



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



May 23, 2023

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**Subject: Firestone Solar Phase II Project (Project)  
MITIGATED NEGATIVE DECLARATION (MND)  
State Clearinghouse No. 2023040553**

Dear Darcy Delgado:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the City of Paso Robles, as Lead Agency, for the Firestone Solar Phase II Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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 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.

<sup>1</sup> 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.

Darcy Delgado, Associate Planner  
City of Paso Robles  
May 23, 2023  
Page 2

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:** REC Solar

**Objective:**

The Project proposes to construct a solar system facility for the Firestone Walker Brewery to offset energy usage at the main brewery through PG&E’s Net Energy Metering Aggregation (NEMA) program. The solar system would be installed in the rear of the Firestone campus and includes a 1.2-megawatt (MW) ground-mounted single axis tracker system on approximately 4.84-acres of a 13.75-acre field located southeast of Firestone’s main building operations, adjacent to an existing solar system. The tracker system will be interconnected to the electric utility infrastructure via a line side tap at an existing service located between the water treatment ponds and the railroad tracks.

Darcy Delgado, Associate Planner  
City of Paso Robles  
May 23, 2023  
Page 3

**Location:** The proposed Project is located on the northern end of Ramada Drive and east of United States (US) Highway 101 within Assessor Parcel Number (APN) 009-631-018.

**Timeframe:** Undetermined

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the City of Paso Robles 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 land that is dry cropped for barley. These agricultural lands also contain several scattered oak trees along the western boundary of the Project area. Additionally, the eastern boundary of the Project area is immediately adjacent to riparian habitat and the Salinas River. 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 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 candidate for listing Crotch bumble bee (*Bombus crotchii*); the State species of special concern burrowing owl (*Athene cunicularia*); the federally threatened and State species of special concern California red-legged frog; and the State species of special concern coast horned lizard (*Phrynosoma blainvillii*) and northern California legless lizard (*Anniella pulchra*). CDFW is also concerned with potential impacts to migratory and non-migratory nesting birds.

### **Crotch Bumble Bee**

The Project site is within the known geographic range of Crotch bumble bee (CBB) and there is a historical occurrence located approximately 6.5 miles 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 along the western boundary of the Project site underneath the oak woodland canopy, the Project has the potential to impact the local population.

Darcy Delgado, Associate Planner  
City of Paso Robles  
May 23, 2023  
Page 4

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 1: 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 2: 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.

**Recommended Mitigation Measure 3: 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.

**Burrowing Owl**

The Project is within the known geographic range of burrowing owl (BUOW) (CDFW 2023) and the MND did not discuss this species. BUOW inhabit open grassland or adjacent canal banks, ROWs, vacant lots, etc. containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Review of aerial imagery indicates that the Project contains agricultural fields with several mature oak trees and is located immediately adjacent to the sandy wash and riparian habitats located within the Salinas River, which may provide suitable nesting habitat for BUOW. As BUOW have the potential to use the Project site and have been documented within the Project vicinity (CDFW 2023), CDFW recommends the following:

**Recommended Mitigation Measure 4: BUOW Surveys**

CDFW recommends conducting a habitat assessment for burrowing owl following the California Burrowing Owl Consortium's "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's Staff Report on Burrowing Owl Mitigation" (CDFG 2012). If suitable habitat is determined to be present within the Project site or immediate vicinity, CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the CBOC and

Darcy Delgado, Associate Planner  
 City of Paso Robles  
 May 23, 2023  
 Page 5

CDFW's Staff Report referenced above. If suitable habitat is present and surveys are conducted, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable.

#### **Recommended Mitigation Measure 5: BUOW Avoidance Buffers**

CDFW recommends no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

\* meters (m)

#### **Recommended Mitigation Measure 6: BUOW Passive Relocation and Mitigation**

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance, at a rate that is sufficient to detect BUOW if they return.

#### **Other State Species of Special Concern**

The Project is within the known geographic range of California red-legged frog, coast horned lizard, and northern California legless lizard and the riparian habitat on the

Darcy Delgado, Associate Planner  
City of Paso Robles  
May 23, 2023  
Page 6

eastern boundary of the Project site and oak trees located within the agricultural lands on the western boundary of the Project site may provide habitat for these species. As these species have the potential to use the Project site, CDFW recommends the following:

**Recommended Mitigation Measure 7: Other State Species of Special Concern  
Pre-activity Surveys**

CDFW recommends that a qualified biologist conduct a focused pre-activity survey prior to project implementation for each species and their requisite habitat features. If California red-legged frog, coast horned lizard, or northern California legless lizard are found during surveys or at any time during construction, coordination with CDFW is recommended to discuss appropriate avoidance and minimization measures.

**Nesting Birds**

The MND identified nesting birds as having the potential to occur within the Project area and provided Mitigation Measure BR-1 to mitigate for impacts to nesting birds. Mitigation Measure BR-1 states the following:

“Within one week of ground disturbance activities, if work occurs between March 15 and August 15, nesting bird surveys shall be conducted. To avoid impacts to nesting birds, grading and construction activities that affect trees and grasslands shall not be conducted during the breeding season from March 1 to August 15. If construction activities must be conducted during this period, nesting bird surveys shall take place within one week of habitat disturbance. If surveys do not locate nesting birds, construction activities may be conducted. If nesting birds are located, no construction activities shall occur within a distance specified by a qualified biologist, until chicks are fledged or nest fails. This includes nests of all common bird species (under the MBTA), as well as special status birds and raptor nests. Construction activities shall observe the delineated buffer, determined by a qualified biologist, where buffer radius will be specified according to special status rank, intensity of construction activity or impact (i.e. high decibel levels or heavy ground disturbance) and where local, state, and federal regulations apply. A preconstruction survey report shall be submitted to the lead agency immediately upon completion of the survey. The report shall detail appropriate fencing or flagging of the buffer zone and make recommendations on additional monitoring requirements. A map of the Project site and nest locations shall be included with the report. The Project biologist conducting the nesting survey shall have the authority to reduce or increase the recommended buffer depending upon site conditions.”

CDFW does not recognize this measure as being sufficient to minimize and avoid impacts to migratory and non-migratory nesting birds and recommends the following:

Darcy Delgado, Associate Planner  
City of Paso Robles  
May 23, 2023  
Page 7

**Recommended Mitigation Measure 8: 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 9: 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.

**Editorial Comments and/or Suggestions**

**Federally Listed Species:** CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including but not limited to San Joaquin kit fox (*Vulpes macrotis mutica*) and California red-legged frog. 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.

Darcy Delgado, Associate Planner  
City of Paso Robles  
May 23, 2023  
Page 8

**Lake and Streambed Alteration:** The Project site is located directly adjacent to, and within the floodplain of, the Salinas River. Project activities may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement; therefore, if the MND approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSA Agreement issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593 or [R4LSA@wildlife.ca.gov](mailto:R4LSA@wildlife.ca.gov).

## **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](mailto: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).

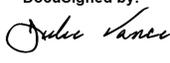
Darcy Delgado, Associate Planner  
City of Paso Robles  
May 23, 2023  
Page 9

## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City of Paso Robles 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](mailto:Jeremy.Pohlman@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Julie A. Vance  
Regional Manager

Darcy Delgado, Associate Planner  
City of Paso Robles  
May 23, 2023  
Page 10

## REFERENCES

California Burrowing Owl Consortium, 1993. *Burrowing owl survey protocol and mitigation guidelines*. April 1993.

CDFG, 2012. *Staff Report on Burrowing Owl Mitigation*. California Department of Fish and Game.

California Department of Fish and Wildlife, 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: Firestone Solar Phase II Project**

**SCH No.: 2023040553**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
CBB	
Recommended Mitigation Measure 1: CBB surveys	
Recommended Mitigation Measure 3: CBB take authorization	
BUOW	
Recommended Mitigation Measure 4: BUOW surveys	
Recommended Mitigation Measure 6: BUOW passive relocation and mitigation	
Other State Species of Special Concern	
Recommended Mitigation Measure 7: Other state species of special concern pre-activity surveys	
Nesting Birds	
Recommended Mitigation Measure 8: Nesting bird surveys	
<i>During Construction</i>	
CBB	
Recommended Mitigation Measure 2: CBB avoidance buffer	
BUOW	
Recommended Mitigation Measure 5: BUOW avoidance buffers	
Nesting Birds	
Recommended Mitigation Measure 9: Nesting bird monitoring and/or avoidance buffer	