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DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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December 11, 2019

Governor's Office of Planning & Research

DEC 16 2019

STATE CLEARINGHOUSE

Dan Kassik
Kings County Community Development Agency
1400 West Lacey Boulevard
Engineering Building #6
Hanford, California 93230

**Subject: Mitigated Negative Declaration
Conditional Use Permit No. 17-08
Leo Solar Project
Apex Energy Solutions
SCH No. 2019119044**

Dear Mr. Kassik:

The California Department of Fish and Wildlife (Department) has reviewed the Mitigated Negative Declaration (MND) submitted by the Kings County Community Development Agency (County) for the Leo Solar Project (Project). Project approval would allow the construction and operation of a 5-megawatt photovoltaic (PV) solar power generating facility located on an approximately 30-acre portion of a 40-acre parcel. Project facilities include PV panels, inverters, transformers, power poles, 20-foot wide all-weather access roads (perimeter and between panel rows), perimeter security fencing, up to five battery storage structures, nighttime directional motion-sensitive lighting, and data monitoring equipment. The Project will also involve upgrades to an existing Pacific Gas & Electric facility and construction of a new approximately 5,000-foot long overhead utility line. The upgrades to the PG&E facility and the construction of the utility line is not described in the Project Characteristics section of the MND, and according to page 4-23 of the MND, the Project site consists of one 40-acre parcel. It is unclear to the Department if these features were adequately analyzed in the MND. The Project is located north of the Kings County and Kern County border, west of the California Aqueduct and east of 25th Avenue, approximately 16 miles southeast of the unincorporated community of Lost Hills, Kern County, California.

In a letter dated September 8, 2017, the Department provided comments on the Early Consultation Notice for the Project. In that letter, the Department expressed concerns regarding potential Project-related impacts to biological resources and provided a list of recommended protocol surveys to be conducted to inform the California Environmental Quality Act (CEQA) document prepared for the Project (the MND) and mitigation measures to be included in the MND to ensure all potentially significant impacts are reduced to less than significant levels.

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Page 4-23 of the MND states that a reconnaissance level biological survey was conducted on the 40-acre parcel only. This statement lends support that the County did not fully analyze the new overhead utility line to connect the Project to the PG&E substation or the necessary PG&E substation improvement work. While the MND states that no special status wildlife was observed during the field visit conducted on August 31, 2017, the County concluded that five special status species have the potential to occur on the Project because it contains appropriate habitat and included the following species: the State species of special concern burrowing owl (*Athene cunicularia*, BUOW); American badger (*Taxidea taxus*); San Joaquin whipsnake (*masticophis flagellum ruddocki*); the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*, SJKF); the State threatened San Joaquin antelope squirrel (*Ammospermophilus nelson*, SJAS); the State and federally endangered giant kangaroo rat (*Dipodomys ingens*, GKR); the State threatened Swainson's hawk (*Buteo swainsoni*, SWHA); the State candidate tricolored blackbird (*Agelaius tricolor*); the federally endangered and State Rare Plant Rank 1B San Joaquin woollythreads (*Monolopia congdonii*); the State Rare Plan Rank 1B Lost Hills crownscale (*Atriplex coronata* var. *vallicola*) and recurved larkspur (*Delphinium recurvatum*); and other migratory nesting birds.

CDFW acknowledges avoidance, minimization and mitigation measures for some species were included in the MND. While the State and federally endangered and State fully protected blunt-nosed leopard lizard (*Gambelia sila*, BNLL) was not identified in the MND list of potentially impacted species, it was identified as having low potential in the reconnaissance survey report and avoidance measures were included in BIO-3.

The Department is providing the following recommendations to ensure the proposed mitigation measures contained in the MND are effective, enforceable, and truly reduce potential Project-related impacts to less than significant levels.

BIO-1: Modify this mitigation measure to require the Project proponent to follow the compensatory recommendations contained in the Department's 2012 Staff Report on Burrowing Owl Mitigation should BUOW be found on the Project or within 250 feet of the Project to fully off-set significant impacts to BUOW individuals and their habitats due to construction and operations of the Project.

BIO-2: Modify the last sentence in this measure to read: If San Joaquin kit fox or American badger and/or suitable San Joaquin kit fox or American Badger dens are identified on the Project site **or within 500 feet of the Project** during the preconstruction **survey or any time during the Project**, the USFWS guidelines for avoidance **shall be followed. If the avoidance guidelines cannot be followed or if a natal den is discovered**, consultation with CDFW, USFWS, and the Kings County CDA shall take place to determine if incidental take authorization through issuance of an ITP

from CDFW and/or USFWS is warranted before proceeding with Project related activities.

BIO-3: Change "should" to "shall" throughout this measure to ensure the mitigation measure is enforceable. Change the second to last sentence to require that survey methodology must be acceptable to both USFWS and CDFW, not one or the other.

Please be advised that should avoidance of small mammal burrows by 50-feet around each entrance be infeasible and protocol surveys must be conducted, the survey protocol acceptable by the Department has been revised and can be found at the following link: <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281283-reptiles>.

BIO-4: This measure is not enforceable because no minimum avoidance distance is specified for nesting birds. The Department recommends using a 500-foot no-disturbance buffer around active nests of raptors, a 250-foot no-disturbance buffer around active nests of non-raptor species, and a ½-mile no-disturbance buffer around active nests of listed bird species. If a qualified biologist monitors each active nest of non-listed species for 48 hours before starting Project activities and has determined that Project activities may occur within the buffer without causing take, the buffer may be reduced as long as the qualified biologist is present to continuously monitor the nest to ensure Project-related activities are not impacting the individuals. Impacts include flushing, calling, remaining away from the nest for longer than normal periods of time, diving and any other signs of agitation or stress from the adults or juveniles. If the ½-mile no-disturbance buffer from State-listed birds is not feasible to maintain until an active nest becomes inactive, obtaining an ITP from CDFW is warranted prior to starting or continuing Project activities within the buffer.

BIO-5: Change "should" to "shall" throughout this measure to ensure the mitigation measure is enforceable. The Department recommends the County include a minimum no-disturbance buffer of at least 50-feet be included in this measure to ensure enforceability and avoid take of individuals. Require that implementation of measures developed in consultation with CDFW and USFWS be completed prior to starting or restarting Project related activities. If avoidance is not feasible, compensatory mitigation would be necessary to fully offset the take of individual plants or seed banks. Include a requirement to either complete compensatory measures before starting Project activities or prior to energization of the panels if a monetary security is provided to the Department.

The Department recommends the County include the following additional mitigation measures in the final MND.

BIO-6: All perimeter chain-link fencing shall be installed 4-6 inches above the ground for the entire length of the fencing and knuckled back to prevent entanglement of SJKF and to allow unimpeded movement of SJKF through the Project. Chain-link fencing that must be constructed around substations or switching stations shall incorporate privacy slats that extend from the ground to four feet above the ground for the entire length of the fencing.

BIO-7: Prohibit the use of rodenticides. If rodenticide use is allowed, before starting rodenticide use, acquisition of an ITP from CDFW for listed species such as SWHA, SJAS, GKR and SJKF that could directly or indirectly ingest rodenticides shall be obtained.

Department Jurisdiction

CEQA Authority: The Department is a Trustee Agency for fish and wildlife resources with the responsibility under CEQA for commenting on projects that could impact fish and wildlife resources. In this role, the Department is responsible for providing, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities. Pursuant to Fish and Game Code section 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species.

CESA Authority: The Department has regulatory authority over projects that could result in the "take" of any species listed by the State as threatened or endangered pursuant to CESA. If the Project could result in the take of any species listed as threatened or endangered under CESA, the Department may need to issue an ITP for the Project. CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (Sections 21001(c), 21083, Guidelines sections 15380, 15064, 15065). Impacts must be avoided or mitigated to less than significant levels unless the CEQA Lead Agency makes and supports a Statement of Overriding Consideration (SOC). The CEQA Lead Agency's SOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code section 2080.

Fully Protected Species: The Department has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited and the Department cannot authorize their take.

Bird Protection: The Department has jurisdiction over actions which may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Sections of the Fish and Game Code that protect birds, their eggs and nests include

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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).

Thank you for providing the opportunity to comment on this renewable energy project. If you have any questions regarding these comments, please contact 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

cc: State Clearinghouse
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Literature Cited

California Department of Fish and Wildlife. 2019. Approved Survey Methodology for the Blunt-Nosed Leopard Lizard. California Department of Fish and Game: October 2019.

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USFWS. 2011. Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance. Sacramento Fish and Wildlife Office: January 2011.