State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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November 4,2021

Tracy Gonzalez
Yolo County Department of Community Services
292 W. Beamer Street
Woodland, CA 95653

Subject: GIBSON SOLAR FARM (ZF2020-0043) NOTICE OF PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT SCH# 2021100191

Dear Ms. Gonzalez:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Preparation of an Environmental Impact Report (EIR) from the Yolo County (County) Department of Community Services for the Gibson Solar Farm Project (Project) in Yolo County pursuant the California Environmental Quality Act (CEQA) statute and guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, plants and their habitats. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project in which CDFW, by law, may need to exercise its own regulatory authority under the Fish and Game Code (Fish & G. 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 provides, 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 may also act 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. For example, to the extent implementation of the Project as proposed may result in "take" as defined by State law

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.

of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The Project site is located at State Route 16, approximately 2 miles west of Interstate 505, approximately 0.6 miles west of the unincorporated community of Madison, and approximately 1.2 miles east of the unincorporated community of Esparto; at latitude 38.684569°, longitude -121.989167°; in Yolo County, California.

The Project consists of the installation and operation of solar photovoltaic modules mounted on single-axis sun tracking support structures to generate 20 megawatts alternating current of renewable electrical energy. The modules will be installed in parallel arrays spaced approximately 14 feet apart to minimize inter-row shading. The modules themselves will cover approximately 34.4 acres, which access roads, equipment and other fixtures will cover another 5.5 acres. The remainder of the 147-acre site will consist of open areas between and under the arrays.

The Project description should include the whole action as defined in the CEQA Guidelines § 15378 and should include appropriate detailed exhibits disclosing the Project area including temporary impacted areas such as equipment stage area, spoils areas, adjacent infrastructure development, staging areas and access and haul roads if applicable.

As required by § 15126.6 of the CEQA Guidelines, the EIR should include an appropriate range of reasonable and feasible alternatives that would attain most of the basic Project objectives and avoid or minimize significant impacts to resources under CDFW's jurisdiction.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations presented below to assist the County in adequately identifying and/or mitigating the Project’s significant, or potentially significant, impacts on biological resources. The comments and recommendations are also offered to enable CDFW to adequately review and comment on the proposed Project with respect to impacts on biological resources. In addition to the initial study already prepared for the Project, CDFW recommends that the forthcoming EIR address the following:

Special-Status Reptiles

The initial study states that, while special-status reptiles including western pond turtle (*Actinemys marmorata*) and giant garter snake (*Thamnophis gigas*) may be present in the project vicinity, no habitat for either species exists on-site. However, existing irrigation ditches along the southern, northern, and eastern borders of the Project site may provide foraging, cover, and/or dispersal habitat for both or either species. While

the Project does not include any disturbance to the irrigation ditches themselves, individual western pond turtles and/or giant garter snakes may move into adjacent upland habitats to bask, nest or hibernate. Therefore, if either species is present in the irrigation ditches, activities associated with construction of the Project may injure or kill snakes or turtles and may indirectly impact the species by disturbing their upland habitats. CDFW recommends the forthcoming EIR include a detailed evaluation of the habitat present in and around the irrigation ditches and an analysis of the potential presence of giant garter snakes and western pond turtles.

Analysis of Impacts to Foraging Habitat

The site currently supports potential foraging habitat for a number of special-status species including, but not limited to northern harrier (*Circus hudsonius*), western burrowing owl (*Athene cunicularia*), loggerhead shrike (*Lanius ludovicianus*), tricolored blackbird (*Agelaius tricolor*), mountain plover (*Charadrius montanus*), Swainson's hawk (*Buteo swainsoni*), pallid bat (*Antrozous pallidus*), western red bat (*Lasiurus blossevillii*), and Townsend's big-eared bat (*Corynorhinus townsendii*), in the form of irrigated agricultural fields.

The initial study states that the conversion of 147 acres would not constitute a significant reduction in foraging habitat for these species. However, the greatest threat to the Swainson's hawk population in California continues to be loss of suitable foraging and nesting habitat in portions of the Swainson's hawks breeding range. This impact has greatly reduced their range and abundance in California in the last century (CDFW 2016, California Department of Conservation, 2011; Wilcove et al. 1986; Semlitsch and Bodie 1998). Significant loss of Swainson's Hawk nesting and foraging habitat has occurred in Yolo, Sacramento, and San Joaquin counties due to residential development, economic and resource availability factors, and conversion of riparian and woodland habitat to agriculture and unsuitable urban environments (CDFW 2016).

The Project as proposed would contribute to a combination of factors that, when considered together, constitute a cumulatively significant impact. For example, while 147 acres may not constitute a significant portion of the Swainson's hawk foraging habitat present in the Central Valley, development of 147 acres of foraging habitat adjacent to a known nesting territory in conjunction with other habitat conversion, such as nearby conversion of row crops to orchards or planned development, may be enough to significantly affect the viability of the nesting site. Suitable foraging habitat is necessary to provide an adequate energy source for breeding Swainson's hawk adults, including support of nestlings and fledglings. If prey resources are not sufficient, or if adults must hunt long distances from the nest site, the energetics of the foraging effort may result in reduced nestling health and survival with an increased likelihood of disease and/or starvation. In more extreme cases, the breeding pair, in an effort to assure their own existence, may even abandon the nest and young (Woodbridge 1985).

Due to the likely significant adverse effects to the nesting and or foraging habitat on the project site, CDFW recommends the forthcoming EIR include an analysis of known

recent and planned development, crop conversion, and other impacts to foraging habitat in the area that may contribute to cumulative impacts. The EIR should also include avoidance, minimization, and mitigation measures to reduce the project impacts to a less than significant level. This could include a minimum of acre for acre habitat replacement for the loss of Swainson's hawk foraging habitat.

Avoidance of Impacts to Nesting Birds

Migratory non-game native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 *et seq.*). CDFW implemented the MBTA by adopting the Fish and Game Code section 3513. Fish and Game Code sections 3503, 3503.5 and 3800 provide additional protection to nongame birds, birds of prey, their nests and eggs. Sections 3503, 3503.5, and 3513 of the Fish and Game Code afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto; section 3503.5 states that is it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto; and section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

Potential habitat for nesting birds and birds of prey is present within the Project area. The Project should disclose all potential activities that may incur a direct or indirect take to nongame nesting birds within the Project footprint and its vicinity. Appropriate avoidance, minimization, and/or mitigation measures to avoid take must be included in the EIR.

CDFW recommends that the EIR include specific avoidance and minimization measures to ensure that impacts to nesting birds or their nests do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. The EIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. In addition to larger, protocol level survey efforts (e.g. Swainson's hawk surveys) and scientific assessments, CDFW recommends a final preconstruction survey be required no more than three (3) days prior to vegetation clearing or ground disturbance activities if such activities are proposed within the typical nesting season of February 1 through August 30, as instances of nesting could be missed if surveys are conducted earlier. Surveys should include the entire Project site as well as areas near enough that birds nesting within them may be impacted by Project activities, to the extent practicable.

Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources

The EIR should provide a thorough discussion of the Project's potential direct, indirect, and cumulative impacts on biological resources. To ensure that Project impacts on biological resources are fully analyzed, the following information should be included in the EIR:

1. The EIR should define the threshold of significance for each impact and describe the criteria used to determine whether the impacts are significant (CEQA Guidelines, § 15064, subd. (f)). The EIR must demonstrate that the significant environmental impacts of the Project were adequately investigated and discussed and it must permit the significant effects of the Project to be considered in the full environmental context.

2. A discussion of potential impacts from lighting, noise, human activity, and wildlife-human interactions created by Project activities especially those adjacent to natural areas, exotic and/or invasive species occurrences, and drainages. The EIR should address Project-related changes to drainage patterns and water quality within, upstream, and downstream of the Project site, including: volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site.

3. A discussion of potential indirect Project impacts on biological resources, including resources in areas adjacent to the Project footprint, such as nearby public lands (e.g. National Forests, State Parks, etc.), open space, adjacent natural habitats, riparian ecosystems, wildlife corridors, and any designated and/or proposed reserve or mitigation lands (e.g., preserved lands associated with a Conservation or Recovery Plan, or other conserved lands).

4. A cumulative effects analysis developed as described under CEQA Guidelines section 15130. The EIR should discuss the Project's cumulative impacts to natural resources and determine if that contribution would result in a significant impact. The EIR should include a list of present, past, and probable future projects producing related impacts to biological resources or shall include a summary of the projections contained in an adopted local, regional, or statewide plan, that consider conditions contributing to a cumulative effect. The cumulative analysis shall include an impact analysis of vegetation and habitat reductions within the area and their potential cumulative effects. Please include all potential direct and indirect Project-related impacts to riparian areas, wetlands, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and/or special-status species, open space, and adjacent natural habitats in the cumulative effects analysis.

Mitigation Measures for Project Impacts to Biological Resources

The EIR should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the Project. CDFW also recommends that the environmental documentation provide scientifically supported discussion regarding adequate avoidance, minimization, and/or mitigation measures to address the Project's significant impacts upon fish and wildlife and their habitat. For individual projects, mitigation must be roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (Guidelines § § 15126.4(a)(4)(B), 15064, 15065, and 16355). In order for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions. When proposing measures to avoid, minimize, or mitigate impacts, CDFW recommends consideration of the following:

1. *Fully Protected Species*: Several Fully Protected Species (Fish & G. Code § 3511) have the potential to occur within or adjacent to the Project area, including, but not limited to American peregrine falcon (*Falco peregrinus anatum*) and white-tailed kite (*Elanus leucurus*). Fully protected species may not be taken or possessed at any time. Project activities described in the EIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends that the EIR fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the Lead Agency include in the analysis how appropriate avoidance, minimization and mitigation measures will reduce indirect impacts to fully protected species.

2. *Habitat Revegetation/Restoration Plans*: If the Project includes habitat revegetation or restoration of grassland habitat in between the proposed photovoltaic arrays, CDFW recommends a revegetation or restoration plan be prepared. Plans for restoration and revegetation should be prepared by persons with expertise in the regional ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. Each plan should include, at a minimum: (a) the location of restoration sites and assessment of appropriate reference sites; (b) the plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.

CDFW recommends that local native propagules from the nearby vicinity be collected and used for restoration purposes, if practicable. Seed collection should be appropriately timed to ensure the viability of the seeds when planted. Onsite vegetation mapping at the alliance and/or association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Specific restoration plans should be developed for various Project components as appropriate. Restoration objectives should include protecting special habitat elements or re-creating them in areas affected by the Project. Examples may include retention of woody material, logs, snags, rocks, and brush piles. Fish and Game Code sections 1002, 1002.5 and 1003 authorize CDFW to issue permits for the take or possession of plants and wildlife for scientific, educational, and propagation purposes. Please see our website for more information on Scientific Collecting Permits at www.wildlife.ca.gov/Licensing/Scientific-Collecting#53949678-regulations-.

3. *Moving out of Harm's Way:* The Project is anticipated to result in the clearing of natural habitats that support native species. To avoid direct mortality, the lead agency may condition the EIR to require that a qualified biologist with the proper permits be retained to be onsite prior to and during all ground- and habitat-disturbing activities. The qualified biologist with the proper permits may move out of harm's way special-status species or other wildlife of low or limited mobility that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety (i.e., CDFW does not recommend relocation to other areas). It should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for habitat loss.

4. *Translocation of Species*: CDFW generally does not support the use of relocation, salvage, and/or transplantation as the sole mitigation for impacts to rare, threatened, or endangered species as these efforts are generally experimental in nature and largely unsuccessful.

The EIR should incorporate mitigation performance standards that would ensure that impacts are reduced to a less-than-significant level. Mitigation measures proposed in the EIR should be made a condition of approval of the Project. Please note that obtaining a permit from CDFW by itself with no other mitigation proposal may constitute mitigation deferral. CEQA Guidelines section 15126.4, subdivision (a)(1)(B) states that formulation of mitigation measures should not be deferred until some future time. To avoid deferring mitigation in this way, the EIR should describe avoidance, minimization and mitigation measures that would be implemented should the impact occur.

California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the CESA. CDFW recommends that a CESA Incidental Take Permit (ITP) be obtained if the Project has the potential to result in "take" (Fish & G. Code § 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of State-listed CESA species, either through construction or over the life of the Project.

The EIR should disclose the potential of the Project to take CESA-listed species and how the impacts will be avoided, minimized, and mitigated. Please note that mitigation measures that are adequate to reduce impacts to a less-than significant level to meet CEQA requirements may not be enough for the issuance of an ITP. To issue an ITP, CDFW must demonstrate that the impacts of the authorized take will be minimized and fully mitigated (Fish & G. Code §2081 (b)). To facilitate the issuance of an ITP, if applicable, CDFW recommends the EIR include measures to minimize and fully mitigate the impacts to any State-listed species the Project has potential to take. CDFW encourages early consultation with staff to determine appropriate measures to facilitate future permitting processes and to engage with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service to coordinate specific measures if both state and federally listed species may be present within the Project vicinity.

Native Plant Protection Act

The Native Plant Protection Act (Fish & G. Code §1900 *et seq*.) prohibits the take or possession of State-listed rare and endangered plants, including any part or product thereof, unless authorized by CDFW or in certain limited circumstances. Take of State-listed rare and/or endangered plants due to Project activities may only be permitted through an ITP or other authorization issued by CDFW pursuant to California Code of Regulations, Title 14, section 786.9 subdivision (b).

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 the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be submitted online or mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov.

FILING FEES

The Project, as proposed, would have an effect on fish and wildlife, and assessment of 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 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

Pursuant to Public Resources Code sections 21092 and 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the Project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670.

CDFW appreciates the opportunity to comment on the NOP of the EIR for the Gibson Solar Farm Project and recommends that the County address CDFW's comments and concerns in the forthcoming EIR. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

If you have any questions regarding the comments provided in this letter or wish to schedule a meeting and/or site visit, please contact Gabriele Quillman, Environmental Scientist at (916) 358-2955 or gabriele.quillman@wildlife.ca.gov.

Sincerely,

DocuSigned by:
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CEQA Comment Letters
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Literature Cited

California Department of Conservation. 2011. California Farmland Conversion Report 2006-2008. http://www.conservation.ca.gov/dlrp/fmmp/Documents/fmmp/pubs/2006-2008/fcr/FCR_0608_final.pdf

California Department of Fish and Wildlife. 2016. Status Review: Swainson's Hawk (Buteo swainsoni) in California. Five-year Status Report, received by the Fish and Game Commission April 14, 2016. http://www.fgc.ca.gov/meetings/2016/Apr/FGC/exhibits/SS_0414_Item_21_SwainsonsHawk.pdf

Sawyer, J. O., T. Keeler-Wolf, and J. M. Evens. 2009. A Manual of California Vegetation, 2nd ed. California Native Plant Society Press, Sacramento, California. http://vegetation.cnps.org/

Semlitsch, R. and J. Bodie. 1998. Are Small Isolated Wetlands Expendable? Conservation Biology 12:1129-1133.

Wilcove D., C. McLellan, and A. Dobson. 1986. Habitat fragmentation in the temperate zone. Pages 237-256 in Soulé ME, ed. Conservation Biology. Sunderland (MA): Sinauer Associates.

Woodbridge, B. 1985. Biology and management of Swainson's hawk in the Butte Valley, California. U.S. Forest Service Report, 19 pp