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Subject: DUNCAN ROAD SOLAR PROJECT
MITIGATED NEGATIVE DECLARATION (MND)
SCH No. 2026080465

Dear Jessica Leal:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt an MND from San Joaquin County Community Development Department (San Joaquin County) for the Duncan Road Solar Project (Project) pursuant the California Environmental Quality Act (CEQA) statute and guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise its own regulatory authority under the 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. (Fish & G. Code, § 1802.) Similarly for purposes of CEQA, CDFW provides, 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 may also act as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory

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.

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.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The Project site is located at 18133 East Comstock Road, Linden, CA 95236; Assessor Parcel Number (APN) 091-170-060-000.

The Project consists of the issuance of a conditional use permit for a 14.5-acre ground-mounted photovoltaic energy facility. The project will generate up to 3 megawatts of solar energy utilizing photovoltaic solar modules, inverters, and appurtenant electrical equipment and distribute the useable energy to the electric grid. The modules will be mounted on a steel racking system employing single-axis tracker technology that efficiently tracks the sun's movement throughout the day and maximizes the efficiency of solar collection. The rows of modules will be anchored in the ground using driven piers, and the overall height of the array is not expected to exceed 15 feet above the existing ground surface at maximum tilt. The Project will interconnect to the existing Pacific, Gas, and Electric electrical distribution system adjacent to the site along East Comstock Road.

The Project description should include the whole action as defined in the CEQA Guidelines section 15070 and should include appropriate detailed exhibits disclosing the Project area including temporary impacted areas such as equipment staging areas, spoils areas, adjacent infrastructure development, and access and haul roads if applicable.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist San Joaquin County in adequately identifying and, where appropriate, 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 document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

CDFW is primarily concerned with the project impacts to Swainson's hawk (*Buteo swainsoni*) (SWHA), Crotch's Bumble bee (*Bombus crotchii*) (CBB), and nesting birds.

COMMENT 1: Special-Status Wildlife Species, Swainson's hawk, page 31/267

Issue: The MND states that a SWHA buffer will be incorporated if a nest tree becomes occupied during construction activities and CDFW recognizes the Project is utilizing the SJMSCP for SWHA take coverage. However, the proposed buffer may not be restrictive

enough to reduce the potential for nest abandonment or bird agitation during ground-disturbing or noisy Project related activities.

Recommendation or Recommended Mitigation Measure: CDFW recommends that the SWHA section be revised to the following (additions are noted in **bold** while deletions are noted in ~~strikethrough~~):

“Swainson’s hawk (*Buteo swainsoni*; state threatened) breeds in grasslands with scattered trees, junipersage flats, riparian areas, savannahs, and agricultural or ranch lands with groves or rows of trees.

Swainson’s hawk requires suitable foraging areas within 10–12 miles of a nest site, such as grasslands, alfalfa, or grain fields that support small mammal populations. Swainson’s hawks are known to nest in single trees on agricultural landscapes and occasionally in orchards. Suitable foraging habitat in the vicinity of the Project Site is present in the scattered surrounding agricultural fields. Trees that may support nesting are present in adjacent rural residential areas; however, no trees are present on the Project Site. In addition, there are 6 documented occurrences of Swainson’s hawk within 5 miles of the Project Site (CNDDDB 2026). This species is covered under the SJMSCP.

As the Swainson’s hawk is a Covered Species under the SJMSCP, the Project Sponsor would be required to comply with all provisions of the SJMSCP, which includes incidental take minimization measures to protect Swainson’s Hawk, such as protecting nest trees and foraging habitat. Specifically, “If the Project Proponent elects to retain a nest tree, and in order to encourage tree retention, the following Incidental Take Minimization Measure shall be implemented during construction activities:

~~If a nest tree becomes occupied during construction activities, then all construction activities shall remain a distance of two times the dripline of the tree, measured from the nest.~~

Nesting SWHA. If Project activities are scheduled during Swainson’s hawk nesting season (approximately March 1 – August 31), and suitable nesting habitat is present in or within 1/4-mile of the Project Area, the Designated Biologist shall conduct a focused Swainson’s hawk nesting and breeding activity survey consistent with the Recommended Timing and Methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley (Swainson’s Hawk Tech. Advis. Comm., 5/2000) with the following changes:

Nesting season surveys shall include at least one preconstruction survey completed no greater than fourteen (14) days prior to vegetation removal and construction activities. Surveys shall be conducted in all suitable Swainson’s hawk nesting habitat within 1/4-mile of the Project Area that can be accessed by the Project Proponent.

The results of the survey and the survey methodology shall be provided to the SJMSCP and CDFW upon completion.

If Swainson's Hawk breeding activity is identified during any of the surveys or during construction activities, a Qualified Biologist shall work in coordination with CDFW and the SJMSCP to establish a site-specific buffer distance of at least ¼ mile. This buffer shall remain in place until the nesting season has ended or until the Qualified Biologist has determined that all young have fledged and are no longer reliant upon the nest or parental care for survival. The site-specific buffer distance may be smaller, subject to SJCOG and CDFW approval. Site-specific buffers shall be marked by brightly colored temporary fencing.

The Qualified Biologist shall serve as a biological monitor during those periods when construction activities occur near active nest areas to ensure that no inadvertent impacts on these nests occur. The Qualified Biologist will have stop work authority in the event construction activities result in disturbance to an active nest.

If a nest tree becomes occupied during construction activities, then all construction activities a site-specific buffer shall be established and impacts to the nesting tree shall be avoided.

~~If the Project Proponent elects to remove a nest tree, then nest trees may be removed between September 1 and February 15, when the nests are unoccupied."~~

If the Project requires the removal of a nest tree, the Project Proponent may remove nest trees between September 1 and February 15, when the nests are unoccupied.

With implementation of these measures as included in the SJMSCP, potential impacts to Swainson's hawk would be mitigated to less than significant by ensuring construction and operation activities are conducted a safe distance from the active nests and foraging habitat is preserved."

COMMENT 2: Mitigation Measures, BIO-1 Crotch's Bumble Bee Avoidance, page 32/267

Issue: The proposed BIO-1 CBB Avoidance measure states that a habitat assessment will be conducted prior to any ground-disturbing activities and a protocol level survey will be required if nesting and foraging resources are present onsite. However, CBB may still be present onsite even if only nesting or foraging resources are present. Additionally, the proposed measure states the CBB active period is April-August but the CBB active period extends beyond that time.

Recommendation or Recommended Mitigation Measure: CDFW recommends that mitigation measure BIO-1 be revised to the following (additions are noted in **bold** while deletions are noted in ~~strike through~~):

“Should construction begin during the Colony Active Period ~~(April—August)~~ **(March 1 through October 31)**, a formal habitat assessment shall be performed by a qualified biologist prior to initiating ground disturbing activities to determine if suitable nesting or foraging habitat is present in the Project Site. The assessment shall include:

1. Review of occurrence record data
2. Analysis of foraging, nesting, and overwintering resources
3. Documentation of plant species observed (including what is blooming at the time of the survey and percent cover)

The locations of any nesting resources, including rodent burrows, cavities, thatched grasses, brush, rock piles, logs, and manmade structures like dumped furniture, shall be mapped during the assessment. Areas adjacent to the Project shall also be considered, as accessible, to determine if there is suitable nesting or foraging habitat for Crotch’s bumble bee.

If suitable nesting ~~and or~~ foraging resources are detected in the Project Site during the habitat assessment, **a Qualified Biologist shall implement the following** protocol-surveys following the CDFW *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species* (CDFW 2023) ~~shall be conducted by a qualified biologist (i.e. someone with a valid CDFW Scientific Collecting Permit for Crotch’s bumble bee) to determine if Crotch’s bumble bee is present in the Project Site. A minimum of three visits shall be conducted during the Colony Active Period (April—August) and will be spaced 2-4 weeks apart. If no Crotch’s bumble bees are detected on the Site, no further mitigation would be required. If Crotch’s bumble bees are detected, consultation with CDFW shall be initiated to determine the most appropriate strategy to avoid impacts to bumble bees on the Site.~~

~~If suitable foraging habitat is absent from the Project Site, but suitable nesting habitat is present and foraging habitat occurs adjacent to the Site, preconstruction nest surveys for Crotch’s bumble bee shall be conducted according to the CDFW Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species (CDFW 2023) document 48 hours prior to construction to determine if any active Crotch’s bumble bee nests are present. If no active Crotch’s bumble bee nests are detected during the preconstruction nest survey, no further mitigation would be required. If Crotch’s bumble bee nests are detected, they shall be avoided by a 50-foot buffer, as possible. If avoidance is not possible, consultation with CDFW shall be initiated to determine the most appropriate strategy to avoid impacts to bumble bees on the site.~~

CBB Protocol Survey. If Project activities are proposed to occur during the active season for CBB, Project Proponent shall develop a Pre-Construction Survey Plan for CBB and submit it to San Joaquin County for acceptance, developed in coordination with CDFW (see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213150&inline>). A total of three surveys shall be conducted prior to any ground-disturbing Project activities or vegetation removal that will take place during the active season for CBB (March 1 through October 31), or until all flowering vegetation is largely desiccated, to

determine if any active nests are within the Project Area. Each survey shall be spaced two to four weeks apart, unless otherwise authorized in writing by San Joaquin County in coordination with CDFW, with the last survey taking place within 72 hours prior to construction activity. A Qualified Biologist shall perform meandering transects through the planned construction footprint, plus a 50-foot buffer where accessible, between 9:00 am and 1:00 pm where feasible and at least one hour after sunrise and at least two hours before sunset, to visually survey the area for CBB activity. The duration of the survey will be the minimum amount of time necessary to adequately survey the area, typically at least one hour of surveying per three acres of potential habitat, excluding capture, chilling, photo, identification, and release time. For each sampling event, the Qualified Biologist shall survey suitable habitat using non-lethal photo voucher and netting methods, developed in coordination with CDFW (see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213150&inline>). If a suspected or confirmed CBB is identified during any of these surveys, the Qualified Biologist shall notify San Joaquin County within 48 hours.

If CBB or CBB nests are observed onsite during protocol level surveys, then Project Proponent will implement the following impact measures:

If a foraging CBB is observed, Project related activities may not proceed until the Qualified Biologist consults with San Joaquin County in coordination with CDFW to demonstrate compliance with CESA.

If CBB nests are discovered in the Project Area, a Qualified Biologist shall establish a 50-foot buffer around the nest until the nest senesces or becomes inactive and is no longer in use. The buffer shall be delineated using high-visibility fencing, flagging, or similar materials along with appropriate signage. The nest location will be recorded with global positioning system (GPS) and will be reported to San Joaquin County within 48 hours of finding the nest. Project related activities may not proceed until the Qualified Biologist consults with San Joaquin County in coordination with CDFW to demonstrate compliance with CESA.”

COMMENT 3: Mitigation Measures, BIO-2 Preconstruction Nesting Bird Surveys, page 32/267

Issue: The proposed BIO-2 preconstruction nesting bird survey measure states that nesting bird surveys shall be performed by a Qualified Biologist prior to any ground-disturbing or vegetation removal activities and a no-disturbance buffer will be implemented if nesting birds are found. However, the proposed measure states the nesting bird season occurs March 1 through August 31, but the nesting bird period often extends beyond that time. Additionally, the proposed raptor buffer size should also be determined by the Qualified Biologist in coordination with San Joaquin County and CDFW.

Recommendation or Recommended Mitigation Measure: CDFW recommends that mitigation measure BIO-2 be revised to the following (additions are noted in **bold** while deletions are noted in ~~strikethrough~~):

“A preconstruction nesting bird survey shall be performed by a qualified biologist no earlier than one week prior to any ground disturbance or vegetation removal activities that start during the nesting season (~~March 1–August 31~~) (**typically February 1 through August 31**) to determine if any native birds are nesting on or near the Project Site (~~including a 250-foot buffer for raptors, where accessible~~). If any active nests are detected during surveys, a suitable avoidance buffer from the nests shall be determined by a qualified biologist **in coordination with San Joaquin County and CDFW. Buffer sizes should be determined based on** species, location, and extent and type of planned construction activity. These nests would be avoided until the chicks have fledged and/or the nests are no longer active, as determined by the qualified biologist.

Any ground disturbance or suitable nesting habitat (i.e., trees and vegetation) that would need to be removed under the Project shall occur outside of the bird breeding season (~~September 1–February 28~~) (**typically September 1 through January 31**) to avoid impacts to nesting birds, when feasible.”

Comment 4: Pollinators

Issue: The MND should include measures to increase use by pollinators such as dual use farming. The Project should be designed to optimize a balance between electrical generation and agricultural production (Jossi 2018) or native plants. Native plantings or dual use farming techniques provide additional foraging resources for pollinator species including but not limited to CBB, a CESA candidate species, and for other native species by increasing the amount of nectar resources on a local level. Incorporating locally native plantings or dual use farming techniques help to increase pollinator populations and would help to reduce project impacts to a less than significant level.

Recommendation or Recommended Mitigation Measure: CDFW recommends the Project be planted with deep-rooted native flowers and grasses that capture and filter storm water, build topsoil, and provide abundant and healthy food for bees and other insects that provide critical services to our food and agricultural systems as described on the Fresh Energy website at <https://fresh-energy.org/beeslovesolar/>.

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 California Natural Diversity Database (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 submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

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

Pursuant to Public Resources Code § 21092 and § 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to R2CEQA@wildlife.ca.gov.

CDFW appreciates the opportunity to comment on the MND for the Duncan Road Solar Project to assist San Joaquin County in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Michael Shun, Senior Environmental Scientist (Specialist) at (916) 767-8444 or michael.shun@wildlife.ca.gov.

REFERENCES

Jossi, Frank. 2018. Scientific American. Solar Farms Produce Power—and Food.
Retrieved on May 21, 2020