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August 20, 2019

Mario Anaya
City of Tulare
Community & Economic Development Department
411 East Kern Avenue
Tulare, California 93274

Subject: Saputo Hylux Concentrated Solar Energy Project (Project), DRAFT INITIAL STUDY/MITIGATED NEGATIVE DECLARATION (DRAFT IS/MND) SCH # 2019079080

Dear Mr. Anaya:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Tulare (City) for the above-referenced Project pursuant 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 exercise of 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. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

[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.

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 implementation of the Project as proposed may result in "take" as defined by State law of species protected under the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.) and 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 §§ 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).

PROJECT DESCRIPTION SUMMARY

Proponent: City of Tulare (City)

Objective: The proposed Project will construct and operate a Hylux Concentrated Solar Power (CSP) system. The CSP system includes ground mounted solar mirror arrays, an overhead receiver string (where the heat energy is concentrated) supported by poles and guy wires; new electrical wires to power the pumps for the heat transfer fluid (HTF) and control equipment. HTF will be used to collect the heat that will be transferred to a water system holding 960,000 gallons of water. The CSP system will automatically shut down at sundown.

Location: The proposed Project is located at 800 East Paige Avenue in the City of Tulare; a portion of APN 181-100-032; Tulare County, California.

Timeframe: Ten to 12 months from start of construction

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City 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 document.

Currently, the MND indicates that the Project's impacts would be less than significant with the implementation of mitigation measures described in the MND. However, as currently drafted, CDFW is unable to concur with this conclusion as the proposed

mitigation measures will result in "take" in the form of catch or capture of Tipton kangaroo rat (*Dipodomys nitratoides*, TKR), a species listed as endangered under both CESA and the federal Endangered Species Act (ESA) and has the potential to result in take of Swainson's hawk (*Buteo swainsoni*, SWHA), a species listed as threatened under CESA.

Additionally, the MND did not address impacts to birds that may be incinerated or otherwise injured passing through the concentrated solar stream or colliding with guy wires during the operation of the CSP system for its useful life. Therefore, additional significant impacts may result from operation of the Project that was not analyzed nor mitigated for.

CDFW is also concerned about the adequacy of mitigation measures for special-status species including, but not limited to, the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*, SJKF), the State species of special concern burrowing owl (*Athene cunicularia*, BUOW), and additional nesting birds that are likely using the Project or nearby lands for nesting or foraging purposes.

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service (USFWS)?

COMMENT 1: San Joaquin Kit Fox (SJKF)

Mitigation Monitoring and Reporting Program, San Joaquin Kit Fox, Mitigation Measures BIO-1 and BIO-3; pages 4 through 6.

Issue: The MND acknowledges the potential for SJKF occupancy of the Project and requires Mitigation Measures (MM) BIO-1 and BIO-3. However, MM BIO-3 c., which requires installation of escape ramps for any excavation that will not be covered at the end of each work day, can result in impacts to this species. Specifically, the fact of having a SJKF contained in an excavation even if it is able to free itself is capture; a form of take as defined in Section 86 of the Fish and Game Code. In addition, MM BIO-3 d does not require CDFW to be contacted in the event that SJKF are found occupying Project piping or prior to moving said piping, or if a SJKF is found dead, injured or entrapped. As currently drafted, take authorization from CDFW is warranted in the event of SJKF occupancy of the Project area, excavation of SJKF burrows (BIO-1), or use of rodenticides (BIO-3 f.).

Specific impact: Without appropriate avoidance and minimization measures for SJKF, potential significant impacts associated with the Project include, den collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor

of young, and direct mortality of individuals due to vehicle strikes, entombment in dens, and rodenticide poisoning.

Evidence impact is potentially significant: Habitat loss resulting from agricultural, urban, and industrial development is the primary threat to SJKF (Cypher et al. 2013). Very little suitable habitat remains in Tulare County (Cypher et al. 2013). Therefore, take resulting from Project activities has the potential to significantly impact local SJKF populations.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact Shortcoming)

To minimize Project impacts, CDFW recommends modifying the language in MM BIO-1 and BIO-3 to include the following information and making the following additional mitigation measures conditions of Project approval.

Recommended Mitigation Measure 1: SJKF Take Avoidance

CDFW recommends the City modify the language in MM BIO-3 to include requiring contact and consultation with CDFW should a SJKF be found on the Project (or within 500 feet of the Project), a SJKF is found in an excavation, in pipes or other materials, a SJKF is found injured or dead. CDFW staff should be contacted at 559-243-4014 and R4CESA@wildlife.ca.gov.

Recommended Mitigation Measure 2: SJKF Take Authorization

SJKF detections, movement of pipes containing a SJKF, potential entrapment in excavations and use of rodenticides warrants consultation with CDFW to discuss how to avoid take, or if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) pursuant to Fish and Game Code § 2081(b) prior to starting Project activities. For consultation regarding take authorization and to report SJKF observations and survey findings, Regional CDFW staff should be contacted at 559-243-4014 and R4CESA@wildlife.ca.gov.

COMMENT 2: Tipton Kangaroo Rat (TKR)

Mitigation Monitoring and Reporting Program, TKR, Mitigation Measure (MM) BIO-6; page 7.

Issue: The MND acknowledges the potential for TKR to be present on the Project and requires MM BIO-6, which requires work to be conducted during daylight hours, biologist to conduct inspections to locate small mammal burrows, and if unspecified avoidance is not feasible, to conduct trapping for TKR.

Specific impact: Capture of TKR during trapping efforts is a form of take as defined in Fish and Game Code § 86, which is to hunt, pursue, catch, capture, or kill or attempt to do so. Removal or other impacts to TKR burrows also have the potential to result in take of the species. Without appropriate avoidance and minimization measures for TKR, potential significant impacts associated with the Project include trap captures, burrow collapse, inadvertent entrapment in cable trenches or other excavations, reduced reproductive success, reduction in health and vigor of young, increased predation and direct mortality of individuals through vehicle strikes, entombment and stress associated with trapping or relocation.

Evidence impact is potentially significant: Capture from trapping, mortality from trapping or relocation efforts, habitat loss resulting from agricultural, commercial, industrial and residential development is the primary threat to TKR whose habitat is currently limited. Habitat loss continues, which threatens to extirpate existing populations. (Cypher et al. 2016). Therefore, take resulting from Project activities has the potential to significantly impact local TKR populations.

Recommended Mitigation Measure 3: TKR Take Avoidance

Include an additional requirement to protect all small mammal burrows with a minimum 50-foot no-disturbance buffer. If a minimum 50-foot avoidance buffer is not feasible, please see Recommended Mitigation Measure 4 below.

Recommended Mitigation Measure 4: TKR Take Authorization

Modify BIO-6 language to state that trapping for TKR warrants consultation with CDFW to acquire an ITP *prior to* trapping. Presence of small mammal burrows or detection of TKR at any time also warrants consultation with CDFW to discuss how to avoid take, or if avoidance is not feasible, to acquire an ITP prior to starting or continuing, as the case may be, Project-related activities, pursuant to Fish and Game Code § 2081(b). For consultation regarding take authorization and to report TKR observations and survey findings, contact Regional CDFW staff at 559-243-4014.

COMMENT 3: Swainson's Hawk (SWHA)

Mitigation Monitoring and Reporting Program, SWHA, Mitigation Measure (MM) BIO-5; page 7.

Issue: Large trees, which may support nesting SWHA, are present adjacent to and within ½ mile of the Project. In addition, the Project and surrounding areas include fallow fields or low-growing cops, which may provide foraging habitat for SWHA. According to the California Natural Diversity Database, there are 15 records for

SWHA within 10 miles of the Project, including one historical nest site located ¼ mile southwest of the Project. The presence of these two requisite habitat features and known occurrences of SWHA in the Project vicinity increases the likelihood of SWHA occurrence within ½ mile of the Project that may restrict activities during the nesting season or warrant an ITP from CDFW prior to starting Project activities for incidental take of SWHA during construction and throughout the operational life of the Project. For these reasons, SWHA have the potential to occur on the Project and be impacted by Project activities; however, the MND includes only one MM that requires a portion of the SWHA survey methodology be used and that coordination with a qualified biologist and CDFW occur to determine appropriate avoidance and minimization measures should an active SWHA next be found within ½ mile of the Project. These proposed MMs are not sufficient to avoid take.

Specific impact: Without appropriate avoidance and minimization measures for SWHA, potential significant impacts associated with the Project's construction include loss of foraging and/or nesting habitat, nest abandonment, reduced reproductive success, and reduced health and vigor or death of eggs and/or young. Direct mortality due to incineration or due to feather singe if a SWHA flies through the concentrated solar zone.

Evidence impact would be significant: Nest trees are a limited resource in the San Joaquin Valley (CDFW 2016). The trees within ½-mile of the Project represent some of the only remaining suitable nesting habitat in the vicinity of the Project. Depending on the timing of construction, Project activities including noise, vibration, odors, and movement of workers or equipment could affect nests and have the potential to result in increased stress on adults, increased expenditure of energy, nest, and egg or chick abandonment, significantly impacting local nesting SWHA population.

The MND provided no information regarding the potential for the concentrated solar heat to impact birds that fly between the solar arrays and the overhead receiver pipe. Without any evidence to the contrary, CDFW assumes the heat above the arrays is sufficient to result in take of SWHA resulting in a significant impact on SWHA for the operational life of the Project.

Recommended Potentially Feasible Mitigation Measure(s)

Because suitable habitat for SWHA is present in the vicinity of the Project, CDFW recommends editing the MND to include the following measures and that these be made conditions of approval for the Project.

Recommended Mitigation Measure 5: Focused SWHA Surveys

CDFW recommends that a qualified wildlife biologist conduct surveys for nesting raptors following the entirety of the survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) in the year prior to Project initiation and continue until Project construction commences. The survey protocol was developed to optimize detectability of SWHA nests. If Project activities take place during the normal bird breeding season (February 1 through September 15), CDFW recommends that additional pre-construction surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project construction.

Recommended Mitigation Measure 6: SWHA Avoidance

If an active SWHA nest is found, CDFW recommends implementation of a minimum ½-mile no-disturbance buffer until the breeding season has ended or until a qualified biologist has determined that the young have fledged and are no longer dependent upon the nest or parental care for survival.

Recommended Mitigation Measure 7: SWHA Foraging Mitigation

A known SWHA nest site is located approximately ¼ mile southwest of the Project. Fourteen additional occurrences are known within a 10-mile radius of the Project. The Project is covered in grasses with presumed small mammal burrows, which provide suitable foraging opportunities for SWHA. CDFW recommends the City include an additional MM in the MND to require foraging habitat compensation that follows the guidelines contained in CDFW's Staff Report regarding Mitigation for Impacts to Swainson's hawks (*Buteo swainsoni*) in the Central Valley of California based on the results from the protocol surveys. CDFW recommends the conserved lands be placed under a conservation easement, managed according to a long-term management plan and funded through a non-wasting endowment in perpetuity.

Recommended Mitigation Measure 8: SWHA Take Authorization

If active SWHA nests are detected and the ½-mile no-disturbance nest buffer is not feasible, consultation with CDFW is warranted to determine if the Project can avoid take. If take of SWHA cannot be avoided, acquisition of an ITP pursuant Fish and Game Code § 2081(b) prior to starting or re-starting Project activities would be warranted to comply with CESA. Acquisition of an ITP is warranted for take of SWHA through incineration or other heat-related injuries prior to Project operation.

COMMENT 4: Burrowing Owl (BUOW)

Issue: The MND does not identify the potential for BUOW to occur within the Project site even though the potential for other burrowing mammals exist. While the MND does include measures for general birds, MM BIO-4 only requires a single pre-construction survey using line transects (BIO-1) within the Project and within 50 feet of the Project and provides avoidance requirements only for SJKF, which are not suitable for BUOW and would therefore be ineffective in reducing impacts to BUOW to a less than significant level.

Specific impact: Potentially significant direct impacts associated with the Project's construction include burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, feather singe and direct mortality of individuals due to vehicle strikes, burrow collapse or entombment and incineration.

Evidence impact is potentially significant: BUOW rely on burrow habitat year-round for their survival and reproduction. Habitat loss and degradation are considered the greatest threats to BUOW in California's Central Valley (Gervais et al. 2008). The Project area is within the range of BUOW and suitable burrow habitat is present on or in the vicinity of the Project. Therefore, the Project has the potential to significantly impact local BUOW populations.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact)

CDFW recommends editing the MND to include the following measures and that these be made conditions of approval for the Project.

Recommended Mitigation Measure 9: BUOW Surveys

CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following Appendix D of CDFW's *Staff Report on Burrowing Owl Mitigation*" (CDFG 2012). In addition, CDFW advises that surveys include a 500-foot buffer around the Project.

Recommended Mitigation Measure 10: BUOW Avoidance

CDFW recommends no-disturbance buffers, as outlined in the "*Staff Report on Burrowing Owl Mitigation*" (CDFG 2012), be implemented prior to and during any ground-disturbing activities associated with Project implementation. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW

verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

Recommended Mitigation Measure 11: BUOW Passive Relocation and Mitigation

If BUOW are found to occupy the Project or within 500 feet of the Project and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a minimization or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after burrows are confirmed empty through non-invasive methods, such as surveillance by a qualified biologist. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) at an off-site location and permanent conservation of constructed burrows and sufficient habitat for continued survival of the relocated owls as mitigation for the potentially significant impact of evicting BUOW. Permanent conservation would also require development and implementation of a long-term management plan and funding of a corresponding endowment to ensure BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance of the Project site during Project activities, at a rate that is sufficient to detect BUOW if they return.

COMMENT 5: Operational Impacts

Issue: The CSP system will be operated for an unspecified extended period of time. During daylight hours when the CSP system is on, the concentrated solar heat aimed at the overhead receiver has the potential to incinerate or singe the feathers off SWHA, BUOW and other sensitive and common bird species. The MND does not analyze the potential for operational take of birds for the life of the Project, which may be significant.

Specific impact: Without appropriate analysis and discussion, it is not possible for CDFW to evaluate the potential impacts on birds species that may fly into the concentrated heat source produced by the Project to determine what if any avoidance, minimization or compensatory measures for needed for listed or other special status bird species. Potential significant impacts associated with the Project's operation include incineration of individuals, feather singe of individuals or other heat induced injury or mortality and guy wire strikes.

Evidence impact would be significant: There are trees, grasses, water sources, and foraging opportunities on the Project and adjoining the Project that has the potential to draw in various bird species. SWHA and BUOW are known to occur in the vicinity of the Project (CNDDB 2019) and various sensitive and more common bird species likely occur in the vicinity of the Project as well.

Recommendations: CDFW recommends the City include a discussion of the operating impacts of Project on listed, other special status and common bird species due to the concentrated heat that will be produced between the solar arrays and the overhead receiver pipe and bird strikes with the guy wires for the operational life of the Project. CDFW recommends the City recirculate the MND to include the specifics of the heat produced by the CSP system, an analysis of the impacts of the concentrated heat of birds flying through and nearby the concentrated solar stream and through the guy wire system, and appropriate avoidance, minimization and compensatory measures for the take of listed, other special status and common bird species for the operational life of the Project. Once this additional information if included in the MND and recirculated for public comment, then CDFW will be able to provide substantive comments should they be warranted. Without this information, CDFW is unable to concur with the City that less than significant impacts would occur.

Editorial Comments and/or Recommendation

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, SJKF and TKR. Take under the Federal Endangered Species Act (ESA) is more broadly defined than CESA; take under ESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with ESA is advised well in advance of any ground-disturbing activities.

Nesting birds: CDFW encourages Project implementation occur during the bird non-nesting season (September 16 through December 31). However, if ground-disturbing activities must occur during the breeding season, 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 Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days 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 Project to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e. nest destruction), noise, vibration, 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. 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 CDFW reconsulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife 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 dependent upon the nest or parental care for survival. Variance from these no-disturbance buffers is possible when there is 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 wildlife biologist advise and support any variance from these buffers and coordinate with CDFW in advance of implementing a variance.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that 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 (CNDDB). The CNNDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

FILING FEES

The Project, as proposed, has the potential to impact fish and/or wildlife, and assessment of filing fees may be 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 MND to assist Poplar Community Service District in identifying and mitigating the Project's impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Lisa Gymer, Senior Environmental Scientist Specialist, at the address provided on this letterhead, by telephone at (559) 243-4014 extension 238, or by electronic mail at Lisa.Gymer@wildlife.ca.gov.

Sincerely,

Julie A. Vance
Regional Manager

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Tiffany Steinert
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REFERENCES

California Department of Fish and Game (CDFG), 1994. Staff Report regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California. November 1, 1994.

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