



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



April 24, 2023

Cameron Christie, Planner I
Merced County Community and Economic Development Department
2222 M Street
Merced, California 95340
(209) 385-7654
Cameron.Christie@countyofmerced.com

**Subject: Conditional Use Permit Application No. CUP22-011 – Dos Palos Clean Power Project (Project)
MITIGATED NEGATIVE DECLARATION (MND)
State Clearinghouse No. 2023030591**

Dear Cameron Christie:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from Merced County Community and Economic Development Department (Merced County), as Lead Agency, for the Conditional Use Permit No. CUP22-011 – Dos Palos Clean Power Project (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 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.

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 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.

PROJECT DESCRIPTION SUMMARY

Proponent: Renewable America LLC

Objective: The Project proposes to construct a 3-megawatt (MW) alternating current (AC) photovoltaic (PV) solar energy facility, a 600-square-foot concrete equipment pad with an estimated 4.4-MW direct current (DC) and its associated inverters, fencing, and site improvements, including fencing and improvements to the existing access road and driveway approaches. The project would also include demolition of the existing on-site vacant residential structure built in 1935, the associated groundwater well, and the septic system. The project would deliver power to the existing Pacific Gas and Electric Company (PG&E) power distribution network via an existing aboveground primary service interconnection utility pole located on the east side of Elgin Avenue. The project

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is anticipated to operate for approximately 35 years, after which the project would be decommissioned and the site would be restored to pre-project conditions.

Location: The proposed Project site is located on an 11.3-acre portion of a 39-acre parcel (Assessor's Parcel Number [APN] 089-020-049-000) located approximately 0.5 mile north of the city of Dos Palos in unincorporated Merced County. The project site is situated on the west side of Elgin Avenue/State Route (SR) 33 at 19553 Elgin Avenue and is accessed from two unpaved driveways off of Elgin Avenue located on the east side of the property.

Timeframe: Project is anticipated to begin during fall 2023 and would take approximately six months to complete.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Merced County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

Aerial imagery of the Project boundary and its surroundings show the area contains agricultural lands including row crops, ruderal and landscaped vegetation, and scattered rural residences, including an existing vacant structure within the Project site. Based on a review of the Project description, a review of California Natural Diversity Database (CNDDB) 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 has concerns about the ability for some of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for the State threatened tricolored blackbird (*Agelaius tricolor*); and the State candidate for listing Crotch bumble bee (*Bombus crotchii*). CDFW is also concerned with potential impacts to special status and non-special status bats, including the State species of special concern (SSC) Townsend's big-eared bat (*Corynorhinus townsendii*) and State special animal hoary bat (*Lasiurus cinereus*).

Tricolored Blackbird (TRBL)

The MND identified the irrigation ditch west of the project area as having suitable habitat for TRBL nesting and foraging and provided Mitigation Measure MM BIO-1 to mitigate for impacts to TRBL, which includes measures for surveys, buffer establishment, variance of buffer distances, nest monitoring, nest removal, and reporting. The variance of buffer distances and nest monitoring sections propose to allow for the reduction of

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buffers around TRBL nests upon advanced notification to CDFW. CDFW agrees with the requirement to notify prior to reducing a TRBL nest buffer and further recommends the following:

Recommended Mitigation Measure 1: TRBL Take Authorization

In the event that a TRBL nesting colony is detected during surveys and a 300-foot buffer cannot be maintained, consultation with CDFW is warranted to discuss how to implement the Project and avoid take, or if complete avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground-disturbing activities.

Crotch bumble bee (CBB)

The Project site is within the known geographic range of CBB and there is a historical occurrence located 0.25 mile south of the Project area (CDFW 2023). The MND did not propose any specific mitigation measures for CBB to reduce impacts to less than significant. CBB are known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses, and as some of these habitat elements may be present prior to construction, the Project has the potential to impact the local population.

As CBB have the potential to be present within the Project site and have been historically documented within the Project vicinity, CDFW recommends the following:

Recommended Mitigation Measure 2: CBB Surveys

CDFW recommends a qualified biologist conduct a habitat assessment for CBB prior to project implementation. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment. If potentially suitable habitat is identified, coordination with CDFW is recommended for guidance on developing focused CBB survey methodology to be conducted prior to any ground disturbing activities.

Recommended Mitigation Measure 3: CBB Avoidance Buffer

In the event that a CBB nest and/or CBB are documented during surveys, consultation with CDFW is recommended for guidance on implementing no disturbance buffers prior to any ground disturbing activities.

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Recommended Mitigation Measure 4: CBB Take Authorization

CDFW also recommends that in the event an active CBB nest is detected, consultation with CDFW is warranted 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.

Special-Status and Non-special Status Roosting Bats

The MND notes that a vacant residence within the Project area and up to four trees would be removed as part of the proposed construction activities. The exterior of the vacant residence was inspected for evidence of bats during the reconnaissance-level survey conducted in 2022. While the MND notes that bat sign was not observed during this inspection, no measures were provided to survey for bats prior to the removal of the residence. As there is potential for special status and non-special status bats, including Townsend's big-eared bat and hoary bat, to roost within the vacant residence and/or trees located within the Project area, CDFW recommends the following mitigation measures to avoid and minimize impacts:

Recommended Mitigation Measure 5: Roosting Bat Pre-construction Surveys

CDFW recommends that a qualified biologist conduct focused visual surveys for roosting bats within the interior and along the exterior of the vacant residence and the trees slated for demolition within two weeks prior to removal to look for evidence of roosting bats. If evidence of roosting bats is found during these visual surveys, it is recommended that dusk emergence surveys are conducted for a minimum of two nights, timed during suitable weather conditions for emergence, to confirm the activity of the roost. These surveys are recommended well in advance of demolition activities to allow adequate time for exclusionary measure planning and implementation if necessary.

Recommended Mitigation Measure 6: Roosting Bat Avoidance Buffer

If bats are found to occupy the Project site, CDFW recommends establishing a 100 foot no-disturbance buffer around roost sites, installing temporary exclusionary devices at the appropriate time of year to avoid take, and installing new roost sites prior to initiation of Project-related activities to allow enough time for bats to relocate. CDFW recommends consultation prior to construction if a bat roost site is anticipated to be disturbed by Project-related activities.

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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 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

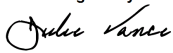
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order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

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist Merced 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:

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Julie A. Vance
Regional Manager

ec: State Clearinghouse, Governor's Office of Planning and Research
State.Clearinghouse@opr.ca.gov

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REFERENCES

CDFW, 2023. *Biogeographic information and observation system (BIOS)*.
<https://www.wildlife.ca.gov/Data/BIOS>. Accessed April 17, 2023.

Attachment 1

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

PROJECT: Dos Palos Clean Power Project

SCH No.: 2023030591

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
TRBL	
Recommended Mitigation Measure 1: TRBL take authorization	
CBB	
Recommended Mitigation Measure 2: CBB surveys	
Recommended Mitigation Measure 4: CBB take authorization	
Roosting Bats	
Recommended Mitigation Measure 5: Roosting bat pre-construction surveys	
<i>During Construction</i>	
CBB	
Recommended Mitigation Measure 3: CBB avoidance buffer	
Roosting Bats	
Recommended Mitigation Measure 6: Roosting bat avoidance buffer	