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DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

December 07, 2023

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STATE CLEARINGHOUSE

Terrance Smalls, Supervising Planner
Kern County Planning and Natural Resources Department
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Subject: **Jasmine Solar Project by SF Jasmine, LLC**
Draft Environmental Impact Report (DEIR)
State Clearinghouse No. 2022060193

Dear Terrance Smalls:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from Kern County Planning and Natural Resources Department (Kern County), as Lead Agency, for the Jasmine Solar Project by SF Jasmine, LLC (Project) pursuant 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 the Fish and Game Code. While the comment period may have ended, CDFW respectfully requests that Kern County still consider our comments.

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

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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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. 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 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.

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.

PROJECT DESCRIPTION SUMMARY

Proponent: SF Jasmine, LLC

Objective: The Project proposes to construct a photovoltaic solar facility with the associated infrastructure necessary to generate up to 70 megawatts (MW) of renewable energy, and a Battery Energy Storage System (BESS) capable of providing approximately 17 MW of power for 4 hours totaling 68 megawatt hours (MWh) of energy storage, on approximately 493 acres of privately-owned land. 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 70-kilovolt (kV) gen-tie overhead electrical transmission line(s) originating from an on-site substation and

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terminating at the nearby PG&E 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, substations, energy (battery) storage system, and operations and maintenance facilities.

Location: The Project site is located in southwestern Kern County, at the northwest corner of Copus Road and Old River Road, approximately four miles west of Interstate-5, 2.5 miles north of State Route 166, approximately 17 miles east of Taft, and approximately 20 miles southwest of downtown Bakersfield. Primary access to the project site is proposed off of Copus Road and Old River Road. The Project site occupies two privately owned parcels: Assessor's Parcel Number (APN) 295-131-12 and APN 295-132-15.

Timeframe: Construction is anticipated to commence in 2024 and would extend for approximately 12 months.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Kern 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.

Aerial imagery of the Project boundary and its surroundings show the area contains agricultural lands, including tilled agricultural fields consisting of wheat (*Triticum aestivum*) and alfalfa (*Medicago sativa*), vineyards, orchards, ruderal habitat, and developed lands. Based on a review of the Project description, a review of California Natural Diversity Database (CNDDDB) records, and the surrounding habitat several special-status species could potentially be impacted by Project activities.

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 the 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 (*Vulpes macrotis mutica*); and the State species of special concern American badger (*Taxidea taxus*) and burrowing owl (*Athene cunicularia*). CDFW also has concerns with potential impacts to migratory and non-migratory nesting birds, including the State watch list species California horned lark (*Eremophila alpestris actia*).

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San Joaquin Kit Fox

Mitigation Measure MM 4.4-3 states that, "To enable San Joaquin kit fox and other wildlife (e.g. American badger) to pass through the project site after construction, the security fence and any permanent interior fencing shall be made a wildlife friendly design that meets the goal of allowing wildlife to move freely through the project site during operation by leaving 4- to 7-inch openings or portals in the fence or raising the bottom of the fence up 5 to 7 inches from the ground leaving a gap between the fence mesh and the ground. In the latter case, the bottom of the fabric shall be knuckled (wrapped back to form a smooth edge) to protect wildlife that passes under the fence." CDFW concurs with this measure but recommends that the style of fencing selected is the type that is raised four to six inches above ground level and knuckled back to form a smooth edge and permeability for wildlife. CDFW does not recommend the use of openings or portals.

Mitigation Measure MM 4.4-6 states that, "Preconstruction surveys shall be conducted by a qualified biologist for the presence of San Joaquin kit fox dens within 14 days prior to commencement of construction activities. Surveys need not be conducted for all areas of suitable habitat at one time; they may be phased so that surveys occur within 14 days prior to that portion of the project site disturbed." CDFW concurs with conducting preconstruction surveys for San Joaquin kit fox (SJKF) dens prior to construction given that SJKF are known to occur in the Project Area but recommends that these den surveys include the Project site and a 500-foot buffer around the Project site.

Mitigation Measure MM 4.4-6 continues by stating that, "If avoidance of the potential dens is not possible, the following measures are required to avoid potential adverse effects to the San Joaquin kit fox:

1. If the qualified biologist determines that potential dens are inactive, the biologist shall excavate these dens by hand with a shovel to prevent San Joaquin kit foxes from re-using them during construction.
2. If the qualified biologist determines that potential dens may be active, an onsite passive relocation program shall be implemented. This program shall consist of excluding San Joaquin kit foxes from occupied burrows by installation of one-way doors at burrow entrances, monitoring of the burrow for 7 days to confirm usage has been discontinued, and excavation and collapse of the burrow to prevent reoccupation. After the qualified biologist determines that San Joaquin kit foxes have stopped using the dens within the project boundary, the dens shall be hand-excavated with a shovel to prevent re-use during construction."

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CDFW does not concur with this measure, as excavation of active SJKF dens would result in unauthorized take of the species. As such, if preconstruction surveys detect SJKF or SJKF known dens, and the buffers outlined in MM 4.4-6 are unable to be followed, it is strongly recommended that the Project proponent consult with CDFW prior to any ground disturbing activities to obtain an ITP pursuant to Fish and Game Code section 2081 subdivision (b) to avoid any unauthorized take of SJKF.

American Badger

The Biological Resources Assessment (BRA), conducted in support of the Project DEIR, notes that American badger (AMBA) is not expected to occur as, “No suitable habitat for the species exists within the study area or regional vicinity”. CDFW does not concur that the species is not expected to occur and that there is no suitable habitat. AMBA occupy sparsely vegetated land cover with dry, friable soils to excavate dens, which they use for cover, and that support fossorial rodent prey populations (i.e., ground squirrels, pocket gophers, etc.) (Zeiner et. al 1990). They are also able to burrow in active agricultural areas. While the DEIR currently notes that the Project site is comprised of agricultural lands, there is a strong likelihood that AMBA could utilize the disturbed soils within the Project site during construction, and over the life of the Project. Additionally, while no CNDDDB occurrences have been documented within the immediate vicinity (CDFW 2023), CDFW is aware of several direct observations of AMBA adjacent to the Project site.

As the Project site is within the known geographic range of the species, there have been direct observations of AMBA within the Project vicinity, and the Project site is anticipated to contain suitable habitat over the life of the Project, CDFW recommends the following:

Recommended Mitigation Measure 1: AMBA Surveys Prior to Construction

CDFW recommends that a qualified biologist conduct focused surveys for American badger and their requisite habitat features (dens) immediately prior to construction to evaluate potential impacts resulting from ground- and vegetation-disturbance.

Recommended Mitigation Measure 2: AMBA Avoidance Buffer

Avoidance whenever possible is encouraged via delineation and observation of a 50-foot no-disturbance buffer around dens until it is determined through noninvasive means that individuals occupying the den have dispersed.

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Burrowing Owl

Mitigation Measure MM 4.4-8 states that, “If burrow avoidance is infeasible during the non-breeding season or during the breeding season (February 1 through August 31) where resident owls have not yet begun egg laying or incubation, or where the juveniles are foraging independently and capable of independent survival, a qualified biologist shall implement a passive relocation program in accordance with Appendix E1 (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 CDFW Staff Report on Burrowing Owl Mitigation.” While CDFW concurs with the majority of Mitigation Measure 4.4-8 it is recommended that burrowing owl (BUOW) passive relocation occur only during the non-breeding season to avoid potential violations of Fish and Game Code Sections 3503 (taking and destroying eggs and nests), 3503.5 (taking bird of prey or their eggs), and/or 3513 (taking of migratory non game birds).

Nesting Birds

Mitigation Measure MM 4.4-9 states that:

“Preconstruction surveys shall be conducted by a qualified biologist of all potential nesting habitat within the project site no more than 14 days prior to commencement of construction activities within the project site during the breeding season (i.e., February 1 to August 31). Surveys need not be conducted for all areas of suitable habitat at one time; they may be phased so that surveys occur within 10 days prior to that portion of the project site disturbed. If construction is scheduled to commence during the non-nesting season for any nesting birds (i.e., September 1 to January 31), no preconstruction surveys or additional measures are required.

The surveying biologist must be qualified to determine the status and stage of nesting by migratory birds and all locally breeding raptor species without causing intrusive disturbance.

The raptor survey shall focus on potential nest sites (e.g., large trees, windrows) within a 0.5-mile buffer around the project site.

A tricolored blackbird nest colony survey shall occur within suitable habitat. Tricolored blackbird nesting season in the San Joaquin Valley is March to mid-June, though most colonies begin nesting in late March. Suitable habitat shall be assessed in March with three follow-up surveys occurring April through June, comprising a total of four surveys of each location. The Swainson’s hawk nest survey shall focus on potential nest sites within a 5- mile buffer around the project site and follow the 2010 Swainson’s hawk protocol surveys (SWHA Survey Protocols, Impact Avoidance, and Minimization Measures, 2010).

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Surveys shall encompass the project site plus the potential nest buffers as listed above, where access has been granted.

If active nests are found, a suitable no disturbance buffer (e.g., 500 feet for common raptors; 0.5 miles for Swainson's hawk; 250 feet for non-raptor species shall be established around active nests until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). For non-listed species, encroachment into the avoidance buffer may occur at the discretion of a qualified biologist provided the biologist has monitored the nest prior to construction to establish a behavioral baseline and continues to monitor the nest during construction to ensure the nest is not negatively affected. Buffer distances can also be adjusted if there is a compelling biological reason such as when a construction area would be concealed from a nest site by topography of vegetation as determined by a qualified biologist. For State-listed species, consultation with CDFW shall occur prior to encroachment into the aforementioned buffers.

Compensation for loss of Swainson's hawk foraging habitat will be based on the results of the protocol SWHA survey (SWHA TAC 2000) as described in CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" (CDFG 1994). If an active Swainson's hawk nest is detected and a 1/2-mile no disturbance buffer is not feasible, CDFW will be consulted to discuss how to implement the project and avoid take."

CDFW does not concur that Mitigation Measure MM 4.4-9 is sufficient to mitigate impacts to nests during the bird breeding season, particularly for the portion of the measure which directs surveys for active nests no more than 10 days prior to the start of construction and defines the breeding season as ending on August 31. As such, CDFW recommends the following:

Recommended Mitigation Measure 3: Nesting Bird Surveys Prior to Construction

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 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

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qualified biologist conduct a survey to establish a behavioral baseline of all identified nests.

Recommended Mitigation Measure 4: Nesting Bird Monitoring and/or Avoidance Buffer

Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends the work causing that change to cease and that CDFW be consulted 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 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 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.

Editorial Comments and/or Suggestions

Federally Listed Species: CDFW recommends consulting with the United States Fish and Wildlife Service (USFWS) regarding 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 Project activities.

Cumulative Impacts: Currently, the DEIR has a very broad analysis of cumulative impacts to biological resources and does not adequately evaluate impacts to specific resources. As such, the conclusions reached in the cumulative impacts analysis are not supported by substantial evidence and the analysis lacks sufficient rigor and transparency to adequately develop reasonable and feasible measures to reduce harm. To address this lack of evidence, 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

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Project, even if those impacts are relatively small (i.e., less than significant). CDFW recommends cumulative impacts be analyzed for the following species 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 should be identified and mapped for each resource being analyzed and utilized for this analysis. CDFW recommends a scientifically sound cumulative impacts analysis be conducted for the following species: SJKF, Swainson's hawk (SWHA), AMBA, BUOW, and California horned lark. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

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. €). Accordingly, please report any special-status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or 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).

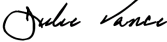
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CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist Kern County Planning and Natural Resources Department in identifying and mitigating Project impacts on biological resources.

If you have any questions, please contact Jeremy Pohlman, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (805) 503-2375 or by electronic mail at Jeremy.Pohlman@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

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REFERENCES

California Department of Fish and Wildlife. 2023. Biogeographic information and observation system. <https://www.wildlife.ca.gov/Data/BIOS>. Accessed 15 November 2023.

Zeiner, D., W. Laudenslayer, Jr., K. Mayer, and M. White. 1990. California's Wildlife. Volumes I-III *in* California Department of Fish and Game, editor. California Department of Fish and Wildlife, Sacramento, California, USA.

Attachment 1

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

PROJECT: Jasmine Solar Project by SF Jasmine, LLC Project

SCH No.: 2022060193

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
AMBA	
Recommended Mitigation Measure 1: AMBA surveys prior to construction	
Nesting Birds	
Recommended Mitigation Measure 3: Nesting bird surveys prior to construction	
<i>During Construction</i>	
AMBA	
Recommended Mitigation Measure 2: AMBA avoidance buffer	
Nesting Birds	
Recommended Mitigation Measure 4: Nesting bird monitoring and avoidance buffer	