



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



December 16, 2024

Jeremy Shaw  
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**Subject: Rosemary Solar and Energy Storage System Complex (Project)  
Unclassified Conditional Use Permit Application Nos. 3795, 3796, 3797,  
and 3798 & EIR No. 8575 Notice of Preparation (NOP)  
SCH No.: 2024110253**

Dear Jeremy Shaw:

The California Department of Fish and Wildlife (CDFW) received a NOP from Fresno 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

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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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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. 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

**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, sections 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.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Rosemary Solar, LLC

**Objective:** The Project proposes to construct, operate, maintain, and decommission a 140-megawatt solar and energy storage complex with an estimated 8 hours of 140-megawatt alternating current (MWac) energy storage. The Project would include O&M buildings, parking, and an onsite substation. Four separate facilities are proposed as part of the Project, each on a distinct site. An approximately 2-mile-long transmission (generation-tie) line would deliver power via one of four possible pathways to the existing Pacific Gas and Electric Company (PG&E) owned 70 kilovolt (kV) Crescent Substation, which would be the Project's point of interconnection with the grid. In addition to the Project, the Environmental Impact Report (EIR) for the Project will also include an evaluation of the impacts of reconductoring approximately five miles of the PG&E Helm to Crescent 70 kiloVolt (kV) electric transmission line (PG&E Transmission Line) to facilitate Project interconnection. These activities will include replacing or improving poles within an approximately 50-foot-wide corridor, pulling and tensioning of

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new conductor, and using equipment storage, storage and laydown areas and a helicopter landing zone with a temporary approximately two-acre footprint.

**Location:** The Project is located in a rural area of Fresno County, approximately 25 miles southwest of Fresno and approximately five miles south of the City of San Joaquin. The Project is located in U.S. Geological Survey (USGS) San Joaquin 7.5-minute quadrangle in Section 19, Township 16 South and Range 17 East, Sections 23 and 24 of Township 16 South and Ranges 16 East of the Mount Diablo Base Meridian. The Project site is bounded by W. Kamm Avenue to the north, S. El Dorado Avenue to the west, W. Conejo Avenue to the south, and S. Yuba Avenue to the east.

**Timeline:** Undetermined

## 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 prepared for this Project.

Aerial imagery of the Project site and its surroundings show the area contains several natural and agricultural habitats including tilled row crops and fallow fields within the Project site. Annual grassland also appears to be present within and surrounding the PG&E Transmission Line, which may provide habitat for a number of special-status species. Based on a review of the Project description, California Natural Diversity Database (CNDDDB) records, and aerial imagery, the Project and PG&E Transmission Line are within the geographic range of a number of special-status species including, but not limited to, the State and federally endangered Fresno kangaroo rat (*Dipodomys nitratoides exilis*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State candidate western burrowing owl (*Athene cunicularia hypugaea*) and Crotch's bumblebee (*Bombus crotchii*), and the State species of special concern American badger (*Taxidea taxus*). Additionally, the Project area is within the geographic range of several special-status plant species and many migratory and non-migratory nesting birds.

In order to support the adequate assessment of potential impacts to biological resources in the Draft EIR (DEIR), CDFW recommends that a qualified biologist perform relevant database reviews and other research of the Project area, then conduct focused habitat assessments and/or focused biological surveys during the appropriate survey period(s) in order to determine whether any special-status species may be present within the Project site.

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CDFW recommends this initial work be documented within the DEIR and used to inform further efforts that may be needed thereafter including the need for additional protocol surveys and/or the development of avoidance, minimization, and/or mitigation measures. This information and analysis may then be used in the DEIR to consider the development of modified or new Project alternatives to avoid and minimize potentially significant environmental impacts on the biological environment. This information is critical to make an informed decision during the CEQA process and to ensure Project compliance with CESA, Fish and Game code, and other applicable State and federal laws and regulations.

### **Fresno kangaroo rat**

The Project Site and PG&E Transmission Line are within the historic range of the Fresno kangaroo rat (FKR) and the species is known to occupy grassland habitats. While there are currently no known extant populations, recent surveys in FKR range have been limited and the status of FKR populations are unknown. Additionally, portions of the PG&E Transmission Line appear to be located near to the Fresno Slough, which may provide connectivity to where the species was last found. As such, CDFW recommends a qualified biologist conduct a habitat assessment within the PG&E Transmission Line and vicinity as part of the biological studies conducted in support of the DEIR for the Project. If suitable habitat is found, consultation with CDFW is recommended for guidance on survey methodology. If FKR is detected, immediate consultation with CDFW is warranted to discuss the Project.

### **Swainson's hawk**

The Project is within the known geographic range of Swainson's hawk (SWHA), and recent occurrences have been documented within the vicinity of the Project site (CDFW 2024). 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 in the NOP, most of the Project site contains suitable habitat for SWHA foraging. In addition, there may be trees and structures located within the vicinity of 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 recommends that a qualified 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 in support of the DEIR.

In addition to conducting SWHA surveys, CDFW recommends the DEIR include the following measures:

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### **Recommended Mitigation Measure 1: SWHA Surveys Prior to Construction**

Depending on the time between the initial survey efforts conducted in support of the DEIR and Project construction, CDFW recommends that additional surveys, following the survey methodology developed by the SWHA Technical Advisory Committee, 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 Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

### **Recommended Mitigation Measure 4: SWHA Foraging Habitat Mitigation**

Finally, CDFW recommends compensation for the loss of SWHA foraging habitat as described in CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" (CDFG 1994) to reduce impacts to foraging habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

- For projects within 1 mile of an active nest tree, a minimum of 1 acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of ¾ acre of HM land for each acre of development is advised.

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- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of ½ acre of HM land for each acre of development is advised.

### **Western Burrowing owl**

The Project site is within the known geographic range of western burrowing owl (BUOW) and there are multiple historic and recent occurrences located adjacent to the Project site (CDFW 2024). BUOW inhabit open grasslands and desert scrublands containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Based on aerial imagery and the information provided in the NOP, most of the Project site contains suitable habitat for BUOW nesting and foraging.

The California Fish and Game Commission (FGC) approved burrowing owl (BUOW) as a candidate for potential listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice Register (Notice Register) on October 25, 2024. As such, BUOW is now a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

As BUOW have the potential to be present within the Project site or Project vicinity, CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) as part of the biological studies conducted in support of the DEIR. In addition to the habitat assessment and focused surveys for BUOW, CDFW recommends the DEIR include the following:

#### **Recommended Mitigation Measure 5: BUOW Preconstruction Surveys**

Depending on the time between the initial survey efforts conducted in support of the DEIR and Project construction, CDFW recommends that additional surveys, following the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) be repeated the survey season immediately prior to construction.

#### **Recommended Mitigation Measure 6: BUOW Avoidance Buffer**

Should a BUOW or known BUOW burrow (active or inactive) be detected, either during preconstruction surveys or construction activities, CDFW recommends that no-disturbance buffers, as outlined in the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012), be implemented prior to and during any ground-disturbing activities. CDFW also recommends that these buffers be implemented for both wintering and breeding BUOW.

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### **Recommended Mitigation Measure 7: BUOW Take Authorization**

If a BUOW or known BUOW burrow (active or inactive) is detected, and the no-disturbance buffers outlined in the 2012 Staff Report on Burrowing Mitigation are 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.

### **Crotch's bumblebee**

The Project site is within the known geographic range of Crotch bumble bee (CBB) and a historical occurrence has been documented approximately eight miles southeast of the Project site (CDFW 2024). CBB are known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses. CBB was once common throughout most of central and southern California. However, it now appears to be absent from most of their range, especially in the central portion of its historic range within California's Central Valley (Hatfield et al. 2015). Analyses by the Xerces Society et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years.

CDFW recommends a qualified biologist conduct a habitat assessment to determine if the Project area and the immediate surrounding vicinity contain habitat suitable to support CBB. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment. If potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023). If surveys indicate the presence or potential presence of CBB, consultation with CDFW is recommended for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation. 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.

### **American badger**

The Project site is within the known geographic range of American badger (AMBA) and there are historical occurrences documented within the vicinity of the Project site (CNDDDB 2024). AMBA occupy sparsely vegetated land cover with dry, friable soils to excavate dens, which they use for cover, and that support fossorial rodent prey

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populations (i.e., ground squirrels, pocket gophers, etc.) (Zeiner et. al 1990). Based on aerial imagery and the information provided in the NOP, the PG&E Transmission Line may contain suitable habitat for AMBA denning and foraging.

As AMBA have the potential to den and/or forage within the Project site, particularly with the PG&E Transmission Line, CDFW recommends that a qualified biologist assess the presence/absence of AMBA by conducting a focused field survey in all areas of potentially suitable habitat as part of the biological studies conducted in support of the DEIR. These surveys should particularly focus on the relatively less disturbed habitat sited for the PG&E Transmission line. If surveys indicate the presence or potential presence of AMBA, consultation with the CDFW is recommended for guidance on mitigation measures such as avoidance, minimization, and mitigation.

### **Botanical Surveys**

CDFW recommends that the PG&E Transmission Line be surveyed by a qualified botanist for special-status plants following the “Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities” (CDFW 2018) as part of the biological technical studies conducted in support of the DEIR. CDFW recommends that the plant surveys be floristic and, if necessary, utilize a known reference site for any special-status plants in order to provide a high level of confidence in the effort and results.

If a special-status plant is found, CDFW recommends that the special-status plant species be avoided whenever possible by delineating and observing a no disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species. If a State or federally listed plant species is identified during botanical surveys, it is recommended that consultation with CDFW and/or the USFWS be conducted to determine permitting needs.

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

**Nesting birds:** CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.



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To evaluate Project-related impacts on nesting birds, CDFW recommends that a general habitat assessment for nesting birds be conducted as part of the biological technical studies conducted in support of the EIR. Depending on the results of that assessment, CDFW further recommends that the EIR for this Project include that a qualified biologist conduct a pre-construction survey for active nests no more than 10 days prior to the start of ground or vegetation 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 Project site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW 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 the birds have fledged and are no longer reliant upon the nest or on-site 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 Project site would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

**California Natural Diversity Database (CNDDDB):** 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 methodology are warranted in order to determine whether or not any special-status species are present at or near the Project site.

**Artificial Lighting:** Installation of outdoor artificial night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication, determining when to begin foraging, thermoregulation behavior, and migration (Longcore and Rich 2004, Miller 2006, Nightingale et al. 2006, Perry et al. 2008, Stone et al. 2009). Phototaxis, a phenomenon which results in attraction and

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movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004). Project activities could result in disruption of wildlife behavior, inadvertent injury, or mortality.

CDFW recommends that the DEIR for the Project include an analysis of artificial lighting as it relates to biological resources and incorporate enforceable mitigation measures to decrease the impacts of artificial outdoor lighting on wildlife species. Potentially feasible mitigation measures include motion sensitive lighting; mounting light fixtures as low as possible to minimize light trespass; use of light fittings that direct and confine the spread of light downward; and use of long-wavelength light sources. In addition, CDFW recommends that lighting is not installed in ecologically sensitive areas (e.g., streams, wetlands, and habitat used by special-status species, such as nesting/roosting sites and riparian corridors) and the use of the white/blue wavelengths of the light spectrum be avoided.

**Cumulative Impacts:** CDFW recommends 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). Cumulative impacts are recommended to be analyzed 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 also be identified and mapped for each resource being analyzed and utilized for this analysis. 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>.

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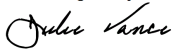
## FILING FEES

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 to assist Fresno County in identifying and mitigating Project impacts on biological resources. Please see the attached Mitigation Monitoring and Reporting Program (MMRP) table which corresponds with recommended mitigation measures in this comment letter. 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:  
  
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Julie A. Vance  
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## REFERENCES

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Swainson's hawk technical advisory committee (SWHA TAC). 2000. Recommended timing and methodology for Swainson's hawk nesting surveys in the central valley of California. Swainson's Hawk Technical Advisory Committee.

Xerces Society for Invertebrate Conservation, Defenders of Wildlife, and Center for Food Safety. 2018. A petition to the state of California fish and game commission to list the Crotch bumble bee (*Bombus crotchii*), Franklin's bumble bee (*Bombus franklini*), Suckley cuckoo bumble bee (*Bombus suckleyi*), and western bumble bee (*Bombus occidentalis occidentalis*) as Endangered under the California Endangered Species Act.

Zeiner, D., W. Laudenslayer, Jr, K. Mayer, and M. White. 1990. California's Wildlife Volume I-III. California Department of Fish and Game, editor. Sacramento, CA, USA.

**Attachment 1**

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

**PROJECT: Rosemary Solar and Energy Storage System Complex by  
Rosemary Solar, LLC**

**SCH No.: 2024110253**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
SWHA	
Recommended Mitigation Measure 1: SWHA preconstruction focused survey	
Recommended Mitigation Measure 3: SWHA Take Authorization	
Recommended Mitigation Measure 4: SWHA Foraging Habitat Mitigation	
BUOW	
Recommended Mitigation Measure 5: BUOW surveys prior to construction	
Recommended Mitigation Measure 7: BUOW Take Authorization	
<i>During Construction</i>	
SWHA	
Recommended Mitigation Measure 2: SWHA avoidance buffer	
BUOW	
Recommended Mitigation Measure 6: BUOW avoidance buffer	