



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

Jul 11 2022

July 11, 2022

STATE CLEARINGHOUSE

Kristen Anaya, Assistant Planner
Stanislaus County Department of Planning and Community Development
1010 10th Street, Suite 3400
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**Subject: Notice of Intent (NOI) to adopt Initial Study/Mitigated Negative Declaration (IS/MND) for the Beltran Solar Energy Center (Project)
Use Permit Application No. PLN2021-0111
SCH No.: 2022020479**

Dear Ms. Anaya:

The California Department of Fish and Wildlife (CDFW) received an IS/MND from the Stanislaus County Department of Planning and Community Development for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

CDFW ROLE

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

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

Kristen Anaya, Assistant Planner
Stanislaus County Department of Planning and Community Development
July 11, 2022
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.

In this role, 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.

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).

Water Pollution: Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures, implementation of the Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to streams include the following: increased sediment input from road or structure runoff; and toxic runoff associated with development activities and implementation. The Regional Water Quality Control Board and United States Army Corps of Engineers also have jurisdiction regarding discharge and pollution to "Waters of the State".

Kristen Anaya, Assistant Planner
Stanislaus County Department of Planning and Community Development
July 11, 2022
Page 3

PROJECT DESCRIPTION SUMMARY

Proponent: Beltran Solar, LLC

Objective: The Project is a request to amend Use Permit No. 2011-11 – Beltran Ranch Solar Farm, which was approved by the Stanislaus County Planning Commission on April 18, 2013, to construct a utility-grade 140 megawatt solar facility in three phases on approximately 606 acres of an approximate 1,720-acre project site. A Mitigated Negative Declaration was prepared and adopted in conjunction with the approved Project. The proposed modifications will remain within the Project footprint approved in 2013 on land regularly disturbed in conjunction with on-site crops and crop rotation. The exception is a proposed 400-foot wide 24.5 kilovolt collector line, which will be located outside of the original Project site in order to connect to a substation located on the Proxima Solar Energy Center, just 1 mile north of the Project site. To date, none of the phases approved in the original project have been developed; the applicant is proposing to develop the Project site in a single phase within an 18-month construction schedule and expand the overall development footprint by up to 211 acres from 606 acres to approximately 817 acres.

Location: The Project is located at 22601 Davis Road in unincorporated Stanislaus County, southwest of the Fink Road Sanitary Landfill operated by Stanislaus County, west of Interstate 5 and the California Aqueduct, in the Newman/Crows Landing area. (APNs 025-017-013, -015, -017, -019, and -020; 026-012-003; 027-017-063, -080, -082, -090, and -091; 025-012-015)

Timeframe: The applicant is proposing to develop the Project site in a single phase within an 18-month construction schedule.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the Stanislaus County Department of Planning and Community 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 environmental document for this Project.

The Project area is within the geographic range of several special-status animal species including but not limited to, the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened Swainson's hawk (*Buteo swainsoni*), and the State species of special concern western spadefoot toad (*Spea hammondi*). CDFW is concerned regarding potential impacts to special-status species

Kristen Anaya, Assistant Planner
Stanislaus County Department of Planning and Community Development
July 11, 2022
Page 4

from the ground-disturbing development activities and provides the following species specific recommendations.

San Joaquin Kit Fox (SJKF)

The California Natural Diversity Database (CNDDDB) has documented occurrence of SJKF along Fink Road west of Interstate 5 (CDFW 2022). Therefore, 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.

CDFW agrees with Mitigation Measure BIO-1 that surveys will be conducted no less than 14 days and no more than 30 days prior to the beginning of ground disturbance. CDFW recommends assessing presence/absence of SJKF by conducting surveys following the U.S. Fish and Wildlife Service (USFWS) "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011). SJKF detection warrants consultation with CDFW to discuss how to avoid take, or if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081(b). Without an ITP, any activities that result in the unauthorized take of the species will be subject to enforcement actions.

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.

CDFW agrees with Mitigation Measure BIO-C of the MND that surveys will be conducted, that a 0.5 mile no-disturbance buffer will be established around any active SWHA nest, and that consultation with CDFW will be necessary to determine if an ITP may be warranted. In addition, 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:

Kristen Anaya, Assistant Planner
Stanislaus County Department of Planning and Community Development
July 11, 2022
Page 5

- 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.

Western Spadefoot

Western spadefoot inhabit grassland habitats, breed in seasonal wetlands, and seek refuge in upland habitat where they occupy burrows outside of the breeding season (Thomson et al. 2016). Habitat loss and fragmentation resulting from agricultural and urban development is the primary threat to western spadefoot (Thomson et al. 2016).

Aerial imagery show that the Project site contains requisite habitat elements for the species, and western spadefoot are known to occur in the area based on CNDDDB records (CDFW 2022). Without appropriate avoidance and minimization measures for western spadefoot, potentially significant impacts associated with ground disturbance include; collapse of small mammal burrows, inadvertent entrapment, loss of upland refugia, water quality impacts to breeding sites, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Ground-disturbing activities associated with the Project have the potential to significantly impact local populations of this species. CDFW recommend that a qualified biologist conduct focused surveys for western spadefoot and their requisite habitat features to evaluate potential impacts resulting from ground- and vegetation-disturbance prior to Project activities.

Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around burrows. If western spadefoot are observed on the Project site, CDFW recommends that Project activities in their immediate vicinity cease and individuals be allowed to leave the Project site on their own accord. Alternatively, a qualified biologist with appropriate take authorization can move them out of harm's way and to a suitable location.

Other Rare 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 pursuant to CESA and/or the federal Endangered Species Act (ESA) to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for a listing as E, R, or T under CESA and/or ESA as specified in the CEQA Guidelines (Cal. Code Regs. tit. 14, Chapter 3, § 15380), CDFW recommend they be fully considered in the environmental analysis for the Project.

Kristen Anaya, Assistant Planner
Stanislaus County Department of Planning and Community Development
July 11, 2022
Page 6

Editorial Comments and Suggestions

Lake and Stream Alteration

CDFW agrees with Mitigation Measure BIO-E of the MND that states that stockponds and Crow Creek will be avoided and that a 250-ft no disturbance buffer around these features will be implemented. In addition to potential species impacts, any Project activities that have the potential to affect the bed, bank, or channel of Crow Creek and other ephemeral streams may be subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Please note that the no-disturbance buffer alone may not be sufficient to avoid the need for a Lake or Streambed Alteration Agreement (LSA Agreement). If a LSA Agreement is needed, CDFW is required to comply with CEQA in the issuance or the amendment of an LSA Agreement. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593.

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

ENVIRONMENTAL DATA

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


CDFW appreciates the opportunity to comment on the Project to assist the Stanislaus County Department of Planning and Community Development in identifying and mitigating the Project's 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>). If you have any questions, please contact Kari Kyler Daniska, Senior Environmental Scientist

Kristen Anaya, Assistant Planner
Stanislaus County Department of Planning and Community Development
July 11, 2022
Page 7

(Specialist), at the address provided on this letterhead, by telephone at (559) 341-4633,
or by electronic mail at Kari.Daniska@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie Vance
Regional Manager

Attachment 1

cc: California Regional Water Quality Control Board
Central Valley Region
1685 "E" Street
Fresno, California 93706-2020

United State Army Corps of Engineers
1325 "J" Street, Suite #1350
Sacramento, California 95814-2928

ec: Patricia Cole; patricia_cole@fws.gov
U.S. Fish and Wildlife Service

Kristen Anaya, Assistant Planner
Stanislaus County Department of Planning and Community Development
July 11, 2022
Page 8

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). 2016. Five Year Status Review for Swainson's Hawk (*Buteo swainsoni*). California Department of Fish and Wildlife. April 11, 2016.
- CDFW. 2022. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>.
- Thomson, R. C., A. N. Wright, and H. Bradley Shaffer, 2016. California Amphibian and Reptile Species of Special Concern. California Department of Fish and Wildlife and University of California Press: 84–92.
- United States Fish and Wildlife Service, 2011. Standardized Recommendations for the Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance. United States Fish and Wildlife Service.

Attachment 1

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

**PROJECT: Notice of Intent (NOI) to adopt Initial Study/Mitigated
Negative Declaration (IS/MND) for the Beltran Solar Energy
Center (Project)
Use Permit Application No. PLN2021-0111**

SCH No.: 2022020479

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