



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



Governor's Office of Planning & Research

September 13 2021

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STATE CLEARINGHOUSE

Tiffany Ho, Planner III
County of Merced, Department of Community and Economic Development
2222 M Street
Merced, California 95340
Tiffany.Ho@countyofmerced.com

**Subject: Las Camas Solar Project (Project)
Notice of Preparation (NOP)
State Clearinghouse No. 2021080196**

Dear Ms. Ho:

The California Department of Fish and Wildlife (CDFW) received a NOP from the Merced County Department of Community and Economic Development for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

PROJECT DESCRIPTION SUMMARY

Proponent: EDP Renewables North America LLC

Objective: The Project proposes the construction, long-term operation, and eventual decommissioning of the Las Camas Solar Project west of Los Banos in Merced County. The Project is a solar photovoltaic (PV) facility that will generate electricity from ground-mounted, single axis tracking arrays and intermittently store electricity by charging and discharging lithium-ion batteries located on roughly 1,745 acres of undeveloped, privately owned land. The Project will have a solar PV capacity of approximately 200 megawatts (MW) alternating current and a battery storage capacity of approximately 100 MV direct current or alternating current. The Project will also include a 230-kilovolt transmission line running from a new substation within the Project site to Pacific Gas and Electric's Los Banos Substation located west of the Project site. The generation tie (gen-tie) line will convey electricity between the Project site and the larger grid. The length of the gen-tie line would range from 0.25 to 2 miles, depending on the location of the Project substation, which would either be located along the western boundary of the Project site or in the interior of the Project site. The Project also proposes transmission system upgrades around the Los Banos substation, including connecting the substation to the Project's gen-tie line, installing a new bay with new circuit breakers, and constructing a new control building.

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Location: The Project site is located approximately 3 miles southeast of the community of Santa Nella, 6 miles west of the City of Los Banos, and approximately 30 miles southwest of the City of Merced. The Project site is at the southwest corner of the intersection of State Routes 33/152 and Interstate 5 and can be accessed via Billy Wright Road off State Route 33/152. The Project site includes the following Assessor's Parcel Numbers: 078-160-012, 078-160-013, 078-160-047, 078-160-056, 078-160-060, 078-172-001, 078-190-004, and 078-190-005 (excepting a portion of 078-172-001).

Timeframe: The proposed Project is anticipated to be operational in October 2024 and is expected to operate for 35 years.

COMMENTS AND RECOMMENDATIONS

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

The Environmental Impact Report (EIR) that will be prepared will determine the likely environmental impacts associated with the Project. CDFW is concerned regarding potential impacts to special-status species from the ground-disturbing development activities, including but not limited to, the fully protected and State and federally endangered blunt-nosed leopard lizard (*Gambelia sila*), the State and federally endangered giant kangaroo rat (*Dipodomys ingens*), the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State and federally threatened California tiger salamander (*Ambystoma californiense*), the State threatened San Joaquin antelope squirrel (*Ammospermophilus nelson*) and Swainson's hawk (*Buteo swainsoni*), the State Candidate Species for listing mountain lion (*Puma concolor*) (Southern California/Central Coast Evolutionarily Significant Units), State species of special concern burrowing owl (*Athene cunicularia*) and tule elk (*Cervus canadensis nannodes*) and the rare and endemic Crotch bumble bee (*Bombus crotchii*), a Species of Greatest Conservation Need (CDFW 2015). Based on the limited information provided in the NOP, CDFW is not able to provide complete and/or substantive comments. Our preliminary comments follow.

San Joaquin Kit Fox (SJKF)

The area from around Los Banos Reservoir to the north of San Luis Reservoir has been identified by CDFW and the United States Fish and Wildlife Service (USFWS) as a migratory corridor critical to the continued existence and genetic diversity of the northern kit fox population – with the Santa Nella area being identified as a critical SJKF migratory “pinch-point” within this area. The creation of the San Luis Reservoir and O'Neil Forebay resulted in a large migratory barrier to the north-south migration of

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SJKF, and busy highways in the area such as State Routes 152 and 33 and Interstate 5, as well as the existing urban development further compounded this problem (HT Harvey and Associates 2004). As a result, any upland habitat in this area that could serve as movement or rest areas for SJKF has very high conservation values for this species.

Because the Project site is within the San Luis Reservoir and Los Banos Reservoir migratory corridor, and that the CNDDDB has multiple SJKF occurrences in the adjacent properties (CDFW 2021), SJKF have the potential to occur on the Project site. SJKF populations are known to fluctuate over years and a negative finding from biological surveys in any one year does not necessarily depict absence of kit fox on a site. It is important to note that SJKF may be attracted to any construction area due to the type and level of activity (pipes, excavation, etc.) and the loose, friable soils that are created as a result of intensive ground disturbance.

The NOP states the Project will pursue an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081(b), for SJKF. CDFW recommends the EIR quantify and describe the direct and indirect potential impacts to SJKF. The evaluation should include the cumulative impacts to SJKF, including those to the SJKF movement corridor, from other existing, planned and potential development from south of the Los Banos Reservoir to north of the San Luis Reservoir that may impact existing upland habitat and/or create barriers for SJKF dispersal. This information, in addition to adequate description of habitat features on the Project site, is essential to adequately assess Project impacts.

The NOP also states the Project will establish a 1,498-acre mitigation site as part of a conservation strategy to mitigate impacts to SJKF. The proposed mitigation site is situated close to the eastern and southern edges of the Los Banos Reservoir. The proposed mitigation site will be conserved with a perpetual conservation easement and the land managed to provide optimum habitat for SJKF. Please note that while the proposed mitigation site appears to provide suitable SJKF habitat based on aerial photography, the proposed mitigation location or acreage amount may not adequately mitigate impacts to the SJKF movement corridor or reduce impacts to SJKF habitat to less than significant. CDFW cannot make a determination about the adequacy of the mitigation site until we have reviewed the impact analysis for this Project, and a preliminary title report and associated documents for the proposed mitigation site.

CDFW typically requires greater than 1:1 mitigation in ITPs to fully mitigate permanent impacts to SJKF habitat, especially for permanent impacts to moderate to high quality SJKF habitat; areas in critical areas of connectivity often require enhanced mitigation amounts and the addition of specific elements. However, given the information provided to date, CDFW cannot make a final determination at this time about the adequacy of the proposed mitigation site to fully mitigate Project-related impacts.

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CDFW can make this determination once an ITP application has been received by CDFW and Habitat Management (HM) Lands process has been completed on the proposed mitigation site.

Swainson's Hawk (SWHA)

SWHA exhibit high nest-site fidelity year after year in the San Joaquin Valley (CDFW 2016). The Project as proposed will involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA. Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include nest abandonment, and reduced nesting success (loss or reduced health or vigor of eggs or young) from loss of foraging habitat.

SWHA has been documented approximately one mile from the Project site (CDFW 2021). The Project is located within the range of SWHA and proposes development in suitable foraging habitat. CDFW recommends compensation for the loss of Swainson's hawk foraging habitat as described in the Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (CDFG 1994) to reduce impacts to foraging habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

- For projects within 1 mile of an active nest tree, a minimum of one acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of 0.75 acres of HM land for each acre of development is advised.
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of 0.5 acres of HM land for each acre of development is advised.

There are a few suitable nesting trees within and adjacent to the Project site, and SWHA are known to travel for miles to forage. Therefore, CDFW recommends surveys following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000) be conducted prior to project implementation. CDFW recommends a minimum no-disturbance buffer of 0.5-mile be delineated around active nests until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. If an active SWHA nest is detected during surveys, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the issuance of an ITP, pursuant to Fish and Game Code § 2081(b) is necessary to comply with CESA.

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Other Wildlife Species

CDFW recommends the EIR evaluate potential impacts to blunt-nosed leopard lizard (BNLL), burrowing owl, California tiger salamander (CTS), Crotch bumble bee, giant kangaroo rat (GKR), mountain lion, San Joaquin antelope squirrel, and tule elk. CDFW recommends this evaluation include identifying any potential habitat in the Project area, the potential for these species to occur in the Project area, and what, if any, mitigation measures are necessary to reduce impacts to less to significant. For mountain lion and tule elk in particular, CDFW advises any evaluation include cumulative impacts and impacts to connectivity.

Please note that if suitable habitat is present and species surveys are warranted, some protocols require specific seasons and/or an extended period of time (e.g., BNLL, CTS). Frequently recommended survey and monitoring protocols for blunt-nosed leopard lizard, burrowing owl, and California tiger salamander can be found at <https://wildlife.ca.gov/Conservation/Survey-Protocols>. CDFW is also available for consultation about survey methods and mitigation measures prior to completion of the draft EIR.

Nesting birds

CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of

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non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place 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 on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Federally Listed Species: CDFW also recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to BNLL, CTS, GKR, and SJKF. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

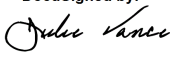
If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist the Merced County Department of Community and Economic Development in identifying and mitigating the Project's impacts on biological resources.

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

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

Attachment 1

ec: Patricia Cole, USFWS
patricia_cole@fws.gov

State Clearinghouse
Governor's Office of Planning and Research
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Carrie Swanberg
Jim Vang
California Department of Fish and Wildlife

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LITERATURE CITED

- California Department of Fish and Game (CDFG). 1994. Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo Swainsoni*) in the Central Valley of California. California Department of Fish and Game.
- California Department of Fish and Wildlife (CDFW). 2015. State Wildlife Action Plan 2015 Update. Species of greatest conservation need. <https://wildlife.ca.gov/SWAP/Final>
- California Department of Fish and Wildlife (CDFW). 2016. Five Year Status Review for Swainson's Hawk (*Buteo swainsoni*). California Department of Fish and Wildlife. April 11, 2016.
- California Department of Fish and Wildlife (CDFW). 2021. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>.
- H.T. Harvey and Associates. 2004. Habitat Conservation Plan for the San Joaquin kit fox at the Arnaudo Brothers, Wathen-Castanos, and River East Holdings sites within, and adjacent to, the Santa Nella Community Specific Plan area. Prepared for Wathen Castanos, Arnaudo Brothers, and River East Holdings June 14, 2004.
- Swainson's Hawk Technical Advisory Committee (SWHA TAC). 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. Swainson's Hawk Technical Advisory Committee, May 31, 2000.

Attachment 1

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

PROJECT: Las Camas Solar Project

SCH No.: 2021080196

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure: SJKF	
SJKF Evaluation	
SJKF Take Authorization	
Mitigation Measure: SWHA	
SWHA Surveys	
SWHA Foraging Habitat Loss	
SWHA Take Authorization	
<i>During Construction</i>	
Mitigation Measure: SWHA	
SWHA Avoidance	