



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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March 05, 2024

Noelle Tomlinson, Project Planner
Kings County Community Development Agency
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Subject: **Conditional Use Permit No. 23-03
Westlands Daylight Legacy Solar Project (Project)
Mitigated Negative Declaration
State Clearinghouse No. 2024020008**

Dear Noelle Tomlinson:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from Kings County Community Development Agency (Kings County), as Lead Agency, for the Conditional Use Permit No. 23-03 Westlands Daylight Legacy Solar 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. While the comment period may have ended, CDFW respectfully requests that Kings County still 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

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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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.

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.

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: Westlands Solar Park Holdings III, LLC

Objective: The Project proposes to construct, operate, and decommission a 300-megawatt (MW) commercial solar photovoltaic and battery storage facility. The Project also proposes to construct an electrical substation, battery storage, an operations & maintenance facility, telecommunication facilities, and a meteorological data collection system. The proposed battery storage consists of 300 battery containers and has a capacity of 1200 MW hours. A new 230-kilovolt (kV) gen-tie line is also proposed to extend from the Project substation 2.5-miles north to the existing PG&E Mustang switching station. An alternative gen-tie line is also proposed that would extend 2.5 miles to the south with the southernmost 1.0-mile segment passing through the previously approved Westlands Cherry Solar Project.

Location: The Project is located at 18352 Avenal Cutoff Road, between 25th Avenue and Nevada Avenue, in the City of Stratford. The Project is located on Assessor’s Parcel Numbers (APNs): 026-010-028, 026-300-004, -031, -032, -033, -043, -044, 026-320-002, and -003.

Timeframe: Construction would begin in 2025 and would extend for approximately 12 months.

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COMMENTS AND RECOMMENDATIONS

The Project is located within the larger Westlands Solar Park Master Plan Area (Westlands Plan Area), A 2.7-gigawatt (GW) Solar Park comprised of multiple individual solar projects (including this Project) encompassing approximately 21,000 acres. The Westlands Plan Area was analyzed within a Program Environmental Impact Report (PEIR), which was circulated and finalized in December 2017. During preparation of the PEIR, extensive coordination occurred with environmental protection groups and federal, state, and local agencies, including CDFW. This coordination led to the siting of the Westlands Plan Area within a least conflict area for fish and wildlife (biological) resources, significantly reducing the potential for individual project and cumulative impacts to special-status species. As such, the siting of the Project may preclude the need for permits under CESA and Project activities are less likely to be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. CDFW has also taken into consideration the extensive coordination and siting efforts for the Westlands Plan Area during the preparation of this comment letter.

CDFW offers the comments and recommendations below to assist Kings 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.

Aerial imagery of the Project boundary and its surroundings show the area contains agricultural fields, agricultural canals and ditches, and developed roads. Based on a review of the Project description, 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 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 of some proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special-status animal species, including the State threatened Swainson's hawk (*Buteo swainsoni*); and the State species of special concern burrowing owl (*Athene cunicularia*).

Swainson's Hawk

Mitigation Measure BIO-4 (b) states that, "Should any active nests be discovered in or near proposed construction zones, the qualified biologist shall establish a suitable construction-free buffer around the nest. This buffer shall be identified on the ground with flagging or fencing, and shall be maintained until the biologist has determined that

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the young have fledged.” CDFW concurs with including a buffer measure for active Swainson’s hawk (SWHA) nests during the SWHA nesting season, but recommends the buffer measure be more specific and include the following:

Recommended Mitigation Measure 1: SWHA Avoidance Buffer

If Project-specific activities will take place during the SWHA nesting season (i.e., March 1 through September 15), and active SWHA nests are present, CDFW recommends a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, regardless of whether it was detected by surveys or observed incidentally. These buffers would 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, to prevent nest abandonment and other take of SWHA as a result of Project activities.

Additionally, in the event an active SWHA nest is detected, and a ½-mile no-disturbance buffer is infeasible, CDFW recommends the following:

Recommended Mitigation Measure 2: SWHA Take Authorization

In the event an active SWHA nest is detected, and a ½-mile no-disturbance buffer is not feasible, then CDFW recommends the Project obtain an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b).

Burrowing Owl

Mitigation Measure BIO-3 (b) states that, “If pre-construction surveys are undertaken during the breeding season (February through August) and active nest burrows are located within or near construction zones, a construction-free buffer of 250 feet shall be established around all active owl nests. The buffer zones shall be enclosed with temporary fencing, and construction equipment and workers shall not be allowed to enter the enclosed setback areas. These buffer zones shall remain in place for the duration of the breeding season. After the breeding season (i.e., once all young have left the nest), passive relocation of any remaining owls may take place, but only under the conditions described below.” CDFW does not concur that the buffer distances proposed would be sufficient to mitigate for potential impacts to burrowing owl (BUOW) and recommends the following:

Recommended Mitigation Measure 3: BUOW Avoidance Buffer

Should a BUOW be detected, CDFW recommends that no-disturbance buffers, as outlined in the “Staff Report on Burrowing Owl Mitigation” (Staff Report; CDFG 2012), be implemented prior to and during any ground-disturbing activities.

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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)

Mitigation Measure BIO-3 (c) states that, “During the non-breeding season (September through January), any burrows occupied by resident owls in areas planned for construction shall be protected by a construction-free buffer with a radius of 250 feet around each active burrow. Passive relocation of resident owls is not recommended by CDFW where it can be avoided. If passive relocation is not avoidable, resident owls may be passively relocated according to a relocation plan prepared by a qualified biologist.” CDFW concurs with Mitigation Measure BIO-3 (c) but recommends the following if BUOW passive relocation is going to occur during the non-breeding season:

Recommended Mitigation Measure 4: 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), excluding birds from burrows is not a take avoidance, minimization, or mitigation method and is instead considered a potentially significant impact under CEQA. However, if it is necessary for Project implementation, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, by a qualified biologist, 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 one (1) burrow collapsed to one (1) artificial burrow constructed (1:1) to mitigate for evicting BUOW and the loss of burrows. 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.

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

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subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. €). 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

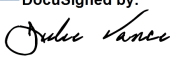
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order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

FA83F09FE08945A...

Julie A. Vance
Regional Manager

ec: State Clearinghouse
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REFERENCES

California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation.
California Department of Fish and Game, Sacramento, California, USA.

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Attachment 1

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

**PROJECT: Westlands Daylight Legacy Solar Project
SCH No.: 2024020008**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
SWHA	
Recommended Mitigation Measure 2: SWHA take authorization	
BUOW	
Recommended Mitigation Measure 4: BUOW passive relocation and mitigation	
<i>During Construction</i>	
SWHA	
Recommended Mitigation Measure 1: SWHA avoidance buffer	
BUOW	
Recommended Mitigation Measure 3: BUOW avoidance buffer	