



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



December 6, 2022

Annette Kephart, Planner III
Madera County Community and Economic Development Department
200 West 4th Street, Suite 3100
Madera, California 93637
(559) 675-7821

Subject: **Conditional Use Permit (CUP 2022-013) RPCA Solar 1, LLC (Project)
MITIGATED NEGATIVE DECLARATION (MND)
State Clearinghouse No. 2022110121**

Dear Annette Kephart:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from Madera County Community and Economic Development Department (Madera County), as Lead Agency, for the Conditional Use Permit (CUP 2022-013) RPCA Solar 1, LLC project (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.

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

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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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).

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: RPCA Solar 1, LLC

Objective:

The Project proposes to construct an approximately 8 megawatt (MW) solar photovoltaic energy generating facility on approximately 46-acres of a 319-acre parcel. The Project will be constructed in two phases and will interconnect to a PG&E preexisting electrical distribution system. Additionally, revised site plans obtained from Madera County (Annette Kephart) on November 21, 2022, identified the location of a Battery Energy Storage System (BESS) located within the proposed energy generating facility and locations of overhead power lines that would connect with the PG&E preexisting electrical distribution system.

Location: The proposed Project site is located within an unincorporated area within Madera County on the south side of Avenue 26 approximately 3/4 mile west of its

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intersection with Road 21, Chowchilla. The Project site includes Assessor's Parcel Number (APN) 030-161-001.

Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Madera County 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 CEQA document.

Aerial imagery of the Project boundary and its surroundings show the area contains agricultural land. Based on a review of the Project description, a review of California Natural Diversity Database (CNDDDB) records, and the surrounding habitat, special status species could potentially be impacted by Project activities.

Currently, the MND 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 is concerned Project-related activities may potentially impact the State threatened Swainson's hawk (*Buteo swainsoni*) as no mitigation measures are proposed for this species. CDFW also has concerns about the ability of some of the proposed mitigation measures to protect migratory and non-migratory nesting birds.

Swainson's Hawk (SWHA)

The MND identified SWHA as potentially occurring within the Project area but did not provide specific mitigation measures to reduce Project impacts to less than significant. SWHA have been documented to occur in several locations adjacent to the Project site with the closest occurrence located approximately three miles west of the Project (CDFW 2022). While the Project site is comprised of orchards and developed/disturbed habitats which may not be preferential to SWHA for foraging, suitable foraging and nesting habitat are present within the vicinity of the Project site. There are trees and structures located adjacent to the Project site that may provide suitable nesting habitat.

CDFW is concerned that impacts to SWHA would occur without implementing the following mitigation measures:

Recommended Mitigation Measure 1: SWHA Surveys

To evaluate potential Project-related impacts, CDFW recommends that a qualified wildlife biologist conduct protocol surveys for nesting SWHA following the entire

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survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) in the survey season immediately prior to Project implementation. SWHA detection during protocol-level surveys warrants consultation with CDFW to discuss how to implement Project activities and avoid take.

Recommended Mitigation Measure 2: SWHA Avoidance Buffer

If Project-specific activities will take place during the SWHA nesting season (i.e., February 1 through September 15), and active SWHA nests are present, CDFW recommends a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, regardless of whether it was detected by surveys or observed incidentally. These buffers would 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, to prevent nest abandonment and other take of SWHA as a result of Project activities.

Recommended Mitigation Measure 3: SWHA Take Authorization

CDFW recommends that in the event an active SWHA nest is detected, and a ½-mile no-disturbance buffer is not feasible, consultation with CDFW occur 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.

Nesting Birds

The MND provides a mitigation measure for nesting birds, which states, “A nesting bird survey shall be performed by a qualified biologist no earlier than one week prior to any construction during the nesting season (March 1 – August 31) to determine if any native birds are nesting on or near the site (including a 100-foot buffer for raptors). If any active nests are observed during surveys, a suitable avoidance buffer from the nests should be determined by the qualified biologist based on species, location, and extent and type of planned construction activity. These nests would be avoided until the chicks have fledged and the nests are no longer active, as determined by the qualified biologist and removal of any suitable nesting habitat (i.e., trees and vegetation) outside of the bird breeding season to avoid impacts to nesting birds.” Additionally, the MND provides a mitigation measure specifically for barn owl, which states, “Prior to the start of construction, a qualified biologist shall check each barn owl nest box within 150 feet of the Project disturbance area to determine if they are actively being used by barn owls for nesting. Any active nest boxes will be flagged with a 150-foot buffer for avoidance during Project construction. All inactive nest boxes will be removed within 24 hours of the survey to ensure no impacts to barn owls will occur under the Project. All nest boxes will be mapped and recorded; the locations of inactive nest boxes will be transmitted to the Project proponent in order to facilitate removal or relocation of the

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boxes.” CDFW normally recommends timing nesting bird surveys between February 1 and September 15 and establishing more appropriate avoidance buffers. As such, CDFW recommends the following mitigation measures:

Recommended Mitigation Measure 4: Nesting Bird Surveys

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

Recommended Mitigation Measure 5: 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 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.

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 CNDDDB. The CNDDDB field survey form can be found at the following link:

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<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

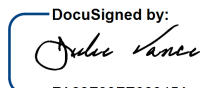
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order 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).

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist Madera County 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:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

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REFERENCES

CDFW, 2022. *Biogeographic Information and Observation System (BIOS)*.
<https://www.wildlife.ca.gov/Data/BIOS>. Accessed September 29, 2022.

Swainson's Hawk Technical Advisory Committee (SWHA TAC), 2000. *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in the Central Valley of California*. 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: RPCA Solar 1, LLC Project

SCH No.: 2022110121

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
SWHA	
Recommended Mitigation Measure 1: SWHA surveys	
Recommended Mitigation Measure 3: SWHA take authorization	
Nesting Birds	
Recommended Mitigation Measure 4: Nesting Birds surveys	
<i>During Construction</i>	
SWHA	
Recommended Mitigation Measure 2: SWHA avoidance buffer	
Nesting Birds	
Recommended Mitigation Measure 5: Nesting Birds avoidance buffer	