Docusign Envelope ID: C5706136-2198-4F4E-B3D2-51AF85C65B0F

State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

October 13, 2025

Emily DeAnda, Associate Planner
Stanislaus County Planning and Community Development
1010 10th Street, Suite 3400
Modesto, California 95354
(209) 525-6330
planning@stancounty.com

Subject: UsePermitApplicationNo.PLN2025-0007 Mid Valley Power (Project)
Early Consultation Referral (CON) SCH No. 2025081256

Dear Emily DeAnda:

The California Department of Fish and Wildlife (CDFW) received a CON from Stanislaus County pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

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 statue for all the people of the State (Fish and Game 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).

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, activities evaluated in the Plan may be subject to CDFW's lake and streambed alteration regulatory authority (Fish and Game Code, § 1600 et seq.).

Docusign Envelope ID: C5706136-2198-4F4E-B3D2-51AF85C65B0F

Likewise, to the extent implementation of the Plan 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 may 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 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: Mid Valley Power

Objective: The Project proposes to construct a photovoltaic (PV) solar energy farm with an aggregate peak power capacity of 115 megawatts (MW) across an approximately 555-acre site comprised of nine parcels within the General Agriculture (A-2-40) zoning district. The Project includes a collector substation and battery energy storage system (BESS) with a 262 MW backup capacity housed within a 15-acre compound. A 34.5 kilovolt (kV) overhead line crossing the California Aqueduct is proposed to connect the systems. Underground electrical lines will run beneath Interstate (I-5) to connect the system with parcels east of I-5. Operations and maintenance is proposed to include routine maintenance and panel washing with on-site wells. Facility operations will be managed remotely via a cloud-based system.

Proposed fencing and landscaping improvements include a six-foot-tall chain link fence with barbed wire around the 15-acre substation and battery compound, a six-foot-tall chain link fence surrounding the entire Project site, and screening with chain link fencing slats and 10-foot-wide landscape strips planted with olive trees along the frontages adjacent to I-5. Access to the site will be provided via a gated driveway from County-maintained Howard Road and Needham Road via Kern Creek Road (a private road). A 20-foot-wide emergency vehicle access perimeter road would be constructed around each parcel.

Location: The Project is located at 3348 Howard Road and I-5, between Henderson Road and Stark Road, in the Westley area, within Assessor's Parcel Numbers (APNs)

Docusign Envelope ID: C5706136-2198-4F4E-B3D2-51AF85C65B0F

021-015-002, -021, -023, -024, -025, -026; and 021-013-001, -018, -020. Eight parcels totaling approximately 484 acres are located east of Interstate 5 (I-5), while one parcel of 71 acres is situated to the west of I-5.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist Stanislaus 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 inform a subsequent CEQA document or to be implemented prior to Project implementation.

Based on a review of the Project description, a review of California Natural Diversity Database (CNDDB) records, and the surrounding habitat, the Project site is within suitable habitat for several special status animal species including, but not limited to, the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*); the State threatened Swainson's hawk (*Buteo swainsoni*); the State candidate western burrowing owl (*Athene cunicularia hypugaea*) and Crotch's bumble bee (*Bombus crotchii*); and the State Species of special concern American badger (*Taxidea taxus*).

San Joaquin Kit Fox and American Badger

The Project site is within the known geographic range of San Joaquin kit fox (SJKF) and American badger (AMBA) and relict habitat may exist west of the Project site. There are also multiple historic recorded occurrences of these species in the Project vicinity (CDFW 2025). SJKF are known to forage within agricultural lands (Warrick et al. 2007). Additionally, SJKF may be attracted to both construction materials (pipes, etc.) and construction footprints due to the type and level of activity (excavation, etc.) and the loose, friable soils that are created as a result of intensive ground disturbance. SJKF will readily use shipping containers, portable buildings, and stacks of materials (e.g., I-beams, wooden boards) with spaces within or underneath them for denning, in addition to pipes and culverts (Cypher et al. 2013). AMBA are also known to occupy sparsely vegetated grasslands and agricultural lands with dry, friable soils to excavate dens, which they use for cover, and that support fossorial rodent prey populations (i.e., ground squirrels, pocket gophers, etc.) (Zeiner et. al 1990).

Therefore, CDFW recommends that a qualified biologist conduct a habitat assessment for SJKF and AMBA as part of the biological technical studies conducted in support of a subsequent CEQA document or prior to Project approval. If potential habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for the applicable species and their requisite habitat features to evaluate potential impacts resulting from ground and vegetation disturbance. If surveys indicate the presence or potential

Docusign Envelope ID: C5706136-2198-4F4E-B3D2-51AF85C65B0F

presence of SJKF or AMBA, 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 for SJKF, 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.

Swainson's hawk

The Project site is within the known geographic range of Swainson's hawk (SWHA) and there are historical occurrences documented within the vicinity of the Project site (CDFW 2025). SWHA are known to forage in alfalfa, fallow fields, field crops, and grassland habitats with a sufficient source of small mammals (CDFG 1994). Based on aerial imagery, most of the Project site contains suitable habitat for SWHA foraging. In addition, there are trees and structures located within the vicinity of the Project area that may provide suitable nesting habitat. Therefore, CDFW recommends the following measures.

Recommended Mitigation Measure 1: SWHA Surveys

CDFW recommends that a qualified biologist conduct surveys for nesting SWHA following survey the methods developed by the Swainson's Hawk Technical Advisory Committee (Swainson's Hawk Technical Advisory Committee 2000) prior to Project implementation. The survey protocol includes early season surveys to assist the Project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities.

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

Docusign Envelope ID: C5706136-2198-4F4E-B3D2-51AF85C65B0F

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.

Western Burrowing Owl

The Project site is within the known geographic range of western burrowing owl (BUOW) there are historical occurrences documented within the vicinity of the Project site (CDFW 2025). CDFW would like to note that the California Fish and Game Commission (FGC) approved 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 considered 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 the following measures:

Recommended Mitigation Measure 4: BUOW Pre-construction Surveys

CDFW recommends that focused surveys, following the 2012 Staff Report on Burrowing Owl Mitigation (2012 Staff Report) (CDFG 2012), be conducted the survey season immediately prior to Project implementation. Please note that the 2012 Staff Report necessitates multiple surveys prior to the initiation of construction.

Recommended Mitigation Measure 5: BUOW Avoidance Buffer

Should a BUOW or known BUOW den (active or inactive) be detected, either during pre-construction 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.

Recommended Mitigation Measure 6: BUOW Take Authorization

If a BUOW or known BUOW den (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

Docusign Envelope ID: C5706136-2198-4F4E-B3D2-51AF85C65B0F

the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Crotch's Bumble Bee

The Project is within known geographic range of Crotch's bumble bee (CBB) (CDFW 2025) and suitable habitat may be present within the ruderal habitats within and along the boundary of the Project site. CBB are known to inhabit a variety of habitats, including grasslands, scrublands, openings in woodlands, areas with bare ground including vacant lots, dirt roads, and levees (Xerces Society et al. 2018; CDFW 2024). As suitable CBB habitat may be present within the Project site and vicinity, CDFW recommends a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of a subsequent CEQA document or prior to Project approval determine if the entire Project site 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, regardless of what time of year Project activities will be conducted, 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 for SJKF, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

EDITORIAL NOTES AND SUGGESTIONS

Lake and Stream Alteration: Several potential streams, including Kern Creek, appear to be present within or directly adjacent to the Project site. Project activities that substantially change the bed, bank, and channel of any river, stream, or lake are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation): (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial and may include those that are highly modified such as canals and retention basins.

Docusign Envelope ID: C5706136-2198-4F4E-B3D2-51AF85C65B0F

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW's website (https://wildlife.ca.gov/Conservation/LSA) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

CNDDB: Please note that the CNDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDB 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/botanist during the appropriate survey period(s) and 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.

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.

To evaluate Project-related impacts on nesting birds, CDFW recommends 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

Docusign Envelope ID: C5706136-2198-4F4E-B3D2-51AF85C65B0F

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.

Battery Energy Storage System Evaluation: The proposed Project includes installation of a BESS on the Project site. CDFW is aware of recent catastrophic fires resulting from lithium-ion BESS operations at similar facilities within California. As such, these BESS systems warrant a careful evaluation for potential fire-related impacts to biological resources within and surrounding the Project site, particularly within nearby natural habitats. Lithium-ion BESS fires can release an array of toxic chemicals into the air (Mylenbusch et al. 2023). In addition to the obvious public health concerns, these emissions may also impact air quality for nearby wildlife, and harmful particulate matter may settle into soils or waterways, possibly affecting soil-dwelling organisms, burrowing mammals, and aquatic life. Concentrations of toxic gases and particulates may be highest in the immediate vicinity of the fire, and the risk of explosion exists, making the area hazardous for firefighters. Further, the use of water for fire suppression is not always appropriate and may exacerbate the fire. The distinctive characteristics of a BESS fire may increase the potential of a resulting wildfire, particularly in largely undeveloped areas such as the Project site and surrounding grassland habitat.

As such, CDFW recommends that any subsequent CEQA document include a thorough analysis of the BESS component of the Project and evaluate the potential impacts of a catastrophic BESS fire on biological resources. CDFW recommends the evaluation detail the Project-specific measures that would be implemented to reduce the risk of catastrophic fire, and to carefully consider BESS siting, spacing, battery life and degradation, and the most appropriate fire protection/suppression system. CDFW also recommends that the BESS be sited away from the natural habitats adjacent to the Project site and that the Project evaluate multiple alternatives that avoid and minimize potential impacts to biological resources.

Docusign Envelope ID: C5706136-2198-4F4E-B3D2-51AF85C65B0F

CONCLUSION

CDFW appreciates the opportunity to comment to assist Stanislaus County in identifying and mitigating this Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (https://www.wildlife.ca.gov/Conservation/Survey-Protocols). Please see the enclosed, Attachment 1, Mitigation Monitoring and Reporting Program (MMRP) table, which corresponds with recommended mitigation measures in this comment letter. Questions regarding this letter or further coordination should be directed to Evelyn Barajas-Perez, Environmental Scientist, at (805) 503-5738 or evelyn.barajas-perez@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Julie Vance
FA83F09FE08945A...

Julie A. Vance
Regional Manager

ATTACHMENT (MMRP)

ec: State Clearinghouse
Governor's Office of Planning and Research
State.Clearinghouse@opr.ca.gov

Docusign Envelope ID: C5706136-2198-4F4E-B3D2-51AF85C65B0F

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. Sacramento, California, USA.

California Department of Fish and Wildlife. 2025. Biogeographic information and observation system. <https://www.wildlife.ca.gov/Data/BIOS>. Accessed 30 September 2025.

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

Cypher, B., Phillips, S., and Kelly P. 2013. Quantity and distribution of suitable habitat for endangered San Joaquin kit foxes: conservation implications. Canid Biology and Conservation 16(7): 25-31.

Mylenbusch, I., K. Claffey, and B.Chu. Hazards of lithium-ion battery energy storage systems (BESS), mitigation strateies, minimum requirements, and best practices. Process Safety Progress, 2023:1–10.

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.

Warrick, G., H. Clark, P. Kelly. D. Williams, and B. Cypher. 2007. Use of Agricultural Lands by San Joaquin Kit Foxes. Western North American Naturalist 67(2): 270-277. Weintraub, K., T. George, and S. Dinsmore. 2016. Nest Survival of Tricolored Blackbirds in California's Central Valley. The Condor 118: 850-861.

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

Docusign Envelope ID: C5706136-2198-4F4E-B3D2-51AF85C65B0F

Attachment 1

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

PROJECT: UsePermitApplicationNo.PLN2025-0007 Mid Valley Power (Project)

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
Before Disturbing Soil or Vegetation	
Swainson's hawk (SWHA)	
Recommended Mitigation Measure 1: SWHA Surveys	
Recommended Mitigation Measure 3: SWHA Take Authorization	
Western Burrowing Owl (BUOW)	
Recommended Mitigation Measure 4: BUOW Pre-construction Surveys	
Recommended Mitigation Measure 6: BUOW Take Authorization	
During Construction	
Swainson's hawk (SWHA)	
Recommended Mitigation Measure 2: SWHA Avoidance Buffer	
Western Burrowing Owl (BUOW)	
Recommended Mitigation Measure 5: BUOW Avoidance Buffer	