



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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June 06, 2024

Elliot Racusin, Planner
Fresno County Department of Public Works and Planning
Development Services and Capital Projects Division
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**Subject: Initial Study No. 8403 and Unclassified Conditional Use Permit No. 3764
Althea Avenue Solar Project Phase I and II (Project)
Mitigated Negative Declaration (MND)
State Clearinghouse No. 2024041216**

Dear Elliot Racusin:

The California Department of Fish and Wildlife (CDFW) received an Initial Study (IS) / MND from Fresno County for the 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 Fish and Game Code. While the comment period may have ended, CDFW respectfully requests that Fresno 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 biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological

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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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.

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).

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: Renewable Properties (Dakin Spain)

Objective: The Project proposes to construct and operate the Althea Avenue Solar Project; a single-axis tracker ground mounted photovoltaic electrical generating facility that is to be constructed in two phases. The total capacity of the Project will be 11 megawatt (MW) direct current or 8.8 MW alternating current (AC). Phase I will be 5 MWAC and Phase II is 3.8 MWAC.

Location: The Project site is located on Assessor Parcel Number (APN) 004-120-02 on the north side of West Althea Avenue, between North Russel Avenue and West Althea Avenue, in unincorporated Fresno County. The Project is located on approximately 41 acres of the 56.7-acre parcel. The Project will interconnect to Pacific Gas and Electric Company's pre-existing electrical distribution system located on site. The power may also be equipped with energy storage technology that will allow on site renewable energy generation to be stored and dispatched to the grid when needed.

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Timeframe: Unspecified.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist Fresno 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 agricultural lands consisting of fallow fields and row crops. Several agricultural ditches and private residences are also located adjacent to the Project area. Based on a review of the early consultation notice and supporting Althea Avenue Solar Project Biological Resources Assessment (BRA) document, California Natural Diversity Database (CNDDDB) records, and the surrounding habitat, several species-status species could potentially be impacted by Project activities.

Currently, the IS/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 the 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*). CDFW also has concerns with potential impacts to migratory and non-migratory nesting birds.

Swainson's Hawk

The Project site is within the known range of Swainson's hawk (SWHA), multiple CNDDDB historical occurrences have been documented within five miles of the Project (CNDDDB 2024), and the BRA, prepared to inform the IS / MND, noted that suitable foraging habitat was present within the Project area. SWHA are known to breed within the Central Valley of California and prefer to nest and forage in alfalfa, fallow fields, field crops, and grassland habitats with a sufficient source of small mammals (CDFG 1994). Based on aerial imagery and the information provided, the Project vicinity contains suitable habitat for SWHA foraging. In addition, there are trees and structures located adjacent to the Project area that may provide suitable nesting habitat.

As SWHA have a high potential to use the Project site and have been documented within the Project vicinity, CDFW continues to recommend that a qualified wildlife biologist conduct surveys for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) as part of the biological technical studies conducted prior to construction activities.

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In addition to conducting SWHA protocol surveys, CDFW recommends the Project include the following avoidance and minimization measures:

Recommended Mitigation Measure 1: SWHA Surveys Prior to Construction

Depending on the time between the survey efforts conducted and Project construction, CDFW recommends that additional surveys, following the survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000), be repeated the survey season immediately prior to construction.

Recommended Mitigation Measure 2: 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.

Recommended Mitigation Measure 3: SWHA Take Authorization

CDFW also recommends that in the event an active SWHA nest is detected, and a ½-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.

Nesting Birds

The Project site is within the known geographic range of several species of migratory and non-migratory birds, and the IS / MND MMRP provided recommended Mitigation Measure f. to mitigate for impacts to nesting birds. Mitigation Measure f. states that, “A nesting bird survey shall be performed by a qualified biologist no earlier than one week prior to any construction during the nesting season (March 1 – August 31) to determine if any native birds are nesting on or near the site (including a 250-foot buffer for raptors). If any active nests are observed during surveys, a suitable avoidance buffer from the nests should be determined by the qualified biologist based on species, location, and extent and type of planned construction activity. These nests would be avoided until the chicks have fledged and the nests are no longer active, as determined by the qualified biologist. A recommendation to remove any suitable nesting habitat (i.e., trees and vegetation) outside of the bird breeding season to avoid impacts to nesting birds.”

CDFW does not concur that this this measure is sufficient to mitigate for impacts to migratory and non-migratory nesting birds and recommends the following:

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Recommended Mitigation Measure 4: Nesting Bird Surveys Prior to Construction

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 5: 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

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 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 survey

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

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

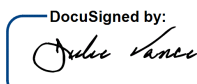
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order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

CONCLUSION

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

Sincerely,

DocuSigned by:


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Julie A. Vance

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LITERATURE CITED

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. Sacramento, California, USA.

California Department of Fish and Wildlife. 2024. Biogeographic Information and Observation System. <https://www.wildlife.ca.gov/Data/BIOS>. Accessed 28 June 2023.

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

Attachment 1

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

**PROJECT: CUP 3764 IS No. 8403 Althea Avenue Solar Project Phase I
and II**

SCH: 2024041216

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
SWHA	
Recommended Mitigation Measure 1: SWHA surveys prior to construction	
Recommended Mitigation Measure 3: SWHA take authorization	
Nesting Birds	
Recommended Mitigation Measure 4: Nesting bird surveys prior to construction	
<i>During Construction</i>	
SWHA	
Recommended Mitigation Measure 2: SWHA avoidance buffer	
Nesting Birds	
Recommended Mitigation Measure 5: Nesting bird monitoring and/or avoidance buffer	