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



June 17, 2024

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Subject: **Las Camas Solar Project (Project)**  
**Draft Subsequent Environmental Impact Report (DSEIR)**  
**State Clearinghouse No. 2021080196**

Dear Tiffany Ho:

The California Department of Fish and Wildlife (CDFW) received a DSEIR from Merced County, as Lead Agency, for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

### **CDFW ROLE**

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

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

Tiffany Ho, Deputy Director of Planning  
Las Camas Solar Project  
June 17, 2024  
Page 2

G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

As a responsible agency, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

**Fully Protected Species:** CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research,
- Efforts to recover a fully protected, endangered, or threatened species, live capture, and relocation of a bird species for the protection of livestock, or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515)

Additionally, specified types of infrastructure projects may be eligible for an Incidental Take Permit (ITP) for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the project planning process if an ITP may be pursued for the Project.

**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).

**Unlisted Species:** Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for the Project.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** EDP Renewables North America LLC

Tiffany Ho, Deputy Director of Planning  
Las Camas Solar Project  
June 17, 2024  
Page 3

**Objective:** The proposed Project proposes to construct and operate a 200-megawatt (MW) alternating current (AC) ground-mounted solar photovoltaic (PV) power plant. The proposed Project also includes improvements to the Pacific Gas and Electric Company (PG&E) Los Banos Substation, and construction of access roads, solar PV panels, single-axis trackers, direct current (DC) to AC power collection wires and electrical inverters, lithium-ion batteries in either a DC-coupled battery energy storage system (BESS) or an AC coupled BESS system (referred to as the DC Option and the AC Option, respectively), battery enclosures, a 230-kilovolt gen-tie line, and a supervisory control and data acquisition (SCADA) system.

**Location:** The 1,741-acre Project site is located in western Merced County, approximately three miles southeast of the unincorporated community of Santa Nella, six miles west of the city of Los Banos, and approximately 30 miles southwest of the city of Merced, at the southwest corner of the intersection of State Route (SR) 33 and 152 and Interstate 5. The Project site can be accessed via Billy Wright Road off SR 33 and 152. The PG&E substation is located approximately 0.2 mile west of the Project site.

**Timeframe:** The proposed Project is anticipated to be operational in 2025 and expected to operate for 35 years.

## COMMENTS AND RECOMMENDATIONS

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

### PG&E Substation Improvements

The DSEIR included an evaluation for the PG&E substation improvements, which would occur on approximately 10 acres of PG&E property adjacent to the Project site and concluded that potential impacts to biological resources would be less than significant with the implementation of PG&E's Best Management Practices (BMPs). As the PG&E improvements are considered part of the overall Project, they are dependent on construction of the Project facilities, and are considered to be a connected action (i.e. the PG&E substation improvements are not considered a separate and complete project). While CDFW recognizes that this DSEIR evaluated the potential impacts associated with PG&E substation improvements, CDFW is concerned that PG&E's proposed BMPs are not adequate to reduce impacts to less than significant and avoid unauthorized take for special-status species. In particular, CDFW does not concur that PG&E's BMPs are adequate to reduce impacts to less than significant and avoid unauthorized take for the State threatened and federally endangered San Joaquin kit

Tiffany Ho, Deputy Director of Planning  
Las Camas Solar Project  
June 17, 2024  
Page 4

fox (*Vulpes macrotis mutica*); the State threatened Swainson's hawk (*Buteo swainsoni*); the State fully protected and endangered and federally endangered blunt-nosed leopard lizard (*Gambelia sila*); the State and federally threatened California tiger salamander (*Ambystoma californiense*); the State candidate for listing Crotch's bumble bee (*Bombus crotchii*), and the State species of special concern burrowing owl (*Athene cunicularia*). As such, CDFW recommends that the mitigation measures outlined in the DSEIR, with the comments and recommendations provided below, be incorporated for the PG&E substation improvements.

### **Project (Including Project Facilities and PG&E Substation Improvements)**

Currently, the DEIR acknowledges that the Project area is within the geographic range of several special-status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special-status animal species, including the State threatened and federally endangered San Joaquin kit fox; the State threatened Swainson's hawk; the State fully protected and endangered and federally endangered blunt-nosed leopard lizard; the State and federally threatened California tiger salamander; the State candidate for listing Crotch's bumble bee; and the State species of special concern burrowing owl.

### **San Joaquin Kit Fox**

As discussed in CDFW's September 13, 2021 Notice of Preparation (NOP) comment letter for the Project (Attachment 1), and September 13, 2007 Draft Program Environmental Impact Report (DPEIR) for the Villages of Laguna San Luis Community Plan (Attachment 2), the area from around Los Banos Reservoir to the north of San Luis Reservoir, which incorporates the Project site, has been identified by CDFW and the United States Fish and Wildlife Service (USFWS) as a movement corridor critical to the continued existence and genetic diversity of the northern San Joaquin kit fox (SJKF) population – with the Santa Nella area being identified as a critical SJKF movement “pinch-point” within this area. The creation of the San Luis Reservoir and O'Neil Forebay resulted in a large barrier to the north-south movement of SJKF, and busy highways in the area such as SR 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 value for this species.

CDFW would like to note that the DSEIR specifically states that the Project would pursue an ITP for SJKF, pursuant to Fish and Game Code section 2081(b). The DSEIR also includes an analysis of cumulative impacts to SJKF and proposes several measures to mitigate for impacts to the species and address CDFW's concerns

Tiffany Ho, Deputy Director of Planning  
Las Camas Solar Project  
June 17, 2024  
Page 5

identified in Attachments 1 and 2. These mitigation measures include incorporating SJKF permeable fencing and maintaining several movement corridors through the Project site. Additionally, an approximately 1,498-acre mitigation site is proposed as part of a conservation strategy to mitigate impacts. The proposed mitigation site is situated close to the eastern and southern edges of the Los Banos Reservoir. The proposed mitigation site would be conserved with a perpetual conservation easement and the land managed to provide optimum habitat for SJKF.

While CDFW recognizes the Project has proposed measures to enhance SJKF connectivity and partially mitigate for impacts to SJKF, CDFW still has significant concerns related to permeability through the Project site, and whether the currently proposed mitigation site is sufficient to adequately mitigate for impacts and reach the “fully mitigated” standard necessary for issuance of an ITP under CESA. As such, CDFW would like to highlight that early consultation with CDFW is imperative to ultimately reach the “fully mitigated” standard and address CDFW’s concerns identified in Attachments 1 and 2.

CDFW typically requires greater than 1:1 mitigation in ITPs to fully mitigate permanent impacts to SJKF, especially for permanent impacts to moderate to high quality SJKF habitat; and areas critical for connectivity often require enhanced mitigation amounts and the addition of specific elements. The DSEIR notes that an ITP is being pursued, and as such CDFW would assist with determining the appropriateness of the mitigation site during the consultation process to ensure impacts to SJKF are “fully mitigated”. CDFW would also assist with identifying suitable movement corridors through the Project area, and ensure that these areas are protected in perpetuity via conservation easement, and managed for the purpose of providing ideal foraging, denning, and movement areas for SJKF.

### **Swainson’s Hawk**

Mitigation Measure BIO-1b proposes to mitigate for impacts to Swainson’s hawk (SWHA), if an ITP is not obtained for the Project, by requiring preconstruction surveys, avoidance buffers, and consultation with CDFW. Additionally, the DSEIR notes that approximately 1,498 acres of mitigation land would be set aside that would provide suitable foraging habitat for SWHA. Mitigation Measure BIO-1b specifically states that, “If an active Swainson’s hawk nest is discovered at any time within 0.5 mile of active construction, a qualified biologist shall complete an assessment of the potential for current construction activities to affect the nest. The assessment shall consider the type of construction activities (e.g., noise levels and duration), the location of construction relative to the nest and pre-existing disturbance levels (e.g., construction activities in historically agricultural land versus activities in non-agricultural land), the visibility of construction activities from the nest location (e.g., topography or vegetation that could block line of sight to the nest), the number of construction personnel required to perform

Tiffany Ho, Deputy Director of Planning  
Las Camas Solar Project  
June 17, 2024  
Page 6

activities within the setback, and other existing disturbances in the area that are not related to construction activities of this project. Based on this assessment, the biologist shall determine if construction activities can proceed and the level of nest monitoring required. When conducting the assessment, the biologist shall consider the following levels of construction activity, with higher levels of activity requiring greater caution in determining setbacks:

- Light construction activity, such as fence installation and limited vehicle operation: Noise levels generated by these construction activities would very likely be similar to existing ambient noise levels closer to the occupied nests.
- Moderate and/or isolated construction activity, such as grading and construction/ installation of the substation, substation access road, inverter skids, and solar panels: Noise levels generated by these construction activities would very likely be similar to existing ambient noise levels beyond a moderate distance from the occupied nests.
- Heavy construction activity across a large area of the project site and/or the use of louder equipment, such as pile drivers, concrete saws, or jackhammers: Noise levels from these types of activities would depend on the location of the activities relative to the nest. Allowing these activities within the 0.5-mile setback would require coordination with CDFW.

If the assessment determines that construction activities could occur closer than 0.5 mile from an active nest, in no event shall construction activities occur within 500 feet of an active nest without conferring with CDFW. Full-time monitoring to evaluate the effects of construction activities on nesting Swainson's hawks shall be required. The qualified biologist shall have the authority to stop work if it is determined that project construction is disturbing nesting activities. Buffers may need to increase, depending on the sensitivity of the nesting Swainson's hawk to disturbances, at the discretion of the qualified biologist. No avoidance shall be needed if construction occurs near a known Swainson's hawk nest outside of the Swainson's hawk nesting season. In the event that take cannot be avoided, the proponent shall confer with CDFW on the need for an incidental take permit."

CDFW does not concur that this measure is sufficient to mitigate impacts to SWHA and avoid take. As such, in the event of an active SWHA nest is detected, and a 0.5 mile no-disturbance buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA. Additionally, as multiple active SWHA nests were documented within 0.5 mile of the Project during the biological

Tiffany Ho, Deputy Director of Planning  
Las Camas Solar Project  
June 17, 2024  
Page 7

studies conducted in support of the DSEIR, CDFW strongly recommends the Project proponent consult with CDFW to obtain an ITP.

### **Blunt-Nosed Leopard Lizard**

The DSEIR notes that blunt-nosed leopard lizard (BNLL) have the potential to occur within the Project site, but no focused surveys appear to have been conducted to determine whether the species may be present. Mitigation Measures BIO-1a and BIO-1d were provided to mitigate for potential impacts to the species, yet neither measure included focused surveys. As such, CDFW does not concur that Mitigation Measures BIO-1a and BIO-1d are sufficient to mitigate for impacts to BNLL and recommends the following:

#### **Recommended Mitigation Measure 1: BNLL Surveys**

CDFW recommends that a qualified biologist conduct protocol surveys in accordance with the “Approved Survey Methodology for the Blunt-nosed Leopard Lizard” (CDFW 2019) prior to Project implementation. This survey protocol, designed to optimize BNLL detectability, reasonably assures CDFW that ground disturbance will not result in take of this fully protected species.

#### **Recommended Mitigation Measure 2: BNLL Avoidance Buffer**

CDFW recommends that any BNLL detection, known or potentially occupied burrows, or egg clutch sites have a minimum 395-acre buffer. This buffer is based on unpublished data from Dr. David Germano documenting that “male BNLL have home ranges up to 52 acres and that female BNLL have home ranges exceeding 98 acres, the known maximum home range sizes observed for the species, the unknown specific footprint of the individual BNLL’s home range relative to where the lizard was observed on the surface, and the unknown location of the lizard underground when construction commences.”

Given the size of the buffer recommendation outlined above relative to the overall size of the proposed Project, CDFW recommends the following if Project activities are anticipated to occur within or near occupied BNLL habitat:

#### **Recommended Mitigation Measure 3: BNLL Take Authorization**

With the passage of Senate Bill No. 147, the incidental take of BNLL may be authorized for certain categories of projects, including industrial solar photovoltaic projects. If BNLL protocol surveys find that the Project site is occupied, or the Project chooses to assume presence for BNLL, consultation with CDFW is recommended to discuss how to implement the Project and avoid take; or if avoidance is not feasible,

Tiffany Ho, Deputy Director of Planning  
Las Camas Solar Project  
June 17, 2024  
Page 8

to potentially acquire an ITP prior to any ground disturbing activities, pursuant Fish and Game Code section 2081 subdivision (b).

### **California Tiger Salamander**

The DSEIR notes that a habitat assessment was conducted for California tiger salamander (CTS) and one season of focused surveys were conducted in accordance with the *Interim Guidance on Site Assessment and Field Surveys Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander* (USFWS 2003) guidance document (USFWS CTS Protocol). Based on the habitat assessment and survey results, CTS was considered to be absent from the Project site. CDFW does not concur with these conclusions and would like to note that the USFWS CTS Protocol requires more than one survey season. As such, CDFW recommends the following:

#### **Recommended Mitigation Measure 4: Focused CTS Protocol-level Surveys**

CDFW recommends that a qualified biologist conduct protocol-level surveys in accordance with the USFWS CTS Protocol (USFWS 2003) at the appropriate time of year to determine the existence and extent of CTS breeding and refugia habitat. CDFW advises that the protocol-level survey include a 100-foot buffer around the Project area in all areas of wetland and upland habitat that could support CTS. Please be advised that protocol-level survey results are viable for two years after the results are reviewed by CDFW.

#### **Recommended Mitigation Measure 5: CTS Avoidance**

If CTS protocol-level surveys as described in Recommended Mitigation Measure 4 are not conducted, CDFW advises that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within and/or adjacent to the Project site. Further, CDFW recommends potential or known breeding habitat within and/or adjacent to the Project site be delineated with a minimum 250-foot no-disturbance buffer. Both upland burrow and wetland breeding no-disturbance buffers are intended to minimize impacts to CTS habitat and avoid take of individuals.

#### **Recommended Mitigation Measure 6: CTS Take Authorization**

If through surveys it is determined that CTS are occupying or have the potential to occupy the Project site, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b)



Tiffany Ho, Deputy Director of Planning  
Las Camas Solar Project  
June 17, 2024  
Page 9

is necessary to comply with CESA . In the absence of protocol surveys, the applicant can assume presence of CTS within the Project site and obtain an ITP from CDFW.

### **Crotch's Bumble Bee**

The DSEIR notes that Crotch's bumble bee (CBB) have the potential to occur within the Project site, but no focused surveys appear to have been conducted to determine whether the species may be present. Mitigation Measures BIO-1a and BIO-1d were provided to mitigate for potential impacts to the species, yet neither measure included focused surveys. As such, CDFW does not concur that Mitigation Measures BIO-1a and BIO-1d are sufficient to mitigate for impacts to CBB and recommends the following:

#### **Recommended Mitigation Measure 7: CBB Surveys**

CDFW recommends that a qualified biologist conduct focused surveys for CBB within areas of suitable habitat following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023).

#### **Recommended Mitigation Measure 8: CBB Avoidance Buffer**

If surveys cannot be completed, CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take.

#### **Recommended Mitigation Measure 9: CBB Take Authorization**

If CBB is identified during surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

### **Burrowing Owl**

The DSEIR notes that a burrowing owl (BUOW) individual was observed at the Project site in 2023. Mitigation Measures BIO-1c is provided to mitigate for potential impacts to the species. CDFW concurs with the portion of the measure that requires preconstruction surveys for the species but does not concur that the avoidance buffers

Tiffany Ho, Deputy Director of Planning  
 Las Camas Solar Project  
 June 17, 2024  
 Page 10

outlined in Mitigation Measure BIO-1c are sufficient to avoid impacts to BUOW. As such, CDFW recommends the following:

### **Recommended Mitigation Measure 10: BUOW Avoidance Buffer**

CDFW recommends that no-disturbance buffers, as outlined in the “Staff Report on Burrowing Owl Mitigation” (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW’s Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

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

\* meters (m)

### **Recommended Mitigation Measure 11: BUOW Consultation**

If BUOW are found within these recommended buffers and avoidance is not possible, consultation with the CDFW is recommended for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation.

### **Editorial Comments and/or Suggestions**

**California Natural Diversity Database:** Please note that the California Natural Diversity Database (CNDDDB) is populated by records through voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified biologist during the appropriate survey period(s) using the appropriate protocol survey methodology are warranted in order to determine whether or not any special-status species are present at or near the Project site.

**Federally Listed Species:** CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including, but not limited to the, SJKF,

Tiffany Ho, Deputy Director of Planning  
Las Camas Solar Project  
June 17, 2024  
Page 11

BNLL, and CTS. 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 Project activities.

**Lake and Streambed Alteration:** The DSEIR notes that multiple streams that may be subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. are present within the Project vicinity and that Project activities would avoid these features. CDFW would like to note that Project activities that substantially change the bed, bank, and channel of any river, stream, or lake are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial and may include those that are highly modified such as canals and retention basins.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

**Nesting birds:** CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), 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 Code sections as referenced above.

If ground-disturbing activities occur during the nesting bird season (February 1 – September 15), CDFW recommends that a qualified biologist conduct pre-activity surveys for active nests no more than one week prior to the start of ground 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 work site to identify nests and determine their status. A sufficient area means any area potentially

Tiffany Ho, Deputy Director of Planning  
Las Camas Solar Project  
June 17, 2024  
Page 12

affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, odors, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once Project activities begin, 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 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 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 a compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

**Wildlife Movement and Connectivity:** As noted above, the Project area supports significant biological resources and contains important habitat connections and is important for wildlife movement across the broader landscape, sustaining both transitory and permanent wildlife populations, including Tule elk (*Cervus canadensis nannodes*).

The DSEIR analyzes impacts to Tule elk (elk) in Mitigation Measure BIO-1g and states, “to avoid and minimize the impact on tule elk and mountain lion movement in the project area, the project applicant shall coordinate with CDFW to implement measures that benefit tule elk and mountain lion. These may include the identifying fencing and barriers to be removed or reconstructed, determining the appropriateness of water guzzlers, and conducting or funding additional studies on wildlife connectivity and movement patterns along SR 152 within Merced County. Measures agreed upon by CDFW and the project applicant shall be initiated prior to the completion of construction activities, as verified by the Merced County Department of Public Works prior to the issuance of a construction permit.”

CDFW concurs with these measures and strongly recommends coordination with CDFW regarding the implementation of these measures, including the installation and placement of water guzzlers within the Project vicinity.

Tiffany Ho, Deputy Director of Planning  
Las Camas Solar Project  
June 17, 2024  
Page 13

## 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 filled out and submitted online at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is 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 environmental document filing 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.)

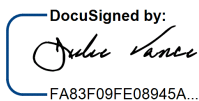
## CONCLUSION

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

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>).

Questions regarding this letter or further coordination should be directed to Kevin Hurt, Senior Environmental Scientist, Specialist, at (805) 458-5775 or [Kevin.Hurt@wildlife.ca.gov](mailto:Kevin.Hurt@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...

Julie A. Vance  
Regional Manager

Tiffany Ho, Deputy Director of Planning  
Las Camas Solar Project  
June 17, 2024  
Page 14

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Tiffany Ho, Deputy Director of Planning  
Las Camas Solar Project  
June 17, 2024  
Page 15

## REFERENCES

California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. Sacramento, California, USA.

California Department of Fish and Wildlife. 2019. Approved survey methodology for the blunt-nosed leopard lizard. California Department of Fish and Wildlife, Sacramento, California, USA.

California Department of Fish and Wildlife. 2023. Survey considerations for California endangered species act candidate bumble bee species. Sacramento, California, USA.

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.

U.S. Fish and Wildlife Service. 2003. Interim guidance on site assessment and field surveys for determining presence or a negative finding of the California tiger salamander. U.S. Fish and Wildlife Service, Sacramento, USA.

**Attachment 1**

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

**PROJECT: Las Camas Solar Project**

**SCH No.: 2021080196**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
BNLL	
Recommended Mitigation Measure 1: BNLL surveys	
Recommended Mitigation Measure 3: BNLL take authorization	
CTS	
Recommended Mitigation Measure 4: CTS focused protocol surveys	
Recommended Mitigation Measure 6: CTS take authorization	
CBB	
Recommended Mitigation Measure 7: CBB surveys	
Recommended Mitigation Measure 9: CBB take authorization	
BUOW	
Recommended Mitigation Measure 11: BUOW consultation	
<i>During Construction</i>	
BNLL	
Recommended Mitigation Measure 2: BNLL avoidance buffer	
CTS	
Recommended Mitigation Measure 5: CTS avoidance buffer	
CBB	
Recommended Mitigation Measure 8: CBB avoidance buffer	
BUOW	
Recommended Mitigation Measure 10: BUOW avoidance buffer	



Tiffany Ho, Deputy Director of Planning  
Las Camas Solar Project  
June 17, 2024  
Page 16

## **ATTACHMENTS**

**CDFW Comment Letters for the Santa Nella Area**

Tiffany Ho, Deputy Director of Planning  
Las Camas Solar Project  
June 17, 2024  
Page 17

**ATTACHMENT 1**



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

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



September 13, 2021

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.<sup>1</sup>

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

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

Tiffany Ho, Planner III  
Merced County Department of Community and Economic Development  
September 13, 2021  
Page 2

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.

Tiffany Ho, Planner III  
Merced County Department of Community and Economic Development  
September 13, 2021  
Page 3

**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

Tiffany Ho, Planner III  
Merced County Department of Community and Economic Development  
September 13, 2021  
Page 4

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.

Tiffany Ho, Planner III  
Merced County Department of Community and Economic Development  
September 13, 2021  
Page 5

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.

Tiffany Ho, Planner III  
Merced County Department of Community and Economic Development  
September 13, 2021  
Page 6

### **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



Tiffany Ho, Planner III  
Merced County Department of Community and Economic Development  
September 13, 2021  
Page 7

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](mailto: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**

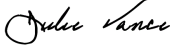
If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is 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.

Tiffany Ho, Planner III  
Merced County Department of Community and Economic Development  
September 13, 2021  
Page 8

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](mailto:Jim.Vang@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...

Julie A. Vance  
Regional Manager

Attachment 1

ec: Patricia Cole, USFWS  
[patricia\\_cole@fws.gov](mailto:patricia_cole@fws.gov)

State Clearinghouse  
Governor's Office of Planning and Research  
[state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov)

Carrie Swanberg  
Jim Vang  
California Department of Fish and Wildlife

Tiffany Ho, Planner III  
Merced County Department of Community and Economic Development  
September 13, 2021  
Page 9

## 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**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<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	

Tiffany Ho, Deputy Director of Planning  
Las Camas Solar Project  
June 17, 2024  
Page 18

**ATTACHMENT 2**

September 13, 2007

Robert King  
County of Merced  
2222 M Street  
Merced, California 94530

Dear Mr. King:

**Villages of Laguna San Luis Community Plan,  
Draft Program Environmental Impact Report (DPEIR),  
SCH No. 2005011074**

The Department of Fish and Game (Department) has reviewed the DPEIR prepared for the Project referenced above. The Project site consists of 6,214 acres located immediately south of O'Neill Forebay and the Santa Nella Community Specific Plan (SNCSP) area in an unincorporated portion of western Merced County. Implementation of the proposed Project would result in 3,011 acres of residential development, 176 acres of commercial development, 204.5 acres of "employment generating land uses," 180 acres of schools, 41 acres for water and wastewater treatment facilities, and 109.6 acres for public facilities. The remainder of the site (2492 acres) would remain in open space "reserved for future urban development, parks, and roadways." The proposed community would be developed over 30 years, with seven (7) identified planning areas. Development is anticipated at an average rate of 1,000 units per year, and implementation plans would provide refined Project-level development plans which would be subject to additional environmental analysis under the California Environmental Quality Act (CEQA).

In addition, due to the unacceptable traffic Levels Of Service that would result from partial build-out of the proposed Project, the Project would also include funding for the reconstruction of the Interstate 5 (I-5)/State Route (SR) 152 interchange, and improvements to the following intersections: SR 152/Hilldale; SR 33/Plaza Drive; SR 33/I-5; SR 33/Henry Miller; SR 33/Vera Cruz Drive; SR 33/SR 152; SR 33/Southeast Residential; I-5/Hilldale; SR 152/Billy Wright Road; SR 33/McCabe Road; SR 33/North Access, north of SR 152; and SR 33/South Access, north of SR 152. In addition, the applicant will provide partial funding for the widening of: SR 152, west of I-5 to SR 101, from 4 to 6 lanes; SR 152, east of I-5 to Los Banos, from 4 to 6 lanes; I-5, between SR 152 and Hilldale, from 4 to 6 lanes; I-5, between Hilldale and SR 33, to 8 lanes; and I-5, north of SR 33 to Interstate 580, to 6 lanes.

The loss of 3,890 acres of "suitable" and "marginal" kit fox habitat are proposed to be offset through preservation in perpetuity, management, and monitoring of 5,662 acres of high quality off-site habitat.

The Department has significant concerns with the proposed Project; implementation would result in significant and irreversible impacts to the State threatened San Joaquin kit fox (*Vulpes macrotis mutica*) (SJKF), by impacting the entire northern range of the species. In addition to

Robert King  
September 13, 2007  
Page 2

direct impacts to 2,400 acres of grassland habitat likely to support kit fox denning and foraging, as well as to an additional 3,083 acres of foraging habitat, the Project as a whole would create a significant movement barrier between the southern and northern kit fox populations. As noted in the DPEIR, the Santa Nella area has been identified by the Department and the United States Fish and Wildlife Service (USFWS) as a "pinch point" in the connectivity between the north and south populations of SJKF. There is a very narrow area remaining in the Santa Nella vicinity that is usable for kit fox north-south movement, and the proposed Project creates a major barrier between this remaining movement area and the Los Banos Valley core kit fox population. An influx of individuals from the Los Banos Valley is thought to be critical to the continued existence and genetic diversity of the northern kit fox population.

Since the grassland portions of the Project area are likely to support foraging and denning kit fox, prior to any ground-disturbing activities in this area that could result in "take," as defined by Section 86 of the Fish and Game Code, a State Incidental Take Permit would be required, in order to comply with the California State Endangered Species Act (CESA). The Department is prohibited by the California Code of Regulations, Title 14, Section 783.4(4)b to issue an Incidental Take Permit that would jeopardize the continued existence of this species. *As the Project is currently proposed, it is unlikely that the Department would be able to make a "No Jeopardy" finding, let alone certify that the mitigation meets the "fully mitigate" standard, both of which are necessary for issuance of an Incidental Take Permit.* We concur with the USFWS (letter dated August 13, 2007), for the reasons stated above, as well as those stated in our comment letter submitted in response to the Notice of Preparation (NOP) that Project implementation would, at a minimum, impact the entire 420,000 acres of kit fox range north of the Project area in addition to the Project footprint. In order to permit the Project under CESA, major Project modifications would be required, including but not limited to suitable movement corridors being established through the Project area, protected in perpetuity via conservation easement, and managed for the purpose of providing ideal foraging, denning, and movement areas for kit fox. It is important to note that the specter of a Jeopardy finding on this Project, as well as the non-attainment of Incidental Take Permit mitigation standards and other issuance criteria, creates potential permitting difficulties for any Project-related actions considered by the Caltrans, the Department of Water Resources, California State Parks, or other State or local agencies, both for their possible CESA permitting needs and also in relation to compliance with Fish and Game Code Section 2055 (conservation of threatened and endangered species by State Agencies, Boards, and Commissions). Our specific comments follow.

### **Department Jurisdiction**

**Trustee Agency Authority:** The Department is a Trustee Agency with responsibility under CEQA for commenting on projects that could impact plant and wildlife resources. Pursuant to Fish and Game Code Section 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, the Department is responsible for providing, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities, as those terms are used under CEQA.

Robert King  
September 13, 2007  
Page 3

**Responsible Agency Authority:** The Department also has regulatory authority over projects that could result in the “take” of any species listed by the State as threatened or endangered, pursuant to Fish and Game Code Section 2081. If the Project could result in the “take” of any State-listed threatened or endangered species, the Department may need to issue a “take” permit for the Project. CEQA requires a Mandatory Finding of Significance, if a project is likely to impact threatened or endangered species (Sections 21001{c}, 21083, Guidelines Sections 15380, 15064, 15065). Impacts must be avoided or mitigated to less than significant levels, unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with Fish and Game Code Section 2080. State-listed species known to occur in the vicinity include the State threatened SJKF and Swainson’s hawk (*Buteo swainsoni*). Specific remarks on Project-related “take” potential are included in the following comments.

The Department also has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource, pursuant to Fish and Game Code Section 1600 et seq. If construction activities are proposed that will involve work within the bed, bank or channel of any drainages that occur within the Project area, a Stream Alteration Agreement (SAA) may be necessary. The Project proponent should submit a Stream Alteration Notification to the Department for the Project. The Department is now required to comply with CEQA in the issuance or the renewal of an SAA. Therefore, for efficiency in environmental compliance, we recommend that the stream disturbance be described and mitigation for the disturbance be developed as part of the environmental review process. This will reduce the need for the Department to require extensive additional environmental review for an SAA for this Project in the future. For additional information on notification requirements, please contact our staff for the Stream Alteration Program at (559) 243-4593.

**Bird Protection:** The Department has jurisdiction over actions which may result in the disturbance or destruction of active nest sites or the unauthorized “take” of birds. Sections of the Fish and Game Code 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 non-game bird). Implementation of Mitigation Measure 5.8-4 in the DPEIR will likely avoid direct impacts to nesting birds. If the Project is approved, the Department requests that these measures be made a condition of Merced County’s approval.

### **Additional Project Impacts and Recommendations**

**San Joaquin Kit Fox (SJKF):** As stated above, implementation of the proposed Project, in conjunction with other development planned in the SNCSP area, as well as that proposed south of the proposed Project (including but not limited to Fox Hills Phases 1-3) would likely result in permanent fragmentation of the north-south migratory corridor of SJKF. The proposed Project would eliminate most of the remaining open space in the Santa Nella area that could be used for denning, resting, and foraging habitat and would block any viable movement corridors, including those incorporated into developments within the SNCSP area. Unless additional accommodations for SJKF movement are developed within the Project design, the proposed Project could result in extirpation of the northern range of SJKF.



Robert King  
September 13, 2007  
Page 4

The Department concurs that preservation in perpetuity of habitat in the area south of the proposed Project, as proposed, is important to the continued existence of the core kit fox population south of Santa Nella. The Department recommends that large blocks of contiguous habitat be conserved up front rather than having each phase of the proposed Project mitigate individually; the latter approach could result in smaller disconnected habitat blocks which would have less conservation value than that discussed in the DPEIR. The Department also recommends that off-site mitigation lands consist primarily of flat or gently rolling landscapes; areas with slopes of 30% or more should be avoided as kit fox mitigation lands.

**Swainson's Hawk:** The DPEIR acknowledges that the Project site is known to support foraging Swainson's Hawks. If the Project is approved, the Department requests that Mitigation Measure 5.8-2 (a-c) be made a condition of Merced County's approval.

**Tule Elk:** Tule elk (elk) were identified collectively with other unlisted species in the DPEIR, but Project-related impacts to elk were not considered as significant and were not addressed. Elk use much of the Project area south of Highway 152 during the spring through fall period, and development of this area will displace the elk. The direction of displacement and where they would be displaced to could result in significant impacts. For example, changing the seasonal shift from the winter use area below San Luis Dam into a northerly direction could result in elk crossing Highway 152. This would present a significant human safety hazard and could impact the elk population. In addition, elk crossing roadways within the proposed Project could also be a significant safety hazard. Development-induced shifts in elk use areas could increase movement distances and result in damage to properties crossed (fences, etc.).

Displacement of elk could have a significant impact on the overall health of this sub-herd. The Department has spent significant resources in re-establishment of elk within their historic range, and the elimination of the elk from this area would reverse some of the progress made in restoring elk in California. Elk require habitat that is not consistent with the mitigation habitat proposed. Mitigation habitat should be proposed that addresses elk displacement, habitat needs, and reduction in safety hazards, property damage, and depredation needs.

Currently the population of elk is managed by controlled hunting. Development can restrict areas where hunting is permitted, and for some people hunting is not compatible with their beliefs. Anti-hunting sentiments could pose a risk to herd management, increase Department response, and increase depredation issues. Housing, especially very low-density housing, will increase the depredation issues. Damage to property by wildlife (elk and deer) is potentially significant, especially in the most westerly area of the proposed Project. These impacts can be minimized by the reduction of development in the most westerly portion of the Project area and should be incorporated into the Project description.

**Open Space Designation and State Lands:** Exhibit 3-3 shows portions of the Department's Jasper Sears mitigation parcel, the Agua Fria mitigation bank (over which the Department holds Conservation Easements recorded as mitigation for other projects), and the United States Bureau of Reclamation-owned and State Parks and Recreation-managed OHV park as "open space." This exhibit improperly implies that the open space depicted represents developable areas set aside by the Project applicant for the purpose of open space preservation, which is

Robert King  
September 13, 2007  
Page 5

misleading. Parcels owned by the State and/or Federal governments or with State or Federally held conservation easements should be clearly indicated on the maps in the DPEIR. In addition, Page 3-10 states that approximately 1,200 acres of open space land would be "set aside" to provide habitat and movement corridors for SJKF, the majority of which would be provided in the western portion of the site. It appears that a significant portion of the kit fox corridor shown in Exhibit 3-4 to "be set aside," as well as the 1,059 acre kit fox open space preserve described on page 5.8-29 and shown on Exhibit 5.8-5, includes a significant amount of acreage that is already protected because it is owned by the State or Federal governments or because conservation easements have been recorded. Page 5.8-28 seems to clarify this issue by stating that the 215 acres of open space preserve that are privately owned and not protected will be put under conservation easement. The DPEIR then goes on to discuss having Pacific Gas and Electric and the United States Bureau of Reclamation (USBR) manage their properties in the open space preserve for kit fox. While it would be beneficial for this to occur, it is unclear that these entities are committed to this approach. As a result, without some formal level of commitment from the managing entities, this should not be included as a mitigation measure, as Section 15126.4 of the CEQA Guidelines states that mitigation measures should be fully enforceable through permit conditions, agreements, or other legally binding agreements. This same comment applies to the "kit fox habitat management plan" described on page 5.8-31.

Page 5.8-29 states that no new road crossings shall be constructed within the open space kit fox preserve without consultation with USFWS. It is important to note that no road crossings would be feasible on the portions of the open space preserve with Department-held conservation easements or the acreage owned by the Department.

Designating kit fox corridors in the electrical line easement areas is problematic, as these areas are subject to management activities required by the utility companies, and are not managed for the purposes of species conservation.

**Urban Reserve and the Western Portion of the Project Area:** The DPEIR identifies an urban reserve on the southern end of the Project area, which identifies land that "could in the future be developed with urban land uses." Urban development in this area would pose significant conflicts to the existing conservation properties in this area and would necessitate additional avoidance, minimization and mitigation measures. In addition, roads through the urban reserve area should not connect to Jasper Sears Road, as traffic on Jasper Sears would result in significant degradation to the values of existing conservation lands in that area as well as the identified "kit fox corridor" identified in the DPEIR.

The Department recommends that development in the most westerly portion of the Project area should not occur in order to minimize potential impacts to existing conservation lands. In addition, development in the most westerly portion of the Project should be avoided because: ingress/egress to this area will impact existing wildlife crossings for kit fox, tule elk, and other wildlife; development will significantly reduce the corridor width crossing SR152 and could jeopardize general wildlife movement; development will impact wildlife movement east and west into potential movement corridors; infrastructure construction (pipelines, etc.) in this area will impact existing open space corridors and conservation lands; growth inducing impacts into

Robert King  
September 13, 2007  
Page 6

adjacent properties could significantly impact wildlife in the region; depredation will be a significant issue in this area; and elk population management could be impacted.

**Open Space Corridors:** Open space corridors should be compatible with special status and other native wildlife species. Open space, if to be utilized as some on-site mitigation value for kit fox, should be protected in perpetuity via conservation easements.

**Highway Improvements:** The Highway improvements that will be necessary as a result of this Project are substantive and will result in significant impacts to the north-south connectivity of kit fox, perhaps more so than the Project itself. This is especially true for the widening of SR 152 and SR 33. While the timing and complete funding of the highway projects is uncertain, it is critical that Caltrans and the County formally agree, in advance of Project implementation, to utilize the avoidance, minimization, and mitigation measures associated with road impacts in the DPEIR, such as incorporating regular crossing structures for kit fox etc. With Caltrans, Department, County, and USFWS cooperation, the widening of SR 33 presents some opportunity to significantly improve kit fox crossing over O'Neill Forebay and the Aqueduct. With the widening of SR 33, there should be opportunities for incorporation of "green" crossings parallel to, but separate from, the additional traffic lanes.

The Department has reiterated these concerns, participated in discussions with Project designers and planners, and offered conceptual solutions to these issues for many years on earlier versions of this Project and on other related Santa Nella area development. We have also met with the Project applicant and the USFWS a few times in the past to discuss biological issues associated with the current version of this Project. We would like to work with the County, applicant, and the USFWS to arrive at solutions that address the outstanding biological issues associated with this Project. To arrange for such a discussion or if you have any questions regarding our comments, please contact Julie Vance, Senior Environmental Scientist, at the address provided on this letterhead or by telephone at (559) 243-4014, extension 222.

Sincerely,

W. E. Loudermilk  
Regional Manager

cc: See Page Seven

Robert King  
September 13, 2007  
Page 7

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