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GAVIN NEWSOM, Governor
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February 12, 2024

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Governor's Office of Planning & Research

Feb 14 2024

STATE CLEARINGHOUSE

Subject: **Los Banos Wildlife Area Solar Project
Mitigated Negative Declaration (MND)
State Clearinghouse No. 2024010246**

Dear Terry Ash:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the Department of General Services, Real Estate Services Division (DGS), as Lead Agency, for the Los Banos Wildlife Area Solar 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. While the comment period may have ended, we respectfully request that DGS consider our comments.

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

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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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.

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.

As a trustee 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: ForeFront Power LLC

Objective: The Project proposes to construct a solar Photovoltaic (PV) power generation system that will include 486 ground mounted solar arrays that would occupy 27,000-square-feet. The Proposed Project will convert sunlight to Direct Current (DC) electrical power which would then be converted to Alternating Current (AC) by string inverters before being delivered to the Pacific Gas and Electric (PG&E) distribution system. The total system is expected to be approximately 211 kilowatts. The Proposed Project would support energy reduction goals, the Global Warming Solutions Act, and Governor's Green Building Order S-20-04.

Location: The Project site is located just outside and north of the City of Los Banos, approximately 1.0 mile directly east of the intersection of Mercy Springs Road and Henry Miller Avenue, in unincorporated Merced County. The Project Site is east of an irrigation canal known as San Luis Canal at 18110 Henry Miller Avenue. The Assessor's Parcel Number (APN) for the Project Site is 070-202-012. Section 31, Township 09 South, Range 11 East of the Mount Diablo Base and Meridian.

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Timeframe: Undetermined.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist DGS 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.

Aerial imagery of the Project boundary and its immediate surroundings show the area contains several natural habitats including agricultural lands, wildlife areas containing alkali grasslands, wetlands, and riparian habitat, and ruderal, anthropogenic, and developed land, some of 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, CDFW's survey data, and the surrounding habitat, several special-status species could potentially be impacted by Project activities absent implementation of additional avoidance measures.

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. However, CDFW has concerns about the ability of some of the proposed mitigation measures to reduce impacts to less than significant for special-status animal species, including the State threatened Swainson's hawk (*Buteo swainsoni*); and the State species of special concern burrowing owl (*Athene cunicularia*). CDFW is also concerned with potential impacts to migratory and non-migratory nesting birds. Our recommendations follow.

Swainson's Hawk and Burrowing Owl

The MND notes that both Swainson's hawk (SWHA) and burrowing owl (BUOW) have the potential to occur within the Project area, and Mitigation Measure BIO-1 proposes to mitigate for impacts to these species by requiring general nesting bird surveys and monitoring. CDFW does not concur that Mitigation Measure BIO-1 is sufficient to mitigate for impacts to nesting SWHA and BUOW as both of these species have species-specific protocols to assist with detection and avoidance. CDFW would like to note that BIO-2 includes species-specific surveys for special-status wildlife and specifically states that species surveys, "shall follow accepted procedures for these species and shall map any occurrences or habitat features (i.e., dens or burrows) with sign of special-status species."; however, SWHA and BUOW are not included with the species identified within BIO-2. As such, CDFW recommends that Mitigation Measure BIO-2 be modified to include species-specific surveys and monitoring for both of these species. CDFW further recommends that the species-specific surveys for SWHA and BUOW follow the survey methodology developed by the SWHA Technical Advisory

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Committee (SWHA TAC 2000) and CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012).

Nesting Birds

Mitigation Measure BIO-1 states that, "If construction is to occur during the nesting season (generally February 1 - August 31), conduct a pre-construction nesting-bird survey of all suitable nesting habitat within 14 days prior to construction. The survey shall be conducted within a 500-foot radius of Project work areas for raptors and within a 100-foot radius for other nesting birds. If any active nests are observed, these nests shall be designated an environmentally sensitive area and protected by an avoidance buffer established in coordination with CDFW until the breeding season has ended or until a qualified biologist has determined that the young have fledged and are no longer reliant upon the nest or parental care for survival. CDFW concurs with this measure but recommends that pre-construction nesting bird surveys occur no more than one week prior to the start of ground disturbance and that the nesting bird season be considered to occur from February 1 to September 15.

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).


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CONCLUSION

CDFW appreciates the opportunity to comment on the MND and assist the Department of General Services, Real Estate Services Division 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

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REFERENCES

California Department of Fish and Game. 1994. Staff report regarding mitigation for impacts to Swainson's hawks (*Buteo Swainsoni*) in the Central Valley of California. California Department of Fish and Wildlife, Sacramento, California, USA.

Swainson's Hawk Technical Advisory Committee. 2000. Recommended timing and methodology for Swainson's hawk nesting surveys in California's Central Valley. Swainson's Hawk Technical Advisory Committee.