



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
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September 19, 2024

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Subject: **Canyon Road Solar Energy Project (Project)**  
**Mitigated Negative Declaration (MND)**  
**State Clearinghouse No. 2023100158**

Dear Tiffany Ho:

The California Department of Fish and Wildlife (CDFW) received a recirculated Mitigated Negative Declaration (MND) from Merced County as Lead Agency, for the 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

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<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.

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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. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). 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.

**Fully Protected Species:** CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

Take is for necessary scientific research,

Efforts to recover a fully protected, endangered, or threatened species, live capture, and relocation of a bird species for the protection of livestock, or

They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515)

Additionally, specified types of infrastructure projects may be eligible for an Incidental Take Permit (ITP) for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the project planning process if an ITP may be pursued for the Project.

**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,

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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:** RPCA Solar 6, LLC

**Objective:** The Project proposes to construct an approximately 5-megawatt (MW) solar photovoltaic (PV) electric generating facility (facilities) on approximately 33 acres of a 318-acre parcel. The Project would be located at the southern edge of the parcel. The facilities would consist of a ground-mounted, single-axis tracking system featuring 13,905 PV panels and 40 string inverters. Additionally, the Project would be equipped with a battery energy storage system (BESS) that would allow onsite renewable energy generation to be stored and dispatched onto the grid when needed. The BESS would be located in the southwest corner of the parcel. The Project would connect to existing Pacific Gas and Electric Company (PG&E) distribution lines on the southern boundary of the Project. Other site improvements include the construction of two transformers, utility poles, perimeter fencing, signage, and construction of a formalized 12-foot access point off either Canyon Road or a private road via Volta Road, which would provide access throughout the site.

**Location:** The Project site is located on Assessor's Parcel Number (APN) 088-020-039, a 318-acre parcel located in Merced County on Canyon Road. The Project site is located in the Los Banos area and is approximately 0.4 mile north of the Los Banos Reservoir. The northeastern corner of the Project site is adjacent to Interstate 5 (I-5), which runs northwest to southeast, east of the Project site.

**Timeframe:** Undetermined but Construction is anticipated to last approximately 6 months

## **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, indirect, and cumulative impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document.

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Aerial imagery of the Project boundary and its surroundings show the area contains several natural habitats including annual grassland, which may have 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.

The Project MND was originally circulated for public comment on October 5, 2023, and CDFW provided a comment letter to Merced County on November 2, 2023 (2023 Comment Letter). Within the 2023 Comment Letter, CDFW recommended mitigation measures for several species including the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*); the State threatened Swainson's hawk (*Buteo swainsoni*); the State fully-protected and endangered and federally endangered blunt-nosed leopard lizard (*Gambelia sila*); the State and federally threatened California tiger salamander (*Ambystoma californiense*); the State candidate for listing Crotch's bumble bee (*Bombus crotchii*); the State species of special concern American badger (*Taxidea taxus*) and burrowing owl (*Athene cunicularia*); and the State species of special concern and federally threatened California red-legged frog (*Rana draytonii*).

According to Notice of Intent (NOI) for this recirculated MND, Merced County recirculated the document to address comments related to biological resources and transportation mitigation measures. The recirculated MND provides additional mitigation measures for Crotch's bumble bee (CBB), Swainson's hawk (SWHA), American badger (AMBA), and burrowing owl (BUOW), and provides Appendix E to the recirculated MND, which incorporates additional desktop analyses, to justify the current measures for San Joaquin kit fox (SJKF) and to support the conclusion that blunt-nosed leopard lizard (BNLL), California tiger salamander (CTS), and California red-legged frog (CRLF) have either a low or no potential to occur.

CDFW concurs with the mitigation measures provided in the recirculated MND for CBB, SWHA, AMBA, and BUOW. CDFW appreciates the additional information provided in Appendix E for BNLL, CTS, CRLF, but continues to recommend the recirculated MND incorporate the recommendations included in the 2023 Comment Letter as it does not appear that focused surveys were conducted to determine the potential for species presence. Finally, CDFW still has significant concerns about the ability of some of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for SJKF.

### **San Joaquin Kit Fox**

Mitigation Measure MM BIO-7 states that, "Approximately 60 days prior to the construction start date, a qualified biologist shall perform early evaluation surveys in accordance with the current USFWS-approved protocol for SJKF for the Northern Range, prepared by the Sacramento Fish and Wildlife Office (June 1999). Early

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evaluation surveys will determine the potential for presence of SJKF onsite. Upon completion of early evaluation surveys, informal consultation with the USFWS shall be initiated to determine proper techniques to avoid impacts to this species during project construction, which would be considered significant under CEQA.” Response 1 from Kleinfelder in Appendix E of the recirculated MND states “As stated in the BRA, Kleinfelder believes early evaluation surveys are appropriate to determine if suitable habitat for SJKF is present on the site. Results of the evaluation should be submitted to USFWS/CDFW for consultation to determine if an ITP is warranted for the project.” CDFW concurs with this portion of MM BIO-7 but strongly recommends that early consultation occur with both the U.S. Fish and Wildlife Service (USFWS) and CDFW. As mentioned in the 2023 Comment Letter, the area around the Los Banos Reservoir, which includes the Project site, to the area north of San Luis Reservoir, has been identified as a movement corridor critical to the continued existence and genetic diversity of the northern SJKF population – with the Santa Nella area being identified as a critical SJKF movement “pinch-point” within this area. The creation of the San Luis Reservoir and O’Neil Forebay resulted in a large barrier to the north-south movement of SJKF, and busy highways in the area such as State Route (SR) 152, SR 33, and I-5, as well as the existing urban development further compounded this problem (HT Harvey and Associates 2004). As a result, any upland habitat in this area that could serve as movement or rest areas for SJKF has very high conservation value for this species.

CDFW is aware of several developed or proposed solar projects and infrastructure projects in the area, including Las Camas Solar and Wright Solar, the High-Speed Rail project (San Jose to Merced segment), as well as potential conservation projects between the Los Banos Reservoir and San Luis Reservoir corridor. CDFW recognizes the measures included within Mitigation Measure MM BIO-7 propose to mitigate for potential impacts to SJKF by allowing for permeability (with raised fences) through the Project site and evaluation surveys to prevent unauthorized take during construction. Even with the implementation of this measure, CDFW still has significant concerns related to permeability of the “Pinch Point” within the Santa Nella area from potential development projects (including Canyon Road Solar; see Cumulative Impacts comment below) and would like to note that, while SJKF may not be present during construction of the Project, there is a strong likelihood that SJKF would utilize the Project site over the life of the Project. As such, CDFW continues to recommend the measures outlined in the 2023 Comment Letter be incorporated as part of the recirculated MND; in particular, the portion of the comment letter that recommends the Project proponent consult with CDFW to obtain an ITP.

### **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 SJKF, BNLL, CTS, and CRLF. Take under the Federal Endangered Species Act (FESA) is more

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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 recirculated MND has a very broad analysis of cumulative impacts to biological resources and does not adequately evaluate cumulative impacts to specific resources, including SJKF. Appendix E states: “With respect to cumulative impacts on biological resources, Kleinfelder believes the contribution to long-term, cumulative impacts would not be considerable given the reduced size of the project, limited construction duration, consistency with the Merced County 2030 General Plan goals and policies, and compliance with mitigation measures BIO-1 through BIO-6. As described above, the project has been designed so that it will not impede movement of SJKF around (or, following construction, through) the project site, and the various preconstruction and protocol-level surveys proposed for SJKF, SWHA, AMBA, BUOW, and nesting birds described in the IS/MND and supplemented as recommended above will further reduce the potential for the project to contribute to cumulative impacts on these species. In addition, incorporating the compensatory mitigation proposed above for loss of SWHA foraging habitat will fully mitigate the potential contribution to cumulative impacts to foraging habitat for this species. California horned lark is a CDFW Watch List species and is afforded no legal protection other than by the federal Migratory Bird Treaty act (MBTA). As such, this species does not need to be specifically singled out in the analysis and can otherwise be discussed in the context of native nesting birds protected by the MBTA and addressed through preconstruction nesting bird surveys. The project would not obstruct elk movements in the vicinity of the site. There will be approximately 0.5-mile between the eastern boundary of the proposed project and Interstate 5 to allow elk to pass along the eastern side of the project and the neighboring Wright Solar project to the northwest. In addition, there is ample room for movement around the western side of the proposed project and through/around the Wright Solar project.”

CDFW would like to note that this portion of Appendix E, which provides further explanation of cumulative impacts to biological resources from the proposed Project, does not provide a robust analysis, but rather references back to the mitigation measures in the MND, provides statements that are not supported by evidence (e.g., ample room for movement of elk), and does not incorporate all of the projects either proposed or developed within the Project vicinity (e.g., Las Camas Solar). 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.

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To address this lack of evidence, CDFW continues to recommend 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 Project, even if those impacts are relatively small (i.e., less than significant).

As mentioned previously, the Project is located within a “pinch Point” for SJKF. Even with the implementation of measures provided in the recirculated MND, CDFW still has significant concerns related to permeability of the “Pinch Point” within the Santa Nella area, and the lack of a detailed analysis within the recirculated MND to analyze the cumulative impacts that this Project (and surrounding projects) might have on the species.

Due to the highly sensitive nature of this area, and the direct impacts the Project will have to connectivity and habitat quality, CDFW continues to recommend 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, SWHA, BNLL, CTS, CBB, AMBA, BUOW, CRLF, California horned lark, and Tule elk (*Cervus canadensis nannodes*). 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. (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

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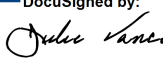
by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

## 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 Ren Cotter, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 767-0956 or by electronic mail at [Ren.Cotter@wildlife.ca.gov](mailto:Ren.Cotter@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...

Julie A. Vance  
Regional Manager

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## **REFERENCES**

H.T. Harvey and Associates. 2004. Habitat Conservation Plan for the San Joaquin kit fox at the Arnaudo Brothers, Wathen-Castanos, and River East Holdings sites within, and adjacent to, the Santa Nella Community Specific Plan area. Prepared for Wathen Castanos, Arnaudo Brothers, and River East Holdings.

**Attachment 1**

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

**PROJECT: Canyon Road Solar Energy Project**

**SCH No.: 2023100158**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
SJKF	
Recommended Mitigation Measure 2: SJKF take authorization	
BNLL	
Recommended Mitigation Measure 6: BNLL surveys prior to construction	
Recommended Mitigation Measure 8: BNLL take authorization	
CTS	
Recommended Mitigation Measure 9: Focused CTS protocol-level surveys	
Recommended Mitigation Measure 11: BNLL take authorization	
CBB	
Recommended Mitigation Measure 12: CBB habitat assessment	
Recommended Mitigation Measure 13: CBB surveys prior to construction	
Recommended Mitigation Measure 15: CBB take authorization	
BUOW	
Recommended Mitigation Measure 18: BUOW surveys prior to construction	
CRLF	
Recommended Mitigation Measure 21: CRLF habitat assessment	
Recommended Mitigation Measure 22: CRLF surveys prior to construction	
<i>During Construction</i>	
SJKF	
Recommended Mitigation Measure 1: SJKF avoidance buffer	

BNLL	
Recommended Mitigation Measure 7: BNLL avoidance buffer	
CTS	
Recommended Mitigation Measure10: CTS avoidance buffer	
CBB	
Recommended Mitigation Measure14: CBB avoidance buffer	
BUOW	
Recommended Mitigation Measure 19: BUOW avoidance buffer	
CRLF	
Recommended Mitigation Measure 23: CRLF avoidance buffer	