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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

August 23, 2021

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STATE CLEARINGHOUSE

Soyeon Choi
Los Angeles County
Department of Regional Planning
320 West Temple Street
Los Angeles, CA 90012
SChoi@planning.lacounty.gov

Subject: Estrella Solar Project, Mitigated Negative Declaration, SCH #2021070438, Unincorporated Los Angeles County and City of Lancaster, Los Angeles County

Dear Ms. Choi:

The California Department of Fish and Wildlife (CDFW) has reviewed an Initial Study/Mitigated Negative Declaration (MND) from the Los Angeles County Department of Regional Planning (County; Lead Agency) for the Estrella Solar Project (Project). The Project is proposed by Applied Energy Services (AES) (Project Applicant). 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.

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Project Description and Summary

Objective: The Project proposes to construct a ground-mounted utility-scale solar energy facility and optional battery energy storage system. The solar energy facility would occupy approximately 145 acres of the 148.8-acre Project site. The Project site currently consists of disturbed agricultural land and has no habitable buildings, structures, or development.

The Project would have a generating capacity of up to 21 megawatts of alternating current and up to 28 megawatts of energy storage capacity. The facility would generate, charge, store, and discharge renewable, emission-free electricity during the highest electricity demand time periods. The project would operate year-round, generating electric power during daylight hours and discharging stored electric power at night. Project-related activities include vegetation removal, grading, and installation of photovoltaic (PV) solar panels, supporting infrastructure, staging areas, and access areas. The major components of the Project are:

- A solar field of north-south rows of PV solar panels mounted on either fixed-tilt or single-axis tracking systems on steel support structures. The assembled PV panels would have a maximum vertical height of approximately 10 feet. The PV panels would be arranged in rows with center-to-center spacing of approximately 10 to 25 feet;
- An electrical collection system consisting of underground electrical conduits;
- Battery storage technology to charge and discharge the battery according to power delivery needs;
- A switchgear area for the transformer equipment, control building foundation, and oil containment area;
- A data collection system to remotely monitor the facility operation and/or remotely control critical components; and,
- Paved driveways, internal 20-foot-wide access roads, security fencing, landscaping, lighting; and two 5,000-gallon water tanks.

The power generated by the Project would be discharged either overhead or underground to an existing Southern California Edison (SCE) grid via one of the two Generation-Tie (Gen-Tie) Line Alignment Options:

- Gen-Tie Alignment Option 1 - Use a shared gen-tie corridor down 110th Street West that is already undergoing. The corridor would ultimately connect to the existing Big Sky North substation.
- Gen-Tie Alignment Option 2 - "Tap" into the existing SCE 66-kilovolt line located within the Project site in the southeast corner along the eastern shoulder of 90th Street West.

Gen-Tie Alignment Option 1 has been identified in as being the Preferred Alternative.

Location: The Project is in the northern portion of unincorporated Los Angeles County within the western portion of Antelope Valley. The Project site is bounded by West Avenue A-8 on the south, Avenue A on the north, 95th Street West on the west, and 90th Street West on the east. The Los Angeles County Accessor's Parcel Numbers (APN) associated with the Project are 3262-006-002 and 3262-006-003. Under Option 1, the proposed Gen-Tie line would extend south for approximately nine miles along public rights-of-way and a few privately owned parcels.

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The Gen-Tie would connect to the Big Sky North substation, northeast of the intersection of 110th Street West and Avenue G-8, within the City of Lancaster.

Comments and Recommendations

The County submitted Project-related documents for an early consultation with CDFW on May 3, 2021 [CEQA Guidelines, § 15063(g)]. CDFW provided comments and recommendations to the County on June 25, 2021 to assist the County in adequately identifying and analyzing the Project's significant, or potentially significant, effects on western Joshua trees (*Yucca brevifolia*); Swainson's hawk (*Buteo swainsoni*); and nesting birds. CDFW appreciates that the County reviewed and considered our comments and recommendations while preparing an MND for the Project.

After reviewing the MND, CDFW offers the comments and recommendations below to further assist the County in adequately avoiding and/or mitigating the Project's impacts on fish and wildlife (biological) resources. Thank you for the opportunity provide comments. We hope that the County will consider our comments prior to finalizing the MND. CDFW recommends the measures or revisions below be included in a science-based monitoring program that contains adaptive management strategies as part of the Project's CEQA mitigation, monitoring and reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097).

Specific Comment: Impacts to Swainson's hawk

Issue: The Project would impact Swainson's hawk (*Buteo swainsoni*), a CESA-listed species. Mitigation measures proposed by the County to mitigate for impacts on Swainson's hawk may not reduce impacts to less than significant.

Specific impacts: The Project would result in the permanent loss of approximately 149 acres of functional Swainson's hawk foraging habitat within the Project site.

Why impact would occur: According to page 3-22 in the MND, "a single adult Swainson's hawk was observed foraging within the project site [...] Gophers (*Thomomys bottae*) were also observed on the project site, which are a primary food source of breeding Swainson's hawk. An active Swainson's hawk nest was observed in a tree approximately 0.4-mile northeast of the project site. Based on the location of this nest relative to the project site, observed foraging behavior, and the presence of primary prey (gophers) onsite, it is assumed the project site is providing the nest with ample foraging opportunity." Given that Swainson's hawks use the Project site to forage, buildout of the Project would result in the permanent loss of approximately 149 acres of functional Swainson's hawk foraging habitat in the Antelope Valley.

Evidence impact would be significant:

Net Loss of Foraging Habitat

Breeding pairs of Swainson's hawks are critical to conserving the species and preventing the population to become less than self-sustaining (CEC and CDFG 2010). The most recognized threat to Swainson's hawks is the loss of their native foraging and breeding grounds (CDFG 2016; CEC and CDFG 2010). As important foraging areas are converted to urban landscapes or other unsuitable habitat, the aptitude for the landscape to support breeding pairs

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decreases.

In the Antelope Valley, the small number of breeding Swainson's hawks and the potential isolation from other Swainson's hawk populations makes the Antelope Valley population particularly susceptible to extirpation (CEC and CDFG 2010). Given the importance of foraging habitat to breeding pairs, impacts on foraging habitat in the Antelope Valley could significantly impact the Antelope Valley population. The Project would convert 149 acres of functional foraging habitat to a landscape unsuitable for use by breeding Swainson's hawks. This could potentially cause an already small, isolated, and vulnerable wildlife population to drop below self-sustaining levels; threaten to eliminate an animal community; and substantially reduce the number or restrict the range of an endangered, rare, or threatened species (CEQA Guidelines, § 15065). As such, the Project could have a significant effect on the environment (CEQA Guidelines, § 15065). Significant effects on Swainson's hawk through habitat modifications and loss should be mitigated to reduce effects to less than significant.

To mitigate for the loss of foraging habitat, the MND proposes to provide "replacement land" based on the quality of the mitigation land relative to impacted habitat at the following ratios:

- Option #1 - A ratio of one acre of replacement land for each three acres of development if replacement land is of superior foraging habitat contiguous to potential nesting and/or foraging habitat and is within a designated or proposed Los Angeles County Significant Ecological Area (SEA).
- Option #2 - A ratio of one acre of replacement land for each two acres of development if the replacement land is unoccupied irrigated land, contiguous to occupied habitat and provides superior quality foraging habitat.
- Option #3 - A ratio of one acre of replacement land for each one acre of development if the replacement land provides similar foraging habitat.

These mitigation measures as proposed would result in net loss of functional foraging habitat. Option #1 would provide approximately 50 acres of replacement habitat for 149 acres that would be lost. Option #2 would provide approximately 75 acres of replacement habitat. An additional 100 acres (from Option #1) or 75 acres (from Option #2) of impacted habitat would be unmitigated. Neither Option #1 nor #2 would provide at least 149 acres of replacement habitat so that there is no net loss of foraging habitat. "A mitigation measure must be roughly proportional to the impacts of the project" [CEQA Guidelines, § 15126(a)(4)(B)]. Moreover, Option #1 proposes replacement habitat contiguous to potential nesting and/or foraging habitat. The Project will impact functional foraging habitat contiguous to occupied nesting habitat. Option #1, as it is currently proposed, may not benefit Swainson's hawks if replacement habitat is provided where Swainson's hawks may potentially nest instead of where Swainson's hawks are observed nesting within the last five years and/or foraging.

As to all options presented by the County, none of the options specify replacement of functional foraging habitat for Swainson's hawk. Rather, mitigation specifies "replacement land". While mitigation may provide replacement land, it may not mitigate for impacts on functional foraging habitat. CEQA Guidelines section 15126(a)(4)(B) states that "A mitigation measure must be roughly proportional to the impacts of the project." Therefore, CDFW is concerned that replacement land may not be proportional to the impacts on functional foraging habitat.

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Inadequate Disclosure and Efficacy of Mitigation Measures

The MND is unclear regarding the efficacy of measures to mitigate for impacts on Swainson's hawk. A CEQA document should adequately disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved [CEQA Guidelines, § 15002(a)(4)]. If the County determined that Project impacts would be mitigated through Options #1, 2, or 3 below a level of significance, the County should discuss why and how that was determined in the MND.

As to Option #1 and #2, it is unclear what is considered to be superior foraging habitat. It is unclear how replacing habitat at the ratios presented in these two options would be adequate to reduce impacts to less than significant considering there would still be acres of habitat that would be unmitigated. Also, it is unclear how the ratios were determined. As to Option #3, it is unclear how the County will determine what constitutes similar foraging habitat.

Finally, mitigation measures should adopt specific performance standards the mitigation will achieve and identify the type(s) of potential action(s) that can feasibly achieve that performance standard that will be considered, analyzed and potentially incorporated into the mitigation measure [CEQA Guidelines, §15126(a)(4)(B)]. None of the mitigation measures provide specific performance standards as to how the County would determine that the replacement habitat would benefit Swainson's hawks. Also, none of the mitigation measures specify when the County would require mitigation. A mitigation measure must be fully enforceable through permit conditions, agreements, or other legally-binding instruments [CEQA Guidelines, § 15126(a)(2)].

The Project's proposed mitigation measures may be inadequate to mitigate for the Project's impacts on Swainson's hawk. Inadequate mitigation measures will result in the Project continuing to have a substantial adverse direct effect, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special status species by CDFW. Furthermore, inadequate mitigation for the loss of functional Swainson's hawk foraging habitat adjacent to occupied nesting sites could impact nesting pairs, therefore, could result in take of a threatened species pursuant to CESA.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #1: To mitigate for the loss of 149 acres of functional foraging habitat for Swainson's hawk, CDFW recommends the County require the Project Applicant to provide a minimum of 1 acre of replacement functional foraging habitat for each 1 acre of development. There should be no net loss of functional foraging habitat for the Swainson's hawk in the Antelope Valley. Replacement habitat should be contiguous to occupied nesting habitat and/or functional foraging habitat within the Antelope Valley.

Mitigation Measure #2: CDFW recommends the County require the Project Applicant to protect replacement habitat in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity that has been approved to hold and manage mitigation lands pursuant to Assembly Bill 1094 (2012). Assembly Bill 1094 amended Government Code sections 65965-65968. Under Government Code section 65967(c), 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. An appropriate non-wasting endowment should be provided for the

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long-term management of mitigation lands. A mitigation plan should include measures to protect the targeted habitat values in perpetuity from direct and indirect negative impacts. Issues that should be addressed include but are not limited to the following: protection from any future development and zone changes; restrictions on access; proposed land dedications; control of illegal dumping; water pollution; and, increased human intrusion.

CDFW recommends that the County require the Project Applicant to record the conservation easement before the County issues the Project Applicant a conditional use permit. A mitigation measure must be fully enforceable through permit conditions, agreements, or other legally-binding instruments [CEQA Guidelines, § 15126(a)(2)].

Mitigation Measure #3: If the Project, Project construction, or any Project-related activity for the duration of the Project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, CDFW recommends the County require the Project Applicant to seek appropriate take authorization under CESA before the County issues a conditional use permit for the Project. Appropriate authorization from CDFW may include an Incidental Take Permit (ITP) among other options [Fish & G. Code, §§ 2080.1, 2081, subs. (b) and (c)]. Early consultation is encouraged, as significant modification to a Project and mitigation measures may be required to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.

Recommendation #1: CDFW recommends the County revise the MND to provide more information on Swainson's hawk mitigation measures. CDFW recommends the final environmental document address the following:

- 1) How will the County evaluate, weigh, and decide on replacement habitat if the Project Applicant presents multiple options for the County to consider?
- 2) What specific data and analyses will the County use to assess and determine whether replacement habitat provides functional foraging habitat and the quality of potential replacement habitat?
- 3) What is the definition of 'superior' foraging habitat and how did the County develop that definition?
- 4) How did the County develop mitigation ratios presented in Option #1 and #2, especially if replacement habitat has yet to be identified and habitat functionality and quality at those locations has yet to be determined?
- 5) As to Option #1, what factors will the County consider in determining potential nesting habitat? Please explain why replacement habitat adjacent to potential nesting habitat is adequate to mitigate for impacts on functional habitat adjacent to occupied nesting habitat below a level of significance.
- 6) Why would Option #1 and #2 be adequate to reduce impacts to less than significant even though there would be net loss of functional foraging habitat?
- 7) As to Option #3, how will the County determine if replacement habitat is similar to the 149-acres of functional foraging habitat impacted?
- 8) How will the County assess the performance of functional replacement habitat and use

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by Swainson's hawk? For example, replacement habitat is near occupied nesting sites; documented use for foraging; increased number of occupied nests; increased number of breeding pairs; prey species abundance and diversity; and habitat quality (e.g., native vegetation, non-native vegetation, and vegetation lifeform).

Recommendation #2: CDFW recommends the County recirculate the MND for public review and commenting if the County determines the proposed mitigation measures will not reduce potential effects to less than significant and new measures must be required (CEQA Guidelines, § 15073.5).

Filing Fees


The Project, as proposed, could have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by Los Angeles County Department of Regional Planning 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

We appreciate the opportunity to comment on the Project to assist the Los Angeles County Department of Regional Planning in adequately analyzing and minimizing/mitigating impacts to biological resources. CDFW requests an opportunity to review and comment on any response that the Los Angeles County Department of Regional Planning has to our comments and to receive notification of any forthcoming hearing date(s) for the Project [CEQA Guidelines, § 15073(e)]. If you have any questions or comments regarding this letter, please contact Ruby Kwan-Davis, Senior Environmental Scientist (Specialist), at Ruby.Kwan-Davis@wildlife.ca.gov or (562) 619-2230.

Sincerely,

DocuSigned by:



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Victoria Tang signing for

Erinn Wilson-Olgin
Environmental Program Manager I
South Coast Region

ec: CDFW

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References

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- [CEC and CDFG] California Energy Commission and Department of Fish and Game. 2010. 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. Available from: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83991&inline>



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Attachment A: Draft Mitigation and Monitoring Reporting Plan

CDFW recommends the following language to be incorporated into a future environmental document for the Project.

Biological Resources (BIO)			
Mitigation Measure (MM) or Recommendation (REC)		Timing	Responsible Party
MM-BIO-1 – Impacts to Swainson’s Hawk Foraging Habitat- Replacement of Functional Foraging Habitat	To mitigate for the loss of 149 acres of functional foraging habitat for Swainson’s hawk, the Project Applicant shall provide a minimum of 1 acre of replacement functional foraging habitat for each 1 acre of development. There shall be no net loss of functional foraging habitat for the Swainson’s hawk in the Antelope Valley. Replacement habitat shall be contiguous to occupied nesting habitat and/or functional foraging habitat within the Antelope Valley.	Prior to the County issuing a Conditional use Permit to Project Applicant	County of Los Angeles/ Applied Energy Services (AES)
MM-BIO-2 – Impacts to Swainson’s Hawk Foraging Habitat- Replacement of Functional Foraging Habitat	<p>The Project Applicant shall protect replacement habitat in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity that has been approved to hold and manage mitigation lands. An appropriate non-wasting endowment shall be provided for the long-term management of mitigation lands. A mitigation plan shall include measures to protect the targeted habitat values in perpetuity from direct and indirect negative impacts.</p> <p>The Project Applicant shall record the conservation easement before the County issues a conditional use permit.</p>	Prior to the County issuing a Conditional use Permit to Project Applicant	County of Los Angeles/AES

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<p>MM-BIO-3 – Impacts to Swainson’s Hawk CESA ITP</p>	<p>If the Project, Project construction, or any Project-related activity for the duration of the Project will result in take of Swainson’s hawk, the Project Applicant shall seek appropriate take authorization under CESA.</p>	<p>Prior to the County issuing a Conditional use Permit to Project Applicant</p>	<p>County of Los Angeles/AES</p>
<p>REC-1-Additional Information</p>	<p>The County should revise the MND to provide more information on mitigation measures for Swainson’s hawk. CDFW recommends the final environmental document address the following:</p> <ol style="list-style-type: none"> 1) How will the County evaluate and weigh replacement habitat if the Project Applicant presents multiple options? 2) What specific data and analyses will the County use to assess and determine whether replacement habitat provides functional foraging habitat and the quality of potential replacement habitat? 3) What is the definition of ‘superior’ foraging habitat and how did the County develop that definition? 4) How did the County develop mitigation ratios presented in Option #1 and #2, especially if replacement habitat has yet to be identified and habitat functionality and quality at those locations has yet to be determined? 5) As to Option #1, what factors will the County consider in determining potential nesting habitat? Please explain why replacement habitat adjacent to potential nesting habitat is adequate to mitigate for impacts on functional habitat adjacent to occupied nesting habitat below a level of significance. 6) Please explain why Option #1 and #2 would be adequate to reduce impacts to less than significant even though there would be net loss of functional foraging habitat. 7) As to Option #3, how will the County determine if replacement habitat is similar to the 149-acres of 	<p>Prior to finalizing CEQA document</p>	<p>County of Los Angeles</p>

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	functional foraging habitat impacted? 8) How will the County assess the performance of functional replacement habitat and use by Swainson's hawk?		
REC-2- Recirculating MND	The County should recirculate the MND for public review and commenting if the County determines the proposed mitigation measures will not reduce potential effects to less than significant and new measures must be required.	Prior to finalizing CEQA document	County of Los Angeles