



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](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**Sep 13 2023**

September 13, 2023

## STATE CLEARINGHOUSE

Noelle Tomlinson, Project Planner  
Kings County Community Development Agency – Planning Division  
1400 West Lacey Boulevard, Engineering Building #6  
Hanford, California 93230  
[Noelle.tomlinson@co.kings.ca.us](mailto:Noelle.tomlinson@co.kings.ca.us)

**Subject: Conditional Use Permit No. 23-02 (Project)**  
**Kings CSG 1 LLC Solar Project**  
**Mitigated Negative Declaration (MND)**  
**SCH No. 2023080332**

Dear Noelle Tomlinson:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the Kings County Community Development Agency – Planning Division (Kings County) for the above-referenced 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 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.

Noelle Tomlinson, Project Planner  
Kings County Community Development Agency – Planning Division  
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.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Kings CSG 1 LLC

**Objective:** The Project proposes to construct, operate, and decommission a 5-megawatt (MW) commercial photovoltaic solar and Battery Energy Storage Facility (BESS). The Project would include approximately 14,000 solar modules, underground electrical conductors, balance of system equipment, access roads, and fencing. The BESS would have a capacity equal to the solar photovoltaic system at 5 megawatt-hours (MWh).

**Location:** The Project site is located at 17345 18<sup>th</sup> Avenue, Lemoore, in Kings County. The Project is located on Assessor’s Parcel Number (APN) 026-070-009 and is bordered by 18<sup>th</sup> Avenue to the west and is south of Kansas Avenue.

**Timeframe:** Unspecified, but construction is anticipated to take approximately three to four months.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations to assist Kings 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 for this Project.

Aerial imagery of the Project boundary and its surroundings show the area contains tilled and cultivated crops that provide suitable habitat for special status species. 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 MND acknowledges that the Project site 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 of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special status animal species, including the State

Noelle Tomlinson, Project Planner  
Kings County Community Development Agency – Planning Division  
Page 3

threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), and the State threatened Swainson's hawk (*Buteo swainsoni*).

### **San Joaquin Kit Fox**

Mitigation Measure MM BIO-1 states that, "Within 14 days of the start of Project construction activities, a pre-construction survey should be conducted by a qualified biologist knowledgeable in the identification of these species. The pre-construction survey should include walking transects to identify the presence of burrowing owls and their burrows, American badgers and their dens, and desert kit foxes and their dens. The pre-activity survey shall be spaced at close enough intervals to provide 100 percent coverage of the Project site and a 250-foot buffer for American badger, and desert kit fox, and a 250 foot buffer for nesting burrowing owl. If no evidence of these special-status species is detected, no further action is required." CDFW would like to note that while MM BIO-1 provides survey recommendations for desert kit fox (*Vulpes macrotis arsipus*), the Project is within the range of San Joaquin kit fox (SJKF), and surveys should be performed to identify SJKF presence. CDFW also recommends that the survey buffer be extended to 500 feet around the Project site to adequately identify and protect any potential or known SJKF dens during the natal season.

Mitigation Measure MM BIO-2 states that, "If dens or burrows that could support any of these species are discovered during the pre-activity survey conducted under Measure BIO-2, the avoidance buffers outlined below should be established, and den or burrow monitoring will be conducted in accordance with the California Department of Fish and Game (CDFG) Staff Report on Burrowing Owl Mitigation (CDFG, 2012) and USFWS Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance (USFWS, 2011b). No work would occur within these buffers unless the biologist approves and monitors the activity". CDFW would like to note that allowing work to occur within the buffers identified in the United States Fish and Wildlife Service (USFWS) "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011) (USFWS Protocol) would have the potential to result in take of SJKF. As such, CDFW recommends the following:

#### **Recommended Mitigation Measure 1: SJKF Take Authorization**

If the no-disturbance buffers outlined in the USFWS Protocol for SJKF are not feasible, CDFW recommends that 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 Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Mitigation Measure MM BIO-2 continues by stating that, "Burrows and dens may be excavated by a qualified biologist once it is determined that the burrow or den is not occupied. To determine occupation, each den should be monitored for three

Noelle Tomlinson, Project Planner  
Kings County Community Development Agency – Planning Division  
Page 4

consecutive days/nights using tracking medium and/or remote cameras fitted with a motion detector and/or infrared triggering system. In addition, prior to excavation of burrows or dens, one-way doors may be installed (only in non-breeding season), and the burrows or dens will be scoped with optic cameras to ensure no occupation of wildlife are present. All excavations would be accomplished by hand or backhoe under the direct supervision of a qualified biologist.” CDFW strongly recommends that this portion of Mitigation Measure MM BIO-2 not be implemented as the exclusion and excavation of occupied SJKF dens would result in take. Take authorization through the acquisition of an ITP would be required prior to any exclusion or excavation activities. As such, CDFW reiterates the recommendation outlined in Recommended Mitigation Measure 1.

### **Swainson’s Hawk**

Mitigation Measure MM BIO-4 states that, “If Swainson's hawks are found to nest within the survey area, active Swainson’s hawk nests shall be avoided by 0.5 miles during the nesting period unless this avoidance buffer is reduced through consultation with the CDFW and/or a qualified biologist with expertise in Swainson’s hawk issues. If a construction area falls within this nesting area, construction must be delayed until the young have fledged (left the nest). The 0.5-mile radius no construction zone may be reduced in size but in no case shall be reduced to less than 500 feet except where a qualified biologist concludes that a smaller buffer area is sufficiently protective. A qualified biologist must conduct construction monitoring on a daily basis, inspect the nest on a daily basis, and ensure that construction activities do not disrupt breeding behaviors.” CDFW would like to note that allowing work to occur within a 0.5-mile buffer of an active Swainson’s hawk (SWHA) would have the potential to result in take of SWHA. As such, CDFW recommends the following:

#### **Recommended Mitigation Measure 2: SWHA Take Authorization**

CDFW recommends that in the event an active SWHA nest is detected, and a 0.5-mile no-disturbance buffer is not feasible, 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.

### **Editorial Comments and/or Suggestions**

**California Natural Diversity Database:** Please note that the CNDDDB is populated by records through voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified biologist during the appropriate survey period(s) using the appropriate protocol

Noelle Tomlinson, Project Planner  
Kings County Community Development Agency – Planning Division  
Page 5

survey methodology are warranted in order to determine whether or not any special status species are present at or near the Project site.

**Federally Listed Species:** CDFW recommends consulting with the USFWS on 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 ground disturbing activities.

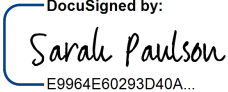
## CONCLUSION

CDFW appreciates the opportunity to comment on the Project to assist Kings County in identifying and mitigating the Project's 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:

  
E9964E60293D40A...

Sarah Paulson for Julie A. Vance  
Regional Manager

ec: United States Fish and Wildlife Service  
Patricia Cole; [patricia\\_cole@fws.gov](mailto:patricia_cole@fws.gov)

State Clearinghouse  
Governor's Office of Planning and Research  
[State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

Noelle Tomlinson, Project Planner  
Kings County Community Development Agency – Planning Division  
Page 6

## **REFERENCES**

United States Fish and Wildlife Service (USFWS). 2011. Standard Recommendations for the Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance. United States Fish and Wildlife Service, Sacramento Fish and Wildlife Office, Sacramento, California, USA.

**Attachment 1**

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

**PROJECT: Kings CSG 1 LLC Solar Project**

**SCH No.: 2023080332**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
SJKF	
Recommended Mitigation Measure 1: SJKF take authorization	
SWHA	
Recommended Mitigation Measure 2: SWHA take authorization	