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Governor's Office of Planning & Research

Jul 11 2022

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STATE CLEARINGHOUSE

Terrance Smalls, Supervising Planner
Kern County Planning and Natural Resources Department
2700 M Street, Suite 100
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**Subject: Notice of Preparation (NOP) of a Draft Environmental Impact Report (Draft EIR) for the Jasmine Solar Project (Project) in Kern County
SCH No.: 2022060193**

Dear Mr. Smalls:

The California Department of Fish and Wildlife (CDFW) received a NOP from Kern County 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 agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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

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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.

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.

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: SF Jasmine, LLC

Objective: The Project, as proposed by SF Jasmine, LLC would construct and operate a photovoltaic solar facility and associated infrastructure necessary to generate up to 70 megawatts (MW) of renewable energy and a Battery Energy Storage System (BESS) capable of storing approximately 17 MW to provide approximately 68 megawatt hours (MWh) of energy, on approximately 493 acres of privately-owned land. The project site consists of 1 site located on 1 privately owned parcel. The project study area consists of an approximate total of 527 acres and includes the project solar facility and transmission line areas. The project would be supported by a 230-kilovolt (kV) gen-tie overhead and/or underground electrical transmission line(s) originating from one or more on-site substations and terminating at a nearby Substation. The project's permanent facilities would include, but are not limited to, service roads, a power collection system, inverter stations, transformer systems, transmission lines, electrical switchyards, project substations, energy (battery) storage system, and operations and maintenance facilities.

Implementation of the project as proposed includes the following requests:

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- a) Conditional Use Permit No. 30, Map No. 160 to allow for the construction and operation of a solar facility with a total generating capacity of approximately 70 megawatts (MW) of renewable energy including up to 17 MWh of energy storage capable of providing approximately 68 MWh of energy, within the A (Exclusive Agriculture) Zone District pursuant to Section 19 .12.030.G, of the Kern County Zoning Ordinance.
- b) Cancellation of an Existing Williamson Act Land Use Contract #22-01.

Location: The proposed Project is located on the northwest corner of the intersection of Old River Road and Copus Road, approximately four (4) miles west of Interstate 5 and 2.5 miles north of State Route 166, in an unincorporated area of western Kern County. The project site is located in Section 31 of Township 32 South, Range 27 East in the Mount Diablo Base and Meridian (MDB&M). (Lat. / Long.: 35° 6' 13.068"N, 119° 7' 24.564"W; APN 295-131-12).

Timeframe: 12 months construction, beginning in 2023. Anticipated operation life of 30 years.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the Kern County Department of Planning and Natural Resources Department 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.

Special-Status Species: Based on aerial imagery, and species occurrence records from the California Natural Diversity Database (CNDDDB), the proposed Project site is known to and/or has potential to support numerous special-status species, including CESA-listed species (CDFW 2022), including: the State and federally endangered and fully protected blunt-nosed leopard lizard (*Gambelia sila*), State threatened Swainson's hawk (*Buteo swainsoni*) and San Joaquin Antelope Squirrel (*Ammospermophilus nelsoni*), the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State and federally endangered Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), the federally endangered Buena Vista Lake ornate shrew (*Sorex ornatus relictus*), and the State species of special concern California glossy snake (*Arizona elegans occidentalis*), burrowing owl (*Athene cunicularia*), and American badger (*Taxidea taxus*). The Project area is also in the range of several special-status plant species including the State and federally endangered and California rare plant rank (CRPR) 1B.1 California jewelflower (*Caulanthus californicus*), CRPR 1B.1 Comanche Point layia (*Layia leucopappa*) and Coulter's goldfields (*Lasthenia glabrata* ssp. *coulteri*), the CRPR 1B.2 heartscale (*Atriplex cordulata* var. *cordulata*), and the

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federally endangered and CRPR 1B.2 San Joaquin woollythreads (*Monolopia congdonii*), and Kern mallow (*Eremalche parryi ssp. kernensis*).

Specifically, CDFW is concerned about potential impacts to the State threatened Swainson's hawk (*Buteo swainsoni*) and the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), and makes the following recommendations:

Swainson's Hawk

CDFW recommends assessing presence/absence of SWHA by conducting surveys following the Swainson's Hawk "Recommended timing and methodology for Swainson's Hawk nesting surveys in California's Central Valley" (2000) and that a 0.5 mile no-disturbance buffer be established around any active SWHA nest. If the species, breeding/nesting activity or an active nest is observed, consultation with CDFW will be necessary to determine if an Incidental Take Permit (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:

- 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.

San Joaquin Kit Fox

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 ITP prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081(b).

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Without an ITP, any activities that result in the unauthorized take of the species will be subject to enforcement actions.

CDFW requests that the Draft EIR fully identify potential impacts to biological resources, including the above-mentioned species. In order to adequately assess any potential impacts to biological resources, focused and protocol biological surveys should be conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) in order to determine whether any special-status species and/or suitable habitat features may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or multiple protocol-level surveys, and to identify any Project-related impacts under CESA to CESA listed species and other species of concern.

Therefore, CDFW recommends the Draft EIR address potential impacts to these species and provide measurable mitigation measures that, as needed, will reduce impacts to less than significant levels. Information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>).

Federally Listed Species: CDFW also recommends consulting with the USFWS on potential impacts to federally listed species, specifically, but not limited to, the blunt-nosed leopard lizard, Buena Vista Lake ornate shrew, San Joaquin kit fox, and Tipton's kangaroo rat. 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.

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), it should be fully considered in the environmental analysis for the Project.

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.

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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 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.

Cumulative Impacts: CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the project, even if those impacts are relatively small (i.e. less than significant). CDFW recommends cumulative impacts be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the project. An appropriate resource study area identified and utilized for this analysis is advised. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

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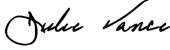
ENVIRONMENTAL DATA

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 Kern County Planning and Natural Resources Department in identifying and mitigating the Project's impacts on biological resources.

CDFW is available to meet with you ahead of Draft EIR preparation to discuss potential impacts and possible mitigation measures for some or all of the resources that may be analyzed in the Draft EIR. If you have any questions, please contact Kari Kyler Daniska, Senior Environmental Scientist (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:

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Julie Vance
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LITERATURE CITED

California Department of Fish and Game (CDFG). 1994. Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo Swainsoni*) in the Central Valley of California. California Department of Fish and Game.

California Department of Fish and Wildlife (CDFW). 2022. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>.

Swainson's Hawk Technical Advisory Committee (TAC). 2000. Recommended timing and methodology for Swainson's Hawk nesting surveys in California's Central Valley.

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.