anniella pulchra*), a Species of Special Concern (SSC), has moderate potential to occur and be impacted by Project-related activities based on the presence of suitable habitat on the Project site (CDFW 2021c). A review of California Natural Diversity Database (CNDDB) indicates that there are multiple historic records of legless lizard throughout the BTR study area (CDFW 2021b). For example, there is at least one record just north of Rangeland Site 1 and High Valley Site 2 and another in between Rangeland Site 2 South, High Valley Site 4, and Rangeland Site 3.

a. Pursuant to the California Code of Regulations, title 14, section 650, the City/qualified biologist must obtain appropriate handling permits to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with Project construction and activities. Please visit CDFW's Scientific Collection Permits webpage for information (CDFW 2021e). An LSA Agreement may provide similar take or possession of species as described in the conditions of the agreement. CDFW has the authority to issue permits for the take or possession of wildlife, including mammals; birds, nests, and eggs; reptiles, amphibians, fish, plants; and invertebrates (Fish & G. Code, §§ 1002, 1002.5, 1003). Effective October 1, 2018, a Scientific Collecting Permit is required to monitor project impacts on wildlife resources, as required by environmental documents, permits, or other legal authorizations; and, to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with otherwise lawful activities (Cal. Code Regs., tit. 14, § 650).

b. The Project proponent should retain a qualified biologist(s) with experience surveying for or is familiar with the life history Southern California legless lizard. The qualified biologist should conduct focused surveys for SSC and suitable habitat no more than one month from the start of any ground-disturbing activities

or vegetation removal where there may be impacts to SSC. In addition, the qualified biologist should conduct daily biological monitoring during any activities involving vegetation clearing or modification of natural habitat. Positive detections of SSC and suitable habitat at the detection location should be mapped and photographed. The qualified biologist should provide a summary report of SSC surveys to the City prior to implementing any Project-related ground-disturbing activities and vegetation removal. Depending on the survey results, a qualified biologist should develop species-specific mitigation measures for implementation during the Project.

c. Wildlife should be protected, allowed to move away on its own (non-invasive, passive relocation), or relocated to adjacent appropriate habitat on site or to suitable habitat adjacent to the project area. SSC should be captured only by a qualified biologist with proper handling permits. The qualified biologist should prepare a species-specific list (or plan) of proper handling and relocation protocols and a map of suitable and safe relocation areas. A relocation plan should be submitted to the City prior to implementing any Project-related ground-disturbing activities and vegetation removal.

d. The Project proponent, in consultation with a qualified biologist, should prepare a worker environmental awareness training. The qualified biologist should communicate to workers that upon encounter with an SSC (e.g., during construction or equipment inspections), work must stop, a qualified biologist must be notified, and work may only resume once a qualified biologist has determined that it is safe to do so.

e. If any SSC are harmed during relocation or a dead or injured animal is found, work in the immediate area should stop immediately. The qualified biologist should be notified and dead or injured wildlife documented. A formal report should be sent to CDFW and the City within three calendar days of the incident or finding. Work in the immediate area may only resume once the proper notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.

4) Inadequate Disclosure of Biological Impact Fee. Section 5.6.4 of the BTR states that "[t]he proposed project would result in direct permanent and cumulative loss of foraging and nesting habitat. In order to mitigate for the permanent loss of habitat for special-status migratory and resident birds, the applicant would provide the requisite funds for the City of Lancaster Biological Impact Fee. This would reduce the level of direct permanent and cumulative effects on tricolored blackbird to below a level of significance." CDFW has concerns that paying an in-lieu fee to the City would not sufficiently offset impacts to roughly 243 acres of foraging and nesting habitat for numerous species reliant upon the Project site.

a. The City should provide adequate, complete, and good-faith disclosure of information that would address the following in relation to the Project in the DEIR:

2) Whether the Biological Impact Fee is going towards an established program;
3) How the program is designed to (and will) mitigate the biological effects at issue at a level meaningful for purposes of CEQA;
4) What the Biological Impact Fee would acquire;

5) What biological resources would the Biological Impact Fee protect/conserve;
6) Why the Biological Impact Fee is appropriate for mitigating the cumulative loss of biological resources in Antelope Valley;
7) Why the Biological Impact Fee is sufficient to purchase land or credits at a mitigation bank;
8) Where the City may acquire land or purchase credits at a mitigation bank;
9) When the City would use the Biological Impact Fee; and,
10) How the Biological Impact Fee would be adequate such that no impacts would occur as a result of the Project.

The City should provide any technical data, maps, plot plans, diagrams, and similar relevant information in addressing these concerns (CEQA Guidelines § 15147).

a. The City should provide a discussion describing how it intends to commit to mitigation via the Biological Impact Fee. For example, the City should provide specifics as to when would the City require payment from the project applicant, how long would the project applicant have to pay the fee, what mechanisms would the City implement to ensure the fee is paid, and when the City would use the Project's payment for mitigation. Also, the City should provide specific performance standards and actions to achieve those performance standards.

5) Nesting Birds. Mitigation Measure MM-BIO-5: Nesting Raptors and Migratory Birds of the Impacts Analysis and Mitigation Section of the BTR addresses avoidance measures to be taken to reduce impacts to nesting passerines and raptors. It includes the recommendation, "[i]f active nests are detected during the preconstruction surveys, a suitable buffer from construction activities (500 feet for raptors and 100 feet for all other species) will be applied until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged or the nest has failed)." CDFW has concerns that applying avoidance buffers in the lower ends of the ranges in this mitigation measure may not sufficiently reduce impacts to nesting birds to a level below a threshold of significance.

a. To protect nesting birds that may occur on site or adjacent to the Project boundary, CDFW recommends that no construction should occur from February 15 (January 1 for raptors) through September 15 unless a qualified biologist completes a survey for nesting bird activity within a 500-foot radius of the construction site. Based on local conditions, the nesting bird surveys should be conducted at appropriate nesting times and concentrate on potential roosting or perch sites. CDFW recommends the Lead Agency require surveys be conducted by a qualified biologist no more than 7 days prior to the beginning of any Project-related activity likely to impact raptors and migratory songbirds, for the entire Project site. If Project activities are delayed or suspended for more than 7 days during the breeding season, repeat the surveys. If nesting raptors and migratory songbirds are identified, CDFW recommends the following minimum no-disturbance buffers be implemented: 300 feet around passerine (perching birds and songbirds) nests, 500 feet around non-listed raptor nests and 0.5 mile around listed bird nests. These buffers should be maintained 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.

6) Biological Baseline Assessment. While the BTR assessed biological impacts to the Rangeland sites, the DEIR should provide an updated biological assessment that covers

the entire Project site. This assessment should update Rangeland sites as well as include all the High Valley sites. An adequate biological resources assessment should provide a complete assessment and impact analysis of the flora and fauna within and adjacent to a project site and where a project may result in ground disturbance. The assessment and analysis should place emphasis upon identifying endangered, threatened, sensitive, regionally, and locally unique species, and sensitive habitats. Impact analysis will aid in determining any direct, indirect, and cumulative biological impacts, as well as specific mitigation or avoidance measures necessary to offset those impacts. CDFW recommends avoiding any sensitive natural communities found on or adjacent to a project. CDFW also considers impacts to SSC a significant direct and cumulative adverse effect without implementing appropriate avoid and/or mitigation measures. The DEIR should include the following information:

a. Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region [CEQA Guidelines, § 15125(c)]. An environmental document should include measures to fully avoid and otherwise protect Sensitive Natural Communities from project-related impacts. CDFW considers these communities as threatened habitats having both regional and local significance. Plant communities, alliances, and associations with a state-wide ranking of S1, S2, S3 and S4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by visiting Vegetation Classification and Mapping Program - Natural Communities webpage (CDFW 2021d);

b. A thorough, recent, floristic-based assessment of special status plants and natural communities following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). Adjoining habitat areas should be included where project construction and activities could lead to direct or indirect impacts off site;

c. Floristic, alliance- and/or association-based mapping and vegetation impact assessments conducted at a project site and within the neighboring vicinity. The Manual of California Vegetation (MCV), second edition, should also be used to inform this mapping and assessment (Sawyer et al. 2009). Adjoining habitat areas should be included in this assessment where project activities could lead to direct or indirect impacts off site. Habitat mapping at the alliance level will help establish baseline vegetation conditions;

d. A complete, recent, assessment of the biological resources associated with each habitat type on site and within adjacent areas that could also be affected by a project. CDFW's California Natural Diversity Database (CNDDB) in Sacramento should be contacted to obtain current information on any previously reported sensitive species and habitat within and adjacent to the Project vicinity (CDFW 2021b). An assessment should include a nine-quadrangle search of the CNDDB to determine a list of species potentially present at a project site. A lack of records in the CNDDB does not mean that rare, threatened, or endangered plants and wildlife do not occur in the project site. Field verification for the presence or absence of sensitive species is necessary to provide a complete biological assessment for adequate CEQA review [CEQA Guidelines, § 15003(i)];

e. A complete, recent, assessment of rare, threatened, and endangered, and other

sensitive species on site and within the area of potential effect, including SSC, and California Fully Protected Species (Fish & G. Code, §§ 3511, 4700, 5050, and 5515). Species to be addressed should include all those which meet the CEQA definition of endangered, rare, or threatened species (CEQA Guidelines, § 15380). Seasonal variations in use of a project site should also be addressed such as wintering, roosting, nesting, and foraging habitat. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, may be required if suitable habitat is present. See CDFW's Survey and Monitoring Protocols and Guidelines for established survey protocol for select species (CDFW 2021f). Acceptable species-specific survey procedures may be developed in consultation with CDFW and the U.S. Fish and Wildlife Service; and,

f. A recent wildlife and rare plant survey. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of a proposed project may warrant periodic updated surveys for certain sensitive taxa, particularly if build out could occur over a protracted time frame or in phases.

g. A biological resources survey should include identification and delineation of any rivers, streams, and lakes and their associated natural plant communities/habitats. This includes any culverts, ditches, storm channels that may transport water, sediment, pollutants, and discharge into rivers, streams, and lakes.

**General Comments**

1) Disclosure. An environmental document should provide an adequate, complete, and detailed disclosure about the effect which a proposed project is likely to have on the environment (Pub. Resources Code, § 20161; CEQA Guidelines, §15151). Adequate disclosure is necessary so CDFW may provide comments on the adequacy of proposed avoidance, minimization, or mitigation measures, as well as to assess the significance of the specific impact relative to the species (e.g., current range, distribution, population trends, and connectivity).

2) Mitigation Measures. Public agencies have a duty under CEQA to prevent significant, avoidable damage to the environment by requiring changes in projects through the use of feasible alternatives or mitigation measures [CEQA Guidelines, §§ 15002(a)(3), 15021]. Pursuant to CEQA Guidelines section 15126.4, an environmental document shall describe feasible measures which could mitigate for impacts below a significant level under CEQA.

   a. Level of Detail. Mitigation measures must be feasible, effective, implemented, and fully enforceable/imposed by the lead agency through permit conditions, agreements, or other legally binding instruments (Pub. Resources Code, § 21081.6(b); CEQA Guidelines, §§ 15126.4, 15041). A public agency shall provide the measures that are fully enforceable through permit conditions, agreements, or other measures (Pub. Resources Code, § 21081.6). CDFW recommends that the City prepare mitigation measures that are specific, detailed (i.e., responsible party, timing, specific actions, location), and clear in order for a measure to be fully enforceable and implemented successfully via a mitigation monitoring and/or reporting program (CEQA Guidelines, § 15097; Pub. Resources Code, § 21081.6). Adequate disclosure is necessary so CDFW may provide comments on the adequacy and feasibility of proposed

mitigation measures.

b. Disclosure of Impacts. If a proposed mitigation measure would cause one or more significant effects, in addition to impacts caused by the Project as proposed, the environmental document should include a discussion of the effects of proposed mitigation measures [CEQA Guidelines, § 15126.4(a)(1)]. In that regard, the environmental document should provide an adequate, complete, and detailed disclosure about a project's proposed mitigation measure(s). Adequate disclosure is necessary so CDFW may assess the potential impacts of proposed mitigation measures.

3) Data. CEQA requires that information developed in environmental impact reports 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 by completing and submitting CNDDB Field Survey Forms (CDFW 2021b). The City should ensure data collected at a project-level has been properly submitted, with all data fields applicable filled out. The data entry should also list pending development as a threat and then update this occurrence after impacts have occurred.

4) Biological Direct, Indirect, and Cumulative Impacts. CDFW recommends providing a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts. The DEIR should address the following:

a. A discussion regarding Project-related indirect impacts on biological resources, including resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands [e.g., preserve lands associated with a Natural Community Conservation Plan (NCCP, Fish & G. Code, § 2800 et. seq.)]. Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR;

b. A discussion of both the short-term and long-term effects to species population distribution and concentration and alterations of the ecosystem supporting the species impacted [CEQA Guidelines, § 15126.2(a)];

c. A discussion of potential adverse impacts from lighting, noise, temporary and permanent human activity, and exotic species, and identification of any mitigation measures;

d. A discussion on Project-related changes on drainage patterns; the volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and, post-Project fate of runoff from the Project sites. The discussion should also address the potential water extraction activities and the potential resulting impacts on the habitat (if any) supported by the groundwater. Mitigation measures proposed to alleviate such Project impacts should be included;

e. An analysis of impacts from proposed changes to land use designations and zoning, and existing land use designation and zoning located nearby or adjacent to natural

areas that may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the DEIR; and,

f. A cumulative effects analysis, as described under CEQA Guidelines section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant and wildlife species, habitat, and vegetation communities. If the City determines that the Project would not have a cumulative impact, the environmental document should indicate why the cumulative impact is not significant. The City's conclusion should be supported by facts and analyses [CEQA Guidelines, § 15130(a)(2)].

5) Project Description and Alternatives. To enable CDFW to adequately review and comment on the proposed Project from the standpoint of the protection of plants, fish, and wildlife, we recommend the following information be included in the DEIR:

a. A complete discussion of the purpose and need for, and description of, the proposed Project;

b. CEQA Guidelines section 15126.6(a) states that an environmental document shall describe a reasonable range of potentially feasible alternatives to the Project, or to the location of the Project, which would feasibly attain most of the basic objectives of the Project but would avoid or substantially lessen any of the significant effects of the Project. CEQA Guidelines section 15126.6(f)(2) states if the Lead Agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion and should include reasons in the environmental document; and,

c. A range of feasible alternatives to Project component location and design features to avoid or otherwise minimize direct and indirect impacts to sensitive biological resources and wildlife movement areas. CDFW recommends the City consider configuring Project construction and activities, as well as the development footprint, in such a way as to fully avoid impacts to sensitive and special status plants and wildlife species, habitat, and sensitive vegetation communities. CDFW also recommends the City consider establishing appropriate setbacks from sensitive and special status biological resources. Setbacks should not be impacted by ground disturbance or hydrological changes for the duration of the Project and from any future development. As a general rule, CDFW recommends reducing or clustering the development footprint to retain unobstructed spaces for vegetation and wildlife and provide connections for wildlife between properties and minimize obstacles to open space.

Project alternatives should be thoroughly evaluated, even if an alternative would impede, to some degree, the attainment of the Project objectives or would be more costly (CEQA Guidelines, § 15126.6).

d. Where the Project may impact aquatic and riparian resources, CDFW recommends the City consider alternatives that would fully avoid impacts to such resources. CDFW also recommends alternatives that would allow not impede, alter, or otherwise modify existing surface flow; watercourse and meander; and water-dependent ecosystems and vegetation communities. Project-related

designs should consider elevated crossings to avoid channelizing or narrowing of streams. Any modifications to a river, creek, or stream may cause or magnify upstream bank erosion, channel incision, and drop in water level and cause the stream to alter its course of flow.

6) Translocation/Salvage of Plants and Animal Species. Translocation and transplantation is the process of moving an individual from a project site and permanently moving it to a new location. CDFW generally does not support the use of, translocation or transplantation as the primary mitigation strategy for unavoidable impacts to rare, threatened, or endangered plant or animal species. Studies have shown that these efforts are experimental and the outcome unreliable. CDFW has found that permanent preservation and management of habitat capable of supporting these species is often a more effective long-term strategy for conserving sensitive plants and animals and their habitats.

7) Compensatory Mitigation. An environmental document should include mitigation measures for adverse Project related direct or indirect impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of project-related impacts. For unavoidable impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. Areas proposed as mitigation lands should be protected in perpetuity with a conservation easement, financial assurance and dedicated to a qualified entity for long-term management and monitoring. Under Government Code, section 65967, the Lead Agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources on mitigation lands it approves.

8) Long-term Management of Mitigation Lands. For proposed preservation and/or restoration, an environmental document should include measures to protect the targeted habitat values from direct and indirect negative impacts in perpetuity. The objective should be to offset the project-induced qualitative and quantitative losses of wildlife habitat values. Issues that should be addressed include (but are not limited to) restrictions on access, proposed land dedications, monitoring and management programs, control of illegal dumping, water pollution, and increased human intrusion. An appropriate non-wasting endowment should be set aside to provide for long-term management of mitigation lands.

**Filing Fees**

The Project, as proposed, could have an impact on fish and/or wildlife, and assessment of filing fees is necessary as part of the formal CEQA review/approval process. 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 & Game Code, § 711.4; Pub. Resources Code, § 21089).

**Conclusion**

CDFW appreciates the opportunity to provide comments and recommendations regarding the Project to assist the City of Lancaster in adequately analyzing and minimizing/mitigating impacts to biological resources. If you have any questions or comments regarding this letter, please contact Felicia Silva, Environmental Scientist, at Felicia.Silva@wildlife.ca.gov or (562) 292-8105.

Sincerely,

DocuSigned by:
5991E19EF8094C3...
For Erinn Wilson-Olgin
Environmental Program Manager I

Attachments:
Attachment 1 - Informal Consultation Letter - Comments on Rangeland Solar Project, City of Lancaster, Los Angeles County

ec: CDFW
Victoria Tang – Victoria.Tang@wildlife.ca.gov - Los Alamitos
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State Clearinghouse – State.Clearinghouse@opr.ca.gov

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State of California – Natural Resources Agency
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(858) 467-4201
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***GAVIN NEWSOM, Governor***
***CHARLTON H. BONHAM, Director***

July 8, 2021

Jocelyn Swain
City of Lancaster
44933 Fern Avenue
Lancaster, CA 93534
jwswain@cityoflancasterca.org

**Subject: Comments on Rangeland Solar Project, City of Lancaster, Los Angeles County**

Dear Ms. Swain:

The California Department of Fish and Wildlife (CDFW) has reviewed the Rangeland Solar Project (Project) proposed by the City of Lancaster (City; Lead Agency). Supporting documentation for the Project includes *Rangeland Solar Project, City of Lancaster, California – Biological Technical Report* (ICF 2020).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.

It is CDFW's understanding that this Project is part of a larger project in which nine Conditional Use Permits (CUPs) have been submitted to the City and the County of Los Angeles (County), totaling 94 megawatts to be constructed on 866 acres. For the larger project, the City and County have agreed to prepare a joint Environmental Impact Report (EIR), with the City serving as the Lead Agency. Consistent with CEQA Guidelines, Section 15063, CDFW's intent is to provide comments to address the subsequent land use permits (CUPs) that are subject to discretionary action by the City and County, triggering the CEQA process.

**CDFW's 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, subdivision (a) & 1802; Pub. Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (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 projects and related activities that have the potential to adversely affect State 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, including 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.), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G. Code, §1900 et seq.), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

**Project Description and Summary**

**Project Proponent:** sPower

**Objective:** The Project proposed by sPower involves the construction of a ground-mounted utility-scale solar energy facility and optional battery energy storage system. The Project would have a generating capacity of up to 34 megawatts (MW) in which north-south rows of photovoltaic (PV) panels would be mounted on either fixed-tilt or single-axis tracking systems with steel support structures. Generation tie (gen-tie) lines would be installed underground to connect the Project to either the Big Sky or Big Sky North Substation. For the execution of the Project, four conditional use permits (CUPs) have been generated, totaling a 307-acre site across four locations.

- CUP 20-07: Development is proposed for 32 acres on the 79-acre site. The remainder of the site is occupied by the Antelope Valley Resource Conservation District Native Plant Nursery. Solar panels generating a total of 5 MW will be developed on this site.
- CUP 20-08: Development is proposed for 85 acres of the 98-acre site. Solar panels generating a total of 12 MW will be developed on this site.
- CUP 20-09: Development is proposed for 34 acres of the 38-acre site. Solar panels generating a total of 5 MW will be developed on this site.
- CUP 20-12: Development is proposed for the entirety of the 92-acre site. Solar panels generating a total of 12 MW will be developed on this site.

Project-related activities include vegetation removal, grading, installation of solar panels, installation of supporting infrastructure, staging areas, and access areas. The solar facilities would occupy approximately 243 acres of the four sites, totaling roughly 307 acres.

The power generated by the Project would connect to either the Big Sky Substation or the Big Sky North Substation through one of two proposed Generation-Tie (gen-tie) Line Alignment Options. Both options would use public rights-of-way as wells as a few privately owned parcels. Under both options, the proposed Project would connect to existing Southern California Edison transmission system through underground 34-kilovolt (kV) gen-tie lines. The estimated width of the disturbance area for the underground gen-tie corridor would be 10 to 50 feet.

- Gen-Tie Alignment Option #1 – referred to as the Big Sky North Gen-Tie – would extend from 82nd Street West to 110th Street West along West Avenue I, then head north along 110th Street West and east along private easements. This option would also include a gen-tie line that would run north from the intersection of 90th Street West and West Avenue I, then turn west at West Avenue H, north at 93rd Avenue West, and west at Avenue G-12 along a private easement. The gen-tie lines would connect to Big Sky North Substation northeast at the intersection of 100th Street West and Avenue G-8.

- Gen-Tie Alignment Option #2 – referred to as the Big Sky Original Gen-Tie – would

consist of several segments. The first segment would start at the intersection of 110th Street West and West Avenue I, extend south for 1 mile, head east at West Avenue J for one mile, south at 100th Street West for 0.25 mile, and terminate at the Big Sky Substation. The second segment would follow the same corridor as the Big Sky North Gen-Tie along West Avenue I, extending 2.75 miles from 82nd Street West to 110th Street West. The third segment would extend south for 1 mile from the intersection of 90th Street West and West Avenue I, turn west along West Avenue J for one mile, south at 100th Street West for 0.25 mile, and terminate at the Big Sky Substation. Two smaller segments would connect to the portion of the gen-tie along 90th Street West. One segment would begin at the intersection of 87th Street West and extend west for 0.25 mile. The other segment would start at the intersection of Lancaster Boulevard and West Avenue I-12, extend south for 0.25 mile, and then continuing west along West Avenue J for 0.35 mile.

**Location:** The Project is located in the western portion of the City of Lancaster in Los Angeles County within the western portion of Antelope Valley, near the community of Del Sur. The Project site is generally bounded by West Avenue J on the south, West Avenue H on the north, 105th Street West on the west, and 80th Street West on the east.

The Los Angeles County Accessor's Parcel Numbers (APN) associated with the Project are:

| **APNs:** | **Location:** |
|---|---|
| 3267-005-902 | Site 1 – southwest of the intersection of 100th Street West and West Avenue I |
| 3219-023-007, 3219-023-008, 3219-023-016, 3219-023-018, 3219-023-019, 3219-024-100 | Site 2 North – northeast of the intersection of West Avenue I and 90th Street West |
| 3203-001-041, 3203-001-009, 3203-002-010, 3203-002-009 | Site 2 South – south of West Avenue I and west of 85th Street West |
| 3203-001-031 | Site 3 – southwest of the intersection of West Avenue I and 80th Street West |

**Comments and Recommendations**

The City submitted Project-related documents for an informal consultation with CDFW on June 14, 2021 [CEQA Guidelines, § 15063(g)]. Biological and hydrological surveys of the Project site, presented in the Biological Technical Report (BTR) were performed in October 2019, April 2020, May 2020, June 2020, July 2020, and September 2020. After reviewing the BTR, CDFW offers the comments and recommendations below to assist the City in adequately identifying the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW recommends the City consider our comments and recommendations when preparing an environmental document that may provide adequate and complete disclosure of the Project's potential impacts on biological resources [Pub. Resources Code, § 21061; CEQA Guidelines, §§ 15003(i), 15151].

**Project Description and Related Impact Shortcoming**

**Comment #1: Impacts to Streams**

**Issue:** As part of the BTR, a jurisdictional delineation was performed, and multiple hydrological features were identified throughout the Project site. Based on the materials provided, it is unclear what hydrological conditions were used to evaluate potential flows and sediment transport of these hydrological features in varying future storm events.

**Specific impacts:** The Project may result in the loss of streams and associated watershed function and biological diversity. Trenching associated with the installation of gen-tie lines and streambed crossings could alter flows or absorption rates in the vicinity of the Project site.

**Why impacts would occur:** The Project may release sediment or alter the watershed. This may result in impacts to streams on site and downstream along with associated biological resources beyond the Project development footprint. Episodic streambeds in Antelope Valley often lack a well-defined bed and bank. Considering desert streams and their episodic and flashy flows, often complete absence of iconic riparian vegetation, and channel forms that are atypical of conventional visions of streams, many episodic streams are inappropriately excluded from stream delineation reports. With potentially omitted portions of streambeds, the assessment of Project-related impacts may not be complete. As a result, subsequent mitigating actions may not be fully enacted to offset significant impacts to streambeds and riparian resources on site and downstream of the Project site.

**Evidence impacts would be significant**: Fish and Game Code section 1602 requires any person, State or local governmental agency, or public utility to notify CDFW prior to beginning any activity that may do one or more of the following:

- Divert or obstruct the natural flow of any river, stream, or lake;
- Change the bed, channel, or bank of any river, stream, or lake;
- Use material from any river, stream, or lake; or,
- Deposit or dispose of material into any river, stream, or lake.

According to Fish and Game Code Section 5650 (a), it is unlawful to deposit in, permit to pass into, or place where it can pass into the waters of this state any of the following:

(1) Any petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum, or carbonaceous material or substance.
(2) Any refuse, liquid or solid, from any refinery, gas house, tannery, distillery, chemical works, mill, or factory of any kind.
(3) Any sawdust, shavings, slabs, or edgings.
(4) Any factory refuse, lime, or slag.
(5) Any cocculus indicus.
(6) Any substance or material deleterious to fish, plant life, mammals, or bird life.

Per Fish and Game Code 5652 (a), “It is unlawful to deposit, permit to pass into, or place where it can pass into the waters of the state, or to abandon, dispose of, or throw away, within 150 feet of the high water mark of the waters of the state, any cans, bottles, garbage, motor vehicle or parts thereof, rubbish, litter, refuse, waste, debris, or the viscera or carcass of any dead mammal, or the carcass of any dead bird.”

The Project may substantially adversely affect the existing stream pattern of the Project site through the alteration or diversion of a stream, which absent specific mitigation, could result in substantial erosion or siltation on site or off site of the Project. Debris, soil, silt, sawdust, rubbish, raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous or deleterious to aquatic life, wildlife, or riparian habitat resulting from Project related activities may enter the stream.

Trenching or drilling beneath the streambed, placing equipment into the riparian area, and introducing artificial structures to the bed, bank, or channel of a stream has the potential to alter flows and result in scouring of a streambed. Scouring during and after storm events could potentially lead to shifting or exposure of Project components, such as gen-tie lines or pipes, that may further alter the shape and flows of the stream and diminish downstream water quality.

**Recommended Potentially Feasible Mitigation Measure(s):**

**Mitigation Measure #1:** The Project will result in the alteration of multiple hydrological features, which would be subject to notification for a LSA Agreement pursuant under Fish and Game Code, section 1600 *et seq*. The Project applicant (or "entity") must provide notification to CDFW pursuant to Fish and Game Code, section 1600 *et seq*. Based on this notification and other information, CDFW determines whether an LSA Agreement with the applicant is required prior to conducting the proposed activities. Please visit CDFW's Lake and Streambed Alteration Program webpage to for information about LSA Notification and online submittal through the Environmental Permit Information Management System (EPIMS) Permitting Portal (CDFW 2021a). LSA Notification should occur prior to the issuance of a grading permit.

**Mitigation Measure #2:** The LSA Notification should include a hydrology report to evaluate whether altering streams within the Project's development, grading, and vegetation clearing areas could impair headwater streams where there is hydrological connectivity. The hydrology report should include a hydrological evaluation of the 100-year storm event to provide information on how water and sediment is conveyed through the Project area. CDFW requests a map showing features potentially subject to CDFW's broad regulatory authority over streams.

**Mitigation Measure #3:** A scour analysis should be conducted to determine the depth of scour potential. The gen-tie lines should be buried below scour depths to avoid the line from eventually becoming exposed. The scour analysis should demonstrate that stream banks and the streambed would not see increased erosion or scouring as a result of the placement of artificial structures or Project equipment. The scour analysis should calculate scour depth and include the potential for uplifting or shifting of Project components that could require routine maintenance in the future. Additionally, the scour analysis should assess the 100, 50, 25, 10, 5, and 2-year frequency flood events to evaluate existing and proposed conditions and erosion/scour potential.

**Mitigation Measure #4:** Evaluation of surficial geologic indicators of fluvial activity and inactivity should be done in collaboration with a fluvial geomorphologist with expertise in episodic streams in arid climates and their processes because it relies heavily on methods that require special training, extensive field experience, and understanding of natural surficial processes outside the practice of many non-geologists.

**Comment #2: Impacts to Swainson's hawk**

**Issue:** According to the BTR, a single adult Swainson's hawk (*Buteo swainsoni*), a CESA-listed species, was observed foraging just outside of the Project site during field surveys in April 2020. In May 2020, a carcass of a juvenile Swainson's hawk was found on the ground under the power lines west of Rangeland Site 1, which would be used for both Gen-Tie Alignment Options. The BTR acknowledges that there is suitable foraging habitat for Swainson's hawk throughout the study area and along the gen-tie routes. It also includes the observation that "nesting habitat is available in roadside trees along the proposed interconnection and gen-tie lines." CDFW has concerns that the Project would impact foraging habitat for Swainson's hawk.

**Specific impacts:** Swainson's hawks were observed during Project surveys and the site has an abundance of grassland habitat that serves as potential foraging habitat. Vegetation removal and ground clearing activities will potentially result in the loss of foraging habitat for Swainson's hawk.

**Why impact would occur**: Section 5.3 of the BTR acknowledges the potential for impacts to Swainson's hawk by stating "[c]onstruction of the proposed project would require vegetation clearing and grading and would result in permanent impacts on biological resources, including foraging habitat for special-status raptor species." Yet in Section 5.6.1, in which impacts to Swainson's hawk is described, the document concludes that "[d]evelopment of the proposed project is not expected to result in a loss of functional foraging habitat and therefore would not have a significant effect on Swainson's hawk. Because of the lack of significant effects, no mitigation is proposed." Inadequate replacement for impacted habitat, even without accounting for temporal loss, yields a net loss of habitat in the Project vicinity. This is likely to be considered take of special status species, including Endangered Species Act (ESA) and CESA-listed species that may occur without adequate detection, avoidance, and mitigation measures.

**Evidence impact would be significant:** Consistent with CEQA Guidelines, Section 15380, the status of the Swainson's hawk as a threatened species under CESA qualifies it as an endangered, rare, or threatened species under CEQA. The estimated historical population of Swainson's hawk was nearly 17,000 pairs; however, in the late 20$^{th}$ century, Bloom (1980) estimated a population of only 375 pairs. The decline was primarily a result of habitat loss from development (CDFW 2016). The most recent survey conducted in 2009 estimated the population at 941 breeding pairs. The species is currently threatened by loss of nesting and foraging habitat (e.g., from agricultural shifts to less crops that provide less suitable habitat), urban development, environmental contaminants (e.g., pesticides), and climate change (CDFW 2016). CDFW considers a Swainson's hawk nest site to be active if it was used at least once within the past five years and impacts to suitable habitat or individual birds within a five-mile radius of an active nest as significant. Based on the foregoing, Project impacts would potentially substantially reduce the number and/or restrict the range of Swainson's hawk or contribute to the abandonment of an active nest and/or the loss of significant foraging habitat for a given nest territory and thus result in "take" as defined under CESA.

**Recommended Potentially Feasible Mitigation Measure(s):**

**Mitigation Measure #1:** The City should require replacement lands at a ratio of no less than 1:1 for impacted Swainson's hawk foraging habitat.

**Mitigation Measure #2:** CDFW released guidance for this species entitled *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* (2010). CDFW recommends conducting focused surveys for Swainson's hawk following the 2010 guidance and disclosing the results. If take of Swainson's hawk would occur from Project construction or operation, CESA authorization [(i.e., incidental take permit (ITP)] would be required for the Project. CDFW may consider the City's CEQA documentation for its CESA-related actions if it adequately analyzes/discloses impacts and mitigation to CESA-listed species. Additional documentation may be required as part of an ITP application for the Project in order for CDFW to adequately develop an accurate take analysis and identify measures that would fully mitigate for take of CESA-listed species.

**Mitigation Measure #3:** Permanent impacts to foraging habitat for Swainson's hawk should be offset by setting aside replacement habitat to be protected in perpetuity under a conservation easement. Areas proposed as mitigation should have a recorded conservation easement and be dedicated to an entity which has been approved to hold/manage lands pursuant to Assembly Bill (AB) 1094 (2012), which amended Government Code sections 65965-65968. An appropriate endowment should be included to provide for the long-term management of mitigation lands.

**Mitigation Measure #4:** Should the purchase of mitigation credits be used as mitigation for the Project, CDFW recommends purchasing restoration or creation credits and not enhancement or preservation. The City should further clarify the mitigation option to be chosen and identify the type of mitigation credits purchased in relation to this Project. Mitigation bank credits should be purchased, approved, or otherwise fully executed prior to implementing Project-related ground-disturbing activities and prior to the City's issuance of grading permits.

**Mitigation Measure #5:** In order to reduce impacts to Swainson's hawk foraging habitat, the City should consider providing alternative project designs that reduce the acreage of impacts to foraging habitat for avian species including Swainson's hawk.. A project with reduced impacts to Swainson's hawk would likely be environmentally superior to the proposed Project (CEQA Guidelines § 15126.6).

**Comment #3: Impacts to California legless lizard**

**Issue:** As indicated in the BTR, California legless lizard (*Anniella pulchra*), a Species of Special Concern (SSC), has moderate potential to occur and be impacted by Project-related activities based on the presence of suitable habitat on the Project site. A review of California Natural Diversity Database (CNDDB) indicates that there are multiple historic records of legless lizard throughout the BTR study area (CDFW 2021a). For example, there is at least one record just north of Rangeland Site 1 and another in between Rangeland Site 2 South and Rangeland Site 3.

**Specific impacts:** Ground clearing and construction activities could potentially lead to mortality of individual lizards found on the Project site.

**Why impact would occur**: California legless lizard is a cryptic species that often evade threats from predators by remaining still and blending into the surrounding landscape. As they can be difficult to identify through a cursory survey, the Project may lead to unintended direct and indirect impacts, via mortality or loss of habitat, to California legless lizard.

**Evidence impact would be significant:** An SSC is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria:

- is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role.
- is listed as ESA-, but not CESA-, threatened or endangered; meets the State definition of threatened or endangered but has not formally been listed.
- is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status.
- has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for CESA status (CDFW 2021b).

Project construction and activities, directly or through habitat modification, may result in direct mortality, reduced reproductive capacity, population declines, or local extirpation of SSC. CEQA provides protection not only for State and federally listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. These SSC meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15065). Take of SSC could require a mandatory finding of significance by the City, (CEQA Guidelines § 15065).

**Recommended Potentially Feasible Mitigation Measure(s):**

**Mitigation Measure #1:** Pursuant to the California Code of Regulations, title 14, section 650, the City/qualified biologist must obtain appropriate handling permits to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with Project construction and activities. Please visit CDFW's Scientific Collection Permits webpage for information (CDFW 2021c). An LSA Agreement may provide similar take or possession of species as described in the conditions of the agreement.

CDFW has the authority to issue permits for the take or possession of wildlife, including mammals; birds, nests, and eggs; reptiles, amphibians, fish, plants; and invertebrates (Fish & G. Code, §§ 1002, 1002.5, 1003). Effective October 1, 2018, a Scientific Collecting Permit is required to monitor project impacts on wildlife resources, as required by environmental documents, permits, or other legal authorizations; and, to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with otherwise lawful activities (Cal. Code Regs., tit. 14, § 650).

**Mitigation Measure #2:** The Project proponent should retain a qualified biologist(s) with experience surveying for or is familiar with the life history Southern California legless lizard. The qualified biologist should conduct focused surveys for SSC and suitable habitat no more than one month from the start of any ground-disturbing activities or vegetation removal where there may be impacts to SSC. In addition, the qualified biologist should conduct daily biological monitoring during any activities involving vegetation clearing or modification of natural habitat. Positive detections of SSC and suitable habitat at the detection location should be mapped and photographed. The qualified biologist should provide a summary report of SSC surveys to the

City prior to implementing any Project-related ground-disturbing activities and vegetation removal. Depending on the survey results, a qualified biologist should develop species-specific mitigation measures for implementation during the Project.

**Mitigation Measure #3:** Wildlife should be protected, allowed to move away on its own (non-invasive, passive relocation), or relocated to adjacent appropriate habitat on site or to suitable habitat adjacent to the project area. SSC should be captured only by a qualified biologist with proper handling permits. The qualified biologist should prepare a species-specific list (or plan) of proper handling and relocation protocols and a map of suitable and safe relocation areas. A relocation plan should be submitted to the City prior to implementing any Project-related ground-disturbing activities and vegetation removal.

**Mitigation Measure #4:** The Project proponent, in consultation with a qualified biologist, should prepare a worker environmental awareness training. The qualified biologist should communicate to workers that upon encounter with an SSC (e.g., during construction or equipment inspections), work must stop, a qualified biologist must be notified, and work may only resume once a qualified biologist has determined that it is safe to do so.

**Mitigation Measure #5:** If any SSC are harmed during relocation or a dead or injured animal is found, work in the immediate area should stop immediately. The qualified biologist should be notified and dead or injured wildlife documented. A formal report should be sent to CDFW and the City within three calendar days of the incident or finding. Work in the immediate area may only resume once the proper notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.

**Comment #4: Inadequate Disclosure of Adequacy of Biological Impact Fee**

**Issue:** Section 5.6.4 of the BTR states that "[t]he proposed project would result in direct permanent and cumulative loss of foraging and nesting habitat. In order to mitigate for the permanent loss of habitat for special-status migratory and resident birds, the applicant would provide the requisite funds for the City of Lancaster Biological Impact Fee. This would reduce the level of direct permanent and cumulative effects on tricolored blackbird to below a level of significance." The BTR does not provide sufficient information for CDFW to evaluate the adequacy of the Biological Impact Fee to offset impacts to biological resources in Antelope Valley. CDFW has concerns that paying an in-lieu fee to the City would not sufficiently offset impacts to roughly 243 acres of foraging and nesting habitat for numerous species reliant upon the Project site.

**Specific Impacts:** The Project would develop roughly 243 acres of California annual and perennial grasslands, thereby eliminating foraging habitat for numerous mammal and bird species.

**Why impacts would occur:** The Project's impacts on biological resources in Antelope Valley would be mitigated through payment of a $770/acre Biological Impact Fee. The BTR does not explain or make a connection as to why payment of the Biological Impact Fee is adequate to offset Project impacts so that the Project would have no impacts. The BTR does not discuss or provide the following information:

1) Whether the Biological Impact Fee is going towards an established program;
2) How that program is designed to (and will) mitigate the significant effects at issue at a

meaningful level meaningful;

3) What the Biological Impact Fee would acquire. It is unclear if the Biological Impact Fee would be used to acquire land for preservation, enhancement, and/or restoration purposes, or if the Biological Impact Fee would be used to purchase credits at a mitigation bank, or none of the above;
4) What biological resources would the Biological Impact Fee protect/conserve;
5) Why the Biological Impact Fee is appropriate for mitigating cumulative loss of biological resources in Antelope Valley;
6) How $770/acre is sufficient to purchase land or credits at a mitigation bank;
7) Where the City may acquire land or purchase credits at a mitigation bank so that the Biological Impact Fee would offset Project impacts on biological resources in Antelope Valley;
8) When the City would use the Biological Impact Fee. Mitigation payment does not equate to mitigation if the funds are not being used. Also, temporal impacts on biological resources may occur as long as the City fails to implement its proposed mitigation;
9) How the City would commit to the Project to paying the Biological Impact Fee. For example, when would the City require payment from the project applicant, how long would the project applicant have to pay the fee, and what mechanisms would the City implement to ensure the fee is paid? Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines, § 15126.4).
10) What performance measures the proposed mitigation would achieve (CEQA Guidelines, § 15126.4);
11) What type(s) of potential action(s) that can feasibly achieve those performance standards (CEQA Guidelines, § 15126.4); and,
12) How the Biological Impact Fee would be adequate such that no impacts would occur as a result of the Project.

**Evidence impacts would be significant:** The basic purpose of an environmental document is to provide public agencies and the public in general with detailed information about the effect a proposed project is likely to have on the environment, and ways and manners in which the significant effects of such a project might be minimized (Pub. Resources Code, §§ 21002.1, 21061). The BTR is insufficient as an informational document because it fails to discuss the ways and manners in which the Biological Impact Fee would mitigate for the Project's impacts on biological resources in Antelope Valley. Mitigation measures should be adequately discussed and the basis for setting a particular measure should be identified [CEQA Guidelines, § 15126.4(a)(1)(B)]. The BTR does not provide enough information to facilitate meaningful public review and comment on the appropriateness of the City's Biological Impact Fee at mitigating for impacts on biological resources

This Project may have a significant effect on the environment because the Project may reduce habitat for rare plants or wildlife; cause rare plants or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; and substantially reduce the number or restrict the range of an endangered, rare, or threatened species [CEQA Guidelines, § 15065(a)(1)]. Furthermore, the Project may contribute to the ongoing loss of sensitive, special status, threatened, and/or endangered plants, wildlife, and vegetation communities in Antelope Valley. The Project may have possible environmental effects that are cumulatively considerable [CEQA Guidelines, § 15065(a)(3)]. The City is acknowledging that the Project would contribute to the cumulative loss of biological resource in Antelope Valley

because the City is proposing a Biological Impact Fee as compensatory mitigation. The Biological Impact Fee may be inadequate mitigation absent commitment, specific performance standards, and actions to achieve performance standards. Inadequate avoidance and mitigation measures will result in the Project continuing to have a substantial adverse direct and cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status in local or regional plans, policies, or regulations, or by CDFW or the U.S. Fish and Wildlife Service.

**Recommended Potentially Feasible Mitigation Measure(s):**

**Mitigation Measure #1:** The City should update the environmental document to provide adequate, complete, and good-faith disclosure of information that would address the following in relation to the Project:

1) Whether the Biological Impact Fee is going towards an established program;
2) How the program is designed to (and will) mitigate the biological effects at issue at a meaningful level;
3) What the Biological Impact Fee would acquire;
4) What biological resources would the Biological Impact Fee protect/conserve;
5) Why the Biological Impact Fee is appropriate for mitigating the cumulative loss of biological resources in Antelope Valley;
6) Why the Biological Impact Fee is sufficient to purchase land or credits at a mitigation bank;
7) Where the City may acquire land or purchase credits at a mitigation bank;
8) When the City would use the Biological Impact Fee; and,
9) How the Biological Impact Fee would be adequate such that no impacts would occur as a result of the Project.

The City should provide any technical data, maps, plot plans, diagrams, and similar relevant information in addressing these concerns (CEQA Guidelines § 15147).

**Mitigation Measure #2:** The City should provide a discussion describing how it intends to commit to mitigation via the Biological Impact Fee. For example, the City should provide specifics as to when would the City require payment from the project applicant, how long would the project applicant have to pay the fee, what mechanisms would the City implement to ensure the fee is paid, and when the City would use the Project's payment for mitigation. Also, the City should provide specific performance standards and actions to achieve those performance standards.

**Mitigation Measure #3:** The City should circulate the environmental document for meaningful public review and assessment of the City's Biological Impact Fee. Additionally, the City should recirculate the environmental document if the proposed mitigation measure (i.e., Biological Impact Fee) would not reduce potential effects to less than significant and new measures must be required [CEQA Guidelines § 15073.5(b)(2)].

**Additional Comments & Recommendations**

**Comment #5: Nesting Birds**

Mitigation Measure MM-BIO-5: Nesting Raptors and Migratory Birds of the Impacts Analysis and Mitigation Section of the BTR addresses avoidance measures to be taken to reduce impacts to nesting passerines and raptors. It includes the recommendation, "[i]f active nests are detected during the preconstruction surveys, a suitable buffer from construction activities (500 feet for raptors and 100 feet for all other species) will be applied until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged or the nest has failed)." CDFW has concerns that applying avoidance buffers in the lower ends of the ranges in this mitigation measure may not sufficiently reduce impacts to nesting birds to a level below a threshold of significance.

To protect nesting birds that may occur on site or adjacent to the Project boundary, CDFW recommends that no construction should occur from February 15 (January 1 for raptors) through August 31 unless a qualified biologist completes a survey for nesting bird activity within a 500-foot radius of the construction site. Based on local conditions, the nesting bird surveys should be conducted at appropriate nesting times and concentrate on potential roosting or perch sites. CDFW recommends the Lead Agency require surveys be conducted by a qualified biologist no more than 7 days prior to the beginning of any Project-related activity likely to impact raptors and migratory songbirds, for the entire Project site. If Project activities are delayed or suspended for more than 7 days during the breeding season, repeat the surveys. If nesting raptors and migratory songbirds are identified, CDFW recommends the following minimum no-disturbance buffers be implemented: 300 feet around passerine (perching birds and songbirds) nests, 500 feet around non-listed raptor nests and 0.5 mile around listed bird nests. These buffers should be maintained 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.

**Comment #6: Gen-Tie Alignment Options**

Page 1-2 of the BTR offers two proposed Gen-Tie Alignment Options for the Project, "[t]he power generated by the Project would connect to either the Big Sky Substation or the Big Sky North Substation through one of two proposed Generation-Tie (gen-tie) Line Alignment Options." While the BTR does describe the impacts for each Gen-Tie Alignment Option, it is uncertain which alignment option will be used and therefore unclear as to the exact acreage and resources impacted by the Project. An incomplete analysis of the proposed Project will likely lead to inadequate mitigation for impacts to a variety of sensitive species as this process may overlook or fail to identify mitigation measures to sufficiently reduce impacts to below a level of significance.

The City should quantify all Project impacts for all Gen-Tie Alignment Options. In addition, the City should disclose which Gen-Tie Alignment Option will be used for the Project and provide mitigation measures for each significant environmental effect.

**Filing Fees**

The Project, as proposed, could have an impact on fish and/or wildlife, and assessment of filing fees is necessary as part of the formal CEQA review/approval process. 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 & Game Code, § 711.4; Pub. Resources Code, § 21089).

**Conclusion**

CDFW appreciates the opportunity to provide early comments and recommendations regarding the Project to assist the City of Lancaster in adequately analyzing and minimizing/mitigating impacts to biological resources. CDFW looks forward to the formal circulation and review of the upcoming Notice of Preparation for an Environmental Impact Report (EIR) for the Project.. If you have any questions or comments regarding this letter, please contact Andrew Valand, Environmental Scientist, at Andrew.Valand@wildlife.ca.gov or (562) 292-6821.

Sincerely,

DocuSigned by:

For 

B12F986CDBBD4AA...

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